

1 mentioned in any context of the discussions  
2 that he had either with Mark Francisco  
3 during the interview or with Elaine -- I  
4 know her as Elaine Strickland from law  
5 school -- in that matter, and that he had  
6 two interviews with Elaine in regard to the  
7 drug conspiracy.

8 THE COURT: The pertinent  
9 provision of the 15-A is entitled 3(a)(2).  
10 The defendant's course must order the  
11 prosecutor, subsection two, to divulge the  
12 substance of any written or oral statement  
13 relevant to the subject matter of the case  
14 made by the defendant, regardless of to  
15 whom the statement was made, within the  
16 possession, custody, or control of the  
17 State, the existence of which is known to  
18 the prosecutor or becomes known to him  
19 prior to or during the course of trial,  
20 except that disclosure of such a statement  
21 is not required if it was made to an  
22 informant whose identity is a prosecution  
23 secret and who will not testify for the  
24 prosecution.

25 Now, that language is not entirely

1 applicable under the facts of this case,  
2 but the spirit of the statute is to protect  
3 the identity of an informant. Now, it  
4 doesn't do him any good whether his  
5 identity is revealed in the context of this  
6 case or in the context of the other case.  
7 The fact that he was an informant in the  
8 other case will necessarily be brought out  
9 in this case.

10 MR. THOMPSON: That was on the  
11 transcript.

12 THE COURT: I understand that.

13 MR. THOMPSON: Substantial  
14 assistance.

15 THE COURT: But the specifics  
16 were not. And it is the specifics that may  
17 ultimately be inquired into. Now, anything  
18 that's on the transcript you folks are  
19 entitled to pursue if otherwise admissible  
20 under the rules of evidence. What I'm  
21 saying in the attempt to comply with the  
22 spirit of what we're talking about here, if  
23 we can avoid disclosure as to the specifics  
24 or anything outside the public record as to  
25 Mr. Hales, I would like to do that, and

1 there are a number of ways or options that  
2 are available to us.

3 MR. BOWEN: I think that was  
4 pretty much our belief. We could, we  
5 certainly don't have to mention Hales, and  
6 what you're saying is we can go forward and  
7 not mention the specific case or context  
8 which the so-called substantial  
9 assistance --

10 THE COURT: Unless it has some  
11 bearing on the case.

12 MR. THOMPSON: Right.

13 THE COURT: The way we would find  
14 that out is through Ms. Kelly and/or  
15 Mr. Henley. It may be preferable to avoid  
16 problems since Henley is likely to be a  
17 witness in this case, call him, have him  
18 vior dire, too.

19 MR. THOMPSON: I've got subpoenas  
20 issued on Mr. Henley, just about 30 minutes  
21 ago they got somebody trying to go and have  
22 him served -- well, maybe they signed them  
23 upstairs.

24 MR. BRITT: He was scheduled to  
25 have knee replacement surgery either

1 beginning of this week or last week.

2 THE COURT: We'll find out what  
3 his status is.

4 MR. THOMPSON: And he may or may  
5 not want to talk to us. And the thing  
6 about it is, if he was acting as a private  
7 investigator in Mr. Hales' case, there's a  
8 confidentiality concern that would prevent  
9 him, quite frankly, from you talking to us,  
10 but there are other --

11 MR. BOWEN: In that regard, our  
12 investigator has already now talked to  
13 Mr. Brady. Mr. Brady has intimated without  
14 saying anything that there is a very  
15 interesting story behind the fact that, we  
16 take it in connection with this case,  
17 Mr. Henley was fired by Mr. Brady. Any  
18 other pertinent work, and Mr. Brady has  
19 said that he would be glad to tell us about  
20 it if --

21 THE COURT: Call him as a witness  
22 then.

23 MR. BOWEN: Only if we can get  
24 permission from his client. Mr. Locklear  
25 is talking to Mr. Hales in that regard.

1 THE COURT: That's a matter --  
2 actually, not a matter that Mr. Locklear  
3 really ought to be involved in because  
4 that's an issue between Hales and  
5 Mr. Brady.

6 MR. BOWEN: Mr. Locklear is only  
7 asking whether or not, you know --

8 MR. THOMPSON: He would be  
9 willing.

10 THE COURT: I understand. That  
11 really needs to be a subject of  
12 discussion. That really -- the risk that  
13 is run with Mr. Locklear doing that, you  
14 folks may be arguably on the verge of  
15 interfering with the attorney-client  
16 privilege.

17 MR. THOMPSON: Mr. Brady  
18 indicated we would try to get that.

19 THE COURT: I understand that.

20 MR. THOMPSON: We're not going to  
21 ask him without him having counsel. I know  
22 that.

23 THE COURT: My point is, the  
24 person that needs to approach Mr. Hales is  
25 not Mr. Locklear, Mr. Brady. That's my

1 point.

2 MR. THOMPSON: He's maybe already  
3 done it, but at any rate --

4 THE COURT: Because if  
5 Mr. Locklear approaches him, you folks are  
6 in a conflict situation in the sense that  
7 arguably he could stand up and say you  
8 folks tried to abridge my attorney-client  
9 privilege.

10 MR. THOMPSON: He says he no  
11 longer represents him.

12 THE COURT: But that  
13 attorney-client privilege existed at the  
14 time he represented him.

15 MR. THOMPSON: I understand.

16 THE COURT: Just be careful.

17 MR. BOWEN: I think one is  
18 entitled, before we leave that, I think one  
19 is entitled to ask a person if they are  
20 willing to talk to you, and then once they  
21 say no, you can back off. I think in this  
22 case we would certainly communicate to the  
23 man that he might want to --

24 THE COURT: There's a difference  
25 between can I talk to you, or are you

1 willing to waive any privilege you might  
2 have with him.

3 MR. BOWEN: And you and he have  
4 to talk about it. Think about it if you  
5 direct him to go talk to the other  
6 attorney.

7 MR. THOMPSON: I think we're on  
8 the same line.

9 THE COURT: What happens if that  
10 person comes up and says this investigator  
11 tried to coerce me to waive my  
12 attorney-client privilege or threaten me or  
13 whatever, that's my point.

14 MR. THOMPSON: I understand.

15 THE COURT: That's my point.  
16 Since Mr. Brady has indicated a  
17 willingness, the appropriate person to  
18 approach Mr. Hales is Mr. Brady.

19 MR. THOMPSON: Okay. But the  
20 fact --

21 THE COURT: Any indication from  
22 anybody when we're ready to go forward with  
23 anything? It's now 11:15.

24 MR. THOMPSON: We're working, and  
25 I think -- I'm glad about Elaine Kelly,

1 because I mean, those are some of the bases  
2 we really need to talk to try to get an  
3 agreement.

4 MR. BOWEN: She may very well be  
5 in court, but we'll try to contact her.

6 THE COURT: This concludes our  
7 conference.

8 MR. THOMPSON: Yes, sir.

9 THE COURT: Let the record  
10 reflect that.

11 (End of in camera proceeding.)

12 THE COURT: Let's the record  
13 reflect all counsel are present, the  
14 defendant is present in open court. All  
15 members of the jury in this case have been  
16 excused until 2:00 p.m. and no members of  
17 the jury are present at this time.

18 Folks, it's now a little bit after  
19 12:00. I wanted us to at least assess  
20 where we were and what we might be able to  
21 do since the jury was instructed to return  
22 at 2:00 this afternoon. Mr. Thompson,  
23 Mr. Bowen, do you folks have any  
24 information?

25 MR. THOMPSON: Your Honor, simply

1           because in the last couple of minutes a  
2           series of events have unfolded, I think  
3           it's going to be fair to say that it will  
4           take us the rest of the day.

5                     And let me say this for the record.  
6           We now have permission to talk to Ed Grady,  
7           and that as a result of that, I think that  
8           we're going to -- it will take the rest of  
9           the day. That is a very significant event  
10          as you well know.

11                    THE COURT: Has a subpoena been  
12          issued for Mr. Brady?

13                    MR. THOMPSON: No, it has not,  
14          but I was on the phone with him when you --  
15          when I got word that you were on the bench  
16          to come down here after having gotten that  
17          permission.

18                    THE COURT: Let's back up and get  
19          some matters into the record. Let the  
20          record reflect that a second recorded in  
21          camera proceeding was conducted following  
22          delivery of the Cumberland County files  
23          pertaining to the State's witness,  
24          Mr. Hales, to counsel for the defendant  
25          this morning. Those files were delivered

1 by the Clerk of Superior Court of  
2 Cumberland County, Mr. Tommy Griffin. All  
3 contents of the files were made available  
4 to counsel for the defendant with the  
5 exception of an envelope sealed by order of  
6 the presiding Judge in Cumberland County,  
7 that the Court examined the contents of  
8 that sealed envelope, made copies of both  
9 the sealed envelope and the contents  
10 thereof, and has directed that the copy of  
11 the sealed envelope and the contents  
12 thereof be placed in a sealed envelope in  
13 this case, pending further order of the  
14 Court.

15 Following the in camera inspection of  
16 the sealed envelope and its contents by the  
17 Court, the Court indicated to counsel for  
18 the State, counsel for the defendant and  
19 the defendant was present at that time that  
20 it was the Court's view that it may be  
21 appropriate to issue a subpoena for the  
22 prosecuting attorney in Cumberland County  
23 who handled these matters.

24 Has that subpoena been issued?

25 MR. THOMPSON: No, sir, Your

1 Honor. We intend to do so. We wanted to  
2 contact her by telephone and certainly  
3 as --

4 THE COURT: I guess what I'm  
5 asking you is, will we be in a position to  
6 go forward with some evidentiary showing  
7 this afternoon?

8 MR. THOMPSON: I think we need --  
9 I'm not sure. I think we need to talk to  
10 him. By the way, Mr. Henley has called and  
11 talked to Mr. Locklear. Mr. Locklear  
12 informed him that another investigator is  
13 on the way to serve him. I suspect he'll  
14 be down this afternoon. Mr. Brady, I'm in  
15 contact with him by telephone. Ms. Kelly,  
16 I have not talked to her yet, but --

17 THE COURT: That's first order of  
18 business. See if those folks are available  
19 for this afternoon.

20 MR. THOMPSON: All right, sir.

21 THE COURT: In the context of  
22 where we are, you'll need, in my view, a  
23 minimum of those three folks and  
24 Mr. Henley, but I want to expedite our  
25 going forward with the voir dire.

1 MR. THOMPSON: Exactly. I think  
2 if we went forward with that, those are the  
3 three players, the three individuals that  
4 we need, as I see it right now. Then we  
5 would be able to go forward.

6 THE COURT: Folks, I want to give  
7 everybody ample opportunity. You've had  
8 access to the file since the Court read the  
9 files at 10:42 a.m. That was after, I  
10 understand it, you folks received copies of  
11 the contents of the file at about,  
12 approximately 10:30, 10:40.

13 MR. THOMPSON: Of the complete  
14 file. We received some yesterday  
15 afternoon.

16 THE COURT: I'm sorry?

17 MR. THOMPSON: We received some  
18 contents yesterday afternoon. We did go  
19 over and have some of those contents  
20 copied.

21 THE COURT: Well, the balance of  
22 whatever was in the file was provided to  
23 you this morning.

24 MR. THOMPSON: This morning.

25 THE COURT: By Mr. Griffin.

1 MR. THOMPSON: And he's been  
2 released.

3 THE COURT: Before he turned  
4 those files over to the Court?

5 MR. THOMPSON: That's correct.

6 THE COURT: He's subsequently  
7 been released with the consent of all  
8 parties; is that accurate?

9 MR. BRITT: No, sir. I have not  
10 seen the Cumberland County file, I have not  
11 seen Mr. Griffin. I mean, I have no idea  
12 what is in that file. I've never seen it.

13 THE COURT: I thought copies had  
14 been provided to you.

15 MR. BRITT: No.

16 THE COURT: Court directs that  
17 any copies now in the possession of the  
18 defendant be provided to the State. The  
19 only thing that I understand is missing  
20 from what they have got is the sealed  
21 envelope that was the subject of the second  
22 in camera proceeding, recorded proceeding,  
23 that you were involved in. So as to the  
24 file, all contents now in the possession of  
25 counsel for the defendant, make a copy,

1 give it to Mr. Britt.

2 MR. THOMPSON: That's right.

3 Will one copy be sufficient, Mr. Britt.

4 MR. BRITT: One copy would be  
5 fine.

6 THE COURT: Bottom line, folks,  
7 is I'm giving you folks an opportunity to  
8 examine the files to see if you can make a  
9 connection between anything that occurred  
10 in Cumberland County and Mr. Hales'  
11 testimony in this case. That's where we  
12 are.

13 MR. THOMPSON: I assure you a  
14 connection has been made, Your Honor. Just  
15 as of two minutes ago.

16 THE COURT: I appreciate your  
17 opinion, and I don't mean any disrespect.  
18 I certainly understand that's your  
19 position. Ultimately, that's something  
20 that I have to decide.

21 Anything else from either  
22 counsel? I would like to be ready to go  
23 forward at 2:00 with your witnesses.

24 Now, if you can instruct those folks  
25 to be here between 2:00 and 2:30, we can

1 start with Mr. Hales at 2:00 or shortly  
2 after the jury's release, and then go  
3 forward from there. According to what you  
4 folks tell me, and according to what  
5 appears to the Court, Ms. Kelly, Mr. Brady,  
6 and Mr. Henley.

7 MR. THOMPSON: Yes.

8 THE COURT: If you'll indicate to  
9 those folks we would like to have them here  
10 no later than 2:30.

11 MR. THOMPSON: Okay.

12 THE COURT: And issue the  
13 subpoenas for that time period, between  
14 2:00 and 2:30. I guess we are at a  
15 standstill until that time.

16 MR. BRITT: Your Honor, as it  
17 relates to any telephone service, I mean  
18 the rules are clear, you serve them by  
19 telephone, you can't compel them to be  
20 here.

21 THE COURT: Hopefully they will  
22 show up.

23 MR. BRITT: I'm sure they will,  
24 but in the event Ms. Kelly is involved in  
25 the case of Cumberland County Superior

1 Court.

2 THE COURT: She's trying a case.

3 MR. BRITT: I don't know. I said  
4 if she is, that may create a problem.

5 MR. THOMPSON: We're going to do  
6 due diligence.

7 THE COURT: Folks, at this time  
8 I'm satisfied that the State used due  
9 diligence. I'm satisfied at this point you  
10 folks are exercising due diligence to  
11 review those matters and to be prepared to  
12 go forward. I'm simply asking that we all  
13 work toward the same objective. And  
14 hopefully be in a position to at least  
15 begin the voir dire this afternoon, because  
16 if we're not, then I have to make some  
17 decisions about what I tell the jury as to  
18 when they can come back.

19 MR. THOMPSON: Yes, sir.

20 THE COURT: So I appreciate  
21 everybody working toward that objective.

22 MR. BOWEN: Your Honor, you don't  
23 need this other --

24 THE COURT: No, I don't.

25 MR. THOMPSON: 305?

1 THE COURT: 330. Incidentally, the  
2 one case you did bring may have a bearing  
3 on other matters. It's a different  
4 Williams but it has a bearing on some other  
5 issues.

6 MR. THOMPSON: It was on grant of  
7 immunity, so I thought --

8 THE COURT: We're at ease, we're  
9 not at recess because some other matters  
10 may develop.

11 THE BAILIFF: Court stands at  
12 ease.

13 (Court at ease, 12:13 p.m.)

14 THE COURT: Let the record show  
15 that all counsel are present, the defendant  
16 is present in open court. All members of  
17 the jury having been excused until 2:00  
18 p.m., are not present at this time.

19 We're going to recess for lunch  
20 between 1:00 and 2:00. Any information you  
21 folks can give us as to any of the  
22 tentative potential witnesses for this  
23 afternoon?

24 MR. THOMPSON: Your Honor, I've  
25 been on the line having a conversation with

1 Ed Brady since we were last put at ease by  
2 the Court. He indicated that he would -- I  
3 told him I would get back with him. He  
4 wanted to go get a sandwich, he stated,  
5 until 1:30. If the Court ordered him to be  
6 here, he would be here. The question is  
7 right now whether we're going to need him  
8 or not. I've got the information from him  
9 that I think I need.

10 Mr. Henley is, it's critical that we  
11 talk to him, and I've not heard from  
12 Mr. Henley. Neither have I heard from our  
13 investigator, which I imagine, maybe I can  
14 call him on the phone.

15 Elaine Kelly, I don't think will be  
16 necessary, based on what -- may not be, but  
17 I haven't had a chance to talk to her,  
18 because I've been talking to Mr. Brady.  
19 She's out on maternity leave, and I don't  
20 want -- if she's not necessarily --

21 THE COURT: That's your call, not  
22 mine.

23 MR. THOMPSON: She's at home,  
24 she's not at work. That's what Mr. Brady  
25 said. I'm going to have to find a number

1 for her. The ultimate question for the  
2 defense is for the purpose of voir dire of  
3 these individuals, will they be necessary.

4 THE COURT: You folks can call  
5 who you think you believe you need.

6 MR. THOMPSON: Yes, sir.

7 THE COURT: And by the way, I've  
8 not had a chance to consult with my  
9 co-counsel concerning -- or with Mr. --  
10 with U'Allah about any of this, because for  
11 the entire time I've been consulting with  
12 Mr. Brady.

13 THE COURT: Well, knowing  
14 Mr. Brady is from Cumberland County, I can  
15 understand how that might take some time.  
16 I don't mean to suggest anything as to  
17 Mr. Brady in particular, but there are a  
18 lot of lawyers out there who believe they  
19 get paid by the word.

20 MR. THOMPSON: Then you know how  
21 burdensome it was for me to --

22 THE COURT: I'm not commenting, I  
23 didn't say anything.

24 MR. THOMPSON: As he was talking,  
25 I was keeping notes.

1                   THE COURT:    You folks, I mean,  
2                   what I would like to do this afternoon is  
3                   at least go forward with Mr. Hales.  
4                   Mr. Brady or whoever you folks want to  
5                   call.  This is your burden.  You folks have  
6                   to show a nexus, show some relevance, I'm  
7                   trying to give you every opportunity to do  
8                   that.

9                   MR. THOMPSON:   And I don't know  
10                  how to answer that at this point.  I mean  
11                  maybe -- I've got to consult with counsel  
12                  and we may be able to go forward.  I  
13                  just -- I mean, I'm just not in a position  
14                  at this time to say anything else about  
15                  that.

16                  THE COURT:    State versus  
17                  Williams, 330 NC, I believe page 711, deals  
18                  with a situation of where evidence was  
19                  proffered apparently under Rule 608 B.  The  
20                  trial court in that case determined  
21                  correctly, according to the decision that  
22                  608 B was not the applicable rule of  
23                  evidence, but found that error had been  
24                  committed because the evidence was  
25                  permissible under 611 B, insofar as the

1 impeachment evidence sought to be  
2 introduced in that case had a bearing on  
3 credibility to the extent that it had a  
4 bearing on credibility of the witness's  
5 ability to recall and narrate as to the  
6 issues involved.

7 1055 says, I think 1055 at least in  
8 the context of where you folks -- where it  
9 appears you folks might be going, says the  
10 following. It's entitled evidence of grant  
11 of immunity or testimonial arrangement may  
12 be fully developed, impacts may be argued  
13 to the jury.

14 Subsection A reads, "Notwithstanding  
15 any other rule of evidence to the contrary,  
16 any party may examine a witness testifying  
17 under a grant of immunity or pursuant to an  
18 arrangement under general statute  
19 15-A 1054 with respect to that grant of  
20 immunity or arrangement."

21 Grants of immunity are covered by  
22 15-A 1052. Picking up on the language of  
23 1055, "A party may also introduce evidence  
24 or examine other witnesses in corroboration  
25 or contradiction of testimony or evidence

1 previously elicited by himself or another  
2 party concerning the grant of immunity or  
3 arrangement."

4 1055 is a wide open rule when it  
5 relates to grants of immunity and when it  
6 relates to arrangements as those matters  
7 are defined by 1054.

8 And I say it's wide open because of  
9 the opening sentence, "Notwithstanding any  
10 other rule of evidence to the contrary."

11 So you've got 608, 609, 611 B, 1052,  
12 potentially 1054, and 1055. And that  
13 applies to the State as well, because 1055  
14 says in corroboration or in contradiction.  
15 The State can corroborate, as a defendant  
16 can contradict, and vice-versa, as to  
17 grants of immunity or any sentence  
18 concession defined by 1054.

19 We're going to be at recess until  
20 2:00, I appreciate your efforts. Please  
21 let us know. If at all possible I would  
22 like to at least start the voir dire by --  
23 and I'm understanding, I think, and if this  
24 is wrong, let me know,, you may have  
25 developed enough information in your

1 conversation with Mr. Brady as to at least  
2 begin the voir dire with Mr. Hales. So I  
3 don't see, if you folks see anything  
4 different, let me know why we can't at  
5 least go forward with that based on  
6 information that may develop. Then you can  
7 choose if you want to call any additional  
8 witnesses under 1055. State can do the  
9 same thing.

10 We're at ease until 2:00.

11 THE BAILIFF: All rise, please.

12 (Lunch recess).

13

14 (Whereupon an in camera proceeding ensued  
15 as follows.)

16

(2:00 p.m.)

17

MR. THOMPSON: For the record,

18

Your Honor, I'm --

19

20

THE COURT: First of all, we need  
21 to establish where we are. I'm sorry. For  
22 the record, this is an in-chambers, in  
23 camera proceeding. Present is the  
24 presiding Judge, court reporter, counsel  
25 for the State, Mr. Johnson Britt; counsel  
for the defendant, Mr. Angus Thompson, Mr.

1 Woodberry Bowen. Also present at this time  
2 is Mr. Daniel Green, also known as U'Allah.

3 Yes, sir.

4 MR. THOMPSON: I've just handed,  
5 for the record, a copy of the files, a copy  
6 of the -- copies that we received of the  
7 files of Dominique Enrico Hales, which were  
8 in the custody and possession of the Clerk  
9 of Superior Court of Cumberland County,  
10 Tommy Griffin. He gave us certified copies  
11 and copies I handed to Mr. Britt are copies  
12 from the certified copies.

13 THE COURT: Folks, you will  
14 recall that earlier this morning at the  
15 first in camera proceeding, Mr. Britt  
16 indicated that he had received information  
17 from and an anonymous source, information  
18 related to one or more members of the jury.

19 About ten minutes ago, Sergeant Meares  
20 with the Robeson County Sheriff's  
21 Department, one of the bailiffs assigned to  
22 the courtroom, indicated to me that a  
23 member of the jury had a matter that she  
24 wanted to bring to my attention.

25 I gave Sergeant Meares a blank pad,

1 asked him to have the juror write out  
2 whatever it was that she wanted brought to  
3 my attention.

4 By the time Sergeant Meares got to  
5 her, she apparently had gotten a memo slip  
6 from somewhere. That memo slip was given  
7 to Sergeant Meares who gave it to me, I  
8 read as follows. To Honorable Gregory  
9 Weeks, Patricia Locklear, Juror Number 15.  
10 I wish to speak to you in-chambers,  
11 privately, about a personal matter.

12 Now, obviously because of the nature  
13 of the case, it would be inappropriate for  
14 me to meet with any juror privately or to  
15 have any contact or communication with any  
16 juror privately.

17 You folks will recall that before I  
18 released the jury this morning, I gave some  
19 expanded instructions to the jury about  
20 what they were to do if they wanted to  
21 communicate to the Court or with the Court.

22 The reason for those expanded  
23 instructions was based on the information  
24 provided to us by Mr. Britt, I wanted to  
25 give them means of communicating any

1 information that might be related to the  
2 matters he discussed in chambers. I  
3 suspect this may be it. If you will  
4 recall, Mr. Britt's information was that  
5 whoever his source was indicated that he  
6 had overheard the third alternate, person  
7 he identified as the third alternate,  
8 speaking about Juror Number 9, and  
9 potentially one or more other members of  
10 the jury.

11 Ms. Locklear is the third alternate.  
12 So it's my intent to ask Ms. Locklear to  
13 come in, with all of us present, I would  
14 explain to her the need for recordation,  
15 without going into the specifics as to any  
16 charges, simply say that these are matters  
17 that have to be of record with everybody  
18 present, nothing else, and go from there.  
19 You folks want to be heard?

20 MR. THOMPSON: No, sir.

21 THE COURT: Mr. Britt.

22 MR. BRITT: No, I think that's  
23 the appropriate thing to do.

24 THE COURT: Mr. Bowen?

25 MR. BOWEN: No, sir.

1 THE COURT: I'm going to ask  
2 Sergeant Meares to ask Ms. Locklear to come  
3 in.

4 (Juror Number 9, Patricia Locklear  
5 enters the Judge's chambers.)

6 THE COURT: Good afternoon  
7 Ms. Locklear. Have a seat.

8 BY THE COURT:

9 Q Ms. Locklear, I believe you know everyone,  
10 but in the event you don't, seated to my right and  
11 your left is Mr. Huseby, who's the court reporter.  
12 To your right is Mr. Angus Thompson, who's the public  
13 defender here, Mr. Angus Thompson as you know  
14 represents, or is one of the lawyers representing the  
15 defendant Daniel Green, also known as U'Allah. To  
16 Mr. Angus Thompson's right is Mr. Britt, Johnson  
17 Britt, who is the District Attorney here in Robeson  
18 County. He represents the State of North Carolina.  
19 To his right is Mr. Woodberry Bowen, also one of the  
20 attorneys representing the defendant Mr. Green. And  
21 at the end of the sofa is Mr. Green.

22 Now, you have asked as I understand it to  
23 speak with me privately, but I need to explain to you  
24 that these are matters which must be of record.

25 A Okay.

1 Q Everything involved in the case must be of  
2 record with everybody present.

3 A Okay.

4 Q And that's the reason that I asked that you  
5 come in, and I very much appreciate the fact that you  
6 complied with my request and submitted something in  
7 writing about apparently something that you wanted to  
8 discuss with us?

9 A Yes, sir.

10 Q Yes, ma'am.

11 A Well, it's a matter that was a concern to  
12 me, something that was -- a statement that was made  
13 by a particular juror at the onset of the trial, that  
14 concerned me. However, what her intentions was, I  
15 don't know, but I know it concerned me. And then  
16 another statement made by her yesterday that also  
17 concerned me as well. And I went to the mall  
18 yesterday, and I saw Jack Inman, and he and I are  
19 very close friends, so Jack and I were talking, just  
20 general conversation, and I mentioned to him that I  
21 had -- that the jury panel were bright people and I  
22 felt they would be fair but I had a concern that  
23 bothered me, and I told him what it was.

24 Q Who is Mr. Jack Inman?

25 A Jack works at WFMO, I think it is, a radio

1 station. And he's a personal friend of mine.

2 Q I don't mean to pry, but simply so a record  
3 can be made, can you tell us how that conversation  
4 came about that you had with him?

5 A He is -- my husband is in Raleigh, and he  
6 had stopped me to see if he had got home yet. And we  
7 just started talking, and talking about my brother's  
8 business, which is on Carthage Road, that's an  
9 account of his, and we asked -- he asked me how was  
10 it going, I told him I was enjoying it.

11 Q I don't mean to cut you off, but "how it  
12 was going," was he referring to jury service?

13 A Yes, sir, and the trial. I told him that  
14 it was going good. I told him that I was enjoying it  
15 but I had, you know, a situation where I didn't know  
16 what to do, because it was a concern of mine, not  
17 nitpicking or anything, but I was concerned.

18 Q Now, did you talk with Mr. Inman  
19 specifically about what was of concern to you or did  
20 you simply express that you had a concern?

21 A No, sir, I told him what my concern was.

22 Q And would you mind -- I don't mean to cut  
23 you off, had you completed what you wanted to tell us  
24 about that, about that conversation?

25 A About my concern? Yes, sir.

1           Q     If you will, tell us about your concern and  
2 what you may have expressed to Mr. Inman.

3           A     Okay. I guess it may have been the first  
4 week, a comment was made by one of the jury members,  
5 she had been writing and she got up and she went  
6 pacing, pacing back and forth, and she made a  
7 statement that we were going to be in deliberations  
8 for a long time. And that kind of took me by  
9 surprise because we had only been here like three  
10 days.

11                     So I did mention to the bailiff that day  
12 that, you know, it was like an explosive behavior,  
13 not erratic or anything, but enough that would have  
14 caught your attention, and told him exactly what had  
15 happened. And he said he felt it was okay as long as  
16 it wasn't directed at a jury member. So I just let  
17 it go.

18                     And then yesterday, and I will admit it was  
19 in a joking manner, but it also was a concern, based  
20 on the first incident, the juror made a comment  
21 that -- well, we all had gotten checks Friday, and  
22 she didn't get one, and she said, what is this, a  
23 racial issue.

24           Q     But you said it was in a joking manner?

25           A     Yes, sir, it was.

1           Q       We need to know, and I know this is  
2 probably an awkward situation for you, and we  
3 certainly understand and appreciate that, but you're  
4 doing the right thing by coming forward with  
5 information that needs to be brought to our  
6 attention. We all very much appreciate that. Who --  
7 is that juror that you've described in both the first  
8 incident --

9           A       And the second one.

10          Q       -- second incident, the same person?

11          A       Yes, sir.

12          Q       Who is that for the record?

13          A       Juror Number 9, Sicilia -- I don't know  
14 what her last name is.

15          Q       Juror Number 9?

16          A       Uh-huh.

17          Q       You indicated that in the context of the  
18 earlier incident which occurred, as I understood  
19 which occurred about two or three days after we  
20 started?

21          A       Yes, sir, uh-huh.

22          Q       She made a comment along the lines, we're  
23 going to be in deliberations for a long time?

24          A       For a long time.

25          Q       You also indicated there was something

1 about her behavior?

2 A Uh-huh.

3 Q What was it?

4 A Like I said, she was writing and she just  
5 stopped and slammed her pencil down and just started  
6 pacing, making -- you know, pacing.

7 Q Back and forth?

8 A Uh-huh.

9 Q I'm sorry?

10 A An kind of twisting her hands like she was  
11 upset, and she said, we're going to be in  
12 deliberations for a long time. And it took me by  
13 surprise, because like the end result may be that,  
14 but it surprised me that someone would have that  
15 statement at the onset of the trial.

16 Q This all occurred in the jury room, this  
17 first incident?

18 A Yes, sir.

19 Q And the second incident, where --

20 A We were standing out in the -- out where  
21 the drink machines and all that was, yesterday.

22 Q And she was the only member of the jury who  
23 hadn't received a check?

24 A Yes.

25 Q And that led to her comment?

1 A Yes, sir.

2 Q Okay. Well, we appreciate you letting us  
3 know that.

4 THE COURT: Mr. Thompson, do you  
5 have any questions for Ms. Locklear?

6 MR. THOMPSON: No.

7 THE COURT: Mr. Britt?

8 BY MR. BRITT:

9 Q Ms. Locklear, at the time that the first  
10 statement was made, were there other members of the  
11 jury in the jury room?

12 A Yes, sir, everybody was.

13 Q Based on your observations at the time,  
14 were you able to determine if any other members of  
15 the jury heard what she may have said?

16 A Yes, sir.

17 Q Based on your observations, did any other  
18 members of the jury have any visible reaction to her  
19 statement?

20 A Other than raise eyebrows, no.

21 Q One or more members of the jury did that?

22 A Yes, sir.

23 Q Were there any comments made by any other  
24 members of the jury at the time?

25 A No, sir.

1 THE COURT: What about after that  
2 time, has that been discussed by yourself  
3 and any other members of the jury to your  
4 knowledge.

5 THE WITNESS: No, sir, no.

6 BY MR. BRITT:

7 Q The incident that occurred yesterday, were  
8 there other members of the jury present at the time  
9 she made that statement?

10 A Yes, sir.

11 Q Were there any comments made by any members  
12 of the jury that may have heard what she said?

13 A No, sir.

14 Q Were there any visible signs or reactions  
15 to her statement?

16 A No, sir.

17 Q If I could -- you said that the first  
18 statement occurred at the onset of the trial?

19 A Uh-huh, yes, sir.

20 Q Has there been any other statements made  
21 along those same lines since then?

22 A No, sir, huh-uh.

23 MR. BRITT: Okay. I don't have  
24 any other questions.

25 THE COURT: Mr. Bowen?

1 BY MR. BOWEN:

2 Q Ms. Locklear, at the time that you saw the  
3 juror write and stand up and say what she said, I  
4 know you were back in the jury room, but had some  
5 evidence of the case been presented?

6 A Yes, sir.

7 Q Now, after that, as I understand it, you  
8 made that known to the bailiff?

9 A Yes, I did.

10 Q But you were not contacted further or --

11 A No, sir, because he didn't --

12 THE COURT: I want to follow up  
13 on that, but let me let you answer that  
14 question first.

15 BY MR. BOWEN:

16 Q Did you tell him substantially what you  
17 told us about that incident?

18 A Yes, I did. I was the last one to come out  
19 of the jury room, and I told him that I had a concern  
20 about a juror's behavior, and I told him what it was,  
21 and he asked me if it was directed at any one juror  
22 member, and I told him no, it was just an isolated  
23 incident, it happened and that was it what was said.

24 BY THE COURT:

25 Q When you indicated to the bailiff that you

1 were concerned about the juror's behavior, did you  
2 tell the bailiff what statement you overheard?

3 A Yes, sir, I told him everything that it was  
4 like an explosive behavior, nothing erratic, not like  
5 she was jumping straight up and down.

6 Q I apologize, I didn't mean to confuse.  
7 What I was asking is did you tell the bailiff she  
8 said the following words?

9 A Yes, I told him.

10 Q She said, we're going to be in  
11 deliberations for the long time, and then she  
12 followed that up by --

13 A Yes, sir. Yes, sir.

14 THE COURT: Mr. Bowen?

15 MR. BOWEN: That's all I have.

16 BY MR. THOMPSON:

17 Q Question. I'm not sure I understood what  
18 the response was or what the -- what you meant by,  
19 and then after you told the bailiff what she said,  
20 then she did what?

21 THE COURT: She was describing  
22 the behavior of Juror Number 9. In her  
23 description of the behavior of Juror Number  
24 9, she said Juror Number 9 made a statement  
25 and this Juror Number 9 stood up suddenly

1 and started pacing and wringing her hands.

2 MR. THOMPSON: Pacing, that's  
3 what -- okay.

4 BY MR. THOMPSON:

5 Q Question. The name of the individual whom  
6 you spoke to who is a friend of yours --

7 A Yes, sir.

8 Q -- or your husband's, his name again is  
9 who?

10 A Jack.

11 Q Henley?

12 A Inman.

13 Q Okay.

14 A I N M A N.

15 Q He's with W --

16 A I'm not sure, WAGR, WFMO, or something like  
17 that.

18 MR. BRITT: It's the radio  
19 station south of town, WJSK, WAGR, I think.

20 BY MR. THOMPSON:

21 Q When did you have this conversation with  
22 him?

23 A Yesterday afternoon at Biggs Park Mall. He  
24 and I just, I was coming from one end of the mall, he  
25 was coming from the other, and we just met in front

1 of Thomason's, and we just started talking. Not  
2 about the case or anything, I told him that I felt  
3 that the case was going good, the jury had -- we got  
4 along very well with each other, but I had a concern.

5 Q And you expressed your concern to him about  
6 a particular juror?

7 A Yes, sir, I did.

8 Q And you discussed with him what this  
9 particular juror said?

10 A Yes, sir.

11 Q And you told Mr. Henley that this  
12 particular juror said, we're going to be in  
13 deliberation a long time?

14 A Yes, sir.

15 Q And that was the concern?

16 A Yes, sir.

17 Q Did you discuss with him who the juror was  
18 or the particular individual was?

19 A I just told him it was Juror Number 9 is  
20 the only thing I said. I did not identify.

21 BY THE COURT:

22 Q I get the sense -- and if this is wrong,  
23 feel free to let me know. I get the sense that  
24 because of your concern, because you knew Mr. Inman  
25 well, you were basically asking for advice?

1 A Right.

2 Q Saying, what should I do?

3 A Yes, sir.

4 Q And as a result of that, you decided today  
5 to come forward and let us know what was going on?

6 A Yes, sir. Well, he told me at the time  
7 that I shouldn't make it known, and I said, I  
8 don't -- I don't want any friction in the jury room.

9 Q We understand. But we very much appreciate  
10 what you're doing, because you're doing the right  
11 thing, ma'am.

12 Do you need a moment?

13 A I think I'm okay.

14 Q Anything further, folks?

15 BY MR. BRITT:

16 Q What bailiff did you speak to?

17 A I don't know his name.

18 Q Was it Mr. Horne?

19 A Horne, yes.

20 THE COURT: Anything further?

21 MR. BRITT: No, sir.

22 THE COURT: Ms. Locklear, again,  
23 I want to thank you for doing what you are  
24 supposed to do. You're doing exactly what  
25 is required of you consistent with your

1 duties and responsibility and we all very  
2 much appreciate it. I'm also going to  
3 instruct you that you're not to discuss  
4 with anyone, including other members of the  
5 panel, any of the matters that have been  
6 gone into.

7 THE WITNESS: Okay.

8 THE COURT: You understand that?

9 THE WITNESS: Yes, sir, I do.

10 THE COURT: We thank you very  
11 much, ma'am.

12 THE WITNESS: You're welcome.

13 THE COURT: Yes, sir.

14 MR. THOMPSON: She maybe should  
15 gain her composure before going back into  
16 the jury room.

17 THE COURT: You need a few  
18 moments, ma'am? I'm going to ask Sergeant  
19 Meares to take you to the restroom  
20 facilities and take whatever time you  
21 need.

22 THE WITNESS: Thank you.

23 THE COURT: Let me get Sergeant  
24 Meares.

25 (Juror leaves chambers.)

1                   THE COURT:  What we have is a  
2                   situation where concerns have been  
3                   expressed by one of the members of the jury  
4                   about comments, in one instance -- well,  
5                   actually in two instances, made by other  
6                   members of the jury, one of those instances  
7                   occurring apparently, based on what she's  
8                   indicated to us, some two to three days  
9                   after the trial commenced, at a stage when  
10                  the evidence had been presented.  The gist  
11                  of that comment is, "We're going to be in  
12                  deliberations for a long time," followed by  
13                  what the juror perceived as some unusual  
14                  behavior.  That's her perception.

15                  We have another situation where  
16                  apparently yesterday when checks were  
17                  passed out, that same juror did not receive  
18                  a check and made a statement along the  
19                  lines of, "What is this, a racial issue."  
20                  According to the juror's perception, that  
21                  statement was made in jest.

22                  The juror is doing exactly what she's  
23                  supposed to do, consistent with her duties  
24                  and responsibility.  She is demonstrating  
25                  conscientiousness in bringing this to our

1 attention, for whatever it's worth, and I  
2 think that that's what she's saying, this  
3 is for whatever it's worth.

4 We've got some options. One option is  
5 to bring Juror Number 9 in, ask her if  
6 there's anything that has occurred that  
7 affected her ability to be fair and  
8 impartial in any respect, prefacing those  
9 questions by saying we're not saying that  
10 anything was done -- you've done anything  
11 wrong, but simply a matter we want to  
12 inquire into. Now, that --

13 MR. THOMPSON: Judge, I mean,  
14 unless -- based on what she said, meaning  
15 this juror, Ms. Locklear, I mean Number 15,  
16 I don't see -- and I know that you've got  
17 to make sure everything is all right and  
18 that jurors can still be fine --

19 THE BAILIFF: She's back in the  
20 jury room. Would you give that to counsel,  
21 please.

22 THE COURT: Thank you, sir.

23 MR. THOMPSON: But --

24 THE COURT: Before you say  
25 anything, but before you say that, you

1 folks don't make a motion, you waive the  
2 issue. If you folks say we're not asking  
3 that that be done, after consultation with  
4 your client, then any issue that might  
5 arise in the future is waived.

6 MR. THOMPSON: I understand.

7 THE COURT: That's all I want to  
8 say. If the State takes the position we're  
9 not asking that inquiry be made, then any  
10 issues the State might have are waived. If  
11 both of you say we're not asking for  
12 further inquiry, based on what is now  
13 before me, I'm not inclined to inquire  
14 further. I just want everybody to know  
15 before you stake yourself out, what the  
16 potential consequences might be down the  
17 road.

18 MR. THOMPSON: I understand.

19 THE COURT: Because I think I  
20 hear you saying we're not asking for  
21 further inquiry of Juror Number 9.

22 MR. THOMPSON: Well, and I  
23 haven't consulted with my client, but all  
24 I'm saying is there's a potential.

25 THE COURT: For creating a

1           problem.

2                   MR. THOMPSON: For creating a  
3           problem, and one may not exist.

4                   THE COURT: I understand that,  
5           and if that's your position, that's fine.

6                   MR. THOMPSON: And the other  
7           thing I want to say is Juror Number 15, and  
8           I mean, it appears to me that she was being  
9           conscientious, but nevertheless treading  
10          down a slippery path by communicating to  
11          other members of the community.

12                   THE COURT: You got a motion as  
13          to either Juror Number 9 or Juror Number  
14          15?

15                   MR. THOMPSON: Not at this time.

16                   THE COURT: Well, this is the  
17          time to make it.

18                   MR. THOMPSON: We need to  
19          consult, but I'm just saying that, you  
20          know, the focus was on Juror Number 9, and,  
21          you know, both could be conscientious about  
22          their jobs, I mean, the statement,  
23          according to how you take it, hey, it's  
24          going to --

25                   THE COURT: There is nothing

1 before me now that would indicate that it  
2 is necessary for me to make further inquiry  
3 as to either Juror Number 9 or Juror Number  
4 15 absent a request for a motion to do so  
5 by one or both of the parties in this case.

6 MR. THOMPSON: I would like the  
7 time to consult, and I don't think it would  
8 be long, but if we can consult with our  
9 client.

10 THE COURT: Yes, sir. I'll tell  
11 you what. To conserve time, because we've  
12 got everything in here, the court reporter,  
13 Mr. Britt and I will step outside. Because  
14 if we lose track of one of you folks --

15 Let the record reflect that counsel  
16 for the State, the court reporter, and the  
17 presiding judge are stepping outside so  
18 Mr. Thompson and Mr. Bowen can consult with  
19 their client.

20 (Brief recess.)

21 THE COURT: Let the record  
22 reflect that counsel for the defendant,  
23 Mr. Thompson, Mr. Bowen have had an  
24 opportunity to consult with Mr. Green, also  
25 known as U'Allah. Is that correct, sir?

1 MR. GREEN: Yes, sir.

2 THE COURT: And that consultation  
3 occurred in private with the Court, counsel  
4 for the State and the court reporter being  
5 absent from the room. Yes, sir.

6 MR. THOMPSON: We're not asking  
7 for, for any further action be taken.

8 THE COURT: As to either Juror  
9 Number 9 for Juror Number 15?

10 MR. THOMPSON: That's right.

11 THE COURT: What's the State's  
12 position, Mr. Britt?

13 MR. BRITT: I'm asking you to  
14 conduct further inquiry, that you have  
15 repeatedly admonished them not to talk  
16 about the case among themselves, not to  
17 form any opinions, and clearly what's  
18 before us is a statement where -- about the  
19 case that was made at the time when they  
20 had been admonished not to do so.

21 THE COURT: Now you're asking for  
22 an in camera as to Juror Number 9?

23 MR. BRITT: Yes, sir. And I  
24 think after inquiring as to Juror Number 9,  
25 if it becomes necessary to replace one or

1 both of them, because I think 15 has  
2 stepped out of bounds in regard to her  
3 comments to Mr. Inman if --

4 THE COURT: That's what I was  
5 thinking about. We lose a juror,  
6 potentially, and an original juror  
7 potentially, a one of the alternates.

8 MR. BRITT: And we have no more  
9 alternates -- that's one alternate, excuse  
10 me. But for the record, Mr. Inman is the  
11 one who contacted me this morning.

12 THE COURT: That's what I was  
13 going to ask you, I suspect that much, and  
14 I ask you if you felt free to do that.

15 MR. BRITT: Yes, sir, and I  
16 indicated to you earlier that he was  
17 willing to waive his anonymity and was  
18 prepared to come in and to testify if it  
19 was necessary.

20 THE COURT: Well, folks, I would  
21 feel better, if we're going to make inquiry  
22 of anybody, bringing Mr. Inman in, because  
23 I think if it needs to be made, need to be  
24 all parties concerned.

25 MR. THOMPSON: The other issue is

1 Mr. Horne.

2 THE COURT: Address that, too.

3 MR. THOMPSON: Because -- yeah.

4 THE COURT: Address that, too.

5 MR. BOWEN: And I think we can  
6 find out through Mr. Inman, but I think  
7 which radio station becomes crucially  
8 important, because there is a juror up  
9 there who is employed by Fairmont Gospel  
10 Radio Station.

11 MR. BRITT: He works for 102.3  
12 which is a country station here in  
13 Lumberton.

14 MR. BOWEN: Different station.

15 THE COURT: All right. How  
16 quickly can we get Mr. Inman down here?

17 MR. BRITT: I can make a phone  
18 call.

19 THE COURT: Yes, sir, if you  
20 would.

21 MR. BRITT: Can I be excused?

22 THE COURT: Yes, sir.

23 (Brief recess.)

24 THE COURT: Let the record  
25 reflect that we are continuing with the in

1 camera proceeding now underway. Present at  
2 this time are counsel for state,  
3 Mr. Johnson Britt, counsel for the  
4 defendant, Mr. Angus Thompson, and  
5 Mr. Woodberry Bowen. The defendant is also  
6 present during this in camera proceeding.  
7 The court reporter is present and is  
8 recording everything in connection with  
9 this matter. Also present at this time is  
10 Mr. Inman. Would you spell your -- first  
11 of all sir, if you'll state your first and  
12 last name.

13 THE WITNESS: Jack Inman, I N M A  
14 N.

15 BY THE COURT:

16 Q Mr. Inman, let me explain why I've asked  
17 you to come in. We've spoken with a member of the  
18 jury in this case who has indicated that that juror  
19 has had a conversation with you about some matters  
20 that may pertain to where we are in this case. As I  
21 understand it, that conversation occurred yesterday?

22 A Yes.

23 Q In the mall here in Lumberton, Biggs Park  
24 Mall?

25 A Biggs Park Mall.

1 Q That's B I G G S?

2 A That's correct.

3 Q If you'll tell us about that conversation.

4 A I know the juror, and I saw her at the  
5 mall, we spoke, and stopped in the courtroom there  
6 for -- or the court area for a moment.

7 Q When you say "court area," so the record is  
8 complete, court area of the mall?

9 A Of Biggs Park Mall, that's correct. And I  
10 did business with her brother and sister-in-law, they  
11 have a business here in Lumberton. We were  
12 discussing that and some upcoming promotions we have  
13 going with them. And she said, I have a problem. I  
14 said, what is your problem, Pat. She said, I'm very  
15 concerned about another juror on the case. She is --  
16 she got real upset.

17 Q When you say "she got real upset" are you  
18 referring to the juror you were speaking to, or was  
19 she relating someone else had gotten upset?

20 A Someone else.

21 Q The juror she had expressed concern about?

22 A The juror -- I think she said Juror Number  
23 9. Paychecks came on Tuesday, I think I understood  
24 her to say, and that juror didn't get her check, and  
25 she started hollering that it was racial

1 discrimination, reason she didn't get a check, got  
2 very upset about it, that the juror had made several  
3 statements that this was going -- they could -- this  
4 was going to be a long deliberation after the trial,  
5 and they could bet on that.

6 Q Okay.

7 A And she was just very concerned by the  
8 lady's attitude that it was -- she was going to be a  
9 real problem to the rest of the jurors. She also  
10 told me there was several other jurors that were very  
11 upset about this lady. One is -- that I remember,  
12 she pointed out, I don't know the lady's name, but  
13 it's a white lady, she's fairly tall, blond hair,  
14 said that she was very upset and was thinking about  
15 going to the Judge, but they didn't -- they weren't  
16 sure how to tell the Judge about it.

17 And she said -- she asked me what I thought  
18 she should do. I said, well, I'll tell you what, I  
19 know Johnson Britt real well, let me call Johnson and  
20 ask him what procedure you should take. I said,  
21 under no circumstances can you talk to Johnson, and I  
22 don't think you can talk directly to the Judge.

23 So I called Mr. Britt, in fact I came by  
24 Mr. Britt's office, and he was tied up, and I left my  
25 card, and with my car phone on it, and he called me

1 on my car phone. I explained it to him, and he told  
2 me the same thing that I had told her, that she would  
3 have to go to the bailiff, give a note to the bailiff  
4 to give to you, but I thought she should do it.

5 Q Have you had any conversation with that  
6 juror since yesterday afternoon?

7 A Yes, I have.

8 Q And did any subsequent conversation involve  
9 the matters discussed yesterday afternoon?

10 A Yes.

11 Q Tell us about that.

12 A I saw her in the hallway just before court  
13 convened.

14 Q This morning or this afternoon?

15 A This afternoon.

16 Q Okay.

17 A And I spoke to her and she informed me that  
18 she had thought it over and she was going to try and  
19 speak with you. And she said, how can I do that. I  
20 handed her a piece of paper and told her to write a  
21 note.

22 Q For the record, what I'm showing you is a  
23 memo message form.

24 A Right. I no idea what she wrote on it.  
25 All I know is I gave her that message, that piece of

1 paper.

2 Q At the time you gave it to her, it was  
3 simply the preprinted message form with no  
4 handwritten or no language on it?

5 A Had no language on it when I gave it to  
6 her.

7 Q Other than the preprinted language?

8 A Exactly. And then I found the bailiff and  
9 sent the bailiff to see her.

10 Q And do you know who that bailiff was that  
11 you sent to see her?

12 A I know him when I see him.

13 Q Do you know the rank of that individual?

14 A I think he's got a sergeant stripes on. I  
15 don't know his name. I'd know him when I see him.

16 Q As I understand it, you called -- caused  
17 Mr. Britt to call you this morning. You stopped by  
18 his office, he was tied up?

19 A He was tied up.

20 Q You left your card?

21 A He called me back last night on my car  
22 phone, and I had another appointment that I had to  
23 get to, I had some equipment down, and I was trying  
24 to find some parts for it, and I knew the place was  
25 closing, couldn't wait.

1 Q When was it that you went by Mr. Britt's  
2 office, today or yesterday?

3 A Yesterday afternoon.

4 Q How much time had elapsed between the time  
5 you had this conversation, a conversation with the  
6 juror, and the time you came down here?

7 A I left the mall and come straight to  
8 Mr. Britt's office.

9 Q Immediately after you had the conversation  
10 at Biggs Park Mall?

11 A Exactly.

12 Q At that time you found out that Mr. Britt  
13 was tied up?

14 A Yes, sir.

15 Q That's when you left your card?

16 A Yes.

17 Q Subsequently after that, he called you?

18 A Exactly. And I stopped by his office a  
19 short while ago and informed him that the lady was  
20 going to give a note to you and she would like to  
21 talk to you about it.

22 THE COURT: Mr. Thompson, do you  
23 have any questions?

24 MR. THOMPSON: Yes, sir.

25 BY MR. THOMPSON:

1 Q Mr. Inman, Juror Number 9 that you have  
2 been referring to, do you know her by name?

3 A No, I don't.

4 Q She told you she was juror -- excuse me,  
5 let me strike that. The lady who came to see you and  
6 told you about the conduct or statements of Juror  
7 Number 9, do you know her name?

8 A I know her name is Pat, but I can never  
9 remember her last name. I've known her for three or  
10 four years, but I don't know her last name.

11 Q You indicated that her brother and  
12 sister-in-law did business with you?

13 A Right.

14 Q Who are they?

15 A Junior McGirts, McGirts NASCAR And  
16 Automotive. They carry all NASCAR races and they  
17 have a very big race and we do some race promotions,  
18 bring some race cars in for promotions.

19 Q Now, this was yesterday that you saw this  
20 individual by the name of Pat?

21 A Yes.

22 Q In the mall?

23 A Yes.

24 Q About what time was that?

25 A You know, it was late yesterday afternoon.

1 I can't recall the time. It had to be after 4:00,  
2 because I know I came straight down here and I was at  
3 Mr. Johnson's office at 5:00 or just a few minutes  
4 before 5:00, and I left the mall and come straight  
5 here. And I had to get a part for the radio station,  
6 and I knew the place closed at 5:00, so I left my  
7 card because I had to get to that place and get that  
8 part. I had engineers standing by waiting on me.  
9 That's what I was doing at the mall. I went by Radio  
10 Shack to get the part first, couldn't get it there,  
11 and I had to get back to Connecting Points to get the  
12 part.

13 Q So after talking to this juror, Pat, that  
14 you refer to as Pat, you left the mall and went to  
15 Connecting Points first?

16 THE COURT: Came here first.

17 BY MR. THOMPSON:

18 Q You came here first?

19 A Yes.

20 Q And then went to Connecting Points?

21 A Yes. Mr. Britt called me, I was en route  
22 to Connecting Point. He called me shortly after I  
23 left.

24 Q How long have you known Johnson Britt, the  
25 District Attorney?

1           A       Quite some time, since he was a young  
2 fellow.

3           Q       Has he ever done any work for you, I mean,  
4 legal work for you or --

5           A       No, sir.

6           Q       What is that?

7           A       No.

8           Q       You just know his family?

9                   MR. BRITT: I just know him and  
10 his family. Mr. Inman and I are distantly  
11 related.

12                   MR. THOMPSON: Okay.

13 BY MR. THOMPSON:

14           Q       So the comment that you heard from this  
15 lady named Pat concerned you enough that you felt  
16 that you should report it to Mr. Britt?

17           A       I felt like I should let somebody know  
18 about it, yes, and I knew Mr. Britt, so that's the  
19 reason I brought the information to him.

20           Q       Have you told anybody else about this  
21 incident other than Mr. Britt and other than the  
22 individuals who are in this in-chambers conference?

23           A       No. My news media would love to get ahold  
24 of it. I wouldn't even tell my operations manager  
25 last night.

1 THE COURT: Well, Mr. Inman, in  
2 that regard, it would violate the  
3 Constitution or the First Amendment if I  
4 told you that -- if I directed you not to  
5 do that, but in the interest of a fair  
6 trial, in the interest of this matter being  
7 tried one time, in the interest of all the  
8 resources and the time that's been invested  
9 in this case, I simply ask you to exercise  
10 good judgment.

11 THE WITNESS: Well, you've all  
12 worked real hard and I admire every one of  
13 you, you've all done a very good job, much  
14 better than the Simpson trial.

15 MR. THOMPSON: I think a lot of  
16 of that is because of the cooperation of  
17 the media around here, too.

18 THE WITNESS: No, I think a lot  
19 of it is that man right there. I admire  
20 you and a lot of people in this town admire  
21 you, the way you handle everything, we  
22 admire you for that.

23 THE COURT: Thank you.

24 MR. THOMPSON: May I continue?

25 THE COURT: Yes, sir.

1 BY MR. THOMPSON:

2 Q Mr. Inman, you left a message, left your  
3 card in the DA's office, and is it my understanding  
4 that Mr. Britt called you back yesterday afternoon?

5 A Yes, shortly after I left, on my car phone.

6 Q You had a conversation with him on the car  
7 phone?

8 A Exactly.

9 Q Concerning the event that took place at the  
10 mall?

11 A Right.

12 Q And -- okay.

13 A I would like to add something else, too, if  
14 I might, in the interest of the trial. This juror  
15 did not discuss anything else about the trial at all,  
16 nothing whatsoever. She said that her mind was still  
17 open to see everything through the end of it before  
18 she made up her mind.

19 THE COURT: That's a point that I  
20 think needs clarification. If I'm  
21 understanding you correctly, the juror who  
22 spoke with you at Biggs Park Mall, the one  
23 you identified as Pat --

24 THE WITNESS: Yes.

25 THE COURT: -- did not discuss

1 the trial in any respect except to express  
2 a concern about another juror?

3 THE WITNESS: Exactly.

4 THE COURT: Is that accurate? I  
5 don't mean to put words in your mouth but  
6 is that --

7 THE WITNESS: That is accurate.  
8 In fact, if she had -- she had already told  
9 me the other part. If she had, I would  
10 have had to have stopped her, because I  
11 didn't feel -- I felt like if she did, I  
12 could have made the trip over here and gave  
13 you the information.

14 BY MR. THOMPSON:

15 Q She indicated to you that there were other  
16 jurors though who had a concern, expressed a concern  
17 about this Juror Number 9?

18 A Yes, there was -- and I remember the one  
19 juror that she said had made the comment that if  
20 things continue like they were, she was going to  
21 figure out a way to talk with the Judge about it.

22 Q And she had --

23 A Or ask to be removed, one, I think that's  
24 the way she put it.

25 Q And she identified this juror as being the

1 tall white female, a tall white female?

2 THE COURT: With blond hair?

3 THE WITNESS: With blond hair. I

4 have no idea who that is.

5 BY MR. THOMPSON:

6 Q And she also indicated that there were  
7 perhaps other jurors other than the tall white female  
8 juror with blond hair who had expressed concern about  
9 Juror Number 9, is that fair to say, is that --

10 A Would you give that to me one more time?

11 Q In other words, other than the tall white  
12 female juror with blond hair, Pat also indicated to  
13 you there were other jurors, you just remember the  
14 first one --

15 THE COURT: Did she say more than  
16 one other juror was concerned about --

17 THE WITNESS: She said there were  
18 several jurors, and I said, like who. And  
19 she said there's a very tall blond white  
20 juror. I said, yeah, she sits on the end  
21 next to the courtroom and she takes a lot  
22 of notes. She said, yes, that's the one.

23 BY MR. THOMPSON:

24 Q So you've been in the courtroom and you've  
25 seen the composition of the jury, right?

1           A       Yes, but I can't tell you who Juror Number  
2   9 is.

3           Q       Right. But you know the location that she  
4   was referring to, the juror who sits on the back as  
5   you say?

6                   THE COURT: We're confusing  
7                   apples and oranges. What you've described,  
8                   the tall white female who was blond, did  
9                   you know who that individual was in terms  
10                  of the jury seating?

11                  THE WITNESS: In terms of the  
12                  juror seating, I remembered her because I  
13                  noticed the last couple of days, she had a  
14                  yellow pad like mine, and she was writing  
15                  vigorously throughout the proceedings. And  
16                  I could tell she was taking lots of notes.

17                  THE COURT: Was when she referred  
18                  to juror Number 9, did you know, in terms  
19                  of the jury setting arrangement, did you  
20                  know who she was referring to?

21                  THE WITNESS: I can't remember.  
22                  In fact, I was hoping to see the jury back  
23                  in there, because I was curious to see  
24                  what -- who she was talking about. They  
25                  hadn't been in, so I don't know who she was

1 talking about.

2 THE COURT: Anything else?

3 MR. THOMPSON: Yes, sir.

4 BY MR. THOMPSON:

5 Q After having that conversation with  
6 Mr. Britt yesterday evening, you came to the  
7 proceedings this morning, or were you here in the  
8 courthouse?

9 A Yes, I'm here almost every day.

10 Q And --

11 A We get most of our stuff through AP, an AP  
12 guy.

13 THE COURT: He's reporting.

14 THE WITNESS: Right, but from  
15 time to time, I'm in and out of here  
16 because I manage the station. I can't stay  
17 here the whole time. I rely on the  
18 Associated Press, but I'm in and out as  
19 much as I possibly can.

20 BY MR. THOMPSON:

21 Q So, do you consult often with Mr. Britt in  
22 your -- I mean, Mr. Johnson Britt, in your reporting  
23 duties, I mean, about the progress of the trial on a  
24 daily basis or regular basis?

25 A I haven't spoken to Johnson about the trial

1 at all other than yesterday over the phone and a few  
2 minutes ago.

3 Q I was just wondering, in your reporting  
4 duties, where do you get your information from?

5 THE COURT: Sitting in the  
6 courtroom.

7 BY MR. THOMPSON:

8 Q So you're in the courtroom?

9 A Yes.

10 Q That's what I was trying to ask.

11 A I didn't understand where you were getting  
12 at.

13 Q I'm sorry. And so you were here this  
14 morning, you saw this juror, meaning Pat?

15 A No, no, that was this afternoon when I saw  
16 her.

17 Q This afternoon, about what time?

18 THE COURT: Just before we came  
19 back for lunch.

20 THE WITNESS: Right. She had --  
21 I had talked with her sister-in-law out at  
22 McGirt's, and I told her sister-in-law that  
23 if she heard from Pat, I says, does Pat  
24 normally come by here at lunchtime? She  
25 said no, I saw her earlier this morning.

1 And she said, she is very upset though, and  
2 I said I know that. I said, give her a  
3 message for me. Tell her that I spoke with  
4 Mr. Britt and he suggested that you write a  
5 note and get it to her -- the bailiff, to  
6 the Judge.

7 And so when I saw her just before  
8 court, just before 2:00, she had spoken to  
9 her sister-in-law, she was sitting in the  
10 hallway with the other jurors, and asked me  
11 what should she do now. And I said, I'll  
12 get you a piece of paper.

13 MR. THOMPSON: Mr. Inman, if you  
14 just back up, I want to make sure I got  
15 this straight as to who you were talking to  
16 when you said, I spoke to Mr. Britt and he  
17 suggested you write a note or something to  
18 the judge. Who were you talking to?

19 THE COURT: Pat's sister-in-law.

20 THE WITNESS: Pat's sister-in-law  
21 at McGirts NASCAR and race shop.

22 MR. THOMPSON: And her name is?

23 THE WITNESS: Teresa.

24 MR. THOMPSON: McGirt?

25 THE WITNESS: T E R E S A,

1 Teresa.

2 THE COURT: Anything else?

3 MR. BOWEN: I have one.

4 BY MR. BOWEN:

5 Q Mr. Inman, other than what you've related  
6 here that Pat said Juror Number 9 said, were there  
7 any other words that Pat related to you that Juror  
8 Number 9 said other than what you've told us?

9 A I can't recall all of the words in the  
10 conversation. That was basically what she said.

11 Q All right. Is everything that you've told  
12 us that which she related to Mr. Britt that was told  
13 by Pat?

14 A I think that's -- I told everything that  
15 I've told you, haven't I Mr. Britt?

16 THE COURT: We're asking you. I  
17 don't mean to be rude.

18 THE WITNESS: Everything that I  
19 said is exactly what I told Mr. Britt over  
20 the phone yesterday afternoon.

21 BY MR. BOWEN:

22 Q You haven't had any other conversation with  
23 him other than that, except --

24 A Just after I talked with her and gave her  
25 the note and found a bailiff for her, I saw Mr. Britt

1 and I told him that she got the message and was going  
2 to talk with the Judge.

3 Q So you never talked to Mr. Britt about the  
4 contents of Juror Number 9's remarks but one time?

5 A One time.

6 MR. BOWEN: That's all.

7 THE COURT: Mr. Britt.

8 MR. BRITT: No questions.

9 THE COURT: Thank you very much,  
10 we appreciate you coming in. Please, now  
11 I'm not saying this in the context of your  
12 job because that would not be appropriate.  
13 That would be a violation of your  
14 Constitutional rights under the First  
15 Amendment. I'm asking that you not discuss  
16 with any members of the jury or anyone else  
17 involved in the case those matters that  
18 have been gone into. I ask that you  
19 exercise the same good judgment that you  
20 have up to this point about matters that  
21 might impact upon our ability to continue  
22 with this case.

23 THE WITNESS: I have a question,  
24 Your Honor.

25 THE COURT: Yes, sir.

1                   THE WITNESS:  When the Court  
2 convenes, is this going to be discussed in  
3 open court?

4                   THE COURT:  It is on the record  
5 in chambers now.  It -- I can't tell you  
6 that it will not be made a matter of public  
7 record.  I can tell you this, that it's not  
8 my intent to bring it up, but I can't  
9 prohibit counsel for the defendant or  
10 counsel for the State from referring to any  
11 matters that may relate to the defendant's  
12 right to a fair trial and the State's right  
13 to a fair trial.

14                  I can simply ask them as officers of  
15 the Court to exercise the same judgment I'm  
16 asking you to exercise.  And to the extent  
17 that it's not necessary, absolutely  
18 necessary, that it does not involve any  
19 Constitutional right or anything relating  
20 to a fundamental fair and objective trial,  
21 that it not be gone into.  But I can't  
22 prohibit them from doing so.

23                  THE WITNESS:  I understand.

24                  THE COURT:  I appreciate that.

25                  THE WITNESS:  Thank you.

1 THE COURT: Yes, sir.

2 (Mr. Inman leaves chambers.)

3 THE COURT: Okay. State is  
4 asking that I make -- or that further  
5 inquiry be made of Juror Number 9?

6 MR. BRITT: Yes, sir.

7 THE COURT: Do you folks want to  
8 be heard further? And since we have  
9 learned from Mr. Inman information that may  
10 relate to Juror Number 2 -- I'm trying to  
11 remember --

12 MR. THOMPSON: Six.

13 THE COURT: I mean 6, I'm going  
14 to interview her, too.

15 MR. BRITT: For the record, I  
16 have the telephone message or the message  
17 that I received.

18 THE COURT: If you'll bring that  
19 in.

20 MR. BRITT: Make it part of the  
21 record.

22 THE COURT: This is going to be a  
23 Court's exhibit. I'm going to ask --  
24 before I ask Juror Number 9 to come in, I'm  
25 going to ascertain the name --

1 MR. BRITT: Juror Number 6 is  
2 Ms. Coverdale, if that is the blond headed  
3 lady.

4 MR. BOWEN: If we can confer.

5 MR. THOMPSON: We need to  
6 confer.

7 (Off-the-record discussion.)

8 THE COURT: You folks had an  
9 opportunity to consult with Mr. Green?

10 MR. THOMPSON: Yes.

11 THE COURT: My intent is to bring  
12 in Ms. Coverdale. I directed Major Watson  
13 to sequester Mr. Horne, put him in that  
14 room up there until we have an opportunity  
15 to talk to him.

16 MR. BRITT: For the record, let  
17 me give you --

18 THE COURT: This will be the next  
19 numbered Court's exhibit, which will be  
20 followed, because sequentially this came  
21 afterward. That is the message I received  
22 regarding Mr. Inman coming to my office  
23 yesterday.

24 (Juror enters chambers.)

25 BY THE COURT:

1 Q Hello ma'am. How are you?

2 A All right.

3 Q Let me first of all alleviate any  
4 apprehensions you might have. We're not asking that  
5 you come in because of anything that you may have  
6 done.

7 A Okay.

8 Q We simply are trying to conduct some  
9 inquiry to find out exactly what our situation is.

10 Now, Ms. Coverdale, we have information  
11 that tends to indicate, we don't know yet, that there  
12 may be some problems with one or more members of the  
13 jury. Specifically, have you heard any juror make  
14 any statements that might indicate that his or her  
15 mind has been made up about this case in one way or  
16 another, or have you observed any behavior on the  
17 part of any juror that you think needs to be brought  
18 to our attention?

19 A Nothing that I've paid any attention to.

20 Q Okay. So if anything has occurred, in your  
21 view it's not anything that we need to be aware of or  
22 be concerned about?

23 A Nothing that I'm concerned, so I wouldn't  
24 think you would be.

25 Q All right. Now, I need to be more

1 specific. If you'll bear with me.

2 A Okay.

3 Q We've received information about Juror  
4 Number 9, that she may have made a statement to the  
5 effect of some two or three days after the evidence  
6 in this case began, we're going to be in  
7 deliberations for a long time. Do you recall any  
8 such statement having been made?

9 A Barely, but I didn't think anything about  
10 it, but --

11 Q Have you observed any behavior that you  
12 would consider to be unusual?

13 A No.

14 Q Or extraordinary on the part of any members  
15 of the jury?

16 A No.

17 Q Okay.

18 THE COURT: Mr. Britt.

19 BY MR. BRITT:

20 Q Ms. Coverdale, you said you do recall the  
21 statement being made?

22 A (Witness nods head affirmatively.)

23 Q Did you react to it in any way?

24 A I think it was said in a jokingly -- I  
25 think we were in there, I'm not sure but I believe we

1 were sitting in there and you all were going over  
2 certain things, and I think it was said in a jokingly  
3 way, and I don't believe anybody took it wrong.

4 Q Sometimes --

5 A Because I can barely remember it being said  
6 to tell you the truth.

7 THE COURT: I guess what I'm  
8 concerned about, at this point it's got to  
9 do with words, and words can sometimes be  
10 misunderstood or misconstrued. You  
11 indicated just now that you were at the  
12 time this statement was made -- was it  
13 during one of those times when the jury had  
14 been sent out of the courtroom when we were  
15 dealing with matters of law, is that what  
16 your recollection is?

17 THE WITNESS: I really couldn't  
18 honestly say that, but I remember it being  
19 said in a jokingly way, but I couldn't tell  
20 you that was -- I'm not sure.

21 THE COURT: Do you recall whether  
22 the statement suggested that the jury  
23 deliberations would take a long time or  
24 this trial would take a long time?

25 THE WITNESS: I wasn't listening

1 to it enough to say.

2 THE COURT: So you don't know  
3 whether one or the other?

4 THE WITNESS: I don't know enough  
5 to comment on it.

6 THE COURT: I appreciate that.  
7 Mr. Bowen or Mr. Thompson.

8 MR. BOWEN: I don't have  
9 anything.

10 THE COURT: Mr. Thompson.

11 MR. THOMPSON: No, sir.

12 THE COURT: We appreciate you  
13 coming in. Before you go back, please  
14 don't discuss with anyone, including other  
15 members of the panel, any of the matters  
16 we've just gone into.

17 THE WITNESS: All right.

18 THE COURT: Thank you, ma'am.

19 (Juror leaves chambers.)

20 THE COURT: Occurs to me that the  
21 statement may have been misunderstood or  
22 misconstrued.

23 MR. BRITT: Possibly.

24 THE COURT: May have been what  
25 was being referred to is is shuttling back

1 and forth to the jury room and this process  
2 is going to take a long time. That's  
3 entirely possible. And we're adding to it  
4 right now. But let's bring in Mr. Horne at  
5 this point and then I'll bring Juror Number  
6 9 in.

7 (Mr. Horne enters chambers.)

8 BY THE COURT:

9 Q For the record, your full name is?

10 A Jimmy Ray Horne.

11 Q You're employed with the Robeson County  
12 Sheriff's Department?

13 A That's correct.

14 Q One of the bailiffs assigned to this  
15 courtroom and to this case?

16 A Yes, sir.

17 Q We've received information from a member of  
18 the jury that sometime apparently about three days  
19 after the presentation of evidence in this case  
20 began, that a juror had indicated to you that she was  
21 concerned about the behavior of another member of the  
22 jury. Do you recall any such conversation?  
23 Specifically, do you recall being approached by Juror  
24 Number 15, Ms. Patricia Locklear, and her expressing  
25 some concern to you about the behavior of Juror

1 Number 9?

2 A Seemed like one of the jurors mentioned  
3 something, but I can't recall what it was.

4 Q Apparently wasn't anything that you thought  
5 was significant at the time?

6 A Seemed like there was something to the  
7 effect she had mentioned something, and I asked her  
8 was a particular -- I didn't know who the person was,  
9 but was it somebody making threats towards anybody  
10 else or anything of that nature, you know, and seemed  
11 like to me she replied no.

12 Q What if anything did you recall saying to  
13 her in addition to that, if you did?

14 A I truly can't remember what it was. I  
15 truly can't remember what it was she said to me, to  
16 be honest with you.

17 THE COURT: Mr. Thompson?

18 MR. THOMPSON: No.

19 THE COURT: Mr. Bowen?

20 MR. BOWEN: No, sir.

21 THE COURT: Mr. Britt?

22 MR. BRITT: No, sir.

23 THE COURT: Thank you very much.

24 You're free to go.

25 THE BAILIFF: Thank you.

1 THE COURT: Ask Sergeant Meares  
2 to bring in Juror Number 9 so we can get  
3 this resolved. Thank you, sir.

4 (Mr. Horne leaves and Juror Number 9  
5 comes in chambers.)

6 BY THE COURT:

7 Q Let me allay your apprehension if you have  
8 any. We haven't brought you in here because we're  
9 contending you've done anything wrong. Simply in any  
10 case, when the situation may warrant it, and I stress  
11 the word "may," inquiry has to be made as to matters  
12 which may affect the parties in this case.

13 The only question I want to ask you is, has  
14 anything occurred in this case up to this point which  
15 in your opinion has affected your ability to be  
16 objective, fair and impartial in any way?

17 A Objective, fair and --

18 Q Objective, fair, or impartial in any way,  
19 has anything happened that would affect your ability  
20 to serve as a juror in this case?

21 A No, not at all.

22 Q Mr. Thompson?

23 MR. THOMPSON: Nothing.

24 MR. BOWEN: Not a thing, Your  
25 Honor.

1 THE COURT: Mr. Britt?

2 BY MR. BRITT:

3 Q It's Ms. Ellerbe?

4 A Yes, sir.

5 Q Has there been any comment made in the jury  
6 room in regard to what a juror's -- that would  
7 indicate that a juror has made up their mind about  
8 the case without having heard all the evidence?

9 THE COURT: That you're aware of.

10 THE WITNESS: Not that I know of.

11 THE COURT: Ms. Ellerbe, don't  
12 place a lot of emphasis on what's going on  
13 now. We're talking with anybody that might  
14 have anything to share with us in terms of  
15 where we are. That's absolutely  
16 necessary. We don't mean to suggest or  
17 imply anything. I hope you understand  
18 that.

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay. Please don't  
21 discuss with anyone, including other  
22 members of the panel, any of the matters  
23 that we've gone into.

24 THE WITNESS: Yes, sir.

25 THE COURT: Thank you.

1 THE WITNESS: Okay.

2 (Juror leaves chambers.)

3 THE COURT: Do you want to be  
4 heard further?

5 MR. THOMPSON: No, sir.

6 THE COURT: Do you want an  
7 opportunity to be heard further?

8 MR. BOWEN: No, sir.

9 THE COURT: Do you want to be  
10 heard?

11 MR. BRITT: Yes, sir. I think  
12 we've got a situation where the impression  
13 made on one juror, that being the  
14 alternate, Ms. Locklear, that the statement  
15 was made that caused her concern, and  
16 brought it eventually to the attention of  
17 the Court, Ms. Coverdale basically has  
18 corroborated the statement was made, though  
19 she did not attach the same significance  
20 that Ms. Locklear did to the statement.

21 And any comment along the lines of  
22 whether we're going to be here for a long  
23 time or whether the deliberations are going  
24 to take a long time in this case, I think  
25 is in violation of the Court's admonition

1 not to make any statements with regard to  
2 the case, not to discuss it with anyone,  
3 and I think it warrants the Court to  
4 exercise its authority in removing  
5 Ms. Ellerbe and at the same time removing  
6 Ms. Locklear.

7 THE COURT: Folks, if I remove  
8 anybody, I'm going to remove both of them.  
9 I'm going to look at the statutory book  
10 now.

11 (Judge leaves chambers).

12 MR. THOMPSON: Can I go get my  
13 book?

14 THE COURT: Sir?

15 MR. THOMPSON: May I just, may I  
16 see this book?

17 THE COURT: 15-A1215, alternate  
18 jurors. A, the Judge may permit the  
19 seating or one of more alternate jurors,  
20 must be sworn and seated with near the jury  
21 with ^ they must /TAPBD the trial at all  
22 times jury obey all orders an admonitions  
23 of the Judge. When the jurors are order  
24 kept together, the alternate jurors must be  
25 kept with them, if before final submission

1 of the case, the jury, any juror dice,  
2 becomes in/KPAS at this time ors /KWAFLD of  
3 dis/KHRALGD for any other reason, the  
4 alternate juror becomes a juror in the  
5 order in which selected serves in all  
6 respects as those selected on the regular  
7 trial panel ^\*NOTE\*( copy copy.

8 I don't think there's anything in 50 A  
9 statutorily. It's the case law that  
10 determines misconduct. It's a matter of  
11 discretion with the Court. The standard on  
12 review is abuse of discretion.

13 The case note cite under the  
14 provisions of 12 -- strike that -- 15-A  
15 1215 are illustrative. Basic law, folks,  
16 is cited in State versus McLaughlin, 323 NC  
17 68. 372 Southeast Second, 49, 1988 case.  
18 It was vacated and remanded for further  
19 consideration in light of McCoy.

20 Commentary indicates the trial judge's  
21 broad discretion in supervising the  
22 selection of the jury to the end both the  
23 State and the defendant may receive a fair  
24 trial. This discretionary power to  
25 regulate the composition of the jury

1 continues beyond empanelment. It is within  
2 the trial Court's discretion to excuse a  
3 juror and substitute an alternate at any  
4 time before final submission of the case to  
5 the jury panel. These kinds of /STEUGS  
6 /RETING to the competency and service of  
7 jurors are not renewable on appeal absent  
8 showing of abuse of discretion or some  
9 imputed legal error. In chapter nine,  
10 dealing with jurors, also has some case law  
11 as I recall it.

12 At a minimum, the matters now before  
13 the court indicate that a member of the  
14 jury at some time apparently,  
15 approximately -- strike that.  
16 Approximately three days after the  
17 beginning of the presentation of evidence,  
18 expressed a view that the deliberations in  
19 this case would be long. That statement  
20 was attributed to her not only by Juror  
21 Number 15, Ms. Locklear, but also  
22 attributed to her by Juror Number 6,  
23 Ms. Coverdale, and Ms. Coverdale's  
24 perception is she didn't place a great deal  
25 of importance on that statement. Do you

1 disagree with that?

2 MR. BOWEN: We think that  
3 Ms. Coverdale also said she was not sure,  
4 but that the comment merely related to  
5 prediction of a long trial.

6 THE COURT: No, sir, she didn't  
7 say that.

8 MR. THOMPSON: You asked her the  
9 question.

10 THE COURT: She said I don't know  
11 how to interpret it, I just didn't place a  
12 great deal of importance on it.

13 MR. THOMPSON: That which is --

14 THE COURT: Her perception.  
15 We've got two jurors with two different  
16 perceptions. Neither juror disagrees on  
17 the fundamental point of was the statement  
18 made. Both jurors agree the statement was  
19 made. The making of the statement is a  
20 violation potentially of the Court's  
21 instruction not to make up your mind about  
22 the case, not to talk about the case among  
23 themselves, and other instructions  
24 regarding their conduct. Just the making  
25 of the statement. And since there is no

1 disagreement that the statement was made,  
2 it's now discretionary with the Court as to  
3 whether or not she ought to be excused.

4 Same thing applies to Ms. Locklear.  
5 Ms. Locklear violated the Court's  
6 instructions regarding her comment, her  
7 conduct, in discussing this aspect at least  
8 of the case with Mr. Inman. So both  
9 jurors, based on matters before the Court,  
10 have violated the Court's instructions.

11 MR. THOMPSON: Well, I --

12 THE COURT: Yes, sir.

13 MR. THOMPSON: And the record  
14 will speak for itself as to what  
15 Ms. Coverdale's response was, but maybe it  
16 was because of your question to her that  
17 caused me some confusion as to what exactly  
18 she contended that Juror Number 9 said. I  
19 mean --

20 THE COURT: She never contended  
21 anything other than what Juror Number 9  
22 said. What she contended was, I didn't  
23 know what it meant. She agreed the  
24 statement was made. She just said, it  
25 didn't mean anything to me, I thought it

1 was joking.

2 MR. THOMPSON: The statement  
3 being, "we're going to be in deliberations  
4 a long time"?

5 THE COURT: Yes, sir.

6 MR. THOMPSON: That being the  
7 statement.

8 THE COURT: That being the  
9 statement.

10 All right. Based on the information  
11 before the Court, the Court in its  
12 discretion is going to excuse Juror Number  
13 9, Ms. -- What is her name?

14 MR. BRITT: Ellerbe.

15 THE COURT: And Juror Number 15,  
16 Ms. Locklear. Note the defendant's  
17 objection as to Juror Number 9. I take it  
18 you folks don't want to object as to Juror  
19 Number 15?

20 MR. BOWEN: Judge, I didn't get a  
21 chance to talk before you made your ruling  
22 and maybe it's too late. What I was going  
23 to propose to you is this: Although it is  
24 in your wise discretion, as to neither  
25 juror has its been shown that this has

1           either affected their ability to be fair  
2           and impartial or anybody else on the jury's  
3           ability to be fair and impartial.

4                   THE COURT:   Go back to  
5           Ms. Coverdale, if you will.

6                   (The record was read.)

7                   THE COURT:   Bottom line is she  
8           heard the statement, she agrees the  
9           statement was made.

10                   MR. BOWEN:   But in your  
11           discretion, assuming the statement was  
12           made, for example, going back to our jury  
13           selection, you were instructive to me in  
14           making me remember that words that I used  
15           like "Judge's charge" and things like that  
16           were not necessarily the words that jurors  
17           would associate with parts of the trial.  
18           We don't know if Juror Number 6 thinks  
19           deliberations or that which occurs at the  
20           end of the trial, those convocations they  
21           have all through the trial or any other  
22           time, we don't know how innocuous that  
23           statement was from the standpoint of her  
24           mind. We certainly get some idea in  
25           Ms. Coverdale, who is certainly a very

1 intelligent member of the jury, that  
2 certainly her ability to be fair is not at  
3 all compromised. And if we get rid of two  
4 jurors based on this, I got a feeling we're  
5 going to have more opportunities because  
6 we're going to set this particular  
7 standard.

8 Now, what I'm stricken with, and this  
9 hasn't been said yet, but when Mr. Britt  
10 first came in here this morning to  
11 accurately repeat what he had been told by  
12 his confidential source, that comment  
13 was -- sounded a lot more sinister than it  
14 does now, because it was accompanied with  
15 the words, something like "because he's one  
16 of the boys," supposedly referring to  
17 Mr. Green. Now, we've had a chance to talk  
18 to Mr. Inman, and evidently that was not  
19 part of the statement at all, or at least  
20 Mr. Inman is not saying that now.

21 THE COURT: Folks, that's why the  
22 statute gives the Court discretion. I'm  
23 going to exercise my discretion, I'm going  
24 to excuse Juror Number 9, excuse Juror  
25 Number 15, and we're going to move on.

1                   MR. THOMPSON: Judge, I simply  
2 say that's your discretion, but I tell you  
3 this, to me is becoming mighty -- I think  
4 it's -- not any insult particularly, but  
5 jurors laugh, they may laugh about an  
6 aspect of the case, I mean, is that --

7                   THE COURT: Mr. Thompson, you're  
8 entitled to your opinion. I'm exercising  
9 my discretion. I'm exercising --

10                  MR. THOMPSON: That means we  
11 don't have any alternates.

12                  THE COURT: 15 minus two leaves  
13 13.

14                  MR. BOWEN: Well, then, okay, if  
15 the statement is to be given that import as  
16 to Juror Number 6 and Juror Number 15, then  
17 I think we're going to move that you also  
18 remove Ms. Coverdale, because despite  
19 what -- she also said she received the  
20 statement and because if the statement had  
21 that much impact and that much power, you  
22 ought to remove her too.

23                  THE COURT: Did she make a  
24 statement?

25                  MR. BOWEN: No.

1 THE COURT: If she made a  
2 statement it would violate the Court's  
3 order. We're talking about who made the  
4 statement, who violated the court's order.

5 MR. BOWEN: What order?

6 THE COURT: You are not to talk  
7 about this case among yourselves, you are  
8 to keep an open mind about this case until  
9 all the evidence has been presented, until  
10 you've had the opportunity to hear the  
11 arguments of the attorneys and the Court's  
12 instructions on the law.

13 MR. BOWEN: Where in Juror Number  
14 6's mind does she comment on the case,  
15 simply to observe that --

16 THE COURT: She expressed,  
17 according to the statement whether it is  
18 taken one way or the other, deliberations  
19 in this case are going to take a long time,  
20 at a point when only apparently three days  
21 of evidence had been presented.

22 Folks, your objection is noted, your  
23 exception is noted for the record. Let's  
24 move. Let's go.

25 MR. BOWEN: Then our motion about

1 Ms. Coverdale --

2 THE COURT: Is denied. There's  
3 no basis.

4 This concludes the in camera  
5 proceeding. We're going back on the  
6 record.

7 (End of in camera proceeding.)

8 THE COURT: Let the record  
9 reflect that all counsel are present, the  
10 defendant is present in open court. Let  
11 the record further reflect that another  
12 recorded in camera chambers conference has  
13 just been held. The Court directs that  
14 according to my count that is the third in  
15 chambers conference on today date that is  
16 directed to be made a part of the record in  
17 this case.

18 Pursuant to matters taken up at this  
19 most recent in camera, in chambers  
20 conference, the Court, having heard in the  
21 presence of all counsel and in the presence  
22 of the defendant, matters pertaining to one  
23 or more members of the jury in this case,  
24 and allegations of -- an allegation that  
25 one or more members of the jury in this

1 case violated the Court's instructions  
2 concerning the conduct of the jury in this  
3 case, the Court in its discretion, pursuant  
4 to North Carolina General Statute, section  
5 15-A 1215, finds that based on the showing  
6 made, Juror Number 9 and Juror Number 15  
7 ought to be excused from further service in  
8 this case, and are here by discharged from  
9 further service in this case for violating  
10 the Court's orders regarding their  
11 conduct. The Court directs that the first  
12 alternate in this case, and for the record,  
13 who is that?

14 THE CLERK: That is Lee McGirt.

15 THE COURT: Mr. McGirt is to  
16 assume seat number nine. The second  
17 alternate in this case, and for the record  
18 who is that, ma'am?

19 THE CLERK: Elaine Odom.

20 THE COURT: Ms. Odum now becomes  
21 the only remaining alternate in this case.  
22 Folks, that leaves us with 12 members of  
23 the panel, one alternate having been  
24 substituted for an original member of the  
25 panel, leaves us with only Ms. Odom as an

1           alternate juror in this case. Note the  
2           defendant's objection and exception to the  
3           Court's exercise of its discretion with  
4           regard to Juror Number 9. Do you folks  
5           also want to note an exception as to Juror  
6           Number 15?

7                       MR. THOMPSON: Yes, sir.

8                       THE COURT: Okay. Note the  
9           defendant's objection and exception to the  
10          Court's exercise of its discretion as to  
11          Juror Number 15. The basis for the Court's  
12          rulings and basis for the Court's exercise  
13          of its discretion are the matters which  
14          appear of record in the third, I think it's  
15          the third, and most recent in camera  
16          proceeding, and matters presented to the  
17          Court by statements of one or more members  
18          of the jury and one or more members of the  
19          Robeson County Sheriff's Department  
20          assigned as bailiffs to this case, as well  
21          as the statements someone not a part of the  
22          jury in this case.

23                      All right. Any other matters before  
24          we -- I'm going to bring in Juror Number 9  
25          and Juror Number 15, and inform them. --

1 Yes, sir.

2 MR. THOMPSON: Your Honor, may we  
3 have just a moment before that is done?

4 THE COURT: Yes, sir.

5 MR. THOMPSON: Yes, sir. Your  
6 Honor, before that is done, we're going to  
7 request that we have -- put another matter  
8 in the record concerning the in camera  
9 proceedings, and that we be allowed to  
10 re-question Juror Number 15 in camera.

11 THE COURT: For what purpose?

12 MR. THOMPSON: Concerning a  
13 matter related to another juror as to  
14 comments or testimony that had been said,  
15 and I'll, at this point, ask that we  
16 proceed in camera with that matter or we  
17 can approach the bench concerning the  
18 particulars, but it's concerning something  
19 that was said by one of the individuals who  
20 was questioned in camera, to another juror.

21 THE COURT: Go ahead.

22 MR. THOMPSON: Yes, which we did  
23 not want to raise because it's a delicate  
24 matter. Now that you -- it doesn't affect  
25 the two jurors that you now discharged, but

1 it concerned the comment concerning conduct  
2 of yet another remaining juror.

3 THE COURT: You folks had an  
4 opportunity to question everybody who was a  
5 part of that in camera proceeding.

6 MR. THOMPSON: We did, Your  
7 Honor.

8 THE COURT: And the Court  
9 indicated to you in the in camera  
10 proceeding what the Court was going to do  
11 in the exercise of its discretion,  
12 correct?

13 MR. THOMPSON: Yes, sir.

14 THE COURT: The Court asked you  
15 if there were any additional matters before  
16 we concluded the in camera proceeding, went  
17 back on the record in open court, is that  
18 correct?

19 MR. THOMPSON: Yes, sir.

20 THE COURT: Denied.

21 MR. THOMPSON: All right, sir.

22 THE COURT: If you'll bring in  
23 Juror Number 9 and Juror Number 15.

24 MR. THOMPSON: Your Honor, I  
25 still think that we would like to make a

1 record as to what, the purpose for which  
2 we're asking to go back in, that should be  
3 made on the record.

4 THE COURT: Come on up. All  
5 counsel come on up, and if you'll come on  
6 up too, sir.

7 (Whereupon a bench conference ensued  
8 as follows.)

9 THE COURT: Let the record  
10 reflect that present at this bench  
11 conference is counsel for the State,  
12 Mr. Johnson Britt, counsel for the  
13 defendant Mr. Thompson, Mr. Bowen. Also  
14 present is the defendant, the presiding  
15 Judge, and the court reporter.

16 Yes, sir.

17 MR. THOMPSON: It was brought to  
18 our attention and it's something that I  
19 heard and I tend to agree, that Mr. Inman  
20 said in his testimony and that was with  
21 regard to --

22 THE COURT: Nobody testified  
23 because nobody was placed under oath. They  
24 all made statements.

25 MR. THOMPSON: That's true. And

1 perhaps maybe you can straighten that  
2 out -- because I made the comment that  
3 "testimony," but anyway, the statement was  
4 made by Mr. Inman that Ms. Locklear said  
5 that Ms. Coverdale had been thinking about  
6 getting off of the jury because --

7 THE COURT: Ms. Coverdale was  
8 called in.

9 MR. THOMPSON: I understand.  
10 Ms. Locklear did not make that statement,  
11 though.

12 THE COURT: Mr. Inman did.

13 THE COURT: But Ms. Coverdale was  
14 called in.

15 MR. THOMPSON: Yes.

16 THE COURT: You had an  
17 opportunity to examine her.

18 MR. THOMPSON: Exactly. That's  
19 the the reason for it. But that's the  
20 reason we requested -- because we requested  
21 Ms. Locklear to see if in fact she's going  
22 to contend that Ms. Coverdale made that  
23 statement.

24 THE COURT: Denied.

25 MR. THOMPSON: All right. Thank

1           you.   And that's for the record.

2           THE COURT:   Okay.

3                       (Bench conference concluded.)

4           THE COURT:   Mr. Horne, if you'll  
5           ask Juror Number 9 and Juror Number 15 to  
6           come in.

7                       (Two jurors come into the courtroom.)

8           THE COURT:   Ms. Ellerbe and Ms.  
9           Locklear, I've asked that you be brought  
10          into the courtroom because the Court at  
11          this time is going to excuse both of you  
12          from all further responsibility in  
13          connection with this case.   I'm going to  
14          discharge you at this time and this  
15          concludes all responsibilities that you  
16          have with regard to this matter.

17                      If both of you would leave your juror  
18          badges in your seats, you're both free to  
19          go, and the Court thanks you very much for  
20          your willingness to serve, but you're free  
21          to go at this time.

22                      (Off-the-record discussion.)

23           THE COURT:   Ma'am, what is the  
24          next Court's Exhibit Number?

25                      THE CLERK:   Number 17.

1                   THE COURT: Court is directing  
2                   that as Court's Exhibit 17, the  
3                   communication with one of the members of  
4                   the jury to the Court, which involves all  
5                   counsel and the defendant during the in  
6                   camera proceeding, be marked and made part  
7                   of the record in this case. That's to be  
8                   sealed pending further order of the Court  
9                   or pending appellate review.

10                   The court further directs that as  
11                   Court Exhibit Number 18, a document with an  
12                   attached business card provided to the  
13                   Court and made known to counsel for  
14                   defendant, provided by counsel for the  
15                   State to the Court, made known to counsel  
16                   for the defendant during in camera  
17                   proceedings, that's to be marked as Court's  
18                   Exhibit 18, made a part of the record in  
19                   this case. It is to be sealed in the same  
20                   envelope with Court's Exhibit Number 17,  
21                   pending further order of the Court or  
22                   pending appellate review.

23                   Mr. Horne, if you'll bring all members  
24                   of the jury in.

25                   (Jury in at 3:46 p.m.)

1 THE COURT: Good afternoon ladies  
2 and gentlemen.

3 Folks, let me apologize to you for the  
4 delay. As I indicated to you, there were  
5 matters of law that are now before the  
6 Court that are required to be heard in the  
7 absence of the jury, and as I earlier  
8 instructed you, please don't worry or  
9 speculated about what takes place in the  
10 courtroom during your absence.

11 Now, let me also inform you the Court  
12 has excused Juror Number 9 and Juror Number  
13 15 from all further responsibility in  
14 connection with this case.

15 Now, Mr. McGirt, you are now as the  
16 first alternate to assume seat number  
17 nine. If you'll take that seat at this  
18 time, please.

19 (Juror complies).

20 THE COURT: Ms. Odum, you are the  
21 sole remaining alternate in this case and  
22 as such, you are now Juror Number 13. If  
23 you will take that seat, please.

24 (Juror complies).

25 THE COURT: Ladies and gentlemen,

1 because there are matters still before the  
2 Court, questions of law, and because of  
3 what has just developed, I'm going to  
4 excuse you at this time. I'm going to ask  
5 that you return at 10:00 tomorrow morning.  
6 Out of an abundance of precaution, let me  
7 make that 10:30.

8 Folks, let me again emphasize to you,  
9 and I want to impress upon you how  
10 absolutely important this is. In any case,  
11 anywhere in our country, both the State of  
12 North Carolina and the defendant involved  
13 in that particular case are entitled to  
14 have their case heard by 12 members of a  
15 jury and alternates who are absolutely  
16 confident that they can be open-minded  
17 about the case, and that they can remain  
18 open-minded about the case throughout the  
19 presentation of evidence and not make any  
20 decision, come to any conclusions about the  
21 case until all the evidence in the case has  
22 been presented, and until they have had the  
23 opportunity to hear the arguments of the  
24 attorneys and the hear the Court's  
25 instructions on the law.

1           Now, in fulfilling your  
2           responsibilities as finders of the facts,  
3           as judges of the facts, it's your solemn  
4           duty and obligation to remain open-minded  
5           up until the point that you have been  
6           specifically instructed by the Court to  
7           begin deliberations in this case, not to  
8           make up your minds about any aspect of this  
9           case until you've had the opportunity  
10          during deliberations to hear the views of  
11          your fellow jurors and to determine  
12          collectively and individually what you  
13          believe the credible evidence in this case  
14          does show based on the competent and  
15          admissible evidence presented in court.

16                 And it's your duty, once you determine  
17          what the facts are, to base what you find  
18          the credible evidence to be, and again  
19          based on the competent and admissible  
20          evidence presented in the courtroom, to  
21          apply those facts to the law as I instruct  
22          you on the law, and to reach a verdict  
23          which speaks the truth in the case based on  
24          how you find the facts and the application  
25          of the law as I instruct you on the law.

1           That's a solemn duty and  
2           responsibility. It's your duty not to talk  
3           about this matter among yourselves until  
4           you have specifically been instructed to  
5           begin deliberations in this case. It's  
6           your duty not to talk about this matter  
7           with anyone else, and that includes  
8           everyone in the universe, family members or  
9           otherwise, other members of the jury or  
10          otherwise, until you have specifically been  
11          instructed to begin your deliberations in  
12          this case.

13           If anyone communicates with you about  
14          this matter or attempts to do so, your  
15          first reaction ought to be, I can't talk  
16          with you about this matter, and I have to  
17          report this encounter to the Court through  
18          one of the bailiffs assigned to this  
19          courtroom. But I will not discuss this  
20          matter with you, and I will report this to  
21          the Court through one of the bailiffs  
22          assigned to the courtroom at the earliest  
23          opportunity. It's your duty to do that.

24           If anyone says anything in your  
25          presence about this case, it's your duty to

1 do exactly the same thing. It's your duty  
2 in keeping with being open-minded about  
3 this matter not to form or express any  
4 opinions about this case until you've heard  
5 all of the evidence and until you've had  
6 the opportunity to hear the arguments of  
7 the attorneys and the Court's instructions  
8 on the law and the Court has specifically  
9 instructed you to begin deliberations in  
10 this matter.

11 It's especially important that you  
12 avoid exposure to any media accounts. I  
13 don't mean any disrespect to anybody, but  
14 in the rush to be first with the news,  
15 accuracy is often sacrificed. More  
16 importantly, matters that might be reported  
17 by way of a television news account, radio  
18 broadcast news account or any newspaper  
19 account are likely to contain references to  
20 matters which are not proper for your  
21 consideration.

22 The verdict of a jury must be based  
23 not on anything outside this courtroom but  
24 only on evidence brought out in open court,  
25 under oath and subject to cross-

1 examination.

2 And it's your duty, members of the  
3 jury, not the conduct any independent  
4 inquiry or investigation or research of any  
5 kind. Again, we come back to the same  
6 fundamental principle: The function and  
7 duty of the jury is to decide the case  
8 based on the evidence presented in court,  
9 remaining open-minded about that evidence  
10 until all of it has been presented,  
11 remaining open-minded about that evidence  
12 until they have had the opportunity to hear  
13 the lawyers' contentions as to what the  
14 lawyers believe the evidence means, and  
15 remaining open-minded until you've received  
16 the Court's instructions on the law  
17 applicable, until you've discussed the case  
18 among yourselves and had the opportunity to  
19 deliberate.

20 We very much appreciate your  
21 conscientious service and your willingness  
22 to serve. I very much appreciate it, along  
23 with the attorneys in this case and all of  
24 the parties in this case, your cooperation  
25 and your indulgence with us.

1           We're going to excuse you at this  
2 time. Please return promptly at 10:30  
3 tomorrow morning, 10:30, not 10:00, 10:30.  
4 We'll go forward at 9:00, and hopefully  
5 we'll be in a position to go forward with  
6 the jury at 10:30. We've worked up until  
7 1:00 this afternoon, broke from about 1:05  
8 until 2:00, we still have matters to  
9 resolve. But I'm going to excuse you folks  
10 at this time until tomorrow morning at  
11 10:30. You're dismissed at this time until  
12 10:30 tomorrow morning. Everyone please  
13 remain seated, you folks are free to go.

14                           (Jury out at 3:53 p.m.)

15           THE COURT: For the record, in  
16 open court, matters already been developed  
17 on the record in-chambers, but for the  
18 record, the basis of the Court's exercise  
19 of its discretion in excusing Juror Number  
20 9, Juror Number 15 is the Court's finding  
21 that both of those jurors violated the  
22 Court's instructions not to discuss the  
23 case with anyone else or any aspect of the  
24 case with anyone else, and violated the  
25 Court's instructions that they are to

1 remain open-minded about this matter until  
2 all of the evidence has been presented,  
3 until they have heard the arguments of  
4 counsel and until they have received the  
5 Court's instructions on the law.

6 To this finding and to the Court's  
7 exercise of its discretion, counsel for  
8 defendant objects and excepts as previously  
9 noted. That remains as noted in this  
10 case.

11 Also, so that the defendant's  
12 appellate rights are preserved, should  
13 those rights be exercised, the Court notes  
14 for the record that the defendant has  
15 excepted to the Court's denial of its  
16 request to further examine jurors or others  
17 called during the in camera proceeding for  
18 the purposes stated at the bench  
19 conference.

20 Is that accurate, Mr. Thompson, so  
21 that you folks have your issues preserved?

22 MR. THOMPSON: Yes.

23 THE COURT: Okay. Folks, I'm  
24 going to do the best I can to see that you  
25 get a fair trial, both of you, and if I

1 think there's an appellate issue out there,  
2 or might be, if you don't note it, I will.  
3 I'll note the exception for you so the  
4 issue is preserved and it goes up.

5 Okay. Anything further from counsel  
6 for the State?

7 MR. BRITT: No, sir.

8 THE COURT: Anything further from  
9 the defendant as relates to this regard?

10 MR. THOMPSON: No, sir.

11 THE COURT: Ready to go forward  
12 with any voir dire matters pertaining to  
13 Mr. Hales at this time?

14 MR. BOWEN: Yes.

15 THE COURT: Do you want to recall  
16 Mr. Hales or go forward with someone else  
17 at this time?

18 MR. THOMPSON: We have attorney  
19 Brady, Ed Brady here, who's been sitting  
20 here.

21 THE COURT: I apologize to him,  
22 but I'm sure he's aware based on what's  
23 developed what's going on. Do you want to  
24 call Mr. Brady now?

25 MR. THOMPSON: Yes, sir.

1 THE COURT: I'll allow you to  
2 call him. If you want to recall Mr. Hales  
3 I'll allow you to do that.

4 MR. BRITT: Just so the record is  
5 complete, there needs to be a waiver of  
6 Mr. Hales' attorney-client privilege.

7 THE COURT: As soon as he gets  
8 his hand on the Bible, we'll do that.

9 If you'll come up and be sworn,  
10 please, sir. Well, actually I'm putting  
11 the cart before the horse, I'll apologize.  
12 Mr. Hales, if you will come up, you remain  
13 under oath, sir.

14 BY THE COURT:

15 Q Mr. Hales you previously testified that  
16 sometime in 1993 and '94, and may have been 1995, you  
17 had charges pending in Cumberland County, is that  
18 accurate?

19 A Yes.

20 Q Exactly what years were involved as to your  
21 pending charges when were you first indicted from  
22 Florida to North Carolina?

23 A '95.

24 Q And all of your charges were resolved in  
25 1995?

1 A Yes.

2 Q Okay.

3 A I'm sorry, '94 rolled over into '95.

4 Q Indicted in '94?

5 A Yes.

6 Q Charges resolved in '95?

7 A Yes.

8 Q At that time you were represented by  
9 counsel?

10 A Yes.

11 Q Attorney Ed Brady of the Cumberland County  
12 Bar?

13 A Yes.

14 Q Now, you've had discussion with Mr. Brady  
15 about attorney-client privilege, have you not?

16 A Yes.

17 Q And I understand that you are willing to  
18 waive any attorney-client privilege that might apply  
19 as between you and Mr. Brady in this instance based  
20 on the matters now before the Court. Do you  
21 understand my question, first of all?

22 A Yes.

23 Q Is that accurate?

24 A Yes.

25 Q You do waive any attorney-client privilege?

1           A       Yes.

2                   THE COURT:  Any questions on  
3           behalf of the State?

4                   MR. BRITT:  No, sir.

5                   THE COURT:  Any questions on  
6           behalf of counsel for the defendant?

7                   MR. THOMPSON:  No, sir.

8                   THE COURT:  As to Mr. Hales,  
9           Mr. Hales if you'll step down for the  
10          moment, please, sir.  We appreciate you  
11          coming up.  Mr. Brady, if you'll come up.  
12          And if you'll be sworn, please, sir.

13                   THE WITNESS:  Yes, sir.

14                   EDWARD THOMAS BRADY,  
15          being first duly sworn was examined and testified as  
16          follows:

17                   DIRECT EXAMINATION

18                   THE COURT:  If you'll state your  
19          full name for the record, please, sir?

20                   THE WITNESS:  Edward Thomas  
21          Brady.

22                   THE COURT:  Spell your first and  
23          last name for the benefit of the court  
24          reporter?

25                   THE WITNESS:  E D W A R D,

1 B R A D Y.

2 THE COURT: Thank you, sir.

3 Mr. Bowen, Mr. Thompson.

4 MR. THOMPSON: Yes, sir.

5 BY MR. THOMPSON:

6 Q Mr. Brady, how are you employed sir?

7 A Attorney at law, practicing in Cumberland  
8 County, North Carolina.

9 THE COURT: We're on voir dire,  
10 jury is absent. There's a preliminary  
11 matter.

12 MR. THOMPSON: That's right.

13 BY MR. THOMPSON:

14 Q How long have you been licensed as a  
15 practicing attorney here in State of North Carolina?

16 A Initially took the Georgia Bar exam and  
17 took the North Carolina bar exam in 1978. I've been  
18 licensed and practiced in Cumberland County since  
19 1978, sir.

20 Q All right. Attorney Brady, do you know a  
21 Jimmy Henley?

22 A I do.

23 Q How long have you known Jimmy Henley?

24 A Approximately ten years.

25 BY THE COURT:

1 Q I don't mean to interrupt but it's 4:00 and  
2 I would like to expedite this. You formally  
3 represented En'Rico Hales?

4 A I did.

5 Q You employed Mr. Henley as a private  
6 investigator in connection with that?

7 A Cumberland County approved my motion  
8 employing Mr. Henley.

9 Q Pursuant to that motion and order, you  
10 employed Mr. Henley to serve as an investigator?

11 A I designated him and filed a designation  
12 with the Clerk of Superior Court, Mr. Henley worked  
13 for me on Mr. Hales' case.

14 BY MR. THOMPSON:

15 Q Those cases that you were referring to,  
16 were they drug cases that Mr. Hales had that were  
17 then pending in Cumberland County?

18 A Mr. Hales was extradited from the State of  
19 Florida by the investigative grand jurors, matters  
20 that were presented to the investigative grand injury  
21 of Cumberland County, North Carolina.

22 Q When did you employ Mr. Henley?

23 A I would have to look at the orders which I  
24 have with me.

25 Q Okay. Would you?

1 THE COURT: Can we down to the  
2 nitty-gritty.

3 MR. BRITT: This is a matter of  
4 record.

5 THE WITNESS: 22nd day of June,  
6 1995.

7 BY MR. THOMPSON:

8 Q And at the time that you employed  
9 Mr. Henley, you employed him in the capacity as a  
10 private investigator, was he -- did he have an  
11 opportunity to meet personally with Ricky Hales  
12 during that employ?

13 A Of course, yes, immediately.

14 Q Did he know where he lived, where he  
15 resided?

16 A Yes, he had extensive contact with  
17 Mr. Hales. Mr. Henley worked -- I currently have  
18 between 8 to 12 murder cases I'm working on  
19 continually. Mr. Henley worked on approximately six  
20 of them at one time.

21 Q Now, sometime in October of 1995, did you  
22 have an opportunity to hear from District Attorney  
23 Johnson Britt?

24 A Yes, I did.

25 Q Did he call you?

1 A Yes.

2 Q Meaning District Attorney Johnson Britt?

3 A I don't personally know him. I spoke to an  
4 individual who I believed to be Mr. Britt. I don't  
5 know Mr. Britt personally at all. I've never seen  
6 him in my life.

7 Q And the person identified himself as  
8 Mr. Britt?

9 A I have every reason to believe it was  
10 Johnson Britt.

11 Q And when?

12 THE COURT: Stipulated --

13 MR. BRITT: For the record,  
14 Mr. Brady was called.

15 THE COURT: All right.

16 BY MR. THOMPSON:

17 Q What was the nature of the conversation  
18 between you and Mr. Britt?

19 A My relationship with my client.

20 Q And did Mr. Britt mention anything to you  
21 about wanting to speak with your client, Ricky Hales?

22 A Either he or his agent.

23 Q Did he tell you that -- meaning Mr. Britt,  
24 that he would assure you that your client would not  
25 be charged with anything he told you with respect to

1 any matters pertaining to the case involving James  
2 Jordan?

3 A Yes, sir.

4 Q He gave you that assurance?

5 A He did.

6 Q Now, do you recall -- do you recall  
7 Attorney Brady, that that was during the time that we  
8 were having motion hearings in this case, is that  
9 right?

10 A Yes, sir, early part of October.

11 Q As a result of the conversation with  
12 Mr. Britt, did you have a conversation with Ricky  
13 Hales?

14 A I certainly did.

15 Q Did you find out from Ricky Hales that  
16 Mr. Henley, Jimmy Henley had contacted him the day  
17 before Mr. Britt contacted you?

18 A I obtained that knowledge but not initially  
19 from Mr. Hales. I obtained that knowledge from  
20 Elaine Kelly Strickland, an Assistant District  
21 Attorney who is responsible for the prosecution of  
22 Ricky Hales' case in Cumberland County. She was the  
23 designated Assistant District Attorney. She first  
24 told me about what was happening with regard to  
25 Mr. Henley and this matter here.

1 Q Did Elaine Kelly tell you that SBI Agent  
2 Kim Heffney had contacted her about talking to Ricky  
3 Hales?

4 A That's right.

5 Q And do you recall, wasn't that on the same  
6 day or -- that you had the conversation with  
7 Mr. Johnson Britt?

8 A I would have to -- approximately, within --  
9 if not that day, within a day or two.

10 Q All right. And Ms. Elaine Kelly knew that  
11 you were representing Mr. Ricky Hales and  
12 communicated, that's why she was calling you, is that  
13 right?

14 A That's correct. I believe that's the  
15 reason she contacted me, I have every reason to  
16 believe that.

17 THE COURT: Well, all right. You  
18 testified that you got the information from  
19 Ms. Kelly.

20 THE WITNESS: That SBI Agent  
21 wanted to interview my client. He was en  
22 route, coming to Cumberland County, and  
23 I --

24 THE COURT: His next question was  
25 that's what happened when she called you,

1           that's not what you testified to. Let's  
2           ask the simple question. Tell you about  
3           any conversations you had with Ms. Kelly?

4                         THE WITNESS: She advised me that  
5           SBI Agent wanted to interview my client  
6           within the next hour or two. I said that's  
7           not going to happen.

8   BY THE COURT:

9           Q       How did that conversation take place?

10          A       She called me on the telephone.

11          Q       When was that if you recall in relationship  
12          to any conversation you had with Mr. Britt?

13          A       Just prior, day or so prior, if not that  
14          day.

15          Q       Was that the extent of your conversation  
16          with Ms. Kelly?

17          A       She also advised me that my investigator  
18          was acting in the capacity I do not feel was  
19          consistent with his working on any other cases.

20          Q       Specifically, what did she tell you?

21          A       She indicated that Mr. Henley had contacted  
22          my client and made inquiries regarding this matter  
23          down here, while Mr. Henley was working for me in my  
24          case. And I had a very serious problem with that  
25          because he was privy to an awful lot of inside

1 information what was going on under the  
2 attorney-client privilege with my client, and when he  
3 contacted my client, I was of the opinion he was  
4 contacting in a law enforcement capacity not as an  
5 employee of me.

6 Q What did you base that opinion on?

7 A My conversation with Arthur Troy Binder,  
8 former chief of detectives, and what my client had  
9 told me about the questions, the nature of the  
10 questions. Mr. Henley had no business talking to my  
11 client about his involvement in this matter, because  
12 my client was in a position to reveal confidants and  
13 things that he had in his mind that he would tell  
14 Mr. Henley that he would never tell anybody else. I  
15 had a very close relationship with my client, because  
16 of the intensity of the case. It was a very highly  
17 contested case, and we had a position that we  
18 maintained, and we prevailed.

19 Q You indicated you had a conversation with  
20 Captain Binder?

21 A I know Arthur Troy Binder very well.

22 Q When did you have that conversation and  
23 where did that conversation take place?

24 A Regarding this matter here?

25 Q Yes, sir.

1           A       I initially told Arthur Troy Binder, he and  
2 I went to a homicide.

3           Q       In relationship to the conversation that  
4 you've testified to with Ms. Kelly, when did that  
5 conversation take place?

6           A       At the same time, I believe he was in  
7 Mr. Britt's office.

8           Q       So at the time that Mr. Britt called you,  
9 you spoke to Mr. Binder?

10          A       I spoke to Mr. Binder first.

11          Q       You spoke WITH Mr. Binder and then  
12 Mr. Britt or a person that identified himself as  
13 Mr. Britt?

14          A       Yes.

15          Q       Now, following that conversation with  
16 Mr. Binder and Mr. Britt, when was the conversation  
17 with Ms. Kelly? Did that precede or come after the  
18 conversation with --

19          A       The initial conversation was on the  
20 telephone and I subsequently went to her office and  
21 spent some time talking to her.

22          Q       So you had the conversation with  
23 Mr. Binder, Mr. Britt, then after that conversation  
24 you had A conversation with Ms. Kelly?

25          A       In person, the first conversation when she

1 alerted me on the telephone, I then went to the  
2 Cumberland County courthouse into her office, and we  
3 sat down and we discussed this matter.

4 THE COURT: Mr. Thompson.

5 BY MR. THOMPSON:

6 Q Now, Attorney Brady, you indicated that  
7 Mr. Britt assured you that your client, Ricky Hales  
8 would not be charged with anything that he told you.  
9 Now, did you communicate what Mr. Britt said to you  
10 to Ricky Hales that he had given you that assurance?

11 A Yes.

12 Q And?

13 THE COURT: What assurances are  
14 we talking about?

15 BY MR. THOMPSON:

16 Q What assurance are we taking about,  
17 Attorney Brady?

18 A I related what Mr. Britt told me, and I  
19 said, you know, honestly, I don't know Mr. Britt, I  
20 made certain inquiries about Mr. Britt and I told my  
21 client not to make any statements unless I was there.

22 Q What did specifically did Mr. Britt assure  
23 you?

24 THE COURT: That's what we need  
25 to know?

1                   THE WITNESS: That my client  
2 would not be charged with anything that  
3 happened if he had been involved in this  
4 matter. He wanted to -- well, I can't say  
5 what he wanted in his mind. I was of the  
6 opinion that he wanted to develop him as a  
7 State's witness.

8                   THE COURT: Anything further?

9 BY MR. THOMPSON:

10           Q       When you say "this matter," you're talking  
11 about this case that we're now in?

12           A       This case here.

13 BY THE COURT:

14           Q       Bottom line. Mr. Brady, based on your  
15 advice, your client, Mr. Hales, has never talked to  
16 Mr. Britt?

17           A       That's my understanding.

18           Q       Bottom line. Based on your advice,  
19 Mr. Hales did not have any further conversation with  
20 Mr. Henley after you learned about what had occurred?

21           A       I terminated Mr. Henley's services.

22           Q       That's what I'm asking, after that --

23           A       As far as I know, that was the end of the  
24 contact between Mr. Hales and Mr. Henley.

25           Q       Bottom line is, your client was never

1 charged with any offense related to these incidents  
2 and by these, I'm referring to the matters now before  
3 the Court in either Cumberland County or Robeson  
4 County, is that correct?

5 A That's correct, sir, that's correct.

6 THE COURT: Anything further?

7 BY MR. THOMPSON:

8 Q Do you recall Mr. Henley taking Mr. Hales  
9 around or assisting him in participating in the DARE  
10 program?

11 A Yes, sir, I think he did it a number of  
12 occasions. Mr. Henley is very big in the anti drug  
13 program. He was using Mr. Hales, which was in  
14 Mr. Hales' benefit, to show his changing his  
15 lifestyle and witnessing to these young boys about  
16 the use of drugs was very detrimental to their  
17 lives. Mr. Hales was facing many, many, many years  
18 in possible imprisonment. And he could testify how  
19 drugs had affected his life. I thought he was a very  
20 good witness.

21 THE COURT: Mr. Thompson, you  
22 might want to have a talk about that  
23 later. Go ahead.

24 BY MR. THOMPSON:

25 Q I believe you had the conversation with

1 Mr. Binder, with Mr. Johnson Britt, and Assistant  
2 D.A. Kelly on October the 6th or 7th of '95, is that  
3 right?

4 A Approximately.

5 Q And it was on October the 9th that you  
6 terminated Mr. Henley with regard to his private  
7 investigator services, because of the reasons you've  
8 just testified to?

9 A He came to my office not knowing my  
10 intentions. I prepared a memorandum and I handed him  
11 a memorandum, you know, one sentence, and I said, I'm  
12 very sorry, but you know, that's the end of our  
13 professional relationship.

14 Q Is there any question in your mind,  
15 Attorney Brady, that Mr. -- SBI -- excuse me -- that  
16 Mr. Jimmy Henley or Mr. Art Binder knew where to find  
17 Mr. Haley back in the year of 1995?

18 MR. BRITT: Objection.

19 THE COURT: Hales.

20 BY MR. THOMPSON:

21 Q I mean Mr. Hales?

22 A I don't know about Arthur Troy Binder, he  
23 had been the chief of detectives, he was no longer  
24 with the Cumberland County Sheriff's Department.  
25 Mr. Henley did, there's no question in my mind he

1 would know, absolutely no question in my mind at  
2 all.

3 THE COURT: Anything further,  
4 sir?

5 MR. THOMPSON: That's all.

6 BY THE COURT:

7 Q Mr. Brady, during the time that you  
8 represented Mr. Hales, you represented him at the  
9 time his pleas of guilty were entered in Cumberland  
10 County for the charges pending there?

11 A Yes, sir.

12 Q You were a party to the plea arrangement  
13 that was a part of his plea of guilty?

14 A Yes, sir.

15 Q Is there anything in that plea arrangement  
16 entered into by Mr. Hales and the State of North  
17 Carolina specifically through the 12th Judicial  
18 Prosecutorial District that related to his testifying  
19 in this case in exchange for any concessions, charge  
20 reductions or any other matters as to that plea  
21 arrangement?

22 A Absolutely not to my knowledge whatsoever,  
23 Your Honor. Totally two separate cases. Absolutely  
24 separate.

25 THE COURT: Mr. Britt, anything

1 further?

2 MR. BRITT: Yes, sir.

3 BY MR. BRITT:

4 Q Mr. Brady, just so the record is complete.  
5 Mr. Hales pled guilty on June 29th, 1995 to the cases  
6 that you represented him in?

7 A If that's what the record reflects.

8 Q I don't have the records in front of me.  
9 He was then sentenced, or judgment entered on October  
10 16th, 1995?

11 A So he could render substantial assistance.

12 Q And the plea agreement that had been  
13 entered into was attached to the transcript of plea,  
14 is that correct?

15 A I would believe so.

16 THE COURT: Show it to him so he  
17 can identify it and state for the record  
18 whether that comprises the entire  
19 transcript of the plea arrangement.

20 MR. BRITT: It's my belief that  
21 the agreement is the sealed document in the  
22 Court file.

23 THE COURT: Yes, sir.

24 Ma'am? I didn't know if you had a  
25 copy of the transcript.

1                   MR. BRITT: I have a copy of the  
2 transcript.

3                   THE COURT: That needs to be  
4 shown to him first.

5                   MR. BRITT: Yes, sir.

6                   THE COURT: He can identify the  
7 transcript, yes, sir. So that we can have  
8 continuity, for purposes of the voir dire  
9 hearing, I believe the next number is  
10 Court's Exhibit 19, make it Court's Exhibit  
11 19.

12 BY MR. BRITT:

13                 Q     Mr. Brady, for the purposes of  
14 identification, I'm going to show you what has been  
15 marked as Court 19, ask you to examine it and tell me  
16 if your signature appears on that document?

17                 A     It does.

18                 Q     And this is a copy of the transcript of  
19 plea certified by the Clerk of Superior Court of  
20 Cumberland County as evidenced by the stamp?

21                 A     Yes, sir.

22                 Q     Transcript of the plea used in the case  
23 involving Mr. Hales?

24                 A     I need to look at the --

25                 Q     Yes, sir.

1           A       This is the transcript of the plea.

2           Q       And you're referring to the transcript of  
3 plea, specifically paragraph number 14, in regard to  
4 any agreement that had been entered into in regard to  
5 the plea, is there not the language entitled "The  
6 entire agreement between the defendant and State of  
7 North Carolina" --

8           A       Yes, sir.

9           Q       Is it your recall that State's Exhibit B  
10 was sealed pursuant to an order by Superior Court  
11 Judge Cory Brewer?

12          A       I have to look at it. I don't see Exhibit  
13 B.

14                   THE COURT: The record, the Court  
15 is handing to Mr. Britt, counsel for the  
16 State, what has previously been marked as  
17 Court Exhibit 16 as referred to in the  
18 record.

19                   MR. BRITT: Yes, sir. With the  
20 Court's permission, may I open it?

21                   THE COURT: Yes, sir.

22 BY MR. BRITT:

23          Q       I'm going to open --

24                   THE COURT: If you'll hand those  
25 contents, because they are sealed, you have

1 not been exposed to them. Mr. Brady, if  
2 you'll open Court's Exhibit 16, remove the  
3 contents in there, please, sir.

4 THE WITNESS: I reviewed the  
5 document, Your Honor.

6 BY THE COURT:

7 Q Do you recognize what has previously been  
8 marked as Court's Exhibit 16?

9 A Yes, Your Honor.

10 Q Without going into any specifics, what do  
11 you recognize it to be?

12 A Well, it's a memorandum agreement, fairly  
13 standard memorandum agreement, reflects my  
14 understanding from Ms. Kelly with regards to  
15 Mr. Hales. Mr. Hales has signed each page. I make  
16 all my clients sign each page so there can be no  
17 alterations or changing the page. It has my  
18 signature on the last page. And it has my assistant  
19 at that time, Lisa Cartein's signature, and she also  
20 signed the last page. It has Ms. Kelly's signature  
21 and I'm familiar with her signature.

22 Q Do the contents of what is contained in  
23 State's Exhibit -- Court's Exhibit 16 reflect the  
24 complete and entire plea arrangement and any  
25 memorandum of agreement between the State of North

1 Carolina and your client Mr. En'Rico Hales?

2 A Yes, sir.

3 THE COURT: Mr. Britt, anything  
4 further? I direct that be marked as 16-A. If you'll  
5 hand that back, please, sir. The record is complete  
6 in that regard. If you'll mark that and place the  
7 contents back in it.

8 THE COURT: Anything further,  
9 Mr. Britt?

10 BY MR. BRITT:

11 Q Yes, sir. Mr. Brady, as a result of your  
12 conversation with either Mr. Binder or Mr. Henley,  
13 you were aware that there was no evidence to suggest  
14 that Mr. Hales had engaged in any type of criminal  
15 activity here in Robeson County?

16 A Not that I'm aware of.

17 Q And based upon information that was  
18 provided to you by either Mr. Binder or Mr. Henley,  
19 there was no information to suggest that Mr. Hales  
20 engaged in any criminal activity in Cumberland County  
21 as it related to the murder of James Jordan?

22 A As a practicing attorney with the case load  
23 that I have, I'm just like anybody else, my knowledge  
24 of this matter here is what I receive in the media.  
25 I'm not really privy to an awful lot of information

1 regarding this case. I was interested in  
2 representing my client and his drug involvement case,  
3 so I don't have any comprehensive knowledge of this  
4 case at all, frankly. I just know bits and  
5 pieces.

6 THE COURT: Does that translate  
7 into I don't know what was out there, and  
8 he is my client and I was going to make  
9 sure that if I could I was going to protect  
10 him from anything.

11 THE WITNESS: My entire attitude  
12 is, any client never makes a statement  
13 unless he has a grant of immunity. That's  
14 what I told Mr. Binder, I believe I told  
15 Mr. Britt and I --

16 THE COURT: So you didn't know  
17 but you weren't taking any chances?

18 THE WITNESS: Never make a  
19 statement.

20 THE COURT: All right.

21 BY MR. BRITT:

22 Q As a result of your conversation with  
23 Mr. Binder and myself, you were never contacted again  
24 either by myself or Mr. Binder in regard to  
25 Mr. Hales?

1           A       No, sir, never contacted me again.

2           Q       And specifically, you instructed me not to  
3 talk to your client without you being present?

4           A       Yes, sir, and -- yes, sir.

5           Q       And your relationship with Mr. Hales  
6 through his active representation terminated once the  
7 matters in Cumberland County had been completed, is  
8 that correct?

9           A       Up until about two or three days ago, I got  
10 a call from his mother, indicating he had been be  
11 called down here and indicating he had been contacted  
12 by an SBI Agent.

13          Q       And at no time in your representation of  
14 Mr. Hales, did his potential as a witness in this  
15 case become a part of any discussions that you had  
16 with Ms. Kelly in the District Attorney's office in  
17 Cumberland County, is that correct?

18          A       That's correct. I think that's the initial  
19 reason Ms. Kelly contacted me, she needed to keep  
20 these matters separate, and I concurred with her, and  
21 that's what we did, we kept them absolutely  
22 separated.

23                   MR. BRITT: I don't have any  
24 other questions.

25                   THE COURT: Anything further?

1 MR. THOMPSON: Yes.

2 BY MR. THOMPSON:

3 Q Attorney Brady, you hired Mr. Henley back  
4 in January of 1995 as a private investigator?

5 A Yes, sir.

6 Q The case that Mr. Hales pled guilty in the  
7 case in which you were representing, or the cases,  
8 those matters were PJC'd?

9 A Yes, sir.

10 Q And they were PJC'd until August, I believe  
11 the 7th?

12 A What have the file reflects.

13 Q In any event, they were not entirely, were  
14 not disposed of until October the 16th of 1995, is  
15 that correct?

16 A If that's what the file reflects.

17 Q All right. And that was after you had the  
18 conversation with Mr. Britt which would have been on  
19 or about the 6th of October?

20 A Yes, sir, that was the approximate time we  
21 had that conversation.

22 Q And it was also after the time that you had  
23 terminated the services of Mr. Henley?

24 A I didn't terminate Mr. Henley's service  
25 until after I had the conversation with, you know,

1 Mr. Britt.

2 Q And that was on October the 9th?

3 A October the 9th.

4 Q Which is before October the 16th, okay.

5 Now, you don't know what if any conversations  
6 Mr. Henley had with Assistant District Attorney Kelly  
7 after you terminated him, do you?

8 A Say that again, please.

9 Q You don't know from your own personal  
10 knowledge whether Mr. Henley had any conversations  
11 with Ms. Elaine Kelly, the Assistant District  
12 Attorney in Cumberland County after you terminated  
13 Mr. Henley, do you?

14 A No, they were friends, they knew each other  
15 professionally for a number of years. I have no  
16 privy to any interaction between those people.

17 Q You don't know whether they talked about  
18 this matter or not, do you?

19 A I have no knowledge, sir.

20 THE COURT: You do know at the  
21 time the plea of guilty was entered there  
22 was no part of a plea arrangement that you  
23 negotiated on behalf of Mr. Hales and the  
24 State of North Carolina through Ms. Kelly  
25 that involved this case, is that correct?

1 THE WITNESS: Hundred eighty  
2 degrees difference, nothing whatsoever to  
3 do at all, that's what I was trying to do,  
4 keep them separate.

5 BY MR. THOMPSON:

6 Q And you do know that you communicated to  
7 Mr. Hales that Mr. Britt nevertheless had assured you  
8 that he would not be charged with anything that he  
9 had to tell them about this case, and you told  
10 Mr. Hales that?

11 A I said that's what Mr. Britt said to me,  
12 but I did not know Mr. Britt. I went back to  
13 Ms. Kelly and said, what do you know about  
14 Mr. Britt? I went to see their number one assistant  
15 John Dickson and made inquiries about Mr. Britt and I  
16 was advised that Mr. Britt is a very honorable man, I  
17 could trust him.

18 Q Three days ago you realized that Mr. Hales  
19 had been subpoenaed maybe to testify in this case?

20 A I understand he was initially contacted by  
21 an SBI Agent and served with a subpoena, yes.

22 THE COURT: Anything further,  
23 folks?

24 MR. THOMPSON: That's all.

25 THE COURT: Mr. Britt.

1 MR. BRITT: No other questions.

2 THE COURT: May Mr. Brady be  
3 released.

4 MR. THOMPSON: Yes.

5 THE COURT: Next witness?

6 MR. BOWEN: We would like to have  
7 Mr. Hales back up.

8 THE COURT: Mr. Hales, if you  
9 would come up, please. You remain under  
10 oath, sir.

11 THE COURT: Mr. Bowen, Mr.  
12 Thompson.

13 BY MR. BOWEN:

14 Q Mr. Hales, you were convicted of possession  
15 with intent to sell or deliver cocaine arising out of  
16 a January 19th, 1993 transaction, were you not, where  
17 you were alleged to have sold cocaine to Donald  
18 Darnell English?

19 A I'm not believing -- not in January.

20 Q Didn't happen in January of 1993?

21 A No, because I got shot in May of '93.

22 Q All right. Now, were you also convicted of  
23 possession with intent to sell or deliver and sale or  
24 delivery of cocaine arising out of a transaction to  
25 Investigator G. A. Williams of the Fayetteville City

1 Police Department on 28 January, 1993?

2 A The date is not correct, but yes.

3 Q Sir?

4 A The date is not correct.

5 Q Now, did you also plead guilty to  
6 another --

7 THE COURT: Mr. Bowen, do the  
8 specifics of the matters that he pled to have any  
9 bearing on the matters before us?

10 MR. BOWEN: Yes, sir, because it  
11 has to do with the date that he was shot  
12 and has to do with the assertions that he  
13 made on an indigency, affidavit of  
14 indigency.

15 THE WITNESS: I can't remember  
16 all that.

17 MR. BRITT: What's that got to do  
18 with allegations that there's a connection  
19 between his plea in this case?

20 THE COURT: Mr. Bowen? I'm  
21 asking, what does that have to do, sir.

22 MR. BOWEN: The specifics, I  
23 would like to establish the basis, because  
24 he's now quarrelling with the Court records  
25 even though he's admitted the conviction.

1 THE COURT: I apologize, it  
2 alludes me, it escapes me because I thought  
3 we were here for the purpose of giving you  
4 the opportunity to try to establish that  
5 there was some arrangements, some  
6 concession, some charge reduction, some  
7 plea negotiating involving the State of  
8 North Carolina in connection with either  
9 through the District Attorney's office in  
10 Cumberland County or through the District  
11 Attorney's office in Robeson County and his  
12 testimony in this case.

13 MR. BOWEN: This is all true,  
14 except that I understood from Your Honor  
15 that when we were out of the presence of  
16 the jury this was time to see on matters  
17 that were very sensitive such as.

18 THE COURT: I appreciate that.

19 MR. BOWEN: -- Cross-examination  
20 about records, and I --

21 THE COURT: So are we proceeding  
22 under 609 now?

23 MR. BOWEN: And 11.

24 THE COURT: How are we proceeding  
25 under 611?

1                   MR. BOWEN: Well, I'm going to  
2 drop just exactly what you were talking  
3 about a moment ago, if you would like me to  
4 fast forward then I certainly can.

5                   THE COURT: I'm just interested.  
6 How are we -- where are we going under 611.

7                   MR. BOWEN: We're going to show  
8 that there was in this man's mind a belief  
9 that there was immunity if he would come  
10 and testify, based upon prior statements  
11 that have been made by his attorney, and  
12 what he was contacted --

13                   THE COURT: Based upon the  
14 testimony Mr. Brady who just testified?

15                   MR. BOWEN: It's going to be a  
16 matter of what's going to be in this  
17 witness's mind. Your Honor, may we  
18 proceed? I'll be glad to fast forward to  
19 that particular area.

20                   THE COURT: Yes, sir, but how is  
21 whatever is in his mind or may have been in  
22 his mind relevant to the case?

23                   MR. BOWEN: If he thinks he's  
24 testifying as a result of immunity  
25 guarantee then that opens up some other

1 areas of inquiry.

2 THE COURT: If you're not charged  
3 with anything, how can you be given  
4 immunity from anything?

5 MR. BOWEN: Well, he was charged.

6 THE COURT: No, we're talking  
7 about here.

8 MR. BOWEN: Here's where he is.  
9 He's on -- right now, as I understand the  
10 records, he's on probation, not only just  
11 probation, but on intensive probation.  
12 Now --

13 THE COURT: I apologize, I don't  
14 want you to have to tip your hand with  
15 regard to the witness. That's not my  
16 intent. I was just trying to figure out  
17 where we were going, and if we could take a  
18 more direct route.

19 MR. BOWEN: I told you I would be  
20 happy to fast forward to this area and then  
21 drop back, but I wanted an opportunity to  
22 develop some specific things about his  
23 record.

24 THE COURT: Two words. You may.

25 MR. BOWEN: Thank you.

1 BY MR. BOWEN:

2 Q Let me go forward. Mr. Hales, was there a  
3 time when you had a conversation with your attorney,  
4 Mr. Brady, about a request by the District Attorney,  
5 Mr. Johnson Britt, to speak to Mr. Britt or an  
6 officer of the law down here in Robeson County about  
7 the Green and Demery case?

8 A No, sir.

9 Q You never had a conversation?

10 A No, sir.

11 Q Have you ever been told by anybody that  
12 Mr. Britt extended to you the opportunity to talk to  
13 them if -- as long as you understood that there would  
14 be no charges as to you arising out of matters  
15 concerning the Jordan car or the Jordan case?

16 A No, sir.

17 Q That never happened?

18 A No, sir.

19 Q Now, do you know why it was that your case  
20 was continued right up until October of 1995 until  
21 you were sentenced?

22 A Big case.

23 Q Yes, sir. Now, by October of 1995 when you  
24 were finally sentenced, you had by then talked to  
25 Mr. Henley about this -- shall we call it the Jordan

1 case, is that correct?

2 A Yes, around four or five months ago.

3 Q And you had talked to Mr. Heffney about the  
4 Jordan case prior to the time that you were finally  
5 sentenced in your own drug cases, hasn't you?

6 A No, sir.

7 Q When did you ever talk to Mr. Heffney, if  
8 you did?

9 A Mr. -- January the 11th, '96.

10 Q Mr. Henley talked to you --

11 THE COURT: Same thing he  
12 testified to yesterday.

13 THE WITNESS: Yes, sir.

14 THE COURT: Thursday of last week?

15 A Yes, sir.

16 Q Hasn't changed any?

17 A No, sir.

18 BY MR. BOWEN:

19 Q Mr. Henley talked to you from time to time,  
20 as he was your mentor and companion in the DARE  
21 program, is that correct?

22 A Yes.

23 Q At that time he was serving as an  
24 investigator for Mr. Brady, is that right?

25 A Yes.

1 Q On your case?

2 A Yes, he sure was.

3 Q While he was serving as an investigator for  
4 Mr. Brady on your case, he talked to you also about  
5 matters concerning the Jordan case --

6 A That's not true.

7 Q Never did?

8 A No, sir.

9 Q Now, were you expecting a call from  
10 Mr. Heffney or were you expecting a subpoena in this  
11 case when it came?

12 A No, sir.

13 Q And when you came down here, you didn't  
14 know what you were going to be talking about?

15 A After I got my subpoena, yes.

16 Q All right. Did you contact Mr. Brady or  
17 any other lawyer after you got the subpoena?

18 A No, I contacted my mother, my mother talked  
19 to --

20 Q Your mother what?

21 A I contacted my mother, and my mother had  
22 talked to Mr. Kim.

23 Q Mr. Who?

24 A Mr. Kim.

25 THE COURT: Mr. Heffney. Kim

1           Heffney.

2       BY MR. BOWEN:

3           Q       Did you know when you came down here after  
4       you talked to your mother, if you talked you were not  
5       going to be charged with anything in this matter?

6           A       No, I didn't know that.

7           Q       Did anybody talk to you at all about any of  
8       that?

9           A       No, sir.

10          Q       Now, you are presently under probation, is  
11       that right?

12          A       Yes, sir.

13          Q       And as a result of the 180 years that you  
14       could have gotten under your drug cases, you got no  
15       active time at all except for the 23 days that you  
16       spent in Florida in prison before extradition, that's  
17       correct?

18          A       That's correct, sir.

19          Q       In addition to that, you were required to  
20       do 72 hours of community services?

21          A       Yes, sir.

22          Q       And pay attorney's fees and costs of less  
23       than \$5,000, is that correct?

24          A       Yes, sir.

25          Q       And you are under intensive probation right

1 now, aren't you?

2 A Yes, sir.

3 Q You are not even allowed to drink a beer at  
4 this point without violating your intensive  
5 probation?

6 A Yes, sir.

7 Q And you are afraid of the probation  
8 officers and the law enforcement officers that now  
9 have control of your case, aren't you?

10 A Yes, sir.

11 Q And you're afraid that if you say or do  
12 anything to displease these persons that you might  
13 see your intensive probation revoked and you would  
14 have to serve the twenty years that Judge Cory Brewer  
15 or whoever gave you?

16 MR. BRITT: Object to the form of  
17 the question.

18 THE WITNESS: Anybody on  
19 probation --

20 MR. BRITT: Object to the form of  
21 the question, it assumes that the probation  
22 officer can activate his sentence.

23 THE COURT: I'm going to let it  
24 go.

25 BY MR. BOWEN:

1           Q       You're afraid that if you slip up in any  
2 way your probation officer would report you back to  
3 the Court, is that right?

4           A       It's up to him.

5           Q       So when Officer Heffney contacted you, you  
6 were interested in helping law enforcement all you  
7 could in this particular case, just as you helped  
8 them in the Cumberland County case, is that correct?

9           A       No, sir, not right then, no, sir.

10          Q       Are you -- are you saying that you did not  
11 help the Cumberland County law enforcement  
12 authorities arising out of your case?

13                   MR. BRITT:  Objection.

14                   THE COURT:  Didn't we discuss  
15 this in chambers about the provisions of  
16 15-A 903-A-2, didn't we discuss the need  
17 for good faith, didn't we discuss the need  
18 for exercise of good judgment?

19                   MR. BOWEN:  Yes, sir.

20                   THE COURT:  Didn't we discuss the  
21 professional responsibility of a lawyer,  
22 that if a lawyer couldn't make a link or a  
23 nexus, not to subject somebody to that,  
24 didn't we do all that?

25                   MR. BOWEN:  Yes, sir, we did, I'm

1 not about to bring forth any names or any  
2 specific identification of anyone.

3 THE COURT: Yes, sir.

4 Sustained. Ask another question.

5 BY MR. BOWEN:

6 Q Let me ask you something. Did you sign  
7 what is called a transcript of plea, sir?

8 A Excuse me?

9 Q Did you sign a document that contained the  
10 requests that Judge Brewer asked you in Cumberland  
11 County Superior Court?

12 MR. BRITT: Objection.

13 THE COURT: Do you recall signing  
14 a document in court, sir?

15 THE WITNESS: No, sir.

16 THE COURT: Show him the  
17 document.

18 MR. BOWEN: May I approach him,  
19 Your Honor.

20 THE COURT: Yes, sir.

21 MR. BRITT: Mr. Bowen, you can  
22 use this, this is the one that's been  
23 marked as Court's 19.

24 BY MR. BOWEN:

25 Q You have previously identified Court's

1 Exhibit Number 19, have you, sir?

2 A Yes, sir.

3 Q What does that say?

4 A Superior Court Division.

5 Q Well, what does the big word there say,  
6 transcript of plea?

7 A Yes.

8 Q And this is a -- this is a document that  
9 has the questions and the answers that you gave to  
10 Superior Court Judge Cory Brewer, is that correct?

11 A I didn't give them to him, my lawyer did.

12 Q All right.

13 THE COURT: Mr. Bowen, for the  
14 record, some lawyers have a copy of the  
15 document in front of the defendant.

16 MR. BOWEN: Yes.

17 THE COURT: Usually the original  
18 of the document is in the hands of the  
19 judge. The judge asks the question, the  
20 defendant gives the answer, the defendant  
21 may or may not see the document in its  
22 entirety prior to the time it's submitted  
23 to him for signature.

24 MR. BOWEN: Yes, sir.

25 THE COURT: Your purpose is, did

1           you sign it?

2                   MR. BOWEN:   Yes, sir.

3                   THE COURT:   Let's get to that,  
4           show him a signature on it.

5                   MR. BOWEN:   Yes, sir.

6 BY MR. BOWEN:

7           Q       Did you give these answers to Judge Brewer  
8           as they are reflected here?

9           A       Gave them to my lawyer.

10          Q       And he in turn gave the answers to the  
11       Court?

12          A       I assume so.

13          Q       Well, did there come a time when you went  
14       over this paper to see if it was correct, and did  
15       there come a time when you signed it?

16          A       Yes.

17          Q       And as a result of this plea bargain, you  
18       were facing up to 180 years, is that correct?

19          A       Correct.

20          Q       You were facing 35 years mandatory minimum  
21       sentence, is that correct?

22          A       Correct.

23          Q       And you were facing a minimum of a \$250,000  
24       fine?

25          A       Correct.

1 Q And whose initials are these above the  
2 designation 35 years and \$250,000 fine?

3 A Mine.

4 Q And above your initials, does Exhibit A  
5 contain a list of all of the charges to which you  
6 were pleading guilty?

7 A Yes.

8 Q Comprising the 180 years worth of matters,  
9 is that right?

10 A Yes.

11 Q Is that what that is? Now, after the time  
12 that you entered this plea of guilty, you never  
13 served a day?

14 A Other than time served.

15 THE COURT: You need to refer to  
16 the document, again, sir.

17 MR. BOWEN: Yeah, I'm finished  
18 with it, I believe, Your Honor, and I'm  
19 about to sit.

20 BY MR. BOWEN:

21 Q Court's Exhibit Number 19 indicates that  
22 you provided a thing called substantial assistance,  
23 is that true?

24 MR. BRITT: Objection.

25 THE COURT: Sustained, unless you

1           want to be heard as to a connection to this  
2           case.

3   BY MR. BOWEN:

4           Q       Now, you were, as a matter of practice,  
5   used to --

6                   THE COURT:   I take it you don't  
7   want to be heard as to a connection on this  
8   case, is that accurate?  As to that last  
9   question?

10                  MR. BOWEN:   I'm going to ask a  
11   question which I hope will make it obvious,  
12   but I'll be glad to be heard.

13                  THE COURT:   Let me hear your next  
14   question, that may save us time.

15                  MR. BOWEN:   Yes, sir.

16   BY MR. BOWEN:

17           Q       Along about toward the end of 1995, you  
18   were accustomed to aiding and assisting law  
19   enforcement officers in preparing testimony for  
20   trials, were you not?

21                  MR. BRITT:   Objection.

22                  THE COURT:   Sustained to the  
23   form.

24   BY MR. BOWEN:

25           Q       You had on a number of occasions spoken

1 to --

2 THE COURT: Let's make it  
3 simple. You understood that you had  
4 obligations that were your responsibility  
5 as part of the plea arrangement you entered  
6 into?

7 THE WITNESS: Yes.

8 THE COURT: Those obligations  
9 pertained to the charges pending in  
10 Cumberland County?

11 THE WITNESS: Yes.

12 THE COURT: You fulfilled those  
13 obligations?

14 THE WITNESS: Yes, sir.

15 THE COURT: Anything further?

16 MR. BOWEN: All right.

17 BY MR. BOWEN:

18 Q When a law enforcement officer called you  
19 with respect to this case, did you feel that you had  
20 a choice in whether or not you cooperated in this  
21 matter?

22 MR. BRITT: Objection.

23 THE WITNESS: Nobody called me.

24 THE COURT: Well --

25 BY MR. BOWEN:

1 Q When you received a subpoena, did you feel  
2 that you had any --

3 THE COURT: There's an  
4 objection. I need to rule. If you'll bear  
5 with me. What's the basis of your  
6 objection.

7 MR. BRITT: Let me go back to the  
8 question. As to the form, whether you feel  
9 he had a choice in whether or not to  
10 cooperate in the matter.

11 THE COURT: I'm going to let it  
12 go.

13 Did you think that the request of  
14 officers here in Robeson County -- well,  
15 back up. Did you feel that the subpoena  
16 that was issued requiring your presence  
17 here in Robeson County in any way had  
18 anything to do with your plea arrangement  
19 in the Cumberland County matters?

20 THE WITNESS: No, sir.

21 THE COURT: Anything further?

22 BY MR. BOWEN:

23 Q Officer Henley, because he had talked to  
24 you earlier about this case, and because he had  
25 worked with you on some matters, did you feel that

1 you owed him cooperation in this regard?

2 A No, sir.

3 Q And the reason that you did not contact  
4 your lawyer or anybody else about coming over here  
5 and talking or testifying in the Robeson County case,  
6 was because the previous assurance of Mr. Britt that  
7 you would not be charged with anything concerning the  
8 Jordan matter, is that correct?

9 A I don't recall that.

10 THE COURT: He said he didn't  
11 recall that. Anything further?

12 BY MR. BOWEN:

13 Q Who is Dorothy Carter Johnson?

14 MR. BRITT: Objection.

15 THE COURT: Basis?

16 MR. BRITT: It's a matter  
17 involved in that sealed document, I  
18 believe.

19 THE COURT: What is the basis of  
20 the question.

21 MR. BOWEN: Basis is the fact  
22 that we have learned that she is the mother  
23 of the witness Jovan Carter who just  
24 testified.

25 THE COURT: What's that got to do

1 with this witness?

2 MR. BOWEN: Now, okay --

3 THE COURT: No, because folks,  
4 frankly, some of the reasoning I'm hearing  
5 is extremely circuitous and logic would  
6 encompass a jump across the Grand Canyon.

7 MR. BOWEN: That name is in the  
8 materials that are in his file.

9 THE COURT: What's that got to do  
10 with this witness in this case?

11 MR. BOWEN: For one thing, the  
12 fact that we're beginning to get the  
13 intimation that Carter and this man and  
14 Ms. Johnson are kin, they live out there in  
15 the same area together, and --

16 THE COURT: So what? So what?

17 MR. BOWEN: Well, you're asking  
18 me to tell you, at the same time you're  
19 asking me to stay away from --

20 THE COURT: Well, I recognize  
21 that that may be a dangerous question in  
22 this case. Let me hold off on that. I'm  
23 going to let you ask your last question.  
24 Do you know Dorothy Clark Johnson or  
25 Johnson Clark, do you know her?

1 THE WITNESS: Yes.

2 THE COURT: Yes, sir. Follow  
3 up? I find it a little bit amusing, folks,  
4 that you folks are concerned about the  
5 discussion that we had given some of the  
6 questions that have already been asked.

7 MR. BOWEN: If Your Honor please,  
8 Mr. Henley is here, we see him in the  
9 audience, apparently arrived, I don't know  
10 exactly when.

11 THE COURT: He's been here since  
12 we came back.

13 MR. BOWEN: We need an  
14 opportunity to see him. I don't know that.

15 THE COURT: I do.

16 MR. BOWEN: Well, Judge, I'm just  
17 telling you I don't know that.

18 THE COURT: What does that mean  
19 with regard to that witness.

20 MR. BOWEN: I'm through with this  
21 witness. I presume I'll have some  
22 questions, I'm just telling the Court that  
23 we would like -- well, let's just see how  
24 long that goes.

25 THE COURT: Do you have any

1 additional questions for this witness?

2 MR. BOWEN: No.

3 THE COURT: Mr. Britt?

4 MR. BRITT: No, sir.

5 THE COURT: Come down, Mr. Hales,  
6 please. Any additional showing for the  
7 defendant?

8 MR. BOWEN: None at this time.

9 We would like the opportunity to talk with  
10 Mr. Henley. We've not been able to talk to  
11 him not because he hasn't been there but  
12 because we have been busy.

13 THE COURT: Folks, as I have done  
14 in the past, within reason, I'll give you  
15 the opportunity to talk with him. It's 15  
16 minutes until 5. I have specifically told  
17 the jury to come back at 10:30. We'll  
18 reconvene tomorrow at 9:00 a.m. I expect  
19 all counsel to be ready to go forward at  
20 9:00 a.m. tomorrow. Do you anticipate  
21 calling any additional witnesses other than  
22 Mr. Henley in connection with this?

23 MR. BOWEN: We are not certain  
24 about Ms. Kelly. We put a call in for her  
25 office. Her office has been good enough to

1 call her at home and called us back and  
2 said she is not answering her telephone,  
3 but we stated the purposes why we wanted to  
4 call her and invited her to call us back.  
5 As soon as we have a chance to talk with  
6 her, we'll know. The possibility of  
7 Ms. Kelly, the possibilities of Mr. Henley,  
8 no, I don't know of anybody else.

9 THE COURT: Mr. Henley had his  
10 hand raised, anything you want to say?

11 MR. HENLEY: Your Honor, tomorrow  
12 morning 9:00, I'm supposed to testify in a  
13 drug related case.

14 THE COURT: I've given you 15  
15 minutes. We'll come back on the record,  
16 we'll go forward. Mr. Hales, you can step  
17 down. If you'll bear with us.

18 THE COURT: Folks, have 15  
19 minutes. We'll come back and reconvene at  
20 5:00.

21 THE BAILIFF: Court stands at  
22 ease until 5:00.

23 (Brief recess.)

24 THE COURT: Folks, I apologize  
25 for the imposition of going beyond 5:00,

1 hope it won't happen again.

2 Let the record reflect all counsel are  
3 present, the defendant is present in open  
4 court. Folks, have you had the opportunity  
5 to talk to Mr. Henley?

6 MR. THOMPSON: Yes, Your Honor.  
7 Call Mr. Henley.

8 THE COURT: If you'll come up and  
9 be sworn, please.

10 JIMMY L. HENLEY,  
11 being first duly sworn was examined and testified as  
12 follows:

13 DIRECT EXAMINATION

14 THE COURT: Mr. Bowen,  
15 Mr. Thompson.

16 MR. BOWEN: State your name,  
17 sir.

18 THE WITNESS: Jimmy L. Henley.

19 THE COURT: I apologize. Please  
20 forgive me. Spell your last name for the  
21 benefit of the court reporter.

22 THE WITNESS: Last name is

23 H E N L E Y.

24 BY MR. BOWEN:

25 Q Where do you live and by whom are you

1 employed now, sir?

2 A I live Route 1, Linden, North Carolina.  
3 I'm employed, I'm self-employed, own North Carolina  
4 Investigation, private detective agency.

5 Q Prior to that, by whom were you employed  
6 and when?

7 A Employed by the Cumberland County Sheriff's  
8 Department, approximately 11 years.

9 Q Now, in connection with your law  
10 enforcement duties, were you aware of an active  
11 internal investigation of this case we're here about  
12 today?

13 A Yes, I was.

14 Q And you were in some of the early  
15 interviews of some persons, including Jovan Carter,  
16 is that correct?

17 A I participated in a lot of interviews.

18 Q Now, at that time -- does that include that  
19 of Jovan Carter?

20 A Yes, it did.

21 Q At that time, did you know a person named  
22 Ricky Hales?

23 A Did I know a person named Ricky Hales, no.

24 Q Yes, sir. Did you at some point come to  
25 know a Ricky Hales?

1           A       I did -- well, it's a hard question to  
2 answer. During the investigation, a person by the  
3 name of Rick's name came up during this  
4 investigation.

5           Q       I take it you didn't know at that time who  
6 that was?

7           A       I did not.

8           Q       At a later time did you know a person who  
9 was named Dominique Hales?

10          A       I did.

11          Q       How did you come to know him and when?

12          A       I was hired by Attorney Brady as an  
13 investigator on his case, in June of '95.

14          Q       That was a series of drug cases and one  
15 trafficking case, is that correct?

16          A       It was.

17          Q       All right. And while working with Mr. Ed  
18 Brady, did you know or come to know that  
19 Mr. Dominique Hales was also called Rick Hales?

20          A       In reviewing the case file itself, it  
21 indicated in there that an a/k/a of Rick, yes.

22          Q       And in the investigation you came to know  
23 that as a result of some earlier injuries, he wore a  
24 colostomy bag, is that correct?

25          A       That's correct.

1           Q       Now, were you present around the first week  
2 in October here in Robeson County last year, 1995  
3 when some suppression hearings took place?

4                   THE COURT:   Is your purpose to  
5 establish that at some point he made a  
6 connection between a person he knew as Rick  
7 and someone he later came to know as  
8 Ricardo Hales.

9                   MR. BOWEN:   Absolutely.

10                  THE COURT:   Did you make such a  
11 connection?

12                  THE WITNESS:  I did.

13                  THE COURT:   When?

14                  THE COURT:   During the  
15 suppression hearings, I believe 5th of  
16 October.

17 BY MR. BOWEN:

18           Q       What did you do as a result?

19           A       First thing I did as a result, I wasn't  
20 sure in what -- I guess kicked my memory a little bit  
21 was testimony coming from the stand about the Rick in  
22 this case having a colostomy bag. That rang a bell  
23 with the other investigation that I had been  
24 participating in. The thing that I did after that  
25 was, I did make a phone call to who I knew then as

1 Dominique Hales, and I asked him if he knew Daniel  
2 Green. And when he told me that he did, if he would  
3 -- if he felt like he was the one and the same.

4 Q So what did you do?

5 A After that, I reported the fact that I  
6 believed that I knew who Ricky Hales was, the one  
7 that was in this investigation, I reported that to  
8 Mr. Britt, the District Attorney. I also informed  
9 him who his attorney was and also who the assistant  
10 District Attorney was, prosecuting the other case.

11 Q Do you know that the other cases concluded  
12 in a judgment sometime in mid-October just a couple  
13 of weeks after this suppression hearing that you're  
14 describing?

15 A I do.

16 Q And now, at that time that you made this  
17 information known to Mr. Britt, obviously you were  
18 able to contact Mr. Hales by telephone when you  
19 wanted to, is that correct?

20 A Yes.

21 Q You knew -- if you didn't know exactly  
22 where he resided, you would have been able to get up  
23 with him, correct?

24 A I knew how to get up with him, yes.

25 Q Do you know how the State was able to

1 obtain his address for the purposes of a subpoena in  
2 this case?

3 A I do not.

4 Q Let me ask you this: Do you recall being  
5 present at the interrogation of Eric Darnell  
6 Thompson, Mr. Henley?

7 A I'm trying to recall. I haven't reviewed  
8 the file, and there were several people I was present  
9 during the interviews, and that may have been one of  
10 them, yes.

11 Q Whether it was Thompson or not, do you  
12 recall the name Ricky Hales coming up? I believe you  
13 said you did, during those interviews, is that right?

14 A I do believe that it did come up, yes.

15 Q Do you remember making this statement: And  
16 Ricky Hales lives on the east side of Fayetteville,  
17 is that right, do you remember making that statement?

18 A I don't remember it but it would be part of  
19 the record.

20 Q Did you know where Ricky Hales lived at the  
21 time these interrogations were taking place back  
22 in 1993?

23 A I'm not sure if we knew an address on him  
24 or a particular area that he stayed in. I think it  
25 was a particular area, because we sent officers out

1 on a couple of occasions to try and locate Ricky  
2 Hales.

3 Q Would you have referred to that area as  
4 over across the river and not too far from where the  
5 car was found?

6 A Probably.

7 Q So you knew that much about where Hales --

8 THE COURT: For the record, if  
9 you'll look in your file, there's a  
10 statement taken of Jovan Carter. That  
11 statement was taken at the Law Enforcement  
12 Center homicide office in Cumberland  
13 County. Present at that time were  
14 Detective Sergeant Don Smith, Detective  
15 Jimmy Henley, Detective Ray Wood. The  
16 interview of Mr. Carter occurred August the  
17 14th, '93 beginning at 18:38 hours. As to  
18 Eric Darnell Thompson, that statement was  
19 taken the next day, August 15th, 1993,  
20 15:15 hours. Present at that time were  
21 Detective Don Smith, Detective Captain Art  
22 Binder, Jimmy Henley.

23 Ask him if he learned about the  
24 possible address of Mr. Hales during the  
25 interview of Mr. Carter the day before.

1 BY MR. BOWEN:

2 Q That's right. You learned the area where  
3 Ricky Hales lived from Mr. Jovan Carter just prior to  
4 this interrogation, didn't you?

5 A Yes, sir.

6 Q You relayed that information to  
7 Mr. Thompson in the subsequent --

8 A Yes, sir.

9 Q So by those directions and by that  
10 information you would have been able to locate  
11 Mr. Hales as early as the mid-August of 1993,  
12 wouldn't you?

13 THE COURT: What information did  
14 he have? What was the information that you  
15 have as to where Mr. Hales might live?

16 THE WITNESS: Just a general  
17 location, Your Honor, we did attempt to  
18 locate him in that general location, and we  
19 did not.

20 THE COURT: For the record, what  
21 was the general location that was given to  
22 you?

23 THE WITNESS: It was Eastover  
24 area and I believe it was called Downing  
25 Road back then which was near the area

1 where the car was found.

2 THE COURT: That's the  
3 information that you had?

4 THE WITNESS: As I recalled it  
5 that's the information I had, yes, sir.

6 BY MR. BOWEN:

7 Q So -- but you had the exact address much  
8 before your conversation with Mr. Britt on or about  
9 the 6th of October, 1995, didn't you?

10 A I had an address, yes, sir. I also say the  
11 address that I had was not the one across the river.

12 Q But what you had here in this interview  
13 would not have been enough to have found Mr. Hales or  
14 was not enough for law enforcement to find Mr. Hales,  
15 correct?

16 A He was not located, so it wasn't  
17 enough.

18 THE COURT: Anything further?

19 BY MR. BOWEN:

20 Q What you knew on the 6th of October, 1995  
21 that was a sufficient address and phone number to  
22 have found Mr. Hales, wasn't it?

23 A Yes, sir.

24 Q When you called Mr. Ricky Hales, did you  
25 call him from the District Attorney's office or from

1 this courthouse?

2 A No, I didn't, I called him from my home.

3 Q Did you ask Jovan Carter how to get up with  
4 Mr. Hales' address?

5 A I don't recall, I would have to go through  
6 the transcript.

7 Q So none of -- not Thompson nor Jovan Carter  
8 or any of the other fellows that you talked to helped  
9 you find his location, is that --

10 A No, not that I recall, no.

11 Q But now, Jovan Carter was cooperating with  
12 law enforcement, is that correct?

13 THE COURT: That's a broad  
14 question. What sense?

15 BY MR. BOWEN:

16 Q Was Jovan Carter helping you as a law  
17 enforcement officer in any way at the time, back --

18 THE COURT: Simply because out of  
19 an abundance of precaution, and because in  
20 the spirit of 903 A-2, this case --

21 MR. BOWEN: Yes, sir, with this  
22 case. Yes, sir.

23 THE WITNESS: I know that  
24 Mr. Carter gave us a statement as to his  
25 involvement and other people's

1           involvement. Whether or not he provided us  
2           with any other information, I cannot  
3           recall. It would be part of the record.

4 BY MR. BOWEN:

5           Q     Did you ask Jovan to take you out to Rick  
6 Hales' house?

7           A     I don't recall asking him that.

8                     THE COURT: Anything further,  
9 folks?

10                    MR. BOWEN: That's all.

11                    THE COURT: Mr. Britt, any  
12 questions?

13                    MR. BRITT: Just a few.

14                             CROSS-EXAMINATION

15 BY MR. BRITT:

16           Q     Mr. Henley, when you made the connection  
17 that from the statement -- let me back up.

18                     This Rick with the colostomy bag that was  
19 in part of the statement that Mr. Green made, is that  
20 correct?

21           A     Yes.

22           Q     You had no other description of that  
23 individual?

24           A     No, not at that time.

25           Q     When you made the connection between Rick

1 with the colostomy bag and Rick Hales, the defendant,  
2 the client of Mr. Brady, you were working for  
3 Mr. Brady?

4 A Yes.

5 Q And you made the connection based upon  
6 information that you had gained as a result of your  
7 employment by Mr. Brady?

8 A Yes.

9 Q And you were concerned about revealing  
10 certain matters that you knew as a result of your  
11 employment with Mr. Brady, is that correct?

12 A That's correct.

13 Q You brought the matter to my attention and  
14 to Mr. Binder's attention that you had made the  
15 connection between Rick with the colostomy bag and  
16 Rick Hales that you were working for?

17 A That's right.

18 Q And you had no conversation with Ms. Elaine  
19 Kelly, Assistant District Attorney in Cumberland  
20 County in regard to Rick Hales, your client being the  
21 person that had been identified as Rick with the  
22 colostomy bag in the Jordan case?

23 A No, I did not.

24 MR. BRITT: I don't have any  
25 other questions.

1 THE COURT: Anything further?

2 MR. BOWEN: That's all.

3 THE COURT: Thank you, sir, you  
4 may step down. Is he free to go as far as  
5 his court appearance tomorrow?

6 MR. BOWEN: Yes.

7 THE WITNESS: Your Honor, I also  
8 will not be available for the remainder of  
9 this trial because I'll be going into the  
10 hospital for surgery Friday.

11 THE COURT: Sorry to hear that,  
12 that may be a matter we need to address.

13 MR. THOMPSON: Yes.

14 THE COURT: He just indicated to  
15 me because of pending surgery he will not  
16 be available for the remainder of this  
17 trial. Does the State contemplate calling  
18 him?

19 MR. BRITT: Many of the matters  
20 Mr. Henley would be called for have already  
21 been taken up in pretrial hearings.  
22 Specifically, matters relating to any  
23 statement the defendant made in the  
24 operation of any tape recorder and custody  
25 of any tape made, so that matter is already

1 made a part of the record.

2 THE COURT: That's a no?

3 MR. BRITT: Yes.

4 THE COURT: Defendant intend to  
5 call?

6 MR. THOMPSON: Your Honor, at  
7 this point we have him under subpoena, and  
8 not at this point able to release him. I  
9 understand if he's having an operation, we  
10 may be able, if it's something we need him  
11 for we can petition the Court and maybe do  
12 it by way of deposition or something, but I  
13 mean, obviously if he's sick, I know he's  
14 got to have a knee operation, so we will  
15 work with him on that. Understand the  
16 situation.

17 THE COURT: I appreciate that.  
18 Thank you. Any further showing for the  
19 defendant as to the testimony of  
20 Mr. Hales? Any further showing, any  
21 further evidence you folks want to put on  
22 as to the testimony of Mr. Hales what we're  
23 here about is what if anything may be  
24 inquired into by way of cross-examination  
25 by counsel for defendant of Mr. Hales.

1           Are there matters admissible under  
2 Rule 609, 608-B, 611-B or are there matters  
3 that may be admissible under North Carolina  
4 General Statute 15-A 1052 and/or 1054?

5           MR. THOMPSON: And Your Honor,  
6 the answer to that is at this point, no.  
7 We again indicated that contact had been  
8 made, or attempted to be made with regard  
9 to Elaine Kelly.

10          THE COURT: All right.

11          MR. THOMPSON: And I don't --  
12 that can, I mean, can be done by perhaps  
13 maybe even by telephone. I don't know  
14 where she lives, all I know is the DA's  
15 office, Janet in the -- Janet Davis, I  
16 believe is her name, anyway in the DA's  
17 office in Cumberland County, contacted  
18 Ms. Kelly. She was not home, left a  
19 message on her answering machine to have  
20 her contact me, and --

21          THE COURT: Last time I saw  
22 Ms. Kelly, she might very well be on her  
23 way to the delivery room in Fayetteville.  
24 I understood that she was close at that  
25 time, and that was several weeks ago. That

1           may pose a problem, but folks --

2                   MR. THOMPSON: I don't think it  
3           may be -- maybe with respect to -- it may  
4           not prevent us from going forward.

5                   THE COURT: Why don't we stop at  
6           this point, come back tomorrow at 9:00,  
7           give you folks an opportunity to be heard  
8           about any matters that you contend are  
9           admissible by way of cross-examination  
10          under any rules, and we will deal with it  
11          that way. The Jury is coming in at 10:30,  
12          we meet at 9:00, hopefully be able to  
13          resolve, go forward at 10:30. Is that  
14          agreeable, folks?

15                   MR. THOMPSON: Your Honor, my  
16          client is trying to communicate with me a  
17          matter perhaps we may need to address  
18          before recess.

19                   THE COURT: Mr. Hales is asking  
20          whether or not he --

21                   MR. BRITT: I've already talked  
22          with him. We had not concluded direct  
23          examination yesterday when the objection  
24          was raised.

25                   THE COURT: Yes, sir. He has not

1           been subjected to cross-examination in  
2           front of the jury.

3                       THE COURT:   That's right.   Well,  
4           he partially has.   That was many, many days  
5           ago.

6                       Mr. Green is going to need to remain.  
7           Folks, I've got Juror 9 and 15 who  
8           indicated they wanted to make inquiry of  
9           the Court.   Since they are excused, out of  
10          an abundance of caution, let's bring the  
11          jurors in.

12                      MR. THOMPSON:   That's all right.  
13          We can --

14                      THE COURT:   Okay.   Mr. Watkins, I  
15          understand the juniors are a little bit  
16          reluctant to come into court.   On the  
17          record, I'm going to ask that you assist  
18          the Court in the following regard.   If you  
19          will inform both jurors that they have an  
20          absolute right -- here they are.

21                      Folks, come on in and have a seat.  
22          I'm going to try to address any concerns  
23          that you might have.   Let me give you the  
24          following information.   If you've got any  
25          questions, I would be glad to answer them.

1           Fist thing is, you don't have to talk  
2 to anybody. You have an absolute right to,  
3 if you want to, speak with anyone you want  
4 to about this case. If you choose not to,  
5 you have an absolute right to simply say, I  
6 don't have anything to say. That includes  
7 members of the news media, and it includes  
8 anybody else.

9           Secondly, if you request it, I will  
10 ask for the assistance of the Robeson  
11 County Sheriff's Department in escorting  
12 you to your vehicles so that you can leave  
13 this area without any impediment of any  
14 kind.

15           Ms. Locklear, do you have anything you  
16 want to say in that regard?

17           JUROR: No, sir, I just wanted to  
18 know if I could go back tomorrow as a  
19 spectator.

20           THE COURT: You're absolutely  
21 entitled to, you're absolutely welcome.  
22 Yes, ma'am. Same thing, ma'am.

23           JUROR: Yes.

24           THE COURT: Feel free. You folks  
25 want an escort to your vehicle?

1 JUROR: No, they have already  
2 told us if we didn't talk to them that it  
3 would be embarrassment for us, and if we  
4 would run off, it would be embarrassment  
5 for us. Or you know, so --

6 THE COURT: Well, I suggest  
7 that -- I don't know this for a fact but I  
8 suspect that there is a governing body  
9 dealing with journalistic ethics and if  
10 anybody made that statement to you, you can  
11 report that individual to any governing  
12 body dealing with journalistic ethics and  
13 report what you believe to be a breach of  
14 those ethics by one or more members of the  
15 media. In my view, and I certainly am not  
16 an expert in that area, that constitutes a  
17 breach of journalistic ethics to threaten  
18 someone in exchange for a story. You don't  
19 have to speak to anybody. If they come to  
20 your home and come on your property, you  
21 can call the Robeson County Sheriff's  
22 Department and following the law, you can  
23 have folks charged with trespassing.

24 JUROR: Okay.

25 THE COURT: You folks want an

1 escort to your vehicle?

2 JUROR: No -- yeah.

3 THE COURT: Major Watkins.

4 Ms. Locklear do you also?

5 JUROR: Yes, sir.

6 THE COURT: If you'll provide  
7 these folks with an escort to their  
8 vehicle.

9 JUROR: Thank you.

10 THE COURT: Yes, ma'am. Any  
11 matters further on behalf of the State?

12 MR. BRITT: No, sir.

13 THE COURT: Any matters on behalf  
14 of the defendant.

15 MR. THOMPSON: No, sir.

16 THE COURT: See you folks  
17 tomorrow at 9:00. If you'll recess us.

18 (Court adjourned.)

19

20

21

22

23

24

25



## 1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

3

4 LUTHER JOHNSON BRITT, III, Esq.  
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6

7 On Behalf of the Defendant:

8

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10

and

11

12 WOODBERRY A. BOWEN, Esq.  
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13

14

15 (January 18, 1996. Proceedings in open court.)

16

(9:05 a.m.)

17

THE COURT: Good morning, folks.

18

19 All counsel are present, but we are  
20 awaiting Mr. Green at this time so we will  
be at ease.

21

(Brief recess.)

22

23 THE COURT: Let the record  
24 reflect that Mr. Green is now present, the  
25 Court having previously indicated on the  
record that all counsel are present.

1           Mr. Britt, Mr. Thompson, Mr. Bowen, we  
2           can do this one of two ways, I can give you  
3           folks an opportunity to be heard -- you all  
4           ready?

5                   MR. BOWEN: Yes, sir.

6                   THE COURT: Let the record  
7           reflect all counsel are present, the  
8           defendant is present in open court.  
9           Mr. Britt, Mr. Thompson, Mr. Bowen, we can  
10          do this one of two ways. I can give you  
11          folks an opportunity to be heard, or tell  
12          you what I think and then hear arguments  
13          regarding that.

14                   MR. BRITT: It's their motion.

15                   MR. BOWEN: Yes, sir, we would  
16          like to tell you generally where we propose  
17          to go, Your Honor, and then, of course,  
18          hear what you have to say.

19                   First of all, we stopped after a  
20          question and an objection, I believe the  
21          witness actually got in an answer. At that  
22          point, as we understand it, the State, of  
23          course had no absolute obligation to put  
24          that witness on the list, and they said  
25          they weren't aware of it sometime during

1 the trial. We had no grounds to object  
2 simply based on the evidence of what that  
3 witness saw or did or anything of that  
4 nature.

5 THE COURT: If I understand the  
6 basis of the objection was that your  
7 contention is that any statement Mr. Hales  
8 attributed to the defendant in his response  
9 to Mr. Britt's question was a statement  
10 that you were not aware of, that had not  
11 been provided in discovery, and that you  
12 had no notice of any such statement.

13 MR. BOWEN: And should have been  
14 provided, if at all possible, at least the  
15 by the Wednesday before the beginning of  
16 trial.

17 THE COURT: No, sir, because  
18 under the statute, 903, if the State is not  
19 aware of that information at that time, the  
20 State obviously can't provide that  
21 information. The State has a duty under  
22 903 and under the continuing to disclose  
23 provision of 15-A, to inform you of that  
24 immediately upon coming into possession of  
25 the information or becoming aware of the

1 information.

2 MR. BOWEN: And therein becomes  
3 our argument, because we say as a result of  
4 what Mr. Henley directly told Mr. Britt on  
5 the 6th of October, that is, that this Rick  
6 Hales, this Rick with the colostomy bag was  
7 one and the same that they had been talking  
8 about as early and as the conversation with  
9 Jovan and others, that this was the man at  
10 that point that the State knew our should  
11 have known that this was somebody that they  
12 could have talked to. And the mere fact  
13 that they delayed talking to him, we  
14 contend, is no excuse for their not having  
15 had it in a timely manner.

16 Now, here's our predicament. The jury  
17 sees us, and of course, Your Honor has  
18 given us a recess, and of course 15-A 910,  
19 that's one of the options, even if 903 has  
20 been violated, and I realize you haven't  
21 found that's so, but from our perspective,  
22 the jury sees us object, of course they  
23 have been sent out for now approximately a  
24 day and a half. They attribute this to the  
25 defendant. And the thing is, had we had

1 this material in a timely manner, arguably  
2 this delay would not have occurred and  
3 certainly not have been attributed to the  
4 defendant.

5 What we say is that Your Honor can  
6 and should consider a 910 sanction which is  
7 subparagraph three, which would be to  
8 exclude this particular testimony.

9 Now, we don't have any problem with  
10 whatever Mr. Hales saw or did or anything  
11 on that day. The extent that he attributes  
12 statements to Mr. Green, we say that the  
13 State having known about this and having  
14 obviously interviewed all of its other  
15 prospective witnesses, we simply argue that  
16 this intentional delay in order to create  
17 this, quote, surprise to the defendant  
18 which has necessitated our request for this  
19 recess which has caused the jury to see the  
20 proceedings bogged down probably because of  
21 the defendant. And in addition, although  
22 we had no way to anticipate this, during  
23 this recess, we had the unfortunate  
24 discharge of two jurors, which of course,  
25 is not the fault of the defendant and the

1 defendant even has objected to the  
2 discharge of those jurors, but they don't  
3 know that. So for all they know, this  
4 whole package is all chalked up to the  
5 fault of the defendant, and seems to me in  
6 a sense we may have paid that price. We'll  
7 never know, because we can't get in the  
8 jurors' minds but we may have already paid  
9 that price to now let them get this  
10 material in, we think is not in good  
11 balance, and we ask you to consider 910 (3)  
12 and exclude any statements attributable to  
13 Mr. Green. That's that issue.

14 THE COURT: Let's take that issue  
15 and deal with them one at the time,  
16 Mr. Britt.

17 MR. BRITT: Your Honor, the  
18 record speaks for itself. The Court  
19 document, the Court exhibit shows when  
20 Mr. Hales was interviewed. When our notice  
21 of additional discovery was provided and  
22 filed with the Court on Friday afternoon,  
23 January the 11th, that was within  
24 approximately two hours or so from the  
25 beginning of Mr. Hales' interview, so as

1 soon as I knew what his statement was, then  
2 it was provided to defense.

3 In response to Mr. Bowen' claim that  
4 we waited to interview Mr. Hales, as  
5 Mr. Brady testified yesterday, we became  
6 aware in October who Rick with the  
7 colostomy bag was, it was Rick Hales. We  
8 attempted to locate that individual for the  
9 purposes of interviewing him, and we were  
10 informed that he was represented by  
11 Mr. Brady. Under the rules of professional  
12 responsibility I had an obligation to  
13 contact Mr. Brady before ever attempting to  
14 contact Mr. Hales, knowing that he was  
15 represented by counsel.

16 I did that. In talking with  
17 Mr. Brady, as he said yesterday, he  
18 requested a grant of immunity for his  
19 client, and I did say there would be no  
20 charges because there's no evidence to  
21 suggest that Mr. Hales committed a crime in  
22 Robeson County as it relates to this case  
23 or any other matters that may ever become  
24 before the Court. But I was not willing to  
25 grant him a blanket immunity. And as a

1 result of that, Mr. Brady said, I do not  
2 want you talking to my client, I do not  
3 want your agents talking to my client  
4 without me being there, without my  
5 permission. Therefore, under the rules of  
6 responsibility, I had to back off.

7 Last Thursday, the 10th of January, in  
8 interviewing Jovan Carter and preparing him  
9 for court, the name Rick Hales came up  
10 again. At that point, we had no idea where  
11 Rick Hales was, we had never met him, had  
12 never seen him. We asked Jovan Carter, do  
13 you know where Rick Hales is today. He  
14 said yes, I can take you to his house.  
15 Mr. Hales -- Mr. Carter took Mr. Kim  
16 Heffney to Mr. Carter's home in  
17 Fayetteville. Mr. Heffney was given a  
18 subpoena to serve upon Mr. Carter to appear  
19 in court last Friday -- excuse me,  
20 Mr. Hales.

21 The first thing we ascertained before  
22 beginning anything was whether or not  
23 Mr. Hales was still represented by  
24 Mr. Brady. Mr. Hales informed us he was  
25 not, therefore, under the rules of

1 professional responsibility, I was entitled  
2 to interview him without having to contact  
3 Mr. Brady.

4 Mr. Hales appeared here last Friday,  
5 court recessed, I asked Mr. Heffney,  
6 Mr. Thompson, and Special Agent Barry Lea  
7 of the SBI, to interview Mr. Hales. I did  
8 not participate in that interview because  
9 it's considered it to be a part of the  
10 investigation, and that is outside my  
11 realm.

12 They interviewed him. The conclusion  
13 of that interview, the handwritten document  
14 that you've been provided was provided to  
15 me. I reviewed it, I talked with Mr. Hales  
16 briefly about incidents that he recalled,  
17 and his involvement with the defendant.  
18 Mr. Hales was released at that time and  
19 returned to court on Tuesday morning, which  
20 he did.

21 903 requires the State has a  
22 continuing duty to disclose information.  
23 I've been --

24 THE COURT: We're talking about  
25 903 and 907.

1                   MR. BRITT: Yes, sir. 15-A, I  
2                   have an obligation that's statutorily  
3                   imposed, I have an obligation under Brady  
4                   and it's in regard to exculpatory  
5                   information to continually provide that to  
6                   the defense as it becomes aware to me.  
7                   I've done that, and complied with the  
8                   spirit of 15-A in providing them this  
9                   discovery last Friday.

10                  THE COURT: Folks, what is now  
11                  before the Court, as I understand it, is at  
12                  the point where the initial objection was  
13                  lodged. There was also a motion to strike  
14                  made by counsel for the defendant. You're  
15                  asking me to rule at this time either on  
16                  the objection or the motion to strike.  
17                  Specifically as to the motion the strike,  
18                  the contention is that that ought to be  
19                  allowed under the provisions of 15-A 910.  
20                  The basis that you're arguing the  
21                  applicability of 910 is your contention  
22                  that the State intentionally delayed in  
23                  providing you with information or in coming  
24                  into possession of information which was  
25                  discoverable under 903.

1 MR. BOWEN: On the grounds that  
2 Mr. Brady's representation concluded  
3 sometime in mid-October and Mr. Britt was  
4 in contact with Ms. Kelly and knew the  
5 progress of the case, and that for some  
6 reason that seems curious that case was  
7 continued right up until just before this  
8 began.

9 THE COURT: Objection is  
10 overruled. Motion to strike is denied.  
11 The court finds that the State has complied  
12 with 15-A 910 A-2 insofar as soon as the  
13 existence of any statement attributable to  
14 the defendant became known to the State  
15 with regard to the testimony of Mr. Hales,  
16 the State provided notice to counsel for  
17 defendant. That notice having been filed,  
18 notice of additional discovery having been  
19 filed on Friday afternoon, and that date  
20 was January the 12th, 1996. The Court  
21 finds the State has complied with its  
22 continuing duty to disclose under 15-A  
23 910. Based on those findings, the Court  
24 further finds that no sanctions are  
25 appropriate under 15-A 910.

1           Now the Court recognizes that a recess  
2           has been allowed. That recess, for the  
3           record, was allowed because of Mr. Thompson  
4           and Mr. Bowen informing the Court that they  
5           had no notice of the statement prior to the  
6           time the statement was testified to by  
7           Mr. Hales, and the discussion on the record  
8           in the absence of the jury confirmed that  
9           counsel for the defendant would need  
10          additional opportunity to examine that  
11          statement and to determine what if any  
12          additional showing they might want to  
13          make. So that recess was allowed not under  
14          910 but in the discretion of the Court in  
15          the interest of justice and general  
16          fairness. Okay.

17                 The Court finds that 910 is otherwise  
18                 inapplicable. Based on that, the objection  
19                 is overruled, exception is noted for the  
20                 record to the Court's ruling in that  
21                 respect. Motion to strike is denied.  
22                 Exception is noted in that respect, so your  
23                 issues is are preserved.

24                         MR. BOWEN: Your Honor, I believe  
25                         you asked me to tell you where we're going

1 in light of Mr. Hales --

2 THE COURT: I think we can  
3 circumvent that. I don't think there's any  
4 disagreement that Mr. Hales can be  
5 questioned on cross-examination about prior  
6 convictions under Rule 609.

7 MR. BRITT: That's correct.

8 THE COURT: The more problematic  
9 area is can he be questioned about any plea  
10 arrangement that existed in connection with  
11 those convictions. One possible basis is  
12 those plea arrangements related to his  
13 testimony in this case. I don't believe  
14 the evidence in this case supports that.

15 Another possible basis for that line  
16 of questioning on cross-examination is that  
17 Rule 611-B, State versus Williams, says  
18 that any matters relating to credibility.  
19 Now, Williams dealt with a very narrow  
20 factual situation dealing with a witness's  
21 past history of psychiatric treatment and  
22 substance abuse. And even though there had  
23 be some fairly long passage of time between  
24 those events and the events testified to,  
25 and the time of trial, the Court said that

1 it went to the issue of credibility. And  
2 anything that bears on credibility is  
3 appropriate by way of cross-examination and  
4 by way of impeachment. In my view, what  
5 the Court really said is that's common  
6 law. And under the common law, anything  
7 that relates to credibility is fair game  
8 for cross-examination, fair game for  
9 impeachment under 611-B and/or the common  
10 law.

11 In my view, the defendant has an  
12 argument that under Rule 611-B, the details  
13 of any plea arrangement arising out of the  
14 Cumberland County convictions is admissible  
15 as it might bear on credibility. Their  
16 argument being that a defendant, and I mean  
17 no disrespect to anybody, a defendant or a  
18 witness, pardon me, a witness's propensity  
19 to enter into a plea arrangement which is  
20 beneficial to that witness is an issue that  
21 ought to be considered by the jury on the  
22 question of credibility in this case. So I  
23 think under 611-B, you're entitled to ask  
24 about the details of any plea arrangement.  
25 1055 says that as to any plea arrangement

1 under 1054, a witness may be cross-examined  
2 and the impact of that plea arrangement may  
3 be argued to the jury. That's where I  
4 think you folks have a problem.

5 I'm ruling that you can explore the  
6 plea arrangement in Cumberland County for  
7 purposes of credibility under 611-B.  
8 There's no evidence before me that  
9 Mr. Hales entered into any plea arrangement  
10 with regard to his testimony here in  
11 Robeson County. In my view, it would be  
12 inappropriate for you to argue to the jury  
13 that Mr. Hales' testimony arose because of  
14 any deal, any plea arrangement or any  
15 concession made by the District Attorney  
16 here in Robeson County. Because there's no  
17 evidence to support that. You can argue,  
18 if the evidence supports it, that he  
19 entered into an agreement in Cumberland  
20 County and that they can consider that on  
21 the question of his credibility in this  
22 case insofar as they find that a propensity  
23 to deal when it's beneficial bears on  
24 credibility. Do you understand what I'm  
25 saying?

1           In my view, and what I'm going to rule  
2           is that 1055 does not apply because in this  
3           instance, does not apply in the sense that  
4           you can argue impact of any plea  
5           arrangement to the jury because in this  
6           instance there is no evidence of any plea  
7           arrangements entered into by Mr. Hales and  
8           this District Attorney regarding his  
9           testimony in this case. I don't think that  
10          608-B B applies for the same reason that is  
11          set out in State versus Williams at 330  
12          NC -- well, it does and it doesn't. It  
13          applies in the sense that 608 B is not a  
14          rule that applies on these facts, and from  
15          your perspective, 608 B would prohibit you  
16          from introducing any extrinsic evidence.  
17          If you are allowed to go on 611-B then  
18          extrinsic evidence may come in, may not be  
19          necessary, but it's a tactical decision you  
20          folks may want to make, I don't know.

21                 I don't think 608-B applies, I think  
22                 609 applies, I think 611-B applies, 1052  
23                 does not apply, 1054 applies only in the  
24                 sense that under 611-B you can ask him  
25                 about Cumberland County convictions and

1 plea arrangement bearing on credibility.  
2 1055 does not apply in terms of your  
3 ability to argue impact of that to the jury  
4 in this case.

5 MR. BOWEN: May I be heard?

6 THE COURT: Yes, sir.

7 MR. BOWEN: I think at this  
8 point -- I hate to discuss my proposed jury  
9 argument, I think I need to tell you where  
10 I want to go so you can see. I think human  
11 behavior dictates when somebody does us a  
12 big favor we very often want to return it.

13 THE COURT: Who's us.

14 MR. BOWEN: Any of us.

15 THE COURT: I understand where  
16 you're going, and I appreciate you bringing  
17 it up. You can't argue, and I will cut you  
18 off, and I will admonish the jury to  
19 disregard the argument if you put any  
20 argument before the jury that Mr. Britt or  
21 this prosecutorial district entered into  
22 any deal with Mr. Hales.

23 MR. BOWEN: If you won't cut me  
24 off, that was not what I was saying.

25 THE COURT: When you say when

1 somebody gives us something, that by  
2 inference brings --

3 MR. BOWEN: No, sir, it does not  
4 bring Mr. Britt into it. If I may finish  
5 my statement. I said that we tend to think  
6 if somebody does us a big favor, we want to  
7 return and work with them and maybe do them  
8 a favor. Now, the impact that I see that  
9 can be legitimately argued from this plea  
10 bargain in Cumberland County is that law  
11 enforcement in general does --

12 THE COURT: Generic law  
13 enforcement.

14 MR. BOWEN: Generic.

15 THE COURT: Just like arguing  
16 yesterday that substantial assistance means  
17 you're required to do it for the rest of  
18 your life.

19 MR. BOWEN: You're not required  
20 to do anything, I won't argue that.

21 THE COURT: That's where you were  
22 going.

23 MR. BOWEN: No, sir. May I  
24 finish?

25 THE COURT: Yes, sir.

1                   MR. BOWEN: What I say is that  
2 human nature is such that if law  
3 enforcement does us a big favor, then you  
4 tend to want to return that favor or so it  
5 could be argued, and so what we have here  
6 is that law enforcement saved this man a 35  
7 year mandatory sentence and \$250,000 fine.

8                   THE COURT: That's where I would  
9 cut you off at the knee caps in front of  
10 the jury.

11                   MR. BOWEN: And when the law  
12 enforcement came again requesting this  
13 man's assistance, not only did he face the  
14 potential of having his probation --

15                   THE COURT: You can't bring that  
16 in.

17                   MR. BOWEN: Because, well, now  
18 the case law says that I can talk about --

19                   THE COURT: Appeal if it becomes  
20 necessary, but I'm telling you you can't  
21 bring that in. Now what you can argue, and  
22 I don't feel comfortable being in a  
23 position telling you what a good argument  
24 is, and what a good argument isn't. It's  
25 appropriate in my view to argue that a

1 witness knows how to cut a deal, that a  
2 witness knows how to act in his or her own  
3 benefit. But if you start arguing anything  
4 that brings this judicial -- this  
5 prosecutorial district into the universe of  
6 the deal cut in Cumberland County, if you  
7 argue even inferentially that the  
8 Cumberland County deal impacts on what is  
9 occurring in this case, my view is that is  
10 improper and inappropriate argument.

11 MR. BOWEN: I don't think we're  
12 arguing this, we got to get this cleared  
13 up, because I don't want to walk into a  
14 buzz saw on this thing.

15 THE COURT: I understand your  
16 position, and I understand your desire to  
17 have appropriate argument placed before the  
18 jury, I respect that, and I appreciate it.  
19 I'm not comfortable telling you you can  
20 argue this but you can't argue that at this  
21 point. All I'm telling you is I have  
22 pointed to the Rules of Evidence, I have  
23 pointed to the appropriate provisions in  
24 15-A. I think if you folks do it, you can  
25 figure out a way of getting your inference

1 or argument before the jury. I'm simply  
2 telling you that if you argue, and I don't  
3 know how to be any more direct, if you  
4 argue anything that brings in this  
5 prosecutorial district, in my view, I will  
6 cut you off.

7 MR. BOWEN: We have a  
8 disagreement on what is law enforcement.  
9 I'm not intending to even imply that  
10 Mr. Britt or this prosecutorial district  
11 had anything to do other than the fact that  
12 some of the same officers were involved in  
13 this case that were Mr. Hales' friends or  
14 handlers or however you want to call it.  
15 They were shepherding him around, using him  
16 as an example, and basically, Your Honor, I  
17 think from this evidence can be argued that  
18 this man was an example of someone that's  
19 supposedly come out of a drug situation and  
20 made good on his life, and that the State  
21 had recognized that, and the Cumberland  
22 County District Attorney's Office had done  
23 good things for him. Now, when --

24 THE COURT: Can I stop you for a  
25 second? You argue what you think is

1           appropriate. I'll do what I think is  
2           appropriate.

3                         MR. BOWEN: Well, but Your Honor  
4           has invited us and asked us before we step  
5           into a buzz saw and displease the Court in  
6           an area --

7                         THE COURT: It's not a matter of  
8           displeasing me, Mr. Bowen, it's a matter of  
9           doing what is proper and appropriate.

10                        MR. BOWEN: I'm trying to put  
11           this thing in front of you.

12                        THE COURT: You're asking me to  
13           rule in advance on the appropriateness of  
14           your argument and I can't do that.

15                        MR. BOWEN: I'm confused when you  
16           invite us to take voir dire and tell us  
17           whether or not we can go through --

18                        THE COURT: I apologize for the  
19           confusion. I've stated what my position  
20           is. This is the way it works. Any  
21           disagreement that you and I have, or any  
22           disagreement that Mr. Britt and I have, I  
23           win.

24                        MR. BOWEN: I recognize that.

25                        THE COURT: Okay, okay. You

1 folks want to be heard about the  
2 evidentiary matters under 608, 609, 611-B,  
3 1054, 1055?

4 MR. BOWEN: What we say is this.  
5 The case law says that we can -- on the  
6 plea arrangement, we can talk about when  
7 the plea was done, where it was done what  
8 the plea was, and the punishment. Now,  
9 what we propose to do is to go into some  
10 detail about the punishment in the sense of  
11 the type of intensive probation that it  
12 was. And --

13 THE COURT: Look at the case  
14 law. You've got until 10:30. What is  
15 permissible under 609 is you can establish  
16 conviction, the pleas of the conviction,  
17 the date of the conviction, and the  
18 sentence imposed. That's what is  
19 permissible under 609. I'm telling you  
20 that under 611-B based on the facts and  
21 circumstances of this case, you can explore  
22 the plea arrangement. Anything beyond that  
23 is problematic.

24 MR. BOWEN: Well --

25 THE COURT: Now, you can

1 establish that he was placed on probation,  
2 what form of probation, all that -- are we  
3 clear on that.

4 MR. BOWEN: I can't, and the  
5 consequence of his violating that  
6 probation, by violating any law of the  
7 State or Federal Government.

8 THE COURT: If it bears on  
9 credibility, yes, if it bears on  
10 credibility.

11 MR. BOWEN: Now, the plea  
12 bargain, plea transcript, I do not purport  
13 to go into any matters that are not  
14 officially in that record, you know what  
15 I'm talking about --

16 THE COURT: Yes, sir.

17 MR. BOWEN: -- But on the face of  
18 the document there are two words.

19 THE COURT: It's a public  
20 document.

21 MR. BOWEN: Yes, sir, and those  
22 two words are as public as anything on  
23 there.

24 THE COURT: If the entirety of  
25 the document is public, then any of the

1 words are public.

2 MR. BOWEN: To wit, the words  
3 substantial assistance, .

4 THE COURT: Yes, sir. Now beyond  
5 that we've got problems.

6 MR. BOWEN: Well, I don't know  
7 anything beyond that.

8 THE COURT: Yes, sir. Mr. Britt,  
9 do you want to note any objection or  
10 exception to the Court's ruling?

11 MR. BRITT: Yes, sir, as to the  
12 Court's ruling it's permissible to  
13 cross-examine under 608-B.

14 THE COURT: Yes, sir, as to the  
15 plea arrangement itself.

16 MR. BRITT: Yes, sir, I would  
17 object and respectfully except to that  
18 ruling, I think this case is  
19 distinguishable from Williams. Williams  
20 dealt with that witness's ability to recall  
21 the events based upon prior drug usage,  
22 suicide attempts.

23 THE COURT: I neglected to say  
24 this, and I don't mean to cut you off  
25 either, but in part my ruling is predicated

1 not in -- on the basis of Williams but also  
2 Campbell versus Reed. Campbell versus Reed  
3 is the case decided by the Fourth Circuit.  
4 Interestingly enough, that case arose out  
5 of Cumberland County, and it dealt with a  
6 number of very interesting issues, but the  
7 language, I think, used by the Court is  
8 especially instructive. Let me find it, if  
9 you'll bear with me.

10 All right. In headnote three, "In the  
11 instant case, the prosecutor remains silent  
12 while Miller testified no plea arrangement  
13 had been made with the State, though he,  
14 the prosecutor, well knew that such an  
15 agreement did exist. Not only did the  
16 prosecutor allow the jury to be misled as  
17 to Miller's reasons for testifying, but by  
18 keeping Miller ignorant of the terms of the  
19 plea bargain"... This was a deal cut  
20 between prosecutor and defense counsel.  
21 Don't tell the defendant of the details of  
22 the deal. That way he can truthfully  
23 testify that there is no plea arrangement  
24 that he's aware of.

25 MR. BRITT: I'm familiar with it.

1           THE COURT: The Court went on to  
2 say "That the person's credibility as a  
3 witness was an important issue in the  
4 case. Evidence of any understanding or  
5 agreement for leniency was relevant to his  
6 credibility. And the jury was entitled to  
7 know of it."

8           There are a number of other cases in  
9 the Federal Courts under due process, on  
10 due process grounds, that have been decided  
11 on the issue of credibility that anything  
12 that arguably affects on a common law  
13 basis, and I mean because the instruction  
14 that would be given is you consider this,  
15 members of the jury, for what you find it  
16 to be worth, as you find that it bears on  
17 the issue of credibility. And if after  
18 doing so, you believe the testimony of the  
19 witness in whole or in part, then you treat  
20 that the same as you would any other  
21 believable evidence in this case.

22           My point is, it's a factor for them to  
23 consider in determining credibility. Now  
24 you're absolutely free to argue that it's  
25 not anything that amounts to anything for

1 the jury and they are entitled to argue  
2 that it's significant. But as it bears on  
3 credibility, I think it's something that  
4 the jury is entitled to note in as far as  
5 it's a circuitous inference to be drawn, if  
6 it is to be drawn at all. But I think they  
7 are entitled to know. I'm sorry I cut you  
8 off.

9 MR. BRITT: No, sir, and I can  
10 understand the Court's instruction, I was  
11 taught a long time ago, he who wears the  
12 black robe rules. I would simply, if the  
13 Court -- if they do pursue this line, I  
14 would request that the Court give a limited  
15 instruction as to --

16 THE COURT: Impeachment evidence.

17 MR. BRITT: Yes, sir.

18 THE COURT: It's being offering  
19 only for purposes of impeachment if they  
20 find it has bearing on credibility.

21 Note the State's objection and the  
22 exception as to the Court's ruling as it  
23 relates to the admissibility of the plea  
24 arrangement between the defendant and  
25 authorities in Cumberland County in this

1 case so that your issue is preserved as  
2 well.

3 MR. BRITT: The other thing, and  
4 when we -- if they start asking about the  
5 plea arrangement and there is a sealed  
6 document within the public file, because of  
7 the words that appear on that transcript,  
8 judgment, substantial assistance, I believe  
9 the Court would agree with me, I believe  
10 Mr. Bowen, Mr. Thompson would agree with  
11 me, because of the nature of the charge  
12 that there may be arguably some danger that  
13 Mr. Hales could be placed in if required to  
14 answer any questions in regard to that.

15 THE COURT: I've already  
16 indicated to him that I'll allow them to  
17 establish that the document reflects an  
18 agreement for substantial assistance and  
19 nothing else, no details.

20 You folks want to note any objection  
21 or exception other than what I've already  
22 noted for you.

23 MR. BOWEN: No, sir.

24 MR. THOMPSON: No, sir.

25 THE COURT: All right. We've got

1 a little time. Mr. Bowen, I genuinely did  
2 not mean to cut you off. I think in my  
3 view that it would not be appropriate,  
4 would not be fair to the State of North  
5 Carolina for me to, in advance, tell you  
6 this is an appropriate argument and this is  
7 not. I've tried to give you some general  
8 parameters, and if that confuses you, it's  
9 not my intent to confuse. I feel that the  
10 only appropriate thing I can do at this  
11 point is provide general parameters and  
12 nothing else.

13 MR. BOWEN: We are not going to  
14 implicate Mr. Britt in anything in  
15 Cumberland County. Our investigation is as  
16 complete as we can get it now. There's not  
17 a basis for that. But my notions were  
18 completely apart from that.

19 THE COURT: I understand, but I'm  
20 simply saying be careful that you don't  
21 paint a general picture that includes that,  
22 because in fairness to the State as I would  
23 do on an issue in fairness to the  
24 defendant, I would view it as my obligation  
25 to correct the jury or correct you so that

1 the jury understands what the situation  
2 is. And frankly, there's a bunch there  
3 that is available to you by arguing that  
4 you don't need to run that risk, in my  
5 view.

6 MR. BOWEN: Yes, sir.

7 THE COURT: Any other matters  
8 that we need to deal with at this time?

9 MR. BRITT: No, sir.

10 THE COURT: We're at ease  
11 until -- we've got the jury coming back at  
12 10:30?

13 MR. BRITT: Yes, sir.

14 THE BAILIFF: Court stands at  
15 ease until 10:30.

16 THE COURT: Folks, Ms. Gaines has  
17 a question. What has been marked as  
18 Court's Exhibit 19, transcript of plea, as  
19 I understand it, was part of the public  
20 records in Cumberland County file. It was  
21 not sealed.

22 MR. BRITT: No, sir.

23 THE COURT: When I reviewed the  
24 files it was not sealed.

25 MR. BRITT: No, Court's Exhibit

1 16 was a sealed document.

2 THE COURT: But not 19.

3 MR. BRITT: That's correct.

4 THE COURT: That's public  
5 record.

6 (Court at ease.)

7 (Whereupon an in camera proceeding  
8 ensued as follows.)

9 THE COURT: Let the record  
10 reflect that this proceeding is in camera,  
11 in-chambers. Present at this time are the  
12 presiding Judge, the court reporter,  
13 Sergeant Bruce Meares of the Robeson County  
14 Sheriff's Department, and the defendant in  
15 this action, Mr. Daniel Green, also known  
16 as U'Allah. This in camera, in-chambers  
17 proceeding is being held at the request of  
18 one of the attorneys for Mr. Green, also  
19 known as U'Allah, that being Mr. Woodberry  
20 Bowen. We are now awaiting Mr. Woodberry  
21 Bowen, Mr. Angus Thompson, and counsel for  
22 the State, Mr. Britt. We are at ease until  
23 attorneys for the parties arrive.

24 (Brief pause.)

25 THE COURT: Let the record

1 reflect Mr. Bowen just arrived. We are  
2 still awaiting Mr. Johnson Britt and  
3 Mr. Angus Thompson. We are at ease until  
4 they arrive.

5 (Brief pause.)

6 Let the record reflect Mr. Johnson  
7 Britt has just arrived. We are awaiting  
8 Mr. Angus Thompson.

9 (Brief pause.)

10 THE COURT: Let the record  
11 reflect Mr. Angus Thompson has just  
12 arrived. Present at this time are counsel  
13 for the State Mr. Johnson Britt, counsel  
14 for the defendant Mr. Angus Thompson, Mr.  
15 Woodberry Bowen. The defendant, Daniel  
16 Green, also known as U'Allah, is present.  
17 Also present is Sergeant Bruce Meares with  
18 the Robeson County Sheriff's Department,  
19 who is one of the bailiffs assigned to this  
20 case, and the court reporter.

21 Yes, sir, Mr. Bowen.

22 MR. BOWEN: Yes, sir, Your  
23 Honor. We were hoping to bring to the  
24 Court's attention, it is Mr. Green's  
25 concern about loosing the jurors yesterday,

1 he has observed I think with some error  
2 that at least one of the excusals could  
3 have probably been prevented if the bailiff  
4 had, when Ms. Locklear first brought  
5 something to his attention, had come to me  
6 or come immediately to the Court and let  
7 the Court deal with the matters.

8 We're just simply concerned about not  
9 having enough jurors and not making it  
10 through the trial. And what we think is  
11 appropriate and would like to suggest to  
12 the Court, that Your Honor give further  
13 instructions to the bailiffs about anything  
14 that a juror mentions to them should be  
15 brought to the attention of the Court.

16 THE COURT: The Court has already  
17 given that instruction after the outset of  
18 these proceedings. And apparently, from  
19 what was communicated in the in camera  
20 proceeding yesterday regarding the jurors,  
21 my impression and understanding is that it  
22 was not clearly communicated to Mr. Horne.  
23 The fact remains though that what was  
24 communicated, whether he clearly understood  
25 it or not, should have been communicated to

1 the Court, and the Court has directed  
2 Mr. Horne accordingly.

3 MR. BOWEN: Yes, sir.

4 THE COURT: Okay. Anything  
5 else?

6 MR. BOWEN: No, sir.

7 MR. BRITT: for the record,  
8 yesterday I presented them with some  
9 information involving an individual by the  
10 name of Angelo Thompson that had come to  
11 our attention on Tuesday evening, the 16th  
12 of January. Mr. Thompson is an inmate in  
13 the North Carolina Department of  
14 Corrections, housed at Morrison Youth  
15 Facility. And as indicated yesterday, the  
16 summary of the conversation with counselor  
17 was provided, then Mr. Thompson,  
18 Mr. Anthony Thompson Mr. Kim Heffney went  
19 to Morrison and interviewed Mr. Angelo  
20 Thompson in regard to statements that had  
21 been attributed to him in regard to this  
22 case. The statement that he gave them has  
23 been provided to defense counsel today  
24 during this recess between our 9:00 session  
25 and the beginning of the 10:30 session.

1 THE COURT: That's pursuant to  
2 Brady versus Maryland, and Agurs, United  
3 States versus Agurs.

4 MR. BRITT: Brady versus  
5 Maryland, also in keeping with the spirit  
6 of maintaining an open file policy. Those  
7 United States Supreme Court cases, United  
8 States versus Agurs, I don't know the cite  
9 but it's related to Brady versus Maryland.

10 MR. BOWEN: So the record will be  
11 complete, this material appears to be  
12 mostly nonexculpatory, the statement --

13 THE COURT: The difficulty with  
14 Brady, it's an ongoing problem, is who gets  
15 to decide what is exculpatory or not. In  
16 lots of situations it's given to the judge  
17 in camera, the judge reviews it in camera.  
18 That always put me in a very uncomfortable  
19 theory because I don't know what your  
20 strategy is or theory is, and it's  
21 difficult to assess what may be exculpatory  
22 and what may not be. That's basically a  
23 determination that you folks have to make,  
24 but in many instances you folks don't get  
25 to because the judge preceding you decided

1 it.

2 The best policy the policy being  
3 adopted by Mr. Britt, and that's to give it  
4 to you directly and then you folks can use  
5 it for whatever it's worth.

6 MR. BRITT: Also, Mr. Bowen  
7 provided me with a copy of a letter that he  
8 had received from Larry Fletcher, who was  
9 the ballistics expert that the defense had  
10 retained pursuant to the Court order.

11 THE COURT: Is that letter in the  
12 form of a report?

13 MR. BRITT: I think it could be  
14 interpreted that way.

15 THE COURT: Is there going to be  
16 a formal report as to that expert?

17 MR. BOWEN: Well, Judge, we have  
18 been attempting for a couple of weeks to  
19 get something in writing from this man, and  
20 this is all he has provided. Now, if  
21 there's anything else, I'm not aware of it  
22 at this point. I think the letter, though  
23 short, basically sets out his points as to  
24 the various subjects.

25 THE COURT: If there is a report,

1           you folks understand, as is true with the  
2           State, there's a continuing duty --

3                       MR. BOWEN:    Sure.

4                       THE COURT:   Any other matters?

5                       MR. BOWEN:    That's all.

6                       THE COURT:   This concludes the in  
7           camera proceeding.  It's now 10:27 by my  
8           watch, and we're scheduled to start at  
9           10:30, so I would like to go forward.

10                      (End of in camera proceeding.)

11                      THE COURT:   Let's the record show  
12           all counsel are present, the defendant is  
13           present in open court.  Mr. Horne, are all  
14           members of the jury secured in the jury  
15           room?

16                      THE BAILIFF:  Yes, sir, they are.

17                      THE COURT:   Any matters from  
18           counsel for the State before we continue  
19           with the State's direct examination of  
20           Mr. Hales?

21                      MR. BRITT:    No, sir.

22                      THE COURT:   Any matters from  
23           counsel for defendant?  So that the record  
24           is clear, folks, I'm going to state on the  
25           record in the presence of the jury that the

1 last objection made by counsel for the  
2 defendant is overruled, that the motion to  
3 strike is denied, and you may repeat or  
4 rephrase your question, whatever your  
5 preference is. If you'll bring the jury  
6 back in, please, Mr. Horne.

7 (Jury in at 10:31 a.m.)

8 THE COURT: Good morning.

9 Mr. Hales, if you will please take the  
10 witness stand once again.

11 Mr. Hales you've previously been sworn  
12 and you remain under oath.

13 For the record, the last objection by  
14 counsel for the defendant is overruled,  
15 exception is noted for the record. The  
16 motion to strike is denied, exception is  
17 noted for the record. Mr. Britt, you may  
18 repeat or rephrase your last question to  
19 Mr. Hales.

20 BY MR. BRITT:

21 Q Mr. Hales, did Mr. Green tell you where he  
22 got the red Lexus?

23 A Yes, sir.

24 Q Where did he tell you he got it?

25 A Said he rented it.

1 Q May I approach?

2 THE COURT: Yes.

3 BY MR. BRITT:

4 Q I'll show you what has been marked as  
5 State's Exhibit 50 and 51. Do you recognize what is  
6 depicted in that photograph?

7 A This is the red Lexus.

8 Q Is that a photograph of the red Lexus that  
9 you saw the defendant Daniel Green and Larry Demery  
10 with on July 26th, 1993?

11 A Yes, it is.

12 MR. BRITT: I don't have any  
13 other questions of Mr. Hales.

14 THE COURT: Any  
15 cross-examination?

16 MR. BOWEN: Thank you, Your  
17 Honor.

18 CROSS-EXAMINATION

19 BY MR. BOWEN:

20 Q Mr. Hales, you are how old now, sir?

21 A 23.

22 Q 23? In 1994, you lived where?

23 A During what time? I lived in Florida --

24 Q Did you ever live out of state?

25 A Yes.

1 Q Were you ever -- did you ever come back  
2 from out of state?

3 A Yes.

4 Q And under what circumstances?

5 A Extradited.

6 Q And you were extradited from what state,  
7 sir?

8 A Florida.

9 Q And as a result of the charges on which you  
10 were extradited from Florida, did you plead guilty or  
11 were you found guilty to certain offenses?

12 A Plead guilty.

13 Q And what offenses did you plead guilty to,  
14 sir?

15 MR. BRITT: Objection, would ask  
16 for a limited instruction.

17 THE COURT: Members of the jury,  
18 the matters now being elicited from the  
19 witness before you, Mr. Hales, by counsel  
20 for defendant are being received in this  
21 case for the limited purpose of  
22 impeachment, and as I have previously  
23 explained to you, the term impeachment  
24 means as tending to discredit or to  
25 contradict. And I instruct you that to the

1 extent that you find that this evidence  
2 bears on the credibility of the witness  
3 before you, you may consider this evidence  
4 for the limited purpose of impeachment and  
5 for no other purpose in this matter.  
6 Anything further, Mr. Britt?

7 MR. BRITT: No, sir.

8 THE COURT: You may answer the  
9 question.

10 THE WITNESS: Question again?

11 BY MR. BOWEN:

12 Q What offense were you convicted of or did  
13 you plead guilty to after being extradited from  
14 Florida?

15 A Seven counts of selling and delivery.

16 Q Selling and delivery of what, sir?

17 A Cocaine.

18 Q Was there anything else?

19 A And conspiracy charge of trafficking  
20 cocaine.

21 Q Conspiracy charge of trafficking, is that  
22 right?

23 A Yes, sir.

24 Q Now, can you tell the jury what mandatory  
25 minimum sentence you were facing on the conspiracy to

1 traffic cocaine?

2 MR. BRITT: Objection.

3 THE COURT: Objection sustained.

4 Anything further?

5 MR. BRITT: Move to strike.

6 THE COURT: Motion to strike  
7 allowed.

8 Members of the jury, disregard both  
9 the last question of Mr. Bowen and the  
10 answer by the witness if one was given.  
11 Those matters not to take part in your  
12 deliberations in this matter in any  
13 respect.

14 You may rephrase, Mr. Bowen.

15 BY MR. BOWEN:

16 Q Did you plead guilty to those cases in  
17 Cumberland County Superior Court?

18 A Yes, I did.

19 Q And did you receive an active sentence?

20 A No, I didn't.

21 Q As a result of those -- sir?

22 A No, I didn't.

23 Q Did you receive a fine in connection with  
24 those cases?

25 A Yes.

1 Q And how much was the fine?

2 A I can't remember.

3 Q Are you on any kind of probation now?

4 A Yes, I am.

5 Q And can you describe the type of probation  
6 you're now on?

7 A Five years probation, six months intense.

8 Q So you're on the intensive portion of the  
9 probation --

10 A For six months.

11 Q Right now, is that correct?

12 A Yes.

13 Q Now, you were originally brought before the  
14 Superior Court and you entered this plea sometime  
15 back in the summer?

16 THE COURT: You need to establish  
17 where and when.

18 BY MR. BOWEN:

19 Q You entered this plea initially in  
20 Cumberland County, is that correct?

21 A Yes, sir.

22 THE COURT: Okay.

23 Q In Superior Court?

24 THE COURT: You're going to have  
25 to rephrase, because you use used the word

1 "initial".

2 BY MR. BOWEN:

3 Q You entered your plea in Cumberland County  
4 Superior Court, correct?

5 A Yes.

6 Q And when did you enter that plea?

7 THE COURT: If you can recall.

8 THE WITNESS: I can't remember.

9 BY MR. BOWEN:

10 Q Would the summer of 1995 sound about right,  
11 June 28th, in fact?

12 A I don't remember.

13 Q Do you recall that sentencing was then  
14 continued until August the 7th?

15 A Don't remember.

16 Q But you were not actually finally given  
17 your sentence until sometime in October of 1995, is  
18 that true?

19 A I was sentenced October the 16th.

20 Q During the time that you say that you saw  
21 Daniel Green, you had a drug habit, did you not,  
22 sir?

23 MR. BRITT: Objection.

24 THE COURT: Do you want to be  
25 heard, Mr. Britt?

1 MR. BRITT: Yes, sir.

2 THE COURT: All right. Members  
3 of the jury, there's a matter of law the  
4 Court must take up at this time. Please  
5 recall my instructions in that regard,  
6 don't worry or speculate about what takes  
7 place in the courtroom in your absence. If  
8 all members of the jury would step to the  
9 jury room at this time.

10 (Jury out at 10:37 a.m.)

11 THE COURT: Let the record show  
12 the following is being conducted in the  
13 absence of the jury. If you'll state the  
14 basis of your objection.

15 MR. BRITT: Your Honor, the basis  
16 of the objection is pursuant to Rule  
17 608(b).

18 THE COURT: Being offered under  
19 what rule of evidence?

20 MR. BOWEN: Well, it's being  
21 offered actually under 611 and State versus  
22 Williams, because what it goes to, we heard  
23 Mr. Henley say that this young man --

24 THE COURT: Just wanted to know  
25 the rule.

1 MR. BOWEN: Yes, sir.

2 THE COURT: Yes, sir.

3 MR. BRITT: In voir dire, that's  
4 been developed yesterday and again this  
5 morning, there's nothing to show, one, that  
6 there's a basis for asking the question,  
7 because there's nothing before the Court  
8 that while he sold drugs, there's nothing  
9 before the Court that shows that he used --

10 MR. BOWEN: Mr. Henley said the  
11 young man was being paraded around as a  
12 remarkable recovery from addiction, was in  
13 a drug program and was considered a --  
14 that's the remarkable thing about him, from  
15 Mr. Henley.

16 MR. BRITT: I remember Mr. Henley  
17 and Mr. Brady's testimony being that  
18 Mr. Hales was used and an example to show  
19 what drugs can do to your life and what you  
20 can do to overcome that.

21 THE COURT: Bottom line. First  
22 question occurred to me is where is the  
23 good faith basis?

24 MR. THOMPSON: Through  
25 Mr. Henley. We talked with Mr. Henley.

1 THE COURT: All right. And I'm  
2 going to allow you to ask him some  
3 questions that will satisfy both the Court  
4 and Mr. Britt as to those. Yes, sir.

5 BY MR. BOWEN:

6 Q Now, Mr. Hales, you did use drugs,  
7 yourself, did you not?

8 A When, at one time? Yes, sir, I had a habit  
9 of smoking marijuana.

10 Q And what period of time did you have the  
11 habit of smoking marijuana?

12 A I stopped smoking marijuana in 1992.

13 Q Stopped smoking in 1992?

14 A Yes.

15 Q Well, now, you have gone around to -- I  
16 take it you've gone with Mr. Henley to various public  
17 meetings concerning drugs?

18 THE COURT: May I interject?

19 THE COURT: Were you  
20 participating in the DARE program and  
21 relating to young folks your experiences as  
22 a former drug user or as a former drug  
23 dealer?

24 THE WITNESS: Dealer.

25 BY MR. BOWEN:

1 Q Do you remember what the name of that  
2 program was?

3 A DARE.

4 Q It was the DARE program?

5 A Uh-huh.

6 Q What period of time did you go around  
7 giving those talks or those appearance?

8 A I can't recall.

9 Q And is it your testimony that you, in those  
10 appearances never spoke of your having used anything  
11 other marijuana?

12 A That's correct.

13 THE COURT: Was the gist of your  
14 speaking experiences if you deal in drugs  
15 you can end up getting shot?

16 THE WITNESS: That's correct.

17 MR. BOWEN: That's all.

18 THE COURT: Anything further,  
19 folks?

20 MR. BOWEN: No, sir.

21 THE COURT: Mr. Britt?

22 MR. BRITT: I just renew my  
23 objection.

24 THE COURT: To the extent that  
25 the witness has testified on voir dire to

1 prior drug use, specifically marijuana,  
2 it's admissible under Williams. I'm  
3 limiting it to that. Note the State's  
4 objection and exception to the Court's  
5 ruling.

6 Anything further?

7 MR. BOWEN: That's all.

8 THE COURT: Bring the jury back  
9 in.

10 It's for a limited purpose under  
11 Williams.

12 (Jury in at 10:41 a.m.)

13 THE COURT: The objection is  
14 overruled, exception is noted for the  
15 record. Yes, sir, you may repeat or  
16 rephrase your question.

17 BY MR. BOWEN:

18 Q Mr. Hales, in the past, you have used  
19 illegal drugs yourself, haven't you?

20 A Yes.

21 MR. BRITT: Objection.

22 THE COURT: Limiting instruction.

23 MR. BRITT: Yes, sir.

24 THE COURT: Members of the jury,  
25 the matters now being elicited by counsel

1 for the defendant of the witness before  
2 you, again, is being admitted for the  
3 limited purpose of impeachment. Now, as I  
4 previously instructed you, the term  
5 impeachment means as tending to discredit  
6 or to contradict. Again, I instruct you it  
7 is for you, the members of the jury, to  
8 decide what the evidence in the case does  
9 show. But to the extent that you find that  
10 this evidence bears on the credibility of  
11 the witness, specifically to the extent  
12 that you find that this evidence bears on  
13 the witness's ability to perceive, to  
14 recount or to retain information about  
15 which the witness may have testified, and  
16 therefore, as bearing on credibility, you  
17 may consider this evidence for that limited  
18 purpose and for no other purpose. Anything  
19 further on behalf of the State?

20 MR. BRITT: No, sir.

21 THE COURT: Yes, sir -- did you  
22 answer the question, sir?

23 THE WITNESS: Yes, I did.

24 BY MR. BOWEN:

25 Q And the drug that you used in the past was

1 marijuana, is that correct?

2 A That's correct.

3 Q And you maintained that you stopped using  
4 marijuana the year before these events that you're  
5 testifying to today?

6 THE COURT: That ain't been  
7 established.

8 MR. BOWEN: Well --

9 THE COURT: Hearsay.

10 BY MR. BOWEN:

11 Q Well, when is it that you say -- what year  
12 is it that you say that you saw Mr. Green?

13 A '93.

14 Q You hadn't known Mr. Green before, had you?

15 A No.

16 Q Hadn't known Mr. Demery, had you?

17 A No, sir.

18 Q Who made the introduction of you to  
19 Mr. Green, if anyone?

20 A Eric Thompson.

21 Q Now, when was the year that you say that  
22 you stopped using marijuana?

23 A '92.

24 Q Now, you formed a close relationship with a  
25 Cumberland County Deputy Sheriff, is that right?

1 MR. BRITT: Objection.

2 THE COURT: Overruled. You can  
3 answer yes or no or whatever is  
4 appropriate.

5 BY MR. BOWEN:

6 Q You formed a close relationship with a  
7 deputy sheriff, namely Mr. Henley?

8 A Yes.

9 Q Lieutenant Jimmy Henley?

10 A Yes.

11 Q Did Mr. Henley take you to various meetings  
12 and convocations concerning drugs?

13 THE COURT: Convocations?

14 MR. BOWEN: Group get-togethers,  
15 that sort of thing.

16 THE COURT: Yes, sir.

17 THE WITNESS: Yes, I went out  
18 with him to talk to kids and that sort of  
19 thing.

20 BY MR. BOWEN:

21 Q Now, then, you were first contacted by  
22 Mr. Heffney when?

23 A January 11th, 1996.

24 Q Now, you have read, you are aware of this  
25 case, you were aware of the charges against Daniel

1 Green for some time, weren't you?

2 A Excuse me, now?

3 Q You were aware of the charges against  
4 Daniel Green for some time prior to January the 11th,  
5 1996, weren't you?

6 A Yes.

7 Q And you still knew how to get up with  
8 Mr. Henley from 1993 until 1996, didn't you?

9 A Yes.

10 Q And all that time, you never called this  
11 officer, Mr. Henley, or any other officer concerning  
12 this case, did you?

13 A No, sir.

14 Q Did you ever reside in a hotel in  
15 Fayetteville, sir?

16 A Reside in a hotel?

17 Q Did you ever --

18 A Live in a hotel?

19 Q Yes, sir?

20 A I might have visited on special occasions  
21 but I never resided there.

22 Q Did you ever conduct any of the drug sales  
23 to which you pled guilty out of a hotel in  
24 Fayetteville?

25 A No, because I --

1 MR. BRITT: Objection.

2 THE COURT: The objection is  
3 overruled.

4 BY MR. BOWEN:

5 Q You may answer, sir?

6 A That was at my home.

7 MR. BOWEN: May I approach the  
8 witness, Your Honor?

9 THE COURT: Yes, sir.

10 BY MR. BOWEN:

11 Q Mr. Hales, I direct your attention to what  
12 is now marked Court's Exhibit Number 19. I'll ask  
13 you, sir --

14 THE COURT: You're going to have  
15 to identify it. Mark and identify it  
16 before you use it as an exhibit

17 (Defense Exhibit 10 was  
18 marked for identification.)

19 BY MR. BOWEN:

20 Q Mr. Hales, this paper is marked Defense  
21 Exhibit Number 10, and I ask you if you recognize  
22 that document, sir?

23 A Yes.

24 Q That document consists of two sheets, is  
25 that correct?

1 A Yes.

2 Q The first sheet has a front and back, and  
3 the second sheet has a front?

4 A Correct.

5 Q Now, Mr. Hales, this is a sheet of paper  
6 called a transcript of plea, is it not?

7 A That's correct.

8 Q This paper records answers that you made or  
9 that your lawyer made for you in open court to Judge  
10 Cory Brewer over in Cumberland County, is that  
11 correct?

12 A I made the answers, he --

13 Q Your lawyer wrote them down for you?

14 A Yes.

15 Q Ultimately when these proceedings -- at a  
16 point in these proceedings, you signed this  
17 transcript of plea, did you not?

18 A Correct.

19 Q Now, you also initialed some areas of this  
20 transcript of plea, did you not?

21 A Correct.

22 Q For example, where it says the listing of  
23 charges to which the defendant is pleading guilty is  
24 continued in Exhibit A which is attached, and you  
25 initialed that, didn't you?

1 A Correct.

2 Q And we turn over the page, and what says  
3 Exhibit A which is attached to Defense Exhibit Number  
4 10, this is a sheet which sets out all of those  
5 charges that you told the jury a moment ago that you  
6 pled guilty to, is that right?

7 A That's correct.

8 Q Now, at the end of that page, you also  
9 initialed it, did you not?

10 A Correct.

11 Q And you were informed by the Court that  
12 based upon these charges you were facing a potential  
13 180 years, is that correct?

14 A Correct.

15 Q And that you were facing a mandatory  
16 minimum sentence of 35 years, is that correct?

17 A Correct.

18 Q You were further informed by the Court that  
19 you were facing a mandatory \$250,000 fine for these  
20 charges?

21 A Correct.

22 Q But you did not get a fine of anything near  
23 that magnitude, did you? You didn't get anywhere  
24 near that big a fine, did you?

25 A No, sir

1 (Defense Exhibit 11 was  
2 marked for identification.)

3 BY MR. BOWEN:

4 Q I'll show you what has been marked as  
5 Defendant's Exhibit 11, and ask you if you recognize  
6 your judgment in your case?

7 A Yes.

8 Q And you've been over that judgment with  
9 your probation officer, haven't you?

10 A Correct.

11 Q And you knew what it said, didn't you?

12 A Yes.

13 Q You've told the jury here earlier that you  
14 received a fine, is that correct?

15 A Yes.

16 Q Do you see the segment of this form that  
17 says monetary conditions?

18 A Yes.

19 Q Do you see the block that says on this  
20 judgment, fine?

21 A Yes.

22 Q That's on Defense Exhibit 11, correct?

23 A Correct.

24 Q Now, are you saying now that you did or did  
25 not receive a fine in this case?

1 A Total amount due, \$3600.

2 Q What does it say under fine?

3 A See, I didn't consider that as no fine or  
4 as -- the fine that I have to pay back for lawyers  
5 fee, that's what I considered as a fine.

6 Q I see. So you got costs of \$265.00, \$3,000  
7 attorney fee, community service?

8 A Yes, sir.

9 Q But you did not receive a fine, did you?

10 A Correct.

11 Q All right. Presently on your intensive  
12 probation, you are not permitted to violate any law  
13 of the State or Federal Government without running  
14 the risk that you will be reported back for a  
15 probation violation, is that right?

16 A Correct.

17 THE COURT: The form of that  
18 question is incorrect. So rephrase.

19 BY MR. BOWEN:

20 Q You know that if you break the law, you  
21 could go back to jail and serve the active portion of  
22 your sentence, correct?

23 MR. BRITT: Object to form.

24 THE COURT: Overruled. You may  
25 answer.

1           A       Yes, if I violated on five years, I get a  
2 twenty year sentence on top of my five.

3           Q       So you could, if you break the law, be  
4 caused to serve 20 years?

5           A       Correct.

6           Q       Now when Mr. Heffney came and talked to  
7 you, you knew that he was an SBI officer?

8           A       Came to talk to me when?

9           Q       Did he come talk to you?

10          A       No, sir, other than my case in Cumberland  
11 County.

12          Q       Did Mr. Heffney come and talk to you on  
13 January the 11th, 1996?

14          A       Yes.

15          Q       Okay. And when Mr. Heffney came and talked  
16 to you, you knew that he was a State Bureau of  
17 Investigation Officer?

18          A       Yes, he identified himself, yeah.

19          Q       Now, did you state that Mr. Heffney had  
20 earlier dealt with your case in Cumberland County or  
21 not?

22          A       Got him mistaken with Mr. --

23                   THE COURT: Henley.

24                   THE WITNESS: Henley.

25          Q       So it was Henley in Cumberland County, and

1 then on January the 11th it was Mr. Heffney that came  
2 to see you?

3 A Correct.

4 Q Had you known in the past officer Don  
5 Smith?

6 A No, sir.

7 Q Art Binder?

8 A No, sir.

9 Q Cliff Massengill?

10 A No, sir.

11 Q Ray Wood?

12 A No, sir.

13 Q Or Barry Lea?

14 A No, sir.

15 Q So you do not know any of those individuals  
16 I just listed nor have you ever talked to them, is  
17 that correct?

18 A I don't recall them, no, sir.

19 Q When Mr. Heffney talked to you, did you see  
20 Mr. Heffney writing out anything?

21 A No, sir. At what time?

22 Q When he talked to you on January the 11th.

23 A No, sir.

24 Q Did he come to see you on January the 12th?

25 A No, sir. Well, yes, he did. I followed

1 him down here because I didn't know how to get here.

2 Q So you actually talked to him on the 12th  
3 at a little bit after midnight, is that correct, or a  
4 little bit after midday, 12:24, midday, is that about  
5 when you talked to him?

6 A Approximately.

7 Q And you say that he did not write anything  
8 at that time, correct?

9 THE COURT: That's not what he  
10 said, Mr. Bowen. Your question was on the  
11 11th, did he write down anything.

12 BY MR. BOWEN:

13 Q When you talked to him, did he write down  
14 anything?

15 THE COURT: On which occasion,  
16 Mr. Bowen?

17 MR. BOWEN: Well, judge, I think  
18 I can develop that.

19 THE COURT: Please do.

20 BY MR. BOWEN:

21 Q I think what happened, Mr. Heffney got in  
22 contact with you?

23 THE COURT: Ask questions.

24 BY MR. BOWEN:

25 Q Mr. Heffney got in contact with you, did

1 he?

2 A Yes.

3 Q And he asked you to follow him?

4 A No, he asked me when he came on January  
5 11th, he asked me did I have any transportation. At  
6 first I said no, but then he said he will make --  
7 provide transportation for me. So therefore, when he  
8 came that morning, I went on and drove myself, and I  
9 followed him down here.

10 THE COURT: So we can clarify in  
11 the record, you indicated that your first  
12 contact with Mr. Heffney was when January  
13 11th, around 7:15 p.m. where did that  
14 occur.

15 THE WITNESS: My house.

16 THE COURT: What happened at that  
17 time?

18 THE WITNESS: We go into the  
19 house, Mr. Heffney talked to my mother, he  
20 gave me my subpoena, and he told me he  
21 would be back in the morning to pick me up.

22 THE COURT: You indicated in the  
23 morning you followed him?

24 THE WITNESS: Yes.

25 THE COURT: What day are you

1           referring to?

2                   THE WITNESS:   January the 12th.

3                   THE COURT:   The following day?

4                   THE WITNESS:   Yes.

5                   THE COURT:   Yes, sir.

6   BY MR. BOWEN:

7           Q       So you did not give him a statement on the  
8   11th?   Sir?

9           A       No, sir.

10          Q       You gave him a statement on the 12th,  
11   correct?

12          A       Correct.

13          Q       And you say did he did or did he not write  
14   anything down when you gave him the statement done on  
15   the 12th?

16          A       Wrote it down.

17          Q       Sir?

18          A       He wrote it down.

19          Q       Now, did you look over that statement?

20          A       He read it over to me.

21          Q       Did you sign the statement?

22          A       No, I sure didn't.

23          Q       Did you read the statement?

24          A       He read it over to me, and I followed him  
25   as he read it on.

1           Q       So except for what he read out, you don't  
2 know what is in that written statement, do you?

3           A       Other than what I said.

4                   THE COURT:   So that we can avoid  
5 confusion, you indicated, Mr. Hales, that  
6 Mr. Heffney according to your testimony  
7 read a statement to you?

8                   THE WITNESS:   Yes.

9                   THE COURT:   At that time, was he  
10 seated across from you or did you have an  
11 opportunity to see the statement as he was  
12 reading it to you?

13                   THE WITNESS:   I was sitting right  
14 in front of him.

15 BY MR. BOWEN:

16           Q       Were you reading along the paper with the  
17 statement as he read it?

18           A       As he was reading the statement, his hand  
19 was following each line, and I was following along.  
20 When his hands stopped moving, that's when he stopped  
21 talking.

22           Q       You've read it, and everything that you  
23 said to Mr. Heffney on the 12th is true, is that  
24 correct?

25           A       Yes, it is.

1 THE COURT: That would be number  
2 12, Mr. Bowen?

3 MR. BOWEN: Yes, sir.

4 (Defense Exhibit 12 was  
5 marked for identification.)

6 BY MR. BOWEN:

7 Q I'll show you what has been marked as  
8 Defendant's Exhibit 12, Mr. Hales, and I'll ask you  
9 to look over what is four pages in that exhibit,  
10 please.

11 A That's correct.

12 Q Is that what Mr. Heffney wrote down at the  
13 time of your statement on the 12th of January this  
14 year?

15 A I would have to read all over it.

16 Q All right.

17 MR. BRITT: Objection.

18 THE COURT: To the form,  
19 sustained.

20 BY MR. BOWEN:

21 Q What is Defense Exhibit 12, if you know?

22 A A statement that Mr. Heffney wrote.

23 Q Is that the statement that you've testified  
24 that you read over as he was reading it back to you?

25 MR. BRITT: Objection, that --

1 THE COURT: Sustained as to form.

2 BY MR. BOWEN:

3 Q Have you read the statement before, that  
4 is, Defense Exhibit Number 12?

5 A Have I read it before?

6 Q Yes, sir.

7 A No, sir.

8 THE COURT: You can ask him if it  
9 was read to him.

10 BY MR. BOWEN:

11 Q Did you testify earlier that the statement  
12 was read to you and that you read it line by line as  
13 Mr. Heffney read it to you?

14 A Yes.

15 Q All right. So you have read it before,  
16 correct?

17 A As I said before --

18 THE COURT: Mr. Bowen, if you'll  
19 bear with me. Members of the jury, there's  
20 a matter of law the Court must take up at  
21 this time out of the hearing and the  
22 presence of the jury. Please recall my  
23 instruction in that regard. Don't worry or  
24 speculate about what takes place in the  
25 courtroom in your absence. If you will

1 please step to the jury room.

2 (Jury out at 11:06 a.m.)

3 THE COURT: Let the record  
4 reflect the following is being conducted in  
5 the absence of the jury so that we can try  
6 to move things along and so that we can all  
7 understand your testimony. None of us  
8 means to suggest anything to you, none of  
9 us means to put any words in your mouth.  
10 We simply want to know what your response  
11 would be.

12 Did I understand your testimony to be,  
13 and if this is incorrect please let me  
14 know, that at the time that you gave  
15 Mr. Heffney the statement on January 12th,  
16 1996, Mr. Heffney was seated on one side of  
17 the table?

18 THE WITNESS: Yes.

19 BY THE COURT:

20 Q You were seated on opposite side?

21 A Yes.

22 Q And that he, as the statement was given by  
23 you, wrote down what you said to him?

24 A Yes, word by word.

25 Q And at the conclusion of your giving the

1 oral statement to Mr. Heffney, he then read that  
2 statement back to you?

