

In the Supreme Court of South Carolina

APPEAL FROM HORRY COUNTY
Court of Common Pleas

RECEIVED

The Honorable J. Cordell Maddox Jr. Circuit Court Judge

JAN 24 2020

S.C. SUPREME COURT

Appellate Case No. 2019-000509

ROBERT ANTONIO STEED,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

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

99-GS-10-04627
99-GS-10-04628
99-GS-10-04629
99-GS-10-04630
00-GS-10-05019

State of South Carolina Respondent,

v.

Robert Antonio Steed Appellant.

RECORD ON APPEAL

VOLUME I OF II

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON COURT OF GENERAL SESSIONS

3

4 STATE OF SOUTH CAROLINA,
5 Plaintiff,

6 v.

TRANSCRIPT OF RECORD
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7 ROBERT ANTONIO STEED, CASE NOS.: 99-GS-10-4579, 4580
8 Defendant. 99-GS-10-4581, 4582, 00-GS-10-5016

9

10 STATE OF SOUTH CAROLINA,
11 Plaintiff,

12 v.

TRANSCRIPT OF RECORD

13 MICHAEL BRIAN FLYNN, CASE NOS.: 99-GS-10-4334, 4520
14 Defendant. 99-GS-10-4557, 4677, 00-GS-10-5016

15

TRANSCRIPT OF TRIAL TESTIMONY

16

December 4, 2000, Morning Session

17

B E F O R E:

18

THE HONORABLE LUKE BROWN, Judge; and a jury.

19

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

20

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Attorneys for the State

21

ASHLEY PENNINGTON, LESLIE SARJI
Attorneys for the Defendant Steed

22

23

JOHN CRUMRINE
Attorney for the Defendant Flynn

24

25

SUZETTE R. WEIS, CSR, RPR, CSR-335
Circuit Court Reporter

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 County: Charleston
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Case No: 00-5018-Steed

Judge: Luke Brown

99-4334, 4520, 4557, 4677, 00-5016-Flynn

State/Pl's Atty: Sean Houseal

State of S.C.

Bruce Durant

Defendants: Robert Antonio Steed

Defense Atty: Ashley Pennington

Michael B. Flynn

John Crumrine Leslie Sarji

Court Reporter: Suzette R. Weis

Jurat No.	Name	Sex	Race	Court	Strikes Plaintiff	Defense	Accuse
34	John W. Culton, Jr	M	B				(1)✓
18.3	Nancy A. Etheridge	F	W			(1)✓	
35	William J. Cutchin	M	W		(1)✓		
182	Samuel T. Donaldson, III	M	W				(2)✓
112	Larry V. Newton	M	B		(2)✓		
196	George W. Tyler	M	W			(2)✓	
55	Neal Golden (FP)	M	W				(3)✓
43	George Feeher	M	W				(4)✓
08	Elizabeth T. Bankston	F	B			(3)✓	
157	William A. Thompson, JR	M	B		(3)✓		
83	David L. Jones	M	W			(4)✓	
39	Carol L. Desautels	F	W			(5)✓	
155	Pearl Talley	F	B		(4)✓		
162	Marlene Washington	F	B				(5)✓
120	Joseph A. Pezzullo	M	W			(6)✓	
18	Janice R. Bradford	F	W			(7)✓	
189	Kathleen Koster	F	W				(6)✓

For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense.

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Date: 12-4-00

County: Charleston

2 of 3

Case No: 99-95-10-4579, 80, 81, 82 VOIR DIRE
00-5018-3teed
99-4334, 4557, 4677, 00-5016- Judge: Luke Brown
 Pl./Secc: State of S.C. Flynn State/Pl's. Atty: Sean Houseal
Bruce Durant

Defendant: Robert Antonio Steed; Defense Atty: Ashley Pennington
Michael B. Flynn Leslie Sargi, John Cummie
 Court Reporters: Suzette R. Weis

Jurat No.	Name	Sex	Race	Court	Strikes Plaintiff	Defense	Accuse
50	David A. Frasier	m	B		(6)✓		
192	Wayne E Rimer	m	W			(8)✓	
115	Cheryl A. Parish	F	W			(9)✓	
188	Roy Kessinger	m	W		(7)✓		
98	William C. Marr	m	W			(10)✓	
24	Corisa Carter	F	B				(7)✓
168	Thomas A. Williams	M	W		(8)✓		
75	Alfreda Jamison	F	B				(8)✓
169	Louis W. Williamson	M	W				(9)✓
107	Rodney Moore	m	W				(10)✓
190	Lynn Nathan	F	W			(11)✓	
72	Tammy Hood	F	W			(12)✓	
46	Robert Fetz	m	W			(13)✓	
37	James Davis	m	W				(14)✓
61	David Hamblin	m	W			(14)✓	
[REDACTED]							
05	Thomas Agee	m	W			(16)✓	
141	Eric Sherer	m	W			(17)✓	

For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense.

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3 of 3

VOIR DIZ

jud201 Luke Brown

8/22/71's. Atty: Sean Houseal

Bruce Durant

Defense Atty: Ashley Pennington

Leslie Sargi, John Crumrine

Court Reporter: Suzette R. Weiss

For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense.

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STATE V. ANTONIO STEED/MICHAEL FLYNN

1 MORNING SESSION, DECEMBER 4, 2001

2 (11:10 a.m.)

3 THE COURT: All right. Call your case, Solicitor.

4 MR. HOUSEAL: Your Honor, the State calls State of South
5 Carolina versus Robert Antonio Steed and State of South
6 Carolina versus Michael Flynn.

7 THE COURT: All right, pass up the indictments, please.

8 THE CLERK: Yes, sir.

9 THE COURT: What were you telling me, Solicitor?

10 THE CLERK: No, sir.

11 THE COURT: Now, members of the jury panel, give me your
12 attention, please.

13 We're about to begin a trial entitled the State versus
14 Michael Brian Flynn. Mr. Flynn is charged with murder,
15 burglary in the first degree, armed robbery, assault with
16 intent to kill and criminal conspiracy.

17 Just like all of us, sometimes Mr. Flynn also has a
18 nickname. Sometimes he's called Creep. Would you let the
19 jury see what he looks like for me, please, sir. That's Mr.
20 Flynn. Thank you.

21 Now, also charged is Robert Antonio Steed. And like
22 most of us he also has a nickname. Sometimes he's called
23 T-Lo. Is that the way you pronounce it?

24 MR. PENNINGTON: Yes, sir, it is.

25 THE COURT: And he's charged with murder, burglary in

STATE V. ANTONIO STEED/MICHAEL FLYNN

1 the first degree, armed robbery, assault with intent to kill
2 and criminal conspiracy.

3 Would you let them see what he looks like. Thank you
4 very much, Mr. Steed.

5 Now, to these indictments both Mr. Steed and Mr. Flynn
6 plead not guilty. Sitting at that table, those two tables
7 with their attorneys, they are just as innocent as you and I
8 unless and until the State, if indeed they can, convince I2
9 of you of their guilt beyond a reasonable doubt.

10 So I'm going to be asking you some questions. If it
11 applies to you, just stand up and tell me about it. And for
12 any reason I ask you a question and it applies to you and you
13 want to talk to me in person, feel free to come up here.
14 I'll have the attorneys come up here and we'll talk about
15 it.

16 Now, the indictments are in essence are alike. All of
17 them alleged to have occurred on or about May the 3rd, last
18 year, 1999.

19 And it alleges in the assault and battery with intent to
20 kill, it alleges that Mr. Steed with malice aforethought
21 committed an assault and battery on one Porter Walker by
22 shooting him in the torso.

23 And it alleges that Mr. Steed with a deadly weapon; that
24 is a handgun, took certain U.S. currency from the person or
25 in the presence of Porter Walker.

STATE V. ANTONIO STEED/MICHAEL FLYNN

1 And then it alleges in essence that Mr. Steed on that
2 same date, May the 3rd, 1999, with others entered the
3 dwelling of Porter Walker located at 4512 Outwood Street,
4 Ladson, South Carolina, in the nighttime, without consent of
5 the owner intending to commit a crime.

6 And it alleges in the murder that Mr. Steed with malice
7 aforethought fatally shot Christopher Gorski, that's
8 G-O-R-S-K-I, at this same time and place.

9 And that he along with others conspired to do these
10 criminal acts.

11 Now, as far as Mr. Creep -- Mr. Flynn is concerned --
12 forgive me -- it alleges that Michael Brian Flynn combined
13 with other -- other persons to commit burglary and/or armed
14 robbery, that is the one involving criminal conspiracy.

15 And the one involving assault and battery with intent to
16 kill it alleges that Mr. Flynn shot Porter Walker also.

17 It alleges on the same date, May the 3rd, 1999, that Mr.
18 Flynn robbed with a deadly weapon, Porter Walker.

19 And that it alleges as far as the burglary in the first
20 degree that he along with others entered the dwelling of
21 Porter Walker at that same location without the consent of
22 the owner and intending to commit a crime.

23 And finally, it alleges that Mr. Flynn willfully and
24 feloniously with malice aforethought murdered one Christopher
25 Gorski.

STATE V. ANTONIO STEED/MICHAEL FLYNN

1 Now, I don't know whether or not these were in the news
2 media, newspaper, radio, TV, or whether you've discussed it
3 with anyone.

4 Is there any member of the jury panel know anything
5 about this case, heard anything about it, discussed it with
6 anyone else, if so, please stand.

7 All right, sir. Without telling me what it is, what is
8 your name first?

9 JUROR: Marvin Arnsdorf.

10 THE COURT: Mr. Arnsdorf. All right, sir. Now, did you
11 learn about this --

12 JUROR: Through the news media.

13 THE COURT: Through the news media.

14 Was it -- what news media?

15 JUROR: Newspaper.

16 THE COURT: Newspaper. All right.

17 Charleston has got good newspapers, good TVs, radios,
18 but very often sometimes they get things wrong. Sometimes
19 they get things mixed up. Sometimes they print what somebody
20 else said. That would be hearsay.

21 But of all my jurors that I draw to try this case and
22 sit over here and start this case I'll be telling them to lay
23 aside anything they might have heard or discuss with anyone
24 and just decide this case on the -- from what comes from the
25 lips of these witnesses.

STATE V. ANTONIO STEED/MICHAEL FLYNN

1 Is there anything you've read or heard or discussed that
2 would keep you from giving either the defendants or the State
3 a fair and impartial trial?

4 JUROR: No.

5 THE COURT: Thank you.

6 MR. PENNINGTON: Your Honor, may I approach?

7 THE COURT: Of course.

8 (Off-the-record discussion at the bench.)

9 THE COURT: The attorneys just remind you, I forgot to
10 swear you. How about all the jurors stand up, please. Raise
11 your right hands.

12 JURY PANEL,
13 was sworn.

14 THE COURT: Now, Mr. Arnsdorf, how about standing up
15 just a minute.

16 I had failed to -- error on my part -- I had failed to
17 ask you, is there anything that you know of -- why don't you
18 come up here and talk to us a little bit and I'll ask you.

19 (Discussion at the bench.)

20 THE COURT: Come on up here, come on, fellows.

21 What did you read if you -- do you recall what you
22 read?

23 JUROR: I just remember, you know, the murders
24 themselves and I remember seeing pictures of Mr. Flynn. I
25 don't remember the other -- seeing a picture of the other...

STATE V. ANTONIO STEED/MICHAEL FLYNN

1 THE COURT: Okay.

2 You remember seeing a picture of Flynn but you don't
3 remember the other one. Do you remember any of the details?

4 JUROR: No. Not really. Not that -- not the details.
5 I just remember reading.

6 THE COURT: Okay. Now that you have been sworn, is
7 there anything that would keep you from giving the State or
8 the defense a fair and impartial trial?

9 JUROR: I can't think of anything.

10 THE COURT: All right. Have a seat.

11 THE CLERK: Judge, there are two more jurors now that
12 have come forward.

13 THE COURT: How about approach the bench for just a
14 minute.

15 MR. PENNINGTON: As far as he's concerned, I don't have
16 any objection at this point. Although I would point out that
17 you may get more of a reaction, my question 7 goes into a
18 little bit more of the detailed description of the events and
19 that one of the key factors was that the victim, Gorski, was
20 a sailor from Jacksonville. That may prompt people to
21 remember the case more clearly.

22 MR. CRUMRINE: Mine is the same as his but includes home
23 invasion which is what they used in the news media.

24 As far as the picture of Flynn, Your Honor, I'm not sure
25 that -- that they had a composite in there which kind of

STATE V. ANTONIO STEED/MICHAEL FLYNN

1 looks like him. There's another one --

2 THE COURT: Okay. Go ahead and have a seat.

3 (Open court.)

4 THE COURT: I always try to get as much information as I
5 can. Very often things occurred that are in the news media
6 that you don't remember.

7 This is -- the State alleges that this occurred in the
8 home of Porter Walker. It's what the officers call a home
9 invasion. And so with that in mind, come on up here.

10 THE BAILIFF: Juror Number 77.

11 THE COURT: Number 77. What is your name?

12 JUROR: Lenor Jenkins.

13 The reason why I am -- I don't want to serve on the jury
14 is I know a family member.

15 THE COURT: Which family?

16 JUROR: Steed.

17 THE COURT: Does that cause you --

18 JUROR: Yeah.

19 THE COURT: Just don't say anything. Just have a seat.
20 Don't talk to the other jurors.

21 JUROR: Okay.

22 THE COURT: Which family, you -- some of the victims or
23 the defendants?

24 JUROR: Defendant.

25 THE COURT: The victim?

STATE V. ANTONIO STEED/MICHAEL FLYNN

1 JUROR: Steed.
2 MR. HOUSEAL: That's the defendant.
3 THE COURT: Go ahead.
4 JUROR: Sit down?
5 THE COURT: But don't talk to anybody.
6 We talk to these people. I'll let you put anything on
7 the record. She knows the victim's family. You don't have
8 an objection excusing her?
9 MR. PENNINGTON: No, sir, I don't. I think she said
10 Steed, I think is my client. I still don't have an
11 objection.
12 MR. CRUMRINE: Then she said victim and --
13 MR. HOUSEAL: She's confused.
14 THE COURT: Come on up, young man.
15 THE BAILIFF: Juror Number 2.
16 THE COURT: What is that name?
17 THE CLERK: Richard Alston.
18 THE COURT: Come on up closer to me.
19 JUROR: (Inaudible.)
20 He was in school with Mr. Steed.
21 MR. HOUSEAL: The defendant.
22 THE COURT: The fact that you were in school with him,
23 are you uncomfortable serving on the jury?
24 JUROR: Um.
25 THE COURT: Could you give a fair trial both to the

STATE V. ANTONIO STEED/MICHAEL FLYNN

1 State and the defense? Are you comfortable?

2 JUROR: Not comfortable.

3 THE COURT: All right. Go have a seat. Don't talk to
4 the other jurors for the time being.

5 MR. PENNINGTON: What was his name?

6 MR. HOUSEAL: Number 2.

7 THE CLERK: Number 2.

8 MR. PENNINGTON: Thank you.

9 THE COURT: Come up here just a minute. I don't mind
10 going into more detail if you want to. But he says that he
11 knows Steed and he's uncomfortable serving on the jury. Do
12 you have any objection if I excuse him?

13 MR. PENNINGTON: I don't.

14 MR. CRUMRINE: No, sir.

15 THE COURT: All right. Anyone else?

16 THE BAILIFF: Juror 196, Your Honor.

17 THE COURT: Come around.

18 THE CLERK: Mr. Tyler, Your Honor, George Tyler.

19 THE COURT: I believe you told me you were an
20 accountant?

21 JUROR: Yes.

22 Better be honest. I live about six, seven blocks from
23 where that happened. I did not know the defendants' names
24 until today. I do not know anything about the case other
25 than that it happened. And I haven't formed any opinions.

STATE V. ANTONIO STEED/MICHAEL FLYNN

1 THE COURT: Can you keep -- can you give a fair trial to
2 both sides?

3 JUROR: Absolutely.

4 THE COURT: All right. Thank you.

5 JUROR: I don't know anything about them other than I
6 didn't know the people that were invaded or otherwise.

7 THE COURT: Have a seat.

8 MR. PENNINGTON: I have no objection.

9 MR. CRUMRINE: No, sir.

10 THE COURT: Anything else?

11 Anyone else?

12 (Open court.)

13 THE COURT: Now, is there any member of the jury panel
14 related by blood or connected by marriage or connected in any
15 social or business way with either Michael Flynn or Robert
16 Steed, if so, please stand.

17 Is there any member of the jury panel connected in any
18 way, blood or marriage, business or social, with the
19 solicitor's office or any member of his staff? And the
20 solicitor is going to try this case, I'm going to let him
21 introduce himself.

22 MR. HOUSEAL: Good morning. My name is Sean Houseal.
23 This is Mr. Bruce Durant who will be sitting with me this
24 week.

25 THE COURT: All right, sir. I'm going to let -- yes,

STATE V. ANTONIO STEED/MICHAEL FLYNN

1 sir, your name?

2 JUROR: Gerald Firetag. Juror 184.

3 THE COURT: Yes, sir?

4 JUROR: Do you want me to come up there?

5 THE COURT: No. You can tell me about it.

6 JUROR: I'm a professional bail bondsman. So I do --

7 THE COURT: All right. Well, I expect you work with

8 both the --

9 JUROR: Yes, sir.

10 THE COURT: -- the public defender's office and the
11 solicitor's office?

12 JUROR: Yes, sir.

13 THE COURT: The fact that you are a bail bondsman, did
14 you have anything to do with this case?

15 JUROR: No, sir.

16 THE COURT: Would that keep you from giving either side
17 a fair trial?

18 JUROR: No, sir.

19 THE COURT: Anything further from the State as far as
20 this witness is concerned from the solicitor's office?

21 MR. HOUSEAL: Nothing from the State, Your Honor.

22 MR. CRUMRINE: Your Honor --

23 THE COURT: How about approach the bench.

24 MR. CRUMRINE: -- could I approach?

25 THE COURT: Yes, sir.

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1 (Discussion at the bench.)

2 MR. CRUMRINE: Of course, the solicitor decides who they
3 excrete bonds and how much and all that, I think they have a
4 direct conflict of interest in this.

5 THE COURT: I think he's right.

6 MR. HOUSEAL: I don't have any objection to that.

7 MR. CRUMRINE: I don't know if he ever had him on a
8 bond.

9 (Laughter).

10 (Open court.)

11 THE COURT: I know you'd be fair but you work with both
12 sides, I think I'll just -- I got plenty of jurors. I'll
13 just excuse you from just this case. So keep your seat
14 there.

15 JUROR: Yes, sir.

16 THE COURT: All right.

17 Now, I'm going to let Mr. Flynn's attorney introduce
18 himself and I want to know whether or not you're related by
19 blood or connected by marriage to he or any member of his
20 staff or office or as far as the solicitor is concerned, and
21 the attorneys, whether or not you've ever used them in the
22 past as attorneys or presently using them.

23 Counselor.

24 MR. CRUMRINE: Yes, sir. John Crumrine. And I practice
25 law over on James Island at the Wappoo Centre.

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1 THE COURT: All right.

2 Same thing with the -- Mr. Steed's attorney.

3 MR. PENNINGTON: Yes, sir.

4 My name is Ashley Pennington. I work in the public
5 defender's office. And seated with me is Ms. Leslie Sarji
6 who also works with me and will be sitting in on this case.

7 THE COURT: Anybody connected with them?

8 Now, these are some of the witnesses who the State might
9 use --

10 THE CLERK: Judge, you got one.

11 THE COURT: Yes, sir?

12 JUROR: I would have a connection to Ashley Pennington,
13 social connection, through church.

14 THE COURT: All right.

15 The fact that you have a connection in church with Mr.
16 Pennington, would that keep you from giving either side a
17 fair trial?

18 JUROR: No.

19 THE COURT: Thank you.

20 THE CLERK: His name?

21 THE COURT: And your name?

22 JUROR: Rodney Moore.

23 THE COURT: Mr. Martin (sic).

24 JUROR: 107.

25 THE COURT: Thank you.

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1 Now, these are some of the State's potential witnesses
2 who might testify in this case. And I want to know the same
3 thing, whether you're related by blood or connected by
4 marriage or connected in any social or business way with any
5 of these witnesses.

6 If the witnesses happen to be in the courtroom just have
7 them stand up briefly.

8 I'm going to try to tell you who they are connected
9 with.

10 Solicitor, let me give you these because you are more
11 familiar with them. How about you call the names out and
12 tell me who -- and tell the jury who they are connected with,
13 if any.

14 And just stand up briefly and then you can sit down.

15 MR. HOUSEAL: Most of these officers, Your Honor, have
16 not been instructed to be here this morning.

17 THE COURT: That's okay. Sometimes they are in the
18 courtroom.

19 MR. HOUSEAL: Detective Paul Tittle with the Charleston
20 County Sheriff's Office. These first 11 names are with the
21 Charleston County Sheriff's Office.

22 Detective Paul Tittle. Detective William Crews.
23 Detective Stanley Garland. Detective Denise Whisenant.
24 Sergeant Donald Dulin. Detective Robert Walker. Detective
25 David -- excuse me -- Deputy David Bohannon. Sergeant Daniel

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1 Isgett. Detective Harold Phillips. Detective Julius

2 Buncum. And Detective Angie Palmer.

3 Ted Shealy.

4 THE COURT: That's all right. Just keep standing up.

5 Go ahead.

6 MR. HOUSEAL: Ted Shealy with SLED. Agent Dan DeFreese

7 also with SLED. Trooper Michael Hodges from South Carolina

8 Highway Patrol. Dr. Clay Nichols who is the medical

9 examiner. Deputy Paul McManigal also with Sheriff's Office.

10 Sergeant Rick Presnell. Deputy David Willoughby. Deputy Ron

11 Maugans. Deputy Carolyn Poore. All with the Sheriff's

12 Office as well as Deputy Dennis Wenger.

13 Jennifer Stoner. Robin Taylor with SLED. Lieutenant

14 Carl Ritchie with the Mount Pleasant Police Department.

15 Connie Ritchie. James Andrews. April Mook. Aislinne

16 Langston. Stacey Dawson. Michael Carney. William Daniel

17 Lewis. Christine Iler. Celeste Tisdale. Porter Walker.

18 Michele Holbrook. Antonio Robertson.

19 Billy Self. John Griffin, Senior. John Griffin,

20 Junior. Michael Griffin. Thomas Bond. And Demetrius Green.

21 THE COURT: All right, sir. Your name, please, sir?

22 JUROR: Wayne Rhymer. 192.

23 THE COURT: All right, Mr. Rhymer?

24 JUROR: You want me to come up there?

25 THE COURT: No. Tell us about it.

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1 JUROR: I know Paul Tittle. He lives in my
2 neighborhood.

3 THE COURT: And who was he with, Solicitor?

4 MR. HOUSEAL: A sheriff's detective.

5 THE COURT: All right.

6 The fact that you might know him, would that keep you
7 from giving either side a fair trial?

8 JUROR: No.

9 THE COURT: Thank you very much. And your name?

10 JUROR: Thomas Williams.

11 THE COURT: Mr. Williams?

12 JUROR: I know one of the witnesses. He goes to my
13 church.

14 THE COURT: The fact that he goes to your church, would
15 that keep you from giving either side a fair trial?

16 JUROR: No, sir. I don't believe so.

17 THE COURT: Thank you.

18 MR. HOUSEAL: Judge, will you inquire as to which
19 witness that is that he knows?

20 THE COURT: Which what?

21 MR. HOUSEAL: Which witness.

22 THE COURT: Which witness was that that you knew?

23 JUROR: Mr. Billy Self.

24 THE COURT: All right. Thank you.

25 MR. PENNINGTON: And that is Juror 169; is that correct?

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1 JUROR: 168.

2 THE COURT: Yes, sir, your name?

3 JUROR: George Tyler. I know one of the deputies.

4 Would not interfere with the ability to trial.

5 THE COURT: Just for the record, which deputy?

6 JUROR: David Willoughby.

7 THE COURT: Thank you, sir.

8 Now, members of the jury panel, several of these charges
9 against the defendants; murder, burglary in the first degree,
10 armed robbery, assault and battery with intent to kill, are
11 classified as violent crimes.

12 There are even organizations dedicated to fighting
13 violent crimes. And there are organizations dedicated to
14 fighting all types of crimes. Some of those organizations
15 were Citizens Against Violent Crimes, called CAVE; People
16 Against Rape, PAR; Mothers Against Drunk Driving, and MADD;
17 all of those organizations.

18 Is there any member of the jury panel or any member of
19 your immediate family a member of, a contributor to any of
20 those organizations, if so, please stand.

21 All right, your name?

22 JUROR: Piper Lassiter. Juror 88.

23 THE COURT: Ms. Lassiter?

24 JUROR: Mothers Against Drunk Driving.

25 THE COURT: You contribute to them?

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1 JUROR: Yes, sir.

2 THE COURT: The fact that you contribute to Mothers
3 Against Drunk Drivers, Ms. Lassiter, would that keep you from
4 giving either side a fair trial?

5 JUROR: Probably not, sir.

6 THE COURT: Thank you.

7 Now, these are some of the proposed witnesses for Mr.
8 Steed.

9 And I'm going to call their names and ask them to stand
10 up briefly if they happen to be in the courtroom.

11 I want to know the same thing, whether you're related by
12 blood or connected by marriage or connected in any social or
13 business way.

14 Carl Ritchie with the Mount Pleasant Police Department.
15 D.G. Isgett with the Charleston County Sheriff's Office. Dr.
16 Paul Tittle. R.L. Walker. Charleston County Sheriff's
17 Office. J. Buncum. Same organization. Antonio nickname
18 Tony Robertson. Thank you. Billy Self. Celeste Tisdale.
19 Thank you. Eric Lee Johnson. R. Maugans. Charleston County
20 Sheriff's Office. And H. Phillips, from the same one.

21 Counselor, I've got your list. Are there anybody whose
22 names have not been called yet so far?

23 MR. CRUMRINE: Yes, sir, Your Honor. Should I call
24 those --

25 THE COURT: Hold on just a minute. These are some that

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1 might be called in the defense of Brian Flynn, Michael Brian
2 Flynn.

3 If you happen to be in the courtroom, stand up briefly.
4 These are some additional witnesses that might testify. Go
5 ahead.

6 MR. CRUMRINE: Your Honor, I think you may have called
7 some of these, but just in case. We had William David Daniel
8 Lewis. Christine Iler. I believe she's present. I think
9 you said Connie Ritchie and David Bohannon.

10 THE COURT: All right. Thank you, sir.

11 Any member of the jury panel connected in any way with
12 any police organization, related by blood or marriage,
13 business or social to any policeman or police organization,
14 if so, please stand.

15 All right. I'll start with this lady. Your name?

16 JUROR: Rebecca V. Verlano.

17 THE COURT: Yes, ma'am?

18 JUROR: I know a few of the police officers, state
19 troopers.

20 THE COURT: You know them how?

21 JUROR: We donate money to like state troopers.

22 THE COURT: Okay.

23 JUROR: My husband knows several police officers.

24 THE COURT: And the fact that you donate money to police
25 organizations, would that keep you from giving either side a

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1 fair trial?

2 JUROR: No.

3 THE COURT: Thank you so much. And your name, please,
4 sir?

5 JUROR: Thomas Agee, Juror Number 1.

6 THE COURT: Yes, sir.

7 JUROR: I'm a member of the Orange County Narcotics
8 Association in California.

9 THE COURT: All right. You're a member of the Narcotics
10 Officers Association in California?

11 JUROR: Yes, sir.

12 THE COURT: Were you a former police officer?

13 JUROR: Probation officer.

14 THE COURT: Probation officer?

15 JUROR: Yes, sir.

16 THE COURT: Would that keep you from giving either side
17 a fair trial?

18 JUROR: No, sir.

19 THE COURT: Thank you, sir. Your name?

20 JUROR: Wayne Rhymer, 192.

21 My brother is a police officer in Greenville, South
22 Carolina.

23 THE COURT: And, Mr. Rhymer, would that -- is that --
24 was it Mr. or doctor, I know I have a doctor back there.

25 JUROR: Mr.

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1 THE COURT: Would that keep you from giving either side
2 a fair trial?

3 JUROR: No.

4 THE COURT: Thank you so much. And your name?

5 JUROR: Excuse me. Albert Hoyton. Juror Number 73. My
6 son-in-law is a North Carolina State Trooper.

7 THE COURT: And he's up there in the snow now I guess.

8 JUROR: Yes, sir.

9 THE COURT: The fact that you have a relative in North
10 Carolina which is a State Trooper, would that keep you from
11 giving either side a fair trial?

12 JUROR: No, sir.

13 THE COURT: Thank you very much.

14 Now, I'm going to ask you this question and if you want
15 to talk to us in person you feel free to come up here.

16 Is there any member of the jury panel or any member of
17 your immediate family been a victim of a violent crime of
18 this type, if so, please stand.

19 All right, sir, you want to tell me about it or you want
20 to come up here?

21 JUROR: I think I'll come up, Your Honor.

22 THE COURT: All right, sir.

23 And for the record, your name again?

24 JUROR: Thomas Agee. Juror Number 1, sir.

25 THE BAILIFF: Juror Number 1.

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1 THE COURT: Come up here.

2 (At bench.)

3 JUROR: Good morning, Your Honor.

4 I have been a victim of a bomb blast in 1991 on duty as
5 a probation officer.

6 THE COURT: The fact that you were, would that keep you
7 from giving either side --

8 JUROR: No, sir.

9 THE COURT: Thank you so much.

10 JUROR: Thank you.

11 MR. CRUMRINE: Judge, could we have him come up? I said
12 could we have each of them come up if there's any more.

13 THE COURT: Sure. There's not any.

14 MR. CRUMRINE: Okay.

15 THE COURT: Young lady, come on up here.

16 THE CLERK: Juror Number 6. This is A-V-I-G-L-I-A-N-O.

17 JUROR: I'm not familiar with all this stuff.. My
18 ex-husband threw knives at me and he's abusive and shooting
19 at everybody and all that stuff.

20 THE COURT: Would that keep you from giving either side
21 --

22 JUROR: No, no. It wouldn't. I don't want to be in
23 trouble.

24 THE COURT: Thank you so much.

25 Come up here. What she said was her husband abused her

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1 with knives and everything.

2 MR. CRUMRINE: Okay.

3 THE CLERK: Got one more, Judge.

4 THE BAILIFF: Juror Number 131.

5 THE COURT: Thank you. Come up.

6 JUROR: Ms. Rivers.

7 THE COURT: How are you doing?

8 (Heard off record.)

9 THE COURT: She was a teacher last year.

10 THE CLERK: 131.

11 THE COURT: So many students go past you.

12 She said his face was familiar.

13 Anybody else?

14 (Open court.)

15 THE COURT: Is any member of the jury panel other than
16 the juror who already said they live within a few blocks,
17 live close to Woodside Manor in Ladson?

18 Does any member of the jury panel know of any reason why
19 they could not give both the State of South Carolina, Mr.
20 Michael Brian Flynn and Mr. Robert Antonio Steed a fair and
21 impartial trial, if so, please stand.

22 Anything further from the State?

23 MR. HOUSEAL: No, nothing further.

24 THE COURT: Defense?

25 MR. CRUMRINE: Nothing further from Mr. Flynn, Your

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1 Honor.

2 MR. PENNINGTON: May I approach, Your Honor?

3 THE COURT: Of course.

4 (Discussion at the bench.)

5 MR. PENNINGTON: I could have missed it. But I'm not
6 certain that you asked whether or not anyone knows --

7 THE COURT: What number?

8 MR. PENNINGTON: This would be '8 and '9 -- the victims --
9 the victims' families. Mr. Gorski, Mr. --

10 THE COURT: They didn't know anything about it --
11 related -- you're right. I didn't ask them that particular
12 one.

13 MR. PENNINGTON: And I take it from your voir dire
14 you're not comfortable asking about people who have feelings
15 about homicides or weapons would interfere.

16 THE COURT: You're right. I'll let you put it on the
17 record later if you want to.

18 MR. PENNINGTON: All right.

19 THE COURT: I failed to ask any member of the jury panel
20 if they were related by blood or connected by marriage or
21 connected in any social or business way with the victim,
22 Christopher Gorski or Porter Walker, if so, please stand?

23 Anything further from defense?

24 MR. PENNINGTON: No, sir.

25 MR. CRUMRINE: Your Honor, I believe there's one other

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1 name, Mr. Porter's wife, Michele Holbrook.

2 THE COURT: Michele Holbrook, Porter's wife. Doesn't
3 appear to be.

4 All right. Give us a jury.

5 Now, members of the jury panel, when your name is
6 called -- how about approach the bench, gentlemen. Let me
7 talk to you just a second.

8 (Off-the-record discussion at the bench.)

9 THE COURT: Members of the jury panel, when your name
10 is called just come right up here, come through that door,
11 come here where you see this little bingo thing and face the
12 back of the courtroom. And if you look at these lawyers,
13 boy, they are talking about you.

14 I mean, I tell you, they've learned everything they can
15 about you. They might say they want you. If they want you,
16 just come over here and have a seat. If they say they don't
17 want you, don't be the slightest bit embarrassed.

18 I practiced law 30 years and I struck for the craziest
19 reasons you ever heard. Just be patient with us, if you
20 will.

21 Do you have any objection that the clerk draws the name?

22 MR. PENNINGTON: No objection from Mr. Steed, Your
23 Honor.

24 MR. CRUMRINE: No objection.

25 MR. HOUSEAL: No objection.

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1 (Jury selection, see attached sheet.)

2 THE CLERK: You're striking together?

3 THE COURT: You're striking together, are you not?

4 MR. PENNINGTON: Yes, sir.

5 THE COURT: So only one of you have to answer that.

6 MR. PENNINGTON: Yes, sir.

7 THE COURT: Go ahead.

8 Approach the bench just a second.

9 (Off-the-record discussion at the bench.)

10 (Jury selected.)

11 THE COURT: Any motions from the State regarding this
12 jury.

13 MR. HOUSEAL: No, sir, Your Honor.

14 THE COURT: Defense?

15 MR. PENNINGTON: May we have the court's indulgence just
16 a moment, please?

17 THE COURT: Yes, sir.

18 (12:20 p.m.)

19 MR. PENNINGTON: Yes, sir, I would like to take up a
20 matter if the court has time.

21 THE COURT: I'm going to send you to your jury room just
22 a minute. It will take me about ten minutes. If you need
23 anything to make you comfortable let us know back there but
24 don't start talking about this case. I'll be telling you
25 about it in a moment or two.

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1 Now, I don't have anywhere else to send you all but the
2 hall. They haven't finished the courthouse. I'm not sure
3 they are going to build one, it's been so long.

4 THE CLERK: We have a courtroom available.

5 THE COURT: Go to your courtroom just a minute. It
6 won't take long.

7 (Outside the presence of the jury and petit jury panel.)

8 THE COURT: Thank you. I will hear your motion.

9 MR. PENNINGTON: Thank you, Your Honor.

10 THE COURT: If you're ready. You're not ready, I'll
11 give you time.

12 MR. PENNINGTON: I believe that I am, Judge.

13 THE COURT: All right, sir.

14 MR. PENNINGTON: Your Honor, we would interpose
15 objections to three out of the four blacks that were --

16 THE COURT: Well, I can't --

17 MR. PENNINGTON: I'm --

18 THE COURT: Just give me your motion first.

19 MR. PENNINGTON: Yes, sir.

20 We would raise a matter with regard to Batson. We
21 believe that --

22 THE COURT: All right. Is it gender or race?

23 MR. PENNINGTON: It is race, Your Honor.

24 THE COURT: All right, sir.

25 Now, we got a little problem, you struck together and I

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1 have one white defendant and one black defendant. But I'll
2 take up the reasons that you struck for -- I'll find out from
3 the solicitor.

4 Are you -- are you talking about -- are you objecting to
5 the black strikes or the white strikes?

6 MR. PENNINGTON: I am objecting to four out of the five
7 black strikes.

8 THE COURT: All right, sir.

9 MR. PENNINGTON: And actually --

10 THE COURT: Let's just take them all. Let's try number
11 -- the first one, Solicitor, that's 112, Mr. Newton. He was
12 a marine construction.

13 MR. HOUSEAL: Yes, sir, Your Honor. We struck Juror 112
14 because of his criminal record.

15 THE COURT: All right, sir. You want him to tell you
16 what the record is?

17 MR. PENNINGTON: That would be helpful for the record,
18 Your Honor.

19 THE COURT: Go ahead.

20 MR. DURANT: It was simple possession of marijuana,
21 Your Honor. It also showed a potential arrest in Florida for
22 burglary --

23 THE COURT: All right, sir.

24 MR. DURANT: -- and narcotic implements.

25 THE COURT: All right, sir. All right.

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1 The next one was Number 157, Thompson. He was an
2 unemployed mail carrier, I thought he said.

3 MR. HOUSEAL: Yes, sir. And the reason I struck him was
4 because he was unemployed.

5 THE COURT: All right, sir.

6 The next one was 155, Talley. I believe she was in
7 housekeeping.

8 MR. HOUSEAL: Your Honor, I'm not sure.

9 But I struck her because of her criminal domestic
10 violence arrest. And also I felt when I looked at her that
11 she appeared to have a bad attitude and I didn't feel
12 comfortable placing her on the jury with the fact that she
13 had a --

14 THE COURT: She had a record of criminal domestic
15 violence?

16 MR. HOUSEAL: Yes, sir, Your Honor.

17 THE COURT: All right. The next one was Number 50,
18 Frasier. He was a truck operator.

19 MR. HOUSEAL: Yeah. I was a little concerned about his
20 inability to tell the court what his wife's job was.

21 THE COURT: Well, he hesitated a long time. I thought
22 for a minute there he wasn't going to speak.

23 MR. HOUSEAL: And that concerned me. And that's why I
24 struck him.

25 THE COURT: All right, sir.

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1 Now, the next one.

2 MR. HOUSEAL: That's all that there are, Your Honor.

3 THE COURT: That's all.

4 MR. HOUSEAL: Yes, sir.

5 THE COURT: All right. I'll be glad to hear from you,
6 Counselor.

7 MR. PENNINGTON: There was one other that we questioned,

8 Your Honor, and that was Juror 58 who was an alternate. He

9 was the first alternate juror struck.

10 MR. HOUSEAL: Yeah.

11 THE COURT: I forgot. That's right. Green. He was a
12 day porter.

13 MR. HOUSEAL: He also has a criminal record, Your Honor,
14 that's why I struck him.

15 THE COURT: What has he got the record for?

16 MR. DURANT: I don't think he did.

17 MR. HOUSEAL: I think this is the gentleman who had a
18 lot of arrests on his record and we weren't sure whether it
19 was actually him or not but out of an abundance of caution
20 assuming that it might be him I struck him.

21 THE COURT: All right, sir, go ahead.

22 MR. HOUSEAL: There are a bunch of aliases on his rap
23 sheet and several arrests.

24 THE COURT: What had he been charged with?

25 MR. DURANT: Well, the charges involve everything from

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1 armed robbery about -- which was way back in 1978, Your
2 Honor. Assaults, burglaries, that type thing.

3 THE COURT: And -- and -- and the reason given was
4 what?

5 MR. HOUSEAL: If --

6 THE COURT: He's got the same name?

7 MR. HOUSEAL: I'm not a hundred percent sure that that's
8 not him. And if it is him I don't want him on the jury with
9 that criminal record.

10 MR. DURANT: The alias of this fellow is the same name,
11 Samuel Green, as the alias used by this particular person.

12 THE COURT: All right, sir. All right, Solicitor -- I
13 mean, Counselor, I'll hear from you.

14 MR. PENNINGTON: Thank you.

15 Your Honor, we would persist in our objection with
16 regard to Jurors 157 and Number 58. Let's start with the
17 last one, Mr. Green --

18 THE COURT: Well, no, let's start with Number 157.
19 That's Thompson.

20 MR. PENNINGTON: All right, sir.

21 THE COURT: He was an unemployed mail carrier.

22 MR. PENNINGTON: Yes, sir.

23 Our contention is that the mere fact of unemployment is
24 not completely racially neutral given the fact that -- of
25 that unemployment particularly in the Charleston County area

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1 involving -- let me see if I can find 157.

2 What we know is that he worked for UMA and then is now
3 currently unemployed. So that there appears to be a bona
4 fide employment history.

5 And so we -- we indicate that that is pretextual and
6 simply a means to --

7 THE COURT: Well, when I first heard it I expected the
8 solicitor did the same thing. You know, when you got a
9 government job you got it forever unless you mess up.

10 Solicitor -- but go ahead.

11 MR. PENNINGTON: That's our argument, Your Honor.

12 THE COURT: And then what's the other one you still
13 object to?

14 MR. PENNINGTON: The other one that I object to is
15 Number 58, which we just went over, the issue of his
16 potential prior record.

17 The concern I have, Judge, is that we know that the
18 solicitor runs rap sheets on all jurors and raises objections
19 at the end of the sounding of the roll. That was not done on
20 the part of the solicitor with reference to Juror 58.

21 So in effect it seems pretextual to now claim that they
22 are concerned about a record that they could have easily
23 raised and disposed of had they had that as a genuine concern
24 at the beginning of the proceedings.

25 THE COURT: Well --

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1 MR. PENNINGTON: So we indicate that that's -- there's
2 not sufficient evidence, especially if he had an arrest for
3 armed robbery, assault, burglary, et cetera, which would have
4 been disqualifying.

5 THE COURT: All right now. Wait a minute. You sure you
6 want to persist? I may give it to you.

7 MR. PENNINGTON: Judge, I just want --

8 THE COURT: You sure you want to draw another jury?
9 You better get together and be sure that's what you want.

10 MR. PENNINGTON: I understand, Judge.

11 I just feel a duty since my client is facing these
12 penalties that I have to articulate the record.

13 THE COURT: You want another jury?

14 MR. PENNINGTON: That is what the -- that is the remedy,
15 Your Honor.

16 THE COURT: Well, sometimes I can bluff them but I can't
17 bluff you.

18 It's a little different in this case, that Number 58.
19 He says that aliases were the same as that. Of course, it
20 doesn't have to be a perfect excuse, as you very well know.

21 I think the -- I think the excuses given by the
22 solicitor are all race neutral and I deny your motion.

23 MR. PENNINGTON: Yes, sir.

24 THE COURT: Anything else?

25 MR. CRUMRINE: Your Honor, I join in the motion. I

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1 realize my client is white, but he's alleged to have been
2 riding around with Mr. Steed and associating with him and we
3 think that it would equally be prejudicial.

4 THE COURT: All right. We'll add you on that too. Same
5 ruling.

6 Anything else?

7 MR. PENNINGTON: No, sir.

8 THE COURT: All right.

9 Now, I got my jury out. And I'm fixing to bring my
10 other jury in.

11 Bring the other jury in for me. Don't bring those yet.

12 Okay.

13 (In the presence of the jury panel.)

14 THE COURT: I'm going to have -- has the jury got a
15 telephone number to call --

16 THE CLERK: Yes, they do, Judge.

17 THE COURT: -- on them?

18 All right. How long would it take to hear the motions
19 if you had to guess? How long will it take for the Jackson
20 Denno?

21 MR. PENNINGTON: There are three witnesses, Judge.
22 Three to four witnesses. I would think it would take us 45
23 minutes, perhaps.

24 THE COURT: Well, let's be on the safe side. All
25 right. So let's just to be on the safe side. We can finish

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1 by 1:30 surely.

2 MR. PENNINGTON: If all the witnesses are here. There
3 is one witness who was a detective that --

4 THE COURT: Do you prefer to recess now -- bring the
5 jury in -- you prefer to recess now and come back at whenever
6 you want to?

7 MR. PENNINGTON: If the witnesses are here we're ready
8 at any time.

9 THE COURT: Are the witnesses here?

10 MR. PENNINGTON: May I ask Mr. Degivinni (phonetic) if
11 he has seen Detective Buncum? He's here.

12 (Off-the-record conference.)

13 MR. HOUSEAL: I don't see Detective Buncum, Your
14 Honor. There are some issues that may take up a little time
15 as well.

16 We are going to ask you to consider allowing us to
17 introduce into evidence a videotape, possibly an audiotape,
18 and you may want to listen to those or take a look at those
19 before you rule on that.

20 THE COURT: When do you think we can get started and
21 give my personnel an hour for lunch?

22 MR. HOUSEAL: I think if the motion is going to take
23 roughly an hour and you may need another half an hour on
24 those issues.

25 THE COURT: That's 12:30.

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1 MR. HOUSEAL: That's 2 o'clock.

2 THE COURT: If I brought them back at 1:30 that would be
3 an hour for lunch. 3 o'clock?

4 MR. HOUSEAL: That's -- I think that's a fair assessment
5 of the time it may take.

6 MR. CRUMRINE: Your Honor, if we can make sure. I think
7 they said they don't have any statements my client made to
8 the authorities and so we --

9 THE COURT: Just wait a minute. Where is my jury? They
10 bringing them?

11 MR. HOUSEAL: Here they come.

12 THE COURT: Bring that jury in for me.
13 (12:30 p.m., in the presence of the jury.)

14 THE COURT: Members of this jury, I'm going to send you
15 to lunch now. I've got some legal matters I have to take
16 care of. There is no need for you to stick around. It will
17 be a long lunch for you. And I don't know how far you are
18 from home. Maybe you can get some Christmas shopping done.
19 I'm going to send you to lunch now and ask you to be back at
20 3 o'clock.

21 Some of you have some newspapers on you and I'm going to
22 be asking you not to read newspapers, listen to TV or radio
23 about this case. And you can understand why.

24 Also I'm going to ask you not to talk about this case.
25 Don't let anybody talk about it with you or in your

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1 presence. If somebody attempts to do so tell me about it.

2 Don't even talk about it among yourselves. I'll be
3 explaining that to you.

4 And I'm going to send you to lunch and ask you to be
5 back at 3 o'clock. That will give time for my court
6 personnel to get lunch. It will be time to get rid of these
7 legal matters.

8 So we're going to start the case at 3 o'clock. I'm
9 going to let you go out this way.

10 One more thing, when you come back at 3 o'clock and you
11 go in the jury room and I tell you to come out, Mr. Golden,
12 you ever serve on a jury before?

13 MR. GOLDEN: No, sir.

14 THE COURT: Would you be my foreman?

15 MR. GOLDEN: Yes, sir.

16 THE COURT: I can train you just like I want you.

17 Now, Mr. -- well, let me see now. Mr. Pine?

18 MR. PINE: Yes, sir.

19 THE COURT: You going to be our first alternate. If
20 somebody became incapacitated you would take their place.
21 And it didn't -- and it happens all the time. And you'll
22 stay with the jury until the end of the case and then if I
23 didn't need you then I would put you in another room and hold
24 you there just in case somebody -- so you just as important
25 as anybody else.

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1 Where is Ms. Roper? There you are. Okay. I want you
2 and Mr. Pine to take the two back seats. And that doesn't
3 mean you are any less important because if two people became
4 incapacitated you would take their place. So you and Mr.
5 Pine sit in those two seats back there later on when you come
6 back out later.

7 And, Mr. Foreman, Mr. Golden, you take this end seat.

8 The rest of them sit anywhere you want to. Have a good
9 lunch. Go out this way. And I'll see you at 3 o'clock.

10 (Jury released for lunch.)

11 THE COURT: Now, members of the jury panel not connected
12 to this case, if you'd rather be someplace else I just made
13 it up for you.

14 You can go about your business. At 6 o'clock today I
15 want you to call that telephone number you got. And I'll
16 have a message for you.

17 If something happened and the communication broke down,
18 call the clerk's office and the clerk will give you a message
19 in person. But that telephone works. The building don't
20 work too good but the telephone works.

21 If you would like to stay here, I'll be back at 3
22 o'clock. I'll give you a front row seat. And keep in mind
23 that I'll tell you the rest of that little story later in the
24 week and also I'll let you complain about anything, make
25 suggestions, you know what I mean.

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1 Have a good lunch. Have a good one whenever I see you.

2 (12:35 p.m., outside the presence of the jury.)

3 THE COURT: Leave quietly if you will, I'm still
4 working.

5 Solicitor, would you like to do part of what we have at
6 this time?

7 MR. HOUSEAL: If that's what you want.

8 THE COURT: Do you have all your Jackson Denno
9 witnesses here?

10 MR. HOUSEAL: I don't know that Mr. Pennington's
11 witnesses are here.

12 MR. PENNINGTON: No, sir. I'm told that Detective
13 Buncum is on his way.

14 THE COURT: Well, you know what that means.

15 MR. PENNINGTON: Yes, sir.

16 THE COURT: About like lawyers.

17 MR. HOUSEAL: I think it might be safer, Judge, to break
18 for lunch now and have everybody together and get started --

19 THE COURT: All right. How about meet me here in an
20 hour.

21 MR. PENNINGTON: 1:30.

22 THE COURT: 1:35. I don't want to cheat you.

23 Court's in recess until 1:35.

24 (A recess was taken.)

25 (1:35 p.m.)

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1 (Court's Exhibit Number 1
2 was marked for identification.)
3 (State's Exhibit Numbers 1 and 2
4 were marked for identification.)

5 (1:40 p.m.)

6 AFTERNOON SESSION, DECEMBER 4, 2000

7 MOTIONS

8 THE COURT: All right. Solicitor, do you have any
9 motions?

10 MR. HOUSEAL: Yes, Your Honor.

11 We initially would like you to consider whether you're
12 going to permit the introduction into evidence of the
13 videotape of the crime scene. And I thought you might want
14 to take a look at that first.

15 THE COURT: Tell me a little bit about it.

16 MR. HOUSEAL: Well, it's a videotape that shows the
17 exterior of the house. There's a car in the driveway.
18 Nothing that I'm aware of of evidentiary value outside of the
19 house.

20 THE COURT: You all had a chance to look at it?

21 MR. PENNINGTON: Yes, sir.

22 THE COURT: Do you have an objection to it?

23 MR. PENNINGTON: I did not anticipate it being offered
24 since I don't know that it really -- I'm not sure of its
25 probative value. And it does have blood in it. But I would

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1 object to it unless the State can lay some foundation that it
2 is necessary to their case.

3 MR. CRUMRINE: I'll join in that, Your Honor.

4 THE COURT: Go ahead, Solicitor.

5 MR. HOUSEAL: Yes, sir, Your Honor. It --

6 THE COURT: Well, ordinarily a crime scene wouldn't have
7 any real probative value. But what is the probative value of
8 it?

9 MR. HOUSEAL: Your Honor, it shows malice, it also
10 goes -- it will assist the jury in their determination --

11 THE COURT: How does it show malice?

12 MR. HOUSEAL: Because the image of the defendant --
13 excuse me -- of the victim and where he's lying will indicate
14 the circumstances surrounding the shooting.

15 And the jury I think needs to understand and get a
16 mental image of where they -- where that body was, where the
17 shell casings were, where the other victim who was shot and
18 didn't die was.

19 Because I anticipate that there may be some questions
20 raised by the defense in this case as to whether this was a
21 self defense, whether there was another shooting by the
22 victim.

23 THE COURT: Isn't that something that you would put on
24 down the road?

25 MR. HOUSEAL: Oh, yeah, I don't intend to put this on

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1 right now.

2 THE COURT: All right, sir.

3 Let me listen to the case and then it might be -- have
4 some probative value.

5 MR. HOUSEAL: Okay.

6 THE COURT: Let's just lay that aside for the time being
7 and I'll listen to the case and we'll see what we need to
8 prove.

9 MR. HOUSEAL: Thank you, Your Honor.

10 THE COURT: Anything else?

11 MR. HOUSEAL: We also intend to introduce the 911 tape.
12 I believe it's relevant and admissible.

13 THE COURT: What is it -- do you have an objection?

14 MR. PENNINGTON: Yes, sir, I've heard the tape. I've
15 heard it and I don't -- I don't have -- can't think of any
16 relevance that it would have.

17 You have a hysterical victim's and victim's mother who
18 were having conversations with the 911 operator. It
19 certainly is an upsetting tape in the sense that you can feel
20 the horror of this home invasion.

21 But the issue in this case as I see it as the issues are
22 going to be developed are going to be identification. And so
23 they couldn't possibly add to proving up who did what in this
24 case.

25 So I would object as irrelevant and highly prejudicial

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1 because of the emotional nature of them.

2 MR. HOUSEAL: And, Your Honor, I didn't intend to
3 introduce the portion of the tape that deals strictly with
4 the mother of the victim when she calls later.

5 I don't believe that does have any evidentiary value.

6 But what it does is the excited utterance of the victim
7 who was inside the house who calls 911. And I anticipate you
8 might hear during the trial of this case some testimony or
9 some cross-examination by the defense attorneys about whether
10 this was a drug deal and whether this was a drug deal gone
11 bad where the victims were firing shots.

12 In this tape that was made minutes after this incident,
13 is admissible and it is relevant to show what happened that
14 -- it is relevant to what Michele Holbrook, a victim inside
15 the house, perceived as having occurred that night.

16 THE COURT: All right. Let's listen to it.

17 MR. CRUMRINE: Your Honor, for the record, I'm joining
18 in the motion for Mr. Flynn and I would --

19 THE COURT: Sure.

20 MR. CRUMRINE: -- I would also assert it is upsetting
21 and has no probative value.

22 THE COURT: All right, sir.

23 MR. PENNINGTON: And to lay out a little of the facts
24 because you won't get this, Judge, from listening to the
25 tape.

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1 Um, the defense will stipulate that what happened in
2 this case was armed men broke into the front door of this
3 house. Ms. Holbrook, according to her statement, said that
4 she was in a back bedroom with her child, two-year-old son.

5 And that we know that the shootings of the two male
6 victims occurred in the living room outside of her vision.

7 She describes that at one point assailants came back in
8 her direction and she actually saw them point a "gun" at Mr.
9 Gorski who died.

10 They were basically holding him captive.

11 And then withdrew from that position in front of her
12 bedroom door, went back to the living room and she heard
13 shots but didn't hear voices, did not hear discussion.

14 I again suggest based on that description of events that
15 Ms. Holbrook is not in a position to possibly even comment on
16 the matters the solicitor has just raised.

17 THE COURT: Let's listen.

18 MR. PENNINGTON: Unless she testifies differently to
19 that that's all she would know is that she heard gunshots.

20 THE COURT: Go ahead, Solicitor, turn it on.

21 MR. PENNINGTON: Can the court reporter play it?

22 (Tape playing).

23 THE COURT: Okay. Now, what is the probative value?

24 MR. HOUSEAL: Well, you can't tell what the probative
25 value is right now because you haven't heard the testimony.

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1 But I anticipate the defense being -- one of the
2 defenses from one of the defendants being, we were there to
3 buy drugs and the victims pulled their guns and we defended
4 ourselves after the victims began shooting at us. And that
5 excited utterance refutes that allegation by Mr. Flynn, as I
6 anticipate Mr. Flynn making it.

7 THE COURT: Would that be better on -- on re --
8 redirect?

9 MR. HOUSEAL: You mean in rebuttal --

10 THE COURT: I meant in rebuttal.

11 MR. HOUSEAL: -- or in reply?

12 THE COURT: I mean, actually, you know the officer is
13 going to testify, or whoever starts off your case, if that's
14 the way you're going to start it off, as a result of a 911
15 call we went to whatever address it is. But does that really
16 tell you anything at this point?

17 MR. HOUSEAL: Well, I'm not sure I understand exactly
18 what you're asking.

19 THE COURT: Well, what good is that right now?

20 MR. HOUSEAL: Right now, it isn't good unless and
21 until --

22 THE COURT: All right. Let's see. You might use it in
23 rebuttal but right now -- all right, sir.

24 MR. HOUSEAL: Because I just heard Mr. Pennington say
25 that they are going to stipulate that an armed man broke into

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1 this house. And I didn't anticipate that whatsoever. And
2 I'm not sure Mr. Crumrine will agree to that stipulation.

3 THE COURT: He don't have to stipulate to anything.

4 MR. HOUSEAL: Right.

5 So if -- if that's the case and their defense is not
6 going to raise an issue that makes that relevant then I agree
7 with you, it has no probative value.

8 THE COURT: All right. Let's leave it like it is for
9 the time being.

10 Anything else from the State?

11 MR. HOUSEAL: No, sir, Your Honor.

12 THE COURT: All right, sir. Mr. Pennington, let's start
13 off with you.

14 MR. PENNINGTON: Yes, sir. First is the matter, just
15 housekeeping.

16 THE COURT: First --

17 MR. PENNINGTON: Yes, sir.

18 THE COURT: First, let's get the matter of -- of the
19 nicknames.

20 I told you, you all addressed that in chambers, and I
21 told you I was going to rule against you but that after we
22 drew the jury and had time I would put on the record anything
23 you wanted to.

24 You noticed that when I addressed the jury and called
25 your clients' names I told them like most people they have

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1 nicknames. And I gave them the nicknames that the State has
2 on the front of the indictments.

3 Mr. Steed is called T-Lo. Any objection as far as that
4 name?

5 MR. PENNINGTON: No, sir, not from us.

6 THE COURT: All right, sir. And Mr. Flynn was called
7 what? Creep?

8 MR. PENNINGTON: Yes, sir.

9 MR. CRUMRINE: Yes, sir, Your Honor.

10 May I be heard on that?

11 THE COURT: Sure. Go ahead.

12 MR. CRUMRINE: I filed a --

13 THE COURT: It is like you had done it prior to me
14 telling the jury --

15 MR. CRUMRINE: Thank you, Your Honor. I have filed a
16 motion with you to exclude from the use of this trial the
17 nickname Creep from my client. As I stated --

18 THE COURT: Does that have a stigma?

19 MR. CRUMRINE: I believe it's derogatory, demeaning,
20 inflammatory. And I believe that it reduces his chances at
21 trial, Your Honor.

22 THE COURT: How did you arrive at that?

23 MR. CRUMRINE: How did I arrive at that?

24 I think it's the common meaning of -- that taken by
25 people for the word creep. It is not a -- certainly not

1 anything to enhance one's representation.

2 For the record, I did make that motion in chambers prior
3 to the beginning of this trial. I asked that my client be
4 formally arraigned without use of that name. The formal
5 arraignment didn't occur. Your Honor introduced him as Creep
6 and informed me that it would be -- that he would be
7 arraigned without using it.

8 In fact, Your Honor called him Mr. Creep at one point,
9 and I would like the record to reflect that there was
10 laughter in the jury panel when you referred to him that way.

11 THE COURT: I didn't hear any laughter.

12 MR. CRUMRINE: I'm sorry?

13 THE COURT: I didn't hear any laughter.

14 MR. CRUMRINE: Well, I would like to put up witnesses to
15 that then.

16 THE COURT: Well, the record will show whatever it is.

17 MR. CRUMRINE: Well, I don't believe that there was
18 anybody up swearing to that, Your Honor. I would like it to
19 -- if Your Honor doesn't agree with my characterization of
20 that, I would like to get it on the record that -- that -- my
21 feelings about how people take the word creep was reflected
22 when you called him Mr. Creep in front of the jury panel.

23 I would like to exclude that name.

24 I would also like to ask for a mistrial for Mr. Flynn at
25 this point for the jury panel being exposed to that and it

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1 coming out in a way which appeared to be demeaning to him and
2 humorous to the jury.

3 THE COURT: I deny that motion.

4 Go ahead.

5 MR. CRUMRINE: Your Honor, I'm basing that on --

6 THE COURT: You can put up any witnesses you want to for
7 anything you want to.

8 MR. CRUMRINE: Yes, sir. I am basing it on State versus
9 Day, State versus Stubbs. All those cases that use the names
10 outlaw, Mad Dog, Cobra. And if the State is allowed to have
11 all of their witnesses call him that and they are able to
12 call him that throughout the trial I think it will infect the
13 trial and make it unfair so that Mr. Flynn can't get a fair
14 trial.

15 THE COURT: Let me ask you this, is he -- is that his
16 street name?

17 MR. CRUMRINE: Your Honor, that is a name that he is
18 called by a lot of people and we're willing to stipulate that
19 any statement that includes the name Creep that we redact
20 Creep and insert the name Michael Flynn. We're prepared to
21 do that for purposes of this trial.

22 THE COURT: What you got to say about that, Solicitor?

23 MR. HOUSEAL: Well, Judge, the witnesses are going to
24 testify that they know this person by the name of Creep. And
25 it is part and parcel to their testimony in describing who

1 was responsible for committing these crimes.

2 And I -- in reading these cases I understand that it may
3 become a problem if a prosecutor in his closing argument
4 repeatedly refers to a defendant as Mad Dog this, Mad Dog
5 that.

6 That is not the case here.

7 These are going to be witnesses who are going to be
8 identifying people in this case and his nickname happens to
9 be Creep.

10 And that may or may not be inflammatory. But there's
11 nothing I can do to correct that.

12 MR. CRUMRINE: Your Honor, I believe there is something
13 I can do.

14 You can instruct each witness before they take the stand
15 that they are refer to him -- they also all know him as
16 Michael Flynn and they can be admonished to refer to him that
17 way.

18 All the officers, I'm sure, will understand that. It
19 will not impair the State's progress in this matter.

20 I think every effort ought to be made to keep the name
21 Creep out so that Mr. Flynn can get a fair trial on this.

22 THE COURT: Well, in the first place I don't find Creep
23 by that -- how it's used as derogatory. But, of course, that
24 depends on I guess how you look at it.

25 It can be for someone who's able to move around

CHRISTINE ILER - DIRECT BY MR. CRUMRINE

1 quietly. I don't have any idea. In any event, I deny your
2 motion.

3 MR. CRUMRINE: Yes, sir.

4 Can I go ahead and put up -- unless the State is willing
5 to stipulate there was laughter at the mention of Mr. Creep
6 by Your Honor, I would like to --

7 THE COURT: Well, you know, I told him that was his
8 nickname and then I called him Mr. It might very well be
9 laughter. Was it, Solicitor?

10 MR. HOUSEAL: I don't recall hearing laughter. I do
11 recall hearing you apologize for misstating his name.

12 THE COURT: Put up anybody you want to.

13 MR. HOUSEAL: Christine Iler.

14 THE COURT: Only those who are going to testify that the
15 jury was laughing.

16 MR. CRUMRINE: Yes, sir, Your Honor.

17 CHRISTINE ILER,

18 was sworn and testified as follows:

19 THE WITNESS: My name is Christine Iler. My married
20 name is Flynn.

21 DIRECT EXAMINATION

22 BY MR. CRUMRINE:

23 Q All right. Christine, you're married to Michael?

24 A Yes.

25 Q And were you present in the courtroom when -- when he

1 was referred to as Mr. Creep?

2 A Yes, I was.

3 Q And can you tell us what you heard at that time?

4 A Um, couple of like -- like muffles of like laughing in
5 the back.

6 Q I'm sorry?

7 A Like muffles of laughing in the back.

8 Q All right. Could you tell the direction it was from?

9 A Back in the corner (Indicating) and behind us.

10 MR. CRUMRINE: All right. And, Your Honor, for the
11 record, she's pointing to the back corner where the jury was
12 seated.

