

1 any sort of pants or shirt --

2 THE COURT: Rephrase.

3 BY MR. BOWEN:

4 Q Did you ask that Mr. Demery answer whether
5 or not the individual had on pants -- or what type of
6 pants, I'm sorry?

7 A I asked him to be as specific and as
8 complete in his description of the individual that he
9 could be, including hairstyle, eyes, eye color,
10 clothing, to include color, anything. And that's the
11 the description he gave.

12 Q And he told you that he was not going to be
13 able to identify either individual, correct?

14 A That's not what he said.

15 Q He said that if the persons walked in
16 today, he would not be able to recognize them, didn't
17 he?

18 THE COURT: You're asking him
19 this?

20 MR. BOWEN: That's what
21 Mr. Clewis Demory said to you, isn't that
22 true?

23 THE WITNESS: No, sir.

24 BY MR. BOWEN:

25 Q Now, you then put together an array of

1 photographs and you say you picked people with short
2 hair, correct?

3 A I believe I said we picked people who were
4 similar in age at the time the photographs were
5 taken, attempted to pick people basically who looked
6 alike.

7 Q You mentioned short hair, didn't you, or do
8 you recall?

9 A I don't recall.

10 Q Well, if you did, it wouldn't have made any
11 difference because the suspect had on a ball cap,
12 correct?

13 A According --

14 Q The individual that Mr. Demory says came
15 into his place had on a ball cap, correct?

16 A That's what he said, yes, sir.

17 Q So wouldn't have matter what kind of hair
18 they had?

19 A That's correct.

20 Q And you did these photographs in black and
21 white, correct?

22 A Yes, sir.

23 Q So it would have been impossible to tell
24 what kind of eye color the individual that came in to
25 see Mr. Demory that morning had, correct?

1 A Yes, sir.

2 Q Now, the --

3 MR. BOWEN: If Your Honor,
4 please, may I ask the witness to come over
5 to the jury and point out certain things?

6 THE COURT: Yes, sir.

7 BY MR. BOWEN:

8 Q Mr. Underwood, could you join me over here,
9 please? We're going to do it down here and then down
10 here.

11 Individual number one does not have on jail
12 clothes, does he?

13 MR. BRITT: Objection.

14 THE COURT: Sustained.

15 BY MR. BOWEN:

16 Q Individual number one has got on a round
17 collar and light colored shirt?

18 MR. BRITT: Objection.

19 THE COURT: The exhibit reflects
20 what it reflects. And your questions can't
21 be argumentative.

22 BY MR. BOWEN:

23 Q Let me ask you this: Do you recognize what
24 kind of clothing Daniel Green is wearing?

25 A No, sir.

1 Q When you selected the photographs, did you
2 attempt to select the photographs in such a way that
3 the words "Sheriff's Department" would be more clear
4 or visible on any particular photographs as opposed
5 to others?

6 A No, sir.

7 Q As to Exhibit Number -- well, as to this
8 Exhibit Number 69, did you try to pick photographs
9 which were uniformly photographically alike or
10 consistent?

11 A I'm not sure I understand what you mean.

12 Q Well, in terms of lightness or darkness of
13 the photographs themselves, did you try to pick
14 photographs that were about alike in terms of their
15 lightness and darkness?

16 A Yes, sir.

17 Q Now, did you look to see if the individuals
18 that you put together in State's Exhibit Number 68
19 were of the approximate same weight?

20 A I didn't check the weight. I basically
21 looked at the date the photograph was taken of those
22 individuals and compared the dates to determine how
23 old they were at the time the photographs were made.
24 I didn't look at the weights.

25 Q Now, people who are heavier tend to have

1 fatter or different shaped faces than people who are
2 lighter, don't they?

3 A Some do.

4 Q And you didn't look in the jackets of any
5 of these individuals that you used to determine the
6 height, did you?

7 A No, sir.

8 Q That's all. Thank you, sir.

9 Mr. Underwood, did you consider a live lineup?

10 A No, sir.

11 Q And did you consider doing a live lineup
12 where all the men in the lineup wore baseball caps?

13 A No, sir.

14 Q But you knew that the image that Mr. Demory
15 had seen was of an individual wearing a baseball cap,
16 didn't you?

17 A Not at the time that that lineup was
18 prepared, I did not know that because I had not
19 talked with him yet.

20 Q So then you had not obtained a description
21 yourself from Mr. Demory when you set about to put
22 together a photo array which you were going to show
23 to Mr. Demory?

24 A That's correct.

25 Q So then you had to get information relative

1 to any description -- when the search took place on
2 the 16th that you've described, Mr. Underwood, to
3 your knowledge was any officer there videotaping that
4 search throughout the Green house?

5 A Not to my knowledge, no, sir.

6 Q As far as you know, they were not
7 videotaping it on the 14th either, at least you're
8 not aware of any such tape?

9 A I don't know.

10 Q Now, you say that Mr. Bass's report is part
11 of your official file now, is that correct?

12 A I have a copy of it, yes, sir.

13 Q And you have read Mr. Bass's report,
14 haven't you?

15 A I don't think I have.

16 THE COURT: Mr. Bowen, this is
17 probably a good time for us to stop for the
18 afternoon.

19 Ladies and gentlemen, we're going to
20 recess at this time. We're going to --
21 folks, I anticipate that there be a matter
22 that will necessarily be heard by the Court
23 out of the presence of the jury. It's a
24 matter of law, I think, that will arise on
25 Monday morning.

1 I'm trying to think in terms of
2 scheduling, and rather than have you come
3 in at 9:30 on Monday, I'm going to ask that
4 you report at 10:30 on Monday morning. If
5 you would, take the usual route, please do
6 not come to the courtroom, and if you'll
7 report to the jury room at 10:30 Monday
8 morning, we hopefully will be in position
9 to go forward at that time.

10 During the weekend recess, don't talk
11 about the case among yourselves or with
12 anyone else, including members of your own
13 families. Don't allow anyone to say
14 anything to you or in your presence about
15 this case. If anyone communicates about
16 this matter or attempts to do so or says
17 anything about the case in your presence,
18 it's your duty to inform us of that
19 immediately.

20 Don't form or express any opinions
21 about this matter. Don't have any contact
22 or communication of any kind with any of
23 the attorneys, parties, witnesses,
24 prospective witnesses, or directly with the
25 Court. It's especially important, as is

1 always true, that you avoid any exposure to
2 any media accounts which may exist in
3 connection with this matter. And you're
4 not to conduct any independent inquiry or
5 investigation or research of any kind.
6 Everyone, please --

7 MR. BOWEN: Judge, if you give us
8 one minute to approach the bench, it may be
9 beneficial.

10 THE COURT: If you'll bear with
11 us. If you all would come up.
12 Mr. Underwood, you may step down.

13 (Whereupon a bench conference ensued
14 as follows.)

15 MR. BOWEN: The reason for the
16 subpoena, our good faith basis is going to
17 be an actual use of the thing. I talked
18 with the reporter myself last night. And
19 out of an abundance of precaution, I talked
20 to Mitch and told him my purpose for
21 inquiring into that has been satisfied
22 already in my cross-examination today and
23 that I will not need that. So I've already
24 told him, and the attorneys don't have to
25 come. If they want to call me this

1 weekend, I can do the same, but I think it
2 would be appropriate to let the jury come
3 in, if that's the reason.

4 THE COURT: Yes, that's the
5 reason.

6 Before you leave, let the record
7 reflect present at this bench conference
8 are all counsel, the defendant, the
9 presiding Judge, and the court reporter.

10 Any other matters?

11 MR. BOWEN: No, sir.

12 (Bench conference concluded.)

13 THE COURT: If you'll report at
14 9:30 on Monday morning, folks, we will be
15 prepared to go forward at that time.
16 Please recall all instructions just given,
17 and as previously given. You folks have a
18 good evening, we'll see you Monday morning
19 at 9:30. Everyone else please remain
20 seated.

21 (Jury out at 4:55 p.m.)

22 THE COURT: Folks, I don't mean
23 to say what I'm about to say in a negative
24 or facetious manner, it's simply something
25 that I need to address at this point,

1 because another judge discussed it with me
2 at this point. There seems to be a
3 perception in Robeson County that if you
4 have it in writing you can impeach anybody
5 with anything that's in writing. That
6 ain't so, folks.

7 Mere fact that one officer may have
8 written a report that says something,
9 doesn't mean that it can be used to impeach
10 everybody who is involved in law
11 enforcement. The mere fact that it's in
12 writing -- reason I say that is because
13 that position was taken by an attorney in
14 another case in this courthouse. It's in
15 writing so I can use it to impeach
16 anybody. That seems to be the prevailing
17 view. I've heard it -- not stated that way
18 and bluntly, and in my view erroneously,
19 but seems to be a perception that if
20 somebody wrote down something somewhere, it
21 can be used to impeach anybody.

22 MR. BOWEN: That having been
23 said, I don't mind telling you where I was
24 going.

25 THE COURT: Mr. Bass's report

1 report doesn't have a thing to do with
2 Mr. Underwood, doesn't have a thing to do
3 with anybody but Mr. Bass.

4 MR. BOWEN: Your Honor, I
5 respectfully disagree for this reason.
6 Now, I think I've got my answer and I think
7 I can stop, but your having made a comment,
8 if you'll hear me for just a minute.

9 THE COURT: Yes, sir, I will.

10 MR. BOWEN: Mr. Underwood said he
11 had not talked to Mr. Demory and gotten any
12 description, okay. He's got a report from
13 Mr. Bass that if he looks at it carefully
14 will indicate Mr. Bass was at least an
15 officer on the scene. We know he was
16 first, and then of course came James
17 Carter.

18 Now, seems to me that Mr. Underwood
19 was without his own information of
20 description to base his photographic array
21 on. It well could be that he could have
22 received those reports earlier on enough
23 that he based that information, he used
24 that information to base his photographic
25 array on. Now, he answered the question,

1 he said no, I didn't have GV Bass's --

2 THE COURT: He based his
3 photographic array on the fact that he had,
4 as a suspect, your client. So he tried to
5 put the array together based on folks who
6 look like your client.

7 MR. BOWEN: That's correct, but
8 it would not have been unreasonable for him
9 to have taken a description given out by
10 the victim as well. And I was just
11 exploring whether or not he did.

12 THE COURT: What has that got to
13 do with Mr. Bass' report?

14 MR. BOWEN: Because since
15 Mr. Underwood didn't get it from himself, he
16 would have gotten it perhaps from other
17 sources in his file. But I have found from
18 my questions that Mr. Bass's report has not
19 appeared in his file until later. So that
20 answers that and I'm going to go away from.

21 MR. BOWEN: I understand that,
22 that's not the first time we've used
23 somebody else's report to try to impeach a
24 witness --

25 MR. BOWEN: Well --

1 THE COURT: -- in this case.

2 MR. BOWEN: It's always possible
3 that when a document is part of one's
4 official file, that that invites one to
5 check on those facts and that one may have
6 some knowledge of those facts himself and
7 that would be impeachment material.

8 THE COURT: Yes, sir. Yes, sir.
9 You've just stated the Robeson County rule.

10 MR. BOWEN: Wait. Wait just a
11 minute.

12 THE COURT: That's what I
13 understood was argued by the other attorney
14 in this case.

15 MR. THOMPSON: That's not a
16 Robeson County rule.

17 THE COURT: It's not a rule of
18 evidence. It's not a rule of evidence.
19 And I'm telling you folks, in as nice a way
20 as I can on a Friday afternoon, that you
21 can't use A's writing to impeach B, C, D,
22 F, down through Z in most instances.

23 MR. BOWEN: I would agree with
24 you except when it's in a person's official
25 file when it has invited someone to check

1 the facts of that, when that may give a
2 reason for a person to have had some
3 personal knowledge of it and the personal
4 knowledge is impeachable. Now, the fact
5 that the written report is in there is good
6 faith to ask the question in the first
7 place, seems to me.

8 THE COURT: Your reasoning is if
9 the FBI agents involved nationwide in the
10 investigation of the bombing of the Federal
11 Building, if one person writes a report
12 connected with that investigation in LA,
13 that L A report can be use to do impeach
14 every FBI officer involved in that
15 investigation throughout the United
16 States.

17 MR. BOWEN: Not necessarily.

18 THE COURT: It's in the file.

19 MR. BOWEN: Not necessarily. But
20 it opens the door to the question. Mr. New
21 York agent, based on the LA agent's report,
22 what did you do. And if you took his
23 report and made up a photographic array
24 from the information in it, then it seems
25 to me I'm entitled to know the basis of

1 what that photographic array came from.

2 MR. BRITT: If that's the
3 purpose, maybe Mr. Bowen can ask
4 Mr. Underwood Monday what was the basis for
5 putting the photographic array together.

6 MR. THOMPSON: He's not going to
7 ask that.

8 MR. BRITT: And we all know why.

9 THE COURT: Yes, sir.

10 Have a good weekend, folks. See you
11 Monday morning at 9:30.

12 (Court adjourned, 5:00 p.m.)

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1 APPEARANCES OF COUNSEL:

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14 - - -

15 (January 29, 1996. Proceedings in open court.)

16

17 THE COURT: Good morning, folks
18 let the record reflect all counsel are
19 present, the defendant is present in open
20 court. Mr. Horne, do we have all members
21 of the jury secured in the jury room.

22 THE BAILIFF: Yes, sir, we do.

23 THE COURT: My matters from
24 either counsel before we proceed.

25 MR. BRITT: No, sir.

1 THE COURT: Let me make the
2 following a matter of record in this case.
3 The Court has been provided with an Ake
4 motion. The Court intends to go forward
5 with an ex-parte hearing on that Ake motion
6 filed on behalf of the defendant at the
7 earliest opportunity. I would like to do
8 it today, but depends on where we are. I
9 think that the best use of our time is to
10 try to hold the hearing at a point where it
11 minimizes any inconvenience for the jurors.

12 Mr. Underwood, if you'll return to the
13 stand, please, sir.

14 And if you'll bring the jury in,
15 please, Mr. Horne.

16 (Jury in at 3:30 a.m.)

17 THE COURT: Good morning, ladies
18 and gentlemen.

19 I believe that at the time we
20 recessed, Mr. Underwood was undergoing
21 cross-examination. Mr. Bowen.

22 CROSS-EXAMINATION

23 BY MR. BOWEN:

24 Q Mr. Underwood, you took from Mr. Clewis
25 Demory some .38 caliber ammunition, did you not?

1 A Yes, sir.

2 Q And that was of the Western Brand, 158
3 grain?

4 A Yes, sir, that's correct.

5 Q And those items were submitted to the SBI
6 lab, correct?

7 A I believe they were submitted to the FBI
8 lab.

9 Q Okay. Now, as part of your official
10 reports, do you have the results of those tests or
11 examination?

12 A No, sir, I do not.

13 Q Now, Mr. Underwood, when you went to the
14 residence of Mr. Larry Demery, Sr., that is Larry
15 Demery who has testified, his father, did you go
16 there with a search warrant?

17 A No, sir.

18 Q Is it true to say that Larry Demery, at the
19 time you went to his father's house, was a suspect in
20 this case?

21 A In the Jordan case?

22 Q Yes, sir.

23 A Yes, sir, he was.

24 Q And when you went to Larry Demery's
25 father's house, you stayed outside that house, is

1 that true?

2 A No, sir.

3 Q You went in?

4 A Yes, sir.

5 Q You asked for two guns, is that correct?

6 A Yes, sir.

7 Q Did you look around in the house to
8 determine with whether or not there were more guns
9 than that?

10 A No, sir.

11 Q Did you request from Mr. Larry Demery's
12 father an opportunity to search that house?

13 A No, sir.

14 Q Did you determine through your
15 investigation that Larry Demery, young Larry Demery
16 lived at that house at least some of the time?

17 A Yes, sir.

18 Q Did you determine that Larry Demery had a
19 room in that house, a bedroom?

20 A I don't recall determining that. I was
21 aware that he lived there.

22 Q All right. But you never looked in Larry
23 Demery's bedroom by consent or otherwise, did you?

24 A No, sir.

25 Q And you received only the two weapons that

1 Mr. Demery, his father, brought to you, correct?

2 A Yes, sir.

3 Q And you left?

4 A Well, he had one of the weapons there. The
5 second weapon we followed him to his brother's house
6 where the other .32 caliber weapon was, and then he
7 got the weapon from his brother and turned it over to
8 us.

9 Q So that at Mr. Larry Demery's house, you
10 did not look for any kind of bags, correct?

11 A That's correct, did not.

12 Q You did not look for any kind of garments,
13 including caps or hooded jackets?

14 A No, sir.

15 Q You did not look for any kind of papers?

16 A No, sir.

17 Q Or any matters and things connected with
18 the Jordan case, did you?

19 A No, sir.

20 Q Even though Larry Demery, the younger, the
21 person who's testified here in court, was a suspect
22 at the time?

23 A That's correct.

24 Q And even though you found and received the
25 two guns from Mr. Demery, Sr., this is the one at the

1 house and the other one he had to go get from his
2 brother, even though you received those guns from
3 him, you did not ever request a consent to search the
4 rest of the house, did you?

5 A No, sir, that was not our purpose in going
6 there.

7 Q All right. Nor did you ever at any later
8 time obtain a search warrant or come back and request
9 a consent to search the house, did you?

10 A No, sir.

11 Q To your knowledge no other officer ever
12 went to search that house, asked to search that house
13 or obtained a warrant to search that house, did they?

14 A I know that there was never a warrant
15 issued for the house. It is my understanding that a
16 search was conducted on the 14th.

17 Q 14th of what?

18 A August.

19 Q Who was involved in that search?

20 A I don't know, that's just the information
21 that I had.

22 Q So to review, since we've been over the
23 weekend, what date was it Mr. Underwood, you can
24 certainly check your notes if you want to, what day
25 was it you went and asked Mr. Demery, Sr. for the two

1 guns?

2 A The 19th, August 19th, 1993.

3 Q But you say a search had already been
4 conducted there on the 14th is your knowledge though
5 you were not there?

6 A That's my understand, yes, sir.

7 Q So then it's fair to say that no guns were
8 there at the house that day or at least none were
9 found, that is, on August 14th, correct?

10 A That's how we had information that
11 Mr. Demery, Sr. had the two .32 caliber weapons was
12 based on the activity performed there on the 14th.

13 Q Well, do you know that on the 14th they
14 discovered the existence of a lot of other guns?

15 MR. BRITT: Objection.

16 THE COURT: Overruled. You may
17 answer if you know.

18 THE WITNESS: Not to my
19 knowledge.

20 BY MR. BOWEN:

21 Q Do you know that they discovered padlocks
22 on both the Demery -- both doors of the Demery
23 bedroom?

24 A I'm not aware of it.

25 Q Do you know whether or not those folks that

1 went there on the 14th searched for other articles
2 such as caps and jackets and clothing and other items
3 that, paper and other items that might be related to
4 the Jordan matter?

5 A No, sir.

6 Q You don't know it or they did not?

7 A I don't know.

8 Q Did you either on the 14th to the extent
9 that you know about that investigation, or on the
10 19th when you went there, either of these times was
11 ammunition searched for?

12 A Well, on the 19th when Mr. Demery, Sr.
13 turned the weapons over to us, both of those weapons
14 were loaded. But as for searching for ammunition,
15 that was not done.

16 Q Did you search to see whether at that time
17 on that premises there was the capacity to reload
18 ammunition?

19 A I didn't check, sir. My purpose was to go
20 there and see if he would surrender those weapons,
21 which he did. That was the limited purpose.

22 Q So from neither search, that is on the 14th
23 or the 19th of August are you able to say whether or
24 not there was equipment to perform reloading of
25 ammunition?

1 A I have no idea.

2 MR. BOWEN: That's all, Your
3 Honor.

4 THE COURT: Any redirect
5 examination.

6 MR. BRITT: Yes, sir.

7 REDIRECT EXAMINATION

8 BY MR. BRITT:

9 Q When you went to see Clewis Demery with the
10 photographic lineups, at that time were you aware
11 that Mr. Demory had been shot with a .32 caliber
12 pistol?

13 A Yes, sir.

14 Q And on August the 19th of 1993, that's when
15 Larry Demery, Sr. turned over the two .32 caliber
16 pistols that you previously identified in court?

17 A Yes, sir, that's correct.

18 Q And that was -- was that before or after
19 you knew Mr. Clewis Demory had been shot with a .32?

20 A I knew at the time Mr. Demery, Sr. turned
21 those weapons over to us, I knew that Mr. Demory had
22 been shot with a .32.

23 THE COURT: Now, that's -- so
24 that we can avoid confusion, at the time
25 that Mr. Larry Demery, Sr. turned those

1 weapons over to you, according to your
2 testimony, you knew who had been shot.

3 THE WITNESS: Mr. Clewis Demery.

4 THE COURT: Thank you, sir.

5 BY MR. BRITT:

6 Q At the time you showed Mr. Clewis Demory
7 the photographic lineup, had any ballistics test to
8 your knowledge been done on the two .32 caliber
9 pistols that you had received from Larry Demery,
10 Sr.?

11 A Yes, sir.

12 Q And as a result of the information that you
13 learned from the ballistics test that was done on the
14 two .32 caliber pistols, what if any role did the
15 results of that test have in your reasoning for
16 showing Mr. Clewis Demory the photographic
17 lineup?

18 MR. BOWEN: Object.

19 THE COURT: In part the answer
20 calls for hearsay so the objection is
21 sustained.

22 BY MR. BRITT:

23 Q Did you know the results of the ballistics
24 test at the time you went to see Clewis Demory?

25 A Yes, sir.

1 THE COURT: I said "answer." The
2 question calls for hearsay. I apologize.

3 BY MR. BRITT:

4 Q And when you talked with Clewis Demory
5 about his .38 caliber pistol that had been taken
6 during the robbery, were you aware of any results of
7 ballistics test on any .38 caliber pistol that had
8 been seized?

9 A Yes, sir, the best I recall, I was aware of
10 it.

11 Q And when you went to the Larry Demery, Sr.
12 residence on August the 19th of 1993, for what
13 purpose did you go there?

14 A To see if he would surrender the two 32
15 caliber hand guns to us for submission to the SBI
16 laboratory for comparison to a lead projectile that
17 was found in Lowry's Short Stop on August 11th, 1993.

18 Q Did you conduct any search at the Larry
19 Demery, Sr. residence on August the 19th of 1993?

20 A No, sir.

21 Q Why did you not conduct any type of search?

22 A Our purposes in going there was limited for
23 the intent of talking with him about the two
24 weapons. It was not for the purpose of searching the
25 residence for any additional evidence.

1 MR. BRITT: I don't have any
2 other questions.

3 THE COURT: Anything further?

4 RECROSS EXAMINATION

5 BY MR. BOWEN:

6 Q Did you question the individual who says
7 they saw the car leaving the Demery store, Clewis
8 Demory store?

9 A I didn't.

10 THE COURT: They can't hear your
11 question.

12 MR. BOWEN: Pardon me.

13 BY MR. BOWEN:

14 Q Did you question the person that said they
15 saw a car leaving the Clewis Demory store?

16 A No, sir, I didn't personally, no, sir.

17 Q Mr. Underwood, can you tell us exactly when
18 you received reports -- let me strike that. The
19 knowledge that you say that you had concerning the
20 ballistics, did that knowledge arrive to you in form
21 of a written report?

22 A With the .38 or the 32s?

23 Q Well, either one. I would like to hear
24 about both, one at a time, if you would.

25 A In written form or verbal?

1 Q That's what I'm trying to ascertain, did it
2 come to you by a written report or did somebody tell
3 you something? Not what they told you, but just, did
4 it come to you verbally or in written form, and if
5 so, when?

6 A The ballistics report involving the .32
7 caliber weapon, I received on or about September the
8 24th. However, I received a verbal report from the
9 firearms laboratory on or about August the 24th
10 concerning the information contained within the
11 written report.

12 Q All right. And the verbal information that
13 you received on August 24th, that was the first
14 information that you had concerning ballistics on the
15 .32, is that correct?

16 A Yes, sir, that's correct.

17 Q I'm trying to understand, you've said that
18 August the 19th was the day that you went out to
19 Mr. Demery, Sr.'s, that is, Larry Demery's father, is
20 that correct?

21 A Yes, sir.

22 Q So how could you have had even verbal
23 knowledge of the ballistics report that arrived to
24 you first on the 24th when you went to the residence
25 on the 19th?

1 A I'm not sure I understand your question.

2 Q Didn't you testify that you had some
3 ballistics results that had come to you prior to your
4 trip out to the Demery, Sr. residence on August 19th,
5 was that not your testimony?

6 A I believe that's correct, yes, sir.

7 Q So now you say that you didn't receive any
8 reports or results, written or verbal, until August
9 24th concerning the .32 caliber weapons, correct?

10 A What I'm referring to is the comparison
11 between the .32 and the lead projectile. Now, prior
12 to that, I did know from the laboratory that the
13 projectile that was recovered from the store was a
14 .32 caliber projectile, I did know that prior to
15 going to Mr. Demery's residence.

16 Q Will you agree with me that when you
17 answered Mr. Britt's questions you said that you had
18 ballistics results or you had received some
19 ballistics report whether it was verbal or
20 written?

21 MR. BRITT: Objection.

22 THE COURT: What is your question
23 pertaining to?

24 BY MR. BOWEN:

25 Q When you went to Mr. Demery's on August

1 19th --

2 THE COURT: For clarification,
3 does your question pertain to ballistics
4 reports relating to the .32 that was found
5 or the .32 weapons that were obtain?

6 MR. BOWEN: Well, I'm asking him
7 any ballistics report. My understanding
8 when I asked you -- let me drop back a
9 minute. My understanding a moment ago when
10 I asked you was your first information
11 concerning ballistics arrived to you in
12 verbal form on August 24th.

13 MR. BRITT: Objection to form.

14 MR. BOWEN: Is that correct or
15 not?

16 THE COURT: Ballistics as to the
17 32?

18 MR. BOWEN: As to the .32s, yes.

19 THE WITNESS: That's what I
20 testified to, but what I was referring to
21 was the comparison.

22 BY MR. BOWEN:

23 Q Now, I'm sorry, the comparison of what?

24 A Between the .32 caliber weapon recovered
25 from Larry Demery, Sr. and the lead projectile that

1 was found in the store.

2 Q Now, so then, you're saying that even
3 earlier than the 24th, and even earlier than the
4 19th, you had some ballistics information comparing
5 the bullet to the .32 gun?

6 A No, sir, Mr. Bowen, that's not what I'm
7 saying.

8 Q You only had information that it was a .32
9 bullet, correct?

10 A Yes, sir. The bullet was submitted prior
11 to the weapons being submitted.

12 Q I understand. So the only information that
13 you had was that a .32 bullet had been found?

14 A That's correct.

15 Q So it is true that the actual ballistics,
16 that is, the comparison matters, didn't come to you
17 until after you went to Mr. Demery's on the 19th?

18 A That's correct.

19 Q Reference the photo array, did you have any
20 information whatsoever that justified your
21 inclusion -- withdraw the question. That's all.

22 THE COURT: Mr. Britt?

23 BY MR. BRITT:

24 Q Why did you include the defendant's
25 photograph in the photo array that you showed Clewis

1 Demory?

2 MR. BOWEN: Object.

3 THE COURT: Ladies and gentlemen
4 of the jury, there's a matter of law the
5 Court must take up at this time out of the
6 hearing and presence of the jury. Please
7 recall my instructions in that regard,
8 don't worry or speculate about what takes
9 place in the courtroom in your absence. If
10 all members of the jury would step to the
11 jury room.

12 (Jury out at 9:53 a.m.)

13 THE COURT: Basis of the
14 objection?

15 MR. BOWEN: Beyond the scope of
16 recross-examination.

17 THE COURT: To some extent
18 recross is beyond the scope of redirect.

19 MR. BOWEN: But we never touched
20 on the subject of the photograph.

21 THE COURT: I suspect what he's
22 going back to is last Friday. Mr. Britt?

23 MR. BRITT: Yes, sir, I'm trying
24 to.

25 (Short pause).

1 MR. BRITT: I found my place.

2 On page 234 of the procedures from
3 Friday, I believe it's actually page 3520
4 on the overall transcript, line number --
5 if I count correctly, I believe it's line
6 Number 62, question is, so then you had not
7 obtained a description yourself from
8 Mr. Demory yourself when you set out to put
9 together a photo array that you were going
10 to show Mr. Demory.

11 Answer, that's correct. Question, so
12 then you had to get information relative to
13 any description when the search took place
14 on the 16th that you described.

15 Mr. Underwood, to your knowledge was any
16 officer there viewing that search
17 throughout the Green household.

18 It would be my contention that the
19 defense has opened the door as to
20 information as a result that Mr. Underwood
21 had in regard to preparing the photo
22 arrays.

23 THE COURT: Mr. Bowen?

24 MR. BOWEN: Judge, I'm having a
25 little trouble getting to the page. Just

1 one moment.

2 What line is it on 234, please?

3 MR. BRITT: If you look at the
4 bottom, it says page 234, line 57. If I
5 counted correctly, there's seven lines and
6 then carries over to page 235.

7 MR. BOWEN: I've got on mine --
8 page 234, I've got --

9 MR. BRITT: Go to the next --

10 MR. BOWEN: 235?

11 MR. BRITT: Yes, sir, would be
12 235 according to this.

13 MR. BOWEN: All right. Line
14 seven.

15 MR. BOWEN: 235, line seven, I
16 say Mr. Demory had seen was an individual
17 wearing a baseball cap.

18 MR. BRITT: Come down,
19 Mr. Bowen. Question, so then you had not
20 obtained a description yourself from
21 Mr. Demory.

22 MR. THOMPSON:

23 MR. BOWEN: Okay, I got you.

24 Actually, if you look at page 235,
25 there was in essence a false start, an

1 assertion, if you -- which was abandoned,
2 and then the question was asked, so then
3 you had to get information relative to any
4 description -- when the search took place
5 on the 16th that you described, to your
6 knowledge was anybody there videotaping
7 that search throughout the house. That's
8 where the question mark is. And that has
9 nothing to do with anything.

10 I think the conscious reason that I
11 diverted myself was the apprehension that,
12 you know, we were in a very dangerous area,
13 pick around in your own stage and going
14 through those kinds of questions, and
15 you're familiar with admonitions of the
16 Court, you're aware that it's a dangerous
17 area, but you do need to probe about the
18 way the photo array was put together --

19 THE COURT: Well, would you
20 agree, Mr. Bowen, that the upshot of the
21 cross-examination, or at least a portion of
22 the cross-examination, was to attack the
23 preparation of the photographic array?

24 MR. BOWEN: Well, I think what we
25 did was to very surgically come in on what

1 was done with information that was obtained
2 from anybody from one individual, and that
3 was Mr. Clewis Demory. We talked about
4 yes, to try to find out what if any
5 information he had gotten from Mr. Bass's
6 report or through Mr. Carter's report from
7 Clewis Demory, and what he had gotten
8 himself if anything, from Clewis Demory. I
9 don't think that when you talk about the
10 presence or the absence of information from
11 Mr. Clewis Demory that formed the basis of
12 the photographic array, that that
13 necessarily opens the door to the State to
14 go anywhere they want to.

15 THE COURT: But the premise of
16 your argument even now is that the
17 photographic array was prepared for
18 Mr. Clewis Demory. Their position is it
19 was not.

20 MR. BOWEN: He said it was not.
21 This witness said it was not. And that is
22 in evidence. And it is --

23 THE COURT: State's contention is
24 now they are entitled to explain why it was
25 not.

1 MR. BOWEN: Well, there is no
2 supposition necessarily that a photographic
3 array always comes -- strike that.
4 Mr. Demory, it was in their evidence that
5 they developed that Mr. Demory gave certain
6 identification materials. And we found out
7 what he did say and what he didn't say, how
8 complete or incomplete that information
9 was.

10 THE COURT: And attempted to use
11 that as a basis for attacking the
12 photographic array. Agreed?

13 MR. BOWEN: Well, we felt that
14 the photographic array to the extent that
15 it would be like the person that Mr. Demory
16 saw, that the jury was entitled to know
17 whether or not it was based on information
18 that Mr. Demory provided, and they have
19 said that it was not. Now, end of subject,
20 as far as we're concerned. And I don't
21 believe in view of the Court's ruling, at
22 least in our interpretation of the Court's
23 ruling, even with the admonitions about
24 opening doors, we do not feel that that
25 area of inquiry were foreclosed simply

1 because there might be other evidence that
2 they had used other materials to prepare
3 the photographic array.

4 In other words, if that were true, we
5 would have been completely foreclosed from
6 talking about what the photographic array
7 showed you in terms of what Mr. Demory
8 saw. Because any comparison between what
9 descriptions he gave to any officer and
10 what showed up in the photographic array
11 would have been off limits because it would
12 have opened the door.

13 THE COURT: Not necessarily.
14 Would you agree, sir, that by
15 cross-examining Mr. Demory, about any
16 information that he may have provided, by
17 cross-examining Mr. Clewis Demory, that's
18 who I'm referring to, about statements he
19 made shortly after the events in question,
20 about his inability to identify anybody,
21 that that cross-examination standing by
22 itself would have given you a basis for
23 arguing to the jury that any subsequent
24 identification made by Mr. Clewis Demory
25 from any photographic array lacks

1 credibility, wasn't necessary to go after
2 this officer on cross-examination, because
3 the admonition that you were looking for,
4 according to what you're telling me now,
5 you had developed or was capable of being
6 developed through Mr. Clewis Demory's
7 cross-examination?

8 MR. BOWEN: Our primary purpose
9 was to get back through this officer and
10 talk about early identifications made by
11 Mr. Clewis Demory to Mr. Bass, to
12 Mr. Carter.

13 THE COURT: His point is, in
14 doing, that you opened the door.

15 MR. BOWEN: No, all we showed was
16 that there were potentially some
17 inconsistencies between what those earlier
18 officers were shown as opposed to what
19 Mr. Demory -- what Mr. Demory gave to
20 Mr. Underwood.

21 THE COURT: But the point of
22 doing that was to attack the photographic
23 array that was prepared by this officer.

24 MR. BOWEN: It was to say that
25 Mr. Demory may have given other

1 identification accounts to other people
2 that may have also been incomplete, and we
3 wanted to find out whether Mr. Underwood
4 had consulted those reports --

5 THE COURT: In doing what?

6 MR. BOWEN: In his official
7 report --

8 THE COURT: In doing what?
9 Whether he had consulted those reports,
10 whether he had access to the information,
11 for purpose of the photographic array?

12 MR. BOWEN: And he said that he
13 did not, even though they were in his
14 report.

15 THE COURT: Folks, I listened to
16 the last question that you asked that was
17 withdrawn. That last question was with
18 reference to the photographic array, did
19 you have any information whatsoever that
20 justified your inclusion, and at that
21 point, there was consultation.

22 But that question embodies in large
23 part the tender of the cross-examination of
24 Mr. Underwood about the preparation of the
25 photographic array.

1 MR. BOWEN: Let me tell you what
2 the rest of that question was going to be.
3 Rest was going to be that that justifies
4 the conclusion that any of those people in
5 that lineup had face hair. Now, what you
6 look at is that there are a number of
7 people on there without face hair, and
8 there's some that are not, and Mr. Clewis
9 Demory didn't say anything one way or
10 another about face hair.

11 THE COURT: All of that goes
12 to --

13 MR. BOWEN: Only reason we
14 withdrew it was simply so that, and I go
15 back to this again, no matter where we are
16 on this argument, having withdrawn that
17 question, Mr. Britt has nothing to show in
18 our recross that justifies going back to
19 the photographic array. There's no
20 question he is beyond the scope of
21 recross.

22 Now, it may be that he allowed me to
23 ask the question without objection, client
24 wanted to ask, that was a little out of
25 cross-examination, I concede that, but does

1 not cause me to waive my right or our right
2 to object when they are beyond the scope of
3 recross. And I think clearly they are.

4 So I think that is the threshold
5 issue, but beyond that, there were good
6 reasons for us to talk about early
7 identification materials that came to other
8 officers to compare with what Mr. Demory
9 later told Mr. Underwood and others about
10 the identification. And also to point out
11 that the identifications early on were very
12 incomplete to Mr. Bass, to Mr. Carter, and
13 those were the purposes of those
14 questions. Mindful of Your Honor's
15 admonition, mindful of the land mines that
16 lay all over the place in exploring that
17 area, but we sincerely felt that we could
18 at least find out what the earliest
19 identification -- first guy on the scene,
20 G.V. Bass, Mr. Underwood said he didn't
21 know anything about Mr. Bass's report. So
22 that stopped us right there on that.

23 As far as Mr. Carter's initial
24 information, Mr. Carter has testified, so
25 we were able to talk to him about the

1 completeness or incompleteness of that
2 report. And all that shows is, it simply
3 underscores that from the very first
4 Mr. Demory has continually underscored he's
5 unable to form a definite identification.

6 And I end by saying it's absolutely
7 beyond the scope of recross.

8 THE COURT: Well, it is, but I
9 again point out that the first question
10 asked on recross was outside the scope of
11 redirect. And it's a discretionary matter
12 for the Court.

13 Folks, as I rode home Friday, my
14 thought was the door has been opened of the
15 cross-examination. And the Court so
16 rules. You may inquire into the purpose
17 for which it was prepared and nothing
18 else. Note the defendant's objection and
19 exception for the record.

20 Bring the jury back in.

21 MR. BOWEN: Your Honor, this is
22 such critical matter, may we hear the
23 answer on voir dire?

24 THE COURT: Mr. Britt?

25 BY MR. BRITT:

1 Q Mr. Underwood, for what purpose was the
2 photographic arrays prepared on September 9th, 1993?

3 A They were prepared for two purposes. The
4 first and primary purpose was to show them to four
5 people who were robbed at gun point at a Rowland
6 motel on July 4th, 1993, and the second reason was to
7 show the photographic array, including the defendant
8 Daniel Green, to Mr. Clewis Demory.

9 THE COURT: Folks, voir dire?

10 MR. BOWEN: To which we object
11 and except at that time, if that's going to
12 be --

13 THE COURT: Yes, sir, the
14 objection is noted for the record. The
15 objection is overruled. Exception is noted
16 for the record.

17 Bring the jury back in.

18 (Jury in at 10:14 a.m.)

19 THE COURT: For the record, the
20 objection is overruled. Exception is noted
21 for the record. You may repeat or rephrase
22 your question to the witness, Mr. Britt.

23 BY MR. BRITT:

24 Q Mr. Underwood, why did you include the
25 defendant's photograph in the photo arrays that you

1 showed Clewis Demory?

2 THE COURT: To that question, the
3 objection is sustained.

4 BY MR. BRITT:

5 Q For what purpose were the photo arrays made
6 on September the 9th, 1993?

7 A They were made --

8 MR. BOWEN: Object.

9 THE COURT: Objection is noted
10 for the record. Overruled, exception is
11 noted for the record. You may answer.

12 THE WITNESS: The photographic
13 arrays were made for two purposes. The
14 first and primary purpose was to forward
15 them to Rhode Island and have them shown to
16 four people there who were robbed at
17 gunpoint at a Rowland motel on July 4th,
18 1993.

19 MR. THOMPSON: Object.

20 THE COURT: Overruled.

21 THE WITNESS: The second purpose
22 was was to show the photographic lineup
23 containing a photo of the defendant Daniel
24 Green to Clewis Demory.

25 MR. BRITT: May I approach?

1 THE COURT: Yes, sir.

2 MR. THOMPSON: Move to strike.

3 THE COURT: Denied. Exception is
4 noted.

5 BY MR. BRITT:

6 Q And the photographic arrays that you've
7 referred to have previously been identified as
8 State's Exhibit Number 68?

9 A Yes, sir.

10 Q And State's Exhibit Number 69?

11 A Yes, sir, that's correct.

12 MR. BRITT: I don't have any
13 other questions.

14 THE COURT: Any additional
15 questions?

16 MR. BOWEN: That's all.

17 THE COURT: May the witness step
18 down, folks?

19 MR. BOWEN: Yes, sir.

20 THE COURT: Thank you,
21 Mr. Underwood.

22 MR. BRITT: Your Honor, at this
23 time we would call Larry Martin Demery.

24 THE COURT: Yes, sir.

25 May we approach while we're waiting

1 for him to come up?

2 (Whereupon a bench conference ensued
3 as follows.)

4 THE COURT: Let the record
5 reflect this is a bench conference.
6 Present at this time are the presiding
7 Judge, the court reporter, counsel for the
8 State Mr. Johnson Britt, counsel for the
9 defendant Mr. Angus Thompson, and Mr.
10 Woodberry Bowen. Also present is the
11 defendant Mr. Daniel Green, also known as
12 U'Allah.

13 Yes, sir, Mr. Britt.

14 MR. BRITT: Before he's brought
15 in, may I have just a second to warn him or
16 give him the Court's ruling for the 404(b)
17 matters and related to the July 4th
18 matters, so that we don't run the risk --

19 THE COURT: Yes, specifically
20 that unless the matters are opened on
21 cross-examination, he's not to refer to any
22 matters relating to the July 4th, 1993
23 incident, pending any further ruling of the
24 Court.

25 MR. BRITT: I simply have not had

DEMERY

1 an opportunity to relate that to him.

2 THE COURT: Yes, sir, you may.

3 MR. BRITT: Can I step outside?

4 THE COURT: Yes, sir. Let the
5 record reflect the bench conference is
6 concluded.

7 (Bench conference concluded.)

8 THE COURT: Mr. Demery, if you'll
9 come up and be sworn, please, sir. If
10 you'll place your left hand on the Bible,
11 raise your right, and face Ms. Gaines to my
12 left.

13 LARRY MARTIN DEMERY,
14 being first duly sworn was examined and testified as
15 follows:

16 DIRECT EXAMINATION

17 THE COURT: If you'll state your full
18 name for the record.

19 THE WITNESS: Larry Martin
20 Demery.

21 THE COURT: If you will spell
22 your last name for the benefit of the court
23 reporter.

24 THE WITNESS: D E M E R Y.

25 THE COURT: Thank you.

1 Mr. Britt?

2 BY MR. BRITT:

3 Q Mr. Demery, how old are you?

4 A 20 years old.

5 Q And prior to August the 15th of 1993, where
6 did you live?

7 A I lived with my parents.

8 Q And where was that located?

9 A Out in Rowland.

10 THE COURT: You're going to have
11 to keep your voice raised so all members of
12 the jury and all counsel and all parties
13 are able to hear you, sir.

14 BY MR. BRITT:

15 Q Off of what road did you live?

16 A Highway 710.

17 Q And other than your parents and yourself,
18 who else lived at that residence?

19 A Brother and sister.

20 Q Now, since August the 15th, 1993, where
21 have you lived?

22 A Robeson County detention center.

23 Q You're presently represented by counsel,
24 are you not?

25 A Yes.

1 Q Who are your lawyers?

2 A Hugh Rogers, John Wishart Campbell.

3 Q Are they present here in the courtroom?

4 A Yes.

5 Q For the record, can you state where they
6 are seated at this time?

7 A Yes, right here on the end of the table.

8 Q Do you know the defendant, Daniel Green?

9 A Yes, I do.

10 Q How long have you known the defendant?

11 A 13 years.

12 Q And where did you first meet the defendant?

13 A Elementary school, third grade.

14 Q What school was that?

15 A Union Elementary.

16 Q How would you describe the relationship
17 that you had with the defendant over these 13 years?

18 A Best friends.

19 Q Did he have occasion to come to your house?

20 A Yes.

21 Q Did you have occasions to go to his house?

22 A Yes.

23 Q Was there -- over the 13 years that you've
24 known the defendant, was there any period of time
25 when you did not see him?

1 A Yes.

2 Q Approximately how long a period of time was
3 there when you did not see him?

4 A The longest was two and a half years.

5 Q At the end of that two and a half year
6 period, did there come an occasion when you saw the
7 defendant?

8 A Yes.

9 Q And where was it that you saw the defendant
10 after this two and a half year period?

11 A At my parent's house.

12 Q Were you there when he arrived?

13 A No.

14 Q Were you made aware by anyone that he was
15 at your house?

16 A Yes.

17 Q Where were you at the time that you were
18 made aware that the defendant was at your house?

19 A I was over at my fiancée's house, my mother
20 called --

21 MR. THOMPSON: Object.

22 THE COURT: For what reason is
23 this being offered?

24 MR. BRITT: To explain his
25 subsequent conduct.

1 THE COURT: Limiting
2 instruction?

3 MR. THOMPSON: Yes, sir.

4 THE COURT: Members of the jury,
5 the testimony now being elicited from the
6 witness before you, Mr. Larry Martin
7 Demery, as to what may have been said to
8 him by someone else in any telephone
9 conversation is not being offered or
10 received in this case for the truth of the
11 matters asserted but simply to explain the
12 subsequent conduct of this witness. And
13 you may consider this evidence for that
14 limited purpose and for no other purpose.

15 Anything further?

16 MR. THOMPSON: That's all.

17 BY MR. BRITT:

18 Q You testified that you were at your
19 fiancée's house when your mother called?

20 A Yes.

21 Q What if anything did your mother say to you
22 when she called you there?

23 A When she first got on the phone, she told
24 me there was somebody at the house wanted to see me,
25 she wouldn't tell me who it was, it was a surprise.

1 Finally I got it out of her, she told me who it was
2 and all. And myself and my fiancée went over to my
3 father's house, he was there.

4 Q What is your fiancée's name?

5 A Angela McClain.

6 Q How did you go from Angela's house to your
7 father's house?

8 A Drove my car.

9 Q What kind of car?

10 A Ford Tempo.

11 Q Do you recall what month and what year this
12 was?

13 A Around the end of June, '93.

14 Q The car that you were driving, what color
15 was it?

16 A Beige.

17 Q Was it a two door or four door car?

18 A Four door.

19 Q Did it have any type of dents or marks on
20 it?

21 A Yes, around the left front fender there was
22 a dent.

23 THE COURT: A what, sir?

24 THE WITNESS: Around the left
25 front fender, it was dented up in that

1 area.

2 BY MR. BRITT:

3 Q If you will pull up closer to the
4 microphone. Now, when you went to your parents' home
5 after receiving this phone call, who was there?

6 A Well, my parents, brother and sister.
7 Daniel, he was there.

8 Q When you arrived at your parent's home, did
9 you and the defendant, did you talk?

10 A Yes.

11 Q How long did you stay there at your
12 parent's house, and how long did he stay there?

13 A From one and a half to two hours.

14 Q Did there come a time when the defendant
15 left?

16 A Yes.

17 Q Did you leave with him?

18 A Yes.

19 Q And who else left?

20 A My fiancée, Angela.

21 Q Where did you go?

22 A We went down -- we stopped down the road at
23 a swimming hole we used to go to. We stayed around
24 there just a few minutes. The reason was to swing by
25 and see my brother, that's where he was at. From

1 there we went over the Hardee's in Pembroke. We hung
2 around there for a little while, ate, talked,
3 catching up on old times, and then from there, I took
4 Angel home and took Daniel home, and I went back
5 home.

6 Q When you say you took the defendant home,
7 where did you take him?

8 A Bob's Landing trailer park.

9 Q Do you know what road that trailer park is
10 located on?

11 A I don't know the name of it but it's
12 located right off of Highway 74. I took a right down
13 beside Sterling mobile home manufacturers.

14 Q Had you ever been to that trailer before?

15 A No, sir.

16 Q And how was it that you knew to go to that
17 particular trailer park?

18 A Daniel was giving me directions.

19 Q And in what car did you take him home?

20 A My car, the Ford Tempo.

21 Q Now, and when you took the defendant home,
22 was there anybody else in the car with you?

23 A No.

24 Q Did the two of you have any conversation
25 there in the car while you were by yourselves?

1 A Well, just pretty much just catching up,
2 you know, letting -- I was letting him know what had
3 went on with me while he was away. He was telling me
4 the same thing.

5 MR. THOMPSON: Object -- that's
6 all right. Withdraw the objection.

7 THE COURT: Okay.

8 BY MR. BRITT:

9 Q When you say you were telling him what had
10 been going on with you while he was away, what did
11 you tell him?

12 A I had told him about meeting Angel, some
13 things I had gotten in, trouble I had gotten into,
14 you know.

15 Q And when you say some trouble that you had
16 gotten into, were there any charges pending against
17 you at that time?

18 A Yes, there was three breaking and entering
19 charges, I had an assault charge, armed robbery
20 charge.

21 Q And did you and the defendant talk about
22 the charges that were pending against you?

23 A Yes.

24 Q What if anything did the defendant say to
25 you about those charges?

1 A Well, he was just telling me about.

2 MR. THOMPSON: Object.

3 THE COURT: Do you want to be
4 heard, Mr. Thompson?

5 MR. THOMPSON: Yes, sir.

6 THE COURT: Members of the jury,
7 there's a matter of law the Court must take
8 up at this time. Please recall my
9 instructions in that regard, don't worry or
10 speculate about what takes place in the
11 courtroom in your absence, and if all
12 members of the jury would step to the jury
13 room at this time.

14 (Jury out at 10:28 a.m.)

15 THE COURT: Following is being
16 conducted in the absence of the jury.
17 Mr. Thompson, am I correct that the basis
18 of the objection is to prevent any
19 reference from the defendant Daniel Green
20 having been in prison?

21 MR. THOMPSON: Yes, sir.

22 THE COURT: Mr. Britt.

23 MR. BRITT: Your Honor, we have
24 taken great care not to -- when he
25 testifies about this two and a half year

1 period, I mean, that's -- that's the period
2 that's covered by his imprisonment but
3 we're not going to make any direct --

4 THE COURT: Well, this is done
5 out of an abundance of precaution. On voir
6 dire, Mr. Larry Martin Demery referred to
7 Mr. Green giving him advice that he had
8 learned in prison.

9 MR. BRITT: I think if he says
10 while he was aware.

11 THE COURT: Mr. Demery, I
12 specifically instruct you that in any
13 conversation that you testify to regarding
14 you and the defendant Mr. Green, you're not
15 to make reference to Mr. Green having been
16 in prison, do you understand that
17 instruction?

18 THE WITNESS: Yes, sir.

19 THE COURT: Anything further on
20 behalf of the defendant?

21 MR. THOMPSON: No, sir.

22 THE COURT: Bring the jury back
23 in.

24 (Jury in at 10:30 a.m.)

25 THE COURT: Mr. Britt, you may

1 repeat or rephrase your question.

2 MR. BRITT: Yes, sir.

3 BY MR. BRITT:

4 Q What if anything did the defendant say to
5 you about the charges that you had pending at that
6 time?

7 A Just basically just asked questions about
8 how things had happened, you know, told me about ways
9 that he knew of, you know, to commit crimes, to get
10 away with them.

11 Q Did you talk about anything else at that
12 time?

13 A No. Our next meeting, next time I saw him,
14 we talked more about it.

15 Q When you say the next time you saw him, how
16 much time had passed?

17 A A week, give or take a day or two.

18 Q Were you working at that time?

19 A Yes, I was.

20 Q Where were you working?

21 A Crestline Mobile Homes, Laurinburg.

22 Q What did you do at Crestline Mobile Homes?

23 A I was like working up under my fiancée's
24 stepfather, and I escorted mobile homes.

25 Q When you say that you escorted mobile

1 homes, what do you mean by that?

2 A Well, I was -- you see mobile homes moving
3 up and down the roads, little car, flashing lights
4 and everything, that's what I did. Made sure cables
5 weren't too low, bridges weren't too low, pretty much
6 got the driver out of tight spots any time he got
7 trapped up with the house or anything.

8 Q Did you keep any type of materials in your
9 car that were work related?

10 A Yes.

11 Q What kind of materials did you keep in your
12 car that were related to your work?

13 A I kept rolls of duct tape, pieces of stick,
14 wire strippers, things like that.

15 Q Why did you have duct tape?

16 A Well, moving -- when we were moving houses,
17 had the plastic on the side and everything, if a
18 small tear or something came in the plastic, and we
19 would catch it in time, we would use this duct tape
20 to tape it up, because if the tear got real long or
21 whatever, beyond the point of taping, it would have a
22 big mess that would come off, things would start
23 coming out of the house.

24 Q Where did you keep these work materials in
25 your car?

1 A In the trunk.

2 Q You testified that after that initial
3 meeting with the defendant you saw him again about a
4 week later?

5 A Yes.

6 Q Where did you see him at that time?

7 A Over at his trailer.

8 Q Was anybody there at that time?

9 A No.

10 Q And when you saw him at his trailer on that
11 occasion, did you talk about the charges that were
12 pending against you?

13 A Yes.

14 Q What else did you talk about?

15 A Well, like I said, telling him again about
16 how things had happened and all, you know, he started
17 telling me about ways he knew of to do these things,
18 crimes, get out of them, avoid getting caught, and
19 then we talked about it for a while, and then he
20 asked me did I want to do a robbery. And when he
21 asked me, I was like, yeah, all for it.

22 Q Now, when you say he asked you if you
23 wanted to do a robbery, and you told him that you
24 were all for it, why did you respond in that fashion?

25 A Well, I mean, here -- I'm still thinking

1 we're best friends, he asked me about this, and I was
2 like, okay, you know, I was --

3 Q And did you talk about where these
4 robberies could take place or who you would rob?

5 A No, not at the time we didn't.

6 Q Now, at that time, did you own any guns?

7 A No, I didn't.

8 Q To your knowledge did the defendant own any
9 guns?

10 A No, not at that time.

11 Q Did you have any other conversations after
12 that conversation where the defendant brought up the
13 subject of wanting to commit a robbery, did you have
14 any other conversations about committing a robbery?

15 A Yes, over the next couple of days, we
16 talked about it some more, you know, planned out --
17 planned it out. It wasn't a specific place, person
18 or whatever, but there was an area we had discussed,
19 you know, around the South of the Border area, that
20 we knew it was during the summertime, lot of
21 vacationers out, carrying lots of money, and that was
22 the place we had discussed trying to find somebody to
23 rob.

24 Q And when you say the South of the Border
25 area, did you ever go to South of the Border with the

1 defendant?

2 A Yes, one night we went out there. We were
3 just out, not really -- well, we hadn't discussed
4 robbing anybody that night. We were just out hanging
5 around and he met a girl down there, but it was like
6 the next night that we were down there, and things
7 happened, you know, we robbed somebody.

8 Q On July the 3rd of 1993 did you go to South
9 of the Border with the defendant?

10 A Yes.

11 Q Did you meet anyone on July the 3rd, 1993?

12 A Yes.

13 Q Who did you meet?

14 A A girl by the name of Melinda Moore and her
15 cousin, Patricia.

16 Q Where did you meet Melinda Moore and her
17 cousin Patricia?

18 A Daniel and I were coming out of a game
19 room, we bumped into them. I don't recall -- they
20 were were just out walking around and, like I said,
21 just ran into them.

22 Q Were you driving a car on that occasion?

23 A Yes.

24 Q Whose car were you driving?

25 A Mine, the Tempo.

1 Q Did either of you have a gun with you on
2 July 3rd, 1993?

3 A No, I don't remember, no.

4 Q After meeting Melinda Moore and her cousin
5 Patricia, did you and the defendant stay in the area
6 of South of the Border or did you go back to your
7 homes?

8 A We hung around a little while longer and
9 then I'm not exactly sure where we went after leaving
10 South of the Border.

11 Q Did you have an occasion to go to Marion,
12 South Carolina?

13 A Yes.

14 Q And did you go to Marion, South Carolina on
15 July 3rd, 1993?

16 A That was -- yes, later in the morning.

17 Q When you went to Marion, South Carolina on
18 July 3rd, 1993, did you go there to see anyone in
19 particular?

20 A Melinda Moore, find out where she lived and
21 all.

22 Q How long did you stay in Marion?

23 A No longer than 30 minutes.

24 Q And after staying in Marion for
25 approximately 30 minutes, did you return in the

1 direction of your homes?

2 A Yes.

3 Q Did you spend the night at the defendant's
4 trailer on July the 14th of 1993?

5 A Well, we were in and out that night, but we
6 were together all night, but we were out looking for
7 somebody to rob.

8 Q Now, between July the 4th and July the 14th
9 of 1993, did you have any other conversations with
10 the defendant about committing a robbery?

11 A Yes.

12 Q And when you had those conversations with
13 the defendant about committing a robbery, what
14 locations did you talk about robbing?

15 A We specifically had this one place picked
16 out, you know, like a store -- if I'm not mistaken,
17 the name of it was RJ's.

18 Q Where is that store located?

19 A Over on Highway 72.

20 Q Why had you and the defendant picked out
21 that one particular store?

22 A Well, because this store cashed payroll
23 checks on Thursdays.

24 Q How do you know that that store cashed
25 payroll checks on Thursdays?

1 A There was a sign out there at the road
2 advertising it, saying that they cashed payroll
3 checks on Thursday.

4 Q Why did the two of you pick out that store
5 as your target?

6 A Because we had talked about it, if they
7 cashed checks on Thursday, it was apparently they
8 probably had a lot of money in there, and that was
9 the reason we picked this place out.

10 Q Now, did either of you have a gun?

11 A At the time, there was -- the night before
12 we had been out and had a sawed off shotgun, but the
13 next morning, when we planned on going to rob the
14 store and everything, we were going to get his mom's
15 gun, but we couldn't because --

16 MR. THOMPSON: Object,
17 unresponsive.

18 THE COURT: Overruled.

19 THE WITNESS: But we couldn't do
20 that because she had it with her. She was
21 going with her parents to somewhere to get
22 some medical tests done, so we discussed
23 going to my parents' house, getting two of
24 my dad's guns.

25 BY MR. BRITT:

1 Q Now, what kind of gun to your knowledge did
2 his mother own at that time?

3 A .380 caliber semiautomatic.

4 Q Did you know where she kept that gun?

5 A From what I had seen, been over to that
6 trailer, it was either on the ironing board or in her
7 pocketbook. But when she was at home it was usually
8 on the ironing board.

9 Q Did either of your parents own any type of
10 guns?

11 A Yes, my dad did.

12 Q What type of guns did your dad own?

13 A He owned two .32 caliber pistols, he had a
14 .22 pistol. He had several shotguns, 12, 20, 16
15 gauge, and he had a black powder gun.

16 Q Now, when talking about robbing the store
17 called RJ's, had the two -- did the two of you talk
18 about getting guns?

19 A Yes.

20 Q And after talking about getting guns, what
21 did the two of you do?

22 A Well, that morning after we took his mother
23 to a church parking lot close by to where he lived to
24 meet one of her parents, we took her car and went to
25 my house, or my parents' house, and that's where we

1 got the guns from.

2 Q What kind of car were you driving when you
3 dropped his mother off at the church parking lot?

4 A A Cougar.

5 Q What color was that car?

6 A Dark blue color.

7 Q Who drove the car when you went to drop his
8 mother off at the church parking lot?

9 A I did.

10 Q After dropping his mother off at the church
11 parking lot, who drove away from that parking lot?

12 A I did.

13 Q Where did you go?

14 A From there, we stopped by Daniel's place
15 just a few minutes. From there we went straight on
16 to my parents' house.

17 Q Where was your car parked?

18 A It was parked at Daniel's trailer.

19 Q When you went to your parents' house which
20 car did you take, yours or the blue cougar?

21 A Cougar.

22 Q Who drove from Daniel's trailer to your
23 parent's trailer?

24 A I did.

25 Q Was there anyone at your home when the two

1 of you arrived?

2 A Yes, my sister was home.

3 Q Did you and the defendant have any
4 conversation about what each of you were going to do
5 when you went into the trailer?

6 A Yes, it was discussed that he would
7 distract my sister while I went back in my dad's room
8 and got the guns out.

9 Q Where were you going to have -- where were
10 these guns kept?

11 A Like I said, my parents' room, daddy
12 usually he kept one on the top of the closet and then
13 kept one right under the edge of his bed.

14 Q Was your father's room locked or unlocked?

15 A It was locked up.

16 Q Can you describe for us how the room was
17 locked?

18 A Well, on the bedroom door from the inside,
19 there's a deadbolt type lock, just a small one, but
20 like on the bathroom, the bathroom door, the second
21 bathroom door that leads into their bedroom on the
22 outside there was a padlock.

23 Q Now, this deadbolt type lock that's on the
24 bedroom door, does it open with a key?

25 A No, it has to be unlocked and locked from

1 the inside.

2 Q Is that a sliding type lock?

3 A Yes.

4 Q And did you have a key to the padlock that
5 was on the bathroom door?

6 A No, I didn't.

7 Q How were you going to get into this room
8 where the guns were kept?

9 A Well, I could take -- there was about a two
10 inch gap under the bedroom door, and like right in
11 front of it there was a long mirror that went from
12 the floor to the ceiling. And I could get down on
13 the floor and look up under the door and use a
14 clothes rack and I could fish around, hook onto that
15 lock and slide it back.

16 Q Where on the door was that lock located?

17 A About a foot and a half up under the
18 doorknob.

19 Q Was it above or below the doorknob?

20 A Below, yeah.

21 Q And when you say that you could take a
22 clothes rack and slide under there, are you referring
23 to a coat hanger?

24 A Yes, yes.

25 Q Would you have to undo the hanger?

1 A Yes, that's what I used most of the time.
2 But then there was times I could go get, break a
3 stick off a bush or something and go around there and
4 fish with that and get it the same way.

5 Q What was the defendant doing -- strike
6 that. When you say the defendant was to distract
7 your sister, what was he to do?

8 A Well, going in the living room where she
9 was watching TV, talk to her, whatever he had to do
10 to just keep her away from the back part of the house
11 so I could do this and get on out.

12 Q Do you know why your parents kept their
13 room locked that way?

14 A Yes.

15 Q Why did they keep it locked that way?

16 MR. BOWEN: Object.

17 THE COURT: If you know, you may
18 answer.

19 THE WITNESS: Well, my dad and I,
20 we used to -- we didn't get along too
21 good. There was several reasons, you know,
22 why, but one day that he had been ragging
23 on me pretty hard, I was ill with him, you
24 know. So later on that night, I knew
25 something -- to make him mad, I went in his

1 room, took one of his guns and hid it from
2 him. Because like I said, I knew it would
3 make him mad. That's the type of
4 relationship we had for a pretty long
5 while. And that was one of the main
6 reasons behind it.

7 But then another reason was we owned a
8 four-wheeler, my dad didn't like us riding
9 it when no one was at home. I would catch
10 him gone, sneak in his room, go out and
11 ride it. Same way with my mom's car. They
12 had a friend that worked together at the
13 same place. One week this friend would
14 drive, next week momma would drive. And on
15 the weeks momma wasn't driving, I was
16 sneaking in the bedroom, getting the keys,
17 running up and down the road. Supposed to
18 have been at school, didn't have a license,
19 that was the reason they had it locked up
20 the way they did.

21 BY MR. BRITT:

22 Q July 15th of 1993, did you and the
23 defendant go to your parents' trailer July 15th,
24 1993?

25 A Yes, we did.

1 Q When you got to your trailer you testified
2 that your sister was there?

3 A Yes.

4 Q Was the bedroom door -- was your parents'
5 bedroom door locked?

6 A Yes.

7 Q Was the padlock on the bathroom door that
8 led into your parent's bedroom?

9 A Yes.

10 Q After you got to your parents' trailer on
11 July 15th, 1993, tell us what you did.

12 A Well, after getting in the trailer and
13 everything, I went and got me a clothes rack, fixed
14 it the way I needed to to get up underneath the door,
15 and Daniel was right in the living room with my
16 sister, talking to her, just keeping her from the
17 back part of the house. I got down there, undid the
18 lock, went in the room, got the guns, you know. I
19 came out and told Daniel, well, I didn't -- in so
20 many words, just let him know that I had the guns, we
21 could go ahead and leave.

22 Q Now, how long did it take you to get the
23 door unlocked, and which door did you open?

24 A The one with the deadbolt lock on it. It
25 was five minutes at the most, and that included the

1 time to get the rack and bend it out, and it was --
2 by this time, I could do it pretty quick. At first
3 it took me a while, but I had gotten, I guess you
4 could say, good at it.

5 Q Now, you say you went in and got the guns
6 out. What guns were you -- what guns did you go
7 there to get?

8 A Two .32 caliber pistols.

9 Q Can you describe the two .32 caliber
10 pistols that your father owned?

11 A One is black, black handles. And other one
12 was black with a bone type handles on it.

13 Q Now, where did you get those guns from?

14 A The black one was up under the closet, the
15 one with the bone handles was the one dad usually
16 kept up under his bed.

17 Q When you got those two pistols on July 15th
18 of 1993, were both of them loaded?

19 A Yes.

20 Q Did you check to see if they were loaded?

21 A Yes.

22 Q Were they fully loaded at the time you
23 first got them on July 15th, 1993?

24 A Yes.

25 Q What were you wearing at that time?

1 A I had on a pair of shorts, a T-shirt,
2 tennis shoes, a cap.

3 Q Where did you put the guns when you left
4 your parents' room?

5 A I had stuck them down in the waistline and
6 pulled my T-shirt over it.

7 Q Did you relock the door?

8 A No, huh-uh, no.

9 Q Did you close the door to the room?

10 A Yeah, just closed it to make it appear that
11 it was locked.

12 Q Now, after you had gotten the guns from
13 your parents' room, how did you indicate to the
14 defendant that you had gotten those two guns?

15 A Well, just -- I don't remember exact words
16 or anything, you know, but making gestures like
17 (indicating) everything is cool, let's leave.

18 Q And at some point did the two of you leave?

19 A Yes.

20 Q Now, which car were you in at that time?

21 A Still in the Cougar.

22 Q And when you got into the Cougar, did you
23 do anything with the two guns?

24 A When I got in, I pulled them out and laid
25 them in the seat so I could drive.

1 Q Where did you go?

2 A From the house, went straight back to
3 Daniel's place.

4 Q While you were driving back to the
5 defendant's place, did either of you pick up one of
6 the .32s that was there in the car?

7 A Yes, Daniel did.

8 Q Which .32 did he pick up?

9 A He got the one with the bone handles on it.

10 Q What if anything did you see him do with
11 that after he first picked it up?

12 A Well, he sat pretty much the whole way back
13 to the trailer just fumbling around with it, opening
14 the cylinder, spinning it around, closing it.

15 Q Now, why had the two of you gone to your
16 parents' house to get these guns?

17 A Because we were going to go and rob a store
18 that morning.

19 Q Which store were you going to go rob that
20 morning?

21 A It had been planned to rob RJ's. There
22 were two others that had been -- well, alternatives.

23 Q Now, after getting the guns, you drove back
24 to the defendant's trailer?

25 A Yes.

1 Q Did you get out of the blue Cougar at that
2 time, when you got back to the his trailer?

3 A Yes.

4 Q Did you go inside the trailer?

5 A Yes just for a few minutes.

6 Q And after staying there for a few minutes,
7 did the two of you leave?

8 A Yes.

9 Q In which car did you leave?

10 A This time we were had gotten back in my
11 car, the Tempo.

12 Q Now, at the trailer, had the two of you
13 picked anything up?

14 A Well, we got -- went in the house and got
15 two hooded type sweat shirts that we were going to
16 use in the robbery, kind of like a disguise.

17 Q Do you remember what color those sweat
18 shirts were?

19 A One was black and had a Raider's logo on
20 the back of it. The other one was just gray, a light
21 gray color.

22 Q Which of those sweat shirts did you have?

23 A That day I had put on the black one.

24 Q And which one did the defendant have?

25 A Light gray one.

1 Q Did you put them on there at the trailer?

2 A No.

3 Q Were either of you wearing any type of hat?

4 A I had on my cap.

5 Q And after picking up the sweat shirts where
6 did the two of you go?

7 A We went straight over to there, 72, around
8 RJ's, started scoping the place out.

9 Q How did you get to the area of Highway 72?

10 A Drove my car.

11 Q Which car was that?

12 A The Tempo.

13 Q Did you go to RJ's store?

14 A Yes, there was -- one time we pulled
15 through the parking lot, but mainly just rode by it,
16 look at the place.

17 Q Did you ever stop there?

18 A Not stop. Like I said, just one time we
19 rode through the parking lot, but didn't stop and go
20 in or anything.

21 Q Why didn't you?

22 A Because the store, it was real busy that
23 morning.

24 Q Approximately what time of the morning was
25 this?

1 A It was around after 9:00, little after
2 9:00.

3 Q How many times do you remember riding by
4 RJ's?

5 A Well, twice, best as I can recall.

6 Q And when you saw that this store was busy,
7 the store that you had planned on robbing was busy,
8 did you and the defendant have any conversation about
9 that?

10 A Well, yeah.

11 Q What did you talk about?

12 A There were two other stores, you know,
13 located close by, you know, that we discussed that
14 could have been alternatives to rob.

15 Q What other stores did you talk about
16 robbing?

17 A There was a BP station about a mile and a
18 half from RJ's, and then maybe about two miles from
19 BP, there is another store called Lowry's Texaco.

20 Q Did you go to the area of the BP station?

21 A Yes.

22 Q When you went to that area around the BP
23 station, what did you find?

24 A The same thing that was at RJ's, the store
25 was real busy, lot of traffic in and out.

1 Q How many times did you ride around the BP
2 station?

3 A I remember once, but two at the most.

4 Q Now, did both of you have guns there in the
5 car?

6 A Yes.

7 Q Which gun did you have?

8 A Well, Daniel had already taken to the .32
9 with the bone handles, and the black one I had, it
10 was laying in the seat beside me.

11 Q At any time did you switch guns?

12 A No.

13 Q Now, after going to the area of the BP
14 station and finding that it was busy, what did the
15 two of you talk about then?

16 A Well, the other store right there on the
17 road, Lowry's Texaco.

18 Q Who was driving?

19 A I was.

20 Q After seeing that the BP station was busy
21 and crowded, did you go to the area of Lowry's
22 Texaco?

23 A Yes.

24 Q And is that store located on Highway 72 as
25 well?

1 A Yes, it is.

2 Q When you got to the area of Lowry's Texaco,
3 what did you see?

4 A Well, when we got down that way, we rode by
5 one time to see what things looked like. I remember
6 a Pepsi Cola truck being there, and I don't remember
7 for sure seeing any other cars. But like I said, we
8 rode by one time, and we discussed stopping by the
9 place to see what things looked like on the inside.

10 Q That's what we did, we passed the store one
11 time, came back, and, you know, we planned that I
12 would go in this one time, just to see what things
13 looked like on the inside, see how many people were
14 in there. So I stopped, got out, went in, bought a
15 pack of cigarettes, a few pieces of candy, and I only
16 meant -- the cashier and then the Pepsi man, they
17 were the only people that I could see in the store.

18 Q Can you describe for us the cashier or the
19 person that you referred to as the cashier?

20 A He was an elderly man, pretty -- heavy, big
21 man.

22 Q Do you recall if he was black, white, or
23 Indian?

24 A He appeared to be Indian, Indian male.

25 Q And when you say that this person was the

1 cashier, is he the only -- one you gave your money to
2 when you bought these few items that you did?

3 A Yes.

4 Q Why did you go into the store?

5 A Just to see what it looked like, scope it
6 out on the inside, see how many people were on the
7 inside.

8 Q Other than the cashier and Pepsi man, did
9 you see anyone else in the store?

10 A No.

11 Q Do you recall how many doors there were
12 leading into the store?

13 A One.

14 Q Were there any windows on the building?

15 A Yes.

16 Q And where were those windows located?

17 A Well, there were -- I remember one big one,
18 being like right in the area where the cash register
19 and everything was at, but it was covered up with
20 bars and stuff, you couldn't really see in that one
21 real good. But the door, it was just metal frame,
22 and everything else was glass.

23 Q When you walked in through the door of this
24 store, describe what the store looked like.

25 A Well, it was small, I mean, when I walked

1 in, immediately to the left of me there was the
2 counter, cash register. The counter, it ran down
3 about halfway, you know, halfway of the store. Over
4 to the right there were two drink boxes. I remember
5 seeing around the back area, I think two video games,
6 some kind of video game.

7 Q Now, how long were you in the store when
8 you went in to buy these things?

9 A Just long enough to ask the guy to get me a
10 pack of cigarettes. Reached down into the bucket
11 thing and pulled out some candy.

12 Q Did you have on this Raider -- this sweat
13 shirt with the Raider's logo on it?

14 A No, I never put that on until the last time
15 we went into the store.

16 Q Did you take the .32 pistol that you had
17 into the store with you at that time?

18 A No.

19 Q Now, after you bought these -- where was
20 the defendant when you went in to buy these items?

21 A He was still out in the car.

22 Q And after you bought these items, what did
23 you do?

24 A I went back out and I told Daniel what
25 things looked like on the inside, told him about the

1 Pepsi man stocking up the drink boxes and stuff. We
2 got in the car again and rode down a little ways, and
3 we discussed that we would stop again. And this time
4 Daniel would get out and go in the store. If
5 everything was cool, he was going to come back and we
6 discussed, made this little plan that if everything
7 was clear on the inside, that he would come out, walk
8 to the door and say, you know, hey man, bring me my
9 wallet. That was my que letting me knowing
10 everything was cool, to come in with the gun drawn.

11 Q While you were riding around and talking
12 about this plan to rob the store, did either of you
13 put any type of shirt on?

14 A Well, no, not at the time, we didn't.
15 Neither one of us did that until we stopped for the
16 last time.

17 Q Now, when you say that you stopped for the
18 last time, where did you stop for the last time?

19 A Well, at the store, you know, we parked
20 over -- facing, it was if right side over towards the
21 kerosene, a kerosene pump.

22 Q And when you say at the store, which store
23 are you talking about?

24 A Lowry's Texaco.

25 Q And when you went back to the store as you

1 stated on this last time, what happened there in the
2 car?

3 A Like I said, you know, when I came out and
4 left, rode down the road a little ways, came back by,
5 and the Pepsi truck was still sitting there. So we
6 took a right, rode almost right in front of the
7 store, rode just a little ways, we came back, the
8 Pepsi guy was gone. We stopped, Daniel got out of
9 the car, and it was then when he put on his jacket.
10 He never pulled the hood up, but I had a pair of
11 shades in the car and he put the pair of shades on
12 and walk on.

13 Q When you say a pair of shades, what do you
14 mean by that?

15 A Sunglasses, a pair that I had in the car.

16 Q Did you see him do anything with the bone
17 handled .32 pistol?

18 A He had took it out and stuck it down in his
19 waistband.

20 Q Did you put anything on there at the car?

21 A Sitting in the car waiting on him to come
22 out and give me my que, I pulled on the hooded
23 jacket. And I had a bandana in the car, I tied it
24 around my neck and everything. When he came out,
25 gave me the que to come on in, I got out, pulled the

1 hood over and pulled the bandana around my face.

2 Q When you say he came out, did the defendant
3 come into the store?

4 A Yes.

5 Q After some period of time, did the
6 defendant ever come out of the store?

7 A Yes, 30 seconds later.

8 Q What did he say when he came out of the
9 store?

10 A Hey man, I forgot my wallet, how about
11 bringing it to me.

12 Q When you heard the defendant say bring me
13 my wallet, what did you do?

14 A Got out of the car, pulled my hood up,
15 pulled up my bandana, pulled out the gun that I had.

16 Q Which gun did you have?

17 A The black .32 with the black handles.

18 Q When you say you pulled the bandana up over
19 your face, can you demonstrate to the jury how far up
20 on your face you pulled this bandana?

21 A Here, right below my eyes.

22 Q Did you pull the hood up over your head?

23 A Yes.

24 Q And after he gave you the signal, what did
25 you do?

1 A I opened the door, like I said, the cash
2 register right here --

3 Q Opened which door?

4 A The door going into the store. I already
5 had my gun out. When I walked in, I held it on the
6 cashier, told him to back up.

7 Q Where was the cashier when you first walked
8 into the store?

9 A He was standing right there behind the cash
10 register.

11 Q Where was the defendant?

12 A He was standing down at the under of the
13 counter.

14 Q What if anything was he doing when -- the
15 defendant doing when you first walked into the store?

16 A He had his gun drawn pointing it at the
17 cashier.

18 Q Now, when you walked in, what if anything
19 did you say to the cashier?

20 A I told him to back up.

21 Q And what if anything did the man do?

22 A Well, that's what he did, you know, and
23 about the time, like when I said back up and
24 everything, he stepped back, that's when he saw -- he
25 looked down towards the other end, and that's when he

1 saw Daniel, saw him with a gun in his hand standing
2 at the other end of the store, or counter.

3 Q What then happened?

4 A Then Daniel went around the counter and
5 everything, he went up to the cashier, got his wallet
6 out, and I remember seeing him punch some buttons on
7 the cash register. But from what I could see he
8 couldn't get it open.

9 The cashier went up there and hit a button,
10 and I remember seeing Daniel scrape the money out and
11 putting it down in the, like the front part of his
12 jacket. I was the doorman, I was watching the
13 parking lot to make sure nobody came in on us or
14 anything. And I remember seeing -- I caught out of
15 the corner of my eye, Daniel, he appeared to me to be
16 like fumbling around in some drawers or what, back
17 behind the lower part of the counter. And then next
18 thing I see, he and the cashier started tussling, and
19 I saw Daniel grab him from behind, and then next
20 thing I see, he's in front of him.

21 Q Who is in front of who?

22 A Daniel is around in the front part, facing
23 the cashier, and the gun that he had, he had it stuck
24 to the cashier, around in this area somewhere
25 (indicating).

1 Q You're pointing to an area on your body.
2 What area are you pointing to?

3 A Around in the shoulder area. Right here
4 (indicating).

5 Q Where were you when you saw this?

6 A Still standing by the door.

7 Q At any time did you go behind the counter?

8 A No.

9 Q At any time did you say anything about the
10 cash register to either the defendant or to the
11 clerk?

12 A I don't remember for sure, I may have said
13 something about "get the cash register," but I don't
14 remember for sure.

15 Q When you saw the defendant holding or
16 pointing this gun in the area of the cashier's chest,
17 what do you remember happening after that?

18 A The next thing I -- next thing I knew, I
19 heard three shots, you know, they were consecutive,
20 pop, pop, pop. Daniel comes around from behind the
21 counter, runs past me, runs out the store. And then
22 I follow him. But before I left out, I looked over
23 to where the cashier was. I couldn't tell, you know,
24 where or if he had been shot. I didn't see any blood
25 or anything. But he sat down and he appeared to me,

1 he was losing his breath. And like I said, I ran on
2 out, got in the car and we took off.

3 Q When you say you looked and saw the
4 cashier, where was he at that time you said he had
5 this shortness of breath?

6 A He was still behind the counter. Like I
7 say, he was sitting down in the chair he had back
8 there, and breathing real hard, quick.

9 Q Now, after you ran out of the store, where
10 was the defendant?

11 A Well, when I got up there, he was getting
12 in the car.

13 Q What did you do?

14 A I jumped in the car behind the wheel, threw
15 it in reverse, backed up, and tried to burn all the
16 rubber off the tires getting away from there.

17 Q Where did you go?

18 A I don't know the number of this road, it's
19 a road that ran right along the side of this store.
20 It ran into Highway 211, well, the very end of it.

21 Q And as you were driving away, did either of
22 you take off your sweat shirts?

23 A Well, yes, as I was driving, I pulled mine
24 off, or wiggled my way out of it. Daniel had took
25 his off. I gave him the one I had and he threw them

1 out on the highway.

2 Q Where were the two guns at that time?

3 A I remember mine, it was stuck down in
4 between my legs in the seat. I didn't see the one
5 that Daniel had.

6 Q Now, as you were driving away, -- strike
7 that. When the defendant ran out of the store, did
8 he have anything in his hands?

9 A Only -- just the pistol that he had that he
10 shot the store clerk with.

11 Q Did you see the defendant take anything out
12 of the cash register?

13 A Like I said, I saw him scooping down in
14 there, getting money out and stuck it down in the
15 front part of his sweat shirt that he had on.

16 Q Was there some type of pocket on that sweat
17 shirt?

18 A Yes, there was a big -- about like this.
19 You could stick both hands down in it, it was kind of
20 deep.

21 Q And at any time as you were driving away,
22 did you see the defendant with any money in the car?

23 A Well, yes, right before, when he took his
24 off, I had handed my sweat jacket to him, before he
25 threw them out, he had a big wad of money he pulled

1 out of his pocket. And I remember seeing a pretty
2 good amount of food stamps.

3 Q Did you see anything else there in the car
4 other than the money and some food stamps?

5 A Yeah, that's when -- about that same time
6 that the jackets were flying out of the window that's
7 when I first noticed that Daniel had another gun.

8 Q Can you describe for us the other gun that
9 the defendant had?

10 A It was a 38 -- it was a .38 caliber gun,
11 had a long -- about a six inch barrel, six shot,
12 black, wooden handles.

13 Q Where was that .38 caliber gun when you
14 first saw it?

15 A In Daniel's hands.

16 Q Did you see him do anything with that .38
17 caliber gun after you first saw it?

18 A Well, just started looking it over, popped
19 the cylinder out, spinning -- checking it out.

20 Q Did you see the bone handled .32 caliber
21 pistol at any point after that?

22 A Next time that I remember seeing it is when
23 we got back to his trailer, switched up cars again,
24 and then got back to my parents' house and take those
25 two guns back.

1 Q Now, you said you left the store and you
2 went down a road that was there in the area of the
3 store and you ended up at 211, is that correct?

4 A Yes.

5 Q When you got to 211 or Highway 211, where
6 did you go?

7 A From the stop sign, we took a right, went
8 down the road a little ways, and there was a hotel
9 that -- as best I can remember, it was the Econo
10 Lodge. We took a right right there at this motel,
11 got on Highway 95. Went down 95 a few miles, got off
12 at exit 14, went back to Daniel's trailer.

13 Q In what town were you in when you came up
14 to this Econo Lodge?

15 A Still in Lumberton.

16 Q Now, you said you went down I-95 to exit
17 14?

18 A Yes.

19 Q What road is exit 14?

20 A Located at the intersection of 74 and 95.

21 Q When you got onto 74, where did you go?

22 A Daniel's trailer.

23 Q Approximately how far was the defendant's
24 trailer from the point where you got onto U.S. 74 at
25 exit 14?

1 A Mile and a half, two miles at the most.

2 Q Now, when you got to his trailer, what did
3 the two of you do?

4 A We went in for a few minutes. The only
5 thing I remember -- or the reason I remember going in
6 there is the cashier's wallet had been taken, and
7 that stuff had been taken in the house and left. And
8 like I said we were only there for a few minutes
9 before we left and went back to my parents to drop
10 those other guns off.

11 Q When the cashier's wallet was taken inside
12 the defendant's trailer was any money taken out of
13 it?

14 A Yes, the money was taken out inside the
15 car.

16 Q Who took the money out of the wallet?

17 A Daniel did.

18 Q What was done with that money and the money
19 that had been taken from the cash register along with
20 the food stamps?

21 A It had all been put together.

22 Q Now, after -- did there come a time when
23 you left the defendant's trailer?

24 A Yes.

25 Q Where were you going?

1 A Back to my parents' house to take those
2 guns back.

3 Q Who went with you?

4 A Just Daniel and I.

5 Q And where was the money that had been taken
6 from the store and from the man's wallet?

7 A It had all been taken and put in the glove
8 compartment of Daniel's mom's car, the Cougar.

9 Q Where was this .38 caliber pistol that the
10 defendant had inside your car?

11 A Daniel still had it, had it out, playing
12 around with it.

13 Q Did he have it with him when the two of you
14 left to go back to your house?

15 A Yes.

16 Q Where did he put it?

17 A He put it -- like I said while we were in
18 the car, he had it out and everything.

19 Q Who drove from the defendant's trailer back
20 to your house?

21 A I did.

22 Q Did you see the defendant do anything with
23 the .38 caliber pistol while you were in the car
24 driving from his trailer to your parents trailer?

25 A Other than just playing around with it, you

1 know, that was --

2 Q When you say he was playing around with it,
3 what was he doing?

4 A Like I said, popping open the cylinder,
5 spinning it around, checking it over.

6 Q Why were the two of you going back to your
7 parents trailer?

8 A To take the two guns back that we had taken
9 from them earlier.

10 Q Did you have one of the guns on you at that
11 time?

12 A It was -- best I can remember it was laying
13 in the seat somewhere. I didn't keep it on me or
14 nothing. It was just -- I couldn't drive, it wasn't
15 comfortable with it stuck down in my waist.

16 Q Which of the two pistols did you have?

17 A The black one still.

18 Q Did the defendant have any gun with him
19 other than the .38 caliber pistol that he was playing
20 with there in the car?

21 A Just the .32 with the bone handles. I
22 mean, these two here were laying down in the seat.

23 Q When you got back to your parent's house,
24 which car did you take over there?

25 A Daniel's mom's.

1 Q When you got to your parents' house, what
2 did the two of you do when you first got there?

3 A Well, when we got in there, my sister was
4 still there, she was the only one still there, well,
5 there, we got in there it was the same plan as
6 before, he would distract her. Except this time
7 while I was putting the guns back and locking the
8 door.

9 Q Who carried the guns inside your parents'
10 trailer?

11 A Best I can remember, I did.

12 Q Now, after going into your parents'
13 bedroom, did you have to reload either gun?

14 A Yes.

15 Q Which gun did you have to reload?

16 A The one with the bone handles.

17 Q And who was it that had the bone handled
18 gun?

19 A Daniel.

20 Q How many bullets did you have to place into
21 the cylinder to completely reload that .32 caliber
22 pistol?

23 A Three.

24 Q Where did you put the bone handled pistol
25 when you went back into your parents' room?

1 A Back up under the edge of the bed where I
2 had found it.

3 Q Where did you put the black handled .32
4 caliber pistol?

5 A Back up in my dad's closet.

6 Q After placing the guns back in the
7 locations where you had found them, what did you do?

8 A Well, went back around in the living room,
9 told Daniel I was finished. We hung around just a
10 few miss, and then from there we went to Marion.

11 Q Did you look the door to your parents'
12 bedroom?

13 A Yes.

14 Q How did you do that?

15 A I had to do it the same way I had opened
16 it, close it, look up under the door and slide it
17 back.

18 THE COURT: Mr. Britt, this is a
19 good point for us to stop for the more than
20 recess. Mr. Demery you may step down for
21 the moment, sir.

22 Ladies and gentlemen, we're going to
23 take the recess at this time until 11:35 by
24 the clock on the far wall. Please recall
25 during this recess that it is your duty to

1 abide by all prior instructions of the
2 Court concerning your conduct. Please
3 report directly back to the jury room at
4 11:35. Everyone else please remain seated,
5 the members of the jury are excused at this
6 time.

7 (Jury out at 11:16 a.m.)

8 THE COURT: We're at ease.

9 (Brief recess.)

10 THE COURT: Let's the record
11 reflected all counsel are present, the
12 defendant is present in open court.

13 For the record, are all members of the
14 jury are secured in the jury room, Mr.
15 Horne.

16 THE BAILIFF: Yes, sir.

17 THE COURT: Yes, sir,
18 Mr. Thompson.

19 MR. THOMPSON: Your Honor, before
20 the cross-examination of Mr. Demery takes
21 place, we would like to have an opportunity
22 to consult with our client. He's
23 requesting that. I don't know how long
24 this direct examination is going to take
25 place. How long the direct examination

1 will be, excuse me. If it's coming up into
2 the lunch hour, that will -- we would be
3 requesting an early lunch hour so that we
4 can --

5 THE COURT: If, for example, they
6 finish at 2:30 you want the opportunity.

7 MR. THOMPSON: Yes, sir. And
8 having said that, there may be a problem
9 with our access to U'Allah, our client, and
10 we need to make arrangements so we will be
11 able to spend that time with our client. .
12 That's very critical to us, and we need
13 access to our client.

14 THE COURT: Where is Mr. Green
15 also known as U'Allah, housed? Where is he
16 now?

17 MR. BOWEN: Your Honor, he's in
18 this conference room, I believe --

19 THE COURT: I'm talking about --

20 THE COURT: Is he in the Robeson
21 County detention center.

22 MR. BRITT: They keep him
23 downstairs in the holding cell.

24 MR. THOMPSON: That's a holding
25 cell down there with other inmates. And of

1 course that would be inappropriate. It's
2 an open area.

3 THE COURT: We'll work something
4 out. We'll work something out. We'll make
5 arrangements one way or another.

6 Any other matters before we bring the
7 jury back in?

8 MR. THOMPSON: No, sir.

9 THE COURT: If you'll bring the
10 jury back in, please.

11 (Jury in at 11:37 a.m.)

12 THE COURT: Mr. Britt.

13 MR. BRITT: May I approach the
14 witness?

15 THE COURT: Yes, sir.

16 BY MR. BRITT:

17 Q I'll show you what has been marked as
18 State's Exhibit 73, clear plastic evidence bag
19 containing certain markings, I'm going to remove the
20 contents of State's Exhibit Number 73. Excuse me for
21 a second.

22 MR. THOMPSON: Your Honor, may

23 I --

24 BY MR. BRITT:

25 Q Mr. Demery, I'm going to you what is

1 contained inside of State's Exhibit Number 73, ask
2 you to look at that and tell me if you can identify
3 it?

4 A Yes, that's one of my dad's 32s.

5 Q Show you what's been marked as State's
6 Exhibit Number 74, plastic evidence bag containing
7 certain handwriting. Ask you to look at that and
8 tell me if you can identify it?

9 A That's another 32 pistol that belonged to
10 my dad.

11 Q On July 15th of 1993 when you and the
12 defendant went to your parents' home, did you take
13 either of those .32 caliber handguns from your
14 parents' bedroom?

15 A Yes, sir, both of them.

16 Q On July 15th, 1993 after taking both of the
17 .32 caliber handguns from your parents' bedroom,
18 which one did you have when you went to Clewis -- the
19 store that you've identified as Lowry's Texaco?

20 A This one, the black one.

21 Q And you're referring to the black handled
22 .32 caliber pistol that was contained inside of
23 State's Exhibit Number 74?

24 A Yes.

25 Q Which one did the defendant have?

1 A This one.

2 Q When you say this one, you're referring to
3 the bone handled .32 caliber pistol that was
4 contained inside of State's Exhibit Number 73?

5 A Yes.

6 Q And when the two of you went into Clewis
7 Demory's store, or Lowry's Texaco on July 15th, 1993,
8 which of the .32s did you have?

9 A The black one.

10 Q Which one did the defendant have?

11 A The one with the bone type handles on it.

12 Q After you returned to your parents' home on
13 July 15th, 1993, which of the two .32's did you have
14 to reload?

15 A This one, the one with the bone handles on
16 it.

17 Q Is that the .32 that the defendant had?

18 A Yes.

19 Q At any time on July 15th, 1993 did you ever
20 fire the .32 caliber pistol that you had?

21 A No, no.

22 Q ?

23 MR. BRITT: May I approach
24 again?

25 THE COURT: Yes, sir.

1 BY MR. BRITT:

2 Q I'll show you what has been marked as
3 State's Exhibit 59, a large clear plastic bag. I'm
4 going to remove part of the contents of State's
5 Exhibit Number 59. I'll show you what has been
6 marked as State's Exhibit Number 59-A. Do you
7 recognize what I hold in my hands?

8 A Yes, that was the gun taken out of the
9 store we had robbed.

10 Q And who had this gun the first time you
11 ever saw it?

12 A Daniel did.

13 Q And when was the first time you ever saw
14 State's Exhibit Number 50 tie nine?

15 A As we were leaving --

16 THE COURT: 59-A?

17 MR. BRITT: Excuse me, 59, thank
18 you, Your Honor.

19 THE WITNESS: As you were leaving
20 the store.

21 BY MR. BRITT:

22 Q For the record can you tell us what type of
23 gun this is?

24 A A .38 Smith & Wesson.

25 Q Is it in the same condition today as it was

1 when you first saw it July 15th, 1993?

2 A Yes, pretty much -- the only different that
3 I could handle is the handles being a little bit
4 cleaner than what they were.

5 MR. THOMPSON: Your Honor I can't
6 hear his last comment.

7 THE COURT: Repeat it.

8 THE WITNESS: I said the handle
9 on it being a little cleaner looking than
10 what it is now.

11 BY MR. BRITT:

12 Q I'll show you what has been marked as
13 State's Exhibit Number 66, ask you to look at that
14 photograph and tell me if you can identify it?

15 A That's Lowry's Texaco.

16 Q Is State's Exhibit Number 66 a fair and
17 accurate representation of the store as it appeared
18 on July 15th, 1993?

19 A Yes.

20 Q Show you what's been marked as State's
21 Exhibit Number 67, ask you to look at that photograph
22 and tell me if you can identify it?

23 A Yes, that's the inside of the store.

24 Q Is State's Exhibit Number 67 fairly and
25 accurately represent the interior of the portion of

1 the store and the area behind the counter as you saw
2 it July 15th, 1993?

3 MR. THOMPSON: Object.

4 THE COURT: Overruled.

5 MR. THOMPSON: As to basis,
6 foundation.

7 THE COURT: Overruled.

8 BY MR. BRITT:

9 Q Can you use State's Exhibit 66 and 67 in
10 illustrating your testimony to the jury?

11 A Yes.

12 MR. BRITT: Your Honor, at this
13 time I ask that he be allowed to step down.

14 MR. THOMPSON: And object to
15 that, Your Honor.

16 THE COURT: For what purpose.

17 MR. BRITT: To illustrate his
18 testimony as to where they entered the
19 store, where the vehicle was parked, as to
20 66, where he stood and 67, and where
21 Mr. Clewis Demory was standing, the cashier
22 as he's identified him, was standing at the
23 time he went into the store, and where the
24 defendant was at the time the shots were
25 fired.