3 A Correct.

4 Q At the time he read it back to you, was he  
5 holding the document that he had written in front of  
6 him?

7 A No, it was laying on flat down.

8 Q Were you able to read that document across  
9 the table?

10 A I wasn't able to read it, no, sir.

11 Q So if I understood your testimony correctly  
12 he read the document to you?

13 A Correct.

14 Q And that as he read the document to you, he  
15 ran down line by line?

16 A Yes, correct.

17 Q But you never actually read the document?

18 A No, sir.

19 Q Yourself?

20 A No, sir.

21 Q When is the first time you have seen that  
22 document?

23 A Other than when he wrote down, just now.

24 Q So from the time he read it to you until  
25 when Mr. Bowen just handed it to you, you have not

1     seen the document?

2             A        Correct.

3                     THE COURT:   Mr. Bowen, what he  
4                     testified is Mr. Heffney read the document  
5                     to him.  When he read it to him, he ran his  
6                     finger along the line.  He never read the  
7                     document at all.  He simply listened as  
8                     Mr. Heffney read the document to him.  And  
9                     at the conclusion of Mr. Heffney's reading  
10                    it to him, he apparently indicated yes,  
11                    that's what I said.  So we need to be clear  
12                    on what happened, and a good way of doing  
13                    that is to listen to what the witness says.

14                    MR. BOWEN:  Yes, sir, I was  
15                    listening.  In fact, the computer reflects  
16                    page 60, line 23, my question was, "You've  
17                    read it, and everything that you said to  
18                    Mr. Heffney on the 12th is true, is that  
19                    correct?"  And he said "Yes, it is".

20                    THE COURT:  Well, I suggest that  
21                    some of questions lend themselves to  
22                    confusion, but I think we've established  
23                    what the true facts are now.  You're  
24                    entitled to ask him some additional  
25                    questions if you want to at this point.  My

1 concern is I am seeing some  
2 miscommunication between the time that the  
3 words are uttered from the witness's mouth  
4 and the time they hit your ears. So any  
5 questions you want to put to the witness,  
6 feel free to do so at this time.

7 BY MR. BOWEN:

8 Q When you were looking at Mr. Heffney moving  
9 his fingers across the page, is it that you were not  
10 able to see those words?

11 A I wasn't able to see those words, no.

12 Q So when I asked you a little while ago if  
13 you had read it and it reflected what you told  
14 Mr. Heffney, and you told me that it did, what were  
15 you thinking?

16 A Repeat that again.

17 Q Well, when I asked you if you had read it  
18 and if it spoke -- if it said what Mr. -- if it said  
19 what you told Mr. Heffney --

20 A I hate to cut you off, but as I said  
21 before, when Mr. Heffney was reading it to me, and  
22 when he got to the conclusion of the statement I had  
23 made, it was correct. That's what I had said.

24 Q So in fact, you've never actually read it  
25 with your eyes?

1 A No, I haven't.

2 Q Never signed it?

3 A No, I haven't, no, I didn't.

4 Q Never made corrections on it?

5 A Never made no corrections.

6 MR. BOWEN: That's all.

7 THE COURT: If you'll bring the  
8 jury back in, please. And you're entitled  
9 to rephrase or ask any additional questions  
10 you want to, Mr. Bowen.

11 (Jury in at 11:11 a.m.)

12 THE COURT: Yes, sir, Mr. Bowen.

13 BY MR. BOWEN:

14 Q Mr. Hales as to Defense Exhibit Number 12,  
15 you have not actually read that document before  
16 today, have you?

17 A That is correct.

18 Q And you have not signed that document, have  
19 you?

20 A That is correct.

21 Q Now, have you had an opportunity to read it  
22 yourself today?

23 A No, I haven't.

24 Q You don't -- you're not then in a position  
25 to say whether that statement truly reflects what

1 you've said to Officer Heffney by your own reading,  
2 are you?

3 A Well, for the little time that I know  
4 Mr. Heffney, I do believe that he wrote down a true  
5 statement.

6 Q All right.

7 THE COURT: Do you want an  
8 opportunity to examine the exhibit, sir?

9 THE WITNESS: (Witness complies).

10 THE COURT: Mr. Bowen.

11 BY MR. BOWEN:

12 Q Was that your statement, sir?

13 A Yes, it is.

14 Q And you stand by that statement?

15 A Yes, I do.

16 Q Now, with respect to the incident at your  
17 house where you say you saw the red Lexus, Mr. Jovan  
18 Carter was there as well, wasn't he?

19 A No, he wasn't.

20 Q Okay. Did you see Mr. Carter the same day  
21 at all that you saw the red Lexus?

22 A Yes, I did.

23 Q Did you see Mr. Jovan Carter in the  
24 presence of the red Lexus at any time?

25 A Until -- until we went to Jovan's house

1 that's when I seen Jovan.

2 Q So Jovan was there with you and others at  
3 Jovan's house?

4 A When we arrived to his house, yes.

5 Q Are you denying that at any time you went  
6 to a hotel that day?

7 A I'm denying it.

8 Q Okay. And out of the potential 180 years  
9 that you were facing, you served in active time  
10 actually 23 days, is that correct?

11 A Yes, that's correct.

12 MR. BOWEN: That's all.

13 THE COURT: Mr. Britt?

14 MR. BRITT: Yes, sir.

15 REDIRECT EXAMINATION

16 BY MR. BRITT:

17 Q Mr. Hales, when did you meet Jimmy Henley?

18 A First met Jimmy Henley sometime in '95 --  
19 no -- yeah, '95. My lawyer hired him as a private  
20 investigator on my case that I had in Cumberland  
21 County.

22 Q When you met Mr. Henley, were you aware  
23 that he had previously worked for the Cumberland  
24 County Sheriff's Department?

25 A Yes.

1 Q Were you aware that Mr. Henley was one of  
2 the investigators in this murder case at the time  
3 that you first met him?

4 A No, sir.

5 Q Did it later come to your attention that  
6 Mr. Henley had been involved in the investigation of  
7 this murder case?

8 A Yes, sir.

9 Q And when did that come to your attention?

10 A I can't recall.

11 Q Was it during a time that he was working  
12 for your attorney on your drug cases?

13 A No, sir.

14 Q Now, the statement that you gave  
15 Mr. Heffney, you've had an opportunity to review it  
16 here in court today?

17 A Yes, sir.

18 Q You stated earlier that you didn't make any  
19 corrections to the statement when Mr. Heffney read it  
20 back to you?

21 A No, sir.

22 Q Why weren't any corrections made?

23 A Because it's the truth, everything.

24 Q Mr. Heffney wrote down word for word what  
25 you told him?

1 A Exactly.

2 Q When you first saw the red Lexus, where  
3 were you?

4 A In my window when I first saw it.

5 Q And who was in that red Lexus when you  
6 first saw it?

7 A Larry and Daniel.

8 Q When did you see Jovan Carter near the red  
9 Lexus?

10 A I say like 30 minutes after they arrived at  
11 my house.

12 Q When you say "they," who are you referring  
13 to?

14 A Larry and Daniel and Eric Thompson.

15 Q Where was it that you saw Jovan Carter  
16 around this red Lexus?

17 A At Jovan's house.

18 Q And how did the red Lexus come to go to  
19 Jovan Carter's house if you know?

20 A Daniel drove.

21 Q To your knowledge, did Daniel Green know  
22 Jovan Carter?

23 A No, he didn't.

24 Q How was it that Daniel Green took the red  
25 Lexus to Jovan Carter's house?

1 A He followed me and Eric Thompson.

2 Q Now, Eric Thompson, is he someone that you  
3 know?

4 A Yes, he is.

5 Q How long have you known Eric Thompson?

6 A Practically all my life.

7 Q Do you know David Moore?

8 A Yes.

9 Q And who is David Moore?

10 A That's -- that's Daniel's half brother or  
11 something like that.

12 Q And how is it that you know David Moore?

13 A By school, grew up together, mostly.

14 Q And did you grow up in the same  
15 neighborhood or the same area as David Moore and Eric  
16 Thompson?

17 A Yes, I did.

18 Q And in the past, have there been occasions  
19 when you have seen Eric Thompson and David Moore  
20 together?

21 A Yes.

22 Q What if any relationship that you know of  
23 do David Moore and Eric Thompson have with each  
24 other?

25 A Just like me and David, friends, good

1 friends.

2 Q And was Eric Thompson with Daniel Green and  
3 Larry Demery when the red Lexus showed up at your  
4 house on July 26th, 1993?

5 A Yes, he was.

6 Q And did Eric Thompson stay there with the  
7 defendant Larry Demery and yourself from the time  
8 they first arrived at your house until you were  
9 dropped off later in the day?

10 A Yes.

11 Q And when you were dropped off at your  
12 house, who if anyone did Daniel Green leave with?

13 A Eric.

14 Q In what vehicle?

15 A Blazer.

16 MR. BRITT: I don't have any  
17 other questions.

18 THE COURT: Any further, folks? .

19 RE CROSS EXAMINATION

20 BY MR. BOWEN:

21 Q Mr. Hales, did you ever see Mr. Daniel  
22 Green at any time after the car was left in the  
23 woods?

24 A No, sir.

25 MR. BOWEN: That's all.

1 THE COURT: Can the witness be  
2 released?

3 MR. BOWEN: Yes, sir.

4 MR. BRITT: Yes, sir.

5 THE COURT: You're free to go,  
6 sir.

7 THE COURT: Mr. Britt?

8 MR. BRITT: Your Honor, at this  
9 time we would call Terrellis Teasley. We  
10 need the assistance of the bailiff.

11 THE COURT: Yes, sir.

12 Mr. Teasley, if you'll come around to  
13 the witness stand, please, sir. If you'll  
14 place your left hand on the Bible, raise  
15 your right, and face Ms. Gaines to my left  
16 over here.

17 **TERRELLIS MARNICUS TEASLEY,**  
18 being first duly sworn was examined and testified as  
19 follows:

20 DIRECT EXAMINATION

21 THE COURT: You may have a seat,  
22 sir. For the record, sir, if you'll state  
23 your full name.

24 THE WITNESS: Terrellis Marnicus  
25 Teasley.

1 THE COURT: You'll need to speak  
2 up so all members of the jury are able to  
3 hear.

4 THE WITNESS: Terrellis Marnicus  
5 Teasley.

6 THE COURT: Would you spell your  
7 first name for the record?

8 THE WITNESS: T E R R E L L I S.

9 THE COURT: And spell your middle  
10 name, if you will?

11 THE WITNESS: M A R N I C U S.

12 THE COURT: If you would spell  
13 your last name as well?

14 THE WITNESS: T E A S L E Y.

15 THE COURT: Mr. Teasley, it's  
16 important that all members of the jury and  
17 all counsel and all parties be able to hear  
18 your testimony. So if you will please  
19 speak directly into the microphone and  
20 speak as clearly as you can.

21 BY MR. BRITT:

22 Q Mr. Teasley, where do you live?

23 A 3778-C Murphy Road.

24 THE COURT: They can't hear you,  
25 sir.

1 BY MR. BRITT:

2 Q You need to speak up, talk slowly so the  
3 jury can understand you.

4 Where do you live?

5 A Presently?

6 Q What is your home address?

7 A 3778-C Murphy Road.

8 Q And presently where do you live?

9 A I live in Sanford right now.

10 Q Are you in the Sanford Correctional  
11 Institute?

12 A Right.

13 Q Part of the North Carolina Department of  
14 Corrections at this time?

15 A Right.

16 Q Are you presently serving a sentence?

17 A Yes, sir.

18 Q And what if any sentence are you presently  
19 serving at Sanford Correctional?

20 A I'm doing three years right now on larceny  
21 charge.

22 Q And the sentence that you're presently  
23 serving for breaking and entering and larceny  
24 charges, are they in connection with the 1992 red  
25 Lexus 400 automobile that occurred in Cumberland

1 County?

2 A Yes, sir.

3 MR. BRITT: May I approach the  
4 witness?

5 THE COURT: Yes, sir.

6 BY MR. BRITT:

7 Q I'll show you what has been marked as  
8 State's Exhibit Number 50 and 51. Do you recognize  
9 the car that's depicted there?

10 A Yes, I do.

11 Q How do you recognize that car?

12 A I seen it before.

13 Q When do you recall --

14 THE COURT: They can't hear you.

15 THE WITNESS: I seen the car  
16 before.

17 BY MR. BRITT:

18 Q And when do you first recall seeing that  
19 red Lexus car?

20 A Back in '93.

21 Q Do you recall seeing that red Lexus in July  
22 of 1993?

23 A Right.

24 Q And when you first saw that red Lexus in  
25 July of 1993, where was it that you saw it?

1           A     At my house.

2           Q     And how was it, if you know, that car came  
3 to be at your house that day?

4           A     Mr. Green and Mr. Hales and some more guys  
5 came over there with it.

6                   THE COURT:    Sir, at the end of  
7 your sentence, your voice drops, so you'll  
8 need to lean forward and speak clearly into  
9 if microphone. Repeat your answer.

10                   THE WITNESS:  Mr. Hales and Green  
11 and some more guys came over to the house  
12 with the red Lexus.

13 BY MR. BRITT:

14           Q     At the time you saw that red Lexus, did you  
15 know the defendant Daniel Green?

16           A     No, sir, I didn't.

17           Q     Was he introduced to you at that time?

18           A     Yes, he was.

19           Q     Do you recall who it was that introduced  
20 you to Daniel Green?

21           A     It wasn't a formal introduction, but we  
22 exchanged words.

23           Q     When you saw the defendant on that occasion  
24 where was he? Was he inside or outside the car?

25           A     Outside the car.

1 Q You said there were some other people that  
2 were there along with the defendant and Mr. Hales.  
3 And Mr. Hales, is that Rick Hales?

4 A Right.

5 Q Now, prior to that, did you know Rick  
6 Hales?

7 A Yes, I did.

8 Q How long had you known Rick Hales?

9 A Known him for quite some time.

10 Q Were there any other individuals that came  
11 there that day with Mr. Hales and the defendant that  
12 you knew?

13 A Carter, Jovan Carter.

14 Q And were there any other people that were  
15 there with the defendant, Rick Hales, and Jovan  
16 Carter?

17 A No, not that I knew.

18 Q When you say not that you knew, there were  
19 other people there?

20 A Yes, there was.

21 Q Can you describe those other people that  
22 were there with the defendant and Mr. Hales and  
23 Mr. Carter?

24 A One was a little short guy, driving a  
25 Blazer.

1 Q Was he black or white?

2 A Black guy.

3 Q Did you know him?

4 A No, I didn't.

5 Q Was there anyone else there?

6 A And there was an Indian guy with him.

7 Q Did you know that individual?

8 A No, I didn't.

9 Q Now, you say they came to your house.

10 Where were you living at that time?

11 A I was staying between my mother and my  
12 girlfriend during the time.

13 Q And when you say the car, was it at your  
14 mother's house or was it at your girlfriend's house?

15 A It was at my mother's house.

16 Q Were you -- before the car actually  
17 arrived, were you aware that someone was coming to  
18 your house?

19 A Yes, sir, I was, I had received a phone  
20 call, maybe about ten, 15 minutes before.

21 Q And do you know from whom you received that  
22 phone call?

23 A From whom?

24 Q Do you know who called you?

25 A Yes, I do.

1 Q Who was it that called you?

2 A Rick.

3 Q And at the time you received the phone  
4 call, were you aware from where that phone call was  
5 being placed?

6 A No, I wasn't.

7 Q Did you later learn where that call was  
8 placed?

9 A Yes.

10 Q When did you later learn where that call  
11 was placed from?

12 A From the Sheriff's Department, detective  
13 told me the call --

14 Q Mr. Teasley, what was your telephone number  
15 back at your mother's house on July the 26th of 1995?

16 A 485-8241.

17 MR. BRITT: May I approach.

18 THE COURT: Yes, sir.

19 BY MR. BRITT:

20 Q I'll show you what has been marked as --  
21 what's been previously admitted as State's Exhibit  
22 Number 56-E, and directing your attention to the top  
23 portion of the document. Do you recognize the  
24 telephone number that you've just given us on State's  
25 Exhibit 56-E?

1 A Yes, I do.

2 Q And may he step down?

3 THE COURT: Yes, sir.

4 BY MR. BRITT:

5 Q If you'll stand to the back of the  
6 exhibit. Using State's Exhibit Number 56-E, I would  
7 ask you to point out to the jury where your mother's  
8 telephone number appears on this exhibit.

9 A (Indicating).

10 Q And if you will, beside the date, will you  
11 put your initials with this red marking pen, initials  
12 T. T.

13 A (Witness complies).

14 Q And State's Exhibit 56-E indicates what  
15 time you received that call, doesn't it?

16 A Yes, sir.

17 Q And for the record, can you tell the jury  
18 what time that call was received at your house?

19 A 11:46.

20 THE COURT: I'm sorry, sir.

21 THE WITNESS: 11:46.

22 BY MR. BRITT:

23 Q What date?

24 A 7/26.

25 THE COURT: Okay. The time that

1           was given, Mr. Teasley, was that a.m. or  
2           p.m.

3                         THE WITNESS:   A.m.

4                         THE COURT:   Thank you, sir.

5                         MR. BRITT:   If you'll step back  
6           to the jury box.

7   BY MR. BRITT:

8           Q       So you received this telephone call on July  
9           the 26th, 1993, at approximately quarter to 12, is  
10          that correct?

11          A       Right.

12          Q       So you were aware that someone was coming  
13          to your house, that person was Rick Hales, is that  
14          correct?

15          A       Yes, sir.

16          Q       Were you aware at the time of the phone  
17          call that Mr. Hales was in a red Lexus automobile?

18          A       Yes.

19          Q       And how was it that you were aware that  
20          Mr. Hales was in a red Lexus at the time he made the  
21          phone call to you?

22          A       He stated over the telephone.

23          Q       And after you completed your telephone  
24          conversation with him, did you wait to see if the car  
25          and Mr. Hales came there?

1 A Yes.

2 Q And how much time passed before Mr. Hales  
3 and the car and the defendant showed up at your  
4 house?

5 A Somewhere between ten and 15 minutes.

6 Q And did you see who was actually driving  
7 the car when it pulled up at your house?

8 A No, sir, I didn't.

9 Q Do you recall if anyone was inside the  
10 Lexus when you first saw it?

11 A No.

12 Q Were you told by anyone or told by the  
13 defendant where the car had come from?

14 A Yes, said it come from South Carolina,  
15 Myrtle Beach, down there that way somewhere.

16 Q Did the defendant tell you what he wanted  
17 to do with the car?

18 A Yes, he wanted to sell the car.

19 Q Did he offer to sell the car to you?

20 A Yes.

21 Q And when the car -- when he offered to sell  
22 the car to you, what did you do?

23 A I declined the offer.

24 Q And why did you turn him down?

25 A The price was too much.

1 Q How much did he want for the car?

2 A Seventy-nine-ninety-five.

3 Q Did you have an opportunity to look inside  
4 the car at any time?

5 A Yes, I did.

6 Q Can you describe what you saw when you  
7 looked inside the car?

8 A It was beautiful. You know, it was -- it  
9 didn't look damaged or nothing.

10 Q Was there a telephone in the car?

11 A Yes, there was.

12 Q Did you look in the trunk of the car at any  
13 time?

14 A Yes.

15 Q And when you looked in the trunk, what did  
16 you see?

17 A Golf clubs over there.

18 Q You're referring to the golf clubs by the  
19 jury box?

20 A Right.

21 MR. BRITT: May I approach?

22 THE COURT: Yes, sir.

23 BY MR. BRITT:

24 Q Mr. Teasley, I'm going to show you what's  
25 been marked as State's Exhibit Number 57, ask you to

1 look at it. You've already told us you recognize it?

2 A Right.

3 Q Where did you first see this golf bag?

4 A In the trunk of the car.

5 Q The golf bag I'm referring to is blue and  
6 white in color?

7 A Right.

8 Q When you saw the golf bag in the trunk of  
9 that car, did you notice any writings or any names on  
10 the golf bag?

11 A Not on that one but the red set, club was  
12 marked, had Michael Jordan on it.

13 Q The golf clubs in the other bag had the  
14 name Michael Jordan on it?

15 A Yes, the black and red bag.

16 Q I'll show you what has been marked as  
17 State's Exhibit Number 58. You've referred to a  
18 black and red golf bag. Is this the black and red  
19 golf bag that you've referred to in your testimony?

20 A Yes, it is.

21 Q You testified that the clubs that were  
22 inside it had Michael Jordan's name on it?

23 A Right.

24 Q And I'll ask you to look at State's Exhibit  
25 Number 57 and 58 and tell me if they are in the same

1 shape as when you saw them on July 26th, 1993?

2 A They were in better shape than that.

3 Q When you say they were in better shape,  
4 what do you mean?

5 A They weren't all dirty and messed up like  
6 that.

7 Q Other than appearing to be dirty and -- you  
8 used the word messed up, did they appear to be in the  
9 same condition other than being dirty?

10 A Yeah.

11 Q When you saw the golf clubs in the trunk of  
12 the car, were they taken out?

13 A Yes.

14 Q Where were you when they were taken out?

15 A My mother's house.

16 Q And when the golf clubs were taken out,  
17 what was done with them?

18 A Oh, I knocked a few balls around with them.

19 Q And the golf balls that you took out of the  
20 bag, were they marked in any way?

21 A No, I can't remember.

22 Q Do you recall if Michael Jordan's name was  
23 on any golf balls?

24 MR. THOMPSON: Object.

25 THE COURT: Overruled.

1 THE WITNESS: Excuse me, Chicago  
2 Bulls was on the ball.

3 BY MR. BRITT:

4 Q When you saw the golf clubs with Michael  
5 Jordan's name on them, did you make any association  
6 between the golf clubs and Michael Jordan, the  
7 basketball player?

8 A Not really, at the time.

9 Q Did you look at the -- did you ever see the  
10 license plate that was on the car?

11 A Yes.

12 Q Do you recall the number that was on the  
13 license plate?

14 A Yes.

15 Q What was the number?

16 A 0023.

17 Q Did you make any connection between the  
18 license plate and Michael Jordan, the basketball  
19 player?

20 A Yes.

21 Q Did you ever tell anyone at that time that  
22 you believed that the car belonged to Michael Jordan?

23 A Yes.

24 Q Who did you say that to?

25 A Me and Mr. Hales, we talked about it.

1 Q Now, after the car came to your house, the  
2 golf clubs were taken out, and as you said you  
3 knocked some golf balls around, did there come a time  
4 when the car left?

5 A Say that again.

6 Q Did the car leave, someone drive the car  
7 off?

8 A Yes.

9 Q Did you go with them when the car was  
10 driven off?

11 A No, sir.

12 Q Do you recall who it was that drove the car  
13 away from your house?

14 A No, I don't recall who drove it.

15 THE COURT: I'm sorry.

16 THE WITNESS: I don't recall who  
17 drove it away.

18 BY MR. BRITT:

19 Q Now, prior to the car leaving, did you have  
20 any conversation with the defendant about when you  
21 declined to buy the car, did you have any  
22 conversation about what he was going to do with it at  
23 that point?

24 A Not with the defendant, no.

25 Q Was there conversation with other people?

1 A Yes.

2 Q Who was the conversation with?

3 A Well, I wasn't directly in the  
4 conversation, but it was talking about where he was  
5 going to stash the car at.

6 Q You overheard the conversation?

7 A Correct.

8 Q Who was talking?

9 A Hales, Carter, and the defendant.

10 Q When you say Hales, Carter, and the  
11 defendant, you're referring to Mr. Green?

12 A Right.

13 Q And Mr. Green was involved in that  
14 conversation?

15 A Yes.

16 Q As a result of what you overheard, where  
17 did you learn that they were going to stash the car?

18 A Where did I learn it at?

19 Q Where did you hear them say they were going  
20 to stash the car?

21 A Down by my house, or my girlfriend's house  
22 at the time.

23 Q Where did your girlfriend live?

24 A Off of Downing Road.

25 Q And did you hear them say specifically

1 where in that area they were going to stash the car?

2 A Yes.

3 Q And where did they say they were going to  
4 stash the car?

5 A Down the street from the trailer.

6 Q And what is down the street from the  
7 trailer where your girlfriend lived?

8 A At the end of the road, it's a dirt road.

9 Q And where does that dirt road take you?

10 A It's just a dead end down there, turn off,  
11 it goes back by a pond.

12 Q After you overheard that conversation  
13 between the defendant, Mr. Hales, and Mr. Carter, did  
14 they leave?

15 A Yes.

16 Q Did the short black man driving the Blazer  
17 leave?

18 A Correct.

19 Q And did the short Indian man also leave?

20 A Yes.

21 THE COURT: We're going to stop  
22 here and take the morning recess.

23 MR. BRITT: That will be fine.

24 THE COURT: We're going to be at  
25 recess until 12:00. Please report to the

1 jury room at that time. Also recall it is  
2 your duty to abide by all prior instruction  
3 of the Court concerning your conduct during  
4 this recess.

5 Everyone else please remain seated.  
6 The members of the jury are excused until  
7 12:00.

8 (Jury out at 11:41 a.m.)

9 THE COURT: Mr. Teasley, thank  
10 you, sir, you may step down.

11 Any matters from either counsel?

12 MR. BRITT: No, sir.

13 THE COURT: We're at ease until  
14 12:00.

15 (Brief recess.)

16 THE COURT: Let the record  
17 reflect all counsel are present, the  
18 defendant is present in open court. Mr.  
19 Horne, are all members of the jury secured  
20 in the jury room?

21 THE BAILIFF: Yes, sir, they are.

22 THE COURT: Two matters before we  
23 bring the jury in. Pursuant to the Court's  
24 direction to all bailiffs assigned to the  
25 courtroom that any communications by the

1 jury are to be immediately related to the  
2 Court, let me make a record of the  
3 following: I understand Mr. Horne, while  
4 initially taking a break, one or more  
5 members of the jury inquired as to whether  
6 or not it was appropriate for the members  
7 of the jury to speak with previous members  
8 of the jury, is that accurate?

9 THE BAILIFF: That's true.

10 THE COURT: At approximately five  
11 minutes ago, or less, Mr. Horne indicated  
12 to me that a -- indicated to me, that a  
13 second member of the jury had inquired as  
14 to when they were going to be paid. As to  
15 the second inquiry, I have been informed  
16 that Ms. Gaines is in possession of the  
17 checks. When we take the lunch recess, I'm  
18 going to ask all members of the jury to  
19 step down and see Ms. Gaines. We will pass  
20 out the checks. Do we have 13 checks?

21 THE CLERK: Yes, sir.

22 THE COURT: That I think takes  
23 care of the first matter.

24 As to the -- or the second matter,  
25 pardon me. As to the first matter.

1 Members of the jury are permitted to speak  
2 to anyone, except counsel, except parties,  
3 and the Court. They are prohibited from  
4 speaking to anyone about the case. And  
5 that sometimes is confused and that  
6 certainly is understandable. Perhaps we  
7 need to be more, explicit. What I intend  
8 to instruct the jury, you can talk to  
9 folks, you simply can't say anything to  
10 anybody about this case in any respect at  
11 all, period.

12 Okay. Counsel for the defendant want  
13 to be heard?

14 MR. THOMPSON: No, sir.

15 MR. BOWEN: No, sir.

16 THE COURT: Okay. That  
17 instruction I'm going to bring up  
18 immediately after the jury is brought back  
19 in, because I think that needs to be dealt  
20 with at the outset before we continue with  
21 the direct examination. If you'll bring  
22 the jury in, please.

23 (Jury in at 12:02 p.m.)

24 THE COURT: Ladies and gentlemen,  
25 I understand that several inquiries have

1           been made by members of the jury, and I'm  
2           going to attempt to respond to those at  
3           this time. I understand that one or more  
4           members of the jury asked whether or not it  
5           was appropriate to speak with any previous  
6           members of the jury. Yes, you may.

7                   Now, before I go further in that  
8           regard, let me explain something. I have  
9           previously instructed you that you are not  
10          to have any -- any being emphasized -- that  
11          means none -- any contact or communication  
12          of any kind with any of the attorneys, any  
13          of the parties, any of the witnesses, any  
14          of the prospective witnesses, or directly  
15          with the Court.

16                   Now, sometimes that's misunderstood,  
17          and that's our fault for not making that  
18          clear. What that means is, good morning to  
19          one of the lawyers is a violation of that  
20          order. How are you is a violation of that  
21          order. Because the order is any.

22                   If you see any of the lawyers in or  
23          about the hallway, if you see any of the  
24          parties in or about the hallway, if you see  
25          the Court in or about the hallway, if we

1 don't speak to you, we're not being rude,  
2 we're bound by the same admonition that I'm  
3 now instructing you about. It's not  
4 appropriate, simply to avoid the appearance  
5 of wrongdoing. A member of the jury may be  
6 engaged, as I previously explained to you,  
7 in an entirely innocent conversation with  
8 someone involved in this case, but the mere  
9 fact that someone on the jury is seen  
10 talking with someone involved in the case  
11 gives rise to a suspicion that something  
12 wrong is to occur. So to avoid that  
13 prospect, you're not to have any contacts,  
14 any communication of any kind with any of  
15 the attorneys, any of the parties, any of  
16 the witnesses, any of the prospective  
17 witnesses, or directly with the Court.

18 Now, having said that, I do not mean  
19 to suggest to you that it is inappropriate  
20 to communicate any concern that we might  
21 have to the Court.

22 Indeed, the opposite is true, it is  
23 entirely appropriate for you to communicate  
24 any concern that you have to the Court.  
25 The means by which you would do so would be

1 not to approach me directly, but to write  
2 your concern out and hand it to one of the  
3 bailiffs assigned to the courtroom. It  
4 would be inappropriate to seek advice from  
5 someone else about what you should do,  
6 because in doing that, you would violate my  
7 order about not talking with anyone about  
8 this case. If you have a concern, write  
9 your concern out, give it to one of the  
10 bailiffs, the bailiff will bring it to our  
11 attention, and we will address it with all  
12 parties being present and with all counsel  
13 being present, which is the way it is  
14 supposed to be.

15 Now, having said that, you may talk  
16 with or communicate with, with the  
17 exception of the lawyers, the parties, the  
18 witnesses, the prospective witnesses, or  
19 the Court, anyone else, as long as you do  
20 not discuss this case.

21 You may not discuss this case with  
22 anyone in any way in any form, in any shape  
23 or in any fashion, except in the presence  
24 of all of us, on the record, in open  
25 court.

1           Now, I recognize that sometimes can be  
2           confusing, I apologize for that, but the  
3           purpose of these rules is to assure or to  
4           attempt to assure that both the State of  
5           North Carolina and a defendant can be  
6           assured of absolute fairness, objectivity  
7           and impartiality and fairness, and that's  
8           the objective of our system.

9           The second inquiry I understand is  
10          when are you folks going to get paid. In  
11          response to that second inquiry, we have  
12          the checks in the courtroom. At the time  
13          that I release you folks for the lunch  
14          recess I'm going to ask at that time that  
15          before you leave, you step down, see Ms.  
16          Gaines, and she will provide you with those  
17          checks.

18          I appreciate your attention, and I  
19          appreciate very much your continued  
20          cooperation and your continued indulgence.

21          Mr. Britt, you may continue with your  
22          direct examination.

23       BY MR. BRITT:

24           Q       Mr. Teasley, before the car left your  
25           house, did you attempt to buy anything that was

1 inside that car?

2 A Golf clubs.

3 Q And who did you try to buy the golf clubs  
4 from?

5 A From the defendant.

6 Q When you say the defendant, are you  
7 referring to --

8 A Mr. Green.

9 Q Mr. Green. Did Mr. Green sell you those  
10 golf clubs?

11 A No, he didn't.

12 Q After you attempted to buy the golf clubs,  
13 what was done with those clubs?

14 A Put back in the car.

15 Q Into which car, the Blazer or the Lexus?

16 A I don't recall which one, which one they  
17 were put back into.

18 Q And after the defendant and the others left  
19 with the red Lexus, did there come a time when you  
20 saw that car again?

21 A Yes.

22 Q And where did you see that car?

23 A Down in the woods.

24 Q And at the time you saw the car, was there  
25 anyone there in the area where the car was?

1 A No.

2 Q And upon seeing the car there in the woods,  
3 what kind of shape was it in?

4 A Good shape. It wasn't damaged.

5 Q Tires still on it?

6 A Yes.

7 Q Did you at that time try to get inside the  
8 car?

9 A Yes.

10 Q Were you able to do so?

11 A Yes.

12 Q And how did you get into the car?

13 A From the sunroof.

14 Q Pardon?

15 A From the sunroof.

16 Q Was the sunroof opened or closed at the  
17 time when you discovered the car in the woods?

18 A No, closed.

19 Q How is it that you got in through the  
20 sunroof?

21 A Pried it open.

22 Q And what did you pry it open with?

23 A I think it was a jackhammer.

24 Q And what if anything inside the car were  
25 you trying to get?

1 A Well, I was getting the rims.

2 THE COURT: Okay -- Mr. Teasley,  
3 you'll need to speak slowly and clearly.  
4 You have a very deep voice and your words  
5 run together, so if you'll repeat your  
6 answer. Speak directly into the  
7 microphone. Ask him again.

8 BY MR. BRITT:

9 Q It's your testimony you wanted the rims  
10 from the car?

11 A Right.

12 Q That is the wheels?

13 A Right.

14 Q Was anyone with you at that time?

15 A Yes, there was.

16 Q Who was with you?

17 A Ken and Gary Farrior.

18 Q Who was it that pried open the sunroof to  
19 the car?

20 A Well, Ken and Gary Farrior, they were up  
21 there also, I was assisting them. In other words,  
22 showing them how to do that.

23 Q And when you say that they were assisting  
24 them, did you break any window on the car?

25 A No, sir.

1 Q Who broke any window on the car?

2 A Little guy named P. J., he busted the  
3 window out.

4 Q And did you take the rims and the tires off  
5 of the car?

6 A Yes.

7 Q How did you get them off?

8 A Took them off.

9 Q Did you go into the trunk and take the jack  
10 out?

11 A Well, they went into the trunk but they  
12 didn't use the jack to take them off.

13 Q Did you open the trunk?

14 A Yes.

15 Q How was the trunk opened?

16 A Pried it open.

17 Q At that time were you looking for the golf  
18 clubs as well?

19 A Yes, sir.

20 Q And did you pry open the trunk in  
21 anticipation of finding the golf clubs there?

22 A Yes, I did.

23 Q Were the golf clubs in the trunk of the  
24 car?

25 A No, sir.

1 Q And after the trunk was pried open, is that  
2 when the wheels and rims were taken off of the car?

3 A Yes.

4 Q Where did you take those?

5 A Took them back to my girlfriend's house  
6 that night.

7 Q And at the time you broke into this car,  
8 did you have any idea who it belonged to?

9 A Well, we had an idea who it belonged to,  
10 but we wasn't for sure, wasn't on the news or nothing  
11 like that at that time.

12 Q Did there come a time later when you  
13 learned who the owner of that car was?

14 A Yes.

15 Q And was that at a point after you had  
16 already broken into the car?

17 A Right.

18 Q And taken the rims and the tires and other  
19 items?

20 A Right.

21 Q At the time you pried open the trunk, do  
22 you recall if there was a CD player in the trunk of  
23 that car?

24 A Yes.

25 Q Did anyone take it out of the car?

1 A Yes.

2 Q Who was that?

3 A One of the Farriors.

4 THE COURT: For the record, do  
5 you know how to spell the last name of the  
6 persons you have described as the Farriors?

7 THE WITNESS: No, I can't spell  
8 it.

9 THE COURT: Okay.

10 BY MR. BRITT:

11 Q And after you took the rims and the tires  
12 off of the car, where did you take those?

13 A Like I said, that night I took them back to  
14 my girlfriend's house.

15 Q Where did you take them when you got to  
16 your girlfriend's house?

17 A There was a shed behind the trailer.

18 Q And how long did you leave the tires and  
19 the rims in the shed behind her trailer?

20 A Maybe a day or two.

21 Q Did there come a time when you took those  
22 tires and rims out of the shed at your girlfriend's  
23 house?

24 A Yes.

25 Q Where did you take them?

1 A Moved them over to my mother's house.

2 Q How long did they stay there?

3 A Maybe a day or two.

4 Q Did there come a time after that that you  
5 moved them again?

6 A Yes.

7 Q Where did you take them then?

8 A Took them back in the woods.

9 Q Where did you take the tires and the rims  
10 back into the woods?

11 A That's -- by then it was on the news, and  
12 television, who the car really was then, who it  
13 belonged to then.

14 Q When you took the tires and the rims into  
15 the woods, you had learned that the car belonged to  
16 James Jordan?

17 A Right.

18 Q The father of Michael Jordan?

19 A Right.

20 Q Why did you take the tires and the rims  
21 back into the woods?

22 A Also, detective from Fayetteville had came  
23 by the house and talked to me about it.

24 THE COURT: Had done what?

25 THE WITNESS: Talked to me about

1 the car.

2 BY MR. BRITT:

3 Q When he came by to talk to you about the  
4 car, were the tires and rims at your mother's or had  
5 you already moved them into the woods?

6 A There were there at the time.

7 Q Where?

8 A At my mother's house.

9 Q When you talked with the detective from  
10 Fayetteville at your mother's house, did you tell  
11 them what you knew about the car?

12 A I denied it at first.

13 Q Why did you deny knowing anything about the  
14 car?

15 A Keep from getting into trouble, that's why.

16 Q Did there come a time after that that you  
17 told members of the Cumberland County Sheriff's  
18 Department about what you knew involving that red  
19 Lexus?

20 A Yes, I did.

21 Q And when you told them about what you knew  
22 about the red Lexus, did you take them to where you  
23 had hidden the tires and the rims in the woods?

24 A Yes, I did.

25 Q When you learned that the car belonged to

1 James Jordan, did you try to call Jovan Carter or  
2 Rick Hales at any time?

3 A I don't recall, but I'm sure I talked to  
4 them.

5 Q After the defendant left your house in the  
6 red Lexus, did you ever see him again?

7 A No, I didn't.

8 Q How about the guy driving the Blazer, did  
9 you ever see him again?

10 A No.

11 Q And the Indian man that you've described,  
12 did you ever see him again?

13 A No.

14 MR. BRITT: I don't have any  
15 other questions.

16 THE COURT: Any  
17 cross-examination?

18 MR. THOMPSON: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. THOMPSON:

21 Q Good afternoon, Mr. Teasley.

22 Mr. Teasley, I believe you were interviewed  
23 back on Saturday, August the 14th of 1993 by  
24 Detective Jimmy Henley, is that correct?

25 A Right.

1 Q And where were you when that interview took  
2 place?

3 A The Cumberland County jail.

4 Q And I believe it took place on that  
5 Saturday shortly after noon, almost around 1:00, is  
6 that right?

7 A Right.

8 Q Now, who else was present when that  
9 interview took place other than you and Detective  
10 Henley?

11 A That was all.

12 Q An I believe Detective Henley tape recorded  
13 that interview?

14 A Yes.

15 Q He told you that he was going to tape that  
16 interview, and did he take any notes? Do you recall  
17 Detective Henley writing anything down as he was  
18 interviewing?

19 A No, I don't.

20 Q Have you ever seen or did Detective Henley  
21 ever present to you a written statement of what you  
22 had said during that interview?

23 A No, not during that interview.

24 Q At sometime afterwards, did he present to  
25 you a written paper or typewritten statement that

1 purported to be what you had told him during that  
2 interview?

3 A No, sir.

4 Q In preparation of your testimony today,  
5 have you seen any purported statement that you may  
6 have given to Detective Henley, whether it be a  
7 transcription of that tape recorded interview or his  
8 notes?

9 A Just that.

10 Q And when was that?

11 A It's been a while ago. Mr. -- came and see  
12 me at Sanford.

13 THE COURT: Who did, sir?

14 THE WITNESS: Mr. Britt.

15 BY MR. THOMPSON:

16 Q Mr. Johnson Britt, the District Attorney?

17 A Right.

18 Q Who else was with him?

19 A Two guys right there.

20 Q Meaning Detective Anthony Thompson, seated  
21 next to Mr. Britt?

22 A Yes.

23 Q And seated next to Detective Anthony  
24 Thompson is SBI Agent Kim Heffney?

25 A Right.

1 Q And when was that, do you know, how long  
2 ago that was?

3 A Maybe two or three months ago.

4 Q And they presented you a -- who presented  
5 you a paper writing which purported to be your  
6 statement?

7 A Mr. Britt showed it to me.

8 Q Was it typewritten?

9 A Yes.

10 Q Did it appear to be the transcription of  
11 the tape recorded interview?

12 A Yes, sir.

13 Q And did you read what Mr. Britt handed to  
14 you?

15 A Yes, sir.

16 Q And he -- when he gave that to you, did he  
17 tell you the purpose for giving it to you?

18 THE COURT: Rephrase.

19 MR. THOMPSON: Well, did he tell  
20 you that he was giving you that statement  
21 so that you could refresh your memory --

22 THE COURT: Rephrase.

23 BY MR. THOMPSON:

24 Q What did you use that statement for,  
25 Mr. Teasley, after Mr. Britt handed it to you, what

1 did you -- did it refresh your memory as to what you  
2 had told Mr. Henley?

3 A Well, I looked at it to make sure it was  
4 what I said during the statement.

5 Q And did it appear to be exactly what you  
6 had told Mr. Henley during the tape recorded  
7 interview?

8 A Yes.

9 Q Now, Murphy Road, you were living on Murphy  
10 Road and that's what you told Detective Henley back  
11 on August of 1993, is that right?

12 A Right.

13 Q How far is that from Downing Road?

14 A A mile and a half, two miles.

15 Q And you told Detective Henley that during  
16 the tape recorded interview, that only people you  
17 knew in the car was Ricky Hales and Jovan Carter, is  
18 that right?

19 A Right.

20 Q You told Detective Henley where Ricky Hales  
21 lived, did you not, you told him that he lived on  
22 Downing Road?

23 A Right.

24 Q Did you know in fact where Ricky Hales  
25 lived when you made that statement to Detective

1 Henley?

2 A Not exactly where he stayed at, no.

3 Q Did Detective Henley ask you to show him  
4 where Ricky Hales lived?

5 A No, he didn't.

6 MR. BRITT: Objection.

7 THE COURT: Objection sustained  
8 anything further?

9 MR. BRITT: Move to strike.

10 THE COURT: Anything further?

11 MR. BRITT: Instruction.

12 THE COURT: Disregard the last  
13 question asked by Mr. Thompson and  
14 disregard any answer that may have been  
15 given by the witness to that question.  
16 Those matters are not to take part in your  
17 deliberations in any respect.

18 BY MR. THOMPSON:

19 Q You told Detective Henley that it was a  
20 white guy, a black guy and another short guy in  
21 addition to Ricky Hales and Jovan Carter, that's the  
22 way you described the individuals?

23 A Correct.

24 Q Now, in your statement to Detective Henley,  
25 you didn't tell him that it was Daniel Green who was

1 going to stash the car, you said they were going to  
2 stash the car, is that right?

3 A Right.

4 Q Today, I believe, did you testify that you  
5 were living between your mother and your girlfriend?

6 A Yes.

7 Q You had your own trailer? Were you living  
8 in a trailer?

9 A No, my girlfriend was living in the  
10 trailer.

11 Q And you say you were living between your  
12 mother and your girlfriend, you mean from house to  
13 house?

14 A Right.

15 Q Okay. Now, you told Detective Henley that  
16 they tried to sell me some golf clubs, you didn't  
17 tell Detective Henley that Daniel Green tried to sell  
18 you some golf clubs, did you?

19 A No, I didn't.

20 Q You told Detective Henley that no one  
21 showed you a gun?

22 A Right.

23 Q You told Detective Henley that a few days  
24 after this incident, which would have been on Monday,  
25 July the 26th, Kenny Farrior, Gary Farrior, P. J., a

1 person, and me went to the woods and we got the rims  
2 off the car?

3 A Right.

4 Q And you told Detective Henley that the  
5 first day the windows were busted out some boys got  
6 some tapes, is that right?

7 A Right.

8 Q Now, who were the boys that got the tapes?

9 A The Farriors and some of the young kids  
10 that stayed around there.

11 Q You know their names?

12 A No, I don't.

13 Q But they live in the community where you  
14 were living?

15 A Right, right.

16 Q You had seen them before?

17 A Right.

18 Q And you told Detective Henley that the next  
19 day, this meaning the next day after the windows were  
20 busted out -- or bursted out, you took the wheels off  
21 and you put them in the shed, is that right?

22 A Right.

23 Q And is that what happened? Is that true?

24 A No, it's not.

25 Q You told Detective Henley back on August

1 the 14th that it was the next day -- "I took the  
2 wheels to my momma's house," was that true?

3 A Yes.

4 Q All right. You told Detective Henley back  
5 on August the 14th of '93 that when you broke in the  
6 car, the telephone, the door speakers and the license  
7 plate were already gone, is that what you told  
8 Detective Henley?

9 A Yes.

10 Q Was that true?

11 A No.

12 Q You told Detective Henley -- strike that.  
13 Let me ask you this. Where is Shilo Church located,  
14 do you know?

15 A It's on Downing Road.

16 Q How far is that from where you were living?

17 A About a mile and a half.

18 Q And how far is that from McNeill Road where  
19 the car was stashed?

20 A It's about a mile.

21 Q Did you make or tell a person by the name  
22 of Phillip Block to break the window out of the car?

23 A No, I didn't.

24 Q Meaning the Lexus. You never told Phillip  
25 Block to break the window out of the Lexus?

1           A       No.

2           Q       You told Kenneth Farrior that this white  
3       guy who you referred to as a white guy was trying to  
4       get rid of the car, you told Kenneth Farrior that,  
5       though, did you not?

6           A       I don't remember that.

7           Q       Do you ever recall having a conversation  
8       with Kenneth Farrior about anybody getting ready rid  
9       of the car?

10          A       Yes.

11          Q       But you deny that you told him it was a  
12       white guy trying to get rid of the car?

13          A       Right.

14          Q       All right, sir. Now, Mr. Teasley, do you  
15       recall giving a statement and an interview with an  
16       investigator who was working for the defense in this  
17       case, Mr. Murray Degan, who's seated over to my  
18       right?

19          A       Yes.

20          Q       And do you recall you gave him that  
21       interview back in November the 18th of 1994?

22          A       Right.

23          Q       Is that right? And where were you when  
24       that interview took place, you and Mr. Degan, do you  
25       recall where you were when you gave him the

1 interview?

2 A In his van.

3 Q Do you recall that interview was taped  
4 also, is that right?

5 A I'm not sure, I don't remember.

6 Q You're not sure?

7 A I don't remember if it was taped or he  
8 wrote it down.

9 Q Do you recall telling Mr. Degan that the  
10 white guy, or who you referred to as a white guy, who  
11 you later found out to be Larry Demery, seemed to  
12 talk a lot, do you recall telling him that?

13 A No.

14 Q Well, are you saying that you may have told  
15 him that, you just don't remember or you may not  
16 have, you just don't remember?

17 MR. BRITT: Objection.

18 THE WITNESS: I don't remember.

19 Q But you could have?

20 MR. BRITT: Objection to form.

21 THE COURT: I'm sorry. When  
22 there's an objection, I have to rule.  
23 Objection is sustained, calls for  
24 speculation, conjecture.

25 BY MR. THOMPSON:

1           Q     Didn't you tell Mr. Degan that the  
2 defendant was not doing a lot of talking? Didn't you  
3 tell him that?

4           A     Right.

5           Q     And that's the truth, isn't it?

6           A     Right.

7           Q     Didn't you tell Mr. Degan that it was the  
8 other guy, the light-skinned guy that was doing the  
9 most of the talking?

10                   MR. BRITT:  Objection, asked and  
11 answered.

12                   MR. THOMPSON:  You may answer.

13                   THE WITNESS:  He did talk more  
14 than Mr. Green, yeah.

15 BY MR. THOMPSON:

16           Q     Do you recall telling Mr. Degan that nobody  
17 tried to tell you that the golf clubs belonged to  
18 Michael Jordan, nobody out there tried to tell you  
19 that?

20           A     Right.

21           Q     And was that true?

22           A     Right.

23           Q     Do you recall telling Mr. Degan that  
24 Mr. Green or Larry Demery didn't even know the CDs  
25 were in the trunk, do you recall telling him that?

1 MR. BRITT: Objection.

2 THE COURT: Overruled. You may  
3 answer.

4 THE WITNESS: Say again.

5 BY MR. THOMPSON:

6 Q Do you recall telling Mr. Degan that  
7 Mr. Demery nor Daniel even knew the CDs were in the  
8 trunk?

9 A Yes.

10 Q All right. And was that true?

11 A Right.

12 Q And you recall telling him that in fact,  
13 Mr. Demery and the defendant seemed surprised,  
14 appeared to you to be surprised when you found the  
15 CDs, is that right?

16 MR. BRITT: Objection.

17 THE COURT: Objection is  
18 overruled. The question is, do you recall  
19 saying that to Mr. Degan?

20 MR. THOMPSON: Yes, sir.

21 THE COURT: You may answer, sir.

22 THE WITNESS: Right.

23 MR. THOMPSON: He answered yes.

24 BY MR. THOMPSON:

25 Q And do you recall telling Mr. Degan that

1 you didn't see any guns or shells in the car?

2 A Right.

3 Q That's what you told Mr. Degan, is that  
4 true?

5 A Right.

6 Q Do you recall telling Mr. Degan that only  
7 after going through the trunk did somebody even say  
8 that the car may belong to Michael Jordan or somebody  
9 in his family, do you remember telling him that?

10 A Yes.

11 Q And is that statement true?

12 A Yes.

13 Q Do you recall telling Mr. Degan that it was  
14 Rick and Jovan who told them where to put the Lexus  
15 after it was determined that the car was too  
16 expensive to sell hot, do you recall telling Mr.  
17 Degan that?

18 A Yes, I do.

19 Q Was that true?

20 A Yes.

21 Q And you told Mr. Degan that your plan was  
22 to get the wheels and tires off the car and you had  
23 nothing to do with where the car was to be put, you  
24 told Mr. Degan that, too, is that right?

25 A Yes, sir.

1 Q And that Gary and Kenneth Farris helped  
2 you get the tires off of the car?

3 A Right.

4 Q Now, do you recall Ricky Hales with a golf  
5 club out there at any time that day, Mr. Teasley,  
6 with a golf club in his hand?

7 MR. BRITT: Objection.

8 THE COURT: Overruled.

9 MR. BRITT: Can we get a  
10 location?

11 BY MR. THOMPSON:

12 Q Well, if you recall first -- excuse me.

13 THE COURT: Ask him the question.

14 BY MR. THOMPSON:

15 Q The question is, do you recall at any time  
16 during the day where you first met Ricky Hales and  
17 this other guy in the Blazer and you first saw the  
18 Lexus, do you recall him with a golf club in his  
19 hand?

20 A Yes.

21 Q Did you see him hit anything other than  
22 golf balls with the golf club?

23 A I don't recall.

24 Q You don't recall. Okay.

25 Now, Mr. Teasley, other than what you just

1 testified to being -- having been convicted of  
2 breaking and entering, what else have you been -- is  
3 there anything else that you've been convicted of  
4 within the last ten years that carries a term of  
5 punishment or imprisonment of more than sixty days?  
6 What if anything else have you been convicted of?

7 A Carries more than sixty days?

8 Q Yes, sir.

9 A Nothing.

10 Q Now, what you were convicted of was  
11 breaking and entering or breaking and entering and  
12 larceny?

13 A Right.

14 Q And that carried a maximum sentence of  
15 twenty years, that's correct?

16 A Right.

17 Q And you received three year --

18 MR. BRITT: Objection.

19 THE COURT: Objection is  
20 sustained to the form of the question.

21 MR. BRITT: Move to strike.

22 THE COURT: Rephrase as to what  
23 he was --

24 MR. THOMPSON: I'm sorry.

25 THE COURT: Ladies and gentlemen,

1           there's a matter the Court needs to take up  
2           out of the hearing and presence of the  
3           jury. Please recall my instructions in  
4           that regard. Don't worry or speculate  
5           about what takes place in the courtroom in  
6           your absence. If you'll step to the jury  
7           room.

8                                 (Jury out at 12:35 p.m.)

9                                 THE COURT: Let the record show  
10           the following is being conducted in the  
11           absence of the jury.

12                                 You folks pulled Mr. Teasley's record  
13           in anticipation of cross-examination?

14                                 MR. THOMPSON: I don't have it  
15           before me.

16                                 THE COURT: The reason I asked is  
17           because I understood, and I may have  
18           misunderstood, his testimony that he was  
19           convicted of breaking or entering in  
20           connection with the red Lexus.

21                                 MR. THOMPSON: Okay.

22                                 THE COURT: That would be via a  
23           motor vehicle, not a residence.

24                                 MR. THOMPSON: Which would be --

25                                 THE COURT: And you've

1 established on cross-examination that there  
2 was also a larceny conviction, so --

3 MR. THOMPSON: I'll straighten  
4 that out.

5 THE COURT: Because we're talking  
6 about B and E of a residence or business  
7 which is a Class A felony action, the  
8 context of your question, and he's talking  
9 about a B and E of a motor vehicle which is  
10 something else.

11 MR. THOMPSON: Five year felony  
12 for which he's received three years. Is  
13 that right, Mr. Teasley?

14 THE WITNESS: Right.

15 MR. THOMPSON: Okay. And I'll  
16 straighten that out.

17 THE COURT: Larceny, a felony or  
18 a misdemeanor?

19 MR. THOMPSON: Let me ask you.

20 BY MR. THOMPSON:

21 Q You were convicted of breaking and entering  
22 of a motored vehicle, is that right?

23 A Correct.

24 Q You were also convicted of larceny, or were  
25 you?

1 A Right, yeah.

2 THE COURT: Folks -- you don't  
3 have his record.

4 MR. THOMPSON: Right now, I don't  
5 have it in front of me, no, sir.

6 THE COURT: Okay.

7 BY MR. THOMPSON:

8 Q The larceny, was it a ten year felony, the  
9 maximum for which you could receive would be ten  
10 years?

11 A I don't know what it was, I know I'm doing  
12 three years on whatever I was charged.

13 Q Whatever it is, you're doing three years?

14 A Right.

15 MR. THOMPSON: And that's it.

16 THE COURT: That's all that  
17 counts to you, right?

18 THE WITNESS: Right.

19 MR. THOMPSON: That's fine with  
20 me.

21 THE COURT: So the question  
22 rephrased properly in terms of whether or  
23 not it was a Class I felony at the time and  
24 a general misdemeanor whether it was a  
25 felony larceny.

1 MR. THOMPSON: I understand.

2 THE COURT: Do you have a copy of  
3 his record so we can clear it up and move  
4 on?

5 MR. BRITT: I think I do  
6 somewhere. My recollection it's a  
7 misdemeanor larceny.

8 THE COURT: I'm not trying to  
9 interfere, I simply say we need to be  
10 clear.

11 MR. THOMPSON: And be fair.

12 THE COURT: So the jury has  
13 information upon which to base any decision  
14 in this case.

15 MR. THOMPSON: So Mr. Britt  
16 stipulates that it was a misdemeanor  
17 larceny.

18 THE COURT: I don't think that I  
19 would be willing to stipulate anything  
20 unless I saw a record. If I knew I was  
21 going to cross examine a witness, I would  
22 have that record.

23 MR. THOMPSON: It's no big --  
24 well.

25 THE COURT: Well, the difference

1           between accuracy and inaccuracy, correct  
2           information and incorrect information is,  
3           in my view, is a big deal.

4                       MR. BOWEN:   He ought to know, I'm  
5           asking him.

6                       THE COURT:   What matters to him  
7           is how much time he's doing and when is  
8           parole.

9                       THE WITNESS:   That's right.

10                      MR. THOMPSON:   I'm sure he would  
11           agree with you, Your Honor.

12                      THE COURT:   So let's pull the  
13           record.

14                      MR. BRITT:   Just to be accurate,  
15           we'll run get it right now.

16                      THE COURT:   Folks, you're going to  
17           run that on NCIC.

18                      MR. BRITT:   Yes, sir.

19                      THE COURT:   In the interest of  
20           moving along, NCIC, I mean, I don't mean to  
21           suggest anything, but there's accurate  
22           information, sometimes inaccurate  
23           information on NCIC.

24                      MR. BRITT:   Yes, sir.

25                      THE COURT:   A copy of the

1 judgment, a copy of the transcript of  
2 plea. Can you rephrase, Mr. Thompson.

3 MR. THOMPSON: Yes, sir, Your  
4 Honor.

5 THE COURT: All right. Bring the  
6 jury back in, please, sir.

7 (Jury in at 12:41 p.m.)

8 THE COURT: Yes, sir,  
9 Mr. Thompson, if you'll rephrase your  
10 question, please, sir.

11 MR. THOMPSON: Yes, sir.

12 BY MR. THOMPSON:

13 Q Mr. Teasley, you are serving a three-year  
14 active sentence for the conviction of the breaking  
15 and entering larceny of a motor vehicle, meaning the  
16 Lexus involved in this case, is that right?

17 A Right.

18 Q Now, Mr. Teasley, you didn't tell  
19 Mr. Henley that Daniel Green told you he was going to  
20 sell you any golf clubs for seven-ninety-nine or  
21 ninety-five, did you -- or the car, excuse me, for  
22 seven-ninety-five, you didn't tell him that in your  
23 statement, did you?

24 A To Mr. Henley?

25 Q Yes.

1           A       No, I didn't.

2                   MR. THOMPSON: That's all.

3                   THE COURT: Anything further

4           Mr. Britt?

5                   REDIRECT EXAMINATION

6 BY MR. BRITT:

7           Q       Mr. Teasley, who did you talk with about  
8 buying the car?

9           A       Excuse me.

10          Q       Who is it that talked to you about you  
11 buying the car?

12          A       Mr. Green.

13          Q       And who did you talk with about buying the  
14 golf clubs?

15          A       Mr. Green.

16          Q       Whether you told the defense investigator  
17 that the car was too expensive to sell because it was  
18 hot, what did you mean by that statement?

19          A       They were trying to sell the car and the  
20 price that he was wanting for it, nobody is going to  
21 pay that kind of money for a stolen car.

22          Q       And on July the 26th, 1993, you had reason  
23 to believe that the car was stolen, didn't you?

24          A       Right.

25                   MR. BRITT: I don't have any

1 other questions.

2 THE COURT: Anything further,  
3 folks?

4 RE CROSS EXAMINATION

5 BY MR. THOMPSON:

6 Q You never told Detective Henley anything  
7 about them trying to sell the car to you, did you?

8 A He didn't ask me about that.

9 Q But you told them they were trying to stash  
10 the car, that's what you told Detective Henley,  
11 didn't you?

12 A Right.

13 MR. THOMPSON: That's all.

14 THE COURT: Anything further,  
15 Mr. Britt?

16 MR. BRITT: No, sir.

17 THE COURT: May the witness be  
18 released?

19 MR. THOMPSON: Yes, sir.

20 THE COURT: Mr. Teasley, thank  
21 you, sir. If you'll step down.

22 Mr. Britt, it's now fifteen. Until do  
23 you have another witness or would you  
24 prefer to hold off. We can recess until  
25 2:15.

1                   MR. BRITT: I would prefer to wait  
2                   due to the length.

3                   THE COURT: Ladies and gentlemen,  
4                   we're going to stop at this time for the  
5                   lunch recess. We'll reconvene at 2:15.  
6                   Does that pose any problem? During the  
7                   lunch recess, please don't discuss this  
8                   case among yourself or with anyone else.  
9                   Don't allow anyone to say anything to you  
10                  or in your presence about this case. If  
11                  anyone communicates about this matter or  
12                  attempts to do so, or if anyone says  
13                  anything in your presence about this case,  
14                  it is your duty to inform us of that  
15                  immediately. The means by which you would  
16                  do so would be to write out that  
17                  information, provide that information to  
18                  one of the bailiffs assigned to the  
19                  courtroom, and that information will be  
20                  communicated to us.

21                  Don't form or express any opinions at  
22                  all about this matter until you have heard  
23                  all of the evidence in the case, until  
24                  you've had the opportunity to hear the  
25                  arguments of the attorneys, and until you

1 have received the Court's instruction on  
2 the law, and until the Court has  
3 specifically instructed you to begin  
4 deliberations in this matter.

5 Don't have any contact or  
6 communication of any kind with any of the  
7 attorneys, parties, witnesses, prospective  
8 witnesses, or directly with the Court.

9 Don't allow yourself to be exposed to  
10 any media accounts which may exist in  
11 connection with this matter, and don't  
12 conduct any independent inquiry or  
13 investigation or research of any kind.

14 If all members of the jury would step  
15 down at this time, and if you will see Ms.  
16 Gaines, she will give you the checks that I  
17 referred to earlier. Everyone else, please  
18 remain seated until the jurors are  
19 excused. You may come down, yes, sir, just  
20 come around.

21 (Jury out at 12:48 p.m.)

22 THE COURT: For the record, in  
23 the absence of any members of the jury, as  
24 it is now composed, do we have checks --  
25 these checks cover what time period, last

1 weeks's up through what date?

2 THE CLERK: These cover through  
3 the 17th.

4 MR. BRITT: Yesterday.

5 THE COURT: Through yesterday.

6 THE CLERK: Right.

7 THE COURT: We have checks for  
8 Ms. Locklear and Ms. Ellerbe.

9 THE CLERK: Yes.

10 THE COURT: Ms. Locklear is  
11 present in the courtroom. Ms. Locklear, if  
12 you'll step forward, please, ma'am.

13 (Former juror comes forward.)

14 THE COURT: Thank you, ma'am. If  
15 you'll see to it that Ms. Ellerbe's check  
16 is sent to her.

17 Folks, for the record, Juror Number 4  
18 has asked for some aspirin from the Court.  
19 My supply is dwindling but I'm willing to  
20 share. Any objection?

21 MR. THOMPSON: No, sir.

22 MR. BRITT: No, sir.

23 THE COURT: Actually it's the  
24 Clerk's supply. Any other matters from  
25 either counsel.

1 MR. BRITT: If she needs anything  
2 stronger, I've got some Extra Strength  
3 Tylenol I'll be happy to provide.

4 MR. THOMPSON: I object to that.

5 THE COURT: We're at ease until  
6 2:15.

7 (Lunch recess).

8 THE COURT: Good afternoon,  
9 folks. Let the record reflect that all  
10 counsel are present, the defendant is  
11 present in open court. Mr. Horne, I  
12 understand all members of the jury are  
13 secured in the jury room.

14 THE BAILIFF: Yes, they are.

15 THE COURT: Mr. Britt, are you  
16 ready to go forward with the next witness  
17 at this time?

18 MR. BRITT: Yes, I believe he's  
19 here.

20 THE COURT: Any matters from  
21 either counsel before we bring the jury  
22 in?

23 MR. BOWEN: No, sir.

24 THE COURT: If you'll bring the  
25 jury in, sir.

1 (Jury in at 2:13 p.m.)

2 THE COURT: Good afternoon,  
3 ladies and gentlemen.

4 Everybody feeling okay? You folks, if  
5 at any time you need a break or there's  
6 anything related to your comfort or  
7 convenience, please don't hesitate to let  
8 us know.

9 Mr. Britt.

10 MR. BRITT: Your Honor, at this  
11 time we call Jamie Moore.

12 THE COURT: Mr. Moore, if you'll  
13 place your left hand on the Bible, raise  
14 your right, face Ms. Gaines, please.

15 JAMES LACY MOORE,  
16 being first duly sworn was examined and testified as  
17 follows:

18 DIRECT EXAMINATION

19 THE COURT: If you'll take the  
20 witness stand, please, sir.

21 Mr. Moore, please state your full  
22 name.

23 THE WITNESS: James Lacy Moore.

24 THE COURT: If you'll spell your  
25 first, middle and last name for the benefit

1 of the court reporter.

2 THE WITNESS: James, J A M E S,  
3 Moore, M O O R E.

4 THE COURT: And your middle name  
5 is spelled?

6 THE WITNESS: L A C Y.

7 THE COURT: Please speak loudly  
8 and clearly enough for all members of the  
9 jury and all counsel to be able to hear  
10 you.

11 BY MR. BRITT:

12 Q Mr. Moore, you also go by the name of  
13 Jamie?

14 A Yes, sir.

15 Q Where do you live?

16 A 229-F Law Road, in Fayetteville, North  
17 Carolina.

18 Q How long have you lived there?

19 A 23 years.

20 Q What if anything is your relationship to  
21 the defendant Daniel Green?

22 A He's my brother.

23 Q When you say he's your brother, do you have  
24 the same father or the same mother?

25 A The same father.

1 Q Do you have any other brothers?

2 A Yes.

3 Q How many other brothers do you have?

4 A David, Daniel and Reece, and another one  
5 that I really don't know that well.

6 Q Your brother, David, where does he live?

7 A Tiffany Pines.

8 Q In what town?

9 A Fayetteville.

10 Q Now, in July of 1993, you were living in  
11 Fayetteville?

12 A Yes, sir.

13 Q Were you living at the address that you had  
14 given us previously?

15 A It was 201-F or 1112 Elliott Circle.

16 Q Elliott Circle is located where?

17 A Fayetteville.

18 Q Now, do you recall where your brother David  
19 was living in July of 1993?

20 A He lived in the back of Spring Lake on old  
21 Farms Road.

22 Q And did he live in a house there or does he  
23 live in a mobile home there?

24 A A mobile home.

25 Q Now, in July of 1993, specifically around

1 July the 30th of 1993, did you have an occasion to  
2 see your brother Daniel at David Moore's house in  
3 Spring Lake?

4 A He was -- I seen Daniel at my uncle's  
5 house.

6 Q What ask your uncle's name?

7 A Gary -- well, his name is Gabriel now,  
8 Moore.

9 Q And where did Gary or Gab -- Gabriel as you  
10 call him live at the time?

11 A He live -- I think it was 1107 Sleepy  
12 Hollow.

13 Q Sleepy Hollow being a mobile home park?

14 A Yes, sir.

15 Q When you went to your uncle's house on the  
16 night of July -- on July the 30th, 1993, when you  
17 went there, did you know that your brother Daniel was  
18 there?

19 A I knew that he was down, yes, sir.

20 Q How was it that you knew he was down?

21 A I had talked to my older brother earlier on  
22 the phone.

23 Q When you say your older brother?

24 A David.

25 Q Now, where was Daniel living, to your

1 knowledge, in July of 1993?

2 A His home or where was he visiting?

3 Q Where was he living?

4 A In Lumberton, I think.

5 Q And in July of 1993, specifically July the  
6 30th, was Daniel Green visiting with family members  
7 in Fayetteville?

8 A Yes.

9 Q And when you saw him on July 30th of 1993,  
10 who all was at your uncle's house?

11 A It was me, David, my friend Mike, Daniel,  
12 Larry, and I think one of my little cousins, Kiesha's  
13 kids, one of them was.

14 Q You've mentioned the name Larry?

15 A Yes.

16 Q You know Larry's last name?

17 A Demery.

18 Q Prior to July the 30th of 1993, had you an  
19 occasion to meet Larry Demery?

20 A That same night.

21 Q Is when you saw them -- you saw Larry  
22 Demery at your uncle Gary's house, July 30th, '93  
23 that was the first time you had ever been introduced  
24 to Larry Demery?

25 A Yes.

1 Q Who introduced you to Larry Demery?

2 A My brother David.

3 Q Can you describe for us anything that you  
4 saw your brother Daniel wearing, specifically  
5 jewelry, on July the 30th of 1993?

6 A He had a silver ring, like a basketball  
7 ring, and a watch.

8 Q The ring, the silver ring that you saw him  
9 wearing, can you describe it in terms of how small or  
10 large it was?

11 A It was like a heavy looking silver ring  
12 that had 1986 on it.

13 Q Did it have any sort of stone in it?

14 A I'm not sure. It had something on it but  
15 I'm not -- my memory is kind of foggy like.

16 Q The watch that you saw him wearing, can you  
17 describe that for us?

18 A The watch had a bull on it, and it had  
19 Juanetta and James, and something else on the back.

20 Q May I approach?

21 THE COURT: Yes, sir.

22 BY MR. BRITT:

23 Q I'll show you what has been marked as and  
24 accepted as State's Exhibit Number 3, do you  
25 recognize what is contained in that photograph?

1 A Yes, sir.

2 Q And how are you able to recognize what is  
3 contained in that photograph?

4 A Because my brother had had it.

5 Q State's Exhibit Number 3 is a photograph of  
6 a watch, is that correct?

7 A Yes, sir.

8 Q And --

9 THE COURT: I apologize for the  
10 interruption, but we need to back up and  
11 clarify.

12 You indicated that you identified  
13 State's Exhibit Number 3 because you said  
14 your brother had had it.

15 THE WITNESS: Yes.

16 THE COURT: Who were you talking  
17 about.

18 THE WITNESS: My brother Daniel.

19 BY MR. BRITT:

20 Q The watch that is depicted in State's  
21 Exhibit Number 3, is the watch that you saw on Daniel  
22 Green when you went to your uncle Gary's house, is  
23 that correct?

24 A Yes, sir.

25 Q And on the front of the watch is depicted

1 in State's Exhibit Number 3, there is a bull's head  
2 that appears there, is that correct?

3 A Yes, sir.

4 Q And that is similar, if not identical, to  
5 the bull's head that is used as the logo for the  
6 Chicago Bulls, is it not?

7 MR. THOMPSON: I object, Your  
8 Honor, he's leading the witness.

9 THE COURT: Also you're  
10 testifying as to matters depicted -- you  
11 can ask him what he recalls.

12 BY MR. BRITT:

13 Q The watch that you saw on Daniel Green, did  
14 it have anything on the face of the watch?

15 A That's the watch.

16 Q State's Exhibit Number 3 is the watch that  
17 you saw on your brother?

18 A Yes, sir.

19 Q I'm going to show you what's been marked as  
20 State's Exhibit Number 7, which is a clear plastic  
21 bag containing an item. I'm going to ask you to  
22 examine that and look at the item contained inside  
23 State's Exhibit Number 7, tell me if you recognize  
24 it. You can pick it up.

25 A Oh. Yes, sir.

1           Q       And how are you able to identify the object  
2 contained inside the plastic bag marked as State's  
3 Exhibit Number 7?

4           A       My brother had it in his pocket carrying it  
5 around.

6           Q       When you say your brother?

7           A       My brother Daniel.

8           Q       For the record, what is contained inside of  
9 the plastic bag marked as State's Exhibit Number 7?

10          A       Look like a championship ring or something.

11          Q       You testified previously that your brother  
12 had a large silver ring?

13          A       Yes, sir.

14          Q       And it had 1986 on it?

15          A       Yes, sir.

16          Q       Ask you to again look at State's Exhibit  
17 Number 7 and tell me if you see 1986 on any portion  
18 of that ring?

19          A       Yes, sir.

20          Q       And ask you again to look at State's  
21 Exhibit Number 7, what if any other markings appear  
22 on the front or the stone area of the ring contained  
23 as State's Exhibit Number 7?

24          A       It says NBA All-Star ring.

25          Q       Looking at the side opposite from where

1 1986 appears, is there a name that appears on the  
2 other side?

3 A This says Jordan.

4 Q And State's Exhibit Number 7, the ring  
5 contained inside the bag marked as State's Exhibit  
6 Number 7, is it in the same condition it was in when  
7 you saw it in your brother's, Daniel's possession on  
8 July 30th, 1993?

9 A Yes, sir.

10 Q Now, the watch that you saw Daniel Green  
11 with, what if anything was on or inscribed on the  
12 back of that watch?

13 A It had Juanetta and I think Michael and  
14 James, and some kind of numbers.

15 THE COURT: Would you like some  
16 water, sir?

17 THE WITNESS: No.

18 THE COURT: You need to speak up.

19 THE WITNESS: I was going to ask  
20 you, could I say something?

21 THE COURT: Mr. Britt, your  
22 witness, I believe, wants to explain  
23 something.

24 MR. BRITT: Yes, sir.

25 THE COURT: Ask him what it is he

1           wants to explain.

2       BY MR. BRITT:

3           Q       What is it that you need to explain  
4       Mr. Moore?

5           A       I think it had belonged to both of them,  
6       because I was going to try to give him something but  
7       he wouldn't give it to me because I think it was both  
8       of theirs.

9                               MR. THOMPSON:   Object -- I  
10       withdraw, I withdraw, I'm sorry.

11                              THE COURT:   It's withdrawn?

12                              MR. THOMPSON:   Yes.

13       BY MR. BRITT:

14           Q       When you saw Daniel at Gary's house on July  
15       the 30th, did you see him with any other items?

16           A       No, sir.

17           Q       Was there a video camera at Gary's house  
18       that day?

19           A       I saw that later on.

20           Q       When did you see this video camera?

21           A       One day when my brother had dropped him off  
22       when I was coming up the street.

23           Q       When you say that your brother had dropped  
24       him off, which brother are you referring to?

25           A       My brother David Moore.

1 Q Dropped off who?

2 A Daniel.

3 Q Where did you see David drop Daniel off?

4 A We were near the Murchison Road area.

5 Q Is that located in Fayetteville?

6 A Yes, sir.

7 Q When David dropped Daniel off on Murchison  
8 Road, is that when you saw this video camera?

9 A Yes, sir.

10 Q Who were you with at the time you saw David  
11 drop Daniel off that day?

12 A I was by myself.

13 Q After seeing David drop Daniel off, did you  
14 and Daniel meet and have any conversation?

15 A Yes, sir.

16 Q And after you met Daniel there on Murchison  
17 Road, where did the two of you go?

18 A We went to the Perry's.

19 Q When you say you went to the Perry's,  
20 specifically who are you referring to?

21 A To Monty's house.

22 Q And are those individuals in the court  
23 today?

24 A Yes, sir.

25 THE COURT: I'm sorry, you said

1 to whose house?

2 THE WITNESS: To Monty's house,  
3 the Perry's.

4 BY MR. BRITT:

5 Q After you went to the Perry's house, where  
6 did you and Daniel then go?

7 A I think we went down to Seabrook.

8 Q What is that?

9 A It's a recreational center.

10 Q Did there come a time, did Daniel have the  
11 video camera with him?

12 A Yes, sir.

13 Q Did Daniel use the video camera at any time  
14 while you were at the Perry's?

15 A Yes, sir.

16 Q And was he operating the camera or was  
17 someone else operating the camera?

18 A I think we all took turns operating the  
19 camera.

20 Q And what was being recorded or videoed?

21 A Rap, we were just basically rapping on it.

22 Q When you say we were just basically rapping  
23 on it, who was rapping and --

24 A Me, Monty, and Daniel.

25 Q And where were you at the time this

1 video -- this video was being made?

2 A Well, at Fayetteville State in the gym.

3 Q Now, when you were at Fayetteville State in  
4 the gym, is that the first time that the video camera  
5 was used?

6 A Let me see. I'm not sure.

7 Q Who all went to Fayetteville State?

8 A Me, Monty, Daniel, this girl Alicia, this  
9 dude Tony, and T. J., and that's all I can remember.

10 Q Now, when you went to Fayetteville State,  
11 how did you get from the Perry's house to  
12 Fayetteville State?

13 A We walked because it's three minutes  
14 away.

15 THE COURT: I'm sorry?

16 THE WITNESS: You could see it  
17 from their house where they went to.

18 BY MR. BRITT:

19 Q When you went to Fayetteville State, did  
20 you go to a particular building?

21 A Yes, to the gym.

22 Q Is there more than one gym at Fayetteville  
23 State?

24 A Yes, we went to the boy's gym.

25 Q At the time you went there, was it open or

1 was it closed, was it locked?

2 A It had to be open because we got in.

3 Q And when you went inside, who all went  
4 inside the gym?

5 A All of us.

6 Q And when you say all of us, you're  
7 referring to --

8 A Me, Monty, Alicia, T. J., and I think the  
9 other little skinny dude.

10 Q Was Daniel with you?

11 A Yes, sir.

12 Q And who had the video camera at the time  
13 when you went to Fayetteville State?

14 A I can't really tell, because whoever is not  
15 rapping on the video had to have it.

16 Q And did each of you take turns in regard to  
17 singing and --

18 A Rapping?

19 Q Yes.

20 A Yes, sir.

21 Q And did Daniel do that?

22 A Yes, he rapped.

23 Q Now, at the time you went to Fayetteville  
24 State, do you recall whether Daniel had the watch on?

25 A Yes, he had the watch on.

1 Q Do you recall whether he had this large  
2 blue -- excuse me, this large silver ring on?

3 A Yes, he had the ring on also.

4 Q And a video was shot, is that correct?

5 A Yes, sir.

6 Q And that video was taken of a number of you  
7 rapping, is that correct?

8 A Yes, sir.

9 Q And that included Daniel?

10 A Yes, sir.

11 Q Do you recall whether Daniel was wearing  
12 any type of baseball hat?

13 A I think he had on a black hat, if I'm not  
14 mistaken, it was either black or blue jean, I can't  
15 really remember.

16 Q Now, approximately, in your best estimate,  
17 how long did you stay at Fayetteville State making  
18 this video?

19 A We stayed at Fayetteville State like  
20 probably like hour, almost an hour.

21 Q And when you left Fayetteville State, where  
22 did you go and how did you get there?

23 A We stopped by the Perry's, we walked -- we  
24 stopped -- we stopped by the Perry's, we walked over  
25 there, and then headed up to the Murchison Road area.

1 Q As you were walking from Fayetteville State  
2 back to the Perry's, do you know whether anyone was  
3 using the video camera?

4 A I think Bobo was carrying it then.

5 Q What is Bobo's real name?

6 A Xavion.

7 Q And when you got to the Perry's house,  
8 did -- was the video camera there?

9 A Yes, sir.

10 Q And when you got to the Perry's house, did  
11 someone continue to video the things that everyone  
12 was doing there in the house?

13 A Yes, sir.

14 Q Now, at the Perry's house, what items were  
15 videoed, what things that you were doing were  
16 videoed?

17 A Well, Monty was just walking around looking  
18 in the house.

19 Q Where was Daniel when all that was going  
20 on?

21 A Probably sitting on the porch or something.

22 Q And --

23 THE COURT: I apologize. If you  
24 don't know, you need to say that, you can't  
25 speculate or guess.

1 THE WITNESS: That's what  
2 everybody else -- he had to be sitting on  
3 the porch and around the house.

4 BY MR. BRITT:

5 Q How long did you stay at the Perry's house?

6 A For like a few minutes, because we were  
7 heading up to Murchison Road.

8 Q Why were you going up to Murchison Road?

9 A To go behind the store.

10 Q Do you know where a store by the name of  
11 Suburban Mart is located?

12 A Yes, sir.

13 Q Where is the Suburban Mart located?

14 A On Murchison Road.

15 Q What street intersects with Murchison Road  
16 at the location of Suburban Mart?

17 A I think Jasper Street.

18 Q You said you were going up to a store on  
19 Murchison Road. Is that the --

20 A Yes, sir.

21 Q What if anything is located behind the  
22 Suburban Mart?

23 A What was behind the Suburban Mart?

24 Q Yes.

25 A Wooded area.

1 Q Let me back up just a minute. When you  
2 went to Fayetteville State and made this video, was  
3 Larry Demery there?

4 A No, sir. Larry Demery, the last that I  
5 knew, he had to get back here real quick.

6 Q And do you of your own knowledge -- you  
7 said he had to come back here, you're saying he had  
8 to return to his home?

9 A Yes.

10 Q Do you know how he got there?

11 A I think, had to be my brother had to have  
12 taken him back, if he would have sent somebody.

13 THE COURT: I'm sorry?

14 A I'm not sure if my brother didn't take him  
15 back or Eric had to take him back.

16 Q Who is Eric?

17 A Eric Thompson.

18 Q Is Eric Thompson a friend of your brother  
19 David Moore?

20 A Yes, sir.

21 Q Can you describe Eric for us?

22 A He's short, dark skinned.

23 Q And when you say he's dark skinned, is Eric  
24 black, is he a black male?

25 A Yes, sir.

1 Q Did you ever see Eric Thompson at your  
2 brother Dave Moore's while Daniel was there?

3 A Well, no.

4 Q Now, did Daniel ever show you any type of  
5 car key?

6 A Yes.

7 Q What kind of car key did Daniel show you?

8 A It was a black car key with a red button.

9 Q Did he tell you anything about that car  
10 key, as to what kind of car it went to?

11 A He said he had told -- he first told me  
12 that when we were at Sleepy Hollow.

13 Q What did he tell you about that car key and  
14 the car that it went to?

15 A He said it went to a Lexus, if you pushed  
16 the button it would crank it up.

17 Q Did you ever see this Lexus that he talked  
18 about?

19 A No, sir.

20 Q Does he ever tell you where it was?

21 A He said it was hidden somewhere.

22 Q Did he ever show you where it was hidden?

23 A I think it had to be by my brother's house.

24 Q Did he tell you why it was hidden?

25 A No, sir.

1 Q Now, when you went to the Suburban Mart,  
2 who went with you to the Suburban Mart?

3 A Everybody who was on the camera.

4 Q Now, would that be Daniel?

5 A Me, Daniel, Larry, Monty, Bobo, Tony, Twan,  
6 and I'm not sure if T. J. went or not, and the girl  
7 Alicia.

8 Q When you say Larry went with you, are you  
9 talking about Larry Demery?

10 A No, Alicia.

11 THE COURT: Is that we're  
12 clear --

13 THE WITNESS: Larry wasn't in  
14 Fayetteville State.

15 BY MR. BRITT:

16 Q Larry was not in Fayetteville?

17 A No, he had to hurry up and get back for  
18 some reason.

19 Q When you went to the Suburban Mart, was  
20 Daniel still wearing the watch?

21 A I think Daniel, I told him to take it off  
22 is nobody wouldn't try to take it, but then I think  
23 it put it on anyways.

24 Q Was Daniel wearing the ring?

25 A Yes, sir.

1 Q And when you went to -- what is located  
2 there behind Suburban Mart?

3 A It's just a wooded area.

4 Q And do people go to that wooded area for  
5 any reason?

6 A Some people do.

7 Q Now, this wooded area, is it in an area  
8 where people go hang out?

9 A Some people, yeah.

10 Q Is it an area where drugs are sold, to your  
11 knowledge?

12 A Yes, sir.

13 Q Now, when you went to this wooded area  
14 behind the Suburban Mart, what was your reason for  
15 going there?

16 A We were just trying to like make a little  
17 video.

18 Q And was the video shot there?

19 A Yes, sir.

20 Q And while you were there in the wooded area  
21 behind the Suburban Mart, did Daniel ever show anyone  
22 the watch or the ring that he had?

23 A He showed this dude Tim.

24 Q And this fellow that you call Tim, is that  
25 somebody that you knew or knew of?

1 A Yeah.

2 Q And what happened when Daniel showed Tim  
3 the ring or the watch?

4 A He asked him could he wear it.

5 Q Who asked who if he could wear it?

6 A Tim asked Daniel if he could wear it, and I  
7 said no.

8 Q You said no?

9 A Yes.

10 Q Why did you say no that Tim couldn't wear  
11 the ring or the watch?

12 A I thought maybe Tim would try to cop it  
13 from him.

14 Q Did Daniel let him hold it?

15 A I think is, I'm not sure.

16 Q Did there come a time when you had to help  
17 Daniel get the ring back?

18 A Yes, sir.

19 Q And who had the ring at the time you had to  
20 help him get the ring back?

21 A Tim.

22 THE COURT: For the purposes of  
23 clarification, you testified that when you  
24 went to the area around or behind the  
25 Suburban Mart on Murchison Road in

1           Fayetteville, according to your testimony,  
2           you said you told the defendant to take the  
3           watch off, not to wear it?

4                         THE WITNESS:   Yes.

5                         THE COURT:    Why was that?

6                         THE WITNESS:   So no one would try  
7           to rob him or anything of it.

8                         THE COURT:    What if anything did  
9           that have to do with the fact that you were  
10          on Murchison Road?

11                        THE WITNESS:   No, I grew up with  
12          the boys around there, but they did not  
13          know Daniel.

14         BY MR. BRITT:

15                 Q       And even though you told him not to wear  
16          the watch, he wore it anyway?

17                 A       Yes, sir.

18                 Q       Now, in your presence, did Daniel show the  
19          ring and the watch to other people?

20                 A       I think he showed it to Tim and this other  
21          light-skinned dude.

22                 Q       From the Suburban Mart, where did you then  
23          go?

24                 A       We headed back up to Murchison Road.

25                 Q       Did you ever go back to the Perry's house?

1 A Yes.

2 Q And when you got back to the Perry's house,  
3 was the video camera there again?

4 A Yes, sir.

5 Q Who had -- the first time -- was it the  
6 same video camera that was used each time?

7 A Yes, sir.

8 Q And who was it that had -- excuse me.

9 THE COURT: If you'll bear with  
10 us just one moment.

11 MR. BRITT: I apologize.

12 THE COURT: Okay, Mr. Britt.

13 BY MR. BRITT:

14 Q Who was the first person you saw with this  
15 video camera?

16 A You mean --

17 Q When you went to your uncle Gary's that  
18 night --

19 A Yes, sir.

20 Q -- who was the person that had the video  
21 camera?

22 A The first time I seen the camera is when  
23 Dave dropped him off on the Murch. That's the first  
24 time I had knowledge of it.

25 Q Dropped who off?

1           A       Dropped David off on the Murch.

2                   THE COURT:   For clarification of  
3       the record, when you say "on the Murch,"  
4       what are you talking about?

5                   THE WITNESS:   On the Murchison  
6       Road area.  I didn't see it the night  
7       that -- the night that we were in Sleepy  
8       Hollow, the night I came up there, I seen  
9       it was Daniel, Dave, one of Kiesha's kids,  
10      Gary, Dave, and Larry.  I didn't see the  
11      camcorder until later on.

12   BY MR. BRITT:

13           Q       You saw the camcorder for the first time  
14      when your brother David dropped Daniel off?

15           A       Down Murchison Road area.

16           Q       You referred to the Murch, is that slang  
17      for Murchison Road?

18           A       Yes, sir.

19           Q       Other than the video camera, was Daniel  
20      carrying any kind of bag with him?

21           A       He had a little black bag.

22           Q       And can you describe that bag for us?

23           A       I can't really remember, I know it was  
24      black.

25           Q       How did he carry it?

1 A On his shoulders.

2 Q When you went back to the Perry's, was the  
3 video camera used there?

4 A Yes, sir.

5 Q And what was videoed or recorded there at  
6 the Perry's at that time?

7 A Just things going on that -- things just  
8 going on at the time.

9 Q People rapping?

10 A Yeah, rapping, sitting around acting.

11 Q People talking?

12 A Yes, laughing.

13 Q People cutting up?

14 A Cutting up.

15 Q And did you spend the night at the Perry's  
16 that night?

17 A No, sir.

18 Q To your knowledge, when you left the  
19 Perry's was Daniel still there?

20 A Yes, sir.

21 Q And when you left the Perry's that night,  
22 did you see Daniel the next morning?

23 A Yes, sir, I had to go back and get him.

24 Q And when you went back to get him, was he  
25 wearing the watch?

1           A       Yes, sir, he still had the stuff.

2           Q       Did he still have the silver ring?

3           A       Yes, sir.

4           Q       Where did you take him?

5           A       We went back to my mother's and I had  
6 called my brother so he can come get them.

7           Q       Now -- and did your brother David come get  
8 you?

9           A       Yes, later on.

10          Q       Did you see Daniel at any point after your  
11 brother David came to pick him up?

12          A       I'm not sure.

13          Q       Did you ever ask Daniel any questions about  
14 why the car was hidden?

15          A       No. I asked him where he got it from.

16          Q       And where did he tell you he got the car?

17          A       He said he got it from a well-dressed white  
18 man.

19          Q       Did you ask him any questions why this  
20 well-dressed white man had given him the car, why it  
21 was hidden?

22          A       He had told me that he had gave him two  
23 rocks for it, but I knew he didn't know anything  
24 about drugs.

25          Q       Said he had given him two rocks?

1 A Yeah.

2 Q Who had given who drugs?

3 THE COURT: I'm sorry.

4 THE WITNESS: He had given the  
5 white man --

6 THE COURT: You all can't talk at  
7 the same time. Let him ask his question,  
8 then you can answer. Mr. Britt, if you'll  
9 let him complete his answer.

10 MR. BRITT: I apologize.

11 THE COURT: Put your question to  
12 him again. If you'll bear with me.

13 BY MR. BRITT:

14 Q You said he had given him two rocks?

15 A Yes, sir.

16 Q Who had given who two rocks?

17 A Daniel told me he had given the  
18 well-dressed white man two rocks for the use of the  
19 car, but I knew he didn't know anything about drugs,  
20 is --

21 Q And when he told you that he had given this  
22 man two rocks, did you take that to mean two rocks of  
23 crack cocaine?

24 A Yeah.

25 Q That's how he told you he got the car?

1 A Yes, sir.

2 Q Do you recall Daniel telling you that the  
3 car was hidden off of Ray Road?

4 A He said something like that.

5 Q Now, where is Ray Road?

6 A It must be in the country somewhere.

7 Q You're not familiar with its location?

8 A No, sir.

9 Q Do you recall Daniel telling you that he  
10 was going to burn the car?

11 A I think him and Larry talked outside about  
12 it, something like that.

13 THE COURT: Do you understand his  
14 question?

15 THE WITNESS: Yes, sir.

16 BY MR. BRITT:

17 Q Is it your testimony that you overheard  
18 Daniel and Larry Demery talking about burning the  
19 car?

20 A They were telling me something like that.  
21 It seemed like to me that -- I don't think Daniel  
22 knew too much about the car and stuff because I think  
23 Daniel was more like the spokesperson, because I  
24 think Larry was like, he probably didn't think I  
25 would trust him, because he was like white or Indian

1 like.

2 Q Daniel had the keys, didn't he?

3 A Yes.

4 Q Daniel told you about some golf clubs in  
5 the car, didn't he?

6 A Yes, sir.

7 Q And the golf clubs that he told you about  
8 had Michael Jordan's name on them, didn't they?

9 A Yes, sir.

10 Q Did Daniel tell you about a compact disk  
11 player in the car?

12 A No, sir.

13 Q Do you recall talking or being interviewed  
14 by Captain Art Binder of the Cumberland County  
15 Sheriff's Department?

16 A Yes, sir.

17 Q Do you recall that conversation that you  
18 had with Mr. Binder was written down?

19 A Yes, sir.

20 Q And do you recall telling Captain Binder  
21 that Daniel told you that the clubs, that the golf  
22 clubs were gold?

23 A Yes, sir.

24 Q And that they either had the initials or  
25 the full name of Michael Jordan on them?

1 A Yes, sir.

2 Q Do you also recall telling Captain Binder  
3 that the car also had a cellular telephone?

4 A Yes, sir.

5 Q Had a compact disk player in it?

6 A See, it's been like three years, I can't  
7 remember exact. But I'm sure if it was a Lexus it  
8 probably did have a CD player.

9 Q Now, while you were at the Perry's house,  
10 do you recall Daniel going to sleep?

11 A Yes, sir.

12 Q And there at the Perry's, do you recall  
13 watching the video tape that had been -- that was in  
14 the video camera earlier that day?

15 A Yes, sir.

16 Q And on that -- you watched the entire  
17 videotape, is that correct?

18 A I watched some of it because I was in and  
19 out.

20 Q And do you recall how much of the videotape  
21 that you watched?

22 A I'm not sure.

23 Q In a portion of the videotape that you  
24 watched, it depicted Daniel at your brother David's  
25 house, did it not?

1           A       Yes, sir.

2           Q       And at that time, Daniel was by himself?

3           A       Yes, sir.

4           Q       Daniel was rapping?

5           A       Yes, sir.

6           Q       He was dancing?

7           A       Yes, sir.

8           Q       Was wearing the watch?

9           A       Yes, sir.

10          Q       Was wearing the silver ring?

11          A       Yes, sir.

12          Q       And then you watched a portion of the  
13 videotape that involved what had occurred at  
14 Fayetteville State?

15          A       Yes, sir.

16          Q       And then what was recorded at the Suburban  
17 Mart?

18          A       I didn't watch all of the Suburban Mart  
19 thing.

20          Q       Did you watch any of the portion of the  
21 videotape where you were at the Perry's house?

22          A       I'm not sure.

23          Q       And the videotape that you watched, Larry  
24 Demery is not anywhere in that videotape, is he?

25          A       He's not in there and stuff because as I

1 said before, he had to hurry up and get back to  
2 Lumberton.

3 Q He was not there?

4 A No, sir.

5 Q Do you know how long Daniel stayed in  
6 Fayetteville?

7 A Daniel came twice, is I'm not sure.

8 Q The last time he was there, did you see  
9 him?

10 A Yes, the last time -- hold up. I'm not  
11 sure.

12 Q Now, were you aware that Eric Thompson  
13 brought Daniel home to Robeson County?

14 A Yes, I took -- I was with him when he brung  
15 him home.

16 Q You rode with Daniel and Eric when he came  
17 home?

18 A Yes.

19 Q What kind of car was Eric driving?

20 A We had my brother's burgundy Grand Am.

21 Q Was that the last time you saw Daniel in  
22 July or August of 1993?

23 A It had to be like the end of July.

24 Q When you brought him home, did you go to  
25 Bob's Landing Mobile Home Park here in Robeson

1 County?

2 A Yes, sir.

3 Q Did you know Daniel's telephone number at  
4 that address?

5 A I knew it, but that was from before,  
6 because when I had a trailer in Eastover, is I'm not  
7 really remembering what that number was.

8 Q And your brother David, he was in the Army  
9 at this time, wasn't he?

10 A Yes, sir.

11 Q And where was he stationed?

12 A Fort Bragg.

13 Q Did you know how to get in touch with your  
14 brother David while he was on post?

15 A I think he had -- he gave me a number one  
16 time, but that was for something else.

17 Q And --

18 A Because he rarely gave out his work  
19 number.

20 Q Your brother David rarely gave out his work  
21 number?

22 A Yeah.

23 Q Fair to say he only gave it to a very few  
24 people?

25 A Yeah.

1 Q And your brother David, where he was living  
2 in Spring Lake, he had a telephone there, didn't he?

3 A Yes.

4 Q Was it the same situation, he only gave his  
5 home number out to a very few people?

6 A Yes, sir.

7 MR. BRITT: I don't have any  
8 other questions.

9 THE COURT: Any  
10 cross-examination?

11 MR. THOMPSON: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. THOMPSON:

14 Q Good evening, Mr. Moore.

15 A Hello, how are you doing?

16 Q Mr. Moore, you indicated on direct  
17 examination that you thought that the ring that you  
18 saw your brother U'Allah wearing belonged to both of  
19 them. Who were you referring to when you said both  
20 of them?

21 A To him and Larry.

22 Q And what was it -- what was the reason that  
23 you thought that it belonged to both of them?

24 MR. BRITT: Objection.

25 THE COURT: Do you want to be

1 heard?

2 MR. BRITT: Calls for  
3 speculation.

4 THE COURT: If you know, you may  
5 answer. Do you know?

6 THE WITNESS: Yes, sir.

7 THE COURT: Then you may answer.

8 THE WITNESS: Because Daniel  
9 acted like he couldn't make a decision  
10 without Larry.

11 THE COURT: The objection is  
12 sustained. Anything further?

13 MR. BRITT: Move to strike. Ask  
14 for an instruction.

15 THE COURT: Allowed. Members of  
16 the jury, don't consider the response just  
17 given by the witness. That response is  
18 based on speculation and conjecture. It is  
19 not to take any part in your deliberations  
20 in this case in any respect.

21 Anything further Mr. Britt?

22 MR. BRITT: No, sir.

23 THE COURT: Yes, sir.

24 BY MR. THOMPSON:

25 Q You saw your brother with the ring and the

1 watch on while in the presence of Mr. Demery, is that  
2 right?

3 A Yes, sir.

4 Q And did you see your brother try -- did you  
5 hear him try to sell the watch or ring to anyone?

6 A No, sir, they were trying to get a gun.

7 Q They were trying to get a gun?

8 A Yes, sir.

9 Q Did you see your brother confer with Larry  
10 Demery with respect to anything related to the ring  
11 or the watch?

12 MR. BRITT: Objection.

13 THE COURT: Sustained, to the  
14 form of the question

15 BY MR. THOMPSON:

16 Q Didn't you offer to give your brother  
17 something for the watch?

18 A Yes, sir.

19 Q And when you offered to give your brother  
20 something for the watch, what did he do?

21 A He said no.

22 Q Did he -- before saying no, did he confer  
23 with Mr. Demery?

24 MR. BRITT: Objection.

25 THE COURT: Sustained to the form

1 of the question.

2 BY MR. THOMPSON:

3 Q Who did he -- well, did he do anything  
4 before he said no?

5 MR. BRITT: Objection.

6 THE COURT: Overruled. You may  
7 answer.

8 THE WITNESS: Him and -- he  
9 told --

10 MR. BRITT: Objection.

11 THE COURT: Okay. Do you want to  
12 be heard, sir?

13 MR. BRITT: Yes, sir.

14 THE COURT: Ladies and gentlemen  
15 of the jury, there's a matter of law the  
16 Court must take up out of the hearing and  
17 presence of the jury. Please recall my  
18 instruction in that regard. Don't worry or  
19 speculate about what takes place in the  
20 jury room in your absence. If all members  
21 of the jury would step to the jury room,  
22 please.

23 (Jury out at 2:54.)

24 THE COURT: Let the record show  
25 the following is being heard in the absence

1 of the jury. Mr. Britt.

2 MR. BRITT: Your Honor, anything  
3 he may have said would be hearsay, and any  
4 conduct I would contend is certainly  
5 conduct that would be hearsay.

6 THE COURT: Matters were elicited  
7 on direct examination dealing with the  
8 watch and the ring, and Mr. Green's conduct  
9 with regard to the watch and the ring.  
10 They are entitled to go into it. It's an  
11 interesting situation, because what we've  
12 got here is someone arguably who is an  
13 adverse or a hostile witness called by the  
14 State.

15 MR. BRITT: Yes, sir.

16 THE COURT: Under such  
17 circumstances, the Court, under 611 C, can  
18 allow leading questions. When examination  
19 is completed by the State, what would  
20 ordinarily be cross-examination under the  
21 rules may be prohibited, because 611 C,  
22 dealing with the commentary -- if you'll  
23 look at the commentary and the case law, it  
24 says it doesn't depend technically on what  
25 phase of the examination is involved, it

1 depends on the nature of the witness and  
2 the relationship of the witness to one of  
3 the members of the parties, or matters to  
4 that effect.

5 Is ordinarily, while cross-examination  
6 may be appropriate, in most instances,  
7 leading questions in the discretion of the  
8 Court under 611 C may be deemed  
9 inappropriate where a person is, in effect,  
10 examining a friendly witness as opposed to  
11 a hostile witness or an adverse witness.

12 The objection is overruled, the  
13 State's exception is noted for the record.  
14 You can repeat your question and I'll deal  
15 accordingly from where we are. If you'll  
16 bring the jury back in, please.

17 (Jury in at 2:57 p.m.)

18 THE COURT: Members of the jury,  
19 the objection is overruled, exception is  
20 noted for the record.

21 Mr. Thompson, you may repeat or  
22 rephrase your question to Mr. Moore.

23 BY MR. THOMPSON:

24 Q Mr. Moore, you indicated that you were  
25 trying to get the ring, get Daniel to sell you the

1 ring, is that right?

2 A I think it was the watch, if I'm not  
3 mistaken.

4 Q Okay. Well, the watch?

5 A Yes, sir.

6 Q And what if anything did Daniel say to you  
7 or do before he indicated to you that he would not  
8 give you the watch or sell you the watch?

9 MR. BRITT: Objection.

10 THE COURT: Bear with me. To the  
11 form of the question, the objection is  
12 sustained. Rephrase.

13 BY MR. THOMPSON:

14 Q Did Daniel say anything to anybody else  
15 while in your presence before refusing to give you  
16 the watch?

17 MR. BRITT: Objection.

18 THE COURT: Sustained to the form  
19 of the question.

20 BY MR. THOMPSON:

21 Q Did he say anything to you --

22 MR. BRITT: Objection. Excuse  
23 me.

24 BY MR. THOMPSON:

25 Q Did Daniel say anything to you before

1 refusing to give you the watch?

2 MR. BRITT: Objection.

3 THE COURT: Sustained to the form  
4 of the question. Go back to your earlier  
5 question, Mr. Thompson.

6 BY MR. THOMPSON:

7 Q Did Daniel do anything --

8 THE COURT: No, sir, not that one.  
9 Bear with me.

10 Mr. Thompson, go to page 172, line five.

11 MR. THOMPSON: And when you  
12 offered to give your brother something for  
13 the watch, what did he do?

14 THE COURT: You may answer.

15 THE WITNESS: He told me and  
16 Larry to come outside the trailer.

17 BY MR. THOMPSON:

18 Q And when you and Larry came outside of the  
19 trailer, what did he do?

20 MR. BRITT: Objection.

21 BY MR. THOMPSON:

22 Q What if anything did you do?

23 A We went outside the trailer.

24 Q Was there a conversation held between you  
25 and Larry Demery and your brother while outside of

1 the trailer?

2 THE COURT: You may answer yes or  
3 no.

4 THE WITNESS: Yes.

5 BY MR. THOMPSON:

6 Q Was that conversation pertaining to the  
7 watch?

8 MR. BRITT: Objection, calls  
9 for --

10 THE COURT: Sustained to the form  
11 of the question. Rephrase.

12 BY MR. THOMPSON:

13 Q Well, a conversation that you had outside  
14 of the trailer, as a result of that conversation,  
15 what did you do, sir?

16 A As we were outside the trailer, we were  
17 talking about the watch and --

18 MR. BRITT: Objection.

19 THE COURT: Overruled. You may  
20 answer.

21 THE WITNESS: And Daniel kept  
22 telling me no. And I kept trying to offer  
23 him different things for it, and then they  
24 got on the subject about guns and stuff  
25 and --



1 gentlemen, there's a matter of law the  
2 Court must take up at this time. Please  
3 recall my instruction, don't worry or  
4 speculate about what takes place in the  
5 courtroom in your absence. If you would  
6 please step to the jury room.

7 (Jury out at 3:02 p.m.)

8 THE COURT: The following is  
9 being conducted in the absence of the  
10 jury. Mr. Thompson?

11 MR. THOMPSON: May I voir dire  
12 the witness?

13 THE COURT: No, sir. What's the  
14 basis -- I thought you wanted to be heard  
15 about your -- my ruling. I apologize.

16 MR. THOMPSON: Yes, sir. Your  
17 Honor, I --

18 THE COURT: Under what rule of  
19 evidence do you contend this is admissible.

20 MR. THOMPSON: We will, it's  
21 conduct that he observed. It's not  
22 hearsay. It was done within the presence  
23 of this witness. I'm simply asking him  
24 what he observed the defendant do while in  
25 his presence. He's testified that they

1           came outside of the house.

2                       THE COURT:   You're asking about  
3           the contents of the conversation as to  
4           Mr. Demery.

5                       MR. THOMPSON:   And I asked him  
6           was there a conversation.

7                       THE COURT:   That's already come  
8           in that there was a conversation.

9                       MR. THOMPSON:   I asked was  
10          there -- I thought the question that I  
11          asked, was conversation between the three  
12          of them, and he objected, and you  
13          sustained.   And I said I didn't ask him  
14          what the conversation was about.

15                      THE COURT:   Bear with me, let me  
16          go back.

17                      MR. BRITT:   Page 178, line 16.

18                      THE COURT:   178 line 23 -- or 24,  
19          excuse me.   "Question, did you have a  
20          conversation or did he have a conversation,  
21          meaning Mr. Demery, in your presence, about  
22          him having to get back to Robeson County.  
23          Objection.   Sustained.   Mr. Thompson:   Your  
24          Honor, I'm not asking about the  
25          conversation," and that's when the jury was

1 sent out.

2 MR. THOMPSON: I understand.

3 THE COURT: You're asking for  
4 hearsay.

5 MR. THOMPSON: About when --

6 THE COURT: And the objection is  
7 sustained. Do you want to be heard  
8 further?

9 MR. THOMPSON: Well, yes, sir, on  
10 another issue of law. With respect to  
11 anything that Mr. Green did particularly  
12 conferring, did he observe him conferring  
13 with Mr. Demery, Your Honor, and I  
14 recall --

15 THE COURT: The objection was  
16 sustained on the basis of confer. Confer  
17 connotes certain things. You're asking him  
18 to draw a conclusion that there was a  
19 conference.

20 MR. THOMPSON: Well, a  
21 conversation.

22 THE COURT: I don't mean, I don't  
23 care what word you use as long as it's not  
24 confer that is otherwise admissible.

25 MR. THOMPSON: Is conversation a

1 substitute.

2 THE COURT: The Court does not  
3 give advanced advisory opinions.

4 MR. THOMPSON: In all honesty, to  
5 me conferring and conversations is --

6 THE COURT: Remember what we  
7 talked about in disagreements, who wins?

8 MR. THOMPSON: Is I can ask, I  
9 understand.

10 THE COURT: All right. Are we  
11 ready to go?

12 Are we ready to go?

13 MR. THOMPSON: Yes, sir.

14 THE COURT: Okay. Bring the jury  
15 back in, please.

16 (Jury in at 3:06 p.m.)

17 THE COURT: The objection is  
18 sustained. Exception is noted.

19 Mr. Thompson, any additional questions?

20 MR. THOMPSON: Yes, sir.

21 BY MR. THOMPSON:

22 Q Mr. Moore, while you were asking your  
23 brother about selling you the ring, did you observe  
24 your brother and Larry Demery having a conversation?

25 A Yes, sir. He was --

1 THE COURT: You can't go into the  
2 conversation, you can answer yes or no.

3 THE WITNESS: Yes.

4 BY MR. THOMPSON:

5 Q And after they had that conversation, is  
6 that when Mr. Green told you, no, he could not sell  
7 you the ring?

8 MR. BRITT: Objection.

9 THE COURT: Do you want to be  
10 heard?

11 MR. BRITT: No, sir.

12 THE COURT: Overruled. You may  
13 answer.

14 THE WITNESS: Yes, sir.

15 BY MR. THOMPSON:

16 Q Did Daniel Green, your brother, indicate to  
17 you why he had the ring on or the watch on, did you  
18 all have a conversation about that?

19 MR. BRITT: Objection.

20 BY MR. THOMPSON:

21 Q Meaning you and your brother?

22 MR. BRITT: Objection.

23 THE COURT: As to whether a  
24 conversation occurred, you may answer yes  
25 or no. And if you don't know --

1 THE WITNESS: I don't know.

2 THE COURT: You can tell us  
3 that.

4 BY MR. THOMPSON:

5 Q You indicated that -- on direct  
6 examination, that you -- that your brother didn't  
7 know anything about selling drugs, is that  
8 right?

9 MR. BRITT: Objection.

10 THE COURT: Overruled. You may  
11 answer.

12 THE WITNESS: Yes, sir.

13 BY MR. THOMPSON:

14 Q And you indicated that that's why you  
15 didn't believe the story about the getting the car  
16 for the two rocks, is that right?

17 A Yes, sir.

18 Q It appeared to you in your presence there  
19 ever came a time where your brother and Larry Demery  
20 had an argument about something?

21 MR. BRITT: Objection, calls for  
22 speculation.

23 THE COURT: Sustained.

24 BY MR. THOMPSON:

25 Q Well, did Larry -- now, Mr. Moore, you gave

1 Art Binder a statement regarding your knowledge about  
2 the watch and the ring, and you seeing your brother  
3 and Larry Demery, is that right?

4 A Yes, sir.

5 Q Didn't you tell Mr. Binder in that  
6 statement -- and again, let me back up and ask you a  
7 few questions about that. That statement that you  
8 gave to Mr. Binder, where were you located, where was  
9 it given, I mean, where?

10 A In front of my mother's house in Elliott  
11 Circle.

12 Q Were you standing outside of a vehicle or  
13 were you located inside a vehicle?

14 A We were inside a vehicle, and we were --  
15 one was in the front seat and one was in the back.

16 Q Who else was present besides Mr. Binder?

17 A Art Binder and another white man.

18 Q Did he indicate to you who he was, who the  
19 other person was, or you just don't recall his name?

20 MR. BRITT: Objection.

21 THE WITNESS: I can't recall his  
22 name.

23 THE COURT: Overruled.

24 BY MR. THOMPSON:

25 Q Is that individual in the courtroom now,

1 the other individual who was in the car with you and  
2 Mr. Binder?

3 A I can't remember. I know he was white.  
4 That's all I recall.

5 Q Now, do you recall telling Mr. Binder,  
6 Mr. Moore, that you knew that Daniel and Larry were  
7 friends but they had been fussing a lot with each  
8 other?

9 A Yeah.

10 Q Do you know from your own knowledge what if  
11 anything they were fussing about?

12 MR. BRITT: Objection.

13 THE COURT: Sustained.

14 BY MR. THOMPSON:

15 Q You indicated on direct examination in your  
16 response to Mr. Britt's question, that your brother  
17 was sort of the spokesperson?

18 A Yes.

19 Q -- because Demery was white, do you recall  
20 saying that?

21 A Yes.

22 Q What did you mean by that?

23 MR. BRITT: Objection.

24 THE COURT: Overruled. You may  
25 answer.

1                   THE WITNESS:   What I mean by  
2                   that, okay, here we are, we're in a  
3                   predominantly black neighborhood, okay.  
4                   This boy is like Indian or white, and  
5                   everybody knows that, they are not going to  
6                   really try to talk to him or anything like  
7                   that.  They would talk to Dave before they  
8                   talked to him.

9   BY MR. THOMPSON:

10            Q     You also told Mr. Binder that you believed  
11            that the watch or ring had been purchased from a flea  
12            market, is that right?

13            A     Yeah, at first, because I didn't believe  
14            that how could they get ahold of something like that.

15            Q     Now, had you ever seen paraphernalia,  
16            meaning shirts or -- such as shirts or items with  
17            Michael Jordan's name on it before, had you ever seen  
18            anything?

19                   MR. BRITT:  Objection to the  
20            relevance.

21                   THE COURT:  I'm sorry, bear with  
22            me, folks.

23                   Rephrase it, sir.

24   BY MR. THOMPSON:

25            Q     Had you ever seen any items that you can

1 purchase at a store with Michael Jordan's name on it  
2 before?

3 A Yeah, a lot of imitation things you can  
4 purchase.

5 Q Now, you indicated that you all were doing  
6 a lot of rapping?

7 A Yes, sir.

8 Q -- while on the video. Why were you all  
9 doing is much rapping?

10 A Oh, because me -- well, at the time, Daniel  
11 was rapping, and I was rapping and stuff, and we were  
12 going to send off separate tapes and stuff, is we  
13 just decided to have a little fun.

14 Q Send off separate tapes where?

15 A Demo tapes, like different rap, like people  
16 who rap and stuff like that.

17 Q You also indicated on direct examination  
18 that your brother didn't know much about the car, do  
19 you recall saying that?

20 A Yes, sir.

21 Q What did you mean by that?

22 MR. BRITT: Objection.

23 THE COURT: Ladies and gentlemen,  
24 this is an appropriate time for me to give  
25 you the afternoon recess. During the

1 recess, please recall it is your duty to  
2 abide by all prior instructions of the  
3 Court concerning your conduct.

4 Everyone else please remain seated.  
5 The members of the jury are excused. Folks  
6 if you would please reassemble in the jury  
7 room at 3:35.

8 Let me give you an additional five  
9 minutes because we've got some  
10 administrative matters to attend to. Let  
11 me give you until 3:40.

12 (Jury out at 3:15 p.m.)

13 THE COURT: Before going to the  
14 objection, let me go back to where we  
15 were.

16 MR. THOMPSON: That was at -- 189  
17 line six.

18 THE COURT: I'm on page 188  
19 beginning on line 19, question by  
20 Mr. Thompson, "Now, you indicated that you  
21 all were doing a lot of rapping? Answer:  
22 Yes, sir. Question: While on the video.  
23 Period. Why were you all doing is much  
24 rapping?"

25 Folks, I have, based on the

1 defendant's motion in limine, excluded the  
2 audio portion of the State's exhibit, and I  
3 don't recall the Exhibit number, I think  
4 it's a Court's as well.

5 MR. BRITT: Court's 4, I  
6 believe.

7 THE COURT: Doors can be opened  
8 on cross-examination.

9 Going now to the matter leading to the  
10 objection, "Question: You also indicated  
11 on direct examination that your brother  
12 didn't know much about the car, do you  
13 recall saying that? Answer: Yes, sir.  
14 Answer, yes, sir. Question: What did you  
15 mean by that?"

16 Folks, that may open up some doors as  
17 well. Let me -- Rule 607, entitled Who May  
18 Impeach, reads as follows: Direct of a  
19 witness may be attacked by any party  
20 including the party calling him.

21 The old rule in North Carolina is that  
22 one could not impeach one's own witness  
23 because by calling a witness, the party  
24 calling that witness in essence vouches for  
25 the credibility of the witness, and you

1           couldn't vouch for the credibility of that  
2           witness and impeach that witness at the  
3           same time. That rule is no longer in  
4           effect.

5           Rule 611 C reads, "Leading questions  
6           should not be used on the direct  
7           examination of a witness except as may be  
8           necessary to develop testimony."

9           "Ordinarily," and that word ordinarily  
10          comes into significance in a few moments,  
11          "leading questions should be permitted on  
12          cross-examination when a party calls a  
13          hostile witness, an adverse witness, or a  
14          witness identified with an adverse party  
15          interrogation may be by leading questions.  
16          Commentary tells us that leading questions  
17          can't be used under what is technically  
18          cross-examination when it's technically or  
19          in substance examination of a friendly  
20          witness."

21          In other words, you can't use the rule  
22          regarding leading questions on cross when  
23          cross is in form only and not in substance.

24          You're asking some stuff that may  
25          entitle them under Rule 607, 611 C, to go

1 back into matters which not only might  
2 pertain to the questions that are asked but  
3 to doors that are opened, which may cause  
4 the Court to revisit or have to revisit or  
5 reconsider rulings on the motion in  
6 limine. And also, if you folks will  
7 recall, I still have not ruled, I  
8 intentionally indicated to all parties on  
9 the record that I was not ruling on whether  
10 or not the video itself, without the audio  
11 portion, would be admissible.

12 Question: Does that video reflect or  
13 depict a date?

14 MR. BRITT: Yes, sir.

15 THE COURT: Do specific portions  
16 of the video indicate the date at which  
17 time that video was made?

18 MR. BRITT: Yes, sir.

19 THE COURT: Folks, I thought that  
20 might be an issue, and in regard to an  
21 earlier cross-examination, I made a note on  
22 the computer and later had the court  
23 reporter print out that portion of the  
24 computer.

25 "Question: Now, you never observed

1 Mr. -- Pause, you never observed U'Allah  
2 with any rings on? Answer: No, sir.  
3 Question: You never observed him with any  
4 jewelry on? Answer: No, sir. Question:  
5 And you specifically told the officers  
6 during your interview back in August,  
7 August the 14th, 1993, you never observed  
8 him with a Michael Jordan watch on?  
9 Answer: Yes, sir."

10 This dealt with matters related to the  
11 26th of July. If the video reflects,  
12 depicts, shows, or portrays a date in  
13 proximity to that time period, it may be  
14 admissible either in rebuttal, if not  
15 during the case in chief. Doors can be  
16 opened on cross-examination.

17 MR. THOMPSON: With respect to --  
18 excuse me, Your Honor -- him wearing the  
19 ring and the jewelry and the -- I mean, the  
20 watch?

21 THE COURT: Yes, sir. Yes, sir.

22 MR. THOMPSON: Yes, sir.

23 THE COURT: In other words, an  
24 argument can be made that the State's  
25 position as to the showing of the video is

1 stronger now than it was when we started  
2 this trial based on the questions asked.  
3 I'm not ruling at this time, I'm simply  
4 pointing out that doors can be opened on  
5 cross-examination.

6 Now, the question immediately before  
7 the Court, the objection immediately before  
8 the Court.

9 MR. BRITT: Page 189.

10 THE COURT: Beginning on line  
11 four. Actually the question is on line  
12 ten, "What did you mean by that?"

13 Basis of your objection?

14 MR. BRITT: Go back to page 188,  
15 line -- the last question that appears on  
16 page 188, "Question: You also indicated on  
17 direct examination that your brother didn't  
18 know much about the car. Do you recall  
19 saying that? Yes, sir.

20 "Answer: Yes, sir.

21 "What did you mean by that?  
22 Objection, would call for speculation."

23 THE COURT: Well, we're on voir  
24 dire, what would your answer be to that  
25 question?

1 THE WITNESS: Because he had said  
2 that it might be the champ's stuff. And I  
3 said who, Mike Tyson? No, he said, no,  
4 Michael Jordan. And said, no, that might  
5 be fake stuff.

6 THE COURT: I'm confused. The  
7 preceding question, "You also indicated on  
8 direct examination that your brother didn't  
9 know much about the car, do you recall  
10 saying that." Answer: "Yes, sir."

11 THE WITNESS: Yes.

12 THE COURT: Next Question: "What  
13 did you mean by that?" And your answer is?

14 THE WITNESS: He said that he  
15 thinks it may be the champ's stuff.

16 THE COURT: When you say it may  
17 be the champ's stuff what are you talking  
18 about?

19 THE WITNESS: The ring and the  
20 watch.

21 THE COURT: The question was  
22 about the car.

23 THE WITNESS: Oh, I don't know  
24 anything about the car. Sorry.

25 THE COURT: Objection is

1           sustained. Anything further?

2                   MR. THOMPSON: No, sir, not at  
3 this time.

4                   THE COURT: All right. We're at  
5 ease until 3:40.

6                   THE BAILIFF: Court stands at  
7 ease until 3:40.

8                   (Brief recess.)

9                   THE COURT: Let the record  
10 reflect that all counsel are present, the  
11 defendant is present in open court. Mr.  
12 Horne, do we have all members of the jury  
13 secured in the jury room?

14                   THE BAILIFF: Yes, sir, they are.

15                   THE COURT: We've got about a  
16 minute or two, but Mr. Britt, are you  
17 prepared to go forward at this time?  
18 Mr. Thompson, Mr. Bowen, are you prepared  
19 to go forward at this time?

20                   MR. THOMPSON: Yes, sir.

21                   THE COURT: Sir, where is the  
22 witness?

23                   MR. BRITT: I believe he's still  
24 in the hallway.

25                   THE COURT: If you'll ask

1 Mr. Moore to come in, please. If you'll  
2 return to the witness stand, please,  
3 Mr. Moore.

4 If you'll bring our jury in, please.  
5 Mr. Moore, if you would like some  
6 water, there's some cups.

7 THE WITNESS: I'm okay.

8 (Jury in at 3:41 p.m.)

9 THE COURT: Yes, sir.

10 MR. THOMPSON: Yes, sir.

11 BY MR. THOMPSON:

12 Q Mr. Moore, you indicated that --

13 THE COURT: Mr. Thompson, please  
14 bear with me, I apologize. There was an  
15 objection, the objection is sustained. The  
16 exception is noted for the record. I  
17 apologize, sir, you may continue.

18 BY MR. THOMPSON:

19 Q Mr. Moore, you indicated that when you were  
20 over -- you went over to the Perry's house, is that  
21 right?

22 A Yes, sir.

23 Q When you went over to the Perry's house,  
24 did your brother, the defendant, go to sleep while  
25 over to the Perry's house?

1 A Yes, sir.

2 Q About what time was it that you arrived  
3 over to the Perry's house?

4 A The next morning, or what?

5 Q Well, when you first observed your brother  
6 going to sleep there at the Perry's house, what time  
7 was it?

8 A I'm not sure.

9 Q Well, was it nighttime?

10 A Yeah, I know it was nighttime.

11 Q Was -- while your brother was asleep, you  
12 and the individuals there were just playing,  
13 horseplaying, and rapping, is that right?

14 A Yes, sir.

15 Q Was your brother asleep when you left the  
16 Perry's house?

17 A I can't even remember.

18 Q Now, you indicated that sometimes -- didn't  
19 sometime back on July the 30th, your brother -- you  
20 and your brother had a conversation, and during that  
21 conversation, your brother indicated to you --

22 MR. BRITT: Objection.

23 THE COURT: Well, I haven't heard  
24 the complete question. If you go forward.  
25 Please don't answer until I rule on the

1 question. Complete your question.

2 MR. THOMPSON: Let me withdraw  
3 that and lay a foundation.

4 THE COURT: Yes, sir.

5 BY MR. THOMPSON:

6 Q Now, back on January the 6th of this year,  
7 which would have been last week, you also had a  
8 conversation with SBI Agent Kim Heffney and Detective  
9 Anthony Thompson, is that right?

10 A All three of them.

11 Q As well as Mr. Britt?

12 A Yeah, all three of them came to my home.

13 Q They came to your house?

14 A Yes, sir.

15 Q And when they came to your house, did you  
16 talk about this case?

17 A Yes, sir.

18 Q And during the time that you talked about  
19 the case, did you give them any kind of statement? I  
20 mean, you gave them a statement about matters that  
21 had happened back on July the 30th of 1993, did you  
22 not?

23 A Outside the trailer?

24 Q Yes, sir. Did you --

25 A Yes, sir.

1 Q Did you tell them that?

2 THE COURT: Let's clarify. Did  
3 you give them the statement outside the  
4 trailer?

5 THE WITNESS: Oh, I gave them the  
6 statement at my house, at my house on  
7 January the 6th about --

8 THE COURT: What occurred outside  
9 the trailer?

10 THE WITNESS: Yes, sir.

11 THE COURT: On what date.

12 THE WITNESS: Okay. At my house,  
13 what was the date or -- about the  
14 situation?

15 THE COURT: Okay. Put a question  
16 to him, Mr. Thompson, for purposes of  
17 clarification.

18 MR. THOMPSON: Yes, sir.

19 BY MR. THOMPSON:

20 Q You told these three individuals seated at  
21 this table certain things that occurred outside of  
22 your trailer back on July the 30th of 1993, is that  
23 right?

24 A Yes, my uncle's trailer.

25 Q Your uncle's trailer?

1           A       Yes.

2           Q       And did you tell them that at that time  
3 your brother had indicated to you that Larry had shot  
4 a --

5                         MR. BRITT:  Objection, like to be  
6 heard.

7                         THE COURT:  Ladies and gentlemen,  
8 there's a matter of law the Court must take  
9 up.  Please recall my instruction, don't  
10 worry or speculate about what takes place  
11 in the courtroom in your absence.  Please  
12 step to the jury room.

13                                 (Jury out at 3:46 p.m.)

14                         THE COURT:  The following is  
15 being heard in the absence of the jury so  
16 I'll be able to rule in context.  Ask the  
17 question on voir dire.

18                         MR. THOMPSON:  Yes, sir.

19 BY MR. THOMPSON:

20           Q       Did you indicate to these three individuals  
21 during that conversation about what took place  
22 outside of your uncle's house on July 30th, that your  
23 brother, the defendant, had indicated to you that  
24 Larry had shot a man?

25           A       Yes, sir.

1 Q You told them that?

2 A Yes, sir.

3 Q On January the 6th --

4 THE COURT: Let me get this  
5 straight. You want to introduce through  
6 this witness that a hearsay statement was  
7 made by his brother to him involving  
8 another hearsay statement by Larry Demery?

9 MR. THOMPSON: This is something  
10 that -- excuse me, Your Honor.

11 THE COURT: Am I wrong? You're  
12 asking him, did the defendant tell him that  
13 Larry Demery had told the defendant that he  
14 shot somebody.

15 MR. THOMPSON: No, that's not  
16 what I'm asking.

17 THE COURT: That's what I wanted  
18 to clear up. What is it that you're asking  
19 him?

20 MR. THOMPSON: I'm asking, did he  
21 tell these three gentlemen during that  
22 interview that Larry told him that he shot  
23 a man. He's already, Your Honor, testified  
24 as to the -- a conversation outside of a  
25 trailer, and I'm -- may I get into this on

1           voir dire? I'm trying to connect the two.

2                   THE COURT: Yes, sir.

3 BY MR. THOMPSON:

4           Q       Now, you indicated early on -- well, strike  
5 that.

6                   THE COURT: You didn't -- he  
7 never answered your question.

8                   MR. THOMPSON: I thought he did.

9                   THE COURT: Did you tell  
10 Mr. Britt, Mr. Anthony Thompson, and  
11 Mr. Kim Heffney --

12           A       Yes --

13                   THE COURT: -- during the  
14 interview on January 6th, 1996, that at  
15 some earlier time -- I haven't finished  
16 yet. That at some earlier time, your  
17 brother, the defendant, Daniel Green told  
18 you that Larry Demery shot a man?

19                   THE COURT:

20                   THE WITNESS: Him and Larry was  
21 saying it.

22                   THE COURT: Okay. All right.  
23 When did that information come to your  
24 attention, when did your brother tell you  
25 that.

1 THE WITNESS: It was in the  
2 summertime, had to be like in July, outside  
3 my uncle's trailer.

4 THE COURT: Was it the same  
5 occasion about which you've already  
6 testified or was it a different occasion?

7 THE WITNESS: Which occasion is  
8 that?

9 THE COURT: You testified about  
10 what occurred on July 30th, 1993. Haven't  
11 you?

12 THE WITNESS: Yes.

13 THE COURT: You testified on that  
14 date you met Larry Demery for the first  
15 time?

16 THE WITNESS: Yes

17 BY THE COURT:

18 Q At your brother David Moore's home?

19 A At Gary's home.

20 Q Excuse me, Gary or Gabriel's?

21 A Yes.

22 Q And after you met Larry Demery for the  
23 first time, you all or some of you all went to  
24 Seabrook?

25 A No, you got the days mixed up.

1 Q That's what I'm trying to find out. That's  
2 exactly what I'm trying to find out.

3 A Can I explain?

4 Q Yes, please do.

5 A We were at my Uncle Gary's trailer, we all  
6 were outside the trailer, I was trying to get the  
7 watch from Daniel, me, Daniel and Larry went outside,  
8 and that's when the conversation took place.

9 Q Is that same occasion that Larry Demery had  
10 to hurry up and get back to Robeson County?

11 A Yes.

12 Q And is that the same occasion that you and  
13 your brother and a number of other folks went to  
14 Fayetteville State University?

15 A No, sir.

16 Q When did that happen?

17 A That had to happen later on. That happened  
18 later, I don't know how much later but few days  
19 later.

20 Q So we're talking about separate days there?

21 A Yes.

22 Q All that did not occur on one day?

23 A No, sir.

24 Q I wonder if those 13 folks understand  
25 that.

1           A     Well, we shot the video, it was at  
2 daytime. When we had the conversation it was at  
3 nighttime.

4           Q     Was it the same day --

5           A     No, sir.

6           Q     How many days separated those events?

7           A     I'm not sure.

8           Q     Approximately?

9           A     I'm not -- I couldn't tell you.

10          Q     More than five or less than five?

11          A     I couldn't tell you.

12                   THE COURT: It may just be me,  
13 but the gist of the examination at least  
14 minimally suggests that what was testified  
15 to earlier by this witness in the presence  
16 of the jury all occurred at one time, one  
17 day.

18                   MR. THOMPSON: That's what -- it  
19 was his direct examination, Your Honor, he  
20 brought it out on July the 30th, and it was  
21 brought out on direct examination the date  
22 of July 30th.

23                   THE WITNESS: No one got that  
24 from me that all that happened on one day.  
25 Because I know -- I wouldn't have took

1 Larry down to Murch Road in the first  
2 place.

3 THE COURT: We understand that.

4 THE WITNESS: So that didn't  
5 happen.

6 THE COURT: Folks, it's not my  
7 case. This is the State of North  
8 Carolina's case, and this defendant's  
9 case. Unless it is determined that  
10 obfuscation is to one's advantage it might  
11 be beneficial to clear it up.

12 Let's go back into this later matter  
13 so we can figure out when if at all  
14 possible when this may have happened. Yes,  
15 sir, Mr. Thompson.

16 BY MR. THOMPSON:

17 Q On July the 6th --

18 THE COURT: January the 6th.

19 BY MR. THOMPSON:

20 Q January the 6th you had an interview with  
21 these three gentlemen, is that right?

22 A Yes, sir.

23 Q During that meeting you told them that it  
24 was on July the 30th that you went to your brother's,  
25 David Moore's residence where you saw Daniel Green

1 and Larry Demery, is that right?

2 A I don't know which date it was.

3 Q You didn't give them a certain date?

4 A No, I didn't give no one specific date, no,  
5 I didn't give you all specific dates. I can take a  
6 lie detector test. I ain't give no specific  
7 dates.

8 THE COURT: Sir --

9 THE WITNESS: I didn't give no  
10 specific dates.

11 THE COURT: Do me a favor.

12 Listen to his question, do the best you  
13 can. If you want to explain, just raise  
14 your hand.

15 Mr. Thompson?

16 BY MR. THOMPSON:

17 Q The first time that you had the  
18 conversation -- do you know what date this was on  
19 when you say that Larry -- I mean, your brother told  
20 you that Larry had shot a man?

21 A No, sir.

22 Q Do you know where you were?

23 A Yes, sir.

24 Q Where were you?

25 A Outside of my uncle Gary's trailer.

1 Q And was this the day -- did this happen  
2 before Larry was taken home the first time? How many  
3 times was Larry taken home?

4 THE COURT: Bear with me. The  
5 matter you've just testified to about?

6 THE WITNESS: Yes, sir.

7 BY THE COURT:

8 Q If you don't understand any question, feel  
9 absolutely free to let me know. Did that  
10 conversation where you have testified that your  
11 brother said Larry Demery had shot someone?

12 A Larry and Daniel were talking about it.

13 Q So your testimony is that both of them said  
14 it?

15 A Both of them were talking about it.

16 Q Did that conversation occur at the same  
17 time that you were asking about the watch?

18 A Trying to get it from him?

19 Q Yes, sir.

20 A Yes, sir, but it was nighttime, and what  
21 happened is, it wasn't the same day that we shot the  
22 videos. If I'm not mistaken, that was daytime. If  
23 they look at the time on the VCR tape and stuff they  
24 can see that. I first seen the camcorder days after,  
25 because he was on the telephone and he was at my

1 brother's house, every time he never have a way to  
2 get to me. One day I was headed to see my daughter,  
3 they came down the street. I don't know how few days  
4 later it was and stuff, but Larry was gone back to  
5 Lumberton at the time.

6 Q Can we clarify. The day you first met  
7 Larry Demery?

8 A Yes, sir.

9 Q That occurred at your brother Gary's house?

10 A My uncle Gary's house.

11 Q I apologize. I'm going crazy. Was that  
12 the same day that the conversation about the watch  
13 took place?

14 A Yes, sir.

15 Q Was that the same day that you testified  
16 the conversation occurred where your brother and  
17 Larry Demery said that Larry Demery had shot someone?

18 A Yes, sir.

19 Q That was all the same day?

20 A Yes, sir.

21 Q So all that occurred on the day you first  
22 met Larry Demery?

23 A Yes, sir, and that was the last time I seen  
24 him.

25 Q So if that was the last time you saw him,

1 when did these events involving the videotape take  
2 place?

3 A Had to be like a few days later, because I  
4 never could get away to get them or my brother was  
5 always at work, or I would have to go see my  
6 daughter.

7 Q So your testimony is that what occurred in  
8 connection with the videotape occurred after you met  
9 Larry Demery?

10 A Yes, the videotape was after.

11 Q You don't know how long after?

12 A No, sir.

13 Q Your best recollection is that it was a  
14 matter of days after, is that accurate?

15 A Yes, sir.

16 THE COURT: Any additional  
17 matters you want to go into regarding the  
18 conversation?

19 MR. THOMPSON: Your Honor, may we  
20 have a minute?

21 THE COURT: Take two.

22 THE WITNESS: It had --

23 THE COURT: He's got his hand  
24 raised. Yes, sir.

25 THE WITNESS: The video had to be

1 taken around the time when I think my  
2 brother brought Dave some sandals, so had  
3 to be around that time, Fila sandals, or  
4 something, I know Daniel had something.

5 THE COURT: I just want to make  
6 sure we're all on the same page. If I  
7 understand you correctly, your recollection  
8 is that the incidents involving the  
9 videotape --

10 THE WITNESS: It was either  
11 Reeboks or Fila sandals, I'm not sure, but  
12 I know because I had got mad because my  
13 brother never got me anything, that's why I  
14 was mad.

15 THE COURT: Okay. Ready?

16 THE WITNESS: Yes.

17 THE COURT: The incidents  
18 involving the videotaping, based on your  
19 best recollection, occurred after you saw  
20 your brother in possession of the watch  
21 you've identified?

22 THE WITNESS: Yes.

23 BY THE COURT:

24 Q After you saw your brother in possession of  
25 the ring you've identified?

1 A Yes.

2 Q After you say you heard your brother say  
3 that Larry Demery had shot somebody?

4 A Yes.

5 Q And after you heard, according to your  
6 testimony, Larry Demery say he shot somebody?

7 A And they dumped the body.

8 Q And they dumped the body?

9 A Yes.

10 Q Now, they dumped the body, is that lumped  
11 in with the watch, the ring, and the conversation?

12 A Yes.

13 Q All that occurred at one time?

14 A Yes.

15 Q Outside the trailer?

16 A Yes.

17 Q Your uncle's trailer?

18 A Yes.

19 Q Gary's trailer?

20 A Yes.

21 Q All right. Anything else?

22 MR. THOMPSON: No, sir.

23 THE COURT: Mr. Britt, anything  
24 you want to ask the witness on voir dire?

25 MR. BRITT: No, sir, nothing on

1           voir dire.

2                   THE COURT: Do you want to be  
3 heard on your objection?

4           MR. BRITT: Yes, sir --

5           MR. THOMPSON: Your Honor I'm  
6 going to withdraw the question at this  
7 time.

8                   THE COURT: There's nothing for  
9 me to rule on? Can we bring the jury in?

10          MR. THOMPSON: Yes, sir.

11          THE COURT: Ready to go?

12          MR. THOMPSON: Yes, sir.

13          MR. BRITT: Yes, sir.

14          THE COURT: Mr. Horne?

15                   (Jury in at 4:00 p.m.)

16          THE COURT: The question is being  
17 withdrawn.

18          MR. THOMPSON: Yes, sir.

19                   THE COURT: There's nothing for  
20 me to rule on. Any additional questions  
21 for this witness?

22          MR. THOMPSON: No, sir.

23                   THE COURT: Mr. Britt, any  
24 redirect examination.

25          MR. BRITT: No, sir.

1 THE COURT: May the witness be  
2 released?

3 MR. THOMPSON: Yes, sir.

4 THE COURT: Thank you, sir, you,  
5 you may step down. You're free to go.

6 Mr. Britt.

7 MR. BRITT: Your Honor, at this  
8 time we call Xavion Perry. He's in my  
9 office.

10 THE COURT: Sir, if you'll come  
11 up to the witness stand, place your left  
12 hand on the Bible and if you'll put your  
13 hat in the chair, raise your right hand, if  
14 you will, please, and face Ms. Gaines.

15 XAVION MARQUIS PERRY,  
16 being first duly sworn was examined and testified as  
17 follows:

18 DIRECT EXAMINATION

19 THE COURT: Thank you, sir. If  
20 you'll have a seat in the witness stand.  
21 If you'll state your full name for the  
22 record?

23 THE WITNESS: Xavion Marquis  
24 Perry.

25 THE COURT: You're going to need

1 the lean forward, turn that microphone to  
2 you, and speak clearly and directly into  
3 the microphone. Repeat your name.

4 THE WITNESS: Xavion Marquis  
5 Perry, II.

6 THE COURT: Spell your first name  
7 please?

8 THE WITNESS: X A V I O N.

9 THE COURT: Spell your middle  
10 name.

11 THE WITNESS: M A R Q I S.

12 THE COURT: If you would spell  
13 your last name for the record?

14 THE WITNESS: P E R R Y.

15 THE COURT: Please remember to  
16 keep your voice up so everybody can hear  
17 you?

18 THE WITNESS: Okay.

19 THE COURT: Mr. Britt.

20 BY MR. BRITT:

21 Q Mr. Perry, back in July of 1993, were you  
22 living at 311 Jasper Street in Fayetteville?

23 A Yes, I was.

24 Q Who lived at that address with you?

25 A My grandmother.

1 Q Do you have any brothers or sisters?

2 A Uh-huh, yes, sir.

3 Q How many brothers do you have, how many  
4 sisters do you have?

5 A One brother, one sister.

6 Q What is your brother's name?

7 A Marcus Perry.

8 Q Are you also known as Bobo?

9 A Yes.

10 Q Back in July of 1993, did you have an  
11 occasion to meet the defendant, Daniel Green?

12 A Yes.

13 Q When you met Daniel Green, who if anyone  
14 introduced you to him?

15 A Jamie Moore.

16 Q And where were you when Jamie Moore  
17 introduced you to the defendant Daniel Green?

18 A On Murchison Road.

19 Q And after meeting Daniel Green on Murchison  
20 Road in July of 1993, did you have an occasion to go  
21 to Fayetteville State University with him?

22 A Yes.

23 Q Who all went to Fayetteville State  
24 University with you and the defendant?

25 A Me, Marcus, my brother, Jamie, Daniel,

1 T. J., Alicia, and Tony McNeill.

2 Q When you met the defendant on this day, do  
3 did he have a video camera with him?

4 A Yes.

5 Q On that day that you met him, was that  
6 video camera used to do anything?

7 A Yes.

8 Q What was it used to do?

9 A Record what we were doing that day.

10 Q Now, when you said record what you were  
11 doing, who do you recall actually operating the video  
12 camera?

13 A I was operating it the whole time, well,  
14 not the whole -- well, yes, at Fayetteville State I  
15 was, the whole time at Fayetteville State.

16 Q To your knowledge, at that time was there a  
17 video cassette inside that video recorder?

18 A A video cassette, you're talking about --

19 Q A tape?

20 A Yes, there was.

21 Q And the best you could tell, did the video  
22 camera work properly?

23 A Yes.

24 Q Now, at Fayetteville State, who and what  
25 did you record?

1           A       I recorded everybody rapping and stuff like  
2   that.

3           Q       Now, when you met the defendant on that  
4   particular date, do you recall any type of jewelry  
5   that he was wearing?

6           A       Yes.

7           Q       What kind of jewelry was he wearing when  
8   you met him?

9           A       Well, he wasn't wearing it though when --  
10   it was after we like coming from Fayetteville State  
11   in the house, we were going up the street and he  
12   pulled it out of his pocket really.

13          Q       What did he pull out of his pocket?

14          A       A ring and a watch.

15          Q       Can you describe for us the watch that he  
16   pulled out of his pocketed?

17          A       Yeah, it was gold, had a little gold bull  
18   in the middle, and it was black and round.

19          Q       Can you describe for us the ring that he  
20   showed you?

21          A       Yes, it was a silver ring, there was like  
22   it had NBA on the side of it, and had Jordan on the  
23   side of it, and had NBA in the middle.

24          Q       Had you ever seen a ring or watch like that  
25   before?

1 A No. I mean, no, sir.

2 Q Now, how long do you recall staying at  
3 Fayetteville State?

4 A Fayetteville State, about an hour, I say  
5 about an hour.

6 Q During the time you were at Fayetteville  
7 State, you recorded different people rapping, is that  
8 correct?

9 A Yes, sir.

10 Q Was the defendant one of those people?

11 A Yes, sir.

12 Q And after you left Fayetteville State,  
13 where did you go?

14 A We went walking up the treat to my house.

15 Q What happened at your house?

16 A We videotaped what happened inside, like  
17 walking to the refrigerator and stuff like that.

18 Q Was the defendant there at that time?

19 A Yes, sir.

20 Q Did you video the defendant doing anything  
21 at that time?

22 A Yeah, I videoed him doing one thing, he was  
23 playing with the cat.

24 Q And what if anything do you recall him  
25 doing with the cat?

1 MR. THOMPSON: Object.

2 THE COURT: Do you want to be  
3 heard, sir?

4 MR. THOMPSON: Yes, sir.  
5 Relevance. I would like to be heard.

6 THE COURT: Ladies and gentlemen,  
7 there's a matter of law the Court must take  
8 up. Please recall my instruction, don't  
9 worry or speculate about what takes place  
10 in the courtroom in your absence, and if  
11 you would, please step to the jury room.

12 (Jury out at 4:09 p.m.)

13 THE COURT: Following is being  
14 heard in the absence of the jury, the  
15 objection being based on relevance  
16 grounds. Where are we going with this,  
17 Mr. Britt?

18 MR. BRITT: Your Honor, this is  
19 based on his observations, also based on  
20 the fact that he was operating the video  
21 camera at the time.

22 THE COURT: What's the meaning of  
23 it to the trial?

24 MR. BRITT: Because in this  
25 particular section of the video when we get

1 to that, it shows the defendant wearing the  
2 watch and wearing the ring in question.

3 THE COURT: What's it got to do  
4 with the cat?

5 MR. BRITT: Because he's viewing  
6 the defendant at the time, and what you see  
7 are -- you see the defendant holding a cat,  
8 and while he's holding the cat you see the  
9 watch and you see the ring. He also had --  
10 well, he's got a knife in his hand and he  
11 takes the knife and puts it up to the cat's  
12 throat.

13 THE COURT: That's not coming  
14 in. That's not coming in under Rule 403.  
15 You're entitled to get in arguably oral  
16 testimony as to the watch and the ring.  
17 There's a case -- I don't know why it  
18 always happened in Cumberland County.

19 MR. BRITT: Interesting things  
20 happen here.

21 THE COURT: State versus  
22 Simpson. Issue in that case on appeal was  
23 State offered for purposes of corroboration  
24 a portion of the defendant's purported  
25 confession in that case that he had had

1 relations with a dead dog, a dog he had  
2 killed. Had absolutely nothing to do with  
3 the case.

4 The reality of it was, it was offered  
5 to prove to the jury this is a bad person.  
6 The case was kicked back on appeal for that  
7 reason. There's no need to court problems  
8 that are not at issue in this case.

9 MR. BRITT: Well, at this  
10 juncture, it's my position that the door  
11 has been opened to the contents of the  
12 video.

13 THE COURT: Yes, sir.

14 MR. BRITT: There is no objection  
15 made at the time Jamie Moore --

16 THE COURT: I'm not ruling on  
17 that at this point. I understand that's  
18 your position, that's why I said yes, sir.  
19 I still have to rule on that, but I can  
20 tell you this, the cat is not coming in.

21 MR. BRITT: I think it's relevant  
22 in that it shows the defendant in  
23 possession of these items. It also --

24 THE COURT: I understand, and I'm  
25 assuming -- bad thing to do -- that you

1 have other portions of the video showing  
2 the defendant in possession of the watch  
3 and the ring.

4 MR. BRITT: Oh, yes, sir.

5 THE COURT: Therefore, the cat is  
6 not necessary.

7 MR. BRITT: In the Court's view.

8 THE COURT: Is it in your view?

9 MR. BRITT: I think the entire  
10 video is relevant.

11 THE COURT: We'll come to that  
12 when we come to that, and I'm not ruling  
13 prematurely. It will take an awful lot to  
14 convince me that the cat is relevant in  
15 this case. Therefore, the objection is  
16 sustained at this point.

17 MR. BRITT: One of the questions  
18 that's been asked by Mr. Thompson was at  
19 the Perry's house wasn't the defendant  
20 asleep.

21 THE COURT: Mr. Britt --

22 MR. BRITT: I understand. You  
23 wear the black robe.

24 THE COURT: I understand your  
25 position, and I have nothing against

1           zealous representation by you or counsel  
2           for the State, but I am sustaining the  
3           objection. Rephrase your question and  
4           let's go on.

5                         MR. BRITT: Yes, sir.

6                         THE COURT: Bring the jury back  
7           in.

8                                 (Jury in at 4:13 p.m.)

9                         THE COURT: The objection is  
10           sustained. You may ask additional  
11           questions, Mr. Britt.

12       BY MR. BRITT:

13           Q       Xavion, when you went back to the house and  
14           you were viewing the activities there, do you recall  
15           whether or not the defendant was wearing the ring or  
16           the watch that you had seen earlier?

17           A       No, sir.

18           Q       Now, after the defendant showed you the  
19           ring and the watch that he was wearing, did he ever  
20           offer to sell it to you?

21           A       Yeah, he said he wanted to sell it to me.  
22           Well, he asked me did I want to buy it.

23           Q       Which item did he ask you if you wanted to  
24           buy?

25           A       It was the ring.

1 Q And did you attempt to buy it?

2 A Yeah, I would have if I had the money.

3 Q How much money did he want for the ring?

4 A He said he wanted a hundred dollars for it.

5 Q Do you recall the defendant saying anything  
6 about your ability to buy a ring like that anywhere?

7 A Yeah, he said you couldn't buy the ring  
8 nowhere.

9 THE COURT: I'm sorry.

10 THE WITNESS: He said you can't  
11 buy the ring nowhere, you can't find  
12 nothing like this.

13 BY MR. BRITT:

14 Q Did the defendant ever show you any keys?

15 A Yes.

16 Q What kind of keys did he show you?

17 A A Lexus key.

18 Q And did he say anything to you about the  
19 car that went with those keys?

20 A Yes.

21 Q What if anything --

22 A He told me -- sorry.

23 Q What if anything did he say about the car?

24 A He said that the remote could start it, you  
25 could start the car with the remote and open the

1 doors and things like that.

2 Q Did he tell you where the car was?

3 A No, he didn't tell me where it was.

4 Q Did he tell you what color the car was?

5 A Yes, he said candy red.

6 Q Did you have any conversation with the  
7 defendant about his need to go pick up his car?

8 A Yes, he said he was going to pick it up but  
9 he didn't say where, though.

10 Q When he talked about going to pick up the  
11 car, did he talk about anything else?

12 A No, sir.

13 Q Did you ever have a conversation with the  
14 defendant about a gun?

15 A I don't recall.

16 Q Do you remember being interviewed by  
17 Mr. Heffney and Captain Binder back on September the  
18 16th of 1993?

19 MR. THOMPSON: Object.

20 THE COURT: Overruled. You may  
21 answer.

22 THE WITNESS: My school.

23 BY MR. BRITT:

24 Q Yes, at the high school?

25 A Yes.

1 Q And do you recall at that time giving them  
2 a statement about the defendant and the ring and the  
3 watch that you had seen and conversations you had had  
4 with the defendant?

5 A Yes, sir.

6 MR. BRITT: May I approach the  
7 court reporter?

8 THE COURT: Yes, sir.

9 BY MR. BRITT:

10 Q And in your conversation with Mr. Heffney  
11 and with Mr. Binder, do you recall telling them about  
12 a conversation that you had with the defendant about  
13 a .38 caliber pistol?

14 A See this was a while ago, you know what I'm  
15 saying?

16 (State's Exhibit 60 was  
17 marked for identification.)

18 MR. BRITT: May I approach?

19 THE COURT: Yes, sir. Is that  
20 number --

21 MR. BRITT: 60.

22 THE COURT: 60.

23 BY MR. BRITT:

24 Q I'll show you what has been marked as  
25 State's Exhibit Number 60. It's a typed copy of the

1 statement that you gave to Mr. Binder and --

2 MR. THOMPSON: Well, I object.

3 THE COURT: The objection to the  
4 form of the question is sustained. You can  
5 ask him if he recognizes it

6 BY MR. BRITT:

7 Q Do you recognize what has been marked as  
8 State's Exhibit Number 60?

9 A All this right here?

10 Q The two-page document that I've handed you?

11 A Yes, this is the same one I read in there,  
12 right?

13 THE COURT: You can't ask him  
14 questions, you can answer his.

15 BY MR. BRITT:

16 Q Do you recognize the document?

17 A Yes, I recognize it.

18 Q Is State's Exhibit Number 60 a typed copy  
19 of the --

20 MR. THOMPSON: Object.

21 THE COURT: Overruled.

22 BY MR. BRITT:

23 Q A typed copy of the statement that you gave  
24 to Mr. Heffney and Captain Binder back on September  
25 the 16th, 1993 at E. E. Smith school?

1 MR. THOMPSON: Object.

2 THE COURT: Overruled. You may  
3 answer.

4 THE WITNESS: Yes.

5 BY MR. BRITT:

6 Q I'm going to ask you to read State's  
7 Exhibit Number 60 to yourself. If you'll do that at  
8 this time.

9 A (Witness complies).

10 Q Are you finished?

11 A Yes, sir.

12 Q Does State's Exhibit Number 60 refresh your  
13 memory as to the conversation that you had with  
14 Captain Binder and Mr. Heffney back on September the  
15 16th, 1993?

16 A You said refresh my memory?

17 Q Yes, sir.

18 A About what, the gun?

19 THE COURT: The question is, does  
20 it refresh your memory about what you said  
21 to the officers back on that date?

22 THE WITNESS: I don't understand  
23 what you all are talking about though.

24 THE COURT: What he's asking you  
25 is you indicated earlier that you didn't

1 recall certain things about the statement  
2 that you said you gave.

3 THE WITNESS: Uh-huh.

4 THE COURT: Do you now recall  
5 those things having read the statement.

6 THE WITNESS: Yes, sir.

7 THE COURT: Let the record  
8 reflect that State's Exhibit 60 is no  
9 longer before the witness, is now in  
10 possession of counsel for the State. Yes,  
11 sir, Mr. Britt.

12 BY MR. BRITT:

13 Q Xavion, what if anything did the defendant  
14 tell you about a .38 caliber pistol?

15 A He said it was -- that he was going to --  
16 well, he had a gun, and people was getting jealous of  
17 him, stuff like that, you know what I'm saying, but I  
18 ain't never seen none of it, this was a while ago, I  
19 don't remember that long ago.

20 Q And when you saw the defendant, at the time  
21 the video camera that -- at the time he had the video  
22 camera, when he had the conversation about the gun  
23 and the car, was he carrying anything else with him?

24 A No, sir.

25 Q Do you recall ever seeing a black bag?

1 MR. THOMPSON: Object.

2 MR. BOWEN: Object.

3 THE WITNESS: Yes, sir.

4 THE COURT: Overruled.

5 THE WITNESS: Yes, sir.

6 BY MR. BRITT:

7 Q Who had the black bag?

8 A When I saw him first, he had it.

9 THE COURT: Who is he?

10 THE WITNESS: Daniel.

11 BY MR. BRITT:

12 Q Can you describe that black bag for us?

13 A Yeah, it was about like this (indicating).

14 Q You've indicated with your hands an  
15 approximate length. Can you estimate the distance  
16 you've indicated with your hands in terms of feet?  
17 Is it one foot, two feet, three feet, or more than  
18 that?

19 A No, I can't estimate like that. I mean, it  
20 was something like that box right there. It wasn't  
21 that tall, but it was that size.

22 Q You've referred to a box and pointed over  
23 towards the defense, you're referring to the  
24 briefcase underneath Mr. Thompson --

25 A It was like a duffle bag.

1 THE COURT: Mr. Britt.

2 MR. BRITT: I'm sorry.

3 THE WITNESS: Was like a duffle  
4 bag, but it wasn't -- you know what I'm  
5 saying?

6 MR. BRITT: Mr. Thompson, may  
7 I --

8 THE WITNESS: It wasn't that hard  
9 either, it was like soft, like.

10 BY MR. BRITT:

11 Q In terms of length, are you saying it was  
12 the size of Mr. Thompson's briefcase?

13 A Maybe like that or a little bit bigger.

14 Q How big would you say the length of this  
15 briefcase is, from point A to point B?

16 A I don't know the length.

17 Q How many feet?

18 A About two.

19 MR. BRITT: May I approach once  
20 again?

21 THE COURT: Yes, sir.

22 BY MR. BRITT:

23 Q I'll show you what has been marked as  
24 State's Exhibit Number 3. Is that the watch that you  
25 saw the defendant wearing?

1 A Yes, sir.

2 Q I'll show you what has been marked as  
3 State's Exhibit Number 7, plastic bag containing an  
4 item. Have you ever seen the item inside the plastic  
5 bag before?

6 A Yes, sir.

7 Q When was the first time you ever saw it?

8 A When was the first time?

9 Q When was the first time you ever saw the  
10 ring?

11 A When he showed it to me with the watch.

12 Q When who showed it to you?

13 A Daniel.

14 Q Did you see anyone else wearing that watch  
15 or that ring?

16 A No, sir.

17 MR. BRITT: I don't have any  
18 other questions.

19 THE COURT: Any  
20 cross-examination, gentlemen?

21 MR. BOWEN: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. BOWEN:

24 Q Mr. Perry, it is true, isn't it, that after  
25 Mr. Green came to your house, you allowed him to stay

1 there the night, is that correct?

2 A Yes, sir.

3 Q He slept where in that house, sir?

4 A In my room.

5 Q Do you recall about when he retired that  
6 night?

7 A No, sir.

8 Q Now, you also said that you did not see him  
9 with the ring and with the watch all the time on him,  
10 didn't you?

11 A No, sir.

12 Q And you did not see the contents of the  
13 duffle bag, did you?

14 A What was inside of it?

15 Q Yes.

16 A No, sir.

17 Q And you did not know where the red car was  
18 or for that matter if there was one, did you?

19 A No, sir.

20 Q If there was one, you didn't know who had  
21 it, if anyone, did you?

22 A No, sir.

23 Q And you never saw a gun, a revolver or a  
24 pistol, did you?

25 A No, sir.

1 Q But now, officers contacted you sometime in  
2 September of 1993, is that correct?

3 A What, at school?

4 Q Well, wherever, I just wondered if any  
5 police officers contacted you about this matter?

6 THE COURT: Did officers come  
7 talk to you on one occasion or more than  
8 one occasion?

9 THE WITNESS: One occasion.

10 THE COURT: Where did that take  
11 place?

12 THE WITNESS: E. E. Smith.

13 THE COURT: Is that the matter  
14 about which you've already testified where  
15 you said you made a statement?

16 THE WITNESS: Yes, sir.

17 THE COURT: Mr. Bowen?

18 BY MR. BOWEN:

19 Q So that, do you remember Mr. Heffney who  
20 was in the room earlier, did you recognize  
21 Mr. Heffney in the courtroom earlier?

22 A The black man?

23 Q Yes, sir.

24 A That was sitting right there?

25 Q Yes, sir.

1           A       Yes, sir.

2           Q       And do you remember Mr. Art Binder talking  
3 to you?

4           A       I don't recall, I mean -- who is Art  
5 Binder? I mean, I don't know by name or nothing like  
6 that, you know what I'm saying, I only know by face.

7           Q       I understand. This piece of paper that you  
8 read a little while ago, after you read it, were you  
9 able to testify based on what the paper said or based  
10 upon what you then actually remembered yourself?

11          A       What I actually remembered.

12          Q       But you hadn't been able to remember that  
13 before they put a paper in front of you, is that  
14 right?

15          A       No, sir.

16          Q       And when the officers took the statement  
17 from you did they read that statement over to you?

18          A       You're talking about after they took it  
19 from me?

20          Q       Yes, sir?

21          A       From school?

22          Q       Yes, sir?

23          A       No, sir, they told me to check, you know  
24 what I'm saying, read it myself -- well, no, he was  
25 talking to me right at school, in my principal's

1 office, and what I told him, he was like, okay, thank  
2 you, you know what I'm saying, then he told me -- did  
3 I recall what I said to him, that was it. Then he  
4 said all right. That was about it.

5 Q So you didn't have a statement read back to  
6 you by any officer, did you?

7 A Not as I recall, no.

8 Q You did not read a statement over yourself  
9 at the time, did you?

10 A See, I don't remember. You all are going  
11 back too far for me, though, really, though.

12 Q So as I understand it, you say you can  
13 independently remember some paragraph about a gun but  
14 you can't remember whether Art Binder was there  
15 talking to you or not?

16 A I don't know who Art Binder is, I'm saying  
17 I remember by face, but if you say name, I don't  
18 know.

19 Q You can't remember whether or not somebody  
20 read the statement back over to you?

21 A No.

22 Q You're unable to remember that?

23 A I really don't.

24 Q Okay. You did not sign a statement, did  
25 you?

1           A       See, no, I don't know, man, I don't know.

2           Q       And in fact, before you came in to testify  
3 today, that statement had been put before you by an  
4 officer of the State, had it not?

5           A       Not today.

6           Q       Well, when in reference to your testifying  
7 today?

8           A       Talking at when I seen it first time again  
9 before I testified?

10          Q       Yes.

11          A       Was yesterday.

12          Q       So you had this piece of paper put before  
13 you yesterday, is that right?

14          A       Yes, sir.

15          Q       Same piece of paper that was put before you  
16 again during your testimony here today?

17          A       Yes, sir.

18          Q       And where did that occur?

19          A       Where did what occur?

20          Q       When did the piece of paper get put before  
21 you before today?

22          A       In that room back there.

23          Q       In the District Attorney's office?

24          A       Yes, sir.

25          Q       And you read all of it at that time, is

1 that right?

2 A No, I didn't read all of it, I read the  
3 front part.

4 Q Nobody read anything to you, a paragraph  
5 about Daniel Green talking about a gun?

6 A No, sir.

7 Q Not yesterday?

8 A No, sir.

9 Q But they read the front part to you?

10 THE COURT: That's not what he  
11 testified to, Mr. Bowen.

12 THE WITNESS: I read it.

13 BY MR. BOWEN:

14 Q What did you tell us about which part of  
15 the statement got presented to you yesterday in the  
16 District Attorney's --

17 THE COURT: Rephrase your  
18 question.

19 BY MR. BOWEN:

20 Q Did this document that has been put before  
21 you today, this blue document, that's State's Exhibit  
22 Number 60, did that document get put before you  
23 yesterday?

24 A Yes, sir.

25 Q By whom?

1 A By whom?

2 Q Yes, who did that?

3 THE COURT: Who gave you the  
4 document?

5 THE WITNESS: Oh, Mr. Britt.

6 BY MR. BOWEN:

7 Q And where did that occur?

8 A In his office.

9 Q And did you and he discuss what was in that  
10 document?

11 A No, but I knew, you know what I'm saying,  
12 what I said.

13 Q Did you read it over in the District  
14 Attorney's office?

15 A The front part but I didn't read the last  
16 page because we got into the movie.

17 Q All right. So that before testifying  
18 today, even as to the front part of State's Exhibit  
19 Number 60, you read that over yesterday in the D A's  
20 office, yourself?

21 A Yes, sir.

22 Q So, Mr. Perry, Mr. Green stayed only one  
23 night at your residence, is that so?

24 A Yes, sir.

25 Q And you invited him to stay there

1 notwithstanding these items that he had showed you  
2 even though he showed you those items he was welcome  
3 to stay at your place, is that right?

4 A Yes, sir.

5 Q You didn't know where he had gotten the  
6 items?

7 A No, sir.

8 Q Or from whom he had gotten the items?

9 A No, sir.

10 Q Or what would happen to the items after he  
11 left, did you?

12 A No, sir.

13 Q And you say you would have purchased the  
14 items had you had the money?

15 A Yeah, sure would.

16 MR. BOWEN: That's all, Your  
17 Honor.

18 THE COURT: Anything further,  
19 Mr. Britt?

20 REDIRECT EXAMINATION

21 BY MR. BRITT:

22 Q Xavion, you said you started watching a  
23 movie yesterday?

24 A Started watching, yes, and the movie you  
25 saw, that was the video that you --

1 MR. BOWEN: Object.

2 THE COURT: Overruled as to this  
3 question, go ahead.

4 BY MR. BRITT:

5 Q The video that you saw yesterday, that was  
6 the video that was taken, a portion of it was the  
7 portion that was taken at Fayetteville State  
8 University?

9 A Yes, sir.

10 Q Did it accurately reflect the events as you  
11 recorded them at Fayetteville State University?

12 MR. BOWEN: Object, foundation.

13 THE COURT: Overruled.

14 THE WITNESS: Say that again.

15 BY MR. BRITT:

16 Q Did it accurately reflect the events that  
17 you videoed at Fayetteville State University back on  
18 July 31st of 1993?

19 A I don't understand your question.

20 THE COURT: What he's asking you  
21 is, you were the one, according to your  
22 testimony, and if this is wrong, please let  
23 us know who was operating the camera.

24 THE WITNESS: Uh-huh, yes, I was  
25 operating the camera.

1 THE COURT: Is what you saw  
2 through the camera, the same thing you saw  
3 in the video yesterday?

4 THE WITNESS: Yes, sir.

5 MR. BRITT: I don't have any  
6 other questions.

7 THE COURT: Anything further?

8 MR. BOWEN: No, sir.

9 THE COURT: May the witness be  
10 released folks?

11 MR. BOWEN: Yes, sir.

12 MR. THOMPSON: Yeah, he can be  
13 released.

14 THE COURT: Thank you, sir, you  
15 may step down, you're free to go.

16 THE COURT: Mr. Britt.

17 MR. BRITT: Your Honor, at this  
18 time we call Terrance Patterson.

19 THE COURT: Mr. Britt, I  
20 apologize, I apologize, counsel for the  
21 defendant, I've got a call that I need to  
22 take. I hope it will be very brief, very  
23 brief. If that does not appear to be the  
24 case, I'll come back and let everybody  
25 know. If you'll bear with me one second.

1 MR. BRITT: Yes, sir.

2 (Brief recess.)

3 THE COURT: I apologize for the  
4 interruption. You may call your next  
5 witness.

6 MR. BRITT: Your Honor, I  
7 initially had indicated to the Court I  
8 would call Terrance Patterson. However  
9 he's somewhere down in the basement. We're  
10 going to call Marcus Perry at this time.

11 THE COURT: Okay. Sir, if you'll  
12 come up to the witness stand, place your  
13 left hand on the Bible, raise your right.

14 **MARCUS LAMONT PERRY,**  
15 being first duly sworn was examined and testified as  
16 follows:

17 DIRECT EXAMINATION

18 THE COURT: If you'll take the  
19 witness stand, please. Please state your  
20 full name for the record?

21 THE WITNESS: Marcus Perry,  
22 Marcus Lamont Perry.

23 THE COURT: If you'll spell your  
24 first name?

25 THE WITNESS: M A R C U S .

1 THE COURT: Spell your middle  
2 name, if you will?

3 THE WITNESS: L A M O N T.

4 THE COURT: And your last name?

5 THE WITNESS: P E R R Y.

6 THE COURT: Thank you, sir,  
7 Mr. Britt.

8 BY MR. BRITT:

9 Q Marcus, how old are you?

10 A 17.

11 Q Are you in school at this time?

12 A No, sir.

13 Q Where do you live?

14 A My grandma.

15 Q And where is that?

16 A 211 Jasper Street.

17 Q What town?

18 A Fayetteville.

19 Q You are the brother of Xavion Perry?

20 A Yes, sir.

21 Q Back in July of 1993, did you have an  
22 occasion the meet the defendant, Daniel Green?

23 A Yes, sir.

24 Q Where did you meet him?

25 A Well, I met him at my house.

1 Q Who was with him at the time you met him?

2 A Jamie.

3 Q And when you say Jamie, are you referring  
4 to Jamie Moore?

5 A Yes, sir.

6 Q After meeting the defendant at your house,  
7 did you have an occasion to go with the defendant  
8 Jamie Moore and other people to Fayetteville State  
9 University?

10 A Yes, sir.

11 Q And while at Fayetteville State University,  
12 did you participate in the rapping that was videoed  
13 there?

14 A Yes, sir.

15 Q Now, when you met the defendant and later  
16 when you were in his presence, did you notice any  
17 jewelry that he was wearing?

18 A No, I don't recall the jewelry, but I seen  
19 it though.

20 Q When you say you don't recall, what did you  
21 see?

22 A We were just there rapping, you ain't see  
23 it. Normally he was rapping but I wasn't paying  
24 attention to what he was doing when he was  
25 there.

1 THE COURT: The question is what  
2 does he see.

3 THE WITNESS: I seen him and us.  
4 I didn't see no jewelry on him when he was  
5 rapping though, I wasn't paying any  
6 attention.

7 BY MR. BRITT:

8 Q Did you see the defendant with a watch?

9 A Yes, I seen him with the watch, yes, sir.

10 Q Where were you when you saw the watch?

11 A We were walking like going toward Suburban  
12 Mart when I saw the watch.

13 Q Can you describe for us the watch that you  
14 saw him with?

15 A I just can remember that it just had a bull  
16 in it, in the middle of it.

17 Q When you say it had a bull in the middle of  
18 it, was it a depiction or a picture of an entire bull  
19 or the face of a bull?

20 A Face.

21 Q Do you remember the color?

22 A I think it was like silver on the outside  
23 with gold around it.

24 Q Did you see any rings that the defendant  
25 had?

1 A Seen the silver one, a silver ring.

2 Q Did it have any markings on it?

3 A It was an NBA ring.

4 Q Now, you had never met the defendant before  
5 that day, had you?

6 A That was my first time meeting him.

7 MR. BRITT: May I approach?

8 THE COURT: Yes, sir.

9 BY MR. BRITT:

10 Q Marcus, I want to show you what's been  
11 marked as State's Exhibit Number 3. Do you recognize  
12 the watch that is depicted in that photograph?

13 A Yes, sir, it's something like that, but I  
14 don't know if it's for sure like that, though.

15 Q Is the watch that is in State's Exhibit  
16 Number 3 similar to the watch that you saw the  
17 defendant with?

18 A Yes, sir.

19 Q I'll show you what has been marked as  
20 State's Exhibit Number 7, a plastic bag containing an  
21 item. Do you recognize what is contained inside the  
22 bag?

23 A Yes, sir, it's a ring.

24 Q Had you ever seen that ring before?

25 A I think that's the one he was wearing right

1 there.

2 Q When you say that's the one he was wearing,  
3 who are you referring to?

4 A Daniel Green.

5 MR. BOWEN: Object to what he  
6 thinks.

7 THE COURT: Overruled.

8 THE WITNESS: That's the ring  
9 right there.

10 BY MR. BRITT:

11 Q The video that was shot at Fayetteville  
12 State, did you ever have an occasion to look at it?

13 A I watched it.

14 Q When did you watch it?

15 A Well, when we went back, when we came from  
16 Fayetteville State, we went -- we didn't go  
17 straight -- we went to my house, but the TV wouldn't  
18 work, so we went back to my girlfriend's house and  
19 watched it over there.

20 Q When you say we watched it, who was there  
21 watching the video with you?

22 A Me, my brother, Jamie, it was Green, who  
23 else was there? It was like all the people that was  
24 in the video.

25 Q And the video that you watched, a portion

1 of it showed the defendant by himself?

2 A Yeah, at the first beginning he was by  
3 himself.

4 Q And then there was a portion that showed  
5 you at Fayetteville State University?

6 MR. BOWEN: Object to leading.

7 THE WITNESS: Yes, sir.

8 THE COURT: Overruled, in the  
9 discretion of the Court.

10 BY MR. BRITT:

11 Q And the portion that you saw that was  
12 filmed in Fayetteville State, was it an accurate  
13 depiction of what took place at Fayetteville State?

14 A It's the same.

15 MR. BRITT: I don't have any  
16 other questions.

17 THE COURT: Any  
18 cross-examination?

19 MR. BOWEN: Yes, sir, Your  
20 Honor.

21 CROSS-EXAMINATION

22 BY MR. BOWEN:

23 Q Mr. Perry, you say you're living with your  
24 grandmother, is that where you're now living?

25 A Yes, sir.

1 Q Are you employed?

2 A No, sir.

3 Q When were you last in school?

4 A Say about a good three months.

5 Q Okay. Now, you said at an earlier time  
6 that the group of you that were involved in making a  
7 videotape spent the whole day doing that, is that  
8 right?

9 A Yes, sir.

10 Q Now, during that time, let me ask you  
11 this -- did you know the difference between an  
12 All-Star ring and NBA ring?

13 A You know, I just seen a ring. It was  
14 exactly like that. But I don't know if it was  
15 All-Star or NBA, I just seen NBA, I don't know if it  
16 was championship or All-Star or what.

17 Q You saw a shiny watch?

18 A I saw a ring just like that.

19 Q Saw a shiny watch?

20 A Yes.

21 Q And you don't know where anybody got that  
22 ring or watch, do you?

23 A No, sir.

24 Q You don't know who if anyone had given them  
25 that ring or watch, do you?

1           A       No, sir.

2           Q       You never saw a red car, did you?

3           A       A red who?

4           Q       You never saw a red car?

5           A       Oh, no, sir.

6           Q       You never saw a bag?

7           A       A bag?

8           Q       Yes.

9           A       No, sir.

10          Q       A duffle bag type looking thing?

11          A       No, sir.

12          Q       And at the time you were staying in the  
13 same residence that Xavion Perry was staying, is that  
14 so or not?

15          A       Yes, sir.

16          Q       And you know that you were staying there  
17 that same night that one night that Daniel Green  
18 stayed there, correct?

19          A       Yes, sir.

20          Q       And you were with Daniel most of the time  
21 during that day that Xavion was with him, correct?

22          A       Yes, sir.

23          Q       Would you say you were with him all that  
24 day that Xavion was with him?

25          A       Not the whole -- I was like half, I wasn't

1 with him all day, but I was like with him all night,  
2 we were there, though. We've been around each other  
3 the whole day.

4 Q You never saw a gun of any sort?

5 A No, sir.

6 Q You never saw any initials on the jewelry  
7 anywhere or any words on the jewelry, did you?

8 A No, but NBA.

9 Q Now, when it came time -- strike that. Was  
10 there a time that some officers came and took a  
11 statement from you such as along about the middle of  
12 September of 1993?

13 A Yes, sir.

14 Q And when they took a statement from you  
15 where did that occur?

16 A My grandma's house.

17 Q And after they were done taking a statement  
18 from you, did they read back a statement to you?

19 A Yes, sir.

20 Q Did they ask you to sign a statement?

21 A Ask me to sign -- I don't know if they  
22 asked me to sign it or not. I can't recall.

23 Q Did they offer to let you read over your  
24 statement?

25 A Yes, sir.

1 Q Did you read one over?

2 A Yes, sir.

3 Q But you don't -- was it typed or was it  
4 handwritten?

5 A It was typed.

6 Q Did they bring a typewriter there that day  
7 they came to interview you?

8 A No, sir.

9 Q All right. So then did they show you that  
10 typed statement the same day that they took your  
11 interview?

12 A Yes, sir.

13 Q Did they show you that typed statement in  
14 the same sitting, that is, at the same time before  
15 they got up, having taken your statement?

16 A Yes, sir.

17 Q And who are those officers, sir?

18 A I don't know none of their names.

19 Q And you were at your grandmother's house,  
20 right?

21 A Yes, sir, I remember one dude right there  
22 though.

23 Q All right. And do you -- you mean Officer  
24 Heffney there?

25 A Yes, sir.

1 Q And do you know where his typewriter was?

2 A No, I don't know where his typewriter was,  
3 man.

4 Q But you know that before you got up from  
5 that statement that day you had been presented by  
6 Agent Heffney or one of other officers a typed  
7 statement?

8 A Yeah, they gave me some piece of paper,  
9 though, some subpoena paper, I think.

10 Q So it wasn't a copy of your statement, is  
11 that right?

12 A No, it wasn't no copy, it was like a  
13 subpoena paper he had gave me.

14 Q So it was not a -- it was not your  
15 statement, it was some other paper writing, is that  
16 correct?

17 A No, they showed me a paper where I read  
18 what I wrote down before, but you know what I'm  
19 saying, why -- the last statement that I had.

20 THE COURT: So there's no  
21 confusion, what he's asking you -- that's  
22 okay. That's all right. What he's asking  
23 you is, you indicated in your testimony  
24 that the officers came to your  
25 grandmother's house and talked with you?

1 THE WITNESS: Yes, sir.

2 BY THE COURT:

3 Q And you responded to their questions?

4 A Yes, sir.

5 Q At that time, at your grandmother's house,  
6 did they present you then with a copy of what you had  
7 told them?

8 A Yes, they had a piece of paper, yeah, what  
9 I had wrote down, yes.

10 Q Did you have an opportunity to read that?

11 A Yes, sir.

12 Q Was that in handwriting or typewritten?

13 A It was a typed, it was a typed.

14 Q That's the statement that you're referring  
15 about?

16 A Oh, okay.

17 Q Is that correct?

18 A That is correct.

19 Q All right. Mr. Bowen.

20 BY MR. BOWEN:

21 Q Now, what period of time were you there at  
22 your grandmother's house from the time they first  
23 came in to talk to you until the time they presented  
24 you with a typewritten copy of your statement?

25 A I don't know the time now.

1 Q All right. Would you say they spent all  
2 day with you?

3 A No, wasn't all day. At least about a good  
4 20, 30 minutes.

5 Q 20 or 30 minutes. Now, did you see any  
6 officer with a typewriter?

7 A No, I couldn't --

8 Q Or a computer printer that types out  
9 printed words?

10 A No, no, sir.

11 Q So where they got that typed statement that  
12 you showed you, you don't know, is that correct?

13 A I don't know. I know that's probably what  
14 they wrote down or something, and they typed it out,  
15 but I ain't seen no typewriter or printer down there.

16 Q You didn't see them typing while you were  
17 talking, did you?

18 A No, sir.

19 Q But then they handed you a typed sheet and  
20 you took that to be your statement?

21 A Yes, sir.

22 Q Did you read it over?

23 A I read the whole thing over.

24 Q Now, have they presented you another typed  
25 sheet before testifying today?

1           A       Another sheet?

2           Q       Yes, sir. Or any sheet of paper with  
3 typing on it either today or yesterday or any time  
4 you've been up to the courthouse?

5                   THE COURT: We need to stop  
6 here. There's another matter we need to  
7 take up. If you'll remain where you are.  
8 Ladies and gentlemen we're going to stop at  
9 this point. During the overnight recess,  
10 please don't talk about this matter among  
11 yourself. And let me expand and amplify  
12 what I mean by that instruction.

13                   What I'm saying, ladies and gentlemen,  
14 is that it would be inappropriate for you  
15 to discuss anything about this case, the  
16 testimony of any witness, any evidence that  
17 might be presented in this case, at any  
18 time before you are told to begin  
19 deliberations.

20                   Don't talk with anybody else about  
21 this case, including members of your own  
22 families. Don't allow anyone else to say  
23 anything to you about this case and don't  
24 allow anyone to say anything in your  
25 presence about this case. If anyone

1 communicates with you about this matter or  
2 attempts to do so or if anyone says  
3 anything about the case in your presence,  
4 it's your duty to inform us of that  
5 immediately, preferably, so that we can  
6 deal with it as expeditiously as possible,  
7 if you will put it in writing, at least  
8 sufficiently so that we know what your  
9 concern so or what may have occurred, give  
10 that paper writing to one of the bailiffs,  
11 that bailiff will pass it to me, and we  
12 will take it up.

13 Don't form any opinions about this  
14 case, don't express any opinions about this  
15 case until all of the evidence has been  
16 presented, until you've had the opportunity  
17 to hear the arguments of the attorneys, and  
18 you've received the Court's instruction on  
19 the law, and you have specifically been  
20 instructed to begin deliberations in the  
21 matter.

22 Don't have any contact or  
23 communication of any kind with any of the  
24 attorneys, parties, witnesses, prospective  
25 witnesses, or directly with the Court.

1           Avoid any news accounts which might  
2 exist in connection with this matter  
3 regardless of what form those news accounts  
4 might take. And don't conduct any  
5 independent inquiry or investigation or  
6 research of any kind.

7           We appreciate your cooperation, please  
8 return promptly to the jury room at 9:30  
9 tomorrow morning and we'll -- 9:00 tomorrow  
10 morning -- well, tomorrow is Friday. 9:00  
11 tomorrow morning. Thank you very much  
12 folks. Tomorrow will be a short day.  
13 We'll stop no later than 1:00. Thank you  
14 for reminding me, have a good evening, see  
15 you tomorrow morning at 9:00.

16                           (Jury out at 4:55 p.m.)

17           THE COURT: Folks, let me be  
18 abundantly clear that I am not suggesting  
19 that anybody is intentionally doing what it  
20 is I'm about to bring to our attention, but  
21 I think inadvertently it's happened or at  
22 least to some extent.

23           Rule 12 in the Rules of Professional  
24 Responsibility provide that the conduct of  
25 lawyers before the Court and with other

1 lawyers should be characterized by candor  
2 and fairness. Counsel shall not knowingly,  
3 that's the key word, misinterpret the  
4 contents of a paper, the testimony of a  
5 witness, the language or argument of  
6 opposite counsel or the language or  
7 decision of other authority.

8 Inadvertently, I think what is happening  
9 here is some of the testimony is being  
10 misinterpreted. Let me give you an  
11 example, not in the context of this case.

12 Lawyer asks the witness a question,  
13 and let me make it an innoxious example,  
14 and you went to the house, answer no. Next  
15 question, and after you went to the house,  
16 you did thus and such. You understand what  
17 I'm saying?

18 The answer precludes that second  
19 question, because the answer was no, I did  
20 not go to the house.

21 The next question ignores the answer  
22 assumes an affirmative answer and  
23 incorporates that false affirmative answer  
24 into the question. That's what happening  
25 here. I tried cases in Robeson County

1 before, I started off on the bench in  
2 Robeson County, I know that is by some  
3 perceived to be a legitimate line of  
4 cross-examination. It ain't.

5 It ain't in Robeson County or in the  
6 other 99 counties in this state. The  
7 conduct of lawyers before the Court and  
8 with other lawyers should be characterized  
9 by candor and fairness. I am comfortable  
10 that it's unintentional. I am comfortable  
11 that it is inadvertent. But I'm equally  
12 confident that it's occurring that between  
13 the words being uttered and being heard on  
14 both sides, there's confusion.

15 MR. THOMPSON: Judge --

16 THE COURT: Okay. All I'm asking  
17 is, we're officers of the court. And we  
18 have a duty. We can't seize upon  
19 confusion, we can't use it to our advantage  
20 if we violate the rulings in doing this,  
21 especially when we have contributed to the  
22 confusion. That's all I want to say.

23 MR. THOMPSON: Your Honor,  
24 though, sometimes the witnesses may not  
25 understand because -- by way of example, I

1 know when he asked -- Mr. Britt asked the  
2 witness did he have any jewelry on, he said  
3 no, but when he asked him did he have a  
4 watch, did he have a ring on, to him that  
5 may not be jewelry. I don't --

6 THE COURT: No. That's right  
7 there. The question was: "Did you have  
8 any jewelry on. His response, "Not  
9 completely articulated, no, he didn't have  
10 it on, but he had it in his pocket.

11 THE WITNESS: No, he had on his  
12 pocket.

13 THE COURT: Where did you see  
14 it?

15 THE WITNESS: We were going to  
16 Suburban Mart.

17 THE COURT: That was on -- you  
18 didn't understand his question.

19 THE WITNESS: It was on when he  
20 was walking but when he was at Fayetteville  
21 State I wasn't paying attention.

22 THE COURT: There you go.

23 MR. THOMPSON: That's what I'm  
24 saying, Your Honor, not always --

25 THE COURT: What you got to do in

1 candor and in fairness, say I apologize, my  
2 question wasn't clear, let me make sure  
3 this is clearly understood, and repeat the  
4 question. Not oops, I got an answer there  
5 that I wasn't expecting, and I'm going to  
6 exploit it. Do you understand my point?  
7 You don't seize upon confusion if in doing  
8 so you violate the rules, although I  
9 understand some folks that's legitimate  
10 cross-examination. I don't.

11 MR. THOMPSON: No, I was talking  
12 about the direct examination.

13 THE COURT: Well, I'm talking  
14 about the cross.

15 MR. THOMPSON: Okay.

16 THE COURT: And the direct to  
17 some extent. And part of it is because we  
18 may know certain things about our case, we  
19 assume or feel like everybody else knows  
20 what we know, and that's incorporated in  
21 the question. Our obligation is to  
22 clarify.

23 We've got a more significant matter  
24 that I need to bring to everybody's  
25 attention. If you folks will recall, at

1 about 4:35, Ms. Gaines whispered something  
2 to me in Court. Immediately thereafter I  
3 indicated that I had a call I had to take.  
4 The message that Ms. Gaines passed onto me  
5 at the bench was that Ms. Stone, who's now  
6 present in the courtroom -- for the record,  
7 Ms. Stone is the secretary for the Superior  
8 Court Judges here in Robeson County, Ms.  
9 Gaines indicated Ms. Stone was in  
10 conversation with someone who had called  
11 her office. That person apparently wanted  
12 to report purported misconduct on the part  
13 of one member of the jury.

14 I went down to the office. By the  
15 time I arrived there, Ms. Stone's  
16 conversation had concluded.

17 Do you have that information for me  
18 ma'am?

19 I asked Ms. Stone to write down the  
20 gist of the conversation. And she has just  
21 handed me a paper writing which reads as  
22 follows: "I received a call approximately  
23 4:30 Thursday, January 18th, 1996.  
24 Period. Caller asked for Judge Weeks'  
25 office, period. I explained that I was the

1           judicial assistant.   Period.   Caller said  
2           she wanted to report something about a  
3           juror that she said felt was not right.

4                     She identified the juror as being a  
5           member of the jury, name is inserted in the  
6           paper writing.   For our purpose, I'm not  
7           reading the name.   Period.   Caller, she  
8           stated that juror, and Daniel Green's  
9           mother were good friends.   Period.   She  
10          stated that juror's husband -- husband  
11          being identified, and caller's father were  
12          first cousins and were both in the  
13          construction business.   Period.

14                    Mrs. Green has worked for the caller's  
15          father during her son's incarceration but  
16          is no longer employed by him.   Period.  
17          Caller stated that she had heard  
18          conversations concerning the trial in the  
19          presence of, named juror.   Period.   I asked  
20          the caller to give me her name and  
21          telephone number.   She said that she was  
22          and gave her name, and her number was, and  
23          gave her number.   I made notes during the  
24          conversation, and repeated then to caller,  
25          caller being named, to make sure that I had

1 the information that she had given to me  
2 correctly."

3 It's my intent to go in camera,  
4 in-chambers right now, with all counsel,  
5 with the defendant, and with the court  
6 reporter, so that we can make further  
7 inquiry.

8 Sir, you are released at this time.  
9 You are to be back in the courtroom at 9:00  
10 tomorrow morning. You understand those  
11 instructions.

12 THE WITNESS: Yes, sir.

13 THE COURT: You're free to go at  
14 this time. We'll see you tomorrow.

15 THE WITNESS: All right.

16 THE COURT: If I may see all  
17 counsel and the defendant and the court  
18 reporter in camera in chambers, and I'm  
19 also going to ask Ms. Stone and Ms. Gaines  
20 to go with us.

21 (5:05 p.m.)

22 THE COURT: Let the record  
23 reflect that this is yet another in camera  
24 in-chambers hearing. Present at this time  
25 are the presiding Judge, the court

1 reporter, counsel for the State,  
2 Mr. Johnson Britt, counsel for the  
3 defendant Mr. Angus Thompson, and  
4 Mr. Woodberry Bowen. Also present at this  
5 time is the defendant Mr. Daniel Green,  
6 also known as U'Allah.

7 Now entering the room is the  
8 assistant -- is it assistant or deputy  
9 assistant Clerk of Superior Court assigned  
10 to the trial of this matter, Ms. Sue  
11 Gaines.

12 All right. Ms. Stone -- did I mention  
13 Ms. Stone? I apologize. Also present at  
14 this time is Ms. Diane Stone, who is the  
15 administrative assistant for the Superior  
16 Court Judges in Robeson County. I  
17 apologize, ma'am.

18 Ms. Stone, if you will please tell us  
19 what occurred at approximately 4:30.

20 MS. STONE: Well, I answered the  
21 phone, of course, and the lady said, you  
22 know, is this Judge Weeks' office? I said,  
23 this is the judicial assistant. She says,  
24 well, I can tell you, she says, I've got  
25 some information, you know, that I think --

1 and those are the words she said, I felt  
2 are not right. I mean, I should have put  
3 that in quotes. And then she proceeded to  
4 tell me exactly what I've put here, because  
5 I was writing while she was talking and she  
6 said, you know, you got one of the jurors,  
7 Linda Dial -- Was I supposed to say the  
8 name?

9 THE COURT: Yes, ma'am.

10 MS. STONE: -- and Daniel Green's  
11 mother are good friends. She said that  
12 Ms. Dial's husband, who is Anthony Dial,  
13 and her father, the caller's father, were  
14 first cousins. They are in the construction  
15 business, and that Ms. Green had worked for  
16 the caller's father.

17 THE COURT: Do we know the  
18 caller's father's name.

19 MS. STONE: No, I did not get  
20 that. I got the caller's name.

21 THE COURT: What is her name for  
22 the record.

23 MS. STONE: Caller's name was  
24 Gina Jones, and she said that her father  
25 and Ms. Dial's husband were first cousins,

1 and that Ms. Green worked for the caller's  
2 father, which I don't know which, Mr. Jones  
3 or what, since he's been incarcerated. And  
4 but that she doesn't -- she's not employed  
5 there at this particular time.

6 THE COURT: Yes, ma'am.

7 MS. STONE: And that she had  
8 heard conversations concerning the trial  
9 with Ms. Dial being there, the juror.

10 THE COURT: Now, you indicated to  
11 me as we were coming in to chambers that  
12 the caller did not say whether those  
13 conversations occurred during the trial of  
14 this case or prior to the trial or the jury  
15 selection process.

16 MS. STONE: This is true, I do  
17 not know that.

18 THE COURT: Folks, my  
19 recollection is Ms. Dial shared that  
20 information with us during voir dire.

21 MR. BRITT: I think she did. My  
22 notes from jury selection are in there.

23 THE COURT: I recall something  
24 vaguely along those lines that she  
25 indicated to us when we asked her if she

1 had heard anything about the case or had  
2 discussed the case or had been present when  
3 it was discussed, my recollection is she  
4 indicated she had. And I believe it was  
5 under these circumstances. I may be wrong,  
6 and we all need to look at our voir dire  
7 notes, but out of an abundance of  
8 precaution, I'm going to direct that if  
9 Ms. Stone, if you will call Ms. Jones,  
10 Ms. Gina Jones, and tell Ms. Jones she is  
11 to be here at 8:30 tomorrow morning. She  
12 is to report to your office. She is to  
13 remain in your office until we summons her,  
14 until we call for her. We will need to  
15 meet at 8:30 tomorrow morning.

16 MS. STONE: I realized after I  
17 broke the connection, I should have made  
18 that particular inquiry, but I was really  
19 just letting her talk, you know, instead of  
20 me asking questions.

21 THE COURT: That's fine, that's  
22 fine.

23 Yes, sir.

24 MR. THOMPSON: Okay. Yeah,  
25 because the jury is coming in at 9:00.

1                   THE COURT: 8:30, so we can  
2                   hopefully be in a position to go forward at  
3                   9:00 or shortly thereafter. Okay. Depends  
4                   on what Ms. Jones says about the time frame  
5                   of those conversations. It may or may not  
6                   be necessary to make further inquiry of  
7                   Ms. Dial. My gut feeling right now, and  
8                   this is just off the top of my head, out of  
9                   an abundance of precaution I'm probably  
10                  going to bring her in, but again, it  
11                  depends on what Ms. Jones says.

12                 If Ms. Jones puts the time frame of  
13                 the conversations prior to jury selection,  
14                 or prior to trial, and if her information  
15                 is consistent with whatever our notes  
16                 reflect about what Ms. Dial told us, then  
17                 I'll hear from you folks as to whether or  
18                 not you think it's necessary, and rule  
19                 accordingly and make a determination  
20                 accordingly.

21                 Okay?

22                 MR. THOMPSON: And this is an in  
23                 camera proceeding involving now Ms. Stone  
24                 as well as the Clerk. I know the lawyers  
25                 aren't going to stay anything about this,

1 Your Honor, but I request that what's been  
2 said to this point, first of all, that it  
3 not be for public consumption.

4 THE COURT: It's not.

5 MR. THOMPSON: And direct us not  
6 to say anything concerning -- of course, I  
7 know the lawyers will not.

8 THE COURT: Folks, you folks are  
9 bound by 77.

10 MR. THOMPSON: That's right.

11 THE COURT: And now as to  
12 Ms. Stone, I'm confident that Ms. Stone is  
13 not going to repeat this matter to anybody  
14 in the press, and I'm equally confident  
15 that Ms. Gaines is not going to.

16 MR. THOMPSON: Okay.

17 THE COURT: I've asked Ms. Gaines  
18 to be here because Ms. Gaines was the  
19 source through whom I got the information.  
20 Anything you want to ask Ms. Gaines, you  
21 folks?

22 MR. THOMPSON: No, sir.

23 THE COURT: Or Ms. Stone?

24 MR. BOWEN: No, sir. I to ask  
25 you to be thinking about something tonight,

1 and that is if you were to hear from  
2 Ms. Jones tomorrow and this thing is to  
3 resolve itself, consider what if any  
4 jurisdiction you may have to ask Ms. Jones  
5 not to talk about it, because we don't want  
6 it to have a chilling effect or any effect  
7 at all on one or more jurors.

8 THE COURT: I certainly will. I  
9 certainly will.

10 MR. THOMPSON: And of course, I  
11 mean, that's --

12 THE COURT: Frankly, I'm not sure  
13 what jurisdiction I do have, except that --

14 MR. BOWEN: I'm worried about  
15 that.

16 THE COURT: Let me think about  
17 that. If it's part of a sealed court  
18 record, then she may be subject to contempt  
19 powers. And if I order that it be sealed  
20 and order that all parties, no one is to  
21 discuss it, pending resolution of the  
22 trial, I may have contempt ruling.

23 MR. THOMPSON: I wish just  
24 that -- of course, this is water under the  
25 bridge, but we may come to it again, this

1 kind of thing. I wish we would have dealt  
2 with it without it being stated from the  
3 bench that allegations of misconduct --

4 THE COURT: I had no choice. I  
5 had no choice at that point, because the  
6 information came in through Ms. Stone and  
7 through Ms. Gaines. And in my view, had I  
8 not put it in the record, that's why I  
9 intentionally omitted reference to any  
10 juror. Now, if this thing turns out not to  
11 be anything, I will put on the public  
12 record that it has been --

13 MR. THOMPSON: We didn't mention  
14 the juror?

15 THE COURT: No, I never mentioned  
16 the juror.

17 MR. BRITT: Almost did.

18 THE COURT: I almost did but I  
19 caught myself.

20 MR. THOMPSON: No, the word  
21 "juror misconduct" was not mentioned?

22 THE COURT: No, that was  
23 mentioned. No one was identified.

24 MR. THOMPSON: That's what I'm  
25 talking about. Even "juror misconduct."

1 THE COURT: If it determines --  
2 if we can determine that there's nothing to  
3 it, I'll put on the record that it was  
4 investigated, everyone was present and it  
5 was determined to be unfounded, which will  
6 alleviate that concern.

7 MS. STONE: If I get any more  
8 phone calls --

9 THE COURT: You have an  
10 obligation to do exactly what you've done.

11 MS. STONE: Okay.

12 THE COURT: And you've done the  
13 right thing, so you have an obligation to  
14 do that.

15 MR. THOMPSON: My point was that  
16 we could address it here before talking  
17 about juror misconduct; this -- you know  
18 what -- well, and it may be -- and  
19 hopefully it is unfounded, but that will  
20 be --

21 THE COURT: I'm sorry, but that's  
22 the way I see it. The way it see it was,  
23 that's the reason I took the action that I  
24 did yesterday after it was determined that  
25 I wasn't going to excuse those folks in

1 here, that was going to happen on the open  
2 record in open court, Ms. Ellerbe and Ms.  
3 Locklear.

4 MR. THOMPSON: I understand.

5 THE COURT: Okay. And I  
6 appreciate your concern. I have the same  
7 concern. But I have to do what I think I'm  
8 required to do.

9 MR. THOMPSON: I was just making  
10 a suggestion, just to try to -- and you  
11 know, it's your call, I just thought  
12 that --

13 THE COURT: I appreciate it. But  
14 I have to be honest with you, if it comes  
15 up again, because of the need to make  
16 matters of record, and in my view this is a  
17 matter that needs to be made a matter of  
18 public record as opposed to an in camera  
19 record, I'm going to do it that way.

20 MR. THOMPSON: Before instead of  
21 after?

22 THE COURT: If it arises in this  
23 context, what I said was "allegations of."  
24 And if it's unfounded, then I will say with  
25 equal vehemence and vigor in open court, it

1 was an unfounded allegation and we  
2 determined that.

3 Anything else?

4 MR. THOMPSON: 8:30 tomorrow?

5 THE COURT: 8:30. It's harder on  
6 me than it is for you folks to get here.

7 MR. THOMPSON: I need to consult.

8 THE COURT: We'll step out of the  
9 room and give you an opportunity to be  
10 heard.

11 (Brief recess.)

12 THE COURT: We've got both  
13 counsel for the State, Mr. Bowen, Mr.  
14 Thompson present, the defendant, Mr. Green,  
15 also known as U'Allah is present, counsel  
16 for the State is present, the presiding  
17 Judge is present, and the court reporter is  
18 present.

19 You folks had an opportunity to  
20 consult with your client?

21 MR. THOMPSON: Yes, sir.

22 THE COURT: Any other matters?

23 MR. THOMPSON: No, sir.

24 THE COURT: I appreciate it.

25 This concludes the in camera proceeding.

1 We're at ease until 8:30.

2 (End of in camera proceeding.)

3 (Court adjourned.)

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## 1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

3 LUTHER JOHNSON BRITT, III, Esq.  
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10 and

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14

15

16 (Whereupon an in camera proceeding ensued  
17 as follows.)

18 (8:40 a.m.)

19 THE COURT: Let the record  
20 reflect that this is an in-chambers, in  
21 camera conference. Present at this time  
22 are counsel for the State Mr. Johnson  
23 Britt, counsel for the defendant Mr. Angus  
24 Thompson and Mr. Woodberry Bowen. Also  
25 present at this time is Mr. Daniel Green,

1 also known as U'Allah. Also present is the  
2 presiding Judge and the court reporter.

3 Folks, our situation is as follows:  
4 As you will recall when we had our  
5 in-chambers conference yesterday, and I  
6 indicated to you the information that had  
7 come to my attention through Ms. Diane  
8 Stone, the administrative assistant here in  
9 Robeson County, Ms. Stone received a call  
10 from a person who identified herself as  
11 reflected in our conversation yesterday,  
12 who indicated she had some information  
13 about one of our jurors, specifically  
14 Ms. Linda Dial. Is she Number 7?

15 MR. BRITT: 11.

16 THE COURT: 11. That person was  
17 directed to be in Ms. Stone's office at  
18 8:30 this morning. It is now 8:42. As of  
19 a moment ago, she had not arrived.

20 Mr. Thompson, you indicated you had your  
21 notes as to the voir dire as to Ms. Linda  
22 Dial. What do your notes reflect? My  
23 recollection -- go ahead, and then I'll  
24 fill in.

25 MR. THOMPSON: Just with respect

1 to the issue at hand, if you recall, she  
2 said that this was juror who said she had  
3 some feeling that it was sad how the two  
4 boys grew up together and now testifying  
5 against one another. She had conversations  
6 with family members or friends, and/or  
7 friends.

8 THE COURT: About the case.

9 MR. THOMPSON: Right. Like to  
10 have been a lawyer who does research,  
11 that's just my notes. She knew Paul  
12 Manuel. Went to school with a person who  
13 found the body. Margaret Fay Demery,  
14 pastor of my church, that's Larry's aunt,  
15 said her church teaches "lest she be  
16 judged," but she does not follow that  
17 doctrine. Basically, with respect to the  
18 issue before us, that's what I have.

19 THE COURT: My recollection is  
20 consistent with that, that she provided the  
21 information that she's now alleged to have  
22 engaged in in terms of having discussions  
23 about the case with family members and with  
24 friends.

25 MR. THOMPSON: Right.

1 THE COURT: The issue is as to  
2 the allegations of the caller, whether  
3 those events that she is alleging occurred  
4 prior to jury selection, if so, that's  
5 consistent with what Ms. Dial told us.  
6 Now, if this juror doesn't show up, what we  
7 essentially have are unfounded  
8 allegations. That being the case, does  
9 anybody want to be heard about inquiring of  
10 Ms. Dial if the juror doesn't show up?

11 MR. BRITT: You mean --

12 THE COURT: If the caller doesn't  
13 show up.

14 MR. THOMPSON: Gina Jones?

15 THE COURT: If Ms. Jones doesn't  
16 show up.

17 MR. THOMPSON: No, sir.

18 THE COURT: What's the State's  
19 position?

20 MR. BRITT: My notes are similar  
21 to Mr. Thompson's and the way I set my  
22 format up when we were doing this, she said  
23 she recognized Mr. Thompson from the Board  
24 of Education, she recognized Mr. Green, she  
25 recognized Mr. Garth Locklear. I have the

1 same note in regard to the church teaching,  
2 and she does not personally follow that;  
3 that she had seen TV accounts, newspaper  
4 accounts, radio accounts -- or heard those,  
5 had had conversations and had not formed an  
6 opinion about the case, had not formed  
7 opinion about guilt or innocence, and said  
8 she had remained open minded. Belief  
9 involving the death penalty, yes, it was  
10 appropriate in some cases but not in all  
11 cases. Had same notations that she had  
12 some intentions of going to law school.  
13 And I pulled her questionnaire --

14 THE COURT: That didn't --

15 MR. BRITT: -- which doesn't  
16 really reveal anything.

17 THE COURT: Am I incorrect,  
18 didn't she indicate during voir dire  
19 that -- she was asked who did you talk to,  
20 and my recollection is she indicated that  
21 the person she talked to is consistent with  
22 the allegations being made by Ms. Jones.

23 MR. THOMPSON: Family members --

24 MR. BRITT: And based upon the  
25 information that was given yesterday, I

1 know Mr. Green's mother used to work for a  
2 construction company called Native American  
3 Construction. It is owned by a man by the  
4 name of McKethan Jones. I was not aware  
5 that Ms. Dial may be related to Mr. Jones,  
6 but that is not of any great concern to  
7 me.

8 For the record, let me give you this.  
9 I'm going to hand you a telephone message  
10 that I had on my desk at the conclusion of  
11 yesterday's court. Ms. Jones apparently  
12 tried to contact me.

13 THE COURT: At 4:25.

14 MR. BRITT: Yes, sir.

15 THE COURT: So apparently she had  
16 called you prior to the time she called  
17 Ms. Stone, or about the same time.

18 MR. BRITT: I was not aware of  
19 that.

20 THE COURT: I understand.

21 MR. BRITT: I have not attempted  
22 to return the phone call.

23 THE COURT: All right. This will  
24 be made a part of the record along with the  
25 other documents, the notes taken by

1 Ms. Stone and the memorandum I asked her to  
2 draw up.

3 MR. BRITT: I asked my secretary  
4 who took the message if she had directed  
5 Ms. Jones to contact the Judge's office,  
6 she said no, so apparently Ms. Jones did  
7 that on her own.

8 MR. THOMPSON: Who was the  
9 secretary that took the message?

10 MR. BRITT: Gail Hickman.

11 MR. THOMPSON: In addition,  
12 Ms. Dial also said she had talked with  
13 Larry Demery's sister at sixth grade and  
14 knows Larry's mother, may have been a year  
15 and a half ago since she seen her or  
16 something.

17 THE COURT: I take it that the  
18 position now being taken by both counsel is  
19 that absent some further showing by  
20 Ms. Jones, both sides are content to have  
21 her remain a member of the jury in this  
22 case, is that correct?

23 MR. BRITT: Yes.

24 MR. THOMPSON: Yes.

25 MR. BOWEN: One addition from Mr.

1           Britt's comments, Ms. Jones was expected to  
2           be probably a State's witness in a matter  
3           in Maxton, and told her to come here  
4           instead, but I think the record should show  
5           she was involved in that proceeding.

6                   THE COURT:   As a matter of fact,  
7           in that regard, Ms. Jones communicated to  
8           Dianne Stone that she was a witness for the  
9           State in a matter in Maxton.   Ms. Stone  
10          indicated to me, I'll bring her down here  
11          if you folks want to, that she informed  
12          Ms. Jones, don't worry about Maxton, you  
13          come here, we'll take care of the Maxton  
14          thing once you arrive.

15                   I'm going to give her until 9:00.   If  
16          Ms. Jones does not show up, then the record  
17          reflects what it reflects, but I understand  
18          the position now being taken by all counsel  
19          is that there is no request that further  
20          inquiry be made of Ms. Dial.   Is that  
21          accurate, Mr. Britt?

22                   MR. BRITT:   Without any other --  
23          I mean, the State's position would be  
24          without any other information involving  
25          this allegation, we would not request it.

1 THE COURT: Let me give you folks  
2 an opportunity to consult and then we'll  
3 come back on the record.

4 Let the record reflect leaving at this  
5 time are the presiding Judge, counsel for  
6 the State, and the court reporter once he  
7 takes his notes.

8 (Brief recess.)

9 THE COURT: Let the record  
10 reflect counsel for the State is now  
11 present, presiding Judge is now present,  
12 the counsel for defendant. Have you folks  
13 completed your consultation with  
14 Mr. Green?

15 MR. THOMPSON: Yes, sir, and Your  
16 Honor, after consulting with counsel and  
17 U'Allah, we want to -- we think we need to  
18 speak to Gina. First of all --

19 THE COURT: To who?

20 MR. THOMPSON: Gina, or whoever  
21 this person is that called -- first of all,  
22 to confirm that the individual who we've  
23 been talking about is in fact the one who  
24 called. Secondly --

25 THE COURT: I'm sorry, to

1 confirm --

2 MR. THOMPSON: That whoever this  
3 person is that called --

4 THE COURT: Is who she claims she  
5 is? Okay.

6 MR. THOMPSON: Quite frankly,  
7 U'Allah has a concern about that, and I  
8 think it's a legitimate concern. You've  
9 got, first of all, people supposedly  
10 anonymously calling saying that --

11 THE COURT: That's not this  
12 case. This is the case where a person  
13 identified themselves.

14 MR. THOMPSON: Well, identified  
15 themselves, right.

16 THE COURT: This person said, I  
17 am Gina Jones.

18 MR. THOMPSON: I understand.

19 THE COURT: So your concern is  
20 can that be confirmed, is it in fact Gina  
21 Jones?

22 MR. THOMPSON: That's right.

23 THE COURT: All right.

24 MR. THOMPSON: And we need to see  
25 who that individual is. We want to see who

1           that individual is.

2                         THE COURT:   What we're going to  
3 do is we're going to go forward and let you  
4 folks subpoena her.  And we will hold a  
5 hearing next week if you can serve a  
6 subpoena on her.  Right now, we don't have  
7 any basis to do anything else except go  
8 forward.  It doesn't matter whether the  
9 interview or any inquiry is conducted now,  
10 we obviously can't conduct it unless that  
11 person is here.  But that doesn't mean we  
12 can't go forward with the trial.

13                        MR. BOWEN:  Well, Mr. Thompson  
14 and I haven't had a chance to confer on  
15 this, but I would respectfully suggest that  
16 if it's possible, and I'm not used to this  
17 so I don't know if there's any such thing  
18 as a court subpoena or not, but I do  
19 believe that at a minimum, given the fact  
20 that -- the essence of the call, although  
21 the person's name has not been mentioned in  
22 court, the essence of the call has been  
23 stated in open court, which is proper,  
24 which is what you had to do.  But now the  
25 press is on fire --

1           THE COURT:  What I intend to do  
2           is to go back and say where we are on the  
3           record, that the person who called  
4           identified himself.  That person was  
5           specifically instructed to be here at 8:30  
6           this morning.  That person didn't show up,  
7           period.  That's going to be public record.  
8           So that no inquiry has been conducted to  
9           the extent that we could, that the person  
10          who made the call and made the allegations  
11          did not show up to support those  
12          allegations, so that will be on the public  
13          record.

14          MR. BOWEN:  Maybe we could do  
15          something a little short of a subpoena.  
16          Since the State is apparently able to call  
17          and talk to the lady, perhaps the State  
18          could request that she come in or at least  
19          check on her whereabouts.  She could very  
20          well be on the --

21          THE COURT:  See, you all are  
22          putting the burden on the State.

23          MR. BOWEN:  Actually, I think  
24          properly the Court ought to request her to  
25          be here.  No, I don't think --

1                   THE COURT: I directed her to  
2                   come here in support of her accusations.  
3                   She didn't show. If she didn't show,  
4                   there's no support for those accusations.  
5                   If there's no support for those  
6                   accusations, where is the burden on the  
7                   Court or anybody else to go forward and  
8                   hunt this lady down? I mean, if, for  
9                   example, somebody calls you up and makes a  
10                  statement to you which has some effect on  
11                  something that you're doing, and that  
12                  person -- you direct that person to come in  
13                  and talk to me about that, and that person  
14                  doesn't show, is there a burden on you to  
15                  pursue that person?

16                  MR. THOMPSON: Reason for that,  
17                  in that she's a State's witness now in some  
18                  other case.

19                  MR. BOWEN: Yes, in the sense  
20                  that that was fact that she was solemn  
21                  enough for --

22                  THE COURT: Anybody can pick up  
23                  phone call and say anything. If that  
24                  person is not going to come in and support  
25                  that contention, there's nothing before the

1 Court. Now, I'm going to agree that you  
2 folks are entitled to have her brought in,  
3 and we will make attempts to locate her.  
4 My position is where we are now, we're  
5 going forward and we'll deal with that at a  
6 later time if and when we can locate her  
7 and bring her in. But until that time,  
8 it's unfounded. Until that time, there's  
9 no support for the allegations that have  
10 been made.

11 MR. THOMPSON: Are you going to  
12 say for the record in open court it's  
13 unfounded?

14 THE COURT: I'm going to say as  
15 of right now, the person who made the call  
16 was directed to come in at a time certain  
17 so that further inquiry could be made.  
18 That person did not show up. And as of  
19 right now, the allegations made are without  
20 support, as of right now. Because that's  
21 the true state of where we are.

22 MR. BOWEN: May I see that note,  
23 Your Honor?

24 THE COURT: I don't have the  
25 note. Diane has got the note.

1 MR. THOMPSON: I want the note so  
2 I can get the phone number off of it,  
3 please.

4 THE COURT: What is Diane's  
5 extension, 332?

6 MR. BRITT: I'm not sure.

7 THE COURT: Diane is holding  
8 everything for me, because I anticipate  
9 that she will be a witness or here to give  
10 a statement.

11 MR. THOMPSON: You mean Diane or  
12 Sue.

13 THE COURT: Diane.

14 (Judge calls Ms. Stone.)

15 MR. BOWEN: I think at a  
16 minimum --

17 THE COURT: I'm going to give you  
18 the number right now and let you call her.

19 (Off-the-record discussion.)

20 (Ms. Stone is present in chambers.)

21 THE COURT: See, my point is  
22 this: Let me give you a scenario.  
23 Somebody out there reading a newspaper  
24 about this case, watching television  
25 accounts, decides there's folks interested,

1 let me pick up a phone and call in, and  
2 I'll say these things and I don't ever have  
3 to show up to support it. Does that mean  
4 every time it happens we have to stop where  
5 we are and there's a burden on us to go out  
6 and investigate unfounded, unsupported  
7 matters?

8 MR. BOWEN: I think that anybody  
9 who interferes with the Court's business  
10 like that needs to be investigated.

11 THE COURT: That's a matter  
12 separate and apart.

13 MS. STONE: Do you need me?

14 THE COURT: For the record,  
15 Ms. Stone just handed me an envelope  
16 which I asked her to retain yesterday  
17 afternoon at the conclusion of the hearing  
18 containing her memorandum. Attached to her  
19 memorandum is the original notes made by  
20 Ms. Stone at the time the call was made to  
21 her. Caller's name was given as Gina  
22 Jones, phone number 844-6237. Also  
23 contained in the envelope is the --

24 MR. THOMPSON: Six three what?

25 MR. BRITT: Six two three seven.

1 THE COURT: Six two three seven.  
2 Also contained in the envelope is the memo  
3 message form given to the Court this  
4 morning and referred to by Mr. Britt in the  
5 in camera proceeding, indicating that a  
6 call was made to Mr. Johnson Britt on  
7 1-18-96, 4:25, by a person purporting to be  
8 Gina Jones, leaving a number of 844-6237.  
9 Note taken by a staff member of Mr. Britt's  
10 as follows: Conflict, juror member, friend  
11 of Daniel Green's mother. She needs to  
12 talk with you. Signed Gail. So the  
13 numbers are consistent, Mr. Thompson.  
14 Here's my seat, there's a phone.

15 844-6237. Do we need Ms. Stone?  
16 Because the person may be showing up down  
17 there for right now, so I'm going to ask  
18 her to go back to her office, unless you  
19 need her right now.

20 MS. STONE: That's a local  
21 number.

22 THE COURT: Yes, ma'am. Thank  
23 you.

24 (Mr. Thompson dials phone.)

25 MR. THOMPSON: There's an

1           answering machine on. And I'm not going to  
2           leave -- I'm not going to tell her, I don't  
3           know whether to tell her to call me or  
4           not. I don't want to get --

5                        THE COURT: That's my  
6           predicament.

7                        MR. THOMPSON: For the record, I  
8           called the number, and there's an answering  
9           machine on, and I hung up.

10                      THE COURT: Yes, sir.

11                      MR. THOMPSON: I didn't speak to  
12           anybody.

13                      THE COURT: Folks, you have the  
14           name, you have the number.

15                      MR. BRITT: We also have her  
16           address based upon the jury questionnaire.

17                      THE COURT: For Gina Jones.

18                      MR. BRITT: No, I'm sorry, we  
19           don't have her address.

20                      MR. THOMPSON: For the record --

21                      THE COURT: You have addresses in  
22           her files in connection with the Maxton  
23           case.

24                      MR. BRITT: May be in the system  
25           that the Clerk maintains.

1 THE COURT: Do you know if a  
2 subpoena has been issued by your office for  
3 Gina Jones?

4 MR. BRITT: My understanding, the  
5 message that I received from Ms. Stone was  
6 that Ms. Jones had been subpoenaed to  
7 appear in Maxton --

8 THE COURT: If you'll provide  
9 Ms. -- You don't know what case number?

10 MR. BRITT: I don't know what  
11 case number.

12 THE COURT: How can we ascertain  
13 from any records in Maxton in what case she  
14 may have been subpoenaed? How can we  
15 ascertain her address?

16 MR. BRITT: Actual court files  
17 are probably en route to Maxton. The  
18 Clerk, as I understand it, has a system in  
19 their computer system where they can put a  
20 witness's name in and hit the appropriate  
21 key.

22 THE COURT: I'll ask Ms. Stone to  
23 run Ms. Jones' name through whatever  
24 computer records she may have, see if we  
25 get an address. If we get an address, I'll

1 issue a subpoena for her.

2 MR. BRITT: If she's listed as a  
3 prosecuting witness, her name will appear  
4 at the court calendar that's printed for  
5 Maxton.

6 THE COURT: I'll issue a subpoena  
7 directing her to be here at 9:30 Monday  
8 morning, and I need to look at the statute  
9 as to specifically what provision I need to  
10 consult.

11 MR. THOMPSON: So in the  
12 interim --

13 THE COURT: We're going forward.

14 MR. THOMPSON: But with respect  
15 to her, we're not to have any contact with  
16 this individual, are you directing us to  
17 or --

18 THE COURT: I'm directing all  
19 counsel not to have any contact or  
20 communication with Ms. Jones pending the  
21 opportunity for all counsel, all parties to  
22 be present on the record.

23 MR. BRITT: As it relates to the  
24 issues --

25 THE COURT: As relates to this

1 case, these allegations. Now, obviously if  
2 she's a State's witness in another case, I  
3 can't direct the State not to consult with  
4 her about that. But I'm directing  
5 Mr. Britt to inform all members of his  
6 office, all staff members that they are not  
7 to discuss with Ms. Jones any matters  
8 pertaining to the allegation now before the  
9 Court.

10 MR. BRITT: at this point, other  
11 than myself, there are only two other  
12 people on my staff who know about these  
13 allegations, and they will not have -- they  
14 are both members of the support staff.

15 MR. THOMPSON: That would be --

16 MR. BRITT: Gail Hickman and  
17 Linda Price.

18 THE COURT: So you folks will  
19 know exactly what I'm going to say, I  
20 indicated to you you earlier I'm going back  
21 in and I'm going to recite the factual  
22 matters leading up to where we were this  
23 morning, and indicate that the Court is  
24 going to attempt to secure the caller's  
25 attendance for further in camera

1 proceedings Monday. But as of now, the  
2 caller has not shown up pursuant to  
3 directions and directives to support  
4 allegations. That's where we are, and  
5 that's the facts. Those are the facts, and  
6 that's the truth. And that's what we're  
7 going to put on the record.

8 Any other matters?

9 MR. THOMPSON: Yes. Did you want  
10 to consult?

11 MR. GREEN: We might need to.

12 THE COURT: You can consult at a  
13 later opportunity.

14 MR. BRITT: I just need to make  
15 sure my witnesses are here. They were not  
16 here when I came in here.

17 THE COURT: Any other matters?

18 MR. BOWEN: No, sir.

19 THE COURT: This concludes the in  
20 camera proceeding.

21 (End of in camera proceeding.)

22 (January 19, 1996. Proceedings in open court.)

23 (9:09 a.m.)

24 THE COURT: Let the record  
25 reflect that all counsel are present, the

1 defendant is present in open court. Major  
2 Watkins, do we have all members of the jury  
3 secured in the jury room?

4 THE BAILIFF: Yes, sir.

5 THE COURT: Let the record  
6 further reflect that another in camera  
7 in-chambers proceeding was held commencing  
8 at 8:30 this morning. The subject matter  
9 of that in camera in-chambers proceeding  
10 was to determine whether there was any  
11 supported, any foundation for allegations  
12 made as to potential juror misconduct.

13 For the record, the Court noted on the  
14 record yesterday that a call had been  
15 received by Ms. Diane Stone, the  
16 Administrative Assistant to the Superior  
17 Court Judges here in Robeson County, from a  
18 person who identified himself or herself to  
19 Ms. Stone. That person indicated that  
20 there was a matter regarding potential  
21 juror misconduct that they wanted brought  
22 to the attention of the Court pursuant to  
23 instructions from the Court. That person  
24 was directed to report at 8:30 this  
25 morning. That person did not show up.

1           As of this point, the Court finds that  
2 there is no support, no foundation for the  
3 allegations made as of the circumstances  
4 now before the Court.

5           For the record, the Court is going to  
6 make attempts to locate the caller to  
7 determine if the name given by the caller  
8 is a correct name, and to determine whether  
9 further inquiry is warranted or justified.  
10 But as of right now, the allegations of  
11 possible juror misconduct remain unfounded  
12 and without support.

13           Ma'am, if you will --

14                           (Off-the-record discussion.)

15           THE COURT: Anything with regard  
16 to the matters just made of record on  
17 behalf of the State?

18           MR. BRITT: No, sir.

19           THE COURT: Anything on behalf of  
20 the defendant as to matters just made of  
21 record, Mr. Bowen, Mr. Thompson?

22           MR. BOWEN: No, sir.

23           THE COURT: You folks otherwise  
24 ready to proceed?

25           MR. BRITT: Yes, sir.

1                   MR. BRITT: I would -- Mr. Marcus  
2 Perry is back. He was on the stand when we  
3 recessed yesterday. Two of my witnesses  
4 have not yet arrived. We're told they are  
5 en route. Specifically, those who have not  
6 yet arrived are Mr. Perry's mother, Pamela,  
7 and an individual by the name of David  
8 Moore. We've specifically been told David  
9 Moore left Fayetteville at 7:00 this  
10 morning. He was here yesterday and told to  
11 return. He is under subpoena.

12                   THE COURT: Well, the Court can  
13 assist.

14                   MR. BRITT: Yes, sir, if it  
15 becomes necessary.

16                   THE COURT: Are you ready to  
17 continue with Mr. Perry?

18                   MR. BRITT: Yes, sir.

19                   THE COURT: Mr. Perry is where?

20                   MR. BRITT: This is Mr. Perry.

21                   THE COURT: Okay. Are we  
22 otherwise ready to proceed?

23                   MR. BOWEN: Yes, Your Honor.

24                   THE COURT: If you'll bring the  
25 jury in, please, Mr. Horne.

1 (Jury in at 9:14 a.m.)

2 THE COURT: Good morning, ladies  
3 and gentlemen.

4 Mr. Perry, if you will return to the  
5 witness stand, please, sir. You remain  
6 under oath. You've already been sworn.  
7 Take a seat.

8 Any further matters? Ready to go  
9 forward, folks?

10 Mr. Britt indicated he's through.

11 MR. BRITT: They had him on  
12 cross-examination yesterday.

13 THE COURT: That's what I'm  
14 indicating. You folks ready to go forward?

15 CROSS-EXAMINATION (Continued)

16 BY MR. BOWEN:

17 Q Mr. Perry, I believe that you said  
18 yesterday that some officers came and talked to you,  
19 is that correct?

20 A Yes, sir.

21 Q And you gave them a statement, is that  
22 correct?

23 A Yes, sir.

24 Q They stayed with you about twenty minutes,  
25 is that true?

1 A Yes, sir.

2 Q At the end of the 20 minutes, they  
3 presented you a typed statement, is that what you  
4 testified to?

5 A Yes, sir.

6 Q You did not sign it?

7 A I signed it.

8 Q You did sign it?

9 A Sign -- what you talking about, the  
10 subpoena thing?

11 THE COURT: No, that's where I  
12 think we need to be clear on what you're  
13 talking about. A statement is something  
14 that someone says that is written down and  
15 that is presented to them. A subpoena is a  
16 document saying you have to come to court.  
17 What are you saying you were given the day  
18 they came to your house?

19 THE WITNESS: They showed me the  
20 statement and they gave me a subpoena.

21 THE COURT: So you got a  
22 statement before you and a statement at the  
23 same time on the same day?

24 THE WITNESS: Yeah.

25 THE COURT: Okay.

1 BY MR. BOWEN:

2 Q Was that the same day that they talked to  
3 you about 20 minutes?

4 A Yes, sir.

5 Q And now, do you remember which document  
6 that you signed, the subpoena or the statement?

7 A I don't recall.

8 Q Did they give you a copy of either one of  
9 those documents?

10 A No, they just gave me a subpoena.

11 Q So you never got a copy of the statement?

12 A No, but I seen the statement, though.

13 Q Did you read it over to know that it was  
14 your statement?

15 A Yes, sir.

16 Q And that's what you don't recall whether or  
17 not you signed?

18 THE COURT: I'm sorry, you have  
19 to answer.

20 THE WITNESS: Oh, yes, sir.

21 BY MR. BOWEN:

22 Q Now, you never, Mr. Perry, you never saw a  
23 red car --

24 A No, sir.

25 Q -- anywhere that day, did you?

1           A     No, sir.

2           Q     You say that you saw a ring on Mr. Green,  
3 is that correct?

4           A     Yes, sir.

5           Q     You did not know where that ring had come  
6 from, did you?

7           A     No, sir.

8                   THE COURT:  If you could keep  
9 your voice up, sir, so all members of the  
10 jury can hear you.

11 BY MR. BOWEN:

12          Q     Sir?

13          A     No, sir.

14          Q     And what you recalled and what you told the  
15 officers about the ring was simply that you saw the  
16 letters N-B-A?

17          A     Yes, sir.

18          Q     Is that correct?

19          A     Yes, sir.

20          Q     And you're identifying the ring here in the  
21 courtroom that you talked to Mr. Britt about  
22 yesterday simply because it had the word NBA on it,  
23 correct?

24          A     Yes, sir.

25                   THE COURT:  Well, did you

1 understand the question? The question  
2 is --

3 THE WITNESS: I understand.

4 THE COURT: Are you saying all  
5 you saw is NBA, or are you saying that's  
6 the ring that you saw.

7 THE WITNESS: That's the same  
8 ring that I saw, but I don't know if it was  
9 All-Star or championship ring.

10 BY MR. BOWEN:

11 Q And are you saying that simply because it  
12 had NBA on it or are you saying that for some other  
13 reason?

14 A No, because that's like exactly the same  
15 ring I seen.

16 Q All right. So you're saying it's like the  
17 ring that you saw?

18 THE COURT: Well, latitude is  
19 allowed on cross-examination. What he is  
20 asking you, can you say with certainty  
21 that's the ring that you saw or are you  
22 saying it looks like the ring you saw?

23 THE WITNESS: I don't know if it  
24 was the same ring but it looked like the  
25 ring I saw.

1 THE COURT: That's what we're  
2 trying to find out. Appreciate that.

3 BY MR. BOWEN:

4 Q Now, what was it about that ring that makes  
5 you say it was like the ring that you saw?

6 A I seen it on his hand.

7 Q It had NBA on it, correct?

8 A NBA on it, yes, sir.

9 Q Was there anything else about that ring  
10 that causes you to say it's like the one that you  
11 saw?

12 A It was silver.

13 Q Anything else?

14 A Had like a little blue stone in the middle  
15 of it.

16 Q Okay. You don't know what size it was or  
17 anything?

18 A No.

19 Q You didn't see any inscriptions on it, did  
20 you?

21 A No, sir.

22 Q As to the watch, you described it earlier  
23 but you didn't see any words on it, did you?

24 A No, sir.

25 Q No inscriptions?

1 A No, sir.

2 Q No names?

3 A No names.

4 Q Did you say that you were offered the  
5 opportunity to purchase those items of jewelry, the  
6 watch and the ring?

7 A I don't recall.

8 Q Now, you know that Mr. Green spent the  
9 night at your house?

10 A Yes, sir.

11 Q Did you invite him there or did somebody  
12 else invite him there, or do you know how he came to  
13 be there that night?

14 A We just all stayed there the same day, same  
15 night.

16 Q You had known him before?

17 A No, I ain't known him before.

18 Q So do you know who invited him, if anyone?

19 A No, I don't know who invited him. He was  
20 there the whole day.

21 Q And he left during the daytime or the  
22 nighttime the following day?

23 A No, he left the next day, in the morning.

24 Q Now, you were present, you say, when some  
25 videotape was made, is that correct?

1           A     Yes, sir.

2           Q     You were present when a group of you went  
3 to Fayetteville State to the campus?

4           A     Yes, sir.

5           Q     And you walked around the campus, is that  
6 right?

7           A     Walked around, like we did the video and we  
8 left.

9           Q     Didn't harm anything or disturb anything  
10 there at Fayetteville State campus, did you?

11          A     No, sir.

12          Q     How long would you say that you were there  
13 on the campus?

14          A     About an hour, about an hour and some  
15 minutes.

16          Q     Now, after the end of your testimony  
17 yesterday, were you further talked to by any police  
18 officers?

19          A     Yeah, my grand mom.

20          Q     I'm sorry, I didn't understand.

21          A     Yeah at my grand mom's house.

22          Q     What I mean, after you finished testifying  
23 yesterday, did any police officers talk to you?

24          A     Oh, no, sir.

25                   MR. BOWEN: That's all.

1 THE COURT: Any redirect for  
2 Mr. Perry?

3 MR. BRITT: Yes, sir.

4 REDIRECT EXAMINATION

5 BY MR. BRITT:

6 Q Marcus, back in -- what is your birthday?

7 A November 9th, '78.

8 Q So back in July of 1993, how old were you?

9 A I think about 15, 16. No, probably 14.

10 Q All right. And in 1993 did you attend Reed  
11 Ross Junior High School?

12 A Yes, sir.

13 Q And that's located in Fayetteville?

14 A Yes, sir.

15 Q Do you remember Mr. Heffney and another man  
16 coming to talk to you at Reed Ross High School?

17 A Yes, sir.

18 Q Is that where you gave Mr. Heffney a  
19 statement?

20 A Yes, sir.

21 Q And you talked with Mr. Heffney where, at  
22 the junior high school?

23 A We were in some kind of a room.

24 Q And after you talked with Mr. Heffney did  
25 you go back the class?

1           A     Yes, sir.

2           Q     Then later, like in October of this year,  
3 Mr. Heffney and Mr. Thompson and Mr. Smith back here  
4 and myself came to your grandmother's house, is that  
5 correct?

6           A     Yes, sir.

7           Q     Now, is that the time when the group came  
8 to your grandmother's house, is that when you're  
9 saying the statement was shown to you?

10          A     Yes, sir.

11          Q     And that was --

12                   THE COURT: For the purposes of  
13 clarification, the statement that was shown  
14 to you at your grandmother's house, that  
15 was not a statement that you had given on  
16 that day, but a statement you had given  
17 earlier at the junior high school, is that  
18 accurate?

19                   THE WITNESS: That's the same  
20 statement.

21                   THE COURT: But it was the same  
22 thing but you had given it earlier, is that  
23 correct?

24                   THE WITNESS: Yes, sir.

25 BY MR. BRITT:

1 Q After Mr. Heffney talked with you at the  
2 junior high school, no other police officers came to  
3 talk with you about the thing that you knew about  
4 Daniel Green?

5 A Talking about after you all came?

6 Q After Mr. Heffney talked with you at the  
7 junior high school.

8 A One came to Fayetteville State when I  
9 was --

10 THE COURT: When you were doing  
11 what?

12 THE WITNESS: Lifting weights.

13 BY MR. BRITT:

14 Q Do you know who that man was?

15 A No, I don't know who that man was.

16 Q Did you give that man a statement?

17 A No, he was just asking me some questions  
18 about it.

19 Q About your statement?

20 A Yeah. I mean yes, sir.

21 Q And when Mr. Heffney and Mr. Thompson and  
22 Mr. Smith and myself came to your grandmother's  
23 house, you were given a typed copy of the statement  
24 that you had made when Mr. Heffney interviewed at  
25 Reed Ross Junior High School, is that correct?

1 A Yes, sir.

2 Q You had an opportunity at that time to read  
3 the statement?

4 A Yes, sir.

5 Q And the typed statement, did it contain the  
6 information, the exact information that you had given  
7 to Mr. Heffney when he interviewed you at Reed Ross  
8 High School?

9 A Yes, sir.

10 Q So yesterday when you were asked if the  
11 police officers had a typewriter with them when they  
12 took your statement, when Mr. Heffney came and talked  
13 to you at Reed Ross High School back in September of  
14 1993, did he have a typewriter with him?

15 A No, sir.

16 Q Did he take notes as he talked with you, as  
17 best you can recall?

18 A I can't remember.

19 Q But when Mr. Heffney came to see you at  
20 your grandmother's in October of 1995, he handed you  
21 a typed piece of paper?

22 A Yes, sir.

23 Q You read that piece of paper?

24 A Yes, sir.

25 Q And that is the statement, that statement

1 contained the information that you had given him  
2 about Daniel Green back in September of 1993 when he  
3 talked with you at Reed Ross Junior High School?

4 A Yes, sir.

5 Q And it was in October of 1995 when you  
6 received your subpoena to come testify in this case?

7 A Yes, sir.

8 MR. BRITT: May I approach?

9 THE COURT: Yes, sir.

10 BY MR. BRITT:

11 Q I'm going to show you again the plastic bag  
12 marked as State's Exhibit Number 7. I'm going to  
13 remove its contents, ask you to look at that ring.  
14 Prior to July the 31st of 1993, had you ever seen a  
15 ring like that?

16 A Yes, sir.

17 Q Pardon?

18 A Yes, sir.

19 Q Where had you seen a ring like that prior  
20 to July 31st 1993?

21 A Daniel had it.

22 THE COURT: Before you saw it.

23 THE WITNESS: Before I saw it --

24 what are you trying to say, where it was

25 at?

1 BY MR. BRITT:

2 Q No, before you saw that ring in Daniel  
3 Green's hand, had you ever seen a ring like that  
4 before?

5 A Oh, no, sir.

6 Q And since you saw that ring on -- in Daniel  
7 Green's hand, have you ever seen a ring like that  
8 since?

9 A No, sir.

10 Q Now, the -- you testified you saw a large  
11 silver ring, is that right?

12 A Yes, sir.

13 Q Had a blue stone?

14 A Yes, sir.

15 Q And had the letters NBA on it?

16 A Yes, sir.

17 Q You don't recall whether it was an All-Star  
18 ring or championship ring?

19 A Yes, sir, I don't recall that.

20 Q Do you ever recall any diamonds being on  
21 any ring that Daniel Green had with him?

22 A No, sir.

23 MR. BRITT: I don't have any  
24 other questions.

25 THE COURT: Mr. Bowen, anything

1 further?

2 MR. BOWEN: Yes.

3 RE CROSS-EXAMINATION

4 BY MR. BOWEN:

5 Q Mr. Perry, you now, upon recollection,  
6 realize that what you said about the officers having  
7 interviewed you only once for twenty minutes and  
8 having given you a typewritten statement, that was  
9 not correct?

10 MR. BRITT: Objection.

11 THE WITNESS: Wasn't correct --

12 THE COURT: Excuse me, sir, I  
13 have to rule on the objection. The  
14 objection is sustained to the form of the  
15 question. Rephrase.

16 BY MR. BOWEN:

17 Q You testified earlier that officers came to  
18 see you, they talked to you 20 minutes, and that they  
19 gave you a typewritten statement. Is that right?

20 A Yes, sir.

21 Q And you testified that that was the only  
22 statement that you had given to those particular  
23 officers, correct?

24 A No, they gave me that statement, they  
25 didn't let me have it now.

1 Q They let you read it?

2 A They let me read it.

3 Q You thought when you testified that they  
4 had produced that statement the same day, didn't you?

5 MR. BRITT: Objection.

6 THE COURT: Sustained to the  
7 form.

8 BY MR. BOWEN:

9 Q Well, you testified, did you not, that they  
10 came and talked with you and gave you a typewritten  
11 statement the same day that they talked with you,  
12 correct?