13 THE COURT: All right, sir.

14 MR. PENNINGTON: All right. That's it for this witness.

15 THE COURT: Any questions?

16 MR. HOUSEAL: No questions, Your Honor.

17 THE COURT: You may come down. Thank you. Anybody
18 else?

19 MR. CRUMRINE: I know of one other. Mr. Flynn,
20 Senior.

21 MICHAEL BRIAN PATRICK FLYNN, SENIOR,
22 was sworn and testified as follows:

23 THE WITNESS: Michael Brian Patrick Flynn, Senior.

24 THE COURT: Go ahead.

25 MR. CRUMRINE: Yes, sir.

MICHAEL BRIAN PATRICK FLYNN - DIRECT BY MR. CRUMRINE

1 DIRECT EXAMINATION

2 BY MR. CRUMRINE:

3 Q Mr. Flynn, you're Michael's father?

4 A Yes, sir.

5 Q All right. And can you tell us, were you present in the
6 courtroom when Michael was referred to as Mr. Creep?

7 A Yes, sir, I was.

8 Q Can you tell us anything that you may have noticed after
9 that comment?

10 A Yes, sir.

11 When -- when Your Honor made the statement calling him
12 Creep and then Mr. Creep instead of Mr. Flynn, there was
13 chuckling coming from directly beside me to the gentleman you
14 appointed jury foreman and the friends sitting next to him
15 and from several other ones was snickering and making
16 chuckling noises.

17 THE COURT: Anything further?

18 MR. CRUMRINE: Nothing further from this witnesses.

19 THE COURT: Any questions, Solicitor?

20 MR. HOUSEAL: No, sir.

21 THE COURT: You may come down.

22 Anybody else?

23 MR. CRUMRINE: That's I think enough for a showing, Your
24 Honor.

25 THE COURT: All right. Go ahead.

1 MR. CRUMRINE: And that's our motion based on the --

2 THE COURT: I deny your motion for a mistrial.

3 MR. CRUMRINE: Thank you, Your Honor.

4 THE COURT: And I deny your motion to keep the witnesses
5 or the -- anybody who knew him as Creep from referring to him
6 as Creep. I don't think it's derogatory, per se.

7 Go ahead.

8 MR. CRUMRINE: Thank you, Your Honor.

9 I had a very close motion to that one. That was to keep
10 out any reference to a so-called gang as it relates to this
11 trial.

12 I don't believe that it -- under Rule 403 that this is
13 something necessarily having any probative value, that
14 there's any indication --

15 THE COURT: What do you contemplate -- I mean, you
16 haven't told me what you contemplate is going to come out.

17 MR. CRUMRINE: Yes, sir.

18 I anticipate that the solicitor is going to introduce
19 witnesses to say that -- that they were all members -- the
20 defendants were members of a gang. And I don't believe --

21 THE COURT: You know anything about that, Solicitor?

22 MR. HOUSEAL: I know that they were, if that's what
23 you're asking, Your Honor.

24 THE COURT: Who is going to testify to that?

25 MR. HOUSEAL: I don't intend --

1 THE COURT: Any witnesses?

2 MR. HOUSEAL: I don't intend to ask anyone directly that
3 question. But I think during the course of the trial
4 witnesses are going to discuss motive for this crime. And
5 the motive for this crime is directly related to the fact
6 that their gang member was in jail and they were trying to
7 get money to bond him out of jail.

8 THE COURT: All right. Well, I'll have to listen to it.

9 You object when something comes up.

10 Solicitor says he's not going to -- he's not going --
11 well, you heard what he said. But I just -- you just have to
12 object when it comes up.

13 MR. CRUMRINE: All right, Your Honor.

14 MR. PENNINGTON: Judge, also since as a party I should
15 probably be open and candid with you that there may be times
16 in which I will elicit testimony that will go to that gang
17 identity as well.

18 In other words, I anticipate trying to probe and
19 establish who was in what gang because it has relevance in
20 terms of my client's defense since he was not part of that
21 gang.

22 THE COURT: All right, sir.

23 MR. CRUMRINE: Your Honor, if that comes to pass, you
24 know, we may be in a situation where a severance would be
25 appropriate where they have mutually antagonistic defenses

1 that are being raised.

2 THE COURT: You just have to make your objection at the
3 proper time, all right?

4 MR. CRUMRINE: Yes, sir.

5 THE COURT: Anything further?

6 MR. HOUSEAL: Nothing from the State.

7 THE COURT: Any other motions?

8 MR. HOUSEAL: None from the State.

9 MR. PENNINGTON: I have some for Mr. Steed, Your Honor.
10 When you're ready.

11 THE COURT: Give them to me.

12 MR. PENNINGTON: Yes, sir.

13 First item is just a matter of housekeeping which is
14 again in chambers prior to selection of the jury panel I've
15 tendered to the court a set of motions and some proposed voir
16 dire.

17 I've asked the clerk to mark those as a Court's exhibit
18 as well as my -- both the voir dire and my motions.

19 THE COURT: All right.

20 Well, as far as the voir dire is concerned, I thought I
21 had asked was anything in addition you wanted. Did you tell
22 me there was?

23 MR. PENNINGTON: There was that momentary -- there was a
24 moment at the bench where I --

25 THE COURT: Give -- give me what number it is that you

MICHAEL BRIAN PATRICK FLYNN - DIRECT BY MR. CRUMRINE

1 asked about that I didn't give.

2 MR. PENNINGTON: Yes, sir. Numbers 5 and 6.

3 THE COURT: Hold on a minute.

4 MR. PENNINGTON: That may be Crumrine's. The ones with
5 the red lines are Mr. Crumrine's, the ones with no lines are
6 mine.

7 THE COURT: Number 5 is have you been a victim of a
8 violent crime.

9 MR. PENNINGTON: Yes, sir. I think you're looking at
10 Mr. Crumrine's.

11 THE COURT: No, sir, this says Defendant Michael Brian
12 Flynn. Hold on a moment. I'll find it.

13 MR. PENNINGTON: I think I have another copy that I can
14 pass up to Your Honor.

15 THE COURT: I've got it. Go ahead.

16 MR. PENNINGTON: Your Honor, this was in reference to
17 Questions 5 and 6.

18 During the voir dire, an individual voir dire of one of
19 the jurors, I brought to the court's attention that the court
20 had not asked about the strong feelings that jurors may bring
21 to the courtroom regarding the possession or use of weapons.
22 That's question 5.

23 Question 6 is particular opinions or feelings about
24 homicides which would make it difficult to serve on the jury
25 where the defendant was charged with a homicide.

1 My only argument in support of that, Judge, is that in
2 effect let me just flush out that I called it to Your Honor's
3 attention saying I surmise that the court did not choose to
4 ask that. The court ruled and said that's correct and that I
5 could bring it out at a future time.

6 I would simply point out that obviously this is going to
7 be a very violent, aggravated homicide case involving the use
8 of weapons and, of course, with crime being what it is in
9 this country and in this community it's a very offensive
10 thing and I felt that if jurors came with such a
11 predisposition such an offense level to this kind of crime
12 that they would not be able to set it aside and be fair that
13 that could be a problem.

14 I am aware that the jury had the indictments read to
15 them but I felt that it was important to touch on those two
16 specific topics.

17 THE COURT: All right. Well, I had asked -- I had gone
18 into some detail on the indictments and then I had gone into
19 detail about violent crimes and those type of things and then
20 I think -- and I had gone over everything that you all asked.

21 And I summed it up by asking if they knew of any reason
22 why they could not give either the State or the defendants a
23 fair and impartial trial. I didn't have any response.

24 So that's on the record.

25 What's your next motion?

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1 MR. CRUMRINE: Your Honor, for the record, may I just
2 join in that as well, that motion?

3 THE COURT: Of course. Yes, sir.

4 MR. PENNINGTON: Next, Your Honor, there is a matter of
5 Rule 5 disclosure, which is the disclosure of evidence and --
6 in the case.

7 There was a photograph of my client that was gathered by
8 Detective Walker and shown to witnesses who are codefendants
9 in this case at a bond hearing on the --

10 THE COURT: Well, which motion is yours? Which motion
11 is it?

12 MR. PENNINGTON: This is actually not based -- it's not
13 reduced to writing.

14 THE COURT: Go ahead. What is it now?

15 MR. PENNINGTON: This is a motion to obtain this
16 photograph that was presented to codefendants.
17 What factually happened is that a series of codefendants
18 were arrested prior to my client. They were interviewed
19 individually and then gathered together at 4 p.m. at our
20 central bond court, and either before or immediately after
21 that proceeding Detective Walker's reports reflect that he
22 showed a photograph of my client and got affirmative
23 statements from two of the witnesses who would be a Michael
24 Griffin and a Tommy Bond that this was in fact the T-Lo that
25 they had referred to in their written statements.

1 What I would like to do is see that photograph.

2 I think the solicitor was searching for it and I'm not
3 certain if it's been found. It is certainly an integral part
4 of the case both from a Rule 5 and a Brady perspective.

5 THE COURT: Let's find it. You got it, Solicitor?

6 MR. HOUSEAL: I believe it should be in the case file.

7 And I'll instruct the detective to go downstairs and look for

8 it right now. It shouldn't take long. I've never seen it,

9 Your Honor.

10 THE COURT: All right, sir.

11 MR. HOUSEAL: And it wouldn't be mine --

12 THE COURT: Which detective has it?

13 MR. HOUSEAL: Pardon me?

14 THE COURT: Which detective has it?

15 MR. HOUSEAL: It's Detective Phillips will go

16 downstairs.

17 THE COURT: Well, I got a --

18 MR. HOUSEAL: Detective Walker is the detective that
19 actually showed the picture.

20 THE COURT: Do you know where the picture is?

21 DETECTIVE WALKER: It should be in the case file, Your
22 Honor.

23 THE COURT: All right, sir. You going to get it for
24 him? All right.

25 We'll give you an answer to that in just a minute.

1 MR. PENNINGTON: Thank you very much, sir.

2 Next I have made certain requests in writing by way of a
3 letter to the solicitor asking for Brady material.

4 THE COURT: Okay.

5 MR. PENNINGTON: I would like to just run through those
6 items if the court will permit.

7 THE COURT: Go ahead.

8 MR. PENNINGTON: First is that my impression from
9 reading the case file is that Mr. Porter Walker, who is one
10 of the two male victims, had never claimed to identify Mr.
11 Steed prior to a circuit court bond hearing.

12 And I'm asking the solicitor to verify if that is in
13 fact the case.

14 MR. HOUSEAL: Your Honor, I don't -- first of all, I
15 don't understand why that should be a specific Brady request.

16 But secondly, I don't know what Mr. Walker will say when
17 he testifies. I have a general idea of what he might say.
18 But I don't think I should be speaking for Porter Walker.

19 THE COURT: The question is what now?

20 MR. PENNINGTON: The question is that we had an incident
21 involving my client being arraigned or having a bond setting
22 in circuit court roughly 20 days after the original arrest.

23 Mr. Walker had previously said he couldn't identify
24 anyone. Said that the black male assailant was hooded --

25 THE COURT: Hold on a minute. Where does that

1 information come from? You're listening?

2 MR. HOUSEAL: I'm listening.

3 MR. PENNINGTON: He's listening. Yes, sir.

4 THE COURT: So go ahead!

5 MR. PENNINGTON: He described that the black male
6 subject had --

7 THE COURT: Where is this information that you are

8 telling me now came from? When you say --

9 MR. PENNINGTON: With regard to the bond hearing?

10 THE COURT: No. You telling me what a witness said.

11 MR. PENNINGTON: These are from statements that he made
12 in writing to the detectives and to the -- in their notes.
13 He described --

14 THE COURT: Hold on a minute. Let me see the statement
15 that you're referring to.

16 MR. PENNINGTON: The statements of Mr. Walker?

17 THE COURT: No. The statement that you read where you
18 are relating to me what Mr. Porter --

19 MR. PENNINGTON: Porter Walker.

20 THE COURT: -- Walker said.

21 MR. PENNINGTON: Okay.

22 Judge, I have for your use a copy of incident reports
23 and other things that I'll just pass up to the court.

24 THE COURT: Oh, good. That will be easy to find then.

25 Okay. So what number is it?

1 MR. PENNINGTON: Let's see if I can figure that out for
2 you. Mr. Walker is under Tab 7.

3 THE COURT: Okay.

4 MR. PENNINGTON: And what you have under Tab 7 will
5 be --

6 THE COURT: Well, just show me the sentence that you're
7 talking about when you tell me what he said at a given time
8 and then you can ask me the question and I'll understand it.

9 MR. PENNINGTON: Yes, sir.

10 THE COURT: It had something to do with he couldn't
11 identify somebody.

12 MR. PENNINGTON: Yes, sir. I would refer you to a
13 supplemental report of Detective Tittle on page 2 of 3.

14 THE COURT: On page 2?

15 MR. PENNINGTON: 2 of 3. It's a -- Detective Tittle.

16 THE COURT: All right. Go ahead.

17 MR. PENNINGTON: We're on tab -- did I say 7? Yes,
18 sir. Tab 7.

19 THE COURT: Go ahead.

20 MR. PENNINGTON: And that's another officer, that's the
21 EMS, then there's some medical. Keep going. And we will get
22 into Detective Tittle.

23 Actually that's his statement. All right. I've
24 arranged mine. I added that later. I'll refer you instead
25 to Tittle's tab which is Tittle 6, Tab 6.

1 THE COURT: I can find it. Go ahead.

2 MR. PENNINGTON: And under his report, under page 2 of
3 3, first paragraph, there's language that says, victim
4 advised that he could not get a good look at the second
5 subject. The black male he advised that he had the hood
6 pulled up --

7 THE COURT: Hold on a minute. What line?

8 MR. PENNINGTON: They are not numbered, Your Honor, but
9 it's the first full paragraph dead in the middle where it
10 begins, the victim advised in the right-hand side of the
11 page.

12 If I may approach?

13 No. This is going to be on page -- I'm sorry. It's
14 page 2 of 3. And it begins the victim advised.

15 THE COURT: All right.

16 MR. PENNINGTON: The victim advised that he could not
17 get a good look at the second subject --

18 THE COURT: Okay. Now, what is your question?

19 MR. PENNINGTON: All right.

20 THE COURT: That's what the officer said.

21 MR. PENNINGTON: Yes, sir.

22 THE COURT: All right.

23 MR. PENNINGTON: In the early stages of the
24 investigation Mr. Walker made a series of statements, all of
25 them basically saying he couldn't identify the black male.

1 THE COURT: Well, here it just says he could not get a
2 good look at the second subject, the black male.

3 MR. PENNINGTON: Yes, sir.

4 THE COURT: Okay. Now, what -- what is it you're asking
5 from the solicitor?

6 MR. PENNINGTON: The question is, I think that there's
7 an identification issue with regard to Mr. Walker.

8 I believe he will take the witness stand and he may or
9 he may not attempt to do an in-court I.D. that was
10 impermissible based upon a prior bond hearing where my client
11 was present.

12 I realize that the court will probably allow him to
13 attempt to do that.

14 The impeaching issue that I'm looking for is that I
15 would like the verification that Mr. Walker never made any
16 photo line-up identification or picture line-up of my client
17 prior to that bond hearing.

18 THE COURT: All right. What he's asking, Solicitor, is
19 did -- did that witness-victim have a photo line-up prior to
20 the --

21 MR. HOUSEAL: I can answer that.

22 THE COURT: All right, sir.

23 MR. HOUSEAL: No, they never showed Mr. Walker a photo
24 line-up containing a picture of Robert Steed.

25 THE COURT: All right, sir.

1 Anything else?

2 MR. PENNINGTON: No, sir, I think that will answer it
3 for now.

4 THE COURT: All right, sir.

5 Go ahead.

6 MR. PENNINGTON: Next, I will just put on the record
7 that I have asked explicitly for any tapes or interviews with
8 either witnesses or codefendants and I've been told that none
9 exist for the record.

10 I would request any and all if -- if any do exist.

11 THE COURT: All right, sir.

12 MR. PENNINGTON: Next, I have asked for any and all
13 notes other than the ones that I've been provided with regard
14 to the interview of my client which occurred five days into
15 the investigation.

16 I've been told that I've been provided all notes
17 informal and otherwise by Detectives Walker and Buncum. And
18 I would ask for anything else just as a matter of record.

19 THE COURT: All right, sir.

20 MR. PENNINGTON: I have asked and I'm -- for access to
21 the shoes -- and there are multiple pairs of shoes that were
22 taken from my client at his arrest and from the search of his
23 apartment -- and I'm not clear as to when those will be
24 available.

25 MR. HOUSEAL: I can make -- they are pulled and

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1 separated at evidence a mile down the road. I can have
2 someone transport them to the courthouse later this
3 afternoon.

4 MR. PENNINGTON: That would be terrific. We would
5 appreciate that.

6 THE COURT: Go ahead.

7 MR. PENNINGTON: Next, Your Honor, this case involves
8 not just two defendants but six defendants.

9 The State may call up to four codefendants in this case,
10 all of whom were charged with burglary, armed robbery,
11 assault and battery with intent to kill, murder and
12 conspiracy.

13 There was an explicit plea arrangement entered into last
14 week before Judge Martin involving one of those defendants.
15 The murder was knocked down from murder to voluntary
16 manslaughter. The burglary was capped at a maximum of 30
17 years concurrent. And all other charges were to be run
18 concurrent.

19 So in effect this defendant moved from a posture of
20 looking at potentially life on two counts with no parole down
21 to a maximum exposure of 30 years, 85 percent.

22 That is clear.

23 What is not clear is the status of the remaining three
24 defendants who have the same charges.

25 I'm not clear if the solicitor intends to call those

1 witnesses. If he is not going to call them, it won't be an
2 issue. If he is, I'm familiar with how this game is sort of
3 played in that with a wink and a nod witnesses are told
4 sometimes, look, there's no official agreement, but you'll
5 get at least as good as the first guy if not better based
6 upon an evaluation of your culpability, based upon the
7 evaluation of your prior record and your level of
8 cooperation.

9 And in fact, I'm sure Mr. Houseal will be completely
10 candid in telling the court that's what he will look at.
11 That's what he told me last week, that he will enter into
12 plea agreements with these witnesses, they have not been
13 officially fleshed out.

14 I am asking for the solicitor to essentially acknowledge
15 that fact that these -- if these witnesses testify as he
16 expects them to that they will get at least as good a deal as
17 the codefendant, Michael Griffin, as I've just enumerated
18 it.

19 MR. HOUSEAL: I can't acknowledge that. I can
20 acknowledge that I will evaluate the credibility that they
21 show from the stand, their cooperation with us, and evaluate
22 their culpability in relation to the entire conspiracy.

23 But I can't predict what they are going to say on the
24 stand. And I'm not going to commit myself to telling you
25 that any of those witnesses might not get more as a sentence

1 than the person who pled last week. And I think that was the
2 specific question.

3 THE COURT: Well, are you saying -- what he wants to
4 know is how to examine them, cross-examine them, as to what
5 they are charged with and the potential sentence.

6 So he wants to -- I've been through this before -- so --

7 MR. HOUSEAL: I understand --

8 THE COURT: Would the proper time be after they testify,
9 then send the jury out and you tell -- you tell him what
10 grade you gave him, is that what you want? Because he wants
11 to -- he wants to examine him. And some of the cases are
12 pretty lenient.

13 MR. HOUSEAL: Judge, I know that there are cases which
14 state that he's entitled to explore that avenue. But I can
15 promise you I am not going to know after a witness testifies
16 what plea offer I'm going to make. I'm not going to know
17 that until sometime after this case is concluded.

18 MR. PENNINGTON: Well, Judge --

19 THE COURT: Then you don't object if he cross -- if he
20 cross-examines on their potential sentence?

21 MR. HOUSEAL: Well, I've read the cases, Judge. I know
22 the jury is going to know when the man, Michael Griffin, who
23 pled last week, Mr. Pennington and Mr. Crumrine are going to
24 cross-examine him on his plea offer and the jury is going to
25 know what he's facing and what he's facing now.

1 So by analogy they are going to know what the defendants
2 are facing. And that's what Mr. Pennington wants to get out
3 of this obviously.

4 So I just don't think it's appropriate for him to
5 continue to go over and over and over life sentence, life
6 sentence, life sentence with each particular codefendant that
7 might testify.

8 THE COURT: One of those cases it was affirmed, Mr.
9 Pennington --

10 MR. PENNINGTON: Yes, sir.

11 THE COURT: -- there was some remark in the case about
12 the fact that it had already been brought out.

13 If -- if that witness who testified whose already been
14 sentenced and you examine him, you get that information from
15 that witness, then you would have it, would you not --

16 MR. PENNINGTON: I would say --

17 THE COURT: -- what everybody was charged with?

18 MR. PENNINGTON: I would say pretty much that's going
19 to deal with it.

20 I think that I may point out clearly, because I want the
21 jury to know what the charges of each young man are, so that
22 there's no risk of confusion.

23 THE COURT: I'm going to tell them.

24 MR. PENNINGTON: But I think beyond that you're right, I
25 certainly don't plan to get on sort of a repetitive process.

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1 THE COURT: Let's find out first because he will have a
2 right to examine that one who pled guilty.

3 MR. HOUSEAL: And just to make sure you are clear, he
4 has not been sentenced. So he has pled guilty, entered
5 guilty pleas to the charges that he elicited, but he has
6 not --

7 THE COURT: He hasn't pled guilty?

8 MR. HOUSEAL: No. I'm going -- he has --

9 THE COURT: He has pled guilty but he hasn't been
10 sentenced?

11 MR. HOUSEAL: I am going to ask you that if you had time
12 later this week after this trial to pass sentence on him.

13 THE COURT: Well, then I assume that you don't object to
14 him eliciting from that witness what his potential sentences
15 can be?

16 MR. HOUSEAL: Correct.

17 THE COURT: All right. Let's just go from that.

18 MR. PENNINGTON: Yes, sir.

19 MR. HOUSEAL: Yes, sir.

20 MR. CRUMRINE: Your Honor, may I be heard on that also
21 because I also make the same motion.

22 THE COURT: You're just going to tag along with the same
23 thing?

24 MR. CRUMRINE: No, I've got a little different side to
25 this.

1 THE COURT: Tell me about it.

2 MR. CRUMRINE: I filed a discovery motion asking
3 specifically for the substance of any agreement, proposed
4 agreement, either oral or written, including direct or
5 indirect, any understanding that the --

6 THE COURT: He's already said he didn't have any
7 direct. Do you have any indirect agreements?

8 MR. HOUSEAR: Not with anyone other than Michael Griffin
9 who already pled an indirect agreement with regard to that as
10 already established earlier. And that's simply is what he
11 was pleading guilty to.

12 MR. CRUMRINE: Your Honor, I understand from trying to
13 elicit from the defense -- other defense attorney that there
14 is a basic understanding that each of these fellows have a
15 lesser degree of culpability and that they --

16 THE COURT: You got a right to call them as a witness if
17 you want to.

18 MR. CRUMRINE: Yes, sir. But I think that under
19 discovery before we cross-examine these fellows that we are
20 entitled to know the solicitor's understanding with --

21 THE COURT: Well, if you don't believe what the
22 solicitor tells you, you got a right to call your own
23 witnesses. You can call them lawyers if you wanted to.

24 I don't know -- that depends on what you want to do.
25 Solicitor says he has no agreement.

1 MR. CRUMRINE: All right.

2 THE COURT: And dependent upon what his testimony is,
3 their testimony at this trial is, then he -- give it some
4 thought, so to speak. And as Mr. Pennington said, a wink and
5 a nod.

6 MR. CRUMRINE: Thank you, Your Honor.

7 MR. PENNINGTON: Thank you, Your Honor.

8 Should I continue?

9 THE COURT: What other motions?

10 MR. PENNINGTON: All right.

11 Your Honor, just again for the record, housekeeping
12 wise, I filed a 404(b) Lyle motion requesting notice for any
13 and all prior bad acts that are intended to be offered
14 against Mr. Steed.

15 That was served and I asked that notice -- that notice
16 to be effective last Wednesday.

17 Mr. Houseal has indicated candidly that he had no Lyle
18 information and as long as that has not changed then I'm in
19 good shape.

20 THE COURT: Is that true, Mr. Solicitor? All right.
21 That hasn't changed?

22 MR. PENNINGTON: Thank you, Your Honor.

23 With regard to criminal record of the State's witnesses,
24 the solicitor has supplied me with rap sheets on the
25 codefendants. He has supplied me also with juvenile records

1 on the codefendants.

2 There are a number of other State's witnesses who are
3 essentially girlfriends of these codefendants and who may
4 well likely have criminal records and histories.

5 Mr. Houseal had indicated preliminarily he thought he
6 would have that and I don't know where that stands.

7 MR. HOUSEAL: They were run this morning, Your Honor.

8 I haven't taken a look at them. But I know we have them.

9 And they will be provided.

10 THE COURT: You'll give them --

11 MR. HOUSEAL: Yes, sir.

12 THE COURT: All right, sir.

13 MR. PENNINGTON: That's great.

14 THE COURT: He will give them to you this afternoon.

15 MR. PENNINGTON: Yes, sir. Thank you.

16 Your Honor, we've already touched on the bloody
17 pictures, the videotapes and things. And I will just have a
18 standing objection to unnecessarily bloody photographs. I
19 realize the State does have to prove its case. But I would
20 like to be heard before we interpose pictures or other
21 exhibits before the jury.

22 THE COURT: All right, sir.

23 MR. PENNINGTON: With regard to the defendant's prior
24 convictions for purposes of his testimony and impeachment, my
25 impression is he has no impeaching convictions and I would --

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1 unless the State has something I would --

2 THE COURT: As to Mr. Steed?

3 MR. PENNINGTON: Yes, sir.

4 THE COURT: All right, sir. Is that correct, Solicitor?

5 MR. HOUSEAL: I don't intend to introduction any prior
6 convictions of Mr. Steed.

7 THE COURT: All right, sir.

8 MR. PENNINGTON: Next, Your Honor, I did file a written
9 motion for sequestration of witnesses in this case.

10 The factual basis -- I recognize that it's a complex
11 case involving many police officers as well as lay
12 witnesses.

13 My concern is is that many of these witnesses are
14 intimately related in terms of boyfriend, girlfriend and/or
15 their loved ones having something on the line here.

16 We have four unsentenced defendants that we have every
17 reason to think will be pleading and the benefit of whatever
18 bargain they can strike.

19 And I would ask the court exercise its discretion and
20 sequester at the very least lay witnesses if not all
21 witnesses. Obviously not the victims, however. The
22 victims --

23 THE COURT: Ordinarily I only sequester, if any at all,
24 the fact witnesses for the incidents.

25 Solicitor, you have any objection to that? How many are

1 there?

2 MR. HOUSEAL: Let me take a look at the witness list and
3 try to figure out how many fact witnesses there might be.

4 THE COURT: All right. Just run down them right quick.

5 MR. HOUSEAL: Are we talking about police officers and
6 lay witnesses or just --

7 THE COURT: No. Police officers didn't see anything, I
8 assume.

9 MR. HOUSEAL: Right.

10 THE COURT: I'm just talking about the fact witnesses.

11 MR. HOUSEAL: The only fact witnesses who will describe
12 what happened inside that house are the two victims and the
13 codefendants.

14 MR. PENNINGTON: Well, I'm actually referring beyond the
15 initial -- the incident itself to encounters that occurred in
16 roughly the same nighttime frame that the State would intend
17 to offer, if any.

18 THE COURT: Encounters between who?

19 MR. PENNINGTON: In this little group there were various
20 encounters at other locations that I think the State will
21 rely on to corroborate the claim of my client's involvement
22 and those are people who have boyfriend, girlfriend
23 relationship with some of the defendants and/or criminal
24 histories that would make me hope that they wouldn't perjure
25 themselves.

1 But I think we would be better off if they weren't here
2 listening to each other testify, specifically people --

3 MR. HOUSEAL: Go ahead.

4 MR. PENNINGTON: I'm sorry.

5 MR. HOUSEAL: Go ahead.

6 MR. PENNINGTON: If I may look over your shoulder.

7 There's April Mook, which is one person who comes to mind.

8 There's an April Mook, an Asa Langston, Stacy Dawson and

9 Antonio Robertson, a Billy Self. Those would be the ones
10 that I would ask for, Your Honor.

11 THE COURT: Well, what you got to say about that?

12 MR. HOUSEAL: I don't object to the sequestration of
13 those witnesses.

14 THE COURT: All right. Says he doesn't have -- doesn't
15 object.

16 MR. PENNINGTON: Thank you, Your Honor.

17 MR. HOUSEAL: I will add one potential witness is the
18 father of one of the codefendants who wasn't mentioned 30
19 seconds ago. His name is John Griffin, Senior. I don't know
20 if he intends to sit through the trial or not. He may be
21 called by the State or defense.

22 MR. PENNINGTON: Since a parent -- unless he has
23 relevance that I'm unaware of, all he would testify to is the
24 theft of his Hi-Point weapon which we're not going to
25 dispute.

1 So I don't think that would be an issue.

2 THE COURT: All right.

3 MR. PENNINGTON: With regard to when Mr. Walker
4 testifies, Your Honor, this is the victim in the case --
5 well, I guess we've already dealt with that. I would just
6 advise the court that I'm -- I'm concerned about this
7 in-court identification process as being unnecessarily
8 suggestive.

9 We do know -- and part of the problem is that Mr. Walker
10 may or may not be attempting an identification. If he's not,
11 then the issue is moot.

12 Frankly he's in the courtroom. So my guess is we're
13 sort of already past that point. But there will be
14 cross-examination that I'll have to elicit. So I'll just
15 withdraw that for the time being.

16 THE COURT: All right, sir.

17 MR. PENNINGTON: Finally I do have a motion to suppress
18 my client's statements to Detectives Walker and Buncum, both
19 of whom are present in the courtroom.

20 THE COURT: All right, sir. Call your witness. That's
21 on the Jackson V. Denno?

22 MR. PENNINGTON: Yes, sir.

23 THE COURT: Call your first witness.

24 MR. HOUSEAL: Detective Robert Walker.

25 ROBERT WALKER,

ROBERT WALKER - DIRECT BY MR. HOUSEAL

1 was sworn and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. HOUSEAL:

4 Q Detective Walker, you're a detective with the Charleston
5 County Sheriff's Office?

6 A Correct.

7 Q And you were employed in that capacity in May of 1999?

8 A Correct.

9 Q And you had occasion to or you participated in the
10 investigation of this case --

11 A Yes, sir.

12 Q -- specifically involving one of the defendants, Robert
13 Antonio Steed. Did you have occasion to be present at his
14 arrest?

15 A Yes, sir.

16 Q Who else was with you when Mr. Steed -- which police
17 officers were with you when Mr. Steed was placed under
18 arrest?

19 A Detective Buncum who's seated in the courtroom.

20 Q Describe for the judge where it was that this arrest
21 took place?

22 A Yes, sir.

23 Q On May the 7th, 1999, at approximately 9:05 p.m., myself
24 and Detective Buncum were in contact with Mr. Steed's
25 family. We received a phone call --

ROBERT WALKER - DIRECT BY MR. HOUSEAL

1 Q Well, not necessarily go into great detail about how
2 you ended up finding him --

3 A Okay.

4 Q -- just at the point at which you were in contact with
5 Mr. Steed, what happened?

6 A Okay. We met Mr. Steed at his residence. We took him
7 into custody. Took him back to headquarters.

8 Q You placed him under arrest at his house?

9 A Correct.

10 Q Did you read him his rights then or?

11 A We took him into custody. And when we got him back to
12 our office we read him his Miranda rights.

13 Q Okay. Approximately how long did that take to get from
14 his house to --

15 A Ten minutes.

16 Q Okay.

17 And how did you insure that you went through all of the
18 Miranda rights?

19 A We have an advisement of rights form. Once we read his
20 Miranda rights we have him initial each individual line and
21 sign it. And he did so. And I signed it. And Detective
22 Buncum also witnessed it.

23 Q Do you have a copy of that --

24 A Yes, sir.

25 Q -- advisement of rights form with you?

ROBERT WALKER - DIRECT BY MR. HOUSEAL

1 A Yes, sir.

2 No, sir. It's in the case file.

3 THE COURT: Go ahead with the examination and I'll --

4 MR. HOUSEAL: I will move on.

5 THE COURT: But go on and get the thing so to make it an
6 exhibit.

7 BY MR. HOUSEAL:

8 Q Did you ask Mr. Steed -- did Mr. Steed appear to be
9 under the influence of any alcohol or drugs?

10 A No.

11 Q Did you ask him those kinds of questions about whether
12 he understood what you were talking about?

13 A Yes, sir, I did.

14 Q And what was his response, if any?

15 A In reference to the case?

16 Q In reference to whether he understood that he was under
17 arrest?

18 A Yes, sir.

19 Q And understood that he had a right to an attorney and so
20 forth?

21 A Yes, sir.

22 After we read those rights we asked him if he understood
23 them. He said yes and he signed the paper agreeing to speak
24 with us.

25 Q Okay.

1 Did you conduct an interrogation of him after that
2 waiver of his rights?

3 A We conducted an interview of Mr. Steed. Yes, sir. At
4 that time Mr. Steed stated that he did not want to give a
5 written statement but that he would verbally state, you know,
6 his action -- I mean, his -- his doings that day.

7 He gave a verbal statement stating that he went to
8 Columbia on that day. He returned around 3 p.m. He picked
9 his girlfriend up and took her to work.

10 He stated that once he dropped his girlfriend off he
11 went to a friend's house.

12 While he was at a friend's house he was paged by his
13 girlfriend. And she stated that she needed to come back home
14 because the computers at her job were not working.

15 He stated that he picked his girlfriend up and they went
16 home and he stayed there for the remainder of the evening.

17 After Mr. Steed gave that verbal statement I then
18 questioned him directly about the incident that took place on
19 Outwood. Mr. Steed made some comments. He made three
20 comments that I made note of and -- on my case notes and in
21 turn transcribed them on my supplement.

22 Q What were those comments?

23 A He stated I quote, if I popped him, I popped him, end
24 quote. I'm F'd if I tell and I'm F'd if I don't. And the
25 last comment was, I'm getting life anyway so it don't

ROBERT WALKER - DIRECT BY MR. HOUSEAL

1 matter. End quote.

2 At that time he refused to talk with myself or Detective
3 Buncum any longer and we in turn transported him to the
4 Charleston County detention center.

5 Q Okay.

6 Do you recall whether those comments were a result of a
7 direct question of him by you or by Detective Buncum or was
8 this just discussion about the incident at Outwood?

9 A It was a discussion about the incident.

10 Q Did you promise him anything or --

11 A No, sir.

12 Q -- offer him any leniency or any --

13 A No, sir.

14 Q Did you make any threats to him to elicit any responses?

15 A No, sir.

16 Q Did you observe Mr. -- or Detective Buncum make any
17 threats or offer any leniency?

18 A None whatsoever.

19 Q Approximately how long did you have this interview with
20 Mr. Steed?

21 A Approximately 40 minutes.. 30, 40 minutes.

22 MR. HOUSEAL: Your Honor, I do have a copy of the
23 advisement of rights sheets.

24 THE COURT: Let's get it marked.

25 MR. PENNINGTON: I'll acknowledge that I've seen a

1 Xeroxed copy, Your Honor.

2 THE COURT: All right. Is that necessary to mark at
3 this time?

4 MR. PENNINGTON: No, sir, not to me.

5 MR. HOUSEAL: I don't have any further questions at
6 this time of this witness.

7 MR. PENNINGTON: So Your Honor doesn't have to get eye
8 strain and neck strain, I'll move over here.

9 THE WITNESS: Okay. Thank you.

10 THE COURT: You can move anywhere.

11 CROSS-EXAMINATION

12 BY MR. PENNINGTON:

13 Q Detective Walker, you've already said that Mr. Steed
14 told you that he didn't want to make a written statement?

15 A Correct.

16 Q And he basically told you that he didn't have anything
17 to do with what had happened up in Woodhill (sic) Manor?

18 A Correct.

19 Q And in fact he kept repeating that throughout the entire
20 course of your interview, that he didn't have anything to do
21 with the home invasion?

22 A Correct.

23 Q In fact, at no time did he say well, yes, I was there or
24 yes, I know something about it?

25 A Correct.

ROBERT WALKER - CROSS BY MR. PENNINGTON

1 Q Now, you were -- you had been looking for Mr. Steed for
2 about four days by that time in the investigation, hadn't
3 you?

4 A Yes, sir. Rough -- approximately four days.

5 Q The homicide had occurred roughly Monday night at around
6 10, 10 to 11 o'clock at night. And this would have been
7 roughly a Friday night?

8 A I don't recall the date specifically but it was on the
9 3rd, yes, sir.

10 Q Okay. So the killing would have been on the 3rd?

11 A Yes, sir.

12 Q And the interview was on the 7th, I believe?

13 A Yes, sir.

14 Q Okay.

15 So during that period of time had you and the sheriff's
16 office gathered information about Robert Antonio Steed's
17 pending charges that he had had from '96?

18 A Yes, sir.

19 Q Okay. So you were aware that he had had armed robbery
20 charges that he was out on bond for?

21 A Yes, sir.

22 Q Okay.

23 And that came up in your interview when he told you that
24 regardless of this case he was quote, F'd anyway. He said,
25 I'm getting life anyway so it don't matter, didn't he?

ROBERT WALKER - CROSS BY MR. PENNINGTON

1 A He did. I didn't know if he was specifically referring
2 to the other charges. But that he made the statement.

3 Q Okay. He did talk about those pending charges, those
4 pending armed robberies?

5 A He had mentioned them, yes.

6 Q Okay.

7 So as -- from where you sit, you're saying that he made
8 the statements and you're not sure if he's talking about the
9 armed robberies or what he's talking about?

10 A Correct.

11 Q Okay. And we don't have a tape recording of the
12 conversation?

13 A No, sir.

14 Q And you said something about having case notes, where
15 are those case notes?

16 A Ah, I don't have them with me. What I do is I take case
17 notes throughout the investigation and I transcribe verbatim
18 my notes onto a supplement form and turn them in.

19 Q All right.

20 Do those case notes have notations that are not
21 contained in your supplement?

22 A No, sir. Everything that I note is contained in my
23 supplement.

24 Q Okay.

25 Now in terms of this interview, you describe that you

ROBERT WALKER - CROSS BY MR. PENNINGTON

1 took my client -- you picked him up from his home and took
2 him to the sheriff's office?

3 A Correct.

4 Q And there at the sheriff's office he was taken to a
5 little room and handcuffed to a chair?

6 A Correct.

7 Q And in that little room you all read him his Miranda
8 rights and he signed a waiver?

9 A Correct.

10 Q And then you started talking to him about how that, um,
11 in effect there were codefendants in this case that were
12 pointing the finger at him?

13 A I don't recall making that statement.

14 Q Do you recall telling him that everybody else said you
15 did it and that you need to write a statement too?

16 A I don't recall.

17 Q Do you recall telling him that -- now, when you say you
18 don't recall, you might have made that statement but you just
19 don't know?

20 A When we take someone into the interview room, the first
21 thing that we do obviously is establish some type of rapport
22 for the person. General conversation being made. I can't
23 recall exactly what was being said.

24 Q Okay. You were aware that Tommy Bond had made a
25 statement implicating T-Lo?

ROBERT WALKER - CROSS BY MR. PENNINGTON

- 1 A That's correct.
- 2 Q And you were aware that Michael Griffin had made a
3 statement indicating T-Lo?
- 4 A Correct.
- 5 Q And in this particular case did you also tell him that
6 in effect that we know you did it?
- 7 A I don't recall making that statement, Mr. Pennington.
- 8 Q And that his response was, if I did it, I did it, I
9 would tell you if I did it?
- 10 A I recall him saying that, yes, sir.
- 11 Q Okay.
- 12 And in effect what he was saying was, I didn't do it,
13 but if I did it I would tell you I did it?
- 14 A Are you asking me if that's the case?
- 15 Q Yes, sir.
- 16 A I can't recall. I remember him making the statement
17 that if he did it he would tell me.
- 18 Q Okay.
- 19 If he did it he would tell you?
- 20 A Yes, sir.
- 21 Q But he all the way through the interview kept insisting
22 that he didn't do it?
- 23 A Correct.
- 24 Q And that's reflected not only in your notes but also
25 nowhere in here does he say yes, I was there?

ROBERT WALKER - CROSS BY MR. PENNINGTON

1 A Correct.

2 Q Okay.

3 MR. PENNINGTON: Thank you. That's all I have of this
4 witness.

5 THE COURT: All right, sir.

6 Anything, Counselor?

7 MR. CRUMRINE: Nothing from Mr. Flynn, Your Honor.

8 THE COURT: Anything further, Solicitor?

9 MR. HOUSEAL: Nothing from the State, Your Honor.

10 THE COURT: You can come down.

11 THE WITNESS: Thank you, sir.

12 MR. PENNINGTON: Your Honor, I would have two witnesses
13 that we would call.

14 THE COURT: All right, sir.

15 MR. PENNINGTON: The first would be Detective Buncum.

16 THE COURT: Let me ask you this. You can stand there
17 while I am asking. Is that defendant charged with other
18 armed robberies other than these?

19 THE WITNESS: At the time, yes, sir, he was charged with
20 other armed robberies and out on bond on several other armed
21 robberies.

22 THE COURT: Okay.

23 And you don't know whether he was talking about, when he
24 says he was going to get life, talking about the armed
25 robbery, whether he was talking about those that he was

JULIUS BUNCUM, III - DIRECT BY MR. PENNINGTON

1 charged with or this armed robbery; is that what you're
2 saying?

3 THE WITNESS: Correct. The fact we had him arrested, he
4 was looking at life for these charges or the other armed
5 robberies, yes, sir.

6 THE COURT: All right, sir.

7 MR. PENNINGTON: Detective Buncum.

8 JULIUS BUNCUM, III,
9 was sworn and testified as follows:

10 THE WITNESS: Julius Buncum, the third. B-U-N-C-U-M.

11 DIRECT EXAMINATION

12 BY MR. PENNINGTON:

13 Q Detective Buncum, you are also a detective with the
14 sheriff's office?

15 A Yes, sir.

16 Q And you worked along with Detective Walker in working up
17 this case?

18 A That's correct.

19 Q And among those, the duties you had assigned was to pick
20 up my client when he surrendered at his mother's house?

21 A Correct.

22 Q And just as Detective Walker described, you all took him
23 back to the sheriff's office and conducted an interview?

24 A Yes.

25 Q Okay.

JULIUS BUNCUM, III - CROSS BY MR. HOUSEAL

1 Is it fair to say, Detective Walker, (sic) that after he
2 was Mirandized, he kept stating that he knew nothing about
3 the home invasion that's involved in this case?

4 A Yes, sir. He kept saying that he knew nothing about it.
5 He didn't know what we were talking about.

6 Q All right. And that never changed, did it?

7 A No, sir. Didn't change.

8 Q And T-Lo

9 MR. PENNINGTON: Court's indulgence just one moment.

10 That's all the questions I have of this witness.

11 THE COURT: Any questions?

12 MR. HOUSEAL: Just one.

13 CROSS-EXAMINATION

14 BY MR. HOUSEAL:

15 Q When you heard Mr. Steed make those comments if I popped
16 him, I popped him; I'm F'd if I tell him, I'm F'd if I don't,
17 was that in response to questioning about an armed robbery or
18 was that in response to a conversation about this murder that
19 had happened at Woodside?

20 A We were talking about Woodside. We weren't talking
21 about the armed robbery when we mentioned that.

22 MR. HOUSEAL: Okay. That's all the questions.

23 MR. PENNINGTON: Redirect, Your Honor?

24 THE COURT: Sure.

25 REDIRECT EXAMINATION

1 BY MR. PENNINGTON:

2 Q Well, Detective, do you recall that there was awareness
3 of his prior -- of his pending armed robberies?

4 A Yes.

5 Q And he told you that he was looking at big time on those
6 charges too, wasn't he?

7 A He didn't make mention of the armed robberies. But what

8 we were talking about was the "Woodside incident." And when

9 he -- he made the comment about if I popped him, I popped

10 him, I'm facing life anyway, we weren't talking about the

11 armed robberies at that time, we were talking about the

12 Woodside residence.

13 Q Where is that reflected in your statement, in your
14 summary?

15 A I didn't put that down. Detective Walker did.

16 Q So nowhere in your written summary is there even mention
17 that he said if I popped him, I popped him?

18 A No, sir, I didn't write it down.

19 Q And -- but that would be probably the most important
20 thing he could have said relevant to this case, isn't it?

21 A At that time, I believe so, sir.

22 Q But your -- your summary --

23 MR. PENNINGTON: -- which, Judge, I'll point it out to
24 you as tab 8 -- excuse me, tab 9 -- and I referred --

25 MR. HOUSEAL: Judge, I don't think this is appropriate

1 redirect. This is not in response to which crime you're
2 talking about. Now he's getting into whether he wrote it or
3 whether he didn't.

4 THE COURT: I understood it different from the first
5 time he testified. So he's clearing something up for me.
6 I'm going to hear it.

7 MR. HOUSEAL: Okay.

8 MR. PENNINGTON: Judge, if you'll look at tab 9, page 4
9 and if you look at the bottom of page 4, that's where we get
10 to this interview.

11 THE COURT: I see. Go ahead.

12 BY MR. PENNINGTON:

13 Q If I may just look over your shoulder, Detective. So
14 your report specifically describes this pick up at his
15 mother's residence?

16 A Right.

17 Q You see that one bottom paragraph, this would be 4 of
18 6. Make sure the judge has got it.

19 THE COURT: Begins with Columbia?

20 MR. PENNINGTON: No, sir. It begins with questioning.
21 We are on tab 9. Should be...

22 THE COURT: I'll find it.

23 MR. PENNINGTON: Here is the numbering system here. If
24 you come one more. You'll be at 406. If you look down on
25 that paragraph.

1 THE COURT: Thank you.

2 MR. PENNINGTON: That's where we are. Yes, sir.

3 BY MR. PENNINGTON:

4 Q There you mention that Detective Walker was assigned to
5 go to the mother's residence to take the suspect into
6 custody.

7 A Right.

8 Q And approximately 20 minutes after being at the
9 residence, suspect was taken into custody without incident
10 and taken to the office.

11 He was advised of his Miranda warnings and the suspect
12 then stated he knew nothing about the home invasion in the
13 Woodside subdivision.

14 A Right.

15 Q Then you take care to go on and describe that he went on
16 to say that he had been in Columbia and returned in time to
17 take his girlfriend to work at 3. This is similar to what
18 Detective Walker said, right?

19 A Right. Yes, sir.

20 Q He had learned she didn't have to be at work, they both
21 went downtown, he got up at a friend, Eric, and they got high
22 the rest of the day.

23 Then you also note the suspect kept repeating that he
24 knew nothing about the incident in Woodside Manor. You
25 repeat that, don't you?

JULIUS BUNCUM, III - REDIRECT BY MR. PENNINGTON

1 A Right. Yes, sir.

2 Q And then you describe that the suspect was then taken to
3 the detention center and charged.

4 Nowhere in your incident report do you stress that all
5 important comment that you characterized about Woodside
6 being, if he popped -- if he popped him, he popped him.
7 That's not in your summary?

8 A No, sir.

9 Detective Walker took over the statement. And I heard
10 him say about if I popped him, I popped him. But we were not
11 talking about the armed robberies.

12 And Detective Walker put down exactly what he heard. I
13 told him I heard him say if I popped him, I popped him, I'm
14 facing life anyway.

15 Q So Detective Walker was the person that sort of had the
16 primary responsibilities?

17 A At that time, yes, sir.

18 Q And so he was the one that was trying to track every
19 word that was said?

20 A Right.

21 He was writing things -- he was writing notes down at
22 that time.

23 Q Okay. Thank you.

24 THE COURT: You can come down.

25 MR. PENNINGTON: I have one more witness, Your Honor.

HAROLD PHILLIPS - DIRECT BY MR. PENNINGTON

1 This would be Detective Harold Phillips.

2 HAROLD PHILLIPS,

3 was sworn and testified as follows:

4 THE WITNESS: Detective Harold Phillips.

5 P-H-I-L-L-I-P-S.

6 DIRECT EXAMINATION

7 BY MR. PENNINGTON:

8 Q Detective Phillips, you also work with the sheriff's
9 office in the detective division?

10 A Yes, sir, I do.

11 Q And in May of '99, you were assigned as one of the lead
12 detectives in this case?

13 A Yes, sir.

14 Q And part of that responsibility is to gather together
15 all the information and try to direct the investigation?

16 A Yes. Along with the supervisors as well.

17 Q You work in conjunction with higher level officers that
18 are -- have more rank than you?

19 A Yes, sir, I do.

20 Q But you and Detective Garland were sort of the case
21 agents?

22 A I was a case agent, yes, sir.

23 Q Okay.

24 Now, part of the responsibilities is to also prepare for
25 and review all the information in the case?

HAROLD PHILLIPS - DIRECT BY MR. PENNINGTON

1 A Yes, sir. Part of the responsibility is to put the case
2 together. Yes, sir.

3 Q Okay.

4 And included in those duties in your particular case was
5 to actually testify at a preliminary hearing?

6 A Yes, sir.

7 Q Okay.

8 Do you recall that, um, you were told that Mr. Steed had
9 made some oral statements to Detective Walker?

10 A Yes, I did.

11 Q And that among those statements was that if he shot him,
12 that he had other armed robbery charges and he wasn't going
13 anywhere for the rest of his life anyways?

14 A You're asking -- your question is?

15 Q Is that what you recall and -- is that what you
16 testified to in -- well, let me just ask you. Isn't that
17 what you recall from learning about this investigation?

18 A I recall that statements were made that if he popped
19 him, he popped him and that another statement was made
20 concerning about, um -- other armed robberies. That's what I
21 recall.

22 Q Okay.

23 Now, to flush this out just a bit because it's getting a
24 little confusing here, you remember that you testified for
25 the sheriff's office in this case at a preliminary hearing?

1 A Yes, sir.

2 Q And that preliminary hearing was conducted on July 1st
3 of last year here in this courthouse?

4 A Okay.

5 Q And do you recall me specifically asking you the
6 question, did he make any oral statements to you or other
7 officers, and your reply being, he did make a verbal
8 statement to the detectives. And what was relayed to me was
9 that if he shot him, he shot him. He said he had other armed
10 robbery charges and he wasn't going anywhere for the rest of
11 his life anyways.

12 A Do you recall making that statement?

13 A Yes, sir, I have, um, this report in front of me.

14 Q And that was based upon the best of your knowledge at
15 that time?

16 A Yes, sir.

17 Q Looking a little further, do you recall being asked the
18 question, the substance of it is he said he was in Columbia
19 earlier in the day with a girlfriend, am I right? And your
20 response. Yes, sir.

21 And that he had other armed robbery charges and was
22 going to prison for the rest of his life anyway and if he
23 shot him, he shot him. Anything else?

24 And your response was, that would be it as far as I
25 know.

HAROLD PHILLIPS - CROSS BY MR. HOUSEAL

1 Is that basically what you knew at that time?

2 A Yes, sir.

3 Q And so you've testified as completely and accurately as
4 you could?

5 A Yes, sir.

6 Q Thank you.

7 MR. PENNINGTON: That's all I have.

8 THE COURT: All right. Anything further, Solicitor?

9 CROSS-EXAMINATION

10 BY MR. HOUSEAL:

11 Q You weren't present during the interview with Mr. Steed,
12 were you?

13 A No, sir, I wasn't.

14 Q Okay.

15 MR. HOUSEAL: Nothing further, Your Honor.

16 THE COURT: All right. You can come down.

17 Anything further? Any more witnesses, Solicitor?

18 MR. HOUSEAL: No, nothing from the State.

19 THE COURT: Mr. Pennington?

20 MR. PENNINGTON: No, sir.

21 THE COURT: I'll hear from you.

22 MR. PENNINGTON: Thank you, Your Honor.

23 Your Honor, I have a couple of concerns that relate to
24 this testimony,

25 In effect, if I can just find my notes, we're dealing

HAROLD PHILLIPS - CROSS BY MR. HOUSEAL

1 with a situation where a defendant has gone in, he's been
2 Mirandized, he said I'll talk to you about it, I won't sign a
3 written statement.

4 He then says that he -- according to the detective who
5 was responsible for taking down the stuff verbatim, he talked
6 about pending charges that he was looking at life anyway.

7 I have some problems with that being offered against my
8 client.

9 In effect, that suggests Lyle kinds of bad act
10 information that this jury is going to be prejudiced by
11 enormously.

12 Clearly they were there to talk about Woodside Manor and
13 you heard Detective Walker explicitly repeat himself over and
14 over that he, the defendant, kept saying, I didn't do this
15 home invasion. And Detective Walker to the point of no
16 admissions that he made that said yes, I was part of the
17 armed robbery. Nothing equivocal was said.

18 Detective Walker agreed with me when I characterized it
19 that he said quote, if I did it, I did it. I would tell you
20 that I did it. But I didn't do it.

21 And so what we've got here is a situation where if that
22 is offered up to the jury my client is going to be exposed to
23 the fact that -- I'm going to have to cross-examine the
24 officer about his pending armed robberies to show that these
25 aren't admissions, that these are comments about unrelated

HAROLD PHILLIPS - CROSS BY MR. HOUSEAL

1 highly prejudicial pending charges.

2 So I specifically object -- I most vehemently object to
3 the proffered testimony that relates to, I'm fucked if I tell
4 and I'm fucked if I don't, end quote. I'm getting life
5 anyway so it don't matter. End quote. Because those,
6 according to the testimony that you heard from Detective
7 Walker, relating to prior charges.

8 And this, if I popped him, I popped him testimony is
9 objectionable because again it goes back to the same thing.

10 I should also qualify my -- my comment in that I know
11 that the State would have a right to put in the other
12 comments that he made, the false exculpatory or however they
13 choose to characterize it, that he was somewhere else and if
14 they can disprove that, my objections don't go to that.

15 My objections are purely limited to these very
16 mischaracterized and very prejudicial comments because they
17 are not responsive to this interrogation.

18 They really are routed in his pending charges which are
19 Lyle bad acts that the solicitor could not get in any other
20 way.

21 THE COURT: Solicitor?

22 MR. HOUSEAL: Your Honor, I just don't think that's the
23 testimony that would be elicited from the officers on the
24 stand.

25 THE COURT: I thought the -- your first witness, when I

HAROLD PHILLIPS - CROSS BY MR. HOUSEAL

1 asked the question because I didn't know that there were
2 other -- didn't know what they were talking about, but I
3 asked the question were there -- did he have more armed
4 robberies pending and his answer was yes. I think more
5 than -- several more.

6 And so I asked him, well, which one was he talking to,
7 which one -- was he talking about this case or the other case
8 and I thought his answer was didn't know.

9 MR. HOUSEAL: Yeah, that was his answer. I think he got
10 confused. I think initially in response to my questioning of
11 him he told you that they were discussing Woodside.

12 THE COURT: I realize that, that's what the witness
13 said. He said they were discussing this. Isn't that -- you
14 going to get in something where you don't know whether he's
15 going to be convicted of it or not.

16 MR. HOUSEAL: I don't anticipate or intend to ask any
17 questions about prior armed robberies. And I'm sure the
18 defense counsel won't either.

19 THE COURT: But how is he going to ask what he's talking
20 about if he doesn't bring up the fact that he is -- that
21 there are additional armed robberies?

22 MR. HOUSEAL: Well, I don't --

23 THE COURT: If what you're trying to get at is one
24 thing, if I popped him, I popped him. Isn't that what you're
25 trying to get after?

HAROLD PHILLIPS - CROSS BY MR. HOUSEAL

1 MR. HOUSEAL: I'm F'd if I tell, I'm F'd if I don't.

2 I'm not even going to ask him about the I'm getting life
3 anyway because I don't believe that's a proper comment.

4 But if I popped him, I popped him, I'm F'd if I tell and
5 I'm F'd if I don't is in response to questioning about this
6 home invasion and this murder.

7 THE COURT: Well, you know, I'm pretty liberal. But I
8 just don't see the probative value. I think it is outweighed
9 by the prejudice. So I wouldn't let you talk about that.

10 MR. HOUSEAL: Okay. I won't ask the officers about that
11 comment.

12 And I assume then we're not going to be going into any
13 comments made by Mr. Steed with regard to establishing his
14 alibi through the back door? State versus Terry says he
15 can't make exculpatory statements.

16 THE COURT: Well, in the first place, I find that he was
17 advised of his Miranda versus Arizona rights and warnings.

18 That he understood them. That he waived the rights and he
19 made a statement. And the statement is free and voluntary.

20 However -- and I find that by the preponderance of the
21 evidence.

22 But he made other things other than that. All I'm just
23 not going to let you do is bring out the fact that -- that he
24 says, I popped him -- if I popped him, I popped him because
25 that's going to bring in information about those armed

HAROLD PHILLIPS - CROSS BY MR. HOUSEAL

1 robberies.

2 But if -- if later on he -- he is setting up an alibi
3 for some other place and you want to -- you wanted to show
4 that he was in Columbia or whatever he said during that
5 interview, I'll let you bring that in.

6 MR. HOUSEAL: So you're going to permit Mr. Pennington
7 or Mr. Crumrine at this point to question any detectives
8 about a statement that the defendant may have provided and
9 allow them to testify about what Mr. Steed told them he was
10 doing that day. Is that --

11 THE COURT: Yeah. I'll let you do that.

12 MR. HOUSEAL: Well, okay.

13 Well, before that -- I mean, I have a matter of law to
14 take up then as to that issue. Because that's improper to
15 permit them to get Mr. Steed's alibi or defense in front of
16 the jury through the back door by questioning Detective
17 Buncum and/or Detective Walker.

18 And State versus Terry clearly says that's impermissible
19 evidence. A defendant who wants to tell a jury that he was
20 at some other place has to take the stand so I can
21 cross-examine him as to that statement.

22 And if you permit Mr. Pennington or Mr. Crumrine to do
23 that through these detectives then I can't cross-examine Mr.
24 Steed.

25 THE COURT: How about that?

HAROLD PHILLIPS - CROSS BY MR. HOUSEAL

1 MR. PENNINGTON: I hadn't anticipated that far, Judge.
2 All I was going to do is keep it out of their case in chief.
3 And I guess when we get to that point we'll have to cross
4 that bridge.

5 THE COURT: Don't have to ask that question.

6 MR. HOUSEAL: This is the case.

7 THE COURT: That's all right. I know the case. Thank
8 you.

9 All right. He says he won't ask him any questions like
10 that until he talks to us first. What other motions?

11 MR. PENNINGTON: That's it for me.

12 MR. CRUMRINE: Your Honor, I have a couple.

13 I think that as to excluding any statements of Mr.
14 Flynn, I believe the -- Mr. Houseal said that there are no
15 statements taken or made to any police officers by him. And
16 if he can confirm that we don't need to --

17 THE COURT: Is that correct, Solicitor?

18 MR. HOUSEAL: That's correct, Your Honor.

19 MR. CRUMRINE: Likewise, as to any Lyle evidence that
20 they would intend to introduce, I believe he told me he
21 didn't anticipate he was going to try to do that. If we
22 could have confirmation --

23 THE COURT: Any Lyle testimony?

24 MR. HOUSEAL: At this point I don't intend to introduce
25 it. But there is some potential Lyle testimony that could

HAROLD PHILLIPS - CROSS BY MR. HOUSEAL

1 become relevant that I may decide is important in this case.

2 THE COURT: We'll face that when we get to it.

3 MR. CRUMRINE: All right.

4 And if we could -- through discovery, of course, we also
5 requested any photo line-ups and such. And the only ones
6 that I'm aware of with Mr. Flynn would be one presented as to
7 any victims, one presented to Michele Holbrook, in which she
8 said that she did not see him in there. And I believe Mr.
9 Houseal indicates that there were none shown to Mr. Porter
10 Walker or to anyone else in the case.

11 THE COURT: Is that correct, Solicitor?

12 MR. CRUMRINE: Aside from a codefendant.

13 MR. HOUSEAL: It is correct that Porter Walker was not
14 shown any line-ups.

15 MR. CRUMRINE: And that there were none other than to
16 one codefendant or to somebody not involved in the case?

17 MR. HOUSEAL: I'm not a hundred percent clear but that's
18 my recollection.

19 MR. CRUMRINE: You don't intend to introduce any other
20 photo line-ups?

21 MR. HOUSEAL: Correct.

22 MR. CRUMRINE: And he has not been not picked out by a
23 witness?

24 MR. HOUSEAL: That's correct.

25 MR. CRUMRINE: All right. So I don't have that.

HAROLD PHILLIPS - CROSS BY MR. HOUSEAL

1 And as to the last one, Your Honor, I would join in the
2 motion to keep out any photographs that are inflammatory of
3 the bloody scene of the body and such.

4 THE COURT: Well, I think we're going to wait down the
5 road to make a decision on that or you have something --

6 MR. HOUSEAL: Well, one of the issues, Your Honor, is
7 going to be -- obviously (inaudible) an issue. I have a
8 photograph of the victim that I intend to introduce through
9 the testimony of both the -- or one or more witnesses
10 including the SLED examiner firearms expert, the medical
11 examiner, they are going to testify about wounds.

12 And in order for the jury to fully appreciate their
13 testimony I intend to show the jury a picture of one
14 particular wound.

15 THE COURT: Let's -- how about it -- well, I tell you
16 what let's do. Before you introduce that then we'll be down
17 the road and I'll know more about the case and I'll be able
18 to rule pretty easy, so will you just wait before you
19 introduce that.

20 MR. HOUSEAL: Yes, sir.

21 MR. PENNINGTON: If it's the face shot I wouldn't have
22 an objection because I think it is relevant. It shows a
23 particular manner, particular firearm that would leave a mark
24 as this one did.

25 THE COURT: Is that --

HAROLD PHILLIPS - CROSS BY MR. HOUSEAL

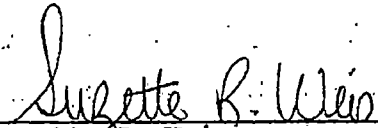
1 MR. HOUSEAL: That is the picture that I'm referring to.
2 THE COURT: That's the picture he's referring to.
3 MR. CRUMRINE: I'm not sure that -- that I have a copy
4 of that photo. But before we get to that --
5 THE COURT: He says he'll show it to you.
6 Anything else?
7 MR. CRUMRINE: No, sir, Your Honor.
8 THE COURT: Anything else, Solicitor?
9 MR. PENNINGTON: No, sir. Thank you.
10 MR. HOUSEAL: Not that I can think of.
11 THE COURT: Do I have my jury?
12 (A recess was taken.)
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CERTIFICATE OF REPORTER

I, the undersigned, Suzette R. Weis, Official Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Criminal Court for Charleston County, South Carolina, on the 4th day of December, 2000.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

January 12, 2001


Suzette R. Weis
Circuit Court Reporter

000120

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON COURT OF GENERAL SESSIONS

3

4 STATE OF SOUTH CAROLINA,

5 Plaintiff,

6 v.

TRANSCRIPT OF RECORD

VOLUME II OF VII

7 ROBERT ANTONIO STEED,

CASE NOS.: 99-GS-10-4579, 4580

99-GS-10-4581, 4582, 00-GS-10-5018

8 Defendant.

9

STATE OF SOUTH CAROLINA,

10

Plaintiff,

11

v.

TRANSCRIPT OF RECORD

12

CASE NOS.: 99-GS-10-4334, 4520

13 MICHAEL BRIAN FLYNN,

99-GS-10-4557, 4677, 00-GS-10-5016

14 Defendant.

15 TRANSCRIPT OF TRIAL TESTIMONY

December 4, 2000, Afternoon Session

16

B E F O R E:

17

THE HONORABLE LUKE BROWN, Judge; and a jury.

18

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

19

SEAN HOUSEAL, BRUCE DURANT

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Attorneys for the State

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Attorneys for the Defendant Steed

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JOHN CRUMRINE

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Attorney for the Defendant Flynn

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SUZETTE R. WEIS, CSR, RPR, CSR-335

Circuit Court Reporter

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AFTERNOON SESSION, DECEMBER 4, 2000

(3:12 p.m.)