1 THE COURT: Do you want to be
2 heard further, Mr. Thompson?

3 MR. THOMPSON: No, sir.

4 THE COURT: The objection is
5 overruled. Yes, sir.

6 BY MR. BRITT:

7 Q If you would step down in front of the jury
8 box. Using State's Exhibit Number 66, I'll ask you
9 to start at this end of the jury box and walk to this
10 end. If you will use State's Exhibit 66, show the
11 members of the jury where it was and what area that
12 you parked the car and in what area that you entered
13 the building?

14 A Last time we stopped and everything, you
15 know, went inside the rob the place, I was parked
16 over on this end in front of the kerosene pump here.
17 This is the store.

18 Q Indicated to these members of the jury
19 where it was that you parked the car?

20 A Yes, over on this end in front of the
21 kerosene pump.

22 Q Where did you enter the store?

23 A The door.

24 Q If you'll come back and show these members
25 of the jury.

1 A (Indicating).

2 Q Using State's Exhibit 67, if you will
3 indicate on the photograph where it was that you were
4 standing when you first entered the store and where
5 Mr. -- where the cashier as you've identified the man
6 in the store was standing?

7 A Cashier was standing around this area right
8 here behind the cash register. The area we came in,
9 I was standing over at the door here looking out in
10 the parking lot.

11 Q If you'll show these members of the jury.
12 Again, if you'll indicate on the photograph where it
13 was the cashier was standing, where you were
14 standing?

15 A Cashier was standing in this area behind
16 the cash register, the door over here, I was standing
17 here, looking out.

18 Q And at the time the cashier was shot, where
19 were you standing if you could show -- use State's
20 Exhibit 67 to show them that?

21 A Still over in the same area at the door.

22 Q And where was he standing at the time he
23 was shot?

24 A It was around in this area, it's not shown
25 in the picture, but a little farther back, and that's

1 where he was shot at.

2 Q If you'll return to the witness stand.
3 I'll show you what has been marked as State's Exhibit
4 Number 70, and State's Exhibit Number 71 , ask you to
5 look at those photographs and tell me if you can
6 identify what is pictured there?

7 A Picture of the car I had, the Tempo.

8 Q And is it shown in both photographs?

9 A Yes.

10 Q And does it accurately reflect the
11 condition your consider was in on July the 15th of
12 1993?

13 A Yes.

14 Q And the automobile pictured in both of the
15 photographs, is the Ford Tempo that you owned, or
16 drove, excuse me?

17 A Yes.

18 Q Is that correct?

19 A Yes.

20 Q And does it also reflects the dented area
21 that you previously testified about?

22 A Yes.

23 Q After the store was robbed and the cashier
24 was shot, where did the two of you go?

25 A We went back to Daniel's place, the

1 trailer.

2 Q And from there, where did you go?

3 A Back to my parents' house.

4 Q How did you go from the defendant's trailer
5 to your parents' house?

6 MR. THOMPSON: Object, asked and
7 answered, Your Honor.

8 THE COURT: We are going over the
9 same areas covered earlier, Mr. Britt. But
10 for the purposes of consistency you may
11 answer the question.

12 THE WITNESS: We had switched
13 cars, I was driving Daniel's mom's car, the
14 Cougar.

15 BY MR. BRITT:

16 Q Was the .38 caliber revolver taken during
17 the robbery put inside the Cougar?

18 A Yes.

19 Q Who put it inside the Cougar?

20 A Daniel.

21 Q Was the money that was taken from the
22 robbery put inside the Cougar?

23 MR. THOMPSON: Object, Your
24 Honor.

25 THE COURT: Overruled. Let's get

1 to a new area.

2 BY MR. BRITT:

3 Q Who placed that money inside the car?

4 A Daniel did.

5 Q After going to your parents' house and
6 returning the guns to the places where you found
7 them, where did the two of you then go?

8 A From there we went to Marion.

9 Q Why did you go to Marion, South Carolina?

10 A To see Daniel -- Daniel wanted to go see
11 his girlfriend, I had to drive for him.

12 Q Approximately what time of the day was it
13 when you left your parents' house en route the
14 Marion, South Carolina?

15 A As best I can remember it was around 11:00,
16 somewhere around in there.

17 Q Where did you go when you went to Marion
18 and how did you get there?

19 A We drove Daniel's mom's car, the Cougar.
20 First place we went was Melinda's house, well, she
21 lived with her grandmother, Melinda's grandmother's
22 house. The next place I remember going was over to a
23 friend of Melinda's at the time I only knew her as
24 Dee. And she stayed in an apartment complex just a
25 few miles from where Melinda stayed.

1 Q Melinda, what is her last name?

2 A Moore.

3 Q When you left Melinda's grandmother's, did
4 anyone go with you?

5 A Yes, Daniel and Melinda.

6 Q Who was driving?

7 A I was still driving.

8 Q Was the .38 caliber pistol that had been
9 taken in the robbery earlier that day still in the
10 car?

11 A Yes.

12 Q Where was it?

13 A At this time it had been put under the
14 passenger seat.

15 Q Who had placed it underneath of the
16 passenger seat of the car?

17 A Daniel had.

18 Q Was the money that had been taken during
19 the robbery in the car at that time?

20 A Yes.

21 Q Where was itself?

22 A In the glove compartment.

23 Q Was it packaged in any way?

24 A No, just thrown in.

25 Q And who put the money in the glove

1 compartment?

2 A Daniel did.

3 Q From Melinda's grandmother's house, you've
4 testified you went to an apartment complex?

5 A Yes.

6 Q Did you meet anyone at that apartment
7 complex?

8 A Yes, that was where I met this girl who
9 went by the name of Dee for the first time.

10 Q After meeting this girl named Dee, did she
11 leave the area of the apartment complex with you, the
12 defendant an Melinda?

13 A Yes.

14 Q Who drove?

15 A She did.

16 Q And do you recall where you sat in the car?

17 A I was in the passenger seat then.

18 Q Now, when you went to Marion that day, did
19 either you or the defendant take a video camera with
20 you?

21 A Yes.

22 Q Who took the video camera?

23 A Daniel did, he had put it in the car.

24 Q Was the video camera carried inside of
25 anything?

1 A Yes, a black nylon type bag.

2 Q Where did Melinda and the defendant sit in
3 the car?

4 A In the back seat.

5 Q And after meeting Dee and leaving the area
6 of the apartment complexes where the did for of you
7 go?

8 A I remember before we ever got back into
9 North Carolina stopping at a store, going in and
10 buying cigarettes, sodas and stuff for every
11 everybody, and the next place we stopped was Daniel's
12 grandmother's house in Rowland.

13 Q When you stopped at the store to buy
14 cigarettes and sodas and things, what money did you
15 use to pay for those items?

16 A Money we had taken from the robbery from
17 earlier that morning.

18 MR. THOMPSON: I --

19 BY MR. BRITT:

20 Q Now, from that store, you testified you
21 went to the defendant's grandmother's house in
22 Rowland?

23 A Yes.

24 Q Was there anyone there when you got to that
25 house?

1 A The only person I saw was Daniel's mother,
2 and she had came out of the house, we never went in.

3 Q And did the defendant get out of the car at
4 any time?

5 A Yes.

6 Q And which car were you driving at this
7 time?

8 A We were still in his mom's Cougar.

9 Q Was there any conversation that you
10 overheard between the defendant and his mother?

11 A Well, just his mom was upset.

12 MR. THOMPSON: Object.

13 THE COURT: Now as to any
14 statements that may be attributed to anyone
15 other than the defendant, the objection is
16 sustained.

17 MR. BRITT: Yes, sir.

18 BY MR. BRITT:

19 Q Was there any conversation between the
20 defendant and his mother, yes or no?

21 A Yes, there was.

22 Q As a result of that conversation, did the
23 defendant take anything out of the car?

24 A Well, he had went -- he came back to the
25 car and got the food stamps that we had taken from

1 the robbery from earlier that morning, he gave her
2 those and a hundred dollar bill that had came out of
3 the victim's wallet, the cashier that had been shot.

4 Q And did you see him give those items to his
5 mother?

6 A Yes.

7 Q And after the defendant gave those items to
8 his mother, what did the defendant do?

9 A Well, he got back in the car, and we left,
10 came to Lumberton.

11 Q Who was driving?

12 A Dee was still driving.

13 Q And where did you go?

14 A We went to Coastal Inn motel.

15 Q In what town is that located?

16 A Here in Lumberton.

17 Q When you got to the Coastal Inn motel, did
18 anyone go in side an register?

19 A Yes, I did.

20 Q How many rooms did you rent?

21 A Two.

22 Q When you registered were you required the
23 fill out any type of form?

24 A Yes.

25 Q What kind of form did you have to fill out?

1 A Some kind of little form they asked for my
2 driver's license number, the license plate that was
3 on the car.

4 Q Did you have to give a description of the
5 car?

6 A I don't remember -- the only thing I
7 remember for sure about the car was I had to you
8 know, give the lady the license plate number.

9 Q Did you have to sign anything?

10 A Yes.

11 Q Did you have to sign the form that you had
12 filled out in reference to your license plate number
13 and the car that you were driving?

14 A Yes.

15 Q Were you required the pay for the rooms at
16 that time?

17 A Yes.

18 Q And how did you pay for the rooms?

19 A In cash, both rooms cost 60 dollars. It
20 came from the money that we had taken from the store,
21 and ever bit of it was in five dollar bills.

22 Q When you say both rooms cost 60 dollars --

23 A Together.

24 Q That was the combined rate for each room?

25 A Yes.

1 MR. BRITT: May I approach?

2 THE COURT: Yes, sir.

3 BY MR. BRITT:

4 Q I'll show you what has been marked as
5 State's Exhibit Number 80 three, paper writing, ask
6 you to look at that and ask you if you can identify
7 any signature that appears on it?

8 A Yes, mine is on it.

9 Q And you say your signature appears there?

10 A Yes.

11 Q And in how many places does your signature
12 appear?

13 A Three times.

14 Q An for the purposes of the record, can you
15 identify the document marked as State's Exhibit
16 Number 80 three?

17 A That's the little -- the form thing I had
18 to fill out in order to get the rooms.

19 Q And you went to this motel on July the 15th
20 of 1993?

21 A Yes.

22 Q After checking in who went to which rooms?

23 A After we checked in, pulled the car over,
24 got everything out of it, Daniel an Melinda went in
25 one room, and this girl Dee and I went in the other

1 room right next to it. After we got, you know, took
2 everything in the rooms, I remember the camera going
3 in. I took some -- I had some clothes and stuff in a
4 bag, I was going to take me a shower, and --

5 Q You say you remember the camera going in,
6 are you referring to the video camera?

7 A Yes.

8 Q Who took the video camera in?

9 A I remember Dee was the person I remember
10 having it, you know, first. And she was pretty much
11 the one that had it the whole time we were there.

12 Q Did anyone operate the video camera while
13 you were there?

14 A Yes, I remember -- she had taken it out of
15 the bag and left out of the room that she and I were
16 in. She went over in the room with Daniel and his
17 girlfriend were, stayed over there a few minutes, I
18 heard them joking around, laughing, and she came back
19 and she had left the camera in the room with Daniel
20 and his girlfriend.

21 MR. THOMPSON: Object, move to
22 strike, unresponsive to the question.

23 THE COURT: On that basis,
24 overruled.

25 BY MR. BRITT:

1 Q Was it daytime or nighttime which you
2 checked into the motel?

3 A During the day.

4 Q How long did you stay there with the two
5 girls?

6 A Two hours at the most.

7 Q And after staying there for around two
8 hours, where did you go?

9 A Daniel and Melinda came over to the room
10 that this girl Dee and I were in, said they were
11 ready to leave, the girls had to be back in Marion,
12 and from there, we went back the Marion.

13 Q Who drove back the Marion?

14 A Dee did.

15 Q Who all went from the motel to Marion?

16 A Daniel, Melinda, Dee, and myself.

17 Q And after taking the girls back to Marion,
18 did you and the defendant stay there for any length
19 of time?

20 A Not long, I don't remember exactly how
21 long, but it wasn't too long.

22 Q And from Marion, where did you and the
23 defendant go?

24 A Back to a motel.

25 Q And why did you go back to the motel at

1 that time?

2 A Well, we went back, you know, to sleep, the
3 rooms were paid for, until the next morning at 11:00,
4 so we went back and stayed.

5 Q After spending the night at the Coastal Inn
6 the next morning, where did you and the defendant go?

7 A From -- I remember taking him back to his
8 trailer, and then we may have stopped a few places in
9 between that time, but after I left him, I went to
10 Angel's house.

11 Q Now, the money that had been taken during
12 the robbery on July 15th of 1993, what was done with
13 that money?

14 A Well, Daniel and I blue it.

15 Q What do you mean by that?

16 A Well, spent it here and there like at the
17 motel and stuff an stores, buying this and that, you
18 know.

19 Q The .38 caliber pistol that was taken
20 during the robbery, what was done with it?

21 A Daniel kept it.

22 Q Now, on the morning of July 16th, 1993,
23 with was your car still parked at the defendant's
24 trailer?

25 A Could you repeat the date.

1 Q On July 16th. The morning after you spent
2 the night at the motel, was your car parked at the
3 defendant's trailer?

4 A Yes.

5 Q And when you arrived at the defendant's
6 trailer that day, did you go in and stay for any
7 time?

8 A I may have, I don't remember for sure.

9 Q Did anyone have a video camera at that
10 time?

11 A Yes, Daniel did.

12 Q And where was the 30 eight caliber pistol
13 when you returned to the defendant's trailer the next
14 morning?

15 A Before getting there it was in the car, it
16 was taken in the house.

17 Q Who took it's into the house?

18 A Daniel did.

19 Q And did you see where he may have -- did
20 you see where he put it?

21 A I don't remember for sure where he laid it
22 at but the majority of the time it was on the ironing
23 board.

24 MR. THOMPSON: Object.

25 THE COURT: Are you testifying

1 from personal observations?

2 THE WITNESS: Yes, sir.

3 THE COURT: Okay. The objection
4 is overruled.

5 MR. THOMPSON: Move to strike as
6 to later part of his testimony.

7 THE COURT: Denied.

8 BY MR. BRITT:

9 Q From the defendant's trailer, where did you
10 go and how did you get there?

11 A From there, I may have stopped by home, but
12 I remember going to Angel's house.

13 Q Did you take the .38 caliber pistol that
14 had been taken during the robbery with you when you
15 left the defendant's trailer?

16 A No.

17 Q Were you still working at Crestline at that
18 time?

19 A No, by then I had already quit and pretty
20 much made a career out of committing crimes.

21 Q Now, between July the 15th and July the
22 22nd, did you have occasions to go to the defendant's
23 trailer?

24 A Yes.

25 Q And on those occasions when you went to the

1 defendant's trailer, was he there?

2 A Yes.

3 Q And between July the 15th and July 22nd,
4 did you and the defendant have any conversation about
5 any other robberies that you were planning to commit?

6 A Yes.

7 Q Between July 15th and July 22nd, who had
8 the .38 caliber pistol that had been stolen during
9 the robbery on July 15th?

10 A Daniel did.

11 Q At any time between the 15th and the 22nd,
12 did either you or the defendant fire that gun?

13 A Yes, yes.

14 Q At the time you first saw the .38 caliber
15 pistol, was it loaded?

16 A Yes.

17 Q Where did you and the defendant fire the
18 gun?

19 A I remember the first time we were firing
20 right there in the trailer park, we were standing
21 towards -- well, facing Daniel's trailer down at the
22 left end, we were firing it over in the direction of
23 some trees, had sat a bottle up in a tree, it was
24 like to the left of his trailer, shooting at the
25 bottle. And I remember a canal that was close by,

1 over to the right, we shot it a few times over that
2 way.

3 Q Were all the bullets that were in the gun
4 on July 15th of 1993 fired?

5 MR. THOMPSON: Object.

6 THE COURT: Basis?

7 MR. THOMPSON: Lacking a
8 foundation for personal knowledge.

9 THE COURT: Mr. Britt.

10 BY MR. BRITT:

11 Q How many times did you shoot that gun?

12 A Together, a total of five times. There was
13 one bullet left.

14 Q And after the bullets were fired, did you
15 or the defendant have any other 38 caliber bullets to
16 place in that gun?

17 A No. We went and bought some.

18 Q When did you go buy some bullets and where
19 did you go?

20 A We went to, I remember it being the 20th of
21 July --

22 Q Where did you go?

23 A C&R Pawn Shop in Pembroke.

24 Q Where did you go there?

25 A For the purposes of buying bullets for the

1 gun.

2 Q Who went to C&R Pawn Shop on the 20th?

3 A Daniel and myself.

4 Q Who went inside the store?

5 A We both did.

6 Q When you got inside the store, what did
7 either of you do?

8 A Well, we looked around for a little bit at
9 things they had in there, an right before we got
10 ready to go, we went over to the part where the
11 bullets were at and Daniel had to call the lady over
12 to unlock it to get the bullets out, and he gave her
13 the money and we left.

14 Q What if anything did you purchase on the
15 20th of July, 1993 at C&R Pawn Shop?

16 A Bullets.

17 Q Who made the purchase?

18 A Daniel did.

19 Q And after purchasing the bullets at C&R
20 Pawn Shop on July 20th, where did you go from there?

21 A I honestly don't remember.

22 Q And at the time you purchased those bullets
23 on July 20th, were there any bullets remaining in
24 that .38 caliber revolver?

25 A Like I say, just one.

1 Q Were any of the bullets that were purchased
2 at C&R on July 20th placed inside the .38 caliber
3 that had been stolen July 15th?

4 A Yes.

5 Q Who placed them inside the .38 caliber
6 revolver?

7 A We both did.

8 Q After you purchased these bullets on July
9 20th, did either of you shoot that gun?

10 A Yes, we both did.

11 Q Where were you when you were shooting the
12 gun?

13 A Still around in the area where Daniel
14 lived, around the trailer park. We popped off a lot
15 of them at a pond that was close by where Daniel
16 lived.

17 Q After the purchase of the bullets was made
18 on July 20th, did you and the defendant have any
19 discussions about any robbery that you were going to
20 commit?

21 A Yes, like I said before, we had -- well,
22 western out ever night looking for something,
23 somebody to rob.

24 Q Did you discuss a specific location?

25 A Well, about the majority of the time, it

1 was just the best place we saw. You know, if we
2 were -- no matter where we were, if it looked like a
3 good opportunity to rob somebody, that's what we did,
4 or attempted to do.

5 MR. THOMPSON: Object,
6 unresponsive.

7 THE COURT: Overruled.

8 BY MR. BRITT:

9 Q Did you ever go, or were you familiar with
10 the Quality Inn that was located at the intersection
11 of 74 and 95?

12 A Yes.

13 Q Did you have any discussions with the
14 defendant about committing a robbery at the quality
15 inn?

16 A Yes.

17 Q And why was the Quality Inn a location that
18 the two of you talked about committing a robbery?

19 A Well, it was -- talked about, considered
20 convenient because it was close by where Daniel
21 lived, it was all off from a lot of other businesses,
22 and over to the one side there was a wooded area, and
23 then banister, places we could duck, wouldn't have to
24 worry about being seen, and at the same time could
25 watch that motel from the parking lot and see what

1 was going on.

2 Q What places where were there that you could
3 duck to?

4 A Like I said there was a abandoned store
5 there and we could pretty much stay behind it all the
6 time, well, the night in question, we were out
7 there.

8 MR. THOMPSON: Well, object, move
9 to strike.

10 THE COURT: If you'll bear with
11 me for one second. Overruled.

12 BY MR. BRITT:

13 Q Now, on July 22nd of 1993, did you and the
14 defendant have any conversation about committing a
15 robbery later that evening?

16 A Yes, we did.

17 Q Where were you when you had that
18 conversation?

19 A Well, we were over at Daniel's trailer
20 during that day, and like the night prior we had
21 talked about it, because we were out hunting
22 something to rob that night.

23 Q On July 22nd, 1993, what did the two of you
24 talk about doing that evening on at the Quality Inn?

25 A We had talk at planning to go out there and

1 rob somebody.

2 Q Did you have any particular person in mind?

3 A No, tourists.

4 Q How were you going to go to the Quality Inn
5 on the night of July 22nd, 1993?

6 A Drive my car out into that area.

7 Q Did either of you have a gun with you on
8 July -- or in your possession on July 22nd, 1993?

9 A Yes.

10 Q Who had a gun?

11 A Daniel did.

12 Q What gun did Daniel have?

13 A A 30 eight that had been taken out of the
14 store that we had robbed on the 15th.

15 Q Did you spend the entire day with the
16 defendant on July 22nd, 1993?

17 A No, no.

18 Q Was there an event or an occasion on July
19 the 22nd, 1993 that caused you to leave?

20 A It was Angel's birthday.

21 Q Angel is who?

22 A My fiancée.

23 Q How long were you with the defendant prior
24 to leaving on July the 22nd, 1993?

25 A We had been together all day, when I left

1 him it was over at his trailer, and that was
2 around -- between 4:30 and 5:00.

3 Q Where did you go and how did you get there?

4 A When I left Daniel's trailer, I was driving
5 my car, Ford Tempo, I left and went over toward
6 Pembroke.

7 Q Where did you go?

8 A Pembroke, I stopped at a Rite Aid and a
9 Jones store.

10 Q Why did you go to those stores?

11 A It was her birthday, I went there with --

12 MR. THOMPSON: Object.

13 THE COURT: Overruled.

14 BY MR. BRITT:

15 Q Why did you go to the stores?

16 A With the intentions of looking for
17 something to by her get her for her birthday.

18 Q Did you make any purchases?

19 A Yes, Rite Aid was the first place I
20 stopped. I went in there and bought a balloon, a
21 card, and it was a Winnie the Poo kit, character,
22 Eor, the donkey, little stuffed -- it was fixed up in
23 a box, had a videotape, and if I'm not badly
24 mistaken, a book, it all came in a box together.
25 From there I went to Jones's.

1 Q Did you buy anything at Joneses?

2 A Yes, while in there, I purchased four or
3 five new children's books, Sesame Street, Bugs Bunny,
4 things like that. A bag of miniature Snicker's Bars.

5 Q Where did you purchase these children's
6 books?

7 A Well, at the -- Angel and I were expecting
8 a baby. We read -- even though she wasn't born yet,
9 we read to it and everything, that was just something
10 that we both liked doing.

11 Q After you made these purchases, where did
12 you go?

13 A From there I wasn't to my parents' house,
14 stayed a few minutes, I called Angel to make sure she
15 was home. As best I can remember, I changed my
16 clothes and everything.

17 Q And after going to your parents house and
18 changing your clothes, where did you go?

19 A Went to Angel's house.

20 Q About what time was it when you got to her
21 house?

22 A Around 7:30, 7:00, 7:30.

23 Q Was anyone at home when you got there?

24 A She was there, her mother. That's all that
25 was there, I think. As far as I can remember.

1 Q Which car did you take from your parents'
2 house -- which car did you drive from the defendant's
3 house to Pembroke where you made these purchases?

4 A The Ford Tempo, my car, the Tempo.

5 Q Which car did you drive the Angel's house?

6 A The Tempo.

7 Q How long did you stay at Angel's house that
8 night?

9 A About an hour and a half.

10 Q And after that hour and a half passed, did
11 you leave?

12 A Yes.

13 Q Did anyone leave with you?

14 A Yes, Angel did. She wanted to go to one of
15 her friend's house, that was a little thing that her
16 friend had put together for her that night. They
17 were going to watch videos, sit around eat popcorn,
18 pizza, things like that. And I took her there.

19 Q About what time did you drop her off?

20 A I remember it being around 8:30 somewhere
21 around in that area.

22 Q From there where you go?

23 A Straight back to Daniel's place.

24 Q Why did you go back to Daniel's house?

25 A We had planned to rob somebody that day, or

1 that night, and I told him I would be back around
2 8:30, 9:00, something like that.

3 Q Was anybody at the defendant's trailer when
4 you arrived?

5 A Just Daniel.

6 Q And when you -- you say that you all had
7 planned to rob somebody that day, were you going to a
8 specific location to rob someone?

9 A Yes, we had planned to go to the Quality
10 Inn.

11 Q Was that the same Quality Inn that was
12 located near the intersection of I-95 and U.S. 74?

13 A Yes.

14 Q How long did you stay at the defendant's
15 trailer after you arrived around 9:00?

16 A Just a few minutes.

17 Q Did you leave?

18 A Yes.

19 Q Did anyone leave with you?

20 A Daniel and I left together.

21 Q Where did you go?

22 A To his mom's friend's house, Kayeol
23 Hernandez, I think that's her last name.

24 Q And when you left the defendant's trailer
25 around nine -- between 9:00 and 9:30 --

1 MR. THOMPSON: Object to leading.

2 THE COURT: Rephrase.

3 BY MR. BRITT:

4 Q When you left the defendant's trailer that
5 night and were going to his mother's friends's
6 house --

7 A Yes.

8 Q -- did either of you have a gun?

9 A Yes, Daniel did.

10 Q What gun did the defendant have?

11 A .38 that had been taken out of the store
12 that we robbed on the 15th.

13 Q Which car did you drive from the
14 defendant's trailer to his mother's friend's houses?

15 A Mine, Ford Tempo.

16 Q What if anything did you see the defendant
17 do with the .38 revolver when you got to the car?

18 A When we got in, he put it up under the
19 passenger seat.

20 Q Now, where was this house located that you
21 went to?

22 A Over around in the Saddle Tree or cloud
23 burn pine area. I remember it being close by a store
24 Parrot's grocery, something like that.

25 Q When you got to that house that night, was

1 there anyone there?

2 A Yes, when I got there, when we got there,
3 Daniel's mother, her friend Kayeol, Kayeol's youngest
4 daughter and one of her friends were there.

5 Q At any time after you first arrived at that
6 house, did you leave by yourself?

7 A No.

8 Q And after you arrived at this house, what
9 did the two of you do?

10 A Well, we had talked to Daniel's mom a few
11 minutes, and the rest of the time we were around in
12 another room watching MTV with Kayeol's daughter and
13 her daughter's friend.

14 Q At any time did anyone else come into that
15 room?

16 A Not that I can remember.

17 Q And when you were watching MTV do you know
18 where the defendant's mother and her friend were?

19 A That were around in the living room
20 watching some kind of movie on TV.

21 Q How long did you and the defendant stay
22 there at that house?

23 A Until about -- around 1:30. Yeah, 1:30.

24 Q In the morning or after?

25 A In the morning hours.

1 Q And around 1:30, what happened?

2 A We left and --

3 Q When you say we left, who are you talking
4 about?

5 A Daniel and I.

6 Q Where were you going?

7 A We were headed out towards the Quality Inn.

8 Q Why were you headed out towards the Quality
9 Inn?

10 A We had planned to rob somebody out there.

11 Q How did you go from this house to the area
12 of the Quality Inn?

13 A Drove my car, the Ford Tempo.

14 Q What road did you take?

15 A We took to get to Quality Inn we went down
16 the service road, .

17 Q How did you get to the service road?

18 A When we left Kayeol's house, I don't
19 remember this road, the name of that road, we got out
20 to highway 72. From 72 we took a left at the stop
21 sign, came out around the planetarium, and from the
22 stop light, we took a slight left and an immediate
23 right and went -- that's how we got on the service
24 road. I remember we had to cross over this single
25 lane bridge. I think the name of it -- well, I

1 remember it being called McNeill's bridge, something.

2 Q And from there, where did you go?

3 A To the Quality Inn.

4 Q Now, on what -- you were on the service
5 road at that time?

6 A Yes.

7 Q How far down the service road did you
8 drive?

9 A Two and a half, maybe three miles at the
10 most.

11 Q Where did you take your car?

12 A Well, there was a canal located close by
13 the Quality Inn, and I had took my car, well, over to
14 the other side of this canal, because there is a dirt
15 road that ran down alongside of it, and that's where
16 I parked it at.

17 Q This canal that's located near the Quality
18 Inn, is that in a cleared field or is it in a wooded
19 area?

20 A Wooded area.

21 Q Why did you take your car into this wooded
22 area along this canal?

23 A So we could get it out of sight.

24 Q After parking the car there -- strike
25 that. When you left Kayeol's house, did either of

1 you have a gun?

2 A Yes.

3 Q Who had the gun or who had a gun?

4 A It had been left in the car but it was
5 still under the passenger seat.

6 Q And as you were driving toward the Quality
7 Inn a along the service road, did either of you have
8 that gun?

9 A Well, when we stopped, parked the car,
10 Daniel got out and took it from up under the seat.

11 Q After parking the car, tell us what
12 happened then.

13 A After we parked the car, we walked over to
14 the Quality Inn.

15 Q Where did you go?

16 A When we first got over there, this
17 abandoned store, we were standing around in the back
18 part of it so we could stay hid and watch the parking
19 lot. There was a few times we walked around in the
20 parking lot looking for somebody, looking at the
21 other side where we couldn't see from the store. And
22 then there was one time we went become to my car for
23 the purposes of getting cigarettes. And then we came
24 back.

25 Q At any time after the car was parked, did

1 you have the .38 caliber pistol in your hands?

2 A There was one time that Daniel handed it to
3 me to lit up, it was a cigarette or cigar, and then
4 as soon as he did that, I handed it right back to
5 him.

6 Q Approximately how long did you stay in the
7 area of the motel before going back to your car?

8 A Roughly 45 minutes, give or take a few.

9 Q Did you walk through the parking lot of the
10 motel?

11 A No, we walked from behind the store, you
12 know, and walked back over to the car.

13 Q How many times did you go back to your car?

14 A We went back two different times but there
15 was -- we left the morning, or the store that one
16 time, went back to the car, then went back to the
17 motel. And the next time we left, we went to the car
18 one more time.

19 Q And on the morning of July 23rd, 1993,
20 while you were in the area of behind the station next
21 to the motel --

22 A Yes.

23 Q -- Did you and the defendant rob anyone?

24 A No, not during the time we were over around
25 the motel or at the store.

1 Q How did you go from your car that was
2 parked in this wooded area beside the canal to the
3 motel?

4 A We had to walk.

5 Q And where did you walk?

6 A We had to get back out on the road, well,
7 the service road, and walk a little ways, cross over
8 a bridge and up this dirt road just a little ways.

9 Q And when you first parked the car along
10 this dirt road and walked back out to the service
11 road on your way to the motel, were there any cars
12 parked in the area along U.S. 74?

13 A I wasn't really paying attention, I do
14 remember seeing a truck, an 18-wheeler was parked
15 over there. I remember seeing that.

16 Q Which way was it facing?

17 A It was facing east, toward Wilmington.

18 Q When -- you've testified there was an
19 occasion when you went back to the car --

20 A Yes.

21 Q -- to get cigarettes or something. Who
22 went back to the car?

23 A Both Daniel and I did.

24 Q When you went back to the car to get
25 cigarettes, did anyone have the gun with them?

1 A Yes, Daniel did.

2 Q How many times did you go back to your car?

3 A Two different times.

4 Q When you walked back to your car the first
5 time, did you notice any other cars other than the
6 tractor-trailer that was parked along 74?

7 A Well, on the way back over to the motel, I
8 had -- I noticed then that there was a car sitting
9 out there, but I didn't really pay attention to it.
10 There was nothing said about it.

11 Q What if anything drew your attention to
12 that car?

13 A Well, it was on the way back from leaving
14 from the motel the last time, Daniel had mentioned
15 you know, he was like, he said something to the
16 effect like, man, that car is still sitting there.
17 You know,. And then he made a statement that it
18 was -- he thought it was an undercover car, some kind
19 of detective, whatever, some kind of law enforcement
20 type vehicle. I disagreed with him. You know, we
21 had a little argument, and decided the best way to
22 solve the problem was to walk up to the car and see
23 for ourselves.

24 Q When you first saw that car, can you tell
25 what kind of car it was?

1 A No.

2 Q Could you tell what color it was?

3 A No.

4 Q And why was that?

5 A Like I said, it was in a slightly lit area,
6 but it was off a ways. Only thing -- park lights
7 were on.

8 Q And when you -- after you first saw the
9 car, you've testified you went become to the area
10 near the motel?

11 A Yes.

12 Q How long did you and the defendant stay in
13 that area?

14 A Not long, 30 minutes at the most.

15 Q Did anyone have a gun when you went back to
16 the area of the motel?

17 A Yes, Daniel did.

18 Q At any time when you went back to the area
19 of the motel, was that .38 caliber gun in your hands?

20 A Not -- no, not after we went back this last
21 time.

22 Q And after staying there at the motel in the
23 area of the motel for some time, did you go back to
24 your car?

25 A Well, yes. It was, after we had already

1 approached this car for the first time that was
2 sitting out beside the road.

3 Q When did you approach this road that was
4 beside the road?

5 A Like I said, we had a disagreement and all,
6 and from there we never went directly back to the
7 car. We walked on down the service road on up to
8 this car that was parked.

9 Q Where was this car parked?

10 A Right off of 74, there was a little cleared
11 area, a flea market, back over to the -- like behind
12 it. It's an area that it's not unusual to see cars
13 stop and park by there all the time.

14 Q Which way cents was the car facing?

15 A Facing like west, you know, towards
16 Charlotte.

17 Q You testified that you walked over to the
18 car?

19 A Right.

20 Q Who went with you?

21 A Daniel and I.

22 Q And what happened when you walked over to
23 the car?

24 A When we went to the car, like I say, we had
25 talked about it, with the -- for the purposes of

1 looking to see what kind of tags was on the car, see
2 whether it had state, government tags, whatever.

3 Q Did you look at the license plate on the
4 car?

5 A Yes.

6 Q What if anything did you remember about the
7 license plate that was on the car?

8 A I remember distinctly it having a
9 University of North Carolina emblem on it.

10 Q Could you tell when you saw the license
11 plate what kind of car it was?

12 A Well, no, I didn't pay attention to that.
13 What brought my attention to the type of the car was
14 on the way back across the road, Daniel pointed out
15 that it was a Lexus.

16 Q What color was the car?

17 A It was a burgundy, reddish looking color.

18 Q When you first approached the car to look
19 at the license plate, could you tell us if there was
20 inside the car?

21 A Well, I could see that there was the form
22 of a person like over in the driver's side but as far
23 as tell whether it was a man or woman, I didn't know
24 the first time around.

25 Q At that time did you see any other forms

1 that resembled a person in the car other than the one
2 by the driver's side?

3 A No, just one person.

4 Q And after you saw the license plate was the
5 defendant there with you?

6 A Yes.

7 Q What happened after you looked at the
8 license plate?

9 A We walked across the road, across 74 and
10 everything, and came back across, and after we came
11 back across the road, that's when Daniel pointed out
12 to me the type of the car, you know, saying it was a
13 real expense -- saying it was a real expensive car.
14 I knew about Lexuses but just hasn't ever really
15 thought about it. And that's when it came up that we
16 started discussing well, looking at the tag it had
17 this university symbol on it. I started thinking and
18 that it might have been a college student, and it
19 appeared to me that that's what Daniel might have
20 been thinking because we started talking about
21 it.

22 MR. THOMPSON: I object.

23 THE COURT: Now you may not
24 speculate Mr. Demery as to what was in
25 somebody else' mind but you may testify to

1 anything that you observed or anything that
2 you heard.

3 MR. THOMPSON: Move to strike.

4 THE COURT: Motion to strike is
5 allowed as to what the witness speculated
6 was in the mind of someone else. You may
7 not consider that matter and you may it may
8 not take any part in your deliberations in
9 this case.

10 BY MR. BRITT:

11 Q Did you and the defendant have any
12 conversation act who might be in the car?

13 A No, it -- well, other than it being a
14 college student.

15 Q What if anything did the defendant say
16 about it being -- maybe being a college student in
17 the car?

18 A Like I said, we both talked about it, and
19 together, we discussed it was probably a college
20 student.

21 MR. THOMPSON: Object.

22 THE COURT: Overruled. You may
23 complete your answer.

24 THE WITNESS: That this person
25 was probably on vacation or whatever, you

1 know, had a little money, and then like I
2 said they came up again, he was talking
3 about what -- how expensive the car was.

4 MR. BRITT: Who was.

5 MR. THOMPSON: Move to strike the
6 testimony.

7 THE COURT: Denied.

8 THE WITNESS: Daniel did, saying
9 that this person had to have had money to,
10 the driver, in order to drive a car like
11 that.

12 BY MR. BRITT:

13 Q Where were you at the time you were having
14 this conversation?

15 A We were, like I say, walking back towards
16 my car, but like the whole time we were discussing
17 robbing this person, taking the car.

18 Q When you say you were talking about robbing
19 this person, what was said?

20 A We were going to -- from we were planning
21 it, we went back to my car, sat around a little bit
22 discussing that we would take this person, you know,
23 approach him, force this person to drive over to
24 Daniel's trailer, where there was a bridge located
25 near by. And that was to be the meeting point. I

1 was to get my car and met them at the bridge, from
2 there we were going to tape this person up and put
3 him out somewhere down the road along the way, and
4 that he was on his own from there.

5 Q When you say you were to get your car an
6 meet them at the bridge, who were you referring to?

7 A Well, Daniel and this person that was in
8 the car.

9 Q Who was to get in the car?

10 A Daniel was.

11 Q And once he got in the car what was he to
12 do?

13 A He was to put the gun on the person and
14 force him to drive over to the bridge.

15 Q Now, you've testified you were going to
16 tape the person up?

17 A Yes.

18 Q Where was the tape to come from?

19 A We put this plan together, and then I had
20 several rolls of it in the trunk of my car.

21 Q And is that the tape that you had used in
22 your work when you worked at Crestline?

23 A Yes.

24 Q Now, after the two of of you talked about
25 doing that, what happened?

1 A After we made these plans and everything,
2 we went back to the car, well, the second -- third
3 time, to get a better look at it, get a lay out of
4 what was on the inside to see if there may have been
5 anybody else in the car. Just, that was the main
6 reason.

7 Q Now, when you walked back across 74 the
8 second time you went to the car, had you looked to
9 see if there was any -- who was in the car?

10 A Like I said, that was the purpose this
11 time, we walked around the back of the car, and then
12 made our way up a little bit so on the way back
13 across the road the fourth time we could walk around
14 the front of the car, get close to it on see on the
15 inside.

16 Q Were there any windows open on the car?

17 A Yes, the passenger window.

18 Q How much of the passenger window was open?

19 A It was open just a little better than half
20 way. Maybe an inch or so.

21 Q When you walked behind the car after you
22 had made this plan to take the car an force this
23 person to drive to an area near the defendant's
24 trailer, did you look inside the car?

25 A Yes.

1 Q Did you see anyone?

2 A Yes.

3 Q Can you describe for us what you saw?

4 A There was a man, a black male, he was in
5 the driver's seat, the seat was inclined back, he
6 appeared to me to be sleeping. He had on a pair of
7 shades. He was just laid back, like I said, looked
8 like to me he was catching him a nap.

9 Q Did you notice anything else about the man
10 at that time?

11 A Well, he had a -- noticed a watch that he
12 had on, a ring that he was wearing.

13 Q What made you notice the watch that he was
14 wearing?

15 A It was standing out, real flashy looking.

16 Q What if anything caught your attention
17 about this ring that he was wearing?

18 A Well, nothing really at the time other than
19 the size of it, you know.

20 Q What about the size caught your attention?

21 A Well, had a, like a big stone in it, it
22 seemed to me. To me it looked like it was a white
23 gold or -- like I said it was kind of, it was flashy,
24 just standing out.

25 Q Could you tell how old this man was?

1 A Well, appeared to me he appeared to be in
2 his mid-40s, early 50s.

3 Q Where was the defendant when you saw this
4 man in the car?

5 A He was right there beside me.

6 Q And after you saw this man in the car, what
7 did you do?

8 A Well, we had -- we walked around the car to
9 the passenger side, looking in, and that's where --
10 where I really noticed the watch and the ring and
11 everything. And like I said, we were just looking
12 the car over, getting a lay out of things. While we
13 were there, a car starts coming, and we run, we run
14 to some bushes, and hid in the bushes, just a few
15 minutes, long enough for this car to get by and
16 everything, and this whole time, even though we had
17 it pretty much planned out, just making last minute,
18 giving last minute ideas and encouraging one
19 another.

20 After this car passed -- well, this first
21 car, we came out from behind the bushes, approached
22 the car again. All right. A car comes again, but
23 this time instead of running all the way to the
24 bushes, there was the flea market had a sign,
25 advertisement sign that was kind of tent shaped it

1 was big enough for the both of us to get behind and
2 hide. This second car came, we hid be signed this
3 little sign.

4 And there, again, we were discussing what
5 we were going to do, encouraging one another, you
6 know, and --

7 Q At that point -- at the point when you ran
8 behind the bushes, did either of you have a gun?

9 A Yes.

10 Q Who had a gun?

11 A Daniel did.

12 Q What gun did the defendant have?

13 A The .38 that we had taken out of the store
14 that we had robbed.

15 Q When you ran behind the sign did either of
16 you have the gun?

17 A Yes, Daniel did.

18 Q Was that the same 38 that had been taken
19 from the store?

20 A Yes.

21 Q After you ran behind the sign did the two
22 of you talk?

23 A Yes.

24 Q What did you talk about?

25 A We were, like I said, giving a last minute

1 ideas about what we were going to do, encouraging one
2 another.

3 Q Why were you encouraging each other?

4 A I was nervous about it, you know, and from
5 the way Daniel talked, he came off at me like he was
6 nervous, and we were giving one another, you know,
7 encouraging, like we're in this together, things like
8 that.

9 Q After you talked there in the area behind
10 the sign, what then happened?

11 A We came out from behind the sign,
12 approached this car again, it was this time, you
13 know, when we walked up to the car this last time, we
14 both squatted down. There was only like about two
15 feet, two and a half feet distance between us. I was
16 like towards the back ends of the car, Daniel, he was
17 around the door area, you know, the front tire.

18 Q On which side of the car were you?

19 A On the passenger side.

20 Q And when you came up on the passenger side,
21 you've testified that you squatted down?

22 A Yes.

23 Q What happened after that?

24 A Again, just before a minute at the most, we
25 squatted down there, again, giving one another these

1 encouraging words and everything, and finally, when
2 we made the move -- I don't know what had happened on
3 the inside of the car, but I know that when we came
4 up, you know, Daniel came up, to put the gun in the
5 car and everything, to wake this man up. Somewhere
6 in between the time that we had approached this car
7 to last time and squatted down, this guy had woken
8 up. And when we came up, he came up. And he started
9 to say, he said something like "what's this, what's
10 going on." And no sooner had the words came out of
11 his mouth, Daniel shot him.

12 Q What did Daniel shoot him with?

13 A The .38 that we had taken out of the store.

14 Q How many times did he shoot the man?

15 A Once.

16 Q What happened, where were you standing at
17 the time Daniel shot the man?

18 A I was right there beside him. Like I said,
19 it wasn't even two feet distance between us.

20 Q What did the man do once Daniel shot him?

21 A When he was first shot, couldn't have been
22 no more than three, four seconds maybe, he appeared
23 to me to have a shock, surprised look on his face.
24 After that was over, you know, those few seconds were
25 over, that's when he started going down, leaning

1 back. He started groaning, moving, wiggling around
2 and everything. Seemed like all that happened, you
3 know, within a minute.

4 Like I say, he was groaning and
5 everything. At one time he was leaned back, he kind
6 of pushed his legs up a little bit, pressed his knees
7 into the steering wheel. And right before he stopped
8 moving, he had groaned out the words that sounded
9 like to me, it was oh, baby I'm sorry, like I said it
10 was in a groaning voice, and that's how I heard it.
11 And then it was like, when that came out, he moved a
12 second or two more, and then he stopped moving.

13 Q When he stopped moving, how was he
14 positioned in the car?

15 A He was, like I say, kind of just twisted a
16 little. His legs were kind of up, but he was laid
17 back.

18 Q Was the back of the seat up or down?

19 A It was still laid down like it was the
20 first time I had saw it that way.

21 Q Did you do when you saw the defendant shoot
22 this man in the car?

23 A Nothing, stood there and watched the man
24 die.

25 Q What did the defendant do after he shot

1 this man?

2 A Well, same thing I did, just stood there
3 beside, you know. We both watched him die.

4 Q At that time did you have any idea who the
5 man was inside that car?

6 A No.

7 Q At any point or after the defendant shot
8 this man in the car, did you say anything to the
9 defendant?

10 A After he stopped moving, you know, and then
11 I guess it was kind of getting over what had just
12 happened, I asked him why did he do it.

13 Q What can the defendant say?

14 A He didn't respond with an answer, he just
15 told me to hurry up help get this guy moved and go
16 get my car.

17 Q How did you react when the defendant shot
18 this man in the car?

19 A I couldn't -- I couldn't believe he had
20 done it. I mean, there was never any discussion
21 whatsoever about you know, hurting, attempting to
22 hurt this person, in order to get what we were after.

23 Q What were you after?

24 A His car.

25 Q Who was to get the car?

1 A Daniel.

2 Q After you asked the defendant why he had
3 shot the man and he told you to hurry up and hen you
4 move him, did either of you open the car?

5 A Daniel walked up, like I said we were right
6 there at the passenger's door, he opened the door up
7 an reached inside the car and started trying to pull
8 this man over, over towards the passenger side. He
9 couldn't get him over, couldn't do much with the guy,
10 so he went over to the driver's side, opened the
11 door, and then he started pushing, and as he started
12 pushing I had already walked up and started pulling
13 the guy. Finally we got him over far enough that
14 Daniel could get in the seat an drive the car.

15 Q Where was he moved from?

16 A He was pushed over from the driver's seat
17 into the passenger seat.

18 Q At the time that the defendant was pushing
19 on the body and you were pulling on the body, did you
20 notice any thing that appeared to be blood in the
21 area of the man's chest?

22 A No, not at that time, I didn't.

23 Q How was the body positioned in the car once
24 it was moved from the driver's seat?

25 A Well, his upper body was twisted, kind of

1 like his face was towards, like out the window. His
2 lower half was twisted over like in the direction of
3 the driver's area. One of his legs was still kind of
4 hooked over the console. It wasn't in the way far
5 enough to where the gear lever couldn't be pulled
6 back, but that's the position that he was in, I
7 remember seeing it.

8 Q After the man's body was moved to the
9 passenger side, what did you do?

10 A I slammed the passenger door shut, you
11 know, Daniel got in, I ran back to my car.

12 Q Now, when you got back to your car --
13 strike that. Where was the .38 caliber pistol?

14 A Daniel still had it.

15 Q At any time after you saw the defendant
16 shoot this man in the car, did he give you that .38
17 caliber pistol to put back in your car?

18 A No.

19 Q After you got to your car that was parked
20 on this dirt road by the canal, where did you go?

21 A I went directly back to Daniel's trailer
22 and parked.

23 Q Now, when you came out of this wooded area,
24 where was Daniel?

25 A He was still sitting there in the Lexus,

1 you know. I crossed on over the road, and it was
2 over 74, hit 301, went back to his place from there,
3 but when I saw him he was still sitting there his car
4 was still sitting in the same place, and he was over
5 in the driver's area.

6 Q Now, when you crossed over 74 and went down
7 301, did you make knit turns off of 301 to go back to
8 the defendant's trailer?

9 A Yes, right after I passed hilly branch
10 school, I took a right, went down that way and passed
11 the trailer park, got to a stop sign, took another
12 right and came up on Daniel trailer park that he
13 lived in, and had to take a right to go up into the
14 trailer park.

15 Q Where did you take your car?

16 A To Daniel's trailer, parked it directly in
17 front of it.

18 Q When you left the area there along 74,
19 where was the Lexus?

20 A Like I said I was still sitting in the same
21 place that I had originally saw it.

22 Q Where was the defendant?

23 A He was in the driver's seat.

24 Q And after you parked your car at the
25 defendant's trailer, did you get out of your car?

1 A Yeah, I did.

2 Q Where did you go?

3 A I walked over to the bridge that we had
4 planned the meet at.

5 Q Why did you walk to this bridge?

6 A Like I said, that's where we had planned to
7 meet, you know.

8 Q How long did you stay at the bridge?

9 A Altogether, I mean, from the time that I
10 got there, first time Daniel came up, it was 15, 20
11 minutes. I remember, I sat there in the yard a few
12 minutes, and then I got out and went to the bridge, I
13 don't remember exactly how long I was at each place,
14 but all together, 15, 20 minutes.

15 Q Now, as you were sitting there at the
16 bridge, did anything catch your attention?

17 A Yes.

18 Q What caught your attention?

19 A I noticed here at this bridge, there was a
20 dirt road that ran alongside the canal. And what
21 caught my attention was a set of head lights was
22 coming down in that direction. And when I first saw
23 them, I ducked, because we had never talked about --
24 he never told me that he was going to come up this
25 way, the only thing that we had planned was the meet

1 at the bridge. I didn't -- like I say, I didn't know
2 he was going to come in that direction.

3 Q What did you do when you saw these
4 headlights?

5 A Hid, hid be signed some bushes.

6 Q Where did you hide?

7 A There was some bushes there and I ducked
8 behind them.

9 Q At some point did you come out from this
10 hiding place?

11 A Yes.

12 Q At what point did you come out?

13 A The car was maybe roughly 15 to twenty feet
14 away from where I was. And that's when I came out,
15 because I knew it was the Lexus coming.

16 Q How did you know it was the Lexus coming?

17 A Well, I had heard far as being able to tell
18 the color, that wasn't the reason that I had heard
19 the radio pumping real loud, and me -- me knowing
20 Daniel for so long, I just knew that that was him.

21 Q Why did you know it was him?

22 A Like I said, the radio was real loud. This
23 late in the morning, like I said, I hadn't seen
24 nobody else out.

25 Q Was it still dark or was it light at this

1 point?

2 A It was still dark.

3 Q And at some point did you sight the car?

4 A Yes.

5 Q Who was driving the car that you saw coming
6 along the canal bank?

7 A When it got up, close to it stopped, Daniel
8 was the one driving.

9 Q And after he got to the area near the
10 bridge, did he pull back on to the road?

11 A Yes, it was after I got in the car with
12 him.

13 Q When did you get in the car?

14 A When he first stopped, he opened up the
15 drivers door and I got in behind him in back seat.

16 Q Was the body still in the car?

17 A Yes.

18 Q Where was the body at that time?

19 A Still over in the passenger seat and in the
20 same position that I remembered seeing it the last
21 time.

22 Q Did you have any difficulty in getting into
23 the car?

24 A Yes.

25 Q Why?

1 A Because the seated, it was still laid back
2 and Daniel hasn't, for some reason it wasn't up yet.
3 An later on he told me it was because he just hadn't
4 figured out how to get the seat to come back up.

5 Q At some point was the back of the seat
6 raised?

7 A Yes, after we were in the cornfield, the
8 next stop we made.

9 Q Of and you got in the car, where did the
10 two of you go, the car and the body?

11 A We got back out on to the road, took a
12 left, went down this road a little ways, came to a
13 stop sign, we were at 301. From the stop sign, we
14 took a right, and went down the road four or five
15 miles at the most. I couldn't see that good back
16 there where -- from where I was at, but I remember
17 Daniel took a right. And we ended up, it was a right
18 on a dirt -- state maintained dirt road. Next stop
19 we made was in a cornfield.

20 THE COURT: Mr. Britt, this is a
21 good point for us to stop for lunch.

22 MR. BRITT: Yes.

23 THE COURT: Ladies and gentlemen
24 of the jury, we're going to take the lunch
25 recess at this time until 2:30 this

1 afternoon. During the lunch recess, it
2 remains your duty to abide by all prior
3 instructions of the Court concerning your
4 conduct, and again I'm obligated to
5 instruct you that you're not to talk this
6 matter among yourself or with anyone else,
7 not allowed to have anyone say anything to
8 you or in your presence about this case.
9 If anyone communicates to you about this
10 matter or attempts to do so, or anyone says
11 anything about the case in your presence,
12 it's your duty to inform us of that
13 immediately.

14 Don't form or express any opinions at
15 all about this matter. Don't have any
16 contact or communications with of any kind
17 with any of the attorneys, parties,
18 witnesses, prospective witnesses, or
19 directly with the Court. Avoid any
20 exposure to any media accounts which may
21 exist in connection with this matter, and
22 don't conduct any independent inquiry or
23 investigation or research of any kind.

24 Everyone else please remain seated,
25 the members of the jury are excused until

1 2:30. Folks, your checks are here, if
2 you'll stop by on your way out and see Ms.
3 Gaines, please.

4 (Jury out at 12:54 p.m.)

5 THE COURT: Mr. Demery, you may
6 come down, sir. Thank you. Logistically,
7 what do we have to do with regard to the
8 request, folks? Lieutenant, Sergeant
9 Meares -- do you folks want to consult here
10 in the courthouse?

11 MR. BOWEN: Yes, sir.

12 THE COURT: Is the room at the
13 end of the hallway available?

14 THE BAILIFF: We could work
15 something out, judge, that room on the
16 left.

17 THE COURT: Yes, sir.

18 MR. THOMPSON: Yes, sir.

19 THE COURT: Is that agreeable.

20 MR. THOMPSON: Yes, sir.

21 THE COURT: Any problems that
22 anybody can foresee in that respect in
23 terms of providing for the consultation or
24 the opportunity to consult and/or providing
25 for lunch for the defendant?

1 MR. THOMPSON: He's fasting Your
2 Honor.

3 THE COURT: That's right, I
4 forgot it's Ramadon, so that won't pose any
5 problem. Anything further from either
6 counsel?

7 MR. BRITT: No, sir.

8 THE COURT: Okay. If you'll
9 recess us until 2:30.

10 THE BAILIFF: All rise, please.
11 (Lunch recess.)

12 THE COURT: Good afternoon,
13 folks. Mr. Demery, if you'll retake the
14 witness stand, please, sir.

15 Let the record reflect all counsel are
16 present, the defendant is present in open
17 court. Mr. Horne do we have all members of
18 the jury secured in the jury room.

19 THE BAILIFF: Yes, sir, they are.

20 THE COURT: Mr. Thompson, do you
21 want to be heard? I thought a few moments
22 ago you were indicating that you wanted to
23 be heard.

24 MR. THOMPSON: No, sir, I was
25 just indicating it wasn't quite 2:30 --

1 THE COURT: Any other matters
2 before we bring the jury back in?

3 MR. THOMPSON: No, sir.

4 THE COURT: Bring the jury in,
5 please, sir.

6 (Jury in at 2:29 p.m.)

7 THE COURT: Good afternoon,
8 ladies and gentlemen.

9 Mr. Britt, you may continue with
10 direct examination.

11 BY MR. BRITT:

12 Q Mr. Demery, the first time that you and the
13 defendant approached the car that was parked along
14 74, approximately how many feet away from it were
15 you?

16 A Ten feet at the most.

17 Q And when -- after being approximately ten
18 feet away from it at that point, you've testified you
19 walked across Highway 74?

20 MR. THOMPSON: Object, Your
21 Honor, this is repetitious.

22 THE COURT: Mr. Britt for what
23 purpose are we going back over this.

24 MR. BRITT: I'm trying to
25 establish the distances where they viewed

1 certain things.

2 THE COURT: Overruled.

3 BY MR. BRITT:

4 Q You crossed 74?

5 A Yes.

6 Q And walked back to the car?

7 MR. THOMPSON: Object, leading.

8 MR. BRITT: I'll rephrase.

9 BY MR. BRITT:

10 Q After crossing 74, what did you do?

11 A Like I said, first time across just to get
12 a look at the tags, crossed over, came right back.

13 Q How far away from you from the car at that
14 time?

15 A About the same distance.

16 Q And from -- after crossing 74 and being
17 about ten feet away from the car, where did you go?

18 A We started walking back towards my car, and
19 started talking about planning to rob this person.

20 Q And did you return to the car a third time?

21 A The third time is when I went to get it an
22 meet Daniel at the bridge.

23 Q When you -- did you return to the area
24 where the Lexus was parked along the highway?

25 A Yes.

1 Q How far away from the car were you at that
2 time?

3 A We cross -- when we went across the third
4 time, about the same, but this time what we wanted to
5 do is get across the road and then try the play it
6 off like we were going to come back up beside the
7 car.

8 MR. THOMPSON: Object,
9 unresponsive.

10 THE COURT: Overruled.

11 BY MR. BRITT:

12 Q You may continue.

13 A Walk along so we can get up close to the
14 car, walked up near the front area of it this last
15 time just to see if anybody else could have been in
16 there.

17 Q How close did you get to the car at that
18 time?

19 A This time when we came up alongside it, it
20 was maybe three, four feet at the most away from it.

21 Q And then the last time you approached the
22 car, was that when the man inside the car was shot?

23 A Yes.

24 Q After you went to this bridge near the
25 trailer park where the defendant lived, and he showed

1 up in the car, where did the two of you go?

2 A From there, the next stop was the
3 cornfield.

4 Q And off of what highway was that cornfield
5 located?

6 A Off of Highway 301.

7 Q And in which direction were you going when
8 you pulled off into the cornfield?

9 A We were headed toward the Rowland -- town
10 of Rowland.

11 Q What happened there in the cornfield?

12 A When we got in the cornfield, we both got
13 out, I had took the keys out of the ignition to go to
14 the trunk and look and see what was back there, and
15 Daniel, he had gotten out and went over to the side
16 of the car where this person was, you know, started
17 going through his pockets, taking things out, taking
18 his jewelry off.

19 Q What jewelry did he take off the man?

20 A A watch, two rings.

21 Q Can you describe the watch that you saw the
22 defendant take off the man?

23 A The watch was like a light goldish color,
24 the inside was black. It had a bull's head with 92,
25 93 world champions, and that was --

1 Q Did he take anything other than the watch
2 off the man?

3 A Two rings that I saw.

4 Q Can you describe the rings that you saw?

5 A One ring was just a regular wedding band,
6 you know, thin, yellow gold. The other ring was --
7 it appeared to me, the first time to be white gold,
8 but this one had a large blue stone in the top of
9 it. On the side it had NBA and All-Star 86.

10 Q You've testified that you looked in the
11 trunk of the car?

12 A Yes.

13 Q What if anything did you see in the trunk
14 of the car?

15 A I saw there were two golf bags, some
16 shoes. There was a shaving kit bag. Well, nylon
17 type material had Chicago Bulls on it. I remember
18 there was a suit in the trunk.

19 Q What kind of shoes did you see in the trunk
20 of the car?

21 A There were a pair of dress shoes, two pair
22 of golf shoes, these two pair of golf shoes were
23 identical.

24 Q Do you recall what color the golf bags
25 where are that you saw in the car?

1 A Yes, one was burgundy color, the other one
2 was Carolina blue and white.

3 Q There in the cornfield did you take either
4 of the golf bags out of the trunk?

5 A No.

6 Q What did you see the defendant do with the
7 watch that he took off of the man?

8 A He had -- he put it on, the same thing with
9 the rings, you know, puts both of them on his
10 fingers. He took them off again, he was showing them
11 to me at one time.

12 Q Were the man's pockets ever checked for any
13 money or a wallet?

14 A Yes.

15 Q And who checked the man's pockets for any
16 money or a wallet?

17 A Daniel did.

18 Q Did the defendant ever show you anything
19 that he had taken from the man's pockets?

20 A Yes, there was a large stack of credit
21 cards, had a rubber band around it. There was
22 some -- there was a money clip. The money clip had,
23 the way it was made up it was like two golf clubs
24 crossed over with something on the inside of them. I
25 don't remember everything about it. And that's all I

1 remember coming out of his pockets.

2 Q Was there any money inside the money clip?

3 A Yes.

4 Q How much money was there inside the money
5 clip?

6 A As best as I can remember it was like 64
7 dollars, give or take a few. No more than 60.

8 Q Did you ever see a driver's license?

9 A Yes.

10 Q When and where did you see a driver's
11 license?

12 A Well, Daniel had went over to the driver's
13 side of the car to look at credit cards and things
14 better, the lighting was better on that side. And he
15 made the statement to me, damn, we killed Michael
16 Jordan's daddy.

17 Q And what if anything did you say to him?

18 A I was like, my first word was like,
19 bullshit. We didn't. Something to the effect of
20 that.

21 Q And did he show you a driver's license?

22 A Yes.

23 Q And when he showed you the driver's
24 license, what if any name was on that driver's
25 license?

1 A James R. Jordan.

2 Q And at that time, did you associate the
3 name James R. Jordan with Michael Jordan the
4 basketball player?

5 A No, sir. At the time I didn't -- I knew
6 Michael Jordan, I knew his wife's name was Juanita,
7 but that was it.

8 Q This watch that you saw the defendant take
9 off of the man there in the car, was there any
10 inscription or any writing on the back of that watch
11 that you saw?

12 A Yes, there was.

13 Q What if any writing or inscription was on
14 the back of that watch?

15 A It had on the back of it, to dad from
16 Michael and Juanita, and that's what really said it
17 for me.

18 Q What do you mean that's what said it for
19 you?

20 A That's what I realized well, this is --
21 positive that's who this man is who Daniel said it
22 was.

23 Q While you were riding in the back seat of
24 the Lexus, before going to the cornfield, did you
25 ever see that .38 caliber revolver?

1 A Yes.

2 Q Where did you see it?

3 A When I first saw, noticed it it was around
4 my feet, that's what -- I felt something banging into
5 me and I looked down, that's what it was.

6 Q Now, when you pulled when the two of you
7 pulled into the cornfield was it dark or was it light
8 outside?

9 A It was dark outside.

10 Q How long did you stay in the area of this
11 cornfield?

12 A 30 minutes.

13 Q And from the cornfield, where did you go?

14 A Went into the town of Rowland.

15 Q Who was driving?

16 A Daniel was.

17 Q Had the seat been raised on the driver's
18 side?

19 A Yes, by then it had been.

20 Q Where was the body at that point?

21 A Still at the same place, positioned a
22 little bit differently but still over the passenger
23 seat.

24 Q Where did you go from the cornfield?

25 A We went to the ways it treatment plant in

1 Rowland.

2 Q Why did you go there?

3 A Daniel had made a suggestion that that was
4 the place we could get rid of the body.

5 Q Had he told you why he thought you could
6 get rid of the body there?

7 A Yes, he said that we could throw this
8 person inside one of the tanks and the chemicals that
9 were in this stuff would eat the body up. He
10 would -- bones, everything, nothing would ever be
11 found.

12 Q And did you go to an area near the waste
13 treatment plant in Rowland?

14 A Yes.

15 Q Who drove?

16 A Daniel did.

17 Q Did you know where the waste treatment
18 plant was in Rowland?

19 A I knew there was one there, but as far as
20 going straight to it, I didn't.

21 Q And do you recall what what route you went
22 in going to the waste treatment plant?

23 A We took 301 all the way into Rowland.

24 Q Did you turn off of 301 to the waste
25 treatment plant?

1 A Yes.

2 Q Did you go though the downtown portion of
3 Rowland?

4 A Yes, we went through the stop light and
5 shortly, just a little ways after then, we took a
6 right, it was somewhere around the area of the pink
7 restaurant.

8 Q What happened when you got to the area near
9 the waste treatment plant?

10 A When we got there, we realized -- I didn't
11 know much about it but Daniel said there had been a
12 gate put up since he had last saw it, and here we
13 were riding around. There was a project area right
14 here (indicating) it was around the area of a park.
15 And almost 4:00 in the morning, we're driving around
16 in this park with a dead man in the car. And coming
17 through town we had passed a cop. And then like I
18 said, a gate had been put up, and he was driving up
19 and down the place trying to find a way in there.

20 Q Was the gate locked?

21 A We never got out and looked, but I just
22 assumed it was. I don't know what he thought about
23 it.

24 Q Now, when you went to this area near the
25 treatment plant, there was a gate. What happened

1 then?

2 A After he drove up and down a few times and
3 everything, I told him, I said let's get the hell out
4 of here. And he asked me did I have a better place
5 in mind. I told him yes, and that's when I told him
6 about the bridge located near Crestline where I had
7 worked.

8 Q Who drove?

9 A Daniel did.

10 Q And from the area of the waste treatment
11 plant near Rowland, where did you go after that?

12 A I gave him instructions on how to get to
13 that area. We went down highway 501. We went all
14 the way to -- we got into Laurinburg around the Hasty
15 area, and there's a BP station, we took a left. And
16 after that left, if I'm not badly mistaken it was
17 straight to the bridge.

18 Q Now, when you say there was a bridge near
19 the crest line plant, had you ever been to this area
20 before?

21 A Yes.

22 Q Approximately how far was this bridge from
23 the Crestline Mobile Home plant?

24 A A mile and a half at the most.

25 Q And on how many occasions had you been to

1 this bridge?

2 A Well, several times. We escorted these
3 houses up and down the road, had been down in South
4 Carolina many times, and that was a route that we
5 used to come back to get to the plant.

6 Q And the bridge that you gave the defendant
7 directions to go to, is it near the North
8 Carolina-South Carolina state line?

9 A Yes, it is.

10 Q Who drove to the bridge?

11 A Daniel did.

12 Q When you got to the area of the bridge, did
13 you go over into South Carolina?

14 A Like I said it was right there on the
15 line. I mean, I just assumed we were already across
16 the line.

17 Q When the car was stopped, was it facing
18 towards into South Carolina or was it face facing
19 into North Carolina?

20 A It was facing towards South Carolina.

21 Q After arriving at the bridge, did you get
22 out of the car?

23 A Yes.

24 Q Who all got out of the car?

25 A We both did.

1 Q Why did you get out?

2 A We had got out, there were two bridges
3 there, we had got out, look and see, like, which
4 would be the best the drop him. And then we had,
5 like on one side it was full of grass, the other side
6 appeared to be pretty deep water, that's the reason
7 we got out to see which would be the best place to
8 drop him.

9 Q And after deciding which would be the best
10 place to drop him, what did you do?

11 A Well, there was somewhere between the time,
12 you know, we got out and getting back in, somehow the
13 hazard lights had came on, and we just -- we couldn't
14 figure how to get them off. I was in the car, Daniel
15 was in the car, I crawled in through the back, and we
16 finally got them off. There was a switch like right
17 up under the panel to cut it off. And Daniel pulled
18 the car up just a little bit to turn it around,
19 because by then we had already determined which side
20 we were going to drop him off on. Like I said we had
21 to turn the car around and everything. And as we
22 were turning around, you know, Daniel still driving,
23 somehow or another, came like out of the lane we were
24 in, crossed all the way over, and almost slipped down
25 into a ditch. But after we got turned around and

1 everything, pulled the car up as close as we could to
2 the side we were going to drop him off on, so we
3 could open the door, got him out, dropped him over.

4 Q Why was the car turned around?

5 A Like I said, the side of the bridge that we
6 had decided to drop him over, it was like over on the
7 left side, the way we were facing, and he was over
8 here on the right side on the passenger seat, and we
9 wanted him to be close, didn't want to have to carry
10 him across the road, just wanted to be able to lift
11 him out and drop him out on over.

12 Q After the car was turned around, what
13 happened?

14 A After the car was turned around, like I
15 said, you know, we opened the door and everything, we
16 reached in, pulled this man out, dropped him over the
17 bridge.

18 Q What part of the man's body did you hold?

19 A I grabbed him around his feet, his legs.

20 Q What part of the body did the defendant
21 hold?

22 A His upper body.

23 Q After you got the body out of the car, were
24 any articles of clothing taken off of the man?

25 A Yes.

1 Q What articles of clothing were taken off
2 the man?

3 A His shoes.

4 Q Who took his shoes off?

5 A Daniel did.

6 Q What if anything did the defendant say or
7 do after he took the man's shoes off?

8 A He said he liked them and that this man
9 wasn't going to need them anymore. So he took them
10 off.

11 Q And after the man's shoes were taken off,
12 what was done with the body?

13 A He was dropped over the bridge.

14 Q At any point prior to dropping the body off
15 of the bridge, did you notice any blood on the
16 clothing?

17 A First time I had noticed it out in the
18 cornfield seemed like there was a spot like right up
19 under his right arm, in this area, and it was
20 afterwards when I noticed some more blood.

21 Q Where did you notice more blood later?

22 A At the bridge, it was right after we
23 dropped this guy off, I noticed somehow or another it
24 must have happened when I reached in, I had got some
25 blood on my arm somehow or another. Come to find out

1 later, there was some that was on the back part of
2 the seat a little bit down in the bottom.

3 Q At any time did you ever clean off the
4 blood that was on the seat?

5 A Yes, I did.

6 Q When did you do that?

7 A That was when we took the car back to
8 Daniel's trailer that morning.

9 Q After the body was dropped off of the
10 bridge, where did you go?

11 A From there, that's when I started driving.
12 The first place we stopped was a Citgo station to put
13 gas in the car.

14 Q What money did you use to buy gasoline
15 with?

16 A The money that had been taken off this man.

17 Q After you bought gasoline, where did you
18 go?

19 A Next place we stopped was a First Union
20 bank, and Daniel got out and went to the teller
21 machine.

22 Q What if any card did he take with him to
23 the teller machine?

24 A At that time, there were a few of the cards
25 left. Like I said, there was a whole stack, an a lot

1 of them had been thrown out at the cornfield over in
2 the area of some woods that were over at the left of
3 us, but I remember a specifically, it was like a
4 Citibank Visa card that was bluish -- dark blue
5 color. That's the one he had attempted to use at the
6 teller machine.

7 Q That's the one who attempted to use at the
8 teller machine?

9 A Daniel.

10 Q Did you observe him go up to the machine
11 and put the card in the machine?

12 A Yes.

13 Q Did he bring back any money?

14 A No.

15 Q Did he say anything about what had happened
16 when he went to the teller machine?

17 A Well, he said that, just said the numbers
18 didn't work. Prior to ever going to the teller
19 machine, he tried -- he told me that what it was,
20 where this man's birthday, his birthdate. He tried
21 to tell me that that was the code, you know, in order
22 to get money out. And I told him it wasn't, but you
23 know, he just didn't want to hear that. So we had to
24 stop anyway. And then when we went up to the teller
25 machine, he stayed up there about ten, 15 minutes,

1 came back and said it didn't work.

2 Q Can you describe for us how this man was
3 dressed that was in the car?

4 A I remember him as having on a light colored
5 pair of pants, maybe light brownish, a light shirt, I
6 remember him having on some type of light colored
7 jacket, looked like a Member's Only type, and I
8 remember his shoes as being a -- they were brownish
9 in color, wing tipped. And he was wearing -- I
10 thought they were shades. And that's all I remember
11 him having on.

12 Q Was the jacket ever taken off of the man
13 before he was thrown in the water?

14 A Yes.

15 Q Who took the jacket off of the man?

16 A Daniel did. He was -- the only time I ever
17 touched the man was when we moved him and then when
18 we picked him up and dropped him over the bridge.

19 Q The glasses or the shades, the glasses that
20 you have described as shades, were they ever taken
21 off of the man?

22 A I never saw them took off. I didn't, no, I
23 didn't see Daniel do it.

24 Q Now, from the bank, what town were you in
25 when you went -- two of you went to this bank?

1 A It was Laurinburg.

2 Q From there, where did you go?

3 A From leaving the bank, we went to a canal
4 right where I live, parents' house.

5 Q What routed did you take from Laurinburg to
6 this canal near your parents' home?

7 A We took 74.

8 Q Who was driving?

9 A I was.

10 Q When you were driving back from Laurinburg
11 do you know whether or not -- strike that. Do you
12 know whether or not there was a telephone in his car?

13 A Yes, there was.

14 Q Where was the telephone located?

15 A Right between the driver and the passenger
16 seat.

17 Q And on the way back from Laurinburg, did
18 either you or the defendant pick up that telephone?

19 A Yes.

20 Q Who picked up the telephone?

21 A Daniel did.

22 Q What if anything did you see him do with
23 the telephone?

24 A I saw him looking it over. He was punching
25 some buttons and everything.

1 Q Did you ever talk on that phone?

2 A During the course of the time --

3 Q That morning?

4 A No, I didn't, no.

5 Q To your knowledge, did he call anyone early
6 that morning as you were coming back from Laurinburg?

7 A No.

8 Q When you got to this canal bank near your
9 parents's house, what happened there?

10 A When we got out over to the canal bank, got
11 out of the car, I went back to the trunk again,
12 Daniel was mostly on the inside of the car, and we
13 were checking it over real thoroughly, going back
14 over it. And getting rid of things that we didn't
15 want to keep in the car, insurance papers, things
16 like that.

17 Q What if anything was done with the things
18 that you didn't want to keep in the car?

19 A Look I say, I was in the trunk, the things
20 that we through out, we were throwing them in the
21 water, in the canal.

22 Q What kind of papers did you find in the
23 trunk?

24 A There was a big stack of -- they were
25 payroll checks, but they had -- I remember they were

1 coming from a company that went by -- had Jordan
2 enterprises across the top. They hadn't been -- this
3 big stack, they weren't wrote out or anything, but
4 there were some checks there that had been wrote out
5 to people.

6 Q What was done with those checks?

7 A They were all thrown in the water.

8 Q Were there any newspapers in the trunk of
9 the car?

10 A Not that I remember.

11 Q Where was Daniel when you were going
12 through the things in the trunk of the car?

13 A On the inside of the car.

14 Q And were you able to see what he was doing
15 there?

16 A Well, one time I walked up there, he was
17 playing with the phone again. Then he had been in
18 the glove compartment. Like I said it had all kind
19 of papers in there, there was insurance papers, I
20 remember a manual, you know, about the car and
21 everything. That was all I remember being in there.

22 Q You testified earlier this car had a radio
23 in it?

24 A Oh, yeah.

25 Q Did it have a CD player in it?

1 A Yes.

2 Q Did it have a tape player in it?

3 A I only remember a CD player.

4 Q Where was the CD player located?

5 A The changer was in the back of the car, but
6 you could put, 12 CD's at the time, from the inside
7 of the car you could hit these buttons an operate the
8 CD changer.

9 Q Were there also CDs in the car?

10 A Yes.

11 Q Where were they located in the car?

12 A They were in the trunk too.

13 Q Do you remember what kind of music --

14 A Yes, mostly easy listening like R an B
15 type. Aritha Franklin, En Vogue, Bob Marly, just
16 different types like that.

17 Q There on the canal bank near your parents
18 home was anything done with those CDs?

19 A Well, other than just looking at them, no,
20 nothing, left.

21 Q Why did you stop there at the canal bank?

22 A So we could go back there and go through
23 the car more thoroughly at this time. Like I said,
24 we had gotten rid of the body and everything, and had
25 kind of started calming down after all this had

1 happened.

2 Q Now, was it still dark outside?

3 A No, by this time it was daylight.

4 Q And approximately how long did you stay
5 there along this canal bank near your parent's home?

6 A No more than an hour.

7 Q From there where did the two of you go?

8 A From there we went to Daniel's trailer.

9 Q What if anything was done with the car
10 whether you got to the defendant's trailer?

11 A When we first got there, I pulled it up
12 behind Daniel's trailer, we got out and everything,
13 and took the things that were in the car, took them
14 out, approximate the them in the house, I had like I
15 said I had already noticed this blood and example, so
16 I went in the house, got a rag, went outside an wiped
17 it up. And after then, it was Daniel got in the car
18 and pulled it over behind another trailer that was it
19 was over directly beside the one that he was living
20 in, but across the little dirt road, a and it was
21 turned another way.

22 Q Before going to his trailer and there at
23 the canal bank, did you ever take any of the golf
24 clubs out?

25 A Yes, I did.

1 Q Why did you take the golf clubs out there
2 at the canal bank?

3 A Well while Daniel was in the car, like I
4 said, he was playing around with the phone a lot, I
5 never heard him talking to anybody, but while he was
6 doing that I had already pretty much cleaned out the
7 trunk, threw away anything that we didn't want to
8 keep. And I got board, you know, pulled out a golf
9 club and there was a lot of golf balls in there and I
10 started smacking golf balls in the woods.

11 Q After you cleaned the blood up from the
12 inside of the car, where was the blood located?

13 A There was some on the back rest in the
14 passenger seat, there was some in this area on the
15 seat (indicating) and then down in the bottom, like
16 along the crack where the seat, the bottom part
17 connects with the upper top part. There was some
18 down in there.

19 Q And after you cleaned this blood out of the
20 car, -- when you cleaned the blood out of the car,
21 where was the defendant?

22 A Best I can remember, he was in the house.
23 Like I said we had taken these things out of the car.

24 Q And after you cleaned the car off, what did
25 you do?

1 A Daniel got in the car and he moved it and
2 everything, and after then, I went to sleep.

3 Q Where did you sleep?

4 A I went and laid down on in Daniel's room on
5 his bed.

6 Q Do you have any idea how long you slept?

7 A Two, three hours at the most.

8 Q And after you slept for that time period,
9 did you wake up on your own or did the defendant wake
10 you up?

11 A He had woken me up.

12 Q Was there anybody else there at the
13 trailer?

14 A No.

15 Q And when you went to sleep that morning --
16 strike that. Before going in to the trailer, where
17 was the .38 caliber revolver?

18 A It was still inside the car, but I don't
19 remember exactly what -- you know, where it was
20 located on the seat or whatever.

21 Q Now, after the defendant woke you up, what
22 did the two of you then do?

23 MR. THOMPSON: Well, I object.

24 THE COURT: Basis?

25 MR. THOMPSON: Assuming facts not

1 in evidence.

2 THE COURT: Restate.

3 BY MR. BRITT:

4 Q Who woke you up after you slept there for
5 two to three hours at the defendant's trailer?

6 A Daniel did.

7 Q After he woke you up, what if anything did
8 the two of you then do?

9 A Got up, I changed clothes and everything.
10 We left and, the first place I remember going to
11 inside the Lexus, there was a little store right
12 there on the road, well, a few miles down the road,
13 stopped and put some more gas in it. Somehow or
14 another, we took back roads, I didn't know where I
15 was going, but we ended up at Fairmont. Stopped at
16 Hardy's got something to eat and everything, an next
17 place I remember going was over to Kayeol's --
18 Daniel's mom's friend's house.

19 Q Is that the house you had been to the night
20 before, before leaving to go to the area near the
21 Quality Inn?

22 A Yes, it was.

23 Q Where did you park the red Lexus -- strike
24 that. What color was this car?

25 A Burgundy, red, reddish color.

1 Q Where did you park this Lexus when you went
2 back to the defendant's mother's friends?

3 A Beside Parrot's grocery store.

4 Q Why did you park it there?

5 A To keep Kayeol and Ann and everybody from
6 seeing it.

7 Q And who drove over there?

8 A I did.

9 Q Did you get out of the car?

10 A Yes.

11 Q Who was at the house when you went back?

12 A Kayeol was there, and Ann was there, but I
13 don't remember if anybody else was or not.

14 Q How long did you stay there at Kayeol's
15 house?

16 A 30 minutes at the most.

17 Q From there where did you go and who went
18 with you?

19 A From there, we went to Red Springs, around
20 the Red Springs area.

21 Q Who is we?

22 A Daniel and I.

23 Q And what did you do in the Red Springs
24 area?

25 A Went to the grocery store, Winn-Dixie.

1 Q After going to the grocery store in red
2 springs, where did you go?

3 A Leaving the grocery store, we went directly
4 back to Daniel's trailer.

5 Q On July the 23rd, 1993, did you and the
6 defendant take -- drive that red Lexus to Marion,
7 South Carolina?

8 A Yes, we did.

9 Q When did you go to Marion, South Carolina
10 on July 23rd, 1993?

11 A It was later on in the evening hours.

12 Q Who drove?

13 A I did.

14 Q When you drove to Marion on July 23rd, 1993
15 who went with you?

16 A It was just Daniel and I.

17 Q Where did you go?

18 A First place we went was to Melinda Moore's
19 house.

20 Q Was she there when you arrived?

21 A Yes, she was there.

22 Q And after you went to her house, did she
23 leave with the two of you?

24 A Yes.

25 Q Where did you go?

1 A We rode around Marion a good hour looking
2 for this girl, Dee.

3 Q Did you go to any places there in Marion?

4 A Yes, we had Melinda had told a few
5 different places to go, I remember one time she
6 stopped at a Hardy's, she said that's where this girl
7 hung out a lot. The next place we went to was a
8 little club, I don't remember the name of it or
9 anything, but that's where Melinda's cousin, Patricia
10 was, and Linda had said that Patricia and Dee had
11 been together early that night. And that if Dee went
12 with Patricia, Patricia would probably know where Dee
13 was at. We went to this club, Patricia was still
14 there, called her up to the car and everything, and
15 she told her that Dee had told her that she was going
16 to some other club.

17 MR. THOMPSON: Object, Your
18 Honor.

19 THE COURT: Sustained at this
20 point. Do you want to be heard, Mr. Britt.

21 MR. BRITT: No, sir, that's all
22 right.

23 MR. THOMPSON: Move to strike.

24 THE COURT: Allowed. Anything
25 further?

1 MR. THOMPSON: No, sir.

2 THE COURT: Okay.

3 BY MR. BRITT:

4 Q As a result of what Patricia told Melinda,
5 did you take Melinda anywhere?

6 A Yes, she instructed us how to get to this
7 other club, and where Patricia said she would be,
8 that's where she was.

9 MR. THOMPSON: Object, move to
10 strike.

11 THE COURT: Motion to strike is
12 allowed.

13 MR. THOMPSON: Request
14 instruction.

15 THE COURT: Members of the jury,
16 disregard the witness's statement as to
17 what someone said about where somebody else
18 was supposed to be. That is not to take
19 part in your deliberations in this case in
20 any respect.

21 BY MR. BRITT:

22 Q As a result of what Patricia told you did
23 you locate Dee?

24 A Yes, we did.

25 Q Where was Dee, where was she?

1 A At this club.

2 Q Did anybody get out of the car?

3 A Melinda got out.

4 Q And where did you see Melinda go?

5 A She walked up, you know, to the -- at the
6 little parking lot that was around this club, I seen
7 her talk to a few people, and then next thing I
8 remember, here she comes and Dee is with her.

9 Q When Melinda came back with Dee, what
10 happened from there?

11 A Well, for a few minutes, stood around, they
12 were talking about how nice this car was.

13 MR. THOMPSON: Object.

14 MR. BRITT: This is all to
15 corroborate the testimony of Melinda Moore
16 an Dee Sullivan.

17 THE COURT: Limiting instruction.

18 MR. THOMPSON: Yes, sir.

19 THE COURT: Members of the jury,
20 the testimony now being elicited of the
21 witness before you Mr. Larry Martin Demery
22 junior as to what he contend were statement
23 made to him by prior State's witnesses,
24 specifically Melinda Moore, are being
25 offered for the limited purposes of

1 corroborating the prior testimony at this
2 trial of Melinda Moore and/or Dee
3 Sullivan. And I instruct you that you may
4 consider this evidence for that limited
5 purpose and for no other purpose.

6 Anything further?

7 MR. THOMPSON: No, sir.

8 BY MR. BRITT:

9 Q What happened when Melinda and Dee came
10 back to the car?

11 A After a few minutes of talking, you know, I
12 switched over, got in the passenger seat, Dee got
13 behind the wheel of the car and started driving.

14 Q Where was the defendant?

15 A He had gotten into the back seat with
16 Melinda.

17 Q And where did the four of you go?

18 A Leaving the club, the first place that I
19 remember stopping was a store out in Marion, and I
20 went in, the only thing I bought was some juice, and
21 came back out, and the next place we stopped was
22 Daniel's trailer.

23 Q When Dee was driving the Lexus from Marion
24 back to the defendant's trailer, do you recall the
25 defendant saying anything to her about the police?

1 A Yes. He said that if it just happened, so
2 happened that a police car or whatever came up behind
3 us, hit us with the blue lights or anything, not to
4 be afraid to drive it. I told her the same thing.

5 Q Why did you tell her that?

6 A Well, because we were in this stolen car,
7 and as far as being worried about you know, a
8 policeman catching us or anything, if they got behind
9 us that wasn't a problem, it was just she was
10 driving, we wanted to let her know to drive it if
11 something like that did happen.

12 Q When you went back to the defendant's
13 trailer with the two girls, was there anyone there?

14 A No.

15 Q Had .38 caliber revolver been taken in the
16 car to Marion?

17 A Yes.

18 Q Who had taken it in the are car?

19 A Daniel had it.

20 Q When you got back to the defendant's
21 trailer, was the .38 caliber revolver taken out of
22 the car and taken into the trailer?

23 A Yes, it was.

24 Q Who did that?

25 A Dee took it out this time.

1 Q And after the four of you went into the
2 trailer, what happened inside the trailer?

3 A Well, we sat around a few minutes, well, a
4 little while, talking and everything. This girl Dee,
5 she's sitting around playing with the gun, it's fully
6 loaded she's sticking it in her mouth, and having to
7 take it away from her, after a little while of that,
8 and everybody started talking about getting something
9 to eat. So Dee and myself, we get out, we leave in
10 the Lexus and go to Hardee's uptown here in
11 Lumberton, get some food, come back, everybody eats,
12 sit around a few minutes more, go to bed. And the
13 next morning, back the Marion.

14 Q Who took the .38 caliber revolver away from
15 Dee when she was playing around with it inside the
16 trailer?

17 A I remember twice myself taking it from her,
18 and I saw Daniel at -- I saw him one time getting it
19 from her.

20 Q And then all four of you of stayed there
21 overnight?

22 A Yes.

23 Q The next day, did all four of you leave the
24 trailer at the same time?

25 A Yes, we did.

1 Q And in what car did you leave at that time?

2 A The red Lexus.

3 Q The night before when Dee had driven from
4 Marion to the defendant's trailer, where was the
5 Lexus parked?

6 A Behind the trailer.

7 Q Where did the four of you go when you left
8 that next morning?

9 A When we left, we went back to Marion.

10 Q Now, on the night of the 23rd on your way
11 back from Marion, did anyone in the car use the
12 telephone that you can recall?

13 A We went back to Marion, it was still
14 early. I mean, during that time, there was -- Dee
15 and Melinda, they had to get their story straight
16 about where they had been the night before.

17 MR. THOMPSON: I object, Your
18 Honor, unresponsive.

19 THE COURT: Overruled. You may
20 complete your answer.

21 THE WITNESS: I remember going by
22 Patricia's boyfriend's house, that was over
23 in Mullins somewhere, and the reason for
24 going over there was to try to get in touch
25 with Patricia to see what Melinda's grand

1 mom had said, and all that. And Patricia's
2 boyfriend, he used the phone. And he's --
3 he's the first one I remember using it that
4 morning.

5 MR. THOMPSON: Move to strike,
6 unresponsive.

7 THE COURT: Denied.

8 BY MR. BRITT:

9 Q Did you drop either of the girls off in
10 Marion?

11 A Yes, we did.

12 Q Who did you drop off first?

13 A The first -- before we dropped anybody off,
14 we had stopped by and picked up one of Melinda's
15 sisters, but the first person to be taken home was
16 Dee.

17 Q Where did you go pick up Melinda's sister?

18 A I couldn't tell you what the name of the
19 area was, Melinda had -- was giving Dee instructions
20 how to get to this place.

21 Q After you dropped Dee off, where did you,
22 the defendant, and Melinda go?

23 A Well, by this time, Melinda's little sister
24 was in the car, after dropping Dee off, we went to
25 Melinda's mother's house, and sat around for a little

1 while, everybody talked. From there, went back to
2 Melinda's grandmother's house where she was living.

3 Q And when you went to Melinda's
4 grandmother's house, did you or the defendant use the
5 telephone to contact Melinda?

6 A Yes, we were sitting out right in front of
7 Melinda's grandmother's house, she was on the inside
8 of the house, and Daniel used the phone the call her
9 in there.

10 Q As a result of the defendant using the
11 telephone, did Melinda come out of the house?

12 A Well, he had -- she had came out like on
13 the porch thing, and Melinda -- not Melinda, Patricia
14 had came out to the car, and told us that --

15 MR. THOMPSON: Object.

16 THE COURT: Sustained.

17 BY MR. BRITT:

18 Q Did Melinda get in the car with you?

19 A No.

20 Q Where did you go from there?

21 A Daniel had gotten out, went in the house,
22 Patricia got in the car, she wanted to take it around
23 the block one time to see how it drove, so that's
24 what she did. I was over in the passenger seat, she
25 got in behind the driver -- she got in the driver's

1 seat, road around the block one time, came back, and
2 then Daniel, Melinda, and Melinda's little sister
3 came out, and from there we all went to Wal-mart.

4 Q After going to Wal-mart there in Marion,
5 where did you next go?

6 A We took Melinda, Patricia, an Melinda's
7 little sister back to her grandparents' house.

8 Q From there where did you go?

9 A We rode around just, a few minutes but next
10 stop we made was at Dee's place.

11 Q When you went to Dee's place, who was with
12 you?

13 A Just Daniel and myself.

14 Q Did you see Dee there?

15 A Yes, she came out and got in the car with
16 us.

17 Q And from there, where did you go?

18 A From there, we just road around, Daniel and
19 I had already planned to commit another robbery, and
20 she knew about this, she heard us talking about it,
21 and she made a suggestion as to a place we could go
22 commit one.

23 Q Where did you go?

24 A We went to this, a basketball court, she
25 had instructed us on how to get there and

1 everything. There was -- she told us --

2 MR. THOMPSON: Object.

3 MR. BRITT: All to corroborate
4 her testimony.

5 THE COURT: Do you want an
6 instruction?

7 MR. THOMPSON: Yes, sir.

8 THE COURT: Members of the jury,
9 the testimony now being elicited as to the
10 witness before you Larry Martin Demery
11 junior, and statements he contends were
12 made to him by Dee Sullivan, these matters
13 are being offered for the limited purpose
14 of corroborating the prior testimony at
15 this trial of Dee Sullivan. You may
16 consider this evidence for that purpose and
17 for no other purpose. Anything further.

18 MR. THOMPSON: No, sir.

19 BY MR. BRITT:

20 Q What did Dee say to you?

21 A She told us that this basketball court was
22 a place for -- was a hang-out for a lot of drug
23 dealers, and that there was much gold and much money
24 that could be taken if we went over there and
25 robbed -- started -- robbed people.

1 Q Did you or the defendant have a gun with
2 you at that time?

3 A The 38 was still in the car.

4 Q Who had it?

5 A It was still under the passenger seat.

6 Q Who was in the passenger seat?

7 A At this time Daniel was.

8 Q Did you ever attempt to rob anybody at the
9 basketball courts?

10 A No.

11 Q Where did you go from the area of the
12 basketball courts?

13 A I was -- at this time I was driving, Dee
14 was in the back stealing us how to get there and
15 everything, we pulled up to this basketball court and
16 stopped and all but I had done towel her before it
17 wasn't going to happen, told her she was crazy for
18 even suggesting a place like that. And then from
19 there we rode around a little bit longer and then
20 dropped her off.

21 Q After dropping her off did you return to
22 North Carolina?

23 A Yes, we did.

24 Q And when you came back to North Carolina,
25 where did you go?

1 A Well, Daniel and I had planned to rob --
2 well, the BP station that I told about earlier, and
3 that store was on the agenda for the night. The
4 reason we left Marion, we had already planned to go
5 back to Marion, but we never made it back, but we
6 came back to North Carolina --

7 MR. THOMPSON: Object, Your
8 Honor, this is unresponsive to the
9 question.

10 THE COURT: Out of an abundance
11 of precaution, we're going to take a break
12 at this time, and we will take it up.
13 Members of the jury, there's a matter of
14 law the Court Ms. Take up, please don't
15 worry or speculate about what takes place
16 in the courtroom in your absence, if you
17 folks would return to the jury room, let me
18 give you until 20 until. If you would
19 return to the jury room at 20 until 4:00,
20 we'll go forward at that time. Please
21 remain seated everyone else, the members of
22 the jury are excused at this time.

23 (Jury out at 3:17 p.m.)

24 THE COURT: Basis of the
25 objection is nonresponsive?

1 MR. THOMPSON: Yes, sir, Your
2 Honor, and the witness -- he asked the --
3 District Attorney asked and when you came
4 back to North Carolina, where did you go,
5 and then the witness says well Daniel and I
6 planned to rob where the BP station that I
7 was told about earlier, and he goes on and
8 on.

9 Your Honor, the District Attorney is
10 asking specific questions of the witness
11 over my objection, and I have objected on a
12 number of grounds that he's been
13 unresponsive. He's allowed to narrate in
14 response to a specific question. And
15 that's my objection.

16 THE COURT: Mr. Britt?

17 MR. BRITT: Judge, I'm simply
18 asking the questions, and he answer them.
19 If Mr. Thompson doesn't like the answer
20 given, if he thinks they are narrations, he
21 can object.

22 THE COURT: The objection
23 nonresponsive generally is an objection
24 made by the person who asked the question.
25 That is the appropriate objection for the

1 examiner. The objection for someone
2 opposed to examination is in this instance
3 a narrative.

4 MR. THOMPSON: Yes, sir.

5 THE COURT: But the bottom line,
6 the question where did you go, and he
7 ultimately got to that. My concern is
8 where are we going with this? I mean, the
9 objection that I would expect is this is
10 getting into matters which are one, not
11 part of any conspiracy that is alleged,
12 two, prejudicial under 403, and not
13 relevant under 401 to any of the issues
14 that are involved in this case. Are they?

15 MR. BRITT: Yes, sir, this leads
16 up to, shows that both of these individuals
17 were in exclusive possession of that car
18 from the time they got it on July 23rd.

19 THE COURT: What has that got to
20 do with plans to rob somewhere else under
21 403 or 401?

22 MR. BRITT: Well, probably none,
23 but they have got an obligation to assert
24 objections if they want to. If they don't
25 want to object to it, it comes in. Now, I

1 can't tell him how to answer questions, nor
2 have I suggested to him how he should
3 answer questions.

4 THE COURT: I understand that.

5 195 line 23. The question preceding
6 that beginning on line 21, when you came
7 back to North Carolina, where did you go.
8 Answer, Daniel and I had planned to rob,
9 well, the BP station that I was told about
10 earlier.