13 A Yes, sir.

14 Q You didn't say anything about their having  
15 talked to you before?

16 A No, sir.

17 MR. BRITT: Objection.

18 THE COURT: Overruled.

19 BY MR. BOWEN:

20 Q And you didn't recall that at the time, did  
21 you?

22 A Say that again.

23 THE COURT: Did you remember them  
24 coming to talk to you in September at Reed  
25 Ross Junior High School when you were

1           answering Mr. Bowen's questions?

2                   THE WITNESS: That's three years  
3           ago.

4                   THE COURT: I'm not asking for an  
5           explanation. I'm asking, did you remember.

6                   THE WITNESS: I don't remember.

7 BY MR. BOWEN:

8           Q        So yesterday when you testified you thought  
9           you had only talked to them at your grandmother's  
10          house, is that correct?

11          A        They came to my grandmother's house and  
12          talked to me.

13          Q        And you didn't testify that they talked to  
14          you anywhere else, did you?

15          A        Not as I recall, no.

16          Q        Now, yesterday, after court ended, did you  
17          leave the courthouse immediately or did you talk to  
18          anybody, District Attorney's office, any of these law  
19          enforcement officers before you left the courthouse?

20          A        No, sir.

21                   THE COURT: Well, simply for  
22          clarification, because there's two parts to  
23          that question, part of the question is did  
24          you leave the Court immediately.

25                   THE WITNESS: Did I leave the

1 Court immediately?

2 THE COURT: After we finished  
3 yesterday, did you go directly home?

4 THE WITNESS: I went home.

5 THE COURT: Before going home,  
6 did you talk with anybody in the DA's  
7 office, did you talk with any law  
8 enforcement officers or anyone else about  
9 your testimony?

10 THE WITNESS: No, no, sir.

11 BY MR. BOWEN:

12 Q This morning, did you talk to any law  
13 enforcement officers or anybody in the District  
14 Attorney's office before you came back on the witness  
15 stand?

16 A No, sir.

17 Q And you say somebody came and talked to you  
18 while you were lifting weights, is that correct?

19 A Yes, sir.

20 MR. BOWEN: That's all.

21 THE COURT: Mr. Britt?

22 MR. BRITT: No other questions.

23 THE COURT: May Mr. Perry be  
24 released, folks?

25 MR. BOWEN: Yes, sir.

1 THE COURT: Thank you sir.

2 You're free to go.

3 Mr. Britt?

4 MR. BRITT: Your Honor, at this  
5 time we call Terrence Patterson.

6 THE COURT: If you'll place your  
7 left hand on the Bible, raise your right.

8 TERRENCE PATTERSON,  
9 being first duly sworn was examined and testified as  
10 follows:

11 DIRECT EXAMINATION

12 THE COURT: If you'll have a seat  
13 please, sir. If you'll state your full  
14 name for the record.

15 THE WITNESS: Terrence Jardell  
16 Patterson.

17 BY THE COURT:

18 Q Spell your first name.

19 A T E R R E N C E.

20 Q Spell your middle name.

21 A J A R D E L L.

22 Q And your last name?

23 A P A T T E R S O N.

24 Q You're going to need to lean forward, speak  
25 directly into the microphone so all members of the

1 jury and all parties and counsel can hear you.

2 BY MR. BRITT:

3 Q Terrence, where do you live?

4 A I stay at 653 Hillsboro.

5 THE COURT: If you would slow  
6 down a little bit.

7 THE WITNESS: Yes, sir

8 BY MR. BRITT:

9 Q If you'll repeat that one more time.

10 A 653 Hillsboro.

11 Q What city?

12 A Fayetteville.

13 Q How long have you lived there?

14 A I just recently moved.

15 Q Are you in school?

16 A Yes, sir.

17 Q Where do you go to school?

18 A East Memphis Senior High School.

19 Q What grade are you in there?

20 A 12th grade.

21 Q Terrence, back in July of 1993, did you  
22 know Xavion Perry?

23 A Yes, sir, I did.

24 Q Did you live in the same neighborhood as  
25 Xavion Perry at that time?

1 A Yes, sir, I did.

2 Q Did you know his brother Marcus?

3 A Yes, sir, I did.

4 Q Did you know Jamie Moore back in July of  
5 1993?

6 A Yes, sir, I did.

7 Q Now, the latter part of July of 1993, did  
8 you have an occasion to go to Xavion Perry's house  
9 and see the defendant Daniel Green?

10 A Yes, sir, I did.

11 Q When you went to Xavion's house, who other  
12 than -- was Xavion there?

13 A Yes, sir.

14 Q Who other than Xavion and the defendant  
15 were there when you got to the house?

16 A Jamie Moore was present. Xavion's brother,  
17 and young lady by the name of Alicia, and another boy  
18 by the name of Tony.

19 Q Do you recall approximately what part of  
20 the time or time of the day you went to Xavion's?

21 A It was around, say, 2:00.

22 Q And when you saw Daniel Green at Xavion's  
23 house, was he carrying anything?

24 A He had a video camera.

25 Q And there at Xavion's house, did you have

1 any conversation or overhear any conversation that  
2 involved Jamie Moore?

3 A Jamie -- Jamie and Marcus were discussing  
4 about making a video with the video camera.

5 MR. BOWEN: Object.

6 THE COURT: For what purposes is  
7 it being offered?

8 MR. BRITT: To explain his  
9 subsequent conduct.

10 THE COURT: Do you want to be  
11 heard?

12 MR. BOWEN: Request instruction.

13 THE COURT: Members of the jury,  
14 matters now being elicited from the witness  
15 before you, Mr. Patterson, as to statements  
16 he contends were made to him by others are  
17 not being offered for the truth of the  
18 matters asserted but are being offered and  
19 received for the limited purposes of  
20 explaining the subsequent conduct of this  
21 witness, Mr. Patterson. And you may  
22 consider this evidence for that limited  
23 purposes and for no other purpose.

24 Anything further?

25 BY MR. BRITT:

1 Q You said that you overheard Jamie and  
2 Marcus talking?

3 A Yes, sir.

4 Q What were they talking about?

5 A About making a video.

6 Q And after they had that conversation, did  
7 you and other people leave and go anywhere?

8 A Yes, sir.

9 Q Who left and where did you go?

10 A Xavion, Marcus, me, Alicia, Tony, Daniel,  
11 and Jamie, we all went to Fayetteville State  
12 University.

13 Q When you got to -- did Daniel Green have  
14 the video camera when you left Xavion's house?

15 A Yes, sir he did.

16 Q Did Daniel Green carry the video camera to  
17 Fayetteville State University?

18 A Yes, sir, he did.

19 Q When you got to Fayetteville State, what  
20 happened?

21 A We entered the boys gym which was being  
22 worked on at the time. And they just settled down  
23 and began to make a video.

24 Q Who was operating the video camera?

25 A Xavion.

1           Q       And while this video was being made, what  
2 exactly was each person doing?

3           A       Each one as rapping in the video, and there  
4 was some people in the background just dancing.

5           Q       Now, after you made this video at  
6 Fayetteville State, where did you go and who else  
7 went with you?

8           A       Well, all of us left the gym and we walked  
9 back to Seabrook Park which is across the street from  
10 Fayetteville State University for a few minutes, then  
11 went to Xavion's -- Marcus's girlfriend's house.

12          Q       At any point did you attempt to watch the  
13 video that you made at Fayetteville State?

14          A       We attempted to watch the video at  
15 Marcus -- Marcus and Xavion's girlfriend's house, and  
16 things didn't work right with the VCR so we left.

17          Q       Where did you go from there?

18          A       We went back to Xavion's house.

19          Q       When you went to Xavion's house, who went  
20 with you there?

21          A       It was all the parties that left from  
22 Fayetteville State, Marcus, Xavion, me, Alicia, Tony,  
23 Daniel, Jamie.

24          Q       Did you ever go to an area behind the  
25 Suburban Mart?

1           A       At Xavion's house, they decided to go up to  
2 Suburban Mart, which is an area off Murchison Road to  
3 make a video, but I didn't go with them at the time.

4           Q       After they left to go to the area near the  
5 Suburban Mart, did you see any of them again?

6           A       They all returned back to the house later  
7 on.

8           Q       When you say they all returned back to the  
9 house, specifically, Marcus, Xavion, Jamie, Daniel,  
10 and one of the girls?

11          A       Yes, sir.

12          Q       Now, when that group returned to Xavion's  
13 house, what happened at that point?

14          A       Everyone just was just sitting around the  
15 house and they were filming and stuff, just around  
16 the house while everyone was just hanging out.

17          Q       Now, while you were around Daniel Green  
18 that day, did you ever notice any kind of watch he  
19 was wearing?

20          A       I happened to notice a gold watch that he  
21 had, it had some type of emblem in it. I wasn't  
22 sure.

23          Q       What was it that drew your attention to  
24 that watch?

25          A       It was just the way -- it was just a real

1 fancy watch. You know, you're not used to see many  
2 people around with real fancy jewelry.

3 Q Did you notice any type of ring that he was  
4 wearing?

5 A I noticed a gold ring that he had shown to  
6 everyone earlier, and it had displayed NBA  
7 championship on it, and it had diamonds on it.

8 MR. BRITT: May I approach?

9 THE COURT: Yes, sir.

10 BY MR. BRITT:

11 Q I'll show you what has been marked as  
12 State's Exhibit Number 3, photograph of a watch. Can  
13 you identify that watch?

14 A This is the watch that I seen that day.

15 Q The watch depicted in State's Exhibit  
16 Number 3 is the watch that you saw on the day that  
17 you met Daniel Green?

18 A Yes, sir.

19 Q Is that the watch that you saw Daniel Green  
20 wearing?

21 A Yes, sir.

22 Q I'll hand you now what's been marked as  
23 State's Exhibits Number 4, Number 5, and Number 6,  
24 and ask you to look at those photographs and tell me  
25 if you can identify what is depicted in those

1 photographs?

2 A Just the -- this is the identical -- or  
3 similar ring that I seen on Mr. Green's finger.

4 Q State's Exhibit 4, 5 and 6 are photographs  
5 of a gold ring?

6 A Yes, sir.

7 Q And taken from various -- photographs  
8 depict one side -- State's Exhibit 4 depicts one side  
9 of that ring?

10 A Yes, sir.

11 Q And that photograph -- that portion of the  
12 ring has the number 23?

13 MR. BOWEN: Object to all this  
14 leading.

15 THE COURT: It's a 104 matter.  
16 It's a preliminary foundational matter.  
17 The objection is overruled.

18 THE WITNESS: Yes, sir.

19 BY MR. BRITT:

20 Q Has a replica of a basketball and a  
21 basketball net or goal and also the numbers fifteen  
22 dash two, is that correct?

23 A Yes, sir.

24 Q State's Exhibit Number 5 is a photograph of  
25 that gold ring taken from the -- with a view of the

1 stone and what I'll call the head of the ring?

2 A Yes, sir.

3 Q And inscribed on that ring are the words  
4 Chicago Bulls World Champions, 1990, 1991?

5 A Yes, sir.

6 Q Also depicted in that photograph is a red  
7 stone, centered in that ring, with a gold bull head  
8 emblem in it?

9 A Yes, sir.

10 Q And surrounding that red stone are a series  
11 of diamonds?

12 A Yes, sir.

13 Q State's Exhibit Number 6 is another  
14 photograph of that same ring showing the opposite  
15 side from what is depicted in State's Exhibit Number  
16 4, and inscribed there are the words thanks, then the  
17 initials MJ, is that correct?

18 A Yes, sir.

19 Q Also there is depicted there a basketball?

20 A Yes, sir.

21 Q And then the numbers 61 dash 21, is that  
22 correct?

23 A Yes, sir.

24 Q The ring depicted in State's Exhibits 4, 5,  
25 and 6, who if anyone have you ever seen with that

1 ring?

2 A I seen the defendannt, Daniel Green, with  
3 it.

4 THE COURT: Sir, if you like some  
5 water, the pitcher is right there.

6 THE WITNESS: Thank you, sir.

7 BY MR. BRITT:

8 Q Terrence, do you recall talking with Daniel  
9 Green or anything that Daniel Green said to you at  
10 the time he showed you the ring?

11 A He mentioned that, you know, it was a rare  
12 item, you wouldn't find it anywhere else around here.

13 Q At any time did you ask him where he had  
14 gotten that ring?

15 A Yes, I did.

16 Q And did he tell you where he had gotten  
17 it?

18 MR. BOWEN: Object.

19 THE WITNESS: No, he didn't.

20 THE COURT: Sir?

21 MR. BOWEN: Object.

22 THE COURT: Overruled.

23 BY MR. BRITT:

24 Q Did he tell you where he had gotten that  
25 ring?

1 A No, sir, he didn't.

2 Q Now, did you spend the night at Perry's  
3 that night?

4 A Yes, sir, I did.

5 Q Daniel Green spent the night there?

6 A Yes, sir.

7 Q The next morning, how long after you woke  
8 up, how long did you stay at the Perry's house?

9 A Roughly about five minutes.

10 Q And when you left, did anyone leave with  
11 you?

12 A Daniel Green left and Jamie, Jamie Moore  
13 was there that morning, and we left the house.

14 Q And when the three of you left, did you all  
15 go off together or did you split up?

16 A We split up, and they went their separate  
17 ways, and I went about mine.

18 Q Now, while you were with Daniel Green, did  
19 he ever talk about a car?

20 A Yes, sir, he did.

21 Q And did he tell you -- what kind of car did  
22 he talk about?

23 A He mentioned a Lexus that was a friend of  
24 his.

25 THE COURT: I'm sorry, can you

1 explain what you mean?

2 THE WITNESS: We were discussing  
3 going somewhere, and you know, no one had  
4 no means of transportation. We mentioned  
5 going somewhere and no one had no means of  
6 transportation, and he mentioned that he  
7 had a car that belonged to a friend of his,  
8 which was a Lexus.

9 BY MR. BRITT:

10 Q Did he tell you where that car was?

11 A No, sir, he didn't.

12 Q Did he ever offer to take you anywhere or  
13 to drive that car?

14 A No, sir, he didn't.

15 Q Did you ever see that car?

16 A No, sir, I didn't.

17 Q And after you left the Perry's house that  
18 morning with Jamie and Daniel Green, you split up,  
19 did you ever have any contact again with Daniel  
20 Green?

21 A No, sir, I did not.

22 MR. BRITT: Thank you. I don't  
23 have any other questions.

24 THE COURT: Any  
25 cross-examination?

1 MR. BOWEN: Yes, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. BOWEN:

4 Q Mr. Patterson, you were with Mr. Green on  
5 the day that you saw him, from approximately what  
6 time did you first see him?

7 A I seen him roughly around 2:00 p.m. that  
8 afternoon.

9 Q Then as I understand it, he spent the night  
10 at the Perry's house?

11 A Yes, sir.

12 Q Did you also spend the night there?

13 A Yes, sir.

14 Q And then Mr. Green left the following day?

15 A Yes, sir.

16 Q Can you give us some idea when he left?

17 A It was roughly about 8:00 a.m. that  
18 morning.

19 Q Now, except for a short time when he went  
20 with some other folks, he was with you that whole  
21 time, wasn't he?

22 A Yes, sir.

23 Q All right. How long would you say he was  
24 away from you during that time from the time he got  
25 there until the time he left?

1           A       Roughly 30 minutes at the most.

2           Q       Now, during that time, you say that you saw  
3 him with a ring?

4           A       Yes, sir.

5           Q       And it is the same ring that you have just  
6 identified through the photographs for the District  
7 Attorney, is that correct?

8           A       Yes, sir.

9           Q       And you're sure that that ring, the one  
10 that you saw on the day in question, had diamonds on  
11 it?

12          A       Yes, sir.

13          Q       And you're sure that that ring which you  
14 saw on the day in question was gold in color?

15          A       Yes, sir.

16          Q       And you never saw another ring but that  
17 one?

18          A       No, sir, I did not.

19          Q       And you say that that is the ring that you  
20 saw Daniel show to the other persons that were with  
21 you all that day, is that right?

22          A       Yes, sir.

23          Q       Now, for the record, please name those  
24 persons that you saw Daniel Green show that gold ring  
25 with diamonds to.

1           A     Xavion Perry, Tony, and Alicia.

2           Q     All right.  Who's Tony, if you know?

3           A     I don't know him really personally.

4           Q     Do you know Alicia's last name?

5           A     No, sir, I do not.

6           Q     Now, those were the people to whom  
7 Mr. Green made the remarks about not seeing a ring  
8 like that around?

9                         MR. BRITT:  Objection.

10                        THE COURT:  It's  
11                        cross-examination.  He's asking you was  
12                        that statement according to your testimony  
13                        made by the defendant to those named people  
14                        or to you or others.

15                        THE WITNESS:  Yes, sir.  He made  
16                        that statement to the people.

17 BY MR. BOWEN:

18           Q     To everybody that you've just named,  
19 including yourself?

20           A     Yes, sir.

21           Q     That is at a time when he was showing them  
22 the gold ring with diamonds that you've just  
23 identified through the photographs to the prosecutor?

24           A     Yes, sir.

25           Q     You never saw any other ring but that one,

1 is that correct?

2 A No, sir, I did not.

3 Q Now, you say that Mr. Green mentioned that  
4 a -- that he was driving a friend's car, is that  
5 correct?

6 A Yes, sir.

7 Q He did not name that friend, did he?

8 A No, sir, he did not.

9 Q However, he made the statement that he did  
10 not want to hear his friend's mouth --

11 MR. BRITT: Objection.

12 MR. BOWEN: Is that correct?

13 THE COURT: Do you want to be  
14 heard?

15 MR. BRITT: It's hearsay. Yes,  
16 sir, I would like to be heard.

17 THE COURT: Ladies and gentlemen,  
18 there's a matter of law the Court must take  
19 up. Don't worry or speculate about what  
20 takes place in the courtroom in your  
21 absence. If you will please step to the  
22 jury room.

23 (Jury out at 9:50 a.m.)

24 THE COURT: What's the basis of  
25 the objection?

1 MR. BRITT: Hearsay.

2 THE COURT: State elicited from  
3 the witness on direct examination comments  
4 which the State contends were made by the  
5 defendant to this witness about a red  
6 Lexus.

7 MR. BRITT: Yes, sir.

8 THE COURT: State elicited on  
9 direct examination from this witness that  
10 according to this witness's testimony,  
11 Mr. Green said that a friend had a red  
12 Lexus.

13 MR. BRITT: Testimony that  
14 Mr. Green had a friend's red Lexus.

15 THE COURT: Or words to that  
16 effect, I apologize.

17 MR. BRITT: Yes.

18 THE COURT: This is a follow-up  
19 on that.

20 MR. BRITT: It's not an admission  
21 being offered by a party opponent.

22 THE COURT: That word "admission"  
23 is construed very broadly. There are often  
24 instances where a purported exculpatory  
25 statement is offered by the State on the

1 grounds that it constitutes an admission  
2 because the State's is in possession of  
3 other evidence which would contradict that  
4 statement.

5 MR. BRITT: Not necessarily to  
6 the -- the statement that was elicited from  
7 Mr. Patterson was a prior inconsistent  
8 statement as it relates to the defense'  
9 explanation to other individuals as to how  
10 he came to the car. All that's before the  
11 jury are statements that the defendant  
12 said, according to Jamie Moore, he got the  
13 car by trading two rocks of crack cocaine  
14 for, that he got it from somewhere in South  
15 Carolina, that it came from somewhere near  
16 Myrtle Beach, and now another inconsistent  
17 statement that it belonged to a friend.

18 THE COURT: So your position is  
19 that while on the face of it, at least with  
20 regard to these charges, the statement is  
21 exculpatory it's admissible as an admission  
22 because of the inconsistency?

23 MR. BRITT: Yes, sir.

24 THE COURT: They are entitled to  
25 get in the rest of it. The State opened

1 the door on direct examination. The  
2 objection is overruled. Exception is noted  
3 for the record. Bring the jury back in.

4 (Jury in at 9:52 a.m.)

5 THE COURT: The objection is  
6 overruled, exception is noted for the  
7 record. You may repeat or rephrase your  
8 question, Mr. Bowen.

9 MR. BOWEN: Thank you, Your  
10 Honor.

11 BY MR. BOWEN:

12 Q Mr. Patterson, you recall Mr. Green stating  
13 to you with reference to the red Lexus that he was  
14 driving a friend's car which was a Lexus that he  
15 would have driven but he did not want to hear his  
16 friend's mouth, was that the complete statement?

17 A Yes, sir.

18 Q And in fact, that was the statement that  
19 you reported to police officers who interviewed you  
20 sometime along about the 22nd of September of 1993,  
21 shortly after this happened, is that correct?

22 A Yes, sir.

23 Q And in fact, you told Officer Heffney, the  
24 gentleman who is sitting here closest to us at the  
25 table, is that correct?

1           A     Yes, sir.

2           Q     Now, did you also identify for Mr. Heffney  
3 at that time the specific ring that you saw that you  
4 saw Mr. Green display?

5           A     Could you repeat the question?

6           Q     Did you identify for Mr. Heffney the ring  
7 or did you describe the ring to Mr. Heffney?

8           A     Yes, sir.

9           Q     And you described it to Mr. Heffney as a  
10 gold ring with diamonds, is that correct?

11          A     Yes, sir.

12          Q     Now, let me ask you, when you were talking  
13 about earlier that ring was shown to some of the  
14 folks that you were with that day, in addition to the  
15 ones that you've named, was a person named Pamela  
16 there when the ring was shown by Daniel Green?

17          A     No, sir.

18          Q     And was Marcus Perry there when the ring  
19 was shown by Daniel Green?

20          A     He was present at the house, but he wasn't  
21 around us at the time.

22          Q     Do you know someone named Pamela?

23          A     Yes, sir.

24          Q     What is her last name?

25          A     Perry.

1 Q Okay. Was Pamela with you during any part  
2 of the day?

3 A Later that night.

4 Q Did you see Pamela leave with Daniel Green  
5 and others to go to the grill?

6 A No, sir.

7 Q Now, you talked not only to Mr. Heffney,  
8 but you also talked to an investigator for the  
9 defense, did you not, the gentleman sitting to my  
10 right here, do you remember?

11 A Yes, sir, I did.

12 Q And to both of those persons you told that  
13 you never saw a key to any car much less a Lexus in  
14 Daniel Green's possession, is that true?

15 A No, sir, I don't recall.

16 THE COURT: I'm sorry, is it that  
17 you don't recall making the statement or  
18 you don't recall seeing the key as  
19 described by Mr. Bowen's questions?

20 THE WITNESS: I don't recall  
21 altogether. I don't recall period.

22 THE COURT: We need to clarify, I  
23 apologize. I'm sorry if I confused you.  
24 The question is do you recall seeing a key  
25 as he has described it.

1 THE WITNESS: No, sir.

2 THE COURT: Do you recall making  
3 a statement to someone that you never saw  
4 such a key?

5 THE WITNESS: Yes, sir.

6 MR. BOWEN: Okay.

7 BY MR. BOWEN:

8 Q Now, neither did you ever see a car of any  
9 kind operated by Mr. Green, did you?

10 A No, sir.

11 Q When was your birthday that year, when is  
12 your birthday each year?

13 A July the 20th.

14 Q And you related for the officers the date  
15 that you thought this happened by tying it to your  
16 birthday, didn't you?

17 A Yes, sir.

18 Q And by tying it to your birthday, when did  
19 you tell the officers that all these things happened  
20 that you've testified to here today?

21 A Roughly two to three days after my  
22 birthday.

23 Q And is that when you recall best to your  
24 recollection that it happened, two or three days  
25 after your birthday?

1 A Yes, sir.

2 Q Birthday being on the 20th of July?

3 A Yes, sir.

4 MR. BOWEN: That's all, Your  
5 Honor.

6 THE COURT: Anything further.

7 MR. BRITT: Yes, sir.

8 REDIRECT EXAMINATION

9 BY MR. BRITT:

10 Q Terrence, you had an opportunity to watch  
11 the video that all of you made at Fayetteville State?

12 A Yes, sir.

13 Q And you watched it the very night that it  
14 was made?

15 A Yes, sir.

16 Q And since then, you've also had another  
17 opportunity to watch the video?

18 A Yes, sir.

19 Q Now, do you recall a date appearing on the  
20 video?

21 A Yes, sir, I do.

22 Q Do you recall the date that appears in the  
23 video?

24 A Yes, sir.

25 Q And what date appears in the video?

1           A       July 31st.

2           Q       What year?

3           A       1993.

4           Q       And when you watched that video, did you  
5 watch it from beginning to end?

6           A       The first time, the first time we watched  
7 it at the residence that night, it began kind of  
8 awkward, the tape began kind of awkward when we first  
9 started watching it.

10          Q       When you say it begins kind of awkward,  
11 what do you mean?

12          A       When the tape began, when we were watching  
13 it, it was a picture of a carpeted floor in someone's  
14 house, and then jumps to when we were on our way --  
15 when we were at Fayetteville State.

16          Q       Jumps where?

17          A       To when we were at Fayetteville State  
18 University.

19          Q       Now, in the video where you say that it was  
20 a picture of a carpeted floor in someone's house,  
21 during that portion of the video, it shows someone,  
22 doesn't it?

23          A       Yes, sir.

24          Q       And the person that it shows is Daniel  
25 Green?

1           A       Yes, sir.

2           Q       And in this portion of the video, where it  
3 begins, it shows Daniel Green by himself --

4                   MR. BOWEN: Object.

5                   THE COURT: Sustained as to the  
6 leading nature of the question.

7                   MR. BRITT: Yes, sir.

8 BY MR. BRITT:

9           Q       That portion of the video that shows Daniel  
10 Green, does it show anyone else?

11           A       No, sir, doesn't.

12           Q       That portion of the video, can you see a  
13 watch that Daniel Green is wearing?

14                   MR. BOWEN: Object.

15                   THE COURT: Do you want to be --  
16 what's the basis? Rule number or  
17 functional equivalent? What is the basis?

18                   MR. BOWEN: 401, relevance.

19                   THE COURT: Overruled.

20 BY MR. BRITT:

21           Q       Can you see a watch that he's wearing?

22           A       I don't actually recall.

23           Q       Can you see any rings that he has on?

24           A       I can't really recall.

25           Q       And then from that portion of the video it

1 goes to the portion that was made at Fayetteville  
2 State?

3 A Yes, sir.

4 Q And your recollection after watching that  
5 video, does it fairly and accurately show the things  
6 that you took part in that were videoed at  
7 Fayetteville State University?

8 A Yes, sir.

9 MR. BOWEN: Object.

10 THE COURT: Basis?

11 MR. BOWEN: Foundation.

12 THE COURT: Overruled.

13 THE WITNESS: Yes, sir.

14 MR. BRITT: I don't have any  
15 other questions.

16 THE COURT: Mr. Bowen?

17 MR. BOWEN: Yes, sir.

18 RECROSS EXAMINATION

19 BY MR. BOWEN:

20 Q Now, at the time that these events  
21 occurred, you were residing for your schooling at the  
22 boys home at Lake Waccamaw, is that correct?

23 MR. BRITT: Objection.

24 THE COURT: Sustained.

25 MR. BRITT: Move to strike,

1 request instruction.

2 THE COURT: Members of the jury,  
3 you will not consider the last question  
4 asked by Mr. Bowen. That matter is not to  
5 take any part in your deliberations in this  
6 case.

7 Do you want to be heard, sir?

8 MR. BOWEN: Yes, sir.

9 THE COURT: Ladies and gentlemen,  
10 please step to the jury room. Don't worry  
11 or speculate about what takes place in the  
12 courtroom in your absence. We're merely  
13 dealing with a question of law.

14 (Jury out at 10:03 a.m.)

15 THE COURT: Let the record show  
16 the following is being heard in the absence  
17 of the jury.

18 MR. BOWEN: Your Honor, he  
19 testified, as I understand it, he told me  
20 two or three days after his birthday these  
21 incidents took place. Elsewhere in his  
22 testimony, I believe he's handed down the  
23 31st.

24 THE COURT: That's what he said,  
25 what is reflected in the videotape?

1                   MR. BOWEN: Yes, sir. Now that  
2 raises the inference to the jury I think  
3 that these matters occurred on the 31st.  
4 Now to that, we have knowledge that  
5 Mr. Patterson, and I don't have to name the  
6 school where he was, but we do know that he  
7 was at the boys home; that right after his  
8 birthday, I don't know the exact date, but  
9 just after his birthday, he left and went  
10 home. Okay.

11                   Now then, or -- he went to -- Foster  
12 home, is that right? And then before the  
13 31st, he was back again. He was removed  
14 from the Foster home, came back to the  
15 boy's home. So we can show if he's  
16 knowledgeable about the dates and so forth,  
17 if he recalls, we believe we can show,  
18 because we've talked to the people that  
19 have the records there at the boys home,  
20 that he was back in the boys home on the  
21 31st.

22                   THE COURT: Do you have record or  
23 a witness that's going to come in and say  
24 July 31st, 1993, the defendant was  
25 somewhere else?

1                   MR. BOWEN: I believe we can, let  
2 me see. We'll have to subpoena the  
3 records.

4                   THE COURT: I'm asking you, do  
5 you know from your investigation whether  
6 you have any records?

7                   MR. BOWEN: There is a case  
8 worker who had -- social services case  
9 worker, I take it, who had to do with his  
10 placement in the foster home, his removal  
11 from the foster home, placement back into  
12 the boys home, and all this was developed  
13 by Mr. Murray, our investigator.

14                   THE COURT: On the 31st --

15                   MR. BOWEN: We'll be able to show  
16 that he was in the boys home, not out  
17 making a video on the 31st of July, yes,  
18 sir.

19                   MR. BRITT: Well, first off, the  
20 boys home, as I understand it, is a foster  
21 setting, where individuals are either  
22 placed there by the courts or the juvenile  
23 authorities or by their families.

24                   Secondly, he would have been a  
25 juvenile which connotes some expectations

1 of confidentiality in regards to any  
2 regards that are maintained. I certainly  
3 hope that they have an order signed by a  
4 judge authorizing the -- if there's a  
5 social worker with the Department of Social  
6 Services who has released that information  
7 to them.

8 THE COURT: Chapter eight.

9 MR. BRITT: That's what I'm  
10 saying, if they have an order, because  
11 otherwise it's a confidential record. If  
12 there is a worker who's disclosed a  
13 confidential record without authority, then  
14 there's actions that are going to be taken.

15 THE COURT: Well, obviously, my  
16 concern is that I don't want to get into  
17 this only to find out later, oops, we made  
18 a mistake, it doesn't show the 31. I want  
19 that firmed up before I'm going to allow  
20 any question.

21 Now, the fact that he may have been at  
22 a boys home in and of itself I don't think,  
23 without more, without going into any of the  
24 reasons why or any aspects that involve  
25 issues of confidentiality, without more,

1 that's no different from 404(b). It simply  
2 is being offered, if it's being offered for  
3 any legitimate purpose, to show that he  
4 could not have been present in Fayetteville  
5 at Fayetteville State or elsewhere in  
6 Fayetteville because records show he was  
7 elsewhere, if that's what it's being  
8 offered for.

9 MR. BRITT: But that wasn't the  
10 question. The question was, you were in  
11 school at the boys home.

12 MR. BOWEN: That's a foundation.

13 THE COURT: I mean, that mere  
14 mention of boys home in my view is no  
15 different from under 404(b) saying that  
16 we've got evidence that you committed  
17 another crime. Now, don't take this  
18 evidence to show that this is a bad person,  
19 but consider it for a legitimate purpose,  
20 that purpose being one of the purposes  
21 enumerated under Rule 404(b).

22 Now, they can establish that he was  
23 elsewhere, and if in establishing that it  
24 shows that he was at a boys home, nothing  
25 else, then they are entitled to do that in

1 my view.

2 MR. THOMPSON: Nobody is  
3 suggesting that he committed a crime --

4 MR. BRITT: Well --

5 THE COURT: The danger in this  
6 kind of evidence, the danger in 404(b)  
7 evidence, the danger in 608 evidence to  
8 some extent is the inferences that might  
9 arise and the danger that it will be used  
10 for an improper purpose. That's his  
11 concern.

12 MR. BOWEN: I don't mind asking  
13 him was he in school --

14 THE COURT: All I'm asking is  
15 before the question is asked, ascertain  
16 that you have a witness or a record showing  
17 he was there.

18 MR. BOWEN: Well, I think --  
19 we've talked a lot about good faith basis.  
20 Here's what I've got. Investigator Murray  
21 says he went and he talked to this man's  
22 case worker.

23 I agree with Mr. Britt, I've gotten --  
24 sir?

25 Mr. Murray has talked to Terrence

1 Patterson before. This had to occur by the  
2 rules in the presence of the case worker.  
3 Now, the other issues about court orders  
4 and things like that, I think perhaps that  
5 was incumbent upon the institutes to  
6 require if one was necessary.

7 In any case, under the rules, our  
8 investigator upon request is allowed to  
9 talk to him. Okay. Now, had there been a  
10 prior court order, we certainly would have  
11 gotten one, could have. Now --

12 THE COURT: How are you going to  
13 prove that he was there?

14 MR. BOWEN: How am I going to  
15 prove --

16 THE COURT: Say for example, the  
17 witness says, no, that that's not so, I was  
18 not there on the 31st, how are you going to  
19 impeach that testimony?

20 MR. BOWEN: My understanding is  
21 there are records, the case worker knows  
22 when he picked --

23 THE COURT: His point is, those  
24 records are privileged.

25 MR. BOWEN: If we get into --

1 first of all, the case worker has talked to  
2 us before. I think Mr. Britt is right. I  
3 think there would be an order requiring  
4 it. I think what we now know we can make a  
5 good faith showing, and it may very well be  
6 this young man will recall where he was.

7 THE COURT: What rule of evidence  
8 are you asking this question under?

9 MR. BOWEN: Well, we think it is  
10 impeachment because he has talked about the  
11 date in the video.

12 THE COURT: What rule of  
13 evidence, Mr. Bowen?

14 MR. THOMPSON: 609.

15 THE COURT: Can't be 609, doesn't  
16 involve a conviction.

17 MR. THOMPSON: 611, credibility,  
18 Your Honor, goes to credibility and  
19 impeachment.

20 MR. BRITT: How does the fact  
21 that he may have been at the boys home go  
22 to credibility?

23 MR. THOMPSON: If it shows a  
24 different date, that's how it goes to  
25 credibility.

1                   MR. BOWEN: He can't be making a  
2 video on the 31st day of July if he's at  
3 the boys home.

4                   THE COURT: What does 608-B say?

5                   MR. BOWEN: This is not to  
6 establish -- the spirit of 608-B, I  
7 believe, is to show a specific instance of  
8 conduct, to show some kind of character  
9 flaw or something of that nature.

10                  THE COURT: No, not to show some  
11 kind of character flaw. What does 608-B  
12 say about extrinsic evidence?

13                  The rule, read it, somebody, please.

14                  MR. BOWEN: Judge, we get back  
15 to --

16                  THE COURT: Have a seat,  
17 Mr. Bowen. Read 608-B into the record.

18                  MR. THOMPSON: Specific instances  
19 of the conduct of a witness for the  
20 purposes of attacking or supporting his  
21 credibility, other than conviction of a  
22 crime as provided in Rule 609, cannot be  
23 proved by extrinsic evidence. They may,  
24 however, in the discretion of the Court,  
25 provide it for truthfulness or

1 untruthfulness.

2 (Reading from document ...)

3 THE COURT: That's my point,  
4 folks. My point is, I don't mean to cut  
5 anybody off, I need to know -- when a  
6 person seeks to offer evidence, that person  
7 is called the proponent of the evidence.  
8 The proponent of the evidence has to make a  
9 threshold showing that the evidence is  
10 admissible, that it's relevant and  
11 admissible under the Rule of Evidence.

12 What rule of evidence are you  
13 contending this question is permissible  
14 under? That's my question, folks.

15 MR. THOMPSON: I thought, Your  
16 Honor, I've answered that.

17 THE COURT: You're not relying on  
18 608-B, because I heard you say 608 at one  
19 point. That's what I'm asking. You're  
20 relying on 611-B, is that accurate?

21 MR. THOMPSON: Yes, sir.

22 THE COURT: That's the only rule  
23 of evidence that you're allowing under --  
24 or offering it under? See, folks, what  
25 you're --

1                   MR. THOMPSON: 611-B, a witness  
2                   may be cross-examined on any matter  
3                   relevant to the issue in this case,  
4                   including credibility.

5                   THE COURT: That's what I -- my  
6                   point was, folks, when you make an offer or  
7                   proffer, you got to be prepared to support  
8                   it by saying I'm offering it under this  
9                   rule, so that I know what context it's in.  
10                  You can't throw it out and say, Judge, find  
11                  one that fits.

12                  Make the proffer under a specific  
13                  rule.

14                  MR. THOMPSON: I said 608 and  
15                  611.

16                  THE COURT: I understand.

17                  MR. THOMPSON: If 608 is not the  
18                  proper rule, then 611. And I mean, you  
19                  know, it's your call. But that's what  
20                  we're offering under. Not under 608; 611  
21                  is where I'm offering.

22                  THE COURT: Do you want to be  
23                  heard, Mr. Britt?

24                  MR. BRITT: Yes, sir, because  
25                  earlier he specifically said he's offering

1           it for purposes of credibility. Now, how  
2           does being at the boys home relate to his  
3           credibility, his truthfulness or his  
4           untruthfulness?

5                       MR. THOMPSON: I don't --

6                       THE COURT: He's talking to me.

7                       MR. THOMPSON: Yes, sir.

8                       THE COURT: Because it related to  
9           his testimony as given. His testimony as  
10          given was that these events occurred during  
11          a certain time frame. They're attempting  
12          to establish that it did not occur during  
13          that time frame. Now, what they may  
14          establish coincidentally is that it ties  
15          closer to the 22nd, 23rd of July as opposed  
16          to the 31st, but that's their call.

17                      MR. BRITT: Yes, sir. There's  
18                      already testimony before this Court from  
19                      two other witnesses who were involved with  
20                      that video that --

21                      THE COURT: They are entitled to  
22                      contradict that evidence if they want to.  
23                      My concern is what rule of evidence are you  
24                      relying on, because I have to know whether  
25                      or not extrinsic evidence may be a

1 possibility, and if so, if so, is that  
2 admissible, and I have to know whether it  
3 involves any issues of confidentiality or  
4 issues of juvenile statutory provisions.  
5 That's what I have to do.

6 You're offering it only under 611-B,  
7 is that accurate?

8 MR. THOMPSON: Yes, sir.

9 THE COURT: Then what question on  
10 voir dire -- put the question to the jury  
11 so that I can rule -- or the witness so I  
12 can rule on it accordingly.

13 BY MR. BOWEN:

14 Q Mr. Patterson, you recall being out -- you  
15 live in Fayetteville normally, right?

16 A Yes, sir.

17 Q But now, there were times right about your  
18 birthday, 1993, that you were living, going to school  
19 elsewhere, is that right?

20 A Yes, sir.

21 Q And that was in the Whiteville area of the  
22 State of North Carolina, correct?

23 A Yes, sir.

24 Q Now, do you recall sometime just after your  
25 birthday, 1993, that you left the area of your

1 Whiteville school and went somewhere else to live?

2 A Yes, sir.

3 Q Now, what community -- don't name any  
4 names, but what community did you go to live in?

5 A I lived in the Foxfire area of  
6 Fayetteville.

7 Q And that's how far from your home?

8 A Oh, about 15 minutes.

9 Q All right. Now, during the time that you  
10 were living in the Foxfire area, did you live  
11 exclusively there or did you ever go home part of the  
12 time?

13 A I went to my mother's house for my  
14 birthday, day after my birthday, I went to my  
15 mother's house.

16 Q But Daniel Green was never there when you  
17 went there for your birthday, was he?

18 A The day I met him was like the day I came  
19 to my mother's house for my birthday.

20 Q Was it the very day that you went for your  
21 birthday?

22 A Yeah.

23 Q All right. So that would have been July  
24 the 20th?

25 A Oh, I went to my mother's house the day

1 after my birthday.

2 Q The day after your birthday, that was the  
3 21st?

4 A 21st.

5 Q Is that the day that you first met Daniel  
6 Green?

7 A That's the first -- yes, that's the first  
8 time I seen him.

9 Q When you first saw him there at your  
10 mother's house, is that the day that he had a ring?

11 A It wasn't at my mother's house; at Perry's  
12 house. And that is when he had the ring.

13 Q All right. So then --

14 THE COURT: So for clarification  
15 purposes, are you saying that all occurred  
16 on the 21st of July?

17 THE WITNESS: Yes.

18 THE COURT: Based on your  
19 recollection?

20 THE WITNESS: Based on my  
21 recollection, it was on the 21st.

22 BY MR. BOWEN:

23 Q Also, that would have been the same day  
24 that this videotape that you've mentioned was made?

25 A Yes.

1           Q       Is that correct? Because you made the  
2 videotape the day before Daniel spent the night, not  
3 the day after he spent the night, is that correct?

4           A       Right.

5           Q       Now, did you ever see Daniel Green at your  
6 mother's house or anywhere else other than those two  
7 days between which he spent the night?

8           A       No.

9           Q       Now, then, sometime after the -- sometime  
10 after the 21st, did there come a time when you left  
11 the Foxfire area and went back to the Whiteville  
12 area?

13          A       About a week later.

14          Q       All right. And so then, a week later, that  
15 would put it approximately the 28th of July, is that  
16 right?

17          A       I don't know. I don't know. You tell me.

18          Q       Would it be fair to say, if you know, that  
19 you were living in the Whiteville area going to  
20 school on or about the 31st day of July of 1993?

21          A       I can't recall.

22          Q       Okay. But you do know that sometime a week  
23 or so after your birthday, you went back to the  
24 Whiteville area?

25          A       Yeah.

1 Q Now, that school that you were at, it was a  
2 boarding type school, right?

3 A What you mean by a school I was at?

4 Q You didn't go back and forth from your home  
5 to that school; you lived where you went to school?

6 A Yeah.

7 Q Right?

8 A Yeah.

9 Q And you lived there for some period of time  
10 after you went back after your birthday, 1993,  
11 correct?

12 A Yeah.

13 Q When did you ever come from the Whiteville  
14 area back to live at your mother's house, if you did?

15 A I'm saying we had visits where we came back  
16 home.

17 THE COURT: What he is trying to  
18 ask you, after you returned to the school  
19 sometime after your birthday, did you,  
20 following that, come to the Fayetteville  
21 area at any time on or about July 31st,  
22 1993?

23 THE WITNESS: I can't recall.

24 BY MR. BOWEN:

25 Q Well, when you went back to the school in

1 the Whiteville area sometime a week or so after your  
2 birthday, when was the next time that you came home  
3 to Fayetteville to visit, if you recall?

4 A I can't remember.

5 Q Well, did you come home for Thanksgiving,  
6 for example?

7 A Yeah, I was home for Thanksgiving.

8 Q Can you recall coming home in between your  
9 birthday and Thanksgiving?

10 A I don't remember.

11 MR. BOWEN: That's all. That's  
12 our showing.

13 THE COURT: Mr. Britt, anything  
14 you want to ask the witness on voir dire?

15 MR. BRITT: Yes, sir.

16 BY MR. BRITT:

17 Q Mr. Patterson, when the video was made, did  
18 you watch the video the same day it was made?

19 A Yeah.

20 Q And the date appears on the video?

21 A No, not the first time we watched the  
22 video. There was no date on the TV screen. The  
23 second time I seen it is when the date was shown up  
24 on it.

25 Q You're shown in the video?

1 A Yes, I am.

2 MR. BRITT: I don't have any  
3 other questions.

4 THE COURT: How many videos were  
5 made?

6 THE WITNESS: It was one tape.  
7 One tape, just like segments on it from  
8 different days.

9 THE COURT: So all of the matters  
10 that you've testified about occurred, to  
11 the extent that they were videoed, are you  
12 reflected in that video on that one  
13 occasion? You didn't make two videos on  
14 two separate dates?

15 THE WITNESS: No.

16 THE COURT: You didn't make three  
17 videos on three separate dates?

18 THE WITNESS: No.

19 THE COURT: You made one video,  
20 everything shown on that video all happened  
21 on one date?

22 THE WITNESS: Yeah.

23 THE COURT: Anything further,  
24 folks?

25 All right. Under 611-B they are

1 entitled to explore this for the purposes  
2 of credibility. You are entitled to come  
3 back on rehabilitation, you can establish  
4 that the testimony given is based on best  
5 recollection. It's for the jury to decide  
6 which of those conflicting, or potentially  
7 conflicting matters is credible. But they  
8 are entitled to do it under 611-B.

9           Folks, that's the way I'm going to  
10 ask you to do it. I thought I made that  
11 clear at the outset. If you are the  
12 proponents of evidence, you need to know  
13 the Rules of Evidence. If you are the  
14 opponent of evidence, you need to know what  
15 rules apply. That's the way -- we have had  
16 the rules codified for a number of years  
17 now, and I still get looks of amazement  
18 when I say, what rules of evidence are you  
19 relying on. Am I supposed to? Yes, you  
20 are.

21           Bring the jury back in.

22                           (Jury in at 10:21 a.m.)

23           THE COURT: The objection is  
24 overruled. You may rephrase or repeat your  
25 question.

1 BY MR. BOWEN:

2 Q Mr. Patterson, back along about your  
3 birthday of 1993, were you going to school out of  
4 town, that is, away from the Fayetteville community?

5 A Yes, sir, I was.

6 Q And what area of the state were you going  
7 to school?

8 A I was in the Whiteville area.

9 Q And that school that you were going to, was  
10 that a boarding school where you stayed or a day  
11 school where you went back and forth to your home?

12 A It was a school where I stayed.

13 Q Now, can you tell us when your birthday was  
14 in 1993?

15 A July the 20th.

16 Q And when you came to try to recall for the  
17 officers when you had seen Daniel Green, was there  
18 any event in your life such as a birthday that you  
19 tied it to?

20 A Yeah.

21 Q And what event was that?

22 A I'm saying when I first met him it was like  
23 the day after my birthday.

24 Q Okay. And where were you the day after  
25 your birthday?

1           A       I was at my mother's house in Fayetteville.

2           Q       Now, that then would have been the 21st day  
3 of July of 1993, correct?

4           A       Yeah.

5           Q       The day after your birthday -- was any kind  
6 of celebration or anything going on with reference to  
7 your birthday?

8           A       No.

9           Q       Then had you ever seen Mr. Green before  
10 that day, the 21st of July?

11          A       No.

12          Q       And was it the 21st of July that the  
13 videotape that you've talked about was made?

14          A       Approximately, yes.

15          Q       In other words, you said that Mr. Green was  
16 around that day, the day after your birthday,  
17 correct?

18          A       Yeah.

19          Q       That he spent the night that night,  
20 correct?

21          A       Yeah.

22          Q       He was around some the following day and  
23 then he left, is that true?

24          A       Whoa, whoa, can you repeat that?

25          Q       You say that Mr. Green was there on the

1 21st, the day after your birthday, correct?

2 A Yes.

3 Q Then the night of the 21st, he spent the  
4 night?

5 A Yes.

6 Q At the Perry's house, is that correct?

7 A Yes.

8 Q And you spent the night at the Perry's  
9 house, am I correct on that?

10 A Yes.

11 Q Then the following day, the 22nd, Mr. Green  
12 was around for a while, and then he left, is that  
13 true?

14 A He left early that morning.

15 Q Left early that morning?

16 A Yes.

17 Q And you didn't see Mr. Green anymore after  
18 that?

19 A No.

20 Q There was never another video made where  
21 you were in Mr. Green's presence, was it?

22 A No.

23 Q Now then, you testified that the videotape,  
24 the first time that you saw it --

25 MR. BRITT: Objection.

1 MR. BOWEN: Strike that.

2 BY MR. BOWEN:

3 Q You say that you saw the videotape twice,  
4 is that correct?

5 A Yeah.

6 Q The first time that you saw the videotape  
7 was in the Fayetteville community, correct?

8 A Yeah.

9 Q And I believe you testified that you first  
10 tried to play it at somebody's house and the TV  
11 wouldn't work?

12 A Yeah.

13 Q Whose house was that?

14 A That was at Marcus and his girlfriend's  
15 house.

16 Q Then when it wouldn't work there, you moved  
17 where to view the videotape?

18 A We went back to Xavion's house and they  
19 went on and went up to Suburban and made the video  
20 and we watched it later that night.

21 Q When you watched the video at Xavion's  
22 house, did you see a date reflected on the screen  
23 anywhere on that video?

24 A No.

25 Q Now then, you said that you saw this tape

1 again at a later time, correct?

2 A Yeah.

3 Q And describe to the jury the circumstances  
4 under which you saw the tape later and approximately  
5 when it was.

6 A I saw it on the -- like the 17th, like the  
7 17th of this month was the last time I saw it, in the  
8 DA's office.

9 Q Who was operating the machinery to show it  
10 to you?

11 A We operate the tape by itself.

12 Q When you played the tape in the District  
13 Attorney's office, state whether at that time you saw  
14 a date appear on the screen of this video.

15 A Yes, I did.

16 Q And what date was that?

17 A July 31st.

18 Q Okay. Now, had July the 31st appeared  
19 anywhere on the screen when you played that tape the  
20 first time in Fayetteville?

21 A No.

22 Q Now then, on the 31st day -- strike that.  
23 After the time that Daniel, that you saw Daniel Green  
24 on or about the 21st or 22nd of July, state whether  
25 or not you returned to the Whiteville area to

1 school.

2 A Yes, I did.

3 Q And approximately when was that to the best  
4 of your recollection following the 21st and 22nd day  
5 of July?

6 A I can't tell you.

7 Q Do you have a best estimate?

8 A No.

9 Q Let me ask you this: Do you recall whether  
10 or not you were back in school in the Whiteville area  
11 on or about the 31st day of July, 1993?

12 A No, I know I wasn't back in school.

13 Q Sir?

14 A I can't remember. I know I wasn't in  
15 school.

16 THE COURT: On what date?

17 THE WITNESS: On the 31st.

18 BY MR. BOWEN:

19 Q But you did not make, or you did not see  
20 made a videotape on the 31st of July, 1993, did you?

21 A No, I did not.

22 MR. BOWEN: That's all, Your  
23 Honor.

24 THE COURT: Anything on redirect,  
25 Mr. Britt?

1 FURTHER REDIRECT EXAMINATION

2 MR. BRITT: May I approach?

3 THE COURT: Yes, sir.

4 BY MR. BRITT:

5 Q Terrence, the ring that you identified in  
6 Exhibit Number 5, did anyone other than Daniel Green  
7 have that ring?

8 A No, sir, he did not.

9 Q And the watch that you've earlier?

10 THE COURT: I apologize for the  
11 interruption. The question was did anyone  
12 else other than Daniel Green have that  
13 ring. Your answer was no, sir, he did  
14 not?

15 THE WITNESS: No, sir.

16 THE COURT: Did anyone have it  
17 other than, according to your testimony,  
18 the defendant?

19 THE WITNESS: No.

20 BY MR. BRITT:

21 Q Did anyone have other than Daniel Green  
22 have the watch that you've identified?

23 A No.

24 Q Did anyone other than Daniel Green talk  
25 about a Lexus automobile?

1 A No.

2 Q And did anyone other than Daniel Green have  
3 the video camera?

4 A No.

5 Q Other than Xavion, did anyone else operate  
6 the video camera?

7 A Yeah.

8 Q Who else operated the video camera?

9 A I did.

10 Q What portion -- at what time did you  
11 operate the video camera, where were you?

12 A We were at Xavion's house.

13 Q Do you recall, Terrence, when you were  
14 using the video camera, whether the date, you could  
15 see the date through the view finder?

16 A I can't remember.

17 MR. BRITT: I don't have any  
18 other questions.

19 THE COURT: Mr. Bowen?

20 FURTHER RECROSS EXAMINATION

21 BY MR. BOWEN:

22 Q So, you were actually operating the video  
23 camera part of the time?

24 A I operated it once.

25 Q And you don't recall a date being present

1 when you operated it in the view camera that you  
2 looked at?

3 A Like I said, I don't remember.

4 Q Don't remember?

5 MR. BOWEN: That's all.

6 MR. BRITT: No other questions.

7 THE COURT: Can the witness be  
8 released folks?

9 MR. BRITT: Yes, sir.

10 THE COURT: Mr. Patterson, you're  
11 free to go.

12 Mr. Britt?

13 MR. BRITT: Your Honor, at this  
14 time we call David Moore.

15 THE COURT: If you'll place your  
16 left hand on the Bible, raise your right,  
17 please.

18 **DAVID A. MOORE,**

19 being first duly sworn was examined and testified as  
20 follows:

21 DIRECT EXAMINATION

22 THE COURT: If you'll take the  
23 witness stand, please. State your full  
24 name for the record, please sir.

25 THE WITNESS: David Andre Moore,

1 Junior.

2 THE COURT: Spell your first  
3 middle and last name.

4 THE WITNESS: D A V I D. A U N D  
5 R E Y. Last name?

6 THE COURT: Yes, sir.

7 THE WITNESS: M O O R E.

8 THE COURT: Mr. Britt.

9 BY MR. BRITT:

10 Q Mr. Moore, where do you live?

11 A 4505 Jade Court, Fayetteville, North  
12 Carolina.

13 Q How are you employed?

14 A Account representative for People's  
15 Security Insurance.

16 Q How long have you worked for them?

17 A Been there since September.

18 Q Prior to that, how were you employed?

19 A I was in the United States Army.

20 Q Where were you stationed?

21 A Fort Bragg.

22 Q How long were you stationed in Fort Bragg,  
23 North Carolina?

24 A Approximately three and a half years.

25 Q What rank did you obtain in the United

1 States Army?

2 A E-5, noncommissioned officer.

3 Q Other than Fort Bragg, were you stationed  
4 anywhere else?

5 A Yes, I was stationed in Germany.

6 Q Approximately how long did you serve in the  
7 United States Army?

8 A Three days shy of seven years.

9 Q While stationed at Fort Bragg North  
10 Carolina, what were your duties and responsibilities?

11 A I was an employ clerk.

12 Q What is your relationship to Daniel Andre  
13 Green?

14 A He's my brother.

15 Q You are the older brother of Jamie Moore as  
16 well?

17 A That I am.

18 THE COURT: Mr. Britt, it appears  
19 we need to take a break.

20 MR. BRITT: All right.

21 THE COURT: Ladies and gentlemen,  
22 it's a little bit early, we may end up  
23 taking a second shorter break this morning  
24 depending on what our situation actually  
25 is. Let me give you fifteen minutes at

1 this time and we will come back somewhere  
2 in the neighborhood of 11:30, 11:45, take  
3 another short break at that time.

4 During this recess, don't -- please  
5 remember it is your duty to abide by all  
6 prior instructions of the Court concerning  
7 your conduct. Everyone else please remain  
8 seated, the members of the jury are excused  
9 at this time until ten until.

10 (Jury out at 10:33 a.m.)

11 THE COURT: Mr. Moore, you may  
12 step down. We're at ease until ten until.

13 THE COURT: Let the record show  
14 all counsel are present, the defendant is  
15 present in open court.

16 Mr. Horne, do we have all members of  
17 the jury secured in the jury room?

18 THE BAILIFF: Yes, sir, they are.

19 THE COURT: State ready?

20 MR. BRITT: One matter before the  
21 jury is brought back in. The State would  
22 be moving to examine Mr. Moore as an  
23 adverse witness.

24 THE COURT: Do you folks want to  
25 be heard?

1                   What rule are you proceeding under?  
2                   611-C.

3                   MR. BRITT:   Yes, and also rule  
4                   43, I believe it is, of the Rules of Civil  
5                   Procedure.

6                   THE COURT:   You folks want to be  
7                   heard?

8                   MR. THOMPSON:  No, sir, Your  
9                   Honor.  I mean, he can under the rules, as  
10                  I understand it, examine him.

11                  THE COURT:   By use of leading  
12                  questions?

13                  MR. THOMPSON:  Yes, sir, that's  
14                  what you said with the other witness.  
15                  Didn't appear to be hostile, but --

16                  THE COURT:   Well, that's why I'm  
17                  asking, what is the basis upon which you're  
18                  proceeding under 611-C?

19                  MR. BRITT:   His relationship to  
20                  the defendant.

21                  THE COURT:   That's been  
22                  established for the record that he is the  
23                  brother of the defendant.  In the  
24                  discretion of the Court, pursuant to 611-C,  
25                  that will be allowed.  Anybody want to be

1 heard further?

2 MR. THOMPSON: No, sir.

3 THE COURT: If you'll bring the  
4 jury back in, please, Mr. Horne.

5 (Jury in at 10:51 a.m.)

6 THE COURT: Mr. Britt, you may  
7 continue, sir.

8 BY MR. BRITT:

9 Q Yes, sir. Mr. Moore, you were stationed at  
10 Fort Bragg, North Carolina July of 1993?

11 A That's correct.

12 Q And your workplace at Fort Bragg was the  
13 Come Center?

14 A That's the Cozcom area.

15 Q And the telephone number for the Cozcom  
16 area at Fort Bragg, North Carolina in July of 1993  
17 was (919) 396-7072, is that correct?

18 A Yes, that was my office number.

19 Q That was your office number?

20 A Yes.

21 Q Now, prior to July the 23rd, 1993, you had  
22 given your office number to your brother Daniel  
23 Green, is that correct?

24 A I'm not sure how he got it.

25 MR. BRITT: May I approach?

1 THE COURT: Yes, sir.

2 BY MR. BRITT:

3 Q I'll show you what has been marked and  
4 admitted as State's Exhibit 56-B. These are the  
5 telephone numbers from James Jordan's cellular  
6 telephone. On July the 23rd, 1993, at 10:47 a.m., a  
7 call was placed to (919) 396-7072. You see that's  
8 reflected on the exhibit?

9 A Yes.

10 Q That's your office number?

11 A Yes.

12 Q You did not know James Jordan --

13 A Actually, my office number should have been  
14 7272.

15 Q You did not know James Raymond Jordan, did  
16 you?

17 A No, I didn't.

18 Q Now, on July the 23rd, 1993, your brother  
19 Daniel Green was not staying in Fayetteville, North  
20 Carolina, was he?

21 A Not to my knowledge.

22 Q Your brother lived at Bob's Landing Mobile  
23 Home Park off of U.S. Highway 74 in Robeson County,  
24 didn't he?

25 A That's to the best of my knowledge.

1 Q Now, you were interviewed by Detective  
2 Captain Art Binder, Detective Jimmy Henley, Detective  
3 Sergeant Don Smith and Detective Ray Woods of the  
4 Cumberland County Sheriff's Department were you not?

5 A I assume that's who they were.

6 Q And that interview took place on August the  
7 14th of 1993?

8 A I don't remember the date.

9 Q The interview that you were involved with  
10 was tape recorded?

11 A One of them was tape recorded.

12 Q Do you recall telling Captain Binder,  
13 Mr. Henley, Mr. Smith, Mr. Wood, that you received a  
14 telephone call from your brother on July the 23rd,  
15 1993?

16 A I honestly don't.

17 Q Do you recall telling them that your  
18 brother came to your house on Sunday, what would have  
19 been July the 25th, 1993?

20 A I can't recall.

21 Q And that he came to your house on the 25th  
22 after you had talked with him on the telephone?

23 A I can't recall.

24 Q Do you recall telling them that when your  
25 brother came to your house he had a red Lexus 400

1 automobile?

2 A I said there was a car there; I didn't say  
3 who had it.

4 Q Larry Demery was with your brother?

5 A That's a fact.

6 Q And the two of them arrived at the same  
7 time?

8 A That's a fact.

9 Q And they arrived with a red Lexus 400  
10 automobile?

11 A It was out there, I assumed they had it.

12 Q Do you recall telling the officers that you  
13 asked your brother where he got the car?

14 A No, I don't.

15 Q Do you recall telling the officers that  
16 your brother said he got it from a crack head?

17 A I do recall it -- that's what you were just  
18 asking me, where he got the car from?

19 Q Yes.

20 A Yes, he did tell me where he got it from,  
21 or where they got it from. What are you reading  
22 from? Are you reading from a statement or reading  
23 from my transcript?

24 THE COURT: Mr. Moore, if you'll  
25 allow him to put the questions to you. If

1           you feel that any question requires an  
2           explanation, you're entitled to explain.

3                   THE WITNESS: I will better  
4           understand where he's coming from if I know  
5           what he's reading from.

6                   THE COURT: Do you understand  
7           what I said?

8                   THE WITNESS: I do.

9   BY MR. BRITT:

10           Q     Do you recall telling your brother that he  
11           needed to get the car away from your house?

12           A     Oh, no doubt.

13           Q     And that's because you knew the car was  
14           stolen, did you not?

15           A     No, I didn't.

16           Q     You never -- your brother didn't have a  
17           car, did he?

18           A     I don't know what he had.

19           Q     Your brother didn't own a car at that time,  
20           did he?

21           A     I don't know.

22           Q     Do you recall telling the officers that he  
23           did not have a car?

24           A     No.

25           Q     That he did not have any means of

1 transportation?

2 A No.

3 THE COURT: Is it that you didn't  
4 tell the officers that or you don't recall  
5 making --

6 THE WITNESS: I don't recall  
7 telling them that. I doubt I would say  
8 anything like that, because I didn't know.

9 BY MR. BRITT:

10 Q Do you recall telling the officers that  
11 your brother had a ring, that you saw him with a  
12 ring?

13 A I recall telling him that I saw a ring, I  
14 didn't say who had it.

15 Q Do you recall telling them that the ring  
16 was silver?

17 A I don't remember what color it was.

18 Q Do you recall telling them that the ring  
19 had a blue stone on it?

20 A I can't recall.

21 Q Do you also recall telling them that your  
22 brother had a wristwatch?

23 A I probably said I saw a wristwatch, I  
24 didn't say who had it.

25 Q Do you recall telling them that the watch

1 had an eagle on it, and I think it had a bull face on  
2 it?

3 A I can't recall.

4 Q You told them that the watch looked to be  
5 silver in color?

6 A I can't recall.

7 Q You also told them about some golf clubs  
8 that you saw in that car?

9 A I do recall some golf clubs.

10 Q And they were in the trunk of the car?

11 A I think.

12 Q You also told the officers that your  
13 brother had a gun, do you recall that?

14 A I didn't say my brother had a gun, I said I  
15 saw a gun.

16 Q Do you recall describing it as a rough  
17 looking gun?

18 A A rusty gun, yes.

19 Q Had that had a long nose?

20 A Pretty much.

21 Q And do you recall telling them that it was  
22 a revolver?

23 A I do recall that.

24 Q A six-shot revolver?

25 A I can't really say what type. I assume it

1 was a six-shot.

2 Q Do you recall telling them at the time that  
3 you saw the gun that it was loaded?

4 A I can't recall.

5 Q Do you recall telling them that the gun was  
6 larger than the .25 that you owned?

7 A I recall them going up and down in numbers  
8 and sizes of guns until he came to the number that he  
9 wanted. That's what I recall.

10 Q Do you recall telling them that you thought  
11 it might be a .38 but you're not sure?

12 A I recall him saying was it possibly that it  
13 was a .38.

14 THE COURT: The question was do  
15 you recall saying that.

16 THE WITNESS: No, I don't. Thank  
17 you, Judge.

18 BY MR. BRITT:

19 Q Do you recall telling them that your  
20 brother was trying to sell things?

21 A No, I don't.

22 Q Do you recall telling them that you weren't  
23 going to buy any of the stuff?

24 A I told them I didn't entertain that type  
25 thing, or nothing of that nature.

1 Q Do you recall telling the officers that you  
2 saw your brother crank the car with a remote control?

3 A No, I don't.

4 Q And that your brother showed you how the  
5 remote control worked?

6 A No, I don't.

7 Q And at the time you saw the car, the car  
8 was in good shape?

9 A Pretty much.

10 Q No windows were broken?

11 A No, sir.

12 Q Sunroof was not broken?

13 A Looked intact.

14 Q And on the Sunday night when your  
15 brother -- your brother and Larry Demery came to your  
16 house, that was about 2:00 or 3:00 in the morning,  
17 wasn't it?

18 A I don't know what night it was they came.

19 Q Do you recall telling the officers they  
20 came there on Sunday night?

21 A I recall telling the officer that I had to  
22 be at work the day before, the next day, so I assumed  
23 it was Sunday night. I don't know.

24 Q You told the officers that you signed back  
25 in on the 21st and you were scheduled to go back on

1 duty the 22nd of July?

2 A I'm not sure.

3 Q And the license plate on the car that your  
4 brother and Demery brought to your house had the  
5 license plate UNC 0023, isn't that correct?

6 A That's correct.

7 Q Now, after they arrived on Sunday, you  
8 introduced them to Rick -- excuse me, Eric Thompson,  
9 did you not?

10 A That's not true.

11 Q Eric Thompson is a friend of yours, isn't  
12 he?

13 A That's true.

14 Q He's a very good friend?

15 A He's a friend.

16 Q Eric Thompson came to your friend's on 26th  
17 of July 1993, didn't he?

18 A I don't know, I wasn't there.

19 Q Eric Thompson did not own a car at the  
20 time, did he?

21 A I don't know.

22 Q Your girlfriend at the time was who?

23 A It's hard to say.

24 Q Girlfriend drove a blue Blazer?

25 A That was my son's mother.

1 Q Drove a blue Blazer?

2 A That's correct.

3 Q And what is her name?

4 A Yvonne Roberta.

5 Q Now, is it your testimony that you went to  
6 report to your duty station on the 26th of July?

7 A I can't say. That was in July of 1993.

8 Q When you went back to Fort Bragg on the  
9 26th of July, the Monday, was the Lexus there when  
10 you reported for duty?

11 MR. BOWEN: Object.

12 THE COURT: The objection is  
13 sustained. The question assumes facts not  
14 in evidence.

15 MR. BRITT: Excuse me.

16 BY MR. BRITT:

17 Q The red Lexus that your brother and Larry  
18 Demery brought to your house, it stayed parked  
19 outside your house that night, didn't it?

20 A No, it did it.

21 Q Where did it go?

22 A I drove it around the corner.

23 Q You drove it?

24 A Yes, I did.

25 Q You saw a cellular telephone in it?

1           A       I guess there was one in there, I can't  
2 remember.

3           Q       And when you drove it, was your brother  
4 with you?

5           A       I can't remember that either.

6           Q       Was Larry Demery with you?

7           A       I don't remember.

8           Q       When you brought the red Lexus back --

9           A       Didn't bring it back.

10          Q       -- where did you park it?

11          A       Left it around in the corner in a  
12 field.

13                   THE COURT:   I'm sorry.

14                   THE WITNESS:  Left it around the  
15 corner in a field, in an empty lot  
16 basically

17 BY MR. BRITT:

18          Q       Why did you do that?

19          A       Because I didn't want it in my yard, didn't  
20 belong to me.

21          Q       At that time you knew it was stolen?

22          A       At that time I knew he had obtained it from  
23 someone, a crack head, he said, and I didn't need it  
24 in my yard.

25          Q       It was a fancy car?

1           A     Pretty much for that neighborhood.

2           Q     Very expensive car?

3           A     Couldn't say, I don't own one.

4           Q     You parked it in a vacant lot?

5           A     Correct.

6           Q     You brought the keys back with you?

7           A     I guess so.

8           Q     Gave the keys to either Daniel or Larry?

9           A     Probably set it on the table, I'm not sure.

10          Q     And then the next morning, did you go to

11   Fort Bragg and report for duty?

12          A     Yes, sir, I went to PT.

13          Q     And approximately what time did you go to

14   PT?

15          A     Probably about 5:45.

16          Q     When you left at 5:45 that morning, was the

17   red Lexus still parked in that vacant lot where you

18   parked it?

19          A     I don't know.

20          Q     Did you go in a different direction?

21          A     No, I went the same way I usually go.

22          Q     Did you ever see the red Lexus when you

23   returned home from Fort Bragg that day?

24          A     Sure didn't.

25          Q     Your brother and Larry Demery were at your

1 trailer when you returned home that day?

2 A I don't remember.

3 Q Now, your brother brought some golf clubs  
4 into your house, didn't?

5 A He probably did.

6 Q You don't recall telling your brother to  
7 get the golf clubs out of your house?

8 A I don't golf, I probably did.

9 Q You don't recall those being the same -- do  
10 you recall those being the same golf clubs that you  
11 had seen in the trunk of that Lexus earlier?

12 A I can't recall.

13 Q Now, you were also interviewed by Captain  
14 Binder on September the 22nd of 1993?

15 A Probably was, I don't remember the date.

16 Q Now, while Daniel was in Fayetteville, you  
17 and your uncle Gary and Daniel and some others went  
18 to White Lake, is that correct?

19 A I do remember going to a lake, yes.

20 Q And you went to White Lake on July the 1st  
21 of -- excuse me, August the 1st of 1993?

22 A I don't remember the date.

23 Q Do you remember Daniel having a video  
24 camera with him?

25 A I can't recall.

1 Q Do you recall using the video camera at  
2 White Lake?

3 A I recall using a camera, I don't know who  
4 it belonged to.

5 Q And you recorded the activities of your  
6 family members there at White Lake?

7 A Probably.

8 Q Now, when you -- while Daniel was visiting  
9 in Fayetteville, you dropped him off on Murchison  
10 Road?

11 A That's correct.

12 Q And that was for him to visit with your  
13 brother and his half brother, Jamie?

14 A I assume.

15 Q You saw Jamie Moore that day when you  
16 dropped him off?

17 A Yes.

18 Q And you dropped him off on Murchison Road  
19 after you had first seen him with the watch, the car,  
20 the golf clubs, and the rings that you had previously  
21 talked with the officers about when it was tape  
22 recorded, wasn't it?

23 A Repeat that?

24 Q When you dropped him off on Murchison Road,  
25 you had already seen Daniel with the watch?

1           A     I had already seen a watch. I didn't see  
2 him with it.

3           Q     You had already seen a ring?

4           A     That's correct.

5           Q     You had already seen this Lexus 400  
6 automobile?

7           A     That's true, too.

8           Q     You had already seen these golf clubs that  
9 were in that Lexus 400?

10          A     That's true.

11          Q     When you dropped him off on Murchison Road,  
12 the car wasn't anywhere around, was it?

13          A     I don't know where the car was.

14          Q     You never saw the car again, did you?

15          A     Didn't care.

16          Q     Do you recall telling them that Daniel had  
17 the video camera with him when he came to  
18 Fayetteville?

19          A     I don't recall.

20          Q     Larry Demery stayed at your house for two  
21 days?

22          A     Not sure.

23          Q     You didn't want Larry Demery at your house?

24          A     I ain't got no problem with that.

25          Q     You told Daniel Larry had to go?

1           A       Probably said they both had to go.

2           Q       And Larry Demery was taken back to  
3   Lumberton?

4           A       I don't know.

5           Q       You did not bring him back to Lumberton?

6           A       I can't recall.

7           Q       Were you aware that Eric Thompson and  
8   Daniel and your brother brought Larry back to Robeson  
9   County?

10          A       I can't recall that either.

11          Q       Were you aware that Eric Thompson took your  
12   brother and Larry Demery to Rick Hales' house?

13          A       I wasn't around, I wouldn't know.

14          Q       Do you know Rick Hales?

15          A       Yes, I do.

16          Q       Do you know where Rick Hales lives?

17          A       No, I don't.

18                   MR. BRITT:   May I approach?

19                   THE COURT:   Yes, sir.

20   BY MR. BRITT:

21          Q       I'm going to show you what's been marked as  
22   State's Exhibit Number 3.  That's the watch that you  
23   saw on July the 25th, 1993, isn't it?

24          A       Not sure.

25          Q       You're not sure?

1           A       No.

2           Q       Did you not previously tell Special Agent  
3 Kim Heffney with the SBI and detective Anthony  
4 Thompson and detective Don Smith that that was the  
5 watch that you saw your brother with when he came to  
6 Fayetteville?

7           A       What date was that?

8           Q       When Mr. Heffney and Mr. Thompson and  
9 Mr. Smith went to your house on Emerald Drive in  
10 Fayetteville, in October of 1995 --

11          A       I never lived on Emerald Drive.

12          Q       You live with your uncle Gary right now?

13          A       We own a house together, yes.

14          Q       Where is that located?

15          A       4505 Jade Court.

16          Q       Excuse me. Jade Court. Do you remember  
17 Mr. Heffney coming to the house?

18          A       Yes.

19          Q       Do you remember Mr. Thompson coming to the  
20 house?

21          A       Yes, and yourself, yes.

22          Q       Do you remember Mr. Smith back there coming  
23 to the house?

24          A       Yes, of course.

25          Q       And that was in October of 1995?

1           A       I can't remember the date.

2           Q       And on that date, you identified the watch  
3 depicted in State's Exhibit Number 3 as the watch  
4 that your brother had when he came to Fayetteville in  
5 July of 1993?

6           A       I probably said it could have been. I  
7 probably said I didn't remember.

8           Q       I'll show you what has been marked as  
9 State's Exhibit Number 7 and remove the contents.  
10 That's the ring that your brother had when he came to  
11 Fayetteville in July of 1993, wasn't it?

12          A       That's a ring that was around them. I  
13 didn't say he had it.

14          Q       That was around them. Around he and Larry  
15 Demery?

16          A       Him and Larry Demery, yes.

17          Q       And that ring is an NBA All-Star ring,  
18 isn't it?

19          A       That's what it says.

20          Q       And that's the ring, as you said, that was  
21 around your brother and Larry Demery?

22          A       That's correct.

23                   MR. BRITT: May I approach?

24                   THE COURT: Yes, sir.

25                   BY MR. BRITT:

1 Q You described to the officers an old  
2 looking six-shot revolver, is that correct?

3 A Yes, sir, that's correct.

4 Q I'll show you what has been marked as  
5 State's Exhibit Number 59. That's the gun that your  
6 brother and Larry had with them when they came to  
7 your house on July the 25th of 1993, isn't it?

8 A I can't recall.

9 Q Mr. Moore, I'm going to show you again  
10 State's Exhibit Number 56-B. I would like you to  
11 place your initials by your office work number that  
12 appears on the date July the 23rd, 10:47 a.m., (919)  
13 376-7072, Fayetteville, North Carolina.

14 A Okay.

15 Q If you'll place your initials with that red  
16 marking pen out here in the margin.

17 A (Witness complies).

18 Q Show you State's Exhibit 56-E, ask you to  
19 look at that. There's an entry that appears 7-26,  
20 13:37. 13:37 is 1:37 in the afternoon, isn't it,  
21 converting military time to a.m., p.m.?

22 A Yes, sir.

23 Q Number (919) 396-7272 appears?

24 A That's correct.

25 Q That's your office number?

1 A Yes.

2 Q That was your office number at Fort Bragg?

3 A They had two lines in there. When I  
4 switched office, it was 7272, and the other office  
5 they had two lines 7072. And the other one is 7272  
6 also.

7 Q If you'll place your initials by that entry  
8 as well.

9 A (Witness complies).

10 Q Do you recall telling the officer that  
11 Daniel had a girlfriend or a friend in Marion, South  
12 Carolina?

13 A No, I don't.

14 MR. BRITT: If I could have just  
15 a minute, Your Honor.

16 THE COURT: Yes, sir.

17 BY MR. BRITT:

18 Q You stated earlier that Yvonne Roberto was  
19 the mother of your child?

20 A That's correct.

21 Q And her telephone number in July of 1993  
22 was (919) 436-6584, wasn't it?

23 A That's correct.

24 Q And is that still her phone number today?

25 A No.

1 Q On July the 23rd of 1993, did you make a  
2 phone call from James Jordan's red Lexus to Yvonne  
3 Roberto?

4 A No.

5 Q May I approach?

6 THE COURT: Yes, sir.

7 BY MR. BRITT:

8 Q Mr. Moore, I'll ask you again to look at  
9 State's Exhibit Number 56-B, an entry July the 23rd,  
10 1993 at 17:39 hours.

11 A Correct.

12 Q A.m., p.m., what time is that?

13 A That's p.m.

14 Q Is that 5:39 p.m.?

15 A Yes, that's 5:39 p.m.

16 Q And the number that appears (919) 436-6584?

17 A Yes. But let it be known that the phone  
18 was in her name, but it was at my residence.

19 Q Is that's your residence as well?

20 A That's where it was as well.

21 Q In Fayetteville, North Carolina?

22 A That's correct.

23 Q If you will take the red marking pen and  
24 place your initials by that entry.

25 A (Witness complies).

1 Q Now, do you recall talking with Daniel  
2 Green the afternoon of July the 23rd, 1993?

3 A No, I don't.

4 MR. BRITT: May I approach  
5 again?

6 THE COURT: Yes, sir.

7 BY MR. BRITT:

8 Q Mr. Moore, I'm going to show you State's  
9 Exhibit Number 56-C, entry dated July the 23rd,  
10 22:05. That's 10:05 p.m.?

11 A That's correct.

12 Q Number (919) 436-6584.

13 A That's correct.

14 Q That's your telephone number?

15 A Yes.

16 Q In Fayetteville? If you'll put your  
17 initial by that.

18 A Actually it's Spring Lake, but same thing,  
19 I guess. (Witness complies).

20 Q Showing you State's Exhibit 56-D, entry,  
21 July 23rd, 23:31 hours. 11:31 p.m., is that correct?

22 A Yes.

23 Q (919) 436-6584, Fayetteville, North  
24 Carolina. That's your telephone number as well?

25 A Again, it is.

1 Q If you'll place your initials be it.

2 A (Witness complies).

3 Q State's Exhibit 56-B again, you've  
4 initialed an entry on July 23rd, 17:39 hours, (919)  
5 436-6584, is that correct?

6 A That's correct.

7 Q That number also appears again, does it  
8 not?

9 A It does.

10 Q At 19:09 hours?

11 A That's correct.

12 Q (919) 436-6584.

13 A Yes.

14 Q If you'll place your initials by that as  
15 well.

16 A (Witness complies).

17 Q Mr. Moore, were you aware that on July  
18 23rd, 1993, at 17:39 hours, that the phone call that  
19 was placed to your telephone number was made on the  
20 phone of James Jordan?

21 A No, it could have been coming from  
22 anywhere.

23 Q Were you aware that it was placed on U.S.  
24 Cellular Telephone Services?

25 A No.

1 Q From an area in Lumberton, North Carolina?

2 A No.

3 Q Were you aware that on July 23rd, 1993 at  
4 19:09 hours, that the phone call that was made to  
5 your number was made on James Jordan's telephone?

6 A No.

7 Q And were you aware that it was made on U.S.  
8 Cellular Telephone Services in the area of Lumberton,  
9 North Carolina?

10 A No.

11 Q Were you aware that on July 23rd at 10:47  
12 a.m., a phone call placed to your work number was  
13 placed on James Raymond Jordan's cellular telephone  
14 number?

15 A No.

16 Q That call was placed on U.S. Cellular  
17 Telephone Services from an area in Lumberton, North  
18 Carolina?

19 A No, sir.

20 Q Were you aware that on July 23rd, 1993 at  
21 23:31 hours, 11:31 p.m. that the phone call that was  
22 placed to your telephone number was made on James  
23 Raymond Jordan's cellular telephone?

24 A No, sir.

25 Q Were you aware that it was placed on

1 Vanguard Cellular Telephone Service out of Myrtle  
2 Beach, South Carolina?

3 A No, sir.

4 Q Were you aware that on July 23rd, 1993 at  
5 22:05 hours, at 10:05 p.m. that the phone call that  
6 was placed to your residence that lasted seven  
7 minutes was placed on James Raymond Jordan's cellular  
8 telephone?

9 A No, sir.

10 Q Were you aware that that phone call was  
11 placed on U.S. Cellular Telephone Services out of  
12 Chesterfield, South Carolina?

13 A No, sir.

14 Q Were you aware that on July 26th, 1993, at  
15 13:37 hours, 1:37 p.m., that the phone call that was  
16 placed to your work number at Fort Bragg was made on  
17 James Jordan's cellular telephone?

18 A No, sir.

19 Q Were you aware that that phone call was  
20 placed on GTE Mobile Com Service out of Fayetteville,  
21 North Carolina?

22 A No, sir.

23 Q Daniel never told you that he was using  
24 Mr. Jordan's cellular telephone, did he?

25 A No.

1 Q And when the officers came to talk with you  
2 on August the 14th of 1993, you told them how they  
3 could find Daniel Green, didn't you?

4 A I can't recall.

5 Q You gave them directions or the general  
6 area where he lived in Robeson County?

7 A No, they told me what the address was, and  
8 described it, and I said that sounds about right.

9 Q That was at Bob's Landing Mobile Home Park?

10 A I can't recall the name.

11 Q Lived in a blue and white or green and  
12 white trailer?

13 A That's true.

14 Q Off of U.S. 74?

15 A If that's going towards Maxton, that might  
16 be true too.

17 Q And after these phone calls were placed to  
18 you, to your number on July 23rd, your brother and  
19 Larry Demery showed up at your residence on the 25th  
20 of July with that red Lexus, didn't they?

21 A I can't recall what date it was.

22 MR. BRITT: May I approach once  
23 more?

24 THE COURT: Yes, sir.

25 MR. BRITT: Just to make matters

1 complete.

2 BY MR. BRITT:

3 Q State's Exhibit 56-C, entry 7-26-93, 0:06  
4 hours. That's 12:06 a.m., is that correct?

5 A That's correct.

6 Q (919) 436-6584?

7 A Again, it is.

8 Q That's your telephone number?

9 A That's true.

10 Q Record shows there was an eight minute  
11 telephone conversation?

12 A Okay.

13 Q Ask you to place your initials by it.

14 A (Witness complies).

15 Q Mr. Moore, were you aware that on July the  
16 25th, 1993, an officer with the Robeson County  
17 Sheriff's Department went to Daniel Green's trailer  
18 looking for a fancy red car?

19 A Repeat that once more, please.

20 Q Were you aware that on --

21 MR. BOWEN: Object.

22 BY MR. BRITT:

23 Q -- July the 25th, 1993 --

24 MR. BOWEN: Object.

25 THE COURT: Do you want to be

1 heard?

2 MR. BOWEN: Yes.

3 THE COURT: Members of the jury,  
4 I had intended to give you the recess in  
5 about 15 minutes. Let me give it to you  
6 now. Please reassemble in jury room at --  
7 let me give you until ten until. Please  
8 recall it is your duty to abide by all  
9 prior instructions of the Court concerning  
10 your conduct.

11 Everyone else please remain seated,  
12 the members of the jury are excused.

13 (Jury out at 11:29 a.m.)

14 THE COURT: The following is  
15 being heard in the absence of the jury.

16 What is the basis of the objection?

17 MR. BOWEN: I am objecting on the  
18 basis that he has not laid a foundation  
19 that this witness was there and would know,  
20 and therefore the reason would conclude  
21 that the only way he would know this  
22 information would be hearsay. And that  
23 would be prohibited under Rule 802.

24 THE COURT: Mr. Britt, do you  
25 want to respond to that?

1                   MR. BRITT: Your Honor, I'm just  
2 asking him if he was aware of it. He can  
3 answer yes or no.

4                   MR. BOWEN: Do they have any  
5 reason to think he's aware of it, and the  
6 only reason he would be, in an admissible  
7 way, would be if they were there at the  
8 time.

9                   THE COURT: What is the point of  
10 the question?

11                  MR. BRITT: The evidence before  
12 the Court and before the jury on July  
13 25th --

14                  THE COURT: I understand that.

15                  MR. BRITT: The defendant stated  
16 that the car was his girlfriend's, was in  
17 South Carolina at midnight on the 26th.  
18 There's a telephone call placed to David  
19 Moore --

20                  THE COURT: I understand all of  
21 that. Why is it necessary for the State to  
22 ask this witness whether or not he's aware  
23 of what occurred on the 25th?

24                  MR. BRITT: Because it's my  
25 contention his brother told him he needed

1 to come to Fayetteville to hide the car.

2 THE COURT: The objection is  
3 sustained.

4 Now, if you have a good faith basis  
5 for that, you can ask him whether his  
6 brother told him that.

7 MR. BRITT: I'll withdraw the  
8 question.

9 THE COURT: Okay. We're at  
10 ease. But while we've got this opportunity  
11 in the absence of the jury, consistent with  
12 the Court's ruling regarding the State's  
13 motion pursuant to Rule 611-C, leading  
14 questions will not be permitted on  
15 cross-examination or what purports to be  
16 cross-examination.

17 You folks want to be heard in that  
18 respect? You have an opportunity to note  
19 your objection, have an opportunity to note  
20 your exception.

21 MR. BOWEN: Yes, sir, we would  
22 object to that simply because the family  
23 status of this witness. The witness was  
24 interviewed by officers, he give a  
25 statement that --

1 THE COURT: He doesn't recall.

2 MR. BOWEN: That's true, and  
3 interestingly enough, I'll bet we're going  
4 to find out he wasn't shown a copy of those  
5 statements like the other witnesses were.  
6 And so his recollection is not refreshed as  
7 much. So he comes off looking like he's  
8 evasive and maybe he's not.

9 THE COURT: As I indicated  
10 yesterday, commentary rule says the rule  
11 conforms to traditionally making use of  
12 leading questions on cross-examination a  
13 matter of right. The purpose of the  
14 qualification ordinarily in the language of  
15 611-C is to furnish a basis for denying the  
16 use of leading questions when the  
17 cross-examination is cross-examination in  
18 form only and not in fact as, for example,  
19 the cross-examination of a party by his own  
20 counsel after being called by the  
21 opponent.

22 Now, that arises in a civil context  
23 where that right exists. Obviously in a  
24 criminal context, the State can't call the  
25 defendant as a witness. But the language

1 of 611-C deals with, as to that exception,  
2 a hostile witness, an adverse party, or a  
3 party or -- pardon me, a witness identified  
4 as an adverse party.

5 The Court having previously found that  
6 the witness now before the Court is  
7 identified with an adverse party in the  
8 sense that he is the brother of the  
9 defendant, the Court in its discretion  
10 denies the use of cross-examination --  
11 strike that -- leading questions by counsel  
12 for the defendant on cross-examination, to  
13 which counsel for defendant objects and  
14 excepts for the record.

15 You can ask what are commonly referred  
16 to as open ended, nonleading questions on  
17 your examination Mr. Bowen. Mr. Moore, you  
18 may step down. We're at ease until -- what  
19 did I say? Ten until.

20 THE BAILIFF: Court stands at  
21 ease until ten until.

22 (Brief recess.)

23 THE COURT: Let the record  
24 reflect that all counsel are present, the  
25 defendant is present in open court.

1           Mr. Horne, do we have all members of  
2 the jury secured in the jury room?

3           THE BAILIFF: Yes, sir, we do.

4           MR. BRITT: May I put something  
5 on the record? When Mr. Meares was  
6 bringing Mr. Green back to the courtroom  
7 through the back hall that goes by my back  
8 door to my office, Mr. Green asked if he  
9 could speak with me. I declined. And that  
10 was the extent of the conversation.

11          THE COURT: Okay. Mr. Green, any  
12 response you want to make for the record?

13          MR. GREEN: Yes, sir. It was  
14 just I had problems with somebody else,  
15 said that I would leave a message for  
16 them. Since this guy couldn't talk to  
17 Mr. Britt, and before I made a promise, I  
18 didn't mean anything about the promise, but  
19 since I did make a promise --

20          THE COURT: I think I hear you  
21 telling us that you were not attempting to  
22 speak to Mr. Britt on your behalf in  
23 connection with your case.

24          MR. GREEN: Oh, no, sir.

25          THE COURT: You were attempting

1 to relay a message from someone else.

2 MR. GREEN: Yes, sir.

3 THE COURT: That someone else is  
4 apparently an inmate in the Robeson County  
5 jail or detention center?

6 MR. GREEN: Exactly. He was  
7 having problems.

8 THE COURT: The record is clear.  
9 Anyone have any issues about that?

10 MR. BRITT: Just don't want it to  
11 become an issue.

12 THE COURT: That's what the  
13 record is for.

14 Anything else before we bring the jury  
15 in, folks?

16 MR. BRITT: No.

17 THE COURT: Mr. Horne if you'll  
18 bring the jury in.

19 (Jury in at 11:50 a.m.)

20 THE COURT: Members of the jury,  
21 the objection made by counsel for defendant  
22 as to the last question of counsel for the  
23 State is sustained.

24 Mr. Britt, you may ask additional  
25 questions, or do you have additional

1           questions for Mr. Moore?

2       BY MR. BRITT:

3           Q       Mr. Moore, when Mr. Heffney, Mr. Thompson  
4       and Mr. Smith and myself came to your residence in  
5       Fayetteville back in October of 1995, you were  
6       provided with a copy of the statement that you had  
7       given to the officers back in August of 1993, were  
8       you not?

9           A       I can't recall.

10                   MR. BRITT: I don't have any  
11       other questions.

12                   THE COURT: Any examination on  
13       behalf of counsel for the defendant?

14                   MR. BOWEN: Yes, Your Honor.

15                               CROSS-EXAMINATION

16       BY MR. BOWEN:

17           Q       Mr. Moore, state whether back in July and  
18       August of 1993 you had any kind of device on your  
19       telephone at home or at the office that was capable  
20       of showing the number from which incoming call came.

21                   MR. BRITT: Objection.

22                   THE COURT: Overruled. You may  
23       answer.

24                   THE WITNESS: No, sir.

25       BY MR. BOWEN:

1           Q       State whether or not you had a device at  
2 home or at the office that reflected whether or not  
3 an incoming call was from a cellular phone or some  
4 other type of phone.

5                   MR. BRITT:  Objection to the  
6 form.

7                   THE COURT:  Do you understand the  
8 question, Mr. Moore?

9                   THE WITNESS:  He's asking me was  
10 I able to identify incoming calls from a  
11 cellular phone, is that correct?

12 BY MR. BOWEN:

13           Q       Did you have a device that did that?

14           A       No, I didn't.

15           Q       Did you have any sort of device or  
16 apparatus either at home or at work that would  
17 identify from what transmitting tower a cellular call  
18 might be coming from it were a cellular call?

19                   MR. BRITT:  Objection to the  
20 leading.

21                   THE COURT:  Well, it is not  
22 entirely open ended but is not in the  
23 strict sense a leading question, so the  
24 objection is overruled.  You may answer.

25                   THE WITNESS:  No, sir.

1 BY MR. BOWEN:

2 Q Now, when you talked to the officers back  
3 in August of 1993, did they appear to be recording  
4 the conversation?

5 A Okay, sir, which time are you referring to  
6 and who are you referring to?

7 Q All right. Do you recall meeting with  
8 officers including Captain Art Binder, Lieutenant  
9 Jimmy Henley, Sergeant Don Smith and Detective Ray  
10 Wood?

11 THE COURT: On what dated, sir?

12 MR. BOWEN: On the 14th of  
13 August, 1993.

14 THE WITNESS: I can't recall the  
15 date but I do remember talking to Captain  
16 Art Binder several times, yes.

17 BY MR. BOWEN:

18 Q Now, at the time that you talked to  
19 Mr. Binder, did it appear to you that the  
20 conversation was being recorded?

21 A He recorded me in the Cumberland County  
22 courthouse, yes, he did.

23 Q When Mr. Britt and others came to see you  
24 in October of last year did they give you a copy of  
25 any tape?

1           A     No, they didn't, and I had asked for it two  
2 years prior.

3           Q     And under what circumstances did you ask  
4 for a copy of the tape?

5           A     In the fact that what happened initially in  
6 opening arguments given by -- or opening statement --

7                   THE COURT:   That's an improper  
8 response.

9                   MR. BRITT:   Move to strike.

10                  THE WITNESS:  Well --

11                  THE COURT:   Sir, put additional  
12 questions to the witness.

13 BY MR. BOWEN:

14           Q     Now, did you see Larry Demery the day that  
15 you saw a red Lexus?

16           A     Yes, I did.

17           Q     Can you describe Larry Demery to the jury?

18           A     I can't really recall how Larry looked.  
19 Just Indian is all I know.

20           Q     Can you describe the manner in which he was  
21 dressed?

22           A     I remember he was kind of dusty looking.

23           Q     Now, did you at any time tell any officers  
24 who was driving the red Lexus?

25           A     No, I didn't, sir.

1 Q Did you ever talk -- strike that. Did you  
2 or not see anyone drive the red Lexus away?

3 A No, sir.

4 Q Now, did you at any time ever see a gold  
5 ring with any diamonds in it?

6 A No, sir, I can't recall.

7 Q Did you ever see more than one ring?

8 A I can't recall that either.

9 Q What did you mean, Mr. Moore, when you  
10 testified earlier that the officers ran up and down  
11 the calibers and sizes of guns until they got to the  
12 one they wanted? What did you mean by that?

13 MR. BRITT: Objection.

14 THE COURT: Overruled. You may  
15 answer.

16 THE WITNESS: Basically sir, from  
17 the transcript that you see pieced  
18 together.

19 MR. BRITT: Objection.

20 THE COURT: Sir, he's asking you  
21 a specific question.

22 THE WITNESS: What I did -- I'm  
23 trying to tell him.

24 THE COURT: Now, if you feel an  
25 explanation is necessary, then you may

1 explain but you need to answer his question  
2 first.

3 THE WITNESS: That's what I'm  
4 trying to do, I'm trying to answer. It  
5 might be an explanation in form, but I'm  
6 trying to answer.

7 THE COURT: Go ahead.

8 THE WITNESS: Basically, what I  
9 meant was they kept running up and down,  
10 giving me different sizes of weapons until  
11 they came up with the weapon that they were  
12 looking for. That's to the best of my  
13 knowledge, that's the reason they were  
14 doing it.

15 BY MR. BOWEN:

16 Q Now then, when the designation of .38  
17 caliber, when they mentioned a .38 caliber, how did  
18 you react when they got to that particular size  
19 weapon?

20 A I really didn't react any way because I'm  
21 not too familiar with sizes of guns. I just know  
22 what I own, that's it.

23 Q So then did you tell them it was a .38 or  
24 did they tell you it was a .38 or what happened?

25 A They told me.

1 Q Did you know what caliber it was?

2 A Honestly, I didn't.

3 Q Did you state whether at any time you ever  
4 told these officers that the Lexus was driven by your  
5 brother?

6 MR. BRITT: Objection to leading.

7 THE COURT: Sustained as to  
8 form. Rephrase.

9 BY MR. BOWEN:

10 Q Did you ever tell the officers that you  
11 knew who was driving the Lexus?

12 MR. BRITT: Objection.

13 THE COURT: Sustained. What if  
14 anything did you tell any officers about  
15 any information you might have about who  
16 was driving the Lexus?

17 THE WITNESS: Sir, I don't know  
18 who was driving the car.

19 BY MR. BOWEN:

20 Q Is that what you told the officers during  
21 the interview on the 14th of August of 1993?

22 A Sir, I don't remember the date of the  
23 interview, and there's no way I could tell somebody  
24 was driving the car if I didn't see anybody pull up  
25 in it.

1 Q Whenever the interview was --

2 A Yes, I just answered the question.

3 Q Did you ever tell them you saw who was  
4 driving the car?

5 MR. BRITT: Objection -- no, I  
6 withdraw the objection.

7 THE COURT: You may answer.

8 THE WITNESS: I couldn't say who  
9 was driving the car because I didn't see  
10 them when they pulled up in it.

11 BY MR. BOWEN:

12 Q Would that include not only who was driving  
13 the car when the car arrived but who was driving the  
14 car when it left, if it did?

15 MR. BRITT: Objection to the  
16 form.

17 THE COURT: Overruled. You may  
18 answer.

19 THE WITNESS: That's correct,  
20 sir.

21 BY MR. BOWEN:

22 Q Now, when the officers came and talked to  
23 you, Mr. Moore, state whether or not you agreed to  
24 talk with them.

25 MR. BRITT: Objection.

1 THE COURT: Sustained as to  
2 form.

3 BY MR. BOWEN:

4 Q When the officers first contacted you, what  
5 did they request?

6 MR. BRITT: Objection.

7 THE COURT: What is it being  
8 offered for?

9 MR. BOWEN: To show subsequent  
10 conduct.

11 THE COURT: Overruled. Do you  
12 want a limited instruction?

13 MR. BRITT: Yes, sir.

14 THE COURT: Members of the jury,  
15 the matters now being elicited by Mr. Bowen  
16 of the witness before you are being offered  
17 not for the truth of the matters asserted  
18 by anyone else, if that is reflected in his  
19 testimony, but to explain his subsequent  
20 conduct, and you may consider this evidence  
21 for that limited purpose and for no other  
22 purpose.

23 Yes, sir.

24 BY MR. BOWEN:

25 Q When the officers first contacted you in

1 the summer of 1993, what if anything did they ask you  
2 to do, sir?

3 A I can't really recall. They probably just  
4 wanted to talk, asking about my brother basically.

5 Q And what was your response?

6 A I can't really recall, two years ago, three  
7 years ago, I can't recall.

8 Q I'm not asking you the exact words. Let me  
9 ask this way. State whether or not you agreed to  
10 talk with them.

11 MR. BRITT: Objection to form.

12 THE COURT: Sustained. The  
13 witness indicated he couldn't recall. And  
14 that's a leading question in that context.

15 BY MR. BOWEN:

16 Q Do you recall, following the phone call in  
17 which they asked to talk to you, do you recall  
18 talking to them?

19 A Following what phone call?

20 Q Well, strike phone call. However they  
21 contacted you and asked you to talk to them,  
22 thereafter did you talk to them?

23 A Yes, I did.

24 Q State whether or not you answered their  
25 questions.

1           A       I'm sure I did.

2           Q       State whether or not to your knowledge any  
3 transcript of the tape recording that was made has  
4 ever been furnished to you.

5           A       Not until two days ago.

6           Q       Can you give us an approximate idea of how  
7 many pages that writing consisted of?

8           A       Well, I read through it, it might have been  
9 between 20 and 35 possibly, I'm not sure.

10          Q       Do you know whether or not the State gave  
11 you that material?

12          A       Yeah, I got it from Mr. Britt's office,  
13 yes.

14          Q       How long ago?

15          A       About two days ago.

16                   MR. BOWEN:   That's all, Your  
17 Honor.

18                   THE COURT:   Any additional  
19 examination by the State?

20                   REDIRECT EXAMINATION

21 BY MR. BRITT:

22          Q       Mr. Moore, when you were given the  
23 transcript of the tape recorded interview, the  
24 interview that took place August the 14th, 1993, did  
25 you review it?

1           A       I read the whole statement.

2           Q       You read the whole thing?

3           A       Front to back.

4           Q       And it contained the information that you  
5 provided to the Cumberland County Sheriff's  
6 Department as it related to your knowledge of your  
7 brother's activities, is that correct?

8           A       Like I was going to state earlier before I  
9 got cut off, it contained bits and pieces of what I  
10 thought my statement would have been, yes.

11                   MR. BRITT: I don't have any  
12 other questions.

13                   THE COURT: Anything further?

14                   RE CROSS EXAMINATION

15 BY MR. BOWEN:

16           Q       Now, when you used the terminology "bits  
17 and pieces," Mr. Moore, state whether or not the tape  
18 recorder was running during the entire time that you  
19 were answering questions for these officers.

20           A       I assumed it was.

21           Q       Do you know?

22           A       I'm not for sure.

23                   MR. BOWEN: That's all.

24                   THE COURT: Anything further?

25                   MR. BRITT: No, sir.

1 THE COURT: May the witness be  
2 released?

3 MR. BOWEN: Yes, sir.

4 THE COURT: Thank you, sir. You  
5 may step down.

6 THE WITNESS: Thank you, sir.

7 THE COURT: Mr. Britt, any  
8 additional showing for the State?

9 MR. BRITT: Yes, sir. Your  
10 Honor, at this time the State would call  
11 Senetta Thomas.

12 THE COURT: Ma'am, if you'll come  
13 up to the witness stand. Place your left  
14 hand on the Bible, raise your right, and  
15 face Ms. Gaines to my left, please.

16 Left hand on the Bible, raise your  
17 right

18 **SENETTA BELL THOMAS,**  
19 being first duly sworn was examined and testified as  
20 follows:

21 DIRECT EXAMINATION

22 THE COURT: If you'll state your  
23 full name for the record, please.

24 THE WITNESS: Ms. Senetta Bell  
25 Thomas.

1 THE COURT: If you'll spell your  
2 first name.

3 THE WITNESS: Cap S E N E T T A.

4 THE COURT: And your middle name.

5 THE WITNESS: Cap B E L L.

6 THE COURT: And your --

7 JUROR: I can't hear.

8 THE COURT: Pull your chair  
9 forward please, ma'am. Speak directly into  
10 the microphone. I apologize. Everybody  
11 needs to be able to hear you.

12 THE WITNESS: Can you hear me  
13 now?

14 THE COURT: Jurors, attorneys,  
15 all parties. Back up again and for the  
16 record spell your first name.

17 THE WITNESS: Cap S E N E T T A.

18 THE COURT: Middle name?

19 THE WITNESS: B E L L.

20 THE COURT: Last name.

21 THE WITNESS: T H O M A S.

22 THE COURT: And your first name  
23 is pronounced --

24 THE WITNESS: Senetta.

25 THE COURT: Thank you.

1 Mr. Britt.

2 BY MR. BRITT:

3 Q Ms. Thomas, where do you live?

4 A 331 Sawdust Lane Laurinburg, North  
5 Carolina.

6 THE COURT: Ms. Thomas, they  
7 can't hear.

8 THE WITNESS: 331 Sawdust Lane,  
9 Laurinburg, North Carolina.

10 BY MR. BRITT:

11 Q How long have you lived at that address?

12 A It will be ten years this September.

13 Q Are you originally from Laurinburg, North  
14 Carolina?

15 A No.

16 Q Where are you originally from?

17 A New York.

18 Q Do you have family that lives in New York?

19 A Yes.

20 Q Specifically, where in New York do you have  
21 family that lives?

22 A Brooklyn, New York.

23 Q And what members of your family live in  
24 Brooklyn, New York?

25 A My parents, a sister, two brothers, and a

1 boy.

2 Q Your daughter, approximately -- the  
3 daughter that lives in New York, approximately how  
4 old is she?

5 A She will be 19 this February.

6 Q And her name, please?

7 A Juanita Senetta Bell Thomas.

8 Q In July of -- strike that. Do you know the  
9 defendant Daniel Green?

10 A Yes, I do.

11 Q How long have you known the defendant  
12 Daniel Green?

13 A Oh, boy. I met Daniel Green when my  
14 daughter attended school. I've known him over five  
15 years.

16 Q When you met Daniel Green, was he living in  
17 Laurinburg, North Carolina?

18 A Yes.

19 Q Was he living in the same general area that  
20 you lived in?

21 A Yes.

22 Q And do you know his mother?

23 A Yes, I do.

24 Q Do you know his sister?

25 A Yes, I do.

1 Q You had occasions to meet with them in the  
2 past when they lived in Laurinburg?

3 A Yes.

4 Q Have you maintained any contact with the  
5 family from the time they lived in Laurinburg to the  
6 present?

7 A Since they moved, no.

8 Q Had Daniel Green been to your house --

9 A Yes.

10 Q -- while he lived in Laurinburg?

11 A Yes.

12 Q And in July of 1993, specifically July the  
13 24th of 1993, did you have an occasion to see Daniel  
14 Green?

15 A Yes.

16 Q Where were you when you saw Daniel Green on  
17 July the 24th, 1993?

18 A I was at the residence that I stayed in  
19 before.

20 Q Now, the residence where you lived --

21 THE COURT: They can't hear,  
22 Mr. Britt. If you'll lean forward and  
23 speak into the microphone.

24 THE WITNESS: Yes, I was at home  
25 with my family.

1 BY MR. BRITT:

2 Q The residence where you live, is that a  
3 single house?

4 A Yes.

5 Q And when you saw Daniel Green on July 24th,  
6 1993, how, to your knowledge, did he arrive at your  
7 house?

8 A He arrived in a car.

9 Q Can you describe the car that he arrived  
10 in?

11 A It was a red Lexus.

12 Q And was anyone with him on July the 24th,  
13 1993 when you saw him at your house in this red  
14 Lexus?

15 A Yes.

16 Q Did you know that individual?

17 A Not at the time, no.

18 Q Can you describe that person for us?

19 A Young, young man, fair skin, it was Mr. --

20 Q Was that person introduced to you?

21 A Yes.

22 Q Who introduced you to the other person with  
23 Mr. Green?

24 A Mr. Green introduced me.

25 Q Do you recall the name --

1 THE COURT: I apologize. That  
2 microphone works, but the only way it will  
3 work is if you lean forward and speak into  
4 it.

5 MR. BRITT: May I approach, Your  
6 Honor?

7 THE COURT: Yes, sir.

8 Thank you ma'am. Would you like some  
9 water, Ms. Thomas?

10 THE WITNESS: No.

11 BY MR. BRITT:

12 Q Ms. Thomas, the individual that was  
13 introduced by Mr. Green, were you given a name?

14 A Yes.

15 Q What was the name?

16 A Larry Demery.

17 Q Who was driving the car?

18 A I did not see the car when it drove up.

19 Q Where were they positioned in the car?

20 A In front of my home.

21 Q Were they inside the car when you first saw  
22 them or outside?

23 A No, Mr. Green came to the door and asked  
24 for me.

25 Q Where was Mr. Demery at that time if you

1 know?

2 A In the car.

3 Q Where in the car?

4 A Passenger seat at the time.

5 Q And when Mr. Green came to the door and  
6 asked for you, what was your reaction?

7 A Surprise.

8 Q Why were you surprised?

9 A Daniel came by the house sometime ago, long  
10 before he used to come by the house, and spoke one  
11 time, that was the only other visit. When he came to  
12 the house, I was just surprised to see him.

13 Q And when he came to your house, did you  
14 have conversation with him there at the door?

15 A No, I came outside of the house and I spoke  
16 to him at the car.

17 Q When you say you spoke with him at the car,  
18 did the two of you walk back to the car?

19 A Yes.

20 Q Did Mr. Green stay outside the car or did  
21 he get back in the car?

22 A He stood outside for a while and then he  
23 got back inside.

24 Q Did you say anything to Mr. Green about the  
25 car?

1           A     Yes.

2           Q     What if anything did you say to him about  
3 the car?

4           A     I teased him that the car was an  
5 interesting new toy.

6           Q     And why did you tease him about the car  
7 being a toy?

8           A     Well, I'm sure you know the old adage, boys  
9 and toys, and it was a very impressive car.

10          Q     Did you ask Mr. Green where he had gotten  
11 the car?

12          A     Well, according to Mr. Green, he was living  
13 in New York, and he was in the recording business,  
14 and he was doing quite successfully.

15          Q     And when he told you that he was living in  
16 New York, did you say anything to him about friends  
17 or relatives of yours that were living in New York?

18          A     Yes.

19          Q     What did you tell him?

20          A     He asked about my daughter Juanita, and I  
21 told him how she was now living in New York City with  
22 my mother.

23          Q     Did you give him a telephone number or an  
24 address?

25          A     Yes.

1 Q What phone number did you give him?

2 A I gave him the number to my mother's, to my  
3 parents' residence in New York City.

4 Q And do you recall what that number was?

5 A Yes, I do.

6 Q Can you tell us what that number is?

7 A You really want me to give it out?

8 MR. BRITT: May I approach the  
9 witness?

10 THE COURT: Yes, sir.

11 BY MR. BRITT:

12 Q While the car was parked there in front of  
13 your house, did anyone use a cellular telephone  
14 located in that car?

15 A Yes.

16 Q Who used that phone?

17 A I did.

18 Q And why did you use the cellular telephone  
19 in the car?

20 A I used the phone to reach my daughter.

21 Q And you dialed a number?

22 A Yes, I dialed it twice.

23 Q That number is located in Brooklyn, New  
24 York?

25 A Yes.

1           Q     The first time you dialed the number, did  
2 you receive an answer?

3           A     No. It was some confusion, I got cut off.

4           Q     Did you redial the number?

5           A     Yes.

6           Q     Was there an answer?

7           A     Yes.

8           Q     Who answered the telephone?

9           A     My mother at first.

10          Q     You recognized her voice?

11          A     Yes.

12          Q     Did you have a conversation with your  
13 mother?

14          A     Yes, I spoke to her briefly, and I asked  
15 her to put Juanita on the telephone.

16          Q     Did a voice come over the telephone that  
17 you recognized as your daughter, Juanita?

18          A     Yes.

19          Q     After speaking -- when that voice that you  
20 recognized as your daughter Juanita came over the  
21 telephone, what did you tell her?

22          A     I said hello to her and I told her there  
23 was someone who wanted to speak to her.

24          Q     And what did you do after that?

25          A     I handed the phone to Mr. Green.

1 Q And did Mr. Green then talk on the  
2 telephone?

3 A Yes.

4 Q Did you stay there by the car while he  
5 talked on the telephone?"

6 A No, by that time Mr. Demery then got into  
7 the driver's seat, Mr. Green on the passenger side,  
8 and they drove off.

9 Q And while they drove off, were you able to  
10 tell if Mr. Green was still talking on the telephone?

11 A Yes, he was talking on the phone.

12 MR. BRITT: May I approach?

13 THE COURT: Yes, sir.

14 BY MR. BRITT:

15 Q I'll show you what has been marked as  
16 State's Exhibit 56-D. These are the telephone  
17 records of James Jordan. Did you know James Jordan?

18 A No.

19 Q Ask you to look at the bottom of the  
20 document. A date appears of 7-24, time ten -- excuse  
21 me, 20:16?

22 A Yes.

23 Q And there's a number that appears?

24 A Yes.

25 Q Do you recognize the number that appears on

1 State's Exhibit 56-D?

2 A Yes.

3 Q Is that the number that you dialed in  
4 Brooklyn, New York?

5 A Yes.

6 Q Is that --

7 THE COURT: For the record, it's  
8 going to have to be established,  
9 Mr. Britt --

10 BY MR. BRITT:

11 Q Number (718) 774-573, the last number is  
12 left off. What is the last number to that?

13 A Two.

14 Q And it appears twice on this document, does  
15 it not?

16 A Yes.

17 Q Once at 20:16 hours, and then at 20:17  
18 hours?

19 A Yes.

20 Q That's 8:16 p.m. and 8:17 p.m.?

21 A Well, I can't --

22 Q If you convert from military time?

23 A Well, I don't --

24 Q The number that appears July 24th to  
25 Brooklyn, New York is the number of your mother's

1 residence?

2 A Yes.

3 Q And the length of the -- the second  
4 telephone conversation, was 21 minutes as reflected  
5 by the exhibit?

6 MR. BOWEN: Object, to Mr. Britt  
7 testifying.

8 THE COURT: I'm waiting for an  
9 answer.

10 THE WITNESS: Yes, the first  
11 phone call yes, that was -- okay, but  
12 the --

13 BY MR. BRITT:

14 Q First phone call --

15 A Was the one I made when I got cut off.  
16 Second one, I can't tell how long it what is.

17 THE COURT: He's asking you what  
18 is reflected on the exhibit.

19 THE WITNESS: Yes. The second  
20 phone call, I can't tell you how long it  
21 was because by that time he drove away.

22 THE COURT: We're not asking you  
23 if you know personally. We're asking you  
24 what is shown on the exhibits as for the  
25 lengths of the call.

1 THE WITNESS: I guess that's  
2 right then.

3 BY MR. BRITT:

4 Q Ms. Thomas, if you will, I'm going to ask  
5 you to take this red marking pen and place your  
6 initials by the entries on State's Exhibit 56-D that  
7 reflect the telephone number that you called.

8 A (Witness complies).

9 Q If you'll do it again.

10 A (Witness complies).

11 Q And as reflected on the record, State's  
12 Exhibit 56-D, this telephone call was transmitted by  
13 Bell Atlantic Metro Mobile Services, is that correct?

14 A That I couldn't tell.

15 Q As reflected here.

16 A Yes.

17 Q Location, Anson County, North Carolina, is  
18 that correct?

19 THE COURT: I'm sorry, you have  
20 to answer.

21 THE WITNESS: Yes, yes.

22 BY MR. BRITT:

23 Q Now on July the 24th of 1993, did you use  
24 any other cellular telephone to call your daughter in  
25 New York?

1           A     No.

2                     MR. BRITT:  I don't have any  
3           other questions.

4                     THE COURT:  Any  
5           cross-examination?

6                     MR. THOMPSON:  Yes, sir, Your  
7           Honor.

8                     CROSS-EXAMINATION

9   BY MR. THOMPSON:

10           Q     Ms. Thomas -- good morning, Ms. Thomas.

11           A     Good morning.

12           Q     Ms. Thomas, your daughter Juanita Senetta  
13           Bell Thomas and Ebony, the defendant's sister, were  
14           close friends and classmates at school?

15           A     Yes.

16           Q     Now, you indicated that the individual  
17           referred to as a light skinned male was introduced to  
18           you as Larry Demery, is that right?

19           A     Yes.

20           Q     And Larry Demery was wearing a leather  
21           Harley Davidson cap, is that correct?

22           A     Yes.

23           Q     And when the Lexus vehicle left your house,  
24           Larry Demery was driving, is that correct?

25           A     Yes.

1           Q     Now, you indicated something about the  
2 second number, when Mr. Britt showed you State's  
3 Exhibit 56-D, that you could not -- it was the second  
4 call made to (718) 774-5732 and you indicated there  
5 was something about that that you could not recall.  
6 What was that?

7           A     Excuse me?

8           Q     I thought -- well, you made both calls to  
9 that number?

10          A     Yes.

11          Q     Okay. That's --

12                   THE COURT: Mr. Thompson, if  
13 you'll ask her if she knows the duration or  
14 length of the second call.

15                   MR. THOMPSON: Okay. That's what  
16 I --

17                   THE WITNESS: No, I do not know  
18 the duration of the second call.

19                   MR. THOMPSON: All right.

20                   That's all.

21                   THE COURT: Anything further on  
22 behalf of the State?

23                   MR. BRITT: No, sir.

24                   THE COURT: May Ms. Thomas be  
25 released gentlemen?

1 MR. BOWEN: Yes, sir.

2 MR. BRITT: Yes, sir.

3 THE COURT: Thank you. You're  
4 free to go.

5 THE COURT: Mr. Britt?

6 MR. BRITT: Your Honor, at this  
7 time we call Pamela Perry.

8 THE COURT: If you'll place your  
9 left hand on the Bible and raise your  
10 right, please.

11 PAMELA B. PERRY,

12 being first duly sworn was examined and testified as  
13 follows:

14 DIRECT EXAMINATION

15 THE COURT: Thank you, ma'am.

16 Ms. Perry, you have a very soft voice.

17 THE WITNESS: Yes.

18 THE COURT: If you'll pull the  
19 microphone down and if you'll speak  
20 directly into the microphone when you're  
21 responding to questions.

22 First of all, if you'll state your  
23 full name.

24 THE WITNESS: My name is Pamela  
25 Bernice Perry.

1 THE COURT: Spell your first,  
2 middle and last name for the record.

3 THE WITNESS: P A M E L A, B E R  
4 N I C E.

5 THE COURT: And last name.

6 THE WITNESS: P E R R Y.

7 THE COURT: Thank you, ma'am.

8 Mr. Britt.

9 BY MR. BRITT:

10 Q Ms. Perry, where do you live?

11 A Where do I live now? 691 Robert Park.

12 Q In July of 1993, where did you live?

13 A I was staying at Seabrook, but I don't know  
14 the address.

15 Q Do you have any children?

16 A Yes, I have three.

17 Q Do you have any sons?

18 A I have two.

19 Q What are your two son's names?

20 A Xavion Marquis Perry and Marcus Lamont  
21 Perry.

22 Q In July 31st, 1993, did you have an  
23 occasion to meet Daniel Green?

24 A Yes, I met Mr. Green.

25 Q Where were you when you met Mr. Green?

1           A     I was living on Slater Avenue.

2           Q     And where did you meet him that day?

3           A     I met him at my house, but it wasn't during  
4 the day, it was in the afternoon.

5           Q     That evening?

6           A     Yes, that evening.

7           Q     When you met Mr. Green at your house that  
8 evening, were there other people there?

9           A     Me, my two sons, my two sons' girlfriends,  
10 and my daughter.

11          Q     Was Jamie Moore there?

12          A     Yes, Jamie was there too.

13          Q     Did you know Jamie Moore prior to meeting  
14 Daniel Green?

15          A     Yes.

16          Q     When you met Daniel Green on July 31st,  
17 1993, did you notice any watch or any rings that he  
18 was wearing?

19          A     Yes.

20          Q     Can you describe for us the watch that he  
21 was wearing?

22          A     It was -- I know it had a gold bull on the  
23 inside of it. I couldn't describe the outside.

24          Q     Can you describe any ring that you saw him  
25 wearing?

1           A       It was a gold ring with a bull in the  
2 middle of it.

3           Q       Did Mr. Green, did you have any  
4 conversation with Mr. Green about the watch and the  
5 ring that he was wearing?

6           A       I asked him where did he get it from.

7           Q       Did he tell you where he got it from?

8           A       He told me he had got it from a person that  
9 owed him some drug money.

10          Q       Was there any conversation between you and  
11 Mr. Green about Michael Jordan?

12          A       He told me that he had got the items that  
13 he had from Michael Jordan. And then I didn't  
14 believe him because when I looked inside the ring, it  
15 didn't have MJ in it, it had JJ in it. But at the  
16 time I didn't know who JJ was.

17          Q       There were initials inside the gold ring  
18 that he was wearing?

19          A       Yes.

20          Q       Of JJ?

21          A       Yes.

22          Q       At any time did Mr. Green offer to sell you  
23 the watch or the ring?

24          A       He wanted me to try to get rid of it, yes.

25          Q       What did you tell him?

1 A That I could.

2 Q Did he ever give you the items?

3 A No.

4 Q Did Mr. Green stay at your house that  
5 night?

6 A Yes.

7 Q Did he ever tell you anything about any  
8 golf clubs?

9 A Yeah, he told me he had some old golf  
10 clubs.

11 Q Did he tell you where they were?

12 A He didn't say.

13 Q And did he ever talk about a car?

14 A He told me he had a red Lexus.

15 Q And did you ever see that car?

16 A No, because he said it was -- he had hid it  
17 in some woods somewhere.

18 Q Did he ever show you any keys to a car?

19 A Yes.

20 Q Can you describe the keys that he showed  
21 you?

22 A I can't really recall how they looked.

23 MR. BRITT: May I approach?

24 THE COURT: Yes, sir.

25 BY MR. BRITT:

1           Q       Ms. Perry, I'm going to show you State's  
2 Exhibit Number 3, a photograph of a watch. Have you  
3 ever seen that watch before?

4           A       Yes.

5           Q       When did you first see that watch?

6           A       Mr. Green had it on his arm.

7           Q       And that was the watch he was wearing when  
8 he was at your house on July 31st, 1993?

9           A       Yes.

10          Q       Show you what's been marked State's Exhibit  
11 4, State's Exhibit 5, and State's Exhibit 6. Do you  
12 recognize the ring that's depicted in those  
13 photographs?

14          A       Yes.

15          Q       And when did you first see the ring that's  
16 depicted in those photographs?

17          A       When Mr. Green was at my house.

18          Q       And that was on July 31st, 1993?

19          A       Yes.

20          Q       Is that the same gold ring that had the  
21 initials JJ inside of it?

22          A       Yes.

23          Q       After Mr. Green spent the night at your  
24 house on the 31st, did he stay the next day?

25          A       No, my son and all them got up and they

1 left the next morning.

2 Q Did you ever see Mr. Green again?

3 A No.

4 Q Did anyone have a video camera at your  
5 house that day?

6 A Mr. Green had a video camera.

7 Q And were -- did Mr. Green or other  
8 individuals use that video camera?

9 A My son Marcus did.

10 Q And did you, after the video -- was there a  
11 video made inside your house that you're aware of?

12 A Yes.

13 Q After it was made, did you ever watch the  
14 video?

15 A Yes.

16 Q And the things that were depicted on the  
17 videotape, were they a fair and accurate  
18 representation of what had taken place during the  
19 time the video was being made?

20 A No.

21 Q They did not accurately reflect the things  
22 that had been videoed?

23 MR. THOMPSON: Object.

24 THE WITNESS: Yes.

25 THE COURT: Comes a little late,

1 but there's no foundation for her knowledge  
2 of that, so the objection is sustained.

3 MR. THOMPSON: Move to strike.

4 THE COURT: Members of the jury,  
5 you're not to consider the question asked  
6 by Mr. Britt regarding anything the video  
7 purports to show or you're not to consider  
8 the answer given by the witness if one was  
9 given. Those matters are not to take any  
10 part in your consideration in this case or  
11 in your deliberations in this case in any  
12 respect.

13 You may attempt to lay a foundation.

14 BY MR. BRITT:

15 Q Mr. Perry, were you present when the video  
16 camera was being used in your house?

17 A That afternoon, yes.

18 Q And did you have an opportunity to look at  
19 the tape that was made?

20 A Yes.

21 Q Do you appear in a portion of the video  
22 that was made?

23 A Yes.

24 Q And in the portion that you appear in, is  
25 that a fair and accurate representation of the

1 activities that were taking place in your house on  
2 that day?

3 A Yes.

4 MR. BRITT: I don't have any  
5 other questions.

6 THE COURT: Anything on  
7 cross-examination?

8 MR. BOWEN: Yes, Your Honor. And  
9 there may be some matters that need to be  
10 heard on voir dire before we proceed.

11 THE COURT: Is it more  
12 appropriate, and I'm asking for your input  
13 since it's a now a little past 12:30, to go  
14 forward with voir dire and do  
15 cross-examination next week, or is voir  
16 dire something that you contemplate that we  
17 can complete.

18 MR. BOWEN: I think we can use  
19 our time doing the voir dire now and then  
20 we'll know where to go when we start next  
21 week.

22 THE COURT: So you're asking to  
23 defer cross-examination and go forward with  
24 voir dire?

25 MR. BOWEN: Yes.

1 THE COURT: State want to be  
2 heard?

3 MR. BRITT: Yes, sir. We can do  
4 it at the bench.

5 THE COURT: That creates problems  
6 for -- yes, sir, come on up.

7 (Whereupon a bench conference ensued  
8 as follows.)

9 THE COURT: Let the record  
10 reflect, present at this time are counsel  
11 for the State Mr. Britt, counsel for  
12 defendant, Mr. Thompson, Mr. Bowen. Also  
13 present is the defendant Mr. Green, also  
14 known as U'Allah, the presiding Judge and  
15 the court reporter.

16 Yes, sir.

17 MR. BRITT: I don't have any way  
18 of anticipating how long the voir dire will  
19 be, how long the cross-examination will be,  
20 but as a matter for convenience for  
21 Ms. Perry, this is the third day she's been  
22 down here. She lives in Fayetteville and  
23 had some difficulty in getting  
24 transportation here.

25 THE COURT: We certainly don't

1 mean to inconvenience Ms. Perry but my  
2 thinking is it would be highly unlikely we  
3 would be able to complete both voir dire  
4 and cross-examination in 25 minutes.

5 MR. BRITT: Maybe we could  
6 inquire the jury go beyond that 1:00  
7 threshold to try to get it completed so she  
8 does not have to come back, because she  
9 does work.

10 THE COURT: You folks anticipate  
11 further length of cross, or don't know  
12 yet?

13 MR. THOMPSON: I don't know.  
14 Voir dire may be lengthier than cross.

15 THE COURT: I don't mean to  
16 inconvenience.

17 MR. BRITT: Just wanted to bring  
18 it to court's attention.

19 (Brief pause.)

20 MR. BRITT: Just so the record is  
21 complete, I don't recall you saying this  
22 was a bench conference out of the presence  
23 of the jury.

24 THE COURT: I said bench  
25 conference at the beginning.

1                   MR. BRITT: And that we had  
2 concluded the conference.

3                   THE COURT: I yes, sir, I did.  
4                   (Bench conference concluded.)

5                   THE COURT: Members of the jury,  
6 I'm going to release you at this time.  
7 Please report back to the courtroom at 9:30  
8 Monday morning. During this weekend  
9 recess, it is especially important that you  
10 continue to abide by all prior instructions  
11 of the Court concerning your conduct.

12                   I'm obligated again at this point to  
13 instruct you that you're not to talk about  
14 this matter among yourself or with anyone  
15 else, including members of your own  
16 families. You're not allowed or permitted  
17 to talk about this matter with anybody at  
18 all. You're not permitted to allow anyone  
19 to say anything to you or in your presence  
20 about this case. If anyone communicates  
21 with you about this matter or attempts to  
22 do so, or if anyone says anything about  
23 this case in your presence, it's your duty  
24 to inform us of that immediately, again,  
25 preferably by writing, through one of the

1 bailiffs assigned to the courtroom.

2 Don't form or express any opinions  
3 about this matter until you've specifically  
4 been instructed to begin deliberations in  
5 the case. Don't have any contact or  
6 communication of any kind with any of the  
7 attorneys, parties, witnesses, prospective  
8 witnesses, or directly with the Court.

9 Don't allow yourself to be exposed to  
10 any media accounts which may exist in  
11 connection with this matter, and don't  
12 conduct any independent inquiry or  
13 investigation or research of any kind.

14 Everyone else please remain seated,  
15 the members of the jury are excused until  
16 Monday morning at 9:30 a.m.

17 (Jury out at 12:36 p.m.)

18 THE COURT: Let the record show  
19 the following is being conducted in the  
20 absence of the jury.

21 Ms. Perry, inquired of me as jurors  
22 we're leaving out, whether she had to come  
23 back. Yes, ma'am, I apologize for any  
24 inconvenience. It's not our intent to  
25 inconvenience anybody. But it appears that

1           you will have to come back Monday morning.  
2           We are going to proceed at this time with a  
3           question of law which involves you. These  
4           lawyers will have

5                         THE WITNESS: Well --

6                         THE COURT: Bear with me, I'll  
7           explain it to you. These lawyers will have  
8           an opportunity to ask you some questions  
9           now in the absence of the jury. Then  
10          Monday morning, you would have to come  
11          back, but I apologize for any  
12          inconvenience. Okay.

13                        THE WITNESS: Okay.

14                        THE COURT: All right. You folks  
15          want to proceed on voir dire? Go ahead.  
16          First of all, tell us where we're going.

17                        MR. BOWEN: Two things, Your  
18          Honor. First of all, in our report from  
19          Corporate Intelligence by Mr. Toby Henry,  
20          president of that organization out of  
21          Charlotte, he has examined the records and  
22          put together background data on this  
23          witness, and part of it consists of a  
24          criminal record. Because I do not have a  
25          certified criminal record in front of me, I

1 thought it appropriate to first talk to  
2 this witness about the record out of the  
3 presence of the jury.

4 THE COURT: So you're proceeding  
5 under Rule 609, and you're doing it on voir  
6 dire because you don't have a certified  
7 record?

8 MR. BOWEN: That's correct. But  
9 I do believe in good faith this is a  
10 record.

11 THE COURT: Ma'am, we can't  
12 talk. You have to say whatever you want to  
13 say on the record. If you'll bear with me  
14 for one second, please, ma'am. Now --

15 MR. BOWEN: Now, the second  
16 category of inquiry would be under Rule 607  
17 and 611-A and State versus Williams, and  
18 this would go to the fact that we have  
19 documentation and information that the  
20 witness has an extensive drug usage  
21 background and was in fact in a  
22 rehabilitation center when our private  
23 investigator talked to her. To the extent  
24 that she has a problem that might affect  
25 her memory --

1 THE COURT: Ma'am, I don't mean  
2 to be rude, but you're going to have to  
3 bear with us. We will address whatever  
4 concerns you've got in just a moment. I'm  
5 trying to listen to Mr. Bowen. If you'll  
6 bear with us.

7 MR. BOWEN: -- on her ability to  
8 recall that about which she testifies. I  
9 wanted the opportunity outside the jury to  
10 talk about that.

11 THE COURT: First of all, I  
12 appreciate that being done on voir dire.  
13 That's the way to do it. Secondly, I  
14 appreciate the fact that you are referring  
15 to specific Rules of Evidence. That's the  
16 way to do it, and I very much appreciate  
17 that. Anything else?

18 MR. BOWEN: Yes, sir, one other  
19 thing that is unclear to me from the  
20 discovery we got. It says in our discovery  
21 materials that Ms. Perry was interviewed by  
22 detective Don Smith at the Cumberland  
23 County jail. And I don't know whether she  
24 was an inmate there or that's just where it  
25 happened to happen. And I thought I would

1           inquire out of the presence of the jury so  
2           we won't give the wrong impression.

3                         THE COURT:   That's appropriate as  
4           well.

5                         Now, yes, ma'am, you want to say  
6           something.

7                         THE WITNESS:  Yeah, can I say  
8           something?  Yes, I used drugs.  Yes, when  
9           they interviewed me, I was in Cumberland  
10          County jail.  But this is not pertaining to  
11          what we're doing now.  This is about me.  
12          It's not about -- this is about Demery, not  
13          about me.  Okay?  That's what I wanted to  
14          say.

15                        THE COURT:  Okay.  Anything else  
16          you want to say, ma'am?

17                        THE WITNESS:  Oh, no, that's it.

18                        THE COURT:  I appreciate your  
19          position, but there's certain rules of law,  
20          certain rules of evidence that we have to  
21          abide by.  Now, if you feel that a matter  
22          is too personal, say so.  But understand  
23          it's my responsibility to rule on questions  
24          of law and understand that it's my  
25          responsibility to rule on questions of

1 evidence.

2 THE WITNESS: I knew that was  
3 going to come up sooner or later.

4 THE COURT: You just wanted to  
5 express your feelings?

6 THE WITNESS: Right.

7 THE COURT: You got that out?

8 THE WITNESS: Yes.

9 THE BAILIFF: I have three jurors  
10 requesting slips for their employer.

11 THE COURT: Can we do that  
12 outside? We'll take care of that. Thank  
13 you, sir.

14 Mr. Bowen, go forward.

15 MR. BOWEN: Thank you, Your  
16 Honor.

17 BY MR. BOWEN:

18 Q Ms. Perry, is that right?

19 A Yes, that's my name.

20 Q Have you been previously convicted of  
21 felonious possession of cocaine?

22 MR. BRITT: Objection. Can we  
23 establish a time frame?

24 THE COURT: I think he's getting  
25 there. Let's do it more directly. You've

1           got a record. You can point out date,  
2           time, place, and court.

3 BY MR. BOWEN:

4           Q       In 1993, were you convicted of felonious  
5 possession of cocaine?

6           A       Yes.

7           Q       Sir?

8           A       Yes.

9           Q       I'm sorry, did I say "sir"? I apologize to  
10 you. Excuse me, I didn't realize it.

11                   Now, ma'am, were you also convicted in 1993  
12 of possession of drug paraphernalia?

13          A       Yes.

14          Q       Were you also convicted in 1994 of  
15 misdemeanor larceny?

16          A       Yes.

17          Q       Were you also convicted between 1982 and  
18 1984 with approximately 12 worthless checks?

19                   MR. BRITT: Objection.

20                   THE WITNESS: No.

21                   THE COURT: Hold up. We're on  
22 voir dire. What is your basis for asking  
23 that when it's outside the ten year time  
24 period?

25                   MR. BOWEN: You're right, I'm

1           sorry.

2                   THE WITNESS: I answered anyway.

3                   THE COURT: Ms. -- I apologize,  
4 your last name?

5                   THE WITNESS: Perry.

6                   THE COURT: Ms. Perry wanted you  
7 to know that she answered anyway.

8                   MR. BOWEN: Yes, sir. And I do  
9 not intend to use that, Your Honor. I  
10 realize that's out side the time frame.

11                   THE COURT: Well, folks, if you  
12 looked at the rule, 609 says that any  
13 conviction carrying more than 60 days  
14 within a ten year time period runs from the  
15 date that an active sentence was imposed.

16                   MR. BOWEN: Judge, I know that.  
17 My mind was not working on that. I know  
18 it's a ten year rule. I've been -- I'm  
19 sorry, I made a mistake.

20                   THE COURT: Sir, listen to me.  
21 Sometimes stuff flies, and I'm not  
22 suggesting -- what I'm suggesting is if she  
23 got an active sentence and if that active  
24 sentence falls within the ten year time  
25 period, then the date of conviction may not

1 necessarily apply and it may otherwise be  
2 an admissible question.

3 MR. BOWEN: All right. Let me  
4 pursue this one moment. Even if it's  
5 outside the ten year time period, okay --

6 THE COURT: I'm trying to help  
7 you out and you're not listening.

8 MR. BOWEN: I am listening.  
9 You're saying the ten year time period  
10 controls. I'm also saying that if it is an  
11 act which can be shown in good faith, which  
12 goes to truth and veracity, it can come in  
13 under other areas of the evidence code.  
14 And so --

15 THE COURT: What time period did  
16 you talk about?

17 MR. BOWEN: Sir?

18 THE COURT: '82 to '86.

19 MR. BRITT: '82 to '84.

20 MR. BOWEN: '82 to '84. And the  
21 Court may say that that's too materially  
22 removed, but it can still show, it still  
23 goes the truthfulness or veracity as a  
24 wrongful act that shows those matters. I  
25 think --

1 THE COURT: Did you hear her  
2 answer to your question?

3 MR. BOWEN: I'm sorry, I didn't.

4 THE WITNESS: My answer was no.  
5 And at the time I was married, me and my  
6 husband was writing checks, okay. Anything  
7 else you want to know?

8 MR. BOWEN: I think I should stay  
9 away from that. No, I didn't hear her  
10 answer.

11 THE COURT: Yes, sir.

12 BY MR. BOWEN:

13 Q You did say, did you not -- Ms. Perry, did  
14 you -- you indicated that you were incarcerated when  
15 you were talked to by Mr. Don Smith, is that correct?

16 A I was.

17 Q And you also have indicated I believe that  
18 you have had a drug consumption problem, is that  
19 right?

20 MR. BRITT: Objection. She  
21 didn't say that --

22 THE WITNESS: I had, I had.

23 MR. BRITT: -- she has now.

24 BY MR. BOWEN:

25 Q With respect to what --

1                   THE WITNESS: Does it matter? As  
2                   long as it was drugs, doesn't matter. I  
3                   don't do drugs anymore, okay? Let's leave  
4                   that one alone.

5 BY MR. BOWEN:

6           Q       Now, back in 1993, were you using any drugs  
7           in '93?

8           A       Yes, I was. You just asked me a few  
9           minutes ago.

10          Q       Were you using drugs at or about the  
11          time --

12          A       Yes, I was.

13          Q       You were using drugs at or about the time  
14          that you say you saw Daniel Green?

15          A       No, I was not.

16          Q       And following that time, did you enter any  
17          type of drug rehabilitation program?

18          A       Yes, I did.

19          Q       So did you then once again resume using  
20          drugs sometime after you saw Daniel Green?

21          A       No, I did not.

22                   THE COURT: That's not relevant,  
23                   unless you've got an argument that it goes  
24                   to ability to retain and recall.

25 BY MR. BOWEN:

1 Q I'm going to need to know what type of  
2 drug.

3 A I wish to not tell you, because it's none  
4 of your business.

5 THE COURT: Ma'am, you have to  
6 answer.

7 THE WITNESS: I have to answer  
8 that?

9 THE COURT: Yes, ma'am.

10 THE WITNESS: It was cocaine.

11 BY MR. BOWEN:

12 Q What form of cocaine did you use?

13 MR. BRITT: Objection. Cocaine  
14 is cocaine.

15 MR. THOMPSON: That's not true.

16 THE COURT: Folks, when an  
17 objection is made, please let me rule  
18 before you interject. The objection is  
19 sustained.

20 MR. THOMPSON: Your Honor, that  
21 was a statement. "Cocaine is cocaine."

22 THE COURT: Let's take five  
23 minutes. Step down, for a moment. We're  
24 going to take five minutes.

25 THE BAILIFF: Court stands at

1 ease for five minutes.

2 (Brief recess.)

3 THE COURT: Ms. Perry --

4 MR. BRITT: She went in the  
5 hallway.

6 THE COURT: If you'll retake the  
7 witness stand, please.

8 THE COURT: Ask your question  
9 another way. Rephrase your question.

10 BY MR. BOWEN:

11 Q Ms. Perry, back in 1983, you say you were  
12 using cocaine?

13 A That's what I said.

14 Q '93, I'm sorry. Were you using cocaine in  
15 some form?

16 A That's what I said.

17 Q When, approximately, did you stop using  
18 cocaine in some form?

19 A About a year ago.

20 Q All right.

21 A About two years ago.

22 Q Okay. So then you're talking about you  
23 stopped using cocaine in some form in 1994?

24 A I don't know.

25 Q When did you start using cocaine in some

1 form?

2 A When did I start?

3 Q Yes, ma'am.

4 A I started in -- I don't remember.

5 Q Would it be before 1992?

6 A No, after.

7 Q Would it be during 1993?

8 A '94, '95.

9 Q Well, had you used cocaine in any form  
10 prior to the summer of --

11 A I told you I did not, okay.

12 THE COURT: Ma'am --

13 THE WITNESS: I'm sorry. I'm  
14 sorry.

15 THE COURT: That's okay.

16 THE WITNESS: No.

17 THE COURT: Ma'am, let him  
18 complete his question. Then you can  
19 answer.

20 THE WITNESS: All right. No.

21 BY MR. BOWEN:

22 Q Now, when was it that you -- well, now, the  
23 possession of cocaine to which you have admitted that  
24 you were convicted, according to the case number,  
25 occurred in 1993. Are you aware of that?

1 A I don't remember. Okay?

2 Q All right. Did you plead guilty in 1993 or  
3 were you convicted in 1993 --

4 A No, I was not. I don't remember. Okay?

5 Q Okay. Now, when you were in jail at the  
6 Cumberland County jail, when you talked to the  
7 officers, talked to officer Don Smith, that was in  
8 September, 1993, correct?

9 A Uh-huh.

10 Q Now, what were you charged with, if  
11 anything, to cause you to be in the Cumberland County  
12 jail at that time?

13 A I was not charged with anything. At the  
14 time I was using. Either I took my sentence or I was  
15 back out using again, so I decided to take the  
16 sentence to be off the street and not to use again.  
17 That's why.

18 THE COURT: So you were on  
19 probation violation?

20 THE WITNESS: Yes, sir.

21 THE COURT: You voluntarily went  
22 in and said, I would rather take my time?

23 THE WITNESS: Yes, sir.

24 BY MR. BOWEN:

25 Q So what were you on probation for when you

1 decided to go in and serve your sentence?

2 A Drugs.

3 Q Okay. So if you voluntarily went back in  
4 jail in September of 1993, then you had been  
5 convicted of your drug -- your drug crimes earlier in  
6 1993, hadn't you?

7 A No. I don't remember, okay?

8 THE COURT: You've got to -- a  
9 conviction date preceding '93.

10 MR. BOWEN: I only have the  
11 calendar number, Your Honor, which is 93 CR  
12 date.

13 MR. BRITT: It's a matter of  
14 record in Cumberland County.

15 THE COURT: Yes, sir. And it's  
16 entirely conceivable that one could be  
17 convicted in '93, be placed on probation,  
18 and invoke activation of that probation all  
19 in one year.

20 MR. BOWEN: Absolutely. I have  
21 no quarrel with that. We'll have that  
22 certified in the record.

23 THE COURT: It would be helpful.

24 BY MR. BOWEN:

25 Q Did you call the officers or Mr. Smith or

1 did Mr. Smith show up and ask to talk to you?

2 A They showed up and asked to talk to me.

3 Q Now, that cocaine usage affected your  
4 mental abilities, did it not?

5 MR. BRITT: Objection.

6 THE WITNESS: No, it did not. Do  
7 I look crazy?

8 MR. BOWEN: I'm not asking --

9 THE WITNESS: What are you trying  
10 to say then?

11 BY MR. BOWEN:

12 Q I'm saying that the cocaine made you high,  
13 didn't it?

14 A Whatever.

15 Q It affected your ability to observe things  
16 and to remember?

17 A No, it did not. No, it did not.

18 Q It affects your ability to function --

19 A I just told you, at the time I was not a  
20 user, okay?

21 Q When you do use it, it affects your --

22 A No, it does not affect my ability to think  
23 or anything.

24 Q And how long was it before you talked to  
25 Mr. Smith approximately that you had used any type of

1 cocaine in any --

2 A I was locked up for four months.

3 Q About how much of that four months had been  
4 served, would you say, when detective Don Smith came  
5 to talk to you?

6 A About two.

7 Q So that would mean that you were locked up  
8 sometime in July of 1993, correct?

9 A I guess so.

10 Q Because you talked to Officer Smith in the  
11 middle of September?

12 A I guess so.

13 Q So if you were locked up in the middle of  
14 July of 1993, you're testifying that you were out in  
15 the community seeing Daniel Green --

16 A I don't remember. I just told you I don't  
17 remember.

18 THE COURT: Anything further?

19 MR. BOWEN: May be, Your Honor,  
20 just one thing.

21 THE COURT: Would you like some  
22 water, Ms. Perry?

23 THE WITNESS: Thank you.

24 MR. BOWEN: That's all, Your  
25 Honor.

1 THE COURT: Any questions,  
2 Mr. Britt?

3 MR. BRITT: Not on voir dire.

4 THE COURT: Folks, you're  
5 entitled to ask anything that's admissible  
6 under 609, specifically 609-B. Now, you'll  
7 listen to me. Your point was that some  
8 convictions falling outside the ten year  
9 time period may be admissible even though  
10 they fall outside the ten year time  
11 period. If the Court makes certain  
12 findings, that was your point, is that  
13 correct?

14 MR. BOWEN: No, sir. My point is  
15 that acts themselves, if it's asked a  
16 different way, "did you in fact write  
17 worthless checks," that gets to, as I  
18 understand it, the 608-B material that  
19 involves prior --

20 THE COURT: Under 608-B, does the  
21 Court have to make findings before it's  
22 admissible?

23 MR. BOWEN: Yes.

24 THE COURT: 608-B, and any  
25 matters outside the time period in 609-B,

1 the Court has to make findings?

2 MR. BOWEN: And I think the time  
3 limit is too far.

4 THE COURT: Listen to me. Is  
5 that true?

6 MR. BOWEN: Yes, sir.

7 THE COURT: Under 609-B, you are  
8 entitled, as a matter of right, the Court  
9 doesn't have to make any findings if you  
10 are within the time period. All right.  
11 Does 609-B say that if you are convicted  
12 within that ten year time period, or you  
13 receive a sentence and the release date  
14 falls within that ten year time period,  
15 you're still entitled as a matter of  
16 right?

17 MR. THOMPSON: Yes, sir.

18 THE COURT: That was my point.

19 MR. THOMPSON: Yes, sir.

20 THE COURT: Scenario: A person  
21 is convicted in '84, receives consecutive  
22 sentences that carry over and a release  
23 date is within the ten year time period,  
24 court doesn't have to make findings, you  
25 don't have to ask the Court to exercise

1 discretion or make findings. It's a matter  
2 of writing.

3 Listening is a wonderful thing.

4 MR. BOWEN: Yes, sir. And I  
5 don't know the answer to --

6 MR. THOMPSON: Your Honor, I  
7 understand what you're saying, and when we  
8 get the certified record, we'll be able to  
9 address that. I understand.

10 THE COURT: Only if you're aware  
11 of it. You can only be aware of it if you  
12 listen.

13 MR. THOMPSON: I understand.

14 THE WITNESS: To Mr. and Mrs. --  
15 What's his name?

16 THE COURT: Those two? Mr.  
17 Thompson, Mr. Bowen?

18 THE WITNESS: People make  
19 mistakes, right? And people overcome their  
20 mistakes. But I made a mistake. Don't use  
21 it against me, okay? And to me, if it had  
22 been me, I was in court, I wouldn't even  
23 come out with personal things sometimes.  
24 All these people know my business, but I  
25 don't care because I kicked the habit. But

1 I never would do that to try to defend  
2 somebody else. That's what I had to say.

3 THE COURT: Ms. Perry, we  
4 appreciate you bearing us with. If you'll  
5 come back at 9:30 Monday, we'll do the best  
6 we can to release you as early as possible.

7 THE WITNESS: Okay.

8 THE COURT: You're free to go  
9 until 9:30 Monday morning.

10 THE WITNESS: Okay.

11 THE COURT: Folks, for the  
12 record, Court provided counsel for the  
13 State and counsel for the defendant with  
14 what is called an impeachment chart. This  
15 is a chart that was prepared by a number of  
16 folks in various trial advocacy programs to  
17 provide a quick reference source to the  
18 rules of impeachment, whether or not  
19 cross-examination is allowed, whether or  
20 not extrinsic evidence is allowed, the  
21 foundation for extrinsic evidence, and  
22 rehabilitation requirement. I gave it to  
23 you for whatever it is worth.

24 MR. THOMPSON: Thank you, sir.

25 MR. BRITT: Thank you.

1 THE COURT: Anything from either  
2 counsel?

3 MR. BRITT: No, sir.

4 MR. THOMPSON: No, sir.

5 THE COURT: We are concluded  
6 until 9:30 on Monday morning.

7 MR. THOMPSON: Yes, sir.

8 THE BAILIFF: All rise, please.

9 (Court adjourned.)

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Trial wt 4

Vols 13-17

Jan 22-26



## 1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

3 LUTHER JOHNSON BRITT, III, Esq.  
4 District Attorney  
16-B Prosecutorial District  
5 Lumberton, North Carolina 28358

6 On Behalf of the Defendant:

7 ANGUS B. THOMPSON, Esq.  
8 Public Defender  
16-B Prosecutorial District  
9 Lumberton, North Carolina 28358

10 and

11 WOODBERRY A. BOWEN, Esq.  
Bowen & Byerly  
12 P.O. Box 846  
Lumberton, North Carolina 28359

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16 (Whereupon an in camera proceeding ensued  
17 as follows.)

18 (9:30 a.m.)

19 THE COURT: Let the record  
20 reflect that the following is an  
21 in-chambers and in camera proceeding.  
22 Present at this time are the presiding  
23 Judge, the court reporter, counsel for the  
24 State, Johnson Britt, counsel for the  
25 defendant, Mr. Angus Thompson and Mr.

1 Woodberry Bowen. Also present at this time  
2 is the defendant, Mr. Daniel Green, also  
3 known as U'Allah.

4 Folks, when I arrived at the  
5 courthouse this morning, approximately  
6 8:00, 8:15, Ms. Stone gave me the following  
7 memorandum. It reads, "Memorandum to the  
8 Honorable Gregory A. Weeks, from Diane P.  
9 Stone. Subject: Juror misconduct. Date  
10 January 19, 1996. Approximately 4:10 p.m.  
11 on Friday, January 19, 1996, Angus  
12 Thompson, Woodberry Bowen and Garth  
13 Locklear came to my office and inquired if  
14 I had talked to someone identified as Anita  
15 Hunt on Thursday, reporting the misconduct  
16 of a juror. I told them that I had not  
17 talked to anyone who identified themselves  
18 as Anita Hunt nor had I talked to anyone  
19 about a juror except for the one phone call  
20 I had reported late yesterday afternoon.

21 They left, and about a minute later  
22 returned to explain why they had made such  
23 an inquiry. Angus said a caller who  
24 identified herself as Anita Hunt called him  
25 about 4:00 p.m. today," that today, I think

1           refers to Friday, January 19, 1996. And  
2           that is my language. Now, back to the  
3           memorandum. "And stated that she had  
4           observed an alternate juror -- Indian  
5           female with short hair -- on a pay phone  
6           and had overheard her say that she would  
7           find the, quote, nigger, spelled N I G E R,  
8           guilty.

9           "The caller stated she called the  
10          D.A.'s office yesterday to report the call  
11          and she gave her name but was not asked for  
12          her phone number, but would have given it  
13          had she been asked. The caller was to call  
14          back today." And my language, I think  
15          "today" refers to Monday, the 22nd of  
16          January, 1996. Back to the memorandum.

17          "Angus stated that he told the caller  
18          she should be giving this information  
19          to 'Diane Stone.' The caller then claimed  
20          that she -- that is," pardon me, "who she  
21          talked to on Thursday. The caller (Anita  
22          Hunt) gave Angus her phone number as  
23          671-4473.

24          "At 5:15 I received a call. Caller  
25          said, 'I don't know if you are the one I

1           talked to yesterday or not concerning what  
2           I heard the juror say.' I asked who was  
3           calling and she identified herself as Anita  
4           Hunt. I told her I did not talk to her  
5           yesterday. She said if what she read in  
6           the paper was about her call, that it was  
7           not right. Ms. Hunt said she called Angus  
8           Thompson today, and he told her she needed  
9           to talk to me.

10                   "Caller explained that she was in  
11           court on the 18th to observe the trial.  
12           During a break, she went to the pay phone  
13           across the street at a sandwich shop. When  
14           she got there, one of the jurors, an Indian  
15           female, was on the phone, and there was a  
16           man behind Ms. Hunt waiting to use the  
17           phone. Said she didn't know who the man  
18           was.

19                   "While Ms. Hunt was waiting to use  
20           the phone, she heard the juror say she knew  
21           he was guilty because what the coroner had  
22           said. Also heard her say, 'somebody needs  
23           to find the nigger,' spelled N I G E R,  
24           'guilty.' The man behind Ms. Hunt  
25           asked, 'How does she know he's guilty

1 before hearing everything.' Ms. Hunt said  
2 the juror must have heard the man because  
3 she said she had to go because someone else  
4 wanted to use the phone.

5 "Ms. Hunt said when she called the  
6 DA's office on Thursday. She asked if they  
7 wanted her phone number and they said no,  
8 and they would pass it along. I asked Ms.  
9 Hunt for her telephone number and she gave  
10 me 671-4473." The end of memorandum.

11 As I indicated, I received this this  
12 morning. I'm going to give anybody and  
13 everybody an opportunity to be heard and  
14 respond to any information contained in the  
15 memorandum, beginning first of all with  
16 you, Mr. Britt. Any information that you  
17 have about any calls made to your office on  
18 or about January 18th, or January 19, 1996,  
19 from someone who identified herself as  
20 Anita Hunt?

21 MR. BRITT: Not that I am aware  
22 of. I mean, I will inquire, but nothing  
23 has been said to me in regard to anything  
24 since Gina Jones.

25 MR. THOMPSON: Your Honor, first

1 of all, I think that the -- when Ms. Stone  
2 was referring to --

3 THE COURT: I'm going to --

4 MR. THOMPSON: -- call back today,  
5 she was not referring to today, Monday the  
6 22nd. She was referring to Friday.

7 THE COURT: Hold on. Let me get  
8 Ms. Stone down here. What is Diane's  
9 number?

10 Let the record reflect I'm calling Ms.  
11 Hunt Diane Stone at the Superior Court  
12 Judges Chambers.

13 (Judge calls number.)

14 Diane, if you can come down to  
15 chambers, please.

16 MR. BOWEN: Let me supplement a  
17 couple of things. Diane correctly recites,  
18 as I recall, what happened as between us.  
19 Mr. Locklear and Mr. Thompson and I went  
20 back up to Public Defender's Office, and  
21 somewhere around that 5:00 hour I got a  
22 call from Ms. Theresa Maynerd of our  
23 office, part of our clerical work, and  
24 Theresa said Ms. Hunt had called our office  
25 and that she was waiting for a return call

1 from me and that she was waiting at a phone  
2 booth. And I told Ms. Maynerd that I did  
3 not feel that I would be permitted to call  
4 her, that if she called back, if she called  
5 back to my office, to simply tell her to  
6 follow Mr. Thompson's earlier instructions  
7 about calling Diane Stone.

8 THE COURT: At that time, you had  
9 received information from Mr. Thompson  
10 apparently, about the call to him, from  
11 Anita Hunt?

12 MR. BOWEN: Yes. I had gone out  
13 a moment to check on my car, and when I  
14 came back, he told me about having gotten  
15 the call, and he and Mr. Locklear were  
16 present then. So anyway, I don't know  
17 whether she called my office back or not,  
18 but then obviously thereafter she called  
19 Ms. Stone.

20 When we went back in, I talked to Ms.  
21 Stone, and she mentioned to me that Judge  
22 Joe Freeman Britt had walked into the  
23 office and apparently had made some remarks  
24 indicating that perhaps he had heard  
25 something, she didn't know when this was,

1 but perhaps he had heard something earlier  
2 about this particular telephone call, that  
3 is, the Anita Hunt call. So after I talked  
4 to Diane, I went down to -- Judge Britt was  
5 in his chambers, I went down and chatted  
6 with Judge Britt. Judge Britt said, and he  
7 was sure he had heard it as early as  
8 Thursday, and the way he phrased it, it was  
9 he heard some things in the back hall about  
10 two juror problems. When we were in here  
11 working on one, he had assumed we were  
12 working on two, because he had heard  
13 something about a telephone call and some  
14 remarks and such.

15 THE COURT: Telephone call from  
16 whom and about what?

17 MR. BOWEN: He was very vague, he  
18 couldn't remember it very well. All he  
19 knew, he heard some talk. But I was pretty  
20 sure it occurred as early as Thursday.  
21 Now, when I talked to Diane, you know, this  
22 was kind of muddy in everybody's mind, but  
23 she indicated perhaps from what -- from  
24 Judge Britt's remarks, not that he named  
25 any particular person, but she inferred

1           that the call might have gone to Linda  
2           Price in the DA's office.

3           When I, at your orders, called Angus  
4           this morning, I can never remember the  
5           Public Defender's exchange number. I  
6           called the D.A.'s Office, theirs is easy to  
7           remember. By the way this has been within  
8           the past hour. By the way Linda, do you  
9           recall receiving a phone call from an Anita  
10          Hunt last week in connection with a jury  
11          problem. And Linda's answer was to me,  
12          "No, I think that Gail Hickman received  
13          that call." I believe Gail Hickman is  
14          another person there in the DA's office.

15          So it would appear that a call went to  
16          the DA's office, may have been fielded by  
17          Gail Hickman as early as last Thursday.

18                 THE COURT: Can I stop you here?  
19          Who is the person who got the call from  
20          Gina Hunt?

21                 MR. BOWEN: Gail Hickman got the  
22          call from Gina Hunt.

23                 MR. THOMPSON: Gina Jones.

24                 THE COURT: I suspect what is  
25          happening here, there is probably some

1           confusion about which call we are talking  
2           about. For the record, as early as  
3           Thursday last week, I mentioned to Judge  
4           Britt when he asked me what was going on  
5           about the call that Gina Jones had made, I  
6           suspect that in your conversation with  
7           Judge Britt, that is, the call he was  
8           referring to. And I suspect that your  
9           information from whoever the first woman  
10          you talked to, Ms. Price, referring to  
11          Gail --

12                         MR. BRITT: Hickman.

13                         THE COURT: -- Hickman is  
14           probably tied to that earlier call and not  
15           the second call.

16                         MR. BOWEN: So we may be back to  
17           Ms. Hunt claiming that she called somebody,  
18           she apparently doesn't know who she talked  
19           to.

20                         THE COURT: Yes.

21                         MR. BOWEN: It was not Diane, we  
22           really don't know for sure.

23                         THE COURT: Any other information  
24           you folks want to add to what is in the  
25           memorandum, what has been added by Mr.

1 Bowen or Mr. Britt, Mr. Thompson?

2 MR. THOMPSON: No, except that --  
3 yes, yes. When the person called me on  
4 Friday, and it was -- and later identified  
5 herself as --

6 THE COURT: Anita Hunt.

7 MR. THOMPSON: -- Anita Hunt, the  
8 first thing she said was, she read in the  
9 paper where she was supposed to come in,  
10 and I became a little apprehensive.

11 THE COURT: Thinking it was Gina  
12 Jones.

13 MR. THOMPSON: Thinking it was  
14 Gina Jones. I said, it's inappropriate  
15 for me to talk to you. By the way, what is  
16 your name. And then she said, Tina Hunt.

17 THE COURT: Anita Hunt

18 MR. THOMPSON: Anita Hunt, excuse  
19 me. I knew immediately it was not Anita --  
20 Gina Jones.

21 THE COURT: And you discussed  
22 with her the gist of her information?

23 MR. THOMPSON: Yes.

24 THE COURT: That information is  
25 accurately reflected in the information Ms.

1 Stone has presented.

2 MR. THOMPSON: Except as  
3 indicated, Ms. Stone, I told Ms. Stone when  
4 she said she was supposed to call back,  
5 today, today meant Friday.

6 THE COURT: There is some  
7 reference in your memorandum that the  
8 caller --

9 MS. STONE: This was typed on  
10 Friday.

11 THE COURT: She was supposed to  
12 call back on Friday.

13 MS. STONE: Right.

14 THE COURT: Did she ever call  
15 back on Friday, this Anita Hunt.

16 MS. STONE: Yes.

17 THE COURT: Now the information  
18 about calling back on Friday, you gave me?

19 MS. STONE: Then she did call me  
20 at 5:15 after we -- I had already typed up  
21 that front first page, was ready to leave  
22 when her call came in, and I stayed and  
23 typed the second page from my phone  
24 conversation.

25 THE COURT: So there is no

1 additional call that we were waiting for

2 MS. STONE: No.

3 THE COURT: All right. Folks,  
4 what I propose to do, I got everybody  
5 present, I'm going to call that phone  
6 number right now. For the record, I dialed  
7 671-4473.

8 For the record, the phone rang 15  
9 times, no one answered.

10 All right. Folks, it's my intent to  
11 -- well, let me back up and go back to  
12 Gina Hunt -- Gina Jones, pardon me. As you  
13 all will recall, we attempted Friday  
14 through Ms. Sue Gaines, the Clerk assigned  
15 to the courtroom, to run Gina Jones' name  
16 through the computer in an effort to obtain  
17 an address. There was no subpoena issued,  
18 as far as the computer reflected for Gina  
19 Jones for any court date on the date in  
20 question. We were not able to obtain any  
21 address as to Gina Jones.

22 Let the record further reflect that as  
23 previously indicated, Ms. Jones was  
24 directed by the Court through Ms. Diane  
25 Stone to report to the Court on Friday,

1           January 19th, 1996 at 8:30 p.m., that we  
2           all assembled in-camera, in chambers  
3           awaiting her until approximately 9:00 on  
4           Friday, January 19th, 1996, and Ms. Gina  
5           Jones never showed up.

6           As to Ms. Jones, it is my intent at  
7           this point to consider the matter she  
8           reported to us as unsupported and therefore  
9           unfounded unless further matters develop.

10          As to Anita Hunt, it is the Court's  
11          intent to attempt to contact her by  
12          telephone throughout today. If you folks  
13          hear from her, the Court directs all  
14          counsel to direct her -- that she is to  
15          report to the Court, 8:30 tomorrow  
16          morning.

17          Mr. Britt you understand that  
18          directive?

19                 MR. BRITT: Yes, sir.

20                 THE COURT: Mr. Thompson?

21                 MR. THOMPSON: Yes.

22                 THE COURT: Mr. Bowen? You folks  
23                 are not to have any conversation with her  
24                 except to direct her she is to report to  
25                 the Court, to Ms. Diane Stone's office at

1 8:30 tomorrow morning. If the Court  
2 contacts her, the Court will do so only  
3 when all of us are present and assembled in  
4 chambers, in-camera. The Court will not  
5 make any attempt do so unless all parties  
6 are present and all counsel are present.

7 Second matter, or third matter is, I  
8 had a call from Marion Isacson this  
9 morning, she apparently had some  
10 conversation with someone connected with  
11 the court reporting service now being  
12 utilized by the Court about daily  
13 transcripts. I'm not aware of any daily  
14 transcripts being provided to the State or  
15 to counsel for the defendant. Are you  
16 aware?

17 MR. BRITT: We get a disk.

18 THE COURT: I'm talking about  
19 daily transcript.

20 MR. BRITT: We print them out in  
21 our office.

22 THE COURT: For the record, is  
23 any cost attached to that?

24 THE COURT REPORTER: No.

25 THE COURT: He said something

1           about Steven Huseby and a \$4.25 per page  
2           per page fee for daily transcripts, and she  
3           was confused and I was confused. And I  
4           didn't know anything about it, so I told  
5           him I would inquire and I thought I would.

6                       MR. BOWEN: While we are talking,  
7           when it came out I needed a transcript to  
8           send to one of my experts witnesses even  
9           though with his disc, I suppose I could  
10          have printed one out and sent to the guy.  
11          My understanding, they have proprietary  
12          rights in that and it was inappropriate for  
13          me to ask for a transcript, get a  
14          transcript.

15                      THE COURT: Only way you can do  
16          that is through the Court.

17                      MR. BRITT: I did that. I mean,  
18          there is an order, you have agreed to sign  
19          an order.

20                      THE COURT: I understand. I'm  
21          making sure that I'm not incurring excess  
22          expense for the State, and I understand  
23          that they do have a proprietary right in it  
24          and it is appropriate that I get that.

25                      MR. BOWEN: That disc is only for

1 my own personal review, and is not to be  
2 used for any other purpose.

3 THE COURT: That is my  
4 understanding, and you are exactly right,  
5 and you did it the way you are supposed to,  
6 you have to come through the Court. That  
7 is the point I want to make. That before  
8 anybody asks for daily transcript, it has  
9 to be approved by me, because I have to get  
10 approval from A.L.C.

11 All right. As to the matter now  
12 before us, Mr. Britt, you want to be heard  
13 further? We don't have Anita Hunt present,  
14 we have attempted to contact her. It is my  
15 intent to follow up on it. As of right  
16 now, as of our circumstances and situation  
17 right now, she is in the same category Gina  
18 Jones is, pending further development.

19 MR. BRITT: I will check further  
20 to see whether or not she did in fact call  
21 my office and check with the people.

22 THE COURT: If you will do that  
23 now, so we can put that matter on record.  
24 We will remain waiting until you give us --

25 MR. BOWEN: One thing when you

1 dictated the first part of your order, I  
2 think you said 8:30 p.m. when you meant  
3 a.m.

4 THE COURT: A.m., I'm sorry.  
5 Just for the record.

6 THE COURT: That is when Ms. Hunt  
7 is to report.

8 MR. BOWEN: Well, earlier when  
9 you were dictating your order I think it  
10 was before that.

11 THE COURT: When I was reading  
12 from the memorandum.

13 MR. BOWEN: When you were talking  
14 about when Ms. Jones, I think was directed  
15 to report.

16 THE COURT: 8:30 a.m.

17 MR. BOWEN: I knew what you meant but  
18 just wanted to clear it up.

19 THE COURT: We are at ease until  
20 Mr. Britt comes back.

21 THE COURT: Let the record  
22 reflect, Mr. Johnson Britt is now present,  
23 and Mr. Britt, if you will introduce who  
24 you brought?

25 MR. BRITT: This is Linda Price

1           who is my administrative assistant. I'm  
2           going to hand this to the Court. This is a  
3           note Ms. Hunt --

4                       THE COURT: The note just handed  
5           to the Court by Mr. Britt reads as  
6           follows. "Anita Hunt, 671-4473, re: A  
7           juror."

8                       Ms. Price, when was this message  
9           received, do you recall.

10                      MS. PRICE: This was Friday  
11           afternoon, I say close to 4:00. And that  
12           is basically the message that was given,  
13           her name, phone number and that she wanted  
14           to talk with Mr. Britt about a juror.

15                      THE COURT: You received this on  
16           Friday, January 19, 1996, late in the  
17           afternoon about the time you indicated?

18                      MS. PRICE: Yes, sir.

19                      THE COURT: Mr. Thompson, any  
20           matters you want to ask Ms. Price about?

21                      MR. THOMPSON: Did you give that  
22           message to Mr. Britt?

23                      MS. PRICE: We have an area in  
24           the office where he normally looks to see  
25           who has called throughout the day. And I

1 placed it there for him to see.

2 THE COURT: When you retrieved it  
3 this morning, where did you retrieve it  
4 from?

5 MS. PRICE: In the same place.

6 THE COURT: Same place you left  
7 it?

8 MS. PRICE: Yes, sir.

9 MR. THOMPSON: Well, I'm just  
10 curious as to Mr. Britt, as to whether he  
11 received a message this morning or --

12 THE COURT: You can ask him.

13 MR. BRITT: When I returned to the  
14 office just a minute ago. The area where  
15 my messages are left are beside the  
16 typewriter, the secretary's station closest  
17 to my office, that is where I retrieved  
18 that message.

19 THE COURT: You have not seen  
20 that until you went back to the office a  
21 few minutes ago?

22 MR. BRITT: That is right.

23 THE COURT: Mr. Thompson?

24 MR. THOMPSON: Sort of like that  
25 notice I got on Friday. I understand.

1                   MR. BOWEN: Ms. Price, when you  
2                   and I talked within the past hour and I  
3                   asked you about a phone call, you mentioned  
4                   one that came into Ms. Hickman. Which was  
5                   that.

6                   MS. PRICE: She had received a  
7                   call from -- I don't recall that name but  
8                   the other juror that said she was a member.

9                   THE COURT: Gina Jones.

10                  MS. PRICE: Yes.

11                  MR. BRITT: When I mentioned  
12                  Anita Hunt, you thought that it was that  
13                  other call.

14                  MS. PRICE: Yes.

15                  MR. BOWEN: I see.

16                  THE COURT: Anything further as  
17                  to Ms. Price.

18                  MR. BRITT: That's all.

19                  THE COURT: Thank you, ma'am.  
20                  Anything further as to Ms. Stone?

21                  MR. BRITT: No, sir.

22                  THE COURT: Thank you, ma'am.  
23                  Folks, we are going to go back in and start  
24                  up, and as I indicated, what I'm going to  
25                  propose is the following: When we break

1 for lunch, when we recess for lunch, folks,  
2 I'm going to bring us all in at about five  
3 or ten until one, and we will attempt to  
4 call that number again on the record.

5 MR. BOWEN: Judge, for the  
6 record, Mr. Green has expressed to me that  
7 this is a period, it is called Ramadan in  
8 his --

9 THE COURT: Falls from sunrise to  
10 sundown.

11 MR. BOWEN: Right. And that --  
12 and you have generally referred to Mr.  
13 Green as U'Allah, Daniel Green, also known  
14 as U'Allah. And I think that would be  
15 appropriate but he has indicated to me that  
16 during this period that he does not respond  
17 to --

18 MR. GREEN: Speaking directly to  
19 me.

20 MR. BOWEN: To anybody speaking  
21 directly to him other than in his Muslim  
22 name, which has not been a problem with  
23 what you --

24 THE COURT: If you will pass on  
25 to Mr. Green that I certainly understand



1 THE COURT: Mr. Green, Mr. Britt,  
2 Mr. Bowen. All right. You folks have had  
3 an opportunity to confer with your client?

4 MR. BOWEN: Yes, sir,.

5 THE COURT: Any other matters  
6 before we conclude this in-camera  
7 proceeding and go back into open court?

8 MR. BOWEN: None that I know of.

9 THE COURT: In chambers and  
10 in-camera proceeding is concluded. We are  
11 now going back on the record in open  
12 court.

13 (End of in camera proceeding.)

14 (10:03 a.m.)

15 (January 22, 1996, Proceedings in open court.)

16 THE COURT: Let the record  
17 reflect that all counsel are present, that  
18 the defendant is present in open court.

19 Mr. Horne, do we have all members of  
20 the jury secured in the jury room?

21 THE BAILIFF: Yes, sir, we do.

22 THE COURT: Let the record so  
23 show. Also for the purposes of the record,  
24 let the record reflect this court has just  
25 conducted an in camera in-chambers

1 proceeding at which all counsel were  
2 present, also at which the defendant was  
3 present. Those matters are directed to be  
4 made a part of the record in this case.

5 Before we bring the jury in, anything  
6 further on behalf of the State?

7 MR. BRITT: No, sir.

8 THE COURT: Anything further on  
9 behalf of the defendant Mr. Thompson, Mr.  
10 Bowen.

11 MR. THOMPSON: No, sir.

12 THE COURT: Do you folks want to  
13 put anything on the record as to your  
14 client's attire and the purpose for your  
15 client's attire?

16 MR. BOWEN: No, sir, Your Honor.  
17 This head covering is a religious  
18 deference, we are about to begin or have  
19 begun the Ramadan time of fasting, which  
20 has long been recognized in the Islamic  
21 religion, and we beg the Court's  
22 permission --

23 THE COURT: The Court in the  
24 exercise of its discretion will take no  
25 action regarding Mr. Green's, also known as

1 Mr. U'Allah's, attire. As I have indicated  
2 to counsel in chambers in the in camera  
3 proceeding just conducted, I'm going to  
4 respect Mr. Green, also known as  
5 Mr. U'Allah's, religious beliefs. It's not  
6 my intent to infringe on his religious  
7 beliefs in anyway.

8 You folks have to recognize, however,  
9 that we're dealing with a matter which is  
10 before the jury in this case. And that the  
11 explanation just made is an explanation  
12 made for the benefit of the record. The  
13 Court having allowed you to make that  
14 explanation, but it is not before the  
15 jury. Did you folks want to be heard  
16 further?

17 MR. BOWEN: Your Honor, we  
18 believe that it would be appropriate that  
19 the jury be told that they are obviously  
20 going to see that there is a change, and  
21 that this has a religious significance.  
22 Less it be in some way prejudicial to the  
23 jury. In other words, I think that which  
24 the Court has allowed into the record, our  
25 remarks about that, controverted as they

1 are, should be communicated also.

2 THE COURT: Mr. Britt, do you  
3 want to be heard in that respect?

4 MR. BRITT: I don't know how it's  
5 relevant to the jury's inquiry in this case  
6 as to whether or not he wears this covering  
7 or not or whether it should be brought to  
8 their attention as to why he's wearing it.

9 THE COURT: I'm not putting  
10 anything one way or other. I'm simply  
11 putting matters on the record. You folks  
12 asking for the opportunity to --

13 MR. BOWEN: We are moving that  
14 that which has been communicated to the  
15 record and is still uncontroverted be  
16 communicated either by the Court or that  
17 the Court allow me to make a statement to  
18 the jury about that.

19 THE COURT: Now that we have a  
20 specific motion before the Court, does the  
21 State want to be heard?

22 MR. BRITT: No, sir.

23 THE COURT: The Court in its  
24 discretion will not make any comment  
25 regarding Mr. Green, also known as

1 U'Allah's attire. The Court in its  
2 discretion will allow Mr. Bowen to make  
3 explanation. The content of that  
4 explanation is to be exactly what was  
5 repeated before the Court for the purposes  
6 of the record.

7 MR. BOWEN: Yes, sir.

8 THE COURT: Anything further,  
9 folks?

10 MR. BOWEN: No.

11 THE COURT: Mr. Green, for the  
12 record, do you concur, agree and join in  
13 your counsel's motion that an explanation  
14 be given to the jury regarding your attire.

15 MR. GREEN: Yes, sir.

16 THE COURT: All right. Let the  
17 record reflect that, and as I've indicated  
18 in the discretion of the Court that will be  
19 allowed.

20 If you'll bring the jury in, please,  
21 Mr. Horne.

22 (Jury in at 10:10 a.m.)

23 THE COURT: Good morning, ladies  
24 and gentlemen.

25 Before we continue with the

1 presentation of evidence in this case,  
2 Mr. Bowen, do you want to be heard?

3 MR. BOWEN: Yes, Your Honor.

4 My understanding is that the Court has  
5 permitted me to say to the members of the  
6 jury consistent with the record that the  
7 difference that they observe this morning  
8 in Mr. Green, also known as U'Allah's  
9 attire, that is the head covering is of  
10 religious significance in that in the  
11 Islamic faith we are beginning the season  
12 of Ramadon, or an observance of, fasting  
13 and the head covering is a part of that  
14 observance.

15 THE COURT: That is allowed in  
16 the discretion of the Court.

17 Mr. Britt, do you have additional  
18 evidence to put on, sir.

19 MR. BRITT: Ms. Perry was on  
20 cross-examination.

21 THE COURT: I apologize.  
22 Ms. Perry, if you'll return to the witness  
23 stand, please ma'am. You've previously  
24 been sworn, you remain under oath. You may  
25 take a seat. Thank you, ma'am.

1                   If you'll speak up loudly and clearly  
2           please.

3                                   CROSS-EXAMINATION

4   BY MR. BOWEN:

5           Q     Good morning, Ms. Perry.

6           A     Good morning.

7           Q     Ms. Perry, I believe that you are the  
8   mother of Mr. Marcus Perry, is that correct?

9           A     Yes.

10          Q     And also -- I can't read my writing?

11          A     Xavion.

12          Q     Xavion Perry also?

13          A     Yes.

14          Q     And you were present, you testified when  
15   Mr. Green, also known as U'Allah, came to your home,  
16   is that right?

17          A     Yes.

18          Q     Now, Ms. Perry, would you tell the jury  
19   please what if anything you have been convicted of,  
20   what if any crime you've been convicted of in the  
21   last ten years that carries a potential punishment of  
22   greater than 60 years?

23          A     Possession of cocaine.

24          Q     Anything else? Have you been convicted of  
25   drug paraphernalia?

1           A     Yes.

2           Q     Anything else in the past ten years?

3           A     No.

4           Q     Now, in connection with -- strike that.

5                     Have you ever been incarcerated in the

6 Robeson County jail for any period of time?

7           A     Yes.

8           Q     That was in September of 1993, is that

9 correct?

10          A     I don't remember when it was.

11          Q     All right. But at any rate there was a

12 time when you went into the Cumberland County jail

13 facility, is that correct?

14          A     Yes.

15          Q     And you were transferred for about a week

16 over to Robeson County?

17          A     Yes.

18          Q     And then you were brought back to

19 Cumberland County?

20          A     Yes.

21          Q     Now, does the fall of 1993 sound about

22 right as to when you came to Robeson County?

23          A     I don't remember.

24          Q     Now, when you came to Robeson County, do

25 you know why you were transferred over here for a

1 period of time?

2 MR. BRITT: Objection to the  
3 relevance.

4 THE COURT: Well, is this a  
5 matter that you need to be heard on folks?  
6 We're talking about a matter outside of the  
7 rule of 609. Rephrase.

8 BY MR. BOWEN:

9 Q Ms. Perry, when you were brought to Robeson  
10 County, were you questioned by anybody about this  
11 case that you're testifying in now?

12 A I don't remember.

13 Q Well, you had no charges or no court  
14 matters in Robeson County, did you?

15 A No, I didn't.

16 Q And is it your testimony that you don't  
17 know why you were brought to Robeson County?

18 A I don't know why I was brought here.

19 Q And no officer ever came and talked to you  
20 or brought up the subject of this particular case?

21 A In Cumberland County, yes.

22 Q They did talk to you about it in Cumberland  
23 County?

24 A Yes.

25 Q But they did not talk to you about it when

1 they -- brought you to Robeson County?

2 A No, they did not, no.

3 Q Now, how did you get to court last  
4 Friday?

5 MR. BRITT: Objection to the  
6 relevance.

7 THE COURT: Overruled. You may  
8 answer.

9 THE WITNESS: What's his name?

10 BY MR. BOWEN:

11 Q Are you indicating an officer? You're  
12 pointing to someone?

13 A Mr. -- I don't know his name.

14 THE COURT: What is he wearing.

15 THE WITNESS: Right here, the  
16 beige jacket.

17 THE COURT: Now she is entitled  
18 to explain any transportation issue.

19 MR. BRITT: Yes, sir

20 BY MR. BOWEN:

21 Q You were unable to provide your own  
22 transportation, is that right?

23 A No, my son had to come to court Friday, so  
24 he wasn't coming so I rode with Mr. Heffney.

25 Q And how did you make the arrangements to

1 get to ride with Mr. Heffney?

2 A I called Mr. Heffney, my son didn't want to  
3 come to Robeson County Friday.

4 Q And you also rode with Mr. Heffney this  
5 morning, too, didn't you?

6 A Yes, I did.

7 Q Is it true that in the back hall this  
8 morning, Mr. Heffney was fixing your collar of your  
9 shirt or blouse?

10 A No.

11 Q Was he touching your shirt or collar?

12 A No.

13 Q Now, Ms. Perry, during these times that you  
14 rode to court with Mr. Heffney, did you and  
15 Mr. Heffney talk at all about your testimony or about  
16 the case?

17 A No, we did not.

18 Q Before testifying here in this matter, had  
19 you talked to any officer about your testimony or  
20 about this case?

21 A No.

22 Q You've never talked to anybody in the  
23 District Attorney's office about your testimony or  
24 about this case?

25 A No, only thing I read was on a piece of

1 paper that they gave me.

2 Q Okay. Well, now, do you know where that  
3 piece of paper came from?

4 A Yes, Attorney Britt showed me the paper.

5 Q And did it have handwriting on it or did it  
6 have typing on it?

7 A Type.

8 Q Do you know where that typing came from?

9 A No.

10 Q So if you never talked to any officer or  
11 anybody in the District Attorney's office about the  
12 case before, then that typing did not reflect any  
13 statement that you gave, did it?

14 THE COURT: Mr. Bowen, ask the  
15 witness about the Cumberland County matters  
16 that she's testified about, sir.

17 MR. BOWEN: All right

18 BY MR. BOWEN:

19 Q You say you had conversations with officers  
20 before about this case, have you or not?

21 A In Cumberland County jail, yes, sir, I  
22 have.

23 Q And do you know if they wrote those things  
24 down?

25 A I have no idea.

1 Q You had never seen anything written down as  
2 a consequence of those interviews with officers, is  
3 that true?

4 A I don't remember.

5 Q Now, this paper writing that the District  
6 Attorney gave to you, did it appear to be a summary  
7 of anything that you had said to Cumberland County  
8 officers in the Cumberland County jail?

9 A Yes.

10 Q And what you're saying is that you haven't  
11 talked to any other officers or anybody in the DA's  
12 office over here since that time?

13 A No.

14 Q You were just simply given a paper, is that  
15 right?

16 A Right.

17 Q Do you have that paper with you?

18 A No, I do not.

19 Q Were you told to bring it or not to bring  
20 it or told anything at all --

21 A I just read the paper and I gave it back to  
22 Mr. Britt.

23 Q When did that happen?

24 A I think it was Tuesday, Tuesday or  
25 Wednesday.

1 Q Tell me, have both your sons, Xavion and  
2 Marcus, you were here when they testified, right?

3 A I was here when Marcus testified, wasn't  
4 here when Xavion testified.

5 Q Now, since these events occurred in 1993,  
6 your sons have been continually living with you, is  
7 that correct?

8 A Yes.

9 Q Now, in that time, have you ever talked to  
10 Xavion and Marcus anything at all about this which  
11 you've testified to here Friday and today?

12 A Have I talked to them about it?

13 Q Have you talked to them at all about the  
14 time that you say Daniel Green came?

15 A Ask the question, I don't understand.

16 THE COURT: He's asking whether  
17 at any time since the matters about which  
18 you've testified, have you discussed those  
19 matters with your sons.

20 THE WITNESS: No.

21 BY MR. BOWEN:

22 Q And when -- strike that. Did you get a  
23 subpoena to come to court?

24 A Yes.

25 Q Do you know of your own knowledge that your

1 two sons also got subpoenas to come to court?

2 A Yes.

3 Q Did those subpoenas arrive at about the  
4 same time?

5 A Yes.

6 Q And when those subpoenas arrived to come to  
7 court, did you at that time talk to either of your  
8 two sons about having to come to court or about your  
9 testimony or anything about this case?

10 A No.

11 MR. BOWEN: One moment, please,  
12 Your Honor.

13 THE COURT: Yes, sir.

14 BY MR. BOWEN:

15 Q Ms. Perry, in addition to what you earlier  
16 testified to, you have also been convicted of  
17 shoplifting within the past ten years, haven't  
18 you?

19 MR. BRITT: Objection.

20 THE WITNESS: That was a while  
21 back.

22 THE COURT: Opportunity to be  
23 heard, Mr. Britt?

24 MR. BRITT: As to the form of the  
25 question --

1 THE COURT: Overruled. Do you want a  
2 limiting instruction?

3 MR. BRITT: Yes, sir.

4 THE COURT: Members of the jury,  
5 the matters elicited by counsel for the  
6 defendant, Mr. Bowen, as to any matters  
7 that the witness before you may have been  
8 convicted of within the time period stated  
9 in the question are being offered and  
10 received in this case as evidence of  
11 impeachment. Now, as I have previously  
12 instructed you, impeachment evidence is  
13 evidence which tends to discredit or tends  
14 to contradict. And I instruct you that it  
15 is for you, the members of the jury, to  
16 decide what the evidence in this case does  
17 show, but to the extent that you find that  
18 this evidence bears on the issue of the  
19 credibility of this witness now before you,  
20 you may consider that evidence for that  
21 limited purposes and for no other purpose.

22 Mr. Britt, anything else?

23 MR. BRITT: No, sir

24 BY MR. BOWEN:

25 Q Ms. Perry, that conviction of shoplifting

1 occurred in 1994, is that correct?

2 A I don't remember.

3 MR. BOWEN: That's all, Your  
4 Honor.

5 THE COURT: Anything on redirect,  
6 Mr. Britt?

7 MR. BRITT: No, sir.

8 THE COURT: May Ms. Perry be  
9 released, gentlemen?

10 Thank you, ma'am.

11 MR. BRITT: Your Honor, at this  
12 time we call Flora McPhaul.

13 THE COURT: If you'll come up and  
14 be sworn, please, ma'am. Place your left  
15 hand on the Bible, raise your right and  
16 face Ms. Gaines to my left

17 **FLORA DENISE MCPHAUL,**  
18 being first duly sworn, was examined and testified as  
19 follows:

20 DIRECT EXAMINATION

21 THE COURT: Have a seat, please,  
22 ma'am. Ma'am, if you'll state your full  
23 name for the record.

24 THE WITNESS: Flora Denise  
25 McPhaul.

1 THE COURT: If you'll spell your  
2 first, middle and last name, please?

3 THE WITNESS: F L O R A,  
4 D E N I S E, M C P H A U L.

5 BY MR. BRITT:

6 Q Where do you live, please?

7 A Lumberton.

8 Q And with whom do you live?

9 A By myself.

10 Q And where do you work?

11 A Sara Lee.

12 Q Are you related to Daniel Green?

13 A Yes.

14 Q How are you related to Daniel Green?

15 A Brother.

16 Q Back in July of 1993, were you living in  
17 Farmview Mobile Home Park here in Lumberton?

18 A Uh-huh, .

19 Q And you still live there today?

20 A No, huh-uh.

21 Q In July of 1993, do you recall what your  
22 telephone number was?

23 A 618-1961.

24 Q Is that the phone number that you still  
25 have today?

1 A No, huh-uh.

2 Q In July of 1993, specifically July the 24th  
3 of 1993, do you recall receiving a phone call from  
4 your brother Daniel Green?

5 A Yes.

6 Q And when he called you, how many times did  
7 he call you on July 24th, 1993 that you recall?

8 A Two.

9 Q And at the time you received the phone call  
10 was there anyone else there at home with you?

11 A Huh-uh.

12 Q The first time he called you, what if  
13 anything did he ask of you?

14 A What?

15 Q What if anything did he ask you for when he  
16 first called you on July 24th, 1993?

17 A Nothing, he just wanted to borrow some  
18 money.

19 Q At that time, did you tell him you would  
20 give him any money?

21 A I didn't have any money.

22 Q Approximately how long did you talk with  
23 him?

24 A About two to three minutes.

25 Q And after that phone call, did he call you

1 back again on July 24th?

2 A Yes.

3 Q How much time had passed between the two  
4 phone calls as best you can remember?

5 A About two to three minutes.

6 Q When he called you back the second time,  
7 did he ask you for anything?

8 A No, he just wanted to speak to my  
9 boyfriend.

10 Q Who was your boyfriend at the time?

11 A John Alford.

12 Q Was Mr. Alford there at the home?

13 A No, huh-uh.

14 Q And did you inform Mr. Green of that?

15 A Yes.

16 Q And after you told Mr. Alford was not  
17 there, did the two of you talk about anything else?

18 A I can't remember, no, huh-uh.

19 Q At the time he talked with you on July  
20 24th, 1993, did he tell you from where he was  
21 calling?

22 A No.

23 Q Did he tell you on what type of phone he  
24 was calling?

25 A No.

1 Q May I approach?

2 THE COURT: Yes, sir.

3 BY MR. BRITT:

4 Q Ms. McPhaul, I'm going to show you what has  
5 been marked as State's Exhibit 56-C, the phone  
6 records of James Jordan. You didn't know Mr. Jordan,  
7 did you?

8 A No, I didn't.

9 Q And the entry beginning July 24th, 15  
10 hundred 22 hours, do you recognize the telephone  
11 number?

12 A Uh-huh.

13 Q What number appears at that entry?

14 A My boyfriend's number.

15 Q What number is that for the record?

16 A 919 618-1961, Lumberton.

17 Q And the duration of that phone call as  
18 indicated by the record was three minutes?

19 A Uh-huh.

20 Q As indicated by the record, placed on U.S.  
21 Cellular Phone Services?

22 A Oh, I don't know, I mean yes, uh-huh.

23 Q In the area of Chesterfield, South  
24 Carolina?

25 A Yeah.

1 Q State's Exhibit 56-D --

2 A 919 --

3 Q July 24th?

4 A Right.

5 Q 15:17 hours?

6 A Right.

7 Q Number appears?

8 A 919 681-1961.

9 Q Duration of the telephone call?

10 A Three minutes.

11 Q Placed on Vanguard Cellular?

12 A Uh-huh.

13 Q In the area of Myrtle Beach, South  
14 Carolina?

15 A Yes.

16 Q Ms. McPhaul, if you will, place your  
17 initials on State's Exhibit 56-D beside the phone  
18 number.

19 A (Witness complies).

20 Q And on State's Exhibit 56-C if you'll place  
21 your initials by the entry of your phone number?

22 A (Witness complies).

23 Q On July 24th, 1993, Ms. McPhaul, were you  
24 aware that your brother was making phone calls on  
25 James Jordan's cellular telephone?

1 A No.

2 Q Were you aware that those phone calls were  
3 being made from a red Lexus 400 automobile?

4 A No.

5 MR. BRITT: I don't have any  
6 other questions.

7 THE COURT: Mr. Bowen,  
8 Mr. Thompson?

9 MR. BOWEN: Yes, thank you, Your  
10 Honor.

11 CROSS-EXAMINATION

12 BY MR. BOWEN:

13 Q Ms. McPhaul, you made a statement earlier  
14 to the officers, Officer Heffney, is that right?

15 A Yes.

16 Q You said at that time that Daniel Green was  
17 calling you to ask to borrow \$20.00, is that right?

18 A Yeah, that I could remember.

19 Q And you did not loan him that money?

20 A No, huh-uh.

21 Q You talked to Mr. Heffney further about  
22 some cookout that you were aware of?

23 A Uh-huh.

24 Q And you told him that there were at least  
25 two cookouts that you were aware of in July of 1993,

1 is that correct?

2 A Yes.

3 Q And in your family, when there's a cookout,  
4 how does it work, who gets together and what happens?

5 A Just family things, just friends and  
6 family.

7 Q Friends and family?

8 A Uh-huh.

9 Q Do you always do that at your mother's  
10 house, that is, Ann Green's house or do you sometimes  
11 go elsewhere?

12 A No, just my boyfriend's house.

13 Q Now, these are cookouts then that you had,  
14 is that correct?

15 A Right, uh-huh.

16 Q Do you know of your own knowledge that your  
17 mom, Ann Green, sometimes goes to her friend's house  
18 to have cookouts?

19 A No, I don't.

20 Q Now, this request to borrow the \$20.00, as  
21 I understand your testimony, this occurred on the  
22 24th of July?

23 A Uh-huh.

24 MR. BOWEN: That's all.

25 THE COURT: Anything further,

1 Mr. Britt?

2 MR. BRITT: No, sir.

3 THE COURT: May the witness be  
4 released gentlemen?

5 MR. BRITT: Yes, sir.

6 THE COURT: Thank you, ma'am,  
7 you're free to go.

8 MR. BRITT: Your Honor, at this  
9 time we need to take up a matter outside  
10 the presence of the jury.

11 THE COURT: Ladies and gentlemen  
12 of the jury, there's a matter of law the  
13 Court must take up out of the presence of  
14 the hearing of the jury. Please recall my  
15 instruction in that regard. Don't worry or  
16 speculate about what take place in your  
17 absence. If all members of the jury with  
18 step to the jury room.

19 (Jury out at 10:31 a.m.)

20 THE COURT: Let the record show  
21 that the following is being conducted in  
22 the absence of the jury. Yes, sir,  
23 Mr. Britt.

24 MR. BRITT: Your Honor, at this  
25 time it would be my intent to call

1           Detective Don Smith at the Cumberland  
2           County Sheriff's Department, who was one of  
3           the officers who was involved in the  
4           interview of David Moore. That interview  
5           was tape recorded. Mr. Smith is the  
6           officer who operated the tape recorder and  
7           has retained a copy of that tape, and the  
8           purpose of calling him would be to impeach  
9           the testimony of Mr. Moore in regard to  
10          things that he said during his testimony  
11          Friday, and specifically, matters that were  
12          inconsistent with his prior statement given  
13          to the officers. This would be offered  
14          pursuant to Rule 607 and 611, and also  
15          pursuant to Rule 403 which would require a  
16          balancing test by the Court to determine  
17          the relevance of this evidence.

18                   THE COURT: Well, if it's being  
19                   admitted only for the purposes of  
20                   impeachment, it's not coming in for  
21                   substantive purpose.

22                   MR. BRITT: That's right.

23                   THE COURT: Coming in for the  
24                   limited purpose of impeachment.

25                   MR. BRITT: Yes, sir.

1 THE COURT: So the nature of the  
2 evidence is one of the factors the Court  
3 has to take into account.

4 MR. BRITT: Yes, sir.

5 THE COURT: Do you want to make a  
6 showing at this time?

7 MR. BRITT: Yes, sir.

8 THE COURT: Yes, sir.

9 Sergeant Smith for purposes of the  
10 voir dire, if you'll be sworn, please.

11 LT. DON SMITH,  
12 being first duly sworn, was examined and testified as  
13 follows:

14 DIRECT EXAMINATION

15 THE COURT: Mr. Britt?

16 BY MR. BRITT:

17 Q Mr. Smith, for the record, please state  
18 your name and occupation?

19 A Lieutenant Don Smith, Cumberland County  
20 Sheriff's Department, homicide.

21 Q How long have you worked with the  
22 Cumberland County Sheriff's Department?

23 A Approximately 17 years.

24 Q And how long have you been assigned to the  
25 homicide division?

1           A       Approximately the last eight years, sir.

2           Q       August the 14th of 1993, did you have an  
3 occasion to participate in an interview of one David  
4 A. Moore that took place at the Cumberland County  
5 Sheriff's Department?

6           A       Yes, sir, I did. It was at 14:37 hours  
7 that would be 2:37 p.m.

8           Q       What other individuals were present at the  
9 time of the interview?

10          A       Captain Art Binder, Lieutenant Jim Henley,  
11 myself, and Detective Ray Wood.

12          Q       At the time Mr. Moore was interviewed, to  
13 your knowledge, had he been advised as to whether or  
14 not he was charged with any crime?

15          A       No, sir, he was not advised at that time.  
16 There was no charges pending on Mr. Moore.

17          Q       At the time Mr. Moore was interviewed, was  
18 he advised as to the purposes of the interview?

19          A       Yes, sir.

20          Q       For what purpose was Mr. Moore interviewed?

21          A       The activities of his half brother,  
22 Mr. Green, in reference to the red Lexus and the  
23 activities and the movements of Mr. Green during the  
24 time that he stayed with him.

25          Q       At the time of the interview, was there a

1 tape recorder present?

2 A Yes, sir, there was.

3 Q Who operated the tape recorder?

4 A Myself.

5 Q And at the time before the interview began,  
6 did you check the tape recorder to determine if it  
7 was operating properly?

8 A Yes, sir, I did.

9 Q At the time the interview began, was a  
10 blank cassette tape placed inside that tape recorder?

11 A Yes, sir, it was.

12 Q At any time after the interview began --  
13 strike that. Was Mr. Moore advised that the  
14 interview was being tape recorded?

15 A Yes, sir, he was.

16 Q And at the time the interview began, was  
17 the tape recorder turned on?

18 A Yes, sir, it was.

19 Q At any time during the interview was the  
20 tape recorder ever turned off?

21 A No, sir, this is a short interview. No, it  
22 was not turned off.

23 Q And after the interview was complete, who  
24 if anyone retained custody of the tape that was made  
25 as a result of that interview?

1           A       I transferred the tape to the word  
2 processing department of the Detective Division of  
3 the Cumberland County Sheriff's Department for  
4 purposes of transcription. Then the tape was  
5 returned to me with a copy of the transcription. I  
6 maintained possession of both at the present time.

7           Q       And after receiving the tape from the  
8 transcription department, did you have an opportunity  
9 at that time to listen to the tape to determine if  
10 any matters had been deleted from that tape?

11          A       Yes, sir.

12          Q       Had any matters been deleted from the  
13 interview of Mr. Moore?

14          A       No, sir, same condition.

15          Q       And do you have with you today the tape  
16 recorded interview that was conducted with David  
17 Moore on August the 14th, 1993?

18          A       Yes, sir, I do.

19                   MR. BRITT: May I approach?

20                   THE COURT: Yes, sir.

21                   Do you want to establish for the  
22 record what it is you're holding, what  
23 condition it is in.

24 BY MR. BRITT:

25          Q       Mr. Smith, you have handed me an envelope

1 that bears certain markings?

2 A Yes, sir, I have.

3 Q The marking OCA 93-15938, what is that?

4 A Case file number for the vehicle that was  
5 found in Cumberland County. This was referencing a  
6 breaking and entering and larceny case that we had  
7 assigned to the Lexus, the red Lexus, that was found  
8 in the eastern part of Cumberland County.

9 Q And there are certain names that appear on  
10 the front of this envelope?

11 A Yes, sir.

12 Q What names appear?

13 A At the top is the interviewee, Mr. David  
14 Moore. Below that are people attending the  
15 interview. Detective Art Binder, Detective,  
16 Detective D. Smith, that is myself, detective --  
17 excuse me, Detective Ray Wood and below that is the  
18 words "Reference Jordan."

19 Q And for the record, prior to handing me the  
20 envelope, the envelope had been stapled closed, is  
21 that's correct, sir?

22 THE COURT: Who did that, and  
23 when?

24 THE WITNESS: I stapled the  
25 envelope together myself, it was broken

1 open by word processing, it was restapled  
2 for purposes of reviewing the tape.

3 Mr. Britt took the tape and listened to  
4 same in, I believe, the District Attorney's  
5 office. It was then restapled and it's  
6 just been reopened in front of me again.

7 THE COURT: Okay.

8 BY MR. BRITT:

9 Q Inside the envelope, you've handed me --  
10 I'm going to remove the contents. For the record,  
11 I'm going to have -- let me back up before I get too  
12 far ahead of myself.

13 (State's Exhibits 61, 61-A were  
14 marked for identification.)

15 BY MR. BRITT:

16 Q For the record, I've had the envelope  
17 marked as State's Exhibit 61. Mr. Smith, I've  
18 removed the contents of the envelope marked as  
19 State's Exhibit Number 61. For the record, can you  
20 tell me what that is?

21 A Yes, sir. It's a Sony 60 minute cassette.  
22 It is a microcassette, sir. And the interview on  
23 this particular session is on side A.

24 Q For the record, I want to mark the tape as  
25 State's Exhibit 61-A, but due to its size I'm not

1 going to be able to place the sticker on it. What I  
2 would propose is to place the exhibit sticker on the  
3 outside of the envelope or either mark the tape as  
4 61-A with a pen?

5 THE COURT: Do you have any  
6 objection to the sticker being placed on  
7 the envelope with the following notation,  
8 61-A audiotape contents of 61.

9 MR. BOWEN: That's fine.

10 MR. BRITT: For the record, I  
11 have marked the exhibit sticker 61-A with  
12 the words "Audiotape Contents, 61."

13 THE COURT: Yes, sir.

14 BY MR. BRITT:

15 Q Detective Smith, I'm going to hand you the  
16 audiotape. You have with you a micro cassettecorder?

17 A Yes, sir.

18 Q That microcassette recorder is connected to  
19 amplified speakers?

20 A Yes, sir, it is.

21 Q At this time, I would ask that you place  
22 the audio cassette into the recorder. And for the  
23 record, have you done that?

24 A Yes, sir, I have.

25 Q At this time, I would ask you to turn the

1 audio cassette on.

2 A Sir, if you will excuse me, I'm not sure  
3 where this volume is going to be.

4

5 (Tape starts.)

6

7 Today's date is 8-14-93. The time now  
8 is 14:37 hours.

9 Q Mr. Smith, if you will stop the cassette.

10

11 (Tape stops.)

12 MR. BRITT: Do you recognize the  
13 voice?

14 THE WITNESS: Yes, sir.

15 MR. BRITT: Whose voice is that?

16 THE WITNESS: That's me, sir.

17 MR. BRITT: And as noted, though,  
18 that was the -- I'm going to ask you again  
19 to turn the tape on. As the tape continues  
20 if you will identify each voice.

21

22 (Tape starts.)

23

24 A All right, sir. Detective Captain Art  
25 Binder, Detective -- Captain Henley,

1 further Detective Ray Wood. And the  
2 interviewee, Mr. David A. Moore. Mr. Moore  
3 was residing at 201, lot 8, Spring Lake,  
4 North Carolina. They still consider that  
5 Spring Lake, sir? Yeah, but it's called  
6 Spring Lake, sir.

7

8 (Tape stops.)

9 MR. BRITT: Whose voice is that?

10 THE WITNESS: My voice asking  
11 Mr. Moore if they still considered the fact  
12 that he lived in Harnett County, if they  
13 still count that as a Spring Lake address,  
14 and he advised they do.

15 MR. BRITT: And you recognize Mr.  
16 Moore's voice?

17 THE WITNESS: Yes, sir, I do.

18

19 (Tape starts.)

20

21 -- 69, this interview would be in  
22 reference to the Jordan investigation.

23 Mr. Moore, do I have your permission  
24 to tape record this interview, sir?

25 A Yes.

1 Q Mr. Moore, if you will, sir, just  
2 speak up so that everything gets on the  
3 tape.

4 Captain Binder, go ahead, sir.

5 Do you mind if I call you David here?  
6

7 (Tape stops.)  
8

9 THE WITNESS: The gentlemen now  
10 is Captain Binder, sir.

11 MR. BRITT: If you'll continue.  
12

13 (Tape starts.)  
14

15 Q David, did I tell you a while ago that  
16 you're not under arrest?

17 A Yes.

18 Q Did I tell you a while ago as long as  
19 you're truthful with me, you've given the  
20 right answers as we talked earlier, tell me  
21 the same story you told me before you went  
22 on tape, that you had no involvement with  
23 what went on, you would not be arrested,  
24 you tell us?

25 A Yes.

1 Q As long as you're being truthful --  
2 truthful during this investigation, tell me  
3 the same thing you told me a while ago, if  
4 it is the truth then nothing you have told  
5 me so far could possibly get you arrested,  
6 if you tell me the truth, and you  
7 understand that?

8 A I do.

9 Q So that's all we're going to do, we  
10 are going to tell the truth of what went  
11 on. And the reason we're talking, of  
12 course, is because we're trying to obtain  
13 facts in the death of Mr. James Jordan.

14 Now, Mr. Jordan owned the automobile  
15 which was a 400 Lexus, red in color, you  
16 understand that?

17 A Yes.

18 Q And you saw a car that fit that  
19 description, is that right?

20 A I did.

21 Q And the person that was driving that  
22 car is a half brother of yours or  
23 stepbrother of yours, and his name is  
24 Daniel Green, is that correct?

25 A Yes, yes.

1 Q And Daniel lives in Lumberton, North  
2 Carolina?

3 A Yes.

4 Q And somewhere off of Highway 74?

5 A Yes.

6 Q And let me ask you this, do you know  
7 the name of the street that it's actually  
8 off of?

9 A No.

10 Q Brushy Swamp, does that sound right or  
11 some kind of swamp, the name of the street,  
12 the road that you turn on some kind of  
13 swamp?

14 A I believe it is Brushy Swamp.

15 Q Brushy Swamp, does that sound right?

16 A No, sir.

17 Q But nevertheless it's in a small  
18 trailer park?

19 A True.

20 Q And the trailer he lives in is white  
21 in color with green shutters or green trim  
22 on it?

23 A Green or blue, one or the other.

24 Q Then the trailer, towards the road,  
25 got a little small air conditioner in the

1 window?

2 A It does.

3 Q And it's got a wooden rail that goes  
4 up to the front door, a set of wooden  
5 steps?

6 A Yes.

7 Q Okay. Now, you had told us as we  
8 talked about an hour before we went on the  
9 tape that Daniel come by your home out in  
10 the Spring Lake area, he was driving that  
11 Lexus 400?

12 A Yes, sir.

13 Q And that as best you could remember,  
14 that was on a Sunday?

15 A I'm not too sure about the dates but  
16 had to be around the time I went back to  
17 work.

18 Q And you think that you returned to  
19 work on a Thursday which was the 23rd?

20 A I signed in on the 21st, went back to  
21 work on the 22nd.

22 Q So 22nd being a --

23 A Thursday --

24 Q No, I believe the 22nd is a Wednesday?

25 A Thursday --

1 Q Excuse me, I'm confused. 22nd of July  
2 of 1993, that's correct?

3 A Yes.

4 Q And that is a Thursday, you are  
5 right. And I believe you told me that  
6 sometime during that day, the following  
7 day, on the 23rd, that you received a phone  
8 call?

9 A True.

10 Q And that phone call was from Daniel?

11 A Yes.

12 Q And he made that phone call from the  
13 Lexus 400?

14 A No, he made the phone call, not  
15 exactly where he was at, I don't know, I  
16 assume he was though.

17 Q But you told me that you knew he  
18 called your house from that Lexus?

19 A He did call me on that phone before,  
20 yes.

21 Q Okay. And that he ultimately come to  
22 your house and you believed it was that  
23 Sunday after you had talked with him?

24 A Yes.

25 Q And that was when he had the Lexus?

1 A Yes.

2 Q Was he with anyone else when he come?

3 A Guy named Larry.

4 Q And Larry is a white male, is that  
5 right?

6 A I guess Indian.

7 Q Indian or white, nonetheless, his  
8 complexion is a little darker than, say, my  
9 complexion?

10 A True.

11 Q His name is Larry. Okay. Describe  
12 Larry as far as his hair goes?

13 A You just got like straight hair.

14 Q Is it kind of scraggly or is it kept  
15 neat?

16 A He always wore a hat so I couldn't  
17 really tell.

18 Q Does his hair go down to the neck line  
19 or, I mean, not neck line but shoulders,  
20 does it lay on his shoulders?

21 A I can't really remember.

22 Q Do you recall any kind of tatoos or  
23 marks or anything on his body?

24 A No.

25 Q Is he a rough looking person or well

1           kept person?

2           A     No, he looked kind of rough now.

3           Q     Okay. And you only know him as Larry?

4           A     That's it.

5           Q     The Lexus, you had an opportunity, I

6           guess, to inspect it pretty closely is that

7           right?

8           A     I looked at it.

9           Q     Did you get in it?

10          A     I got in it.

11          Q     Did you ride in it?

12          A     Yes.

13          Q     Where did you go?

14          A     Just around the corner.

15          Q     Did you question him as to where he

16          got that car from?

17          A     I did.

18          Q     What did he say?

19          A     He said he got it from a crack head.

20          Q     A crack head, meaning street lingo

21          from someone who is a user of cocaine?

22          A     Yes.

23          Q     Rock form of cocaine?

24          A     Yes.

25          Q     And did he say -- what state that was

1 in?

2 A Lumberton or South Carolina, one or  
3 the other.

4 Q But you don't know exactly?

5 A I don't know.

6 Q Could it have been Fayetteville as  
7 easily as Lumberton?

8 A No, not there.

9 Q Why wouldn't it be Fayetteville?

10 A Because he was county -- (inaudible).

11 Q Had to be Lumberton simply because he  
12 lives there?

13 A Had to be Lumberton, because --

14 Q And if it was in South Carolina, what  
15 would the reasoning for that be?

16 A I know he has a girlfriend up there,  
17 well, some female.

18 Q Is that somewhere in the Marion area?

19 A I think he said Marion, South  
20 Carolina.

21 Q Does he have any ties to -- what's the  
22 name of the town in South Carolina --  
23 Bennettsville, South Carolina?

24 A Not that I know of.

25 Q Are you familiar with Bennettsville?

1           A     No.

2           Q     If you were to go through Laurinburg,  
3           North Carolina, the first town across North  
4           Carolina line into South Carolina is  
5           Bennettsville, does that help you as far as  
6           knowing?

7           A     No, I never --

8           Q     So you don't know anything at all  
9           about Bennettsville?

10          A     No.

11          Q     How about Chesterfield, South  
12          Carolina, have you ever heard of that, know  
13          where that is?

1 Q And when he told you that he got the  
2 car from a crack head, you pretty well told  
3 him that you needed to get rid of the car,  
4 told him to get out of the car, not to get  
5 in the car, you weren't involved, you were  
6 a career man, don't want nobody screwing  
7 you up?

8 A True.

9 Q He had some other items with him, is  
10 that right?

11 A He did.

12 Q One of them was a ring?

13 A Yes.

14 Q Can you describe the ring to us?

15 A It was a silver, looked silver.

16 Q All-Star ring, right?

17 A True.

18 Q Can you describe any of the design  
19 that was on the type of it?

20 A Had a, I think a blue stone in it, if  
21 I'm not mistaken, I think it was blue.

22 Q Had a wristwatch with him?

23 A Yes.

24 Q Wristwatch be a Chicago Bulls  
25 wristwatch?

1           A     I know it had an eagle on it, and I  
2           think it had a bull face on it.

3           Q     Bull like Chicago Bull emblem? Was it  
4           gold in color or silver in color?

5           A     Looked silver.

6           Q     He had a set of golf clubs, is that  
7           right?

8           A     I saw some golf clubs.

9           Q     They were in the trunk of the car?

10          A     Yes.

11          Q     Did you see any kind of marking on the  
12          clubs?

13          A     No, I saw the bag, I didn't see --

14          Q     You saw a golf bag?

15          A     Yes.

16          Q     That holds clubs in it?

17          A     Yes.

18          Q     That had things sticking out of the  
19          top of it that made you assume clubs were  
20          in it?

21          A     Yes, I'm almost positive.

22          Q     I think you told me that trunk was  
23          pretty well full of stuff, do you recall  
24          seeing any suitcases?

25          A     No.

1 Q Do you recall what -- what do you  
2 recall looking in there and seeing that is  
3 identifiable in your mind now -- but is  
4 there any one thing there that sticks out  
5 in your mind that is identifiable?

6 Okay. I asked you earlier if that  
7 looked like a liner was in the trunk, the  
8 carpet that would cover up the floorboard  
9 to make it presentable and you said there  
10 was so much stuff in there you really don't  
11 know, is that right?

12 A True.

13 Q Did Larry have anything to say about  
14 the car or where it come from?

15 A They both basically had the same  
16 story.

17 Q That it come from a white guy?

18 A Uh-huh.

19 Q Who was a crack head. I don't know if  
20 you had told me earlier on tape that it was  
21 a white guy, but you told me earlier it was  
22 a white guy?

23 A Yes.

24 Q So as far as you know, their story is  
25 they got the car from a white male?

1           A     True.

2           Q     And that he was a crack head?

3           A     Yeah.

4           Q     I had asked you earlier also in our  
5           earlier interview, I had asked you if you  
6           saw a gun while they were there, you told  
7           me they had?

8           A     Uh-huh.

9           Q     You said it was a rough looking gun.  
10          Can you describe it to us?

11          A     Had a long nose, piece of shit gun.

12          Q     You said long nose but you said  
13          barrel, the barrel was long and I think you  
14          told me it was a six shooter?

15          A     A wheel gun, a revolver.

16          Q     And I asked you if you saw ammunition,  
17          you told me I know -- I know the gun, I  
18          think the gun had all six rounds in it?

19          A     Uh-huh.

20          Q     Did you see any ammunition in addition  
21          to the six rounds that would have been in  
22          the gun?

23          A     No.

24          Q     And you don't know what caliber it  
25          was?

1           A     Not really.

2           Q     But you had an occasion the see the  
3           barrel?

4           A     Yes.

5           Q     Was the barrel large enough that it  
6           would have been a caliber larger than  
7           a .22?

8           A     Definitely.

9           Q     Was it large enough that it would have  
10          been a .38?

11          A     Possibly.

12          Q     So you're in the military, sir, I know  
13          you're somewhat familiar with guns?

14          A     No, sir, because we don't use guns.

15          Q     Are you somewhat familiar with guns?

16          A     I've got a little .25, so --

17          Q     You got a .25, so the barrel was  
18          bigger than your .25?

19          A     Well --

20          Q     But the barrel, they call fire, they  
21          kind of fire -- what I'm saying, the hole  
22          of the barrel is smaller than the hole of  
23          that gun?

24          A     No, hole on mine is smaller.

25          Q     Correct, that's what I'm asking. So

1           that would have put the caliber larger than  
2           a .25. A .38 caliber is larger than  
3           a .25. So would it be your guess it would  
4           be in the neighborhood of .38?

5           A     Well, it wasn't a .44, so could have  
6           been .38.

7           Q     Big enough for a .44, smaller than  
8           a .44 barrel. Larger than a .25 barrel?

9           A     It is.

10          Q     Couldn't be a 9 mm because that's an  
11          automatic. Revolver three -- A blade, so  
12          that don't leave but one caliber, that's  
13          about a .38. So pretty safe to assume that  
14          it's somewhere, could possibly be a .38.  
15          Do you know firsthand what happened to that  
16          gun?

17          A     I think he gave it to Larry.

18          Q     Okay. That's what I mean, do you know  
19          firsthand?

20          A     No, I don't, I don't.

21          Q     But you've been told what happened to  
22          it?

23          A     I think he had said he gave it to  
24          Larry.

25          Q     Who said it?

1 A Daniel, because I didn't --

2 Q So you asked -- you asked something to  
3 Daniel, he said he gave the gun to Larry,  
4 you believe?

5 A Right, basically.

6 Q Has that been since he was at your  
7 house or during the time he was at your  
8 house that he told you gave the gun to  
9 Larry -- and how long ago was it?

10 A Some weeks ago.

11 Q It's obvious that you try to live your  
12 life right, I can tell that when I first  
13 met you, and it's obvious that you want a  
14 good career in the Army because we already  
15 talked about that and you're doing well in  
16 the Army?

17 A Right.

18 Q And you try to talk some sense into  
19 your stepbrother?

20 A True, yeah, definitely.

21 Q You told him you need to do the right  
22 thing to come forth and turn himself in to  
23 law enforcement, and when is the last time  
24 you told him to do that?

25 A Two nights ago.

1 Q It your opinion that he would do that  
2 eventually?

3 A I don't know, I hope so.

4 Q Tough call, isn't it?

5 A He needs to, especially if he say he  
6 didn't do anything I don't think wrong, so  
7 shouldn't be any problem.

8 Q Did he offer to give you any of the  
9 items in the car?

10 A He did, but I didn't want none.

11 Q What did he offer you?

12 A Anything I want.

13 Q Just take it?

14 A He was trying to sell it but I wasn't  
15 going to buy that shit.

16 Q Didn't take a rocket scientist to  
17 figure out there was a problem there -- did  
18 you see him with an item that's used to  
19 crank a car when you're outside, a remote  
20 control, you can crank a car without  
21 using a key?

22 A Oh, yeah.

23 Q Did he show you how that worked,  
24 demonstrate it to you?

25 A Yes.

1 Q And he had the key to the car too,  
2 right?

3 A Oh, yeah.

4 Q Was there any damage at all to the  
5 car, any windows knocked out?

6 A No, no.

7 Q The car was in good shape?

8 A Yeah, didn't do anything to it.

9 Q So the back window was intact?

10 A Oh, yeah.

11 Q Sunroof was in it?

12 A I don't know if it had a sunroof.

13 Q You don't recall. Was there any dents  
14 on the quarterpanels?

15 A I didn't see that.

16 Q Had the wheels on it?

17 A Oh, yes.

18 Q Had to if they drove up there. What  
19 did it look like, the wheels?

20 A They were Lexus wheels.

21 Q With five stars?

22 A Yeah.

23 Q Gold in color?

24 A No, they were silver.

25 Q Silver. Did it have emblems all over

1 it?

2 A Had emblems.

3 Q Were they gold or silver?

4 A Gold -- no, they might have been  
5 black.

6 Q He was at your house at night on  
7 Sunday?

8 A I don't know if it was Sunday night.

9 Q The night he was there, it was dark?

10 A It was dark.

11 Q How late was it?

12 A Had to be about 2:00 or 3:00 in the  
13 morning.

14 Q So we're thinking earlier you said it  
15 could have been Sunday or maybe even  
16 Monday, so you think it was Sunday?

17 A I don't know which night it was  
18 exactly. I know I had to go to work that  
19 next --

20 Q Assuming it was Sunday, this -- that  
21 would have been the 25th of July, because  
22 this is -- it would have been the first  
23 Sunday after you talked to him?

24 A Uh-huh.

25 Q If it's not a Sunday, it would have

1           been Monday which would have been the 26th,  
2           so do you know now that it's either going  
3           to be 25th or 26th of July, 1993?

4           A       To the best of my knowledge, yes.

5           Q       Well, I'm not trying to say that's  
6           absolute date. I understand that dates are  
7           hard the deal with, dates and times to keep  
8           straight. You think it was somewhere  
9           between 2:00 and 3:00 in the morning. Did  
10          you see him make a phone call while he was  
11          there?

12          A       No.

13          Q       He called you at your unit sometime  
14          during this time also, right?

15          A       Said he did, but I don't know talking  
16          to him, I mean what date was that.

17          Q       It's not in my -- I said dates and  
18          times are hard to remember, it's was not in  
19          my mind either right now, but I could look  
20          it up.

21          A       23rd.

22          Q       To the unit or to the home?

23          A       To the unit.

24          Q       And also on 23rd, he called home -- I  
25          know he called home, but -- okay. Had you

1           talked to anyone else about this besides  
2           law enforcement?

3           A     Yes, Mr. Worthy and --

4           Q     Your talking to Mr. Worthy you thought  
5           it might have been the 23rd or 26th that  
6           all this took place when he first contacted  
7           you?

8           A     I'm saying that because that's when I  
9           first went back to work.

10          Q     That's what I'm saying, you and I got  
11          a calendar out and clarified that it had to  
12          be the 23rd because it was a Thursday which  
13          you all had been working and July 23rd was  
14          a Thursday?

15          A     No, it was the 22nd.

16          Q     Sorry, I'm stuck on that 23rd. July  
17          22nd because that was -- now, we talked  
18          about the ring, talked about the watch,  
19          talked about the gun, talked about the golf  
20          clubs, the car. Is there any other items  
21          that you saw that we haven't talked about,  
22          like any charge cards, any wallets or  
23          anything like that?

24          A     No, sir.

25          Q     Any clothing items?

1 A No, sir.

2 Q Any other things that would associate  
3 that vehicle with Michael Jordan, Chicago  
4 Bull books laying around, pictures with  
5 anything to do with Chicago Bulls?

6 A What's that, sir?

7 Q Okay. Why don't we try and figure out  
8 a question I haven't asked you, so how  
9 about license plates on the car, did you  
10 notice any?

11 A Oh, yeah.

12 Q Was that the licenses plate that's  
13 been all over the press, UNC 0023?

14 A Actually, only thing I saw was maybe  
15 like the news -- as a matter of fact,  
16 second I saw was yesterday. I did see some  
17 license plate.

18 Q Did you recognize it as being a  
19 University of North Carolina license plate?

20 A Oh, yes.

21 Q Personalized?

22 A Yes.

23 Q Do you recall it being UNC 0023 -- do  
24 you now know as we talk where those tags  
25 are?

1 A No, no, sir.

2 Q Since you have talked with your  
3 brother and encouraged him to turn himself  
4 in, you know, since his involvement, direct  
5 involvement in the death of Mr. Jordan, he  
6 says he has nothing to do with that, he got  
7 to call someone else. Have you -- during  
8 that talking to him, have you asked him  
9 where any of these items are, like tags,  
10 car, golf clubs, any of the items that they  
11 had? Have you asked him where the car is?

12 A No, I don't --

13 Q So you haven't said, you know, did you  
14 get rid of that car?

15 A I know he got rid of it he -- leave it  
16 alone.

17 Q So in talking to him, he hasn't been  
18 no telephone -- been back to your house?

19 A Oh, yes.

20 Q When was that?

21 A Weeks ago, weeks ago.

22 Q How many weeks ago?

23 A It was around that time.

24 Q Okay. So at the time he was at your  
25 house, you told him to get rid of the car,

1 next time he came to your house --

2 A He didn't have it.

3 Q How many days after the first time you  
4 saw him did he come back to your house?

5 A Might have been the next day.

6 Q So he could return as quick as July  
7 27th to your house, 1993, and not had the  
8 car, which would be Tuesday after that  
9 Sunday, maybe?

10 A Could have been, whenever -- don't  
11 have shit with him, nothing.

12 Q Did he have any money with him?

13 A No, he --

14 Q Broke -- broke as I am. Let me --  
15 you've met Sergeant Don Smith, my partner.  
16 Sergeant you got any questions?

17 UNIDENTIFIED SPEAKER: No, sir, I  
18 don't, he's covered everything that I had.

19 Q This is Jim Henley, I introduced him.

20 UNIDENTIFIED SPEAKER: Just a  
21 couple. When you said you drove in that  
22 car --

23 A I drove that car, sir.

24 Q You drove it around the corner?

25 A Yes, I did.

1 Q You talked about the gun and having  
2 some knowledge of guns. Do you know the  
3 difference in appearance, the difference  
4 between a revolver and semi-automatic?

5 A Oh, definitely.

6 Q You know this was not an automatic?

7 A True.

8 Q He's already stated it was a wheel gun  
9 or revolver. Also you said he told you he  
10 got the car that from a crack head?

11 A Yes.

12 Q Did he tell you how much money he had  
13 to get from the crack head, what he had to  
14 give the crack head?

15 A Just two rocks.

16 Q Gave the crack head two rocks?

17 A Yes.

18 Q And got the car?

19 A That's what he told me.

20 Q That's all the questions.

21 This is Ray Wood one of the  
22 investigators. Detective Ray, you got  
23 anything?

24 BY DETECTIVE WOOD:

25 Q Earlier I'm not sure if I picked it

1 up, but did you give a description of the  
2 white male that was with your brother --  
3 actually he did not because I asked the  
4 questions and then didn't finish up. About  
5 how tall is it?

6 A Oh, maybe about five-six, five-five.

7 Q How about his weight?

8 A About 150, 160.

9 Q And you said his hair, you didn't know  
10 a whole lot about it, he normally wears a  
11 cap but had you seen enough of it to get me  
12 a color about it?

13 A Brown, black, dusty.

14 Q Did he have any facial hair, beards,  
15 mustache, goatee?

16 A No, I can't --

17 Q Anything about his mouth, gold teeth  
18 or anything, or tooth missing or anything?  
19 I'm going to -- I'm not suggesting that he  
20 did, I'm just asking, anything about him at  
21 all that is unusual, like a -- I think you  
22 said he had no scars or tatoos, would not  
23 have any bad scar on his face or anything  
24 that is easily recognizable?

25 A Well, he looked rough.

1 Q Lot of people look rough. What type  
2 of ball cap was he wearing, you mentioned  
3 earlier --

4 A I don't know what type it was, could  
5 have been one of those Jack Daniels, you  
6 know, those country people, they throw on  
7 anything.

8 Q Was there anyway at all that -- it  
9 could have been a Bull's hat?

10 A Not that I can remember.

11 Q By the hat. Now it's your turn,  
12 anything that you would like to add to your  
13 statement or take away from it?

14 A Don't want to have shit to do with it.

15 Q Anything that you would like to ask  
16 me?

17 A Yeah. Did you go in my house, did  
18 he --

19 Q I didn't understand your question.

20 A Did you all go in my house or my  
21 truck?

22 Q No, we can't do that unless you let us  
23 in there, unless we got a warrant to go in,  
24 we got no reason. Everything you told us  
25 is the truth?

1 A Yeah.

2 Q Not the absolute truth, might have  
3 been you might have had a date mixed up?

4 A Definitely.

5 Q You're not purposely telling us  
6 anything --

7 A No.

8 Q I appreciate -- I'm happy that you  
9 told me the truth and I appreciate it.

10 A So I'll be getting a copy of that  
11 tape.

12 Q Yes. Not a copy of the tape but a  
13 copy of the transcript?

14 A Actually words that we're saying.

15 Q You're going to get -- that's  
16 correct. A lady takes the tape and  
17 everything you say she puts it on paper.  
18 If you want to make sure that's what you  
19 said then we allow you to hear the tape as  
20 you read the transcript and when you're  
21 happy with it we'll give you a copy, but  
22 the actual tape, we don't duplicate it or  
23 give it out. Time now is 15:00, all  
24 present on set of this interview, present,  
25 tape ends now.

1 (Tape stops.)

2 MR. BRITT: Does that concludes  
3 the interview with David Moore?

4 THE WITNESS: Yes, sir, it does.

5 MR. BRITT: That would be the  
6 State's showing.

7 THE COURT: Any questions by  
8 counsel for the defendant on voir dire?

9 CROSS-EXAMINATION

10 BY MR. BOWEN:

11 Q Sergeant Smith, any copy of the tape was  
12 never given to Mr. Moore, was it?

13 A No, sir, a copy of the tape was never going  
14 to be given to Mr. Moore. As Captain Binder did say  
15 in the tape, he would have been allowed to read the  
16 printed transcript and if he wanted to, he could go  
17 along with the transcript and the tape, but this  
18 never transpired.

19 Q To your knowledge was the tape ever played  
20 to him?

21 A No, sir, tape was not.

22 Q Now, this interview occurred in August of  
23 1993?

24 A Yes, sir.

25 Q And without the benefit of rehearing the

1 tape or looking over the transcript, you would not  
2 have been able to remember all the details of that  
3 interview, would you?

4 A Not as many cases as I have in my head, no,  
5 sir.

6 Q And without benefit of hearing the tape  
7 over or reviewing the transcript, your honest answer  
8 would have been I don't remember as to a lot of  
9 questions about that interview, correct?

10 A Not without going over the tape -- or not  
11 the tape, but the transcript, sir.

12 Q Mr. Moore was never told at that time that  
13 he might thereafter have to testify to all these  
14 matters and things and remember that which was talked  
15 about with you officers, correct?

16 A Not at that time, sir, but Mr. Heffney also  
17 Mr. Britt and myself, when we visited Mr. Moore, just  
18 a short time ago, I'm not sure of the exact date, he  
19 did have a chance to go over this statement at that  
20 time, and he was served a subpoena at that time.

21 THE COURT: When you say he had  
22 an opportunity to go over this statement,  
23 are you referring to a transcript of the  
24 statement given on August 14th, 1993.

25 THE WITNESS: I believe so, yes,

1           sir

2       BY MR. BOWEN:

3           Q       And that was prepared by your law  
4 enforcement agency, correct?

5           A       That was prepared by information that I had  
6 furnished from Mr. Britt.

7           Q       And the tape, was it available to you to  
8 play to Mr. Moore in preparation for this trial?

9           A       Yes, sir, it was in my custody. However it  
10 was never played nor was it requested to be played.

11          Q       So whatever paper writing that you took to  
12 Mr. Moore, was that a verbatim transcript or is that  
13 a synopsis that you talked to Mr. Moore?

14          A       Sir, this is a verbatim transcript that I  
15 have in my possession. All copies that came off of  
16 this verbatim transcript are exactly Xeroxed copies,  
17 there's no change.

18          Q       And you have had the opportunity to compare  
19 the written word to the tape to determine that it's  
20 been correctly transcribed, is that correct?

21          A       Yes, sir, it's correctly.

22          Q       But Mr. Moore was never afforded that  
23 opportunity?

24                   THE COURT: Well, I know we're on  
25 voir dire, but the evidence, the tape

1 indicates that Mr. Moore was told at the  
2 time of the interview, if you want to hear  
3 the tape at the time that you reviewed the  
4 transcript, you will be allowed to. So  
5 when you use the word afforded, that --

6 MR. BOWEN: Well, let me ask you  
7 this.

8 BY THE COURT:

9 Q Did Mr. Moore ever ask to hear a copy of  
10 the tape at the time he was provided with the  
11 transcript?

12 A No, sir.

13 Q Did he ever ask at any time to hear the  
14 tape played as he reviewed the transcript?

15 A No, sir.

16 Q Being April -- strike that. August 14th,  
17 1993 and the present?

18 A August 14th, 1993, sir, he requested a copy  
19 of the tape. We advised him at that time that that  
20 would not be possible. However, a transcript would  
21 be made available to him. When we visited him,  
22 Mr. Britt and Mr. Heffney a short while before the  
23 trial down here, he was given a transcript, there was  
24 no request made for the tape, sir.

25 BY MR. BOWEN:

1 Q And you did not have the tape with you,  
2 sir?

3 A I have my case file, and the tape is inside  
4 of a large brown envelope. It is in a smaller  
5 envelope but it's in with a number of other envelopes  
6 that is in a large brown envelope in the case file.

7 Q You had it with you when you went to see  
8 Mr. Moore before trial?

9 A If the case file is in my possession, yes,  
10 sir, it's with me.

11 Q State whether or not Mr. Moore asked again  
12 for a copy of the tape when you and Mr. Britt went to  
13 talk to him before the trial?

14 A No, sir, did not.

15 Q Now, part of this interview, as I  
16 understand it, back on August of 1993 was not taped,  
17 correct?

18 A This was a conversation between Captain  
19 Binder and himself that took place I believe in  
20 Spring Lake. Because of Mr. Moore's work and I  
21 believe he was possibly on leave at that time, we  
22 could not located him. I believe Captain Binder and  
23 Mr. Moore spoke, arrangements were made for Mr. Moore  
24 to come to the law enforcement center and that's when  
25 we made this tape here.

1           Q     At the outset of the tape, you recall  
2 reference to Mr. Moore having, quote, told his story  
3 previously?

4           A     Yes, sir.

5           Q     That's in there, isn't it?

6           A     Yes, sir.

7           Q     And do you know where and under what  
8 circumstances he told his story prior to the time the  
9 tape was being turned on?

10          A     I'm not aware of that, sir, no.

11          Q     So you were not present when any other  
12 conversation before the tape recording was made?

13          A     No, sir.

14          Q     Do you know of any reason why whatever went  
15 before could not have been taped?

16                   THE COURT:   That's assuming  
17 something.   Aren't you assuming that there  
18 was discussion by officers and Mr. Moore  
19 there at the Law Enforcement Center prior  
20 to the tape recorded portion?   Because the  
21 witness just testified there was a  
22 conversation between Captain Binder and  
23 Mr. Moore on another instance out in Spring  
24 Lake.

25                   MR. BOWEN:   Yes, sir --

1 THE COURT: Establish it too --

2 MR. BOWEN: I don't know --

3 THE COURT: Ask it.

4 BY MR. BOWEN:

5 Q Do you know where the prior conversation or  
6 the prior opportunity for Mr. Moore to tell his  
7 story, that is made reference to on the tape, took  
8 place?

9 A To the best of my knowledge, sir, attempts  
10 were made by different officers checking Lot Number 8  
11 of Mr. Moor's residence at that time to locate him.  
12 Mr. Binder was the officer that found Mr. Moore at  
13 home at the time that he talked to him. The exact  
14 time, and only thing I can say is approximate date,  
15 and it was before the 14th, is all I can say, sir.

16 BY THE COURT:

17 Q Let's clear it up. Mr. Smith, were you  
18 present in the Cumberland County law enforcement  
19 center on August 14th, '93 when Mr. Moore first  
20 appeared there?

21 A Yes, sir.

22 Q At that time, who was present and where did  
23 you first see Mr. Moore?

24 A I saw Mr. Moore, it was in the interview  
25 room, sir, inside of room 212-A of Cumberland County

1 Sheriff's Department on the second floor, detectives'  
2 office, myself was present, Captain Binder,  
3 Lieutenant Henley, and Detective Ray Wood and the  
4 interviewee, Mr. Moore.

5 Q So that we're all clear, at the time that  
6 you officers were assembled in that interview room,  
7 was -- were all the officers assembled before  
8 Mr. Moore was brought in?

9 A No, sir, I believe Mr. Moore was brought in  
10 first, and then we had other officers come in.

11 Q And who brought Mr. Moore in?

12 A Mr. Moore I believe came in on his own,  
13 sir, and --

14 Q Who directed him to that office?

15 A I believe Captain Binder did.

16 Q Was there any discussion to your knowledge  
17 on the part of Captain Binder or any other officers  
18 with Mr. Moore prior to the time the taped interview  
19 began?

20 A Nothing more than reading sir, but I  
21 remember right after Mr. Moore arrived at the law  
22 enforcement center, he came in to Captain Binder's  
23 secretary, he was brought into the interview room, we  
24 were notified he was there, the tape started  
25 immediately upon my arrival, and was shut off by me,

1 sir.

2 THE COURT: Mr. Bowen?

3 BY MR. BOWEN:

4 Q So what you're saying is that the  
5 references in the tape to Mr. Moore's having  
6 previously told the story, that would not have  
7 occurred at the law enforcement center?