THE COURT: All right. I got a jury now. Anything before I bring the jury out? Where is my other attorney?

MR. HOUSEAL: Nothing from the State.

I'm right here.

THE COURT: Oh, there you are.

MR. HOUSEAL: I'm checking something real quick.

THE COURT: Go ahead.

Ready, Solicitor?

MR. HOUSEAL: Yes, we are.

THE COURT: Bring the jury out.

(3:15 p.m., in the presence of the jury.)

THE COURT: All right. Now, Mr. Foreman, members of the jury, if you just stand and raise your right hand. I got my -- my clerk is going to give you your oath.

JURY,

was sworn:

THE COURT: Approach the bench a minute, gentlemen. Have a seat.

(Off-the-record discussion at the bench.)

THE COURT: All right. Bring the defendants forward.

THE CLERK: Case Number 1999-GS-10-4677, State of South Carolina versus Michael Brian Flynn, indictment for murder, if you answer to that name, please raise your right hand.

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1 You may put it down.

2 You stand indicted by the name of Michael Brian Flynn?

3 THE DEFENDANT: Yes, sir.

4 MR. PENNINGTON: Your Honor, we'll waive any reading of
5 the indictments.

6 THE COURT: They waive the reading of the indictments.

7 THE CLERK: Okay.

8 How say you, are you guilty or not guilty?

9 THE DEFENDANT: Not guilty.

10 THE COURT: How will you be tried?

11 THE DEFENDANT: By God and my country.

12 THE CLERK: May they send you a true deliverance.

13 Are you ready for trial?

14 THE DEFENDANT: Yes, sir.

15 THE CLERK: Case Number 1999-GS-10-4334, State of South
16 Carolina versus Michael Brian Flynn, indictment for assault
17 and battery with intent to kill. If you answer to that name
18 please raise your right hand.

19 You may put it down. How say you, are you guilty or not
20 guilty?

21 THE DEFENDANT: Not guilty.

22 THE COURT: How will you be tried?

23 THE DEFENDANT: By God and my country.

24 THE COURT: May they send you a true deliverance.

25 Are you ready for trial?

STATE V. ANTONIO STEED/MICHAEL FLYNN

1 THE DEFENDANT: Yes, sir.

2 THE CLERK: Case Number 1999-GS-10-4520, State of South
3 Carolina versus Michael Brian Flynn, indictment for armed
4 robbery. If you answer to that name please raise your right
5 hand. You may put it down.

6 How say you, are you guilty or not guilty?

7 THE DEFENDANT: Not guilty.

8 THE CLERK: How will you be tried?

9 THE DEFENDANT: By God and my country.

10 THE CLERK: May they send you a true deliverance.

11 Are you ready for trial?

12 THE DEFENDANT: Yes, sir.

13 THE CLERK: Case Number 1999-GS-10-4557, State of South
14 Carolina versus Michael Brian Flynn, indictment for burglary
15 first degree. If you answer to that name please raise your
16 right hand. You may put it down.

17 How say you, are you guilty or not guilty?

18 THE DEFENDANT: Not guilty.

19 THE CLERK: How will you be tried?

20 THE DEFENDANT: By God and my country.

21 THE CLERK: May they send you a true deliverance.

22 Are you ready for trial?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Case Number, 2000-GS-10-5016, the State of
25 South Carolina versus Michael Brian Flynn, indictment for

STATE V. ANTONIO STEED/MICHAEL FLYNN

1 criminal conspiracy. If you answer to that name please raise
2 your right hand. You may put it down.

3 How say you, are you guilty or not guilty?

4 THE DEFENDANT: Not guilty.

5 THE CLERK: How will you be tried?

6 THE DEFENDANT: By God and my country.

7 THE CLERK: May they send you a true deliverance.

8 Are you ready for trial?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Case Number 1999-GS-10-4627, State of South
11 Carolina versus Robert Antonio Steed, indictment for murder.

12 If you answer to that name please raise your right hand. You
13 may put it down.

14 How say you, are you guilty or not guilty?

15 THE DEFENDANT: Not guilty.

16 THE CLERK: How will you be tried?

17 THE DEFENDANT: By God and my country.

18 THE CLERK: May they send you a true deliverance.

19 Are you ready for trial?

20 THE DEFENDANT: Yes, sir.

21 THE CLERK: Case Number 1999-GS-10-4628, State of South
22 Carolina versus Robert Antonio Steed, indictment for assault
23 and battery with intent to kill.

24 If you answer to that name please raise your right
25 hand. You may put it down.

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1 How say you, are you guilty or not guilty?

2 THE DEFENDANT: Not guilty.

3 THE CLERK: How will you be tried?

4 THE DEFENDANT: By God and my country.

5 THE CLERK: May they send you a true deliverance.

6 Are you ready for trial?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Case Number 1999-GS-10-4630, State of South

9 Carolina versus Robert Antonio Steed, indictment for armed
10 robbery. If you answer to that name please raise your right
11 hand. You may put it down.

12 How say you, are you guilty or not guilty?

13 THE DEFENDANT: Not guilty.

14 THE CLERK: How will you be tried?

15 THE DEFENDANT: By God and my country.

16 THE CLERK: May they send you a true deliverance.

17 Are you ready for trial?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Case Number 1999-GS-10-4629, State of South
20 Carolina versus Robert Antonio Steed, indictment for burglary
21 first degree. If you answer to that name please raise your
22 right hand. You may put it down.

23 How say you, are you guilty or not guilty?

24 THE DEFENDANT: Not guilty.

25 THE CLERK: How will you be tried?

STATE V. ANTONIO STEED/MICHAEL FLYNN

1 THE DEFENDANT: By God and my country.

2 THE CLERK: May they send you a true deliverance.

3 Are you ready for trial?

4 THE DEFENDANT: Yes, sir.

5 THE CLERK: Case Number 2000-GS-10-5019, State of South
6 Carolina versus Robert Antonio Steed, indictment for criminal
7 conspiracy. If you answer to that name please raise your

8 right hand. You may put it down.

9 How say you, are you guilty or not guilty?

10 THE DEFENDANT: Not guilty.

11 THE COURT: How will you be tried?

12 THE DEFENDANT: By God and my country.

13 THE CLERK: May they send you a true deliverance.

14 Are you ready for trial?

15 THE DEFENDANT: Yes, sir.

16 THE CLERK: Thank you.

17 MR. PENNINGTON: Thank you, Your Honor.

18 THE COURT: Let me see those. Thank you.

19 Now, Mr. Foreman, members of the jury, it now becomes --
20 we swore them, didn't we?

21 THE CLERK: Yes.

22 THE COURT: Now -- how many have never served on a jury
23 before? Good many of you. Let me tell you what's about to
24 happen.

25 The State charges these two young men; that is, Michael

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STATE V. ANTONIO STEED/MICHAEL FLYNN

1 Brian Flynn and Robert Antonio Steed, with like indictments;
2 that is, murder, assault and battery with intent to kill,
3 armed robbery, burglary first degree and criminal
4 conspiracy.

5 And to these indictments they plead not guilty. And as
6 I told you earlier, sitting at the table with their
7 attorneys, they are just as innocent as you and I unless and
8 until the State, if indeed they can convince 12 of you of
9 their guilt beyond a reasonable doubt.

10 So when you are looking for a reasonable doubt use those
11 words reasonable doubt like you would in your every day
12 affairs. I'll tell you more about it later.

13 Now, the statement -- the State has the burden of
14 proving them guilty beyond a reasonable doubt.

15 The defendants don't have to prove anything. They can
16 sit right there and their attorneys can sit there and not ask
17 any questions and not even participate in the case at all.
18 Because under our constitution a person is presumed to be
19 innocent.

20 So because the State has that burden of proof the
21 solicitor is going to get up and make some opening remarks to
22 you. It won't be long. He'll in all probability tell you
23 about what he says happened at this particular time and what
24 he intends to prove. Kind of like telling you what a book is
25 all about or what a movie is all about.

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1 And then each of the defendants, if they want to, their
2 attorneys can make some remarks to you.

3 When that's complete, the State puts up their
4 witnesses. Each side gets to examine them. Then the defense
5 will have the same opportunity.

6 And when all that's completed each attorney will get up
7 and make some closing remarks to you. And when that's
8 completed then I will tell you what the law is.

9 Because all I'm going to do is tell you what the law is
10 in these particular charges, preside in this courtroom. You
11 have the most important job. Our constitution makes you
12 judge of the facts. So you must determine the believability
13 of these witnesses who testified.

14 Don't let anything I do give you an idea I'm trying to
15 take that away from you because in essence you decide the
16 facts. I tell you what the law is and you apply that law
17 that I tell you to the facts that you find, deliberate and
18 reach a verdict in the case.

19 Now, I'm not going into any details about the law on
20 each one of these because later on I'll be doing that.

21 The attorneys might mention what the law is.

22 Murder is the killing of one person by another with
23 malice aforethought.

24 Assault and battery with intent to kill has all of the
25 elements of murder; that is, malice. It's an assault and

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1 with intent to kill.

2 Armed robbery speaks for itself. But I'll be giving you
3 more details on this.

4 Burglary in the first degree and criminal conspiracy.

5 Now, from time to time one of these attorneys might get
6 up and say I object and I'll send you to your room. You
7 might feel like you're up and down all the time.

8 But it's the only way we can operate.

9 For instance, suppose one of the attorneys say, I
10 object, Judge Brown, I don't think the testimony ought to
11 come in. And if you sat right there and listened and later
12 on I said it couldn't come in, see, you have already heard
13 it.

14 So that's why I send you out. So if you feel like
15 you're up and down too much, don't hold it against the
16 parties because that's the only way we can operate.

17 Now, for any reason any of you want to take a break,
18 just tell the foreman. Mr. Foreman, you tell me and we'll
19 take a break. If you need anything back there to make you
20 comfortable let us know.

21 And if I tell you to -- if I send you out and tell you
22 to come back and you're not ready you tell me you're not
23 ready.

24 We're perfectly happy to listen to you.

25 Finally, you remember I told you not to discuss this

1 case. Don't talk about this case among yourselves. Don't
2 talk about it when you go home today tonight. Don't let
3 anybody talk about it with you or in your presence. Don't
4 read any newspapers or listen to the radio or watch TV about
5 this case because you want to find a verdict in this case on
6 just what goes on in this courtroom.

7 Now, you might say, well, Judge Brown, when we go back
8 in the room why can't we talk about it because we got to
9 decide it?

10 When you really think about it you can't discuss
11 anything until you know both sides. So that's why you don't
12 talk about the case.

13 Now, I don't know whether I have any smokers or not. If
14 I got any smokers just tell the bailiffs and they'll make
15 arrangements for the smokers.

16 I will tell you this, Mr. Foreman, after the case is
17 over and you're deliberating you'll be in charge of the
18 smokers. But if the smokers happen to be out, if there are
19 any smokers, you can't talk about the case because all of you
20 must be in the room at the same time.

21 Now, finally, this morning I -- I confiscated, you want
22 to call it, some of your newspapers. I hope you'll forgive
23 me. I didn't want you to bring in any newspapers when you
24 come up here.

25 Also, if anybody has got a cell phone or a beeper of any

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1 kind, be sure to give it to the bailiffs. As a matter of
2 fact, anybody got a cell phone or beeper on them right now?

3 JUROR: (Indicating).

4 THE COURT: All right. Just give it to the bailiff and
5 we'll take good care of it. I will tell you that it's no
6 stigma to have it. Gosh, everybody has got one right now.
7 You can't have it in the courtroom, that's all.

8 If you got any instructions for him to answer your
9 telephone you be sure to tell him about that.

10 I think that's about all.

11 Solicitor.

12 OPENING STATEMENT BY THE STATE

13 (3:30 p.m.)

14 MR. HOUSEAL: Thank you, Your Honor.

15 In the spring of 1999 Christopher Gorski was in the
16 United States Navy. He was in the engineering department.
17 The USS John F. Kennedy, stationed in Jacksonville, Florida.

18 He turned 21 on April 24th, 1999. And had a little time
19 off from the ship and decided to meet some friends of his,
20 seated in the courtroom, towards the end of April, early part
21 of May 1999.

22 You met those people, Porter Walker and Michele
23 Holbrook, and their two-year-old son, Torin when Chris used
24 to live in Charleston.

25 On the 3rd of May of 1999 he was spending the night with

STATE V. ANTONIO STEED/MICHAEL FLYNN

1 Michele Porter and her two-year-old son, Torin. And about
2 roughly 10:30 that night Michele, Torin tucked themselves in
3 bed, closed their eyes, Porter and his friend Chris were
4 watching television in the other room eating cookies Michele
5 just baked for them before she had gone to bed.

6 And there was a knock at the door. Porter answered it
7 and a man came to the door and said he was looking for a girl
8 named Jennifer.

9 Porter said, I'm sorry, you have the wrong house,
10 there's no Jennifer here.

11 And as he began to shut the door, close the door to go
12 back to watching television, the man with the bandana
13 covering part of his face carrying a 9 millimeter shotgun
14 kicked in the door, forced his way into the house and opened
15 fire striking Porter, striking Chris Gorski.

16 Porter rolled away, fell to the floor and tried to
17 protect himself under a table that was in that room, was
18 lying on his back.

19 A second -- that man was later identified as Robert
20 Steed, the defendant.

21 The man who had knocked on the door initially was
22 already into the house, that man went and approached Chris
23 Gorski demanding drugs and money. Give me all the drugs and
24 money in the house.

25 This defendant, Mr. Steed, while Porter is lying on his

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1 back, is standing over him pointing a 9 millimeter pistol at
2 him demanding where is the money.

3 About that same time a third man, also wearing a dark
4 mask, also carrying a 9 millimeter pistol comes into the
5 house. That man is later identified as Michael Flynn, the
6 second defendant.

7 Michael Finn -- Flynn -- excuse me -- approaches Chris
8 Gorski demanding the same thing. Where are the drugs and
9 money? Give us all your drugs and money. Chris says,
10 there's nothing here. I don't even live here.

11 Steed, still standing over Porter Walker, Porter saying
12 I don't have anything, there is nothing here, reached in his
13 pocket, pulled out anything he could grab, including his
14 identification; two, two dollar bills that he kept with him
15 and a silver dollar, threw it on the table. This is all we
16 have.

17 He lied there, looked over to Chris, made eye contact
18 with Chris. Chris made a decision. Chris made a decision to
19 try to get the assailants out away from Porter into the back
20 of the house. And he told them.

21 Follow me, I'll show you, we don't have anything. There
22 aren't any drugs, there isn't any money. He took them to the
23 back of the house.

24 Porter Walker was able -- excuse me -- Porter Walker at
25 that point was able to pull himself off the floor, run out

STATE V. ANTONIO STEED/MICHAEL FLYNN

1 the front door and try to get help from the neighbors.

2 When the man who had knocked on the front door was later
3 identified as Michael Griffin got to the back of the house
4 where Michele Holbrook and her two-year-old son are trying to
5 go asleep he saw Michele on the telephone dialing 911, he
6 told her, hang up the phone. She did.

7 Said the same thing to her. Where are all the drugs and
8 money? I know you have drugs and money. We don't have
9 anything. There's nothing here.

10 Chris, a few seconds later, walked in to the bedroom
11 where Michele and her two-year-old were on the bed and looked
12 at Michele. Michele looked at Chris.

13 She could tell he had been shot. She could tell he was
14 scared to death. She asked him if Porter had been shot.
15 Nodded. And the defendants finding no drugs, no money in the
16 house, ordered Chris to go back out in the front room where
17 they shot and killed him.

18 One shot through his face, nine shots in his back and
19 the back of his legs and they left.

20 Porter had been able to get to a neighbor's house and
21 was able to call 911. Michele also called 911 and detectives
22 were on the scene shortly thereafter.

23 What you're going to hear from the witness stand during
24 the trial of this case is eyewitness testimony. You're going
25 to hear Porter Walker tell you what he saw. Fortunately he

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STATE V. ANTONIO STEED/MICHAEL FLYNN

1 didn't die, he lived. Chris Gorski didn't live.

2 But you will hear from Michele Holbrook and you will
3 hear from participants in this crime.

4 I expect you to hear from a man named Michael Griffin.
5 He was the guy that knocked on the door initially and said...
6 He will describe his participation in this crime.

7 He will describe the role that Michael Flynn and Robert
8 Steed had in committing this crime. And you will also

9 probably hear from some other codefendants that are also
10 charged in this case, that helped plan this crime, that
11 helped participate in this crime.

12 And I'll tell you right now, you are not required to
13 believe everything that you hear from codefendants. You're
14 not required to believe everything you hear from any witness,
15 for that matter.

16 The judge will tell you that it's perfectly fine to
17 believe 99 percent of what a witness says or 90 percent of
18 what a witness says or one hundred percent of what a witness
19 says.

20 And I bring that to your attention because as
21 prosecutors representing the State of South Carolina I can't
22 choose my witnesses. I can't select law-abiding citizens in
23 Charleston County to walk in here and tell you that they saw
24 a murder take place and this is what happened.

25 I'm given witnesses, I have to make difficult decisions

1 about how to use those witnesses, whether to call accomplices
2 to tell you what happened. And when we make those decisions
3 oftentimes we're not happy with whom we have -- who we have
4 to ask to come in and testify.

5 But angels don't hang out with murderers and law-abiding
6 taxpaying hardworking members of this community aren't
7 participants in conspiracies to commit armed robberies.

8 Aren't participants in murders.

9 I'll tell you that up front so you can keep that in mind
10 when you're evaluating testimony.

11 What I will tell you is that the evidence that you will
12 hear from the witness stand not only from codefendants but
13 also from every other witness in this case, the police
14 officers to doctors to SLED agents to other witnesses who had
15 contact with these people both before and after the incident,
16 will show you beyond a reasonable doubt that these two
17 defendants are guilty of all five of the crimes that they are
18 charged with.

19 Again, you may wonder why all six of these people that
20 you will find out were involved in this case -- I'll tell you
21 who they are now so you can keep their names in mind.

22 Michael Steed and Robert -- excuse me -- Robert Steed
23 and Michael Flynn are the two defendants. The third man who
24 was in the house who knocked on the door first, his name is
25 Michael Griffin.

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1 His younger brother, John Griffin, was also a
2 participant in this crime. Conspired with them. Planned
3 with them.

4 That's four.

5 The fifth man is named Demetrius Green. Also is charged
6 with all of these crimes.

7 And the final person is Thomas Bond. So we have six
8 people charged with all six -- all five of these crimes.

9 You may hear from two of those people, you may hear from
10 three, you may hear from all four.

11 What you will hear will prove to you beyond a reasonable
12 doubt that we have murder, assault and battery with intent to
13 kill, armed robbery, burglary in the first degree, and
14 criminal conspiracy.

15 And I'll briefly tell you again what the elements of
16 those crimes are so that you have some idea when you're
17 listening to the witnesses.

18 Criminal conspiracy is a combination or agreement
19 between two or more people to commit an unlawful or criminal
20 act.

21 Combination or agreement of two or more people to commit
22 an unlawful or criminal act. It's criminal conspiracy.

23 Armed robbery is the taking and carrying away of
24 personal property of another with the intent to deprive them
25 of possession by use of force, threats or intimidation with

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1 the use of a deadly weapon.

2 That's long and I'll say it again. It's taking and
3 carrying away of personal property of another by threats,
4 force or intimidation and while armed essentially.

5 Burglary is defined in the law in South Carolina -- let
6 me back up. Let me go to murder. Let's start there.

7 Murder, as you heard the judge tell you, is the unlawful
8 killing of another with malice aforethought. Unlawful
9 killing of another person with malice.

10 How do we show malice? What is malice?

11 Malice can be shown in two ways. Can show it by
12 expressed malice, show it by implied malice.

13 Expressed malice can be described as expressing ill
14 words. A person showing by his words that he has malice. Or
15 a person planning a crime in order to accomplish it. You can
16 -- you can find that that is expressed malice. And it's one
17 way of showing malice.

18 Another way of showing malice is implying malice. As
19 the judge will tell you, you can imply malice in many
20 different ways.

21 A few ways are, the use of a deadly weapon. You can
22 infer malice when the defendants were using a deadly weapon
23 when they committed the killing.

24 Assault and battery with intent to kill is the unlawful
25 violent injury to another person with malice. The same as

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1 murder, we show it in the same way as we show malice. And
2 murder we show it in assault and battery with intent to
3 kill. Essentially the violent injury to another person but
4 that person didn't die, with malice, expressed or implied.

5 And finally burglary is entering a dwelling without
6 consent with the intent to commit a crime while you're inside
7 the dwelling.

8 Say it again. Entering a dwelling or a house without
9 the consent of the people inside the house with the intent to
10 commit the crime therein.

11 Burglary is separated in three levels. You have
12 burglary first degree, second degree, third degree.

13 What makes this a burglary first degree or the elements
14 that will rise it to the level of burglary first degree is if
15 it occurred at night or if the perpetrators were armed, if
16 they threatened to use a dangerous instrument, if they harmed
17 someone inside, all those are examples or ways in which you
18 raise a burglary to a first degree burglary.

19 And I'll give you one more point on the malice issue.
20 You can infer malice in several ways like I said. But you
21 can infer malice if the crime was committed during the
22 commission of a felony.

23 Why do I bring that to your attention?

24 We have in South Carolina what's called accomplice
25 liability or the hand of one is the hand of all. What does

1 that mean?

2 That means that if two or more people conspired to
3 commit a felony and while they are committing that felony
4 someone is killed, that all of the people that were involved
5 in the conspiracy are guilty of murder.

6 Say that again.

7 Two or more people are conspiring to commit a felony,
— 8 someone gets killed, everybody who was participating in the
9 conspiracy is guilty of murder.

10 And why is that so critical. Because that makes your
11 job that much simpler. You're not required to find -- you're
12 not required to answer questions like who fired the first
13 shot? Which gun did this bullet come from? How many guns
14 were there? How much money did they take? Which one of the
15 defendants took the money? How much was it? Did they split
16 it up?

17 These are questions that you don't need to answer.
18 Because if you find that there is a conspiracy to commit a
19 felony, you find that these defendants were participants in
20 that conspiracy and that someone was killed, the crime is
21 murder.

22 If you find that these defendants participated in a
23 conspiracy and someone was shot and didn't die, you may find
24 that it's assault and battery with intent to kill.

25 Same with the burglary. All those who participated in

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1 the crime and participated in the conspiracy are equally as
2 responsible whether they fired a gun at all, whether they
3 were in the house or not, doesn't make any difference under
4 the law, all of them are equally responsible.

5 So when you hear all the testimony that's going to be
6 presented to you in the next couple of days it should be
7 quite clear to you that you won't have any question about who
8 fired the first gunshot or how many guns were used.

9 Because the evidence will show you beyond any doubt,
10 Robert Antonio Steed forced his way into 4512 Outwood at
11 about 10:40 p.m. and shot Porter Walker.

12 Mr. Flynn and Mr. Steed shot Chris Gorski to death
13 during the commission of a burglary and an armed robbery that
14 they had conspired throughout the day to commit.

15 That's what the evidence is going to show you because
16 that's the truth about what happened.

17 And when you deliberate and reach your verdict you'll
18 reach a truthful verdict.

19 And the only truthful verdicts in this case based on the
20 law and evidence in this case are guilty of murder, assault
21 and battery with intent to kill, burglary first, armed
22 robbery, and criminal conspiracy.

23 Thank you.

24 (3:45 p.m.)

25 MR. CRUMRINE: Your Honor, if it please the court?

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1 THE COURT: You going to keep that order? He's going
2 first, you second?

3 MR. PENNINGTON: Yes, sir, I believe that's correct.

4 THE COURT: Counselor.

5 MR. CRUMRINE: Thank you, Your Honor.

6 OPENING STATEMENT BY DEFENSE

7 MR. CRUMRINE: Mr. Foreman, ladies and gentlemen of the
8 jury, had a brief time to introduce myself before, it's sort
9 of an awkward way to do it.

10 I'm John Crumrine. I practice law on James Island. I'm
11 a sole practitioner over there. I'm here to defend Michael
12 Griffin (sic) against these allegations by the State.

13 You heard when the bailiff reads out -- the clerk read
14 out the indictments against Mr. Griffin and those indictments
15 are the -- are the accusations against him and returned by
16 the Grand Jury.

17 I want you to know that this is the first time Michael
18 Griffin has had a chance to defend himself on these
19 allegations and we don't get to go into the Grand Jury room
20 and ask questions of whoever presents the testimony there.
21 It's a secret proceeding. We don't even get to know what
22 they did in there.

23 We want you to know that this is the first and only
24 opportunity that we have to challenge the evidence.

25 The judge told you that we're not required to -- to

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1 present any evidence but we certainly will be challenging
2 what they have and deciding whether we need to be doing that.
3 We're supposed to be able to rely upon this presumption of
4 innocence the judge told you about.

5 Obviously this is one of the most serious cases and one
6 of the most important decisions you all will make in your
7 life -- in your lives and we want you to make sure that you
8 take these protections that are -- our system provides for
9 all of us and that is that when we're coming in here we are
10 presumed to be innocent.

11 Because you sit over at that table you're not suppose to
12 look and say, I wonder what they might have done. You're
13 suppose to say, that guy is innocent and only if the State
14 brings you good and solid evidence that will in essence build
15 a bridge in your minds between the position of absolute
16 innocence and that of guilt with no reasonable doubt that
17 this sort of bridge of evidence is one which you can cross
18 without hesitation as if it's way up in the air and you have
19 to -- to decide, can I cross this without any hesitation.

20 So I want you to look at this, this bridge of evidence
21 that they are to present to you.

22 And I mentioned the other protection -- protection our
23 constitution gives us that of the reasonable doubt standard.
24 And maybe that concept crossing this bridge may help in
25 trying to imagine what that -- that reasonable doubt is.

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1 You know, is this -- is this bridge of evidence
2 something that has handrails and solid structure that you
3 have no hesitation to utilize.

4 This is a case in which this bridge of evidence has no
5 physical evidence that connects Mr. Flynn that measure Mr.
6 Steed with the allegations.

7 There is no physical evidence in this case that the
8 State is going to be able to point out and say see, Mr. Flynn
9 had that or he was wearing that or these are his
10 fingerprints. There are no fingerprints -- I don't believe
11 there's any allegation in that any of the individuals that
12 did this thing had on gloves and there are no prints from it.

13 There are, I think, 11 shell casings that they are going
14 to say that they found eventually that were connected with
15 this thing.

16 They'll be questions of how you get shell casings into a
17 gun. And there are no prints on any of those. They were --
18 there's no blood evidence that they are going to say was on
19 any of -- Mr. Flynn or Mr. Steed's clothing.

20 No shoe prints that the door was supposed to have been
21 kicked in. They seized a boat load of shoes in this case.
22 Boat load of clothes that they seized. There are no clothes
23 that were worn that were identified by anyone who was at the
24 household.

25 There's no DNA. There's no hair and fiber. There are

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1 no fibers from the carpet or anything that they are saying
2 that -- that they found on any of our clients' possessions in
3 any way.

4 No guns that they say these are the guns they had. And
5 certainly no physical evidence whatsoever.

6 I know I'm probably leaving out a lot of the physical
7 evidence that might be introduced into the case. But I want
8 you to watch as this case unfolds. And they'll be saying,

9 well, that might have been the gun that they possibly had at
10 one time or this might have been this or that.

11 Keep your eyes on what's going on and ask yourself that
12 question, have they proven by any physical evidence.

13 When you reach the end and you find that they haven't
14 then what we have are just tests -- testimony of some
15 individuals that did do this thing, that were around and
16 about Mr. Flynn, were from a circle of acquaintances and they
17 are certainly landed off on him.

18 We want you to watch their motivation for testifying.

19 What they are hoping to get by making these allegations.

20 That they have their lives on the line. And the only way
21 they intend to salvage them is by being of some use to the
22 State.

23 And the only testimony that you're going to have from
24 anyone that connects Mr. Flynn and for that matter Mr. Steed
25 to this are people with something to lose.

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1 There are a couple other witnesses that the police
2 picked up for accessory charges because they were around and
3 about, brought in. Need to look at the manner in which the
4 police questioned them.

5 Look at the fact that the police wrote the statements
6 themselves. The people are scared. And they signed
7 statements and they will be testifying. You need to look at
8 their motivations.

9 Mr. Houseal said that Mr. Flynn was identified. He has
10 never been identified by anyone who was an independent
11 witness.

12 The only identifying that there has been is by the guys
13 that actually did this thing. I want you to look at the
14 descriptions of the witnesses as to who was going where and
15 what car -- what car.

16 We have an independent witness that saw the cars out
17 there. They don't match what all these guys are saying.

18 This is a terrible crime and certainly something that is
19 not to be taken lightly. It is a fact in this case that will
20 be coming out that Mr. Porter is a drug dealer.

21 He had, I guess, maybe 135 telephone calls coming in and
22 going out in the 24 hours before this thing happened. Look
23 to that.

24 It -- Mr. Porter testified -- Mr. Porter gave statements
25 initially that he knew who did this and then that he didn't

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1 know who did this.

2 He described the individuals as two black males who did
3 this initially, then three black males. And two or three
4 days after the thing happened, after he had been with Michele
5 and compared notes, his story changed. And he, um -- we're
6 left here with what we've got and you guys got to ask
7 yourselves what this is that we have here. What really

8 happened: Do we know or are there foundations of this, this
9 evidence, are they more questionable where they leave a
10 reasonable doubt.

11 As the evidence unfolds I think that you all will
12 probably be able to raise a lot of questions that I have sort
13 of given you a preview in opening statement.

14 We're not suppose to argue our case here but kind of
15 give you an idea, the framework of what's going on. I ask
16 you to take this most serious matter that is before you and
17 ask yourself all those questions that you would want to have
18 asked and when you get to the end we submit that you're going
19 to find that this bridge of evidence is one that you cannot
20 reasonably be asked to cross to a position of guilt.

21 Appreciate your attention. We hope that this doesn't
22 take long. It's tough to -- to defend in the same trial and
23 we'll try to keep it moving as swiftly as we can.

24 Thank you.

25 MR. PENNINGTON: Your Honor.

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1 THE COURT: Mr. Pennington.

2 (3:42 p.m.)

3 OPENING STATEMENT BY DEFENSE

4 MR. PENNINGTON: Mr. Houseal. Mr. Crumrine.

5 Ladies and gentlemen, this is a case about a group of
6 teens, teenagers, teenage boys, and some girlfriends who
7 committed a horrible, unspeakable crime in our community.

8 And they got caught. And they got scared. And they
9 lied to the police. They lied to benefit themselves and to
10 protect somebody that's not sitting here today.

11 I represent Robert Steed. Robert Antonio Steed who
12 lived on Dorchester Road on Dorchester County Garden
13 Apartments which is where the western entrance to the Air
14 Force base is.

15 You didn't know it but you're doing double duty today.
16 Because this is not one trial. What you're really doing is
17 you're judging two trials simultaneously.

18 You see, the State has the power and the ability to not
19 bring their case against one person but if they choose to
20 they can bring their case together.

21 And so what you have to do is something that's a little
22 bit more tasking and more difficult than your average juror
23 would have to face, you've got to listen to two cases.

24 I'm going to spend a little time right now giving you a
25 preview of the things I think are important that relate to

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1 Robert Steed.

2 Now, I've already told you that there was this group of
3 teenagers who in the spring of '99 were out in the, what is
4 called the Woodside Manor subdivision of Ladson.

5 They live there. Couple of them went to school there,
6 couple of ninth graders.

7 It was the ninth graders who were the ones that cooked
8 up this plan to rob the local drug dealer that lived back in
9 the back corner of this subdivision.

10 They did it in home room. They talked about it all day
11 long. They confirmed it in sixth period. And they started
12 calling their kin, some of the codefendants in this case,
13 this Michael Griffin who wasn't in school at that time. And
14 they put this package together of how they were going to get
15 there and they were going to do this home invasion.

16 Now, my client, Robert Steed, does know a couple of
17 these guys. Some better than others. Have known them for a
18 few weeks.

19 My client, the testimony will show, was someone who had
20 occasional contact with them up in Summerville. Because they
21 like to hang out at a man's house by the name of Peter
22 Davis. An address called White Drive. It's in the western
23 side of Summerville.

24 The evidence will show you that they saw my client that
25 night. Then they went and they did this crime. The evidence

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1 is going to show you that three people went in and three
2 people went in armed. All three guns were discharged.

3 We have bullets from all three weapons in poor Mr.
4 Gorski's body.

5 So there is a lot of blame and a lot of guilt to share
6 in this situation.

7 They left together, they obviously talked about it.

8 They obviously had a day and a half or so before the first
9 one got arrested by the police.

10 Now, you have to understand that one of these three
11 teens, his name is Tommy Bonds -- excuse me -- his name is
12 Michael Griffin, the brother of the younger one in the ninth
13 grade, Michael Griffin, went in with no mask. But he did
14 have a big ole hickey on his neck from a girlfriend. And
15 that was something specifically noted by Ms. Holbrook who was
16 being terrorized by him as he stood there with a revolver in
17 her face.

18 The other two were described -- the other two assailants
19 are described as wearing masks. One of them was described as
20 probably black. And one of the teens is black.

21 One of them, that black person, is masked, hooded, and
22 slender, according to the description that were given to the
23 police at that time.

24 A day and a half after this horrible incident, Tommy
25 Bonds is picked up on other charges but he's questioned about

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1 this particular case and he's asked specifically about what
2 he knows about Woodside and this home invasion. And you know
3 what he does, he lies.

4 He says that he is with a guy named Crazy, a Mark Smith,
5 or maybe a Stephen Mark Smith, and that he and some other
6 people went and did this crime.

7 The police caught him in that lie because they went
8 right out and found Mark Smith.

9 They figured it out that night that he was lying. But
10 you know what, he got a second chance to lie. He wrote
11 another statement. This time he starts naming his friends
12 that live in Woodside Manor. But he also throws out the name
13 of T-Lo. A person he had met. T-Lo is Robert Steed.

14 Now, Michael Griffin doesn't say oh, I know Robert
15 Steed, he doesn't say oh, I know him, he is the guy that
16 lives in Dorchester Garden Apartments, you need to go arrest
17 him. He says, I know this guy, I can't tell you the name, I
18 can't tell you where he lives, I just know his nickname,
19 T-Lo.

20 And there's an odd thread that emerges in this case that
21 I want you to watch for closely as you listen to the
22 testimony of these witnesses because the thread is going to
23 be that none of these people knew who the black guy was.
24 They just threw out a name, T-Lo. They threw out -- they had
25 no first name, they had no last name, they had no address

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1 because it's not right.

2 Now, in truth, Robert Steed had seen them up in the
3 Summerville area that night. But what they didn't tell the
4 police is that they have another friend, a male, a black
5 male, slender, a much closer friend than Robert Steed,
6 someone who is exactly in their circle of friends, someone
7 who actually claims to have even some authority over
8 them, someone who they have allegiance and ties to, and
9 someone who fits the exact size, description, and shape of
10 this third assailant.

11 Now, as you probably guessed they found the fellow with
12 the hickey, the Michael Griffin guy with the hickey. He came
13 in and all he could say was T-Lo.

14 And then after another day goes by, the police gather
15 all four suspects for a bond hearing. The two younger men
16 ironically could only say T-Lo, that's all they knew. T-Lo.

17 Police had to do two things. They had to carry these
18 guys to a bond hearing and they had to figure out if they had
19 -- if these guys had any idea what they were talking about.

20 So they showed up at that bond hearing, two detectives
21 here, showed up at a bond hearing with a picture of my client
22 and they asked one question of two of the suspects, is this
23 T-Lo? Oh, yeah, that's T-Lo.

24 And that was the end of it.

25 That's what brings us here to court today.

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1 That's the case.

2 All four of these defendants go back. And the way our
3 bond system and our bond courts are set up, they go back
4 together into the same jail, through the same door, into the
5 same booking area.

6 And these teens are in a tough spot. Every single one,
7 as the solicitor told you, is charged with the five felonies,
8 five most serious felonies that you could find yourself faced
9 with in South Carolina.

10 And they only have one way out of the punishment that
11 the law allows and that is if they can tell you a story.
12 They are going to tell you a story. They hope you'll believe
13 it.

14 Because if it's believable enough they stand to benefit
15 by virtue of an explicit plea agreement that have been
16 entered into and implied agreements that are out there
17 between them right now.

18 I spent a lot of time talking about their word because
19 that's all this case really hangs on. You ask yourself --
20 Mr. Crumrine kind of tipped off the list of things that you
21 should review with respect to a case like this, if you have
22 somebody really involved in a home invasion, where they go
23 and search the house and they don't find any consistent
24 materials or hair and fibers on shoes or blood on shoes like
25 they -- the splotches that were found on Michael Griffin's

1 shoes.

2 You don't find weapons. You don't find bullets or shell
3 casings or money or proceeds or clothing or anything that
4 makes you feel like oh, okay, we can trust these guys.

5 You're going to hear a few girlfriends that I want you
6 to ask them, what do they really know? What do they really
7 know? And what do they have to fear? What was their
8 involvement in terms of covering up for their boyfriends when
9 they were brought in and questioned.

10 You know, my mom talked about as a boy that you should
11 worry about guilt by association. The old adage if you lay
12 down with dogs you get up with flees. I suppose that's
13 true. There's no doubt that you're going to look at my
14 client who had some association with these fellows and wonder
15 and say well, gosh, that's pretty lousy company that you
16 keep.

17 The issue is no -- not whether he's someone that knew
18 them but whether or not he went with them. Whether he was
19 there on Outwood Street breaking in that door as the State is
20 proclaiming and asserting.

21 The criminal justice system exists to convict the guilty
22 and also to protect the innocent.

23 Your job is to test the evidence. My job is to test the
24 evidence. The whole purpose of the trial is to be here and
25 test the evidence. That's why 12 of you are brought in.

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1 You can't talk about the case now. You sit as 12 judges
2 of the facts, the only judges of the facts. For you see,
3 even Judge Brown can't issue a verdict of guilt or innocence
4 in this case. You're the only judges in history that will
5 ever decide this case as to my client.

6 And so you have those guidelines that the judge gave you
7 at the beginning.

8 You know, when they answered the formula that when they
9 are being arraigned, the formula they are asked is how will
10 you be tried. We know they will be tried by God who knows
11 all things. But we have to rely on ourselves and our juries
12 here on this earth and we have to trust you to think
13 critically and carefully before finding someone guilty on
14 this kind of flimsy evidence.

15 At the end of this case you would expect the evidence to
16 be conclusive, to remove all reasonable doubt. That's the
17 promise and that is the pledge that you received.

18 The State is going to argue that it is enough. But the
19 case is just not going to sit well with you. You're not
20 going to have that feeling in your gut that you're
21 satisfied because you won't have heard the truth. It won't
22 be clear, it won't be convincing, it won't be strong.

23 Instead you'll know in your heart that something is
24 wrong. And based on that evidence, which is all the evidence
25 you're going to find, you're going to have to do the only

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1 thing you can do is find my client not guilty because that
2 reflects the truth in this case.

3 By his plea of guilty (sic) he's already testified, he's
4 already told you, I'm not guilty, it's not me.

5 And he's saying to the State now, State, you've brought
6 me here, it's your time now to conclusively show that I'm
7 guilty of what you say I did beyond a reasonable doubt.

8 That what these fellows say is right.

9 But at the end of this case the evidence won't tell you,
10 you're just going to be told to trust them. But I submit if
11 you listen carefully and you analyze all this stuff you
12 wouldn't buy a used car from those fellows. You wouldn't
13 let them watch your kids and you certainly wouldn't rely on
14 them for something as important as this case.

15 Thank you for your attention and I look forward to
16 working with you.

17 THE COURT: All right, Solicitor. Call your first
18 witness.

19 MR. HOUSEAL: Thank you, Your Honor. The State calls
20 David Bohannon.

21 THE CLERK: Please state your full name for the record
22 spelling your last name.

23 THE WITNESS: David Earl Bohannon. B-O-H-A-N-N-O-N.

24 DAVID EARL BOHANNON,

25 was sworn and testified as follows:

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DAVID BOHANNON - DIRECT BY MR. HOUSEAL

1 DIRECT EXAMINATION

2 BY MR. HOUSEAL:

3 Q Where do you work, sir?

4 A I work for the Charleston County Sheriff's Office.

5 Q Try to speak up a little bit if you could. How long
6 have you been working there?

7 A Been there about ten years.

— 8 Q What do you do for the sheriff's office?

9 A I work in the Patrol Division.

10 Q And how long have you been working in the Patrol
11 Division?

12 A Ten years.

13 Q Okay. What were you doing in May of 1999 with regard to
14 working in the Patrol Division, generally, what were your
15 duties, responsibilities?

16 A I was working in district three which is Rivers Avenue
17 from Aviation all the way up past the fairgrounds to the
18 county line at East Owens Drive.

19 Q Do you recall whether you were on duty on May the 3rd of
20 1999?

21 A Yes, I was.

22 Q Do you recall getting a call to respond to a homicide on
23 that day?

24 A I was dispatched to Outwood Street on a shooting call.

25 Q Is Outwood Street in Charleston County?

DAVID BOHANNON - DIRECT BY MR. HOUSEAL

1 A Yes, sir.

2 Q And when you got dispatched there what did you do?

3 A I responded to the scene at 4512 Outwood Street in
4 Woodside, Woodview.

5 Q What did you see when you got to that scene?

6 A I arrived at the address. There was a man in civilian
7 clothes standing in the doorway which I identified as a

8 Lieutenant of the Mount Pleasant. I believe it was Lieutenant
9 Ritchie from Mount Pleasant.

10 Q Do you recall approximately what time that was that you
11 responded to the scene?

12 A I was dispatched at 10:57 p.m. I arrived at 11:11 at
13 the scene.

14 Q Okay. And you made contact with Lieutenant Ritchie.
15 Describe what you saw?

16 A I asked him -- he identified himself and showed me his
17 badge so I knew who he was. I asked him what was going on.
18 He said that he had been in the house to clear the house.
19 There was one guy laying on the floor and there was another
20 one down at his house two doors down across the street that
21 had been shot.

22 Q Were you able to confirm that there was someone inside
23 lying on the floor?

24 A I could see from standing in the yard through the open
25 front door a person laying on the floor inside the house.

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DAVID BOHANNON - DIRECT BY MR. HOUSEAL

1 Q Okay. At that point what did you do?

2 A I went over to the lieutenant's house to check on the
3 other subject. And EMS was there working on him. They took
4 him and transported him I believe to One West at MUSC.

5 Q Did you see anyone else on the scene when you arrived
6 other than Lieutenant Ritchie and a person inside on the
7 ground?

8 A No, sir.

9 Q After you went and looked -- and checked on the other
10 person, did you talk to anyone else, any victims, speak to
11 anyone?

12 A I spoke with a Tonya Michele Holbrook.

13 Q And what did you speak to her about?

14 A She informed me on the incident that occurred there
15 that --

16 Q MR. PENNINGTON: Your Honor.

17 THE COURT: Yes, sir.

18 MR. PENNINGTON: I'm going to object to hearsay.

19 I mean, this witness is available, will testify.

20 MR. HOUSEAL: I'm not specifically asking Deputy
21 Bohannon to describe what she said. I'm just asking him
22 generally what he talked to her about.

23 So I'll be more specific with my question if that will
24 help.

25 THE COURT: Yes, he's objected. I sustain the objection

DAVID BOHANNON - CROSS BY MR. CRUMRINE

1 up to now. Go ahead.

2 BY MR. HOUSEAL:

3 Q Where did you talk to Ms. Holbrook?

4 A To the best of my memory I believe it was in the street
5 on Outwood Street in the roadway.

6 Q Okay. Did you have any involvement at all in the
7 investigation after that night?

8 A No, sir.

9 Q What was your role at that point after you spoke to Ms.
10 Holbrook about what happened, what did you do?

11 A From the observations I made on the scene and the nature
12 of the incident I quartered off an area of the residence as a
13 crime scene, notified my supervisor which called for
14 detectives and they responded to the scene.

15 Q How long were you on the scene roughly?

16 A I was there about -- about seven hours.

17 MR. HOUSEAL: Your Honor, I have no further questions
18 at this time of this witness.

19 MR. CRUMRINE: Your Honor, if I may go next?

20 CROSS-EXAMINATION

21 BY MR. CRUMRINE:

22 Q Officer -- Deputy Bohannon, you were one of the first to
23 arrive, were you?

24 A I was the first.

25 Q The first. And can you describe Ms. Holbrook's -- was

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TONYA MICHELE HOLBROOK - DIRECT BY MR. HOUSEAL

1 she terribly upset at the time when you arrived?

2 A She seemed upset, yes, sir.

3 Q Bordering on hysterical?

4 A She seemed upset.

5 Q All right.

6 With your, I guess limited testimony you provided, you

7 don't have any evidence that you, yourself observed at the

8 scene that in any way connects with Mr. Flynn, do you?

9 A I don't understand the question. I'm sorry.

10 Q You didn't see anything -- you don't have anything to

11 add to the -- for the jury that Mr. Flynn was in any way

12 involved in this, do you?

13 A No, sir.

14 Q MR. CRUMRINE: I have no other questions.

15 A MR. PENNINGTON: No questions, Your Honor.

16 Q THE COURT: Thank you. You can come down. Call your
17 next witness.

18 MR. HOUSEAL: States calls Tonya Michele Holbrook.

19 TONYA MICHELE HOLBROOK,

20 was sworn and testified as follows:

21 MR. HOUSEAL: Your Honor, can Deputy Bohannon be
22 released from his subpoena at this point?

23 THE COURT: Have a good day.

24 THE WITNESS: Tonya Michele Holbrook. H-O-L-B-R-O-O-K.

25 DIRECT-EXAMINATION

TONYA MICHELE HOLBROOK - DIRECT BY MR. HOUSEAL

- 1 BY MR. HOUSEAL:
- 2 Q Ms. Holbrook, what do people -- how do people refer to
- 3 you?
- 4 A Michele.
- 5 Q Michele. You married?
- 6 A No, sir.
- 7 Q Have any children?
- 8 A Yes, sir.
- 9 Q How many?
- 10 A One.
- 11 Q Boy or girl?
- 12 A Boy.
- 13 Q And his name is?
- 14 A [REDACTED]
- 15 Q How old is he?
- 16 A He's just about to be 4 next month.
- 17 Q Where do you live?
- 18 A I presently live in the Ladson area.
- 19 Q Are you working?
- 20 A Yes, sir.
- 21 Q Where do you work?
- 22 A Um, customer accounts manager at Aaron's Rental
- 23 Purchase.
- 24 Q What do you do there, what is an accounts manager there?
- 25 A I am actually the assistant manager over the store as

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TONYA MICHELE HOLBROOK - DIRECT BY MR. HOUSEAL

1 well as the head collections advisor.

2 Q What hours you working over there?

3 A Um, probably around 9 to 7 or 9 to 9 at night.

4 Q I take you back and ask you about the night of May 3rd,

5 1999. Where were you spending the night that night?

6 A In -- on Outwood Street in Woodside Manor.

7 Q What's the address there?

8 A 4512 Outwood.

9 Q And whose house was that?

10 A It was actually -- it was in my name. Porter and I

11 lived there together at one point. At that time we were -- I

12 was kind of back and forth between there and my mom's house.

13 I had a trailer of my own.

14 Q Okay. And Torin was with you that night?

15 A Yes, sir.

16 Q Who else was spending the night that night?

17 A Christopher Gorski.

18 Q How did you know Chris?

19 A Okay. Chris was our next door neighbor in a duplex we

20 lived in before we lived in Woodside.

21 Him and two of his friends that were in the military

22 they lived next door to us for maybe about six months, close

23 to a year. And he was stationed in Florida and he came down

24 and spent his time off with us at our house.

25 Q Do you know what he was training for in the Navy?

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- 1 A I believe nuclear engineering.
- 2 Q Do you know why he was spending the night with you that
3 night?
- 4 A He was -- had some time off so he came to spend it with
5 us.
- 6 Q Okay. Do you recall doing anything special that evening?
- 7 A No, not really. We went -- Chris and I went to the
8 store and got hot dogs and chocolate chip cookies and came
9 back and we ate and I baked cookies and they were watching, I
10 believe, wrestling on the TV.
- 11 Q Do you recall about what time you went to sleep?
- 12 A Probably close to 10:30 at night.
- 13 Q Did you hear anything unusual that night before you went
14 to bed?
- 15 A Yes, sir.
- 16 I was on the phone with a friend of mine talking when I
17 was actually baking cookies and it sounded like there was a
18 tap at the back window. And I went to tell Chris and Porter
19 that I heard it but they didn't hear it because they were in
20 the living room.
- 21 I probably heard someone tap twice. And I just ignored
22 it thinking maybe it was nothing.
- 23 Q And they were tapping where exactly?
- 24 A The window in the sounded -- it appeared to be the
25 window in the kitchen is what it sounded like, which is where

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TONYA MICHELE HOLBROOK - DIRECT BY MR. HOUSEAL

1 I was.

2 Q And that was roughly what time, if you had gone to bed
3 around 10:30?

4 A Maybe 20 minutes before I went to bed at the most. 15
5 to 20 minutes before I went to bed.

6 Q Okay. So you went to bed roughly at 10:30. What woke
7 you up?

8 A Um, I vaguely heard someone knocking on the door I
9 thought. I heard someone, I guess Porter was answering the
10 door. I can't recall if I heard what he was saying or
11 anything.

12 Um, I guess he was asking who was at the door. Somebody
13 said, I believe the name Mike. I was kind of on and off
14 asleep at that point. I wasn't really aware of anything
15 going on.

16 And then from that I heard, um, three to four loud bangs
17 is what actually woke me up and a lot of yelling but I can't
18 recall what anyone was saying.

19 Q So what did you do when you heard the noises?

20 A I picked up the phone and dialed 911.

21 Q What did you see next or hear next?

22 A Um, I dialed 911 and then the light came on in the
23 bedroom and there was a man standing there with a gun, told
24 me to hang the phone up and so I hung the phone up.

25 Q Did he have a mask on?

1 A No.

2 Q What did he look like?

3 A He was -- he appeared to be skinny. He didn't have much
4 hair on his head. He looked very young, anywhere between 16
5 and 19. And he had a hickey on his neck was the only other
6 thing that I really noticed.

7 Q Okay. Where -- where were you when he came into the
8 room?

9 A I was sitting up on the bed.

10 Q Where was the phone in relation to where you were?

11 A (Indicating) On the left on the night stand.

12 Q And where was he at this time?

13 A He's (indicating) probably about right here to the bed
14 and there was a dresser next to him.

15 Q What was he saying to you?

16 A He just put the gun in my face and told me to hang the
17 F-ing phone up and then started asking me where the drugs and
18 money were and said that he knew we had drugs and money there
19 and he wanted to know where they were. He wanted all the
20 drugs and money.

21 Q What did you tell him?

22 A I told him we didn't have anything there. And, um, I
23 just started explaining to him that I didn't really live
24 there. I lived down the road. And I didn't know anything
25 that was going on. That my son was only 2 and I asked him

1 could I -- if he would let us go out the window maybe his
2 friends in the other room didn't even know that we were back
3 there.

4 And I told him there was a safe in the closet. And he
5 asked me what the combination to the safe was and told me to
6 open it.

7 I told him I didn't know the combination but if he
8 tilted it sideways he could feel and hear that there was
9 nothing inside the safe.

10 Q How did you know there was nothing inside the safe?

11 A Because I -- it had been opened at one point probably a
12 few months before that and I remembered there was just a
13 Manila folder inside there with nothing in it.

14 Q Okay. Did you even have the combination to get it open?

15 A No.

16 Q Did Porter?

17 A Probably not. No.

18 Q Anybody else come into the bedroom?

19 A Um, yeah, then Christopher Gorski came back to the
20 bedroom.

21 Q What did he do or what did you see him do?

22 A Um, he came in and I guess he was bringing, um, the
23 other two guys with him.

24 He came into the room and I could tell that he had been
25 shot because there was blood on his chest and, um, the other

1 guys were yelling at him, where were the drugs and money.

2 And he just put his hands up and shrugged his shoulders
3 telling them he didn't know where anything was. He was
4 really scared and his cheeks were really red.

5 I asked him if Porter had been shot because I was
6 assuming he had been. And he just shook his head to tell me
7 yeah, and put his head down.

8 And the whole time all the other guys were just

9 demanding drugs and money and....

10 Q When you say all the other guys, who are you referring
11 to?

12 A That's the three guys that -- there was two mask and one
13 unmasked, the one in the room.

14 Q Can you describe those people?

15 A Um, they were outside of the room, they didn't come all
16 the way in. They were kind of in the doorway. They were
17 both wearing masks. One of them was white. One of them was
18 black. I can't give a very good description of the male that
19 was black.

20 And the male that was white had very small eyes and
21 brown hair.

22 Q You said how many of them were white?

23 A There was two.

24 Q And one black?

25 A Uh-huh. Yes, sir..

1 Q Can you give me -- or did you give police officers any
2 more description of the white male that had the mask on? In
3 other words, did you elaborate at all about his physical
4 features?

5 A No, sir.

6 Q Did you and Chris say anything to each other?

7 A Um, not at the time other than me asking him if Porter
8 had been shot.

9 Q And what were the three people inside, two with the
10 masks and one without, doing at that point?

11 A Well, he was -- before I asked him had Porter been shot,
12 he was then telling them that I didn't live there and stuff
13 like that, I guess to try to help me a little.

14 And then I asked him had Porter been shot and he shook
15 his head yes and put his head down. And the -- I guess the
16 two guys in the hallway started heading back up front to the
17 house to the living room and then the one that was in the
18 room with me all the time followed behind them and I guess
19 around that time is when Chris left the room and went behind
20 them.

21 Q And how many guns did you see?

22 A Three.

23 Q And who had the three guns?

24 A Um, the one in the room with me without the mask on that
25 told me to hang up the phone and the two with the masks on in

- 1 the hallway.
- 2 Q Did you ever see Chris with a gun that night?
- 3 A No, sir.
- 4 Q Porter have a gun that night?
- 5 A No, sir.
- 6 Q Did you have a gun that night?
- 7 A No, sir.
- 8 Q What happened after they left your room and went back to
- 9 the other part of the house?
- 10 A I got my son out of the bed and we went into the
- 11 bathroom which was inside the room and shut and locked the
- 12 door and I just covered him up and we crouched down in
- 13 between like the toilet and the sink and then I heard a bunch
- 14 of shots fired.
- 15 Q When you say a bunch, what do you mean?
- 16 A I heard -- I knew at the time I heard at least four to
- 17 five.
- 18 Q Sound like it came from just one gun?
- 19 A No.
- 20 Q What did it sound like to you?
- 21 A It sounded like more than one gun. Not sure of how many
- 22 because the sequence of the shots.
- 23 Q So your at this point in the bathroom with Torin?
- 24 A Uh-huh. Yes, sir.
- 25 Q And what's the next thing you heard or did?

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1 A After the shots I probably stayed in there about a
2 minute. It was completely silent so I assumed everyone was
3 out of the house. So I came out and called 911 at that
4 point.

5 Q Where did you go after that?

6 A I came out into the room back to the same phone and
7 dialed 911 and spoke to the dispatcher.

8 Q And you were in which room at this point?

9 A The same room.

10 Q The bedroom?

11 A In the bedroom.

12 Q When did you go out and see what was happening or what
13 had happened in the other room?

14 A After I hung up the phone with 911 -- I think I actually
15 talked to them twice. But the first time I went out into the
16 living room. At that point -- and I can't remember if I went
17 out of the house yet or not because I know I called the
18 police again.

19 Q What did you see when you went to the living room?

20 A Christopher Gorski was lying on the floor on his
21 stomach.

22 Q Was he moving?

23 A And I could tell he had been shot and there was a lot of
24 blood around his head. And then I was looking for, um,
25 Porter so I looked around to see where he might be and I --

1 he was gone. I didn't know where he was.

2 And there was some blood on the floor where Porter would
3 have been right in front of where Porter would have been
4 sitting at.

5 And that's -- I guess I went back to the phone or went
6 outside then to get help.

7 Q Did you talk to anyone outside of the residence at that
8 point?

9 A Um, yeah. Sometime in there I called my mom. And then
10 when I went outside there was a Mount Pleasant police officer
11 who lived kind of diagonally across from us coming up as I
12 walked outside.

13 And I told him what was happening and that I couldn't
14 find Porter. And he told me that, um, Porter was at his
15 house and he had been shot in the back. And then sent me to
16 a neighbor's house across the street with my son.

17 Q Okay. Do you remember talking to detectives later about
18 what happened?

19 A Yes, sir.

20 Q Do you remember giving a statement to them about what
21 happened?

22 A Yes, sir.

23 Q Do you recall approximately how long after the shootings
24 you were talking to the detectives and they actually took
25 your statement?

1 A Um, less than two hours. Close to two hours.

2 THE COURT: Is that a drawing of the house, Solicitor?

3 MR. HOUSEAL: It's a drawing of the inside of the house.

4 THE COURT: Is it to scale?

5 MR. HOUSEAL: Yes, sir.

6 THE COURT: Any objection if he uses it?

7 MR. PENNINGTON: No, sir, I don't have any.

8 MR. CRUMRINE: Not from Mr. Flynn.

9 (State's Exhibit Number 3

10 was marked for identification.)

11 THE COURT: You got a pointer?

12 Can all of you see it?

13 MR. HOUSEAL: Should I back it up?

14 BY MR. HOUSEAL:

15 Q Michele, I want to go back and allow you to show the
16 jury exactly where you were inside the house.

17 Well, first of all, where is the kitchen? Well, let me
18 back up and ask you, do you recognize what that is?

19 A Yes.

20 Q What is it?

21 A It's a diagram of the house, 4512 Outwood.

22 Q Does that fairly and accurately reflect the interior of
23 the house as it was on May 3rd, 1999?

24 A Yes, sir.

25 Q Please show the jury where the kitchen area is in the

- 1 house?
- 2 A (Indicating).
- 3 Q Describe the area top, left bottom, left bottom, right,
4 that kind of thing as you're pointing to it.
- 5 A This is the kitchen, top left.
- 6 Q And the front door of the house?
- 7 A This is the front door.
- 8 Q And this area to the left?
- 9 A This would be the living room. This is probably the
10 living room.
- 11 Q Okay. What would that square object be right there that
12 you just pointed to?
- 13 A Coffee table.
- 14 Q Okay. And what would this L shaped object be?
- 15 A This is the sectional sofa.
- 16 Q And this rectangular object is what?
- 17 A Sofa table.
- 18 Q And this door leads from where to where?
- 19 A This is the front door of the house. Leads you into the
20 living room or this way goes directly into the dining area to
21 the kitchen or you can just go to the hallway.
- 22 Q Okay. And what was this rectangular object?
- 23 A Foosball table.
- 24 Q And this hallway leads to what rooms?
- 25 A There were three bedrooms.

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TONYA MICHELE HOLBROOK - DIRECT BY MR. HOUSEAL

1 Q And?

2 A And a bathroom.

3 Q And what was inside this room?

4 A This room was my son's room. There was a playpen and
5 some toys and his clothes.

6 Q Okay. And this room in the lower left-hand corner --
7 right-hand corner?

8 A Spare room basically. There was a chair in there and
9 most of Christopher Gorski's belongings that he brought down
10 with him when he visited or what he left when he was gone.

11 Q Okay. And this room?

12 A This is the bathroom.

13 Q This room?

14 A This is the bathroom inside the bedroom.

15 Q Okay. Where was Chris and where was Porter when they
16 were watching television?

17 A Porter was there (Indicating), Chris was probably here,
18 but I'm not sure.

19 Q And the television would have been where?

20 A Over here.

21 Q Okay. And you're in which bedroom?

22 A I'm right here.

23 Q And where is Torin?

24 A Torin is in the bed with me in that bedroom.

25 Q Okay. So describe for the jury again -- well, what is

1 this object right here?

2 THE COURT: Solicitor, those jurors can't see. Just
3 stand back a little bit.

4 MR. HOUSEAL: Is that a little better?

5 Let's do this, excuse me -- can you see that?

6 BY MR. HOUSEAL:

7 Q Okay. Tell me again the first thing that you saw as the
8 lights came on and show the jury where you were and where
9 that thing or person was?

10 A Okay. Me and my son are on the bed right there. And a
11 man entered the room coming through the hallway right here.

12 Q Where is the light switch?

13 A The light switch is right there.

14 Q Okay. And when the light switch was turned on what
15 light came on, how was the room illuminated?

16 A It's an overhead, the light above us.

17 Q So how bright was it?

18 A It was bright. Like it is in here.

19 Q Okay. And where did he go when he came in the door and
20 turned on the light switch?

21 A Turned on the light and I was right here on the bed. He
22 came about right there.

23 Q You were on the telephone at that time?

24 A Yes, sir.

25 Q But still sitting on the bed?

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1 A Yes, sir.

2 Q Okay. And again, what -- what did he tell you when he
3 first came in the door?

4 A Told me to hang up the F-ing phone.

5 Q And so you did. Where is the safe that you told him to
6 look at?

7 A In the closet right here.

8 Q Can you back up a little bit so this juror can see?

9 A In the closet right here.

10 Q Okay. Did he go to that safe?

11 A No, I don't believe so.

12 Q And the next person you saw, where did they go when they
13 came into the bedroom?

14 A Christopher Gorski. He came in and went right here in
15 front of us. There was a long dresser right here and he
16 stood in front of it.

17 Q And Torin at this point is still?

18 A In the bed with me.

19 Q Okay. And the other two defendants who had masks on,
20 show the jury where they were?

21 A They came right here in the doorway.

22 Q Just inside the bedroom or still out in the hallway?

23 A It was (Indicating) kind of just inside the bedroom
24 there. They are almost in there but never actually came in.

25 Q Did they -- well, after they went back out, you went

- 1 into which bathroom?
- 2 A This bathroom right here.
- 3 Q Did you shut the door?
- 4 A Yes, sir.
- 5 Q Lock the door?
- 6 A Yes, sir.
- 7 Q Was there a telephone in there?
- 8 A No, sir.
- 9 Q How long do you estimate you stayed in there before you
- 10 came out?
- 11 A Maybe two to three minutes.
- 12 Q Okay. In two to three minutes after you came out of the
- 13 bathroom you went directly where?
- 14 A To the phone.
- 15 Q And?
- 16 A Called 911.
- 17 Q And called. Did you get them on the telephone at that
- 18 point?
- 19 A Yes, sir.
- 20 Q Do you recall what you told them?
- 21 A Um, somewhat. Just at that time I don't -- is I didn't
- 22 even really know what was going on. I told them that I knew
- 23 that people had been shot and then I thought that they were
- 24 -- I was telling them that they were dead. And I thought
- 25 that Porter and Chris were both dead because I didn't hear

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1 them or see them anymore. I assumed that they had to be
2 dead. They must have killed them because I heard so many
3 shots.

4 And they were telling me to go out there and look at
5 them to check on them, I guess to see what else was going on
6 but I didn't. I didn't want my son to see anything like
7 that.

8 So I was telling them I couldn't go back out there
9 because I didn't want my baby to see anybody.

10 THE COURT: Solicitor, you -- Solicitor, you need her
11 there?

12 MR. HOUSEAL: One more quick question.

13 BY MR. HOUSEAL:

14 Q What does this represent here in the middle of the
15 diagram?

16 A This here?

17 Q Yes.

18 A Christopher Gorski, where he was lying on the floor.

19 Q Does that -- is that an accurate representation of where
20 he was as you remember from that evening?

21 A Yes, sir. Yes, sir.

22 Q Okay. You can go ahead and take the seat.

23 Michele, did the detectives ever show you a photo
24 line-up and try to help you identify who was inside the house
25 that night?