11 On the basis given, the objection is
12 overruled. Any other grounds you want to
13 assert?

14 MR. THOMPSON: Well, Your Honor,
15 again, it is a -- well, the indictment
16 alleges conspiracy on July 23. He's -- the
17 State has on a number of occasions, and
18 quite frankly they may not have been
19 objecting to the witness talking about
20 their plans to rob certain people or
21 certain places. This is something that has
22 happened after the 23rd. There is no
23 indictment alleging any conspiracy
24 certainly after that, and under 403, it
25 certainly, we suggest to you, is

1 prejudicial.

2 MR. BRITT: Let's go back to
3 Melinda Moore's testimony and Dee
4 Sullivan's testimony where there was no
5 objection to the statements that the
6 defendant made that they wanted to rob
7 people. That's the waiver.

8 THE COURT: Your argument is that
9 it was a waiver. Folks, bottom line is
10 state is entitled to show up through the
11 completion of that conspiracy those acts.

12 Mr. Demery, I'm going to ask you to
13 listen carefully to Mr. Britt's questions,
14 and I'm going to ask you to respond to
15 those questions. If you feel an
16 explanation is necessary, you're entitled
17 to explain. I'll take specific objections
18 as they come up. But there is a
19 significant strong argument that there is
20 waiver as to at least this aspect of it.

21 Anything further from either counsel.

22 MR. BRITT: No, sir.

23 THE COURT: We're at ease until
24 20 until.

25 THE BAILIFF: Court stands at

1 ease until 20 until.

2 (Brief recess.)

3 THE COURT: Mr. Demery if you'll
4 retake the witness stand, please.

5 THE BAILIFF: Remain seated, be
6 quiet, the Court is back in session.

7 THE COURT: Let the record reflect
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, sir, we do.

13 THE COURT: Major Watson is
14 present in the courtroom. The Court was
15 informed during the break just taken that
16 apparently two members of the jury during
17 the lunch break were in the area
18 immediately outside the courtroom or
19 somewhere in that general area, and at that
20 time they apparently came in and reported
21 to major Watson that there were two
22 gentlemen in that same area who were
23 discussing the case.

24 Because of my instructions to them,
25 they left that area, went directly to major

1 Watson as I understand it and reported what
2 had transpired to major Watson. Have I
3 summarized that accurately.

4 THE BAILIFF: Yes, sir.

5 THE COURT: Who are those jurors.

6 THE BAILIFF: Juror Number one
7 and Juror Number six.

8 THE COURT: Would you state for
9 the record who Juror Number one and six are.

10 THE CLERK: Patricia Haley,
11 Number 6 Angela Coverdale.

12 THE COURT: Is that accurate?

13 THE BAILIFF: Yes, sir.

14 THE COURT: My understanding is
15 that they were abiding by my instructions.
16 The Court had previously instructed all
17 members of the jury on numerous occasions
18 that if anyone discussed the case with them
19 or attempted to do so, or if anyone said
20 anything about the case in their presence,
21 they were to inform us of that immediately
22 through one of the bailiffs assigned to the
23 courtroom.

24 In compliance, as I understand it,
25 with that instruction, the named jurors

1 reported what had occurred to major
2 Watson. Anything further on behalf of the
3 State, does the State wish to make inquiry
4 of those jurors.

5 MR. BRITT: No, sir.

6 THE COURT: Anything further on
7 behalf of the defendant does the defendant
8 want the make inquiry of those jurors.

9 MR. THOMPSON: Yes, sir.

10 THE COURT: If you'll ask
11 Ms. Coverdale and the other juror was --

12 THE CLERK: Ms. Haley.

13 THE COURT: If you'll ask them to
14 come in and take their seats in the jury
15 box.

16 (Two jurors enter courtroom.)

17 MR. BRITT: May Mr. Demery
18 leave?

19 THE COURT: Mr. Demery if you
20 could step down, if we could use that room,
21 is that room available? If you'll follow
22 their instructions, please, sir.

23 Good afternoon, ladies. Ms. Haley and
24 Ms. Coverdale, you have been asked to come
25 into the courtroom because of some

1 information which has been brought to my
2 attention. I'm going to state what I
3 understand that information to be. If
4 anything I state is inaccurate, please feel
5 absolutely free to let me know that.

6 I understand that during the lunch
7 recess, the two of you were in the area
8 outside of the courtroom, is that right?

9 JUROR: Yes, sir.

10 THE COURT: And I understand that
11 while you were in the area outside of the
12 courtroom, two gentlemen were personally
13 discussing some matters related to this
14 case, is that accurate?

15 JUROR: I don't know who, I just
16 heard voices.

17 THE COURT: Were both of the
18 voices --

19 JUROR: Male.

20 THE COURT: Back up. How many
21 voices do you recall hearing?

22 JUROR: There were a couple.

23 JUROR: There were females out
24 there. I think two females and a male.

25 THE COURT: Was the matter now

1 before us, the trial now before us, being
2 discussed by one of more of those vices
3 that you heard?

4 JUROR: I heard Demery's name.

5 JUROR: I heard the name Jordan.

6 THE COURT: I understand that
7 immediately when you folks realized what
8 was going on, you left that area?

9 JUROR: I went outside and then
10 she was on the phone. And then we decided
11 when we left --

12 JUROR: When I got off the phone.

13 JUROR: We told one of the
14 deputies.

15 THE COURT: I understand that
16 both of you reported what had happened to
17 Major Watson, is that correct.

18 JUROR: Yes, sir.

19 THE COURT: Anything else about
20 that occurrence that I've missed, any other
21 information that you want to share with
22 us?

23 JUROR: We didn't listen.

24 THE COURT: In other words, you
25 followed the instruction that I had given?

1 JUROR: Yes, sir.

2 THE COURT: Mr. Britt, any
3 questions for either Ms. Haley or
4 Ms. Coverdale?

5 MR. BRITT: No, sir.

6 THE COURT: Mr. Thompson,
7 Mr. Bowen?

8 MR. BOWEN: If I may talk to them
9 individually. Ms. Haley, I take it you
10 didn't here hear a complete sentence?

11 JUROR: No. What I did is I got
12 up and I walked outside.

13 MR. BOWEN: Yes, ma'am.
14 Ms. Haley, notwithstanding anything about
15 that incident, do you still feel that you
16 could be a fair and impartial juror, give
17 the defendant a fair trial?

18 JUROR: Yes, I do.

19 MR. BOWEN: Ms. Coverdale, did
20 you hear a complete sentence or complete
21 thought?

22 JUROR: No, sir.

23 MR. BOWEN: And you removed
24 yourself as quickly as you could?

25 JUROR: Yes, sir.

1 MR. BOWEN: Do you also feel that
2 you can still continue to give the
3 defendant a fair trial in this matter?

4 JUROR: Yes, sir.

5 MR. BOWEN: Thank you.

6 THE COURT: Any other matters on
7 behalf of the State?

8 MR. BRITT: No, sir.

9 THE COURT: Ms. Coverdale,
10 Ms. Haley, let me thank you for reporting
11 the incidents as you have previously been
12 instructed to do, and I'm obligated at this
13 point to ask both of you, and I'm going to
14 address you individually, Ms. Haley, has
15 anything occurred which would affect your
16 ability to be objective, impartial and fair
17 both with regard to the State of North
18 Carolina and as well as with regard to the
19 defendant in this case?

20 JUROR: No, nothing has happened.

21 THE COURT: Ms. Coverdale, has
22 anything about the matter you've related to
23 us in any way affected your ability to be
24 objective, impartial, and fair both to the
25 State of North Carolina as well as the

1 defendant in this case?

2 JUROR: No, sir.

3 THE COURT: Anything further from
4 either counsel?

5 MR. BRITT: No, sir.

6 MR. BOWEN: One question. Did
7 either of you discuss the subject matter of
8 any word or phrase you may have heard with
9 each other?

10 JUROR: We said that we needed to
11 get out of there, and that's about all we
12 said.

13 MR. BOWEN: Thank you.

14 THE COURT: Folks, I'm going to
15 instruct both of you that you're not to
16 discuss with anyone, including other
17 members of the panel the matters just gone
18 into. Thank you both. You may return to
19 the jury room.

20 (Jurors leave the courtroom.)

21 THE COURT: Anything further on
22 behalf of the State, Mr. Britt?

23 MR. BRITT: No, sir.

24 THE COURT: Anything further on
25 behalf of the defendant, folks?

1 MR. BOWEN: No, sir, Your Honor.

2 THE COURT: Ready to go forward
3 at this time?

4 MR. BRITT: Yes, sir.

5 THE COURT: If you'll ask
6 Mr. Demery to come back in.

7 MR. ROGERS: Mr. Campbell and I
8 were talking about whether or not they wore
9 the Court badges during these recesses. I
10 think it's been a practice for them perhaps
11 to leave them in the chair, or do they wear
12 them?

13 THE COURT: We've instructed them
14 to.

15 MR. ROGERS: That answers my
16 question then.

17 THE COURT: If you'll bring the
18 jury back in, please.

19 (Jury in at 3:47 p.m.)

20 THE COURT: For the record, the
21 objection as phrased is overruled. The
22 exception is noted for the record. You may
23 ask additional questions of the witness.

24 BY MR. BRITT:

25 Q Mr. Demery, after you and the defendant

1 left Marion, South Carolina and returned to North
2 Carolina, where specifically did you go?

3 A BP station located on Highway 72.

4 Q Now, on the way back from Marion, did
5 either you or the defendant use the telephone in the
6 car?

7 A No. Well, I didn't, and I don't remember
8 if Daniel did or not.

9 Q Did you ever return to the defendant's
10 trailer with the Lexus?

11 A Yes, we did.

12 Q Had there been any conversation between you
13 and the defendant about taking Melinda Moore and Dee
14 Sullivan to Myrtle Beach?

15 A No, not that I can remember.

16 Q Did you ever go back in the area of
17 Laurinburg with the Lexus?

18 A Yes, we did.

19 Q When was that?

20 A That was later over into the next day,
21 morning hours, next day.

22 Q Where in Laurinburg did you go?

23 A The first place -- this was early morning
24 hours, we had -- I don't remember exactly where in
25 Laurinburg it was, but we had stopped at this gas

1 station, the car was almost out of gas, you know,
2 neither one of us had much money on us. We did a
3 drive-off and --

4 MR. THOMPSON: Well, I object.
5 Move to strike.

6 THE COURT: Complete your answer
7 and I'll rule on the objection.

8 THE WITNESS: From there, we went
9 back to Daniel's trailer.

10 MR. THOMPSON: Move to strike.

11 THE COURT: Overruled. Denied.

12 I apologize, I misunderstood the
13 answer. The motion to strike is allowed.
14 Members of the jury, you're not to consider
15 the last portion of Mr. Demery's answer,
16 specifically matters related to a
17 drive-off, you're not to consider that,
18 it's not to take any part in your
19 deliberations in this case in any respect.
20 Mr. Britt.

21 BY MR. BRITT:

22 Q Did you and the defendant -- did you ever
23 talk about getting rid of the car?

24 A Yes, we did.

25 Q And when you talked about getting rid of

1 the car, what did the defendant say?

2 A He was back and forth on what to do with
3 it.

4 Q When you say he was back and forth on what
5 to do with it, what do you mean by that?

6 A Well, like the first time, you know, we had
7 an encounter with the car and the person, it was said
8 he wanted to keep it. And then next thing he would
9 say, he wanted to sell it. And then it was over and
10 over and over again.

11 Q Did you ever go to anyone's house in
12 Laurinburg?

13 A Yes, we did.

14 Q And when was that?

15 A This was about -- later over into the day
16 around 5:30, 6:00.

17 Q Do you remember what day it was?

18 A Sunday, as best as I can remember.

19 Q Were you introduced to anyone there at this
20 house in Laurinburg?

21 A Yes, there was -- it was some lady, I don't
22 remember her name or anything.

23 Q Who introduced you to this lady?

24 A Daniel did.

25 Q Who did the defendant say the lady was?

1 A Said it was a friend of his mother.

2 Q And was this a black lady, a white lady or
3 Indian lady?

4 A Black lady.

5 Q Did the lady ever use the telephone that
6 was in the car?

7 A Yes, she did.

8 Q After she used the telephone, did you ever
9 see the defendant with the telephone?

10 A Yes.

11 Q How many calls do you remember the lady
12 making on the telephone?

13 A I remember one for sure, and then there was
14 an attempt, I don't know what happened.

15 Q Did the defendant ever tell you who he was
16 speaking with on the telephone while you were in
17 Laurinburg?

18 A A girl that he knew from going to school in
19 Laurinburg years prior.

20 Q And when you left the lady's house, the
21 defendant ended the conversation with his friend that
22 he identified was a classmate?

23 A I didn't fully understand you.

24 Q When you left the house in Laurinburg, was
25 the defendant still talking on the telephone with

1 this person he identified as a friend?

2 A Oh, yes.

3 Q And from Laurinburg, where did you go?

4 A From Laurinburg we went back to my parents'
5 house.

6 Q Did you drive the car into your yard?

7 A No.

8 Q Where did you take the car?

9 A Parked it over in the same place, over at
10 the canal, that we had been the morning following
11 what happened.

12 Q Why didn't you take the car to your house?

13 A I didn't want my parents or anybody else
14 that lived and there to see me in it.

15 Q How far away from your house did the two of
16 you park the car?

17 A About from the point on the canal where we
18 parked it all the way to my patients' house, I would
19 say a mile. No more than a mile.

20 Q Did you walk from that point to your
21 parents' house?

22 A Yes.

23 Q What did you do at your parents' house?

24 A When I went to my parents' house, I told
25 her that -- Daniel and I had already discussed and

1 planned to go somewhere and try to do something with
2 this car, and I went to the house for the purpose of
3 getting some clothes and telling my parents that I
4 was going to be gone for a few days.

5 Q Did you tell your parents that you were
6 going any particular place?

7 A Yes.

8 Q Where did you tell them you were going?

9 A I told them that Daniel had a half brother
10 that lived in Georgia, and that Daniel and I were
11 going to ride with his mother to this place, and
12 reason I was going was that his mother had asked me
13 to do some of the driving for him.

14 Q And is that what you told your parents?

15 A Yes.

16 Q When you told your parents that, were you
17 telling them the truth?

18 A No, I was lying.

19 Q Why did you lie to your parents at that
20 time?

21 A Like I say, I didn't want them to know that
22 I had anything -- well, that we had this car, I just
23 didn't want to bring them into it in any kind of way.

24 Q Do you have relatives that live in New
25 York?

1 A Yes.

2 Q Where in New York do they live?

3 A Albany or -- I think the -- the area they
4 live in is called Huntington Station.

5 Q And what are your relatives names that live
6 in Huntington Station, New York?

7 A Aunt and uncle, my aunt's name is Dale
8 Botchwick, and my uncle Joe, a cousin Janine that I
9 got, two other cousins Andre and Joy, and their kids.

10 Q From either your house or the car did --
11 from either your house or from the Lexus, did you
12 call your relatives in New York?

13 A Both places. While we were at the house, I
14 got a number, you know, the number to my cousin
15 Janine's house and everything. I had -- it wasn't my
16 intentions to call her, I was trying to get in touch
17 with her brother, and he didn't live there. But I
18 never got through that time and while we were in the
19 Lexus I made that one call and I got through to her.

20 Q Why were you calling your relatives in New
21 York?

22 A Well, like I say, I wanted to get in touch
23 with my cousin Joy, because I thought that maybe he
24 knew somehow, knew of a way that we could get rid of
25 this car.

1 Q Now, prior to calling your cousins in New
2 York, had you and the defendant talked about getting
3 rid of the car and taking it anywhere?

4 A Yes.

5 Q Where had you talked about taking it?

6 A Well, to -- talked about going to New York
7 with it, and then Daniel talked about going to
8 Philadelphia, his -- one of his mom's boyfriends that
9 lived up there, he said -- well he had already called
10 this guy, but wanted to go to Philadelphia, said this
11 guy knew a place that he could -- called it a chop
12 shop that he could get rid of serial numbers and
13 everything, have it repainted.

14 Q Do you know the name of this person that
15 the defendant called in Philadelphia?

16 A I've only known him as Ant. That was his
17 nickname.

18 Q Do you know where the defendant called him,
19 where he was at the time he called him?

20 A He called him out of the -- Daniel's
21 trailer a couple of times, and he called him from the
22 car phone a couple of different times.

23 Q After you placed a phone call or phone
24 calls to New York, and after the defendant placed
25 phone calls to Philadelphia, did the two of you leave

1 to take the car anywhere?

2 A Yes.

3 Q Where were you taking the car?

4 A We were headed in the direction of
5 Philadelphia and New York at first, between there and
6 whenever we got there, we had discussed, you know,
7 that the first place we got to, and if one place
8 didn't work out, we would try the other place.

9 Q And did you ever take the car or the Lexus
10 to either Philadelphia or to New York?

11 A No, we didn't.

12 Q Why not?

13 A Because I had gotten to the point where I
14 was exhausted and I just couldn't drive anymore. And
15 I had asked Daniel would he drive, and he didn't want
16 to do it, but -- and I didn't really want him to do
17 it, but like I said, I couldn't -- I was -- my
18 batteries were very low.

19 Q And what town were you near -- which
20 direction did you go when you headed off to New York
21 and to Philadelphia?

22 A We were going -- we went down 74.

23 MR. THOMPSON: I object to the
24 question, the form of the question. It's
25 compound.

1 THE COURT: Overruled.

2 BY MR. BRITT:

3 Q Which direction did you go off in when you
4 headed toward New York and to Philadelphia?

5 A Went in the -- west, trying to get to
6 highway 220.

7 Q How far west did you go?

8 A We went all the way to highway 220, and I
9 took a left, and it was at that point, I decided that
10 if Daniel wasn't going to drive, that we were just
11 going to -- we were turning around.

12 Q What town were you in at that time?

13 A We were in Rockingham at 220. Like I said,
14 we took a left, and we went down this road a few
15 miles, and we went into another town, but I don't
16 remember the name of it.

17 Q Did you stop anywhere?

18 A No, not that I remember.

19 Q At any point after you went to Rockingham
20 did the defendant start driving?

21 A Well, when we turned around, I drove back,
22 and I stopped at a BP station around in the Hasty
23 area in Laurinburg, and that's where I stopped. I
24 told Daniel that I wasn't driving anymore, I was
25 going to sleep, and when he felt like it, if he

1 wanted to he could drive and we would leave the
2 store.

3 Q Did you go to sleep?

4 A Yes.

5 Q How long did you sleep?

6 A I slept a good hour before Daniel ever woke
7 me up.

8 Q When you woke up where were you?

9 A We were still sitting there in the parking
10 lot but Daniel told me he would drive, he started
11 driving and we headed towards Rowland.

12 Q And from there, where did you go?

13 A From the store from Rowland.

14 Q Did you go to Rowland?

15 A We went into the town of Rowland.

16 Q Did you ever go back to the defendant's
17 trailer?

18 A No, not -- no.

19 Q Do you know someone whose nickname is June
20 Bug?

21 A Yes.

22 Q Who is June Bug?

23 A Daniel's cousin.

24 Q Where does he live?

25 A Rowland.

1 Q To your knowledge did the defendant ever
2 try to call his cousin in Rowland?

3 A Yes.

4 Q If you know, why was he trying to call his
5 cousin June Bug in Rowland?

6 A He was trying to call June Bug to, you
7 know -- he had said that June Bug could maybe tell
8 him a way to get rid of the car and --

9 MR. THOMPSON: Object. I think
10 it's hearsay.

11 THE COURT: Now, you're referring
12 to who when you say "he had told you"?

13 THE WITNESS: Daniel.

14 THE COURT: Overruled.

15 THE WITNESS: And with the
16 purposes of getting money from him.

17 BY MR. BRITT:

18 Q Did you ever see the defendant's cousin?

19 A No, we didn't.

20 Q Did there come a time when you went back to
21 the defendant's trailer and slept during the
22 afternoon on Sunday, July 25th?

23 A No.

24 Q Did you ever have a conversation with the
25 defendant about a Deputy coming to the trailer?

1 A Yes. That was that morning.

2 Q Which morning?

3 A That Sunday morning.

4 Q And what if anything did the defendant tell
5 you about a deputy coming to the trailer?

6 A He came -- he came in the house, woke -- he
7 had been on the outside. He came in and told me to
8 get up, we had to leave, you know, he said that a
9 deputy had been out that way looking for us, looking
10 for the car.

11 Q And after he told you that, did you go
12 outside?

13 A Yeah, I got on up, and we went out, and the
14 car was parked down at the pond close by where Daniel
15 lives.

16 Q Where near the pond was the car parked?

17 A Over around -- the right end of it. Parked
18 up in between some bushes and stuff. Out of sight.

19 Q Now, on Sunday, July 25th, Monday morning,
20 July 26th, 1993, did you go with the defendant to
21 Fayetteville?

22 A Yes, I did.

23 Q How did the two of you get to Fayetteville?

24 A In the Lexus Daniel was driving.

25 Q Where were you going?

1 A Trying to get to his brother's house.

2 Q What was his brother's name if you know?

3 A David Moore.

4 Q Did you know where David Moore lived?

5 A No.

6 Q How did you go from the defendant -- did
7 you leave from the defendant's trailer? When you
8 left the go to Fayetteville, where did you leave
9 from?

10 A Well, we left from, like I say, we were at
11 the BP station, went through Rowland and we never
12 made a stop, we went on through down 301, got on 95
13 headed towards Fayetteville.

14 Q Who was driving?

15 A Daniel was.

16 Q Now, as you were going up 95, did you
17 take -- or did the defendant turn off at any of the
18 Fayetteville exits?

19 A First time around he missed it, he missed
20 the exit. I --

21 MR. THOMPSON: Object.

22 Narrative.

23 THE COURT: Overruled. You may
24 complete your answer.

25 THE WITNESS: Like I said, first

1 he hadn't got on on business 95, and during
2 the whole time we were going this way, I
3 was asleep. Every now and again he would
4 wake me up, and he woke me up, asking me,
5 you know, he asked me what had happened,
6 how come we weren't in Fayetteville. I
7 told him we had missed the exit, and we
8 were -- the exit going into Goldsboro.

9 BY MR. BRITT:

10 Q How far up 95 did you go?

11 A 40, 45 miles.

12 Q And when you say that you all had gone to
13 the exit going to Goldsboro, did anyone pick up the
14 cellular telephone and make a phone call?

15 A Yes.

16 Q Who did that?

17 A Daniel was using it.

18 Q Do you know who he called?

19 A He had talked to June Bug's mother, and he
20 had been calling David.

21 Q Now, after -- at some point did you write
22 directions down to David Moore's?

23 A Yes, I did.

24 Q What did you write those on?

25 A On a little black phone book on the inside.

1 Q And where did you get those directions?

2 A Daniel was on the phone talking as he was
3 on -- he was giving me the directions, I would write
4 them down.

5 Q And at the Goldsboro exit, did you turn
6 around and he had south on 95 towards Fayetteville?

7 A Yes.

8 Q Did you eventually arrive at the location
9 where you found David Moore?

10 A Yes.

11 Q Do you know what area of Fayetteville you
12 went to?

13 A It was the Spring Lake area.

14 Q Did you go to a house or did you go to a
15 trailer?

16 A A trailer.

17 Q When you got to this trailer, was anyone
18 home?

19 A Yes.

20 Q Who was there?

21 A Daniel's brother, David.

22 Q Did you all get out of the car and go in?

23 A Yes.

24 Q Did David Moore ever come out of the
25 trailer?

1 A Well, yes, but -- before we ever went in,
2 he had came out, looked at the car and everything,
3 and then we all went in together.

4 Q Where was the car parked when you went
5 inside the trailer?

6 A When we first got up in the trailer it was
7 parked from the way the trailer was facing, we were
8 down at the right end of it.

9 Q Now, when you went to Fayetteville, or when
10 you left with the intent of going to New York or
11 Philadelphia, and ended up in Fayetteville, did
12 either of you have this --

13 MR. THOMPSON: Object to the form
14 of the question.

15 THE COURT: Rephrase.

16 MR. BRITT: Excuse me.

17 BY MR. BRITT:

18 Q When you went to Fayetteville, did either
19 of you have the .38 caliber revolver with you?

20 A It was in the car, up under the passenger
21 seat.

22 Q Who had put it there?

23 A Daniel had put it in there, but --

24 Q Did either of you have a video camera with
25 you?

1 A Yes, video camera was in the car.

2 Q And the watch and the rings that had been
3 taken off of the man while you were in the cornfield
4 near Rowland, did either of you have those items?

5 A Yes.

6 Q Who had those items?

7 A Daniel had them, he was wearing them.

8 Q After arriving -- did David Moore ask you
9 any questions about the car?

10 A Yes.

11 Q Did you or the defendant respond to those
12 questions?

13 A Daniel did.

14 Q What did the defendant tell him?

15 A When David asked, Daniel told him he had
16 gotten it from a crack head for two 20 dollar pieces
17 of crack cocaine.

18 Q Did David Moore say anything about the car
19 being there at his house?

20 A Yes, he said --

21 MR. THOMPSON: Object, move to
22 strike.

23 THE COURT: Pardon me?

24 MR. THOMPSON: Object.

25 THE COURT: Do you want to be

1 heard, sir?

2 MR. THOMPSON: Yes, sir.

3 THE COURT: Ladies and gentlemen,
4 there's a matter of law the Court must take
5 up. Don't worry or speculate about what
6 takes place in the court room in your
7 absence. If all members of the jury would
8 step to the jury room, please.

9 (Jury out at 4:10 p.m.)

10 THE COURT: Let the record
11 reflect the following is being heard in the
12 absence of the jury. Mr. Britt, this is
13 being offered to corroborate the prior
14 testimony of Mr. Moore at this trial?

15 MR. BRITT: Yes, sir, this
16 portion is being offered to corroborate
17 Mr. Moore's prior testimony.

18 THE COURT: Yes, sir.

19 MR. THOMPSON: Well, then, if
20 it's being offered for corroborative
21 purposes, we would ask for a limited
22 instruction.

23 THE COURT: Anything further?

24 MR. THOMPSON: Your Honor, may I
25 have just a moment?

1 THE COURT: Yes, sir.

2 MR. BRITT: While the jury is
3 out, let me inform the Court as well --

4 THE COURT: I recognize you're
5 probably going to attempt to impeach other
6 portions of it.

7 MR. BRITT: Yes, sir, just so you
8 know where we're coming from.

9 MR. THOMPSON: So he's -- what
10 he's saying is he's offering part of it for
11 corroboration, part of it for impeachment.
12 We would request the instruction, Your
13 Honor, limited instruction.

14 THE COURT: Yes, sir.

15 THE COURT: Bring the jury back
16 in, please.

17 (Jury in at 4:11 p.m.)

18 THE COURT: The objection is
19 overruled. I will give a limiting
20 instruction as requested.

21 Members of the jury, the testimony now
22 being elicited of the witness before you,
23 Mr. Demery, as to statements Mr. Demery
24 contends in this instance were made to him
25 by a prior State's witness, Mr. David

1 Moore, are being offered in this instance
2 for the limited purpose of corroboration.

3 Now, as I previously explained to you,
4 the term corroboration means as tending to
5 strengthen or to support. It is for you
6 the members of the jury to determine what
7 the evidence in the case does show, but I
8 instruct you that you may consider this
9 evidence for that limited purpose and no
10 other purpose.

11 Anything further Mr. Thompson.

12 MR. THOMPSON: No, sir.

13 THE COURT: Mr. Britt, repeat or
14 rephrase.

15 BY MR. BRITT:

16 Q Did David Moore say anything about the car
17 being there at his house?

18 A Yes, he did.

19 Q What if anything did he say?

20 A Said he didn't want it right there at his
21 trailer.

22 Q As a result of that statement, was the car
23 moved?

24 A Yes.

25 Q Who moved it?

1 A David.

2 Q And do you know where he moved the car?

3 A It was over to the left, there was a
4 little -- like a little parking lot area. It was
5 sand, you know, with some crossties set up, an area
6 large enough for maybe five or six cars, and that's
7 where it was taken to.

8 Q Now, after the car was moved, did David
9 Moore say anything to you about helping you get rid
10 of the car?

11 A Well, he wasn't discussing all this with
12 me. He and Daniel were talking about it. He told
13 Daniel that he had a friend by the name of Eric. He
14 would call Eric and, you know, Eric might could come
15 up with something.

16 Q Now, you overheard that conversation?

17 A Yes.

18 Q And after the defendant and his brother
19 David Moore talked, did you go to sleep?

20 A Yes.

21 Q The next morning, who woke you up?

22 A The next morning, around 6:00, 6:30, David
23 woke us up. And he had told Daniel that --

24 MR. THOMPSON: Object.

25 MR. BRITT: This is being offered

1 to impeach the testimony of David Moore.

2 THE COURT: Mr. Thompson?

3 Members of the jury, the evidence now
4 being elicited of the witness, Mr. Larry
5 Martin Demery, as to statements he contends
6 were made by the the prior State's witness
7 in this case, David Moore, are being
8 offered in this instance for the limited
9 purposes of impeachment.

10 Now as I previously explained to you,
11 the term impeachment means as tending to
12 contradict or discredit. And you may
13 consider this evidence in this instance for
14 this limited purpose and no other purpose.
15 Anything further Mr. Thompson?

16 MR. THOMPSON: No, sir.

17 BY MR. BRITT:

18 Q What if anything did you hear David Moore
19 tell the defendant after he had woken you up the next
20 morning?

21 A He said he had gotten in touch with Eric
22 and that Eric would be over later that morning.

23 Q And did David Moore leave after that?

24 A Yes.

25 Q After he left, what did you and the

1 defendant do?

2 A Went back to sleep.

3 Q Did there come a time later in the morning
4 when you were awakened?

5 A Yes.

6 Q What was it that woke you up that morning?

7 A A knock on the door, turned out to be Eric.

8 Q Did Eric come inside the trailer?

9 A Yes.

10 Q Did you see this person by the name of Eric
11 use the telephone there at David Moore's?

12 A I don't remember for sure, because just a
13 minute or two after Eric came in, I had went over to
14 the car, where the car was parked to get something
15 out, I forgot what it was.

16 Q After this person who was identified to you
17 as Eric came to the trailer, did you, the defendant,
18 and Eric leave?

19 A Yes, just short while later.

20 Q When you left David Moore's trailer in
21 Fayetteville, what car did you leave in?

22 A Daniel and I left in the Lexus, and we --

23 Q Who drove?

24 A I did.

25 Q Was this Eric person in the car with you?

1 A No, he was driving a blue Blazer, Bronco or
2 Blazer.

3 Q Now, did you follow him anywhere?

4 A Yes.

5 Q Where did you follow him?

6 A We followed him to a guy's house or
7 trailer, and the guy that lived in this trailer, his
8 name was Rick, and that's where we went.

9 Q And at Rick's house, did you get out of the
10 Lexus?

11 A No, when we pulled up to Rick's house, Rick
12 got -- he had already talked to Eric --

13 MR. THOMPSON: Object.

14 THE COURT: Sustained.

15 MR. THOMPSON: Move to strike.

16 THE COURT: Allowed.

17 BY MR. BRITT:

18 Q When you got the Rick's house, did Rick
19 come out?

20 A Yes.

21 Q And after Rick came out of the house, did
22 you, the defendant, Eric and Rick go anywhere?

23 A Yes.

24 Q Where did you go?

25 A Daniel and I followed Rick and Eric to

1 another guy's house that was -- we went down a dirt
2 road to get to this person's house. Jovan something,
3 I don't remember his name.

4 Q Now, when you followed Rick and Eric, what
5 car were they in?

6 A They were in the truck, the Jimmy, or
7 Bronco, whatever it was.

8 Q Which car were you and the defendant in?

9 A Lexus.

10 Q When you went to this person you've
11 identified as Jovan's house, what happened there?

12 A When we got there, this guy Jovan came out,
13 everybody was standing around the Lexus, and checking
14 it out and everything. There was a few calls made,
15 and then Eric and this guy Rick, they were discussing
16 something, and they told us to wait, you know, they
17 were going to leave but they would be back in a
18 little bit. And then from there, we would talk about
19 what -- talk about where to go from there, as far as
20 the car was concerned.

21 But, you know, right before they left, this
22 guy Jovan had asked anybody wanted some marijuana,
23 you know. There was a few people spoke up. So we
24 followed Eric and Rick out. This time, Jovan was
25 driving the Lexus, I was in the back seat, Daniel was

1 in the passenger seat. We were behind them just for
2 a few minutes, and then they turned off, and we kept
3 going. Went a couple of miles or so, and when Jovan
4 stopped the car, he stopped at -- there was two guys
5 standing beside the road, you know.

6 Eric called the guy over to the car, told
7 them he wanted the marijuana. The guy got the dope
8 out, Eric gave -- Jovan gave him the money, got the
9 weed from there, had -- there was a store just a
10 little ways from where this guy was standing. We
11 stopped at the store, Jovan went in and had bought a
12 few -- those big Philly cigars, I think that's --
13 that's the name of them. From there, we went back to
14 Jovan's house and waited on Eric and Rick to come
15 back.

16 Q When you went back to Jovan's house and
17 waited for Rick and Eric to come there, what happened
18 there while you were waiting?

19 A Jovan, Daniel and myself were sitting out
20 in the backyard, Jovan rolled up this marijuana
21 cigarette, he called it a blunt, you know, he and
22 Daniel were smoking it. And I played around with
23 this guy's dog a little bit. And -- but like I say
24 we just hung out until Eric and Rick came back.

25 Q At any time did you smoke this marijuana

1 cigarette that Jovan called a blunt?

2 A No, I hadn't smoked marijuana in over two
3 years at that time.

4 Q Eventually did Rick and Eric come back to
5 Jovan's house?

6 A Yes.

7 Q When they came back, did you, the
8 defendant, Jovan, Eric, and Rick go anywhere?

9 A Yes --

10 Q Where did you go?

11 A We followed -- Jovan was still driving, we
12 followed Eric, Rick, and by this time, some other guy
13 had came into the picture. Eric and Rick had gotten
14 him from somewhere. We followed them to a trailer.
15 And this trailer was -- this was the place where
16 things was supposed to happen.

17 MR. THOMPSON: Object.

18 THE COURT: Sustained. Answer
19 his question, Mr. Demery.

20 BY MR. BRITT:

21 Q What was supposed to happen at this
22 trailer?

23 A That was the place where a call was to be
24 made about the car, you know, and it was to be sold
25 or --

1 Q Had you talked with anyone about selling
2 the car or buying the car?

3 A No, I didn't -- Daniel was the negotiator,
4 I wasn't saying anything.

5 MR. THOMPSON: Object.

6 THE COURT: Overruled.

7 BY MR. BRITT:

8 Q Had the defendant talked with anyone about
9 selling the car?

10 A Yes.

11 Q Who had he talked to?

12 A Eric, Rick, -- I don't remember him talking
13 with any of these other guys, but there was one that
14 he discussed with, about trading the car for a trunk
15 load of guns, and then another time it was for -- I
16 forget the amount, it was a large amount of cocaine.
17 That subject came up.

18 Q Now, was there anyone at this trailer that
19 you went to where you said things were supposed to
20 happen?

21 A Yes.

22 Q Can you describe who was there?

23 A There was this -- there was a heavy set guy
24 came out of the trailer, and he was the person that
25 was the caller person, you know, to ask about buying

1 the car.

2 Q Did you know that person's name?

3 A No, I didn't.

4 Q Were you ever introduced to that person?

5 A No, not -- not formally, I guess you would
6 say.

7 Q From there, how long did you stay there at
8 that trailer?

9 A A good three hours.

10 Q When you left that trailer, did you take
11 the car with you?

12 A Yes.

13 Q When who was driving when you left that
14 trailer?

15 A Jovan.

16 Q Who was in the Lexus?

17 A Daniel and myself.

18 Q Where were Eric and Rick at this time?

19 A We were following them.

20 Q And where did you go?

21 A This place in the woods somewhere where we
22 left the car.

23 Q You say that you left the car, what do you
24 mean by that?

25 A Well, we just left it in the woods, this is

1 where this car was to remain until it was decided
2 what to do with it.

3 Q Who drove the car into the woods?

4 A Jovan did.

5 Q And after the car was parked there in the
6 woods, were there any items taken out of the car?

7 A I don't remember for sure.

8 Q Were the golf clubs in the car when you
9 went to this trailer where you stayed about three
10 hours before taking the car into the woods?

11 A Yes, they were.

12 Q Were the golf clubs ever taken out of the
13 trailer?

14 A Yes.

15 Q Who took the golf clubs out of the car into
16 the trailer?

17 MR. THOMPSON: Well, I object.

18 Leading.

19 THE COURT: Pardon me?

20 MR. THOMPSON: Object, leading.

21 THE COURT: Overruled.

22 BY MR. BRITT:

23 Q Who took the golf clubs out of the car at
24 the trailer?

25 A This third person that had came back with

1 Eric and Rick to Jovan's house, he had taken one of
2 them out, the other one, I don't know who took it
3 out.

4 Q When you left the car in the woods were the
5 golf clubs inside the car?

6 A No.

7 Q Where were the golf clubs?

8 A Inside this truck, the Bronco or Jimmy.

9 Q Who was driving that vehicle?

10 A Eric was.

11 Q And do you know who placed the golf clubs
12 inside of the vehicle that Eric was driving?

13 A No, I don't remember.

14 Q After you -- who got the keys to the Lexus?

15 A Daniel had a key and I had a key.

16 Q What kind of key did you have?

17 A The one I had, it was just -- well, both of
18 the keys, they were -- they could control the locks,
19 you know, set the alarm off and everything, but the
20 one that I had was just the key. The one Daniel had
21 had a key on it, and then some kind of, a little
22 device you could use to crank the car up, you know,
23 lock doors.

24 Q You say there was a little device, was it
25 something similar to a remote control?

1 A Well, yes, that's what it was.

2 Q Did you ever see Daniel demonstrating to
3 anyone how you could crank the car with this remote
4 control?

5 A Yes.

6 Q After the car was left in the woods, did
7 you still have a key to that car?

8 A Yes, I did.

9 Q Did you ever give it to anyone?

10 A No.

11 Q What if anything did you do with the key
12 that you had to that car?

13 A I kept it until the night that I left, came
14 back to Lumberton.

15 Q Did Daniel have a key to that car after it
16 was left in the woods?

17 A Yes.

18 Q Which key did he have?

19 A The one with the remote control on it.

20 Q From the area where the car was parked in
21 the woods, where did you go?

22 A After we left out of the woods, we dropped
23 Jovan off, and I remember dropping Eric off, and from
24 there Daniel, myself, and Eric was in the Jimmy, we
25 stopped by -- we stopped by McDonald's, gas station,

1 gas was put in the truck, and from there we went back
2 to Daniel's brother's house.

3 Q Do you know what day of the week this was?

4 A This was on a Monday.

5 Q When you went back to Daniel's brothers,
6 did you stay there that night?

7 A Yes.

8 Q Did the defendant stay there that night?

9 A Yes, he did.

10 Q On Tuesday, July 27th, did you stay in
11 Fayetteville all day?

12 A Yes.

13 Q Did there come a time on Tuesday July 27th
14 when you came home?

15 A Yes, there was.

16 Q And who brought you home?

17 A David's -- I mean Daniel's brother, David.

18 Q Did anyone other than you and David Moore
19 go to your home on Tuesday, July 27th?

20 A Well, they took me to Daniel's trailer, but
21 Daniel was in the car, and one of David's
22 girlfriends.

23 Q Was there any reason why you wanted to come
24 home on Tuesday, July 27th?

25 A Yes. I was ready to get out of

1 Fayetteville, away from the car. It was -- like I
2 said, I had told me mother, my family that I would be
3 back in just a few days, and I had to get on back
4 home.

5 Q Was it anyone's birthday?

6 A It was my dad's, yeah.

7 Q Was it your dad's birthday on July 20 7th?

8 A Yes.

9 Q You say you went to the defendant's trailer
10 at Bob's landing?

11 A Yes.

12 Q How did you go from his trailer to your
13 house off of 710?

14 A My mom had to come pick me up.

15 Q When you were dropped off at the
16 defendant's trailer, did the defendant stay there?

17 A Well, no, he left with David and went back
18 to Fayetteville.

19 Q Now, did they leave before or after your
20 mom had gotten there to pick you up?

21 A It was before.

22 Q When you came home from Fayetteville on
23 July 27th, 1993, did you have the .38 caliber
24 revolver that had been stolen during the robbery on
25 July 15th, 1993?

1 A Yes, I did.

2 Q Where did you get it?

3 A I got it from Daniel.

4 Q And why had you gotten it from Daniel?

5 A Well, it was -- there was -- heat up in
6 Fayetteville, meaning that Lexus, the car was
7 supposed to have been taken care of while it was
8 there, and just didn't want anything to come up.

9 Q When you gotten the .38 caliber revolver?

10 A I got it from him the night that we came
11 back, or that I came back.

12 Q What if anything did you do with it when
13 you came home?

14 A Well, after I got home, stayed there that
15 night, I had put it down, my brother and I had bunk
16 beds, I slept on the bottom, and while I was there in
17 the house, I kept it like in between the mattress and
18 the wall.

19 Q At any time on the night of July the 27th,
20 '93, when you went to the defendant's trailer, did
21 you ever go inside his trailer?

22 A Yes.

23 Q For what purpose did you go inside the
24 trailer?

25 A I went inside the trailer to wait on mom to

1 get there and pick me up.

2 Q When you went inside his trailer that
3 night, did you take the .38 caliber revolver inside
4 with you?

5 A Yes.

6 Q Did you leave it there at his trailer?

7 A No.

8 Q At any time did you place the .38 caliber
9 revolver inside a shop vac vacuum cleaner?

10 A No, I didn't. It was in a black book bag
11 that I was carrying, had my dirty clothes in it, gun,
12 and when mom came and picked me up, I had it still.

13 Q Did you have a key to the defendant's
14 trailer?

15 A No.

16 Q Did you ever return the .38 caliber
17 revolver to the defendant?

18 A Yes.

19 Q When was that?

20 A Friday or Saturday, I don't remember for
21 sure, but it was the day that Daniel came back from
22 Fayetteville.

23 Q Was that the Friday or Saturday after you
24 had come home on Tuesday the 27th?

25 A Yes.

1 Q When you gave the .38 caliber back to the
2 defendant, where were you?

3 A Over at his place, his trailer.

4 Q And had you taken it there with you?

5 A Yes.

6 Q Why had you taken the gun with you to the
7 defendant's trailer?

8 A Well, it was his gun, I was taking it back
9 to him. And we went out that same night to commit
10 another robbery, went right back to the Quality Inn.

11 Q When you saw the defendant the night that
12 you took the gun to his trailer, did he have the
13 watch that you had seen him take off of the man's
14 arm?

15 A I don't know the if he --

16 MR. THOMPSON: Object.

17 THE COURT: Overruled.

18 THE WITNESS: I never saw it, the
19 last time I saw the ring and the watch that
20 was while I was still in Fayetteville, well
21 the night that I came back from
22 Fayetteville.

23 BY MR. BRITT:

24 Q Were there any items that had been taken
25 out of the car that were at the defendant's trailer

1 and left there?

2 A Which night do you mean?

3 Q Were there any CD's taken out of the car an
4 attorney to the defendant's trailer?

5 A Yes, there was.

6 Q Who took those CD's to the defendant's
7 trailer?

8 A Daniel did, when we were in Fayetteville
9 they were in Daniel's house, when he came back he
10 brought the CD's with him.

11 Q When you came back from Fayetteville, did
12 you have any of Mr. Jordan's items?

13 A Yes.

14 Q What did you have?

15 A When I came back I had on a pair of golf
16 shoes and I don't remember if I was wearing, had it
17 in the pocketed, but I had his wedding band.

18 Q Where had you gotten the wedding band?

19 A After -- I had gotten it from Daniel at
20 some point in time between the beginning and I guess
21 the end of it.

22 Q What did you do with the golf shoes and the
23 wedding band?

24 A That night while I was in the trailer, I
25 took the golf shoes off, put my tennis shoes on, left

1 the golf shoes, and I had put the wedding band on
2 a -- as you walk into the door over to the right
3 there was like a little stand there with some
4 flowers, whatnots and things on it, and I had left it
5 there.

6 Q Which night was that?

7 A The night of the 27th.

8 Q Did you ever see the wedding band or the
9 golf shoes again?

10 A I saw the golf shoes again.

11 Q When did you see the golf shoes?

12 A The next night I remember seeing them was
13 the night of Friday, August the 13th.

14 Q When you went back to the defendant's
15 trailer on the Friday or the Saturday night after you
16 had come home from Fayetteville, and you gave him the
17 gun, did you ever get the gun back?

18 A Well, there was one time.

19 Q And when was that?

20 A The night of August 13th.

21 Q And who gave you the gun on Friday, August
22 13th?

23 A Daniel did.

24 Q How long did you keep it?

25 A Just that night until about -- well, the

1 next morning before 12:00, Daniel had came to the
2 house with his mother, and he got the gun from me
3 then.

4 Q And at the time he got the gun, did you
5 ever see it again?

6 A No, I didn't.

7 Q Now, on the night of July 27th, when you
8 left to go to your house, when your mother came and
9 picked you up, did you lock the door to the trailer?

10 A No. Daniel's mother had to lock it,
11 because on this door, the front door to the trailer,
12 there wasn't a door handle or anything. And --

13 MR. THOMPSON: Well, I object to
14 Daniel's mother's lock, Your Honor. Move
15 to strike.

16 THE COURT: Did you see that or
17 is that a conclusion?

18 THE WITNESS: Well, I was on the
19 outside of the door. The only thing I
20 heard was the key going in, the lock
21 turning from the inside.

22 THE COURT: Overruled.

23 BY MR. BRITT:

24 Q And who was inside at that time?

25 A Daniel's mother was.

1 Q Now, on Friday August 13th, you testified
2 that the defendant gave you this .38 caliber revolver
3 again?

4 A Yes.

5 Q Did you and the defendant go anywhere on
6 August 13th of 1993?

7 A Yes, we did.

8 Q Where did you go?

9 A Daniel came and picked me up in his mom's
10 car, and when he got to -- well, he had called me a
11 little while earlier told me he was coming, told me
12 he wanted to get rid of some things, and from there,
13 after he picked me up, we went to -- came towards
14 Lumberton, and we were over in the area behind food
15 folks, the food folks on Fifth Street.

16 Q Food folks or food lion?

17 A Food lion, yeah, that's it. And it was
18 down back behind that store somewhere, we through
19 some stuff out. And there was a girl he had met a
20 couple of days prior, and she lived over in that area
21 somewhere, and we were around that way trying to find
22 out where she lived, helped to go see her.

23 Q When you were in this area behind food
24 lion, were you on a road?

25 A Yes.

1 Q Was it a paved road?

2 A Yes, I don't remember the number.

3 Q And when the defendant called you and told
4 you helped to get rid of some things, did he tell you
5 why?

6 A Well, yes, the heat was coming down, the
7 car had been found. From what I had heard on the
8 television, the body had been found. And that was
9 the reason he came over there that night.

10 Q Now, did the two of you ever talk about
11 what you would tell the police if they came and
12 questioned you?

13 A Yes.

14 Q When did you talk with them about that?

15 A We had talked about that same night, Friday
16 night.

17 Q And did the two of you come up with a story
18 that you were going to tell if the police came and
19 asked you any questions?

20 A Daniel told me that if the police came,
21 anybody came asking questions, to tell them a guy
22 named Rick from Fayetteville came to the trailer
23 while me and him were there in the Lexus, he was
24 going to say that Rick knew -- the reason we got in
25 the car with Rick was to go to Daniel's brother's

1 house up in Fayetteville just to visit him.

2 Q Now, what items were thrown away in the
3 area behind the food lion?

4 A There were CD's, a pair of golf shoes, I
5 remember some clothing being thrown out.

6 Q Do you remember what kind of clothing?

7 A I remember specifically a shirt, like a
8 white looking dress shirt, but I don't remember
9 any -- what other things.

10 Q Who was throwing things out of the car?

11 A Daniel was, I was driving.

12 Q Now, the CD's that were thrown away, where
13 did they come from?

14 A They had came out of the Lexus.

15 Q At that time, did the defendant say
16 anything about going to Philadelphia?

17 A Yes.

18 Q What did he say about going to
19 Philadelphia?

20 A He told me that he had decided to go with
21 his mother.

22 Q Did you talk about the telephone being in
23 the car?

24 A There was a discussion that something came
25 up about the telephone, I don't -- I don't remember

1 exactly what it was. I couldn't say.

2 Q After you went to this girl's house, where
3 did you go?

4 A After leaving the girl's house, next place
5 we went was Daniel took me home -- well, I drove back
6 to my house, from there he got in the car.

7 Q Now, on Saturday, August 14th of 1993, did
8 you see Daniel at any time?

9 A Yes.

10 Q When did you see him?

11 A It was before 12:00, but he and his mother
12 had came to the house, and he said he had -- he had
13 told me he had been to his grandmother's and he
14 wanted to get a pair of shorts and get the gun.

15 Q Did you give him the gun?

16 A Yes.

17 Q Which gun did you give him?

18 A The .38 that we had taken out of the store
19 from the robbery on the 15th.

20 Q And was that the last time you saw the .38
21 caliber revolver?

22 A Yes.

23 Q What did you do on the 14th of August?

24 A I stayed around home all day and waited for
25 the police to come.

1 Q And when you say that you waited for the
2 police to come, what do you mean by that?

3 A Mr. Britt, I knew they were coming. You
4 know. I just --

5 Q After the defendant came to your house
6 shortly before noon on August 14th, did you talk with
7 him anymore that day?

8 A Yes.

9 Q About what time did you talk to him?

10 A I remember it as being around 7:30, 8:00.

11 Q Now, did he come to your house and talk to
12 you or was it a telephone conversation?

13 MR. THOMPSON: I object to
14 leading.

15 THE COURT: Overruled. You may
16 answer.

17 THE WITNESS: He called me.

18 BY MR. BRITT:

19 Q And was there anybody at your house when he
20 called?

21 A No.

22 Q Did you answer the phone?

23 A Yes.

24 Q Did you recognize the voice on the other
25 end of the phone?

1 A Yes, I did.

2 Q Did you recognize it to be the defendant?

3 A Yes.

4 Q What if anything did the defendant tell you
5 when he called you around 7:30, 8:00 that night on
6 the 14th of August?

7 A His exact words were -- I picked up the
8 phone and said "hello," his exact words were, "these
9 mother fuckers have done surrounded my house. Get
10 the hell on out."

11 Q Did you ask him who he was talking to?

12 A I did but he had already hung up the phone.

13 Q What did you do after receiving that
14 telephone call?

15 A I stayed around the house.

16 Q How long did you stay around your home?

17 A Until about 11:00, and that's when it was
18 around that time that I the police first -- first
19 time they came.

20 Q Did you or your parents own a scanner?

21 A Yes, my dad did.

22 Q Did you listen to the scanner that day?

23 A Yes.

24 Q Why did you listen to the scanner?

25 A Because I just wanted to -- I wanted to

1 hear, you know, if there was anything came over the
2 radio, saying about the situation, you know, anybody
3 was coming. I was just listening to see if my name
4 came up, you know.

5 Q And while you were listening to the
6 scanner, did you hear anything that caused you to
7 leave?

8 A Well, about 30 minutes before I left, I had
9 heard something, somebody came on, they said, only
10 thing --

11 MR. THOMPSON: Object.

12 THE COURT: For what purposes is
13 this being offered?

14 MR. BRITT: Offered to explain
15 his conduct.

16 MR. THOMPSON: Request
17 instruction.

18 THE COURT: The testimony now
19 being elicited of the witness before you,
20 Mr. Larry Martin Demery, Jr., is not being
21 offered for the truth of the matter
22 asserted, but is being offered to explain
23 his subsequent conduct and you may consider
24 it for that limited purpose and no other
25 purpose.

1 Yes, sir, Mr. Britt.

2 BY MR. BRITT:

3 Q What did you hear on the scanner?

4 A They said something, say it's a white
5 double-wide trimmed in black, go down a long dirt
6 road, in the Rowland area. That was about all that
7 was said, that was the last I heard, but it was then
8 I got up, cut off all the lights off in the house and
9 everything and sat there and waited.

10 Q What color is your parents' trailer?

11 A White trimmed in black.

12 Q Is it double-wide?

13 A Yes.

14 Q Do you live along the road on 710 or did
15 you live down -- off of a road that adjoins 710?

16 MR. THOMPSON: Object to leading.

17 THE COURT: Where do you live.

18 MR. BRITT: I apologize.

19 BY MR. BRITT:

20 Q Where is the trailer located?

21 A Down a pretty long dirt road, located off
22 highway 710.

23 Q When you heard that description on the
24 scanner, what did you do?

25 A I turned the lights off and everything in

1 the house, you know, left the TV on, I sat there and
2 waited.

3 Q How long did you wait?

4 A It was about 30 minutes before I saw many
5 headlights coming down the dirt road, and that's when
6 I got up and left out of the house.

7 Q Which door did you go out?

8 A The back door.

9 Q Where did you go?

10 A First place, I ran through the woods and
11 stopped over at my uncle's house, asked my cousin for
12 a cigarette, stood there just a minute or two. When
13 I got the cigarette from him, I there was -- the
14 canal that's located around the area that I live,
15 there was a -- we had a place fixed up across the
16 water to cross over to the other side. I went down
17 to this area, crossed over to the other side of the
18 canal, walked down, came out at the highway, circled
19 back around to a bean field that was right there from
20 where I lived, and from the bean field, that's where
21 I watched all this police activity going on around
22 the house, watched them walking around in the yard, I
23 saw my brother and my parents come up, watched them
24 leave.

25 Q How long did you stay there in the bean

1 field?

2 A I think -- about two hours.

3 Q Do you know what time it was when you left
4 the house?

5 A I remember being -- remember it being
6 around 11:00.

7 Q Did you ever go back to your parents'
8 house?

9 A Yes.

10 Q When you got back to your parents' house,
11 who was there?

12 A When I got there, mom and daddy were there,
13 two of their friends, Dean, Nancy Locklear, and one
14 of their children, Derrick, my brother and my sister.

15 Q What did you do when you went back to the
16 house?

17 A When I walked back in the house, I -- mom
18 and them told me that the police --

19 MR. THOMPSON: Object.

20 THE COURT: Being offered for
21 what purpose?

22 BY MR. BRITT:

23 Q Did your mother tell you anything, yes or
24 no?

25 A Yes.

1 Q And of your mother talked with you, what
2 did you do?

3 A I went and took a bath.

4 Q And after taking the bath, what happened?

5 A I waited for a -- a phone call was made to
6 the Sheriff's Department. They were asked did I want
7 to -- should I just come on up there.

8 MR. THOMPSON: Object.

9 THE COURT: Being offered to
10 explain subsequent conduct?

11 MR. BRITT: Yes.

12 THE COURT: Ladies and gentlemen,
13 again, this is being offered not for the
14 truth of the matters asserted but to
15 explain the subsequent conduct of the
16 witness, and you may consider that it for
17 that purpose and no other.

18 BY MR. BRITT:

19 Q Who placed the phone call to the Sheriff's
20 Department?

21 A My mother did.

22 Q What if anything did she say after she made
23 that phone call?

24 A She told him I was home, asked them did
25 they want me to come on up there. They said no, they

1 wanted to come out and pick me up. So I sat there
2 and waited.

3 Q After you waited, did officers arrived at
4 your parents' trailer?

5 A Yes.

6 Q Do you recall who those officers were?

7 A Deputy Junior Mitchell, Mark Locklear, and
8 this man right here, sitting right behind you. I'm
9 not sure of his name.

10 Q The man sitting on the front row behind me?

11 A Yes, on the very end.

12 THE COURT: For the record --

13 MR. BRITT: That is Special Agent
14 Barry Lea of the SBI.

15 THE COURT: Any disagreement,
16 folks? End of first row?

17 MR. THOMPSON: No, sir.

18 THE COURT: Let the record so
19 show.

20 BY MR. BRITT:

21 Q When the officers came to the house, what
22 did you do?

23 A I left with them.

24 Q Where did you go?

25 A We came down to Robeson County Sheriff's

1 Department.

2 MR. BRITT: May we approach?

3 THE COURT: Yes, sir. Court
4 reporter would also come up and all counsel
5 an Mr. Green would come up as well.

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

8 THE COURT: Let the record
9 reflect this is a bench conference.
10 Present at this time are the presiding
11 Judge, the court reporter, counsel for the
12 State Mr. Johnson Britt, counsel for the
13 defendant Mr. Angus Thompson, Mr. Woodberry
14 Bowen. Also present is the defendant,
15 Mr. Green, also known as U'Allah.

16 MR. BRITT: You mentioned
17 something earlier about an Ake motion that
18 had been filed. This may be a good point
19 to stop the examination and you could take
20 that up in chambers.

21 THE COURT: All right. That,
22 plus I need to ask some questions about
23 scheduling.

24 MR. BRITT: Yes, sir.

25 THE COURT: All right.

1 MR. BRITT: I just wanted to
2 bring it to your attention.

3 (Bench conference concluded.)

4 THE COURT: Ladies and gentlemen,
5 we're going to stop at this point. I'm
6 going to release you until 9:30 tomorrow
7 morning. During the overnight recess
8 please, recall my previous instructions and
9 again I'm obligated to instruct you that
10 you're not to talk about the matter among
11 yourself or anyone else, not allowed to
12 have anyone say anything to you or in your
13 presence about this case. If anyone
14 communicates with about this matter or
15 attempts to do so, or anyone says anything
16 about the case in your presence, it's your
17 duty to inform us of that immediately.

18 Don't form or express any opinions
19 about this matter. Don't have any contact
20 or communications of any kind with any of
21 the attorneys, parties, witnesses,
22 prospective witnesses, or directly with the
23 court. It's especially important as always
24 that you continue to avoid any exposure to
25 any media accounts which may exist in

1 connection with this matter. And you're
2 not to conduct any independent inquiry or
3 investigation or research of any kind.

4 Everyone please remain seated, the
5 members of the jury are excused until
6 9:30.

7 (Jury out at 4:50 p.m.)

8 MR. BRITT: May I approach the
9 Clerk?

10 THE COURT: Yes, sir.

11 MR. BRITT: To return these
12 items.

13 THE COURT: Mr. Demery, you can
14 step down, sir.

15 Folks, as I indicated earlier there is
16 a motion filed on behalf of the defendant
17 under the authority of Ake versus Oklahoma,
18 that's A K E. It's an exparte matter. I'm
19 going to ask that counsel for the defendant
20 as well as the defendant and the court
21 reporter meet with me in chambers so that
22 we can go forward with an exparte hearing
23 regarding that motion.

24 As to the State, Mr. Britt, don't mean
25 to pin you down and if you're not

1 comfortable in answering this in any way
2 that's fine with me, but are you in a
3 position to give us a ballpark figure of
4 when you anticipate the State might
5 conclude the presentation of its evidence?

6 MR. BRITT: Your Honor, I think
7 if things continue at the present rate, the
8 State would be in a position to rest as
9 early as Friday.

10 THE COURT: Okay. That's
11 basically what I was trying to find out,
12 because I was going to then ask you folks,
13 with that guesstimate, recognizing that
14 we're talking about an estimate and nothing
15 more, in the event that the defendant
16 elects to put on evidence, would you folks
17 be in a position to go forward or would you
18 need some time, or is that something you
19 are not in a position to answer at this
20 time?

21 MR. THOMPSON: Your Honor, we
22 would need some time.

23 THE COURT: How much? A day?

24 MR. THOMPSON: At least, yes,
25 Your Honor.

1 THE COURT: That's -- I'm sorry,
2 I don't mean to interrupt. What I'm trying
3 to find out, if we would break on Friday,
4 for example, would the following Monday be
5 suitable or would you need beyond that?

6 MR. THOMPSON: That would be fine
7 if we were to break on Friday.

8 THE COURT: At any event, if we
9 were to break in the week, you need at
10 least one day?

11 MR. THOMPSON: Yes, sir.

12 Your Honor --

13 THE COURT: Yes, sir.

14 MR. THOMPSON: -- I have a motion
15 to reconsider prior order. I'm serving it
16 on the State at this time. It's something
17 we can take it up --

18 THE COURT: Is it ex-parte?

19 MR. THOMPSON: No, it's in court,
20 and --

21 THE COURT: That's why I'm
22 asking.

23 MR. THOMPSON: I would like to
24 file the original.

25 THE COURT: Is this the

1 original?

2 MR. THOMPSON: Yes.

3 THE COURT: If you'll clock this
4 in, since I've got it in hand, 4:53.

5 MR. THOMPSON: And basically,
6 Your Honor, the gist of it is with respect
7 to to a prior order of the Court, with
8 respect to matters under 15-A, reciprocal
9 discovery, there was a prior order that we
10 were supposed to have certain reports in
11 hands of the State within seven days prior
12 to introducing evidence by and through an
13 expert.

14 This motion is to reconsider that
15 order, and basically the gist of it goes
16 to -- first of all, we're not sure at this
17 point whether we intend to use certain
18 reports. Secondly, the -- certain matters,
19 and of course we haven't made a decision at
20 this point whether we're going to -- what
21 if any evidence we're going to put on,
22 whether the defendant will testify, and
23 some of those matters that that our experts
24 are involved in may be matters in which we
25 contend are not privy, state would not be

1 privy to should the defendant take the
2 stand. And that is basically the gist of
3 the motion.

4 Your Honor, it's --

5 THE COURT: Well, we're being
6 candid here.

7 MR. THOMPSON: Yes, sir.

8 THE COURT: In all candor, the
9 problem that has been encountered in the
10 past, not in context with this case,
11 because we haven't reached that point yet,
12 folks, I was a defense lawyer for almost
13 all of my career before I went on the
14 bench. And it was almost routine in the
15 criminal defense bar to tell Ake experts,
16 you don't have the report, wink, wink, and
17 you won't have a report until you hit the
18 stand, right? Wink, wink.

19 Same thing applies to the State on
20 other matters, but the objective of the
21 trial process is to seek the truth to
22 attempt to do justice. I understand that
23 under 15-A you are not required to provide
24 notice unless you make the decision --

25 MR. THOMPSON: That's correct.

1 And in all honesty, Your Honor --

2 THE COURT: Mr. Thompson,
3 Mr. Bowen, I'm going to leave it at this.
4 I'm going to accept you folks telling me in
5 good faith, and I'm hearing that the
6 assertion is made in good faith. I'm going
7 to accept on the basis of good faith that
8 you have not made that decision. I am also
9 instructing you that pursuant to the
10 statute, once that determination has been
11 made in good faith, you have an obligation
12 under the reciprocal discovery portions of
13 the statute.

14 MR. THOMPSON: Two things, Your
15 Honor, we addressed. First of all, we
16 addressed -- I address the issue of whether
17 in fact any reports or -- that we might
18 have or would be forthcoming to the
19 defendant, we would be using, as far as
20 that evidence. The question -- the first
21 question is whether in fact we made a
22 determination to use them. And --

23 THE COURT: Obviously. I mean,
24 that's what is required. Until that
25 determination is made, nothing is treated.

1 All I'm saying is you folks are telling me
2 in good faith, as I understand it, you have
3 not made that determination.

4 MR. THOMPSON: In good faith, we
5 have not made that determination at this
6 point.

7 THE COURT: I'm saying that once
8 you make that determination in good faith,
9 and consistent with the spirit of the
10 rules, you know what your obligations are,
11 right?

12 MR. THOMPSON: Yes, sir. But the
13 second issue deals with --

14 THE COURT: Yes, sir.

15 MR. THOMPSON: -- the concern of
16 that information, if we decide to use it,
17 being used or delivered to the State prior
18 to any decision we might make, if we choose
19 to make -- I mean, choose to --

20 THE COURT: I thought we had
21 gotten past that.

22 MR. THOMPSON: I beg your pardon.

23 THE COURT: It's only triggered
24 once you make the determination under the
25 statute that you're going to call that

1 expert.

2 MR. THOMPSON: I understand. And
3 all I'm simply saying to Your Honor, since
4 you alluded to, you know, defense counsel
5 winking, I haven't winked at anybody.

6 THE COURT: No, I didn't say
7 anything about you folks. I specifically
8 said not in the context of this case.

9 MR. THOMPSON: I understand. But
10 I want to to understand --

11 THE COURT: Bottom line is
12 defense lawyers on the criminal side
13 throughout this state have routinely told
14 experts, you don't have a report until you
15 show up in court. I haven't made a
16 decision to call you until I see you in the
17 courtroom, I run out out of witnesses, and
18 I look and and say oops, that's my next
19 witness. And then I've made my decision.
20 And therefore my obligations under the
21 statute stricken. That's playing games
22 with the rules. You understand?

23 MR. THOMPSON: That's not the
24 case here.

25 THE COURT: That's exactly

1 right. I'm taking about what you're
2 telling me on good faith.

3 MR. THOMPSON: Case here is even
4 if we had a report, we may not make a
5 determination we want to use it.

6 THE COURT: Then you have no
7 obligation to give it up.

8 MR. THOMPSON: Yes, sir. I just
9 wanted to be very candid about it.

10 THE COURT: Let me read the
11 statute. 15 A 905, disclosure of evidence
12 by the defendant. Information subject to
13 disclosure. A. Documents, intangible
14 objects. If the Court grants any release
15 sought by the defendant under GS 15 A 903
16 B, which the Court has, the Court must,
17 mandatory, has no discretion, upon motion
18 of the State, order the defendant to permit
19 the State to inspect a copy or photograph
20 books, papers, documents, photographs,
21 motion pictures, mechanical or electronic
22 recordings, tangible objects or copies or
23 portions thereof which are within the
24 possession, custody or control of the
25 defendant, and which the defendant intends,

1 that's where it's triggered, to
2 introduction in evidence at the trial.

3 B, reports of examinations and tests.
4 If the Court grants any release sought by
5 the defendant under GS 15-A 903 E, which
6 the Court has, the Court must, no
7 discretion, it's mandatory, upon motion of
8 the State order the defendant to permit the
9 State to inspect and copy or photograph
10 results or reports of physical or mental
11 examinations or of tests, measurements or
12 experiments made in connection with the
13 case or copies thereof, within the
14 possession and control of the defendant
15 which the defendant intends to introduce in
16 evidence at the trial, or which were
17 prepared by a witness whom the defendant
18 intends to call at the trial, when the
19 results or reports relate to that witness's
20 testimony.

21 In addition, upon motion of a
22 prosecutor, the Court must order the
23 defendant to permit the prosecutor to
24 inspect, examine and test, subject to
25 appropriate safeguards, any physical

1 evidence or a sample of it available to the
2 defendant if the defendant intends to offer
3 such evidence or tests or experiments in
4 connection with such evidence or an exhibit
5 or evidence in the case.

6 Under A and B, both A and B are
7 triggered by the intent to call the witness
8 or the intent to offer the evidence. Once
9 that determination is made, you have an
10 obligation under the reciprocal discovery
11 statute, 905, to provide those to the
12 State.

13 MR. THOMPSON: I understand. And
14 Your Honor, the problem was, and reason we
15 filed a motion was because of the seven day
16 requirement.

17 THE COURT: The seven days
18 doesn't apply until you otherwise fall
19 under A and B.

20 MR. THOMPSON: Okay.

21 THE COURT: If you know, for
22 example, the 32nd of Jovember that you
23 intend to offer the evidence, and seven
24 days from that date, the 39th of Jovember,
25 you have an obligation to provide that to

1 the State.

2 MR. THOMPSON: Yes, sir.

3 THE COURT: Okay. If you know
4 today that you intend to offer specific
5 testimony, have you issued subpoenas for
6 folks?

7 MR. THOMPSON: Have I issued
8 subpoenas for folks?

9 THE COURT: Any Ake experts?

10 MR. THOMPSON: I've issue -- you
11 mean Ake experts?

12 THE COURT: Anybody under A or
13 B.

14 MR. THOMPSON: Well --

15 THE COURT: If you've issued
16 subpoenas --

17 MR. THOMPSON: That doesn't mean
18 I'm going to use them.

19 THE COURT: That's prima fascia
20 evidence you intend to use them, otherwise
21 you wouldn't have subpoenaed.

22 MR. THOMPSON: Not necessarily,
23 Your Honor. I've subpoenaed individuals
24 that we may not use, simply because -- and
25 I've done here some against State's

1 witnesses just for availability. There's a
2 number reasons why you may subpoena a
3 person.

4 THE COURT: I understand. What
5 I'm saying, I'm not going to let State play
6 games with discovery, and I'm not going to
7 let counsel for the defendant play games
8 with discovery. I have reviewed everything
9 that's in the State's possession to my
10 knowledge, in attempt to make sure, not
11 that I believe State would, but consistent
12 with my obligations, and because I'm not
13 going to let one side play games with the
14 discovery rules, I'm not going to let the
15 other side do it either.

16 It's fair and across the board,
17 everybody gets treated the same way. Same
18 rules apply to the State as defendant.
19 State has same obligations under the
20 statute that the defendant has under
21 counterpart portions of the statute. And
22 I'm taking you folks at good faith.

23 MR. THOMPSON: Yes, sir.

24 THE COURT: Okay? We now know
25 what is in the statute what your

1 obligations are? I would hate to see a
2 scenario where on one day you're calling
3 three or four experts and the State hasn't
4 gotten any notice.

5 MR. THOMPSON: I understand.

6 THE COURT: Okay?

7 MR. THOMPSON: I try to make
8 decisions a little in advance of that.

9 MR. BRITT: I filed a motion for
10 reciprocal discovery in this case for that
11 specific reason. And I asked for a greater
12 time period than seven days, which the
13 Court allowed me, because I know for a fact
14 one of their Ake experts has been in this
15 courtroom. And that's the psychologist. I
16 saw him in here, I saw him walk up to the
17 defense counsel table. I saw him to speak
18 to the defendant.

19 I can tell you his name. His name is
20 Dr. John Warner, psychologist from
21 Winston-Salem. I took it based upon his
22 presence in the courtroom, they intend,
23 one, to have the defendant psychologically
24 evaluated, which I'm sure they've already
25 done, and two Dr. Warren was here to

1 observe court and further his evaluation in
2 anticipation of trial. Of course, I
3 haven't received any notice that they
4 intend to call him, but I would say in
5 regard to their ballistics expert that they
6 hired, they have already provided me with
7 that. Whether they intend to use him or
8 not, I don't know.

9 THE COURT: Well -- folks, I
10 understand.

11 MR. BRITT: But to come back in
12 and ask for a motion to reconsider, and
13 then have the things that you've referred
14 to a day before, put us on notice that we
15 intend to call this expert, this expert,
16 and this expert, and by the way, here are
17 the reports --

18 THE COURT: Mr. Britt, I
19 understand what you're saying exactly. I'm
20 doing the best I can to avoid that
21 eventuality. I can say that not all of
22 those decisions are bad faith decisions.
23 There are legitimate circumstances where
24 decision as to whether or not to put on a
25 witness in many instances is a last minute

1 decision. And that's because of tactical
2 matters that arise during the course of the
3 trial. And it's difficult to predict what
4 may develop down the road.

5 And I certainly understand that. All
6 I'm asking is both sides have an ethical
7 obligation to comply with the rules. And
8 I'm accepting what Mr. Thompson, Mr. Bowen
9 are telling me that they are acting in good
10 faith, and I'm relying on them. Okay?

11 Now, if a situation develops where you
12 feel like you need additional time, I'll
13 give it to you.

14 MR. BRITT: Oh, I'll ask for it.

15 THE COURT: And I'll certainly
16 allow it. I hope we don't reach that
17 point, because that means delays in the
18 proceedings. And folks, four months ago,
19 we started pretrial motions in this case.
20 We're beginning our fifth month.

21 MR. BRITT: Yes, sir.

22 THE COURT: And both sides are
23 entitled to fully present their case. I'm
24 not going to do anything to impinge on that
25 either with regard to the State or the

1 defendant, but I would like to move the
2 case consistent with fairness to both
3 sides. And if you need time, I'll give it
4 to you.

5 The Court does take your motion to
6 reconsider under advisement. The Court
7 accepts what you say, and all I can say in
8 response, folks, is that 905 controls. And
9 I accept what you folks tell me in good
10 faith. All right?

11 MR. THOMPSON: Yes, sir.

12 THE COURT: All right. Any other
13 matters from either counsel?

14 MR. BRITT: No, I would just, for
15 the record, I've not been put on notice of
16 any type of Ake motion that might have been
17 filed in this instance. They intended to
18 approach it, I assume, and I know that's a
19 dangerous thing to do in this case, that it
20 may relate to matters of psychological or
21 psychiatric expert, I do not know that for
22 a fact. My understanding of Ake, if it
23 does not related to psychiatric or
24 psychological, they must make some
25 preliminary showing as to the -- as to the

1 specific need for Ake expert.

2 THE COURT: Under Ake, I think it
3 applies to psychological and psychiatric as
4 well without commenting on what the nature
5 of the motion is.

6 MR. BRITT: I think it applies to
7 those specifically but, for example, for
8 instance, the need for investigator --

9 THE COURT: Showing has to be
10 made of need within the particular facts of
11 that case.

12 MR. BRITT: Yes, sir.

13 THE COURT: In the interest of
14 fairness and interest of justice.

15 MR. BRITT: Yes, sir.

16 THE COURT: And I understand your
17 position, but under Ake the State is not
18 entitled to that. That's a determination
19 for the Court to make.

20 Yes, sir, anything further?

21 MR. BOWEN: Your Honor, if we may
22 please, I would like to revisit a motion
23 that the State is already familiar with.
24 They already have a copy, but I'm serving
25 another copy on him at this time. This

1 relates to the witness -- may I approach?

2 THE COURT: Yes, sir.

3 MR. BOWEN: -- that I have asked
4 to bring from out of state.

5 You'll note, Your Honor, pursuant to
6 the instructions from the Court, I have
7 suggested to the Court, I have procured a
8 fax affidavit from this individual stating
9 that she will accept and honor the subpoena
10 that we've provided her, moreover you have
11 my affidavit there that following faxing
12 her that information and receiving that
13 affidavit, I also faxed her copies of our
14 statute 15-A 803 and 813.

15 Together with that was my letter that
16 this was the controlling law, that she had
17 certain rights that she might want to look
18 into in regard to whether or not she had to
19 come or not. She had an opportunity and
20 right to consult counseling in California.
21 I'm prepared -- I'm not sure I have it with
22 me, but I am prepared to show Your Honor
23 that letter in camera.

24 THE COURT: This is not an Ake
25 matter.

1 MR. BOWEN: I understand that.
2 And I think we resolved that. But Your
3 Honor had suggested that we provide her
4 803 and 813.

5 THE COURT: Copy of the statute
6 and an affidavit which she could execute at
7 her place and state of residence.

8 MR. BOWEN: Yes, sir.

9 THE COURT: Yes, sir.

10 MR. BOWEN: And what I did, I
11 sent the affidavit first, and she signed
12 it, and then I sent the law and told her
13 I'm sending you this with five days for you
14 to look into it, so forth. If you have any
15 problem, any reason that you want to get in
16 touch with me, or any reason you want to
17 rescind the affidavit or whatever, let me
18 know, and I have not heard from her. As
19 far as I know, she is willing to come, just
20 as she was willing to come to begin with,
21 as long as --

22 THE COURT: Where is your
23 proposed order? The order has to comply
24 with the statute.

25 MR. BOWEN: I have it here.

1 Well --

2 THE COURT: Specifically under
3 15-A 803 E, one and two.

4 MR. BOWEN: I may have to revise
5 it. This is what I have. I'll be happy to
6 revise it.

7 THE COURT: Why don't we do it
8 this way. The State has form material
9 witness orders. If you'll pull -- or the
10 District Attorney's office may have some as
11 well. But I know the Clerk's office and/or
12 the DA's office is supposed to have those
13 form orders. If you'll pull those so I can
14 look at those to see if your proposed order
15 is in compliance.

16 I'm looking at it, I think there's
17 problems here already. Look at 15-A 803 E
18 entitled order. If the Court makes a
19 material witness, one, it may direct
20 release of the witness in the same manner
21 that a defendant may be released under
22 general statute 15-A dash 534, or, two, may
23 direct retention of the witness.

24 Ordinarily, this order is addressed to
25 a court of competent jurisdiction in the

1 receiving state.

2 MR. BOWEN: If you recall
3 circumstances here, and I believe it's the
4 same as when we presented it to the Court,
5 this is an individual who is consenting to
6 come forward.

7 THE COURT: Yes, sir. Who are we
8 going to mail this to?

9 MR. BOWEN: Well, that order is
10 going to allow me to go to a travel agency
11 and obtain her ticket.

12 THE COURT: I understand that.
13 But say this order is mailed, where are you
14 going to mail it?

15 MR. BOWEN: Mail it? I would
16 carry it to the travel agency. That would
17 be their authorization to bill --

18 THE COURT: Who are they going to
19 deliver it to?

20 MR. BOWEN: I take it to the AOC
21 with a copy of their invoice for payment.
22 That would --

23 THE COURT: Where is the court --
24 she resides in California?

25 MR. BOWEN: Yes, sir.

1 THE COURT: The order is
2 addressed to California. The Court of
3 competent jurisdiction. They --

4 MR. BOWEN: This is a witness --

5 THE COURT: I understand that.
6 And she appears before that judge and says,
7 I signed this affidavit, I'm willing to go
8 voluntarily. I've had notices, had an
9 opportunity to be heard, due process has
10 been accorded. That's why I suggested if
11 you'll pull the order. Now, I've done them
12 where other states have sent material
13 witness orders through us and comes through
14 the court system.

15 MR. BOWEN: Judge, I just don't
16 understand, because I did -- what we had
17 was a person who was -- Your Honor told me
18 last time we were here that if she gave an
19 affidavit stating that she would
20 voluntarily come --

21 THE COURT: I understand your
22 point. What happens if you mail it to her
23 and she doesn't show up?

24 MR. BOWEN: Then we'll have to go
25 through the procedures.

1 the proper channels.

2 MR. BOWEN: I concede that, Your
3 Honor. But that was the reason for getting
4 her affidavit. Now --

5 THE COURT: No, sir. The reason
6 for getting her affidavit was to expedite
7 matters out in California.

8 Mr. Britt, while waiting here, do you
9 have a material witness order in your
10 office?

11 MR. THOMPSON: Judge, we'll get
12 the --

13 THE COURT: No, sir, we're going
14 to do this right now.

15 In other words, I don't want to reach
16 the -- it may not happen, but I will feel
17 that I have been derelict in my
18 responsibility, when we reach the stage of
19 this problem, ticket has been mailed, your
20 witness doesn't show up. Then you're
21 standing in front of me saying, we need a
22 week or so to get her here. And I've got
23 to tell this jury to go home for a week.

24 MR. BOWEN: Here's what my
25 feeling was. The alternative to that is,

1 of course, go through the proceeding, hire
2 the necessary representation out there --

3 THE COURT: She doesn't need
4 representation if she's got due process and
5 she walks into a courtroom and says, I
6 signed this affidavit, I want to go, I
7 don't have any problem -- there is no
8 expense. But we have to comply with the
9 statute in order to ensure that there is
10 some means of enforcing the order once it's
11 out there. If we simply mail this order to
12 her, we've got no means of enforcing it.

13 MR. BOWEN: All right. We'll
14 prepare the order anyway that Your Honor
15 would feel comfortable with. Just wanted
16 to you to know that I sent the affidavit
17 out there, I got it back. I sent her
18 copies of law like Your Honor asked me to,
19 and we will make an order --

20 THE COURT: What I asked,
21 Mr. Bowen, is to look at the statute.

22 MR. BOWEN: Sure, I did.

23 THE COURT: And I apologize.

24 MR. BOWEN: Given that she was
25 volunteering, that that bypasses some of

1 the dictates that would have been -- some
2 of the dictates of the statute that would
3 have been necessary if we had been forcing
4 her to come.

5 THE COURT: 99 percent of the
6 material witness orders that I've done,
7 person walks in the Court and says, I'll
8 go. I explain to them, you understand you
9 have right to be represented by counsel,
10 you have the right, in addition to due
11 process rights, you have a right to contest
12 whether or not in fact you are a material
13 witness, I've agreed to go, they already
14 called me and I told them that I would go.
15 Then I issue the order from the North
16 Carolina state courts.

17 Now, it may be that I'm making a big
18 deal out of nothing if she shows up.
19 There's no problem. But if she doesn't,
20 then we have been inconvenienced because we
21 then have to go through the process all
22 over again. That's my point. And rather
23 than take that chance, and in an effort to
24 minimize the disruption in this case, I
25 would rather go through the proper hoops.

1 MR. BOWEN: You see, what I was
2 going to do is go ahead and get her here in
3 plenty of time so if there was a glitch, we
4 would know it well before we got into the
5 fence.

6 THE COURT: But I'm not the Court
7 that she would have -- she would have a
8 right to in California where she resides.

9 MR. THOMPSON: Judge, what you
10 sent Mr. Britt to get, isn't that an
11 order?

12 THE COURT: That's an order
13 that's mailed from here and mailed from our
14 court system to court system in California.

15 MR. THOMPSON: AOC form?

16 THE COURT: Yes, sir.

17 MR. THOMPSON: I'm familiar with
18 it. We've got the form, we don't have to
19 wait for him.

20 MR. BOWEN: No problem. The
21 reason I did it differently was the fact of
22 the voluntary affidavit. Really all my
23 order covers is the provision of the funds.

24 THE COURT: Folks, I will give
25 you the funds. I just want some means of

1 insuring her appearance. I will give you
2 the funds.

3 Folks, look at State versus Tindal,
4 294 NC 689. Court may refrain from issuing
5 an ineffectual processes. Trial judge's
6 denial of defendant's motion for material
7 witness orders compel New York residents
8 who had no contact with North Carolina did
9 not infringe upon the defendant's rights
10 under the United States Constitution
11 Amendment Six to compulsory process for
12 obtaining the witnesses in the state. A
13 state court need not engage in the futile
14 issuances of ineffectual process in order
15 to satisfy the requirements of U.S.
16 Constitution, Amendment 14.

17 MR. BRITT: May I approach?

18 THE COURT: Yes, sir.

19 MR. BRITT: Your Honor, this is
20 not the precise thing that you have asked
21 for, but I could not locate a material
22 witness order, but this is a certificate of
23 attendance for out of state witness
24 pursuant to 15-A 813.

25 THE COURT: All right. Have you

1 got the form that's pursuant to the Uniform
2 Act to secure attendance of witnesses from
3 without the State? That's what you folks
4 need to --

5 MR. BRITT: They can have that.

6 THE COURT: You need to consult
7 with that. And folks, I'm telling you, I
8 will sign a proper order.

9 MR. THOMPSON: I understand that.

10 THE COURT: Anything further from
11 either counsel?

12 MR. BRITT: No, sir.

13 MR. THOMPSON: No, sir.

14 THE COURT: For our purposes,
15 folks, you are released until 9:30 tomorrow
16 morning. We need to convene in chambers.
17 I apologize to the court reporter. We're
18 going on the record exparte.

19 (Whereupon an in camera exparte
20 proceeding ensued as follows.)

21 THE COURT: For the record, this
22 is an in camera proceeding being held
23 pursuant to the defendant's motion for
24 funds with which to hire an expert in
25 eyewitness identification and for an

1 exparte hearing. The Court at this time is
2 conducting this matter in camera because it
3 is an Ake versus Oklahoma motion, which is
4 required to be heard ex parte.

5 Present at this time are the presiding
6 Judge, court reporter, counsel for the
7 defendant Mr. Thompson, Mr. Bowen. Also
8 present at this time is the defendant
9 Mr. Daniel Green, also known as U'Allah.

10 Folks, and Ake versus Oklahoma, you
11 folks are entitled to make a showing and
12 are required to make a threshold showing in
13 support of your motion. Mr. Bowen and/or
14 Mr. Thompson, either or both of you
15 gentleman may be heard.

16 MR. THOMPSON: Judge, may I have
17 the motion?

18 Your Honor, we would ask that, of
19 course, the affidavit attached be
20 introduced.

21 THE COURT: The Court -- the
22 affidavit is incorporated by reference.

23 MR. THOMPSON: And that being the
24 case, that would -- the matters set forth
25 in the affidavit --

1 THE COURT: You don't wish to be
2 heard in addition to what is in the
3 affidavit?

4 MR. THOMPSON: No, sir. I mean,
5 as far as the showing, just simply by way
6 of summing up the particularized need, and
7 our view is that notwithstanding Mr. Demery
8 making an ID of U'Allah, the defendant, as
9 to both the Clewis Demory armed robberies
10 being present and the person involved as an
11 accomplice in the robbery, and of course
12 the same with the Rowland Motel robbery
13 which was brought out on voir dire, we feel
14 that the expert material would assist the
15 defense in that the ID of Mr. Demory, as
16 the Court has already noted -- he has some
17 problems in identifying the defendant.

18 THE COURT: You're talking about,
19 so the record is clear, Clewis Demory.

20 MR. THOMPSON: Yes, sir, with
21 respect to the ID by the Rhode Island
22 couple.

23 THE COURT: Those folks are not
24 in issue at this point, are they?

25 MR. THOMPSON: Not at this point,

1 but as you've indicated, if doors are
2 opened, if the defendant puts on evidence
3 and takes the stand, you know, this stuff
4 comes in.

5 THE COURT: Or may, I don't know.

6 MR. THOMPSON: Or could. And
7 that's right, it may come in. And because
8 of that, and we feel that ID's in the Rhode
9 Island couple, by the Rhode Island couple
10 and the Rowland Motel robbery are somewhat
11 of Mr. Clewis Demory. And again, the only
12 remaining person who would ID and put the
13 defendant there is Larry Demery. Now, of
14 course his credibility will be of course an
15 issue in this case. But if the jury
16 chooses to disbelieve Mr. Demory for any
17 reason because of credibility, then the
18 only remaining ID's would be those of
19 Mr. Clewis Demory and the July 4th --
20 Clewis Demory and Lowry's Texaco.

21 THE COURT: We haven't gotten to
22 that point so it's hard for me to consider
23 that. Under the Clewis Demory
24 identification, Mr. Demory has on
25 cross-examination, as I recall, indicated

1 that while he identified the defendant from
2 a pretrial photographic array as looking
3 like the person who committed the robbery,
4 and identifying him in court as looking
5 like the person who robbed him, he has not
6 made a specific identification of the
7 defendant.

8 MR. THOMPSON: Well, that's my
9 point. And this individual whom we are
10 asking the Court to allow for us to retain
11 him as an Ake expert has the same expertise
12 in cross racial identification. That's his
13 area, and that's the kind of stuff he deals
14 with, which would be consistent with what
15 Mr. Clewis Demory's statement is, they all
16 look alike, I mean, basically. That's what
17 we're talking about.

18 THE COURT: May I see your
19 affidavit again? Mr. Bowen, do you want to
20 be heard in addition to what Mr. Thompson
21 said?

22 MR. BOWEN: No, sir, just
23 underscore that the nature of the State's
24 other-than-identification evidence, it
25 seems to me has to be carefully considered

1 by Your Honor and the particular stake that
2 Mr. Demery has in the matter, and the
3 possibility that some or all of what he
4 says could be disbelieved, which would
5 leave you right back in the situation as if
6 the State would be without a witness. And
7 I think it's a judgment call, it would --

8 THE COURT: Well, and as to this
9 kind of expert in particular, it's a
10 discretionary call. And the statute 7A(4)
11 15, and 7A(4) 54 require that this kind of
12 assistance consistent with Ake versus
13 Oklahoma upon a showing by the defendant
14 that there be one, a reasonable likelihood
15 that requested experts will materially
16 assist the defendant in the preparation of
17 his defense, or two, that without such help
18 it is probable that the defendant will not
19 receive a fair trial. That's the standard
20 under the applicable statutes.

21 MR. THOMPSON: And Your Honor,
22 while you're thumbing through that, you
23 know, we're at a point where we would have
24 loved to have even sent, being in a
25 position to send the transcription of the

1 testimony of Mr. Demory for our expert to
2 consult with him with respect to, in a
3 sense --

4 THE COURT: Well --

5 MR. BOWEN: Looks like with the
6 evidence already leaning toward the
7 likelihood that there may be the type of
8 misidentification that we're trying to
9 explore, that not to allow us the
10 opportunity to corroborate that which --
11 where the horse is already going in that
12 direction and not be able to get on him and
13 ride a little bit or corroborate what is
14 already tending in that direction, could be
15 distinctly prejudicial, and lack of that
16 expert might be well argued to make the
17 difference.

18 THE COURT: I understand that
19 argument, but this case is different for
20 the reason that Larry Martin Demery exists
21 in this case. This is not the typical.
22 The Court finds that the showing made does
23 not rise to the level of that contemplated
24 by North Carolina General Statute Section
25 7A(4) 50 and 7A(4) 54, nor does it meet the

1 test set forth in North versus Gay, 278,
2 nor the test set forth in Ake versus
3 Oklahoma, 105 Supreme Court, 1087.

4 And in the discretion of the Court,
5 the defendant's motion for funds with which
6 to hire an expert in eyewitness
7 identification is denied, to which the
8 defendant objects and excepts for the
9 record. That way you folks have your issue
10 preserved. The ex parte hearing has been
11 recorded, and the issues are there for the
12 appellate courts. The motion is denied,
13 the exception is noted for the record.

14 And folks, I'm going to order that
15 your ex parte motion be made a part of the
16 record, sealed for appellate review so that
17 this is in the file.

18 MR. THOMPSON: Yes, sir. Did I
19 only give you one --

20 THE COURT: That's the only copy
21 I've got. Since I've got the only copy,
22 I'm going to put it in the record, along
23 with your proposed order.

24 MR. THOMPSON: Yes. There was
25 one attached.

1 THE COURT: An order to seal, the
2 order to seal the motion, and order ex
3 parte is allowed. And we will put it in a
4 sealed envelope.

5 MR. THOMPSON: What's this other
6 thing there? Maybe --

7 THE COURT: Your order and motion
8 for sealing.

9 MR. THOMPSON: Just several
10 copies of the order, that's all. May I get
11 one of them?

12 THE COURT: Yes, sir. That way
13 you'll have a copy.

14 MR. THOMPSON: Really, that's all
15 you need is one copy. We need the other
16 ones.

17 THE COURT: You can take it back,
18 and the copy of your motion. And I think
19 there's only one copy.

20 MR. THOMPSON: That's it. I have
21 the others.

22 THE COURT: Thank you. You want
23 to take this? Folks, I'll sign the order
24 once we understand --

25 MR. BOWEN: Judge, I apologize --

1 THE COURT: It was my fault.

2 MR. BOWEN: Because she was
3 consenting, I thought we had waived some of
4 that, and I understand.

5 MR. THOMPSON: She can change her
6 mind.

7 MR. BOWEN: Certainly wise to be
8 sure. Thing was, I was going to find out
9 early enough on so if we had to go back we
10 would have plenty of time.

11 THE COURT: Let me give you a
12 scenario. We do that, we send her a
13 ticket, she cashes it in and moves. That's
14 my concern.

15 MR. BOWEN: Yes, sir.

16 MR. THOMPSON: I sort of
17 figured --

18 THE COURT: I said no, huh-uh, we
19 go through a court, you're covered and I'm
20 covered.

21 MR. BOWEN: I have no problem
22 with that. I thought I was doing what I
23 was supposed to be.

24 THE COURT: I understand.

25 MR. THOMPSON: Do you need to

1 close out the hearing?

2 THE COURT: Yes. This concludes
3 the ex parte hearing. Thank you, sir.

4 (End of in camera proceeding.)

5 (Court adjourned.)

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1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

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6 On Behalf of the Defendant:

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10 and

11 WOODBERRY A. BOWEN, Esq.
12 Bowen & Byerly
13 P.O. Box 846
Lumberton, North Carolina 28359

14
15 (January 30, 1996. Proceedings in open court.)

16
17 THE COURT: Good morning, folks.

18 Let the record reflect all counsel are
19 present, the defendant is present in open
20 court. Do we have all members of the jury
21 secured in the jury room?

22 THE BAILIFF: Yes, sir, we do.

23 THE COURT: Okay. Anything from
24 either counsel?

25 MR. BRITT: No.

1 THE COURT: Is Mr. Demery
2 present?

3 MR. BRITT: Yes, sir, he's around
4 in my office with a deputy.

5 THE COURT: Are you ready to go
6 forward with his testimony?

7 MR. BRITT: Yes, sir.

8 THE COURT: If you could have him
9 brought around, please.

10 Mr. Demery, if you'll again take the
11 witness stand, sir. You remain under
12 oath. Mr. Horne, if you'll bring our jury
13 in, please.

14 (Jury in at 9:00 a.m.)

15 THE COURT: Good morning, ladies
16 and gentlemen. Mr. Britt you may continue
17 with your examination.

18 MR. BRITT: May I approach the
19 witness?

20 THE COURT: Yes, sir.

21 BY MR. BRITT:

22 Q Let me show you what's been marked as
23 State's Exhibit Number 56-B, part of the records from
24 the cellular telephone owned by James Jordan that was
25 assigned -- that had the telephone number 704

1 577-5523, ask you to look at State's Exhibit 56-B,
2 entries that appear in the middle of the page under
3 the heading cause placed on U.S. dash Lumberton NC
4 nonwire line. Do you see the date is reflected on
5 the exhibits as 7-23, 10:36, (919) 521-3365,
6 Pembroke, North Carolina, do you recognize that
7 telephone number?