8 A No, sir, did not.

9 Q To the best of your knowledge, even though  
10 it may have come to you through hearsay, but I want  
11 to inquire on voir dire, to the best of my knowledge,  
12 where did that previous interview take place if it  
13 does, with what officer?

14 A To the best of my knowledge it was Captain  
15 Binder, to the best of my knowledge it was when he  
16 found him at his residence at Lot 8 over in Harnett  
17 County, and that would have been still considered  
18 Spring Lake, sir.

19 Q And approximately, if you know, when did  
20 that interview take place with reference to the  
21 interview that was tape recorded at the law  
22 enforcement center?

23 A Only thing that I could say about that,  
24 sir, it either happened on the 13th or in the early  
25 morning hours of the 14th.

1 Q It's that previous interview that was not  
2 recorded?

3 A Yes, sir.

4 Q And to your knowledge, is there any reason  
5 why it could not have been recorded?

6 A I have no idea on that one, sir. If the  
7 reason that Captain Binder had this interview on tape  
8 that you heard here is because I had no idea of what  
9 they had talked about prior. This is why I started  
10 the tape recording, this is why I initialized the  
11 tape recording, this is why I kept very little into  
12 the recorded or took any part of the interview, sir.

13 Q Is that policy about not furnishing a copy  
14 of any of these tapes to a prospective witness who  
15 asks for it, is that policy written down anywhere to  
16 your knowledge, sergeant Smith?

17 A Giving a copy of an interview to a subject,  
18 sir, is letting information out, and we try and  
19 maintain a case file. Now, a copy is usually  
20 furnished to a subject prior to trial to reflect on  
21 his memory, and to reflect what he had told us before  
22 and at that time we usually ask the subject if there  
23 is any changes to that particular statement.

24 THE COURT: When you say a copy  
25 is given, are you referring to a copy of

1 the tape being given to a witness or  
2 prospective witness or a copy of the  
3 transcript going to the prospective  
4 witness?

5 THE WITNESS: A copy of the tape  
6 is never given to a prospective witness. A  
7 copy of the transcript is always given.

8 BY MR. BOWEN:

9 Q Now, to your knowledge, is that policy of  
10 not giving a tape to a prospective witness, to your  
11 knowledge is that written down?

12 A I'm not sure if it's written down or not.  
13 The policy has recently changed, because of problems  
14 we ran into with tape and the prosecution center. It  
15 takes them quite some time to process the tapes from  
16 the taped interview to the written word. This has  
17 putting us behind time. We have since gone to a  
18 substance oral interview, where the officers  
19 interviews the subject, takes down notes, takes those  
20 notes from a handwritten form to a substance to oral  
21 interview, which is testified to in court by the  
22 officer.

23 Q Now, you went to see Mr. Moore  
24 approximately how many weeks to your best  
25 recollection prior to the time that he testified?

1           A       Excuse me, sir --

2           Q       I beg your pardon. Were you with the group  
3 along with Mr. Britt that called on Mr. Moore some  
4 weeks --

5                       THE COURT: I apologize, if  
6 you'll bear with me for one second,  
7 please.

8                       THE COURT: Yes, sir.

9 BY MR. BOWEN:

10          Q       Sergeant Smith, were you with Mr. Britt and  
11 others who went to see Mr. Moore some weeks ago  
12 before his testimony here in this case?

13          A       Yes, sir, I was.

14          Q       And what was the method of going over the  
15 transcript with Mr. Moore, did somebody read it to  
16 him or was it offered for him to read or how did that  
17 work?

18          A       If I remember correctly, sir, it was  
19 offered to him to read, and then I believe it was  
20 either Mr. -- I believe it was Mr. Britt or  
21 Mr. Heffney talked to Mr. Moore. My purposes for  
22 being there was the service of a subpoena in  
23 reference for preparation for trial at this location.

24          Q       Do you recall that Mr. Moore told you that  
25 he couldn't remember certain things after three

1 years, correct?

2 A Sir, as I say, my purposes for being there  
3 was to serve the subpoena, I did not talk to  
4 Mr. Moore at that time. However, I have copies of  
5 the transcript was given to him to read at that time.

6 Q Yes, sir. Did you hear him -- I mean, you  
7 were there an heard --

8 THE COURT: We're talking about  
9 voir dire, Mr. Bowen, what you're  
10 attempting at this point to elicit matters  
11 that are hearsay, because that's not what  
12 he testified to in the stand. It would  
13 necessitate him coming in again and being  
14 offered as a witness for the defense.  
15 We're outside the scope of the voir dire.  
16 Scope of the voir dire is what occurred on  
17 the 14th of August, 1993. That is being  
18 offered by the State for purposes of  
19 impeachment as I understand it under Rule  
20 607.

21 MR. BRITT: Yes, sir.

22 THE COURT: And 611.

23 MR. BRITT: Yes, sir.

24 THE COURT: The State made some  
25 reference to prior inconsistent evidence.

1 State also offered it under 613.

2 MR. BRITT: Yes, sir.

3 THE COURT: That's where we are  
4 on voir dire. 607, 611, and 613.

5 Yes, sir.

6 MR. BOWEN: Yes, sir, but Your  
7 Honor, if he goes into prior inconsistent  
8 statements then on cross-examination,  
9 presumably prior consistent statements  
10 would also come in. And if --

11 THE COURT: Consistent with  
12 what?

13 MR. BOWEN: Consistent with "I  
14 don't remember." I mean, that's basically  
15 what --

16 THE COURT: But you're asking him  
17 not about events of August 14th, 1993,  
18 you're asking him about events that  
19 occurred at the time the officers testified  
20 they went to him and provided him with a  
21 copy of the transcript.

22 MR. BOWEN: Yes, sir.

23 THE COURT: That would have been  
24 a different date.

25 MR. BOWEN: As I see it, what

1           they are trying to attack is a number of I  
2           don't remembers which Mr. Moore testified  
3           to. Since it's been a long time that  
4           Mr. Moore doesn't remember --

5                         THE COURT: Mr. Moore testified  
6           that the officers came to see me several  
7           weeks back, provided me a copy of the  
8           transcript and at that time I told them I  
9           don't remember. Did he testify to that  
10          when he was present before the jury and in  
11          court?

12                        MR. BOWEN: I don't know that he  
13          was asked that.

14                        THE COURT: If he didn't testify  
15          to that, how could it be a prior consistent  
16          statement, prior consistent with what?  
17          Have to be consistent with his testimony at  
18          trial.

19                        MR. BOWEN: Well, I respectfully  
20          disagree. I think it is a prior statement,  
21          okay, that this witness may have knowledge  
22          of that may be quite consistent with what  
23          he did testify to.

24                        THE COURT: Go ahead and ask your  
25          question, sir.

1 BY MR. BOWEN:

2 Q Did Mr. Moore at any time that you heard at  
3 the interview with Mr. Britt and others before the  
4 trial, did you hear him say I don't remember to  
5 anything that he was asked?

6 A I believe there was a comment or two, sir,  
7 about the fact that it was a long time ago. The  
8 exact verbiage of "I don't remember" I don't  
9 recall.

10 MR. BOWEN: That's all, sir.

11 THE COURT: Anything further?

12 MR. BRITT: No, sir.

13 THE COURT: Folks it's now

14 11:25. I'm going to bring the jury in, let  
15 them take a break and then we will hear  
16 arguments. Let me focus you folks on what  
17 my concerns are. State is offering this as  
18 a prior inconsistent statement under 613.  
19 On the theory that under 607, anybody can  
20 impeach and the State is attempting to  
21 impeach a witness called by the State,  
22 specifically David Moore. The basis for  
23 the State's impeachment is that during the  
24 testimony of Mr. Moore before the jury,  
25 Mr. Moore on a number of occasions said he

1 did not recall events about which he was  
2 questioned.

3 Query, first of all, is impeachment  
4 appropriate when a witness says I don't  
5 recall as opposed to that didn't happen?

6 MR. BRITT: Let me direct the  
7 Court specifically to what I'm going to.

8 Mr. Moore testified that the car  
9 arrived at his house, he did not know who  
10 drove it. On this tape, he says the  
11 defendant drove it.

12 THE COURT: So you're talking  
13 about the specific matters that he denied?

14 MR. BRITT: Yes, sir.

15 THE COURT: Or indicated a lack  
16 of recollection.

17 MR. BRITT: Yes, sir. For  
18 instance, on the stand, he denied having  
19 previously identified the NBA All-Star ring  
20 that was shown to him in court. On the  
21 tape he describes that very ring.

22 THE COURT: Also denied a number  
23 of instances as relating to possession.

24 MR. BRITT: Yes, sir, as to what  
25 things, whether he saw a gun, who had the

1 gun. He denied -- one of the things that  
2 he talked about or testified to, was that  
3 when asked if the defendant had a car, he  
4 said --

5 THE COURT: I apologize, I didn't  
6 mean to get into an argument at this  
7 point. I'm just focusing us on those  
8 matters.

9 My second concern is there are at  
10 least two, I think perhaps three, instances  
11 where, according to the tape, Captain  
12 Binder asked Mr. Moore about Mr. Moore's  
13 attempts to get the defendant to turn  
14 himself in. On those instances, Mr. Moore,  
15 according to the tape, indicated that he  
16 had made efforts to get his brother, the  
17 defendant, to turn himself in.

18 As to at least one of those instances,  
19 Mr. Moore made the further comment, because  
20 he had told me that he hasn't done  
21 anything, I told him that that's why he  
22 needed to clear it up, or words to that  
23 effect.

24 I've got concerns about the language  
25 of turning yourself in as the right thing

1 to do, best thing to do under the  
2 circumstances, and how that might be  
3 interpreted by the jury. I think to some  
4 extent it's clarified by Mr. Moore's  
5 comment of he told me he hasn't done  
6 anything, and I told him that's why he  
7 needed to turn himself in. There's some  
8 explanation that tends to exculpate or  
9 offer exculpatory evidence on behalf of the  
10 defendant. So if there is any prejudice,  
11 that prejudice is arguably minimized in  
12 favor of the defendant.

13 MR. BRITT: I understand that.

14 THE COURT: You folks want to be  
15 heard -- well, let's hold off. I'm  
16 focusing you things I think of concern.  
17 You folks let my bring the jury in, we can  
18 send them out and then talk about it.

19 (Jury in at 11:28 a.m.)

20 THE COURT: Ladies and gentlemen,  
21 the matter before the Court is going to  
22 take more time than we initially  
23 anticipated. Rather than keeping you back  
24 there, I'm going to let you folks take the  
25 morning recess at this time. It is now --

1 I've got approximately 11:30. Let me give  
2 you until five until.

3 It's Monday, folks. Until five  
4 until. If you would, please report  
5 directly back to the jury room from which  
6 you've just come no later than five until  
7 12:00. It's your duty to continue to abide  
8 by all prior instructions of the Court  
9 concerning your conduct during this  
10 recess. Everyone else please remain  
11 seated, the members of the jury are excused  
12 until five until 12:00.

13 (Jury out at 11:30 a.m.)

14 THE COURT: Again let the record  
15 reflect the following is being heard, we  
16 are continuing with the voir dire in the  
17 absence of the jury.

18 Mr. Britt, let me give you this  
19 opportunity to be heard as to why you  
20 contend this is admissible under 607, 611,  
21 an 613.

22 MR. BRITT: Your Honor, as the  
23 Court will recall, Mr. Moore was called as  
24 a hostile witness. And during the  
25 examination of Mr. Moore, not only did he

1 deny making certain statements, he denied  
2 seeing certain items and tried to  
3 generalize, in my opinion, what it was he  
4 saw, in regard to who was in possession of  
5 certain items, who was driving the  
6 automobile, who he had conversations with  
7 about a particular gun.

8 He also testified that he drove the  
9 car around the block and he parked it in a  
10 vacant lot when he was interviewed on  
11 August the 14th. He simply said he drove  
12 it around the corner. He denied having  
13 previously identified the NBA All-Star ring  
14 that's marked as State's Exhibit Number 7,  
15 but on the tape he describes not only the  
16 color of the metal portion of the ring but  
17 the stone, but also describes it as an  
18 All-Star ring.

19 Those are matters, those are  
20 statements that were made back in August  
21 that are inconsistent with what he  
22 testified to here in court, and as such,  
23 pursuant to the rules, I'm entitled to  
24 impeach my own witness or any witness, and  
25 also to do so pursuant to 611, matters of

1 impeaching a witness, I think. It's my  
2 position that this tape does impeach  
3 Mr. Moore's testimony in regard to the  
4 things that I've previously mentioned, and  
5 as such, it is admissible for that limited  
6 purpose.

7 THE COURT: Mr. Bowen, Mr.  
8 Thompson, do you folks want to be heard in  
9 opposition?

10 MR. BOWEN: Your Honor, for  
11 example, 613, referring to prior statements  
12 of witnesses, I think puts us on notice in  
13 the spirit of this whole matter that  
14 impeachment of prior inconsistent  
15 statements is almost always done when one  
16 is on cross-examination, where the witness  
17 itself doesn't have to be. But 613 does  
18 start out by saying in examining a witness  
19 concerning a prior statement made by him.  
20 It doesn't say about him or anyone else.  
21 And so I don't think 613 is any help there.

22 THE COURT: Why not?

23 MR. BOWEN: Because it limits it  
24 to a situation where you are cross  
25 examining.

1 THE COURT: Your contention is  
2 you can only impeach by prior inconsistent  
3 statements on cross-examination?

4 MR. BOWEN: I'm not saying that.  
5 I'm saying you can use 613 to do it because  
6 it says in examining a witness concerning  
7 prior statements made by him, whether  
8 written or not, the statement needs to be  
9 shown and so forth. So 613 confines itself  
10 only to situations where you are talking to  
11 the witness who made the statement.

12 THE COURT: What do you contend  
13 this tape is? Do you contend this is not a  
14 statement made by him?

15 MR. BOWEN: I don't have any  
16 problem with it having been made by  
17 Sergeant Smith.

18 THE COURT: No, no, by  
19 Mr. Moore. I'm trying to understand your  
20 argument.

21 MR. BOWEN: Your Honor, if he had  
22 used that tape to play to Mr. Moore on the  
23 stand, impeach Mr. Moore by saying, didn't  
24 you say that, isn't that your voice, I  
25 would have no argument under 613.

1 THE COURT: Remember that  
2 impeachment chart I gave you folks?

3 MR. BOWEN: Yes, sir.

4 THE COURT: If you'll look at it,  
5 please.

6 MR. BOWEN: Yes, sir, I have it  
7 right in front of me.

8 THE COURT: Go down to Number 5.  
9 What is that category?

10 MR. BOWEN: That's 613, Your  
11 Honor. But --

12 THE COURT: Does it say you can  
13 do it on cross-examination? Is there a yes  
14 there?

15 MR. BOWEN: Yes.

16 THE COURT: What about extrinsic  
17 evidence allowed?

18 MR. BOWEN: Yes, if not  
19 collateral, that's correct, but how do we  
20 get around the language that says -- all  
21 I'm saying is this, I think you can do  
22 those things, but I'm reading in the first  
23 sentence where it says in examining a  
24 witness concerning a prior statement made  
25 by him, and what we're doing here is we're

1 talking about a statement not made by  
2 Sergeant Smith except in part when he comes  
3 on the tape, and I don't have any problem  
4 with that, but a statement made by  
5 Mr. Moore --

6 THE COURT: This an authenticated  
7 witness. His only role in being on this  
8 witness stand is to authenticate the tape.

9 MR. BOWEN: I have no problem  
10 with that.

11 THE COURT: So he is not being  
12 cross-examined about the statement except  
13 to the extent that he's being examined  
14 about the authenticity of the tape  
15 recording. That's all. If I'm  
16 understanding you correctly, what you're  
17 saying is that the State can't examine  
18 Mr. Smith about the statement, that the  
19 State is limited under 613 to  
20 cross-examining Mr. Moore and only  
21 Mr. Moore.

22 MR. BOWEN: I can't escape the  
23 language in the first sentence, Your Honor,  
24 it does not say to talk about a witness or  
25 somebody else. It says --

1                   THE COURT:  Would you concede  
2                   that the tape recording is extrinsic  
3                   evidence?

4                   MR. BOWEN:  Yes.

5                   THE COURT:  Would you concede  
6                   extrinsic evidence if not related to  
7                   collateral matter can be used to impeach?

8                   MR. BOWEN:  That's what the chart  
9                   says.  I'm at loggerheads between that and  
10                  what this says.  Therefore, I make my  
11                  objection based on that first sentence.

12                  I will also say that my note number 4  
13                  was exactly what Your Honor has already  
14                  pointed out, and that is this.  To the  
15                  extent that the witness said "I don't  
16                  remember,"  the only way you could impeach  
17                  that particular statement is to show  
18                  somehow that that isn't true, he does  
19                  remember.  Now, seems to me that to the  
20                  extent that Mr. Britt can show that  
21                  Mr. Moore made specific statements at trial  
22                  and that he dealt with specific materials  
23                  in the interview, and those things were  
24                  different or inconsistent, he's entitled to  
25                  have that material in.

1           But to the extent that there's a --  
2           the tape says he said certain things three  
3           years ago, and he comes to trial and he  
4           says "I can't remember that. Yes, I've  
5           looked at the written word, but I did ask  
6           for a tape. May not have renewed my  
7           request or recalled that you told me that I  
8           could listen to the tape while I was  
9           reading the written word, but anyway I  
10          haven't heard the tape, all I've seen is  
11          this written material. I can't  
12          independently remember." In other words,  
13          the showing of the written word has not  
14          refreshed his recollection, which sometimes  
15          happens.

16                 Now, to the extent that he made a  
17                 statement back yonder in the original  
18                 interview, and comes to court and says I  
19                 don't remember, that occurred in a number  
20                 of cases, I argue that the prior statement  
21                 does not impeach "I don't remember,"  
22                 therefore, it seems to me that if this  
23                 comes in at all, it needs to be pared down  
24                 to where we have only those statements  
25                 where Mr. Britt can show that he made a

1 statement at the original interview and an  
2 inconsistent statement at trial, because  
3 what I suggest, Your Honor, and I know Your  
4 Honor is going to give the appropriate  
5 instructions about this, and tell the jury  
6 to consider it only for the proper  
7 purpose. The State knows, and I think we  
8 basically know that a jury is going to have  
9 a great deal of difficulty in sorting out  
10 what is impeachment, what are prior  
11 inconsistent statement, they are basically  
12 going to hear the whole thing, and what  
13 they will have effectively done is to have  
14 used this tape, which I think is the true  
15 purpose, to fill in the gaps where the "I  
16 don't remembers" came, and to me that  
17 overall purpose if that is the purpose, is  
18 improper, but even the possibility of that  
19 can be eliminated by causing the State to  
20 pare this thing down to the actual  
21 statements made in the original interview  
22 specifically addressed at trial, not the "I  
23 don't remembers".

24 THE COURT: Mr. Britt, I  
25 understand you folks are being provided

1 with software on a daily basis regarding  
2 the day's proceedings.

3 MR. BRITT: Yes, sir.

4 THE COURT: Have you gone through  
5 last Friday's proceedings as to Mr. Moore's  
6 testimony.

7 MR. BRITT: No, sir, and I don't  
8 recall, may not have even been printed  
9 yet.

10 THE COURT: Let me suggest that  
11 that would simplify my concerns if you  
12 could put before the Court specific  
13 instances where Mr. Moore denied --

14 MR. BRITT: Yes, sir.

15 THE COURT: -- certain items. If  
16 you will go through the transcript and  
17 highlight those, and then we'll come back  
18 and be heard. Because, folks, State has  
19 got a couple of options, State can impeach  
20 as to specific matters, utilizing the tape  
21 or utilizing the testimony of someone who  
22 was present.

23 As to prior inconsistent statements,  
24 my concern is under 403, I have to conduct  
25 a balancing test, if there are other means

1 of offering that evidence, for example, the  
2 testimony of one of the officers present,  
3 and those other means would limit or  
4 minimize the instances where argument might  
5 exist as to whether or not there is a prior  
6 inconsistency. I would prefer that route  
7 than the introduction of the whole tape.  
8 In the alternative, if the State can show  
9 on the record before the Court specific  
10 denials by the witness, then those specific  
11 portions may become more relevant. And  
12 under 403, I have to make the determination  
13 whether to limit the introduction of the  
14 tape as to those instances and no others.

15 So I'm going to ask that you go  
16 through the transcript so that we can make  
17 a determination as to what is more  
18 appropriate, if anything, in terms of my  
19 ruling.

20 All right. For our purposes, I  
21 recognize you may want to withdraw Sergeant  
22 Smith at this point until you've had an  
23 opportunity to do that. I'm instructing  
24 you that you're not to go into these  
25 matters in the presence of the jury until

1 the Court has an opportunity to rule, until  
2 counsel for the defendant has an  
3 opportunity to be heard further.

4 Sergeant Smith, you can step down.  
5 We're at ease until five until.

6 (Brief recess.)

7 THE COURT: Let the record show  
8 that all counsel are present, the defendant  
9 is present in open court. Mr. Horne, do we  
10 have all members of the jury secured in the  
11 jury room?

12 THE BAILIFF: Yes, we do.

13 THE COURT: Let the record  
14 reflect the following. During the recess,  
15 the Court was approached by counsel, one of  
16 the attorneys representing the defendant,  
17 Mr. Woodberry Bowen. Mr. Bowen indicated  
18 to the Court that he had observed Mr. Hugh  
19 Rogers speaking with the Clerk assigned to  
20 this courtroom, Ms. Sue Gaines, in an area  
21 immediately adjacent to the jury  
22 deliberation room. Mr. Bowen expressed  
23 concern about Mr. Rogers being in close  
24 proximity to members of the jury, and  
25 specifically expressed his concern that

1 Mr. Bowen had apparently observed  
2 Mr. Rogers nod or otherwise exchange  
3 greeting with a member of the jury. The  
4 Court directed Mr. Bowen to ask Mr. Rogers  
5 to report to the Court's chambers. The  
6 Court instructed Mr. Rogers, and again for  
7 the record, instructs both Mr. Rogers and  
8 Mr. Campbell, who are of record for counsel  
9 Larry Martin Demery in this case, that they  
10 are not to allow themselves to be in close  
11 proximity to members of the jury, that they  
12 are to avoid any situation that might put  
13 them in close proximity to the members of  
14 the jury.

15 Mr. Rogers and Mr. Campbell are  
16 present in open court. Do both of you  
17 understand those instructions?

18 MR. CAMPBELL: Yes, sir. May I  
19 ask a precautionary thing? I haven't, as  
20 far as I know, talked to anybody.

21 THE COURT: You have not. But  
22 since you're here and since you also  
23 represent Mr. Demery, I think it's  
24 appropriate to instruct you as well.

25 Mr. Bowen, has the Court decided

1           essentially the matters pointed out to the  
2           Court?

3                   MR. BOWEN:   Yes, sir.   And for  
4           the record, none of that has anything  
5           directly to do with Ms. Gaines.   I mean, I  
6           understand she's going to be around the  
7           jurors, and that's fine, but it was counsel  
8           for the --

9                   THE COURT:   For the record,  
10          further, Mr. Rogers, at the time he  
11          reported to the chambers of the Court as  
12          directed, indicated -- Mr. Rogers, if I  
13          understood you correctly, you indicated you  
14          recognized a member of the jury as someone  
15          you attended school with?

16                   MR. ROGERS:   Yes, sir, that's  
17          correct.

18                   THE COURT:   That person nodded  
19          his or her head to you?

20                   MR. ROGERS:   That's correct.

21                   THE COURT:   And you nodded your  
22          head to her?

23                   MR. ROGERS:   That's correct, and  
24          that was the extent of it.   And Ms. Gaines  
25          and I were not discussing anything

1           concerning testimony in here today or the  
2           merits of the case at all.

3                   THE COURT:   Any other matters you  
4           want to put on the record?

5                   MR. BOWEN:   And I didn't suggest  
6           there were, Your Honor.

7                   THE COURT:   Mr. Britt, do you  
8           need an opportunity to review any  
9           transcript before we go further as to the  
10          matter now before the Court?

11                   MR. BRITT:   Yes, sir.   The court  
12          reporter provided us -- me with a disk of  
13          Friday's proceedings as we took the break.  
14          It's being printed right now.   And when we  
15          came back in here at the conclusion of the  
16          break, that portion involving Mr. Moore's  
17          testimony was what was being printed at  
18          that time.   I instructed my office as soon  
19          as that is completed to bring it to me here  
20          in court.

21                   THE COURT:   So the record is  
22          clear, counsel for the State is seeking to  
23          introduce, I think, both the audiotape of  
24          the interview conducted by law enforcement  
25          officers with Mr. David Moore on August

1 14th, 1993, and is also seeking to  
2 introduce the testimony of Detective Don  
3 Smith as it may relate to that incident, is  
4 that correct.

5 MR. BRITT: Yes, sir.

6 THE COURT: The objection is  
7 being made to the introduction of the  
8 audiotape, is that correct?

9 MR. BOWEN: Yes, sir. And of  
10 course, Mr. Smith's testimony, if it were  
11 to deal with those matters as to which  
12 Mr. Moore's answer was, "I don't remember".

13 THE COURT: All right. So that  
14 we can address it now, if the State seeks  
15 to introduce through the testimony of  
16 Mr. Smith specific matters relating to what  
17 the State contends are prior inconsistent  
18 statements of Mr. Moore, brought in with  
19 the interview being given on August 14th,  
20 1993, do you wish to be heard as to those  
21 specific matters?

22 MR. BOWEN: If they are.

23 THE COURT: If, for example, the  
24 State seeks to introduce a specific denial  
25 by Mr. Moore and an impeachment of that

1 offering the oral testimony of Mr. Smith as  
2 a prior inconsistent statement, you folks  
3 want to be heard?

4 MR. BOWEN: Well, we will not  
5 concede that it comes in under 613 for  
6 reasons that I argued earlier.

7 THE COURT: All 613 says is that  
8 contrary to the old common law rule, the  
9 old common law rule and the old rule under  
10 Queen versus -- look at the commentary.  
11 The commentary 613 says Queen's case 2  
12 British -- or BR and B 284 129 English  
13 Reporter 926 1820, laid down the  
14 requirement that a cross-examiner, prior to  
15 their own statement in writing, must first  
16 show evidence. 613 says you don't have to  
17 do that. That's all it says, that they  
18 abolish the rule under the old case.  
19 That's all it says. Says you don't have to  
20 show it to the witness before you  
21 cross-examine him about it.

22 MR. BOWEN: So primarily he's  
23 offering it under 611-B.

24 THE COURT: As I understand it,  
25 607 which entitles one to impeach one's own

1 witness. 611-A and B which deal with the  
2 Court's control of the motive,  
3 interrogation and the discretion authorized  
4 by the Court under C as to leading  
5 questions of an adverse witness. 613 as a  
6 prior inconsistent statement.

7 MR. BOWEN: Sure. Well, if it  
8 takes 613, okay, to allow it in as a prior  
9 inconsistent statement, then you've heard  
10 an argument before which the Court doesn't  
11 agree with, but I still go back to that  
12 first sentence that appears to say under  
13 613 that it would be in a cross-examination  
14 process of the witness who made the  
15 statement. And I know the Court doesn't  
16 buy that, but -- so in that sense, we would  
17 object. If you're asking --

18 THE COURT: That objection is  
19 overruled. So your issue is preserved,  
20 exception is noted for the record. Because  
21 the complete sentence says in examining a  
22 witness' prior inconsistent statements,  
23 whether made by him or not, comma, the  
24 statement need not be shown or its contents  
25 disclosed to him. The witness, at that

1 time, that is, on request, the statement  
2 shall be disclosed to opposing counsel. So  
3 the whole statement must be read, not the  
4 first sentence.

5 MR. BOWEN: I realize no copy has  
6 to be shown. Now, if he intends to offer  
7 voir dire that the statement was made, the  
8 original statement, that it's inconsistent,  
9 to the extent that it obviously appears  
10 inconsistent, we would have no grounds to  
11 object. If he tries to say that it was  
12 made in the original statement, but the  
13 witness came forward and said at trial, I  
14 don't remember, then we will object on the  
15 grounds stated before.

16 THE COURT: Well, what I'm trying  
17 to focus on are, there are a number of ways  
18 that the State can impeach. The State can  
19 impeach by offering the transcript. The  
20 State can impeach by offering the oral  
21 testimony of one who was present at the  
22 interview, and the State can seek to  
23 impeach by offering the audiotape. So what  
24 it comes down to, from my perspective, is  
25 under Rule 403, what is the best method to

1 allow in terms of the interest of fairness,  
2 and given the nature of the evidence.

3 MR. BRITT: For the record, it's  
4 my position that the audiotape is the best  
5 evidence of what was said, and you and  
6 opposing counsel both know that if I elect  
7 to put an offer up to take out specific  
8 statements, that the argument can and will  
9 be made that they have picked and chose  
10 over the evidence that they want you to  
11 hear.

12 THE COURT: Another way that the  
13 evidence can come in if a door is opened on  
14 cross-examination. If, for example, you've  
15 questioned Mr. Smith about matters and  
16 those matters are inquired into on  
17 cross-examination regarding the tape, that  
18 may open the door to the entire tape coming  
19 in. My concern about the entire tape  
20 coming in, is portions of it arguably are  
21 not impeachment. B, portions of it are  
22 arguably more prejudicial, substantially,  
23 than probative. So 403 would come into  
24 play. And if I allow only portions of the  
25 tape to come in, does that -- is that



1 have to review Mr. Moore's testimony. My  
2 purpose here is to make sure the evidence  
3 comes in for the legitimate purpose for  
4 which it's offered and nothing else. If  
5 that can be done under Rule 403. And  
6 folks, we have to keep in mind what we're  
7 talking about here is not substantive  
8 evidence. It's impeachment evidence.

9 MR. BRITT: Yes, sir.

10 THE COURT: And the  
11 characterization, the nature of the  
12 evidence is a factor to consider under 403  
13 as well as 401.

14 Are you ready to go forward with other  
15 matters now or do you want to come back to  
16 this?

17 MR. BRITT: Your Honor, for  
18 purposes of continuity I would like to be  
19 able to come back to this.

20 THE COURT: Now?

21 MR. BRITT: I've got the  
22 transcript here in front of me.

23 THE COURT: Let's go ahead and do  
24 it.

25 MR. BRITT: If you'll give me an

1 opportunity --

2 THE COURT: Yes, sir. Has a copy  
3 of that been provided to counsel for the  
4 defendant.

5 MR. BOWEN: I have it, Your  
6 Honor. He's talking about --

7 MR. THOMPSON: You mean copies of  
8 Mr. Moore's --

9 THE COURT: Transcript.

10 MR. BOWEN: I don't see.

11 MR. BRITT: I'm talking talk the  
12 court testimony.

13 THE COURT: That's what I'm  
14 talking about, transcript of the court  
15 testimony.

16 MR. BRITT: Just so we can move  
17 forward, if we can come back to this  
18 matter. I'm prepared to present other  
19 evidence.

20 THE COURT: Let's do that. I  
21 prefer that rather than keeping the jury, I  
22 mean, this is a matter, folks, that in the  
23 scheme of things, I understand why the  
24 State would want to get it in, but in the  
25 scheme of things, we would do better to go

1 forward, I think.

2 MR. BRITT: Yes, sir, I'm  
3 prepared to go forward with other evidence  
4 at this time.

5 THE COURT: If you'll bring the  
6 jury in, please.

7 (Jury in at 12:11 p.m.)

8 THE COURT: Yes, sir, Mr. Britt,  
9 you may call your next witness.

10 MR. BRITT: Your Honor, at this  
11 time we call Dee Sullivan.

12 THE COURT: If you'll place your  
13 left an hand on the Bible raise your  
14 right.

15 **DELORES MIRANDA SULLIVAN,**  
16 being first duly sworn, was examined and testified as  
17 follows:

18 **DIRECT EXAMINATION**

19 THE COURT: If you'll take a  
20 seat, please. For the record, please state  
21 your name.

22 THE WITNESS: Delores Miranda  
23 Sullivan.

24 THE COURT: If you'll pull your  
25 chair up closer to the microphone, speak

1 directly into the microphone, please.

2 Spell your first name for the record?

3 THE WITNESS: D E L O R E S.

4 THE COURT: Middle name?

5 THE WITNESS: M I R A N D A,  
6 S U L L I V A N.

7 THE COURT: Thank you. You have  
8 a very soft voice. It's necessary that  
9 everybody be able to hear you, so please  
10 speak up loudly and clearly enough so  
11 everybody can hear and understand your  
12 testimony.

13 BY MR. BRITT:

14 Q Dee, where do you live?

15 A Marion.

16 Q In what -- I'm sorry?

17 A Marion, South Carolina.

18 Q And how long have you lived there?

19 A For about five or six years.

20 Q How old are?

21 A 17.

22 Q Are you in school?

23 A Yes, sir.

24 Q Where do you go the school?

25 A Marion High.

1 Q Do you know the defendant?

2 A I don't really know him, but you know, I  
3 have been -- I already know him, but I met him  
4 before.

5 Q When did you meet him?

6 A Sometime in July.

7 Q Of what year?

8 A '93.

9 Q And when you met him, do you know him by  
10 another name other than Daniel Green?

11 A Trulik.

12 Q And who told you his name was Trulik?

13 A He did.

14 Q And when did you recall or where do you  
15 recall first meeting him?

16 A When my friend brought him to my house.

17 Q And who was your friend that brought him to  
18 your house?

19 A Melinda Moore.

20 Q Was anybody else with them when they came  
21 to your house?

22 A Larry.

23 Q Can you describe Larry for us, do you know  
24 Larry's last name?

25 A Demery.

1 Q And when they came to your house, when you  
2 first met them, did you go anywhere with them?

3 A Yes, I did.

4 Q And where did you go?

5 A We came back to Lumberton.

6 Q And how did you get from Marion to  
7 Lumberton?

8 A In Trulik's mother's car.

9 Q Can you describe the car that you came back  
10 the Lumberton in?

11 A I think it was a blue Cougar.

12 Q And do you recall when this was?

13 A No, I don't know my dates, but I know it  
14 was sometime in July.

15 Q And when you came back to Lumberton with  
16 them, where did you go?

17 A I think it was his mom's house or  
18 grandmother's house, went to some house, I don't know  
19 whose house it was.

20 Q Did you stay there?

21 A No.

22 Q Was this in daytime or was it at night?

23 A It was night. It was nighttime.

24 Q Who drove from Marion to Lumberton?

25 A I did.

1 Q And at the time you were how old?

2 A 15.

3 Q Did you have a driver's license?

4 A No, sir.

5 Q Did anyone ask you to drive or ask you if  
6 you wanted to drive?

7 A Yes, sir.

8 Q Who asked you if you wanted to drive?

9 A Trulik.

10 Q And when he asked you if you could drive,  
11 if you wanted to drive, did you in fact do that?

12 A Yes, I did.

13 Q From the house or the trailer that you went  
14 to, did you go anywhere else?

15 A After we left the house, we went to a  
16 trailer, we stayed there for about an hour, and then  
17 we left from there and went to a motel.

18 Q Who went from the house to the trailer?

19 A Me, Melinda, Trulik and Larry.

20 Q When you left the trailer and you went to  
21 the motel, who went there?

22 A All four of us.

23 Q And when you got to the motel, what  
24 happened?

25 A They got rooms, everybody got separate

1 rooms, and from there --

2 Q How many rooms did the group --

3 A Two.

4 Q And who went to what room with each other?

5 A Melinda and Trulik and me and Larry.

6 Q And did you spend the night there at the  
7 motel?

8 A No, we left like that morning, like 3:00 --  
9 about 2:00, 3:00 that morning.

10 Q Where did you go from there?

11 A Back home.

12 Q And who drove back home?

13 A Me.

14 Q Now, while you were in that blue Cougar,  
15 did you see any money?

16 A Yes.

17 Q Where did you see any money?

18 A In the glove compartment.

19 Q And can you describe for us how the money  
20 was packaged?

21 A It was just like rolled up, like. It was  
22 all in a bundle like.

23 Q Was it a small bundle or large bundle?

24 A Large.

25 Q And did anyone take any of the money from

1 the glove compartment?

2 A Me and Melinda.

3 Q How much money did you take from the glove  
4 compartment?

5 A It wasn't that much. It was like probably  
6 15 dollars apiece, something like that.

7 Q And do you recall how much money there was  
8 in that bundle?

9 A No, I didn't count it.

10 Q Did you ever tell the defendant or Larry  
11 that you had taken the money from the glove  
12 compartment?

13 A No, we never told them that.

14 Q You went back to Marion?

15 A Yes, sir.

16 Q Did the defendant and Larry stay in Marion  
17 after you went back home?

18 A No, they dropped us off.

19 Q Did there come a time after they dropped  
20 you off when they were driving the blue Cougar that  
21 you saw them again?

22 A I saw them later, like probably a week or  
23 some days, and they came down, an --

24 Q Did they have a car with them?

25 A Yes, sir.

1 Q What kind of car did they have with them  
2 when you saw them this second time?

3 A A Lexus.

4 Q What color was that Lexus?

5 A Burgundy or red.

6 Q And where were you when you saw them with  
7 this Lexus?

8 A At this club.

9 Q What's the name of the club?

10 A TCM Lounge.

11 Q Had you gone to the club with them?

12 A No, sir.

13 Q How was it that you saw them at the club?

14 A My friend Melinda came in the club, and she  
15 told me they was out the door.

16 MR. BOWEN: Object.

17 THE COURT: What is this being  
18 offered for?

19 MR. BRITT: This portion, to  
20 explain her conduct.

21 THE COURT: You want a limiting  
22 instruction, Mr. Bowen?

23 MR. BOWEN: Yes.

24 THE COURT: Members of the jury,  
25 the testimony now being elicited from the

1 witness before you, Ms. Sullivan, as to  
2 statements Ms. Sullivan contends were made  
3 to her by someone else are not being  
4 offered for the truth of the matters  
5 asserted but are being offered -- excuse  
6 me, for the limited purpose of explaining  
7 the subsequent conduct of this witness,  
8 Ms. Sullivan, and you may consider these  
9 statements for that limited purpose and for  
10 no other purpose. Anything further, sir.

11 MR. BOWEN: No, sir.

12 BY MR. BRITT:

13 Q What did Melinda tell you when she came  
14 into the club?

15 A That Larry and Trulik was outside.

16 Q As a result of what Melinda said to you,  
17 what did you do?

18 A I just left out the club and walked -- me  
19 and her walked across the street where the car was  
20 at, and then we made plans to come back over  
21 here.

22 MR. BOWEN: Object the made  
23 plans.

24 THE WITNESS: All of us talked  
25 among each other.

1 MR. BOWEN: Object.

2 THE COURT: Sir?

3 MR. BOWEN: Object to what they  
4 talked about.

5 THE COURT: Do you want to be  
6 heard, Mr. Britt?

7 MR. BRITT: No, sir.

8 THE COURT: The objection is  
9 sustained. Anything further? Yes, sir.

10 BY MR. BRITT:

11 Q Did you talk with the defendant and Larry,  
12 yes or no?

13 A Yes, I did.

14 Q As a result of talking with them, was --  
15 strike that. Was anything said to you about driving  
16 that car?

17 MR. BOWEN: Object.

18 THE WITNESS: Yes.

19 THE COURT: As to whether or not  
20 anything was said, you may answer yes or  
21 no, and that's it.

22 THE WITNESS: Yes.

23 BY MR. BRITT:

24 Q Who said anything to you about driving the  
25 red Lexus?

1           A     Larry.

2           Q     Now, did you drive the red Lexus?

3           A     Yes, I did.

4           Q     As a result of the conversation that you  
5 had there when you came out of the club, did you go  
6 anywhere?

7           A     What do you mean, did I go anywhere?

8           Q     When you came out of the club, you  
9 testified that you all talked. Where did you go  
10 after you talked?

11          A     After I talked to them? All of us got in  
12 the car.

13          Q     And where did you go?

14          A     To Lumberton, we came back here.

15          Q     And who drove?

16          A     I did.

17          Q     Where was the defendant in the car, if you  
18 remember?

19          A     I think Larry was in the front with me --

20                   MR. BOWEN: Object to what she  
21 thinks.

22                   THE COURT: If you don't recall  
23 specifically, you need to tell us that.

24                   But if you do have a specific recollection,  
25 you may testify according to what you

1 specifically recall.

2 THE WITNESS: Larry was in the  
3 front with me and Trulik was in the back  
4 with Melinda.

5 BY MR. BRITT:

6 Q And when you drove -- where were you going?

7 A When I was driving the car?

8 Q When you drove the Lexus?

9 A Back to Trulik's house.

10 Q And do you know what town that was near?

11 A No, I just -- it was driving and went where  
12 he told me to go.

13 Q Who told you to go?

14 A Trulik.

15 Q Now, while you were driving back to his  
16 house, did the defendant say anything to you about  
17 what you should do in the event a policemen pulled up  
18 behind you?

19 MR. BOWEN: Object, leading.

20 THE COURT: Ma'am, I'm sorry, if  
21 there's an objection, you have to let me  
22 rule. The objection to the form of the  
23 question is sustained. Rephrase.

24 BY MR. BRITT:

25 Q While you were driving the car back to the

1 defendant's house, what if anything did he say to  
2 you?

3 A If anybody get behind me like cops or  
4 anything, don't stop, keep going.

5 Q Did you ask him why?

6 THE COURT: Folks are having  
7 difficult hearing, ma'am. If you'll speak  
8 loud enough for everybody to hear you.

9 BY MR. BRITT:

10 Q Did you ask him why he told you not the  
11 stop if anybody like cops got behind you?

12 A No, I didn't pay no attention.

13 Q And when you left Marion and you drove to  
14 his house, can you describe for us where it was that  
15 you stopped that night? Was it a house or trailer?

16 A It was a trailer.

17 Q Do you recall where you had parked the car?

18 A In the back.

19 Q And who was in the car at that time?

20 A When I parked the car in the backyard? Me  
21 Melinda, Trulik, and Larry.

22 Q After you parked the car, where did you go?

23 A All of us go out of the car and went into  
24 the house.

25 Q When you got inside the house or trailer?

- 1           A     Trailer.
- 2           Q     -- what did you do?
- 3           A     We sat around and was talking.
- 4           Q     And while inside sitting around and talking
- 5     did you see anything?
- 6           A     Yeah, a gun.
- 7           Q     What kind of -- can you describe for us the
- 8     gun that you saw?
- 9           A     It was a revolver.
- 10          Q     Do you recall what color it was?
- 11          A     Probably brown.
- 12          Q     And where was it that you saw this
- 13     revolver?
- 14          A     On the table.
- 15          Q     And what if anything did you do when you
- 16     saw this revolver?
- 17          A     I picked it up and started playing with it.
- 18          Q     Why did you do that?
- 19          A     I was just doing it.
- 20          Q     Was the gun loaded at that time?
- 21          A     No, sir.
- 22          Q     Did you spend the night there at the
- 23     trailer?
- 24          A     Yes, sir.
- 25          Q     And after spending the night, the next day,

1 where did you go?

2 A We got up and we went and pick Melinda's  
3 little sister up, after we picked her up, we went  
4 back to Marion.

5 Q You said we got up, who are you talk about?

6 A Me, Melinda, Trulik and Larry.

7 Q When you say you went to pick up Melinda's  
8 little sister, where did you go?

9 A I didn't know what place, I was just  
10 driving, wherever they told me to go, I don't know  
11 where I was going.

12 Q Now, did you ever ask the defendant where  
13 he had gotten the car?

14 A Yes, I did.

15 Q What if anything did he tell you about  
16 where he had gotten that car?

17 A He told me he bought it from New York.

18 THE COURT: I'm sorry, said what.

19 THE WITNESS: He told me he  
20 bought it from New York.

21 BY MR. BRITT:

22 Q Now, the car, this red Lexus, did it have a  
23 telephone in it?

24 A Yes, it did.

25 Q And did you ever use the telephone?

1 A Yes, I did.

2 Q How many times do you recall using the  
3 telephone?

4 A Once, twice.

5 Q And when you used the telephone, do you  
6 recall who it was that you were trying to call?

7 A Iris Hemmingway.

8 Q Why were you trying to call Iris  
9 Hemmingway?

10 A Because I was talking to her brother at the  
11 time.

12 Q And where did Iris Hemmingway live, in what  
13 town?

14 A Marion.

15 Q And do you recall that telephone number?

16 A Uh-huh, yes, sir.

17 Q What is that telephone number?

18 A 423-2135.

19 Q What's the area code?

20 A 803.

21 Q And when you made those telephone calls,  
22 who else was in the car?

23 A Me, Melinda, Trulik, Larry, and her little  
24 sister.

25 Q Did you ever look in the trunk of the car?

1           A       No, I didn't.

2           Q       And was there a reason why you never looked  
3 in the trunk?

4           A       No.

5           Q       Do you recall whether anyone had a video  
6 camera?

7           A       Yeah, I seen that.

8           Q       Who had a video camera?

9           A       Trulik.

10          Q       And what if anything did you see him doing  
11 with the video camera?

12          A       Nothing. He just had it.

13          Q       And when you say you saw him with it --

14          A       We was at the motel then when I saw it.

15          Q       And did you ever see that video camera  
16 inside the car?

17          A       Yes.

18          Q       And when you saw it inside the car, who had  
19 it there?

20          A       It was in the back seat so anybody could  
21 have had it.

22                   THE COURT: Can we put this in a  
23 time frame?

24 BY MR. BRITT:

25          Q       When you saw it in the car was that at the

1 time you were driving it?

2 A Yes, sir.

3 THE COURT: I'm talking about the  
4 first incident, second incident.

5 BY MR. BRITT:

6 Q First time you saw it at the motel, what  
7 car were you driving at that time?

8 A His mother's car.

9 Q That would be the blue Cougar?

10 A Yes, sir.

11 Q The second time you saw it, you saw it in  
12 which car?

13 A The Lexus.

14 Q The money that you testified about earlier,  
15 do you ever recall asking the defendant where he got  
16 that money?

17 A That was in the glove compartment?

18 Q Yes, ma'am.

19 A I asked him, he told me he said he robbed  
20 people and sell drugs and stuff like that.

21 THE COURT: Now, we need to put  
22 that in a time frame.

23 BY MR. BRITT:

24 Q Now, when you saw the money in the glove  
25 compartment of the blue Cougar, that was the occasion

1 when you first met the defendant?

2 A Yes, sir.

3 Q And when you asked him where he had gotten  
4 the money?

5 A We were talking among each other. And it  
6 was just something he said.

7 Q And was that at the time you first met him?

8 A Yes, sir.

9 Q In July of 1993?

10 A Yes, sir.

11 Q Did you ever look at the license plate of  
12 the car?

13 A No, sir.

14 Q Was there any reason why you did you want  
15 look at the license plate?

16 A I wasn't paying that no attention.

17 Q What was your attention focused on?

18 A Driving that Lexus.

19 Q Had you ever driven a Lexus or car like  
20 that before?

21 A I drove a car before, but I never drove a  
22 Lexus.

23 Q And since that time, have you ever had an  
24 occasion to drive a car like that?

25 A That -- did I have an occasion of driving a

1 car like that?

2 Q Driving a car like that Lexus?

3 A No, huh-uh.

4 Q Are you familiar with a place called the  
5 Honey Hole?

6 A Yes.

7 Q Where is the Honey Hole?

8 A In Marion.

9 Q And what is the Honey Hole?

10 A A basketball court.

11 Q Does anything else go on at the Honey Hole?

12 A I don't know, I just know it's a basketball  
13 court.

14 Q Do people hang out there?

15 A Yeah.

16 Q Did you ever have an occasion to go in the  
17 area of the Honey Hole with the defendant and Larry  
18 Demery?

19 A Yes.

20 Q And when was that?

21 A We had the Lexus, me and Larry and Trulik.

22 Q Was anybody else with you at that time?

23 A Melinda was home -- no, wasn't no one with  
24 us.

25 Q Why did you go in the area of the Honey

1 Hole?

2 A Because they wanted to rob somebody.

3 MR. BOWEN: Object.

4 BY MR. BRITT:

5 Q When you say --

6 MR. BOWEN: Object.

7 THE COURT: The objection is  
8 sustained. Anything further?

9 MR. BOWEN: Motion to strike.

10 THE COURT: Motion to strike is  
11 allowed.

12 Members of the jury, you will  
13 disregard and you will not consider the  
14 witness's statement as to they wanted to  
15 rob someone. That matter is not to take  
16 part in your deliberations in any respect.

17 BY MR. BRITT:

18 Q Did the defendant say he wanted to do  
19 anything at the Honey Hole?

20 A Yes, he did.

21 Q What if anything did the defendant say he  
22 wanted to do at the Honey Hole?

23 A He asked me did I know anybody out there  
24 that he could rob.

25 Q And when he asked you that, what did you

1 tell him?

2 A I told him he probably could find somebody  
3 out there with a lot of money or something that he  
4 could rob, I told him that.

5 Q Did you ever go to the Honey Hole?

6 A Yes, we went to the Honey Hole.

7 Q At any time did the car stop or did anyone  
8 ever get out of the car?

9 A We stopped but didn't nobody get out.

10 Q And when the defendant told you he wanted  
11 to rob someone at the Honey Hole, had you seen or was  
12 there a gun in the car?

13 A I didn't -- I don't know, I can't recall.

14 Q Now, after you went by the Honey Hole,  
15 where did you go?

16 A I think I went home.

17 Q Did you ever see the defendant or Larry  
18 Demery again?

19 A No, sir.

20 Q Had you had any conversation about going to  
21 the beach?

22 A No, sir.

23 Q Now, after you were dropped off at your  
24 house on that occasion, did there come a time when  
25 you received a phone call from the defendant?

1           A     Yes, sir.

2           Q     Now, when he called you, did you recognize  
3 his voice?

4                     MR. BOWEN: Object to foundation.

5                     THE COURT: At this point, the  
6 Court holds in abeyance any ruling on the  
7 objection. You may continue.

8 BY MR. BRITT:

9           Q     Did you recognize the defendant's voice at  
10 the time you received that telephone call?

11          A     No, sir.

12          Q     Did he identify himself?

13          A     Yes, sir.

14          Q     And upon identifying himself, did you then  
15 recognize his voice?

16          A     Yes, sir.

17          Q     Did you have any conversation with him at  
18 that time?

19                     MR. BOWEN: Object to foundation.

20                     THE WITNESS: Yes.

21                     THE COURT: Overruled.

22 BY MR. BRITT:

23          Q     And what if anything did the defendant tell  
24 you in that telephone conversation?

25          A     He just -- Trulik said --

1 MR. BOWEN: Object.

2 THE COURT: Overruled.

3 BY MR. BRITT:

4 Q You may answer.

5 A Trulik said that -- he said, I know you  
6 know what's going on and stuff, because you probably  
7 heard it on TV or seen what was going on on TV or  
8 anything. He said, but if anybody come asking you  
9 anything, act like you don't know nothing.

10 Q And what did you say to him?

11 A I said okay. And he told me to call  
12 Melinda and tell her the same thing.

13 Q And did you do that?

14 A Yes, I did.

15 Q Now, there came a time, did there not, Dee,  
16 in August of 1993, when police officers came to talk  
17 with you?

18 A Yes, sir.

19 Q Do you recall where you were when you first  
20 talked to any police officers?

21 A Home.

22 Q And do you recall who those police officers  
23 were?

24 A No, sir.

25 Q And when the police officers came to your

1 house in August of 1993, did they ask you questions  
2 about the red Lexus?

3 A Yes, sir.

4 Q Did they ask you questions about telephone  
5 calls that had been made from that red Lexus?

6 A Yes, sir.

7 Q Did they ask you questions about who made  
8 those phone calls?

9 A Yes, sir.

10 Q And what if anything did you tell the  
11 officers about any phone calls that you made?

12 A I just told them I made phone calls.

13 Q Did they ask you questions about who was  
14 with you in that red Lexus?

15 A Yes, sir.

16 Q And who did you tell them was with you in  
17 the red Lexus when those phone calls were made?

18 A Me, Melinda, Trulik, and Larry.

19 Q While you were in the Lexus, did anyone  
20 other than yourself make any phone calls?

21 A Yes, sir.

22 Q Who else made phone calls?

23 A Melinda made some and Trulik made some.

24 MR. BRITT: May I approach?

25 THE COURT: Yes, sir.

1 BY MR. BRITT:

2 Q Dee, I want to show you what has been  
3 marked as State's Exhibit 56-D. Do you see the  
4 exhibit sticker up here in?

5 THE COURT: You have to answer,  
6 ma'am.

7 THE WITNESS: Yes, sir.

8 BY MR. BRITT:

9 Q Is ask you to look at the middle portion of  
10 56-D under the heading cellular number (704)  
11 577-5523. You see that?

12 A Yes, sir.

13 Q There's an entry dated 7-23, 10:50, and

1 A That's Melinda's mother's number.

2 Q On 7-23, 18:15 hours, there's an entry  
3 (803) 423-2493, Marion, South Carolina.

4 A Melinda's.

5 Q Two four nine --

6 A Is Melinda's number. Her mother's number  
7 right there.

8 Q That's at 7-23, 18:16 hours, 423-0278?

9 A Yes, sir.

10 Q Is Melinda's mother's number?

11 A Yes, sir.

12 Q 7-23, 19:06 hours. There's a number (803)  
13 423-1551, Marion, South Carolina. Whose number is  
14 that?

15 A That's my number.

16 Q And on 7-23, 19:15 hours, 19:15, again, the  
17 number (803) 423-2493 appears, Marion, South  
18 Carolina. That's Melinda's number again?

19 A Yes, sir.

20 Q On 7-25, 19:02 hours, (803) 423-2493  
21 appears, Marion, South Carolina. Again, that's  
22 Melinda's number?

23 A Yes, sir.

24 Q On 7-25 at 19:03 hours, the number (803)  
25 423-1551 appears. Marion, South Carolina.

1           A       That's my number.

2           Q       Show you State's Exhibit 56-C. On 7-23 at  
3 22:20 hours, the number (803) 423-2493 Marion, South  
4 Carolina appears.

5           A       Melinda's number.

6           Q       7-23 at 22:27 hours, the number (803)  
7 423-1551 appears, Marion, South Carolina?

8           A       That's my number.

9           Q       State's Exhibit 56-D, 7-23, at 23:06 hours,  
10 (803) 423-1551, Marion, South Carolina?

11          A       That's my number.

12          Q       7-23 at 23:07 hours, (803) 423-0278,  
13 Marion, South Carolina?

14          A       That's Melinda's mother's number.

15          Q       7-23 at 23:15 hours, (803) 423-2493.

16          A       Melinda --

17          Q       -- Marion, South Carolina.

18          A       That's Melinda's number.

19          Q       7-24 at 11 minutes after midnight, (803)  
20 423-4315 Marion, South Carolina, whose number is that  
21 if you know?

22          A       Iris Hemmingway.

23          Q       Is that the phone call that you made?

24          A       Yes, sir.

25          Q       So July 24th at 1993 at a little after

1 midnight, you called Iris Hemmingway from the red  
2 Lexus that the defendant and Larry Demery drove to  
3 Marion, South Carolina?

4 MR. BOWEN: Object to all the  
5 leading.

6 THE WITNESS: Yes, sir.

7 THE COURT: Overruled.

8 BY MR. BRITT:

9 Q On the same day, 7-24, at 0:35 hours, 12:35  
10 a.m., (803) 423-2493, Marion, South Carolina?

11 A That's Melinda's number.

12 Q 7-24 at 0:37 hours, 12:37 a.m., (803)  
13 423-2493, Marion, South Carolina?

14 A Melinda.

15 Q 7-24, 11:46 hours, (803) 423-2493, Marion,  
16 South Carolina?

17 A Melinda's number.

18 Q On 7-24, 12:07 p.m., (803) 423-2493,  
19 Marion, South Carolina?

20 A Melinda.

21 Q 7-24, at 12:28, (803) 423-2493, Marion,  
22 South Carolina?

23 A Melinda.

24 Q On 7-24 at 12:29, (803) 423-2493, Marion,  
25 South Carolina?

1           A       Melinda.

2           Q       7-24 at 12:57, (803) 423-1551, Marion,  
3 South Carolina?

4           A       My number.

5           Q       7-24, at 15:02 hours, (803) 423-1551,  
6 Marion, South Carolina?

7           A       That's my number.

8           Q       7-24, 21:39 hours, (803) 423-1551, Marion,  
9 South Carolina?

10          A       That's my number.

11          Q       7-24 at 21:40 hours, (803) 423-2493,  
12 Marion, South Carolina?

13          A       Melinda.

14          Q       State's Exhibit 56-E, on July the 26th at  
15 10:35 a.m., record reflects (803) 423-2493, Marion,  
16 South Carolina?

17          A       That's Melinda's number.

18          Q       On July the 24th at 22:34 hours, (803)  
19 423-1551, Marion, South Carolina?

20          A       That's my number.

21          Q       On July 24th at 22:35 hours, (803)  
22 423-1551, Marion, South Carolina?

23          A       My number.

24          Q       7-24, 22:37 hours, (803) 423-2493?

25          A       That's Melinda number.

1 Q 7-24, 22:47 hours, (803) 423-1551 Marion?

2 A That's my number.

3 Q 7-24, 23:03, (803) 423-1551, Marion?

4 A That's my number.

5 Q 7-24, 23:15 hours, (803) 423-4293, Marion,  
6 South Carolina?

7 A Melinda's number.

8 Q And the phone calls that you made, Dee, who  
9 was present in the car with you each time you made a  
10 phone call?

11 A Me, Melinda, Trulik, and Larry.

12 Q And when you last saw that red Lexus, who  
13 was in it?

14 A Me, Trulik, and Larry.

15 Q When you were dropped off at your house,  
16 who left in the red Lexus?

17 A Trulik and Larry.

18 Q Did you ever see that car or the two  
19 individuals you knew as Trulik and Larry again?

20 A On the news.

21 Q When you saw them on the news, that was on  
22 a television broadcast?

23 A 6:00 News, I guess, I don't know.

24 MR. BRITT: May I approach the  
25 witness again?

1 THE COURT: Yes, sir.

2 BY MR. BRITT:

3 Q Dee, if you will, going back through the  
4 exhibits, if you will place your initials by your  
5 home telephone number and the phone number of Iris  
6 Hemmingway that you called, on State's Exhibit 56-E.

7 A (Witness complies).

8 Q On State's Exhibit 56-D.

9 A (Witness complies).

10 Q This section.

11 A (Witness complies).

12 Q Is that also --

13 A (Witness complies).

14 THE COURT: If you would like  
15 some water, ma'am, it's right there.

16 THE WITNESS: No thank you.

17 BY MR. BRITT:

18 Q On State's Exhibit 56-C.

19 A (Indicating).

20 Q And on State's Exhibit 56-B.

21 A (indicating).

22 MR. BRITT: I don't have any  
23 other questions at this time.

24 THE COURT: Folks, it's now about  
25 ten minutes until 1:00. Prior to

1 cross-examination, there's some matters  
2 that we need to take up. I'm going to  
3 excuse the jury at this time. We will go  
4 forward with the cross-examination of the  
5 witness after lunch recess.

6 Ladies and gentlemen, I'm going to  
7 release you until 2:30 this afternoon.  
8 During the lunch recess, please recall that  
9 it is your duty to abide by all prior  
10 instructions of the Court concerning your  
11 conduct. I'm obligated at this point to  
12 instruct you that you're not to talk about  
13 this matter among yourself or with anyone  
14 else, or to allow anybody to say anything  
15 to you or in your presence about this  
16 case. If anyone communicates with you  
17 about this matter or attempts to do so, or  
18 if anyone says anything about the case in  
19 your presence, it's your duty to inform us  
20 of that immediately through one of the  
21 bailiffs assigned to this courtroom.

22 Don't form or express any opinions  
23 about this matter. Don't have any contact  
24 or communication of any kind with any of  
25 the attorneys, parties, witnesses,

1 prospective witnesses, or directly with the  
2 Court. Don't allow yourself to be exposed  
3 to any media accounts which may exist in  
4 connection with this matter, and don't  
5 conduct any independent inquiry or  
6 investigation of any kind.

7 Everyone else please remain seated,  
8 the members of the jury are excused until  
9 2:30.

10 (Jury out at 12:49 p.m.)

11 THE COURT: Ms. Sullivan, you may  
12 step down. Please return promptly to the  
13 courtroom no later than 2:30.

14 For the record, I'm going to need to  
15 see all counsel and the defendant and the  
16 court reporter in chambers in camera. The  
17 Court, as it indicated to all counsel and  
18 the defendant at the earlier in camera  
19 proceeding, intended to pursue that matter  
20 at about this time, which is the  
21 appropriate time for us to do so.

22 So let the record reflect that the  
23 Court is retiring to chambers for an in  
24 camera proceeding, continuation of this  
25 morning's proceeding with counsel for the

1 state, counsel for the defendant, and the  
2 defendant, with the court reporter being  
3 present to record all matters connected  
4 with that proceeding.

5 We're at ease until 2:30.

6 (Brief recess.)

7 (Whereupon an in camera proceeding ensued  
8 as follows.)

9 THE COURT: Let the record  
10 reflect, this is an in-chambers, in-camera  
11 proceeding. Present at this time are the  
12 Presiding Judge, the court reporter,  
13 counsel for the state, Mr. Johnson Britt,  
14 counsel for defendant, Mr. Angus Thompson,  
15 Mr. Woodberry Bowen. Also present is the  
16 defendant, Mr. Green, also known as  
17 U'Allah; Ms. Diane Stone, Administrative  
18 Assistant for the Superior Court Judges in  
19 Robeson County.

20 Let the record reflect that during the  
21 mid morning recess, Ms. Stone gave the  
22 Court the following paper writing  
23 containing the following information:  
24 "Anita Hunt, 1-22-96, 11:15, 671-4473."  
25 There is following that, the apparent time

1 of 8:50, which is written through, and  
2 following that is 9:50. "Message, to call  
3 Ms. Stone at 671-3320." There is a line,  
4 below that line is the following language.  
5 "Person at Ms. Hunt's called Star 69  
6 before listening to message. Person  
7 answering knew nothing about call ". There  
8 is a line below that line is the following  
9 address: Route 8, Box 909 Lumberton, Mt.  
10 Olive Clutch Road.

11 Ms. Stone, if you will restate for the  
12 record the matters pertaining to the note  
13 you provided to the Court during the  
14 mid-morning recess and what you recall  
15 about that information.

16 MS. STONE: Okay. It was 1:15.  
17 I looked at my watch when she said she was  
18 Anita Hunt, she said, "I'm returning your  
19 call." I said, "I haven't called." I  
20 said, "When the call come in, I haven't  
21 called you today." And she said, "My  
22 answering machine gives the time and it  
23 was, she said 8:50" -- no, excuse me, it  
24 was 9:50.

25 THE COURT: So apparently she

1 received a message on her answering machine  
2 at 9:50?

3 MS. STONE: Right. She said she  
4 was not home, someone else was there, heard  
5 the phone, the answering machine picked it  
6 up before they -- before they could. They  
7 listened to the message, they did the Star  
8 69. Someone from this number just called.  
9 You know, who was it. And they said,  
10 unless you can tell us who's calling you,  
11 we don't know. I have no idea who she got  
12 when she did that Star 69.

13 THE COURT: We don't know what  
14 number was reflected when the person who  
15 was present at the home Star 69'd the  
16 telephone, right?

17 MS. STONE: Have no idea. So the  
18 person listened to the message. The  
19 message said to call Diane Stone at  
20 671--3320.

21 THE COURT: Let's stop there for  
22 a moment.

23 Mr. Britt, you got any information  
24 about anybody in your office calling the  
25 number previously given for Anita Hunt and

1 leaving a message to call Diane Stone?

2 MR. BRITT: No, sir.

3 THE COURT: Mr. Thompson, you got  
4 information about anybody in your office  
5 calling a number previously given for Anita  
6 Hunt, leaving a message to call Diane  
7 Stone?

8 MR. THOMPSON: No, but I haven't  
9 inquired.

10 THE COURT: And Mr. Bowen?

11 MR. BOWEN: The same answer, but  
12 my last instructions to my people were  
13 not -- that we were not going to call her  
14 back, and if she called, we would direct  
15 her to call Diane Stone.

16 THE COURT: If you check on that  
17 and we'll go back on the record as to  
18 that. I'm sorry, Ms. Stone, I --

19 MS. STONE: I was in this office  
20 when this call supposedly came from me.

21 THE COURT: Apparently, somebody  
22 called Ms. Hunt at 9:50 and left a message  
23 for Ms. Hunt on her answering machine to  
24 call Ms. Stone at the number that was given  
25 on that message, which was 671-3320.

1 MS. STONE: This was very close  
2 to the time you called and said it rang 15  
3 times and it was no answer. I was in this  
4 office at this time.

5 THE COURT: Yes, ma'am. Any  
6 additional information as to the -- the  
7 information just given us pertains to the  
8 first portion of your note and the second  
9 portion of your note.

10 Now, as to the third portion of your  
11 note which contains an address, let the  
12 record reflect at the time the Court  
13 received this note, first two portions were  
14 on there. I directed Ms. Stone to call the  
15 number for Ms. Hunt back and see if we  
16 could get an address on Ms. Hunt. That is  
17 the third portion of the note. And you  
18 followed my instructions.

19 MS. STONE: Exactly.

20 THE COURT: Called the number for  
21 Ms. Hunt, and obtained this address from  
22 Ms. Hunt.

23 MS. STONE: Right.

24 THE COURT: Okay. I intend to  
25 call the number left for Ms. Hunt, that

1           being 671-4473 at this time. Anybody want  
2           to be heard before I do that?

3                       MR. THOMPSON: No, sir.

4                       (Judge dialing the telephone).

5                       THE COURT: It's ringing. The  
6           Court dialed 671-4473.

7                       This is Judge Gregory Weeks, I'm  
8           Superior Court Judge from Fayetteville,  
9           North Carolina but I'm holding court here  
10          in Robeson County. Is there an Anita Hunt  
11          there at this number? You are Ms. Hunt?  
12          All right. Ms. Hunt, I understand that you  
13          live at Route 8, Box 909, in Lumberton.  
14          And that is Mt. Olive Church Road.

15                      Okay. Ma'am, I need to have you come  
16          down to the Robeson County Courthouse.  
17          Yes, ma'am. Well, not immediately, not  
18          right now. If you could be here at 2:30  
19          this afternoon. Can you be here at that  
20          time? Okay. If you will go to the second  
21          floor, and if you will ask for Ms. Diane  
22          Stone's office. Her office is on the back  
23          hallway. And if you will report directly  
24          to Ms. Diane Stone's office and remain  
25          there until I call for you.

1           You have asked if you can come  
2 earlier. Can you explain why you want to  
3 come earlier? What time are you scheduled  
4 to go to work? Okay. Yes, ma'am, can you  
5 be here in, at 2:00. Okay. Make it 2:00  
6 instead of 2:30. All right. You know  
7 where to go to. All right. Talk to you  
8 when you get her. Thank you ma'am. Bye.

9           She is has been directed, as was made  
10 of record, to report to Ms. Stone's  
11 office. As hopefully was apparent from the  
12 record, she wanted to know if she could  
13 come earlier, she has to be at work at  
14 3:00, so I told her at 2:00 is fine. We'll  
15 take it up then. We will have bailiffs  
16 bring Mr. Green, also known as U'Allah, at  
17 2:00. We also need to be here at 2:00 with  
18 all counsel back. I'm not in position to  
19 go further at this point until Ms. Hunt is  
20 here.

21           MR. THOMPSON: You have to  
22 instruct the bailiffs --

23           THE COURT: Yes, sir. Anybody  
24 want to be heard further?

25           MS. STONE: Do you want me here?

1 THE COURT: Yes, ma'am, if you  
2 could be out of an abundance of precaution  
3 in case some matters come up. If there is  
4 nothing further, I'm going to conclude the  
5 in-camera proceedings at this point and  
6 we'll reconvene in-camera in chambers at  
7 2:00 then. Is that satisfactory with the  
8 State, Mr. Britt.

9 MR. BRITT: Yes, sir.

10 THE COURT: Satisfactory with  
11 counsel for the defendant.

12 MR. THOMPSON: Yes, sir.

13 THE COURT: This concludes the  
14 in-camera proceeding at this time. We'll  
15 reconvene at 2:00 this afternoon. It is  
16 now 1:04 p.m. by my watch.

17 (In-camera conference adjourned until  
18 2:00 p.m.)

19 (Lunch recess.)

20 THE COURT: Okay. For the  
21 record, this is a continuation of the  
22 in-camera, in-chambers proceeding initiated  
23 earlier on today's date, it's now 2:00  
24 p.m.. Present are the Presiding Judge,  
25 court reporter, counsel for the State,

1 Johnson Britt, counsel for the defendant,  
2 Mr. Thompson and Mr. Bowen. Also present  
3 is defendant, Mr. Green, also known as  
4 U'Allah.

5 Folks, Ms. Stone called me, indicated  
6 Ms. Hunt is in her office. All right  
7 before we call, let me address a matter  
8 that we need to focus on. If you recall in  
9 the memorandum that was provided to me by  
10 Ms. Stone, she related certain information  
11 which was given to her by the caller,  
12 purportedly by the caller, Ms. Hunt. The  
13 information is, I think, absolutely  
14 germane.

15 According to Ms. Stone's memorandum,  
16 she said that as related by Mr. Thompson,  
17 Mr. Thompson indicated that a caller  
18 identifying herself as Anita Hunt called  
19 him about 4:00 Friday, January 19, 1996,  
20 stated that the caller had observed an  
21 alternate juror, Indian female with short  
22 hair, on a pay phone. And had overheard  
23 her say certain things. We've got two  
24 alternate jurors, or did have earlier, two  
25 alternate jurors as of the 8th of January,

1 1996, Ms. Locklear and Ms. Odum. Ms.  
2 Locklear is one of the jurors previously  
3 excused by the Court. It is entirely  
4 possible and conceivable, since she is  
5 referring to matters she says she observed  
6 and overheard, on January 8, that the  
7 alternate juror that she is referring to is  
8 Ms. Locklear and not Ms. Odum. If that is  
9 the case, we don't have a problem because  
10 Ms. Locklear has already been excused.

11 What I proposed to do, so that the  
12 record is clear, is bring Ms. Hunt down,  
13 question her about the matters set out in  
14 the memorandum, ask her to give a  
15 description of the juror she says she  
16 observed.

17 Now, depending on what that  
18 description may be, it may be necessary to  
19 ask Ms. Hunt to go into the courtroom at  
20 2:30, bring the jurors in, and ask her to  
21 look in the jury box, see if she can  
22 identify the person she says she overheard  
23 and observed, and to look in the audience,  
24 and see if she sees anyone that she may  
25 have overheard or observed. Let the record

1 reflect, Ms. Locklear was present in the  
2 courtroom this morning, and has been  
3 present since she has been excused from  
4 further service as a juror in this case.

5 Then we can reconvene in here, find  
6 out if the person she is referring to is  
7 Ms. Locklear or Ms. Odum or anybody else on  
8 the --

9 MR. THOMPSON: That's fine. For  
10 the record, I specifically asked Ms. Odum,  
11 Ms. --

12 THE COURT: Hunt.

13 MR. THOMPSON: -- Hunt if the  
14 person with the short hair that she  
15 observed was the individual that was in the  
16 newspaper, because the conversation that I  
17 had with her was on Friday. The day  
18 before, which was the day that she was  
19 talking about, was Thursday, and they had  
20 Ms. Locklear in the newspaper. And she  
21 said it was not her. And that is what led  
22 me to believe it was then Ms. Odum, which  
23 could only be the remaining juror. She  
24 sort of indicated to me that but I'm  
25 letting you know. She still, she could be

1 mistaken.

2 THE COURT: Now, that  
3 conversation should have been reflected  
4 this morning in the hearing this morning,  
5 that we had. Any conversation that you had  
6 with Ms. Hunt should have been reflected  
7 when we initially met this morning. Any  
8 other matters that you and Ms. Hunt  
9 discussed?

10 MR. THOMPSON: Not that I can  
11 recall, Judge. I related it. All right,  
12 I'm going to call Ms. Stone and ask Ms.  
13 Stone to bring Ms. Hunt down.

14 Diane, this is Judge Weeks. If you  
15 will bring Ms. Hunt down to our Chambers,  
16 please. Thank you ma'am.

17 Come in. All right. Let the record  
18 reflect now coming into the chambers is Ms.  
19 Diane Stone. And for the record, if you  
20 have a seat, ma'am. If you will state your  
21 full name, please?

22 MS. HUNT: Anita K. Hunt.

23 BY THE COURT:

24 Q Where do you live?

25 A Route 8, Box 909, Lumberton.

1           Q       Ms. Hunt, my purpose in asking you to come  
2 in, when I spoke to you earlier on the phone, is to  
3 make further inquiry into matters that you have  
4 apparently brought to the attention of at least Ms.  
5 Stone. I understand you spoke with her on Friday the  
6 19th of January, last Friday?

7           A       Yes, sir.

8           Q       And I understand that before you spoke with  
9 Ms. Stone, you spoke with Mr. Angus Thompson?

10          A       Yes, sir.

11          Q       The Public Defender's office?

12          A       Yes, sir.

13          Q       Is that accurate?

14          A       Yes, sir.

15          Q       I understand that you have given  
16 information both to Mr. Thompson and to Ms. Stone  
17 that sometime on or about January the 8th --

18          A       Yes, sir.

19          Q       -- 1996, this year, you with present in the  
20 courtroom?

21          A       Yes, sir.

22          Q       Is that the only date that you were present  
23 in the courtroom?

24          A       That's the only time I've been her.

25          Q       And you were here merely as a spectator

1 simply observing what was going on?

2 A Right.

3 Q I understand that at sometime during that  
4 day, apparently during a break or recess or after  
5 Court recessed for the day, you had an occasion to  
6 see someone that you recognized as a member of the  
7 jury in this case?

8 A After -- not at first I didn't recognize  
9 her.

10 Q Okay.

11 A Afterwards, I recognized who she was.

12 Q Was that during one of the recesses during  
13 the day or at the end of the day?

14 A During the day.

15 Q Do you recall whether it was during the  
16 lunch recess?

17 A It was the lunch recess.

18 Q Where did you see this person?

19 A Across the road at the cafeteria at the  
20 phone booth.

21 Q And tell us what if anything you saw or  
22 heard?

23 A I had left to go back make a phone call,  
24 make sure somebody was doing to pick up my sister  
25 from school. She was on the phone. There was a

1 gentleman was there when I got there, so I thought he  
2 was waiting to use the phone. And he said no, I'm  
3 just waiting here. And I was standing behind her,  
4 waiting for her to get through, and I heard her make  
5 the comment, "Yes, I'm going to find him guilty."  
6 She stopped and then I still didn't put it together  
7 that she was one of the jurors. And then they asked  
8 her something, she said, "After what the coroner said  
9 today, yes, he's guilty, and I'll find him guilty,"  
10 and no offense, but said "That nigger deserves to  
11 die."

12 Q And can you describe that person for us  
13 please?

14 A Got real short hair. She was sitting on  
15 the front row, the very end closer to you on the  
16 jury.

17 Q What is her physical build?

18 A She little bit taller than I am, she is not  
19 as heavy as I am but --

20 Q What is her race, if you know?

21 A She looks like an Indian girl.

22 Q When you describe --

23 A She's an alternate, I believe that's how  
24 you say it.

25 Q You indicated apparently to Mr. Thompson,

1 and again apparently to Ms. Stone, that person had  
2 short hair?

3 A Um-hmm.

4 Q All right. What about her complexion,  
5 white complexion, medium, dark?

6 A She was about my complexion.

7 Q And can you give us an approximation of  
8 what you think her age was?

9 A Looks like she is in her twenties, maybe  
10 24, 25.

11 Q Hair color?

12 A To be honest, I really don't know.

13 Q You have not been back in court since the  
14 8th?

15 A Huh-uh.

16 Q I understand that you have had the  
17 opportunity to see some news accounts in connection  
18 with this since that time?

19 A Okay. The day that I heard this, I did not  
20 know that I could come tell anybody, but the  
21 gentleman that was behind me said, how can you find  
22 somebody guilty without hearing the testimony. And  
23 the girl heard it and she got off the phone. I did  
24 not know that I could tell anyone. A friend of mine  
25 come from out of town, and she was asking about the

1 case. I said, well, I haven't been but one time, and  
2 I told her what he said. She said, Anita, you should  
3 had told somebody. I don't know who to tell. So  
4 they called me to call the DA's office, find out who  
5 I could tell, because I don't think it's right. If  
6 someone got an opinion just hearing one, after one  
7 day, I don't think it's right. And that's this  
8 reason I come forth.

9 Q When did you first call the DA's office?

10 A I called on Thursday, and I asked for the  
11 DA's office, and she gave me another number to call,  
12 and I thought I was talking to Ms. Stone. But Ms.  
13 Stone said I didn't talk to her on Thursday. I read  
14 in the paper, I'm not saying it was me they were  
15 assuming, that it was supposed to be here on Friday  
16 morning, but the lady, ever who I talked to, didn't  
17 tell me I was supposed to.

18 Q That was not you?

19 A Okay. But anyway, didn't know if that is  
20 what it was, so I called back Friday.

21 Q All right. You have not been in court  
22 since the 8th of January, so you have not had the  
23 opportunity to see the jury since that day?

24 A Yes, sir.

25 Q There have been news accounts about two

1 jurors that have been excused?

2 A I read that.

3 Q Not read, but have you seen any of those  
4 television news accounts?

5 A Yes.

6 Q Have you seen those two jurors on  
7 television?

8 A Um-hmm.

9 Q Is either of those two jurors the person  
10 you say you overheard?

11 A No, sir.

12 Q It's not either one of them?

13 A No, sir.

14 Q What I'm going to ask you to do is, I'm  
15 going to give you an opportunity to ask some  
16 questions a few moment, but at some point we are  
17 going back at 2:30, I'm going to ask you to sit in  
18 the courtroom, I'm going to ask you to sit on a row  
19 where you can observe the jurors, and I also want you  
20 to look in the audience. If you see anybody, either  
21 in the jury box or anyone in the audience, that you  
22 recognize as the person you say you saw and overheard  
23 on the 8th of January, keep that to yourself until  
24 you get back here.

25 A Okay.

1 Q Okay?

2 A I mean, can I ask you a question?

3 Q Yes, ma'am.

4 A I'm not -- all I want to know is, no one  
5 doesn't have to know that, unless -- I mean, if it's  
6 going to help and I say that is her, but as far as  
7 the media or anything, I don't want to know anything  
8 I even discussed it?

9 THE COURT: This matter right now is  
10 being held here in chambers, not in the open court,  
11 so we can resolve it and that's all I can do, I can't  
12 tell you at some point in the future it will be not  
13 be made a part of the public record.

14 BY MR. BRITT:

15 Q Ms. Hunt, the lady you saw on the phone,  
16 was she shorter or taller than you?

17 A Taller than me.

18 Q How tall are you?

19 A Five-one.

20 Q In terms of her size, you said she was a  
21 little smaller than you?

22 A Um-hmm.

23 Q Would you consider her to be dark-skinned  
24 or light-skinned for an Indian?

25 A She wasn't dark-skinned, she was about my

1 complexion. I mean, it's hard to -- she might was my  
2 complexion or maybe a little bit darker.

3 THE COURT: Using Ms. Stone, is the  
4 person's physical build closer to Ms. Stone or closer  
5 to yourself.

6 MS. HUNT: It was closer to her.

7 BY MR. BRITT:

8 Q This individual, approximately how old  
9 would you say she was or is?

10 A She looks like she's in her twenties, like  
11 maybe 24, 25. To me, that is the way she looked.

12 Q You recall how she was dressed?

13 A If I'm not mistaken, really, I didn't look,  
14 but I believe she had on a pair of blue jeans, if I'm  
15 not mistaken. I can't be definite.

16 Q You said she had short hair, was it similar  
17 to Ms. Stone's style?

18 A Cut shorter.

19 Q Up kind of like yours?

20 A It's cut shorter than Ms. Stone's.

21 MR. BRITT: I don't have any  
22 questions.

23 THE COURT: Mr. Thompson, any  
24 questions?

25 BY MR. THOMPSON:

1           Q     You indicated that you observed this juror  
2 seated in the jury box on the first row?

3           A     Yes, sir.

4           Q     Closest to the judge?

5           A     Right, and the only reason that I knew she  
6 was there because after I heard the conversation,  
7 when Court come back in, I did go in long enough to  
8 see if she was on this case, because -- then after I  
9 seen she come back in, I left.

10           THE COURT:   Now, any other questions,  
11 Mr. Thompson?

12           MR. THOMPSON:   No.

13           THE COURT:   Mr. Bowen?

14           BY MR. BOWEN:

15           Q     Ms. Hunt, the gentleman that made the  
16 remark about not hearing all the evidence, do you  
17 know who he was?

18           A     No, sir, but I can tell you what he looked  
19 like. He had sandy blond hair, had a suit, looked  
20 like he could be a lawyer or somebody, you know, by  
21 the way he was dressed. He was real nice dressed.  
22 He was standing there, and I thought he was wanting  
23 to use the phone, but weren't -- there was more or  
24 less like he was just standing there.

25           Q     Did you happen to see that person in court?

1           A       I didn't look for him.

2           Q       If we go back out, if you looked in the  
3 audience, if you see him, let us know.

4                   THE COURT:   Any other matters?

5 BY MR. THOMPSON:

6           Q       Yes. Did the individual who, the male that  
7 was standing behind the juror that you saw at the  
8 phone booth, what race did he appear to be?

9           A       He was white, he was a white gentlemen.

10                   THE COURT:   We are going to go  
11 back in, reconvene at 2:30. I'm going to  
12 ask you gentlemen to approach the bench.  
13 I'm going to give you an opportunity to  
14 examine folks in the jury box and folks in  
15 the courtroom in the audience.

16                   MS. HUNT:   And to be honest, I  
17 really can't stay I know what he --  
18 remember what he looks like. Maybe if I  
19 see him I do.

20                   THE COURT:   All we are asking, if  
21 you see anybody that you recall seeing at  
22 the place, and at the time in question, who  
23 was involved, let us know. Okay. Anything  
24 else?

25                   MR. BRITT:   In terms of her

1 concerns about the media, wouldn't it be  
2 best if she entered through the public  
3 corridor and just assumed a seat where --

4 THE COURT: Do we have an  
5 agreement that Ms. Stone can show her, do  
6 we have consent to that?

7 MR. THOMPSON: Yes.

8 MS. STONE: Do you want her to  
9 sign in?

10 THE COURT: No, ma'am. For our  
11 purposes right now, she does not have to  
12 sign it.

13 MR. THOMPSON: Question: And I  
14 know she indicated she has got to be at  
15 work at 3:00.

16 MS. HUNT: I called and told them  
17 that I might be late. That's fine.

18 MR. THOMPSON: Okay. But once  
19 she goes in there, are we going to resume?

20 THE COURT: We are coming right  
21 back out here after she has an opportunity  
22 to examine the jury.

23 MR. BRITT: Question: Is she to  
24 notify someone once she has had an  
25 opportunity to --

1 THE COURT: She is to say nothing  
2 until we get back in here. She simply is  
3 to go in and have a seat, look around at  
4 the jury, look around in the audience, I  
5 will recess Court. You will remain with  
6 her until we send for her from the  
7 courtroom, so --

8 MS. STONE: Just sit with her in  
9 the courtroom?

10 THE COURT: Then you go out.

11 MS. STONE: When you recess we  
12 come out.

13 THE COURT: Nobody in there will  
14 know what is going on. Go in, look around,  
15 if you see somebody, as I say, keep it to  
16 yourself, don't say anything to anybody  
17 until we all get back here. Okay.

18 MS. STONE: We can sit anywhere  
19 where she feels like she can observe  
20 everybody.

21 MR. THOMPSON: Can I ask her one  
22 question?

23 Ms. Hunt, do you feel like this juror,  
24 whoever it was you saw knows you before  
25 they put the phone down an --

1                   MS. HUNT: She heard the gentleman  
2                   behind me make that statement, and when he  
3                   made that statement, I said, "Well, I agree  
4                   with you because I wouldn't want her to be  
5                   on my case and my life is on the line."  
6                   That is what was said, and when he heard  
7                   that, she said, let me know, and she did  
8                   make a statement, she said, I have told --  
9                   and she called somebody's name that was  
10                  coming to the phone, told her to wait on me  
11                  before she went, so she says I got to go,  
12                  but I don't remember the name she told.

13 BY MR. THOMPSON:

14                  Q       Now, at the time you heard this individual  
15                  talking on the phone, did you know at that time that  
16                  she was on the jury?

17                  A       No, I still did not know she was on that  
18                  jury until she made the racial comment, and I went  
19                  back into the courtroom to see if she was on this  
20                  case.

21                           MR. THOMPSON: That's what I  
22                           understood you to say. Okay.

23                           THE COURT: Anybody else got  
24                           anything else to ask?

25                           MR. THOMPSON: No, sir.

1 THE COURT: We will recess at  
2 this point. It is now 2:20. If you will  
3 have her come in at 2:30 when we open Court  
4 and seat yourself anywhere you can see the  
5 jury and look around the courtroom. Take  
6 whatever opportunity you need. Okay.

7 MS. STONE: We can go on in there  
8 and have a seat before the jury gets in  
9 there.

10 (Ms. Stone and Ms. Leave the room).

11 THE COURT: Anything further from  
12 any counsel?

13 MR. BRITT: My concerns in trying  
14 to comply with her wishes about the media,  
15 that Ms. Stone's presence there may somehow  
16 attract attention to them if they both get  
17 up and walk out at the same time.

18 THE COURT: I'm not going to  
19 worry about that. I'm concerned about the  
20 allegation. Her exposure to the media is  
21 something we are going to do the best we  
22 can to protect but the process I'm  
23 concerned about is the integrity of the  
24 trial.

25 MR. BRITT: I understand that.

1 Yes, sir.

2 THE COURT: Anything further from  
3 counsel for the defendant?

4 MR. THOMPSON: No, sir.

5 THE COURT: Be at ease until  
6 2:30.

7 Let the record reflect we have not  
8 concluded. We are going on. We got some  
9 404-B matters that are likely to come up.  
10 404-B matters may come in arguably in the  
11 State's case in chief, may come in in  
12 rebuttal, may come in in corroboration of  
13 any State's witnesses, arguably. It's  
14 difficult to assess where we are at this  
15 point in terms of that. I'm throwing this  
16 out because we are -- it may be we are  
17 making an effort to get stuff in at one  
18 point when it is more likely to be  
19 admissable at other points, or inadmissible  
20 at other points, it depends.

21 There has been some indication in the  
22 newspaper, I don't know how true it is,  
23 don't want to concern myself, but I read a  
24 report where Mr. Bowen was quoted as saying  
25 the defendant will testify.

1 MR. BOWEN: Mr. Bowen did not say  
2 that.

3 THE COURT: Don't know  
4 anything --

5 MR. BOWEN: Mr. Bowen did not say  
6 that, wouldn't have said that.

7 MR. THOMPSON: He did not say  
8 that.

9 THE COURT: I'm saying that maybe  
10 a ruling is confined to the circumstances  
11 existing at the time that may not be the  
12 same ruling that might be appropriate at  
13 another time. We will just have to wait  
14 and see. Okay. We are at ease until  
15 2:30.

16 (End of in camera proceeding.)

17 THE COURT: Folks, let the record  
18 reflect that all counsel are present, the  
19 defendant is present in open court.

20 Mr. Horne, do we have all members of  
21 the jury secured in the jury room.

22 THE BAILIFF: Yes, sir, we do.

23 THE COURT: All right. Let the  
24 record reflect that the Court is continuing  
25 with the in-chambers, in camera proceeding

1           which was initially begun at approximately  
2           9:00 this morning, and which was continued  
3           at approximately 1:45 -- strike that,  
4           one -- 12:45 or 12:50, just prior to the  
5           lunch recess, and continued until  
6           approximately five or ten after 1:00, and  
7           which is again recommenced at approximately  
8           2:00 this afternoon until approximately  
9           2:20.

10                       Folks, since that matter is still  
11           before us, it's my intention to bring the  
12           jury in at this time, inform the jury that  
13           we are still dealing with a matter of law,  
14           and indicate to them that they are to abide  
15           by the Court's previous instructions in  
16           that regard, and they are not to worry or  
17           speculate about what takes place in the  
18           courtroom or in connection with the matter  
19           of law before the Court, and excuse them to  
20           the jury room while we continue.

21                       Mr. Britt, do you want to be heard  
22           further?

23                               MR. BRITT:   No, sir.

24                               THE COURT:   Mr. Thompson, Mr.  
25           Bowen?

1 MR. BOWEN: No, sir.

2 THE COURT: Mr. Horne, if you'll  
3 bring the jury in at this time.

4 (Jury in at 2:32 p.m.)

5 THE COURT: Good afternoon,  
6 ladies and gentlemen.

7 Members of the jury, there are matters  
8 of law before the Court which need to be  
9 considered, as I've previously explained in  
10 the context of other matters, out of the  
11 hearing and the presence of the jury. Now,  
12 these matters are required to be heard by  
13 the Court in the absence of the jury.

14 Again, I instruct you that you  
15 shouldn't worry or speculate about what  
16 take place in the courtroom in your  
17 absence, and you shouldn't worry or  
18 speculate about what is occurring in  
19 connection with any matters of law which  
20 are before the Court.

21 Don't worry or speculate in any regard  
22 or in any respect about those matters. As  
23 I have previously explained to you, the  
24 function of the jury is to serve as judges  
25 of the facts. And it is your exclusive

1 province to determine what the facts are  
2 based on the evidence that is presented in  
3 court and before you.

4 In that regard, it is your exclusive  
5 province to determine what the true facts  
6 are based on the credible evidence as you  
7 find the credible evidence to be in a  
8 particular case.

9 Now, I'm going to excuse you to the  
10 jury room. Hopefully those matters will  
11 not take an extended period of time. If it  
12 appears to the Court that they will require  
13 some extended period of time I'll bring you  
14 in and give you appropriate instruction.  
15 At this time, please continue to abide by  
16 all prior instructions of the Court  
17 concerning your conduct, and in particular,  
18 continue to abide by the Court's  
19 instruction requiring matters of law that  
20 are required to be heard by the Court.

21 Everyone else please remain seated,  
22 the members of the jury are excused to the  
23 jury room at this time.

24 (Jury out at 2:34 p.m.)

25 THE COURT: For the record, the

1 Court is about to return to the in camera  
2 in-chambers proceedings. I'm going to ask  
3 that all counsel and the defendant and the  
4 court reporter to reconvene in chambers so  
5 we can do that matter, hopefully be in a  
6 position to go forward with additional  
7 presentation of evidence.

8 Mr. Britt.

9 MR. BRITT: No, sir.

10 THE COURT: Mr. Thompson, Mr.  
11 Bowen.

12 MR. BOWEN: No, sir.

13 THE COURT: We are at ease  
14 pending further instruction from the  
15 Court.

16 THE BAILIFF: Court stands at  
17 ease.

18 (Whereupon an in camera proceeding ensued  
19 as follows.)

20 THE COURT: Let the record  
21 reflect that present at this time is the  
22 Presiding Judge, court reporter, counsel  
23 for the State, counsel for the defendant,  
24 Mr. Thompson and Mr. Bowen, Daniel Green,  
25 also known as U'Allah. Also present at

1           this time is Ms. Diane Stone and Ms. Hunt.

2           Ms. Hunt, did you have an opportunity  
3           to observe the jurors as they came into the  
4           courtroom?

5           MS. HUNT: Yes, sir.

6 BY THE COURT:

7           Q     Did you have an opportunity to observe the  
8           jurors while they were seated in the jury box?

9           A     Yes, sir.

10          Q     Did you have an opportunity to observe the  
11          jurors as they left the courtroom?

12          A     Yes, sir.

13          Q     Did you see anyone whom you recognize from  
14          the matters that you told us about having occurred  
15          based on what you told us on January 8, 1993?

16          A     Yes, sir.

17          Q     Who was that?

18          A     She had the red bow in her hair.

19          Q     And where was she seated in the jury box?

20          A     I believe it was number 13. I was trying  
21          to see the number. I believe it was 13.

22          Q     Is there any disagreement in the record she  
23          is referring to the only remaining alternate in this  
24          case, Ms. Odum?

25                 MR. BRITT: No disagreement.

1 THE COURT: Any disagreement on the  
2 part of the State that she is referring to the  
3 remaining alternate in this case?

4 MR. THOMPSON: No, sir.

5 MR. BOWEN: I don't disagree.

6 THE COURT: Ms. Hunt, I'm going  
7 to ask at this time that you step down in  
8 Ms. Stone's office. She is, as I  
9 understand, the person you say you saw in  
10 Ann Marie's restaurant.

11 MR. BRITT: The pay phone is  
12 located at the corner of North Elm Street  
13 and North Court Square.

14 MS. HUNT: Yes sir.

15 THE COURT: That's the person you  
16 say you saw and overheard?

17 MS. HUNT: Yes, sir?

18 THE COURT: If you will at this  
19 time accompany Ms. Stone and remain there  
20 until you hear from us.

21 MS. HUNT: Okay.

22 THE COURT: Okay.

23 (Ms. Stone and Ms. Hunt left the  
24 room).

25 THE COURT: Folks, it's my intent

1 to ask Ms. Odum to come in, question Mr.  
2 Odum about the matters now before us. The  
3 Court will initiate the questions, and  
4 next, ask the State to ask any questions it  
5 wants to, ask counsel for the Defendant to  
6 questions. Any matters before we go  
7 forward with Ms. Odum?

8 MR. BRITT: No, sir.

9 THE COURT: All right, sir. Let  
10 the record reflect we are going to get Mr.  
11 Horne to ask Ms. Odum to come in.

12 (Ms. Odum enters the room).

13 THE COURT: Ms. Odum, come in,  
14 have a seat. How are you.

15 MS. ODUM: Fine.

16 THE COURT: Ms. Odum, we asked  
17 that you come in because there are some  
18 matters I need to inquire into. Again, I  
19 mean, you have been asked to come in on the  
20 prior occasion and you understand that when  
21 we made inquiry of you at that time, I  
22 explained to you, and I'm explaining to you  
23 now, it is not our purpose to bring you in  
24 to accuse you of any wrongdoing. Simply to  
25 inquire into some matters that have been

1 brought to our attention. You understand.

2 MS. ODUM: Yes, sir

3 BY THE COURT:

4 Q You understand that anytime any matters are  
5 brought to the attention of the Court, the Court has  
6 an obligation, as do the parties in this case, to  
7 make inquiry, to ask questions to find out if the  
8 information provided is accurate or inaccurate. You  
9 understand that?

10 A Yes, sir.

11 Q Ms. Odum, we have received information from  
12 a person. That person says that they observed a  
13 member of the jury at a pay phone which is in close  
14 proximity to the courthouse. My understanding is  
15 that pay phone is located outside of what I know to  
16 be Dot's Sandwich Shop, which is next door to the  
17 courthouse. That person says that they observed a  
18 member of the jury, and they have identified the  
19 member of the jury that they observed as being you,  
20 on the phone, talking with someone, on or about  
21 January the 8th, 1996, that is, after the trial of  
22 this case started and after some evidence had been  
23 presented in connection with this case.

24 That person has further informed us that  
25 they overheard you make certain remarks. We are not

1 saying that you made those remarks, we are inquiring  
2 into whether you recall anything about this incident  
3 at all or whether you have any information you want  
4 to give us about this incident at all?

5 A Since I have been here, I have not used  
6 that phone there, I have not used the phone that is  
7 out here. Only time I used the phone, I walked to  
8 Jones, used the phone to call the guy I live with,  
9 come pick me up.

10 Q You walked where?

11 A To Jones', where my sister works, used the  
12 phone to call him, pick me up, only the times he had  
13 to use the car.

14 Q All right. Now, I'm required to go into  
15 the specific information that I have. So understand  
16 again, that as to what in fact you can tell us about  
17 what has been told us, okay?

18 A I swear to God on my young 'un's life, I  
19 never used those phones, I haven't talked about this  
20 case among other.

21 Q I understand what you are saying, but  
22 following along with me in terms of what I have to  
23 ask you. The information that has been provided to  
24 us is that the person was waiting to use the phone,  
25 at the time this person was waiting to use the phone,

1 you were on the phone, and this person overheard you  
2 say that you would find the, quote, nigger guilty,  
3 close quote. And that immediately after the person  
4 heard this statement, there was another gentlemen, a  
5 man, who was in the area of that pay phone, and that  
6 this man apparently overheard that remark, and  
7 commented, how can she find someone guilty before she  
8 had heard all of the evidence? And that you  
9 apparently overheard the man make this comment,  
10 because at that point, you said you had to go because  
11 someone else wanted to use the phone. That person  
12 said that you purportedly made the statement, in  
13 addition, "someone" or "somebody needs to find the

1 Q And am I correct that you deny making any  
2 of those statements?

3 A That is right.

4 Q And at anytime?

5 A No, sir, I have not.

6 Q To anyone?

7 A No, sir.

8 Q Mr. Britt, you have any questions you want  
9 to ask Ms. Odum?

10 MR. BRITT: No, sir.

11 THE COURT: Mr. Thompson or Mr.  
12 Bowen?

13 MR. BOWEN: No, sir.

14 BY MR. THOMPSON:

15 Q Yes. Are you -- did I understand you to  
16 correctly to say that not only have you not used the  
17 phone over there at Dot's, the restaurant?

18 A Right.

19 Q But you have not used the phone here in the  
20 courthouse?

21 A No, sir. No, sir, I haven't.

22 MR. THOMPSON: Okay.

23 MS. ODUM: Only time I ever used  
24 the phone while I was here, when I walked  
25 to Jones and used the phone call him to

1           come pick me up for lunch. That was it.

2 BY THE COURT:

3           Q       Specifically, you understand that whenever  
4 somebody says anything like this occurred, we have to  
5 inquire into it?

6           A       Yes, sir.

7           Q       You are absolutely sure you never not only  
8 used the phone but not made any calls, used these  
9 comments?

10          A       Swear to God on my young 'un's life I  
11 haven't.

12          Q       That you haven't made any comments?

13          A       No, sir, I keep my notes in the car so the  
14 guy I live with, he don't ask me about them. And I  
15 keep them in the car, keep my doors locked. I keep  
16 them locked up. That way in the morning I have them.

17          Q       Have you made up your mind in any respect  
18 about this case?

19          A       No, sir, because all the evidence hadn't  
20 come to us, you can't know, you know.

21          Q       You are satisfied that you can remain a  
22 member of this jury, if you are to remain a member of  
23 this jury, and listen to the evidence in its  
24 totality, all of the evidence, with an open mind?

25          A       Yes, sir.

1 Q Consider that evidence objectively, fairly  
2 and impartially?

3 A Yes, sir.

4 Q You are satisfied that based on what you  
5 know about yourself, and your views and attitudes,  
6 that you can be a fair and impartial juror both to  
7 the State as well as to the defendant?

8 A Yes, sir.

9 Q Anything at all that has occurred that has  
10 changed your position in that regard, about your  
11 ability to do that?

12 A No, sir.

13 THE COURT: Okay. Mr. Britt,  
14 anything further?

15 MR. BRITT: No, sir.

16 THE COURT: Mr. Thompson?

17 MR. THOMPSON: No, sir. Mr.  
18 Bowen?

19 MR. BOWEN: : No, sir.

20 THE COURT: Ms. Odum, I instruct  
21 you that you are not to discuss with anyone  
22 any of the matters that have been inquired  
23 into. You understand that? That includes  
24 the other members of the panel.

25 There is some additional matters that

1 I need to attend to and before you go back.  
2 I'll ask you to have a seat in the room at  
3 the end of the hall that we used earlier.  
4 If you bear with me for one second.

5 Ms. Odum, if you will follow Mr.  
6 Horne's instructions and if you will have a  
7 seat in that room for just a moment,  
8 please?

9 MS. ODUM: Yes, sir.

10 (Ms. Odum leaves the room).

11 THE COURT: Anybody want to  
12 inquire further of Ms. Hunt?

13 MR. THOMPSON: Your Honor --

14 THE COURT: Let the record  
15 reflect Ms. Odum has been directed to a  
16 room other than the jury room occupied by  
17 the remaining members of the panel, she is  
18 being sequestered from the remaining  
19 members of the panel until further notice,  
20 further instruction of the Court.

21 MR. BOWEN: If Your Honor please,  
22 our client is asking to talk to us in  
23 private.

24 THE COURT: Yes, sir, I will give  
25 you that opportunity. If you want to

1           inquire further of either Ms. Hunt or Ms.  
2           Odum, let me know.

3                       MR. THOMPSON:   Yes, sir, and I  
4           need to talk to my -- can I get my  
5           investigator.

6                       THE COURT:   Yes, sir.  Mr. Britt,  
7           before you step out let me say this:  
8           Folks, in the event that there is a motion  
9           to excuse Ms. Odum, I will take that motion  
10          -- I won't take it under advisement, I  
11          will rule on it.  But if it turns out that  
12          we end up excusing Ms. Odum, we got 12  
13          jurors, we are going to go forward with  
14          what we've got unless we find ourselves in  
15          a situation where a mistrial is mandated.

16                      MR. BRITT:   That would occur if  
17          we fall below 12 jurors.

18                      THE COURT:   If a mistrial is  
19          mandated, I want you folks to be, I want to  
20          be honest and candid.  If a mistrial is  
21          mandated, and if I'm still responsible for  
22          this case, on my motion, based on what has  
23          occurred, I'm going the change venue.  I'm  
24          going to look at the statute to see if I  
25          have that authority.  My recollection is

1           that statute says if there exists a ground  
2           or grounds upon which either the State or  
3           defense counsel may move for a change of  
4           venue, the Court, on its own, may raise  
5           such a motion and rule on such a motion.  
6           If that does come to pass, if a mistrial is  
7           declared because we fall below 12 jurors,  
8           then I'm going to use the record in this  
9           case as a basis for a change of venue in  
10          this case, if I am still responsible for  
11          this case, outside this county. That is  
12          simply so everybody will know that these  
13          matters, I think, are the matters that I  
14          raised when I talked to you folks early on,  
15          does anybody want to be heard on a motion  
16          for change of venue, and I think I raised  
17          that subject repeatedly.

18                         MR. BRITT: Yes, sir.

19                         THE COURT: Okay.

20                                 (Brief recess.)

21                         THE COURT: All right, sir. Let  
22          the record reflect all counsel are present,  
23          the defendant is present. Also present at  
24          this time are Presiding Judge, the court  
25          reporter. Yes, sir, you folks want to be

1 heard further about further inquiry of Ms.  
2 Hunt or Ms. Odum or otherwise?

3 MR. BOWEN: We desire to question  
4 Ms. Hunt but not Ms. Odum.

5 THE COURT: You do want to ask  
6 Ms. Hunt some additional questions? The  
7 Court, for the record, is calling Ms.  
8 Stone, asking Ms. Stone to bring Ms. Hunt  
9 out.

10 Diane, if you please bring Ms. Hunt  
11 back down to chambers, please? Thank you,  
12 ma'am.

13 Folks, I'm placing into the envelope  
14 the memorandum prepared by Ms. Stone, along  
15 with the initial note taken by Ms. Stone,  
16 and subsequent notes made by Ms. Stone, and  
17 the note previously furnished by Mr. Britt  
18 through Ms. Price.

19 Let the record reflect now coming  
20 into chambers is Ms. Stone, along with Ms.  
21 Anita Hunt.

22 Ms. Hunt, I believe Mr. Bowen and Mr.  
23 Thompson have some additional matters they  
24 want to talk about.

25 BY MR. BOWEN:

1 Q Let me ask you, are you employed outside  
2 the home?

3 A Yes, sir.

4 Q Where do you work?

5 A Accent Fabrics.

6 Q And are you married or single?

7 A I'm married.

8 Q And who is your husband?

9 A His name is Reverend Grover Lynn Hunt.

10 Q Have you and Reverend Hunt discussed these  
11 matters that you brought to our attention?

12 A No, sir, he doesn't know I'm here.

13 Q Have you discussed these matters with  
14 anyone else?

15 A No, sir.

16 Q You called the courthouse, you say you  
17 specifically called the District Attorney's office  
18 and they referred you to another number?

19 A No, sir, she told me to hold on, did I need  
20 to speak to Ms. Stone. I don't know who the lady was  
21 who answered the phone, but that's what she told me.  
22 She didn't give a number to dial, she told me to hold  
23 on, then someone else picked up.

24 Q Did that person identify themselves?

25 A To be honest, I can't remember.

1 Q Does the name Linda or Gail sound familiar  
2 at all?

3 A No, sir.

4 Q Whoever it was that picked up after the  
5 DA's office asked you to hold, that is who you talked  
6 to?

7 A Yes, sir.

8 Q And this would have been on Thursday of  
9 last week?

10 A Right.

11 Q And you told that person substantially what  
12 you told here in chambers?

13 A Yes, sir.

14 Q And nobody then called you back?

15 A No, sir. She asked my name, I gave her my  
16 name, and she said, I will pass it along. That is  
17 what she said.

18 Q Did she say to whom?

19 A No, sir. She asked me -- I asked her did  
20 she need my number? And she said no, that's okay, I  
21 will pass it along.

22 Q Do you recall about what time of the day on  
23 Thursday?

24 A It was about 4:30.

25 Q Now, then, I take it you expected then to

1 get a call and did not?

2 A Well, I didn't know what to expect.

3 THE COURT: Now, you didn't leave your  
4 number the first time?

5 A That's correct, because I asked her did she  
6 need my number, she said no.

7 BY MR. BOWEN:

8 Q Is that when you then called Mr. Thompson?

9 A I called Mr. Thompson on Friday after I had  
10 read the newspaper and did not know if they were  
11 talking about me and I wanted to make sure they  
12 weren't talking about me because I knew I had called,  
13 and they said a caller was asked to come in, and I  
14 didn't want them, you know --

15 Q You spoke with Mr. Thompson and he did get  
16 your number?

17 A Yes, sir.

18 Q And I believe you called my office and  
19 talked with Mr. Jamaine?

20 A I don't know who I called.

21 Q But you called.

22 A I called because somebody called my home  
23 and I weren't home. The person that called said --  
24 well, I didn't get the message, my husband got the  
25 message, said Ms. Hunt, I'd rather discuss this with

1 you, and I didn't know if it was you all or not,  
2 didn't say who it was.

3 Q So then thereafter you then called my  
4 office, is that --

5 A Yes, sir.

6 Q And --

7 THE COURT: Trying to find out who had  
8 called?

9 A If it was them, could have been, I don't  
10 know if it was them or not, could have been anybody.

11 Q You and I have not talked until today, have  
12 we?

13 A No, sir.

14 Q Did you call my office anymore?

15 A No, sir.

16 Q But it was then thereafter that you called  
17 Ms. Stone?

18 A I called Ms. Stone Friday evening after I  
19 had talked to you all, because he suggested that I  
20 call and report it back to her in case it wasn't her  
21 that had got it.

22 Q What brought you to the courthouse the day  
23 that you observed these things back on January the  
24 8th?

25 A Well, really, if I don't have to work, I

1 will come up here, and I had planned coming up more  
2 but I been having to work. I did not have to work  
3 that Monday.

4 Q Are you interested in watching this  
5 particular trial or this --

6 A I watch different trials, but I come to  
7 watch this trial.

8 Q And so I take it you heard about the case  
9 and read about it some?

10 A Yes, sir.

11 Q In the news. Do you know Larry Demery or  
12 any of his family members?

13 A No, sir.

14 Q Do you know anybody in the District  
15 Attorney's office?

16 A No, sir.

17 Q Do you know closely any members of law  
18 enforcement?

19 A I know Glenn Maynard, the Sheriff. I have  
20 an uncle that was a jailer at the courthouse.

21 Q Who is that?

22 A Jimmy Lynn Hunt. But we hardly ever see  
23 each other.

24 Q Could you describe Mr. Hunt?

25 A He's tall, real tall, he's a preacher.

1           Q     Any other law enforcement officers that you  
2 know?

3           A     I know law officers when I see them. As  
4 far as names, I don't know.

5           Q     How close of an association do you have  
6 with Sheriff Maynard?

7           A     I helped him with his election.

8                   THE COURT:    Would you characterize  
9 yourself as a friend or an acquaintance of him or  
10 someone who just worked on his campaign.

11                   MS. HUNT:    I known him a long time but  
12 as far as someone of a real close friend, no, just  
13 acquaintance, you know, it's nothing like a  
14 friendship or anything like that.

15 BY MR. BOWEN:

16           Q     Before you came to watch the case, had you  
17 formed any strong feelings about the likely guilt or  
18 innocence of the defendant?

19           A     No, sir, I had not.

20           Q     You did not know this juror whom you now  
21 identify, you did not know her before this date?

22           A     Now I have seen her somewhere, but I don't  
23 remember where it is at. I don't know if it was that  
24 day and it's just stuck in my head or not, but as far  
25 as knowing her, no, I don't know her.

1 Q Did you have any impression at all as to  
2 whom she might be talking to?

3 A When she was on the phone?

4 Q Yes.

5 A No, sir, I did not.

6 Q Did you see a man out in the courtroom who  
7 looked at all like the man that was standing behind  
8 you and had some conversation with?

9 A I looked to see if I knew anyone, but it's  
10 hard. I can't really remember what the guy looked  
11 like. There was a guy in the courtroom today and he  
12 was sitting over close to where he was sitting, I  
13 can't remember his name.

14 Q Are you indicating Mr. Britt?

15 A Right. But I couldn't tell if that was him  
16 or not. He had sort of the same color hair.

17 Q You said a white man, with curly sort of  
18 sandy blond hair?

19 A I didn't say curly. Sandy blond.

20 Q Not curly?

21 A Huh-uh, wasn't curly.

22 Q Was this person sitting up at the table or  
23 back in the audience?

24 A I'm not saying that is him, now, I'm saying  
25 it sort of reminded me of him. He was sitting at the

1 table.

2 Q Where did the person, juror that you saw,  
3 where did she go after the conversation was over?

4 A I was on the phone, and after I dialed my  
5 number, I turned and faced the courthouse and she was  
6 coming back into the courthouse.

7 Q Have you talked about these matters that  
8 you are bringing to the Court's attention now with my  
9 member of law enforcement?

10 A No, sir I have not.

11 Q Has Mr. Hunt ever made a remark about Mr.  
12 Daniel Green?

13 A My uncle?

14 Q Yes, sir.

15 A No, sir.

16 Q To your knowledge?

17 A No, sir, not to me, he has not. Like I  
18 said, I have seen him -- Christmas, that is the only  
19 time I have seen him, but this case never came up.

20 Q That would be your husband's --

21 A It's my mother's brother.

22 BY MR. THOMPSON:

23 Q Ms. Hunt, what was it that specifically  
24 prompted you to call my office? I mean, have I ever  
25 represented any member of your family?

1           A     No, sir.

2           Q     What was it?

3           A     The reason I called your office is because  
4 I had read in the newspaper, and I'm didn't know if  
5 they were confirming to me as being the caller that  
6 was supposed to come in, and I called your office,  
7 that is the reason I called your office, because what  
8 was said in the newspaper, not what I had said. I  
9 wanted to make sure that someone thought they had  
10 told me to come in and didn't, that is why I called  
11 you.

12          Q     Was there any specific reason why you did  
13 not call the DA's office from a -- specifically, you  
14 called the DA's office the first time?

15          A     Right.

16          Q     And was there any particular reason why you  
17 did not get back or call them?

18          A     To be honest, the girl or the lady that I  
19 talked to on the phone, she acted like she wasn't  
20 real concerned. I'm not saying it was Ms. Stone. I  
21 said everything, she didn't act like she was real  
22 concerned. That is the reason. Before I called you,  
23 I called the District Attorney's office and asked to  
24 speak with him, but he wasn't in:

25                   MR. THOMPSON:   Okay.

1 BY MR. BOWEN:

2 Q Did the -- when you got put on hold when  
3 you first talked to the District Attorney's office,  
4 the person who put you on hold to let you talk to  
5 somebody else, whether you can recall what they said  
6 or not, did that second person give the name of any  
7 other office or department?

8 A No, sir, they didn't. As a matter of fact,  
9 I couldn't remember his name, so I had some old  
10 newspapers, that is how I found his name to call  
11 him.

12 MR. BOWEN: That's all.

13 THE COURT: Mr. Britt.

14 BY MR. BRITT:

15 Q Ms. Hunt, as I understand, you came up here  
16 as a casual observer of the trial?

17 A Yes, sir.

18 Q Because you are interested?

19 A Yes, sir.

20 Q You don't know Mr. Green or any members of  
21 his family?

22 A No, sir, I do not.

23 Q And the things you have related to us, you  
24 brought them to our attention because of your  
25 concern?

1           A       Yes, sir.

2                   MR. BRITT:   I don't have any  
3           other questions.

4                   THE COURT:   Anybody else?  Do we  
5           need Ms. Hunt to remain, folks, or can we  
6           let Ms. Hunt go?

7                   MR. THOMPSON:  No, sir.

8                   MR. BOWEN:  No.

9                   THE COURT:   We need Ms. Hunt to  
10          remain or let her go?

11                   MR. THOMPSON:  Let her go.

12                   MR. BOWEN:  Let her go.

13                   THE COURT:   Thank you ma'am, you  
14          are free to go.

15                   MS. HUNT:  I don't know how to get  
16          out of here.

17                   THE COURT:   Ms. Stone will show  
18          you.  I thank you.  You all through with  
19          Ms. Stone?

20                   MR. BRITT:   I am.

21                   MR. THOMPSON:  Yes, sir.

22                   THE COURT:   Thank you ma'am.  Let  
23          the record reflect, leaving at this time,  
24          is Ms. Hunt and Ms. Stone.  Anybody want to  
25          be heard about Ms. Odum?



1 time may be reflected on your note.

2 Okay. If you will ask her to  
3 bear with us if possible. So what may be  
4 -- if an attempt was made to transfer the  
5 call to the DA's office to Ms. Stone's  
6 office at 4:30 and Ms. Stone was on the  
7 phone, it may be possible that somebody in  
8 the DA's office picked up on the second  
9 occasion.

10 This is the wrong one. This is the  
11 one dealing with Ms. Locklear -- anyway,  
12 wrong envelope. Tell Sue it's the wrong  
13 envelope.

14 MR. THOMPSON: Judge, while she is  
15 getting that, and you made the comment  
16 about the change of venue and that you had  
17 indicated this, something to us to counsel,  
18 and I don't want to misunderstand you, but  
19 when you said you indicated something to  
20 counsel, are you talking about this kind of  
21 thing could happen? What were you exactly  
22 -- I'm just --

23 THE COURT: Go ahead and ask your  
24 question.

25 MR. THOMPSON: What were you

1 referring to, misconduct?

2 THE COURT: No. What I was  
3 indicating was that in my view, based on  
4 matters that you folks filed about pretrial  
5 publicity, that this was an event that was  
6 likely to happen, and that it might be  
7 difficult either getting a jury or keeping  
8 a jury in this county. And that on  
9 numerous occasions, I inquired of all  
10 counsel, does anybody wants to be heard  
11 about change of venue.

12 MR. BRITT: I specifically recall  
13 that you mentioned it in January of 1995 at  
14 a proceeding, and at that time, I told you  
15 that I was not going to ask you for a  
16 motion to change venue. And as I recall,  
17 the defense said they were going to study  
18 the issue.

19 MS. STONE: This was on your desk.

20 MR. BOWEN: I'm sure you studied  
21 it and we did, too.

22 MR. BRITT: There was never a  
23 question in my mind.

24 THE COURT: Yes, this is it.

25 Note indicates the call came in at 4:25

1 from Jenny Jones. So according to what  
2 your recollection is, at 4:30 you were  
3 still talking to Ms. Jones and 4:30 that  
4 Ms. Hunt says she was transferred from the  
5 DA's office to someone she thought was Ms.  
6 Stone. Let's get Ms. Odum back in here and  
7 find out what she wants to say.

8 Any further matters with Ms. Stone?

9 MR. THOMPSON: No.

10 MR. BRITT: No, sir.

11 (Ms. Odum enters the room).

12 THE COURT: Have a seat, please.  
13 You had some matter you wanted to talk to  
14 us about?

15 MS. ODUM: Yes, sir. The date  
16 that you said that someone said I had done  
17 that, the 8th, when we went to lunch that  
18 day, I had to go to the unemployment  
19 office, I was in the unemployment office  
20 during my lunch.

21 THE COURT: So you have recalled  
22 that on that occasion, during the lunch  
23 recess, you weren't around here, is what  
24 you are telling us?

25 MS. ODUM: Right.

1 THE COURT: You were at the  
2 unemployment office?

3 MS. ODUM: Yes, sir.

4 THE COURT: During that time  
5 period? Okay, we appreciate that.

6 Anything else? Mr. Thompson, Ms. Bowen?

7 BY MR. THOMPSON:

8 Q You recall specifically what day of the  
9 week that was on?

10 A Yes, because on -- I had went the second to  
11 file for unemployment, and like on Sundays we have to  
12 call out the number, I had called but I couldn't  
13 remember my pin number, and I had to go back up there  
14 so they can redo it so I can get a new pin number.

15 Q So what day of the week would that have  
16 been on?

17 A Monday.

18 THE COURT: Anything further, Ms.  
19 Odum?

20 MS. ODUM: No, sir.

21 THE COURT: Mr. Thompson, Mr.  
22 Bowen?

23 MR. BOWEN: No, sir.

24 THE COURT: Mr. Britt?

25 MR. BRITT: Do you recall who you

1           may have talked to at Unemployment  
2           Security?

3                   MS. ODUM:   At first there is a  
4           guy up there and lady, she had went over  
5           there to the computer, and she had did  
6           everything there.

7                   THE COURT:   Did they give you any  
8           paperwork or anything that you recall or  
9           did you sign anything on that day?

10                   MS. ODUM:   Yes, sir, but I don't  
11          have -- you know, just like I had to go up  
12          there today, which I have my paperwork on  
13          that, but you know, other than that, I been  
14          going home for lunch except for twice.  
15          That day where we had to come back at 2:00,  
16          and there is one day I had went to the  
17          bank. Rest of the time I been going home  
18          for lunch.

19                   MR. BRITT:   Just so the record is  
20          complete. Employment Security is located  
21          on West Fifth Street.

22                   MS. ODUM:   Whatever this street  
23          here.

24                   THE COURT:   About a block from  
25          the courthouse?

1 MS. ODUM: Um-hmm.

2 THE COURT: Near where you're  
3 employed at the Robesonian?

4 MS. ODUM: Yes, sir.

5 THE COURT: Mr. Bowen, Mr.  
6 Thompson? Again, if you will have a seat  
7 in the other room for just a few moments,  
8 please.

9 (Ms. Odum left the room).

10 THE COURT: For the record, she's  
11 going back to a room where she is  
12 sequestered from other members of the  
13 jury. You folks want to be heard further?

14 MR. BOWEN: No, sir.

15 MR. THOMPSON: No, sir.

16 MR. BOWEN: Nothing further, Your  
17 Honor.

18 THE COURT: Okay. Anybody want  
19 to be heard as to Ms. Odum's remaining on  
20 the jury? State want to be heard?

21 MR. BRITT: No, sir.

22 THE COURT: Is the State taking  
23 the position that the State is satisfied to  
24 have Ms. Odum remain as the alternate?

25 MR. BRITT: Yes, sir, State is

1 not taking any position in regard to  
2 whether she should -- well, I'm satisfied  
3 that she should remain.

4 THE COURT: All right. Mr.  
5 Thompson, Mr. Bowen, what is the  
6 defendant's position as to whether Ms. Odum  
7 should remain as the alternate member of  
8 the jury? You folks want to be heard?

9 MR. BOWEN: If Your Honor please,  
10 the defendant desires that before giving  
11 you an answer on our position on the juror,  
12 that he would like to have us make an oral  
13 motion to sequester the jury here in view  
14 of those things that have been brought to  
15 the Court's attention by the jurors in the  
16 past.

17 THE COURT: Okay. That motion is  
18 denied.

19 MR. BOWEN: All right. We do not  
20 wish to be heard further.

21 THE COURT: Folks I need to ask  
22 you, for the record. I'm going to ask  
23 counsel, I'm going to ask Mr. Green. Mr.  
24 Thompson, and Mr. Bowen, are you, as  
25 counsel for Mr. Green, satisfied to have

1 Ms. Odum remain a member of the jury. Mr.  
2 Thompson?

3 MR. THOMPSON: Yes.

4 THE COURT: Mr. Bowen?

5 MR. BOWEN: Yes, I am, Your Honor.

6 THE COURT: Mr. Green? Before  
7 you answer, let me explain some things to  
8 you, and if you have any questions about  
9 anything I say, feel free to ask them.

10 Ms. Odum, as you are aware, is the  
11 alternate juror, the 13th juror. She would  
12 not participate in the deliberations unless  
13 for some extraordinary reason the original,  
14 now original members of the panel as it is  
15 now constituted were unable to do so, in  
16 which case she would then assume the seat  
17 of that juror. All jurors are, by  
18 instruction of the Court prohibited from  
19 talking among themselves about this case.

20 I am going to bring Ms. Odum again  
21 into chambers, and instruct her that if she  
22 is returned to the jury, she is not to  
23 discuss with anyone, any of the matters  
24 that have been gone into in this  
25 in-chambers proceeding. She is, as is true

1 with the other members of the panel,  
2 prohibited, based on my instructions, from  
3 talking about any aspect of this case,  
4 until this jury has specifically been  
5 instructed to begin deliberations. If the  
6 12 members of the panel who are now  
7 constituting the original jury go in for  
8 purposes of deliberation, Ms. Odum, as  
9 alternate, would not participate in  
10 deliberation, would not be a party to any  
11 deliberation. Do you understand what I  
12 have said?

13 MR. GREEN: Yes, sir.

14 THE COURT: Having said that, and  
15 having heard what you have heard in the  
16 context of this in-chambers, in-camera  
17 hearing, are you content to have Ms. Odum  
18 remain as the alternate juror on this  
19 case? Or in the alternative, because you  
20 have a right to understand what your  
21 options are, do you make a motion that she  
22 be excused as the alternate juror, which  
23 would leave us with 12 jurors.

24 MR. GREEN: I'm not content with  
25 her but I don't want a mistrial.

1 THE COURT: That doesn't -- I  
2 need a direct answer to the question. Are  
3 you satisfied to have her remain on the  
4 jury?

5 MR. GREEN: I leave it up to  
6 them.

7 THE COURT: No. I have to ask  
8 you directly and you have to answer.

9 MR. GREEN: I mean, I really  
10 can't answer because, I mean, if I say I'm  
11 not, I'm calling her a liar. I can't call  
12 this lady a liar because I don't know  
13 anything.

14 THE COURT: Are you moving to  
15 have her withdrawn as the alternate juror  
16 in this case?

17 MR. GREEN: No, sir, I'm not  
18 doing anything.

19 THE COURT: Okay. So I take it  
20 then if the Court takes no action, that is  
21 consistent with your wishes at this time,  
22 is that accurate?

23 MR. GREEN: It's not consistent  
24 with my wishes. I don't have any wishes.

25 THE COURT: Tell me what --

1                   MR. GREEN: I don't have any  
2 wishes one way or the other.

3                   THE COURT: You are not taking  
4 any position?

5                   MR. GREEN: I can't say the  
6 position.

7                   THE COURT: You understand that  
8 me giving you an opportunity to take a  
9 position and your decision not to take a  
10 position, specifically, in terms of your  
11 decision not to move that she be withdrawn  
12 as a juror in this case, you may waive or  
13 give up any rights that you may have in the  
14 future to challenge this issue? Do you  
15 understand that?

16                   MR. GREEN: Meaning an appeal?

17                   THE COURT: You may be giving it  
18 up on appeal. You may be waiving that  
19 right to challenge the right on appeal  
20 because it may be argued that in your  
21 acquiescence with your counsel's wishes  
22 that she remain on the jury, you have  
23 agreed implicitly to her remaining on the  
24 jury. Do you understand that?

25                   MR. GREEN: Yes, sir.

1 THE COURT: Okay. Understanding  
2 that, do you wish to say anything at this  
3 time as to Ms. Odum specifically? Do you  
4 wish to move that she be withdrawn?

5 MR. GREEN: I mean, you know, I  
6 don't even know how to say anything. I  
7 never even thought about it.

8 THE COURT: You have had the  
9 opportunity to consult with your lawyers on  
10 two occasions. All I'm asking you, are you  
11 asking that she be withdrawn from the  
12 jury?

13 MR. GREEN: You can deny my  
14 motion, you can deny --

15 THE COURT: If you were to ask  
16 that she be withdrawn, I will withdraw  
17 her.

18 MR. GREEN: So basically what you  
19 are saying, if I take no position --

20 THE COURT: She remains on the  
21 jury.

22 MR. GREEN: By me taking no  
23 position means she remains on the jury,  
24 that I'm waiving any --

25 THE COURT: Well, if you take no

1 position and she remains on the jury and  
2 does not participate in the deliberations,  
3 you don't have an issue anyway, in my  
4 view. I could be wrong about that. But  
5 since she didn't participate in the  
6 deliberations, it would be difficult to  
7 conceive of you having an issue. May or  
8 may not. I don't see it. But if you ask  
9 that she be withdrawn, I will withdraw her,  
10 if, what your lawyer is telling you is  
11 correct.

12 MR. GREEN: You can't have a  
13 trial with less than 12?

14 THE COURT: Got to have 12,  
15 otherwise it is a mistrial.

16 MR. GREEN: Can I ask you a  
17 question? What if there is -- what if one  
18 of the jurors, something happens to one of  
19 the jurors.

20 THE COURT: She would move into  
21 that seat.

22 MR. GREEN: She moves into that  
23 place? Then it comes to the situation  
24 where it is like 11-1, and she is the only  
25 one holding out for guilty verdict.

1                   THE COURT: Hung jury means no  
2 verdict.

3                   MR. GREEN: That in essence is a  
4 mistrial.

5                   THE COURT: Yes, sir. But you  
6 are talking about possibilities. I can't  
7 possibly tell you all the countless  
8 possibilities that might arise. All I need  
9 to know at this point, what I'm required to  
10 ask you, and have to have you answer, are  
11 you content to have her remain on the  
12 jury? Are you asking that I withdraw her  
13 at this time?

14                   MR. GREEN: I just -- I just  
15 don't -- I just really -- I don't know  
16 anything about any of this, and I mean,  
17 honest, I can't take a position, I really  
18 can't take a position.

19                   THE COURT: Have you consulted  
20 with your lawyers?

21                   MR. GREEN: I can't take a  
22 position either way.

23                   THE COURT: All right. We are  
24 asking -- let me ask you a specific  
25 question and ask for a specific response.

1           Are you moving Ms. Odum be withdrawn, yes  
2           or no?

3                       MR. GREEN:   No, sir.

4                       THE COURT:   Okay.   Let's go.

5                       (Ms. Odum returns to chambers)

6   BY THE COURT:

7           Q       Ms. Odum, come in.   Have a seat if you  
8           please.

9                       Ma'am, I'm going to -- you are going to go  
10          back to the jury room in a few moments, and I  
11          instruct you that you are not to discuss with anyone,  
12          that means family members, friends, anybody, not to  
13          discuss with anybody matters just gone into.   You  
14          understand those instructions?

15          A       Yes, sir.

16          Q       If you will return to the jury room at this  
17          time.   Thank you Ms. Odum.

18          A       Thank you.

19                       (Ms. Odum leaves the room).

20                       THE COURT:   Let the record  
21          reflect the following:   The Court, having  
22          an in-camera hearing, which commenced at  
23          approximately 8:30 or thereabouts this  
24          morning, that hearing having been continued  
25          until just prior to the lunch recess at

1 approximately 12:45, continuing until  
2 approximately 1:10 and resuming at 2:00  
3 p.m. and present at this hearing being all  
4 counsel, being the defendant Daniel Green,  
5 also know as U'Allah, and Ms. Diane Stone,  
6 and Ms. Anita Hunt. Court giving counsel  
7 for the State the opportunity to be heard,  
8 having given counsel for the defendant the  
9 opportunity to be heard, defendant the same  
10 opportunity to be heard. At this time,  
11 counsel for the State is not moving for the  
12 withdrawal of Ms. Odum as a member of the  
13 jury in this case, specifically, as the  
14 sole remaining alternate in this case.  
15 That counsel for the defendant is not  
16 moving to have Ms. Odum withdrawn in this  
17 case, specifically, in having her remain as  
18 juror number 13 in this case, that the  
19 defendant is taking the position that he  
20 does not wish to state his position, except  
21 insofar as he has stated on the record that  
22 he does not move to have Ms. Odum withdrawn  
23 as a juror in this case, at this time.

24 The Court considering the above, and  
25 considering the fact that there is a

1 conflict in the information provided by Ms.  
2 Anita Hunt and the information provided by  
3 Ms. Odum, and based on the position of all  
4 counsel, and based on the position of the  
5 defendant, determines that at this time,  
6 there being no motion to have Ms. Odum  
7 excused as a member of the jury in this  
8 case that she should remain as a member of  
9 the jury in this case. And that is the  
10 Court's finding and conclusion and order as  
11 it relates to this matter of record. These  
12 matters will remain sealed pending  
13 appellate court.

14 MR. BOWEN: I object and except  
15 for the specific reason that although this  
16 was a motion in the Court's discretion as  
17 it --

18 THE COURT: What are you  
19 objecting and excepting to?

20 MR. BOWEN: The decision.

21 THE COURT: You folks have  
22 indicated that you want her to stay on the  
23 jury?

24 MR. BOWEN: We also wanted Ms.  
25 Ellerbe to stay on the jury, and we

1 deferred to the Court to make the Court's  
2 decision.

3 THE COURT: Mr. Bowen, either you  
4 are moving that she be withdrawn or asking  
5 she remain, one or the other.

6 MR. BOWEN: Okay. Well, we are  
7 doing exactly what we announced earlier,  
8 and for the record, we object and except,  
9 to the Court on its own motion doing what  
10 it did in light of what he did with Ms.  
11 Ellerbe.

12 THE COURT: The Court on its own  
13 motion doing what?

14 MR. BOWEN: Ms. Ellerbe was  
15 excused from the jury even though she also  
16 denied the conduct that was involved. Her  
17 conduct however, arguably was conduct that  
18 led one to conclude that she may have been  
19 more in favor of the defendant. This  
20 juror, on the other hand, may have been --  
21 clearly was opposed to the defendant, and  
22 so we handled the matter consistently.

23 THE COURT: Note your objection  
24 and exception for the record. The Court  
25 confirmed through statements made by Juror

1           Number Six, that the statement attributed  
2           to Ms. Ellerbe was made. The Court finding  
3           that that statement was initially brought  
4           before us through the statements of Ms.  
5           Locklear and verified through statements  
6           given in-camera, in-chambers by Ms.  
7           Coverdale, that the totality of the  
8           circumstances, the balance of the  
9           statements, and matters before the Court  
10          indicated that Ms. Ellerbe had made the  
11          statement which she denied. Your objection  
12          and exception are noted for the record.

13                 What I would like to do is go back in  
14          court, give the jury the information about  
15          tomorrow, and also, all subsequent times  
16          thereafter, to the extent possible, I would  
17          like to spend more time in open court and  
18          less time in-chambers so he we can move  
19          this case along.

20                 Any other matters before we go back,  
21          folks?

22                 This concludes the in chambers,  
23          in-camera conference.

24                 MR. BRITT: Well, if I can, as I  
25          indicated earlier, tomorrow it is my intent

1 to take up the 404-B matter, so in terms of  
2 when we recess today, I have no witnesses  
3 here today who is an out of state witness.

4 THE COURT: Specifically what  
5 404-B matters do you intend --

6 MR. BRITT: The Clewis Demory  
7 robbery of August 15, 1993.

8 THE COURT: You intend to get  
9 into matters relating to any other 404-B  
10 matters tomorrow?

11 MR. BRITT: Yes, sir, it is  
12 conceivable that in the testimony of Mr.  
13 Demory, we would go into the July 4th, 1993  
14 robbery involving --

15 THE COURT: Folks, I'm not going  
16 to involve myself in anybody's case, that  
17 is not my prerogative or role. But if, for  
18 example, Mr. Larry Martin Demery testifies,  
19 and then we get into these 404-B matters,  
20 the State has the additional record this is  
21 offered in corroboration.

22 MR. BRITT: Yes, sir. And for  
23 the record, I intend to call Mr. -- in  
24 regard to the July 15th, 1993 incident, I  
25 intend to call Mr. Clewis Demory, I intend

1 to call Special Agent Tony Underwood.

2 THE COURT: My point is, the  
3 defendant in this case has denied, with  
4 regard to the allegations involved in James  
5 Jordan, that he was with Larry Martin  
6 Demery on the date in question. If Mr.  
7 Demery testifies not only about that date  
8 but about matters pertaining to July 15 and  
9 others, if applicable, then his testimony  
10 can be corroborated by others.

11 MR. BRITT: Yes, sir. Yes, sir,  
12 I understand what are you saying.

13 THE COURT: And what you are  
14 attempting to do is put him before his  
15 testimony, so it can't be in corroboration  
16 if he hasn't testified yet.

17 MR. BRITT: I understand what you  
18 are saying.

19 MR. THOMPSON: But at the same  
20 time --

21 THE COURT: Alibis raised by the  
22 defense, anything that goes to negate  
23 alibi, anything that goes to negate -- to  
24 support the State's contention that there  
25 was a conspiracy or acting in concert may

1           come in, and if it comes in, then  
2           corroborative evidence can be offered.

3                     MR. BRITT:  Yes, sir.

4                     THE COURT:  All right.  Let's  
5           go.

6                     (End of in camera proceeding.)

7                     THE COURT:  Let the record  
8           reflect all counsel are present, the  
9           defendant is present in open court.

10                    Mr. Horne, do we have all members of  
11           the jury secured in the jury room?

12                    THE BAILIFF:  Yes, we do.

13                    THE COURT:  Because of the fairly  
14           extended in camera, in-chambers proceeding,  
15           I'm going to bring the jury in give them a  
16           15 minute recess, come back after that  
17           recess and continue with the presentation  
18           of evidence.

19                    MR. BRITT:  I would ask the Court  
20           to allow me to ask some additional  
21           questions on direct.  I had previously  
22           announced prior to the lunch recess that I  
23           completed any direct examination, but I  
24           would ask the Court to exercise its  
25           discretion in allowing me to ask a couple

1 more questions.

2 THE COURT: Do you want to be  
3 heard?

4 MR. BOWEN: No, sir, I want to  
5 ask the same thing myself.

6 THE COURT: In the discretion of  
7 the Court that will be allowed. We'll  
8 continue with additional direct examination  
9 matters at the conclusion of recess. Mr.  
10 Horne -- any other matters for counsel for  
11 the defendant before we bring the jury in?

12 If you'll bring the jury in please,  
13 Mr. Horne.

14 (Jury in at 3:55 p.m.)

15 THE COURT: Ladies and gentlemen,  
16 matters before the Court took longer than  
17 we anticipated. I apologize to you for  
18 that, but as I indicated it is necessary  
19 that these matters be heard by the Court in  
20 the absence of the jury, and I again  
21 instruct you that you shouldn't worry or  
22 speculate at all about what takes place in  
23 your absence.

24 Folks, I'm going to give you a 15  
25 minute recess, come back at the conclusion,

1           you folks have been back in the jury room  
2           for some period of time now, and we will  
3           continue with the presentation of evidence  
4           following that recess.

5                       Now, during the recess, please recall  
6           that it is your duty to abide by all prior  
7           instructions of the Court concerning your  
8           conduct. If all of you would reassemble in  
9           the jury room a at ten after 4:00 and we  
10          will go forward at that time. Thank you  
11          very much, everyone please remain seated,  
12          the members of the jury are excused at this  
13          time.

14                       (Jury out at 3:56 p.m.)

15                       THE COURT: We're at ease until  
16          4:10.

17                       (Brief recess.)

18                       THE COURT: Folks, let the record  
19          reflect all counsel are present, the  
20          defendant is present in open court.

21                       Mr. Horne, do we have all members of  
22          the jury secured in the jury room?

23                       THE BAILIFF: Yes, sir, we do.

24                       THE COURT: There's another  
25          matter I want to take up before we bring

1 the jury in.

2 It's been brought to my attention,  
3 several folks asked me if I had seen  
4 today's newspaper. I indicated I had not.  
5 Mr. Britt indicated that he had a copy of  
6 today's Robesonian. Other folks that read  
7 the Robesonian said that the same article  
8 appearing in the Robesonian had also  
9 appeared in the Fayetteville News and  
10 Observer.

11 The specific article is captioned  
12 "Weeks Turns Courtroom Into Classroom."  
13 The Court, having read the article, notes a  
14 number of things. The Court notes that the  
15 article asserts, among other things, that  
16 the Court -- most of the Judge's "lessons  
17 quote -- this a quote from the article,  
18 "Most of the Judge's lessons to the  
19 defense -- and occasionally the  
20 prosecution -- occur when the jury is out  
21 of the courtroom. He expresses himself  
22 when the jury is in the courtroom by  
23 raising his eyebrows, laughing or grinning  
24 behind his cupped hand and fidgeting with  
25 two foam water cups on his desk."

1           Going on to another portion of the  
2           article, "But at no time has his" --  
3           referring to the Judge, myself --  
4           "exasperation been more noticeable than  
5           last week. At one point, Weeks declared  
6           that the Court was going to, quote, take  
7           five, close quote, walked off the bench  
8           before the flustered bailiff could announce  
9           the break. Another time, the Judge sent  
10          the jury out so he could castigate the  
11          defense lawyers.

12           Take two, close quote, the judge said  
13          sharply, when Thompson asked if the defense  
14          team could have a moment to confer during  
15          cross-examination of Green's half brother."

16           Has counsel for defendant had an  
17          opportunity to read the article?

18                   MR. THOMPSON: No, sir.

19                   THE COURT: You folks want to be  
20          heard on any motion for mistrial based on  
21          any alleged misconduct by the bench,  
22          Mr. Britt?

23                   MR. BRITT: No, sir.

24                   THE COURT: Mr. Thompson?

25                   MR. THOMPSON: No, sir.

1 THE COURT: Mr. Bowen?

2 MR. BOWEN: Don't wish to be  
3 heard, Your Honor.

4 THE COURT: Mr. Green, do you  
5 wish to be heard after having the  
6 opportunity to consult with Mr. Thompson,  
7 Mr. Bowen as to any alleged misconduct by  
8 the presiding Judge, by me, or any motion  
9 for a mistrial based upon any allegations  
10 in this case?

11 MR. GREEN: No, sir, I don't  
12 think there's been misconduct by you.

13 THE COURT: Anybody want to be  
14 heard further?

15 MR. BRITT: No, sir.

16 THE COURT: Court directs that  
17 the article in today's Robesonian, dated  
18 Monday, January 22nd, 1996 be made the next  
19 numbered Court exhibit for possible  
20 appellate review.

21 MR. THOMPSON: I do want to say,  
22 Your Honor, I did read the one in  
23 Fayetteville Observer.

24 MR. BOWEN: I have not read  
25 either.

1 THE COURT: Anything further,  
2 gentlemen? Are you ready to go forward?

3 MR. BOWEN: Yes, sir.

4 THE COURT: Mr. Britt?

5 MR. BRITT: Yes.

6 THE COURT: Mr. Horne, if you'll  
7 bring the jury in.

8 MR. BRITT: May Ms. Sullivan  
9 retake the stand?

10 THE COURT: Yes, sir.

11 (Jury in at 4:13 p.m.)

12 THE COURT: Ladies and gentlemen,  
13 the Court has been informed that smoking in  
14 the jury room has caused some difficulty  
15 for one or more members of the jury. Out  
16 of the spirit of sensitivity and  
17 consideration, the Court directs that there  
18 is to be no further smoking in the jury  
19 room. I hope that all of you can  
20 understand and appreciate the Court's  
21 directive in that regard and that all of  
22 you will abide by that. You folks are  
23 absolutely free to smoke on break, on  
24 recess, but out of consideration for your  
25 fellow jurors I'm asking that you not smoke

1 in the jury room.

2 Mr. Britt, you've asked in the  
3 discretion of the court to be allowed to  
4 ask additional questions of Ms. Sullivan on  
5 direct examination.

6 MR. BRITT: Yes, sir.

7 THE COURT: Yes, sir, you may  
8 proceed.

9 MR. BRITT: May I approach the  
10 witness.

11 THE COURT: Yes, sir.

12 BY MR. BRITT:

13 Q Ms. Sullivan, I'm going to show you what's  
14 previously been marked as State's Exhibit Number 59,  
15 clear plastic bag containing an item. Can you see  
16 the item through the plastic bag?

17 A Yes, I can.

18 Q And do you recognize what is contained  
19 inside the plastic bag marked as State's Exhibit  
20 Number 59?

21 A A gun.

22 Q And prior to court, have you ever seen that  
23 gun before?

24 A Yes, I have.

25 Q And where was the first time you ever saw

1 the gun that is contained inside the bag marked as  
2 State's Exhibit Number 59?

3 A At Trulik's trailer.

4 Q When you saw it at Trulik's trailer where  
5 if anywhere did you see it?

6 A On the table.

7 Q And you previously testified that you  
8 picked up a gun that was on a table in the trailer  
9 that you went that night, that's correct?

10 A Yes, I did.

11 Q And the gun contained inside of State's  
12 Exhibit Number 59, does it appear to be in the same  
13 condition it was in when you saw it that night at  
14 Trulik's trailer?

15 A I don't know, I didn't pay that much  
16 attention to it.

17 MR. BRITT: I don't have any  
18 other questions.

19 THE COURT: Any  
20 cross-examination, folks.

21 MR. BOWEN: Thank you, Your  
22 Honor.

23 CROSS-EXAMINATION

24 BY MR. BOWEN:

25 Q Ms. Sullivan, can you tell us please your

1 date of birth?

2 A 4-22-78.

3 Q So in 1993, when you were with U'Allah and  
4 Mr. Larry Demery, how old were you?

5 A I was 15.

6 Q Now, as I understand it, when you first  
7 came to know Mr. Demery and he was then Mr. Green,  
8 you spent most of your time with Mr. Demery, is that  
9 correct?

10 A Yes, I did.

11 Q Now, you went into a motel room the  
12 first -- the night of the first day that you met  
13 Mr. Demery, is that correct?

14 A Yes, I did.

15 Q And earlier that night or the next day, did  
16 you go over to Mr. Green's residence?

17 A Earlier that night or --

18 Q When did you go to Mr. Green's residence,  
19 if you did?

20 A The first -- when we first got to Lumberton  
21 after we left another house, we went there.

22 Q Was that before the motel or after?

23 A That was before.

24 Q Now, you have talked to several police  
25 officers about the things that you've testified to

1 today, haven't you?

2 A Yes, sir.

3 Q And Ms. Sullivan, you sometimes exaggerate  
4 things when it comes to figures, when it comes to  
5 numbers, don't you?

6 A No, I don't.

7 Q Do you remember talking to Mr. Barnes who  
8 was in the courtroom -- well, in fact, sitting back  
9 here on the front row, do you talking with the --

10 A I remember talking someone, but I don't  
11 know who it was.

12 Q Did you remember this gentleman back here  
13 with the beard?

14 A Yes.

15 Q You did talk to him, is that right?

16 A Yes.

17 Q And he was running a tape recorder while  
18 you were talking to him, wasn't he?

19 A Yes.

20 Q And he asked you about this case, correct?

21 A Yes.

22 Q Do you remember him telling you that he was  
23 an investigator provided to the defense in this case?

24 A No.

25 Q So you didn't know whether he was a police

1 officer or a defense investigator, did you?

2 A I just know he -- not really, no.

3 Q Can you recall where you talked to him, Mr.  
4 Barnes, that is?

5 A I think I talked to him at this girl named  
6 Lakiesha's house.

7 Q Do you remember talking to him about how  
8 many different interviews that you had given about  
9 this case?

10 A Yes.

11 Q And you told him that you had had  
12 Fifty-eleven million interviews?

13 A That was an expression.

14 Q And then he said, it hadn't been quite that  
15 many, right?

16 MR. BRITT: Objection to what he  
17 said.

18 THE COURT: Sustained.

19 MR. BRITT: Move to strike.

20 THE COURT: Allowed.

21 BY MR. BOWEN:

22 Q But you said it's been a lot, right?

23 A Yes, I said it was a lot.

24 Q And you said one time they came to the  
25 schoolhouse for you?

1 A Yes.

2 Q Are you still in school?

3 A Yes.

4 Q Where did you go to school?

5 A Marion High School.

6 Q Are you a junior, Senior, where are you?

7 A Junior.

8 Q Now, then, you say that you looked into a  
9 glove compartment in the Lexus automobile, is that  
10 right?

11 A I looked in the glove compartment of the  
12 Cougar, not the Lexus.

13 Q I see. When you did that, you said that  
14 you were plundering, is that right?

15 A Yeah.

16 Q And nobody was around when you were doing  
17 that plundering, were they, ma'am?

18 A Me and Melinda.

19 Q And when you looked in there, you saw some  
20 money, didn't you?

21 A Yes.

22 Q And you have described a great big tall  
23 stack of money, haven't you?

24 A Yes.

25 Q And you're not exaggerating when you saw --

1 A No, I --

2 Q Great big stack of hundred dollar bills?

3 A When you see a lot of money, you see a lot  
4 of money, and that's what I saw.

5 Q And you helped yourself to a little bit of  
6 it, didn't you?

7 A Yes.

8 THE COURT: Mr. Sullivan, you'll  
9 have to let Mr. Bowen finish his question,  
10 because the court reporter needs to take  
11 them both down.

12 BY MR. BOWEN:

13 Q And the amount of money that you told the  
14 officers that you took was about 30 dollars, right?

15 A It was about 15.

16 Q Okay. So you --

17 A Together.

18 Q So you got 15 and Melinda got 15 while you  
19 all were in there plundering, is that right?

20 A Yes.

21 Q So there were other bills in there other  
22 than hundreds, there were small bills, fives, tens  
23 things like that?

24 A Yes.

25 Q And how were those bills packaged?

1           A       They were all in a bundle, like stacked up,  
2 rolled up together.

3           Q       Rolled up, is that right, you mean all the  
4 way into -- how big a roll?

5           A       It was just in a bundle like.

6           Q       Was it a bundle spread out and stuff in an  
7 envelope or put together and rolled up?

8           A       Some was spreaded out, some was rolled up.  
9 It was just all kind of ways.

10          Q       So you don't really have any idea how much  
11 was there, do you?

12          A       No.

13          Q       And you could have just as easily pulled  
14 out some of those hundreds, couldn't you?

15          A       No.

16          Q       Well, I mean, they were all in there, you  
17 could have reached and grabbed those, too?

18          A       I was looking at what I was getting.

19          Q       So you decided to get the small bills  
20 instead of the large ones, is that correct?

21          A       No, I didn't decide to get that, that's the  
22 first thing I could get.

23          Q       You just fished in there?

24          A       Whatever I could get, that's what I got.

25          Q       Even though nobody else was around other

1 than Melinda, you didn't fish for more?

2 A Huh-uh.

3 Q You didn't immediately tell anybody that  
4 you had been plundering in the car and taking money,  
5 did you?

6 A No.

7 Q You didn't know whose money that was?

8 A I figured it was theirs, it was in the car.

9 Q You figured that but you didn't know?

10 A No, I didn't know.

11 Q And you never did tell them that you had  
12 gotten money, did you?

13 A No, I did not.

14 Q Now, do you recall Mr. Barnes back here --  
15 strike that. Do you recall talking on or about the  
16 15th day of August of 1993 to a law enforcement  
17 officer?

18 A I don't know the dates, I just know I  
19 talked to some people.

20 Q You talked to several law enforcement  
21 officers, right?

22 A Yes.

23 Q At some point did they write down a  
24 statement that you had said?

25 A Some wrote down, some tape recorded it, did

1 some of everything.

2 Q Did any of them ever give you a copy of it  
3 back to look over?

4 A No.

5 Q The statement, that is?

6 A Not until I got over here.

7 Q And when you got up here, when, if you did,  
8 were you given a copy of your statement by law  
9 enforcement?

10 A Sunday.

11 Q Okay. Was that -- where did you meet  
12 Sunday?

13 A Here at the DA's office.

14 Q And who was present?

15 A Mr. Britt and Mr. Heffney and Thompson and  
16 me and Melinda.

17 Q And at that time, were you shown a  
18 document, a typewritten document, consisting of two  
19 pages, that you had an opportunity to read over?

20 A I received a document that I gave, whatever  
21 I told them, and stuff, and wrote down, I received  
22 all that.

23 Q Okay. And when you looked over those  
24 documents, it refreshed your memory as to what you  
25 had said before, didn't I?

1 A Yes, sir.

2 Q You don't have those documents in front of  
3 you today, do you?

4 A No, they are over there.

5 Q All right. Now, did you remember sometime  
6 back in August of 1993 telling one of the police  
7 officers that you saw a gun with Trulik and Larry but  
8 it was a .45 or 9 mm, do you remember saying that?

9 A That's what I thought it was, I didn't know  
10 what the name of it was.

11 Q So you don't know whether -- you didn't  
12 know a .45 or a 9 mm from a .25 or .45 or .357 or any  
13 other gun, did you?

14 A No, because I don't have a gun.

15 Q And you have looked at a weapon that they  
16 have earlier showed you in a plastic bag here a few  
17 moments ago, is that right?

18 A Yes.

19 Q And they showed you that gun in the DA's  
20 office, too, didn't they?

21 A No.

22 Q And you don't know whether that gun that  
23 they just showed you here in the courtroom is a 9 mm  
24 or a .45 or some other type caliber of gun, do you?

25 A I know it's a revolver now.

1 Q But you don't know what caliber it is, do  
2 you?

3 A No.

4 Q And so as far as you know, what you saw, if  
5 you saw anything, with Larry and Trulik was a .45 or  
6 9 mm, correct?

7 A Yes.

8 Q Now, why did you tell the officers that it  
9 was a .45 or 9 mm if you didn't know what it was and  
10 didn't know anything about guns?

11 A Because I just said whatever I thought it  
12 was.

13 Q How many times did you see or go out with  
14 or meet Larry Demery?

15 A Two times.

16 Q Did you ever say to anyone that Larry  
17 Demery had caused you to be pregnant?

18 MR. BRITT: Objection.

19 THE COURT: Do you want to be  
20 heard, sir?

21 MR. BRITT: Yes, sir.

22 THE COURT: Ladies and gentlemen,  
23 there's a matter of law the Court must take  
24 up at this time out of the hearing and  
25 presence of the jury. Please recall my

1 instructions in that regard, don't worry or  
2 speculate about what takes place in the  
3 courtroom in your absence, and please step  
4 to the jury room.

5 (Jury out at 4:25 p.m.)

6 THE COURT: Let the record  
7 reflect the following is being heard in the  
8 absence of the jury. Question objected to  
9 is, did you ever say to anyone that Larry  
10 Demery had caused you to be pregnant? The  
11 State objected at this point. What is the  
12 basis of the objection?

13 MR. BRITT: Rule 608-B and also  
14 Rule 403, relevance.

15 THE COURT: Well, so you're  
16 arguing 401, it's not relevant.

17 MR. BRITT: Yes.

18 THE COURT: Don't go to  
19 truthfulness or untruthfulness on 608-B.

20 MR. BRITT: No, and it's my  
21 position that 608-B would bar such a  
22 question as an attempt to impeach her  
23 character.

24 THE COURT: Mr. Bowen.

25 MR. BOWEN: Well, it shows that

1           they went into a motel together, and I  
2           think we can infer certain things from  
3           that. She was a 15 year old at the time.  
4           We know from our investigating material  
5           that at least Melinda Moore says that this  
6           witness claims that she was pregnant by  
7           Larry Demery. Now --

8                         THE COURT: What does it go to,  
9           Mr. Bowen.

10                        MR. BOWEN: May go to bias, Your  
11           Honor, because of the fact that if she is  
12           close to Larry Demery as the mother of his  
13           child or -- I don't know what became of the  
14           child, if that's true, but if she had that  
15           sort of relationship with Larry Demery, she  
16           could well be here on a mission to help  
17           Larry Demery's thrust in this case be  
18           carried forward. So I think I'm entitled  
19           to explore it on bias grounds. And my  
20           basis --

21                        THE COURT: We're on voir dire.  
22           Put your question to the witness.

23   BY MR. BOWEN:

24           Q       Did you ever discuss with Melinda Moore the  
25           issue of whether or not Larry Demery caused you to be

1 pregnant?

2 A No, because me and Larry Demery never had  
3 sex.

4 MR. BOWEN: All right that  
5 answers my question.

6 THE WITNESS: Okay.

7 THE COURT: Anything further?

8 MR. BOWEN: Not in view of that  
9 answer, no, sir. Wait a minute.

10 THE COURT: Do you intend to  
11 pursue it further in the presence of the  
12 jury?

13 MR. BOWEN: If the answer is no,  
14 we will not go into that in front of the  
15 jury.

16 THE COURT: The objection has  
17 been made, is the question withdrawn?

18 MR. BOWEN: Yes, at this point.

19 THE COURT: Question being  
20 withdrawn. Anything further on behalf of  
21 the State?

22 MR. BRITT: Yes, sir, I would ask  
23 for an instruction, even though it has been  
24 withdrawn.

25 THE COURT: Court will give an

1 instruction, Court will also indicate the  
2 question has been withdrawn.

3 Mr. Horne, if you'll bring the jury  
4 in.

5 (Jury in at 4:29 p.m.)

6 THE COURT: Mr. Britt -- excuse  
7 me, Mr. Bowen, I understand you're  
8 withdrawing your question.

9 MR. BOWEN: Withdrawn, Your  
10 Honor.

11 THE COURT: No need for me to  
12 rule on the objection, but is the State  
13 asking for any instructions?

14 MR. BRITT: Yes, sir, I am.

15 THE COURT: Members of the jury,  
16 the question has been withdrawn by  
17 Mr. Bowen, but nonetheless, I instruct you  
18 that you are not to consider his last  
19 question to this witness in any respect.  
20 And you are not to allow that question to  
21 enter into your deliberations in this case  
22 in any regard.

23 Anything further on behalf of the  
24 State?

25 MR. BRITT: No, sir.

1 THE COURT: Mr. Bowen, any  
2 additional questions?

3 BY MR. BOWEN:

4 Q Ms. Sullivan, you testified earlier that  
5 you were 15 when you met Larry Demery?

6 A Yes.

7 Q Did the issue of age come up and did you  
8 tell him what age you were?

9 MR. BRITT: Objection to  
10 relevance.

11 THE COURT: Sustained.

12 BY MR. BOWEN:

13 Q Did you know how old Larry Demery was?

14 A Not really. I mean, he could have lied to  
15 me too, but not really.

16 Q Did you tell him anything that wasn't true  
17 about your age?

18 A I think I told him I was 16.

19 Q And that wasn't true, right?

20 A That wasn't true.

21 Q Now, you told Officer Barnes that the  
22 automobile that you rode in when you first met Larry  
23 was a Thunderbird, is that correct?

24 A Yes, it was a -- or Cougar or whatever it  
25 was, I know it was a blue car, I think it was a

1 Cougar.

2 Q But you told Mr. Barnes a Thunderbird,  
3 right?

4 A I don't remember telling him that.

5 Q Is the truth that you don't know which  
6 product it was?

7 MR. BRITT: Objection to form.

8 THE COURT: Rephrase.

9 BY MR. BOWEN:

10 Q Do you know which product it was, a  
11 Thunderbird or Cougar?

12 A I'm going to say it was a blue Cougar.

13 Q Now, the place that you went to was called  
14 the Udge, that's a club, right?

15 A Yes.

16 Q Is that in South Carolina or North  
17 Carolina?

18 A South Carolina.

19 Q Can you spell that for us?

20 A South Carolina?

21 Q No, ma'am, Udge?

22 A Udge? U D G E.

23 Q Do you know what that means?

24 A I didn't make the name up. I mean to me,  
25 that's the name of the club.

1 Q Now, that was, as I understand it, the  
2 first time that you saw the Lexus automobile, is that  
3 right?

4 A That's the first time I saw the Lexus.

5 Q Now, you didn't go plundering in the glove  
6 compartment of that one, did you?

7 A No, I didn't.

8 Q But Melinda was there, was she?

9 A Melinda was with me, yes.

10 Q And at a point, you went over to Trulik's  
11 house, the night of the Udge, or was it the other  
12 night or did you go over both times?

13 A Both times.

14 Q Now, then, you say that the night that you  
15 went to the Udge, when you went over to Daniel  
16 Green's house, you say there was a gun there on the  
17 table, correct?

18 A Yes.

19 Q Now you don't know if that was a .45 or 9  
20 mm or some other caliber of gun, did you?

21 A I know it was a gun I just saw in that  
22 plastic bag, I know that much.

23 Q Even though you don't know what size it  
24 was?

25 A It was the one in that plastic bag.

1 Q Looked like it, didn't it?

2 A Didn't look like it, it was.

3 Q You could look at that gun in that bag and  
4 pick it out and dish it from all the other revolvers  
5 in the world, is that right?

6 A I guess so, I don't know.

7 Q Okay. Well, now, you picked that gun off  
8 the table, didn't you?

9 A Yes.

10 Q The boys didn't pick it up, did they?

11 A No, they could have had it. I mean, they  
12 had to have it laying on the table.

13 Q At one point you picked that gun up and put  
14 the barrel in or close to your mouth, didn't you?

15 A Yes.

16 Q When you did that, I want you to tell  
17 exactly what Mr. Green, also known as U'Allah, did?

18 MR. BRITT: Objection.

19 THE COURT: Do you want to be  
20 heard, sir?

21 MR. BRITT: Yes, sir.

22 THE WITNESS: Excuse me.

23 THE COURT: Hold up. Do you want  
24 to be heard?

25 MR. BRITT: Yes, sir. I would.

1                   THE COURT: Ladies and gentlemen,  
2                   there's a matter of law, the Court must  
3                   take up. Please recall my instructions in  
4                   that regard, don't worry or speculate about  
5                   what takes place in the courtroom in your  
6                   absence, if all members of the jury would  
7                   step to the jury room.

8                   (Jury out at 4:35 p.m.)

9                   THE COURT: Let the record show  
10                  the following is being heard in the absence  
11                  of the jury.

12                 Mr. Britt, basis of your objection.

13                 MR. BRITT: First, I don't see  
14                 any relevance as to what Mr. Green did in  
15                 that regard, and two, if it's being offered  
16                 as to some sort of character evidence to  
17                 show that his good character, under --

18                 THE COURT: 405.

19                 MR. BRITT: Yes, sir, under 405,  
20                 specifically B, says in cases in which  
21                 character or trait of character of a person  
22                 is an essential element of charge, claim or  
23                 offense, proof may be made of specific  
24                 instances of his conduct, I don't see how  
25                 that fits.

1 THE COURT: Pertinent character  
2 trait --

3 MR. BRITT: Yes, sir.

4 THE COURT: I don't know where  
5 we're going either, so let's go forward on  
6 voir dire to see. Repeat your question.

7 BY MR. BOWEN:

8 Q Yes. When -- you saw the gun on the table,  
9 correct?

10 A Yes.

11 Q Almost immediately you picked up the gun,  
12 is that right?

13 A Yes.

14 Q You put it up towards your face and brought  
15 the barrel toward your mouth, is that right?

16 A Yes.

17 Q Now, when you brought the gun that close,  
18 it was not such that -- it was too close really to  
19 see and look at, wasn't it?

20 A No.

21 Q All right. As soon as you brought it that  
22 close, what part of the gun could you see?

23 A I could still see it, I ain't had it that  
24 close to my face.

25 Q How close did you have the barrel to your

1 face?

2 A I had the gun like this (indicating). I  
3 was playing with it. I didn't have the gun all up in  
4 my mouth like this, I ain't stupid.

5 Q What did Mr. Green do?

6 A What did he do? I don't remember what he  
7 did.

8 Q He took the gun away from you?

9 A Yes, he took the gun away from me.

10 Q Placed it where?

11 A I don't know where he placed it, been three  
12 years, I don't know, I forgot.

13 Q Altogether, you had the gun how long?

14 A I had the gun about a minute, two minutes,  
15 something like that. I was playing with it, I was  
16 just playing with the gun.

17 Q Now, you mean two 60 second minutes, I mean  
18 counting one, chimpanzee, two chimpanzee or are we  
19 just talking about few seconds?

20 A Your minutes are different from my minutes,  
21 so I guess -- I don't know.

22 Q You know the difference between minutes and  
23 seconds?

24 A I know the difference between them but your  
25 minute's probably longer than what I would say a

1 minute is. Your minute is probably longer than  
2 mine. So I don't know.

3 Q Well, would you say that you had hold of  
4 the gun a second or actually minutes?

5 A I held the gun for a while. Put it like  
6 that. I held the gun for a while.

7 Q And you did not look all over its surface?

8 A Look all over the gun. I was looking -- I  
9 was just playing with it.

10 Q And you didn't -- did you see anything  
11 distinguishing about that gun that you could pick out  
12 from any other revolver of that same size?

13 A No.

14 Q Can you give us any idea --

15 THE COURT: Are you going beyond  
16 the matter we were on voir dire for? The  
17 matter we were on voir dire for was the  
18 objection being made as to what Mr. Green  
19 did. Are we beyond that or are there  
20 additional matters.

21 MR. BOWEN: I'm trying to show  
22 this in light of her opportunity to view  
23 and see the gun and the total amount of  
24 time she had to see it.

25 THE COURT: That's one thing.

1 But the objection is to the question as to  
2 what Mr. Green did. What purpose is that  
3 being offered.

4 MR. BOWEN: To show that limited  
5 her opportunity to view the gun because  
6 when she picked it up for whatever time I  
7 can't quite ascertain how long she had it  
8 but there came a time when he interrupted  
9 that opportunity to view by taking it away.

10 THE COURT: So it's being offered  
11 for that limited purpose.

12 MR. BOWEN: Of showing her access  
13 to see it.

14 THE COURT: Mr. Britt, do you  
15 want to be heard further?

16 MR. BRITT: No, sir.

17 THE COURT: The objection is  
18 overruled.

19 MR. BRITT: I would ask for a  
20 limited instruction at the appropriate  
21 time. If it's being offered for the  
22 limited purpose to show he took it away  
23 from her, to limit her opportunity to  
24 observe, and that's what they said they  
25 were offering it for.

1                   THE COURT: That's a matter for  
2                   you folks to argue. Mr. Bowen stated on  
3                   the record what his purpose is. If he goes  
4                   beyond that, then an objection would be  
5                   appropriate at that time. Based on the  
6                   record, that's not before me. So the Court  
7                   will not give any limiting instruction in  
8                   this regard but will leave it to you folks  
9                   to object if you think it's appropriate to  
10                  do so.

11                  Bring the jury in, please.

12                                 (Jury in at 4:40 p.m.)

13                  THE COURT: The objection is  
14                  overruled, exception is noted for the  
15                  record. You may repeat or rephrase,  
16                  Mr. Bowen.

17                                 MR. BOWEN: Thank you, Your  
18                  Honor.

19                  BY MR. BOWEN:

20                  Q         You, Ms. Sullivan, picked up a gun in  
21                  Daniel Green's house, is that right?

22                  A         Yes.

23                  Q         And on the gun that you picked up, you saw  
24                  no distinguishing features that you could tell that  
25                  gun from any other gun of a similar size in the

1 world, could you?

2 A I didn't pay attention to it.

3 Q I'm sorry?

4 A I did not pay attention to it.

5 Q And you picked it up, is that right?

6 A Yes.

7 Q At one point you pointed it more or less at  
8 your face, didn't you?

9 A Yes, it wasn't all the way at my face.

10 Q By the time you got the gun to that point  
11 you hadn't had ahold of it but a few seconds, had  
12 you?

13 A No, I was playing with it first.

14 Q So by playing with it, you weren't paying  
15 that much attention to what very small parts of that  
16 gun looked like, were you?

17 A I just knew it when I seen it again.

18 Q Now, after you pointed it towards yourself,  
19 Mr. Green got up immediately, didn't he?

20 MR. BRITT: Objection to the  
21 form.

22 THE WITNESS: I don't know.

23 THE COURT: Overruled. This is  
24 cross-examination.

25 BY MR. BOWEN:

1 Q Mr. Green got up immediately, didn't he?

2 A I don't know if he got up immediately, but  
3 I remember him getting up.

4 Q He came over and took the gun out of your  
5 hand, correct?

6 A Yes.

7 Q Put it back over on the table somewhere?

8 A I don't know where he put it at but he took  
9 it.

10 Q After he took it and put it away, you  
11 didn't look at it anymore, did you?

12 A No.

13 Q So your opportunity to see this gun was  
14 limited to a few seconds, is that correct?

15 A No.

16 Q You know what the concept of about ten  
17 seconds would be, don't you?

18 A Yes, I do.

19 Q You could if you had to count off -- in  
20 about the right syncopation to be ten seconds, right?

21 A No, I think, I said some minutes.

22 Q You say minutes?

23 A Yeah, not seconds, minutes.

24 Q Okay. So you think that you had -- well,  
25 could you count for the jury, could you count off

1 what you consider to be ten seconds?

2 MR. BRITT: Objection.

3 THE COURT: Overruled.

4 BY MR. BOWEN:

5 Q Could you count it at a rate that you think  
6 would be ten seconds?

7 A One, two, three, four, five, six, seven,  
8 eight, nine, and ten.

9 Q Thank you, ma'am. Now, how many of those  
10 ten seconds periods would you say you had a hold of  
11 that weapon?

12 A I don't know, I just said some minutes, I  
13 don't know nothing about no seconds, I just said  
14 minutes.

15 Q And in that time, you wouldn't have known  
16 whether it was a .45 or 9 mm?

17 A No, I would not have.

18 Q Now, the only jewelry that you say that you  
19 saw in or about Mr. Green was -- you never saw a  
20 ring, did you?

21 A No.

22 Q You saw a necklace and a charm, correct?

23 A And a bracelet.

24 Q And that's all you saw?

25 A Yes, and a camcorder.

1 Q Well, I mean, you didn't consider a  
2 camcorder jewelry, did you?

3 A No, but it's a part of whatever he had.

4 Q All right. Now, in the interview with Mr.  
5 Barnes, did you not talk to Mr. Barnes about what  
6 Mr. Green said to you about how he had gotten hold of  
7 the red Lexus?

8 A Did I talk to him about that?

9 Q Did you talk to Mr. Barnes --

10 A I can't remember.

11 Q Let me ask you, you did not tell Mr. Barnes  
12 that Mr. Green said to you that Larry and some  
13 friends --

14 MR. BRITT: Objection.

15 BY MR. BOWEN:

16 Q -- brought it to him. Did you tell Mr.  
17 Barnes that?

18 THE COURT: Do you want to be  
19 heard, Mr. Britt?

20 MR. BRITT: Yes, sir.

21 THE COURT: Ladies and gentlemen,  
22 if you'll step to the jury room, the Court  
23 has a matter of law to attend to. Please  
24 recall my instructions, don't worry or  
25 speculate about what takes place in the

1           courtroom in your absence.

2                       (Jury out at 4:46 p.m.)

3           THE COURT:   Let the record  
4           reflect the following is being heard in the  
5           absence of the jury.

6                       What is the basis of the objection?

7           MR. BRITT:   Your Honor, the  
8           previous question she said she does not  
9           remember what she told Mr. Barnes, and  
10          Mr. Bowen's question assumes that she made  
11          the statement.   And it also contains  
12          matters allegedly made by Mr. Green which  
13          would, in my opinion, constitute hearsay.

14          THE COURT:   State elicited on  
15          direct examination a statement attributed  
16          to Mr. Green about how he came into  
17          possession of the red Lexus.

18          MR. BRITT:   Yes, sir.

19          THE COURT:   They are entitled to  
20          explore on cross-examination anything that  
21          is inconsistent with that as it relates to  
22          this witness.   The question specifically  
23          was, "All right.   Now in the interview with  
24          Mr. Barnes, did you not talk to Mr. Barnes  
25          about what Mr. Green said to you about how

1 he had gotten hold of the red Lexus?"

2 Her response was, "Did I talk to him  
3 about that?"

4 "Question: Did you talk to Mr.  
5 Barnes.

6 "Answer, I can't remember.

7 Following question by Mr. Bowen: "Let  
8 me ask you, you did not tell Mr. Barnes  
9 that Mr. Green said to you that Larry and  
10 some friends," and that's the point where  
11 the objection was interposed. It's  
12 cross-examination. He is entitled to sift  
13 the witness to some extent. He's entitled  
14 to try to refresh recollection to some  
15 extent.

16 If you feel that it goes beyond that  
17 and gets argumentative, then you're  
18 entitled to object. But at this point, the  
19 objection is overruled.

20 Do you want to ask the witness any  
21 questions on voir dire? Or the State want  
22 to ask the witness any questions on voir  
23 dire?

24 MR. BRITT: Yes, sir.

25 THE COURT: Go ahead.

1 BY MR. BRITT:

2 Q Ms. Sullivan, do you recall making any  
3 statements to Mr. Barnes in regard to how Mr. Green  
4 told you he got the car?

5 A If I did talk to him about it, I can't  
6 remember.

7 THE COURT: Then another  
8 foundation has to be laid.

9 MR. BOWEN: May I approach, Your  
10 Honor?

11 THE COURT: Yes, sir.

12 (Defense Exhibit 13 was  
13 marked for identification.)

14 BY MR. BOWEN:

15 Q Ms. Sullivan -- if I may approach, Your  
16 Honor?

17 THE COURT: Yes, sir.

18 BY MR. BOWEN:

19 Q I'm going to draw your attention to  
20 Defendant's Exhibit Number 13. Now, you've said that  
21 you gave Mr. Barnes an interview, is that right?

22 A Uh-huh.

23 Q Now, if you could see what purports to be a  
24 transcript of that interview, do you believe that you  
25 could use that perhaps to refresh your

1 recollection?

2 MR. BRITT: Objection.

3 BY MR. BOWEN:

4 Q About things that you said to Mr.

5 Barnes?

6 THE COURT: Yes, sir?

7 MR. BRITT: As to the form of the

8 question, what purports to be a transcript

9 of that interview.

10 BY MR. BOWEN:

11 Q That is a transcript, to my knowledge, of

12 the interview?

13 THE COURT: The appropriate thing

14 to do, Mr. Bowen, is give the witness the

15 exhibit, ask her if she can identify it.

16 BY MR. BOWEN:

17 Q Okay. I want you to look particularly at

18 this document now marked Defense Exhibit Number 13,

19 and while you may if you want to read it all, I'm

20 going to call your attention particularly to page

21 60.

22 A Read what now?

23 Q Could you read page 60 of Defense Exhibit

24 Number 13?

25 MR. BRITT: Objection.

1 THE WITNESS: That's page 60  
2 right there?

3 MR. BRITT: Objection.

4 THE COURT: She has to identify  
5 it first, Mr. Bowen.

6 BY MR. BOWEN:

7 Q Do you know what that is?

8 A What this is?

9 Q Yes, ma'am.

10 A Huh-uh.

11 Q I'm going to ask you to read it and then  
12 answer me whether or not you know what it is. That  
13 is, read page 60, and answer me if you know what it  
14 is.

15 A (Witness reads document.) What do you want  
16 to know about?

17 Q What I wanted to know, having read page 60  
18 of that document before you, do you know what the  
19 document is?

20 A It's talking about when Trulik was calling  
21 me when he was locked up.

22 Q Do you see written down your words from the  
23 interview with Mr. Barnes on that page before you?

24 MR. BRITT: Objection.

25 THE WITNESS: I don't understand

1           it but I seen it.

2                         THE COURT: Overruled.

3 BY MR. BOWEN:

4           Q       I beg your pardon?

5           A       I don't understand it. You all ain't got  
6 it printed out right. You all left some words out or  
7 something.

8           Q       Let me ask you this: Do you remember  
9 telling Mr. Barnes that Daniel said that Larry and  
10 some friends had brought the Lexus automobile to  
11 him?

12                        MR. BRITT: Objection.

13 BY MR. BOWEN:

14           Q       Did you tell Investigator Barnes that  
15 Trulik, that is, Daniel Green, said Larry and some  
16 friends had brought the Lexus to him?

17                        THE COURT: What time frame?

18           MR. BOWEN: Well, during either  
19 the time you went to the Udge or -- either  
20 the time that you were with the Cougar or  
21 with the Lexus, and probably the second  
22 time when you were with the Lexus?

23                        THE WITNESS: Did he tell me some  
24 friends brought it to him?

25 BY MR. BOWEN:

1 Q Did Daniel Green tell you that Larry Demery  
2 and some friends had brought him that car?

3 A When I was on the phone with him. When we  
4 was talking on the telephone.

5 Q And you told Mr. Barnes about that, didn't  
6 you?

7 A About our conversation on the telephone.

8 Q And he wrote it down?

9 A I guess he wrote it down or taped it or  
10 something.

11 THE COURT: I apologize for the  
12 interruption. What phone conversation are  
13 you testifying about, ma'am?

14 THE WITNESS: He called me while  
15 he was locked up, the time when this first  
16 started happening and stuff, he called me  
17 then.

18 BY MR. BOWEN:

19 Q Okay. But he did tell you that Larry and  
20 some friends had brought it to him?

21 A Yes, he said he didn't have nothing to do  
22 with it when I was asking him about it.

23 THE COURT: Ma'am, you indicated  
24 earlier that there was a phone conversation  
25 after you first saw the red Lexus.

1 THE WITNESS: After I first saw  
2 the red Lexus?

3 THE COURT: Sometime after you  
4 saw the red Lexus and had ridden in it.  
5 Your testimony was Mr. Green called you at  
6 a later time and said if anybody asked you  
7 about it, you probably saw it on the news  
8 or something to that effect, don't say  
9 anything about it?

10 THE WITNESS: Yeah.

11 THE COURT: Now, the conversation  
12 you're now testifying about, did that occur  
13 before or after that earlier conversation?

14 THE WITNESS: I don't understand  
15 that. I can't answer that.

16 THE COURT: You don't know when  
17 it happened?

18 THE WITNESS: When what  
19 happened?

20 THE COURT: You just said that  
21 Mr. Green called you after he was locked  
22 up.

23 THE WITNESS: Yeah.

24 THE COURT: On that occasion that  
25 he called you after he was locked up, did

1           that conversation occur after a  
2           conversation when Mr. Green told you if  
3           you're asked about the red Lexus, you say  
4           you don't know anything about it.

5                        THE WITNESS: That was during  
6           that time, he told me that.

7                        THE COURT: What was during what  
8           time?

9                        THE WITNESS: When we were  
10          talking on the phone, when he called me  
11          after all this came up.

12                       THE COURT: Which came first, the  
13          conversation with Mr. Green, according to  
14          your testimony, where he said if anybody  
15          asks you about the red Lexus you don't know  
16          anything, did that come first or the  
17          conversation where he said Larry Demery and  
18          some friends brought me the red Lexus come  
19          first.

20                       THE WITNESS: It kind of all came  
21          all together.

22                       THE COURT: About the same time.

23                       THE WITNESS: Yeah.

24                       THE COURT: You don't remember  
25          which one happened first.

1 THE WITNESS: No.

2 MR. BOWEN: Okay. That's enough  
3 on voir dire.

4 THE COURT: Folks, it's 5:00, I'm  
5 going to bring the jury in, let them go.  
6 There was some discussion about 404(b)  
7 matters during in camera. Do you still  
8 intend to go forward with any hearing on  
9 404(b) matters tomorrow morning?

10 MR. BRITT: Not in the morning  
11 because Ms. Sullivan is still on the stand  
12 and then Ms. Moore who is also present in  
13 the courtroom.

14 THE COURT: You've got one  
15 additional witness beyond Ms. Sullivan?

16 MR. BRITT: Yes, when we complete  
17 Ms. Moore's testimony, I anticipate going  
18 into the 404(b) hearing.

19 THE COURT: I'll have the jury  
20 come back at 9:30 then.

21 Mr. Horne, if you'll bring the jury  
22 in.

23 MR. BOWEN: May I approach the  
24 witness while they are coming in?

25 THE COURT: Yes, sir.

1 (Jury in at 5:02 p.m.)

2 THE COURT: Ladies and gentlemen,  
3 it's now a little bit after 5:00, we're  
4 going to stop the proceedings at this  
5 time. I would ask that you report to the  
6 jury room no later than 9:30 tomorrow  
7 morning, and we'll continue with the  
8 presentation of evidence at that time.

9 And during the overnight recess,  
10 again, you are instructed that you're not  
11 to talk about this matter among yourself or  
12 with anyone else, including members of your  
13 own family. You're not allowed or  
14 permitted to discuss this matter with  
15 anyone at all. You're not allowed or  
16 permitted to allow anyone to say anything  
17 to you or in your presence about this  
18 case. If anyone communicates with you  
19 about this matter or attempts to do so, or  
20 if anyone says anything about the case in  
21 your presence, it's your duty to inform us  
22 of that immediately through the means I  
23 previously instructed you about, again,  
24 through one of the bailiffs assigned to the  
25 courtroom. Please don't approach me

1 directly because that would be  
2 inappropriate.

3 Don't form or express any opinions  
4 about this matter. Don't have any contact  
5 or communication of any kind with any of  
6 the attorneys, parties, witnesses,  
7 prospective witnesses, or again, directly  
8 with the Court. Don't allow yourself to be  
9 exposed to any media accounts which may  
10 exist in connection with this matter, don't  
11 conduct any independent inquiry or  
12 investigation or research of any kind.

13 Everyone else please remain seated,  
14 the members of the jury are excused until  
15 9:30 tomorrow morning.

16 (Jury out at 5:04 p.m.)

17 THE COURT: Let the record  
18 reflect the following is being conducted  
19 in the absence of the jury.

20 Folks, I don't mean to belabor this  
21 point, but it's a matter of concern to me,  
22 and I think the record needs to be as  
23 complete as possible. I have directed, as  
24 you folks are aware, that the article  
25 appearing in the Robesonian which

1           apparently is an AP article, or was taken  
2           from an AP article, be made a part of the  
3           record in this case. The Court will mark  
4           it as Court's Exhibit Number 22 for  
5           purposes of possible appellate review, so  
6           that everybody has an opportunity to make a  
7           record in any way you folks deem  
8           appropriate. Court is going to read at  
9           this time North Carolina General Statutes  
10          Section 15-A-1232, which is entitled Jury  
11          Instructions: Explanation of law: Opinion  
12          Prohibited. Reads as follows: "In  
13          instructing the jury, the judge shall not  
14          express an opinion as to whether or not a  
15          fact has been proved and shall not be  
16          required to state, summarize or  
17          recapitulate the evidence or to explain the  
18          application of the law to the evidence."  
19          Commentary. And 1232 indicates that this  
20          section which replaced old section 1-180,  
21          applies throughout the trial. And it  
22          applies to any expression of opinion by the  
23          judge in the hearing or the presence of the  
24          jury at any time during the trial.

25                 Now, in my view, what is reported in

1           this article is tantamount to an allegation  
2           of misconduct on the part of the bench.

3           I'm asking the State whether the State  
4           wants to at this point make any motion for  
5           mistrial on the basis of the State's  
6           contention that the Court has violated  
7           North Carolina General Statute Section  
8           15-12832.

9           MR. BRITT: No, sir.

10          THE COURT: Does the State  
11          contend that the Court has done anything to  
12          deny the State a fair trial in this matter.

13          MR. BRITT: No, sir.

14          THE COURT: Mr. Bowen,  
15          Mr. Thompson, do either of you gentleman  
16          want to make a motion pursuant to North  
17          Carolina General Statute Section 15-A-1232.

18          MR. THOMPSON: No, sir.

19          THE COURT: Do either of you  
20          gentleman contend that the Court has  
21          violated 15-A 1232?

22          MR. THOMPSON: When you say  
23          either.

24          THE COURT: Do you contend I have  
25          violated -- do you, Mr. Thompson, or you

1 Mr. Bowen, contend the Court has violated  
2 15-A-1232?

3 MR. THOMPSON: No, sir.

4 THE COURT: Mr. Bowen?

5 MR. BOWEN: I decline to answer,  
6 Your Honor.

7 THE COURT: That's your  
8 privilege, but I'm telling you at this  
9 point if you have a motion to make before  
10 the Court, this is the time to make it. In  
11 failing to make a motion at this time you  
12 may be waiving or giving up any right that  
13 you have as attorney for Mr. Green to  
14 assert such grounds should an appeal become  
15 an issue in the case. Do you understand  
16 that?

17 MR. BOWEN: Let me say for the  
18 record any such motion with the trial yet  
19 to go and not knowing the likely outcome of  
20 such motion might chill or work to  
21 intimidate.

22 THE COURT: It's not my intent to  
23 intimidate. As I expressed to you, when  
24 you folks don't make a record, I'll make a  
25 record for you. I'll give you the

1 opportunity to put your issues in and note  
2 your exception whether you do or not.

3 MR. BOWEN: I stand on that, I  
4 decline to --

5 THE COURT: Okay. Mr. Green?

6 MR. BOWEN: -- answer.

7 THE COURT: Do you understand  
8 what I've said, sir?

9 MR. GREEN: Yes, sir.

10 THE COURT: Do you contend that  
11 the Court has done anything to deny you a  
12 fair trial?

13 MR. GREEN: I haven't even seen  
14 the article.

15 THE COURT: I'm asking you, based  
16 on what you've seen in court, do you  
17 contend the Court has done anything?

18 MR. GREEN: Based on what I've  
19 seen in court, no, sir, not based on  
20 anything in court.

21 THE COURT: Do you want to make a  
22 motion at this time for a mistrial based on  
23 any of the matters I've brought to  
24 everybody's attention?

25 MR. GREEN: I don't suppose you

1           could throw the Robesonian out, could you?

2                       THE COURT:  No, sir, that would  
3           be a violation of of their rights.

4                       Anything from either counsel?

5                       MR. BRITT:  No, sir.

6                       THE COURT:  See you at 9:30  
7           tomorrow morning.

8                       If you'll recess us until 9:30  
9           tomorrow morning.

10                      (Court adjourned.)

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## 1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

3 LUTHER JOHNSON BRITT, III, Esq.  
4 District Attorney  
5 16-B Prosecutorial District  
6 Lumberton, North Carolina 28358

7 On Behalf of the Defendant:

8 ANGUS B. THOMPSON, Esq.  
9 Public Defender  
10 16-B Prosecutorial District  
11 Lumberton, North Carolina 28358

12 and

13 WOODBERRY A. BOWEN, Esq.  
14 Bowen & Byerly  
15 P.O. Box 846  
16 Lumberton, North Carolina 28359

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20 (Whereupon an in camera proceeding ensued  
21 as follows.)

22 (9:30 a.m.)

23 THE COURT: Let the record  
24 reflect that this is an in-chambers, in  
25 camera proceeding. Present at this time  
are the presiding Judge, the court  
reporter, counsel for state Mr. Johnson  
Britt, counsel for the defendant  
Mr. Woodberry Bowen, Mr. Angus Thompson.

1 Also present at this time is the defendant  
2 Mr. Daniel Green, also known as U'Allah,  
3 and Mr. Horne, who is one of the bailiffs  
4 assigned to the jury in this case.

5 Mr. Horne, if you'll repeat for the  
6 record the information that you provided to  
7 the Court earlier this morning.

8 THE BAILIFF: Well, while  
9 Ms. Odom was coming into the jury room, she  
10 asked me could I ask the Judge if he needed  
11 a paper in reference to yesterday's  
12 meeting. I told her that I would do so.

13 THE COURT: All right. Folks, I  
14 want to put this on the record because if  
15 you recall during the in camera proceeding  
16 yesterday, Ms. Odum indicated that on the  
17 day in question, January 8th, 1996, that  
18 she could account for her whereabouts,  
19 specifically that she was at the Employment  
20 Commission. And in that in camera  
21 proceeding, she was asked, according to my  
22 recollection, by the Court, may have been  
23 asked by others, whether or not she had any  
24 documentation or paperwork. It's my intent  
25 to bring Ms. Odum in at this point, put the

1 paperwork in the record, let you folks ask  
2 any questions that you want to ask of her  
3 before you leave. Any questions for  
4 Mr. Horne? Mr. Thompson, Mr. Bowen?

5 MR. THOMPSON: No.

6 MR. BOWEN: No, sir.

7 THE COURT: Any questions by the  
8 State Mr. Britt.

9 MR. BRITT: No, sir.

10 THE COURT: If you'll ask  
11 Ms. Odum to come on in, please, with the  
12 paperwork.

13 MR. BOWEN: Since we're still all  
14 present, we're only absent Mr. Horne, it  
15 occurred to me, just because she says do  
16 you need a paper, does that necessarily  
17 mean she has one or we don't know if she's  
18 just asking --

19 (Ms. Odum enters chambers.)

20 THE COURT: How are you doing.

21 MS. ODUM: Fine. What I was  
22 asking you about this morning, if you think  
23 I could run to the house and I could get it  
24 right quick, I got everything up last night  
25 but forgot it this morning. But I could

1 bring it back on lunch if you need it then.

2 THE COURT: So --

3 MS. ODUM: I got my card and  
4 everything what they had sent before I had  
5 to be at the employment office on that  
6 date.

7 THE COURT: We appreciate that.  
8 I misunderstood, I thought from the  
9 information Mr. Horne gave us that you had  
10 the paperwork with you.

11 MS. ODUM: Huh-uh.

12 THE COURT: But you're indicating  
13 that you do have some paperwork that you  
14 want to provide to us?

15 MS. ODUM: Yes, stating I was at  
16 the Unemployment Office on that date.

17 THE COURT: Do you want to be  
18 heard further?

19 MR. BRITT: No, sir.

20 THE COURT: Mr. Thompson, Mr.  
21 Bowen?

22 MR. BOWEN: No, sir.

23 THE COURT: What I'm going to  
24 ask, so that the record can be complete, if  
25 you will bring that paperwork back at

1 lunch.

2 MS. ODUM: Okay.

3 THE COURT: After the lunch  
4 recess, and that way we can make a record  
5 in this case and put the paperwork in the  
6 record.

7 Again, I instruct you that you're not  
8 to discuss with anyone any of the matters  
9 that have been gone into. Okay?

10 MS. ODUM: All right.

11 THE COURT: Thank you. Any  
12 matters on behalf of counsel for the  
13 defendant?

14 MR. BOWEN: Well, except, of  
15 course she was able to discuss it with  
16 Mr. Horne, if she needed to bring anything  
17 further to Your Honor's attention, I take  
18 it.

19 THE COURT: Ask her.

20 MR. BOWEN: Well, you're giving  
21 her some instructions not to talk to  
22 anybody. Suppose she --

23 MS. ODUM: He don't know what I  
24 was talking about. I didn't, you know,  
25 give him full details on it.

1 MR. BOWEN: I see. That's all.

2 THE COURT: Thank you, ma'am.

3 (Ms. Odum leaves chambers.)

4 THE COURT: All right. Any other  
5 matters before we go on record in open  
6 court? Let me say for the record, folks,  
7 that if there's an objection made, I'm  
8 going to ask you what the basis of the  
9 objection is. I expect counsel to tell me  
10 what rule of evidence you're relying on.  
11 If you don't know the rule of evidence,  
12 tell me generically or generally what the  
13 basis of your objection is so that we can  
14 move forward. Anything further?

15 Let's go.

16 (End of in camera proceeding.)

17

18 (January 23, 1996. Proceedings in open court.)

19 THE COURT: Let the record  
20 reflect that all counsel are present. That  
21 the defendant is present in open court.

22 Mr. Horne, do we have all members of  
23 the jury secured in the jury room.

24 THE BAILIFF: Yes, we do.

25 THE COURT: Is the State ready to

1 go forward?

2 MR. BRITT: Yes, sir.

3 THE COURT: Counsel for the  
4 defendant ready to go forward?

5 MR. BOWEN: Yes, sir. Just a  
6 minute.

7 Just one moment, Your Honor.

8 THE COURT: Yes, sir.

9 MR. BOWEN: Yes, sir, ready.

10 THE COURT: Ms. Sullivan, if you  
11 will please return to the witness stand.

12 Mr. Britt, before we bring the jury  
13 back, any further matters on behalf of the  
14 State as to Ms. Sullivan?

15 MR. BRITT: No, sir, she was on  
16 cross-examination yesterday when we broke.

17 THE COURT: I asked -- the Court  
18 exercised its discretion, I didn't know  
19 if --

20 MR. BRITT: I completed that.

21 THE COURT: Thank you, ma'am, if  
22 you'll have a seat.

23 Bring the jury in please, sir.

24 (Jury in at 9:39 a.m.)

25 THE COURT: Good morning, ladies

1 and gentlemen.

2 Mr. Bowen or Mr. Thompson.

3 MR. BOWEN: Thank you, Your  
4 Honor.

5 CROSS-EXAMINATION (Continued)

6 BY MR. BOWEN:

7 Q Ms. Sullivan, in your conversation with Mr.  
8 Barnes, sitting down here to the right of me, he  
9 asked you if Mr. Green or Mr. Demery had ever said  
10 anything about robbing anybody. Do you remember that  
11 question?

12 MR. BRITT: Objection.

13 THE COURT: Do you want to be  
14 heard, Mr. Britt, the form --

15 MR. BRITT: Objection is based on  
16 anything Mr. Barnes may have said.

17 THE COURT: Rephrase, Mr. Bowen.

18 BY MR. BOWEN:

19 Q You told Mr. Barnes that neither Mr. Demery  
20 nor Mr. Green had ever mentioned having robbed  
21 anybody, didn't you?

22 A I don't recall saying that.

23 Q Now, Larry Demery called you some at your  
24 home after you first saw the red Lexus, didn't he?

25 A No, he didn't.

1           Q       Larry Demery called you and -- strike  
2 that. You saw Larry Demery use the telephone in that  
3 red Lexus, too, didn't you?

4           A       No, I didn't.

5           Q       Are you saying that Larry never called you  
6 on the telephone from anywhere after you first saw  
7 the red Lexus?

8           A       That's what I'm saying, yes.

9           Q       You never had any other meetings or  
10 conversations with Larry after first seeing the red  
11 Lexus?

12          A       No.

13          Q       So then, there was the meeting in the motel  
14 that night with Larry, you saw him some the following  
15 day, and then never again, is that your testimony?

16          A       Repeat that question again.

17          Q       Well, you did go to a motel with him the  
18 night that you first met him, correct?

19          A       Yes.

20          Q       And then you were with him a little bit the  
21 following day after the motel, is that correct?

22          A       No.

23                   THE COURT: Mr. Bowen, are we  
24 talking about two separated incidents, one  
25 involving the Cougar and one involving the

1           Lexus?

2                           MR. BOWEN:   Talking about the  
3           motel, sir.

4                           THE COURT:   You may want to  
5           clarify.

6   BY MR. BOWEN:

7           Q     If you would like to relate it to the car,  
8           which car were you in when you went to the motel?

9           A     The Cougar.

10          Q     Did you see him after that?

11          A     After we have left the motel?

12          Q     Yes, ma'am.

13          A     No, they dropped us off home.

14          Q     But another day following that, did you see  
15          him?

16          A     After that day?

17          Q     Yes, ma'am.

18          A     No, I didn't see him after that day, but I  
19          seen him like a couple days or week later when they  
20          were in the Lexus.

21          Q     This was when you were in the Lexus?

22          A     Yes.

23          Q     In the meantime, between the night of the  
24          motel when you were in the Cougar and the night Larry  
25          Demery was in the Lexus, did he call you or contact

1 you in any way?

2 A I don't remember.

3 Q Now, after the day or night that you saw  
4 him in the Lexus, did you see him anymore after that?

5 A After they dropped us off in the Lexus?

6 Q Yes, ma'am.

7 A No.

8 Q Did he ever call you or contact you in any  
9 way after that?

10 A No.

11 Q Now, to the best of your recollection, when  
12 was the first time some persons identifying  
13 themselves as police officers of any kind came to you  
14 and talked to you about this case?

15 A When I was home.

16 Q Now, other -- strike that. Who all do you  
17 live there with in your home?

18 A Me and my mother.

19 Q Now, after the first police officer came  
20 and talked to you about your statement, did other  
21 police officers come and talk to you about your  
22 statement?

23 A Yes.

24 Q How many altogether would you say?

25 A It was a lot. Like I told you before,

1 about 50-11 million.

2 Q 50-11 million?

3 A Yeah.

4 Q Now, did you ever talk to anybody else  
5 about the events that you've described here in your  
6 testimony other than those police officers and Mr.  
7 Barnes?

8 A My mother.

9 Q Who else, if anyone?

10 A My mother.

11 Q So nobody else other than your mother, is  
12 that correct?

13 A Yes.

14 Q How did you get to court today?

15 A I rode with Mr. Thompson.

16 Q That is, Deputy --

17 A Anthony Thompson.

18 Q Here sitting next to the prosecutor?

19 A Yes.

20 Q How did you get to court yesterday?

21 A Anthony.

22 Q And how did you get home after court?

23 A How did I get home after court? I'm not  
24 home, I'm staying --

25 Q You're right. How did you get home

1 yesterday after court?

2 A Anthony and Mr. Kim.

3 Q Mr. Kim Heffney, also sitting here at the  
4 prosecution table?

5 A Yes.

6 Q Are there other times that you have been  
7 taken to and from the courtroom by either of the two  
8 officers or other police officers?

9 A No, just them two.

10 Q Now, prior to your testimony yesterday and  
11 today, were you brought up to the District Attorney's  
12 office to talk about this case?

13 A When?

14 Q Any time prior to your testimony today and  
15 yesterday.

16 A No, we went in the room yesterday and was  
17 talking about it.

18 Q What room was that?

19 A The DA office.

20 Q Who was there?

21 A People.

22 Q Well, do you know what their names were?

23 A Some of them.

24 Q All right. Was Mr. Britt, the District  
25 Attorney, there?

1           A     Yes.

2           Q     All right.  So in addition to the officers,  
3     and in addition to your mother, you've also talked to  
4     Mr. Britt about your testimony, haven't you?

5           A     Yes.

6           Q     Do you recognize any of those other folks?  
7     Was Mr. Erich Von Hackney, the man here in the came  
8     medical colored coated, was he there?

9           A     Yes.

10          Q     Was anybody else there whose name you know  
11     or whom you can describe?

12          A     No.

13                     MR. BOWEN:  May I approach?

14                     (Defense Exhibit 14 was  
15                     marked for identification.)

16                     MR. BRITT:  May I be heard?

17                     THE COURT:  Members of the jury,  
18     there's a matter of law the Court must take  
19     up out of the presence and the hearing of  
20     the jury.  Please recall my instruction in  
21     that regard, please don't worry or  
22     speculate about what takes place in the  
23     jury room in your absence.  If all members  
24     of the jury would step to the jury room,  
25     please.

1 (Jury out at 9:47 a.m.)

2 THE COURT: Let the record  
3 reflect the following is being conducted in  
4 the absence of the jury.

5 MR. BRITT: Your Honor, the  
6 objection is based on my belief that the  
7 witness will not be able to identify the  
8 document Mr. Bowen is getting ready to  
9 present her, and short of Mr. Bowen having  
10 to state on the record what it is, which  
11 would put him in a position of actually  
12 testifying, she can't identify it. This is  
13 a --

14 THE COURT: May I see the  
15 document, Mr. Bowen?

16 MR. BRITT: It is a portion of  
17 phone tolls from the home of Virginia  
18 Demery that were obtained pursuant to a  
19 search warrant that a U.S. Magistrate  
20 issued that were obtained back in August of  
21 1993.

22 THE COURT: Okay. Mr. Bowen?

23 MR. BOWEN: If Your Honor please,  
24 she will be able to identify that as a  
25 paper writing. If I ask her does she see

1 her own telephone number anywhere on that  
2 paper writing,, I believe she will be able  
3 to recognize her own telephone number. Now  
4 granted, at this point, it's not an  
5 opportunity to offer evidence, and I've not  
6 been age to lay the foundation of other  
7 witnesses, that's true, I cannot show any  
8 further things about that document. But I  
9 they at the proper time when it is our  
10 proper time to show evidence.

11 THE COURT: You intend to ask her  
12 simply whether or not to identify whether  
13 or not her number appears.

14 MR. BOWEN: Yes, sir. And  
15 initial it just as the State has done on  
16 the document.

17 THE COURT: Do you want to be  
18 heard, Mr. Britt.

19 MR. BRITT: As to the contents of  
20 the document without it being in evidence,  
21 the contents are hearsay.

22 THE COURT: For what purpose is  
23 this being offered, under what rule of  
24 evidence are you offering this?

25 MR. BOWEN: It would be relevant

1 evidence, 401.

2 THE COURT: His argument is that  
3 the document contains hearsay matters, and  
4 that any reference to the contents of the  
5 document necessarily involves reference to  
6 hearsay matters. So I'm asking what rule  
7 of evidence are you doing this under.

8 MR. BOWEN: Well, the -- she is  
9 being asked to identify her own telephone  
10 number on the document, seems to me we  
11 are --

12 THE COURT: Mr. Bowen, why can't  
13 you just ask her what her phone number is,  
14 and then introduce this through somebody  
15 else?

16 MR. BOWEN: Well, but you see,  
17 Your Honor, here's what I'm trying to do.  
18 The State has elected, because it was their  
19 turn to offer evidence, they have had the  
20 ability to first authenticate their  
21 documents, they have had their witnesses  
22 pick out telephone numbers that are  
23 relevant and put their initials beside  
24 them. Now, I can't help it if it's not my  
25 turn to offer evidence. If it were, I

1           could have authenticated the document just  
2           as they had, and then gone forward to have  
3           this witness put her initials by it.

4           I can't imagine any prejudice to the  
5           State by having this lady at this time  
6           identify her telephone number and place her  
7           initials by it on that paper writing, which  
8           obviously is not going to be passed to the  
9           jury because it's not my turn to do that.  
10          And then if I can't authenticate it later  
11          on in the proper way, then it never gets to  
12          the jury, they never know what it is or  
13          anything, but I see what you're --

14                 THE COURT:  You're asking  
15          questions about it in the presence of the  
16          jury.  You're asking her, isn't your number  
17          reflected on this document.

18                 MR. BOWEN:  Is it not reflected  
19          on this paper writing.  The jury does not  
20          know what that is until such time as I  
21          prove what it is.

22                 THE COURT:  Mr. Bowen, you can  
23          ask her when on a date certain at a time  
24          certain, a call was placed to her home by  
25          whoever you contend made the call.  If that

1 is denied, then for the purposes of  
2 impeachment once the foundation is laid,  
3 you can introduce the document. The  
4 objection is sustained.

5 Now, you can ask her about the date,  
6 you can ask her about the time, you can ask  
7 her about what her phone number is for the  
8 purposes of laying the foundation for  
9 impeachment.

10 MR. BOWEN: May I retrieve the  
11 document?

12 THE COURT: Yes, sir. Objection  
13 is sustained. Note the defendant's  
14 exception to the ruling of the Court. If  
15 you'll bring the jury back in, Mr. Horne.

16 (Jury in at 9:52 a.m.)

17 THE COURT: The objection is  
18 sustained. Mr. Bowen, you may ask  
19 additional questions.

20 MR. BOWEN: Thank you, Your  
21 Honor. May I approach?

22 THE COURT: Yes, sir.

23 BY MR. BOWEN:

24 Q Ms. Sullivan, on or about the 16th day of  
25 July of 1993 --

1 MR. BRITT: Objection.

2 THE COURT: Sustained. You

3 can't --

4 MR. BOWEN: All right.

5 BY MR. BOWEN:

6 Q Can you state for the record, Ms. Sullivan,  
7 what your telephone number was on July 16th,  
8 1993?

9 THE COURT: Ms. Sullivan, if  
10 you'll answer his question without  
11 reference to the document.

12 THE WITNESS: Area code 803  
13 423-1551.

14 BY MR. BOWEN:

15 Q And was that number in your mother's name?

16 A Yes.

17 Q And that was your telephone number during  
18 the time that you knew Larry Demery and were seeing  
19 some of Larry Demery, is that true?

20 A Well, we have two telephone numbers.

21 Q What is your other telephone number?

22 A Area code 803 423-9519.

23 Q Any other numbers coming into your home?

24 A No.

25 Q The second telephone number, in whose name

1 was that, if you know?

2 A Oh, both of them are in my mother's name.

3 Q Now, state whether or not on the 16th of  
4 July of 1993, you received an approximately 11 minute  
5 telephone call from Larry Demery.

6 A I don't recall that.

7 Q You're not denying it happened, you're just  
8 saying you can't remember?

9 A I can't remember.

10 MR. BRITT: Objection to the  
11 form.

12 THE COURT: Overruled.

13 BY MR. BOWEN:

14 Q Do you remember Larry Demery from the time  
15 that you met him when he was riding in the Cougar  
16 until the time you last saw him in the red Lexus?

17 A Do I remember him?

18 Q Excuse me let me finish. Do you remember  
19 from the time you met him when he was riding in the  
20 Cougar until the time you last saw him he was riding  
21 in a Lexus, do you remember receiving any phone calls  
22 from him anywhere?

23 A No.

24 Q After you last saw him in the Lexus, do you  
25 recall receiving any phone calls or visits from Larry

1 Demery?

2 A No.

3 Q Now, did you ever talk to the defendant  
4 Daniel Green, also known as U'Allah, at any time  
5 prior to the last time you saw Larry Demery in the  
6 Lexus?

7 A Excuse me?

8 Q All right. When did you first meet  
9 Mr. Daniel Green, also known as U'Allah?

10 A I know him as Trulik.

11 Q All right. You met Trulik at the same time  
12 that you met Larry Demery, isn't that true?

13 A Yes.

14 Q You had not known Trulik before?

15 A No, I did not know him.

16 Q At the time you saw Larry Demery when Larry  
17 Demery was in the red Lexus, that was also the last  
18 time you saw Trulik?

19 A Yes.

20 Q Now, did Trulik ever talk to you or call  
21 you on a telephone?

22 A Yes.

23 Q And when do you say that was?

24 A After he got locked up.

25 Q All right. But from the time that you met

1 Larry and Trulik to the time that you last saw Larry  
2 and Trulik in the Lexus, Trulik never called you on  
3 the telephone?

4 A I don't recall him calling me on the  
5 telephone.

6 Q Would you say that you -- in those times  
7 between the time that you first saw Larry and Trulik,  
8 and the last time you saw Larry and Trulik in the red  
9 Lexus, would you say that you got to know Larry  
10 better or Trulik?

11 MR. BRITT: Objection.

12 THE COURT: Overruled. It's  
13 cross-examination.

14 THE WITNESS: Say it again.

15 BY MR. BOWEN:

16 Q Did you get to know Larry better during  
17 that time or Trulik?

18 A I knew both of them the same.

19 Q But you were doing more talking to Larry  
20 Demery, weren't you?

21 A Not really, he wouldn't hardly talk.

22 Q You were spending more time with Larry  
23 Demery, weren't you?

24 A Yes.

25 Q You were never in a motel alone with

1 Trulik, were you?

2 A I was never in a hotel alone with Trulik,  
3 no.

4 Q But you were in a hotel room alone with  
5 Larry Demery?

6 A Yes.

7 Q Now, do you deny that you were in the motel  
8 all night with Larry Demery?

9 A Yes, I do deny that, because we did not  
10 stay there all night.

11 Q You said that you were just in there 15  
12 minutes or so?

13 A We wasn't in there 15 minutes, we were in  
14 there longer than that.

15 Q How long were you in there?

16 A I can't say that, I don't know, I just know  
17 it was some hours.

18 Q Were you alone together --

19 A Me and Larry was in a room and Trulik and  
20 Melinda was in a room.

21 Q Were you alone together in a bedroom in  
22 Trulik's trailer?

23 A Yes.

24 Q You were with Larry longer than 15 minutes  
25 alone that night, weren't you?

1           A       Yes, we spent the night.

2           Q       When you talked to Mr. Barnes,  
3 Ms. Sullivan, you referred to the red Lexus as  
4 belonging or being possessed by both these  
5 individuals, Trulik and Larry Demery, didn't you?

6           A       What you mean by that?

7           Q       Well, you said it was their car as opposed  
8 to Mr. Green's car or Mr. Demery's car, didn't you,  
9 when you talked to Mr. Barnes?

10          A       Trulik said it was his.

11          Q       But you referred to it as theirs when you  
12 talked to Mr. Barnes, didn't you?

13          A       I don't recall telling him that.

14                   MR. BOWEN:   That's all.

15                   THE COURT:   Anything on redirect,  
16 Mr. Britt?

17                   REDIRECT EXAMINATION

18 BY MR. BRITT:

19          Q       When did Trulik tell you the car was his?

20          A       I asked Trulik whenever they first came and  
21 picked me up from Marion, when I was at the club, I  
22 asked him, I said, where did you get this car from?  
23 And he told me that he got it from New York and  
24 stuff, for like \$50,000 or something like that.

25          Q       He told you he paid \$50,000 for this car?

1 A Yes, he told me something like that.

2 Q To your knowledge, was he working at that  
3 time?

4 A No, he was not working.

5 Q Now, did you believe him when he told you  
6 he had bought the car for \$50,000?

7 MR. BOWEN: Object.

8 THE COURT: Sustained. Anything  
9 further?

10 MR. BOWEN: Instruction.

11 THE COURT: Members of the jury,  
12 you are not to consider the last question  
13 asked by counsel for the State, Mr. Britt,  
14 and you are not to consider any answer that  
15 may have been given by the witness. I  
16 instruct you that those matters are not to  
17 take part in your deliberations in this  
18 case in any respect. Anything further,  
19 Mr. Bowen?

20 MR. BOWEN: No, sir. Thank you.

21 THE COURT: Mr. Britt.

22 BY MR. BRITT:

23 Q Dee, you said -- Mr. Bowen asked you a  
24 question about a statement that you had made to a Mr.  
25 Barnes?

1           A     Yes.

2           Q     When Mr. Barnes came to talk to you, did he  
3 identify himself?

4           A     He said something about he was a sheriff or  
5 something in Florence or something like that. And  
6 that's the only reason I talked to him, because he  
7 didn't talk to me at home, I was at one of my  
8 friends's house that he was talking to. And he said  
9 he was the Sheriff or something in Florence.

10           MR. BRITT:   May I?

11           THE COURT:   Yes, sir.

12           MR. BRITT:   If I could have just  
13 a second.

14           THE COURT:   Yes, sir.

15 BY MR. BRITT:

16           Q     Dee, when you first saw that Lexus, who was  
17 in it?

18           A     When I first saw it? Everybody was  
19 standing around it.

20           Q     Who is everybody?

21           A     Trulik, Larry, and Melinda.

22           Q     And when you left Marion driving that  
23 Lexus, where did you go?

24           A     We went straight to Lumberton.

25           Q     And where did you go in Lumberton?

1           A     To the trailer.

2           Q     How long did you stay at the trailer?

3           A     We stayed to the trailer for about an hour  
4 or something, and then they asked me and Larry to go  
5 to McDonald's to get something to eat. And we went  
6 and got something to eat and came back.

7           Q     How did you go to McDonald's?

8           A     I was driving and Larry was with me.

9           Q     Do you recall seeing the keys to that car?

10          A     Yes, it was keys to it.

11          Q     Who had keys to the car?

12          A     I had them most of the time.

13          Q     And what kind of key did you have?

14          A     It was the key to the car.

15          Q     Did you ever see anything that looked like  
16 a remote control?

17          A     I didn't see that.

18          Q     Now, when you went to the trailer after you  
19 drove the car from -- the Lexus from Marion to the  
20 trailer, is that where you saw the gun that you  
21 testified about yesterday?

22          A     Yes.

23          Q     Now, prior to getting to the trailer, had  
24 you seen that gun in the car?

25          A     No, I don't think so.

1 Q And from the trailer you went where?

2 A After we left the trailer -- talking about  
3 that morning or that night?

4 Q That night.

5 A We went to McDonald's.

6 Q Now, you testified earlier that Trulik and  
7 Melinda stayed in one room and you and Larry stayed  
8 in another room?

9 A You're talking --

10 Q At the trailer.

11 A Oh, yeah.

12 Q What if anything happened between you and  
13 Larry Demery in that room?

14 A What if?

15 Q What if anything, what did you all do?

16 A Nothing but lay in the bed and talk.

17 Q And when you laid in the bed and talked, at  
18 any time did either one of you take your clothes off?

19 A Yes.

20 Q Who did?

21 A Both of us.

22 Q Did you ever have any type of sexual  
23 relations with Larry Demery?

24 A No, sir.

25 Q When you went to the motel the time before

1 when you had ridden in the blue Cougar?

2 A Yes, sir.

3 Q Did you have any type of sexual relations  
4 with Larry Demery at the motel?

5 A No, sir.

6 Q Now, how many times did you see a video  
7 camera?

8 A I seen it at the motel and I seen it at the  
9 trailer.

10 Q And each time you saw the video camera, who  
11 had it?

12 A At the motel, Trulik had it. And then I  
13 got it from Trulik, and that's when I was videotaping  
14 Melinda and Trulik in their room, everybody was  
15 playing and stuff.

16 Q Now, when you saw it at the trailer, who  
17 had it?

18 A Nobody. It was just sitting out.

19 Q Now, did you see more than one gun when you  
20 were with Trulik and Larry?

21 A Yes.

22 Q When was the first time you recall seeing  
23 any guns when you were with Trulik and Larry?

24 A In the Cougar.

25 Q Do you remember what kind of gun you saw in

1 the Cougar when you were with Trulik and Larry?

2 A I think it was a 9 mm.

3 Q Now, did it look different than the gun  
4 that you found on the table at his trailer?

5 A Yes.

6 Q What was different about the way it looked?

7 A The one in the Cougar was just black, and  
8 the one at the trailer got a long piece at the end  
9 and stuff like where the bullet come out at. That's  
10 longer.

11 Q And when you saw this gun that you've  
12 identified as a 9 mm, did someone have it in their  
13 hands?

14 A No.

15 Q Where did you find the -- where did you see  
16 the 9 mm?

17 A It was in the glove compartment.

18 Q Of which car?

19 A The Cougar.

20 Q And when was it that you saw this 9 mm  
21 pistol in the glove compartment of the car?

22 A When me and Melinda was getting some money.

23 Q Is that the money that you testified about  
24 yesterday?

25 A Yes, sir.

1 Q Now, when you were riding in that Lexus,  
2 who do you remember using that telephone?

3 A Me, Melinda and Trulik.

4 Q Did you ever see Larry Demery place any  
5 telephone call on the car phone?

6 A No, sir.

7 Q And after Trulik and Larry left in the  
8 Lexus, who if any of those two called you at any time  
9 after that?

10 A Trulik.

11 Q And when he called you after you last saw  
12 him in the Lexus, what did he say?

13 A He was locked up --

14 MR. BOWEN: Object.

15 THE COURT: Overruled.

16 BY MR. BRITT:

17 Q What did he say?

18 A He was locked up, and he was like, he kind  
19 of figured me and Melinda knew what was going  
20 on.

21 MR. BOWEN: Objection.

22 THE COURT: Sustained. But as to  
23 that, the door was opened on  
24 cross-examination, so you may inquire.

25 BY MR. BRITT:

1 Q Did he tell you he was locked up?

2 A Yes.

3 Q Did he tell you why he was calling?

4 A No, not really.

5 Q What did he say to you when he called you?

6 A He was like, you know, me and Melinda seen  
7 the news and stuff on TV, and he was, like, if  
8 somebody asked us anything about what we saw on TV  
9 about the Lexus or anything like that, we don't know  
10 knowing about it.

11 Q And the money that you saw in the glove  
12 compartment of the car, did you ever ask the  
13 defendant where that money came from?

14 A Yes.

15 Q And what did he say?

16 A He say he robbed people and sold drugs.

17 MR. BRITT: I don't have any  
18 other questions.

19 THE COURT: Mr. Bowen, Mr.  
20 Thompson.

21 MR. BOWEN: Yes.

22 RE CROSS EXAMINATION

23 BY MR. BOWEN:

24 Q You looked at a handgun yesterday  
25 afternoon, did you not, one in a plastic bag that

1 Mr. Britt came forward with?

2 A Whatever that gun was in the plastic bag,  
3 yes.

4 Q And at that time, you testified on my  
5 question that you didn't know whether it was a  
6 9 mm or .45 or what?

7 A Talking about that gun in the bag?

8 Q Yes, ma'am.

9 A I said I didn't know what it was, but I say  
10 when I saw it again I would know it.

11 Q Now, when you first saw the Lexus at the  
12 club, that is, the Udge --

13 A Yes.

14 Q -- Larry Demery was driving it then, wasn't  
15 he?

16 A Yes.

17 Q Mr. Barnes was tape recording the interview  
18 he made of you, isn't that correct?

19 A Yes, I think so, yes.

20 Q And your last -- strike that. Just before  
21 the interview concluded, you told him in answer to  
22 his question that Trulik, or Mr. Daniel Green, also  
23 known as U'Allah, never said anything about having  
24 robbed anybody. Isn't that what you told Mr. Barnes?

25 A I don't recall telling him that.

1 Q But you don't deny telling him that?

2 A I don't recall telling him that.

3 Q You don't deny --

4 A I didn't say deny, I said recall.

5 Q Do you or do you not deny?

6 A I don't recall.

7 Q You could have told him that?

8 A I don't recall telling him that.

9 Q Other than what you called the 9 mm in the  
10 glove compartment of the Cougar, did you see any  
11 other gun in or around the motel?

12 A Yes, I did.

13 Q And today, what have you said, if anything,  
14 with respect to a gun in or around the motel?

15 A Excuse me?

16 Q Have you been asked anything about a gun  
17 around the motel today?

18 A Have I been asked anything about a gun  
19 around a motel?

20 Q Yes, ma'am.

21 A Today?

22 Q Yes.

23 A It was in the glove compartment of the  
24 Cougar, and the Cougar, at that time we was at the  
25 motel, so I guess the gun didn't jump out, it was

1 still in there.

2 Q So that when you mean there was a gun at  
3 the motel, you mean the one in the cougar?

4 A I didn't say it was in the motel, I just  
5 said it was in the Cougar, I didn't see it in the  
6 motel.

7 Q Okay.

8 MR. BOWEN: That's all.

9 THE COURT: Mr. Britt?

10 MR. BRITT: Yes, sir

11 FURTHER REDIRECT EXAMINATION

12 BY MR. BRITT:

13 Q Can I approach the witness?

14 THE COURT: Yes, sir.

15 BY MR. BRITT:

16 Q Dee --

17 THE COURT: Mr. Britt, if you'll  
18 handle that --

19 MR. BRITT: Yes, sir.

20 BY MR. BRITT:

21 Q Dee, you testified that you saw a gun in  
22 the glove compartment of the Cougar?

23 A Yes.

24 Q I'll show you what has been marked as  
25 State's Exhibit Number 59. Is that the gun that you

1 saw in the glove compartment of the Cougar?

2 A Nope.

3 Q I'm going to show you, this is  
4 Mr. Heffney's service weapon that I have in my  
5 hand --

6 MR. THOMPSON: Object.

7 MR. BOWEN: Object to what it is.

8 THE COURT: You folks want to be  
9 heard?

10 MR. THOMPSON: Yes.

11 THE COURT: Ladies and gentlemen,  
12 there's a matter of law the Court must take  
13 up. Please recall my instructions in that  
14 regard, don't worry or speculate about what  
15 takes place in the courtroom in your  
16 absence. Please step to the jury room.

17 (Jury out at 10:16 a.m.)

18 THE COURT: Folks, basis of the  
19 objection?

20 MR. BOWEN: He has stated in  
21 his -- I guess you call it question,  
22 matters not in evidence, that is, that this  
23 is Mr. Heffney's service weapon. No  
24 evidence as to that.

25 THE COURT: So you're asking that

1 he rephrase?

2 MR. BOWEN: Yes, sir.

3 THE COURT: Okay. While we're on  
4 voir dire, why don't you put the questions  
5 to the witness that you would intend to ask  
6 so that we can deal with any other  
7 objections that might arise.

8 BY MR. BRITT:

9 Q Dee, the gun that you saw in the glove  
10 compartment of the Cougar, was it similar in style  
11 and in size to the gun that's contained inside the  
12 bag marked as State's Exhibit Number 59?

13 A No, sir.

14 Q I hold a gun in my hand, ask you to look at  
15 it. Is this gun similar to the style and size of the  
16 gun that you saw in the glove compartment of the blue  
17 Cougar?

18 A Yes, it is.

19 THE COURT: You folks want to be  
20 heard on voir dire?

21 MR. BOWEN: Yes, sir. There's no  
22 way in the world on that that we have a  
23 record. Either we have to have the pistol  
24 marked.

25 THE COURT: Simple matter is you

1           folks agree to have it photographed,  
2           photograph placed into evidence.

3                       MR. BOWEN:   At a minimum that's  
4           what will have to be done.

5                       THE COURT:   Otherwise, do you  
6           want to be heard?

7                       MR. BOWEN:   We're going to have  
8           something marked.

9                       THE COURT:   The photograph can be  
10          marked.

11                      MR. BOWEN:   Sure.

12                      THE COURT:   For the record, is  
13          there a stipulation -- what would be your  
14          next Exhibit Number, 62?

15                      MR. BRITT:   62.

16                      THE COURT:   Is there a  
17          stipulation in the record by counsel that  
18          the firearm referred to can be  
19          photographed, that photograph can be marked  
20          State's Exhibit 62 for purposes of the  
21          record?

22                      MR. BOWEN:   No, sir, we can't  
23          stipulate to that.

24                      THE COURT:   All right.  
25          Mr. Britt?

1                   MR. BRITT: I can simply have it  
2 marked, but I don't have to have it  
3 entered.

4                   THE COURT: Go ahead and mark  
5 it.

6                   Ready to go forward, folks.

7                   MR. BRITT: Yes, sir.

8                   THE COURT: Any other matters on  
9 voir dire?

10                  MR. BOWEN: No, sir.

11                  THE COURT: If you'll bring the  
12 jury back in, please, Mr. Horne.

13                  For the record, she asked if she could  
14 play with one of the pens. She has to have  
15 something in her hand.

16                  Yes, ma'am, you may. I want my pen  
17 back.

18                  THE WITNESS: I'm going to give  
19 it back.

20                  (Jury in at 10:19 a.m.)

21                  THE COURT: Ladies and gentlemen  
22 of the jury, the objection to the question  
23 as phrased is sustained. You may ask  
24 additional questions or you may rephrase

25                  (State's Exhibit 62 was  
                  marked for identification.)

1 MR. BRITT: May I approach?

2 THE COURT: Yes, sir.

3 BY MR. BRITT:

4 Q Dee, the gun that you saw in the glove  
5 compartment of the blue Cougar, was it similar in  
6 style and in size to the gun that is contained inside  
7 the plastic bag marked as State's Exhibit Number 59?

8 A No, sir.

9 Q I'll show you what has been marked as  
10 State's Exhibit Number 62, ask you to look at this.  
11 For the record, can you describe what I'm holding in  
12 my hand that's marked as State's Exhibit Number 62?

13 A It looks like a 9 mm.

14 Q What color is it?

15 A Black.

16 Q When you say it looks like a 9 mm, are you  
17 familiar with what a 9 mm pistol looks like?

18 THE COURT: Mr. Britt, don't  
19 point that --

20 BY MR. BRITT:

21 Q For the record, the clip has been removed  
22 and there is no round in the chamber.

23 THE COURT: Yes, sir.

24 BY MR. BRITT:

25 Q The gun marked as State's Exhibit Number

1 62, is it similar in style and size to the gun that  
2 you saw in the glove compartment of the blue Cougar  
3 when you were with Trulik and Larry Demery?

4 A Yes, sir.

5 Q Now, State's Exhibit Number 59, when was  
6 the first time you saw that gun?

7 A At the trailer.

8 Q When you say at the trailer, whose  
9 trailer --

10 A Trulik's trailer.

11 Q When you saw State's Exhibit Number 59,  
12 where was it?

13 A On the table in the front room.

14 Q And after -- you testified yesterday, I  
15 believe, that the defendant took the gun away from  
16 you?

17 MR. BOWEN: Object to what the  
18 questioner believes.

19 MR. BRITT: Excuse me?

20 THE COURT: Yes, sir, if you --

21 MR. BRITT: I'll withdraw it.

22 THE COURT: Folks I'm going to do  
23 it across the board fairly. I recognize  
24 that that's a form of expression, but that  
25 phrase has been used by both counsel. I

1 believe. What counsel believes is  
2 irrelevant. It's what the jury finds from  
3 the evidence presented what matters. I  
4 sustain your objection but it applies both  
5 ways.

6 BY MR. BRITT:

7 Q When you had the pistol that's marked as  
8 State's Exhibit 39 in your hands at the defendant's  
9 trailer, what happened to that gun?

10 A Nothing.

11 Q Did anyone take it away from you?

12 A Trulik did.

13 Q And do you know what he did with it?

14 A No, I think he put it back on the table or  
15 put it up somewhere.

16 MR. BOWEN: Object.

17 THE COURT: Ma'am, you may not --  
18 if you don't recall specifically, you need  
19 to tell us that. If you do have a specific  
20 recollection, then you may testify based on  
21 that specific recollection.

22 THE WITNESS: Well, I don't  
23 recall.

24 MR. BOWEN: Then, motion to  
25 strike.

1 THE COURT: Motion to strike is  
2 allowed.

3 MR. BOWEN: Instruction.

4 THE COURT: Members of the jury,  
5 you're not to consider the last response  
6 given by Ms. Sullivan, that matter is not  
7 to take part in your deliberations in this  
8 case in any respect.

9 BY MR. BRITT:

10 Q After the defendant took the gun that's  
11 been marked as State's Exhibit Number 59, did you  
12 ever see it again?

13 A No.

14 MR. BRITT: Thank you. I don't  
15 have any other questions.

16 THE COURT: Mr. Bowen?

17 FURTHER RECROSS EXAMINATION

18 BY MR. BOWEN:

19 Q And when you were talking to Agent Heffney  
20 and Detective Anthony Thompson over the last several  
21 days, did they show you a gun?

22 A Yes. What kind of gun? This gun right  
23 here?

24 Q Well, you tell us, if you will, what kind  
25 of gun they showed you?

1           A       No, they didn't show me a gun, they showed  
2 it to me after I got up here to the DA's office.

3           Q       What kind of gun did they show you when you  
4 got up here?

5           A       That gun in that bag.

6           Q       What other guns?

7           A       That's it.

8           Q       And without saying what they said, they  
9 made some statements or remarks to you about that gun  
10 in that bag, didn't they?

11          A       What kind of statements or remarks?

12          Q       Well, I'm not permitted to say or suggest  
13 what they said, I'm just asking you, did they make  
14 any statements about that gun to you?

15          A       Not really. They just asked me was that  
16 the gun that I seen in Trulik's trailer.

17          Q       You said yesterday that that gun, that is,  
18 the revolver that Mr. Britt has shown you, you didn't  
19 know what caliber it was, right?

20          A       No.

21          Q       You did not remember what color the handles  
22 were, did you?

23          A       No.

24          Q       Did not remember exactly the length of the  
25 barrel, did you?

1           A       I remember that.

2           Q       Did you measure it?

3           A       Excuse me?

4           Q       Did you measure it?

5           A       Did I measure it?

6           Q       Yes, ma'am.

7           A       No, I don't take time out to do that.

8           Q       Did not know when the weapon was a single

9       action or double action, did you?

10          A       No, I don't know.

11          Q       Don't even know that, do you?

12          A       No. Do you?

13          Q       Yes -- -- sorry, I shouldn't say that. I

14       retract that. You didn't know when it was a five

15       shot, six shot, or more, did you?

16          A       I knew it was a five or a six-shot.

17          Q       A five or a six?

18          A       Yes.

19          Q       You testified that you didn't know the

20       caliber?

21          A       No, I didn't.

22          Q       Did not know when it was a center fire or

23       rim fire, did you?

24          A       No, I did not.

25          Q       Did not know what kind of sights it had,

1 did you?

2 A What sights?

3 Q You don't know what sights are?

4 A No. What is it?

5 Q So you didn't know what kind of sights it  
6 had?

7 A I just knew how the gun looked when I seen  
8 it again.

9 Q And you don't know how many other guns are  
10 out there like it in its color?

11 A I know it's a lot of them because they sell  
12 them in stores like it.

13 Q You have seen ones like it?

14 A Yeah, I've seen them.

15 Q But when the officers asked you if that was  
16 the gun that you saw, you answered yes because you  
17 wanted to please the officers, didn't you?

18 A No, I didn't.

19 Q But in truth, you do not know if that was  
20 the gun?

21 A I know that is the gun.

22 MR. BOWEN: All right. That's  
23 all.

24 THE COURT: Anything further?

25 MR. BRITT: No other questions.

1 THE COURT: May the witness step  
2 down?

3 MR. BOWEN: Yes, sir.

4 THE COURT: May the witness be  
5 released?

6 MR. BOWEN: Yes, sir, for now.  
7 She is under our subpoena.

8 THE COURT: Thank you, ma'am,  
9 you're free to go.

10 MR. BRITT: Your Honor, we call  
11 Melinda Moore.

12 THE COURT: If you'll come up and  
13 be sworn, please, ma'am.

14 Place your left hand on the Bible,  
15 raise your right, and face Ms. Gaines to my  
16 left.

17 MELINDA D. MOORE,  
18 being first duly sworn was examined and testified as  
19 follows:

20 DIRECT EXAMINATION

21 THE COURT: If you'll have a  
22 seat, please. If you'll state your full  
23 name for the record, please?

24 THE WITNESS: Melinda Demetrin  
25 Moore.

1 THE COURT: Ms. Moore, you have a  
2 very soft voice, it's going to be necessary  
3 for to you speak directly into the  
4 microphone. Speak up loudly enough for  
5 everybody to hear. Spell your first name.

6 THE WITNESS: M E L I N D A.

7 THE COURT: Middle name?

8 THE WITNESS: D E M E T R I N.

9 THE COURT: And your last name,  
10 please?

11 THE WITNESS: Moore, M O O R E.

12 BY MR. BRITT:

13 Q Melinda, where do you live? Where do you  
14 live?

15 A Marion, South Carolina.

16 Q How long have you lived in Marion?

17 A Off and on, all my life.

18 Q How old are you?

19 A I'm 21.

20 Q Now, do you know the defendant?

21 A Yes, sir.

22 Q When did you have an occasion to first meet  
23 the defendant?

24 A It was July the 3rd.

25 Q July the 3rd of what year?

1 A '93.

2 Q Where did you meet?

3 A South of the Border.

4 Q How was it that you came to meet him on  
5 July the 3rd, 1993 at South of the Border?

6 A I was engaged to another boy, and me and  
7 him was arguing, and I was upset, and he met me and  
8 my cousin, he just started talking.

9 Q When you say he just met you, who are you  
10 referring to?

11 A To Trulik, as I know him. And Larry. They  
12 were together.

13 Q And did he introduce himself to you?

14 A Yes, sir.

15 Q What name did he use?

16 A Trulik.

17 Q Trulik what?

18 A Green.

19 Q He said there was someone else with him?

20 A Yes, sir.

21 Q Did he introduce that person to you?

22 A Yes, sir.

23 Q Who was that person?

24 A Larry.

25 Q Did he give you a last name?

1 A Yes, sir.

2 Q What name?

3 A Demery.

4 Q And after he introduced himself to you, did  
5 you engage in conversation?

6 A Yes, sir.

7 Q And approximately how long do you recall  
8 talking to him there at South of the Border?

9 A About maybe about 15, 20 minutes, something  
10 like that, I guess.

11 Q After talking with him, did there come a  
12 time when you left?

13 A Yes, sir.

14 Q Did the defendant leave?

15 A I don't think --

16 Q When you left how did you leave?

17 A I left with the people I came there with.

18 Q Where did you go?

19 A Home.

20 Q Now, after you met -- during the time that  
21 you talked with the defendant, did you ever give him  
22 your telephone number?

23 A Yes -- I can't remember, I can't be sure.

24 Q Back in July of 1993, is it your testimony  
25 you can't recall if you gave him your telephone or

1 not? Now, did there come a time after you met him on  
2 July the 3rd, 1993, when the defendant called you?

3 A Before I answer that question, I would like  
4 to ask the Judge something.

5 THE COURT: All right. Members  
6 of the jury, I'm going to ask that you step  
7 to the jury room. There's a matter of law  
8 the Court must take up at this time out of  
9 the hearing and presence of the jury.  
10 Please recall my instruction in that  
11 regard, don't worry or speculate about what  
12 takes place in the courtroom in your  
13 absence.

14 (Jury out at 10:30 a.m.)

15 THE COURT: Folks, I don't know  
16 what's coming, so out of an abundance of  
17 precaution, I'm excusing the jury so we can  
18 make a determination as to where we were.

19 Yes, ma'am, what is it you want to ask  
20 me.

21 THE WITNESS: He's asking me  
22 questions about things when I recall these  
23 things. But I have a diary, like  
24 day-to-day things, and if I can pull that  
25 out, I can be sure what I'm telling you.

1 Do you understand what I'm saying?

2 THE COURT: If I'm understanding  
3 you correctly, and if I'm wrong, please let  
4 me know, but I think I hear you saying, you  
5 want to make sure whatever your testimony  
6 is is accurate?