- 1 A Yes, sir.
- 2 Q Do you remember how many photo line-ups they showed you?
- 3 A I think just one.
- 4 Q And did you see the unmasked man inside the photo
- 5 line-up or represented in that photo line-up?
- 6 A No, sir.
- 7 Q What did they do with you or what did they ask you to do
- 8 to help them determine who that person was?
- 9 A Um, they had a yearbook photo, a page of a year book
- 10 that had maybe 20 kids on it and they asked could I point out
- 11 anyone in the picture who may have been the unmasked man in
- 12 the house.
- 13 Q Did you point to anyone?
- 14 A Yes, I did.
- 15 Q Do you know who that person was that you pointed to?
- 16 A Um, apparently it was the younger brother of the person
- 17 who was in the room with me.
- 18 Q Do you know what his name is?
- 19 A John Griffin.
- 20 Q Do you know what his older brother's name was or is?
- 21 A Michael Griffin.
- 22 Q Do you recall a composite being made?
- 23 A Yes, sir.
- 24 Q Did you assist in the presentation of the composite?
- 25 A Yes, sir.

TONYA MICHELE HOLBROOK - DIRECT BY MR. HOUSEAL

1 Q How -- how did that come about? How did you assist them
2 in actually drawing this composite?

3 A It was done on a computer. It was the unmasked person
4 who was in the room with me. Um, they just show you
5 different sets of eyes on the screen and you can point out if
6 you think it resembles them and they will go through hair and
7 chin and facial hair and their head and so forth.

8 Q Do you recall going to the police station that night?

9 A Yes, sir.

10 Q What do you recall as you got to the police station,
11 what do you recall happening?

12 A When I got there?

13 Q Uh-huh. Why were you taken there?

14 A When I got there I just did a statement with the lady,
15 did a statement, then we did the composite.

16 Q Okay. Did they ask you -- did you talk to anybody on
17 the telephone?

18 A Did I talk to anybody on the phone?

19 Q Did the detectives ask you to talk to anyone over the
20 telephone that night?

21 A Oh, yes, sir.

22 Q Do you recall who that was or why they asked you to do
23 that?

24 A Jason Lyons, who was a good friend of Porter's, was in
25 jail at the time. And they probably asked me because he was

1 a notorious drug dealer who had just been arrested on very
2 big drug charges and was real close friends with Porter.

3 Q So what were you talking to Jason about?

4 A They wanted -- the police wanted to see if maybe Jason
5 and I spoke to one another we could come up with any ideas
6 who may have done this.

7 And Jason just asked me if I knew who it was and what
8 they looked like. And I had no idea who they were and
9 couldn't give that well of a description at the time of what
10 all I saw. And that was really it. It was nothing that was
11 concluded out of it or anything.

12 Q Okay. Did you ever see Jason at Porter's house or your
13 house?

14 A Did I ever see him there?

15 Q Yes.

16 A Yes, sir.

17 Q But you said he was in jail. How long prior to May 3rd
18 do you know that he was in jail?

19 A He was maybe in jail two weeks at that time, I believe.
20 He wasn't in there very long at that time. But he was --
21 they were looking for him. He was on the run for a good
22 couple of weeks before he even went to jail.

23 Q Okay. And you said that you remember giving a statement
24 a couple of hours after the shooting. Have you had a chance
25 to review that statement?

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1 A Yes, sir.

2 Q Have you found anything or do you remember anything
3 since you gave a statement that you weren't asked to include
4 in that statement?

5 A Um, do you mean was there anything that -- I wasn't
6 actually asked or anything. Maybe more that I remembered
7 since then or --

8 Q That's what I mean.

9 Do you recall anything after you were asked to give a
10 statement, do you recall anything that you would have added
11 had you been given the statement at the time you recalled it?

12 A Um, yes. That I heard someone knocking on the door and
13 heard them say the name Mike. I remembered --

14 Q I'm sorry. You didn't have that in your statement?

15 A I don't think so.

16 Q Okay. Anything else that you recall after you had a
17 chance to reflect on it?

18 A Just their masks. I remembered I could see their faces
19 a little bit better. A little bit afterwards. And they had
20 appeared to have bandanas on. And I know I could actually
21 see the tops of their heads and their eyes a little bit, I
22 think.

23 Q How did you -- how were you able to determine that one
24 of the masked men was a white male and one was a black male?

25 A Well, in my statement I said that one was white, one was

1 black, but I was unsure whether it was because I saw their
2 eyes or their hands. But I felt positive of their skin
3 color. And I can picture them standing there now and I know
4 I could see their eyes is why I knew the color of their skin.

5 Q Okay. I'm going to show you a few pictures.

6 (State's Exhibit Numbers 4, 5, 6, 7, 8, 9, 10
7 were marked for identification.)

8 BY MR. HOUSEAL:

9 Q Michele, I approach you and show you what's been marked
10 as State's Exhibit 4 for identification and ask you to take a
11 look at that, tell me if you recognize what that is?

12 A That's the -- one of the bedrooms in the house, the back
13 bedroom, which would have been across from the master
14 bedroom.

15 Q And what's in that bedroom?

16 A Um, most of Christopher Gorski's belongings.

17 Q Okay. Show you what's been marked State's Exhibit 5 for
18 identification. Can you take a look at that and see if you
19 recognize it?

20 A That was Torin's bedroom. Most of his toys and his
21 clothes were in there. His playpen.

22 Q Does that picture fairly and accurately represent what
23 that bedroom looked like on May 3rd, 1999?

24 A Yes, sir.

25 Q Does this State's Exhibit 4 fairly and accurately

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1 represent what the storage room looked like on May 3rd, 1999?

2 A Yes, sir.

3 Q Show you what's been marked State's Exhibit 8 for
4 identification. Take a look at that. Do you recognize what
5 that is?

6 A It's the hallway entrance into the house on Outwood.

7 Q What does it depict?

8 A Probably -- part of the partial of the living room, the
9 hallway heading into the dining room.

10 Q Okay. Show you what's marked State's Exhibit Number 9
11 for identification, ask you to take a look at that, do you
12 recognize it?

13 A Yes, sir.

14 MR. HOUSEAL: Your Honor, I intend to publish these to
15 the jury and if the defense counsel don't have any objection
16 I would like to move them into evidence at this time and
17 publish them.

18 THE COURT: Any objection?

19 MR. PENNINGTON: No, sir, no objection from Defendant
20 Steed.

21 MR. CRUMRINE: No objection from Mr. Flynn, Your Honor.

22 MR. HOUSEAL: 4, 5, 6, 7, 8, 9 10.

23 THE COURT: All right, sir.

24 (State's Exhibit Numbers 4, 5, 6, 7, 8, 9, 10
25 were admitted into evidence.)

TONYA MICHELE HOLBROOK - DIRECT BY MR. HOUSEAL

1 BY MR. HOUSEAL:

2 Q Michele, first I'm going to ask you to take a look at
3 State's Exhibit Number 10. Again, you recognize what that
4 is?

5 A Yes, sir.

6 Q What is it?

7 A Front of the house on Outwood.

8 THE COURT: Can all of you jurors see it? If you can't,
9 feel free to move, stand up and move down there if you feel
10 like it.

11 BY MR. HOUSEAL:

12 Q That is the house?

13 A Yes, sir.

14 Q State's Exhibit 9, what does that depict?

15 A Bedroom.

16 Q What is that right there?

17 A It's the night stand with the telephone on it.

18 Q Is that the telephone that you used to dial 911?

19 A Yes, sir.

20 Q What does this picture represent?

21 A It's the entrance right when you walk in the front door,
22 living room to your right, kitchen is straight ahead.

23 Foosball table.

24 Q Okay. And as you're standing at this picture, is --
25 what door is this?

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TONYA MICHELE HOLBROOK - DIRECT BY MR. HOUSEAL

1 A That would be the front door.

2 Q Okay. And the television would be where in reference to
3 this picture?

4 A To the left.

5 Q Okay.

6 MR. PENNINGTON: Mr. Solicitor, can I ask you to
7 announce which exhibit it is when you're showing these.

8 MR. HOUSEAL: That was State's Exhibit 8.

9 MR. PENNINGTON: Thank you.

10 BY MR. HOUSEAL:

11 Q Michele, State's Exhibit 6, can you describe for the
12 jury what that depicts, please?

13 A That's the living room of the house.

14 Q And this is what?

15 A Coffee table.

16 Q And that is -- that item right there, that is?

17 A Car seat.

18 Q State's Exhibit Number 5, which room is that?

19 A That's my son's room.

20 Q State's Exhibit 4?

21 A That is the storage room where Christopher's stuff was.

22 Q Okay. Finally State's Exhibit 7?

23 A That's the living room.

24 Q What is that?

25 A Blood on the floor.

- 1 Q And describe -- when you said earlier you testified that
2 you saw some blood I believe where Porter must have been
3 sitting, is that what you were referring to?
- 4 A Yes, sir. Because he always sat on that -- that was his
5 seat on the couch.
- 6 Q And do you -- is that the television then?
- 7 A Yes, sir.
- 8 Q Just a couple more questions.
- 9 When you were asked to help design or construct or a
10 composite, you were asked questions about the description of
11 which one of the three defendants?
- 12 A The unmasked defendant.
- 13 Q Were you able to identify that person at any time?
- 14 A Um, I wasn't asked to actually identify him if that's
15 what you mean. I was never shown a picture or anything of
16 him.
- 17 Q You have never been shown a picture at all of that
18 person?
- 19 A Of him, no, sir.
- 20 Q Okay. Last question I have is you testified that you
21 went to bed about 10:30 and these incidents occurred after
22 that. Was it light outside or dark outside at that point?
- 23 A Dark.
- 24 Q Thank you, Michele. Please answer any questions defense
25 may have.

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TONYA MICHELE HOLBROOK - CROSS BY MR. CRUMRINE

1 MR. PENNINGTON: Your Honor, please.

2 THE COURT: Do you have any questions?

3 MR. CRUMRINE: No, sir. Yes, sir, I do have questions.

4 THE COURT: All right. You got to keep the same routine.

5 MR. PENNINGTON: All right. Do you want us to?

6 THE COURT: Yes, please. Either first. You all just

7 choose.

8 MR. PENNINGTON: Mr. Crumrine can go.

9 THE COURT: Go ahead.

10 MR. CRUMRINE: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. CRUMRINE:

13 Q Ms. Holbrook, my name is John Crumrine representing
14 Michael Flynn. We have a few questions about all this that
15 occurred. I'm sorry for what happened to you. I must ask a
16 few of them.

17 One of them is how long did you know Mr. Porter, Porter
18 Walker?

19 A Approximately nine years.

20 Q How long have you been living with him?

21 A Maybe about two years.

22 Q And the -- you were familiar with what he did for a
23 living?

24 A Yes, sir.

25 Q And that was the drug trade?

- 1 A No. He actually worked for his father for a living.
- 2 Q But he had a substantial drug trade, did he not?
- 3 A He did have some drug dealings but not at the time of
- 4 the incident.
- 5 Q And he -- Jason Lyons, the gentleman you mentioned
- 6 earlier, he had lived with you all for a while, didn't he?
- 7 A He didn't actually live there. But he lived with his
- 8 mother in James Island so if he came over he would stay the
- 9 night frequently.
- 10 Q All right. So he stayed there frequently then?
- 11 A Uh-huh.
- 12 Q All right. And when he was arrested you all expected
- 13 some trouble at your household, didn't you?
- 14 A We thought there may have been.
- 15 Q All right.
- 16 Q And you all moved out at that time because of that?
- 17 A No, we did not.
- 18 Q You didn't move out?
- 19 A No, we did not.
- 20 Q And tell me this, had you all returned to the household
- 21 just three days prior to this incident because Mr. Gorski was
- 22 coming to town?
- 23 A Repeat that?
- 24 Q Did you and Porter Walker move back to the house three
- 25 days before this incident because Mr. Gorski was coming to

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1 town to visit?

2 A We never actually moved out of the house. I did have
3 another trailer I stayed at a lot with a girlfriend of mine
4 but Porter Walker never moved out of that house.

5 Q All right. The same day this thing happened did you all
6 have some trouble at the house, someone trying to break in
7 the back door?

8 A No, sir, not that day. But prior to that.

9 Q All right. How long before then?

10 A Maybe a week.

11 Q And did you all call the police about that?

12 A No, sir.

13 Q Is there a reason you didn't call the police about that?

14 A We didn't feel reason to. The back door had been kicked
15 in -- not the back door to the house, the back door that got
16 into the garage. But whoever tried to break in could not get
17 into the house because it was bolt locked.

18 Q All right.

19 And when -- after this incident happened the police
20 contacted Jason Lyons about it?

21 A While we were -- they had Jason Lyons and I talk on the
22 phone.

23 Q All right. And was he in jail at the time?

24 A Yes, sir.

25 Q And was he with a DEA agent at the time?

1 A I'm not sure.

2 Q Did you ever hear the name Buddy Isgett that put him in
3 touch with you?

4 A I would not recall that.

5 Q Was the thrust of that conversation to try to determine
6 who might have done this that was connected with the drug
7 trade?

8 A Yes, sir.

9 Not -- I'm not sure about connected with the drug trade
10 or anything like that. But they just thought maybe since
11 Jason and I were friends that he was involved in drugs and
12 they were demanding drugs and money maybe he had known
13 somebody that may have been involved.

14 Q And isn't it true that Mr. Jason Lyons and Porter Walker
15 sold drugs together, they were in business together?

16 A At one point, yes, sir.

17 Q And Mr. Lyons to your understanding was, um, cooperating
18 with the police at that point and was an informant?

19 A He was cooperating with the police to my knowledge. But
20 I have not much knowledge of what was going on in his
21 situation with the police or what his charges were or
22 anything at the time. I don't know.

23 Q And do you know if Mr. Walker was also cooperating along
24 with Mr. Lyons?

25 A Mr. Walker was never questioned to my knowledge about

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TONYA MICHELE HOLBROOK - CROSS BY MR. CRUMRINE

1 anything that had to do with Jason Lyons or his arrest.

2 Q And did you discuss at some length with Mr. Lyons

3 whether this was in fact related to the drug trade?

4 A Did I discuss with --

5 Q Mr. Lyons.

6 A No, not to my knowledge.

7 Q And we have some telephone records with the residence of
8 the 24 hours up until this point. And I counted 135 calls

9 going to and from your household. Was that a normal amount
10 of telephone calls for you all to have?

11 A It's possible. I mean, I'm not sure.

12 Q All right. Were most of these calls related to drugs?

13 A Not to my knowledge. No, sir.

14 Q And then do I take it that you were not participating in
15 most of these calls?

16 A Probably not. I wasn't always there.

17 Q And Mr. Gorski, were you familiar with his tattoos that
18 he had?

19 A Um, maybe some of them.

20 Q Do you know what riding dirty means?

21 MR. HOUSEAL: Your Honor, I object as to relevance.

22 THE COURT: He's on cross. She's on cross. I'll allow
23 it.

24 MR. HOUSEAL: It's not asking her about anything that
25 she has.

TONYA MICHELE HOLBROOK - CROSS BY MR. CRUMRINE

1 THE COURT: He wants to know what riding dirty means.
2 Is that the question?

3 MR. CRUMRINE: Yes, sir.

4 BY MR. CRUMRINE:

5 Q Do you know what a tattoo on Mr. Gorski saying riding
6 dirty would refer to?

7 A No, sir, I do not.

8 Q All right.

9 The -- would you -- your statement that you gave that
10 night was about -- started about 12:30; is that about right?

11 A Maybe. I said approximately two hours from the time.
12 I'm not sure about the time.

13 Q All right. But this thing happened just before 11,
14 correct?

15 A Yes, sir.

16 Q All right. And then you met with Detective Denise
17 Whisenaut, did you not, and she took your statement?

18 A Yes, sir.

19 Q And where does that occur?

20 A At the station, police station.

21 Q And you reviewed that before you came in here today, the
22 statement?

23 A Yes, sir.

24 Q All right. And did you see the start time that was
25 written on the statement that you signed?

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TONYA MICHELE HOLBROOK - CROSS BY MR. CRUMRINE

1 A I don't remember.

2 Q Let me show you an item. First tell me whether you can
3 recognize this?

4 A This is my statement.

5 Q All right. And if you'll look at the front page in the
6 upper right-hand corner.

7 A Uh-huh.

8 Q I'm sorry, the front page, upper right-hand corner, does
9 it have a start time on your statement?

10 A Start 0038.

11 Q All right. And on that -- that would be 12:38
12 approximately -- approximately a couple hours afterwards. Do
13 you believe that your recollections in the statement that you
14 gave at that time would be more or less accurate than the
15 ones that you've given today?

16 A Do you believe that they would be -- repeat that?

17 Q Do you believe that those would be a more accurate
18 recollection of what actually occurred than now being about a
19 year and a half later?

20 A I couldn't really say. I mean, there are some things
21 that at that time I was -- I was unsure of, I could not
22 remember. Maybe a few hours and a couple of days after that
23 there were things that I remembered more of. If that's what
24 you're asking.

25 Q All right. Let me ask you this, the -- do you agree

1 with me that the -- that that night you described this first
2 individual that had the hickey on his neck, that you dealt
3 with him mostly that night, right?

4 A Yes, sir.

5 Q All right. You saw him the longest, correct?

6 A Yes, sir.

7 Q And the other two individuals you saw briefly in the
8 doorway; is that true?

9 A Yes, sir.

10 Q All right. And the other two individuals, the -- you
11 described first that the one you thought was a black male,
12 and that he had a black mask; is that what you described the
13 first time? And you can refer to your statement.

14 A Yes, sir.

15 Q I'm sorry, did you say yes?

16 A Black male in a black mask.

17 Q And you thought he was a black male and you weren't
18 really sure, you thought maybe you had seen a hand or
19 something but you weren't really sure at that time?

20 A Wait a second. Yes, sir.

21 Q Is that correct? All right.

22 And let me give you this copy so that I can hold mine.
23 I have some notes on it that I need.

24 And is it true today that you're saying that you
25 definitely know it was a black male, though --

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1 A Yes, sir.

2 Q -- the second individual?

3 And is it correct that the third individual you
4 described on that night you told the police you did not know
5 the race of that individual; is that correct?

6 A I said he was white. Are you asking me --

7 Q Yes, sir -- I mean, yes, ma'am. You said -- is it true
8 that you said that the other person, being the third one, had
9 a mask on but I know it was not black, it may have been
10 white, the mask. And I think he was white. I never saw
11 clothes or anything on him, just the mask.

12 A Yes, sir.

13 Q So you didn't know whether the third individual was
14 white or not at the -- or black, you only saw the mask,
15 correct?

16 A Well, I said I think he was white. But I never saw his
17 clothes.

18 Q But you did not know two hours after it happened,
19 correct?

20 A I don't know. I mean, I think he was white. I'm saying
21 here that he was white in my eyes. I mean, I said I think.
22 So...

23 Q In all fairness --

24 A I can't remember at that time did I not really know for
25 sure or not. I mean...

1 Q In all fairness, after this happened you had time to get
2 together with Porter and the police officers and to watch the
3 news and read the news and that that may have had an affect
4 on your memory; is that correct?

5 A No, sir.. Actually anything more that I'm adding, I
6 actually talked to the police officers about maybe hours
7 after that happened when I was back at the station at 10
8 o'clock a.m. that morning. Hasn't been much that I've added
9 since then. That was all just right after.

10 Q Not much that you added.

11 How about small eyes and brown hair, that you've added
12 since the time this happened, isn't it?

13 A Yes, sir.

14 Q And do you know when you discovered that, when you
15 decided that that was true?

16 A I never actually have been asked about his description
17 ever came up until standing on this stand. But, yeah, it was
18 right afterwards that I could remember and picture his
19 face --

20 Q You didn't call the police --

21 A -- not his whole face but just his eyes.

22 Q -- you didn't call the police and tell them, hey, I
23 remembered he was a white guy and he had brown hair and small
24 eyes?

25 A There wasn't any need to. They had apprehended at that

TONYA MICHELE HOLBROOK - CROSS BY MR. CRUMRINE

1 time all the suspects and I -- it wasn't a -- it's a memory
2 -- it's not a -- it's a memory where I can look in my eyes
3 and close my eyes and try to remember that day and I can see
4 their masks and their eyes.

5 Q Their eyes. And you didn't say that he had green eyes,
6 did you?

7 A No, sir.

8 Q All right.

9 Q And as far as identifications, you were shown a -- a
10 year book and is it your understanding that you picked out
11 the fellow with the hickey's brother?

12 A Yes, sir.

13 Q Michael Griffin's brother, John Griffin?

14 A Yes, sir.

15 Q All right. And you were also asked on direct whether
16 you were shown a photographic line-up containing Mr. Flynn's
17 picture --

18 A Yes, sir.

19 Q -- is that correct? And have you had a chance to look
20 at that again since that day?

21 A No, sir.

22 Q Let me show you a document, see if you can recognize
23 that. I'll take that if that helps.

24 A Yes. This is the line-up photo?

25 Q Does that appear to be the line-up for -- photo line-up

1 that the police showed you the day after this happened about
2 4:00 I think in the afternoon?

3 A Yes, sir.

4 Q All right. And Mr. Griffin's picture -- I'm sorry, I do
5 that all the time -- Mr. Flynn's picture is very prominent in
6 that photographic line-up, isn't it?

7 A Yes, sir.

8 Q And can you hold it up and show the jury where it occurs
9 on the page --

10 MR. HOUSEAL: Your Honor, I object.

11 THE COURT: What's your grounds?

12 MR. HOUSEAL: This isn't in evidence. She wants -- he
13 wants it published to the jury.

14 THE COURT: All right, sir.

15 MR. CRUMRINE: I am using it for identification, Your
16 Honor.

17 THE COURT: You can't hold it up and show it to the jury
18 unless you're going to make it an exhibit.

19 BY MR. CRUMRINE:

20 Q All right. Describe for the jury where it is on the
21 page where Mr. Griffin's picture is?

22 A The top middle.

23 Q Top middle.

24 A Uh-huh.

25 Q All right.

1 MR. HOUSEAL: Your Honor, I hate to interrupt, but he's
2 still referring to this person as Mr. Griffin and I think he
3 is --

4 MR. CRUMRINE: I'm sorry. I get excited and I have a
5 Michael Flynn and Michael Griffin and I do want to keep that
6 separate.

7 BY MR. CRUMRINE:

8 Q Michael Flynn's picture is -- you said in the top middle
9 of that page, correct?

10 A Yes, sir.

11 Q All right.

12 And can you flip to the back page and see if your
13 comments from viewing that are on the back?

14 A Yes, sir.

15 Q And what was your comment when you looked at Mr. Flynn's
16 picture?

17 A From the six photos I looked at I did not see the person
18 who broke into the house I was in on 5-3-99. And I'm
19 referring to the person that was unmasked.

20 Q All right.

21 And you didn't say but the top guy in the middle has the
22 same kind of eyes, did you?

23 A Actually I told the police officers that he was very
24 familiar to me but I was not sure from where, but no, I did
25 not sign a statement that that was him at the time because I

TONYA MICHELE HOLBROOK - CROSS BY MR. CRUMRINE

1 was unsure.

2 Q My question was, you didn't tell him this guy's eyes
3 looked like the fellow that night, did you?

4 A No.

5 Q You didn't say this guy's hair is the same color as that
6 fellow. By the way, he does have brown hair, I just
7 remembered since that night?

8 A All the hair is the same color in the picture. Black
9 and white. And so are their eyes. I wouldn't have been sure
10 of any color distinction.

11 Q All right.

12 The -- let me take that back. Is it true that you gave
13 no clothing description or shoe description on these
14 individuals?

15 A Yes, sir.

16 Q And did you tell deputy --, Detective Whisenaut that
17 these individuals had on ski masks, the two masks?

18 A I don't remember how I described them. Is that in my
19 statement?

20 Q I'm looking at the police report.

21 A I'm not actually sure or positive.

22 Q Is it possible you told her they were wearing ski masks?

23 A Possible. Yes.

24 Q All right.

25 A At the time I couldn't remember what type of masks they

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TONYA MICHELE HOLBROOK - CROSS BY MR. PENNINGTON

1 had on.

2 MR. CRUMRINE: I appreciate your answers. I have no
3 other questions.

4 MR. PENNINGTON: Your Honor, please.

5 CROSS-EXAMINATION

6 BY MR. PENNINGTON:

7 Q Ms. Holbrook, I just have a few questions and I'll move
8 over here so you don't get neck strain looking at me over
9 there.

10 There is no doubt that this whole episode began when a
11 white male came into your bedroom that night, right?

12 A Yes, sir.

13 Q And that was very -- very frightening?

14 A Yes, sir.

15 Q And that white male was not wearing a mask?

16 A No, sir.

17 Q And had a gun?

18 A Yes, sir.

19 Q Do you recall whether you could describe anything about
20 that gun?

21 A Um, I don't -- I wouldn't even begin to know how to
22 describe a gun to you. I've only seen a couple of them. It
23 was a handgun. It was black to my knowledge.

24 Q Okay. And he told you in kind of unpleasant language to
25 hang up the phone?

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TONYA MICHELE HOLBROOK - CROSS BY MR. PENNINGTON

- 1 A Yes, sir.
- 2 Q And you noticed as he stood there and he talked to you
- 3 that there was something about his neck?
- 4 A Yes, sir.
- 5 Q And that was what appeared to be either a hickey or
- 6 birth mark?
- 7 A Yes, sir.
- 8 Q And that was something that really you thought might be
- 9 important?
- 10 A Yes, sir.
- 11 Q And you relayed that to the police?
- 12 A Yes, sir.
- 13 Q And you were later told that there was a witness or I
- 14 should say a defendant who was arrested who had a hickey?
- 15 A Probably.
- 16 Q And that was Michael Griffin?
- 17 A Yes, sir.
- 18 Q You did not see him wearing any gloves, did you?
- 19 A I didn't -- I didn't -- I don't recall. Don't remember.
- 20 Q You recall seeing Mr. Michael Griffin go around your
- 21 bedroom and pick up items that belonged to your husband?
- 22 A He picked up items that were on a dresser next to him.
- 23 Q Right.
- 24 And do you recall telling the deputy who was
- 25 interviewing you that night that he didn't have on any gloves

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TONYA MICHELE HOLBROOK - CROSS BY MR. PENNINGTON

1 on page 3 of your statement?

2 A I think -- to my memory he did not have gloves on. But
3 I don't remember what I actually said at the time.

4 Q Okay. Well, that is not terribly important, but you
5 just don't remember gloves?

6 A No, sir.

7 Q And it was clear that that unmasked young fellow wanted
8 drugs and money?

9 A Yes, sir.

10 Q And then later you indicated that you saw Chris Gorski
11 come back and he was accompanied by two other people but
12 those guys had masks?

13 A Yes, sir.

14 Q And even then, even at that point, the fellow in the
15 bedroom that had been the first one in there with you was
16 asking the questions, where is the drugs and money, I know
17 you know where it is. Isn't that what happened?

18 A He was asking questions but the guys who were in the
19 doorway were asking Mr. Gorski questions, where the drugs and
20 money were. And I'm not sure which one of them said what.

21 Q Okay. The three burglars then ended up leaving your
22 bedroom, right?

23 A Yes, sir.

24 Q And you retreated to your bathroom and locked the door
25 to protect you and your son?

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TONYA MICHELE HOLBROOK - REDIRECT BY MR. HOUSEAL

1 A Yes, sir.

2 Q And it was from that vantage point that you heard the
3 shots out in the living room?

4 A Yes, sir.

5 Q Thank you. I believe that's all the questions I have.
6

REDIRECT EXAMINATION

7 BY MR. HOUSEAL:

8 Q Michele, you testified earlier that Chris and Porter
9 were watching TV?

10 A Yes, sir.

11 Q Is that in your statement?

12 A I think so.

13 Q Referring to page 2 of 7. Is that in your statement?
14 A Yes, sir.

15 Q You also testified that you had gone to bed around 10:30
16 p.m. with your two-year old; is that in your statement?
17 A Yes, sir.

18 Q You also testified that you dialed 911, is that in your
19 statement?

20 A Yes, sir.

21 Q You testified that a white male with a gun came into the
22 room and told you to hang up the phone; is that in your
23 statement?

24 A Yes, sir.

25 Q You also testified that that person, a white male

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1 without a mask, was young looking, had real short hair,
2 thought it was brown; is that in your statement?

3 A Yes, sir.

4 Q Testified he had a hickey on his right side; is that in
5 your statement?

6 A Yes, sir.

7 Q You testified that he had a gun; is that in your
8 statement?

9 A Yes, sir.

10 Q You testified that you asked him not to hurt you or your
11 son and that he had told you to shut up; is that in your
12 statement?

13 A Yes, sir.

14 Q You testified that he was asking you where the drugs and
15 money were and you were saying there wasn't anything here; is
16 that in your statement?

17 A Yes, sir.

18 Q You testified that you had pointed to a safe at that
19 point and told him look in there, you can even look in there,
20 there's nothing in there; is that in your statement?

21 A Yes, sir.

22 Q You testified that Porter you thought didn't even have
23 the combination; is that in your statement?

24 A Yes, sir.

25 Q You testified that when Chris entered the room he looked

000211

1 at you and you could tell that he had blood on his shirt; is
2 that in your statement?

3 A Yes, sir.

4 MR. CRUMRINE: Your Honor, I would object to this line
5 of questioning.

6 THE COURT: Well, what's the -- what's the -- what's the
7 purpose of it? You've asked all these questions.

8 MR. HOUSEAL: I'm asking her on redirect their -- their
9 cross-examination of her was trying to show that she made
10 statements that weren't in her statement and I am showing --
11 asking her questions to establish --

12 THE COURT: Any objection to publishing the statement?

13 MR. CRUMRINE: I don't think I have an objection to it,
14 Your Honor.

15 MR. PENNINGTON: I don't believe so.

16 MR. CRUMRINE: That might be a lot easier than them
17 doing it this way.

18 THE COURT: Read the statement if you want to.

19 BY MR. HOUSEAL:

20 Q Michele, will you read the statement for us?

21 A "On May 3rd, 1999, I was at 4512 Outwood Drive,
22 Charleston, South Carolina, around 10 p.m. Porter, Chris
23 were watching wrestling on TV and I had went to bed around
24 10:30 p.m. with my 2-year-old.

25 They must have kicked in the door because I didn't hear

000212

1 a knock. All of a sudden I heard approximately four shots
2 fired. It sounded like there was also a fight. A lot of
3 stuff was being banged around.

4 I heard Porter yell but I couldn't hear what he said. I
5 picked up the phone and dialed 911.

6 A white male with a gun came into the room and told me
7 to hang up the phone. I think he may have hung it up for me
8 but I may have hung it up.

9 The white male was around 5'9, skinny, not real skinny,
10 looked about 19. No facial hair, short hair, brown. I don't
11 remember his eyes.

12 He had a hickey on his right side. If it wasn't a
13 hickey it was a birth mark. It was a big hickey. I believe
14 he had on a sweat shirt. I don't think he had on any
15 gloves. He had a gun in his left hand.

16 That's where it was, his left hand, but I'm not sure
17 why.

18 I asked him not to hurt me or my son and he told me to
19 shut up. He was real serious and obviously wanted me to take
20 him seriously.

21 He said where is the drugs and money, I want all the
22 drugs and money. I said there's nothing here. He said don't
23 lie to me.

24 I then told him that I didn't live there but I lived
25 down the road. Then I pointed to the safe that was in the

1 closet. The closet was open. I said there's a safe right
2 there but there's nothing in it.

3 He told me to open it. I told him that Porter lost the
4 combination but that he could turn it over and feel that
5 nothing was in there if he didn't believe me.

6 He then started picking up things on the tall dresser in
7 the room and putting them down. He picked up Porter's watch
8 and bracelet and I'm almost sure he put them right back down
9 and didn't take it. They are worth about 3000 dollars.

10 Chris entered the room at that time. He didn't say
11 anything. He looked at me. He looked like -- he had blood
12 on his shirt at that time.

13 At that time a boy with a black mask walked to the
14 doorway. I thought he had a gun and I think he was a black
15 male. I don't know why I thought that unless I saw his hands
16 or eyes.

17 Then the other person had a mask on but I know it was
18 not black. It may have been white and I think he was white.

19 I never saw clothes or anything on him, just the mask.
20 At that point, I asked Chris had Porter been shot and he shook
21 his head yes.

22 I was trying to cover my son and I was sitting on the
23 bed the whole time.

24 The white man without the mask said to Chris, where is
25 all the money and drugs, I know you know where it is. Chris

1 said I don't know, there's nothing here, I swear.

2 He was so scared. I could see it in his face. After
3 that I don't remember or who but Chris and the three other
4 boys ended up back in the living room and I was all alone.

5 Then I heard at least four shots fired. It almost
6 sounded like it was more than one gun. I picked up my son
7 and went into the bathroom and I locked the bathroom door and
8 listened to see if it was quiet.

9 I heard a car on the street behind Outwood, it sounded
10 like a car flying down the road. I came out of the bathroom
11 and went to the phone beside the bed and called 911.

12 After I called 911 I went into the living room and I saw
13 Chris lying on the floor on his stomach and I assumed he
14 wasn't alive because he wasn't moving or breathing.

15 And I saw blood on the back of his head. I went outside
16 and began screaming for the neighbors to help. I saw blood
17 on the floor where Porter was sitting. Couldn't find Porter
18 anywhere around the house.

19 The neighbor asked if I called 911 and I told him yes.
20 I went back in the house and the phone was ringing, they hung
21 up before I could pick it up.

22 I called my mom. When I hung up from her a girl named
23 Gabby called and asked for Porter. I told her he wasn't
24 there and hung up the phone.

25 The Mount Pleasant police officer came down and said

1 Porter was all right. I remember Porter talking to someone
2 earlier in the night and they were going to come by. I
3 thought it was his dad, but whoever it was didn't come by."
4

5 That's it.

6 MR. HOUSEAL: Thank you, Michele. I don't have any
7 further questions.

8 THE COURT: Anything further?

9 MR. PENNINGTON: No, sir.

10 MR. CRUMRINE: Your Honor, we have just one or two
11 follow-up questions.

12 THE COURT: Go ahead.

13 RECROSS-EXAMINATION

14 BY MR. CRUMRINE:

15 Q You described the first individual in your statement as
16 having brown hair. Are you aware that he actually has blond
17 hair, Michael Griffin?

18 A I don't remember his hair. But yes, sir, he has dirty
19 blond hair, dirty brown hair.

20 Q Can you tell us whether you talked with Sergeant Isgett
21 at the police station about this matter?

22 A I spoke --

23 MR. HOUSEAL: Your Honor, I don't believe this is an
24 appropriate line of questioning on recross.

25 THE COURT: Well, if she talked -- I'll allow it. Go

000216

TONYA MICHELE HOLBROOK - RECROSS BY MR. CRUMRINE

1 ahead.

2 MR. CRUMRINE: They went through the whole thing again
3 on the statement, Your Honor.

4 MR. HOUSEAL: But this has nothing to do with who she
5 talked to at the police station about a guy named Jason
6 Lyons.

7 THE COURT: He just asked a question. Did she talk to
8 this sergeant. And her answer is yes. Now, I don't know
9 where he's going from here.

10 BY MR. CRUMRINE:

11 Q Did you tell Sergeant Isgett that there was -- one
12 suspect was black, one was white, you were not sure of the
13 last subject?

14 A I don't remember.

15 Q Was it possible that you did?

16 A I mean, I don't remember -- I don't even remember which,
17 talking to Isgett and know that he was Isgett. I talked to
18 several officers and I don't remember what I said.

19 I don't actually even recall, um, Isgett questioning me
20 at all. The only time I thought I ever actually saw him was
21 when we spoke to Jason Lyons on the phone.

22 But I don't remember him actually questioning me about
23 the descriptions of the defendants but maybe he did. But
24 that's -- I don't remember.

25 MR. CRUMRINE: All right. I have no other questions.

1 Thank you.

2 THE COURT: All right. You can come down.

3 How about approach the bench for a minute, Solicitor?

4 (5:25 p.m.)

5 THE COURT: You got anybody you have to have today or
6 can we break at this time? Any objection to breaking?

7 MR. PENNINGTON: No, sir.

8 THE COURT: Good time to break. I'm going to send you
9 about your business. Remember what I told you, when you come
10 back tomorrow morning go straight to your jury room. Don't
11 be hanging around the courthouse. Somebody might be talking
12 about the case. Don't use the TV or radio or newspaper about
13 the case. And be sure to not discuss it among yourselves or
14 anybody else.

15 All right. They want you to start at 10 o'clock and not
16 9:30. So I got something else to do in the morning at 9:30.
17 So meet me in the jury room at 10 o'clock. Have a good
18 night. Everyone else remain seated. How about just be sure
19 you got your pads so you'll have them in the morning.

20 He's going to keep them for you.

21 (5:25 p.m., outside the presence of the jury.)

22 THE COURT: Solicitor, I think we have arraignments at
23 8:30 so we don't start until 10 o'clock.

24 MR. HOUSEAL: That's fine.

25 THE COURT: Any objection to that?

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TONYA MICHELE HOLBROOK - RECROSS BY MR. CRUMRINE

1 MR. HOUSEAL: No objection.

2 MR. PENNINGTON: That's fine. I think that's the way it
3 is.

4 THE COURT: All right. Sir, move him out. Officers,
5 where are the officers?

6 All right. Sir, go ahead and move him out. Everyone
7 else remain seated for the time being.

8 (Court adjourned for the evening.)

9 FOR THE PROSECUTION: I have no further questions.

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CERTIFICATE OF REPORTER

I, the undersigned, Suzette R. Weis, Official Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Criminal Court for Charleston County, South Carolina, on the 4th day of December, 2000.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

January 18, 2001

Suzette R. Weis
Suzette R. Weis
Circuit Court Reporter

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,
5 Plaintiff,

6 v.

7 ROBERT ANTONIO STEED,
8 Defendant.

TRANSCRIPT OF RECORD
VOLUME III OF VII
CASE NOS.: 99-GS-10-4579, 4580
99-GS-10-4581, 4582, 00-GS-10-5018

9
10 STATE OF SOUTH CAROLINA,
11 Plaintiff,

12 v.

13 MICHAEL BRIAN FLYNN,
14 Defendant.

TRANSCRIPT OF RECORD
CASE NOS.: 99-GS-10-4334, 4520
99-GS-10-4557, 4677, 00-GS-10-5016

15 TRANSCRIPT OF TRIAL TESTIMONY

16 December 5, 2000, Morning Session

17 B E F O R E:

18 THE HONORABLE LUKE BROWN, Judge, and a jury.

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

20 SEAN HOUSEAL, BRUCE DURANT
Attorneys for the State

21 ASHLEY PENNINGTON, LESLIE SARJI
22 Attorneys for the Defendant Steed

23 JOHN CRUMRINE
Attorney for the Defendant Flynn.

24
25 SUZETTE R. WEIS, CSR, RPR, CSR-335
Circuit Court Reporter

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	<u>NO.</u>	<u>DESCRIPTION</u>	<u>FOR I.D.</u>	<u>IN EVID.</u>
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MORNING SESSION, DECEMBER 5, 2000

1
2 THE COURT: I want to remind you all that I don't have a
3 law clerk or secretary. I don't need one and I don't need
4 jury instructions. It sounds pretty simple. But I welcome
5 anything you want to give me.

6 So keeping that in mind, I just won't ask you any more.
7 I'll tell you at the end of the case what I think the jury
8 instructions ought to be. But then I always got an open
9 air.

10 Anything from the solicitor's office before we bring the
11 jury out?

12 MR. HOUSEAL: Not that I can think of, Your Honor.

13 THE COURT: Gentlemen?

14 MR. CRUMRINE: Your Honor --

15 MR. HOUSEAL: Well, let me give these while we're
16 dealing with it so she can mark them for identification
17 beforehand.

18 THE COURT: Well, don't -- go ahead.

19 MR. CRUMRINE: Yes, Your Honor.

20 We have been informed that the four codefendants who are
21 expected to testify for the State are here, all in the same
22 cell. We move to have them sequestered. Certainly at least
23 after they testify so they don't -- are unable to go back and
24 compare notes and prepare for their -- for the
25 cross-examination.

1 I think it would be important to do beforehand as well.

2 MR. DURANT: Unfortunately, Judge, we just got two
3 cells.

4 THE COURT: I got to -- always have a security problem,
5 which I don't fool with security and they don't fool with
6 me.

7 What -- what -- what facilities do you have? You don't
8 have but one cell, do you?

9 MR. DURANT: We have two back there.

10 THE BAILIFF: We can take care of them. After each one
11 testifies we'll put them in a separate cell. Once they have
12 testified they will go into a separate cell.

13 THE COURT: Is that what you want?

14 MR. CRUMRINE: I think that will take care of it, Your
15 Honor.

16 MR. PENNINGTON: That will be fine.

17 THE COURT: That will take care of it.

18 Anything else?

19 MR. CRUMRINE: No, sir, not from defense.

20 THE COURT: Bring the jury out.

21 (In the presence of the jury.)

22 (State's Exhibit Numbers 10, 11, 12, 13, 14
23 were marked for identification.)

24 THE COURT: I hope you had a good night, Mr. Foreman,
25 ladies and gentlemen.

PORTER WALKER - DIRECT BY MR. HOUSEAL

1 I forgot yesterday but my clerk here is an experienced
2 chef and I meant to have him cook something for you, sausage
3 and biscuits, things like that. But I forgot.

4 So if you remind me tonight I'll tell him and he'll get
5 up tomorrow morning at 4 o'clock and cook it for you.

6 (Laughter).

7 THE COURT: All right. Ready to go forward, Solicitor?

8 MR. HOUSEAL: Yes, sir, Your Honor.

9 THE COURT: Call your next witness.

10 MR. HOUSEAL: Thank you. State calls Porter Walker.

11 PORTER SCOTT WALKER,

12 was sworn and testified as follows:

13 THE WITNESS: My name is Porter Scott Walker,

14 W-A-L-K-E-R.

15 DIRECT EXAMINATION

16 BY MR. HOUSEAL:

17 Q Porter, how old are you?

18 A 24, sir.

19 Q Do you have any kids?

20 A Yes, sir.

21 Q How many?

22 A One, sir.

23 Q What's his name?

24 A Torin Scott walker.

25 Q How old is he?

PORTER WALKER - DIRECT BY MR. HOUSEAL

- 1 A He's four as well.
- 2 Q Where were you living, Porter, in May of 1999?
- 3 A 4512 Outwood Street, Woodside Manor neighborhood.
- 4 Q Were you working at the time?
- 5 A Yes, sir.
- 6 Q Where were you working?
- 7 A Working for Herrings.
- 8 Q Doing what?
- 9 A Vinyl siding. Building room additions. Odds and ends,
- 10 stuff like that.
- 11 Q Do you recall the night of May 3rd, 1999?
- 12 A Yes, sir, of course.
- 13 Q What were you doing that night?
- 14 A Um, sitting around watching some wrestling. Waiting for
- 15 my father. Have friends come over so we could watch the
- 16 wrestling match.
- 17 Q Who was at your house?
- 18 A Um, Michele Holbrook; my son, Torin Walker; Mr.
- 19 Christopher Gorski.
- 20 Q Michele is your girlfriend?
- 21 A Yes, sir.
- 22 Q How long had you known Chris?
- 23 A I'd say at that time about maybe a year and a half, two
- 24 years.
- 25 Q How did you meet him?

PORTER WALKER - DIRECT BY MR. HOUSEAL

1 A Um, we lived in a duplex together in College Park. He
2 lived with a couple navy buddies. We lived in a duplex
3 adjoining his.

4 Q What were Michele and Torin doing that night?

5 A Um, basically just eating dinner, sitting around,
6 watching a little bit of TV, um, making cookies, stuff like
7 that.

8 Q Do you remember about what time they went to sleep?

9 A Yes, sir.

10 Q About what time was that?

11 A I would say around 10:30.

12 Q And you and Chris were watching TV at the time?

13 A Yes, sir.

14 Q In which part of the house?

15 A The living room, sir.

16 Q Did you hear a knock at the door?

17 A Yes, sir.

18 Q Roughly what time would you say that knock --

19 A Um, maybe about 15 minutes after Michele went to bed.

20 Q And tell the jury what happened as you heard the knock
21 at the door?

22 A Um, I heard the knock on the door. I asked who it was.
23 They said it was Mike, like I knew him. So I opened the
24 door. So, asked what's up. He said is Jennifer around? And
25 I said, no man, you got the wrong house. And he said all

PORTER WALKER - DIRECT BY MR. HOUSEAL

1 right. And I went to close the door and as I got the door
2 closed it was kicked back in and I was shot through the
3 chest.

4 Q The same person that knocked on the door kicked the door
5 in.

6 A Yes, sir.

7 Q Describe how many people you saw at the door?

8 A Um, I only saw one person at the door. Eventually as I
9 closed the door, you know, a black male kicked the door in
10 and shot me in the back.

11 Q Could you show the jury where you were shot?

12 A Yes, sir. The bullet went in there (Indicating) and it
13 ricocheted around and it's still in my back.

14 Q It's still in your back?

15 A Yes, sir.

16 Q The man that knocked on the door, is he a white male or
17 a black male?

18 A White male.

19 Q Did he have a mask on?

20 A Yes, sir.

21 Q Did the black male who kicked his way, forced his way in
22 the door and shot you, have a mask on?

23 A Not really a mask, it was more of a bandana he held over
24 his mouth.

25 Q Okay. How much of his face was covered by the bandana?

PORTER WALKER - DIRECT BY MR. HOUSEAL

1 A Just basically his mouth and cheeks. I could see from
2 his nose up.

3 Q Okay. And you said he was holding it on there?

4 A Yes, sir.

5 Q And what was he doing with his other hand?

6 A Pointing a gun at me; shooting at me.

7 Q Did you get a good look at the gun?

8 A Yes, sir.

9 Q How would you describe the gun and how do you recall the
10 gun appearing?

11 A Um, black 9 millimeter.

12 Q What was the lighting like on the porch or right inside
13 the door when you first stood there?

14 A There was enough light where you could write a letter.

15 Q Okay. How about inside the living room area where the
16 TV was?

17 A About the same. I have a big screen TV. There was
18 enough lighting, like I said, to write a letter.

19 Q Okay. And as you were shot, what did you do?

20 A Um, I seen him pull the gun out as he come through the
21 door. I figured he was going to shoot me anyways so I just
22 turned and tried to drop to the ground. And -- and I guess
23 the bullet hit me. And as I fell to the ground he shot again
24 at my head. And there was other shots from behind him as
25 well. I think one struck Christopher Gorski in the chest as

1 well.

2 Q Okay. When you fell to the ground, where exactly in the
3 house were you when you were on the ground?

4 A Basically in front of my television.

5 Q How close would you estimate the black male that had the
6 bandana over his face got to you?

7 A Um, I imagine from -- from what I can remember, probably
8 within reaching distance. He was bent over screaming in my
9 face, not to look at his face and to keep my mouth shut.

10 Q Were you lying on your stomach or on your back?

11 A On my back, sir.

12 Q And he was where in relation to where you were?

13 A Probably standing down from my feet over the top of me.

14 Q And he was pointing the gun at what part of your body?

15 A Um, it really wasn't a -- it was moving all around. He
16 never really, you know, had it stuck at one point.

17 Q Okay.

18 And can you estimate how many seconds maybe you were
19 looking directly at his face?

20 A Um, I would say maybe 30. It felt like, you know,
21 forever. But 30 would be the max, I imagine.

22 Q You ever been shown a photo line-up with the picture of
23 that person in it and asked if you could identify them?

24 A No, sir.

25 Q You see that man in the courtroom?

1 A Yes, sir.

2 Q Where is he?

3 A (Indicating).

4 Q Anything about him that -- which guy are you pointing to
5 exactly?

6 A Um, Mr. Steed.

7 Q And is there something about him that you remember

8 specifically that makes you certain that that's who it is?

9 A Yes. He had rough complexion on his face and his eyes.

10 Q What is it about his eyes that you recall?

11 A Well, personally myself I have a man standing over me
12 that has already shot me once I'm not going to forget his
13 eyes.

14 Q Okay. What was he saying to you when he was standing
15 over you with the gun?

16 A Um, don't look at my F-ing face. Where is the money?
17 Where is the drugs? Um, get up. Show me where it's at.
18 Basically stuff like that.

19 Q What were you saying to him?

20 A You just shot me kid.

21 Q Did you -- well, describe for the jury what happened
22 then?

23 A Um, about that time Mr. -- I reached in my back pocket
24 and I grabbed out whatever I could, put it on the table.

25 Q What was that?

PORTER WALKER - DIRECT BY MR. HOUSEAL

1 A Two, two dollar bills and a silver dollar.

2 Q Are you sure that you had that in your pocket?

3 A Yes, sir, absolutely sure.

4 Q How are you sure?

5 A Well, they pretty much went with me everywhere. Pretty
6 much something I just kept around that I obtained over the
7 years. Lucky pieces of mine.

8 Q Okay. And what happened then?

9 A Um, Mr. Gorski then got up, said okay, I'll take you to
10 the back of the house. I'll show you that we don't have
11 anything here. I'll show you. Just -- just cool off.

12 Q Did you look at Chris? Did you talk to Chris at all?

13 A I was able to look back at Chris and make some eye
14 contact. We knew we had to do something or they were going
15 to kill everybody in the house.

16 Q Where was he when you made that eye contact with him?

17 A Directly behind me sitting on the couch.

18 Q So he took them to the other part of the house?

19 A Correct, sir.

20 Q Before that happened, how many people did you see come
21 in the front door?

22 A Um, two for sure and then I'm almost positive I saw a
23 third come in. But I didn't get a good look at the third
24 person.

25 Q Okay.

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PORTER WALKER - DIRECT BY MR. HOUSEAL

1 When -- well, what was the second -- the first person
2 that knocked on the door; this is a white male without a
3 mask?

4 A Correct.

5 Q Do you recall seeing him when you were lying on your
6 back and Mr. Steed had the gun pointed over you?

7 A Correct.

8 Q Do you remember where that person was in the house at
9 that time?

10 A The third or second person?

11 Q The first person, the guy that knocked on the door.

12 A Um, I imagine from -- from where I heard the gunshot
13 come from that I believe hit Christopher Gorski he was behind
14 my couch.

15 Q Were you ever shown a photo line-up of that person and
16 asked if you could identify him?

17 A No, sir.

18 Q Do you recall seeing a gun in possession of either that
19 first person, the white male without the mask, or the third
20 person that came into the house?

21 A Um, I don't exactly remember for sure seeing a gun with
22 the third person. But I know for a fact the other two men
23 had guns.

24 Q Did you see Chris give any money or anything to any of
25 the other people?

PORTER WALKER - DIRECT BY MR. HOUSEAL

1 A I didn't actually see him. But I heard him say, here
2 man, this is all the money I got. And he had his wallet. I
3 imagine he said here's my wallet, that's all I got, take it,
4 whatever. We weren't really arguing too much at the time.

5 Q When Chris took them to the other part of the house what
6 did you do?

7 A Um, I saw an opportunity to leave the house and go for
8 some help. We were pretty much helpless in that situation.

9 Q Did you have a gun in the house to protect yourself
10 with?

11 A No, sir.

12 Q Did you ever have a gun in the house to protect yourself
13 with?

14 A Yes, sir, I have.

15 Q When was that? How long prior to this incident?

16 A Probably six months before my son came back.

17 Q And why did you not have one that night or what's the
18 significance of your son coming back.

19 A I don't believe in having weapons around my son.

20 Q So after you ran out of the house, did you hear or see
21 anything from the inside of the house?

22 A Yes, sir.

23 Q What was that?

24 A Um, as I got down to another house I saw a tremendous
25 light show coming out of my den over and over and over, fire,

1 bangs, shooting.

2 Q Did it sound like it came from one gun?

3 A No, sir.

4 Q What did it sound like?

5 A It sounded like over fire, guns over guns. I couldn't
6 tell if it was two or three but I knew it was more than one.

7 Q Where did you go as you were hearing that?

8 A Um, to a Mount Pleasant police officer's house.

9 Q You heard yesterday Michele testify about Jason Lyons.
10 He was a friend of yours?

11 A Yes, sir.

12 Q And that he had been arrested on a drug charge?

13 A Yes, sir.

14 Q Was he ever selling drugs out of your house or marijuana
15 out of your house?

16 A I imagine Jason could have done something like that.

17 Q How long ago or how long prior to May 3rd do you think
18 that occurred?

19 A Maybe a month. Maybe -- I mean a month and a week,
20 somewhere around there.

21 Q What drugs was he selling?

22 A Probably marijuana, if anything. That's about all Jason
23 ever messed with.

24 Q Did you ever see him mess with crack cocaine or any
25 harder drugs?

PORTER WALKER - DIRECT BY MR. HOUSEAL

1 A No, sir.

2 Q You have a criminal conviction on your record as well,
3 don't you?

4 A Correct, sir.

5 Q Explain what that is for.

6 A Um, me and my cousin had a --

7 MR. PENNINGTON: Objection, Your Honor.

8 MR. HOUSEAL: What's the charge?

9 MR. PENNINGTON: Improper.

10 MR. HOUSEAL: Let me rephrase the question.

11 BY MR. HOUSEAL:

12 Q What's the charge that you were convicted for?

13 A Grand larceny.

14 Q Of?

15 A Of motor vehicle.

16 Q You stole a car or stole something in the car?

17 A I stole something in the car, sir.

18 Q So are you sure that the charge is grand larceny of a
19 car?

20 A I'm almost positive that's what it is. It's either that
21 or breaking and entering.

22 Q Could it be breaking into the car rather than stealing
23 the car?

24 A Right. Correct.

25 Q And that's called breaking into a motor vehicle?

PORTER WALKER - DIRECT BY MR. HOUSEAL

- 1 A Yes, sir.
- 2 Q Okay. Now, you didn't steal the car?
- 3 A No, sir.
- 4 Q I would like you to take a look at this diagram. What
- 5 does that look like to you?
- 6 A It looks like the inside of my house.
- 7 Q That is the house on Outwood Street?
- 8 A Yes, it is.
- 9 Q Do -- you use that laser pointer that you have to show
- 10 the jury where the front door is?
- 11 A (Indicating) Right there, sir.
- 12 Q Okay. And where were you and Chris sitting when you
- 13 heard the knock at the door?
- 14 A (Indicating) I was sitting right there. And Mr. Gorski
- 15 was sitting right there. There's a console in between
- 16 separating the two recliners.
- 17 Q What is that rectangular --
- 18 A That there would be my coffee table.
- 19 Q Is that -- well, show the jury where you were lying on
- 20 your back after you had been shot by the defendant, Mr.
- 21 Steed?
- 22 A The table was more straight instead of caddy corner like
- 23 that.
- 24 Q Okay.
- 25 A I would have been -- if this was straight I would have

PORTER WALKER - DIRECT BY MR. HOUSEAL

- 1 been on that side with my head up under the -- halfway under
2 the table and halfway out.
- 3 Q Why did you have your head halfway under the table?
- 4 A Hell, man, I was hoping he wouldn't shoot me again.
- 5 Q What is the surface of the table?
- 6 A It's glass.
- 7 Q Could you see up through the table?
- 8 A Um, not really too well.
- 9 Q But is it dark glass, light glass?
- 10 A Yeah, it's somewhat dark glass.
- 11 Q Okay.
- 12 Now, where was Michele at the time that they came into
13 the house?
- 14 A In the bedroom with Torin.
- 15 Q Which is where on that diagram?
- 16 A (Indicating) Okay.
- 17 Q Let me pull this diagram over so you can see that part
18 of the house.
- 19 A The rear room right there.
- 20 Q What's this area over here?
- 21 A I believe that's the garage.
- 22 Q Okay. And show me again where Chris was when you were
23 on your back on the carpet?
- 24 A (Indicating) He was about right there.
- 25 Q Okay. And that's where he was when you looked over at

PORTER WALKER - DIRECT BY MR. HOUSEAL

1 him?

2 A Correct, yes, sir.

3 Q And describe where -- the direction he walked with the
4 two people -- or three people rather that were in the house
5 at the time?

6 A (Indicating).

7 Q Okay.

8 A Just like that.

9 Q And you got up and went out which door?

10 A The front door.

11 Q Okay.

12 I'm going to show you what's been marked as State's
13 Exhibit 12 for identification, ask if you can take a look at
14 that and tell me what it depicts?

15 A It looks like a bunch of houses. And it looks like the
16 back yard of my house.

17 Q Okay. Show you State's Exhibit 14, ask you if you can
18 identify what that photograph depicts?

19 A Um, looks like an areal photo of the front of my home.

20 Q State's Exhibit 13, take a look at that, please. What
21 does that depict?

22 A It looks like a higher areal photo of my home,
23 neighborhood in general.

24 Q Can you see State's Exhibit 11, take a look at that,
25 show me what that depicts?

000243

PORTER WALKER - DIRECT BY MR. HOUSEAL

1 A Um, that looks like a church that is behind my
2 neighborhood that is off of Lincolnville Road, parallel to
3 some railroad tracks.

4 Q Okay.

5 MR. HOUSEAL: Your Honor, I would like to move to admit
6 these photographs into evidence.

7 THE COURT: Any objection?

8 MR. CRUMRINE: No objection.

9 MR. PENNINGTON: No, sir, no objection.
10 (State's Exhibit Numbers 11, 12, 13, 14
11 were admitted into evidence.)

12 BY MR. HOUSEAL:

13 Q State's Exhibit 12, Mr. Walker, do you see your house in
14 that photograph?

15 A Yes, sir.

16 Q Which one is it?

17 A Well, the one in the very middle with all the trees and
18 the brown roof.

19 Q Can you point to it with that pointer?

20 A (Indicating).

21 Q The railroad tracks in that picture?

22 A Yes, sir. See them right there.

23 Q State's Exhibit 11. Where is the church that you
24 described?

25 A (Indicating) Right there, sir.

PORTER WALKER - DIRECT BY MR. HOUSEAL

1 Q In this picture where is Woodside Manor neighborhood?

2 A Exactly across that way. That would be Outwood Drive
3 right there.

4 Q Okay. And what part of Outwood Drive, would your house
5 be on the bottom part or upper part?

6 A The upper part.

7 Q Do you know what road that is running down the middle of
8 the picture?

9 A Yes, sir. That would be Lincolnville Road.

10 Q Okay. State's Exhibit 14. Do you recognize your house
11 in that photograph?

12 A Yes, sir. That should be my house right there.

13 Q Okay. And State's Exhibit 13?

14 A I'm almost positive --

15 Q It's a little bright.

16 A I believe that's it right there. I'm almost a hundred
17 percent sure.

18 Q And the railroad track obviously --

19 A Right across.

20 Q And Lincolnville Road?

21 A Yes, sir.

22 Q The church in this picture would be in what area?

23 A (Indicating).

24 Q Thank you.

25 A Thank you.

PORTER WALKER - CROSS BY MR. CRUMRINE

1 MR. HOUSEAL: Your Honor, I don't have any further
2 questions of this -- well, hold on.

3 BY MR. HOUSEAL:

4 Q When you were inside the house lying on your back, Mr.
5 Steed standing over you, you testified that you pulled items
6 out of your pocket --

7 A Yes, sir.

8 Q -- tell me again what you did with those items?

9 A Excuse me, sir?

10 Q Tell me again what you did with those items after you
11 pulled them out of your pocket?

12 A Set them on top of the table.

13 Q Were they still on the table when you got up to run out
14 of the house?

15 A I'm not really sure. It was kind of a harry moment. I
16 would imagine not.

17 Q Did you ever get those items back from the police?

18 A No, sir.

19 MR. HOUSEAL: Thank you.

20 MR. CRUMRINE: Your Honor.

21 CROSS-EXAMINATION

22 BY MR. CRUMRINE:

23 Q Mr. Walker, John Crumrine, how are you doing today?

24 I have a number of questions.

25 First, I want to tell you I'm sorry for what happened to

PORTER WALKER - CROSS BY MR. CRUMRINE

1 you. I have to ask these questions. I think you understand
2 it's important, the accuracy of your memory and what really
3 happened that night.

4 A Okay.

5 Q The first person you told what happened to was -- was
6 your neighbor, was it not, Mr. Ritchie?

7 A If that's his name, yes, sir.

8 Q He's the Mount Pleasant police officer?

9 A Okay.

10 Q The fellow across -- was he -- does he live across the
11 street?

12 A There was a Mount Pleasant police officer.

13 Q And that's where you ran immediately after this?

14 A I didn't remember his name all that way.

15 Q And when you went to his house you told him basically
16 what had happened, didn't you?

17 A Um, yes, sir. That -- well, from what I can recall. I
18 gave him some kind of statement.

19 Q All right.

20 And isn't it true that your first statement to Mr.

21 Ritchie was that there were two black male suspects entered
22 your residence and shot you and a friend?

23 A Could have been.

24 Q And you just don't remember now?

25 A I barely remember anything from that evening except for,

PORTER WALKER - CROSS BY MR. CRUMRINE

1 you know, several, you know, things that I remembered over --
2 over a time of period passing.

3 Q All right.

4 And are you saying that you have remembered additional
5 things in the time period since this happened until today?

6 A Yes, sir.

7 Q Do you think your memory was better right after it
8 happened or, um, sometime in between?

9 A Sometime in between.

10 Q And you -- just to be fair, sometime in between allowed
11 you some time to talk with Michele Holbrook, did it not?

12 A Not before I remembered the things I was going to -- the
13 things that I remembered.

14 Q We'll get to that.

15 The other thing that you told Mr. Ritchie when you first
16 ran into him was that the suspects were wearing black ski
17 masks; isn't that what you told him?

18 A I don't remember.

19 Q You don't deny that you said that?

20 A No, sir.

21 Q And after Mr. Ritchie, Officer Ritchie, went over to try
22 to help Michele and Mr. Gorski, you stayed with Mrs. Ritchie,
23 correct?

24 A Yeah. I believe so. I know it was a woman. I don't
25 know if it was his wife or not.

PORTER WALKER - CROSS BY MR. CRUMRINE

1 Q She had you laying on the couch on your stomach?

2 A Yeah, I believe so, yes, sir.

3 Q And isn't it true that you told Mrs. Ritchie that three
4 black males came in and did this?

5 A I would not be able to recall that, sir.

6 Q All right. You -- once again, you don't deny that you
7 said that?

8 A No, sir.

9 Q Okay. Do you remember when the EMS technicians came in
10 and Mrs. Ritchie was there that you told -- made the
11 statement, um, don't worry, I know who did this, and I'm
12 going to get, and you used -- you used some curse words. You
13 said mother fuckers, didn't you? You said, I know who did
14 this, don't worry, I'm going to get those mother --

15 A I don't believe I've ever said that.

16 Q You deny that you ever said that?

17 A Yes, sir.

18 Q And while you were in there you then changed the
19 statement from three black males to -- to two black males and
20 a white male, did you do that, do you know?

21 A Sir, I really don't recall what I said at that time.

22 Q All right.

23 After that time when you were at the hospital, Detective
24 Tittle met with you, did he not?

25 A If that was his name. I don't really remember much then.

PORTER WALKER - CROSS BY MR. CRUMRINE

1 Q All right.

2 You met with the detective and he tried to take a
3 detailed statement from you of what occurred, do you remember
4 that?