8 A No, I don't.

9 Q And on July 23rd, 1993, did you place any
10 phone calls on the cellular telephone in that red
11 Lexus between the hours of 10:00 a.m. and 11:00 a.m.

12 A No, I didn't.

13 Q See the entry of 7-23, 10:43,
14 (919) 887-6864 out of High Point, North Carolina? Do
15 you recognize that telephone number?

16 A No.

17 Q See the entry 7-23 10:49, (919) 350-0828,
18 Wilmington, North Carolina?

19 A Yes.

20 Q Do you recognize that number?

21 A No.

22 Q Do you recognize this number that appears
23 at 7-23, 10:58 at (803) 243-2493, Marion, South
24 Carolina?

25 A No.

1 Q I'll show you what has been marked as
2 State's Exhibit 56-C, entry that appears in the area
3 labeled, calls placed on U.S. Cellular dash
4 Chesterfield, see that?

5 A Yes.

6 Q Do you know where Chesterfield is?

7 A I can get there. As far as telling you a
8 direction --

9 Q To your knowledge, is Chesterfield, South
10 Carolina located near Bennettsville?

11 A Close by.

12 Q See the entry that appears 7-23, 7:05 a.m.,
13 (800) 999-4749, eight hundred service? Do you
14 recognize that telephone number?

15 A No.

16 Q On July 23rd, 1993, did you place any
17 telephone call at 7:00 in the morning on the cellular
18 phone that was in the Lexus?

19 A No, I didn't.

20 Q Who other than you was in the Lexus on July
21 23rd at that hour of the morning?

22 A Daniel was.

23 Q See the entry 7-23, 22:03, (919) 739-8927,
24 Lumberton, North Carolina?

25 A Yes.

1 Q Do you recognize that telephone number?

2 A No.

3 Q Did you place any phone call at 10:03 p.m.
4 on the night of July 23rd, 1993 from that cellular
5 phone?

6 A No, I didn't.

7 Q See the entry 7-24, 8:56 a.m. to (215)
8 229-2710, Philadelphia, Pennsylvania?

9 A Yes.

10 Q Do you recognize that telephone number?

11 A No.

12 Q On July the 24th, 1993 did you place any
13 telephone call on that cellular phone to
14 Philadelphia, Pennsylvania?

15 A No, I didn't.

16 Q To your knowledge did anyone call
17 Philadelphia, Pennsylvania from that cellular
18 telephone?

19 A Yes.

20 Q Who was that?

21 A Daniel did.

22 Q And do you know the purpose for which that
23 call was made?

24 A Yes.

25 Q What was the purpose for which that call

1 was made?

2 A To get in touch of one of his mom's
3 boyfriends to talk with him about getting rid of the
4 car some way or another.

5 Q Is that the person that you referred to as
6 Ant yesterday?

7 A Yes.

8 Q 7-24, 10:13 a.m., (919) 422-9007, Rowland
9 North Carolina?

10 A Yes.

11 Q Do you recognize that phone number?

12 A No.

13 Q Did you place any phone call at 10:30 --
14 excuse me, 10:13 a.m. from the cellular telephone?

15 A No.

16 Q To your knowledge did the defendant try if
17 call anyone in Rowland, North Carolina?

18 A Yes, he did.

19 Q Do you know who he tried to call?

20 A He was trying to get in touch with his
21 cousin that went by the name of June Bug.

22 Q On how many occasions do you recall the
23 defendant trying to call his cousin in Rowland?

24 A There were several different times.

25 Q See the entry 7-24 15:40 hours,

1 (919) 422-9007, Rowland, North Carolina?

2 A Yes.

3 Q That's the same entry that appears at 10:30
4 on that date?

5 A Yes.

6 Q That entry also appears on July with 25th
7 at 23:33 hours?

8 A Yes.

9 MR. THOMPSON: Object to leading.

10 THE COURT: Overruled.

11 BY MR. BRITT:

12 Q That number also appears again on the
13 record 7-25 at 23:47 hours, (919) 422-9007?

14 A Yes.

15 Q Do you recognize the number that appears on
16 the entry 7-26, 00:06 hours, (919) 436-6584,
17 Fayetteville, North Carolina?

18 A No.

19 Q To your knowledge, did the defendant call
20 anyone from that cellular phone in Fayetteville?

21 A He was trying to get in touch with his
22 brother David. David lived in Fayetteville.

23 Q I'll show you what has been marked as
24 State's Exhibit Number 56-D, the area is headed,
25 Calls Placed on Vanguard, parentheses, 01645 close

1 parentheses, dash Myrtle Beach, South Carolina.

2 A Yes.

3 Q Entry dated 7-23, 23:10 hours, (919)
4 738-8804, Lumberton, North Carolina. Do you
5 recognize that telephone number?

6 A No.

7 Q Did you place any phone call on the
8 cellular phone to that number?

9 A No, I didn't.

10 Q The entry that appears at 7-23 at 23:10
11 hours, (919) 738-8804, appears again July 24th at
12 0:31 hours, (919) 738-8804, Lumberton, do you see
13 that?

14 A Yes.

15 Q Did you place a phone call on July 24th at
16 12:31 a.m. to that number that had a Lumberton
17 listing?

18 A No, I didn't.

19 Q Ask you to look at the very last entry that
20 appears on State's Exhibit 56-D, 7-25, 21:04 hours,
21 (516) 271-7715, Huntington, New York?

22 A Yes.

23 Q Do you recognize that telephone number?

24 A Yes, I do.

25 Q How do you recognize that telephone number?

1 A That's the number that I called to my
2 family that lived in New York.

3 Q And what was your purpose in making that
4 phone call?

5 A I was trying to get in touch with a cousin
6 that I had that lives up there, thinking that maybe
7 he could tell, you know, give me some suggestion as
8 to how to get rid of the car.

9 Q Mr. Demery, if you will place your initials
10 by the entry that appears at 7:25, 21:04 hours,
11 number (516) 271-7715?

12 A (Witness complies).

13 Q I'll show you what has been marked as
14 State's Exhibit 56-E, entry that appears July 26th,
15 11:04, (919) 436-7196, Fayetteville, North Carolina,
16 do you recognize that number?

17 A No, I don't.

18 Q On July 26 at 110 4:00 a.m. did you place
19 any phone call from the cellular telephone?

20 A No.

21 Q Entry that appears July 26th, 11:55 a.m.
22 (805) 238-7994, to a location in California. For the
23 record, because I cannot pronounce this town's name,
24 I'll spell it: P A S O R O B L E S?

25 THE COURT: Pasorobles.

1 MR. BRITT: Thank you.

2 BY MR. BRITT:

3 Q Do you recognize that phone number?

4 A No, I don't.

5 Q Did you place any phone call to a town in
6 California on July 26th, 1993?

7 A No.

8 Q Mr. Demery, other than yourself -- strike
9 that. Other than the one phone call that you've
10 identified as having made from that cellular
11 telephone, did you place any other phone calls on
12 that telephone?

13 A No, I didn't.

14 Q And from the time that you and the
15 defendant had that car on July the 23rd, 1993, until
16 you went to Fayetteville with it on July the 26th of
17 1993, who placed the majority of the phone calls that
18 were placed on that cellular phone?

19 MR. THOMPSON: Well, I object.

20 THE COURT: Do you want to be
21 heard, Mr. Thompson?

22 MR. THOMPSON: Yes, sir.

23 THE COURT: Ladies and gentlemen,
24 there's a matter of law the Court must take
25 up. Don't worry or speculate about what

1 takes place in the courtroom in your
2 absence. If all members of the jury would
3 step to the jury room, please.

4 (Jury out at 9:42 a.m.)

5 THE COURT: The following is
6 being conducted in the absence of the jury.

7 MR. THOMPSON: Yes, sir, Your
8 Honor, he would -- that calls for a
9 conclusion for which he has not laid a
10 foundation --

11 THE COURT: He established that
12 the witness was there during that time
13 period, and he's asking who placed the
14 majority of the phone calls during that
15 time period.

16 MR. THOMPSON: But there's no
17 foundation that he has that personal
18 knowledge as to who placed the majority of
19 the phone calls. There's been testimony
20 several people placed phone calls.

21 THE COURT: Yes, sir. But if he
22 was there during the entire time period and
23 had an opportunity to observe access and
24 use of the phone during that time period,
25 then he can answer the question.

1 MR. THOMPSON: I don't think that
2 it's -- the foundation has been laid,
3 sufficient foundation has been laid to
4 establish that he was there that date.

5 THE COURT: That's what we spent
6 most of yesterday doing.

7 MR. THOMPSON: Well, that's my
8 objection.

9 THE COURT: Yes, sir. The
10 objection is overruled, the exception is
11 noted for the record.

12 If you'll bring the jury back in,
13 please.

14 (Jury in at 9:43 a.m.)

15 THE COURT: The objection is
16 overruled, exception is noted for the
17 record. You may repeat or rephrase.

18 BY MR. BRITT:

19 Q Mr. Demery, from the time you and the
20 defendant had that car July 23, 1993, until you went
21 with the defendant with that car July 26th, '93, who
22 placed the majority of that phone calls that were
23 placed on that cellular telephone?

24 A Daniel did

25 (State's Exhibits 83, 84 were
marked for identification.)

1 MR. BRITT: May I approach?

2 THE COURT: Yes, sir.

3 BY MR. BRITT:

4 Q Mr. Demery, let me show you what first has
5 been marked as State's Exhibit Number 84, ask you to
6 look at that and tell me if you can recognize it?

7 A Yes, I can.

8 Q How are you able to recognize State's
9 Exhibit Number 84?

10 A It's got the directions that I wrote on it
11 to where to get to David's house.

12 Q And for the record, there are writings that
13 appear on the --

14 THE COURT: First of all,
15 Mr. Demery, identify what State's Exhibit
16 84 is.

17 THE WITNESS: Oh, it's appears to
18 me to be an instruction manual, whatever,
19 for the phone that was in the car.

20 BY MR. BRITT:

21 Q And are there writings that appear on the
22 front of that manual as you've referred to it?

23 A Yes.

24 Q Do you recognize the handwriting that
25 appears there?

1 A Yes.

2 Q And whose handwriting is it that appears
3 there?

4 A Mine.

5 Q And what if anything did you write on the
6 instruction manual?

7 A It has light at BK, make left on All
8 American, past hospital on left, past Santa Fe, or
9 exit right on Gruba at second light, left on Bragg
10 Blvd, 2110 Willington, make left, over railroad, Kay
11 Drive.

12 Q And the writings that appear on State's
13 Exhibit Number 84, are those the directions that you
14 wrote to David Moore's residence?

15 A Those were the directions I was being told.

16 Q And who was telling you, who was giving you
17 those directions at the time you were writing them
18 down?

19 A Daniel was.

20 Q Is State's Exhibit 84 in substantially the
21 same condition it was in when you wrote those
22 directions on that manual when you and the defendant
23 went to Fayetteville on July 26th, 1993?

24 A Yes.

25 MR. BRITT: Your Honor, at this

1 time I move that State's Exhibit 84 be
2 admitted.

3 THE COURT: It's admitted without
4 objection.

5 (State's Exhibit 85 was
6 marked for identification.)

7 BY MR. BRITT:

8 Q I'll show you what has been marked as
9 State's Exhibit Number 85, a photograph. Can you
10 identify what is depicted in that photograph?

11 A It shows an abandoned store and the Quality
12 Inn.

13 Q Is that the same abandoned store and the
14 same Quality Inn that's located near the intersection
15 of Interstate 95 and U.S. 74 just south of the City
16 of Lumberton?

17 A Yes, it is.

18 Q And does State's Exhibit Number 84 --
19 excuse me, 85, fairly and accurately depict the scene
20 as you know it to be?

21 A Yes.

22 Q And can you use State's Exhibit Number 85
23 to help you in illustrating your testimony to the
24 jury?

25 A Yes.

1 (State's Exhibit 86, 87 were
2 marked for identification.)

3 BY MR. BRITT:

4 Q Show you what's been marked as State's
5 Exhibit Number 86, a photograph, ask you to look at
6 that photograph and tell me if you can identify what
7 is depicted there?

8 A It shows the area where the Lexus was
9 parked that night.

10 Q And does State's Exhibit Number 86 fairly
11 and accurately depict the area along U.S. 74 as you
12 look west on 74 --

13 MR. THOMPSON: Object to leading.

14 THE COURT: It's a foundational
15 question. Overruled.

16 BY MR. BRITT:

17 Q There where the service road intersects
18 with U.S. 74?

19 A Yes.

20 Q And does State's Exhibit Number 86 fairly
21 and accurately represent the area where you saw the
22 red Lexus parked on the morning of July 23rd, 1993?

23 A Yes.

24 Q And will State's Exhibit Number 86 help you
25 in illustrating your testimony to the jury?

1 A Yes, it somewhat, I mean --

2 Q Hand you what's been marked as State's
3 Exhibit Number 87, ask you to look at that and tell
4 me if you can identify that photograph?

5 A That's the same area where the Lexus was
6 parked.

7 Q Is State's Exhibit Number 87, does it
8 fairly and accurately represent the area along U.S.
9 74 near the intersection of the service road as you
10 look east toward U.S. 95?

11 A Yes.

12 Q Is does it fairly and accurately depict or
13 represent the scene as you know it to be?

14 A Yes.

15 Q Can you use State's Exhibit Number 87 in
16 helping you illustrate to the jury the location of
17 the red Lexus as you found it on July 23rd, 1993?

18 A Yes, I can.

19 (State's Exhibit 88 was
20 marked for identification.)

21 BY MR. BRITT:

22 Q Show you what's been marked as State's
23 Exhibit Number 88. Ask you to look at that and tell
24 me if you can identify that photograph?

25 A That's an overhead view showing the area

1 where the Lexus was, the motel, the area where the
2 car was parked, where I had parked my car that night.

3 Q And does State's Exhibit Number 88 fairly
4 and accurately depict the scene at the intersection
5 of Interstate 95 including the location of the
6 Quality Inn, the wooded area where the car was
7 parked, where your car was parked, and the area along
8 U.S. 74 where the flea market was located?

9 MR. THOMPSON: Well, I object,
10 leading.

11 THE COURT: Foundational,
12 overruled.

13 BY MR. BRITT:

14 Q -- And where you saw the red Lexus on the
15 morning of July 23rd, 1993?

16 A Yes.

17 Q Would State's Exhibit Number 88 help you in
18 illustrating your testimony to the jury?

19 A Yes, it could.

20 MR. BRITT: Your Honor, at this
21 time I move for admission for illustrative
22 purposes State's Exhibits 85 through 88.

23 THE COURT: Without objections,
24 they are admitted for illustrative
25 purposes.

1 MR. BRITT: Ask that Mr. Demery
2 be allowed to step down in front of the
3 jury.

4 THE COURT: Yes, sir.

5 Members of the jury, please recall my
6 instructions, these exhibits, specifically
7 85 through 88, are being offered for the
8 limited purposes of illustrating the
9 testimony of Mr. Larry Martin Demery, and
10 to extent that you find State's Exhibits
11 85, 86, 87, and 88 of aid or assistance in
12 understanding his testimony, you may
13 consider it for that purpose and no other
14 purposes.

15 BY MR. BRITT:

16 Q Mr. Demery you testified on the night of
17 July 22nd, early morning of July 23rd, you and the
18 defendant went to a motel located near the
19 intersection of U.S. 74 and I-95?

20 A Yes.

21 Q What was the name of that business?

22 A Quality Inn.

23 Q Located beside the Quality Inn, was there
24 any other building?

25 A Yes, an abandoned store.

1 Q And there at the abandoned store?

2 THE COURT: Mr. Demery, you're
3 going to have to keep your voice up, sir.

4 BY MR. BRITT:

5 Q There in the area of the abandoned store,
6 what did you and the defendant do?

7 A We hid out behind the store, stayed out of
8 sight.

9 Q I'm going to hand you what has been marked
10 as State's Exhibit Number 85. Can you use State's
11 Exhibit Number 85 to illustrate for the jury the
12 location of the hotel, location of the abandoned
13 store, and the area where you and the defendant hid?

14 A Yes.

15 Q If you'll start at this end and then work
16 your way back to this end.

17 A This is the store, the abandoned store.
18 This is the motel. Most of that time we were back
19 behind this store. There were times during the
20 period of time we were out there that we were right
21 up under here.

22 THE COURT: You're going to have
23 to repeat your testimony, Mr. Demery.

24 THE WITNESS: This is the store,
25 this is the motel. Most of the time we

1 were back off behind this store, looking
2 over toward the parking lot area, and for a
3 little while we were up around the front
4 part of this store area.

5 BY MR. BRITT:

6 Q Step down to that end of the jury box.

7 A This is the store right here. Motel. Back
8 behind the store, this is where we were most of the
9 time we were out there. Sometimes we were around the
10 front part.

11 Q I'm going to hand you what's been admitted
12 as State's Exhibit Number 88. You testified that the
13 red Lexus was parked along U.S. 74 as you faced west?

14 A Yes.

15 MR. THOMPSON: Object, Your
16 Honor.

17 THE COURT: Rephrase, Mr. Britt.

18 BY MR. BRITT:

19 Q Can you use State's Exhibit Number 86 to
20 show the jury where it was that the car was parked,
21 the red Lexus was parked, on the morning of July
22 23rd, 1993 when you and the defendant found it?

23 A Okay. It was over in this area here, about
24 the exact spot it was, like right behind where this
25 stop sign is. It's the flea market over here, this

1 is facing west, this is the direction the car was
2 turned in.

3 This is the area where the car was parked.
4 Right behind where this stop sign is, that's about
5 exactly where it was. This is the flea market, the
6 car facing down in this direction, west, when we saw
7 it -- I saw it.

8 This is the area where the car was parked,
9 back off behind the stop sign, flea market, going
10 down this way is west, the direction the car was
11 parked, pointed.

12 Q I'll hand you what's been accepted as
13 State's Exhibit Number 87, a photograph. Can you use
14 that photograph to show the jury the exact location
15 where the car was parked on the night of July 23rd
16 when you and the defendant found it?

17 A Okay. This is the part where the car was
18 parked. This piece of blown out tire, that's about
19 exactly where the front of the car was parked.

20 Same area where the car was, where this
21 piece of tire is, this is the spot where the car was
22 parked.

23 Same area the car was parked, where this
24 piece of tire is, it's the exact spot it was
25 sitting.

1 Q If you will, with this red marking pen, --

2 MR. BRITT: If the record would
3 show, I'm removing the photograph contained
4 inside the plastic sleeve marked as State's
5 Exhibit Number 87.

6 THE COURT: Yes, sir.

7 BY MR. BRITT:

8 Q I'm going to place the photograph on the
9 table. With this red marking pen, will you mark the
10 location of where the car was parked on July 23rd,
11 1993? If you'll mark it with an X and if you'll
12 write the word "car" and place your initials there.

13 A (Witness complies).

14 MR. BRITT: The record will
15 reflect that he has placed a red X on the
16 photograph that was accepted as State's
17 Exhibit Number 87. He has written in the
18 word "car" and placed his initials, L.M.D.
19 on that photograph.

20 THE COURT: Yes, sir.

21 MR. BRITT: And that I am
22 returning the photograph to the plastic
23 sleeve.

24 THE COURT: Yes, sir.

25 BY MR. BRITT:

1 Q I'm going to hand you what's been marked as
2 State's Exhibit Number 88. Ask you to use that
3 photograph to point out the following locations. The
4 motel, the intersection of 95 and 74, the area where
5 your car was parked in the wooded area, and the area
6 where the flea market that you referred to in your
7 testimony was located, and again, the area where the
8 car was parked on the night of July 23rd, 1993?

9 A Okay. This is the motel here.

10 THE COURT: Mr. Demery, again,
11 please keep your voice up so the court
12 reporter can hear you.

13 THE WITNESS: This is the motel,
14 this building right here, the abandoned
15 store. All right. Intersection 74, 95.
16 This little dirt road right here, this is
17 the road that I went up where my car was
18 parked. It was back off over this way, you
19 know, you couldn't see, you can't see the
20 area I was parked from here. Like I say,
21 this is the dirt road that I -- this is the
22 flea market. Right along in here is where
23 the car was parked at.

24 BY MR. BRITT:

25 Q If you'll tell the same thing to these

1 members of the jury.

2 A This is the motel, this is the store where
3 we were hiding out. Intersection of 74 and 95. Flea
4 market. This little dirt road right here is the road
5 that I used, went up with my car. I was parked over
6 here in the wooded area. Section right here is where
7 the car was parked.

8 THE COURT: Now, when you say the
9 car was parked, what car are you referring
10 to.

11 THE WITNESS: The Lexus.

12 Motel. We were at, attempting to rob
13 somebody. Here's the store where we were
14 hiding out. Intersection of 74 and 95.
15 This little dirt road right here, this is
16 the road I used to get back up to the spot
17 along the canal bank where I parked my
18 car. Flea market, this area right here
19 where the Lexus was parked.

20 BY MR. BRITT:

21 Q If you'll return to the witness stand.

22 MR. BRITT: May I approach the
23 witness?

24 THE COURT: Yes, sir.

25 BY MR. BRITT:

1 Q I want to show you what's been marked as
2 State's Exhibit Number 7, which is a clear plastic
3 bag that contains an item. The record will reflect
4 I'm removing the item from inside the bag marked as
5 State's Exhibit Number 7.

6 THE COURT: Yes, sir.

7 BY MR. BRITT:

8 Q I show you what's contained inside of
9 State's Exhibit Number 7, ask you to look at that and
10 tell me if you can identify it.

11 A This is the ring that Daniel took off
12 Jordan's finger out there in the cornfield.

13 Q Yesterday during your testimony you
14 described a ring that you thought was white gold with
15 a blue stone.

16 A Yes.

17 Q After you saw the defendant take that ring
18 off of the man's hand, did you have an opportunity at
19 a later time to look at the ring that the defendant
20 had removed from the man's hand?

21 A Yes, I did.

22 Q Were there any writings or markings on the
23 ring at the time you observed them?

24 MR. THOMPSON: Well, I object.

25 Repetitious.

1 THE COURT: Overruled. You may
2 answer.

3 THE WITNESS: Yes. This blue
4 stone in the top, NBA All-Star, '86 on the
5 side. I remember this NBA emblem here on
6 the side.

7 BY MR. BRITT:

8 Q Is there a name that appears above that
9 emblem?

10 A Yes, there is.

11 Q What name appears above that emblem?

12 A Jordan.

13 Q And the ring that was contained inside of
14 State's Exhibit Number 7, is it in substantially the
15 same condition today as it was when you first saw it
16 on July 23rd, 1993?

17 A Yes, it is.

18 Q After it was removed from the man's hand on
19 July 23rd, 1993, who maintained possession of that
20 ring?

21 A Daniel did.

22 Q At any time did he give you the ring, the
23 NBA All-Star ring?

24 A No.

25 Q At any time did you bury the NBA All-Star

1 ring?

2 A No, I didn't.

3 Q Show you what's previously been marked and
4 accepted into evidence as State's Exhibit Number 3.
5 Ask you to look at that and tell me if you can
6 identify it?

7 A It's a picture of the watch Daniel took off
8 Jordan the night we were out in the cornfield.

9 Q After you saw the defendant take a watch
10 off of the man in the car, who retained possession of
11 that watch?

12 A Daniel did.

13 Q At any time did you have possession of that
14 watch?

15 A Only time was out in the cornfield, and
16 that's when I read the inscription that was on the
17 back of it.

18 Q And what inscription did you read on the
19 back of that watch?

20 A "To Dad from Michael and Juanita."

21 Q After you read the inscription of that
22 watch, what if anything did you do with the watch?

23 A Gave it back to Daniel.

24 Q At any time did you throw the watch that
25 the defendant had taken off of the man in the car

1 away?

2 A No, I didn't.

3 Q At any time did you ever have the watch?

4 A No.

5 Q Show you a series of three photographs,
6 previously been marked and accepted as State's
7 Exhibit Number 4, State's Exhibit Number 5, and
8 State's Exhibit Number 6. On the night of July 23rd,
9 1993 -- first of all, do you recognize what is
10 contained in those photographs?

11 A No, sir, I don't.

12 Q At any time after July 23rd, 1993, did you
13 ever see a ring similar to the ones depicted in those
14 photographs?

15 MR. THOMPSON: Object.

16 THE COURT: Overruled. You may
17 answer yes or no.

18 THE WITNESS: No, I didn't.

19 BY MR. BRITT:

20 Q Show you what's previously been marked and
21 accepted into evidence as State's Exhibit 13, 14, ask
22 you to look at those photographs and tell me if you
23 recognize what is depicted in those photographs?

24 A That's the bridge where we dropped the
25 body, where Daniel and I dropped the body.

1 Q Can you use State's Exhibits 12 or 14 to
2 help you in illustrating your jury as to the location
3 where you and the defendant stopped the car and
4 dumped the body over the edge of the bridge?

5 A Yes.

6 MR. BRITT: Your Honor, at this
7 time, I ask that he be allowed to step
8 down.

9 THE COURT: Yes, sir.

10 THE COURT: Mr. Britt, have 12,
11 13 and 14 been proffered?

12 MR. BRITT: Yes, sir.

13 BY MR. BRITT:

14 Q Handing you State's Exhibit Number 14, can
15 you point out on State's Exhibit Number 14 at which
16 bridge you stopped and dumped the body over into the
17 swamp?

18 A I remember it as being this one.

19 Q You refer -- how many bridges are depicted
20 in that photograph?

21 A Two.

22 Q And you've pointed to one bridge. Showing
23 the photograph to the jury, can you point out the
24 bridge that you're referring to --

25 MR. THOMPSON: Object.

1 THE COURT: Sustained as to form.

2 BY MR. BRITT:

3 Q Can you use the photograph to point out the
4 bridge where you and the defendant stopped and dumped
5 the body into the swamp?

6 A Yes.

7 Q If you'll do that at this time?

8 A When you first asked me this, I pointed to
9 this bridge. This photograph was taken in the
10 opposite direction of the way we came. I was
11 mistaken. It's right here.

12 THE COURT: Mr. Demery, two
13 things. You're going to have to speak up
14 loudly for the court reporter to hear, and
15 the purpose of using the exhibit is to
16 illustrate your testimony to the jury, so
17 you're going to have to turn the exhibit
18 around and answer Mr. Britt's question.

19 Yes, sir.

20 BY MR. BRITT:

21 Q Can you use State's Exhibit Number 14 to
22 point to the bridge where you and the defendant
23 stopped and dumped the body over the edge into the
24 swamp?

25 A Yes, sir. I remember it as being this

1 bridge right here.

2 I remember dropping the body over beside
3 this bridge, this side.

4 This is the bridge, the side that I
5 remember dropping the body over.

6 Q If you'll return to the witness stand.

7 I'm going to hand you what's previously
8 been marked and admitted as State's Exhibit Number
9 9. Ask you to look at that photograph. Do you
10 recognize the person depicted in that photograph?

11 A Yes.

12 Q And how do you recognize the person
13 depicted in that photograph?

14 A The person in this photograph was the man
15 we dropped over the bridge that night, Daniel and I.

16 Q And the man depicted in the photograph
17 marked as State's Exhibit Number 9, is that the man
18 that was in the car on the morning of July 23rd, 1993
19 when you and the defendant approached the car?

20 A Yes, it is.

21 Q And the man depicted in the photograph
22 marked as State's Exhibit Number 9, is that the man
23 that you saw asleep in the car on the morning of July
24 with 23rd, 1993?

25 A Yes.

1 Q And the man depicted in the photograph
2 marked as State's Exhibit Number 9, is that the man
3 that you saw the defendant shoot on the morning of
4 July 23rd, 1993?

5 A Yes.

6 Q Again, I'm going to show you what's
7 previously identified as State's Exhibit Number
8 59-A. What if any gun did the defendant shoot the
9 man in the car with?

10 A This gun.

11 Q Referring to State's Exhibit Number 59-A?

12 A Yes, sir.

13 Q And is State's Exhibit Number 59-A the same
14 gun that was taken during the robbery at Lowry's
15 Texaco on --

16 MR. THOMPSON: Object.

17 THE COURT: Overruled. You may
18 answer.

19 THE WITNESS: Yes, it is.

20 BY MR. BRITT:

21 Q And is State's -- withdraw that.

22 MR. BRITT: Your Honor, at this
23 time, I ask that State's Exhibit 9 and
24 State's Exhibit 3 be published to the jury.

25 THE COURT: Counsel for the

1 defendant want to be heard?

2 Yes, sir,, Mr. Horne, if you will
3 publish State's Exhibits 3 and 9.

4 MR. BRITT: Your Honor, also
5 State's Exhibit Number 84.

6 THE COURT: And State's Exhibit
7 84 to the members of the jury. Ladies and
8 gentlemen, please recall my instructions,
9 you are to examine any exhibit given to you
10 individually and carefully and without any
11 comment. Yes, sir.

12 MR. BRITT: May I approach the
13 witness?

14 THE COURT: Yes, sir.

15 BY MR. BRITT:

16 Q Mr. Demery, I'll show you again State's
17 Exhibit Number 59, ask you to examine it. Do you see
18 any markings along the barrel?

19 A Yes.

20 Q Where along the barrel do you see any
21 markings?

22 A Around the middle ways up towards the top.

23 Q Are there any numbers that appear in that
24 same area?

25 A Yes.

1 Q Do you know how the markings that appear on
2 the barrel in the area of these numbers were made?

3 A You mean the scratch marks or the --

4 Q The scratch marks?

5 A Yes.

6 Q And how, to your knowledge, were those
7 scratch marks made on the barrel of this gun?

8 A Daniel used a chain saw file and was
9 scrubbing on it trying to get them off.

10 THE COURT: Trying to get what
11 off?

12 THE WITNESS: The numbers.

13 MR. BRITT: May I approach once
14 again to clear up a matter on the record?

15 BY MR. BRITT:

16 Q Mr. Demery, I previously identified this as
17 State's Exhibit Number 59. For the record, what is
18 the exhibit number that appears on the tag?

19 A 59-A.

20 Q You testified yesterday that there was some
21 golf clubs that were in the trunk of the Lexus?

22 A Yes.

23 Q What was done with the golf clubs that were
24 in the trunk of the Lexus?

25 A The last time I saw the golf clubs, Daniel

1 was taking them out of David's house and -- well,
2 that's the last time I saw them until just now, seen
3 them here, there on the floor.

4 MR. BRITT: May I approach?

5 THE COURT: Yes, sir.

6 BY MR. BRITT:

7 Q Let me show you what's been marked as
8 State's Exhibit Number 57, ask you to look at this
9 and tell me if you can identify it?

10 A That was one of the golf bags that were in
11 the trunk of the car.

12 Q How are you able to recognize the golf bag?

13 A By the color, and then --

14 Q Is there any other way?

15 A Yes, I remember on this side, when we first
16 came across the golf clubs, there was tape over the
17 name. And then when we got to Fayetteville, Daniel
18 had pulled it all off, and then it revealed Michael
19 Jordan's name on the bag.

20 Q Is State's Exhibit Number 57 in
21 substantially the same condition as when you last saw
22 it when the defendant was taking them out of David
23 Moore's trailer?

24 A Yes, minus the clubs that were in it.

25 Q I'll show you what has been marked as

1 State's Exhibit Number 58. Do you recognize this?

2 A Yes.

3 Q How are you able to recognize State's
4 Exhibit Number 58?

5 A That was the other golf bag that was in the
6 car, the Lexus.

7 Q Is State's Exhibit Number 58 in
8 substantially the same condition it was in when you
9 last saw it when the defendant took it out of David
10 Moore's trailer in Fayetteville?

11 A Yes.

12 MR. BRITT: May I have just a
13 minute?

14 THE COURT: Yes, sir.

15 BY MR. BRITT:

16 Q Mr. Demery, there in the area where the
17 body was dumped over the bridge, did you throw away
18 any type of .38 cartridge casing?

19 A No, sir, I didn't.

20 Q At any point, was the .38 caliber bullet
21 loaded or unloaded while you and the defendant were
22 in the Lexus?

23 MR. THOMPSON: Object.

24 THE COURT: Rephrase. Was
25 the .38 caliber bullet loaded or unloaded?

1 BY MR. BRITT:

2 Q Excuse me. At any point was the .38
3 caliber revolver loaded or unloaded while you and the
4 defendant were inside the red Lexus?

5 A Do you mean the whole time we had it?

6 Q Yes, sir.

7 A Yes, there was.

8 Q Who loaded or unloaded that .38 caliber
9 revolver while inside the red Lexus?

10 A The only person I remember for sure fooling
11 with the gun in any way inside the Lexus was Dee
12 Sullivan.

13 Q The box of bullets that was purchased at
14 C&R Pawn Shop, was it a particular brand of bullet?

15 A No, sir. The whole -- it was a box full of
16 reloads, there were several different types of
17 bullets inside.

18 Q To your knowledge, what is a reload?

19 A A cartridge that's been fired and then
20 repacked, done over again.

21 Q And do you recall what makes or types of
22 .38 caliber bullets were in the box that was
23 purchased at C&R Pawn Shop?

24 A Yes.

25 Q What --

1 THE COURT: The question assumes
2 facts not in evidence.

3 BY MR. BRITT:

4 Q Did you ever open the box of bullets that
5 was purchased at C&R Pawn Shop?

6 A Yes.

7 Q Did you ever examine the bullets that were
8 inside the box that was purchased at C&R Pawn Shop?

9 A Yes, I did.

10 Q And in examining the bullets, did you see
11 what makes of bullets were located in that box?

12 A Yes.

13 Q Based upon your examination of the bullets
14 that were contained in the box that was purchased at
15 C&R Pawn Shop, what makes of bullets were in that
16 box?

17 A I remember Federal, Winchester, Ruger.
18 That's all the names I can remember right off, and
19 then there were shorts and longs in there, too.

20 Q When you say there were shorts and longs,
21 what do you mean by that?

22 A Long bullets, you know, short bullets.

23 Q Did you and the defendant ever have any
24 conversation about the phone records that were being
25 made from the use of that cellular telephone?

1 A Yes.

2 Q When did you have that conversation and
3 what was said?

4 A Could you repeat the question again?

5 Q Did you and the defendant ever have any
6 conversation about the phone records that were being
7 made from the use of the cellular telephone in the
8 red Lexus?

9 A Records -- yes, yes.

10 Q When did you talk about the phone calls
11 that were being made and what was said?

12 A Again, first time Daniel picked it up, up
13 until the end of it, until we were arrested.

14 Q What if anything did you say to him about
15 the use of that phone?

16 A I had told him that if there were calls
17 made on the phone, that they, meaning police, you
18 know, law enforcement officers, had ways of finding
19 out.

20 Q Did he ever say anything about the phone
21 records or the phone calls?

22 A During that time, he was telling me I
23 didn't know what I was talking about and that he knew
24 how to get around things like that.

25 Q Now, on August the 13th, '93, you had a

1 telephone conversation with the defendant when he
2 told you he was going to Philadelphia, is that
3 correct?

4 A Yes.

5 Q During that conversation, did the cellular
6 telephone come up?

7 A Yes, there was, yes.

8 Q What was said about the cellular telephone
9 and who said it?

10 A Daniel said that by this time -- well, I
11 knew law enforcement would come to me, but Daniel was
12 telling me that he felt like they were coming, you
13 know -- he made the statement about I didn't make but
14 just one call, and that, you know, they couldn't
15 really say anything to me. He said that he was
16 thinking about going to Philadelphia with his mom,
17 and that he told me that I didn't have anything to
18 worry about, if anything else came up, he went to
19 prison or whatever for this, he told me that if I had
20 ever come in any kind of money, to look out for his
21 mom for him.

22 Q Did you ever call Melinda Moore or Dee
23 Sullivan and tell them to forget that they had seen
24 you and the defendant with the red Lexus?

25 A No, I didn't. But Daniel did.

1 Q Were you present when he did that?

2 A Yes, one time I was.

3 Q On August the 15th, 1993, police officers
4 came to your parents' home?

5 A Yes.

6 Q Did you leave with them?

7 A Not the first time they came.

8 Q Police officers come to your parents' home
9 on more than one occasion?

10 A Yes, they did.

11 Q Did there come a time on August 15th, 1993
12 that you left with the police officers?

13 A Yes.

14 Q Where did you go?

15 A Went to Robeson County Sheriff's
16 Department.

17 Q And at the Robeson County Sheriff's
18 Department, were you advised of your rights?

19 A When I first went in, I was told that they
20 just wanted to ask some questions, and then later --

21 MR. THOMPSON: Object.

22 THE COURT: Sustained.

23 BY MR. BRITT:

24 Q The Robeson County Sheriff's Department on
25 the morning of August 15th, 1993, did you answer

1 questions from various police officers?

2 A Yes, I did.

3 Q Were you questioned about the matters that
4 related to the red Lexus?

5 A Yes.

6 Q What was the first thing that you recall
7 telling the officers about the red Lexus?

8 MR. THOMPSON: Object.

9 THE COURT: Sustained.

10 Do you want to be heard, Mr. Britt?

11 MR. BRITT: No, sir.

12 BY MR. BRITT:

13 Q Mr. Demery, how many times have you talked
14 with police officers about this case?

15 A Three different times, I remember actually
16 sitting down discussing the whole thing.

17 Q The first time was when?

18 A At the Robeson County Sheriff's Department
19 that night.

20 Q When was the second time?

21 A Second time was in Fayetteville, at SBI lab
22 or office, during May -- first part of May, last
23 year, '95.

24 Q When was the third time?

25 A The third time was I came over here one

1 night and I was asked -- at first I was asked some
2 questions, there was some discrepancies about --

3 MR. THOMPSON: Object.

4 THE COURT: Sustained.

5 BY MR. BRITT:

6 Q Now, in April of 19 -- April 27th of 1995,
7 did you plead guilty to first degree murder and
8 conspiracy to commit armed robbery and to other
9 charges as it related to your involvement in the
10 death of James Jordan?

11 A Yes, I did.

12 Q As a result of the plea that you entered,
13 do you have some type of an agreement with the State
14 as far as any sentence that you may receive?

15 A Yes.

16 Q What if any agreement do you have with the
17 State as to any sentence that you might receive?

18 A That for all the crimes with the exception
19 of the murder, I would get 40 years.

20 Q As to the murder charge, is there any
21 agreement as to the sentence that you will receive in
22 that -- for that charge?

23 A No, sir, there's not.

24 Q What is your understanding of the possible
25 sentences that you face in connection with the murder

1 charge?

2 A I could -- I would either get life or
3 death.

4 Q As a part of your agreement in your guilty
5 plea, is that when you spoke with law enforcement
6 officers on the second occasion?

7 A Yes.

8 Q And as part of that agreement, were you
9 asked to tell the truth about the matters relating to
10 Mr. Jordan's death and other crimes?

11 A Yes, I was.

12 Q And in the second interview that you had
13 with law enforcement after you had entered your
14 guilty plea, did any portion of the events as they
15 related to Mr. Jordan's death change in the second
16 statement as -- than they were in the first
17 statement?

18 A Yes --

19 MR. THOMPSON: Object.

20 THE COURT: Sustained.

21 MR. THOMPSON: Request
22 instruction.

23 THE COURT: Members of the jury,
24 you're not to consider the last question
25 asked by counsel for the State, or the

1 answer, if one was given, by the witness.
2 Those matters are not to take any part in
3 your deliberations in this case in any
4 respect.

5 BY MR. BRITT:

6 Q As part of your agreement in your guilty
7 plea, were there crimes that you talked about that
8 you have not been charged with --

9 MR. THOMPSON: Object.

10 THE COURT: Ladies and gentlemen,
11 there's a matter of law the Court must take
12 up at this time out of the hearing and
13 presence of the jury. Please recall my
14 instructions in that regard, don't worry or
15 speculate about what takes place in the
16 courtroom in your absence. If all members
17 of the jury would step to the jury room,
18 please.

19 (Jury out at 10:38 a.m.)

20 THE COURT: Let the record show
21 the following is being heard in the absence
22 of the jury. For the record, Mr. Thompson,
23 what is the basis of the objection.

24 MR. THOMPSON: Your Honor, it
25 appears that Mr. Britt is getting into

1 matters that were subject to 404(b)
2 hearings which the Court has excluded
3 except for Mr. Demery, that was my
4 objection.

5 THE COURT: What 404(b) matters?

6 MR. THOMPSON: Evidence of the
7 other crimes. He asked -- the question
8 was, what -- as a result of a plea
9 agreement, did you discuss other crimes.
10 And, for example, the Rowland robbery was
11 something that the Court has ruled on. And
12 that was my concern about this line of
13 questioning.

14 THE COURT: Mr. Britt, do you
15 intend to get into this matter?

16 MR. BRITT: No, sir, what this
17 is, and I mean, this is to lessen the
18 impact of cross-examination about the plea
19 agreement.

20 THE COURT: That's why I
21 sustained the objection. That's what I
22 thought the objection was based on. You
23 can't bolster before there's been
24 impeachment. . You can't preemptively
25 strike.

1 MR. BRITT: I understand. I can
2 try -- you know as well as I do that
3 lawyers get up, they have a witness who has
4 a record, and what is the first thing out
5 of their mouth. What have you been tried
6 and convicted of, to lessen the impact on
7 cross.

8 THE COURT: I understand.

9 MR. THOMPSON: That's not the
10 first thing I'll ask this witness, I'll
11 assure you. He says the first thing
12 lawyers do is ask what they have been tried
13 and convicted of.

14 THE COURT: On the basis given,
15 the objection is overruled. Do you want to
16 be heard further?

17 MR. THOMPSON: Your Honor, the
18 other basis is he is trying to impeach his
19 own witness.

20 THE COURT: Anybody can impeach
21 anybody under 607, but what he's trying to
22 do ask preemptively strike, minimize the
23 damage that he anticipated is going to come
24 on cross-examination. And under common law
25 rules of evidence, you can't bolster before

1 there's been impeachment. You can't
2 rehabilitate before there's been
3 impeachment, which is essentially what he's
4 trying to do. Do you want to be heard?

5 MR. THOMPSON: For those grounds
6 we offer an objection.

7 THE COURT: The objection is
8 sustained.

9 Bring the jury in.

10 (Jury in at 10:42 a.m.)

11 THE COURT: The objection is
12 sustained.

13 Mr. Britt, any additional questions
14 for the witness.

15 MR. BRITT: Yes, sir.

16 BY MR. BRITT:

17 Q Mr. Demery, from July 15th, 1993, until you
18 were arrested on August 15th, 1993, did you have
19 access to any other .38 caliber revolver?

20 A No, I didn't.

21 Q To your knowledge, did the defendant have
22 access to any other .38 caliber revolver?

23 A Just the one that he had.

24 Q And the one he had, you've identified as
25 State's Exhibit Number 59?

1 A Yes.

2 Q Who shot James Jordan on July 23rd,
3 1993?

4 MR. THOMPSON: Object.

5 THE COURT: Overruled.

6 THE WITNESS: Daniel did.

7 BY MR. BRITT:

8 Q Who took the watch that he was wearing?

9 A Daniel did.

10 MR. THOMPSON: Object.

11 THE COURT: Overruled.

12 BY MR. BRITT:

13 Q Who took the ring that he was wearing?

14 MR. THOMPSON: Object,,

15 repetitive Your Honor, move to strike.

16 THE COURT: Overruled, denied.

17 A Daniel did

18 BY MR. BRITT:

19 Q Who wanted the red Lexus automobile?

20 MR. THOMPSON: Object, move to

21 strike.

22 THE COURT: Denied.

23 THE WITNESS: Daniel did.

24 MR. BRITT: If I could have just

25 a minute.

1 THE COURT: Yes, sir.

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. May we approach?

8 THE COURT: Yes, sir. Come on up
9 if you would, please, Mr. Court reporter,
10 with all counsel and Mr. Green.

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. Angus Thompson, and Mr.
19 Woodberry Bowen. Also present is the
20 defendant Daniel Andre Green, also known as
21 U'Allah. Yes, sir.

22 MR. THOMPSON: Wanted to request
23 a break at this time before start of
24 cross-examination. I mean, it's quarter
25 until 11:00. We've been in here since

1 9:30.

2 THE COURT: I'll accommodate
3 you. Anything further?

4 MR. BRITT: No.

5 THE COURT: 25 minutes.

6 (Bench conference concluded.)

7 THE COURT: Members of the jury,
8 it is a little bit early but we're going to
9 take the mid-morning recess at this time.
10 I'm going to give you until five after
11 11:00. Strike that. Let me give you until
12 ten after 11:00. Please recall at this
13 time that it is your duty to abide by all
14 prior instructions of the Court concerning
15 this recess, and if you would please
16 reassemble in the jury room at no later
17 than ten after 11:00. Everyone else please
18 remain seated, the members of the jury are
19 excused.

20 (Jury out at 10:46.)

21 THE COURT: Mr. Demery, you may
22 step down. Thank you, sir.

23 We're at ease until 11:10).

24 (Brief recess.)

25 THE BAILIFF: Remain seated,

1 quieted please, court is back in session.

2 THE COURT: Let the record
3 reflect all counsel are present, the
4 defendant is present in open court. Do
5 we've all members of the jury secured in
6 the jury room?

7 THE BAILIFF: Yes, we do.

8 THE COURT: Both counsel ready to
9 go forward?

10 MR. BRITT: Yes, sir, we are.

11 MR. THOMPSON: Yes, sir.

12 THE COURT: If you'll bring the
13 jury in, please, Mr. Horne.

14 (Jury in at 11:11 a.m.)

15 THE COURT: Mr. Demery, if you'll
16 again take the witness stand, sir.

17 Have a seat, please, the witness is
18 now with the defendant for
19 cross-examination.

20 CROSS-EXAMINATION

21 BY MR. THOMPSON:

22 Q Good morning, Mr. Demery.

23 A Hello.

24 Q Mr. Demery, you are 20 years old, is that
25 right?

1 A Yes, sir, yes.

2 Q And you understand that you're under oath
3 testifying, you understand that?

4 A Yes, sir, I fully understand that.

5 Q Yes, sir. And now, prior to August the
6 15th of 1993, you lived with your parents off of
7 Highway 710, is that right?

8 A Yes.

9 Q And you testified on direct examination
10 yesterday that since that time, you lived at the
11 Robeson County Detention Center, is that right?

12 A Yes, sir.

13 Q And but after your conviction in April of
14 1995, you lived approximately six months in the North
15 Carolina Department of Corrections, did you not?

16 A Yes, I did.

17 Q So for six months then, you lived in the
18 Department of Corrections, and there was something
19 about the North Carolina Department of Corrections,
20 that the living conditions there, that caused you to
21 want to move back to the Robeson County Detention
22 Center, is that right?

23 A Yes, sir.

24 Q Now, while at the Robeson County Sheriff's
25 Department, after moving back -- well, strike that.

1 At the Robeson County Sheriff's Department while you
2 were being housed there, you were allowed to go home?

3 A Yes, I was.

4 Q When you went home, you were allowed to eat
5 dinner there at your house, weren't you?

6 A Yes, sir, I was.

7 Q When you went home -- it was Sheriff Stone
8 who allowed you to do this, isn't that right?

9 A Yes.

10 Q When you went home, you were allowed to --
11 did you see Angela McClain?

12 A Yes, she --

13 Q I'm sorry --

14 A Yes, sir, she was there.

15 Q Now, is she in the courtroom?

16 A Yes, she is.

17 Q Where is she?

18 A Sitting on the first row to the right side
19 over here, second to last.

20 Q Is that your mother sitting next to
21 Ms. McClain?

22 A On the very end.

23 Q And when you went home, you -- were you
24 allowed to see your baby?

25 A Yes, sir, she was there, too.

1 Q And when was your baby born?

2 A She was born September 22nd of '93.

3 Q And when you went home, you were there at
4 your mother's house, was your father there?

5 A Yes, he was.

6 Q And you stayed there for how long there at
7 your house?

8 A An hour and a half.

9 Q And during that entire hour and a half,
10 Angela McClain was there?

11 A Yes.

12 Q Now, Angela McClain is, and still is your
13 fiancée?

14 A Yes, she is.

15 Q She was your fiancée back in July of 1993?

16 A Yes, she was.

17 Q And how long had she been your fiancée back
18 in July of 1993?

19 MR. BRITT: Objection to the
20 relevance.

21 THE COURT: Relevance?

22 MR. THOMPSON: I'll withdraw the
23 question.

24 BY MR. THOMPSON:

25 Q And she was -- when you visited your home

1 while being housed at the Robeson County Detention
2 Center when Angela McClain was there, your baby was
3 there, what law enforcement officers were with you?

4 A There was one, Bobby Deese.

5 Q And were you handcuffed?

6 A I was shackled the whole time.

7 Q But no handcuffs?

8 A No, sir.

9 Q Now, in July of -- prior to July of 1993,
10 you were driving a Ford Tempo?

11 A Yes, I was.

12 Q Now, you were buying this car from Angela's
13 father?

14 A No, from --

15 Q Who were you buying the car from?

16 A Angela's mother. The car was in Angel's
17 name, but her mother had purchased it, used her
18 money, and I was paying her mother back for it.

19 Q And Angel was living in the house there
20 with her mother and her stepfather?

21 A Yes, sir, during that time she was.

22 Q And the stepfather, what's his name?

23 A Eugene Talmadge Gentry.

24 Q Is that who you were working with escorting
25 trailers?

1 A Yes, it was.

2 Q And Mr. Gentry and you weren't the best of
3 friends, were you?

4 MR. BRITT: Objection to the
5 relevance.

6 THE COURT: Mr. Thompson?

7 MR. THOMPSON: I'll withdraw that
8 at this time.

9 THE COURT: Okay.

10 BY MR. THOMPSON:

11 Q Now, when did you first started driving the
12 Ford Tempo?

13 MR. BRITT: Objection.

14 THE COURT: Overruled. You may
15 answer.

16 THE WITNESS: I remember it being
17 around May, May of '93.

18 BY MR. THOMPSON:

19 Q May of 1993. What year Ford Tempo was
20 that?

21 A '84.

22 Q And prior to driving the Ford Tempo, you
23 owned a 1986 Grand Am?

24 A Yes.

25 Q And how long did you drive the 1986 Grand

1 Am?

2 A When I turned 16 in '92, I got my
3 driver's licence -- no, '91, excuse me.

4 Q What month?

5 A August 3rd.

6 Q So you started driving the Grand Am in
7 August of 1991?

8 A Yes.

9 Q And did you drive the Grand Am until May of
10 1993?

11 A As long as it was working, yes.

12 Q And I believe you also had an interest in a
13 Ford Escort, isn't that right?

14 MR. BRITT: Objection to form.

15 BY MR. THOMPSON:

16 Q Did you own a Ford Escort?

17 A It was in my and Angela's name, but we were
18 paying for it, having it fixed and everything, so I
19 considered it being mine and hers together.

20 Q When did you purchase the Ford Escort?

21 A This car was bought -- I remember it being
22 around January, first of January, '93, maybe December
23 of '92. I remember -- the Escort, I had it before
24 then, excuse me about that. I had this car, we were
25 driving this car in September of '92. Because I

1 remember now going to a concert driving this car.

2 Q And that car, the Ford Escort was a 1984
3 Ford Escort, is that right?

4 A No, sir, it was an '86.

5 Q Now, what kind of car did your mother own
6 back in -- before June of 1993?

7 MR. BRITT: Objection to
8 relevance.

9 THE COURT: Mr. Thompson?

10 MR. THOMPSON: Your Honor, I mean
11 it's -- goes to -- the question is whether
12 he was driving it, if you'll let me --
13 allow the line of question, what other cars
14 he was driving back during that time.

15 THE COURT: It's
16 cross-examination, I'm going to allow it.

17 BY MR. THOMPSON:

18 Q What kind of car was your mother driving?

19 A She didn't own a car at that time. She
20 owned a 93 Nissan pickup truck.

21 Q And what kind of vehicle did your father
22 drive?

23 A My father hasn't had a driver's license in
24 over ten years. He didn't -- he owned a pickup
25 truck, but he never drove it. It was a '78 GMC, baby

1 blue color.

2 Q Well, now, prior to June or July 19, 1993
3 you were driving your mother's car unbeknownst to her
4 on several occasions?

5 A I didn't fully understand the question.
6 Could you repeat it?

7 Q Well, you would drive your mother's car,
8 wouldn't you?

9 A The truck?

10 Q Yes.

11 A Every now and again.

12 Q Well, now, and you would drive it without
13 her permission, wouldn't you?

14 A Not the pickup truck.

15 Q What other car did she own if any other
16 vehicle?

17 A Like I said, at the time that you're
18 speaking about, she owned a truck, a Nissan, that was
19 it.

20 Q You mean prior to July of 1993?

21 A Prior to -- she had given me her car
22 in '91. That was the Grand Am.

23 Q Okay. In June of 1993, you saw the
24 defendant over to your mother's house?

25 A Yes, I did.

1 Q And you introduced him to your fiancée,
2 Angel?

3 A Yes, sir.

4 Q And she was pregnant at the time, carrying
5 your child?

6 A Yes.

7 Q And how long had you and Angel been
8 engaged?

9 A Since Christmas Eve of '92.

10 Q Had you set a date to get married?

11 MR. BRITT: Objection to the
12 relevance.

13 THE COURT: Overruled. You may
14 answer.

15 THE WITNESS: There was one time
16 we had set a date. I don't remember
17 exactly when it was, but we had plans to go
18 down to Dillon, South Carolina and get
19 married. But that changed, and we decided
20 we wanted to live together for a while and
21 see how things worked out.

22 BY MR. THOMPSON:

23 Q Now, you discussed with the defendant back
24 then on the day that you met him that you were in
25 trouble with the law?

1 A Yes.

2 Q There were three breaking and entering and
3 larceny charges pending against you?

4 A Yes, there was.

5 Q And these three breaking and entering and
6 larcenies you had committed, is that right?

7 A Two of them.

8 Q Now, back on September the 15th of 1991,
9 one of those breaking and entering and larceny was
10 David Mitchell's Union Mini Market?

11 A Yes, it was.

12 Q Among the several items that you stole back
13 there was a Harley Davidson hat?

14 A Yes.

15 Q Cigarettes?

16 A Cigarette lighters.

17 Q All right. No cigarettes?

18 A If there was, there was only a few -- I
19 don't remember for sure.

20 Q And back then on September 15th of 1991,
21 when you broke in to David Mitchell Locklear's Union
22 Mini Mart there were four individuals with you?

23 A Yes.

24 Q There was Durrance Jacobs?

25 A Yes, there was.

1 Q Chad Bullard?

2 A Yes.

3 Q There was Randy Stewart?

4 A Yes.

5 Q And Michael Lowry?

6 A Yes.

7 Q Now, where is Union Mini Mart located?

8 A Located on Highway 710, directly across the

9 road from Union Elementary School.

10 Q You lived on 710, didn't you?

11 A Yes.

12 Q Back on September 15th of 1991?

13 A Yes.

14 Q How far was' the Union Mini Mart from where

15 you lived?

16 A Roughly a mile, mile at the most.

17 Q And then back in January the 14th of 1992,

18 you broke into Larry Oxendine's residence, that was

19 one of the breaking and entering and larcenies, was

20 it not?

21 MR. BRITT: Objection, .

22 THE COURT: Basis?

23 MR. BRITT: 608, 609.

24 MR. THOMPSON: Testified to it --

25 THE COURT: The objection is

1 sustained under Rule 609.

2 BY MR. THOMPSON:

3 Q Well, you testified on direct examination
4 that you had three breaking and entering and larceny
5 charges against you, didn't you?

6 A Yes.

7 Q And one of them was Larry Oxendine's
8 residence, wasn't it?

9 A Yes.

10 Q And that was on January the 14th of 1992?

11 A Yes, as best as I can remember it was
12 around that time.

13 Q And you -- on September the 15th of 1991,
14 you broke into Viola's Locklear's store?

15 A No, I didn't.

16 Q You pled guilty to breaking into Viola
17 Locklear's store?

18 A Yes, I did.

19 Q She was doing business as Joan's Grocery?

20 A Yes.

21 Q And you pled guilty to stealing cigarettes
22 among other items, didn't you?

23 A I don't remember what was supposed to have
24 came out of that store, but yes, I did plead guilty
25 to it, but I did not break into that store.

1 Q And the persons who were with you were
2 Timothy Jacobs?

3 A No.

4 Q All right. You know Timothy Jacobs?

5 A Yes.

6 Q You know Stephens Jacobs?

7 A Yes.

8 Q You know Joy Shawn Jacobs?

9 A Yes.

10 Q And Michael Lowry?

11 A Yes.

12 Q Now, you -- back in October of 1992,
13 Mr. Demery, there was an assault charge pending
14 against you, wasn't there?

15 MR. BRITT: Objection to the
16 form.

17 THE COURT: Sustained.

18 BY MR. THOMPSON:

19 Q You testified on yesterday --

20 THE COURT: Ladies and gentlemen,
21 there's a matter of law the Court must take
22 up at this time out of the hearing and
23 presence of the jury. Please recall my
24 instructions in that regard, don't worry or
25 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 please.

4 (Jury out at 11:29 a.m.)

5 THE COURT: Let the record
6 reflect the following is being heard in the
7 absence of the jury.

8 For the record, if you'll state the
9 basis of the objection.

10 MR. BRITT: Your Honor, the basis
11 of the objection is rule 609. He can ask
12 Mr. Demery what he's been tried and
13 convicted of in the last 60 days that
14 carries -- that's the proper form of
15 question.

16 THE COURT: We've got potentially
17 two areas of cross-examination that I think
18 are being interwoven here, 608-B and 609-B.
19 Under 608-B you can ask the witness about
20 specific acts of conduct, but those acts
21 have to relate to truthfulness or
22 untruthfulness as defined by our case law.

23 Now, our case law is somewhat -- it's
24 different from the Federal case law in that
25 respect.

1 Under 609, you can establish that
2 there has been a prior conviction if it
3 meets the requirements of the rule. And
4 under 609, you're entitled to establish the
5 date of the conviction, the place or court
6 where the conviction was obtained, the
7 sentence that was imposed, but you can't go
8 into matters beyond that. Okay? And
9 potentially, what we're getting into are
10 matters of who was with you, which is not
11 admissible under 609. May go to
12 credibility in some way under 611-B, but
13 there's no showing of that before me at
14 this time. So I need to know where you're
15 going and what rule you're relying on.

16 MR. THOMPSON: Your Honor, first
17 of all, we ask under 608 we be allowed to
18 question with respect this offense --

19 THE COURT: So your contention is
20 any larceny offense, any theft offense is
21 such an offense as ^{with} defined by 608-B.

22 MR. THOMPSON: Yes, sir, goes to
23 truthfulness, yes, sir.

24 THE COURT: Well, there's some
25 discretion in that in terms of crimes of

1 dishonesty being crimes related to
2 truthfulness or to deceit. I'm going to
3 allow it as relates to any theft offense.

4 MR. THOMPSON: And thank you,
5 Your Honor. Having done that, you ruled
6 the offense, and I'm about to ask about,
7 which was an assault charge, there was also
8 a robbery charge --

9 THE COURT: Yes, sir.

10 MR. THOMPSON: -- And that was
11 the offenses I was getting into.

12 THE COURT: Was there a
13 conviction in that case?

14 MR. THOMPSON: Yes, he pled
15 guilty.

16 THE COURT: What did he plead
17 guilty to?

18 MR. THOMPSON: Pled guilty 20
19 year felonious assault with a dangerous
20 weapon with intent to kill, and pled guilty
21 to robbery with a dangerous weapon.

22 THE COURT: The question was
23 couched in language that suggested you were
24 proceeding under 608-B. Are you proceeding
25 under 608-B or 609?

1 MR. THOMPSON: At this time,
2 under 608. He's testified -- that's what I
3 at this time --

4 THE COURT: As to the assault?
5 How is the assault related to truthfulness
6 or untruthfulness?

7 MR. THOMPSON: Well, it was a
8 part of the robbery, the assault occurred
9 during the robbery --

10 THE COURT: You have to go after
11 609.

12 MR. THOMPSON: Well, the robbery,
13 then, Your Honor, I suggest to you, would
14 go to truthfulness.

15 MR. BRITT: Robbery is a crime of
16 violence in the state.

17 THE COURT: The objection is
18 sustained. You could ask him under 609.
19 Note the defendant's exception to the
20 ruling of the court. If you'll bring the
21 jury back in. I'm sorry -- Mr. Horne --

22 MR. THOMPSON: Before he does
23 that, he admitted that at least yesterday,
24 that these were charges that he discussed,
25 and I -- rather than go into the details

1 about it, I just want to ask, I want to
2 remind the Court that he did testify that
3 there were three breaking and entering.

4 THE COURT: What he testified to
5 is what he pled to, and that there was some
6 discussion of charges generically.

7 MR. THOMPSON: As I recall, he
8 testified that there were pending charges,
9 and these were among the pending charges.

10 THE COURT: You can't go into the
11 details, Mr. Thompson. You ask him about
12 the conviction under 609-B. If you feel
13 something is admissible under 608-B, let me
14 know what you're relying on, what rule of
15 evidence you're relying on. If you think
16 it's something that goes to credibility
17 under 611-B, let me know that.

18 MR. THOMPSON: I understand your
19 ruling. I'm not going to go into details
20 but I intend to question him about those
21 being the pending charges.

22 THE COURT: Put your questions to
23 him on voir dire.

24 BY MR. THOMPSON:

25 Q Among those other charges that were pending

1 against you was an assault charge, is that
2 right?

3 THE COURT: The objection to a
4 pending charge would be sustained.

5 MR. THOMPSON: Your Honor, he
6 testified to it yesterday.

7 THE COURT: Well, then you have
8 to put it in context.

9 BY MR. THOMPSON:

10 Q Did you testify yesterday that one of the
11 charges that was pending against you was an assault
12 charge, Mr. Demery?

13 A Yes, I was asked.

14 Q Did you testify one of the charges pending
15 against you was an armed robbery charge?

16 A Yes, I did.

17 THE COURT: That's as far as you
18 need. Then you need to put it in context
19 and argue that they opened the door.

20 Okay?

21 MR. THOMPSON: Yes, sir.

22 THE COURT: Bring the jury back
23 in, please, Mr. Horne.

24 (Jury in at 11:35 a.m.)

25 THE COURT: The objection to the

1 question as phrased is sustained.

2 Mr. Thompson, you may rephrase or ask
3 additional questions.

4 MR. THOMPSON: Yes, sir. Thank
5 you, Your Honor.

6 BY MR. THOMPSON:

7 Q Mr. Demery, you testified yesterday that
8 one of the charges pending against you --

9 THE COURT: Put it in context.

10 According to what you contend the testimony
11 was yesterday. Who did he discuss it with
12 according to his testimony, Mr. Thompson?

13 MR. THOMPSON: Your Honor, may I
14 be heard?

15 THE COURT: Members of the jury
16 if you'll step out, please. Don't worry or
17 speculate about what takes place in the
18 courtroom in your absence.

19 (Jury out at 11:36 a.m.)

20 THE COURT: Again, the following
21 is being heard in the absence of the jury.
22 Mr. Thompson, the context of the testimony
23 yesterday was that when shortly after
24 Mr. Green returned to the -- on June 1993
25 that he had a discussion with Mr. Green;

1 that in that discussion with Mr. Green he
2 discussed certain charges pending against
3 him. So rather than run the risk of then
4 objecting, because it's not coming in in
5 the context that you contend it is because
6 you opened the door, you have to put it in
7 context. If you want to ask a 609
8 question, then you're going to have to ask
9 a 609 question in terms of what he's
10 convicted of. If you want 609-B, you have
11 to show there's some foundation for it
12 under 609-B.

13 MR. THOMPSON: Foundation was
14 laid yesterday during the direct
15 examination.

16 THE COURT: What did he testify
17 to yesterday, what is the foundation?

18 MR. THOMPSON: He's testified to
19 what you just said.

20 THE COURT: Yes, sir, but what
21 was your question?

22 MR. THOMPSON: My question was
23 basically the same one I asked on voir
24 dire.

25 THE COURT: And I sustained it

1 earlier. You got to put it in context.

2 MR. THOMPSON: Well, Your Honor.

3 THE COURT: Am I confusing you?

4 I don't mean to.

5 MR. THOMPSON: No, sir, but Your
6 Honor, I mean, the witness testified
7 yesterday as to these matters, the jury has
8 heard the context in which he testified.
9 I'm simply asking --

10 THE COURT: Let's assume for a
11 moment that there had been no testimony
12 yesterday. Okay. Is it a permissible
13 question to ask a witness, weren't you
14 charged with? Is that permissible?

15 MR. THOMPSON: No, if there had
16 been no testimony.

17 THE COURT: Then the testimony is
18 what allows it to come in, is that
19 correct?

20 MR. THOMPSON: Yes, sir, the
21 testimony.

22 THE COURT: Then you have to put
23 it in context of the testimony for purpose
24 of cross-examination.

25 MR. THOMPSON: And Your Honor, I

1 understand what you're saying. You want me
2 to include in that question that he was --
3 he was discussing with Mr. Green his
4 charges when he made the comment, but I
5 mean, that's in evidence. And I'm not -- I
6 understand Your Honor's ruling, but I don't
7 see -- since the matter is in evidence, and
8 to be quite frank with you, my reason for
9 not saying it is he's trying to stay away
10 from opening anything that I'm not saying
11 that I would, but that --

12 THE COURT: I certainly
13 appreciate that, but if you ask the
14 question in the way you're asking it, I
15 don't know and the record doesn't
16 necessarily reflect the context in which
17 the question is being asked. If the record
18 doesn't reflect that, then as ordinarily it
19 would be, it is an objectionable question.

20 MR. THOMPSON: Yes, sir, Your
21 Honor. I'll except to Your Honor's ruling
22 but I'll ask it --

23 THE COURT: For the third time,
24 the exception is noted for the record.

25 MR. THOMPSON: Yes, sir, thank

1 you.

2 THE COURT: Yes, sir. Are we
3 clear?

4 MR. THOMPSON: Yes, sir.

5 THE COURT: Bring the jury in,
6 please, Mr. Horne.

7 (Jury in at 11:40 a.m.)

8 THE COURT: Again, members of the
9 jury, the objection to the question as
10 phrased is sustained.

11 Mr. Thompson, you may ask additional
12 questions or you may rephrase.

13 MR. THOMPSON: Thank you, Your
14 Honor.

15 BY MR. THOMPSON:

16 Q Mr. Demery, you testified yesterday that
17 when discussing the trouble that you were in and the
18 pending charges against you, that one of those
19 charges was an assault charge, is that correct?

20 A Yes.

21 Q And you also testified that one of those
22 charges was an armed robbery charge, is that correct?

23 A Yes, I did.

24 Q All of these having occurred prior to June
25 of 1993, is that right?

1 A Yes, sir.

2 Q In the fall of 1991, did you know an
3 individual by the name of Daniel Oxendine?

4 MR. BRITT: Objection.
5 Relevance.

6 THE COURT: Overruled.

7 BY MR. THOMPSON:

8 Q You may answer it?

9 A Yes, I did.

10 Q And Daniel Oxendine was a friend of yours,
11 was he not?

12 A Yes.

13 Q And prior to June -- in fact, in the fall
14 of 1991, did you -- you and Daniel Oxendine robbed a
15 Charles Pierce at a dumpster across from --

16 MR. BRITT: Objection.

17 THE COURT: Sustained. Members
18 of the jury, you are not to consider the
19 last question by Mr. Thompson. That matter
20 is not to take any part in your
21 deliberations in this case in any respect.

22 BY MR. THOMPSON:

23 Q Did you know an individual by the name of a
24 Pitt Bear or Pitt Berry back in 1991, Mr. Demery?

25 A No, I didn't.

1 Q Do you know where Chavis Park is in
2 Pembroke, North Carolina?

3 A Yes, right as -- located right across the
4 highway from Pembroke Junior High School.

5 Q Now, you indicated that you had been
6 working, providing escorting with Angela, your
7 fiancée's stepfather, is that correct, back in 1993?

8 A Yes.

9 Q And he was working for Crestline Mobile
10 Home?

11 A Yes.

12 Q And that was located, Crestline Mobile
13 Home, what is the name of that business, do you know?

14 A Crestline Mobile Home Manufacturers.

15 Q And that was located in McColl, South
16 Carolina?

17 A No.

18 Q Where was it located?

19 A Laurinburg, North Carolina around the Hasty
20 area.

21 Q And how long had you been providing escorts
22 working for your fiancée's stepfather?

23 A I started, best I can remember, around last
24 part of November, maybe December of '92.

25 Q And what kind of work were you doing prior

1 to providing escorts, Mr. Demery?

2 A Whatever I could find, pretty much.

3 Q Well, what were you finding?

4 A Well, as far as the last job I had actually
5 gotten a paycheck came from a -- I worked for this
6 guy by the name of McKeithen Jones, and he had a
7 little business where he had contracts with the
8 State, and the type of work he did, he made -- like I
9 said, he made agreements with the State when new
10 highways were being made, his job was to go around
11 planting the grass that's on the side of the road
12 that you see alongside the interstates, and he had a
13 little steel construction business.

14 Q And Mr. Demery, how long did you work for
15 McKeithen Jones?

16 A Well, from the time that -- from the first
17 time I worked for him -- it didn't last longer than a
18 month and a half as best I can remember.

19 Q When was that?

20 A Well, prior to beginning work with my
21 fiancée's stepfather.

22 Q So that would have been in 1992?

23 A Yes.

24 Q What month?

25 A Around September, October.

1 Q Prior to working for McKeithen Jones in
2 1992 where were you employed?

3 MR. BRITT: Objection to
4 relevance.

5 THE COURT: Overruled.

6 BY MR. THOMPSON:

7 Q You may answer.

8 A I worked at a McDonald's, the one here in
9 Lumberton on West Fifth Street.

10 Q How long did you work at McDonald's?

11 A I only stayed there about three months.

12 Q That was 1992?

13 A No, that was in '91.

14 Q What months did you work in 1991 in
15 McDonald's?

16 A I began in August, September, October --
17 when I turned 16, got my license, that's the time
18 that I started working at McDonald's.

19 Q So August, September, and October you were
20 working at McDonald's in 1991?

21 A At -- best I can remember that was the
22 months that I was there.

23 Q All right. You were working at McDonald's
24 at September the 15th of 1991, then, is that correct?

25 A Best as I can remember.

1 Q And on January 14th -- or in January of
2 1992, you were unemployed?

3 A There was a -- pretty much the whole time,
4 like, speaking about the period of time that you're
5 talking about --

6 Q Now, what period are you talking about? .

7 A From the time I started working at
8 McDonald's, and then --

9 Q From September -- I mean August of
10 1991?

11 MR. BRITT: Objection to
12 Mr. Thompson cutting him off.

13 BY MR. THOMPSON:

14 Q I'm sorry, go ahead.

15 A From McDonald's to McKeithen's, there was
16 one time I worked for another guy, he lived in
17 Pembroke, I -- I remember his name as being -- Gene
18 Marshall, I don't remember his last name. He owned a
19 steel construction company. I worked with him a
20 little while. But I was always doing something, you
21 know, other than crime, you know, there were other
22 jobs, so I did that a lot of times there wasn't a
23 paycheck coming, but it was money being paid out
24 under the table, you know, reason being for that, you
25 know, taxes and all.

1 Q How much money did you get under the
2 table?

3 MR. BRITT: Objection to the
4 relevance.

5 THE COURT: Overruled.

6 THE WITNESS: How much money did
7 I get under the table?

8 BY MR. THOMPSON:

9 Q Yes, did you make under the table as you
10 testified?

11 THE WITNESS: Difficult to answer
12 this question.

13 THE COURT: Under 608-B, yes you
14 do.

15 THE WITNESS: There was time maybe
16 \$200, \$300. It was not -- it wasn't
17 illegal activities. It was legal jobs, but
18 like I said, the way I was getting paid,
19 and it was illegal, because the money
20 wasn't being taxed.

21 BY MR. THOMPSON:

22 Q I understand. And you say that you were --
23 you had these jobs making money under the table other
24 than the crimes that you were committing?

25 A Yes, sir, I did.

1 Q And you were committing crimes back in --
2 in September and August, 1991 --

3 MR. BRITT: Objection.

4 THE COURT: Sustained as to the
5 form.

6 BY MR. THOMPSON:

7 Q The crimes that you referred to as you were
8 committing -- strike that. Mr. Demery, have you ever
9 been to the Sands Motel in Rowland?

10 MR. BRITT: Objection to the
11 relevance.

12 THE COURT: Overruled. You may
13 answer, sir.

14 THE WITNESS: I don't even know
15 the place you're talking about.

16 BY MR. THOMPSON:

17 Q Have you ever been to any motel in
18 Rowland?

19 MR. BRITT: Objection.

20 BY MR. THOMPSON:

21 Q With respect to the Sands Motel -- I'll
22 withdraw that question.

23 THE COURT: Okay.

24 MR. THOMPSON: Withdraw the
25 question.

1 THE COURT: Yes, sir.

2 BY MR. THOMPSON:

3 Q Mr. Demery, did you ever work for anyone
4 catching chickens? Do you know who I mean when I say
5 catching chickens?

6 A Mr. Thompson, I wouldn't really call that
7 work. Daniel and I did it one time. And that was
8 it.

9 Q What is that, catching chickens?

10 A Well, exactly what it sounds like, catching
11 chickens.

12 Q Tell us what that is?

13 A Well, okay. It was under contract with
14 some man, I don't remember this guy's name, but he
15 was under contract with Perdue, and what we did that
16 night, had these hen houses, okay. What we had to
17 do, had to -- we had to wait until it was dark.
18 Something about, you know, so the chickens would be
19 calm and cool and all.

20 Q That's when the chickens sleep?

21 A No, that's when they are just standing
22 around.

23 Q All right. Go ahead.

24 A And we had to go inside these hen houses
25 and catch these chickens and put them inside crates,

1 and then the crates were loaded onto a truck, and
2 taken off to the companies to be cut up, cleaned, you
3 know.

4 Q All right. Now, when you did this, that
5 was up in Rockingham area, is that right?

6 A Yes, it was.

7 Q There was another black male that you were
8 working with doing this kind of work, was there
9 not?

10 MR. BRITT: Objection.

11 THE COURT: Overruled.

12 BY MR. THOMPSON:

13 Q You may answer?

14 A There were several black males.

15 Q Well, wasn't there a black male by the name
16 of Godfather who was working with you catching
17 chickens that night?

18 MR. BRITT: Objection.

19 THE COURT: Do you want to be
20 heard as to relevance, sir?

21 MR. THOMPSON: Yes, sir.

22 THE COURT: Ladies and gentlemen,
23 there's a matter of law the Court must take
24 up. Don't worry or speculate about what
25 takes place in the courtroom in your

1 absence. If you'll step to the jury room,
2 please.

3 (Jury out at 11:53 a.m.)

4 THE COURT: The following is
5 being conducted in the absence of the
6 jury. Mr. Thompson?

7 MR. THOMPSON: Your Honor, I'm
8 trying to, first of all, establish who he
9 was with. He's testified that he and the
10 defendant did this one night, and I'm
11 trying to establish who else was with him,
12 particularly if this individual was known
13 to him by the name of Godfather, and if not
14 by any other name. That's where I intend
15 to go with it.

16 THE COURT: How is that
17 relevant?

18 MR. THOMPSON: Well, Your Honor,
19 it will be relevant later on, because --
20 I'm trying to identify this individual.

21 THE COURT: Okay. The case law
22 on third party guilt, which I think is
23 where you're going, I don't know, but it's
24 sounds to me like what you're attempting to
25 do at some point down the road is to

1 establish that if this witness committed
2 the offenses that are now before this court
3 and jury, that there exists a possibility
4 that he committed these offenses with
5 someone other than the defendant.

6 MR. THOMPSON: Well, that may be
7 true, but that's not why I'm offering
8 this. I may --

9 THE COURT: How is it relevant to
10 this case?

11 MR. THOMPSON: Well, because --
12 and again, Your Honor, I'm trying to show
13 the connection between Mr. Demery and this
14 individual, knowledge of this individual --

15 THE COURT: How is any of that
16 relevant to any of the issues?

17 MR. THOMPSON: May I be heard?

18 THE COURT: Yes, sir.

19 MR. THOMPSON: Knowledge of this
20 individual. We have a good faith basis for
21 asking this question --

22 THE COURT: You're going to have
23 to reveal it to me before I'm going to let
24 this line be pursued.

25 MR. THOMPSON: Yes, sir. And I'm

1 getting ready to do that, Your Honor.

2 THE COURT: Thank you.

3 MR. THOMPSON: That Mr. Demery
4 was in the presence of this individual
5 during the month of July and June, that he
6 was seen with this individual leaving
7 Mr. U'Allah's residence, the defendant's
8 residence, during this period of time, that
9 this individual and Mr. Demery along with
10 other folks -- or Mr. Demery had in his
11 possession a firearm while in the presence
12 of this individual and other folks. That
13 is what I'm trying to establish -- that's
14 the relevance.

15 THE COURT: Third party guilt.

16 MR. BRITT: Yes, sir.

17 MR. THOMPSON: No, sir, Your
18 Honor, it goes also for impeachment.
19 Mr. Demery has testified that he has never
20 had in his possession a .38 caliber other
21 than State's Exhibit 59-A. We're intending
22 to try to establish that that's not true.
23 And this goes to impeachment. And as to
24 the parties who were present when he had
25 such a weapon in his possession, we're

1 trying to -- want to establish, through
2 witnesses who we know exist, that he had
3 such a weapon. And we're trying to
4 establish who was -- through him, who was
5 present.

6 Now he can deny it, but that's the
7 relevance. And it's certainly relevant on
8 impeachment. He's denied that he had a .38
9 caliber weapon.

10 THE COURT: I haven't heard --

11 MR. THOMPSON: Other than --

12 THE COURT: I haven't heard any
13 questions about .38 weapon. What I heard
14 is about the chickens and the Godfather.

15 MR. THOMPSON: Well, maybe he can
16 remember who this individual is because of
17 the chickens and the Godfather. He denied
18 on voir dire, if you recall, Your Honor,
19 the other day that he did not know a
20 Godfather. I asked about a person by the
21 name of Godfather.

22 THE COURT: For a moment I
23 thought you were attempting to establish
24 under 608-B that he committed an act of
25 deception by sneaking up on the chickens

1 during the nighttime while they were
2 resting.

3 MR. THOMPSON: Well, among his
4 other escapades, I don't know that he
5 steals chickens; I know he steals
6 everything else.

7 MR. BRITT: Object to that last
8 comment.

9 THE COURT: The objection at this
10 point is sustained. If you look at the
11 case law, you have to lay a foundation.
12 You can put the questions to the witness on
13 voir dire for the purpose of making an
14 offer of proof.

15 MR. THOMPSON: Yes, sir.

16 BY MR. THOMPSON:

17 Q Now, Mr. Demery, do you recall there being
18 an individual, a black male individual, by the name
19 of Godfather or any other name who -- or even by the
20 name of Larry who you and the defendant worked with
21 catching chickens up there in Rockingham on this one
22 night that you've testified to?

23 MR. BRITT: Objection. That's
24 about three questions in one as it
25 relates --

1 MR. THOMPSON: I'll ask the
2 question and then do it one at a time.

3 THE COURT: His job is really
4 difficult, so let him make his objection,
5 then you can interject. But when we're all
6 talking at the same time, it makes it hard
7 for him.

8 Yes, sir, if you'll rephrase.

9 BY MR. THOMPSON:

10 Q Did you know, do you recall -- excuse me.
11 Do you recall, Mr. Demery, working with an individual
12 by the name of Larry, a black male?

13 A No --

14 Q -- catching chickens?

15 A No, sir, I don't.

16 Q Do you recall working with an individual by
17 the name of Godfather?

18 A No, sir. The only --

19 Q -- catching chickens? Yes, go ahead. You
20 may explain.

21 A The night we caught these chickens, the
22 only name that I know, mine, Daniel's, and then there
23 was another guy that I used to go to school with, and
24 he was working with us that night.

25 Q Who was that individual?

1 A His name was James Kevin. I don't remember
2 his last name, but his nickname is Fatback. That's
3 what I've always called him.

4 Q And Fatback was a black male?

5 A No, sir, he was an Indian male.

6 Q Now, do you recall, Mr. Demery, -- strike
7 that. Do you know a James C. Deese, also known as
8 JC?

9 A Yes, sir.

10 Q Now, JC Deese stayed at the first trailer
11 there in Bob's Landing Mobile Home Park where the
12 defendant stayed, is that right?

13 MR. BRITT: Objection, outside
14 the scope of voir dire.

15 MR. THOMPSON: Your Honor, if I'm
16 going to make a showing, I've got to make
17 the showing. Now, you've asked me to do
18 it, and that's all I'm trying to do. I
19 would ask that I be allowed to continue.

20 THE COURT: Yes, sir.

21 MR. THOMPSON: Thank you.

22 BY MR. THOMPSON:

23 Q Do you want me to ask the question again?

24 A Is it all right for me to go ahead and
25 answer now?

1 THE COURT: Let's ask

2 Mr. Thompson. Is it all right?

3 BY MR. THOMPSON:

4 Q You can answer.

5 A As far as this guy's last name, Deese, I
6 wasn't aware of that. There was a guy that went by
7 the name of JC that lived in this first trailer, in
8 the trailer park Daniel lived in. He is over in the
9 Robeson County jail right now, I can see him every
10 day.

11 Q Do you recall there was also a person
12 living there with him by the name of Maryland
13 Locklear, female?

14 A Mr. Thompson, there was several people in
15 and out of that house. It was a trailer full of dope
16 heads. There were several people in and out.

17 Q Well, do you recall one individual who was
18 living there being a black male?

19 A I remember a black male being in and out of
20 there different times.

21 Q He was living there?

22 A Like I said, I didn't know who -- there
23 were several people, they were -- if you could call
24 it living there, staying there two or three days at a
25 time, leaving, coming back. As far as that goes, I

1 don't know who the trailer belonged to, who was --
2 you know.

3 Q You associated with the black male who was
4 living there, did you not, and went places with him
5 alone?

6 THE COURT: This is another
7 alternative to Godfather, is that correct?
8 Another alternative to Godfather?

9 MR. THOMPSON: No, sir.

10 THE COURT: Okay.

11 BY MR. THOMPSON:

12 Q You may answer. Did you associate with a
13 black male who was living there?

14 A There was a black male living there, and
15 there was times I talked to him.

16 Q What was this individual's name?

17 A I have no idea. I've forgotten.

18 Q Describe him.

19 A He was a black male, about my height. I
20 don't remember his name. I didn't really associate
21 with him that much. The only time I ever really
22 talked to this dude was when he walked down to the
23 trailer, or Daniel's trailer, to buy crack cocaine
24 from Daniel, which was only a few times. But like I
25 said, that's the only time I ever really associated

1 with him.

2 Q Mr. Demery, you went off with this dude
3 that you referred to, didn't you, on more than one
4 occasion?

5 A This was the fellow that the night we went
6 to catch chickens, he was there that night.

7 Q All right. Now, so this dude who you
8 referred to that was living there in the first
9 trailer in Bob's Landing Mobile Home Park, you say
10 was there catching chickens with you?

11 A Yes.

12 Q But you and this dude -- person who you
13 referred to as "this dude," on several occasions have
14 left together from Mr. Green's residence in your
15 vehicle, did you not?

16 A No, sir.

17 Q He's never ridden in your vehicle?

18 A I never said that. I said we were never
19 alone in my vehicle.

20 Q Okay. Well, when were the times -- how
21 many times did this dude ride in your vehicle?

22 A Twice.

23 Q And when were those?

24 A The night that we went to catch chickens,
25 we all rode together down there in the Tempo.

1 Q Now, who all was in the vehicle with you
2 the night that you went to catch the chickens?

3 A Daniel, this guy, and myself.

4 Q Now, when was the next time this dude road
5 in your vehicle?

6 A A couple days later, we went back to the
7 motel to get our money for that night's work.

8 Q Back to which motel?

9 A The one in Rowland, I don't recall the name
10 of it.

11 THE COURT: Mr. Thompson, have
12 you folks looked at the case law on third
13 party guilt? Have you read any of the
14 cases?

15 MR. THOMPSON: Yes, sir.

16 THE COURT: I see Mr. Bowen
17 nodding his head. What is the predicate
18 showing that has to be made, or
19 Mr. Thompson?

20 MR. BOWEN: Well, the requirement
21 is that you have to show some background of
22 actual accusations or a belief that this
23 individual was involved. However, what our
24 indications are --

25 THE COURT: Which case did that

1 come out of?

2 MR. BOWEN: I can't quote you the
3 name of the case. You asked me if I
4 looked at the cases. I looked at the
5 annotations, and there has to be some
6 showing beyond a speculation. Am I
7 correct? Would that be a correct statement
8 of the cases?

9 THE COURT: Yes, sir.

10 MR. BOWEN: I can't give you the
11 name of the case.

12 THE COURT: Evidence has to point
13 directly to the guilt of another.

14 MR. BOWEN: Well, what --

15 THE COURT: It can't be
16 conjecture, can't be speculative, can't be
17 mere possibilities.

18 MR. BOWEN: No, it can't. But if
19 you can put two people together within a
20 time frame and you can show distinct
21 similarities by separate and distinct
22 similarities and description, by separate
23 and distinct individuals, it seems to me
24 that you can advance evidence that there
25 can have been a mistake in identification,

1 because that's what all this is about.

2 THE COURT: "There can have
3 been," that language falls into conjecture
4 and speculation.

5 MR. BOWEN: We've got to try to
6 prove our case, Your Honor. We have what
7 we have.

8 THE COURT: I understand. What
9 I'm going to do folks, I'm going to bring
10 the jury back in. We're going to take an
11 early lunch break. I'll ask you folks to
12 come in with the pertinent authority.
13 We'll come back at 2:00. We'll come back
14 at 2:00, because I think you folks are
15 entitled to make your record. It's not my
16 intent in any way to prevent you from doing
17 that. It's not my intent in any way to
18 prevent you from making any offer of proof,
19 but rather than going through a long voir
20 dire, I'll ask you to bring me the
21 authority that you contend makes this line
22 of questioning admissible. And then we'll
23 go forward from there.

24 Let's bring the jury in, I'll recess
25 them until 2:30. We will reconvene at

1 2:00.

2 (Jury in at 12:08 p.m.)

3 THE COURT: Ladies and gentlemen
4 of the jury, the matter of law now before
5 the Court is apparently going to take more
6 than what was initially anticipated. I'm
7 going to release at this time for the lunch
8 recess rather than keeping you confined in
9 the jury room.

10 Folks, I'm going to ask that you
11 reassemble in the jury room at 2:30, at
12 your usual time. Now, do not come back
13 into the courtroom or into the area around
14 the courtroom earlier than that. You may
15 take the same route that you've been using,
16 go directly to the jury room at 2:30, no
17 later than 2:30, so we can proceed with
18 presentation of evidence in this case.

19 During lunch recess, you're obligated
20 to abide by all prior instructions of the
21 Court concerning your conduct. I again
22 instruct you you're not to talk about this
23 matter among yourselves, or with anyone
24 else. You're not allowed to have anyone
25 say anything to you or in your presence

1 about this case. If anyone attempts to do
2 so or anybody says anything about the case
3 in your presence, it's your duty to inform
4 us of that immediately through one of the
5 bailiffs assigned to the courtroom.

6 Don't form or express any opinions
7 about this matter, don't have any contact
8 or communication of any kind with any of
9 the attorneys, parties, witnesses,
10 prospective witnesses, or directly with the
11 Court. Don't allow yourself to be exposed
12 to any media accounts which may exist in
13 connection with this matter, and don't
14 conduct any independent inquiry or
15 investigation or research of any kind.

16 You folks are excused at this time
17 until 2:30. Everybody else please remain
18 seated.

19 (Jury out at 12:10 p.m.)

20 THE COURT: If both sides would
21 come prepared to provide the Court with any
22 authority that you're relying on, I think
23 that we can probably -- and again if you
24 folks want an additional voir dire, I'll
25 certainly allow that. If you want to make

1 an offer of proof, I'll allow that, but I
2 think that we can minimize the amount of
3 time that we will be spending on this if we
4 can get the authority before us.

5 We're at ease until, for our purposes,
6 2:00.

7 MR. BRITT: Does Mr. Demery need
8 to be here at 2:00?

9 THE COURT: Yes, at 2:00,
10 Mr. Demery.

11 If you'll recess us.

12 (Lunch recess.)

13 THE COURT: Good afternoon,
14 folks.

15 We're still waiting for Mr. Bowen and
16 Mr. Thompson. I thought I saw him coming
17 in.

18 Mr. Demery, if you'll return to the
19 witness stand, please, sir. You remain
20 under oath.

21 Let the record reflect that all
22 counsel are present, the defendant is
23 present in open court, in the absence of
24 the jury. Folks, I called up during lunch
25 recess to both the District Attorney's

1 office and Mr. Bowen, I called your
2 office. I didn't have your number
3 Mr. Thompson. Asked that your office
4 contact Mr. Thompson's office. I asked
5 both the State and counsel for the
6 defendant to bring copies of State versus
7 McElrath, that case is spelled M small C
8 cap E L R A T H, 322 NC at page one; State
9 versus Mills. Mills is at 332, NC, 392.
10 McElrath is a 1988 case. Mills is 1991 or
11 '92 case. '92. McElrath is probably the
12 seminal case under North Carolina law, at
13 least under the code, evidence code as to
14 evidence of third party guilt. You have
15 copies of both McElrath and Mills?

16 MR. BRITT: Do not have Mills,
17 however I have some other cases I would
18 like to hand up to the Court.

19 MR. BOWEN: Your Honor, I read
20 Mills, got the public defender's office --
21 I don't have that good a relationship with
22 the computer, but I got it coming from my
23 office, and then I've got some newer cases
24 that I found as well.

25 THE COURT: The black letter law

1 is, folks, as I understand it, as follows:
2 The admissability of evidence tending to
3 show the guilt of one other than the
4 accused depends on its relevancy in the
5 case in which it is offered, that is,
6 whether logically tends to prove or
7 disprove some material fact at issue in the
8 particular case.

9 To be competent, evidence that the
10 crime was committed by another must point
11 unerringly to the latter's guilt. It is
12 incompetent if it does no more than cast
13 suspicion on another or raise a mere
14 conjectural inference that the crime may
15 have been committed by another, and it must
16 be of such character as to exclude the
17 guilt of the accused. That is the
18 applicable law.

19 MR. BRITT: For the record, I
20 would like to hand up to the Court the
21 following cases: State versus Cotton, 318
22 North Carolina, 663. 1987 decision of the
23 Court. And Cotton is the case that Brandis
24 and Brown, North Carolina evidence, cites
25 as one of the leading cases in this area.

1 THE COURT: It is.

2 MR. BRITT: Also hand up for the
3 Court's review is State versus McNeill,
4 that appears at 326 North Carolina 712,
5 1990 case. And would also hand up for the
6 Court's review State versus Rose as appears
7 339 North Carolina 172, 1994 decision as it
8 relates to this issue.

9 THE COURT: Mr. Bowen, you
10 indicated you have some cases as well?

11 MR. BOWEN: Yes, sir. I
12 found, -- the latest case that I found in
13 Lois is, it's so new in fact it doesn't
14 have a cite but has a date. Appears at
15 September 8th, 1995, and it is State versus
16 Burr. However, it cites back to State
17 versus McNeill, so I read the language in
18 McNeill at 326 NC 712, and also cites State
19 versus Brewer, at 325 at 550, which is a
20 1989 case.

21 What I wanted to distinguish, if Your
22 Honor please, first of all do a little
23 background as it has to do with Rule 401,
24 and I again refer to Brown edition of
25 Brandis on evidence. Just if I may read a

1 short paragraph?

2 Earlier North Carolina cases where
3 there was no direct evidence of the
4 commission of a crime by another, it was
5 held that the defendant could not present
6 other evidence tending to prove the
7 commission by others lest the crime was one
8 that could have only been committed by a
9 single individual acting alone.

10 Recently, our supreme court most
11 commendably held that the general
12 definition relevance and rules of evidence
13 applies, rule 401, and expressly
14 disapproved prior extremely narrow
15 approach.

16 Now, I realize that the black letter
17 law rule which Your Honor has alluded does
18 circumscribe some of the things that we can
19 do, but I want to let you know that we are
20 going to stay within what we believe to be
21 the bounds of Rule 401 and 403, for this
22 reason: Clewis Demory has come forward and
23 he has testified that in his opinion, many
24 individuals in this community look just
25 like Daniel Green.

1 Now, that has some tendency under Rule
2 401 to suggest that there are a lot of
3 people out there as to the issue of
4 identity whom Clewis Demory could have
5 mistaken Daniel Green for. So to that
6 narrow issue of identity which the Court
7 has let in evidence of the Clewis Demory
8 matter under 401-B, seems to us that we
9 would be entitled to show, by corroboration
10 through Larry Demery, that there are indeed
11 other persons out in the community who look
12 like Mr. Daniel Green. And to show that we
13 have got to show an opportunity for
14 Mr. Demory to have seen and known that
15 person in order to give a description or
16 talk about. Now, he started into a
17 description on voir dire, and talked about
18 the fact that they are about the same
19 height and they are black individuals.

20 The other issue that we get to
21 identity is this: In our presentation,
22 we're going to show some of the people that
23 Mr. Demory was around in the community
24 with, and that will be relevant for various
25 reasons, including to show what kind of

1 weapons he was in possession with during
2 the exact time frames we're talking about,
3 the fact that he was not just associating
4 with Daniel Green in a vacuum, not to
5 suggest that those people were off
6 committing crimes with him necessarily, but
7 he did have other associations.