7 THE WITNESS: Yes, sir, because  
8 that's how I came --

9 THE COURT: You want to refer to  
10 your diary to --

11 THE WITNESS: Yes, sir.

12 THE COURT: There's certain  
13 evidentiary matters that have to be dealt  
14 with in that context, Mr. Britt has to lay  
15 a foundation for that.

16 Are you prepared to go forward?

17 MR. BRITT: Yes, sir.

18 THE COURT: Would you hand me my  
19 pen?

20 Thank you, ma'am. Ready to go  
21 forward, folks?

22 MR. BRITT: Yes, sir.

23 THE COURT: Bring the jury back  
24 in.

25 MR. BRITT: Do you want to do

1           that on voir dire?

2                       THE COURT:  I haven't heard a  
3           request.  Are you folks requesting voir  
4           dire?

5                       MR. THOMPSON:  Yes.

6                       THE COURT:  So the record is  
7           clear, are you going to offer the diary or  
8           testimony.

9                       MR. BRITT:  Your Honor, in  
10          talking with Ms. Moore, she recalls some  
11          things, but not everything.  The evidence  
12          is going to show she kept a diary at the  
13          time of these --

14                      THE COURT:  I guess I'm asking,  
15          are you going to proceed under past  
16          recollection refreshed or revived or past  
17          recollection recorded, or both.

18                      MR. BRITT:  Recorded.

19                      THE COURT:  That means the diary  
20          is the evidence.

21                      MR. BRITT:  The diary -- as to  
22          the notations that are in the diary -- as I  
23          said, she recalls certain things, but not  
24          everything.

25                      THE COURT:  Okay.  And I don't

1 mean to confuse. Are you going to offer  
2 the diary as the substantive evidence of  
3 past recollection recorded or are you going  
4 to refresh her recollection by allowing her  
5 to use the diary.

6 MR. BRITT: At this point, I  
7 would use the diary to refresh her  
8 recollection.

9 THE COURT: Do you folks want to  
10 be heard in that respect?

11 MR. THOMPSON: No, sir.

12 THE COURT: I hate to do this,  
13 but just so --

14 MR. THOMPSON: Your Honor --

15 THE COURT: Yes, sir.

16 MR. THOMPSON: If he's going to  
17 use it for past recollection, use the  
18 diary, past recollection, refreshed, then  
19 of course, he can present it to her. We  
20 would be requesting to see the diary. Now,  
21 we can do -- if that's what she's going to  
22 use to refresh her memory, we would be  
23 making that request.

24 MR. BRITT: For the record, just  
25 so everything is clear.

1 THE COURT: I'm looking at 803-5.

2 MR. BRITT: Yes, sir.

3 THE COURT: And that deals with  
4 recollection, recorded recollection.

5 MR. BRITT: Yes, sir, I'm also at  
6 liberty using that exception of the hearsay  
7 rule which would make the contents of the  
8 diary evidence.

9 THE COURT: There's to  
10 foundation. Foundation, to some extent, is  
11 the same but there's some additional  
12 matters as to one and not the other. You  
13 folks do it the way you want to. My job is  
14 to rule when it comes up.

15 MR. BRITT: Yes, sir, just so the  
16 record is clear, they have been provided on  
17 discovery copies of the entries that  
18 Ms. Moore made in her diary.

19 MR. THOMPSON: I've been provided  
20 a paper writing which purported to be her  
21 handwriting, I did not know it came from  
22 the diary.

23 Mr. Britt, if what I see in the  
24 notebook is what you're talking about, I've  
25 been provided that. I didn't know where it

1           came from, it was just a statement of hers  
2           in her handwriting. Didn't know it came  
3           from her.

4                        THE COURT: All right. Where are  
5           we? Are you asking for voir dire? I mean,  
6           it's a foundational matter, foundational  
7           matter for me to rule on in the presence of  
8           the jury? Unless there's some basis for  
9           believing that the foundation cannot be  
10          laid.

11                      MR. THOMPSON: I think if he lays  
12          it correctly, he can do it in front of the  
13          jury.

14                      THE COURT: Yes, sir.

15                      MR. BRITT: That's fine.

16                      THE COURT: Mr. Horne, bring the  
17          jury back in.

18                      THE WITNESS: What does that  
19          mean?

20                      THE COURT: Listen to Mr. Britt's  
21          questions, and I think that will answer  
22          your question.

23                      (Jury in at 10:36 a.m.)

24                      THE COURT: Mr. Britt, you may  
25          put additional questions to the witness.

1 BY MR. BRITT:

2 Q Melinda, after you met the defendant at  
3 South of the Border on July the 3rd, 1993, did you  
4 ever receive a phone call from him?

5 A Yes, sir.

6 Q And do you recall whether you received a  
7 phone call from him after meeting him on July the  
8 3rd, 1993?

9 A Yes, sir.

10 Q When was that?

11 A July the 5th.

12 Q And when you talked with him on July the  
13 5th, what if anything did he tell you?

14 A He told me that he was -- he was in Marion  
15 -- well, he was on the bypass, but that's in Marion  
16 too, and he was coming down, and he asked me for  
17 directions to my house. And I tried to give it to  
18 him, but I was confusing him, so my cousin got on the  
19 phone, and she gave them to him.

20 Q Now, prior to July the 5th, had you given  
21 the defendant your telephone number?

22 A Yes, sir.

23 Q What was your telephone number --

24 A 803 423-2493.

25 Q And did you see the defendant on July the

1 5th, 1993?

2 A Yes, sir.

3 Q Was anyone with him when he came to where  
4 you were?

5 A Yes, sir.

6 Q Who was with him?

7 A Larry Demery.

8 Q Were they in any type of car?

9 A Yes, sir.

10 Q What kind of car?

11 A A beige Ford Tempo.

12 Q Do you know who was driving?

13 A Yes, sir.

14 Q Who was driving?

15 A Larry.

16 Q On July the 5th of 1993, approximately how  
17 long or how much time did you spend with the  
18 defendant Larry Demery?

19 MR. THOMPSON: Well, object. I  
20 mean -- defendant Larry -- withdraw the  
21 objection.

22 MR. BRITT: Let me rephrase.

23 BY MR. BRITT:

24 Q On July the 5th of 1993, how long did the  
25 defendant Trulik and Larry Demery stay at your house?

1 A Not very long.

2 Q Did they stay the night?

3 A No, sir.

4 Q Did there come a time when they left?

5 A Yes, sir.

6 Q And after they left on July the 5th, 1993,  
7 when was the next time you had any conversation with  
8 the defendant?

9 A I spoke with him that same day. Well, that  
10 night, because when he got there, which it was like  
11 the wee hours of the morning, like about 1:00,  
12 something like that, between 1:00 and 2:00, and they  
13 left there, and they were supposed to be going to get  
14 a motel in Marion, so that we could go spend the  
15 night there.

16 Q And did you ever go to a motel in Marion  
17 with the defendant?

18 A No, because he called back and said that  
19 they couldn't get a room.

20 Q In the week following July the 5th of 1993,  
21 did you receive any telephone calls from the  
22 defendant?

23 A Like I stated before, I can't say that,  
24 unless --

25 Q At the time, in July of 1993, Melinda, were

1 you keeping a diary?

2 A Yes, sir, I was.

3 Q Did you keep a diary on a daily bays?

4 A Yes, sir.

5 Q Did you make entries in your diary about  
6 meeting the defendant and about your contacts either  
7 on the telephone or in person?

8 A Yes, sir.

9 Q -- with him?

10 A Yes, sir.

11 Q Do you have that diary with you?

12 A Yes, sir.

13 Q Would it help you refresh your memory if  
14 you could refer and read the entries in your diary to  
15 help you recall and possibly testify in that matter?

16 A Yes, sir.

17 Q Do you have those with you on the stand?

18 A Yes, sir.

19 MR. BRITT: May I approach?

20 THE COURT: Yes, sir. Ms. Moore,  
21 if you will bear with us. Listen to  
22 Mr. Britt's questions, and if you will  
23 refer to any document that he may give you.

24 THE WITNESS: Yes, sir.

25 (State's Exhibit 63 was  
marked for identification.)

1 MR. BRITT: May I approach?

2 THE COURT: Yes, sir.

3 BY MR. BRITT:

4 Q Melinda, I'll show you what has been marked  
5 as State's Exhibit Number 63. Do you recognize the  
6 handwriting in this six page paper writing?

7 A Yes, sir.

8 Q And how is it that you recognize the  
9 handwriting?

10 A Because it's mine.

11 Q And for purposes of the record, can you  
12 identify what this six page paper writing is?

13 A It's from my diary.

14 Q When you say it's from your diary, is that  
15 a photostatic copy or Xerox copy of the entries that  
16 are in your diary that you were maintaining back in  
17 July of 1993? Do you understand the question?

18 A No, sir.

19 Q Is this a Xerox copy of the pages from your  
20 diary --

21 THE COURT: He's asking you when  
22 that is the original or is that a copy.

23 THE WITNESS: That's not the  
24 original.

25 BY MR. BRITT:

1           Q     Now, the original, do you have that with  
2 you in court?

3           A     Yes, sir.

4           Q     Can you produce that, please?

5           A     Yes, sir.

6           Q     Now, when you say that this is your  
7 handwriting, which portion of State's Exhibit Number  
8 63 is your handwriting?

9           A     All of it.

10          Q     And did you write on a separate piece of  
11 paper the information that -- well -- that appears in  
12 State's Exhibit Number 63 based upon the entries of  
13 your diary?

14          A     Yes, sir, towards the questions that I was  
15 asked.

16          Q     And the information that's contained in  
17 State's Exhibit Number 63 is the same information  
18 that's contained in your diary?

19                   MR. THOMPSON: Object to leading.

20                   THE COURT: Foundational matter.

21                   Overruled. You may answer.

22                   THE WITNESS: Yes, it is.

23           BY MR. BRITT:

24           Q     Would it help you to refresh your memory to  
25 read State's Exhibit Number 63?

1 A Yes, sir.

2 Q If you will read State's Exhibit Number 63  
3 to yourself.

4 A (Witness complies).

5 Q You've read State's Exhibit Number 63?

6 A Yes, sir.

7 Q After reading State's Exhibit Number 63,  
8 does it refresh your memory as to the events of July  
9 of 1993?

10 A Yes, sir.

11 MR. BRITT: The record will  
12 reflect that I have State's Exhibit Number  
13 63 in my hand.

14 THE COURT: Yes, sir.

15 MR. BRITT: If the record will  
16 reflect I'm returning to my seat with the  
17 exhibit.

18 THE COURT: Yes, sir.

19 BY MR. BRITT:

20 Q Melinda, in the week following July the 5th  
21 of 1993, did the defendant call you on the telephone?

22 A He called -- yes, sir.

23 Q And do you recall how many times he called  
24 you?

25 A No, sir, I can't recall how many times.

1 Q After you saw him on July the 5th of 1993,  
2 did there come a time when you saw the defendant  
3 again in Marion, South Carolina?

4 A Yes, sir.

5 Q Do you recall the date?

6 A Yes, sir.

7 Q What date was that?

8 A July 15th.

9 Q When you saw him on July 15th of 1993, were  
10 you aware that he was coming to Marion?

11 A Yes, sir.

12 Q And how were you aware that he was coming  
13 to Marion on July the 15th, 1993?

14 A Because he called me July the 14th and he  
15 also called me the morning of July 15th.

16 Q When you say he called you on the morning  
17 of July 15th, do you recall approximately -- strike  
18 that. On July the 15th, when you saw the defendant  
19 in Marion, was anyone with you?

20 A Yes, sir.

21 Q Who was with you?

22 A Larry Demery.

23 Q Were they driving a car?

24 A Yes, sir.

25 Q What kind of car did they have?

1 A A royal blue Cougar.

2 Q Who was driving when you saw them?

3 A Larry.

4 Q And where were you at the time you saw them  
5 in this royal blue Cougar?

6 A At my house.

7 Q Was anyone with you at your house?

8 A Yes, sir.

9 Q Who was there?

10 A My cousin.

11 Q What is your cousin's name?

12 A Patricia Williams.

13 Q And when the defendant and Larry Demery  
14 came to your house, what if anything did you do after  
15 that?

16 A I dissed her so we could go leave and go  
17 get Lee.

18 Q You ditched who?

19 THE COURT: Dissed.

20 BY MR. BRITT:

21 Q What do you mean by dissed her?

22 A I just made up something because Larry  
23 didn't want to be with her, so I just made up  
24 something.

25 Q Now, after you dissed her, you went to get

1 someone, is that correct?

2 A Yes, sir.

3 Q Who did you go get?

4 A Dee, Delores.

5 Q When you say Dee, are you referring to  
6 Delores Sullivan?

7 A Yes, sir.

8 Q Where did you go?

9 A I went to her house.

10 Q Was she there?

11 A Yes, sir.

12 Q And who went with you to her house?

13 A Me, Larry, and Trulik.

14 Q When you went to Dee's house, what did you  
15 do there?

16 A I introduced her to Larry and me and her  
17 talked, and I asked her was she straight? And then I  
18 asked him was they straight. And then we just  
19 decided to go back to Rowland.

20 Q When you say that we decided to go back to  
21 Rowland, who is we?

22 A All of us, me, Larry, Trulik, and Dee, but  
23 the plan before we even got with Dee was to go back  
24 anyway.

25 Q Who had you made this plan with?

1           A       With Trulik.

2           Q       Now, when you went to Dee's house and after  
3 getting Dee, who drove the Rowland?

4           A       Dee.

5           Q       And when Dee drove this royal blue Cougar  
6 to Rowland, where you did go first?

7           A       We went to some house that's supposed to be  
8 his grandmother's house.

9                         MR. THOMPSON:  Object..

10          BY MR. BRITT:

11           Q       When you say supposed to be his  
12 grandmother's house?

13                         THE COURT:  Let me hold the  
14 objection in abeyance.  Complete your  
15 question.

16          BY MR. BRITT:

17           Q       When you say supposed to be his  
18 grandmother's house?

19           A       Yes.

20           Q       Who did?

21           A       He did.

22           Q       Who is he?

23           A       Trulik.

24                         THE COURT:  Overruled, for the  
25 record.

1 BY MR. BRITT:

2 Q Was anyone at that house?

3 A Yes, sir.

4 Q Who was at that house?

5 A His mother.

6 Q And how do you know it was his mother?

7 A That's what he told me.

8 Q And did you get out of the car?

9 A Yes, sir.

10 Q Did you go inside the house?

11 A No, sir.

12 Q Where was it that you saw his mother?

13 A Outside.

14 Q And was there any conversation between the  
15 defendant and his mother at that time?

16 A Yes, sir.

17 Q Did you observe the defendant give anything  
18 to his mother at that time?

19 A Yes, sir.

20 Q What if anything did you observe the  
21 defendant give his mother at that time?

22 A A hundred dollar bill.

23 Q Had you seen where the defendant had gotten  
24 that hundred dollar bill?

25 A Yes, sir.

1 Q Where was that?

2 A Out of the glove compartment.

3 Q Was there any other money that you saw in  
4 the glove compartment?

5 A Yes, sir.

6 Q Can you describe --

7 A Not -- not at that time.

8 Q Did there come a time when you saw some  
9 money in the glove compartment of that Cougar?

10 A Yes, sir.

11 Q When was that?

12 A The car broke down, and then Larry put some  
13 more money in there, and when he opened it up, that's  
14 when we saw all the money.

15 Q When you say you saw all the money, can you  
16 describe what you saw?

17 A As in bills? I can't.

18 Q How was the money packaged?

19 A Like one just rolled up.

20 Q And did you see anything else in the glove  
21 compartment at that time?

22 A Just -- yes, sir.

23 Q What if anything did you see?

24 A A gun.

25 Q Can you describe the gun that you saw in

1 the glove compartment?

2 A A black gun.

3 Q And are you familiar with guns?

4 A Not all kinds of guns.

5 Q Are you --

6 THE COURT: I apologize. Have we  
7 established a time frame for this?

8 MR. BRITT: Yes, sir.

9 THE COURT: Okay.

10 MR. BRITT: Just so the record is  
11 clear --

12 BY MR. BRITT:

13 Q When the defendant and Larry Demery came to  
14 your house with the blue Cougar, when was that?

15 A July 15th.

16 THE COURT: I want to make sure,  
17 I apologize.

18 BY MR. BRITT:

19 Q When you went to this house, the defendant  
20 told you that was his mother's --

21 A Grandmother's.

22 Q Excuse me. When was that?

23 A July 15th.

24 Q When you saw the defendant give his mother  
25 a one hundred dollar bill, when was that?

1           A       July 15th.

2           Q       And when you saw this money in the glove  
3 compartment of that blue Cougar, when was that?

4           A       July 15th.

5           Q       Now, after the defendant gave his mother a  
6 one hundred dollar bill, did you, Dee, Larry Demery,  
7 and the defendant stay there at the house?

8           A       No, sir.

9           Q       Did you leave?

10          A       Yes, sir.

11          Q       Where did you go?

12          A       To a nasty beige and white trailer.

13          Q       And was there anybody there when you went  
14 to that trailer?

15          A       No, sir.

16          Q       Do you know whose trailer it was?

17          A       Trulik told me that it was him -- it was  
18 his and Larry's.

19          Q       Did you stay there?

20          A       For a little while, not that long.

21          Q       What if anything did you do while you were  
22 at that trailer?

23          A       We tried to go in that nasty trailer.

24          Q       When you say you tried to go in it, what do  
25 you mean?

1           A       It was too nasty for us to stay in there.

2           Q       Did you go inside and spend any time there  
3 at all?

4           A       We went inside and looked around, and then  
5 me and Dee went back outside.

6           Q       Now, when you and Dee went back outside,  
7 did you get back in the car?

8           A       Yes, sir.

9           Q       What happened when you and Dee got back in  
10 the car?

11          A       We stole some money.

12          Q       And from where did you steal money?

13          A       Out of the glove compartment.

14          Q       How much money did you take?

15          A       \$25.00 apiece.

16          Q       After you got this money, where was the  
17 defendant at that time?

18          A       In the house.

19          Q       Did there come a time when he and Larry  
20 came out to the car?

21          A       Yes, sir.

22          Q       When they came out to the car, what did you  
23 do and where did you go?

24          A       We left there and went to a motel.

25          Q       Do you recall where that motel was?

1           A       It's near a main highway, you got to go  
2 down and, like, a downgrade or something.

3           Q       Do you know what town you were in?

4           A       I guess --

5                   MR. THOMPSON:   Object.

6                   THE WITNESS:   No, I can't tell.

7 BY MR. BRITT:

8           Q       Had you ever been to the Rowland area  
9 before?

10          A       Yes, sir.

11          Q       Had you ever been to Lumberton before?

12          A       Yes, sir.

13          Q       Do you recall if the motel was in Rowland  
14 or if it was in Lumberton?

15          A       It's up here, in Lumberton.

16          Q       When you got to this motel, what happened?

17          A       Larry went in and registered for two rooms.

18          Q       What car did you have at that time?

19          A       We were still in the same car, a royal blue  
20 Cougar.

21          Q       At any time on that day, Dee, did you  
22 see --

23          A       Melinda.

24          Q       Excuse me. Melinda, at any time on July  
25 15th, 1993, did you see a video camera?

1           A       Yes, sir, a camcorder.

2           Q       A camcorder?

3           A       Yes, sir.

4           Q       Where did you see that camcorder?

5           A       It was in the car.

6           Q       In which car?

7           A       The gray and blue Cougar.

8           Q       At any time did anyone take the camcorder

9           out of the gray and -- the blue Cougar?

10          A       Yes, sir.

11          Q       Who took it out?

12          A       Trulik.

13          Q       How was -- was the camcorder inside

14          anything?

15          A       A bag.

16          Q       What kind of bag?

17          A       Like the bags that camcorders be in, come

18          in.

19          Q       What color was it?

20          A       White.

21          Q       Did you ever look in the bag?

22          A       Yes, sir.

23          Q       When you looked in the bag, did you see

24          anything other than the camcorder?

25          A       Yes.

1 Q What did you see?

2 A Another gun.

3 Q Can you describe the gun that you saw in  
4 the bag?

5 A A long -- a gun with a long thing where the  
6 bullet come out of.

7 MR. BRITT: May I approach?

8 THE COURT: Yes, sir.

9 BY MR. BRITT:

10 Q I'll show you what has been marked as  
11 State's Exhibit Number 59, a plastic bag containing  
12 an object. Do you recognize the object that is  
13 inside the bag?

14 A Yes, sir.

15 Q And how do you recognize the object that's  
16 inside the bag?

17 A It looks like the gun that was in that bag  
18 with the camcorder.

19 Q Now, prior to looking in the bag where the  
20 camcorder was, had you ever seen a gun similar to the  
21 one marked as State's Exhibit Number 59?

22 A Had I ever seen that gun?

23 Q Yes.

24 A No, sir.

25 Q At the motel, did the defendant give you

1 anything?

2 A Yes, sir.

3 Q What did he give you?

4 A He gave me a chain with a charm on it that  
5 said Number One Grand and gave me a gold rope  
6 bracelet.

7 Q How long did you stay at the motel?

8 A A couple of hours.

9 Q When you left the motel, was it light or  
10 dark outside?

11 A Dusk.

12 Q And when you left the motel, where did you  
13 go?

14 A Home.

15 Q Who took you home?

16 A Larry, Trulik, and Dee.

17 Q When you went home, did you have an  
18 occasion after July the 15th to talk to the  
19 defendant?

20 A Yes, sir.

21 Q When did you next talk to him?

22 A He called me on the 16th, the 19th, and  
23 some way in the 20th, and then on the 25th.

24 Q Now, on the 23rd of July, do you recall  
25 when it was that he called you?

1 MR. THOMPSON: Object.

2 THE COURT: Sir?

3 MR. THOMPSON: Object, assume  
4 matters not in evidence.

5 THE COURT: If you'll bear with  
6 me, please, folks. Page seventy three,  
7 line 18, the objection is sustained.

8 BY MR. BRITT:

9 Q On July the 23rd, 1993, did the defendant  
10 call you?

11 A Yes, sir.

12 Q Do you recall how many times that he called  
13 you on July 23rd, 1993?

14 A A lot.

15 Q And when you say "a lot" you mean more than  
16 once?

17 A Yes, sir.

18 Q When was the first time that he called you  
19 on July 23rd, 1993?

20 A That morning.

21 Q Do you recall approximately what time?

22 A I think about 9:00.

23 THE COURT: I'm sorry, ma'am, you  
24 have to speak up.

25 THE WITNESS: About 9:00.

1 BY MR. BRITT:

2 Q And when he called you on the morning of  
3 July the 23rd, did you actually talk to him?

4 A Yes, sir.

5 Q Did he tell you where he was calling you  
6 from?

7 A No, he didn't -- no, no, sir.

8 Q And on the morning of July the 23rd, do you  
9 know how long you talked with him?

10 A Couple of minutes, just enough time to make  
11 plans.

12 Q And when you say to make plans, what if  
13 anything did the two of you talk about?

14 A About me going to stay -- about me and Dee  
15 going to stay the night, spend the night in -- here.

16 Q Did you talk about how you were to go meet  
17 them to stay the night?

18 A Yes, sir.

19 Q And how were you to go meet --

20 A He was supposed to -- him and Larry was  
21 going to come pick us up.

22 Q And during the day of July the 23rd, you've  
23 testified you received more than one phone call. On  
24 July the 23rd, 1993, did the defendant and Larry  
25 Demery come pick you up in Marion, South Carolina?

1           A       On the night of the 23rd?

2           Q       July the 23rd, 1993, did the defendant and  
3 Larry Demery come pick you up?

4           A       Yes, sir.

5           Q       Do you recall what time of day or night  
6 when they came?

7           A       It was nighttime.

8           Q       Were they driving a car?

9           A       Yes, sir.

10          Q       What kind of car were they driving?

11          A       A red or a maroon Lexus.

12          Q       Who was driving?

13          A       Daniel -- Larry.

14          Q       And where did they pick you up?

15          A       By Safeway.

16          Q       Safeway is what?

17          A       A store.

18          Q       When you had talked with them earlier, when  
19 you talked with the defendant earlier, had you told  
20 him to pick you up any particular place?

21          A       At my house.

22          Q       Did you wait at your house for any time for  
23 the defendant to pick you up?

24          A       I waited long enough.

25          Q       And when you say that you waited long

1 enough, did -- you left your house?

2 A Yes.

3 Q And where did you go?

4 A Up there by Safeway, walking to Safeway.

5 Q Now, when the defendant and Larry Demery  
6 picked you up in this red Lexus at the Safeway store,  
7 was Dee with you?

8 A No, Dee wasn't with me, my cousin was with  
9 me.

10 Q Now, which cousin was with you?

11 A Patricia Williams.

12 Q Did you get in the red Lexus?

13 A Yes, sir, after me and him finished  
14 arguing.

15 Q When you say you and him finished arguing,  
16 what are you talking about?

17 A Me and Trulik.

18 Q What did you argue about?

19 A Because I wasn't at home, I wasn't where I  
20 was supposed to be, he said.

21 Q After you got into the Lexus, where did you  
22 go?

23 A We went to the Casbar.

24 Q What is the Casbar?

25 A A club.

1 Q And when you got into the Lexus the night  
2 of July the 23rd, 1993, did you see a telephone in  
3 that car?

4 A Yes, sir.

5 Q Did someone show you the phone or was it  
6 visible where you could see it?

7 A It was visible where I could see it.

8 Q At any time after you got into the car on  
9 July did 23rd, 1993, did you place any phone calls on  
10 that telephone?

11 A Yes, sir.

12 Q Who did you call?

13 A I called my house, my mother's house, and  
14 Dee's house.

15 Q Now, why did you call your house?

16 A To lie to my grandmom and told her I was  
17 going to baby-sit so I could go spend the night with  
18 Trulik.

19 Q Had you told your grandmother that you were  
20 going to go anywhere with the defendant?

21 A No, sir.

22 Q Why did you call your cousin's house --  
23 excuse me -- why did you call Dee's house?

24 A I was looking for Dee.

25 Q Had you talked to Dee earlier in the day?

1 A No.

2 Q And when you called Dee's house, did you  
3 talk with Dee?

4 A No, I spoke with her mother, and her mother  
5 said she wasn't home.

6 Q And when you went to the Casbar --

7 A Casbar.

8 Q Casbar, excuse me -- why did you go there?

9 A So Patricia could get with her boyfriend.

10 Q And from the Casbar, where did you go?

11 A To Udge.

12 Q And for the record, what is Udge?

13 A Another club.

14 Q And why did you go there?

15 A Looking for Dee.

16 Q Did you find Dee at the Udge?

17 A Yes, sir.

18 Q Where was she?

19 A She was inside.

20 Q Did anybody get out of the car?

21 A I went -- I went inside.

22 Q Where was the defendant when you got out of  
23 the car?

24 A When I first got out of the car, they were  
25 still inside the car.

1 Q When you say they, who are you talking  
2 about?

3 A Larry and Trulik.

4 Q When you found Dee inside the Udge, what  
5 did you tell him?

6 A I told -- I said guess what? She is like  
7 what --

8 MR. THOMPSON: Well, I object --  
9 well, that's all right. Withdraw the  
10 objection.

11 THE COURT: Okay.

12 BY MR. BRITT:

13 Q What did you say to Dee?

14 A I said, guess what? She said, what? I  
15 said, Larry and Trulik is outside.

16 Q Did you say anything about the car they  
17 were driving?

18 A Of course.

19 Q What did you tell her about the car?

20 A I told her they was driving a fat Lexus and  
21 let's go.

22 Q And when you say a fat Lexus, what do you  
23 mean by that?

24 A A bad car.

25 Q After telling Dee that, what did you and

1 Dee then do?

2 A Run to the car.

3 Q When you got to the car, where was it  
4 parked?

5 A A cross the street from the club.

6 Q And at that time, was anybody inside the  
7 car?

8 A No, sir.

9 Q Now, when you saw the defendant on July the  
10 23rd, 1993 with this Lexus, did you ask him where he  
11 had gotten it?

12 A Yes, sir.

13 Q What did he tell you?

14 A He had then told me that -- he had a car  
15 that was in the shop, so he told me that was the car  
16 that was in the shop, it came from Philadelphia, it  
17 was the car that was in the shop.

18 Q He told you the car came from Philadelphia,  
19 Pennsylvania?

20 A Yes, sir.

21 Q And when you and Dee came out of the Udge  
22 and went to the car, what did you do after that?

23 A When we came out of the club, we didn't get  
24 in the car right then, we talked so that we could get  
25 Dee to go to North Carolina with us and he made a

1 phone call.

2 Q Who made a phone call?

3 A Trulik.

4 Q Do you know who he called?

5 A He --

6 Q Did he tell you who he called?

7 A Yes, sir.

8 Q Who did he tell you he called?

9 A Supposed to be his brother.

10 Q Now, when you were at the Casbar, when you  
11 dropped Patricia off --

12 A Yes, sir.

13 Q -- was there a time when you were at the  
14 Casbar when you saw a gun?

15 A Yes, sir.

16 Q Who had a gun?

17 A Trulik did.

18 Q Can you describe the gun that he had at the  
19 Casbar?

20 A It looked like the same gun that you  
21 already showed me as State's Exhibit something.

22 Q You're referring to the gun that I hold in  
23 my hand that's marked as State's Exhibit Number 59?

24 A Yes, sir.

25 Q What did you see him do with the gun there

1 at the Casbar?

2 A He just pulled it up so a person could see  
3 it.

4 Q When you say he just pulled it up so a  
5 person could see it, had something happened prior to  
6 that?

7 A Yes, sir.

8 Q What if anything had happened prior to  
9 that?

10 A When me and Patricia got out of the car, we  
11 ran into Billy, this guy that had liked me, and he  
12 jacked me up because I was with him.

13 Q And what did the defendant do?

14 A Trulik came over there.

15 Q With what?

16 A With the gun, but not like that, now, he  
17 had the gun in his pants.

18 THE COURT: Ma'am, you have to  
19 describe what happened.

20 THE WITNESS: Billy jacked me up  
21 and Trulik got out of the car and walked  
22 over there to where the incident happened,  
23 where Billy jacked me up at, and he had a  
24 gun but he had it in his pants. And he  
25 just pulled it up enough where Billy could

1 see the gun so he would get the point. And  
2 then Billy asked was that my man, and I --

3 MR. THOMPSON: Object to what  
4 Billy --

5 THE COURT: For what purposes is  
6 this being offered?

7 MR. BRITT: This last statement?

8 THE COURT: Yes.

9 MR. BRITT: I will with --

10 THE COURT: Objection is  
11 sustained. Members of the jury, don't  
12 consider the last comment of the witness as  
13 to what someone else said. That's not to  
14 take part in your deliberations in this  
15 matter in any respect.

16 BY MR. BRITT:

17 Q After you were at the Casbar, you went to  
18 the Udge?

19 A Yes, sir.

20 Q Found Dee?

21 A Yes, sir.

22 Q And you and Dee walked out to the car?

23 A We ran out to the car.

24 Q Now, at the car, you said there was a  
25 conversation where you all talked to Dee about going

1 to Lumberton?

2 MR. THOMPSON: Object the  
3 leading, Your Honor.

4 THE COURT: Folks, this is  
5 probably a good point for us to take a  
6 recess.

7 Ladies and gentlemen, we're going to  
8 be at recess. Let me give you folks until  
9 11:30. Please reassemble in the jury room  
10 at 11:30, and also please recall that it is  
11 your duty to abide by all prior  
12 instructions of the Court concerning your  
13 conduct.

14 Everyone please remain seated, the  
15 members of the jury are excused until  
16 11:30.

17 (Jury out at 11:11 a.m.)

18 THE COURT: Anything from either  
19 counsel?

20 MR. BRITT: No, sir.

21 THE COURT: We're at ease until  
22 11:30.

23 (Brief recess.)

24 THE COURT: Let the record  
25 reflect that all counsel are present, the

1 defendant is present in open court.

2 Ms. Moore, if you'll again take the  
3 witness stand, please, ma'am.

4 Any matters before we bring the jury  
5 back in?

6 MR. BRITT: I just want to return  
7 Defendant's Exhibit Number 13 to him.

8 THE COURT: You folks ready to go  
9 forward?

10 MR. BRITT: Yes, sir.

11 THE COURT: Bring the jury in, if  
12 you will, Mr. Horne.

13 You can have a seat, ma'am. I'm  
14 sorry.

15 (Jury in at 11:32 a.m.)

16 THE COURT: Mr. Britt.

17 MR. BRITT: Yes, sir.

18 BY MR. BRITT:

19 Q Melinda, on July the 23rd, 1993, you  
20 testified that the defendant and Larry Demery came to  
21 your house with the red Lexus, is that correct?  
22 Excuse me, picked you up at the Safeway in a red  
23 Lexus, is that correct?

24 A Yes, sir.

25 Q And from there, you went to a club called

1 the Casbar?

2 A Yes, sir.

3 Q And from there, you went to a club called  
4 the Udge?

5 A Yes, sir.

6 Q And at the Udge, you found Dee Sullivan?

7 A Yes, sir.

8 Q And after finding Dee at the Udge, you've  
9 testified that --

10 MR. THOMPSON: I object. Your  
11 Honor, to leading.

12 THE COURT: Summarizing?

13 MR. BRITT: Yes.

14 THE COURT: At this point the  
15 objection is overruled.

16 BY MR. BRITT:

17 Q At the Udge, you and Dee ran to the car?

18 A Yes, sir.

19 Q Now, at the car, you testified there was a  
20 conversation.

21 MR. THOMPSON: Object to the form  
22 of the question.

23 THE COURT: Overruled.

24 BY MR. BRITT:

25 Q Who was involved in that conversation?

1           A     Me, Dee, Trulik, and Larry.

2           Q     And in that conversation -- strike that.

3     After that conversation, did you, Dee, the defendant,  
4     and Larry go anywhere?

5           A     Yes, sir.

6           Q     Where did you go?

7           A     Back to Rowland.

8           Q     Who drove?

9           A     Dee.

10          Q     And when you say she drove, what car was  
11     she driving?

12          A     The red Lexus.

13          Q     Where did you sit?

14          A     In the back seat with Trulik.

15          Q     And where did Larry sit?

16          A     In the front seat on the passenger side  
17     with Dee.

18          Q     Now, after Dee started driving the Lexus  
19     there in Marion, where did you go?

20          A     Back to Rowland.

21          Q     Where in Rowland did you go?

22          A     To that trailer.

23          Q     Now, when you say that trailer, what  
24     trailer are you talking about?

25          A     The trailer that belongs to him and Larry.

1 Q And is that the trailer that you had been  
2 to earlier on July the 15th, 1993?

3 A Yes, sir.

4 Q And when you got to that trailer on July  
5 the 23rd, 1993, was anyone there?

6 A Inside?

7 Q Yes, ma'am.

8 A No, sir.

9 Q Now, while Dee was driving from Marion to  
10 Rowland, do you remember the defendant saying  
11 anything to her?

12 A Yes, sir.

13 Q And what if anything did the defendant say  
14 to her while she was driving from Marion to Rowland?

15 A He said if the police -- we're going to see  
16 how good you can drive, if the police get behind you,  
17 don't stop.

18 Q Did you ever ask him why he told her that?

19 A No, I just didn't pay it no attention.

20 Q When you got to this trailer on July the  
21 23rd, where was the car parked?

22 A In the back.

23 Q When you say the car was parked in the  
24 back, what do you mean?

25 A Parked behind the trailer.

1 Q And who parked the car there?

2 A Dee.

3 Q Had anyone told her to park the car there?

4 A Yes, sir.

5 Q Who told her to park the car behind the  
6 trailer?

7 A Trulik and Larry.

8 Q Were there other trailers near the area  
9 where this trailer was that you went to?

10 A Yes, sir.

11 Q Do you recall approximately how many  
12 trailers that you saw?

13 A No, sir. I just thought it was a mobile  
14 park.

15 Q And how would you describe that mobile home  
16 park in terms of its size?

17 A Not very big.

18 Q After you got there on the 23rd, do you  
19 recall whether there was a pond or a lake near by?

20 A Behind.

21 Q Behind what?

22 A Them trailers.

23 Q And did you ever go to the pond or this  
24 lake behind these trailers?

25 A Yes, we walked back over there.

1 Q Who went with you over there?

2 A All of us.

3 Q How did you get there?

4 A Get where, we walked over there.

5 Q Did you have to walk through some woods or  
6 was it an open field?

7 A Went through some trees.

8 Q When you went to the pond or the lake, what  
9 did the four of you do there?

10 A Looked at the water and talked.

11 Q And after you were there, where did you go?

12 A Back to the house.

13 Q At any time while you were there at the  
14 trailer on July the 23rd, did anyone come to that  
15 trailer?

16 A No, sir.

17 Q Was the defendant's mother there?

18 MR. THOMPSON: Object.

19 THE COURT: Do you want --

20 MR. THOMPSON: She said no, sir.

21 THE COURT: Overruled.

22 BY MR. BRITT:

23 Q Was the defendant's mother there?

24 A No, sir.

25 Q Did you spend the night at that trailer?

1 A On the night of the 23rd? Yes, sir.

2 Q And who all spent the night at the trailer?

3 A Me and Trulik, Dee and Larry.

4 Q Now, did you stay all night?

5 A Yes, sir.

6 Q The next morning, was everyone, that is,  
7 was the defendant, Larry, Dee, were they still there?

8 A Yes, sir.

9 Q And the next morning on July the 24th of  
10 1993, was the car still there?

11 A Yes, sir.

12 Q And on July the 24th of 1993, did the four  
13 of you, that is, you, Dee, Larry, and the defendant,  
14 go anywhere in that car?

15 A Yes, sir.

16 Q Where did you go?

17 A We was going home.

18 Q And when you say you were going home, where  
19 were you going?

20 A To Marion.

21 Q Did you go directly from the trailer to  
22 Marion?

23 A Well, we was leaving, he made Dee turn back  
24 around to go back to the house, so that he could get  
25 that camcorder.

1 THE COURT: Now, you need to  
2 identify who you're talking about, ma'am.

3 BY MR. BRITT:

4 Q Who made Dee turn back around?

5 A Trulik.

6 Q And did she go back to the trailer?

7 A Yes, sir.

8 Q Did the defendant get out of the car and go  
9 inside and get anything?

10 A Yes, sir.

11 Q What if anything did he bring back out of  
12 the trailer?

13 A That camcorder.

14 Q Did he have the camcorder in the bag or was  
15 it simply the camcorder?

16 A Both.

17 Q And after he got the camcorder, where did  
18 you go?

19 A Little Rock.

20 Q Where is Little Rock?

21 A Like a -- it's not in the city limit, town  
22 limits of Dillon, it's on the outskirts of Dillon.

23 Q What state is that in?

24 A South Carolina.

25 Q And why did you go to Little Rock?

1 A To pick up my little sister.

2 Q And who was your little sister staying with  
3 in Little Rock?

4 A Her mother.

5 Q And after you picked -- at any time on July  
6 the 24th, 1993, did you make any phone calls from  
7 that Lexus?

8 A I can't recall.

9 THE COURT: You need to keep your  
10 voice up.

11 THE WITNESS: I can't recall.

12 BY MR. BRITT:

13 Q Do you recall anyone making any phone calls  
14 in that Lexus when you were in it on July 24th, 1993?

15 A I can't recall.

16 Q After going to Little Rock and picking up  
17 your sister, where did -- who was there with you at  
18 that time?

19 A Was where?

20 Q Who was in the car?

21 A Me, Trulik, Dee, and Larry, and then my  
22 sister after.

23 Q Who was driving?

24 A Dee.

25 Q And after you picked up your sister in

1 Little Rock, where did the five of you go?

2 A We proceeded to go to Marion.

3 Q And when you got to Marion, where did you  
4 go and what did you do?

5 A We went to Mullins because we had to go  
6 pick up Patricia.

7 Q Was your sister -- your little sister still  
8 in the car with you when you went to Mullins?

9 A Yes, sir.

10 Q From Mullins, where did you go?

11 A To Marion.

12 Q And who was dropped off where in Marion?

13 A Me and my sister was dropped off at home,  
14 at my house.

15 Q When you were dropped off, you and your  
16 sister were dropped off at your house, who was in the  
17 car at that time?

18 A Dee, and -- Dee, Trulik, and Larry.

19 Q Prior to being dropped off at your house or  
20 there at your house after you got out of the car, did  
21 you have any conversation with the defendant about  
22 doing anything later that day?

23 A About going to the beach.

24 Q And when did you have that conversation  
25 with him about going to the beach?

1 A At my house.

2 Q And what beach were you going to go to?

3 A Myrtle Beach.

4 Q Did you go from your house to the beach?

5 A No, sir.

6 Q Did the defendant say anything about  
7 needing to get anything before going to the beach?

8 A He said he had to go back to North Carolina  
9 to get some money so that we could go to the beach.

10 Q And after they dropped you off at your  
11 house, did you see the defendant again on July the  
12 24th, 1993?

13 A July the what?

14 Q Excuse me, July 24th, 1993?

15 A No, sir.

16 Q Did he ever come back to take you to the  
17 beach?

18 A No, sir.

19 Q Melinda, in July of 1993, did you own any  
20 kind of car?

21 A No.

22 Q Did you own a red Nissan in July of 1993?

23 A No, I don't own no red Nissan now. I don't  
24 have no license.

25 Q At any time after you first saw that red

1     Lexus, did you and Dee ever take that car back to  
2     South Carolina without the defendant or Larry Demery  
3     being in the car?

4             A     No, we --

5                     MR. THOMPSON:  Objected.

6                     THE COURT:  Overruled.

7     BY MR. BRITT:

8             Q     On July the 25th of 1993, did you have that  
9     red Lexus in Marion, South Carolina?

10            A     July what?

11            Q     The 25th?

12            A     No.

13            Q     After July the 24th, 1993, did you ever see  
14     that red Lexus again?

15            A     Not after the 24th.

16            Q     After July the 24th, 1993, did you ever see  
17     the defendant again?

18            A     No.

19            Q     After July the 24th, 1993, did the  
20     defendant ever call you again?

21            A     Yes, sir.

22            Q     Do you recall how many times he called you  
23     after July the 24th, 1993?

24            A     Called me period?

25            Q     Called you, yes?

1           A       He called me on the 14th of August and then  
2 started calling me December of last year.

3           Q       And when you talked with him on August the  
4 14th of 1993, did he say anything to you about the  
5 red Lexus?

6           A       No. He told me -- excuse me, I take that  
7 back. He had told me that they didn't have that car,  
8 that he didn't have that Lexus no more because he had  
9 to sell the car to get Larry out of jail.

10                   MR. THOMPSON: Object as to  
11 foundation as when that was said.

12                   THE COURT: The specific question  
13 was on August 14th.

14                   MR. THOMPSON: Oh, okay.

15                   That's correct. Withdraw that.

16                   THE COURT: Okay.

17 BY MR. BRITT:

18           Q       After you last saw the defendant on July  
19 the 24th, 1993, did you have an occasion to see and  
20 to talk with Dee around August the 1st of '93?

21           A       Yes.

22           Q       And did you see her, did you talk to her --

23           A       I talked to her over the phone.

24           Q       And when you talked with Dee on August the  
25 1st of 1993, did she say anything to you about

1 receiving a telephone call from the defendant?

2 A Yes, sir.

3 Q What if anything did she tell you --

4 A She told me --

5 MR. THOMPSON: Object.

6 THE COURT: For what purpose is  
7 it being offered?

8 MR. BRITT: To corroborate her  
9 testimony.

10 THE COURT: Do you want a  
11 limiting instruction?

12 MR. THOMPSON: Yes, sir.

13 THE COURT: Members of the jury,  
14 the testimony now being elicited from the  
15 witness before you, Ms. Moore, as to  
16 statements Ms. Moore contends were made to  
17 her by the previous State's witness,  
18 Ms. Dee Sullivan, are being offered for the  
19 limited purpose of corroboration.

20 Now, as I previously explained to you,  
21 the term corroboration means as tending to  
22 strengthen or to support. To the extent  
23 that you find that this evidence is  
24 corroborative of the testimony of Dee  
25 Sullivan, you may consider that evidence

1           for that limited purpose and for no other  
2           purpose.

3                   Anything further?

4                   MR. THOMPSON: No, sir.

5                   THE COURT: Mr. Britt.

6 BY MR. BRITT:

7           Q       When you talked with Dee on the telephone  
8           around August the 1st of 1993, what did she tell you?

9           A       Told me that Trulik had called her, and  
10          that he told her that if the police or anybody came  
11          by asking questions about him and that red Lexus, to  
12          tell them that we don't know anything.

13                           (State's Exhibit 64 was  
14                           marked for identification.)

15                   MR. BRITT: May I approach the  
16          witness?

17                   THE COURT: Yes, sir.

18 BY MR. BRITT:

19          Q       I'm going to show you what's been marked as  
20          State's Exhibit Number 64, ask you to look at that  
21          and tell me if you can identify what's depicted in  
22          that photograph?

23          A       The trailer.

24                           (State's Exhibit 65 was  
25                           marked for identification.)

1 BY MR. BRITT:

2 Q I'll show you what has been marked as  
3 State's Exhibit Number 65, ask if you can look at  
4 that and tell me if you can identify what is depicted  
5 that the photograph?

6 A The back of the trailer.

7 Q When you say it's that trailer, is State's  
8 Exhibit -- are State's Exhibits 64 and 65 photographs  
9 of the front and the back of a trailer?

10 A Yes, sir.

11 Q And can you identify that trailer?

12 A Yes, sir.

13 Q How are you able to identify that trailer?

14 A By them steps, with them steps.

15 Q On July the 23rd, 1993, did you go to the  
16 trailer that's depicted in State's Exhibit 64 and 65?

17 A Yes, sir.

18 Q And can you use State's Exhibit 64 and 65  
19 to illustrate to the jury where it was that you  
20 parked or where it was that Dee was instructed to  
21 park the red Lexus on the night of July the 23rd,  
22 1993?

23 A Behind the trailer.

24 Q Yes or no, can you use these photographs to  
25 show the jury, to illustrate your testimony where Dee

1 was instructed to park the red Lexus?

2 A Yes, sir.

3 MR. BRITT: At this time I offer  
4 64 and 65 for illustrative purposes.

5 THE COURT: You folks want to be  
6 heard?

7 MR. THOMPSON: No, sir.

8 THE COURT: Admitted. Members of  
9 the jury, I instruct you that State's  
10 Exhibits 64 and 65 are being offered and  
11 received for the limited purpose of  
12 illustrating the testimony of the witness  
13 now before you. To the extent that you  
14 find State's Exhibits 64 and 65 of aid or  
15 assistance in understanding her testimony,  
16 you may consider those exhibits for that  
17 limited purpose and for no other purpose.

18 MR. BRITT: May Ms. Moore step  
19 down in front of the jury, please?

20 THE COURT: Yes, sir.

21 BY MR. BRITT:

22 Q I'm going to hand you what has been marked  
23 as State's Exhibit Number 64. If you would show that  
24 to the jury. If you'll indicate where that was that  
25 you went inside of the trailer on the night of July

1 23rd. You need to talk so the court reporter -- you  
2 will need to point?

3 A Through the door, the front door.

4 Q If you'll show --

5 A (Indicating).

6 Q I'll hand you State's Exhibit 65. Can you  
7 use that photograph to show the jury where it was  
8 that Dee was instructed to park the red Lexus?

9 A Yes, sir.

10 Q Can you indicate where -- indicate by using  
11 State's Exhibit Number 65 where she parked the car?

12 A Right here.

13 Q If you'll show it to these jurors at the  
14 end.

15 A (Indicating).

16 Q If you'll return to the witness stand.  
17 When you got to the trailer on the night of July  
18 23rd, 1993, were there any cars parked in front of  
19 the trailer?

20 A No, sir.

21 Q Was there -- there appears to be an area in  
22 the front -- in front of the trailer -- was there an  
23 area in the front of the trailer where it appeared  
24 that cars were parked, were normally parked?

25 A Yes, sir.

1           Q       In the area where the red Lexus was parked,  
2 was there a similar area there? Was there like a  
3 driveway?

4           A       No.

5           Q       Was there -- as depicted in the photograph,  
6 was there grass growing behind the trailer?

7           A       Yes.

8           Q       In the area in front of the trailer, was --  
9 were there bare spots?

10          A       Yes, sir.

11          Q       And there were no other cars parked there  
12 on July 20 --

13                   MR. THOMPSON: Well, I object.

14                   THE COURT: Sustained.

15                   MR. BRITT: May I approach?

16                   THE COURT: Yes, sir.

17 BY MR. BRITT:

18           Q       Melinda, I'm going to show you what's been  
19 marked as State's Exhibit 56-B. You see the exhibit  
20 sticker?

21           A       Yes, sir.

22           Q       This exhibit, the phone records from James  
23 Jordan's cellular telephone --

24                   MR. THOMPSON: Object.

25                   THE COURT: Complete your

1 question.

2 BY MR. BRITT:

3 Q Ask you to look at State's Exhibit Number  
4 56. On July the 23rd, there's an entry at 10:50,  
5 (803) 423-2493, Marion, South Carolina. Do you  
6 recognize that telephone number?

7 A Yes, sir.

8 Q Whose telephone number is (803) 423-2493?

9 A My number.

10 Q And the record indicates what time that  
11 call --

12 A 10:50.

13 Q I'm going to ask you to place your initials  
14 with a red marking pen beside the entry of July 23rd  
15 at 10:50.

16 A (Witness complies).

17 Q Also on the exhibit, there's an entry of  
18 July 23rd at 17:34 hours. Do you see that?

19 A Yes, sir.

20 Q 803, 423-0278, Marion, South Carolina. Do  
21 you recognize that telephone number?

22 A Yes, sir.

23 Q Whose telephone number is 803 423-0278?

24 A My mother's.

25 Q Do you know who placed that telephone call?

1           A       I guess I did.

2                   MR. THOMPSON: Object.

3                   THE COURT: Sustained.

4                   MR. THOMPSON: Move to strike.

5                   THE COURT: Allowed.

6 BY MR. BRITT:

7           Q       Did you place a telephone call to your  
8 mother at 803 423-0278 on the night of July the 20 --  
9 excuse me, the afternoon of July 23rd?

10          A       The afternoon? No, sir.

11          Q       Had you given the defendant your mother's  
12 telephone number?

13          A       Yes, sir, he had been calling me there,  
14 too.

15                   THE COURT: I'm sorry, you have  
16 to speak up.

17                   THE WITNESS: Yes, sir he had  
18 been calling me at my mother's number, too.

19 BY MR. BRITT:

20          Q       If you'll place your initials beside that  
21 entry. There is another entry that appears, July the  
22 23rd, 18:15 hours, (803) 423-2493, Marion, South  
23 Carolina. Whose number is 423-2493?

24          A       Mine.

25          Q       And do you know -- did you place that

1 telephone call to your phone number?

2 A What time --

3 Q At eight -- 6:15 p.m.

4 THE COURT: The court reporter  
5 has to take down everything that is said.  
6 It's a little awkward, but you have to  
7 speak into the microphone.

8 THE WITNESS: No.

9 BY MR. BRITT:

10 Q 423-2493, is that a telephone number that  
11 you had given to the defendant?

12 A Yes, sir.

13 Q If you will place your initials beside that  
14 entry of July 23rd at 18:15 hours. Beneath that is  
15 another entry, July 23rd, 18:16 hours,  
16 (803) 423-0278, Marion, South Carolina. Do you  
17 recognize that telephone number?

18 A Yes, sir.

19 Q And did you place that phone call at that  
20 time?

21 A No, sir.

22 Q And is that a telephone number that you had  
23 given to the defendant?

24 A Yes, sir.

25 Q If you'll place your initials beside that

1 entry?

2 A (Witness complies).

3 Q Also July the 23rd, 1993, the time 19:15  
4 hours, (803) 423-2493, Marion, South Carolina. Do  
5 you recognize that telephone number?

6 A Yes, sir.

7 Q The exhibit -- the record shows that there  
8 was a telephone conversation of 18 minutes. Do you  
9 recall talking to the defendant on July the 23rd,  
10 approximately 7: 15 in the evening?

11 A Yes, sir.

12 Q And do you recall the length of that  
13 telephone conversation?

14 A No, sir.

15 Q Did you place the telephone call as shown  
16 on the exhibit at 7:15 p.m. to (803) 423-2493?

17 A No, sir.

18 Q If you'll place your initials by that.

19 A (Witness complies).

20 Q Also on State's Exhibit 56-B, there is an  
21 entry for July the 25th at 19:02 hours. That's 7: 02  
22 p.m. (803) 423-2493, Marion, South Carolina. Do you  
23 recognize the telephone number?

24 A Yes, sir.

25 Q Whose phone number was that?

1 A Ours.

2 Q On July 25th, 93, did you ride in that red  
3 Lexus automobile?

4 A On the 25th?

5 Q On the 25th?

6 A No, sir.

7 Q Did you place any telephone call on July  
8 the 25th from that red Lexus?

9 A No, sir.

10 Q If you'll place your initials there?

11 A (Indicating).

12 Q Ask you to look at State's Exhibit 56-C,  
13 you see the exhibit sticker?

14 A Yes, sir.

15 Q There is an entry that appears for July  
16 23rd at 22:20 hours. That's 10:20 p.m.  
17 (803) 423-2493, Marion, South Carolina. Do you  
18 recognize that telephone number?

19 A Yes, sir.

20 Q And whose phone number is that?

21 A Ours.

22 Q At 10:20 p.m. on July 23rd, 1993, did you  
23 place a telephone call to your telephone number from  
24 that red Lexus?

25 A I could have.

1           Q     At any time when you placed a telephone --  
2 when you called your residence, did you always talk  
3 with someone?

4           A     One time -- one time I had a bad connection  
5 and he had to call back.

6           Q     When you say he had to call back?

7           A     Trulik called back for me.

8           Q     Will you place your initials beside the  
9 entry of July 23rd at 22:20 hours.

10          A     (Witness complies).

11          Q     Show you State's Exhibit 56-D -- let me  
12 back up.

13                     On State's Exhibit 56-C, you see the entry  
14 of Chesterfield? Do you know where Chesterfield,  
15 South Carolina is?

16          A     No, sir.

17          Q     Is it near your hometown of Marion, if you  
18 know?

19                     MR. THOMPSON: Well, I object.

20                     She said she didn't know.

21                     THE COURT: If you know, you may  
22 answer.

23          BY MR. BRITT:

24           Q     Do you know if Chesterfield is near Marion,  
25 South Carolina?

1           A       I don't know, because I don't know where  
2 Chesterfield is.

3           Q       I'll show you what has been marked as  
4 State's Exhibit 56-D. See the entry Myrtle Beach,  
5 South Carolina?

6           A       Yes, sir.

7           Q       On State's Exhibit 56-D, do you see the  
8 entry of July the 23rd at 23:07, 11:07 p.m.  
9 (803) 423-0278, Marion, South Carolina?

10          A       Yes, sir.

11          Q       Do you recognize that telephone number?

12          A       Yes, sir.

13          Q       And whose telephone number is that?

14          A       My mother's.

15          Q       And did you call your mother from that red  
16 Lexus?

17          A       Yes, sir.

18          Q       On July 23rd, 1993?

19          A       Yes, sir.

20          Q       And for what purposes did you call your  
21 mother from that red Lexus on July 23rd, 1993?

22          A       I don't know, I can't remember.

23          Q       If you'll place your initials --

24          A       (Witness complies).

25          Q       Did you know the defendant's telephone

1 number?

2 A His home telephone number?

3 Q His home number?

4 A Yes, sir.

5 Q What was that number?

6 A Seven -- seven three -- I think the area  
7 code was nine --

8 MR. THOMPSON: I object.

9 THE WITNESS: The other number  
10 is --

11 MR. BRITT: Hold on, hold on.

12 THE COURT: State your objection,  
13 Mr. Thompson.

14 MR. THOMPSON: I object to her  
15 testifying as to what she thinks --

16 THE COURT: Do you know the  
17 number, ma'am?

18 THE WITNESS: I don't know the  
19 area code but I know the other numbers.

20 THE COURT: Then you may answer  
21 Mr. Britt's question.

22 THE WITNESS: 739-8804.

23 BY MR. BRITT:

24 Q On July the 23rd at 23:10 hours, you see  
25 the entry of (919) 738-8804, Lumberton, North

1 Carolina, do you recognize that number?

2 A That was his phone number.

3 Q When you say that was his phone number, who  
4 were you referring to?

5 A Trulik.

6 Q And in your presence, did the defendant  
7 call his home number?

8 A I don't remember him calling his home  
9 number.

10 Q Do you recall him ever telling you that he  
11 was trying to call his home number?

12 MR. THOMPSON: Well, I object.

13 THE COURT: Overruled. You may  
14 answer if you know.

15 THE WITNESS: No, sir, I don't  
16 remember.

17 BY MR. BRITT:

18 Q July the 23rd, 23:15 hours, 11:15 at night,  
19 (803) 423-2493, Marion, South Carolina. Whose  
20 telephone number is that?

21 A Mine.

22 Q Did you place that phone call?

23 A I could have.

24 Q If you'll place your initials by that  
25 entry.

1 A (Witness complies).

2 Q And what was the difference in the time  
3 frame from the call that was placed -- based upon the  
4 exhibit -- between the call that was placed  
5 (919) 738-8804, and the call that was placed to  
6 (803) 423-2493?

7 A What's the difference?

8 Q How much time had elapsed, based upon what  
9 the record reflects?

10 A I don't know.

11 Q Do you see the column headed "time"  
12 (919) 738-8804?

13 MR. THOMPSON: I object.

14 THE COURT: Do you want to be  
15 heard, sir?

16 MR. THOMPSON: Well, yes, sir.

17 THE COURT: Members of the jury,  
18 there's a matter of law the Court must take  
19 up at this time out of the hearing and the  
20 presence of the jury. Please recall my  
21 instructions in that regard, don't worry or  
22 speculate about what takes place in the  
23 courtroom in your absence, please step to  
24 the jury room.

25 (Jury out at 12:07 p.m.)

1                   THE COURT: Let the record  
2 reflect the following is being heard in the  
3 absence of the jury.

4                   Mr. Thompson, basis of your  
5 objection?

6                   MR. THOMPSON: First of all, Your  
7 Honor, Mr. Britt is continuing to lead the  
8 witness by pointing to the exhibit. She  
9 said she did not know the time, she's  
10 answered that question one time. It's been  
11 asked and answered.

12                   And the second thing is the exhibit  
13 would speak for itself. I mean, -- or the  
14 third thing.

15                   THE COURT: All right. The  
16 exhibit is in evidence.

17                   MR. THOMPSON: Not at this time.

18                   MR. BRITT: Exhibit is in  
19 evidence.

20                   MR. THOMPSON: Okay. That's  
21 right. Yeah, it's been introduced, offered  
22 and introduced. And it speak for itself.

23                   THE COURT: Your third argument  
24 is your strong argument. And the objection  
25 as to that is sustained.

1 Bring the jury back in.

2 (Jury in at 12:08 p.m.)

3 THE COURT: Members of the jury,  
4 the objection is sustained. You may ask  
5 additional questions, Mr. Britt.

6 BY MR. BRITT:

7 Q Ms. Moore, does the record reflect that on  
8 July 23rd at 23:10 hours, a call was placed to  
9 (919) 738-8804?

10 MR. THOMPSON: Well, I object,  
11 Your Honor, to him testifying. That's not  
12 a question.

13 THE COURT: Sustained.

14 BY MR. BRITT:

15 Q July the 24th at 0:35 hours, State's  
16 Exhibit 56-D reflects a call to  
17 (803) 423-2493 Marion, South Carolina?

18 MR. THOMPSON: Object to the form  
19 of the question.

20 THE COURT: Well, Mr. Thompson, a  
21 number of those questions have been asked  
22 without objection, and I'm going to deem  
23 that waived at this point. The objection  
24 is overruled. Exception is noted for the  
25 record.

1 BY MR. BRITT:

2 Q Do you recognize the number that appears  
3 for July the 24th at 0:35 hours, (803) 423-4293,  
4 Marion, South Carolina?

5 A Yes, sir.

6 Q An whose number is that?

7 A Mine.

8 Q And do you recall whether you were the one  
9 who made that phone call on July the 24th, 1993?

10 A I can't recall.

11 Q If you'll place your initials by that  
12 entry.

13 A (Indicating).

14 Q The next entry, July the 24th at 0:37  
15 hours, (803) 423-2493, Marion, South Carolina, do you  
16 recognize the number?

17 A Yes, sir.

18 Q An whose number is that?

19 A Mine.

20 Q If you'll place your initials by that.

21 A (Indicating).

22 Q Next entry, July 24th at 11:46 a.m.,  
23 (803) 423-2493 , Marion, South Carolina. Do you  
24 recognize this number?

25 A Yes, sir.

1 Q Whose number is that?

2 A Mine.

3 Q If you'll place your initials by it.

4 A (Indicating).

5 Q Next entry, there is no number, then  
6 there's a slash and a 24, at 12:07, (803) 423-2493 ,  
7 Marion, South Carolina. Do you recognize that  
8 number?

9 A Yes, sir.

10 Q An whose number is that?

11 A Mine.

12 Q Place your initials by it. Next entry,  
13 7-24, 12:28, (803) 423-2493, Marion, South Carolina,  
14 do you recognize that number?

15 A Yes, sir.

16 Q Now, on the 24th of July, 1993,  
17 is that the date that you went to pick your sister up  
18 from Little Rock, South Carolina?

19 A On the 24th?

20 Q Yes.

21 A Yes, sir.

22 Q If you will place your initials by the  
23 entry of 7/24, 12:28. Next entry, 7/24, 12:29,  
24 (803) 423-2493, Marion, South Carolina, that's your  
25 telephone number?

1           A       Yes, sir.

2           Q       Do you recall if you made that phone call  
3 or not?

4           A       I can't recall.

5           Q       If you'll place your initials by that.

6           A       (Witness complies).

7           Q       On the 24th of July, when you arrived after  
8 you picked your sister up and you went to Mullins and  
9 then went home, do you recall what time of the day it  
10 was when you were dropped off?

11          A       About 2:00.

12          Q       In the afternoon?

13          A       Yes, sir.

14          Q       And was that when the defendant dropped you  
15 off on July the 24th, 1993, around 2:00 in the  
16 afternoon, is that the last time you saw the red  
17 Lexus?

18          A       Yes, sir.

19          Q       On July the 24th at 21:40 hours, phone call  
20 was placed to (803) 423-2493, Marion, South  
21 Carolina. That's your telephone number, is it not?

22          A       Yes, sir.

23          Q       And on July the 24th of 1993, at  
24 approximately 9:40 p.m., did you make a phone call  
25 from that red Lexus to your home?

1 A What time?

2 Q At 9:40 p.m.

3 A No, sir.

4 Q If you'll place your initials by that  
5 entry.

6 A (Witness complies).

7 Q Show you what's been marked as State's  
8 Exhibit 56-E, July the 26th at 10:35 a.m.,  
9 (803) 423-2493 , Marion, South Carolina. Do you  
10 recognize that number?

11 A Yes, sir.

12 Q The record reflects that there was a ten  
13 minute telephone conversation on July the 26th, 1993,  
14 do you recall receiving a telephone call from the  
15 defendant?

16 A I don't recall.

17 Q On July the 26th, 1993, were you in the red  
18 Lexus at any time?

19 A No, sir.

20 Q Did you make any telephone call from the  
21 red Lexus on July the 26th, 1993?

22 A No, sir.

23 Q If you'll place your initials there.

24 A (Witness complies).

25 Q On State's Exhibit Number 56-E, there is an

1 entry dated July 24th at 22:37 hours, to  
2 (803) 423-2493 , Marion, South Carolina. Telephone  
3 call of six minutes in length. 423-2493 is your  
4 telephone number, is that correct?

5 A Yes, sir.

6 Q On July the 24th, 1993, did you place a  
7 call to your home number at 10:37 p.m. that night?

8 A No, sir.

9 Q Do you recall the defendant calling you on  
10 July the 24th, 1993, 10:37 p.m.

11 A I can't recall.

12 Q If you'll place your initials there?

13 A (Witness complies).

14 Q Also there's an entry of July 24th, 1993 at  
15 23:15 hours, telephone number (803) 423-2493, that's  
16 your telephone number?

17 A Yes, sir.

18 Q In Marion, South Carolina?

19 A Yes, sir.

20 Q At 11:15, on the night of July 24th, did  
21 you place a telephone call to your home?

22 A No, sir.

23 Q If you'll place your initials there.

24 A (Witness complies).

25 Q After you were dropped off at your house on

1 the afternoon of July 24th, 1993, and the defendant  
2 told you he was going home to get money to go to the  
3 beach, how much time passed before you heard from the  
4 defendant again?

5 A I don't recall him, from him -- I can only  
6 remember him calling me August 14th.

7 Q Melinda, in late August, early September of  
8 1993, did you go off to college?

9 A August -- yes, sir.

10 Q Where did you go?

11 A Vorhees College.

12 Q And where is Vorhees College located?

13 A Denmark, South Carolina.

14 Q While you were at college, were you  
15 contacted by any police officers in reference to  
16 your -- to my knowledge that you had about that red  
17 Lexus?

18 A Yes, sir.

19 Q Do you recall who those officers were?

20 A Kim Heffney and Anthony Thompson and Sonny  
21 Raleigh, and Sheriff Darnell, and that man over  
22 there.

23 Q When you say the man down there, you're  
24 talking about the gentleman at the end of the defense  
25 table?

1           A     Yes, sir.

2           Q     Did he come and talk with you at the same  
3 time that Mr. Heffney and Mr. Thompson came to talk  
4 to you?

5           A     No, sir.

6           Q     When did -- I believe his name is Mr.  
7 Barnes -- come and talk with you?

8           A     After I had -- after December of last year.

9           Q     December of 1994 or 1995?

10          A     '94.

11          Q     When you first met Mr. Heffney and  
12 Mr. Thompson at Vorhees College, was that the first  
13 time that either Mr. Heffney or Mr. Thompson had  
14 spoken to you about any information that you had in  
15 regard to the red Lexus?

16          A     Yes, sir.

17          Q     Prior to them coming and seeing you, had  
18 any other police officer talked with you?

19          A     Before them?

20          Q     Before them.

21          A     No, sir.

22          Q     And when you talked with them, where did  
23 you talk with them?

24          A     In the auditorium at Vorhees.

25          Q     And when you spoke with them in the

1 auditorium at Vorhees College, what did you talk  
2 about? Did they ask you questions?

3 A Yes, sir.

4 Q And did you answer their questions?

5 A Yes, sir.

6 Q Did they ask you questions about the  
7 defendant?

8 A They asked me questions about Daniel Green,  
9 but I ain't know nobody by the name of Daniel Green.

10 Q And why didn't you know him by the name  
11 Daniel Green?

12 A Because that's not what he told me his name  
13 was.

14 Q And when they asked you questions about the  
15 defendant, were you asked about when you had met him?

16 A Yes, sir.

17 Q And did you tell them?

18 A Yes, sir.

19 Q Were you asked about a red Lexus?

20 A Yes, sir.

21 Q And did you answer their questions?

22 A Yes, sir.

23 Q Did they ask you about Larry Demery?

24 MR. THOMPSON: Well, I object,  
25 Your Honor. I object.

1 THE COURT: Do you want to be  
2 heard?

3 MR. BRITT: I withdraw the  
4 question.

5 BY MR. BRITT:

6 Q After you talked with Mr. Heffney and  
7 Mr. Thompson, is that when you talked with Mr.  
8 Barnes, the man sitting at the end of the table?

9 A What you mean, afterwards? Like the same  
10 day?

11 Q No, when you talked with Mr. Heffney and  
12 Mr. Thompson at Vorhees College?

13 A Yes, sir.

14 Q Did there come a time after that that you  
15 talked with Mr. Barnes who's seated at the end of the  
16 table?

17 A Yes, sir.

18 Q And where did you talk with Mr. Barnes?

19 A At the physical plant at Vorhees College.

20 Q And did Mr. Barnes identify himself?

21 A Yes.

22 Q And when you talked with Mr. Barnes, did  
23 you talk about your -- the information that you had  
24 in regard to the red Lexus and to the defendant who  
25 you knew as Trulik Green?

1 A Not -- not really.

2 Q What did you and Mr. Barnes talk about?

3 A We talked about --

4 MR. THOMPSON: Well, I object.

5 THE COURT: Sustained to the form  
6 of the question.

7 BY MR. BRITT:

8 Q What if anything did you say to Mr. Barnes?

9 A I told him that -- I told him that I was  
10 upset at how the FBI had come and got information  
11 from me and then went back and told Trulik stuff that  
12 wasn't true, that I did not say, and I was mad about  
13 that. And I told them that -- I said that I felt  
14 like that was wrong, and the way they portrayed him,  
15 that's not the way I know him, and things of that  
16 nature.

17 Q Was there information, had you received any  
18 information from the defendant about things that had  
19 allegedly been said about you?

20 A Yes, he wrote me -- yes, sir. He wrote me  
21 letters and he sent me a statement that -- he told me  
22 that --

23 MR. THOMPSON: I object.

24 THE COURT: Opportunity to be  
25 heard as to the basis of your objection?

1 MR. THOMPSON: That's all right.

2 Withdrawn.

3 THE COURT: It's withdrawn?

4 MR. THOMPSON: Yes, sir.

5 THE COURT: Okay.

6 BY MR. BRITT:

7 Q As a result of that information that you  
8 received from the defendant, how did you react to  
9 that?

10 A I was mad and I went and told -- that man  
11 came to see me, and I told him, I said that since  
12 they was lying on me, I said, I lie about  
13 everything. I don't have nothing bad to say about  
14 him or anything. Because I didn't feel like they  
15 should have lied on me.

16 Q When you told Mr. Barnes that you had lied  
17 about the defendant, were you telling him the truth?

18 A No.

19 Q Why did you tell Mr. Barnes that you had  
20 lied about the information you related about the  
21 defendant and the red Lexus?

22 A Because he made me -- Trulik made me think  
23 that they were lying on me and telling him things on  
24 me and talking about me.

25 Q Each time you made a phone call from that

1 red Lexus, was the defendant in the car?

2 A Yes, sir.

3 Q And each time you saw that red Lexus, was  
4 the defendant in that car?

5 A Yes, sir.

6 Q And when you last saw that red Lexus, was  
7 the defendant in that car?

8 A Yes, sir.

9 Q And each time that you saw the red Lexus,  
10 was Larry Demery in the car?

11 A Yes, sir.

12 Q And each time that you saw the red -- each  
13 time you made a phone call from the red Lexus, was  
14 Larry Demery in the car?

15 A Yes, sir.

16 Q And when you last saw the red Lexus, was  
17 Larry Demery in the car?

18 A Yes, sir.

19 Q Did you ever see a license plate on that  
20 car?

21 A Yes, sir.

22 Q Do you recall what state license plate was  
23 on that car?

24 A North Carolina.

25 Q And when you saw a North Carolina plate on

1 that car, had the defendant already told you he had  
2 gotten the car from Philadelphia?

3 A Excuse me?

4 Q Where did the defendant tell you he got the  
5 car?

6 A From Philadelphia out of the shop.

7 Q And when you saw a North Carolina plate on  
8 that car, did you ask the defendant any questions  
9 about why there was a North Carolina plate on the car  
10 if the car had come from Philadelphia?

11 A Yes, sir.

12 Q And what did you ask him?

13 A I asked him why he had North Carolina tags  
14 on it if he just got it out of the shop in  
15 Philadelphia.

16 Q And what did he say?

17 A He said he changed the tags.

18 Q Did you ever see the number or do you  
19 recall the number that was on the tag?

20 A No, sir, I don't remember all that.

21 Q Were you aware at the time, on July the  
22 23rd, when you first saw that red Lexus, that that  
23 car belonged to James Jordan, Michael Jordan's  
24 father?

25 A No.

1           Q       Were you aware that when you were placing  
2 telephone calls on that phone, that you were making  
3 phone calls on Mr. Jordan's cellular phone?

4           A       No, sir.

5                   MR. BRITT: I don't have any  
6 other questions.

7                   THE COURT: Cross-examination?

8                   MR. THOMPSON: Yes, sir.

9                   THE COURT: Yes, sir.

10                   CROSS-EXAMINATION

11 BY MR. THOMPSON:

12           Q       Good afternoon.

13           A       Same to you.

14           Q       Ms. Moore, you're 21 years old, is that  
15 right?

16           A       Yes, sir.

17           Q       And you met the defendant, U'Allah, after  
18 you -- at South of the Border?

19           A       I met Trulik at South of the Border.

20           Q       Who you now know to be the defendant in  
21 this case, is that right?

22           A       Yes, sir.

23           Q       And you had had an argument with your  
24 boyfriend?

25           A       Yes, sir.

1           Q     And this boyfriend you referred to as your  
2 fiancée?

3           A     Yes, sir.

4           Q     When you had that argument, that occurred  
5 on July the 3rd or July the 4th?

6           A     July 3rd, because the 4th was a Sunday.

7           Q     And it was just getting dark when you had  
8 that argument?

9           A     Yes, sir.

10          Q     When you met the defendant there at South  
11 of the Border, after having an argument with your  
12 fiancée, you were crying when you met him, is that  
13 right?

14          A     Yes, sir.

15          Q     And he came over to cheer you up, meaning  
16 the defendant, is that right?

17                   MR. BRITT:  Objection.

18          BY MR. THOMPSON:

19          Q     The defendant came over to cheer you up  
20 there when you were crying at South of the  
21 Border?

22                   THE COURT:  It's  
23 cross-examination.  You can answer yes or  
24 no based on what you recall the events to  
25 be.

1 THE WITNESS: Yes.

2 BY MR. THOMPSON:

3 Q And the two of you talked about New York  
4 and Phily, or Philadelphia, is that right?

5 A Yes, sir.

6 Q You had lived up north for a while?

7 A Yes, sir.

8 Q And the two of you exchanged telephone  
9 numbers there at South of the Border?

10 A Yes, sir.

11 Q Now, you observed the defendant and Larry  
12 Demery come up in a beige Tempo Ford, is that right?

13 A Yes, sir.

14 Q You and the defendant talked there at South  
15 of the Border for about 15 or 20 minutes, is that  
16 right?

17 A Yes, sir.

18 Q About two days after meeting the defendant  
19 at South of the Border, Larry Demery and the  
20 defendant came to your house in Marion, is that  
21 correct?

22 A Yes, sir, on July the 5th.

23 Q That was July the 5th?

24 A Yes, sir.

25 Q And it was around 1:00?

1 A Yes, sir --

2 Q Excuse me.

3 A Yes, sir.

4 Q That would have been 1:00 a.m. in the  
5 morning?

6 A Yes, sir.

7 Q And you and your cousin Tara Whitten were  
8 at your grandmother's house, is that correct?

9 A Yes, sir.

10 Q When the defendant arrived there at your  
11 grandmother's house about 1:00 a.m. in the morning,  
12 were you outside or inside the house?

13 A Outside.

14 Q Was your cousin with you Tara Whitten?

15 A Yes -- she wasn't with me, but she was  
16 outside.

17 Q Outside with you?

18 A Yes, sir.

19 Q And the plan at the time that the defendant  
20 arrived at your grandmother's house was for you and  
21 Dee and Larry Demery and the defendant to go get a  
22 motel?

23 A No, it wasn't, because he didn't even know  
24 Dee. They didn't even know Dee at that time. They  
25 were supposed to go get a motel, and I was supposed

1 to come on up. Trulik and Larry were supposed to get  
2 a motel, and I was going to sneak out of my house.  
3 They didn't even know Dee.

4 Q So you were going to sneak out the window  
5 of your house, is that right?

6 A I was just going to sneak out.

7 Q At any event, the defendant called back  
8 sometime after 1:00 a.m. in the morning and indicated  
9 that he could not get a motel room, is that right?

10 A Yes.

11 Q At what time was that when he called?

12 A I can't remember.

13 Q Now, the next time you saw the defendant  
14 was on July the 15th of 1993?

15 A Yes, sir.

16 Q And Larry Demery and the defendant came to  
17 your house in a blue Cougar?

18 A Yes, sir.

19 Q And Larry, on that occasion, meaning Larry  
20 Demery, on July 15th of 1993, met Delores Sullivan?

21 A Yes, sir.

22 Q Who you also referred to as Dee?

23 A Yes, sir.

24 Q Now, it was then that Larry asked -- on  
25 July 15th of 1993 that Larry asked Dee to drive, is

1 that right?

2 A Yes.

3 Q Now, wasn't it then, Ms. Moore, that -- it  
4 was Larry who said --

5 MR. BRITT: Objection.

6 THE COURT: Sustained.

7 MR. THOMPSON: Yes, sir.

8 BY MR. THOMPSON:

9 Q You testified, Ms. Moore, that it was the  
10 defendant, U'Allah, who told you -- who made the  
11 comment, "We're going to see how good you can drive  
12 if they stop you" -- I mean, "if the police stop you,  
13 don't stop," you testified to that, did you not?

14 A Yes, I did.

15 Q Now, did -- didn't Mr. Demery make that  
16 statement to Dee back on July 14th?

17 MR. BRITT: Objection.

18 THE COURT: Sustained.

19 THE WITNESS: I didn't --

20 THE COURT: The objection has  
21 been sustained. You can't answer.

22 THE WITNESS: I can?

23 THE COURT: Cannot.

24 MR. BRITT: Move to strike.

25 THE COURT: Motion to strike is

1 allowed.

2 MR. BRITT: I would ask for an  
3 instruction.

4 THE COURT: Members of the jury,  
5 you're not to consider the last question  
6 asked by counsel for the defendant,  
7 Mr. Thompson. That matter is not to take  
8 any part in your deliberations in this case  
9 in any respect.

10 Mr. Thompson, you may ask additional  
11 questions.

12 BY MR. THOMPSON:

13 Q Now, you indicated, Ms. Moore, that you  
14 gave an interview to Mr. William Barnes who's seated  
15 here at the end of the defense table, is that right?

16 A Yes.

17 Q Actually, he saw you two times in February  
18 of -- down there at Vorhees College?

19 A He saw me what?

20 Q Did he speak to you two times there at the  
21 college?

22 A No, he did not, he spoke with me one time.

23 Q Now, did Mr. Barnes ever speak to you while  
24 you were there as a student at Vorhees College there  
25 in the security house? Do you recall that?

1           A       Excuse me?

2           Q       The security house or the security shack?

3           A       He came down there and that's where he was  
4 at, and then they took us to the physical plant.  
5 That's where he interviewed me at, at the physical  
6 plant.

7           Q       So that was on --

8           A       That's the same time. It wasn't no two  
9 different interviews.

10          Q       Do you recall that on that -- on the  
11 occasion, the occasion that you're speaking about,  
12 that that conversation was taped?

13          A       Yes, he asked me could he tape it.

14          Q       And you gave him permission?

15          A       Yes, I did.

16          Q       And you gave your date of birth as November  
17 the 23rd of 1974?

18          A       Yes.

19          Q       And you gave him your telephone number as  
20 793-8392 there at the college?

21          A       What was the number?

22          Q       793-8392?

23          A       I don't remember what my number was, could  
24 have been.

25          Q       Do you recall what day of the week this

1 was?

2 A No.

3 Q In any event, it's your testimony that he  
4 only spoke with you on one occasion, and that was he  
5 moved you from the security shack to the physical  
6 plant, is that what you're saying?

7 A Yes, that's all --

8 Q That's the same day?

9 A That's all I recall.

10 Q Well, now, do you recall, Ms. Moore,  
11 telling Mr. Barnes that it was Larry Demery who said  
12 to Dee when he told her or requested of her to drive  
13 that we're going to see how good you can drive?

14 MR. BRITT: Objection.

15 BY MR. THOMPSON:

16 Q And if the police stop you, don't stop, do  
17 you recall --

18 MR. BRITT: Objection.

19 THE COURT: Folks, pardon me,  
20 there's a matter of law the Court must take  
21 up at this time out of the hearing and  
22 presence of the jury.

23 Ladies and gentlemen, please recall my  
24 instructions in that regard. Don't worry  
25 or speculate about what takes place in the

1 courtroom in your absence. If all members  
2 of the jury would step to the jury room.

3 (Jury out at 12:37 p.m.)

4 THE COURT: Let the record  
5 reflect the following is being conducted in  
6 the absence of the jury. Mr. Thompson, for  
7 what purposes is this being offered?

8 MR. THOMPSON: Your Honor, it's  
9 offered -- it's on cross-examination on  
10 impeachment. It is a prior inconsistent  
11 statement.

12 THE COURT: It's being offered to  
13 impeach?

14 MR. THOMPSON: Yes, sir.

15 MR. BRITT: Your Honor if you go  
16 back to page 138, line -- go from the  
17 bottom, "Question: In any event, it is  
18 your testimony that you only spoke -- he  
19 only spoke with you on one occasion that  
20 was when he moved you from the security  
21 shack to the physical plant. Is that what  
22 you're saying?

23 "Answer: Yes, that's all.

24 "That's the same day?

25 "Answer: That's all I recall."

1 THE COURT: Yes, sir.

2 MR. BRITT: "Question: Well,  
3 now, do you recall Ms. Moore telling Mr.  
4 Barnes it was Larry Demery who said to Dee  
5 when he told her or requested her to drive  
6 that we're going to see how good you can  
7 drive?"

8 Objection was noted.

9 Her answer to the previous question  
10 is, all she remembers is that Mr. Barnes  
11 came and talked to her. His question  
12 presupposes --

13 THE COURT: Well, I don't read  
14 the question that way. As I read her  
15 response to that question was, it was that  
16 there were not two interviews, there was  
17 one interview. Now he's getting into that  
18 interview. So on that basis, the objection  
19 is overruled. State's exception is noted  
20 for the record.

21 Anything further before we bring the  
22 jury back?

23 MR. THOMPSON: No, sir.

24 THE COURT: Do you want a  
25 limiting instruction?

1 MR. BRITT: Yes, sir.

2 THE COURT: Bring the jury in,  
3 please, Mr. Horne.

4 (Jury in at 12:40 p.m.)

5 THE COURT: Ladies and gentlemen  
6 of the jury, the objection is overruled.  
7 And I instruct you that the matters now  
8 being elicited by counsel for the defendant  
9 are being offered and received for the  
10 limited purpose of impeachment.

11 Now, as I previously explained to you  
12 the term impeachment means as tending to  
13 discredit or to contradict. And I instruct  
14 you that you may consider this evidence for  
15 that limited purpose and for no other  
16 purpose.

17 Anything further, Mr. Britt?

18 MR. BRITT: No, sir.

19 THE COURT: You may repeat or  
20 rephrase your question.

21 BY MR. THOMPSON:

22 Q Ms. Moore, do you recall telling  
23 Mr. William Barnes there at the interview at Vorhees  
24 College that it was Dee who asked -- I mean it was  
25 Larry Demery who asked Dee to drive, and he said to

1 Dee Sullivan, we're going to see how you can drive  
2 and if the police stop you, don't stop?

3 A I don't recall.

4 Q So you don't deny that you made that  
5 statement, you just don't recall it?

6 A I don't recall, I don't recall it.

7 Q So you could have made the statement?

8 A I don't recall.

9 MR. BRITT: Objection to the  
10 form.

11 THE COURT: Sustained as to the  
12 form of the question.

13 BY MR. THOMPSON:

14 Q Well, you told Mr. Barnes during his -- the  
15 interview that he had with you, that Larry always  
16 wanted someone to drive the car --

17 MR. BRITT: Objection.

18 MR. THOMPSON: You told him that,  
19 didn't you.

20 THE COURT: Overruled. You may  
21 answer.

22 THE WITNESS: Yes, sir.

23 BY MR. THOMPSON:

24 Q And we're back now on July 15th, this is  
25 the first time that Larry Demery met Dee Sullivan, is

1 that right?

2 A Yes, sir.

3 Q Now, Dee, in fact, drove to Lumberton,  
4 drove the Cougar to Lumberton?

5 A Yes, sir.

6 Q And the car actually broke down before you  
7 got to the trailer that you've testified to?

8 A Yes, sir.

9 Q And both Larry Demery and the defendant  
10 pulled off their shirts in trying to fix the car, is  
11 that right?

12 A Yes, sir.

13 THE COURT: For the record, for  
14 the purposes of clarity, establish what car  
15 you're talking about.

16 BY MR. THOMPSON:

17 Q We're talking about the car, the Cougar  
18 that you all were in, that -- the blue Cougar?

19 A I know.

20 Q Yes, but the Judge wants us to establish  
21 that. We're talking about the blue Cougar, is that  
22 right?

23 A Yes, sir.

24 Q And when Larry pulled off his shirt or  
25 started to take off his shirt, it was then that you

1 observed him remove a large sum of cash from his  
2 pants pockets, is that right?

3 A Yes, sir.

4 Q And Larry Demery removed that large sum of  
5 cash from his pants pocket and put it in the glove  
6 compartment of the blue Cougar, is that right?

7 A Yes, sir.

8 Q Now, after the car was fixed you went to  
9 the trailer, is that right?

10 A Yes, sir.

11 Q That's the trailer that you referred to as  
12 being nasty at the time, is that right?

13 A Yes, sir.

14 Q Now, did you refer to that trailer as being  
15 a brown, beige, and white trailer, did you ever refer  
16 to it as being a brown, beige, and white trailer?

17 A Yes, sir.

18 Q You told Private Investigator Barnes that  
19 it was a brown, beige, and white trailer?

20 A Yes, sir.

21 Q You also told other officers that it was a  
22 brown, beige, and white trailer?

23 A Yes, sir.

24 Q Now, it was there at the trailer where you  
25 and Dee Sullivan stole the money out of the glove

1 compartment?

2 A Yes, sir.

3 Q Now, you -- Dee counted -- Dee Sullivan was  
4 the one who counted that money, is that right?

5 A From what she told me.

6 Q And Dee handed the money to you that you  
7 took, is that right?

8 A Yes, sir, because I was in the back seat.

9 Q And Dee and you got about \$25.00 apiece,  
10 was it about \$25.00 a piece or was it \$25.00 apiece?

11 A I already stated before it was \$25.00  
12 apiece.

13 Q And you left the trailer after you got --  
14 after you stole the money, and you went to the motel,  
15 is that right?

16 A Yes, sir.

17 Q And Larry went in and got the rooms,  
18 meaning Larry Demery?

19 A Yes, sir.

20 Q He paid for two motel rooms?

21 A Yes, sir.

22 Q This was around 4:00 or 5:00 in the  
23 evening?

24 A I guess -- I can't --

25 Q July the 15th of 1993?

1           A       I can't be sure what time it was.

2           Q       But are we still talking about July 15th,  
3 1993?

4           A       Yes, sir.

5           Q       And when you went to the motel room there  
6 on July 15th of 1993, it was daylight, was it?

7           A       Yes, sir.

8           Q       And you stayed at the motel until about  
9 8:00, until 8:00 that evening, is that right?

10          A       Dusk, whatever time dusk is.

11          Q       Yes, ma'am. And you and the defendant went  
12 into a motel room, is that right?

13          A       Yes.

14          Q       And you observed Larry Demery and your  
15 friend Dee Sullivan go into a motel room?

16          A       Yes.

17          Q       When you left the -- you returned back to  
18 home, meaning in Marion, back on July the 15th of  
19 1993, the same day you went to the motel, they  
20 brought you back home?

21          A       Yes.

22          Q       Now, the next time that you saw the  
23 defendant was on July the 23rd of 1993?

24          A       Yes.

25          Q       You indicated on direct examination that

1 the defendant called you about 9:00 a.m. on July the  
2 23rd of 1993.

3 A Said I guess.

4 Q Yeah, about 9:00 a.m.

5 A I guess.

6 Q And the nature of that conversation was  
7 that he was planning to come to Marion to pick you  
8 up?

9 A Yes.

10 Q Also, that Larry Demery was planning to  
11 come to Marion to pick Dee Sullivan up, your friend?

12 A Yes.

13 Q And the defendant along with Larry Demery  
14 got to your house or actually picked you up, you were  
15 at the Safeway store, and that was around 10:00 that  
16 night on July 23rd of 1993?

17 A I was walking from Safeway.

18 Q You were walking from Safeway, and it was  
19 about 10:00 p.m. on the night of July 23rd, 1993?

20 A Yes, I guess.

21 Q You told your grandmother that you were  
22 going to Patricia's house to baby-sit?

23 A Patricia's aunt's house.

24 Q Now, when you left your grandmother's  
25 house -- well, back up. At the time that you were

1 picked up walking from the Safeway store back on July  
2 23rd of 1993, was anyone walking with you?

3 A Yes.

4 Q Who was with you?

5 A My cousin.

6 Q What is her name?

7 A Patricia Williams.

8 Q And you and Patricia Williams, Larry Demery  
9 and the defendant then went to your grandmother's?

10 A No, we did not.

11 Q Where did you go?

12 A We went to the Casbar.

13 Q Now, the Casbar, how do you spell Casbar?

14 A I don't know, I just spell it the best way  
15 I can.

16 Q And how is that?

17 A Cas, I guess C A S, and bar, B A R.

18 Q Now, you went to -- let me ask you this.

19 Are you familiar with a club down there called New  
20 Birth?

21 A That's the same club.

22 Q So you, now, was -- was the Casbar the New  
23 Birth before it was named the Casbar?

24 A Yes.

25 Q Okay. At the time, back on July 23rd of

1 1993, was the name of the place that you went to the  
2 New Birth or the Casbar, for the record?

3 A Well, it was known as both.

4 Q Okay.

5 A What the official name is, I don't know.

6 Q And you went there, meaning you, Patricia  
7 Williams, Larry Demery, and the defendant, went to  
8 the New Birth or Casbar, did you find Patricia  
9 William's boyfriend?

10 A Yes.

11 Q And Patricia Williams' boyfriend was at the  
12 club?

13 A Yes.

14 Q After you left the Casbar, you went to the  
15 Udge, club Udge, is that right, is that the way you  
16 pronounce it?

17 A Udge, yes.

18 Q And how do you spell Udge?

19 A I don't know.

20 Q Now, it was at this time that you and -- of  
21 course, you all were riding on the 23rd in the Lexus,  
22 is that right?

23 A Yes.

24 Q Now, it was Dee who asked on this  
25 particular occasion when you -- first of all, strike

1 that. You found Dee at the club Udge, is that right?

2 A Yes, sir.

3 Q And Dee, as you said, and you ran out of  
4 the club, an Dee asked to drive the car?

5 A Yes.

6 Q Asked Larry Demery to drive the car?

7 A Yes.

8 Q And you indicated now that back on the 23rd  
9 while you were there at the club Udge -- strike  
10 that. Let me ask you what time was it when you got  
11 up with Dee Sullivan?

12 A I don't know.

13 Q Well, was it still on the 24th, the night  
14 on the 24th or early morning hours of the --

15 A It was either there or the 23rd.

16 Q I mean the 23rd, I'm sorry.

17 A Yes.

18 Q So sometime between 10:00 p.m. and 12:00?

19 A Yes.

20 THE COURT: Mr. Thompson, I don't  
21 mean to interpret but there's a scheduling  
22 matter that we need to discuss. It's  
23 almost five until 1:00, and I'm trying to  
24 make a determination as to our schedule.

25 Ladies and gentlemen, for the purposes

1 of an administrative scheduling matter that  
2 I need to attend to, if you'll please step  
3 to the jury room for just a moment.

4 Again, don't worry or speculate about  
5 what takes place in the courtroom. I'm  
6 simply trying to ascertain as to some  
7 matters related to you. If you'll step to  
8 the jury room, please.

9 (Jury out at 12::53 p.m.)

10 THE COURT: Let the record  
11 reflect the following is being conducted in  
12 the absence of the jury.

13 Mr. Britt, my recollection is you  
14 indicated yesterday that at some point  
15 there were two witnesses for today before  
16 any 404(b) matters that you wanted to  
17 address.

18 MR. BRITT: Yes, sir.

19 THE COURT: My understanding was  
20 those witnesses were Ms. Sullivan and  
21 Ms. Moore who is now on the stand  
22 undergoing cross-examination.

23 MR. BRITT: That's right.

24 THE COURT: You don't intend to  
25 call any more witnesses who would be heard

1 before the jury before going into 404(b)  
2 matters.

3 MR. BRITT: No, sir, and  
4 yesterday when I attempted to play the tape  
5 involving David Moore, you gave me time to  
6 review the transcript. We will go back to  
7 that issue --

8 THE COURT: So we can deal with  
9 those matters of law presumably this  
10 afternoon.

11 MR. BRITT: Yes, sir.

12 THE COURT: That's what I was  
13 trying to find out.

14 Mr. Thompson, I don't mean to cut into  
15 your cross-examination in any way. Can you  
16 give me some ballpark figure of how much  
17 additional time-wise cross-examination  
18 you've got? What I'm trying to decide is  
19 do we go beyond 1:00 and then excuse the  
20 jury for the balance of the day or do I  
21 stop at lunch, bring them back and then --

22 MR. THOMPSON: Judge, I prefer  
23 you stop, because I think I've got as much  
24 to go as I've already covered.

25 THE COURT: It's about 25, 20

1 minutes --

2 MR. THOMPSON: I'm just counting  
3 pages.

4 MR. BOWEN: Judge, this is the  
5 23rd of January, and if Your Honor will  
6 recall, seven weeks ago I made you aware of  
7 my doctor's appointment at 2:00. With luck  
8 I'll be able to see him at 2:00 and be back  
9 on time.

10 THE COURT: That was my other  
11 concern. My concern is, I'm reluctant to  
12 take a lunch break, come back, do 20, 30  
13 minutes of cross-examination and then send  
14 the jury home for the balance of the day.  
15 If there's any way we can go forward and  
16 complete the cross-examination, even if  
17 that takes us until 1:30. Your appointment  
18 is what time?

19 MR. BOWEN: 2:00.

20 THE COURT: That would allow you  
21 to attend to your appointment and allow us  
22 to go through with matters of law after  
23 your appointment is concluded and minimize  
24 the delay to the jury.

25 You folks want to be heard? What I'm

1 proposing is going forward with cross, go  
2 as long as you think you need to. We'll  
3 stop at that point, I'll release the jury  
4 then for the balance of the day, and then  
5 we can address the matters of law. How  
6 long do you anticipate your voir dire  
7 showing is going to be?

8 MR. BRITT: I anticipate that  
9 taking some time. The other thing, I don't  
10 know what Mr. Thompson is going to cover on  
11 his cross.

12 THE COURT: Which may involve  
13 redirect.

14 MR. BRITT: Yes, we may open up a  
15 lot of things on redirect.

16 THE COURT: My concern is, folks,  
17 lot of matters have been dealt with in  
18 camera, lot of matters heard outside the  
19 presence of the jury, and I'm trying to  
20 minimize those occasions --

21 MR. BRITT: Yes, sir.

22 THE COURT: But I'm hearing from  
23 you folks that you don't think that it's  
24 going to do any good.

25 MR. THOMPSON: I prefer to break

1 now and have lunch.

2 THE COURT: Well, Mr. Bowen has  
3 got an appointment at 2:00. So if we break  
4 now and come back at 2:00, we may be faced  
5 with a delay in any event because of his  
6 appointment. If we take a lunch break from  
7 1:00 to 2:30, the appointment may carry  
8 over into that.

9 MR. BOWEN: It might. I would  
10 say that -- I'll ask the doctor's office to  
11 be cooperative. I think that we'll be -- I  
12 certainly expect to be back at 2:45. I  
13 just put the Court on notice, I would be a  
14 little late if the Court would allow me to.

15 THE COURT: Yes, sir. I told you  
16 I would, and I will.

17 Doesn't appear that we're going to be  
18 able to do this in an efficient way.

19 If you'll bring the jury in, please.

20 (Jury in at 12:58 p.m.)

21 THE COURT: Members of the jury,  
22 I was trying to address the scheduling  
23 matters so as to expedite the matters  
24 before us. We're going to go ahead and  
25 take a lunch break at this time. I'm going

1 to ask that you return -- one of the folks  
2 involved in this case has a medical  
3 appointment. That's part of what my  
4 concern was, trying to determine what our  
5 schedule might be in light of that.

6 If you folks would return at 2:30, we  
7 hopefully will be in a position to go  
8 forward at or about that time.

9 Now, during the lunch recess, please  
10 recall it is your duty to abide by all  
11 prior instructions of the Court concerning  
12 your conduct. I'm again obligated to  
13 instruct you that you're not to talk about  
14 this matter among yourself or with anyone  
15 else, you're not to allow anyone to say  
16 anything to you or in your presence about  
17 this case. If anyone communicates with you  
18 about this matter, or attempts to do so, or  
19 says anything about the case in your  
20 presence, it's your duty to inform us of  
21 that immediately through one of the  
22 bailiffs assigned to the courtroom.

23 Don't form or express any opinions  
24 about this matter. Don't have any contact  
25 of any kind with any of the attorneys,

1 parties, witnesses, prospective witnesses  
2 or directly with the Court. Don't allow  
3 yourself to be exposed to any media  
4 accounts which might exist in connection  
5 with this matter, and don't conduct any  
6 independent inquiry or investigation or  
7 research of any kind.

8 Everyone else please remain seated,  
9 the members of the jury are excused at this  
10 time.

11 (Jury out at 1:00 p.m.)

12 THE COURT: Ms. Moore, thank you  
13 ma'am. You may step down. If you'll  
14 return at 2:30.

15 Mr. Bowen, if it appears that your  
16 appointment is going to carry beyond 2:30  
17 if you could call Ms. Gaines to let her  
18 know your situation.

19 MR. BOWEN: Yes, sir.

20 THE COURT: Anything further from  
21 either counsel?

22 MR. BRITT: No, sir.

23 THE COURT: If you'll recess us.

24 (Lunch recess).

25 THE COURT: Good afternoon,

1           folks. Let the record reflect that all  
2           counsel are present, the defendant is  
3           present in open court.

4           Mr. Horne, do we have all members of  
5           the jury secured in the jury room, sir?

6                     THE BAILIFF: Yes, sir, we do.

7                     THE COURT: Folks, give Mr. Bowen  
8           an opportunity to get settled. Let me  
9           address a matter that was a subject of our  
10          in camera proceeding on yesterday and  
11          continuing into today.

12                    The Court is informed that the  
13          information which was referred to as  
14          available to us, my proposal in that regard  
15          is that we recess at perhaps ten until 5:00  
16          or 15 until 5:00, and take that matter up.  
17          That will give Mr. Thompson an opportunity  
18          to talk to his -- and Mr. Bowen an  
19          opportunity to talk to their client.

20                    MR. BRITT: It may be that we  
21          take it up before then.

22                    THE COURT: I didn't know how  
23          long the voir dire would take. We may be  
24          able to do that. In any event, at some  
25          point this afternoon, is that

1           satisfactory?

2                   MR. BOWEN:   Yes, sir.

3                   THE COURT:   You folks ready to go  
4           forward?

5                   MR. THOMPSON:   Yes, sir.

6                   THE COURT:   Mr. Horne, if you'll  
7           bring the jury in, please, and Ms. Moore,  
8           if you'll again take the witness stand.

9                               (Jury in at 2:41 p.m.)

10                   THE COURT:   Good afternoon,  
11           ladies and gentlemen,.

12                               Mr. Thompson you may continue with  
13           cross-examination.

14   BY MR. THOMPSON:

15           Q       Good afternoon, Ms. Moore.   Ms. Moore, back  
16           on July the 23rd of 1993, when you -- you indicated  
17           that you found Delores Sullivan at the Udge club, is  
18           that correct?

19           A       Yes, sir.

20           Q       And you testified on direct examination  
21           that you made several calls on the telephone?

22           A       Yes, sir.

23           Q       Back on July the 23rd?

24           A       Yes, sir.

25           Q       And I believe you indicated you called your

1 mother?

2 A Yes, sir.

3 Q You called home?

4 A Yes, sir.

5 Q And you called Dee's house?

6 A Yes, sir.

7 Q Now, is the number to Dee's house 423-3215?

8 A No, sir.

9 Q That's the number to Dee's boyfriend, is  
10 that right?

11 A At that time, it was.

12 Q Is that the number that you're referring to  
13 when you say you called Dee's house?

14 A No.

15 Q Okay. Did you also call that number?

16 A Yeah -- I called that number, too, but she  
17 said she called it. But I remember calling it.

18 Q But you called it?

19 A Yes.

20 Q And her -- the 423-2135 is the residence of  
21 a Dan Fields, is that right?

22 A Yes.

23 Q And that's Dee's boyfriend -- was her  
24 boyfriend?

25 A Boyfriend at the time.

1           Q     Now, the numbers that I just indicated,  
2     that you just indicated that you just called, were  
3     those calls made prior to getting up with Delores  
4     Sullivan or were any of them made after you got up  
5     with Delores Sullivan?

6           A     It was made prior.

7           Q     So every one of those calls you just  
8     testified to --

9           A     I can't be sure of that. Some of them was,  
10    some of them wasn't.

11          Q     Well, the one that was made to her  
12    boyfriend's house was made before, because you were  
13    trying to get up with her, is that right?

14                   THE COURT: I'm sorry, ma'am, you  
15    have to answer for the record.

16                   THE WITNESS: Yes, sir.

17    BY MR. THOMPSON:

18          Q     You and Larry Demery, the defendant, and  
19    Dee, leave Marion and you come to Lumberton, is that  
20    correct, back on July 23rd?

21          A     Rowland?

22          Q     Rowland, come back to Rowland?

23          A     Yes, sir.

24          Q     At any event, you come back to this trailer  
25    that you had previously testified that you had been

1 to before?

2 A Yes, sir.

3 Q This time the trailer was clean?

4 A Yes, sir.

5 Q And all of you went into the trailer and  
6 stayed there a short time but Larry and Dee left,  
7 leaving you and the defendant there in the trailer  
8 for a while?

9 A Please repeat.

10 Q When all of you -- all of you went into the  
11 trailer, all four of you went into the trailer, do  
12 you know about what time that was?

13 A About 1:00 or 2:00, between 1:00 and 2:00.

14 Q So that would have been between 1:00 and  
15 2:00 during the early morning hours of July 24th?

16 A Yes, sir.

17 Q And at some point there was some talk about  
18 being hungry, is that right?

19 A Yes.

20 Q And Larry and Dee left?

21 A Yes.

22 Q How long did they stay gone?

23 A I don't know, I can't be sure.

24 Q Would you say it was as much as 30  
25 minutes?

1 MR. BRITT: Objection.

2 THE COURT: Overruled.

3 THE WITNESS: Longer, I think.

4 BY MR. THOMPSON:

5 Q Maybe somewhere between 30 minutes and an  
6 hour, is that fair to say?

7 A Yes.

8 Q And they brought food back and you all ate  
9 the food there in the trailer?

10 A Yes, sir.

11 Q Went to bed, you went to bed -- went to  
12 sleep?

13 A We went to bed.

14 Q All right. Went to bed. And did you ever  
15 go to sleep?

16 A Of course.

17 Q Okay. And what time did you get up that  
18 morning after you went to sleep?

19 A I got up about 6:00, between 6:00 and 7:00.

20 Q I believe you had some stomach problems,  
21 you were a little sick?

22 A Yes, yes.

23 Q So you left the trailer about 12:00 noon,  
24 is that fair to say, on July 24th?

25 A Yes, that would be fair.

1 Q And you, Dee, Larry Demery, and the  
2 defendant, left the trailer and went to Mullins, is  
3 that right, or did you go to Marion? Where did  
4 you -- did you go the Mullins?

5 A Yes, we eventually went to Mullins.

6 Q You stopped though in Dillon, South  
7 Carolina to pick up your sister?

8 A Little Rock.

9 Q Is that near --

10 A That's near Dillon.

11 Q Okay. What is Little Rock, a section of  
12 the town --

13 A I don't know if it's a section, I just say  
14 it's on the outskirts of Dillon.

15 Q And it was there that you picked up your  
16 sister Rochelle?

17 A Yes, sir.

18 Q And from Little Rock, you went to Mullins?

19 A Marion, Mullins.

20 Q You went to Marion and then to Mullins?

21 A Yes, you got to go through Marion to get to  
22 Mullins.

23 Q Did you stop in Marion?

24 A No.

25 Q You went to Mullins to Patricia's

1 boyfriend's house, that's --

2 A Her boyfriend's sister's house.

3 Q And then did you pick up Patricia Williams  
4 in Mullins?

5 A No.

6 Q But you went there to pick Patricia  
7 Williams up?

8 A Yes.

9 Q Now, where did Patricia Williams stay,  
10 where did she stay? Was it in Mullins or Marion?

11 A What do you mean?

12 Q I mean, where did she live, her home?

13 A She was living with me.

14 Q At your house?

15 A Yes.

16 Q Okay. So when you went to Mullins, you  
17 found out that Patricia was already home?

18 A Yes.

19 Q And so you called Patricia Williams on the  
20 phone?

21 A No.

22 Q You never called Patricia --

23 A Bubba.

24 Q To find out what kind of -- excuse me, you  
25 were about to say something?

1           A       Trulik got a number for Bubba and Bubba  
2 called to house to get Patricia on the phone.

3           Q       And that was while you were at Bubba's  
4 house?

5           A       Yes, his sister's house.

6           Q       And Bubba, for the record, is Patricia  
7 Williams' boyfriend?

8           A       At that time.

9           Q       At that time. All right. At some point,  
10 you -- back on -- this would have been July 24th of  
11 1993, went to Wal-mart, do you remember that, to buy  
12 your sister a blouse?

13          A       I guess. I can't remember.

14          Q       Now, you indicated on direct examination  
15 that the defendant left Marion back on July the 24th  
16 at around 2:00 p.m., is that true?

17          A       I guess it was about 2:00, I would say --

18          Q       Is that when he dropped you off?

19          A       Yes, at my house.

20          Q       Do you recall telling Mr. Barnes, the  
21 investigator, that they left Marion on July the 24th  
22 around 4:00 or 5:00 p.m.?

23          A       I can't recall.

24          Q       Now, Ms. Moore, State's Exhibit Number 63,  
25 do you recall that exhibit, it was your -- something

1 about your entries in the diary? Do you recall  
2 testifying about --

3 A Yes.

4 Q -- that exhibit. Now, State's Exhibit  
5 Number 63, did you actually copy -- is that a copy of  
6 the entries in your diary?

7 A No, it was -- no, it's not no exact copy of  
8 it, no, duplicate copy of it. It's just from entries  
9 that I had written in my diary to the questions that  
10 I was asked.

11 Q All right. Now, I believe that back on --  
12 THE COURT: Mr. Thompson, avoid "I  
13 believe".

14 MR. THOMPSON: Excuse me, yes.

15 BY MR. THOMPSON:

16 Q It was back on August 15th of 1993 that you  
17 gave a statement to -- you talked to a Lieutenant  
18 Raleigh, is that correct?

19 A On what date?

20 Q On -- was it on August the 15th of 1993?

21 A I did not talk with him.

22 Q Now, State's Exhibit Number 63 that you've  
23 testified to, who did you -- on what date did you  
24 prepare State's Exhibit Number 53 -- 63, excuse me?

25 A On the day that they came and talked to me.

1 Q What date was that?

2 A The 15th, August the 15th. That was a  
3 Sunday.

4 Q Now, when you say "they" who all came and  
5 talked to you?

6 A The FBI, SBI, local police, everybody.

7 Q There was about 15 people, weren't there?

8 A It was a lot of them.

9 Q About 15 --

10 A Lot of them.

11 THE COURT: Pardon me, ma'am,  
12 you'll need to let Mr. Thompson complete  
13 his question, and then if you feel an  
14 explanation is necessary, you can explain.  
15 The court reporter has to take down what is  
16 said, and that's difficult with more than  
17 one person talking at the same time.

18 BY MR. THOMPSON:

19 Q Would you say there were more than 15 law  
20 enforcement officers who came to see you, Ms. Moore?

21 A I would say it was a lot of them, just like  
22 I just said. I didn't count the number.

23 Q I understand. Would you say that a lot of  
24 them would have been at least more than ten?

25 A A lot of them was just a lot of them, I

1 don't know.

2 Q Now, when you say it was a lot of them,  
3 where did you observe these people? Where were they  
4 when they talked to you?

5 A They were in the auditorium at Vorhees  
6 College.

7 Q Were you there with anyone other than law  
8 enforcement officers?

9 A What do you mean?

10 Q I mean, there in the auditorium at Vorhees  
11 College when they questioned you?

12 A No.

13 Q So it was just you and these lot of law  
14 enforcement officers there in the auditorium, is that  
15 right?

16 A Yes.

17 Q Again, this was back on the 15th?

18 A Yes, sir.

19 Q Now, was that around noon on the 15th?

20 A I don't know.

21 Q Now, where were you seated in the  
22 auditorium when they questioned you?

23 A At the table with them.

24 Q Where were they seated when they questioned  
25 you?

1 A At the table.

2 Q Were they in front of you or behind you?

3 A Beside, beside me, in front of me, all  
4 around. They were just at the table.

5 Q Would it be fair to say that you were  
6 afraid?

7 A Of course.

8 Q And you were afraid because there were a  
9 lot of officers around you, is that correct?

10 A Yes. What --

11 Q Now, they were -- you felt threatened by  
12 these officers?

13 MR. BRITT: Objection to the  
14 form.

15 THE COURT: It's  
16 cross-examination. You may answer if you  
17 can.

18 BY MR. THOMPSON:

19 Q You may answer, Ms. Moore. You felt  
20 threatened by these officers?

21 A Wouldn't you be threatened the first day of  
22 college and officers come to see you?

23 Q I take that to mean you were threatened by  
24 these officers?

25 A Yes, yes.

1 MR. BRITT: Objection to  
2 Mr. Thompson's statement.

3 THE COURT: The objection is  
4 sustained. It's a statement of belief.  
5 You can ask questions. Anything further?

6 MR. BRITT: Move to strike.

7 THE COURT: Allowed.

8 MR. BRITT: Ask for instruction.

9 THE COURT: Members of the jury,  
10 disregard the statement by Mr. Thompson as  
11 to what he took the answer of the witness  
12 to mean. It is for you, the members of the  
13 jury, to decide what the evidence in this  
14 case does show. You're not to consider  
15 that matter in any respect in your  
16 deliberations in this case.

17 BY MR. THOMPSON:

18 Q For sake of clarity of the record,  
19 Ms. Moore, I'll have to ask you the question again.  
20 You were threatened by the officers, weren't  
21 you?

22 MR. BRITT: Objection, that was  
23 not the question.

24 THE COURT: Rephrase.

25 BY MR. THOMPSON: Were you threatened by these

1 officers.

2 MR. BRITT: Objection.

3 MR. THOMPSON: May I withdraw the  
4 question?

5 THE COURT: Yes, sir, you may.

6 BY MR. THOMPSON:

7 Q Did you feel threatened by these officers?

8 A Yes.

9 Q One or more of those officers told you that  
10 you could be charged with perjury if you didn't talk  
11 to them, didn't you?

12 MR. BRITT: Objection.

13 THE COURT: Objection is  
14 sustained.

15 MR. BRITT: Move to strike.

16 THE COURT: Motion to strike is  
17 allowed.

18 MR. BRITT: Ask for instruction.

19 THE COURT: Members of the jury,  
20 disregard the last question asked by  
21 counsel for the defendant, Mr. Thompson.  
22 That matter is not to take any part in your  
23 deliberations in this case in any respect.  
24 You may ask additional questions.

25 BY MR. THOMPSON:

1           Q       You were accused by one or more of these  
2 officers of doing things that you knew you hadn't  
3 done, isn't that fair to say?

4                   MR. BRITT:  Objection.

5                   THE COURT:  Sustained.  Do we  
6 need to be heard, folks?

7                   MR. THOMPSON:  Yes, sir.

8                   THE COURT:  Members of the jury,  
9 there's a matter of law the Court must take  
10 up at this time out of the hearing and  
11 presence of the jury.  Please recall my  
12 instructions in that regard, don't worry or  
13 speculate about what takes place in the  
14 courtroom in your absence.  If all members  
15 of the jury would step to the jury room.

16                           (Jury out at 2:58 p.m.)

17                   THE COURT:  Let the record reflect  
18 the following is being heard in the absence  
19 of the jury.

20                           Mr. Britt, the basis of the objection  
21 is hearsay?

22                   MR. BRITT:  Yes, sir, the  
23 question itself is hearsay.

24                   THE COURT:  Is the defendant  
25 relying on any exception to the hearsay

1 rule?

2 MR. THOMPSON: Your Honor, we  
3 have in the evidence that she felt  
4 threatened by the officers --

5 THE COURT: The questions that  
6 you're being asked refer to specific  
7 statements by the officers. Those  
8 statements being --

9 MR. THOMPSON: You accused --

10 THE COURT: Exactly. Hearsay  
11 matters. There are exceptions under the  
12 hearsay rule.

13 MR. THOMPSON: This is not being  
14 offered for the truth of the matters  
15 asserted therein but to show subsequent  
16 conducts.

17 THE COURT: Then you're going to  
18 have to do that on voir dire. And I think  
19 that is the basis -- I'm going to let you  
20 proceed on voir dire, you can ask her  
21 questions at this time.

22 BY MR. THOMPSON:

23 Q And Ms. Moore, one of more of those  
24 officers accused you of doing certain things or  
25 involvement with respect to this case that were not

1 true, is that right?

2 A Yes.

3 Q And you knew that when they were accusing  
4 you of these things, you had reason to believe that  
5 they knew they weren't true, is that right?

6 A That's how I felt.

7 Q Right. For example, they accused you of  
8 driving a car and you knew that wasn't true?

9 A Yes.

10 Q And you felt that they knew it wasn't true?

11 A Yes.

12 Q You felt that they were attempting to scare  
13 you, frighten you?

14 A Yes.

15 Q They told you things that the defendant  
16 allegedly said, particularly with, in your own words,  
17 made you feel like you were cheap, is that correct?

18 A Yes.

19 Q And they told you, meaning these officers  
20 told you these things, is that right?

21 A Officers?

22 Q Yeah.

23 THE COURT: Can you identify  
24 them, Mr. Thompson?

25 BY MR. THOMPSON:

1 Q Can you identify --

2 THE COURT: No, sir. Okay. All  
3 right. Go ahead. Yes, sir.

4 BY MR. THOMPSON:

5 Q Can you identify who said what, Ms. Moore?

6 A Not really, because I don't know all the  
7 officers.

8 Q How many of them were accusing you -- how  
9 many of the ones that were there were actually  
10 threatening or accusing you of things you hadn't  
11 done?

12 MR. BRITT: Objection.

13 THE COURT: We're on voir dire,  
14 items of voir dire. Objection is  
15 overruled. You may answer.

16 THE WITNESS: Could you repeat  
17 that?

18 BY MR. THOMPSON:

19 Q Let me ask you this. Can you identify --  
20 for example, I believe you indicated that Mr. Heffney  
21 was there. Was he there?

22 A Yes, sir.

23 Q Was he one of the ones who were threatening  
24 you and accusing you of things, ma'am?

25 A He didn't threaten me.

1 Q Was Mr. Anthony Thompson there, Detective  
2 Anthony Thompson?

3 A Yes, sir.

4 Q Was he one of the ones who was accusing you  
5 or threatening you?

6 A They didn't threaten me in the sense like  
7 that.

8 Q Well, now, Ms. Moore, they -- one or more  
9 of those officers told you or threatened you that if  
10 you didn't give them a statement that you could be  
11 found in contempt of court, didn't they?

12 A Yes.

13 Q That statement was made to you, wasn't it?

14 A Yes.

15 Q Who made that statement to you?

16 A Neither one of them.

17 Q I understand. But then did -- was there a  
18 Marion Riley who was there, do you know a Marion  
19 Riley, Officer Riley?

20 A I know a Sonny Riley.

21 Q Is he chief of the Denmark Police  
22 Department? Who is he? Is he a SLED agent?

23 A He's an agent for -- he's a SLED agent.

24 Q Did he make that -- any of those statements  
25 to you?

1           A       He told me that if I don't talk to them and  
2 stuff like that, if I don't help -- not really help  
3 them, but if I don't talk to them, he say a lot of  
4 stuff can happen, I can be charged with perjury and  
5 all kind of stuff, contempt of court, and my life  
6 would just be, as in his words, be a living hell.

7           Q       This is what Officer Riley said to you?

8           A       Yes, not in those words, but, you know.

9           Q       Well, when he told you -- these were his  
10 words when he told you your life -- did he say your  
11 life would be a living hell?

12          A       Yes.

13          Q       Those were his words?

14          A       Yes.

15          Q       And an FBI agent by the name of Bill --  
16 William Pitt, do you recall him being there, FBI?

17          A       I don't know everybody that was there.

18          Q       And which one of the officers were telling  
19 you the things about what Mr. Green, the defendant,  
20 was saying to you to make you feel cheap? Which  
21 officers were telling you about those things?

22                   THE COURT: Well, you need to  
23                   establish that first.

24          BY MR. THOMPSON:

25          Q       Well, what were the kind of things that

1 they were telling you, Ms. Moore, that in your own  
2 words, made you feel cheap?

3 A I was told that Trulik said that I wasn't  
4 nothing but a cheap thrill to him.

5 Q And who told you that?

6 A It's all right to answer who told you?  
7 They did.

8 Q Who?

9 A They did. They meaning Mr. Heffney and  
10 Mr. --

11 Q SBI Agent Heffney and Detective Thompson  
12 both told you that?

13 A They were together when it was said.

14 Q So one or both of them made that statement?

15 A Yes.

16 Q All right. Now, what else was being said  
17 that made you feel cheap, that was attributed to one  
18 or more of these officers?

19 A Just he had other girlfriends.

20 Q Who told you he had other girlfriends?

21 A Officers.

22 Q SBI Agent Heffney?

23 A No.

24 Q Detective Anthony Thompson?

25 A No.

1 Q Do you recall any officers in specific that  
2 told you?

3 A I don't know their names. I saw a lot of  
4 officers. I don't remember all their names.

5 Q And were you surrounded by these officers  
6 when they were telling you these things?

7 A We were at the table.

8 Q What else were they telling you?

9 A Basically that's it.

10 Q As a result of what these officers were  
11 telling you and making you feel bad about what they  
12 said the defendant said about you, did you tell  
13 them -- did you give them a true statement?

14 A Yes.

15 THE COURT: Now, let's be clear  
16 that you understand the question. The  
17 question is, was any statement that you  
18 gave to the officers on the date in  
19 question a result of the things that you  
20 say were said to you by the officers? In  
21 other words, did you give them a statement  
22 on the date in question because you felt  
23 threatened or because you felt that it  
24 would otherwise put you in jeopardy?

25 THE WITNESS: Yes.

1 BY MR. THOMPSON:

2 Q Which one, because you felt threatened or  
3 both?

4 A Both.

5 Q Otherwise put you in jeopardy?

6 THE COURT: Mr. Britt, any  
7 questions on voir dire?

8 MR. BRITT: Is he finished?

9 MR. THOMPSON: Yes, sir.

10 BY MR. BRITT:

11 Q When you talked with them, did you tell  
12 them the truth?

13 A Yes, to the best of my knowledge.

14 Q And the testimony that you have given here  
15 in court today, is that as a result of a threat?

16 A No, it's the truth.

17 Q Is it as a result of any intimidation on  
18 the part of anyone?

19 A No.

20 Q The things that you've testified about  
21 today in court, are those the same things that you  
22 told the officers back in August of 1993?

23 A Basically, yes.

24 MR. BRITT: I don't have any  
25 other questions.

1 THE COURT: Yes, sir.

2 MR. THOMPSON: Just desire to be  
3 heard.

4 THE COURT: What the --

5 MR. THOMPSON: Yes, sir.

6 Your Honor, in addition, this goes to  
7 biasness, this is cross-examination of this  
8 witness.

9 THE COURT: Well, doesn't go to  
10 her bias. Whose bias does it go to?

11 MR. THOMPSON: Well, I suggest it  
12 goes to perhaps even as to hers as to the  
13 threats that was being made, the fear that  
14 was being induced. I think it's a question  
15 for the jury as to --

16 THE COURT: I agree with you as  
17 to that. I don't agree with you as to --  
18 there's an exception under the hearsay  
19 rules that matters are offered for  
20 nonhearsay purpose, for example, to explain  
21 the effect of statements on the hearer,  
22 mental input, then it's admissible for that  
23 limited purpose.

24 In this instance, the State is  
25 entitled to come back and ask questions

1 consistent with the questions asked on voir  
2 dire. But I am going to overrule the  
3 objection. The Court is going to admit it  
4 for the limited purpose of its effect to  
5 the jury to the extent that the jury finds  
6 it has any effect on the hearer.

7 MR. BRITT: With all due respect,  
8 that is not the proffer that was made.

9 THE COURT: I understand.

10 MR. BRITT: That proffer has  
11 never been tendered to the Court. They  
12 said it was to explain subsequent conduct.

13 MR. THOMPSON: That is --

14 THE COURT: No, it's not exactly  
15 the same thing. It's another way of  
16 getting at the same thing, but it's not  
17 exactly the same thing.

18 MR. BRITT: I would also object  
19 under Rule 611, as to specifically 611-A,  
20 as to protect the witness from harassment  
21 or undue embarrassment.

22 THE COURT: I note your  
23 objections. Those objections are overruled  
24 for the record. Exception is noted for the  
25 record. The Court will admit it for the

1 limited purpose I've indicated, and you're  
2 entitled to go back into the matters.  
3 Bottom line is, jury decides what if  
4 anything it is.

5 MR. BRITT: Yes, sir, and I  
6 believe I'm entitled to a limiting  
7 instruction.

8 THE COURT: I certainly will give  
9 one.

10 Anything from either counsel?

11 MR. THOMPSON: No, sir.

12 MR. BRITT: No, sir.

13 THE COURT: Bring the jury back  
14 in, please.

15 (Jury in at 3:10 p.m.)

16 THE COURT: Members of the jury,  
17 the objection is overruled, and I instruct  
18 you that the matters about to be elicited  
19 from the witness who is before you,  
20 Ms. Moore, by counsel for the defendant,  
21 are not being admitted for the truth of the  
22 matters asserted. The evidence to be  
23 elicited is being offered and received for  
24 the limited purpose of explaining the  
25 effect of any statements that the witness

1           testifies to upon her as the hearer of  
2           those statements. You may consider this  
3           evidence for that limited purpose and for  
4           no other purposes.

5                     Mr. Britt, anything further?

6                             MR. BRITT: No, sir.

7                             THE COURT: Mr. Thompson.

8 BY MR. THOMPSON:

9           Q        Ms. Moore, I believe you testified that you  
10           felt threatened by one or more of these officers that  
11           were there in the auditorium which were questioning  
12           you back on August the 14th of 1993, is that  
13           correct?

14                            MR. BRITT: Objection to  
15                            Mr. Thompson's belief.

16                            THE COURT: Sustained. Rephrase.

17 BY MR. THOMPSON:

18           Q        I'm sorry. You testified that you felt  
19           threatened, did you not?

20           A        Yes, sir.

21           Q        And among the officers that were there were  
22           SBI Agent Heffney, is that correct?

23           A        Yes, sir.

24           Q        Detective Anthony Thompson who is also  
25           seated with SBI Agent Heffney at the State's table,

1 is that correct?

2 A Yes, sir.

3 Q Also an officer whom you referred to by the  
4 name of Sonny Riley was there?

5 A Yes, sir.

6 Q Now, you don't know what law enforcement  
7 agencies are, or do you know what law enforcement  
8 agency Sonny Riley works for?

9 A No, sir.

10 Q Was Chief of Police of Denmark there?

11 A I can't remember everybody that was there.

12 Q And, Ms. Moore, one or more of these  
13 officers -- strike that. What did Sonny Riley say to  
14 you, Ms. Moore, that caused you to feel threatened or  
15 what did he say to you by way of accusation?

16 MR. BRITT: Objection.

17 THE COURT: Sustained to the  
18 form.

19 BY MR. THOMPSON:

20 Q Well, what did he say to you, meaning Sonny  
21 Riley which caused you to feel threatened or scared  
22 or afraid?

23 MR. BRITT: Objection.

24 MR. THOMPSON: One at a time.

25 Q What did Sonny Riley say to you, Ms. Moore,

1       which caused you to -- to feel threatened?

2                       MR. BRITT:  Objection.

3                       THE COURT:  Overruled.  You may  
4       answer.  If you can recall.

5                       THE WITNESS:  He said things like  
6       I can be charged with perjury and contempt  
7       of court and --

8                       MR. BRITT:  Objection, move to  
9       strike as to reference to things like --

10                      THE COURT:  Overruled.  You may  
11       complete your answer.

12                      THE WITNESS:  And that my life  
13       would be a living hell.

14       BY MR. THOMPSON:

15               Q       Now, when you testified and you said that  
16       your life would be a living hell, were those his  
17       words or are those your words?

18               A       His words.

19               Q       And when he told you those things that you  
20       could be charged with perjury an contempt and your  
21       life would be a living hell, did he tell you those  
22       things would happen if you did not give a  
23       statement?

24                      MR. BRITT:  Objection.

25                      THE COURT:  Overruled.  You may

1 answer.

2 THE WITNESS: He just told me  
3 those things.

4 BY MR. THOMPSON:

5 Q And what if anything did SBI Agent Heffney  
6 tell you which caused you to feel cheap or  
7 threatened?

8 MR. BRITT: Objection.

9 THE COURT: Sustained to the  
10 form.

11 BY MR. THOMPSON:

12 Q Was there anything that was said to you,  
13 Ms. Moore, which made you feel cheap or -- ma'am?

14 A Yes, sir.

15 MR. BRITT: Objection.

16 THE COURT: Overruled.

17 BY MR. THOMPSON:

18 Q And what if anything was said to you that  
19 made you feel that way, ma'am?

20 MR. BRITT: Objection.

21 THE COURT: Overruled.

22 BY MR. THOMPSON:

23 Q You may answer.

24 THE COURT: You may answer.

25 THE WITNESS: That he said that

1 Trulik said I was a cheap thrill to him and  
2 he had other girlfriends besides me.

3 BY MR. THOMPSON:

4 Q Which officer told you that Trulik said  
5 that you were a cheap thrill?

6 A I can't be sure, I just know they were  
7 together.

8 Q When you say they, are you referring to SBI  
9 Agent Heffney and Detective Anthony Thompson?

10 A And other, yes, sir.

11 Q So one or more of them said that, made that  
12 statement, is that right?

13 A Excuse me?

14 Q One or more of them made that statement to  
15 you, is that right?

16 A Yes, sir.

17 Q Now who was it that told you that Trulik  
18 had other girlfriends?

19 A One of the officers.

20 Q Well --

21 A One of the officers.

22 THE COURT: Do you know which  
23 one?

24 THE WITNESS: No.

25 BY MR. THOMPSON:



1           were developed on voir dire. Do you want  
2           to be heard again?

3                       MR. THOMPSON: Yes, sir, I guess  
4           we're going to have to go back for voir  
5           dire.

6                       THE COURT: Members of the jury,  
7           there is a matter of law the Court must  
8           take up at this time out of the hearing and  
9           presence of the jury. Please recall my  
10          instructions and please don't worry or  
11          speculate about what takes place in the  
12          courtroom in your absence. Please step to  
13          the jury room.

14                      (Jury out at 3:18 p.m.)

15                      THE COURT: Mr. Thompson --  
16          again, the record should reflect we are  
17          conducting the following in the absence of  
18          the jury. Mr. Thompson, I understood your  
19          proffer to be to offer these matters for  
20          nonhearsay purposes of explaining the  
21          effect of any statements that were made  
22          upon the hearer for purposes of eliciting  
23          the statement on the day in question at  
24          Vorhees College. We're now beyond that.

25                      MR. THOMPSON: May I be heard,

1 Your Honor?

2 THE COURT: Yes, sir.

3 MR. THOMPSON: And this will be  
4 offered, Your Honor, with respect to  
5 anything that may have been said on  
6 yesterday, and I realize we did not cover  
7 this during the previous voir dire. With  
8 respect to any matters that they may have  
9 said to her, anything that they may have --

10 THE COURT: To explain the effect  
11 of those on her in what respect, for what  
12 purpose?

13 MR. THOMPSON: For the same  
14 purpose of her testimony when she testified  
15 today and yesterday.

16 THE COURT: Put questions to her  
17 on voir dire first.

18 MR. THOMPSON: Yes.

19 BY MR. THOMPSON:

20 Q Now, Ms. Moore, yesterday were you tearful  
21 or -- while here in the courtroom, ma'am, was there  
22 anything that -- were you tearful or did you cry  
23 while here in the courtroom?

24 A When?

25 Q Yesterday?

1 A No.

2 Q Was there anything that Detective Anthony  
3 Thompson did or said to you that upset you yesterday?

4 A No.

5 Q Did he prevent you from any movement or  
6 talking with any person that you wanted to speak to,  
7 ma'am?

8 A Nope.

9 Q What about today? Did detective Thompson  
10 or, for that matter, SBI Agent Heffney prevent you  
11 from talking to anyone that you wanted to talk to?

12 A No.

13 Q Did they, either one of them, tell you not  
14 to talk to anyone, any particular person, Ms. Moore?

15 A No.

16 MR. THOMPSON: Your Honor, if I  
17 can have just one minute.

18 THE COURT: Yes, sir.

19 MR. THOMPSON: Your Honor, with  
20 respect to that matter, after having heard  
21 her answer, I feel it's inappropriate to  
22 pursue it. But so that we won't have any  
23 interruptions, on the previous voir dire,  
24 after voir direing and then after then  
25 presenting the evidence to the jury, I

1 wanted to go back to, because this is what  
2 we were on, with respect to the  
3 circumstances surrounding this statement.  
4 And that's where we were --

5 THE COURT: Let me be abundantly  
6 clear. The State elicited the taking of  
7 the statement on the date in question. The  
8 State, having done that, my view is that  
9 the defendant is entitled to explore for  
10 the purposes of fundamental fairness the  
11 circumstances, the relevant circumstances,  
12 under which that statement may have been  
13 given.

14 MR. THOMPSON: And I don't  
15 think --

16 THE COURT: I'll allow you to do  
17 that to the extent that any purported  
18 statements made by any law enforcement  
19 officers may have had an effect on this  
20 witness and may have led to the giving of  
21 that statement. What is it that you intend  
22 to do now with regard to the statement in  
23 terms of any other circumstances?

24 MR. THOMPSON: No other  
25 circumstances. I'm through with the voir

1           dire, and I intend to go back into this  
2           with respect to --

3                       THE COURT:   Let me back up to --

4                       MR. THOMPSON:  -- questioning  
5           there in the auditorium with all these  
6           officers around having established now --

7                       THE COURT:   Are we going to get  
8           into any more statements by the officers?

9                       MR. THOMPSON:  No more statements  
10          by the officers, just circumstances  
11          surrounding -- the statement, how she  
12          prepared it, which is State's Exhibit  
13          Number 63.

14                      THE COURT:   Bear with me, folks.

15                      Specific question objected to was, I'm  
16          on page 191, line 24, question by  
17          Mr. Thompson, "Has agent -- pause, excuse  
18          me, comma, has Detective Anthony Thompson  
19          said or done anything to you, because, did  
20          he do anything to you yesterday Ms. Moore,  
21          comma which caused you to --" pause, at  
22          that point, the Court interjected an  
23          indicated we were outside the scope of  
24          matters developed on voir dire.  Is there  
25          an objection, Mr. Britt.

1 MR. BRITT: Yes, sir.

2 THE COURT: Do you want -- the  
3 objection is sustained. Anything further?

4 MR. BRITT: Move to strike and  
5 ask for an appropriate instruction.

6 THE COURT: Motion to strike is  
7 allowed. Court will give instruction as  
8 necessary. Anything further?

9 MR. BRITT: No, sir.

10 THE COURT: All right. If you'll  
11 bring the jury back in, please, sir.

12 (Jury in at 3:26 p.m.)

13 THE COURT: Members of the jury,  
14 the State's objection to the last question  
15 by Mr. Thompson is sustained. The last  
16 question made reference to detectives in  
17 this case and whether or not those  
18 detectives had done anything to this  
19 witness prior to her testimony. I instruct  
20 you that you are to disregard that  
21 question. That question is not to take any  
22 part in your deliberations in any respect  
23 in this case. The Court's instructions  
24 apply to the last question asked by counsel  
25 for the defendant.

1 Anything further, Mr. Britt?

2 MR. BRITT: No, sir.

3 THE COURT: Mr. Thompson, any  
4 additional questions on cross-examination.

5 MR. THOMPSON: Yes, sir.

6 BY MR. THOMPSON:

7 Q Ms. Moore, you indicated that State's  
8 Exhibit Number 63 was prepared by you on August the  
9 14th of 1993?

10 A Yes, sir.

11 Q And was it prepared by you while there in  
12 the auditorium at Vorhees College?

13 A No, sir.

14 Q Was it prepared prior to you going to the  
15 auditorium there at Vorhees College where these  
16 officers, lot of officers were around you?

17 A No, afterwards.

18 Q How late afterwards or how soon afterwards?

19 A When I left.

20 Q In other words, you left the auditorium and  
21 where did you go?

22 A To my room.

23 Q And when you went to your room, you  
24 prepared State's Exhibit Number 63?

25 A Yes.

1           Q       And State's Exhibit Number 63 is what you  
2 prepared from entries in your diary, is that correct?

3           A       Basically, yes, sir.

4           Q       And, now, I believe you testified yesterday  
5 that the defendant sent you a copy of some statement  
6 that you had given?

7                   MR. BRITT:  Objection to form.

8                   THE WITNESS:  Testified today?

9 BY MR. THOMPSON:

10           Q       Testified today, yes, today or yesterday,  
11 testified that the defendant sent you a copy of some  
12 statement?

13           A       Yes, he did, and letters, and phone calls,  
14 he was calling me.

15           Q       Did he send you a copy of State's Exhibit  
16 Number 63?

17           A       What you got in your hands?

18           Q       Well, yeah, which was what you testified to  
19 as the paper writing that you prepared from the  
20 entries in your diary?

21           A       Not my handwriting, not no copy of what I  
22 wrote myself or my handwriting, something that was  
23 typed up.

24           Q       Okay.  Now, what he sent you, Ms. Moore,  
25 did it appear to be a typed copy of what you had

1 prepared as identified in State's Exhibit Number  
2 20 -- 63?

3 A I don't understand.

4 Q Did the defendant send you what appeared to  
5 be a typewritten copy of what was contained in  
6 State's Exhibit Number 63? You still don't  
7 understand?

8 A No, I don't.

9 MR. THOMPSON: Your Honor, if I  
10 may have a moment.

11 THE COURT: Yes, sir.

12 MR. THOMPSON: May I --

13 (Defense Exhibit 15 was  
14 marked for identification.)

15 BY MR. THOMPSON:

16 Q Ms. Moore, I hand you what's been marked as  
17 Defendant's Exhibit Number 15. Will you look and  
18 read Defendant's Exhibit Number 15 and tell me  
19 whether you can identify that or whether you've ever  
20 seen that document before.

21 A I can't be sure that's the same thing he  
22 sent me.

23 Q Have you ever seen Defendant's Exhibit  
24 Number 15 before?

25 A You're showing it to me now.

1 Q Other than -- prior -- excuse me. Have you  
2 seen Defendant's Exhibit Number 15 prior to me now  
3 presenting it to you for your perusal? Have you ever  
4 seen it before?

5 A You're presenting it to me now, no.

6 Q So this is the first time you have seen it?

7 A Yeah, I can't be sure that's the same thing  
8 he sent me.

9 Q All right. Thank you. Now, Ms. Moore, has  
10 either Detective Anthony Thompson or SBI Agent  
11 Heffney provided you transportation to and from  
12 court?

13 A Yes, sir.

14 Q Which one?

15 A Both of them.

16 Q You mean both of them have accompanied you  
17 to and from court?

18 A You said provided.

19 Q Provided. Okay. Did you ride with them or  
20 did either one of those officers pick you up in  
21 one --

22 A Yes.

23 Q -- or the other vehicle?

24 A Yes.

25 Q Which one picked you up?

1 A When?

2 Q Yesterday.

3 A I can't remember. I can't --

4 Q You don't know which one of these officers  
5 picked you up yesterday, Ms. Moore?

6 A I know they provided me transportation, I  
7 can't remember the exact which one picked me up. I  
8 seen both of them yesterday.

9 Q Where were you picked up from?

10 A From the motel.

11 Q And transported in a law enforcement  
12 vehicle to court?

13 A Yes.

14 Q Today, were you picked up from a motel by  
15 either one of these officers?

16 A Yes.

17 Q And transported to court?

18 A Yes.

19 Q Which one transported you to court today?

20 A Mr. Thompson.

21 Q Detective Anthony Thompson?

22 A Yes, sir.

23 Q Which one took you home yesterday to the  
24 motel?

25 A I can't be sure about yesterday, I just

1 told you that, I can't remember. I saw both of them  
2 yesterday.

3 Q Well, were both of them in the vehicle with  
4 you when you were transported back to the motel?

5 A I think so.

6 Q Were both of them in the vehicle with you  
7 yesterday when you -- okay. All right. Did they  
8 talk to you about -- either one, meaning Mr. --  
9 Detective Anthony Thompson or SBI Agent Kim  
10 Heffney -- talk to you yesterday about this case as  
11 they were transporting you to and from court?

12 MR. BRITT: Objection.

13 THE COURT: You may answer yes or  
14 no.

15 THE WITNESS: Repeat it.

16 BY MR. THOMPSON:

17 Q Did Detective Anthony Thompson talk to you  
18 about this case -- I'll take it one step at a time --  
19 as you were transported to court yesterday?

20 A No, I don't recall.

21 Q What about SBI Agent Heffney, did he talk  
22 to you about the case?

23 A I don't recall.

24 Q Did Detective Anthony Thompson talk to you  
25 about the case as you were transported from court

1 back to your motel yesterday?

2 A I don't recall.

3 Q Did SBI eight Heffney talk to you yesterday  
4 as you were transported back to your motel?

5 A I don't recall.

6 Q What about this morning, Ms. Moore, did  
7 Detective Anthony Thompson talk to you about this  
8 case on your transportation to court?

9 A No, no.

10 Q What about SBI Agent Heffney?

11 A I already -- I just told you he wasn't  
12 there this morning.

13 Q Okay. The statement that you indicated the  
14 defendant sent to you, Ms. Moore, did you give that  
15 to the police?

16 A I can't recall. I don't remember. I could  
17 have, but I don't remember.

18 Q You don't recall testifying yesterday that  
19 you gave it to the police?

20 A I did not testify yesterday.

21 Q Or today, I'm sorry. Earlier, you don't  
22 recall testifying earlier today that you gave it to  
23 the police?

24 A I can't remember. I don't recall.

25 Q Now, the defendant never asked you about

1 robbing anybody at any Honey Hole, did he?

2 MR. BRITT: Objection.

3 THE COURT: Sir?

4 MR. BRITT: Excuse me. Wait a  
5 minute. I'll withdraw the objection.

6 THE COURT: Okay.

7 BY MR. THOMPSON:

8 Q You may answer.

9 A Repeat it.

10 Q He never, meaning the defendant never  
11 mentioned to you or asked you about robbing anybody  
12 at any Honey Hole, did he?

13 A No.

14 Q Where is the Honey Hole?

15 A In Marion.

16 Q What is the Honey Hole, describe it?

17 A A basketball court.

18 Q And did you indicate, did you tell Mr.  
19 Barnes, the private investigator here seated at the  
20 defense table, that that would have been ridiculous  
21 for you to go to the Honey Hole in a Lexus to try to  
22 rob somebody, did you make that statement?

23 A I don't recall.

24 Q Well, would it have been ridiculous?

25 MR. BRITT: Objection.

1 THE WITNESS: Ridiculous to do  
2 what?

3 MR. BRITT: Move to strike.

4 THE COURT: Allowed. Anything  
5 further?

6 MR. BRITT: Motion to strike.

7 THE COURT: Members of the jury,  
8 disregard that last question by  
9 Mr. Thompson. That is not to take place in  
10 your deliberations in any way.

11 BY MR. THOMPSON:

12 Q Do you know Bob Richardson?

13 A Who is --

14 Q I'm asking you, do you know?

15 A No.

16 MR. THOMPSON: That's all. Thank  
17 you.

18 THE COURT: Anything on  
19 redirect?

20 MR. BRITT: Yes, sir.

21 REDIRECT EXAMINATION

22 BY MR. BRITT:

23 Q Melinda, when you made your entries in the  
24 diary, were they made on the dates that are indicated  
25 in your diary?

1           A     Yes.

2           Q     For instance, if you made an entry on July  
3 the 3rd, 1993, was it made on July the 3rd, 1993?

4           A     Yes.

5           Q     And when these entries were made in your  
6 diary, they were made at a time when those entries  
7 were fresh in your mind?

8           A     It was made on a day-to-day basis.  When  
9 those events happened, I wrote them down.

10          Q     And you were interviewed by the officers at  
11 Vorhees College, did you refer to your diary in  
12 answering their questions?

13          A     Yes.

14          Q     The information that you gave to the  
15 officers, that was the same information that you had  
16 entered into your diary as to those particular dates  
17 that you were asked about?

18          A     Yes.

19          Q     And at the time you entered those or made  
20 those entries into your diary, were they truthful?

21          A     Yeah, the events was happening.

22          Q     And when you told the officers about those  
23 events, did you tell them the truth?

24          A     I went by my diary, and that's the truth.

25          Q     When Mr. Barnes interviewed you, did Mr.

1 Barnes or the defense ever give you a copy of any  
2 transcript from the tape recorded interview that they  
3 made?

4 A No, sir, when he came and talked to me, I  
5 told him, I asked him, I asked him was I going to get  
6 a copy of the tape or either a print out of what I  
7 said. And he assured me that I would get it in two  
8 to three days, which here it is now '96, and I still  
9 haven't received it.

10 Q Were you ever allowed to listen to the tape  
11 recorded interview that he took from you?

12 A No.

13 Q Since you've been here for court, have you  
14 been given an opportunity to review any tape recorded  
15 interview or any transcript taken from that  
16 interview?

17 A That man just came to give me something a  
18 few minutes ago, but I ain't know what it was, so --

19 Q When you say that man came to give you a  
20 few minutes ago, who were you referring to?

21 A His lawyer.

22 Q Talking about Mr. Thompson, got his hand  
23 raised?

24 A Yes.

25 THE COURT: So that we can have

1 clarification for the record, are you  
2 referring to what was just shown to you at  
3 the witness stand as Defendant's Exhibit  
4 Number 15, is that what you're talking  
5 about.

6 THE WITNESS: No, sir.

7 THE COURT: Clarify.

8 BY MR. BRITT:

9 Q Was it during a break, during court, that  
10 you -- Mr. Thompson attempted to give you a copy of  
11 something?

12 A It was after lunch.

13 Q Had you ever seen that document before?

14 A No, sir.

15 Q Mr. Thompson asked you if you knew a  
16 Richard Williams?

17 A He said Bob something.

18 Q Do you recognize the name Richard Williams?

19 A Yes, I know him.

20 Q And how do you recognize or how do you know  
21 Richard Williams?

22 A Because he a big time roller.

23 Q When you say he's a big time roller, what  
24 do you mean?

25 A Drug dealer.

1 Q Now, when you were with the defendant,  
2 after you spent the night at his trailer, did the  
3 name -- did the name Richard Williams ever come up in  
4 your conversation?

5 A Yes, sir.

6 Q Who brought the name Richard Williams up in  
7 the conversation?

8 A I did.

9 Q And did you tell the defendant who Richard  
10 Williams was?

11 A Yes.

12 Q Did the defendant say anything about  
13 Richard Williams?

14 A He -- the conversation happened because we  
15 were in the car, me, him, Larry and Dee was in the  
16 car, and we were talking about -- they were talking  
17 at robbing people.

18 MR. THOMPSON: Object.

19 THE COURT: Overruled. You need  
20 to clarify.

21 BY MR. BRITT:

22 Q When you say they were talking about  
23 robbing people, who are you referring to?

24 A Larry and Trulik.

25 Q And that conversation took place on July

1 the 24th of 1993?

2 A Yes.

3 Q And did that conversation take place in the  
4 Lexus?

5 A Yes, we were going to Mullins.

6 Q What did the defendant say about robbing  
7 people -- or specifically did the defendant say  
8 anything about robbing Richard Williams in the Lexus  
9 on July 24th, 1993?

10 A I don't understand.

11 Q On July 24th, 1993, while you were in the  
12 Lexus, did the defendant say anything to you about  
13 robbing Richard Williams?

14 A Yes.

15 Q What if anything did the defendant say  
16 about robbing Richard Williams?

17 A He wanted to go rob -- he wanted to rob  
18 anybody. I just said the name of Richard because he  
19 was talking about drug dealers, big time rollers, you  
20 know.

21 Q When the defendant said he wanted to go rob  
22 Richard Williams, what if anything did you say?

23 A I wasn't down with that, because that's  
24 accessory to a crime.

25 Q How did the defendant react when you told

1 him that you did not want to go rob Richard Williams?

2 A He got mad.

3 Q And when you say he got mad, how did he  
4 demonstrate that he was mad?

5 A He shut up, he wasn't talking no more.

6 Q Now, when Mr. Barnes came to talk with you  
7 at Vorhees College, did anyone come with him?

8 A What do you mean?

9 Q Did a lady come with him?

10 A No, he -- you're talking about another  
11 incident, he looked like --

12 MR. THOMPSON: Object.

13 THE COURT: The question is, the  
14 occasion about which you've testified about  
15 with Mr. Barnes was anybody with him?

16 THE WITNESS: No, sir.

17 BY MR. BRITT:

18 Q Did there come a time when Mr. Barnes came  
19 to see you in Marion?

20 A No.

21 Q Did you quit school?

22 A Yes, sir.

23 Q When did you quit school?

24 A I didn't quit .

25 Q Did you drop out of school?

1 A Yes.

2 Q When did you drop out of school?

3 A February, I think that was in February.  
4 February of '94.

5 Q Prior to dropping out of school, did  
6 individuals come to Vorhees College looking for you?

7 A Who?

8 Q A man and a woman.

9 MR. THOMPSON: Well, I object.

10 THE COURT: Overruled. You may  
11 answer if you know.

12 THE WITNESS: I don't understand what  
13 you're saying.

14 Q In January of 1994, did a black woman and a  
15 white man come to see you at Vorhees College?

16 A Yes.

17 Q Did they identify themselves?

18 A They told me something -- I can't remember  
19 what they said.

20 MR. THOMPSON: I object.

21 THE COURT: Basis?

22 MR. THOMPSON: They, as to they.

23 They told me.

24 THE COURT: Rephrase.

25 BY MR. BRITT:

1 Q Did the individuals identify themselves?

2 A I can't remember what they said.

3 Q Did they show you any badges that they were  
4 police officers?

5 A No, no.

6 Q Did you talk with them?

7 A A little bit.

8 Q Did the woman ask you questions?

9 A Yes, and told me things.

10 Q And as a result of what she told you, did  
11 you continue to answer questions or did you refuse to  
12 answer questions?

13 A I refused.

14 Q Did the woman resemble anyone that you had  
15 ever met when you were with the defendant?

16 A Yes.

17 Q And who did she resemble?

18 A I said she looked like his momma, but it  
19 wasn't his momma.

20 Q As a result of the conversation and the  
21 questioning that the black woman and the white man --

22 MR. THOMPSON: Object.

23 THE COURT: Sustained.

24 BY MR. BRITT:

25 Q Were you scared when talking to them?

1           A     Yes.

2                     MR. THOMPSON:  Object.

3                     THE COURT:  Sustained.

4                     MR. THOMPSON:  Move to strike.

5                     THE COURT:  Allowed.  Anything  
6 further?

7                     MR. THOMPSON:  Request  
8 instruction, Your Honor.

9                     THE COURT:  Let me see counsel at  
10 the bench, please.  Court reporter, if  
11 you'll come up too.

12                    (Whereupon a bench conference ensued  
13 as follows.)

14                    THE COURT:  Let the record  
15 reflect this is a bench conference.  
16 Present at this time are the presiding  
17 judge, the court reporter, counsel for the  
18 state Mr. Johnson Britt, counsel for the  
19 defendant, Mr. Thompson, Mr. Bowen.  Also  
20 present is the defendant Mr. Green, also  
21 known as U'Allah.

22                    Can you make a nexus?

23                    MR. BRITT:  Basically, you've  
24 allowed their questions about what the  
25 officer said and things that happened.

1 THE COURT: They have to -- the  
2 folks you're talking about have to be tied  
3 to them, and there's not been any nexus.

4 MR. BRITT: Well, in terms of --

5 THE COURT: I understand where  
6 you're, going but unless you can make a  
7 connection between those folks and this  
8 client, then it's not relevant. And that's  
9 what I'm asking. Can you make that nexus?

10 MR. BRITT: Yes, sir, I believe I  
11 can.

12 THE COURT: On voir dire?

13 MR. BRITT: I can do it on voir  
14 dire, that's fine.

15 THE COURT: All right.

16 (Bench conference concluded.)

17 THE COURT: There's a matter of  
18 law the Court must take up at this time out  
19 of the hearing and presence of the jury.  
20 Please recall my instructions in that  
21 regard, don't worry or speculate about what  
22 takes place in the courtroom in your  
23 absence.

24 It's now ten minutes until four, I  
25 apologize, I hoped to give you a break

1 earlier, that oversight is my fault. If  
2 you folks would reassemble in the jury room  
3 at ten after by that clock.

4 Please recall it is your duty to abide  
5 by all prior instructions of the Court  
6 concerning jury conduct during this recess,  
7 everyone else please remain seated.

8 (Jury out at 3:52 p.m.)

9 THE COURT: Let the record  
10 reflect the following is being conducted in  
11 the absence of the jury.

12 Folks, at the risk of lecturing, I  
13 have allowed counsel for defendant to  
14 pursue matters related to the statement  
15 that the witness has testified that she  
16 gave law enforcement officers on the day in  
17 question at Vorhees College because, first  
18 of all, the State elicited that statement.

19 Since they did that, they are entitled  
20 to go into the circumstances under which  
21 the statement was made to the extent that  
22 they may be able to set up an argument to  
23 the jury that that statement may not  
24 necessarily be reliable or credible if it  
25 was based on any feelings of threatening

1 behavior on the part of law enforcement  
2 officers, coercive behavior on the part of  
3 law enforcement officers, or anything that  
4 may affect the credibility of the State.

5 It was offered for that limited  
6 purpose, and I understand you're trying to  
7 do the same thing now, but the predicate  
8 for that is you've got to link the matters  
9 that you're now going into, a visit by an  
10 unidentified man and unidentified woman at  
11 some subsequent time to some effect that it  
12 may have had on this witness to the extent  
13 that the witness therefore gave a statement  
14 or refrained from giving a statement which  
15 is germane to the issues in this case. Can  
16 you make the nexus?

17 MR. BRITT: Yes, sir, I believe I  
18 can.

19 THE COURT: Go ahead.

20 BY MR. BRITT:

21 Q Melinda, on January 14th, 1994, were you  
22 visited at Vorhees College by a black female and a  
23 white male?

24 A Yes, sir.

25 Q Did they identify themselves as police

1 officers?

2 A No, sir.

3 Q Did you talk with them there at Vorhees  
4 College?

5 A A little bit.

6 Q Did you talk with the lady specifically?

7 A Yes, sir.

8 Q And did the lady ask you questions  
9 involving information about the defendant Daniel  
10 Green?

11 A Yes, sir.

12 Q And did you ever tell the lady that she  
13 favored Daniel Green's aunt?

14 A His aunt -- his mother. I said mother.

15 Q And did the lady -- when you said that, how  
16 did the lady react?

17 A She got upset.

18 Q Was Dee or Delores Sullivan's name  
19 mentioned in that interview?

20 A Yes, they told me that they knew that she  
21 had quit school.

22 Q Did the lady also ask you questions about  
23 the phone records?

24 A She told me that -- she told me that the  
25 phone record was missing or something, I don't know.

1 Q Did they ever identify themselves as being  
2 investigators for the defendant in this case?

3 A No, not that I recall.

4 Q Now, after this unidentified man and woman  
5 came to see you, did you report that matter to any  
6 police authorities?

7 A To security, and security notified the  
8 local police.

9 Q And as a result of your contacting  
10 security, did Special Agent Berry Lee of the State  
11 Bureau of Investigation and Detective Thompson come  
12 see you?

13 A I can't remember.

14 Q Did Mr. Heffney and Mr. Thompson come see  
15 you?

16 A Yeah, I -- yes, sir, yes, sir.

17 Q Did you give them, describe the individual  
18 to anyone where a composite drawing was made?

19 A Yes, sir.

20 Q Now, after the man and woman left, did you  
21 receive a phone call?

22 A Yes, sir.

23 Q And was it a male or female on the other  
24 end of the line?

25 A A male.

1           Q       What if anything was said to you at that  
2 time?

3           A       Talking about if I got to go to court, they  
4 suggest I don't go.

5           Q       I'm sorry?

6           A       If I have to go to court, they suggest I  
7 don't go.

8           Q       And did that scare you?

9           A       Of course.

10          Q       And when the person said if you have to go  
11 to court, I suggest you don't go, had you been  
12 interviewed in any other case? Had you been  
13 interviewed in any other investigation at that time?

14          A       Not at that time.

15                   MR. BRITT: I don't have any  
16 other questions.

17                   THE COURT: The link is not  
18 there, Mr. Britt. It's conjecture. I  
19 understand where you're going, but the link  
20 is just not there, so the objection is  
21 sustained. You folks want to be heard.

22                   MR. THOMPSON: Request  
23 instruction, strike to whole testimony.  
24 Speculation.

25                   THE COURT: Let me go back to

1           that.

2                   All right I'm on page 213, line ten,  
3           first question I see in that regard is,  
4           "Prior to dropping out of school, did  
5           individuals come to Vorhees College looking  
6           for you?"

7                   "Answer: Who?"

8                   "Question: Man and a woman."

9                   Then the defendant objected through  
10          Mr. Thompson. At that point it was  
11          overruled, and I indicated that the witness  
12          could answer if she knew.

13                   So, folks, I think the first question  
14          in that line of questioning begins on line  
15          213, line ten. My intent is to instruct  
16          the jury that they are to disregard any  
17          questions from counsel for the State as to  
18          any individuals, a male and a female coming  
19          to Vorhees College for purposes of talking  
20          with this witness.

21                   Do you folks want to be heard  
22          further?

23                   MR. THOMPSON: That's fine, Your  
24          Honor.

25                   THE COURT: State want to note an

1           exception to the Court's ruling?

2           MR. BRITT:   No, sir.

3           MR. THOMPSON:   Your Honor, may we  
4           have just a moment before the jury comes  
5           in.

6           THE COURT:   Jury is not coming  
7           back in until 4:10.   THE COURT:   Is that  
8           okay?

9           MR. THOMPSON:   Yes.

10          THE COURT:   Glad it meets with  
11          your approval.

12          (Brief recess.)

13          THE COURT:   Let the record  
14          reflect all counsel are present, the  
15          defendant is present in open court.

16          Mr. Horne, do we have all members of  
17          the jury secured in the jury room?

18          THE BAILIFF:   Yes, we do.

19          THE COURT:   Ready to go forward,  
20          folks?

21          MR. THOMPSON:   Yes, sir.

22          THE COURT:   If you'll ask the  
23          jury to come back in.   Ms. Moore, if you'll  
24          again take the witness stand, please.

25          (Jury in at 4:11 p.m.)

1 THE COURT: For the purposes of  
2 the record, you folks want to be heard?

3 MR. THOMPSON: Yes, sir, Your  
4 Honor. We would move to strike the  
5 response, testimony of Ms. Moore regarding  
6 the last series of questions or testimony  
7 concerning the couple visiting here.

8 THE COURT: Ladies and gentlemen  
9 -- first of all, your objection is  
10 sustained.

11 Members of the jury, I instruct you  
12 that you are not to consider the line of  
13 questioning by counsel for the State  
14 dealing with a purported visit to this  
15 witness, Ms. Moore, at Vorhees College by  
16 an unidentified male and an unidentified  
17 female which those matters are not to take  
18 any part in your deliberations of this  
19 case, and you are not to allow those  
20 matters to enter into the deliberations in  
21 this case in any respect. Anything  
22 further?

23 MR. THOMPSON: No, sir.

24 THE COURT: Mr. Britt, any  
25 additional matters for Ms. Moore.

1 THE COURT: Yes, sir.

2 MR. BRITT: Just a couple more  
3 questions.

4 BY MR. BRITT:

5 Q Melinda, the matters that you told the  
6 officers on August the 15th of 1993, that information  
7 was based upon what you had written in your diary?

8 A Yes, sir.

9 Q And the matters that you've testified to in  
10 court here today, that's the same information that  
11 you had put in your diary back in July of 1993, and  
12 from July the 3rd, 1993 until July 24th, 1993, when  
13 you last saw the defendant, is that correct?

14 A Yes, sir.

15 MR. BRITT: I don't have any  
16 other questions.

17 THE COURT: Anything further?

18 MR. THOMPSON: Yes.

19 RE CROSS EXAMINATION

20 BY MR. THOMPSON:

21 Q Ms. Moore, I believe you have your diary  
22 with you?

23 A Yes, sir.

24 Q What's the beginning entry date on the  
25 beginning of that diary, the first date in your

1 diary?

2 MR. BRITT: Objection.

3 THE COURT: Well, technically  
4 it's outside the scope of what was raised  
5 on redirect, but what is your specific  
6 basis?

7 MR. BRITT: The diary itself is  
8 not in evidence, nor are the entries.

9 THE COURT: He's asking for the  
10 date in the diary which she's testified she  
11 has present with her in court.

12 MR. BRITT: Yes.

13 THE COURT: So the objection is  
14 overruled. You may answer his question,  
15 ma'am.

16 THE WITNESS: Could you repeat?

17 BY MR. THOMPSON:

18 Q What's the first date that appears in your  
19 diary?

20 A July the 3rd.

21 Q July the 3rd of what year?

22 A '93.

23 Q And what's the last date that appears in  
24 your diary?

25 A I don't know, I have to look at it and see.

1 Q Would you?

2 A Wednesday, August the 25th.

3 Q And that's the diary that you've testified  
4 that you keep on a daily basis, that's the diary that  
5 you've testified to, is that it?

6 A Yes.

7 Q So you started keeping the diary on July  
8 the 3rd of 1993?

9 A No, I didn't. I tore the first part out  
10 because it didn't have nothing to do with this trial.

11 Q And you stopped keeping your diary on  
12 August the what?

13 A 25th.

14 Q Of what year?

15 A The same year, '93.

16 Q Ms. Moore, do you recall calling or telling  
17 the defendant that you were having his baby, you were  
18 pregnant by him?

19 MR. BRITT: Objection.

20 THE COURT: Sustained. That's  
21 outside the scope.

22 MR. BRITT: Move to strike.

23 THE COURT: Allowed.

24 MR. BRITT: Would ask for  
25 instruction.

1                   THE COURT:  Members of the jury  
2                   you are not to consider the last question  
3                   asked by counsel for the defendant,  
4                   Mr. Thompson.  That matter is not to take  
5                   any part in your deliberations in this case  
6                   in any respect.

7                   MR. THOMPSON:  Your Honor, we  
8                   desire to make a proffer.

9                   THE COURT:  Members of the jury,  
10                  there's a matter of law the Court must take  
11                  up.  Please retire to the jury room.  
12                  Please don't worry or speculate about what  
13                  takes place in the jury room in your  
14                  absence.  Please follow my instructions in  
15                  that regard.

16                  If all members of the jury would step  
17                  to the jury room.

18                                 (Jury out at 4:16 p.m.)

19                  THE COURT:  Let the record show  
20                  the following is being conducted in the  
21                  absence of the jury.

22                  Folks, it's in the discretion of the  
23                  Court under rule 611 as to the mode and  
24                  scope of interrogation.  I've given wide  
25                  latitude to both counsel.

1           Typically, under the Federal Rules,  
2           and I recognize our state rules are  
3           different, there is direct. Under the  
4           Federal Rules the cross is limited to the  
5           scope of the direct. We don't abide by  
6           that, but when we get into redirect and  
7           recross, and reredirect, rerecross, the  
8           scope will be limited to the matters raised  
9           in the preceding examination.

10           You may make your proffer.

11 BY MR. THOMPSON:

12           Q       Did you tell the defendant sometime in  
13           August of 1993, in July of 1993, that you were  
14           pregnant and -- pregnant from him?

15                   MR. BRITT: Objection, can we  
16           get -- I mean we've got one month and then  
17           we've got another month.

18 BY MR. THOMPSON:

19           Q       Excuse me. Did you tell the defendant in  
20           July of 1993 that you were pregnant?

21                   THE COURT: Mr. Thompson, do you  
22           want to be specific, because the testimony  
23           is she met the defendant July 30th.

24                   MR. THOMPSON: I understand, Your  
25           Honor.

1 THE COURT: Go ahead.

2 BY MR. THOMPSON:

3 Q Did you call the defendant or tell the  
4 defendant in July of 1993 that you were pregnant from  
5 him?

6 A Yes, and what does that got to do with  
7 this? That's personal.

8 THE COURT: Ma'am, I  
9 understand -- Mr. Thompson, bear with me.

10 If you feel that a matter is too  
11 personal, you let me know and I will tell  
12 you whether you have to answer it or not.  
13 And you have to abide by my instructions,  
14 Ms. Moore, do you understand that.

15 THE WITNESS: Yes, sir.

16 THE COURT: Mr. Thompson.

17 BY MR. THOMPSON:

18 Q First of all, was that a true statement --

19 A Yes.

20 Q -- were you pregnant? Did you put that in  
21 the diary?

22 A Is it in there?

23 Q Yes, ma'am.

24 A I don't know.

25 Q That was a significant event, wasn't it?

1           A       That's your opinion.

2           Q       Is it in the diary?  You've got the  
3 diary?

4                   THE COURT:  Mr. Thompson, you  
5           can't argue with her.

6 BY MR. THOMPSON:

7           Q       Please, would you look in the diary?

8                   THE COURT:  Okay.

9 BY MR. THOMPSON:

10          Q       Would you?

11          A       Would I what?

12          Q       Look in the diary and see if that's in  
13 there.

14                   Have you finished looking in your diary?

15          A       Uh-huh.

16          Q       Is that in there?

17          A       Not that way, no.

18          Q       Is it in -- is it in your diary that you  
19 were pregnant?

20          A       No.

21          Q       Is it in your diary that you were  
22 pregnant -- well, when you say not that way --

23                   MR. BRITT:  Can we approach?

24                   THE COURT:  Yes, sir.  We're on  
25 voir dire.  Is this under 611-8 to avoid

1           undue embarrassment.

2                   MR. BRITT:   Yes, sir.

3                   THE COURT:   Folks, we're on the  
4           public record.  It's a voir dire.  I have  
5           ruled that at this point that the matters  
6           outside the scope of the last redirect  
7           examination, so I'm allowing him to make an  
8           offer of proof for purposes of the record.  
9           And I don't mean to cause anybody any  
10          embarrassment, but this is a matter of  
11          grave importance both to the State as well  
12          as to the defendant in this case, so we're  
13          going to proceed.

14                   Mr. Thompson put questions to her.

15  BY MR. THOMPSON:

16           Q       Did you put in your diary, Ms. Moore, the  
17          date that you had the conversation with the defendant  
18          about you being pregnant from him?

19           A       No.

20           Q       Did you at some time in August of 1993 talk  
21          to the defendant and tell him that you were having an  
22          abortion while you were still keeping the diary?  Did  
23          you do that?

24           A       Yes, and I think that's real personal.

25                   THE COURT:   I understand your

1 feelings, ma'am, but you're going to have  
2 to answer the question.

3 BY MR. THOMPSON:

4 Q And that was prior to the 25th of August?

5 A That was August the 14th to be exact.

6 Q And was that in your diary?

7 A August the 14th?

8 Q That you told the defendant that you were  
9 having an abortion?

10 A No.

11 MR. THOMPSON: That's all I have,  
12 Your Honor.

13 THE COURT: Now, how do you  
14 contend that this is relevant to any  
15 matters developed during the last  
16 examination by counsel for the State?

17 MR. THOMPSON: Well, Your Honor,  
18 it goes to -- he questioned on redirect,  
19 asked questions about the diary. My  
20 questions, I contend, on the redirect, even  
21 though you allow me to ask, and you did  
22 allow me to ask about the diary, this goes  
23 to the very matter that he opened up on  
24 redirect.

25 THE COURT: Let me look at the

1 prior examination by Mr. Britt.

2 MR. BRITT: Your Honor, I believe  
3 if you go to page 223, line -- beginning at  
4 line 14, I believe it is. Question,  
5 Melinda --

6 THE COURT: 223, line 14.

7 MR. BRITT: Excuse me. Line 13.

8 THE COURT: I've got line 13 --  
9 that's an admonition by the Court.

10 MR. BRITT: Sixth line from the  
11 bottom of the page.

12 THE COURT: "Mr. Britt: Just a  
13 couple more questions."

14 MR. BRITT: Yes, sir.

15 THE COURT: Page 223, line four.

16 MR. BRITT: Yes, sir, I'm sorry.

17 MR. THOMPSON: Yes, sir. Thank  
18 you, Mr. Britt. 224, line two, is where  
19 the question is.

20 THE COURT: I'm talking about his  
21 examination. His examination picks up on  
22 224, line two.

23 He's got an argument, Mr. Britt.

24 "Question by Mr. Britt: Melinda, the  
25 matters that you told the -- is that

1 jurors? August the 15th of 1993, that  
2 information is based on what you had  
3 written in your diary? Yes, sir. And the  
4 matters that you've testified to in court  
5 today, that's the same information that you  
6 put in your diary back in July of 1993 and  
7 from July the 3rd 1993 until July the 24th,  
8 1993 when you last saw the defendant, is  
9 that correct?"

10 The Court reverses it's ruling, the  
11 court is going to allow the question. Note  
12 the State's objection and exception. The  
13 State opened the door by going back into  
14 the matters that were contained in the  
15 diary.

16 MR. THOMPSON: Your Honor, even  
17 though the question wasn't asked on voir  
18 dire, there is probably one more question I  
19 ask in that vein.

20 THE COURT: Let's go ahead and  
21 ask it.

22 BY MR. THOMPSON:

23 Q When you told Mr. Green or the defendant  
24 that you were pregnant with his baby, he questioned  
25 whether it was his or not, is that right?

1           A       What?

2           Q       He questioned whether you were in fact  
3 pregnant with his child, did he not?

4           A       Questioned it to whom?

5           Q       You.

6           A       No. He ain't had no reason to question.

7           Q       But he questioned you, meaning he denied  
8 that he was the father of that child, did he not?

9           A       I don't recall.

10          Q       That's why you had the abortion?

11          A       I had an abortion because I wanted to have  
12 an abortion.

13                   MR. THOMPSON: That's all.

14                   THE COURT: Folks, in addition to  
15 the door being open, it's a matter that  
16 goes to bias.

17                   MR. THOMPSON: Yes, sir.

18                   THE COURT: Do you want to note  
19 your exception to my ruling.

20                   MR. BRITT: Yes, sir.

21                   THE COURT: Exception is noted  
22 for the record.

23                   Bring the jury back in.

24                   (Jury in at 4:28 p.m.)

25                   THE COURT: Members of the jury,

1 the Court reverses it's earlier ruling, the  
2 objection by counsel for the State,  
3 Mr. Britt, is overruled. The exception is  
4 noted for the record.

5 Mr. Thompson, you may repeat or  
6 rephrase your question to the witness.

7 MR. BRITT: I would ask for a  
8 limited instruction.

9 THE COURT: Okay. It's being  
10 offered for impeachment purposes.

11 MR. THOMPSON: Yes, sir.

12 THE COURT: That's what you're  
13 asking for?

14 MR. BRITT: Yes, sir.

15 THE COURT: Members of the jury,  
16 I instruct you that the testimony now being  
17 elicited or about to be elicited from the  
18 witness on the stand, Ms. Moore, is being  
19 offered and admitted in this case for the  
20 limited purpose of impeachment.

21 Now, as I previously instructed you,  
22 the word impeachment means as tending to  
23 correct or discredit. It is for you, the  
24 members of the jury, as I previously  
25 instructed you, to determine what the

1 evidence in this case does show, but you  
2 may consider this evidence for that limited  
3 purpose and for no other purpose. Anything  
4 further, Mr. Britt?

5 MR. BRITT: No, sir.

6 THE COURT: Mr. Thompson.

7 BY MR. THOMPSON:

8 Q Ms. Moore, you testified on direct  
9 examination that you -- back in 1983, you kept a  
10 diary of significant personal events which occurred  
11 in your life, is that correct?

12 A Do you mean 1993?

13 Q 1993, I'm sorry. Is that correct?

14 A Yes.

15 Q Now, you brought your diary with you to  
16 court?

17 A Yes.

18 Q What is the beginning first date or entry  
19 date in your diary?

20 A July 3rd.

21 Q Of what year?

22 A '93.

23 Q And what is the last entry date in that  
24 diary?

25 A August 25th, '93.

1           Q       Now, in July of 1993, you told the  
2 defendant that you were pregnant with his child, is  
3 that correct?

4           A       Yes.

5           Q       And on what date did you tell the defendant  
6 that?

7           A       We talked about it on the 14th.

8                   THE COURT:    Of --

9                   THE WITNESS:  August of having an  
10 abortion.

11                  THE COURT:    Was it July or  
12 August.

13                  THE WITNESS:  August the 14th.

14 BY MR. THOMPSON:

15           Q       In July of 1993, you had a conversation  
16 with the defendant and told him that you were  
17 pregnant with his child, is that right, in July of  
18 1993?

19           A       I don't recall when it was we talked about  
20 it, but we talked -- but we talked about it.

21           Q       Now, on what date did you find out that you  
22 were pregnant?

23           A       I don't recall, I don't remember.

24           Q       Well, it was in July, wasn't it?

25           A       What?

1 Q Wasn't it in July?

2 A I don't recall. I guess.

3 Q That's a significant personal event in your  
4 life, isn't it?

5 A Yes.

6 Q Your becoming pregnant, is that in your  
7 diary?

8 A No.

9 Q You called or talked to the defendant  
10 subsequent to your finding that you were pregnant,  
11 and he denied being the father of that child, did he  
12 not?

13 A No, he wouldn't have no reason to deny  
14 that.

15 Q When did you talk to him?

16 A I talked -- I remember talking to him  
17 August the 14th.

18 Q On August the 14th, did you tell the  
19 defendant that you were having or had had an  
20 abortion?

21 A Having an abortion.

22 Q You were having an abortion?

23 A Yes.

24 Q That's a significant personal event in your  
25 life, isn't it?

1 A Yes.

2 Q And is that in your diary?

3 A No.

4 Q Now, on August the 14th you were still  
5 keeping your diary?

6 A Yes.

7 MR. THOMPSON: That's all.

8 THE COURT: Anything further?

9 Mr. Britt, I'm limiting any additional  
10 examination to matters raised on the  
11 rerecross.

12 MR. BRITT: No, sir, I don't have  
13 any questions.

14 THE COURT: May the witness be  
15 released?

16 MR. BRITT: She may.

17 THE COURT: Ms. Moore, you may  
18 step down, ma'am, you're free to go.

19 Mr. Britt, any other matters at this  
20 time?

21 MR. BRITT: I believe you had  
22 mentioned earlier about an administrative  
23 matter.

24 THE COURT: As far as the jury.

25 MR. BRITT: No, sir, not at this

1 time.

2 THE COURT: There is one  
3 administrative matter we need to attend  
4 to.

5 Members of the jury, we need to have  
6 some discussions of an administrative  
7 nature regarding scheduling. That is  
8 because we anticipate that there will be  
9 matters of law that we will have to deal  
10 with tomorrow morning. It appears at this  
11 point, so that we can get some idea of what  
12 kind of time frame might be involved and  
13 give you some reporting time other than  
14 9:30, we need to discuss that. So while we  
15 attend to this administrative scheduling  
16 matter, I'm going to ask that you folks  
17 step to the jury room. Don't worry about  
18 what takes place in the courtroom in your  
19 absence. I will have further information  
20 for you regarding your schedule for  
21 tomorrow when we come back.

22 If all members of the jury would step  
23 to the jury room at this time.

24 (Jury out at 4:33 p.m.)

25 THE COURT: Let the record

1 reflect the following: The jury in this  
2 case is secured in the jury room. I'm  
3 asking at this time that all counsel and  
4 the defendant along with the court reporter  
5 report to the chambers, Judge's chambers  
6 for the purposes of continuing the  
7 in-camera, in-chambers proceeding that was  
8 commenced yesterday, so that we can  
9 hopefully resolve and wrap that up.

10 We are at ease at this time. We are  
11 going to bring the jury back once we get  
12 some idea what our schedule is going to be  
13 likely from their perspective.

14 MR. BRITT: Yes.

15 THE COURT: We're at ease.

16 THE BAILIFF: Court stands at  
17 ease.

18 (Whereupon an in camera proceeding  
19 ensued as follows.)

20 THE COURT: Let the record  
21 reflect the following is an in camera,  
22 in-chambers hearing which is a continuation  
23 of the hearing commenced on yesterday's  
24 date, which was Monday, January 22nd, 1996,  
25 with regard to allegations pertaining to a

1 member of the jury, specifically the  
2 alternate juror in this case, Ms. Odum.

3 Folks, as I indicated to you earlier,  
4 Ms. Odum has brought the documentation back  
5 with her as requested by the Court this  
6 morning. We can do it one of two ways. We  
7 can ask Ms. Odum to come in with the  
8 documentation, give you folks opportunities  
9 to ask additional questions if you would  
10 like to do so, or we can simply ask Mr.  
11 Horne to ask Ms. Odum to hand the  
12 documentation out to him.

13 MR. THOMPSON: We desire to ask  
14 to have Mr. Horne have her hand the  
15 documentation to him.

16 THE COURT: Is that, do you  
17 concur with that, Mr. Bowen?

18 MR. BOWEN: Yes, sir.

19 THE COURT: Mr. Green, do you  
20 agree?

21 MR. GREEN: Yes, sir.

22 THE COURT: Do you agree with  
23 that?

24 MR. BRITT: That's the simplest  
25 way to do it.

1                   THE COURT:  And if it appears on  
2                   the face of the documentation that there  
3                   are some additional matters we need to go  
4                   into, we can go into that.  I hope not but  
5                   Lord only knows.

6                   If you'll knock on the door, ask  
7                   Ms. Odum to come to the door, ask her to  
8                   step outside and hand the documentation --  
9                   ask her to bring her person to the door and  
10                  she and her person step out.  No  
11                  conversation in the presence of the jury,  
12                  have her step out.  She can go back in and  
13                  bring the documentation in.

14                  Let the record reflect the  
15                  instructions that I just gave Mr. Jimmy  
16                  Horne, bailiff assigned to the jury.

17                  MR. BOWEN:  While we have a  
18                  moment on the record, I would like to thank  
19                  you for accommodating my slight delay  
20                  today.  My next one is in four months so  
21                  hopefully we do not have to --

22                  THE COURT:  For the record, I had  
23                  one set for yesterday and I missed mine.

24                  MR. BRITT:  I'm not scheduling  
25                  mine until we've finished.

1                   MR. BOWEN: Mine was scheduled  
2 before we started, that's how long it  
3 takes.

4                   THE COURT: Let me will also say  
5 this, I appreciate the way matters have  
6 gone today. If you folks provide me with a  
7 basis in law, rule of evidence, authority,  
8 you're not going to have any problem. If  
9 you don't give me that, then we're going to  
10 have some disagreements and some  
11 difficulties, because that's the way I  
12 believe it's supposed to be done.

13                   For the the record, the Court has been  
14 handed the following by Mr. Horne. One  
15 post card sized document which bears the  
16 following as to the addressee. Ellen Odum,  
17 192 Delmar, D E L M A R, Lumberton, North  
18 Carolina, 28358. There is present in the  
19 upper left-hand corner, return address of  
20 Employment Security Commission, 118 West  
21 15th Street, Lumberton, North Carolina  
22 28358. It bears a U.S. Postal Stamp  
23 indicating that it was mailed from  
24 Fayetteville, North Carolina, in the p.m.,  
25 on -- I can't read the date but it's

1           sometime in '96.

2           On the reverse side is preprinted  
3           language. Preprinted language is as  
4           follows: North Carolina Employment Service  
5           Commission, below are two sentences.  
6           Beside each sentence is a parenthetical.  
7           One of those parentheticals is marked with  
8           an X. The first parenthetical or first  
9           sentence reads, please see message below,  
10          and that is Xed. Second parenthetical is,  
11          please come to this office, with space  
12          being provided for entry of the date and  
13          time, to see, with space being provided for  
14          the name of a person to see, regarding,  
15          parenthetical, employment, parenthetical,  
16          paren, employment insurance, parenthetical,  
17          come prepared to go for job interview with  
18          employer. Underneath employee appears the  
19          handwritten language, when you called, your  
20          claim in Monday from this office, the  
21          system told you it was not your day to  
22          call, parens, you may have realized this,  
23          close parens. Just wanted to let you know,  
24          you need to call Tuesday and Saturday and  
25          file for 1-6-95.

1           Below is the preprinted language on  
2 the form reading as follows: Bring this  
3 card with you, period. If you are unable  
4 to come to the office as requested, please  
5 telephone the representative whose name  
6 appears below. Immediately below that is  
7 the preprinted word, date, with provision  
8 for entry of the date. The date entered  
9 into by hand is 1-8. The form language  
10 telephone number with telephone number and  
11 number being abbreviated and entry for --  
12 provision for entry of telephone number.  
13 The number asserted is 618-5500, signed by  
14 a person who apparently is a  
15 representative.

16           Also provided to the Court is a  
17 letter, bearing the letterhead of the  
18 Employment Security Commission, North  
19 Carolina, dated 1-23-96, in hand. Also  
20 written in hand is the following: To whom  
21 it may concern, Ms. Ellen Odum was in our  
22 office on 1-8-96. Signed, somebody Jones,  
23 appears to be Anderson Jones, manager.

24           And immediately below is a stamped  
25 notation reading, Employment Security

1 Commission 118 West Fifth Street,  
2 Lumberton, North Carolina 208358.

3 Anything further from either counsel?  
4 Let the record reflect that the Court is  
5 showing the documents to counsel for the  
6 defendant and the defendant and counsel for  
7 the State.

8 MR. BRITT: Yes, sir.

9 THE COURT: Folks, that's my  
10 intent to place these documents in the  
11 sealed envelope pertaining to allegations  
12 of misconduct about Ms. Odum. The Court  
13 finds that this is further indication that  
14 Ms. Odum's -- Ms. Odum's statement to us  
15 that on the date in question when the  
16 allegations of misconduct purportedly  
17 occurred, appears to be verified by the  
18 documentation now provided to the Court.

19 Anything from counsel for the State?

20 MR. BRITT: No, sir.

21 THE COURT: Anything from counsel  
22 for the defendant?

23 MR. THOMPSON: No, sir.

24 MR. BOWEN: I would like to  
25 inquire one thing just to be sure. It does

1           appear that, for example, the latest -- the  
2           Ms. Hunt telephone call, does seem that  
3           when these telephone calls come in, they  
4           seem to go to the DA's office, and that's  
5           not surprising at all. I just wonder since  
6           there was left some questions as to whether  
7           the person who might have gotten this call  
8           from Ms. Hunt in the District Attorney's  
9           office immediately went to Mr. Britt, I  
10          wanted to inquire Mr. Britt if he had  
11          instructed his staff about the handling of  
12          those messages.

13                       MR. BRITT: They have been told  
14          that if they get any calls related -- one,  
15          related to jurors, to notify me, two, if --  
16          we have been receiving calls as to people  
17          who say they saw the defendant with the car  
18          and the body, we've been investigating --  
19          all those matters are brought to my  
20          attention. We've been to -- the officers  
21          have been to Morrison Correctional to  
22          interview a person. That statement was --  
23          of Angelo Thompson was provided to the  
24          defense. They are going to Marion, South  
25          Carolina tonight to interview an individual

1           who says he saw the defendant with the car,  
2           that there was blood in the car, and when  
3           we get that statement, we'll give it to  
4           them.

5                     As matters come in, under Brady, I  
6           have an obligation to investigate those.  
7           Under my obligations in prosecuting the  
8           case, if information comes in that may be  
9           incriminating, we investigate that as well.

10                    MR. BOWEN:   Exactly.   And it  
11           appears to us that we have gotten all such  
12           Brady information, does appear we're  
13           getting open file discovery.   I was just  
14           merely inquiring of that, you know, the  
15           staff is -- and I will say this to the  
16           Court, I've instructed my staff the same  
17           way.   In fact, Ms. Maynord the other day  
18           got an incoming call, she tracked me down  
19           and gave it to me about Ms. Hunt.

20                    MR. BRITT:   I ininquire at each  
21           break if there are any calls about jurors.

22                    THE COURT:   We're all doing the  
23           best we can.

24                    MR. THOMPSON:   You do that.

25                    THE COURT:   We're all doing the

1 best we can. All right. Regarding  
2 tomorrow's schedule --

3 MR. BRITT: Tomorrow's schedule.

4 THE COURT: When do we need to  
5 tell the jury to come back? Do you plan to  
6 go directly into 404(b)?

7 MR. BRITT: Yes, sir, and I would  
8 anticipate that it may take the entire  
9 day.

10 THE COURT: What I'm going to  
11 suggest is have the jurors call in at  
12 12:00, and they will access a recorded  
13 message at 12:00 p.m. telling them either  
14 to report at 2:30 or to call back after  
15 5:00 p.m.. Is that agreeable?

16 MR. BRITT: Yes, sir, fine.

17 THE COURT: Is that agreeable  
18 with counsel for the defendant?

19 MR. THOMPSON: Yes.

20 THE COURT: Let's go back.

21 This concludes the in-chambers  
22 matters.

23 (End of in camera proceeding.)

24 THE COURT: Let the record  
25 reflect all counsel are present, the

1 defendant is present in open court. We  
2 have all members of the jury secured in the  
3 jury room?

4 THE BAILIFF: Yes, sir, they are.

5 THE COURT: If you'll bring the  
6 jury in, I'm going to release them after  
7 appropriate instructions.

8 (Jury in at 4:46 p.m.)

9 THE COURT: Ladies and gentlemen  
10 of the jury, we have concluded our  
11 scheduling conference, and in that regard,  
12 let me give you the following information  
13 regarding your schedule tomorrow. You  
14 folks will not have to report at 9:30  
15 tomorrow morning. I'm going to ask instead  
16 that you call the number that has  
17 previously been given to you at 12:00 noon  
18 tomorrow. Now, you will access a recorded  
19 message, and that recorded message will say  
20 one of two things. It will either say  
21 report at 2:30 or it will say call back  
22 after 5:00 p.m. tomorrow evening.

23 Now, if the latter message is the one  
24 that you do receive when you call in at  
25 12:00 tomorrow, when you call at 5:00 p.m.,

1           you will receive at that time one of two  
2           messages.

3           You will either hear report at 9:30 on  
4           Thursday morning, tomorrow being Wednesday,  
5           or it will say report at a specified time  
6           on Thursday.

7           I recognize that's confusing, I could  
8           hardly believe I got it out myself. Folks,  
9           understand what I said? So your  
10          responsibility is to call at noon, you will  
11          access a message that will say report at  
12          2:30 or call after 5:00. If you are to  
13          call after 5:00 you will access again a  
14          recorded message which will either say  
15          report Thursday morning at 9:30 or report  
16          Thursday at some specific time.

17          I'm going to release you folks at this  
18          time. During the recess, during the time  
19          period that you're aware from the  
20          courtroom, it's your obligation to abide by  
21          all prior instructions of the Court  
22          concerning your conduct. You're not to  
23          talk about this matter among yourself or  
24          anyone else, including members of your own  
25          families, not allowed to have anyone say

1 anything to you or in your presence about  
2 this case. If anyone communicates with you  
3 about this matter or attempts to do so, or  
4 anyone says anything about the case in your  
5 presence, it's your duty to inform us of  
6 that immediately through one of the  
7 bailiffs assigned to the courtroom,  
8 preferably, again, in writing. Don't form  
9 or express any opinions about this matter.  
10 No contact or communication of any kind  
11 with any of the, parties, witnesses,  
12 prospective witnesses or directly with the  
13 Court.

14 It's especially important, as always,  
15 that you continue to abide by the Court's  
16 instruction regarding any media accounts.  
17 You are not to allow yourself to be exposed  
18 to any media accounts which may exist in  
19 connection with this matter. You're not to  
20 conduct any independent inquiry or  
21 investigation or research of any kind.

22 Have a good evening, folks, and we'll  
23 see you when we do. You're free to go at  
24 this time.

25 (Jury out at 4:50 p.m.)

1 THE COURT: All right. Let the  
2 record reflect that we -- folks, is there  
3 any objection to us convening at 9:00  
4 tomorrow morning?

5 MR. BRITT: I just need to check  
6 with the witness to see if he could be  
7 there at 9:00.

8 THE COURT: Had you planned on  
9 9:30?

10 MR. BRITT: Yes.

11 THE COURT: I saw the grimace on  
12 Mr. Thompson's face. We'll start at 9:30.  
13 For the record, we will be dealing with  
14 issues of law relating to the State's  
15 proffer under Rule 404(b).

16 MR. BRITT: Yes, sir.

17 Any other matters before we recess?

18 MR. BRITT: No, sir.

19 THE COURT: Recess us until 9:30  
20 tomorrow morning.

21 (Court adjourned.)

22

23

24

25



## 1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

3

4 LUTHER JOHNSON BRITT, III, Esq.  
5 District Attorney  
16-B Prosecutorial District  
Lumberton, North Carolina 28358

6

On Behalf of the Defendant:

7

8 ANGUS B. THOMPSON, Esq.  
Public Defender  
16-B Prosecutorial District  
9 Lumberton, North Carolina 28358

10

and

11

12 WOODBERRY A. BOWEN, Esq.  
Bowen & Byerly  
P.O. Box 846  
Lumberton, North Carolina 28359

13

14

15 (January 24, 1996. Proceedings in open court.)

16

17

THE COURT: Good morning, folks.

18

(9:34 a.m.)

19

(Jury not present.)

20

21

22

THE COURT: Let the record  
reflect all counsel are present, the  
defendant is present in open court.

23

24

25

Mr. Thompson, while we were waiting  
for you to come down, I asked Mr. Britt to  
pull certain cases, and for your

1 information, those cases are as follows:  
2 Paulson versus United States, 485 U.S. 681,  
3 1988 case. Second case I asked to be  
4 provided is U.S. versus Beechum, B E E C H  
5 U M, 582 Fed 2nd, 898. Pertinent matters  
6 are pages 912 and 913. Fifth Circuit  
7 cases, decided 1978.

8 Cert was denied by the United States  
9 Supreme Court, 440 U.S. 920, 1979.

10 I've also asked that U.S. versus  
11 Maddox, M A D D O X, be pulled, 944 Fed  
12 2nd, 923. Pertinent matters at page 1230.  
13 Sixth Circuit case, decided 1991.  
14 Basically all of the cases involve the  
15 application of 404(b) matters, and Rule  
16 104(b).

17 Also asked Mr. Britt to pull Western  
18 vs. United States at 117 Lawyer's Edition  
19 2nd, 456 Supreme Court 112, 1992 case.  
20 Western apparently doesn't help us, refers  
21 back to the earlier case.

22 MR. BRITT: It's in 944 2nd.

23 THE COURT: It's a Sub Nom case.

24 Both sides ready to go forward?

25 MR. BRITT: If I could have just

1 a second.

2 THE COURT: For the record, the  
3 following is a matter being conducted in  
4 the absence of the jury. As I understand  
5 it, Mr. Britt, the hearing that we are  
6 about to commence relates to matters which  
7 the State contends are admissible under  
8 404(b), is that correct?

9 MR. BRITT: Yes, sir, that's  
10 correct.

11 THE COURT: Are you ready to go  
12 forward?

13 MR. BRITT: Yes, sir, I am. Your  
14 Honor, at this time we would call Clewis  
15 Demory.

16 THE COURT: If you'll come up to  
17 the witness stand, Mr. Demory, and if  
18 you'll place your left hand on the Bible,  
19 sir.

20 If you'll raise your right hand.

21 CLEWIS DEMORY,  
22 being first duly sworn was examined and testified as  
23 follows:

24 DIRECT EXAMINATION

25 THE COURT: Thank you, sir, you

1           may have a seat. For the record, sir,  
2           state your full name?

3                       THE WITNESS: Clewis Demory.  
4           C L E W I S, D E M O R Y.

5                       THE COURT: Thank you, sir.

6                       MR. BRITT: May I approach and  
7           adjust the microphone.

8                       MR. THOMPSON: Excuse me, Your  
9           Honor. Before we start the examination,  
10          may I address a matter.

11                      THE COURT: Yes, sir.

12                      MR. THOMPSON: For the purposes  
13          of the 404(b) hearing, Ms. Berry, from the  
14          Public Defender's office has been involved,  
15          and while she would not be doing the actual  
16          trial --

17                      THE COURT: Any examination --

18                      MR. THOMPSON: But for purposes  
19          of the hearings, she will be involved, and  
20          with the Court's permission, and we  
21          addressed this earlier.

22                      THE COURT: Mr. Britt, do you  
23          want to be heard? I think I know what your  
24          position is, as previously stated, that the  
25          statute provides for two attorneys for any

1 defendant charged with what potentially is  
2 a capital case.

3 MR. BRITT: From the very outset  
4 of this case, Mr. Thompson and Mr. Bowen  
5 have represented Mr. Green. The statute  
6 specifically states that if a public  
7 defender is appointed to represent an  
8 indigent defendant charged with capital  
9 murder, the requirement that second counsel  
10 can be appointed can be fulfilled by  
11 assigning an assistant public defender to  
12 that case. They did not choose to do  
13 that. They sought second counsel from the  
14 list that is maintained by the clerk of  
15 persons who are on the capital appointment  
16 list, and Mr. Bowen was assigned by the  
17 Court to represent Mr. Green.

18 From the very beginning, when this  
19 matter came into Superior Court, at the  
20 Rule 24 hearing that was conducted in front  
21 of you, Mr. Thompson, Mr. Bowen were  
22 counsel. At every subsequent hearing after  
23 that, until last spring, actually this past  
24 summer, when we heard a suppression motion,  
25 Mr. Bowen and Mr. Thompson had done every

1 matter in court related to this case, and  
2 at that suppression hearing, Ms. Berry  
3 appeared for the first time. The Court  
4 exercised it's discretion and allowed her  
5 to do that.

6 There's no reason Mr. Bowen and Mr.  
7 Thompson cannot do this. I represent the  
8 State, I represent the State individually.  
9 I could have asked other individuals in any  
10 office to assist me, I chose not to do  
11 that. They have the responsibility of  
12 representing the defendant, and I would  
13 object to Ms. Berry's participation in this  
14 hearing.

15 MR. THOMPSON: May I be heard,  
16 Your Honor?

17 THE COURT: Yes, sir.

18 MR. THOMPSON: Your Honor, I find  
19 in some ways Mr. Britt's comments to be  
20 ingenious, because he admits that he could,  
21 certainly can --

22 THE COURT: Disingenuous?

23 MR. THOMPSON: Disingenuous, but  
24 certainly can have members in his office  
25 assist them. I mean, the arm of the State

1 is long and strong.

2 THE COURT: Pardon me --

3 MR. THOMPSON: Yes.

4 THE COURT: The Court in the  
5 exercise of its discretion notes the  
6 State's objection to the allowance of  
7 Ms. Berry as a participant in the 404(b)  
8 matters now before the Court. The Court  
9 overrules the objection, notes the  
10 exception of the State. For the record, in  
11 the discretion of the Court, Ms. Berry will  
12 be allowed to proceed only in the context  
13 of the 404(b).

14 MR. BRITT: As I understand, if  
15 this evidence is allowed, Ms. Berry will  
16 not be able to take part.

17 THE COURT: I've limited in my  
18 exercises of my discretion to this 404(b)  
19 matter in the absence of the jury.

20 MR. BRITT: I just want to make  
21 sure that I'm clear on that.

22 THE COURT: You are. I hope I  
23 am, too.

24 Ready to go forward?

25 MR. BRITT: Yes.

1 BY MR. BRITT:

2 Q Mr. Demory, where do you live?

3 A Route 1, Pembroke.

4 Q How old are you, Mr. Demery?

5 A 82.

6 Q Do you work at the present time?

7 A No, I don't.

8 Q What type of work have you done in the  
9 past?

10 A Well, I grew up on the farm. Then I went  
11 in the service in '41. When I got out of there, I  
12 went in the steel mill up in Maryland and worked  
13 right close to 30 years. And I retired and moved  
14 back down here, and I've just been doing any little  
15 job I could to keep me occupied.

16 Q Now, when you say you moved back down here,  
17 you mean you moved back to the Pembroke area of  
18 Robeson County?

19 A Yes.

20 Q And in what year did you retire and then  
21 move back to the Pembroke area?

22 A I retired in October of -- in '75 and I  
23 moved back down here on February the 4th of '76.

24 Q After moving back to the Pembroke area, did  
25 you take up work?

1           A       I helped on the farm a little, but it was  
2 too much for me. So I got me a job working in those  
3 stores, I worked in three stores.

4           Q       What stores did you work in?

5           A       Well, first one I worked in was for Hubbard  
6 Locklear, just this side of Mt. Airy Church.

7           Q       On what highway or road?

8           A       72.

9           Q       How long did you work there?

10          A       I worked there for -- I don't know, three  
11 or four years.

12          Q       Did you work in any store after that?

13          A       Yes, oh, yes.

14          Q       Where did you work?

15          A       I worked -- well, the reason I left that  
16 one, they built on the game rooms, put those game  
17 machines in there, and the children run me out. I  
18 could be ringing up orders for someone and they would  
19 come up wanting change right quick, wanting it then,  
20 not tomorrow or one hour from now, but right then,  
21 and I just couldn't take that.

22          Q       When you quit in, where did you go to work?

23          A       I went down to Galloway Hunt's on 1003  
24 toward 211.

25          Q       How long did you work for Mr. Galloway?

1           A       I worked there about three years, and he  
2 went out of business. Then I come back up there to  
3 72 and 1003, is where I -- well, I did this year, I  
4 did work about, no, it wasn't this year, it was last  
5 year. I did work about four or five months at a  
6 place up there on the Philadelphia Road.

7           Q       The store that you worked at that is  
8 located at 72 and 1003, who did you work for there,  
9 and what is the name of that store?

10          A       I worked for three different people. I  
11 worked for Curlin Lowry, and Gaston Locklear -- no,  
12 that's just two people. I'm sorry. Two people.

13          Q       When did you start work for Curlin Lowry at  
14 that store?

15          A       About -- along about '88, somewhere right  
16 in there, I can't remember, I didn't keep a record of  
17 it.

18          Q       Now, did Curlin Lowry sell that store, to  
19 your knowledge, to Gaston Locklear?

20          A       No, it was not their store, it was a rented  
21 store.

22          Q       Did Gaston Locklear take over the operation  
23 of that store from Curlin Lowery?

24          A       Yes, he did.

25          Q       Do you recall when that was?

1 A Yeah.

2 Q When was that?

3 A I can't remember if exact year, but like I  
4 say, I did not keep a record of it.

5 THE COURT: In the discretion of  
6 the Court, you may lead as to preliminary  
7 matters.

8 MR. BRITT: Yes, sir.

9 BY MR. BRITT:

10 Q Mr. Demory, did you begin working for  
11 Gaston Locklear there at the store at 72 and 1003 in  
12 August of 1993?

13 A No, no, no. It was before that.

14 Q In July of 1993 were you working at that  
15 store?

16 A Yes, yes.

17 Q And in July of 1993, was that store known  
18 as Lowry's Quick Stop?

19 A No, it was -- no. That was Locklear's at  
20 that time.

21 Q Had the name of the store been changed?

22 A Just little corner store is all.

23 Q July the 5th tenth of 1993, Mr. Demory, did  
24 you go to work that day?

25 A I sure did.

1 Q What time did you normally go to work?

2 A 5:00 in the morning.

3 Q And on July the 15th of 1993, did you go to  
4 work at the store located at 72 and 1003 at 5:00 a.m.

5 A I did.

6 Q And when you went to work that morning, was  
7 there anyone else who was working in the store at  
8 that time -- what were the hours the store was open?

9 A When I opened the store, like I said, at  
10 5:00, the reason I opened it that early, there was a  
11 lot of people working out of town, cart or  
12 construction workers, whatever you call them, and  
13 they would stop there to get gas and whatever. And  
14 that's why I opened up as early as I did.

15 Q When you opened, was anybody else there to  
16 help you in the store?

17 A No, no, no, huh-uh.

18 Q Mr. Demory, can you describe that store for  
19 us?

20 A Well, it's just a little flat building,  
21 cement block building, and I would say about maybe 30  
22 or 35 foot wide and maybe 60 or 70 foot long.

23 Q Were there gas pumps at the store?

24 A The gas pumps is right out front in front  
25 of the door.

1 Q Did you sell kerosene?

2 A Yeah, yeah.

3 Q Was the kerosene pump located in the same  
4 area where the gasoline pumps?

5 A No it was right around at the side of the  
6 store.

7 Q How many doors were on the front? How many  
8 doors were on the front of that building?

9 A Just one.

10 Q How many windows were on the front?

11 A Two, one on each side of the door. But  
12 they were large. I would say eight or nine feet  
13 wide.

14 Q Now, on July the 15th of 1993, when you  
15 went to work, when you first got there, tell us what  
16 you did?

17 A Well, I opened up, got everything ready and  
18 then I opened the door.

19 Q Now, when you went to work that morning,  
20 did you carry any money with you to place in the cash  
21 register?

22 A No, no.

23 Q Was there money in the cash register when  
24 you arrived on July 15th?

25 A No, he would always hide it in a certain

1 place.

2 Q And on July the 15th of 1993, did you find  
3 any money there in the spot where the money was  
4 placed overnight? Strike that. Where was the money  
5 hidden?

6 A Well, it was hidden under the counter under  
7 some paper bags.

8 Q On July the 15th of 1993, did you find that  
9 money in that hiding place?

10 A Oh, yes.

11 Q And when you got that money from the hiding  
12 place, what did you do with it?

13 A Put it in the cash register.

14 Q At any time did you count the money that  
15 was there?

16 A No, I didn't bother to count it but I know  
17 it was usually about the same amount.

18 Q What amount of money did you normally open  
19 the store with each morning?

20 A Well, he would have around two hundred  
21 dollars in it.

22 Q And that two hundred dollars, would it be  
23 broken down into various bills and loose change?

24 A Well, might have two or three 20s, eight or  
25 ten 10s, maybe 15 fives and the rest in ones.

1 Q Now, at that store, did you accept food  
2 stamps?

3 A Yes, we did.

4 Q Did you keep any -- were any food stamps  
5 kept with that money in order to open up each  
6 business day?

7 A Well, it would be in the cash register.

8 Q After getting the business ready to open,  
9 approximately how much time would it take you to get  
10 things ready before you unlocked the door?

11 A Just a few minutes.

12 Q And on the morning of July 15th, 1993, did  
13 you have customers coming in and out of the store in  
14 the early morning hours?

15 A Oh, yes.

16 Q On a fairly regular basis, would you have  
17 vendors who would come by and restock the supplies  
18 there?

19 A Well, yes. We had two, Lance and Little  
20 Debbie's is the only two that we had that, you know,  
21 we bought from there at that time. No, no, I'm  
22 sorry, I made a mistake. Tom's, they puts stuff in  
23 there, too.

24 Q Now, when was the busiest time there in the  
25 store, what part of the day was the busiest?

1           A       It varied. Sometimes it might be 8:00 in  
2 the morning, sometime could be at 11:00 in the day,  
3 in the morning.

4           Q       Now, around 9:30, 10:00 the morning of July  
5 15th, 1993, did anything happen, Mr. Demory that you  
6 recall?

7           A       What time?

8           Q       Around 9:30, 10:00, on the morning of July  
9 15th, 1993?

10          A       Oh, yes.

11          Q       What if anything happened about that time?

12          A       Well, I can't remember exactly what I was  
13 doing, but I didn't see these guys when they came  
14 in. I don't know whether I was putting some  
15 cigarettes in the rack or what I was doing. I don't  
16 remember. But I had my back turned, and --

17          Q       What did you have your back turned toward?

18          A       Toward the counter, and the cigarette  
19 counter was over here and the counter over here.

20          Q       Was there anyone in the store prior to that  
21 time that you say these individuals that you say --  
22 were there any customers in the store at that time?

23          A       No, no, no.

24          Q       Now, you've referred to two guys that came  
25 in. Can you describe these people?

1           A       Well, one of them was a tall, young, black  
2   guy.  And the other one, I could not tell you what he  
3   looked like to save my life, because he had a towel  
4   around his face.

5           Q       And the one with the towel around his face,  
6   was he shorter or taller than the black man that you  
7   saw?

8           A       Well, now, that's something I've been  
9   troubled with all along.  It must have been the way  
10  he was stooped over.

11          Q       The way who was stooped over?

12          A       The one with the towel around his face.  He  
13  looked shorter.  But then when I saw them, when I saw  
14  both of them on television together, they looked near  
15  about the same height.  That looked that way to me.

16          Q       Now, the young black man that came into the  
17  store, did he have anything covering his face?

18          A       No, huh-uh.

19          Q       And when these two individuals came into  
20  the store, what if anything caused you to take notice  
21  of them?

22          A       The first thing I saw was he was standing  
23  right beside of me with his gun pointed at my head.

24          Q       Who was standing beside you with a gun  
25  pointed at your head?

1 A The black one.

2 Q When you say he was standing beside you --

3 A Yeah.

4 Q -- how close to you was he?

5 A (Indicating).

6 Q You've indicated with your hands a distance  
7 of approximately a foot, is that correct?

8 A Yeah, yeah.

9 Q And when this young black man placed this  
10 gun beside your head, where were you in the store?

11 A I was behind the counter, right at the cash  
12 register.

13 Q Did this young black man say anything to  
14 you at the time he put the gun to your head?

15 A I don't remember him saying anything, now.

16 Q Now, where was this other individual that  
17 you said had a towel over his face?

18 A He was standing right out in front of the  
19 counter.

20 Q And when this young black man put this gun  
21 beside your head, was he also behind the counter?

22 A Yeah, he was behind the counter, yes, the  
23 other one was in front of the counter.

24 Q What happened after this young black man  
25 put this gun to your head?

1           A       Well, there was -- one thing I can tell  
2   you, now, some of you might not believe it, but it's  
3   the truth. I was not scared. I don't know why I  
4   wasn't scared, I don't know. But -- well, he pulled  
5   that trigger three times and they told me in the  
6   hospital three bullets hit me, and I didn't feel  
7   one. Now, I can't -- I'm sorry, I got in this, but I  
8   just wanted you to know that I was not scared and I  
9   didn't hurt. But everything they said, I cannot  
10   remember.

11           Q       Did the man with the towel over his face  
12   say anything to you?

13           A       Not to me.

14           Q       Did he say anything to the young black man?

15           A       Yeah.

16           Q       What did he say?

17           A       Cash register, cash register, cash  
18   register.

19           Q       At that time, were you standing in an area  
20   at the cash register?

21           A       Right in front of it.

22           Q       And when the individual with the towel over  
23   his face said "cash register, cash register," what  
24   did the young black man with the gun to your head do?

25           A       He punched a key, one or two keys, but it

1 didn't open.

2 Q And --

3 A And he still had his gun up there, so I hit  
4 the key.

5 Q When you say he still had the gun up here,  
6 what do you mean by that?

7 A Right at my head.

8 Q And when this young black male could not  
9 open the cash register, did you do anything --

10 A Well, he just didn't hit the right key.  
11 Yes, I hit the key and let it open.

12 Q And when you opened the cash register  
13 drawer for him, what did he do?

14 A He got it, got the cash, food stamps out.

15 Q Did he put it in anything?

16 A Put it in his pocket.

17 Q And was that a shirt pocket or pants  
18 pocket?

19 A Lord, I wasn't looking at that, what he  
20 done with it.

21 Q Now, after he took the money and the food  
22 stamps out of the cash register, what then happened?

23 A Okay. Under the counter we had three  
24 little drawers and he opened this one, he didn't see  
25 anything in it --

1 Q Where were you standing at this time?

2 A Right over here. He opened (indicating)  
3 this one, and nothing in there, but what it was, the  
4 little bank book with a little money in it, he got.  
5 And over at the other one is where I had my gun.

6 Q What kind of gun did you have there,  
7 Mr. Demory?

8 A The .38 Smith & Wesson.

9 Q How long had you had that gun?

10 A Since 1961.

11 Q And did you buy that gun for a specific  
12 reason?

13 A I bought that gun because our work got slow  
14 in the plant and I had to get me a part-time job to  
15 make my house payments, my car payments, my light  
16 payments, my gas payments and all that.

17 Q What kind of part-time job did you get?

18 A Got a security job.

19 Q Getting that job, did you have to buy a  
20 gun?

21 A Well, I didn't want to be out there in the  
22 dark without one at night.

23 Q Now, the Smith & Wesson .38 that you  
24 purchased, was that a revolver?

25 A Yeah.

1 Q How many bullets would it hold?

2 A Six.

3 Q And can you describe that gun for us?

4 A Well, it's a blue steel and on the handles,  
5 the grip, it's got a brown looking wood.

6 Q Now, why did you have that gun at the  
7 store?

8 A I wanted it to -- I wanted people to know I  
9 had it so they wouldn't bother me.

10 Q Is it there for your protection?

11 A Yeah.

12 Q And where was that gun, where did you keep  
13 that gun while you were at the store?

14 A It was in that last drawer, like I said.

15 Q Did this young black male open the drawer  
16 where you kept your gun?

17 A Yeah.

18 Q And at the time he opened that drawer, was  
19 the gun inside?

20 A Yeah, oh, yeah.

21 Q What happened after he opened the drawer  
22 where your gun was located?

23 A Well, when he pulled that drawer open, I  
24 don't know why I did it, but I reached for that gun.

25 Q Did you --

1           A       I didn't want to hurt him, I just didn't  
2 want him getting it. And that's when he pulled the  
3 trigger.

4           Q       Now, did you ever get your hands on your  
5 gun?

6           A       Only time I touched that gun after that was  
7 the police brought it to the house and showed it to  
8 me and asked me if I could identify it.

9           Q       Now, on July the 15th when you reached for  
10 the gun in the drawer, did you actually pick it up?

11          A       No, no, huh-uh.

12          Q       What happened as you reached for the gun?

13          A       That's when he shot me.

14          Q       Who shot you?

15          A       The guy that was standing there, the black  
16 guy.

17          Q       Now, the other person that you've  
18 identified as having a towel over his face, did he  
19 say anything other than "cash register, cash  
20 register"?

21          A       I never heard him mention anything other  
22 than that.

23          Q       How many times do you recall hearing  
24 gunshots?

25          A       Well, I know I heard it three times.

1 Q And after you heard these three gunshots,  
2 what do you recall doing?

3 A Well, I didn't do anything. Like I say, I  
4 didn't know I had been shot. And when they left out  
5 of the front door -- well, the only door in the  
6 place, they left out, and I said, well, I'm going to  
7 go out there and see if I can see what they are  
8 riding in. I went out, but I couldn't see them  
9 nowhere, no car or anything. And I went back in and  
10 sit down on the stool and when I did, right there  
11 (indicating).

12 Q You're pointing to an area along your jaw,  
13 that's correct?

14 A Yeah.

15 Q And your neck?

16 A Yes, that artery right there, hit it right  
17 there and broke that artery. And looked like there  
18 was a stream of blood that big coming out of there  
19 (indicating).

20 Q Is that when you first realized that you  
21 had been shot?

22 A That's when I realized that I had been  
23 shot.

24 Q When you realized that you had been shot,  
25 Mr. Demory, what did you do?

1           A       I thought I was doing 911 or whatever it  
2 is, but I didn't. If I did, I didn't get a response,  
3 so I dialed my house number, told my wife to call the  
4 emergency people and tell them to come get me, that I  
5 had been shot.

6           Q       And after you called your wife, did  
7 emergency people come and pick you up?

8           A       They were there in about 15 or 20 minutes.

9           Q       Do you know, were you taken anywhere?

10          A       Took me to the hospital.

11          Q       And was that Southeastern General Hospital?

12          A       Yeah.

13          Q       Did you stay in the hospital for any period  
14 of time?

15          A       Well, I went in that Wednesday and got out  
16 on Friday.

17          Q       Other than being shot in the area of your  
18 neck, did you later learn that you had been shot in  
19 other places?

20          A       Oh, well, one bullet went in right here and  
21 come out at my back.

22          Q       You're pointing to an area of your chest?

23          A       Well, right along there.

24          Q       Were you shot anywhere else?

25          A       Well, one bullet hit me right here on the

1 shoulder, now that could have been to my opinion,  
2 that it -- this one might have ricocheted off down  
3 there and hit that.

4 Q Did you have to undergo any surgical  
5 procedures to remove any bullet?

6 A Oh, no, huh-uh. No, all the bullets was  
7 gone except one. And the doctor said he was going to  
8 leave it in there, he said it was no problem. It  
9 wouldn't bother me. And he just left it in there.

10 Q Now, after you were shot, Mr. Demory, did  
11 you see the individuals leave the store?

12 A No. Well, I saw them when they went out  
13 the door, yes.

14 Q And do you recall which one went out first?

15 A I thought I was dialing the emergency  
16 number, but I didn't get a response.

17 Q When you saw these people leaving the  
18 store --

19 A Oh, no, no, no, after I set down and saw I  
20 had been shot.

21 Q You've testified that you were shot. You  
22 heard three gunshots and the individuals ran out of  
23 the store?

24 A Yeah.

25 Q Do you remember which one of the

1 individuals went out first?

2 A I wasn't looking at that.

3 Q Now, the three gunshots that you heard, did  
4 they all come from the same direction?

5 A Yeah, yeah.

6 Q Did they all come from the direction of the  
7 young black man that was --

8 A Sounded like they were standing right there  
9 at my head, that's what it sounded like.

10 Q Did you ever see the guns well enough to  
11 describe them?

12 A Well, now, it's hard for me to tell you  
13 what size gun it was. I mean, but they were blue  
14 steel.

15 Q Were they smaller than your .38?

16 A Looked like a .32 or something like  
17 that.

18 MR. BRITT: May I approach the  
19 witness?

20 THE COURT: Yes, sir. Mr. Britt,  
21 for the record, your last question assumes  
22 plural, guns.

23 MR. BRITT: I apologize.

24 BY MR. BRITT:

25 Q Mr. Demory, when the individuals came into

1 the store, how many guns did you see?

2 A Well, now, I'm going to tell you, I didn't  
3 even see them when they came in. Like I say, I don't  
4 know, I don't remember what I was doing, whether I  
5 was putting cigarettes in the rack or had supplies  
6 and was putting it up, I can't tell you, I don't  
7 remember.

8 Q Did you see any gun other than the one that  
9 was pointed at your head?

10 A Well, both of them had a gun in their  
11 hands.

12 Q And did they appear to be similar in size  
13 and color?

14 A Yeah, they looked like they were close to  
15 the same size.

16 (State's Exhibits 66, 67 were  
17 marked for identification.)

18 MR. BRITT: May I approach the  
19 witness?

20 THE COURT: Yes, sir.

21 MR. BRITT: For the purposes of  
22 the record, these are State's Exhibits 66  
23 and 67.

24 THE COURT: Okay. Mr. Demory,  
25 would you like some water, sir?

1 THE WITNESS: No thank you.

2 BY MR. BRITT:

3 Q Mr. Demory, I'm going to show you what has  
4 been marked as -- do you recognize what is contained  
5 in that photograph?

6 A Oh, yes, that's the little flat store that  
7 I mentioned.

8 Q And State's Exhibit Number 60 --

9 A And that's the kerosene pump right there.

10 Q State's Number 66, is that a photograph of  
11 the exterior or the outside portion of that store?

12 A Yes.

13 Q Looking at it from --

14 A The front part, yes, yes.

15 Q Does State's Exhibit 66 show the door that  
16 you go through to get inside the store?

17 A Right there.

18 Q Does it show the windows that you  
19 previously testified about?

20 A Well, I did say there was one on each side,  
21 but there wasn't, look there.

22 Q The windows are beside each other, are they  
23 not?

24 A Yeah.

25 Q Does it show the location of the kerosene

1 pump?

2 A Yes.

3 Q State's Exhibit 66, does it fairly and  
4 accurately depict the exterior portion of the store?

5 A Oh, yes.

6 Q Can you use that to help you to illustrated  
7 your testimony to the Judge?

8 A Yeah.

9 Q For the purposes of this hearing, I would  
10 ask that 66 be admitted.

11 THE COURT: Yes, sir. It's  
12 admitted for the purposes of the hearing,  
13 for illustrative purposes at this time?

14 MR. BRITT: Yes, sir.

15 THE COURT: Okay.

16 BY MR. BRITT:

17 Q If you can, using State's Exhibit 66, show  
18 the Judge the matters you referred to in terms of the  
19 only entry into the store and the location of the  
20 kerosene pump?

21 MR. THOMPSON: Your Honor, may

22 I --

23 THE WITNESS: This is the only  
24 door to it, no side door --

25 THE COURT: Bear with me.

1 Mr. Thompson needs to get up here so he can  
2 see it.

3 THE WITNESS: Okay, okay.

4 THE COURT: That's all right.

5 Yes, sir.

6 THE WITNESS: Like I say, this is  
7 the only door, there's no side doors or  
8 rear doors. And the only way in was here  
9 or out.

10 THE COURT: Okay.

11 BY MR. BRITT:

12 Q When you walk in that door, Mr. Demory,  
13 where is the counter and cash register located?

14 A Just to the left of the door there.

15 Q I'll show you what has been marked as  
16 State's Exhibit 67, do you recognize what is  
17 contained in that photograph?

18 A Oh, yeah.

19 Q For the record, what does State's Exhibit  
20 Number 67 depict?

21 A Well, this is the cash register, right  
22 where that man is at, that's right over in front of  
23 the cash register where I said the guy was that --  
24 with the towel around his face. And right back here  
25 is where I was standing in front of the cash

1 register. Now, those are the drawers I mentioned one  
2 there, one there, one there.

3 Q Does State's Exhibit Number 67 fairly and  
4 accurately represent or depict the area of the store  
5 where the cash register and counter were located?

6 A Yeah.

7 Q Does it depict the drawers that you  
8 referred to, specifically the one where you kept your  
9 .38 caliber revolver?

10 A Right here (indicating).

11 Q And would it help you in illustrating your  
12 testimony to the Judge? Can you use that to  
13 illustrate your testimony to the Judge?

14 A Well --

15 THE COURT: He's asking you  
16 whether you can use that photograph to show  
17 me what you say happened on the day in  
18 question.

19 THE WITNESS: Well, like I say,  
20 the one, the guy with the towel around his  
21 face was standing right out front there,  
22 but he was looking over the counter. And  
23 the other guy that, the tall black guy, he  
24 was back here. And I was standing right  
25 here and he was standing right here

1 (indicating).

2 BY MR. BRITT:

3 Q When you say he was -- were you closer to  
4 the window or was the young black man closer to the  
5 window?

6 A No, no, he was closer to the window. I was  
7 right along, you know.

8 Q Which way were you facing?

9 A Well, Luke I say, I came -- when they came  
10 in, I don't know, because like I say, I didn't see  
11 them when they came in, I must have been putting  
12 cigarettes in the rack or something, I don't know  
13 what I was doing.

14 THE COURT: At the time that the  
15 man that you say came in and put the gun to  
16 your head, at the time he had the gun to  
17 your head, where were you facing at that  
18 time.

19 THE WITNESS: Well, when he come  
20 in and I saw he had it, I was looking right  
21 straight at him.

22 THE COURT: Okay.

23 BY MR. BRITT:

24 Q Now were you behind the counter?

25 A Oh, yes.

1 Q When that individual came in and put the  
2 gun to your head?

3 A Oh, yes.

4 Q When he put the gun to your head, did you  
5 move toward the cash register or were you in the  
6 general area of the cash register?

7 A No, I was -- I just let him do what he  
8 wanted to. What was I going to do? I couldn't --

9 Q For purposes of this hearing, I would ask  
10 that 67 be admitted for illustrative purposes.

11 THE COURT: Yes, sir.

12 MR. BRITT: May I approach the  
13 witness again?

14 THE COURT: Yes, sir.

15 BY MR. BRITT:

16 Q I'll show you what has been marked as  
17 State's Exhibit 59. It's a clear plastic bag that  
18 contains an item. With the Court's permission, I'm  
19 going to open State's Exhibit 59.

20 THE COURT: Yes, sir.

21 BY MR. BRITT:

22 Q Mr. Demory, State's Exhibit 59 at this  
23 time, the plastic bag is closed. If you'll examine  
24 that. Are all of the edges sealed?

25 A Oh, yes, well, they seem -- look,

1     yeah.

2                     MR. BRITT:   For the record I've  
3             opened State's Exhibit 59, removing the  
4             contents.

5                     THE COURT:   Yes, sir.

6     BY MR. BRITT:

7             Q     Mr. Demory, --

8                     MR. BRITT:   For the record, the  
9             cylinder is opened, it's not loaded.

10    BY MR. BRITT:

11             Q     Mr. Demory, I'm going to ask you to --

12                     MR. BRITT:   For the record, I'm  
13             marking the revolver as State's Exhibit  
14             59-A.

15                     THE COURT:   Yes, sir.

16                     (State's Exhibit 59-A was  
17                     marked for identification.)

18    BY MR. BRITT:

19             Q     I'm going to ask you to look at State's  
20             Exhibit 59-A -- and tell me if you can identify  
21             that.

22             A     Yes.

23             Q     How are you able to identify State's  
24             Exhibit Number 59-A?

25             A     Well, now, I don't want you to think I'm

1 trying to do something stupid, but when you've had  
2 something as many years as I've had that and you look  
3 at it, you know it. Just like your car out there, if  
4 you go look at that car, you know it's your car.

5 Q And State's Exhibit 59-A, is that the .38  
6 caliber Smith & Wesson revolver that you purchased in  
7 1961 when you took a job as a security guard?

8 A Yeah.

9 Q State's Exhibit 59-A, is that the same .38  
10 Smith & Wesson revolver that you took to work with  
11 you on July the 15th, 1993, and placed in that drawer  
12 at the store where you worked?

13 MS. BERRY: Object, assumes facts  
14 not in evidence, Your Honor.

15 THE COURT: Well, it does, but  
16 foundation to go ahead and answer those  
17 questions.

18 BY MR. BRITT:

19 Q Mr. Demory, July 15th, 1993, did you take  
20 your .38 Smith & Wesson revolver with you to work?

21 A I did.

22 Q Was that your normal habit of taking  
23 the .38 caliber Smith & Wesson revolver with you?

24 A Every morning.

25 Q When you opened the store, where would you

1 place the .38 caliber Smith & Wesson revolver?

2 A I put it in the drawer.

3 Q Is that the same .38 caliber Smith & Wesson  
4 revolver that you took with you to work on the  
5 morning of July 15th, 1993?

6 A Well, now, I say it is, but this -- I don't  
7 know why this is so changed colors. It used to be  
8 the same as this one.

9 Q When you say something has changed color,  
10 for the record, specifically what has changed color?

11 A This wooden grip. You see the difference  
12 in the color now?

13 THE COURT: For the record,  
14 Mr. Demory, am I correct in understanding  
15 that you're testifying that one side of the  
16 wooden grip is darker?

17 THE WITNESS: I don't know if  
18 it's something that has been rubbed on it  
19 or not. I don't know. Look here, the same  
20 one that was on there when I bought it.

21 THE COURT: What is the  
22 difference that you notice, sir?

23 THE WITNESS: The color.

24 THE COURT: The color is darker  
25 now from what you remember?

1                   THE WITNESS: It used to be this  
2                   color.

3                   THE COURT: Okay. For the  
4                   record, folks, he has indicated that one  
5                   side of the wooden grip is darker than he  
6                   recalls it being, that the one he describes  
7                   as being darker today is unlike the grip on  
8                   the opposite side which is consistent with  
9                   what he recalls the coloring being. Is  
10                  that correct, Mr. Demory.

11                  THE WITNESS: Yes.

12 BY MR. BRITT:

13                  Q       Mr. Demory, other than the change in the  
14                  color or of the grip on the one side, is that pistol  
15                  in substantially the same condition it was in when  
16                  you last saw it?

17                  A       It's -- it's the same size gun I had, but  
18                  now, I don't know the serial number. I had it, I  
19                  took it off of here when I got -- I wanted to see if  
20                  I could get a permit from the Sheriff to carry it  
21                  with me home and back to the store. But he said they  
22                  didn't give out permits, and he just wrote me a  
23                  letter saying that I was entitled to carry it with  
24                  me, and said they didn't need the serial number.

25                  THE COURT: So there's no

1           confusion. Mr. Demery, do you recognize  
2           what has been marked as State's Exhibit  
3           59-A as being the same weapon that you  
4           purchased back in 1961?

5                   THE WITNESS: Well, like I'm  
6           saying, it looks to me like the same one,  
7           other than this grip here is darker than  
8           this one, and they used to be the same  
9           color.

10                   THE COURT: Yes, sir.

11                   THE WITNESS: That's what I'm  
12           saying.

13           BY MR. BRITT:

1 Q Do you know what a reload bullet is?

2 A Reload?

3 Q Yes, sir, do you know what reload  
4 ammunition is? Do you know whether you had --

5 MS. BERRY: Your Honor I would  
6 ask that the record reflect that he gave a  
7 negative response.

8 THE COURT: You'll have to answer  
9 for the record. Mr. Britt asked you if you  
10 knew what reload ammunition is? If you'll  
11 answer so the court reporter can take down  
12 your answer.

13 THE WITNESS: If you're talking  
14 about do I have ammunition at home, yeah,  
15 I've got some other at home.

16 BY MR. BRITT:

17 Q You have a box of bullets that you had  
18 purchased for this gun?

19 A I've got a box with some in it, yeah.

20 Q And do you recall when you purchased that  
21 box of bullets?

22 A No, I sure can't.

23 Q Do you recall the brand of bullet that you  
24 purchased?

25 A Well, what I bought them for was to have

1 some.

2 THE COURT: Mr. Demory, do you  
3 have the same box of ammunition that you  
4 used to load the weapon on July 15th, 1993?

5 THE WITNESS: Oh, yeah, I got  
6 some of them at home.

7 THE COURT: So the rounds that  
8 were in the .38 on July 15th, 1993 came  
9 from a box of ammunition that you still  
10 have.

11 THE WITNESS: Yeah.

12 THE COURT: Mr. Britt.

13 BY MR. BRITT:

14 Q Mr. Demory, you testified earlier that the  
15 next time you saw that gun is when some officers  
16 brought it to you and asked you if you could identify  
17 it?

18 A Yeah.

19 Q At the same time, Mr. Demory, did you show  
20 the officers the box of bullets that you had there at  
21 your home?

22 A Yeah, yeah, uh-huh. Well, they took five  
23 or six of them with them.

24 Q Mr. Demory, in September of 1993, do you  
25 recall this officer (indicating), Agent Underwood,

1 coming to see you?

2 A Yeah.

3 Q And when Mr. Underwood came to see you on  
4 September the 13th, do you recall him showing you a  
5 group of photographs?

6 A Well, you know, it's hard to remember all  
7 that stuff, but I remember him being there and asking  
8 me questions and he showed me something, but I can't  
9 remember exactly what it was, it looked like

10 (State's Exhibit 68 was  
11 marked for identification.)

12 MR. BRITT: May I approach?

13 THE COURT: Yes, sir. This is  
14 going to be 68?

15 MR. BRITT: Yes, sir.

16 BY MR. BRITT:

17 Q Now, prior to Mr. Underwood coming to see  
18 you on September the 13th, Mr. Demory, you had given  
19 a description of the individuals that had come into  
20 the store to police officers, had you not?

21 MS. BERRY: Object.

22 THE WITNESS: Oh, yeah.

23 THE COURT: Do you want to be  
24 heard?

25 MS. BERRY: Well, Your Honor, I

1           would suggest that's getting beyond the  
2           preliminary matters that the Court had  
3           previously --

4                         THE COURT:  Overruled.  Exception  
5           is noted for the record.

6  BY MR. BRITT:

7           Q        You gave them a description of the  
8           individuals that came into the store that day?

9           A        Uh-huh.

10                       MR. BRITT:  May I approach?

11                       THE COURT:  Yes, sir.

12  BY MR. BRITT:

13           Q        Mr. Demory, the individual that had the  
14           towel over his face, could you tell if he was a black  
15           man, white man, or an Indian man?  The individual  
16           that had the towel over his face?

17           A        I couldn't tell you what he looked like.

18           Q        Can you tell what race he was?

19           A        No, huh-uh, you couldn't see nothing about  
20           his face.

21           Q        And the young black male that came into the  
22           store and put the gun to your head, can you describe  
23           him for us, please?

24           A        Well, he was just a -- to me, he was a  
25           young, kind of tall black guy, and that's all.

1 Q In talking with the police, did you give  
2 them an age that the person might be?

3 A I don't remember telling them what I  
4 thought his age would be. But it would have been  
5 somewhere around 19 or 20, 21. But I'm not going to  
6 say what it was.

7 Q Your best estimate?

8 MS. BERRY: Object, Your Honor,  
9 to that. It's not being responsive to the  
10 question that he was asked.

11 THE COURT: Overruled.

12 BY MR. BRITT:

13 Q Your best estimate as to the age of the  
14 person?

15 A Well, like I say, I would say 19 or 20,  
16 21.

17 Q Mr. Demory, I'm going to show you what's  
18 been marked as State's Exhibit Number 68, ask you to  
19 look at that. And have you ever seen what's been  
20 marked as State's Exhibit Number 68 before?

21 A Oh, yeah.

22 (State's Exhibit 69 was  
23 marked for identification.)

24 BY MR. BRITT:

25 Q And State's Exhibit Number 68, was that

1 shown to you by Special Agent Tony Underwood back in  
2 September, specifically September the 13th of 1993?

3 A Yeah, yeah.

4 Q Show you what's been marked as State's  
5 Exhibit Number 69, and ask you if you've ever seen  
6 that exhibit before?

7 A Yes, I sure have.

8 Q Was that exhibit also shown to you by  
9 Mr. Underwood on September the 13th of 1993?

10 A Yeah.

11 Q Referring to State's Exhibit Number 68, how  
12 many photographs appear in State's Exhibit Number 68,  
13 if you will count them, please.

14 A How many photographs --

15 Q How many photographs are contained on  
16 State's Exhibit Number 68?

17 A Eight.

18 Q And are all eight photographs of black  
19 males?

20 A Yes. Yes.

21 Q Show you State's Exhibit Number 69, how  
22 many photographs are contained --

23 A There's eight on that one.

24 Q Is that -- all eight of those photographs,  
25 are they of Indian males?

1           A       Well --

2           Q       Or what appear to be Indian males or white  
3 males?

4           A       They seem to be, look like it to me. Now,  
5 I could be wrong.

6           Q       You could be wrong in regard to whether  
7 they are white or Indian?

8           A       Yeah, yeah.

9           Q       The photographs in State's Exhibit 68 and  
10 69, are they black or white or color?

11          A       This one?

12          Q       The photographs -- this is 69. Are these  
13 photographs in black and white or are they color  
14 photographs?

15          A       Well, I would say black and white. Now, I  
16 don't know.

17          Q       State's Exhibit Number 68, are those  
18 photographs in black and white or are they in color?

19          A       Just black and white to me. I don't see  
20 any colors on the pictures.

21          Q       Now, Mr. Demory on September the 13th,  
22 you've testified that Mr. Underwood showed you both  
23 State's Exhibit Number 68 and 69. Is that correct?

24          A       Yeah.

25          Q       Did Mr. Underwood ask you to do anything

1 with State's Exhibit 68 and 69?

2 A Well, he might have -- I can't remember.  
3 It's been so long.

4 Q Were you given an opportunity to look at  
5 State's Exhibit Number 68 and State's Exhibit Number  
6 69?

7 A Well, just like you're doing, and he might  
8 have just asked me if I could identify --

9 MS. BERRY: Excuse me, I  
10 object --

11 THE WITNESS: I don't remember,  
12 that's been --

13 THE COURT: I apologize for the  
14 interruption, Mr. Demory, if you'll bear  
15 with me for one second. The Court is  
16 exercising its discretion under 611-C,  
17 leading questions are generally not to be  
18 used on direct examination of a witness  
19 except as may be necessary to develop the  
20 witness's testimony. Ordinarily, leading  
21 questions should be permitted on  
22 cross-examination, that's the rule.  
23 Because of the age of Mr. Demory, the  
24 Court, in the exercise of its discretion as  
25 to matters now pertaining to the voir dire,

1 will allow latitude to ask leading  
2 questions.

3 MR. BRITT: Yes, sir.

4 THE COURT: Note the defendant's  
5 objection and exception for the record.

6 BY MR. BRITT:

7 Q On September the 13th, did Mr. Underwood  
8 ask you to look at the exhibits marked as State's  
9 Exhibit 68 and 69?