5 A I imagine so. I don't really remember too much in the
6 hospital.

7 Q I see.

8 Well, from the incident itself, that was also a pretty
9 wild scene and it is kind of hard to remember details from
10 that too, isn't it, under those conditions, I mean, in all
11 fairness?

12 A Yes, sir. Yes, sir.

13 Q And with Officer Tittle, did you tell him that the first
14 white male had short dirty blond hair?

15 A I imagine I could have. If you have a copy of my
16 statement I'll look at it. I'm not sure.

17 Q This isn't a statement, this is Officer Tittle's notes.

18 A Okay.

19 Like I said, I don't remember talking to anybody much
20 that night.

21 Q All right.

22 Do you recall telling Detective Tittle that the second
23 subject, um, you did not get a good look at him?

24 A I don't recall making any statements at all to Detective
25 Tittle that evening, sir.

PORTER WALKER - CROSS BY MR. CRUMRINE

1 Q You described him as a black male and that he had a hood
2 pulled up, does that ring any bells?

3 A I could have. Um, I'm not really sure.

4 Q All right.

5 And at that time you also told him that the individual
6 that came to the door -- well, strike that.

7 You told Detective Tittle you weren't sure about a third
8 guy, do you recall that?

9 A I imagine. I really don't recall a third fellow. I
10 knew there was a third fellow in there. I don't recall...

11 Q Fair enough.

12 Mr. Walker, the -- a day and a half after this happened,
13 on the 5th of May, okay, do you recall meeting with Detective
14 Phillips and Detective Garland in order to give them a
15 detailed written statement?

16 A Um, I briefly remember it. That -- I was heavily
17 medicated. I was probably on every type of painkiller. I
18 had a tube hanging out of my chest. I don't remember very
19 much about that. I can do my best to help you out with what
20 I can. But...

21 Q Thank you.

22 Have you had a chance meeting with the solicitor in
23 preparing to read over the statement that you gave to
24 Detective Garland and Detective Phillips?

25 A Yes, sir, we have discussed the statement.

PORTER WALKER - CROSS BY MR. CRUMRINE

1 Q All right.

2 Is it your position that -- can you tell us whether you
3 think your statement was erroneous?

4 A Um, I don't understand what you mean.

5 Q In error?

6 A Um, the statement that I gave Detective Phillips, um,
7 that I spoke with Mr. Houseal about is pretty much accurate
8 except for a couple minor details that I put together in my
9 head since then.

10 Q Okay. And how did you put them together in your head
11 since that time?

12 A Um, nightmares. Just basic remembering stuff, I guess
13 stuff popping in my head.

14 Q So it came from nightmares. In other words, from
15 dreams, correct?

16 A No, you know, I ain't got to be sleeping to have -- to
17 think about the man that shot me in my back.

18 Q All right. So day mares I guess instead of nightmares;
19 is that what you're saying?

20 A Whatever you want to call it.

21 Q And things popping in your head?

22 A Sure.

23 Q All right.

24 And isn't it true that by the time you gave a statement
25 to Detective Phillips and Garland you had time to be with

PORTER WALKER - CROSS BY MR. CRUMRINE

1 Michele after this incident and compare notes as to what
2 happened?

3 A I don't remember Michele Holbrook being around me too
4 much when I was in the hospital, sir.

5 Q You're saying you never talked to her in between?

6 A No, sir, I'm not saying that. I am saying I don't
7 remember talking to her. I was heavily medicated.

8 Q All right.

9 When you gave the statement to Detective Garland and
10 Detective Phillips you didn't say somebody at the door said
11 their name was Mike, you said their name was David, didn't
12 you?

13 A Could have.

14 Q Would you like to look at your statement --

15 A Sure.

16 Q -- or -- to recall that?

17 First of all, do you recognize that as the statement
18 that you gave?

19 A Yes, sir, that's my signature on there.

20 Q All right. I think that if you read just the first page
21 you can get to that.

22 A (Reading). Yes, sir. I do see that in the statement.

23 Q All right. And today you said that the individual said
24 his name was Mike, correct?

25 A Yes, sir, I did.

1 Q And -- and now you know Michael Flynn is on trial for
2 this case, don't you?

3 A Yes, sir.

4 Q All right.

5 There was -- the first individual that came in, you
6 understand his name was Michael Griffin though, correct?

7 A Correct. That's who was at my front door.

8 Q And he is the one with the big hickey on his neck?

9 A I didn't really notice a hickey, I just noticed he had
10 real nasty teeth.

11 Q And it's true you never told Officer Ritchie or
12 Detective Tittle about a hickey, did you?

13 A I have no idea.

14 Q But -- but you did put one in your statement to Officer
15 Walker a day and a half later after you --

16 A I might have.

17 Q Yes, sir. So now you do agree that you remember a
18 hickey?

19 A Um, not really. If it's in my statement I imagine I
20 said it but, you know, like I said, man, I wasn't in a great
21 statement giving type of situation.

22 Q Is it possible that your memory was affected by someone
23 else telling you what they remembered?

24 A No. My memory was affected by the medication they had
25 me on.

PORTER WALKER - CROSS BY MR. CRUMRINE

1 Q All right. And the first -- when the people came into
2 your house, they kicked the door to get in?

3 A Correct, yes, sir.

4 Q And in the interview you gave to Detective Garland and
5 Phillips, you had a chance to look at the first page, that's
6 the first time you said the black male had a scarf covering
7 his face, isn't it?

8 A If that's what is in my statement I imagine so, yes,
9 sir.

10 Q All right. And before that you didn't tell that to
11 Officer Ritchie and you didn't tell that to Detective Tittle,
12 you just said he had a hood pulled up, didn't you?

13 A I really don't remember what I said to the two fellows,
14 sir, I don't even remember speaking to them.

15 Q And do you recall saying that another subject, you
16 didn't know what color they were?

17 A Um, I don't really recall saying that, if it's in my
18 statement, so again to the best of my memory as I stated at
19 the time.

20 Q All right.

21 The, um -- would you agree that before today's statement
22 on the stand you never gave any of these officers a statement
23 that there was a bandana? You never used that term before?

24 A Um, I -- I have no idea. Scarf, bandana is about the
25 same thing, correct?

1 Q And the testimony today about the black male standing
2 over you saying don't look at my face, that was never in any
3 statements you gave before, was it?

4 A I'm not sure. If it's in my written statement then...I
5 mean, that's really the only thing I can go by is by the
6 written statement I made at the time. What I said to anybody
7 else at the time was really nothing that I can remember.

8 Q And the fact that you don't remember those, um, I think
9 that your memory of what happened in the house would be
10 better than your memory of talking to the police officers?

11 A Um, I mean, it was such a wild incident that memory was
12 really something that I wasn't trying to work on. I was
13 trying to, you know, stay alive, fight for my life, man.

14 Q All right. The -- you had a glock gun case in your
15 house, I believe?

16 A Yes, sir.

17 Q But no gun in it, correct?

18 A Yes, sir.

19 Q And it took you a little while after you left the house
20 before you went to Officer Ritchie's, didn't it?

21 A No, sir.

22 Q You went straight there?

23 A Yeah, within minutes or seconds even.

24 Q You weren't hiding in the bushes a little while?

25 A I hid on the side of the house until I heard them leave

PORTER WALKER - CROSS BY MR. CRUMRINE

1 my house and ran over a chain link fence.

2 Q Is there any doubt in your mind that this incident is a
3 drug related incident?

4 A Um, I believe it had something to do with drugs, money,
5 yes, sir, that's what they were hollering for.

6 Q And you told us a little while ago that Jason Lyons may
7 have sold drugs out of your house?

8 A Sure.

9 Q Isn't it true that you told Detective Tittle that you
10 and Lyons were selling drugs together?

11 A Not at the time, sir.

12 Q What do you mean not at the time that somebody came in
13 the house or not that day?

14 A Not at the day, within a month's period of time, month
15 and a half -- as soon as my son came home I stopped all kind
16 of crap like that.

17 Q And you're saying that was six months before that your
18 son came home, right?

19 A No. He was staying in between with Michele at her house
20 and her mom. And Torin really didn't come around too much at
21 the time.

22 Q Now, do you recall there being an attempt to break into
23 your house the day this thing happened?

24 A Yeah. I mean, I didn't think about it like that. It
25 just really didn't dawn on me it was an attempt to break in.

PORTER WALKER - CROSS BY MR. CRUMRINE

1 I mean, I guess it was, yes, sir.

2 Q And the -- do you think that attempt to break in was
3 also drug related?

4 A Um, I didn't know what to think about it at the time. I
5 just -- I didn't think of it as a big deal. They didn't get
6 in my house. I didn't know if it was drug related or not. I
7 didn't have any dope in my house, I was not too worried about
8 it. That's why I didn't make a big deal about it, it didn't
9 seem like that big of a deal.

10 MR. CRUMRINE: Beg the court's indulgence a moment.

11 THE COURT: All right, sir.

12 BY MR. CRUMRINE:

13 Q Mr. Walker, did these individuals take some drugs from
14 your house?

15 A No, sir.

16 Q Did they take some money from your house, large sum of
17 money?

18 A No, sir, whatever money I had in my back pocket,
19 whatever Mr. Gorski gave out of his wallet before he got
20 killed.

21 Q And you would have told the police if they had, right?

22 A Sure. I mean, there would have been evidence of it
23 everywhere.

24 Q All right. You wouldn't have misled them about whether
25 there were different identities, different races of people

PORTER WALKER - CROSS BY MR. PENNINGTON

1 that actually did this?

2 A Um, if I did it was in the heat of the moment. I was
3 just trying to get help. I thought I was dying. I don't
4 know what I told them. I was just trying to get medical
5 attention, the faster the better.

6 Q All right.

7 MR. CRUMRINE: I have no other questions. Thank you.

8 MR. PENNINGTON: Your Honor, please.

9 CROSS-EXAMINATION

10 BY MR. PENNINGTON:

11 Q Mr. Walker, I am going to ask you to take a look at
12 this document, just take a moment and review the portions
13 that I have highlighted for you while I get set up.

14 MR. PENNINGTON: Judge, tab 7 is what I'm going to be
15 referring to of the materials that I've supplied the court.

16 THE COURT: Thank you.

17 Which statement, Counselor?

18 MR. PENNINGTON: Tittle, Your Honor. It is a three-page
19 report by a detective of the sheriff's office.

20 THE COURT: Thank you.

21 MR. PENNINGTON: Under tab 7.

22 THE WITNESS: You want me to read all three pages, sir?

23 MR. PENNINGTON: Just the highlighted portions.

24 MR. HOUSEAL: Your Honor, I object to him requesting
25 this witness to look at a case note statement prepared by a

PORTER WALKER - CROSS BY MR. PENNINGTON

1 police officer. He's not looking at his own statement. And
2 then he's going to ask him to read it. He's asking him to
3 read that statement.

4 THE COURT: He's asked him to read it, okay?

5 MR. HOUSEAL: Not out loud.

6 MR. PENNINGTON: That's correct. I am not asking him to
7 read it out loud.

8 THE COURT: The first thing he said is read it now.

9 That's all I understood him to ask him to do except this
10 witness said, you want me to read it? And he said, just the
11 highlighted portions. That doesn't mean out loud, I don't
12 think.

13 Go ahead.

14 MR. HOUSEAL: Okay.

15 MR. PENNINGTON: Go ahead, Mr. Walker.

16 THE COURT: He says he's read them.

17 BY MR. PENNINGTON:

18 Q You have read them, Mr. Walker?

19 A The first page. If you want me to read all of them --

20 Q Yes, please, go ahead.

21 A (Reading).

22 MR. PENNINGTON: Judge, you may need to look under tab
23 6.

24 THE COURT: I was just fixing to say I didn't see it.

25 All right. And it's the report of Officer Tittle?

PORTER WALKER - CROSS BY MR. PENNINGTON

1 MR. PENNINGTON: Yes, sir.

2 THE COURT: Three pages?

3 MR. PENNINGTON: That's correct, Your Honor.

4 THE COURT: All right.

5 BY MR. PENNINGTON:

6 Q Mr. Walker, let me know when you're ready, okay?

7 Mr. Walker, clearly you suffered a gunshot wound to
8 your chest and side that night?

9 A Yes, sir.

10 Q You never experienced a loss of consciousness, did you?

11 A Um, you know, man, I was too scared to even know what
12 was going on around me let alone remember if I lost
13 consciousness. I might have when I was in the police
14 officer's house, I'm not sure.

15 Q Well, you recall the incident?

16 A Right.

17 Q And then you recall running over across the way to the
18 Mount Pleasant lieutenant's house?

19 A Correct, yes, sir.

20 Q And you knocked on the door and you asked for help?

21 A I beat on the door.

22 Q Beat on the door and asked for help?

23 A Yes, sir.

24 Q Because not only had you been shot but you were
25 concerned about what was going on in that house?

PORTER WALKER - CROSS BY MR. PENNINGTON

1 A Yes, sir.

2 Q And you indicated that you were paying enough attention
3 that you heard and saw flashes suggesting other gunshots?

4 A I really didn't have to pay too much attention to
5 remember that, it was loud and bright.

6 Q Okay.

7 And that made you concerned about your wife and child
8 as well as Mr. Gorski?

9 A Of course. Yes, sir.

10 Q And so you wanted somebody to call for help?

11 A Yes, sir.

12 Q And you described to Detective Ritchie, Lieutenant
13 Ritchie of the Mount Pleasant Police Department that people
14 with black ski masks broke in your house? I'm talking about
15 Lieutenant Ritchie now.

16 A All right.

17 I might have said that to him. Like I said, I don't
18 really remember too much. I was trying to save my life and I
19 didn't give a great amount of detail.

20 Q Now, there's no dispute that you and Jason Lyons sold
21 drugs out of that location?

22 A Um, yeah, I'm sure a little bit of drugs was sold there
23 before. But nowhere near around this time.

24 Q Okay. And of course EMS did arrive and you were
25 transported down to the hospital?

PORTER WALKER - CROSS BY MR. PENNINGTON

1 A Yes, sir, I believe so.

2 Q Okay. And the first thing is first, you were treated,
3 weren't you?

4 A Ah, I'm not exactly sure what -- what all I went through
5 when I got there. I was -- it was -- it was just all moving
6 so fast and I was just trying to keep calm.

7 Q All right. And at some point in the early morning hours
8 or the next day you had a conversation with the
9 representative of the sheriff's office, didn't you?

10 A I have no recollection of that. But if they say so then
11 I imagine I did.

12 Q All right. Well, you would have been motivated at that
13 point, wouldn't you, to try to help the police as much as
14 possible in this case?

15 A Sure. I imagine so. I just don't remember talking to
16 them.

17 Q You would have wanted to tell them anything and
18 everything that you could remember specifically about this
19 case?

20 A Um, I imagine so. I don't remember having any
21 conversation with any police hardly at the hospital.

22 Q You certainly didn't have a reason to try to lie about
23 who came in your house, did you?

24 A I don't think so, Mr. --

25 Q Okay. Now, you've had a chance to review the report by

PORTER WALKER - CROSS BY MR. PENNINGTON

1 Detective Tittle, right?

2 A The thing I just read. Yes, sir.

3 Q Now, does that refresh your recollection that during the
4 course of that conversation you were very specific in terms
5 of describing the white male who knocked on the front door.
6 You described him as 6'1, 6'2 in height, slender build, who
7 asked if Jennifer was at home.

8 A Uh-huh.

9 Q Do you recall telling him that the second subject was a
10 black male wearing a hooded shirt?

11 A No, sir, I don't recall telling him anything.

12 Q Well, you don't think that this officer just made it up?

13 A No, sir. I'm not saying that at all. I'm just saying I
14 don't remember.

15 Q Okay.

16 Q Do you recall telling him that the black male kicked
17 open the door and came in the residence with a black
18 semiautomatic pistol?

19 A Again, sir, I don't remember having any conversation
20 with any police officer.

21 Q How about when you got down to the specifics of the
22 white male having a scar near his goatee. You gave some
23 specific information on that. You remember that, don't you?

24 A I mean, now I do. I don't remember talking to any
25 officers about it. But I imagine the reason why I was so

PORTER WALKER - CROSS BY MR. PENNINGTON

1 specific because I did have a bullet in my back at the time,
2 I was scared for my life.

3 Q Uh-huh.

4 A Things didn't --

5 Q Turning to the black male that is listed on the
6 highlighted portions that you have before you, you remember
7 telling the officer, don't you, that you did not get a good
8 look at the second subject, the black male?

9 A Sir, again, I don't remember having any conversation
10 with any police officers.

11 Q And that you told him specifically that that black male
12 had his hood pulled up, when he brandished the weapon and
13 began to fire you began to run?

14 A Again, sir, I don't remember having any conversations
15 with any officers.

16 Q And that the best description you can give was between 5
17 foot 10 and 6 foot and slender?

18 A Sir, I don't remember giving this man any kind of
19 statement whatsoever.

20 Q How about when you talked with Detective Walker the next
21 day on the telephone and you repeated the same information
22 that's recited in this report, do you recall that?

23 A No, sir.

24 Q The same description that described that you stated to
25 Detective Walker that you were shot and rolled under that

PORTER WALKER - CROSS BY MR. PENNINGTON

1 glass table that you described.

2 A I might have. I just don't remember talking to him,
3 sir. I was on a lot of medication.

4 Q Now, there's no question that you did tell the
5 detectives -- let me back up. You said here in court that
6 you weren't sure if there was a third guy?

7 A No. I was sure there was a third guy, I couldn't
8 describe him very well. I heard him come in the house.

9 Q You weren't sure if he was black or white?

10 A I wasn't -- I'm not real positive of that. I would have
11 to read my statement to see on that.

12 Q Would that be helpful to look at?

13 A Yes, sir.

14 Q Could I have a copy of that? Looking at page 4 of 5.
15 Is that tab 7?

16 MR. PENNINGTON: Tab 7, Your Honor.

17 BY MR. PENNINGTON:

18 Q If you'll look at page 4.

19 MR. PENNINGTON: See if I can find that for you on the
20 page.

21 THE COURT: And this is a statement of?

22 MR. PENNINGTON: Of this witness, Porter Walker. It's a
23 five-page statement under the sheriff's office form, Your
24 Honor. And we --

25 THE COURT: I see. I got it.

PORTER WALKER - CROSS BY MR. PENNINGTON

1 MR. PENNINGTON: Page 4.

2 BY MR. PENNINGTON:

3 Q I'd refer you to just take a look and see if this
4 refreshes your recollection which would be the second and
5 third line from the top.

6 THE COURT: Page what?

7 MR. PENNINGTON: This would be page 4, Your Honor.

8 THE COURT: All right.

9 THE WITNESS: What was the question?

10 BY MR. PENNINGTON:

11 Q Top of page 4. And the question was, when you described
12 the third subject, isn't it fair to say that you didn't know
13 if he was black or white?

14 A Yes, sir. I also said I didn't get a good look at him
15 as well.

16 Q Because there was a lot happening in that house?

17 A Seemed like it.

18 Q This is a pretty shocking event?

19 A Beyond shocking, sir.

20 Q You described it as pretty harry?

21 A Yeah.

22 Q And not only was it frightening but of course you lost a
23 friend in this?

24 A Yes, sir. A dear friend.

25 Q A dear friend. Who -- not only is this upsetting and

PORTER WALKER - CROSS BY MR. PENNINGTON

1 frightening but it also makes you pretty mad, doesn't it?

2 A I haven't really had much time to deal with all this too
3 well. I don't know how I've dealt with anger management too
4 well. I haven't dealt with anger too much. It's still
5 pretty new to me.

6 Q This was May of last year?

7 A Yes, sir.

8 Q But you're not sure if you're mad or not?

9 A I imagine I have anger built up but I haven't really
10 displayed much. I don't know, my family says I am acting
11 weird sometimes. I really don't know what's going on in my
12 head about this. It's a hard incident to talk about. I have
13 more sorrow than anger.

14 Q You believe the police have the right people, don't you?

15 A Um, I wouldn't know for sure until this is -- until this
16 court is done. I hope they do, um, for the safety of the
17 public. But I wouldn't know for sure until the trial is
18 done, sir.

19 Q Now, you are familiar -- you've seen on TV or in the
20 news media that one of the techniques that police can use to
21 try to get people identified in a criminal investigation is
22 like a physical line-up where they walk out six subjects or
23 five subjects and they have you look through a one-way
24 mirror, have you seen that on TV?

25 A Yeah. But I mean, TV doesn't really tell the truth too

PORTER WALKER - CROSS BY MR. PENNINGTON

1 much. I'm not sure how it goes.

2 Q You've seen it?

3 A Sure. Yeah.

4 Q And that's a process to sort of test the memory of the
5 person to see if they can recognize the person without trying
6 to just suggest it or show -- show that one person, isn't it?

7 A Yeah. I guess so.

8 Q Okay.

9 And there's a shortcut technique again that you probably
10 have heard of called a photo line-up. The solicitor asked
11 you about a photo line-up, didn't he?

12 A Yes, sir.

13 Q A photo line-up or photo spread is the same kind of
14 thing except for instead of seeing five or six people you
15 would see five or six photographs?

16 A Okay.

17 Q Is that right?

18 A I don't know, I've never seen one, sir.

19 Q In this case no one brought around a photo spread to ask
20 you to select out of a group of unknown pictures the person
21 that shot you?

22 A No, sir.

23 Q That never happened?

24 A No, sir.

25 Q What did happen though was you were in the hospital for

PORTER WALKER - CROSS BY MR. PENNINGTON

1 about five days?

2 A Yeah. Roughly a week. Yes, sir.

3 Q Got out I believe on Saturday after this Monday event?

4 A I believe it was a Friday evening.

5 Q Friday evening?

6 A Yes, sir.

7 Q Okay. All right.

8 And I know that you were being treated and medicated but
9 they felt you were ready to go by Friday evening?

10 A Well, I was pretty anxious to get home and see my son.
11 It wasn't that they felt that I probably could go, I didn't
12 have any insurance. I had no way to pay for this. So I
13 imagine they wanted me out of there as soon as possible
14 because I wasn't paying for the bill. I had no way to.

15 Q They didn't talk to you about the victims' fund or for
16 getting compensated?

17 A Um, I don't really remember what they told me then,
18 they could have told me.

19 Q Did they pay some of your bills since then?

20 A Yes, sir. They have been paid since then.

21 Q Okay.

22 In addition to that, of course you were able to talk to
23 Michele off and on on the phone?

24 A Yeah. I imagine so. I imagined I talked to several
25 people. I don't really remember if I did or not.

PORTER WALKER - CROSS BY MR. PENNINGTON

1 Q Other family members?

2 A I imagine so.

3 Q Okay. Your family was right concerned about this,
4 weren't they?

5 A I would hope so.

6 Q And they were following the course of the progress of
7 this investigation in the media?

8 A Um, not as much as they were being worried about me. I
9 imagine they were keeping up on the news to find out if they
10 caught the murderers.

11 Q Okay.

12 And you know now that the -- on the day that you were
13 released from the hospital, the Post and Courier ran a
14 photograph of Mr. Steed in the newspaper?

15 A I've never seen any of the newspapers that I remember.

16 Q I would ask you to take a moment and take a look and see
17 if this refreshes your recollection.

18 A Sure.

19 Q Take a look at that.

20 A Okay.

21 Q Have you seen that before?

22 A Um, I might have. I don't really, you know, remember
23 looking at any newspapers.

24 Q And that would have been the Friday edition, Friday, I
25 believe that would have been the --

PORTER WALKER - CROSS BY MR. PENNINGTON

- 1 A May 7th --
- 2 Q -- the 7th?
- 3 A -- is what it says here.
- 4 Q The 7th of May, that's a front page headline?
- 5 A Yes, sir.
- 6 Q And a photograph of my client?
- 7 A Yes, sir.
- 8 Q Okay. You don't know why -- why that was put in the
- 9 newspaper, do you?
- 10 A Um, no, sir, not at all.
- 11 Q Would it have maybe had something to do with the fact
- 12 that the other picture of the four defendants at the bond
- 13 hearing, would that refresh your recollection?
- 14 A I don't understand the question.
- 15 Q I asked you why they put the picture in the photograph,
- 16 doesn't the article talk about the fact that the four
- 17 defendants called the name T-Lo?
- 18 A I would have to read the article, sir.
- 19 Q You don't recall that?
- 20 A No, sir. I haven't seen this newspaper.
- 21 Q But you knew the police were looking for the two fellows
- 22 in the photograph?
- 23 A I didn't know what the police were doing at the time,
- 24 sir.
- 25 Q Okay. Well, since then, let's not talk about that day

PORTER WALKER - CROSS BY MR. PENNINGTON

1 because you were being medicated, you were being treated, you
2 were under the doctor's care and you were going home, but
3 it's been now about 18 months since that time?

4 A Yes, sir.

5 Q And certainly since that time you've learned enough
6 about the case from -- you've had conversations with the
7 solicitor, haven't you?

8 A Yes, sir.

9 Q You've been to a couple of bond hearings?

10 A Yes, sir.

11 Q You've had an opportunity to be told what the status of
12 the case is?

13 A Um, they haven't really told us too much. I imagine
14 they don't want us to know everything for, I guess, security
15 reasons. But yeah, I've been informed a good bit about it.

16 Q Okay. Do you recall being told on the weekend after you
17 went home that the black male subject had surrendered to the
18 sheriff's department?

19 A I don't recall anything like that. I don't -- I don't
20 really recall a couple weeks of that.

21 Q Do you recall seeing him on TV from his bond hearing
22 that weekend?

23 A Not that I remember. I might have.

24 Q Okay. And you do recall after that point at no time did
25 you call up and say to the sheriff's office -- between then

PORTER WALKER - CROSS BY MR. PENNINGTON

1 and when you came to court in this courthouse, you never
2 called up and said, you know what, that's the fellow that
3 shot me. You never did that, did you? Yes or no?

4 A No. I never made a phone call to the solicitor and said
5 anything like that.

6 Q Or to the sheriff's office?

7 A Not that I can remember, no, sir.

8 Q Okay.

9 Now, you were present about a month and a half after
10 this in this courthouse right down the hall, do you recall
11 the first bond hearing of Mr. Steed?

12 A Um, it's kind of foggy. But yeah, I believe so.

13 Q Okay. And that was when you saw Mr. Steed brought in in
14 chains and a yellow jumpsuit?

15 A I'm not sure if that's what he was wearing or not.

16 Q Okay. And that would have been about a month and a half
17 after this shooting occurred?

18 A I'm not sure. I would have to find -- look at the paper.

19 Q I'm not asking for a specific date, I'm not trying to
20 trick you, but I am just saying approximately a month and a
21 half afterward?

22 A Sure. It could have been.

23 Q Okay.

24 Now, you threw out the term of 30 seconds that you were
25 looking at this man's face that was shooting you or had shot

PORTER WALKER - CROSS BY MR. PENNINGTON

1 you, right?

2 A When you asked me if -- how long it took or when -- say
3 again, sir?

4 Q I believe, correct me if I'm wrong, but when the
5 solicitor asked how long did you look at the man's face, you
6 replied about 30 seconds approximately, give or take?

7 A Yeah. It could have been. I mean, it seemed like an
8 hour the way I was seeing stuff. It was real slow in
9 movement.

10 Q Now, this was a home invasion where there were three
11 suspects that came into your house and you had already been
12 shot once?

13 A Yes, sir.

14 Q And honestly you were fearing for your life pretty much,
15 weren't you?

16 A Um, yeah, fearing, fighting for my life. Yeah, sure.

17 Q Fighting for your life.

18 A And you described to the judge -- or to the court that
19 among the things you did was after you were shot you were
20 thinking about being shot again so you hit the floor?

21 A Well, I was falling when -- I was trying to move when he
22 shot me in the first place. I seen the gun and was trying to
23 spin around and drop to the ground but he shot me too quick.

24 Q That was an attempt to evade the gun?

25 A Yes, sir.

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PORTER WALKER - REDIRECT BY MR. HOUSEAL

1 Q Okay. And then you rolled up under that glass top
2 table?

3 A I'm not completely under it. Yeah, somewhat under it.

4 Q You tried to get your head under there?

5 A Well, not really. I was just trying to get anything in
6 between me and another bullet.

7 Q Okay. And then you hear all this shouting and yelling?

8 A Yeah. But, you know, I didn't hear it like that. It
9 didn't sound like shouting and yelling. All I could hear was
10 bullets flying by me.

11 Q Okay. And then as these fellows moved down the hallway
12 you go for help?

13 A Yes, sir.

14 MR. PENNINGTON: Court's indulgence, Your Honor.

15 That's all the questions I have. Thank you, Mr. Walker.

16 REDIRECT EXAMINATION

17 BY MR. HOUSEAL:

18 Q Porter, you were asked the question about do you think
19 the police had the right people. Let me go back to that and
20 ask you to explain how you know that this man who is sitting
21 here, Robert Steed, is the guy that shot you?

22 A Because of the same eyes I looked into when he was
23 pulling the trigger over my face.

24 Q So when Mr. Pennington is referring to these six
25 gentlemen, how many of those six gentlemen did you get a good

JENNIFER STONER - DIRECT BY MR. HOUSEAL

1 look at?

2 A Two.

3 Q Okay. And is one of those two people that you got a
4 good look at Mr. Steed?

5 A Yes, sir.

6 Q And are you certain that that is the guy that shot you?

7 A A hundred percent, sir.

8 Q Thank you.

9 MR. CRUMRINE: I have no other questions, Your Honor.

10 MR. PENNINGTON: No follow-up, Your Honor.

11 THE COURT: Thank you. You can come down. Thank you.

12 Call your next witness.

13 (11:08 p.m.)

14 MR. HOUSEAL: Your Honor, I'll retrieve this document.

15 Your Honor, the State calls Jennifer Stoner.

16 JENNIFER STONER,

17 was sworn and testified as follows:

18 THE WITNESS: Jennifer M. Stoner. S-T-O-N-E-R.

19 DIRECT EXAMINATION

20 BY MR. HOUSEAL:

21 Q Jennifer, where do you work?

22 A I work for the State Law Enforcement Division.

23 Q What is the State Law Enforcement Division?

24 A It's commonly -- excuse me -- it's commonly referred to
25 as SLED. And it's a state police division in which, um, we

JENNIFER STONER - DIRECT BY MR. HOUSEAL

1 have field agents who investigate crimes and we have
2 criminalists in the lab who analyze evidence that is
3 supposedly related to a crime.

4 Q And you were asked to examine some tins containing hairs
5 and fibers in this case?

6 A Yes, I did.

7 Q Okay. How long have you been employed with SLED?

8 A I have been there approximately three years.

9 Q What exactly do you do there for them?

10 A Um, currently I work in the trace evidence department.

11 Q What does that mean?

12 A Trace evidence is minute evidence that's left behind.
13 We analyze paint samples from hit and run accidents, we
14 analyze explosive residue, we do hairs and fiber analysis
15 that is possibly related to a crime. We also do gunshot
16 residue on suspects' hands that are suspected of shooting a
17 weapon.

18 Q And what type of training have you undergone?

19 A Um, I have a bachelor of science degree in chemistry.
20 And I have also undergone intense in-house training at SLED
21 and have attended several schools outside of SLED.

22 Q Have you ever been qualified as an expert in court in
23 trace evidence analysis?

24 A Yes, I have.

25 MR. HOUSEAL: Your Honor, I would submit Jennifer

JENNIFER STONER - DIRECT BY MR. HOUSEAL

1 Stoner as an agent who is qualified as an expert to testify
2 as to the trace evidence analysis in this case.

3 THE COURT: Any objection?

4 MR. CRUMRINE: None from Mr. Flynn.

5 MR. PENNINGTON: No, sir, no objection.

6 THE COURT: Thank you.

7 (State's Exhibit Number 15

8 was marked for identification.)

9 BY MR. HOUSEAL:

10 Q Agent Stoner, I approach you with what's been marked
11 State's Exhibit 15 for identification. Can you take a look
12 at that, please, and tell me if you've ever seen that before?

13 A Yes, I have.

14 Q Where have you seen that before?

15 A I received this at SLED. And I, um, performed an
16 analysis on it up in our lab.

17 Q What type of analysis did you perform on it?

18 A I performed, um, somewhat of a hair analysis. I was
19 told to look at the hairs that were present to screen them
20 for possible DNA work.

21 Q How do you know that those were the tins that you
22 analyzed in reference to this case?

23 A My initials are on the heat seal that I put on the
24 package. I also initialed the front of the envelope I put
25 them in and I initialed the tins themselves with the lab

1 number and the item number and my initials.

2 Q Okay. Will you tell the jury what the results of your
3 examination were?

4 A Um, on the one tin that was labeled hair and fiber tape
5 driver's seat, I found several brown hair fragments and
6 several brown body hairs.

7 On the tin that was labeled hair and fiber tape front
8 passenger seat, I could not perform analysis on it due to the
9 condition of the tape.

10 Q Describe again the first tin?

11 A Um, the first tin contained a -- it looked like masking
12 tape, it was a large piece of tape that I don't know for
13 certain but I think they put tape on the seat to pick up any
14 hair fiber and debris that was present. When it was put in
15 the container it was put back on itself and I had a difficult
16 time pulling it apart, the adhesive had gotten very gummy and
17 I could not separate it out.

18 Q And the tape that you did -- the other tape, describe
19 the condition of that tin, not tape?

20 A The other was severely gummed together, and I could not
21 even get it apart at all to look at it.

22 Q So essentially describe for the jury what you were
23 trying to do?

24 A Um, normally in hair cases we're looking for any hairs
25 that possibly could link someone to a scene. In this case if

JENNIFER STONER - DIRECT BY MR. HOUSEAL

1 I had found hair in this car it would have been considered a
2 double hair transfer.

3 Q Which means what?

4 A Which means it came from the victim's house on to the
5 suspect and into the car. Normally this is highly unlikely
6 for double transfers to occur.

7 If the victim had been in the car we -- it would have
8 been much more probative evidence because we possibly would
9 have found evidence in the car.

10 But a hair transfer on someone who is supposedly in a
11 house and then leaves, goes into a car, runs, does whatever,
12 you're not likely going to find it.

13 And if we would look at hair from this we wouldn't do a
14 tape lift, we would use a flashlight and tweezers to find
15 hairs that are just laying on the surface. We don't want all
16 the hairs that are embedded in the car because it collects a
17 lot of debris and hair.

18 MR. HOUSEAL: Thank you, Your Honor. I don't have any
19 further questions other than I would like to move State's
20 Exhibit, is it 15, into evidence, with no objection.

21 MR. PENNINGTON: I don't have an objection.

22 MR. CRUMRINE: No objection, Your Honor.

23 THE COURT: Thank you.

24 (State's Exhibit Number 15
25 was admitted into evidence.)

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JENNIFER STONER - CROSS BY MR. CRUMRINE

CROSS-EXAMINATION

1
2 BY MR. CRUMRINE:

3 Q Ms. Stoner, I have a few questions about your particular
4 area of expertise.

5 THE COURT: Just a minute.

6 MR. CRUMRINE: Yes, Your Honor.

7 THE COURT: How about approach the bench for a minute.

8 (Off-the-record discussion at the bench.)

9 BY MR. CRUMRINE:

10 Q When I said that, I don't mean I'm questioning your
11 abilities, I mean just your particular area of science.

12 Aren't the limits of this area, hair and fiber,
13 basically limited by the quality of the samples that you're
14 given?

15 A Um, yes.

16 Q And the manner in which they are taken?

17 A And the manner in which the evidence they are looking
18 for. If they -- like I'm saying on the double transfer, it's
19 not very likely. If it's a single transfer, it's more
20 probative evidence than a double transfer.

21 Q And the understanding you have of these tins that you
22 were sent were samples of -- are that these were taken from a
23 purple Honda?

24 A It was from a vehicle.

25 Q From a vehicle.

1 And they did not send you any -- any hair fibers from
2 the house where this happened?

3 A No, sir.

4 Q And they didn't send you any from the -- from the
5 victims?

6 A No, sir.

7 Q And they didn't send you any from the -- any of the
8 suspects?

9 A No, sir.

10 Q Well, what were you supposed to compare these with?

11 A If I saw that I had probative hairs there they would
12 have submitted standards for me to compare it to and then I
13 would have -- if they matched to a degree I would have sent
14 them to DNA for further analysis.

15 Q If they were attempting to use hair and fiber to connect
16 any suspects with the household, what would you have wanted
17 them to do at the household and with the suspects?

18 A Since we're getting -- we're not doing as much hair as
19 we usually do. We are not taking hair samples from suspects
20 at the time.

21 If DNA evidence falls through then we then go back to
22 hair evidence.

23 I don't work that many crime scenes. I'm not an officer
24 for Charleston. But any hair around the victim would have
25 possibly been more probative than hair in the car.

JENNIFER STONER - CROSS BY MR. PENNINGTON

1 Q All right.

2 Isn't it true though if they are trying to connect
3 suspects with their clothing with the household you would
4 have wanted fibers from say the carpets and such at the
5 household and the suspects' clothing to see if -- their shoes
6 to see if there had been any transfer?

7 A True. That can be done. It's a different -- processing
8 does that. We receive the fibers if they have any.

9 Q And to your knowledge none of that was attempted in this
10 case?

11 A From the evidence that -- the sheets that I have, it
12 does say there were victims' clothes and attempt to locate
13 hair, but that was not my evidence. So I don't know. It
14 never came to me. There was never an item for me.

15 MR. CRUMRINE: I have no other questions. I appreciate
16 it.

17 CROSS-EXAMINATION

18 BY MR. PENNINGTON:

19 Q Agent Stoner, my name is Ashley Pennington, I represent
20 Mr. Steed. I just have a couple of quick questions and that
21 is, it's clear that at no point were you submitted any kind
22 of hair and fibers that are attributed to coming from any
23 clothing or shoes owned by Mr. Steed?

24 A Um -- No, not from the sheets I have.

25 Q All right. There are times and occasions in which SLED

JENNIFER STONER - REDIRECT BY MR. HOUSEAL

1 is capable of examining clothing items for like a carpet
2 fiber evidence?

3 A Correct.

4 Q There are times when SLED is capable of looking at shoes
5 for the same kind of carpet fiber evidence?

6 A Yes, they will screen the shoes for any fiber present.

7 Q Okay.

8 MR. PENNINGTON: That's all I have. Thank you.

9 REDIRECT EXAMINATION

10 BY MR. HOUSEAL:

11 Q Just two quick questions to clarify.

12 Can you do a DNA test on a hair fragment?

13 A No, we cannot.

14 Q So did you -- in your examination of those tins, did you
15 find any samples or hair fragments with which you could have
16 done a DNA test on?

17 A No.

18 Q Thank you.

19 MR. HOUSEAL: I have no further questions.

20 MR. CRUMRINE: Nothing further.

21 THE COURT: You can come down.

22 MR. HOUSEAL: May Agent Stoner be released from her
23 subpoena?

24 MR. PENNINGTON: I have no objection.

25 MR. CRUMRINE: No objection.

JENNIFER STONER - REDIRECT BY MR. HOUSEAL

1 THE WITNESS: Thank you.

2 MR. HOUSEAL: Beg the court's indulgence for a minute.
3 Judge, may we approach?

4 THE COURT: Sure.

5 (Off-the-record discussion at the bench.)

6 THE COURT: Let's take about ten minutes, Mr. Foreman.

7 I forgot the smokers. Don't forget to turn the smokers
8 over. And let me know when you're ready. I just wanted to
9 take perhaps a bathroom break, coffee or cold drink,
10 whatever.

11 (Outside the presence of the jury.)

12 THE COURT: Solicitor tells me the next witness probably
13 will be a lengthy witness. So keep that in mind for your
14 clients.

15 MR. PENNINGTON: Yes, sir.

16 THE COURT: Court is in recess.

17 (A recess was taken.)

18 (State's Exhibit Numbers 16, 17, 18, 19

19 were marked for identification.)

20 THE COURT: Jury says they are ready. Anything before
21 we bring them out?

22 MR. PENNINGTON: No, sir.

23 MR. CRUMRINE: No, sir.

24 (11:40 a.m., in the presence of the jury.)

25 THE COURT: All right, sir. Call your next witness.

DANIEL ISGETT - DIRECT BY MR. HOUSEAL

1 MR. HOUSEAL: Thank you, Your Honor. State calls Daniel
2 Isgett.

3 DANIEL GLENN ISGETT,
4 was sworn and testified as follows:

5 THE WITNESS: Daniel Glenn Isgett. I-S-G-E-T-T.

6 DIRECT EXAMINATION

7 BY MR. HOUSEAL:

8 Q Where do you work?

9 A The Charleston County Sheriff's Office.

10 Q What do you do there?

11 A I am a deputy sheriff sergeant over the Patrol Division
12 for the north area right now.

13 Q What -- explain that a little bit more, what does a
14 sergeant mean?

15 A I'm a supervisor over, um, deputy sheriffs.

16 Q Okay. How long have you been doing that?

17 A I've been a sergeant since 1996. A supervisor in the
18 criminal investigation division and Patrol Division since
19 that time.

20 Q How long have you been with the sheriff's office all
21 total?

22 A Since December of 1987.

23 Q Okay. In what capacity then were you working on May
24 3rd, 1999, as a sergeant?

25 A I was a sergeant supervisor of the criminal

DANIEL ISGETT - DIRECT BY MR. HOUSEAL

1 investigations division.

2 Q And in that capacity is one of your duties to assist in
3 homicide investigations?

4 A Yes, sir, it is.

5 Q Did you become involved in the investigation in Outwood
6 Street?

7 A Yes, sir, I did.

8 Q How did you assist in that investigation?

9 A I was notified of -- by the dispatcher from my home
10 that we had a home invasion homicide that was in Woodside
11 subdivision.

12 Q Is that in Charleston County?

13 A Yes, sir, it is.

14 Q And you responded to the scene?

15 A Yes, sir, I did.

16 Q What did you learn initially when you got to the scene?

17 A I was briefed at the scene that a home invasion occurred
18 with several suspects. That, um, there was one person inside
19 the house that was deceased. That there was another victim
20 with a gunshot wound that was transported to MUSC and there
21 was another victim -- I mean, witness and a small child that
22 was inside the house at the time.

23 Q And describe for us what your responsibilities at the
24 scene were as sergeant?

25 A Um, when I got to the scene the crime scene was already

1 secured with crime scene tape. It was yellow sheriff's
2 office tape surrounding the entire house so that nobody could
3 enter including law enforcement people that -- that didn't
4 need to be in the crime scene. That was already done.

5 I was briefed. My captain of the investigations was
6 already present. The lieutenant of investigations was
7 present. And I was briefed as to what little information we
8 had at the time.

9 Q Okay. Did -- did Charleston County Sheriff's Office do
10 anything to attempt to locate the shooters that night?

11 A Yes, we did. We canvassed the area. We sent detectives
12 to each house to see if we found anybody that saw anything or
13 heard anything.

14 Part of the information that we gained is that we
15 believe the suspects fled the house on foot towards the
16 railroad tracks through a back yard.

17 We have a canine division with the sheriff's office, a
18 dog team, that we called out to see if they can track the
19 suspects.

20 Q Did they track the suspects?

21 A They responded. Um, they were shown the area where the
22 suspects were believed to have fled. I could overhear on the
23 radio their progress. Lieutenant Smoak and his deputies went
24 behind the house over the railroad tracks to Lincolnville
25 Road and at that time they said they couldn't follow the

DANIEL ISGETT - DIRECT BY MR. HOUSEAL

1 track any more.

2 MR. CRUMRINE: Objection, Your Honor, to any hearsay.

3 THE COURT: That's harmless. Go ahead.

4 BY MR. HOUSEAL:

5 Q So they lost the track down Lincolnville Road somewhere?

6 A Yes, sir.

7 Q Okay. Who's responsible for collecting evidence at the
8 scene, is it you or --

9 A No, sir. We have a technical services unit that comes
10 out and processes the crime scene. Um, I did not even enter
11 the crime scene.

12 Q Okay. So your responsibility at that point became to
13 continue the investigation?

14 A Yes, sir. That's correct.

15 Q Okay. How did you -- describe for the jury how the
16 investigation proceeded?

17 A After the initial information we tried to follow up any
18 leads that we could follow. What was important is trying to
19 get whatever information that we can glean from the witness
20 in the household and from the person that was shot, what
21 little information we could get from them or information from
22 the Mount Pleasant police officer to try to help us.

23 Q And did any of your detectives follow any other leads?

24 A Yes. Um, it seemed the main break in the case came from
25 an outside agency, was investigating --

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DANIEL ISGETT - DIRECT BY MR. HOUSEAL

1 Q What's that mean when you say outside agency?

2 A Um, not the Charleston County Sheriff's Office. The
3 Goose Creek Police Department.

4 Q Okay. And continue to describe what that was.

5 A Okay.

6 They were investigating somebody -- I guess they heard
7 from the news or BOLOs that they found out of our
8 investigation.

9 Q What is a BOLO?

10 A Be on the lookout that we send to different agencies to
11 let them know that we've got a crime.

12 Q Okay. So what did Goose Creek Police Department tell
13 you?

14 MR. PENNINGTON: Your Honor, may I approach briefly?

15 THE COURT: Go ahead.

16 (Off-the-record discussion at the bench.)

17 THE COURT: Sometimes we get together. Go ahead.

18 MR. HOUSEAL: Thank you.

19 BY MR. HOUSEAL:

20 Q We were talking about the Goose Creek Police Department
21 contacting you.

22 A Yes, sir.

23 Q Describe what that information was?

24 A They advised that there was a person that lived in the
25 Woodside subdivision that they were conducting an

1 investigation on and were interviewing and wanted to know if
2 we wanted to have a detective there in case he may have some
3 information on the case.

4 Q Who was that person that lived in Woodside that they
5 were talking about?

6 A Um, Bond.

7 Q Thomas Bond?

8 A Yes, sir. Thomas Bond.

9 Q Did someone from the Charleston County Sheriff's Office
10 talk to Bond?

11 A Yes, sir, we had two investigators talk with him.

12 Q What was discussed with Bond in reference to this case?

13 A We asked if he had some information and he gave us
14 information implicating people that were involved in this
15 case.

16 Q How many people did he tell you?

17 MR. PENNINGTON: Your Honor, I think we're now crossing
18 the line.

19 THE COURT: Yes, sir.

20 MR. HOUSEAL: Okay.

21 THE COURT: Well --

22 MR. PENNINGTON: That witness is available, I expect to
23 testify, but we can't get it out through him, this witness.

24 MR. DURANT: Your Honor, I think in fairness we're not
25 offering it to prove its truth, we are just offering at this

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1 point to show why the police department acted as they did and
2 what information they received.

3 THE COURT: I'll let him answer that question. Let's
4 don't go into any details. How many did he say were
5 involved?

6 MR. PENNINGTON: Your Honor, may I just clarify my
7 objection then.

8 If the solicitor has been ambiguous about which
9 witnesses he's going to call, I will be a lot less concerned
10 if Mr. Bond is going to be a witness.

11 THE COURT: Is he going to be a witness?

12 MR. HOUSEAL: I believe he will be. But --

13 THE COURT: Well, if he's not let's get on another fact,
14 as a result.

15 MR. HOUSEAL: Well, so is he going to be able to --

16 THE COURT: No, sir, he's not.

17 MR. HOUSEAL: Well, okay.

18 MR. DURANT: May we approach the bench, Your Honor?

19 THE COURT: Yes, sir.

20 MR. CRUMRINE: For the record, Your Honor, we join in
21 the objection.

22 (Off-the-record discussion at the bench.)

23 BY MR. HOUSEAL:

24 Q So you talked to Thomas Bond about the homicide; is that
25 correct?

1 A That's correct.

2 Q And he provided you some information?

3 A Yes, sir, he did.

4 Q And as a result of that information what steps did the
5 sheriff's office take to continue the investigation?

6 A We assigned investigators to interview other people.

7 Q And what resulted from that?

8 A We, um, met with these people and interviewed them and
9 obtained information from them about their involvement.

10 Q And was one of the names of the people that you
11 investigated named John Griffin, Junior?

12 A Yes, sir.

13 Q Was one of the names you investigated as a result of
14 your conversation with Bond, Michael Griffin?

15 A Yes, sir, it was.

16 Q Was one of the names that you investigated as a result
17 of your conversation with Bond, Demetrius Green?

18 A Yes, sir, it was.

19 Q Was one of the people that you were investigating as a
20 result of your information from Thomas Bond the defendant,
21 Michael Flynn?

22 A Yes, sir.

23 Q And was one of the people that you investigated as a
24 result of your conversation with Thomas Bond the other
25 defendant, Robert Steed?

DANIEL ISGETT - DIRECT BY MR. HOUSEAL

1 A Yes, sir.

2 Q When you discussed this incident with Michael Griffin
3 was he willing to talk to you about what happened?

4 A Yes, sir, he was.

5 Q Did he provide a statement about what happened?

6 A Yes, sir, he did.

7 Q Was that consistent with Bond's statement?

8 MR. PENNINGTON: Objection, Your Honor. He's not

9 entitled to commented on what's consistent and not
10 consistent.

11 THE COURT: Well, if he knows I'll let him answer.

12 MR. PENNINGTON: Then it's a vague question, Your Honor.
13 He's got to be more specific about what we're being
14 consistent about.

15 MR. CRUMRINE: I join in the objection, Your Honor.

16 THE COURT: All right. Sir, would you just like to join
17 in everything he does, then you wouldn't have to stand up.

18 MR. CRUMRINE: Well, it might -- it might not be so.

19 THE COURT: Well, that's all right. I'll let you do it.
20 I thought I would save you --

21 MR. CRUMRINE: We do have separate defenses, Your Honor.

22 BY MR. HOUSEAL:

23 Q Was your conversation with Mr. Griffin -- with Mr.
24 Michael Griffin, was your discussion with Mr. Michael Griffin
25 concerning the incident at Outwood Street consistent with --

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DANIEL ISGETT - DIRECT BY MR. HOUSEAL

1 in regard to the number of people that were involved?

2 A Yes, sir. That was consistent.

3 Q Was it also consistent with who those six people were?

4 A Yes, sir, it was.

5 Q Did you also during the course of your investigation

6 discuss this homicide with Michael Griffin's little brother,

7 John Griffin?

8 A Yes, sir, our investigators did.

9 Q Was John Griffin able to provide you information about
10 the homicide?

11 THE COURT: Just yes or no, I'll let him answer that.

12 BY MR. HOUSEAL:

13 Q Was John Griffin able to provide the sheriff's office
14 with information about the events about the homicide?

15 A Yes, sir, he was.

16 Q Did he give a written statement?

17 A Yes, sir, he did.

18 Q Was that written statement consistent with regard to the
19 number of people involved in the homicide?

20 MR. CRUMRINE: Your Honor, I object to this line of
21 questioning. I don't believe it's proper.

22 THE COURT: Well, so far he's all right. But both you
23 object. What's your grounds?

24 MR. PENNINGTON: Your Honor --

25 MR. CRUMRINE: It's hearsay, Your Honor. He's also

DANIEL ISGETT - DIRECT BY MR. HOUSEAL

1 bolstering witnesses.

2 THE COURT: He's not going into any detail. All right,
3 sir, I'll let him answer that question. Go ahead.

4 THE WITNESS: Ask again, please.

5 BY MR. HOUSEAL:

6 Q The question was, was the statement that you received
7 from John Griffin consistent with the number of people
8 involved in this incident?

9 A Yes, sir, it was.

10 Q Was it also consistent with the --

11 MR. CRUMRINE: Your Honor, I would have to object to the
12 whole line --

13 THE COURT: You have got to ask the question first. You
14 already objected to the first one.

15 MR. HOUSEAL: The question is going to be, were the
16 names of the people involved consistent?

17 THE WITNESS: Yes, sir, they were.

18 MR. PENNINGTON: Judge, I'll have to interpose an
19 objection.

20 THE COURT: All right. Let's go -- let's not go any
21 further with that.

22 MR. HOUSEAL: I am not going to ask any follow-up
23 questions --

24 THE COURT: They object to anything up to that point.
25 Go ahead.

DANIEL ISGETT - DIRECT BY MR. HOUSEAL

1 MR. HOUSEAL: I'm not going to ask any follow-up
2 questions about the substance of their statement. Did you
3 also discuss --

4 THE COURT: Wait a minute.

5 MR. HOUSEAL: Sorry.

6 THE COURT: Hold on a minute. Let him put his objection
7 on the record.

8 MR. PENNINGTON: Your Honor, I just would advise the
9 court to please note that if they fail to call these
10 witnesses then we will move for a mistrial based upon this
11 hearsay testimony which is this claim of information without
12 backing it up with the real witness.

13 THE COURT: All right, sir.

14 MR. CRUMRINE: Your Honor, I join in that and I also
15 believe that misusing the rules to bolster other witnesses
16 that aren't present and to make qualitative decisions as to
17 how consistent the statement is to another statement.

18 THE COURT: All right, sir.

19 MR. PENNINGTON: I join in that, Your Honor.

20 THE COURT: Thank you. Go ahead.

21 BY MR. HOUSEAL:

22 Q During the course of your investigation did the nickname
23 Smurf come up?

24 A Yes, sir, it did.

25 MR. CRUMRINE: Objection, Your Honor.

DANIEL ISGETT - DIRECT BY MR. HOUSEAL

1 THE COURT: Wait a minute now.

2 Solicitor, how about approach the bench for a minute.

3 (Off-the-record discussion at the bench.)

4 THE COURT: All right. Over your objection I'm going
5 to allow him to answer that question.

6 MR. CRUMRINE: Your Honor, can we have a continuing
7 objection to this line of questioning rather than having to
8 get up every question?

9 THE COURT: Well, I don't know how to do that because
10 you wouldn't take me up a while ago. I won't take you up.
11 Go ahead.

12 BY MR. HOUSEAL:

13 Q The question --

14 THE COURT: Let me tell you something, Mr. Foreman,
15 members of the jury, don't hold it against the parties if
16 they -- if they -- you appear that they are objecting too
17 much. That's the only way we can operate. And if I rule in
18 favor of either side that doesn't mean I'm favoring that
19 side. And I hope you understand that.

20 Thank you. Go ahead.

21 BY MR. HOUSEAL:

22 Q During the course of your investigation were you able to
23 identify who Smurf is?

24 A Yes, sir.

25 Q Do you -- what's the name of Smurf?

1 MR. PENNINGTON: Objection, Your Honor, hearsay.

2 THE COURT: All right. Sir, go ahead.

3 MR. HOUSEAL: That's not --

4 MR. CRUMRINE: I join in that, Your Honor.

5 MR. HOUSEAL: Your Honor, the question is do you know
6 who Smurf is.

7 MR. PENNINGTON: And he has to be relying, Your Honor,
8 on what someone else told him so in a sense, Your Honor, this
9 is just blatant out and out hearsay. If he has witnesses
10 that can identify this person, that's fine.

11 THE COURT: All right, sir. I'm going to allow it
12 subject to him putting the witnesses up.

13 Go ahead.

14 BY MR. HOUSEAL:

15 Q The question is, do you know who Smurf is?

16 A Yes, sir.

17 Q Who is that person?

18 A Demetrius Green.

19 Q Were you able to locate -- well, let me back up. Did
20 you attempt to locate defendant, Mr. Michael Flynn, in
21 reference to this case?

22 A Yes, sir, I did.

23 Q Were you able to locate him in Charleston?

24 A No, sir, we were not.

25 Q How did you find him?

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DANIEL ISGETT - DIRECT BY MR. HOUSEAL

1 A We were provided information from the Berkeley County
2 Sheriff's Office about the possible whereabouts of Mr. Flynn.

3 Q What were those possible whereabouts?

4 A In Pennsylvania.

5 Q Do you know whether he was in Pennsylvania?

6 A Yes, sir.

7 Q Was he apprehended there?

8 A Yes, sir, he was.

9 Q Did the sheriff's office make an attempt to locate Mr.
10 Robert Steed?

11 A Yes, sir, we did.

12 Q Was he able to be located right away?

13 A No, sir.

14 Q How did you find him?

15 A After an extensive, um, search --

16 MR. PENNINGTON: Objection, Your Honor.

17 THE COURT: Well, no, I'll allow that.

18 MR. PENNINGTON: That is a -- his comment is extensive,
19 he's qualifying his answer. If he wants to tell what
20 happened, but for him to comment and try to put it in sort of
21 a, let me tell you my opinion about this, I object to his
22 opinion.

23 THE COURT: All right. Ask your question again.

24 BY MR. HOUSEAL:

25 Q My question was how did you find Mr. Steed.

DANIEL ISGETT - DIRECT BY MR. HOUSEAL

1 THE COURT: All right. I'll allow that.

2 THE WITNESS: Well, he was eventually taken into custody
3 when he, um -- our officers notified him or members of his
4 family.

5 BY MR. HOUSEAL:

6 Q Approximately how many days after this incident was he
7 taken into custody, do you recall?

8 A Several. I'll have to look at notes or something to
9 refresh my memory. I'm sure there is a booking report.

10 Q Did the Charleston County Sheriff's Office show any
11 photo line-ups to Mr. Porter Walker containing pictures of
12 either Mr. Steed, Mr. Flynn or Mr. Griffin from inside the
13 house?

14 A No, sir.

15 Q Why not?

16 A Two of the three we were told had a bandana covering
17 their face. So we didn't feel that they would be able to
18 make identification from the two.

19 Q Is that standard procedure not to show a line-up when
20 the --

21 MR. PENNINGTON: Objection to standard procedure.

22 THE COURT: No, sir, I'll allow it.

23 BY MR. HOUSEAL:

24 Q Is it standard procedure not to show a photo line-up to
25 the victim when the testimony or the information that you

1 have is that partially covered faces were involved?

2 A As a rule of course, yes, sir.

3 Q Okay. I would like you to take a look at one picture,

4 State's Exhibit 12, take a look at that and see if you

5 recognize that area?

6 A Yes, sir.

7 Q What does that depict?

8 A This is the part of Woodside subdivision.

9 Q Do you see 4512 Outwood in that picture?

10 A Yes, sir, I do.

11 Q Okay.

12 Show you what's been marked State's Exhibit 13, take a

13 look at that, please. What area does that depict?

14 A This is the entire Woodside -- not the entire, but a lot
15 of the Woodside subdivision.

16 Q Okay.

17 Specifically with regard -- I'm going to ask you if you
18 would show the jury which house is 4512 Outwood?

19 A (Indicating).

20 Q Can you see it from over there?

21 A Yes, sir. It should be right in this area right here.

22 Q Okay.

23 And specifically with -- well, let me put this on. This
24 is a close-up. Can you tell the jury which house it is?

25 A That house right there.

DANIEL ISGETT - DIRECT BY MR. HOUSEAL

1 Q Which direction of travel did the dogs take?

2 A I believe the house was right across the street where
3 there was like a bent fence, that's where they started.

4 Q Okay.

5 A As the detective supervisor I was paying close
6 attention. And they tracked past the railroad tracks and I
7 know that Lincolnville Road is that way, that's the direction
8 they went.

9 (State's Exhibit Number 20
10 was marked for identification.)

11 BY MR. HOUSEAL:

12 Q Let me show you what's been marked State's Exhibit 20
13 for identification, do you recognize that?

14 A Yes, sir.

15 Q What is that?

16 A It's a bent down fence I was talking about.

17 Q That's the fence that you were referring to?

18 A Yes, sir.

19 Q And in this picture again where is that fence?

20 A (Indicating) I believe it's right over here.

21 Q Okay. That's the direction that the dogs took?

22 A Yes, sir.

23 MR. PENNINGTON: And that's State's?

24 MR. HOUSEAL: Exhibit 20.

25 I would like to move this into evidence.

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DANIEL ISGETT - CROSS BY MR. CRUMRINE

1 certain steps and -- in interviewing other people?

2 A Yes, sir.

3 Q All right.

4 And as a -- directly after that did you not go interview
5 someone named Stephen Mark Smith also known as Crazy?

6 A Yes, sir.

7 And for clarification, when we're saying you and we, the

8 sheriff's office. I don't believe I personally sat down and

9 interviewed anybody. I oversaw other investigators and they

10 briefed me on what happened.

11 Q Is it fair enough to say that you, um, wrote some
12 lengthy paragraphs in your case notes about the investigation
13 as a -- related to Crazy, Mr. Stephen Mark Smith?

14 A Yes, sir.

15 Q And to another individual that you began to talk to
16 around the same time, Walter Gardenhigher; is that correct?

17 A That's correct.

18 Q And do you know Walter Gardenhigher's street name or
19 nickname?

20 A Yes, sir.

21 Q And what is that?

22 A Little T.

23 Q Little T.

24 And are you familiar with the fact that Little T and
25 Crazy, Mr. Gardenhigher and Mr. Stephen Mark Smith, know each

DANIEL ISGETT - CROSS BY MR. CRUMRINE

1 other and are good friends?

2 A I think I am aware that they are somewhat associated,
3 yes, sir.

4 Q Did you know that at the time of this incident that Mr.
5 Gardenhigher's vehicle was parked at Mr. Smith's
6 grandmother's house?

7 A Do we know her name?

8 Q I don't know his grandmother's name.

9 A I'm not sure. I don't know that.

10 Q And would you -- you talked -- are you aware if Mr.
11 Stephen Mark Smith looked very much like the composite that
12 was done in this case?

13 A There were some similarities, yes, sir.

14 Q And Mr. Gardenhigher is a black male?

15 A Yes, he is.

16 Q And do you know whether Mr. Smith and Mr. Gardenhigher
17 know all the other individuals that you described, um, having
18 arrested in this case?

19 A Yes, sir, I believe they do.

20 Q When you said it was standard -- or is not standard
21 procedure to show a photo line-up when somebody was to have
22 been wearing bandanas, you guys showed a photo line-up to Ms.
23 Holbrook with my client's picture in it, didn't you?

24 A I believe at some time that they showed a photographic
25 line-up to her, that's correct.

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DANIEL ISGETT - CROSS BY MR. CRUMRINE

1 Q And you already knew Michael Griffin, the fellow with
2 the big hickey on his neck, was already the individual that
3 was involved that didn't have a mask on, correct?

4 A I am not sure of the chronological order of when they
5 were shown.

6 MR. CRUMRINE: Beg the court's indulgence.

7 BY MR. CRUMRINE:

8 Q When you discovered Mr. Flynn was in Pennsylvania, is it
9 your understanding he was at his grandmother's house up
10 there?

11 A Yes, sir.

12 Q All right. And that he rode with a fellow by the name
13 of Andrews, James Andrews?

14 A Yes, sir, that's correct.

15 Q And James Andrews is an old friend of his?

16 A I'm not sure of their relationship, no, sir.

17 Q All right.

18 And you communicated with the Pennsylvania police
19 department about this?

20 A Yes, sir.

21 Q And did you tell them that Mr. Andrews was going to be
22 charged up there for giving Mr. Flynn a ride?

23 A No, sir.

24 Q Do you have your case notes with you there?

25 A Uh-huh.

DANIEL ISGETT - CROSS BY MR. CRUMRINE

- 1 Q Page 5 of the report.
- 2 A Yes, sir. Page 5. Page 4 or 5?
- 3 Q Says page 5 on mine.
- 4 Do you have a page 5?
- 5 A The same page is page 4 on mine.
- 6 Q I don't think so.
- 7 A Okay. It's a different page.
- 8 Q It appears we have different reports.
- 9 A They look a little different.
- 10 Q Did you ever retype these reports?
- 11 A No, not that I know of. What I did is when I went along
- 12 I kept adding and adding as the days went by, 5-6, 5-4.
- 13 MR. CRUMRINE: If I may have the court's indulgence,
- 14 let me compare notes with the solicitor.
- 15 THE COURT: Yeah. Go ahead.
- 16 BY MR. CRUMRINE:
- 17 Q I think we have the same. Let me compare it with you.
- 18 Let's start in the back.
- 19 Page 8.
- 20 A I have page 6.
- 21 That one is more complete than this one.
- 22 Q All right. Let me just show you mine then. Would you
- 23 look at page 5 in this report. Does it say case note,
- 24 Sergeant Isgett?
- 25 A Yes, sir.