8 We can show that he knew this person,
9 he says not by the name of Godfather. He
10 refers to him as "this dude." Now, if we
11 are to connect later evidence with this
12 same person that he's talking about that
13 lived over at JC's house, we need a
14 description to do that since he doesn't
15 know his name. I think we can connect
16 "this dude" by description to people that
17 other folks actually know as a resident of
18 JC's house, and that is another reason that
19 we want to get the description.

20 Now, are we going to haul off and ask
21 an irresponsible question such as "Didn't
22 you haul off with Godfather and do such and
23 such and so and so?" We're not going to
24 ask any question of that nature unless we
25 have a good faith basis for it. And that's

1 not where we're going. But we're here on a
2 limited purpose -- and there's another
3 purposes too, and that to is impeach him
4 and to show prior inconsistent statements.

5 You recall what Larry Demery has said
6 on the one hand is that he never went off
7 with a person matching the description of
8 whom he now calls this black dude to catch
9 chickens. Later on in his testimony, he
10 reverses that and he admits going off with
11 just such a person. And that provides
12 risks for impeachment and
13 cross-examination.

14 It goes only as far as it goes. I
15 don't think it goes to set up any notion
16 that is prohibited under this third party
17 guilt situation, but it does go to what
18 Professor Brown has talked about in the
19 fair use of 401 evidence, in that it tends
20 to show more likely that what Clewis Demory
21 is saying, that there are folks out there
22 in the community that look just like Daniel
23 Green. That's come in without objection
24 from anybody. And to me, that is material
25 that is susceptible to corroboration.

1 Now, let's do a 403 analysis. Does
2 the State suffer any undue prejudice? We
3 say no, because Clewis Demory, their
4 witness, was allowed without their
5 objection to come in and say that others in
6 the community look just like Daniel Green.

7 THE COURT: 403 deals with
8 matters other than prejudice, doesn't it?

9 MR. BRITT: Yes.

10 MR. BOWEN: Yes, sir. But I'm
11 just talking about prejudice.

12 THE COURT: Confusion of the
13 issues?

14 MR. BOWEN: Well, Judge, if we
15 put it in to corroborate Mr. Demory, there
16 are individuals out there that look like
17 Daniel Green, that goes directly to the
18 issue of what Clewis Demory says. That's
19 no more confusing than any other material
20 that would tend to corroborate.

21 THE COURT: What case are you
22 trying? Is this the case where the
23 defendant is charged with armed robbery of
24 Clewis Demory, or the case where the
25 defendant is charged with first degree

1 murder, armed robbery, and conspiracy to
2 commit armed robbery of James Raymond
3 Jordan?

4 MR. BOWEN: This is the case in
5 which the State has been allowed to go
6 forward with certain evidence where we have
7 competent, contradictory or corroborative
8 evidence, as the case may be, that
9 strengthens our case, seems to me we're
10 entitled to put evidence on that supports
11 it.

12 THE COURT: Folks, I'll let you
13 go forward on voir dire at this point. And
14 I don't mean this in any disrespectful way,
15 but what I hear is we're attempting to put
16 in evidence that gives rise to conjecture
17 or speculation or inference, nothing else.
18 But I'm going to let you lay a foundation,
19 if you can.

20 MR. THOMPSON: All right.

21 BY MR. THOMPSON:

22 Q Mr. Demery, the individual whom you've
23 referred to as "the dude," would you describe,
24 please -- you indicated that he was about the same
25 height as you, is that correct?

1 A About my height, maybe a little shorter or
2 maybe a little taller, I don't remember exactly for
3 sure.

4 Q And how many occasions have you seen this
5 individual there in the trailer park?

6 A There were several different occasions.

7 Q About how many would you call several?
8 More than five?

9 A Yes.

10 Q More than ten?

11 A I wouldn't say more than ten.

12 Q And had you -- had you ever been to the
13 residence of JC Deese, to that first trailer up
14 there?

15 A Yes.

16 Q And you had seen this individual who you
17 referred to as "the dude" up to that trailer, is that
18 right?

19 A Yes, I had seen him at the trailer.

20 Q Many times?

21 A No. He wasn't in this trailer; inside of
22 the yard.

23 Q Well, you explained -- how many times have
24 you seen him inside the trailer?

25 A I don't remember seeing him any times

1 inside the trailer. I was inside the trailer once,
2 but I seen him several times on the outside of the
3 trailer. There was times he came down to the trailer
4 where -- Daniel's trailer, and then the night we went
5 out and caught chickens.

6 Q Now, the time that you saw him there in the
7 yard at JC's house, you had conversations with him?

8 A I don't -- no.

9 Q Did you have conversation with him the
10 night that he rode with you to Rockingham to catch
11 chickens?

12 A If you would consider conversation anything
13 other than exchanging pleasantries, like hello, hi,
14 how is the weather, you could say I did have a
15 conversation.

16 Q Was it in the car when you drove to
17 Rockingham?

18 A He was -- there was about ten of us
19 altogether in the van. He was somewhere in the van.

20 Q Oh, it was a van? It was not your car that
21 you all rode to Rockingham in to catch chickens?

22 A No, it was a van we rode in to Rockingham.
23 Daniel and myself and this individual rode to Rowland
24 to this motel. From there we got into the van and
25 went to Rockingham.

1 Q And you went to the motel to pick up a
2 check?

3 A That second time. The night, first time we
4 went to this motel to meet these other guys, then go
5 to Rockingham and catch chickens. The second time we
6 went down to this motel to pick up some money.

7 Q For your work?

8 A Yes.

9 Q And so you had an opportunity to observe
10 this individual some five or ten, five to ten times?

11 A Are you saying that I had --

12 Q I mean, he was in your presence, wasn't he?

13 A Yes, yes.

14 Q All right. The time you went to pick up
15 the -- your check, you drove, didn't you?

16 A Yes.

17 Q In your vehicle?

18 A Yes.

19 Q And he and the defendant were with you?

20 A Yes.

21 Q Now, did this dude that you referred to
22 have any facial hair?

23 A I remember him to have a mustache. It
24 was -- he had fuzz over his lip, let me put it like
25 that.

1 Q Like you've got fuzz over yours?

2 A Yes, sir.

3 Q Just like the defendant has fuzz over his?

4 A Well, yeah.

5 Q Now, were they, meaning this dude and the
6 defendant, the same, about the same complexion?

7 A Yes. Would you like me to go ahead with
8 this to prevent you --

9 THE COURT: What did he look
10 like?

11 THE WITNESS: He was about the
12 same height, same complexion. This guy's
13 ears stuck out more than Daniel's did. His
14 arms was about the size of Daniel's head.
15 So that was about the only difference.

16 BY MR. THOMPSON:

17 Q Are you saying he had large arms?

18 A Yes, I am.

19 Q But besides that, besides his arms and his
20 ears, that's what you're saying everything else was
21 about the same?

22 A Repeat the question, please. Repeat the
23 question.

24 Q Besides his arms and his ears, everything
25 else was about the same?

1 A Well, this guy here, you know, this was --
2 in my mind, looking at him in the face, he looked a
3 lot crazier than Daniel did, you know.

4 THE COURT: What was the
5 approximate age of the individual you're
6 talking about?

7 THE WITNESS: I myself assumed
8 that he was in his late 20s, maybe early
9 30s.

10 THE COURT: What was the
11 approximate height of the individual that
12 you're talking about?

13 THE WITNESS: Your Honor, I can't
14 say approximately. He was around my, my
15 height.

16 THE COURT: What was the
17 approximately weight of the individual
18 you're talking about?

19 THE WITNESS: I can't say
20 approximately, but to me he appeared to be
21 maybe from anywhere from 170 to maybe 190
22 pounds.

23 THE COURT: Okay. Mr. Thompson?

24 BY MR. THOMPSON:

25 Q And is it your testimony, Mr. Demery, that

1 you never -- this individual never rode with you in a
2 vehicle just you and he alone out of that trailer
3 park?

4 A That's right, yes, he didn't. We didn't.

5 Q Now, and I believe you indicated that he
6 did live up there in that first trailer for a number
7 of days, you knew that?

8 A Yes.

9 Q Did the individual have, this dude have
10 short hair or --

11 A Yes.

12 Q About the same as the defendant?

13 A Yes.

14 Q And you never heard this individual, seeing
15 him five or so times, or five to ten times,
16 Mr. Demery, referred to by any name, is that your
17 testimony?

18 A Not that I can remember. If I did, I've
19 forgotten. It has been two and a half years.

20 MR. THOMPSON: That's all.

21 THE COURT: Anything further?

22 MR. THOMPSON: That's all.

23 THE COURT: Any questions on voir
24 dire?

25 MR. BRITT: No, sir.

1 counsel for the defendant is noted for the
2 record. Your issue is preserved, folks.

3 All right. Any other matters?

4 MR. THOMPSON: Yes, Your Honor,
5 would you give me a minute, please?

6 THE COURT: Yes, sir.

7 MR. THOMPSON: That's all, Your
8 Honor.

9 THE COURT: Ready to go forward
10 with cross-examination, Mr. Thompson, when
11 the jury comes back?

12 MR. THOMPSON: Yes.

13 THE COURT: We've got about five
14 minutes. The jurors were told to come back
15 at 2:30. I'm amenable, once we determine
16 that all members of the jury are present,
17 to going forward immediately. Otherwise,
18 the risk is that folks will become
19 disbursed and once disbursed, difficult to
20 resemble.

21 Sergeant Meares, if you'll check with
22 Mr. Horne and ask him to let us know as
23 soon as all members of the jury are
24 present.

25 THE BAILIFF: They are all here,

1 sir.

2 THE COURT: Ready to go forward,
3 folks?

4 MR. BRITT: Mr. Heffney was
5 retrieving the evidence. I don't know if
6 they needed it at this juncture or not.

7 THE COURT: We'll wait until he
8 comes back.

9 (Short pause).

10 MR. BRITT: Your Honor, we're
11 ready.

12 THE COURT: If you'll ask the
13 jury to come in, please.

14 (Jury in at 2:30 p.m.)

15 THE COURT: Good afternoon,
16 ladies and gentlemen.

17 Members of the jury, the last question
18 asked by counsel for the defendant,
19 Mr. Thompson, was: Well, wasn't there a
20 black male by the name of Godfather who was
21 working with you catching chickens that
22 night. There was an objection to that
23 question. The Court has sustained that
24 objection.

25 Anything further by the State?

1 MR. BRITT: We move to strike and
2 ask for an instruction.

3 THE COURT: Motion is allowed.
4 Members of the jury, I instruct you that
5 you are not to consider the last question
6 just referred to and that that matter is
7 not to take any part in your deliberation
8 in this case in any respect.

9 Mr. Thompson, any additional
10 cross-examination for the witness?

11 MR. THOMPSON: Yes, sir.

12 THE COURT: Yes, sir.

13 BY MR. THOMPSON:

14 Q Good afternoon, Mr. Demery.

15 Mr. Demery, your father, he repairs guns,
16 is that right?

17 A Yes, he does.

18 Q How long has he been repairing guns?

19 MR. BRITT: Objection.

20 THE COURT: Overruled.

21 BY MR. THOMPSON:

22 Q You may answer.

23 A For a long time.

24 Q As long as you can remember?

25 A Yes.

1 Q And he in repairing guns, he also assembles
2 and makes guns, does he not?

3 A I don't fully understand the question you
4 just asked me.

5 Q Well, does he retool or remake weapons, gun
6 weapons, exchange parts?

7 A He takes the gun that he restores, breaks
8 it down, cleans the parts, you know, oils if needed,
9 and put it back together.

10 Q Or put new parts, if needed?

11 A Well, yes, if a new part is needed to be
12 put on, he does and can do that.

13 Q And you've assisted him, helped him in
14 repairing guns, haven't you?

15 A No.

16 Q You certainly have watched him on a number
17 of occasions?

18 A I've attempted to watch him.

19 Q And your father owned several guns back in
20 June of -- prior to June of 1993, did he not?

21 A Yes, he did.

22 Q Your father had a shed or shelf in the back
23 there where he worked on these guns and repaired
24 guns, did he not?

25 A Yes.

1 Q You're very familiar with guns, yourself?

2 A Yes, I am.

3 Q And your father owned .32 caliber guns,
4 didn't he?

5 A Yes.

6 Q He owned all kinds of shotguns?

7 A Yes.

8 Q 16 gauge?

9 A 12, 20.

10 Q 12 gauge?

11 A Yes.

12 Q 20 gauge?

13 A Yes.

14 Q You said he owned a black powder gun?

15 A Yes.

16 Q .38 caliber guns?

17 A He has during, you know, over periods of
18 time, but --

19 Q Yes. And 45s?

20 A Yes.

21 Q 357s?

22 A I have seen him in possession of a 357.

23 Q And you've owned a .38 caliber gun prior to
24 June of 1993, haven't you?

25 A Prior to?

1 Q Yes, sir.

2 A I was in possession of a .38 caliber
3 pistol.

4 Q When were you in possession of a .38
5 caliber pistol prior to June of 1993?

6 A During the months of September and October
7 of '92.

8 Q And that .38 caliber weapon that you owned
9 was confiscated, wasn't it?

10 A Yes, it was.

11 Q Taken by Detective Rodney Demery of the
12 Robeson County Sheriff's Department, wasn't it?

13 MR. BRITT: Objection.

14 MR. THOMPSON: Pembroke Police
15 Department, Detective Rodney Demery of the
16 Robeson County Sheriff's Department.

17 THE COURT: Do you want to be
18 heard, Mr. Britt?

19 MR. BRITT: No, sir. I withdraw
20 the objection.

21 BY MR. THOMPSON:

22 Q You may answer.

23 A I was told Detective Demery was the one
24 that had taken it out of the car.

25 Q And where -- he took it out of your car,

1 the Ford Tempo, is that right?

2 MR. BRITT: Objection.

3 THE COURT: Overruled. If you
4 know, you may answer.

5 THE WITNESS: No, sir, it was the
6 Ford Escort.

7 BY MR. THOMPSON:

8 Q That's the car that you and your fiancée
9 Angelo owned together, is that right, the Ford
10 Escort?

11 A Yes.

12 Q And the serial number on that gun was filed
13 off, the .38 caliber that was taken out of your car?

14 A Yes, it was.

15 Q And it was filed off with a chain saw file,
16 wasn't it?

17 A Yes, sir.

18 Q And you filed it off, didn't you?

19 A Yes, I did.

20 Q With the chain saw file, didn't you?

21 A Yes.

22 Q And when did you file the serial numbers
23 off of that gun?

24 A Well, it was after I had gotten this gun in
25 my possession, it was about a week, week and a half

1 later after I had gotten this gun that I did that.

2 Q And that would have been in September of
3 1992?

4 A Yes.

5 Q Do you know a James C. Deese, also known
6 as --

7 MR. BRITT: Objection.

8 BY MR. THOMPSON:

9 Q -- JC Deese?

10 MR. BRITT: Objection.

11 THE COURT: Basis?

12 MR. BRITT: Relevance.

13 THE COURT: Mr. Thompson?

14 MR. THOMPSON: Desire to be
15 heard.

16 THE COURT: Members of the jury,
17 there's a matter of law the Court must take
18 up again. Please recall my instructions,
19 don't worry or speculate about what takes
20 place in the courtroom in your absence. If
21 all members of the jury would step to the
22 jury room.

23 (Jury out at 2:36 p.m.)

24 THE COURT: The following is
25 being heard in the absence of the jury.

1 Mr. Thompson?

2 MR. THOMPSON: Your Honor, where
3 I intend to go with this is, again, the
4 knowledge that -- we covered this partly
5 during the voir dire, previous voir dire.
6 He knows James C. Deese, asking with
7 respect to the Maryland Locklear, stayed
8 there with James C. Deese. That as to
9 whether he and Maryland Locklear along with
10 one by the name of Mary Ann Locklear, along
11 with the defendant, went to pick up
12 Mr. Deese on one occasion, and on that
13 occasion, whether in fact he had in his
14 possession a .38 caliber.

15 THE COURT: Mr. Britt?

16 MR. BRITT: One, as to whether or
17 not he knows Mr. Deese isn't relevant to
18 any issues involved in this case.

19 THE COURT: Foundational matter
20 to establishing the possession of the
21 weapon.

22 MR. BRITT: Well --

23 THE COURT: And he's setting him
24 up for impeachment potentially.

25 MR. BRITT: But becomes a

1 collateral issue which --

2 THE COURT: It may be, may be
3 something that he's bound by. I don't know
4 that yet. What time frame are we talking
5 about, Mr. Thompson? When do you contend
6 this occurred?

7 MR. THOMPSON: June or July of
8 1993.

9 THE COURT: At this point, the
10 objection is overruled. Exception is noted
11 for the State, without prejudice to the
12 State's right to make further objection or
13 renew its objection. Bring the jury back
14 in, Mr. Horne.

15 (Jury in at 2:39 p.m.)

16 THE COURT: The objection at this
17 time is overruled, members of the jury.
18 Mr. Thompson, you may repeat or rephrase.

19 BY MR. THOMPSON:

20 Q Mr. Deese, did you know an individual by
21 the name of James C. Deese or JC Deese back in
22 June -- excuse me, or July of 1993?

23 A I knew of an individual that -- by JC. As
24 far as the last name.

25 Q And the individual that you know by the

1 name of JC, did he live up in the first trailer going
2 into Bob's Landing Mobile Home Park?

3 A Yes, he did.

4 Q That's the mobile home park where the
5 defendant lived?

6 A Yes.

7 Q And that individual had a female staying
8 with him by the name of Maryland Locklear, didn't he?

9 A I don't know her name. He had a female
10 living with him.

11 Q Right. And do you recall back in June or
12 July, 1993, Mary -- Maryland Locklear, this
13 individual who staying with JC Deese, a Mary Ann
14 Locklear, who was another female, and the defendant
15 and yourself going up to Texaco station at
16 intersection of 74 and 710 to pick up JC Deese from
17 work, do you remember that occasion?

18 MR. BRITT: Objection. Assumes
19 matters beyond his knowledge. He testified
20 he did not know who Maryland Locklear was.

21 MR. THOMPSON: Didn't know by
22 name.

23 THE COURT: Rephrase.

24 BY MR. THOMPSON:

25 Q The individual that you know who stayed

1 there with JC, did you and that individual -- let me
2 strike that. The individual whom you referred to as
3 living with JC, she was an Indian female, is that
4 right?

5 A To me, she appeared to be.

6 Q And did you and that individual, the
7 defendant, and another Indian female ever go to
8 Texaco station there at 74 and 710 back in July or
9 June of 1993?

10 MR. BRITT: Objection, relevance.

11 THE COURT: Overruled. You may
12 answer.

13 BY MR. THOMPSON:

14 Q You may answer.

15 A Yes.

16 Q And you went there to pick up JC, did you
17 not, that is the purpose of going there?

18 A That's what I was told.

19 Q And you went there in your car?

20 A Yes.

21 Q And that was the Ford Tempo?

22 A Yes, it was.

23 Q You remember a little boy coming up playing
24 with you, Mr. Demery?

25 A Yes.

1 Q What's that little boy's name, do you know?

2 A Derrick Locklear.

3 Q Derrick Locklear. How old was he about
4 that time?

5 A At that time he was about ten years old.

6 Q And in playing with you, he accidentally
7 bursted or broke your lip, did he not?

8 A He didn't accidentally, he meant to do it,
9 he punched me right in the mouth that day.

10 Q And when he punched you in the mouth, you
11 told -- you said to everybody there in the car to
12 "shoot the little fucker," didn't you?

13 A No, sir, I did not.

14 Q You had a gun in the car, didn't you?

15 A There was a gun in the car.

16 Q And it was a .38 caliber, wasn't it?

17 A Yes, it was.

18 Q It was your gun, wasn't it?

19 A No, sir. Your Honor, may I be allowed to
20 explain?

21 THE COURT: You can explain --
22 you'll need to answer the question, but if
23 you feel an explanation is necessary,
24 you're entitled to explain.

25 THE WITNESS: Thank you.

1 BY MR. THOMPSON:

2 Q And --

3 THE COURT: He wanted to explain,
4 Mr. Thompson.

5 THE WITNESS: .38 caliber pistol
6 that was in the car that day was not mine.
7 It belonged to Daniel. It was the same
8 pistol he shot James Jordan with, the same
9 pistol that came out of the store that we
10 robbed on Highway 72.

11 BY MR. THOMPSON:

12 Q And that gun was located there in the front
13 of that car, in the console when you made -- when the
14 boy hit you in the mouth, wasn't it?

15 A It was under the passenger seat as I
16 remember it.

17 Q You were in the front seat?

18 A I was driving.

19 Q This girl who lived with JC was in the
20 front passenger seat, wasn't she?

21 A No, she wasn't.

22 Q Who was in the front passenger seat?

23 A Daniel was. Both of these females were in
24 the back.

25 THE WITNESS: Your Honor, may I

1 be allowed to explain just a little bit
2 more?

3 THE COURT: Yes, sir.

4 THE WITNESS: When you asked me
5 did I make the statement talking about get
6 the gun, shoot the little fucker, I
7 didn't. It was this man sitting at this
8 table beside you, Daniel Green, told me to
9 get the gun and shoot the little mother
10 fucker. He was ten years old. I knew this
11 guy all my life. His mother, my mother
12 practically best friends. We grew up
13 together. And he's standing there telling
14 me to shoot him.

15 BY MR. THOMPSON:

16 Q I understand.

17 A Derrick was playing around. He
18 intentionally busted me in the mouth.

19 Q He was playing?

20 A Yes.

21 Q And he intentionally busted you in the
22 mouth?

23 A Yes. And I was picking at him because a
24 bee had stung him in his eye, and it swole up real
25 bad. And I was picking at him, and he punched me.

1 Q And you knew him all your life?

2 A Yes. Well, not all my life. For a long
3 time.

4 Q You all were friends?

5 A Yes.

6 Q And I believe you indicated he knew your
7 mother?

8 MR. BRITT: Objection to the
9 form.

10 THE COURT: Overruled. You may
11 answer.

12 THE WITNESS: I said that his
13 mother and my mother were best friends,
14 they worked together at Campbell Soup.

15 BY MR. THOMPSON:

16 Q And so that's the reason you didn't do
17 anything to him when he hit you in the mouth, is that
18 your testimony?

19 A I knew Derrick, well, things about him.
20 That's just the way he was. We were both like that.
21 I would pick at him, he could hit me. If he could
22 get away from me, you know, he would avoid getting
23 hit back.

24 Q So you wouldn't do anything ugly to your
25 friends, would you?

1 MR. BRITT: Objection to the
2 form.

3 THE COURT: Overruled. You may
4 answer.

5 BY MR. THOMPSON:

6 Q You may answer.

7 A I never said that. If -- if it hadn't have
8 been -- the reason I didn't just go ahead and smack
9 him that day when he punched me, because he was
10 holding a baby, holding his little nephew. Like I
11 said, he swung and punched me in the mouth, but like
12 I said, I probably would have went ahead smacked him
13 on up side the head but he had a baby in his hand.
14 Just something the way we were with one other.

15 Q Now, Mr. Demery, your father kept guns
16 under lock and key, didn't he?

17 A Yes, he did.

18 Q There at his house?

19 A Yes.

20 Q In the bedroom, didn't he?

21 A Yes.

22 Q You and your father were friends, weren't
23 you?

24 A Well, at a point in time we were, and then
25 there was times we were -- I hated him. I don't know

1 how he felt about me.

2 Q Time when you hated your father?

3 A Right.

4 Q And --

5 A I felt like I hated him, let me -- if I
6 may, can I rephrase that?

7 THE COURT: Yes, sir.

8 BY MR. THOMPSON:

9 Q Times you felt like you hated your father?

10 A Yes.

11 Q And he kept his gun in his room and your
12 mother's bedroom, didn't he?

13 A Yes.

14 Q And your parents' bedroom had two doors,
15 didn't it?

16 A Yes, one going in to the bedroom, one going
17 in and out of the bathroom.

18 Q There was one door that opened into the
19 hallway, the bedroom door, is that right?

20 A A bedroom door and a bathroom door.

21 Q All right. But one of the doors to the
22 bedroom opened into the hallway, isn't that right?

23 A Yes.

24 Q The other door to the bedroom opening to
25 the bathroom, is that right?

1 A Yes.

2 Q Now, there was a deadbolt lock on the
3 bedroom door, one of those bedroom doors?

4 A Yes, the one directly at the end of the
5 hall.

6 Q And that was the one that opened into the
7 hallway?

8 A Yes.

9 Q And there was a padlock on the bedroom door
10 opening into the bathroom, is that right?

11 A Well, inside the bathroom, that's where
12 this padlock was.

13 Q Now, your parents had put deadbolts and
14 padlocks on their doors because you had a bad habit
15 of stealing, didn't you?

16 MR. BRITT: Objection to the
17 form.

18 THE COURT: Overruled.

19 THE WITNESS: Going in there,
20 taking keys and things, going out, running
21 up down the road. I wasn't supposed to
22 have been doing that.

23 BY MR. THOMPSON:

24 Q Prior to July of 1994 you had broken into
25 that door many times, didn't you?

1 A Yes, sir.

2 Q You would break in there and steal keys,
3 wouldn't you?

4 A Yes.

5 Q Keys to the four-wheeler?

6 A Yes.

7 Q And they were locked up in this room?

8 A Yes.

9 Q You would break in there and steal your
10 mother's keys, wouldn't you?

11 A Yes.

12 Q And that would be keys to the Nissan truck?

13 A No, keys to her car.

14 Q Which car, that Grand Am?

15 A The Pontiac. See, I did this for a long
16 time before I ever turned 16 years old. Hey, I would
17 go in there, get momma's keys, run up and down the
18 road. I wasn't old enough to have a driver's
19 license, but yes, I did do that.

20 Q How many times would you say you broke into
21 your parents' bedroom prior to July of 1993,
22 Mr. Demery?

23 A A hundred times if one.

24 Q A hundred times if one. You knew it was
25 more than one, don't you?

1 A Yes, sir, that's what I just said.

2 Q More like a hundred, isn't that right?

3 A Probably a lot more than a hundred.

4 Q Lot more than a hundred times, all the time
5 breaking into your parents' bedroom, wasn't it?

6 A Yes, sir.

7 Q Now, when you broke into your parents'
8 bedroom, you had to pick that deadbolt, didn't you?

9 A Yes.

10 Q Now, when did they put the deadbolt on that
11 door, Mr. Demery?

12 A Well, it was after I had went in my dad's
13 room one time, took one of his guns and hid it from
14 him. But like I said, that wasn't the only reason,
15 the reason that, and then the fact that I was going
16 in there, taking keys out.

17 Q Mr. --

18 A Taking keys out, taking vehicles away from
19 the house.

20 Q Mr. Demery, what year was that that your
21 parents put the deadbolt on the bedroom door?

22 A That was around, best I can remember,
23 around '91 sometime.

24 Q Was it before September of 1991?

25 A Yes.

1 Q Is that where you got that .38 caliber gun
2 from that you had in 1992?

3 A No.

4 Q Now, when you first started breaking
5 into -- strike that. When did they put the padlock
6 on the bedroom door entering into the bathroom?

7 A About the same time they put the deadbolt
8 on.

9 Q And now, when you first started breaking
10 into your parents' room, it would take more than ten
11 minutes, you would say?

12 A When I first started, you know, but after I
13 got the hang of it, it was just, get down on the
14 floor, click, click, and I was in there.

15 Q You could cut that time in half you got so
16 good at it?

17 A Yes, sir.

18 Q Then you got to the point where it only
19 took you about five minutes to break into that
20 bedroom, isn't that right?

21 A There were times it took less time than
22 that.

23 Q Now, what did you mean when you said that
24 your daddy started ragging on you, Mr. Demery, what
25 do you mean by ragging on you?

1 A Well, my dad cussed at me and everything.
2 This day, it was a little different. He -- now, the
3 only time he ever did anything like that is he was
4 drunk. This day, he was saying things to me, you
5 know, that I knew he would have never said sober. He
6 was telling me that he hated my guts, to look at me
7 it made him sick, he wished I had never been born.
8 Things of that nature. That's what I meant.

9 Q And when your daddy told you that, you went
10 in there and took a gun, didn't you?

11 A Later on I did.

12 Q You didn't hide that gun, you pulled it on
13 him?

14 A No, sir.

15 Q Now --

16 THE WITNESS: Your Honor?

17 MR. THOMPSON: Do you have
18 something you want to explain?

19 THE WITNESS: Yes, sir, if you
20 don't mind. I hid the gun that night, and
21 my mother, she's sitting over there on the
22 first row, on this side on the very end.
23 She's the one that found the gun that
24 night. So if you would like, I'm sure she
25 would gladly come up here and tell you the

1 same thing.

2 BY MR. THOMPSON:

3 Q Well, now, what night was that, what month
4 was that, what year was that when you hid this gun?

5 A This was '90, '91. I remember the incident
6 that happened following that, that night, after then,
7 I wasn't allowed to come-- well, it was during '91,
8 I couldn't come home anymore. I had to move in with
9 a cousin.

10 Q Now, you were skipping school, too, weren't
11 you?

12 MR. BRITT: Objection.

13 THE COURT: Overruled.

14 THE WITNESS: Yes.

15 BY MR. THOMPSON:

16 Q Your father was concerned about you
17 skipping school?

18 MR. BRITT: Objection.

19 THE COURT: Sustained.

20 BY MR. THOMPSON:

21 Q Breaking into his room, he was obviously
22 concerned about that, wasn't he?

23 MR. BRITT: Objection.

24 THE COURT: Sustained.

25 BY MR. THOMPSON:

1 Q Now, you indicated your behavior got so bad
2 around there your father didn't want you living with
3 him, is that right?

4 MR. BRITT: Objection.

5 THE COURT: Sustained to the
6 form.

7 MR. BRITT: Move to strike, ask
8 for an instruction.

9 THE COURT: Motion to strike is
10 allowed. Members of the jury, don't
11 consider the last question of counsel for
12 the defendant, Mr. Thompson. That matter
13 is not to take any part in your
14 deliberations in this case in any way.

15 BY MR. THOMPSON:

16 Q Your father ran you away from living there
17 at the house, didn't he?

18 MR. BRITT: Objection.

19 THE COURT: Rephrase or ask
20 another question, Mr. Thompson.

21 BY MR. THOMPSON:

22 Q Why did you leave, Mr. Demery?

23 MR. BRITT: Objection to
24 relevance.

25 THE COURT: Overruled. You may

1 answer it.

2 THE WITNESS: It was several
3 times I left. There were times where he
4 ran me away. There were times my old man
5 shot at me to get me away from there, and I
6 had to go, because if I didn't, I would
7 have more than likely been killed. Like I
8 said before, we had at one point in time,
9 we just, like I said, I felt like I hated
10 him and I felt like he felt the same way
11 about me.

12 BY MR. THOMPSON:

13 Q But you were stealing with him, over a
14 hundred times you broke into his room, didn't you?

15 MR. BRITT: Objection to the
16 form, argumentative.

17 THE COURT: It's argumentative,
18 Mr. Thompson. Rephrase.

19 BY MR. THOMPSON:

20 Q Was anybody else in the family stealing
21 from your daddy, Mr. Demery?

22 MR. BRITT: Objection,
23 argumentative.

24 THE COURT: Sustained. On
25 different grounds, but it's sustained.

1 BY MR. THOMPSON:

2 Q Well, you were stealing guns?

3 MR. BRITT: Objection.

4 THE COURT: Overruled.

5 BY MR. THOMPSON:

6 Q Weren't you? You may answer.

7 A No, I never stole a gun from him. I took a
8 gun one time and hid it from him. If that's what you
9 call stealing, I guess, yes, I did.

10 Q Now, some of those times that you ran away
11 from home, you were back in June, you were -- June of
12 1993, you were having problems with your father then,
13 weren't you?

14 MR. BRITT: Objection.

15 THE COURT: Overruled.

16 THE WITNESS: No, sir, I wasn't.

17 He would -- if he saw where I was doing
18 something I -- felt like he told me about
19 it, but see, it was during that time we had
20 started getting along fine. After the
21 night of the incident, me hide hiding the
22 gun from him, a few weeks, when I was
23 finally allowed to come back home, see,
24 from then on out, I'm not saying we never
25 had a disagreement about anything, but

1 things were pleasant between us.

2 BY MR. THOMPSON:

3 Q So you're saying you never had to leave
4 your house since September of 1991, sometime in
5 1991?

6 MR. BRITT: Objection, that's not
7 his testimony.

8 BY MR. THOMPSON:

9 Q What is your testimony about leaving the
10 house?

11 THE COURT: Do I get to say
12 something?

13 MR. THOMPSON: Yes.

14 THE COURT: The objection is
15 overruled, but rephrase.

16 BY MR. THOMPSON:

17 Q When is the last time you had to leave your
18 house, Mr. Demery?

19 A The time that I stole the gun for -- excuse
20 me. The time I took the gun and hid it from Daniel.

21 Q So it's your testimony you never took a gun
22 out of that bedroom there in your parents' house
23 except when you were mad with your dad, is that
24 right?

25 A No, sir, I never said that. You asked --

1 Q Now, Mr. Demery, on July the 15th of 1993,
2 you broke into your parents' room again, isn't that
3 right?

4 A Yes.

5 Q And you took two .32 caliber guns?

6 A Yes.

7 Q You had seen those guns before, hadn't you?

8 A Yes, I had. As a matter of fact, one of
9 those guns, the black one with the black handles, was
10 the very one that I took and hid that night.

11 Q All right. Now, you indicated, Mr. Demery,
12 that things got pretty bad around there between you
13 and your daddy and he threatened to kill you?

14 A Yes.

15 Q And you threatened to kill him?

16 A Yes.

17 Q How many times did you threaten to kill
18 your daddy?

19 A There was many times.

20 Q How many?

21 A Many times.

22 Q More than ten?

23 A Maybe so.

24 Q More than 20 times you threatened to kill
25 your daddy?

1 MR. BRITT: Objection, asked and
2 answered.

3 THE COURT: Overruled.

4 BY MR. THOMPSON:

5 Q You may answer.

6 A Maybe so.

7 Q More than 30 times you threatened to kill
8 your daddy, Mr. Demery?

9 A Very possibly that I did.

10 Q Probably more than 40 times that you
11 threatened to kill him, didn't you?

12 A Could have been.

13 Q And even could have been more than 50
14 times, isn't that right?

15 MR. BRITT: Objection,
16 argumentative.

17 THE COURT: Overruled. You may
18 answer.

19 THE WITNESS: Could have. As far
20 as that goes, there could have been 50
21 million times.

22 BY MR. THOMPSON:

23 Q So many you can't even count it, isn't that
24 right?

25 A Yes, sir, that's what -- that's the point

1 that I tried to get across the first time I
2 answered.

3 Q Mr. Demery, you indicated that on July the
4 15th you were wearing a cap, shorts, T-shirt, tennis
5 shoes, is that right?

6 A Yes.

7 Q What kind of cap were you wearing?

8 A Harley Davidson, suede leather cap.

9 Q Harley Davidson suede leather cap. Is that
10 the cap that you stole from the store that you
11 testified to earlier?

12 A No, sir.

13 MR. BRITT: Objection.

14 BY MR. THOMPSON:

15 Q It was another cap, Harley Davidson cap?

16 A Yes, it was.

17 Q Now, Mr. Demery, you, in the month of June
18 and July of 1993, spent the night at the Green
19 residence, did you?

20 A Yes, many nights.

21 Q Many nights?

22 A Yes.

23 Q And you had access to the -- you indicated
24 that you didn't have a key to the trailer?

25 A That's correct.

1 Q And is that the truth?

2 A Yes, it is.

3 Q Now, you indicated there was something
4 wrong with the lock to the front door of that
5 trailer, isn't that right?

6 A I remember saying that the front door
7 didn't even have a doorknob on it. Had a key had to
8 be used to get into the trailer.

9 Q Now, the front door didn't have a doorknob
10 on it, we're talking about to the Green trailer?

11 A Yes.

12 Q How did you get in the trailer?

13 A A key would have to be used, stuck in the
14 lock. It was a deadbolt. Key had to be used to open
15 the door.

16 Q Well, now, didn't you go to that trailer
17 back in June or July '93 on occasions when neither
18 the defendant nor his mother was there?

19 A No.

20 Q You were never left there in that trailer
21 alone by either Mrs. Green nor the defendant?

22 A There was one time that I remember being
23 left inside -- I was there by myself, that Daniel was
24 gone, he had took, taken my car and went down the
25 road to a store.

1 Q Well, now, you had free access to the
2 trailer, didn't you?

3 A Well, no. If there had ever come a time
4 that I wanted to go over there, either I or Daniel
5 wasn't with me, anyone wasn't with me, I couldn't
6 have gotten in. Well, short of kicking the door in
7 or something.

8 Q Well, you know how to pick locks, don't
9 you?

10 A No.

11 Q Just deadbolts?

12 A But like I said, you said "pick locks."
13 See, when I was explaining to you about this
14 deadbolt, I never had to pick a thing. See, all I
15 said, I had to go up under the door with a stick,
16 clothes rack, hook it and slide it, you see.

17 Q Like you said every time you did it, it
18 became easier and easier to you?

19 A Yes. If --

20 Q Did you have something else you wanted to
21 say?

22 A Something, a remark that I thought about
23 making. Would you like to hear it?

24 Q Probably not, sir. No, sir.

25 Mr. Demery, you testified that back in

1 July, on July 15th, 1993, you had a pair of shades in
2 the car?

3 A Yes.

4 Q And they were dark shades, weren't they,
5 the lenses in those shades were dark?

6 A Had dark blue lenses in them.

7 Q And what color were the rims?

8 A They were a goldish color, like the glasses
9 that I got on now.

10 Q And it was your testimony that those shades
11 were put on by who you say was the defendant when the
12 store was robbed, is that right?

13 A Who I know was the defendant.

14 Q And you gave him those shades?

15 A They were in the car. He grabbed them on
16 his own and put them on.

17 Q You saw him go in the store with the shades
18 on?

19 A Yes.

20 Q And when you were in there, you saw him
21 with the shades on?

22 A When I walked in the store, you know, I
23 saw -- I don't -- I don't remember, being inside the
24 store. I honestly couldn't tell you while we were on
25 the inside of the store I remember seeing shades

1 because shades wasn't on my mind when we went in
2 there.

3 Q Mr. Demery, you were inside the store,
4 weren't you?

5 A That's what I just said, unless --

6 Q All right. I thought I --

7 A Unless I have a very short memory. I
8 mean --

9 Q Well, sometimes you are badly mistaken
10 about things, aren't you?

11 A Yes.

12 Q Badly mistaken about a number of things,
13 aren't you?

14 A When it's involving this situation here,
15 no.

16 Q Well, a number of times during your direct
17 examination you indicated that you might have been
18 badly mistaken about what you testified to, didn't
19 you?

20 A Yes, I do remember saying that.

21 Q On a number of times, didn't you?

22 A Yes, more than once.

23 Q You never went behind the cash register
24 there at Lowry's grocery?

25 A No, sir, no.

1 Q Therefore, you never observed the cash
2 register or the counter from the angle that was
3 depicted in State's Exhibit Number 67; do you recall
4 what State's Exhibit Number 67 was?

5 A A picture of the back side of the counter,
6 that's what --

7 Q Yes. You never observed the back side of
8 that counter from the angle as depicted in State's
9 Exhibit Number 67, did you?

10 A No, sir. But I did see from this picture,
11 on the other side of the counter, the door, things
12 that were over there. Now, I had seen that.

13 Q I understand. You were inside the store?

14 A Right, yes.

15 Q Holding the gun on Mr. Demory the whole
16 time?

17 A Not the whole time.

18 Q Well, now, Mr. Demery, you testified, did
19 you not on yesterday that you went into the store
20 with your gun pulled?

21 A Yes, I did.

22 Q And that's the truth, isn't it?

23 A Yes, it is.

24 Q You told the cashier to back up?

25 A Yes, I did.

1 Q You testified that that's when the cashier
2 looked and first observed the man holding the gun,
3 isn't that right?

4 A I said that when I walked in, sat back up,
5 he backed up from the counter, and it was about that
6 time he looked at the other end and saw Daniel
7 standing there with his gun drawn.

8 Q You said that's when he looked and first
9 observed -- that's what you said yesterday, the black
10 man -- I mean the defendant, Daniel, holding the gun;
11 that's what you testified to, didn't you?

12 A If I did say it that way, you know, it was
13 not -- it was not my intention for you to take it the
14 way you're saying it now.

15 Q Well, now, Mr. Demery, is it your
16 intentions that the jury takes it the way that you
17 have testified to today?

18 MR. BRITT: Objection,
19 argumentative.

20 THE COURT: Rephrase.

21 BY MR. THOMPSON:

22 Q Well --

23 MR. BRITT: Move to strike.

24 THE COURT: Allowed. Members of
25 the jury, don't consider the last question,

1 but Mr. Thompson you may rephrase, sir.

2 BY MR. THOMPSON:

3 Q You testified on yesterday, Mr. Demery,
4 that it was after you sat back up that the defendant
5 went around the counter. Do you remember testifying
6 to that?

7 A Yes.

8 Q And is that what you intended to mean, or
9 say?

10 A Yesterday, when I was telling everybody
11 about that, and I said back up, Mr. Demory did as he
12 was told. Well, he was already backing up anyway.
13 It was around that time he looked down there and saw
14 Daniel with his gun drawn. Daniel went around the
15 counter.

16 Q But it was only when you said "back up"
17 that he went around the counter, is that what you're
18 saying? That's when he went around the counter after
19 you said "back up"?

20 A It was during -- well, right after that
21 time.

22 Q And you were holding and pointing the gun
23 at Mr. Demory during that time?

24 A When -- yes.

25 Q And when you testified that the defendant

1 went behind the counter, which side of Mr. Demory was
2 he on? I mean, was he on the left side or right side
3 as you faced the counter?

4 A When I -- from where Mr. Demory was
5 standing when I first saw him, Daniel went around the
6 counter, he had to come around on his left side
7 because his right side was up against the wall over
8 here.

9 Q So he went to -- so Mr. Demory was between
10 the defendant and the window, is that correct?

11 A Yes, yes.

12 Q Meaning the defendant was on Mr. Demory's
13 left side, is that right?

14 A He had to have been when he first went
15 around the counter.

16 Q Now, you -- describe again the chest area
17 where you say you saw the defendant pointing the gun
18 there at Mr. Demory.

19 A Around this area, around in his shoulder
20 area.

21 Q You're pointing to your left upper chest
22 area?

23 A Yes, that's -- yes.

24 Q All right, sir. Now, you testified that
25 you saw Mr. Demory, Clewis Demory, tussle with the

1 defendant?

2 A Yes.

3 Q And how long were they there tussling?

4 A I don't know. It was just a minute at the
5 most, but it wasn't a minute I don't --

6 Q Well, about how long was it, how many
7 seconds?

8 A I would say no more than ten.

9 Q Now, count off ten seconds for me in the
10 time sequence that you say it took, the tussle took
11 place.

12 A Ten, nine, eight, seven, six, five, four,
13 three, two, one, zero.

14 Q All right. And they tussled for that long?

15 A That was about the amount of time that I
16 was looking at them.

17 Q You heard three shots?

18 A Yes.

19 Q Never saw any blood?

20 A No, sir.

21 MR. THOMPSON: May I have a
22 moment, Your Honor?

23 THE COURT: Yes, sir.

24 BY MR. THOMPSON:

25 Q Now, Mr. Demery, you testified that the

1 first time you saw the defendant with the .38 gun,
2 after the Lowry Texaco store robbery, you were on the
3 side road there next to the store, headed toward 211,
4 is that right?

5 A Yes.

6 Q And it was on that road that you testified
7 that and the defendant threw out the pullover
8 sweater?

9 A Yes.

10 Q Now, you had on the black pullover sweater?

11 A Yes, I did.

12 Q Had Raider's, Los Angeles Raider's logo on
13 it?

14 A Yes.

15 Q Football team?

16 A Yes.

17 Q Now, Mr. Demery, on July 14th of 1993, you
18 went to the Coastal Inn motel?

19 A July 14th?

20 Q When did you and Dee Sullivan go to the
21 motel?

22 A It was on July 15th.

23 Q I'm sorry. And you paid for two rooms?

24 A Yes.

25 Q You took a shower?

1 A Yes.

2 Q She took her clothes off?

3 A No.

4 Q Stayed there about two hours?

5 A Yes.

6 Q Dee Sullivan, that was the first day you
7 had met Dee Sullivan?

8 A Yes, it was.

9 Q Now, she gave you her phone number?

10 A No.

11 Q You gave her your phone number?

12 A No, sir, I did not.

13 Q You were engaged, that's why you didn't
14 give her your phone number?

15 A Well, it might have been a thought in my
16 mind that that would have had something to do with
17 it, but it was never -- she was just there, I was
18 just there.

19 Q You were just there to take a shower?

20 A Well, that's what -- I took a shower, yes.
21 If what you're getting at, did I ever touch her or
22 sleep with her, no, I didn't.

23 Q You bought a motel room that she went into
24 with you, isn't that right?

25 A Yes.

1 Q And was the purpose to watch TV?

2 A Well, mine was -- I took a shower, I
3 watched some TV, caught a nap. The only reason --
4 the reason for getting two rooms in the first place
5 was because so I -- this girl Dee and myself wouldn't
6 have to stand around in the parking lot and look
7 stupid while Daniel and his girlfriend was over in
8 their room doing their thing.

9 Q And you did your thing while you were in
10 your room, didn't you?

11 A Yes, sir; took my shower, laid down on the
12 bed and watched TV, took a nap.

13 THE COURT: Let's take the
14 afternoon recess.

15 MR. THOMPSON: Yes, sir.

16 THE COURT: Members of the jury,
17 we're going to take a recess until 25
18 until. Please reassemble in the jury room
19 at that time. Please recall it is your
20 duty to abide by all prior instructions of
21 the Court concerning your conduct during
22 this recess. Everyone else please remain
23 seated, the members of the jury are
24 excused.

25 (Jury out at 3:15 p.m.)

1 THE COURT: Mr. Demery, you may
2 come down, sir.

3 We're at ease until 3:35.

4 (Brief recess.)

5 THE COURT: Mr. Demery, if you'll
6 again take the witness stand. All counsel
7 are present, the defendant is present in
8 open court. Mr. Horne, do we have all
9 members of the jury secured in the jury
10 room?

11 THE BAILIFF: Yes, sir, they are.

12 THE COURT: Mr. Thompson, are you
13 ready to go forward, sir?

14 MR. THOMPSON: Yes.

15 THE COURT: If you'll bring the
16 jury in.

17 (Jury in at 3:34 p.m.)

18 THE COURT: Mr. Thompson, you may
19 continue with cross-examination.

20 MR. THOMPSON: Thank you, Your
21 Honor.

22 BY MR. THOMPSON:

23 Q Mr. Demery, on yesterday, you testified
24 that you fired the .38 caliber gun that was taken
25 from Clewis Demory, is that correct?

1 A Yes, it is.

2 Q You fired that gun there at the defendant's
3 house?

4 A Yes.

5 Q You testified you fired it five times?

6 A No, sir. I said I fired the gun several
7 different times.

8 Q Now, didn't you testify that you fired the
9 gun five times there at the defendant's house?

10 A No. There was a question being asked about
11 who first came into contact -- well, when this gun
12 first came into play, I was asked was it loaded. I
13 said, yes, it was fully loaded. There were five
14 bullets shot out of that gun that were -- the bullets
15 that were in the gun when it first came into play.
16 And there was one left. And that's when we went to
17 the pawn shop and a box of bullets were purchased.

18 Q The five bullets that were in that gun that
19 you say were in that gun when it was taken from
20 Mr. Demory's, you fired those five bullets out,
21 didn't you?

22 A I fired some of them. Daniel fired some of
23 them.

24 Q Of the five bullets, how many did you fire?

25 A Two, three. I did not fire all -- I did

1 not fire five bullets out of the original rounds that
2 were in it.

3 Q And you said one was left there in the
4 chamber?

5 A Yes.

6 Q You were the last person to fire that gun
7 on the day the original bullets were fired out?

8 A Last person --

9 Q There at the trailer, all this took place
10 there at the trailer, is that right?

11 A There at the trailer, out of the original
12 rounds that were in the gun, like I said, I did fire
13 some of the bullets in there. But as far as
14 remembering whether I was the last person to fire out
15 of the original rounds, I don't remember. But there
16 was one left in the gun.

17 Q You saw one bullet left in the chamber?

18 A I -- yes, yeah.

19 Q You held the gun?

20 A Yes, I did.

21 Q And opened the chamber?

22 A Yes.

23 Q And saw the bullet in the chamber?

24 A Yes.

25 Q And when you held the gun and saw the

1 bullets in the chamber, that was right after you had
2 finished firing the gun?

3 A Mr. Thompson, that could have been. I
4 don't remember for sure.

5 Q But you could be badly mistaken?

6 A Like I said, I don't remember for sure.

7 Q You also testified that you remembered it
8 being on July the 20th of 1993 that you bought the
9 .38 caliber bullets; that's what you testified to
10 yesterday, isn't that right?

11 A I said that that was the date that Daniel
12 purchased the bullets over at C&R Pawn Shop.

13 Q All right. Now, and that was -- was that
14 the same day that the defendant went across the
15 street and got his ID made? Do you recall that?

16 A I recall Daniel going to get his ID made,
17 but I can't remember the day for sure. It could have
18 been that day.

19 Q You didn't have any ID to purchase the
20 bullets?

21 A Yes, I did.

22 Q But you --

23 A I had ID, I had a driver's license. See,
24 at the time I wasn't 18 years old. It was law that
25 you had to be 18 to purchase ammunition. Daniel was

1 18, and he had his ID. That's the reason he's the
2 one that had to buy them, sign the receipt, give the
3 lady the money and everything.

4 Q Now, that's the reason that Daniel, the
5 defendant went across the street and got his ID the
6 day that the bullets were purchased, is that right?

7 A I remember -- that wasn't -- that wasn't
8 the main -- the reason. I remember, he had been
9 talking about he wanted to get his ID because he
10 needed it for purposes of trying to find a job.

11 THE COURT: Question he's asking,
12 Mr. Demery, is do you recall whether the
13 day the bullets were purchased was the same
14 day that the defendant got his ID?

15 THE WITNESS: No, no, I don't.

16 BY MR. THOMPSON:

17 Q Well, now, you testified earlier that it
18 was on the 15th, the very day the .38 caliber pistol
19 was taken from Clewis Demory, that the bullets was
20 purchase, didn't you?

21 MR. BRITT: Objection.

22 THE COURT: Restate your
23 question.

24 BY MR. THOMPSON:

25 Q Did you not state on a prior occasion that

1 it was on the 15th that the bullets were purchased
2 from C&R Pawn Shop?

3 A Yes, I did say that statement. That was
4 made to law enforcement officers.

5 Q And when did you make that statement to law
6 enforcement officers?

7 A That was in May of '94 -- '95, excuse me.

8 Q And where were you when you made that
9 statement to law enforcement officers?

10 A I was at the SBI office in Fayetteville.

11 Q And would that have been May 2nd of 1995?

12 A I can't remember exact dates, but it was
13 around that time. First of May.

14 Q Well, not only that, you made that
15 statement as late as Thursday of last week, didn't
16 you?

17 A No, sir.

18 Q That the bullets were purchased on the 15th
19 of July, did you not?

20 A No, sir, I didn't. That was -- in May of
21 '95, that was the first time I had ever gave a
22 statement concerning that robbery, and it was the
23 last time. I was told -- like I said, I did say that
24 in a statement. I was told later on it was not the
25 same -- it wasn't the 15th, that it was on the 20th.

1 Q And who told you that it was on the 20th
2 instead of the 15th?

3 A If I'm not badly mistaken, it was one of my
4 attorneys that told me that.

5 Q You don't recall which one of your
6 attorneys told you that?

7 A No, sir. I honestly don't recall which
8 one.

9 Q Where were you -- excuse me. I didn't mean
10 to cut you off.

11 A I don't recall exactly which one it was.

12 Q Well, now, it would have been after May the
13 2nd when one of your attorneys would have told you
14 that, isn't that right?

15 A Yes, yes, it was.

16 Q Where were you when one of your attorney's
17 told you that?

18 A Here in the courthouse over in the DA's
19 office.

20 Q Were both of your attorneys present when
21 you were told that?

22 A Yes, yes, they were both there. Like I
23 said, one of my attorneys told me that.

24 Q And who else -- you were in the DA's
25 office, is that right?

1 A Yes.

2 Q Who else was present there in the DA's
3 office with you and your attorneys when one of them
4 told you it was on the 20th instead of the 15th?

5 A This -- before, you know, well, that night,
6 day, Mr. Johnson, the DA was present. Mr. Kim
7 Heffney was present. Man sitting right beside the
8 DA, and Detective Anthony Thompson, sitting back here
9 behind Mr. Heffney, was present. But before,
10 everybody sat down and started -- we started talking,
11 this was like before everybody came in. One of my
12 attorneys made the suggestion to me, or told me that
13 it was not on the 15th, that it was on the 20th.

14 Q And why did that conversation come up about
15 it not being on the 20th -- I mean, on the 15th as
16 opposed to the 20th?

17 A Well, the reason is because, you know, I
18 came up here that day to -- like I said, there was
19 some discrepancies that needed to be cleared up, some
20 questions that needed to be -- hadn't been answered,
21 for the purposes of getting familiar with
22 Mr. Johnson, the DA. I had, this was the first time
23 ever talking to this guy.

24 And before then, the only thing we did, I
25 sat on one side of the courtroom, he on the other, we

1 glared at each other. They wanted me to feel
2 comfortable responding to this man's questions. And
3 the other reason was to go over statements that I had
4 made, just to make sure that -- like I said, go over
5 the statements.

6 Q Well, now, you were brought up here, your
7 attorneys told you they wanted you to feel
8 comfortable with Mr. Johnson, the District
9 Attorney's, is that right?

10 A Yes, sir. Mr. Johnson himself even made
11 that statement.

12 Q Mr. Johnson made the statement to you that
13 he wanted you to feel comfortable with him?

14 A Yes, sir, he did. He said that he didn't
15 want to -- you know, like I just said before about
16 the part never talking to him, glaring at one
17 another, we were on opposing sides. He didn't want
18 to come up here and be questioning me and me feel all
19 nervous and just fumbling around with answers.

20 Q Now you're on Mr. Johnson's side, is that
21 right?

22 A Well, you could say that. I don't feel
23 that way. I'm --

24 Q You feel comfortable with him, don't you?

25 A Yes, yes, I do.

1 Q And you were here in the District
2 Attorney's office -- now, let's back up. You were in
3 the SBI's office on May the 2nd?

4 A Yes.

5 Q Now, May the 2nd of 1995, that was a
6 Tuesday, wasn't it?

7 A I don't remember the date.

8 Q Well, now, when you were there in the SBI
9 office over in -- that was over in Fayetteville,
10 wasn't it, May the 2nd?

11 A Yes, it was.

12 Q Who was all there?

13 A That day, it was, you know, myself, my
14 attorney, John Campbell, Mr. Heffney, and Detective
15 Thompson.

16 Q And then do you recall the next day you had
17 another meeting?

18 A Yes, we did.

19 Q Was that in the District Attorney's office?

20 A No, sir, it was in the same place, the SBI
21 office in Fayetteville.

22 Q And then you met yet again, did you?

23 A Yes.

24 Q That would have been the next day which
25 would have been the 4th?

1 A Yes.

2 Q And was that the time that you were in the
3 DA's office?

4 A No, it wasn't. I was over in my attorney's
5 offices John Wishart Campbell, here in Lumberton,
6 right across the street.

7 Q Who was present in that meeting?

8 A My attorney, John Campbell, Mr. Heffney and
9 Detective Thompson.

10 Q Who was present in the meeting before then
11 on May the 3rd?

12 A The same people.

13 Q John --

14 A My attorney, John Campbell, Mr. Heffney,
15 and Detective Thompson.

16 Q Now, then you met on May the 8th, did you
17 not, which would have been on a Monday?

18 A Yes, yes.

19 Q Now, was that in the DA's office?

20 A No, sir, it wasn't.

21 Q Where was that meeting?

22 A It was over in my attorney John Campbell's
23 office.

24 Q Who was present at that meeting?

25 A Mr. Heffney, Detective Thompson.

1 Q I believe -- Mr. Rogers didn't come into
2 that meeting?

3 A The last one he did.

4 Q Was that the last one?

5 A I remember it being around four times.
6 Could have been five. I do know that the last day
7 that we met here in Lumberton, that both of my
8 attorneys, John Campbell, Mr. Rogers, Mr. Heffney and
9 Detective Thompson were present.

10 Q And that was in John Campbell's office?

11 A Yes, sir, it was.

12 Q Now, the meeting that you had in the DA's
13 office was even later, yet later, isn't that right?

14 A Yes, sir, about four weeks ago, maybe five.

15 Q And four weeks ago you went over your
16 testimony what you were to testify here for?

17 A No, sir. It was more or less like another
18 interrogation. I wasn't being yelled, screamed at or
19 anything, but like I said, I was being asked about
20 everything all over again.

21 Q Well, you were being asked by Johnson
22 Britt, the District Attorney, were you not?

23 A He did ask some questions. Mr. Heffney,
24 Detective Thompson. And there were times even my
25 attorney, you know, he made -- well, asked some

1 questions about things. You know, like I said,
2 the -- not like the main two questions were. Like I
3 said, there was some that needed to be answered that
4 had never been answered before or asked about before.

5 Q All right, sir. Now, after that meeting
6 with Mr. Britt, after that meeting with Mr. Britt
7 there, that would have been here on the second floor,
8 wouldn't it?

9 A Yes, yes.

10 Q You said that was four weeks ago?

11 A Around four, five weeks ago. Well, I
12 remember it was -- I came up here one time before the
13 actual testimony in this trial started and there was
14 another time I came -- well, the first day I was
15 here, that was for purposes of, I had been told that
16 there was a hearing going on and that I might have
17 been needed to testify in that hearing. But turned
18 out I didn't. I was only here for about two hours.

19 Q Now, Mr. Demery, getting back to the time
20 when you changed your statement about the -- when the
21 bullets were purchased there at C&R Pawn Shop, were
22 you shown any receipt or any paper by any of your
23 attorneys?

24 A That's -- that first night up here at the
25 DA's office, this receipt was being passed around.

1 But as far as actually -- I didn't see it. It was
2 never in my hands and I've known about this receipt
3 for pretty much the whole time that all this went on,
4 two and a half years. But like I said, I've never
5 seen it in possession of either one of my attorneys.

6 Q So you were just badly mistaken about the
7 bullet being purchased on July 15th, weren't you?

8 A Yes, sir, I was, yes.

9 Q And you're badly mistaken about a lot of
10 other things in this case, aren't you?

11 MR. BRITT: Objection,
12 argumentative.

13 THE COURT: Overruled. You may
14 answer if you feel an explanation is
15 necessary, you may explain.

16 THE WITNESS: A few things, but
17 not like you just said a whole lot of
18 things. There may be my -- there may be
19 minor details that I might be badly
20 mistaken about, but the main things that
21 happened, I remember.

22 BY MR. THOMPSON:

23 Q Now, Mr. Demery, July the 22nd of 1993,
24 that was your fiancée's Angel's birthday, wasn't it?

25 A Yes, it was.

1 Q And she was, what, eight, about eight
2 months pregnant with your child?

3 A She was about six and a half to -- about
4 seven months pregnant.

5 Q And you went by the Rite Aid drugstore, I
6 believe you indicated, back on July the 22nd, around
7 4:30, 5:00?

8 THE COURT: Rephrase,
9 Mr. Thompson.

10 MR. THOMPSON: Yes, sir, Your
11 Honor.

12 BY MR. THOMPSON:

13 Q Mr. Demery, it was around 4:30 or 5:00 that
14 you went by the Rite Aid store, did you not?

15 A It was about 4:30, 5:00 when I left
16 Daniel's trailer. It was not a long period of time
17 after then I was over in Pembroke, went by the Rite
18 Aid and Jones's store.

19 Q And this was again on July 22nd, 1993?

20 A Yes, yes.

21 Q And it was there that you bought a balloon,
22 did you?

23 A Yes.

24 Q Now, that was for your -- Angel's birthday?

25 A Yes, it was.

1 Q And you bought these books for, so that you
2 all could read to the baby that she was carrying?

3 A Yes, I bought the books from Jones's.

4 Q Now, on the next day, July the 23rd, you
5 were down in Marion?

6 A Yes, Daniel and I were down in Marion.

7 Q Picked up Dee Sullivan?

8 A Yes.

9 Q The same Dee Sullivan you had in the motel
10 on July 15th?

11 A Yes.

12 Q You took her to the defendant's trailer?

13 A Well, she was -- she drove back, so I guess
14 you could say she took us back to the defendant's
15 trailer.

16 Q You didn't ask to get out, did you?

17 A Did I --

18 Q You didn't ask her to drop you off at
19 Angel's, did you?

20 A No, sir.

21 Q You didn't ask her to drop you off at home,
22 did you?

23 A No.

24 Q So you went in the trailer and you and Dee
25 slept in the same room?

1 A Yes, sir.

2 Q Again, all night?

3 A From about 1:00 in the morning until about
4 9:00 on the next morning. We slept on the same bed,
5 between different sheets.

6 THE WITNESS: Could I -- Your
7 Honor, could I offer an -- maybe an
8 explanation for that?

9 THE COURT: Yes, sir.

10 THE WITNESS: Reason that we were
11 both on this bed together, see, Daniel --
12 well, Daniel and I had been running around,
13 you know, with this car. I was tired, you
14 see. And I had gotten to the point where I
15 just didn't -- I didn't care. I mean, I
16 could have went out there in the living
17 room and slept on this little couch, which
18 if I would have laid down on it I would
19 have been half way off. But I was going to
20 get in this bed, see. I went in there
21 first, she came in there just a few minutes
22 later, got in there, but like I said, I was
23 going to stretch out. I wasn't sleeping on
24 that couch. I was tired, and that's the
25 reason. If Godzilla had laid down beside

1 me on that night, I would have slept in the
2 same bed with him.

3 THE COURT: Mr. Thompson.

4 BY MR. THOMPSON:

5 Q Mr. Demery, back on the 22nd of July of
6 1993, when you went over the Angel's house, I believe
7 you stayed there for about an hour and a half, is
8 that right?

9 A Yes.

10 Q You left Angel's house and you were in your
11 Ford Tempo, driving your Ford Tempo?

12 A Yes, I was.

13 Q And you came to the defendant's house, the
14 Green's residence?

15 A Yes.

16 Q And you and the defendant went over to an
17 individual by the name of Kayeol, who you referred to
18 as Kayeol's house?

19 A Yes, we did.

20 Q What time did you get to Kayeol's house?

21 A I remember it being around 10:30, 11:00.

22 Q Now, Kayeol lives out in the Cloud Burn
23 Pines area, is that right?

24 A Yes.

25 Q When you got over to Kayeol's house, there

1 was a cookout going on?

2 A No, there wasn't.

3 Q After you got to Kayeol's house, did a
4 cookout start?

5 A No, sir, it didn't.

6 Q Now, Mr. Demery when you got over to
7 Kayeol's house, Sebette Leones was there, wasn't she?

8 A No, I don't remember seeing Sebette that
9 night. The only people that I remember that night
10 that Daniel and I went over to Kayeol's was his
11 mother, Kayeol, Kayeol's youngest daughter, Monica,
12 and one of Monica's friends were over there.

13 Q Ebony Moore was there, wasn't she?

14 A I don't remember her being there.

15 Q And you say Monica Hernandez was there?

16 A Yes.

17 Q Kay Hernandez was there?

18 A Yes.

19 Q Elizabeth Ann Green was there?

20 A Yes, she was.

21 Q Tina Jacobs, was she there? She was there,
22 wasn't she?

23 A Like I say, I don't remember anybody being
24 there except for the people that I just told you
25 about.

1 Q Did you know a Nellie Montez --

2 A No, I don't.

3 Q -- back in in July of 1993?

4 A No.

5 Q What about a Bobbie Jo Morillo?

6 A Monica's -- I mean, Kayeol's youngest
7 daughter, Monica, well, I can't -- in order to answer
8 this, I have to say I think.

9 Q Well, you indicated Kay's youngest
10 daughter's was named Monica?

11 A Yes, yes.

12 Q And there's something about Kay's youngest
13 daughter Monica, you remember her being there?

14 A Yes.

15 Q But you remember an individual there that
16 was a friend of hers?

17 A Yes.

18 Q Male or female?

19 A It was a female, a girl, female.

20 Q And that is somebody who you now recall was
21 there that you earlier didn't recall was there, isn't
22 that right?

23 A No, sir. No, I never said that.

24 Q What is the name of that individual?

25 A What I was getting ready to say, I told you

1 I had to say in order to answer this question, may I
2 be allowed to --

3 THE COURT: Sure.

4 THE WITNESS: The name you just
5 mentioned, Bobbie Jo Morillos, Bobbie Jo, I
6 think this -- this was this girl, Monica's
7 friend's name, Bobbie Jo. That sounds
8 familiar, the last name. Bobbie Jo sounds
9 familiar. Very well could have been
10 Monica's friend.

11 BY MR. THOMPSON:

12 Q Hector Leones, did you know him?

13 A Yes, yes.

14 Q He was there, wasn't he?

15 A No, I don't remember him being there.

16 Q Now, Mr. Demery, you testified that when
17 you went over to Kayeol's house, you went into a room
18 there and watched some TV, is that right?

19 A Yes.

20 Q Now, who do you say was in the room with
21 you watching TV?

22 A It was Daniel, myself, Kayeol's daughter
23 and her friend.

24 Q Kayeol's daughter, Monica?

25 A Yes, yes.

1 Q And her friend who you think to be Bobbie
2 Jo?

3 A Yes.

4 Q And it's your testimony you stayed there at
5 the Hernandez house until about 1:30?

6 A Yes, that's around the time that I left.

7 Q And when you left there at 1:30, the
8 defendant was not with you, was he?

9 A Yes, he was.

10 Q Now, did you not leave there at 1:30 and
11 return later on at that house back on the 23rd of
12 July, early morning of the 23rd of July, around 4:00
13 or 5:00?

14 A No, I did not.

15 Q Did you eat anything while you were over
16 there, Mr. Demery, at Kay Hernandez's house?

17 A I don't remember eating anything.

18 Q Did you drink anything?

19 A I honestly don't remember drinking
20 anything.

21 Q Did you speak to Kay Hernandez?

22 A Yes.

23 Q Did you speak to Elizabeth Ann Green?

24 A Yes, I did.

25 Q Do you know who Tina Jacobs is?

1 A That -- no, sir, I don't. That name
2 doesn't sound familiar.

3 Q Mr. Demery, back in July of 1993, your
4 phone number was 521-8885?

5 A Yes.

6 Q Now, that's the number of the residence
7 where you and your parents were staying, is that
8 right?

9 A Yes.

10 Q There was only one phone number at that
11 residence, isn't that right?

12 A Yes, there was.

13 Q Now, did you pay the phone bill regularly
14 there at that residence?

15 A No, sir, I didn't.

16 Q Whose responsibility was it to pay for it?

17 A My parents.

18 Q Do you know which parent?

19 A Both mom and dad.

20 Q Were you allowed to make long distance
21 calls?

22 A Well, I did anyway. If --

23 Q Were you told not to make long distance
24 calls?

25 A Last time I remember being told about long

1 distance calls, that's when Angel and I first started
2 going out together. She was living in Maxton, and at
3 the time it was long distance from the Pembroke-
4 Rowland area to call Maxton, and they jumped all over
5 me about that. That's the last time I remember
6 anything being said concerning, don't make long
7 distance calls.

8 Q When was that?

9 A When Angel and I first started going
10 together.

11 Q When was that, what date?

12 A Around August of '91.

13 Q But you made long distance calls anyway?

14 A Whenever it was deemed necessary, or when I
15 felt it was necessary.

16 Q And you felt it was necessary plenty of
17 times to make long distance calls?

18 A No, no, I didn't.

19 Q Well, the defendant didn't have permission
20 to make long distance calls, did he?

21 THE COURT: From where?

22 BY MR. THOMPSON:

23 Q On your phone.

24 A There was times I gave him permission. It
25 wasn't my place, but I told him yeah, go ahead, you

1 know.

2 Q He didn't -- did he make any long distance
3 calls at your house back in July of 1993?

4 A Yes, he did.

5 Q Now, July the 15th was when you and Dee
6 were there in the motel at Coastal Inn right?

7 A Yes, it was.

8 Q Now, July 16th, the following day, you did
9 not call Dee Sullivan from your residence to Marion,
10 South Carolina?

11 A Yes, sir, I never called Dee Sullivan or
12 Melinda Moore on the telephone. I never called them.

13 Q At your residence?

14 A At my residence or anywhere else.

15 Q Now --

16 A That --

17 Q Go ahead.

18 A That doesn't go to say I never spoke with
19 either one of those people over the phone, but as far
20 as dialing the number myself, I never did that.

21 Q Well, now, you spoke to Dee -- you called
22 Dee Sullivan, made two one-minute phone calls to Dee
23 Sullivan's residence on July 16th of 1993 from your
24 residence, did you not?

25 A No, I did not.

1 Q You spoke to Dee Sullivan on July 16th for
2 about 11 minutes, did you not?

3 A No, no, I didn't. The times that -- the
4 only one I remember ever speaking to over the phone,
5 like the girls from South Carolina, that was
6 Melinda. And that was -- no, excuse me, there was a
7 time that I did talk to Dee over the telephone too.

8 Q At your house?

9 A Yes, sir.

10 Q And that was on July the 16th, wasn't it?

11 A No, sir, it was not.

12 Q When was it?

13 A It was -- this was after, you know, after
14 the murder had been committed, the car was out of the
15 picture, Daniel was back from Fayetteville. He
16 called me one day from his house, Daniel had had
17 three-way calling, and he had been talking to Dee
18 down in Marion, South Carolina. He called my place
19 and these two were on the phone, and that discussion
20 that day was his girlfriend, Melinda Moore.

21 Q I want to know when it was.

22 MR. BRITT: Objection.

23 THE COURT: Let him complete his
24 answer.

25 MR. THOMPSON: Yes, sir.

1 THE COURT: Complete your answer.

2 THE WITNESS: The discussion was
3 about his girlfriend, Melinda Moore. See,
4 Melinda had said that she was carrying
5 Daniel's baby. They were supposed to have
6 been best friends, but here she was on the
7 phone with Daniel, Daniel called my place,
8 we were all on the phone together, and she
9 was telling me and Daniel that Melinda was
10 lying, that she was like that -- she made
11 that claim to about every guy that looked
12 at her twice, some way she put it like
13 that.

14 BY MR. THOMPSON:

15 Q Well, did Dee tell you she was pregnant
16 from you?

17 A No, she didn't.

18 Q Did Melinda tell you that Dee was pregnant
19 from you?

20 MR. BRITT: Objection.

21 THE COURT: It's
22 cross-examination. Overruled. You may
23 answer.

24 MR. BRITT: What Melinda may have
25 said to him is hearsay.

1 THE COURT: Overruled. You may
2 answer.

3 THE WITNESS: No, sir, no.

4 BY MR. THOMPSON:

5 Q Now, on July the 16th around at 2:31 p.m.,
6 you deny making a phone call to Melinda Moore's
7 residence?

8 A Yes, sir.

9 Q Now, on July the 22nd at 10:03 p.m., did
10 you call Huntington, New York?

11 A No, I didn't.

12 Q Do you know who is the owner of the
13 following number, (516) 271-7715?

14 A That's the number to my relatives' house
15 that lives in Huntington, New York.

16 Q And you -- what's the name of the owner of
17 that residence?

18 A Dale -- Joe and Dale Baculik.

19 Q Who is -- how is Janine Baculik related
20 to --

21 A That's their daughter.

22 Q By the way how do you spell Baculik?

23 A B A C U L I K.

24 Q And now, that's the same number that you
25 dialed in the Lexus, is that correct?

1 A Yes, it is.

2 Q On July the 25th at 9:21 p.m., did you dial
3 (561) 271-7715 from your residence?

4 A There was a time that I did dial that
5 number from the house, and then one time in the
6 Lexus.

7 Q And was that on July the 25th?

8 A Yes, it was.

9 Q And you also dialed it on July 28th at
10 11:09 a.m. to Huntington, New York, (516) 271-7715?

11 A No, sir, I didn't.

12 Q At the time you dialed it on the 25th, how
13 long did you talk Mr. Demery?

14 A I didn't -- as best I recall, the first
15 time I dialed that number, like I said, it was at the
16 house, my parents' house, I didn't even talk to
17 anyone there. Then but it was later on inside the
18 Lexus when I made that call that I talked to
19 somebody.

20 Q Now, you don't know how long, how many
21 minutes, have an estimate of how long you talked?

22 A The conversation that I had with --

23 Q Yes.

24 A Around ten minutes.

25 Q Who did you talk to?

1 A I talked with my cousin, Janine.

2 Q Now let's go back to the night of July
3 22nd. That's the same night you bought the balloon
4 for Angel, is that right?

5 A Same day, yes.

6 Q All right. Same day. You came over to the
7 defendant's house after leaving Angel?

8 A Yes, I did, I went back.

9 Q But you all went over to your house before
10 going to Kay's, isn't that right?

11 A No, we didn't.

12 Q And you deny making any calls on the Lexus
13 telephone except one call and that was to Huntington,
14 New York?

15 A Yes, I do -- I am denying that.

16 Q Yes, sir. Now, on July 28th, Mr. Demery,
17 do you remember what day of the week that was, 1993?

18 A Wednesday.

19 Q You were back from Fayetteville as you've
20 testified to?

21 A Yes, I was.

22 Q You came back on Tuesday, July 27th?

23 A Yes.

24 Q And you went home on Tuesday July 27th?

25 A Yes, I did.

1 Q Stayed at your residence?

2 A Yes.

3 Q Off of 710?

4 A Yes.

5 Q And you got home at about what time on the
6 27th?

7 A 8:30, 9:00.

8 Q And the next morning, what time did you get
9 up?

10 A It was after 12:00. I could tell you that
11 for sure. But --

12 Q Okay. On July the 28th at 5:10 p.m., did
13 you call Fayetteville North Carolina, the number
14 (919) 436-6584?

15 A Could you -- what time was that you gave?

16 Q That would be 5:10 p.m., ten after 5:00?

17 A I don't remember exact --

18 Q Go ahead. I'm sorry.

19 A I don't remember exact time, but yes, I did
20 call Fayetteville.

21 Q And do you know whose number (919) 436-6584
22 belongs to?

23 A I don't recognize the number but the person
24 that I called -- well, the person's residence that I
25 called was David Moore, Daniel's brother.

1 Q When did you get that number?

2 A Oh, I had gotten it from Daniel before --
3 that night before on the 27th, before they left, you
4 know, because the reason for that, I was going to
5 call him and ask him what had went on, if the car was
6 gone.

7 Q On July the 30th, Mr. Demery, at 8:05 p.m.,
8 did you call that same number at Mr. David Moore's
9 residence?

10 A I don't remember for sure. I mean, there
11 was more than one occasion that I did call that
12 residence, but as far as days and times, all I can
13 say is it was afterwards and that I did call.

14 Q And you called it on August the 2nd at
15 11:55 a.m., the same number, did you not?

16 A Well, like I just said before, there was
17 more than one occasion that I called. I can't
18 remember dates, you know, times.

19 Q Now, on August the 2nd at 6:02 p.m. you
20 called a (919) 822-1396 at Fayetteville, didn't you,
21 from your residence?

22 A Like I said, -- would you repeat that
23 number please, the question?

24 Q The (919) 822-1396. You called -- dialed
25 that number, did you not, from your residence?

1 A That exact -- is that the number that you
2 repeated, had stated before then?

3 Q No, it's a different number.

4 A I only called, the only residence I ever
5 called was David Moore's.

6 Q Do you know or did you ever meet the
7 defendant's uncle Gary who lived in Fayetteville?

8 A I remember meeting a man that Daniel said
9 it was his uncle, but I don't remember a name.

10 Q Did you get a telephone number from Daniel
11 or anyone which purported to be the number for Gary?

12 A No, I didn't, no.

13 Q On August the 3rd, Mr. Demery, 3:41 p.m.,
14 did you call from your residence or dial the number
15 (919) 436-6584, David Moore's residence?

16 A If David Moore's number was dialed, I did,
17 you know, if it was dialed from my residence, I did.
18 But like I said, once again, I don't remember days or
19 anything for sure.

20 Q And if on the day before that, you dialed
21 822-1396, which purported to be the number for Gary,
22 the defendant's uncle, you dialed that one too,
23 didn't you?

24 MR. BRITT: Objection.

25 THE COURT: He's entitled to some

1 latitude on cross-examination. The
2 question has been asked three times now but
3 you may answer.

4 THE WITNESS: No, I did not.

5 BY MR. THOMPSON:

6 Q Now, on August the 3rd of 1993 at 6:52
7 p.m., did you dial the number (919) 436-6584, the
8 residence of David Moore?

9 A Could have. I don't remember for sure.
10 The only thing I remember about August the 3rd is it
11 was Happy Birthday Larry. That was the day I was
12 born, August the 3rd, '75. I am sure about that.

13 Q You called Fayetteville for somebody to
14 wish you happy birthday?

15 A No, sir. If I called Fayetteville that day
16 it was for the purposes of talking to Daniel to see
17 if, you know, or anything had happened with the car.

18 Q Now, Mr. Demery, it's your testimony that
19 sometime after 1:30 a.m. on July the 23rd, you and
20 the defendant left Kay's house, is that right?

21 A Yes.

22 Q And you testified that you came to the
23 Quality Inn motel or the abandoned store next to the
24 motel?

25 A Yes.

1 Q Now, when you left Kay's house and you went
2 to the area of the Quality Inn motel, you parked your
3 car there on a dirt road next to a canal bank?

4 A Yes, I did.

5 Q You were driving your Ford Tempo?

6 A Yes.

7 Q And you got out of your Ford Tempo, and you
8 and the defendant walked down the canal bank and back
9 down the service road to the abandoned store, is that
10 your testimony?

11 A Yes, it is. Well, walked --

12 Q I beg your pardon?

13 A We walked up the canal bank a little ways,
14 the way we had came in, and got on the service road.

15 Q Okay. And then walked back in the same
16 direction toward the abandoned store? Well, you
17 would have been walking north, in a northward
18 direction?

19 A The reason I said that was because, like --
20 well, you said walk down the canal bank and then over
21 to the store. If we had walked down, we would have
22 ended up behind the asphalt plant located -- here in
23 Lumberton. That's the reason I said we went up, you
24 know, we went up in the direction we had came back on
25 to the road, from the service road over to the area

1 around the motel and the abandoned store.

2 Q When you say up, you mean towards 74?

3 A To the service road.

4 Q And that would have been walking up in the
5 direction of 74?

6 A Yes, yes.

7 Q All right. Is that also upstream, is that
8 where you get "up" from?

9 A Yes.

10 Q Okay. You testified, Mr. Demery, on
11 yesterday that when you first got there to the canal
12 bank, you remember seeing an 18-wheeler truck there
13 on 74?

14 A I recall seeing, you know, seeing an
15 18-wheeler truck parked off on the -- beside the
16 road, yeah.

17 Q And this truck was facing east on 74?

18 A Yes.

19 MR. THOMPSON: Mr. Britt, do you
20 have State's Exhibit 86?

21 MR. BRITT: Is that a
22 photograph?

23 MR. THOMPSON: Yes.

24 MR. BRITT: It's over there on
25 the table.

1 MR. THOMPSON: May I approach the
2 witness, Your Honor?

3 THE COURT: Yes, sir.

4 BY MR. THOMPSON:

5 Q Mr. Demery, I hand you what's been
6 previously marked as State's Exhibit 86, 88, and 87.
7 And they have been previously identified by you.

8 A Yes.

9 Q Using either one of those exhibits, can you
10 describe or point out to illustrate your testimony
11 where the truck was that you saw facing east on 74
12 during the early morning hours of July the 23rd of
13 1993 when you drove that car down there on the canal
14 bank?

15 A Yes, I could.

16 Q Which exhibit would you like to use to
17 point that out?

18 A Well, it would have to be 88. 88.

19 Q All right. Now, where on State's Exhibit
20 Number 88 was the truck parked, the 18-wheeler that
21 you've testified about?

22 A It was parked over on this side of the road
23 facing east, this way.

24 Q All right. In what area now?

25 A This area right here across the road from

1 where the Lexus was, right -- it was not directly
2 across from the Lexus but about from -- about 20 feet
3 back from it.

4 Q And when did you first observe the
5 18-wheeler?

6 A I remember us first seeing it when we first
7 went that direction, you know, to get on the canal
8 bank.

9 Q Can you use State's Exhibit Number 88 to
10 show me where you were located when you first
11 observed the 18-wheeler?

12 A Well, from right around -- this is the dirt
13 road where we went in, and from here, over here, it
14 was a clearing, I could see it.

15 Q Were you in your vehicle when you first
16 observed the 18-wheeler?

17 A Yes, yes.

18 Q And as you turned down the dirt road, the
19 18-wheeler would have been to your left, is that
20 right?

21 A Yes, yes, it would have, yeah.

22 Q Can you use State's Exhibit Number 88 to
23 point out to the jury, illustrate your testimony as
24 to where you saw the 18-wheeler truck when you first
25 observed it and -- as to where the 18-wheeler was

1 when you first observed it and as to where you were
2 when you first observed the 18-wheeler facing east on
3 74?

4 A Yes, I could.

5 MR. THOMPSON: Your Honor, may he
6 step down and do that?

7 THE COURT: Yes, sir.

8 BY MR. THOMPSON:

9 Q Would you do that in three different
10 sections, pointing out to the jury to illustrate your
11 testimony using State's Exhibit Number 88?

12 A Yes. The truck when I first noticed it, it
13 was right in here.

14 MR. BRITT: May I --

15 THE COURT: Yes, sir.

16 MR. THOMPSON: Wait a minute,
17 Mr. Demery.

18 THE COURT: Please keep your
19 voice up, too, sir.

20 BY MR. THOMPSON:

21 Q Go ahead.

22 A Truck was parked about right here. This is
23 the dirt road. This is the dirt road that we went in
24 on the canal bank. From here to here, you know, it's
25 a clear shot, there was nothing in the way as far as

1 blocking the view of it.

2 This is where the truck was. Here is where
3 we went in on the canal bank. This is the area that
4 we were going, I noticed the truck parked over here.
5 Clear shot, nothing blocking the view of it.

6 This area right in here, first -- well,
7 place I saw a truck, this is the dirt road, the canal
8 bank I parked my car up on. From here to here,
9 there's a clear shot, nothing that would block the
10 view of the truck.

11 Q Thank you. You may step back on -- be
12 seated. Now, you testified on yesterday, Mr. Demery
13 that you remember that there was a slightly lit area
14 over near the 74 or the flea market, is that correct?

15 A Yes, I did.

16 Q Now, was there a light pole that you
17 remember or a light fixture that you remember?

18 A There were around in this -- well, the area
19 where the car was, the truck and all, and then around
20 in this area there was some lamps, well, night
21 lights, and then here's the flea market. There were
22 several, I remember being several up around in that
23 area.

24 Q Now, you indicated that you and the
25 defendant, after parking your vehicle on the canal

1 bank, you came to the building and you looked there
2 at the motel, scoped the motel out, is that right?

3 A Yes.

4 Q And you did that for about two hours?

5 A About an hour or so, maybe give or take a
6 few minutes.

7 Q You distinctly remember going back to your
8 car the first time at least one time from the
9 abandoned store?

10 A Yes.

11 Q And is that the -- and on that occasion,
12 you remember the defendant handing you a gun as he
13 lit his cigarette?

14 A It was during that time frame.

15 Q You mean on the first trip back to the car
16 during that time frame?

17 A This was like while we were over in the
18 abandoned store watching the motel and everything,
19 that's when he handed me the gun.

20 Q Was it before you made your first trip back
21 to the car, is what I'm trying to find out, or after
22 that first trip?

23 A I don't remember for sure. It was over in
24 the area of the abandoned store, but wasn't much
25 difference in time.

1 Q Now, what was the reason that you went back
2 to the car the first time?

3 A It was to get cigarettes, cigars. It was
4 something to smoke, I do remember that for sure.

5 Q There came a time that you went back to the
6 car a second time, is that right?

7 A Yes, there was.

8 Q And you left the abandoned store building
9 and went back to the car the second time?

10 A No, we left from the Lexus, we were around
11 the area where this Lexus was parked, and from there
12 went back to the car.

13 Q All right. Now, Mr. Demery, I believe --
14 strike that. Mr. Demery on yesterday, you testified
15 that you and the defendant went to see the car to see
16 what kind of tags it had on it first time?

17 A Yes.

18 Q And on that time, you got as close as ten
19 feet from the vehicle?

20 A Yeah, around ten feet, no more than ten
21 feet.

22 Q You were on the same side of the road as
23 the vehicle?

24 A Yes.

25 Q And you were in front or behind the

1 vehicle?

2 A Behind.

3 Q You walked up behind the vehicle and did
4 you stop approximately ten feet from the rear end of
5 that vehicle?

6 A Not -- no more than ten feet. It could
7 have been less but it wasn't any more than ten.

8 Q Were you and the defendant talking as you
9 walked up to the vehicle?

10 A We were just playing it off, acting real
11 casual, like we were supposed to have been there,
12 walking around that night.

13 Q In a loud voice or soft voice like you were
14 supposed to have been there that night?

15 A No, it wasn't a loud voice. Like I say, we
16 were on our way to see what these tags looked like.

17 Q And when you walked up from be -- when you
18 walked up behind the vehicle, you stood approximately
19 ten feet away, were you closest to the shoulder of
20 the road or was the defendant closest to the shoulder
21 of the road?

22 A We were both standing right together.

23 Q Let me ask another question. Do you
24 understand when you were walking up to the rear end
25 of that vehicle, were you walking -- you were walking

1 up on the shoulder of the road behind the vehicle?

2 A Right.

3 Q On Highway 74?

4 A Yes, we just -- we crossed over, you know,
5 walked across this, the grass area out in there. We
6 didn't even get on the service road, we just walked
7 across, you know, we were approaching this car, we
8 walked right on behind it, you know, and crossed over
9 74, came back.

10 Q And when you came back, where did you come
11 back to?

12 A Well, we came back across the road.

13 Q And that's when you were approximately ten
14 feet from the vehicle?

15 A No, the first time that we crossed over, it
16 was no more than ten feet, but it could have been a
17 little less. I never said approximately. But that
18 was the first time across. The last time -- it could
19 have -- about the same distance.

20 Q Now, Mr. Demery, I don't mean to cut you
21 off but I'm going to have to take this one time -- or
22 one step at a time. The first time, so that we can
23 try to get through this, the first time that you
24 walked up to the vehicle, it's your testimony now
25 that you crossed the road?

1 A Yes.

2 Q Crossed 74?

3 A Yes.

4 Q And that's when you considered to be the
5 first time that you walked up to the vehicle?

6 A No, that was the first time walking up, you
7 know, when we actually walked up to the vehicle, it
8 was the fourth time, fourth and last. Well, not --
9 not the last time, but as far as crossing over the
10 road, that was the fourth time.

11 Q Well, now, during your testimony yesterday,
12 you mentioned different times that you did different
13 things, is that right?

14 A Yes.

15 Q When you referred to the first time you
16 walked up to the vehicle, you testified you were some
17 ten feet away?

18 A No more than ten feet, could have been
19 less.

20 Q And it was on the first time that you
21 walked up to the vehicle that you testified that you
22 observed a person in the vehicle?

23 A First -- I said that, we saw -- and I, you
24 know, I could see the form of a person, but like I
25 said yesterday, I couldn't tell whether it was male,

1 female, race, you know. I couldn't tell if there was
2 anybody else in the car, but I did see a form of a
3 person over at the driver's side.

4 Q Where were you in relation to the vehicle
5 when you saw the person in the vehicle?

6 A I was walking -- we walked behind the car.

7 Q So --

8 A I was --

9 Q So --

10 MR. BRITT: Objection, cutting
11 him off.

12 BY MR. THOMPSON:

13 Q Go ahead, Mr. Demery.

14 A I noticed, you know, this form of a person,
15 that first time, by that first time through. The car
16 did have a back window in it.

17 Q And the car had a back window in it, and
18 the person you saw in the vehicle was in the driver's
19 seat?

20 A Yes.

21 Q And the seat was laid back?

22 A Yes.

23 Q And you could see -- did the seat have a
24 headrest on it?

25 A I didn't really -- I didn't notice that at

1 the time, or I don't remember noticing that, but
2 being in the car the time that we were, I remember
3 it, it did have some type of headrest.

4 Q First time you went to the vehicle, you
5 went to see what kind of tags there were, did you
6 notice what kind of tags there were?

7 A Yes, I did.

8 Q And what kind of tags were on it?

9 A They were -- they had the emblem University
10 of North Carolina's emblem on it.

11 Q And you only saw the tags on the rear of
12 the vehicle at that time?

13 A Yes, that was the ones that we had -- well,
14 my intentions that was the one to look, to go see,
15 you know.

16 Q And you crossed over the road after you
17 observed the individual in the vehicle?

18 A After I saw the tags, we kept -- we never
19 stopped walking, Daniel and I we didn't stop
20 walking. We walked on across the road, saw these
21 tags. I noticed the form of a person. We got across
22 the other side of the road, we came back.

23 Q Which direction?

24 A Well, back across the road where the car
25 was, but we walked behind it again.

1 Q You never stopped walking?

2 A Not this time.

3 Q And --

4 A Well, first or second time.

5 Q You came back across the road, never
6 stopped walking, where did you go?

7 A That was, from there, we went back to my
8 car for the second time.

9 Q And when you came back across the road and
10 went to your car the second time, again, you were
11 about ten feet from the vehicle, isn't that
12 right?

13 THE COURT: Which vehicle,
14 Mr. Thompson?

15 BY MR. THOMPSON:

16 Q From the Lexus.

17 A It was about the same distance, crossing
18 over.

19 Q Now, at this time, going back to the first
20 time that you walked up to the vehicle, had the
21 18-wheeler left the area that you indicated?

22 A There was an 18-wheeler still sitting
23 there. It could have been a different one but there
24 was one still there.

25 Q And did you notice whether anyone was in

1 the 18-wheeler?

2 A I didn't notice whether there was or not.
3 I just -- I assumed because the truck was running,
4 lights -- park lights and everything were on.

5 Q And you never mentioned, you or Daniel or
6 the defendant never talked about anybody being in the
7 18-wheeler, did you?

8 A No.

9 Q But you were going to rob someone there in
10 a Lexus right across the street from it?

11 A Well, when we came back across the road the
12 second time, that's when we started discussing taking
13 this car.

14 Q And the 18-wheeler was still running?

15 A Well, yes.

16 Q Right across the road?

17 A Yes.

18 Q And didn't bother you one bit whether
19 anybody was in that 18-wheeler or not looking at you,
20 did it?

21 A Well, it wasn't a thought. Like I said, we
22 were discussing taking this car.

23 Q Did it bother you, Mr. Demery, whether
24 anybody was in the 18-wheeler looking at you?

25 A Like I just said, I never thought about

1 it. It wasn't a thought.

2 Q Was the Lexus running, the engine of the
3 Lexus running?

4 A If it -- this Lexus, this car, I mean, I
5 guess it had to do with the engine that was in it.
6 This car could be cranked up, you could be standing
7 by here listening, standing by the car as it was
8 running, and the only way you could tell it was on is
9 if somebody revved the engine. That's just how quiet
10 this car was. It could have been running.

11 Q But you could sure hear that deisel on that
12 18-wheeler running, couldn't you?

13 A Oh, yes, yes.

14 Q When you went back to the car the second
15 time, Mr. Demery, this is when you testified that you
16 and the defendant started talking about a plan of how
17 you were going to steal this car?

18 A Repeat the first part of the question
19 again.

20 Q When you went back to your vehicle there on
21 the dirt road, the second time --

22 A Yes.

23 Q -- this is when you and the defendant
24 talked about a plan about how you were going to take
25 this car?

1 A Well, from the time we crossed over to the
2 road and walking back to my car, we were discussing
3 it the whole way. We had got to the car, just, you
4 know, stayed a few minutes, getting things put
5 together, you know.

6 Q And what you put together, the plan that
7 you put together, Mr. Demery, was that the defendant
8 was going to take -- was going to get in that car,
9 that's right, isn't it?

10 A Yes.

11 Q The plan that you put together was the
12 defendant was going to get in the car and hold a gun
13 on the driver?

14 A That's correct, yes.

15 Q The plan that you put together was then
16 that the defendant was going to drive, I mean was
17 going to -- while holding the gun on the driver, make
18 the driver drive to the defendant's house?

19 A Well, to the bridge located near his house.

20 Q Where you would be waiting?

21 A Yes, where -- that's where we were to meet.

22 Q The bridge there at his house?

23 A Yes.

24 Q That's Bob's Landing Trailer Park?

25 A Yes, it is.

1 Q And the plan was, Mr. Demery, was that you
2 all were to tape the man up there at the defendant's
3 house --

4 THE COURT: Rephrase your question.
5 You said the bridge.

6 BY MR. THOMPSON:

7 Q There at the bridge near the defendant's
8 house, that is where you were going to tape him up?

9 A I said we were going to tape -- we had
10 discussed and planned to tape this guy up, put him up
11 along the road somewhere. As far as where we were
12 going to put him out, I never said. I just said we
13 were going to put him out.