10 A Yeah.

11 Q Did he ask you if you could identify anyone  
12 in State's Exhibit Number 6 -- or if anyone in  
13 State's Exhibit Number 68 looked like the individual  
14 who came into the store on July 15th, 1993?

15 A Well, I'm going to tell you, I believe -- I  
16 believe he did, now. You know, it's hard to go back  
17 that far and remember everything.

18 Q State's Exhibit Number 68, the photographs  
19 of the black males --

20 A Well --

21 Q If you will -- is there anyone depicted in  
22 State's Exhibit Number 68 that resembles the person  
23 that came into the store on July 15th, 1993 and put  
24 the gun to your head and then shot you?

25 MS. BERRY: Object.

1 THE WITNESS: Well, I --

2 THE COURT: Overruled.

3 THE WITNESS: The one I see on  
4 here that resembles him is number three.

5 THE COURT: For the record,  
6 Mr. Demory, you've indicated that you  
7 recall seeing State's Exhibit Number 68 at  
8 sometime in the past, you don't necessarily  
9 remember when?

10 THE WITNESS: That's right.

11 THE COURT: At that time, did you  
12 identify anyone, at the only time when you  
13 saw it, as being similar to or being the  
14 person who came into your store on July  
15 15th, 1993?

16 THE WITNESS: Well, now, can I --  
17 I know this is not police officer business,  
18 but can I tell you what I told them the day  
19 that I was laying in that hospital on the  
20 stretcher --?

21 THE COURT: Yes, sir.

22 THE WITNESS: -- and they asked  
23 me questions. They asked me a lot of  
24 questions like that, and I told them, I  
25 says, I couldn't identify them if they

1 walked in here. I said that black guy  
2 looked just like I see -- I said, I see  
3 lots of them that look just like them. And  
4 I said the other one, I couldn't see his  
5 face, it was covered. But then they asked  
6 me something about the gun, or some  
7 question, and I can't remember exact words  
8 they used, but I said, let me ask you a  
9 question.

10 I said, have you ever been standing,  
11 looking down the barrel of two guns and  
12 could tell me everything that went on.

13 THE COURT: We certainly  
14 understand, Mr. Demory. And we can  
15 appreciate what you're telling us. We're  
16 simply trying to make sure --

17 THE WITNESS: But I want to do my  
18 best to tell the truth. That's what I'm  
19 here for.

20 THE COURT: Yes, sir.

21 THE WITNESS: I don't want to  
22 hurt nobody.

23 THE COURT: We don't mean to  
24 confuse you, and we don't want you to do  
25 anything other than tell the truth.

1           You indicated earlier that you had  
2           seen State's Exhibit 68. Mr. Britt, if  
3           you'll hand State's Exhibit 68 to  
4           Mr. Demory. On that earlier occasion when  
5           you saw this exhibit, at that time, did you  
6           identify anybody.

7           THE WITNESS: Well, no, I didn't  
8           identify anybody, but I said that this  
9           looked like the one that was in there with  
10          the gun.

11          THE COURT: So on the earlier  
12          occasion when you saw this exhibit, you  
13          pointed to a specific photograph?

14          THE WITNESS: Yeah.

15          THE COURT: And at that time you  
16          said, this looks like the person who had  
17          the gun?

18          THE WITNESS: That's right.

19          THE COURT: And the person that  
20          you were referring to was a black male?

21          THE WITNESS: Yeah.

22          THE COURT: You didn't identify  
23          him as being the person?

24          THE WITNESS: No.

25          THE COURT: You said he looked

1           like the person, is that correct?

2                       THE WITNESS: That's what I said.

3                       THE COURT: All right.

4 BY MR. BRITT:

5           Q       And for the record, the person that you  
6 said looked like the person that shot you is depicted  
7 as number three --

8           A       Yeah.

9           Q       -- in State's Exhibit Number 68?

10          A       Uh-huh.

11          Q       State's Exhibit Number 69, were you able to  
12 identify or tell the officers that -- about anyone in  
13 State's Exhibit Number 69?

14          A       No, no. The only time I could tell you  
15 about that is I saw that on television.

16          Q       And you've pointed to the photograph number  
17 eight on State's Exhibit Number 69?

18          A       Yeah.

19          Q       Mr. Demory, other than the money that was  
20 taken from the cash register, and then the .38  
21 caliber pistol that you owned, was there any other  
22 property taken or any other monies taken?

23          A       Got my wallet, and I had about a hundred  
24 and 40 or 50 dollars in it. Driver's license, Social  
25 Security card, medicaid, all them cards.

1 Q Were any coins taken from you?

2 A I had one coin.

3 Q What kind of coin?

4 A It was -- what was it. It had two soldiers  
5 on the coin. Way back, way back, before I can  
6 remember. Valor of the Soldiers of the South.

7 THE COURT: Civil War?

8 THE WITNESS: Yeah.

9 THE COURT: Is that the one  
10 you're talking about.

11 THE WITNESS: Yeah, and it was a  
12 half a dollar, fifty cent piece, I never  
13 saw another one like it in my life. And I  
14 had that thing since '46, and I hated to  
15 lose it. It could have been worth  
16 something, I don't know what it was worth.

17 BY MR. BRITT:

18 Q Who took your wallet from you?

19 A The guy that was behind the counter.

20 Q Is that the one with the towel over his  
21 face or was that the young black male?

22 A No, no, huh-uh, the other one.

23 Q Was that coin in your wallet or in your  
24 pocket?

25 A In my wallet.

1                   MR. BRITT: I don't have any  
2 other questions.

3                   THE COURT: Any  
4 cross-examination?

5                   MS. BERRY: Thank you, Your  
6 Honor.

7                                   CROSS-EXAMINATION

8 BY MS. BERRY:

9           Q       Mr. Demory, I just want to ask you a few  
10 questions if I could today. Do you hear me all  
11 right? Do I need to speak up a little bit?

12           A       Yes.

13           Q       If you don't hear what I say, Mr. Demery,  
14 will you tell me and I'll try to speak up a little  
15 louder?

16           A       Okay.

17           Q       Mr. Demory, back in July of 1993, you were  
18 79 years of age, weren't you?

19           A       No, at that time I was 80.

20           Q       80 years of age?

21           A       Yes.

22           Q       Okay. And I noticed that you're wearing  
23 glasses today?

24           A       I am.

25           Q       Do you wear those glasses for reading or do

1 you wear them for your distance vision?

2 A The reason I wear them now, every day, is  
3 because on my driver's license they got it on there I  
4 must have them on, and I don't want to go home and  
5 lay them down and forgot them and get on the road and  
6 get a ticket.

7 Q And did the driver's license people tell  
8 you that you needed to wear those glasses so you  
9 could see at a distance properly?

10 A Well, I'm going to tell you, now, they  
11 hadn't told me that, but in the eye clinic, they tell  
12 me that I have 20/20 vision with these glasses on.  
13 And without them, I don't have too good of eyesight,  
14 so that's one thing.

15 Q And when in time did you get those glasses,  
16 sir?

17 A Lord, I don't know what year I got these,  
18 the lens that's in there now.

19 Q Well, back in July of 1993, particularly on  
20 the day when you were robbed and when you were shot,  
21 did you have those glasses?

22 A Oh, yes.

23 Q And were you wearing those glasses at the  
24 time?

25 A Yeah, uh-huh.

1 Q That's -- you recall having them on?

2 A Yeah.

3 Q Was it those same lenses that are in the  
4 glasses now?

5 A I'm pretty sure they were. I don't  
6 remember having any new ones made since then.

7 Q Now, Mr. Demory, you indicated that when  
8 you went to work at -- went to the store at 5:00 that  
9 morning, you carried the pistol with you?

10 A Yes.

11 Q And that's because you always took the  
12 pistol with you every day when you went to work, is  
13 that right?

14 A That's right.

15 Q And then you carried it back home with you?

16 A I did.

17 Q When you got off of work?

18 A Yes.

19 Q And you kept it there at the store  
20 basically for protection, is that right?

21 A Yes, yes.

22 Q Now, Mr. Demory, when you bought that gun  
23 back in 1961, did you get any paperwork with it?

24 A No, huh-uh.

25 Q So there's no record anyplace about what

1 the serial number for the gun that you bought in  
2 1961, no record of that number any place, is there?

3 A None that I know of.

4 Q Now, on July the 15th of 1993, did you just  
5 follow your usual routine when you came to work in  
6 the morning, put the gun in the drawer, and put the  
7 money in the register the way you told us?

8 A Yeah, yeah.

9 Q And there were only -- you only recall  
10 there being bills, you know, folding money to go into  
11 the register? No coins, is that right?

12 A Well, the coins was already in there. We  
13 didn't take that out at night.

14 Q And whatever food stamps, those stayed in  
15 the register as well?

16 A Well, he wouldn't take the food stamps out  
17 at night either, they just leave them in there. Got  
18 so many, and then take them out and take them to the  
19 bank.

20 Q So it was just the folding money that was  
21 hidden at night for you to put back in the register,  
22 is that right?

23 A Yes, yeah.

24 Q Now, you indicated to Mr. Britt that during  
25 the workday, some periods would be real busy with

1 lots of customers and some periods of time would be  
2 real quiet with very few customers?

3 A Oh, yeah.

4 Q Now, on this particular morning, had there  
5 been a busy period?

6 A Well, not like some days, no.

7 Q And your recollection, your best  
8 recollection is that when you first realized these  
9 two men with guns were in the store, they were  
10 already in the store and close to you, is that right?

11 A Yes.

12 MS. BERRY: If I could step up to  
13 the witness, please, Your Honor.

14 THE COURT: Yes, ma'am.

15 BY MS. BERRY:

16 Q Now, Mr. Demory, let me show you what was  
17 earlier introduced for the purposes of this hearing  
18 as State's Number 66. You said this looks like the  
19 outside of the --

20 A That is the front part, yes.

21 Q Yes, sir. And what has been marked in this  
22 hearing as Number 67, that's the inside of the store,  
23 is that right?

24 A Yes.

25 Q And you told Mr. Britt that this picture

1 helps you explain where you were and where other  
2 items were, is that right?

3 A Oh, yeah.

4 Q Now, Mr. Demory, to go from the front door  
5 to behind the counter, you must walk --

6 A Right around here.

7 Q -- all the way around to come back around?

8 A Yes, yeah.

9 Q What is your best recollection of the  
10 length of that counter?

11 A I would say about 12 feet long.

12 Q So from the front wall to the --

13 A The end of the counter would be about 12  
14 feet, yes.

15 Q And Mr. Demory, what would you estimate to  
16 be the width of this counter?

17 A The width of -- about, I would say, maybe  
18 28 or 30 inches.

19 Q And then in this picture, is the cash  
20 register in the same place as it was on July the  
21 15th?

22 A Yes.

23 Q And the drawers are in the same place?

24 A Yes.

25 Q Now, where is the cigarette rack that you

1 told us you think you might have been filling?

2 A Well, it was sitting right out here.

3 Q And would that be against a side wall?

4 A No, it was rotating, you could, you know,  
5 turn it.

6 Q Yes, sir. Okay.

7 THE COURT: Mr. Demory, for  
8 purposes of clarification, if a person were  
9 behind the counter and facing the cigarette  
10 rack, would that person's front or back be  
11 to the cash register?

12 THE WITNESS: Well, his back  
13 would be. That's why I said I didn't know  
14 whether I was putting cigarettes in or  
15 what. Because I didn't see them when they  
16 came in.

17 THE COURT: So if one were behind  
18 the counter facing the cigarette rack, that  
19 person's back would be facing the counter?

20 THE WITNESS: Yeah.

21 THE COURT: Facing the door.

22 THE WITNESS: Yeah.

23 BY MS. BERRY:

24 Q Now, Mr. Demory, when you tell us that you  
25 first realize that had somebody else was in this

1 store with you --

2 A Yeah.

3 Q -- is when you -- you realized they were  
4 almost right next to you?

5 A Yeah, the black guy was back here and the  
6 other one was standing out there in front of the  
7 counter.

8 Q And so does that mean that both you and the  
9 black man that you described were past the cigarette  
10 revolving stand?

11 A No, like I say, when I saw him, he was  
12 standing there, standing up there beside of me with  
13 that gun to my head. And I didn't know, I didn't  
14 know he was in there, and I -- Lord, I just couldn't  
15 understand what was going on.

16 Q Yes, sir. Yes, sir. Thank you.

17 Now, Mr. Demory, it would be fair to say,  
18 would it not, that all of this happened very quickly?

19 A Oh, yes, yeah.

20 Q From the time that you first realized that  
21 someone else was in the store with you until they  
22 were gone out the front door, that all happened very  
23 quickly, didn't it?

24 A Yes, it sure did.

25 Q And even right after, within a very short

1 time after you were shot and after you were robbed,  
2 you told the police that there's no way you could  
3 identify those two individuals even if you were to  
4 see them right then?

5 A That's true.

6 Q Now, Mr. Demory, when this all was  
7 happening and happening quickly, you told Mr. Britt  
8 that you believed that you heard three shots?

9 A Yeah.

10 Q Mr. Demory, is it possible that you only  
11 heard two shots?

12 A It could be, but now, I'm telling you what  
13 I heard.

14 Q What it sounded like to you?

15 A Now, there was one bullet found that didn't  
16 hit me. It was in the wall back there, you know, in  
17 a little post.

18 Q And so Mr. Demory, when you say three  
19 shots, are you saying three because you heard three  
20 or are you saying three because you feel like you got  
21 shot twice and somebody found a bullet in the store?

22 A Well, I'm not telling you what I think.  
23 I'm telling you what the doctors told me, that I had  
24 been shot three times.

25 Q But you at least think maybe you just got

1 shot twice, right?

2 A Like I said a while ago, I don't know, but  
3 I do know that there was several places on me where  
4 bullets had hit me.

5 Q Yes, sir.

6 THE COURT: What do you recall  
7 hearing in terms of gunshots?

8 THE WITNESS: Just bang, bang,  
9 bang.

10 BY MS. BERRY:

11 Q Now, you indicated, Mr. Demory, in response  
12 to Mr. Britt's questions that both of the individuals  
13 who came into the store were holding a gun?

14 A I did.

15 Q Now, Mr. Demory, is it possible that the  
16 bang, bang, bang that you recall hearing could have  
17 come from more than one gun?

18 A It's possible. I didn't see it, I didn't  
19 see the gun when it went off.

20 THE COURT: So that the record  
21 can be clear on this, you indicated, and  
22 I'm not sure it's reflected in the record,  
23 that you had wounds on a certain part of  
24 your body.

25 THE WITNESS: Yeah.

1 THE COURT: For the record, can  
2 you tell us where those wounds were on your  
3 body.

4 THE WITNESS: Well --

5 THE COURT: For the record, are  
6 you pointing to the right side of your jaw  
7 or upper neck?

8 THE WITNESS: Well, do you see  
9 this artery going up there.

10 THE COURT: Yes, sir.

11 THE WITNESS: Right along there  
12 is where the bullet hit it.

13 THE COURT: Right side of your  
14 face?

15 THE WITNESS: Yes.

16 THE COURT: Right under your  
17 upper jaw or neck?

18 THE WITNESS: Yes and bullet hit  
19 me right up against my shoulder.

20 THE COURT: Area of your right  
21 side of your body or left side of your  
22 body?

23 THE WITNESS: Yes.

24 THE COURT: Which one?

25 THE WITNESS: This over here.

1 THE COURT: Right hand or left  
2 hand?

3 THE WITNESS: Well, right under  
4 here.

5 THE COURT: You need to say right  
6 or left for the record?

7 THE WITNESS: Well, that's the  
8 right side, yes.

9 THE COURT: Where else were  
10 you --

11 THE WITNESS: Other place the  
12 bullet went right in under here and came  
13 out at my back.

14 THE COURT: Where you're pointing  
15 to an entrance wound, right side of your  
16 chest or left?

17 THE WITNESS: Yeah, right here.

18 THE COURT: You need to say right  
19 for the record?

20 THE WITNESS: Right.

21 THE COURT: Yes, sir, anything  
22 further, ma'am?

23 MS. BERRY: Yes, sir.

24 BY MS. BERRY:

25 Q Mr. Demory, after the rescue squad came and

1 got you at the store, they took you to the hospital,  
2 didn't they?

3 A Yes.

4 Q And you talked with some law enforcement  
5 officers there at the hospital, isn't that correct?

6 A I sure did.

7 Q And do you remember if the officers were  
8 in, you know, a uniform, or if they were just in  
9 regular street clothes?

10 A In street clothes, most of them, I believe  
11 there was one or two in uniforms.

12 Q And was it to those officers that you said  
13 if they brought you -- brought the folks into --  
14 right that moment, you couldn't identify them?

15 A That's right.

16 Q And do you remember one of the people that  
17 you talked to there at the hospital, one of the law  
18 enforcement officers that you talked to at the  
19 hospital, was Officer James Carter?

20 A I can't tell you, I don't remember.

21 MS. BERRY: Your Honor, could I  
22 ask that Officer Carter stand up so that  
23 Mr. Demory --

24 THE COURT: Is he present?

25 MS. BERRY: Yes.

1 THE COURT: Let the record  
2 reflect that Officer Carter is standing.

3 BY MS. BERRY:

4 Q Mr. Demory, did you have a chance to see  
5 the man who stood up?

6 A I just saw him, well, I saw him yesterday  
7 and today. But I don't remember.

8 Q Do you remember Mr. Carter as being one of  
9 the officers that talked with you there at the  
10 hospital?

11 A No, ma'am, I don't, I'm sorry, but --

12 Q Do you remember telling one of the officers  
13 at the hospital that one of the suspects shot you  
14 twice and then fled out of the store on foot?

15 A I don't remember telling him that, but  
16 that's what happened. They shot me and then when  
17 they got the money and stuff, they went out.

18 Q Yes, sir. You indicated that you spent  
19 some time with Officer Carter, the man that stood up  
20 just a minute ago, today, is that right?

21 A Well, I -- just sitting there with him, and  
22 then I spoke to him yesterday.

23 Q And --

24 A Around there in the -- in his office.

25 Q If you would, just tell us what were the

1 circumstances under which you spoke with Mr. Carter  
2 yesterday? His office is at the Sheriff's  
3 Department, right?

4 A He just spoke to me, and said we met, you  
5 know, when you got shot, and stuff like that.

6 Q And how is it that you came to be at the  
7 Sheriff's Department yesterday, sir?

8 THE COURT: Where did you see him  
9 yesterday, sir?

10 THE WITNESS: I wasn't there, I  
11 was right here in the District Attorney's  
12 office

13 BY MS. BERRY:

14 Q You were waiting to maybe testify  
15 yesterday?

16 A Yeah.

17 Q And so that was your conversation with  
18 Mr. Carter at that time?

19 A Yeah, uh-huh.

20 Q While you were up here yesterday, did you  
21 speak to any of the other law enforcement officers  
22 about, you know, being on to testify?

23 A If I spoke to him, I don't remember. There  
24 was so many people coming in and out of there.

25 Q Okay. Since you talked to Agent Underwood

1 back in September of 1993, up until yesterday, did  
2 you talk with any police officers about this  
3 incident?

4 A The only time I talked to them about it is  
5 when they would come to my house or wherever I would  
6 be and talk to me about it. No.

7 Q And -- excuse me. And has that happened  
8 every so often in this period of time since you --

9 A No, not in the last two, two and a half  
10 years. The most of that went on right after the  
11 problem happened.

12 Q Now, Mr. Demory, you indicated that you  
13 spoke on -- in September of 1993 with Agent Tony  
14 Underwood. Do you remember telling --

15 A I know he come to my house.

16 Q And you know which one is Agent Underwood?

17 A Pardon?

18 Q Do you see Agent Underwood here in the  
19 courtroom today?

20 A Uh-huh.

21 Q So you remember speaking with him?

22 A Yeah.

23 Q And Mr. Demory, can you remember what it is  
24 that you and Agent Underwood talked about when he  
25 came to your home?

1           A       Now, I can't remember whether he was one of  
2 the police along when they brought that gun out there  
3 or not, I can't remember. But other than that, there  
4 was a couple of times when some police come out  
5 there. But no, I cannot remember what was talked  
6 about.

7           Q       Okay. And Mr. Demory, remember when you  
8 told Mr. Britt about you talked with Mr. Britt about  
9 looking at those photographs, and do you remember  
10 whether there was a police officer there when you  
11 looked at the photographs?

12          A       Yeah.

13          Q       You remember which police officer it was?

14          A       No, I sure don't.

15          Q       Can you remember what the police officer  
16 said to you before you looked at the photographs?

17          A       Only thing I can remember them saying was  
18 they wanted me to look at them and see if I could  
19 identify them or something.

20          Q       Now, before you looked at those  
21 photographs, looked at those pictures, you told the  
22 officer that you had seen on television about the  
23 people being arrested for the James Jordan homicide?

24          A       Yeah.

25          Q       And in fact, Mr. Demory, you had watched

1 that on the news and on the television quite a bit,  
2 hasn't you?

3 A Oh, yeah.

4 Q And between the time that the two  
5 individuals were arrested and when they brought the  
6 pictures to you, you had seen a lot of news coverage  
7 about those arrests, hadn't you?

8 A Oh, yeah.

9 Q And on many occasions you had seen on the  
10 television pictures of the individuals who had been  
11 arrested in the James Jordan homicide, hadn't you?

12 A Yeah.

13 Q And you told that to the police officer,  
14 didn't you?

15 A Oh, yeah.

16 THE COURT: When? Establish when  
17 Ms. Berry? Before or after --

18 MS. BERRY: Thank you, Your Honor

19 BY MS. BERRY:

20 Q When the police officer came to show you  
21 those pictures that you saw earlier again today --  
22 you know, with the eight photographs on each -- when  
23 the police officer came and showed -- to show you  
24 those photographs, you told him that you had seen a  
25 lot of television coverage about the arrest in the

1 James Jordan homicide, didn't you?

2 A Yeah.

3 Q And you and the officer talked about that  
4 before he showed you the pictures, isn't that right?

5 A Lord, I don't remember that now.

6 Q But you do remember telling the officer  
7 that you had seen quite a bit of television --

8 A Oh, yeah.

9 THE COURT: Can you establish  
10 what officer and on what occasion, because  
11 if you're asking him whether on the  
12 occasion that he was shown the photographs  
13 he told the officer that, he's already said  
14 he doesn't recall. If you're asking if he  
15 told other officers on other occasions  
16 about that, that's a separate matter. So  
17 we need to be clear in the record.

18 MS. BERRY: Your Honor I didn't  
19 quite hear what you said.

20 THE COURT: He indicated on the  
21 occasions that the officer showed him the  
22 photographs that he's identified, that he  
23 didn't recall at that time whether he said  
24 to the officer, I have seen coverage of  
25 this other matter. So you need to

1           establish what it is that you're talking  
2           about in the framework of your question.

3           Your question was, you told the  
4           officer. And when you say you told the  
5           officer, are you referring to the occasion  
6           he was shown the photographs or some other  
7           occasion?

8           MS. BERRY: I was, and I thought  
9           that was clear, but perhaps --

10          THE COURT: His prior answer to  
11          that was "I don't recall."

12 BY MS. BERRY:

13          Q       Mr. Demory, you remember being shown the  
14          photographs by a police officer at your home?

15          A       Oh, yeah.

16          Q       And now you told Mr. Britt that that  
17          happened in September of 1993, is that right?

18          A       Well, it had to be sometime there, because  
19          it -- the shooting happened in -- and robbery  
20          happened in August, so it had to be under  
21          August.

22          THE COURT: Was it August or  
23          July?

24          THE WITNESS: Oh, July, I'm  
25          sorry, July the 15th, or 14th, whichever it

1 was.

2 BY MS. BERRY:

3 Q And so when Mr. Britt talked about them  
4 showing you the photographs on September the 13th of  
5 1993, does that sound about right to you?

6 A Well, yeah.

7 Q And you remember that it was someone who  
8 identified themselves as a police officer who showed  
9 you those pictures at your home, is that correct?

10 A Yeah.

11 Q But you're just not sure which police  
12 officer?

13 A No, I don't -- I can't -- I'm around so  
14 many people, it's hard for me to remember all the  
15 names of people.

16 Q And you're not able to tell us today what  
17 that police officer said to you on the day that he  
18 showed you the pictures except what you've already  
19 told us he asked you to look at them?

20 A Yeah.

21 Q That's really all that you can remember the  
22 police officer saying?

23 A Look at them and see if I can identify  
24 them, that's all, that's all I can remember he said.

25 Q But it is true, isn't it, Mr. Demory, that

1 you can remember that you told that police off  
2 the day he was there to show you the photographs tha  
3 you had watched a lot of television regarding the  
4 arrests of individuals in the James Jordan homicide?

5 A Oh, yes, I told them that, yes.

6 THE COURT: On the day that you  
7 were shown the photographs?

8 THE WITNESS: Yes.

9 THE COURT: That's correct?

10 THE WITNESS: Yeah.

11 THE COURT: Okay

12 BY MS. BERRY:

13 Q And that the television coverage that you  
14 watched included pictures of the individuals who had  
15 been arrested in that homicide?

16 A Yeah.

17 Q And you told that to the police officer  
18 when he was there that day to show you the pictures,  
19 didn't you?

20 A Yeah.

21 THE COURT: For the record,  
22 folks, what does the record reflect as to  
23 the date of arrest for this defendant?

24 MR. BRITT: August the 15th,

25 1993?

1                   THE COURT:   What does the date  
2                   reflect in the record as to the date any  
3                   photo array may have been shown to the  
4                   witness.

5                   MR. BRITT:   September 13th,  
6                   1993.

7                   THE COURT:   There you go.

8                   MS. BERRY:   If I could have just  
9                   a moment, if Your Honor please.

10                  THE COURT:   Folks, I'll give you  
11                  folks an opportunity to consult and give  
12                  Mr. Demory an opportunity to step down.  
13                  Why don't we take about a 15, 20 minute  
14                  break. We're going to take a break until  
15                  about 11:30. You can step down.

16                  We're going to be at ease until that  
17                  time. We indicated to the jury that they  
18                  were to call back at 12:00. I'll direct  
19                  Ms. Gaines to put on the record that the  
20                  jurors are to call back after 5:00. Is  
21                  that agreeable, Mr. Britt?

22                  MR. BRITT:   Yes, sir.

23                  THE COURT:   Is that agreeable,  
24                  Mr. Thompson?

25                  MR. BOWEN:   Yes, sir.

1 THE COURT: If you'll put that on  
2 the record.

3 (Brief recess.)

4 THE COURT: Let the record  
5 reflect all counsel are present, the  
6 defendant is present in open court. And  
7 continuing with the 404(b) hearing in the  
8 absence of the jury.

9 Ms. Berry, do you have additional  
10 questions?

11 MS. BERRY: No, sir. Thank you.

12 THE COURT: Thank you. Any  
13 redirect examination by the State?

14 MR. BRITT: No, sir.

15 THE COURT: Mr. Demory, thank  
16 you, sir, you may step down.

17 Mr. Britt, any additional showing?

18 MR. BRITT: Yes, sir. At this  
19 time we call Detective James Carter.

20 THE COURT: Sir, if you'll be  
21 sworn, please.

22 JAMES CARTER,

23 being first duly sworn was examined and testified as  
24 follows:

25 DIRECT EXAMINATION

1 THE COURT: If you'll state your  
2 full name for the record, please?

3 THE WITNESS: James Carter.

4 THE COURT: If you'll spell your  
5 first and last name.

6 THE WITNESS: J A M E S,  
7 C A R T E R.

8 BY MR. BRITT:

9 Q Mr. Carter, for the record, by whom are you  
10 employed?

11 A Robeson County Sheriff's Department.

12 Q And how long have you worked for the  
13 Robeson County Sheriff's Department?

14 A 12 years.

15 Q And in July of 1993, were you working as a  
16 detective with the Robeson County Sheriff's  
17 Department?

18 A Yes, sir.

19 Q On July the 15th, 1993, were you dispatched  
20 to an area of Robeson County or to a store near the  
21 area of the intersection of Highway 72 and rural  
22 paved road 1003?

23 A Yes, sir, Lowery's Quick Stop.

24 Q When you got to the store located at 72 and  
25 1003 that you've referred to as Lowery's Quick Stop,

1 what did you see upon immediately entering the store?

2 A Upon immediately entering the store, I seen  
3 blood -- well, before I went in the store, I seen  
4 blood on the ground.

5 Q Where on the ground did you notice any  
6 blood?

7 A If you're leaving out of the door it would  
8 be to the left. Then as I went into the store, I  
9 seen blood on the floor, on or around behind the  
10 counter was a chair, it was covered in blood.

11 Q Upon being dispatched, had you been told  
12 anything about what had occurred at that store?

13 A Yes, sir. It was given out over the radio  
14 as a robbery.

15 Q And when you saw blood or what appeared to  
16 be blood in the store, in what area of the store did  
17 you notice any blood?

18 A As you go in the front entrance, you go in  
19 the entrance, down the hall, around the counter, on  
20 to the back where the cash register is located.

21 Q And can you describe the amount of what  
22 appeared to be blood there on the floor?

23 A Yes, sir. In the back where the chair was  
24 at was a large amount of blood.

25 Q Was there -- did you know Mr. Clewis Demory

1 prior to July 15th of 1993?

2 A I didn't know him personally, I just knew  
3 he run the store there.

4 Q Now, you had had an occasion prior to that  
5 date to go into the store?

6 A Yes, sir.

7 Q Was the man that you knew that operated the  
8 store present when you got to the --

9 A Yes, sir.

10 Q And did you talk with Mr. Clewis Demory on  
11 July 15th, 1993?

12 A No, sir, I did not.

13 Q Did you ever have an occasion to talk with  
14 Mr. Clewis Demory?

15 A I talked to him, yes.

16 Q And when and where did you speak to him?

17 A Talked to him at Southeastern General  
18 Hospital on the day after, the morning of the 16th.

19 Q And your purposes in going to talk to  
20 Mr. Demory on July 16th, 1993 was what?

21 A To get a statement from him and to find out  
22 from him what had happened.

23 Q Now, prior to going to talk with Mr. Demory  
24 on July 16th, 1993, had you started any investigation  
25 into the robbery that you were dispatched to?

1           A       Yes, sir. I had talked to several people  
2 in the area and got a description of the car.

3                   MS. BERRY: Object, Your Honor.

4                   THE COURT: For what purpose is  
5 this being offered?

6                   MR. BRITT: This will explain his  
7 subsequent conduct.

8                   THE COURT: Do you want to be  
9 heard, ma'am?

10                  MS. BERRY: No, not as long as it  
11 pans out in the same way that it's being  
12 forecasted, Your Honor.

13                  THE COURT: You may continue.

14 BY MR. BRITT:

15           Q       Mr. Carter, in talking to any individuals,  
16 did you receive a description of a car that had been  
17 seen leaving the area of the store?

18           A       Yes, sir.

19           Q       What information or description of a  
20 vehicle did you receive?

21                   MS. BERRY: Object, Your Honor.

22                   THE COURT: Do you intend to call  
23 that person at this hearing? Anybody who  
24 may have provided a description of the  
25 vehicle?

1                   MR. BRITT: What the evidence  
2 will show is that on August the 15th, 1993,  
3 Mr. Carter was one of the officers that  
4 went to Larry Demory's home. He saw a car  
5 that fit the description that he was given.

6                   THE COURT: Their objection is  
7 that it is hearsay in terms of any  
8 description that was given to the officer  
9 at the time that he initially began the  
10 investigation.

11                   MR. BRITT: It's the description  
12 that he was given that resulted in his  
13 subsequent conduct, because on August the  
14 15th, 1993, he took a photograph of the car  
15 that he saw fitting that description at  
16 Larry Demery's home.

17                   THE COURT: Do you intend to call  
18 anybody who gave Mr. Carter a description  
19 that may be involved in any subsequent  
20 conduct?

21                   MR. BRITT: I can, but for the  
22 court's information, Mr. Demery, as  
23 everyone in this room is aware, is going to  
24 testify.

25                   THE COURT: That's what I wanted

1 to find out. All right. At this time, the  
2 Court holds in abeyance any ruling on the  
3 objection subject to the State laying the  
4 appropriate foundation.

5 MR. BRITT: Yes, sir.

6 BY MR. BRITT:

7 Q What if any description did you receive of  
8 a vehicle on July 15th, 1993?

9 A A small Ford, light yellow in color, with a  
10 dent on the front.

11 Q With a dent where?

12 A On the front.

13 Q The front of the vehicle or on one or the  
14 other sides?

15 MS. BERRY: Object, Your Honor.

16 THE COURT: Okay. Rephrase.

17 BY MR. BRITT:

18 Q Where was this dent described to you being  
19 located?

20 A On the front fender.

21 Q Now, on July 16th, 1993, you testified that  
22 you went to Southeastern General Hospital and spoke  
23 to Mr. Demory, Mr. Clewis Demory?

24 A Yes, sir.

25 Q What if anything did Mr. Demory tell you

1 there at the hospital on July 16th, 1993 that had  
2 occurred to him on July 15th, 1993?

3 MS. BERRY: Object.

4 MR. BRITT: This is --

5 THE COURT: Basis?

6 MS. BERRY: Your Honor, it's not  
7 corroborative. It's just hearsay. Not  
8 corroborative.

9 THE COURT: My recollection is he  
10 was cross-examined about what he told the  
11 officers on the day in question.

12 MS. BERRY: Respectfully, Your  
13 Honor, I would suggest that he was asked  
14 about one statement, one sentence with  
15 regard to his statement to Officer Carter,  
16 and that was on cross, and not on direct.

17 MR. BRITT: And that opened the  
18 door to this.

19 THE COURT: The Court so rules,  
20 the objection is overruled. The door was  
21 opened on cross-examination. You may  
22 rephrase or repeat your question.

23 BY MR. BRITT:

24 Q What if anything did Mr. Demory tell you at  
25 Southeastern General Hospital on July 16th, 1993?

1           A       Mr. Demory stated he was at the store about  
2 10:00 a.m., a black male came into the store and  
3 asked for something but he can't remember what it  
4 was. He stated he went back out of the store, then  
5 two males came in the store, the black male and  
6 another boy, with something around his face.

7                   They both had pistols. The short one, with  
8 something on his face, said, give us the money, give  
9 us the money. And he told the other one to raise the  
10 drawer and see if it was under it. The tall one  
11 reached in the cash register and I grabbed for my  
12 gun. And he shot me and grabbed my gun out of my  
13 hand. I would say he shot three times. And one of  
14 them came around where I was at, the tall one, and  
15 got my wallet out of my back pocket. And then he  
16 left out the door.

17                   I tried to call 911 but I did not get an  
18 answer. So I called my wife and told her to get  
19 someone out there, that I had been shot.

20                   Then after that, I went to the door to see  
21 if I could see someone, but I didn't see no one at  
22 that time, so I went back and sat down. And Lewis  
23 Oxendine came up and seen what had happened, and he  
24 went to his truck and called for help. And a short  
25 while later, the ambulance came up and took me to the

1 hospital.

2 Q On August the 15th of 1993, did you  
3 accompany other officers to a mobile home located off  
4 of Highway 710 in the western portion of Robeson  
5 County?

6 THE COURT: That date was August  
7 15th?

8 MR. BRITT: Excuse me, yes, sir,  
9 August 15th, 1993.

10 THE WITNESS: Yes, sir.

11 BY MR. BRITT:

12 Q And the mobile home that you went to off of  
13 Highway 710, to your knowledge, was that where Larry  
14 Martin Demery lived with his parents?

15 A Yes, sir.

16 Q Upon going to that location on August 15th,  
17 1993, did you see any cars at that -- in that area?

18 A Yes, sir.

19 Q What if any car did you see in the area of  
20 the mobile home that you went to off of Highway 710  
21 on August the 15th of 1993?

22 A I saw a small Ford car, light yellow in  
23 color, with the front fender bent.

24 Q And upon seeing that car, what if anything  
25 did you do?

1           A       I taken a photograph, a Polaroid shot of  
2       it, and kept it. Then I took other 35 millimeter  
3       films to be developed later.

4           Q       Why did you take photographs of that car  
5       that you saw at Larry Demery's trailer?

6           A       I wanted to show it to the witness that  
7       left the store and he said that car almost run into  
8       him.

9           Q       Now, was the car that you saw on August the  
10       15th, 1993 at Larry Demery's trailer similar to the  
11       description that you had received about the car  
12       leaving Mr. Demery's store on July 15th, 1993?

13          A       Yes, sir.

14                   THE COURT: For the record,  
15       folks, this is a 104 B matter. The Court  
16       is allowing it under Rule 104 B subject to  
17       the State coming forward with additional  
18       evidence.

19                   MR. BRITT: Yes, sir.

20                   MR. THOMPSON: Right.

21       BY MR. BRITT:

22           Q       Mr. Carter, describe for us the car that  
23       you saw at the residence of Larry Demery?

24           A       Small Ford, light yellow in color with the  
25       front fender bent.

1 Q And where was that car when you saw it when  
2 you went to that residence?

3 A To the right of the driveway as you pull up  
4 to the residence

5 (State's Exhibit 70 was  
6 marked for identification.)

7 MR. BRITT: May I approach?

8 THE COURT: Yes, sir.

9 BY MR. BRITT:

10 Q Mr. Carter, I'm going to show you what's  
11 been marked as State's Exhibit Number 70. It's a  
12 photograph. Do you recognize what is depicted in  
13 that photograph?

14 A Yes, sir.

15 Q How are you able to recognize what is  
16 depicted in that photograph?

17 A This is a photograph that Detective Donald  
18 Britt took of the car.

19 Q And you are depicted in that photograph,  
20 are you not?

21 A Yes, sir.

22 Q You're the individual that appears in an  
23 area behind the photograph?

24 A Yes, sir.

25 Q Is that a photograph of a beige or light

1 yellow Ford vehicle?

2 A Yes, sir.

3 Q And is that the Ford car that you saw in  
4 the yard at Larry Demery's residence on August the  
5 15th, 1993?

6 A Yes, sir.

7 (State's Exhibit 71 was  
8 marked for identification.)

9 BY MR. BRITT:

10 Q I'll show you what has been marked as  
11 State's Exhibit 71, which is a photograph, and ask  
12 you if you can identify that photograph?

13 A Yes, sir, it's the same car closer up.

14 Q An State's Exhibit Number 71, you say it's  
15 a close-up photograph of the automobile. Does it  
16 depict or show the area where this dent was located  
17 in the front fender that you referred to earlier?

18 A Yes, sir.

19 Q And State's Exhibit 70 and 71, are they  
20 fair and accurate representations or depictions of  
21 the vehicle as you saw it on August the 15th, 1993?

22 A Yes, sir.

23 Q Would State's Exhibit 70 and 71 help you in  
24 illustrating your testimony to the Judge?

25 A Yes, sir.

1 Q For the purposes of this hearing, I ask  
2 that they be admitted for illustrative purposes?

3 THE COURT: You folks want to be  
4 heard?

5 MS. BERRY: No, sir.

6 THE COURT: They are admitted for  
7 that purpose.

8 BY MR. BRITT:

9 Q Mr. Carter, using State's Exhibit 70 and  
10 71, show the Judge first the automobile and then the  
11 area where it was dented in the left front fender?

12 A This is the automobile and the left front  
13 fender is dented.

14 MS. BERRY: I can't hear.

15 THE COURT: You have to speak up  
16 loud enough.

17 THE WITNESS: This is the Ford  
18 car, the left front fender is bent. This  
19 is a closer up of the dent.

20 MR. BRITT: I don't have any  
21 other questions, Mr. Carter.

22 THE COURT: Any  
23 cross-examination?

24 MS. BERRY: Yes, sir, thank you.

25 CROSS-EXAMINATION

1 BY MS. BERRY:

2 Q Officer Carter, is it correct that you have  
3 some notes there at the witness stand that you are  
4 reading from and using to refresh your recollection  
5 in the course of testifying in this matter?

6 A Yes, ma'am.

7 MS. BERRY: Your Honor, I would  
8 ask for the opportunity to review those,  
9 please.

10 THE COURT: Yes, ma'am.

11 MR. THOMPSON: Your Honor, for  
12 the record, while she's doing that, it  
13 appears that we were provided in discovery  
14 an incident, typewritten incident report.  
15 However, there was no second page to the  
16 incident report that we received. So we  
17 had an incomplete incident report.

18 THE COURT: Mr. Britt, do you  
19 have --

20 MR. THOMPSON: And that's  
21 happened before, we just didn't get it, I'm  
22 not saying -- just in copying we just  
23 didn't get it, the second page.

24 THE COURT: Mr. Britt.

25 MR. BRITT: Yes, sir, I have --

1           which page did you not receive?

2                   MR. THOMPSON: All I got is this  
3           front page. Is there a second page?

4                   MR. BRITT: For the record,  
5           Mr. Thompson, first page of the report  
6           simply states -- let me pull it out here.  
7           I'll be glad to give you a copy.

8                   MR. THOMPSON: Mr. Britt, is this  
9           the first page?

10                   MR. BRITT: Yes, sir, that's the  
11           first page.

12                   MR. THOMPSON: And that's the  
13           second page?

14                   MR. BRITT: Yes, sir.

15                   MR. THOMPSON: Nothing else?

16                   MR. BRITT: No, sir.

17                   THE COURT: So you've got  
18           everything?

19                   MR. THOMPSON: Of the incident  
20           report, but I guess the notes are more  
21           complete than this. I know the notes are  
22           more complete than this.

23                   MR. BRITT: May I approach the  
24           Clerk?

25                   THE COURT: Yes, sir.

1 MS. BERRY: If I could step back  
2 to the witness, please, Your Honor.

3 THE COURT: Yes, ma'am.

4 (Defense Exhibits 16 through 18 were  
5 marked for identification.)

6 BY MS. BERRY:

7 Q Mr. Carter, let me just hand to you one of  
8 the documents you just gave to me a few minutes ago  
9 that has now been marked for identification purposes  
10 in this hearing as Defendant's Exhibit Number 16.  
11 That's a two-page document, is it not?

12 A Yes, ma'am.

13 Q And can you tell us what that is, please,  
14 sir?

15 A It's a statement from Clewis Demory.

16 Q And that's the statement that you tell us  
17 you took from him there at the hospital on July the  
18 16th of 1993?

19 A Yes, ma'am.

20 Q This is taken in your hand?

21 A Yes, ma'am.

22 Q And is that the statement that you read  
23 into the record just a few minutes ago?

24 A Yes, ma'am.

25 Q Did you provide Mr. Britt with a copy of

1 this handwritten statement in the course of his  
2 preparation to try this case?

3 MR. BRITT: Objection. If we can  
4 get the record clear. We're not trying --  
5 the case we're trying is State of North  
6 Carolina versus Daniel Green for the murder  
7 of James Jordan, not State of North  
8 Carolina versus Daniel Green for the  
9 robbery and assault of Clewis Demory.

10 THE COURT: Mr. Carter, what  
11 you've identified as Defendant's Exhibit  
12 Number 16, did you provide a copy of that  
13 to Mr. Britt?

14 THE WITNESS: I've made him aware  
15 of it but I hadn't supplied him a copy of  
16 it for the robbery, no, sir.

17 THE COURT: Okay.

18 BY MS. BERRY:

19 Q And do you remember when it is that you  
20 made him aware of it, sir?

21 A No, ma'am.

22 Q And let me show you what -- a two-page  
23 document that you handed to me earlier when you  
24 handed me the items that you were using to read from  
25 and/or refresh your recollection for the purposes of

1     testifying.  It's been marked for the purposes of  
2     this hearing as Defendant's Exhibit Number 17.  Can  
3     you tell us what that is, please?

4             A     It's a copy of the offense report, typed  
5     copy.

6             Q     And was that typed copy prepared from this  
7     handwritten copy that has been marked for the  
8     purposes of this hearing as Defendant's Exhibit  
9     Number 18?

10            A     Yes, ma'am.

11            Q     And who prepared the handwritten incident  
12     investigation report that is Number 18 that became  
13     the typewritten form of Number 17?

14            A     Deputy G. D. Bass.

15            Q     And were those documents made a part of the  
16     investigative file in the in the Sheriff's Department  
17     in the course of the regular business of the  
18     Sheriff's Department?

19            A     Yes, ma'am.

20            Q     And as the officer assigned to investigate  
21     this robbery and shooting, did you maintain that  
22     record there in the Sheriff's Department?

23            A     I maintained a copy.

24            Q     And reviewed that in the course of your  
25     investigation of this matter, is that correct?

1 THE COURT: By "this matter," you  
2 need to refer specifically to what  
3 investigation you're referring to.

4 BY MS. BERRY:

5 Q With regard to the investigation of the  
6 Clewis Demory shooting and robbery?

7 A Yes, ma'am.

8 Q And it's correct, is it not, that in Deputy  
9 Bass's report, he indicates that Mr. Demery advised  
10 that the black males walked into the store and asked  
11 for something, he can't remember what, because he  
12 told them he didn't sell that?

13 MR. BRITT: Objection to the  
14 contents of Mr. Bass's report.

15 THE COURT: Overruled for the  
16 purpose of this hearing at this time. You  
17 may answer the question.

18 THE WITNESS: Yes, ma'am

19 BY MS. BERRY:

20 Q And that Mr. Clewis Demory told Deputy  
21 Bass, "then they told them to give him all the money,  
22 and he told him it was in the cash register"?

23 A Yes, ma'am.

24 Q And Mr. Clewis Demory further told Deputy  
25 Bass, they started getting the money and Mr. Demory

1 reached into the desk where his .38 caliber was, and  
2 pulled it out?

3 A Yes.

4 Q Mr. Clewis Demory further told Deputy Bass  
5 at that time, one of the suspects shot him twice and  
6 fled out of the store on foot heading toward the  
7 right?

8 A Yes.

9 Q Mr. Demery later told Mr. Clewis Demory  
10 later told Deputy Bass that only one male came in at  
11 first, asked for something, and he told him he didn't  
12 sell it, so the suspect left?

13 A Yes.

14 Q And Mr. Clewis Demory also told Deputy Bass  
15 then both of the suspects came inside and demanded  
16 money?

17 A Yes.

18 Q Mr. Demory, Clewis Demory, further told  
19 Deputy Bass that one bullet went into his left upper  
20 shoulder area and with one bullet went into the left  
21 side of his neck?

22 A Yes.

23 Q Mr. Clewis Demory also told Deputy Bass  
24 that the suspects took his billfold and his pistol  
25 and they left the store?

1 A Yes.

2 Q Finally, Mr. Clewis Demory told Deputy  
3 Bass, the suspect that came in the store the second  
4 time had what appeared to be a towel over his face?

5 A Yes, ma'am.

6 THE COURT: What exhibit are you  
7 referring to so the record is clear,  
8 Ms. Berry? The one you're reading from  
9 right now?

10 MS. BERRY: That would be -- I  
11 need to see up there and be absolutely  
12 sure. For the record, that would be  
13 Defendant's Exhibit Number 17.

14 THE COURT: What has previously  
15 been referred to as the typed incident  
16 report or the handwritten incident report?

17 MS. BERRY: The typed incident  
18 report and the typed statement. If the  
19 Court looks at those exhibits that the  
20 handwritten is actually a two-sided  
21 document, one page, two-sided. This is a  
22 two-page, one-sided on each page, typed  
23 document.

24 THE COURT: What you're referring  
25 to as Defendant's Exhibit 17, which is a

1 two-page document, which is typewritten.  
2 State's Exhibit 18 is a one-page document  
3 with matters appearing on both front and  
4 back. Any entries other than preprinted  
5 form language on Defendant's Exhibit 18  
6 is -- or are entries in hand?

7 MS. BERRY: Yes, sir.

8 THE COURT: Yes, ma'am.

9 BY MS. BERRY:

10 Q Mr. Carter, were you present when  
11 Mr. Clewis Demory told law enforcement officers that  
12 he would be unable to identify the people that shot  
13 him and robbed him if they were brought before him at  
14 that very moment?

15 A No, ma'am.

16 MS. BERRY: If I could have just  
17 a minute, please.

18 THE COURT: Yes, ma'am

19 BY MS. BERRY:

20 Q With regard to the items, the photographs  
21 that the State has marked as Number 70 and Number 71  
22 that you described as photographs of a light yellow  
23 colored Ford vehicle, you know which ones I'm talking  
24 about, Officer?

25 A Yes, ma'am.

1 Q Do you need those in front of you?

2 A No.

3 Q You're familiar enough to -- you indicated  
4 that at some point in time you took a Polaroid  
5 picture of that same vehicle?

6 A Yes, ma'am.

7 Q And when is it that you took the Polaroid  
8 picture?

9 A On the same date that the other ones were  
10 taken.

11 THE COURT: His testimony was he  
12 took a Polaroid shot for himself at that  
13 time, which he kept, and then later took 35  
14 millimeter shots at the same time.

15 BY MS. BERRY:

16 Q And those filming episodes took place on  
17 the same day?

18 A Yes, ma'am.

19 MS. BERRY: Thank you, Your  
20 Honor, that's all I have.

21 THE COURT: Mr. Britt, anything  
22 further on redirect?

23 MR. BRITT: No, no other  
24 questions.

25 THE COURT: May the witness step

1 down?

2 MS. BERRY: Yes.

3 THE COURT: Thank you. If you'll  
4 leave those exhibits that have been marked  
5 for the purposes of identification,  
6 including your handwritten notes, anything  
7 that's been marked and identified on the  
8 bar, please.

9 MR. BRITT: Your Honor, these are  
10 the originals, and that case is still  
11 pending. I would ask that we make --

12 THE COURT: Any objection to  
13 substituting copies for the record?

14 MR. THOMPSON: No, sir.

15 THE COURT: Let the record  
16 reflect there is no objection of  
17 substituting copies of what previously been  
18 marked as Defendant's Exhibit 16, 17, and  
19 18.

20 Any additional evidence on behalf of  
21 the State?

22 MR. BRITT: Yes, sir, at this  
23 time we call Special Agent Tony Underwood.

24 TONY UNDERWOOD,

25 being first duly sworn was examined and testified as

1 follows:

2 DIRECT EXAMINATION

3 THE COURT: If you'll state your  
4 full name for the record, please, sir?

5 THE WITNESS: Tony Underwood.

6 THE COURT: If you'll spell your  
7 last name for the record?

8 THE WITNESS: U N D E R W O O D.

9 THE COURT: Mr. Britt.

10 BY MR. BRITT:

11 Q Mr. Underwood, by whom are you employed?

12 A Special Agent, North Carolina State Bureau  
13 of Investigation.

14 Q How long have you worked with the SBI?

15 A Six and one half years.

16 Q In July of 1993, were you the Resident  
17 Agent for Robeson County?

18 A Yes, sir.

19 Q And how long were you the Resident Criminal  
20 Agent for Robeson County?

21 A I was assigned as a criminal agent to  
22 Robeson County from June of 1992 until November the  
23 1st of 1994. However, I worked in Robeson County  
24 from December of 1989 up until November 1st, 1994.

25 Q In your employment with the State Bureau of

1 Investigation, are you one of the officers that was  
2 involved in the investigation of the homicide of  
3 James Raymond Jordan?

4 A Yes, sir.

5 Q On August the 16th, 1993, what if anything  
6 did you do in connection with the investigation of  
7 the death of James Raymond Jordan?

8 A I prepared a search warrant application and  
9 a probable cause affidavit, took the search warrant  
10 application before Robeson County Magistrate Randy  
11 Canady for issuance. He did, in fact, find probable  
12 cause for the issuance of that search warrant, and  
13 the warrant was executed on the residence of Daniel  
14 Green.

15 Q Who was present with you when you went to  
16 the residence of Daniel Green to execute that search  
17 warrant?

18 A Special Agent Kim Heffney, Special Agent  
19 Barry Lea, Detective Erich Von Hackney, and Detective  
20 Anthony Thompson with the Robeson County Sheriff's  
21 Department.

22 Q And when you went to Mr. Green's residence  
23 on August the 16th of 1993, with that search warrant,  
24 what if any information -- excuse me. What if any  
25 items of evidence had you prayed for in your request

1 for -- excuse me, let me back up. August 16th you  
2 prepared a affidavit for search warrant?

3 A Yes, sir.

4 Q In that affidavit did you -- was there  
5 information in regard to items of evidence that you  
6 were looking for?

7 A Yes, sir.

8 Q What items of evidence did you include that  
9 you were looking for did you include in your  
10 application to the Magistrate for the search  
11 warrant?

12 MS. BERRY: Object to relevance,  
13 Your Honor.

14 THE COURT: Overruled.

15 THE WITNESS: I don't have that  
16 document in front of me, but to the best of  
17 my memory, there was a wedding band, a .38  
18 caliber handgun, a video camera, and there  
19 were some additional items, but off the top  
20 of my head I don't recall without seeing  
21 the document.

22 BY MR. BRITT:

23 Q On August the 16th, 1993, where was this  
24 residence of Mr. Green's located?

25 A Located in Bob's Landing Mobile Home Park,

1 which is off of the Back Swamp Road just south of  
2 Highway 74.

3 Q And prior to August the 16th of 1993, had  
4 you ever been to that residence?

5 A No, sir.

6 Q When you arrived at this mobile home in  
7 Bob's Landing Mobile Home Park on August 16th, 1993,  
8 was anyone there at the residence?

9 A There was not.

10 Q What if anything was done when you arrived  
11 and found no one there?

12 A Special Agent Lea and I left the residence  
13 and went to the residence of Daniel Green's uncle,  
14 Mr. Bernie Green, and attempted to obtain a key for  
15 the mobile home in Bob's Landing Mobile Home Park.  
16 Mr. Bernie Green did not have a key, so we returned  
17 to the residence and Detective Hackney used some type  
18 of prying tool to enter through the front door.

19 Q Whether you first arrived at that mobile  
20 home, was the mobile home locked?

21 A Yes, sir.

22 Q And after Mr. Hackney used the prying tool  
23 to open the door, what happened?

24 A We entered the residence, and I executed  
25 the warrant on the house, although there was no one

1 there, and left a copy of the warrant there at the  
2 residence, and then the search began.

3 Q Now, were you the officer in charge of the  
4 search?

5 A Well, I wouldn't say I was in charge of the  
6 search, I was the one who applied for the warrant.  
7 Special Agent Heffney was the case agent for SBI so  
8 technically he was the officer in charge.

9 Q Once the search warrant was executed, were  
10 certain officers assigned to different rooms of the  
11 trailer?

12 A Yes, sir.

13 Q Was Special Agent Barry Lea one of those  
14 officers assigned to search any particular room?

15 A Yes, sir, he was.

16 Q And what if any room or which room was  
17 Special Agent Lee assigned to search?

18 A He searched the bedroom on the right, the  
19 far end of the mobile home. If entering through the  
20 door that we went through, he would have -- it would  
21 have been the bedroom on the right side.

22 Q And did you see Special Agent Lea go to  
23 that room?

24 A Yes, sir.

25 Q Where were you in relation, where were you

1 positioned at the time you saw Mr. Lea go into that  
2 room?

3 A I was in the den area.

4 Q Did you search the area of the den?

5 A Well, I wasn't actually doing any  
6 searching, I was the officer that was collecting  
7 items of evidence that were found and making notes of  
8 the times and the location where those items were  
9 found.

10 Q And after you saw Mr. Lea go to this  
11 bedroom to the right as you enter the door of the  
12 trailer, what if anything did you hear Mr. Lee say?

13 A He notified me that there was a weapon that  
14 he discovered inside of a shop vacuum cleaner located  
15 within that bedroom that he was searching.

16 Q And when he notified you of that, what did  
17 you do?

18 A I went in the bedroom, observed the weapon  
19 he was referring to, photographs were made of the  
20 item. And then I recovered it out of the vacuum  
21 cleaner.

22 Q Now, who had a camera?

23 A Special Agent Heffney had one, and  
24 Detective Hackney had one.

25 Q Did you use a camera at the time when you

1 first went in to the room where Mr. Lea had been  
2 searching?

3 A I don't recall if I had it at that time or  
4 Detective Hackney had it. Detective Hackney made  
5 most of the photos using his camera. I made some of  
6 the photographs using his camera, but specifically  
7 those photographs looking down into the shop vacuum  
8 were made by Detective Hackney.

9 Q And when you -- Mr. Lea notified you that  
10 he had discovered a gun in that room, did you go into  
11 the room and observe the gun that he had told you  
12 about?

13 A Yes, sir.

14 Q Where was that gun located?

15 A It was inside of the shop vacuum cleaner  
16 that was inside of the bedroom.

17 Q Can you describe the gun that you saw in  
18 that vacuum cleaner?

19 A Yes, sir.

20 Q Describe it for us, please?

21 A It was a .38 caliber Smith & Wesson, blue  
22 steel finished handgun with brown colored handles, a  
23 six-shot revolver.

24 Q And at any time, did you remove or did you  
25 observe anyone remove that .38 caliber Smith & Wesson

1 revolver from that vacuum cleaner?

2 A Yes, sir, I removed it.

3 Q Can you describe for us the manner in which  
4 you removed it and what you did after you removed it  
5 from the vacuum cleaner?

6 A I inserted my right hand into the vacuum  
7 cleaner and grabbed it using the thumb and index  
8 finger of my right hand, picked it up by the handle  
9 and placed it into a large, clear, plastic bag. .

10 (State's Exhibit 72 was  
11 marked for identification.)

12 BY MR. BRITT:

13 Q I show you what's been marked as State's  
14 Exhibit Number 72, ask you if you can identify that  
15 photograph?

16 A Yes, sir, I can.

17 Q How are you able to identify State's  
18 Exhibit Number 72?

19 A State's Exhibit 72 bears my initials and  
20 the date on the back of the photograph.

21 Q And is State's Exhibit Number 72 a fair and  
22 accurate depiction of the scene as you saw it when  
23 you went into the room that Special Agent Lee was  
24 searching in the defendant's trailer on August 16th  
25 of 1993?

1           A       Yes, sir.

2           Q       Does State's Exhibit Number 72 fairly and  
3 accurately depict the .38 caliber revolver and its  
4 location when you first saw it as you've testified?

5           A       Yes, sir.

6                   MR. BRITT: Your Honor, at this  
7 time, I ask that State's Exhibit 72 be  
8 admitted for purposes of this hearing.

9                   THE COURT: For illustrative  
10 purposes at this time? Or substantive?

11                  MR. BRITT: Substantive at this  
12 time.

13                  THE COURT: You folks want to be  
14 heard?

15                  MR. THOMPSON: I would just like  
16 to see it, please.

17                  THE COURT: Okay.

18                  THE COURT: State's Exhibit 72 is  
19 admitted without objection.

20 BY MR. BRITT:

21           Q       Would State's Exhibit Number 72, for the  
22 purposes of the hearing -- I would show you State's  
23 Exhibit Number 72 and using it point out to the Court  
24 where the gun was located in the vacuum cleaner as  
25 depicted in the photograph?

1           A       It is located down inside of the shop vac.  
2       Once the lid which appears on the floor in front of  
3       the vacuum cleaner is removed, the gun is down at the  
4       base of the interior of the shop vac.

5           Q       Mr. Underwood, I'll show you what has been  
6       marked as State's Exhibit Number 59, ask you if you  
7       can identify the clear plastic bag marked as State's  
8       Exhibit Number 59.

9           A       Yes, sir.

10          Q       How are you able to do that?

11          A       The bag bears my initials along the seal  
12       where I sealed the bag and also at the time it was  
13       more legible than it is now, but this is my  
14       handwriting that is somewhat faded that bears the SBI  
15       case file number and the item number that I assigned  
16       to it, and the writing below that that described the  
17       location where the item was recovered and the time  
18       and date it was located.

19          Q       For the record, you said your initials  
20       appear on the bag. What initials of yours appear on  
21       the bag?

22          A       T.A.U.

23          Q       Where do they appear?

24          A       On the seal at the top of the bag, also  
25       below the descriptive writing that I placed on the

1 bag.

2 Q And at the time you placed your initials on  
3 the bag marked as State's Exhibit Number 59, what if  
4 anything was contained inside of it?

5 A The .38 caliber Smith & Wesson six-shot  
6 revolver had that was recovered from that vacuum  
7 cleaner.

8 Q I'm going to remove the contents of State's  
9 Exhibit Number 59, show you what's been marked as  
10 State's Exhibit Number 59-A and ask you if you can  
11 identify that.

12 A It appears to be the same weapon that was  
13 placed inside of this bag. However, I did not put  
14 any type of markings on the weapon itself, because I  
15 did not want to jeopardize any latent prints that may  
16 be on the weapon, nor did I want to remove the live  
17 rounds that were inside of the weapon, so I removed  
18 it from the vacuum cleaner and I placed it in the bag  
19 in the very same condition that I found it.

20 THE COURT: You've indicated that  
21 at the time you initially removed the  
22 weapon from the vacuum canister, it had  
23 live rounds in it?

24 THE WITNESS: Yes, sir.

25 THE COURT: How many?

1 THE WITNESS: Six.

2 BY MR. BRITT:

3 Q Do you recall the make of the rounds that  
4 were located in the revolver at the time you found  
5 it?

6 A No, sir, I never opened the cylinder to  
7 look at them.

8 Q Why didn't you open the cylinder to look at  
9 the rounds that were in the revolver?

10 A I didn't want to jeopardize the possibility  
11 of any fingerprints that might be on the weapon.

12 Q And is State's Exhibit Number 59-A in  
13 substantially the same condition it was in when you  
14 first found it on August the 16th of 1993?

15 A With the exception of this tag being placed  
16 here, the cylinder being open and the rounds being  
17 removed, it is in the same condition.

18 Q On August the 16th of 1993, had the  
19 defendant Daniel Green been charged with the murder  
20 of James Jordan?

21 A Yes.

22 Q And had the defendant Larry Martin Demery  
23 been charged with the murder of James Jordan?

24 A Yes, sir.

25 Q Mr. Underwood, did you also participate in

1 the investigation of the robbery and assault of  
2 Clewis Demory that occurred on July 15th of 1993?

3 A Yes, sir.

4 Q Had the SBI's assistance been requested by  
5 either the Robeson County Sheriff's Department or the  
6 District Attorney's office here in Robeson County?

7 A Sometime later on, yes, sir.

8 Q Who made the request?

9 A I don't recall specifically. It was sort  
10 of an implied request after the murder charges were  
11 brought about.

12 Q And --

13 MR. BOWEN: Object to that.

14 THE COURT: Sustained. It's not  
15 really relevant anyway, is it?

16 MR. BRITT: Yes, sir, it will be.

17 THE COURT: Then you can ask  
18 additional questions about it then.

19 BY MR. BRITT:

20 Q Mr. Underwood, after the .38 caliber Smith  
21 & Wesson revolver was discovered in the defendant's  
22 home, did you have an occasion to speak with  
23 Mr. Clewis Demory after August the 16th of 1993?

24 A Yes, sir.

25 Q On how many occasions did you speak with

1 Mr. Clewis Demory following August the 16th of 1993?

2 A Two occasions.

3 Q Do you recall the date of the first  
4 occasion where you had an opportunity to speak with  
5 Mr. Clewis Demory?

6 A I'm sorry, let me correct that earlier  
7 answer. I believe there were three occasions that I  
8 spoke with him.

9 Q Did you have an occasion to speak with  
10 Mr. Demory on September the 13th of 1993?

11 A Yes, sir.

12 Q Do you recall the location where you spoke  
13 with Mr. Demory?

14 A Yes, sir, spoke --

15 Q Where was that?

16 A Spoke there at the convenience store  
17 located on Highway 72 at the intersection of State  
18 Road 1003.

19 Q Now, prior to speaking with Mr. Demory on  
20 September the 13th of 1993, had you prepared a  
21 photograph -- any photographic lineups to be used in  
22 your investigation involving Mr. Demory's robbery and  
23 assault?

24 A Yes, sir.

25 Q Where did you obtain any photographs that

1 were used in preparing those photographic lineups?

2 A From the Robeson County jail files.

3 Q And in preparing the photographic lineups,  
4 were you using information that had been provided to  
5 you to select photographs?

6 MR. BOWEN: Object.

7 MR. BRITT: Let me rephrase  
8 that.

9 THE COURT: Okay.

10 BY MR. BRITT:

11 Q Had you received any information in regard  
12 to any description that Mr. Demory had provided to  
13 anyone?

14 A Yes, sir.

15 Q And did you use or utilize that information  
16 in selecting any photographs that you placed into the  
17 photographic lineup?

18 A Yes, sir.

19 Q Did you also use information that you had  
20 obtained from the search that you had conducted at  
21 the defendant's home on August the 16th, 1993 in  
22 selecting any photograph that was used in one or more  
23 lineups?

24 A I'm not sure if I understand the question.

25 Q A gun was discovered in the defendant's

1 home on August the 16th, 1993?

2 A Yes, sir.

3 Q The fact that a gun was found in the  
4 defendant's home on August the 16th, 1993, was that  
5 information utilized in preparing the photographic  
6 line up?

7 A Yes, sir, that was the part of the reason  
8 why, yes, sir.

9 Q Now, how many --

10 THE COURT: So that we can be  
11 clear, you've indicated that in preparing  
12 the photographic array that you obtained  
13 photographs from the Robeson County  
14 Sheriff's Department or Robeson County  
15 jail, did I understand that correctly?

16 THE WITNESS: Yes, sir.

17 THE COURT: Was any photograph  
18 depicting the defendant obtained as a  
19 result of photos on file at the Robeson  
20 County jail or was there any photograph  
21 depicting the defendant included in the  
22 array based on the finding of the .38  
23 caliber during the search of his  
24 residence? Convolutated, complex question, I  
25 apologize. If a photograph of the

1 defendant was included in the array, did  
2 that photograph come from records  
3 maintained by the Robeson County jail,  
4 first of all.

5 THE WITNESS: Yes, sir.

6 THE COURT: And was the inclusion  
7 of that photograph a result of the finding  
8 of the weapon.

9 THE WITNESS: That wasn't the  
10 only --

11 THE COURT: That's what I'm  
12 trying to find out. What if any reasons  
13 where there?

14 THE WITNESS: The other factors  
15 involved the automobile that had been seen  
16 at Mr. Demery's residence on August the  
17 15th, and also the discovery of a round of  
18 ammunition that had been found in the store  
19 in August of 1993. But I don't remember  
20 the exact time frame as to what we knew at  
21 that particular point.

22 THE COURT: That's what I was  
23 trying to find out. I apologize for the  
24 confusion in the question.

25 Mr. Britt?

1 BY MR. BRITT:

2 Q You used a known photograph of the  
3 defendant in one of the arrays?

4 A Yes, sir.

5 Q In how many other photographs were used in  
6 that array?

7 A There were seven additional photographs in  
8 addition to the defendant's photograph.

9 Q In selecting the seven additional  
10 photographs in addition to the defendant's, what  
11 procedure did you use in selecting those photographs  
12 and what -- how did you go about selecting those  
13 photographs?

14 A Robeson County Deputy Stewart McFadder, who  
15 was the ID officer employed by the Sheriff's  
16 Department, assisted us with going through files  
17 maintained at the Robeson County jail. Anthony  
18 Thompson and I observed files that Deputy McFadder  
19 removed from the filing cabinets for us to review and  
20 selected which photographs we thought would be most  
21 fair to include in the photographic line up.

22 What we did was, using the defendant's  
23 photograph, we attempted to locate individuals who  
24 looked as close to Mr. Green, same age, complexion,  
25 that sort of thing, to be as fair as we could. That

1 was basically --

2 MR. BOWEN: Object to his  
3 comments.

4 THE COURT: Overruled.

5 What if any information did you have  
6 from Mr. Clewis Demory as to a description  
7 that was given?

8 THE WITNESS: At the time we  
9 prepared these lineups, I had not yet  
10 spoken with Mr. Demory. What I knew was he  
11 had described a young black male.

12 THE COURT: That's the only  
13 information that you were aware of?

14 THE WITNESS: Yes, sir.

15 THE COURT: Okay.

16 BY MR. BRITT:

17 Q And after selecting the photographs for the  
18 array, did you also prepare another array?

19 A Yes, sir.

20 Q And was a known photograph of Larry Martin  
21 Demery included in that array?

22 A Yes, sir.

23 Q And did you follow the same procedure in  
24 selecting photographs to include in the array  
25 depicting Mr. Demery's photograph?

1           A     Yes, sir.

2           Q     Did you use the same criteria in regard to  
3 complexion, age, in selecting those photographs in  
4 Mr. Demory's array in selecting the photographs for  
5 Mr. Green's array?

6           A     Yes, sir.

7           Q     On September the 13th, 1993, was that the  
8 date that the photo array was put together?

9           A     No, sir.

10          Q     When was the photo array put together?

11          A     Detective Thompson and I began working on  
12 the photographic lineups on September the 8th, 1993,  
13 and we completed them on September the 9th, 1993.

14          Q     And after the photograph arrays were  
15 prepared, who maintained custody of those arrays?

16          A     I did.

17          Q     On September the 13th of 1993, did you have  
18 an occasion to see Clewis Demory?

19          A     Yes, sir.

20          Q     Did you talk with Mr. Demory?

21          A     I did.

22          Q     Where did you talk with Mr. Demory on  
23 September 13th, 1993?

24          A     At his place of employment, which at that  
25 time was called the Country Corner Store, located

1 there on Highway 72 at the intersection of State Road  
2 1003.

3 Q And when you went to the store on September  
4 13th, did you interview Mr. Demory?

5 A Yes, sir.

6 Q Is that the first time you ever spoke with  
7 Mr. Demory?

8 A Yes, sir.

9 Q Did you obtain a statement or make a report  
10 based upon the interview that you conducted with  
11 Mr. Demory?

12 A I did.

13 Q What if anything did Mr. -- and when you  
14 talked with Mr. Demory on September 13th, what was  
15 your purposes in interviewing him?

16 A To recount the events that transpired on  
17 July 15th, 1993 during the robbery and assault  
18 against him.

19 Q What if anything did Mr. Demory tell you  
20 when you interviewed him on September 13th, 1993?

21 A He told me that he had been working at the  
22 convenience store for approximately seven or eight  
23 years. He told me that the store had recently been  
24 purchased by Gaston Locklear from a man named Curlin  
25 Lowry. He told me that Mr. Locklear changed the name

1 of the store from Lowry's Short Stop to the Country  
2 Corner Store.

3 He told me that he came to work on  
4 Thursday, July 15th, 1993 at approximately 5:00  
5 a.m.. He said he was scheduled to work until 3:30  
6 p.m. that day. He recalled that around 9:30 or 9:45  
7 that morning, two males entered the store. He told  
8 me at the time they entered there was no one else in  
9 the store.

10 He described the two individuals as male  
11 number one being a black male, approximately six feet  
12 tall, approximately 140 to 145 pounds, about 22 to 23  
13 years of age, wearing a dark colored ball cap, full  
14 length pants and some type of shirt.

15 Male number two had a cloth over his face,  
16 therefore, he could not determine what race this  
17 person was. He said this person appeared to be about  
18 five feet-five or five feet-six inches tall, was a  
19 small built person. He told me the only thing he  
20 remembered either of those two guys saying was that  
21 male number two said, "cash register, cash register."

22 He told me that the first thing that when  
23 these two individuals came into the store, he was  
24 doing something at the cigarettes stand, located  
25 there behind the counter. When he turned around,

1 both of these individuals had a gun pointed towards  
2 him. He said both weapons were small caliber,  
3 possibly a .32 or .22 caliber weapon. He told me  
4 that both weapons were blue steel finished. And to  
5 the best of his recollection, he said both handguns  
6 were revolvers.

7 He said the black male came around behind  
8 the counter and pointed the gun at him. First thing  
9 the black male did was to reach for his wallet. He  
10 told him that he had the wallet in his back pocket.  
11 He said he thought his wallet was black in color. He  
12 said his wallet had his driver's license, Social  
13 Security card, a Medicare card, a fifty cent piece  
14 made in 1925 or 1928 that was a memorial entitled  
15 Valor of the Soldiers of the South. He told me that  
16 he had had this coin since 1946. He said his wallet  
17 had at least \$130 to \$145 in cash.

18 He said the other male told the black male,  
19 "cash register, cash register." The black male  
20 pushed a button on the cash register but the door  
21 wouldn't open. So Mr. Demery pushed the correct  
22 button for him. The black male then took all the  
23 money from the cash register, including the food  
24 stamps, and he estimated that this person took out at  
25 least \$250 from the cash register. He said that the

1 black male then looked into one of the drawers behind  
2 the counter but did not take anything out of that  
3 drawer, then pulled out another drawer, and  
4 Mr. Demory said that he reached into the drawer for a  
5 weapon that he had concealed there.

6 He said that as he reached for the weapon,  
7 the black male fired three shots at him. They were  
8 all fired one right after the other. He said that  
9 one of the shots hit him on the right side of his  
10 jaw, one hit him on the right shoulder, and a third  
11 shot him on the right side in the upper chest area.  
12 He said one of the bullets came out of his back. And  
13 that he said one of the bullets was still in his  
14 body. He told me that Gaston Locklear found one of  
15 the bullets at the back of the store, and  
16 Mr. Locklear later gave that bullet to the police.

17 He said the weapon that was concealed in  
18 the drawer was a .38 caliber Smith & Wesson, blue  
19 steel, six-shot revolver, with a barrel length of  
20 four and one half inches to five inches. He told me  
21 that he purchased that weapon in Maryland in 1961.  
22 He said the weapon had brown colored handles. He  
23 told me he did not know what type of ammunition that  
24 he had loaded in the weapon, but he had provided that  
25 information to a detective with the Sheriff's

1 Department.

2 He told me after the person fired the  
3 shots, these two individuals went out the front  
4 door. He did not see how they left the area. He  
5 then sat down on a stool and noticed that blood was  
6 coming out of his jaw. He walked outside to see if  
7 he could determine which direction they left, but he  
8 couldn't see them. He went back inside and dialed  
9 191, trying to dial 911. He hung up the telephone  
10 and then called his wife and told her that he had  
11 been shot.

12 He said that a gentleman named Louie  
13 Oxendine who lived down the road was the next person  
14 to come into the store, and about the time  
15 Mr. Objection dine arrived, the ambulance arrived.  
16 He told me that his wife was the person who called  
17 the ambulance. He said he was transported to the  
18 Hospital in Lumberton, and stayed there until  
19 Saturday afternoon July 17th.

20 I asked him if he had seen the television  
21 reports pertaining to the arrest of Daniel Green and  
22 Larry Demery for the murder of James Jordan. He told  
23 me that he had. And he then said that he is not  
24 positive that they were the two people who robbed him  
25 on July 15th. He did say at that time that the black

1 male that he saw on television looked like the same  
2 person who shot him.

3 BY MR. BRITT:

4 Q Now, at the time you interviewed  
5 Mr. Demery, did you have with you the photographic  
6 arrays that you had prepared on September the 9th of  
7 1993?

8 A Yes, sir.

9 Q And prior to interviewing Mr. Demory, had  
10 you shown him either of the photo arrays?

11 A No, sir.

12 Q Were the contents of the photo arrays kept  
13 out of Mr. Demory's sight?

14 A Yes, sir.

15 Q Why did you keep the photo arrays out of  
16 Mr. Demory's sight at that time?

17 A Well, we wanted to interview him first and  
18 get a description again from him about the people  
19 that came into the store before he was shown any  
20 photograph of them.

21 Q After you interviewed Mr. Demory, did you  
22 use the photo arrays that were in your possession at  
23 that time in any way?

24 A Yes, sir.

25 Q How did you use the photo arrays?

1           A       I told Mr. Demory that I was going to show  
2 him a photographic line up that contained photographs  
3 of eight individuals, and that the person who shot  
4 him, their photograph may or may not appear in the  
5 photographic line up, but I wanted him to carefully  
6 look at it and see if he recognized anyone.

7           Q       And how many arrays did you show  
8 Mr. Demory?

9           A       One.

10                   MR. BRITT:   May I approach?

11                   THE COURT:   Yes, sir.

12 BY MR. BRITT:

13           Q       Mr. Underwood, I'll show you what has been  
14 marked as State's Exhibit Number 68, ask you if you  
15 can identify that?

16           A       Yes, sir.

17           Q       How are you able to identify State's  
18 Exhibit Number 68?

19           A       I can identify State's Exhibit 68 by the  
20 appearance of my initials, T.A.U., along the seal,  
21 and also by my handwriting, the date, and time that I  
22 placed here that I sealed this lineup.

23           Q       And what initials and what date appear on  
24 State's Exhibit Number 68 that you placed there?

25           A       T.A.U., September the 9th, 1993, 10:45 a.m.

1 Q 10:45 a.m. does that reflect the time when  
2 the photo array was sealed?

3 A Yes, sir.

4 Q And after the photo array was sealed,  
5 State's Exhibit Number 68 stayed in your possession  
6 until you showed it to Mr. Demory on September the  
7 13th of 1993?

8 A Yes, sir.

9 Q State's Exhibit Number 68, is it the photo  
10 array that you prepared that included the known  
11 photograph of the defendant Daniel Green?

12 A Yes, sir, it is.

13 Q And that State's Exhibit Number 68, is that  
14 the photographic array that also contains seven  
15 additional photographs of individuals of the same  
16 race, same complexion and approximately the same age?

17 A Yes, sir.

18 Q And is State's Exhibit Number 68 in  
19 substantially the same condition it was in when you  
20 prepared it on September the 9th, 1993?

21 A Yes, sir.

22 Q Is it in the same condition that it was in  
23 when you showed State's Exhibit Number 68 to Clewis  
24 Demory on September 13th of 1993?

25 A Yes, sir.

1 MR. BRITT: Your Honor, at this time I  
2 move that State's Exhibit 68, for purposes of this  
3 hearing, be admitted.

4 THE COURT: For purposes of this  
5 hearing. Do you folks want to be heard?

6 MR. THOMPSON: No, sir.

7 BY MR. BRITT:

8 Q At the time you spoke with Mr. Demory on  
9 September the 13th, did you hand him State's Exhibit  
10 Number 68?

11 A Yes, sir.

12 Q What if anything did you ask Mr. Demory to  
13 do in regard to State's Exhibit Number 68?

14 A Told him to carefully look at the  
15 individuals and tell me if he recognized anyone.

16 Q And in your presence, did Mr. Demory look  
17 at State's Exhibit Number 68?

18 A Yes, sir.

19 Q Approximately how long did Mr. Demory look  
20 at State's Exhibit Number 68?

21 A It was an estimation, I didn't time it, but  
22 45 seconds to a minute, maybe a little longer.

23 Q And after looking at State's Exhibit Number  
24 68, did Mr. Demory say anything to you in regard to  
25 the photo array marked as State's Exhibit Number 68?

1           A       Yes, sir.

2           Q       What if anything did Mr. Demory say or do  
3 with State's Exhibit Number 68 photo array?

4           A       He told me that the person in frame number  
5 three looked more like him than anybody else.

6           Q       And the person in frame number three of  
7 State's Exhibit Number 68, is that the known  
8 photograph of the defendant, Daniel Green?

9           A       Yes, sir.

10          Q       At any time, did you show Mr. Demory what's  
11 been marked as State's Exhibit Number 69?

12          A       No, sir.

13          Q       Why was Mr. Demory not shown State's  
14 Exhibit Number 69?

15          A       Because he had told me that he -- the  
16 second person in the store had a cloth over his face  
17 and he could not determine the race or any facial  
18 features of this person.

19          Q       And State's Exhibit Number 69 is the photo  
20 array that you prepared on September the 9th, 1993  
21 that contains the known photograph of Larry Martin  
22 Demery?

23          A       Yes, sir.

24          Q       And State's Exhibit Number 69, is it in the  
25 same condition as it was in when you prepared it on

1 September the 9th, 1993?

2 A Yes, sir.

3 Q And after it was prepared, did you retain  
4 possession and custody of State's Exhibit Number 69?

5 A Yes, sir.

6 Q Mr. Underwood, on August the 19th of 1993,  
7 did you have an occasion to go to the residence of  
8 Larry and Virginia Demery?

9 A Yes, sir.

10 Q Who if anyone accompanied you to that  
11 residence?

12 A Detective Anthony Thompson.

13 Q What was your purpose in going to the  
14 residence of Virginia and Larry Demery on August the  
15 19th of 1993?

16 A To speak with Mr. Larry Demery, Sr. about  
17 the two .32 caliber handguns that we knew he had, to  
18 see if he would surrender those weapons to us for  
19 some testing.

20 Q At the time you went to the residence of  
21 Larry and Virginia Demery, was Mr. Demery at home?

22 A He wasn't there when we first arrived. He  
23 arrived sometime later.

24 Q After Mr. Demery arrived, did you tell him  
25 your purpose for being there?

1           A       Yes, sir.

2           Q       After telling him your purpose in being  
3 there, what if anything happened?

4           A       He agreed to turn over the two .32 handguns  
5 that he had.

6                   MR. BRITT: May I approach?

7                   THE COURT: Yes, sir.

8                   MR. BRITT: Your Honor, for the  
9 purposes of clarity of the record, one of  
10 these exhibits has previously been marked  
11 in a hearing involving the defendant Larry  
12 Demery. It bears an identification sticker  
13 of State's Exhibit 3. For the purposes of  
14 this hearing, that exhibit will be marked  
15 as State's Exhibit Number 73.

16                   THE COURT: Okay.

17                   MR. BRITT: And the name Green  
18 will be inserted below the Exhibit Number.

19                   THE COURT: Okay.

20                   THE COURT: Mr. Britt, simply for  
21 purposes of clarification, because we've  
22 got a number of matters that arguably might  
23 be interwoven here, does the State contend  
24 it's allowed to introduce any evidence of  
25 any court, incourt identification by

1 Mr. Demery under 404(b), pretrial  
2 identification, photographic array?

3 MR. BRITT: Yes, sir.

4 THE COURT: Does the State intend  
5 to introduce any incourt identification by  
6 Mr. Clewis Demory if allowed to under Rule  
7 404(b).

8 MR. BRITT: If allowed to.

9 THE COURT: We may have a  
10 problem, because at this point, our record  
11 does not reflect anything with regard to an  
12 incourt identification.

13 MR. BRITT: Yes, sir, I  
14 understand that.

15 THE COURT: Okay.

16 (State's Exhibit 73 was  
17 marked for identification.)

18 MR. BRITT: May I approach the  
19 witness?

20 THE COURT: Yes, sir.

21 BY MR. BRITT:

22 Q Mr. Underwood, I'll show you what has been  
23 marked as State's Exhibit 73, Green?

24 A Yes, sir.

25 Q Ask you to look at that package and tell me

1 if you can identify the package and its contents.

2 A Yes, sir, I can.

3 Q How are you able to identify State's  
4 Exhibit Number 73, the package and its contents?

5 A I can identify State's Exhibit 73 by my  
6 initials that I placed on the seal and by the  
7 appearance of my handwriting on the front of the bag  
8 where I placed the SBI case file number, the  
9 description of the item within this bag, which is  
10 a .32 caliber six-shot revolver, model 632, serial  
11 number AYO 10056. I noted that the weapon had a  
12 Smith & Wesson barrel and an H & R frame. And I also  
13 placed the date and time that I recovered this  
14 weapon, August 19th, 1993, at 7:05 p.m. from the  
15 residence of Mr. Larry Demery, Sr.

16 Q At the time that you recovered -- for the  
17 record, what if anything is contained inside of  
18 State's Exhibit -- the plastic bag marked as State's  
19 Exhibit Number 73?

20 A This is the weapon, the six shot .32  
21 caliber revolver that I recovered from Larry Demery,  
22 Sr.'s residence.

23 Q And what type of handle is on that .32  
24 revolver? What color is it?

25 A It's a pearl white handle with some brown

1 stains.

2 Q At the time that you recovered that .32  
3 caliber revolver from Mr. Larry Demery, Sr., was it  
4 loaded?

5 A Yes, sir.

6 Q And did you remove the ammunition from the  
7 revolver at that time?

8 A Yes, sir, I did.

9 Q Show you what's been marked as State's  
10 Exhibit 73-A, ask you to look at that and ask you if  
11 you can identify its contents?

12 A Yes, sir, I can.

13 Q How are you able to identify the package  
14 and its contents?

15 A I can identify State's Exhibit 73-A by my  
16 initials, T.A.U., that appear along the seal on the  
17 front and back of the bag, and also the handwriting  
18 that I placed on this bag, six rounds of  
19 Remington/Peters Smith & Wesson .32 caliber  
20 ammunition, removed from .32 caliber Smith & Wesson  
21 six-shot revolver, model 632. Serial number  
22 AY010056, received August 19th, 1993, from Larry  
23 Demery, 7:05 p.m.

24 Q After you received the .32 caliber revolver  
25 with the pearl colored handle marked as State's

1 Exhibit Number 73 and the ammunition from that gun,  
2 what if anything did you do with them?

3 A Turned them over to Special Agent Kim  
4 Heffney.

5 Q Was the pearl handle .32 caliber weapon  
6 placed into an evidence bag?

7 A Yes, this is the bag I testified I placed  
8 it into.

9 Q Was it sealed at that time?

10 A Yes, sir.

11 Q The ammunition that you removed from the  
12 pearl handle .32 caliber revolver, was it also placed  
13 in an evidence bag?

14 A Yes, sir.

15 Q Was that bag also sealed?

16 A Yes, sir. .

17 (State's Exhibit 74 was  
18 marked for identification.)

19 BY MR. BRITT:

20 Q I'll show you what has been marked as  
21 State's Exhibit Number 74, ask you to examine the bag  
22 and tell me if you can identify the bag and the  
23 contents contained in the bag?

24 A Yes, sir, I can.

25 Q How are you able to do that?

1           A       By my initials that appear along the seal,  
2       and by the handwriting that I placed on the front of  
3       the bag after I sealed it, where I placed the SBI  
4       case file number, the item number, and the  
5       description of the evidence within the bag, a .32  
6       caliber six-shot revolver, model 732, serial number  
7       AE18405. I noted that the weapon had a Smith &  
8       Wesson barrel and an H & R frame. I placed on the  
9       bag the date and time that I recovered it, August  
10      19th, 1993, 7:45 p.m. from the junior Demery  
11      residence.

12           Q       And who if anyone gave you the .32 caliber  
13      revolver marked as State's Exhibit 74?

14           A       Larry Demery, Sr.

15           Q       And for the record, what color is that  
16      handle on that revolver?

17           A       A black colored handle.

18           Q       And at the time that you received the black  
19      colored handle .32 revolver, was it loaded?

20           A       Yes, sir.

21           Q       Did you remove the ammunition from it?

22           A       Yes, sir.

23           Q       I'll show you what has been marked as  
24      State's Exhibit Number 74, ask you if you will --

25                   THE COURT:   74 or 74-A?

1 MR. BRITT: 74-A.

2 (State's Exhibit 74-A was  
3 marked for identification.)

4 BY MR. BRITT:

5 Q Ask you to examine that and tell me if you  
6 can identify the package and the contents.

7 A Yes, sir, I can.

8 Q How are you able to identify those?

9 A I can identify State's Exhibit 74-A by my  
10 initials that appear along the seal after I sealed it  
11 and initialed it. And the writing that I placed on  
12 the bag that is barely legible, six rounds of  
13 Remington/Peters Smith & Wesson .32 caliber  
14 ammunition. Removed from .32 caliber Smith & Wesson,  
15 an H & R revolver, model 732, August 19th, 1993, and  
16 my initials, 7:45 p.m.

17 Q And at the time you received State's  
18 Exhibit 74 and 74-A, was the .32 caliber revolver and  
19 the ammunition from that revolver, were they placed  
20 into evidence bags and sealed?

21 A Yes, sir.

22 Q Who retained custody of State's Exhibit 73,  
23 73-A, 74 and 74-A after they were placed in the bags  
24 and sealed?

25 A I transferred them to Special Agent Heffney

1 on August the 19th, 1993. However, he gave them back  
2 to me sometime later on September 21st, 1993, and  
3 then I retained them until sometime in 1994 when I  
4 transferred them to him.

5 Q At the time you received them from  
6 Mr. Heffney, were the envelopes still -- the evidence  
7 bag still sealed?

8 A Yes, sir.

9 Q And when you returned them to Mr. Heffney  
10 sometime in 1994, had you retained exclusive custody  
11 of the two revolvers and the two sets of ammunition  
12 from the time you had received them from Mr. Heffney?

13 A Yes, sir.

14 Q Where were they maintained?

15 A In my evidence locker at the SBI  
16 Southeastern District Office in Fayetteville.

17 Q Who if anyone had access to your evidence  
18 locker at the SBI Southeastern District Office in  
19 Fayetteville?

20 A No one but me.

21 Q At the time that you returned them to  
22 Mr. Heffney, were the items still sealed in the  
23 envelopes?

24 A Yes, sir.

25 Q And State's Exhibit 73, 73-A, 74, 74-A, are

1 they in substantially the same condition today as  
2 they were in when you last transferred them to  
3 Mr. Heffney?

4 A Yes, sir.

5 Q Are they in the same condition they were in  
6 when you first received them from Larry Demery, Sr.,  
7 on August 19th of 1993?

8 A The contents are, the bags are -- the  
9 handwriting is somewhat faded but the contents are  
10 the same.

11 Q Did you ever submit the two revolvers and  
12 the ammunition for any type of ballistics examination  
13 with the SBI laboratory?

14 A I didn't.

15 THE COURT: Mr. Britt, is this a  
16 good point for us to stop for the lunch  
17 recess?

18 MR. BRITT: That would be fine.

19 THE COURT: Any objection to  
20 reconvening at 2:00 folks?

21 MR. BRITT: No, sir.

22 THE COURT: You folks want to be  
23 heard?

24 MR. BOWEN: No, sir.

25 THE COURT: Thank you, sir you

1           may step down. We'll take the lunch recess  
2           at this time until 2:00 p.m.

3                               (Lunch recess).

4                               THE COURT: Thank you, sir. I  
5           realize that we're a little early. I just  
6           wanted to come in and look at these Federal  
7           Reports.

8                               Let the record reflect all counsel are  
9           present, the defendant is present in open  
10          court. We are continuing the 404(b)  
11          hearing now under way in the absence of the  
12          jury.

13                              MR. THOMPSON: Yes, sir. Your  
14          Honor, I've given the original copies of  
15          what has previously been marked as  
16          Defendant's Exhibits 16, 17 and 18 to  
17          Mr. Britt, and have since marked the  
18          copies, conformed copies, as 16, 17, and  
19          18.

20                              THE COURT: Okay. Let the record  
21          so show.

22                              Mr. Underwood, if you'll return to the  
23          witness stand, please.

24                              MR. BRITT: Ready?

25                              THE COURT: Yes, sir.

1 BY MR. BRITT:

2 Q Mr. Underwood, on September the 21st of  
3 1993, did you have an occasion to go to Clewis  
4 Demory's home?

5 A Yes, sir.

6 Q Did any other officer accompany you when  
7 you went to Mr. Demory's home?

8 A Yes, Special Agent Randy Myers, M Y E R S,  
9 with the SBI, accompanied me to Mr. Demory's  
10 residence on that date.

11 Q For what purpose did you go to Mr. Clewis  
12 Demory's residence on September 21st, 1993?

13 A To show him the weapon that had been  
14 recovered from the vacuum cleaner at the Green  
15 residence on August the 16th, 1993, and determine  
16 whether or not he could identify that weapon.

17 Q And did you have the .38 caliber Smith &  
18 Wesson six-shot revolver with you when you went to  
19 Mr. Demory's residence on September 21st, 1993?

20 A Yes, sir, I did.

21 Q Did you make a report in connection with  
22 your interview with Mr. Demory on September 21st,  
23 1993?

24 A Yes, sir.

25 Q On September the 21st of 1993, what if

1 anything did Mr. Clewis Demory tell you in regard to  
2 the .38 caliber Smith & Wesson six-shot revolver that  
3 you had with you in your possession at that  
4 time?

5 MR. BOWEN: Object.

6 THE COURT: Who's conducting the  
7 cross-examination of this witness?

8 MR. BOWEN: I am, sir.

9 MR. BRITT: May I be heard?

10 THE COURT: Yes, sir, if you'll  
11 bear with me for one second, please.  
12 What's the basis of the objection?

13 MR. BOWEN: Hearsay.

14 THE COURT: Yes, sir.

15 MR. BRITT: WHEN we started this  
16 hearing this morning, this is still part of  
17 the 404(b) hearing, it was their  
18 representation to the Court that Ms. Berry  
19 was doing it. Now has something gone  
20 awry?

21 MR. THOMPSON: May I?

22 THE COURT: Yes, sir. I would  
23 prefer, I'm going to give you an  
24 opportunity to be heard, but before I do  
25 that, let me say this. We've got some

1 business to attend to. I would prefer  
2 going forward with the business rather than  
3 being caught up in minor matters.

4 Yes, sir. Go ahead.

5 MR. THOMPSON: I mean, Judge, I  
6 said that she would be participating in the  
7 404(b) hearing. She's done this. It was  
8 same in the earlier hearing, she did not  
9 conduct all of the examination. She's a  
10 participant assisting us in this stage of  
11 the proceedings.

12 Now, that's all I have to say. When  
13 the writ of prohibition was filed against  
14 Your Honor, Mr. Britt didn't do it, he went  
15 to the Attorney General, and they did it on  
16 his behalf.

17 THE COURT: That's an example of  
18 what I consider to be a minor matter. I  
19 understand your position, I understand the  
20 State's position. What is the basis of --  
21 for what purpose are you offering that  
22 evidence?

23 MR. BRITT: To corroborated  
24 Mr. Demory's testimony in regard of  
25 identification of the gun.

1                   THE COURT: Folks, we're not  
2                   dealing with the jury. Dealing only with  
3                   the Court. If it turns out it's only  
4                   corroborative, you folks are entitled to be  
5                   heard on a motion to strike? At this time  
6                   the objection is overruled. Repeat or  
7                   rephrase your question.

8 BY MR. BRITT:

9           Q        When you went to see Mr. Clewis Demory on  
10           September 21st, 1993, what if anything did he tell  
11           you in regard to the gun that you questioned him  
12           about?

13           A        I asked him to describe his weapon to  
14           Special Agent Myers, and he then told us that the  
15           weapon was a .38 caliber six-shot Smith & Wesson,  
16           blue stem revolver, with walnut colored grips. He  
17           told us that the weapon had a hole in the butt of the  
18           gun where a strap could be attached. He said that he  
19           had purchased this weapon at a store in Maryland in  
20           1961 and during the time he worked there as a  
21           security officer in Baltimore County, Maryland. He  
22           told us that the weapon was new when he purchased  
23           it.

24                    Approximately 6:23 p.m. after he told us  
25           that description, I showed him the handgun that we

1 seized, or I seized from Mr. Green's trailer on  
2 August the 16th. I asked him if he recognized the  
3 weapon. He looked at it. He then said he was  
4 positive that that was the same weapon that was taken  
5 from him during the store robbery on July 15th.

6 He also looked at the ammunition that was  
7 contained in the same plastic bag with the handgun.  
8 He said the ammunition in the bag was not the  
9 ammunition that he had in the weapon at the time it  
10 was taken. He gave me a box of Western center fire  
11 cartridges, .38 special caliber, 158 grain alloy  
12 ammunition. He told me that the rounds of ammunition  
13 in the weapon at the time it was taken from him came  
14 out of that box of ammunition. I noted there were 32  
15 rounds of ammunition in that box.

16 THE COURT: For the purposes of  
17 the voir dire hearing, the objection is  
18 overruled. The exception is noted for the  
19 record.

20 MR. BRITT: May I approach the  
21 witness?

22 THE COURT: Yes, sir.

23 BY MR. BRITT:

24 Q Again showing you what's been marked as  
25 State's Exhibit 59-A, is this the Smith & Wesson .38

1 caliber six-shot revolver that you took with you to  
2 Clewis Demory's residence on September 21st, 1993?

3 A Yes, it is.

4 Q And is that the Smith & Wesson .38 caliber  
5 revolver that you showed Clewis Demory on September  
6 21st, 1993?

7 A Yes, it is.

8 Q And Mr. Demory identified State's Exhibit  
9 59-A as the .38 caliber revolver that was stolen  
10 during the robbery and the assault upon him that  
11 occurred July 15th, 1993?

12 A Yes.

13 Q And State's Exhibit 59-A is the same .38  
14 caliber Smith & Wesson six-shot revolver that you  
15 seized from the defendant's home on August the 16th  
16 of 1993 pursuant to the search that was conducted  
17 that evening?

18 A That's correct.

19 MR. BRITT: If I may have just a  
20 second.

21 THE COURT: Yes, sir.

22 BY MR. BRITT:

23 Q Mr. Underwood, prior to taking the .38  
24 caliber revolver marked as State's Exhibit 59-A to  
25 Mr. Demory's residence, to your knowledge, had

1 the .38 caliber revolver been submitted for a  
2 ballistics test at the FBI laboratory?

3 A Yes.

4 Q And had you received the .38 caliber  
5 revolver from the laboratory when you -- prior to  
6 taking it to Mr. Demory's residence on September  
7 21st, 1993?

8 A No, sir, I got it from Special Agent  
9 Heffney the same day that I showed it to Mr. Demory.

10 MR. BRITT: I don't have any  
11 other questions.

12 THE COURT: Any  
13 cross-examination?

14 CROSS-EXAMINATION

15 BY MR. BOWEN:

16 Q Mr. Underwood, if you can again clearly set  
17 up our time frame. Let me ask you, you took the gun  
18 to see if Mr. -- that is State's Exhibit 59-A, to  
19 Mr. Demory to see if he could identify it on  
20 September what?

21 A 21st.

22 Q September 21st. Having received it from  
23 Mr. Demory -- from Mr. Heffney that same day?

24 A Yes, sir, best I remember.

25 Q To your knowledge, or through your reports

1 that you have copies of, the search of the Green  
2 trailer, at which time 59-A was found in a vacuum  
3 cleaner, was conducted when?

4 A August 16th.

5 Q August 16th. Now, was that at a time when  
6 Mr. Green was or was not in custody at the Robeson  
7 County jail?

8 A He was in custody.

9 Q Now, tell us if you know from your own  
10 knowledge or from your reports when it was that the  
11 officers had gone out to get Mr. Green at his home  
12 and take him to the Robeson County jail facility or  
13 Sheriff's Department facility after which he remained  
14 in jail?

15 A August 14th, 1993.

16 Q Now, when you made up your search warrant  
17 for the Magistrate, you were aware that the officers  
18 that had gone out to search or had gone out to speak  
19 to Mr. Green and ultimately take him to the Sheriff's  
20 Department and jail facility, that they had conducted  
21 a search out there on August 14th, you knew that,  
22 didn't you?

23 MR. BRITT: Objection, outside  
24 the scope of voir dire.

25 THE COURT: Overruled. You may

1 answer if you know.

2 THE WITNESS: I knew it, I don't  
3 remember exactly at what point. I mean I'm  
4 aware that they did.

5 BY MR. BOWEN:

6 Q And you knew they did that --

7 THE COURT: Well, now, okay, the  
8 question was, at the time he conducted his  
9 search did he have that information.

10 MR. BOWEN: Yes.

11 THE COURT: His answer was, I  
12 remember obtaining that information. When  
13 I obtained it, when, I don't know.

14 BY MR. BOWEN:

15 Q Do you know now that on August 14th, other  
16 officers went out to Daniel Green's house and  
17 transported Mr. Green to the Sheriff's Department  
18 jail complex, don't you?

19 A Yes, sir.

20 Q You know now at that time on August 14th,  
21 1993, those officers obtained a written consent from  
22 Mrs. Green to search the trailer, don't you?

23 A Yes, sir.

24 Q And you know now that that trailer was  
25 searched at that time, don't you?

1           A       That's correct.

2           Q       And you also know that the trailer was  
3 searched, and officers in the party that searched  
4 that trailer videoed the trailer and its contents as  
5 the search was being conducted, correct?

6           A       I'm not aware of that.

7           Q       All right. Did you talk to those other  
8 officers that conducted that search on the 14th of  
9 August?

10          A       About that incident?

11          Q       No, let me strike that. Did you talk to  
12 the officers that conducted a search pursuant to the  
13 consent of Ann Green on the 14th of August of 1993  
14 regarding the scope of their search?

15          A       I mean, I have talked with them, but as far  
16 as whether or not I talked with them prior to this  
17 search warrant, I may have, I don't know  
18 specifically, you know, when I talked to them. I'm  
19 aware there was a search done pursuant to consent. I  
20 may have known it prior to the search warrant but I  
21 can't testify either way because I don't know.

22          Q       And you know that no gun was found pursuant  
23 to the search that occurred on August 14th, 1993,  
24 don't you?

25          A       That's correct.

1 Q And you have not determined even now  
2 whether or not there was a shop type vacuum cleaner  
3 in that house as of the 14th of August, 1993, have  
4 you?

5 A Other than what I've heard. I wasn't there  
6 so I don't know what was in there on August 14th.

7 Q And if a shop type vacuum cleaner came to  
8 be in there after the time that Daniel Green was  
9 taken away to jail, you knew when you got your search  
10 warrant that certainly Daniel Green didn't take it  
11 away, correct?

12 MR. BRITT: Objection to the  
13 form.

14 THE COURT: Sustained. That's an  
15 argument

16 BY MR. BOWEN:

17 Q Now, on the 16th of August, did you state  
18 in your search warrant any specific things that you  
19 wanted to look into inside that house?

20 MR. BRITT: Objection, search  
21 warrant is a matter of record, speaks for  
22 itself.

23 THE COURT: Do you have a copy of  
24 the search warrant, Mr. Bowen?

25 MR. BOWEN: Ten thousand pages or

1           so, we probably do.

2       BY MR. BOWEN:

3           Q       Mr. Underwood, you don't have your copy  
4       handy, do you?

5           A       I have it in the courtroom, I don't have it  
6       here on the stand.

7           Q       On the 16th of August of 1993, you signed a  
8       search warrant that set out certain items to be  
9       seized, is that correct?

10          A       Yes, sir.

11          Q       And you set out there a .35 caliber --  
12       a .38 caliber revolver and .38 caliber ammunition and  
13       other items, is that correct?

14          A       That's correct.

15          Q       And then you described as the premises to  
16       be searched a trailer and gave the directions to Ann  
17       Green's home, is that correct?

18          A       Yes, sir.

19          Q       And then you submitted what is entitled and  
20       signed by you, a probable cause affidavit, correct?

21          A       Yes, sir.

22          Q       And you set forth information about the  
23       alleged death of James Jordan, correct?

24          A       Yes, sir.

25          Q       You set forth alleged information about the

1 identification of James Jordan, correct?

2 A Yes, sir.

3 Q You set forth information about place of  
4 discovery of the body of James Jordan, correct?

5 A Yes, sir.

6 Q You set forth material about some dental  
7 comparisons, is that correct?

8 A That's correct.

9 Q But you did not say anything about a .38  
10 caliber revolver or .38 ammunition in that probable  
11 cause affidavit, did you?

12 A I don't recall without reading it.

13 MR. BRITT: While he's looking,  
14 may I approach the Clerk?

15 THE COURT: Yes, sir.

16 (Defense Exhibit 19 was  
17 marked for identification.)

18 BY MR. BOWEN:

19 Q Show you Defendant's Exhibit 19, consisting  
20 of five pieces of paper. Can you tell us what that  
21 is, sir?

22 THE COURT: Number 19,  
23 Mr. Bowen?

24 MR. BOWEN: Yes, sir.

25 THE WITNESS: Yes, sir, I can.

1 BY MR. BOWEN:

2 Q What is that?

3 A Defendant's Exhibit Number 19 are the  
4 attachments to the search warrant application that I  
5 prepared on August the 16th, 1993.

6 Q Of those pages, how many pages comprise  
7 your item named "affidavit" on probable cause or  
8 however you termed it?

9 A Three.

10 Q All right, sir. Now, did you type up those  
11 three pages that comprise that report?

12 A Yes, sir.

13 Q That affidavit as you call it?

14 A That's correct.

15 Q You typed it on your machine?

16 A Wasn't mine, I borrowed a machine at the  
17 Sheriff's Department.

18 Q You caused it --

19 A Yes, sir.

20 Q You reviewed it after you typed it?

21 A Yes, sir.

22 Q When you typed it up, you had all the  
23 information that you were able to obtain prior to  
24 going out to the Green house, is that correct?

25 A I'm not sure.

1           Q     You didn't acquire any information after  
2 you wrote up that affidavit and before you got to the  
3 Green house, did you?

4                   THE COURT:   That's a broad  
5           question, Mr. Bowen.   For example, do we  
6           know when, if at all, the officer got  
7           information from South Carolina about any  
8           bullets that may have been removed from the  
9           body of a person later identified as James  
10          Jordan?

11 BY MR. BOWEN:

12          Q     All right.   Can you tell us when you typed  
13 and printed out that which is called your affidavit  
14 in that package of papers, Defendant's Exhibit 19?

15          A     As far as the time?

16          Q     Yes, sir, about?

17          A     Not specifically.   I mean, it was late in  
18 the evening hours.

19          Q     Would have been on the 14th of August,  
20 wouldn't it, or I'm sorry, 16th?

21          A     Yes, sir, August 16th, but as to the  
22 specific time, I can't testify to that.   It was prior  
23 to 7:00 p.m.

24          Q     How quickly did you go to the Magistrate's  
25 office once you printed out that document?

1           A       Within a matter of minutes.

2           Q       Now, you didn't learn any other information  
3 from the time you printed out that document called  
4 "affidavit" until you went to the Magistrate's  
5 office about this case, did you?

6           A       Well, Mr. Bowen, there was so much  
7 information out there and so many people involved in  
8 this investigation, I can't tell you when, you know,  
9 someone may have told me this or that.

10                   THE COURT:   Can we be specific,  
11           sir.

12 BY MR. BOWEN:

13           Q       It's fair to say you don't recall receiving  
14 any additional information of significance from the  
15 time that you printed out that affidavit until the  
16 time you took it before the Magistrate?

17                   THE COURT:   Sir, are you asking  
18           him whether everything he knew about that  
19           case at that time, as of August 16th, 1993,  
20           is set forth in that affidavit?

21                   MR. BOWEN:   That's not any  
22           question at all.

23                   THE COURT:   That's what we're all  
24           trying to understand your question.

25 BY MR. BOWEN:

1 Q You put down in that affidavit matters of  
2 significance to you and to your investigation, right?

3 A Some of them, yes.

4 Q And the point is, in the affidavit, you  
5 don't mention anything about a .38 caliber revolver,  
6 do you?

7 A Yes, sir.

8 Q You do mention that?

9 A Yes, sir.

10 Q And I'm talking about in the three pages  
11 that comprise your affidavit?

12 A Yes, sir.

13 Q And you mention the bullets, is that  
14 correct?

15 A I mention a penetrating .38 caliber gunshot  
16 wound.

17 Q But you didn't mention a .38 caliber  
18 revolver, do you?

19 A Well, I don't know specifically about a  
20 revolver as far as in the affidavit, but the caliber  
21 is here in the affidavit.

22 Q Now, so when you got over to the Green  
23 residence on the 16th, what officers were you with?

24 A Special Agent Kim Heffney, Special Agent  
25 Barry Lea, Detective Erich Von Hackney, and Detective

1 Anthony Thompson.

2 Q And you had a still camera or video  
3 cameras?

4 A Still camera.

5 Q And still camera that you used on the  
6 vacuum cleaner?

7 A Yes, sir.

8 Q And nobody was there to let you in, is that  
9 correct?

10 A That's correct.

11 Q You tried to get a key, were unable to get  
12 a key and forced the door, is that right?

13 A Right.

14 Q Now, you said that you picked up this  
15 revolver out of that vacuum cleaner with just your  
16 thumb and forefinger, is that right?

17 A Yes, sir.

18 Q That was to enable someone perhaps sometime  
19 later to see if there were any latent prints on that  
20 gun, is that right?

21 A Yes, sir.

22 Q You handled it by putting it into a bag and  
23 then turning it over to other officers?

24 A Yes, sir.

25 Q That gun, as far as the way the handles and

1 other parts of that gun, looks the same as when you  
2 pulled it out of that vacuum cleaner, is that right?

3 A Best I recall, yes, sir.

4 Q Now, were you the officer who would have  
5 requested any print analysis or would that have been  
6 some other officer that would have done that, if it  
7 were done?

8 A The person who would have done that would  
9 have been the person who prepared the lab submission  
10 sheets. I was not that person, so I think April  
11 Sweat with the SBI did that.

12 Q Now, if you would look at your photo array,  
13 or both photo arrays, please, sir, that you have  
14 earlier testified to --

15 A I don't have them up here.

16 Q Do you have them there?

17 A No.

18 MR. BRITT: The clerk has the one  
19 that was entered into evidence.

20 BY MR. BOWEN:

21 Q I hold before you again State's Exhibit 68,  
22 Mr. Underwood, that which you identified as a photo  
23 array shown to Mr. Clewis Demory?

24 A Yes, sir.

25 Q Now, do you know whether at the time the

1 photograph number three, taken of Mr. Daniel Green,  
2 whether or not he was under arrest when that photo  
3 was taken?

4 A I don't know of my own personal knowledge,  
5 no.

6 Q Mr. Underwood, do you recognize the kind of  
7 garment that Mr. Green is wearing in the photograph?

8 A No, sir.

9 Q Does that not look like the upper part of a  
10 jail jumpsuit to you?

11 A It just looks like a shirt without a  
12 collar.

13 Q Now, that is the style and type of collar  
14 that is used on the orange type jail jumpsuits that  
15 are standard inmate attire at the Robeson County  
16 jail, true?

17 A Best I remember that it was. I haven't  
18 been out there in quite some time.

19 Q Now, you're not used to seeing inmates  
20 dressed in dark turtleneck shirts or sweat clothes,  
21 are you?

22 A Not after they have been there a while.

23 Q All right. Now, for example, photograph  
24 number one is a round, close fitting -- not  
25 turtleneck, but it is a round, close fitting collar,

1 is that correct?

2 A Appears to be.

3 Q And a light garment?

4 A Yes, sir.

5 Q Number two appears to have some type of  
6 necklace or jewelry around his neck, correct?

7 A Yes, sir.

8 Q Now, inmates at the Robeson County jail are  
9 not allowed to have any necklaces or jewelry when  
10 they are in the jail, are they?

11 A I don't know.

12 Q Number four is wearing a round type dark  
13 knit garment with some sort of louvers of some sort  
14 in it?

15 THE COURT: Some sort of what?

16 MR. BOWEN: Louvers.

17 MR. BOWEN: I can rephrase and  
18 ask him if it's some sort of netting.

19 THE COURT: Okay.

20 BY MR. BOWEN:

21 Q Do you see some sort of netting in that?

22 A I don't know what it is, it's a different  
23 color from the darker portion.

24 Q Photograph number eight is distinct,  
25 photographically, from all the other photographs, is

1 it not?

2 A What do you mean?

3 Q Well, it is much less dense, that is, much  
4 lighter than all the other photographs, isn't it?

5 A Yes, sir.

6 Q And the person in number eight has got a  
7 dark garment with a round collar, correct?

8 A Yes, sir.

9 Q And that's not like any garment that you  
10 have seen as standard apparel at the Robeson County  
11 jail, is it?

12 A No, sir.

13 Q And likewise, number seven is wearing a  
14 dark round collar unlike the standard apparel at the  
15 Robeson County jail, correct?

16 A Correct.

17 Q Now, person -- photograph Number 6 shows a  
18 dark garment but a more open collar, is that correct?

19 A Look like it's pushed down to one side.

20 Q Okay. And it is unlike anything that you  
21 normally see worn by inmates at the Robeson County  
22 jail, correct?

23 A Yes, sir.

24 Q And as to Number 5, that individual is  
25 wearing a shirt of some type of round collar but

1 something that apparently has some sort of pattern,  
2 perhaps stripes or other pattern in it, is that  
3 correct?

4 A Correct.

5 Q And you've never seen any inmate normally  
6 wearing that sort of attire in the Robeson County  
7 jail, have you?

8 A No, sir.

9 Q That is an inmate, I'm sorry. Now, by the  
10 time that you showed these photographs to Mr. Clewis  
11 Demory, you knew that Daniel Green was incarcerated,  
12 correct?

13 A Yes, sir.

14 MR. BOWEN: One question if I may  
15 reapproach, Your Honor.

16 THE COURT: Yes, sir.

17 BY MR. BOWEN:

18 Q As to all of these photographs, state on  
19 which of any of the photographs can you distinctly  
20 read the words "Sheriff's Department" at the bottom  
21 of the photograph?

22 A On seven of the eight.

23 Q Well, would you agree that numbers two and  
24 three are the most distinct by far in that regard in  
25 the ability to read the words "Sheriff's

1 Department"?

2 THE COURT: That's argumentive,  
3 that depends on one's perspective and  
4 one's --.

5 BY MR. BOWEN:

6 Q All right. If you had to rank in terms of  
7 these those photographs, which photographs would you  
8 rank as the two clearest?

9 MR. BRITT: Objection.

10 THE COURT: Sustained to the  
11 form.

12 BY MR. BOWEN:

13 Q You stated that in your selection of  
14 photographs for that photographic array, that at the  
15 time you did it, you've testified here in court  
16 today, the only thing that you knew was that these  
17 were black males, is that correct?

18 A As far as a description of the suspect?

19 Q Yes, sir. The only thing that you knew is  
20 that they were black males?

21 A Young black males I believe is what I  
22 testified to.

23 Q You did a written synopsis of your  
24 investigation shortly after presenting those  
25 photographs to Mr. Clewis Demory, didn't you?

1                   MR. BRITT:  Objection.  Can we  
2                   clarify which investigation Mr. Bowen is  
3                   referring to?  We're getting intermixed  
4                   between the Jordan investigation and Clewis  
5                   Demory investigation.

6                   THE COURT:  Mr. Bowen, I think  
7                   the easy way to deal with it, if you've got  
8                   a date on the synopsis, refer to it by  
9                   date.

10                  MR. BOWEN:  I don't, and that's  
11                  the problem.

12                                 (Defense Exhibit 20 was  
13                                 marked for identification.)

14  BY MR. BOWEN:

15                  Q        Let me ask you simply this:  Look, if you  
16                  will, at Defendant's Exhibit Number 20 and see if you  
17                  recognize that document?

18                  A        Yes, sir, I do.

19                  Q        What is that document?

20                  A        It is a photostatic copy of the synopsis  
21                  that I prepared for this incident.

22                  Q        Do you have the original of that document  
23                  in your materials?

24                  A        Not the original, no, sir.

25                  Q        Let me ask you, did you state for purposes

1 of your synopsis that the only thing that you knew  
2 before you put together the photo array was that  
3 Mr. Clewis Demory had identified some dark skinned  
4 individuals?

5 A Could you repeat the question?

6 Q Did you state for purposes of making your  
7 synopsis that Mr. Clewis Demory had told you only  
8 that your understanding was -- strike that. Did you  
9 decide and place into your synopsis that the  
10 individuals that should comprise the photo array were  
11 dark skinned individuals, is that right?

12 A That is what is in the synopsis, yes, sir.

13 Q And you wrote that in your synopsis?

14 A I did.

15 Q And at the time, and can you tell us the  
16 time that you wrote that synopsis?

17 A October the 20th, 1993.

18 Q That was after you had talked to Mr. Clewis  
19 Demory?

20 A Yes, sir.

21 Q How many times?

22 A Once about the details the second time, the  
23 identifies of the weapon, and the third time I  
24 returned the ammunition to him.

25 Q So instead of saying black males, as you

1 say here in court today, you said back in October of  
2 1993 dark skinned males, correct?

3 A Yes, sir.

4 Q Yet, when you put together the photo array,  
5 you put a together an array with exclusively African  
6 American or black males, eight of them, correct?

7 A That's correct.

8 Q You did not put together an array with  
9 eight Hispanics, did you?

10 A No, sir.

11 Q Did not put together eight native  
12 Americans, did you?

13 A Well, some of the individuals in the other  
14 lineup were native Americans.

15 Q And the photo density on those individuals  
16 varied considerably, did it not, in the other array  
17 with --

18 THE COURT: What do you mean by  
19 photo density, sir?

20 MR. BOWEN: Lightness and  
21 darkness in photograph, sir.

22 THE COURT: Okay.

23 BY MR. BOWEN:

24 Q I'm going to show you State's Exhibit  
25 Number 69. Mr. Underwood, this is the array that you

1 put together of what you contend to be native  
2 Americans?

3 A No, sir. That's what I contend to be light  
4 skinned males.

5 Q Okay. So now you've got a combination of  
6 several races in State's Exhibit Number 69?

7 A I believe some of those individuals were  
8 white males and some were Indian males.

9 Q Well, now, if you put together several --  
10 if you allowed several races to be represented among  
11 what you call white males, I'll ask you why you did  
12 not allow several races to be represented among those  
13 persons which you put together on State's Exhibit  
14 Number 68 which you called at the time dark skinned  
15 males?

16 MR. BRITT: Objection, that's not  
17 what he said.

18 THE COURT: I'm not sure what he  
19 said.

20 MR. BOWEN: Let me rephrase a  
21 little bit at a time.

22 BY MR. BOWEN:

23 Q As I understand it, State's Number 69 was  
24 an exhibit that you put together that you wanted to  
25 be representative of some light skinned males?

1           A       Correct.

2           Q       In among these light-skinned males, you  
3 placed a picture of who you knew to be Mr. Demery,  
4 that is, not -- that is, the defendant Larry Demery?

5           A       Correct.

6           Q       And when you put these individuals together  
7 on this photo array, you did not confine your  
8 selection only to native American persons, is that  
9 right?

10          A       That's correct.

11          Q       You put together an array of some folks who  
12 were native American, some folks who were white or  
13 European Americans, correct?

14          A       There are some white males in there, there  
15 are some Indian males in there. I can't explain why  
16 it was done that way.

17          Q       Well, I'm just asking you about what you  
18 did?

19          A       Yes, sir.

20          Q       Now, but -- so 69 is what you maintain is a  
21 fair representation of light skinned males?

22          A       Yes, sir.

23          Q       But now then, you also say, according to  
24 your report, that is, according to your synopsis made  
25 sometime in October of '93?

1           A     Yes, sir.

2           Q     That as to State's Exhibit 68, you set  
3 about to put together an array with dark skinned  
4 males?

5           A     Yes, sir.

6           Q     But now, as to the dark skinned males, you  
7 picked only African Americans, that is, black males,  
8 is that correct?

9           A     Dark skinned males, yes, sir.

10          Q     Now, between the time that you wrote in  
11 your synopsis that you were putting together an array  
12 of dark skinned males and today, you have changed  
13 that testimony to where now today you're saying you  
14 put together an array of black people, is that right?

15          A     Well, these individuals are black people.

16          Q     Yes, I know that. Mr. Demory identified to  
17 you a dark skinned male, and that's why you put it  
18 down that way in your synopsis, correct?

19          A     Mr. Demory identified to me a black male.

20          Q     Well, if Mr. Demory told you that the  
21 individual was black, why didn't you put it down that  
22 way in your synopsis?

23          A     At the time the synopsis was prepared,  
24 there were plans to send the photographic lineups to  
25 Rhode Island to be shown to four victims of an armed

1 robbery that occurred July 4th, 1993 down at  
2 Rowland. Best I recall, their description of the two  
3 assailants, or the two suspects, were a light skinned  
4 male and a dark skinned male, and that's why I  
5 referred to them in the synopsis as pertaining to the  
6 photographic lineups as one lineup being light  
7 skinned males and one lineup being dark skinned  
8 males. The primary purpose of this lineup was to  
9 show in Rhode Island, not this incident.

10 Q So when you knew that that array was going  
11 to Rhode Island, you assumed that dark skinned male  
12 could be nothing but a black male, is that correct?

13 A I don't recall what I actually assumed.

14 Q Would it be fair to say that in your view,  
15 that photo array of eight persons, the same one that  
16 was shown to Clewis Demory, would serve to be a fair  
17 depiction of an array of black males or an array of  
18 dark skinned males depending on the circumstances?

19 A Mr. Bowen, what I can tell you is that in  
20 my opinion, that this photographic lineup is a very  
21 fair and accurate lineup of black males who, as best  
22 we could do by going through the files, come up with  
23 photographs of people that closely resemble  
24 Mr. Green. There was no way to find eight people who  
25 looked identical to Mr. Green or who were wearing the

1 exact same clothing of Mr. Green when you put those  
2 two combinations together. That's the best we could  
3 do with the photographs that were on file.

4 Q How many times have you had Mr. Clewis  
5 Demory in a courtroom or anywhere in the courthouse  
6 where he had the opportunity to look upon Mr. Daniel  
7 Green, also known as U'Allah, in person?

8 A I've never had him in here.

9 Q All right. How many times, to your  
10 knowledge, has he been in a courtroom or anyplace in  
11 the courthouse where he could see Mr. Green live  
12 other than today?

13 A I have no idea.

14 THE COURT: Mr. Bowen, I don't  
15 mean to interject, but I'm simply trying to  
16 understand your point for the purposes of  
17 where we are. Is it your contention that  
18 it would have been a nonsuggestive photo  
19 array, for example, to put in a dark  
20 skinned European male? For example,  
21 someone of Italian extraction or someone of  
22 Arab extraction? Is it your opinion that  
23 that would have been less suggestive than  
24 what I think you're contending this was in  
25 terms of suggestiveness?

1                   MR. BOWEN:  What I'm looking for,  
2                   Your Honor, is consistency.  What I say is  
3                   inconsistent is to go in and equate a light  
4                   skinned male with several races of persons  
5                   and suggest that the -- if you will, the  
6                   Larry Demery photo array is fair, when you  
7                   do not mix at all with regard to the races  
8                   in the other --

9                   THE COURT:  Would the defendant's  
10                  position through counsel have been that it  
11                  was inherently suggestive, inherently  
12                  prejudicial, to mix photographs of this  
13                  defendant with, say, for example, an  
14                  Italian American, an Arab American, a  
15                  Hispanic American?  Would you have then  
16                  taken the position that there's no way that  
17                  can be anything other than suggestive  
18                  because of the differences in races under  
19                  these circumstances?

20                  MR. BOWEN:  Well, again, I'm not  
21                  dealing with that, but I think you'll see  
22                  the consistency -- inconsistency between  
23                  mixing the races in one set and not mixing  
24                  the races in the other.

25                  THE COURT:  The objective in a

1 lineup or in a -- a corporeal lineup or in  
2 a photo array to attempt to obtain  
3 photographs of folks who closely resemble  
4 someone who is a suspect.

5 MR. BOWEN: Yes, and moreover,  
6 persons who are, if they all are wearing  
7 street -- if they should all either be  
8 wearing street clothes.

9 THE COURT: I'm not talking about  
10 that point. I'm talking about, it seems to  
11 me that the officers erred by not  
12 including, for example, what folks might  
13 describe as males with a swarthy  
14 complexion, dark complexion, Mediterranean  
15 types, Hispanic types to some extent.  
16 Arabs to some extent or folks of Middle  
17 Eastern extraction, but I find that  
18 somewhat difficult to comprehend, because  
19 on the other hand, I would suspect that  
20 would be the ideal basis to argue  
21 suggestiveness.

22 MR. BOWEN: It's not when you  
23 consider the fact that there are  
24 inconsistencies in his report that I have  
25 extracted, and he has admitted writing a

1 synopsis at one point that his information  
2 was that it was a dark skinned male.

3 Now, I didn't realize until he talked  
4 about, it's not clear from his synopsis  
5 that he's talking about a whole different  
6 set of persons in another state and all  
7 that. I think reasonably you can read that  
8 report and think that that was what he was  
9 told by Clewis Demory. I --

10 THE COURT: Even when you knew  
11 that the defendant's picture was contained  
12 in that array?

13 MR. BOWEN: I mean, I know his  
14 picture is contained in the array --

15 THE COURT: If you know that, how  
16 can you possibly argue that it would have  
17 been more appropriate to include folks who  
18 are nonAfrican American and that that would  
19 have been less suggestive than what was  
20 done under the circumstances?

21 MR. BOWEN: Because if  
22 Mr. Underwood's synopsis is correct, he was  
23 talking about merely a dark skinned male,  
24 having to do with the Clewis Demory matter,  
25 then that suggests that Mr. Demory didn't

1 have any idea of the race of the person.  
2 And if you don't have any idea of the race  
3 of the person, then it would only be fair  
4 to include several races. I don't know  
5 what Mr. Demory would say. He testified he  
6 wouldn't know this person from walking --

7 THE COURT: Did Clewis Demory  
8 testify to anything other than there was a  
9 black male and another individual whom he  
10 cannot identify by race?

11 MR. BOWEN: But testimony  
12 sometimes changes, and there's still that  
13 sentence in Mr. Underwood's report that it  
14 was a dark skinned male --

15 THE COURT: Then the appropriate  
16 question, is that your language or did you  
17 get that from Clewis Demory? That would be  
18 germane.

19 MR. BOWEN: I think so, it was in  
20 the Clewis Demory investigation, I think it  
21 was reasonable to conclude it had to do  
22 with that. Now, he's saying it had  
23 something to do with some other state, some  
24 other matter. I'm sorry, I see your point,  
25 but I think as long as I came forward with

1           this investigation it was appropriate to  
2           assume --

3                   THE COURT: I'm simply trying to  
4           understand, that's all. Mr. Britt.

5                   MR. BRITT: May I be heard.

6                   THE COURT: Yes.

7                   MR. BRITT: In regard to Mr.  
8           Bowen's questioning, I find it very  
9           misleading to the Court in light of the  
10          fact that they know and they have the  
11          information in regard to the investigation  
12          that was done on July 4th 1993 from the  
13          hotel robbery that involved the Rezendes  
14          and Tedeschi families and they have in  
15          their possession.

16                   THE COURT: They may have it.  
17          Whether they know it is another thing.

18                   MR. BRITT: And they also know  
19          the same lineups, the lineups they are  
20          questioning Mr. Demory now were used for  
21          identification proposes with those  
22          individuals, and they know the results of  
23          those identifications.

24                   THE COURT: I was just trying to  
25          understand.

1 MR. BRITT: I understand. I'm  
2 trying to do the same thing.

3 THE COURT: Let's go forward.  
4 Didn't mean to make the interruption. You  
5 may continue.

6 BY MR. BOWEN:

7 Q Thank you. Mr. Underwood, you obtained as  
8 a part of your report a medical report from  
9 Southeastern General Hospital?

10 A Yes, sir.

11 Q And the medical report had to do with  
12 Mr. Clewis Demory, correct?

13 A I'm sorry.

14 Q The medical report had to do with the  
15 treatment of Mr. Clewis Demory after the incident  
16 we've been talking about here?

17 A Yes, sir

18 (Defense Exhibit 21 was  
19 marked for identification.)

20 BY MR. BOWEN:

21 Q Now, you have seen Defendant's Exhibit 21,  
22 haven't you?

23 A Yes, sir.

24 Q And that was obtained by you pursuant to a  
25 medical release by Mr. Clewis Demory, you got it from

1 Southeastern General Hospital, is that correct?

2 A That's correct.

3 Q And has to do with the medical treatment of  
4 Mr. Clewis Demory, correct?

5 A Yes, sir.

6 Q And who was his original treating  
7 physician?

8 A According to this document, Dr. Frederik  
9 Tolin.

10 Q Now, after obtaining State's Exhibit 21,  
11 you've kept that in the care, custody, and control of  
12 your records, have you not?

13 A Yes, sir.

14 Q It was released to you by the hospital?

15 A Yes, sir.

16 Q Now, do you see a place on the report where  
17 Mr. Tolin, or Dr. Tolin reports on what is put down  
18 here as a 63, but I believe that's our page marking  
19 regarding the gunshot wounds, under his designation  
20 "impression"?

21 A Yes, sir.

22 Q How many gunshot wounds does he talk about?

23 A He mentions a gunshot wound to the right  
24 neck and right chest.

25 Q Okay. Any others?

1           A       On page one it says several gunshots  
2 wounds.

3           Q       You don't know how many several means, do  
4 you?

5           A       No, sir.

6           Q       What's a hematoma?

7           A       I have no idea.

8                   THE COURT:   A blood clot.

9                   MR. BOWEN:   Sir?

10                  THE COURT:   It's a blood clot.

11                  MR. BOWEN:   I was wondering if he  
12 knew.

13                  THE WITNESS:  I don't.

14 BY MR. BOWEN:

15           Q       Another point in the report, it mentions  
16 two wounds and two hematomas, doesn't it?

17           A       Ask me that question again.

18           Q       All right.  I'm just showing you a  
19 different page and asking you how many wounds does  
20 that page talk about?

21                   THE COURT:   Are you  
22 characterizing a hematoma as a wound,  
23 Mr. Bowen?

24                   MR. BOWEN:   I don't know, I'm not  
25 a doctor.

1 MR. BRITT: He's not either.

2 MR. BOWEN: Report mentions  
3 hematoma, giving him the benefit of the  
4 doubt, I thought I would talk about it.

5 BY MR. BOWEN:

6 Q On the page I just pointed you to, do you  
7 find anything on that that indicates how many wounds  
8 we're talking about?

9 A Well, again, I'm not a doctor and don't  
10 know what some of the medical terminology means. I  
11 see a few places on here where the word "wound" is  
12 mentioned. I understand the word wound. But  
13 hematoma and all this stuff, I don't.

14 Q There's no mention of any wounds in that  
15 report, is there, sir?

16 THE COURT: For what purpose is  
17 this being offered, sir?

18 MR. BOWEN: As I understand it,  
19 we're going to go into ballistics,  
20 ballistics in the wall. There has been  
21 some talk and some cross-examination about  
22 just how Mr. Demory was wounded. It was a  
23 serious question, as I understand, it was  
24 various analysis, here are some --

25 THE COURT: For the purposes of

1 the 404(b) motion, why is it being  
2 offered?

3 MR. BOWEN: In the first place,  
4 they are wanting to make a comparison with  
5 the Demory matter and the Jordan matter.  
6 There is one shot in the Jordan matter.

7 THE COURT: I think that's  
8 where -- I don't want to interrupt, I'm  
9 just trying to keep us on track. Their  
10 theory, as I understand their theory, is  
11 the Demory matter is an instrumentality,  
12 the .38 caliber taken during the Demory  
13 robbery is connected to matters involved in  
14 the allegations before the Court,  
15 specifically, the conspiracy to commit  
16 robbery with a dangerous weapon, robbery  
17 with a dangerous weapon and first degree  
18 murder of James Jordan.

19 Their connection, their nexus under  
20 404(b), as I understand it, is the  
21 instrumentality from the Demory incident  
22 and the Jordan incident, that  
23 instrumentality being the .38 caliber.

24 MR. BOWEN: Except that .38  
25 caliber, even under their best

1 presentation, was not the instrumentality  
2 with which the perpetration was only the  
3 fruit of that at best.

4 THE COURT: But in order to  
5 explain the defendant's possession of that  
6 instrumentality, they are bringing in the  
7 Demory matter.

8 MR. BOWEN: Yes, sir, but we're  
9 going to argue that that can logically be  
10 done in the other ways. If they are  
11 saying, if the only reason they are  
12 bringing that in is to identify the source  
13 of the gun, then they can bring Mr. Demory  
14 forward to identify that gun.

15 THE COURT: How can he identify  
16 the gun without explaining the  
17 circumstances under which the gun was taken  
18 from him.

19 MR. BOWEN: I thought of that,  
20 Your Honor. Mr. Demory can say it is my  
21 gun, I last saw it on a certain date. In  
22 other words, you avoid the potential  
23 prejudice that 403 requires you --

24 THE COURT: I understand.  
25 There's an appropriate time I don't mean to

1 cut you off when argument is appropriate.  
2 I understand, I think, what you're saying.  
3 Let me allow you to go ahead and complete  
4 your examination. I was trying to figure  
5 out how your line of questioning about  
6 wounds and hematoma has anything to do with  
7 404(b).

8 MR. BOWEN: I haven't heard the  
9 State cone it down, Your Honor, and say  
10 that is the only argument they are going to  
11 make. If they are going to argue  
12 similarities of these crime, 1988 case,  
13 State versus Green, ironically, and that is  
14 the case after which project cases deals  
15 with similarities.

16 THE COURT: This is  
17 Imwinkelriell. He writes prolifically about  
18 evidentiary matters, commonly accepted by  
19 courts throughout this country. He's one  
20 of the leading experts in issues related to  
21 evidence. Let me read the following to  
22 you.

23 In the second place, talking about  
24 similar crimes, similar crimes is  
25 imprecise. The acts need not be similar to

1 the charge crime to be admissible under  
2 this theory. The litmus test is logical  
3 relevance rather than similarity. And the  
4 act can be relevant even if it is in no way  
5 similar to the crime charged.

6 Now, this is his language. Suppose  
7 that the defendant is charged with murder.  
8 The killer dropped a pistol at the crime  
9 scene. To identify the defendant as the  
10 murderer, the prosecution can introduce  
11 evidence that the defendant had stolen that  
12 pistol a month prior to the robbery.

13 Sound familiar?

14 MR. BOWEN: Yes, sir. However,  
15 again, when I read State versus Green --

16 THE COURT: You're talking about  
17 one -- I recognize that the general  
18 principle is that when you have under the  
19 heading of similarity there has to be some  
20 sort of signature, there has to be some  
21 sort of characteristic unique to the  
22 offenses involved. But -- similarity is  
23 much broader than that.

24 MR. BOWEN: You're saying they  
25 may go on a different -- on a different

1 category than that. However --

2 THE COURT: May I read something  
3 to you?

4 MR. BOWEN: Yes, sir.

5 THE COURT: I don't mean to  
6 interrupt. The test for 404(b) is as  
7 follows: Is the extrinsic offense evidence  
8 relevant to an issue other than character,  
9 because 404(b) prohibits its introduction  
10 if it's offered for character purposes  
11 only. That's the first step.

12 If it is, the second step is, does the  
13 extrinsic evidence -- offense evidence  
14 possess probative value that is not  
15 substantially outweighed by his prejudice,  
16 404(b) balancing. First proponent of the  
17 evidence has the burden of showing it has  
18 some logical relevance other than to prove  
19 character for which is prohibited under  
20 404(b).

21 If it meets that burden then the  
22 second step is the State has to show that  
23 the need, the proponent has to show that  
24 the need for that evidence outweighs any  
25 danger or risk of -- substantially

1           outweighs any risk of undue prejudice. And  
2           in consideration of that second issue, the  
3           Court has to take into account, are there  
4           other means, alternative means that the  
5           State can get this evidence in that don't  
6           pose the same threat or risk of prejudice  
7           or substantial risk of prejudice.

8           Now, your argument is, you're willing  
9           to let them get it in a little bit but not  
10          all. That's not what the law says.

11          MR. BOWEN: I'm not saying I'm  
12          willing to let them get in anything. I'm  
13          saying if you're talking about another  
14          avenue whereby dictates of 403 can be met,  
15          and -- see, they have come in here and tell  
16          you all we want to do just make the  
17          identification of this gun, where it came  
18          from and who had it.

19          THE COURT: And if they are  
20          entitled to do that, they are entitled to  
21          explain the circumstances. And we've got  
22          separate considerations, because one is  
23          does it come in during their case in  
24          chief? It may not. The Court may say the  
25          risk is too substantial at this point. But

1 if it doesn't come in during their case in  
2 chief, does it come in in rebuttal to any  
3 evidence that may be offered by the  
4 defendant.

5 And if it doesn't come in in rebuttal  
6 and doesn't come in during their case in  
7 chief, can it come in under another form as  
8 corroborative evidence, if, for example, a  
9 person purports to be an accomplice  
10 testifies and then in corroboration of that  
11 accomplices, testimony is offered.

12 MR. BOWEN: But the 403 balancing  
13 test has got to be done, and we're simply  
14 going to argue that the prejudicial value  
15 outweighs the probative value and there are  
16 other ways to establish the same thing, and  
17 I think it would be quite different if you  
18 had a situation where Mr. Demory had come  
19 in and made an incourt identification of  
20 someone, we are far from that.

21 Mr. Britt promises that that is to  
22 come in view of what he said thus far. I  
23 sort of doubt it. When you don't have  
24 that, and you have serious questions about  
25 identification, it seems to me that you

1 have to crank that kind of concern into  
2 your 403 balancing.

3 THE COURT: That's part of the --  
4 part of the balancing test is what is the  
5 strength, what is the relative value of the  
6 evidence being offered.

7 MR. BOWEN: I think we would kid  
8 ourselves --

9 THE COURT: I don't want to get  
10 into an argument now. I just want to find  
11 out where we were going. I'm going to give  
12 you a full opportunity to argue until your  
13 heart's content at the appropriate time. I  
14 was just simply trying to find out how  
15 hematomas had anything to do with 404(b).

16 MR. BOWEN: In the interest of  
17 completeness, that record that he holds  
18 there, Dr. Tolin on one page says what I  
19 think could be concluded by anybody that  
20 there were just two wounds.

21 Now, there's some question about how  
22 many times Mr. Demory was shot. And one of  
23 the things I understand, at least they have  
24 given us ballistics reports to suggest they  
25 have done some test on the bullet and the

1 wall. There is some serious questions  
2 about how many firings occurred.

3 Now, if Dr. Tolin at one point says  
4 two wounds, and that seems to be the  
5 clearest point, I do see some other areas  
6 where if the District Attorney gets him on  
7 cross, he's going to look at another area  
8 of that report and say, well, there's a  
9 couple of wounds and there's a couple of  
10 hematomas, and I can see the District  
11 Attorney suggesting there's your three or  
12 four wounds instead of two, and I just like  
13 to get it out up front --

14 THE COURT: I don't know anybody  
15 that's been shot and only suffered a  
16 hematoma.

17 MR. BOWEN: Okay. This resolves,  
18 that completely resolves it.

19 THE COURT: Unless shot with a BB  
20 gun. I'm not a medical expert.

21 MR. BOWEN: That's good, I can  
22 get off of it now.

23 THE COURT: Why don't we take  
24 ten.

25 MR. BRITT: I was going to

1 suggest that.

2 THE COURT: Let's take ten, and  
3 folks, I don't mean to impede anybody's  
4 rights to go forward in this hearing.  
5 We've got a jury waiting, and I would like  
6 to get this matter resolved as quickly as  
7 possible so we can go forward with the jury  
8 and presentation of evidence. It's not my  
9 intent to impinge on anybody's right to  
10 inquire. I simply ask that we keep our  
11 inquiry limited to matters before the  
12 Court. But you folks do what you think is  
13 appropriate and I'll rule based on what I  
14 think is appropriate. Why don't we take  
15 about 15 minutes.

16 THE BAILIFF: Court stands at  
17 ease for approximately 15 minutes.

18 (Brief recess.)

19 THE COURT: If you'll retake the  
20 stand, please. Let the record reflect all  
21 counsel are present, the defendant is  
22 present in open court. We are continuing  
23 in the absence of the jury. Mr. Bowen.

24 BY MR. BOWEN:

25 Q Mr. Underwood, you don't know of any print

1 analysis that would link the weapon in question,  
2 State's Exhibit 59-A with anybody, do you?

3 MR. BRITT: Objection.

4 THE COURT: Overruled. You may  
5 answer if you know.

6 THE WITNESS: I do not.

7 BY MR. BOWEN:

8 Q How many serial numbers were on that  
9 weapon, State's Exhibit 59-A?

10 A One.

11 Q One. It had one when you got it, right?

12 A Yes, sir, I remember there was one.

13 Q You looked over the weapon, didn't you?

14 A At that time, or now?

15 Q Well, at that time, when you first got it  
16 back in 1993?

17 A Yes, sir.

18 Q One serial number?

19 A May have been more than one sets of  
20 numbers, one set I recorded as being.

21 THE COURT: I'm sorry, for the  
22 purposes of clarification, is the question,  
23 were there different serial numbers on  
24 there or was the one serial number on there  
25 more than one time?

1 MR. BOWEN: I'm asking, did he  
2 find one serial number or more than one  
3 different serial number?

4 THE COURT: Do you understand,  
5 sir?

6 THE WITNESS: I think so.

7 THE COURT: Okay.

8 MR. BOWEN: And I understand your  
9 answer was you found only one serial number  
10 in one place and it's was one number,  
11 correct?

12 THE WITNESS: No, sir. I said  
13 that -- I recorded one serial number, I  
14 said there may have been more than one set  
15 of numbers.

16 MR. BOWEN: But they would have  
17 been the same numbers.

18 THE WITNESS: Without looking at  
19 it closely --

20 THE COURT: Would you like the  
21 opportunity?

22 BY MR. BOWEN:

23 Q You mean you don't know whether the gun had  
24 more than one serial number on it when you got it in  
25 1993?

1           A       I recorded the number that I believed to be  
2 the serial number off of that weapon.

3           Q       And you looked over that weapon for any  
4 serial numbers that were on there, is that correct?

5           A       I didn't break open the cylinder. I didn't  
6 do a very thorough examination of the weapon because  
7 I did not want to damage the possibility of any  
8 latent prints that may exist.

9           Q       But you looked at the exterior of the  
10 weapon?

11          A       Briefly, yes.

12          Q       If there had been more than one serial  
13 number, you would have written it down, wouldn't you  
14 have?

15          A       I may have, I may not have. I recorded  
16 what I believed was the serial number. Some guns  
17 have more than one sets of numbers. Some have a  
18 model number, some have other numbers on there. I  
19 believe it varies from manufacturer to manufacturer  
20 of weapons.

21          Q       Do you know whether that serial number is  
22 consistent with a serial number recorded by  
23 Ms. Aprille Sweatt?

24          A       I do not know what she recorded.

25                   THE COURT: Anything further?

1 MR. BOWEN: That's all.

2 THE COURT: Mr. Britt.

3 REDIRECT EXAMINATION

4 BY MR. BRITT:

5 Q When you put together the photographic  
6 arrays that have previously been marked and  
7 identified, what was your purpose in putting those  
8 arrays together?

9 Let me rephrase the question. Were there  
10 certain characteristics that you were looking for in  
11 each of the photographs that you placed in each of  
12 the photographic arrays?

13 A Characteristics?

14 Q You had a known photograph of Mr. Green?

15 A Yes, sir.

16 Q And in picking out the photographs that  
17 were included in the photographic array that included  
18 Mr. Green's picture, were there certain  
19 characteristics that you were looking for in terms of  
20 placing those other photographs in that array with  
21 Mr. Green's?

22 A We were looking for individuals who closely  
23 resembled his appearance.

24 Q Can you explain why in your synopsis you  
25 referred to dark skinned males?

1 A Yes, sir.

2 Q Please do.

3 A That reference in the synopsis about dark  
4 skinned males was due to the fact that the Rowland  
5 motel robbery that occurred on July the 4th, 1993  
6 involved four victims from Rhode Island. And the  
7 information known to me at that time was that those  
8 individuals described the two suspects as one of  
9 those individuals being a light skinned male and one  
10 being a dark skinned male. This photographic lineup  
11 was prepared for the mere purpose of sending it to  
12 Rhode Island to show to those individuals to see if  
13 they recognized anyone. And that's why it was  
14 referred to in that manner.

15 Q And at the time you prepared the  
16 photographic array for the Rowland motel robbery of  
17 July 4th, 1993, you had not yet had an opportunity to  
18 talk with Clewis Demory, had you?

19 A No, sir.

20 Q And when you prepared the photographic  
21 arrays, you were aware that Mr. Demory, in the course  
22 of that robbery, his .38 caliber Smith & Wesson  
23 revolver had been stolen, is that correct?

24 A Yes, sir.

25 Q And you were aware that a .38 Smith &

1 Wesson revolver was seized in Mr. Green's trailer on  
2 August the 16th, 1993?

3 A Yes, sir.

4 Q And in the search warrant, the affidavit  
5 that you prepared, the issuance of the search warrant  
6 that was used to search the trailer on August the  
7 16th, 1993, you included information that you had  
8 learned in regard to the investigation involving  
9 Mr. Jordan's death to establish probable cause for  
10 the issuance of the search warrant, did you not?

11 A Yes, sir.

12 Q In your affidavit that was dated August the  
13 16th of 1993, part of that information that you had  
14 received was that the -- Dr. Sexton, who conducted  
15 the autopsy, had found a .38 caliber gunshot wound to  
16 the body that was -- he performed the autopsy on in  
17 South Carolina, is that correct?

18 A That's correct.

19 Q Also included in your affidavit of probable  
20 cause was information in regard to a 1992 Lexus 400  
21 automobile that had been discovered in Cumberland  
22 County on August the 5th of 1993, is that correct?

23 A Yes, sir.

24 Q And you also included information that the  
25 body discovered in South Carolina was identified as

1 James Jordan on August the 13th of 1993, is that  
2 correct?

3 A Yes, sir.

4 Q Included in your affidavit for probable  
5 cause was information that was received from Larry  
6 Martin Demery involving the death of James Jordan,  
7 was it not?

8 A Yes, sir.

9 Q One of the items that you were searching  
10 for was a .38 caliber gun?

11 A Yes, sir.

12 Q You were looking for a wedding band?

13 A Yes, sir.

14 Q And you were looking for a wedding band  
15 because that was based on information that Mr. Demery  
16 had provided that the wedding band was last seen at  
17 the defendant's trailer?

18 A That's correct.

19 Q You were looking for a video camera?

20 A Yes, sir.

21 Q Information in the Rowland motel robbery  
22 that you had received included the fact that a video  
23 camera was stolen?

24 A That's correct.

25 Q You were looking for a camera, in addition

1 to the video camera, you were looking for another  
2 type of camera?

3 A Yes, sir.

4 Q That was information that was received that  
5 a camera was stolen during the Rowland motel robbery  
6 on July the 4th?

7 A Yes, sir.

8 Q You were looking for video cassette tapes,  
9 is that correct?

10 A Yes, sir.

11 Q And that was based upon information that  
12 had been received from an individual that you  
13 identify in the affidavit as a female friend of  
14 Daniel Green?

15 A Yes, sir.

16 Q And that female friend of Daniel Green,  
17 according to your affidavit, told that you Mr. Green  
18 was wearing a Chicago Bulls NBA Championship watch as  
19 well as two or three other rings each time she had  
20 seen him, including the night of August 13th of 1993?

21 A That's correct.

22 Q And you were also looking for proceeds or  
23 instrumentalities of a crime?

24 A That's correct.

25 Q When you said you were looking for

1 instrumentalities of a crime, what do you mean by  
2 that, or what did you mean by that in your affidavit?

3 A Anything used in the commission of a crime,  
4 before, during, or after.

5 Q You testified that the photo arrays were  
6 prepared to be submitted for possible identification  
7 by the two couples in Rhode Island who were robbed on  
8 July 4th, 1993?

9 A Yes, sir.

10 Q To your knowledge, were those individuals  
11 given an opportunity to view the photographic arrays  
12 that you prepared?

13 A Yes, sir.

14 Q And to your knowledge, were any  
15 identifications made by the individuals in Rhode  
16 Island?

17 A Best I recall, yes.

18 Q And in the photographic arrays that were  
19 submitted for identification procedures in Rhode  
20 Island, photograph number three on State's Exhibit  
21 Number 68 was a photograph of Mr. Green, was it not?

22 A Yes, sir.

23 Q And photographic array, State's Exhibit  
24 Number 69, photograph number eight, was Mr. Demery?

25 A That's correct.

1 Q And to your knowledge, were both Mr. Demery  
2 and Mr. Green identified by the individuals in Rhode  
3 Island?

4 MR. BOWEN: Object.

5 THE COURT: For the purposes of  
6 where we are right now, the objection is  
7 sustained.

8 MR. BRITT: Your Honor it's my  
9 contention he opened the door on this.

10 THE COURT: I understand that.  
11 But folks, we're not going to miss a step  
12 in this process in terms of establishing or  
13 not establishing whether 404(b) matters  
14 come in. I understand what you're trying  
15 to do, I understand you've got an argument  
16 that the door was opened, but for the  
17 purposes of these proceedings, we're going  
18 to go through every hoop before I admit the  
19 evidence.

20 MR. BRITT: I don't have any  
21 other questions.

22 THE COURT: Anything further?

23 MR. BOWEN: One area.

24 BY MR. BOWEN:

25 Q Mr. Underwood, I understand that you put

1 together a photographic array, which is State's  
2 Exhibit Number 71, primarily and exclusively to show  
3 to some persons in Rhode Island, is that correct,  
4 that was your initial purpose?

5 A You mean State's Exhibit 68 and 69?

6 Q Well, okay, I'm sorry, I was reading off  
7 our sheet. Which is the one of Green, 69?

8 A 68.

9 Q 68 is Green. All right. Did you put  
10 together 68, State's Exhibit Number 68 for the photo  
11 array of Daniel Green, did you put it together for  
12 that specific purpose of showing it to somebody in  
13 Rhode Island?

14 A That was the primary purpose but not the  
15 sole purpose.

16 Q But now when you did it you had no -- you  
17 put that array, Number 68, together solely on the  
18 input that you had from the folks in Rhode Island,  
19 correct?

20 A No, sir.

21 Q Well, you intended at that time only to  
22 show it to the folks in Rhode Island, didn't you?

23 A No, sir.

24 Q Well, did you have a description at that  
25 time from anybody other than the folks at Rhode

1 Island when you put it together?

2 A The vague description from Mr. Clewis  
3 Demory.

4 Q But --

5 MR. BOWEN: That's all, Your  
6 Honor.

7 THE COURT: Anything further,  
8 folks? Mr. Britt?

9 MR. BRITT: No, sir.

10 THE COURT: May Mr. Underwood be  
11 released? May he step down at this time?

12 MR. BOWEN: He can go.

13 THE COURT: Any further showing?

14 MR. BRITT: Yes, sir, at this  
15 time we call Larry Martin Demery. If we  
16 can have just a minute.

17 THE COURT: Folks, while we're  
18 waiting for Mr. Demery to come in, view the  
19 following case, State versus McClain, 1972  
20 case, but it is cited as being applicable  
21 under Codified Rule 404(b). 282 NC 357,  
22 193 Southeast Second, 108. And State  
23 versus Bishop, 1977 case also cited as  
24 being applicable under the Codified 404(b),  
25 Rule 404(b), 293 NC 234; 235 Southeast

1 Second, 214. Both of those cases deal with  
2 possession of instrumentalities s from one  
3 offense being used in prosecution for  
4 another.

5 MR. BRITT: Can you give me the  
6 page number for McClain.

7 THE COURT: 282 357. Bishop is  
8 293 84. And if you folks both shepardize  
9 those cases for me, please.

10 MS. BERRY:: Yes, sir.

11 THE COURT: The pertinent  
12 headnotes.

13 MS. BERRY:: I'm sorry?

14 THE COURT: Shepardize the  
15 pertinent headnotes.

16 MS. BERRY:: Yes, sir.

17 THE COURT: Also, let me give you  
18 another cite. I think McClain applies to this  
19 situation, as well. To corroborate  
20 testimony of a purported accomplice.

21 Mr. Demery if you'll come up to the  
22 witness stand. Place your left hand on the  
23 Bible, please. Raise your right hand and  
24 face Ms. Gaines, please.

25 LARRY MARTIN DEMERY,

1 being first duly sworn was examined and testified as  
2 follows:

3 DIRECT EXAMINATION

4 THE COURT: You can have a seat,  
5 sir. And let the record reflect that  
6 present at this time are counsel for  
7 Mr. Larry Martin Demery, Mr. John Campbell,  
8 and Mr. Hugh Rogers.

9 Folks, out of an abundance of  
10 precaution, I don't believe there are any  
11 Fifth Amendment matters we need to go into  
12 given the circumstances that we are now in,  
13 but does anybody want to be heard in that  
14 regard?

15 MR. BRITT: No, sir.

16 MR. THOMPSON: No, sir.

17 THE COURT: I think that the  
18 record in this case reflects what it does  
19 reflect, and reflects any plea arrangement  
20 that might pertain to Fifth Amendment  
21 matters, is that accurate?

22 MR. BRITT: Yes, sir.

23 THE COURT: Is that accurate on  
24 behalf of your client.

25 MR. ROGERS: That's correct.

1 BY MR. BRITT:

2 Q Mr. Demery, for the record, please state  
3 your name?

4 A Larry Martin Demery.

5 Q I'll ask you to pull the chair closer up to  
6 the microphone. How old are you?

7 A 20.

8 Q If you will please spell your name for the  
9 record?

10 A L A R R Y, M A R T I N, D E M E R Y.

11 Q Where are you presently living?

12 A 122 Littlejohn Road.

13 Q Is that the Robeson County jail?

14 A Yes, sir.

15 Q Prior to being held in custody at the  
16 Robeson County jail -- strike that. Back in July of  
17 1993, where did you live?

18 A I lived with my parents.

19 Q Where is that located?

20 A Rowland, Highway 710.

21 Q Do you know the defendant, Daniel Green?

22 A Yes, I do.

23 Q How long have you known the defendant,  
24 Daniel Green?

25 A 12, almost 13 years.

1 Q Did you go to school with him?

2 A Yes.

3 Q And during the 12 to 13 years that you've  
4 known the defendant, did there come a time during  
5 that time frame when you did not see him for some  
6 extended period of time?

7 A Yes, there was.

8 Q Approximately how much time was there  
9 between -- that was involved in that extended period  
10 of time?

11 A Two and a half years.

12 Q And when do you recall first seeing him  
13 after this extended period of time -- after this  
14 extended period of time when you had not seen him?

15 A Over at my parents' house the first time.

16 Q Were you there at your parents' house when  
17 the defendant arrived there?

18 A No, sir, I wasn't. I was over at my  
19 fiancée's house.

20 Q And while there at your fiancée's house,  
21 did you receive any telephone call?

22 A Yes, I did, my mother called.

23 Q Based upon what your mother told you, what  
24 did your mother tell you?

25 A Well, when she first called, she told me

1 that somebody was at the house that wanted to see me,  
2 you know. First few minutes she wouldn't tell me,  
3 said it was a surprise. And I finally got it out of  
4 her, and she told me that Daniel was there.

5 Q Now, as a result of that conversation with  
6 your mother, what did you do?

7 A I left, along with my fiancée went with me  
8 and we went to my parents' house.

9 Q How did you go from your fiancée's to your  
10 parents home?

11 A Drove my car.

12 Q What kind of car did you own or were you  
13 driving back in July of 1993?

14 A A Ford Tempo.

15 Q And when you got to your parents -- what  
16 color is that Ford Tempo?

17 A Beige.

18 Q Did it have any kind of distinguishing  
19 marks on it?

20 A Yes, there was a dent on the left front  
21 fender.

22 Q When you got to your parents home after you  
23 received this phone call from your mother, who was  
24 there?

25 A My mother, father, brother, sister, and

1 Daniel.

2 Q Did you have an occasion to talk with  
3 Daniel Green at that time?

4 A Yes.

5 Q How long were you and Daniel Green together  
6 on that occasion at your parents' home?

7 A About hour and a half to two hours, maybe,  
8 I think.

9 Q Did anyone leave?

10 A Yes.

11 Q Who left?

12 A Daniel and I, my fiancée was with us.

13 Q Where did you go?

14 A First place we stopped was at the river a  
15 few miles away from where I live, my brother was down  
16 there, and we had to stop down there to see him a  
17 minute or two. And we stayed around there just a few  
18 minutes, and then we went over to Hardee's in  
19 Pembroke and ate. After we left Hardee's I took my  
20 fiancée home and took Daniel home then I went back  
21 home.

22 Q Do you recall this being in July or June of  
23 1993 when you first saw him?

24 A June.

25 Q Now, were you working at that time?

1 A Yes, I was.

2 Q Where were you working?

3 A Crestline Mobile Home.

4 Q After you saw him on this occasion in June  
5 of 1993, you say you took him home?

6 A Yes.

7 Q Where did you take him?

8 A I took him to -- if I'm not mistaken, the  
9 name of the trailer park is Bob's Landing, located,  
10 about a mile, mile and a half off of 74.

11 THE COURT: Mr. Demery, if you'll  
12 place that microphone directly in front of  
13 you, or move your chair over just to the  
14 right a little bit so you can speak  
15 directly into it, please. .

16 BY MR. BRITT:

17 Q After you took him home on this day in  
18 June, did there come a time when you saw him again?

19 A Yes, there was.

20 Q And where did you see him again?

21 A The next time I saw Daniel was over at his  
22 place, trailer park.

23 Q When you say over at his place, are you  
24 referring to the trailer at Bob's Landing Mobile Home  
25 Park?

1 A Yes.

2 Q Do you know whether the defendant had a car  
3 at that time?

4 A No, he didn't.

5 Q Did you know the defendant's mother?

6 A Yes.

7 Q And what was her name?

8 A Ann Green.

9 Q On any occasion when you went over to the  
10 defendant's home prior to July the 4th of 1993, had  
11 you seen a car there?

12 A Yes, I had.

13 Q What kind of car?

14 A A Ford Cougar.

15 Q What color?

16 A Blue.

17 Q Did you ever have an occasion to drive that  
18 car?

19 A Yes, I did.

20 Q How many times did you drive that car?

21 A There were several different occasions.

22 Q On the occasion when you drove that blue  
23 Cougar who was with you?

24 A Daniel.

25 Q When you were with the defendant prior to

1 July the 4th of 1993, did the two of you engage in  
2 any conversation?

3 A Yes, we did.

4 Q What conversation did the two of you engage  
5 in?

6 A Well, we had -- we caught up on old times,  
7 you know. And then we discussed -- I had gotten into  
8 some trouble while Daniel was away, and he had  
9 learned about it through his mother, and he was  
10 asking me about it. You know, I was telling him what  
11 had happened, the things that went on.

12 Q When you say that you had gotten into some  
13 trouble, what do you mean by that?

14 A I had gotten a couple of breaking and  
15 entering charges and a robbery charge and an assault  
16 charge.

17 Q Did the defendant tell you how he had  
18 learned of that?

19 A Well, his mother had told him about it.

20 Q And did the defendant say anything to you  
21 about the charges that were pending against you at  
22 that time?

23 A Yes.

24 Q What if anything did he say to you?

25 A After -- after I explained, you know, how

1 things were and all, we went into a conversation, he  
2 was telling me about how --

3 MR. THOMPSON: Object.

4 THE COURT: What's the basis?

5 MR. THOMPSON: For what purposes  
6 is this offered? I mean, this is a 404(b).

7 THE COURT: One of the charges in  
8 this case is conspiracy?

9 MR. BRITT: Yes, sir.

10 MR. THOMPSON: On the date?

11 THE COURT: Does this pertain to  
12 the conspiracy?

13 MR. BRITT: Yes, sir.

14 MR. THOMPSON: No, Your Honor, I  
15 would note that the bill of indictment  
16 charging the conspiracy indicates the  
17 offense on July 23rd. It does not indicate  
18 any specific period or continuing  
19 conspiracy, and --

20 THE COURT: Yes, sir.

21 MR. THOMPSON: That's my  
22 objection.

23 THE COURT: I understand. At  
24 this point, I don't know what the answer is  
25 going to be. So your objection is taken

1           under -- the Court holds in abeyance any  
2           ruling on the objection at this time. You  
3           may continue with your questioning of  
4           Mr. Demery.

5 BY MR. BRITT:

6           Q       Mr. Demery, what if anything did the  
7           defendant say to you about the charges that were  
8           pending against you at that time?

9           A       Well, he had told me that -- about ways he  
10          had learned.

11                   MR. THOMPSON: Object, Your  
12          Honor, that's unresponsive.

13                   THE COURT: Complete your answer,  
14          I'll rule on the objection.

15                   THE WITNESS: While he was away,  
16          he said that he had learned of ways to  
17          commit crimes without getting caught and  
18          was saying that things that had happened  
19          and, the charges that I had, there was ways  
20          of -- you know, getting out of them, that  
21          was basically it.

22                   THE COURT: Mr. -- so the record  
23          is clear, Mr. Thompson, I'm overruling your  
24          objection at this time for the purposes of  
25          this hearing, without prejudice to your

1 right to renew any objection should this  
2 matter be elicited in the presence of the  
3 jury.

4 MR. THOMPSON: Yes, sir.

5 BY MR. BRITT:

6 Q Did you talk about robbing or committing  
7 any robbery at that time?

8 A Yes, we did.

9 Q What was said about committing a robbery or  
10 robbing anyone at that time?

11 A Daniel made a statement, he asked me did I  
12 want to commit a robbery.

13 Q What did you tell him?

14 A When he asked me, I told him, yes, you  
15 know, I was all for it.

16 Q Now, on Saturday, July the 3rd of 1993, did  
17 you have an occasion to go to South of the Border  
18 with the defendant?

19 A Yes, we did.

20 Q And on Saturday, July the 3rd, 1993, did  
21 you meet anyone that day?

22 A Yes.

23 Q Who did you meet?

24 A Melinda Moore and her cousin, Patricia.

25 Q And after meeting Melinda Moore and her

1 cousin Patricia on July the 3rd of 1993, did you and  
2 the defendant have an occasion to go to Marion, South  
3 Carolina?

4 A Yes, we did.

5 Q How did you get there?

6 A We drove my car.

7 Q When you say you drove your car, what car  
8 are you referring to?

9 A The Ford Tempo.

10 Q And in Marion, South Carolina, on July the  
11 3rd of 1993 -- strike that.

12 Before going to Marion, South Carolina on  
13 July the 3rd, 1993, did you or the defendant have a  
14 gun in your possession?

15 A Yes.

16 Q Who had a gun?

17 A Daniel.

18 Q What kind of gun did the defendant have  
19 before -- with him before going to Marion, South  
20 Carolina on July the 3rd, 1993?

21 A A .380.

22 Q Now, when you say a .380, was that a  
23 revolver or is it an automatic type pistol?

24 A Semiautomatic type weapon.

25 Q And do you know where the defendant had

1 gotten that .380 pistol?

2 A Yes.

3 Q Where -- did you see him get it?

4 A Yes, it belonged to his mother, he had  
5 taken it out of her purse.

6 Q Did you go to Marion, South Carolina on  
7 July the 3rd, 1993?

8 A Yes.

9 Q When you went to Marion, South Carolina on  
10 July the 3rd, 1993, did the defendant have that .380  
11 pistol with him?

12 A Yes.

13 Q In what car did you go to Marion, South  
14 Carolina on July the 3rd?

15 A My car.

16 Q And for the record, what car is that?

17 A Ford Tempo.

18 Q Where did you go in Marion?

19 A We went to Melinda Moore's house -- well,  
20 her grandmother's house, where she was staying.

21 Q Did you find Melinda Moore there?

22 A Yes.

23 Q And did you stay in Marion, South Carolina  
24 for some length of time July 3rd, 1993?

25 A About 30 minutes.

1 Q What time of day or evening did you go to  
2 Marion?

3 A It was late, late night, after 12:00, if  
4 I'm not mistaken.

5 Q When you went to Marion, South Carolina on  
6 July the 3rd, 1993, was there any discussion between  
7 you and the defendant about spending the night in  
8 that area?

9 A No.

10 Q Did you ever go to a motel in Marion, South  
11 Carolina on the night of July the 3rd, 1993?

12 A No, I don't remember.

13 Q Approximately what time did you leave  
14 Marion and where did you go?

15 A Around 1:00 in the morning, and we headed  
16 back towards Rowland -- South of the Border, Rowland.

17 Q What route or what road did you take from  
18 Marion back to Rowland?

19 A 95.

20 Q Now, on the way back to Rowland from  
21 Marion, South Carolina, was there any conversation  
22 between you and the defendant about committing a  
23 robbery?

24 A Yes, there was.

25 Q What was said?

1           A       That we were going to commit a robbery  
2 around in this area of South of the Border.

3           Q       Why were you going to do it in the area of  
4 South of the Border?

5           A       Because this area was full of tourists.

6           Q       And on the way -- did you ever reach South  
7 of the Border?

8           A       Yes.

9           Q       And what if anything happened to your car  
10 in the area of South of the Border?

11          A       We had -- prior to coming back to South of  
12 the Border, I had had some car trouble and my car had  
13 ran hot, and we kind of -- we thought we had  
14 everything straightened out, but coming back to South  
15 of the Border, as we were coming off of the ramp to  
16 go back down into South of the Border, it ran hot and  
17 it cut off.

18          Q       When the car cut off, what did you do?

19          A       We stopped and got out and looked at it and  
20 everything, trying to see what was wrong with it, but  
21 neither one of us were mechanics, we couldn't see  
22 what had happened. And like I said, the car had  
23 gotten so hot that it just, it wouldn't turn over or  
24 anything. We just pushed it, you know, completely  
25 off the ramp and got out, closed the car up and

1 everything, took the tags off, put a cloth in the  
2 window.

3 Q Why did you take the tags off the window?

4 A Well, we had -- we were going to rob  
5 somebody. That was the plan. The car was tore up it  
6 was sitting here. If we -- we didn't want anything  
7 to come up, you know, where somehow that it could be  
8 linked to us maybe through the car being there, you  
9 know.

10 Q Were any items taken out of the car after  
11 it broke down?

12 A Yes.

13 Q What items were taken out of the car?

14 A Two sweat jackets that had hoods over them  
15 and a gun.

16 Q What was done with the sweat jackets?

17 A Daniel and I put them on.

18 Q Where was the gun?

19 A It was under the passenger seat in the car.

20 Q And who removed the gun from the  
21 passenger -- from inside the car?

22 A Daniel took it out.

23 Q And after Daniel took the gun that you're  
24 referring to, is that the .380 he had taken from his  
25 mother's pocketbook?

1 A Yes.

2 Q And after he took the .380 out of the car,  
3 what was done with it?

4 A I don't remember right then -- as best I  
5 can remember, he kept it for a little bit, but not  
6 long, because he gave it to me and I took it and kept  
7 it in my possession.

8 Q Why did you have sweat jackets in the car?

9 A Well, to use as a -- we were going to  
10 commit a robbery, pull these hoods on and everything  
11 to disguise us.

12 Q Had the two of you talked about that at an  
13 earlier occasion?

14 A Yes.

15 Q And you say at some point you got the gun?

16 A Yes.

17 Q Was there anything different about the  
18 jacket that you were wearing than the one the  
19 defendant put on?

20 A Yes.

21 Q What was the difference?

22 A The one that I had on had a big pocket on  
23 the front, you know, put your hands down in. And I  
24 could take the pistol down in here and keep my hands  
25 on it, you know. It was -- had easy access.

1 Q When the car broke down and these items  
2 were removed from the car, was it still dark outside?

3 A Yes.

4 Q And once the items were taken out of the  
5 car and the sweat jackets were put on, what did the  
6 two of you then do?

7 A We walked around South of the Border area  
8 for a little while, and we stayed around in that area  
9 an hour at the most, and then from there we walked  
10 back down to the Family Inn.

11 Q When you say you walked around in the area  
12 of South of the Border, are there stores located  
13 there?

14 A Yes.

15 Q Gasoline stations?

16 A Yes.

17 Q And you say you went to an area back down  
18 to the Family Inn?

19 A Yes.

20 Q Now, to your knowledge is the Family Inn in  
21 North or South Carolina?

22 A North Carolina.

23 Q And how did you go from the area of South  
24 of the Border to the Family Inn?

25 A Walked.

1 Q And why did you go to the Family Inn?

2 A Well, it was a motel, we went there to rob  
3 somebody.

4 Q And when you say you went there to rob  
5 anyone, to rob someone, what did you do when you got  
6 to the Family Inn?

7 A Well, when we got there, we walked around  
8 in the parking lot a few times, and --

9 Q When you say we, who are you referring to?

10 A Daniel and I.

11 Q What were you looking for?

12 A Looking for somebody to rob.

13 Q Did you ever go up to any room?

14 A No, we just -- we walked around and looked,  
15 scoped the place out.

16 Q At that hour of the morning, did you see  
17 any individuals in the parking lot area?

18 A Yes.

19 Q Did you see individuals on more than one  
20 occasion?

21 A Yes.

22 Q Who is the first -- can you describe for us  
23 the first individual you saw there in the parking lot  
24 area?

25 A First person was a man, he was driving a

1     Ryder truck.  He was -- we were going to rob him.  
2     Timing was off and everything, and we just missed.

3           Q     Did the two of you talk about robbing this  
4     man with the Ryder truck?

5           A     Yes.

6           Q     Did you ever attempt to approach him?

7           A     No.  We were only 20 feet away from him at  
8     the most, but we just didn't -- we didn't have it  
9     together enough then, just really hadn't built the  
10    nerve up enough to approach this man.

11          Q     Did you see --

12                   THE COURT:  For purposes of  
13                   clarification, pardon the interruption, you  
14                   said something about the timing was off.

15                   THE WITNESS:  Yes, sir.

16                   THE COURT:  What did you mean by  
17                   that, Mr. Demery?

18                   THE WITNESS:  We didn't -- we  
19                   were trying to -- boosting one another up.  
20                   Our nerve wasn't together enough, and we  
21                   just -- we drug around, he got away from  
22                   us.  I mean, he left before we got our  
23                   nerve up enough to approach him.

24                   THE COURT:  Okay.

25     BY MR. BRITT:

1 Q And after this man drove off, did you see  
2 anyone else in the parking lot area?

3 A Yes.

4 Q Can you describe who you saw then?

5 A A man and a woman, they were coming out of  
6 a room. And once again, we were going to rob this  
7 couple, but again, same thing happened, timing was  
8 off, just hadn't gotten the nerve up yet.

9 Q Do you know what race these people were  
10 that you saw coming out of the room?

11 A White.

12 Q Do you recall what kind of -- were they  
13 near a car, did they get in a car?

14 A Yes, this couple got into a Ford Maverick.  
15 I remember this car by it was real -- it was -- I  
16 would say it was hopped up, had nice rims, a lot of  
17 work had been put into it.

18 Q After you saw that couple, did you see  
19 anyone else in the parking lot?

20 A Yes.

21 Q And do you know about what time it was when  
22 you saw these other people in the parking lot?

23 A Around 3:30 to 4:30.

24 MR. THOMPSON: Well -- object  
25 Your Honor, again. This goes to the --

1 THE COURT: Mr. Britt, am I  
2 correct that you're leading up to another  
3 matter that you contend is admissible under  
4 404(b)?

5 MR. BRITT: Yes, sir.

6 THE COURT: Specifically the  
7 matter of July 4th, 1993?

8 MR. BRITT: Yes, sir, and they  
9 have been provided notice.

10 THE COURT: You folks have been  
11 provided notice, is that correct?

12 MR. THOMPSON: Yes, sir.

13 THE COURT: Do you want to be  
14 heard further as to your objection?

15 MR. THOMPSON: No, sir. So the  
16 parameters of the hearing is for the 4th as  
17 well as the 15th.

18 THE COURT: That's what I  
19 understood was reflected in the notice.

20 MR. BRITT: Yes, sir.

21 MR. THOMPSON: Yes, sir.

22 THE COURT: The objection is  
23 overruled. The exception is noted for the  
24 record. You may continue, sir.

25 BY MR. BRITT:

1 Q About what time was it that you saw these  
2 other people in the parking lot?

3 A I remember between the hours of 3:30 and  
4 4:30.

5 Q Can you describe who it was that you saw in  
6 the parking lot at that time?

7 A Two males.

8 Q And where did you see them?

9 A They were coming out of a room.

10 Q And in what area of the motel were they?

11 A They were closer to the front of the motel,  
12 and Daniel and I were at the back, you know, looking  
13 around the corner.

14 Q And when you saw these two men coming out  
15 of the room, did you and Daniel have any discussion  
16 about that?

17 A Yes, but before we saw these two guys, we  
18 had a discussion, you know, it was getting late, and  
19 if we were going to rob somebody, we needed to go  
20 ahead and get it done, because the sun was coming up,  
21 so the next -- and we discussed it and the next plan  
22 was that the next people that we saw we were going to  
23 approach them and rob them.

24 Q When you saw these two men, what if  
25 anything did you and the defendant then do?

1           A       We came around from around the corner, we  
2 walked down the pavement up under the catwalk, we  
3 walked by these two men. We walked up to the front  
4 of the motel and we circled around and came back from  
5 another side of them, you know, acted as if we were  
6 supposed to have been there. But --

7           Q       What were the men doing in the parking lot?

8           A       They were putting things in their car, you  
9 know, packing up.

10          Q       When you came back around to the area where  
11 they were after you walked around the motel, what  
12 then happened?

13          A       By this time, two females had come out.  
14 Daniel and I walked on past, and when we passed them  
15 we walked maybe 30 feet, you know, away from them and  
16 circled back around. As we did that, we were  
17 approaching them again, we were maybe 20 feet away  
18 from them, and one of the guys looked in our  
19 direction. And when he did, I pulled out the gun,  
20 you know, held it up, and put my finger to my lip, to  
21 gesture meaning for him not to cry out, or scream or  
22 anything.

23          Q       What if anything did you do with the gun?

24          A       I pointed it in their direction, you know,  
25 held it out like this (indicating).

1 Q Did you say anything to the individuals?

2 A Well, when -- I spoke to one of the guys,  
3 he was the slim guy. I told him to empty his  
4 pockets. Daniel, he approached the other, you know,  
5 the two females and the other guy.

6 Q What if anything did you hear him say, and  
7 what if anything did you see him do?

8 A He was telling them in a Jamaican type  
9 accent to empty their pockets, and that was basically  
10 it, telling them to give up their possessions.

11 Q When this slim man, when you told this slim  
12 man to empty his pockets, what did he do?

13 A He was acting real nervous and everything,  
14 but when I told him to empty his pockets, he reached  
15 down into his pockets and pulled out some money and  
16 dropped it on the ground. I told him to back up, you  
17 know, back up so I could reach down and get it. And  
18 after he backed up, I reached down, grabbed the money  
19 and put it in my pocket, and then I went over to the  
20 other side of the car where Daniel and the other  
21 three people were.

22 Q And when you went to the other side of the  
23 car where Daniel and the other three people were  
24 located, did the defendant have anything in his hands  
25 at that time?

1           A       Well, he was -- I think he had gotten the  
2    purse --

3                    THE COURT:   Mr. Demery, if you  
4           don't recall, you need to tell us that.  If  
5           you have a specific recollection, you may  
6           testify as to what you specifically recall.

7                    THE WITNESS:  Yes, sir.  He had a  
8           purse in his hands.  I heard the guy that  
9           was on the other side of the car telling  
10          one of the women to -- he was saying, give  
11          him the thing, you know --

12                   MR. THOMPSON:  Well, I object.

13                   THE WITNESS:  She gave him a  
14          black bag.

15                   THE COURT:  Overruled.  Exception  
16          is noted.

17  BY MR. BRITT:

18           Q       Gave who a black bag?

19           A       Daniel.

20           Q       Can you describe that black bag?

21           A       It was about maybe two and a half feet  
22          long, maybe a foot wide, had a black strap on it.  
23          Later on we found out it was a carrying bag for a  
24          video camera.

25           Q       Who got the black bag from the lady?

1           A     Daniel did.

2           Q     And what if anything did you see him do  
3 with that black bag?

4           A     He put it over his shoulder.

5           Q     And did you see the defendant take any  
6 money from anyone?

7           A     No, I did not.

8           Q     Now, after the defendant had gotten the  
9 black bag and you saw him with the lady's purse, what  
10 happened?

11          A     Well, I had been standing over on the other  
12 side of the car telling -- one of the ladies, she had  
13 gotten real loud, she was real upset, mad. She kept  
14 asking us, you know, why were we doing this. I was  
15 over on the other side of the car trying to get her  
16 to calm -- telling her to shut up. I even threatened  
17 her, I called her a bitch and told her if she didn't  
18 shut up, how I would shoot her. She never did.

19                    When I saw Daniel, when he had gotten  
20 everything, I was telling him, let's go, let's go.  
21 This lady wouldn't stop hollering. I was ready to  
22 cut out, run. He got everything. I said, let's go.  
23 But before we started running, we told them to --  
24 well, Daniel told them not to move. He had taken the  
25 keys out of the ignition while he was in the car

1 getting the video camera out, told them not to move  
2 until we were out of sight. We started running.

3 Q Where did you run?

4 A We ran out behind -- back behind the  
5 motel. We crossed over a fence and ran down a -- it  
6 was a part of a pave -- paved road. It cut off, it  
7 was a dead end. From there we ran in a corn field,  
8 ran through a corn field for -- at least 30 minutes.

9 Q What items did you have with you when you  
10 ran from the motel?

11 A Well, leaving the scene, only I had the gun  
12 in my hand. I still had the gun.

13 Q Did you have any money?

14 A And the money that I had taken off the tall  
15 slim guy.

16 Q What items did Daniel have when you ran?

17 A The purse, the video camera bag. There was  
18 another bag, a shaving kit.

19 Q And when you ran down to this road, down  
20 this dead end road, where did you go from there?

21 A We crossed over -- when we came out of the  
22 corn field, we came out to a state maintained dirt  
23 road. We coasted over this dirt road, and there was  
24 another corn field right on the other side of it. We  
25 got down on the edge of the field and started looking

1 through the things to see what we had.

2 Q Did you count the money that you had?

3 A Yes.

4 Q How much money did you have?

5 A It was between -- I don't remember exactly  
6 but it was no more than \$20.00.

7 Q Did you say anything about the -- when you  
8 say you only had 20 dollars, is that your money or  
9 money that you had taken from the people?

10 A That was the money that came off the tall  
11 slim guy. I was looking -- I went through the purse,  
12 and there was \$130 to -- \$130 to \$150 that came out  
13 of the purse.

14 Q Did you say anything about having only the  
15 \$20.00 from the slim man and \$130 to \$150 from the  
16 purse?

17 A Yes.

18 Q What did you say?

19 A I had made a statement to Daniel that there  
20 wasn't that much money that had came out of this.  
21 And he said -- he made a statement to me, he said,  
22 you know, don't worry about that. Then he went down  
23 in his pocket and pulled out a big roll of money,  
24 said he had gotten it off the other guy.

25 Q Now, was that money later counted?

1           A       It was counted then.

2           Q       Do you recall how much money was in that  
3 role that Daniel had?

4           A       Around \$700, maybe a little more than \$700.

5           Q       When you stopped in the edge of the corn  
6 field to count the money, did Daniel still have the  
7 black bag?

8           A       Well, no. It was -- as we were coming  
9 through the corn field, we had stopped just long  
10 enough for him to pass me off the bag, and we just  
11 looked down in it. Then we kept going.

12          Q       When you looked down in the black bag, what  
13 did you find there?

14          A       We could see a video camera.

15          Q       Could you see anything else at that time?

16          A       No, just seen the camera, I zipped it right  
17 back up and kept running.

18          Q       When you were running through the corn  
19 field, was it still dark or was it becoming light?

20          A       It was still dark but when we were over on  
21 the edge of the other corn field it was starting to  
22 get pretty light then.

23          Q       After counting the money there in the corn  
24 field, where did you go?

25          A       We had -- before we got finished thoroughly

1 checking everything, a police car had came down that  
2 dirt road, and we had to jump back off into the field  
3 out of sight. And when the car passed, we got up and  
4 then we went, walked on through this corn field for a  
5 while, and then we stopped again and went through  
6 everything, you know, what we didn't keep, we left  
7 it. And --

8 Q Who had the gun at that time?

9 A At that time, the gun was -- had been put  
10 in the video camera bag.

11 Q And from the field, where did you go?

12 A To Daniel's grandmother's house.

13 Q Where did she live?

14 A In Rowland.

15 Q Did she live in town or outside of town?

16 A It was kind of like on the outskirts of  
17 town, around a project area, I remember a church  
18 being close by.

19 Q When you got to the defendant's  
20 grandmother's house, what did you do?

21 A Everything that we had taken from the  
22 people, we left it outside on a bench up under the  
23 porch, and Daniel knocked a few minutes before  
24 anybody came to the door. When his grandmother came,  
25 she let us in. And we went inside. I called my

1 mother and told her that my car had broken down and  
2 gave her directions, told her how to get to Daniel's  
3 grandmother's house. She came and picked us up. She  
4 came and picked us up. From there we took Daniel  
5 home.

6 Q Where were the items that you had taken  
7 from the people?

8 A Well, while we were in the house or when my  
9 mom came?

10 Q When your mother came to get you?

11 A When my mom came, we put them in the back  
12 of the truck.

13 THE COURT: Mr. Britt, I  
14 apologize for the interruption. The court  
15 reporter has been working diligently all  
16 day.

17 MR. BRITT: Yes, sir.

18 THE COURT: It's been difficult  
19 because we haven't taken the breaks that we  
20 ordinarily take when the jury is present.  
21 Also, we need to discuss what our situation  
22 is with regard to the jury. How much  
23 additional evidence do you anticipate  
24 putting on beyond Mr. Demery's testimony.

25 MR. BRITT: Your Honor, I

1 anticipate calling Mr. Heffney who took a  
2 statement from Mr. Demery in regard to  
3 those matters to corroborate his  
4 testimony. I also intend to call Special  
5 Agent Ron Myers of the State Bureau of  
6 Investigation ballistics laboratory who did  
7 ballistics examinations as to the .32  
8 caliber pistols. Mr. Underwood testified  
9 he received from Larry Demery, Sr., and  
10 ballistics examinations he did as a result  
11 of the .38 caliber gun that was found in  
12 the defendant's home pursuant to that  
13 search.

14 THE COURT: Then that --

15 MR. BRITT: I also anticipate  
16 recalling Mr. Clewis Demory if the Court  
17 allows me for the purposes of incourt  
18 identification.

19 THE COURT: I will allow that.  
20 Do you intend to put on any testimony from  
21 any alleged or purported victims from Rhode  
22 Island in connection with the 404(b).

23 MR. BRITT: No, sir, not at this  
24 time.

25 THE COURT: All right. Then it

1 appears that we will have testimony that  
2 will carry us potentially into or through  
3 tomorrow morning.

4 MR. BRITT: Yes, sir.

5 THE COURT: Any objection from  
6 either counsel if we leave the following  
7 message for the jurors calling in after  
8 5:00, that they are to call back tomorrow  
9 after 11:00 a.m.

10 MR. BRITT: Fine.

11 THE COURT: That would give them  
12 time to get her at that time.

13 MR. BRITT: That would be fine.

14 THE COURT: Anything on behalf of  
15 counsel for defendant in that regard?

16 MR. BOWEN: No, sir.

17 THE COURT: Ma'am, if you'll  
18 leave that message for jurors who have been  
19 directed to call in after 5:00 today, that  
20 they are to call back after 11:00 a.m.  
21 tomorrow morning. So we can give the court  
22 reporter a break, we're going to take about  
23 15 minutes at this time. Mr. Demery, you  
24 may step down, please, sir. . We'll come  
25 back -- yes, sir, you can have a seat right

1           there in the jury box.

2                   We're at ease until 4:30. We'll come  
3           back and continue with Mr. Demery's  
4           testimony at that time.

5                           (Brief recess.)

6                   THE COURT: Let the record  
7           reflect all counsel are present, the  
8           defendant is present in open court.

9                   Mr. Demery, if you'll again take the  
10          witness stand. We are continuing in the  
11          absence of the jury with the 404(b) matter  
12          now before the Court.

13 BY MR. BRITT:

14           Q       Mr. Demery, the morning of July 4th, 1993,  
15          you testified your mother came and picked you and the  
16          defendant up at his grandmother's house?

17           A       Yes.

18           Q       You testified that the items that you had  
19          taken from the two men and two women at the Family  
20          Inn motel were placed in the back of the truck?

21           A       Yes.

22           Q       When your mother came to pick you up, what  
23          kind of car was she driving?

24           A       She was driving a Nissan pickup.

25           Q       Who placed -- excuse me. The items that

1 were taken from the two couples, what was done with  
2 all those items, where were they?

3 A Well, the video camera, there was a 35  
4 millimeter camera that was inside the bag, shaving  
5 kit, that was kept, and the money. The pocketbook  
6 and contents of the pocketbook and everything were  
7 left out in the corn field strowed about.

8 Q Where was the .380 pistol?

9 A It was inside the bag with the video  
10 camera.

11 Q Who placed the bag containing all those  
12 items into the pickup truck that your mother was  
13 driving?

14 A I honestly don't remember.

15 Q Where did you go from -- once your mother  
16 picked you up?

17 A Took Daniel home.

18 Q And when you say she took Daniel home,  
19 where did you take him?

20 A Bob's Landing Trailer Park.

21 Q Did the defendant get out of the truck?

22 A Yes, he did.

23 Q When he got out of the truck, did he take  
24 any items with him?

25 A Yes.

1 Q What items did the defendant take with him?

2 A Video camera, the shaving kit, got it out  
3 of the back of the truck. I got out with him. We  
4 went in the trailer together, you know, for a few  
5 minutes. I told him I would be back later on if I  
6 got my car fixed. And left and went home.

7 Q Where was the video camera at the time you  
8 left?

9 A Inside Daniel's trailer.

10 Q Where was the money that was taken during  
11 the robbery of those people when you left?

12 A Inside Daniel's trailer.

13 Q Where was the .380 pistol?

14 A Inside Daniel's trailer.

15 Q Where was the other camera that you  
16 referred to?

17 A Inside Daniel's trailer.

18 Q Now, from the defendant's trailer, where  
19 did you and your mother go?

20 A Home.

21 Q And when you got home that morning, what  
22 did you do?

23 A I called a person -- a man about towing my  
24 car, going and getting it for me and bringing it.

25 Q Where was your car at that time?

1           A       It was still sitting down at, you know,  
2 South of the Border, off the road, beside the road,  
3 broke down.

4           Q       Now, these hooded sweat shirts that you and  
5 the defendant had put on, where were they?

6           A       We still had them on but had -- both of  
7 them were left over at Daniel's trailer.

8           Q       Now, after you made this phone call to have  
9 your car towed, was your car -- did your car  
10 eventually end up at your house?

11          A       Yes, I had laid down, went to sleep, slept  
12 maybe about two hours. Then my dad came in, woke me  
13 up, told me the guy was outside, he wanted his money.

14          Q       And when you left the defendant's trailer,  
15 did you have any of the money that had been taken in  
16 the robbery?

17          A       No, no.

18          Q       Did you have any money with which to pay  
19 the tow truck driver?

20          A       Yes.

21          Q       And where had you gotten that money?

22          A       Well, from the job that I had.

23          Q       Did you check your car to see what had gone  
24 wrong with it?

25          A       Yes, my dad and I had went out and looked

1 at it. And he found that a piece of water hose had  
2 busted, and that's what caused all the water to run  
3 out, making it run hot.

4 Q Once you found out what had happened to  
5 your car, did you fix it?

6 A Yes.

7 Q Later on July the 4th, 1993, did you leave  
8 your home in your car?

9 A Yes.

10 Q Where did you go?

11 A To Daniel's house.

12 Q And did anything happen with -- to your  
13 car, with your car, when you were on your way to  
14 Daniel's house on the afternoon of July the 4th,  
15 1993?

16 A It ran hot again. It wasn't because --  
17 like I said, the water hose had been fixed and  
18 everything, but along with the water hose, it being  
19 busted and all, the fan, the fan on the car was tore  
20 up, and that was causing it to get hot like that.  
21 And my dad told me that was the reason the pipe  
22 busted to start with.

23 Q When you got to the defendant's house, was  
24 that at Bob's Landing Mobile Home Park?

25 A Yes.

1 Q Was he there?

2 A Yes.

3 Q Was anyone else there?

4 A No.

5 Q What was the defendant -- did you go inside  
6 the trailer?

7 A Yes.

8 Q What was the defendant doing when you went  
9 inside the trailer?

10 A When I first went in, he was playing around  
11 with the video camera, and he put a tape inside and  
12 told me to watch it while he was getting dressed.  
13 And as he was changing his clothes and all, I sat  
14 down and watched the video that he had made that --  
15 sometime that morning.

16 Q Now, did the defendant have a VCR?

17 A No.

18 Q When you say he gave you a videotape to  
19 watch and he put a tape inside something, what did he  
20 put the tape inside?

21 A Back in the video camera. He had it hooked  
22 to the television and the video camera had -- well,  
23 it was just like a VCR almost, I mean you could  
24 replay and all.

25 Q And did you watch this video he had given

1 you?

2 A Yes.

3 Q What if anything did you see on that video?

4 A Well, he was -- he had made up a rap song,  
5 he was dancing around, flashing the money that we had  
6 taken, and had his mom's .380 out, making gestures  
7 with it, you know, like pointing it towards the  
8 camera, you know, that was basically it.

9 Q Was there anyone else in the video other  
10 than the defendant?

11 A Well, right there at the end of it, his mom  
12 started coming in the trailer, and then when she  
13 came -- when she came in the door and everything,  
14 Daniel, from what -- from looking at the video it  
15 surprised him, he hadn't heard her come in, and he  
16 made a quick move went to hide the money and the gun,  
17 and she came in and she saw the camera and  
18 everything, and she was asking where did it come  
19 from, and who does it belong to. And then it clicked  
20 off.

21 Q Now, after you watched this video, did you  
22 and the defendant go anywhere?

23 A Yes.

24 Q Where did you go?

25 A We left and went to Dobb's, a store located

1 on West Fifth Street here in Lumberton.

2 Q How did you get there?

3 A Drove my car.

4 Q When you say you drove your car, is that  
5 the Ford Tempo?

6 A Yes.

7 Q Why did you go to Dobb's on West Fifth  
8 Street?

9 A They had a 24 hour repair service, and  
10 wanted to go there get a fan put on the car and  
11 everything.

12 Q And how long did you stay there at Dobb's  
13 on West Fifth Street?

14 A At least two hours.

15 Q When you left the defendant's house to go  
16 to Dobb's on West Fifth Street, did you take any of  
17 the items from the robbery that had occurred earlier  
18 in the day?

19 A The money, the video camera, that was in  
20 the car.

21 Q And who had the money?

22 A Well, Daniel had half of it, I had half of  
23 it.

24 Q Had you divided the money?

25 A No, not sat down and counted it out,

1 divided it that way. He took half the stack, I took  
2 half the stack, we put it in our pockets.

3 Q Now, did you get your car fixed that day?

4 A Yes.

5 Q Do you recall how much you had to pay to  
6 get your car fixed?

7 A Altogether it was a total of \$130 -- about  
8 \$130 dollars.

9 Q And did you use the money that you had  
10 gotten in the robbery the night before to pay for the  
11 repairs of your car?

12 A Yes.

13 Q You've testified that the money was split  
14 between the two of you?

15 A Yes.

16 Q Were you with the defendant when he  
17 purchased anything with the money that he got after  
18 you split it?

19 A Well, afterwards, it was all spent  
20 together. Before I had gotten, before I ever went  
21 back to Daniel's place that morning, or that evening,  
22 he and his mom had been to town somewhere, and he had  
23 bought a couple of pairs of shoes and some shorts and  
24 stuff.

25 Q Did he tell you that?

1 A Yes.

2 Q Did he tell you he had used the money from  
3 the robbery to pay for it?

4 A Yes.

5 Q What was done with the remaining money that  
6 was taken in the robbery on July the 4th, 1993?

7 A Other than using some to get the car fixed,  
8 the rest of it was blown.

9 Q When you say it was blown, what do you mean  
10 by that?

11 A Well, just throwing it away, you know,  
12 having a good time with it.

13 Q And who spent the money?

14 A We both did.

15 Q When you say we both did, who are you  
16 referring to?

17 A Daniel and I.

18 Q Turning your attention to July the 14th of  
19 1993, on the night of July the 14th of 1993, did you  
20 spend the night at the defendant's trailer?

21 A Some portion of the night, but about the  
22 whole night, we had been out looking for somebody to  
23 rob.

24 Q When you say you had been out looking for  
25 someone to rob, had you and the defendant had other

1 conversations about robbing people?

2 A Yes, we had.

3 Q When you talked on those occasions prior to  
4 July the 14th of 1993, had you talked about locations  
5 where you could commit these robberies?

6 A Yes.

7 Q What locations had you talked about in  
8 terms of committing robberies?

9 A Some stores located on Highway 72.

10 Q Do you recall what stores that you had  
11 talked about robbing on Highway 72?

12 A We had discussed one store specifically. I  
13 remember the store being referred to as RJ's.

14 Q Why had you talked about robbing this store  
15 that you call RJ's?

16 A Well, this store, they cash checks on  
17 Thursdays, this day being Thursday, we knew -- well,  
18 assumed this store would have pretty good amount of  
19 money in it. That's the reason we had planned to rob  
20 this store.

21 Q When you say this store cashed checks on  
22 Thursday, are you referring to payroll checks?

23 A Yes.

24 Q And had you ever cashed a payroll check  
25 there?

1 A No, I hadn't --

2 Q How was it that you knew that they had  
3 cashed checks at this store?

4 A Right out in front of the store a big  
5 flashing sign that said "we cash payroll checks on  
6 Thursday".

7 Q Now, did you talk about robbing RJ's on  
8 August 14th of 1993?

9 A Yes, we had.

10 Q Did you talk about robbing any other stores  
11 on Highway 72?

12 A Yes.

13 Q What other stores?

14 A Later on -- they were alternatives, the BP  
15 station, and Lowery's Texaco.

16 Q Now, on the morning of August the 15th,  
17 1993, did you and the defendant leave his residence,  
18 leave his trailer, in your Ford Tempo?

19 A Yes.

20 Q When you left his trailer that morning, did  
21 either one of you have a gun?

22 A Yes, we did, by -- when we left his trailer  
23 in my car, we both had guns, two .32 pistols that  
24 belonged to my dad.

25 Q Now, where had you gotten those two .32

1 pistols and when had you gotten them?

2 A Well, we had Daniel's mother's car that  
3 morning, we went to my parent's house -- well,  
4 with -- we went there to get guns.

5 Q Had you talked with the defendant about  
6 going to your house and getting any guns?

7 A Yes.

8 Q When had that conversation taken place?

9 A The night before and earlier that morning.  
10 The reason that we talked about going to get my dad's  
11 guns is because we couldn't get, we couldn't get his  
12 mom's gun again. She was -- that morning she was  
13 going with her parents to -- it was Duke, some  
14 hospital, to have some tests done, I forgot whether  
15 it was her mom or dad, and she took it with her that  
16 morning.

17 Q And when you say you had his mom's car,  
18 what car are you referring to?

19 A The Cougar.

20 Q And who drove the defendant's mother's  
21 Cougar to your house that morning?

22 A I did.

23 Q When you got to your house that morning on  
24 August the 15th of 1993, who was home?

25 A My sister.

1 Q Now, did you and the defendant talk about  
2 how you were going to get the guns out of your house?

3 A Yes, I had told him -- my dad has got  
4 several guns and he keeps his bedroom door locked up  
5 and on one side of the door there's a deadbolt.  
6 Other side there's a padlock, and I told him -- I  
7 knew how to get in the room. I told him how I would  
8 have to get down on the floor and fish under the door  
9 with a clothes rack or something to unhook the  
10 deadbolt. And I told him he would have to distract  
11 any sister while I was doing this. And when we got  
12 to the house that morning, that's what he did, that's  
13 what I did, I went in my dad's room and got the guns.

14 Q When you went in your dad's room and got  
15 the guns, what guns did you get?

16 A I got two .32 caliber pistols.

17 Q Can you describe those for us?

18 A One was black in color. The other one was,  
19 had a black with white bone handles on it.

20 MR. BRITT: Can I approach?

21 THE COURT: Yes, sir.

22 BY MR. BRITT:

23 Q Mr. Demery, I'll show you what has been  
24 marked as State's Exhibit Number 73. Do you see  
25 State's Exhibit Number 73 through the clear plastic

1 bag?

2 A Yes.

3 Q Can you identify State's Exhibit 73?

4 A It's a pistol that belongs to my dad.

5 Q Is State's Exhibit Number 73 one of the  
6 two .32 caliber pistols that you removed from your  
7 father's bedroom on the morning of July 15th, 1993?

8 A Yes.

9 Q Show you what's been marked as State's  
10 Exhibit Number 74. Can you see it?

11 A Yes.

12 Q Do you recognize it?

13 A Yes, it's my dad's.

14 Q And State's Exhibit Number 74, is that the  
15 other .32 caliber pistol that you've testified about  
16 that you took from your father's bedroom?

17 A Yes.

18 Q When you got these two pistols out of your  
19 father's bedroom, were they loaded?

20 A Yes.

21 Q And when you got them out of your father's  
22 bedroom, did you hide them so that your sister would  
23 not see them?

24 A Yes.

25 Q How did you hide them?

1           A       I tucked them both down in my waistline and  
2 pulled my T-shirt over them and then told Daniel --  
3 in a roundabout way I let him know that I had them.

4           Q       When you say in a roundabout way that you  
5 told him that you had them, what do you mean by that?

6           A       Well, ask him was he ready to go, you know,  
7 let him know, you know, I had them and all.

8           Q       Where did you go?

9           A       From there, we went back to Daniel's  
10 trailer and switched up cars.

11                   MR. BRITT: May I have just a  
12 second?

13                   THE COURT: Yes, sir.

14 BY MR. BRITT:

15           Q       After you let the defendant know that you  
16 had the guns, did you give him one of the guns?

17           A       Yes.

18           Q       Where were you when you gave him one of  
19 the .32 pistols?

20           A       We were inside the car.

21           Q       Which car?

22           A       His mother's.

23           Q       Were you on your way somewhere at that  
24 time?

25           A       Yes, back to his trailer in order to get my

1 car.

2 Q Which pistol did you give, which .32  
3 caliber pistol did you give the defendant?

4 A Well, when I got in the car, I pulled both  
5 pistols out and laid them in the seat so I could  
6 drive and be comfortable, and he picked up the one  
7 with the bone handles on it. And that's one he kept.

8 Q May I approach?

9 THE COURT: Yes, sir.

10 BY MR. BRITT:

11 Q The one with the bone handle, is that the  
12 one that's marked as State's Exhibit Number 73?

13 A Yes.

14 Q After he picked up the bone handled .32  
15 pistol, did you see what he did with it?

16 A While we were in his mom's car on the way  
17 back to his trailer, you know, just played around  
18 with them, opened up the cylinder, spun it around,  
19 things like that.

20 Q When you got back, did you go back to the  
21 defendant's trailer?

22 A Yes.

23 Q Did you go inside?

24 A Yes.

25 Q Did the two of you have any conversation

1 about what you were going to do with those pistols?

2 A We had -- it had already been discussed and  
3 planned we were going to use them to commit a  
4 robbery.

5 Q Where was that robbery to take place?

6 A The one that was planned out was RJ's over  
7 on Highway 72.

8 Q Did you leave the defendant's trailer on  
9 July 15th, 1993 with the purpose of going to RJ's to  
10 commit a robbery?

11 A Yes.

12 Q Who went with you?

13 A Just Daniel and I.

14 Q How did you go?

15 A We drove my car.

16 Q When you say you drove your car, you're  
17 referring to the beige colored Ford Tempo?

18 A Yes.

19 Q Where did you go?

20 A We went over to RJ's, around in that area  
21 on Highway 72.

22 Q And when you left the defendant's trailer  
23 on July the 15th, 1993, which gun did you have?

24 A The black one.

25 Q Which gun did the defendant have?

1 A The one with the white bone handle on it.

2 Q Where did you go?

3 A Went over to RJ's around in that area.

4 THE COURT: Mr. Britt, this is  
5 probably a good point for us to stop.  
6 There's some matters we need to take up in  
7 chambers, in camera.

8 Mr. Demery, you may step down for the  
9 moment. We're through with Mr. Demery  
10 until tomorrow morning. Thank you, sir,  
11 you may step down.

12 Before you leave, I would like to  
13 start at 9:00 tomorrow morning.

14 MR. BRITT: That would be fine.

15 THE COURT: Mr. Thompson,  
16 Ms. Berry, Mr. Bowen.

17 MS. BERRY: Yes, sir.

18 MR. BOWEN: Fine.

19 THE COURT: Start tomorrow 9:00.  
20 If you'll make arrangement to have  
21 Mr. Demery here at that time. Make  
22 arrangements to have Mr. Green here at that  
23 time as well.

24 If I could see all counsel, the  
25 defendant, the court reporter in chambers,

1 please.

2 (Court adjourned.)

3 (Whereupon an in camera proceeding  
4 ensued as follows.)

5 (5:10 p.m.)

6 THE COURT: Let the record  
7 reflect that this is a matter being  
8 conducted in-chambers, in camera. Present  
9 at this time are the presiding Judge, the  
10 court reporter, counsel for the State,  
11 Mr. Johnson Britt, counsel for the  
12 defendant, Mr. Angus Thompson,  
13 Mr. Woodberry Bowen. Also present is the  
14 defendant Mr. Daniel Green, also known as  
15 U'Allah.

16 Folks, when I returned from lunch  
17 recess this afternoon, Ms. Stone came down  
18 to my chambers and gave me a note  
19 containing the following information: She  
20 also orally related the information  
21 contained in the note. The note reads as  
22 follows: 11:20. Anita Hunt, and in  
23 parentheses is the following telephone  
24 number: 671-4473. Got home about 3:05  
25 a.m., parens, at hospital, hospital being

1           abbreviated, with mother, close parens, 15  
2           calls on answering machine, no message.  
3           Dash hung up. 3:15 a.m., man called and  
4           asked for Anita, close quote. Said, quote,  
5           I don't guess you accomplished what you  
6           intended to do. The best thing you can do  
7           is leave this trial alone, close quote, and  
8           hung up.

9           The note -- second page of the note  
10          further reflects she called, "she"  
11          referring to Ms. Hunt, Star 69 and got  
12          quote, number unknown, close quote. No one  
13          in family knows she came to court. Only  
14          one to know are court people. 1-24-96,  
15          signed or initialed by Ms. Stone.  
16          Ms. Stone essentially said what happened  
17          was reflected in the note. Ms. Hunt called  
18          and related this information.

19          Folks, one matter I meant to put in  
20          the record and forgot to. When Ms. Hunt  
21          appeared, if you recall, she indicated that  
22          she -- someone at her home on the day in  
23          question answered the machine -- call came  
24          in, answering machine started to pick it  
25          up, and whoever was at home picked up the

1 phone before the answering machine  
2 completed its message, and took whatever  
3 information was related to us. My  
4 recollection is the time period that she  
5 gave us is the same time period that I  
6 called right here from the chambers to that  
7 number. Phone rang 15 times, nobody  
8 answered. But my recollection is that the  
9 time period that she says this incoming  
10 call came that someone else at her home  
11 took was right at the same time I was  
12 making telephone calls.

13 MR. THOMPSON: It's amazing  
14 because you said the phone rang 15 times  
15 right on the record.

16 THE COURT: I counted them. But  
17 my recollection is that if someone was  
18 there as she says someone was there, to  
19 intercept this other message, that person  
20 wasn't there when I called when we were all  
21 present in chambers. I don't know what the  
22 deal is on Ms. Hunt.

23 Apparently, Mr. Britt, you also gave  
24 the Court a message indicating that she  
25 called your office at 2:39 and left a

1 message with the same telephone number,  
2 671-4473, indicating the message left at  
3 your office personally as reflected here is  
4 in reference to a call, phone call she  
5 received, parens, Daniel Green case, won't  
6 be home until 7:00, she is in the  
7 hospital. And if you'll hold up one  
8 second, I'm going to open this, because I  
9 think that information that I just referred  
10 to is contained in here.

11 (Ms. Sue Gaines enters chambers.)

12 THE COURT: Ms. Hunt, when she  
13 called earlier and talked to Ms. Stone, she  
14 said there is a 9:50 message to call  
15 Ms. Stone. That was when we were in  
16 chambers, at about the same time.

17 MR. THOMPSON: Okay.

18 THE COURT: I don't know what the  
19 situation is with Ms. Anita K. Hunt in  
20 terms of where we are in our case, I don't  
21 believe there's anything that will require  
22 us doing anything further unless anybody  
23 wants to be heard.

24 MR. THOMPSON: Do we?

25 MR. BOWEN: We don't want to be

1 heard on that.

2 THE COURT: For the record, I am  
3 placing the most recent message from Ms.  
4 Hunt in the envelope previously -- asking  
5 that you reseal it again.

6 MR. BOWEN: While we're here on  
7 that subject, I've got to make another  
8 disclosure about something said by Patricia  
9 Locklear, that is the juror you dismissed.  
10 I left the Court yesterday afternoon down  
11 the steps, went out the west side of the  
12 courthouse, of course said hello to  
13 Ms. Locklear. And she, I guess,  
14 indicated -- anyway, she started a  
15 conversation, and I stopped and talked to  
16 her.

17 She went on in essence to suggest that  
18 what she had told the Court the other day  
19 was not all of it. She went on to say that  
20 Mr. Inman had apparently been attempting to  
21 get up with her at her quote, shop,  
22 whatever that meant. I think that's  
23 what -- I'm a little vague on this. I was  
24 tired. But it was something about  
25 Mr. Inman allegedly having pursued her with

1 the intent to talk to her about something.  
2 And then she went on to say about that.  
3 She said that before they parted company,  
4 Mr. Inman made some racial slurs to the  
5 effect that he hoped that she or they or  
6 whoever "convicted the nigger." And  
7 that's --

8 THE COURT: Isn't Mr. Inman  
9 supposed to be her friend?

10 MR. BOWEN: Yes.

11 THE COURT: Isn't that the person  
12 she talked to in the mall? Because she's  
13 seeking a confidant.

14 MR. BOWEN: I didn't  
15 cross-examine her.

16 THE COURT: But am I correct in  
17 that?

18 MR. BOWEN: What she said, and I  
19 do recall, I think I recall, that at a  
20 point she sent word by the bailiff or  
21 somebody to the Court after she was  
22 dismissed that she desired to address the  
23 Court, and the Court sent her a message  
24 back that it would need to be in open  
25 court --

1                   THE COURT: My recollection at  
2                   the time that they were discharged, they  
3                   left the courtroom. One of the bailiffs, I  
4                   believe Mr. Horne came back in and said  
5                   that they were being besieged by news  
6                   reporters down in the magistrate's office,  
7                   wanted to know if they could have an escort  
8                   and they wanted to speak with me  
9                   privately. And my response from the bench  
10                  was anything they wanted to say on the  
11                  record, they have to say in open court.  
12                  That's when the two of them, both  
13                  Ms. Locklear and Ellerbe, came in.

14                  MR. BOWEN: I asked her if she  
15                  thought Mr. Inman had reason to know that  
16                  she was on the jury that morning when he  
17                  came to see her at the shop, which wouldn't  
18                  necessarily mean anything if it wasn't  
19                  about the jury matter. And she said that  
20                  she did think he had reason to know that.  
21                  The only other thing I recall from her  
22                  conversation was that she indicated that  
23                  Mr. Inman was talking to her in terms of a  
24                  desire to meet or attempt to establish a  
25                  personal relationship with Ms. Coverdale.

1 And that's about it.

2 THE COURT: Let the record  
3 reflect Mr. Inman is not a member of the  
4 jury. Let the record reflect that  
5 Mr. Inman is the individual to whom  
6 Ms. Locklear confided her concerns about  
7 what ultimately turned out to be Juror  
8 Number 9, Ms. Ellerbe. Mr. Inman was the  
9 individual who was part of an in-chambers,  
10 in camera proceeding in this case, the  
11 allegations made by Ms. Locklear pertaining  
12 to Ms. Ellerbe. Mr. Inman to my knowledge  
13 has nothing at all to do with the jury as  
14 it's now constituted. Any inquiry that  
15 apparently he is making, according to what  
16 you've just related to us, is of  
17 Ms. Locklear who has been excused from the  
18 jury, and I appreciate you --

19 MR. BOWEN: No, I'm saying that  
20 she said this occurred on the very same day  
21 that she originally came into chambers to  
22 talk about it, that this conversation is --

23 THE COURT: Preceded her coming  
24 in?

25 MR. BOWEN: Yes, sir,

1 absolutely. She is talking.

2 THE COURT: My point is,  
3 Ms. Locklear, if it affects any juror, it  
4 affects Ms. Locklear, Ms. Locklear is no  
5 longer on the jury, so it doesn't effect  
6 us.

7 MR. BOWEN: I'm not saying it  
8 is. I just felt like --

9 THE COURT: Yeah, you're doing  
10 the right thing, and that's all I was  
11 trying to say. I understand what you're  
12 saying, but doesn't pertain to anybody  
13 involved in the case at this point. I  
14 appreciate you sharing that with us. It's  
15 your obligation to do that.

16 Anybody want to be heard further about  
17 the information Mr. Bowen just gave us?

18 MR. BRITT: No, sir.

19 THE COURT: Folks, way I see our  
20 situation right now, we have nothing before  
21 us pertaining to the jury as it's now  
22 constituted. Does anybody disagree with  
23 that?

24 MR. THOMPSON: No, sir, I don't.

25 THE COURT: Mr. Bowen?

1                   MR. BOWEN: Well, the only thing  
2 I think about -- well, I'm just trying to  
3 think about Ms. Locklear. If all that had  
4 come out, then the result basically would  
5 have been even stronger to discharge  
6 Ms. Locklear, so I obviously --

7                   THE COURT: Exactly. All right.

8                   MR. BOWEN: No, sir, we don't  
9 have anything further.

10                  THE COURT: All right.  
11 Mr. Green, do you have any comment about  
12 what we've said up to this point? Or  
13 Mr. U'Allah?

14                  MR. GREEN: About what he just  
15 said?

16                  THE COURT: Anything.

17                  MR. THOMPSON: Anything?

18                  THE COURT: Pertaining to what  
19 we're talking about.

20                  MR. GREEN: Just seemed to me  
21 like they made a deliberate interest to  
22 solicit information from her.

23                  THE COURT: My point is, and I  
24 understand your concern, if she was a  
25 member of the jury, that would be something

1 for us to be concerned about. She's not.  
2 She's off the jury.

3 MR. GREEN: But we didn't want  
4 her dismissed.

5 THE COURT: Seems like your  
6 lawyer is saying now there is a stronger  
7 grounds to have her dismissed than existed  
8 in the first place. Bottom line is I  
9 dismissed her because she violated my  
10 admonition not to talk to anybody. I've  
11 excused, for the record, again, Ms. Ellerbe  
12 because even though she did not admit  
13 making any statement to jurors, Ms.  
14 Locklear and Ms. Coverdale verified that  
15 she made that statement. One took it as a  
16 joke, one took it seriously. But the  
17 bottom line was both of them said that Ms.  
18 Ellerbe made the statement about length of  
19 deliberations at a point when we were three  
20 days into the presentation of the evidence  
21 in this case, which was a violation of the  
22 Court's order to remain open-minded, not to  
23 form or express any opinions about any  
24 aspect of the case.

25 MR. THOMPSON: Unfortunately, she

1 never was asked specifically whether she  
2 made the statement --

3 THE COURT: I think the record  
4 reflects that.

5 MR. THOMPSON: You know --

6 THE COURT: But the Court was  
7 satisfied for the record based on the  
8 statements of Ms. Coverdale and Ms.  
9 Locklear that the statements were made.  
10 And that's the basis upon which she was  
11 excused.

12 MR. BRITT: The record will  
13 reflect that she was asked if any juror had  
14 made any comment in the jury room in the  
15 presence of other jurors that would  
16 indicate to her that they had formed an  
17 opinion about the case.

18 THE COURT: And she denied it.  
19 Which is a denial of the statement.

20 MR. THOMPSON: No, it's not  
21 necessarily.

22 THE COURT: Well, how many --

23 MR. THOMPSON: She was not asked  
24 specifically as these other jurors have  
25 been asked, did you make the certain

1 statement. And that's over, but the point  
2 is --

3 THE COURT: The appellate courts  
4 will decide whether it's right or wrong.  
5 I'm not going to beat a dead horse now.  
6 The issue is done, they can decide if I'm  
7 right or wrong.

8 Anything further?

9 MR. BRITT: No, sir. 9:00 in the  
10 morning?

11 THE COURT: 9:00. This concludes  
12 the conference.

13 (End of in camera proceeding.)

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## 1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

3 LUTHER JOHNSON BRITT, III, Esq.  
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10 and

11 WOODBERRY A. BOWEN, Esq.  
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13

14

15 (January 25, 1996. Proceedings in open court.)

16

17 THE COURT: Good morning, folks.

18 MR. BRITT: Good morning.

19 THE COURT: Let the record  
20 reflect that all counsel are present, that  
21 the defendant is present in open court.22 Mr. Britt, I understand that one of  
23 your witnesses is in the District  
24 Attorney's office and we're awaiting  
25 waiting that person.

1 MR. BRITT: Yes, sir, he should  
2 be here in just a second.

3 THE COURT: Let the record  
4 reflect all counsel are present, the  
5 defendant is present in open court. We are  
6 proceeding on the 404(b) matter now before  
7 the Court in the absence of the jury.

8 Mr. Britt, are you prepared to  
9 continue with your examination?

10 MR. BRITT: Yes, sir.

11 THE COURT: Yes, sir.

12 DIRECT EXAMINATION (Continued)

13 BY MR. BRITT:

14 Q Mr. Demery, on July the 15th, 1993, you and  
15 the defendant went to your home?

16 A Yes.

17 Q And when you went to your home, what did  
18 you go there for?

19 A To get two guns that belonged to my dad.

20 Q Why did the two of you go to your house to  
21 get two guns that belonged to your dad?

22 A To rob a store.

23 Q And did you get any guns at your parents'  
24 home on July 15th, 1993?

25 A Yes.

1 Q What guns did you get there?

2 A Two .32 caliber pistols.

3 Q And what color were those pistols?

4 A One was black in color, the other was black  
5 with white bone handles.

6 Q And after you got those pistols from your  
7 parent's home, where did you go?

8 A Went back to Daniel's trailer to switch  
9 cars.

10 Q After getting the two pistols did you give  
11 either pistol to the defendant?

12 A When I got in the car, I was driving, I  
13 took both of them out, laid them down in the seat,  
14 and he picked one up.

15 Q Which one did he pick up?

16 A The one with the bone handles.

17 Q And at any time after he picked up the .32  
18 caliber pistol with the bone or pearl colored handle,  
19 did you ever have that gun in your possession?

20 A No, not until we went back to take the guns  
21 back to my parents' house.

22 Q Now, when you went back to the defendant's  
23 house, what did you do there?

24 A Switched cars.

25 Q How were the two of you dressed?

1           A       I had on a pair a shorts that day and a  
2 T-shirt. When we went back to Daniel's trailer, we  
3 got on two hooded sweat shirts to put on.

4           Q       Were those the same hooded sweat shirts  
5 that you had worn during the robbery on July 4th  
6 1993?

7           A       Yes, they were.

8           Q       Did the defendant put on a hooded sweat  
9 shirt on July 15th, 1993?

10          A       Yes.

11          Q       Did you put one on?

12          A       Yes.

13          Q       Did you have any sort of towel or bandana  
14 with you?

15          A       Yes, I had a bandana in my car.

16          Q       It was where?

17          A       In my car.

18          Q       At any time did you take that bandana out  
19 of your car?

20          A       Yes.

21          Q       When?

22          A       When we went inside the store to rob it.

23          Q       Now, July the 15th, 1993, you returned to  
24 the defendant's trailer, what did the two of you talk  
25 about there?

1           A       When we returned, it was just like I said,  
2 to switch up cars, to get the hooded sweat shirt and  
3 we left.

4           Q       Where were you going?

5           A       Over to highway 72 to a store called RJ's.

6           Q       And why were you going to RJ's store that's  
7 located on Highway 72?

8           A       To commit a robbery, to rob the store.

9           Q       Did you go to RJ's on Highway 72?

10          A       Yes.

11          Q       What happened when you went there?

12          A       Well, it was -- when we got there it was  
13 real busy. And we rode by a couple of times, hoping  
14 that traffic would clear up. It never did.

15          Q       How did you get there?

16          A       Drove my car, Ford Tempo.

17          Q       Did either of you have a gun at that time?

18          A       Yes.

19          Q       Who had a gun?

20          A       We both did.

21          Q       What gun did you have?

22          A       A black .32.

23          Q       What gun did the defendant have?

24          A       The one with the bone type handles.

25          Q       When you say you got to RJ's and it was

1 busy, what do you mean by that?

2 A There were a lot of customers, I remember a  
3 Lance truck being there, stocking the store, I guess  
4 they were.

5 Q Did you ever stop and go inside the store?

6 A We went through the parking lot one time  
7 but we didn't stop or anything.

8 Q After you saw that the store was busy, did  
9 you and the defendant talk about anything?

10 A Yes, we discussed the other stores that  
11 were down, located only a few miles from this one.

12 Q What stores did you talk about?

13 A It was a BP station and then Lowry's  
14 Texaco.

15 Q The BP station and Lowry's Texaco, what  
16 road are they located on?

17 A Highway 72.

18 Q After you talked about going to either the  
19 BP station or Lowry's Texaco, did you go in the  
20 direction of those stores?

21 A Yes, we did.

22 Q Who was driving?

23 A I was.

24 Q And did you go to this BP station located  
25 on 72?

1           A       Well, we rode by it a couple of times, we  
2 never stopped at that store though.

3           Q       Why didn't you stop at that store?

4           A       Same reason being at RJ's, this store was  
5 real busy too, a lot of customers.

6           Q       After going to the BP station, did you ever  
7 travel in the direction of Lowry's Texaco?

8           A       Yes, yes, we did.

9           Q       Did you go to that store?

10          A       Yes.

11          Q       What if anything happened at that store?

12          A       Well, after giving up on the RJ's, the BP  
13 station, we discussed going down to this store to see  
14 what things looked like. We rode down in that  
15 direction, and first time we passed there was a car  
16 and a Pepsi truck sitting there. We went on by, came  
17 back by. As we were riding down the road, we  
18 discussed that we would stop, and I would get out, go  
19 in the store and see what things looked like on the  
20 inside.

21                   So on the way back, we stopped, I pulled up  
22 in the front of the store -- well, kind of off to the  
23 side a little bit. I got out and went in the store  
24 just to see what things looked like. I bought some  
25 candy, a pack of cigarettes. And when I went in,

1 there was a man running -- behind the cash register  
2 and a Pepsi Cola man, he was in, stocking up drink  
3 boxes and everything.

4 Q Describe the store for us, please.

5 A It was blue, trimmed in white, had two gas  
6 pumps in front, a kerosene tank on the right side of  
7 the store facing it. It was pretty small on the  
8 inside.

9 Q How many doors did it have on the front?

10 A One.

11 Q Were there any windows on the front?

12 A Yes.

13 Q How many windows do you recall on the  
14 store?

15 A Well, there was -- I remember being the  
16 whole door basically except for the framing was  
17 glass.

18 Q And when you went inside -- when you say it  
19 was blue and white, you're referring to it was blue  
20 and white in color?

21 A Yes, on the outside.

22 Q When you went inside this store, can you  
23 describe what you saw inside?

24 A Like I said, when I walked in, you know,  
25 the guy was behind the cash register, Pepsi man was

1 in there stocking up the drink boxes, there was  
2 nobody else in the store. Or if there was, I didn't  
3 see anyone else.

4 Q Was there a counter?

5 A Yes.

6 Q Where was the counter when you came in the  
7 door?

8 A It was immediately to the left of me, it  
9 was kind of a long counter. And as you first walk in  
10 the door, it's right there.

11 Q Can you describe the man that you say was  
12 running the store?

13 A He was an elderly man, elderly large man.  
14 He was a large man.

15 Q Was he a black man, Indian man or white  
16 man?

17 A Indian man, as far as I could tell.

18 Q And what if any items did you purchase that  
19 you recall?

20 A I bought some candy and a pack of  
21 cigarettes.

22 Q And for what purpose did you go in and buy  
23 this candy?

24 A Just to see what things looked like on the  
25 inside.

1 Q At that time, did you carry your gun into  
2 the store with you?

3 A No, no, I didn't.

4 Q At that time, were you wearing the sweat  
5 shirt that you referred to earlier?

6 A No, I only had on a pair of shorts, a  
7 T-shirt, and my cap.

8 Q After you went in and looked around the  
9 store, what did you do?

10 A After I purchased those things, I left,  
11 went on out of the store. When I got back to the  
12 car, I told Daniel how things looked.

13 Q What did you tell them?

14 A Told him there was only two people on the  
15 inside. I told him the Pepsi man appeared to me that  
16 he was almost finished with what he was doing, and I  
17 assumed he was about to leave.

18 Q Why did it appear to you that the Pepsi man  
19 was almost finished and was about to leave?

20 A He had his little cart thing with the  
21 drinks stacked up, and he was working on his last  
22 carton of drinks, putting them inside the box.

23 Q When you -- where were you when you told  
24 the defendant that?

25 A I had gotten back into the car, and we were

1 backing out.

2 Q Did you leave the area of the store?

3 A Yes.

4 Q Where did you go?

5 A We backed out on Highway 72, rode down the  
6 road a little ways, came back, the Pepsi truck was  
7 still sitting there. And I took a right, seemed like  
8 almost directly in front of the store. We rode down  
9 this road just a little ways, not even a mile, turned  
10 around and came back. Pepsi man was gone.

11 Q When you were riding around in the car  
12 after you left the store, did the two of you talk  
13 about what you were going to do?

14 A Yes.

15 Q What did you talk about?

16 A Well, we were discussing robbing the place,  
17 and we had -- devised a plan or whatever, that when  
18 we went back by we were going to stop at this store  
19 again, this time Daniel would get out and go in the  
20 store and we said -- discussed a way that he could  
21 let me know everything was clear and it was  
22 discussed. And we planned that he would go in the  
23 store, and if everything was clear, just the cashier,  
24 that he would come back to the door and say bring --  
25 I forgot my wallet and left it in the car and bring

1 it to me, and that was my key, you know, to let me  
2 come on in.

3 Q Now, during this time that you were riding  
4 around, was the defendant wearing the sweat shirt  
5 that you testified about earlier?

6 A No, he put it on as he was getting out of  
7 the car when we stopped the last time.

8 Q Did the defendant -- other than the sweat  
9 shirt, did he put anything else on?

10 A I had a pair of shades in the car, as he  
11 got out he put them on.

12 Q When you say a pair of shades, are you  
13 referring to a pair of sunglasses?

14 A Yes.

15 Q Did he put any type of hat or anything on  
16 his head?

17 A No.

18 Q Other than the sunglasses that you saw him  
19 put on, did he put anything over his face to try to  
20 conceal his identity?

21 A No.

22 Q Was there anyone else with the two of you  
23 on this day?

24 A No.

25 Q At what point did you put on the sweat

1 shirt?

2 A As Daniel was getting out, went into the  
3 store and everything, I was putting the jacket on and  
4 tied the bandana like around my neck, and he came to  
5 the door and told me to bring him his wallet. As I  
6 was getting out of the car, I pulled it up over my  
7 face.

8 Q Now, when the defendant got out of the car  
9 to go in and check out the store, do you know whether  
10 he had a gun with him?

11 A Yes, he did.

12 Q What gun did he have with him?

13 A .32 with the bone handles.

14 Q Did he put it anywhere?

15 A Yes, he had it stuck down in his waistline  
16 with the hooded sweat shirt kind of pulled down over  
17 it.

18 Q Where did you park the car?

19 A Over to the right side of the store, facing  
20 it, where the kerosene pump was.

21 Q Were there any other cars in the parking  
22 lot?

23 A No.

24 Q Did you see the defendant go inside the  
25 store?

1           A       Yes.

2           Q       Approximately how much time elapsed before  
3 you saw or heard the defendant again?

4           A       Right around 30 -- no more than 30 seconds.

5           Q       What if anything did you see or hear him do  
6 at the end of that thirty seconds?

7           A       He came back to the door -- well, didn't  
8 come out of the store, he just came to the door and  
9 yelled to me to bring his wallet, said he had  
10 forgotten it.

11          Q       When he yelled to you to bring him his  
12 wallet, did that have any significance?

13          A       Yes, like I said, that was the clue to let  
14 me know to come on in, everything was clear.

15          Q       And when you heard him say bring me my  
16 wallet, what did you do?

17          A       I got out of the car, pulled the bandana  
18 over my face, put my hood on. And as I walked up to  
19 the door, I pulled the gun out.

20          Q       When you say you pulled the bandana over  
21 your face, can you show us, demonstrate to the Court  
22 how much of your face was covered by the bandana?

23          A       Well, I had it pulled up to here below my  
24 eyes.

25          Q       You're demonstrating that you had it pulled

1 up to the bridge of your nose?

2 A Yes.

3 Q And you said that you pulled the hood up on  
4 the sweat shirt?

5 A Yeah. I put it over my head.

6 Q How much of your face at that point was  
7 concealed by the hood?

8 A Well, it came down to along right in here.

9 Q You're demonstrating an area roughly level  
10 with your eyebrows?

11 A Yes.

12 Q After pulling on the bandana and pulling  
13 the hood over your head, what did you do?

14 A I walked on in the store, with the gun  
15 drawn, and I walked in --

16 Q Which gun did you have?

17 A The black .32.

18 Q Walked in the store, did you see the  
19 defendant?

20 A Yes, he was standing down at the end of the  
21 counter.

22 Q Did he have anything in his hand at the  
23 time you saw him?

24 A Yes, he had the gun drawn.

25 Q What was he doing with the gun?

1           A       He had it pointed in the direction of  
2 Mr. Demory.

3           Q       When you say Mr. Demory, can you point out  
4 Mr. Demory for us in the courtroom?

5           A       Yes, the gentleman sitting directly in  
6 front of me.

7           Q       Is Mr. Demory sitting on the front row?

8           A       Yes, he is.

9           Q       Is he the same gentleman that you saw when  
10 you went into the store to check it out?

11          A       Yes.

12          Q       Where was Mr. Demory standing when you  
13 first walked into the store?

14          A       Behind the cash register.

15          Q       And where was the defendant?

16          A       He was standing down at the end of the  
17 counter.

18          Q       When you came into the store, what if  
19 anything did you do?

20          A       Well, I -- when I came in, I had the gun  
21 raised, Mr. Demory saw me as soon as I came in the  
22 door, and he kind of backed up a little, and I told  
23 him to back up. And he was, you know, I could tell  
24 he was visibly shaken. And when I told him to back  
25 up and everything it was about that time he turned

1 and looked and he saw Daniel standing at the other  
2 end of the counter with his gun drawn out.

3 Q At that time, did Daniel have anything  
4 covering his face?

5 A No, he just had the shades on.

6 Q At any time did Daniel Green place anything  
7 over his face to conceal his identity?

8 A No.

9 Q When Mr. Demory looked in the direction of  
10 the defendant, what did the defendant do?

11 A He went around the counter, around the area  
12 where Mr. Demory was standing. He took his wallet  
13 off of him. He was --

14 Q When you say he took his wallet off of him,  
15 what do you mean by that?

16 A He pulled his wallet out of his back  
17 pocket.

18 Q Who pulled the wallet out?

19 A Daniel did.

20 Q Where was the gun?

21 A He still had it out in his hand.

22 Q Which gun did he have?

23 A The bone with the bone handles.

24 Q After you saw the defendant pull  
25 Mr. Demory's wallet out of his pocket, what else did

1 you see the defendant do?

2 A I noticed him over at the cash register  
3 punching buttons, but he couldn't get it opened. And  
4 I had made a statement, something to the effect of,  
5 like, you know, hurry up and get the cash register.  
6 And I can't say for sure, but I was positive that  
7 Mr. Demory hit a button and opened the register for  
8 him.

9 Q When you say that he couldn't get the cash  
10 register open and he was pushing the buttons who are  
11 you talking about?

12 A Daniel.

13 Q Now, at some point was the cash register  
14 opened?

15 A Yes, it was.

16 Q Where were you at the time the cash  
17 register was opened?

18 A I was standing by the door, looking out,  
19 seeing if -- making sure that nobody came in on us.

20 Q And at any time did you come behind the  
21 counter?

22 A No.

23 Q Once the cash register was opened, what  
24 happened then, who did what?

25 A I -- out of the corner of my eye, like I

1 said, I was looking out in the parking lot area,  
2 making sure nobody came up, but every now and then I  
3 would glance back. And I looked around one time and  
4 I noticed Daniel fumbling around with drawers, or it  
5 was like down -- I couldn't see him, but I assumed  
6 that's what it was, he was down around the bottom  
7 part of the counter. And the next thing I saw,  
8 Daniel and Mr. Demory started tussling. I saw Daniel  
9 grabbing him from behind, and it appeared to me,  
10 Mr. Demory is a big man, and it appeared to me that  
11 Daniel wasn't handling him too well. And I saw  
12 Daniel, the gun that he had in his hand, I saw him  
13 stick it somewhere around in this area on Mr. Demory  
14 (indicating).

15 MR. THOMPSON: Excuse me. Your  
16 Honor, may I observe? I can't see.

17 THE COURT: If you'll demonstrate  
18 again, Mr. Demery, the area.

19 THE WITNESS: The chest area,  
20 around in here (indicating).

21 BY MR. BRITT:

22 Q When you say you saw him stick it around  
23 the area of his chest, what are you talking about?

24 A He took the gun, it was pressed into  
25 Mr. Demory.

1 Q What was pressed?

2 A The gun he had in his hand.

3 Q Was pressed against what?

4 A Mr. Demory's shoulder area.

5 Q When you saw Daniel do that, what happened?

6 A Three shots were fired. Daniel ran from  
7 around the counter, he ran out past me. I ran out  
8 right behind him, but before I went out of the store,  
9 I couldn't see where, I couldn't tell where or if  
10 Mr. Demory had been shot, but like I said, I had  
11 heard the three shots. And then I saw him sit down,  
12 and he --

13 Q You saw who sit down?

14 A Mr. Demory.

15 Q Where did you see Mr. Demory sit down?

16 A There was a chair behind the counter. He  
17 appeared to be losing, had shorts of breath, looked  
18 like he was losing his breath.