DANIEL ISGETT - CROSS BY MR. CRUMRINE

1 Q And if you would look at the last paragraph.

2 A Okay. Um, this was in contingent of them faxing me a
3 statement saying that he willfully had knowledge of the
4 situation when he was taking him up there.

5 Q All right.

6 A That he --

7 Q First of all, your report does say that you notified
8 Pennsylvania police you would be charging James Andrews with
9 this, correct?

10 A That's not what it says. It says that I advised them to
11 fax over the statement and if that is the case we would be
12 charging him in the case, that he willfully aided and abetted
13 him.

14 Q He had given a statement and based on what they were
15 letting you know was in there that you told them that you
16 would be charging him, correct?

17 A Right.

18 When they faxed it back all the information contained
19 was that he said when he started taking him up there in
20 Berkeley County that he needed a ride to his grandmother's
21 house, his grandmother was ill. It was not until he left the
22 state or the area that he got into some other information.

23 Q All right. Let me have that back.

24 A Correct.

25 Q Isn't it true that when James Andrews was in

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DANIEL ISGETT - CROSS BY MR. PENNINGTON

1 Pennsylvania that you communicated up there to him you were
2 looking at him as a suspect for some sort of accessory charge?

3 A Yes, sir.

4 Q All right. And when he came back to Charleston did you
5 participate in questioning him here, Mr. Andrews?

6 A One of our investigators did, yes, sir.

7 Q Were you present?

8 A I don't recall if I was.

9 MR. CRUMRINE: I have no other questions. Thank you.

10 CROSS-EXAMINATION

11 BY MR. PENNINGTON:

12 Q Sergeant Isgett, would it be helpful if I gave you a
13 copy of the report enumerated in the pages that we have?

14 A Sure.

15 MR. PENNINGTON: Judge, this is tab 10.

16 THE COURT: Thank you.

17 BY MR. PENNINGTON:

18 Q Detective -- I should say Sergeant Isgett -- you've been
19 a detective in the past, haven't you?

20 A Yes, sir.

21 Q And now you're in a sense a supervisor?

22 A Yes, sir, that's correct.

23 Q Okay. And so while you're not the case agent you were
24 involved in this and had some kind of authority --

25 A Yes, sir.

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DANIEL ISGETT - CROSS BY MR. PENNINGTON

1 Q -- over the investigation?

2 A That's correct.

3 Q And, um, now, in what document is it published for your
4 -- in terms of internal procedures that says that if a
5 suspect's face is partially covered that you do not show any
6 kind of photo line-up to that witness?

7 A What I explained earlier is a rule of course, not as a
8 policy. There's not a policy that directly explains when to
9 do a photo line-up or when not to do a photo line-up.

10 This was a decision made among the detectives and the
11 detectives' supervisors as to when we should or when we
12 shouldn't show them.

13 Q Okay.

14 And in this case basically you're going on the best
15 information that you have available to you?

16 A Yes, sir. That's correct.

17 Q And in this case at no time were you contacted by Mr.
18 Walker and said you know what, I've remembered more clearly
19 the face that I saw, could you please see if I could make an
20 identification? That didn't happen, did it?

21 A No, sir, it did not.

22 Q Now, you've mentioned that you started out right from
23 the beginning, this would have been on May 3rd I believe, and
24 if you need to you can check your report.

25 A Yes, sir.

000313

DANIEL ISGETT - CROSS BY MR. PENNINGTON

1 Q And you described that you're familiar with the fact
2 that on what would have been the 6th, which would have been a
3 Monday to a Thursday, there was a bond hearing with the four
4 defendants over at the county jail?

5 A I don't have that in my notes, but that seems right.

6 Q Okay. That seems correct?

7 A Yes, sir.

8 Q Okay.

9 And you're aware that as part of your supervisory
10 responsibilities that you in this case used the news media to
11 try to locate Mr. Steed?

12 A That's correct.

13 Q And so you or a representative of the sheriff's office
14 disclosed at the bond hearing that you were looking for
15 Robert Steed?

16 A That's correct.

17 Q Okay. And that bond hearing would have been, um, the
18 day before that my client called and surrendered?

19 A The day he surrendered I don't have that.

20 Q Well, let's first of all just pin down the date and then
21 we'll look at your report.

22 A Yes, sir.

23 Q Would this refresh your recollection as to that the bond
24 hearing was on a Thursday?

25 A Yes, sir, the paper's dated on a Friday. And it appears

DANIEL ISGETT - CROSS BY MR. PENNINGTON

1 that it was Thursday.

2 Q The bond hearing would have been the day before that
3 Friday?

4 A Yes, sir.

5 Q And then headline Post and Courier in Charleston based
6 on your investigation was a photograph of Robert Steed?

7 A Yes, sir.

8 Q Okay. Please, if you would, look at -- you indicated
9 that you relied on other investigators' reports and
10 information in terms of piecing things together?

11 A Yes, sir.

12 Q I would ask you if you would look at just briefly a
13 portion of Detective Buncum's --

14 A (Beeper goes off).

15 Q Huh-uh. Crime never sleeps.

16 A Yes, sir.

17 Q Just take a moment, you don't have to testify or refer
18 to it at all, but just take a moment if you would and see if
19 this refreshes you particularly of these paragraphs as to the
20 date of Mr. Steed's surrender.

21 A Yes, sir.

22 Q All right. And it was in fact the same day that this
23 news article came out?

24 A Yes, sir.

25 Q And that would have been Friday?

000315

1 A Yes, sir.

2 Q Okay. And that surrender took place at his mama's house
3 over off of Montague Avenue?

4 A Yes, sir. That's correct.

5 Q Okay. Now, that was the first time that that picture
6 had been put in the paper, isn't it?

7 A Yes, sir, to my knowledge.

8 Q And that's the first time that that name had been called
9 publicly by the news media?

10 A Yes, sir.

11 Q Okay.

12 Now, you mentioned on direct examination the solicitor
13 asked you when there was a -- some detectives questioned a
14 Tommy Bond?

15 A Yes, sir.

16 Q And among the names that he asked you did this person
17 name the different people -- he threw out the name Robert
18 Steed.

19 Isn't it a fact though that Tommy Bond never called the
20 name Robert Steed, instead he used the nickname called T-Lo?

21 A That's correct.

22 Q And in fact he was very explicit with the officers that
23 he didn't know where this T-Lo lived?

24 A Yes, sir.

25 Q He couldn't help them with locating this T-Lo?

DANIEL ISGETT - CROSS BY MR. PENNINGTON

1 A That's correct.

2 Q And he also didn't even know this T-Lo's name, his first
3 name?

4 A Yes, sir, that's correct.

5 Q Didn't know his last name?

6 A That's correct.

7 Q Now, we know that the homicide occurred on Monday, the
8 3rd, May 3rd, it would have been late Monday night?

9 A Yes, sir.

10 Q And we know that by Wednesday you personally interviewed
11 a fellow by the name of Walter Gardenhigher?

12 A Yes, sir.

13 Q And just to make sure we're talking about the same
14 person, I would like to show you, does that appear to be the
15 same person that you interviewed?

16 A Yes, sir.

17 Q Okay. Mr. Gardenhigher's black?

18 A Yes, sir.

19 Q About 6 foot?

20 A Yes, sir.

21 Q Slender?

22 A Yes, sir.

23 Q And a friend of these fellows?

24 A He's an acquaintance, yes, sir.

25 Q And lived with Tommy Bond?

000317

DANIEL ISGETT - CROSS BY MR. PENNINGTON

1 A I don't recall that part.

2 Q On Woodduck with Antonio Robertson?

3 A Okay.

4 Q You do remember now?

5 A I don't recall that they -- whether they lived there or
6 not but I know there's an association of Woodduck to these
7 people.

8 Q Okay. And that's why you were talking to them?

9 A Yes, sir.

10 Q And he goes by the nickname Little T?

11 A Yes, sir.

12 Q And you also know that from your knowledge overall in
13 this investigation that the sheriff's office collected up not
14 only -- well, let me back up.

15 Standard operating procedure is to gather the
16 fingerprints of your suspects, isn't it?

17 A That's correct.

18 Q And those get submitted to your crime scene personnel in
19 order to be able to compare them if future unknown prints
20 show up?

21 A That's correct.

22 Q And in this case you have a crime scene officer by the
23 name of officer, is it Maugans?

24 A Maugans.

25 Q Maugans. I'm sorry. Is it Deputy Maugans?

000318

DANIEL ISGETT - CROSS BY MR. PENNINGTON

1 A Yes, sir.

2 Q In this investigation on that Wednesday of the
3 investigation you all began to gather copies of fingerprints
4 on these suspects?

5 A Yes, sir.

6 Q And so in that process you got major case prints of a
7 Michael Griffin?

8 A Yes, sir.

9 Q And major case prints of a John Griffin?

10 A Yes, sir.

11 Q And major case prints of a Demetrius Green?

12 A Yes, sir.

13 Q Major case prints of a Thomas Bond?

14 A Yes, sir.

15 Q Some print cards of a Michael Flynn?

16 A Yes, sir.

17 Q And three ten-print cards of a Walter Theron
18 Gardenhigher?

19 A I don't recall them asking for those.

20 Q Would it refresh your recollection --

21 A It's possible.

22 Q -- if I showed you Deputy Maugans' report?

23 A Sure. Okay.

24 Q All right.

25 And so it does appear that on that Wednesday, two days

DANIEL ISGETT - REDIRECT BY MR. HOUSEAL

1 into the investigation, you gathered three ten-print cards on
2 this Little T?

3 A Yes, sir.

4 Q And that was because he was one of the associates of
5 these fellows?

6 A Yes, sir.

7 MR. PENNINGTON: If I may just have the court's

8 indulgence.

9 Thank you, Sergeant, that's all I have.

10 REDIRECT EXAMINATION

11 BY MR. HOUSEAL:

12 Q One question.

13 Do you personally know how Walter Gardenhigher was
14 eliminated as a suspect?

15 MR. PENNINGTON: Objection, Your Honor.

16 THE COURT: Well, he says personally know. Now, that
17 means you didn't get it from somebody else.

18 MR. PENNINGTON: Well, but it may be that he's got --

19 THE COURT: I'm talking to the officer now.

20 MR. PENNINGTON: I'm sorry.

21 THE COURT: Do you personally know or did you get the
22 information from somebody else?

23 THE WITNESS: The information was provided to me either
24 way.

25 BY MR. HOUSEAL:

000320

DANIEL ISGETT - REDIRECT BY MR. HOUSEAL

1 Q Okay. So you're not going to personally testify as to
2 how Walter was eliminated as a suspect?

3 A No, sir.

4 MR. PENNINGTON: I object to the form of the question,
5 Your Honor. It implies facts that are not in evidence. The
6 solicitor is suggesting through his question that he's been
7 eliminated. And I object to the form of the question.

8 THE COURT: I don't know how you could ask it otherwise
9 if he asked it at all. But...

10 MR. HOUSEAL: I don't have any further questions.

11 THE COURT: All right.

12 You got a 33-minute witness?

13 MR. HOUSEAL: Can we have a second? Can we approach?

14 (Off-the-record discussion at the bench.)

15 THE COURT: Mr. Foreman, members of the jury, I got a
16 little legal problem, I'm going to send you to lunch now.
17 Can you get a lunch in an hour and two minutes? I'd forgive
18 you all if you were late, you're the only ones. Get back as
19 close as you can to an hour and two minutes. That is 1:30.
20 Have a good lunch. And remember what I told you about
21 talking to people and thus and so.

22 Nobody is going to bother your pads when you leave them
23 in there.

24 (12:30 p.m., outside the presence of the jury.)

25 THE COURT: Let me see the attorneys in chambers for

DANIEL ISGETT - REDIRECT BY MR. HOUSEAL

1 just a minute as soon as we break. All right. This case is
2 recessed until 1:30.

3 (A recess was taken.)
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000322

DANIEL ISGETT - REDIRECT BY MR. HOUSEAL

CERTIFICATE OF REPORTER

I, the undersigned, Suzette R. Weis, Official Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Criminal Court for Charleston County, South Carolina, on the 5th day of December, 2000.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

February 2, 2001

Suzette R. Weis

Circuit Court Reporter

000323

000324

1 STATE OF SOUTH CAROLINA

2 COUNTY OF CHARLESTON

3

4 STATE OF SOUTH CAROLINA,

5 Plaintiff,

6 v.

7 ROBERT ANTONIO STEED,

8 Defendant.

COURT OF GENERAL SESSIONS

TRANSCRIPT OF RECORD

VOLUME IV OF VII

CASE NOS.: 99-GS-10-4579, 4580

99-GS-10-4581, 4582, 00-GS-10-5018

9

STATE OF SOUTH CAROLINA,

10

Plaintiff,

11

v.

12

MICHAEL BRIAN FLYNN,

13

Defendant.

TRANSCRIPT OF RECORD

CASE NOS.: 99-GS-10-4334, 4520

99-GS-10-4557, 4677, 00-GS-10-5016

14

TRANSCRIPT OF TRIAL TESTIMONY

15

December 5, 2000, Afternoon Session

16

B E F O R E:

17

THE HONORABLE LUKE BROWN, Judge; and a jury.

18

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

19

SEAN HOUSEAL, BRUCE DURANT

20

Attorneys for the State

21

ASHLEY PENNINGTON, LESLIE SARJI

22

Attorneys for the Defendant Steed

23

JOHN CRUMRINE

24

Attorney for the Defendant Flynn

25

SUZETTE R. WEIS, CSR, RPR, CSR-335

Circuit Court Reporter

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2

NO.DESCRIPTIONFOR I.D.IN EVID.

3

STATE'S

4

1

Videotape

43

5

2

Audiotape

43

6

VOLUME II

7

3

Large Diagram of House

168

8

4

Photograph

179

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Photograph

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Photograph

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Photograph

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1 AFTERNOON SESSION, DECEMBER 5, 2000

2 (State's Exhibit Numbers 21, 22, 23

3 were marked for identification.)

4 (1:45 p.m.)

5 THE COURT: Anything before we bring the jury out?

6 MR. CRUMRINE: No, sir.

7 MR. HOUSEAL: Nothing from the State that I'm aware of.

8 MR. PENNINGTON: Only, Your Honor, that before they call

9 Michael Griffin, Joby, we have reason to think based on

10 letters that we saw in evidence that were in the sheriff's

11 office file that he has served -- he's been in jail

12 repeatedly.

13 We don't show concrete conviction data however. We know

14 of arrests. And I would like to get him out here in limine

15 and ask him his convictions so that we won't have to stumble

16 around on that.

17 MR. HOUSEAL: I asked one of my --

18 THE COURT: You don't have a rap sheet on him?

19 MR. HOUSEAL: Yeah, we do. We don't show any

20 convictions on his rap sheet. But Mr. -- but we don't show

21 dismissals or nol prosses on them either.

22 So I asked one of the members of my office a minute ago

23 to run down and try to make a phone call to the North

24 Charleston Police Department, the agency that made the arrest

25 that we're talking about, a shoplifting arrest, to try to

1 determine if this was a conviction or not.

2 THE COURT: Well, I will put it this way.

3 MR. HOUSEAL: And he's not going to be called first.

4 THE COURT: If he's got -- and you don't know whether or
5 not he's had any convictions? You don't know? Surely you
6 would know --

7 MR. HOUSEAL: I don't think he has. I was operating
8 under the assumption he didn't.

9 THE COURT: I can't imagine the solicitor wouldn't know
10 if he had been convicted or not.

11 MR. HOUSEAL: Well, his wrap sheet doesn't show any
12 convictions.

13 THE COURT: But has he been convicted? I know you
14 talked to him.

15 MR. HOUSEAL: I don't know, Judge. I'm not calling him
16 right now. If we reach him at all today, it will be the last
17 witness.

18 THE COURT: I can tell you one thing, if you don't know,
19 and you all haven't talked to him, I will let him ask him and
20 go into some detail.

21 MR. PENNINGTON: Thank you.

22 MR. HOUSEAL: Okay. Well, if I don't have an answer by
23 the time we get there that's perfectly fine.

24 THE COURT: Then you're stuck with him.

25 MR. HOUSEAL: That is perfectly fine.

DEMETRIUS GREEN - DIRECT BY MR. HOUSEAL

1 THE COURT: All right. Bring the jury in.

2 Of course, if he denies it, that's of course as far as
3 you can go.

4 MR. PENNINGTON: Hopefully we'll get that...

5 (1:47 p.m., in the presence of the jury.)

6 THE COURT: All right, sir. Call your next witness.

7 MR. HOUSEAL: Thank you, Your Honor. State calls

8 Demetrius Green.

9 THE COURT: Demetrius Green. I want Demetrius Green.

10 All right, Mr. Green. Go ahead.

11 DEMETRIUS GREEN,

12 was sworn and testified as follows:

13 THE WITNESS: Demetrius Oliver Green. G-R-E-E-N.

14 THE COURT: Thank you, sir.

15 DIRECT EXAMINATION

16 BY MR. HOUSEAL:

17 Q Demetrius, how old are you?

18 A 18.

19 Q Where did you go to school before you got arrested?

20 A Stall High.

21 Q Where do your parents live?

22 A 44 Wakeover Street, Ladson.

23 Q Is that in Woodside?

24 A Yes, sir.

25 Q Were you living with them in May of 1999 last year?

DEMETRIUS GREEN - DIRECT BY MR. HOUSEAL

- 1 A Yes, sir, I was.
- 2 Q How far roughly, and that's not too far from Outwood
3 Street, is it, where you lived?
- 4 A I think it's approximately 11 streets from there. We
5 live on the very first street, they live on the 11th. I
6 think 11th or 12th.
- 7 Q Okay. Were you in school on Monday May 3rd of last
8 year?
- 9 A Yes, sir, I was.
- 10 Q Do you recall having a conversation with John Griffin?
- 11 A Yes, sir.
- 12 Q How do you know John?
- 13 A From the neighborhood. Playing basketball at the court.
- 14 Q Do you recall where you were when the two of you first
15 talked?
- 16 A In home room.
- 17 Q And what were you talking about in home room with John
18 Griffin?
- 19 A He had -- he had talked to me about a friend of his who
20 was locked up and they needed some money to get him out. And
21 the dealing, I know not saying they -- we had got into a
22 marijuana conversation. They deal. And I say they know them
23 for dealing marijuana. I know some people you all can talk
24 to about that.
- 25 Q Okay. Do you know this person or who this person was

DEMETRIUS GREEN -- DIRECT BY MR. HOUSEAL

1 that he told you he needed to get some money to get him out
2 of jail?

3 A No, sir. He just specifically said OG, that's it.

4 Q What does OG mean?

5 A I don't know.

6 Q What did you tell him exactly about this location that
7 you thought they might be able to get some money to get this

8 OG out of jail?

9 A I just told him where I know he can get some marijuana
10 from, that's it.

11 Q And where was that place?

12 A Outwood.

13 Q 4512 Outwood?

14 A I don't know the address.

15 Q Is it the house that this incident occurred at?

16 A Yes, sir.

17 Q So describe in greater detail about your conversation.
18 What happened after that conversation?

19 A After that he just told me when we leave, you get home,
20 he would come talk to me and we can go about it. I mean,
21 well, he told me whenever he get up -- he say we can talk
22 about it, you know what I'm saying. He just like contact me
23 and we talk about it.

24 Q And by that he meant talk about it after school?

25 A To go by and talk with them. You know what I'm saying.

1 That's what I was getting from him. To go by and talk with
2 them about it.

3 Q Okay. I want to make it clear. You're saying that John
4 told you that you would talk to John about it later, is that
5 what you mean?

6 A No, we was going -- you talking about Friday, right?

7 Q No, I'm talking about the day that this happened.

8 A The Monday?

9 Q Okay.

10 A The Monday it happened.

11 Q Did you also have a conversation Friday with him about
12 it?

13 A Friday -- no, Friday was the day -- Friday was when he
14 first occurred and told me about it. You know what I'm
15 saying.

16 I went home on the weekend. Then Monday he came back
17 and he made it specific. You know what I'm saying.

18 Q Okay. When you say Friday was the day it first
19 occurred, what are you talking about exactly happening
20 Friday?

21 A When he approached me Friday that's what he was talking
22 about. You know what I'm saying. Getting money to bond his
23 friend out of jail.

24 Q Okay. That's the conversation about getting OG out of
25 jail?

DEMETRIUS GREEN - DIRECT BY MR. HOUSEAL

1 A Yes, sir.

2 Q And then Monday in home room your conversation was what?

3 A That's when the weed came up. I told him I knew the
4 people you can get it from. You know what I'm saying.

5 Q Okay.

6 Where did you see him next or after you -- after both of
7 you left school where did you see him?

8 A At the school there he picked me up on the street.

9 Q Who picked you up?

10 A Um, um, Robert Steed and, um, Michael Flynn. They were
11 inside a green car, four-door car. And, um, Bond and two
12 Griffins was inside a two-door Honda. And, um, Flynn told me
13 to jump in the car and I jumped in the back seat of the car
14 with them.

15 Q Okay. Let me interrupt you a second. Show you what's
16 been marked State's Exhibits 23, 22, 21 for identification.
17 First 21. Can you take a look at that picture and tell me if
18 you recognize what that is?

19 A That looks just like the car that, um, Bond was driving.

20 Q Okay. State's Exhibit Number 22 for identification, you
21 recognize that, and State's Exhibit 23?

22 A That also looks just like the car.

23 Q What type of car is that, the first one? Do you
24 recognize it?

25 A From the picture it looks blue. On the picture it looks

1 blue.

2 Q And this is State's Exhibit 21?

3 A Yeah.

4 Q Now, referring to State's Exhibit 23, do you recognize
5 that car?

6 A That looks just like the car they put Flynn -- Steed
7 picked me up in, the green car.

8 Q That's the green one.

9 MR. HOUSEAL: Your Honor, I would like to enter these
10 into evidence.

11 THE COURT: Any objection?

12 MR. CRUMRINE: Yes. On the one he said it looked like a
13 blue car. I don't think that was the description given. I
14 don't think he's identified that as being --

15 THE WITNESS: No, I --

16 THE COURT: Go ahead.

17 BY MR. HOUSEAL:

18 Q I hand you State's Exhibit 22. Is that the car that you
19 saw?

20 A 22 looks like the brown rusty car. The first one looks
21 -- that one right there, the shiny one, looks like it got
22 blue on it.

23 Q Is that the same car?

24 MR. CRUMRINE: Objection, Your Honor, leading question.

25 THE COURT: I'll allow that.

DEMETRIUS GREEN - DIRECT BY MR. HOUSEAL

1 THE WITNESS: Yes, sir. It looks like it.

2 MR. HOUSEAL: Okay.

3 MR. CRUMRINE: Your Honor, move to strike the answer as
4 a leading question.

5 THE COURT: All right, sir. Overruled. Go ahead.

6 I'll allow it.

7 MR. HOUSEAL: Are these in evidence? And may I publish
8 them to the jury?

9 THE COURT: Any objection?

10 MR. PENNINGTON: No, sir.

11 MR. CRUMRINE: Just subject to the prior objection.

12 THE COURT: All right, sir. Thank you.

13 (State's Exhibit Numbers 21, 22, 23

14 were admitted into evidence.)

15 MR. PENNINGTON: Although for the record, Your Honor, I
16 would just join in Mr. Crumrine's objection.

17 THE COURT: Thank you.

18 BY MR. HOUSEAL:

19 Q All right.

20 Demetrius, back to the day, Monday, May 3rd in the
21 afternoon. You just testified that several people picked you
22 up. Who were those people again?

23 A Whose car I was in was Robert Steed and Michael Flynn in
24 the car I was in.

25 Q Do you see those two people in the courtroom today?

DEMETRIUS GREEN - DIRECT BY MR. HOUSEAL

- 1 A Yes, sir, I do.
- 2 Q Will you point those people out, say Robert Steed and
- 3 then Michael Flynn?
- 4 A (Pointing.) Robert Steed behind his lawyer. Michael
- 5 Flynn.
- 6 Q Okay.. And in the other car, who was in the other car?
- 7 A Tommy Bond, Michael Griffin and John Griffin.
- 8 Q Okay. And was this -- what time of day was this,
- 9 roughly, afternoon or evening?
- 10 A Afternoon.
- 11 Q Okay.
- 12 A About 3:00, 3:45.
- 13 Q Where did you go when they picked you up in the cars?
- 14 A They said, um, Michael Flynn, he told me just go by the
- 15 house. We went by the house. But no one was home. I told
- 16 him, I say, that is -- the Cadillac isn't there, they ain't
- 17 home.
- 18 Q When he asked you to go by the house, did you know what
- 19 he meant, go by -- did you know where he wanted you to take
- 20 him?
- 21 A Yes, sir, to the house.
- 22 Q How did you know which house he meant for you to take
- 23 him to?
- 24 A Because like I said, you know, Mr. Griffin right here
- 25 saying in school, he told me he was going to bring them by so

DEMETRIUS GREEN - DIRECT BY MR. HOUSEAL

1 we could go by. You know what I'm saying.

2 Q What did you do after the -- you drove by the house and
3 there wasn't a car in the driveway?

4 A We went by -- I told him the fellow isn't home. And
5 Michael Flynn told me he was hungry. He was like, I'm going
6 to get something to eat. Where are you going? I said drop
7 me back off at the street, I'm going to go home.

8 Q You told that to whom?

9 A Michael Flynn.

10 Q Okay. Did he drop you off?

11 A Yes, sir, they did.

12 Q At your house?

13 A Yes, sir. On my street.

14 Q Okay. When did you see them next?

15 A It was late -- a little bit later down the line. I was
16 walking on one of the main streets to go to the back to one
17 of my friends's house, they pulled up next to me on the road,
18 told me to jump in.

19 Q Was it dark out at that point?

20 A Getting dark.

21 Q Okay. Roughly what time would you say in May of '99?

22 A Around about 6:30, somewhere around in there. 6:30,
23 somewhere around there.

24 Q Okay. Who was with -- who did you see that second time
25 when they picked you up?

DEMETRIUS GREEN - DIRECT BY MR. HOUSEAL

1 A It was the same. It was Michael Flynn, Robert Steed.

2 And in this other two-door car was Bond and the two Griffins,
3 Michael and John Griffin.

4 Q And whose car did you get into?

5 A Robert Steed's car.

6 Q Is that the green car?

7 A Yes, sir.

8 Q Where did you go?

9 A We went back -- we went back towards the back of the
10 house. And I was like, yeah, they home now. And the
11 Cadillac is there. And they went by. And they went back,
12 went around to the Lincolnville, the next neighborhood behind
13 it.

14 Q Why did they go by the next neighborhood behind?
15 Explain what you mean?

16 A Well, he just -- they drove by the house. You know what
17 I'm saying. We was -- to my knowledge we were supposed to be
18 going to the house, they drove by the house.

19 And we went into the next neighborhood back -- we went
20 into Lincolnville on Lincolnville Road. And Mr. Robert --
21 Mr. Steed pulled in the middle of the road, Mr. Bond pulled
22 over to the side. Steed was -- Steed, he got out of the car
23 and told me to pull the car over. And they walked around the
24 corner.

25 And I pulled the car over and I was waiting for them to

DEMETRIUS GREEN - DIRECT BY MR. HOUSEAL

1 come back.

2 Q Okay. Now specifically is this on a street, is this in
3 someone's yard, where is it that you're parked?

4 A It's off of Lincolnville Road right on the -- right next
5 to the grass of the church. Right on the grass of the
6 church.

7 (State's Exhibit Numbers 24, 25

8 were marked for identification.)

9 BY MR. HOUSEAL:

10 Q Demetrius, I'm going to approach you and show you what's
11 been marked State's Exhibit Number 24 and 25 for
12 identification.

13 Will you please take a look at those and see if you can
14 identify it?

15 A It's the, um, church that we pulled up the side to --
16 aside the church yard.

17 Q Is the area where the cars were parked depicted in that
18 picture or one of those pictures?

19 A Yes, sir. On the faraway picture is on the side of the
20 road right here in the dirt in the gravel, there.

21 MR. HOUSEAL: Your Honor, I would like to move these be
22 admitted into evidence.

23 THE COURT: Any objection?

24 MR. CRUMRINE: No objection from Mr. Flynn.

25 MR. PENNINGTON: No objection, Your Honor.

DEMETRIUS GREEN - DIRECT BY MR. HOUSEAL

1 (State's Exhibit Numbers 24, 25

2 were admitted into evidence.)

3 BY MR. HOUSEAL:

4 Q I'm going to quickly show you this on the overhead and
5 ask you to show the jury where exactly it was that you were
6 parked.

7 Use this laser pointer to point to it. This is State's
8 Exhibit 25, do you recognize that area?

9 A Yes, sir.

10 Q Show the jury where it was that you pulled the cars in?

11 A Exactly right there (Indicating).

12 Q And where is Lincolnville Road in this picture?

13 A The road is right here.

14 Q Okay. So there were two cars, right?

15 A Yes, sir.

16 Q Describe exactly as best you can what happened when the
17 cars were backed into that location?

18 A When the cars were backed into the location -- well,
19 Bond had already backed his car onto the side and Steed just
20 stopped his in the middle of the road and he knelt down and
21 he was like, go head and pull the car over, you know what I'm
22 saying, and we'll be right back.

23 Q So he asked you to get in and pull the car over?

24 A He stopped in the middle of the road, in the middle of
25 the road, left his door open, say, go ahead and pull it over,

DEMETRIUS GREEN - DIRECT BY MR. HOUSEAL

1 we will be right back.

2 So I went around and backed it up, pulled it over. And

3 I sat there and turned it off. I just sat back. I leaned

4 the chair back. They went on around the corner.

5 Q You say they went on around the corner, who are you
6 referring to?

7 A Mr. -- Michael Griffin, Michael Flynn and Robert Steed.

8 Q What did Tommy Bond and John Griffin do?

9 A Tommy Bond and John Griffin sat inside the two-door
10 Honda.

11 Q That is the other car?

12 A Yes, sir.

13 Q They weren't in your car?

14 A No, sir.

15 Q You were alone in your car at that point?

16 A Yes, sir.

17 Q Steed's car?

18 A Yes, sir.

19 Q Did you see anybody with a gun before they left?

20 A When I was sitting in the back seat, I seen a little
21 black gun (indicating) in the right pocket of Robert Steed's
22 pocket.

23 Q What color was that gun?

24 A Black.

25 Q And the gun was in which one of Steed's pockets?

DEMETRIUS GREEN - DIRECT BY MR. HOUSEAL

- 1 A The -- the right pocket.
- 2 Q Pant pocket?
- 3 A Yeah. The pants pocket, front.
- 4 Q Did you see anyone else with guns at that time?
- 5 A No, sir.
- 6 Q How long were you at the cars until they returned?
- 7 A About --
- 8 Q Would you estimate?
- 9 A 45, 50 minutes, probably an hour.
- 10 Q Who did you see first on the way back?
- 11 A They all -- they all were walking side by side and they
- 12 came walking around the corner.
- 13 Q And when you say they all again, who were they all?
- 14 A Mr. -- Michael Griffin, Michael Flynn, Robert Steed.
- 15 Q Okay. You saw them come around the corner?
- 16 A Yes, sir. And they was just talking and, um, Michael
- 17 Griffin walked to the two-door Honda and got in the passenger
- 18 side of that car.
- 19 Robert Steed opened the passenger side of his car. And
- 20 I was sitting in the driver's seat still. And he just sat
- 21 there. He had his foot hanging out the door and Michael
- 22 Flynn got in the back seat.
- 23 And Robert Steed looked back and he was like, next time
- 24 you get your priorities straight. And Michael Flynn was
- 25 like, I didn't know. You know what I'm saying. And Robert

DEMETRIUS GREEN - DIRECT BY MR. HOUSEAL

1 Steed looked over to me and he was like, hey, where you
2 going? I said I was going home. He said you ain't going
3 with us? I said I'm going home.

4 And he said all right, follow Tommy. Tommy pulled off
5 and I pulled off behind him.

6 Q And where did you drive to?

7 A We went -- we went back down to Varnells (phonetic)
8 Road, turned right on it, came back down to 78, made a right
9 and made a right back on to Woodside Manor.

10 Q And you pulled into Woodside Manor, where did you go?

11 A Tommy went straight past the first street, which is my
12 street. I turned onto my street. And I pulled up to my
13 front yard on the side of my yard and I got out and they was
14 like, all right, we going to holler at you. I was like all
15 right then. I walked to my door.

16 As I was walking to the door, Tommy came back around,
17 Tommy Bonds came around in the Honda to him, hey, we going to
18 Tony's house in Summerville. And they just pulled off.

19 Q Do you know who Tony is?

20 A No, sir.

21 Q Okay. So what else did he say?

22 A They pulled off and I went back in, continued walking to
23 my door. I had to knock on the door because the alarm was
24 on. I didn't have a key.

25 Q Your aunt had an alarm on the door?

- 1 A Yes, sir.
- 2 Q So you woke her up to ask her to let you in?
- 3 A Yes, sir.
- 4 Q Did Mr. Flynn and Mr. Steed talk to you at all between
- 5 the time that they said those comments when they got back
- 6 from the time you dropped yourself off?
- 7 A No, sir, they didn't.
- 8 Q They just said to you what exactly when they came back
- 9 in, just to make sure I am clear?
- 10 A Sir?
- 11 Q What did Mr. Steed say to Mr. Flynn when they got in the
- 12 car?
- 13 A He looked back to Mr. Flynn and was like, next time get
- 14 your priorities straight. Mr. Flynn was like, I didn't
- 15 know. And that was it.
- 16 MR. HOUSEAL: One moment, Your Honor.
- 17 BY MR. HOUSEAL:
- 18 Q So that was on a Monday, May 3rd, or late in the night.
- 19 Do you remember what you did the following day?
- 20 A The following day. I went and got up -- I went to
- 21 school but I came home early. I went to my friend's house.
- 22 And school got out. They, um, I saw the news. Then I found
- 23 out that, um, one of the fellows in the back, I found out
- 24 both of them had got shot. One of them died.
- 25 And that day I just went home that day. And that

DEMETRIUS GREEN - DIRECT BY MR. HOUSEAL

1 Wednesday, um, I was told that some detective wanted to ask
2 me some questions. They called my mother, which is my aunt.
3 She raised me.

4 And I called her and, um, I was like, I'm going to the
5 store because somebody told me the lady at the store told the
6 detective they could ask me some questions.

7 She was like, Demetrius, he live around here, he know a
8 lot about around here, you can ask him. That's what I was
9 told.

10 I told her, she was like, no, they want to ask you
11 questions, just, they know how to find you, just stay home.
12 They know how to find you. If they want to ask you some
13 questions they know where to find you, get in touch with you,
14 just stay home. That's what I did.

15 Q Did they come by and talk to you?

16 A They came and got me Thursday morning at 5:30, 5:40.

17 Q And did you talk to them about what you knew about the
18 homicide?

19 A Well, um, they came and got me and I got dressed. And
20 my, um, my mother told them to hold up, don't lock me up
21 inside the house because I got my little twin brothers in
22 there. She was like take him to the porch.

23 And sit him in the car so I can get dressed, we can go
24 down there.

25 But they took me to the car and screeched to the

DEMETRIUS GREEN - CROSS BY MR. CRUMRINE

1 station. And he -- they had to tell -- they had to go
2 through a couple of things before I could even could give a
3 statement because like I say I didn't even know what happened
4 at the house.

5 Q Okay. Did you give a statement to the police about what
6 happened though that you knew?

7 A Yes, sir.

8 Q Have you been promised anything by anybody to come in
9 here and tell the jury what happened?

10 A No, sir. Only consider my cooperation. That's it.

11 Q Thank you, Demetrius. Please answer any questions
12 these lawyers may have for you.

13 MR. CRUMRINE: Your Honor, if it please?

14 CROSS-EXAMINATION

15 BY MR. CRUMRINE:

16 Q Mr. Green, my name is John Crumrine. I'm defending
17 Michael Flynn.

18 You are just a cooperative fellow, are you?

19 A Yes, sir.

20 Q And when they asked you to come down and talk to them at
21 the store, you said somebody wanted to come talk to you
22 there, had some questions about this incident?

23 A Yes, sir.

24 Q You didn't walk right down there and talk to them?

25 A No, sir.

DEMETRIUS GREEN - CROSS BY MR. CRUMLINE

1 Q You wanted to wait at home to see if anyone showed up,
2 right?

3 A No, sir. When I was told that the lady had told some
4 detectives that they could ask me some questions about what
5 was going on because I'm well known around there, I called my
6 mother because I was mad that she even told them something
7 like that and put me in something like that because I wasn't,
8 from what I figure what I knew, I wasn't involved in it, she
9 didn't have a right to tell like that.

10 So I called my mother, and I was like I need to talk to
11 the lady about this. She said, no, don't get mad, just stay
12 home. They'll find you if they got to ask you some
13 questions. So I stayed home.

14 Q Let me put it this way, you didn't call up the police
15 and say hey, I got some information on that thing, did you?

16 A No, I didn't.

17 Q And when they picked you up they let you know how much
18 trouble you were in, didn't they?

19 A Yes, sir.

20 Q Before they let you know how much trouble you were in
21 you didn't think you were in trouble?

22 A I already -- I already had put what I knew together and
23 I figured it already -- I knew by what happened I was like --
24 I was figuring that it was them who had done it. By waiting
25 there I was thinking it was they who done it and I called my

DEMETRIUS GREEN - CROSS BY MR. CRUMRINE

1 aunt and she told me to stay, they know where to find me, to
2 stay home.

3 Q What did the police say to you to let you know what kind
4 of trouble you were in?

5 A When they came and got me they told me, um, I had to go
6 to family court then when we got in the car he was like, we
7 got you for a murder charge. I was like who? And he told me

8 he was calling Mr. Flynn, um, Mr. -- both the Griffins and
9 Bond, that was it.

10 Q All right.

11 So first the police tricked you by saying this is just
12 about a family court matter?

13 A Uh-huh.

14 Q And for the record that is a yes?

15 A Yes, sir.

16 Q All right. She can't take that down. It's all right.
17 All right.

18 And then next they told you that you were wanted on a
19 murder charge?

20 A Yes.

21 Q And they named out the names of people they thought were
22 involved?

23 A Yes, sir.

24 Q Okay. They named Mr. Flynn's name?

25 A Yes, sir.

DEMETRIUS GREEN - CROSS BY MR. CRUMRINE

1 Q Who else was named?

2 A Michael Griffin, John Griffin, Tommy Bond. They said
3 they had a suspect named T-Lo, but they didn't know his name,
4 they didn't have his name.

5 Q All right.

6 Did they also tell you that they had the name of Stephen
7 Mark Smith, Crazy?

8 A No, sir.

9 Q Did they tell you they had the name of Walter
10 Gardenhigher, also known as Little T?

11 A No, sir.

12 Q All right. So they only told you those names?

13 A Yes, sir.

14 Q Those are the names that you eventually put in your
15 statement, the ones they told you?

16 A Yes, sir.

17 Q And when you got to the station they told you that you
18 had certain rights, the Miranda rights, correct? You have
19 the right to remain silent?

20 A Yes, sir.

21 Q The right to consult with a lawyer. Did they tell you
22 those things?

23 A Yes, sir.

24 Q They told you anything you said could be held against
25 you?

DEMETRIUS GREEN - CROSS BY MR. CRUMRINE

- 1 A Yes, sir.
- 2 Q And knowing that things could be held against you how
3 did they -- how were you convinced to give up those rights to
4 give a statement if you knew that it was going to be used
5 against you? Did they tell you anything to encourage you to
6 do that?
- 7 A No, they didn't -- they didn't tell me anything. They
8 just -- when he asked me if I wanted to give a statement, he
9 gave me my rights to me and everything, I didn't have to give
10 a statement. I was like well, I didn't know what happened so
11 I'm going to give a statement and let you all know the truth.
12 That's all I could do.
- 13 Q They didn't tell you what evidence they thought they
14 already had that other people had given statements against
15 you?
- 16 A Yes, sir. They told me other people had given
17 statements against me.
- 18 Q And didn't they tell you you might as well give a
19 statement too, we already know all about it, and they've
20 already told on you?
- 21 A No, sir.
- 22 Q Didn't tell you that?
- 23 A No, sir.
- 24 Q You are just a real cooperative and honest guy?
- 25 A Yes, sir.

DEMETRIUS GREEN - CROSS BY MR. CRUMRINE

1 I was in the situation there that was leading me to lie
2 to get out because I had no involvement as far as what
3 happened to the -- at the house so I gave a statement.

4 Q Do you think it was an honest thing to do to talk to
5 John Griffin and plan to rob somebody?

6 A If I -- well, the way that me and him talked it
7 wasn't -- from my knowledge it wasn't no rob -- it wasn't a
8 robbery.

9 Q What did you think you and Little John had planned to do
10 then?

11 A What did I think me and Little John had planned?

12 Q Yes, sir.

13 A I didn't -- I didn't never think me and Little John had
14 planned a robbery, I mean, do a robbery. When we got into
15 Lincolnville, that's when I figured I probably done got
16 myself into a robbery when I seen the gun. But that was it.
17 I didn't think me and Little John planned a robbery.

18 Q What did you think you were doing over there by the
19 church sitting in the car?

20 A I -- I was just waiting for them to come back. I seen
21 the gun. I was like Oh, Lord, what I got myself into. I was
22 -- all I could do is sit. I was about two miles from home,
23 long walk, I just sat in the car.

24 Q Didn't the police scare you pretty badly before you gave
25 your statement?

DEMETRIUS GREEN - CROSS BY MR. CRUMRINE

- 1 A Scare me, not really. One of them --
- 2 Q Did they tell -- did they tell you the penalties you
- 3 could get for murder and for assault and battery with intent
- 4 to kill, for burglary first degree, for conspiracy, did they
- 5 tell you what the penalties were you were facing?
- 6 A At the time?
- 7 Q Yes, sir.
- 8 A Yes, sir.
- 9 Q What did you understand you were facing?
- 10 A When did I understand I was facing the charges?
- 11 Q No. What did you understand the penalties were that you
- 12 were facing?
- 13 A When did I understand what they were?
- 14 Q Did you understand what they were, how much time you
- 15 could get?
- 16 A Yes, I did.
- 17 Q And what did they tell you that was?
- 18 A Um, the murder, first degree burglary I know was life.
- 19 The armed robbery --
- 20 Q For each of those?
- 21 A Yes.
- 22 Q Yes, sir.
- 23 A The armed robbery was 10 to 25 I think. 10 to 25. And
- 24 I can't really remember the assault and battery with intent
- 25 to kill, but I know it was time.

DEMETRIUS GREEN - CROSS BY MR. CRUMRINE

1 Q All right.

2 After they told you that you said, well, let me tell you
3 how I participated in this?

4 A On the way to the station I was already told about they
5 saying well about them (sic). Then when I got there it was
6 telling me about the time and everything right there. I was
7 like look, I don't got to lie to you all, I will give you all
8 a statement. I don't got to lie to you about nothing because

9 I wasn't at the house, I didn't know anything. I give you
10 all a statement.

11 They didn't try to scare me or nothing to give a
12 statement. They just -- out of my own free will I said I was
13 going to give a statement.

14 Q You admitted you drove the car, correct?

15 A Yes, sir.

16 Q You -- did you admit that you gave the gun to Tommy?

17 A I didn't give a gun to Tommy.

18 Q Did you give a gun to Michael Griffin?

19 A No, sir.

20 Q Did you -- who did you give the gun to?

21 A I didn't give a gun to anyone.

22 Q Did you -- when did you decide that you were going to
23 come into court and testify?

24 A When?

25 Q Yes, sir.

DEMETRIUS GREEN - CROSS BY MR. CRUMRINE

- 1 A (Pause). Um.
- 2 Q Was it today?
- 3 A No. Um...
- 4 Q Was it yesterday?
- 5 A No. Um, the last time -- I think it was the last time
- 6 my lawyer came to see me and we was talking and I can't
- 7 exactly remember everything. I can't really answer that to
- 8 tell you the truth when I decided to come testify.
- 9 Q Was it the last time your lawyer talked to you before
- 10 you came in here?
- 11 A When the last time he came to talk to me I knew -- I
- 12 knew that they wanted me to testify.
- 13 Q And when you say they, do you mean Mr. Houseal here?
- 14 A I knew that whoever is prosecutor, Mr. Houseal, wanted
- 15 me to testify. So that's it.
- 16 Q All right.
- 17 A I was agreeable to that.
- 18 Q You knew that the last time your lawyer talked to you,
- 19 correct?
- 20 A Yes, sir.
- 21 Q All right. And how long -- about how long was -- I
- 22 don't need a date -- was it a day ago, was it a week ago?
- 23 A Two and a half weeks. Two and a half, three weeks.
- 24 Q All right. For the record, your lawyer is Kevin Holmes?
- 25 A Yes, sir.

DEMETRIUS GREEN - CROSS BY MR. CRUMRINE

1 Q And he's seated back here in the suit in the back?

2 A That's him.

3 Q And how did -- how was it you arrived at the decision
4 that you were going to testify for the State?

5 A Um...

6 Q Was it just a patriotic duty, you felt to be a good
7 citizen you ought to come in and testify?

8 A It wasn't a -- it wasn't a good citizen thing. It
9 just -- I was facing time and -- for something that I wasn't
10 at the house. I didn't do it. I wasn't going to let them
11 bring me down with them on something like that. So it was
12 like, (noise) a young man had got killed by it, so I wasn't
13 responsible for it, so I wasn't going to let them blame me
14 for it either.

15 Q You don't feel you're responsible for it?

16 A Responsible?

17 Q For the murder and assault and battery with intent to
18 kill, burglary?

19 A I don't feel I'm responsible for it.

20 Q Yes, sir. Didn't you understand the elements of the
21 crime, that you participated and that you are being
22 prosecuted for that?

23 A I -- I understand.

24 Q And your testimony implicates you and gives them
25 evidence that you in fact did this thing?

DEMETRIUS GREEN - CROSS BY MR. CRUMRINE

- 1 A Yes, I understand.
- 2 Q You understand that?
- 3 A Yes, sir.
- 4 Q And you wanted them to come in and have -- just have
- 5 them give you two life sentences and -- and all the extra
- 6 years for armed robbery and assault and battery with intent
- 7 to kill, you came in here so they can go ahead and give that
- 8 to you?
- 9 A I didn't -- I didn't come here so they can give it to
- 10 me. But I just came in here to tell the truth, let my side
- 11 of the story be heard. If they did it, they did it.
- 12 Q Mr. Green, isn't it true you're here to try to get a
- 13 break from all that time you're facing to avoid the life
- 14 sentences and to try to get out on the street eventually,
- 15 isn't that why you're cooperating with the State?
- 16 A Like I said, I wasn't promised anything. They just -- I
- 17 just made the decision I was going to testify. So I'm here.
- 18 Q Who told you to say that you weren't promised anything?
- 19 A Who told me to say that?
- 20 Q Yes, sir.
- 21 A I wasn't promised anything.
- 22 Q I'm asking when did that term come up to you?
- 23 A That I wasn't promised anything?
- 24 Q That I wasn't promised anything?
- 25 A Tell you the truth I don't really know.

DEMETRIUS GREEN - CROSS BY MR. CRUMRINE

1 Q Did you meet with the solicitor's office, did you
2 prepare your testimony with Mr. Houseal?

3 A Did I prepare it? No. We didn't -- we didn't prepare
4 it. He just had told him I was going to tell the truth. I
5 couldn't change it. I didn't want to change it because it's
6 the truth. Need for me to get up here -- sit there and
7 change it and lie about it when I told the truth offhand.

8 So...

9 Q Let me go beyond the direct promise, what is your
10 understanding of what break you get for being in here today
11 and testifying against these two young men? What is your
12 understanding of how this helps you?

13 A I can't really tell you.

14 Q Do you know what, um, Michael Griffin pled guilty to?

15 A He just told me, um, he told me he was pleading to a 15-
16 to 30-year, um, sentence.

17 Q So Michael Griffin told you that he has pled to a 15- to
18 30-year sentence?

19 A He told me he was pleading to it. He didn't tell me he
20 already pled to it.

21 Q Did he tell you he got -- got his charge reduced to
22 voluntary manslaughter?

23 A I saw -- he didn't tell me, he just told me about the 15
24 to 30. I was already told about the voluntary manslaughter
25 though.

DEMETRIUS GREEN - CROSS BY MR. CRUMRINE

- 1 Q All right. And who told you about that, please?
- 2 A A roommate that came to court yesterday.
- 3 Q All right. And is it your understanding that since your
- 4 -- you didn't go -- you were not to have gone in the house
- 5 and actually pulled the trigger like Michael Griffin, that
- 6 you should do better than he did; is that your understanding
- 7 by cooperating that you should do better than that?
- 8 A No.
- 9 Q Did you talk to your lawyer about that?
- 10 A About?
- 11 Q About the understanding as to your sentence.
- 12 A We talked about the types of murder and other three
- 13 charges.
- 14 Q Do you know who is going to determine what deal you get
- 15 when this trial is over here?
- 16 A No, sir, I don't.
- 17 Q You don't know who's -- who's watching your testimony
- 18 and going to decide?
- 19 A I would -- I would guess the prosecutor.
- 20 Q All right. What do you think he wants you to do?
- 21 A More specific?
- 22 Q To help him get a conviction?
- 23 A He wants me to -- he wants me to come up here and tell
- 24 the truth. That's all I know. That's all I can tell you. I
- 25 don't know what he want me to help -- if he wants me to help

DEMETRIUS GREEN - CROSS BY MR. CRUMRINE

1 him get a conviction. I know for me to come up here and tell
2 the truth.

3 Q All right. Let me ask you a few questions about what
4 you did testify to.

5 When you gave your statement you described the Honda as
6 being a what, do you remember?

7 A A dirtyish brownish car.

8 Q Dusty?

9 A Dusty.

10 Q Brownish color?

11 A Uh-huh.

12 Q And this car that you identified today as being the car,
13 isn't a dusty brownish color? Is it? You want to look at it
14 again?

15 A In this picture right here from the front it doesn't
16 look like a dusty brownish car. But from right here with the
17 shadow on it, it looks like a dusty brownish car.

18 Q Do you think that whoever took the photograph didn't
19 accurately depict the real color of that car as you saw it,
20 if that is the car?

21 A Say again?

22 Q Do you think that whoever took that photograph didn't
23 accurately capture the real color that that car is?

24 A It looks like it, yes.

25 Q When you say it looks like it, yes --

DEMETRIUS GREEN - CROSS BY MR. CRUMRINE

1 A From the looks of it, it didn't capture the actual color
2 of it. Because here you can tell the sun is on it, from here
3 it has the shadow. You got nothing on it to really show the
4 color of it. That's why I told him it looks like the car.

5 Q That doesn't look like the car you saw that night, does
6 it?

7 A From, um -- the two-door Honda, it looks like the
8 two-door Honda. But like I said, from here it looks like a
9 blue car from the front. But the shadow in the back part,
10 that's when it looks like a dusty brown car.

11 Q And on the night that -- well, when you gave a
12 statement, you said you didn't see any masks anyone had; is
13 that right?

14 A Yes, sir.

15 Q And the only gun you were to have seen was, um, was a
16 25, isn't that what you said, a 25 caliber?

17 A It was in his pocket and it was small. And, um, family
18 member might have already got -- got locked up for it,
19 similar gun. When I seen it, that's what it resembled to me.
20 I told them it looked like a black 25. Small gun.

21 Q Demetrius, since you've been locked up you've had a good
22 bit of occasion to compare notes with the other fellows that
23 have been charged and are going to testify, haven't you?

24 A If -- if I could --

25 Q You were at bond hearings together, correct?

DEMETRIUS GREEN - CROSS BY MR. CRUMRINE

1 A We went to one bond hearing. Didn't talk.

2 Q You have been at various institutions passing word to
3 each other directly or indirectly?

4 A Never passed a word.

5 Q Michael Griffin didn't tell his brother, Little John
6 Griffin, to tell you what to say?

7 A No, he didn't.

8 Q You all been back here together all day today for --
9 since early this morning?

10 A Uh-huh.

11 Q In the same cell talking about the case, haven't you?

12 A No, sir.

13 No, sir. We wasn't -- just -- we was just sitting back
14 there just taking deep breaths and waiting to get it over
15 with. That's all each and everybody said. Just -- I'm just
16 ready -- ready to get it over with. Everybody was agreeing.
17 Ready to get it over with. We never said anything about the
18 case. What he was going to say, I'm going to say, nothing
19 like that.

20 Q Just catching up on old times?

21 A Yeah. Basically that's what, um, Bond, Griffin and
22 Michael Griffin was doing. All I was doing was sitting in
23 the corner because like I say I don't really hang with them
24 fellows.

25 Q And you're just up here because you're a good guy?

DEMETRIUS GREEN - CROSS BY MR. PENNINGTON

1 A Sir?

2 Q You're up here testifying because you're a good guy?

3 A I'm an honest fellow. Honest guy.

4 Q Honest fellow?

5 A Yes, sir.

6 Q All right. Thank you. I have no other questions.

7 MR. PENNINGTON: Your Honor, please.

8 CROSS-EXAMINATION

9 BY MR. PENNINGTON:

10 Q Mr. Green, I've just got a few questions for you. My
11 name is Ashley Pennington.

12 A All right.

13 Q You will agree, won't you, Mr. Green, that you watched
14 the news on Tuesday and you didn't call the police?

15 A Yes, sir.

16 Q Sat in your house up all day Wednesday, didn't call the
17 police?

18 A I wasn't -- I wasn't exactly in the house all day
19 Wednesday. I -- when I found out that -- like around about 5
20 o'clock in the afternoon, that's when detectives wanted to
21 ask me some questions, I called my mother.

22 Q Is that calling the police?

23 A Yes, sir.

24 Q You called the police?

25 A No, I didn't call the police.

DEMETRIUS GREEN - CROSS BY MR. PENNINGTON

1 Q Okay.

2 A I said I called my mother.

3 Q Okay. So you didn't call the police?

4 A No, sir.

5 Q Now, you were 16 years old last May, weren't you?

6 A Yes, sir.

7 Q And you live on Clovewood?

8 A Yes, sir.

9 Q And Clovewood is you said 11 streets away?

10 A I said I think it's -- I can't really -- I can't really
11 pinpoint the exact number. But --

12 Q Well, let's take a look and see if I can refresh your
13 recollection.

14 Mr. Green, I just ask you to take a moment and take a
15 look at this diagram, don't tell us what it is, just study
16 it, if you would. Particularly pay attention to the marks
17 that you see and the words that you see. And let me know
18 when you're finished taking a look at it.

19 A I'm finished.

20 Q Okay. Now you live in, is it, Woodhill Manor?

21 A Woodside Manor.

22 Q Woodside Manor. This is off of Highway 78?

23 A Yes, sir.

24 Q And it's a subdivision that has one road in, one road
25 out?

DEMETRIUS GREEN - CROSS BY MR. PENNINGTON

- 1 A Two roads in, two roads out.
- 2 Q All right. We got Midview?
- 3 A Uh-huh. And Barrywood.
- 4 Q Barrywood. Does Barrywood open out onto 78?
- 5 A Yes, sir, it does.
- 6 Q Okay. And you live up near the 78 end of the
- 7 neighborhood?
- 8 A Yes, sir.
- 9 Q But it's only ten streets down to where Outwood Street
- 10 is?
- 11 A Yes, sir.
- 12 Q Okay. And the Griffins, this -- this Little John
- 13 Griffin that you talked about, he also lives in Woodside
- 14 Manor?
- 15 A Yes, sir.
- 16 Q And he lives about two streets from you, a little closer
- 17 to where the victims lived?
- 18 A Yes, sir.
- 19 Q Okay. Thank you.
- 20 Q And you know a Tommy Bonds?
- 21 A Yes, sir, I do.
- 22 Q And he also lives in Woodside Manor?
- 23 A Yes, sir.
- 24 Q And he lives about one block away from where the victims
- 25 live, right?

DEMETRIUS GREEN - CROSS BY MR. PENNINGTON

1 A Yes, sir.

2 Q Now, you started out by telling us that -- that you made
3 two trips by Outwood that night?

4 A Yes, sir, we did.

5 Q And the first one was about 3 in the afternoon, about
6 3:45 you said?

7 A Yes, sir. I said around 3:45, 3:45.

8 Q Okay. And you testified when the solicitor asked you on
9 direct you said that when the -- when you were picked up you
10 said you were picked up by a man named Robert Steed?

11 A Yes, sir.

12 Q And that that's what you told the police; is that right?

13 A No, I didn't say Robert Steed.

14 Q Okay. When you were picked up by the police you didn't
15 know the man's name?

16 A I didn't know his real name.

17 Q Okay. You didn't know Robert?

18 A No, sir.

19 Q You didn't know Steed?

20 A No, sir.

21 Q You didn't hang out with him?

22 A No, sir.

23 Q He wasn't one of your friends?

24 A No, sir.

25 Q He wasn't in your crowd?

DEMETRIUS GREEN - CROSS BY MR. PENNINGTON

- 1 A No, sir.
- 2 Q Okay. Now, when you actually made your statement on
3 that Thursday you described that the police said look, we
4 have some names. Do you know, for example, Little John and
5 you said yes?
- 6 A Yes.
- 7 Q And they threw out the name Creep; isn't that right?
- 8 A Yes, sir.
- 9 Q And you said yes?
- 10 A Yes, sir.
- 11 Q You didn't use these formal names?
- 12 A No, sir.
- 13 Q Okay. And they threw out the name T-Lo?
- 14 A Yes, sir.
- 15 Q And you went oh, yes, that's right?
- 16 A Yes, sir. I told him I heard that name that Monday
17 night when I was inside his car.
- 18 Q Okay. But you didn't use Robert Steed, so --
- 19 A No, sir.
- 20 Q -- when the solicitor asked you about it and you told
21 them it was Robert Steed that was wrong, right?
- 22 A His name is Robert Steed.
- 23 Q But that's not the name you gave the police?
- 24 A No, sir.
- 25 I didn't know his full name until after I got locked

DEMETRIUS GREEN - CROSS BY MR. PENNINGTON

1 up.

2 Q Now, let's talk about the weekend before.

3 Now, you described that on Friday you and Little John
4 had a little conversation at school?

5 A Yes, sir.

6 Q And that Little John had a friend locked up in jail and
7 wanted to get out on bond?

8 A Yes, sir.

9 Q And the plan was to get some money to help him go and
10 pay a bondsman?

11 A I guess. Yes, sir.

12 Q Okay.

13 And so you all talked about this house that -- that you
14 knew about that was in the back of the neighborhood where
15 they sold weed?

16 A Yeah. John got on the subject of weed and I told him I
17 knew who sold weed.

18 Q Okay.

19 And so the idea was that there could be some money in
20 that, right?

21 A Money in the house or money involvement?

22 Q That you could get some money from them?

23 A From them, from the house?

24 Q I'm asking you, sir?

25 A I'm asking you if you are considering into the house,

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DEMETRIUS GREEN - CROSS BY MR. PENNINGTON

1 getting money from the house?

2 Q Well, it was your conversation, you spoke with Mr.
3 Little John, didn't you?

4 A Yes, sir.

5 Q And you all were talking about getting money?

6 A Yes, sir.

7 Q And you were going to get money from that house some
8 way?

9 A We had got into the conversation of weed, I told him I
10 know where you all can get some weed from.

11 Q Okay.

12 Was this going to be like a bank where you could go
13 there and you could make a withdrawal or take out a loan?

14 A No, sir.

15 Q Was this going to be a place where you could just go up
16 and say, would you mind giving me some weed?

17 A No, sir.

18 Q You weren't thinking that?

19 A Yes, sir.

20 Q You're not here to tell this jury that's what you were
21 thinking?

22 A No, sir.

23 Q You all were talking about robbing the place, weren't
24 you --

25 A No, sir.

DEMETRIUS GREEN - CROSS BY MR. PENNINGTON

1 Q -- let's be honest?

2 A No, sir.

3 Q This was just going to be a let's -- let me -- give it
4 to me or you're going to go there and just ask them and they
5 are going to politely hand it over?

6 A No, sir. John Griffin never -- he never -- when he came
7 over -- when he approached me he never approached me as a
8 robbery. I know John Griffin and him as buying weed.

9 Q Okay.

10 A If I ever needed some they would have sold me some. And
11 he didn't say I wanted to rob people. He just said we need
12 some weed.

13 Q So you're trying to tell this jury that the people were
14 just going to give you money or weed?

15 A No. No, sir.

16 Q No. That's not what you're telling this jury?

17 A No, sir.

18 Q Was it just going to be laying out in the front yard for
19 you to pick up?

20 A No, sir.

21 Q And then you had all weekend to think about it until
22 that Monday, right?

23 A Yes, sir.

24 Q And Monday in home room -- you were in the 9th grade?

25 A Yes, sir.

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DEMETRIUS GREEN - CROSS BY MR. PENNINGTON

- 1 Q You all had a conversation again?
- 2 A Yes, sir.
- 3 Q And he didn't talk about calling T-Lo, did he?
- 4 A No, sir.
- 5 Q He talked about calling his brother, Joby?
- 6 A Yes, sir.
- 7 Q And that's Michael Griffin?
- 8 A Yes, sir.
- 9 Q Okay. Now, you've told us that you never got out of the
10 car when you were over there by that church, right?
- 11 A I got out of the car to pull the car to the side but I
12 never -- after that I never got out of the car.
- 13 Q Okay. Would you mind standing up here on the floor.
- 14 A (Complying).
- 15 Q You're 16 years old at the time?
- 16 A Yes, sir.
- 17 Q And you're how tall?
- 18 A 5'8, 5'9.
- 19 Q 5'8, 5'9.
- 20 A (Witness moves head up and down.)
- 21 Q Okay. Please have a seat.
- 22 Now, you've gone over that -- the police told you that
23 you were looking at a lot of time?
- 24 A Yes, sir.
- 25 Q And they told you that you were charged with murder?

DEMETRIUS GREEN -- CROSS BY MR. PENNINGTON

1 A Yes, sir.

2 Q And then you got served with a warrant for murder,
3 didn't you, a warrant for murder?

4 A They never --

5 Q Didn't you get an arrest warrant for murder on that
6 Thursday?

7 A When they came to my house?

8 Q No. When you went to bond court. Remember when you
9 went in front of Judge Gadalia (phonetic) --

10 A Yes, sir. Yes, sir.

11 Q -- and they gave you a warrant saying you're charged
12 with murder?

13 A I never -- I never got -- I never got it.

14 Q You never got it?

15 A No, sir. I don't have --

16 Q Did you know you were charged with murder?

17 A Yes, sir.

18 Q That wasn't a surprise?

19 A It came from the -- it already had come from the
20 sheriff's office. I already knew that I was -- I already
21 knew the four charges that they prescribed to me.