14 Q But you were going to tape him up after the
15 defendant was going to hold a gun on the man and tell
16 the man to drive to his house or near the bridge,
17 near his house?

18 A Yes, from the plan that we discussed that's
19 the way it was going to -- had to be.

20 Q Past the sign that says Bob's Landing
21 Mobile Home Park? There's a big sign out there that
22 says Bob's Landing Mobile Home Park?

23 A You mean right out the road at the driveway
24 coming in the trailer park?

25 Q Yes, sir.

1 A I remember a sign being there, and I
2 wouldn't call it very -- I wouldn't call it big. It
3 was a sign about this long (indicating), maybe this
4 high, you know.

5 Q Big letters though, weren't they? Said
6 Bob's Landing Mobile Home Park?

7 A Yes, big letters, Bob's Landing Mobile Home
8 Park, yes.

9 Q And the defendant was going to drive, was
10 going to hold the gun on the man and he was going to
11 drive by that sign, right?

12 A Well, the defendant was going to hold the
13 gun on this man, from what we had planned out, force
14 this man to drive to the bridge, there was never a
15 discussion about by a sign, you know, running over a
16 sign, anything like that. It was just to try to make
17 this man drive to the bridge.

18 Q And when you were going to make the man
19 drive to the bridge, there you were waiting the duct
20 tape, you were going to be waiting with the duct
21 tape?

22 A That's the way everything was supposed --
23 well, it was supposed to have happened that way, but
24 it didn't. The man was shot and dead before we ever
25 met at the bridge.

1 Q I understand. But you had the duct tape in
2 your car?

3 A Yes, sir, several rolls in the trunk.
4 Now --

5 Q Now -- Mr. Demery --

6 THE COURT: Were you going to
7 explain something, sir?

8 THE WITNESS: Yes, I would have
9 liked to, I mean.

10 MR. THOMPSON: Certainly.

11 THE COURT: You're entitled to
12 any time you feel an explanation is
13 necessary.

14 THE WITNESS: This duct tape
15 wasn't in the trunk for the purpose of
16 riding around, taking people's cars, tying
17 them up. It just happened to be there, and
18 then it fell into the plan.

19 BY MR. THOMPSON:

20 Q Well, you knew the duct tape was in the
21 car?

22 A Yes, yes.

23 Q So that part of the plan was your original
24 idea, wasn't it?

25 A We discussed it together, but --

1 Q You said "I got some duct tape"?

2 A Yes, yes.

3 Q Now, after you taped the man up, the plan
4 was you were going to leave your house and you were
5 going to go just a little bit down the road and drop
6 him off?

7 A Well, we were going to leave the area where
8 Daniel lived, put this guy out somewhere beside the
9 road, and leave him. And the plan that we made, he
10 was on his own after then. We didn't discuss where,
11 you know, when, and where, when or where. I mean,
12 like I said it was -- the plan was he was on his own,
13 we were going to put him out. If he made it, that
14 was him.

15 Q Who was on his own?

16 A The man that was in this car that night.

17 Q And you had parked your car at the Green's
18 residence, that was where you were going to park your
19 car?

20 A Yes, that's where I did park my car.

21 MR. THOMPSON: Judge, may we
22 approach the bench?

23 THE COURT: Yes, sir. If you'll
24 come up please, too, Mr. Court reporter.

25 (Whereupon a bench conference ensued

1 as follows.)

2 THE COURT: Let the record
3 reflect this is a bench conference.
4 Present at this time are the presiding
5 Judge, the court reporter, counsel for the
6 State Mr. Johnson Britt, counsel for the
7 defendant Mr. Angus Thompson, Mr. Woodberry
8 Bowen. Also present is the defendant
9 Mr. Green, also known as U'Allah.

10 MR. THOMPSON: Your Honor, this
11 is at a point in my cross-examination where
12 I would like to take a break. I'm going
13 into some different areas, and for the sake
14 of continuity, we've only got about five
15 more minutes.

16 THE COURT: Okay.

17 (Bench conference concluded.)

18 THE COURT: Members of the jury,
19 we're going to stop at this time. We will
20 continue with the matter before us at 9:30
21 tomorrow morning. During the overnight
22 recess, please recall it is your duty not
23 to talk about this matter among yourselves,
24 or anyone else, that includes members of
25 your own families. You're also not to

1 allow anyone to say anything to you or in
2 your presence about this case.

3 If anyone communicates with you about
4 this matter, or attempts to do so, or if
5 anyone says anything to you in your
6 presence, it's your duty to inform us of
7 that immediately.

8 Don't form or express any opinions
9 about this matter. Don't have and contact
10 or communication of any kind with any of
11 the attorneys, parties, witnesses,
12 prospective witnesses, or directly with the
13 Court. Don't allow yourself to be exposed
14 to any media accounts which may exist in
15 connection with this matter, and don't
16 conduct any independent inquiry or
17 investigation or research of any kind.

18 Folks, if you would reassemble at
19 9:30, we hope to be prepared to go forward
20 appropriately at that time. Have a good
21 evening, see you tomorrow at that time.

22 Everyone else please remain seated.

23 (Jury out at 4:54 p.m.)

24 THE COURT: Any other matters
25 from either counsel?

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MR. THOMPSON: No, sir, Your Honor.

THE COURT: If you'll recess us until 9:30, please.

THE BAILIFF: All rise.

(Court recessed.)

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2 NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
3 ROBESON COUNTY SUPERIOR COURT DIVISION
FILE NO. 93 CRS 15291-93

4

STATE OF NORTH CAROLINA)

5

6

vs.

) VOLUME 20

7

DANIEL GREEN, aka AS-SADDIQ)

8

AL-AMIN SALLAM U'ALLAH,)

) DEFENDANT.)

9

ALL
DEMERY

10

11

Transcript of Proceedings before the

12

Honorable GREGORY A. WEEKS, Judge Presiding,

13

before Steve S. Huseby, Registered Professional

14

Reporter and Notary Public, Robeson County

15

Courthouse, Lumberton, North Carolina, on

16

the 31st day of January, 1996.

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14

15 (January 31, 1996. Proceedings in open court.)

16

17 THE COURT: Morning folks. Let
18 the record reflect all counsel are present,
19 the defendant is present in open court.
20 Mr. Horne, do we have all members of the
21 jury secured in the jury room?

22 THE BAILIFF: Yes, sir.

23 MR. BRITT: Your Honor, in
24 keeping with my policy of providing the
25 defense with discovery as it comes in,

1 on -- serving with them today a copy of the
2 statement that we obtained through the
3 assistance of the City of San Bernadino
4 California, Police Department, an interview
5 that was conducted with Katina Jacobs
6 yesterday.

7 THE COURT: Mr. Demery, if you'll
8 retake the witness stand, please, sir.

9 Ready to go forward with cross
10 examination, Mr. Thompson?

11 MR. THOMPSON: Yes, sir.

12 THE COURT: If you'll bring the
13 jury in, please.

14 (Jury in at 9:31 a.m.)

15 THE COURT: Good morning, ladies
16 and gentlemen.

17 Mr. Thompson, you may continue with
18 your cross-examination of Mr. Demery.

19 BY MR. THOMPSON:

20 Q Good morning, Mr. Demery.

21 A Hey.

22 Q Mr. Demery, when we broke or recessed
23 yesterday, you had testified about what happened on
24 the first time that you and the defendant went over
25 to the Lexus and you returned to your car, do you

1 recall that?

2 A Yes.

3 Q Now, the second time, Mr. Demery, that you
4 approached the Lexus was so you could walk past the
5 front of the car to get close and see into the inside
6 of it?

7 A Yes.

8 Q And you testified earlier that you walked
9 past the passenger side of the Lexus, is that right?

10 A Walked around that side. This was the
11 fourth and last time across the road.

12 Q Now, the second time, the second time that
13 you went to the Lexus, you walked -- didn't you
14 testify that you walked past the passenger side of
15 the Lexus?

16 A No, sir, the second time --

17 THE COURT: Folks, so that we can
18 avoid confusion, Mr. Demery, how many times
19 did you approach the Lexus?

20 THE WITNESS: There were six
21 times.

22 MR. THOMPSON: Okay.

23 BY MR. THOMPSON:

24 Q You approached the Lexus six times?

25 THE COURT: Let's walk him

1 through each one so we know exactly which
2 occurrence we're talking about, if you
3 don't mind.

4 BY MR. THOMPSON:

5 Q The first time, as we indicated, was what
6 you testified to yesterday, you went behind the Lexus
7 about ten feet, crossed the road, came back,
8 continued walking back to your car, that's the first
9 time?

10 A Yes, sir, what my meaning of that was, the
11 second time coming back across the road, I considered
12 that to be the second time --

13 THE COURT: That's where I think the
14 confusion is. Let's go through each one.

15 MR. THOMPSON: Okay. Do you want
16 me to start from the beginning for
17 clarification?

18 THE COURT: Yes, sir; yes, sir.

19 BY MR. THOMPSON:

20 Q Let's start back with the first time,
21 Mr. Demery, that you approached the Lexus. What did
22 you do?

23 A The first time we approached the Lexus was
24 for the purposes of getting close enough to get a
25 look at the tags to determine whether it was -- it

1 had state, government tags, because like I said, we
2 thought this might have been an undercover car.

3 THE COURT: On that occasion,
4 where did you go in relationship to the
5 Lexus.

6 THE WITNESS: We walked behind it,
7 crossed over the road, came back across the
8 road, and as we crossed this second time,
9 that's when the discussion first came up
10 about taking the car, you know. From
11 there, we walked back to my car, Tempo, and
12 we went back a third -- the third time, was
13 like I said, for the purposes of getting a
14 layout, what was on the inside of the car
15 to see if anybody else was in there.

16 BY MR. THOMPSON:

17 Q Mr. Demery, hold on a minute, please. So
18 the third time you approached the Lexus after leaving
19 your car, is that correct?

20 A Yes.

21 Q Get a scope of the layout and continue.

22 A From there, this third time across, we
23 walked back behind the car, Daniel and I, in order
24 to, like I said, get a good look on what was inside
25 the car and everything, and get close enough to it.

1 This fourth and last time, walked around the front --

2 Q Okay. The third time you walked behind the
3 car, behind the Lexus?

4 A Yes, yes.

5 Q How far from the Lexus were you when you
6 walked behind the Lexus the third time?

7 A About the same distance as the first time,
8 about ten feet, no more. Like I say -- that's was
9 just for the purposes of crossing over to come back
10 up beside the car and go around the front of it.

11 THE COURT: May I see counsel at
12 the bench please with the court reporter?
13 (Whereupon a bench conference ensued
14 as follows.)

15 THE COURT: Let the record
16 reflect this is a bench conference. At
17 this time are the presiding Judge, the
18 court reporter, counsel for the State Mr.
19 Johnson Britt, counsel for the defendant,
20 Mr. Angus Thompson, Mr. Woodberry Bowen.
21 Also present is the defendant Mr. Green,
22 also known as U'Allah.

23 State's Exhibit 88 is the overhead.
24 The overhead can be used to show where they
25 were, which side of the road, eastbound or

1 west side when they initially began
2 discussing approaching the car. Each
3 movement can be traced using the overhead,
4 so there's no confusion. Right now, in my
5 mind at least there's a lot of confusion
6 about who did what when. And simply for
7 the purpose of clarity and presentation of
8 the evidence on behalf of the State and on
9 behalf of the defendant, since we have the
10 exhibit we can use the exhibit to show
11 where he positioned himself, on which side
12 of the road when he initially, according to
13 his testimony, determined they were going
14 to approach the Lexus, and trace his
15 movement back and forth so there's no
16 confusion in the minds of the jury.

17 MR. THOMPSON: I understand, and
18 desire to listen to the testimony first and
19 intend to use the exhibit.

20 THE COURT: Yes, sir. My point
21 is that -- and I don't mean this in any
22 other way, if we can avoid confusion as
23 opposed to establishing confusion for the
24 record, then the objective is to present
25 clear evidence to the jury so that they can

1 determine the truth of the testimony.

2 Okay?

3 MR. THOMPSON: Well --

4 THE COURT: Folks, come back up.

5 I'm not suggesting that it's your burden.

6 I'm not suggesting that, Mr. Thompson.

7 MR. THOMPSON: I intended to do

8 that.

9 THE COURT: All right. This
10 concludes the bench conference.

11 (Bench conference concluded.)

12 BY MR. THOMPSON:

13 Q Mr. Demery, again, we were talking about
14 the third time when you walked behind the Lexus, you
15 were about ten feet, and you said it was for the
16 purpose of crossing over to come up beside the car in
17 front of it, is that right?

18 A To get around the front area of the car so
19 we could look in, see if there was anybody else in
20 it.

21 Q All right, sir. Now, Mr. Demery, the third
22 time that you approached that Lexus, did you approach
23 it from the rear?

24 A Yes.

25 Q Okay. The second time that you testified

1 to that you approached the Lexus, did you approach it
2 from the rear?

3 A The second time we were coming back across
4 the road.

5 Q Thank you. The first time you approached
6 the Lexus, did you approach it from the rear?

7 A Yes, we did, yes.

8 THE COURT: Mr. Demery, for the
9 purposes of clarification, sir, you said,
10 according to your testimony, that there was
11 some discussion between you and the
12 defendant initially about approaching the
13 Lexus?

14 THE WITNESS: Yes, yes, there
15 was.

16 THE COURT: At the time you say
17 that discussion took place, on which side
18 of the road were you and the defendant,
19 according to your testimony, on the
20 eastbound side of the road or the westbound
21 side of the road?

22 THE WITNESS: On the westbound
23 side. We were coming, leaving the motel,
24 parked at the abandoned store parking lot.
25 The last time, that's when Daniel made the

1 statement about he thought this was an
2 undercover car, and first time we
3 approached was for the purposes of getting
4 a look at the tags.

5 THE COURT: When you say you
6 decided to approach the Lexus, on which
7 side of the road was the Lexus parked? Was
8 it parked on the westbound side of the road
9 or the eastbound side of the road?

10 THE WITNESS: The west side.

11 THE COURT: Now, you indicated
12 that you crossed the road.

13 THE WITNESS: Yes, sir.

14 THE COURT: Explain to us what
15 you mean.

16 THE WITNESS: We crossed over

17 74 --

18 THE COURT: Crossing the
19 westbound side to the eastbound side?

20 THE WITNESS: Crossed from the
21 westbound side over to the eastbound side,
22 all the way across the road and came back
23 again behind the car.

24 THE COURT: So that we're clear
25 on your testimony, you crossed from the

1 westbound side to the eastbound side, and
2 then walked along the eastbound side of the
3 road?

4 THE WITNESS: After we got across
5 the road to the eastbound side, came
6 directly back across the road, behind the
7 car again on the westbound side.

8 THE COURT: All right.
9 Mr. Thompson.

10 BY MR. THOMPSON:

11 Q Mr. Demery, and when you crossed from the
12 eastbound side back over to the westbound side, were
13 you behind the Lexus?

14 A Yes.

15 Q Now, Mr. Demery, the fourth time that you
16 approached the Lexus, you left from your vehicle?

17 A No, sir, we came back across the road from
18 the eastbound side in order to get close to this car
19 and get around the front of it to see if anybody else
20 was in there.

21 Q Now, Mr. Demery, the third time that you
22 indicated that you crossed the eastbound back to the
23 westbound to see if anybody else was in the vehicle,
24 how close did you get to it?

25 A The third time, it was about the same

1 distance, we walked across the road, eastbound side
2 over to the westbound side. The fourth time we came
3 back across from the eastbound side and walked around
4 the front part of the car.

5 Q Mr. Demery, the third time that you
6 approached the vehicle, how -- were you about ten
7 feet from the vehicle?

8 A Yes, sir, about the same --

9 Q From the rear of the vehicle?

10 A Yes, yes. Like I said before, the purpose
11 for the third time going back across behind the car
12 was only to get around the front part, trying to play
13 it off real casual like it was nothing to be -- like
14 we were supposed to have been walking down the road
15 that night.

16 Q And when you -- and you did walk toward the
17 front of the car?

18 A Yes, we did.

19 Q And when you walked toward the front of the
20 car, you were on the west side of the road?

21 A Yes.

22 Q Westward bound lane of the road?

23 A Yes.

24 Q When you walked toward the front of the
25 vehicle, you were on the -- were you on the passenger

1 side or did you walk past the passenger side or did
2 you walk past the driver's side?

3 A Came up around the driver's side, walked
4 around the front part of the car.

5 THE COURT: So you would have
6 been walking in an easterly direction at
7 that time?

8 THE WITNESS: Well, no, sir, we
9 came -- this fourth and last time crossing
10 over the road, we came around, it was --
11 had to come back over to the westbound
12 side. We were on the driver's side of this
13 car, and walked around the front part of
14 it, which is the passenger side.

15 THE COURT: But you would have
16 been walking back toward the east.

17 THE WITNESS: No, sir, we just
18 crossed over. I mean, we didn't --

19 THE COURT: That's what we need
20 to understand, Mr. Demery. Let's back up
21 so we can be clear on your testimony. When
22 you initially decided to approach the
23 vehicle, where were you?

24 THE WITNESS: Walking back
25 towards my car leaving the motel and

1 abandoned store for the last time.

2 THE COURT: As you were walking back
3 to your car, where was the Lexus?

4 THE WITNESS: The Lexus was parked
5 on the right side of the road near --
6 facing west, on the westbound side.

7 THE COURT: Now, once you made
8 the decision, according to your testimony,
9 to approach the vehicle, exactly what did
10 you do?

11 THE WITNESS: Walked across the
12 road behind this car and it was still
13 facing the west, facing towards Charlotte.

14 THE COURT: So you were coming
15 from the eastbound side to the westbound
16 side.

17 THE WITNESS: No, sir. We were
18 on the west side, the westbound side.

19 THE COURT: Well, where did you
20 cross the road?

21 THE WITNESS: From the westbound
22 side over to the eastbound side, then back
23 across to the westbound side.

24 THE COURT: That's what we need
25 to know. We need to know exactly what your

1 testimony is, where were you when you
2 decided to approach the car, where did you
3 walk to, what direction did you walk in,
4 and from there, tell us what happened.

5 THE WITNESS: Okay. Start,
6 beginning --

7 THE COURT: Yes, sir.

8 THE WITNESS: Can I go through
9 the whole thing without --

10 THE COURT: Yes, sir.

11 THE WITNESS: When we initially
12 -- when it was first decided to approach
13 this car, you know, we were over -- well,
14 going from the side of the road, it was on
15 the westbound side. We were walking from
16 this motel, abandoned parking lot, walking
17 down this service road. When we crossed
18 over the road for the first time, it was --
19 we were on the westbound side. We went
20 over to the eastbound side, came back.
21 That's when Daniel and I first started
22 discussing taking the car and everything.
23 We went to my car, like 15 minutes at the
24 most was what amount of time that was put
25 into these plans. When we went back to

1 this car for the purposes of getting close
2 to it to determine whether anybody else was
3 inside the vehicle, we again walked from
4 the westbound side over to the eastbound
5 side for the purposes, like I said, just to
6 make it appear that we were out walking
7 around, casual, like we were supposed to
8 have been there.

9 THE COURT: When you crossed over
10 to the eastbound side, once you reached the
11 eastbound side of the road --

12 THE WITNESS: No, sir.

13 THE COURT: What did you do? Did
14 you stand there?

15 THE WITNESS: We came back across
16 to the eastbound side, but instead of
17 walking behind the car, at this time went
18 in the direction alongside the car and
19 walked around the front part of it.

20 THE COURT: Now, at the time you
21 walked toward the car were you on the
22 westbound side or eastbound side?

23 THE WITNESS: Westbound side.

24 THE COURT: So you went from the
25 westbound side directly across the street

1 to the eastbound side?

2 THE WITNESS: Yes, sir.

3 THE COURT: From that point, you
4 stopped and then walked directly back
5 across the street?

6 THE WITNESS: Yes, we did.

7 THE COURT: And once you walked
8 directly back across the street, you were
9 on the westbound side?

10 THE WITNESS: Yes, we were.

11 THE COURT: And from that
12 position, you approached the vehicle?
13 Nobody else was there, so you need to tell
14 us what you did, according to your
15 testimony?

16 THE WITNESS: May I be allowed to
17 start over again.

18 THE COURT: Yes, sir.

19 THE WITNESS: We were over on the
20 westbound side of the road over at this
21 motel. From the position we were in, and
22 like I said, when we left the motel,
23 abandoned store parking lot for the last
24 time, we were approaching, walking down the
25 service road, and we were coming up to this

1 car from the westbound side. That's when
2 it was decided, you know, the discussion
3 came -- the disagreement came up about it
4 being an undercover. We walked -- we were
5 on the westbound side of the road, crossed
6 over to the eastbound side. This was the
7 first time around. The purpose was to see
8 the tags.

9 Okay. From the westbound side, we
10 went directly right back across the road
11 towards the eastbound side. Okay. From
12 there, from that point is when the
13 discussion came up about taking the car.

14 Went on back to my car, the Tempo.
15 Like I said, it took about 10, 15 minutes
16 at the most to make these plans.

17 The next time we approached this car
18 we were still -- we were on the westbound
19 side. We crossed back over the road again
20 from behind this car over to the eastbound
21 side, and this time was for the purposes of
22 getting up close to the car to get a look
23 on the inside to determine whether anybody
24 else was in there or not.

25 From the east side, we came back

1 across to the west side along the side of
2 this car, and from the side of this car, we
3 walked around the front part of it, and
4 from there, it was to the sign, the bushes,
5 ducking from cars and everything.

6 THE COURT: Mr. Thompson. A
7 diagram would be helpful.

8 MR. THOMPSON: Yes, sir, that's
9 what I intend to approach the witness, Your
10 Honor, if you --

11 THE COURT: Yes, sir.

12 MR. THOMPSON: -- will allow me.

13 THE COURT: Yes, sir.

14 MR. THOMPSON: I'm handing the
15 witness State's Exhibit Number 88, which is
16 the aerial that you previously testified
17 to. Mr. Demery, can you use State's
18 Exhibit Number 88 to illustrate your
19 testimony as to how many times you went,
20 you approached the vehicle and the
21 positions from which you approached it?

22 THE WITNESS: Yes, sir, I feel
23 that I could.

24 THE COURT: Do you want to have
25 him stand up?

1 MR. THOMPSON: Yes, sir.

2 BY MR. THOMPSON:

3 Q Had you rather do it all at one time in
4 sections, Mr. Demery, in other words, start from the
5 first time all the way through the fourth time?

6 A Yes, sir, I would prefer to do it that way.

7 Q Well, you can do it that way.

8 MR. BRITT: May I --

9 THE COURT: Yes, sir.

10 BY MR. THOMPSON:

11 Q Now, I want you to do it, that's a small
12 photograph in four sections.

13 THE COURT: Three would be fine.
14 Whatever you want to do, but three would
15 work. Whatever you want to do,
16 Mr. Thompson.

17 MR. THOMPSON: All right.

18 THE WITNESS: This place right
19 here, the motel we were at, the store.

20 THE COURT: Keep your voice up
21 please, Mr. Demery.

22 THE WITNESS: This is the dirt
23 road where the car was parked. First time
24 we approached this vehicle we were leaving
25 the motel, walked down the road, service

1 road right here. This part, this section
2 right here being where the Lexus was
3 parked. It was facing this direction which
4 is west, towards Charlotte. Okay. First
5 timed we approached this car, we came, like
6 I said, down the road here, came across and
7 walked behind this car, sitting about right
8 here in this location.

9 First time we approached it, crossed
10 over behind the car, walked over to this
11 side of the road, which this being the
12 westbound lane -- I mean east, excuse me,
13 east. Went back across the road. We went
14 this direction first time, directly back
15 across behind the car again.

16 From there, like I said, this is where
17 my car was parked. Went there, discussed
18 plans -- well, from this point, the second
19 time crossing the road, where the
20 discussion started about taking the car.
21 From there to here, that's what we talked
22 about. Came back.

23 Third time we crossed over the road,
24 car still sitting here. Come across behind
25 it again. This -- all the way across. But

1 instead of the fourth time, we walked just
2 a little bit this way, which would --
3 direction we were walking would have still
4 been west. Came up alongside this car.
5 And which would be, you know, it was still
6 on the side pointing west. Walked around
7 the front of this car, and from there,
8 front of this car, like right here at the
9 sign, that's where the first car came. We
10 ran to the bushes back here, from there,
11 back up to the -- well, to the car, another
12 car came, sign, from behind the sign,
13 that's when the murder was committed and
14 from there on out.

15 BY MR. THOMPSON:

16 Q All right. Would you step down to where
17 Mr. McGirt is, here, and explain to this section of
18 the jury your testimony, illustrate it.

19 A Motel store, that's where we were
20 attempting to rob. First time we approached this
21 car, you know, for the purposes of getting a look at
22 the tags that were on the car. We were walking down
23 this road. Okay. Car sitting here. When we crossed
24 the first time, we crossed behind this car, over to
25 this side of the road that, the eastbound lane, and

1 from here, turned right around and walked back over
2 to the westbound lane here.

3 From here, the discussion came up about
4 taking the car. From here to here, which is the area
5 where my car was parked, that's what the discussion
6 was, making plans.

7 We came back this third time, like I said,
8 to get a look, see if anybody else was in this car.
9 We approached the car from the same direction, walked
10 behind it, went across the road to the eastbound
11 lane, and instead of going behind it this time, we
12 come around along the side of it. And from there, we
13 walked around the front. From there, you know, over
14 to the -- car comes, bushes, back to the car, another
15 car comes, sign.

16 Q Now, stand right here and show this section
17 of the jury and illustrate your testimony?

18 A This is the motel store, we were attempting
19 to rob somebody. Here, first time we approached the
20 car, we were coming from this direction. The car was
21 sitting here, facing west, westbound lane, eastbound
22 lane. First time we approached it, we walked behind
23 the car, crossed over to this point, right here which
24 is eastbound lane. Turned directly around and walked
25 back across for the purposes of getting a look at the

1 tags.

2 From there, from this point here, crossing
3 back over, that's where the discussion started about
4 taking this car. From here to here, you know, which
5 this area right here, where my car was parked, that's
6 what the discussion was about.

7 When we approached this car the third time,
8 like I said, it was for the purposes of getting close
9 to this car to see if there was anybody else in it
10 besides -- well, this person that I had noticed, the
11 form of a person.

12 Third time we approached, same direction,
13 walked behind it, westbound lane, eastbound lane.
14 Crossed over to this section, eastbound lane, and
15 instead of walking directly back across behind this
16 car again, we came up to this side, this side of the
17 car. Walked around the front part of it, from there,
18 and bushes, sign, cars coming.

19 Q All right. You may be seated. You can
20 hold that, I'm going to ask you to use it again later
21 on.

22 Is your testimony, Mr. Demery, that you
23 never could tell whether the engine was running or
24 not on that Lexus?

25 A That's correct.

1 Q That's because the engine runs so smooth?

2 A That, and like I said, across the road from
3 it, over the eastbound lane, there was a truck,
4 18-wheeler, 95, nowhere -- to the left where I was
5 standing, lot of noise coming from there.

6 Q And that 18-wheeler was there every time
7 that you approached that vehicle?

8 A Yes, sir. Yes, it was.

9 Q That 18-wheeler was there when you say the
10 defendant shot the man in the Lexus?

11 A Yes.

12 Q That engine was running in that 18-wheeler
13 the whole time?

14 A As far as I could tell. Like I said, 95
15 was right there, and many trucks go up and down 95.
16 I don't have to tell anyone here that.

17 Q I understand. But the 18-wheeler was
18 parked across from the Lexus?

19 A Not directly across, but this truck was
20 facing it was over on the eastbound lane, facing
21 towards Wilmington, and the Lexus -- Lexus here, you
22 know, westbound side, facing west. This truck was --
23 I would say up from it, like up here, maybe 20, 30
24 feet, you know, up this way, but it was right here --

25 Q Mr. -- excuse me. I want you to point out

1 in the courtroom the distance that you say that truck
2 or that diesel engine running was from the Lexus?

3 A Well, like I said, it was all the way
4 across the road --

5 Q Using -- Your Honor, may I stand up?

6 THE COURT: Yes, sir.

7 BY MR. THOMPSON:

8 Q First of all, was the truck further than
9 that door?

10 A Like I said, it was all the way across the
11 road on the eastbound side, it was not directly
12 across from this Lexus --

13 Q I understand.

14 A It was up this way, like I say, about maybe
15 20, 30 feet up, but that would make it --

16 Q I understand. Now, Mr. Demery, the Lexus
17 is in the eastbound -- I mean on the westbound
18 shoulder of 74?

19 A Yes, it was.

20 Q The truck is on the eastbound shoulder?

21 A Yes.

22 Q Of 74.

23 A Yes.

24 Q Now, I realize that you've got to cross 74
25 to get from the westbound to the eastbound?

1 A Yes.

2 Q But nevertheless, if you went, looked
3 straight up on the eastbound side of 74 from where
4 the Lexus was, you indicated it was about 20 feet,
5 the truck?

6 A Up.

7 Q But across the road?

8 A Yes.

9 THE COURT: Mr. Thompson
10 rephrase. He indicated it was not directly
11 across but at an angle.

12 THE WITNESS: Mr. Thompson, I
13 could use this and show you better than I
14 could tell you.

15 BY MR. THOMPSON:

16 Q I understand. But at this point, I want
17 you, if you can, to use this courtroom to tell me if
18 that truck was further than this door, this back door
19 here, from where you're sitting?

20 A It was about 20, 30 feet, but about this
21 distance, I guess you could say --

22 THE COURT: From where you are to
23 where --

24 THE WITNESS: To the door. But
25 what I was trying to say is that this car,

1 I mean, this truck facing east was up this
2 way, and then it was all the way across --

3 BY MR. THOMPSON:

4 Q I understand. But you're saying -- and
5 now, I'm going to let you use State's Exhibit Number
6 88, but you're saying it's about as far as from you
7 to the door?

8 A Yes, sir, upwards.

9 Q Now, Your Honor, may I?

10 A This -- westbound lane.

11 Q Hold on a minute.

12 THE COURT: There's some markers
13 back there, Mr. Thompson.

14 MR. THOMPSON: Your Honor, may we
15 approach?

16 THE COURT: Yes, sir.

17 (Whereupon a bench conference ensued
18 as follows.)

19 MR. THOMPSON: I don't know if
20 this is going to work out. I know these
21 magic markers don't work on this -- yeah,
22 on those. They come off. I mean, as you
23 handle it, it smears off.

24 MR. BRITT: That's why they are
25 in the plastic sleeves.

1 THE COURT: We've also got a pad
2 back there, where you can use a diagram.

3 MR. THOMPSON: I was just going
4 to try to duplicate this on -- I think it
5 will take on a copy, plain sheet of paper
6 and then it will be much clearer.

7 MR. BRITT: That's fine.

8 THE COURT: Yes, sir.

9 (Bench conference concluded.)

10 THE COURT: Do you want to do
11 that now, Mr. Thompson?

12 MR. THOMPSON: Yes, sir.

13 THE COURT: Let me let the jury
14 step down for about ten or 15 minutes.

15 MR. THOMPSON: Yes, sir.

16 THE COURT: Folks for logistical
17 and administrative reasons, we're going to
18 take a ten minute recess at this time.
19 Please reassemble in the jury room at 15
20 after ten -- let me give you until 20
21 after. Please recall it is your duty to
22 abide by all prior instructions of the
23 Court concerning your conduct during this
24 recess. Everyone please remain seated.
25 Members of the jury are excused until 10:20.

1 (Jury out at 10:06 a.m.)

2 THE COURT: Mr. Thompson, you've
3 asked for an opportunity to duplicate
4 State's Exhibit 68. As I pointed out to
5 you folks at the bench conference, my
6 purpose is not to impinge on anybody's
7 right to conduct your examination as you
8 deem appropriate, but I have an obligation
9 under 8(c)611(a) to see to it that the
10 evidence is presented in this case in a way
11 to most effectively present the truth to
12 the jury. The ascertainment of the truth
13 is the Court's concern. In that regard,
14 I'm going to give you that opportunity.

15 We've got opportunities to diagram, to
16 avoid any confusion, and I don't mean to
17 suggest that anybody is intentionally
18 trying to confuse, I certainly don't mean
19 that on the part of the State or the
20 defendant, but the jury has got the
21 responsibility, they have the
22 responsibility to determine the truth in
23 this case. And they have got to do that on
24 the basis of the evidence presented. If
25 that evidence is not clear, their job

1 becomes even more difficult.

2 MR. THOMPSON: Yes, sir.

3 THE COURT: I appreciate you
4 accommodating us folks.

5 MR. THOMPSON: Your Honor, what
6 I'm going to try to do is get this copied
7 on a copy, if it doesn't work, we'll try
8 maybe using a diagram.

9 THE COURT: I appreciate the
10 help.

11 MR. THOMPSON: All right.

12 THE COURT: Yes, sir. We're at
13 ease.

14 (Brief recess.)

15 THE COURT: Let if record show all
16 counsel are present, the defendant is present in open
17 court. Mr. Thompson, do you need a moment?

18 MR. THOMPSON: Yes, sir.

19 (Short pause)

20 (Defense Exhibit 24 was
21 marked for identification.)

22 THE COURT: If you'll bring the
23 jury in, please, Mr. Horne.

24 (Jury in at 10:28 a.m.)

25 THE COURT: Yes, sir,

1 Mr. Thompson you may continue, sir.

2 THE WITNESS: Your Honor, I would
3 like to ask if I could clear something up?

4 THE COURT: If you'll allow
5 Mr. Thompson to put questions to you and
6 Mr. Britt will have an opportunity on
7 redirect examination to ask additional
8 questions.

9 THE WITNESS: Okay.

10 THE COURT: Mr. Thompson.

11 MR. THOMPSON: Yes, sir. Again,
12 Your Honor, may I approach the witness?

13 THE COURT: Yes, sir.

14 BY MR. THOMPSON:

15 Q I hand you, Mr. Demery, what has been
16 marked as Defendant's Exhibit Number 24, which is a
17 photocopy of State's Exhibit Number 88. Does it
18 appear to be a photocopy copy of State 88?

19 A Yes, it is.

20 Q Now, using Defendant's Exhibit Number 24,
21 can you use that to show and illustrate your
22 testimony as to where your car was, the Lexus was,
23 and intersection of 74 and 95, the various things
24 that you've testified to?

25 A Yes, sir, I could.

1 Q Now, first of all, before you do that,
2 would you indicate, using the Defendant's Exhibit
3 Number 24, about where you indicate the Lexus was?

4 A Yes, sir.

5 Q And draw a circle and write "Lexus" next to
6 it on Defendant's Exhibit Number 24.

7 A (Witness complies).

8 Q Can you draw that circle a little heavier?

9 A Yeah, I could.

10 MR. BRITT: There's a magic
11 marker.

12 THE COURT: Marker might be
13 better than the pen.

14 BY MR. THOMPSON:

15 Q Just shade that circle in with the magic
16 marker use the pen to write the words, you can write
17 better with a pen.

18 A Okay.

19 Q Now, using Defendant's Exhibit Number 24,
20 will you -- can you indicate on that exhibit where
21 the 18-wheeler --

22 A Yes, yes, I could.

23 Q -- was.

24 A (Indicating).

25 Q Now, --

1 A Should I write "truck"?

2 Q That will be fine, write "truck."

3 A Just darken it in a little bit.

4 Q That's all right. Using Defendant's
5 Exhibit Number 24, can you indicate where your car
6 was parked there on the dirt road along the canal
7 bank?

8 A Yes. The area now --

9 Q Show me the area first.

10 A Well, right here (indicating). But now,
11 from --

12 Q Go ahead and explain your answer.

13 A Now, the car was pulled up into the wooded
14 area, so from this photograph, I couldn't show you
15 because these trees and everything, but it was right
16 here, this is the same dirt road that I used.

17 Q Well, would you put --

18 THE COURT: Why don't we use a
19 green pen for that, Mr. Thompson, green
20 marker.

21 MR. THOMPSON: I don't know how
22 well it's going to show up, but we can try.

23 THE COURT: Yes, sir, we can
24 try.

25 BY MR. THOMPSON:

1 Q Using a green marker can you put a dot?

2 THE COURT: How about an X.

3 BY MR. THOMPSON:

4 Q An X there where you say your vehicle was
5 parked?

6 A (Indicating).

7 THE COURT: You have to make it
8 bigger than that, Mr. Demery.

9 THE WITNESS: (indicating).

10 Should I write "Tempo"?

11 BY MR. THOMPSON:

12 Q No, I think that X should be
13 sufficient?

14 THE COURT: Yes, sir, since it's
15 in a different color. As a matter of fact,
16 why don't we differentiate. We've got two
17 red dots, why don't we use blue for the
18 truck, red for the Lexus.

19 BY MR. THOMPSON:

20 Q You're going to have to put the blue on top
21 of the red dot. I don't know what color, that will
22 probably be green or something. I don't know what
23 color that; but anyway, you can use it to illustrate
24 your testimony. Has "truck" written next to it, does
25 it not?

1 A Yes, it does.

2 Q The bushes that you say you ran behind,
3 about where were they located?

4 A The bushes were right in here (indicating)
5 this area.

6 Q On the other side of that road?

7 A I don't --

8 Q That's all right. That's all right. Using
9 Defendant's Exhibit Number 24, Your Honor, again,
10 since this is a new exhibit, may he step down and
11 show the jury using Defendant's Exhibit Number 24 to
12 illustrate your testimony.

13 THE COURT: Yes, sir.

14 BY MR. THOMPSON:

15 Q Each section, just point where your car was
16 located on the dirt road, approximately where the
17 18-wheeler was located and where the Lexus was
18 located?

19 THE COURT: Mr. Britt, if you
20 would like to position yourself, feel free,
21 sir.

22 THE WITNESS: This is where my
23 car was where the X is, this is the truck.

24 THE COURT: What color is
25 denominated on the diagram for the truck?

1 THE WITNESS: Blue color here.

2 BY MR. THOMPSON:

3 Q Has "truck" written next to it, does it
4 not?

5 A Yes. Green mark, my car was --

6 Q And that has --

7 A Just the green mark. X. Red dot, the
8 Lexus.

9 Q And it has "Lexus" next to the red dot?

10 A Yes.

11 Green X is where my car, the Tempo was at.
12 The red dot, the Lexus. This blue dot is where the
13 truck was.

14 My car, X, green X. This red dot, the
15 Lexus. Blue dot is where the truck was. Across the
16 road from -- the distance up and -- as far as the
17 distance, I have a -- I could tell like another way
18 -- well, about the same way, and it might would
19 sound better. I mean, give everybody a full
20 understanding of it.

21 Q Well, now, and I'll let you do that, but
22 you indicated that it was about as far as from you to
23 the back of the courtroom?

24 A Yes, yes, sir, I did, yes.

25 Q All right, sir. Now, go ahead and explain

1 whatever you want to using Defendant's Exhibit Number
2 24 what you would like to explain. Come back down
3 this way and start.

4 A If I could offer a little explanation to
5 begin with that would --

6 THE COURT: Yes, sir.

7 THE WITNESS: I've never been
8 good with distances as far as measuring and
9 everything. Now, if I had been asked a
10 question about six and a half by ten feet,
11 that being the size of my cell at the jail,
12 I could tell you all about it. But during
13 the break, I was advised that -- I said 20,
14 30 feet. But during the break I was
15 advised from where I am to the back of the
16 courtroom is about 60, 65 feet, that's the
17 amount of distance, when I was saying 20 or
18 30, that's what it was.

19 BY MR. THOMPSON:

20 Q Who advised you that it was 60 or so feet?

21 A Well, when my attorneys came up and were
22 telling me that, well, about this distance.

23 Q But nevertheless, it's from where you were
24 seated to the back of the courtroom?

25 THE COURT: So that the record is

1 clear, Mr. Demery, what is it that you're
2 telling us at this time? Are you telling
3 us that your estimate of 20 feet was
4 incorrect.

5 THE WITNESS: Yes, sir, it was
6 very incorrect. Again, I was badly
7 mistaken.

8 THE COURT: What is it that
9 you're telling us about your recollection
10 of the distance in terms of anything that
11 you can use as a point of reference in the
12 courtroom?

13 THE WITNESS: What I would say,
14 where I said it was 20 or 30 feet, I was
15 mistaken.

16 THE COURT: What is your
17 recollection?

18 THE WITNESS: Well, my
19 recollection is what I said before, from
20 here to the back of the courtroom, but --
21 and from the front bumper of the Lexus, you
22 know, standing at the front bumper, walked
23 directly across the road, standing in front
24 of this truck, still the distances of 60,
25 65 feet.

1 BY MR. THOMPSON:

2 Q Are you through?

3 A Yes.

4 Q Now, using Defendant's Exhibit Number 24,
5 using this pen instead of your finger, would you
6 retrace again your testimony as to the number of
7 times you approached the Lexus and show from whether
8 it was from where you came from --

9 THE COURT: Get a different color
10 on there.

11 MR. BRITT: Blue, black, red, and
12 green.

13 THE COURT: Here's yellow.

14 MR. BRITT: Yellow.

15 THE COURT: Mr. Thompson --

16 MR. THOMPSON: May be a little
17 messy and you probably won't be able to --

18 THE COURT: Let's try.

19 MR. THOMPSON: You can't write
20 doing it like that, I guess you need to get
21 back on the stand.

22 THE WITNESS: (Witness complies).

23 BY MR. THOMPSON:

24 Q From the first time you approached the
25 Lexus, you came from where? Just tell me.

1 A Leaving the area of the motel and the
2 store, walked down the service road and --

3 Q Where is the store, can you see the store
4 on there? Let me get State's 88.

5 Now, using Defendant's Exhibit Number 24,
6 and you have before you also State's Exhibit 88. On
7 Defendant's Exhibit 24, can you indicate where the
8 store is on Defendant's Exhibit Number 24?

9 A Well, it's not very clear, but looking at
10 this, this is the store where this white looking
11 square is.

12 Q All right, sir.

13 A And this is the area of the motel.

14 MR. THOMPSON: Your Honor, you
15 got any suggestion you want to put for the
16 store?

17 MR. BRITT: Why don't we put a
18 red S there where the store is.

19 THE COURT: It's only got five
20 letters, spell it out.

21 THE WITNESS: Store.

22 (indicating).

23 BY MR. THOMPSON:

24 Q Okay. Now, using Defendant's Exhibit
25 Number 24, and using a yellow highlighter, would you

1 trace the path from which you left the store and
2 first approached the Lexus.

3 A Yes (indicating).

4 MR. BRITT: That's fine.

5 BY MR. THOMPSON:

6 Q Did you want to say something, Mr. Demery?

7 A No.

8 Q All right. Now, using, again, Defendant's
9 Exhibit Number 24, and using the yellow marker, trace
10 where you went, the direction you went from -- the
11 direction you went behind the Lexus, across the
12 westbound, and as you say, you went back to the
13 eastbound, across back to the westbound. That
14 testimony. Go ahead, sir.

15 A First time across, should I --

16 Q Would you --

17 A Now, the second time across, in order to
18 put that with this yellow marker I would have to run
19 back across this line.

20 Q I thought you were going to have to do
21 that. You've run back across, go ahead, and what did
22 you do after you did that?

23 A Okay. From, again, right here, this point
24 behind the Lexus, coming back across, from there, to
25 the car, my car, over here --

1 Q Go ahead and draw the route that you took
2 using a different marker. Can you do that?

3 A Yes, I could, yes.

4 Q Blue.

5 A I would have to -- this part right here, I
6 would have to run straight through this, but this is
7 where I would have to go.

8 Q That's all right. Go ahead and run it
9 where you want to run it?

10 MR. BRITT: May I interject?

11 Just so things are clear, or clearer, why
12 don't we have him place a "1" by the yellow
13 line.

14 MR. THOMPSON: Well, Your
15 Honor -- I was going to do that, too.

16 MR. BRITT: Then 2, and 3, 4, for
17 the other trips to the car.

18 BY MR. THOMPSON:

19 Q I'll do that. First of all, run the line
20 from the back to the car where you say you left?

21 A (Indicating).

22 Q And you've drawn a line back to the X?

23 A Yes.

24 Q From the eastbound shoulder of the highway?

25 A No, from the westbound shoulder.

1 Q Okay. And from the X where you were at the
2 car, you approached the Lexus again, is that right?

3 A Yes.

4 Q Now, you refer to that as, what time, the
5 third time?

6 A Yes.

7 Q All right. Now, using Defendant's Exhibit
8 Number 24, draw the direction in which you came
9 back. And you may go ahead and explain it first
10 before you draw it?

11 A Well, using this same color pen where you
12 went up here with the blue, using the same color it
13 wouldn't be able --

14 Q As you came back the exact same way?

15 A Yes, sir.

16 Q And ended up where?

17 A Here. Well, I would have to -- from this
18 point behind the Lexus all the way across the road I
19 would have to go through that with a pen, too, this
20 blue pen.

21 Q All right. And then where did you go from
22 there?

23 A Okay. Now, this third time approaching,
24 like I said, we came from my car, went the same
25 direction, walked behind the Lexus again, and this

1 fourth time, fourth time crossing the road, turn
2 around point was right here, but instead of walking
3 back behind the car, it was --

4 Q Use the green pen for that one.

5 A (Indicating).

6 Q Okay. Now using Defendant's Exhibit Number
7 24 you can use that to illustrate your entire
8 testimony as to how many times you approached the
9 Lexus?

10 A Yes, I could.

11 Q All right. Now, going back, the first time
12 you approached the Lexus, you walked from the
13 abandoned store to the west -- I mean to the
14 eastbound side of the road?

15 A Yes.

16 Q Now you may put a "1" there.

17 THE COURT: Here you are, sir,
18 this writes better, it's got different
19 colors, you can put whatever numbers you
20 think is appropriate. Mr. Thompson you can
21 use that.

22 BY MR. THOMPSON:

23 Q Go ahead.

24 A Here, up here or --

25 Q Put the one on the eastbound side of the

1 road.

2 THE COURT: What color did you
3 use to reflect the path of travel that you
4 used from the store to the area around the
5 Lexus, what colors --

6 THE WITNESS: The yellow
7 highlight.

8 THE COURT: Put a "1" beside the
9 yellow.

10 BY MR. THOMPSON:

11 Q Right there put a "1" there in the
12 eastbound.

13 A (Indicating).

14 Q Okay. Now, you left there and you walked
15 right back across the road in the same direction
16 where you have the yellow, is that correct?

17 A Yes.

18 Q But you went back to the car?

19 A Yes.

20 Q Now, that's blue.

21 A From beginning of this dirt road, goes
22 along the side of the canal, that's blue, to the
23 point where my car is.

24 Q Now, the third time you approached the
25 Lexus, you went where?

1 A Took the same -- from my car, this little
2 blue stretch of dirt road, and then run into the
3 yellow again, the same path.

4 Q Put a "3" right there, right below "1",
5 that's where you went, right?

6 A Yes.

7 Q Then put a "3".

8 A (Indicating). It's not showing up that
9 good.

10 Q The fourth time, and when you left the
11 third time, you're now on the eastbound shoulder of
12 the road --

13 A Uh-huh.

14 Q -- you went where?

15 A Well, back across the road. The fourth
16 time crossing. We went from this point (indicating).

17 Q Put a "4."

18 A Four right here.

19 Q You now have a "1", a "3", and a "4" on
20 there. The only thing missing is a "2". Where do
21 you recall the second time?

22 A The second time was from this point where
23 the X is, the green X, my car, this blue little
24 stretch, the dirt road going along the canal bank,
25 running into the yellow, same direction.

1 Q Would it fairly reflect and illustrate your
2 testimony if you put a "2" there then?

3 A Beginning at the point that we --

4 Q From your car?

5 A The second time?

6 Q Yes, sir.

7 A At the beginning point?

8 Q Yes, sir. Would that fairly reflect what
9 you're trying to describe to the jury to put a "2"
10 there?

11 A Yes.

12 Q All right. Then put a "2".

13 A (Indicating).

14 MR. THOMPSON: Now, Your Honor
15 may he step down and illustrate the
16 testimony to the jury using Defendant's
17 Exhibit Number 24.

18 THE COURT: May I have my pens
19 back?

20 MR. THOMPSON: This is yours.

21 MR. BRITT: Judge can have it.
22 His is about worn out.

23 THE COURT: Mr. Thompson.

24 BY MR. THOMPSON:

25 Q Start from this end, start back over and

1 illustrate your testimony, first of all, what
2 happened from the first time you left the abandoned
3 store to the fourth time and from the time that you
4 state that the man in the Lexus was shot. Okay?

5 A Yeah. Could I borrow your pen to use as a
6 pointer?

7 Q Certainly.

8 A First time going toward the car, this is --
9 this right here, the store area where we left. Down
10 this service road to here. This is the point
11 where -- we didn't walk on this service road all the
12 way up to the car, just cut across, across some grass
13 and everything.

14 THE COURT: What color is used to
15 reflect that path of travel on that first
16 occasion, Mr. Demery?

17 THE WITNESS: Yellow, yellow.

18 THE COURT: The record has to
19 reflect that. Yes, sir.

20 THE WITNESS: Beginning, going
21 all the way across the road here, then
22 first time this back part of the car.
23 Second time, crossing the road, back
24 across, same color and everything. Back in
25 the same direction. But right here, where

1 this blue comes in and breaks up on this
2 little dirt road. This is the dirt road
3 going up to the canal. This is my car,
4 where it's at.

5 Third time going to the car, it began
6 right here and -- well, this blue area,
7 dirt road, runs back into the yellow,
8 crossed over eastbound lane. From here,
9 instead of -- like I said, this is behind
10 the car. Instead of going directly back
11 across this green, slightly darker color
12 than yellow, this is where we went around
13 the fourth time crossing the road. And we
14 went around -- this is the front part, went
15 around this way, and this is around -- this
16 area right here is not marked or anything,
17 but this is the bushes we hid behind the
18 first time a car came. Went back out to
19 where the car is. There's a flea market
20 sign I have been talking about. It isn't
21 shown in here, but it is -- if it was shown
22 it would be located about right here.

23 MR. THOMPSON: We'll use another
24 exhibit to show the bushes and flea market.

25 THE WITNESS: I was under the

1 impression that you wanted me to.

2 MR. THOMPSON: Go ahead, I was
3 going to let you know, go ahead you can
4 show it to them on that.

5 THE WITNESS: That was the last
6 time passing the car. Anything else I need
7 to.

8 THE COURT: Go to the middle.

9 BY MR. THOMPSON:

10 Q Go through the same testimony and
11 illustrate for this section of the jury, sir?

12 A This is the store where we left. All
13 right. From here, this is the route we took, you
14 know, approaching the car the first time. Where this
15 yellow line runs, this is the service road. We get
16 to this point right here, we didn't take the service
17 road all the way up to the car. Consulted across,
18 this little grassy area off the shoulder of the
19 road. Like I said, this is the yellow, Lexus is the
20 red dot. Okay. This is the route we took the first
21 time across the road, and directly back across the
22 road the second time. Same car and all, and then
23 crossed over the road from here, this is the point
24 where we started discussing taking this car. All the
25 way up into this point where the blue breaks off into

1 this yellow, that's the little canal bank, dirt road
2 that -- this is the X, green X is where my car was
3 at.

4 Next time we approached the car which would
5 have been the third time -- well, third time crossing
6 over, that's -- like I say, that would have been from
7 leaving here, that's when we were going back towards
8 this car for the purposes of looking on the inside of
9 the car. Determining whether, how many people was
10 there, if it was more than one. And that fourth --
11 well, this would have been the third time crossing,
12 and like I said, same yellow line and everything,
13 same direction behind the car. Fourth time crossing
14 over, you know, we didn't go directly -- this is the
15 back part of the car. We went around the car, and
16 this slightly darker color than the yellow here. ,
17 that's the direction we took or the way we went going
18 around this car the last time. Front part of the car
19 and everything. And then -- do I need to --

20 Q You need to come down here, show this area?

21 A Store, first time we approached this car,
22 this is the route we took. This yellow line running
23 down through here, this is the service road we took.
24 We didn't take the service road all the way up to the
25 car. Cutting across right here, there's a little --

1 off the shoulder of the road from here, here's is
2 where we got off, right here off the service road,
3 walked across this grass area. This is the car,
4 behind the car. First time approaching, crossing the
5 road, this yellow line shows where we crossed the
6 road this first time. Right here. Going back across
7 the back, across the road was the second time
8 crossing, took the same loop, back across, down this
9 way.

10 Beginning at this point behind the Lexus is
11 where the discussion started about taking the car.
12 From here, all the way across the green X, which is
13 my car, where my car was at, this blue area here,
14 this breaks off from the yellow, that's the little
15 dirt road we used -- I used to park my car.

16 Third time crossing over the road, purpose
17 of getting close to the car, seeing if anybody else
18 was in there. Started right here, this little blue
19 area, took the same route back across the road where
20 this little yellow line is.

21 But fourth and last time crossing the road,
22 we didn't go this way. Right here, this slightly
23 darker color, green, this is the direction we went
24 the last time crossing around the front of the car,
25 which is this is the front.

1 Q Now, Mr. Demery, using -- just step back to
2 the stand a minute, please. Using State's Exhibit
3 Number 88, which is the aerial of that section of the
4 road that you've used to illustrate your testimony,
5 and using State's Exhibit Number 87, which is a
6 close-up of the area and where you previously marked
7 an X as to where the Lexus vehicle was on Highway 74,
8 can you use either one or both of those photographs
9 to illustrate where the sign was located that you hid
10 behind and the bushes were located that you testified
11 you hid behind?

12 A I would have to use both of them, but I
13 could.

14 Q Okay.

15 MR. THOMPSON: And may he use
16 both of them to illustrate his testimony?

17 THE COURT: Yes, sir.

18 BY MR. THOMPSON:

19 Q If you'll step down again. Using State's
20 Exhibit Number 87 and 88, in three different
21 sections, use those to illustrate your testimony as
22 to where the --

23 A Car was?

24 Q Where the Lexus was, where the sign was
25 that you hid behind, and where the bushes were that

1 you hid behind?

2 A Okay. Right here --

3 THE COURT: Mr. Demery, for the
4 record, right here -- close your eyes.
5 Close your eyes. I'm pointing right here.
6 Do you know where I'm pointing?

7 THE WITNESS: No, sir.

8 THE COURT: Neither does the
9 record unless you point it out.

10 BY MR. THOMPSON:

11 Q Which exhibit are you using? Look on the
12 back?

13 A 87. Where this X is marked, this is where
14 the Lexus was. Okay. This sign, this is the same
15 sign -- well, it appears to me to be the same sign
16 that we hid behind. Now it's in a different, this
17 sign is not in the same place that it was that
18 night. It was like right across, you know, directly
19 beside where this car was sitting. There was almost
20 a two-week time period that had elapsed before this
21 person was ever realized missing, so in between that
22 time, this sign could have been using this picture --

23 THE COURT: What exhibit is
24 that?

25 THE WITNESS: 88.

1 THE COURT: Thank you, sir.

2 THE WITNESS: I can't show you --
3 87, I can't show where the bushes that we
4 hid behind. 88, car was here, these
5 bushes, they were right along this dirt
6 road here, they were right along -- there
7 was a fence, I remember a fence being here,
8 but there were bushes there. We hid there
9 the first time the car started coming. And
10 I can't see the sign, but the sign would
11 have been right here, car.

12 BY MR. THOMPSON:

13 Q All right. If you would go to the next
14 section using 87 and 88 just as you did, and identify
15 which exhibit you're using.

16 A 87, this point here where the X is, that's
17 where the Lexus was parked. Okay. This sign showing
18 here, appears to me to be the same sign that was
19 there that night. But like I say, it's not in the
20 same spot that I remember it being in the night that
21 the murder happened.

22 I can't show you the bushes from here,
23 didn't show, but using 88, right along this dirt road
24 -- well, this dirt road here, these bushes that we
25 hid behind the first time a car started coming was

1 right along on this side of the dirt road. There was
2 a fence there, some bushes there. You can't really
3 see it that good, but this was the location where the
4 bushes were that we hid behind.

5 Q You may go to the next section.

6 A 87, where this X is, this is where the
7 Lexus was parked. This sign, appears to me to be the
8 same sign that we hid behind that night. It's not in
9 the same location as I remember it being in, but --
10 and I can't show the bushes using this one, but 88,
11 this dirt road right here, along this side of -- this
12 side of the dirt road, this is where the bushes
13 where. There was a fence. That's the place we hid
14 the first time a car started coming. Small road --

15 Q You may step back to your seat.

16 Mr. Demery, the 18-wheeler that you've
17 testified to with the engine running also had its
18 park lights on?

19 A Yes, I remember park lights.

20 Q At all times?

21 A Every time I looked in that direction, saw
22 the truck there was park lights on, yes.

23 Q Did you notice, Mr. Demery, what -- whether
24 there were any logos or writings or signs on the cab
25 of this truck?

1 A No, sir, I didn't, I noticed park lights,
2 the direction of the truck was facing, and that
3 was --

4 Q That didn't concern you at all about the
5 truck being there with an engine running?

6 A Meaning was that a thought of mine when we
7 were planning on robbing, taking this car?

8 Q Yes, sir. It didn't concern you?

9 A No, sir, I didn't really think about it.
10 If -- Your Honor if I -- if I were allowed to
11 elaborate.

12 THE COURT: You may explain.

13 THE WITNESS: Okay. That night,
14 well, the early morning hours of July 23rd,
15 1993, two people standing out beside 74,
16 one being a rookie criminal, I would say.
17 The other being --

18 MR. THOMPSON: Object.

19 THE COURT: Sustained.

20 MR. THOMPSON: Object.

21 THE COURT: Anything further?

22 MR. THOMPSON: And I object, Your
23 Honor --

24 THE COURT: Sustained. Anything
25 further?

1 MR. THOMPSON: Yes, sir, I want
2 to be heard with respect to Mr. Campbell's
3 comment.

4 THE COURT: Members of the jury,
5 there's a matter of law the Court must take
6 up at this time out of the hearing and
7 presence of the jury. Please recall my
8 instruction in that regard, don't worry or
9 speculate about what takes place in the
10 courtroom in your absence. Please step to
11 the jury room.

12 (Jury out at 11:07 a.m.)

13 THE COURT: Let the record
14 reflect that the following is being
15 conducted in the absence of the jury.
16 Mr. Thompson?

17 MR. THOMPSON: Yes, sir, well,
18 Your Honor, after the question was asked, I
19 assume maybe the witness was -- I thought
20 he had answered the question, I heard
21 Mr. Campbell mumble something as to, "well,
22 let him answer" or "let him be heard," I
23 thought or something to that effect. Now,
24 Your Honor, if -- I don't think that's
25 appropriate for Mr. Campbell if he's got

1 an -- if he's got a -- I mean, for him to
2 be commenting while the witness is
3 testifying.

4 THE COURT: I didn't hear any
5 comment but if a comment was made it is not
6 appropriate. The appropriate party to make
7 that objection is Mr. Britt.

8 MR. THOMPSON: Yes, sir.

9 THE COURT: Okay.

10 MR. THOMPSON: Well, Mr. Campbell
11 is here and I mean --

12 THE COURT: I'm accepting what
13 you said.

14 MR. THOMPSON: Yes.

15 THE COURT: Mr. Campbell, any
16 response you want to make?

17 MR. CAMPBELL: What is in the
18 record?

19 MR. THOMPSON: What does the
20 record reflect?

21 THE COURT: I didn't hear it.

22 MR. CAMPBELL: Must not have said
23 it.

24 MR. ROGERS: I didn't hear it.

25 THE COURT: Bottom line is this,

1 the proper party to make the objection is
2 counsel for the State.

3 MR. CAMPBELL: Yes, sir.

4 THE COURT: Mr. Demery, any time
5 you feel an explanation is necessary, you
6 don't have to look to me and say may I
7 explain. You just need to say, may I
8 explain. And if he says that, he's
9 entitled to explain.

10 MR. THOMPSON: Yes, sir, of
11 course.

12 THE COURT: The proper party to
13 make any objection, since we're dealing
14 with the State of North Carolina versus
15 Daniel Andre Green, also known as U'Allah,
16 Mr. Britt represents the State of North
17 Carolina. Mr. Thompson, Mr. Bowen
18 represent the defendant in this case.

19 Now, absent something that goes to
20 issues of confidentiality, absent something
21 that goes to the issue of attorney-client
22 privilege, Mr. Bowen, or excuse me,
23 Mr. Rogers and Mr. Campbell are not the
24 appropriate parties to be heard except in
25 that limited respect. Okay?

1 MR. THOMPSON: Yes, sir.

2 THE COURT: What I was asking you
3 was, you made an objection to what I
4 thought the objection was going toward was
5 his narrative.

6 MR. THOMPSON: No, for the
7 record, I didn't want to make that -- those
8 allegations, that statement in front of the
9 jury.

10 THE COURT: I appreciate that.

11 MR. THOMPSON: My objection was
12 to --

13 THE COURT: I appreciate that.
14 Folks --

15 MR. THOMPSON: What I perceived
16 to be heard to be a comment by
17 Mr. Campbell.

18 THE COURT: So your objection was
19 not to his narrative?

20 MR. THOMPSON: Well, yes, I
21 object to the narrative, too, but I heard
22 the comment, that's why I objected.

23 THE COURT: Folks, my policy is
24 when it's unclear, the rules -- I don't
25 mean to lecture, but under our rules, a

1 general objection is waived if the
2 objection, if the matter objected to is
3 admissible for any purposes. On appeal, if
4 an appeal is an issue. The reason I asked,
5 do you want to be heard, is what is your
6 basis.

7 MR. THOMPSON: Okay. I
8 understand.

9 THE COURT: Because if you make a
10 general objection, and the evidence is
11 admissible for any purpose, and I don't
12 know what the basis of your objection is,
13 then more likely than not I'm going to
14 overrule it, depending on the nature of the
15 evidence.

16 When I say, do you want to be heard,
17 what in effect I'm asking you is what is
18 the basis for your objection? What I'm
19 asking for is a specific reference to the
20 rule number or something to indicate to me
21 what the basis of the objection is.

22 And when I ask after the objection, do
23 you want to be heard, I'm asking do you
24 want a motion for striking it. Do you want
25 a curative instruction given to the jury?

1 Because absent a request, and folks I
2 don't have to do that -- I don't have to
3 inquire of counsel whether you want to move
4 to strike, whether you want a curative
5 instruction to the jury, but I do it
6 because I think it's appropriate for me to
7 do so.

8 Normally it would be, object, move to
9 strike, curative instruction. Because I
10 want to give both of you an opportunity to
11 preserve the record, I ask the question, do
12 you want to be heard.

13 MR. THOMPSON: Yes, sir.

14 THE COURT: Are we ready to move
15 on?

16 MR. THOMPSON: Now may I be
17 heard?

18 THE COURT: Yes, sir, you may.

19 MR. THOMPSON: Your Honor, and I
20 did object to the comment of -- or the
21 testimony of the witness. He said he was a
22 rookie.

23 THE COURT: And I sustained
24 that. Do you want a motion to strike?

25 MR. THOMPSON: I want a motion to

1 strike.

2 THE COURT: Do you want curative
3 instruction?

4 MR. THOMPSON: I also objected to
5 Mr. Campbell, that was also a matter I
6 would I want to deal with.

7 MR. BRITT: If you go back to
8 page 55, I don't want to belabor,
9 Mr. Thompson asked the question, meaning --
10 was that a thought of mine -- excuse me,
11 that didn't concern you at all about the
12 truck being parked there with an engine
13 running? Answer: Meaning was that a
14 thought of mine when we were planning on
15 robbing, taking this car? Yes. Yes, sir
16 it didn't concern me. No, sir, I didn't
17 really think about it -- Your Honor, if I
18 were allowed to elaborate, and you said he
19 may explain. That statement where
20 Mr. Thompson cut him off was being offered
21 to explain his answer that he didn't really
22 think about it. I think that's an
23 appropriate area that he can elaborate on.
24 He does not -- and his question goes on,
25 "That night, well, the early morning hours

1 of July 23rd, 1993, two people standing out
2 beside 74, one being a rookie criminal," he
3 hasn't identified who he's referring to as
4 a rookie or what he was referring to the
5 other one as.

6 THE COURT: That's why we have
7 redirect examination.

8 MR. BRITT: I understand. But I
9 think at this juncture the objection ought
10 to be overruled. He's entitled to explain
11 his answer.

12 THE COURT: Note the State's
13 exception to my ruling, and you're entitled
14 to go into that on redirect examination,
15 Mr. Britt.

16 MR. BRITT: Oh, I will.

17 THE COURT: Anything further,
18 folks?

19 Bring the jury back in.

20 (Jury in at 11:14 a.m.)

21 THE COURT: Mr. Thompson, the
22 objection is sustained, exception is noted
23 for the record. You may ask additional
24 questions.

25 MR. THOMPSON: Yes, sir.

1 BY MR. THOMPSON:

2 Q Now, Mr. Demery --

3 THE COURT: I'm sorry, I
4 apologize. You asked for a curative
5 instruction. Motion to strike is allowed.

6 Members of the jury, I instruct you
7 you're not to consider the last response of
8 the witness, Mr. Demery, if one was given.
9 That matter is not to take any part in your
10 deliberations in this case in any respect.
11 Yes, sir, you may continue.

12 BY MR. THOMPSON:

13 Q The 18-wheeler that you referred to, did it
14 have a trailer hooked to the --

15 A Yes, it did, yes.

16 Q What kind of trailer did it have?

17 A The box type trailer. A trailer, I mean,
18 you haul stuff in.

19 Q Okay. Closed in boxed type?

20 A Yes.

21 Q What color?

22 A I couldn't tell you the color of this
23 truck.

24 Q Did you notice any insignias or logos or
25 writing on the trailer?

1 A No, I didn't.

2 Q Now, you indicated, Mr. Demery, that during
3 your direct examination that the window pane on the
4 passenger side was opened?

5 A On the car or truck?

6 Q On the Lexus, I'm sorry.

7 A On the Lexus, the passenger window was
8 down.

9 Q You indicated it was open about an inch or
10 two, is that right?

11 A No, sir, I did not. It said it was about
12 an inch or two below the half way mark, or what I
13 would call the half way mark.

14 Q And you testified that the man appeared to
15 be sleeping inside of the Lexus?

16 A Yes, he did, to me, yes.

17 Q And when did it first appear to you that
18 the man appeared to be sleeping?

19 A Like I said, the first time we approached
20 the car from the back, I noticed the form of a person
21 in this car. Like I said before, I couldn't tell
22 gender, race, all I could see was the form of a
23 person. And I could tell they were laying back. To
24 me, it appeared they were in a position to be -- to
25 be asleep. But --

1 Q And were the interior lights on inside the
2 Lexus?

3 A No, I couldn't -- I couldn't tell that at
4 the time.

5 Q Well, were the interior lights on inside of
6 the Lexus at any time --

7 A No.

8 Q Mr. Demery, your answer is no?

9 A No -- yes.

10 Q What is your answer?

11 A You asked me the first time I noticed, and
12 then at any time, yes, during the period of time we
13 had this car, yes, the interior lights were on.

14 Q Okay. On the night that you were out there
15 going to the Lexus three or four or five times,
16 however many times you went to that Lexus while it
17 was parked there on 74, were the interior lights on?

18 A No, I don't remember the interior lights
19 being on. I remember park lights.

20 Q Yes, sir. And you testified the man had
21 shades on?

22 A Yes, what appeared to me to be shades.

23 Q And which time was it that you first
24 observed the man with the shades on?

25 A Well, the last time coming back across the

1 road, in order to get close to this car and look on
2 the inside, walked around the front, and from the
3 front side of the car, went over to the passenger
4 side. That's when I first noticed the window was
5 down, and we were standing, Daniel and myself,
6 standing right there at the window, looking inside of
7 the car on the man. And that's when I noticed
8 shades, what I thought was shades.

9 Q You were standing right there looking on --
10 looking at the man?

11 A Yes.

12 Q Right there on the passenger side?

13 A Yes.

14 Q How far from the car?

15 A I was standing no more than 12 inches away
16 from the car at that time, away from the window.

17 Q The window was down?

18 A A little below the half way mark.

19 Q Did you hear him snoring?

20 A No, I didn't.

21 Q You never saw this individual take his
22 shades off, did you?

23 A No, I did not.

24 Q You noticed he had a watch on?

25 A Yes, I did.

1 Q Which hand was the watch on?

2 A It was on his right arm.

3 Q And you noticed he had a ring on?

4 A Yes.

5 Q Which hand was the ring on?

6 A It was on his right -- his right hand.

7 Q And the thing that caught your attention
8 about the ring was that it had a -- was its size and
9 had a big stone in it?

10 A Yes.

11 Q A big dark blue stone?

12 A I never said -- at that time I said I
13 noticed a stone. It wasn't until later on I said
14 what color it was.

15 Q But it was a dark stone?

16 A I noticed a stone inside -- on the ring.

17 Q And you never said what color -- you never
18 said it was a dark stone, is that your testimony?

19 A I may have said a dark stone, but I never
20 said that at that time what color it was, you know.

21 Q Now, at one point you indicate that a car
22 came by, the first time a car came by, you ran and
23 hid in the bushes?

24 A Yes.

25 Q Why did you run and hide in the bushes?

1 A Because a car was coming like down 74.
2 Like I said, even though we were out here walking
3 around -- or I was trying to appear casual, like I
4 was supposed to have been there, but this time when
5 this car started coming here we were, Daniel and I,
6 standing right here at this car, looking in on this
7 man. A car starts coming, hid from it.

8 Q You were afraid somebody was going to see
9 you?

10 A Yes.

11 Q Looking down on that man?

12 A Yes.

13 Q Weren't afraid of anybody in that
14 tractor-trailer, that 18-wheeler?

15 MR. BRITT: Objection, assumes
16 facts not in evidence.

17 THE COURT: Sustained.

18 MR. BRITT: Move to strike, ask
19 for an instruction.

20 THE COURT: The motion to strike
21 is allowed. Members of the jury, you're
22 not to consider the last question counsel
23 for the defendant Mr. Thompson, it's not to
24 take any part in your deliberations in this
25 case in any way. You may ask additional

1 questions.

2 BY MR. THOMPSON:

3 Q Were you afraid of anybody in that
4 18-wheeler seeing you?

5 MR. BRITT: Objection, assumes
6 facts not in evidence.

7 MR. THOMPSON: I'm asking the
8 question, Your Honor.

9 THE COURT: There's a predicate
10 question.

11 BY MR. THOMPSON:

12 Q Were you afraid, were you afraid,
13 Mr. Demery, that someone might be in that -- inside
14 of that 18-wheeler who would see you looking down on
15 that man in the Lexus?

16 THE COURT: You may answer.

17 THE WITNESS: It never, the
18 thought just didn't crossed my mind. If I
19 could offer -- well, explain a little bit.

20 THE COURT: You're entitled to
21 explain, sir.

22 THE WITNESS: I'll try to put
23 this in a different way than what I
24 attempted to the last time. What needs --
25 what I feel needs to be understood is that

1 that night, like I said, plans were made,
2 and like I've said before, ten, 15 minutes
3 at the most, you know,, if during this
4 time, it was only the basics, I mean, of
5 how, you know, means we would take in order
6 to obtain this car, what to do with this
7 person and where to meet. Any plans made
8 afterwards as to what to do with the car,
9 places that we went in this car they were
10 made after Daniel and I were in possession
11 of this vehicle. If --

12 MR. THOMPSON: Your Honor, I
13 object to this. This is unresponsive.

14 THE COURT: Put questions to
15 him. You may put questions to him.

16 MR. THOMPSON: Well, yes, sir.

17 BY MR. THOMPSON:

18 Q It's your testimony that you ran to those
19 bushes. How far were the bushes from that Lexus?

20 A I would say, I would say going by what, you
21 know, the bit of knowledge I was turned on to a
22 little while ago that it was -- 200 feet.

23 THE COURT: What he's asking you
24 is what is your recollection, Mr. Demery.

25 THE WITNESS: 200, 200 feet at

1 the least, I would say.

2 BY MR. THOMPSON:

3 Q Who turned you onto some knowledge a little
4 while ago?

5 A Like I stated earlier, during the break, my
6 attorneys informed me of my -- my mistake of saying
7 20, 30 feet, they kind of set me straight a little on
8 as far -- how far -- determine distance, feet.

9 Q For the record, which one set you straight?

10 A Like I said before, both of my attorneys
11 talked to me about the --

12 Q So from the knowledge that you were turned
13 on a little while ago, you think it was approximately
14 200 feet, the bushes were, from the Lexus?

15 A Yes, if --

16 Q And -- do you want to say something else,
17 go ahead.

18 A Yes, if they hadn't had told me that I
19 would have said 50 feet, maybe. You know.

20 Q Are you finished?

21 A Yes, sir, yes.

22 Q Now, to get to those bushes you had to run
23 by that sign, isn't that right?

24 A Yes, we had to pass it.

25 Q Now, the next time a car came by, you ran

1 and hid behind the sign?

2 A Yes.

3 Q And how far was the sign from the Lexus?

4 A I'd say about the distance from this back
5 wall to the door, being 60, 65 feet.

6 Q Did anybody turn you onto that information?

7 A Well --

8 MR. ROGERS: Object, that's
9 privileged.

10 MR. THOMPSON: I object to
11 Mr. Rogers, Your Honor.

12 THE COURT: Folks, members of the
13 jury, step to the jury room. There's a
14 matter of law the Court must take up at
15 this time. Don't worry or speculate about
16 what takes place in the courtroom in your
17 absence. All members of the jury step to
18 the jury room.

19 (Jury out at 11:28 a.m.)

20 MR. THOMPSON: Your Honor, may I
21 be heard?

22 THE COURT: No, sir, not at this
23 time.

24 I've put counsel on notice as to the
25 provisions of the rules of professional

1 conduct. Rule 1.2, misconduct. That
2 provisions reads as follows. It is
3 professional misconduct for a lawyer, A, to
4 violate or attempt to violate the rules of
5 professional conduct, knowingly assist or
6 induce another to do so or do so through
7 the acts of another. D, engage in conduct
8 that is prejudicial to the administration
9 of justice.

10 Folks, the Court has authority with
11 regard to acts of misconduct committed in
12 the presence of the Court. One of the
13 options available to the Court is to refer
14 counsel to the State Bar. The other option
15 is for the Court to take action pursuant to
16 statutory authority. I'm putting all
17 counsel on notice. Everybody understand
18 what I say? Mr. Britt?

19 MR. BRITT: Yes, sir.

20 THE COURT: Mr. Rogers?

21 MR. ROGERS: Yes, sir.

22 THE COURT: Mr. Campbell?

23 MR. CAMPBELL: Yes, sir.

24 THE COURT: Mr. Thompson.

25 MR. THOMPSON: Yes, sir.

1 THE COURT: Mr. Bowen?

2 MR. BOWEN: Yes, sir.

3 THE COURT: Now, you want to be
4 heard, sir?

5 MR. THOMPSON: Yes, sir, Your
6 Honor, for the record, the record
7 reflects -- from the court reporter, that
8 Mr. Campbell on -- I'm referring to line 74
9 -- page 74 line 12 -- okay.

10 THE COURT: Okay, yes, sir.

11 MR. THOMPSON: The objection --

12 THE COURT: "Mr. Campbell:
13 Object, that is privileged. Mr. Thompson:
14 I object to Mr. Rogers, Your Honor --

15 (Off-the-record discussion.)

16 MR. THOMPSON: I want to get that
17 straight for the record. Now, having --
18 the record reflecting that, Mr. Rogers said
19 "I object, that is privileged," are you
20 going to deal with the objection?

21 THE COURT: Yes, sir.

22 MR. THOMPSON: All right, sir.

23 THE COURT: Mr. Rogers, I just
24 got finished informing all counsel that the
25 proper party to make an objection in this

1 case as to matters unrelated to
2 attorney-client privilege and
3 confidentiality was the State of North
4 Carolina through Mr. Johnson Britt. I
5 understand from your objection that you're
6 contention is that the matter you objected
7 to was privileged information, i.e.
8 privileged communication or within the
9 attorney-client privilege, is that
10 correct?

11 MR. ROGERS: Yes, sir.

12 THE COURT: What do you base that
13 on?

14 MR. ROGERS: The fact that the
15 discussion that was involved was between
16 Mr. Campbell, Mr. Rogers and my client, and
17 you have clearly delineated the areas that
18 we did have standing.

19 THE COURT: Do you concede that
20 the record reflects that there have been a
21 number of questions asked by Mr. Thompson
22 about those matters that went unobjected
23 to?

24 MR. ROGERS: To some extent, yes,
25 sir. And I don't mean to digress, but

1 Mr. Demery has attempted, I feel, and I
2 think everybody knows that he has attempted
3 to be candid in his answers.

4 THE COURT: That's for the jury
5 to decide. It's got nothing to do with the
6 issues before us.

7 MR. ROGERS: I want to be equally
8 candid with you, that Mr. Campbell and
9 myself during that discussion, and I'll
10 withdraw the objection, but just for
11 everybody's edification, we did not plant
12 information in this man or suggest answers
13 to him. We were attempting to provide him
14 with information regarding -- and I'll
15 waive the privilege to this extent at this
16 point -- as to various objects in the
17 courtroom and the approximate distances, as
18 he had informed us that he had problems
19 with distances. Our sole purpose was to
20 assist him in his testimony so that he
21 could give accurate testimony to attempt to
22 clarify what was becoming a confusing
23 situation, and I apologize.

24 THE COURT: The matter has been
25 injected before the jury without objection

1 on prior occasions. Do you agree with
2 that?

3 MR. ROGERS: I do, yes, sir.

4 THE COURT: The party having the
5 privilege is this witness. He has not
6 asserted the privilege. In fact, he is the
7 one who introduced the matter into the
8 testimony before the jury voluntarily, not
9 in response to any questions initially
10 asked by counsel for the defendant, do you
11 agree with that?

12 MR. ROGERS: He did, yes, sir.

13 THE COURT: And in doing so, he
14 waived the privilege, arguably.

15 MR. ROGERS: Arguably, yes, sir.

16 THE COURT: As to those matters
17 he testified to. Do you agree with that?

18 MR. ROGERS: Yes, sir.

19 THE COURT: Folks, I understand
20 that this is a highly disputed, hotly
21 disputed matter between the State of North
22 Carolina and the defendant. I don't want
23 to inject matters into this case that are
24 misleading or tend to confuse or obfuscate
25 the real issues for the jury to determine

1 in this matter. I'm putting all counsel on
2 notice, unless it pertains to something
3 legitimately within the attorney-client
4 privilege and confidentiality, the party
5 who objects on behalf of the State is
6 Mr. Johnson Britt.

7 MR. ROGERS: We understand and
8 apologize for the injection of any such
9 matters.

10 THE COURT: Mr. Thompson, I'm
11 putting you and Mr. Woodberry Bowen on
12 notice, recognizing that you've had nothing
13 to do with this, Mr. Bowen, that when you
14 have an objection, just make it. Do you
15 understand what I'm saying? Just make your
16 objection.

17 MR. THOMPSON: Yes, sir.

18 THE COURT: Okay. I don't want
19 to get into personalities in this case, is
20 what I'm saying. Your objection was
21 proper. All you had to say to avoid the
22 possibility of personality is, "Objection,
23 I want to be heard."

24 MR. THOMPSON: All right. And
25 then give the grounds.

1 THE COURT: Yes, sir, out of the
2 presence of the jury.

3 MR. THOMPSON: Unless you ask for
4 grounds.

5 THE COURT: Unless I ask for
6 grounds. That was not a situation where I
7 asked for it.

8 MR. THOMPSON: I'm sorry.

9 THE COURT: Folks, let's try the
10 case.

11 Bring the jury back in. I'm going to
12 give them a break, give us all a break for
13 about 20 minutes.

14 Mr. Bowen, for the record, I referred
15 to you simply because you're co-counsel in
16 this case, recognizing that you're not
17 involved.

18 MR. BOWEN: I understand.

19 (Jury in at 11:36 a.m.)

20 MR. THOMPSON: Your Honor, may we
21 have an instruction?

22 THE COURT: All right. Yes, sir,
23 if you'll bear with me.

24 Members of the jury, there was an
25 objection made by Mr. Rogers in this case.

1 The Court -- in response to Mr. Roger's
2 objection, Mr. Thompson objected. The
3 Court sustains Mr. Thompson's objection,
4 and I instruct you that you are not to
5 consider the fact that Mr. Rogers made an
6 objection in this case. That matter is not
7 to take any part in your deliberations in
8 this case. It is not to play any role in
9 your consideration in this case in any
10 respect.

11 Now, anything further on behalf of the
12 State, Mr. Thompson or the defendant? I'm
13 sorry.

14 MR. THOMPSON: No, sir.

15 THE COURT: Ladies and gentlemen,
16 we're going to take a recess at this time
17 until 12:00. During the recess, please
18 recall my instructions concerning your
19 conduct, and please continue to abide by
20 those instructions. Please reassemble in
21 the jury room at 12:00 and we will continue
22 with presentation of evidence at that
23 time. Everybody else please remain seated,
24 the members of the jury are excused until
25 12:00.

1 (Jury out at 11:39 a.m.)

2 THE COURT: Anything further from
3 any counsel?

4 MR. THOMPSON: No, sir.

5 THE COURT: Mr. Britt?

6 MR. BRITT: I don't want to
7 belabor the point, and I know that -- I
8 represent the State in this matter, but I
9 do not represent Mr. Demery. I don't know
10 that I have standing to raise the
11 attorney-client privilege, that's why I
12 have not objected. It's his to assert.

13 THE COURT: That's my point.

14 MR. BRITT: That's right, his to
15 assert, not mine to interject, and say you
16 can't answer that because of
17 attorney-client privilege, because I don't
18 know what they have talked about.

19 THE COURT: I understand your
20 need to put that in the record. And I
21 think it needs to be put in the record.
22 And I've informed them that if it pertains
23 to attorney/client privilege, they have a
24 right to be heard. In this instance, this
25 witness broached the attorney-client

1 privilege voluntarily.

2 MR. BRITT: I agree with the
3 Court.

4 THE COURT: It went unobjected
5 to.

6 MR. BRITT: Yes, sir.

7 THE COURT: In a proper
8 situation, they are the proper parties to
9 be heard. If I've confused you folks in
10 that regard, I apologize, but in a proper
11 situation, you represent this witness.

12 All I'm asking is if it pertains to
13 attorney-client privilege, stand up and
14 say, I want to be heard. That's all.

15 MR. ROGERS: We're clear.

16 THE COURT: Anything further from
17 either attorneys?

18 MR. THOMPSON: No, sir.

19 THE COURT: We're at ease until
20 12:00.

21 THE BAILIFF: Court stands at
22 ease until 12:00.

23 (Brief recess.)

24 THE COURT: Let the record
25 reflect that counsel for the State is

1 present, at this time Mr. Johnson Britt.
2 Counsel for the defendant is present,
3 Mr. Angus Thompson, and Mr. Woodberry
4 Bowen. Let the record further show that
5 the defendant, Daniel Andre Green, also
6 known as U'Allah, is not present at this
7 time.

8 Mr. Thompson, for the record, if
9 you'll state the matters just developed.

10 MR. THOMPSON: Your Honor, just
11 prior to the last break, my client
12 communicated to me that he was hurting. He
13 had his hand over his chest, and then you
14 gave us a break. That was during your
15 instructions to counsel. When he stood up,
16 he grabbed himself and went back down, said
17 "My chest is hurting." And he grabbed his
18 stomach, and we went back to the room. The
19 bailiff, Mr. Meares, who is certified in --
20 I think in EMC, he does some of that
21 himself.

22 MR. BRITT: Mr. Meares is a
23 certified EMT.

24 MR. THOMPSON: He checked his
25 pulse, said that he needed, thought it felt

1 normal, but he felt he needed to call EMC.
2 EMC arrived just a few minutes ago --

3 THE COURT: EMT or --

4 MR. BRITT: EMT.

5 MR. THOMPSON: I'm sorry, Your
6 Honor. EMT arrived, they checked him out,
7 just -- and indicated that he would need to
8 go to the hospital or somewhere else for
9 further attention.

10 THE COURT: He is being
11 transferred or is about to be transferred
12 to a medical facility?

13 MR. THOMPSON: Yes, to a medical
14 facility. Still be in custody of the
15 Sheriff's Department.

16 THE COURT: Two matters we need
17 to address. One is where we are in the
18 trial, and the second thing is the issue of
19 custody. State want to be heard as to any
20 custody issue?

21 MR. BRITT: Your Honor, he is in
22 custody of the Sheriff's Department. He
23 needs to remain so in terms -- and the
24 Sheriff is here. I don't think it would be
25 a matter of any -- a difficult matter for a

1 Deputy to accompany the ambulance people to
2 the hospital if that's where they take him,
3 or if they return him to the jail where
4 Dr. Shalculter, who's head of the medical
5 staff, has a small office.

6 THE COURT: Obviously it would
7 depend on what if any diagnosis is made at
8 the hospital.

9 MR. THOMPSON: I'll say this,
10 Your Honor. They asked -- EMT asked did he
11 want to be transferred by stretcher, and he
12 said that he would rather be -- rather be
13 in the custody of a deputy. You know, he
14 doesn't want to be in an ambulance or
15 anything like that.

16 THE COURT: Let the record
17 reflect that the Sheriff is -- Sheriff's of
18 Robeson County is present at this time.

19 THE SHERIFF: Sir?

20 THE COURT: Let the record
21 reflect the Sheriff is present at this
22 time.

23 Sir, is it your intent to, since the
24 defendant is in custody, to assign a member
25 of your staff, deputy sheriff?

1 THE SHERIFF: Two bailiffs.

2 THE COURT: To accompany him to
3 the medical facility where he will be
4 taken?

5 THE SHERIFF: Yes, sir.

6 THE COURT: That's ordered and
7 directed.

8 THE SHERIFF: Yes, sir.

9 THE COURT: It may be necessary
10 for us to do a safe keeping. I don't know,
11 I think that would depend on what if
12 anything, what if any information is
13 available from the local medical facility.

14 At this time, I'm going to bring the
15 jury in and without elaboration, simply
16 tell them that we are reconvening at 9:30
17 tomorrow morning. That will, of course,
18 depend on what developments may occur.

19 Is there anything from either counsel
20 in that regard?

21 MR. THOMPSON: No, sir.

22 THE COURT: Sheriff, I'm going to
23 leave the custody issue to your
24 discretion.

25 THE SHERIFF: Yes, sir.

1 THE COURT: I'm going to bring
2 the jury in, release them at this time
3 until 9:30.

4 MR. BOWEN: Your Honor, I think
5 it can go without saying if it is medically
6 appropriate, that Mr. Thompson and
7 Mr. Locklear and I have access to our
8 client in cooperation with the Sheriff's
9 Department.

10 THE COURT: Yes, sir, obviously.
11 That will be allowed if medically
12 appropriate.

13 MR. BOWEN: Yes, sir.

14 THE COURT: If you'll bring the
15 jury in, please.

16 (Jury in at 12:14 p.m.)

17 THE COURT: Members of the jury,
18 I'm going to release you at this point
19 until 9:30 tomorrow morning. It is
20 sufficient for our purpose right now for me
21 to state that because of matters beyond our
22 control, that's necessary. I'm going to
23 ask that you return at 9:30 tomorrow
24 morning. We may be in a position to
25 proceed at that time. In any event, I will

1 have further instructions for you at that
2 time or shortly thereafter.

3 Now, during this interval, during this
4 recess, I again instruct you you're not to
5 talk about this matter among yourselves or
6 with anyone else, including members of your
7 own family. You are not allowed to have
8 anyone say anything to you or in your
9 presence about this case. If anyone
10 communicates with you about this matter or
11 attempts to do so, it remains your duty to
12 inform us of that immediately.

13 Similarly, if anybody says anything
14 about the case in your presence, it is your
15 duty to inform us of that immediately.

16 Don't form or express any opinions
17 about this matter. Don't allow yourself to
18 have any contact or communication of any
19 kind with any of the attorneys, parties,
20 witnesses, prospective witnesses, or
21 directly with the Court. Don't allow
22 yourself to be exposed to any media
23 accounts which may exist in connection with
24 this matter, and don't conduct any
25 independent inquiry or investigation or

1 research of any kind.

2 We very much appreciate your
3 cooperation and indulgence with us.

4 Everyone else please remain seated.
5 All members of the jury are excused at this
6 time. Please reconvene in the jury room at
7 that time. Once we determine all members
8 of the jury are present, we will have
9 further information for you at that time.
10 All members of the jury are excused until
11 9:30 tomorrow morning.

12 (Jury out at 12:16 p.m.)

13 THE COURT: Folks, under our case
14 law, the defendant is required to be
15 present at all stages of the process. Let
16 the record reflect that the defendant is
17 absent at this time because of a medical
18 emergency. You agree with that
19 Mr. Thompson, Mr. Bowen?

20 MR. THOMPSON: Yes, sir.

21 MR. BOWEN: Yes, sir.

22 THE COURT: Let the record
23 reflect that the matters which have
24 occurred have been made a part of the
25 record in this case in open court. All

1 counsel agree with that?

2 MR. BRITT: Yes, sir.

3 MR. THOMPSON: Yes, sir.

4 THE COURT: Let the record
5 further reflect that no proceedings will be
6 conducted in this matter until the
7 defendant is medically able to be present
8 at all subsequent stages of the process in
9 this case.

10 Anything further on behalf of the
11 State?

12 MR. BRITT: Your Honor, you had
13 mentioned briefly the possibility of safe
14 keeping. I do not know if Southeastern
15 Regional Medical Center, which is the
16 hospital here in Lumberton, has the
17 facilities with which to house the
18 defendant if it becomes necessary.

19 THE COURT: That would generally
20 involve Central Prison in Raleigh.

21 MR. BRITT: Yes, sir.

22 THE COURT: That would depend on
23 his medical condition, whether or not that
24 is a viable alternative under the
25 circumstances.

1 MR. BRITT: Yes, sir, and if it
2 becomes necessary that a safekeeping order
3 be issued, are we going to do that in court
4 on the record?

5 THE COURT: Yes, sir. Any
6 matters related to the defendant's
7 condition will be done on the record in
8 open court.

9 MR. BRITT: I just wanted to --
10 because I do know that -- there was a
11 motion filed by the defense back in the --
12 in the initial stages of this investigation
13 after the arrest, that no safekeeping order
14 be issued without notice to them that their
15 client was being --

16 THE COURT: That's why I
17 indicated the possibility of a safekeeping
18 order on the record in their presence, and
19 it would depend on the circumstances and
20 the defendant's condition.

21 Anything further from counsel for the
22 defendant, Mr. Bowen and Mr. Thompson?

23 MR. BOWEN: No, sir.

24 THE COURT: Folks, I think you
25 all have my numbers. If you'll keep me

1 apprised as to what's going on.

2 MR. BRITT: Yes, sir.

3 THE COURT: We'll reconvene
4 tomorrow at 9:30.

5 THE BAILIFF: All rise, please.

6 (Court adjourned.)

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22

23 (February 1, 1996. Proceedings in open court.)

24

25

26 THE COURT: Let the record
27 reflect all counsel are present, the
28 defendant is present in open court. Two
29 matters we need to address fairly
30 expeditiously. Mr. U'Allah, Mr. Green is
31 now present in the court. Mr. Green was
32 not present in the court at the time that
33 matters developed relating to his medical
34 condition yesterday, which is a matter of

1 record. The Court has directed that the
2 transcript of those proceedings be
3 prepared. A copy of that transcript has
4 been provided to counsel for the State,
5 counsel for the defendant, Mr. Thompson,
6 Mr. Bowen, and also a copy of the
7 transcript has been provided to the
8 defendant, Mr. U'Allah, also known --
9 Daniel Green, also known as U'Allah.

10 That pertinent portion of the
11 transcript, folks, begins on 4122 and it is
12 that portion of the transcript which has
13 been provided to all counsel and the
14 defendant, beginning on page 4122 and going
15 through page 4131.

16 Mr. Green, I'm going to give you an
17 opportunity to examine that portion of the
18 transcript. Our case law requires that you
19 be present at all times, and since because
20 of the medical situation which developed
21 yesterday, that obviously meant you could
22 not be present. So I'm providing you a
23 transcript of whatever proceedings were
24 conducted so you will be aware of what was
25 heard or conducted in your absence.

1 Second matter is, Court has been
2 informed that we have an ill juror.
3 Apparently that ill juror, Juror Number 13,
4 Ms. Odum, arrived fairly early this
5 morning. She indicated to Mr. Horne, who
6 is now present in the courtroom -- for the
7 record, Mr. Jimmy Horne is a deputy sheriff
8 with the Robeson County Sheriff's
9 Department, one of the bailiffs assigned to
10 this courtroom and specifically assigned to
11 the jury in this case. Mr. Horne indicated
12 to the Court Ms. Odum related to him that
13 she had been at the hospital until
14 approximately 2:00 a.m. this morning.

15 Mr. Horne, as I understand the
16 information that was given to you, she is
17 feverish or had a fever?

18 THE BAILIFF: She indicated she
19 was ill, had a sore throat, chest hurt.

20 THE COURT: Is that the extent of
21 the information she indicated to you.

22 THE BAILIFF: Yes, sir.

23 THE COURT: Okay. I apologize.
24 Folks, I intend to bring Ms. Odum in,
25 inquire into her situation and determine

1 whether we can go forward.

2 Counsel for the State want to be
3 heard?

4 MR. BRITT: No, sir, I think
5 that's the appropriate thing to do.

6 THE COURT: Counsel for the
7 defendant?

8 MR. THOMPSON: No, sir.

9 THE COURT: If we can place a
10 chair there so she won't have to walk
11 across the courtroom to the jury box.

12 (Juror comes in.)