19 Q What did you do?

20 A I ran out of the store.

21 Q At the time, did you see Daniel Green take  
22 money out of the cash register?

23 A Yes, when the drawer was opened, I saw him,  
24 he reached in, scooped money out. There was food  
25 stamps there and he stuck it all down into the hooded

1 jacket he was wearing, had a pocket down on the front  
2 part of it, and he stuck all the money in there.

3 Q After you left the store, where did you go?

4 A Around, ran out and got in the car and  
5 everything. The road that was located down beside  
6 the store, I don't remember the number, the name of  
7 the road or anything, but I remember it came out to  
8 Highway 211. We backed out and went in that  
9 direction.

10 Q When you say you backed out and went in  
11 that direction, what do you mean by that?

12 A The road that was located beside the store,  
13 we went in the direction of Highway 211.

14 Q At any time while you were in the store  
15 where Mr. Clewis Demory was, did you fire the gun  
16 that you had?

17 A No, I didn't.

18 Q Who if anyone fired a gun inside the store  
19 where Mr. Clewis Demory was?

20 A Daniel did.

21 Q How many times do you remember hearing that  
22 gun fired?

23 A Three.

24 Q When you left the area of the store, you  
25 ended up going in the direction of Highway 211, is

1 that correct?

2 A Yes.

3 Q When you got to Highway 211, where did you  
4 go?

5 A When we got to 211, took a right, went down  
6 the road just maybe not even a mile, and took another  
7 right at, I think it was -- if I'm not mistaken, it  
8 was the Econo Lodge that we turned out in front of.

9 Q The Econo Lodge is located where? In what  
10 town?

11 A Here in Lumberton. And like I said, we  
12 took a right there, got on 95. And from 95 we went  
13 down to exit 14, got off, and went back to Daniel's  
14 trailer.

15 Q What roads are located at exit 14 of  
16 Interstate 95?

17 A 74 and 95, and then over to the side,  
18 there's a service road.

19 Q And while you were driving back to Daniel's  
20 trailer, was anything done with the hooded sweat  
21 shirts that you had?

22 A Yes. On the road that we traveled before  
23 we ever got to Highway 211, they were taken off, and  
24 I took mine off as I was driving, handed it to  
25 Daniel, and he threw both of them out the window.

1           Q       When you got into the car there at the  
2 store, did you see any money?

3           A       Well, when I first -- I saw him take it out  
4 of the cash register. Next time I saw it, that's  
5 when he was taking his hooded jacket off, he pulled  
6 it out.

7           Q       While you were driving back, did you ever  
8 see the .32 gun that Daniel Green had had?

9           A       Yes.

10          Q       Where was it?

11          A       He had -- he never did put it back in his  
12 waistline. When we got back in the car it was just  
13 laying down in the floorboard.

14          Q       Where was the .32 that you had?

15          A       I had put it down in the seat between my  
16 legs.

17          Q       While you were driving back, did you see  
18 any other gun other than the two .32's?

19          A       First time I saw any other gun was after,  
20 right after the jackets were thrown out on the road,  
21 Daniel -- I can't remember where he pulled it out  
22 from, but I remember he pulled out a .38 caliber  
23 pistol.

24          Q       How did you know it was a .38 caliber  
25 pistol?

1 A I could tell just by looking at it.

2 Q Can you describe the gun that he pulled  
3 out?

4 A It was a -- had a long barrel, blackish in  
5 color, had wooden handles, six-shot.

6 Q When you say he pulled it out, did you see  
7 from where he had gotten it?

8 A No.

9 Q Did you ask him where the gun had come  
10 from?

11 A No, I don't -- no. I mean, I knew we  
12 didn't have it when we went in, and I guess I just  
13 assumed it had come out of the store. I don't  
14 remember ever asking.

15 Q You've testified you went back down 95 and  
16 you went to Daniel's trailer?

17 A Right.

18 Q What did you do when you got there?

19 A When we got there, we went inside the  
20 trailer just a few minutes, and -- well, as we were,  
21 you know, going back to his place, the wallet that he  
22 had taken from Mr. Demory, he had already taken the  
23 money out of it and everything, and when we went to  
24 his trailer, the only thing I remember doing there is  
25 taking Mr. Demory's wallet, had his driver's license

1 and some other papers and things that was taken in  
2 the house. Like I said, we only stayed a few  
3 minutes, and then left, switched cars again.

4 Q Which car did you have when you switched  
5 cars?

6 A Well, we had used my car to do the  
7 robbery in. And switched over to Daniel's mom's car.

8 Q Is that the blue Cougar that you testified  
9 about yesterday?

10 A Yes.

11 Q When you switched cars and you got the blue  
12 Cougar, what did you do?

13 A We went back to my parents' house in order  
14 to take my dad's guns back.

15 Q What was done with the money that you had  
16 gotten in the robbery from the store where Mr. Demory  
17 worked?

18 A When we got inside the Cougar, the money  
19 was placed inside the glove compartment.

20 Q And how was the money packaged at that  
21 time?

22 A It was just thrown in.

23 Q Had you counted the money?

24 A Yes.

25 Q Do you recall how much money there was?

1           A       \$300, give or take just a few.

2           Q       What was done with the .38 pistol that  
3 Daniel had shown you in the car?

4           A       Well, it was inside the Cougar with us  
5 after we switched cars.

6           Q       Where inside the Cougar was it?

7           A       Well Daniel, as we were going back to my  
8 parents' house to take any dad's guns back, he had it  
9 out, playing around with it, releasing the cylinder,  
10 spinning it around.

11          Q       Were there bullets in the gun?

12          A       Yes, there was.

13          Q       Now, when you -- did he do anything else  
14 with the gun?

15          A       No, not at the time, not -- on the way back  
16 to my parents' house, but when we got there --

17          Q       When you got where?

18          A       To my parents' house, he took -- it was a  
19 chain saw file and attempted to scratch some serial  
20 numbers off or some numbers that was on the side of  
21 the barrel, on the inside of the cylinder somewhere.

22          Q       And as a result of doing that, did it leave  
23 any marks on the gun?

24          A       I remember the barrel on the side being  
25 scratched somewhat.

1 Q Now, when you got to your parents' house,  
2 you testified you went there to return the guns?

3 A Yes.

4 Q Was your sister there?

5 A Yes.

6 Q Was anyone else there?

7 A No.

8 Q How did you put the guns back where you had  
9 found them?

10 A Well, had to have Daniel distract her again  
11 for a few minutes while I went in my parents' room  
12 and put the guns up.

13 Q And the gun that you had, the black .32 --

14 A Yes.

15 Q -- did you have to reload it?

16 A No, no, I didn't.

17 Q The .32 that Daniel had with the bone  
18 colored handle, did you have to reload it?

19 A Yes.

20 Q How many bullets did you have to put in the  
21 gun?

22 A I had to put three in it.

23 Q After you placed those three bullets back  
24 in that gun, what did you do with that  
25 particular .32, the bone handled .32 and the

1 black .32 that you had?

2 A The black .32, I put it back in the of my  
3 dad's closet. The one with the bone handles, I put  
4 it back up under the edge of his bed, that's where he  
5 always kept it.

6 Q And after returning the guns to the places  
7 where you had found them, what did you do?

8 A From my parents' house we went to Marion.

9 Q How did you get to Marion?

10 A Driving Daniel's mom's car, the Cougar.

11 Q Who drove?

12 A I did.

13 Q Why were you going to Marion?

14 A Well, Daniel was seeing a girl by the name  
15 of Melinda Moore that lived down in Marion.

16 Q When you left to go to Marion, did the  
17 defendant still have the .38 caliber Smith & Wesson  
18 revolver?

19 A Yes.

20 Q What did he do with it while you all were  
21 on the way to Marion?

22 A It was up under the passenger seat.

23 MR. BRITT: May I approach?

24 THE COURT: Yes, sir.

25 BY MR. BRITT:

1           Q       I'll show you what has been marked as  
2 State's Exhibit Number 66, ask you to look at that  
3 and tell me if you can identify what's in that  
4 photograph?

5           A       That's the store that we robbed.

6           Q       You need to speak up so the court reporter  
7 can hear you.

8           A       That's the store that we robbed on the  
9 morning of the 15th, July the 15th.

10          Q       Show you what's been marked as State's  
11 Exhibit Number 67, ask you to look at that and tell  
12 me if you can identify it?

13          A       That's the -- looks like the back part of  
14 the counter in the store that we robbed.

15          Q       Can you use State's Exhibit Number 67 to  
16 show the Judge where you stood on the morning of July  
17 15th, 1993, during the robbery at that store that you  
18 and the defendant went to?

19          A       Yes.

20                   MR. THOMPSON: Excuse me, Your  
21 Honor --

22                   THE COURT: Mr. Demery, you need  
23 to -- you need to speak into the microphone  
24 so the court reporter can hear you and so  
25 the defendant can hear you as well.

1 THE WITNESS: I stood right here,  
2 this is the door here, I was standing in  
3 front of the cash register.

4 BY MR. BRITT:

5 Q Using State's Exhibit Number 67, can you  
6 show the Judge where it was that you first saw  
7 Mr. Clewis Demory when you walked into the store?

8 A He was standing here behind the cash  
9 register.

10 Q Using State's Exhibit Number 67, can you  
11 show the Judge in which direction Daniel Green was  
12 standing when you first walked in the store?

13 A He was around over in this area  
14 (indicating), pulling open drawers and things.

15 Q So the record is clear, you have indicated  
16 that Mr. Demory was standing in the area behind the  
17 counter near the cash register?

18 A Yes.

19 Q So the record is clear, you've indicated  
20 that the defendant, Daniel Green, was standing in an  
21 area behind the counter --

22 A Yes.

23 Q -- when you first walked in?

24 A No, when I first came in the store, Daniel  
25 was standing -- it doesn't show it on this picture

1 here, but he was standing down at the end of the  
2 counter.

3 Q Can you use State's Exhibit 67 to show the  
4 Judge where it was that Daniel Green moved to after  
5 you first saw him near the end of the counter?

6 A He moved out -- well, it doesn't show it  
7 here, but he came right at the end of the counter,  
8 was over in this area here (indicating).

9 Q Is your testimony that he came behind the  
10 counter?

11 A Yes.

12 Q And went to the area near Mr. Demory?

13 A Yes.

14 Q Using State's Exhibit Number 66, can you  
15 show the Judge the general area where it was that you  
16 parked your car on the morning of July 15th, 1993,  
17 before the robbery?

18 A I parked it over on this end of the store,  
19 but it was in front of this kerosene pump.

20 THE COURT: For the record, as  
21 you view the photograph, are you pointing  
22 to an area to the right of the store as the  
23 store is depicted in State's Exhibit 67?

24 THE WITNESS: Yes.

25 BY MR. BRITT:

1 Q I'll show you what has been marked as  
2 State's Exhibit Number 70, and State's Exhibit Number  
3 71. Do you recognize what is depicted in those  
4 photographs?

5 A Yes.

6 Q What if anything is depicted in those  
7 photographs?

8 A That's my car.

9 Q And is that the car that you and the  
10 defendant traveled in on the morning of July 15th,  
11 1993, when the robbery of Clewis Demory occurred?

12 A Yes.

13 Q Is that the car you were driving in when  
14 you left the scene of the store on July 15th, 1993?

15 A Yes.

16 Q I'll show you what has been marked as  
17 State's Exhibit Number 59-A, ask you to look at that,  
18 tell me if you can identify it?

19 A Yes, that's the gun that was taken out of  
20 the store.

21 Q Is that the gun the defendant showed you  
22 when you were driving away from the store on the  
23 morning of July 15th, 1993?

24 A Yes.

25 Q Is this the gun that you saw the defendant

1 take a chain saw file to and try to scratch off some  
2 numbers?

3 A Yes.

4 Q Can you show what area of this gun that he  
5 used the chain saw file on?

6 A This area right around here.

7 Q You're referring to an area on the barrel?

8 A Yes.

9 Q Are there any numbers that appear --

10 THE COURT: Let's be specific,  
11 Mr. Britt. Are you referring to an area on  
12 the right side of the barrel?

13 THE WITNESS: Yes.

14 BY MR. BRITT:

15 Q Are there any numbers that appear in that  
16 area of the barrel at this time?

17 A Yes, there is.

18 Q Can you read those for us please?

19 A It's 38767, and down below that has 3.5  
20 tons. And then further over it has .38 Smith &  
21 Wesson CTG.

22 Q And is that the same .38 caliber revolver  
23 that the defendant placed under the passenger seat of  
24 the blue Cougar when you were on your way to Marion,  
25 South Carolina?

1 A Yes.

2 Q And is this gun in the same shape it was in  
3 when you first saw it on July 15th, 1993?

4 A Yes.

5 Q When you went to Marion, South Carolina on  
6 July the 15th of 1993, was there a camcorder in the  
7 car?

8 A Yes.

9 Q And is that the same camcorder or video  
10 cassette recorder that had been stolen from the two  
11 couples on July the 4th, 1993, in the robbery at the  
12 Family Inn in Roland?

13 A Yes, it was.

14 Q Who had placed the camcorder or video  
15 camera in the blue Cougar?

16 A Daniel had.

17 Q When you went to Marion on the 15th of  
18 July, 1993, where did you go?

19 A Went to Melinda Moore's place, where she  
20 was staying.

21 Q And who drove?

22 A I did.

23 Q When you arrived at Melinda Moore's place,  
24 did you find her there?

25 A Yes, she was.

1 Q Was anyone there with her?

2 A I don't remember.

3 Q In Marion, South Carolina, July 15th, 1993,  
4 did you meet a young girl by the name of Delores or  
5 Dee Sullivan?

6 A Yes, yes.

7 Q Who introduced you to her?

8 A Melinda.

9 Q Was Dee at Melinda's house when you and the  
10 defendant first went there?

11 A No, she wasn't.

12 Q Where did you meet Dee?

13 A After Melinda got in the car with us, she  
14 gave us directions to an apartment complex just a few  
15 miles from where she lived. And when we got there,  
16 she got out, went up the stairs, and when she came  
17 back, a girl by the name of Dee came out with her.

18 Q After meeting Dee, did the four of you,  
19 that is, you, the defendant, Melinda, and Dee have  
20 any conversation about going anywhere?

21 A Well, yes, yes, we were coming -- we were  
22 to come back to Lumberton.

23 Q And did you come back to Lumberton?

24 A Yes.

25 Q Who came back the Lumberton?

1           A     Daniel and I, Melinda, and Dee.

2           Q     Where did you go?

3           A     The first place we stopped was a store  
4 somewhere around in Marion. And the next place was  
5 Daniel's grandmother's house.

6           Q     Did you see anyone at Daniel's  
7 grandmother's house?

8           A     Yes. Well, we never got out and went in it  
9 or anything, but his mom came out.

10          Q     When his mom came out, did the defendant  
11 get out of the car?

12          A     Yes.

13          Q     Did he engage in any conversation with his  
14 mother?

15          A     Yes, and then she was -- his mom was upset  
16 because we had been gone so long in the car. We had  
17 supposed to have been back at a certain time, and  
18 were three hours late.

19          Q     Did you observe the defendant give his  
20 mother anything there?

21          A     Yes.

22          Q     What if anything did he give her?

23          A     He gave her some money and the food stamps  
24 that had been taken from the robbery that morning.

25          Q     Did you see where he had gotten the food

1 stamps from?

2 A Yes, they had came out of the store that we  
3 robbed.

4 Q When he gave the food stamps to his mother,  
5 did he have those in his pocket or did he take them  
6 from the glove compartment?

7 A I remember -- I had to get out of the car,  
8 he went in there and got everything out, and he took  
9 it to his mom.

10 Q Do you know how much money he gave his  
11 mother?

12 A He gave -- as best I can remember, there  
13 was about \$40.00 worth of food stamps and then a  
14 hundred dollar bill.

15 Q From there, where did you go?

16 A We came back, came to Lumberton.

17 Q Where did you go in Lumberton?

18 A We went to -- there was a motel, the name  
19 of it is Coastal Inn.

20 Q Before going to the motel, did you ever go  
21 by the defendant's trailer in Bob'S landing?

22 A No.

23 Q When you got to the Coastal Inn who went  
24 inside the office?

25 A I did.

1 Q Did you rent any rooms?

2 A Yes.

3 Q How many rooms did you rent?

4 A Two.

5 Q And how did you pay for them?

6 A I gave cash that -- gave them the money  
7 that had came from the robbery that morning, some of  
8 it.

9 Q When you went to the motel, was it daylight  
10 or was it dark outside?

11 A It was daylight.

12 Q And when you rented the two rooms, who went  
13 to what rooms?

14 A Daniel and Melinda went in one room, and  
15 then Dee and I went in another room.

16 Q How long did you stay at the motel?

17 A It was two to three hours, I think it was.

18 Q Was the video camera ever taken out of the  
19 car at the motel?

20 A Yes.

21 Q Who took the video camera out of the car at  
22 the motel?

23 A I don't remember for sure.

24 Q Do you recall if anyone operated the video  
25 camera at the motel?

1 A Yes.

2 Q Who did that?

3 A First person I saw take it was Dee, she had  
4 gotten it and went in the room with Daniel and  
5 Melinda, and she stayed over there a few minutes. I  
6 could hear them laughing, just clowning around, I  
7 guess they were. And then she came back and left the  
8 camera inside the room with Daniel and Melinda.

9 Q Was the .38 caliber pistol ever taken out  
10 of the car at the motel?

11 A Yes.

12 Q Who took it out?

13 A It had been placed in a black -- a knapsack  
14 kind of thing, and I had taken it out and taken it in  
15 the room that -- the room that Dee and I were in.

16 Q Now, the black knapsack that you've  
17 referred to, is that the same back bag that was taken  
18 in the robbery at the motel in Rowland?

19 A Well, no, the video camera was in that bag,  
20 but there was another one, like a book sack type bag.

21 Q Whose bag was that, if you know?

22 A It had come from -- something else that had  
23 occurred in Rowland.

24 Q Now, you took the .38 caliber pistol out at  
25 the motel?

1           A       No, it stayed in the bag the whole time.

2           Q       Was the gun returned to the car at any  
3 time?

4           A       Yes, when we got ready to leave.

5           Q       And where was it placed at that time?

6           A       It was still in the book bag. It was put  
7 in the back seat of the car.

8           Q       Who drove from Marion to Lumberton?

9           A       Dee.

10          Q       Who drove from Marion back to Lumberton?

11          A       Dee.

12          Q       When did you go back to Marion?

13          A       It was later on in the evening hours, it  
14 wasn't dark yet. But I remember it being dark by the  
15 time we got back, Daniel and I.

16          Q       When you went back to Marion, what did you  
17 do with the girls?

18          A       Took them home and everything, and then we  
19 came back.

20          Q       When you came back, where did you go?

21          A       Daniel and I went back to the Coastal Inn,  
22 and he went in the room that he was in, and I went in  
23 the one that I was in, and we slept that night.

24          Q       After sleeping at the Coastal Inn on the  
25 night of July 15th, 1993, what did you do the next

1 morning on the 16th, where did you go?

2 A I had -- I took Daniel home, and I can't  
3 remember for sure if it was directly after dropping  
4 Daniel off, but I had went over to a girlfriend's  
5 house.

6 Q Larry, are you familiar with C&R Pawn Shop  
7 in Pembroke?

8 A Yes.

9 Q At any time after the .38 pistol was taken  
10 in the robbery of Clewis Demory, did you and the  
11 defendant go to the C&R Pawn Shop in Pembroke?

12 A Yes, we did.

13 Q Why did you go to the C&R Pawn Shop in  
14 Pembroke?

15 A In order to buy bullets for the gun.

16 Q In order to buy bullets for what gun?

17 A The .38 that had been taken out of the  
18 store.

19 Q When you first saw the .38 caliber pistol  
20 on July 15th, 1993, were there any bullets in that  
21 gun?

22 A Yes, there were.

23 Q What if anything, to your knowledge,  
24 happened to the bullets that were in the gun on July  
25 15th, 1993 when you first saw them?

1 A They had been shot out. I mean --

2 Q Who, to your knowledge, fired those rounds?

3 A I did, Daniel and I shot the bullets out.

4 Q And at the time you first saw the gun on  
5 July 15th, 1993 was it fully loaded?

6 A Yes, it was.

7 Q After -- and did you and the defendant  
8 shoot all those rounds?

9 A No, there was one, one left in the chamber.

10 Q Did you have any other .38 caliber bullets?

11 A No.

12 Q And why did you go to the C&R Pawn Shop in  
13 Pembroke?

14 A To buy bullets for it.

15 Q Did you go inside the store?

16 A Yes.

17 Q Did the defendant go inside the store?

18 A Yes.

19 Q Did you ask -- did you, personally, ask for  
20 any item when you went in the store?

21 A No, no.

22 Q Did the defendant ask for any item when he  
23 went into the store?

24 A No, we just -- we walked around and looked  
25 in the case -- I had been in the particular pawn shop

1 a few times before. I knew they sold bullets and had  
2 pretty much had everything in there, and I knew --

3 Q While you and the defendant were in the C&R  
4 Pawn Shop, was any purchase made?

5 A Yes.

6 Q Who brought anything?

7 A Daniel bought a box of .38.

8 Q How did he pay for it?

9 A Cash -- money that had come out of the  
10 robbery.

11 Q Which robbery?

12 A At Lowry's Texaco.

13 Q And the box of .38 that the defendant  
14 purchased, was there a particular brand of .38  
15 bullet?

16 A No, they were -- they were all reloads.

17 Q Do you know what a reload is?

18 A Repack, repacked shells, and there was -- I  
19 remember three types of bullets that were in the box,  
20 Winchester, Federal, and Ruger.

21 Q How do you know that there were Winchester,  
22 Federal and Ruger bullets?

23 A Well, by looking at them and, the names on  
24 the bottom. Like I said, there was -- there was only  
25 a box full of reloads, there was no particular, no

1 one kind of them.

2 Q And were those -- any of those bullets ever  
3 placed inside the .38 caliber pistol that was taken  
4 during the robbery of Clewis Demory?

5 A Yes.

6 Q Who loaded the gun?

7 A We both did on different occasions.

8 Q Why did you have to load it on different  
9 occasions?

10 A Well, most of the bullets that we bought,  
11 that Daniel purchased in the pawn shop was spent just  
12 firing the gun, but --

13 Q Where would you go fire the gun?

14 A Most of the time we fired it we were around  
15 the trailer park somewhere.

16 Q Around whose trailer park?

17 A The trailer park that Daniel lived in.

18 Q At any time did you ever take that .38  
19 caliber bullet home with you -- excuse me, that .38  
20 caliber revolver home with you?

21 A Yes, there was.

22 Q How many occasions?

23 A I remember -- I only remember for sure two  
24 different occasions.

25 Q And after each time that you took it home

1 with you -- strike that. On July the 15th, 1993,  
2 when you returned -- excuse me, when you returned  
3 from Marion, South Carolina, who had the .38 caliber  
4 revolver?

5 A Daniel did.

6 Q On July the 16th, 1993, after spending the  
7 night at the motel, who had the .38 caliber revolver?

8 A Daniel did.

9 Q And on the occasion when you first took  
10 the .38 caliber revolver home with you, from whom did  
11 you get it?

12 A Daniel.

13 Q And after taking it home with you on the  
14 first occasion, did you ever return it to the  
15 defendant?

16 A Yes.

17 Q And on the second occasion, when you took  
18 the .38 caliber revolver home with you, from whom did  
19 you get it?

20 A Well, I got it from Daniel, got it from  
21 Daniel.

22 Q Did you ever return it to him after taking  
23 it home with you on that occasion?

24 A He came back and got it.

25 Q Following the robbery of Clewis Demory on

1 July the 15th, 1993, did you and the defendant have  
2 any other discussions about committing any other  
3 robberies?

4 A Yes.

5 Q Where did those discussions take place?

6 A Just about everywhere we were together. I  
7 mean, this was like an every-night thing, we were out  
8 attempting to look -- looking, attempting to rob  
9 somebody, someplace.

10 Q When you say it was an every-night thing,  
11 what do you mean by that?

12 A Like every night that we were together, you  
13 know, we were -- like I said, we were out attempting  
14 to rob somebody or looking for somebody to rob.

15 Q When you say you were out at night, what  
16 time of the night are you talking about?

17 A All hours of the -- late night, early  
18 morning. As long as it was dark outside, we were out  
19 looking for something to rob.

20 Q And on those occasions when you were out  
21 looking for someone to rob following the July 15th  
22 robbery of Mr. Demory, did you have a gun?

23 A I didn't own one, Daniel had the .38.

24 Q When you say Daniel had the .38; was that  
25 the .38 that was taken during the robbery of Clewis

1 Demory?

2 A Yes.

3 Q What places would you go to on these nights  
4 looking for someone to rob?

5 A Motels, BP station that was located on  
6 Highway 72. We went out there several different  
7 times, you know, scoping the place out. And we  
8 planned robbing that store.

9 Q When you say you went to motels, do you  
10 recall any specific motels that you went to and where  
11 they are located?

12 A Quality Inn located at exit 14,  
13 intersections of 74 and 95.

14 Q How many times did you go to that  
15 particular location?

16 A Must have been many times. I don't --  
17 several, on several occasions.

18 Q On July the 22nd of 1993, did you see the  
19 defendant that day?

20 A Yes, I did.

21 Q Where did you see him?

22 A We had been together all that night before.

23 Q Did you spend the night at the defendant's  
24 trailer?

25 A Yes.

1 Q On the night of the 21st of July?

2 A Well, a few hours. The rest of the time we  
3 were out.

4 Q On July the 22nd 1993, did you have any  
5 conversation with the defendant about committing any  
6 robbery that day or that night?

7 A Yes.

8 Q Where were you when the two of you talked  
9 about committing a robbery on the day or the night of  
10 July 22nd, 1993?

11 A I don't remember where we were, but like I  
12 said before, all the time we were together, that was  
13 the main thing that was discussed.

14 Q And had the two of you talked about when  
15 and where you were going to try the commit this  
16 robbery?

17 A When was as soon as night fell, and then  
18 that day, specific day, it was the Quality Inn.

19 Q Where was the Quality Inn located?

20 A Right off of Highway 74 and 95.

21 Q On July 22nd, 1993, were you driving a car,  
22 or did you have a car with you?

23 A Yes.

24 Q Which car?

25 A My Ford Tempo.

1           Q       Why did you pick, or why did you decide to  
2 try to rob someone at the Quality Inn located at 74  
3 and 95?

4           A       Because it was -- like I said, we had  
5 discussed, you know, that there would probably be  
6 tourists there, and then the fact that it was off  
7 from other businesses, there wasn't a lot of other  
8 places around, and then -- like there was this old  
9 abandoned store that we could hide out there and  
10 watch the parking lot, pretty much stay out of sight.

11          Q       Did the defendant live near that location?

12          A       Yes.

13          Q       Approximately how far was the Quality Inn  
14 located from the defendant's trailer?

15          A       Roughly a mile and a half.

16          Q       Did you spend the entire day of July 22nd,  
17 1993 with the defendant?

18          A       No, not the entire day, I didn't.

19          Q       At some point on July 22nd, 1993, did you  
20 leave the defendant's trailer?

21          A       Yes, it was around 4:30, 5:00.

22          Q       When you left, where did you go?

23          A       I went to -- well, first place I stopped  
24 was in Pembroke.

25          Q       Why did you go there?

1           A       My reason was, that day was my fiance's  
2 birthday. I went in there to -- I bought her a  
3 balloon, a card. There was a -- it came in a box,  
4 had a Winnie the Poo character in it, a videotape,  
5 and if I'm not badly mistaken, there was a book along  
6 with it. I had bought her that. And then the next  
7 place I went was a book store in Pembroke, bought  
8 four or five children's books, Sesame Street, things  
9 like that.

10           Q       Why did you buy your fiancee children's  
11 books?

12           A       Well, we were expecting a baby, and we  
13 would read to the baby, that was something that we  
14 both did. And even though she wasn't born yet, it  
15 was just something that Angel and I did together.

16           Q       And after you purchased these items, where  
17 did you go?

18           A       I went to my parents' house, stayed just a  
19 few minutes, and I called Angel, stayed there just a  
20 little while, and then went to Angel's house.

21           Q       Do you recall about what time it was when  
22 you got to Angel's house?

23           A       6:30, 7:00.

24           Q       How long did you stay there with her?

25           A       About an hour and a half, two hours.

1 Q After that hour and a half to two hours,  
2 did you leave?

3 A Yes.

4 Q Did anyone leave with you?

5 A My fiancée. I had -- she was going to go  
6 over to her best friend's house to watch some videos  
7 with her that night.

8 Q And did you take her there?

9 A Yes, I did.

10 Q Why did you only stay with your  
11 girlfriend -- excuse me, your fiancée for such a  
12 short time on her birthday?

13 A Well, like I said, we were -- Daniel and I  
14 were out committing all these crimes, and that was  
15 our plan, to go out that night, do something. I had  
16 told him that I would be back at his place between  
17 9:00, 10:00. And it was getting to be around that  
18 time.

19 Q When you dropped your fiancée off at her  
20 friend's house, where did you go?

21 A I went directly back to Daniel's trailer.

22 Q Was anyone there?

23 A Yes.

24 Q Who?

25 A He was, he was alone.

1 Q And when you got back to his trailer at  
2 that time, did the two of you have any conversation?

3 A Well, just -- I don't remember what was  
4 said. It wasn't much. I was only there a few  
5 minutes before we left.

6 Q When you left, who left with you?

7 A Just -- well, Daniel and I.

8 Q When you left, did Daniel take anything  
9 with him?

10 A We had the .38 pistol. The video camera  
11 was already at the place that we went that night.

12 Q Now, the .38 pistol, who had it?

13 A Daniel did.

14 Q Is that the same .38 pistol that had been  
15 taken in the robbery of Clewis Demory July 15th,  
16 1993?

17 A Yes.

18 Q What if anything did you see Daniel do with  
19 the .38 pistol as you were leaving?

20 A When we got in the car, he put it up under  
21 the passenger seat.

22 Q Which car did you get into?

23 A Mine, the Ford Tempo.

24 THE COURT: Mr. Britt, may I  
25 interrupt? You indicated, Mr. Demery, that

1 the video camera was already at the place  
2 that we went. What did you mean by that?

3 THE WITNESS: Well, I was  
4 thinking that -- the video camera, it was  
5 already over at the next place we went, his  
6 mom's friends house, it was already over  
7 there. For a second I was thinking that it  
8 may have been put in the car, but it  
9 wasn't, it was already over there.

10 THE COURT: Okay.

11 BY MR. BRITT:

12 Q From the defendant's trailer, where did you  
13 go?

14 A Went over to his mom's friend's house,  
15 Kayeol Hernandez.

16 Q Do you know where -- where is  
17 Ms. Hernandez's house located?

18 A Around the Burnt Pines area, there's a  
19 store by the name of Parrot's that's located close by  
20 where she lives.

21 Q What town is that near?

22 A Around the Saddle Tree area here in  
23 Lumberton.

24 Q When you got to Ms. Hernandez's house, who  
25 got out of the car?

1 A We both did.

2 Q Where did you go?

3 A Went inside the house.

4 Q Who was there?

5 A Daniel's mom, her friend Kayeol, Kayeol's  
6 youngest daughter, Monica, and one of Monica's  
7 friends.

8 Q About what time was this?

9 A Between 10:00 and 11:00.

10 Q When you got out and went into  
11 Ms. Hernandez's house, what did you do?

12 A We just -- well, Daniel and I went in the  
13 house, we went around and talked with his mom and  
14 Kayeol just a few minutes, and then we went into  
15 another room and watched MTV for a while. Daniel's  
16 mom and Kayeol, they were in another room watching a  
17 movie.

18 Q When you say we went and talked with his  
19 mom, who are you talking about?

20 A Daniel and I.

21 Q When you say we talked to his mom, whose  
22 mother did you talk to?

23 A Daniel's mother.

24 Q When you say we went in and watched MTV for  
25 a while, who are you referring to as we?

1           A       Daniel and I. Then like I said, Kayeol's  
2 youngest daughter was there, and one of her friends,  
3 and they were already in there.

4           Q       How long did you stay at Ms. Hernandez's  
5 house?

6           A       About two hours, two and a half. I  
7 remember it being around, between 1:00 and 1:30 when  
8 we left.

9           Q       At any point after you went to  
10 Ms. Hernandez's house, did you ever leave by  
11 yourself?

12          A       No.

13          Q       And when you left Ms. Hernandez's house  
14 between 1:00 and 1:30, who left with you?

15          A       Daniel did.

16          Q       And when you left Ms. Hernandez's house,  
17 where were you going?

18          A       We were going to the Quality Inn located  
19 off of Highway 74, 95, to rob -- rob somebody.

20          Q       Now, when you say we left, who do you mean  
21 by we?

22          A       Daniel and I.

23          Q       What car did you take?

24          A       My car, the Tempo.

25          Q       Who drove?

1           A       I did.

2           Q       Where was the defendant?

3           A       In the passenger seat.

4           Q       Was the .38 caliber pistol in your car when  
5 you went to Ms. Hernandez's house?

6           A       Yes.

7           Q       Was the .38 caliber pistol in your car when  
8 you left Ms. Hernandez's house?

9           A       Yes.

10          Q       Where was it when you left her house?

11          A       Up under the seat, passenger seat.

12          Q       At any time was the .38 caliber pistol  
13 taken out from beneath the passenger seat of the car?

14          A       Only when we got over to the Quality Inn,  
15 you know, parked the car, it was taken out then.

16          Q       When you left Ms. Hernandez's house, can  
17 you tell us the route that you took from her house to  
18 the Quality Inn?

19          A       I don't remember the name of the road, the  
20 first road we took, but we came out of Highway 72,  
21 intersection, there was a BP station located to the  
22 left, some other type stores across the road to the  
23 right, but when we got to the stop sign, we took a  
24 left, and took Highway 72 all the way up to the  
25 planetarium. And as we stopped -- we stopped at the

1 light, and then when the light changed, we went over,  
2 went off to the left kind of and then an immediate  
3 right, and we went over a small, one lane bridge, and  
4 we were on the service road then.

5 Q When you say you were on the service road,  
6 does that service road run beside any other road?

7 A Along Scotland County side of Highway 95.

8 Q When you got on the service road, which way  
9 did you go and where did you go?

10 A We took it all the way to just a little  
11 ways past the Quality Inn, beside the Quality Inn,  
12 there's a canal, and right before you get to the stop  
13 sign, you know, at 74, off this service road, there's  
14 a little dirt road that breaks back to the right that  
15 goes up into a dirt road that runs down alongside the  
16 canal. And that's where I turned off. We parked the  
17 car up on that dirt road.

18 Q This canal that's near the motel, is it in  
19 a cleared or wooded area?

20 A In a wooded area.

21 Q Why did you take your car back into this  
22 wooded area along the canal?

23 A So it could be hidden out of sight from  
24 other cars. That's the reason.

25 Q When you parked the car in this wooded area

1 near the Quality Inn, what happened next?

2 A Daniel and I got out, he got the .38 out  
3 from under the seat, and he put it under his  
4 waistband, and we walked from the car over to the  
5 Quality Inn.

6 Q When you say you walked from the car to the  
7 Quality Inn, did you walk through the woods and cross  
8 a canal, or how did you get there?

9 A No, we had to go back out to the road, the  
10 service road, and walk down the service road a little  
11 ways, got to the Quality Inn by walking down the  
12 road.

13 Q Where did you go?

14 A There's an abandoned store right beside the  
15 Quality Inn, and most of the time that we were over  
16 in that area, we were behind that abandoned store  
17 looking at the parking lot over at the motel.

18 Q Why did you stay in the area of the store?

19 A Well, that way, where we were, we were  
20 pretty much out of sight, and we could see like the  
21 whole parking lot -- well, the parking lot on the  
22 left side you could see pretty good. And like I  
23 said, we were out of sight.

24 Q At any time did you ever go into the  
25 parking lot of the motel?

1           A       There was a few different times we walked  
2 around in the parking lot.

3           Q       Did you ever see anyone in the parking lot?

4           A       No.

5           Q       Did you ever return to your car?

6           A       Yes.

7           Q       How many times?

8           A       Well, two different times, but first time  
9 it was to go get cigarettes, cigars, something to  
10 smoke, out of the car. And then we went back over to  
11 the motel, stayed a little while longer and left.

12          Q       Who had the .38 when you first walked over  
13 to the area near the motel?

14          A       Daniel did.

15          Q       At any time did you have the .38 that  
16 night?

17          A       One time, we were over behind the store,  
18 and Daniel was lighting a cigarette or cigar or  
19 something, and he handed it to me. I held it just  
20 long enough for him to do what he was doing, and  
21 handed it right back to him.

22          Q       And after you handed it back to him after  
23 he lit this cigarette or this cigar, at any time  
24 after that, did you ever have the .38 revolver in  
25 your hands?

1           A       No, not while we were at the motel.

2           Q       You said there were two times when you went  
3 back to the car?

4           A       Yes.

5           Q       Your car?

6           A       Yes.

7           Q       On each occasion did both you and the  
8 defendant go back to the car?

9           A       Yes.

10          Q       On either of those occasions, when you went  
11 back the your car that was parked in this wooded area  
12 along the canal, did anything or anyone catch your  
13 attention?

14          A       After -- we went to the car the first time,  
15 on the way back to the motel, there was a car parked  
16 along, off the road, beside 74. And it had been  
17 sitting there -- it was first noticed when we were  
18 walking back to the motel, but nobody said anything  
19 about it really.

20          Q       What if anything caught your attention  
21 about the car being parked along 74?

22          A       Well, what caught my attention was Daniel  
23 made a statement that when we left the motel the last  
24 time, he made the statement that it was like, that  
25 car is still sitting there, and then he said that he

1 thought it was an undercover police car or  
2 something.

3 Q Were there any lights on?

4 A Park lights were on.

5 Q Could you tell from where you were standing  
6 at the time what kind of car it was?

7 A No.

8 Q Could you tell what color it was?

9 A No.

10 Q Could you tell if anyone was inside the car  
11 at that time?

12 A No.

13 Q After Daniel made the statement that he  
14 thought it was an undercover car, did the two of you  
15 have any other conversation about that car?

16 A Yes, when he said that, I disagreed with  
17 him. We fussed about it a minute or two and decided  
18 that the only, that only way to -- you know, find out  
19 for sure was to go see, go see what type of car it  
20 was.

21 Q When you were having this conversation  
22 about what kind of car it was, where were you?

23 A We were still walking along the road, going  
24 back toward the car, my car.

25 Q When you say you were walking along the

1 road, which road are you referring to, 74 or the dirt  
2 road or the service road?

3 A The service road.

4 Q And at some point was it decided to go over  
5 and see what kind of car it really was?

6 A Yes.

7 Q Who walked over to the car?

8 A Daniel and I, both of us.

9 Q When you approached the car, did you  
10 approach it from the rear or the front or the side?

11 A From the rear.

12 Q At what point were you able to tell what  
13 type of car it was?

14 A Well, it was on the way -- like I said, we  
15 walked behind the car, across the road and came back,  
16 but when we were coming across the road that Daniel  
17 mentioned what type of car it was.

18 Q What kind of car did he say it was?

19 A A Lexus.

20 Q Could you see what color it was?

21 A Yes, then I could.

22 Q What color was it?

23 A It was a burgundy red looking car.

24 Q When you first saw it was a burgundy red  
25 colored car and the defendant told you it was a

1 Lexus, could you see anyone inside that car?

2 A Well, as we were crossing back over the  
3 road that second time, there was -- I could see and  
4 tell that somebody was in there, but I didn't -- I  
5 couldn't tell whether it was a man -- I just saw the  
6 form of a person laid back.

7 Q Where did you see the form of a person laid  
8 back in the car?

9 A They were in the driver's seat.

10 Q Could you tell if it was a white person,  
11 black person, or Indian person?

12 A No, I couldn't.

13 THE COURT: Mr. Britt, let me  
14 interrupt for a moment. It's 10:15 right  
15 now. We had directed our jury to call back  
16 at 11:00.

17 MR. BRITT: Yes, sir.

18 THE COURT: And what I'm going to  
19 propose is that the message to be left  
20 should be as follows: That they are to  
21 report at 9:30 tomorrow morning. That  
22 gives us ample time to go forward with the  
23 balance of today with the matters before  
24 us, and hopefully, we'll be in a position  
25 to begin presentation of the evidence in

1 the presence of the jury tomorrow morning.

2 MR. BRITT: That would be fine.

3 THE COURT: Counsel for the  
4 defendant?

5 MR. THOMPSON: No, sir.

6 MR. BOWEN: No, sir.

7 THE COURT: If you'll leave that  
8 message on the recorder for the jurors  
9 calling in that they are to report at 9:30  
10 tomorrow morning. Yes, sir. I'm sorry.

11 BY MR. BRITT:

12 Q How many figures of a person did you see in  
13 the car?

14 A At the time I only noticed one. Like I  
15 say, I couldn't -- I could see the form of a person,  
16 like I said, in the driver's side but I couldn't tell  
17 if there was anybody in the back or in the passenger  
18 seat.

19 Q Were you able to see the license plate on  
20 the car as you walked by it?

21 A Yes.

22 Q Do you recall the license plate number on  
23 the car?

24 A Yes. I don't remember numbers, but there  
25 was the University of North Carolina emblem on the

1 tags.

2 Q And did you and the defendant have any  
3 discussion --

4 THE COURT: I apologize, I'm  
5 looking at the screen. It's 9:30, not  
6 11:30 tomorrow morning.

7 MR. BRITT: Yes, sir.

8 BY MR. BRITT:

9 Q And after seeing the license plate on the  
10 car, did you and the defendant have any other  
11 discussion about it being an undercover police car?

12 A The main objective the first time walking  
13 by the car was to see what type of tags it was, not  
14 really what type of car, just to get a look at the  
15 tags. We saw the tags, we walked on across the road,  
16 and then came back. And it was then that Daniel made  
17 the statement about what type of car it was, and  
18 everything. And from there, we both started  
19 discussing that, saying it was probably a college  
20 student, they were home on vacation, more than likely  
21 they probably had money on them. Daniel made the  
22 statement that he would like to have had the car.

23 So the second time we went back to the car,  
24 that was -- that's what we were doing then,  
25 discussing, planning out what we were going to do,

1    how we were going to go about getting hold of this  
2    car.

3           Q       What did you talk about?

4                   THE COURT:   Mr. Britt, this is a  
5    good point for us to stop.  The court  
6    reporter needs -- we're going to take about  
7    two 15 minute breaks in the morning.

8                   MR. BRITT:   That would be fine.

9                   THE COURT:   If necessary.  Two  
10   breaks.  This is really difficult for the  
11   court reporter when it's continuous and  
12   uninterrupted.

13                   MR. BRITT:   Yes, sir.

14                   THE COURT:   So we'll be at ease  
15   at this point until 25 until.

16                   THE BAILIFF:  Court stands at  
17   ease until 25 until.

18                               (Brief recess.)

19                   THE COURT:   Let the record  
20   reflect all counsel are present, the  
21   defendant is present in open court.  All  
22   members of the jury are absent at this  
23   time.  The Court is continuing with the  
24   404(b) matter now before the Court.

25                               Is Mr. Demery present?

1 MR. BRITT: He is -- he's in my  
2 office with Mr. Rogers and Mr. Campbell --  
3 oh, here he is.

4 THE COURT: Mr. Demery, if you  
5 will again take the witness stand. You  
6 remain under oath.

7 Mr. Britt.

8 BY MR. BRITT:

9 Q Larry, before we broke, you testified that  
10 Daniel had made a statement that he would like to  
11 have the car?

12 A Yes.

13 Q You stated that that's what we were doing,  
14 was discussing, planning out what we were going to  
15 do, how we were to go about getting hold of this  
16 car. What did the two of you talk about?

17 A We talked about how we were going to go  
18 about approaching it, approaching this car, about  
19 what we were going to do with the person inside of  
20 the car, and where we were going to meet.

21 Q When you talked about what you were going  
22 to do with the person inside the car, what was said?

23 A We had planned to take this guy, tie him --  
24 well, to start off, we were going to both be at the  
25 car, he was going to be woken up, forced to bring

1 back over to Daniel's place, and from there, tape him  
2 up and put him out beside the road, somewhere.

3 Q Now, when you say that we were both going  
4 to be at the car, what do you mean by that?

5 A Well, Daniel had the gun and everything --

6 Q What gun did Daniel have?

7 A The .38 that came out of the robbery at  
8 Lowry's Texaco. And he was going to be the one to  
9 get in the car with the person that was in there, and  
10 hold him at gunpoint, force him to drive over to the  
11 bridge located right at Bob's Landing Trailer Park  
12 that Daniel lived in.

13 Q At that point, did you know if it was a  
14 man, a woman in the car?

15 A Yes, after we left my car the second time,  
16 we pretty well had everything planned out, you know,  
17 the way it was supposed to happen. And --

18 Q How was it supposed to happen?

19 A Like I said, you know, we were going to tie  
20 him up, put him out beside the road somewhere.

21 Q What were you going to tie him up with?

22 A I had several rolls of duct tape in the  
23 trunk of my car.

24 Q Why did you have duct tape in the trunk of  
25 your car?

1           A       From the job I was doing prior to quitting  
2 it and committing crimes, I worked with my fiancée's  
3 stepdad at Crestline Mobile Home.

4           Q       Doing what?

5           A       Escorting mobile homes.

6           Q       When you say escorting mobile homes, what  
7 did you do?

8           A       When mobile homes are being moved up and  
9 down the highway, the little car, truck with the  
10 flashing lights, that's what I did.

11          Q       Why did you have duct tape for that job?

12          A       Like the plastic that would be on the  
13 house, a lot of times it would tear, and if we caught  
14 the tear before it got too big, we would use the duct  
15 tape to tape it over real good, because if it  
16 got -- tear got so long, the plastic, everything  
17 would have come off, it would have been a mess.

18          Q       And did the duct tape have a part in the  
19 plan that you and the defendant had made in taking  
20 this car?

21          A       Yes, it was there in the car.

22          Q       Who was to do what?

23          A       Like I said, we were both going to be at  
24 the car, you know, this guy was going to be woken  
25 up. My main --

1 Q By whom?

2 A Daniel was going to wake him up, hold a gun  
3 on him and everything, and get in car with him, force  
4 him to drive. My main purposes for being at the car  
5 was just to, even though Daniel had the gun, you  
6 know, earlier the statement was made that we had  
7 crossed over the road and came back another time to  
8 get a good look at this guy, get the layout of  
9 everything, see if anybody else was in the car. And  
10 there was a comment made between -- well --

11 Q Who said what?

12 A A small discussion between the two of us  
13 that the guy that was in this car may have been a  
14 hustler, meaning a drug dealer or something, you  
15 know.

16 Q Now, you had determined that there was a  
17 man in the car?

18 A Yes.

19 Q What color was he?

20 A He was a black man.

21 Q And can you tell how old he was at that  
22 time?

23 A To me, he appeared to be in his late 40's,  
24 early 50's.

25 Q Could you tell how he was dressed?

1           A       Yes, he was dressed real casual like. He  
2 had on, if I'm not mistaken, a light brownish colored  
3 pants, a light colored shirt, and I remember a light  
4 colored Members Only type jacket.

5           Q       How was the person positioned in the car?

6           A       He was reclined back in the driver's seat,  
7 taking a nap.

8           Q       Were there any windows open on the car?

9           A       The window on the passenger side was open  
10 half way.

11          Q       Now, you said you and the defendant had  
12 made a plan to take the car and take this person back  
13 to the bridge near Bob's Landing Mobile Home Park?

14          A       Right.

15          Q       Who had the gun at that point?

16          A       Daniel did.

17          Q       At any time after you approached this car  
18 on the night -- on the morning of July 23rd, 1993,  
19 did you ever have the gun?

20          A       No.

21          Q       Now, after you formed this plan to take the  
22 car and tie the person up and leave them along the  
23 road, what did you do?

24          A       Well, when we left my car the second time,  
25 you know, approached this car again and everything,

1 like I said, we walked by it again, came back by real  
2 close to the car, around the front part of it, see  
3 how many people were there, get a layout of  
4 everything. We --

5 Q How many people did you see in the car?

6 A Just one.

7 Q Where was that person?

8 A In the driver's seat.

9 Q After you came around the front part of the  
10 car, what did you do?

11 A Walked over to the side, we were looking --  
12 looked in the car through the passenger side. Like I  
13 was saying a minute ago, there was discussion between  
14 Daniel and I, just a small one, you know, that this  
15 guy looked like a -- he might have been a drug dealer  
16 or something. A reason -- or my reason for thinking  
17 that was I could tell -- even though it was dark,  
18 there was some lighting around, but I noticed the  
19 watch that he had on, it really stood out. A ring  
20 that he had on his finger, and then he -- like I say,  
21 he was reclined back. He had on a pair of glasses,  
22 but to me, they looked like they were kind of dark  
23 tinted, like shaded. And just real cool looking, the  
24 kind of -- he was dressed whatever the way, I would  
25 think that this person was, you know, that's the way

1 he came off to me.

2 Q Now, when you saw this ring and this watch  
3 on this man in the car, what was that person -- what  
4 was the man doing at the time?

5 A He was asleep.

6 Q And what then happened?

7 A Well, like I said, we -- we were standing  
8 at the car, a car started coming down Highway 74.  
9 And even though we had all -- we had it planned out  
10 and everything, it was still, we were discussing last  
11 minute things, you know, trying to -- and boosting  
12 one another up, building our nerve to go ahead and do  
13 this thing. But like I said, a car started coming  
14 and we ran.

15 Q Where did you run?

16 A A little ways off from where the car was  
17 parked, there was some bushes. There was a flea  
18 market in that area, they were down behind the flea  
19 market sign. We hid in those bushes. And after the  
20 car passed, we came out of the bushes, approached the  
21 car again, stood there a minute -- well, not a  
22 minute, but another car started coming. When this  
23 car started coming, there was -- the flea market had  
24 an advertisement sign up, and it was a pretty big  
25 sign. It was big enough for both of us to squat down

1 behind it and hide from this passing car. And after  
2 this second car passed, we got up from behind the  
3 sign again, approached the car.

4 Q Did you have any conversation while you  
5 were there at the sign?

6 A Well, we were -- we were boosting one  
7 another up, you know, building each other's nerves.

8 Q What was said?

9 A Saying things like -- the last thing I  
10 remember saying for sure, Daniel said, we're in this  
11 together. We gave each other the high five, whatever  
12 you want to call it, and came out from behind the  
13 sign.

14 Q Did anyone have the .38 at that time?

15 A Yes, Daniel did.

16 Q And when you came out from behind the sign,  
17 where did you go and what happened?

18 A We approached the car again. When we got  
19 up to the car --

20 Q On what side of the car did you approach?

21 A The passenger side.

22 Q Why did you approach on the passenger side?

23 A Because the window was down, like I said,  
24 we were going to wake this man up, Daniel was to get  
25 in, make him drive.

1           Q       When you approached on the passenger side  
2 of the car, where did you go and where did the  
3 defendant go?

4           A       Well, we both went up to -- no, it was a  
5 two-door car, we both went up to the passenger side.  
6 I was more towards the back of the car, and Daniel  
7 was at the front. But the distance between us was no  
8 more than two feet.

9           Q       And when you got up to the car, what did  
10 the two of you do?

11          A       Well, we squatted down. And again, just  
12 for a few seconds, we were boosting one another up,  
13 saying, we want to do this, we want to do this. And  
14 when --

15          Q       Was the .38 caliber revolver out?

16          A       Yes, Daniel had pulled it out as we came  
17 out behind the sign the last time.

18          Q       When you say he pulled it out, did he have  
19 it in his hand?

20          A       He had pulled it out from his waistband and  
21 had it in his hand.

22          Q       When you got to the car and squatted beside  
23 the passenger side of the car, did the defendant  
24 still have the .38 caliber revolver?

25          A       Yes.

1 Q And after you squatted there beside the car  
2 and spoke to each other again, what happened?

3 A When we made our move, I mean, you know,  
4 what we were supposed to get this guy awake and  
5 everything, it was as we were standing up, I don't  
6 know whether this man in the car heard us out there  
7 or what, but as we were coming up, he was waking up.  
8 And --

9 Q What was he doing that made you think that  
10 he was waking up?

11 A Well, he had sat up kind of, and he made a  
12 statement that it was like -- what's this or what's  
13 going on. But as soon as those words came out of his  
14 mouth, Daniel cut him off. And what I mean by that,  
15 he shot him.

16 Q And when you say Daniel shot him, what if  
17 anything did you see Daniel Green do with that .38  
18 caliber revolver?

19 A Well, like I said, when we came up, the gun  
20 was in the window, this guy was up, he made that  
21 statement, and just like -- Daniel just shot him. I  
22 mean, it was, like I said, as soon as the words were  
23 out of his mouth.

24 Q And when you say the gun was in the window,  
25 in whose hand was that gun?

1           A     Daniel's.

2           Q     How many times did the defendant fire  
3 that .38 caliber revolver?

4           A     Once.

5           Q     And when the defendant fired the .38  
6 caliber revolver, what if anything did you see the  
7 man inside that car do?

8           A     For the first few seconds, it seemed -- to  
9 me it seemed like forever. He had an expression of  
10 surprise, shock on his face. And then the next thing  
11 he started doing, he kind of -- he fell back. He  
12 started, you know, wiggling around. He was making  
13 groaning sounds. And finally, right before --  
14 seconds before he stopped moving completely, he  
15 groaned out, like I said he was groaning, and to me  
16 it sounded like he groaned out, "Oh, baby, I'm  
17 sorry." That's the way I heard it. That's what I  
18 thought he had said. And he stopped moving.

19          Q     And when the defendant shot the man in the  
20 car, what was your reaction?

21          A     I don't -- I was surprised. It wasn't  
22 supposed to have happened. Just like what he did the  
23 other robbery we committed with Mr. Demory, that  
24 wasn't supposed to have happened.

25          Q     When you say that wasn't supposed to have

1 happened, what are you talking about?

2 A Mr. Demory getting shot, there was never  
3 any discussion whatsoever of anybody getting shot,  
4 hurt, in any kind of way. And --

5 Q When you saw the defendant shoot the man in  
6 the car, did you say anything to him, to the  
7 defendant?

8 A Only until the man stopped moving and  
9 everything, the only thing I did -- well, I stood  
10 there, and we both stood there and watched the man  
11 die. And then I made the first statement after he  
12 stopped moving and everything, I asked Daniel why did  
13 he do it. Well, my exact words were, "Why the fuck  
14 did you shoot him?" He didn't respond to me with any  
15 kind of answer, he just said, "Hurry up and let's get  
16 him moved, let's get your car."

17 Q Did you open the car door?

18 A No, Daniel did.

19 Q Which car door was opened?

20 A He opened the passenger's door. I don't  
21 remember whether he opened it from the outside or  
22 reached in and opened it, but he opened the passenger  
23 door and reached in and tried to pull this man over  
24 some, but he couldn't, he couldn't handle him that  
25 much. He went over to the driver's side and opened

1 the door. And from the driver's side he pushed,  
2 pushed him over. And I had went in the passenger  
3 side, and as he was pushing, I was pulling, and we  
4 got him over --

5 Q Got him over to where?

6 A Over in the passenger seat. Moved him over  
7 enough that, you know, Daniel could get in and drive  
8 the car. And his upper body was twisted over toward  
9 like the door, facing out toward the passenger  
10 window. His -- the lower part of him was twisted,  
11 some way or another, one of his legs was still kind  
12 of over on the console, -- it wasn't in the way far  
13 enough to where the gears couldn't -- the lever  
14 couldn't be pulled back into Park or anything. After  
15 then, I shut the door, Daniel got in the car and I  
16 ran back to my car.

17 Q And when you were pulling this man's body  
18 and Daniel was pushing the man's body from the  
19 driver's seat to the passenger seat, did you ever  
20 notice any blood?

21 A No, I didn't.

22 Q Now, after the body was moved to the  
23 passenger seat, you say you closed the door, where  
24 did you go?

25 A I went directly back the my car.

1 Q When you got your car, what did you do?

2 A I jumped in there, jumped in there, fired  
3 it up, and left, went, headed back towards Daniel's  
4 place.

5 Q When you closed the door, the passenger  
6 door to that Lexus, where was the defendant?

7 A He was getting in the car, in the Lexus.

8 Q When you drove your car back out of the  
9 dirt road toward the service road, when you got to  
10 the service road, was the Lexus still there?

11 A Yes, it was.

12 Q Could you see the defendant?

13 A Yes, I could -- well, I knew it was him, I  
14 could tell by -- he was wearing a cap, just by his  
15 movement, I knew it was him in the car, in the  
16 driver's seat.

17 Q When you left, when you got out of the  
18 service road, where did you go?

19 A I crossed over Highway 74, like 301, around  
20 Hilly Branch school, and took a right just a little  
21 ways after I passed the school, and went down -- I  
22 took a right, went down that road a little ways, and  
23 then to Daniel's trailer.

24 Q When you got to the defendant's trailer,  
25 what did you do with your car?

1           A       I parked it in his front yard in front of  
2 the trailer and got out. And I walked over to the  
3 bridge, there was a canal located right -- right  
4 there where Daniel's trailer was, a little ways off  
5 to the left of it. And then there was a bridge out  
6 there, and we had discussed planning to meet at the  
7 bridge.

8           Q       Did you have the .38 caliber revolver when  
9 you left the area of 74?

10          A       No.

11          Q       Who had the .38 caliber revolver?

12          A       Daniel still had it.

13          Q       You went to the bridge near the defendant's  
14 trailer. How long did you wait there?

15          A       Anywhere from 15 to 20 minutes, I waited.

16          Q       And during that time, did anything catch  
17 your attention?

18          A       Yes, while I was standing at the bridge, I  
19 noticed -- right beside the bridge, there was a dirt  
20 road. And I noticed some headlights coming. When I  
21 first saw them, I kind of panicked a little, got out  
22 of the way and ducked, because there was -- I didn't  
23 know how he was going to -- I didn't know he was  
24 going to come back that way by this dirt road. But  
25 when I saw the lights, I kind of panicked and hid,

1 but the closer it got, I could tell that was Daniel  
2 in the car, the Lexus.

3 Q And these headlights that you saw, did that  
4 car that was emanating those headlights arrive at the  
5 bridge?

6 A I didn't completely understand the  
7 question.

8 Q The headlights that you saw --

9 THE COURT: As you saw the  
10 headlights approach, what happened?

11 THE WITNESS: Like I said, the  
12 closer they got, I knew it was Daniel, so  
13 when it got maybe, when he got maybe 15  
14 feet away from me, I noticed, like I said,  
15 I came out, came out from the place that I  
16 was hiding and stood there. When he  
17 stopped the car, he opened the driver's  
18 door and I got in behind him, got in the  
19 back seat.

20 BY MR. BRITT:

21 Q How did you know it was Daniel when you saw  
22 the headlights as they got closer to you?

23 A Well, it was -- like I say, it was dark in  
24 this area but wasn't dark to the point where I  
25 couldn't really see anything. And by the shape of

1 the car, you know, and then the radio was blasting  
2 loud, and come to find out later, that's when I say I  
3 was leaving from where I had my car parked and he was  
4 in the car fumbling around, that was one of the  
5 things he was doing, messing around with the radio,  
6 getting it cut on and everything. I just, like I  
7 say, I knew it was him.

8 Q And when he came to that bridge, was he  
9 driving the red Lexus?

10 A Yes.

11 Q Where was the body of the man that had been  
12 in the car?

13 A It was still pushed over in the passenger  
14 seat of the car, just like still in the same position  
15 that we had pulled it, and pushed and pulled it in.

16 Q And when he got to the -- when the  
17 defendant got to the bridge with the red Lexus, what  
18 happened?

19 A He stopped, opened the door, I got in. I  
20 got in behind him. I had to get in the back seat.

21 Q Did you have any difficulty getting into  
22 the car?

23 A Yes, because the seat was still reclined  
24 back from where this person had been laying back,  
25 laying back asleep. And Daniel, he hasn't -- he said

1 he had worked with it, but he couldn't -- he hadn't  
2 gotten the seat up yet, and he was having to drive it  
3 like sitting up, the back, the seat it was laid  
4 almost completely down. I mean, that's the reason I  
5 had so much difficulty getting in the car.

6 Q And after you got in the car, where did the  
7 two of you go?

8 A We pulled out from the bridge, we took a  
9 left, went down the road just a little ways, came to  
10 a stop sign, took a right on 301.

11 Q When you got on 301, where did you go?

12 A We went down the road about four or five  
13 miles, and --

14 Q Were you going towards any town at that  
15 point?

16 A Yes, headed towards the town of Rowland.

17 Q As you rode down 301 towards Rowland --

18 THE COURT: I apologize for the  
19 interruption. Are we beyond matters that  
20 are pertaining to the 404(b) issue?

21 MR. BRITT: Not quite.

22 THE COURT: Okay.

23 MR. BRITT: I'm almost finished.

24 THE COURT: Okay. Take whatever  
25 time you need. I'm just trying to limit it

1 to the issues before us.

2 MR. BRITT: Yes, sir, I  
3 understand.

4 BY MR. BRITT:

5 Q As you were going down 301 towards Rowland,  
6 did you ever turn off of 301?

7 A Yes. Daniel, like I say, he was driving,  
8 he took a right somewhere after we had traveled this  
9 road four or five miles, he took a right onto -- it  
10 was a state maintained dirt road. The reason I knew  
11 that, it was real wide. I could tell it was taken  
12 care of -- the dirt road had a number on it. And we  
13 went down this dirt road for a little ways, and then  
14 took another left up into a smaller dirt road and up  
15 into a corn field. To me, I assumed that the reason  
16 for this other smaller dirt road, it was used by  
17 tractors and stuff to get back up in the field, the  
18 corn field.

19 Q And when you pulled into the corn field,  
20 did you go through the man's personal items?

21 A Yes, we did.

22 Q Did you find a driver's license?

23 A Daniel did.

24 Q And did Daniel show you that driver's  
25 license?

1           A       Not when he first -- you know, when he  
2 first came across them, he told me he made the  
3 statement, he said, "Damn, I believe we killed  
4 Michael Jordan's daddy."

5                   But at the time I said something like  
6 bullshit, something like that, but like I say, I  
7 didn't -- I knew of Michael Jordan, but I didn't know  
8 what his father's name was. I couldn't have -- and  
9 after Daniel made that statement, I was -- I had got  
10 the keys out of the trunk -- out of the ignition,  
11 went to the trunk. I was back in the trunk looking  
12 through things. Daniel, he had -- he was at this  
13 person, taking this person's jewelry off, emptying  
14 their pockets and everything. And like I said, I had  
15 noticed in the back of the car there was a Chicago  
16 Bulls shaving kit bag. But I didn't think nothing of  
17 it. And Daniel showed me -- this was after he had  
18 made that statement. And then he showed me a ring.  
19 It had -- it was -- to me appeared it was silverish  
20 in color, or real light gold, and had a large blue  
21 stone in the top of it. It had '86 All-Star, NBA on  
22 the side. I didn't think much of that then. You  
23 know, I was thinking, well maybe he's just a big --  
24 he was a Jordan freak.

25                   But then what really set it off for me was

1 the watch that this man was wearing, Daniel had  
2 showed it to me, and on the back of this watch it had  
3 an inscription. It said "To Dad, from Michael and  
4 Juanita." And like I say, I knew of Michael Jordan.  
5 I knew that his wife's name was Juanita. And like I  
6 say, that's what really told it for me.

7 And then like I say, a little later on  
8 before we ever left the corn field. There was  
9 insurance papers and stuff that came out of the glove  
10 box and on those it showed where the car was insured  
11 to -- it was in Michael Jordan's name, insured to  
12 him. And a James R. Jordan.

13 Q Did you ever see a driver's license?

14 A Yes, but it was later on.

15 Q And did you ever see the name on that  
16 driver's license?

17 A Yes.

18 Q What was the name on that driver's license?

19 A It had James R. Jordan from -- it had  
20 Charlotte, North Carolina, I don't remember the  
21 address.

22 Q Now, when you got into the red Lexus there  
23 at the bridge near Bob's Landing Mobile Home Park,  
24 did you see the .38 caliber revolver in the car?

25 A When I first got in, I didn't see it, but

1 as we were going down -- going down the highway, I  
2 noticed something had gotten around my feet. And I  
3 looked down, and that's what it was, the gun had come  
4 out from up under the driver's seat and came back to  
5 where I was at. It was in the floorboard.

6 Q The .38 caliber revolver that the defendant  
7 had when he shot the man in the car, was that the  
8 same .38 caliber revolver that had been taken in the  
9 robbery of Clewis Demory on July 15th, 1993?

10 A Yes, it was.

11 MR. BRITT: May I approach?

12 THE COURT: Yes, sir.

13 BY MR. BRITT:

14 Q The .38 caliber pistol that the defendant  
15 had, is that the same gun that's been marked as  
16 State's Exhibit Number 59 A?

17 A Yes, it is.

18 MR. BRITT: I don't have any  
19 other questions.

20 THE COURT: Any  
21 cross-examination?

22 MR. THOMPSON: Yes, sir.

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25 BY MR. THOMPSON:

1 Q Good morning, Mr. Demery.

2 A Hi.

3 Q Mr. Demery, the car, the Ford Tempo that  
4 you have testified to as being a beige Ford Tempo,  
5 was that car owned by you or was it owned by your --  
6 Angel McClain?

7 A Yes, it was, the car was in Angel's name,  
8 but I was paying for the car, and before -- at the  
9 time, I had the title but I just hadn't. It had been  
10 signed over to me, but something about I was supposed  
11 to have taken it, sent it to Robin, got it switched  
12 over, but I never did that.

13 Q Now, Mr. Demery, I believe you have been --  
14 THE COURT: Mr. Thompson, please  
15 avoid that phrase.

16 MR. THOMPSON: Okay.

17 BY MR. THOMPSON:

18 Q You're now housed at the Robeson County  
19 jail, is that right?

20 A Yes.

21 Q Shortly after your plea, you were -- your  
22 plea back in May of 1995 to these and other  
23 charges --

24 A Yes.

25 Q -- you went into the Department of

1 Corrections, North Carolina Department of  
2 Corrections, is that right?

3 A Yes, I did.

4 Q And in what unit did you go into in --

5 MR. BRITT: Objection. How is  
6 that relevant to this hearing?

7 THE COURT: I'm sorry?

8 MR. BRITT: How is that relevant  
9 to this hearing?

10 THE COURT: Mr. Thompson?

11 MR. THOMPSON: Your Honor, I'm  
12 trying to show, as a matter of reference,  
13 where he's been when he made certain  
14 statements. I'm going to be getting into  
15 that, statements as to matters that he's  
16 testified to today.

17 THE COURT: Are you saying that  
18 you're laying a foundation for --

19 MR. THOMPSON: Yes.

20 THE COURT: Okay. At this time,  
21 the objection is overruled.

22 BY MR. THOMPSON:

23 Q Now, where were you housed in DOC?

24 A Lumberton Correctional Institute, right  
25 across from the jail.

1 Q How long were you over there?

2 A Not -- almost six months, not quite.

3 Q That would have been after May of 1995?

4 A Yes.

5 Q And did you request to -- from anybody to  
6 leave there and then come back to Robeson County  
7 jail?

8 A Yes.

9 Q And do you know what month you made that  
10 request?

11 A First time -- you mean to go back to the  
12 jail?

13 Q Yes.

14 A That was in August.

15 Q Why did you make that request?

16 A Well, the reason, when I was first put over  
17 there, and my attorney and everybody that handled  
18 those things, they had been told and were under the  
19 impression that Lumberton Correctional would be  
20 equipped for safekeeping, and that's what I was  
21 told. But when I got over there, it turned out that  
22 this facility didn't have -- it wasn't equipped for  
23 safekeeping. And I had been placed in a small --  
24 like a solitary confinement cell. And as -- it's  
25 what people that's locked up refer to as being in the

1 hole.

2 And I stayed in there, like I say for,  
3 almost six months. And I got to the point where I  
4 felt like I couldn't take it anymore. And I asked to  
5 be moved back to the jail.

6 Well, I had requested before that to be  
7 placed somewhere else but that just didn't work out.  
8 And I told them if they would just to move me back to  
9 the jail.

10 Q So you just felt uncomfortable in that  
11 cell?

12 A Well, that --

13 Q Small, and then you were by yourself in  
14 solitary confinement?

15 A Well, the fact of me being by myself, that  
16 didn't really bother me, but I didn't get to get  
17 outside. That kind of bothered me.

18 Q In any event, you expressed this to your  
19 attorneys, and as a result you were brought back to  
20 Robeson County?

21 A Yes.

22 Q Now, and when you brought back to the  
23 Robeson County jail, have you since been in a  
24 population or --

25 A No, I'm in -- it's not a regular populated

1 cell, it's a four man cell, but each person in that  
2 cell has their own room.

3 Q Now, when you -- the matters that you've  
4 testified to today, you have given a statement to one  
5 or more law enforcement officers, is that right?

6 A Yes.

7 Q Now, you've given, in fact, several  
8 statements, is that right, to different people?

9 A Well, I remember about three or four  
10 different ones involving the murder.

11 Q Now, what statements do you remember  
12 giving?

13 A Well, the night that I was picked up and  
14 everything, the first one that I gave was something  
15 that Daniel and I had discussed. He had told me --

16 Q I don't want to know the nature of them  
17 right now?

18 MR. BRITT: Objection.

19 MR. THOMPSON: You can go ahead.

20 Fine. Take your time.

21 THE COURT: May I rule?

22 MR. THOMPSON: Yes.

23 THE COURT: Thank you. My  
24 concern, Mr. Thompson, is that the issue  
25 before the Court is the admissibility of

1 matters that the State contends ought to  
2 come in under 404(b).

3 MR. THOMPSON: I understand.

4 THE COURT: Now, you're entitled  
5 to go back to, on cross-examination, as a  
6 general proposition, I think that carries  
7 over to 404(b) matters as well, but it  
8 appears that what we're going after are  
9 matters relating to impeachment, which  
10 would be factual issues to be resolved by  
11 the jury. The legal issue before me is  
12 what if any evidence as to other alleged  
13 offenses or crimes ought to be admitted.

14 MR. THOMPSON: Yes, sir. And I  
15 understand that, Your Honor, and because  
16 he's given several --

17 UNIDENTIFIED PERSON: Your Honor,  
18 can I approach the bench, please?

19 THE COURT: Would you state your  
20 name, please?

21 UNIDENTIFIED PERSON: My name is  
22 Harold Glenn Dial. I have the evidence  
23 that will solve this case.

24 THE COURT: If you'll escort this  
25 gentleman outside, please, ma'am.

1 UNIDENTIFIED PERSON: Okay.

2 THE COURT: Let me allow the  
3 swarm to begin.

4 MR. THOMPSON: I might need to go  
5 check that out.

6 THE COURT: Do you want to swarm,  
7 too?

8 MR. ROGERS: I'm concerned that  
9 they were able to walk up here and address  
10 everyone at the table.

11 THE COURT: Folks, why don't we  
12 do this. Let's take about 15 minutes,  
13 we'll come back and continue, but  
14 Mr. Thompson, we'll pick up when we come  
15 back. We'll be at ease for 15 minutes.

16 (Brief recess.)

17 THE COURT: Let the record reflect  
18 all counsel are present, the defendant is  
19 present in open court. All members of the  
20 jury are absent, we are continuing with the  
21 404(b) matter now before the Court.

22 Mr. Demery, if you'll again take the  
23 witness stand.

24 Before going into cross-examination,  
25 the Court wanted to make a matter of

1 record, the Court has been informed during  
2 the break that the gentleman who came into  
3 the Court earlier, I believe he identified  
4 himself as Harold Glen Dial. I thought  
5 that's what I heard. But in any event, the  
6 Court has been informed that that gentleman  
7 showed up at the District Attorney's office  
8 yesterday dressed in a Boy Scout uniform,  
9 carrying a long pole with feathers attached  
10 to it; that he apparently had a box  
11 containing something. And that when  
12 inquiry was made as to his business in the  
13 District Attorney's office, the Court was  
14 informed that the gentleman indicated that  
15 he had been subpoenaed to appear as a  
16 witness in this case. And when asked by  
17 whom he had been subpoenaed, he indicated  
18 the United States Government. When asked  
19 specifically who subpoenaed him, he  
20 indicated, as I understand it, that the  
21 President of the United States had issued a  
22 subpoena for his appearance in this matter.

23 I think that's sufficient for purposes  
24 of the record. At this point, it's a  
25 matter for the Sheriff's Department here in

1 Robeson County Robeson County and/or the  
2 mental health authorities.

3 Any matters from counsel for the State  
4 regarding what the Court has just put into  
5 the record?

6 MR. BRITT: No, sir. I was not  
7 aware that he had come to my office  
8 yesterday.

9 MR. THOMPSON: No, sir.

10 THE COURT: Anything on behalf of  
11 counsel for the defendant?

12 MR. THOMPSON: No, sir, not as to  
13 that matter, Your Honor.

14 THE COURT: Do you want to  
15 heard --

16 MR. THOMPSON: I just want to  
17 forecast for the Court where I'm going with  
18 this in asking questions for the 404(b)  
19 hearing. And when I think I'm entitled to  
20 ask him how many statements and who he gave  
21 them to because of matters that he  
22 testified to, whether in fact in those  
23 statements he mentioned some or a part of  
24 those matters. That's about it as to each  
25 statement. I certainly didn't want him to

1 tell me everything in each statement.  
2 That's why I tried to stop him. The State  
3 was the one who objected to me stopping  
4 him.

5 THE COURT: The basis of the  
6 State's objection, even though it is a  
7 404(b) hearing, the question asked was a  
8 broad, open-ended question and invited an  
9 open response.

10 MR. THOMPSON: We, I didn't mean  
11 to --

12 THE COURT: Is that accurate,  
13 Mr. Britt?

14 MR. BRITT: Actually, the  
15 objection was made because Mr. Thompson cut  
16 him off while he was answering the  
17 question.

18 MR. THOMPSON: Well, if I didn't,  
19 I guess he was going to tell everything  
20 said. But that's not within the scope of  
21 404(b) and I understand that.

22 THE COURT: In my discretion, so  
23 we can limit it to matters before us,  
24 rephrase.

25 MR. THOMPSON: Okay.

1 BY MR. THOMPSON:

2 Q Now Mr. Demery, you indicated you made  
3 statements or gave at these three or four prepared  
4 statements -- is that right?

5 A Right.

6 Q Now, you gave a statement on the night of  
7 August the 14th or early morning of August the 15th  
8 when you were picked up and charged with these  
9 offenses, is that right?

10 A Yes.

11 Q Now, and that -- you were beginning to  
12 testify as to that. Now, what other statements and  
13 to whom have you given with regard to the matters  
14 that you've testified to yesterday and today?

15 THE COURT: Specifically, are you  
16 asking were there any other statements  
17 given by witness pertaining to matters  
18 related to the July 4th incident testified  
19 to and July 15th incident, is that what  
20 you're asking?

21 MR. THOMPSON: Yes, that's fine.

22 THE WITNESS: There was only one  
23 occasion, I gave one statement pertaining  
24 to the robbery in Rowland, one on Highway  
25 72. One statement.

1 BY MR. THOMPSON:

2 Q Who did you give that to?

3 A I gave it to SBI Agent Kim Heffney and  
4 Detective Anthony Thompson.

5 Q When did you give that statement?

6 A Following week after I went to court and  
7 pled guilty to all charges.

8 Q And it's your testimony you have not talked  
9 about those matters specifically with any other law  
10 enforcement officers except SBI Agent Kim Heffney and  
11 Anthony Thompson?

12 A Yes, that's correct.

13 Q Now, with respect to the robbery of the  
14 couples that you have testified to, is it your  
15 testimony that after robbing those couples, you and  
16 the defendant ran into a corn -- jumped a fence and  
17 ran into a cornfield?

18 A Yes, ran down a stretch of paved road,  
19 jumped into a cornfield.

20 Q You did not get in an automobile?

21 A No, we didn't.

22 Q Now, you indicated you and the defendant  
23 wanted to -- you discussed after that robbery -- I  
24 mean, you discussed prior to robbing that couple that  
25 you needed to go ahead and rob them because the sun

1 was coming up?

2 A Well, that and we were out to rob  
3 somebody. Like I said earlier, we had missed two  
4 other times, and we discussed we needed -- if we were  
5 going to do it, to go ahead.

6 Q Do you recall about what time the sun did  
7 come up?

8 THE COURT: What date are we  
9 talking about?

10 MR. THOMPSON: That would have  
11 been on the 4th, the --

12 THE COURT: July 4th, 1993.

13 MR. THOMPSON: Yes, the robbery  
14 of the couple that you've testified to.

15 THE COURT: I'm just trying to  
16 clarify which one we're talking about.

17 BY MR. THOMPSON:

18 Q What time, if you recall, did the sun come  
19 up, about?

20 A I'm thinking -- my mom showed up at his  
21 grandmom's house about 7:00, it wasn't up yet, but by  
22 7:30, the sun was shining. It was nice outside that  
23 day.

24 Q You testified that you never saw the  
25 defendant take any money from anybody out there at

1 the motel robbery on July 4th?

2 A That's right, yeah.

3 Q You counted the money that you took and it  
4 was no more than \$20.00?

5 A Right.

6 Q Where did that \$20.00 come from?

7 A The tall slim guy.

8 Q But then there was \$130 to \$150 that came  
9 out of a purse?

10 A Yes, there was.

11 Q Did you take that money?

12 A No, I didn't.

13 Q Are you saying the defendant took that  
14 money?

15 A Yes, the purse that he had that was taken  
16 from one of the ladies, he had it, and like I said,  
17 later, when we stopped, I got the purse and was going  
18 through it while he was going through the camera bag  
19 and everything.

20 Q So as you were going through the purse, you  
21 counted \$130 to \$150?

22 A Yes.

23 Q And you took that money out of the purse?

24 A Right.

25 Q And you were in the cornfield at that time?

1           A       Yes, we were both were. Well, the second  
2   cornfield.

3           Q       The second cornfield, okay. Now, you  
4   indicated that a police car came down a dirt road?

5           A       Yes.

6           Q       And was that when you and the defendant  
7   were in the cornfield?

8           A       Yes, well, we were over -- we had came out  
9   of the first one, crossed over this dirt road, and we  
10  were down like in the edge of the second cornfield,  
11  going through everything. We heard a car coming,  
12  jumped back far enough in the cornfield so we  
13  couldn't be seen, and a police car came by.

14          Q       What kind of police car?

15          A       It was a deputy car, brown in color. It  
16  didn't -- it went by, it was going at a high rate of  
17  speed even on this dirt road. And it never stopped,  
18  slowed down.

19          Q       It never slowed down?

20          A       No.

21          Q       Now, what was the race of the couples there  
22  on July the 4th of 1993 at the motel?

23          A       They were --

24          Q       Whom you say that you and the defendant  
25  robbed?

1           A     White, Caucasian.

2           Q     Now, you indicated that, I believe, the car  
3 keys were taken out of that car as you all left, you  
4 and the defendant left the motel?

5           A     Yes, well, before we ever started running  
6 away.

7           Q     You didn't try to take that car, you and  
8 the defendant?

9           A     No.

10          Q     What happened to the car keys?

11          A     Well, while Daniel was inside the car, he  
12 was plundering around, he had taken them out, and as  
13 we were leaving, he threw them down on the ground,  
14 told the couple not to make a move until we were out  
15 of sight.

16          Q     Threw them down there in the parking lot?

17          A     Yes.

18          Q     Now, you indicated that you had actually,  
19 after you all left the cornfield, you all split up  
20 the money, is that -- you had about half and he had  
21 about half?

22          A     Yeah -- yes.

23          Q     You also testified that at some point the  
24 defendant told you that he had purchased some shoes  
25 and some clothes with the money?

1 A Yes.

2 Q Now, where did that conversation take  
3 place?

4 A This was after, later on that evening, when  
5 I went back to his trailer, I had gotten there and he  
6 told me him and his mom had been out, and had  
7 purchased some clothes, two pairs of shoes, or one  
8 pair was a pair of flip flops and another type were  
9 boot type.

10 Q Did you see the shoes?

11 A Yeah.

12 Q Were they male shoes, did he say that the  
13 shoes that you're referring to the boot type and the  
14 flip flops were the defendant's shoes?

15 A Yes.

16 Q And did he tell you where he purchased them  
17 from?

18 A He said him and his mother had been to --  
19 uptown, around Lumberton somewhere. I don't remember  
20 for sure.

21 Q Now, you indicated that your father has  
22 several guns?

23 A Yes.

24 Q How many guns does your father have?

25 A I don't know exactly, but like I said, he

1 owns several types of guns.

2 Q Would you say more than ten?

3 A As of right now, I don't know, but at the  
4 time, probably a little better than ten.

5 Q Would you say at the time we're talking  
6 about, back in July of '93, that he owned more than  
7 20 guns?

8 A No, I wouldn't say more than 20.

9 Q Somewhere between 10 and 20 guns?

10 A Yes.

11 Q Where did he keep those guns?

12 A He kept them all in his bedroom, locked up.

13 Q Is that the bedroom where he and your  
14 mother slept?

15 A Yes.

16 Q And he had a deadbolt lock on that bedroom  
17 door?

18 A Yes, on the inside of the bedroom door and  
19 a padlock on the bathroom door.

20 Q Now, does the bathroom door lead into --  
21 excuse me. Does the bathroom door open up into the  
22 bedroom?

23 A Yes, one of them does.

24 Q Your parents' bedroom?

25 A Yes, one of them does.

1 Q The one that has a padlock on it?

2 A Yes.

3 Q Does it open up to any other room, the  
4 bathroom door, other than your parents' room?

5 A Not other than the one with the padlock on  
6 it, just my parents.

7 Q So there's a padlock on the bathroom door  
8 that opens up into your parents' room?

9 A Right.

10 Q And then there's a deadbolt lock on the --  
11 your parents' bedroom door?

12 A Yes, on the inside.

13 Q And it opened up into --

14 A My parents' room.

15 Q Okay. The deadbolt is on the inside of  
16 your parents' bedroom, right?

17 A Right.

18 Q When you come out of your parents' bedroom,  
19 what room do you come into, coming through that door  
20 with the deadbolt lock on it?

21 A Walk out into the hallway.

22 Q Now, what kind of guns did your father own  
23 back on January -- back on July of 1993?

24 A He had two .32 caliber pistols. He had an  
25 eight shot .22 pistol. A real old gun. He had

1 several 12 gauge shotguns, about three or four 20  
2 gauge shotguns, a black powder gun.

3 Q Excuse me, let me back up a minute. You  
4 say he had several 12 gauge shotguns?

5 A Yes.

6 Q About how many of those did he have?

7 A Six, maybe six.

8 Q And then you mentioned two .32's he had an  
9 eight shot .22. He had about six 12 gauge shotguns,  
10 and now pick it up from there and tell me what else  
11 he had.

12 A Two or three 20 gauge shotguns, a black  
13 powder gun, a 16 gauge bolt action shotgun. And  
14 that's all I can remember.

15 Q And he kept all these guns in he and your  
16 mother's bedroom?

17 A Sometimes, he might have kept one out in  
18 his building.

19 Q Now, you indicated that this deadbolt lock  
20 is on the inside of the bedroom door?

21 A Yes.

22 Q Now, you indicated at some point when you  
23 say you and the defendant went over and you got the  
24 two .32's --

25 A Yes.

1 Q -- that you had to do something to get the  
2 deadbolt lock off, is that right?

3 A Yes.

4 Q Are you saying -- how did you -- in other  
5 words, I'm trying to -- explain to me how they put  
6 the deadbolt lock on upon leaving the room. Just  
7 explain to me how that happened.

8 A Well, what they did, they slid the deadbolt  
9 and went out through the bathroom door, from the  
10 bathroom door on the other side, they put the padlock  
11 on.

12 Q Okay. Now, the padlock on the bathroom  
13 door, where is that located on, the door inside the  
14 bathroom --

15 A Yes.

16 Q -- on the other side of the door where the  
17 bedroom is?

18 A On the side of the door in the bathroom.

19 Q So you, now, you can come out of the  
20 bathroom after putting the padlock on the bathroom  
21 door, and how do you get out?

22 A Like I said before, when they locked the  
23 room up, from the inside of the bedroom, they slid  
24 the deadbolt. Had to go out through the bathroom  
25 door, and from standing inside the bathroom, put the

1 padlock on the door and that's how they locked it  
2 up.

3 THE COURT: What he's asking you  
4 is, if they locked the bathroom door from  
5 the inside, how did they get out of the  
6 bathroom.

7 THE WITNESS: There's two doors.

8 BY MR. THOMPSON:

9 Q Two doors to what?

10 A One bathroom door is here (indicating).  
11 That's the one you come out of the hallway, going  
12 through this door. Right here, there's another door,  
13 you know, going to and from the bathroom, going into  
14 my parents' room.

15 Q I understand. So the bathroom had a door  
16 that leads into the hallway as well as a door that  
17 leads into your parents' bedroom?

18 A Yes.

19 Q And it was then their usual custom, was it,  
20 when they left their bedroom, to put both the padlock  
21 on the bathroom door and the deadbolt on the bedroom  
22 door?

23 A Yeah. Well, most of the time, the door  
24 leading into the bedroom with the deadbolt, it stayed  
25 locked pretty much all the time. And going in and

1 out of their bedroom, they always walked through the  
2 bathroom.

3 Q Now, who all lived in the house with you  
4 with your parents back in July of 1993?

5 A My mom, dad, brother, sister, and me.

6 Q Were there any other rooms in the house  
7 that had deadbolts, padlocks on them?

8 A I had -- I can't remember if it was tore  
9 down at the time. At one point in time I had one put  
10 on my bedroom door the same way.

11 Q So how many doors entered your bedroom?

12 A There was one going into the bedroom, then  
13 here was -- I and my brothers' bathroom, it had two  
14 doors, and on the other side of one of the bathrooms  
15 was my sisters. Pretty well the same set up.

16 Q Were there problems there at the house  
17 about personal items, either your parents' items or  
18 your items being missing or being stolen?

19 MR. BRITT: Objection. Outside  
20 of --

21 THE COURT: What's the  
22 relevance?

23 MR. THOMPSON: Your Honor,  
24 because this is where the guns he's talking  
25 about, a place where guns were taken.

1 Obviously --

2 THE COURT: Has there been any  
3 testimony.

4 MR. THOMPSON: He said he went in  
5 and used a coat hanger to -- and I'm trying  
6 to find out, I think it's relevant because  
7 this is where two .32's, the household  
8 where two .32's were taken from.

9 THE COURT: But we're now talking  
10 at his bedroom. Has there been any  
11 testimony that any weapons were kept in his  
12 bedroom.

13 MR. THOMPSON: No, but there's  
14 been testimony that he volunteered with  
15 respect to deadbolts being on his bedroom.  
16 Seems to me there's -- may be a problem  
17 there in the house, and I'm trying to find  
18 out if there is one, with items being  
19 missing.

20 THE COURT: Sir -- are you  
21 through?

22 MR. THOMPSON: Yes, sir.

23 THE COURT: He didn't volunteer,  
24 you asked him. And he responded to your  
25 question.

1 MR. THOMPSON: I asked were there  
2 other deadbolts.

3 THE COURT: In other rooms of the  
4 house. And he responded to your question.  
5 What has that got to do with the 404(b)  
6 issue?

7 MR. THOMPSON: Well, Your Honor,  
8 even with 404(b), I think you have to make  
9 some decision as to credibility --

10 THE COURT: No, sir. The law is  
11 that under Rule 104 B, all that the State  
12 has to show is an inference. The Court  
13 doesn't have to believe the testimony. All  
14 they have to do is show an inference.  
15 That's exactly what those cases that I gave  
16 to you folks yesterday --

17 MR. THOMPSON: Has to be a  
18 logical inference.

19 THE COURT: Did you read those  
20 cases?

21 MR. THOMPSON: Well, inference,  
22 Your Honor -- an inference would have to be  
23 at least logical inference, Your Honor.

24 THE COURT: What do the cases  
25 say, Mr. Britt?

1 MR. BRITT: Huddleson says they  
2 have to be logically relevant. There is no  
3 determination by the Court as to the  
4 credibility of the witness. The question  
5 is, is it something that the jury can  
6 believe.

7 THE COURT: That's it. And in  
8 terms -- I mean what you're essentially  
9 doing are matters that would be argued to  
10 the jury in terms of impeachment as going  
11 to the weight of the issue, but what is  
12 before me is the legal question of under  
13 Rule 104 B is there a sufficient showing to  
14 allow the jury to make the factual  
15 determination that ultimately they would be  
16 required to make.

17 MR. THOMPSON: I understand, Your  
18 Honor, but I'm also -- this is  
19 cross-examination, and asking him about  
20 matters that he testified to and about  
21 places and things that he testified to.  
22 And you know, for the sake of moving on, I  
23 won't ask him anymore about the deadbolt in  
24 his room, just about the deadbolts and the  
25 circumstances surrounding his parents' room

1           where the .32 is located.

2                   THE COURT: Yes, sir.

3                   MR. THOMPSON: Thank you.

4 BY MR. THOMPSON:

5           Q       Now, was there, the reason -- was there a  
6 reason why your parents had the deadbolts there in  
7 the house and padlocks to their bedroom and the  
8 bathroom?

9           A       Yes, there was.

10                   MR. BRITT: Objection to the  
11 relevance. I'll withdraw the objection.

12                   THE COURT: We take up more time  
13 dealing with them than letting him answer  
14 the question.

15                   MR. BRITT: I'll withdraw the  
16 objection.

17                   THE WITNESS: My dad and I used  
18 to have a lot of problems. And he was the  
19 one that had the locks and all put on.  
20 When I was about -- I was 15 at the time,  
21 and one night it was just my dad and I at  
22 home by ourselves. Like I said -- he had  
23 been ragging on me all day. I went in his  
24 room and took a pistol out that belonged to  
25 him. My reason for doing that is I knew it

1 would piss him off. That's the type of  
2 relationship we had. He would do something  
3 to me, and I would turn around and do  
4 something back to him just to make him  
5 mad.

6 After that happened, you know, it  
7 wasn't just that, I would go in there, we  
8 had a four-wheeler at the time, he didn't  
9 want us out riding it when no one was  
10 home. I would go in there and sneak the  
11 key and take it off.

12 BY MR. THOMPSON:

13 Q Take what off?

14 A Sneak the key with the four-wheeler and  
15 sneak it off, catch him gone. I used to go in there  
16 and take mom's car. They kept a few sets of car keys  
17 around. My mom used to ride to work with a friend of  
18 hers, and they switched -- she would drive one week,  
19 her friend would drive another. The weeks that Mom  
20 wasn't driving her car, I would go in there and sneak  
21 her keys and take her car and drive it around, go to  
22 school, pick up some friends, and we hit the town.  
23 And that was the reason why the locks were on the  
24 doors, to keep me out.

25 Q Thank you. Now, you indicated -- and of

1 course, this is back, as for point of reference, July  
2 15th of 1993, that at some point when you left your  
3 house, you went to the defendant's house in, I  
4 believe, your blue Cougar and you switched to the  
5 tempo, Ford Tempo, is that right?

6 A Yes, back at Daniel's trailer, yes.

7 Q Now, did you know anybody by the name of --  
8 referred to as Godfather back there -- a black male?

9 A A black male?

10 Q By the name, referred to as Godfather back  
11 then, in July of 1993?

12 MR. BRITT: Objection.

13 THE WITNESS: No --

14 MR. BRITT: Can we identify where  
15 "back there" is?

16 BY MR. THOMPSON:

17 Q Back there in July of 1993, did you know --

18 THE COURT: Before or after July  
19 15th, 24, 22nd, 23rd.

20 MR. THOMPSON: I can take it --

21 THE COURT: I apologize. Answer  
22 his question.

23 THE WITNESS: No, I did not.

24 MR. THOMPSON: Okay.

25 BY MR. THOMPSON:

1           Q       Now, on July 15th, 1993, when you testified  
2 about the robbery of Clewis Demory, you indicated  
3 that you went into the store?

4           A       Yes.

5           Q       And when you went into the store the first  
6 time on July the 15th, 1993, what was Mr. Clewis  
7 Demory doing?

8           A       He was standing behind the cash register,  
9 you know, shooting the breeze with the Pepsi man.

10          Q       Did you speak to him?

11          A       If I did it was just hi, how are you doing,  
12 something like that.

13          Q       Did you buy anything?

14          A       Yes.

15          Q       What did you buy?

16          A       I bought candy and a pack of cigarettes.

17          Q       Did he wait on you?

18          A       Yes, he did.

19          Q       And do you recall what -- how you paid for  
20 that candy and cigarettes, I mean, in what  
21 denominations of currency?

22          A       Two dollar bills, if I'm not badly  
23 mistaken.

24          Q       You mean, two one dollar bills?

25          A       Yes, two one dollar bills.

1 Q Now, the sweat shirts that you indicated  
2 that you and the defendant had been wearing, even  
3 back on the July the 4th, 1993 robberies, where did  
4 they come from?

5 A Daniel's trailer.

6 Q And you say they were -- one was a dark  
7 sweat shirt?

8 A One was gray, the other one was black with  
9 a Raiders' logo on the back of it.

10 Q And the one that was black with the  
11 Raiders' logo on it, did it have pockets?

12 A Side pockets. The gray one was the one  
13 that had the big pocket on the front of you that  
14 you've heard me talk about.

15 Q So the grey one had big pockets on the  
16 front of it. The black one had small pockets?

17 A The gray one had -- it was like one pocket,  
18 but I could put both --

19 Q Right in the front?

20 A Yeah, kind of deep.

21 Q That's the gray one?

22 A Yes.

23 Q And what about the black, what kind of  
24 pockets, if any did it have?

25 A One on each side, you know, small pockets

1 on it.

2 Q And on the night of the 4th, July the 4th,  
3 of 1993, at the motel robbery, which sweat shirt were  
4 you wearing?

5 A Gray one.

6 Q Now, on the 15th at the Clewis Demory  
7 robbery, which sweat shirt were you wearing?

8 A It was the black one.

9 Q Okay. And I believe you said that -- did  
10 the defendant leave that one, leave the gray one in  
11 the car? Was the gray one in the car when you went  
12 into the store?

13 A No, we each had one on.

14 Q So he had the gray one on?

15 A Yes.

16 Q What kind of pants did Mr. -- did the  
17 defendant have on when he -- on the 15th of July,  
18 1993?

19 A I remember he had on long -- some kind of  
20 jeans. I don't remember color or anything.

21 Q Now, after you went in the store and you  
22 bought your cigarettes and the other item, you left  
23 back out, I believe you said you all went down the  
24 road a piece and came back, is that right?

25 A Yes.

1 Q Now, did you ever go, actually go behind  
2 the counter there in the Clewis Demory store?

3 A No.

4 Q In the store where Clewis Demory worked.

5 A No, I didn't.

6 Q And you indicated that Mr. Green had shades  
7 on, or U'Allah, had shades on?

8 A Yes.

9 Q The defendant had shades on. Now,  
10 describe -- they were dark colored lens shades?

11 A They were -- the frames was a gold color,  
12 the lenses were blue.

13 Q But they were dark?

14 A Yeah, dark blue color.

15 Q You saw the defendant and Mr. Demory in  
16 some struggle there behind the counter?

17 A Yes.

18 Q And how long would you say that they were  
19 back there tussling or struggling with each other?

20 A Just a few seconds, not much time at all.

21 Q But you indicated that it appeared that  
22 Mr. Demory was getting the best of this -- of the  
23 defendant?

24 A I said it appeared to me that Daniel  
25 couldn't handle him much, because Daniel was behind

1 Mr. Demory, and it looked to me as if he were trying  
2 to slam him or something. Mr. Demory is a pretty big  
3 man, and it just didn't turn out like that.

4 Q So, the defendant was behind Mr. Demory  
5 when you first observed them struggle?

6 A Yes.

7 Q And when the gun went off, where was the  
8 defendant in proximity or in relation to Mr. Demory?

9 A He had gotten around to the front of him  
10 somehow. And like I said, the first time that he  
11 stuck it -- to Mr. Demory somewhere around in this  
12 area, in his shoulder area (indicating).

13 Q You're talking about the left shoulder  
14 area? That's what you're pointing to now, is that  
15 right?

16 A I believe -- I can't say for sure. It was  
17 the shoulder area.

18 Q What are you pointing to when you  
19 testified --

20 A My left.

21 Q All right. And what happened with that  
22 area, the gun went off and he was shot in that area?

23 A Like I said, I heard three shots, before I  
24 ever left out of the store, I couldn't tell where or  
25 if Mr. Demory had been shot. I never saw any blood.

1 Q Three successive shots?

2 A Yes.

3 Q Now, did Mr. Demory have anything in his  
4 hands when the gun went off?

5 A I didn't see anything.

6 Q Which hand did the defendant have the gun  
7 in when he fired the gun?

8 A I don't remember.

9 Q You've indicated the defendant took  
10 Mr. Demory's wallet?

11 A Yes.

12 Q Do you recall from which pocket the  
13 defendant took Mr. Demory's wallet?

14 A No, I don't. Like I said before, I was the  
15 doorman, making sure no one came in on us. I  
16 couldn't keep my eyes out on the parking lot and on  
17 the counter all the time, so --

18 Q And what if anything did you see -- what if  
19 anything happened to the wallet, Mr. Demory's wallet?

20 A He put it somewhere. I mean, like I said,  
21 I didn't have my eyes on everything that was going  
22 on.

23 Q Later on, did you see the wallet?

24 A Yes, I did.

25 Q Where, where were you?

1           A     Daniel had it out, we were going in the car  
2 going back towards his trailer.

3           Q     And what happened to the wallet, if you  
4 know?

5           A     The last time I remember it, even seeing  
6 anything out of the wallet, Daniel and I had been out  
7 somewhere one day, we came back in, his mother was at  
8 the trailer, and she was real pissed off. And what  
9 she was mad about was some of the things that --  
10 Mr. Demory's driver's license and some of his  
11 personal papers she had found them laying around the  
12 house, and that's the last time I ever saw anything  
13 that came out of Mr. Demory's wallet, or his wallet.

14          Q     So that's the last time you saw any of  
15 that -- did you actually hear her talking about it?

16          A     Yeah, I was one of the ones that was  
17 getting fussed about it.

18                   THE COURT: The question is, at  
19 the time you said this conversation was  
20 taking place about items from Mr. Demory's  
21 wallet, did you see those items in the  
22 possession of anyone at the time that  
23 conversation occurred?

24                   THE WITNESS: Yes, she had those  
25 items laid out in front of us.

1 BY MR. THOMPSON:

2 Q And when you say they were laid out, where  
3 were they laid out?

4 A She had them -- she said she had found them  
5 in the bedroom, and they were out -- if I'm not -- I  
6 may be mistaken, but the ironing board, there was an  
7 ironing board that was always sitting out in the  
8 living room. I'm sure that's where it was at.

9 Q What is it, when you say you may be  
10 mistaken, what is it you may be mistaken about?

11 A Whether it was on the ironing board or  
12 there was a -- like a little -- not really a counter  
13 thing, but some kind of -- it was rigged there at the  
14 kitchen, like a little banister type thing.

15 Q Now, Mr. Demory, you indicated that the  
16 defendant showed you a .38 gun?

17 A Yeah.

18 Q -- caliber gun on the way back from the  
19 Clewis Demory robbery to his trailer, is that right?

20 A Yes.

21 Q And you indicated at some point, you and  
22 the defendant fired that .38 caliber gun somewhere  
23 there about the trailer?

24 A Yes.

25 Q Was that the same day, July the 15th, 1993?

1           A       I honestly don't remember for sure.

2           Q       Do you know whether it was the first you  
3 fired that gun, was it the day after July the 15th or  
4 more than one or two days after the 15th?

5           A       Just at the most, one or two days  
6 afterwards.

7           Q       And where were you when you fired it, where  
8 in the trailer or there about the trailer?

9           A       The position Daniel's trailer was at, we  
10 were in the front, down at the far end, the left end  
11 of it. And what we were shooting at, I had set a  
12 bottle up, and there is a small tree. I sat a bottle  
13 up in the tree, I shot the bottle, busted it out.  
14 And Daniel shot it a couple of times, hit the tree.  
15 If the tree is still standing the bullets are  
16 probably in it.

17          Q       Now, are you saying that this happened  
18 after you purchased -- after the shells were  
19 purchased, the defendant purchased the shells,  
20 the .38 caliber bullets?

21          A       Now, this was before. We were out -- this  
22 was, like I said, when I saw it was an old gun, I  
23 mean, it was in -- as far as -- it appeared to be in  
24 pretty bad shape. The hammer was kind of loose, and  
25 we were out there firing it to make sure that it

1 wasn't a piece of junk that might blow up in our face  
2 if we shot it.

3 Q Were you familiar, generally familiar with  
4 handguns back then when you were firing that pistol?

5 A Yes.

6 Q And does your father, did he repair guns?

7 A Yes, he did.

8 Q You mentioned there was a shed there at  
9 your house, did he have his gun repair shop in that  
10 shed at your house?

11 MR. BRITT: Objection, assumes  
12 matters not in evidence.

13 MR. THOMPSON: I'm asking.

14 THE COURT: You mentioned a house  
15 or a building?

16 THE WITNESS: A small building my  
17 dad kept his tools in it.

18 BY MR. THOMPSON:

19 Q Was that where he also repaired guns?

20 A Yeah, he did -- it wasn't an all the time  
21 thing, I mean, friends would come around, you know.

22 Q What about manufacturing bullets, did he  
23 also do that, your father?

24 A No. If he did, I never saw him do it.

25 Q You know what reloads are, right?

1 A Yes, I do.

2 Q Did he make reloads?

3 A Not to my knowledge, he didn't.

4 Q Now, you indicated you are familiar with  
5 guns, and is that from being around your father?

6 A Yes.

7 Q And him working on guns?

8 A Well, not --

9 Q Repairing guns, as you say?

10 A Well, not really that. I mean, I grew up  
11 around them, hunted and everything.

12 Q Particularly handguns. Were you familiar  
13 with handguns?

14 A Yes, my dad --

15 Q What type handguns were you familiar with?

16 A All types.

17 Q All types, small caliber, large caliber?

18 A Yes.

19 Q And you fired all types?

20 A Yes, I have.

21 Q Now, back on July the 15th of 1993, when  
22 you indicated that you went to Melinda Moore's down  
23 there in Marion, you did that, right?

24 A Yes.

25 Q Okay. And the defendant was with you. And

1 when you went to her house, you don't remember if  
2 anyone -- you went there and picked her up?

3 A Right.

4 Q But you don't remember whether anyone was  
5 with her when you picked her up?

6 A Well, I don't remember if anybody was at  
7 the house, but I know there was no one with us other  
8 than her, you know, when we went over to Delores  
9 Sullivan's --

10 Q When you went over to Dee's house?

11 A Yeah.

12 Q Okay. And I believe you indicated that you  
13 first met, you and the defendant first met Melinda on  
14 July the 3rd, is that right?

15 A As best as I can recall, that's when it  
16 was.

17 Q Is that the same night that you went to  
18 Marion?

19 A No.

20 Q It was the next night, July the 4th?

21 A Yes, I think so. Well, I remember it as  
22 being the 4th.

23 Q Now, on July -- when you left Marion on the  
24 15th, you brought -- and you and the defendant  
25 brought Melinda and Dee back over to Rowland, is that

1 right -- or Lumberton?

2 A Rowland was the first stop at Daniel's  
3 grandmother's house.

4 Q But you ended up at the motel?

5 A Right.

6 Q And the name of that motel was --

7 A Coastal Inn.

8 Q You took them back to Marion and then you  
9 and the defendant came back and stayed at the motel?

10 A Yes.

11 Q And then it was on July the 16th you got up  
12 and you went over the to your girlfriend's house, who  
13 is Angela McClain?

14 A I may have not went directly there, but it  
15 was that day.

16 Q Now, you testified that you took the .38  
17 caliber gun home two times?

18 A Right.

19 Q And on each of those occasions that you  
20 took the gun home, the defendant came back and got  
21 the gun?

22 A Well, the first time I went back to him,  
23 gave it back, and then the next time he --

24 Q Let's back up. And the first time you took  
25 the .38 caliber gun home, when was this? What date

1 was this?

2 A That was the night that I returned home  
3 from Fayetteville, after we had left the car in the  
4 woods.

5 Q You don't know what date that was, it was  
6 just the night that you returned home from  
7 Fayetteville. And if you can't remember, that's all  
8 right?

9 THE COURT: So we can clarify.  
10 You indicated that it was the night that  
11 you returned home from Fayetteville when  
12 you left the car in the woods. What car  
13 are you referring to?

14 THE WITNESS: The Lexus.

15 BY MR. THOMPSON:

16 Q Okay. You were about to -- were you about  
17 to give me a day?

18 A Yes, it was July 27th, a Tuesday. I  
19 remember it was my dad's birthday.

20 Q Of 1993, Tuesday, your daddy's birthday?

21 A Yes.

22 Q And you took the gun home. And how long  
23 did the gun stay at your house before you indicate  
24 the defendant came and picked it up?

25 A It was just a few days. Daniel -- when

1 Daniel came back from Fayetteville, he stayed a  
2 little longer than I did. And I don't remember for  
3 sure whether it was Friday or Saturday when he came  
4 in, but as soon as he got back, gave me the call and  
5 let me know he was home, I went over there. When I  
6 went, the gun went, I had it with me.

7 Q But it appeared it was on the weekend as  
8 best you recall after July the 27th, 1993, wherein  
9 the gun was returned back?

10 A Yes.

11 Q Now, you said you went over to the  
12 defendant's?

13 A Yes.

14 Q And you took the defendant back the your  
15 house to get the gun or did you bring the gun over to  
16 his house?

17 A No, I took the gun with me.

18 Q The second time that you took the gun home,  
19 Mr. Demery, when was that?

20 A The night of August the 14th, before -- the  
21 day before we were arrested or picked up and  
22 questioned for the murder of James Jordan, I had -- I  
23 got a call from Daniel that night. He told me he was  
24 on his way over. He had some stuff belonging to --  
25 or had belonged to Mr. Jordan that he wanted to get

1 rid of. And he came and picked me up in his mom's  
2 car. That night when he -- when I went back home, I  
3 took the gun with me. That next day, that Saturday  
4 morning, I don't remember the exact time, but it was  
5 before 12:00, he and his mom stopped by the house,  
6 and he got the gun and an orange pair of shorts that  
7 he had over there.

8 Q So you took the gun on August the 14th and  
9 kept it until --

10 A The next morning.

11 Q Until August the 15th?

12 A Well, it was -- Friday night, 13th, if I'm  
13 not mistaken, and that Saturday morning the 14th.

14 Q Now, prior to the -- when did you first  
15 start driving the Ford Tempo? I mean, what year,  
16 what -- about what month and date was that?

17 A I don't remember. I mean, it was -- if I'm  
18 not mistaken, it was around the first part of '93.  
19 The reason being, my fiancée and her mother went and  
20 bought the car, and because mine was in the shop at  
21 the time, and the job that I had required having a  
22 car. So to help me out, they went and got it, let me  
23 use it. And then I started making payments to my  
24 fiancée's mother for the car.

25 Q And what kind of car did you own prior to

1 your purchasing the Ford Tempo?

2 A '86 Grand Am, and together my fiancée and I  
3 had an '86 Ford Escort.

4 Q So you were driving an '86 Grand Am? What  
5 color?

6 A Blue, two tone blue, a darker blue and then  
7 trimmed up in a lighter color.

8 Q And in a lighter blue?

9 A Yeah.

10 Q And the Ford Escort, you also had?

11 A Yes, it was in my fiancée's name.

12 Q But you drove it?

13 A Yes.

14 Q What year Ford Escort was that?

15 A '86.

16 Q And what color?

17 A Beige.

18 MR. THOMPSON: May I approach the  
19 witness?

20 THE COURT: Yes, sir.

21 (Defense Exhibits 22, 23 were  
22 marked for identification.)

23 BY MR. THOMPSON:

24 Q I hand you what's been previously marked as  
25 Defendant's Exhibit Number 22 and Defendant's Exhibit

1 Number 23. Would you look at -- those are two  
2 photographs. Would you look at those photographs?

3 Can you identify Defendant's Exhibit Number  
4 22, Mr. Demery?

5 A That's the area that the Lexus was  
6 parked.

7 THE COURT: You'll need to speak  
8 into the microphone, sir.

9 THE WITNESS: This is the picture  
10 of the area where the Lexus was parked the  
11 night we came across it.

12 BY MR. THOMPSON:

13 Q And Defendant's Exhibit Number 23 -- well,  
14 strike that. Defendant's Exhibit Number 22, does it  
15 depict an intersection on that photograph,  
16 Defendant's Exhibit Number 22? Can you see an  
17 intersection there?

18 A Yes.

19 Q What are the intersections that you can see  
20 on Defendant's Exhibit Number 22?

21 A Well, this road here is where the service  
22 road was, I think. This is 74 out here. Across  
23 is -- that way to get to 301. And then there's an  
24 overpass here going out 95.

25 Q Okay. Now, Defendant's Exhibit Number 23,

1 will you pick that up? What does Defendant's Exhibit  
2 Number 23, the photograph, show?

3 A It shows the area where we came across the  
4 Lexus, the flea market that was close by. The sign  
5 that we ducked behind that night when the cars were  
6 coming.

7 Q Does Defendant's Exhibit Number 22 also  
8 show the sign that you ducked behind when the car was  
9 coming?

10 A Yes.

11 Q Using Defendant's Exhibit Number 22 or  
12 Defendant's Exhibit Number 23, can you locate on  
13 either one or both of those exhibits where you  
14 contend the Lexus was parked?

15 A Lexus was parked?

16 MR. BRITT: May I approach?

17 THE COURT: Yes, sir.

18 MR. THOMPSON: Yes.

19 BY MR. THOMPSON:

20 Q You're picking up Defendant's Exhibit  
21 Number 22 now, is what you have in your hand, is that  
22 correct?

23 A Yes.

24 Q And describe where you contend the area --  
25 or point out where you contend the Lexus was parked?

1           A       Right here where this piece of blown out  
2       tire is, it was around in this area where the Lexus  
3       was parked. And it was facing west.

4           Q       Now, using this red pen, would you make a  
5       mark or draw a circle in the area where you contend  
6       the Lexus was parked on Defendant's Exhibit Number  
7       22, for the record.

8           A       (Indicating).

9           Q       And would you put your initials inside that  
10      circle?

11          A       (Witness complies). Pen isn't writing.

12          Q       Pen doesn't write too well on that  
13      photograph.

14          A       Huh-uh.

15          Q       And this Magic Marker, draw the circle  
16      again and where you contend the Lexus was parked and  
17      put your initials.

18          A       (Indicating).

19          Q       And the sign, using Defendant's Exhibit  
20      Number 23, can you also see the area on Defendant's  
21      Exhibit Number 23 where the Lexus was parked? If you  
22      can now. If you use it to show --

23          A       Around where this stop sign is, like around  
24      the area that's not even shown, it's more grass has  
25      grown out towards the road.

1 Q Which one of the photographs or exhibits,  
2 Defendant's Exhibit Number 22 or Defendant's Exhibit  
3 Number 23 can you use to best illustrate your  
4 testimony as to where you hid behind the sign?

5 A That night, the sign, on these photographs  
6 it's not sitting on the same place it was on that  
7 night. I mean it was --

8 Q Well, show me on Defendant's Exhibit Number  
9 22, if you can -- that's the exhibit where you've  
10 indicated where the Lexus was -- where you contend  
11 the sign was shown, if you can show it on Defendant's  
12 Exhibit Number 22?

13 A It was about the same distance, but the  
14 sign was turned more like this way, straight on,  
15 facing the road. Instead of angled like that.

16 Q But it was in the same general area, just  
17 angled a little different?

18 A Yeah, about the same distance.

19 Q And you're referring to Defendant's Exhibit  
20 Number 22 when you're talking about the same distance  
21 from where you've drawn the circle where the Lexus  
22 is, is that right?

23 A Yeah.

24 Q Okay. Now, Mr. Demery, I believe you --  
25 well, strike that. You testified on direct

1 examination that it was sometime in June of 1993 when  
2 you saw the defendant for the first time in about two  
3 and a half years, is that right?

4 A Right.

5 Q And you first saw him over at your parents'  
6 house?

7 A Yes.

8 Q And I believe -- excuse me. You and  
9 Angela, your girlfriend, took -- I mean drove over to  
10 your parents' house after receiving a call from your  
11 mother?

12 A Right.

13 Q And you stayed there maybe two and a half  
14 hours, and then you took the defendant home?

15 A No.

16 Q What did you do?

17 A We rode down to the river, and there was a  
18 swimming place maybe a mile and a half, two miles  
19 from where I lived, from there to Hardee's and then  
20 took Angel home and then took Daniel home.

21 Q Okay.

22 THE COURT: Mr. Thompson, let's  
23 take about ten minutes.

24 MR. THOMPSON: Yes, sir.

25 THE COURT: Mr. Demery, you may

1 step down, we're going to be at ease for  
2 about ten minutes.

3 (Brief recess.)

4 THE COURT: Let the record  
5 reflect all counsel are present, the  
6 defendant is present in open court. We are  
7 continuing in the absence of the jury with  
8 the 404(b) matter now underway.

9 Folks, while we're waiting for  
10 Mr. Demery to come back. Let me put the  
11 following on the record. The individual  
12 who came into court, and I remember him  
13 stating his name, I may be incorrect, as  
14 being a Mr. Dial, has been interviewed by  
15 folks at the Robeson County Sheriff's  
16 Department. He is present. Out of an  
17 abundance of precaution, Mr. Thompson  
18 indicated that he might want to talk to  
19 that individual so that there's no issue as  
20 to whether or not this person was available  
21 for interview by counsel for the  
22 defendant. I am giving you the opportunity  
23 to interview him. Before I go further, let  
24 me also put on the record, Mr. Garth  
25 Locklear, your investigator, indicated that

1 he knew the gentleman, and that he  
2 recognized the gentleman as someone from  
3 his community, who according to community  
4 information, was someone suffering from  
5 mental illness.

6 The issue which was raised with me by  
7 members of the Robeson County Sheriff's  
8 Department was what, if any, action did I  
9 want to take with regard to that  
10 individual. It's not my intention to take  
11 any punitive or criminal action on the  
12 individual based on the information before  
13 me.

14 I am, to the extent that you folks  
15 want to pursue it, making him available to  
16 you as a potential witness, both he and his  
17 WD-40, for counsel for the defendant.

18 Do you folks want to interview  
19 Mr. Dial?

20 MR. THOMPSON: Well, we may, Your  
21 Honor, want to talk to him.

22 THE COURT: Mr. Locklear, as I  
23 understand it, you know where the gentleman  
24 lives.

25 MR. LOCKLEAR: I know where his

1 father lives.

2 THE COURT: Do you know how to  
3 contact him?

4 MR. LOCKLEAR: No.

5 THE COURT: What I'm concerned  
6 about is, I don't want to hold the  
7 gentleman in custody, or arguably in  
8 custody. I would like for somebody to  
9 contact some family members. Mr. ,  
10 Locklear do you know any family members  
11 that you could contact as to him?

12 MR. LOCKLEAR: I know some of his  
13 family members I could possibly contact.

14 THE COURT: My understanding is  
15 he drove here, that's the information that  
16 I was provided from the officers. Rather  
17 than releasing him outright, I would like  
18 to have him released to the custody of some  
19 family member.

20 Mr. Locklear, will you assist us in  
21 that regard?

22 MR. LOCKLEAR: Let me check up on  
23 it.

24 THE COURT: All right. I simply  
25 wanted the record to reflect that to the

1 extent that there was some question by  
2 counsel for the defendant as to whether or  
3 not he was available for interviewing. He  
4 is. My understanding, through your  
5 investigator, is that he knows the  
6 gentleman.

7 MR. THOMPSON: Yes, sir.

8 THE COURT: Anything anybody  
9 wants to put in the record in that regard?

10 MR. BRITT: No, sir.

11 THE COURT: Folks, if you will  
12 ask Mr. Dial to remain with us until  
13 Mr. Locklear gets back with some  
14 information concerning family members, he  
15 may be able to assist us.

16 Mr. Demery, you remain under oath.  
17 Mr. Thompson, you may continue with your  
18 cross-examination.

19 BY MR. THOMPSON:

20 Q Mr. Demery, you indicated that you and the  
21 defendant had a conversation sometime after June of  
22 1993, where you began to explain, talk to him about  
23 all the trouble you were in?

24 A Well, he had asked me about it. His mom  
25 had kept him informed on what was going on with me.

1 Q Where did that conversation take place,  
2 when you were telling him about your problems, I  
3 mean, with respect to --

4 A Well, when we first mentioned, it was over  
5 at my place or my parents' place that day, but when  
6 we really went into full detail, or I went into  
7 detail about it was next time I saw him about a week  
8 later.

9 Q All right. And where was that, where were  
10 you all at when you went into it in full detail?

11 A Over at Daniel's place, his trailer.

12 Q And when you say you went into it in full  
13 detail, did you go into it in full detail about the  
14 breaking and entering and larceny of a David Mitchell  
15 Locklear, is that one of the cases or incidents that  
16 you went into full detail about?

17 A Well, I don't remember the guy's name but  
18 it was at the Union Mini Mart store that we had  
19 broken into.

20 Q Did you go into any detail about who, if  
21 anyone, was with you when you broke into the Union  
22 Mini Mart?

23 MR. BRITT: Objection to the  
24 relevance.

25 THE COURT: Mr. Thompson?

1                   MR. THOMPSON: Well, he's  
2 testified that they had a conversation,  
3 Your Honor, about crimes that he was  
4 committing, and I mean, that's part of the  
5 cross-examination. And they had -- they  
6 went into full detail about it. He also  
7 testified that -- or implicated that  
8 Mr. Green was telling him about how to do  
9 it or how to commit other crimes. Now they  
10 will say that this is some conspiracy, and  
11 they are trying to show -- the State  
12 meaning they brought out on direct  
13 examination through this witness that they  
14 had a conversation about crimes that he was  
15 committing. I'm simply asking on  
16 cross-examination as to which crimes was he  
17 talking about that they had a conversation  
18 about. I think that's relevant.

19                   THE COURT: How does it bear on  
20 the 404(b)?

21                   MR. THOMPSON: Well, Your Honor,  
22 he's trying to show these other robberies  
23 that were committed, basically on the 15th  
24 and on the 4th. These other crimes, if  
25 they were committed, it appears certainly

1 that they would not have been committed  
2 with Mr. -- with the defendant, because he  
3 was not available.

4 THE COURT: Yes, sir.

5 MR. THOMPSON: So I wanted to  
6 know what similarities, if any, those  
7 crimes were committed with respect to the  
8 ones that we have here, if there are any  
9 similarities. I'm simply trying to find  
10 out the circumstances surrounding it. I  
11 think that's relevant. It certainly -- we  
12 contend it is, Your Honor.

13 THE COURT: If it's relevant, and  
14 I suspect ultimately this is where we're  
15 going, what we're trying to do here is lay  
16 the foundation for later impeachment with  
17 the jury. Really, that's where I see  
18 you're going, trying to establish anything  
19 here that may be used in impeachment if the  
20 evidence comes in before the jury. And  
21 that's okay. But you've got a copy of the  
22 record. You know what matters he's pled  
23 guilty to, you know what matters he was  
24 charged with. Presumably, you know what  
25 matters are admissible under Rule 609, and

1           what matters may be admission, I believe,  
2           under 608-B.

3                       MR. THOMPSON:   But what I don't  
4           know necessarily is who was involved in the  
5           commission of those crimes with  
6           Mr. Demery.   That's what I don't know, that  
7           I would like to find out if I can.

8                       THE COURT:   I'm going to let  
9           you.

10                      Answer his question.

11                      THE WITNESS:   Would you repeat  
12           it?

13   BY MR. THOMPSON:

14           Q       With respect to the breaking and entering  
15           and larceny of a David Mitchell Locklear, the Union  
16           Mini Mart, did you discuss with the defendant who if  
17           anyone were involved with you in the breaking and  
18           entering and larceny of items from that store?

19           A       Yes.

20           Q       And did you give -- did you discuss the  
21           name of individuals, is that right?

22           A       I'm sure that I did.

23           Q       And who were those individuals?

24           A       Chad Bullard, a good friend of mine; guy  
25           named Durance, he was a friend of mine.

1 Q Excuse me, I'm sorry, I didn't get the  
2 name, the second name you just mentioned?

3 A Well, I didn't get to finish it but Durance  
4 Jacobs, the second guy, he was a friend of mine and  
5 my brother's. Michael Lowry, a guy that I went to  
6 school with. Michael Lowry's half brother, Randy  
7 Stewart. And myself. That was it.

8 Q Now, and that happened back in September of  
9 1991, is that right?

10 A Yes.

11 Q Now, you also -- did you also discuss with  
12 the defendant the breaking and entering and larceny  
13 of Jones Grocery Store, of a Viola J. Locklear?

14 A I told him what happened with that.

15 Q And that happened back in September of  
16 1991?

17 A The authorities say it did.

18 Q Well, when did it happen?

19 A They say it happened that same night.

20 That's all I can go on. What I'm trying to say is,  
21 and if you like me to explain --

22 Q Certainly, certainly.

23 A When we were arrested, picked up, about the  
24 breaking and entering down at the Union Mini Mart,  
25 well, my mom, she's the one that pretty much caught

1 onto everything, and she had always said that if I  
2 did something, you know, she would -- she wanted me  
3 to own up to it. So she took us down to the store  
4 that day, told the guy we had broken into his place.

5 Q Told Mr. Locklear?

6 A Yes, and some of the stuff we had taken out  
7 of the store that night, one of the guys that were  
8 with us, this idiot, he had the stuff right there  
9 behind my dad's barn and my mom had found it. And  
10 like I said, she took us down there, called the  
11 police and everything. And it happened, they said  
12 that same night, that store, about a half mile down  
13 the road had got broken into. We were questioned  
14 about it, that first night everybody was charged,  
15 Michael and I were the only ones. I was 16, I think  
16 he was 17, and we were the only ones that could be  
17 brought down and questioned about it. The other guys  
18 were underage and juveniles. My friend Chad, when  
19 they brought him down, or the next day, Detective  
20 Thompson came to my house --

21 Q Anthony Thompson?

22 A Yes, sir. He had another warrant for me,  
23 and I didn't know what was going on. We got down  
24 there, he told me when he had questioned my friend  
25 Chad, Chad had told him that he and I, Chad, myself,

1 while these other guys were breaking in this one  
2 store, the Union Mini Mart, he told them that -- we  
3 didn't have anything to do with this, that he and I  
4 went down to this other store and broken into it,  
5 which was not true.

6 And later on, he admitted that he -- even  
7 went to my parents' house, I was there that day  
8 apologizing to my mom that he had said something like  
9 that. But he said he was scared, hadn't ever had any  
10 dealings with the law, which I hadn't either. And  
11 the last I heard of it, he had -- when he went to  
12 court it was dropped against him, but it was still  
13 pending against me three years later.

14 Q And this is Chad who?

15 A Bullard.

16 Q Where does he live?

17 A About a mile away from me on Highway 710.

18 Q Durrance Jacobs, where does he live?

19 A He's probably living in the Department of  
20 Corrections now.

21 Q Michael Lowry, where did he live?

22 A The same place. Because the last time I  
23 saw him was at the jail.

24 Q Randy Stewart, where does he live?

25 A More than likely, Mr. Thompson, the same

1 place.

2 Q Now --

3 THE COURT: For the record,  
4 Mr. Demery, the individuals you've named,  
5 can you state the race of those individuals  
6 for the record?

7 THE WITNESS: Indian.

8 THE COURT: All of them?

9 THE WITNESS: Yes, sir.

10 BY MR. THOMPSON:

11 Q Are all of them your complexion or --

12 A One a lot lighter, another a little darker,  
13 but we were all Indians.

14 Q But there are some very dark Indians that  
15 you know of?

16 A Yes, I know some very dark ones and some  
17 very light ones.

18 Q And nevertheless, the breaking and entering  
19 of -- and larceny of Viola J. Locklear at the  
20 grocery, you deny any participation in that?

21 A That's right, I did not do it.

22 Q This information that Chad -- that came to  
23 your mother by way of Chad Bullard, did it come  
24 before you pled guilty to that offense or after?

25 A Yes, sir, about a year and a half before

1 any of this ever happened. Like I said, that charge  
2 was still pending against me in court.

3 Q And you pled guilty to it?

4 A Yes, yeah.

5 Q Now, did you talk to the defendant about  
6 the breaking and entering of a larceny of a residence  
7 of a Larry Oxendine back on January the 14th of  
8 1992? Did you tell him about that, talk to him about  
9 that?

10 A The name you just said doesn't even ring a  
11 Bell.

12 Q Where something like a Stanley box cutter  
13 was taken, does that ring a Bell?

14 A Oh, yes, yes, it does.

15 Q And that's one of the cases, charges you  
16 pled guilty to?

17 A Yes.

18 Q And who was with you when you committed  
19 that act?

20 A Michael Lowry. I think the other guy's  
21 name was Timothy Jacobs, two of his brothers, I can't  
22 even remember those guys' names.

23 Q Timothy Jacobs and two of his brothers?

24 A Yes, one of their names was Stephen. And  
25 Joy Shawn was the other one. Joy Shawn.

1 Q Joy Shawn?

2 A Yes.

3 Q What's the last name of Joy Shawn?

4 A I assume Jacobs, I don't --

5 Q So you said Joy Shawn is one of the two --  
6 Joy Shawn and Stephen are the two brothers of Timothy  
7 Jacobs?

8 A Yes.

9 THE COURT: What are the races of  
10 those individuals, Mr. Demery.

11 THE WITNESS: Everybody is  
12 Indian.

13 BY MR. THOMPSON:

14 Q Describe what complexion these individuals  
15 are?

16 A Joy Shawn and Stephen were darker. Tim, he  
17 was about my complexion. Like I said, Michael, he  
18 was -- Michael looked like -- he looked like he was  
19 white, but he was real light complected, blond hair.

20 Q And where does Timothy Jacobs live?

21 A At the time they were all living right off  
22 of 710 in a trailer with their mother, from Harper's  
23 Ferry Church.

24 Q So you're saying Timothy, Stephen, and Joy  
25 Shawn were all living there together?

1 A Yes.

2 Q And Michael Lowry, is he the same Michael  
3 Lowry that was with you in the David Mitchell Union  
4 Mart breaking and entering?

5 A Yes.

6 Q Now, did you discuss with the defendant an  
7 assault on a Wilma R. Dial with a cinder block back  
8 on October the 6th of 1992, did you discuss that with  
9 him?

10 A Yes.

11 Q And was that a robbery?

12 A Yes, I was charged with armed robbery for  
13 that.

14 Q And who was with you when that was  
15 committed?

16 A Durance Jacobs.

17 Q Was that the same Durance Jacobs that was  
18 with you when you broke into David Mitchell  
19 Locklear's store, Union Mini Mart?

20 A Yes.

21 Q Was he the only other person that was with  
22 you?

23 A Yes.

24 Q Now, you also discussed with the defendant  
25 other crimes that you had committed for which you

1 were not charged, isn't that right?

2 A No. Everything that I went out there and  
3 did, I ended up getting caught for it. I was charged  
4 with it.

5 Q So you're denying that there were other  
6 robberies and assaults that you had committed that  
7 you were not charged for?

8 A Yes, I am denying saying that to him. And  
9 even if I had, I mean, what kind of fool would I be  
10 to sit here and tell you that I had done other things  
11 like that?

12 Q Well, you've got immunity, don't you, from  
13 prosecution, don't you, Mr. Demery?

14 A No, sir.

15 THE COURT: Mr. Thompson, a while  
16 back we talked about looking at 1052 and  
17 1054.

18 MR. THOMPSON: Yes, sir. Well,  
19 let me rephrase that.

20 BY MR. THOMPSON:

21 Q There was an agreement, a plea bargain  
22 agreement that you entered into back in May of 1995  
23 where you pled guilty to many of the things that  
24 we've talked about, is that right?

25 A Right.

1 Q And on that -- there was a signed plea  
2 transcript, was there not? And there was -- the  
3 agreement was between you and the State that anything  
4 that came out about crimes that you had committed as  
5 a result of your testifying in this case you would  
6 not be prosecuted in this district, isn't that true?

7 A The agreement was that the State wanted to  
8 ask -- they wanted to question me about things that  
9 Daniel and I had done, things that they suspected we  
10 had done, and if there were other things that they  
11 knew nothing about, they wanted me to tell them about  
12 those. But you asked me a while ago had I discussed  
13 with Daniel about things that I had done and never  
14 been charged with, but these things here, Daniel and  
15 I did them together.

16 Q And you're denying having discussed with  
17 Daniel things that you had done, crimes that you had  
18 committed while he was -- that was committed prior to  
19 June of 1993, you deny discussing with the defendant  
20 any crimes that you had committed for which you had  
21 not been charged?

22 A Right, like I said, what I had done, I had  
23 been caught for, charged with.

24 Q And you are also denying that you committed  
25 any other crimes other than these that you've just

1 testified to and to which you pled guilty?

2 A I'm not denying, but I'm not admitting  
3 either.

4 THE COURT: Let's take a lunch  
5 break.

6 Mr. Demery, you can come down, sir.

7 Folks, we're going to break until  
8 2:00. We'll come back at 2:00.

9 Mr. Thompson, Mr. Bowen, Ms. Berry, do you  
10 have a problem with 2:00?

11 MS. BERRY: Your Honor, I have a  
12 funeral, it's very close by, it's a close  
13 family. It's at 2:00, if we could just  
14 have until 2:30, I'll be back.

15 THE COURT: Well, I certainly  
16 don't mean to be insensitive, I certainly  
17 want to accommodate, but are you involved  
18 with the cross-examination of this witness.

19 MS. BERRY: No, sir.

20 THE COURT: Any problem with  
21 coming back at 2:00 and continuing your  
22 cross-examination, Mr. Thompson.

23 MR. THOMPSON: I would love to  
24 have Ms. Berry here since she still is  
25 participating, and would be making an

1 argument. Your Honor, I don't mind.

2 THE COURT: We've got a record.  
3 And certainly we will not go forward with  
4 any argument until Ms. Berry is back.

5 MR. THOMPSON: Okay. No problem.

6 THE COURT: Mr. Britt, any  
7 problem with the State coming back at 2:00.

8 MR. BRITT: No, sir.

9 THE COURT: We'll take a one hour  
10 break until 2:00.

11 THE BAILIFF: All rise, please.

12 (Lunch recess.)

13 THE COURT: Good afternoon,  
14 folks.

15 Let the record reflect that all  
16 counsel are present at this time with the  
17 exception of Ms. Berry. Let the record  
18 further reflect Ms. Berry is appearing in  
19 the discretion of the Court in the context  
20 of this 404(b) motion. Let the record  
21 further show that with the consent of all  
22 counsel, we're going to continue at this  
23 time pending Ms. Berry's arrival with the  
24 presentation of evidence, and with the  
25 cross-examination of the witness now on the

1 stand, Larry Martin Demery. Once  
2 Mr. Demery arrives, Mr. Thompson, you may  
3 continue with your cross-examination.

4 Mr. Demery, if you'll return to the  
5 witness stand, please, you remain under  
6 oath.

7 Mr. Thompson.

8 BY MR. THOMPSON:

9 Q Good afternoon, Mr. Demery. Mr. Demery,  
10 with regard to the September 1991 David Mitchell  
11 Locklear Union Mini Mart BEL, how did you get to the  
12 Union Mart, what was your mode of transportation?

13 A We walked that night. It was only about a  
14 mile at the most from where I lived.

15 Q And with respect to the Larry Oxendine  
16 breaking and entering and larceny back in September  
17 of 1992, how did you get to that residence?

18 A Same way, walked.

19 Q You walked?

20 A It was about a mile in the other direction.

21 Q And with respect to Wilma R. Dial, the  
22 assault by the cinder block on that individual back  
23 in October of 1992, -- by the way, where did that  
24 take place?

25 A At the Pantry over in Pembroke.

1 Q And how did you get to the Pantry?

2 A Well, we drove -- I drove -- we parked the  
3 car a little ways from it and walked, walked up to  
4 the store.

5 Q In which car did you drive?

6 A The Escort.

7 Q Ford Escort?

8 A Yes.

9 Q Now, since you've been incarcerated for the  
10 offenses related to James R. Jordan, have you been  
11 out to your parents' home, I mean, to your father's  
12 and mother's home, have you been taken out there by  
13 law enforcement?

14 MR. BRITT: Objection to the  
15 relevance.

16 THE COURT: Mr. Thompson?

17 MR. THOMPSON: Your Honor, I'm  
18 trying to find out with respect to these  
19 items these -- whether he showed -- he's  
20 testified as to guns and bullets, just  
21 trying to find out if he showed them  
22 anything.

23 THE COURT: For the purposes of  
24 the hearing, I'll allow it.

25 BY MR. THOMPSON:

1           Q     You may answer.  Have you been out there to  
2 your parents' home?

3           A     Yes, about a year after I was arrested for  
4 the murder, my brother had got in a bad car accident,  
5 he was in the hospital for a while, and then when he  
6 finally -- he was put in an outpatient center.  When  
7 he was allowed to come home for about the first month  
8 it was on weekends, and my mother had called the  
9 Sheriff and asked him was it possible that she could  
10 bring my brother up to the Sheriff's Department and  
11 let me see him a few minutes, because it had been  
12 about three months.  And I guess out of the kindness  
13 of his heart, he allowed one of his deputies to take  
14 my to my parents' house for about an hour and a half  
15 to see my brother.

16          Q     Was this Sheriff Hubert Stone?

17          A     Yes.

18          Q     Who was the Deputy that escorted you?

19          A     Billy Dees, or Bobby.

20          Q     You say this was what year, year after the  
21 incident, '94 -- '94 of last year?

22          A     '94.

23          Q     Other than that, had you been out there  
24 with any law enforcement officers to your parents'  
25 home to show them anything?

1 A No, I hadn't.

2 Q Was a pistol used, Mr. Demery, in the  
3 assault on Wilma R. Dial or that robbery?

4 A That was something that a guy that was  
5 picked up for it at first, something he said, but he  
6 lied about it.

7 Q Are you -- so you're saying a pistol was  
8 not used?

9 A No, it was not. No.

10 Q Now, Mr. Demery, with respect to -- we can  
11 just go over these briefly again. With respect to  
12 the Clewis Demory robbery, that robbery occurred in  
13 the daytime, is that --

14 A Yes, sir, at about 10:00 in the morning.

15 Q About 10:00. And the Rowland motel robbery  
16 and the robbery of James Jordan occurred at the  
17 nighttime, is that right?

18 A Yes, sir, in the early morning hours.

19 Q Now, with respect to the Rowland robbery,  
20 which occurred on July 4th, motel robbery, of 1993,  
21 it's your testimony that a .380 --

22 A Yes.

23 Q -- was used?

24 A Yes.

25 Q And in the Clewis Demory robbery, two .32

1 caliber guns were used?

2 A Yes.

3 Q And in the James Jordan robbery, it's your  
4 contention that the .38 or a .38 caliber gun was  
5 used?

6 A Yes.

7 Q Now, in the Rowland motel robbery, back on  
8 July the 4th of 1993, you and the defendant were  
9 actually on foot, is that right?

10 A Yes, sir, we were. Yes.

11 Q In the Clewis Demory robbery back on the  
12 15th of July, you're contending you were in your Ford  
13 Escort -- I mean Ford Tempo?

14 A Yes.

15 Q And in the Clewis Demory robbery on July  
16 15th, both you and the defendant went into the  
17 convenience store?

18 A Yes.

19 Q And both you and the defendant had weapons?

20 A Yes.

21 Q And confronted Mr. Demory, Clewis Demory?

22 A Yes.

23 Q Now, with respect to the Rowland motel  
24 robbery back on July the 4th of 1993, you did not --  
25 you indicated you all planned that robbery?

1 A Yes.

2 Q It was not your intentions to take an  
3 automobile? You wasn't planning to take a car?

4 A No, no, sir, no.

5 MR. CAMPBELL: Excuse me, can  
6 Mr. Rogers and I have a brief conference with our  
7 client there in the corner?

8 THE COURT: Counsel for the State  
9 wanted to be heard?

10 MR. BRITT: No, sir, I don't  
11 believe -- I'm not sure.

12 THE COURT: They are asking for a  
13 conference. Do you want to be heard as to  
14 that?

15 MR. BRITT: No, sir.

16 THE COURT: Counsel want to be  
17 heard?

18 MR. THOMPSON: Object. I would  
19 be through in a few minutes, only got a few  
20 more questions.

21 THE COURT: At this time, the  
22 request is denied.

23 THE COURT: Yes, sir.

24 BY MR. THOMPSON:

25 Q And with respect to the James Jordan

1 robbery, it's your testimony that you and the  
2 defendant planned to tape Mr. Jordan up?

3 A Yes.

4 Q The individual in that vehicle?

5 A Yes.

6 Q And your intentions were to -- the object  
7 of that was to steal an automobile, of that robbery?

8 A No, not -- it was more an impulse thing.  
9 It was planned -- we had planned to rob somebody, but  
10 at the beginning there was never -- well, I had never  
11 intended to take a car. We had discussed and planned  
12 to rob somebody. And like I said, that was just an  
13 impulse decision that we talked about and planned  
14 out.

15 Q But at a point, you decided to take the  
16 car, prior to approaching the vehicle, isn't that  
17 right?

18 A Well, after approaching it the first time.

19 Q That's when you all went back over and you  
20 say hid behind something and you talked about taking  
21 the car?

22 A No, that's the second time we went back to  
23 my car. On the way to my car, we were talking about  
24 it, planning it out, and went back to my car, and  
25 kept planning.

1 Q Now, in the Demory, Clewis Demory robbery  
2 back on July the 15th of 1993, you had a mask on?

3 A A bandana.

4 Q I mean a bandana?

5 A Yes.

6 Q You also had a hood on your head?

7 A Yes.

8 Q The defendant had shades on, dark colored  
9 shades on, is that right?

10 A Yes.

11 Q The hood was -- even though he had a sweat  
12 shirt -- was the hood over his head?

13 A No, he had to put it over his head.

14 Q Did you have anything on your face in the  
15 Rowland motel July 4th, 1993 robbery?

16 A No, we both had our hoods pulled on, but I  
17 had my cap on and had the hood pulled over it. At  
18 some point the hood came back, and I still had my cap  
19 on, but as far as anything over my face, no.

20 Q Now, how far is the Rowland motel, July  
21 4th, 1993 robbery, was that the Family Inn, is that  
22 right?

23 A Yes.

24 Q How far is that from the intersection of 74  
25 and 95?

1           A       I would say maybe four or five miles, I  
2       guess.

3           Q       Now, we're talking about the Family Inn is  
4       there at South of the Border, is that right?

5           A       Right.

6           Q       Now, we're talking about -- isn't that  
7       about 15 or so miles from 74, the intersection of 74  
8       and 95?

9           A       Exit 14 where the Jordan robbery  
10      occurred --

11          Q       That's 74, and Interstate 95?

12          A       Well, I know of two -- two ways to get  
13      there, go all the way down 95 or 301, but --

14          Q       You're saying --

15          A       Depending on which way you go.

16          Q       The shortest way to get there you say is  
17      five miles?

18          A       As best I can recall.

19          Q       How far is Lowry's Texaco where you  
20      testified the Clewis Demory robbery took place from  
21      the intersection of 74 and 95?

22          A       Maybe four, four to five miles.

23          Q       Do you know an individual by the name of  
24      Daniel Oxendine?

25          A       Yes.

1 Q What complexion is he?

2 A He's about my complexion, that is, at the  
3 time I was out, before I ever got arrested.

4 Q He's an Indian male?

5 A Yes.

6 MR. THOMPSON: That's all.

7 THE COURT: Anything on redirect,

8 Mr. Britt?

9 MR. BRITT: Yes.

10 REDIRECT EXAMINATION

11 BY MR. BRITT:

12 Q Larry, after you pled guilty back in April  
13 of 1995, you were interviewed by Mr. Heffney and  
14 Mr. Thompson, were you not?

15 A Yes.

16 Q And that interview took place partly at the  
17 SBI office in Fayetteville?

18 A Yes.

19 Q And other parts of it took place in  
20 Mr. Campbell's office, your attorney?

21 A Yes.

22 Q Mr. Campbell was there each and every time  
23 that you were interviewed by the officers?

24 A Yes, he was.

25 Q And then Mr. Rogers was there for part of

1 the time?

2 A Yes.

3 Q And that interview lasted approximately  
4 five days, thereabouts, did it not?

5 A Yes.

6 Q And in that interview, you were asked  
7 questions about your participation in James Jordan's  
8 murder, were you not?

9 A Yes, I was.

10 Q And you were also asked questions about the  
11 defendant's participation in James Jordan's murder?

12 A Yes.

13 Q Were you asked questions about your  
14 participation in the robbery of Clewis Demory?

15 A Yes.

16 Q Were you also asked questions about the  
17 defendant's participation in the robbery of Clewis  
18 Demory?

19 A Yes.

20 Q Were you asked questions about your  
21 participation in the July 4th, Rowland motel robbery?

22 A Yes.

23 Q And you were also asked questions about the  
24 defendant's participation in the July 4th, Rowland  
25 motel robbery, is that correct?

1 A Yes.

2 Q Mr. Thompson asked you on  
3 cross-examination -- cross-examination, Mr. Thompson  
4 asked you the following question: "And are you also  
5 denying that you committed any other crimes other  
6 than these that you just testified to and to which  
7 you pled guilty"?

8 A Yes.

9 Q You remember that question?

10 A Yes.

11 Q In the interviews with Mr. Heffney and  
12 Mr. Thompson, did you discuss other crimes that you  
13 and the defendant had committed?

14 A Yes, I did.

15 Q What other crimes did you discuss with  
16 Mr. Heffney and Mr. Thompson that you and the  
17 defendant committed?

18 MR. THOMPSON: Object.

19 THE COURT: Well, does the State  
20 intend to try to lay a foundation through  
21 the testimony now being elicited for  
22 additional 404(b) matters?

23 MR. BRITT: Yes, sir.

24 THE COURT: Matters not  
25 previously involved in any notice?

1                   MR. BRITT: No, sir, but matters  
2 which have been made known to the defense  
3 when they were provided a copy of this  
4 statement back in June of 1995, matters  
5 which Mr. Thompson on cross-examination  
6 opened the door to.

7                   THE COURT: Okay. Let me back up  
8 to your first statement. You indicated  
9 that notice, perhaps not formal, but notice  
10 was given to counsel for the defendant.

11                   MR. BRITT: Yes, sir.

12                   THE COURT: As to other specific  
13 offences.

14                   MR. BRITT: Yes, sir.

15                   THE COURT: For the record, what  
16 are those other specific offenses?

17                   MR. BRITT: Those other specific  
18 offenses are the breaking and entering and  
19 the larceny of the residence of David  
20 McClain. The arson of David McClain's  
21 residence that occurred in July of 1993. A  
22 break-in of a tractor-trailer that was  
23 parked along U.S. 74 at the intersection of  
24 Interstate 95, and the breaking and  
25 entering of a drink machine at the Quality

1 Inn motel the weekend following the James  
2 Jordan murder.

3 THE COURT: You folks contend  
4 there was no notice as to those offenses.

5 MR. BOWEN: No question about it,  
6 Your Honor, I'm sitting here holding the  
7 notice which was filed, looks like  
8 September 28th, 3:30. And this file is  
9 signed by Mr. Britt himself, dated  
10 September 28, 1995. Paragraph number one  
11 says the other crimes, wrongs or acts  
12 consist of the following, paragraph number  
13 one details matters arising on July 4th,  
14 1993 having to do with the -- what we've  
15 referred to as the Rowland matter.

16 THE COURT: He's admitted, he's  
17 conceded there was no formal notice as to  
18 the matters he just recited. What he  
19 indicated to you is that he's given you  
20 that information although not in formal  
21 notice terms.

22 MR. BOWEN: He's given all  
23 matters in discovery, I don't deny that,  
24 but his formal notice is notice as to what  
25 we are expected to be prepared to go

1 forward with on this hearing is only July  
2 4th and July 5th matters.

3 THE COURT: His position is,  
4 you've got formal notice to those matters.

5 MR. BOWEN: Correct.

6 THE COURT: You're also admitting  
7 for the record that as to the allegation or  
8 offense he has just recited, he told you  
9 about those as well.

10 MR. BOWEN: Let me tell you  
11 this: To the extent those matters, if they  
12 are, are in Mr. Heffney's statement that I  
13 adduced from Mr. Demery, and of course, we  
14 have a copy of that statement, there's --  
15 you know, five thousand pages back here. I  
16 couldn't stand here, having had no notice  
17 that these matters were going to come up in  
18 this context, and tell you that everything  
19 that he's mentioned thus far is in some of  
20 those papers. I have to have time to  
21 confirm or deny that, so I do neither at  
22 this point.

23 THE COURT: My concern is this.  
24 If you were put on notice, formal or  
25 otherwise, about other matters, then asking

1 the question arguably opens the door.

2 MR. THOMPSON: Your Honor, may I  
3 be heard?

4 THE COURT: Yes, sir.

5 MR. THOMPSON: Now, he referred  
6 to a -- obviously, to the screen and a  
7 particular portion where the question was  
8 asked. I remember -- and I asked a  
9 question and in the context I thought that  
10 we were talking about crimes that he had  
11 discussed with Mr. Green about that he  
12 committed, and that was prior to June of --  
13 and he denied having discussed with  
14 Mr. Green any crimes other than the ones to  
15 which he had been charged to -- charged  
16 with. And that was the area of the  
17 questioning when that question was asked.  
18 And I mean, it was prior to June of 1993  
19 when he had the discussion with Mr. -- with  
20 the defendant.

21 THE COURT: All right.  
22 Mr. Britt, I'm going to let you make your  
23 record. We'll take it up on argument. But  
24 let me say this: When you get into  
25 multiple offenses, when you get into

1 multiple contentions of 404(b) matters,  
2 then the sheer number lends itself to a  
3 finding of undue substantially and undue  
4 prejudice. I mean, there's such a thing as  
5 overkill.

6 MR. BRITT: Yes, sir, I  
7 understand that.

8 THE COURT: And I understand what  
9 your position is. Ultimately, it's going  
10 to be my responsibility to make that  
11 decision. But in making that decision, for  
12 example, and simply by way of example, if I  
13 am faced with a situation where the State  
14 is attempting to put in just for purposes  
15 of illustration ten prior 404(b) matters,  
16 the Court is required to consider each and  
17 every one separately and independently.  
18 And if a court, by way of illustration,  
19 says the probative value of one is clearly  
20 of significant strength to outweigh any  
21 risk or substantial risk of undue  
22 prejudice, but when you get to that second  
23 one and that third one, depending on the  
24 relative strength of those matters, the  
25 cumulative effect lends itself to error.

1                   MR. BRITT: Yes, sir, and I  
2 understand the Court's position. That's  
3 why I limited my notice to the two  
4 instances, one of July the 4th, and one of  
5 July 15th. They were given this  
6 information on discovery, they have had it  
7 for months, they know what questions to  
8 ask, they know what questions not to ask.  
9 And if you go back and you look beginning  
10 at page 159, Mr. Thompson --

11                   THE COURT: I'm not disputing  
12 your point. My point is simply this. Our  
13 courts uniformly say that evidence of other  
14 offenses, whether you want to characterize  
15 those offenses under the term uncharged  
16 misconduct, similar crimes, extrinsic  
17 offenses, however you want to label them,  
18 is inherently prejudicial. And if its only  
19 purpose is to show that a person is  
20 somewhat of bad character or has a  
21 propensity to commit crimes, then it's  
22 inadmissible. And there are narrow  
23 exceptions carved out under our law.

24                   MR. BRITT: And I agree with you,  
25 I understand the risks that are involved.

1           And I do not intend, so that everything is  
2           clear on the record, I do not intend to  
3           offer any evidence of the David McClain  
4           fire, I do not intend to offer evidence of  
5           the truck break-in, or offer evidence of  
6           break-in the of drink machine at the  
7           motel. What I do intend to do, and  
8           Mr. Thompson repeatedly pointed out that he  
9           was trying to gather information for  
10          purposes of impeachment, I am entitled on  
11          redirect to have any witness explain any  
12          question or response that was asked on  
13          cross.

14                       THE COURT: That is the real crux  
15                       of where we are. What I think I hear you  
16                       say is if that same question is asked in  
17                       front of the jury --

18                       MR. BRITT: Put it bluntly, I'm  
19                       going to stick it in him.

20                       MR. THOMPSON: I understand.

21                       THE COURT: Because even though I  
22                       might rule that you can't get into certain  
23                       matters during your case in chief, if doors  
24                       are opened on cross-examination, by way of  
25                       impeachment or attempted impeachment, then

1 that ruling may not -- may not any longer  
2 be applicable under those circumstances.

3 And if, for example, we were before  
4 the jury now and that question had been  
5 asked, a lot of stuff that otherwise would  
6 not come in would come in.

7 MR. THOMPSON: I understand, and  
8 this is voir dire, and lot of things we ask  
9 would not be admissible before the jury.

10 THE COURT: I was glad to hear  
11 you say that.

12 MR. THOMPSON: This is voir dire.

13 THE COURT: Yes, sir. Do you  
14 want to go into it for our purposes right  
15 now, Mr. Britt? If you do, I'll let you do  
16 it, but based on what you just said that  
17 you don't intend to offer it, I don't see  
18 the usefulness.

19 MR. BRITT: No, sir, I believe to  
20 go into it would be a waste of the Court's  
21 time.

22 THE COURT: I appreciate it.  
23 They are on notice.

24 MR. BRITT: They have been on  
25 notice for a long time.

1 THE COURT: I'm putting everybody  
2 on notice, if you open doors through  
3 impeachment or otherwise, that may change  
4 the situation with regard to the Court's  
5 rulings. The Court hasn't made those  
6 rulings yet. Any other questions of  
7 Mr. Demery?

8 MR. BRITT: No, sir.

9 THE COURT: You folks have  
10 anything additional for Mr. Demery?

11 MR. THOMPSON: No, sir.

12 THE COURT: Mr. Demery, you may  
13 step down. Any additional evidence for the  
14 State?

15 MR. BRITT: Yes, sir. At this  
16 time we would call Special Agent Ron  
17 Marrs.

18 RONALD MARRS,  
19 being first duly sworn was examined and testified as  
20 follows:

21 DIRECT EXAMINATION

22 THE COURT: If you'll state your  
23 full name for the record.

24 THE WITNESS: Ronald Marrs,  
25 M A R R S.

1 THE COURT: Thank you.

2 Mr. Britt.

3 BY MR. BRITT:

4 Q Mr. Marrs, by whom are you employed?

5 A I'm employed by the North Carolina State  
6 Bureau of Investigation.

7 Q And in what capacity do you work for the  
8 State Bureau of Investigation?

9 A Special Agent assigned as a firearms and  
10 tool mark examiner in the crime lab in Raleigh.

11 Q What are your duties and responsibilities  
12 in that capacity?

13 A As a firearms and tool mark examiner, my  
14 responsibilities are to examine bullets, cartridge  
15 cases, and shells in an attempt to determine if they  
16 have been fired in or from a particular firearm.

17 Q Didn't mean to cut you off.

18 A To examine firearms and determine if they  
19 function properly, to identify ammunition components,  
20 to identify, examine clothing for the the presence of  
21 gunshot residue. If gunshot residue is present,  
22 attempt to determine the distance that the muzzle of  
23 a firearm was from that object at the time it was  
24 fired. To examine firearms where the serial number  
25 has been obliterated, and attempt to restore those

1 numbers; to issue, write reports on my findings,  
2 issue reports, and sometimes testify in court.

3 Q And how long have you worked for the SBI in  
4 that capacity?

5 A I've been a Special Agent for 21 years,  
6 I've been assigned as a firearms and tool mark  
7 examiner in the lab for ten years.

8 Q What special training have you received in  
9 the area of firearms and tool mark examination?

10 A There is no college courses in firearms and  
11 tool mark examination. Upon entering the laboratory,  
12 the section, ten years ago, I underwent a two year  
13 on-the-job training program, under the tutelage of a  
14 senior firearms examiner. That training program  
15 includes the forensic discipline of firearms  
16 identification.

17 Firearms identification is that discipline  
18 which deals with examining bullets, cartridge cases,  
19 shotgun shells, and attempting to determine if they  
20 were fired in or from a particular weapon.

21 I also received training in weapon  
22 function, weapon design. Part of that training was  
23 visiting gun manufacturing facilities on the east  
24 coast, talking with the designers, the machinists,  
25 the people who put the guns together, and learning

1     how the guns work and how they function.

2                     I also attended numerous armor courses,  
3     which are courses put on the gun manufacturer, where  
4     you learn how to repair weapons. In doing so, you  
5     learn how they may malfunction. I received training  
6     in gunshot and prime residue as it pertains to  
7     distance determination from the State Bureau of  
8     Investigation, and also from the Federal Bureau of  
9     Investigation at the school in Quantico. I received  
10    training in serial number restoration, writing  
11    reports and testifying.

12                    MR. BRITT: Your Honor, at this  
13                    time I would tender Mr. Marrs an an expert  
14                    in the area of forensic firearms  
15                    identification.

16                    THE COURT: You folks want to be  
17                    heard?

18                    MR. BOWEN: Do not want to be  
19                    heard.

20                    THE COURT: You may so testify.

21    BY MR. BRITT:

22                    Q     What is forensics firearms identification?

23                    A     As stated, that is a discipline of forensic  
24                    science which deals with examination of bullets,  
25                    cartridge cases, and shotgun shells, in an attempt to

1 determine if they had been fired in or from a  
2 particular firearm.

3 Q What makes such an identification possible?

4 A If you examine a rifled firearm such as a  
5 revolver or pistol or rifle, if you looked on the  
6 inner circumference of the barrel at the muzzle, you  
7 would see on the inner circumference what look like  
8 small hills and valleys. In firearms terminology,  
9 these are called lands and grooves. There are always  
10 the same number of lands as there are grooves in the  
11 barrel of a firearm.

12 The number of lands and grooves in a  
13 firearm barrel is determined by the manufacturer  
14 prior to the -- before the gun is made. Most Smith &  
15 Wesson weapons have five lands and grooves. Most  
16 Colt weapons have six lands and grooves. That could  
17 vary from some model to model. If you held that  
18 barrel up to the light and looked through it, you  
19 would see that these lands and grooves either twist  
20 to the right or twist to the left. And the purpose  
21 of the twisting lands and grooves in the barrel of a  
22 firearm is to impart spin to the bullet as it leaves  
23 the barrel of the firearm. This is kind of like the  
24 quarterback throwing the football. Put spin on the  
25 football, the football is more stable in flight and

1 flies farther and straighter.

2 Same way with a bullet. When a bullet  
3 leaves the barrel, it is spinning, and that spin  
4 applies stabilization to the bullet and allows it to  
5 travel in a straighter line. But the bullet is  
6 either a lead bullet or a copper jacketed bullet and  
7 is therefore softer than the hard steel barrel. And  
8 the force of the gunpowder, expansion of the  
9 gunpowder in the cartridge case which forces the  
10 bullet out of the barrel, also expands that bullet  
11 somewhat, so that it comes in contact or fills up  
12 these lands and grooves in the barrel of the  
13 firearm. And it then receives or imparts the  
14 impression of the lands and the grooves on its  
15 bearing surface or sides of that bullet.

16 To examine a bullet that was fired from a  
17 firearm, and we shoot in a water tank to recover a  
18 bullet, you would see if a gun had five lands and  
19 grooves, the bullet that I would recover from the  
20 water tank under a microscope would show five lands  
21 and grooves, and show that those lands and grooves  
22 lean to the right, which showed that the barrel had a  
23 right hand twist.

24 Also a part of the class -- these are all  
25 called class characteristics of the bullet. Another

1 section of the class characteristics would be the  
2 width of those lands and grooves which we measure on  
3 a comparison microscope using a measuring technique  
4 which can measure to a thousandth of an inch. So the  
5 class characteristics of a bullet would be its  
6 caliber or it's size, the number of lands and  
7 grooves, the twist of those lands and grooves in the  
8 barrel, and how wide those lands and grooves are.

9           If I have an evidence bullet or test bullet  
10 that I fire and it has five lands and grooves, and my  
11 evidence bullet that I am comparing also has five  
12 lands and grooves, with a right hand twist, and the  
13 width of those lands and grooves are consistent, then  
14 I can say at that time that that evidence bullet  
15 could have been fired from that firearm or any other  
16 firearm that had those class characteristics.

17           So a second criteria then after class  
18 characteristics are individual characteristics. And  
19 these are unique to that specific firearm. During  
20 the manufacturing process, the process of cutting in  
21 the grooves or placing the grooves in the barrel of  
22 the firearm, leaves imperfections in the firearm,  
23 tiny pits, burrs, scratching along the length of the  
24 barrel. And when the bullet is fired and comes in  
25 contact with these imperfections it leaves scratches,

1 or what we call striations, within the lands and  
2 grooves structure of that bullet.

3 By comparing test bullets that we fire and  
4 looking at them under a comparison microscope, which  
5 is a scope that allows you to compare two bullets,  
6 put one on one stand, another on another, looking  
7 through it with an optical set, see these bullets  
8 side by side. By shining light across the bullet, to  
9 highlight these striations, and rotating the bullets  
10 until -- if you can, align these striations, which  
11 some vary in width and size and depth, then you can  
12 match your test bullets to each other and show that  
13 the barrel has reproducing marks. Then you would  
14 compare your test bullets to the evidence bullets.  
15 If there are a sufficient number of matching  
16 striations when compared to the evidence bullet and  
17 the test bullet, the examiner can make the  
18 determination that that bullet had been fired, the  
19 evidence bullet had been fired from that gun, to the  
20 exclusion of all other guns.

21 With cartridge cases, it's similar. When  
22 cartridge -- a cartridge is fired, center fire  
23 cartridge is the firing pin strikes the center of the  
24 primer, which is a small cap in the base of the  
25 cartridge, it contains an impact sensitive compound

1 that emits a flame. This flame ignites the gunpowder  
2 inside the cartridge case. This burns at an  
3 extremely fast rate, building up gas pressure inside  
4 the cartridge case. The bullet point, being the  
5 point of least resistance, is forced out of the  
6 cartridge case and down the barrel. But the pressure  
7 is in all directions. So the cartridge case could  
8 expand within the chamber or could be pushed back  
9 against the breech face, therefore, receiving  
10 machining marks that may have been imparted on the  
11 breech face during the manufacture of the weapon.

12 So we can compare cartridge cases, looking  
13 for these machining marks, and if there's a  
14 sufficient number of identifying characteristics  
15 present between tests and evidence, we can say a  
16 cartridge case had been fired in a particular gun to  
17 the exclusion of all other guns.

18 Q Are you familiar with the term reload  
19 ammunition?

20 A Yes. A more specific term, the term we  
21 use, remanufactured ammunition. But a reload  
22 ammunition is where, using components, a person can  
23 make their own ammunition or a company using  
24 components from other manufactures of cartridges that  
25 have already been fired, they would take those

1 cartridges, what they call deprime them, kick out the  
2 fired primer, reprime them with a new primer, add  
3 some gunpowder and a new bullet, and make a new  
4 cartridge.

5 Q Does the age of a particular gun have any  
6 bearing on the identifying characteristics --

7 A That's --

8 Q -- that would be left on a bullet?

9 A That's a possibility. It's not always a  
10 criteria. It's possible that if the gun had been  
11 fired numerous times, that the barrel may have gotten  
12 larger, what they call being shot out, or could be  
13 over a large period of time, if only lead bullets  
14 were fired, heavy leading built up inside the bullet  
15 which makes it difficult to match but it's not always  
16 possible. I have matched guns that are very old to  
17 bullets.

18 MR. BRITT: May I approach the  
19 witness?

20 THE COURT: Yes, sir.

21 BY MR. BRITT:

22 Q Let me first show you what's been marked as  
23 State's Exhibit Number 59, ask you to examine the  
24 exterior portion of this large plastic bag and tell  
25 me if you can identify it?

1           A       Some of the markings have been marked off.  
2       It appears to be the bag that I received this gun in,  
3       some of the markings have been wiped off that were in  
4       black.

5           Q       On the exterior portion of this bag, does  
6       there appear a lab number?

7           A       Yes, it does.   It's R93 16441, which is the  
8       lab number assigned to this case when it was  
9       received.

10          Q       Do you recall when you received the bag  
11       marked as State's Exhibit Number 59 the condition it  
12       was in when you received it?

13          A       Yes, sir, I received it on August 24th of  
14       1993, from Special Agent Jerry Richardson of the  
15       latent evidence section.

16          Q       Remove the contents of State's Exhibit 59,  
17       and I ask you to look at State's Exhibit Number 59-A  
18       and tell me if you can identify it?

19          A       Yes, sir, I can.

20          Q       How are you able to identify State's  
21       Exhibit 59-A?

22          A       I can identify it by the white tag which I  
23       placed on the trigger guard, which has my item  
24       number, the laboratory case number assigned to this  
25       case when it was received in Raleigh, the date I

1 received it, my initials. I can also identify by the  
2 serial number which is located under the barrel and  
3 which I recorded.

4 Q What serial number appears on State's  
5 Exhibit 59-A?

6 A Its serial number is V as Victor, 83470.

7 Q Ask you to look at 59-A, do you see a  
8 series of numbers along the barrel?

9 A Yes, sir, I do.

10 Q What numbers do you see along the barrel?

11 A These are -- I heard testimony before that  
12 these were thought to be a serial number. These were  
13 actually proof marks, there are .38 and 767, and the  
14 767 was in parentheses, had parentheses marks on it.

15 Q What is a proof mark?

16 A There were marks that at the time the gun  
17 was made, the manufacturer proof test guns, and proof  
18 test is where they fire cartridges that are  
19 overloaded with powder to test to see if the gun can  
20 withstand the pressure. And if they do, then they  
21 proof test them. One of the marks had a British  
22 proof mark with an N P, which stood for nitro proof,  
23 which means it was proof tested with nitro cellulose  
24 gunpowder.

25 Q Did you conduct any examination on State's

1 Exhibit 59-A?

2 A Yes, I did.

3 Q What if any examinations did you conduct on  
4 State's Exhibit 59-A?

5 A I examined it to determine the serial  
6 number, which I did, I examined it to determine if it  
7 functioned properly, which it did, and determined  
8 that it had a trigger -- this is a revolver that can  
9 fire in both the single action and a double action  
10 mode.

11 Q Now, for the record, what is State's  
12 Exhibit 59-A?

13 A State's Exhibit 59-A is a Smith & Wesson  
14 caliber .38 Special, and it's a Victory model  
15 military and police.

16 Q When you say that gun is capable of firing  
17 both single action and double action mode, what do  
18 you mean by that?

19 A A single action is the mode where the  
20 hammer is manually cocked and is held back under  
21 tension and then by pulling the trigger, the hammer  
22 flies forward. Double action is whereby simply  
23 pulling the trigger internal mechanisms within the  
24 gun must have the trigger to the rear, firing it.

25 Q And at the time you examined State's

1 Exhibit 59-A, the .38 caliber Smith & Wesson  
2 revolver, did you find that it worked properly?

3 A Yes, sir, it did.

4 Q Were you able to determine what type of  
5 pull or pounds of pull it took to fire the weapon?

6 A Yes, sir, I did.

7 Q And what measurement did you make?

8 A In the single action, it has a trigger pull  
9 of greater than five pounds but less than or equal to  
10 six pounds, and double action trigger pull of greater  
11 than 13 and one half pounds but less than or equal to  
12 14 and one half pounds.

13 Q Did you conduct any other examination of  
14 State's Exhibit 59-A?

15 A Yes. I fired a series of test bullets to  
16 determine the class characteristics of the gun and  
17 also to use those test bullets in comparison with  
18 another bullet.

19 Q At the time you received State's Exhibit  
20 59-A, was it loaded?

21 A When I received it, it was not loaded. The  
22 cartridges had been removed and placed in a separate  
23 bag.

24 Q And did you examine those bullets that were  
25 contained in a separate bag?

1 A Yes, sir, I did.

2 Q Did you make any markings for the purposes  
3 of identifying those bullets?

4 A Yes, sir, I did.

5 (State's Exhibit 59-B was  
6 marked for identification.)

7 BY MR. BRITT:

8 Q Show you what's been marked as State's  
9 Exhibit 59-B, ask you to examine that bag and its  
10 contents. Can you identify the contents of State's  
11 Exhibit 59-B?

12 A Yes, sir, I can.

13 Q How are you able to identify those?

14 A I have placed on the outside of each bag my  
15 item number, the laboratory case number, the date I  
16 received it, my initials, and then on each item, I've  
17 also placed that same information.

18 Q And for the record, what is contained in  
19 each of the individual bags that you removed from  
20 State's Exhibit 59-B?

21 A Each of those bags contain one Remington  
22 caliber .38 Smith & Wesson cartridge.

23 Q And are you able to tell us if they are  
24 remanufactured bullets?

25 A These are not remanufactured cartridges.

1 These are factory ammunition.

2 THE COURT: For the record,  
3 Mr. Marrs, how many individual bags do you  
4 have containing individual cartridges?

5 THE WITNESS: Sir, I have six  
6 individual bags, each containing one  
7 cartridge.

8 THE COURT: Thank you, sir.

9 THE WITNESS: For the record, the  
10 firearm has six chambers and can hold six  
11 cartridges.

12 THE COURT: Thank you, sir.

13 BY MR. BRITT:

14 Q Mr. Marrs, I'm going to show you what's  
15 previously been marked as State's Exhibit Number 41  
16 and ask you if you can identify that envelope?

17 A Yes, sir, I can.

18 Q How are you able to identify State's  
19 Exhibit Number 41?

20 A It has an item number which I placed on it,  
21 the laboratory case number, and date I received it,  
22 my initials.

23 Q What date did you write on the envelope  
24 marked as State's Exhibit 41?

25 A 8-19-93.

1 Q Now, at the time you received State's  
2 Exhibit 41, in what condition was that envelope?

3 A It was sealed.

4 Q And at the time you opened State's Exhibit  
5 Number 41, did you remove any item from inside?

6 A Yes, sir, I did.

7 Q What item did you remove from inside of  
8 State's Exhibit 41?

9 A I removed a medium sized clear plastic bag  
10 which contained a small plastic vial with a lid.

11 Q I'm going to remove the contents of State's  
12 Exhibit Number 41, show you a plastic bag that bears  
13 a marking State's Exhibit 41-A. Is that what you  
14 found in the sealed envelope when you first opened  
15 it?

16 A No, sir.

17 Q Do you recognize what's been marked as  
18 State's Exhibit 41-A?

19 A Yes, sir, I do.

20 Q How do you recognize what's been recognized  
21 as State's Exhibit 41-A?

22 A Within State's Exhibit 41-A is a  
23 caliber .32 fired bullet.

24 Q Did you conduct any examination of that .32  
25 caliber bullet?

1 A Yes, sir, I did.

2 Q On what date?

3 A On 8-20 and 8-23, 93.

4 Q Does State's Exhibit 41-A bear a different  
5 laboratory number than the laboratory report --  
6 number that appears on State's Exhibit Number 41?

7 A Yes, sir, it does.

8 Q What lab number appears on State's Exhibit  
9 41?

10 A 41, the lab number is R93-16441. On 41-A,  
11 the lab number is R93 16453.

12 Q On State's Exhibit Number 41, do you see  
13 writing bearing the date of 7-7-94?

14 A Yes, sir, there's -- on the brown seal, the  
15 seals on either end, there's information, resealed on  
16 7-7-94, and 7-7-94 on that, and also it says opened  
17 by, and there's certain initials, on 7-7-94 at 12:35  
18 p.m., and then reopened by so and so at 7-24 at 7:52  
19 p.m.

20 Q On the plastic bag marked as State's  
21 Exhibit 41-A, do you see any date of 7-7-94?

22 A No, sir.

23 Q I'm going to hand you what is marked as  
24 State's Exhibit Number 42, and ask you if you can  
25 identify that package?

1           A     Yes, sir, I can.

2           Q     And how are you able to identify State's  
3 Exhibit Number 42?

4           A     It's a package in which I placed some  
5 evidence that I returned in this case. And I can  
6 recognize it has my, the lab number R93 16453 and my  
7 initials.

8           Q     Is lab number R93 16453 the laboratory  
9 report number that appears on State's Exhibit 41-A  
10 that contains the .32 caliber bullet?

11          A     Yes, sir.

12          Q     I'll ask you -- at the time you placed the  
13 evidence into the envelope marked as State's Exhibit  
14 Number 42, what evidence did you place in that  
15 envelope?

16          A     In State's Exhibit 42, I placed this  
17 envelope, this clear plastic bag containing State's  
18 Exhibit 41-A.

19          Q     And at the time you placed that evidence in  
20 State's Exhibit Number -- when you placed State's  
21 Exhibit 41-A into State's Exhibit Number 42, did you  
22 seal State's Exhibit Number 42?

23          A     Yes, sir, I did.

24          Q     I'm going to ask you to remove what is now  
25 contained inside of State's Exhibit Number 42, and

1 ask you to examine that and tell me if you can  
2 identify it.

3 A Yes, sir, I can.

4 Q How can you identify it?

5 A It's a fired caliber .38, .357 cast or hand  
6 made bullet. I have marked the base of the bullet  
7 with my item number and the laboratory case number  
8 16441, and my initials. A red vial, plastic vial.  
9 It also has my lab number and the date and the  
10 initials on it. And a clear plastic bag, and it also  
11 has on the outside my item number, the date and the  
12 initials.

13 Q The laboratory number that you referred to,  
14 16441, is that the laboratory number that appears on  
15 State's Exhibit Number 41?

16 A Yes, sir, it is.

17 Q And after you conducted any type of test on  
18 the projectile contained inside of State's Exhibit  
19 42-A, what if anything did you do with that  
20 projectile?

21 A I placed it back in the red vial, sealed  
22 it, placed it back in the clear envelope, sealed  
23 that, and signed my seals, placed it back in State's  
24 Exhibit 41, and sealed this item.

25 Q State's Exhibit Number 42-A, does it bear

1 the number 7-7-94?

2 A Yes, sir, it does. It has the dark tape on  
3 it that says resealed 7-7-94 at eight -- I can't make  
4 out the time, looks like 12:00 p.m. and resealed it  
5 on 7-7-94 at 12:49 p.m. and then says opened by and  
6 looks like -- I can't make out the initials, last one  
7 looks like at H on 7-7-94 at 12:36 p.m.

8 Q What's been marked as State's Exhibit  
9 Number 42, do those numbers 7-7-94 appear?

10 A No, sir, nowhere on the outside of this  
11 package do those numbers appear.

12 Q State's Exhibit 41, do the numbers 7-7-94  
13 appear?

14 A Yes, in several places.

15 Q Did you conduct any type of test or  
16 examination of the lead projectile --

17 A In --

18 Q -- State's Exhibit Number 42-A?

19 A Yes, I conducted several tests.

20 Q What if any tests did you perform or  
21 conduct on State's Exhibit 42 A?

22 A I first examined the bullet visually and  
23 then under a microscope, I measured it to determine  
24 it was a caliber .38 bullet, but it was slightly  
25 undersized. .38 bullets measures normally .357

1 inches. This one measured at .354 inches. It was  
2 about three thousandths inches undersized. I  
3 determined that it was a cast bullet, which meant it  
4 had been molten lead poured into a dye, I could tell  
5 that by -- you could see the dye marks on the side  
6 where it's -- a dye is a mold, has two halves that  
7 come together and then lead is poured in the mold.  
8 And on this bullet, you could see the dye marks on  
9 the sides where the two sides had come together.

10 And also had what is called a sporule mark,  
11 which is the molten lead and fills up and goes above  
12 the edge of the bullet. When that is cut, it leaves  
13 a mark on the bottom of the base. So that was all  
14 consistent with this being a cast or hand made  
15 bullet.

16 I determined by researching that it was  
17 consistent with .38 caliber bullets weighing  
18 approximately 158 to 168 grams, made by -- cast in a  
19 Lyman bullet mold. And that was based on the  
20 structure of the bullet. It had two, what we call  
21 lubricating cannelures. A cannelure is a deep groove  
22 that goes around the bullet, one type, and lead  
23 bullets such as these, they place lubricant in that  
24 groove, which, for firing, it doesn't lead the barrel  
25 up so bad.

1           It was a round nose bullet, and I examined  
2 it under a microscope and determined it had five  
3 lands and grooves with a right hand twist. Also  
4 determined by examining it that there was some  
5 distortion, or the bullet had what we call gas  
6 melting.

7           Being slightly undersized, when the bullet  
8 goes through the barrel, the hot gasses behind it  
9 were able to get alongside the bullet instead of  
10 pushing it along, and melted some of the bearing  
11 surface of the bullet. This bullet also had what we  
12 refer to as slippage, in that as it went down the  
13 barrel of the firearm, it didn't go down clean,  
14 because it was slightly undersized, probably went  
15 into the lands and grooves, and then slipped as it  
16 went through the barrel. So it had slippage that  
17 showed on the bullet. I was still able to determine  
18 it had five lands and grooves based on certain areas  
19 and measure those lands and grooves.

20           Q       Did you compare the projectile contained in  
21 State's Exhibit 42-A with any bullet that was fired  
22 from State's Exhibit 59-A?

23           A       Yes. I did -- I fired first some factory  
24 ammunition through State's Exhibit 59. Is that  
25 correct?

1 Q 59-A?

2 A 59-A. And I was able to match my test  
3 bullets to each other. I compared those bullets to  
4 State's Exhibit 42-A, and had some -- same class  
5 characteristics and some strong similarity, but I  
6 cannot make a match, I could not match those bullets  
7 to that test. So I then obtained a Lyman bullet mold  
8 and we made our own bullets in a lab, melted some  
9 lead made, some bullets consistent in size, and then  
10 sized them down to a size smaller than a normal  
11 bullet. And I fired many of those bullets through  
12 State's Exhibit 59-A. Those bullets showed the gas  
13 melting that was apparent on State's 42-A. They also  
14 showed the slippage, and there is some similarity of  
15 individual characteristics, but I could not match  
16 those bullets to State's Exhibit 59-A, I could not  
17 say that -- excuse me, State's Exhibit 42-A, I could  
18 not say that 42-A had been fired from State's Exhibit  
19 59-A, exclusive to all other weapons.

20 As a last resort, there was also a  
21 cartridge that was submitted in this case that had a  
22 was bullet in it. It was a Winchester .38 Special  
23 Plus P cartridge, and a case bullet in it. And I  
24 fired that one as to -- to see if I can then possibly  
25 make a match firing that bullet. And I could not

1 match that.

2           The conclusion reached was that State's  
3 Exhibit 42-A had the same class characteristics, same  
4 land and groove structure as State's Exhibit 59-A  
5 and -- test bullets as I fired from this gun, and  
6 there was some strong similarity but I could not  
7 reach a conclusion that State's Exhibit 42-A had been  
8 fired from this gun.

9           Q     Let me show you what's previously been  
10 marked as State's Exhibit Number 55, and ask you if  
11 you can identify that?

12           A     Yes, sir, I can.

13           Q     And how are you -- how can you identify it?

14           A     It has my markings on the outside, which is  
15 the item number assigned to this, and also on the  
16 film canister, plastic film canister which is inside,  
17 there's also my markings.

18           Q     And what if anything did you place inside  
19 the film canister which is contained inside the  
20 plastic bag marked as State's Exhibit 55?

21           A     As it was received, it was one cartridge,  
22 which was a Winchester Plus P cartridge case, and a  
23 .38 -- excuse me, a Winchester -- yes, Winchester  
24 Plus P cartridge case, and a cast bullet, round nose  
25 bullet loaded into that cartridge case. Which when I

1 fired it, I examined the bullet and that bullet was  
2 consistent in size and design with the bullet in  
3 State's Exhibit 42-A. And I fired that bullet --  
4 this cartridge in State's Exhibit 59-A, compared the  
5 bullet that I fired to State's Exhibit 42-A, and  
6 there was some similarity, same class  
7 characteristics, some similarity, but I could not  
8 reach a conclusion as to if 42-A was fired from 59-A.

9 Q And after you completed your examination of  
10 State's Exhibit 59-A, State's Exhibit 42-A, what if  
11 anything did you do with the revolver marked as  
12 State's Exhibit 59-A?

13 A I repackaged it in the container, placed a  
14 tag on it. Didn't put the tag on until after I fired  
15 it so it wouldn't get in the way. Marked the tag. I  
16 placed the bullet back in the red plastic vial, put  
17 the lid on, put it back in the plastic bag, sealed  
18 it, and placed 42-A inside State's Exhibit 41.  
19 The -- this was a different comparison. And Special  
20 Agent Kim Heffney picked those up from the lab on the  
21 17th of September of 1993.

22 Q Show you what's previously been marked as  
23 State's Exhibit 73, ask you to examine that and tell  
24 me if you can identify it?

25 A Yes, sir, I can.

1           Q       And how are you able to identify State's  
2 Exhibit Number 73? And for the record what is  
3 State's Exhibit Number 73?

4           A       State's Exhibit 73 is an H & R, which  
5 stands for Harrington and Richardson, Incorporated,  
6 caliber .32 Smith & Wesson revolver, serial number  
7 AE18405 -- excuse me. State's Exhibit 73 is an H & R  
8 caliber .32 Smith & Wesson long revolver, serial  
9 number AY 010056, and it's a model 632. And I can  
10 identify it by the markings which I've placed on the  
11 outside of the bag, which are my item number, the  
12 laboratory case number, the date received it, my  
13 initials, and also a white tag which I placed on  
14 trigger with the same information.

15           Q       For the record, can you describe the color  
16 and the handle of State's Exhibit Number 73?

17           A       Yes. It's a blue gun with a dark, more a  
18 matt finish, the frame. The handles are plastic, but  
19 they are fake bone colored and bone type handles. .

20                               (State's Exhibit 73-A was  
21                               marked for identification.)

22 BY MR. BRITT:

23           Q       For the record, let me show you what's been  
24 marked as State's Exhibit 73-A. Can you identify  
25 that?

1           A       Yes, sir, I can.

2           Q       How are you able to identify State's  
3 Exhibit 73-A?

4           A       These -- I can identify them by the marks  
5 which I have placed on the outside of the bag.

6           Q       And what if any markings did you place on  
7 the outside of the bag?

8           A       My item number assigned to these numbers,  
9 the laboratory case number assigned to this case, the  
10 date I received it, my initials.

11          Q       For the record, what if anything is  
12 contained inside the plastic bag marked as State's  
13 Exhibit 73-A?

14          A       It contains six Remington caliber .32  
15 Smith & Wesson cartridges.

16          Q       Show you what's been marked as State's  
17 Exhibit Number 74, and ask you if you can identify  
18 that?

19          A       Yes, sir, I can.

20          Q       How are you able to identify State's  
21 Exhibit 74?

22          A       I can identify it by markings I placed on  
23 the outside of the bag which are my item number, the  
24 laboratory case number assigned to this case, the  
25 date I received it, my initials. And also by the

1 information on a white tag which I placed on the  
2 trigger guard, that same information.

3 Q And for the record, what is contained  
4 inside of the bag marked as State's Exhibit Number  
5 74?

6 A It's an H & R, or Harrington and Richardson  
7 Incorporated, caliber .32 Smith & Wesson serial  
8 AE18405, and model .32.

9 Q And for the record, can you tell us the  
10 color of the gun and the handle of that gun?

11 A Yes, it's a dark blue gun with a matt frame  
12 and has dark black plastic grips.

13 Q Show you what's been marked as State's  
14 Exhibit 74-A and ask you if you can identify that?

15 A Yes, sir, I can.

16 Q How can you identify it?

17 A These are -- I can identify it by markings  
18 I placed on the outside of the bag, which are my  
19 laboratory number assigned to these numbers, the case  
20 number assigned to this case, the date I received it,  
21 and my initials. Inside are contained six Remington  
22 caliber .32 Smith & Wesson cartridges.

23 Q Did you perform any examination of State's  
24 Exhibit -- on State's Exhibit 73 and 74?

25 A Yes, sir, I did.

1           Q       What examinations did you conduct on  
2 State's Exhibit 73 and 74?

3           A       I examined both State's Exhibits 73 and 74,  
4 to determine if they functioned properly. I examined  
5 them to determine what their class characteristics  
6 were, I fired test bullets from each of State's  
7 Exhibit 73 and 74. And compared test bullets to each  
8 other fired from each gun and then compared the test  
9 bullets from State's Exhibit 73 to State's Exhibit  
10 41-A, and the test bullets from State's Exhibit 74 to  
11 State's Exhibit 41-A, to determine if 41-A had been  
12 fired from either these guns or if I can determine  
13 that at all.

14          Q       And what were your findings?

15          A       I determined that State's Exhibit 41-A  
16 which was a caliber .32 fired bullet, lead bullet,  
17 had been fired from State's Exhibit 73, the model  
18 632, the one with the bone handles, to the exclusion  
19 of all other firearms.

20          Q       And after completing that examination, what  
21 if anything did you do with the .32 caliber  
22 projectile that is contained inside of State's  
23 Exhibit Number 41-A?

24          A       I folded it, and then placed it inside this  
25 container which I -- which -- a padded envelope, I

1 then sealed the container, I placed it in the  
2 envelope and then sealed it, the plastic bag, placed  
3 the plastic bag inside this container and then sealed  
4 this and then put my markings on the outside of the  
5 container. And this was turned over to Special Agent  
6 Kim Heffney on the 23rd of September of 1993.

7 Q And at the time that State's Exhibit 42 was  
8 turned over to Kim Heffney, were State's Exhibits 73,  
9 73-A, 74, and 74-A also turned over to him?

10 A They were turned over to Special Agent  
11 Heffney on the 17th of September of 1993.

12 Q Show you what's been marked as State's  
13 Exhibit Number 24, ask you if you can identify that?

14 A Yes, sir, I can.

15 Q How are you able to identify what's marked  
16 as State's Exhibit Number 24?

17 A By markings I placed on the outside of the  
18 small manila envelope which were the item number I  
19 assigned to it, the laboratory case number, the date  
20 I received it, my initials.

21 Q And the laboratory case number that you  
22 assigned to it, is that the same laboratory case  
23 number that was assigned to the .38 caliber Smith &  
24 Wesson six-shot revolver?

25 A Yes, sir, it is.

1 Q What if anything was contained inside of  
2 State's Exhibit Number 24 when you received it?

3 A It contained a Winchester caliber .38  
4 Special fired cartridge case.

5 Q And did you conduct any type of examination  
6 on that cartridge case?

7 A Yes, I did.

8 Q What if any examination did you conduct?

9 A I compared it to cartridge cases which I  
10 fired in State's Exhibit 59-A.

11 Q And for what purpose did you do that?

12 A To determine if State's Exhibit 24 had been  
13 fired in 59-A.

14 Q And were there -- did you find any markings  
15 similar on State's Exhibit Number 24 to those  
16 markings that had been made by the test bullets that  
17 you had fired?

18 A Yes, it had a similar class -- firing pin  
19 impression and sharp breech fast mark, but this  
20 cartridge contained very, very little individual  
21 detail. And I was not able to determine if it had  
22 been fired in State's Exhibit 59-A.

23 MR. THOMPSON: Your Honor, the  
24 cartridge that he just had, that he was  
25 holding in his hand.

1 THE WITNESS: State's Exhibit

2 24.

3 MR. THOMPSON: May I see that?  
4 The defendant wanted to see the cartridge.  
5 He cannot from where he's seated. May I  
6 see the cartridge, please?

7 THE COURT: Yes, sir.

8 MR. BOWEN: Let the record show,  
9 if, it please Your Honor, I'm transporting  
10 the cartridge in my open hand in front of  
11 the Court and everyone present to the  
12 defendant.

13 I'm returning the bullet still in my  
14 open hand to the area of the witness stand.

15 THE COURT: Cartridge casing.

16 MR. BOWEN: Cartridge casing,  
17 excuse me.

18 THE COURT: Yes, sir.

19 MR. BRITT: I don't have any  
20 other questions of Mr. Marrs at this time.

21 THE COURT: Any  
22 cross-examination?

23 MR. BOWEN: Yes, sir, Your  
24 Honor.

25 CROSS-EXAMINATION

1 BY MR. BOWEN:

2 Q Mr. Marrs, you have noted that on State's  
3 Exhibit Number 59-A, the .38 revolver, there are two  
4 sets of numbers, is that correct?

5 A There's several -- the serial number on  
6 this gun is located in several locations. It's  
7 located under the barrel. The Smith & Wesson, at the  
8 time this gun was made, which it's call a Victory  
9 model because it was made during World War II, they  
10 also placed the serial number on the side of the  
11 extractor star, on the butt and one side of the grips  
12 if you took the grips off. The numbers on the right  
13 side of the barrel were numbers that were placed  
14 there probably by -- although I can't be for sure,  
15 this gun made at Smith & Wesson, shipped to Britain  
16 and it was probably shipped over there as a .38 200  
17 and retooled to be a .38 special by the Coxworth &  
18 Harris, Ltd., which is engraved on the side of this  
19 gun.

20 Q Now, are you aware that any personnel in  
21 the SBI office mistook one of these numbers for the  
22 serial number and placed it on some paper writings in  
23 the chain of custody?

24 A Yes, and it was also requested to determine  
25 if the serial number, so that -- I don't know if they

1 were sure that was the serial number or not but it  
2 was placed on some writings.

3 Q And it was not a serial number, it was this  
4 other --

5 A It was .38 and then a 767 in parentheses,  
6 and then 3.5 tons.

7 Q Now, you have determined that as to State's  
8 59-A, the casing cannot be -- the casing that you --

9 A State's Exhibit 24.

10 Q 24, analyzed you cannot conclusively say it  
11 was fired in this weapon, State's Exhibit 59-A?

12 A That's correct.

13 Q Nor can you say any of the bullets that you  
14 tested were consistent with the bullet alleged to  
15 have been taken from the body of the victim in this  
16 case, correct?

17 A No, sir, that's not correct.

18 Q Well, you say you cannot conclusively match  
19 it with that --

20 A Yeah, but they had the same class  
21 characteristics. State's Exhibit -- I don't remember  
22 the State's Exhibit Number of the fired bullet which  
23 was removed from the body at autopsy, but it had the  
24 same class characteristics as test bullets I fired  
25 from this gun, which meant it was the same caliber,

1 had the same number of lands and grooves, had the  
2 same twist, and that the width of those lands and  
3 grooves was the same as tests bullets I fired from  
4 this gun. And there is some strong similarity of  
5 microscopic characteristics, but I could not reach a  
6 conclusion that it had been fired from that gun.

7 Q The five lands and grooves characteristics  
8 appear in many brands of weapons other than Smith &  
9 Wesson, correct?

10 A It -- to my knowledge, it appears some  
11 Ruger guns had five right; INA had five right; and  
12 Trius guns and many different models of Smith &  
13 Wesson this had five right.

14 Q Wouldn't you agree that most of the weapons  
15 made in the country of Spain also have the five lands  
16 and grooves characteristics?

17 A Some may have. There were possibly some  
18 Lhamas that had, according to the latest reference  
19 materials that I have used, which is the FBI GRC,  
20 they didn't list any Spanish guns that I knew of, but  
21 there may be some guns that were made in Spain that  
22 had five right.

23 Q What about not only the Lhama, but what  
24 about the Alpha brand made in Spain?

25 A I'm not familiar with the Alpha brand made

1 in Spain, but it may have five right, yes, sir.

2 Q Did you run an FBI computer check on the  
3 guns that were available that had these same  
4 characteristics?

5 A No, sir, I did not. I was asked to compare  
6 it to this specific gun.

7 Q Now, I believe you said Ira Johnson was one  
8 of the ones that had these same, at least five lands  
9 and grooves characteristics, correct?

10 A I don't believe I said that, the Ira  
11 Johnsons. There may be some Ira Johnson's that had.

12 Q What about the Rohm brand made in Germany,  
13 R O H M?

14 A Most Rohm's that I was aware of had eight  
15 lands and grooves or ten. They may have made some  
16 with five right that I'm not aware of.

17 Q And I believe you mentioned Ruger?

18 A Yes, sir. Ruger Security Six and .357  
19 and .38 Special was made at one time with five lands  
20 and grooves and right hand twist.

21 Q How about U.S. Revolver, the manufacturer?

22 A That's an older gun that may be. It was  
23 not -- again, I recently have several guns with the  
24 same class characteristics and have run that program,  
25 it's a computer program that we have, and most of the

1 guns they list are Smith & Wesson, Trius, INA and  
2 Ruger. Very few other models were listed.

3 Q There are some H & R that --

4 A Again, that may be a possibility.

5 Q And there's some INA?

6 A I think I mentioned INA.

7 Q And Coonan Arms?

8 A That's a Canadian made gun, and that's  
9 possible, yes.

10 Q Some Hollis weapons?

11 A I'm not familiar with the Hollis.

12 Q And some Sports Arms weapons?

13 A That may be true, yes, sir.

14 Q Mr. Marrs, it is not possible to match a  
15 bullet with the casing, that is, to fire a bullet and  
16 conclusively say that the bullet came out of that  
17 particular casing, is it?

18 A It would be very difficult, because of the  
19 circumstances involved in firing the gun, when the  
20 bullet travels down the barrel, it may pick up marks  
21 as it is being pulled, forced out of the cartridge  
22 case. But at the same time, that cartridge case is  
23 expanding so it would change those marks on the  
24 cartridge case, and as the bullet travels down the  
25 barrel where it comes in contact with the surfaces of

1 the barrel which would wipe out any markings on the  
2 bullets that were made from the cartridge case. So  
3 it would be supremely difficult to match a bullet to  
4 a cartridge case.

5 Q And you have never done such a match, have  
6 you?

7 A I nor anyone in my lab have ever been able  
8 to do that.

9 Q And you have not ever attempted such a  
10 match?

11 A No, sir.

12 Q And you certainly in this particular case  
13 did not attempt to match any casing with any bullet  
14 of any sort?

15 A That's correct.

16 Q And particularly not a .38 casing with a  
17 .38 bullet, is that correct?

18 A That's correct, sir.

19 Q An in your opinion, that would be virtually  
20 impossible to do?

21 A I'm not going to use the word virtually  
22 impossible, they may come up with a method to do it  
23 in the future.

24 Q At this time?

25 A That's correct.

1 Q It would be impossible at this time as far  
2 as you know?

3 A As far as I know.

4 Q Now, the characteristics that you have  
5 spoken about that are similar, those characteristics  
6 in part have occurred by virtue of the gas patterns  
7 that resulted from the exit of the particular type of  
8 ammunition, that is, the reload ammunition, exiting  
9 from the gun barrel of this particular State's  
10 Exhibit 59, is that correct?

11 A No, sir. The individual characteristics  
12 that I saw on the bullet, the striations, were as a  
13 result of coming in contact with the barrel. There  
14 was gas melted, but the striations I looked at were  
15 not caused by the gas melting.

16 MR. BOWEN: That's all, Your  
17 Honor.

18 THE COURT: Anything further,  
19 Mr. Britt?

20 MR. BRITT: I don't have any  
21 other questions of Mr. Marrs.

22 THE COURT: May the witness be  
23 released at this time?

24 MR. BRITT: Yes, sir. At this  
25 time we reserve the right to recall him in

1 front of the jury.

2 THE COURT: Thank you, Mr. Marrs,  
3 you're free to go at this time.

4 Folks, let's take 15 minutes. You  
5 have how many additional witnesses in.

6 MR. BRITT: One more witness.

7 THE COURT: Let's take 15  
8 minutes.

9 (Brief recess.)

10 THE COURT: Let the record  
11 reflect that all counsel are present, the  
12 defendant is present in open court. We're  
13 continuing in the absence of the jury with  
14 the 404(b) matters now before the Court.

15 MR. BRITT: Your Honor, at this  
16 time we call Special Agent Heffney.

17 THE COURT: If you'll be sworn,  
18 please, sir.

19 **KIM HEFFNEY,**  
20 being first duly sworn was examined and testified as  
21 follows:

22 DIRECT EXAMINATION

23 THE COURT: Mr. Heffney, for the  
24 record, please state your full name, sir.

25 THE WITNESS: Kim Heffney, K I M,

1 H E F F N E Y.

2 BY MR. BRITT:

3 Q By whom are you employed?

4 A North Carolina State Bureau of  
5 Investigation.

6 Q Beginning on May the 2nd of 1995, did you  
7 and Detective Anthony Thompson of the Robeson County  
8 Sheriff's Department conduct an interview with Larry  
9 Martin Demery?

10 A Yes, sir, I did.

11 Q Who was present -- strike that. On May the  
12 2nd, 1995, where did you interview Mr. Demery and who  
13 was present?

14 A The interview on May 2nd, 1995 took place  
15 at Fairwood District Office, Southeastern District  
16 Office of the State Bureau of Investigation. Present  
17 during that interview were Detective Anthony Thompson  
18 with the Robeson County Sheriff's Department, and  
19 attorney John Campbell for Mr. Demery.

20 Also there was an interview conducted on  
21 May 3rd, 4th, and 8th of 1995. The other date of the  
22 interview, if I remember correctly on the 3rd, 4th  
23 and 8th was conducted at the office of Mr. Campbell.  
24 Everyone as I mentioned prior was present, in  
25 addition to Mr. Hugh Rogers, he was present also

1 during portions of the interview.

2 Q And during the course of the interview with  
3 Mr. Demery, that interview was brought about as a  
4 result of Mr. Demery's plea to the charges that were  
5 pending against him in reference to the Jordan murder  
6 case, is that correct?

7 A Yes, sir, it was.

8 Q And when you interviewed Mr. Larry Demery  
9 during that time frame, was a portion of that  
10 interview, did a portion of that interview involve a  
11 robbery that occurred on July the 4th, 1993 at the  
12 Family Inn in Rowland, North Carolina?

13 A Yes, sir, it did. The portion of that  
14 interview basically consisted of a Rhode Island  
15 couple that was robbed during the July 4th, 1993 --

16 Q As a result of that interview, was that  
17 interview then put into written form?

18 A Yes, sir, it was.

19 Q And do you have a copy of that interview  
20 with you on the stand?

21 A Yes, sir, I do.

22 Q Mr. Heffney, if you will, first -- if you  
23 will turn to page 16 of that document.

24 A Yes, sir.

25 Q What if anything did Mr. Demery tell you in

1 regard to the July 4th, 1993 robbery at the Rowland  
2 motel?

3 A Mr. Demery advised me, also Detective  
4 Thompson and also in the presence of his attorney,  
5 that on July 3rd, 1993, while at Daniel's --

6 MR. THOMPSON: Your Honor I  
7 realize this is --

8 MR. BRITT: That is all for  
9 corroboration.

10 THE COURT: Do you want to be  
11 heard as to that?

12 MR. THOMPSON: No, is he reading  
13 from the --

14 MR. BRITT: Are you reading from  
15 the statement?

16 THE WITNESS: Yes, sir, I am.

17 THE COURT: You may continue.

18 THE WITNESS: While at Daniel's  
19 Daniel went and got his mother's .380  
20 pistol out of her pocketbook. The pistol  
21 was either in Daniel mother's pocketbook or  
22 kept on the ironing board. The gun was not  
23 on the ironing board. After Daniel got the  
24 gun, they stayed around the house and then  
25 went to the pond behind Daniel's house.

1           When they left the pond, they came back to  
2           Daniel's, took a shower and then went to  
3           the South of the Border. After leaving  
4           South of the Border, he believed they went  
5           to Marion. On the way to Marion, they got  
6           stopped for not having a taillight. He was  
7           in his car, and Daniel had hidden the gun  
8           under the glove compartment where a smaller  
9           compartment was located. They had to go to  
10          the police station because he did not have  
11          his license.

12                 They, being the police, called it in  
13          while on the road, but could not find his  
14          name in the computer. After leaving the  
15          police department, they went to Melinda's,  
16          but prior to getting there, they called her  
17          from a pay phone.

18                 They stayed in Marion with Melinda for  
19          a short while, maybe 30 minutes. They were  
20          on the way back to Lumberton, and when they  
21          got around Dillon, South Carolina his car  
22          ran hot. They stopped at a store and  
23          bought some Stop Leak for the car, and let  
24          it cool.

25                 After leaving Dillon they were on

1 their way to North Carolina, and when they  
2 got to the border they turned off of I-95.  
3 When they were getting off the ramp, the  
4 car knocked off and they pushed it off the  
5 road.

6 When the car got out of the road, they  
7 still were going to rob someone. They got  
8 the zip up hoods out of the car and he took  
9 the license plate off the car and put it in  
10 the trunk. He then got the gun out of the  
11 car, put a white flag around the door area,  
12 locked the car up, and they began walking  
13 north on Highway 301, slash 501, towards  
14 Rowland.

15 They got to the Family Inn, about 3:00  
16 a.m., on Sunday morning, July 4th, 1993.

17 While in the parking lot of the Family  
18 Inn, they noticed a Ryder truck and a man  
19 who was coming out of his room going to the  
20 truck. They were going to rob this man,  
21 but did not because their timing was off,  
22 and they had not boosted their nerve enough  
23 to rob the man.

24 After the man left, they walked around  
25 the hotel. They then saw a man and a woman

1           who were in a Maverick automobile that was  
2           fixed up and they were going to rob this  
3           couple but did not because of the timing,  
4           and they again had not gotten their nerve  
5           up to do the robbery.

6                     After that, it was getting late,  
7           around 4:00 a.m. or 4:30 a.m. They knew  
8           they had to do something if they were going  
9           to rob anyone. They were at the back of  
10          the hotel when they noticed a man going in  
11          and out of his room putting stuff in his  
12          car. He and Daniel walked by the front of  
13          the car and they believed he saw two men  
14          outside at the car and they continued to  
15          walk to the front of the building.

16                    They turned back around and were  
17          talking to each other, that these were  
18          going to be the ones. Building up each  
19          other's courage. They walked past the man  
20          from behind, and he believed the woman was  
21          outside at the time. They walked a short  
22          distance behind them and turned back around  
23          on the people. They were about 50 feet  
24          from the people when he pulled the gun out  
25          of his jacket pocket and put his finger

1 over his mouth. The first person he saw --  
2 excuse me. The first person who saw him  
3 and Daniel was a taller slim man who was on  
4 the driver's side of the car. He went to  
5 the driver's side of the car and Daniel  
6 went to the passenger side. On the  
7 driver's side where the tall man and a  
8 woman who did not say anything. He told  
9 the man to give him the money. The man  
10 pulled some money out of his pocket and let  
11 it fall to the ground.

12 At that point, he backed up, because  
13 he thought the man was up to something. He  
14 reached down and picked up the money while  
15 still pointing the gun at the man. He  
16 never got anything from the lady who was on  
17 the driver's side of the car.

18 He then went to the passenger side and  
19 Daniel had gotten the money from the heavy  
20 set man and the pocketbook from the lady.  
21 He went to the passenger side to try and  
22 quiet down the lady who was asking them why  
23 they were robbing them.

24 He told the lady to shut up or he  
25 would shoot her. Daniel was fumbling

1           around on the inside of the car, and the  
2           heavy set man told the lady to give him the  
3           bag. Daniel -- Daniel gave the lady  
4           something out of the pocketbook, maybe some  
5           medicine. Before they left, he told the  
6           people not to move before they were out of  
7           sight.

8                       From there, they ran behind the  
9           motel. He had some money in his pocket he  
10          had taken from the tall slim man, and he  
11          was carrying the gun. Daniel was carrying  
12          the black bag with the camcorder and  
13          camera, a pocketbook, and possibly another  
14          bag that contained a shaving kit.

15                     They ran into a dead end road and then  
16          into a cornfield. They ran in the  
17          cornfield for a long time. Before they got  
18          to the dead end road and while running, he  
19          saw the car of the people they had just  
20          robbed drive up in front of the motel at a  
21          high rate of speed. While running through  
22          the cornfield, they crossed a dirt road and  
23          went into another cornfield. They stopped  
24          at the edge of the cornfield and started  
25          going through the stuff. They went through

1 the pocketbook of the heavy set lady, and  
2 saw credit cards, approximately \$130 to  
3 \$150 in cash, and driver's license. They  
4 went through the toiletry bag and found  
5 shaving stuff and cologne. In the black  
6 bag they found a camcorder and camera.  
7 While going through the stuff, a car came  
8 down the dirt road, and they backed further  
9 into the field. The car which passed was a  
10 police car. After the car passed they  
11 continued running through the cornfield,  
12 leaving the pocketbook, some credit cards,  
13 driver's license, and some papers.

14 They stopped again to go through the  
15 stuff completely and decided what they were  
16 going to keep. The only thing left at that  
17 time was some more papers, maybe a credit  
18 card and possibly another lady's  
19 pocketbook.

20 When they stopped the first time to go  
21 through the stuff, he told Daniel there was  
22 not much money in the pocketbook, maybe  
23 \$130 to \$150, and the man he took money  
24 from only had \$15.00 or \$20.00. Daniel  
25 stated, said -- correction, Daniel said not

1 to worry about it because he had gotten  
2 money from the heavy set man, and Daniel  
3 then pulled out a roll of money which later  
4 came out to be approximately \$700. The  
5 total amount of money turned out to be  
6 approximately \$900.

7 After completely going through  
8 everything, it was daylight, but the sun  
9 had not come up. After leaving the field,  
10 they eventually ended up at Daniel's  
11 grandmother's house in Rowland.

12 They went in the house, leaving the  
13 black bag with camcorder and everything  
14 else. He called his mother and told her  
15 to -- told her his car had broken down at  
16 the South of the Border. They stayed at  
17 Daniel's grandmother's approximately 30  
18 minutes before his mother arrived. After  
19 his mother arrived, they took Daniel home,  
20 he helped Daniel carry the stuff into the  
21 house, to include all the money which was  
22 put in the toiletry bag. He then went  
23 home. At that time, Daniel's mother's gun  
24 was in the bag.

25 When he got home he called for a

1 wrecker and his family went to church. He  
2 went to sleep between 9:00 a.m. and 10:00  
3 a.m. His father later work him up and told  
4 him the wrecker was outside. He paid  
5 approximately \$60.00 for his car to be  
6 picked up. He paid with money he had  
7 worked for. A hose on his car broke, which  
8 caused it to run hot. Later that day, he  
9 and his father replaced the hose.

10 At approximately 2:00 p.m., he went  
11 back to Daniel's and while on the way, his  
12 car ran hot again. When he got to  
13 Daniel's, Daniel was playing with the  
14 camcorder. He waited for Daniel to get  
15 dressed and then went to Dobb's Mobile  
16 station to get the car fixed. They waited  
17 approximately two hours to have the car  
18 repaired. It cost approximately \$130.00 to  
19 have the car fixed, which was paid for from  
20 the money they had taken from the prior  
21 night's robbery.

22 One of them had to sign a receipt for  
23 the car repair. Prior to splitting the  
24 money, Daniel bought two pairs of shoes, of  
25 which one was a pair of flip flops that

1 Daniel is now wearing in jail.

2 The rest of the money was blown  
3 between the two of them. The last time he  
4 saw any of the items from the Family Inn  
5 robbery, they were in the possession of  
6 Daniel. He asked Daniel while in jail  
7 where the cameras were, and Daniel told him  
8 they were gone but did not say where.

9 That concludes the statement that was  
10 given by Mr. Demory concerning the Rowland  
11 motel robbery.

12 BY MR. BRITT:

13 Q Did you talk with him about the Clewis  
14 Demory robbery?

15 A Yes, sir, I did.

16 Q What if anything did he tell you about it?

17 A He also gave a statement concerning he,  
18 along with Daniel Green's involvement in the Clewis  
19 Demory robbery. And that statement was --

20 MR. THOMPSON: Might as well give  
21 us the page number, Your Honor.

22 THE COURT: That's what he's  
23 looking for, I think.

24 MR. BRITT: Page 23, beginning  
25 with the third full paragraph of that

1 page.

2 THE WITNESS: The night prior to  
3 this, Mr. Demery had spent the night. They  
4 may have gone to sleep, but if they did, it  
5 was a short time because in the morning  
6 they took Ann to meet her mother and father  
7 at the Hilly Branch Church parking lot  
8 because Ann went with them to the hospital  
9 for some type of test to be ran. Ann  
10 wanted him to drive her car. They may have  
11 gone back to Daniel's house for a while,  
12 but then went to his house to get his  
13 father's guns because they were still  
14 planning to rob a store. He was going to  
15 get two .32 caliber pistols. When he got  
16 home, the only person at home was his  
17 sister. Daniel occupied his sister while  
18 he went in his parents' bedroom and got the  
19 two guns.

20 In a roundabout way, he told Daniel he  
21 had gotten the guns, and they left going  
22 back to Daniel's house in his mother's  
23 car. When they got back to Daniel's, they  
24 got the two hooded zip up sweat shirts they  
25 used in the prior hotel robbery. They left

1 Daniel's in his car with the gun. When  
2 they left the house, Daniel chose the gun  
3 with the bone handles, and he had the gun  
4 with the black handles.

5 The first store they went to was a  
6 store on Highway 72 where they cash  
7 checks. They drove by the store twice but  
8 it stayed crowded. Before they got to the  
9 store on Highway 71, they passed by the  
10 Clewis Demory store, and mentioned that the  
11 store could be the other choice.

12 When they left the store on Highway  
13 72, they went to Demory's store. He went  
14 into the store to see who was working  
15 inside. When he went into the store, he  
16 saw Demory and the Pepsi Cola man in the  
17 store. He purchased some candy and  
18 cigarettes and left. He got back to the  
19 car and told Daniel who was in the store.  
20 They drove off and discussed their plan.  
21 The plan was for Daniel to go in and if the  
22 coast was clear, he would call for them by  
23 saying for him to bring his wallet. They  
24 returned to the store and parked on the  
25 right side of the store as you face it.

1 Daniel got out and put on the zip up  
2 hooded sweat shirt. One of the sweat  
3 shirts was gray, and the other was black,  
4 with a Raider's logo on the back of it. He  
5 did not know which one Daniel wore. Daniel  
6 went into the store with shades on but he  
7 did not put on the hood. Approximately 30  
8 seconds later, Daniel came to the door and  
9 said to bring his wallet, which was the  
10 signal for him to come in. He got out of  
11 the car, put on the sweat shirt with the  
12 hood on, a bandana over his face, and he  
13 entered the store with his gun drawn.

14 When he entered, he saw Daniel at the  
15 end of the counter with his gun drawn, and  
16 Mr. Demory was looking at him as he entered  
17 the store. Mr. Demory was not paying any  
18 attention to Daniel. When Mr. Demory saw  
19 him he was standing behind the counter at  
20 the cash register. Mr. Demory appeared  
21 very surprised and kind of jerked back and  
22 looked down the counter and saw Daniel with  
23 a gun and he started shaking.

24 He told Mr. Demory to back up, which  
25 he did. Daniel then went around the

1 counter and got in -- got Mr. Demory's  
2 wallet, and Daniel started messing with the  
3 cash register trying to get it open. At  
4 this point, he was standing at the front  
5 door looking for anyone who might be  
6 coming.

7 Daniel was fumbling in some drawers,  
8 and he believed Mr. Demory opened the cash  
9 register drawer because he told Daniel to  
10 hurry up and get the cash register. While  
11 at the front door from the corner of his  
12 eye he could see Daniel grab Mr. Demory and  
13 they began struggling and Daniel shot  
14 Mr. Demory, and ran out the front door past  
15 him. Before leaving the store, he could  
16 not tell where or if Mr. Demory had been  
17 shot, because he could not see any blood,  
18 but Mr. Demory was losing his breath, and  
19 he saw Mr. Demory sit down before he left  
20 the store.

21 They left the store traveling S R  
22 1003, and went to Highway 211. While in the  
23 car, Daniel pulled out the gun. The gun is  
24 described as being an old revolver,  
25 six-shot, long barrel, with wooden

1 handles. Daniel tried to sign the serial  
2 number off the gun, and that's why the gun  
3 was scratched on the side. After the  
4 robbery, they went back to Daniel's house,  
5 switched cars, got Daniel's mother's car  
6 and on the way back to his house to return  
7 the guns, they stopped at C&R Pawn Shop and  
8 bought a box of .38 caliber bullets which  
9 Daniel signed for and went back to his  
10 house. When they got back to his house,  
11 his sister was still there, Daniel occupied  
12 her while he put the guns back. He  
13 reloaded the guns, Daniel had with three  
14 rounds.

15 They took approximately \$300 from  
16 Mr. Demory and the money was kept in the  
17 glove compartment of Ann's car. After  
18 returning the guns they went to Marion,  
19 South Carolina to see Melinda and Delores.

20 And those are the events concerning  
21 the robbery of Mr. Demory.

22 BY MR. BRITT:

23 Q You also talked with him about the events  
24 leading up to Mr. Jordan's death, is that correct?

25 A Yes, sir, I did.

1 Q On page 25 of the statement that you took  
2 from him, the last paragraph --

3 A Yes, sir.

4 Q -- will you begin there.

5 A When they left the sign for the last time,  
6 he and Daniel went to the Lexus. They ran up to the  
7 car and while on the way to the car, Daniel pulled  
8 the gun out they had taken from Mr. Demory. When  
9 they got to the car, they both squatted down beside  
10 the passenger door. He was closest to the car  
11 handle, and Daniel was closest to the front but they  
12 were beside the door. Even though squatted down, he  
13 was able to look into the car. While beside the  
14 door, they gave each other encouragement, and he was  
15 able to see Mr. Jordan getting up, and about that  
16 time, Daniel stood up, and before Mr. Jordan was  
17 shot, Mr. Jordan said something to the effect of,  
18 what's going on, or what is this. Daniel then shot  
19 Mr. Jordan. When Mr. Jordan was shot, he was  
20 approximately two feet away from Daniel.

21 When Daniel shot Mr. Jordan, Daniel reached  
22 into the car and shot. After Mr. Jordan was shot,  
23 Mr. Jordan squirmed around in the seat, and the last  
24 statement made by Mr. Jordan made in a groaning  
25 voice, "Oh, baby, I'm sorry." He then asked Daniel

1 "why in the fuck did you shoot him?" Daniel did not  
2 respond to his question with an answer, but Daniel  
3 told him to help him get the man in the passenger  
4 seat. He did not -- he did not help push the man  
5 over into the passenger seat. Daniel went to the  
6 driver's side of the car and pushed Mr. Jordan into  
7 the passenger seat. Daniel told him to go get his  
8 car, which he did, and meet Daniel at his house.  
9 When he went by the Lexus, Daniel was in the car  
10 moving around as mentioned prior.

11 Everything stated concerning the murder of  
12 Mr. James Jordan is true and correct, the corrections  
13 were made after careful examination and wanting to  
14 tell the complete truth as agreed upon.

15 MR. BRITT: I don't have any  
16 other questions.

17 THE COURT: Any  
18 cross-examination?

19 CROSS-EXAMINATION

20 BY MR. BOWEN:

21 Q Officer Heffney, while you're on the  
22 statement there, would you kindly turn to the top of  
23 page four. Now, you just read from the later portion  
24 of that interview what Mr. Demery told you happened  
25 with regard to the shooting of James Jordan. He told

1 you that on the part of the interview that occurred  
2 on May 8, 1995, correct?

3 A Yes, sir.

4 Q Now, on May 2nd, 1995, there at the top of  
5 page four, he gave you a different version of those  
6 same events, didn't he?

7 A Yes, sir.

8 Q And on page four, when he gave you those  
9 events, he had also promised to tell you the complete  
10 truth and hold back nothing, is that correct?

11 A Yes, sir.

12 Q And he told you on page four that he was  
13 running toward his car and that Daniel was running  
14 toward the Lexus, correct, starting on page -- on  
15 line three, page four, in the middle. He stated he  
16 was running toward his car and Daniel was running  
17 toward the Lexus?

18 A I'm trying to find -- are you in the first  
19 paragraph?

20 Q If you want to -- okay. I'll tell you  
21 what, how about starting reading at top of page four,  
22 if you would?

23 A Okay. They were in it together. When they  
24 left the sign, he went towards his car as planned and  
25 Daniel pulled the gun out and went toward the Lexus.

1 He is running towards his car and Daniel was running  
2 towards the Lexus. They had been separated a matter  
3 of seconds when he heard the gunshot. He was  
4 approximately 60 feet away from Daniel when the gun  
5 was fired. After getting to his car, he crossed over  
6 Highway 74 and saw Daniel in the driver's seat of the  
7 Lexus. It was dark but he could tell it was Daniel  
8 because of the movement, and he was wearing a cap.  
9 He took old 301 back toward Daniel's house. He was  
10 at Daniel's house approximately 15 minutes before he  
11 saw car lights coming down the canal bank behind  
12 Daniel's house.

13 Q One more paragraph, please.

14 A After Daniel arrived at the house, Daniel  
15 told him to get into the car, which he did. He got  
16 into the back seat behind the driver's seat. Upon  
17 getting into the car, he asked Daniel what happened,  
18 Daniel told him the man started waking up and  
19 something about the man seeing his face, he observed  
20 the man's body pushed over in the passenger seat.

21 One of the man's legs was still over the  
22 console of the car. The man never said anything. At  
23 the time he knew the man had been shot and knew  
24 pretty much before Daniel arrived in the car that the  
25 man had been shot.

1 Q So Officer Heffney, first investigation on  
2 page four, Mr. Demery tells you in essence that he  
3 was more than 60 feet away when he heard a gunshot?

4 A Yes, sir.

5 Q And that he didn't actually see anybody  
6 shoot anybody?

7 A Yes, sir.

8 Q And that Daniel told him that the man made  
9 no sound?

10 A Daniel told him something about the man  
11 seeing his face.

12 Q But in that statement from Mr. Demery to  
13 you, Mr. Demery didn't attribute to Mr. Green any  
14 comment about the man who was shot said anything, or  
15 moving or anything like that, correct?

16 A No, sir.

17 Q Now, moving again to the end of your  
18 statement, before Mr. Demery amended that version of  
19 events that he had given you on page four, you asked  
20 him at the end of the statement if there was anything  
21 that he wanted to change or anything that was  
22 incorrect and so forth, didn't you?

23 A Yes, sir.

24 Q And that's when he told you a different  
25 version of those events that appear on the top of

1 page four?

2 A Yes, sir.

3 Q Now, Mr. Heffney, the first page of your  
4 report notes that the first thing that happened when  
5 these interviews began on May 2nd, about 10:46 in the  
6 morning is that you give Mr. Demery an opportunity to  
7 simply tell about the James Jordan events or the  
8 events on the side of Highway 74, is that correct?

9 A Yes, sir.

10 Q Now, that took about an hour, right?

11 A More or less, yes, sir.

12 Q But you have indicated that roughly an hour  
13 there in your notes is what that part took?

14 A Yes, sir.

15 Q Now, during that hour, was anything  
16 discussed about the Rowland matter or the Clewis  
17 Demory matter or any other matters?

18 A No, what it started out, the interview  
19 started out basically as mentioned prior, we, being  
20 myself and Detective Thompson, was interviewing  
21 Mr. Demery as agreed upon, and concerning his  
22 involvement and the truthful statement concerning his  
23 involvement in the James Jordan murder. Also in that  
24 statement, Mr. Demery agreed to give statements  
25 concerning Clewis Demory robbery. Also, to give

1 information concerning the robbery of a couple in  
2 Rhode Island.

3 In addition to that, Mr. Demery was --

4 THE COURT: Is that in Rhode  
5 Island or from Rhode Island. .

6 THE WITNESS: From Rhode Island.  
7 In addition to those crimes, Mr. Demery was  
8 to give statements of any other crimes that  
9 we may have known of, and I mean, we, law  
10 enforcement may have known of that they  
11 were involved in. In addition to that, he  
12 was to give any statements of crime that he  
13 and Mr. Green may have been involved in  
14 that we had no knowledge of.

15 BY MR. BOWEN:

16 Q I see. Altogether, these interviews  
17 consisted of four basically full days of work, and  
18 about 27 hours less four lunch hours?

19 A A long time.

20 Q And you wrote these statements out in  
21 longhand on an eight and a half by 11 legal pad?

22 A Yes.

23 Q Consisting of 49 pages of your own  
24 handwriting?

25 A Yes.

1 Q And you weren't writing all the time, were  
2 you during these 24 --

3 A I was listening and after I listened, I  
4 would write.

5 Q You would talk and ask some questions and  
6 then write?

7 A The way it was done, we mentioned in the  
8 beginning of this, we asked Mr. Demery to give his  
9 account concerning the murder of James Jordan as  
10 related to he and Mr. Green. Mr. Demery did that  
11 with no interruptions. He talked and we listened.  
12 Okay.

13 After he talked, we would ask questions, if  
14 we had questions, to fill in blanks that we knew or  
15 felt that were blanks. That was also followed in the  
16 other -- the other crimes, be it the Mr. Demory and  
17 the Rhode Island couple, and the other crimes. We  
18 would listen and if we felt we had -- if we had  
19 questions, we would ask. But when it came to writing  
20 after having the information, basic information, when  
21 it came to writing, we would ask the question, and we  
22 would write it.

23 Q Mr. Heffney, let me clear up what we mean  
24 we. Were there any other officers there with you?

25 A Okay, well, as far as writing, me, I was

1 the only one writing. When I say we, I'm talking  
2 about Detective Thompson. But as far as writing, I  
3 did all the writing. I did the majority of the  
4 question asking. If Detective Thompson had a  
5 question, of course, he would ask.

6 Q Now, did Mr. Campbell or Mr. Rogers when he  
7 was there ever interject any questions?

8 A I'm sure they did, I'm sure they did ask  
9 questions.

10 Q Now, can you say, Mr. Heffney, whether or  
11 not you or the attorneys when they asked any  
12 questions ever asked any leading questions, that is,  
13 the type of questions that suggested a particular  
14 answer?

15 A I can't honestly sit here and say that, no,  
16 sir. I mean, I would ask a question like you're  
17 asking me to get clarification. If that's to be  
18 leading, I don't consider that leading.

19 Q But it may be that some of your questions  
20 suggested an answer?

21 A No, sir.

22 Q Okay. Mr. Heffney, did you tape record  
23 this interview?

24 A No, sir.

25 Q And I believe that is because of State

1 Bureau of Investigation policy that officers are not  
2 to tape interviews with potential witnesses or  
3 defendants, is that correct?

4 A I mean, I don't tape record interviews.  
5 That's just something that I don't do.

6 Q So that's not a written policy or even an  
7 established practice or procedure with the State  
8 Bureau of Investigation, that's just something that  
9 you choose not to do, is that right?

10 A I think it is a policy, I don't know  
11 exactly the wording as it is, but that is something  
12 I've been employed for 13 years, if I've used a tape  
13 recorder during an interview, it may have been once  
14 or twice at the most, and if I used it, it was  
15 because the person had it. And you know, I had no  
16 problems, you know, being tape recorded.

17 Q So you don't --

18 THE COURT: Folks, it's now 4:15,  
19 we're going to conclude this matter today.

20 MR. BOWEN: Yes, sir.

21 BY MR. BOWEN:

22 Q On May 2nd, do you know whether there was  
23 an official policy of tape recorded interviews of  
24 defendants or witnesses?

25 MR. BRITT: Objection.

1 THE WITNESS: I don't know, I  
2 have the information, I can find that. I  
3 can have that answer for you if you need  
4 it.

5 BY MR. BOWEN:

6 Q You had a tape recorder, didn't you?

7 A I did not have one with me, no.

8 Q But you used a tape recorder to actually  
9 dictate this document that consists of 26 pages which  
10 is the typed written version of your statement,  
11 correct?

12 A Yes, I have a Dictaphone, and the way we do  
13 it, I mean we, the SBI, is that we take notes and we  
14 have a tape recorder that we dictate from our notes.  
15 And this statement, I was able to dictate from the  
16 statement.

17 Q You could have tape recorded if you wanted  
18 to, but you didn't?

19 A I never thought about dictating -- I mean,  
20 excuse me, I never thought about recording.

21 Q There was nothing about the SBI policy that  
22 would have prevented you from tape recording as far  
23 as you know, correct?

24 THE COURT: Can we get off the  
25 tape recorder? The point is made.

1 BY MR. BOWEN:

2 Q Now, neither of the attorneys caused any  
3 recording device to run, did they?

4 A No, sir.

5 Q After each day of questioning, I take it  
6 that Mr. Demery was returned to the jail or prison  
7 facility, is that correct?

8 A Yes, sir.

9 Q And the concluding date that concluded  
10 there at Mr. Campbell's office, can you tell us why  
11 it was conducted there at Mr. Campbell's office?

12 A I can't remember exactly why, but I know  
13 that we just conducted it there, it was much easier  
14 as far as the people, be it Mr. Campbell, Mr. Rogers,  
15 Detective Thompson, Mr. Demery or all here. I was in  
16 Fayetteville, it's a lot easier for me to come here,  
17 logistically wise, than all through.

18 Q Who transported the defendant to the  
19 Mr. Campbell's office?

20 A Detective Thompson.

21 Q And the other interviews were in the  
22 Fayetteville office?

23 A I know the first interview was in the  
24 Fayetteville office. The interview on the 3rd was  
25 conducted at the SBI office in Fayetteville. The

1 interview on the 4th -- the interview on the 4th was  
2 conducted in the offices of Mr. John Campbell. And  
3 the interview on the 8th was conducted in the office  
4 of Mr. Campbell.

5 Q Were there ever any interruptions for the  
6 defendant to confer privately with his attorneys?

7 A No, sir.

8 Q I trust there were lunch breaks each day,  
9 Mr. Heffney?

10 A I mean we ate. When you say lunch break,  
11 we didn't go out. We ate there. Of course, we  
12 didn't interview while we were chewing our food, but  
13 we continued to interview Mr. Demery.

14 Q Were there any family members that were  
15 ever at or near any of these interviews --

16 A No, sir.

17 Q -- of Mr. Demery?

18 A No, sir.

19 Q Did you ever see a person named Angel in or  
20 around any of these interviews?

21 A No, sir.

22 Q What specifically caused you to ask  
23 Mr. Demery if there was anything that he wanted to  
24 change or anything he wanted to amend about his  
25 statement?

1           A       On the morning of May 8, when Mr. Demery  
2 came into the office, and we started the interview,  
3 and you can see there's a gap between the 4th and  
4 8th. There was a weekend there. Mr. Demery was in  
5 the jail on that weekend. And knowing the facts of  
6 the case as me and Mr. Thompson did, Mr. Demery, when  
7 he came in had a -- I don't know how you would say  
8 it, but had a very somber look on his face. We asked  
9 him, you know, what's wrong, what happened in the  
10 jail, if anything.

11                   And he said he was not completely truthful  
12 with us. And we said, what is the problem. He says  
13 concerning the shooting of Mr. Jordan, he left out  
14 something. Mr. Thompson and myself then at that time  
15 asked him what it was. He told us, and it was that  
16 he was there during the actual shooting. If I  
17 remember correctly, my exact words to Mr. Demery at  
18 that time was, I felt that you were, at the end of  
19 the interview we were going to come back and ask you  
20 anyway.

21           Q       Now, as the interview was progressing,  
22 Mr. Heffney, even though you had not perhaps dictated  
23 your report or anything, were you reporting back to  
24 the District Attorney's office or anything, the  
25 process and the substance of what you were getting

1 out of the interview with Demery?

2 A If I remember correctly, I did advise  
3 Attorney Britt what may have transpired that day. I  
4 gave him no notes as far as what was written that  
5 day. I would basically give him a summary of the  
6 day's activities, as I do concerning any  
7 investigation -- any investigative aspects of this  
8 case or any other case that I may have been involved  
9 with.

10 Q Did you tell him in your opinion that there  
11 were any gaps or factual holes in the evidence or  
12 words to that effect?

13 A Not that I recall, no, sir. But again,  
14 that was on the last day, being the 8th, when he did  
15 in fact say that.

16 THE COURT: So that we can  
17 clarify, are you indicating that the only  
18 time you spoke to Mr. Britt about the  
19 interview was after the interviews were  
20 concluded on May 8.

21 THE WITNESS: No, sir.

22 THE COURT: That's what we need  
23 to be clear on

24 BY MR. BOWEN:

25 Q You spoke to him each day that an interview

1 took place?

2 A As I said, I would summarize and tell him  
3 the basic events of the day.

4 Q Now, Agent Heffney, you don't know who if  
5 anyone went to see Mr. Demery over the weekends  
6 between May 4th and May 8 of 1995, do you?

7 A No, sir, I don't.

8 Q As far as you know, no law enforcement  
9 officer did?

10 A No, sir, not as far as I know, no.

11 MR. BOWEN: Just at the risk of  
12 mentioning the tape recorder one last  
13 question, Mr. Heffney, could you bring us  
14 that policy to look at tomorrow?

15 THE WITNESS: No problem.

16 THE COURT: Anything further?

17 MR. BRITT: That would be the  
18 State's showing for 404(b) motion.

19 THE COURT: Thank you, sir. You  
20 may come down.

21 Any showing on behalf of the defendant  
22 on the 404(b) matter now before the Court?

23 MR. BOWEN: No, Your Honor.

24 THE COURT: Folks, I've read the  
25 cases. Basically, you know what is set out

1 in the cases that I asked you folks to pull  
2 in addition to the cases that you folks  
3 gave to me. Although I'm not inclined to  
4 tell anybody you can't refer to the cases,  
5 any argument that you want to make I  
6 appreciate that you keep your arguments  
7 succinct and concise and to the point.

8 Mr. Britt, you're the proponent of  
9 this evidence. The proponent of the  
10 evidence has to articulate some logically  
11 relevant purpose for which the evidence is  
12 offered. I'm going to ask you to do so as  
13 to each specific event, beginning with the  
14 4th of July, 1993.

15 MR. BRITT: As to the 4th of  
16 July, 1993 incident, there is a tremendous  
17 amount of evidence before this Court and  
18 before this jury that shows that at the  
19 time in question after the murder of James  
20 Jordan --

21 THE COURT: May I interrupt?

22 MR. BRITT: Yes, sir.

23 THE COURT: Under 404(b), there  
24 are a number of exceptions that are noted.  
25 The commentary, the case law indicates that

1           they are not exhaustive, not exclusive.  
2           What specific purposes, either under 404(b)  
3           or if not under 404-B, what specific  
4           purpose is the State offering matters  
5           related to the July 4th, 1993 incident?

6                     MR. BRITT:   July 4th incident,  
7           State is offering that to show a common  
8           purpose in plan and scheme by the defendant  
9           Daniel Green, and co-defendant Larry Martin  
10          Demery.

11                    THE COURT:   To commit robberies?

12                    MR. BRITT:   Yes, sir.

13                    THE COURT:   Okay.

14                    MR. BRITT:   And also to show that  
15          the defendant, as it relates to the Jordan  
16          case, was in possession of an instrument of  
17          the crime --

18                    THE COURT:   On the 4th incident?

19                    MR. BRITT:   Yes, sir, the video  
20          camera.

21                    THE COURT:   Now, how does the  
22          video camera relate to anything at issue in  
23          the allegations before the jury?

24                    MR. BRITT:   Well, as we have not  
25          gone into the issue about the videotape

1 yet, but there was a motion that was heard  
2 before the evidence started, where the  
3 Court withheld ruling on a matter of the  
4 video.

5 THE COURT: I guess my question  
6 is specifically, say, for example, State is  
7 allowed to introduce evidence that during  
8 the course of the robbery, July 4th, 1993,  
9 among the items stolen was a video camera,  
10 and that the State's contention is that  
11 that video camera was used by the defendant  
12 in videotapes that the State wants to show  
13 to the jury, what does that prove in the  
14 context of the allegation of first degree  
15 murder of James Jordan, conspiracy to  
16 commit robbery with a dangerous weapon of  
17 James Jordan, or robbery with a dangerous  
18 weapon of James Jordan? What element of  
19 any of those offenses does it go to prove?

20 MR. BRITT: One of the inferences  
21 in the law that the State can rely on is  
22 recent possession of stolen goods. The use  
23 of that video camera by the defendant in  
24 filming himself shows him in possession of  
25 items that belonged to Mr. Jordan.

1 THE COURT: Omit reference to the  
2 Rowland robberies, July 4th, State  
3 introduced evidence that defendant is  
4 depicted in a videotape in possession of  
5 that evidence. How is the State harmed?

6 MR. BRITT: I don't know that we  
7 are.

8 THE COURT: Does the State  
9 accomplish what it intends to accomplish in  
10 terms of recent possession?

11 MR. BRITT: Yes, sir.

12 THE COURT: So Rowland robberies  
13 are really not necessary to your proving  
14 recent possession of any item that was  
15 allegedly taken in the robbery with a  
16 dangerous weapon of James Jordan?

17 MR. BRITT: That's correct,  
18 because the videotape does that.

19 THE COURT: Anything else you  
20 want to say about the July 4th matter?

21 MR. BRITT: Other than it goes to  
22 a common scheme or plan and shows a mode of  
23 operation.

24 THE COURT: Yes, sir. As to the  
25 July 15th --

1                   MR. BRITT: As to the July 15th  
2 incident involving Clewis Demory, again,  
3 that's being shown to offer a common scheme  
4 or plan on the part of the defendant and  
5 Larry Martin Demery. It's also being  
6 offered to show the purpose of intent as it  
7 relates to the robbery and homicide of  
8 Mr. Jordan on --

9                   THE COURT: How does the robbery  
10 or alleged robbery of Mr. Demory on July  
11 15th bear on the issue of intent --

12                   MR. BRITT: I think they are  
13 intertwined. I think intent and common  
14 scheme or planned modus operandi are  
15 intertwined.