22 Q Okay. Tell me what those are?

23 A Murder. First degree burglary. Armed robbery. And
24 assault and battery with intent to kill.

25 Q All right.

DEMETRIUS GREEN - CROSS BY MR. PENNINGTON

- 1 Murder. Burglary in the first degree. Armed robbery.
2 Assault and battery with intent to kill.
3 A Uh-huh.
4 Q Police had talked to you about you could get life in
5 prison on the murder charge?
6 A Right.
7 Q And the burglary first charge?
8 A Right.
9 Q And that you knew that there was a lot of time
10 associated with armed robbery?
11 A Right.
12 Q And your lawyer has since told you that you're looking
13 at 30 years on that, right?
14 A For the armed robbery?
15 Q Yes, sir.
16 In your conversations with Mr. Holmes?
17 A Yes, sir --
18 Q Okay.
19 A -- I knew.
20 Q And then you've learned that you're facing 20 years for
21 assault and battery with intent to kill?
22 A Yes, sir.
23 Q And --
24 A I am aware of all the times.
25 Q Pardon me?

DEMETRIUS GREEN - CROSS BY MR. PENNINGTON

1 A I am aware of all the sentences.

2 Q All right. Keep your voice up because the jury is
3 listening to our conversation here.

4 A All right.

5 Q Okay.

6 Q Now, so if you add all that up --

7 MR. HOUSEAL: Judge, can I approach the bench on an
8 issue, please?

9 (Off-the-record discussion at the bench.)

10 THE COURT: Go to your room just a minute. It won't
11 take just a second. Don't sit down.

12 (2:40 p.m., outside the presence of the jury.)

13 THE COURT: Go ahead.

14 MR. HOUSEAL: Judge, I objected because I don't think
15 it's appropriate to continue to question this witness about
16 the maximum penalties that he's facing. He's asked the --
17 the witness has answered it four or five times. Mr.
18 Pennington is trying to testify himself.

19 If he wants to introduce evidence himself about those --

20 THE COURT: Did you object to that witness up there?

21 MR. HOUSEAL: I object to the line of questioning.

22 He continues to ask him the same line of questioning
23 about the maximum penalties. And I anticipate he will
24 probably try to do it with each of the codefendants that
25 testify.

1 And we talked yesterday about his ability to question
2 Michael Griffin on it in detail. And I understand that. And
3 I understand the jury is going to know what the maximum
4 penalties are.

5 I think it is improper to continue to go into this line
6 of questioning and that's why I objected.

7 MR. PENNINGTON: In reply, Your Honor, I would say that
8 it was his own witness who is still present in the courtroom
9 who said that these were matters that were taken up during
10 the interrogation process and that have subsequently been
11 flushed out in conversations with his attorney.

12 And as the case law that I presented to the court very
13 clearly states, this is a matter of credibility. We've
14 already had -- it's fairly clear I think from the way that
15 this case is shaping up that credibility is the key to this
16 entire prosecution.

17 I can understand why the solicitor may be concerned that
18 the jury can believe this young man is under pressure. It
19 would be pretty impossible other than if he had a gun, a
20 loaded gun, pointed to his head to have much greater pressure
21 placed on him at this tender age in terms of what is weighing
22 on coming out of this case.

23 And so it would be a travesty, it would be a fraud on
24 this jury to try to deceive them.

25 Now, I honestly will tell the court I'm not going to do

DEMETRIUS GREEN - CROSS BY MR. PENNINGTON

1 a song and dance repeatedly and bore them out of their
2 skulls. But this is the first time that these jurors will
3 have ever heard or know these numbers or clearly understand
4 them and I think it's not doing too much with the first
5 witness to go through and just lay it out.

6 THE COURT: Let me ask you --

7 MR. DURANT: Your Honor, if I may.

8 If he's willing to introduce this exhibit into evidence,
9 we have no objection to it. But all he's doing is creating
10 an exhibit and he is showing it to this jury without going
11 through the hoops of having to put something into evidence
12 and give us last argument.

13 THE COURT: You want to introduce that?

14 MR. PENNINGTON: It's not an exhibit, Your Honor.

15 THE COURT: All right.

16 MR. PENNINGTON: It's just a chalkboard.

17 THE COURT: All right, sir.

18 MR. PENNINGTON: This is demonstrative.

19 THE COURT: But it's an exhibit. It's writing down so
20 the jury can see without introducing it. You can ask him all
21 about it. But if -- if they object to that, I'm not going to
22 allow it. I'll let you examine him and be sure he
23 understands that murder is life, burglary first is --

24 MR. HOUSEAL: I mean, he understands it. He's answered
25 that question five or six times. First from Mr. Crumrine now

DEMETRIUS GREEN - CROSS BY MR. PENNINGTON

1 again from Mr. --

2 THE COURT: Let me get one thing straight. Do you
3 object to that unless he introduces it?

4 MR. HOUSEAL: Absolutely.

5 MR. DURANT: Absolutely.

6 THE COURT: I sustain the objection. All right. Tear
7 it off or turn it around, whatever you prefer.

8 Has he already -- for your examination has he -- so you
9 can mark it as --

10 MR. PENNINGTON: We don't need to do that, Judge. I was
11 going to ask the court a question.

12 If I was in final argument could I not do the same
13 thing, simply summarizing testimony?

14 THE COURT: Yes, sir.

15 MR. PENNINGTON: Very good then.

16 THE COURT: Now, has he admitted that -- that what
17 you've written up there, burglary -- all of those and what
18 the penalties are, has he admitted he understood that?

19 MR. PENNINGTON: Yes, sir.

20 THE COURT: All right, sir. Let's not go any further
21 with that.

22 (In the presence of the jury.)

23 BY MR. PENNINGTON:

24 Q. Mr. Green, we just finished going over the possible
25 penalties for the four charges you have but you have an

DEMETRIUS GREEN - CROSS BY MR. PENNINGTON

1 additional charge too, don't you?

2 A Not that I know of.

3 Q Conspiracy, does that ring a bell?

4 A That's it.

5 Q You're charged with that too?

6 A Yes, sir. They told me.

7 Q All right.

8 Now, you know that it's the prosecutor in South Carolina

9 who has the authority to reduce those charges?

10 A Yes, sir.

11 Q And nobody else?

12 A Yes, sir.

13 Q Your lawyer can't do it, Mr. Holmes?

14 A Yes, sir.

15 Q Judge can't do it?

16 A Yes, sir.

17 Q Okay.

18 And you've been represented by Mr. Holmes for probably
19 about a year and a half?

20 A Yes, sir.

21 Q You've been in the county jail?

22 A Yes, sir.

23 Q And over the course of that representation you've been
24 wanting to know what he could do for you in this case, right?

25 A Yes, sir.

DEMETRIUS GREEN - CROSS BY MR. PENNINGTON

- 1 Q And he's told you repeatedly that you just got to wait
2 and try to make a deal with the solicitor at the end of the
3 case, right?
- 4 A Not exactly. No, not exactly.
- 5 Q Well, you weren't demanding a speedy trial in this case?
- 6 A No, sir.
- 7 Q You knew that it was in your best interest to try to
8 come in here and be a witness for the solicitor? He told you
9 that a long time ago, right?
- 10 A Not exactly.
- 11 Q What were you asking for, a speedy trial?
- 12 A No, sir.
- 13 Q What were you waiting on?
- 14 A Waiting to go to court.
- 15 Q And this is going to court, isn't it?
- 16 A They call me this morning to go to court, I thought this
17 was going to court.
- 18 Q Okay.
- 19 And you fully expect to come in here later this week and
20 offer a guilty plea in this case, don't you?
- 21 A Yes, sir, after.
- 22 Q You have to, that's part of the arrangement, right?
- 23 A No, sir.
- 24 Q Well, why do you have to?
- 25 A Because I'm already inside the situation. I'm not going

DEMETRIUS GREEN - CROSS BY MR. PENNINGTON

1 to try to go to trial.

2 Q Okay.

3 So you're going to plead guilty to murder?

4 A I'm going to plead guilty to my charges.

5 Q You're hoping to plead guilty to voluntary manslaughter,
6 aren't you?

7 A If my charges can be reduced, I'll plead guilty to them.

8 Q That would be good, wouldn't it?

9 A Yes, sir.

10 Q In fact, you and your lawyer have specifically talked
11 about hoping to get a fairly big break, better than Michael
12 Griffin?

13 A Not really.

14 Q No?

15 A Not really. He just told me the charges that I'm facing.

16 Q Only charges -- he has never talked to you about what
17 you might get? You all haven't talked about what you might
18 get?

19 A Yes. Yes, we have.

20 Q Okay.

21 And you're certainly hoping for a better deal than what
22 Michael Griffin got? Michael Griffin is accused of going
23 into the house, isn't he?

24 A Yes, sir.

25 Q Are you accused of going into the house?

DEMETRIUS GREEN - CROSS BY MR. PENNINGTON

- 1 A No, sir.
- 2 Q Are you going to settle for Michael Griffin's deal?
- 3 A If I have to I got to.
- 4 Q Because it's really not your choice, is it?
- 5 A No, sir.
- 6 Q It's the solicitor's choice, isn't it?
- 7 A Yes, sir.
- 8 Q You all even explored the possibility of getting a
- 9 youthful offender sentence, haven't you? You all talked
- 10 about that?
- 11 A We've talked about a youthful offender act?
- 12 Q Yes. Youthful offender act.
- 13 A Not really.
- 14 Q Well, is it yes or is it no? Have you all talked about
- 15 it or not? Has it come up?
- 16 A I asked him -- I asked him about it.
- 17 Q Okay.
- 18 Solicitor didn't want to go that far, does he?
- 19 A I don't know. He -- he never --
- 20 Q Is that still on the table then, it's a possibility?
- 21 A I don't know.
- 22 Q A 1 to 6?
- 23 A I don't know.
- 24 Q You're not sure?
- 25 A No, sir.

DEMETRIUS GREEN - REDIRECT BY MR. HOUSEAL

1 I was never -- I was never even given the option to it.

2 I just asked him about it.

3 Q All right.

4 Now, let's talk about the -- the fact that you've been

5 -- you were brought up here to the courthouse today, this
6 morning.

7 A Yes, sir.

8 Q And you essentially were put into the same cell with

9 Michael Griffin?

10 A Yes, sir.

11 Q And Tommy Bond?

12 A Yes, sir.

13 Q And who else?

14 A John Griffin.

15 Q Little John?

16 A Yes, sir.

17 Q The fellow that you hatched this plan with, right?

18 A Yes, sir, if you want to call it a plan.

19 MR. PENNINGTON: Court's indulgence just a moment, Your

20 Honor. I believe I'm close to an end.

21 THE COURT: Okay.

22 MR. PENNINGTON: Thank you very much, Your Honor. And

23 thank you, Mr. Green.

24 REDIRECT EXAMINATION

25 BY MR. HOUSEAL:

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DEMETRIUS GREEN - REDIRECT BY MR. HOUSEAL

- 1 Q Just a couple questions, Mr. Green. What is your
2 nickname?
3 A Smurf?
4 Q Smurf.
5 Do you know what Michael Griffin's nickname is?
6 A Joby.
7 Q Joby?
8 A Yes, sir.
9 Q You know what his younger brother's name is?
10 A Little John.
11 Q Little John?
12 A Yes, sir.
13 Q Do you know what Mr. Flynn's nickname is?
14 A Yes, sir. Creep.
15 Q Creep?
16 A Yes, sir.
17 Q And Mr. Steed's nickname?
18 A T-Lo.
19 Q Is that how you know who that person is?
20 A Yes, sir.
21 Q By his name T-Lo?
22 A By his name T-Lo.
23 Q Back to before this even happened, John Griffin and you
24 had a conversation?
25 A Yes, sir.

JOHN GRIFFIN, JR. - DIRECT BY MR. HOUSEAL

1 Q In your conversation he told you he needed some money?

2 A Yes, sir.

3 Q Why did he tell you he needed some money?

4 A To get one of their friends out of jail.

5 Q Okay.

6 MR. HOUSEAL: That's all I have, Your Honor.

7 THE COURT: Anything further?

8 MR. CRUMRINE: I have a matter of law. Nothing further

9 from this witness.

10 THE COURT: All right, sir.

11 MR. PENNINGTON: Nothing further, Your Honor.

12 THE COURT: Thank you very much. All right. How about
13 approach the bench a minute.

14 (Off-the-record discussion at the bench.)

15 THE COURT: Call your next witness.

16 MR. HOUSEAL: Your Honor, the State calls John Griffin,
17 Junior.

18 JOHN CALVIN GRIFFIN, JUNIOR,

19 was sworn and testified as follows:

20 THE WITNESS: John Calvin Griffin. G-R-I-F-F-I-N. Jr.

21 DIRECT EXAMINATION

22 BY MR. HOUSEAL:

23 Q John, I'm going to ask you a couple of questions. How
24 old are you?

25 A 17.

000387

- 1 Q 17. Where do your parents live, John?
- 2 A Woodside in Ladson.
- 3 Q Woodside Manor?
- 4 A (The witness moves head up and down.)
- 5 Q What street do they live on?
- 6 A Elderwood.
- 7 Q Do you have any brothers and sisters?
- 8 A Yes, sir.
- 9 Q How many?
- 10 A Half brother and sister. I got one, two, three half
- 11 brothers and three half sisters.
- 12 Q And any of those brothers older than you are?
- 13 A All are.
- 14 Q Older brother named Michael?
- 15 A Yes, sir. Michael.
- 16 Q He was involved in this case as well?
- 17 A (Witness moves head up and down.)
- 18 Q Let's take you to May the 3rd, 1999. Were you in school
- 19 that day?
- 20 A Yes, sir.
- 21 Q Do you recall that being a Monday?
- 22 A Yes, sir.
- 23 Q Do you recall talking to anyone in school that morning
- 24 about an incident?
- 25 A Yes, sir.

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JOHN GRIFFIN, JR. - DIRECT BY MR. HOUSEAL

1 Q What was that discussion about?

2 A Robbery.

3 Q And specifically what were -- who were you talking with?

4 A Demetrius Green.

5 Q What did you say to him?

6 A I was talking about how my boy got locked up in jail.

7 Q When you say your boy, who are you talking?

8 A My boy Peter Davis.

9 Q Why do you refer to him as your boy?

10 A Because I know him.

11 Q How -- how do you know him?

12 A Relationship. See him. Every time my brother go
13 somewhere, go over there and say hello. I know him.

14 Q And he was in jail. So you were talking to Demetrius
15 Green about him?

16 A (Witness moves head up and down.)

17 Q And what did you and Mr. Green talk about?

18 A I told him that my brother and I were getting five grand
19 to get him out of jail.

20 Q To get who out of jail?

21 A To get him out of jail, Peter Davis.

22 Q Okay. Your brother was trying -- say that again, I'm
23 sorry.

24 A All of us was trying to get him out of jail. Everybody.

25 Q And you needed how much money to get him out of jail?

- 1 A 5 grand.
- 2 Q Okay. What else did you talk -- tell the jury about
- 3 your conversation with Mr. Green?
- 4 A Start over or what?
- 5 Q Well, continue if there was more to it.
- 6 A And then he told me he knew these boys in the back of
- 7 Woodside that had a lot of money and drugs. If they wanted
- 8 they could jack them to get the money.
- 9 Q I couldn't hear the last part of it?
- 10 A I said they had a lot of money and drugs and they could
- 11 jack them if they needed the money.
- 12 Q Okay. What does jack them mean?
- 13 A Rob.
- 14 Q You said that to Mr. Green or Mr. Green said that to
- 15 you?
- 16 A I said that -- which part?
- 17 Q About jacking them if they needed the money?
- 18 A He said that to me.
- 19 Q Okay. What did you say in response?
- 20 A Well, I told him I will ask him.
- 21 Q You'd ask who?
- 22 A My brother.
- 23 Q Okay. This is Michael Griffin you're referring to?
- 24 A (Witness moves head up and down.)
- 25 Q Okay.

JOHN GRIFFIN, JR. - DIRECT BY MR. HOUSEAL

1 Did Mr. Green say anything in response to that?

2 A The bell rung so we got back up 6th period.

3 Q And by we got back up, you mean you talked to Mr. Green
4 in 6th period as well?

5 A Yeah.

6 Q What did you talk about then?

7 A He gave me his pager number and he told me if they

8 wanted to do it, go ahead and page him.

9 Q Okay.

10 Did you talk to him at school again that day about
11 anything?

12 A No.

13 Q What did you do when you left school?

14 A Went home. I got home around 2:15. I paged my brother
15 around 4:00, 4:20. Then he called back around 4:30.

16 Q Do you know who you're talking about when you say they?
17 You said they called back around 4 --

18 A I paged Creep.

19 Q Who is Creep?

20 A Michael Flynn.

21 Q Do you see Mr. Flynn in the courtroom?

22 A (Pointing.) He's right there.

23 MR. CRUMRINE: Your Honor, same objection as earlier.

24 THE COURT: Yes, sir.

25 BY MR. HOUSEAL:

- 1 Q You paged Mr. Flynn?
- 2 A (Witness moves head up and down.)
- 3 Q And did he return your call?
- 4 A Yes, sir, he did.
- 5 Q And what did he say when he returned your call?
- 6 A He called back. And I told him exactly what Smurf
- 7 said. And then I said is my brother there and he said yeah.
- 8 So he gave the phone to my brother and I said the same thing.
- 9 Q Where was Mr. Flynn and your brother Michael when you
- 10 were talking to them on the phone?
- 11 A They were at Peter Davis' house.
- 12 Q Same guy they were trying to bond out of jail?
- 13 A (Witness moves head up and down.)
- 14 Q Tell the jury again where you are when you are on the
- 15 telephone?
- 16 A I was at my house.
- 17 Q Okay.
- 18 They are at Peter Davis' house. You're on the telephone
- 19 with Michael Flynn. What exactly did he say to you?
- 20 A Um.
- 21 Q What did Mr. Flynn say to you again when he returned
- 22 your page?
- 23 A Nothing. He just said what do you want. And I told.
- 24 Q What did you tell him?
- 25 A Exactly what Smurf said.

1 Q Which was?

2 A That if we really needed the money, rob the dude in the
3 back of Woodside and get the money.

4 Q So when you're talking to Mr. Flynn he returned your
5 page and you talked to him about people in Woodside. Did he
6 understand what you were talking -- well, let me rephrase
7 that question.

8 -- What did your brother say to you when he got on the
9 telephone?

10 A Nothing. I just told him the same thing. And he said
11 he'd be over there soon. Hung up the phone.

12 Q Hold on. I don't mean to keep interrupting you. I just
13 want to make sure. This jury is hearing this for the first
14 time.

15 A I know.

16 Q What exactly did you tell your brother? When you say I
17 told him the same thing, what was that?

18 A That I told him that Smurf said these boys in back of
19 Woodside had a lot of money and drugs. If they needed the
20 money they could jack them and get the money.

21 Q Was your brother, Michael Griffin, trying to get money
22 too to bond out Mr. Davis?

23 A Everybody was getting money.

24 Q And by everybody, you include Mr. Flynn in that?

25 A (Witness moves head up and down.)

- 1 Q So Mr. Flynn and you had a conversation about getting
2 some money to get Mr. Davis out of jail?
3 A (Witness moves head up and down.)
4 Q Okay.
5 What did you do after that telephone call?
6 A I hung the phone up and waited until they came over.
7 Q Who is they?
8 A My brother. Creep. Tommy. Them three.
9 Q Who is Tommy?
10 A Tommy Bonds.
11 Q How do you know Mr. Bond?
12 A I know him through my brother.
13 Q Okay.
14 And they came to your house?
15 A Yeah.
16 Q And the three of them again were, three people?
17 A Michael Flynn, Michael Griffin and Tommy Bonds.
18 Q Okay.
19 Roughly what part of the day is that?
20 A It was Monday, afternoon.
21 Q What part of Monday, was it -- okay, afternoon?
22 A Around 5 o'clock when they came over.
23 Q Okay.
24 What did they say to you and what did you do when they
25 came home?

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1 A Nothing. When they came by I just got in the car and
2 took them to where Smurf was.

3 Q Who was driving?

4 A Tommy.

5 Q Do you recall what kind of car he was driving?

6 A A Honda.

7 Q Have you seen that car before?

8 A Yes, sir.

9 Q Whose car was it?

10 A April's. His girlfriend.

11 Q Whose girlfriend?

12 A Tommy's.

13 Q So the four of you were in April's car?

14 A (Witness moves head up and down.)

15 Q And where did you go?

16 A To Noodle's house where he was at.

17 Q Whose house?

18 A Noodle. One of his home boys. One of the people he
19 knew.

20 Q People who knew?

21 A Smurf.

22 Q Okay.

23 You stay there very long?

24 A We stayed at the house about an hour.

25 Q And where did you go after that?

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JOHN GRIFFIN, JR. - DIRECT BY MR. HOUSEAL

- 1 A Um, we drove by the house.
- 2 Q Was Smurf with you at the time?
- 3 A Yeah. Whenever we drove by the house? Yeah. Because
- 4 he showed us where it was.
- 5 Q Go ahead. I'm sorry to interrupt you. Go ahead.
- 6 A Go ahead.
- 7 Q After they picked -- you said that Michael Flynn,
- 8 Michael Griffin and Thomas Bond came to your house and picked
- 9 you up?
- 10 A Yes.
- 11 Q You left your house. When did you see Smurf first?
- 12 A We went to the house where he was at.
- 13 Q Okay. You went to pick him up there?
- 14 A No. Went in the back yard and talked to him.
- 15 Q Okay. So you talked to Smurf in the yard. What did you
- 16 talk to him about?
- 17 A We went back there and they said the whole plan was for
- 18 them to go in, to get whatever there was, and come out.
- 19 Q And when you say get whatever there was?
- 20 A What was in there, anything valuable.
- 21 Q Okay.
- 22 Q Who was planning on going in and doing this?
- 23 A They didn't say who was suppose to go in. The plan was
- 24 for whoever to go in and get whatever and come out. There
- 25 wasn't a specific for you to do this and for you to do that,

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1 just to go in.

2 Q Okay.

3 So where did you go when the five -- the four of you
4 leave or did Smurf go with you?

5 A Smurf went with us to show where the house was.

6 Q You all in the same car at this point?

7 A Yeah. Yes, sir.

8 Q And was he able to show you which house he was referring
9 to?

10 A Yes.

11 Q Do you remember what street that was on?

12 A The last street. I believe it's Mixwood. I know it was
13 the last street.

14 Q Okay. And when you say the last street, you mean?

15 A The last street in the neighborhood.

16 Q Okay.

17 Q What did you do after you drove -- well, was anybody
18 home when you drove by the house?

19 A No, there was no car. We drove by and there was no car
20 in the driveway at the time.

21 Q So what did you do?

22 A I mean, Mikey Flynn said he was going to grab a bite to
23 eat. He said he would come back and get us at 9 o'clock.

24 Q When he said come back and get us, who is he talking
25 about?

1 A Me and Smurf.

2 Q Okay.

3 A So we dropped Smurf off and me off. I said, if you
4 ain't here at 9 o'clock I will be on the first street waiting
5 on you all. Okay.

6 Q Okay.

7 What did you do between the time you got dropped off at
8 9 o'clock?

9 A I went inside and I paged my girl. She called back.

10 Q What is your girlfriends's name?

11 A Kim.

12 Q Okay. She called?

13 A I was talking to her. I hung the phone up. And my mom
14 called. I was talking to my mom. I said, I'm going to leave
15 for a couple of hours. She said, no, don't go anywhere and I
16 said okay.

17 After we hung the phone up, 9 o'clock came and I went to
18 the first street and waited on them.

19 Q Okay. Who were you waiting for?

20 A Creep, Joby and Tommy to come by and pick me up.

21 Q Okay.

22 So you walked down there to the other street. Who came
23 by?

24 A Um, there's two cars. All of a sudden I got in the
25 first car, it was me and my brother and Tommy. And I said

JOHN GRIFFIN, JR. - DIRECT BY MR. HOUSEAL

1 who is in the next car, the car behind us. And he said T-Lo
2 and Creep. He said let's go get Smurf.

3 So we went back to Noodle's house to get Smurf.

4 Q Who said let's go get Smurf? Was it your brother or was
5 it Tommy Bond?

6 A Both of them actually.

7 Q Okay. When they -- which one of them told you that it
8 was T-Lo back there and Creep?

9 A My brother.

10 Q Did you know who T-Lo -- who he was referring to when he
11 said T-Lo?

12 A That was actually my first day seeing him, the first day
13 I ever seen him.

14 Q Okay.

15 A That night actually.

16 Q And after you pulled away you went to pick up Smurf?

17 A Yeah.

18 Q Where was he?

19 A At the same house we went to before.

20 Q Okay. Which car did he get into?

21 A Um, the car that Creep and T-Lo were in.

22 Q Where did you go when you left that location?

23 A We drove by the house one more time. And this time,
24 there was a car in the, um, driveway at that time. They kept
25 on going and they went and parked the car at the church.

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- 1 Q Which church?
- 2 A It's on Lincolnville Road.
- 3 Q Okay.
- 4 So back up a second.
- 5 You drove by the house, what did you see when you drove
- 6 by the house?
- 7 A There was a car in the road at the time.
- 8 Q What color was the car, do you remember?
- 9 A I think -- I believe it was kind of grayish. I ain't
- 10 given a fact. I believe it was kind of grayish.
- 11 Q Did you stop at the house?
- 12 A No. Just drove straight by.
- 13 Q What did you think -- well, so you went to the church,
- 14 what happened when you got to the church?
- 15 A My brother got out, Tommy got out, Creep got out, T-Lo
- 16 got out. We were talking for a minute. Then T-Lo walked
- 17 around and said something to Smurf and Smurf jumped in the
- 18 front seat and they took off. They went through a path --
- 19 Q When you say they took off, who are you talking about?
- 20 A My brother, Creep and T-Lo.
- 21 Q Okay. Where did they go or which direction did they go?
- 22 A They went through the path, straight. Went through a
- 23 path.
- 24 Q What's through that path, did you see anything?
- 25 A The neighborhood.

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1 Q Okay. What did you think they were doing, what did you
2 know they were doing?

3 A Like I figured they were going to rob the people most
4 likely.

5 Q Did you see anybody with guns?

6 A No.

7 Q Did you know whether they had guns?

8 A They supposed to when I picked them up they said. I

9 mean, I ain't seen none, no.

10 Q How many of the three people did they tell you were
11 supposed to pick up guns?

12 A They didn't say how many --

13 MR. PENNINGTON: Your Honor, I object to the
14 generalized. If he is going to be more specific as to who
15 said what, that's fine. That's admissible. But who they
16 said did what --

17 MR. HOUSEAL: Okay. I'll rephrase it.

18 THE COURT: Go ahead.

19 BY MR. HOUSEAL:

20 Q Who did you talk to about how many guns they had?

21 A Well, right when we walked in the back yard of Smurf's
22 house we was standing there talking. Like I said, the plan
23 was to go in the house, get whatever, come out. They said
24 first we got to go get the guns. And that's when we rode
25 straight by the house.

1 You know what I'm saying.

2 After he said we have to get the guns, right, Creep said
3 let's ride by the house. We all jumped in the car and Smurf
4 showed us where the house was.

5 That's when he said I'll get you all at 9 o'clock and he
6 dropped me off.

7 Q Okay. So when they told you that they had to go get the
8 guns that was the first time you had driven by, not the next
9 time?

10 A The first time, yeah.

11 Q Okay.

12 A We all in the back yard.

13 Q So you parked. Who stayed at the car -- cars, I should
14 say?

15 A Me and Tommy stayed in one car, Smurf stayed in the
16 other car.

17 Q Which car were you and Tommy in?

18 A April's car, his girlfriend.

19 Q And what kind of car is that again?

20 A A Honda.

21 Q Okay. And Demetrius Green was in the other car you said?

22 A Yeah.

23 Q Okay. Approximately how long would you estimate your
24 brother and the two defendants were gone?

25 A Between an hour, hour 30 minutes. Hour 30 minutes at

JOHN GRIFFIN, JR. - DIRECT BY MR. HOUSEAL

1 the max.

2 Q What were you doing during that time?

3 A Sitting in the car really in the back seat, just
4 sitting.

5 Q Who got back into the cars when they returned?

6 A My brother got back in my car -- the car we were in and,
7 um, Creep and T-Lo got back in the other car.

8 Q Did you talk to your brother?

9 A After -- right when he jumped in the car we took off.
10 And I said what took so long. He said we went to the front
11 door and no one answered so we were fixing to go to the
12 window and the light turned, we went back to the front door.
13 That's what he said about that. And then --

14 MR. PENNINGTON: Your Honor, we need to say who said
15 what.

16 MR. HOUSEAL: Well, he's answering the question about
17 what -- did you have a conversation with his brother.

18 THE COURT: You will be able to cross. Go ahead.

19 BY MR. HOUSEAL:

20 Q Who was this that was saying this to you?

21 A My brother.

22 Q Okay. Mr. Flynn, Mr. Steed were in the other car at the
23 time?

24 A (Witness moves head up and down.)

25 Q You didn't have a conversation with them in the car --

- 1 A No.
- 2 Q -- after you left?
- 3 A Because they all ran, jumped in the car and took off.
- 4 They didn't have time to say nothing. No.
- 5 Q Did your brother tell you people had been shot?
- 6 A I asked him what was that smell. I smell gunpowder.
- 7 And he said they shot at somebody, yes. In which they --
- 8 they means two or three. So they, only two of them were left
- 9 so that's what they means.
- 10 Q He said they shot someone?
- 11 A (Witness moves head up and down.)
- 12 And then he looked at Tommy and said take me home, so I
- 13 straight up and went home.
- 14 Q Who was driving?
- 15 A Tommy.
- 16 Q You were in the front seat passenger seat --
- 17 A No, I was in the back seat.
- 18 Q Okay. Your brother was?
- 19 A He jumped -- got in the front seat.
- 20 Q Okay. And again, what was the understanding of how this
- 21 money was going to be split up if you got a bunch of cash?
- 22 A Take five grand off the top to get my boy out of jail
- 23 and the rest would be split.
- 24 Q Split among whom?
- 25 A Everybody. All of us.

JOHN GRIFFIN, JR. - DIRECT BY MR. HOUSEAL

1 MR. HOUSEAL: Can I have one moment, Your Honor?

2 BY MR. HOUSEAL:

3 Q Do you know what an OG is?

4 MR. CRUMRINE: Objection, Your Honor.

5 THE COURT: What is your grounds?

6 MR. CRUMRINE: We made a pretrial motion --

7 THE COURT: How about approach the bench a minute.

8 (Off-the-record discussion at the bench.)

9 BY MR. HOUSEAL:

10 Q We talked about which six people were involved or
11 which -- what their names are. And you said -- well, give
12 the jury the names of the six people that were involved in
13 this plan one more time?

14 A Tommy Bonds, Michael Griffin, me, John Griffin,
15 Demetrius Green, Robert Steed and Mikey Flynn.

16 Q And at the time did you know what Robert Steed's
17 nickname was?

18 A Yeah. I knew his nickname at the time. I didn't know
19 his real name at the time.

20 Q Had you seen him a lot before that? You said you
21 hadn't --

22 A I seen him that night. I seen his face that night,
23 yeah.

24 Q And Mr. Flynn, how often had you seen him prior to that
25 night?

1 A Whenever they came and got me and dropped me off. Then
2 they came and picked me back up and I parked at the church.

3 Q And the person you know as T-Lo, do you see him in the
4 courtroom?

5 A (Pointing.)

6 Q And the person that you know as Mr. Flynn, Craep, you
7 see him in the courtroom?

8 A Uh-huh. (Pointing.)

9 Q Okay.

10 MR. HOUSEAL: That's all the questions I have right now.

11 Please answer any questions these attorneys have for you.

12 THE COURT: Counselor.

13 MR. CRUMRINE: Yes, sir, Your Honor.

14 Q CROSS-EXAMINATION

15 BY MR. CRUMRINE:

16 Q John Griffin, my name is John Crumrine. I'm defending
17 Michael Flynn.

18 I have a few questions about your decision to come in
19 here and testify today.

20 You are coming in here hoping to get a break, are you?

21 A No. I ain't not going to plea. I got to fess up to
22 what happened, man. What's wrong is wrong. What's right is
23 right.

24 Q So you don't hope to get a good sentence or a good deal
25 on your charges?

JOHN GRIFFIN - CROSS BY MR. CRUMRINE

1 A Whatever I get I get. I can't stop them.

2 Q Did you go over that language with anyone before you
3 came in here today?

4 A No, sir.

5 Q You didn't meet with the -- Mr. Houseal?

6 A Who?

7 Q Mr. Houseal right here?

8 A Today?

9 Q The prosecutor -- not today.

10 A No.

11 Q Have you met with him before today?

12 A (Witness moves head up and down.)

13 Q Is that yes for the record?

14 A Can I ask the judge a question?

15 MR. CRUMRINE: I'm sorry?

16 MR. HOUSEAL: I think he said he couldn't hear the
17 question.

18 THE COURT: He is asking you have you talked to the
19 solicitor before?

20 THE WITNESS: Have I seen him, yeah.

21 THE COURT: I think his question was have you ever
22 talked to him before?

23 THE WITNESS: Yes, sir.

24 MR. CRUMRINE: I think he was saying he wanted to ask
25 you a question, Judge.

1 THE WITNESS: I wanted you to repeat the question,
2 that's all.

3 MR. CRUMRINE: All right.

4 BY MR. CRUMRINE:

5 Q When did you meet with Mr. Houseal?

6 A Around August, yeah.

7 Q And you haven't seen him since August?

8 A (Witness moves head from side to side.) No.

9 Q And have you had your lawyer talking to Mr. Houseal for
10 you, do you know that?

11 A My lawyer talked to him on his own basis, yeah. But, I
12 mean, did I tell him to go talk to him, no.

13 Q All right. And why were you having your lawyer talk to
14 him?

15 A I send my lawyer to talk to him on his own basis.

16 Q On his own basis?

17 A Yeah.

18 Q He wasn't talking to him for you?

19 A I guess, you know what I'm saying, he's my lawyer, so I
20 guess he is doing it for the good.

21 Q Do you know -- did he discuss with you what he was
22 trying to do for you in talking to the solicitor?

23 A No, man, he just came and saw me and I said the truth.
24 That's what I said now.

25 Q All right.

JOHN GRIFFIN - CROSS BY MR. CRUMRINE

- 1 A That's all I said.
- 2 Q Nobody told you to come in here and all they told me is
- 3 to tell the truth and I have no deals?
- 4 A No. Just since day one I was telling the truth.
- 5 Q Do you know what kind of deal your brother got?
- 6 A Yeah, he got it good.
- 7 Q He got a good deal, didn't he?
- 8 A I don't know.
- 9 Q You don't know.
- 10 I thought you said you knew he got a deal?
- 11 A Yeah. But that's none a good deal.
- 12 Q That's not a good deal?
- 13 A Ain't no time a good deal, man.
- 14 Q All right.
- 15 You hope to do better than he does?
- 16 A Whatever I get is meant to happen is all I can say. Of
- 17 course I want to do better. Of course I want to go home.
- 18 That doesn't mean it's going to happen.
- 19 Q And as far as you see it what is your best chance of
- 20 getting a better deal than your brother?
- 21 A No one said I worked out a plea. I just --
- 22 Q Nobody is saying you worked out a plea?
- 23 A No.
- 24 Q You are just hoping to get better, correct?
- 25 A I am hoping that the judge have leniency on me, yeah.

1 Q And you are hoping that Mr. Houseal will give you a
2 better deal than your brother, aren't you?

3 A Whatever they do is on their time.

4 Q Aren't you hoping he gives you a better deal than your
5 brother?

6 A If you are saying do I want to go home, yeah. If that's
7 what you're saying.

8 Q And you are hoping that he will make that possible for
9 you, correct?

10 A Whatever him and the judge discuss, that's on their own
11 time.

12 Q And how do you think -- what is your understanding of
13 how he's going to evaluate what kind of deal you get?

14 A It ain't -- it wasn't nothing like that, man. He came
15 and saw me and I (sound) said the truth and that was it.

16 Q And so that's not going to have any affect -- what you
17 say up here shouldn't have any affect on what kind of
18 sentence, what kind of deal you will get or sentence you will
19 get?

20 A What are you trying to say?

21 Q I'm trying to ask you if you're trying to testify what
22 they want you to testify to so that you get a good deal;
23 isn't that correct?

24 A I'm saying what I am saying because it happened, it's
25 the truth, that's what I'm saying.

JOHN GRIFFIN - CROSS BY MR. CRUMRINE

1 Q All right. Let's take it from the top when the police
2 picked you up.

3 Do you remember that?

4 A Yeah.

5 Q Where were you at the time?

6 A Actually, um, I went in for questioning.

7 Q Went in for questioning?

8 A Uh-huh.

9 Q And was that something you volunteered to do?

10 A That's something I volunteered to do, yes.

11 Q You called up the police and said can I come in for
12 questioning?

13 A Huh-uh. See, he was calling me. Then he picked my
14 brother up. Then he called me and said my brother wanted me
15 to come in. That's what he said. So I said okay, I'll come
16 in.

17 Q All right.

18 A So they came and got me and I went in.

19 Q So you knew your brother was in being questioned by
20 police?

21 A I know he was in jail, yes.

22 Q Okay. And they told you he gave a statement about what
23 happened?

24 A Right when they seen me, no, they didn't say anything
25 about a statement. Because right when they picked him up, 20

JOHN GRIFFIN - CROSS BY MR. CRUMRINE

1 minutes later or so they called and got me.

2 Q Did they read you your rights?

3 A Um, right when I got in the car they were questioning
4 me. And I said the same thing I did now. So I got there and
5 captain was sitting right there so I said the same thing
6 again. And he said --

7 Q What was that same thing you said?

8 A The same story I got -- as him. Only thing is in
9 shorter terms.

10 Q All right. You said all that before they gave you your
11 rights?

12 A Yes.

13 Q All right.

14 Did they tell you that you had a right to remain silent?

15 A Right when I got there the captain was sitting there at
16 the desk. I told him the same exact thing. And they walked
17 off and they said take a statement and they took my
18 statement.

19 Q They told you whatever you said they were going to hold
20 it against you, correct?

21 A (Witness moves head up and down.)

22 Q That's a yes for the record?

23 A Yes.

24 Q All right.

25 And you didn't want to go to jail and do time, did you?

JOHN GRIFFIN - CROSS BY MR. CRUMRINE

1 A No one wants to go to jail and do time.

2 Q But you went ahead and told them that you were involved
3 in a murder, a robbery, a burglar --

4 A A robbery, yes, I didn't say anything about a murder.

5 Robbery, yes.

6 Q You understand that -- that with the participation you
7 described today, it makes you guilty of all those things,

8 didn't it?

9 A (Witness moves head up and down.)

10 Q That's a yes for the record?

11 A Yes.

12 Q All right.

13 Q And you just decided you would just be a good guy and go
14 ahead and tell them whatever they wanted to know?

15 A Yes, I guess you could say that, yeah.

16 Q They told you your brother had already told on you?

17 A No.

18 Q Who wrote your statement for you, John?

19 A Some lady.

20 Q Some lady?

21 A Yeah.

22 Q You didn't write it yourself, did you?

23 A No.

24 Q And they -- the police had let you know who the suspects
25 were that they already formulated, didn't they? They told

JOHN GRIFFIN - CROSS BY MR. CRUMRINE

- 1 you we already got you, we already know the whole story, you
2 might as well tell us, didn't they?
- 3 A Something like that, yeah.
- 4 Q And when you gave the statement you really hadn't had
5 time yet to compare notes that well with your brother?
- 6 A No.
- 7 Q And when you described -- let's get this straight from
8 the beginning. --
- 9 This wasn't about to go buy pot, was it?
- 10 A No.
- 11 Q All right. This wasn't any plan that you and Demetrius
12 Green had to go over there and buy drugs?
- 13 A (Witness moves head from side to side.)
- 14 Q And that's a no for the record?
- 15 A No.
- 16 Q There's no question about that?
- 17 A (No audible answer.)
- 18 Q The car that you described, this -- what you described
19 T-Lo is driving, was a red Mitsubishi?
- 20 A Yes, sir.
- 21 Q Wasn't it green, dark green car?
- 22 A No, that was -- there was two cars.
- 23 Q Right.
- 24 A The one I was in was the dark green one. Dark bluish, a
25 Honda.

JOHN GRIFFIN - CROSS BY MR. CRUMRINE

1 Q Then there's a -- T-Lo had a Mitsubishi?

2 A Yeah.

3 Q Red Mitsubishi?

4 A I don't now -- see me. That's what I saw.

5 Q You know your cars pretty well?

6 A (Witness moves head up and down.) Well, you can tell by
7 the car. I mean, symbol on it sometimes.

8 Q All right. And the Honda was a purple Honda?

9 A Not purple, but I mean, it's like bluish kind of. Yeah,
10 you could say that. Let's see the color up in here. I mean,
11 you saying it wasn't like dark purple, no.

12 Q And from your statement you said when your brother came
13 back to the car you smelled gunpowder on him; is that correct?

14 A I smelled gunpowder, yes.

15 Q On him?

16 A (Witness moves head up and down.)

17 Q Yes?

18 A Yes.

19 Q Tell me this, do you know Walter Gardenhigher?

20 A Do I know him? No, I don't know him.

21 Q I'm sorry?

22 A No, I do not know him.

23 Q You don't know him. Do you know anyone named Little T?

24 A I knew -- yeah, I know somebody. Yeah.

25 Q That's not Walter Gardenhigher?

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JOHN GRIFFIN - CROSS BY MR. CRUMRINE

- 1 A I guess that's the name. I don't know his real name. I
2 know Little T. I don't know his real name.
- 3 Q Do you know a fellow named Crazy, also known as Stephen
4 Mark Smith?
- 5 A Yeah. Yeah.
- 6 Q And would you agree that -- that Stephen Smith or Crazy
7 looks somewhat like Michael Flynn?
- 8 A By a very, very, very, very little bit. I mean, very
9 little bit probably.
- 10 Q Do you know that Little T and -- and Crazy are friends?
- 11 A Yeah, I guess you would say that, yes.
- 12 Q All right. Did you know that at the time soon after
13 this thing had happened that Little T's car was kept over at
14 Crazy's grandmother's house?
- 15 A Do I know that?
- 16 Q Yes, sir.
- 17 A Right after the crime happened?
- 18 Q Not immediately. But soon after.
- 19 A No, I ain't know nothing about any car being kept
20 nowhere.
- 21 Q You never seen it. Did Little T have a maroon colored
22 Oldsmobile?
- 23 A Did he have a car?
- 24 Q Yes, sir?
- 25 A Did he used to have one?

JOHN GRIFFIN - CROSS BY MR. PENNINGTON

1 Q Did he have one?

2 A Yeah, he had one, yeah.

3 Q And of your own personal knowledge you say -- you stayed
4 at the car, you don't know what happened during this
5 incident?

6 A Did I see them go in the house, no. Did I see them do
7 anything. No, no, no. I ain't seen nothing.

8 Q And you as far as guns go, you didn't see any kind of
9 gun, did you?

10 A No, no. I didn't see none, no.

11 MR. CRUMRINE: All right. I have no other questions.

12 CROSS-EXAMINATION

13 BY MR. PENNINGTON:

14 Q Mr. Griffin, my name is Ashley Pennington. I have a few
15 questions for you. I'm going to move over here if you don't
16 mind.

17 Mr. Griffin, you've told us about what went on in home
18 room on that Monday, the 3rd, right?

19 A Yeah.

20 Q And then later in 6th period you all had another meeting
21 with Smurf?

22 A He gave me his beeper number.

23 Q Okay. Smurf is Demetrius Green?

24 A Correct.

25 Q He's the fellow that you were locked up with this

JOHN GRIFFIN - CROSS BY MR. PENNINGTON

- 1 morning, up in lock up?
- 2 A (Witness moves head up and down.)
- 3 Q Right?
- 4 A (Witness moves head up and down.)
- 5 Q And just for the court reporter, when you nod, of course
- 6 she can't take that down.
- 7 A Yes, sir.
- 8 Q I appreciate it. Thank you.
- 9 And he had a beeper?
- 10 A He gave me a beeper, number to page him.
- 11 Q Okay. So he had a pager of some kind?
- 12 A Yes.
- 13 Q And you indicated that, um, your friends needed to get
- 14 this Peter Davis out of jail?
- 15 A They wanted to get him out of jail.
- 16 Q Wanted to?
- 17 A (Witness moves head up and down.)
- 18 Q Okay. But it was going to cost 5,000 cash?
- 19 A Yeah.
- 20 Q That was going to be paid to a bondsman?
- 21 A I guess. They said they needed five grand to get him
- 22 out of jail.
- 23 Q And you learned that from your brother?
- 24 A What?
- 25 Q About the five grand?

JOHN GRIFFIN -- CROSS BY MR. PENNINGTON

1 A I learned it -- yeah, I mean, I guess you would say
2 that.

3 Q Okay. And, um, ultimately it seemed like the best plan
4 was to be able to go down there to the back of the
5 neighborhood and hit the marijuana dealer?

6 A No. They were trying to get five grand. There was no
7 specific way about we are going to do this. This is

8 something that -- that they said and I told them in other
9 words.

10 Q Okay. So something that you and Smurf kind of came up
11 with?

12 A I was talking about it in home room, how my buy got
13 locked up and my brother and them trying to get five grand
14 getting them out of jail. And he said he knew these people
15 back in Woodside that had a lot of money and drugs and if
16 they needed money they can jack them.

17 Q Okay. So it was really Smurf's idea?

18 A I guess you can say that, yeah.

19 Q It wasn't your idea?

20 A No.

21 Q Okay. You're sure on that -- you're clear about that?

22 A I'm positive, positive.

23 Q Okay. All right. And you described that there was a
24 meeting in Smurf's back yard?

25 A Yes.

JOHN GRIFFIN - CROSS BY MR. PENNINGTON

- 1 Q A little bit, a gathering -- I guess you said it was
2 Tommy Bonds, right?
- 3 A (Witness nods head.)
- 4 Q And again that has to be a yes?
- 5 A Yes.
- 6 Q And then it was your brother?
- 7 A Yes.
- 8 Q And there was -- you say it was Mr. Flynn?
- 9 A Yes.
- 10 Q And it would have been you and Demetrius Green?
- 11 A Yes.
- 12 Q And so Robert Steed, the man sitting there next to me at
13 counsel table, he was not there?
- 14 A No.
- 15 Q You had never seen him before?
- 16 A No.
- 17 Q Okay.. And there was no -- talk of him in terms of
18 him --
- 19 A No.
- 20 Q -- being involved in this?
- 21 A No.
- 22 Q And that was about you say about 5 p.m. in the
23 afternoon?
- 24 A We all over at his house?
- 25 Q Yeah. In the back yard meeting?

JOHN GRIFFIN - CROSS BY MR. PENNINGTON

1 A Around 5:30.

2 Q 5:30?

3 A Yeah, 5:30.

4 Q And then Tommy got you all into the Honda and you rode
5 by the house?

6 A Yeah.

7 Q And there was no car there and Smurf didn't think it was
8 a good time to hit?

9 A No, there was no car at -- at the time really.

10 Q Okay.

11 So it was felt that maybe 9 o'clock would be a better
12 time to do this?

13 A No. It just something they say, we be back at 9 o'clock
14 to get you all.

15 Q Were you all going to hit the house if there was no car
16 or were you waiting for a car?

17 A Really ain't never said, there was no car or no car.

18 Q Okay.

19 A Just go in and get whatever.

20 Q Okay.

21 And in that conversation there wasn't talk about, um --
22 well, there was talk about getting guns for this, right?

23 A Yeah.

24 Q And -- and that was your brother talking?

25 A You mean my brother Joby?

JOHN GRIFFIN - CROSS BY MR. PENNINGTON

1 Q Yes.

2 A No. Actually kind of both of them to tell you the
3 truth.

4 Q Okay. It was Tommy and Joby?

5 A No, Michael Flynn and Joby.

6 Q Okay.

7 Now, your mama told you not to go out that night?

8 A Yeah.

9 Q But -- but we know you did?

10 A Yeah.

11 Q And you did not see any guns yourself?

12 A No.

13 Q Now, you got picked up after your brother?

14 A Yeah.

15 Q And after Tommy?

16 A Yeah.

17 Q Did it come up during your interview that the police
18 told you that -- that your brother had told them what had
19 happened?

20 A Um, repeat that. I didn't understand that.

21 Q When you were being interviewed, did they tell you that
22 your brother had already talked to them?

23 A They said that he was in another room, yeah. They said
24 that. He ain't say nothing, they didn't say he write a
25 statement or nothing. They said he was in another room.

JOHN GRIFFIN - CROSS BY MR. PENNINGTON

1 Q Were you a little nervous at that point?

2 A Yeah.

3 Q Because you knew that you had been part of this home
4 invasion?

5 A No, because I found out someone got shot.

6 Q Right. That made you a little naturally nervous?

7 A Yeah.

8 Q Because you knew you could be looking at a murder charge?

9 A (The witness moves head up and down.)

10 Q And a burglary in the first degree charge, right?

11 A Yeah.

12 Q And in fact that's just what happened in the case,
13 right?

14 A Well, actually I wrote my statement and then they
15 charged me.

16 Q Okay.

17 But you were nervous even in the beginning, weren't you?
18 You knew this was something bad, didn't you?

19 A Yeah.

20 Q You knew it wasn't a good thing to break into somebody's
21 house?

22 A Yeah. Yeah.

23 Q And to do that with guns?

24 A Yeah.

25 Q And then you found out that somebody was dead, right?

JOHN GRIFFIN - CROSS BY MR. PENNINGTON

- 1 A Found out May 4th.
- 2 Q May the 4th was the Tuesday before you got locked up,
3 the day before?
- 4 A Yes, sir.
- 5 Q So that was what was making you nervous?
- 6 A Yes, sir.
- 7 Q Now, you told us that you ended up getting charged with
8 those things; the murder and the burglary in the first
9 degree, you also got charged with assault and battery with
10 intent to kill too, right?
- 11 A Yeah.
- 12 Q And that's because the State is not saying that you went
13 in the house, are they?
- 14 A No.
- 15 Q They are saying that under our South Carolina law --
- 16 A Hand of one hand of all.
- 17 Q -- hand of one is the hand of all.
- 18 Q Meaning that when two or more people agree to do
19 something and it is foreseeable that a crime like this can
20 result in a death you're responsible, right?
- 21 A Yes.
- 22 Q And that's why you and your lawyer, Mr. Stavernakus
23 (phonetic), know that you're charged with murder, right?
- 24 A Yes.
- 25 Q And you could be convicted of murder?

JOHN GRIFFIN - CROSS BY MR. PENNINGTON

1 A Yes.

2 Q And you're familiar that you could get life for murder
3 in this state?

4 A Yes.

5 Q And that you can't get lower than 30 years, that's the
6 lowest you can get, right?

7 A Yes.

8 Q And that's real time, there's no time off for that,
9 there's no parole or any kind of deductions for that, right?

10 A Yeah. Yes, sir.

11 Q Okay.

12 A But you know that from your conversations with your
13 lawyer that there's one person who does have the chance or
14 the power to reduce your charge, right?

15 A Yes.

16 Q And that's Mr. Houseal?

17 A Yes.

18 Q Okay. And he's already done that once already for
19 someone else in your family?

20 A I guess. I ain't never talk to my brother about it, but
21 what I heard, yes.

22 Q Okay. And were you advised that while right now there's
23 no official offer to you, right, there's no official like you
24 do this and you get this?

25 A No offer.

JOHN GRIFFIN - CROSS BY MR. PENNINGTON

1 Q There is none of that?

2 A No offer.

3 Q But you've told us that you're well aware that your
4 lawyer has been talking with the solicitor about trying to
5 help you?

6 A I know he talked to him, yes.

7 Q Okay. And did your lawyer relay that the State's going
8 to be looking at your involvement in the case, you know what
9 you did, your part?

10 A Well, after -- didn't matter what I said. I done wrote
11 a statement so either way I done messed up so it didn't
12 matter what I said.

13 Q Well, you expect that your outcome is going to be
14 dependent upon what you say you did, right?

15 A Yes, sir, I guess you can say that.

16 Q And of course they are going to look at your prior
17 criminal history too, right?

18 A I ain't got no criminal history.

19 Q Okay. We'll talk about that in a minute.

20 And then also about obviously you coming here to court,
21 they are going to evaluate your cooperation?

22 A I guess they are.

23 Q That's what your lawyer has led you to believe, isn't
24 it?

25 A The thing was, I went ahead in today here because I know

JOHN GRIFFIN - CROSS BY MR. PENNINGTON

1 I done wrong. I'm going to admit it.

2 Q That was part of this too, you really do feel guilty
3 about what happened here? That's an honest feeling on your
4 part, isn't it?

5 A Yeah.

6 Q You don't feel particularly good about what happened
7 here, do you?

8 A No.

9 Q But you're also -- you're not hoping to get the full
10 load, are you?

11 A No human being would want to get a full load of time,
12 would they?

13 Q Right, right. And since you didn't go in you honestly
14 hope you can do better?

15 A I hope the judge give me --

16 Q Yeah, yeah. What do you expect?

17 A I don't plan on going up there and do a lot of time.
18 You got to deal with what the judge give me.

19 Q Okay. I appreciate your honesty.

20 Q So we -- we're talking about that you did write a
21 statement for this officer, I think you said it was Palmer or
22 did you say Whisenant?

23 A I said a lady.

24 Q A lady. You're not sure of her name?

25 A No, sir.

JOHN GRIFFIN - CROSS BY MR. PENNINGTON

- 1 Q Okay. And you never threw out the name Robert Steed in
2 that statement, did you?
- 3 A No, sir.
- 4 Q Because you didn't know the name Robert?
- 5 A I didn't know his real name, no.
- 6 Q Didn't know the name Steed?
- 7 A No.
- 8 Q Hadn't had any dealings with him?
- 9 A No.
- 10 Q He wasn't in the little circle of friends --
- 11 A No.
- 12 Q -- that used to meet up at Peter Davis' house?
- 13 A No.
- 14 Q I'm sorry, that was a no?
- 15 A No. That I seen.
- 16 Q Okay.
- 17 Q I mean, he had been up there once or twice maybe but he
18 wasn't a regular as far as you knew?
- 19 A I ain't seen him there, no.
- 20 Q You had been up there?
- 21 A I been to his house, yeah.
- 22 Q Right. And you also been to -- had you been to Tony
23 Robertson's house right near there? Do you know Antonio
24 Robertson?
- 25 A No.

JOHN GRIFFIN - CROSS BY MR. PENNINGTON

1 Q On Woodduck?

2 A No.

3 Q Okay. A Friend of Tommy Bond?

4 A I don't know him, no.

5 Q Okay.

6 One thing that I need to ask you about is when you were

7 giving this statement to the police didn't you tell them that

8 it really was about the fact that Demetrius wanted to fix up

9 his car and get it back on the road?

10 A No. Whenever -- like I said, it was going to be split.

11 The money he got he was going to get his car on the road.

12 Q Oh, it was a two-part purpose. There was going to be

13 the 5,000 to get out Mr. Davis?

14 A I said take five grand off the top first and split it
15 with the rest.

16 Q Okay. And then that's where it came in that Green was
17 hoping to get some money for his car?

18 A Yeah.

19 Q Okay. And that's what you told them, that he wanted to
20 get it back on the road?

21 A Yeah.

22 Q And you told them that Green didn't like the guy?

23 A Well, if you think about it, um, if somebody wants to
24 jack somebody then apparently they don't like them. That's
25 the way that part came in.

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- 1 Q Let's not just talk about in general. Let's talk about
2 didn't you say or at least didn't you lead the police to
3 believe that Demetrius didn't like these particular people?
- 4 A Yeah.
- 5 Q And that was based on what?
- 6 A Just what he said.
- 7 Q Just let's jack them?
- 8 A Yes.
- 9 Q Okay. And he told you he didn't like them?
- 10 A Not apparent like that, no.
- 11 Q Oh, he didn't put it like that?
- 12 A I mean, he didn't say I ain't like the dude, no.
- 13 Q He had some dealings with him?
- 14 A He ain't never said.
- 15 Q All right.
- 16 Q Now, this guy that you saw that showed up, you were sort
17 of surprised when there were two cars because you had been in
18 a purple Honda before, right?
- 19 A Yes.
- 20 Q It was a little bit surprising that you see two cars,
21 right?
- 22 A Yes.
- 23 Q And one of them was a red Mitsubishi?
- 24 A Yes.
- 25 Q And there's no doubt in your mind about that?

JOHN GRIFFIN - CROSS BY MR. PENNINGTON

1 A No doubt in my mind.

2 Q But -- and you've talked about the fact that you're
3 aware that there's this guy, Little T, that you know?

4 A I know him, yeah.

5 Q And he had like a burgundy or maroon colored Olds, a
6 Cutlass?

7 A I guess that was the kind of car it was. Yeah, it was
8 that color.

9 Q Okay. It was at least a red car?

10 A I mean, no. Compared to the color that one was, no?

11 Q So it was two different cars?

12 A Red, maroon, two different colors.

13 Q Okay.

14 Now, you told the police initially that all three of the
15 guys who would have been Flynn; your brother, Michael; and
16 this T-Lo guy had guns; do you remember saying that in your
17 statement?

18 A Yes.

19 Q But then you had to kind of back off of that, didn't
20 you, by saying that you actually didn't see any guns?

21 A The reason why I said that is because they said they are
22 going to get them, since I seen three people I said the three
23 of them had them. That's where that came in.

24 Q Actually you -- you told them you didn't see any guns
25 but you were told that they had guns?

JOHN GRIFFIN - CROSS BY MR. PENNINGTON

- 1 A Told they were going to get them, yeah.
- 2 Q Okay. So part of this is -- part of what you know is
- 3 not because you saw it with your own eyes but because --
- 4 A I heard them.
- 5 Q -- you were told things, right?
- 6 A Yeah.
- 7 Q Now, you mentioned prior criminal record and maybe I
- 8 should clarify.
- 9 In South Carolina we can actually ask you about your
- 10 juvenile record and you do have some juvenile criminal
- 11 record, don't you?
- 12 A Excuse me.
- 13 THE COURT: How about approach the bench for a minute.
- 14 MR. PENNINGTON: Yes, sir.
- 15 (Off-the-record discussion at the bench.)
- 16 MR. STAVERNAKUS: I'm his lawyer, he wants to ask me
- 17 something.
- 18 THE COURT: Sure.
- 19 MR. STAVERNAKUS: Thank you, Judge.
- 20 THE COURT: All right.
- 21 BY MR. PENNINGTON:
- 22 Q John, that was your lawyer, Mr. Savarnakus?
- 23 A (Witness moves head up and down.)
- 24 Q Okay. And I think you have to answer yes.
- 25 A Yes.

JOHN GRIFFIN - CROSS BY MR. PENNINGTON

1 Q Okay. Good. Thank you.

2 You would agree that back in February of '98 you were
3 convicted of or at least pled guilty to burg second --
4 burglary in the second degree and petty larceny?

5 A Yes.

6 Q And then a few months later in July, the summertime, you
7 were arrested and charged with shoplifting?

8 A Yes.

9 Q And you were convicted of that later that year?

10 A Yes.

11 Q And then in February, the spring of this particular year
12 in '99, when this offense occurred, you were also convicted
13 of burglary third, weren't you?

14 A February. No. Not in February.

15 Q No. I am saying you were arrested in February?

16 A No, I was not. It was in January.

17 Q Did you surrender?

18 A It was in January. It was not February.

19 Q I'm sorry. It was January of '99?

20 A Yeah.

21 Q And that's when you were convicted of burglary third
22 later on, that same spring?

23 A I got arrested in January. Yeah.

24 Q You were charged as an adult and then it was sent back
25 to family court?

JOHN GRIFFIN - REDIRECT BY MR. HOUSEAL

1 A Yeah.

2 Q Okay.

3 But there's no question in your mind that you were found
4 guilty of that or you pled guilty to that?

5 A Yes, I pled guilty.

6 Q Okay. You were 16 when this thing happened?

7 A Yes.

8 Q And you're 17 now?

9 A Yes.

10 MR. PENNINGTON: Court's indulgence. Thank you very
11 much, John.

12 THE COURT: Anything further, Solicitor?

13 MR. HOUSEAL: Yes, sir, may I have just one moment,
14 please?

15 Just a couple questions, Mr. Griffin.

16 REDIRECT EXAMINATION

17 BY MR. HOUSEAL:

18 Q You do remember giving a statement to the police with
19 regard to this case?

20 A Yes.

21 Q And that was a couple of days after this incident --

22 A Yes.

23 Q -- roughly? Were you telling the police the truth when
24 you gave them that statement?

25 A Yes.

JOHN GRIFFIN - REDIRECT BY MR. HOUSEAL

1 Q The same statement that you're giving to the jury today?

2 A Yes.

3 Q Ever waived at all between May 5th, 1999 --

4 MR. PENNINGTON: Objection, Your Honor.

5 THE COURT: I'll allow it.

6 MR. PENNINGTON: Your Honor, he's trying to elicit prior

7 consistent statements that are after the reason for this

8 whole testimony has arisen because of these charges.

9 THE COURT: It was brought up in cross-examination.

10 I'll allow it.

11 BY MR. HOUSEAL:

12 Q John?

13 A Um.

14 Q You made this statement in May of 1999, correct?

15 A Yes.

16 Q Had I talked to you before you made that statement?

17 A No.

18 Q Had anybody from law enforcement talked to you --

19 A No.

20 Q -- about any kind of deal?

21 A No.

22 Q Have I ever approached you about leniency?

23 A No.

24 Q Was Little T with you that night?

25 A No.

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JOHN GRIFFIN - REDIRECT BY MR. HOUSEAL

1 Q Did he have anything to do with the planning of this or
2 the commission of this case, robbery?

3 A No.

4 Q Was Steve Smith with you that night?

5 A Who.

6 Q Crazy, Steve Smith --

7 A No.

8 Q -- that they were talking about?

9 A No.

10 Q Did he have anything to do with this case?

11 A No.

12 Q Thank you, John.

13 MR. CRUMRINE: Nothing further, Your Honor.

14 MR. PENNINGTON: Nothing further, Your Honor.

15 THE COURT: Thank you. You can come down. Thank you,
16 sir.

17 MR. HOUSEAL: It might be an appropriate time to take a
18 short recess.

19 THE COURT: Let's take a real short one. Let me know
20 when you're ready.

21 (Recess taken.)

22 (Discussion off the record.)

23 MR. HOUSEAL: It is a conviction of four shopliftings.

24 MR. PENNINGTON: That's it.

25 THE COURT: Counsel, during -- you made an objection

JOHN GRIFFIN - REDIRECT BY MR. HOUSEAL

1 and we had a conference here and I told you I would let you
2 put it on the record later.

3 It was when the solicitor asked the question of one of
4 the witnesses and referred to your client as Creep.

5 So what was your objection that you wanted to put on the
6 record?

7 MR. CRUMRINE: Yes, sir. Thank you, Your Honor.

8 Before the trial began I made a motion in limine to keep
9 out the name of Creep. We agreed to stipulate that any place
10 in the statement where that name came up that we would be
11 glad to put the name of Michael Flynn instead. And that Your
12 Honor --

13 THE COURT: Well, I denied that.

14 MR. CRUMRINE: -- overruled that.

15 THE COURT: And you objected to that.

16 MR. CRUMRINE: Yes, sir.

17 THE COURT: You don't have to object any more, unless
18 the solicitor did it during his closing.

19 MR. CRUMRINE: Yes, sir. He has referred to him as
20 Creep in his questioning.

21 THE COURT: If you'll notice, even the witnesses refer
22 to your client as Creep. As a matter of fact, one of the
23 witnesses didn't know -- didn't know the other defendant's
24 name except by his nickname.