13 THE COURT: Have a seat right
14 there for our purposes. Good morning.
15 Ms. Odum, I understand that you've had some
16 medical matters that have developed, and I
17 understand that you were at the hospital
18 until about 2:00 this morning, is that
19 correct?

20 JUROR: (Nods head
21 affirmatively.)

22 THE COURT: Don't mean to pry,
23 but for the purposes of the record, can you
24 tell us generally what your situation is
25 right now?

1 JUROR: Sinus infection and lung
2 infection.

3 THE COURT: You have an infection
4 in your sinuses and your lungs?

5 JUROR: Yes.

6 THE COURT: Are you on medication
7 or have they prescribed any.

8 JUROR: (Nods head
9 affirmatively.)

10 THE COURT: Have you obtained
11 medication or --

12 JUROR: I hadn't taken them this
13 morning.

14 THE COURT: Feel absolutely free
15 to tell us what your honest situation is.
16 I can see that you're not feeling well. Is
17 that accurate?

18 JUROR: (Nods head
19 affirmatively.)

20 THE COURT: If this is the case,
21 feel free to let us know that. Is your
22 medical condition right now such that you
23 would not be able to go forward today?

24 JUROR: (Nods head
25 affirmatively.)

1 THE COURT: Mr. Britt?

2 MR. BRITT: No, sir, I don't have
3 any questions.

4 THE COURT: Mr. Thompson, Mr.
5 Bowen?

6 MR. THOMPSON: No, sir.

7 THE COURT: Ms. Odum, you can
8 remain right where you are. Folks, I'm
9 going to excuse the jurors until 9:30
10 tomorrow morning.

11 (Jury in at 9:34 a.m.)

12 THE COURT: Good morning, ladies
13 and gentlemen. Ladies and gentlemen, we
14 are not in a position to go forward at this
15 time. One of the members of the jury is
16 ill, and we are going to reconvene at 9:30
17 tomorrow morning.

18 During this recess -- and again,
19 please recall it is your duty at all times
20 to abide by the Court's prior instructions
21 concerning your conduct. During this
22 recess do not talk about the case among
23 yourselves or with anyone else, including
24 members of your own families. Don't allow
25 anyone to say anything to you or in your

1 presence about this case. If anyone does
2 communicate about with you about this
3 matter or attempts to do so, or anyone says
4 anything about the case in your presence,
5 please recall that it is your duty to
6 inform us of that immediately.

7 Don't form or express any opinions at
8 all about this matter. Don't have any
9 contact or communication of any kind with
10 any of the attorneys, parties, witnesses,
11 or prospective witnesses involved in this
12 matter, or directly with the Court. Don't
13 allow yourselves to be exposed to any media
14 accounts which may exist in connection with
15 this matter, and don't conduct any
16 independent inquiry or investigation or
17 research of any kind.

18 Again, folks, we appreciate your
19 cooperation and indulgence. The members of
20 the jury now in the jury box are excused at
21 this time until 9:30 tomorrow morning.

22 Ms. Odum, if you'll remain with us for
23 just a moment, please, ma'am.

24 (Jury out at 9:36 a.m.)

25 THE COURT: May I see all counsel

1 and the court reporter at the bench for
2 just a moment, please.

3 (Whereupon a bench conference ensued
4 as follows.)

5 THE COURT: Folks, I'm going to
6 indicate -- let the record reflect this is
7 a bench conference. Present at this time
8 is the alternate juror, Ms. Odum, who is in
9 the courtroom. Also present at the bench
10 conference -- let the record reflect
11 Ms. Odum is not present at the bench
12 conference -- is Mr. Johnson Britt, the
13 District Attorney; Mr. Angus Thompson, Mr.
14 Woodberry Bowen, counsel for the
15 defendant. Also present at this time is
16 Daniel Green, also known as U'Allah.

17 What I'm going to indicate to
18 Ms. Odum, folks, is that if her condition
19 is such that she feels she's unable to come
20 tomorrow, she doesn't have to come and just
21 call and let us know by 9:00.

22 MR. BRITT: Okay.

23 THE COURT: Is that agreeable?

24 MR. BRITT: In the event that she
25 calls in, will she be excused or will we

1 continue -- wait until Monday?

2 THE COURT: Wait until Monday.
3 We're not going to go forward unless we
4 have all jurors. Now, I'm doing that. If
5 anybody wants to be heard, I've already
6 directed the other 12 members of the jury
7 to be here at 9:00.

8 MR. THOMPSON: I think that's the
9 way to handle it.

10 THE COURT: I prefer to keep it
11 that way, so we don't spread any ills.

12 MR. THOMPSON: Thank you.

13 THE COURT: Anybody want to be
14 heard?

15 This concludes the bench conference.

16 (Bench conference concluded.)

17 THE COURT: Ms. Odum, if you are
18 able, please report at 9:30 tomorrow
19 morning. If you're not able or in a
20 condition such that you feel you're not
21 able to go forward, you don't have to come
22 in. Ms. Gaines will give you a number to
23 call no later than 9:00 tomorrow morning.
24 If you'll call between 8:30 and 9:00, but
25 no later than 9:00. And I hope you're

1 feeling better. If you'll bear with us one
2 moment, Ms. Gaines will give you a number.
3 Mr. Horne, if you'll give this number to
4 Ms. Odum.

5 Thank you, ma'am. You're free to go,
6 and I hope you feel better.

7 (Juror leaves).

8 THE COURT: Let the record
9 reflect the following for purposes of
10 public record: The Court at the bench
11 conference indicated to all counsel that it
12 was the Court's intent to indicate to
13 Ms. Odum that she, if she was not feeling
14 better tomorrow morning that she was to
15 call in, be no need for her to come in.
16 The Court, not knowing the nature of her
17 illness, did not want to run the risk that
18 any infection might be spread to other
19 folks. Anything on behalf of counsel for
20 the State?

21 MR. BRITT: No, sir.

22 THE COURT: Anything on behalf of
23 counsel for the defendant?

24 MR. THOMPSON: No, sir.

25 THE COURT: All right. Folks,

1 these things happen. I guess we have to
2 expect that they will occur and make the
3 best of the circumstances. Hopefully we'll
4 be in a position to go forward at 9:30
5 tomorrow morning. If not, my intent is if
6 Ms. Odum calls in between 8:30 and 9:00 as
7 directed, once the other members of the
8 jury are assembled at 9:30, I will inform
9 them accordingly depending on what our
10 circumstances are. Is that agreeable?

11 MR. THOMPSON: Yes, sir.

12 MR. BRITT: Yes, sir, that's
13 fine.

14 THE COURT: All right. If you'll
15 recess us until 9:30 tomorrow morning.

16 THE BAILIFF: All rise, please.

17 (Court adjourned.)

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NORTH CAROLINA
ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 93 CRS 15291-93

STATE OF NORTH CAROLINA)
)
)
 vs.)
)
 DANIEL GREEN, aka AS-SADDIQ)
 AL-AMIN SALLAM U'ALLAH,)
)
 DEFENDANT.)
 - - -)

VOLUME 22

ALL
DEMERY

Transcript of Proceedings before the
Honorable GREGORY A. WEEKS, Judge Presiding,
before Steve S. Huseby, Registered Professional
Reporter and Notary Public, Robeson County
Courthouse, Lumberton, North Carolina, on
the 2nd day of February, 1996.

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15 (February 2, 1996. Proceedings in open court.)

16

17 THE COURT: Good morning, folks.
18 Let the record reflect that all counsel are
19 present, the defendant is present in open
20 court. Mr. Horne, do we have all available
21 members of our jury secured in the jury
22 room?

23 THE BAILIFF: Everybody but
24 Ms. Odom.

25 THE COURT: For the record that

1 is our delima. She apparently called Ms.
2 Gaines, who provided her with the number of
3 the Clerk's office yesterday, sometime
4 after 8:30 this morning, is that correct?

5 THE CLERK: Yes, sir.

6 THE COURT: Indicated that her
7 medical condition was such that she did not
8 feel that she could come today. As she
9 indicated yesterday, folks, she has
10 apparently an infection which is now in her
11 sinus and lung area.

12 Mr. Horne also indicated that at some
13 point yesterday, Ms. Odom mentioned that
14 she had asthma, which probably has
15 aggravated her situation.

16 It's my intent to bring the jurors in,
17 excuse them until Monday morning. With the
18 weather conditions being as they are, it's
19 my intent to tell them first of all that
20 they are to call the number that has
21 previously been provided to them beginning
22 at 8:30 on Monday morning and report at
23 10:00 a.m. if conditions permit it.
24 Anything on behalf of the State?

25 MR. BRITT: No, sir, that's fine.

1 THE COURT: Anything on behalf of
2 the defendant?

3 MR. BOWEN: No, sir.

4 THE COURT: Mr. Horne, if you'll
5 bring our -- I'm sorry, before you do that,
6 yesterday the Court dictated into the
7 record an order denying the motion on
8 behalf of the defendant made by counsel for
9 the defendant to suppress any in-court and
10 out of court identification by Mr. Clewis
11 Demory. That order has been signed and
12 dated today. Ms. Gaines has the original
13 of that order. I've asked that she make
14 copies for all counsel and file the
15 original so the record should reflect that
16 the order denying the defendant's motion to
17 suppress identification both in-court and
18 out of court as to the State's witness
19 Clewis Demory as previously indicated on
20 the record is now filed.

21 If you'll bring the jury in, please.

22 (Jury in at 9:36 a.m.)

23 THE COURT: Good morning, ladies
24 and gentlemen.

25 Members of the jury, let me inform you

1 that we are going to suspend all further
2 proceedings until, tentatively, 10:00
3 Monday morning. Ms. Odom still is ill and
4 is not available at this time. We hope
5 that her condition improves and she will be
6 available on Monday morning. Let me also
7 indicate to you that because of the current
8 weather conditions, I'm going to ask -- do
9 all of you have the number that was
10 previously given to you?

11 If you will call that number because
12 we don't know at this point what our
13 situation will be in terms of the weather
14 on Monday morning. If you'll call that
15 number beginning at 8:30 in the morning,
16 you will access one of two messages. The
17 message will either say that weather
18 conditions are such that we will not have
19 court today and will tell you what to do in
20 that regard, either to call back at a time
21 certain or to report back at a time
22 certain, or the message will say we will
23 have court today, we will convene at 10:00
24 that morning.

25 So if you'll begin calling at 8:30 in

1 the morning --

2 JUROR: You said in the morning.

3 THE COURT: I apologize, on
4 Monday morning. Thank you. We will
5 convene if that will be at all possible at
6 10:00 on that morning. Otherwise, you will
7 access instructions as to when and where
8 you are to report or to call back.

9 Again, we appreciate your cooperation
10 and indulgence. Again, I instruct you that
11 you're not to talk about this matter during
12 this recess among yourself or with anyone
13 else, you're not allowed to have anyone say
14 anything to you or in your presence about
15 this case. If anyone communicates with you
16 about this matter or says anything in your
17 presence or attempts to do so, again it's
18 your duty to inform us of that
19 immediately.

20 Don't form or express any opinions
21 about this matter. Don't have any contact
22 of any kind with any of the attorneys,
23 parties, witnesses, prospective witnesses.
24 Avoid exposure to any media accounts which
25 may exist in connection with this matter,

1 and you're not to conduct any independent
2 inquiry or investigation or research of any
3 kind.

4 Be careful going home and hopefully we
5 see you Monday morning at 10:00. You're
6 free to go at this time. If anyone needs
7 to get the number again, please stop by and
8 see Ms. Gaines.

9 (Jury out at 9:39 a.m.)

10 THE COURT: Folks, we may have to
11 think about our situation next week
12 depending on what our circumstances are,
13 but I want to be candid with all counsel
14 and I want the record to reflect this. If
15 it's at all possible, it's my intent to go
16 forward with an alternate juror. I do not
17 want to run the risk at this juncture of a
18 mistrial if we lose the alternate and at
19 some point thereafter fall below 12.

20 State want to be heard in that
21 regard?

22 MR. BRITT: No, sir, I concur
23 with that.

24 THE COURT: Defendant want to be
25 heard?

1 MR. THOMPSON: No, sir.

2 THE COURT: We'll just have to
3 weather this out, literally and
4 figuratively and see where we are next
5 week, but I would be very reluctant to
6 excuse any additional jurors at this point
7 if there's any way I can avoid doing that.

8 Okay. We're at ease until 10:00
9 Monday morning, tentatively.

10 THE BAILIFF: All rise, please.

11 (Court adjourned.)

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15 (February 5, 1996. Proceedings in open court.)

16 (10:06 a.m.)

17 THE COURT: Good morning, folks.

18 Let the record show that all counsel are
19 present, the defendant is present in open
20 court. I understand that Mr. Demery is
21 also present. Let's bring Mr. Demery in,
22 please.23 Mr. Demery, if you'll retake the
24 witness stand. You remain under oath. Do
25 we have all members of the jury in the jury

1 room?

2 THE BAILIFF: Yes, sir.

3 THE COURT: Anything from either
4 counsel before we go forward?

5 MR. BRITT: No, sir.

6 THE COURT: If you'll bring our
7 jurors in, please, ma'am.

8 (Jury in at 10:09 a.m.)

9 THE COURT: Good morning, ladies
10 and gentlemen.

11 Mr. Thompson, you may continue with
12 cross-examination, sir.

13 CROSS-EXAMINATION (Continued)

14 BY MR. THOMPSON:

15 Q Good morning, Mr. Demery.

16 A Hey.

17 Q Mr. Demery, were you wearing a watch back
18 on July 22nd, 1993?

19 A Yeah, I'm pretty sure that I was, yeah.

20 Q And on the 23rd of the morning, early
21 morning of July 23rd, 1993 were you wearing a watch?

22 A May have been.

23 Q Why are you pretty sure that you were
24 wearing a watch on July 22nd Mr. Demery?

25 A Well, my birthday was coming up in a few

1 weeks, my girlfriend bought me a Mickey Mouse watch,
2 she didn't wait until my birthday because -- well,
3 she told me that she felt like I ought to be locked
4 up when my birthday came around so she gave it to me
5 early.

6 Q When did she give it to you? Your birthday
7 was August the 6th, is that right --

8 A August 3rd.

9 Q August the 3rd. Now when did your
10 girlfriend give you the Mickey Mouse watch?

11 A It was about almost a month before my
12 birthday.

13 Q So you got a Mickey Mouse watch about a
14 month before your birthday and you're sure you were
15 wearing it on July 22nd, 1993, is that right?

16 A Yeah.

17 Q But you're not sure you were wearing it the
18 morning of July 23rd of 1993, is that your testimony?

19 A No, I said I may have, I more than likely
20 was.

21 Q You don't recall ever looking at your watch
22 on July 23rd of 1993?

23 A No, I really don't.

24 Q Do you recall ever looking at your watch on
25 July 22nd of 1993?

1 A I'm sure I did, I mean --

2 Q You're sure you looked at it on the 22nd,
3 but you don't recall looking at it on the 23rd, is
4 that your testimony, Mr. Demery?

5 A I may have.

6 Q May have which way?

7 A Only time I remember looking, checking the
8 time at all that night was when we were riding around
9 in the park down in Rowland trying to get up in that
10 waste treatment plant. It was about 3:45 in the
11 morning.

12 Q So you definitely, you say looked at your
13 watch July 23rd and said 3:45, is that your
14 testimony?

15 A No, sir, I didn't say I looked at my
16 watch. I looked at the time in the car up there on
17 the panel.

18 Q Never looked at your watch, did you?

19 A I didn't say I never looked --

20 Q Well, Mr. Demery, the fender that was bent
21 on that Tempo, when was that fender bent?

22 A When we first got the car it was -- you
23 could see had like small, just small dents around the
24 front part on the left side, where they had been beat
25 out, but where the big dent came in was when I was

1 working with my girlfriend's stepdad, we were taking
2 a house to Gastonia and going into Monroe, I got
3 sideswiped.

4 Q Now, did -- you were hit by what kind of
5 vehicle?

6 A A '93 Buick LeSabre.

7 Q What month was that?

8 A April, May, sometime.

9 Q Mr. Demery, the engine in that Tempo, did
10 it have a knock, I mean, was there an engine problem
11 with that Tempo?

12 A Other than it running hot, like I said, the
13 fan was tore up.

14 Q The fan was tore up. What was wrong with
15 the fan?

16 A It wouldn't kick in automatically like it
17 was supposed to. Sometimes it wouldn't even come on
18 and then others times I couldn't get it to go off.
19 And after got the fan replaced, still had to like
20 straight wire it.

21 Q But back in July of 1993, the fan on that
22 car was broken, is that correct?

23 A No.

24 Q Well, back in July of 1993, did the fan or
25 did the engine keep a noise?

1 A Other than like I said, had to straight
2 wire it, and it pretty much stayed on about all the
3 time until I had to click it off myself. It wouldn't
4 go off on its own.

5 Q So when you say you straight wired it and
6 it stayed on, are you talking about the fan?

7 A Yes.

8 Q And when the fan was on, it kept a loud,
9 distinctive noise, did it not?

10 A No, other than the hum of a fan. I mean,
11 it wasn't loud, didn't tick.

12 Q Now, Mr. Demery when you cut the fan off,
13 when you say you had to manually cut it off, did you
14 mean that you had to manually cut it off once you
15 turned your car off?

16 A Yes.

17 Q And if you turned your car off and you
18 didn't manually turn that fan on, turn the fan off,
19 the fan would continue running, is that what your
20 testimony is?

21 A Yes.

22 Q Now, that car was it straight or standard?

23 A Straight.

24 Q And the defendant could not drive a
25 straight drive, is that right?

1 MR. BRITT: Objection.

2 THE COURT: Sustained

3 BY MR. THOMPSON:

4 Q Could the defendant drive your Tempo?

5 MR. BRITT: Objection.

6 THE COURT: Do you want to be

7 heard Mr. Britt?

8 MR. BRITT: No, sir.

9 THE COURT: Overruled. You may
10 answer.

11 THE WITNESS: No. Just -- I
12 tried to show him how, and then there was a
13 time he did take off with it by himself,
14 but when he got back I was scared to get in
15 it and crank it up and try to move it.

16 BY MR. THOMPSON:

17 Q That one time?

18 A I tried to show him how to, there was one
19 time he did leave by himself in it.

20 Q Do you recall, Mr. Demery, that the
21 defendant had an injured ankle back in June or July
22 of 1993?

23 A He said he did.

24 Q He walked with a limp, didn't he?

25 A No, no.

1 Q He walked the same way he walks now, is
2 that right?

3 A Yeah.

4 Q Now, Mr. Demery, I believe when we stopped
5 Wednesday, we were talking about the bushes there off
6 of 74 and you being turned onto a bit of knowledge by
7 your attorneys, and it's your estimate now that the
8 bushes were some 200 feet away, or is that your
9 attorney's estimate?

10 MR. BRITT: Objection to the
11 form.

12 THE COURT: Sustained as to form.

13 MR. BRITT: Move to strike.

14 THE COURT: Motion to strike is
15 allowed.

16 BY MR. THOMPSON:

17 Q Well, now, Mr. Demery, again, how far were
18 the bushes from the Lexus out there on 74 on the
19 night of July 23rd of 1993?

20 A About 200 feet, I guess, going by what I
21 was told last week.

22 THE COURT: Mr. Demery, what
23 you're being asked is what you recall.

24 THE WITNESS: Well, yeah, I mean,
25 what I meant was by them telling me how

1 wrong I was on distances. I was just going
2 by nobody ever told me 200 feet, I'm just
3 saying --

4 THE COURT: Can you use something
5 in the courtroom as a point of reference to
6 indicate what your recollection was in
7 terms of distance.

8 THE WITNESS: Yeah. Like last
9 week when I was saying from the back wall
10 to the door being 20 or 30 feet, my
11 attorneys telling me that was way off.
12 More or less like 60, 65, I'm doubling like
13 the distance from here to the door, twice,
14 and that would be -- well, little more than
15 twice, roughly 200 feet.

16 BY MR. THOMPSON:

17 Q Well, now, Mr. Demery, I believe you stated
18 last week that with respect to the 20 feet you were
19 to talking about a distance from where you were
20 seated in the witness stand to the door, is that
21 right?

22 MR. BRITT: Objection to form.

23 THE COURT: Sustained as to form.

24 BY MR. THOMPSON:

25 Q You said it was -- the truck from the Lexus

1 was approximately the distance from where you're
2 seated in the witness stand to the back of the
3 courtroom door there, is that right?

4 A Well, from up -- I mean up from the Lexus.

5 Q Now, the way that you arrived at the --
6 your estimate of the 200 feet with respect to the
7 bushes is as a result of a conversation that you had
8 with your lawyers during -- is that right?

9 MR. BRITT: Objection.

10 THE COURT: Sustained as to form.

11 BY MR. THOMPSON:

12 Q Well, now, you testified, Mr. Demery, that
13 your lawyers told you that the truck was more like 60
14 or 65 feet rather than 20 feet to 30 feet as you've
15 previously testified, is that right?

16 MR. BRITT: Objection.

17 THE COURT: Sustained as to form.

18 MR. BRITT: Move to strike.

19 THE COURT: Allowed.

20 MR. BRITT: Would ask for an
21 instruction.

22 THE COURT: Members of the jury,
23 you are not to consider the last question
24 or questions asked by counsel for the
25 defendant, Mr. Thompson. Those matters are

1 not to take any part in your deliberations
2 in this case in any respect.

3 Mr. Thompson, you may ask additional
4 questions.

5 BY MR. THOMPSON:

6 Q Mr. Demery, now, when you ran -- you had to
7 run by the sign to get to the bushes?

8 A Yes.

9 Q Now, the first time that a car came, in
10 which direction did that car come on 74, which way
11 was it traveling?

12 A Like I said, there were two -- I remember
13 one, I can't say which one it was, one was coming
14 like from the Wilmington direction headed west, I
15 remember one coming from that direction, but I
16 couldn't say whether it was the first or the last.

17 Q Well then, where did the other one come
18 from that caused you to run?

19 MR. BRITT: Objection.

20 THE COURT: Well, he's already
21 indicated that he can't recall, but if you
22 can recall, answer his question.

23 THE WITNESS: Like I said, I
24 don't remember the order, I remember one
25 coming headed west.

1 BY MR. THOMPSON:

2 Q Okay. Now, the fourth time that you
3 testified to earlier in this case where you
4 approached the car, Mr. Demery, you indicated that
5 was the last time you approached the Lexus, is that
6 right?

7 A Well, other than like going across the road
8 and coming back to it.

9 Q And when you crossed the road and you came
10 back, you walked past the driver's side?

11 A Yeah, walked around the front part of the
12 car.

13 Q And you could see the individual reclined
14 back in the chair, I mean in the seat?

15 A Yes.

16 Q About how far would you -- was he reclined
17 back? Can you move your seat back and show me about
18 how far he was reclined back in that seat, sir? Just
19 back up from --

20 A Yes. (indicating) kind of like this.
21 That's the best I can remember.

22 Q And you walked around the front of the car
23 and came back up on the passenger side?

24 A Yes, yeah.

25 Q Now, it was your testimony, Mr. Demery,

1 that both of you squatted down next to the car?

2 A Yes.

3 Q You were close to the door handle and the
4 defendant was closest to the fender, is that right?

5 A No, that's not -- I was closest to the --
6 to the fender, the back tire of the car -- I wasn't
7 far from the door but Daniel was closer to the front
8 back there at the door, and it was like two, two and
9 a half feet distance between us.

10 Q And of course, the truck was still across
11 the street with the engine running, is that right?
12 Because the engine was running at all times, wasn't
13 it?

14 A May have, yes, I guess.

15 Q Did the man in the Lexus have a Member's
16 Only jacket on his body when you saw him lying in the
17 seat?

18 A I don't remember specifically if it was a
19 Member's Only jacket but it was, I remember the kind
20 of jacket that he had on was like a Member's Only
21 type, real light, thin material.

22 Q What color was it?

23 A I remember it as being like a light
24 brownish color. It was a light color.

25 Q But he had that on as he was lying there in

1 the car, asleep in the car?

2 A Yes.

3 Q And you indicated that both of you, you and
4 the defendant, raised up about the same time there at
5 the window?

6 A Yes.

7 Q Window was about half way down?

8 A Yes.

9 Q The defendant, the man said, what's going
10 on?

11 A Something to that effect.

12 Q And the defendant stuck his hand in the
13 window and shot the man lying in the car?

14 A Yes.

15 Q About how far did his hand go in the
16 window?

17 A It could have been half way, all the way, I
18 do know. It was enough to get in there and pull the
19 trigger.

20 Q You mean his arm could have been half way
21 through the window meaning up to his elbow, or
22 further?

23 A Yes, could have.

24 Q And you saw that?

25 A Yeah.

1 Q All right. And at the time that he pulled
2 the trigger, you were still standing at the rear of
3 the car?

4 A Closer to the rear, not at the rear.

5 Q And do you know what time it was,
6 Mr. Demery, when the man in the car was actually
7 shot?

8 A I don't know exactly, but going by the time
9 that we were down in Rowland looking at the clock at
10 3:45, I would say it was around 3:00 sometime, 3:00
11 in the morning.

12 Q And you stood there at the window after the
13 man was shot and you heard the man say, "I'm sorry,
14 baby"?

15 A Like I said, he was -- it was something to
16 that effect, something like "Oh, baby," it was
17 groaned out. That's what I heard.

18 Q And you stayed there looking at the man in
19 the car for about one to two minutes?

20 A No, it wasn't that long. No more than a
21 minute, meaning the amount of time that it took
22 before he stopped moving at all.

23 Q And when he stopped moving, it's your
24 testimony that the defendant opened the passenger
25 door to the car?

1 A Yes.

2 Q He tried to pull the body across the
3 console of the car?

4 A Yes.

5 Q And he was having problems pulling the body
6 over the console of the car?

7 A Yes.

8 Q And at that time, you didn't see any blood?

9 A No.

10 Q And then the defendant went around to the
11 driver's side of the car and started pushing the
12 body?

13 A Yes.

14 Q And when he was pushing the body, he was --
15 where was his hands located on the body?

16 A I couldn't tell you all that. I don't
17 honestly -- I couldn't say, you know.

18 Q Well, you saw him push him, didn't you?

19 A Yes, he was pushing.

20 Q Where were his hands located when he was
21 pushing him, the defendant's hands, in position to
22 the body?

23 MR. BRITT: Objection.

24 THE COURT: If he recalls, he can
25 answer.

1 THE WITNESS: I don't recall.

2 BY MR. THOMPSON:

3 Q Where were you standing when you saw the
4 defendant pushing the body?

5 A At the passenger door.

6 Q Looking into the vehicle?

7 A Yes. Well, when Daniel went over to the
8 driver's side and started pushing, that's when I went
9 up to the passenger side and started pulling.

10 Q And what part of the body did you grab when
11 you started pulling the body?

12 A I remember trying to grabbing around his,
13 the area, his lower part, grabbing onto --

14 Q Now stand up, Mr. Demery, and point to
15 where you say you started to grab him.

16 A Around this area (indicating).

17 Q Now, you're pointing to, for the record,
18 where are you pointing?

19 A Over here at my side, around in that
20 area.

21 THE COURT: Now, "this" is not
22 reflected in the record. You have to give
23 us the part of the body.

24 THE WITNESS: Like around the
25 thigh part, thigh area, I guess.

1 BY MR. THOMPSON:

2 Q You grabbed his pants and started pulling?

3 A The pants, then I may have grabbed him
4 around his shirt or something, I don't --

5 Q The Member's jacket -- I mean, the jacket
6 was still on that you just described, a thin light
7 colored jacket?

8 THE COURT: Mr. Thompson, you
9 need to establish whether or not the jacket
10 was opened or closed.

11 BY MR. THOMPSON:

12 Q Was the jacket opened or closed?

13 A I don't remember that.

14 Q But the jacket was nevertheless still on?

15 A Yes, it was on until we got into the
16 cornfield and that's when Daniel took it off of him.

17 Q And when you started pulling on the leg or
18 there at the pockets, what you've indicated there
19 about the pockets, did you have both hands there on
20 his leg pulling at the pockets or did you have one
21 hand on the pocket and your other hand somewhere
22 else?

23 A That was more than likely, I couldn't --
24 like I said, I remember for sure at one time grabbing
25 around his thigh area, but.

1 Q Didn't see any blood then, did you?

2 A No, no, I didn't.

3 Q And you still don't recall where the
4 defendant was pushing, do you?

5 A He was pushing the man, he was at the
6 driver's side pushing him over from the left side.

7 Q Still don't recall where the defendant's
8 hands were on the body when he was pushing, do you?

9 A No.

10 Q And you pulled the body over across the
11 console into the passenger seat, isn't that right?

12 A Yes.

13 Q And when you pulled the body over into the
14 passenger seat, what was the position of the body
15 then with regard to the passenger seat, describe it.

16 A Well, his upper body, like I said before,
17 it was kind of twisted over like facing out towards
18 the window part, and his

19 Q Go ahead first.

20 A The lower part, his legs and all was like
21 twisted out towards the driver's side.

22 Q Are you saying that the body was turned
23 over on its side there in the front passenger seat,
24 was the body laying on its side?

25 A The upper half.

1 Q The upper half of the body was laying on
2 his right side, is that right?

3 A Yes.

4 Q Didn't see any blood, did you?

5 A No.

6 Q And the legs of the body were across the
7 console?

8 A Well --

9 Q Describe that.

10 A One was partially over. I can -- if you
11 would like me to go ahead, I can tell you why you
12 couldn't see any blood then at that particular time.
13 He was shot up on his right side, and the right side
14 was the area that he was twisted over (indicating).
15 First time I noticed blood was in the cornfield.

16 Q You saw where he was shot?

17 A It was around in this area. That's --

18 Q Stand up and show me where you say he was
19 shot?

20 A In this area around here. Could have been
21 up higher, down lower, but I remember it as being
22 around in here (indicating).

23 Q You didn't see any blood nevertheless while
24 he was laying on his side there in the Lexus out
25 there on 74?

1 A No, I didn't, no.

2 Q And you testified, Mr. Demery, that you
3 left the Lexus and you went to your vehicle?

4 A Yes.

5 Q And you drove back to Bob's Landing Mobile
6 Home Park?

7 A Yes.

8 Q And you got out of your vehicle and stood
9 there next to the bridge?

10 A I stayed at my car for a few minutes and
11 then went to the bridge.

12 Q Where was your car parked?

13 A Directly -- well, in front of Daniel's
14 trailer in the front yard area.

15 Q And the bridge is located right there at
16 the entrance of Bob's Landing Mobile Home Park, is it
17 not?

18 A Slightly over -- well, over to the left, I
19 mean, few feet off.

20 Q About how far from the driveway of Bob's
21 Landing Mobile Home Park was the bridge? And you can
22 use a distance in the courtroom to point that out?

23 A I would say --

24 Q Would you look in front of you and try to
25 use a distance located directly in front of you?

1 A Yes, I would -- I would say like about to
2 the second bench.

3 Q From where you're seated on the witness
4 stand to the second bench?

5 A Yes.

6 Q And as you were standing out there next to
7 the bridge, you saw these headlights coming down the
8 canal bank?

9 A Yes.

10 Q And the canal runs parallel with the
11 driveway that comes off of Back Swamp Road going into
12 Bob's Landing Mobile Home Park, is that right, going
13 side by side?

14 A Well, could you repeat the question
15 please?

16 Q Where does the canal with respect to the
17 driveway coming into Bob's Mobile Home Park?

18 A Like I say, going in it would be over to
19 the right; leaving out, over to the left.

20 Q And you couldn't tell what color the car
21 was coming down that canal bank that night, could
22 you?

23 A No.

24 Q And it had its headlights on, isn't that
25 right?

1 A Yes.

2 Q And about what time would you say this was
3 when it was coming down that canal bank?

4 A What time?

5 Q Yes, sir.

6 A Between 3:00 and 3:45.

7 Q But you could hear the radio pumping real
8 loud coming down that canal bank, isn't that right?

9 A When it got up close enough I could --
10 maybe 60, 65 feet away.

11 Q Using a distance in this courtroom, how far
12 would that be from where you're seated?

13 A To the door.

14 Q And when you got up about to the door, you
15 could hear the radio pumping, isn't that right?

16 A Yes, sir, wide open.

17 Q Wide open, loud, wasn't it?

18 A Yes.

19 Q And that car came up to you, that radio was
20 still pumping, wasn't it?

21 A Yes.

22 Q Body was still in the car, wasn't it?

23 A Yes.

24 Q Headlights still on?

25 A Yes.

1 Q About 3:00 in the morning?

2 A Yes.

3 Q The door opens?

4 A Yes.

5 Q Radio still pumping?

6 A Yes, sir, yes.

7 Q And you get in the car?

8 A Yes.

9 Q You indicated you had problems getting into
10 the back seat of that car because that driver's seat
11 was still reclined, is that right?

12 A Yes.

13 Q So did you, after getting into the back
14 seat of the car, move over to the passenger side in
15 the back seat?

16 A No, not directly behind the passenger
17 side. I guess about middle ways.

18 Q Now, was the reclined chair, or seat,
19 meaning the driver's seat, reclined far enough so
20 that its headrest would have touched the back seat or
21 any part of the front seat, driver's seat, would have
22 touched the back seat?

23 A No, it was leaned, like I say, pretty back
24 far, but I could still squeeze, I got in. I got in.

25 Q And it was at that time when you got in

1 that you moved the seat up?

2 A No. It was sometime after we got into the
3 cornfield, it was -- figured out how to get it up.

4 Q Well, now, the cornfield that you went to
5 was off 301 somewhere between Bob's Landing Mobile
6 Home Park and Rowland, is that right?

7 A Somewhere before you get to Rowland.

8 Q Well, you could describe how you got there,
9 couldn't you?

10 A I said if you went down 301, Daniel took a
11 right, it was on a state maintained dirt road, and
12 took a short left and pulled up into the cornfield.

13 Q It was in the cornfield that you took the
14 keys out of the ignition?

15 A Yes.

16 Q You looked into the trunk there at the
17 cornfield?

18 A Yes.

19 Q And it was at the cornfield where you saw
20 the defendant take the watch off -- took the watch
21 off the body, is that right?

22 A Yes.

23 Q And you took two rings off of the person?

24 A Yes, yes.

25 Q And one of those rings was a wedding band?

1 A Yes.

2 Q Other one was 1986 NBA All-Star ring, is
3 that right?

4 A Yes.

5 Q Now, you testified, Mr. Demery, that it was
6 there while you were out at the cornfield that you
7 were satisfied that -- or you knew this man to be
8 James Jordan, is that right?

9 A After I read the inscription on the watch,
10 that pretty much affirmed it for me. But then some
11 insurance papers started popping up, insured to
12 Michael Jordan and his father.

13 Q So it was there in the cornfield where you
14 concluded that James Jordan was the father of Michael
15 Jordan?

16 A Yes.

17 Q Michael Jordan the NBA star, basketball
18 star?

19 A Yes.

20 Q And it was there in the cornfield where you
21 started thumbing through the insurance papers?

22 A Had -- they popped up, but I remember they
23 were thoroughly looked at on the canal bank close to
24 my house. This was like around 7:00 in the morning,
25 body was gone.

1 Q Back in the cornfield you saw some
2 insurance papers?

3 A Yes, yes.

4 Q Where did the insurance papers come from?

5 A The glove compartment.

6 Q And back there in the cornfield, credit
7 cards were thrown out?

8 A Yes.

9 Q Other papers were thrown out?

10 A I just -- credit cards, papers and stuff
11 were thrown out in the canal over at my place, well,
12 close to my parents' house.

13 Q Nothing was thrown out except for credit
14 cards there at the cornfield, Mr. Demery?

15 A That's all I remember being thrown out.

16 Q That was at the edge of the cornfield, was
17 it not?

18 A There was a stretch of woods there off to
19 the left from where you were standing, the position
20 the car was facing, and I remember the credit cards
21 being thrown over into the woods.

22 Q And you left the cornfield and you went
23 to -- it's your testimony that you went to Rowland?

24 A Yes.

25 Q You went through a traffic light there in

1 Rowland. Was that on 301?

2 A Yes.

3 Q That meant that you would have been headed
4 south, towards South of the Border?

5 A Yes.

6 Q And you took a right around an area of the
7 pink restaurant, is that your testimony?

8 A Yes, it was somewhere in that area.

9 Q And that was next to a project area, is
10 that right?

11 A No, we ended up around the project area.

12 Q And this is where you're sure that it was
13 around 3:45 a.m. in the morning?

14 A Yes.

15 MR. THOMPSON: Your Honor, if I
16 may have a drink.

17 THE COURT: Yes, sir.

18 BY MR. THOMPSON:

19 Q And it was there in Rowland that you told
20 the defendant that you knew a better place to dump
21 the body, is that your testimony?

22 A Yes, after he asked me did I know of a
23 better place, yes.

24 Q And the defendant was still driving?

25 A Yes.

1 Q And you showed him how to get on 501?

2 A Well, told him -- I told Daniel the
3 directions to get to the place that I had in mind.

4 Q And the place that you had in mind is a
5 place down there near Crestline Manufacturers?

6 A Yes.

7 Q That's where you worked or used to escort
8 trailers to and from Crestline Manufacturers?

9 A Only from.

10 Q Only from?

11 A Yeah.

12 Q And now, when Mr. Britt asked you on direct
13 examination how you got from Rowland to this bridge
14 down there at Crestline, down from Crestline
15 Manufacturers, you indicated that you couldn't be
16 sure, you weren't sure of the direction, is that
17 true?

18 A No.

19 Q You knew the directions?

20 A Yes.

21 Q And the bridge that you indicate the body
22 was dumped off of, would it have been the first
23 bridge or second bridge coming from Crestline?

24 A Would it -- you mean like taking this road
25 going into McColl or coming out of McColl? I could

1 tell you better that way.

2 Q Let me back up, Mr. Demery. Would you
3 again explain or tell the direction that you say you
4 directed the defendant to go to the bridge where you
5 dumped the body, leaving Rowland?

6 A Leaving Rowland there on 501, took 501 all
7 the way -- well into Laurinburg around the Hasty
8 area, took a left, the BP station, direction we were
9 going, it was over on the left side, took a left
10 there, that area is referred to as John's Station
11 around in there. And from there, it was a straight
12 shot, as best as I can remember it.

13 Q Well, now, that's what you said on direct
14 examination, as best as you could remember it was a
15 straight shot, isn't that right?

16 A Yes.

17 Q Now, you know how to get to that bridge
18 from Rowland, don't you?

19 A I could take you straight there, yeah.

20 Q Well, now, is it as best as you can
21 remember or was that the way that you told the
22 defendant to go as you testified to?

23 A Like I said, I showed him the way.

24 Q Well, was that the way that he got to the
25 bridge?

1 A Yes, it was, because we made it to the
2 bridge, yeah.

3 Q But you could be mistaken?

4 MR. BRITT: Objection.

5 BY MR. THOMPSON:

6 Q Isn't that right?

7 THE COURT: Overruled.

8 THE WITNESS: No, I couldn't be,
9 because like I said, we made it to the
10 bridge that night.

11 BY MR. THOMPSON:

12 Q Several ways of getting to that bridge,
13 isn't it Mr. Demery?

14 A I'm sure there is, but one sure fire way
15 that I know of to get there, yeah.

16 Q One way to get to that bridge is on 74,
17 isn't it, west?

18 MR. BRITT: Objection, unless he
19 knows.

20 THE COURT: He may answer if he
21 knows.

22 THE WITNESS: If there is, I know
23 nothing about it.

24 BY MR. THOMPSON:

25 Q You know where 401 is in Laurinburg,

1 Mr. Demery?

2 A 401, yes, yeah.

3 Q The road that the bridge is located on
4 where you say that you dumped the body, do you know
5 the name of that road?

6 A Pea Bridge Road.

7 Q Did Pea Bridge Road intersect 401?

8 A I don't remember for sure. It could.

9 Q Now, Mr. Demery, you have transported --
10 excuse me, escorted several trailers from Crestline
11 using the Pea Bridge Road, have you not?

12 A No. We've come back down Pea Bridge Road
13 several times after dropping off a mobile home.

14 Q Well, now, when you came back down Pea
15 Bridge Road where were you coming from?

16 A This was like coming up through South
17 Carolina through McColl, I couldn't -- I honestly
18 couldn't tell you a way from that direction, but --

19 Q Well, coming from Florence?

20 A Whenever we went to Florence and took a
21 house, we always came back up 95, got off in Rowland,
22 took 501 back to the plant.

23 Q Well, now, how many times would you say you
24 had been down that road, Pea Bridge Road, escorting
25 trailers prior to July of 1993?

1 A Coming back after dropping a trailer off, I
2 don't know. I don't know. I mean, we moved a lot of
3 houses.

4 Q Would you say it was more than 50 times?

5 MR. BRITT: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: No, I wouldn't say
8 it was over 50 times, no.

9 BY MR. THOMPSON:

10 Q More than 25 times maybe?

11 A It wouldn't say it was more than 25.

12 Q More than ten times?

13 A Could have been. Do we really have to play
14 this game again? Like I said, I don't remember for
15 sure how many times we went through there or coming
16 back.

17 Q Mr. Demery, this isn't a game. Are you
18 telling the truth, sir?

19 A Yes, I am.

20 MR. BRITT: Objection to
21 Mr. Thompson's commentary. Move to strike.

22 THE COURT: Folks, it's
23 cross-examination. Wide latitude is
24 allowed on cross-examination. But you
25 folks know the rules. Motion to strike is

1 allowed.

2 Members of the jury, you will not
3 consider Mr. Thompson's comment that "this
4 is not a game," and I instruct you that you
5 are not to consider Mr. Demery's statement
6 about "Do we have to play this game
7 again." I instruct that you neither of
8 those statements are to take any part in
9 your deliberations in this case in any
10 respect.

11 Mr. Demery, if you'll answer
12 Mr. Thompson's questions, and Mr. Thompson,
13 put questions to him without commentary.

14 BY MR. THOMPSON:

15 Q Mr. Demery, is it your testimony here today
16 that you don't know how to get to 401 from Pea Bridge
17 Road?

18 A Like I said, I could show you better than I
19 could tell you.

20 Q Can you -- do you know how to get to 401
21 from Pea Bridge Road where that body was dumped?

22 MR. BRITT: Objection, asked and
23 answered.

24 THE COURT: Overruled. You may
25 answer.

1 THE WITNESS: I could show you
2 better than I could tell you.

3 BY MR. THOMPSON:

4 Q So you do know how to get to 401 from Pea
5 Bridge Road?

6 A I find a way to get to 401 from Pea Bridge.

7 Q You found a way back on July 23rd of 1993
8 to get from Pea Bridge Road to 401, didn't you?

9 A Yes, we did.

10 Q How far is 401 from Pea Bridge?

11 A Maybe five miles, could be a little more,
12 little less.

13 Q Now, Mr. Demery, when you were out there in
14 that cornfield between Rowland and Bob's Mobile Home
15 Park, did the man in the Lexus still have his shades
16 on?

17 A No, I don't remember him having them on.

18 Q You're saying he did or he didn't have them
19 on?

20 THE COURT: He's saying he
21 doesn't remember.

22 THE WITNESS: Thank you.

23 BY MR. THOMPSON:

24 Q Now, out there in the cornfield,
25 Mr. Demery, did you see any blood in the Lexus?

1 A I remember seeing a spot of blood on this
2 person that was in the car. I never noticed blood
3 inside the car until the next -- until it was
4 daylight.

5 Q And the spot that you saw on the person in
6 the car, how big was that spot?

7 A This big (indicating).

8 THE COURT: For the record,
9 folks, can we agree that he has placed his
10 forefinger and his thumb together in a
11 circle indicating approximately an inch,
12 two inches in diameter?

13 MR. THOMPSON: Your Honor, I'm
14 going to have him draw it, if I can,
15 please.

16 THE COURT: Yes, sir. You need
17 to mark that.

18 MR. THOMPSON: I will, sir.
19 (Defense Exhibit 25 was
20 marked for identification.)

21 BY MR. THOMPSON:

22 Q I'm going to hand you what has been marked
23 as Defendant's Exhibit 25 which is a blank piece of
24 paper with lines on it. Would you draw, using -- let
25 me get a red pen. Would you draw, using Defendant's

1 Exhibit Number 25, about how big that spot was that
2 you observed out there in the cornfield.

3 A (Indicating).

4 Q You can shade that in, please.

5 A (Witness complies).

6 Q Now, that spot that you saw on the body,
7 where was it located on the body?

8 A On his right side around this area
9 (indicating), somewhere around in here.

10 Q And Your Honor, for the record, the witness
11 did draw a red spot on Defendant's Exhibit Number
12 25.

13 THE COURT: Yes, sir.

14 MR. THOMPSON: Yes, sir.

15 BY MR. THOMPSON:

16 Q Mr. Demery, when you got there to the
17 bridge and you dumped the body off, do you recall
18 during your direct examination Mr. Britt asking you
19 the question at that time whether the man had shades
20 on or not?

21 MR. BRITT: Objection to the
22 form.

23 THE COURT: Overruled. Do you
24 recall that question being asked by
25 Mr. Britt?

1 THE WITNESS: No, I don't.

2 BY MR. THOMPSON:

3 Q Do you recall telling Mr. Britt that, or
4 testifying during direct examination in this case you
5 never saw him take the shades off, I didn't know, I
6 didn't see Daniel do it, do you recall telling,
7 testifying to that earlier in this case?

8 A If -- I don't recall the question, but the
9 answer, to answer it again, if you would like, no, I
10 never saw Daniel take shades off the man. I didn't.

11 Q And this was there when you were at the
12 bridge, isn't that right, at Pea Bridge?

13 A What was -- this was what at Pea Bridge?

14 Q When you testified that you never saw him
15 take the shades off it was in response to a question
16 about whether you saw the individual with shades on
17 there at Pea Bridge where you dumped the body, was it
18 not?

19 MR. BRITT: Objection.

20 THE COURT: Sustained to the
21 form.

22 MR. BRITT: Move to strike.

23 THE COURT: Motion to strike is
24 allowed.

25 MR. BRITT: Ask for an

1 instruction.

2 THE COURT: Members of the jury,
3 as I've told you on numerous occasions, it
4 is your function and your exclusive
5 province to determine what the evidence in
6 this case does show and what the facts in
7 this case are.

8 It is your exclusive duty and
9 responsibility to determine what the
10 evidence in the case is and what it shows
11 and what it means. And I instruct you that
12 in fulfilling that duty and obligation, it
13 is your duty to recall the testimony as it
14 was presented in the courtroom. And you
15 are to use your recollection of the
16 evidence as it was presented in this case
17 and not the recollection of counsel in your
18 deliberations in all respects.

19 I instruct you that you are not to
20 consider the last question asked by counsel
21 for the defendant, Mr. Thompson, that
22 matter is not to take any part in your
23 deliberations in this case in any respect.
24 And again, I emphasize to you that it is
25 your duty to recall the evidence as it has

1 been presented and to decide from the
2 evidence presented what the facts are in
3 this case.

4 Yes, sir, Mr. Thompson.

5 BY MR. THOMPSON:

6 Q Mr. Demery, it was there at Pea Bridge
7 where you testified the defendant took the jacket off
8 of the body, isn't that right?

9 A No, I said that Daniel took the man's shoes
10 off at the bridge.

11 Q All right. Now, it was there at Pea Bridge
12 where you grabbed the feet, is that correct?

13 A Yeah, around in the feet area.

14 Q And it's your testimony that the defendant
15 grabbed the body around the upper portion of the
16 body?

17 A Yes.

18 Q And you didn't see any blood on the
19 defendant, did you?

20 A No, I didn't, no.

21 Q But you noticed somehow you got blood all
22 over you, didn't you?

23 A No, not all over me. There was a smear on
24 my right arm.

25 Q Where on your right arm, stand up and let

1 me show the jury where you're talking about on your
2 right arm.

3 A Right here.

4 Q About how big was that smear?

5 A It was just -- it was this long
6 (indicating) it didn't really -- I noticed it, you
7 know, but it wasn't really that dark or anything.

8 Q Well, it would have been red, wouldn't it,
9 if it was blood?

10 A Well, it was dried up. It was a faint red
11 color.

12 Q The blood was dried up when you observed it
13 on your arm?

14 A Yes.

15 Q Was it on your skin?

16 A Yes.

17 Q Prior to dumping the body off there at Pea
18 Bridge, you hadn't touched the body, had you?

19 A Other than trying to pull him over.

20 Q That is right, when you pulled him across
21 the street, I mean, pulled him across the seat, is
22 that right?

23 A Yes.

24 Q But you didn't notice that blood on you
25 until you dumped the body at Pea Bridge?

1 A I didn't really notice blood anywhere until
2 it was daylight, headed back down 74. Well, when I
3 noticed, like the passenger seat was where the
4 majority of the -- where the small amount of blood
5 that there was, that's where it was mostly at. I had
6 a small amount on my arm, around the bridge, maybe,
7 that I noticed it on myself. But like I said, I
8 didn't really notice it much until it was light,
9 headed back down 74.

10 Q Now, the jacket that the man was wearing,
11 when was the last time you saw the man with the
12 jacket on?

13 THE COURT: Off or on?

14 BY MR. THOMPSON:

15 Q When was the last time you saw the body
16 with the jacket on, when was the last time you recall
17 seeing the body with the jacket on?

18 A The cornfield.

19 Q When the body was dumped into the creek,
20 was the jacket off then?

21 A Yes.

22 Q When was the jacket taken off?

23 A Cornfield.

24 Q And who took the jacket off?

25 A Daniel did.

1 Q Where were you when the jacket was taken
2 off?

3 A Around the car, I would be at the trunk and
4 then over around the side of the car. We were out
5 there going through this car, I was never -- neither
6 one of us, I wasn't just here in the trunk and he was
7 just here in the front part of the car, we were back
8 and forth.

9 Q And you looked at the jacket?

10 A Like I said, the guy had a jacket on, but
11 as far as really giving it, putting much attention
12 into it, no, I didn't do that.

13 Q You held the jacket?

14 A No, I -- no. I don't remember holding the
15 jacket.

16 Q You saw an emblem on the jacket?

17 A No, I did not.

18 Q Was it a Member's Only jacket?

19 A Mr. Thompson, I said before that it
20 appeared to me to be a Member's Only type jacket. I
21 mean, light material. It was light colored.

22 Q And you had seen a Member's Only jacket
23 before?

24 A I've owned several. Yes, I've seen them.

25 Q You had seen them several times, Member's

1 Only jackets, prior to July 23rd of 19 93, had you?

2 A Yes, seen them. Like I said, I've owned
3 them myself.

4 Q Your Member's Only jackets, do they have a
5 logo on it?

6 A The ones that I have, or had, I remember
7 them as having a small tag. The majority of the
8 time, be around in here somewhere (indicating) about
9 the size of -- you buy a pair of Levi's, got a small
10 tag on the back about that size.

11 Q Mr. Demery, when you observed the defendant
12 taking the Member's Only jacket off of the body, did
13 you --

14 THE COURT: Question assumes
15 facts not in evidence.

16 BY MR. THOMPSON:

17 Q Didn't you see him take the Member's Only
18 jacket off, didn't you testify?

19 THE COURT: You're identifying it
20 as a specific type of jacket and that's not
21 consistent with the testimony.

22 MR. THOMPSON: Yes, sir.

23 BY MR. THOMPSON:

24 Q Mr. Demery, when you observed the defendant
25 take the jacket off of the body, did you see any

1 blood on the jacket?

2 A No, I didn't notice any blood.

3 Q But you did notice a spot of blood on the
4 body?

5 A Yes.

6 Q And the spot of blood that you noticed on
7 the body you've testified to was under the right arm?

8 A Around in that area, yes.

9 Q It was on, then, the shirt?

10 A Yes.

11 Q But you did not notice any blood on the
12 jacket, that's your testimony?

13 A Yes, that is my testimony.

14 Q Did you ever see that jacket again?

15 A If I did, I don't remember seeing it any
16 other time except for that night. There was a couple
17 of suits I had forgotten about seeing until all that
18 started, you know.

19 Q Now, Mr. Demery, when you were there at Pea
20 Bridge, you indicated that you never threw a shell
21 casing, empty shell casing out of the car, is that
22 right?

23 A That's right.

24 Q You never saw the defendant throw an empty
25 shell casing out of the car?

1 A No, sir, I didn't. I didn't see any.

2 Q And when you left Pea Bridge, you went to a
3 Citgo gas station?

4 A Yes, that was the name of it, it was Citgo.

5 Q Where is that gas station located?

6 A It's still around the Hasty area about --
7 leaving Rowland, you go down the road about a mile
8 and a half, take a left at the stop sign, it's about
9 two miles down the road.

10 Q That Citgo gas station is on 401, isn't it?

11 A Yes, yes, it is.

12 Q You had been to that Citgo gas station
13 before, hasn't you?

14 A Yes, sir, yes.

15 Q And you had been to 401 then, before,
16 hadn't you?

17 A I have traveled 401 many times.

18 Q And you know that 401 is there located near
19 Pea Bridge, hadn't you?

20 A It's around there, yes.

21 Q And you know how to get to Pea Bridge from
22 401, don't you?

23 A Yes, I could.

24 Q And you had been to Pee Bridge from 401
25 several times prior to July 1993, hadn't you?

1 A Not to and from these several places, I had
2 been on around and through these places several
3 times.

4 Q And it your testimony that you left the
5 Citgo station, you were driving?

6 A Yes.

7 Q And you went into Laurinburg?

8 A Yes.

9 Q Now, let me ask you, Mr. -- excuse me.
10 Mr. Demery, what time was it when the body was
11 dumped?

12 A I would say around 4:00.

13 Q Takes about 15 minutes to get from Rowland
14 to Pee Bridge?

15 A Well, depending on how fast you were going.

16 Q You all were traveling fast?

17 A Yes, yes, we were.

18 Q And Mr. Demery, it was still dark?

19 A Yes.

20 Q When you dumped the body?

21 A Yes.

22 Q When you went into Laurinburg it was still
23 dark?

24 A Yes.

25 Q And you went to a teller machine there in

1 Laurinburg?

2 A Yes.

3 Q How long did you stay there at the bank at
4 the teller machine?

5 A Ten, 15 minutes.

6 Q What time was it when you left Laurinburg?

7 A Coming out of Laurinburg it was getting
8 daylight.

9 Q About what time was it, do you know?

10 A Maybe around 6:30, sometime.

11 Q So, from the time that you left Pea Bridge
12 and the time that you left Laurinburg, about two and
13 a half hours had expired, is that what your testimony
14 is?

15 A Yes, yes.

16 Q And you left Pea Bridge, went straight to
17 the Citgo station, is that right?

18 A Yes.

19 Q You left the Citgo station, went straight
20 to the teller machine?

21 A Yes.

22 Q And left the teller machine and came back
23 to Robeson County?

24 A Well, went straight to the canal bank right
25 there from the house.

1 Q So when you left the teller machine it was
2 6:30?

3 A I say around that time.

4 Q So from 4:00 when you dumped the body until
5 6:30, you -- when you got to the teller machine, it
6 took you two and a half hours to get from the bridge,
7 stop at the Citgo station and go to that teller
8 machine, is that what you're testifying to?

9 A No, we left from the bridge, went straight
10 to the Citgo station, Citgo, straight to the bank,
11 but when I mean straight, I mean directly to the
12 places. We were doing that -- in between, we never
13 stopped, but I never said we just didn't ride around,
14 you know, we didn't go here, straight here, went --
15 let me explain this.

16 Q Please.

17 A We went straight, left the bridge, straight
18 to the store. Straight from the store, straight to
19 the bank, straight from the bank, straight to the
20 canal from the house. But in between this time, we
21 were just -- what is the word I could use, kicking
22 around, you know.

23 Q The word that you used, Mr. Demery, is
24 you're not being truthful, are you?

25 THE WITNESS: Yes, I am.

1 MR. BRITT: Objection.

2 THE COURT: Sustained.

3 MR. BRITT: Move to strike.

4 THE COURT: Allowed.

5 MR. BRITT: Ask for instruction.

6 THE COURT: Members of the jury,
7 let me allow you to take the mid-morning
8 recess at this time. Please reassemble in
9 the jury room at 11:35. We're taking a
10 break a little early but if you would
11 please report directly to the jury room at
12 11:35.

13 It's also your duty to abide by all
14 prior instructions of the Court concerning
15 your conduct during this recess. Everybody
16 else please remain seated, the members of
17 the jury are excused.

18 (Jury out at 11:13 a.m.)

19 THE COURT: Let the record
20 reflect the following is being heard in the
21 absence of the jury. The specific question
22 objected to following the explanation of
23 the witness, the question by Mr. Thompson,
24 "The word that you used, Mr. Demery, is
25 you're not being truthful, are you?" He's

1 entitled to go after the witness on
2 credibility. And by his questions, he can
3 attack credibility. But he can't engage or
4 inject commentary into it which reflects
5 personal opinion.

6 And the phrasing used, the word that
7 you used, if my estimation in my view,
8 under my interpretation, is that. So I'm
9 going to instruct the jury to disregard the
10 question as phrased but you are entitled to
11 go after the witness on credibility.

12 MR. THOMPSON: Yes, sir.

13 THE COURT: All right. Anything
14 further from the State?

15 MR. BRITT: No, sir.

16 THE COURT: Let's take a 20
17 minute break, we'll come back. Step down,
18 if you will Mr. Demery. We're at ease
19 until 11:35.

20 (Brief recess.)

21 THE COURT: Let the record
22 reflect all counsel are present, the
23 defendant is present in open court. Do we
24 have all members of the jury secured in the
25 jury room, sir.

1 THE BAILIFF: Yes, sir.

2 THE COURT: Mr. Thompson, you
3 indicated there was a matter you wanted to
4 take up on the record in the absence of the
5 jury?

6 MR. THOMPSON: Yes, sir. Your
7 Honor, I talked to Mr. Heffney about
8 bringing some items and he's now been
9 subpoenaed and he has the items here,
10 evidentiary items related to the case. He
11 indicated there may be a problem about
12 opening, and I wanted to address that
13 because we want to see those items, we need
14 to view, defense needs to view those items
15 again.

16 THE COURT: Now, what is the
17 subpoena for, Mr. Britt?

18 MR. BRITT: The subpoena to
19 Mr. Heffney was served, says -- he's to
20 produce in court -- served today, directs
21 him to appear on February 5th, 1996 until
22 the end of trial, to appear at 9:30 a.m. He
23 is to, he's commanded to appear and testify
24 to the Court, the following items at the
25 time place indicated below, all physical

1 evidence and copies of reports, notes,
2 files, tape recorded interviews in your
3 possession obtained during the
4 investigation of the above case,
5 specifically the transcription of the tape
6 recorded interview of Larry Demery by Brant
7 Clifton on January 11th, 1994.

8 THE COURT: By Brant Clifton.

9 MR. BRITT: That's a newspaper
10 reporter, as I understand it, if it has not
11 been filled but it is in the process of
12 being filed, there's a motion to quash the
13 subpoena that the defense served on
14 Mr. Clifton similar to the one that the
15 Court heard earlier in the Larry Demery
16 matters.

17 THE COURT: If you'll bear with
18 me, I've got a letter from Mr. --

19 MR. BRITT: Mr. Stephens, I
20 believe.

21 MR. THOMPSON: I don't know that
22 that --

23 THE COURT: What is the next
24 numbered Court's exhibit, Ms. Gaines?

25 THE CLERK: 25.

1 THE COURT: I've got a fax dated
2 1-26. It was addressed to Angus Thompson,
3 also addressed to the Court and
4 Mr. Woodberry Bowen from Hugh Stephen, Re:
5 State versus Green. Fax indicates that
6 Mr. Hugh Stephens represents NBC News, his
7 videotape, the target of a subpoena that
8 was served earlier on that date, 26th of
9 January, my recollection is that was a
10 subpoena served by Mr. Woodberry Bowen on
11 Mitch Davis of WECT and Brant Clifton, whom
12 Mr. Bowen also subpoenaed, in order for our
13 clients to determine how they wish to
14 respond to these subpoenas. It is urgent,
15 "urgent" being capitalized, that I talk to
16 you as soon as possible. This is directed
17 to you, Mr. Thompson. Also indicating,
18 providing a telephone number where
19 Mr. Stephens could be reached. And a home
20 number in the event that he wasn't reached
21 by 6:00 p.m. on Friday, January 26th.

22 My understanding was that -- folks,
23 correct me if I'm wrong on this, but my
24 recollection is that at the conclusion of
25 the proceedings on that date, Friday

1 afternoon, I indicated to the jury, started
2 to indicate to the jury that it might be
3 necessary for them to show up at 10:30 in
4 the morning, at which time Mr. Bowen asked
5 for a bench conference and indicated to me
6 that they had apparently resolved their
7 matters or concerns with the reporter in
8 question. And that it would not be
9 necessary for us to start late that
10 following Monday which would have been
11 Monday the 29th.

12 MR. BOWEN: Your Honor, that
13 concerned Mr. Davis with the videotape of
14 Mr. Clewis Demory. And while I'm here on
15 the record, in that -- by the way, I called
16 Mr. Stephens this Friday afternoon so we
17 wouldn't make a fruitless trip, and so I
18 told him that it appeared it would not be
19 necessary. I determined from Mr. Stephens
20 that their position was that under the
21 subpoena I was not entitled to the raw
22 footage that had not aired, however he did
23 tell me that he would cause to be made and
24 provide to me within a week the videotape
25 of the portions which had, and a week has

1 come and gone.

2 THE COURT: That's with regard to
3 Mr. Clewis Demory?

4 MR. BOWEN: Yes, sir. A week has
5 come and gone, I've not heard anything
6 further from Mr. Stephens and not been sent
7 a copy of that tape.

8 THE COURT: The current subpoena
9 deals with a WECT videotape of what?

10 MR. BRITT: Your Honor, the
11 subpoena deals with a tape recorded
12 interview that was made by a Brant Clifton,
13 who is a reporter for The Robesonian at the
14 time of the telephone conversation that
15 involved the witness, Larry Demery.

16 THE COURT: That was the subject
17 matter of an earlier --

18 MR. BRITT: Mr. Rogers and
19 Mr. Campbell, in a motion to suppress
20 Mr. Demery's statements, filed a motion to
21 suppress the statements that were made to
22 Mr. Clifton. Mr. Stephens appeared on
23 behalf of Mr. Clifton in his capacity as a
24 news reporter, argued under the First
25 Amendment --

1 MR. THOMPSON: Your Honor, I
2 don't understand why all this is necessary,
3 because I'm not after -- Mr. Britt has
4 stood up and talked about the subpoena that
5 was served on Mr. Heffney. What I'm
6 concerned with -- by the way, I talked with
7 Mr. Heffney, and Mr. Heffney has told me
8 that --

9 THE COURT: What is it that
10 you're asking for?

11 MR. THOMPSON: Thank you.

12 THE COURT: What is it that
13 you're asking for?

14 MR. THOMPSON: Item numbers that
15 appeared on his inventory log, number 51,
16 and Mr. Heffney, I just spoke with him, he
17 says he has those items but he could not
18 open them, and that's my concern, I just
19 simply need --

20 THE COURT: What is this?

21 MR. THOMPSON: That's a subpoena.

22 THE COURT: Yes, sir, for all
23 physical evidence and copies of reports,
24 notes, files, and tape recorded interviews
25 in your possession obtained during the

1 investigation of the above case,
2 specifically transcription of the tape
3 record of Larry Demery by Brant Clifton
4 January 11th, 1994. So my understanding is
5 specifically what you wanted is that
6 transcript?

7 MR. THOMPSON: No, sir, that's
8 been resolved between Mr. Heffney and I.

9 THE COURT: Pardon me?

10 MR. THOMPSON: Mr. Heffney told
11 me that he does not have a transcript, and
12 that's fine. I don't need that. What I am
13 concerned with, though, now is
14 Mr. Heffney's comments to me with respect
15 to those items and our ability on those
16 items, and --

17 THE COURT: I don't mean to
18 interrupt. I still don't know what it is
19 that you want.

20 MR. THOMPSON: Yes, sir. Item 51
21 and 52, Your Honor, that appeared on the
22 master evidence log prepared by Mr. Heffney
23 were photographs collected by S. A. Tony
24 Underwood, 8-16-93 and transferred to
25 Special Agent Heffney on 8-16-93.

1 Mr. Heffney, as the log indicates, that the
2 evidence was found in the same location as
3 item number 50, and we've seen these items,
4 we simply need to review them again.

5 THE COURT: For what purposes,
6 Mr. Thompson, cross-examination of this
7 witness?

8 MR. THOMPSON: Not necessarily.
9 For cross-examination of this witness?

10 THE COURT: Yes, sir, that's what
11 I'm asking.

12 MR. THOMPSON: May, but -- yes,
13 sir, yes, sir, we need to see them. Maybe
14 even for cross-examination for this
15 witness. Not necessarily saying that we
16 will use them at this point, but it's
17 something that I wanted to see again. And
18 Mr. Britt's comment with respect to
19 Mr. Clifton and the subpoena on
20 Mr. Clifton, that's on Mr. Brant Clifton.
21 I don't need him to produce the tape, we've
22 already got the tape. I just wanted to see
23 if there was a transcription. We have a
24 transcriber, we can use our own. So that's
25 not a problem for the defense.

1 THE COURT: Now, as to those
2 items, as you well know, is by number, 51
3 and 52, is that correct? That's what
4 you're asking for?

5 MR. THOMPSON: Yes, sir, that's
6 what I'm asking for.

7 THE COURT: What are those
8 items?

9 MR. BRITT: 51 and 52 are two
10 photographs, my understanding, and I'm
11 having to recall from memory what they
12 specifically are. You recall Special Agent
13 Tony Underwood testified that during the
14 search of the defendant's home certain
15 items were seized tying the defendant to
16 the room where the gun was located.

17 One of those items included, as is
18 described, a black twofold card holder that
19 contained photographs, photographs of some
20 young women. When this was brought to my
21 attention by Mr. Heffney on Friday, the
22 purpose of seeing the -- requested purpose
23 of seeing the photographs was not to
24 cross-examine Larry Demery but to see if
25 the defense could identify those

1 individuals in those photographs. Those
2 items are located in the evidence locker in
3 Fayetteville.

4 THE COURT: Okay. Is there an
5 immediate need for them?

6 MR. THOMPSON: Well, yes, sir,
7 Your Honor, I thought that Mr. Heffney
8 indicated to me that he would -- what
9 Mr. Britt was doing, was he was -- first of
10 all, let me back up and say that when I
11 talked with Mr. Heffney, I told Mr. Heffney
12 that I certainly didn't want him lugging,
13 bringing all the evidence over here every
14 day. That was not the purpose of the
15 request. He wanted to know specifically
16 what did I want. He said because the way
17 he worked with Mr. Britt was, he would tell
18 him what item numbers, and he would bring
19 those item numbers over here. And it was
20 my understanding, I told Mr. Heffney that
21 what I wanted were those items, all items
22 seized from the residence pursuant to the
23 search. And I just -- it was my
24 understanding he was going to bring them
25 here.

1 THE COURT: This is Friday you're
2 talking about?

3 MR. THOMPSON: Yes, and the
4 subpoena here, not been served with the
5 subpoena then, but however, I talked with
6 him and I didn't think there was a problem
7 with him bringing them here. When I spoke
8 to him in the hallway during the break, I
9 thought the items were here, but he made
10 the comment, well, I'm not -- I'm not going
11 to open them. And I can't open them. The
12 items. So I wanted to seek some relief
13 from the Court in an attempt that we can
14 open the items and view the evidence,
15 meaning those items indicated as items
16 number 51 and 52.

17 THE COURT: Am I correct that
18 what we're really talking about is two
19 photographs? Or a series of photographs as
20 well as any other physical items that were
21 seized? Is that correct?

22 MR. BRITT: As I understand it,
23 the subpoena, it's everything.

24 MR. THOMPSON: Well, yeah, Your
25 Honor. -- Excuse me.

1 MR. BRITT: Just so you're clear,
2 there are 148 items that he's had in his
3 custody. Some of them include parts to
4 that car, body parts to that car.

5 THE COURT: All I want to know is
6 what specific items do you want?

7 MR. THOMPSON: I've stated them,
8 Your Honor.

9 THE COURT: For the record.

10 MR. THOMPSON: For the record.
11 I've stated for the record. Do you want me
12 to --

13 THE COURT: Any item seized from
14 the residence --

15 MR. THOMPSON: You mean what do I
16 want now in view of that?

17 THE COURT: Yes, sir.

18 MR. THOMPSON: Again, Your Honor,
19 items 51 on 52 on the master evidence log.

20 THE COURT: Which are?

21 MR. THOMPSON: The photographs
22 collected by S.A. Tony Underwood, 8-16-93.

23 THE COURT: What item number is
24 attached to those photographs if at all?
25 What I'm trying to do is break down what is

1 in 51 and what is in 52.

2 MR. THOMPSON: Any and all items
3 as indicated in his --

4 THE COURT: Would you read what
5 is there for 51 into the record?

6 MR. THOMPSON: That's what I had
7 done before, I'll read it again.

8 THE COURT: Yes, sir.

9 MR. THOMPSON: I'm reading from
10 the master evidence log that was prepared
11 by Special Agent Heffney, which was
12 provided to the defense on discovery.

13 THE COURT: Yes, sir.

14 MR. THOMPSON: An by the way,
15 which we had during the discovery view.

16 THE COURT: Yes, sir.

17 MR. THOMPSON: All right. Item
18 number 51 and 52 is described --

19 THE COURT: Read 51 first or are
20 they together?

21 MR. THOMPSON: They are
22 together.

23 THE COURT: Yes, sir.

24 MR. THOMPSON: And I'm reading
25 from the master evidence log. Photographs

1 collected by Special Agent Tony Underwood
2 on 8-16-93, and transferred to Special
3 Agent Heffney on 8-16-93. The evidence was
4 found in the same location as item number
5 50, the evidence was not submitted to the
6 SBI lab and is in Special Agent Heffney's
7 custody. Item number 50 on the evidence
8 log is a black plastic twofold card holder
9 collected by S.A. Tony Underwood on
10 8-16-93, and transferred to Special Agent
11 Heffney on 8-16-93, evidence was found in
12 Daniel Green's bedroom in a burgundy carry
13 case. Evidence was not submitted to the
14 SBI lab, and is in the custody of Special
15 Agent Heffney.

16 THE COURT: You want 50, 51, an
17 52?

18 MR. THOMPSON: Yes, sir,
19 immediately. And Your Honor, I want to say
20 this, that's what I want right now. I
21 understand Mr. Heffney's problem, I'm not
22 asking him to bring all that evidence over
23 here every day. I told him I would be
24 serving him with a subpoena, and
25 Mr. Heffney didn't seem to have a problem

1 with that, with the discussion that we
2 had. Mr. Britt seems to have a problem,
3 but I don't see what the problem is.
4 Except that we need those items, and
5 throughout this trial, later on we may need
6 additional items, but I'll tell him, prior
7 notice, which items I think we'll need, I
8 need them here in the courtroom the next
9 day.

10 THE COURT: Now, you need 50, 51,
11 52 for the purposes of reexamination?

12 MR. THOMPSON: Yes, sir.

13 THE COURT: All right.
14 Mr. Heffney, will you bring those items
15 tomorrow morning?

16 MR. HEFFNEY: Yes, sir.

17 THE COURT: Everybody happy?

18 MR. THOMPSON: Just a second.
19 For the record, Your Honor, we want all of
20 those items in his possession that's
21 described.

22 THE COURT: 50, 51, 52.

23 MR. THOMPSON: Yes, sir, the
24 packaging and the negatives and all of it.
25 That's --

1 THE COURT: To the extent that he
2 has them in his custody.

3 MR. THOMPSON: Yes, sir.

4 THE COURT: And they are
5 reflected in what has been read into the
6 record and what is contained on the master
7 evidence log as 50, 51, 52, he's indicated
8 he will bring them in tomorrow morning at
9 9:30. Any other matters?

10 MR. THOMPSON: No, sir.

11 THE COURT: Okay. I apologize
12 folks, I was simply trying to make clear
13 for the record what was being asked for so
14 tomorrow morning we didn't have any problem
15 in that regard. If you'll bring the jury
16 back in.

17 (Jury in at 11:51 a.m.)

18 THE COURT: Members of the jury,
19 the State's objection to the last question
20 asked by Mr. Thompson, specifically that
21 question was, "The word that you used.
22 Mr. Demery. Is you're not being truthful,
23 are you" is sustained, the motion to strike
24 is allowed. I instruct you that you are
25 not to consider that question, and that

1 question is not to take any part in your
2 deliberation in this case in any respect.
3 Anything further on behalf of the State?

4 MR. BRITT: No, sir.

5 THE COURT: Mr. Thompson, you may
6 ask additional questions of the witness on
7 cross-examination.

8 MR. THOMPSON: Your Honor, may I
9 approach the witness?

10 THE COURT: Yes, sir.

11 BY MR. THOMPSON:

12 Q Mr. Demery, let me back up here and hand
13 you what was previously marked as Defendant's Exhibit
14 Number 25. That is a paper writing on which you drew
15 a red spot indicating the amount of blood that you
16 saw on the shirt there on the body in the cornfield,
17 is that right?

18 A Yes.

19 Q Would you indicate on this exhibit, write
20 on this exhibit "blood on shirt in cornfield." Would
21 you write on that, please?

22 A (indicating).

23 Q Thank you.

24 A Put an E before the I and then switch it
25 up.

1 Q Okay. I understand. In other words, you
2 spelled field F I E L D, originally you spelled it F
3 E I L D, and you were just correcting it?

4 A Yes.

5 Q No problem. That's on State's Exhibit
6 Number 25.

7 Mr. Demery with respect to the angle in
8 which the seat was reclined in the Lexus when you
9 observed the person sleeping in the Lexus on the
10 driver's side out on 74, and with respect to the
11 position of the seat when you got into the vehicle
12 there near the canal near Bob's Mobile Home Park, can
13 you draw a diagram to help illustrate at least your
14 testimony with respect to the angle in which that
15 seat was reclined?

16 A I can try.

17 Q All right. Do you think you would be able
18 to draw a vehicle, a car?

19 A Well --

20 Q And then the seat in it?

21 A At least a box, two wheels, yeah, I can.

22 Q Okay. Would this help you?

23 A Yes.

24 Q All right. Then let me mark this.

25 THE COURT: If you'll state for

1 the record what it is and what may be
2 contained on it.

3 MR. THOMPSON: Yes, sir, after I
4 mark it.

5 THE COURT: Yes, sir.

6 This is number 26?

7 MR. THOMPSON: This is number
8 26.

9 (Defense Exhibit 26 was
10 marked for identification.)

11 MR. THOMPSON: And it's a diagram
12 drawn by yours truly of a vehicle, supposed
13 to be a Lexus.

14 BY MR. THOMPSON:

15 Q I hand you what's been marked as
16 Defendant's Exhibit Number 26. Using Defendant's
17 Exhibit number 26, can you draw the seat showing the
18 angle in which it was reclined there as you observed
19 it on Highway 74 back on 7-23 of '93?

20 A Yes.

21 MR. BRITT: For the record, can
22 we establish that this is the exterior or
23 interior portion of the car?

24 THE COURT: Is it sufficient,
25 folks if it reflects, the record reflects

1 that Defendant's Exhibit Number 26 is a
2 white piece of paper with a drawing
3 side-view of a motor vehicle?

4 MR. BRITT: That's fine.

5 THE COURT: Is that
6 satisfactory?

7 MR. THOMPSON: Yes, sir.

8 THE COURT: Okay.

9 MR. THOMPSON: With tires on it.

10 THE COURT: With tires on it.

11 BY MR. THOMPSON:

12 Q You may go ahead, Mr. Demery.

13 A (Witness complies) using a line, would that
14 be --

15 Q Yes, sir, and draw the back of the seat at
16 the angle in which it was inclined, or reclined.

17 A (Witness complies).

18 Q For the record, the witness has drawn two
19 lines indicating the angle at which the seat was
20 reclined in the Lexus automobile on Defendant Number
21 26, is that right?

22 A Yes.

23 Q Can you show, using Defendant's Exhibit
24 Number 26 the angle of the front passenger seat?

25 A I can try to.

1 Q Okay. Would you -- can you do that using
2 the Green magic marker showing the angle of the front
3 passenger seat?

4 THE COURT: You're asking for the
5 angle of the back portion?

6 MR. THOMPSON: Yes, sir, the back
7 portion of the seat, yes, sir.

8 THE WITNESS: (Witness complies).

9 BY MR. THOMPSON:

10 Q Okay. Now, on Defendant's Exhibit Number
11 6, would you -- Defendant's Exhibit Number 26, would
12 you write next to the drawing that you indicated was
13 the -- to illustrate the front driver's seat and
14 write "driver's seat" beside it, and then next to the
15 green line which you've used to indicate the
16 passenger seat, write "passenger seat" next to it,
17 next to the green line?

18 A (Witness complies)

19 (Defense Exhibit 27 was
20 marked for identification.)

21 BY MR. THOMPSON:

22 Q I'm handing you now what's been previously
23 marked as Defendant's Exhibit Number 27. It is a
24 blank sheet of paper. Can you use Defendant's
25 Exhibit Number 27 to show approximately how much

1 dried blood you observed on your arm out there at the
2 Pea Bridge? First of all --

3 A Yes, I believe I could.

4 Q The amount of dried blood as you showed the
5 amount on Defendant's Exhibit Number 25?

6 A I mean, it was just a streak.

7 Q Can you draw on Defendant's Exhibit Number
8 27 the amount of dried blood to illustrate your
9 testimony?

10 A Yes, I can try to.

11 Q Would you please.

12 A Would it be better if I just draw a form of
13 an arm and then --

14 Q However you want to draw it. Do you want
15 to draw the arm with the black pen and then the blood
16 with the red mark.

17 A (Indicating).

18 MR. THOMPSON: Your Honor if I
19 may have just a moment.

20 THE COURT: Yes, sir.

21 BY MR. THOMPSON:

22 Q Now --

23 A Should I write "blood on arm"?

24 Q Yes, for the record, you've drawn what
25 appears to be an arm on Defendant's Exhibit Number

1 27. It's -- it's not to scale, to your arm, is it?
2 I mean, it's a small arm that you drew on Defendant's
3 Exhibit Number 27, is that right?

4 A Yes.

5 Q And you've actually drawn, shown on
6 Defendant's Exhibit Number 27 a red streak or red
7 streaks indicating the location of the blood?

8 A Yes.

9 Q On your arm?

10 A Yes.

11 Q Not the amount that you actually had on
12 your arm, just the location of the blood?

13 A Yes.

14 Q You may explain.

15 A As far as, I mean, amount, I don't know if
16 I could really show, because the amount -- what was
17 on my arm that night, it could have just been a drop
18 smeared, like I say it was just smeared.

19 Q Nevertheless, you've used Defendant's
20 Exhibit -- you can use Defendant's Exhibit Number 27
21 to illustrate your testimony as to where the blood
22 was located on your arm?

23 A Yes.

24 Q And would that have been your left arm or
25 right arm?

1 A That was on my right arm.

2 Q Would you write on Defendant's Exhibit
3 Number 27 "blood on right arm"?

4 A Yes.

5 THE COURT: So that the record is
6 clear, why don't you write location.

7 BY MR. THOMPSON:

8 Q "Location" of blood on right arm.

9 A (Indicating).

10 MR. THOMPSON: Now, Your Honor,
11 may I have the witness step down.

12 THE COURT: Yes, sir.

13 MR. BRITT: Objection, like to be
14 heard.

15 THE COURT: Members of the jury,
16 there is a matter of law the Court must
17 take up. Please recall my instructions in
18 that regard, don't worry or speculate about
19 what takes place in the courtroom in your
20 absence, and if all members of the jury
21 would step to the jury room.

22 (Jury out at 12:05 p.m.)

23 THE COURT: Let the record
24 reflect the following is being conducted in
25 the absence of the jury. Mr. Britt, the

1 basis of the objection.

2 MR. BRITT: I anticipate
3 Mr. Thompson is going to ask the witness to
4 display these illustrations to the jury.
5 These illustrations are not in evidence.
6 If they want to move them into evidence.
7 That will be fine.

8 And I would also like an opportunity
9 to see the diagrams.

10 THE COURT: All right. The
11 primary objection is that this is State's
12 case in chief?

13 MR. THOMPSON: I understand.

14 THE COURT: That you can't use
15 the exhibit for illustrative purposes
16 unless they have been admitted for that
17 purpose. And in order to admit them, which
18 is permissible with the discretion of the
19 Court, you may waive last argument.

20 MR. THOMPSON: Yes, sir, we don't
21 want to do that at this point.

22 THE COURT: You folks -- are you
23 moving or withdrawing the request?

24 MR. THOMPSON: Well, we wanted
25 him to use the exhibits to illustrate to

1 the jury, and in light of his objection
2 we're not going to move to introduce them.

3 THE COURT: So you're withdrawing
4 your request as to Exhibits 26 -- 25, 26
5 and 27, at this time?

6 MR. THOMPSON: Yes, sir. And
7 Your Honor, what I intend to do is have
8 them use this thing up here that, this
9 piece of paper here and draw.

10 MR. BRITT: We're back to square
11 one. He's asking to draw, make an
12 illustration, and without moving through
13 the introduction of illustration into
14 evidence, it's not proper for the jury to
15 view it.

16 THE COURT: Folks, the case law
17 on this, and I mean no disrespect to our
18 appellate courts, but the case law on this
19 is about as clear as mud. There are some
20 instances when a defendant has been
21 determined to have offered evidence on
22 cross-examination by bringing to the
23 attention of the jury certain articles of
24 clothing or having demonstrations
25 conducted. This is not something that I'm

1 about to tackle rationally, and I suggest
2 that we all need to approach this very
3 cautiously, because what is at stake here
4 is if the Court determines that evidence
5 has been offered based on the objection
6 during the State's case in chief -- now,
7 you can have him identify them, mark them,
8 and use them at some subsequent time
9 without running afoul of the rule of
10 offering evidence.

11 MR. THOMPSON: Question: It's
12 our contention that if we have him draw an
13 exhibit, I mean, draw a diagram, and we do
14 not move to introduce the particular
15 diagram into evidence, that we would not
16 foreclose our right to --

17 THE COURT: Mr. Thompson, do I
18 recall you asking the witness on
19 cross-examination to demonstrate where on
20 his arm the blood was?

21 MR. THOMPSON: Yes, sir.

22 THE COURT: Do I recall you
23 asking the witness to demonstrate the size
24 of any blood spot that you saw him -- that
25 he saw on the body of the decedent?

1 MR. THOMPSON: Yes, sir.

2 THE COURT: Do I recall you
3 asking him to indicate how far back the
4 seat was reclined?

5 MR. THOMPSON: Yes, sir.

6 THE COURT: Do you need these
7 items right now, sir?

8 MR. THOMPSON: Not if this is
9 going to foreclose me from -- I sure don't.

10 THE COURT: I'm going to put it
11 this way: The objection to the original
12 tender is sustained because those items are
13 not in evidence. I'll have to rule
14 accordingly on any demonstration that's
15 made.

16 MR. THOMPSON: I'm withdrawing my
17 request.

18 THE COURT: As to 25, 26 and 27.
19 There is a potential objection should
20 the --

21 MR. THOMPSON: I'm not going to
22 use that diagram --

23 THE COURT: I'm not trying to
24 foreclose you from doing anything, I'm just
25 saying, do you need it at this point?

1 MR. THOMPSON: What I do want to
2 do, even though he's leaned back in his
3 chair, is to use his hands to show the
4 angle of the seat while we're on voir dire,
5 I might as well.

6 THE COURT: Yes, sir.

7 MR. THOMPSON: May I voir dire
8 the witness?

9 THE COURT: Yes, sir.

10 BY MR. THOMPSON:

11 Q Mr. Demery, can you use your hands to
12 indicate the angle at which the seat was reclined,
13 the driver's seat was reclined in the Lexus?

14 A Yeah, I believe I could, yeah.

15 Q Would you do that, please? Stand up and do
16 that. Let me see.

17 A (Indicating) bottom part of the seat.

18 Q You mean this angle? Would you put your
19 hands together at the angle?

20 A (Indicating).

21 MR. THOMPSON: Thank you, Your
22 Honor.

23 THE COURT: Mr. Britt?

24 MR. BRITT: I don't have any
25 questions on voir dire.

1 THE COURT: Okay. If you'll
2 bring the jury back in.

3 MR. THOMPSON: Your Honor.

4 THE COURT: Sir? I'm sorry, do
5 you want to be heard?

6 MR. THOMPSON: For the record, at
7 this point, can we agree that that's about
8 a 30 degree angle?

9 THE COURT: That's a fact for
10 them to decide. I'm not getting into
11 that. Now if you and Mr. Britt can work
12 out some stipulation.

13 MR. THOMPSON: Mr. Britt -- may I
14 ask Mr. Britt?

15 THE COURT: Yes, you certainly
16 may.

17 MR. THOMPSON: Mr. Britt, would
18 you stipulate that's about a 30 degree
19 angle.

20 MR. BRITT: No, sir.

21 MR. THOMPSON: I gathered that.

22 THE COURT: Folks, you can argue
23 contentions based on what was elicited on
24 cross-examination.

25 MR. THOMPSON: I just wanted it

1 for the record, Your Honor. Thank you.

2 We're ready.

3 THE COURT: Okay.

4 (Jury in at 12:14 p.m.)

5 THE COURT: For the record,
6 Mr. Thompson, you're withdrawing your
7 question as to Defendant's Exhibit 25, 26,
8 27, is that correct?

9 MR. THOMPSON: Yes, sir, Your
10 Honor.

11 THE COURT: Any additional
12 questions on cross-examination?

13 MR. THOMPSON: Yes, sir.

14 BY MR. THOMPSON:

15 Q Now, Mr. Demery, can you use your hands to
16 illustrate the angle at which the driver's seat in
17 the Lexus was reclined as you observed it on July the
18 23rd of 1993? First, can you use your hands?

19 A Yes.

20 Q To illustrate your testimony?

21 A Yes.

22 Q Would you please use your hands to
23 illustrate the angle at which the seat was reclined?

24 A Yes.

25 MR. THOMPSON: With the Court's

1 permission?

2 THE COURT: Yes, sir.

3 THE WITNESS: This is the bottom
4 part of the seat (indicating).

5 BY MR. THOMPSON:

6 Q Would you turn around and use that again,
7 please, toward the jury.

8 A (Indicating).

9 Q Okay. Thank you, Mr. Demery. Now,
10 again --

11 MR. THOMPSON: May I approach the
12 witness?

13 THE COURT: Yes, sir.

14 BY MR. THOMPSON:

15 Q Mr. Demery, using Defendant's Exhibit
16 Number 26, you drew the back of the front passenger
17 seat by using a green line, is that correct?

18 A Yes.

19 Q Now, would you -- can you use Defendant's
20 Exhibit Number 26 and also draw a green line to
21 indicate the bottom of the seat of the front
22 passenger seat as you did the bottom of the driver's
23 seat?

24 A Yes.

25 Q All right. Would you do that?

1 A (Indicating).

2 Q Okay. Now, Mr. Demery, you indicated that
3 at some point you observed blood in the passenger
4 seat?

5 A Yes.

6 Q And would you indicate, or can you use on
7 Defendant's Exhibit Number 26 where on the passenger
8 seat you observed the blood?

9 A No, I couldn't. It's just lines.

10 Q Well, you indicated on direct examination
11 that you observed a spot of blood between the back
12 seat and the bottom of the seat?

13 A A smear running down from the back part of
14 the seat and a little -- I wouldn't call it a puddle
15 but like some down in the crack where the seat joined
16 together.

17 Q You say it was a smear of blood that was
18 running down the back?

19 A Well, yes.

20 Q Of the seat?

21 A A smear. It was never a large -- just a
22 small amount.

23 Q And you can't use Defendant's Exhibit
24 Number 26 to illustrate your testimony as to where
25 that blood would have been located on the passenger

1 seat?

2 A Not using this, I couldn't.

3 Q All right.

4 A I could use like a full diagram, down at
5 the seat like this, everything I could use, something
6 like that to show.

7 Q A full diagram of the seat?

8 A Well, from the front, a front view of it.

9 Q Okay. Now, Mr. Demery, you indicated that
10 after you left Pea Bridge and after dumping the body,
11 going to the Citgo, and going to the bank, you and
12 the defendant were kicking around for about two and a
13 half hours in the Laurinburg area, is that right?

14 A Well, it was about two hours, two and a
15 half.

16 Q From 4:00 to about 6:30, is that right?

17 A Yes.

18 Q And where did you kick around at exactly in
19 Laurinburg area?

20 A Well, in Laurinburg, on the highway, I
21 mean, what I meant by that was like, the time period
22 it took us to get from place to place, I mean, when I
23 say kick around, I didn't mean like going anywhere, I
24 just meant the amount of time it took to get there.

25 Q Well, how long did it take you to get from

1 Pea Bridge to the Citgo station on 401?

2 A 20 minutes.

3 Q You drove directly from Pea Bridge and went
4 to the Citgo station, is that right?

5 A Yes.

6 Q And it took you 20 minutes is your
7 testimony?

8 A About 20 minutes, something like that.

9 Q And when you went to the Citgo station, how
10 long did you stay there at the Citgo station?

11 A Well, we were at the Citgo station probably
12 30 minutes.

13 Q There in the parking lot of the Citgo
14 station?

15 A Yes.

16 Q And you left the Citgo station and went
17 directly to the bank?

18 A Yes.

19 Q How long did it take you to get from the
20 Citgo station to the bank?

21 A 20 minutes, I guess.

22 Q Citgo station is located on 401, is that
23 right, south?

24 A Yes.

25 Q And the bank is located on what street in

1 Laurinburg?

2 A I couldn't tell you the name of the street,
3 but if you're -- being familiar with Laurinburg, what
4 a Big Lot store is, is like. I couldn't tell you a
5 street number but I could take you to it.

6 Q Now, how long did you stay at the bank?

7 A About ten, 15 minutes at the most.

8 Q And when you left the bank, you testified
9 you came back on 74, is that right?

10 A Yes.

11 Q And when you left the bank it was 6:30?

12 A Around 6:30, yeah.

13 Q Now, Mr. Demery, you indicated that, now,
14 from your testimony, that you accounted for about an
15 hour and 25 minutes of the two and a half hours, from
16 4:00 to 6:30?

17 A Yeah.

18 MR. BRITT: Objection. Is that a
19 question?

20 THE COURT: It's
21 cross-examination, overruled.

22 BY MR. THOMPSON:

23 Q You indicated it took you 20 minutes to
24 leave, to go from Pea Bridge to Citgo, you stayed at
25 the Citgo station 30 minutes, did you not?

1 A Yes, about 30 minutes.

2 Q That's 50 minutes, isn't it?

3 A Yes.

4 Q And it took you 20 minutes to go from the
5 Citgo station to the bank?

6 A Yes.

7 Q That's 70 minutes, isn't it?

8 A Yes.

9 Q And when you stayed at the bank, you stayed
10 there 10 to 15 minutes?

11 A Yes.

12 Q On the greater side, that would be 85
13 minutes if it were 15 minutes?

14 A Yes.

15 Q And then you came straight back to Robeson
16 County?

17 A Yes.

18 Q And then you left the bridge around 4:00
19 a.m.

20 A Around 4:00.

21 Q And you left the bank around 6:30 a.m.

22 A Yes.

23 Q And then you accounted for kicking around
24 in Laurinburg for only 85 minutes?

25 A Well, yes, about, you know.

1 Q And what did you do the rest of that time?

2 A Well, nothing -- while in Laurinburg?

3 Q Yes.

4 A Just the things that I've told you, but
5 I've always said about, not exactly for sure, could
6 have been maybe a five minute difference off, but
7 those five minutes will add up. I've always said
8 about, you know, I can't say approximately.

9 Q Where were you, Mr. Demery, when you first
10 noticed daylight?

11 A Around -- down 74.

12 Q Now, you noticed daylight before the sun
13 comes up, is that right, or are you talking about
14 that's when the sun came up?

15 A I'm just saying that's when it started
16 getting light outside.

17 Q All right. Now, you've testified here in
18 court that when you left the bank you went to the
19 canal bank near your house?

20 A Yes.

21 Q And how far is that canal bank from your
22 house?

23 A Quarter of a mile, maybe half. You mean
24 the actual, the bridge -- well, beginning part or --

25 Q The canal?

1 A Where we stopped?

2 Q Excuse me. Where you stopped, Mr. Demery?

3 A I would say at least a mile, because we
4 drove down the canal bank a good ways.

5 Q And you drove from Laurinburg back to the
6 canal bank?

7 A Yes.

8 Q Later on when you got back to -- from the
9 canal bank, you testified in court that you left the
10 canal bank and came to the defendant's house?

11 A Yes.

12 Q And you left the defendant's house, made a
13 stop or two at a store and then you went to Kay's
14 house?

15 A Yes.

16 Q And you drove to Kay's house?

17 A Yes.

18 Q You parked the Lexus behind Parrot
19 Groceries?

20 A Yes.

21 Q You hid the Lexus behind Parrot Groceries
22 because you didn't want anybody to see it, didn't
23 want Kay Ann to see it?