16                   THE COURT: But isn't that what  
17 is prohibited by the rule? Essentially,  
18 what you're saying to me, if we can show he  
19 had the intent to commit robbery on July  
20 15th, then that evidence bears on his  
21 intent to commit robbery of James Jordan.

22                   MR. BRITT: One of the things it  
23 bears upon is his intent to kill. And if  
24 the jury were to find the defendant guilty  
25 of first degree murder pursuant to a theory

1 of premeditation and deliberation, the jury  
2 must find that he had specific intent to  
3 kill.

4 THE COURT: How does it bear on  
5 intent to kill?

6 MR. BRITT: Well, I think the  
7 evidence would show that on the 15th he  
8 shot a man three times.

9 THE COURT: During the course of  
10 a robbery.

11 MR. BRITT: Yes. On July 22nd,  
12 he shot a man one time during the course of  
13 a robbery. I think that's circumstantial  
14 evidence of his intent at the time of July  
15 the 23rd when Mr. Jordan was killed.

16 THE COURT: Okay. So you're  
17 offering it to show intent as it relates to  
18 the charge of first degree murder, okay.  
19 And what else, if anything?

20 MR. BRITT: It's also being  
21 offered to show that the gun that was used  
22 in the course of killing Mr. Jordan was  
23 taken, it's an instrumentality of the crime  
24 that was committed on July 15th.

25 THE COURT: Now, in and of

1           itself, that's one thing, but doesn't it  
2           really go to identity?

3                       MR. BRITT:   Yes, sir, it does.  
4           Because the evidence that is before the  
5           Court at this point is that a young, black,  
6           slender male shot me three times.  That the  
7           person with the hood or the towel over his  
8           face did not shoot me; it was the person  
9           standing beside me.  And that was a young  
10          black male, who Mr. Demery has identified  
11          through the use of the photographic  
12          lineups, and --

13                      THE COURT:   That's Clewis Demory.

14                      MR. BRITT:   Yes.  While he is not  
15          here, he would identify him in court as  
16          looking like the person who shot him.

17                      THE COURT:   Okay.

18                      MR. BRITT:   There is also the  
19          identification of Larry Martin Demery, that  
20          the defendant Daniel Green was the one who  
21          not only shot Clewis Demory but was the one  
22          who was in almost sole possession of that  
23          gun over the course of the next two weeks.

24                      The gun was found in the defendant's  
25          trailer on August the 16th, 1993, during

1 that search. There is evidence that's been  
2 referred to in the testimony of Larry  
3 Martin Demery that the defendant purchased  
4 a box of .38 caliber shells at C&R Pawn  
5 Shop.

6 THE COURT: So it's also offered  
7 to corroborate Larry Martin Demery?

8 MR. BRITT: Yes, sir.

9 THE COURT: Okay. I appreciate  
10 it. Thank you.

11 Who's arguing on behalf of the  
12 defense?

13 MR. BOWEN: I will, Your Honor.  
14 Your Honor, reading all the cases that  
15 first I came up with and then adding all  
16 your cases to this, I come back with one  
17 thread that runs through all these cases.  
18 Every one of them comes down to a  
19 similarities analysis.

20 THE COURT: That's one way of  
21 showing identity.

22 MR. BOWEN: Every one gets down  
23 to comparing the early crime or crimes and  
24 the present crime or crimes.

25 THE COURT: State versus Austin

1           80 NC App. Austin -- 404(b) deals not only  
2           with other crimes, other wrongs, but with  
3           other acts. Act may not amount to a crime,  
4           but if it's logically relevant to some  
5           issue in the case, then it comes in.

6           State versus Austin, the North  
7           Carolina Court of Appeals said that  
8           evidence by a bank teller that one of the  
9           defendants came into a bank in New Bern to  
10          change a one hundred dollar bill on the day  
11          that another bank in New Bern was robbed,  
12          purportedly by that defendant and others,  
13          was admissible to show that the defendant  
14          who changed the one hundred dollar bill was  
15          in New Bern on the day in question, bearing  
16          on the issue of identity, even though  
17          didn't have anything to do with the crime  
18          or criminal act, and to corroborate the  
19          testimony of a purported accomplice who  
20          testified on behalf of the State in that  
21          case. Didn't have anything to do with  
22          similarity because there was no crime  
23          committed.

24                   MR. BOWEN: Well, in their end  
25                   you get the kind of language that you see

1 in State versus Ake, the 1990 case, where  
2 the Justice deals with -- however, State  
3 versus Ake -- in your case there's a day  
4 that separates the two matters, or it all  
5 happened in the same day as I understand  
6 it. In Ake it all happened as part of the  
7 same transaction. As you know, the guy  
8 went in, guy had thrown some LSD across his  
9 shoulder, but did find marijuana on him so  
10 therefore they put everything together.  
11 And that's the kind of reasoning. And that  
12 language of Ake maybe inviting to someone  
13 that wants to take something that is as  
14 many as from 15th to the 23rd, 22nd or 23rd  
15 separated, a week or more, such as this  
16 case.

17 But when you look at a case like State  
18 versus Moore, 1983 case where Justice  
19 Mitchell dealt with it, he came right back,  
20 as virtually all these cases do, and no  
21 matter whether talking at identity, motive,  
22 common plan scheme and design -- and by the  
23 way, it seems to me that common plan,  
24 scheme or design is almost by definition  
25 about the same thing as a conspiracy.

1           Now what is interesting to me is it  
2           seems to me as though the State is  
3           foreclosed by using that argument because  
4           they said that the conspiracy in this case,  
5           according to their indictment, began on the  
6           23rd of July. They don't even extend the  
7           conspiracy back to the 15th or 4th of  
8           July. Seems to me they are estopped to  
9           even assert that.

10           And we asked for a bill of  
11           particulars, we were denied a bill of  
12           particulars, so therefore we haven't staked  
13           them out as to the date. But we tried. So  
14           we're relying on the indictment in saying  
15           that the common scheme, plan or design, the  
16           conspiracy, if you will, according to their  
17           pleadings, began on the 23rd at the time --

18           THE COURT: The M O is not the  
19           same. As to the Rowland matter, the Clewis  
20           Demory matter, and the allegation involved,  
21           the M O is not the same.

22           MR. BOWEN: Because virtually  
23           every case returns to a similarities  
24           analysis. I simply, just for argument,  
25           must point to Your Honor what the

1 dissimilarities of these --

2 THE COURT: I'm aware of them.

3 And unless you feel absolutely compelled to  
4 do so, I'm aware of them.

5 MR. BOWEN: I got you. Okay.

6 Well, then, that would be our argument,  
7 Your Honor, in that similarities are not  
8 present. The dissimilarities outweigh.  
9 The opportunity for the State, as Your  
10 Honor has spoken with Mr. Britt a moment  
11 ago, the opportunities for them to get some  
12 of this information into evidence without  
13 bringing in evidence of other crimes --

14 THE COURT: Say, for example, I  
15 exclude all reference in any -- in the  
16 State's case in chief, the July 4th, July  
17 15th, 1993 incidents. State puts on Larry  
18 Martin Demery to testify.

19 By Mr. Thompson's opening statement,  
20 Mr. Thompson has essentially staked the  
21 defense out on opening statement to any  
22 involvement our client had came after the  
23 fact. In effect, our client was not there,  
24 was not present, at the time that James  
25 Jordan was killed. If there was a killing,

1           our client wasn't involved in it.

2                   Am I correct so far?

3                   MR. BOWEN:   He was elsewhere,  
4           yes, sir.

5                   THE COURT:   By his plea of not  
6           guilty, he places identity in the issue.  
7           By raising the defense of alibi, he places  
8           identity into issue.  You folks put  
9           identity in the issue.  Since you put  
10          identity in the issue by the plea of not  
11          guilty, which the defendant is entitled to  
12          do, and by asserting apparently alibi as a  
13          defense in the case, the State is entitled  
14          to offer evidence going to identity of the  
15          defendant as the perpetrator of the crime.  
16          Do you agree with that?

17                  MR. BOWEN:   Well, so long as they  
18          can survive any kind of reasonable  
19          similarities test.

20                  THE COURT:   No, sir, I don't  
21          think that necessarily applies.  The test  
22          is -- the litmus test is, is the evidence  
23          offered or sought to be offered logically  
24          relevant to something at issue in this  
25          case.

1                   MR. BOWEN: Now, I see that  
2 language. I know what you're talking  
3 about. It's in the cases, but it's  
4 interesting to me not just what the Court  
5 says, but then to see what the Court does.  
6 Every one of those cases in which that  
7 language you just cited is used, then the  
8 Court goes on to perform a similarities  
9 test.

10                   THE COURT: Based on the facts of  
11 that case.

12                   MR. BOWEN: And I don't see them  
13 performing any other test to come to their  
14 conclusion. Now, when I performed or I  
15 assert to you if you perform a similarities  
16 test here, then it becomes very dangerous  
17 to consider --

18                   THE COURT: Don't mean to  
19 interrupt you, I understand what your  
20 argument is, your argument is, I'm bound by  
21 the similarities test, you contend that's  
22 the only test that can be applied.

23                   MR. BOWEN: In these cases,  
24 that's what I say.

25                   THE COURT: I disagree. I

1 understand that's your argument, I  
2 understand that's your position.

3 Any other argument that you want to  
4 make other than a similarities argument?

5 MR. BOWEN: I want to also go to  
6 the 403 considerations also, and those have  
7 to do with the overwhelming prejudicial  
8 effect of those things, and if I can borrow  
9 William Simon's title of his book, "Time for  
10 Truth," I can see the seal of the State of  
11 North Carolina sitting up there or rather I  
12 can see and I remember Tony Brown's oft  
13 used word "intellectual honesty," the truth  
14 of the matter is, and the statutes  
15 acknowledge that to put this type of  
16 evidence in is at a baseline prejudicial.  
17 The question is, how prejudicial is it, and  
18 how much does the State absolutely need to  
19 prove what they got to prove.

20 We argue that they don't need this  
21 evidence to get where they got to go. They  
22 don't have to have this proof, and when you  
23 stack it up against the potential  
24 prejudice, it's overwhelming.

25 Now, I know that even if Your Honor

1 decides to let this evidence in, Your Honor  
2 can give a proper instruction to the jury.  
3 But let's be completely honest in our  
4 souls, how can any human being hear this  
5 evidence and sit there and no matter how  
6 hard they try, take, accept and apply the  
7 instruction that Your Honor will give to  
8 limit their consideration of that material  
9 to one specific purpose such as intent or  
10 motive and such an --

11 THE COURT: Mr. Bowen, if I  
12 accept your argument then 404(b) matters  
13 would never be admissible.

14 MR. BOWEN: That is not so, there  
15 are situations where the State desperately  
16 has to have the evidence to make its cases  
17 at all. This is not one of those cases.  
18 There are situations where the act sought  
19 to be admitted is not nearly as prejudicial  
20 as the act or acts here sought to be  
21 admitted. And so it seems to me that's  
22 part of Your Honor's difficult balancing  
23 test. But what I'm saying is it would be  
24 proper, I think, for you to consider while  
25 you're making your balancing test that no

1 matter how perfect an instruction you give  
2 to this jury, it is as a practical human  
3 matter, I submit, very difficult if not  
4 almost impossible for them to follow that  
5 instruction. And therefore, I think you  
6 should crank that sort of thinking into  
7 your balancing test under 403.

8 THE COURT: Well, I agree with  
9 you that latter -- in that last respect. I  
10 think it is more difficult trying to  
11 balance under 403, I think that's probably  
12 the case.

13 However, the Court having considered  
14 the evidence presented in this case, makes  
15 the following findings pursuant to the  
16 Court's obligation under the case law  
17 decided under Rule 404 and 403.

18 As to the July 15th, 1993 incident,  
19 the Clewis Demory robbery, the Court finds  
20 that this evidence is logically relevant.  
21 The defendant having placed in issue at  
22 issue in this case, the issue of identity  
23 by raising the defense of alibi and by his  
24 plea of not guilty, the Court finds that  
25 the probative value of this evidence is not

1           outweighed by the risk of undue prejudice.

2           Based on that finding, and based on  
3           the Court's consideration of the relative  
4           probative value of the evidence presented  
5           as to the July 4th, 1993 incident, the  
6           Court finds that the probative value is  
7           less as to the July 4th, 1993 incident than  
8           it is as to the July 15th, 1993 incident.  
9           And the Court taking that into  
10          consideration and also taking into  
11          consideration the admission of evidence as  
12          to the July 15, 1993 evidence, finds that  
13          the cumulative effect as to the substantial  
14          risk of prejudice in this case, then the  
15          Court rules that the risk of prejudice is  
16          substantial, and that it substantially  
17          outweighs the probative value of the  
18          evidence related to the July 4th, 1993  
19          incident and the Court rules that that may  
20          not be adduced during the State's case in  
21          chief.

22          That evidence may however be  
23          admissible on redirect examination  
24          following the cross-examination of Larry  
25          Martin Demery or Clewis Demory or any other

1 witness called on behalf of the State. And  
2 the Court by this ruling does not mean to  
3 suggest that that evidence would not be  
4 admissible in a sentencing hearing if that  
5 sentencing hearing is reached under 2000 E  
6 11.

7 So I'm excluding the July 4th, 1993  
8 incident. To that the State objects and  
9 excepts. I'm allowing the July 15th, 1993  
10 incident. To that the defendant objects  
11 and excepts. So that both of you folks  
12 have your issues preserved.

13 Folks, it is my view that the issue of  
14 identity and issue as it bears on intent  
15 make this logically relevant and probative  
16 and that that probative value is not  
17 substantially outweighed by the risk of  
18 undue prejudice as to the July 15th  
19 incident.

20 Now, we've got another matter that is  
21 somewhat interwoven with that and that is  
22 defendant's motion to suppress as to ID.

23 As to that motion to suppress the  
24 identification of the defendant both in  
25 court -- strike that, both the out of court

1 identification of the defendant by Clewis  
2 Demory is denied, to which the defendant  
3 objects and excepts for the record. The  
4 Court will make written findings and  
5 conclusions of law, which will appear of  
6 record in that regard.

7 To this ruling, the defendant objects  
8 and excepts, and the Court specifically  
9 allows the defendant the right to make  
10 specific objection to specific findings of  
11 fact and/or conclusions of law as they  
12 might appear of record.

13 Does that -- in terms of any issues  
14 you folks might have, does that satisfy you  
15 folks.

16 MR. BOWEN: Yes, sir.

17 THE COURT: Folks, the July 15th  
18 incident is in. The July 4th incident is  
19 out insofar as the State's case in chief.  
20 It may be admissible on redirect  
21 examination or may be admissible on  
22 rebuttal if the defendant in this case  
23 testifies or may be admissible in any  
24 sentencing hearing if such a sentencing  
25 hearing is reached.

1 Anything further?

2 MR. BRITT: No, sir.

3 THE COURT: We're going to start  
4 at 9:30 tomorrow morning. The jury has  
5 been directed to report at that time. You  
6 folks going to be ready to go forward?

7 MR. BRITT: Yes, sir.

8 THE COURT: For my information,  
9 Mr. Britt, because I may need to amend what  
10 I said on the record, do you intend to call  
11 Larry Martin Demery first.

12 MR. BRITT: No, sir, I intend to  
13 call Clewis Demory first.

14 THE COURT: The reason I ask, is  
15 if Larry Martin Demery were called first,  
16 Clewis Demory's testimony would be  
17 corroborative. You can't corroborate that  
18 which has not yet occurred.

19 MR. BRITT: I understand.

20 THE COURT: Court reserves the  
21 right to make further findings as to the  
22 July 15th, 1993 incident insofar as it may  
23 be corroborative. Based on what is now  
24 before me it appears that it will be.

25 We're at ease until 9:30 tomorrow

1 morning.

2 MR. BOWEN: At the appropriate  
3 time, I would request the appropriate  
4 instruction.

5 THE COURT: Court will give the  
6 limiting instruction, and for the record,  
7 and for your information, the Court intends  
8 to limit it. If you'll look at pattern  
9 instruction 104.15, that's the language I'm  
10 going to use. The first parenthetical will  
11 be given, the identity of the person who  
12 committed the crime charged in this case if  
13 it was committed. And third parenthetical,  
14 that the defendant had the intent which is  
15 a necessary element of the crime charged in  
16 this case if they made findings in accord  
17 with that.

18 Anything further from either counsel?

19 MR. BRITT: No, sir.

20 THE COURT: If you'll recess us  
21 until 9:30 tomorrow morning.

22 (Court adjourned.)

23

24

25



## 1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

3  
4 LUTHER JOHNSON BRITT, III, Esq.  
5 District Attorney  
6 16-B Prosecutorial District  
7 Lumberton, North Carolina 283588  
9 On Behalf of the Defendant:10  
11 ANGUS B. THOMPSON, Esq.  
12 Public Defender  
13 16-B Prosecutorial District  
14 Lumberton, North Carolina 28358

15 and

16  
17 WOODBERRY A. BOWEN, Esq.  
18 Bowen & Byerly  
19 P.O. Box 846  
20 Lumberton, North Carolina 2835921  
22  
23 (January 26, 1996. Proceedings in open court.)

24 THE COURT: Good morning, folks.

25 Let the record reflect all counsel are  
present the defendant is present in open  
court.Mr. Horne, do we have all members of  
the jury secured in the jury room.

THE BAILIFF: Yes, sir, they are.

THE COURT: Mr. Britt, you  
indicated just outside the door that there

1 was a matter you wanted to raise before we  
2 brought the jury in?

3 MR. BRITT: Yes, sir. I don't  
4 know if there's anything to this, but for  
5 what it's worth, I think under Brady I  
6 think I need to make it part of the record  
7 so the defense counsel is notified of  
8 this.

9 Last night, which would have been  
10 January 25th, I got a phone call about 9:15  
11 p.m. from Mike McIntyre who is an attorney  
12 here in Lumberton. Mr. McIntyre at this  
13 time, who is a candidate for Congress,  
14 called me, and said he had had a phone  
15 message from an unidentified woman from  
16 Fayetteville. He does not know why the  
17 woman contacted him, but he allowed me to  
18 listen to the message that he had on his  
19 machine. The lady never identified herself  
20 in any way, said -- asked Mr. McIntyre if  
21 we would be willing to give the information  
22 to the attorneys for Mr. Green.

23 Information that she relayed on the  
24 message was that the car had been stripped  
25 in Fayetteville by a man whose wife works

1 at High Smith Rainey Hospital in  
2 Fayetteville, she works on the third floor,  
3 that this nurse -- this hospital employee's  
4 husband was the one who in fact stripped  
5 the car that belonged to Michael Jordan.

6 THE COURT: For what it's worth,  
7 folks, there it is. I think since the  
8 caller is unidentified, may be somewhat  
9 difficult to track her down. But the  
10 information that is available is now being  
11 provided to counsel for the defendant. Let  
12 the record so reflect.

13 Anything from either counsel before we  
14 bring the jury in?

15 MR. BRITT: No, sir, we're ready  
16 to go.

17 THE COURT: Before we bring the  
18 jury in, let me apprise you of the language  
19 the Court would use in the context of 104  
20 or the 404(b) matter before the Court.  
21 That instruction is North Carolina pattern  
22 instruction Criminal 104 point fifteen --  
23 that's one five, evidence of similar acts  
24 of crimes, GS8C1 404, rule B.

25 The instruction as modified reads as

1 follows: Evidence has been received  
2 tending to show that the defendant Daniel  
3 Green, also known as U'Allah, acting  
4 together with another, committed a robbery  
5 with a dangerous weapon on July 15th, 1993,  
6 and that during the course of this robbery,  
7 he took or stole a .38 caliber revolver  
8 Smith & Wesson which the State contends and  
9 the defendant denies was used in the  
10 commission of the offenses for which the  
11 defendant is now being tried.

12 I instruct you that this evidence  
13 is -- was, pardon me, received solely for  
14 the purpose of showing the identity of the  
15 person who committed the crime or crimes  
16 charged in this case, if it was committed.  
17 And that the defendant had the intent which  
18 is a necessary element of the crime or  
19 crimes charged in this case.

20 I further instruct you that if you  
21 believe this evidence, you may consider it  
22 but only for the limited purpose for which  
23 it was received. I further instruct you  
24 that you may not use this evidence as  
25 general character evidence. Rather, you

1           may use this evidence, if you believe it,  
2           only in deciding the existence of the fact  
3           or facts for which it was admitted, that  
4           is, as bearing on the issue of identity  
5           and/or intent.

6           You folks want to be heard in any  
7           respect as to the Court's limiting  
8           instruction?

9           MR. BRITT: No, sir that's  
10          satisfactory.

11          MR. BOWEN: One moment, Your  
12          Honor.

13          We have no objection.

14          THE COURT: Folks, this  
15          instruction as is contemplated by the  
16          language of the instruction will be given  
17          following the admission of the evidence.

18          Any other matters before we bring the  
19          jury in?

20          MR. BRITT: No, sir.

21          THE COURT: Mr. Horne, if you'll  
22          bring our jury in, please, sir.

23          (Jury in at 9:34 a.m.)

24          THE COURT: Good morning, ladies  
25          and gentlemen.

1           Mr. Britt, the State prepared to go  
2 forward with any additional evidence?

3           MR. BRITT: Yes, sir, we are.

4           THE COURT: Yes, sir you may  
5 proceed at this time.

6           MR. BRITT: Your Honor, at this  
7 time we call Mr. Clewis Demory.

8           THE COURT: If you'll come up and  
9 be sworn, please, sir. If I'll place your  
10 left hand on the Bible and raise your right  
11 hand.

12           **CLEWIS DEMORY,**  
13 being first duly sworn was examined and testified as  
14 follows:

15           DIRECT EXAMINATION

16           THE COURT: If you'll have a  
17 seat, please, sir.

18           Mr. Demory, it's going to be necessary  
19 that all members of the jury and all  
20 counsel and all parties be able to hear  
21 you, so if you'll speak directly into the  
22 microphone, please, sir.

23           If you'll state your full name for the  
24 record.

25           THE WITNESS: My name is Clewis

1 Demory. C L E W I S, D E M O R Y.

2 THE COURT: Thank you, sir.

3 BY MR. BRITT:

4 Q Good morning, Mr. Demory.

5 A Good morning.

6 Q Where do you live, sir?

7 A Route 1, Pembroke.

8 Q Mr. Demory, for the record, how old are  
9 you?

10 A I'm 82 right at the present. If I live to  
11 April the 12th, I'll be 83.

12 Q Mr. Demory, do you work?

13 A Well, not for the last few weeks I haven't,  
14 no.

15 Q In July of 1993, were you working at that  
16 time?

17 A At the little store out on Highway 72 and a  
18 1003.

19 Q And what kind of work did you do when you  
20 were a younger man, Mr. Demory?

21 A Well, I grew up on the farm. Well, I was  
22 on the farm until I was about 25 years of age, and  
23 then I left it. And I put in a little time in the  
24 military during World War II. When I got out of  
25 that, I went up to Maryland and went to work in the

1 steel mill, and I retired from that.

2 Q How long did you work in the steel mills in  
3 Maryland?

4 A About 27 and a half years.

5 Q And while you were living in Maryland, did  
6 you do any other work other than working in the steel  
7 mill?

8 A Well, yes, I -- work got a little slow in  
9 '61 or 2, I think it was '61. And I had to get a  
10 part-time job to so I could make my payments, house  
11 payments and everything.

12 Q What kind of part-time job did you get?

13 A Security guard job.

14 Q And when you got that security guard job,  
15 did they give you a gun or did you have to go out and  
16 buy a gun?

17 A No, I bought the gun.

18 Q And what kind of gun did you buy to help  
19 you in your security job or security guard work?

20 A A .38 caliber Smith & Wesson.

21 Q And how long did you work as a security  
22 guard?

23 A I would say about six or seven years.

24 Q And from the time you bought that Smith --  
25 .38 caliber Smith & Wesson, did you keep it once you

1 quit your job as a security guard?

2 A I sure did.

3 Q What kind of gun was that, was it an  
4 automatic or was it a revolver?

5 A No, it was a revolver.

6 Q Do you remember how many shots it held?

7 A Six.

8 Q And can you describe it for us, what color  
9 was it?

10 A Well, it was a blue steel -- the metal was  
11 blue steel, excuse me. On the grip, on each side was  
12 a wood panel like thing, you know. And that was --  
13 looked like Hickory or something, I don't know.

14 Q Had wooden handles?

15 A Yes.

16 Q What color were those wooden handles?

17 A Well, when it was brand new it was about  
18 almost the color of this here (indicating).

19 Q Would you say that's a light brown?

20 A Yes, something like that, yes.

21 Q You retired from the steel mill, didn't  
22 you?

23 A I did.

24 Q When you retired from the steel mill, did  
25 you move back or did you move to Robeson County?

1           A       I moved back here to Robeson County, yes.

2           Q       And when did you move back to Robeson  
3 County?

4           A       On February the 4th, 1976.

5           Q       And after you retired and you moved home,  
6 did you do any kind of work?

7           A       Well, the first year, year and a half, I  
8 helped my nephew and other people on the farm. And I  
9 got -- I was getting too old for that kind of stuff,  
10 so I asked a man up at the BFW building one night at  
11 a meeting, he worked in the employment office, and I  
12 asked him if he had any part-time work. Yeah, come  
13 down check it out, see what we got.

14                   On the way down, I stopped at a little  
15 store down there, and I told the man where I was  
16 going. Well, he said, you don't have to do that, he  
17 said you can work here with me if you want to. I  
18 said good.

19           Q       Where was that store located, Mr. Demory?

20           A       That was, I would say a mile and a half,  
21 right close to a mile and a half west of Converse on  
22 72.

23           Q       And do you remember the name of that store?

24           A       Well, it was -- at that time, it just  
25 had -- Lord, it didn't have a name out there.

1 Q How long did you work there?

2 A I worked -- well, for this man, I worked  
3 for him for about a year and a half, and he sold it  
4 to one of his nephews then.

5 Q Did you continue working at that store?

6 A I continued to work for him for, I don't  
7 know, three or four years. And they built on a game  
8 room, and those children run me out of it.

9 Q From there, did you go work somewhere else?

10 A I did, I went two miles back down to 1003  
11 towards 211, second crossroad down there, and I  
12 worked at that one for three years.

13 Q And after working there for three years,  
14 did you then go to work at another store?

15 A Come back up to 72 and 1003.

16 Q And who did you work for there?

17 A Well, I started off with Curlin Lowry.

18 Q And --

19 A It was his. He was the owner, until it was  
20 robbed. And he just -- he went out of business.

21 Q Now, do you recall the name of the store  
22 when you worked for Curlin Lowry?

23 A Lowry's Short Stop is what it was.

24 Q After Mr. Lowry went out of business, did  
25 you work for someone else at that location?

1           A     He sold it to another guy right there in  
2 the area, and I worked for him.

3           Q     And what is that man's name?

4           A     Gaston Locklear.

5           Q     In July of 1993, Mr. Demory, were you  
6 working for Curlin Lowry at his store, Lowry's Short  
7 Stop there at 72 and the intersection of 1003?

8           A     I was.

9           Q     What time of the day did you normally work,  
10 Mr. Demory?

11          A     What time?

12          Q     Yes, sir, what hours would you work?

13          A     Well, I worked from 5:00 in the morning  
14 until 3:00, 3:30 in the afternoon.

15          Q     And at 5:00 in the morning, would you be  
16 the only one who would go to open up the store?

17          A     I sure did.

18          Q     And why did you open so early in the  
19 morning?

20          A     Because we had a lot of customers going  
21 out -- out of the community to work, and they would  
22 stop to get gas and whatever.

23          Q     And from 5:00 in the morning until 3:00 or  
24 3:30 in the afternoon when you got off, would you be  
25 the only person working there in the store?

1           A       Well, once in a while, some of his family  
2 might come in and help put up supplies when it had  
3 come in, something like that, yes.

4           Q       Now, when you would go to work at 5:00 in  
5 the morning, would you take any of the store's money  
6 with you to open?

7           A       No, I did not. The store money was in the  
8 store.

9           Q       Where was the store money kept?

10          A       Well, we would hide it in different  
11 places. But he would let me know where he was going  
12 to put it.

13          Q       Now, was there a set amount of money that  
14 was left in the store so that you could come in and  
15 open up for business the next day?

16          A       Well, no, but in something like that, you  
17 have to leave so much or you'll run out before the  
18 bank opens.

19          Q       And the money that was left there in these  
20 various hiding places, were those bills and coins?

21          A       Were they --

22          Q       The money, was it made up of bills and  
23 coins?

24          A       Well, it was -- yeah.

25          Q       Did the store accepted foods stamps?

1 A Yes.

2 Q Were food stamps also left in the store so  
3 it would be there when the store was opened?

4 A Yeah.

5 Q Were food stamps kept with the cash money?

6 A No, the food stamps, they were just left in  
7 the cash register.

8 Q Can you describe for us the store where you  
9 worked?

10 A Yeah. Well, it was just a little small  
11 black top store out there at -- a cement block  
12 building.

13 Q Did you sell gasoline?

14 A Yes.

15 Q Where were the gasoline pumps located?

16 A Right in front of the building.

17 Q Did you sell kerosene?

18 A Sold kerosene, and the kerosene pump was  
19 around on the left front corner.

20 Q How many doors were there to that building?

21 A Just one door.

22 Q Where is it located?

23 A Right in front on the left side.

24 Q Are there any windows on that building?

25 A Well, there was one big double window in

1 the front.

2 Q And when you walked in -- inside, when you  
3 would walk inside the building, where was the cash  
4 register located?

5 A Well, come in at the door there and right  
6 here is the counter and the cash register is sitting  
7 on it about that far from the end (indicating).

8 Q Now, and when you were minding the store,  
9 did you spend most of your time behind the counter?

10 A Most of it, yes.

11 Q Now, did you have regular vendors that  
12 would come in and call on you?

13 A Have what?

14 Q Did you have vendors that would come in and  
15 call on you?

16 A Oh, yeah, yes.

17 Q Did you sell crackers and foods and drinks?

18 A Oh, yeah, yeah.

19 Q Now, when you would go to work each  
20 morning, would you take any type of gun with you to  
21 work?

22 A I would take my handgun, Smith & Wesson.

23 Q And why would you take your gun with you?

24 A I just wanted it for protection.

25 Q And in the mornings when you would arrive

1 and get the store opened, where would you place your  
2 gun?

3 A In the drawer right under the counter.

4 Q And is there more than one drawer beneath  
5 the counter?

6 A There were three drawers right there.

7 Q And where are those drawers in relationship  
8 to the cash register?

9 A Well, one of them was right under the cash  
10 register. One was to the right of it and one to the  
11 left.

12 Q Did you always carry your gun with you?

13 A I did.

14 Q And that gun that you carried with you, is  
15 that always the Smith & Wesson .38 caliber that you  
16 bought in Maryland back in 1961?

17 A That's right. It's the only gun I ever  
18 owned in my life. I never had a rifle or shotgun,  
19 just that one gun.

20 Q When you would take that gun with you, was  
21 it loaded?

22 A It was.

23 Q On the morning of July 15th, 1993,  
24 Mr. Demory, do you remember the events of that day?

25 A Yeah, can remember them pretty good.

1 Q On July the 15th of 1993, did you go to  
2 work at Lowry's Short Stop?

3 A I did.

4 Q What time did you arrive there that  
5 morning?

6 A Right about probably five minutes until  
7 5:00, something like that.

8 Q When you arrived at the store on July the  
9 15th, 1993, will you tell the jury what you did in  
10 preparing to open up that day?

11 A Well, all I would do would be go in, and I  
12 would lock the door behind me when I went in, get the  
13 money and put it in the cash register, and I checked  
14 the others, couple more items around to see if it  
15 needed anything. Then I would turn the lights on and  
16 open the door.

17 Q Now, on the morning of July the 15th, you  
18 stated you got the money and you put it into the cash  
19 register?

20 A That's right.

21 Q Did you ever count the money before you  
22 placed it into the cash register?

23 A Yes, most times I would count it.

24 Q Do you recall if you did that on July 15th?

25 A Yeah.

1 Q Do you recall how much money you placed in  
2 the cash register before opening for business that  
3 day?

4 A Well, it was right close to 200 dollars, I  
5 know.

6 Q Were there any food stamps in the store  
7 that morning?

8 A Yes, but I can't tell you how many, because  
9 I didn't count that.

10 Q Where were the food stamps located that  
11 morning?

12 A In the left drawer on the cash register  
13 shelf.

14 Q After getting the store ready to be open,  
15 you opened the store, didn't you?

16 A I did.

17 Q And do you recall if it was busy during the  
18 time right after you opened?

19 A Well, yes, it was. It usually was every  
20 morning like that.

21 Q Were there times during the day that were  
22 busier than other times?

23 A Oh, yeah.

24 Q What times were generally the busiest,  
25 Mr. Demory?

1           A     Like I say, most times is early in the  
2 morning, when I first opened, then maybe 10:00,  
3 11:00.

4           Q     Did you have any vendors call on you?

5           A     Oh, yeah, you would have people stop by,  
6 yes.

7           Q     Around 10:00 on the morning of July 15th,  
8 1993, Mr. Demory, did something happen?

9           A     Oh, yeah.

10          Q     Tell us what happened around 10:00 that  
11 morning?

12          A     Well, now, I believe -- I'm not sure, but I  
13 believe it was a little before 10:00. Because right  
14 about 10:00 or maybe ten after, five or ten after  
15 10:00, is when I left there going to the hospital in  
16 the ambulance.

17          Q     What happened around 10:00?

18          A     Well, I'm not going to give you the exact  
19 minute it was because I can't remember that, but I  
20 know it was around 9:30, something like that, I know.

21          Q     What happened?

22          A     Well, I don't remember exactly what I was  
23 doing, whether I was checking the cigarettes in the  
24 rack or what I was doing, but when I turned around  
25 and looked, there's two guys in there. And they both

1 had guns.

2 Q Now, where is the cigarette rack located?

3 A It was right here (indicating).

4 Q Is that in front of or behind the counter?

5 A Yeah.

6 Q Was it in front of the counter or behind?

7 A Behind the counter.

8 Q Is the cigarette rack located in the area  
9 of the cash register?

10 A Well, yeah, I had plenty of room to go  
11 between the --

12 Q Now, you said you turned around and there  
13 were two guys there?

14 A Yeah.

15 Q Can you describe the two guys that you saw?

16 A I can describe one. He was a black guy.  
17 The other one, I could not see his face.

18 Q Why couldn't you see the other one's face?

19 A Because he had a towel or a scarf or  
20 something around over it.

21 Q You say they had guns?

22 A Yes, both of them had guns.

23 Q What if anything did they do with those  
24 guns?

25 A What did they do with them?

1 Q Yes, sir.

2 A Just stood there with them. One pointed at  
3 me, both of them was pointed at me.

4 Q Now, you've testified that one was a black  
5 guy?

6 A Yes.

7 Q Can you tell us how tall he was?

8 A I would say he was close to six foot tall.

9 Q Was he heavy?

10 A No, no.

11 Q How would you say that he was built?

12 A Well, like -- I wouldn't guess his weight  
13 but I would say around 145, 48 or 50, something like  
14 that.

15 Q Now, this black man, did he have anything  
16 over his face?

17 A No, huh-uh.

18 Q And the man that -- the other man that you  
19 described as having a towel or something over his  
20 face, was he taller or shorter than the black man?

21 A He looked shorter to me, the way he was out  
22 in front of that counter.

23 Q Now, when you saw these two men, where were  
24 they when you saw them?

25 A Well, the black guy was standing right side

1 of me behind the counter. And the other one was out  
2 in front of it.

3 Q Now, you said the black man was behind the  
4 counter with you?

5 A Yeah.

6 Q What if anything did the black man do when  
7 you realized he was behind the counter next to you?

8 A Well, he just stood there and -- the other  
9 boy, or man, whatever he was, he said, "cash  
10 register, cash register, cash register." And this  
11 one here behind there, he hit a couple of keys, but  
12 it didn't open.

13 Q When the black man came around behind the  
14 counter, did you see a gun?

15 A Well, when I saw him back there, I saw the  
16 gun. He had it -- already had it in his hand up  
17 here.

18 Q Was it pointed in any direction?

19 A Towards me, yes.

20 Q Now, when you saw that man behind the  
21 counter with the gun pointed at you, did you get  
22 scared?

23 A No, I didn't.

24 Q Did the other man with the towel over his  
25 face, did he have a gun?

1 A He had one too, pointed --

2 Q What was he doing with the gun?

3 A His was pointing it right towards me.

4 Q Now, when the man with the towel over his  
5 face said "cash register, cash register," what did  
6 you do?

7 A Well, to try to stay out of trouble, I hit  
8 the key and it opened.

9 Q And when you opened the cash register, what  
10 happened?

11 A Well, he got the money out of it.

12 Q Who got the money out of it?

13 A The one that was behind the counter.

14 Q And when you say he took the money, did he  
15 take the bills?

16 A He took it all, change and -- I don't think  
17 he took the pennies.

18 Q Now, was anything taken from you?

19 A Well, my wallet. I had about a hundred --  
20 at least \$140 in it.

21 Q Now, who took your wallet?

22 A The one back of the counter with me.

23 Q Now, who was the one behind the counter  
24 with you?

25 A The black guy.

1 Q Was anything else other than your wallet  
2 taken from you?

3 A Just what was in it.

4 Q Did you have anything in your wallet other  
5 than the hundred and forty dollars that you've  
6 testified about?

7 A I had my driver's license, Social Security,  
8 medicaid, all that stuff.

9 Q Did you have a coin that you had collected  
10 and saved?

11 A I had a coin that I had had since 1946.

12 Q Where was that coin?

13 A It was in my wallet in a one section of it.

14 Q What kind of coin was that that you had had  
15 since 19 --

16 A It was a half a dollar, but it was  
17 something -- I never saw one of them other than that,  
18 that's the only one I ever saw.

19 Q When you say it was a half dollar, what did  
20 it look like?

21 A Well, it had two horsemen on it, two men on  
22 horses. And it says in the -- Memorial to the Valor  
23 of the Soldiers of the South.

24 Q And was that coin taken from you?

25 A Yeah, it was in my wallet.

1 Q Why did you reach for your gun?

2 A Maybe I was stupid, maybe, I don't know.

3 But I did it.

4 Q At the time you reached for your gun in the  
5 drawer, did the black man have a gun in his hand?

6 A Sure, he had it.

7 Q And where was that gun at that time?

8 A Right pointed at my head.

9 Q And when you reached for the gun, what did  
10 the black man do?

11 A (Indicating).

12 Q You've made a motion with your finger?

13 A Well, you know what you do when you pull a  
14 trigger?

15 Q Did you hear gunshots?

16 A Yeah.

17 Q How many gunshots did you hear?

18 A I heard it three times.

19 Q Where did you hear those gunshots from?

20 A Right there beside of my head.

21 Q And at that time, when you heard those  
22 gunshots, who was standing beside you, the black man  
23 or the man with the towel over his face?

24 A The black guy. No, the guy with the towel  
25 over his face, he never -- if he ever come behind

1           Q       And after your wallet was taken and after  
2 the money was taken from the cash register, what  
3 happened after that, Mr. Demory?

4           A       They left. Well, no, now -- when he pulled  
5 these drawers open --

6           Q       When who pulled the drawers open?

7           A       The one back of the counter with me.

8           Q       Which one was behind the counter with you?

9           A       The black guy. When he got to the third  
10 one, that's where my gun was. And when he pulled it,  
11 that -- I reached for it, because I -- that's when I  
12 heard the gun go off three times.

13          Q       Now, the gun that you said was in the  
14 drawer behind the counter, what gun was that?

15          A       That was my gun.

16          Q       Which one?

17          A       My .38.

18          Q       And had you placed it there that morning?

19          A       I did.

20          Q       And that morning, was it loaded?

21          A       It was loaded.

22          Q       Now, when the black man went to open that  
23 drawer where your gun was located, what did you do?

24          A       I reached for that gun when he pulled it  
25 out.

1 that counter, I didn't see him.

2 Q Now, when you heard the gunshots,  
3 Mr. Demory, did you realize if you had been shot at  
4 that point?

5 A No, I did not.

6 Q What happened after you heard the gunshots?

7 A Well, when they left out, when they got the  
8 money and stuff and left out, I said, I'm going out  
9 there and see if I can see what they are traveling  
10 in. But when I got out there, I didn't see nothing.

11 Q What did you do at that time?

12 A I came back in and sit down on the stool  
13 and that artery had been hit and broken.

14 Q You're pointing to an area along your jaw  
15 and your neck on your right side, is that correct?

16 A Yeah (indicating). Looked like a stream of  
17 blood that size coming out of that thing. That's  
18 when I realized I had been shot.

19 Q Now, when you realized at that point that  
20 you had been shot and you were bleeding, what did you  
21 do?

22 THE COURT: Mr. Demory, would you  
23 like some water, sir?

24 THE WITNESS: No, thank you. I  
25 dialed a number, I thought I was dying, an

1 emergency number. But when I dialed it, I  
2 didn't get any response. And I called my  
3 house, told my wife to call them and tell  
4 them to come get me, that I had been shot.

5 BY MR. BRITT:

6 Q At that time, did you know if you had been  
7 shot any place other than in the area of the right  
8 side of your neck?

9 A No, no, I didn't.

10 Q Now, did there come a time when you learned  
11 that you had been shot in addition to the one time in  
12 your neck?

13 A When the ambulance got there and they  
14 started checking and putting gauze -- taping gauze to  
15 those places.

16 Q Were you shot in other places?

17 A Oh, yeah.

18 Q Where else were you shot?

19 A Right along here (indicating).

20 Q You're pointing to an area of your right  
21 chest, is that correct?

22 A Yes, yeah, one bullet went in there and  
23 came out at my back.

24 Q Were you shot anywhere else?

25 A Well, now, I don't know. I was hit right

1 here on my shoulder, like, next to my neck.

2 Q Which shoulder?

3 A This one.

4 Q Your right shoulder?

5 A Yeah. And the doctor told me when I was in  
6 the hospital --

7 MR. BOWEN: Object.

8 THE WITNESS: I had been shot  
9 three times.

10 THE COURT: The objection is  
11 sustained as to anything the doctor may  
12 have said. Members of the jury, you're not  
13 to consider that, that's not to take any  
14 part of your deliberations in this case in  
15 any respect.

16 BY MR. BRITT:

17 Q Were you taken to the hospital, Mr. Demory?

18 A Yes, I was.

19 Q Did you have to undergo any type of surgery  
20 to remove any bullets?

21 A No, I didn't.

22 Q How long did you remain at the hospital and  
23 what hospital did you go to?

24 A Southeastern, here in town.

25 Q How long did you stay there?

1           A       Well, I went in there on Wednesday and got  
2 out on Thursday -- Friday.

3           Q       After you were shot, Mr. Demory, did you  
4 look for your gun?

5           A       I looked in the drawer and it was gone.  
6 Yeah.

7           Q       And when was it that you looked in the  
8 drawer and discovered that your gun was gone?

9           A       Right after they left out of there.

10                   MR. BRITT: May I approach the  
11 Clerk?

12                   THE COURT: Yes, sir.

13                   MR. BRITT: If I could approach  
14 the witness?

15                   THE COURT: Yes, sir.

16 BY MR. BRITT:

17           Q       I'll show you what has been previously  
18 marked as State's Exhibit 66. Do you recognize what  
19 is contained in that photograph?

20           A       That's the store.

21           Q       When you say "that's the store," is that  
22 Lowry's Short Stop where you worked?

23           A       That was his at that time, correct.

24           Q       Is State's Exhibit 66 a fair and accurate  
25 representation of the appearance of the outside of

1 that store?

2 A Oh, yes.

3 Q And in that photograph, is the door to the  
4 store shown?

5 A Right here.

6 Q And are the windows that you previously  
7 testified about shown?

8 A Double-wide window right here.

9 Q Is the kerosene pump --

10 A Right there.

11 Q -- depicted in that photograph?

12 A Right there (indicating).

13 Q Mr. Demory, would that photograph help you  
14 in illustrating your testimony to the jury as to  
15 those things that we've just talked about, the  
16 location of the door, the window, and the kerosene  
17 pump?

18 A I know where the doors and windows were and  
19 the pump.

20 Q Can you use that photograph to show the  
21 jury those things?

22 A Well, if they want to look at it.

23 MR. BRITT: Your Honor, I ask  
24 that State's Exhibit 66 be admitted for  
25 illustrative purposes.

1 THE COURT: Counsel want to be  
2 heard?

3 MR. BOWEN: No, sir.

4 THE COURT: It's admitted for  
5 illustrative purposes.

6 BY MR. BRITT:

7 Q I'll show you what has been marked as  
8 State's Exhibit 67, ask you to look at that and tell  
9 me if you can identify what is depicted in that  
10 photograph?

11 A Yeah.

12 Q And what's depicted in State's Exhibit  
13 Number 67?

14 A Well, this is the counter, that's the cash  
15 register, windows over here, and right over there is  
16 the door.

17 Q Now, State's Exhibit Number 67, the  
18 photograph, is that a fair and accurate  
19 representation of the area --

20 A It is.

21 Q -- behind the counter where the cash  
22 register was located?

23 A It is.

24 Q Does it show the location of the drawers  
25 that you've testified about?

1           A       Well, there's one drawer. Well, here's  
2 one. That's one over there, and two, and three.

3           Q       And does it also show the location of the  
4 cash register and the counter in relationship to the  
5 door that you entered into the store?

6           A       Well, yes.

7           Q       And would State's Exhibit Number 67 help  
8 you illustrate your testimony to the jury about where  
9 you were and the things that occurred there in that  
10 store on July 15th, 1993?

11          A       Well, I could tell them, but now, whether  
12 they would know what I'm saying or not, but I was  
13 standing right here, right up against the counter  
14 there is where I was at.

15                   MR. BRITT: Your Honor, at this  
16 time I ask that State's Exhibit 67 be  
17 admitted for illustrative purposes.

18                   THE COURT: It's admitted without  
19 objection.

20                   MR. BRITT: And if Mr. Demory  
21 could step down in front of the jury box.

22                   THE COURT: Yes, sir.

23 BY MR. BRITT:

24           Q       Let me hand you what's been marked as  
25 State's Exhibit Number 67, photograph of the exterior

1 of the store. Can you use that to show the jury  
2 where you entered the store, where the windows were  
3 located, the kerosene pump?

4 A Yeah, well, this is the front door on the  
5 right side here. The only door to the building.  
6 This is the kerosene pump. And the gas pumps is  
7 right out here. They didn't get them in the picture  
8 for some reason.

9 Q Can you show these members of the jury, you  
10 can walk down this way.

11 A (Witness complies).

12 Q Let me hand you what's been marked as  
13 State's Exhibit Number 67, which a photograph of the  
14 inside of the store there at the counter area. Can  
15 you show the jury in that photograph where the cash  
16 register is located, where you were standing at the  
17 time you realized the two men were in the store?

18 A Well, right here is the door (indicating),  
19 this window is right here. And the cash register,  
20 and there's the three drawers I mentioned. And,  
21 well, I was standing right along here, and the guy  
22 was beside of me there.

23 Q Now, when you say the guy was beside of you  
24 there, you've indicated to a point on the  
25 photograph. Which guy was beside you behind that

1 counter?

2 A The black guy that was robbing me and shot  
3 me.

4 Q Where was the man with the towel over his  
5 fast standing?

6 A He was standing right about where you see  
7 that (indicating).

8 Q Where you see the man in that photograph?

9 A Yeah, yeah.

10 Q If you could show that to the jury?

11 A He was right out in front of the cash  
12 register there.

13 Q If you'll return to the witness stand.

14 A (Witness complies).

15 MR. BRITT: May I approach?

16 THE COURT: Yes, sir.

17 BY MR. BRITT:

18 Q Mr. Demory, let me show you what's been  
19 marked as State's Exhibit Number 59-A. I'm going to  
20 ask you to look at that and tell me if you can  
21 identify it.

22 A It's mine, but there's one thing changed  
23 about it.

24 Q What if anything is changed about it?

25 A This side here is darker than this side.

1 Q And when you last saw --

2 A They were the same color.

3 Q Now, for the record, you say this is mine,  
4 what is it that you're holding in your hands?

5 A The .38 Smith & Wesson.

6 Q Is that the gun that you bought in Maryland  
7 back in 1961?

8 A Yeah.

9 Q Is that the gun that you took with you to  
10 work at Lowry's Short Stop each morning when you went  
11 to open the store?

12 A It is.

13 Q Is that the gun that you took with you to  
14 Lowry's Short Stop on the morning of July 15th, 1993?

15 A It is.

16 Q And is that the gun that you reached for  
17 during the robbery of July the 15th, 1993?

18 A Yes.

19 Q Mr. Demory, when you went back into the  
20 store on July 15th, 1993, were you able to locate  
21 your .38 caliber Smith & Wesson revolver?

22 A Oh, no, huh-uh, no. I saw it a year after  
23 that, I think. The law, police, brought it over to  
24 the house and asked me if I could identify it.

25 Q Now, some police officers came to see you,

1 is that correct?

2 A Yeah.

3 Q You recognize Mr. Underwood, the man  
4 sitting on the front row with the beard?

5 A Yeah.

6 Q Is he one of the officers that came to see  
7 you?

8 A I think he was there that day.

9 Q And when the officers came to see you, they  
10 came to see you on more than one occasion, did they  
11 not?

12 A Oh, yeah. They were over there -- well,  
13 the first time they came was just to ask me  
14 questions. But that day, they brought this, they  
15 brought it over just to see if I could identify it.

16 Q Were you able to identify the .38 caliber  
17 Smith & Wesson revolver that's been marked as State's  
18 Exhibit Number 59-A?

19 A Yeah.

20 Q And when you identified the .38 caliber  
21 Smith & Wesson revolver, did you identify it as your  
22 gun?

23 A Yes.

24 Q And is that the gun that was taken from you  
25 during the robbery of July the 15th, 1993?

1           A       Well, if it isn't, it's just like it. Now,  
2 the -- that serial number -- looks like it's been  
3 scratched.

4           Q       Mr. Demory, you testified that the police  
5 came to see you on a number of occasions. The first  
6 time they came and talked with you about what had  
7 happened?

8           A       Yeah.

9           Q       And then they came and ask you if you could  
10 identify this gun?

11          A       That's right.

12          Q       And they came and saw you on another  
13 occasion, didn't they?

14          A       Lord, it's --

15          Q       Do you recall being shown some photographs?

16          A       Yeah, yeah, uh-huh.

17          Q       And when --

18                   MR. BRITT: May I approach?

19                   THE COURT: Yes, sir.

20 BY MR. BRITT:

21          Q       Mr. Demory, let me show you what's been  
22 marked as State's Exhibit Number 68. Ask you to look  
23 at that. Is that the series of photographs that the  
24 police officers came and showed to you?

25          A       Yes, it is.

1 Q And when the officers asked you to look at  
2 those photographs, did you do that?

3 A Yes.

4 Q And after looking at the photographs, were  
5 you asked if the black male who had robbed you, if  
6 any of those individuals looked like the man that had  
7 robbed you and shot you on July 15th, 1993?

8 MR. BOWEN: Object to foundation.

9 THE WITNESS: Yeah.

10 THE COURT: Do you want to be  
11 heard?

12 MR. BOWEN: No, sir.

13 THE COURT: Overruled. You may  
14 answer, Mr. Demory.

15 THE WITNESS: Yeah, yeah.

16 BY MR. BRITT:

17 Q And how many pictures are on State's  
18 Exhibit Number 68?

19 A Eight.

20 Q And which of the eight pictures did you  
21 tell the officers looked like the man who had robbed  
22 and shot you?

23 A The number three one.

24 Q Mr. Demory, is the man who robbed you --  
25 strike that.

1                   Is there anyone present in the courtroom  
2 that looks like the man who robbed and shot you on  
3 July the 15th, 1993?

4                   MR. BOWEN:   Object.

5                   THE WITNESS:  There is.

6                   THE COURT:  Sustained to the form  
7 of the question.  Rephrase.

8                   MR. BOWEN:  Judge, move to  
9 strike.

10                  THE COURT:  Motion to strike is  
11 allowed as to the form of the question.  
12 You may rephrase.

13                  MR. BOWEN:  Desire the jury be  
14 instructed.

15                  THE COURT:  Members of the jury,  
16 do not consider the last question of  
17 counsel for the State, Mr. Britt.  And if  
18 any answer was given, you're not to  
19 consider any answer that may have been  
20 given.  Those matters are not to take part  
21 in your consideration in this case in any  
22 way.  But you may rephrase, Mr. Britt.

23                  MR. BRITT:  Yes, sir.

24                  May I have just a second?

25                  THE COURT:  Yes, sir.

1 THE COURT: Specific question  
2 asked, was looks like it --

3 MR. BOWEN: Object.

4 THE COURT: Overruled. I'm  
5 referring him to the question that was  
6 objected to.

7 MR. BRITT: Yes, sir, that's what  
8 I was --

9 BY MR. BRITT:

10 Q Mr. Demory, can you identify the  
11 individual -- excuse me. Can you identify the black  
12 male who was in the store on July 15th, 1993 at the  
13 time you were robbed and shot?

14 A I can answer that this way: I can show you  
15 the one that looks just like the one that was there,  
16 that I say was there, but I could not stand up and  
17 swear to it.

18 Q And will you show us the person that you  
19 say looks like the man who shot you and robbed you on  
20 July 15th, 1993?

21 MR. BOWEN: Object.

22 THE WITNESS: The defendant right  
23 there.

24 THE COURT: Do you want to be  
25 heard, Mr. Bowen?

1 MR. BOWEN: No, sir, but I object  
2 to the form of the question.

3 THE COURT: The objection to the  
4 form of the question is overruled.  
5 Specifically, sir, do you want a voir  
6 dire?

7 MR. BOWEN: Yes, sir.

8 THE COURT: Members of the jury,  
9 there's a matter of law the Court must take  
10 up out of the hearing and presence of the  
11 jury. Please recall my instructions in  
12 that regard, don't worry or speculate about  
13 what takes place in the courtroom in your  
14 absence. If all members of the jury would  
15 step to the jury room at this time.

16 (Jury out at 10:18 a.m.)

17 THE COURT: Let the record  
18 reflect the following is being conducted in  
19 the absence of the jury.

20 Folks, I'm asking you that question  
21 because if you recall during the testimony  
22 of Mr. Demory which occurred out of the  
23 jury's presence in connection with the  
24 404(b) matters, there was no incourt  
25 identification.

1 MR. BOWEN: Correct.

2 THE COURT: There was evidence as  
3 to an out-of-court identification. The  
4 matter now being before the Court in the  
5 context of the incourt identification, you  
6 folks are entitled, if you want one, to a  
7 voir dire.

8 MR. BOWEN: Well, I'm looking at  
9 the record, and while I was objecting I was  
10 unable to hear. Apparently immediately  
11 after my objection, the witness stated the  
12 words, "the defendant right there."

13 Now, what we object to is the fact  
14 that the District Attorney has asked the  
15 question "Do you see a person in the  
16 courtroom that looks like the person that  
17 robbed you," or words to that effect. I'm  
18 not reading that out of the transcript.  
19 Now, in effect, he's saying can you  
20 identify the defendant.

21 THE COURT: Yes, sir.

22 MR. BOWEN: And the witness is  
23 saying no, I cannot identify the defendant,  
24 I cannot swear to it --

25 THE COURT: That's for them to

1           decide.

2                   MR. BOWEN:  -- But I can point  
3           out somebody that looks like him.

4                   THE COURT:  Now, your argument  
5           goes to the weight of the evidence, not the  
6           admissibility.  It's for them to decide  
7           what this evidence means, if anything.  So  
8           it's a weight argument, not admissibility.

9                   Where we are now, do you want a voir  
10          dire?  There has to be a showing of an  
11          incourt identification based on an  
12          independent recollection of the events and  
13          something that is not tainted by or tied to  
14          any out-of-court identification.

15                   MR. BOWEN:  And my understanding  
16          is before he can get to this, that is his  
17          predicate to lay, but I'll be glad to deal  
18          with it right now.

19                   THE COURT:  Yes, sir.

20          BY MR. BOWEN:

21                  Q       Mr. Demory, you say that some officers came  
22          to see you with some photographs, that is, a  
23          photograph array of eight pictures, is that right?

24                  A       Yes.

25                  Q       Now, when they came to see you with those

1 eight pictures, had you already seen some photographs  
2 on the TV or some pictures on the television screen  
3 of folks that you understood the State was alleging  
4 had killed James Jordan?

5 A No, I -- wait a minute. Let me ask you,  
6 did you say had I saw it before I saw it on TV or --

7 Q What I'm wondering is, let me take it a  
8 step at a time. You saw some photos at some point,  
9 some pictures on TV of some suspects that law  
10 enforcement was suggesting had something to do with  
11 the killing of James Jordan, didn't you?

12 A Well --

13 THE COURT: Had you seen any news  
14 accounts showing folks who had been  
15 arrested or were considered to be suspects  
16 in the James Jordan murder case?

17 THE WITNESS: I don't believe I  
18 had until after I saw the pictures.

19 THE COURT: Okay.

20 THE WITNESS: No, I don't think.  
21 I don't remember seeing them before that.  
22 Not on TV. But after they came over and  
23 showed them to me, then the screens was  
24 covered.

25 BY MR. BOWEN:

1 Q Now, do you recall -- do you actually  
2 recall when they came to show you the photographs?

3 A Well, no, not really, because I don't write  
4 down --

5 Q I know, sir. And I don't either. Do you  
6 remember if you were out of the hospital when they  
7 came?

8 A Pardon?

9 Q Were you out of the hospital when they came  
10 to show you photographs?

11 A Yes, I -- yeah, I had come home.

12 Q Can you recall about how long you stayed in  
13 the hospital?

14 A Well, I went in on Wednesday, around 10:30  
15 or 11:00, something like that.

16 THE COURT: Folks, he's testified  
17 as to when he went in.

18 THE WITNESS: And I stayed -- I  
19 got out on Friday morning.

20 THE COURT: Didn't mean to  
21 interrupt you, Mr. Demory. I'm sorry.

22 There's also on the record matters  
23 related to when the photo array was shown.

24 BY MR. BOWEN:

25 Q Now, when you were in the hospital and when

1 you came home, I take it you were convalescing and  
2 you watched a lot of TV, is that right?

3 A I'm sorry, I didn't --

4 Q You were recuperating from your injuries  
5 and you watched a lot of TV, didn't you?

6 A Well, you could call it that, but I could  
7 have got up and walked and went anywhere I wanted to  
8 at any time.

9 Q Now, since the time that you saw the photo  
10 array, you have seen the defendant, that is Daniel  
11 Green, also known as U'Allah, you have seen his  
12 picture on the TV screen and in the newspapers a  
13 number of times, haven't you?

14 A Yeah, since this, yes, yes, uh-huh.

15 Q Now, right after the incident, you talked  
16 to several newspaper reporters about your  
17 recollection of the identification of a person that  
18 shot you, didn't you?

19 A Well, the reason I said what I did, I  
20 couldn't today, I couldn't swear it was him, because  
21 in the community at this time out there, there's so  
22 many black people that look just alike. That's what  
23 I'm saying.

24 Q And that's basically what you told a  
25 reporter, if you remember her name, named Rene

1 Ferguson, is that correct, in a TV interview?

2 A Lord, I don't remember -- I remember  
3 talking to one or two, but I don't know their names.

4 Q But you have from the beginning said that  
5 out in the community where you worked in that store,  
6 a number of black men came in and out of your store  
7 that looked exactly alike, or looked just like, you  
8 said, the person that robbed you, is that correct?

9 A Yeah.

10 Q And so that when you indicate that  
11 Mr. Green may look like that person, he would be only  
12 one of many that looks like that person, is that  
13 correct?

14 A That's right.

15 Q Now, Mr. Demory, can you say whether or not  
16 you told any reporter or any person back yonder  
17 closer to when it happened, that person that robbed  
18 you was not Daniel Green?

19 A I never told nobody that, no, I didn't, and  
20 I never told anyone it was him, neither.

21 Q Now, in terms of the young black men that  
22 came in and out of your store about that time, about  
23 the time you were robbed --

24 THE COURT: Mr. Bowen, I don't  
25 mean to interrupt. Most of your questions

1 go to the weight issue, not the  
2 admissability. The test on the  
3 admissability is the incourt identification  
4 of the accused by any witness based solely  
5 on the recollection of the witness at the  
6 time the crime occurred, and is it free  
7 from any pretrial identification procedure  
8 influences of any respect. That's the only  
9 test. So what you're asking about goes to  
10 weight, not to independent recollection.  
11 Can we focus on independent recollection?

12 MR. BOWEN: Yes, sir.

13 BY MR. BOWEN:

14 Q Now, Mr. Demory, you have been consistent  
15 in what you have told, that is, you've told about  
16 your inability to distinguish Mr. Green from other  
17 black males, you have said that from the beginning,  
18 haven't you?

19 A That's right.

20 Q Has anything that you have seen on TV or in  
21 the newspapers made it more likely for you to sit in  
22 this Cumberland County courtroom and say that Daniel  
23 Green looks like the man that robbed you?

24 MR. BRITT: Objection to the  
25 form.

1 THE COURT: Sustained to the  
2 form.

3 BY MR. BOWEN:

4 Q Are you able to look back in your own  
5 memory and distinctly recall the face of the person  
6 that you saw in your store on the date in question?

7 A Well, it looked just like that face there.

8 Q Do you say that you're able, yourself,  
9 today, these almost three years later, to recall back  
10 and distinctly remember what you saw without any  
11 influence whatsoever from what you have seen on TV or  
12 what you have seen in any photographic array?

13 A That's right.

14 Q Let me ask you something. When the person  
15 was standing behind the counter, was that person  
16 between you and the window or was he on the other  
17 side of you from the window?

18 MR. BRITT: Objection.

19 THE WITNESS: Yes, he was next to  
20 the window.

21 THE COURT: Overruled.

22 BY MR. BOWEN:

23 Q So that it was daylight, almost 10:00 in  
24 the morning?

25 A Yeah.

1 Q You were looking out the window, is that  
2 right, and looking at this black person's face. So  
3 the window -- and there was no light coming over your  
4 shoulder, because there wasn't a window over there,  
5 was there?

6 A No.

7 Q So the light was coming straight into your  
8 face, and he was silhouetted against that light, is  
9 that correct?

10 A Well, yes, he was against -- next to the  
11 window.

12 Q Now, that situation caused his features to  
13 be even darker and less distinct, didn't they?

14 A But now --

15 MR. BRITT: Objection. This  
16 doesn't go to the -- this goes to weight  
17 again.

18 THE WITNESS: I can put a little  
19 something in there.

20 THE COURT: Yes, sir. Go ahead.

21 THE WITNESS: The light was not  
22 that bright out there, because there was a  
23 canopy or whatever you called it. It  
24 wasn't a plastic -- it was a thing built up  
25 there, and the sunlight didn't shine right

1 in there.

2 THE COURT: Yes, sir.

3 BY MR. BOWEN:

4 Q Not suggesting that the sun shown directly  
5 in, but what was out there was the daylight that you  
6 could see directly out the window, correct?

7 A Well, if it hadn't been for that light, I  
8 couldn't have seen to tell you what he looked like.

9 Q But there was no light -- now, you have  
10 talked to the officers a number of times about your  
11 identification, haven't you?

12 A I talked to them, I don't know how many. I  
13 would say about three or four hours in the hospital  
14 laying on that stretcher.

15 Q Now, did they show you any pictures at that  
16 time?

17 A Not right then, no, no, there hadn't been  
18 any made.

19 Q But they have shown you these -- this photo  
20 array more times than just the first time, haven't  
21 they, more times than the --

22 A I don't remember the police showing it to  
23 me but that one time.

24 Q You have seen faces on the TV a number of  
25 times of someone identified as Daniel Green, correct?

1           A     Oh, yeah.

2           Q     And has the time, the times that you have  
3     seen Daniel Green each time on TV in some form or in  
4     newspaper in some form, has seeing those images  
5     caused you to be more convinced that looks like the  
6     man, or less convinced?

7                         MR. BRITT:  Objection.

8                         THE COURT:  Sustained.

9     BY MR. BOWEN:

10          Q     Or has it had any effect at all?

11          A     No, it has not changed me one bit.  I'm  
12     still feeling today like I did the 15th of July in  
13     1993.  I still feel the same way.  It's -- if I could  
14     swear it was him, I would do it today, but I cannot  
15     do it.

16                         THE COURT:  What is it that  
17     you're saying to us, Mr. Demory?  Are you  
18     saying that in regard to identifying anyone  
19     as one of the persons in the store on the  
20     day in question --

21                         THE WITNESS:  What I'm saying is,  
22     there's so many black men in that community  
23     who looks just like this one, and I  
24     couldn't -- if I -- it could have been some  
25     of them, how do I know?  I could swear

1           against the wrong person, and I'm not going  
2           to do it.

3                         THE COURT:   So you're doing the  
4           best you can to be as truthful as you can?

5                         THE WITNESS:  That's right.

6                         THE COURT:  And what is it that  
7           you're telling us about any identification  
8           of anybody that with regard to anybody in  
9           this courtroom at this time?

10                        THE WITNESS:  Well --

11                        THE COURT:  Let me ask it this  
12           way.  Do you see in this courtroom anyone  
13           who was in the store on July 15th, 1993?

14                        THE WITNESS:  No.  Well, I don't  
15           know whether any of the police come out.  
16           If they did, they came out there after I  
17           left.

18                        THE COURT:  I apologize.  Do you  
19           see anyone in this courtroom who resembles  
20           the two men that came in and robbed you on  
21           July 15th, 1993?

22                        THE WITNESS:  Well, this one  
23           right here resembled one of them.

24                        THE COURT:  What do you base that  
25           on?

1 THE WITNESS: His features.

2 THE COURT: What you observed in  
3 the store at the time in question?

4 THE WITNESS: Yes, yes.

5 THE COURT: Anything further?

6 MR. BOWEN: That's all.

7 THE COURT: Anything further from  
8 the State?

9 MR. BRITT: No, sir.

10 THE COURT: Do you want to be  
11 heard, Mr. Bowen?

12 MR. BOWEN: No, sir.

13 THE COURT: Folks, the motion to  
14 suppress as to the incourt identification  
15 is denied. Objection is overruled, to  
16 which the defendant objects and excepts for  
17 the record. The Court will include in its  
18 findings of fact and conclusions of law  
19 pertinent findings and conclusions as  
20 relates to any incourt identification. But  
21 the defendant is entitled to have this  
22 exception noted for the record.

23 I also want to give you folks the  
24 opportunity to conduct any voir dire,  
25 because that has not been provided to you

1 in connection with your earlier evidence.  
2 Now, your issues are preserved in that  
3 regard.

4 MR. BOWEN: Yes, sir.

5 THE COURT: Anything further on  
6 behalf of the State?

7 MR. BRITT: No, sir.

8 THE COURT: Bring the jury in,  
9 please.

10 (Jury in at 10:34 a.m.)

11 THE COURT: The objection is  
12 overruled, exception is noted for the  
13 record. You may ask additional questions  
14 of Mr. Demory, Mr. Britt.

15 MR. BRITT: Yes. If I could find  
16 where we were.

17 THE COURT: Okay.

18 MR. THOMPSON: Page 43, line  
19 one.

20 BY MR. BRITT:

21 Q Mr. Demory, you've testified that you can  
22 show the one that looked just like the black --

23 MR. BOWEN: Object to the form.

24 THE COURT: Rephrase.

25 BY MR. BRITT:

1 Q Mr. Demory, can you identify the black male  
2 who was in the store on July 15th, 1993 at the time  
3 you were robbed and shot?

4 A Can I identify him?

5 Q Yes, sir.

6 A I can show you one that looks like him.  
7 That's --

8 Q Will you do that.

9 A This one right here (indicating).

10 Q And you're pointing to the defendant, is  
11 that correct?

12 A The defendant.

13 Q When you say the defendant looks like the  
14 man who robbed and shot you on July 15th, 1993, what  
15 do you base that on?

16 A His features, his -- just --

17 Q When you say his features, are you  
18 referring to his facial features?

19 A Yes.

20 Q What was it -- what is it about the  
21 defendant's facial features that resemble those of  
22 the man that robbed and shot you on July 15th, 1993?

23 A Well, now, I'm not a scientist or anything  
24 like that to tell you what changes things, but I can  
25 tell you this: When I look at something, I'm just

1 like any other human. I see something. Now, don't  
2 ask me to explain it to you what it is.

3 Q There in the store on July 15th, 1993, you  
4 had an opportunity to look at the two men?

5 A One of them.

6 Q And which one of the men did you have an  
7 opportunity to look at?

8 A This one here, the black one.

9 Q Now, the other man, the man with the towel  
10 over his face --

11 A Yes.

12 Q -- do you know whether he was a black man,  
13 an Indian man, or white man?

14 A No, I don't. I could not see his face.  
15 And I didn't pay any attention to his hands. I  
16 didn't look at that.

17 Q Now, the black man that was in the store on  
18 July 15th, 1993, how close was he standing to you at  
19 the time you got to -- that you looked at him?

20 A Two feet (indicating).

21 Q Were you wearing glasses?

22 A I was.

23 Q And were you wearing your glasses on July  
24 15th, 1993?

25 A I was.

1 Q With your glasses, do you have 20/20  
2 vision?

3 A According to the doctor, I do.

4 MR. BOWEN: Object to "according  
5 to the doctor," move to strike.

6 THE COURT: Objection comes  
7 late. The Court deems it waived. Motion  
8 to strike is denied.

9 BY MR. BRITT:

10 Q Mr. Demory, was there anything between you  
11 and the black man that shot you on July 15th, 1993  
12 that would have obstructed your opportunity to see  
13 him?

14 A No, no.

15 THE COURT: Mr. Demory, for  
16 clarification purposes, sir, you indicated  
17 that the defendant looks like the man who  
18 robbed you and shot you on July 15th,  
19 1993?

20 THE WITNESS: That's right.

21 THE COURT: What is it that  
22 you're saying, sir? Are you saying that he  
23 resembles the man in some respects? What  
24 exactly are you telling us?

25 THE WITNESS: His face features,

1 just the same face. But like I've said,  
2 there's so many of them looks just alike.

3 THE COURT: Yes, sir.

4 Mr. Britt, anything further?

5 MR. BRITT: No, sir, no other  
6 questions.

7 THE COURT: Anything on  
8 cross-examination, Mr. Bowen,  
9 Mr. Thompson?

10 MR. BOWEN: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. BOWEN:

13 Q Mr. Demory, you cannot and do not mean to  
14 identify this defendant as the person that shot you  
15 on the morning in question, do you?

16 MR. BRITT: Objection to form.

17 THE COURT: Rephrase, if you  
18 will.

19 BY MR. BOWEN:

20 Q You are not identifying the defendant as  
21 the person who shot you, are you?

22 MR. BRITT: Objection to form.

23 THE WITNESS: I have never told  
24 anybody that was him, but I have said it  
25 looks just like the one that did it.

1 BY MR. BOWEN:

2 Q You've also said from the beginning that  
3 there are many black men in your community that look  
4 just alike this defendant, correct?

5 A Yes.

6 Q And you have seen those folks in the  
7 community and in and out of your store, haven't you?

8 A Sure.

9 Q And you have told the officers and the news  
10 media and anybody that would ask you from the  
11 beginning that there are scores of persons who look  
12 like the defendant that you have seen?

13 A That's right.

14 Q Now, you lost a coin, is that correct, that  
15 morning?

16 A Pardon?

17 Q You lost a coin, the morning of the  
18 incident, is that right?

19 A I did.

20 Q Had two horsemen on there and an  
21 inscription about Valor of the Soldiers of the South,  
22 is that correct?

23 A Yes.

24 Q You've never seen that coin again, have  
25 you?

1 A No.

2 Q Now, when this individual was in your store  
3 on the morning in question, was he standing between  
4 the cash register and the window?

5 A Yes, right at that time.

6 Q And it was daylight, although the sun was  
7 not shining into the window, was it?

8 A No, it wasn't.

9 Q But the light of the day from the 9:30 to  
10 10:00 time frame there was coming through that  
11 window, is that right?

12 A Yeah.

13 Q And there was no window to your -- as you  
14 were facing the cash register there, the window was  
15 to your right, is that right?

16 A There was no window over there, no.

17 Q I mean, as you faced the cash register and  
18 out into the store area, then the window was to your  
19 right, is that correct?

20 A Yes.

21 Q It was over in that direction that the  
22 defendant was, or a person --

23 THE COURT: I apologize,

24 Mr. Demory, you nodded your head, sir, and  
25 the court reporter has to be able to take

1 down what was said. If you'll say yes or  
2 no, please, sir.

3 THE WITNESS: Well, yes.

4 THE COURT: Thank you, sir.

5 BY MR. BOWEN:

6 Q A person was over near the window, is that  
7 right?

8 A Yes.

9 Q And to your left, there was no window?

10 A That's right.

11 Q So the light that was lighting up the area  
12 around the cash register was coming from that window  
13 to your right where a person, a black person was,  
14 correct?

15 A Not necessarily. Because there was about  
16 an eight foot light right up over my head.

17 Q But now you had -- that was the inside  
18 light, not sunlight, correct?

19 A That's right. But that's where the light  
20 come from.

21 Q And you were looking into this black  
22 person's face and out through a daylight window?

23 A Oh, yeah.

24 Q And when you did that, that daylight coming  
25 in was causing that individual to be silhouetted or

1 look even darker, is that correct?

2 A Well, let me tell you something. You can  
3 call it what you want to, but I am sitting here right  
4 now looking at him, and he still looks the same as he  
5 did that day.

6 Q All right. And in two years since then,  
7 you've also seen those same individuals, scores of  
8 them, in the community who also look the same way,  
9 correct?

10 A That's right.

11 Q Now, you have also said, have you not, that  
12 looking down the barrel of two guns, you couldn't  
13 tell everything that was going on, correct?

14 A Well, that's what I asked the police when  
15 they -- in the hospital, and they were asking me all  
16 those questions, I asked one of them that.

17 Q Now --

18 A And he didn't answer it, though.

19 Q When the black individual came around to  
20 the counter, Mr. Demory, did the black individual do  
21 anything with respect to you or the cash register  
22 until the other individual made the remarks "cash  
23 register, cash register"?

24 A Well, the only thing he did, he was  
25 standing there with a gun, appeared like --

1           Q       Did he do anything else until the other  
2 person uttered those words "cash register, cash  
3 register"?

4           A       Well, now, I can't remember whether he got  
5 my wallet before that or after, but he took it out of  
6 my pocket.

7                       MR. BOWEN:   May I approach?

8                       THE COURT:   Yes, sir.

9       BY MR. BOWEN:

10           Q       Mr. Demory, you -- as to State's Exhibit  
11 59-A, you did not have the serial number of the gun  
12 that you lost to furnish law enforcement, did you?

13           A       I had never give it to them, I had never  
14 put it down on the record until I went to the  
15 Sheriff's Department to try to get a permit so I  
16 could take it home. And they said that we don't give  
17 out permits. But he wrote me a letter, but it said  
18 we don't need that serial number.

19           Q       And you lost it after that, or don't know  
20 where it got to, is that correct?

21           A       That's right.

22           Q       And did you tell the officers -- well,  
23 you're testifying that this weapon, State's 59-A, is  
24 different in the respect that now the one side is  
25 lighter and one side is darker, and that's not the

1 way it was with the gun that you lost?

2 A No, it -- they were close together.

3 Q Now, you never scratched your initials on  
4 the gun that you lost, did you?

5 A No, I didn't.

6 Q And there are no specific markings that you  
7 can point to on State's Exhibit Number 59 that would  
8 distinguish this as your gun, are there?

9 A No, sir, but when you've carried something  
10 around for 30 years or more, you don't have to have a  
11 mark on it. You look at it and --

12 Q Well, now, Mr. Demory, you have no idea how  
13 many guns were made just like this, do you?

14 A No, I don't.

15 Q But you were familiar enough with your gun,  
16 because you did carry it every day, to know that your  
17 gun had two pieces of wood on either side of the  
18 handle that were just alike in color?

19 A One piece on each side.

20 Q I'm sorry. One piece on each side. And  
21 they were both the same lightness or darkness,  
22 correct?

23 A Yes.

24 Q Now State's 59-A is different in that  
25 respect, isn't that true?

1           A     It is.

2           Q     And there are some other numbers on this  
3 gun that you never noticed or memorized or wrote  
4 down, that is, there's some other numbers on 59-A,  
5 correct?

6           A     That's right.

7           Q     So, in fact, you can't say for certain that  
8 State's 59-A is actually your gun by pointing to any  
9 marking on this gun, can you?

10          A     No, because there was no markings on my  
11 gun. But there's new markings on that one.

12          Q     And of course, you weren't there when those  
13 markings were made?

14          A     No, I wasn't.

15          Q     So you don't know of your own knowledge  
16 whether they are new markings or not, do you?

17          A     Well, they look new, some of them do, brand  
18 new.

19          Q     But you were not there when they were made?

20          A     No.

21          Q     So, the best you can say is that State's  
22 Exhibit 59-A looks like the gun that you had, except  
23 59-A has the different colored handles, correct?

24          A     Yeah.

25          Q     And I believe --

1 THE COURT: Rephrase.

2 MR. BOWEN: Pardon me, Your  
3 Honor, you're exactly right.

4 BY MR. BOWEN:

5 Q Mr. Demory, can you tell the jury the brand  
6 or the kind of ammunition that you had this gun  
7 loaded with, that is, State's 59-A?

8 A Right sitting here and tell them?

9 Q Haven't you said it was H & R ammunition?

10 MR. BRITT: Objection.

11 THE COURT: Overruled.

12 BY MR. BOWEN:

13 Q You haven't? Do you know?

14 A I don't remember saying that, no. But if I  
15 would have just had any thought about it, I would  
16 have brought some of it with me. I've got some at  
17 the house.

18 Q You still have some, is that right?

19 A Yeah. If I have to come back next week one  
20 day, I'll bring some with me.

21 Q Okay. All right.

22 THE COURT: Anything further,  
23 Mr. Bowen?

24 MR. BOWEN: No, sir.

25 THE COURT: Will there be any

1 redirect?

2 MR. BOWEN: Excuse me, I didn't  
3 turn him loose. I misunderstood you. I'm  
4 sorry, I thought you said were we through,  
5 and I said no, sir. I'm sorry.

6 THE COURT: I said anything else.

7 MR. BOWEN: Yes.

8 BY MR. BOWEN:

9 Q The black person that you referred to in  
10 your store, Mr. Demory, did you see any kind of  
11 headware on this individual, a hat or anything like  
12 that?

13 A Just a little bit louder.

14 Q This black person that came into your  
15 store, did you see any kind of headware on him like a  
16 hat?

17 A What he had on his head?

18 Q Yes, sir.

19 A He had a cap.

20 Q All right. Now, state whether or not he  
21 had sunglasses, sometimes referred to as shades.

22 A I can't tell you that, I don't remember.

23 Q You wouldn't deny that he had that on, is  
24 that correct?

25 MR. BRITT: Objection to form.

1 THE COURT: He said he didn't  
2 remember.

3 MR. BOWEN: All right.

4 BY MR. BOWEN:

5 Q Now, Mr. Demory, when the officers first  
6 talked to you about that case, they talked to you in  
7 the hospital, correct?

8 A That's right.

9 Q And they came to you and asked you if you  
10 could identify either of the two individuals that  
11 came into your store that day, correct?

12 A That's right.

13 Q And you told those officers at that time  
14 that you could not identify those persons if they  
15 walked in and you saw them right then, could you?

16 A That's right.

17 Q And you have since said those words since  
18 you talked to those officers, that is, that if the  
19 persons came and walked right in before you, you  
20 didn't think you could recognize them or identify  
21 them, correct?

22 A I could tell you, but I could have said he  
23 looked like him, but I couldn't have sworn. And I  
24 still don't swear until I leave here.

25 Q You told the officers that to you, many

1 young black men looked alike?

2 A Yes, I did.

3 Q Many there in your community and otherwise,  
4 is that correct? Are you indicating yes? We need it  
5 for the record?

6 A Yes, yes. Sorry, I didn't mean to do  
7 that.

8 THE COURT: That's okay. That's  
9 all right.

10 MR. BOWEN: That's all.

11 THE COURT: Any redirect  
12 examination, Mr. Britt?

13 REDIRECT EXAMINATION

14 BY MR. BRITT:

15 Q Mr. Demory, the .38 caliber Smith & Wesson  
16 revolver that you purchased in Maryland back in 1961,  
17 when you bought it, was it new?

18 A Yes, it was.

19 Q And after you -- when you bought it, did it  
20 have -- when you bought the gun, did it have anything  
21 on it that you could attach a strap to?

22 A Yes.

23 Q And what was it that was on that gun that  
24 you could attach a strap to?

25 A Well, it was -- I don't know what they are

1 called, but it was a little thing that, with a stem  
2 on it that goes to the end of the grip there. And it  
3 had a little, you know, opening like where you could  
4 put a strap through it.

5 Q And after you bought your gun, did you  
6 remove what you described as that little stem where  
7 the strap would go?

8 A Yes, I did.

9 Q And when you removed that little stem where  
10 the strap could go, what was left there on your gun?

11 A Nothing, just like that is.

12 Q Was there any type of opening on the  
13 handle?

14 A There's a little hole in the --

15 MR. BRITT: May I approach?

16 THE COURT: Yes, sir.

17 BY MR. BRITT:

18 Q Mr. Demory, let me show you State's Exhibit  
19 59-A. You testified that when you purchased the  
20 Smith & Wesson .38 caliber revolver back in 1961, it  
21 had a stem on it where a strap could be you attached,  
22 is that correct?

23 A Well, it was a little flat thing, but then  
24 it had the little stem that would go down in there.

25 Q Let me show you State's Exhibit 59-A, is

1 that a piece where the strap would go?

2 A In here.

3 Q Is that piece on that gun?

4 A No, the piece isn't here. I threw it away  
5 when I took it off.

6 Q And on State's Exhibit Number 59-A, is  
7 there a hole where that piece would go?

8 A Right there (indicating).

9 Q Mr. Demory, other than the handles being --  
10 one side of the handle being darker than the other,  
11 is there anything different about that gun?

12 A One thing. When that -- I thought I pushed  
13 that in to get to thing to open up, but it don't do  
14 it now, you have to pull it out. Oh, yeah. Yes,  
15 yes, I see that now.

16 Q You push in the stem to remove the  
17 cylinder?

18 A Yeah.

19 Q Or to open the cylinder, is that correct?

20 A Yeah. But I don't know what the problem  
21 is, unless that was just laying on something that  
22 changed that color.

23 Q And when you say that you've had something  
24 for over 30 years and you can look at it and tell  
25 it's yours -- that was your testimony?

1 MR. BOWEN: Object to leading.

2 THE COURT: Sustained.

3 BY MR. BRITT:

4 Q How long did you own your .38 caliber Smith  
5 & Wesson?

6 A Well, 60 -- 30 -- 32 years?

7 Q When was the last time you had it?

8 A The day that they -- July the 15th of '93,  
9 when it was taken from me.

10 MR. BRITT: I don't have any  
11 other questions.

12 THE COURT: Anything further?

13 RECROSS EXAMINATION

14 BY MR. BOWEN:

15 Q The hook that goes on the butt of that gun,  
16 you have seen .38s like that gun before, haven't you?

17 A Oh, yeah.

18 Q And that hook is for some sort of a leather  
19 strap of some sort, isn't it?

20 A Yeah.

21 Q And you've never seen any person using such  
22 a leather strap in connection with the use of one of  
23 those guns, have you?

24 A Yes, I have. Somebody, I've seen somewhere  
25 have that strap on there so they wouldn't lose it or

1 somebody could reach and take it away from them or  
2 something.

3 Q But you didn't use that strap, and normally  
4 people don't use that strap?

5 MR. BRITT: Objection.

6 THE COURT: Sustained as to the  
7 form of the question. He can't testify  
8 what other folks could have done.

9 BY MR. BOWEN:

10 Q You have seen other guns that were like  
11 that where in a strap wasn't employed, haven't you?

12 A Yes.

13 Q Was there something mechanically different  
14 about the gun that you just noticed?

15 A Well, that -- the only thing I could say  
16 was that wooden grip has changed colors a lot.

17 Q All right. And the gun that you kept, you  
18 didn't allow that gun to get rusty, did you?

19 A Well, I didn't have it out in the rain.

20 Q It wasn't rusty on the day that it was  
21 taken from your place, was it?

22 A Huh-uh.

23 Q Sir?

24 A No.

25 MR. BOWEN: Thank you. That's

1 all.

2 MR. BRITT: No other questions.

3 THE COURT: Members of the jury,  
4 I instruct you that evidence has been  
5 received tending to show -- and as I  
6 previously instructed you, what the  
7 evidence in this case does show is for you  
8 the members of the jury to determine.  
9 Evidence has been received tending to show  
10 that the defendant, Daniel Green, also  
11 known as U'Allah, together with another,  
12 committed a robbery with a dangerous weapon  
13 on July 15th, 1993. And that during the  
14 course of this robbery, he took or stole  
15 a .38 caliber Smith & Wesson revolver,  
16 which the State contends and the defendant  
17 denies the defendant used in the commission  
18 of the offenses for which he is now being  
19 tried, specifically first degree murder,  
20 robbery with a dangerous weapon, and  
21 conspiracy to commit robbery with a  
22 dangerous weapon.

23 And I instruct you that this evidence  
24 is received solely for the purpose of  
25 showing the identity of the person who

1 committed the crime or crimes charged in  
2 this case if it was committed, and that  
3 this evidence is also being received to  
4 show, if believed, that the defendant had  
5 the intent, which is a necessary element of  
6 a crime or crimes charged in this case.

7 Now, members of the jury, I instruct  
8 you that if you believe this evidence, then  
9 you may consider it, but only for the  
10 limited purpose for which it has been  
11 received. And I further instruct you that  
12 you may not use this evidence as general  
13 character evidence, rather you may use this  
14 evidence, if you believe it, only in  
15 deciding the existence of the fact or facts  
16 for which it has been offered and  
17 received. Specifically, as find that it  
18 bears on the issue of the identity of the  
19 defendant as the perpetrator of the crime  
20 or crimes charged in the matters which are  
21 now before the jury, and as it may bear on  
22 the intent of the defendant if you find  
23 that this evidence is believable.

24 Now, members of the jury, you are to  
25 use this evidence only for the limited

1 purpose for which it has been received and  
2 for which you have just received the  
3 instructions of the Court and to no other  
4 purpose.

5 Do all members of the jury understand  
6 the instruction just given? If you do,  
7 please so indicate by raising your right  
8 hands at this time.

9 Let the record reflect that all 13  
10 members of the jury responded  
11 affirmatively.

12 Folks, we're going to take a recess at  
13 this time. We're going to be at recess  
14 until 11:25. Please report directly back  
15 to the jury room at 11:25. Once we  
16 determine that all of you are present,  
17 we'll be prepared to go forward with the  
18 continuation or presentation of evidence in  
19 this case.

20 Please recall also that it is your  
21 duty to abide by all prior instructions of  
22 the Court concerning your conduct in this  
23 recess. Everyone please remain seated, the  
24 members of the jury are excused at this  
25 time until 11:25.

1 (Jury out at 11:04 a.m.)

2 THE COURT: Mr. Demory, you may  
3 step down. Any matters from either  
4 counsel?

5 MR. BRITT: No, sir.

6 THE COURT: We're at ease until  
7 11:25.

8 (Brief recess.)

9 THE COURT: Let the record  
10 reflect that all counsel are present, the  
11 defendant is present in open court.

12 Mr. Horne, do we have all members of  
13 the jury secured in the jury room?

14 THE BAILIFF: Yes, sir, they are.

15 THE COURT: Mr. Britt, are you  
16 ready to go forward?

17 MR. BRITT: Yes, sir.

18 THE COURT: If you'll bring the  
19 jury in, please.

20 (Jury in at 11:25 a.m.)

21 THE COURT: You may call your  
22 next witness.

23 MR. BRITT: Your Honor, at this  
24 time we call Detective James Carter.

25 THE COURT: If you'll come up,

1           please, sir.  If you'll place your left  
2           hand on the Bible and raise your right and  
3           be sworn.

4                               **JAMES CARTER,**

5           being first duly sworn was examined and testified as  
6           follows:

7                               DIRECT EXAMINATION

8                               THE COURT:  If you'll state your  
9           full name for the record.

10                              THE WITNESS:  James Carter.

11                             THE COURT:  And if you will spell  
12           your last name for the benefit of the court  
13           reporter.

14                             THE WITNESS:  C A R T E R.

15                             THE COURT:  Mr. Britt.

16           BY MR. BRITT:

17           Q       Mr. Carter, by whom are you employed?

18           A       Robeson County Sheriff's Department.

19           Q       How long have you worked for the Robeson  
20           County Sheriff's Department?

21           A       12 years.

22           Q       And in what capacity do you work with the  
23           Sheriff's Department at this time?

24           A       Detective.

25           Q       How long have you been a detective with the

1 Sheriff's Department?

2 A Four years.

3 Q Back in July, specifically July 15th, 1993,  
4 were you dispatched to Lowry's Short Stop located on  
5 Highway 72 in Robeson County?

6 A Yes, sir.

7 Q And when you were dispatched on July 15th,  
8 1993 to Lowry's Short Stop, what was the information  
9 that you received at that time?

10 A We had gotten the information of an armed  
11 robbery.

12 MR. BOWEN: Object.

13 THE COURT: Do you want to be  
14 heard, sir?

15 MR. BOWEN: No, sir.

16 THE COURT: What's the basis?

17 MR. BOWEN: Hearsay.

18 THE COURT: Being explained for  
19 what -- or offered for what purpose?

20 MR. BRITT: His conduct.

21 THE COURT: Do you want a  
22 limiting instruct?

23 MR. BOWEN: Yes, sir.

24 THE COURT: Members of the jury,  
25 the testimony now being elicited as to any

1 information the witness testifies he  
2 received and what he did pursuant to that  
3 information is being offered for the  
4 limited purpose of explaining the  
5 subsequent conduct of the witness and not  
6 for the truth of the matters asserted. I  
7 instruct you that you may consider this  
8 evidence for that limited purpose and no  
9 other purpose.

10 Yes, sir, Mr. Britt.

11 BY MR. BRITT:

12 Q After receiving the information that there  
13 had been an armed robbery at that location, did you  
14 go directly to the store?

15 A Yes, sir.

16 Q And when you arrived at the store, what did  
17 you find?

18 A When I arrived at the store, I found blood  
19 in the yard and blood in the store, and behind the  
20 counter.

21 Q Were there any people present in the store  
22 when you arrived?

23 A Yes, sir, other officers were there.

24 Q Was Clewis Demory present when you arrived  
25 at that store?

1           A     No, sir.

2                     MR. BRITT:   May I?

3                     THE COURT:   Yes, sir.

4   BY MR. BRITT:

5           Q     I'll show you what has been marked as  
6   State's Exhibit 66. Do you recognize what is  
7   contained in that photograph?

8           A     Yes, sir, that's the pictures of the front  
9   of the store.

10          Q     Show you what's been mark as State's  
11   Exhibit Number 67, do you recognize what is depicted  
12   there?

13          A     Yes, sir, that's behind the counter.

14          Q     Now, you said you arrived, you located  
15   blood inside the store?

16          A     Yes, sir.

17          Q     In what areas did you find any blood or  
18   what appeared to be blood?

19          A     Going in the door, around the counter, and  
20   to the back of the counter, there was a chair there,  
21   it was covered in blood.

22                     THE COURT:   A what there?

23                     THE WITNESS:  A chair.

24                     MR. BOWEN:   We desire to be  
25   heard, Your Honor.

1 THE COURT: Ladies and gentlemen,  
2 there's a matter of law the Court must take  
3 up. Please recall my instructions, don't  
4 worry or speculate about what takes place  
5 in the courtroom in your absence. If all  
6 members of the jury would step to the jury  
7 room.

8 (Jury out at 11:33 a.m.)

9 THE COURT: Mr. Britt, the record  
10 does not reflect what was shown by counsel  
11 for the State to counsel for the  
12 defendant.

13 MR. BRITT: Yes, sir.

14 THE COURT: Which apparently gave  
15 rise to the request to be heard.

16 MR. BRITT: Yes, sir.

17 THE COURT: If you'll do that  
18 now.

19 (State's Exhibit 75 was  
20 marked for identification.)

21 MR. BRITT: May I approach the  
22 witness?

23 THE COURT: Yes, sir. Well, I  
24 mean, simply state for the record what it  
25 is that you've got in your hand.

1                   MR. BRITT: I have in my hand  
2                   three photographs. The first one is marked  
3                   State's Exhibit Number 75. It is a  
4                   photograph depicting, if one were looking  
5                   through the door of Lowry's Short Stop into  
6                   the store, it's an area which would be the  
7                   public area of the store, where the cola  
8                   box is located, some other food stands are  
9                   located. Also shows in that walkway what  
10                  appear to be -- what the State would  
11                  contend would be blood.

12                 THE COURT: All three photographs  
13                  deal with the photographs taken at the  
14                  crime scene?

15                 MR. BRITT: Yes, sir.

16                 THE COURT: July 15th, 1993  
17                  event?

18                 MR. BRITT: Yes.

19                 THE COURT: All three photographs  
20                  show blood?

21                 MR. BRITT: Yes, sir.

22                 THE COURT: Basis of the  
23                  objection?

24                 MR. BOWEN: Judge, the photograph  
25                  looking down the aisle appears to be

1 separate and distinct from the last two  
2 photographs. Our particular objection goes  
3 to the last two photographs as they show  
4 blood surrounding an area of a green  
5 chair. I would not say that they show  
6 precisely exactly the same square inch, but  
7 the last two photographs are highly  
8 inflammatory. Those are two that have the  
9 most blood, and both show area around the  
10 green chair, more or less about 10 percent  
11 of the area.

12 And what I say under Hennis, those  
13 last two photographs being the obvious most  
14 bloody and inflammatory, are not necessary  
15 to be both shown. But in the sense that  
16 they show something distinct from the first  
17 photograph, it may be that one can be  
18 shown, but certainly not both.

19 THE COURT: May I see the  
20 photographs, sir?

21 (State's Exhibits 76, 77 were  
22 marked for identification.)

23 MR. BRITT: Yes, sir. The two in  
24 question are State's Exhibit 76 and 77.  
25 There's 75.

1 THE COURT: There's no objection  
2 to State's Exhibit 75, is that accurate?

3 MR. THOMPSON: No, sir.

4 THE COURT: 75, I'm putting  
5 aside. Is there an objection to both 76  
6 and 77?

7 MR. BOWEN: I think our objection  
8 goes to using them both together. They  
9 appear to depict a scene separate from the  
10 first photograph, but they are duplicitous  
11 as to each other unless the State can  
12 articulate to use one on top of the other,  
13 seems to carry almost the same geographical  
14 area of the store.

15 MR. BRITT: Your Honor, if you'll  
16 look at State's Exhibit 76, there is what  
17 appears to be a roll of white paper that  
18 extends down from the top portion -- if I  
19 can approach?

20 MR. BOWEN: I would like to see,  
21 too.

22 MR. BRITT: State's Exhibit  
23 Number 76, those are photographs that were  
24 taken behind the counter of the store.  
25 State's Exhibit 76 shows cash register

1 tape, which would indicate the area -- if I  
2 can get the other photograph, the one that  
3 is already in evidence.

4 State's Exhibit 67, which is already  
5 in evidence, shows white tape.

6 THE COURT: Continuation?

7 MR. BRITT: Yes, sir.

8 THE COURT: What about this one?

9 MR. BRITT: State's Exhibit 77 is  
10 a photograph -- if you recall, Mr. Demory's  
11 testimony was he thought he was at the  
12 cigarette stand. The cigarette stand is  
13 depicted in this photograph. Also depicted  
14 in this photograph, as Mr. Carter has  
15 previously testified, he found blood by an  
16 area of a chair. And that is what is  
17 depicted here.

18 THE COURT: My concern is this:  
19 We are dealing with matters not involved in  
20 the issues before the jury. Specifically,  
21 charges of first degree murder of James  
22 Raymond Jordan, conspiracy to commit  
23 robbery with a dangerous weapon of James --  
24 well, James Raymond Jordan, and robbery of  
25 James Raymond Jordan.

1           What we are getting into what has been  
2 referred to in a number of cases as a mini  
3 trial of other matters. It's be being  
4 offered to corroborate the testimony of  
5 Mr. Demory. His testimony was admitted for  
6 the limited purpose of 404(b) testimony  
7 bearing on intent.

8           Objection to State's Exhibit 77 is  
9 sustained. You folks want to be heard as  
10 to -- 75 not being objected to? I  
11 understand there is no objection as to 76  
12 if 76 and 77 don't come in together, is  
13 that accurate?

14           MR. BOWEN: Except for the  
15 overall objection on the grounds that --

16           THE COURT: What I just said.

17           MR. BOWEN: You've got a  
18 limitation already. They don't really go  
19 to those limited materials.

20           THE COURT: That's any concern.  
21 We can accomplish this by his testimony.  
22 We're getting into photographs which depict  
23 bloody scenes. This is the area -- this is  
24 one of those dangerous areas where we  
25 really don't need this. The testimony is

1 sufficient, especially when we're talking  
2 about a matter which is collaterally  
3 involved in the case. I'm sustaining the  
4 objection. I'm going to make it easy. The  
5 Court -- where is 75? I've got it.

6 Court on its own motion excludes 75,  
7 76, and 77.

8 MR. BRITT: For the record, I  
9 would note my exception and ask that 75 and  
10 76 be made a part of the record for  
11 purposes of appellate review.

12 THE COURT: Yes, sir. This is  
13 that area where it's, in my view, tempting  
14 but dangerous, not necessary. A clean case  
15 on appeal, if an appeal arises, or rises,  
16 is my objective.

17 MR. BRITT: Yes, sir.

18 THE COURT: Objection to 77 and  
19 76 as noted is sustained. The Court on its  
20 motion excludes 75.

21 Bring the jury back in.

22 Now, if the issue is raised on  
23 cross-examination, that's another thing.

24 MR. BRITT: Yes, sir.

25 (Jury in at 11:39 a.m.)

1 THE COURT: Mr. Britt, do you  
2 have additional questions for Mr. Carter?

3 MR. BRITT: Yes, sir.

4 THE COURT: Now, the ruling does  
5 not apply to any testimony.

6 MR. BRITT: Yes, sir, I  
7 understand that.

8 THE COURT: Okay.

9 BY MR. BRITT:

10 Q Mr. Carter, when you got to the store --  
11 got to Lowry's Short Stop on July 15th, what if  
12 anything did you see?

13 A I saw blood on the outside and blood inside  
14 the store and around the counter.

15 Q And when you say you saw blood on the  
16 outside --

17 A On the ground.

18 Q And then you saw blood inside the  
19 store --

20 MR. BOWEN: Object to leading.

21 THE COURT: Complete your  
22 question.

23 BY MR. BRITT:

24 Q -- where inside the store did you see  
25 blood?

1           A       Down the aisle as you go in the door, and  
2 around the counter.

3           Q       And when -- describe for us the inside of  
4 this store, please.

5           A       As you walk in the store, the counter was  
6 to the left, there was a drink box to the right. And  
7 you walk down an aisle. There was blood on the  
8 floor. Then you go around the end of the counter to  
9 the back of the counter, was blood on the floor and  
10 blood in a chair that was sitting behind the cash  
11 register.

12          Q       And behind the counter, do you recall  
13 seeing a cigarette stand?

14          A       Yes, sir.

15          Q       Where was it located in relationship to the  
16 cash register, if you remember?

17          A       If I remember -- it was before you get to  
18 the cash register.

19          Q       And when you got to the store, was the cash  
20 register opened or closed?

21          A       It was open.

22          Q       Was there any money inside the cash  
23 register?

24          A       I don't recall if there was any change in  
25 it.

1 Q Can you describe the amount of blood you  
2 saw behind the counter?

3 A Behind the counter was a lot of blood where  
4 he had laid there for a little while and it started  
5 to --

6 MR. BOWEN: Object.

7 THE COURT: Now, you may describe  
8 what you observed. You may not draw any  
9 conclusions or speculate as to the meaning  
10 of anything.

11 THE WITNESS: Yes, sir.

12 THE COURT: The objection is  
13 sustained.

14 BY MR. BRITT:

15 Q Can you describe for us the amount of blood  
16 that you saw behind the counter?

17 A There was a lot of blood behind the  
18 counter.

19 Q Can you describe for us the blood that you  
20 saw there when you walked into the store?

21 A Just blood drips and blood and tracks.

22 Q How long did you stay there at the store?

23 A Probably 45 minutes.

24 Q From there, where did you go?

25 A From there, I talked to -- I went and

1 talked to some witnesses that had been to the  
2 store.

3 MR. BOWEN: Object to where they  
4 had been.

5 THE COURT: Now, the objection to  
6 the response is sustained. You may state  
7 what you did.

8 BY MR. BRITT:

9 Q What if anything did you do?

10 A I went and talked to some witnesses.

11 Q And where -- who specifically do you recall  
12 talking to?

13 A I talked to Carlton Oxendine and Patricia  
14 Locklear -- without my notes.

15 Q Now, after talking with those witnesses,  
16 did you ever go to Southeastern General Hospital?

17 A Other officers had went to the hospital.

18 Q Did you ever talk with Clewis Demory?

19 A The next morning I talked to him.

20 Q When you spoke with Mr. Demory, where was  
21 he at that time?

22 A He was in the hospital.

23 Q And did you make notes of your conversation  
24 with Mr. Demory?

25 A Yes, sir.

1 Q What was your purpose in going -- talking  
2 to Mr. Demory on July 16th, 1993?

3 A To try to get some information on what  
4 exactly had happened.

5 Q On July 16th, 1993, what if anything did  
6 Clewis Demory tell you about the robbery that had  
7 occurred on July the 15th, 1993?

8 MR. BOWEN: Object, and desire  
9 instruction.

10 THE COURT: It's being offered  
11 for what purpose?

12 MR. BRITT: Corroboration.

13 THE COURT: Members of the jury,  
14 I instruct you that the testimony now being  
15 elicited from the witness before you,  
16 Detective Carter, as to statements he made  
17 testified were made to him by Mr. Clewis  
18 Demory, a previous State's witness in this  
19 case, are being offered for the limited  
20 purpose of corroborating the prior  
21 testimony of Mr. Clewis Demory.

22 Now, as I previously explained to you,  
23 the term "corroboration" means as tending  
24 to strengthen or to support. And I  
25 instruct you that to the extent that you

1 find that this testimony is corroborative  
2 of the prior testimony of Mr. Clewis  
3 Demory, you may consider it for that  
4 limited purpose and for no other purpose.

5 Yes, sir, you may answer.

6 THE WITNESS: Mr. Demory stated  
7 he was at the store at about 10:00 a.m. A  
8 black male came into the store and asked  
9 for something, but he can't remember what  
10 it was.

11 He stated he went back out of the  
12 store. Then two males came in the store.  
13 The black male and another boy, with  
14 something around his face.

15 They both had pistols. The short one  
16 with something on his face, said, "give us  
17 the money, give us the money." And he told  
18 the other one to raise the drawer and see  
19 if any was under it. The tall one reached  
20 in the cash register, and I grabbed for my  
21 gun. And he shot me and grabbed my gun out  
22 of my hand. I would say he shot me three  
23 times. And one of them came around where I  
24 was at, the tall one, and got my wallet out  
25 of my back pocket.

1           And then they left and went out the  
2           door. I tried to call 911 but I didn't get  
3           an answer. So I called my wife and told  
4           her to get someone out there, that I had  
5           been shot. Then I went to the door to see  
6           if I could see someone, but I didn't see no  
7           one at that time. So I went back and sat  
8           down. And Lewis Oxendine came up, seen  
9           what had happened, and he went to his truck  
10          and called for help. And a short while  
11          later, the ambulance came and took me to  
12          the hospital.

13 BY MR. BRITT:

14           Q       At that time, did Mr. Demory give you a  
15           description of either of the individuals that came  
16           into the store?

17           A       Yes, sir.

18           Q       And what if any description did Mr. Demory  
19           give you?

20           A       He could only tell me about, he said one of  
21           the boys -- black male, tall, slim built. He  
22           couldn't give me a description of the other boy.

23           Q       Now, after you talked with Mr. Demory on  
24           July 16th, Mr. Carter, did you have an occasion to go  
25           back to that store on August the 11th of 1993?

1 A Yes, sir.

2 Q And on August the 11th of 1993, was  
3 Mr. Clewis Demory at the store?

4 A No, sir.

5 Q Do you recall who was at the store on  
6 August the 11th, 1993, when you arrived?

7 A The owner was there, Curlin Lowry. And  
8 there some other people there I don't remember.

9 Q And on August the 11th of 1993, had you  
10 been requested to go back -- or dispatched back to  
11 the store?

12 A Yes, sir.

13 Q What if any information did you receive on  
14 August the 11th of 1993 that caused you to go back to  
15 the store?

16 A To pick up a bullet that had been found in  
17 the store.

18 Q And when you arrived at the store on August  
19 the 11th, 1993, who if anyone was there?

20 A Mr. Curlin Lowry was there.

21 Q On August the 11th of 1993, did you receive  
22 any items from Mr. Curlin Lowry?

23 A Yes, sir, a small bullet.

24 Q What if anything did you do with the bullet  
25 that you received from Curlin Lowry on August the

1 11th, 1993?

2 A I turned it over to Stewart McFadder who  
3 was then the ID officer.

4 Q Upon receiving that bullet, did you place  
5 it in any type of evidence bag?

6 A Yes, sir, a small plastic bag.

7 Q Did you place your initials on that bag?

8 A Yes, sir.

9 Q Did you seal that bag?

10 A Yes, sir.

11 Q Did you make any notes of the time and the  
12 date when you received that bullet?

13 A I put a date on the bag and my  
14 initials.

15 MR. BRITT: May I approach?

16 THE COURT: Yes, sir.

17 BY MR. BRITT:

18 Q I'm going to show you what's been marked as  
19 State's Exhibit 41-A, ask you to examine this plastic  
20 bag and tell me if you can identify it.

21 A Yes, sir.

22 Q How are you able to identify State's  
23 Exhibit 41-A?

24 A I placed my initials on the front of the  
25 bag and the date that I received it.

1 Q And what initials of yours appear on that  
2 bag?

3 A J.E.C.. The time is 2:05 p.m.

4 Q Did you place any other markings on that  
5 bag?

6 A Lowry's Grocery.

7 Q At the time you placed those markings on  
8 State's Exhibit 41-A, what if anything was contained  
9 inside State's Exhibit 41-A?

10 A I placed the bullet inside the bag.

11 Q And you're able to see a bullet inside of  
12 State's Exhibit 41-A?

13 A Yes, sir.

14 Q The plastic bag containing the bullet  
15 marked as State's Exhibit 41-A, at the time you  
16 turned it over to Stewart McFadder, in what condition  
17 was the plastic bag?

18 A The same it is now.

19 Q Was it sealed?

20 A Yes, sir, sealed.

21 Q Are there any additional markings that  
22 appear on state 41-A that were not present at the  
23 time you made the markings?

24 A Yes, sir, other initials and numbers.

25 Q And as best you can, is the bullet in

1 substantially the same condition today as it was in  
2 when you received it on August the 11th, 1993?

3 A Yes, sir.

4 MR. BRITT: May I approach the  
5 Clerk?

6 THE COURT: Yes, sir.

7 BY MR. BRITT:

8 Q Mr. Carter on August 15th, 1993, did you  
9 have an occasion to go with other officers to a  
10 mobile home located off of Highway 710 south of U.S.  
11 74 here in Robeson County?

12 A Yes, sir.

13 Q And on August 15th, 1993, when you went to  
14 that mobile home located off of 710 south of U.S. 74,  
15 did you know who lived there?

16 A Yes, sir.

17 Q Who lived at that mobile home that you went  
18 to on August the 15th of 1993?

19 A The Demery, it was the Demery residence.

20 Q When you say it was the Demery residence,  
21 to your knowledge did Larry Martin Demery live at  
22 that residence?

23 A Yes, sir.

24 Q Who did you accompany to that residence on  
25 August 15th, 1993?

1 A Detective Donald Britt.

2 Q When you arrived at the mobile home, were  
3 there any cars parked in the area around the mobile  
4 home?

5 A Yes, sir.

6 Q What if any cars were parked in the area  
7 around the mobile home?

8 A Ford -- small Ford car.

9 Q Can you describe that car for us?

10 A It was a small beige colored with a dent on  
11 the front fender, left fender.

12 Q Were any photographs taken of that car on  
13 August the 15th, 1993?

14 A Yes, sir.

15 Q And why were any photographs taken of that  
16 car on August 15th, 1993?

17 A To show witnesses that may have seen it at  
18 the store.

19 Q Had you received information -- had you  
20 received a description of a car --

21 A Yes, sir.

22 MR. BOWEN: Object, move to  
23 strike.

24 THE COURT: Do you want to be  
25 heard, Mr. Bowen?

1 MR. BOWEN: No, sir.

2 THE COURT: For what purpose is  
3 this being offered?

4 MR. BRITT: Offered to explain  
5 his conduct in taking the photograph.

6 THE COURT: Members of the jury,  
7 I instruct you that the testimony now being  
8 elicited from Mr. Carter as to any  
9 description that he may have been given is  
10 being offered for the limited purpose of  
11 explaining his subsequent conduct,  
12 specifically in explaining his conduct on  
13 or about August 15th, 1993. You may  
14 consider this evidence for that limited  
15 purpose. You may not consider it for the  
16 truth of the matters asserted with regard  
17 to any description that may have been  
18 given, but simply to explain the subsequent  
19 conduct on August 15th, 1993 and for no  
20 other purpose.

21 Yes, sir.

22 BY MR. BRITT:

23 Q Mr. Carter had you received a description  
24 of a car --

25 A Yes, sir.

1 Q Let me back up. Let me finish the  
2 question. Had you received a description of a car  
3 that was seen leaving Lowry's Short Stop on July  
4 15th, 1993?

5 A Yes, sir.

6 Q What description did you receive and from  
7 whom did you receive it?

8 A Carlton Oxendine said he seen the car. It  
9 was a small Ford with a dent on the left front  
10 fender.

11 Q And when you went to the Demery trailer on  
12 August 15th of 1993, can you describe the car that  
13 you saw there?

14 A Small beige Ford car with a dent in the  
15 fender.

16 MR. BRITT: May I approach?

17 THE COURT: Yes, sir.

18 BY MR. BRITT:

19 Q I'm going to show you State's Exhibit  
20 Number 70 and State's Exhibit Number 71 , ask you to  
21 look at those and tell me if you can identify what is  
22 depicted in those photographs?

23 A Yes, sir. This is the car that we seen  
24 there in the yard.

25 THE COURT: Now, when you say

1           there in the yard, you need to tell us  
2           exactly what you're talking about.

3                         THE WITNESS:   At Larry Demery's  
4           residence, this is the car that was in the  
5           yard.

6   BY MR. BRITT:

7           Q       State's Exhibit 70 and 71, are they fair  
8           and accurate representations of that car as you saw  
9           it on August 15th of 1993?

10          A       Yes, sir.

11          Q       Were there any marks or any dents on the  
12          beige Ford car that you saw at Larry Demery's home on  
13          August 15th of 1993?

14          A       Yes, sir.

15          Q       Where were any marks or any dents located  
16          on the beige Ford that you saw at Larry Demery's  
17          residence on August 15th, 1993?

18          A       The left front fender.

19                         MR. BRITT:   Your Honor, at this  
20          time I ask that State's Exhibit 70 and 71  
21          be admitted.

22                         THE COURT:   Folks want to be  
23          heard?

24                         MR. BOWEN:   Illustrative purposes  
25          or substantive purposes?   Object to

1 substantive evidence.

2 THE COURT: Mr. Britt?

3 BY MR. BRITT:

4 Q Mr. Carter, the scene depicted in each of  
5 the photographs, does it depict the scene as you  
6 observed it on August 15th, 1993?

7 A Yes, sir.

8 Q And was the car in the same condition as  
9 you saw it as it's depicted in the photographs?

10 A Yes, sir.

11 MR. BRITT: Your Honor, at this  
12 time I move for admission.

13 THE COURT: The objection is  
14 sustained if it's offered for substantive  
15 purposes.

16 MR. BRITT: Your Honor, at this  
17 time we request it be moved for  
18 illustrative purposes.

19 THE COURT: I understand there's  
20 no objection to that.

21 MR. BOWEN: That's correct.

22 THE COURT: Without objection,  
23 State's Exhibit 70 and 71 are admitted  
24 for the limited purpose of illustrating the  
25 testimony of the witness now before you.

1           You may consider these exhibits for that  
2           limited purpose to the extent that you find  
3           State's Exhibits 70 and 71 of aid or  
4           assistance in understanding that  
5           testimony.

6                     Yes, sir.

7                     MR. BRITT: Your Honor I ask that  
8           Mr. Carter be allowed to step down in front  
9           of the jury.

10                    THE COURT: Yes, sir.

11           BY MR. BRITT:

12                    Q       Using State's Exhibit 70 and 71, State's  
13           Exhibit 70, show the jury the area -- does it depict  
14           the area where the car was located, or where you  
15           found it in the yard?

16                    A       To the right of the yard, as you pull up in  
17           driveway.

18                    Q       State's Exhibit 71, is that a close-up  
19           photograph of the marked or dented area of the left  
20           front fender?

21                    A       Yes, sir.

22                    Q       If you'll step down this way.

23                    A       (Witness complies).

24                    Q       If you'll return to the witness stand.

25                    MR. BRITT: I don't have any

1 other questions.

2 THE COURT: Any  
3 cross-examination?

4 MR. BOWEN: Yes, Your Honor,  
5 thank you.

6 CROSS-EXAMINATION

7 BY MR. BOWEN:

8 Q Mr. Carter, you say that the first time you  
9 went to see Mr. Demery, I believe you said he was in  
10 the hospital?

11 A Yes, sir.

12 Q And you asked him, Mr. Carter, about what  
13 he believed was his capacity perhaps in the future to  
14 identify the individuals that came into the  
15 store?

16 MR. BRITT: Objection to the  
17 form.

18 THE COURT: Sustained as to the  
19 form. You may rephrase.

20 BY MR. BOWEN:

21 Q You asked him if he could identify the  
22 people, didn't you, that came into the store?

23 A Yes.

24 Q Sir?

25 A Yes.

1 Q And he told you that he could not, didn't  
2 he?

3 A Yes, sir.

4 Q And you went ahead and attempted to get  
5 some kind of physical description, is that right?

6 A Yes, sir.

7 Q Did Mr. Demory give you any description  
8 whatsoever of specific facial features of the -- of  
9 either individual that came into his store?

10 A No, sir.

11 Q And specifically, of a black individual,  
12 did he give you any facial features whatsoever?

13 A No, sir, he could not.

14 Q Did he describe anything about the eyes,  
15 mouth, ears of this person?

16 A No, sir.

17 Q Did he describe any kind of markings on  
18 this person?

19 A No, sir.

20 Q Did he describe the nose, the eyebrows or  
21 any face hair that this person might or might not  
22 have had?

23 A No, sir.

24 Q Did he even mention the subject of face  
25 hair?

1 A No, sir.

2 Q Did you ask him about face hair?

3 A I asked him if he had a beard or not or  
4 mustache.

5 Q What did he say?

6 A No, he couldn't tell you.

7 Q Couldn't tell you one way or another?

8 A That's correct.

9 Q Did he say anything about the individual  
10 wearing shades or sunglasses?

11 A No, sir.

12 Q Now, he said that the other individual had  
13 his face covered up, is that correct?

14 A Yes, sir.

15 Q Did he say that that individual had his  
16 eyes and eyebrows covered up, that is, the person  
17 other than the black individual?

18 A No, sir, he said he could see his eyes, but  
19 that's all.

20 Q All right. Did he say whether or not the  
21 individual other than the black individual had his  
22 hands covered up?

23 A He didn't say whether they were covered or  
24 not, but he couldn't tell me his race.

25 Q So you concluded that he was unable to see

1 his hands, or if he did, he didn't notice?

2 MR. BRITT: Objection to the  
3 form.

4 THE COURT: Sustained to the form.

5 MR. BOWEN: All right. I'll  
6 withdraw it.

7 BY MR. BOWEN:

8 Q Now, did Mr. Demory give you any idea of  
9 how long he had the opportunity to look upon the  
10 individual, that is, the black individual?

11 A I don't have any other -- on the stand at  
12 this time, I don't recall.

13 Q Now, did he indicate to you that after the  
14 black individual went behind the counter with him,  
15 that the black individual was standing between him  
16 and the window that was opened to daylight?

17 A Yes, sir, that's where he said he was  
18 standing.

19 Q So it was then your understanding that as  
20 Mr. Demory looked upon this black individual, the  
21 background would have been the daylight through the  
22 window, not sunlight, but just the daylight view?

23 MR. BRITT: Objection to the  
24 form.

25 THE COURT: Sustained.

1 BY MR. BOWEN:

2 Q What was your understanding as to where the  
3 black individual was standing according to what  
4 Mr. Demory told you with relation to the window?

5 MR. BRITT: Objection to the  
6 form.

7 THE COURT: Sustained. You may  
8 ask him where he said Mr. Demory said the  
9 man was standing.

10 BY MR. BOWEN:

11 Q Tell us that, please.

12 A Between him and the window.

13 Q You saw the window, didn't you?

14 A Yes.

15 Q And what time of the day or night did you  
16 see the window?

17 A I got there just a few minutes after 10:00.

18 Q So you saw it approximately the same time  
19 of day that the black person who was alleged to have  
20 been in the store, correct?

21 A Yes, sir.

22 Q Now the sun was not shining in the window  
23 when you saw it, was it?

24 A I don't recall that.

25 Q But you could see the light of day outside,

1 correct?

2 A Yeah.

3 Q Do you recall what the view through the  
4 window was?

5 A It was clear.

6 Q There was no corresponding window at the  
7 other end of the counter, was there?

8 A No, sir.

9 Q And the only other light that was present  
10 in the store when you viewed the window at about  
11 10:00 in the morning was the artificial light, is  
12 that correct?

13 A Yes, sir.

14 Q Do you know if that was fluorescent or  
15 incandescent type light?

16 A I don't recall. I think it was a long  
17 light, I'm not sure.

18 Q Now, Mr. Carter, Mr. Demory told you in the  
19 statement that you wrote down after talking to him  
20 that he had his gun in his hand when he was shot,  
21 didn't he?

22 A Yes.

23 Q Sir?

24 A Yes, he said he grabbed the gun out of his  
25 hand.

1 Q So it was your understanding it was in his  
2 hand when he was shot?

3 MR. BRITT: Objection to form.

4 THE COURT: Sustained.

5 BY MR. BOWEN:

6 Q You wrote down that individual grabbed it  
7 out of his hand, correct?

8 A Yes, sir.

9 Q So he didn't tell you that he was just  
10 reaching for his gun; he told you that he had his gun  
11 out of the drawer and in his hand, didn't he?

12 MR. BRITT: Objection.

13 THE COURT: Sustained. That's  
14 not -- you need to rephrase.

15 BY MR. BOWEN:

16 Q Did Mr. Demory tell you whether he had  
17 actually gotten his hand on his gun before he was --

18 THE COURT: Your question was hand  
19 on gun out of drawer. There's no evidence  
20 as to "out of drawer."

21 BY MR. BOWEN:

22 Q Let me ask you this: Did he tell you that  
23 he had actually gotten his hand on his gun or not?

24 A He said he grabbed the gun out of my hand.

25 Q Do you know whether his hand was in the

1 drawer or not, or did he tell you?

2 A It don't mention it in his statement.

3 Q Did you ask him?

4 A No.

5 Q Now, he described a commemorative coin to  
6 you, did he not or did he tell you about what if  
7 anything that he was missing?

8 A No, sir, he told other officers.

9 Q And they talked to him at another time to  
10 your knowledge?

11 A Yes, sir.

12 Q Now, Mr. Carter, State's Exhibit 41-A,  
13 plastic bag with some type of projectile in it, you  
14 did not find that projectile, did you?

15 A I didn't find it in the store, no.

16 Q You received that projectile from someone  
17 else?

18 A Yes, sir.

19 Q To your knowledge, no officer found that  
20 projectile anywhere, did they?

21 A No, sir.

22 Q Did Mr. Demory tell you which one of the  
23 two individuals was the taller?

24 A Yes, sir.

25 Q And which did he say was the taller, the

1 black individual or the other individual he could not  
2 see?

3 A The black guy, the black individual.

4 Q Now, did he state whether or not the person  
5 he could not see uttered any words?

6 A Yeah.

7 Q And what words were they?

8 A Let's see, the short one with something  
9 over his face said, give us the money.

10 Q All right. So when Mr. Demory talked to  
11 you about what the other individual, the one with the  
12 face covering, he did not say the words "cash  
13 register, cash register" did he?

14 A He told me, he said give us the money, give  
15 us the money.

16 Q And did he tell you then what the black man  
17 started to act with regard to getting the money?

18 A I'm sorry, I didn't --

19 Q Did the black man then start to act after  
20 giving the order get the money?

21 A Yes.

22 MR. BRITT: Objection to form.

23 THE COURT: Well, you got a copy  
24 of the statement?

25 MR. BOWEN: Yes, sir.

1 THE COURT: It's  
2 cross-examination, you can lead.

3 BY MR. BOWEN:

4 Q Did the black man move towards the cash  
5 register after the other man uttered the words that  
6 you've talked about, get the money?

7 MR. BRITT: Objection.

8 THE COURT: Sustained to form.

9 BY MR. BOWEN:

10 Q What did you say -- after the man that was  
11 masked or whose face was covered said what he said,  
12 what did Mr. Demory tell you the --

13 THE COURT: You're asking him  
14 questions that would involve personal  
15 knowledge. He was not present. You can  
16 ask him what Mr. Demory told him and then  
17 you can lead.

18 MR. BOWEN:

19 Q What did Mr. Demery tell you he did after  
20 the words were uttered --

21 A He told the other one to raise the drawer  
22 and see if any money was under it.

23 Q Now, Mr. Demory informed you that he had  
24 been shot, correct?

25 A Yes.

1 Q And you saw blood?

2 A Yes.

3 Q In the places Mr. Britt has asked you to  
4 describe in his questions, is that correct?

5 A Yes.

6 Q You see blood when there's been a shooting,  
7 don't you?

8 A I seen blood, yes, sir.

9 Q I'm saying, you generally see blood when  
10 there's been a shooting, don't you?

11 A Yes, sir.

12 Q Was officer G.V. Bass present when you  
13 questioned Mr. Demory?

14 A No, sir.

15 Q Were you aware of a written report  
16 concerning the matters -- concerning the matters  
17 Mr. Demory described to you, that is, Mr. Clewis  
18 Demery described to you, were you aware of a written  
19 report on the subject by officer G.V. Bass, had you  
20 ever seen it?

21 A Yes, sir, yes, sir.

22 Q Do you know whether Mr. Bass was first on  
23 the scene after the incident or whether you were?

24 A He was before me.

25 Q Is that G.V., that is, V as in victory?

1 A Yes, sir.

2 Q G.V. Bass. Had you consulted with officer  
3 Bass before you went to talk to Mr. Demory?

4 A Yes, sir.

5 MR. BOWEN: That's all, Your  
6 Honor.

7 THE COURT: Anything on redirect  
8 examination, Mr. Britt?

9 MR. BRITT: No, sir.

10 THE COURT: May Mr. Carter be  
11 released, folks?

12 MR. BRITT: Yes, sir.

13 MR. BOWEN: Yes, sir.

14 THE COURT: Thank you, sir, you  
15 may come down.

16 MR. BRITT: Your Honor, at this  
17 time we call Special Agent Tony Underwood.

18 THE COURT: Yes, sir.

19 TONY UNDERWOOD,  
20 being first duly sworn was examined and testified as  
21 follows:

22 DIRECT EXAMINATION

23 THE COURT: Sir, if you'll state  
24 your full name for the record.

25 THE WITNESS: Tony Underwood.

1           U N D E R W O O D.

2                   THE COURT: Thank you.

3 BY MR. BRITT:

4           Q       By whom are you employed?

5           A       I'm a Special Agent with the North Carolina  
6 State Bureau Of Investigation.

7           Q       How long have you been employed by the SBI?

8           A       Six and a half years.

9           Q       In that six and a half years, were you ever  
10 stationed here in Robeson County?

11          A       Yes, sir, I was.

12          Q       How long were you assigned to Robeson  
13 County?

14          A       Just a little less than five years from  
15 December of 1989 until November the 1st, 1994.

16          Q       And as and one of the SBI agents stationed  
17 here in Robeson County, what were your duties and  
18 responsibilities?

19          A       My duties from December of 1989 until June  
20 the 1st of 1992, was that of a drug agent, meaning I  
21 primarily investigated crimes involving allegations  
22 of narcotics trafficking. After June the 1st of  
23 1992, my status changed to that of a general criminal  
24 agent meaning that I investigated broader crimes  
25 ranging from embezzlement homicide, rape, et cetera.

1 Q And as one of the resident SBI agents in  
2 Robeson County were you involved in the investigation  
3 of the James Jordan homicide?

4 A Yes, sir, I was.

5 Q And as a resident is SBI Agent here in  
6 Robeson County were you also involved or participate  
7 in the investigation of the Clewis Demory robbery  
8 that occurred on July 15th, 1993?

9 A Yes, sir.

10 Q On August the 16th of 1993, did you  
11 participate or were you participating in the  
12 investigation of the Jordan homicide?

13 A Yes, sir, I was.

14 Q On August the 16th of 1993, what if any  
15 investigative action did you take in connection with  
16 the Jordan homicide?

17 A I prepared a probable cause affidavit to  
18 submit along with a search warrant application to a  
19 Robeson County Magistrate, asking for a search  
20 warrant to be issued for the residence of the  
21 defendant Daniel Green, located at Bob's landing  
22 mobile home parks, lot Number 6, off of the Back  
23 Swamp Road just south of U.S. 74.

24 Q Now, on August the 16th of 1993, had the  
25 defendant already been arrested in connection with

1 the Jordan homicide?

2 A Yes, sir, he had.

3 Q On August the 16th after preparing the  
4 affidavit and the application for search warrant, who  
5 did you take that application and affidavit to?

6 A Robeson County Magistrate Randy Canady.

7 Q And for what purpose and for what items did  
8 you prepare the affidavit and the affidavit for the  
9 search warrant?

10 MR. BOWEN: Object.

11 THE COURT: Do you want to be  
12 heard, sir.

13 MR. BOWEN: No, sir.

14 THE COURT: Overruled. You may  
15 answer, Mr. Underwood.

16 THE WITNESS: We were looking for  
17 a wedding ring, golf shoe spikes, compacted  
18 disk, a .38 caliber revolver, .38 caliber  
19 ammunition, papers, documents, or writings,  
20 related to the victim, James Jordan, and/or  
21 his relatives, a video camera, a camera,  
22 video cassette tapes, photographs,  
23 undeveloped film, proceeds, and/or  
24 instrumentalities of a crime.

25 BY MR. BRITT:

1           Q       Had you received information that you  
2 included in your affidavit in applying for the search  
3 warrant?

4                   MR. BOWEN:   Object.

5                   THE COURT:   Complete your  
6 question.   I.

7           Q       Had you received information that you  
8 included in your affidavit in applying for  
9 the search warrant in regard -- that  
10 related to a body that had been discovered  
11 in South Carolina?

12                   MR. BOWEN:   Object.

13                   THE COURT:   Overruled, you may  
14 answer.

15                   THE WITNESS:  Yes, sir.

16 BY MR. BRITT:

17           Q       What if any information did you include in  
18 your affidavit as it related to a body this had been  
19 discovered in South Carolina?

20                   THE COURT:   Do you want a limit,  
21 instruction Mr. Bowen.

22                   MR. BOWEN:   Yes, sir.

23                   THE COURT:   Members of the jury,  
24 the matters now being elicited through the  
25 witness before you Mr. Underwood, are being

1 offered and received in this case for the  
2 limit purpose of corroborating prior  
3 State's witnesses in this case, and you may  
4 consider this testimony for that limited  
5 purpose and for no other purpose.

6 THE WITNESS: On Tuesday, August  
7 the 3rd, 1993, the body of an unidentified  
8 black male was discovered in a creek off of  
9 Highway 35 dash 34, McCormick road in  
10 Marlboro county, South Carolina. The body  
11 was taken to the Marlboro County coroner they  
12 were and then to Lee Bury Hospital where  
13 pathologist Dr. Joel Sexton performed an  
14 autopsy. Dr. Sexton conclude that had this  
15 individual suffered a fatal penetrating .38  
16 caliber gunshot wound to the right side of  
17 his chest an traveling through the left  
18 lower lobe of the lung. The body had a  
19 moderate amount of decomposition at the  
20 time it was discovered. The body will  
21 extensive dental restoration present that  
22 included crowns, a bridge, a root canal,  
23 and some unfinished type of dental  
24 restorations.

25 On Friday, August 13th, 1993, dental

1 x-rays of the victim were obtained from  
2 Mr. Jordan's dentist, Dr. Lawrence S.  
3 Seitlin, of Charlotte. Those records were  
4 compared to the individual who had been  
5 located at the Moore creek on August --  
6 that comparison confirmed that the victim  
7 was that of James Raymond Jordan. Also  
8 authority with the Cumberland County  
9 Sheriff's Department transported those same  
10 records to Dr. Barbarro, a forensic dentist  
11 in Cumberland County, and Dr. Barbarro also  
12 positively identified the records of the  
13 unidentified victim to to be that of James  
14 Raymond Jordan.

15 BY MR. BRITT:

16 Q In your affidavit in applying for the  
17 search warrant, did you include any information about  
18 a red Lexus automobile?

19 A Yes, sir.

20 Q What if any information did you include in  
21 your affidavit about a red Lexus automobile?

22 A On Thursday Kay, August the 5th, 1990  
23 three, a red colored, 1992 Lexus was discovered in a  
24 wooded area off of Highway 24 near Interstate 95 in  
25 Cumberland County. It was determined that this

1 vehicle belonged to the victim James Raymond Jordan.  
2 The vehicle was later transported to a storage  
3 facility in Stedman, North Carolina, and the vehicle  
4 had been stripped and most of the glass had been  
5 broken out of it. And the cellular phone had also  
6 been taken from the vehicle.

7 Q In your affidavit in applying for the  
8 search warrant did you include information about --  
9 that had been relayed to you in regard to interviews  
10 that had been conducted by members of the Cumberland  
11 County Sheriff's Department?

12 A Yes, sir.

13 Q What if any information did you include in  
14 your affidavit?

15 A Interviews conducted by detectives with the  
16 Cumberland County Sheriff's Department identified two  
17 suspects as possibly being involved in the shooting  
18 death of James Raymond Jordan. Beth of those  
19 individuals are residents of Robeson County.

20 Q Was a search warrant issued by the  
21 Magistrate here in Robeson County?

22 A Yes, sir.

23 Q Do you recall at what time the search  
24 warrant was issued?

25 MR. BOWEN: Object, document

1 speaks for itself.

2 THE COURT: I was reading a note  
3 that was just passed up to me, I  
4 apologize. Let me look at the screen.

5 You're asking him for his independent  
6 recollection.

7 MR. BRITT: Yes, sir.

8 THE COURT: Overruled. You may  
9 answer.

10 THE WITNESS: 7:10 p.m.

11 BY MR. BRITT:

12 Q What date?

13 A August 16th, 1993.

14 Q After the search warrant was issued at  
15 7:10, as best you can recall on August 16th, 1993,  
16 what did you do?

17 A Proceeded to the residence described in the  
18 search warrant, the residence of the defendant.

19 Q Did any officers accompany you?

20 A Yes, sir.

21 Q What other officers accompanied you there?

22 A SBI Special Agent Kim Heffney, SBI Special  
23 Agent Barry Lea, L E A, Robeson County detectives  
24 Anthony Thompson, and detective Erich Von Hackney.

25 Q And when you went to the residence

1 described in the search warrant, did you find anyone  
2 there?

3 A No, sir, there was no one there, and the  
4 doors were secured when we arrived.

5 Q When you say the doors were secured, what  
6 do you mean by that?

7 A They were locked.

8 Q And upon finding that the doors -- strike  
9 that.

10 Where did you go, what residence did you go  
11 to?

12 A The mobile home located at lot Number 6 in  
13 Bob's Landing Mobile Home Park.

14 Q Can you describe that mobile home for us?

15 A It's a single wide mobile home, I believe  
16 it was white in color. I don't recall the color of  
17 the trim, I believe it was green. White colored  
18 single wide mobile home with green trim. Third  
19 trailer from the rear and the fifth trailer from  
20 rural paved road 64, the back Swamp Road.

21 Q Upon discovering that the trailer was  
22 locked and no one was at home, what did you then do  
23 Mr. Underwood?

24 A Special Agent Lee and I left there, while  
25 other officers remained at this mobile home. We went

1 to the residence of Mr. Daniel Green's uncle, Burnie  
2 Green, located on the Austin Loop Road and attempted  
3 to obtain a key for the residence.

4 Q Now, had you previously met the defendant's  
5 uncle Burnie Green?

6 A Yes.

7 Q When had you previously met him?

8 A Sunday evening, August 15th, 1993.

9 Q Was Mr. Burnie Green at the residence?

10 A He was at his residence, yes, sir.

11 Q Was he able to give you a key to the mobile  
12 home that was described in the search warrant?

13 A He did not have one.

14 Q Where did you go from there?

15 A Returned to the mobile home of the  
16 defendant Daniel Green.

17 Q And when you arrived back at the mobile  
18 home were there any officers there?

19 A The same officers were present that were  
20 there when we left.

21 Q Had anyone else arrived at that location?

22 A Not that I recall.

23 Q And upon returning to the defendant's  
24 trailer, what happened then?

25 A Detective Hackney used a prying tool and

1 entered through the front door of the mobile home.

2 Q And after the front door of the mobile home  
3 was opened, what if anything did you do with the  
4 search warrant?

5 A I executed the search warrant to the  
6 residence, although there was no one there.

7 Q When you say you executed the search  
8 warrant, what you did do?

9 A I read the face of the search warrant aloud  
10 and left the copy of it there.

11 Q After you had read the face of the search  
12 warrant, was there any search conducted of the inside  
13 of the trailer?

14 A Yes, sir.

15 Q Were certain officers directed to certain  
16 rooms of the trailer?

17 A Yes, sir.

18 Q Do you recall which officers went to which  
19 rooms?

20 A Initially, I recall that Special Agent  
21 Barry Lea went to the room on the right after  
22 entering the front door. I don't recall specifically  
23 who went where after that. It was sort of a small  
24 confined area.

25 Q What if any room -- how was the room to the

1 right of the front door furnished?

2 A It was a bedroom, I recall that there was a  
3 bed, a shop type vacuum cleaner was there beside the  
4 bed on the floor. There was a closet in there.  
5 Other than that, that's about what I recall.

6 Q This shop type vacuum cleaner that you saw,  
7 can you describe it, please?

8 A It was a brand name Genie, G E N I E, 12  
9 gallon shop vac.

10 Q And where was it located?

11 A It was on the floor in that bedroom, to the  
12 left of the bed, if you entered through the bedroom  
13 door.

14 Q When did you first go in to that room?

15 A I went in there approximately 8:37 p.m.  
16 after I was notified by Special Agent Lea of an item  
17 he discovered.

18 MR. BOWEN: Object to what he was  
19 notified.

20 THE COURT: Overruled.

21 BY MR. BRITT:

22 Q When you say that Mr. Lea had notified you  
23 that he had discovered an item, what did you do?

24 THE COURT: This is being offered  
25 to explain subsequent conduct?

1 MR. BRITT: Yes, sir.

2 THE COURT: Members of the jury,  
3 consider this evidence only for the purpose  
4 that you find that it is of aid or  
5 assistance in understanding any testimony  
6 by the witness now before you as to his  
7 subsequent conduct. You are not to  
8 consider this for the truth of the matters  
9 asserted but simply to explain subsequent  
10 conduct.

11 BY MR. BRITT:

12 Q What if anything did Mr. Lea tell you that  
13 he had found?

14 A A weapon.

15 Q And did he tell you where he had found the  
16 weapon?

17 A Yes, sir.

18 Q Where did he tell you he had found it?

19 A It was down inside of the shop vac. Once  
20 the lid of the shop vac was removed, it was down  
21 inside.

22 Q And after he notified you that he had found  
23 a weapon in the room to the right of the front door,  
24 what did you do?

25 A I documented the time that it was

1 discovered, where it was discovered, and I consulted  
2 with Detective Hackney and asked him to take  
3 photographs of the items as it appeared in the shop  
4 vac.

5 Q And why did you want the photographs taken  
6 of the item as it appeared inside the vacuum cleaner?

7 A I wanted some type of record that that was  
8 the position it was discovered in.

9 Q And did you go look inside the shop vac,  
10 vacuum cleaner?

11 A Yes, sir.

12 Q Can you describe for us what you saw what  
13 you looked inside the vacuum cleaner?

14 A There was a blue steel finished revolver  
15 with brown colored handles lying on the bottom of the  
16 shop vac. There were also some paper writings inside  
17 of the shop vac beside of this weapon.

18 Q And after observing this blue steeled  
19 revolver with brown handles in the vacuum cleaner  
20 along with these paper writing, did you remove the  
21 paper writings and the revolver?

22 A Yes, sir.

23 Q Were there any markings on these paper  
24 writings?

25 A There were. There was writing on them, but

1 I don't recall what it was.

2 Q How did you remove the blue steeled  
3 revolver with brown handles from the vacuum cleaner?

4 A I used my right thumb and my right index  
5 finger, grabbed the wooden handle of the weapon, and  
6 picked it up, examined it, and I placed it inside of  
7 a clear plastic evidence bag.

8 Q Why did you pick it up in the manner that  
9 you did?

10 A I did not want to jeopardize the presence  
11 of any latent fingerprints that might be present on  
12 the weapon.

13 Q And what is a latent print, if you know?

14 A It is a print that is not visible to the  
15 eye.

16 Q And why did you place it inside a plastic  
17 evidence bag?

18 A To preserve the integrity of the item as it  
19 was discovered

20 (State's Exhibit 78 was  
21 marked for identification.)

22 MR. BRITT: May I approach?

23 THE COURT: Yes, sir.

24 BY MR. BRITT:

25 Q Mr. Underwood, I'm going to show you what's

1 been marked as State's Exhibit Number 78. Ask you to  
2 look at that photograph and tell me if you can  
3 identify it?

4 A Yes, sir yes, sir, I can.

5 Q How are you able to identify State's  
6 Exhibit Number 78?

7 A I can identify State's Exhibit Number 78 by  
8 my initials, T.A.U., and the date, 9-17-93, that  
9 appear on the back of State's Exhibit Number 78.

10 Q Is State's Exhibit Number 78 a fair and  
11 accurate representation of the scene as you found it  
12 in the room to the right of the front door of the  
13 defendant's residence as it appeared on August 16th,  
14 1993?

15 A Yes, sir.

16 Q Is -- can you use State's Exhibit Number 78  
17 in illustrating your testimony to the jury?

18 A Yes, sir.

19 MR. BRITT: Your Honor, at this  
20 time I move that State's Exhibit 78 be  
21 admitted for illustrative purposes.

22 THE COURT: Without objection,  
23 it's admitted.

24 Members of the jury, please recall my  
25 instruction in that regard.

1 BY MR. BRITT:

2 Q I'll show you what has previously been  
3 marked as State's Exhibit Number 72, and ask if if  
4 you can identify it?

5 A Yes, sir, I can.

6 Q How are you able to identify State's  
7 Exhibit Number 72?

8 A State's Exhibit Number 72 has my initials,  
9 T.A.U., and the date, 9-17-93 on the back of the  
10 photograph.

11 Q And State's Exhibit Number 17, is it a fair  
12 and accurate representation of the shop vac type  
13 vacuum cleaner that you found in the bedroom to the  
14 right of the door of the defendant's residence on  
15 August 16th, 1993?

16 A I believe it's State's Exhibit 72.

17 Q Excuse me.

18 A Yes, sir, it is.

19 Q Is State's Exhibit Number 72 a fair and  
20 accurate representation of the interior portion of  
21 that vacuum cleaner that you found on August 16th,  
22 1993 and the contents that you found therein?

23 A Yes, sir.

24 THE COURT: May I interrupt? I  
25 apologize. For the purpose of

1 clarification, you indicated the search was  
2 conducted on what date?

3 THE WITNESS: August the 16th.

4 THE COURT: Now, are you  
5 indicating that you recognize both State's  
6 Exhibit 72, and State's Exhibit 78 in part  
7 by your initials being on that?

8 THE WITNESS: Yes, sir.

9 THE COURT: And a date being on  
10 the back?

11 THE WITNESS: Yes, sir.

12 THE COURT: What is the  
13 significance of that date, if any?

14 THE WITNESS: That's the date I  
15 got it back from the lab once the film was  
16 developed.

17 THE COURT: Okay.

18 BY MR. BRITT:

19 Q You submitted film to be developed as a  
20 result of photographs that were taken during the  
21 course of the search?

22 A Yes, sir.

23 Q And you had an opportunity to review those  
24 photographs at the time when you received them from  
25 the laboratory in September of 1993?

1 A Yes, sir.

2 Q And were each of the photographs that were  
3 taken on August the 16th of 1993 depicted in the  
4 photographs that you received on September the 17th  
5 of 1993?

6 A I'm sorry, will you repeat that?

7 Q Are each of the photographs fair and  
8 accurate depictions of the scene as you found them in  
9 the mobile home on August 16th, 1993?

10 A Yes, sir.

11 Q State's Exhibit Number 72, can you use it  
12 in illustrating your testimony to the jury?

13 A Yes, sir.

14 MR. BRITT: Your Honor, at this  
15 time I move that State's Exhibit 72 be  
16 admitted for illustrative purposes.

17 THE COURT: Folks, my record  
18 shows it's previously been introduced  
19 without limitation. 72 has previously been  
20 introduced without limitation.

21 MR. THOMPSON: Only for voir  
22 dire.

23 THE COURT: All right. You're  
24 moving it at this time for --

25 MR. BRITT: Actually I'm moving

1 for both illustrative and substantive  
2 purpose.

3 THE COURT: You folks want to be  
4 heard?

5 It is now received without limitation,  
6 and may be used for the purpose of  
7 illustration.

8 Yes, sir.

9 MR. BRITT: Ask that  
10 Mr. Underwood be allowed to step down in  
11 front of the jury.

12 THE COURT: Yes, sir.

13 BY MR. BRITT:

14 Q Mr. Underwood, after -- you stated you went  
15 into a room that was located to the right of the  
16 front door --

17 Q Yes, sir.

18 Q -- of the trailer?

19 A Yes, sir.

20 Q And how was that room furnished?

21 A With a bed against the right wall as you  
22 walk in the door. There was a sink to the left as  
23 you enter through the door. There was also a closet  
24 door, and the vacuum cleaner was there on the floor  
25 to the left of the bed.

1           Q       Would you use State's Exhibit Number 78 to  
2 illustrate to the jury to items that you saw in the  
3 room and their location?

4           A       This is the bed that appears on the right  
5 side as you look into the room through the doorway.  
6 This is the bed on the right. This is the sink here  
7 to the far left. Closet door over here. This is the  
8 shop vac.

9           Q       Is there an item located in the area of the  
10 shop vac? In State's Exhibit Number 78, does there  
11 appear to be a trash can in the area of the shop vac?

12          A       Yes.

13          Q       And what color is that trash can?

14          A       White.

15          Q       To your knowledge, were there any other  
16 objects in the area of the vacuum cleaner other than  
17 the trash can?

18          A       Yes, sir.

19          Q       What other item was in the area of the  
20 vacuum cleaner?

21          A       There's a radio here, if looking in this  
22 direction, off to the back left corner of the shop  
23 vac, and there's a long wooden stick propped against  
24 the wall.

25          Q       So the members of the jury can have an

1 opportunity, I ask you to step to that end of the  
2 jury box.

3 A (Witness complies).

4 Q Handing you now what's been admitted as  
5 State's Exhibit Number 72. Was the vacuum cleaner  
6 moved before it was opened? Strike that.

7 When you went in and looked inside the  
8 vacuum cleaner, what if anything did you observe?

9 A A weapon.

10 Q And can you describe that weapon?

11 A It was a blue steel finished revolver, with  
12 brown colored handles.

13 Q And where in the vacuum cleaner was it  
14 located?

15 A Down in the very bottom, in the base of the  
16 vacuum cleaner.

17 Q Using State's Exhibit Number 72, ask you to  
18 show that to the jury. And if you will on State's  
19 Exhibit Number 72, will you indicate where the  
20 revolver was at the time the photograph was taken?

21 A The revolver appears inside of the vacuum  
22 cleaner, this is looking down into it. This is the  
23 lid from the vacuum cleaner. These are some of the  
24 paper writings that are in the corner there.

25 Q If you'll return to the witness stand,

1 please.

2 MR. BRITT: May I approach the  
3 witness?

4 THE COURT: Yes, sir.

5 BY MR. BRITT:

6 Q Mr. Underwood, I'm going to show you what's  
7 previously been marked as State's Exhibit Number 59,  
8 a large plastic bag. I ask you to examine that bag  
9 and tell me if you can identify it.

10 A Yes, sir, I can.

11 Q How are you able to identify the large  
12 plastic bag marked as State's Exhibit 59?

13 A I can identify the large plastic bag marked  
14 as State's Exhibit Number 59 by my initials, T.A.U.,  
15 which appear along the top of the seal in black  
16 colored ink, here, and also by the writing which is  
17 sort of faded now, but it's on the front of the bag  
18 that I placed here on August the 16th, 1993, to  
19 include the SBI case file number, the item numbers  
20 assigned to this item, a description of the item  
21 within the bag, and the date and time that I found  
22 it, or that I removed it from the vacuum cleaner.

23 Q At the time you placed those markings on  
24 State's Exhibit Number 59, what if anything was  
25 contained inside of it?

1           A     A .38 caliber Smith and Wesson six-shot  
2 revolver with brown colored handles.

3           Q     Hand you what's been marked as as State's  
4 Exhibit 59-A, and ask you to examine that and tell me  
5 if you can identify it?

6           A     Yes, sir, I can.

7           Q     How are you able to identify State's  
8 Exhibit 59-A?

9           A     I recall the numbers which appear on the  
10 barrel that I wrote down at the time I removed it  
11 from the vacuum cleaner, 387767. I wrote those  
12 numbers down at the time I removed it from the  
13 barrel -- I sorry, from the vacuum cleaner and sealed  
14 it in the evidence bag.

15          Q     And is State's Exhibit Number 59-A the  
16 revolver that was removed from the vacuum cleaner at  
17 the defendant's residence on August 16th of 1993?

18          A     Yes, it is.

19          Q     Is it in substantially the same condition  
20 today as it was when you seized it August 16th, 1993  
21 at the defendant's residence?

22          A     Yes, sir.

23          Q     After -- at the time you seized the  
24 revolver, was it loaded or unloaded?

25          A     It was loaded, fully loaded.

1 Q At any time did you remove any bullets from  
2 the revolver marked as State's Exhibit 59-A?

3 A I did not. I did not even open the  
4 cylinder, because I was able to see that it was  
5 loaded. And again, I did not want to jeopardize what  
6 prints may be on the weapon.

7 Q After removing the revolver from the vacuum  
8 cleaner, what if anything did you do with it?

9 A Placed it in this evidence bag.

10 Q After placing the revolver in the evidence  
11 bag, who retained custody of the bag containing the  
12 revolver?

13 A I did.

14 Q And where was it stored while it was in  
15 your custody?

16 A While it was in my custody, I kept it at  
17 the SBI district office in my evidence locker in  
18 Fayetteville, however I did turn it over the Special  
19 Agent Kim Heffney sometime after that.

20 Q And at the time you turned it over to  
21 Mr. Heffney, was the bag still in a sealed condition?

22 A Yes, sir.

23 Q Was the revolver still inside the bag that  
24 you had sealed on August 16th of 1993?

25 A Yes, sir.

1 Q After you turned it over to Mr. Heffney,  
2 did there come a time when the bag and the revolver  
3 were returned to your custody?

4 A Yes, sir.

5 Q Do you recall when that was?

6 A If I could correct that, I believe I turned  
7 this item over to Special Agent after I seized it,  
8 but I did get it back from special agent Heffney on  
9 September the 21st, 1993.

10 Q Let me go back to August 16th of 1993.  
11 Were there any other items that were seized during  
12 the search of the defendant's residence?

13 A Yes, sir.

14 Q What other items were seized during the  
15 search of the defendant's residence?

16 A There was a standard video cassette tape  
17 that was seized from the front room of the residence  
18 that was on a bookshelf there.

19 Q And why was this standard video cassette  
20 tape seized from the residence?

21 A It was one of the items we were searching  
22 for, because we had information --

23 MR. BOWEN: Object.

24 THE COURT: Sustained at this  
25 point.

1 BY MR. BRITT:

2 Q Did you include in your affidavit in  
3 applying for the search warrant information that you  
4 had received about the use of the video camera?

5 A Yes, sir.

6 THE COURT: Mr. Britt, there's a  
7 matter we need to take up out of the  
8 presence of the jury. And this is probably  
9 a good point for me to release them for the  
10 lunch recess.

11 Members of the jury, I'm going to  
12 release you until 2:30. Please report  
13 directly back to the jury room at that  
14 time. During the lunch recess, don't talk  
15 about this matter among yourselves, or with  
16 anyone else. Don't allow anyone to say  
17 anything to you or in your presence about  
18 this case. If anyone communicates with you  
19 about this matter or attempts to do so, or  
20 if anyone says anything to you about this  
21 case in your presence, it's your duty to  
22 inform us of that immediately.

23 Don't form or express any opinions  
24 about this matter, don't have any contact  
25 or communication of any kind with any of

1 the attorneys, parties, witnesses,  
2 prospective witnesses, or directly with the  
3 Court. Don't have any contact with any  
4 media accounts may exist in connection with  
5 this proceeding, and don't conduct any  
6 independent inquiry or research of any  
7 kind.

8 Everyone else please remain seated,  
9 the members of the jury are excused until  
10 2:30.

11 (Jury out at 12:48 p.m.)

12 THE COURT: Mr. Underwood, thank  
13 you, sir, you may come down.

14 For the record, in the absence of the  
15 jury, at the time that direct examination  
16 was begun as to Mr. Underwood, the Court  
17 was handed a paper writing by Mr. Jimmy  
18 Horne, or Deputy Jimmy Horne, one of the  
19 bailiffs assigned to the courtroom. That  
20 paper writing reads as follows.

21 January 26th, 1996. Judge Weeks. I  
22 need to address the issue of a subpoena  
23 that was served on me this morning by the  
24 defense. It is not technically possible to  
25 deliver the requested videotape in a form

1 that can be shown in court today. Signed,  
2 sincerely, Mitch Davis, WECT TV.

3 Mr. Davis is present. Mr. Davis, you  
4 can certainly remain where you are, sir.  
5 But I understand from this paper writing  
6 that apparently a subpoena was served on  
7 you by counsel for the defendant or some  
8 representative of counsel for the  
9 defendant, is that correct?

10 MR. DAVIS: Around 10:30.

11 THE COURT: It was for a specific  
12 videotape that apparently was -- or is in  
13 possession of WECT TV, your employer?

14 MR. DAVIS: Yes, sir.

15 THE COURT: Without going into  
16 the contents of it, I understand from your  
17 communication that it's not technically  
18 possible to provide that to counsel for  
19 defendant this afternoon?

20 THE WITNESS: That's correct.

21 THE COURT: Does the subpoena  
22 request or order, purport to order that it  
23 be provided this afternoon?

24 MR. DAVIS: For this morning.

25 THE COURT: You were served at

1 10:30 this morning, and it was wanted this  
2 morning?

3 THE WITNESS: Yes, sir.

4 THE COURT: Can you give us some  
5 idea as to when the videotape might be  
6 available?

7 MR. DAVIS: Probably first thing  
8 Monday.

9 MR. BOWEN: I can eliminate some  
10 of that. I basically wanted to get the  
11 subpoena to Mr. Davis as a predicate for  
12 talking to him about it. And the urgency  
13 is not that extreme, and if he had  
14 mentioned it to me, which of course he was  
15 unable to do because I was in trial, I  
16 would have said we could work something  
17 out.

18 THE COURT: So Monday is no  
19 problem?

20 MR. BOWEN: Monday or even  
21 later. I just wanted to make the subpoena  
22 a predicate for talking to him.

23 THE COURT: Okay. Simply because  
24 I've dealt with this kind of situation in  
25 the past, is it -- can I expect some

1 representative, some legal representative  
2 from WECT TV to appear in court perhaps  
3 Monday morning --

4 MR. DAVIS: Yes, sir.

5 THE COURT: -- wanting to be  
6 heard?

7 MR. DAVIS: Yes, sir.

8 THE COURT: Requiring some  
9 hearing?

10 MR. DAVIS: Yes, sir.

11 THE COURT: That's what I  
12 thought. We'll just have to deal with it  
13 as it comes up. But I appreciate that.

14 Any other matters as from either  
15 counsel as to the information just  
16 provided?

17 MR. BOWEN: Your Honor, I think I  
18 can cut to the meat of some of this.

19 THE COURT: I don't think it's  
20 appropriate for me to proceed with a  
21 hearing without WECT TV being represented  
22 by counsel. They are entitled to notice  
23 and an opportunity to be heard. We'll take  
24 it up at the appropriate time.

25 For the record, ma'am, if you'll mark

1 this as whatever number the next Court's  
2 exhibit is, and put it into the record.

3 23. All right. Also, for the  
4 purposes of information, can I expect that  
5 we're going to get into the videotape or  
6 some proffer as to the videotape today?

7 MR. BRITT: No, sir, not as of  
8 today, just get it established that it was  
9 seized, where it was seized. We're not at  
10 that juncture yet.

11 THE COURT: Okay. All right.  
12 Any matters before we recess for lunch?

13 MR. BRITT: No, sir.

14 THE COURT: If you'll recess us  
15 until 2:30.

16 (Lunch recess).

17 THE COURT: Good afternoon,  
18 folks. Let the record show all counsel are  
19 present, the defendant is present in open  
20 court.

21 Mr. Horne, do we have all members of  
22 the jury secured in the jury room?

23 THE BAILIFF: Yes, sir, they are.

24 THE COURT: Any matters before we  
25 continue with the presentation of

1 evidence?

2 MR. BRITT: No, sir, ready to go.

3 THE COURT: Mr. Underwood, if  
4 you'll retake the stand.

5 Mr. Horne if you'll bring the jury in,  
6 please, sir.

7 (Jury in at 3:30 p.m.)

8 THE COURT: Good afternoon,  
9 ladies and gentlemen.

10 Mr. Britt.

11 MR. BRITT: Yes, sir.

12 BY MR. BRITT:

13 Q Mr. Underwood, in your affidavit, in your  
14 application for the search warrant, did you include  
15 information that you had received about a video  
16 camera?

17 A Yes, sir.

18 Q What if any information about a video  
19 camera did you put in your affidavit for the search  
20 warrant?

21 A On Sunday evening, August 15th, 1993,  
22 affiant spoke with a female friend of Daniel Green  
23 who stated she had has known Green since August 6,  
24 1993. This friend informed affiant that Green and an  
25 Indian male she knows as Larry Demery --

1 MR. BOWEN: Object.

2 THE COURT: For what purpose is  
3 this being offered?

4 MR. BRITT: This is being offered  
5 as to why they were searching for a  
6 videotape and why that information was  
7 included in the probable cause affidavit.

8 THE COURT: May I see counsel at  
9 the bench, please, with the court  
10 reporter.

11 (Whereupon a bench conference ensued  
12 as follows.)

13 THE COURT: Let the record  
14 reflect this is a bench conference.  
15 Present at this time are the presiding  
16 Judge, the court reporter, counsel for the  
17 State, Mr. Johnson Britt, counsel for the  
18 defendant Mr. Thompson, Mr. Bowen. Also  
19 present is the defendant Daniel Green, also  
20 known as U'Allah.

21 Who is the female referred to?

22 MR. BRITT: It will be -- it  
23 would not be Melinda Moore or Dee Sullivan.

24 THE COURT: I'm trying to find  
25 out if it was corroborative. All right.

1           The basis of the objection is that it's  
2           hearsay?

3                   MR. BOWEN:  Not only hearsay, but  
4           sounds to me like it's leading into what  
5           may be forbidden Rowland robbery material.

6                   MR. BRITT:  It's in the --

7                   THE COURT:  If your purpose, you  
8           need anything other than it was included  
9           based on information received?

10                  MR. BRITT:  No, sir.

11                  THE COURT:  Okay.

12                               (Bench conference concluded.)

13                  THE COURT:  Rephrase your  
14           question, Mr. Britt.

15                  MR. BRITT:  Just so the record is  
16           clear, do you want to rule on their  
17           objection -- I'll withdraw the question.

18                  THE COURT:  Question is  
19           withdrawn.  Rephrase the question.

20   BY MR. BRITT:

21           Q     Mr. Underwood, based on information that  
22           you had received, did you include in the affidavit  
23           that was part of the application for the search  
24           warrant information about a video camera or  
25           videotapes?

1           A     Yes, sir.

2           Q     On August the 16th, 1993, after the search  
3 warrant was executed, were any videotapes or any  
4 video camera seized from the residence of the  
5 defendant?

6           A     A videotape was seized from the residence.

7           Q     And did you personally seize that  
8 videotape?

9           A     Yes, sir, I did.

10          Q     And what if anything did you do with the  
11 videotape that was seized from the defendant's  
12 residence on August 16th, 1993?

13          A     I removed it from the residence, placed it  
14 in a bag, and later that evening transferred it to  
15 the custody of Special Agent Heffney.

16          Q     Where did you find this videotape at the  
17 defendant's residence?

18          A     It was in a bookcase, if entering through  
19 the front door, the bookcase would be on the right,  
20 against a wall. It was on the second shelf from the  
21 bottom out towards the end of the shelf closest to  
22 the interior of the den area.

23          Q     And at the time you seized the videotape,  
24 did you place any markings on it that you recall?

25          A     No, sir, I did not.

1 Q Did you place any markings on the plastic  
2 bag that it was placed in?

3 A Not that I recall, no, sir.

4 Q And at the time you seized that particular  
5 videotape, had you viewed it?

6 A No, sir

7 (State's Exhibits 80, 81 were  
8 marked for identification.)

9 MR. BRITT: May I approach?

10 THE COURT: Yes, sir.

11 BY MR. BRITT:

12 Q Mr. Underwood, I'm going to hand you two  
13 photos. First is marked State's Exhibit 80. Ask you  
14 to look at it and tell me if you can identify it?

15 A Yes, I can.

16 Q How are you able to identify State's  
17 Exhibit 80?

18 A State's Exhibit 80 bears my initials  
19 T.A.U., and the date, 9-17-93, on the back of the  
20 photograph.

21 Q State's Exhibit Number 81, ask you to look  
22 at the it and tell me if you can identify that  
23 photograph?

24 A Yes, sir, I can.

25 Q How are you able to identify State's

1 Exhibit 81?

2 A State's Exhibit 81 also bears the initials  
3 T.A.U. and the date, 9-17-93 on the back.

4 Q State's Exhibit Number 80, is it a fair and  
5 accurate representation of the room that you've  
6 testified about where you saw this bookshelf and  
7 videotape that you seized was located?

8 A Yes, sir.

9 Q State's Exhibit Number 81, is that a fair  
10 and accurate representation of the bookshelf and its  
11 contents as you saw them on August 16th, 1993?

12 A Yes, sir, it is.

13 Q State's Exhibit Number 81, is it a close-up  
14 photograph of the bookshelf?

15 A Yes, sir.

16 Q That was located in the defendant's  
17 residence?

18 A It is.

19 Q And can you use State's Exhibits 80 and 81  
20 to illustrate your testimony to the jury?

21 A Yes, sir.

22 MR. BRITT: Your Honor, at this  
23 time I ask that 80 and 81 be admitted for  
24 illustrative purposes.

25 THE COURT: They are admitted

1 without objection.

2 MR. BRITT: If Mr. Underwood can  
3 stand down.

4 THE COURT: Yes, sir.

5 BY MR. BRITT:

6 Q State's Exhibit 80, you testified that the  
7 videotape that was seized was found in a room where a  
8 bookshelf was located?

9 A Yes, sir.

10 Q State's Exhibit 80, is that a photograph of  
11 that room?

12 A It is.

13 Q And is the bookshelf visible in that  
14 photograph?

15 A Yes, it is.

16 Q If you could show that to the jury.

17 A (Indicating).

18 Q State's Exhibit Number 81, that is a  
19 close-up of that bookshelf?

20 A Yes, sir.

21 Q And can you use it to show the jury the  
22 area where it was, this videotape that you seized was  
23 located?

24 A Yes, sir. (Witness complies). Videotape  
25 here that was seized.

1 Q If you'll return to the witness stand.

2 (State's Exhibit 79 was  
3 marked for identification.)

4 MR. BRITT: May I approach the  
5 witness?

6 THE COURT: Yes, sir. What is  
7 that number?

8 MR. BRITT: This is 79. This has  
9 previously been marked.

10 THE COURT: Okay, I apologize.

11 BY MR. BRITT:

12 Q Mr. Underwood, you previously testified  
13 that you seized a videotape at the defendant's  
14 residence on August 16th, 1993?

15 A Yes, sir.

16 Q Was there any type of label on the  
17 videotape that you seized?

18 A No, sir, there was not.

19 Q And I believe you have also testified that  
20 you didn't make any markings on either the tape or  
21 the plastic bag that it was placed in, is that  
22 correct?

23 A That's correct.

24 Q I'm going to show you what's been marked as  
25 State's Exhibit Number 79. Remove the contents of

1 State's Exhibit Number 79. Are you able to identify  
2 either of those 79 or the contents?

3 A I can say that's a tape that looks like the  
4 one I removed, however, I did not put any markings on  
5 this, and I turned this tape that I recovered from  
6 that residence over to Special Agent Heffney that  
7 same evening.

8 Q Were any other items seized during the  
9 search of the defendant's home?

10 A Yes, sir.

11 Q What other items were seized?

12 A Various paper writings that were located  
13 inside of the vacuum cleaner, one black colored  
14 plastic twofold card holder that was located inside  
15 of a burgundy colored Cambridge carry case. A K-Mart  
16 photo return envelope containing various color  
17 photographs. A K-Mart photo return envelope that  
18 contained additional various photographs. One camel  
19 colored Revlon toiletry case. One pay stub from  
20 Carrollton of Lumberton, 110109, made payable to  
21 employee Daniel Green, Social Security number  
22 246-19-9862. One letter written on Native  
23 Construction Company letterhead, addressed to  
24 Mr. Daniel Green, P.O. Box 1439, Morgantown, North  
25 Carolina.

1 MR. BOWEN: Object, move to  
2 strike.

3 THE COURT: Do you want to be  
4 heard?

5 MR. BOWEN: No, sir.

6 THE COURT: Objection is  
7 overruled. Motion to strike is denied.

8 BY MR. BRITT:

9 Q Mr. Underwood, approximately -- what time  
10 did the search of the defendant's trailer end?

11 A 9:42 p.m.

12 Q And after the search was completed, was the  
13 trailer secured?

14 A It was left in the custody of the  
15 defendant's uncle, Mr. Burnie Green.

16 Q And had Mr. Burnie Green come to the  
17 trailer at some point?

18 A He came there at our request.

19 Q And was a copy of the search warrant left  
20 at the trailer?

21 A Yes, sir.

22 Q After you completed the search, did you  
23 then make a return on the search warrant?

24 A Yes, sir.

25 Q What date and time was the search warrant

1 returned?

2 A August the 17th, 1993, 12:05 a.m.

3 Q Was there an inventory of the seized  
4 property filed as a result of the search that was  
5 conducted on October -- excuse me, August 16th, 1993?

6 A Yes, sir.

7 Q And when was the inventory of seized  
8 property filed in conjunction with that search?

9 A August the 18th, 1993.

10 Q And the items that were seized during the  
11 search of the defendant's trailer, were they listed  
12 on the inventory of seized property that was filed in  
13 conjunction with the search?

14 A Yes, sir

15 (State's Exhibit 82 was  
16 marked for identification.)

17 MR. BRITT: May I approach?

18 THE COURT: Yes, sir.

19 BY MR. BRITT:

20 Q I'll show you what has been marked as  
21 State's Exhibit 82. Ask you to look at that and tell  
22 me if you can identify it?

23 A Yes, sir, I can.

24 Q How are you able to identify State's  
25 Exhibit Number 82?

1           A       I can identify State's Exhibit Number 82, I  
2 recognize my handwriting on it back, here where I've  
3 indicated the name of the person to whom a copy of  
4 this inventory was delivered to, Mr. Burnie Green,  
5 Route 3, box 274, Rowland, North Carolina. This  
6 document also bears a photocopy of my signature, my  
7 title, and the name and address of the agency where  
8 I'm employed.

9           Q       Is State's Exhibit Number 82 a copy of the  
10 original inventory of seized property that you filed  
11 in connection with the search of the defendant's  
12 trailer on August 16th, 1993?

13          A       Yes, sir.

14                   MR. BRITT: Your Honor, at this  
15 time I move that State's Exhibit Number 82  
16 be admitted.

17                   THE COURT: Admitted without  
18 objection.

19 BY MR. BRITT:

20          Q       Mr. Underwood, on August 19th of 1993, did  
21 you accompany Robeson County Sheriff's Department  
22 Detective Anthony Thompson to a residence located off  
23 of Highway 710 here in Robeson County?

24          A       Yes, sir, I did.

25          Q       Did you know whose residence that was that

1 you went to on August 19th of 1993?

2 A I did.

3 Q Whose residence was that?

4 A The residence of Mr. and Mrs. Larry Demery,  
5 Sr. and Larry Demery, Jr.

6 Q When you went to Larry Demery -- Larry  
7 Martin Demery's residence on August 19th of 1993, for  
8 what purpose did you go there?

9 A To talk with Mr. Larry Demery, Sr. about  
10 the two .32 caliber revolver handguns that we knew he  
11 had, to see if he would allow us to take possession  
12 of those weapons to send them to the SBI laboratory  
13 for testing purposes.

14 Q And why did you want to have these two .32  
15 caliber revolver handguns tested at the SBI  
16 laboratory?

17 MR. BOWEN: Object.

18 THE COURT: Do you want to be  
19 heard?

20 MR. BOWEN: Perhaps we need to.

21 THE COURT: Members of the jury,  
22 there is a matter of law Court must take  
23 up. Please recall my instructions, don't  
24 worry or speculate about what takes place  
25 in the courtroom in your absence, and if

1 you would please step to the jury room at  
2 this time.

3 (Jury out at 2:53 p.m.)

4 THE COURT: Let the record show  
5 the following is being conducted in the  
6 absence of the jury. Last question asked  
7 was why did you want to have these two .32  
8 caliber revolver handguns tested by the SBI  
9 laboratory.

10 If you will answer the question so I  
11 can rule in context.

12 THE WITNESS: To compare with a  
13 lead projectile that had been recovered  
14 from the Lowry's Quick Stop on August the  
15 11th, 1993.

16 THE COURT: Basis of the  
17 objection?

18 MR. BOWEN: Basis of the  
19 objection, Your Honor, is the question was  
20 open and broad. I could see some very  
21 dangerous areas, and I wanted -- before I  
22 had a chance to object to it -- as far as  
23 that answer is concerned, there would be no  
24 objection to that with that question and  
25 answer -- just a minute.

1           I think it might be worthwhile while  
2 they are out to kind of see where we're  
3 going with it. I can see some treacherous  
4 waters ahead.

5           MR. BRITT: We did that.

6           THE COURT: Having sat at that  
7 table in the past, I understand the  
8 usefulness of voir dire in terms of  
9 potentially establishing impeachment or at  
10 least knowing what's coming so that can be  
11 factored into the cross-examination, but  
12 there was a specific objection to a  
13 specific question. I understand that  
14 specific objection was -- is withdrawn, is  
15 that correct?

16          MR. BOWEN: It is, in light of  
17 that answer.

18          THE COURT: All right. If you'll  
19 bring the jury back in, please.

20          (Jury in at 2:55 p.m.)

21          THE COURT: The objection is  
22 withdrawn, as I understand it. Is that  
23 correct?

24          MR. BOWEN: That's correct.

25          THE COURT: You may answer the

1 question, Mr. Underwood. Do you want  
2 repeat your question, sir?

3 MR. BRITT: I'll repeat it.

4 BY MR. BRITT:

5 Q Mr. Underwood, why did you wanted to have  
6 these two .32 caliber revolver handguns that you knew  
7 belonged to Larry Demery, Sr. tested at the SBI  
8 laboratory?

9 A We wanted to compare the two handguns with  
10 a lead projectile that had been recovered from  
11 Lowry's Short Stop convenience store on August 11th,  
12 1993, to see whether or not either of those two guns  
13 may have fired that projectile.

14 MR. BRITT: May I approach?

15 THE COURT: Yes, sir.

16 BY MR. BRITT:

17 Q On August the 19th, when you went to Larry  
18 Demery's residence, was Larry Demery, Sr. present?

19 A He was not there upon our arrival, however  
20 he did arrive at his residence shortly after we got  
21 there.

22 Q And when he arrived there, did you state to  
23 him the purpose for your being there?

24 A Yes, sir, and he also signed a consent to  
25 search form allowing us to take custody of those two

1 weapons.

2 Q And at the time you were there, did you  
3 explain to Mr. Demery that he did not have to turn  
4 any items over to you or allow any type of search to  
5 be conducted on his property?

6 A Yes, sir, we did.

7 Q After explaining that to him, did  
8 Mr. Demery allow you to search his property or did he  
9 give you any items?

10 A We didn't actually search it. He  
11 voluntarily surrendered the two weapons to us.

12 Q Show you what's been marked as State's  
13 Exhibit Number 73. Can you identify State's Exhibit  
14 Number 73, plastic bag containing an item?

15 A Yes, sir, I can.

16 Q How are you able to identify it?

17 A I can identify State's Exhibit 73 by my  
18 initials T.A.U. that appear along the seal, and also  
19 I recognize my handwriting on the front of the bag  
20 wherein I placed the SBI case file number 491 dash H  
21 dash 16, the description of the evidence, one .32  
22 caliber six-shot revolver, model 632, serial number A  
23 Y 010056. I noted here that the weapon has a Smith &  
24 Wesson barrel and H & R frame.

25 Q For the record, at the time you placed the

1 writings on there, had anything been placed inside  
2 the bag marked as State's Exhibit 73?

3 A I believe I wrote on the bag and then put  
4 the weapon inside of it.

5 Q What if anything did you place inside the  
6 bag marked as State's Exhibit Number 73?

7 A A .32 caliber six-shot revolver.

8 Q Was it loaded at the time you received it?

9 A It was.

10 Q And did you remove any bullets from  
11 that .32 caliber revolver?

12 A I did.

13 Q Show you what's been marked as State's  
14 Exhibit 73-A, ask you if you can identify it?

15 A Yes, sir, I can.

16 Q How are you able to identify State's  
17 Exhibit Number 73-A?

18 A I can identify State's Exhibit 73-A by my  
19 initials T.A.U. that appear along the seal and also  
20 by the writing that I placed on the front of this  
21 bag.

22 Q And what if anything is contained inside of  
23 State's Exhibit 73-A?

24 A These are six live rounds of .32 caliber  
25 Smith & Wesson Remington/Peters ammunition.

1 Q I'm going to remove the contents of the bag  
2 of State's Exhibit 73. Ask you, do you recognize the  
3 revolver that was removed from State's Exhibit Number  
4 73?

5 A Yes, sir, I do.

6 Q How are you able to identify it?

7 A By the serial number that appears on the  
8 butt of the handle, A Y 010056.

9 Q And is that the same serial number that you  
10 wrote in your hand on the bag, evidence bag, marked  
11 as State's Exhibit 73?

12 A Yes, sir, it is.

13 Q For the record, can you describe the color  
14 and the handle of that .32 caliber revolver?

15 A May I open it?

16 Q Please.

17 A It is a blue steel finished weapon with a  
18 pearl handle with brown stripes in the handle.

19 Q Did you receive any other .32 caliber  
20 revolver from Larry Demery, Sr. on August 19th, 1993?

21 A Yes, sir, I did.

22 Q For the record, is the revolver that was  
23 removed from State's Exhibit 73 in substantially the  
24 same condition it was in when you first received it?

25 A Yes, sir, it is.

1 Q And after placing it in the evidence bag,  
2 what if anything was done with that bag and the  
3 contents?

4 A I turned it over to Special Agent Heffney  
5 for submission to the SBI laboratory.

6 Q And was the bag sealed at the time you  
7 turned it over to Special Agent Heffney?

8 A Yes, sir, it was.

9 Q Show you what's been marked as State's  
10 Exhibit Number 74, ask you if you can identify that  
11 bag and its contents?

12 A Yes, sir, I can.

13 Q How are you able to do that?

14 A State's Exhibit Number 74, I can identify  
15 by my initials, T.A.U. that appear along the seal,  
16 and also I recognize my handwriting on the front of  
17 the bag where I placed the SBI case file number, the  
18 description of the evidence contained within the bag,  
19 one .32 caliber six-shot revolver, model 732, serial  
20 number AE18405. I noted that the weapon had a Smith  
21 & Wesson barrel and an H & R frame. I placed on here  
22 the date and time I recovered it August 19th, 1993 at  
23 7:45 p.m. from the junior Demery residence.

24 Q And to your knowledge, who is junior  
25 Demery?

1 A Larry Demery, Sr.'s brother.

2 Q At this time State's Exhibit 73, the  
3 plastic bag is it in a sealed condition?

4 A Yes, sir.

5 MR. BRITT: With the Court's  
6 permission --

7 THE COURT: Yes, sir.

8 MR. BRITT: The record will  
9 reflect that I've opened State's Exhibit 73  
10 and removed its contents.

11 THE COURT: Yes, sir.

12 BY MR. BRITT:

13 Q Mr. Underwood, ask you to examine the  
14 contents of the bag marked as State's Exhibit Number  
15 74, and ask you if you can identify that revolver?

16 A Yes, sir, I can.

17 Q How are you able to identify it?

18 A By the serial number that appears on the  
19 butt of the handle, AE18405.

20 Q And is that the same serial number that  
21 appears on the plastic bag marked as State's Exhibit  
22 number 74?

23 A Yes, sir, it is.

24 Q And for the record, will you please  
25 describe the color and handle of the .32 caliber

1 revolver that was removed from State's Exhibit Number  
2 74?

3 A It is a blue steel finish, .32 caliber  
4 Smith & Wesson frame, H & R handle, weapon, with  
5 black colored handles.

6 Q And at the time you received the .32  
7 caliber pistol marked as State's Exhibit Number --  
8 that was contained inside the bag that was marked as  
9 State's Exhibit Number 74, was it loaded?

10 A Yes, it was.

11 Q What if anything did you do with any  
12 bullets that were in it at the time?

13 A I removed them from the cylinder and placed  
14 them in a separate clear plastic bag.

15 Q I'm going to hand you what has been marked  
16 as State's Exhibit 74-A, and ask you if you can  
17 identify it.

18 A Yes, sir, I can.

19 Q How are you able to identify 74-A?

20 A I recognize the initials I placed here  
21 T.A.U. along the seal, and also the handwriting I  
22 placed on the front of the bag at the time I removed  
23 it from the weapon.

24 Q And what if anything is contained inside of  
25 State's Exhibit 74-A?

1           A       Six live rounds of .32 caliber Smith &  
2 Wesson Remmington/Peters ammunition.

3           Q       State's Exhibit 74-A and the revolver that  
4 was removed from 74, are they in substantially the  
5 same condition they were in when you first received  
6 them?

7           A       Yes, sir.

8           Q       After you received the revolver that was  
9 contained in State's Exhibit Number 74, what did you  
10 do with it?

11          A       I transferred them to Special Agent Heffney  
12 for submission to the SBI laboratory.

13                   MR. BRITT: May I approach the  
14 Clerk?

15                   THE COURT: Yes, sir.

16 BY MR. BRITT:

17          Q       During your investigation of the James  
18 Jordan homicide and your investigation of the Clewis  
19 Demory robbery that occurred on July 15th of 1993,  
20 did you prepare any type of photographic lineups for  
21 purposes of obtaining an identification?

22          A       Yes, sir.

23          Q       Can you explain or tell the jury about the  
24 circumstances surrounding the preparation when the  
25 selection of any photographs to be used in a

1 photographic lineup?

2 A On September the 8th, 1993, Robeson County  
3 Detective Anthony Thompson and I went into the  
4 Robeson County jail and removed photographs of young  
5 black males who were similar in appearance, facial  
6 features, hairstyle, roughly the same age at the time  
7 the photographs were taken. And we, along with  
8 assistance provided by Deputy Stewart McFadder, who  
9 was the ID officer at that time, looked at several  
10 photographs and selected in addition to the  
11 defendant's photograph, seven additional photographs,  
12 and placed them in a photographic lineup to be used  
13 for identification.

14 Q Was the defendant Daniel Green's photograph  
15 included in any photographic lineup that was  
16 prepared?

17 A Yes, sir.

18 Q What is a photographic lineup?

19 A It is an array of several photographs of  
20 individuals who are similar in appearance, facial  
21 features, used to show to eye witnesses, victims of  
22 crime who may have had an opportunity to see a  
23 person, to determine whether or not they recognize  
24 someone within that lineup of individuals.

25 Q And in September of 1993, did you prepare

1 more than one photographic lineup?

2 A Yes, sir.

3 Q You've testified about one photographic  
4 lineup that was prepared, is that correct?

5 A Yes, sir.

6 Q What other photographic lineups did you  
7 prepare in September of 1993?

8 A Also using a photograph of Larry Martin  
9 Demery, we used the same procedure and went through  
10 files within the Robeson County jail and located  
11 individuals who were similar in hairstyle, same --  
12 similar age, black and white photographs, to use in a  
13 photographic lineup.

14 Q And after these photographic lineups were  
15 prepared, who retained custody of them?

16 A I did.

17 Q On September the 13th of 1993, did you have  
18 an occasion to meet with Clewis Demory?

19 A Yes, sir, I did.

20 Q Where did you meet with Clewis Demory?

21 A At his place of employment, there at  
22 Lowry's Short Stop. At the time I talked with him,  
23 the name of the place had changed to the Country  
24 Corner Store.

25 Q And when you met with Mr. Demory on

1 September 13th of 1993 there at the store, was one of  
2 your purpose to interview Mr. Demory about the  
3 robbery that occurred on July 15th of 1993?

4 A Yes, sir.

5 Q And what if anything did Mr. Demory tell  
6 you in that interview about the robbery of July 15th,  
7 1993?

8 MR. BOWEN: Object, desire  
9 instruction.

10 MR. BRITT: This is offered for  
11 purposes of corroboration.

12 THE COURT: Members of the jury,  
13 the testimony now being elicited as to the  
14 witness before you concerning any statement  
15 he may testify to regarding matters he  
16 contends were stated to him by prior  
17 State's witness in this case, specifically  
18 Mr. Clewis Demory, are being offered for  
19 the limited purpose of corroborating prior  
20 testimony at this trial, of Mr. Clewis  
21 Demory. You may consider this evidence for  
22 that limited purpose and no other purpose.

23 Anything further?

24 MR. BOWEN: No, sir.

25 BY MR. BRITT:

1           Q       What if anything did Mr. Demory tell you  
2 Mr. Underwood?

3           A       He told me that he had been working at the  
4 convenience store for approximately seven or eight  
5 years. He said that the store had recently been  
6 purchased by Gaston Locklear from a man named Curlin  
7 Lowry. He said that Mr. Locklear changed the name of  
8 the store from Lowry's Short Stop to the Country  
9 Corner Store.

10                   He told me he came to work on Thursday July  
11 15th, 1993 at approximately 5:00 a.m. He was  
12 scheduled to work from 3:30 p.m. that day. He  
13 recalled that around 9:30 or 9:35 a.m. that morning,  
14 two males entered the store. He said at the time  
15 they entered there was no one else in the store.

16                   He described male number one as being a  
17 black male, approximately six feet tall,  
18 approximately 140 to 145 pounds, about 22 to 23 years  
19 of age, wearing a dark colored ball cap, full length  
20 pants and some type of shirt. He described male  
21 number two as having some type of cloth over his  
22 face, and he said he was unable to determine what the  
23 race of that person was.

24                   He told me that male number two appeared to  
25 be approximately five feet-five or five feet-six

1 inches tall and was a small built person. He told me  
2 that the only thing he could recall either of those  
3 two individuals saying was male number two saying  
4 "cash register, cash register."

5 He told me that when these two individuals  
6 first came into the store, he was possibly doing  
7 something at the cigarette stand which was located  
8 behind the counter. When he turned around, both of  
9 these individuals had a gun pointed toward him. He  
10 said both weapons were small caliber, possibly 32 or  
11 22 caliber. He said both weapons were blue steel  
12 finish. To the best of his recollection both  
13 handguns were revolvers.

14 He told me that the black male came behind  
15 the counter and pointed the gun at him. The first  
16 thing this individual did was to reach for his  
17 wallet. He told me that he had his wallet in his  
18 back pocket. He said he thought his wallet was black  
19 in color. He said his wallet had had his driver's  
20 license, Social Security card, a Medicare card, a  
21 fifty cent piece made in 1925 or 1928 that was a  
22 memorial entitled Valor of the Soldiers of the  
23 South.

24 He told me he had had that coin since 1946,  
25 and told me that his wallet had at least 135 to 145

1 dollars in cash. He said he heard the other male  
2 tell the black male "cash register, cash register,"  
3 and said the black male then pushed a button on the  
4 cash register but the drawer would not open. So  
5 Mr. Demory pressed the correct button for him.

6 He said the black male then took all the  
7 money in the cash register, including the food  
8 stamps. He estimated that this individual took at  
9 least \$250 out of the cash register. He said this  
10 black male then looked into one of the drawers behind  
11 the counter but didn't take anything out of that  
12 drawer.

13 They then pulled another drawer open and  
14 Mr. Demory reached in to that drawer for a weapon  
15 that he had concealed there. He said that as he  
16 reached for the weapon, the black male fired three  
17 shots at him. He said they were all fired one right  
18 after the other. He said one of the shots hit him on  
19 the right side of his jaw, one hit him on the right  
20 shoulder and the third shot hit him on the right side  
21 in the upper chest area. He said one of the bullets  
22 came out of his back. He said one of the bullets was  
23 still in his body. He told me that Gaston Locklear  
24 found one of the bullets at the back of the  
25 store.

1 MR. BOWEN: Object -- withdraw  
2 it.

3 THE COURT: You may continue.

4 THE WITNESS: He said that Gaston  
5 Locklear found one of the bullets at the  
6 back of the store and later turned that  
7 bullet over to the police. He told me that  
8 weapon that was concealed in the store was  
9 a .38 caliber Smith & Wesson blue steel  
10 six-shot revolver with a barrel length of  
11 four and one half inches to five inches.  
12 He told me he bought that weapon in  
13 Maryland in 1961. He said that the weapon  
14 had brown colored handles. He told me he  
15 did not know what type of ammunition that  
16 he had loaded in the weapon, but that he  
17 had provided that information to a  
18 detective with the Robeson County Sheriff's  
19 Department.

20 He told me that after this person  
21 fired the shots, the two suspects went out  
22 the front door. He did not see how they  
23 left the area. He said that he sat down on  
24 a stool and noticed that blood was coming  
25 out of his jaw. He walked outside to see

1 if he could determine which direction they  
2 left in, but he couldn't see them. He went  
3 back inside and dialed 191, trying to dial  
4 911. He hung up the telephone and then  
5 called his wife and told her he had been  
6 shot.

7 He told me that Louie Oxendine, who  
8 lived down the road, was the next person to  
9 come into the store. He said about the  
10 time Mr. Oxendine arrived, the ambulance  
11 arrived, and told me that his wife was the  
12 person that called the ambulance. He said  
13 he was transported to Southeastern General  
14 Hospital in Lumberton and remained there  
15 until Saturday, July 17th.

16 I asked him if he had seen the  
17 television reports pertaining to the arrest  
18 of Daniel Green and Larry Demery for the  
19 murder of James Jordan. And he told me  
20 that he had. He told me he is not positive  
21 that they were the two people who robbed  
22 him on July 15th, but he then said that the  
23 black male whom he saw on television looked  
24 like the person who shot him.

25 BY MR. BRITT:

1 Q At the time you interviewed Mr. Demory, had  
2 you shown him either of the photographic arrays?

3 A No, sir.

4 Q Did you have them with you when you went  
5 there to interview him on---

6 A Yes, sir.

7 Q On that date?

8 A Yes, sir.

9 Q And after interviewing Mr. Demory, did you  
10 show him both of the photographic arrays that you had  
11 prepared earlier?

12 A Yes, sir, I did.

13 Q Mr. Underwood, I'm going to show you what  
14 has been marked as State's Exhibit 68, ask you to  
15 examine that and tell me if you can identify it?

16 A Yes, I can.

17 Q How are you able to identify State's  
18 Exhibit Number 68?

19 A I can identify State's Exhibit Number 68 by  
20 my initials that appear along the seal, T.A.U., and  
21 also my handwriting where I placed "sealed," 9-9-93,  
22 10:45 a.m., my initials T.A.U., the item number I  
23 assigned to it and other writing I placed on here.

24 Q At this time is State's Exhibit Number 68  
25 still in a sealed condition?

1 A Yes, sir, it is.

2 Q And State's Exhibit Number 68, for the  
3 purposes of the record, will you identify what it is?

4 A Yes, sir. State's Exhibit Number 68 is the  
5 photographic lineup that Detective Thompson and I  
6 prepared on September the 8th, 1993 and completed on  
7 September the 9th, 1993.

8 Q And State's Exhibit Number 68, does it  
9 contain a known photograph of the defendant Daniel  
10 Green?

11 A It does.

12 Q And was that photograph in place at the  
13 time you showed it to Clewis Demory on the date when  
14 you interviewed him?

15 A Yes, sir.

16 Q And is State's Exhibit Number 68 in  
17 substantially the same condition it was in after you  
18 completed it on September the 9th, 1993?

19 A Yes, sir.

20 Q Show you what's been marked as State's  
21 Exhibit Number 69. Ask if you can identify it?

22 A Yes, sir.

23 Q And how are you able to identify State's  
24 Exhibit Number 69?

25 A I can identify State's Exhibit Number 69 by

1 my initials, T.A.U., and the handwriting I placed on  
2 the back of the lineup, sealed, 9-9-93, 4:25 p.m., my  
3 initials underneath it and other writing that I  
4 placed on it.

5 Q And at this time, is State's Exhibit Number  
6 69 in a sealed condition?

7 A Yes, sir.

8 Q And is it in substantially the same  
9 condition it was in after completing preparation of  
10 the photo array on 9-9-93?

11 A Yes, sir.

12 Q For the purposes of the record, what is  
13 State's Exhibit Number 69?

14 A It is a photographic lineup of light  
15 skinned males, including a photograph of Larry Martin  
16 Demery.

17 Q On the date that you went to talk with  
18 Mr. Demory, which of the two photographic lineups did  
19 you show him?

20 A The photographic lineup containing a  
21 photograph of the defendant, Daniel Green.

22 Q Which is exhibit what?

23 A State's Exhibit 68.

24 Q At the time you showed -- prior to showing  
25 Mr. Demory the photographic lineup, what if anything

1 did you say to him?

2 A I told him that I was going to show him a  
3 photographic lineup that contained several  
4 individuals and that -- I asked that he carefully  
5 examine the individuals in the lineup, and that the  
6 person who shot him may or may not be in the  
7 photographic lineup but to carefully look and see if  
8 he recognized anyone.

9 Q And after you advised Mr. Demory of that,  
10 did you give him an opportunity to look at the  
11 photographic lineup?

12 A Yes, sir.

13 Q Approximately how long did Mr. Demory look  
14 at the lineup?

15 A Between 45 seconds and a minute or possibly  
16 a little longer.

17 Q And during the time that Mr. Demory viewed  
18 or looked at the photographic lineup, did you say  
19 anything to him?

20 A No, sir.

21 Q After Mr. Demory looked at the photographic  
22 lineup, did you ask him any questions?

23 A Yes, sir.

24 Q What if any questions did you ask him?

25 A I asked him if he recognized anyone and he

1 told me that the person in frame number three looked  
2 more like the person than any of the others.

3 Q And the person in frame number three of the  
4 photographic lineup that you showed Mr. Demory was  
5 the photograph of whom?

6 A The defendant Daniel Andre Green.

7 MR. BRITT: Your Honor, at this  
8 time I move for admission of State's  
9 Exhibit 68 and 69.

10 THE COURT: State's Exhibits 68  
11 and 69 are admitted without objection,  
12 other than those previously noted.

13 BY MR. BRITT:

14 Q Was there any reason why you did not show  
15 Mr. Clewis Demory the photographic lineup that's been  
16 marked as State's Exhibit Number 69 that contains the  
17 known photograph of Larry Martin Demery?

18 A Yes, sir.

19 Q What was that reason?

20 A He told me that the other person in the  
21 store had some type of cloth over his face, and that  
22 he would have been unable to determine that person's  
23 race, so therefore I didn't show him the lineup.

24 MR. BRITT: Your Honor, at this  
25 time I ask that State's Exhibit Number 68

1 be published to the jury.

2 THE COURT: Please recall my  
3 instructions. Mr. Horne, if you'll assist  
4 us please. I instruct you again that you  
5 are to examine the exhibit individually and  
6 carefully and without any comment.

7 Mr. Britt.

8 BY MR. BRITT:

9 Q Mr. Underwood, after you interviewed  
10 Mr. Demory on September the 13th, did you have  
11 another occasion to visit with Mr. Clewis Demory?

12 A Yes, sir.

13 Q On September 21st of 1993, did you have an  
14 occasion to see Mr. Demory?

15 A I did.

16 Q Where did you see him at that time on that  
17 date, excuse me?

18 A At his residence.

19 Q Who if anyone accompanied you to that  
20 residence on that date?

21 A Special Agent Randy Myers of the SBI.

22 Q What was your purpose in going to see  
23 Mr. Clewis Demory on September 21st, 1993?

24 A To talk with him again about the weapon  
25 that was taken from his store during the robbery and

1 assault on July 15th, 1993 and to show him the weapon  
2 to see if he could identify it.

3 Q And you said to show him a weapon. What  
4 weapon if any did you have that you wanted him to see  
5 and possibly identify?

6 A The weapon that was located in the vacuum  
7 cleaner at the defendant's residence on August the  
8 16th, 1993, the .38 caliber Smith & Wesson six-shot  
9 revolver.

10 Q And when you went to Mr. Demory's residence  
11 on September 21st, what if anything did he say to you  
12 in describing his gun?

13 A Before I ever showed it to him, I asked him  
14 to describe, again, his weapon to Special Agent  
15 Myers. He told me -- told us that the weapon was a  
16 .38 caliber six-shot Smith & Wesson blue steel  
17 revolver with walnut colored grips. He told us that  
18 the weapon had a hole in the butt of the gun where a  
19 strap could be attached. He told us that he  
20 purchased that weapon at a store in Maryland in 1961  
21 during the time he worked there as a security officer  
22 in Baltimore County, Maryland. He told us that the  
23 weapon was new when he bought it.

24 Q After he described the gun, what then  
25 happened?

1           A       I showed him the handgun and asked him if  
2 he recognizeed it. He looked at it and told us that  
3 he was positive that that was the same weapon that  
4 was taken from him during the store robbery.

5           Q       Did you show him any ammunition at that  
6 time?

7           A       Yes, sir.

8           Q       What if any ammunition did you show him?

9           A       I showed him the ammunition that was  
10 contained in the same plastic bag with the handgun,  
11 and he told us that the ammunition in that bag was  
12 not the ammunition that he had in the weapon at the  
13 time it was taken.

14          Q       Did Mr. Demory show you any type of  
15 ammunition while you were there?

16          A       Yes, sir. He gave me a box of Western  
17 center fire cartridges, .38 Special caliber, 158  
18 grain levaloy rounds of ammunition. I counted the  
19 ammunition and noted that there was 32 rounds of  
20 ammunition in this box.

21                   MR. BRITT: May I approach?

22                   THE COURT: Yes, sir.

23 BY MR. BRITT:

24          Q       Again, I'll show you State's Exhibit Number  
25 59, a large plastic bag you previously identified.

1 Showing you, again, what has been marked as State's  
2 Exhibit Number 59-A that you previously identified.  
3 Is State's Exhibit 59-A the .38 caliber Smith &  
4 Wesson revolver that you took with you to see Clewis  
5 Demory on September the 21st, 1993?

6 A It is.

7 Q And is State's Exhibit 59-A the .38 caliber  
8 Smith & Wesson revolver that Mr. Clewis Demory  
9 identified as the gun belonging to him that was taken  
10 during the robbery of July 15th, 1993?

11 A Yes, sir, it is.

12 Q Is State's Exhibit 59-A the same .38  
13 caliber Smith & Wesson revolver that was seized from  
14 the defendant's trailer on August 16th of 1993 from  
15 the vacuum cleaner?

16 A Yes, sir.

17 MR. BRITT: I don't have any  
18 other questions at this time.

19 THE COURT: Ladies and gentlemen,  
20 we're going to take the afternoon recess at  
21 this time. Please reassemble in the jury  
22 room at five until and we will go forward  
23 at that time. It's your duty to abide by  
24 all prior instructions of the Court  
25 concerning your conduct during this recess.

1           Everyone please remain seated, the  
2 members of the jury are excused until five  
3 until 4:00.

4                           (Jury out at 3:34 p.m.)

5           THE COURT: Thank you  
6 Mr. Underwood, you may come down.

7           MR. BRITT: Your Honor, one  
8 matter before we break. In order to ensure  
9 an orderly presentation of the evidence, I  
10 would like to reserve the right to recall  
11 Mr. Underwood at a later time.

12           THE COURT: Yes, sir. In the  
13 discretion of the Court that will be  
14 allowed. Anything from counsel for the  
15 defendant?

16           MR. THOMPSON: No, sir.

17           THE COURT: We're at ease,  
18 folks.

19                           (Brief recess.)

20           THE COURT: Let the record  
21 reflect all counsel are present, the  
22 defendant is present in open court.

23           Do we have all members of the jury  
24 secured, sir?

25           THE BAILIFF: Yes, sir, we do.

1 THE COURT: If you'll, again,  
2 Mr. Underwood, take the witness stand.

3 And if you'll bring the jury in.

4 (Jury in at 3:54 p.m.)

5 THE COURT: Cross-examination?

6 MR. BOWEN: Thank you, Your  
7 Honor.

8 CROSS-EXAMINATION

9 BY MR. BOWEN:

10 Q Mr. Underwood, before your recent change  
11 within the department, you said you worked in drug  
12 enforcement, is that correct?

13 A Yes, sir.

14 Q How many years did you work in drug  
15 enforcement?

16 A Approximately two and a half.

17 Q Now, during your drug enforcement career  
18 with the SBI and/or before, have you ever worked in  
19 the capacity as an undercover officer?

20 A Some. Not to a large extent, but some.

21 Q And as a drug enforcement officer, you have  
22 worked with persons called confidential informants,  
23 correct?

24 A Yes, sir.

25 Q Now, an undercover officer is a police

1 officer who goes out and pretends he is not a police  
2 officer and tries to buy drugs from people, is that  
3 correct?

4 A Well, if it's a drug investigation, that  
5 would be his role, but undercover sort of is a broad  
6 term. You could do various roles depending on the  
7 type of investigation.

8 Q Very often involves taking on a disguise of  
9 somebody other than the police officer, correct?

10 A Yes, sir.

11 Q So your objective is to mislead people into  
12 thinking that you are someone other than a police  
13 officer, is that right?

14 MR. BRITT: Objection.

15 THE COURT: Is there any  
16 relevance to this line of questioning?

17 MR. BOWEN: Yes, under 608-B,  
18 Your Honor.

19 THE COURT: Members of the jury,  
20 there's a matter of law the Court must take  
21 up at this time out of the hearing and  
22 presence of the jury. Please recall my  
23 instructions in that regard. Don't worry  
24 or speculate about what takes place in the  
25 jury room in your absence. If you would

1 please step to the jury room, please.

2 (Jury out at 3:57 p.m.)

3 THE COURT: Mr. Bowen, is there a  
4 contention that this witness, in his former  
5 capacity as an undercover officer, engaged  
6 in conduct which was misleading, therefore  
7 untruthful, and that that bears on his  
8 credibility as a witness in this case?

9 MR. BOWEN: Yes, sir,  
10 absolutely. The undercover officer, and  
11 I've seen this in those seminars that Your  
12 Honor sometimes refers to, I've seen this  
13 line developed where you have a person with  
14 extensive drug background -- by definition  
15 working undercover means that he has often  
16 worked under assumed names, taken on  
17 aliases, often dealt in false papers and  
18 documents, made pretense telephone calls,  
19 done all these things, and they are all in  
20 the name of advancing the law enforcement  
21 objectives, and we understand that. But it  
22 goes to the fact --

23 THE COURT: Do you have any cases  
24 you want me to see, any case law  
25 authority?



1 the sale of drugs in reverse sting  
2 operations, this is fair game for  
3 cross-examination.

4 THE COURT: Under 608-B?

5 MR. BOWEN: Yes, sir, and also  
6 under impeachment.

7 THE COURT: It's novel. I  
8 participated in a lot of trial seminars,  
9 taught at a bunch of them, and I've never  
10 heard of that.

11 MR. BOWEN: Do you want to hear  
12 where I picked it up? Court TV, right off  
13 of a New York superior case trial. Watched  
14 that lawyer work that thing and didn't even  
15 hear an objection.

16 THE COURT: I'm not going to  
17 comment on New York. Mr. Britt, do you  
18 want to be heard?

19 MR. BRITT: Your Honor, as I  
20 understand 608-B, the evidence can only  
21 refer to the character for truthfulness and  
22 untruthfulness --

23 THE COURT: Yes, sir. And I  
24 think his argument is that even though it  
25 is in furtherance of law enforcement,

1 anybody acting in an undercover capacity at  
2 any time in attempting to maintain that  
3 undercover capacity, anyone who engages in  
4 conduct which is misleading, deceptive,  
5 untruthful, for example, not telling a drug  
6 dealer "I am a law enforcement officer,"  
7 would qualify.

8 MR. BRITT: If you look at the  
9 first sentence of 608-B where it says  
10 specific instances of conduct of the  
11 witness for the purpose of attacking his  
12 credibility, other than conviction of a  
13 crime as provided in 609, may not be proven  
14 by extrinsic evidence.

15 Sounds like what he is trying to do is  
16 get into specific incidences about --

17 THE COURT: What he is saying is  
18 I don't know of any specific instances now  
19 but if you give me time I'll find some.

20 MR. BRITT: Yes, sir, kind of  
21 like a fishing expedition.

22 MR. BOWEN: I'm not suggesting  
23 specific instances, I'm talking about  
24 course of conduct.

25 THE COURT: That's what 608-B is

1 all about.

2 MR. BOWEN: But, all right, but  
3 also we say that we're dealing with a  
4 course of conduct which is sponsored and  
5 condoned by his agency, no question about  
6 it, and I understand the DA can argue that  
7 there's a justifiable, reasonable purpose  
8 for it all, but it is nevertheless  
9 deceptive, misleading --

10 THE COURT: Do you have any  
11 information as to any specific instance on  
12 the part of officer -- or Agent Underwood  
13 that you contend will qualify under 608-B?

14 MR. BOWEN: Not by date and time  
15 but as to each and every case, that in  
16 which capacity he would have actively --

17 THE COURT: Do you have  
18 information before you as to a specific  
19 instance under 608-B as relates to Agent  
20 Underwood?

21 MR. BOWEN: No, sir, because I  
22 can't get into his files to determine that.

23 THE COURT: This New York law  
24 apparently may become North Carolina law  
25 but it's going to have to on appeal. The

1 objection is sustained.

2 MR. BOWEN: Then we offer it also  
3 under 611-B as well as generally for  
4 impeachment --

5 THE COURT: If you've got  
6 specific instances, I'll hear you.

7 MR. BOWEN: 611-B does not  
8 require specific instances, and it is  
9 relevant if this officer can be shown to be  
10 engaged in misleading --

11 THE COURT: The objection -- your  
12 record is clear. You're offering it under  
13 611-B and 608-B. The objection is  
14 sustained. Exception is noted for the  
15 record. Your issue is preserved.

16 Bring the jury back in.

17 MR. BOWEN: First, Your Honor, I  
18 would like to --

19 THE COURT: Tell them to keep the  
20 jury out, please.

21 MR. BOWEN: I respectfully  
22 disagree that the record is not complete,  
23 and I would like to make a record.

24 THE COURT: You want to make an  
25 offer of proof?

1 MR. BOWEN: Yes, sir.

2 THE COURT: Yes, sir.

3 BY MR. BOWEN:

4 Q Mr. Underwood when you have in the past  
5 engaged in your work as an undercover drug officer,  
6 you have misled or deceived people into thinking that  
7 you're not a police officer when you are, is that  
8 correct?

9 A What do you mean by misled them or deceived  
10 them?

11 Q Well, you have been in instances where you  
12 went into a place and attempted to buy narcotic  
13 drugs, correct?

14 A Yes, sir.

15 Q And at that time, you never dressed as a  
16 police officer, did you?

17 A While I was buying drugs?

18 Q Yes, sir.

19 A No, sir.

20 Q And you never carried a badge as a law  
21 enforcement officer?

22 A I may have had one with me, I didn't  
23 display it.

24 Q You never identified yourself as a police  
25 officer?

1           A       Not until after I made the buy.

2           Q       And so you pretended to be someone other  
3 than yourself, didn't you?

4           A       Obviously.

5           Q       And your intent was to mislead the person  
6 from whom you were trying to buy the drugs, is that  
7 right?

8           A       My intent was to get to the truth of the  
9 matter. An individual selling drugs is breaking the  
10 law. My intent was to enforce the law.

11          Q       And to do that, you tricked him into  
12 thinking that you were somebody that you were not?

13          A       I went there on several occasions and to  
14 various locations, and purchased drugs as an  
15 individual. I don't recall too many times ever being  
16 asked if I was a police officer. So therefore I  
17 don't see that I was deceiving in any way to anybody.

18          Q       If if you had been asked if you were a  
19 police officer, you were prepared to tell the truth?

20          A       Not at that time, I would not have said I  
21 was a police officer, no.

22          Q       You've operated as an undercover agent  
23 under an assumed name, haven't you?

24          A       Yes, sir.

25          Q       You've therefore used an alias, is that

1 right?

2 A Correct.

3 Q That in essence is designed to deceive  
4 someone into thinking that you are someone that you  
5 are not, is that correct?

6 A No, sir, that's for my protection.

7 Q Well, now, trickery and deexception is an  
8 acceptable means of enforcing the law in certain  
9 areas of your duties under the customs and the  
10 procedures of your agency, is that correct?

11 A Yes, sir.

12 Q Now, you have been involved in reverse  
13 sting operations, is that correct?

14 A In what capacity?

15 Q Have you had any involvement in those?

16 A Not as an undercover officer.

17 Q What involvement if any have you had in  
18 reverse sting operations?

19 A Maybe part of an arrest team, part of a  
20 subsequent search team, anything like that.

21 Q All right. So you never had directly  
22 engaged in the sale of narcotics pursuant to a  
23 reverse sting operation?

24 A I don't recall of any occasions that I've  
25 done that.

1 Q In connection with your undercover work,  
2 have you possessed or used false papers or documents?

3 A I don't recall. I may have, I don't know.

4 Q These procedures about which I have  
5 questioned you are normally and usually used in  
6 connection with undercover drug operations, are they  
7 not?

8 A If it's an undercover narcotics operation  
9 then some of those procedures are employed, yes.

10 Q And those procedures, customs and practices  
11 are sanctioned and acceptable under the policies and  
12 procedures of your agency?

13 THE COURT: You need to ask for  
14 an offer of proof. What you're attempting  
15 to do is to attack the credibility of this  
16 witness. So you need to deal with this  
17 witness. Now, it may apply under some  
18 policy, but you can't broad-brush

19 BY MR. BOWEN:

20 Q You're not yourself personally, to your  
21 knowledge, operating outside of or ultra vires  
22 policies and procedures of your agency, are you?

23 MR. BRITT: Objection.

24 THE COURT: It's okay. It's  
25 offer of proof.

1 THE WITNESS: Not that I'm aware  
2 of, sir.

3 BY MR. BOWEN:

4 Q So the bottom line is, you have played  
5 fictitious roles in connection with your law  
6 enforcement activities?

7 A I have worked undercover in various  
8 capacities in my career with the SBI.

9 Q And often these means result in arrest, is  
10 that true?

11 A They have.

12 MR. BOWEN: That's all my  
13 questions, Your Honor.

14 THE COURT: You're telling me you  
15 want to ask this under 608-B and 611-B?

16 MR. BOWEN: Under theories of  
17 impeachment, yes.

18 THE COURT: Common law?

19 MR. BOWEN: Yes, sir.

20 THE COURT: State objects?

21 MR. BRITT: Yes, sir.

22 THE COURT: All right.

23 Mr. Green, are you authorizing your  
24 attorney to pursue this line of questioning  
25 of this witness, sir?

1                   MR. GREEN: Yes, sir. They are  
2 my attorneys.

3                   THE COURT: So you're authorizing  
4 this line of questioning with regard to  
5 this witness, is that correct?

6                   MR. GREEN: Yes, sir.

7                   THE COURT: Let the record so  
8 reflect. The Court reverses its ruling as  
9 to 611-B. I'm going to allow it.  
10 Before you do it, let me say this for  
11 whatever it's worth. Like everything else  
12 that occurs in the courtroom, credibility  
13 is a two edged sword. In attempting to  
14 attack credibility, it may cost us  
15 credibility. But that's your call. That's  
16 a tactical, strategic matter that you folks  
17 have to decide.

18                   I'm going to allow it under 611-B for  
19 whatever it's worth. Let the record  
20 reflect that Mr. Green has personally  
21 indicated on the record that he has  
22 authorized his counsel to pursue this line  
23 of questioning on cross-examination.

24                   MR. BOWEN: Your Honor, may I  
25 respectfully inquire who you mean this will

1           attack the credibility or whom you mean it  
2           will cost credibility?

3                   THE COURT: Any advocate in any  
4           case, whether it's the State or counsel for  
5           defendant, whether it's a criminal matter  
6           or a civil matter, that advocate's  
7           credibility is at stake based on what he or  
8           she does in the context of that particular  
9           case. All of us are aware of it. In  
10          asking these questions, credibility could  
11          be lost or gained with regard to the  
12          witness or with regard to the defendant.

13                   MR. BOWEN: Or his counsel.

14                   THE COURT: Or his counsel,  
15          through counsel.

16                   MR. BOWEN: That may be true with  
17          virtually any interchange. And I think  
18          it's an apt observation of Your Honor, and  
19          I think it's one of those things where we  
20          won't know --

21                   THE COURT: It's a tactical  
22          call. You apparently made that decision.  
23          I simply wanted to clarify on the record  
24          that your client authorized you to do it.

25                   MR. BOWEN: Yes, sir. Thank you.

1 THE COURT: Note the State's  
2 exception to the ruling of the Court. The  
3 jury ultimately decides what if anything  
4 any evidence or proffered evidence shows.

5 Bring the jury back in.

6 (Jury in at 4:12 p.m.)

7 THE COURT: Mr. Bowen, you may  
8 continue, sir.

9 MR. BOWEN: Thank you, Your  
10 Honor.

11 BY MR. BOWEN:

12 Q Mr. Underwood, you say that several years  
13 of your employment with the SBI has been involved  
14 with undercover drug work?

15 A I said some, not to a large degree, no,  
16 sir.

17 Q Now, when you're involved in undercover  
18 drug work, you very often work under an assumed name,  
19 don't you?

20 A Sometimes.

21 Q An alias?

22 A Sometimes.

23 Q You pretend to be somebody that you're not,  
24 is that right?

25 A Sometimes.

1 Q You mislead other folks as to your purpose,  
2 say, for buying drugs, correct?

3 THE COURT: You're entitled to  
4 explain anything that you feel an  
5 explanation is required or any time you  
6 feel an explanation is required.

7 THE WITNESS: What do you mean by  
8 mislead?

9 BY MR. BOWEN:

10 Q You don't walk up and tell somebody you're  
11 a police officer, do you, when you're trying to buy  
12 drugs?

13 A No, sir.

14 Q And you therefore play a fictitious role,  
15 don't you?

16 A I don't think you can answer that question  
17 with a yes or no.

18 Q You don't go into a drug dealer's situation  
19 with your police ID on or your uniform on or anything  
20 like that, do you?

21 A While attempting to purchase drugs?

22 Q Yes, sir.

23 A No, sir.

24 Q And if asked who you are, you're not going  
25 to tell them you're a police officer, are you?

1           A     If they pulled a gun on me or something  
2 like that, I might.

3           Q     But under normal circumstances, you  
4 wouldn't tell them who you really were, would you?

5           A     No, sir.

6           Q     And in connection with your drug  
7 enforcement you have used pretense phone calls,  
8 haven't you, that is, pretending to be somebody that  
9 you're not when you make a call?

10          A     You're asking me if I personally have done  
11 this? Or if I have been involved in investigations  
12 where that has been done?

13          Q     The second, if you will. Have you been  
14 involved in investigations where that has occurred?

15          A     Yes, sir.

16          Q     Now, these practices and procedures have on  
17 occasions led to arrests, is that true?

18          A     Yes, sir.

19          Q     Now, Mr. Underwood, when you went to the  
20 home of Mr. Green as you've testified, you say you  
21 went to a certain area in the home and retrieved a  
22 videotape, is that correct?

23          A     Yes, sir.

24          Q     Now, on the photograph that Mr. Johnson  
25 Britt showed you, the majority of those videotapes

1 had some sort of label on the back, didn't they?

2 A Yes, sir.

3 Q But some additional ones did not have a  
4 label on the back, is that correct?

5 A Best I recall, that's correct.

6 Q And the one that you received and retrieved  
7 and identified here in court, I believe it was  
8 Exhibit Number 79, that did not have a paper or  
9 sticker on the back spine, is that correct?

10 A That's correct.

11 Q But now you only removed one videotape,  
12 correct?

13 A Yes, sir.

14 Q And you left behind the other videotapes  
15 that had nothing or no sticker on the spine?

16 A What I did, Mr. Bowen, was collected the  
17 one videotape that was separate and apart from those  
18 that were neatly lined along the bookshelf. I only  
19 collected the one that was lying flat in front of  
20 those that were lined up. It was unlabeled. The  
21 others appeared to be in some type of order and this  
22 one was -- it just sort of jumped out at you.

23 Q Now, did anybody else to your knowledge  
24 collect any videotapes of any sort labeled anywhere?

25 A Not with -- not amongst the officers who

1 were there when I was there, no, sir.

2 Q Now, Mr. Underwood, that tape was retrieved  
3 by you from a bookcase in what room, sir?

4 A The den area.

5 Q You never retrieved a videotape from  
6 anyone's bedroom, did you?

7 A No, sir.

8 Q Did you ascertain during that trip into the  
9 Green home which room was Daniel Green's bedroom?

10 A I couldn't specifically say, no, sir.

11 Q Are you aware of an SBI document authored  
12 by Agent Heffney that says that you retrieved a  
13 videotape from Daniel's bedroom?

14 A No, sir.

15 Q So you got no videotapes nor to your  
16 knowledge did anybody else get any videotapes from  
17 Daniel's bedroom?

18 A No, sir.

19 Q Now, your trip to the Green household  
20 occurred on the 16th of August, correct?

21 A Yes, sir.

22 Q Did you know, Mr. Underwood, that other  
23 officers including Agent Barry Lea had been there to  
24 that house on the 14th of August, just two days  
25 before?

1           A     Did I know that then or you're asking me do  
2 I know that now?

3           Q     Do you know it now?

4           A     I know that now, yes, sir.

5           Q     And do you know that Agent Barry Lea was  
6 present for both searches?

7           A     Yes, sir.

8           Q     And do you know that the search that  
9 occurred on the 14th when Agent Barry Lea was present  
10 occurred as a result of the consent of Ms. Ann  
11 Elizabeth Green, Daniel's mother?

12                   MR. BRITT:  Objection.

13                   THE COURT:  The question is, do  
14 you know that.  Then or now?

15                   MR. BOWEN:  Now.

16                   THE WITNESS:  Yes, sir.

17 BY MR. BOWEN:

18           Q     And also the consent of Mr. Daniel Green,  
19 also known as U'Allah?

20           A     Yes, sir.

21           Q     And you know that on the 14th, there was no  
22 weapon or videotape seized or found, correct?

23           A     Yes, sir.

24           Q     And Daniel Green, to your knowledge, had  
25 been incarcerated since -- in the Robeson County

1 jail, since before the 14th, had he not?

2 MR. BRITT: Objection.

3 THE COURT: Restate it.

4 BY MR. BOWEN:

5 Q When if you know did Mr. Daniel Green also  
6 known as U'Allah go into the Robeson County jail?

7 A August the 15th, 1993.

8 Q That was in the early morning hours of the  
9 15th, correct?

10 A Yes, sir.

11 Q Now, Mr. Daniel Green had been picked up in  
12 the evening hours of the 14th at his home, correct?

13 A That is my understanding, yes, sir.

14 Q That's when he and his mother gave consent  
15 to search?

16 A Sometime that evening, yes.

17 Q You know that Mr. Green left in the  
18 presence of officers and went to the Robeson County  
19 jail Sheriff's Department facility, correct?

20 A Yes, sir.

21 Q And you further know he never left that  
22 facility, but after being with officers a number of  
23 hours, was thereafter incarcerated in the Robeson  
24 County jail?

25 A I do know that he left once.

1 MR. BRITT: Objection.

2 MR. BOWEN: Sir?

3 THE WITNESS: I know he left one  
4 time.

5 BY MR. BOWEN:

6 Q You mean the night of the 14th?

7 A No, sir, the 15th.

8 Q He left on the 15th?

9 A Yes, sir.

10 Q That was early in the morning. But did not  
11 go to his house, did he?

12 A No, sir.

13 Q And that was when he left in the company of  
14 a police officer or sheriff's officer?

15 A What I'm referring to is when he left with  
16 me on the 15th.

17 Q Okay. So, now, when Agent Barry Lea went  
18 into the room where the vacuum cleaner was, state  
19 whether or not Agent Barry Lea was in that room  
20 alone.

21 A I don't recall.

22 Q You said that Agent Barry Lea made some --  
23 made a remark or made some noise or something, and  
24 then you went in, is that correct?

25 A Yes, sir.

1 Q And that is when he showed to you a shop  
2 type vacuum cleaner, correct?

3 A Yes, sir.

4 Q You looked down in it and saw State's  
5 Exhibit 59-A, a revolver, correct?

6 A Yes, sir.

7 Q It was not covered with rust, was it?

8 A It wasn't covered, I don't remember if it  
9 there was any rust on it or not, but it wasn't  
10 covered with rust.

11 Q There was no rust that caught your  
12 attention about which you could now testify, correct?

13 A I didn't pay any attention honestly if  
14 there was any rust on it or not.

15 Q Did Agent -- well, you said that you  
16 reached in with your thumb and forefinger and plucked  
17 it out?

18 A Yes, that's correct.

19 Q And so that's when you looked at State's  
20 Exhibit 59-A, the revolver, correct?

21 A Yes, sir.

22 Q Did you look at both sides of it?

23 A Yes, sir.

24 Q I ask you, Agent Underwood, did you see any  
25 rust whatsoever on that weapon?

1 A I don't recall.

2 Q All right. Did you see any dirt in the  
3 bottom of the vacuum cleaner?

4 A I don't recall if there was dirt. Seems  
5 like there was some -- a small amount of dirt or  
6 trash or particles in there, but I don't specifically  
7 recall.

8 Q You say the weapon, State's 59-A was loaded  
9 with some cartridges?

10 A Yes, sir.

11 Q Did you remove those cartridge?

12 A No, sir.

13 Q Do you know who did remove those cartridges  
14 if anyone did remove those cartridges?

15 A I don't know who did.

16 Q Now, you said at a later time you had that  
17 gun and you had a bag of cartridges, correct?

18 A Yes, sir.

19 Q You don't know how the cartridges got  
20 separated from the weapon?

21 A No, sir.

22 Q Do you know that H & R cartridges were in  
23 that weapon?

24 A I didn't look at them.

25 Q But you do know that Mr. Demory's box of

1 cartridges were yet some other brand, is that  
2 correct?

3 A Yes, sir.

4 Q You say that you found a pay stub, an  
5 employment type pay stub, made out to Daniel Andre  
6 Green?

7 A Yes, sir.

8 Q Now, State's exhibit 59-A, the revolver,  
9 you copied down a number which you said at least at  
10 one point was a serial number, correct?

11 A Yes, sir.

12 Q And that was 387767?

13 A That's correct.

14 Q Now, you found that on the barrel of  
15 State's Exhibit 59-A, correct?

16 A Yes, sir.

17 Q And that barrel, to your knowledge, is  
18 capable of being separated from the rest of the body  
19 of that gun by a gunsmith, is it not?

20 A I don't know.

21 Q Well, the barrel is of one manufacturer and  
22 the body of the gun is of another manufacturer, is it  
23 not?

24 A I don't know.

25 Q Now, how long would you say that you held

1 and examined State's Exhibit Number 59-A when you  
2 received it out -- when you picked it up out of the  
3 shop vac?

4 A Not very long.

5 Q Well, did -- you looked at more than the  
6 barrel, didn't you?

7 A I looked at the weapon, I turned it around,  
8 I looked at it, I observed that it was loaded with  
9 six rounds of ammunition. I wrote down the number  
10 that I believed to be the serial number from the  
11 barrel. And I put it in an evidence bag and sealed  
12 it up.

13 Q Did you find any other numbers on the  
14 weapon?

15 A .38 caliber. There were some other numbers  
16 on it, but as far as identifying number, 387767 was  
17 the number that I wrote as the serial number.

18 Q But you did not examine the barrel or any  
19 other part of the body of the gun with intent to find  
20 any other numbers that you would write down, is that  
21 correct?

22 A No, sir. It was loaded with live rounds of  
23 ammunition, and I did not want to run the risk of  
24 shooting myself or anyone else, and further did not  
25 want to jeopardize the possibility of any

1 fingerprints that might be on the weapon, so I was  
2 careful to package it without touching it any more  
3 than I had to.

4 Q Now, Mr. Underwood, the number that you  
5 wrote down --

6 THE COURT: Mr. Bowen, recognize  
7 that the cylinder is out --

8 MR. BOWEN: Yes, sir.

9 BY MR. BOWEN:

10 Q Mr. Underwood, the number that you wrote  
11 down comes from the fatter portion of the barrel  
12 closer to the cylinder where is written 387767,  
13 correct?

14 A Yes, sir.

15 Q Now, there is a number under the barrel, is  
16 there not?

17 A Yes, sir.

18 Q And that number is -- there's a letter too,  
19 isn't there, V over to one side, and then 83470,  
20 correct?

21 A I can't see it from here.

22 Q Take it yourself, if you would.

23 A Yes, sir.

24 Q And you didn't write that number down, did  
25 you?

1           A     I never saw that number.

2           Q     So you never opened the cylinders like  
3 that, did you?

4           A     That's correct.

5           Q     Now, do you find a number on the body of  
6 this gun anywhere?

7           A     A number?

8           Q     Yes, sir.

9           A     As in -- I mean, there are numbers here  
10 that I've pointed out.

11          Q     Serial number or anything else. I think  
12 His Honor wants us to point that --

13          A     38.

14          Q     Yes, sir. Now, by the body, I would mean  
15 anything back toward the handle from the junction of  
16 the barrel and the body.

17          A     I don't see any other number.

18          Q     Now, in examining the weapon a little bit  
19 ago on the stand, Mr. Underwood -- you do not see any  
20 rust on the gun now, do you, in State's Exhibit 59-A?

21          A     I didn't specifically look for rust.

22          Q     Okay. Now, you say that weapon went from  
23 you to Aprille Sweatt, is that correct?

24          A     Best I recall, yes.

25          Q     And then went from Aprille Sweatt to Agent

1 Heffney, is that right?

2 A Well, from Aprille, my understanding is she  
3 submitted it to the laboratory, but without looking  
4 back through all the submission sheets and the  
5 evidence transfer sheets, I don't know specifically  
6 who she gave it to after that.

7 Q But in time it came back to you, is that  
8 right?

9 A Yes.

10 Q Now, when you went and talked to  
11 Mr. Demory, that is Mr. Clewis Demory, you  
12 ascertained that Mr. Demory had in fact seen some  
13 pictures that appeared on TV in connection with the  
14 alleged James Jordan shooting, is that correct?

15 A Yes, sir, before I ever showed him any  
16 photographs, I asked him if he had seen any news  
17 accounts regarding the arrest of the defendant and  
18 Larry Demery for the murder of James Jordan. And he  
19 told me that he had seen that.

20 Q So that when you went to talk to Mr. Clewis  
21 Demory about the robbery in which he was the victim,  
22 one of the first things you talked to him about was  
23 some other suspects in the Jordan matter, is that  
24 correct?

25 A No, sir.

1 Q Well, you didn't -- okay. You went and  
2 talked to Mr. Demory, how long after the alleged  
3 robbery of Mr. Demory, Mr. Clewis Demory?

4 A Approximately two months.

5 Q Okay. And when you went there, you say you  
6 asked him if he had seen some photos on TV relating  
7 to the James Jordan matter, correct?

8 A Yes, sir.

9 Q And then you proceeded to talk to him about  
10 making some identifications, is that correct?

11 A Well, I interviewed him first about what  
12 transpired that day inside of his store, obtained a  
13 description from him of the individuals who entered  
14 the store, and then is when I talked with him about  
15 that.

16 Q All right. But is it fair to say that  
17 before you showed him any photographs of any sort,  
18 you had brought up the subject of the James Jordan  
19 shooting?

20 MR. BRITT: Objection to the  
21 form.

22 THE COURT: Overruled.

23 BY MR. BOWEN:

24 Q Sir?

25 A Yes, sir. I asked him if he had seen the

1 news accounts regarding the arrest of the defendant  
2 and Larry Demery.

3 Q And --

4 THE COURT: For clarification,  
5 purposes, question was asked in the context  
6 of did you say anything to Mr. Demory about  
7 the James Jordan case.

8 THE WITNESS: Yes, sir. The  
9 question that I asked him.

10 THE COURT: What was the question  
11 that you asked him?

12 THE WITNESS: I asked him if he  
13 had seen the news accounts regarding the  
14 arrest of the defendant Daniel Green and  
15 Larry Demery for the murder of James  
16 Jordan.

17 THE COURT: Now you may follow  
18 up.

19 BY MR. BOWEN:

20 Q Did you then further discuss the Jordan  
21 matter with Mr. Clewis Demory?

22 A No, sir.

23 Q But it was after those questions that you  
24 asked him, it was after you brought up the matter of  
25 the Jordan case and the photographs on TV that you

1 later showed Mr. Demory the photo arrays that you've  
2 identified here?

3 A Yes, sir.

4 Q And you know of your own knowledge that a  
5 photograph of Mr. Daniel Green and Mr. Larry Demery  
6 were shown numerous times on the news media and on  
7 the television around the area prior to your talking  
8 to Mr. Demory, don't you?

9 A You're asking me if I saw it, I mean if I  
10 saw his picture on television?

11 THE COURT: The question is  
12 limited to your own knowledge.

13 THE WITNESS: Yes, sir.

14 BY MR. BOWEN:

15 Q Did you ascertain how many times Mr. Demory  
16 had had an opportunity to see photos of Daniel Green  
17 and Larry Demery on the local television?

18 A I didn't ask him.

19 Q Now, you said that you proceeded to get  
20 from Mr. Demory a description?

21 A Yes, sir.

22 Q Two months after the incident?

23 A That's correct.

24 Q Are you familiar with an officer whose name  
25 is GV -- that is V as in Victory -- Bass?

1 A Yes, sir.

2 Q And do you know what if anything Mr. Bass  
3 did with respect to the incident at Mr. Clewis  
4 Demory's store?

5 A No, sir.

6 Q Are you aware that Mr. Bass was the first  
7 officer on the scene?

8 MR. BRITT: Objection.

9 THE COURT: If you know, you may  
10 answer.

11 THE WITNESS: I am now.

12 BY MR. BOWEN:

13 Q All right, sir. Now, during the course of  
14 your investigation, have you had occasion to acquire  
15 a copy of Mr. Bass's original report made following  
16 his arrival at the scene of the Clewis Demory  
17 robbery?

18 A Yes, sir.

19 Q That report from Mr. GV Bass is part now of  
20 your papers and documents which you have sole care  
21 and custody and control relating to your part of this  
22 investigation, correct?

23 A I have a copy of his report, not the  
24 original.

25 Q All right. Now, were you aware from that

1 report that Mr. Demory was invited to give any kind  
2 of physical description of the two individuals that  
3 came into his store on the morning of the  
4 robbery?

5 MR. BRITT: Objection.

6 THE COURT: Sustained.

7 BY MR. BOWEN:

8 Q Did you receive any description whatsoever  
9 from Mr. Bass before you attempted to talk to  
10 Mr. Demory about a description?

11 A I've never talked with Mr. Bass about this  
12 investigation.

13 Q Did you have an occasion to talk to -- do  
14 you know Mr. James Carter?

15 A Yes, sir.

16 Q Did you have an occasion to receive  
17 Mr. James Carter's written report and consolidate it  
18 with your own investigative file?

19 A No, sir.

20 Q Did you receive any kind of description of  
21 the Clewis Demory assailants through Mr. -- or from  
22 Mr. Carter, Mr. James Carter?

23 A I had received a description, but I can't  
24 specifically say I got it from him. I got it from  
25 someone employed by the Sheriff's office sometime

1 after the incident occurred, but I can't specifically  
2 say he was the one that provided me the description.

3 Q And that description, Mr. Underwood, did  
4 not give a weight, did it?

5 MR. BRITT: Objection.

6 THE COURT: Not relevant.

7 BY MR. BOWEN:

8 Q When you talked to Mr. Demory, you did not  
9 get an estimated weight of the individual, did you?

10 A When I talked to Mr. Clewis Demory?

11 Q Yes, sir.

12 A Yes, sir.

13 Q And you did not get -- he gave you a weight  
14 at that time, is that correct?

15 A Yes, sir.

16 Q And you don't know who he had talked to if  
17 anyone between the time of the robbery and the time  
18 that you talked to him, correct?

19 A No, sir.

20 Q You asked him about a hairstyle, is that  
21 correct, and was he able to tell you anything about a  
22 hairstyle?

23 A He told me that one of the individuals had  
24 a cloth over his face and the other had on a ball  
25 cap.

1 Q So it's fair to say he could not give you a  
2 hair color or a hairstyle, correct?

3 A I don't know if he could or not.

4 Q He didn't?

5 A No, sir.

6 Q Given that he had the hat on his head, he  
7 was unable to give you a hair length, correct?

8 A That's correct.

9 Q He was unable to give you an eye color,  
10 correct?

11 A That's correct.

12 Q He was unable to tell you whether the  
13 individual wore glasses or whether he had shades or  
14 sunglasses or whether he was without glasses  
15 altogether, correct?

16 A Are you referring to suspect number one or  
17 suspect number two?

18 Q I'm referring to the defendant in this  
19 case, Mr. Daniel Green, also known as U'Allah. Did  
20 Mr. Demory state whether or not Mr. Green was or was  
21 not wearing glasses, and if so, what kind?

22 A The description that he gave me and the  
23 only description he gave me was that he was a black  
24 male, approximately six feet tall, approximately 140  
25 to 145 pounds, about 22 to 23 years of age, wearing a

1 dark colored ball cap, full length pants, and some  
2 type of shirt.

3 Q But he said he had seen Mr. Green on TV,  
4 correct?

5 A That was later on in the interview after I  
6 asked him if he had seen the television account.

7 Q You were letting him describe Mr. Green  
8 from TV, weren't you?

9 A No, sir, I was letting him describe the  
10 suspect that shot him and robbed him.

11 Q Why did you bring up matters about suspects  
12 in the Jordan case and bring up Mr. Green and  
13 Mr. Demory when you were to say that you were  
14 there -- strike that. I withdraw that.

15 What I want to know here is this: You  
16 first also said who had a jacket, anybody?

17 A Who had a jacket?

18 Q Did either suspect have a jacket?

19 THE COURT: You're asking him --

20 MR. BOWEN: Did Mr. Clewis Demory  
21 say they had a jacket?

22 THE WITNESS: I don't recall him  
23 mentioning a jacket.

24 BY MR. BOWEN:

25 Q Did you ask or request that they describe