25 MR. CRUMRINE: Yes, sir.

1 THE COURT: And here again, I say Creep doesn't -- is
2 not like Mad Dog or something. Creep is -- it might be
3 complimentary.

4 MR. CRUMRINE: Your Honor --

5 THE COURT: I had a good buddy of mine that would go
6 through the woods so quiet a deer wouldn't hear him. He
7 wasn't called Creep but a name of that type.

8 MR. CRUMRINE: Your Honor, I realize that maybe -- I
9 know Ashley is not objecting to his client's name and that
10 doesn't carry with it the same sort of import.

11 THE COURT: You've objected. You don't have to object
12 any more unless the solicitor uses it in his closing
13 arguments to the jury in a detrimental way, I will put it.

14 MR. HOUSEAL: That was going to be my follow-up
15 question. I'm sure at some point that I'm going to have to
16 refer to him as Creep.

17 THE COURT: Bring the jury in.
18 (3:55 p.m., in the presence of the jury.)

19 THE COURT: All right. Call your next witness.

20 MR. HOUSEAL: Thank you, Your Honor. State calls
21 Michael Griffin.

22 THE WITNESS: I can't do that.

23 THE COURT: All right. Do you solemnly affirm that the
24 testimony you give in this matter will be the truth, the
25 whole truth and nothing but the truth?

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

1 THE WITNESS: Yes, sir.

2 MICHAEL PAUL GRIFFIN,

3 was affirmed and testified as follows:

4 THE COURT: Have a seat.

5 THE WITNESS: Thank you.

6 THE CLERK: Please state your full name for the record
7 spelling your last name.

8 THE WITNESS: Michael Paul Griffin. G-R-I-F-F-I-N.

9 THE COURT: Thank you, Mr. Griffin.

10 DIRECT EXAMINATION

11 BY MR. HOUSEAL:

12 Q Mr. Griffin, I'm going to ask you a couple of
13 questions.

14 How old are you?

15 A 22, sir.

16 Q Have any brothers or sisters?

17 A Yes, sir.

18 Q How many?

19 A I got two brothers and three sisters.

20 Q What are your brothers' names?

21 A John and Stephen.

22 Q And John is one of the codefendants in this case?

23 A Yes, sir.

24 Q Younger or older than you?

25 A Younger than me.

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

- 1 Q Where were you living in May of 1999?
- 2 A In May of '99 I was living with Peter Davis.
- 3 Q Who's Peter Davis?
- 4 A A friend of mine. Old friend of mine.
- 5 Q How long have you known him?
- 6 A Since I've been like 15.
- 7 Q Do you recall how you met him?
- 8 A No.
- 9 Q Okay.
- 10 Where was that house? Not exactly what the address is,
- 11 but generally what location in town?
- 12 A In Summerville.
- 13 Q Okay. Was he living there at the time?
- 14 A Yes, sir.
- 15 Q Was he living there on May 3rd, did he spend the night
- 16 there on May 3rd, 1999?
- 17 A Well, on that date he was incarcerated but he did still
- 18 live there.
- 19 Q Okay. Where were you that afternoon, May 3rd, 1999?
- 20 A Ladson, Summerville, North Charleston.
- 21 Q Did you go back to Peter Davis' house at all?
- 22 A Yes, sir.
- 23 Q Is that morning, the afternoon, the evening?
- 24 A Basically that afternoon.
- 25 Q Who was there when you were there?

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

1 A When I was there Mr. Thomas Bond was there, Mr. Michael
2 Flynn was there, Ms. April Mook was there and Rene Evans was
3 there.

4 Q Who is Rene Evans?

5 A Peter's own girlfriend.

6 Q Okay. And who is April Mook?

7 A April, that's Tommy's girlfriend.

8 Q Okay. And the fourth person that was there was Mr.

9 Flynn?

10 A Yes, sir.

11 Q What were you doing that afternoon at the house?

12 A Nothing really. Just sitting around.

13 Q Did you talk to your brother John that afternoon at all?

14 A Yes, sir, I did.

15 Q What did you talk to him about?

16 A He had called over to the house looking for me and
17 talking with me for a few minutes. He tell me that he had
18 something to talk to me about. I asked him what he want to
19 talk about.

20 He said he had heard from someone that there was some
21 boys in Woodside that had a lot of drugs, and that the guy
22 wanted to take all the drugs from him. So I tell him we'll
23 sit down and discuss this because it was kind of -- kind of
24 didn't look right to me.

25 Q When you're talking to him where were you when this

1 conversation took place?

2 A I was in the living room on the phone.

3 Q Which house, living room?

4 A At Peter's.

5 Q And was your brother on the telephone?

6 A Yes, sir.

7 Q Okay. And you were -- he was telling you about these
8 people in Woodside?

9 A He didn't really tell me anything other than somebody
10 told him that there was some people in Woodside.

11 Q And what was the point of him telling you that there are
12 people in Woodside that might have some drugs?

13 A Well, obviously this individual wanted to rob these
14 people and he thought that maybe we would be able to help him
15 or that we would help him.

16 Q Okay. And why were you wanting to rob somebody to begin
17 with?

18 A Well, basically everybody was kind of strapped for
19 cash. We ain't have no money. I ain't have no money. I
20 ain't have no job. So first thought in my head was if we
21 take -- we go over there and take the drugs there, we can
22 make some money off that, we be good to go for a little
23 while.

24 Q And did you ever talk about the fact that Peter Davis
25 was in jail at the time?

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

1 A That came up but that didn't come out until later on
2 that night.

3 Q Okay. When did that come out, about what time?

4 A Right -- right before we went and did a little thing
5 that we did that night.

6 Q Okay. Can you give me a rough estimate of what time you
7 were making that -- having that conversation?

8 A About 7 o'clock, 8 o'clock that night.

9 Q Who were you talking with?

10 A It never came out of my mouth. There was just a
11 conversation that was carried over in the living room between
12 a couple of other individuals.

13 Q Will you tell the jury who those individuals were?

14 A Mrs. Rene Evans was trying to find money to bond Peter
15 out. So in between myself and Mr. Bond and Mrs. Mook and
16 Mrs. Evans we were discussing this all -- basically all week
17 because we were trying to find a way to help get Peter out.

18 Q How much money did you need to get him out of jail?

19 A I think it be like 2,000.

20 Q Okay. So you're in Peter Davis' house. April, Rene,
21 Bond, you are there, anybody else there?

22 A Mr. Flynn was there.

23 Q How long have you known Mr. Flynn?

24 A Since August 14, so about six years.

25 Q See him in the courtroom today?

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

- 1 A Yes, sir.
- 2 Q Will you point him out for the jury, please?
- 3 A (Pointing.)
- 4 Q Okay.
- 5 A He's right there.
- 6 Q Okay. How long had you known Thomas Bond at that time?
- 7 A Probably about a year.
- 8 Q Okay. Anybody else come over to the house that night?
- 9 A Yeah, Mr. Steed came over later on.
- 10 Q How do you know Mr. Steed?
- 11 A I know him for about a week. I know him through Mr.
- 12 Flynn.
- 13 Q You had met Mr. Steed through Mr. Flynn about a week
- 14 before that?
- 15 A Yes, sir.
- 16 Q Do you recall where you were when you met him or what
- 17 the circumstances were?
- 18 A Honestly, no.
- 19 Q Did you talk to Mr. Steed on the telephone at all that
- 20 night?
- 21 A That night. I do believe I did for like about, I don't
- 22 know, maybe about a minute.
- 23 Q Do you remember the gist of that conversation?
- 24 A Yeah. He had already, um, spoke with Mr. Flynn on the
- 25 phone about what we were going -- discuss doing at night. So

1 he called back later on and I had answered the phone and he
2 asked me what was going on, I told him, yeah. So he said --

3 Q He asked you what, if you knew what was going on?

4 A Yes. He asked me what was going on.

5 Q And your response to Mr. Steed was?

6 A I told him yes.

7 Q And what else did you discuss?

8 A Then he said that he be on the way in a minute. So I
9 tell him all right. Then give the phone to Mr. Flynn and Mr.
10 Flynn discussed whatever they were discussing.

11 Q Your understanding of Mr. Steed's statement that he
12 would be on the way meant what, he was going to go where?

13 A He was on the way over to Peter's house, where we were
14 at.

15 Q Okay. And your understanding from that conversation was
16 -- was that you -- well, describe for the jury what your
17 understanding was about what was going to happen that night
18 after your conversation with Mr. Steed?

19 A From my understanding all we were going to do is talk
20 with this individual that had told my brother what was going
21 on and to see what he knew, see what we could do and go find
22 out what's really going on.

23 Q Okay. I'm not sure I follow you.

24 I don't know that the jury is clear about what you
25 understood was going on. So will you try to explain?

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

1 A At that point in time we weren't sure what we were going
2 to do either. We just wanted to go find out what this man
3 was talking about. So when he come by --

4 Q And who is this man that you're referring to?

5 A Mr. Green.

6 Q What's his first name?

7 A Demetrius.

8 Q Know what his nickname is?

9 A Yeah, they call him Smurf.

10 Q Do you have a nickname?

11 A I got quite a few.

12 Q What were people calling you on May 3rd, '99?

13 A Joby.

14 Q Joby?

15 A Yes, sir.

16 Q Your little brother have a nickname in May of '99?

17 A Not really. But we call him John, Little John, because
18 my Pa's name is John too.

19 Q Did you know Mr. Steed by a nickname May of '99?

20 A Yes, sir.

21 Q Pardon me?

22 A Yes, sir.

23 Q What was that nickname?

24 A T-Lo.

25 Q Did you know a guy named Little T in May of '99?

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

1 A Yes, sir.

2 Q Do you know what his real name is?

3 A Walter Gardenhigher.

4 Q Did Mr. Gardenhigher come over to Peter Davis' house
5 that night?

6 A Not that I recall. He had been on probation and he
7 wasn't allowed over at Peter's house because both of them was
8 on probation.

9 Q Okay. Did you see Mr. Gardenhigher -- did Mr.
10 Gardenhigher go to this location with you that night?

11 A No. No, sir.

12 Q Okay.

13 Q So after your conversation with Mr. Steed -- told you
14 that he was on the way over to the house, did he actually
15 show up to the house?

16 A Yes, sir. About half an hour later.

17 Q How many people were at the house at that time, do you
18 recall?

19 A It just been me and Mr. Flynn and Mr. Bond.

20 Q And then Mr. Steed showed up at that time?

21 A Yes, sir.

22 Q Did you go anywhere?

23 A Yeah. We went to look for, um, Mr. Green to find out
24 what was going on. When we picked up my little brother first
25 and we went to where he told us that Mr. Green was going to

1 be at and we discussed then for about half an hour.

2 Q Okay. What were you discussing?

3 A We were asking him what he was talking about basically
4 and he described to us about these people were always
5 flashing drugs and flashing a lot of money. And he was
6 talking about how he wanted to go hit them up and take any
7 drugs from them.

8 Q Were you talking about needing money to get Peter Davis
9 out of jail?

10 A That didn't come up until after -- that didn't come up
11 until we went back to the house.

12 Q Okay. And how long after your conversation with Mr.
13 Green did that issue come up?

14 A Maybe about -- maybe about 45 minutes.

15 Q Okay.

16 And who again were you talking with when you were
17 talking about committing a robbery to get some money to bond
18 out Mr. Davis?

19 A We were talking with all the individuals over at his
20 house.

21 We were talking with, um, Mrs. Evans and Mrs. Mook, all
22 them because Mrs. Evans was asking us is there any way we can
23 get money to get Peter out.

24 So we were telling her, you know, hey, if these people
25 got everything that they suppose to have, they got everything

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

1 that Mr. Green says they have and then whenever we get all
2 the stuff and get rid of this and come off the money we can
3 give you the first 2 g's and go ahead and bond him out.

4 Q Okay.

5 After you rode -- excuse me -- after you talked to Mr.
6 Green, did you ever ride by the house in cars?

7 A Yes, we did.

8 Q Who was it that was in the cars that rode by the house?

9 A All six of us.

10 Q And when you say all six, who were those six people?

11 A Mr. Green; my little brother, Mr. Griffin; Mr. Flynn;
12 Mr. Bond; Mr. Steeds.

13 Q And the six of you were in how many cars?

14 A In two.

15 Q Know whose cars they were?

16 A Honestly I don't know that. One of them was
17 Mrs. Mook's.

18 Q One of them was April's?

19 A April's, yes.

20 Q Do you know what kind of car that was?

21 A A little Honda.

22 Q Is that the car you were in or were you in the other
23 car?

24 A I was in the Honda.

25 Q You drove by the house. Did you see anything?

1 A No. No. Actually we didn't. Which is why we planned
2 on coming back later on that night. Because we was going to
3 wait for them to see if they were going to come home.

4 Q Where did you go after you drove by the house and no one
5 was home the first time?

6 A We went and dropped off Mr. Green. Dropped off my
7 little brother --

8 Q And where did you drop them off?

9 A Dropped both them off at the same place where we had
10 just been discussing all this, then we went and got something
11 to eat.

12 Q And that place you were discussing all this was in
13 Woodside Manor?

14 A In Woodside.

15 Q You say the rest of you went to go get something to eat,
16 that would be how many of you?

17 A Mr. Steed, Mr. Flynn, Mr. Bond and myself.

18 Q Okay.

19 Q Roughly how long did you spend having something to eat,
20 estimate?

21 A We just went and got it and went and sat over to Mr.
22 Davis' house a little while.

23 Q Did you talk about what was going to happen?

24 A We were discussing quite a few times, as a matter of
25 fact, because we was kind of, you know, a little skeptical on

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

1 whether to do it or not.

2 Q Okay. What were you talking about when you were at
3 Peter Davis' house, give you any details?

4 A The situation come to mind that we didn't know who these
5 individuals were so as far as we knew Mr. Green could be
6 lying to us. The situation came to mind that Mr., um, Davis
7 needed money to bond out. That come up. We was talking
8 about that. Then we was discussing about whether or not we
9 should do it or not.

10 Q And obviously a decision was made that you would do it?

11 A Oh, yeah, obviously.

12 Q Did you talk about having guns?

13 A Right. The, um, what our discussion with Mr. Green, he
14 told us that there was normally a large crowd of individuals
15 at the house and that all of them always had weapons. So our
16 whole intention of bringing weapons was just in case they had
17 weapons that we -- when we go in there, you know, they
18 wouldn't light us up.

19 Q How many of you had weapons?

20 A Just the three of us.

21 Q Which three?

22 A Myself, Mr. Flynn and Mr. Steed.

23 Q Did you see the guns that Mr. Steed and Mr. Flynn had?

24 A I seen the gun that Mr. Flynn had. I didn't see no gun
25 on Mr. Steed.

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MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

- 1 Q How did you know he had a gun?
- 2 A Later on during the night it came up.
- 3 Q This conversation is taking place at Peter Davis' house?
- 4 A Yes, sir.
- 5 Q Did you get the guns at Peter Davis' house or did you
- 6 get them somewhere else?
- 7 A I myself personally I picked the gun up from Mr. Davis'
- 8 house through Thomas Bond. Thomas Bond had bought a gun and
- 9 had it there at the house and he -- he allowed me to use that
- 10 gun. And Mr. Flynn, I'm not sure if he got the gun from the
- 11 house or had it on him or not. I'm not sure if Mr. Steed had
- 12 his gun on him when he arrived, whether he got it later on, I
- 13 don't know.
- 14 Q Do you know what kind of gun Mr. Flynn had?
- 15 A Yes, sir. He had a 9 millimeter.
- 16 Q How do you know what kind of gun he had?
- 17 A Because I steal it from my pops to get it there.
- 18 Q When did you take it from your dad?
- 19 A Probably a week, week and a half before.
- 20 Q What kind of 9 millimeter was it?
- 21 A A Hi-Point.
- 22 Q Why did you give it to Mr. Flynn?
- 23 A Short on cash. Owed out some money.
- 24 Q You owed him money?
- 25 A Oh, actually owed Mr. Peter Davis some money.

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

1 Q You owed Peter Davis money but you gave the gun to Mr.

2 Flynn?

3 A Kind of in a way. It went to Peter Davis and Mr. Peter

4 Davis gave it to Flynn, selling it to Flynn, something like

5 that.

6 Q Okay. Why did you give the gun to Peter Davis

7 initially?

8 A Owed him in money.

9 Q Owed him money too?

10 A Yes, sir.

11 Q So you left Peter Davis' house, who were you with when

12 you left the house?

13 A I was with Thomas Bond.

14 Q And in which car?

15 A In Mrs. Mook's car.

16 Q Okay. And Ms. Flynn and Mr. Steed were where?

17 A They was in another car.

18 Q Do you know whose car that -- who was driving that car?

19 A Mr. Steed was driving the car, but I don't know whose it

20 was.

21 Q Did he drive to Peter Davis' house in that car?

22 A He was the only one in the car. I imagine so.

23 Q Okay. Where were you headed when you left Peter Davis'

24 house?

25 A Going back to pick up Mr. Green and my little brother.

1 Q Before you left the house, do you recall whether April
2 was there or Rene was there?

3 A They show up which is where the whole discussion of us
4 giving some money to Mrs. Evans to bond Peter came up.

5 Q So April and Rene were present during part -- at least
6 part of the conversation?

7 A At least part of it.

8 Q Okay. When you left Peter Davis' house where did you go
9 first?

10 A We went to get my little brother.

11 Q And where was he?

12 A Well, we found him walking down the road. So we picked
13 him up. We went and found Mr. Green.

14 Q Which car did your little brother get in?

15 A In the car with me and Tommy.

16 Q And did you find Mr. Green?

17 A Yes, we did.

18 Q Where did you find him?

19 A Honestly I don't remember. He had been in Woodside,
20 somewhere around the house that we had spoke with him earlier
21 in the day.

22 Q Which car did Mr. Green get into?

23 A He got in the car with Mr. Steed and Mr. Flynn.

24 Q Where did you go after you picked up Mr. Green?

25 A Riding back by the house again.

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

1 Q Do you recall what street that house is on?

2 A I think it was Outwood.

3 Q Okay. Both of those cars just following each other?

4 A Right.

5 Q You drove by the house?

6 A Yes, sir.

7 Q What did you see?

8 A We seen a white Lincoln in the driveway. White Lincoln

9 or white Cadillac.

10 Q What -- did you say anything to Peter -- yes, to

11 Tommy -- excuse me -- or your little brother at that time?

12 A Actually I can't tell you if I did or not.

13 Q Okay.

14 Where did you go after you saw the car in the driveway

15 on Outwood Street?

16 A We went and we parked on the end of the road and we were

17 discussing what to do. And we went around to the church off

18 of Lincolnville Road.

19 Q Who were you discussing what to do with?

20 A We was discussing among ourselves.

21 Q Just the three of you in the cars?

22 A Just the three of us in the cars.

23 Q When you went to the church -- just one car go to the

24 church or both cars?

25 A We had followed Mr. Steed's car. I do believe Mr. Green

1 was driving. At that point we followed the car to the church
2 off of Lincolnville Road.

3 Q What happened when you go to the church off of
4 Lincolnville Road?

5 A Myself and Mr. Bond and Mr. Steed and Mr. Flynn got out
6 of the cars. We were standing around smoking a cigarette
7 discussing what to do. Went through the woods and went over

8 to the house.

9 Q Who went through the woods?

10 A Myself and Mr. Steeds and Mr. Flynn.

11 Q Did either of the three of you have anything to hide
12 your identities?

13 A Well, at first, yeah, we all had our face covered.

14 Q With what?

15 A With little bandanas.

16 Q Why did you choose bandanas?

17 A Always got them on us.

18 Q And why do you always have them on you?

19 A Personal reasons. Personal beliefs.

20 Q Can you go into -- can you explain what that means? Why
21 -- well, let me ask you this. Were the bandanas any
22 particular color?

23 A Mine was black. I do believe Mr. Flynn's was blue or
24 black. Mr. Steed's was probably black too.

25 Q Any reason why they were blue or black as opposed to

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

1 another color?

2 A No, sir. Not really. They could have been white. It
3 could have been yellow, could have been gray, purple.

4 Q Okay. Did you wear your bandana when you left the car
5 or--

6 A No, sir. We didn't put it on until after we gone walk
7 by the house.

8 Q Where did you have your bandana when you were walking to
9 the house?

10 A In my pocket.

11 Q Did you see Mr. Steed with the bandana during the walk?

12 A No, sir.

13 Q Did you see Mr. Flynn with the bandana during the walk
14 over there?

15 A No, sir. They were following me so...

16 Q Okay. So you approached the house. What did the three
17 of you do when you approached the house?

18 A At first we started looking around the house, you know,
19 and for some reason or another we started walking down the
20 road to walk away from the place. Then we were discussing
21 something or another. And we were walking down the road.

22 And we turned around and went back to the house.

23 At that point in time that's when we put the bandanas on
24 the face, try knocking on the back door, see if they would
25 open the back door. Beat on the back door -- beat on the

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1 door three, four times. No one answered the back door.
2 Q Did you see -- well, before we get into what happened
3 inside, how much time would you estimate you stood outside
4 the house?
5 A Probably a good 30 minutes.
6 Q What were you doing during that 30 minutes?
7 A Basically just looking around.
8 Q And what were you looking for?
9 A I can't -- I don't know, honestly. I don't know.
10 Q At what point did the three of you get your guns out?
11 A Right before we went to knock on the back door.
12 Q And where were you standing when the three of you got
13 your guns ready?
14 A On, um, I do believe we was inside the garage.
15 Q In the back -- I'm sorry, I don't understand you.
16 A I said I believe we were inside the garage.
17 Q How did you get into the garage?
18 A The door was open.
19 Q The front of the house or the back?
20 A In the back of the house.
21 Q Before you went into the garage was that when you were
22 knocking -- tapping on the window or knocking on the door you
23 said or was that after?
24 A When you go into the garage they either didn't have a
25 door or the door was open. You go in the garage, look to the

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MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

1 left, you got a back door to go into the kitchen. We walked
2 into the garage and knocked on that door.

3 Q And did anybody come to the back -- to the door, to the
4 back door?

5 A No, sir.

6 Q Okay. So what did you do at that point?

7 A We started -- we moved ourselves out of the garage and
8 we were discussing possibilities at that point in time. I

9 stood on the side of the house while the other two
10 individuals were walking around looking in through the
11 windows.

12 Q Did you look in the windows?

13 A Actually I don't think I did. No, sir.

14 Q Okay. When did you decide how you were going to get
15 into the house?

16 A I'm not sure when that decision was made. But Mr. Steed
17 just came up to me and asked me to go knock on the front
18 door.

19 Q What did you say?

20 A I tell him I ain't want to. And he said well, go ahead.
21 Take your colors off your face and hand me your gun, knock on
22 the front door.

23 Q He said take what off your face?

24 A Colors off my face.

25 Q What did he mean by your colors?

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

- 1 A My blue bandana -- black bandana.
- 2 Q Okay.
- 3 What did you say in response to him telling you or --
- 4 did he tell you or ask you to take your colors off?
- 5 A He asked me to take the colors off my face and hand me
- 6 the gun and go knock on the door. I tell him I didn't want
- 7 to do it. He said well, don't worry about it because they
- 8 ain't going to open the door if you go knock on the door with
- 9 the gun in your hand.
- 10 Q He said they are not going to open the door if you got
- 11 the gun in your hand?
- 12 A Yes, sir.
- 13 Q Who said that?
- 14 A Mr. Steeds.
- 15 Q Did you say anything in response?
- 16 A No, sir. I went and knocked on the door.
- 17 Q Did -- well, before you went to knock on the door, how
- 18 did you -- describe what you did? The three of you are
- 19 standing in the back yard?
- 20 A We're standing on the side of the house.
- 21 Q Side of the house. All three of you, at that point have
- 22 the colors across your face?
- 23 A Yes, sir.
- 24 Q And where were you -- where was your gun?
- 25 A It was in my right hand.

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

1 Q Where was Flynn's gun?

2 A I'm not sure. I wasn't paying attention.

3 Q Where was Steed's gun?

4 A It was probably in his right hand.

5 Q Okay. And this conversation that you had with him when
6 he asked you to take your colors off and go to the front

7 door, describe for the jury exactly how you did it? What did

8 you do first? Did you hand the gun first, did you take the
9 colors off, describe --

10 A I handed the gun first and then took my colors off, put
11 it in my pocket.

12 Q Were you worried about being identified?

13 A Actually, yes, sir, I was.

14 Q What did you do about that?

15 A That's what -- that was one thing that I brought up. I
16 had tell him that I didn't feel comfortable going in there
17 and knock on the door because they will see my face. And Mr.
18 Steed responded it didn't matter because they will be dead
19 anyways.

20 Q Mr. Steed said that to you?

21 A Yes, sir.

22 Q So you hand your gun to him, took your mask off and went
23 to the front door?

24 A Yes, sir.

25 Q Did you knock?

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

1 A Yes, sir.

2 Q Anybody respond?

3 A Actually two men come to the door. And they asked who
4 it was and I tell them my name. So they opened the door and
5 a chain across the door and they seen me. And I asked for
6 somebody but I don't remember who it been. It had been a
7 female that I asked for. Then they closed the door, took the
8 chain off and opened the door all the way.

9 Q Where was Steed at this time, did you know?

10 A The way the front porch is set up, the front door been
11 about 15 feet back on the inside of the house. And they had
12 the front of the house come up and they been a corner. And
13 right where I had been Mr. Steed been on the other side of
14 the corner with Mr. Flynn so when I knock on the door they
15 come around this corner.

16 Q Okay. What happened next?

17 A Mr. Steeds come over my shoulder. The man that been
18 standing at the door, he been the first one that I noticed
19 that Mr. Steed come behind me because he had a sharp look on
20 his face. One dude start jumping for the floor the other
21 dude start backing up. A couple of shots were fired. I get
22 pushed into the house.

23 Q Who fired the shots?

24 A I'm not sure. I ain't pay no attention.

25 Q Who was with you? Who was behind you?

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

1 A Mr. Steed was behind me.

2 Q Are you suggesting that the victims fired the shots?

3 A Oh, no, sir. No, sir. It wasn't coming from them.

4 Because one of them -- like I said, one of them was running
5 the other direction and the other one was jumping for the
6 floor.

7 Q So did you fire any shots?

8 A No, sir.

9 Q So who are you saying fired the shots?

10 A Either Mr. Flynn or Mr. Steeds.

11 Q Did you see anybody hit with any bullets?

12 A Not actually, no, sir.

13 Q Could you tell -- where did the first person that you
14 said fell to the floor, where did he -- which part of the
15 house did he go to? Where did he roll to?

16 A He jumped over the couch. When -- when we first come
17 into the house, either one big wrap around couch or two
18 couches and he jumped over the couch closest to the door in
19 between the coffee table and the couch.

20 Q What did you do?

21 A Well, I stand there for a minute then I noticed --

22 Q Where were you standing?

23 A I overheard -- I was standing right inside the door,
24 maybe about five feet inside the doorway.

25 Q And did you see Steed come in the house? Did he go in

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

- 1 before you or after you?
- 2 A He come in behind me.
- 3 Q So you were actually standing at the doorway when Mr.
- 4 Steed came in the house?
- 5 A Yes, sir.
- 6 Q Where were you standing when Mr. Flynn came in the house?
- 7 A I'm not sure. I didn't notice him in the house.
- 8 Q Okay. Let me ask you, did Mr. Flynn go in before you?
- 9 A No, sir.
- 10 Q So you're in the doorway, you're the first person that
- 11 actually goes into the house?
- 12 A Yes, sir.
- 13 Q Mr. Steed is the second person that goes into the house,
- 14 correct?
- 15 A As far as I know, yes, sir.
- 16 Q Okay. But you're not sure whether Mr. Steed fired the
- 17 shots or Mr. Flynn?
- 18 A No, sir.
- 19 Q Was Mr. Flynn on the porch at the time the shots were
- 20 fired, do you know?
- 21 A I'm not sure where he was at, sir. I wasn't -- I was
- 22 not even aware that he was in the house until I heard some
- 23 noises in the back of the room and I walked back to the back
- 24 bedroom and he was in there.
- 25 Q Did you -- how many shots did you hear roughly? Can you

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

1 --

2 A I think about two or three.

3 Q Where was Mr. -- where did Mr. Steed go when he came
4 into the house?

5 A He stayed right there in the living room.

6 Q Who else was in the living room?

7 A Myself and the two -- the two victims.

8 Q Which victim was Mr. Steed near? Do you know what --
9 let me -- let me approach you, it might be easier for you to
10 describe it.

11 This is State's Exhibit 3 for identification. Do you
12 recognize that at all? Do you recognize it?

13 A I'm not sure exactly where the front door is at. But
14 from the way this is I would say the front door is right
15 here. And I was standing about right here (Indicating) and
16 Mr. Steed was standing about right here. And one individual
17 being right here because he jumped over the couch and the
18 other individual been about right here because the
19 television was about right here, right in front of the T.V.

20 Q Okay. So Steed was closest to which of these people?

21 A He was off to the left closest to this person, this
22 individual here.

23 Q And you were standing again where?

24 A About right here. Right in the hallway. Right in the
25 doorway.

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

1 Q Okay.

2 And let me see. Tell me what you saw -- tell me what
3 you heard Mr. Steed say?

4 A I didn't hear him say anything.

5 Q You didn't have -- well, what were you saying?

6 A I ain't say nothing. I overheard some noise in the back
7 of the house.

8 Q So did you go into the back of the house?

9 A I didn't see Mr. Flynn. So I went to look to see if he
10 was back there.

11 Q Did you find him?

12 A Yes, sir, I did. I found him in the closet.

13 Q What was he doing in the closet?

14 A I haven't the slightest idea.

15 Q Which room -- let me show you State's Exhibit 3 again.

16 A The back bedroom on the left.

17 Q Show that to the jury, which bedroom you're referring to?

18 A Back bedroom on the left (Indicating).

19 Q And can you tell from this diagram where the closet
20 you're referring to is?

21 A Right here.

22 Q Was there anybody else in that room?

23 A Yeah. Been a female and a little baby on the bed. But
24 I wasn't sure if it was a little girl or a little boy.

25 Q Okay. What was the girl inside doing at the time?

1 A She was sitting on -- she was sitting on the bed
2 covering up the little baby. She was speaking to us, telling
3 us that that she don't normally live there and that they were
4 visiting or something like that. They were not normally
5 suppose to be at the house. They didn't have nothing.

6 Q Okay. And you were where when you were talking to her?

7 A There is a dresser right here, yeah, a dresser right
8 here, and I've been right here at this dresser (Indicating).

9 Q Did you see Steed come into that room at all or down
10 that hallway?

11 A Later on, I probably give him about 30 seconds, Mr.
12 Gorski came into the room with a blood stain on his shirt and
13 kind of surprised me because I wasn't expecting to someone
14 come into the room. I did not see Mr. Steed, I seen Mr.
15 Gorski. At that point in time he had said something --

16 Q Where was Mr. Gorski standing?

17 A He was standing in the doorway. He didn't really come
18 up in the room.

19 He was standing in the doorway. Then Mrs. Holbrook said
20 something along the lines that he didn't live there or
21 something like that.

22 Then turned around and left the room. And Mr. Flynn
23 walked out behind him.

24 Q Did you hear Ms. Holbrook -- well, when you were back in
25 the back room, was Mr. Flynn saying anything?

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

1 A Um, I'm not actually too sure if Mr. Flynn was saying
2 anything or not.

3 Q Well, was Mr. Flynn having a conversation with Michele
4 Holbrook?

5 A With the female when I walked in the room, yes, sir.

6 Q Did you hear what he was saying to her?

7 A Yeah, something to do with the safe that had been in the
8 closet.

9 Q What about it, do you know?

10 A (No audible answer).

11 Q Did he answer her, did you hear anything?

12 A She was saying something about there was a hole cut in
13 the bottom of it, something like that.

14 Q So is Mr. Flynn looking for money in there?

15 A Obviously --

16 MR. CRUMRINE: Objection, Your Honor.

17 THE COURT: Well, if he knows, I'll let him answer it.

18 BY MR. HOUSEAL:

19 Q Mr. Griffin, how is it that Flynn -- how is it that you
20 were going to find money or drugs in this house?

21 A Actually, I'm not too sure how we intended on doing
22 that. I think we just went in there with the thought that
23 maybe we ask them for us and maybe they just give them to us.

24 Q Did you ask anybody for it? Not you personally, but
25 the three of you?

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

1 A Yeah, yeah. It was brought up a couple of times.

2 Q Tell the jury what the three of you were saying to the
3 victims inside?

4 A As far as anything going, everybody was asking where was
5 the drugs at. You know. Where were all these drugs that you
6 got, where are these weapons that you all got, you know.

7 Q And what were the responses by the victims?

8 A The only individual I heard say anything was

9 Mrs. Holbrook. She said they didn't have anything.

10 Q Okay.

11 What happened after you heard Ms. Holbrook say that,
12 you left that back bedroom, where did you go from there?

13 A I walked right out in the hallway and right out the
14 front door.

15 Q What did you see on the way out?

16 A I seen a couple of individuals firing shots.

17 Q And who were those individuals you saw firing the shots?

18 A Mr. Flynn and Mr. Steed.

19 Q Who were they -- well, where were they when they were
20 firing those shots?

21 A They were standing right in front of the couch that was
22 at the end of the hallway right in front of the doorway to
23 the kitchen.

24 Q They fired one shot?

25 A I'm not sure how many shots that they fired. But I

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

1 think I seen about two or three.

2 Q Can you tell which -- when you say hallway to the
3 kitchen, what do you mean?

4 A All right. There's a door. That's it right there.

5 (Indicating) Unless that's it right there that goes into the
6 kitchen.

7 Q Where is the kitchen in this diagram?

8 A Right in here.

9 This is the living room. He been -- we be coming down
10 this hallway. This is a very small diagram. That hallway is
11 a good 10, 15 steps long. I take long strokes. He been on
12 the end of the hallway on the ground. Mr. Steed right here.
13 Mr. Flynn right here.

14 Q When you say he was on the -- in the hallway on the
15 ground, who were you talking about?

16 A Whoever -- Mr. Gorski.

17 Q Okay. Does this diagram appear to be consistent with
18 your recollection of where Mr. Gorski was on the ground?

19 A Pretty much. But I kind of thought he was closer.

20 Q Okay. Tell me again where Steed was when you saw --

21 A Mr. Steed was down here by his feet.

22 Q Okay. And Mr. Flynn?

23 A And Mr. Flynn was about right here closer to the doorway.

24 Q Did you see the other victim, Porter Walker, at that
25 time?

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

1 A I didn't see nobody. I just walked right by them and I
2 hurried to get out of that house.

3 Q As you were walking by them, they were shooting Mr.
4 Walker -- I mean, Mr. Gorski?

5 A By the time I walked by them everything was done.

6 Q Did you see Mr. Gorski moving?

7 A No, sir.

8 Q What's the first thing you did when you left the house?

9 A I jumped over a fence and ran down the railroad track.

10 Q Heading which -- why were you running down the railroad
11 tracks?

12 A Heading back toward the car.

13 Q Okay. Michael Flynn and Robert Steed with you as you
14 headed back?

15 A Um, I do believe so because at one point in time when we
16 was going down the railroad tracks we was all together.

17 Q So you did meet up at some point between the house and
18 the cars?

19 A Yes, sir.

20 Q What did you do when you got back to the cars?

21 A They got in their car and they took off and I jumped in
22 the car with Mr. Tommy and my little brother and I tell them
23 boys to take my little brother back to the house.

24 Q And did you do that?

25 A Yes, sir.

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

- 1 Q Did you have any conversation with your little brother
2 or Thomas Bond in the car about what happened?
3 A Not as far as I remember.
4 Q Okay.
5 A They didn't -- somebody did ask me if anything
6 happened. And I think my response to that was no.
7 Q Do you know a guy named Walter Gardenhigher?
8 A Yes, sir.
9 Q Do you know what his nickname is?
10 A Little T.
11 Q Little T.
12 Q And again, did you see Little T. at Outwood Street that
13 night?
14 A No, sir.
15 Q Little T had been doing some pretty shady stuff so we
16 had been trying to stay away from him because we weren't too
17 happy with him lately.
18 Q Okay.
19 Q What were you charged with as a result of your
20 involvement in the killing?
21 A Murder, assault and battery with intent to kill, armed
22 robbery, burglary first and criminal conspiracy.
23 Q Did you enter any guilty pleas to any charges?
24 A Yes, sir. Thursday morning.
25 Q Thursday of which week?

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

- 1 A This past week. I do believe it was November the 30th.
- 2 Q What did you enter a plea of guilty to?
- 3 A To the five charges -- no, no, no, no. I pled guilty to
- 4 voluntary manslaughter and then assault and battery with
- 5 intent to kill, armed robbery, burglary first and criminal
- 6 conspiracy.
- 7 Q Why did you plead guilty to voluntary manslaughter and
- 8 assault and battery with intent to kill if you didn't fire a
- 9 gun?
- 10 A Because as far as I know the State has some pretty
- 11 messed up laws to where every individual involved in a crime,
- 12 whether they were directly involved or just witnessing a
- 13 crime, is just as guilty as everybody else.
- 14 Q As a result of your plea do you know what the sentence
- 15 that you can potentially get is?
- 16 A Yes, sir.
- 17 Q What is that sentencing range?
- 18 A Anywhere between 15 and 30.
- 19 Q 15 to 30 what?
- 20 A Years.
- 21 Q Have you been promised any particular sentence as --
- 22 A No, sir.
- 23 Q -- to encourage you to testify?
- 24 A Other than the 15 to 30, no, sir.
- 25 Q Did you give a statement to the police in reference to

1 this case?

2 A Yes, I did.

3 Q Roughly how long after this incident did you give a
4 statement?

5 A About two days, three days.

6 Q How long was it, would you estimate, that it was between
7 May of '99 before you even had any contact with me or my

8 office?

9 A Yes, sir.

10 Q How long -- how many months do you think after -- do you
11 remember roughly what time of the year or what season it was
12 that I even talked to you the first time? Was it this year?

13 A I think it was May -- May or June of this year.

14 Q Of this year?

15 A (Witness moves head up and down.)

16 Q Anybody promise you anything in exchange for your
17 agreement to cooperate and testify?

18 A Detective Buncum told me he help me out if I gave him a
19 statement.

20 Q And when did he say that?

21 A Before he did -- before he bring me in.

22 Q Was that May of '99?

23 A That was May of '99.

24 Q Did you talk to him since then about giving a statement?

25 A No, sir. No, sir.

MICHAEL GRIFFIN - DIRECT BY MR. HOUSEAL

1 Q See T-Lo in the courtroom today?

2 A Yes, sir.

3 Q Which man is T-Lo?

4 A This man with the dark skinned individual over here.

5 Q And his real name is what?

6 A I'm not sure. I think it's Robert Steed.

7 Q You knew him on the street as what?

8 A As T-Lo.

9 Q Any question that's the guy that you were with that
10 night?

11 A No. Not a single doubt.

12 Q Any other person that you were with that you saw in the
13 house that night shooting a gun at Chris Gorski was who?

14 A It was Mr. Steeds and Mr. Flynn.

15 Q And Mr. Flynn is where?

16 A He's sitting right over here. (Indicating).

17 Q Did Mr. Flynn use a gun that night that you had stolen
18 from your dad?

19 MR. CRUMRINE: Objection, Your Honor, leading.

20 THE COURT: If he knows.

21 THE WITNESS: As far as I'm concerned, as far as I knew,
22 yes, because as I -- as far as I know that had been the only
23 weapon that he had.

24 BY MR. HOUSEAL:

25 Q Okay. Mr. Griffin, you ever been convicted of any

MICHAEL GRIFFIN - CROSS BY MR. CRUMRINE

1 criminal offenses other than what you pled to last week --

2 A No, sir.

3 Q -- that you're aware of?

4 Ever been arrested for the stealing anything?

5 A Yes, sir.

6 Q When were you arrested?

7 A Arrested in November of '98 for petty theft.

8 Q Did you get arrested and put in jail at all for that?

9 A Yes, sir.

10 Q How long did you spend in jail, do you recall?

11 A 20 days.

12 Q Thank you, Mr. Griffin. Please answer any questions
13 these lawyers have for you.

14 CROSS-EXAMINATION

15 BY MR. CRUMRINE:

16 Q Mr. Griffin, my name is John Crumrine and I am
17 representing Michael Flynn.

18 You were asked by Mr. Houseal about the statement that
19 you gave when you were first arrested --

20 A Yes, sir.

21 Q -- and the officers, did they read you your rights?

22 A No, sir, they didn't advise me of my rights until after
23 I wrote and gave my statement.

24 Q So on the first page of your statement where they have
25 an advisement of rights --

MICHAEL GRIFFIN - CROSS BY MR. CRUMRINE

1 A That was the last thing I initialed and the last thing I
2 signed.

3 Q So you gave your statement and then they advised you of
4 your rights and then you signed your rights?

5 A Yes, sir.

6 Q All right.

7 Did they tell you then was it -- was it -- you believe
8 it was unfair of them not to tell you that anything that you
9 said could be held against you until after you already told
10 them?

11 A That ain't come up until later on when they started
12 speaking with other individuals who pretty much informed me
13 that that was basically pretty messed up of them.

14 Q All right. And you're saying that it was pretty messed
15 up of the police to do it that way?

16 A Yes, sir.

17 Q Do you feel they tricked you into giving your statement?

18 A Yes, sir.

19 Q And besides not telling you your rights before they gave
20 them to you, before you gave the statement, did they tell you
21 that they already had all the other individuals giving
22 statements on this and you might as well give yours?

23 A Basically.

24 Q And Detective Buncum I think you said indicated that
25 this somehow could help you if you gave a statement?

1 A Yes, sir.

2 Q And did he tell you it also would help your little
3 brother if you went ahead and gave a statement?

4 A No. But he did tell me that he had helped my little
5 brother on a case before. And he told me if I doubted him
6 helping me they would call my little brother and that's what
7 we did and my little brother did tell me that Mr. Buncum had
8 helped him before.

9 Q Had helped him before?

10 A Yes, sir.

11 Q On another case?

12 A Yes, sir.

13 Q All right. And so you trusted him to help you for
14 giving your statement?

15 A Not really. Basically I wasn't too sure what kind of
16 help that he was actually referring to. But concerning the
17 events that happened that night, I was very much aware of the
18 time that I was facing.

19 Q And he wasn't able to give you a promise of exactly what
20 kind of help he could give you at that time, was he?

21 A No, sir.

22 Q But you did in fact get a good bit of help for
23 cooperating, didn't you?

24 A Not that I'm aware of.

25 Q When you walked into court last Thursday and pled guilty?

MICHAEL GRIFFIN - CROSS BY MR. CRUMRINE

1 A And pled guilty to 30 years.

2 Q Not to murder which carries life but the manslaughter --

3 A But if I didn't commit the murder than why do I got to
4 plead guilty to a murder.

5 Q My question to you is, you got a pretty good break for
6 having cooperated in this case, haven't you?

7 A I'm not too much aware of it because I do believe I pled

8 guilty to 15 to 30 which means I have to do 30 years on the

9 max.

10 Q Would it be fair to say to your understanding that you
11 have been given a lot better deal than anyone else has so
12 far?

13 A Then what? 30 years or what?

14 Q Then still facing a murder charge?

15 A Well, it's either plead guilty to something I know I did
16 or get found guilty of something I know I did. And I would
17 rather do 30 years than life.

18 Q And you pled guilty to voluntary manslaughter, correct?

19 A Yes, sir.

20 Q And that carries a maximum of 30 years rather than a
21 maximum of life, correct?

22 A I do believe so, yes, sir.

23 Q And your lawyer and the judge explained to you when
24 you're pleading guilty what manslaughter means, didn't they?

25 A No, not really.

1 Q Did your lawyer not question you and the court question
2 you as to whether in fact you were guilty of voluntary
3 manslaughter?

4 A They did -- they did ask me if I was aware of what I was
5 pleading guilty to.

6 Q Right.

7 A And I told them yes, I am aware of what I'm pleading
8 guilty to.

9 Q Voluntary manslaughter to your understanding is the
10 unlawful killing of another in the heat of passion upon just
11 provocation. Is that what they told you when you met with
12 your lawyer?

13 A They didn't exactly break it down what it meant. But
14 considering the fact that they did tell me that because the
15 fact that I was there I can be convicted of the crime just
16 like anybody else then I at that point in time was advised by
17 my lawyer that the best thing for me to do is plead guilty.

18 Q All right.

19 They told you you could be found guilty of murder for
20 your participation --

21 A Yes, sir.

22 Q -- and therefore you better -- be best off pleading
23 guilty to voluntary manslaughter?

24 A Yes, sir.

25 Q All right. And your lawyer is Mr. Price?

1 A Yes, sir.

2 Q And is he present in here? All right. And did he
3 explain to you before you pled guilty what the elements of
4 voluntary manslaughter were?

5 A Um, basically, yes, sir.

6 Q All right.

7 That's the unlawful killing of another in the heat of
8 passion on just provocation, correct?

9 A If that's how it breaks down, yes, sir.

10 Q And that's what you believe you're guilty of?

11 A Oh, no, it's not what I believe I'm guilty of, it's what
12 I can be found guilty of.

13 Q What do you believe you're guilty of?

14 A Basically I believe I'm guilty of burglary first.

15 Q And that's it.

16 A But considering the fact that other events happened
17 during the course of my arrival upon the scene of the crime I
18 can be found guilty of everything else and I have been
19 advised of that; therefore, I pled guilty.

20 Q All right. Let's go to the other breaks you've been
21 given. You were able to plead to the burglary first with a
22 maximum of 30 years, correct?

23 A Yes, sir.

24 Q And that's to run concurrent, the recommendation is
25 being concurrent of that to the manslaughter plead, correct?

MICHAEL GRIFFIN - CROSS BY MR. CRUMRINE

- 1 A Yes, sir.
- 2 Q And the armed robbery with a minimum of 15 years and a
3 maximum of 30, correct?
- 4 A Yes, sir.
- 5 Q To be run concurrent with the other two charges?
- 6 A Yes, sir.
- 7 Q All right. Assault with intent to kill?
- 8 A Yes, sir.
- 9 Q Concurrent with the other charges?
- 10 A Yes, sir.
- 11 Q And conspiracy, concurrent, which carries what, five
12 years, right?
- 13 A Yes, sir.
- 14 Q All right.
- 15 And so with all of that what you're left with right now
16 is you're to receive a sentence of between 15 and 30 years
17 correct?
- 18 A Yes, sir.
- 19 Q That's your understanding?
- 20 A Yes, sir.
- 21 Q And they held off sentencing until after you testified
22 today, correct?
- 23 A As far as I'm concerned they told us we would all be
24 sentenced at the same time.
- 25 Q They held off until after you testified, correct?

MICHAEL GRIFFIN - CROSS BY MR. CRUMRINE

1 A If you want to look at it that way. I was made aware of
2 the fact that we would all be sentenced at the same time. It
3 had nothing to do with my testimony.

4 Q So you can say whatever you want to say and you are not
5 worried about getting 30 years versus 15?

6 A I pled guilty to 15 to 30. So I'm very much aware that
7 I could catch 30.

8 Q Who determines whether you're going to get in between 15
9 and 30 years?

10 A As far as I was informed, the judge.

11 Q And aren't you hoping to get a better recommendation
12 from the solicitor's office for your cooperation and for
13 telling the truth?

14 A Well, who wouldn't?

15 Q All right.

16 A I'm 20 years old, I don't want to go home when I'm 50.

17 Q Who do you suppose is going to make that determination
18 as to whether you've fulfilled that?

19 A That's not on me to decide. I just come up here to tell
20 the truth as best as I seen it and best as I know it.

21 Q All right.

22 I'm not asking you to decide, I'm asking you what your
23 understanding is of who it is will determine how well you've
24 done today.

25 A I didn't know I had anything to do with how well I done.

1 Because I can sit up here and you can tear me down bit by bit
2 and I can look like a jackass. What that got to do with how
3 much time I get?

4 Q Do you consider yourself an honest man, Mr. Griffin?

5 A Majority of the time, yes, sir. But everybody tends to
6 lie.

7 Q And do you consider robbing people an honest action?

8 A No, sir. Actually I don't. But that's not something
9 that I'm proud that I done. It's not something that I have a
10 continuance of doing. That been a one-night event that done
11 destroy six people, seven -- eight people's lives. Eight
12 people, man.

13 Q Do you consider participating in the murder of an
14 individual an honest act?

15 A (Witness moves head from side to side.) No, actually I
16 don't.

17 Q Did you become honest after this time? Has there been
18 some revelation in your life?

19 A What, like I go around doing this all the time?

20 Q No. I'm just saying now that we've got your word under
21 oath, can we believe that you are now honest?

22 A I was an honest man before this crime happened. This
23 crime that happened it had -- yes, it had part to do with me,
24 but it was a lot of that -- a lot of that night that was out
25 of control to my hands. It had nothing to do with being

MICHAEL GRIFFIN - CROSS BY MR. CRUMRINE

1 honest. Has nothing to do with what you do in your life.

2 Being honest has everything to do with what you say out
3 of your mouth.

4 Q Are you the same Michael Griffin that was convicted of
5 shoplifting in North Charleston?

6 A Wow. Yes, I am.

7 Q And you -- I believe you had some -- were in the Marines
8 and got kicked out of there as well?

9 A I didn't get kicked out, I chose to get out.

10 Q You chose to get out?

11 A Yes, sir.

12 Q Didn't you go AWOL for a considerable amount --

13 A For 29 days.

14 Q And you've had some -- well, let me ask you this. When
15 is it that we can believe you? Okay? When did you become
16 honest?

17 A When did I ever become a liar?

18 Q Well, do you consider it honest to -- to be robbing
19 people?

20 A Well, we already went over this.

21 Q And did -- after the robbery when you gave your
22 statement did you have some revelation that made you a good
23 person --

24 A No --

25 Q -- after that? So we can -- excuse me -- so that we can

1 rely upon your statement?

2 A At that point in time I knew what I had did. The
3 detectives knew what I had done. There was enough people
4 telling them what happened that night.

5 I ain't going to be stupid and sit down and boldface lie
6 the man to his face knowing that he knows what I done. So I
7 told him. Yes, I done this thing. I accepted the

8 responsibility for what I did.

9 Q And hoping to get something out of it?

10 A How can you benefit from a crime when you about to go do
11 time?

12 Q I have to ask the questions, Mr. Griffin. Let me ask
13 you this.

14 Have you changed your -- have you written letters to
15 other people since the time this thing happened and given
16 different versions of the facts?

17 A No. But I have had letters written to me by other
18 individuals telling me that I should say other things than
19 what I did.

20 Q Do you deny writing a letter to your girlfriend,
21 Chrissy?

22 A Saying what?

23 Q Saying that -- that this thing is being put off on
24 Michael Flynn and on Mr. Steed?

25 A Um, was that before --

MICHAEL GRIFFIN - CROSS BY MR. CRUMRINE

1 Q Was that true?

2 A Was that before or after I was in LE and they told me
3 that I could help them out by doing that?

4 Q So you're admitting that you have said that in the
5 letter?

6 A Yes, I did write that in a letter. That was not the
7 truth.

8 Q And that was telling something false, are you saying, to
9 help someone else out?

10 A Me and Mr. Flynn been friends for a long time. You
11 know. When I got locked up, I ain't mean to sit down and
12 tell everybody what happened. All right. But it came out.
13 I felt bad about the fact that I brought him up into
14 something with -- basically we never should have said
15 anything in the first place. But we did. It came up. I
16 felt bad about what I did. Me and Mr. Flynn have been
17 friends a long time.

18 I started thinking, that is my friend, you know. I
19 ain't suppose to do this. So I have individuals writing me
20 telling me look, look, look, change the statement, help us
21 out, change the statement, help us out. So I didn't know how
22 to go about that. So they tell me write letter to somebody
23 and they'll turn it in over to the detective so that's what I
24 did.

25 Q So you will lie to help out a friend but you won't lie

MICHAEL GRIFFIN - CROSS BY MR. CRUMRINE

1 to help out yourself and your little brother; is that fair to
2 say?

3 A What has my little brother got to do with this? I ain't
4 helping out my little brother.

5 Q You would like to help him out too, wouldn't you?

6 A I would, yeah.

7 Q And you wouldn't lie to help -- you would lie to help
8 out Mr. Flynn but not lie to help out yourself?

9 A It is a little late to tell a lie when everything is in
10 written ink.

11 Q What is your answer to my question?

12 A Whether I lie or not has nothing to do with anything.

13 Q Just yes or no, please.

14 A I don't know. Actually, I wouldn't.

15 Q Okay.

16 Q And let me ask you about this statement that you gave to
17 the police. Didn't you tell the police that you had never
18 seen Smurf before?

19 A I probably did.

20 Q And that was a lie that you told the police, wasn't it?

21 A Uh-huh.

22 Q And that was when you were cooperating with them?

23 A Uh-huh.

24 Q And you told them that you were telling the truth then?

25 A Uh-huh.

MICHAEL GRIFFIN - CROSS BY MR. CRUMRINE

1 Q And that's a yes for the record?

2 A That's a yes for the record.

3 Q And in your statement today you said that Smurf -- today
4 you said Tommy gave you a gun --

5 A Right?

6 Q -- I believe? And in your statement didn't you say that
7 Smurf gave you the gun?

8 A Well, I'm not sure if I said that or if that was written
9 down.

10 Q Who wrote this by the way? Who wrote your statement for
11 you?

12 A It wasn't me. It was one of the detectives.

13 Q They wrote it down and you signed it, correct?

14 A Yes, sir.

15 Q And as far as -- let me give you a copy of it so you can
16 see it.

17 I would like to hand this to you and have you look it
18 over and see if you recognize it.

19 A You want me to read them?

20 Q No. I just want you to look at it. Tell me if you
21 recognize that statement.

22 A Right there. She got on the line in blue --

23 Q No. I just wanted you to tell me. Is that your
24 statement --

25 THE COURT: He just wants to know, is that your

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MICHAEL GRIFFIN - CROSS BY MR. CRUMRINE

1 statement?

2 THE WITNESS: Right.

3 BY MR. CRUMRINE:

4 Q All right. If you will turn to page 4 of your
5 statement, Mr. Griffin.

6 A All right.

7 Q About halfway down when it says Smurf -- Smurf who first
8 of all you said -- told them that you just met that night?

9 A Okay.

10 Q Even though he lives in your neighborhood, correct?

11 A Okay.

12 Q All right. Smurf asked me if I had a piece.

13 A Right.

14 Q You mean a gun by that, don't you?

15 A Yes, sir.

16 Q And I told him no. He gave me a black 6-shot revolver
17 and told me it had four shells in it.

18 A All right.

19 Q Is that what you told the police?

20 A Well, I don't think so because there was Tommy that
21 asked me and it was Tommy that gave me his revolver.

22 Q Okay. And Tommy gave you a 32?

23 A As far as I know, yes, sir.

24 Q And so what the police wrote down wasn't really what
25 happened but you signed it anyway?

MICHAEL GRIFFIN - CROSS BY MR. CRUMRINE

1 A Well, yes, sir.

2 Q Is that because you thought they wanted you to sign it,
3 they wrote it in and wanted you to sign it?

4 A They wrote everything and everything that I told them
5 they wrote down. As far as I was concerned they had
6 everything written down that was said. They gave me a sheet
7 by sheet. I signed it sheet by sheet. Then they gave me the
8 one explaining my rights to me and explaining to me I had to
9 initial by them and sign the rest.

10 Q In your statement you never told the police that Mr.
11 Steed said anything about it doesn't matter, they'll be dead
12 or anything like you said today, did you?

13 A No, sir.

14 Q Mr. Griffin, you ended up with a gun at the end of the
15 night, didn't you?

16 A No. The gun ended up with Mr. Thomas Bond because it
17 was his gun.

18 Q Okay. So Mr. Bond had the gun?

19 A At the end of the day, yes, sir.

20 Q And you deny that you smelled like gunpowder afterwards?

21 A I didn't deny I smelled like gunpowder.

22 Q And as far as your statement goes today and to the
23 police, it's pretty convenient that you didn't have the gun,
24 you handed it off just before you went in there, isn't it?

25 A Right.

MICHAEL GRIFFIN - CROSS BY MR. CRUMRINE

1 Q And the fact that you stole your dad's gun but said that
2 that was handed off to someone else?

3 A Right.

4 Q And the fact that you said you didn't shoot anybody
5 else?

6 A Right.

7 Q And the fact that you said that you were back --
8 actually in your statement you said you were in the back
9 bedroom when the shooting took place so you didn't see it,
10 did you?

11 A Right.

12 Q But today when you're being evaluated for this deal you
13 said, oh, I saw it, I was coming down the hallway and I saw
14 them doing this, didn't you?

15 A Okay.

16 Q You agree with me?

17 A Well, yes.

18 Q In your statement did you also say that Smurf got into
19 the car when you guys got back to the cars?

20 A I don't remember if I said that or not.

21 Q All right. Let me take a look.

22 While I'm looking for that, the car that you were riding
23 in was April Mook's?

24 A Yes, sir.

25 Q And it's a purple Honda?

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MICHAEL GRIFFIN - CROSS BY MR. CRUMRINE

1 A Yes, sir.

2 Q I may come back to that.

3 Let me just ask you right now, your girlfriend's name,
4 nickname was what?

5 A I'm not sure.

6 Q Your girlfriend's nickname was what?

7 A I am not sure. She had quite a few of them.

8 Q Shorty?

9 A Yeah. Yeah, that was one of them.

10 Q And did you write her ever and say, Fuck the Walker boys
11 and fuck Porter?

12 A Maybe, maybe not. You asking me something about a year
13 and a half ago.

14 Q Did you complain about having hallucinations back at the
15 time that you were writing these statements and talking to
16 the police?

17 A Well, I've had hallucinations for quite a long time.

18 Q You've been to see some psychiatrists for that?

19 A I've been seeing psychiatrists for a long time too.

20 Q And when you were writing Chrissy didn't you tell her to
21 tell your brother, Little John --

22 A Uh-huh.

23 Q -- to tell Smurf what you wanted him to say?

24 A I'm not really too sure what all I told her in them
25 letters.

MICHAEL GRIFFIN - CROSS BY MR. CRUMRINE

1 Q Isn't it true that you've tried to communicate with the
2 other codefendants so that you guys could get your stories
3 straight?

4 A Right.

5 But if you would notice that the story that we were
6 trying to say tended to deviate from what was written and
7 what we all said today was already in black and white.

8 Q All right.

9 And as far as telling your girlfriend what happened in
10 the letter, do you say that Little T, Tommy and me were under
11 orders from T to go to the house?

12 A And like I just told you, that was after individuals
13 told me to try to change that to help them. But in between
14 that time and now I have decided that helping them out would
15 not benefit anything because they are too interested in
16 saving themselves instead of doing the time for the crime
17 they committed.

18 Q And you were interested in helping them, you were
19 willing to lie to help them?

20 A At that point in time I was. But you see, it was
21 already too late because everything was already written down.

22 Q And wasn't that because you said you had some revelation
23 from God?

24 A Some revelation from God. I don't believe in God.

25 Q I'm sorry?

MICHAEL GRIFFIN - CROSS BY MR. CRUMRINE

1 A I don't believe in God.

2 Q You don't believe in God.

3 A No, I don't believe in no God.

4 Q All right. And so where do you draw your moral compass
5 from?

6 A My moral compass come from inside. Whatever my heart
7 tell me to do and whatever my mind tell me is right.

8 Q All right. So do you agree that you said that you had a
9 revelation from God before and now you just don't believe or
10 what?

11 A I don't know. I'm not too sure if I ever said I had a
12 revelation from God or not. Because as far as I'm concerned
13 ain't nothing ever happened in my life to better me through
14 any kind of religious material or anything like that.

15 Q Do you in a statement say there is a 25 caliber involved
16 and that Tommy had a 3 -- had a 9 millimeter and you a 32?

17 A No. I do believe it was Mr. Smurf that referred to Mr.
18 T-Lo as having the 25 and you got your statements confused.

19 Q So you did give a statement saying there was a 25
20 caliber involved?

21 A That was Mr. Green that gave that statement.

22 Q And do you agree that you were saying it wasn't right
23 that this thing was being blamed on Michael Flynn and on Mr.
24 Steed?

25 A Um, why would it not be right to place the blame where

MICHAEL GRIFFIN - CROSS BY MR. CRUMRINE

1 it's due.

2 Q I'm asking you a question. You are not allowed to ask
3 me questions.

4 Did you say that or didn't you say that?

5 A I don't remember if I did or not.

6 Q Do you know who Little T is?

7 A Yes, I do.

8 Q And who is that?

9 A He is a little child molester.

10 Q And do you know the name of this individual?

11 A His name is Walter Gardenhigher.

12 Q All right.

13 Q Did you say, I'm sorry for Mikey and Little T being
14 brought into the crime list?

15 A And once again I just tell you they had been after --
16 individuals asked me to deviate what was already said.

17 Q When did you meet and prepare your testimony with Mr.
18 Houseal?

19 A At no point in time did we discuss my testimony. All he
20 asked me to do was to tell the truth.

21 Q And when was that?

22 A We talked one time back June, May of this year.

23 Something like that. He come and asked me a couple of
24 questions about my testimony. Then he come and told me again
25 Thursday morning, asking me if there was any difference that

MICHAEL GRIFFIN - CROSS BY MR. CRUMRINE

1 -- anything that I might have remembered. Anything like
2 that.

3 Q Anything different than your statement?

4 A Anything that might not be in the statement or anything
5 that I wrote down that was either wrote wrong, come out
6 wrong, or just was totally wrong.

7 Q And did you tell him that your statement was wrong?

8 A No. I told him there was -- there was the part in there

9 where it said that Smurf gave me the gun when it was Tommy
10 that gave me the gun. And that was basically the only thing
11 in the whole thing that might actually have been wrong.

12 Q So you told him before today that your statement was
13 wrong?

14 A That that one sentence in the statement was wrong.

15 Q What about the other sentences that I have discussed
16 with you today that you've said were incorrect?

17 A I don't remember what sentences you've discussed with
18 me.

19 Q Michael, you and John Griffin grew up in the same
20 neighborhood where this thing happened, didn't you?

21 A No.

22 Q You didn't live in the Woodside subdivision?

23 A I didn't live in -- I didn't live in that neighborhood
24 until after I came back from the service.

25 Q All right. Well, you lived there at the time this

MICHAEL GRIFFIN - CROSS BY MR. CRUMRINE

1 happened?

2 A No.

3 Q You had moved?

4 A Well, I had only lived there for maybe three months.

5 Q Okay.

6 A Before the time.

7 Q And your little brother lived there?

8 A For how long. Six, seven years.

9 Q And Tommy Bonds lived there?

10 A As far as I know.

11 Q And the fellow Smurf?

12 A As far as I know.

13 Q And do you know where he lived?

14 A No, sir. I wasn't very much aware of where he lived. I
15 don't really hang around that neighborhood.

16 Q All right.

17 And what told us today, is this finally the real truth?

18 THE COURT: You've asked him that question three or four
19 times, counselor, different ways but the same thing. Get on
20 another subject.

21 MR. CRUMRINE: This is the last question, Your Honor.

22 THE COURT: All right.

23 BY MR. CRUMRINE:

24 Q Is this finally the right version you have given today?

25 A Unless you want me to say something else that you think