24 A Yes.

25 Q You left Kay's house and you went to

1 Winn-Dixie in Red Springs?

2 A Yes. Well, it was Winn-Dixie or Food Lion,
3 something, it was as big grocery store.

4 Q You're not sure whether it was a Winn-Dixie
5 or not, could be mistaken about that?

6 A Like I say, it could be either one.

7 Q Now, you went back to the defendant's
8 trailer from Red Springs, isn't that right?

9 A Yes.

10 Q And then you went to Marion?

11 A Yes.

12 Q Mr. Demery, do you remember owning a -- is
13 it a Taurus .38 caliber gun?

14 A I had a Colt .38 in my possession at one
15 time.

16 Q Are you familiar with a brand name of a gun
17 called Taurus?

18 A Doesn't ring a bell right off.

19 Q But now you've owned and possessed other
20 .38s prior to July of 1993?

21 A One.

22 Q Other -- you mean just the Colt, that's the
23 only one that you've ever possessed?

24 A Yes.

25 Q You never saw a -- did that Colt -- strike

1 that. You never saw a .38 with a rusty barrel on it?

2 A Only when it was taken out of the store on
3 72.

4 Q When you say when it was taken out of the
5 store?

6 A The gun that was taken -- the .38 that was
7 taken out of the store on 32 that Daniel and I robbed
8 had a slightly rusty barrel on it.

9 Q Did you ever fire a gun that had a loose
10 hammer on it back in July of 1993?

11 A Had a loose handle on it?

12 Q Loose hammer?

13 A The .38 that was taken out of the store,
14 the hammer was -- I remember it as being slightly
15 loose, but, you know.

16 Q Did you repair the handle?

17 A No.

18 Q The gun that Dee was playing with there at
19 the trailer, was the barrel rusty when she was
20 playing with it?

21 A It was the same gun. May have been, I
22 mean, it never -- it was never rusted, slightly --
23 slightly rusted, yeah.

24 Q Now, Mr. Demery, you admitted to having
25 stolen guns from your father?

1 A Yes.

2 Q You've stolen bullets from your father?

3 A Yes.

4 Q And when you steal those bullets from your
5 father, you've had to replace those bullets?

6 A No, I never have, you know.

7 Q How many times prior the July, 1993 have
8 you stolen bullets from your father?

9 MR. BRITT: Objection to
10 relevance.

11 MR. THOMPSON: Well --

12 THE COURT: Overruled. You may
13 answer.

14 THE WITNESS: Many a time.
15 Shotgun shells mostly, but there have been
16 times I would take his pistols outside,
17 shoot them, and then have to replace the
18 bullets. Go in there and put them back in
19 the cylinder.

20 BY MR. THOMPSON:

21 Q There have been times where you would take
22 his pistols outside, shoot them, and then have to
23 replace the bullets, that's your testimony?

24 A Well, replace them back inside the
25 cylinder, you know. I never had to -- if what -- I

1 never had to go out and buy bullets in order to
2 replace them if that's what you're asking.

3 BY MR. THOMPSON:

4 Q The bullets that you were to replace back
5 in the cylinder, the bullets prior to July of 1993,
6 you have fired your father's weapons many times and
7 had to replace his bullets?

8 A Well, from his bullets, I would replace
9 them inside the cylinder.

10 Q You've had to specifically, Mr. Demery,
11 replace .38 bullets?

12 A I don't -- daddy has had .38s before, but I
13 can't honestly remember ever shooting one, his, but
14 like I say, I have had one in my possession before
15 but I had my own bullets for it.

16 Q You deny having ever having stolen any .38
17 bullets from your father?

18 MR. BRITT: Objection.

19 THE COURT: Overruled.

20 THE WITNESS: Yes, I'm denying
21 that. Yes. .

22 BY MR. THOMPSON:

23 Q The bullets that you had in your -- in
24 the .38 Colt, Mr. Demery, where did those bullets
25 come from?

1 THE COURT: What .38 Colt? Oh,
2 I'm sorry.

3 MR. THOMPSON: That you testified
4 to.

5 THE COURT: I apologize, you may
6 answer.

7 THE WITNESS: One time I went
8 into a store over in Pembroke, Service
9 Star, and bought a box out of there, but
10 turns out when I tried again, I couldn't,
11 so there was a man that I know of that I
12 could go to him and buy bullets.

13 BY MR. THOMPSON:

14 Q You said one time you went to what store in
15 Pembroke and bought bullets?

16 A The name on the outside of the window is
17 Service Star, but I know the man and I've always
18 referred to him as Kurt, and if you would hear
19 anybody that did business with this man, they would
20 say, Kurt's, I'm going to Kurt's store to buy some
21 bullets or whatever.

22 THE COURT: So that we can be
23 clear, you indicated that you went to the
24 store to buy bullets.

25 THE WITNESS: Yes, sir, I have on

1 one occasion.

2 THE COURT: Did you in fact buy
3 bullets?

4 THE WITNESS: Yes. And I've
5 returned and tried to purchase them another
6 time but I couldn't.

7 BY MR. THOMPSON:

8 Q Are you saying Service, S E R V I C E,
9 Service Star?

10 A Yes.

11 Q Star, S T A R?

12 A Yes now, how old were you when you went and
13 bought those bullets from Service Star.

14 MR. BRITT: Objection.

15 THE COURT: Overruled.

16 THE WITNESS: It was, I remember,
17 right before I turned 15 or right after 16,
18 but it was -- I forgot, I didn't need ID or
19 anything if that's what you're asking.

20 BY MR. THOMPSON:

21 Q All right. When you went back, though, how
22 old were you?

23 A This was -- it was right after I turned --
24 about the same age, you know.

25 Q And you needed ID, is that your testimony?

1 A Yes, didn't have it. Reason for that
2 being, the certain person working in the store the
3 day that I bought them didn't carry them. And --

4 Q Who was the certain person that worked in
5 the store that didn't care, Mr. Demery, what's his
6 name?

7 A I couldn't tell you his name.

8 Q He was a friend of yours, wasn't he?

9 A I knew him by face, he was a son of the
10 owner.

11 Q And who was the owner?

12 A Mr. Kurt, you know, the guy that owned the
13 place.

14 Q Now, you said your attempting to buy these
15 bullets happened when you were about 15, is that
16 right?

17 A Possibly 16, had already turned 16.

18 Q You went back and couldn't buy any, but you
19 still had the .38, did you not?

20 A Yes.

21 Q And prior to July of 1993, since you
22 couldn't buy the bullets, who did you send in there
23 to get bullets?

24 MR. BRITT: Objection, I would
25 like to be heard.

1 THE COURT: Members of the jury,
2 there's a matter of law the Court must take
3 up. Don't worry or speculate about what
4 takes place in your absence. Please step
5 to the jury room at this time.

6 (Jury out at 12:36 p.m.)

7 THE COURT: Let the record
8 reflect -- I'm sorry, if you'll close the
9 door. Let the record reflect the following
10 is being conducted in the absence of the
11 jury. Mr. Britt.

12 MR. BRITT: Your Honor, these
13 matters about buying bullets when he was
14 15, who he bought them from, these are
15 collateral issues to this case. That's the
16 basis of the objection.

17 MR. THOMPSON: Impeachment, Your
18 Honor, goes to credibility.

19 THE COURT: How does it go to
20 credibility, as to what?

21 MR. THOMPSON: Well, Your Honor,
22 first of all, as to him buying bullets
23 underage, secondly, he's --

24 THE COURT: What rule of evidence
25 is that admissible under?

1 MR. THOMPSON: We're offering
2 this, Your Honor, on cross-examination as
3 impeachment, shows his custom and practice
4 and familiarity with weapons. Again, I'm
5 trying to get to particularly the .38s
6 which has been the subject of this case.
7 And that's where I'm headed. I think it's
8 certainly relevant we would suggest.

9 THE COURT: Now, the question --
10 I'm sorry, the question is, prior to July
11 of 1993, how much prior? Was it in 1992?
12 1990? 1989? All of which is prior to
13 1993.

14 MR. THOMPSON: Yes, sir.

15 THE COURT: On voir dire, why
16 don't we ask him questions, see where we
17 are?

18 MR. THOMPSON: Yes, sir.

19 BY MR. THOMPSON:

20 Q When you first purchased the bullets that
21 you've testified to from the Service Star from the
22 owner's son, what year was that?

23 A That was in '92 -- I was 16. Yeah, I was
24 for sure, certainly.

25 THE COURT: You know about when

1 in '92.

2 THE WITNESS: This was around the
3 end of August. I couldn't give you a
4 specific date.

5 BY MR. THOMPSON:

6 Q And you purchased .38 caliber bullets?

7 A Yes.

8 Q Your answer?

9 A Yes, yes.

10 Q What kind of bullets were they? I mean
11 what brand of bullets were they?

12 A They were in a yellow-green box.

13 Q Were they reloads?

14 A No, these here were top of the line. I
15 could -- 20 bullets cost like \$15.00. They were full
16 metal jackets.

17 Q Full metal jackets, top of the line
18 bullets?

19 A Yes.

20 Q And the next time you went back to purchase
21 bullets, they wouldn't sell them to you, is that
22 right?

23 A Well, the person that was in there that day
24 wouldn't.

25 Q And who was that person?

1 A I couldn't give you a name.

2 THE COURT: Was he the son of the
3 owner.

4 THE WITNESS: One of the sons of
5 the owner, he had about three -- it was
6 three or four sons. It was a family
7 business. .

8 BY MR. THOMPSON:

9 Q And so --

10 THE COURT: On that occasion did
11 you have someone else buy bullets for you
12 when you were refused service? .

13 THE WITNESS: No, sir, I went to
14 another place that I knew of in order to
15 get them.

16 BY MR. THOMPSON:

17 Q Where did you go?

18 A It was a man that I know -- well, used to
19 know, I guess you could say -- well, I would say.
20 And --

21 Q Who was what is his name?

22 A I could give you his nickname.

23 Q What is his nickname?

24 A Frog Lever.

25 Q Who?

1 A Frog Lever.

2 Q Frog Lever? Frog as in F R O G?

3 A Yes.

4 Q Lever as in L E V E R?

5 A Yes.

6 Q And did he own a shop or something, does he
7 own a shop and store?

8 A He can fix guns, right, and the way I
9 became familiar with this person is, see, my dad --
10 when dad would come across an old type gun, antique
11 or whatever, if it needed a part, hard to find a
12 part, this man could get ahold of it. That's how I
13 was familiar with him.

14 Q Frog Lever could get ahold of --

15 A Yes, yes.

16 Q Go ahead.

17 A Like I said, he could reload, reload empty
18 cartridges. I went to him several times to get
19 shotgun shells. He could reload those. As long as I
20 kept the casing, or the shell, he would repack them
21 all, and then 25 bullets, two dollars, shotgun shells
22 that is.

23 Q Did he ever reload .38 caliber bullets? He
24 could reload those, couldn't he?

25 A Yes, about any kind you threw at him, he

1 could fix them up.

2 THE COURT: The issue is, did he
3 reload any for this witness?

4 THE WITNESS: Shotgun shells
5 or --

6 THE COURT: No, sir. .38
7 calibers. Go ahead.

8 THE WITNESS: I bought them from
9 him one time. See, I didn't take the
10 casings to him. He already had them there.

11 BY MR. THOMPSON:

12 Q They were reloads?

13 A Yes.

14 Q How many did you buy from him?

15 A Seemed like there was about a hundred if
16 I'm not mistaken.

17 Q Now, this was in what date or month of
18 1992?

19 A This was around sometime in late September,
20 early October. You got to understand, this whole
21 time I was in possession of this gun was no more than
22 two months.

23 THE COURT: So that we can be
24 clear, Mr. Demery, on your testimony, am I
25 understanding correctly that the first

1 occasion that you purchased .38 caliber
2 bullets was sometime in August of 1992.

3 THE WITNESS: Around the end,
4 possibly the first of September.

5 THE COURT: The key word there is
6 first. Is that the first time you
7 purchased .38 caliber bullets?

8 THE WITNESS: Yes, it is.

9 THE COURT: On that occasion you
10 purchased .38 caliber bullets at the place
11 you've indicated is Star Service or Service
12 Star?

13 THE WITNESS: Yes, sir.

14 THE COURT: Next time you
15 purchased .38 caliber bullets, was that
16 purchase made from the individual that
17 you've identified as Frog Lever.

18 THE WITNESS: Yes, sir.

19 THE COURT: On that second
20 occasion, according to your testimony, you
21 purchased approximately 100 bullets?

22 THE WITNESS: About 100.

23 THE COURT: And they were all
24 reloads.

25 THE WITNESS: Yes.

1 THE COURT: All right.

2 Mr. Thompson.

3 BY MR. THOMPSON:

4 Q Now, subsequent to going to Frog Lever, you
5 purchased some .38 caliber bullets from Kurt's son,
6 did you not, at the Service Star? You indicated that
7 you also purchased --

8 THE COURT: I think that's --

9 MR. THOMPSON: Strike that. I
10 understand.

11 BY MR. THOMPSON:

12 Q You indicated that you went back to the
13 Service Star after the first time you purchased the
14 bullets and somebody, another son wouldn't sell
15 you --

16 A With the intentions of buying more bullets.

17 Q Now, my question is, you -- did I
18 understand you to say that you at some subsequent
19 time, you went back to Service Star but you sent
20 somebody else in to buy the bullets?

21 A No.

22 Q This was Frog Lever, the only other time
23 you bought .38 bullets?

24 A Yes, the second time, yes.

25 THE COURT: Were there any other

1 times after that second time when you
2 purchased from Frog Lever any .38 caliber
3 bullets?

4 THE WITNESS: No, sir, it was
5 shortly thereafter the gun was
6 confiscated.

7 BY MR. THOMPSON:

8 Q When was that gun confiscated, the .38
9 Colt?

10 A October -- either October the 3rd or 4th
11 of --

12 Q 1992?

13 A Yes.

14 THE COURT: So that we're all
15 clear, you made one purchase of .38 caliber
16 bullets sometime arm the latter part of
17 August 1992?

18 THE WITNESS: Yes.

19 THE COURT: Made a second
20 purchase of .38 caliber bullets from Frog
21 Lever sometime in September of 1992?

22 THE WITNESS: Yes.

23 THE COURT: That second occasion
24 involved reloads?

25 THE WITNESS: Yes.

1 THE COURT: You bought about 100?

2 THE WITNESS: Yes, sir.

3 THE COURT: All right.

4 BY MR. THOMPSON:

5 Q And you were 16 in August of 1992?

6 A Yes.

7 Q August the 3rd of 1992 you turned 16?

8 A Yes. No, no, I turned 16 August the 3rd
9 in -- did I understand you correctly, did you say
10 August or October? I'm --

11 Q Well, you indicated that you were 16 when
12 you -- you said, in fact, I know I was 16 when I
13 purchased those bullets the first time?

14 A Yes.

15 Q Okay.

16 A Because it was around the end of October --
17 I mean August that I first got hold of the gun.

18 Q What is your birthday?

19 A August 3rd, 1975.

20 MR. THOMPSON: Your Honor, if I
21 may have just a second.

22 THE COURT: Yes, sir.

23 BY MR. THOMPSON:

24 Q Now, you were 17 in -- you were, in fact,
25 17 years old when you purchased those bullets in

1 August from Service Star, weren't you, Mr. Demery?

2 A Yes, yes, I was, yes.

3 Q Okay. And when you went back to purchase
4 some additional bullets from Service Star, what was
5 the reason you couldn't purchase the bullets?

6 A I was told that I had to be 18 years old.

7 Q Now, other than .38 caliber bullets, did
8 you ever after September of 1992 go to Frog Lever and
9 purchase any bullets?

10 A No. I went back one time to get some
11 shotgun shells repacked, but he was gone.

12 THE COURT: What was gone?

13 THE WITNESS: Frog Lever, his
14 little set up that he had, with the guns,
15 bullets.

16 THE COURT: Hopped on out of
17 town?

18 THE WITNESS: Yes, sir, yes.

19 BY MR. THOMPSON:

20 Q When you say his set up, describe his set
21 up?

22 A He had a little -- right off from his
23 house, he had a little building, that's where he did
24 his work, restored guns, repacked bullets, and that's
25 where he ordered his parts from.

1 Q So when did he go out of business? You
2 said you went back and he was out of business?

3 MR. BRITT: Objection, we're
4 beyond the scope of the requested voir
5 dire.

6 THE COURT: Mr. Thompson?

7 MR. THOMPSON: Well, I'll
8 withdraw that question.

9 THE COURT: Okay.

10 BY MR. THOMPSON:

11 Q Mr. Demery, other than the shotgun shells,
12 it's your testimony -- well, other than attempting to
13 purchase shotgun shells after September of 1992,
14 you -- you've never purchased any other bullets,
15 bought any other bullets?

16 A Other than shotgun shells, no.

17 Q But after September of 1992, you have --
18 did you steal any bullets from your father since
19 September of 1992?

20 A Well, yes, yes.

21 Q Now, other than those that are contained in
22 the .32 that you've testified to, what other bullets
23 have you stolen?

24 A 12 gauge shotgun shells, 20 gauge shotgun
25 shells, pretty much it.

1 Q How many times since September of 1992 have
2 you stolen bullets from your father?

3 A I couldn't say. There was more than one --

4 THE COURT: I don't mean to
5 quibble. The question was, other than
6 those that are contained in the .32 that
7 you've testified to, what other bullets
8 have you stolen? The response was, 12
9 gauge shotgun shells, 20 gauge shotgun
10 shells. Question: How many times since
11 September of 1992 have you stolen bullets?
12 The question is not consistent with the
13 answer. The answer was shotgun shells, 12
14 gauge, 20 gauge. Question following that
15 was bullets, which may be confusing to the
16 jury. There are a lot of folks who would
17 say a shotgun shell is not a bullet and
18 bullet is not a shotgun shell.

19 MR. THOMPSON: Yes, sir.

20 BY MR. THOMPSON:

21 Q How many times have you, since August of
22 1992, have you stolen shotgun shells from your
23 father?

24 A More than once but not too many times.
25 That's the best way I can answer that question.

1 Q But at least three times because you've
2 stolen 12 gauge, isn't that right, Mr. Demery?

3 A At least the three times, yes.

4 Q 20 gauge?

5 A Yes.

6 Q And 16 gauge?

7 A Yes, 16 also, yes. Well, no, I never stole
8 16 gauge bullets from him. See, he owned a 16 gauge
9 gun but about the only time I ever shot that one was
10 when we were outside together. I wouldn't call it
11 stealing, but you have been, but --

12 Q Did you buy them?

13 A Sometimes I did, yes.

14 Q Were they locked up in your -- behind the
15 deadbolt and padlock in your daddy's room?

16 A Yes, they were.

17 Q Did you break into the room to take them?

18 A Sometimes.

19 Q Did he give you permission to take them?

20 A Lot of times, if he was home, go get them,
21 son. But if he wasn't there, regardless. When Daddy
22 left the house, room was locked up, if I wanted them,
23 needed them, yes, I had to pop the lock, get in there
24 and get them.

25 THE COURT: This is really

1 collateral to the issues on voir dire. Any
2 other matters on voir dire?

3 BY MR. THOMPSON:

4 Q Mr. Demery, who was the other person that
5 you got to buy bullets for you back in, prior to --
6 back in 1992?

7 MR. BRITT: Objection, this is
8 collateral as well.

9 THE COURT: All right. For voir
10 dire purposes, you may answer.

11 THE WITNESS: No one.

12 THE COURT: Two occasions. One
13 at the Service Star, he went in; second at
14 Frog Lever's, he got out.

15 BY MR. THOMPSON:

16 Q Now, Mr. Demery, in July of 1993, you went
17 with the defendant to buy bullets from C&R Pawn Shop,
18 did you not?

19 A Yes.

20 Q And isn't it true that you couldn't
21 purchase bullets because you were underage?

22 A Yes.

23 Q And the bullets that were purchased at C&R
24 Pawn Shop, the defendant purchased those bullets
25 because he was 18?

1 A Yes.

2 Q He had just gotten a brand new ID?

3 A Yes.

4 Q And he purchased those bullets for you?

5 A No, he did not. He purchased them for
6 himself. That was -- the .38 at that time, was
7 Daniel's.

8 Q That's the .38 that you had been shooting?

9 A I had shot it, yes.

10 Q Your brother had been shooting? Your
11 brother shot that gun?

12 A No, he didn't.

13 Q Michael Collins has shot that gun?

14 A Michael who?

15 Q Collins?

16 A I don't know --

17 Q Connors, do you know a Michael Connors?

18 A Yes.

19 Q He had shot the .38, hadn't he?

20 A Yes, yes.

21 Q And that gun, the .38, you had been
22 carrying in the car with you?

23 A As long as Daniel was in the car with me,
24 it was in there.

25 MR. THOMPSON: Your Honor, that's

1 all for voir dire.

2 THE COURT: Mr. Britt, do you
3 want to be heard?

4 MR. BRITT: Yes, sir.

5 THE COURT: Okay.

6 MR. BRITT: Again, these are
7 collateral matters. If you look at the
8 rules, under Rule 404-A(3), entitled
9 Character of a Witness, evidence of the
10 character of a witness as provided by Rule
11 607608, 609.

12 THE COURT: I understand, but I
13 think he's offering this for something more
14 than character, I think he's offering it to
15 establish that the witness on prior
16 occasions has had opportunity to buy
17 bullets, .38 caliber bullets. And that
18 bears on matters at issue in this case.
19 His access to opportunity to purchase.
20 Now, the time period involved, August and
21 September of 1992, makes it remote but that
22 doesn't go to admissibility, goes to
23 weight.

24 MR. BRITT: Yes, sir.

25 THE COURT: You're entitled to

1 argue that, come back on redirect
2 examination and establish that the weapon
3 was seized and confiscated in October, as I
4 understood his testimony, early October of
5 1992.

6 MR. THOMPSON: Yes, sir.

7 THE COURT: And that he didn't
8 have access to a .38 caliber revolver after
9 that time period, but to the extent that
10 the jury finds that it has any bearing on
11 the matters at issue, I think it is
12 admissible. Weight is for the jury to
13 determine, believability is for the jury to
14 determine.

15 I understand your argument that it
16 goes to character, one aspect of it does,
17 the comment about how it was obtained, but
18 that has already been testified to by this
19 witness in the context of other matters,
20 specifically, the .32 caliber revolvers and
21 bullets that were obtained.

22 So in my view, there's no prejudice to
23 the State, but I understand your position.
24 State's objection is noted for the record,
25 exception is noted for the record. I am

1 going to limit how far you can go in to
2 that. You can establish the Service Star
3 incident. You can establish the Frog Lever
4 incident, and any matters that relate to
5 that, but beyond that, some of the other
6 stuff --

7 MR. THOMPSON: About the shotgun
8 shells?

9 THE COURT: What has that got to
10 do with anything?

11 MR. THOMPSON: Shows him, Your
12 Honor, he's indicated that he went in there
13 and stole 20 gauge, says --

14 THE COURT: What has that got to
15 do with anything at issue in this case?

16 MR. THOMPSON: His credibility,
17 Your Honor.

18 THE COURT: That's what he's
19 talking about, character.

20 MR. THOMPSON: Yes. The other
21 thing -- shotgun shells.

22 THE COURT: You folks feel free
23 to note your exception to my ruling in that
24 regard.

25 MR. THOMPSON: Your Honor,

1 however, I would like to say that also this
2 goes to show that at issue in this case,
3 even though he's denied it, is that we have
4 a good faith basis for showing that he has,
5 in fact, had another .38 caliber weapon in
6 his possession, and we indicated that on
7 voir dire before.

8 THE COURT: How are you going to
9 show that?

10 MR. THOMPSON: Through other
11 witnesses that were in his presence.

12 THE COURT: Yes, sir, that's the
13 way you can do it.

14 MR. THOMPSON: Yes, sir. So it
15 also goes -- yeah, well, I just wanted
16 to --

17 THE COURT: I mean, you know,
18 that's fair game for impeachment purposes
19 through other witnesses.

20 Now, the State may have an argument
21 that it's collateral, but as long as it
22 deals with a .38, I don't think it is. I'm
23 not going to prejudge any issues in this
24 case, and not going to state myself as to
25 what my ruling may be, but if it pertains

1 to .38 or access to .38 or specifically
2 reload .38 caliber bullets --

3 MR. THOMPSON: Or, Your Honor, I
4 suggest to the Court that it would also be
5 relevant to show why, if this individual,
6 the defendant, went in to purchase the .38s
7 in July, why he went in to purchase them.
8 And on numerous occasions, Mr. Demery has
9 said that he couldn't purchase them because
10 he was underage but he had -- he either
11 went to other folks to purchase them or he
12 purchased them from one of Kurt's sons who
13 would sell them to him knowing that he was
14 underage. And I think with respect to
15 the -- even with respect to the shotgun
16 shells --

17 THE COURT: To explain your
18 client's name on a receipt?

19 MR. THOMPSON: Sure, so his name
20 is on a receipt, but --

21 THE COURT: That's the reason
22 you're offering it for, right?

23 MR. THOMPSON: I'm offering it to
24 show that if in fact Mr. Green did go and
25 purchase .38 --

1 THE COURT: That's an explanation
2 as to why his name appears on the receipt.

3 MR. THOMPSON: Yes, sir, that's
4 it.

5 THE COURT: All right. Bring the
6 jury back in.

7 MR. THOMPSON: But still shotgun
8 shells is off?

9 THE COURT: Yes, sir.

10 MR. BOWEN: May I be heard
11 briefly?

12 THE COURT: Yes, sir.

13 MR. BOWEN: I'm trying to
14 understand. I think off the record at one
15 point we were talking about a line of
16 cross-examination that Your Honor maybe
17 heard of in a seminar, and was asking this
18 witness, do you agree that as a general
19 proposition if one will lie to those
20 people, if it was reversed, still would
21 they lie, that was that linkage. Seems to
22 me, and I know 606-B is not absolutely in
23 every respect, we've got to pin him down to
24 shotgun shells, as well as, I think 608-B
25 is satisfied --

1 THE COURT: Folks --

2 MR. BOWEN: -- question is the
3 connection between the selling and the
4 lying I think is reasonable --

5 THE COURT: That demonstration
6 that was done by a lawyer from Chicago, at
7 the National Criminal Defense College, she,
8 quote, unquote, stole it from another
9 lawyer in Chicago in terms of the language
10 that was used. It was under the Federal
11 Rules. The federal case law permits
12 greater latitude in terms of what is an act
13 of truthfulness or untruthfulness in --

14 MR. BOWEN: And this would not be
15 a pattern and practice of conduct that
16 amounts to deception of the father
17 repeatedly going in and taking the stuff,
18 not telling him about it, and things of
19 that nature. I think an argument could be
20 made that it does. And I don't think
21 when --

22 THE COURT: The theft may not,
23 but the means by which it was accomplished
24 may.

25 Let's bring the jury in and take

1 lunch.

2 (Jury in at 1:03 p.m.)

3 THE COURT: Folks, we're going to
4 take a lunch recess at this time. I'm
5 going to ask that all members of the jury
6 return at 2:30, and we'll go forward with
7 the evidence at that time.

8 During the lunch recess, don't talk
9 about this matter among yourselves or
10 anyone else, don't allow anyone to say
11 anything to you or in your presence about
12 this case. If anyone communicates with you
13 about this matter or attempts to do so, or
14 if anybody says anything about the case in
15 your presence, it's your duty to inform us
16 of that immediately.

17 Don't form or express any opinions
18 about this matter, don't have any contact
19 or communication of any kind with any of
20 the attorneys, parties, witnesses,
21 prospective witnesses, or directly with the
22 Court. Don't allow yourself to be exposed
23 to any media accounts which may exist in
24 connection with this matter, and don't
25 conduct any independent inquiry or

1 investigation or research of any kind.

2 Everyone else please remain seated,
3 the members of the jury are excused until
4 2:30.

5 (Jury out at 1:04 p.m.)

6 THE COURT: All right. For the
7 record, folks, in the absence of the jury,
8 there's one thing which you can do in a
9 demonstration in a trial advocacy seminar
10 where the rules of evidence were, as it
11 were, suspended, and what you can do in a
12 court of law, and the initial use of that
13 line of questioning was done by a lawyer
14 named Eugene Pinchum from Chicago, one of
15 the best trial lawyers in this country,
16 formerly a justice on the Illinois Supreme
17 Court. And because of his stature within
18 the legal community, not only in Illinois
19 but nationwide, he could do a lot of things
20 lot of folks can't get away with. But I
21 understand your point. All I'm saying is
22 that under North Carolina case law, has to
23 relate to honesty or dishonesty. Sometimes
24 what you can't do by one avenue you can do
25 by another.

1 Anything further from either counsel?

2 MR. BRITT: No.

3 THE COURT: We're at ease until
4 2:30.

5 THE BAILIFF: All rise.

6 (Lunch recess.)

7 THE COURT: Good afternoon,
8 folks.

9 MR. THOMPSON: Your Honor, may I
10 have a minute with my client to consult
11 before the jury comes in.

12 THE COURT: Yes, sir.

13 Mr. Britt, what I've got before me at
14 this time -- let the record reflect all
15 counsel are present, I'm sorry, and the
16 defendant is present in open court. All
17 members of the jury are secured in the jury
18 room.

19 I've got a motion and order for
20 production of defendant's prison records
21 including any psychological evaluation and
22 testing filed by the State.

23 MR. BRITT: Yes, sir.

24 THE COURT: This is pursuant to
25 statutory authority basically in

1 procedure --

2 MR. BRITT: Yes, sir.

3 THE COURT: -- common practice
4 and procedure?

5 MR. BRITT: Yes, sir. I had
6 previously contacted the Department of
7 Corrections about the subject matter of the
8 motion, and they informed me that they
9 would provide them with me only upon --

10 THE COURT: Court order?

11 MR. BRITT: -- Court order.

12 THE COURT: You folks want to be
13 heard?

14 MR. BOWEN: Yes. Your Honor, as
15 I understand it, even from the face of this
16 motion, that these are medical matters,
17 they are certainly privileged. We've not
18 been able to get any medical records on any
19 defendants we would like to out at the jail
20 other than our client. The thing is, these
21 materials arise out of the matter for which
22 the defendant was incarcerated, which the
23 Court has ordered to be, as far as this
24 case annul.

25 Now, I realize there was

1 incarceration, and maybe some of these
2 records arose out of incarceration, but
3 would seem to me highly prejudicial to get
4 into things which arose out of that
5 incarceration which the Court has now found
6 not a legal incarceration under the ruling
7 of the Court, and then to explore our
8 client's behavior in a circumstance where
9 he was wrongly and illegally incarcerated
10 and then say that that behavior displayed
11 there is relevant to this case.

12 THE COURT: Paragraph one of the
13 motion reads that the defendant is charged
14 with matters now before the Court. Further
15 reads the State is seeking the death
16 penalty should the defendant be convicted
17 of first degree murder. That upon
18 information and belief the Court has issued
19 orders appointing Ake experts, including a
20 psychologist to assist defense counsel with
21 the defendant's case and testify in a
22 sentencing hearing.

23 Goes on to paragraph three to cite the
24 earlier conviction which has been set aside
25 by this Court, and the subsequent

1 incarceration following that conviction.
2 Paragraph four is really the heart of it, a
3 copy of the defendant's prison records
4 including any report of a psychological
5 evaluation and/or psychological testing is/
6 are essential to the State's case in
7 preparing for cross-examination of any
8 psychological expert witness called by the
9 defense.

10 So, essentially what the State is
11 asking for, the reason the State is asking
12 for these materials is for preparation of
13 cross-examination of psychological
14 witnesses that may be offered by the
15 defendant. If that doesn't arise, would
16 not be pertinent, would not be relevant
17 unless some other doors are opened.

18 So Mr. Britt, I'm going to allow the
19 order -- the motion, sign the order, with
20 the understanding that these matters are
21 not to be gotten into in the presence of
22 the jury should that situation occur
23 without an opportunity to be heard.

24 MR. BRITT: Yes, sir. And this
25 is for preparation or anticipating a second

1 phase in this trial as was made a part of
2 the record last week, the defense requested
3 another Ake hearing in front of the Court
4 for an ex parte hearing. At that time I
5 told them I was aware, that I had observed
6 Dr. John Warren in the courtroom, who is a
7 psychologist from Winston-Salem who does
8 primarily work related to the defense
9 individuals.

10 MR. THOMPSON: Your Honor, I
11 object to all this. I mean --

12 MR. BRITT: I do not --

13 MR. THOMPSON: He presented the
14 motion. What is the purpose of this?

15 THE COURT: He has a right to be
16 heard.

17 MR. BRITT: And obtaining copies
18 of these records would assist me in
19 preparing for Dr. Warren's anticipated
20 testimony in regard to any psychological
21 evaluation or any testing he's done on the
22 defendant and whether that is contradictory
23 to what has previously been done.

24 THE COURT: Motion is allowed,
25 the order has been signed.

1 MR. BRITT: I have two additional
2 copies, and that is the Court's copy.

3 THE COURT: Is this for file?

4 MR. BRITT: That's for the
5 record, yes, sir.

6 Thank you, sir.

7 THE COURT: Any -- yes, sir.

8 MR. BOWEN: I want the record to
9 note our exception. It is our position
10 that it's virtually impossible to make news
11 of this material without alerting the jury
12 and keying the jury in to the previous
13 incarceration which has been placed off
14 limits.

15 THE COURT: That's why I
16 indicated he's not to go into it without an
17 opportunity to be heard. But objection and
18 exception noted for the record. Anything
19 else from either counsel?

20 MR. BRITT: No, sir.

21 THE COURT: If you'll bring the
22 jury back in, please.

23 (Jury in at 2:40 p.m.)

24 THE COURT: Good afternoon,
25 ladies and gentlemen.

1 Mr. Thompson?

2 MR. THOMPSON: Yes, sir.

3 BY MR. THOMPSON:

4 Q Good afternoon, Mr. Demery. Mr. Demery,
5 you're familiar with all types of -- many types of
6 guns, aren't you?

7 A Yes, I am.

8 Q And you fired several different types of
9 guns?

10 A Yes.

11 Q Now, your birthdate is on August the 3rd,
12 is that right?

13 A Yes.

14 Q What year were you born?

15 A '75.

16 Q And back in August the 3rd of 1992, you
17 were 17 years old?

18 A Yes.

19 Q And you have purchased .38 caliber
20 ammunition several times, is that right?

21 MR. BRITT: Objection.

22 THE COURT: Overruled.

23 MR. BRITT: Would ask for a
24 limited instruction.

25 THE COURT: You're going to have

1 to put it in time frame.

2 MR. THOMPSON: Yes, sir. I'll
3 strike -- withdraw that question.

4 THE COURT: Yes, sir.

5 BY MR. THOMPSON:

6 Q Mr. Demery, back in August of 1992, you
7 purchased .38 caliber ammunition, did you not?

8 MR. BRITT: Objection.

9 THE COURT: The objection is
10 overruled.

11 MR. BRITT: Would ask for a
12 limited instruction.

13 THE COURT: Members of the jury,
14 I instruct you that you may consider this
15 line of questioning, and I will let you
16 know when this line has been concluded,
17 solely and only for the purpose insofar as
18 you find that it bears on the credibility
19 of the witness now before you.

20 This again is impeachment evidence, it
21 is for you the members of the jury to
22 decide what if anything the evidence in
23 this case as to this line of questioning
24 does show, but you may consider it for this
25 limited purpose and for no other purpose.

1 Anything further, Mr. Britt?

2 MR. BRITT: Not at this time.

3 THE COURT: Mr. Thompson.

4 BY MR. THOMPSON:

5 Q You may answer the question.

6 A Yes, twice.

7 Q And you mean you purchased ammunition twice
8 in -- since -- in 1992, not in August of '92?

9 A From the end of August up until the first
10 of October there was twice.

11 Q And you owned a .38 caliber weapon back in
12 August of 1992?

13 A Yes.

14 Q It was a Colt 38?

15 A Yes.

16 Q And back in August of 1992, you
17 purchased .38 ammunition from a store or commercial
18 business called the Service Star?

19 A Yes.

20 Q And where is the Service Star located?

21 A Pembroke.

22 Q Where in Pembroke?

23 A Right in the center of town, a hop and skip
24 from the police station if that would say anything.

25 Q On the main street?

1 A Yes.

2 Q And you were underage when you purchased
3 that ammunition, were you not?

4 A Yes, I was.

5 Q And you -- the type of ammunition that you
6 purchased was not reload, was it?

7 A No.

8 Q It was what you -- it was full metal jacket
9 ammunition?

10 A Yes.

11 Q Top of the line?

12 A Yes.

13 Q And how many bullets were in that box of
14 ammunition?

15 A About 20, about 20 bullets.

16 Q And did you use all that ammunition that
17 you purchased back in August of 1992?

18 A Yes.

19 Q After August of 1992, you purchased
20 additional .38 caliber ammunition, didn't you?

21 A Yes, I did.

22 Q You purchased it from an individual by the
23 name of Frog Lever?

24 A Well, nickname, that's what I knew him as.

25 Q And where did he live?

1 MR. BRITT: Objection.

2 THE COURT: I'm sorry? Somebody
3 say something?

4 MR. BRITT: Yes, sir. I object
5 to the question "where did he live."

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

8 MR. BRITT: No, sir.

9 THE COURT: Overruled. You may
10 answer if you know.

11 THE WITNESS: It was around
12 Raynham, not in Raynham, but --

13 BY MR. THOMPSON:

14 Q And you had purchased ammunition from Frog
15 Lever prior to September of 1992?

16 MR. BRITT: Objection.

17 THE COURT: Overruled.

18 BY MR. THOMPSON:

19 Q You may answer.

20 A Shotgun shells and all.

21 MR. BRITT: Objection, move to
22 strike.

23 THE COURT: The objection is
24 overruled. Exception is noted for the
25 record. Mr. Thompson.

1 BY MR. THOMPSON:

2 Q And when you purchased the .38 caliber
3 ammunition from Frog Lever in 1992, what kind of
4 business if any did he have?

5 A He had -- well, it was similar to like the
6 little side business that my dad had. He repaired
7 guns, broke them down, restore, put parts, make
8 reloads.

9 Q He manufactured reload ammunition?

10 A Yes.

11 Q Meaning Frog Lever did?

12 A Yes, he did.

13 Q And when you purchased the .38 ammo from
14 Frog Lever back in September of 1992, how many rounds
15 of ammo did you purchase?

16 A It was about a hundred rounds.

17 Q A hundred rounds of .38 caliber reloads, is
18 that right?

19 A Yes.

20 Q And did you use all of that ammunition?

21 A Yes, except for six.

22 Q Except for six rounds?

23 A Yes.

24 Q And when you purchased the one hundred
25 rounds of ammunition reloads from Frog Lever, that

1 was because you had made another attempt to purchase
2 ammo from the Service Star, is that right?

3 A Yes.

4 Q And they wouldn't sell you the ammunition
5 from the Service Star because of your age, is that
6 right?

7 A Yes. A different person.

8 Q You mean there was a different person who
9 was waiting on you there at the Service Star?

10 A Yes.

11 Q Now, who was the -- what's the name of the
12 person who worked at the Service Star who sold you
13 the ammunition back in August of 1992?

14 A Like I said before, I couldn't give you a
15 name.

16 MR. BRITT: Objection.

17 THE COURT: Sustained.

18 MR. BRITT: Move to strike.

19 THE COURT: Motion to strike is
20 allowed. For the record, that's on
21 relevance grounds.

22 MR. BRITT: Yes.

23 BY MR. THOMPSON:

24 Q Now, who was the owner of that business
25 that you referred to as the Service Star?

1 MR. BRITT: Objection.

2 THE COURT: Sustained, unless you
3 want to be heard as to relevance.

4 BY MR. THOMPSON:

5 Q Now, the one hundred reloads or the 94
6 reloads that you said you used of the one hundred
7 reloads that you purchased from Frog Lever, did you
8 use that ammunition prior to July -- did you use it
9 all in 1992?

10 A I used it all within a two month time
11 frame, the amount of time that I had the gun in my
12 possession, with the exception of six, that is.

13 Q Now, the .38 caliber Colt that you
14 indicated that you had in your possession in 1992,
15 when did -- that gun was seized from you, was it not?

16 A Yes.

17 Q It was seized by Rodney Demery, Pembroke
18 Police Department?

19 A I was told he was one of the officers at
20 the house that night, yeah.

21 Q At any rate, it was taken from your vehicle
22 in October of 1992?

23 A Yes.

24 Q And you owned other .38 caliber weapons, is
25 that right?

1 A No, I didn't. I've owned one .38 and one
2 handgun as far as that's concerned.

3 Q And what kind of handgun did you own other
4 than the .38?

5 A I said I only owned a .38, just that one.

6 Q Just that one handgun?

7 A Yeah.

8 Q And that's the one you filed the serial
9 number off, is that right?

10 A Yes.

11 Q With the chain saw file?

12 A Yes.

13 Q Of course, now, Mr. Demery, you, in
14 addition to purchasing ammo, you have taken some .38
15 caliber ammunition from your dad?

16 MR. BRITT: Objection.

17 THE COURT: Put it in a time
18 frame.

19 BY MR. THOMPSON:

20 Q Prior to July of 1993.

21 THE COURT: Overruled. You may
22 answer.

23 THE WITNESS: No.

24 BY MR. THOMPSON:

25 Q Is it your testimony you've taken

1 ammunition other than .38 caliber?

2 MR. BRITT: Objection.

3 THE COURT: Overruled. You may
4 answer.

5 BY MR. THOMPSON:

6 Q Prior to July of 1993?

7 A I've taken other ammunition, yes.

8 Q And on many times you've had to replace
9 that ammunition after you took it, did you not?

10 A There was times when I used up the old
11 man's shotgun shells, I would go buy some, put them
12 back in, but as far as like bullets for handguns, I
13 just clung to a hope and prayer that he didn't find
14 out, which he always did.

15 Q Many times you replaced that ammunition
16 before he found out, didn't you?

17 A No.

18 Q Mr. Demery, since April the 27th of 1995,
19 you have been in the Robeson County jail except for
20 about six months when you were in the Department of
21 Corrections, is that correct?

22 A Yes.

23 Q Since you've been in the Robeson County
24 jail, you have come to know some of the jailers or
25 personnel over at the Robeson County jail, is that

1 right?

2 A Yes.

3 Q You've discussed your case, Mr. Demery,
4 with several individuals, have you not, other than
5 your attorneys?

6 A Yes, when they have asked about it, yeah, I
7 would tell them.

8 Q You discussed your case with the news
9 media, you've given interviews to news media?

10 A Yes, twice.

11 Q When was that, the two occasions that you
12 gave interviews?

13 A I don't remember the dates, but seemed like
14 I remember the first one being maybe around five, six
15 months after -- six months after I was first locked
16 up.

17 Q Was that to a person who was employed with
18 the High Point newspaper?

19 A Yes.

20 Q And then you gave an interview to Brant
21 Clifton, did you not?

22 A Yes.

23 Q And that person was employed with The
24 Robesonian?

25 A Yes.

1 Q Both of these were telephone interviews?

2 A Yes.

3 Q And you've talked to inmates about your
4 case, other inmates in the Robeson County detention
5 center?

6 A Certain things.

7 Q And you have talked to jailers there in the
8 Robeson County detention center about your case?

9 A Yes.

10 Q And since you pled guilty, you've talked to
11 jailers there about your plea bargain with the State,
12 haven't you?

13 A The ones that have asked, yeah.

14 Q Do you know a jailer by the name of Richard
15 Locklear?

16 A Yes.

17 Q You've talked to inmates and jailers down
18 at the Robeson County detention center about your --
19 the sentence that you expect to receive in this
20 case?

21 MR. BRITT: Objection.

22 BY MR. THOMPSON:

23 Q Haven't you?

24 THE COURT: Overruled.

25 BY MR. THOMPSON:

1 Q You may answer.

2 A The ones that have asked, I've told them
3 the amount of time that I've already received and the
4 possibility of what could happen.

5 Q You told several individuals down -- while
6 being in custody at the Robeson County jail that you
7 had talked to Mr. Britt about your sentence that
8 you've received, meaning the State, the District
9 Attorney?

10 MR. BRITT: Objection to the
11 form.

12 THE COURT: Overruled.

13 BY MR. THOMPSON:

14 Q You may answer.

15 THE COURT: Question is whether
16 or not he said that.

17 THE WITNESS: No, I've never
18 really talked to Mr. Johnson -- Mr. Britt
19 about it. My attorneys, yeah, you know,
20 but --

21 BY MR. THOMPSON:

22 Q Mr. Demery, you told individuals while
23 being in the custody of the Robeson County detention
24 center that in exchange for your testifying against
25 the defendant in this case, that you might be out in

1 eight years, didn't you?

2 A No, huh-uh, no.

3 Q Mr. Demery, let me draw your attention back
4 to July 27th, 1993. Now, that was the day that you
5 testified that you came back from Fayetteville?

6 A Yes.

7 Q David Moore brought you back?

8 A Yes.

9 Q And David Moore's girlfriend was in the
10 car?

11 A Yes.

12 Q The defendant was in the car?

13 A Yes.

14 Q A person by the name of Eric was in the
15 car?

16 A No.

17 Q All right. Just you, David Moore, David
18 Moore's girlfriend, and the defendant were in the
19 car?

20 A That's it, yes.

21 Q And when you came back to Robeson County,
22 you were brought back to the defendant's house?

23 A Yes.

24 Q That is in Bob's Landing Mobile Home Park?

25 A Yes.

1 Q When you went to the defendant's house, you
2 went there because you had left your car there, is
3 that right?

4 A Yes.

5 Q When you got to the defendant's house, your
6 car was not there, was it?

7 A That's right, it was gone.

8 Q When you arrived at the Green's residence,
9 you were very angry because your car was not there,
10 were you not?

11 A Yes, I was ticked, yeah.

12 Q You were mad, weren't you?

13 A No, I wasn't mad.

14 Q Well, you found out that your fiancée's
15 stepfather had taken your Ford Tempo, didn't you?

16 A Yes.

17 Q And your fiancée's stepfather was named
18 Gene?

19 A Yes.

20 Q And you told everybody around there that
21 you were going to kill him, didn't you?

22 A No.

23 Q Well, you threatened to kill him?

24 A No.

25 Q The reason you took the .38 was because you

1 were mad at Gene, wasn't it?

2 MR. BRITT: Objection.

3 THE COURT: Overruled.

4 THE WITNESS: No.

5 BY MR. THOMPSON:

6 Q Did you not tell the individuals at that
7 house that you wanted the .38 because he had come and
8 taken your car, Mr. Demery?

9 A I did not say that.

10 Q Well, you took the .38, didn't you?

11 A Yes.

12 Q You took it home with you, didn't you?

13 A Yes.

14 Q Your mother came and picked you up?

15 A Yes.

16 Q And you were still mad about Gene taking
17 that car, weren't you?

18 A No, because when we got back to the
19 trailer, that's -- my mother and myself, I hadn't
20 been in the house five minutes before Gene had
21 already called and he said that he should have went
22 about things in a better manner. But, and like I
23 said, it was smoothed over just like -- now, I did
24 make the statement over at Daniel's trailer to his
25 mother, his brother was there, his brother, his

1 brother's girlfriend, that I would kick Gene's ass if
2 I could get my hands on him.

3 Q And you said that you had that .38 spinning
4 around on your finger, is that it?

5 A That -- I did not. That was your client's
6 thing, spinning that around. He was Billy the Kidd,
7 and stuck the nickname on me, Doc Holiday.

8 Q Well, you were Doc Holiday?

9 A Well, that's what -- that's the name Daniel
10 stuck on me.

11 Q Doc Holiday took that .38 home with him,
12 didn't he?

13 A Well, yes.

14 Q Mr. Demery, back on August the 3rd of 1993,
15 your grandfather was hospitalized, was he not?

16 A Yes.

17 Q August the 3rd was your birthday?

18 A Yes.

19 Q Your grandfather was hospitalized in
20 Southeastern General Hospital, isn't that right?

21 A Yes, he was.

22 Q You remember seeing the defendant at the
23 hospital on August the 3rd of 1993?

24 A I don't remember if it was that exact date
25 but it was around that time frame, because my grand

1 dad had been in the hospital for a while, and yes, I
2 did see Daniel there.

3 Q And you hadn't seen the defendant since
4 July 27th when you took that gun and went home, had
5 you?

6 A I had saw Daniel before, one time before
7 the hospital that night, but I didn't -- again, I did
8 not say it was the third. My grand dad was
9 hospitalized during that time, but like I said, it
10 could have been earlier or later date, I don't
11 remember for sure.

12 Q It was your birthday, that was a special
13 day, wasn't it?

14 A No, it wasn't, no.

15 Q Well, you indicated it was on your birthday
16 that you made some telephone calls, didn't you?

17 A No, I told you that the only thing I really
18 remembered about August 3rd was that that was my
19 birthday.

20 Q So you remember that August the 3rd was
21 your birthday?

22 A Yes.

23 Q And you don't remember going to the
24 hospital on your birthday?

25 A Like I say, I don't remember dates, I could

1 have, but I spent a lot of time with him while he was
2 up there.

3 Q Did you remember going to see Angel on your
4 birthday?

5 A I don't know if I saw Angel that day or
6 not. Like I said, she had already made her birthday
7 rounds early because she told me that my sorry ass
8 would be locked up before my birthday got here.

9 Q But you weren't locked up on August the
10 3rd, were you?

11 A No, I was lucky.

12 Q Because you were in that hospital on August
13 the 3rd visiting your granddaddy?

14 A I could have been, yes.

15 Q Now, Mr. Demery, on the night of July the
16 22nd, 1993, you testified that you picked the
17 defendant up at his trailer and took him over to
18 Kay's. That's not true, is it?

19 A Yes, it is, yes.

20 Q Wasn't the defendant over to Kay's when you
21 went to Kay's on July 22nd, 1993?

22 A No.

23 Q Did you not leave Kay's at any time on July
24 22nd, 1993 and go directly to your house?

25 A No, I did not, no.

1 Q Your mother was home on July 22nd of 1993,
2 wasn't she?

3 A Yes.

4 Q Particularly during the night hours around
5 9:00 or 10:00, wasn't she?

6 A I don't know if she was or not. Around
7 that time frame, between 9:00 and 10:00, I was on my
8 way back to Daniel's house.

9 Q You went to your house on the evening of
10 July the 22nd of 1993, didn't you?

11 A Yes.

12 Q When you went there, the defendant was with
13 you, wasn't he?

14 A No.

15 Q Do you deny that the defendant was there at
16 your house on July 22nd of 1993 when you were
17 caught -- strike that. Do you deny calling
18 Huntington, New York from your residence on July 22nd
19 of 1993?

20 A Yes, I'm denying that, yes.

21 Q You have a cousin who lives in Huntington,
22 New York by the name of Janine Baculik?

23 A Yes.

24 Q Joy Baculik is also a cousin?

25 A Yes.

1 Q Is Joy Janine's brother?

2 A Yes.

3 Q If not on July 22nd, 1993, did you
4 thereafter call and have a conversation with Janine
5 Baculik?

6 A Later on.

7 Q And which day do you say that was?

8 A 25th.

9 Q When you left your parents, left your
10 mother's house and your father's house, you left with
11 a black bag, didn't you?

12 A Yes.

13 Q Money was in it?

14 A Clothes.

15 Q Money was in it also, wasn't there?

16 A No.

17 Q You had a pistol grip shotgun back on July
18 22nd 1993, didn't you?

19 A No.

20 Q Never owned a pistol grip shotgun?

21 A No.

22 Q Ever owned a sawed off shotgun?

23 A Never owned one, but I've had one in my
24 possession before.

25 Q You had one in your possession back on July

1 22nd, 1993, didn't you, sawed off shotgun?

2 A No, I got rid of it by then.

3 Q When did you get rid of your sawed off
4 shotgun?

5 A It was between 4th of July and before the
6 15th.

7 Q Mr. Demery, did you -- did that sawed off
8 shotgun have a pistol grip handle on it?

9 A No. Now, it did have stock on the
10 shotgun. You can go up so far and cut that off,
11 would be about this much left that would -- I guess
12 you could consider it a pistol grip, but it was part
13 of the stock, hadn't been changed or anything.

14 Q When you were over at Kay's house back on
15 the night of July 22nd, Kay Hernandez, early morning
16 hours July 22nd or early morning hours of July 23rd,
17 1993 -- strike that. You were over there on July
18 22nd of 1993, do you remember watching television?

19 A Yes.

20 Q And do you remember watching Death Comedy
21 Jam?

22 A Could have.

23 Q The defendant was talking to a young lady
24 there by the name of Betina Jacobs, wasn't he?

25 A I don't remember anybody by that name being

1 there that night.

2 Q He was talking to a young lady there, young
3 female, wasn't he?

4 A There was Monica and her friend.

5 Q Was he talking to the friend?

6 A Bobbie Jo.

7 Q He was talking to an individual by the name
8 of Bobbie Jo, was a Bobbie Jo there?

9 A Yes.

10 Q The defendant was talking to Bobbie Jo, was
11 he not?

12 A Yes, yes.

13 Q And the defendant, when you asked him to
14 leave, didn't want to leave because he was talking to
15 Bobbie Jo, wasn't he?

16 MR. BRITT: Objection to what the
17 defendant wanted to do.

18 THE COURT: Sustained to the
19 form.

20 MR. BRITT: Move to strike.

21 THE COURT: Sustained to the form
22 of the question. Motion to strike is
23 allowed. Anything further?

24 MR. BRITT: No, sir.

25 BY MR. THOMPSON:

1 Q At some point you asked the defendant, told
2 the defendant you were ready to go, did you not?

3 A I may have made the comment that we need to
4 go on and get out of here, but as far as pushing him,
5 no.

6 Q And you told -- at that point or some point
7 thereafter, the defendant told you he didn't want to
8 go because he was talking to Bobbie Jo, didn't
9 he?

10 MR. BRITT: Objection.

11 THE COURT: Sustained.

12 MR. BRITT: Motion to strike.

13 THE COURT: Allowed.

14 MR. BRITT: Request instruction.

15 THE COURT: Members of the jury,
16 don't consider the last question by counsel
17 for defendant. That is not to take part in
18 your deliberations in any respect.

19 BY MR. THOMPSON:

20 Q The defendant told you he did not want to
21 go?

22 MR. BRITT: Objection.

23 THE COURT: Sustained.

24 MR. BRITT: Motion to strike.

25 THE COURT: Allowed.

1 MR. BRITT: Ask for instruction.

2 THE COURT: Members of the jury,
3 do not consider the last question from
4 Mr. Thompson, counsel for defendant. That
5 question is intended to elicit hearsay
6 information, so your question is
7 sustained. You may ask additional
8 questions.

9 BY MR. THOMPSON:

10 Q When you observed the defendant talking to
11 Bobbie Jo, who else was in the room?

12 A Monica, myself, --

13 Q Just you and Monica -- and Bobbie Jo, and
14 the defendant?

15 A Yes.

16 Q And where were the defendant and Bobbie Jo
17 in the room in relation to where you were?

18 A Seemed like they were both sitting on the
19 couch.

20 Q Where were you sitting?

21 A In a -- one of these old wooden type chairs
22 with the weave bottom in it, like right at the end of
23 the couch almost.

24 Q Where was Monica sitting?

25 A About any and everywhere she felt like it.

1 She was everywhere.

2 Q Well, was she over there sitting in that
3 weave seat with you?

4 A No, no, she wasn't, no. This girl was 12
5 years old.

6 Q Well, Mr. Demery, did you have any clothes
7 in your bag when you left your house?

8 A You mean on Sunday the 25th?

9 Q No, July 22nd, 1993.

10 A If there was, I --

11 Q If there was --

12 A -- I don't remember. I don't remember.

13 Q But you could have clothes in your bag?

14 A Yeah, I could have.

15 MR. BRITT: Objection.

16 THE COURT: Sustained to the
17 speculative question. And the answer --
18 members of the jury, don't consider either
19 the question or the answer. It's based on
20 speculation and conjecture.

21 BY MR. THOMPSON:

22 Q Mr. Demery, was your telephone number
23 (919) 521-8885?

24 A Yes.

25 MR. THOMPSON: May I approach the

1 witness?

2 THE COURT: Yes, sir.

3 BY MR. THOMPSON:

4 Q I hand you what's been previously marked as
5 Defendant's Exhibit Number 18. Is this your
6 telephone number, (919) 521-8885 on Defendant's
7 Exhibit number 14?

8 A Yes.

9 Q And on July the 22nd at 10:03 p.m. at
10 night, did you make a call to Huntington, New York at
11 the number (516) 271-7715?

12 MR. BRITT: Objection.

13 THE COURT: Mr. Thompson, you
14 referred to that as Defendant's Exhibit
15 what? What's the number?

16 MR. THOMPSON: 14.

17 THE COURT: Prior question
18 referred to 18.

19 MR. THOMPSON: I'm sorry.

20 THE COURT: I'm sorry. Repeat
21 your question again.

22 BY MR. THOMPSON:

23 Q Did you make a call from your residence on
24 July the 22nd at 10:03 p.m. to Huntington, New York
25 (516) 271-7715?

1 MR. BRITT: Objection.

2 THE COURT: Do you want to be
3 heard?

4 MR. BRITT: Yes, sir.

5 THE COURT: Members of the jury,
6 there's a matter of law the Court must take
7 up at this time out of the hearing and
8 presence of the jury. Please recall my
9 instructions, don't worry or speculate
10 about what takes place in the jury room in
11 your absence. Please step to the jury
12 room.

13 (Jury out at 3:13 p.m.)

14 THE COURT: Let the record
15 reflect the following is being heard in the
16 absence of the jury.

17 Mr. Britt, what is the basis of your
18 objection?

19 MR. BRITT: Your Honor,
20 Defendant's Exhibit Number 14, if that's
21 the correct number, is not in evidence,
22 therefore the contents of that document are
23 hearsay.

24 THE COURT: Without reference to
25 the document, do you disagree that he can

1 ask him question on cross-examination?

2 MR. BRITT: He's already asked
3 him that question and it was denied, and
4 now he's trying to use the document to
5 impeach him.

6 THE COURT: Okay. The
7 question -- hold on a second, folks. I'm
8 at 156, line 21. The document was
9 initially handed to the witness. You're
10 referring to the question earlier on.

11 MR. BRITT: Earlier on.

12 THE COURT: Which was a general
13 question as to that entire night, when you
14 went home did you make the call to
15 Huntington, New York.

16 MR. BRITT: Yes, sir.

17 THE COURT: He's entitled to some
18 latitude in terms of sifting the witness.
19 But haven't we been over this stuff
20 before?

21 MR. THOMPSON: Not with respect
22 to the other --

23 THE COURT: Didn't we go over
24 this last week?

25 MR. THOMPSON: May have asked

1 about the Huntington call.

2 THE COURT: Yes, sir. Last
3 week? Monday or Tuesday of last week?

4 MR. THOMPSON: He was only on the
5 stand last week, so I guess, yeah.

6 THE COURT: That's my concern,
7 we're going over a lot of matters that have
8 already been gone over in
9 cross-examination. I'm going to allow this
10 question with reference to the document.

11 MR. THOMPSON: Yes, sir.

12 THE COURT: At this time the
13 Court holds in abeyance any ruling on the
14 objection. It has been denied but he's
15 entitled to sift. You're allowed in my
16 discretion to ask additional questions.
17 We'll bring the jury back in, please.

18 (Jury in at 3:15 p.m.)

19 THE COURT: Court holds in
20 abeyance any ruling on the objection. At
21 this time you may repeat or rephrase your
22 question to the witness, Mr. Thompson.

23 BY MR. THOMPSON:

24 Q Did you make a phone call to Huntington,
25 New York on July 22nd at 10:03 p.m. -- July 22nd of

1 1993 at 10:03 p.m.?

2 A No, I didn't.

3 Q Did you make a phone call to Huntington,
4 New York on July 25th at 9:21 p.m.?

5 A I made a call on the 25th.

6 Q Did you make the phone call to New York on
7 July 25th at 9:21 p.m.?

8 A I don't remember it as being that late, but
9 if it was made at that time, yes, I did.

10 Q And you made the call to (516) 271-7715,
11 did you not?

12 A Yes.

13 Q Talked for about ten minutes, didn't you?

14 A I didn't catch nobody that time
15 around.

16 MR. BRITT: Objection. Is it
17 necessary for Mr. Thompson to stand by the
18 witness without showing him the exhibit?

19 THE COURT: No, sir, it's not.

20 BY MR. THOMPSON:

21 Q Didn't catch anybody at that time?

22 A No.

23 Q July 28th at 11:09 a.m. did you call to
24 Huntington, New York (516) 271-7715?

25 A No, I didn't.

1 Q Now, on August the 3rd of 1993 at 3:41
2 p.m., did you call the Fayetteville, North Carolina
3 area, (919) 436-6584?

4 A I may have. It was during that time that I
5 came back, Daniel was still in Fayetteville, and I
6 called a few times trying to get in touch with him.
7 I wanted to know what was going on, what happened to
8 the call car and all.

9 Q And you had talked to --

10 THE COURT: Mr. Thompson, haven't
11 we been over this matter already?

12 MR. THOMPSON: No, sir, not that
13 I recall.

14 THE COURT: Mr. Britt?

15 MR. BRITT: Your Honor, I believe
16 we went over this last Monday or Tuesday.

17 THE COURT: That's my
18 recollection. I'm going to allow some
19 latitude.

20 BY MR. THOMPSON:

21 Q And you called again on August the 3rd,
22 1993, 6:52 p.m. to Fayetteville, North Carolina,
23 dialing (919) 436-6584, did you not?

24 A That's David Moore's number. I did --
25 well, yeah.

1 Q And August the 3rd was your birthday,
2 wasn't it?

3 A Yes, it was.

4 Q And your father could have been -- your
5 grandfather could have been in the hospital on August
6 3rd, 1993, is that right?

7 MR. BRITT: Objection to the
8 form.

9 THE COURT: Well --

10 MR. BRITT: "Could have been."

11 THE COURT: Rephrase.

12 BY MR. THOMPSON:

13 Q Well, does it help the record -- well, does
14 it help to refresh your memory that if you called the
15 defendant on August the 3rd of 1993, that your
16 father -- grandfather was in the hospital on that
17 date?

18 A It could have been. Like I said, it was
19 over a period of time, weeks.

20 THE COURT: In other words,
21 Mr. Demery, you don't deny that your
22 grandfather could have been hospitalized at
23 that time?

24 THE WITNESS: No, I don't deny
25 that.

1 BY MR. THOMPSON:

2 Q And you don't deny not having seen the
3 defendant then since you called him August the 3rd
4 1993, since July the 27th of 1993?

5 A Could you repeat the question?

6 Q Well, now, you saw the defendant on July
7 27th of 1993, that's when he and his brother and his
8 brother's girlfriend brought you home?

9 A Yes.

10 Q And you hadn't seen the defendant by August
11 the 3rd of 1993, had you, because he hadn't come home
12 yet, right?

13 A Well, yeah.

14 Q But he did come home that evening on August
15 3rd, 1993, and that's when you saw him in the
16 hospital, isn't that right?

17 A Could have been.

18 Q That was your birthday, wasn't it?

19 A Yes, yes. Could have -- it could have been
20 later on.

21 Q So you don't deny it?

22 A I don't deny it but I can't honestly sit
23 here and say it happened either because I just -- I
24 don't remember.

25 Q You testified earlier, Mr. Demery, that you

1 called your relative in New York two times, isn't
2 that right?

3 A Yes.

4 Q Now --

5 A Attempted to call twice, succeeded once.

6 Q And you made one call from the Lexus?

7 A Yes.

8 Q And you made another call from your
9 residence?

10 A Well, I called from the house with the
11 first time -- well, the first time I tried to get in
12 touch, but like I said, didn't get through, and then
13 I called from the Lexus, yes.

14 Q Well, when you say you couldn't get
15 through, you mean nobody answered?

16 A I don't know. I do know I couldn't get in
17 touch with the person that I was after. I was trying
18 to get in touch with my cousin Joy.

19 Q You were trying to get in touch with your
20 cousin Joy to see if he could do something with that
21 Lexus, right?

22 A See if he could tell me something.

23 Q Tell you where a chop shop was, right?

24 A Yes.

25 Q What's a chop shop?

1 THE COURT: I know we've been
2 over this.

3 BY MR. THOMPSON:

4 Q What's a chop shop?

5 A From what your client told me, it was a
6 place where serial numbers could be erased, get a new
7 paint job, cut some off the car here and there, make
8 it look different. But you know -- get falsified
9 titles, insurance papers, all that stuff.

10 Q First time you called your cousin in New
11 York, you talked to Janine, isn't that right?

12 A I remember -- Janine was the one I talked
13 to inside the Lexus.

14 Q Well, then, the other time you've indicated
15 that you may have talked with somebody, but you
16 didn't talk to who you wanted to talk to, isn't that
17 right?

18 A I didn't get up with Joy -- I didn't get
19 through.

20 Q What do you mean by you didn't get through,
21 Mr. Demery?

22 A I mean that I did not get in touch with the
23 person that I was after.

24 Q But it doesn't mean that you didn't talk to
25 somebody on the other end of that phone, isn't that

1 right?

2 A I guess -- could have shot the breeze a
3 minute or two, but like I said, I consider that not
4 getting through. I didn't talk to the person that I
5 wanted to get in touch with.

6 Q Who did you shoot the breeze with,
7 Mr. Demery?

8 MR. BRITT: Objection,
9 argumentative.

10 THE COURT: Sustained.

11 BY MR. THOMPSON:

12 Q You say you could have shot the breeze.
13 Who do you recall shooting the breeze with?

14 MR. BRITT: Objection, asked and
15 answered.

16 THE COURT: Overruled. You may
17 answer if you recall.

18 THE WITNESS: I don't recall, but
19 anybody that would have answered, I guess.

20 BY MR. THOMPSON:

21 Q Who lives there at that residence,
22 Mr. Demery?

23 MR. BRITT: Objection, asked and
24 answered.

25 THE COURT: Is there a point,

1 Mr. Thompson?

2 MR. THOMPSON: Yes.

3 THE COURT: Members of the jury,
4 let me allow you to take the afternoon
5 recess at this time. Please recall my
6 instructions, it remains your duty to
7 continue to abide by all prior instructions
8 concerning your conduct during this
9 recess. Please reassemble in the jury room
10 at 15 until. Everybody else please remain
11 seated, the members of the jury are
12 excused.

13 (Jury out at 3:20 p.m.)

14 (Off-the-record discussion.)

15 THE COURT: My recollection is
16 this was all gone over Tuesday afternoon,
17 Wednesday afternoon.

18 MR. THOMPSON: My recollection is
19 his memory is better because he's obviously
20 testified, even as of today since this
21 examination began, that he now recalls
22 getting through. I'm trying to find out
23 what "getting through" means. He first
24 says he never talked to anybody except on
25 one occasion. Then later on during this

1 cross-examination, he now recalls that he
2 didn't get through. But he remembers
3 shooting the breeze.

4 THE COURT: Does that mean you
5 get to ask him eight or nine times until
6 his memory improves to the point where
7 you're satisfied?

8 MR. THOMPSON: Your Honor, until
9 he tells the truth.

10 THE COURT: That's your
11 contention. That's your contention. Those
12 are the folks who decide what is truth and
13 what is not, not counsel.

14 MR. THOMPSON: Yes, sir.

15 THE COURT: If counsel could
16 decide what the truth is, we wouldn't need
17 to have a trial.

18 MR. THOMPSON: I understand
19 that. Told those jurors that during jury
20 selection.

21 THE COURT: I appreciate it,
22 folks. You're entitled, as I say, to
23 sift. But folks, we are not going to spend
24 three weeks cross-examining a witness. I'm
25 going to give you the latitude that I think

1 you folks are entitled to on
2 cross-examination. I simply ask that if
3 it's matters that are at issue, matters
4 that don't go to issues involved in the
5 case, that we be pointed in our
6 examination.

7 MR. THOMPSON: Yes, sir. And
8 Your Honor, let me say this: He's denying
9 ever having made a phone call from his
10 residence, an 11 minute phone call. Now, I
11 suggest to the Court that I'm entitled to
12 establish some foundation to impeach him,
13 if not through him, at some later point to
14 him making that phone call from that
15 residence, talking to somebody in
16 Huntington, New York.

17 THE COURT: How many times do you
18 have to ask him before you get a foundation
19 for impeachment?

20 MR. THOMPSON: He just -- well,
21 but if he doesn't answer, Your Honor --

22 THE COURT: He has said on at
23 least five occasions that "I can recall,"
24 "I didn't make that call."

25 MR. THOMPSON: I understand.

1 THE COURT: Which means the
2 foundation is there for impeachment
3 purposes, if it is not a collateral matter.

4 MR. THOMPSON: Yes, sir. I
5 understand.

6 THE COURT: All right.

7 MR. THOMPSON: But he also now
8 says that he made a phone call, that he
9 didn't get through but he shot the breeze
10 with somebody.

11 MR. BRITT: The record is clear.
12 He made a phone call on July 25th from his
13 home, he said that. He made a phone call
14 July 25th from the Lexus, the records
15 indicate that.

16 THE COURT: Yes, sir. That's
17 what I understood. I think we're confusing
18 phone calls made from the Lexus to phone
19 calls made from the home.

20 Mr. Demery --

21 MR. BOWEN: Can I just assure the
22 Court that if you saw what we saw in the
23 State's discovery, there would be no
24 question, because this person Janine was
25 interviewed less than a month after this

1 incident by an FBI officer and it was
2 confirmed that she did in fact have the
3 conversation.

4 THE COURT: All it takes a one
5 denial from him, and then move on. Once he
6 said "I did not make the phone call," if
7 the phone call is germane to the matters,
8 you're entitled to offer extrinsic
9 evidence.

10 Mr. Demery, you may step down, sir.
11 We're at ease until -- what did I say, 15
12 until?

13 MR. BRITT: 15 until.

14 (Brief recess.)

15 THE COURT: Let the record show
16 that all counsel are present, Mr. Demery is
17 present in open court. The defendant is
18 present in open court as well. Mr. Demery,
19 if you'll retake the witness stand.

20 Do we have all members of the jury
21 secured? Mr. Thompson, ready to go
22 forward?

23 MR. THOMPSON: Yes.

24 THE COURT: If you'll bring the
25 jury in, please.

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

2 THE COURT: Mr. Thompson, you may
3 continue with cross-examination.

4 MR. THOMPSON: Yes, sir.

5 BY MR. THOMPSON:

6 Q Mr. Demery, you testified earlier in this
7 case that on Sunday morning, July 25th of 1993, you
8 were asleep in the Green's residence, is that right?

9 A Sunday morning, the 25th, yes.

10 Q And you testified that the defendant woke
11 you up?

12 A Uh-huh.

13 Q And when he woke you up, there was a
14 conversation about a deputy had been there, is that
15 right?

16 A Yes.

17 Q And what time was it when the defendant
18 woke you up?

19 A I don't know. It was in the morning hours
20 before 12:00. I don't -- even when Daniel told me a
21 deputy had been there, I didn't believe him.

22 Q Are you saying it was before 12:00?

23 A Yeah, yes.

24 Q Did you still have that Mickey Mouse watch
25 on?

1 A May have.

2 Q On July 24th of 1993, that would have been
3 that Saturday, you testified earlier that you and the
4 defendant went to Laurinburg?

5 A Yes.

6 Q And after you went to Laurinburg, you and
7 the defendant went to Florence, South Carolina?

8 A No, that was in the early morning hours,
9 Laurinburg came next.

10 Q It's your testimony that you went to
11 Florence in the early morning hours Saturday, July
12 24th, is that right?

13 A Yes, yes.

14 Q Didn't you make phone calls, Mr. Demery --
15 strike that. Mr. Demery, when you went to Florence,
16 did you drive, were you driving the Lexus?

17 A I drove into the town but then when we got
18 in the neighborhood of where Daniel wanted to go, he
19 wanted to switch up then.

20 Q You went to a friend of the defendant's,
21 did you not?

22 A He said it was a friend, so I -- yes, I
23 guess so.

24 Q Did you see him talking to a female?

25 A Yes.

1 Q And did he go into the house?

2 A No, I don't remember, I don't remember him
3 going in the house. He was sitting out on the
4 porch. There were a pretty good amount of people
5 there that night. They were having some kind of
6 party. It was in the backyard or next door.

7 Q So now you realize that it was a party at
8 night, isn't that right?

9 A Early morning hours.

10 Q When you say "early morning hours," what do
11 you call early morning hours? Between what hours,
12 Mr. Demery?

13 A I would say night, but technically, after
14 12:00 a.m. it would be the early morning hours.

15 Q So you're saying that it was on Sunday,
16 early morning hours, July 25th that you arrived in
17 the city of Florence, is that your testimony?

18 A Yes.

19 Q As opposed to Saturday night, July 24th?

20 A Yes.

21 Q And did you observe the defendant making
22 any phone calls from the Lexus while in the city of
23 Florence?

24 A We were going in, going in to Florence, and
25 he was on the phone, but I don't remember who he was

1 talking to or --

2 Q You say you were going in to Florence. How
3 far away were you from the city limits of Florence?

4 A I would say inside the city limits.

5 Q And would this have been on Saturday night,
6 the 24th or the early morning hours of Sunday July
7 25th?

8 A Early morning hours of the 25th.

9 Q Do you recall being on the telephone in the
10 Lexus talking to Melinda while the defendant was
11 talking to a girl in Florence?

12 A No.

13 Q Do you recall Melinda getting mad after
14 overhearing the defendant talking to a girl in
15 Florence?

16 A No.

17 Q Do you deny ever attempting to try to call
18 Dee Sullivan on Saturday night, July 24th, 1993 while
19 in Florence?

20 A Yes, I'm denying that.

21 MR. THOMPSON: May I approach?

22 THE COURT: Yes, sir.

23 BY MR. THOMPSON:

24 Q Mr. Demery, how many times do you recall
25 the defendant making a phone call using the phone in

1 the Lexus during the early morning hours of July the
2 25th, Sunday of 1993?

3 A I don't recall how many. There were many
4 times, but I don't --

5 Q Would you say there was more than two,
6 three?

7 A Yes.

8 Q More than five?

9 A I -- could have been.

10 Q And how many times do you recall the
11 defendant making -- strike that. You said he made no
12 phone calls on Saturday night, July 24th while in the
13 Florence city limits, is that right?

14 A Ask that question again.

15 Q Well, while you were in the Florence, South
16 Carolina city limits, the defendant made no phone
17 calls on the Lexus phone?

18 A Could have, yeah. I remember a call being
19 made to Florence, something about could have been
20 directions or something, but like I say, he was on
21 the phone all the time. I didn't keep up with who he
22 was trying to call.

23 MR. THOMPSON: May I approach the
24 witness?

25 THE COURT: Yes, sir.

1 BY MR. THOMPSON:

2 Q I hand you what's been -- hand you State's
3 Exhibit Number 56-E. Do you recall testifying
4 earlier about State's Exhibit 56-E?

5 A Yes.

6 Q And do you recall being asked specifically
7 about the calls from the Florence area on 56-E?

8 A I don't -- I don't see any on there.

9 Q All right. Now, I show you State's Exhibit
10 56-E, GTE Mobile Com, Florence non-wires. This first
11 number on July 24th, at 22:34, which is 10:34 p.m.,
12 (803) 423-1551, do you know whose number that is?

13 A No. Either way, could be Dee's or
14 Melinda's.

15 Q But you know it's one of them, don't you?

16 A Going by what it's got here, where it says
17 city of Marion.

18 Q You had Dee's number, didn't you?

19 A No, I never called Dee.

20 Q You never exchanged numbers with Dee?

21 A No.

22 Q She never gave you her number, you never
23 gave her your number?

24 A No. There was nothing there, what was the
25 reason? What would have been the purpose of

1 exchanging numbers?

2 Q There was nothing there?

3 A That's right, nothing. She was there, I
4 was there, but that was it, you know.

5 Q But there were nights you spent together in
6 motel rooms, right?

7 A Well, there was one time for a couple of
8 hours we were in a motel room together.

9 Q Nights you spent together at the
10 defendant's residence?

11 A There was one time we spent a night --

12 Q Between the sheets, right?

13 A Yes, yes.

14 Q But (803) -- the number (803) 423-2493, do
15 you know whose number that is?

16 A No.

17 Q Mr. Demery, during the early morning hours
18 of August 14th of 1993, you were taken into custody,
19 isn't that right?

20 A Yes.

21 Q And you were brought down to the Robeson
22 County Sheriff's Department?

23 A Yes.

24 Q You were advised of your Miranda rights?

25 A Yes.

1 Q You were advised that you had the right to
2 remain silent, say nothing, is that right?

3 A Yes, that's correct.

4 Q That anything that you say can and may be
5 used against you in court?

6 A Yes.

7 Q You have the right to talk to a lawyer
8 before we ask you any questions and to have him
9 present with you during questioning, you were advised
10 of that?

11 A Yes.

12 Q You were advised that if you could not
13 afford a lawyer one would be appointed for you by the
14 Court if you wanted a lawyer?

15 A Yes, I was.

16 Q If you decided to answer questions now
17 without a lawyer present you will still have the
18 right to stop answering at any time?

19 A Yes.

20 Q You were advised of those rights by
21 Lieutenant Jimmy Henley from the Cumberland County
22 Sheriff's Department, is that right?

23 A I don't remember the person's name. I was
24 advised of my rights that night but I don't remember
25 names or anything.

1 Q And you signed a waiver of those rights,
2 waiving those rights, and volunteered to give a
3 statement, is that right?

4 A Yes.

5 Q And when you signed that waiver, how many
6 officers or other persons were present?

7 MR. BRITT: Objection, relevance.

8 THE COURT: Mr. Thompson?

9 MR. THOMPSON: Getting ready,
10 Your Honor, to get into --

11 THE COURT: The specific
12 objection is why is it relevant how many
13 folks were present.

14 MR. THOMPSON: Strike that.

15 BY MR. THOMPSON:

16 Q Who was present?

17 THE COURT: Okay.

18 BY MR. THOMPSON:

19 Q Who was present?

20 A As far as the two gentlemen sitting on the
21 first row on the end, I remember those two being
22 there.

23 Q You mean Mr. Heffney, seated next to --

24 A No, sir, on the first row, the bench back
25 there.

1 Q For the record, you're talking about
2 Detective Anthony Thompson?

3 A Yes.

4 Q And SBI Agent Barry Lea?

5 A Yes.

6 Q And you knew Detective Anthony Thompson,
7 did you not?

8 A Yes.

9 Q He had been involved in investigation of
10 prior offenses that you had committed back in 1991,
11 isn't that right?

12 A Yes.

13 Q And in fact, in three of those cases in
14 which you were involved in and committed felonies
15 back in 1991, Anthony Thompson was the investigating
16 officer, is that right?

17 A Two of them.

18 Q Now, the statement that you gave back then
19 to the Robeson County Sheriff's Department, it was
20 tape recorded, wasn't it?

21 A The majority of it, yeah.

22 Q And you were told that it was being tape
23 recorded?

24 A Yes.

25 Q Now, Mr. Demery, you signed a waiver of

1 your rights around 1:54 a.m. back on August the 15th
2 of 1993?

3 MR. BRITT: Objection.

4 THE COURT: Do you want to be
5 heard?

6 MR. BRITT: How is it relevant?

7 THE COURT: At this point the
8 objection is overruled without prejudice to
9 renew the objection. You may answer the
10 question, sir.

11 THE WITNESS: It was around that
12 time frame.

13 BY MR. THOMPSON:

14 Q And that's when you began giving statements
15 about your involvement in the James Jordan incident,
16 is that right?

17 A That's the time that I gave the one
18 statement that Daniel had told me to give them, but
19 that didn't insinuate anything that we had done.

20 Q Well, now, Mr. Demery, you also gave a --
21 well, you gave -- that was a tape recorded interview
22 which followed the 1:54, or approximately 1:54 in the
23 morning on August the 15th, that was tape recorded?

24 A Yes, the story about Rick.

25 Q Well, there was a transcript and you have

1 seen a transcript of that taped interview, have you
2 not?

3 A Yes.

4 Q And you've read over the transcript of that
5 taped interview?

6 A No, I didn't -- we were in court, I think
7 maybe December of '94, and somewhere around that time
8 when the attorneys were making a motion to suppress
9 my statement, and then the Judge allowed it to be
10 heard, I heard it on tape, and then saw a couple of
11 pages as my attorney was sitting there flipping
12 through it, going along with it.

13 Q But you never read a transcription of the
14 tape but you heard the tape interview?

15 A No. Well, yes, I heard the tape interview
16 but I didn't ever sit down and actually read the
17 transcript, interview.

18 Q Back on August the 15th of 1993, you signed
19 a written statement, is that right?

20 A Yes.

21 Q Now, that written statement was taken by
22 SBI Agent Barry Lea?

23 A Yes, he was there.

24 Q Who else was there?

25 A Well, at one time, Detective Thompson, he

1 sat in and took notes, and I remember Detective Mark
2 Locklear coming in at one time. He started taking
3 notes. They were relieving one another.

4 Q But SBI Agent Berry Lee was there the
5 entire time?

6 A Yes, he was the one writing out everything.

7 Q And that statement was taken over in the
8 evening of August the 15th of 1993?

9 A No, it was during the early morning hours,
10 around 4:00 to 6:00, 6:30 maybe.

11 Q You read that written statement, did you
12 not?

13 A After he had read it, no, I didn't read
14 over it. We went back through parts, like if a word
15 had been misspelled or I would have -- where
16 something was incorrect, I would have to go back and
17 put my initials over it.

18 Q He asked you to read the statement?

19 A Ask me did I want to, but I --

20 Q He handed you the statement?

21 A Yes.

22 Q To read?

23 A To put my initials on it. I didn't want to
24 read it, I knew what I had already told him.

25 Q You've read the statement since August the

1 15th of 1993?

2 A No, I could --

3 Q You -- go ahead.

4 A I could tell you of every statement
5 that's -- that I have read. There was one incident
6 where a cell mate of mine had made a statement --

7 MR. THOMPSON: I object, Your
8 Honor.

9 THE COURT: Mr. Demery, if you'll
10 allow Mr. Thompson to put specific
11 questions to you.

12 Mr. Thompson.

13 BY MR. THOMPSON:

14 Q Are you denying that -- are you testifying
15 that you've not -- strike that.

16 MR. THOMPSON: May I approach the
17 witness?

18 THE COURT: Yes, sir.

19 MR. THOMPSON: Do I need this
20 marked?

21 THE COURT: Yes, sir.

22 (Defense Exhibit 28 was
23 marked for identification.)

24 MR. THOMPSON: May I approach?

25 THE COURT: Yes, sir.

1 BY MR. THOMPSON:

2 Q Mr. Demery, I hand you what's been
3 previously marked as Defendant's Exhibit Number 28.
4 Have you -- can you identify Defendant's Exhibit
5 Number 28?

6 A Yes. That's the second statement that I
7 gave the night of -- well, the 15th, Sunday the 15th,
8 early morning hours.

9 Q Now, the second statement that you gave as
10 indicated in Defendant's Exhibit Number 28, was it
11 taped that you know of?

12 A No, I just remember it being written. I
13 told it one time, and then after then, it needed to
14 be wrote down.

15 Q Where were you when you gave the statement
16 contained in Defendant's Exhibit Number 28?

17 A Over at the Sheriff's department here in
18 Lumberton.

19 Q And what time was it when you gave this
20 statement contained in Defendant's Exhibit Number 28?

21 A Like I say, maybe around -- started around
22 4:00 and --

23 Q 4:00 in the evening, or in the morning?

24 A In the morning.

25 Q And when did the statement end, I mean,

1 when did you stop giving the statement, if it started
2 at 4:00 a.m. in the morning?

3 A I say between 6:00, 6:30. Like I say,
4 first -- we went through it twice. First time I told
5 it to -- I don't remember the guy's name. He was the
6 one that had been operating the recorder that night,
7 and then he had pushed everybody out, you know, and
8 then he corrected me, I guess, well, I would say,
9 then Mr. Heffney came in. And Mr. Lea came in, and
10 he's the one that wrote this down.

11 Q Does your signature appear on Defendant's
12 Exhibit Number 28?

13 A Yes.

14 Q On page one, does your signature appear on
15 Defendant's Exhibit Number 28?

16 A Yes, up at the top.

17 Q And was Defendant's Exhibit Number 28 given
18 to you to read?

19 A That was after it was written, I was asked
20 did I want to go over it and read it, and then asked
21 to initial -- like right here, my initials. But I
22 didn't read it over.

23 Q Did you initial each page?

24 A Yes, I remember putting --

25 Q And since initialing Defendant's Exhibit

1 Number 28, were you later given a copy of it?

2 A No. I could have gotten one but I just
3 never did ask. There was one time I did ask but
4 snitches being put in the cell, somebody might have
5 gotten their hands on it. But I could have gotten
6 it, but I didn't.

7 Q Does your signature appear on the last
8 page?

9 A Yes.

10 Q Defendant's Exhibit Number 28?

11 A Yes.

12 Q Also the signature of Barry -- BM Lea
13 appears on there?

14 A Yes.

15 Q And the time 8:45 p.m. appears on there?

16 A Yes, it does.

17 Q Who wrote that on there?

18 A Mr. Lea.

19 Q Is that when you signed the last page of
20 Defendant's Exhibit Number 28, at 8:45 p.m.? Is
21 that -- that's a.m., isn't it? I'm sorry.

22 A Yes.

23 Q And that was on August the 15th of 1993?

24 A Yes.

25 Q Mr. Demery, you also gave some -- an

1 interview in this case to a Brant Clifton, reporter
2 for The Robesonian, did you not?

3 A Yes.

4 Q And that was by telephone, was it not?

5 A Yes, it was.

6 Q And do you recall that you had given that
7 interview on January the 11th of 1994?

8 A Yes, I do.

9 Q And you were in the Robeson County
10 detention center?

11 A Yes.

12 Q And have you seen a transcription of that
13 interview?

14 A No, I haven't.

15 Q Meaning the interview you gave to
16 Mr. Clifton?

17 A No.

18 Q Have you heard the tape recording of that
19 interview?

20 A About five seconds on Channel 11 News the
21 day that it was given.

22 Q Your attorneys did not provide you with a
23 copy of that interview?

24 MR. BRITT: Objection.

25 THE COURT: Sustained.

1 MR. BRITT: Move to strike.

2 THE COURT: Allowed.

3 MR. BRITT: Ask for instruction.

4 THE COURT: Don't consider the
5 last question by counsel for the defendant,
6 Mr. Thompson, as to what if anything
7 Mr. Demery's attorneys may have provided to
8 him. That matter is not to take any part
9 in your deliberation in this case in any
10 respect.

11 BY MR. THOMPSON:

12 Q Have you requested of anyone, Mr. Demery, a
13 copy of -- of the transcription of that tape recorded
14 interview?

15 MR. BRITT: Objection, assumes
16 matters not in evidence.

17 MR. THOMPSON: I'm asking has he
18 requested, Your Honor.

19 THE COURT: As to whether or not
20 he's requested any copy, whether or not it
21 may be in existence, you can answer. Have
22 you requested a copy?

23 THE WITNESS: No, I haven't, no.

24 BY MR. THOMPSON:

25 Q Have you requested of anyone to hear a tape

1 recording of that interview?

2 A No, I haven't.

3 Q How long did that tape recorded interview
4 take, Mr. Demery? We're talking about the interview
5 of Mr. Brant Clifton.

6 A About an hour and a half, as best I can
7 recall.

8 Q And were there any interruptions?

9 A Yes, over at the jail, the type of phone
10 system that are there, you're only allowed to talk
11 for ten minutes, and then it will cut off and you
12 have to call back, and that was the only
13 interruptions at that time.

14 Q And prior to talking to Mr. Clifton,
15 Mr. Demery, did you give an interview with -- you
16 gave an interview with a High Point newspaper
17 reporter, did you not?

18 A Yes.

19 MR. BRITT: Objection, asked and
20 answered.

21 THE COURT: Overruled.

22 BY MR. THOMPSON:

23 Q And have you --

24 MR. THOMPSON: I'm sorry, Your
25 Honor, for not waiting.

1 BY MR. THOMPSON:

2 Q Have you seen a transcription of that
3 recorded interview?

4 A No, I haven't.

5 Q Do you recall who you talked to?

6 A No, I don't remember the guy's -- no
7 transcription, but the guy that I gave the interview
8 to, he had -- he didn't send the whole newspaper,
9 just a couple of sheets, stuck it in an envelope and
10 he sent it to me at the jail.

11 Q Did the guy that you talked to, did he tell
12 you he was tape recording the interview?

13 A No, this guy didn't.

14 Q You mean the guy from High Point?

15 A No, he didn't. Well, he or Brant Clifton
16 didn't tell me that things were being taped.

17 Q When you talked to the individual in High
18 Point during that interview, were you -- you were in
19 the Robeson County detention center?

20 A Yes.

21 Q You were using the telephone?

22 A Yes.

23 Q Do you recall what month that was?

24 A I don't recall the month, but like I say,
25 maybe about three, four months after I was first

1 locked up.

2 Q And do you recall how long that interview
3 took?

4 A No, I don't.

5 Q Was it -- were there any interruptions
6 during that interview?

7 A Just the amount of time it took to call
8 back, dial the number again.

9 Q How many times did you call back?

10 A I don't know. I don't remember.

11 Q Have you ever requested of anyone to get a
12 copy of the transcription of that interview?

13 A No.

14 Q What about have you requested from anyone
15 to get a copy of the tape recording, I mean, of the
16 audiotape of that interview?

17 A No. Audiotape, nothing.

18 Q I'm sorry, I didn't hear your last
19 comment.

20 A I said no audiotape, no nothing.

21 Q And you gave Mr. Heffney an interview back
22 in May --

23 A Yes.

24 Q -- of 1995?

25 A Yes.

1 Q And that was after you had pled guilty to
2 felony offenses in Robeson County Superior Court?

3 A Yes.

4 Q Was that interview taped, Mr. Demery?

5 A No, it was all handwritten.

6 THE COURT: I'm sorry, what
7 interview?

8 MR. THOMPSON: In May of 1995.

9 BY MR. THOMPSON:

10 Q Was that interview taped, Mr. Demery?

11 A No, sir, it wasn't, no.

12 MR. THOMPSON: Your Honor, if I
13 may have just a moment.

14 THE COURT: Yes, sir.

15 BY MR. THOMPSON:

16 Q Mr. Demery, when you gave the interview or
17 the statement to Mr. Lea back on August the 15th of
18 1993, which was the second statement that you gave
19 that you referred to, is that right, that was the
20 second statement?

21 A Yes, yes.

22 Q Did you tell him the truth about what you
23 knew about this?

24 A No, not on the first statement, and not
25 everything on the second statement.

1 Q Did you tell Mr. Clifton the truth when you
2 gave Brant Clifton the interview back in January the
3 11th of 1994?

4 A Most of it, except for one specific part.

5 Q Did you tell the reporter who you gave the
6 interview to in High Point the truth?

7 A Not the same interview, except the specific
8 part I'm talking about, I left that out.

9 Q Have you testified truthfully, Mr. Demery,
10 in court last week as to what you know about this?

11 A Yes, I have, yes.

12 Q Did you tell Mr. Heffney the truth,
13 Mr. Demery, about the Jordan incident?

14 A About -- about two days later, after first,
15 you know, getting questioned about it, I gave him the
16 full truth about this same specific part. That's
17 when I finally went ahead and let it out.

18 Q Now, you -- on May the 2nd of 1995 when you
19 were interviewed by SBI Agent Heffney, you were over
20 in Fayetteville, is that right?

21 A Yes.

22 Q Mr. Campbell was present?

23 A Yes.

24 Q And you told Agent Heffney that you did not
25 remember seeing the Lexus on Highway 74 when you went

1 to the dirt road on the canal, that was back on July
2 22nd of 1993?

3 A Yes, I told him when we first -- I told him
4 when we first went to that area, I didn't notice it.

5 Q I'm sorry, I didn't mean to cut you off.

6 A I told Mr. Heffney when we first went to
7 that area, going to the motel and all, I didn't
8 notice it then.

9 Q Now, do you recall, Mr. Demery, that you --
10 on August the 15th, early morning hours of August the
11 15th, 1993, telling Detective Henley that the first
12 time you ever saw the car was at Daniel's house?

13 A Yes, I do, yes.

14 Q Do you recall telling Brant Clifton on
15 January the 11th of 1994 that the first time you saw
16 the Lexus was at Daniel's house?

17 A Yes.

18 Q And was that true?

19 A No, it wasn't, no.

20 Q Now, on August -- early morning hours of
21 August the 15th of 1993, you never mentioned to the
22 police officers there at the Robeson County jail when
23 you gave your first statement, that there was a truck
24 parked on highway 74, did you?

25 A I don't recall if I did or not.

1 Q And Mr. Demery, you never mentioned in your
2 second statement to SBI Agent Barry Lea that there
3 was a truck parked on Highway 74, did you, when you
4 gave your statement on August 15th of 1993?

5 A I don't remember. If it's there in the
6 statement, I did. If it's not, I didn't. I don't
7 remember.

8 MR. THOMPSON: Your Honor, may I
9 approach?

10 THE COURT: Yes, sir.

11 BY MR. THOMPSON:

12 Q Mr. Demery, you've never had an opportunity
13 to read Defendant's Exhibit Number 28?

14 A I've never -- well, I could have had the
15 opportunity, but like I said, I never requested to.

16 Q You've never read it?

17 A No.

18 Q Would you read it?

19 A Yes. The whole thing?

20 Q I mean, would you read -- would it help you
21 to refresh your recollection as to what you told
22 officer Barry Lea on August the 15th of 1993?

23 A Yes, I guess it would.

24 Q Would you read it there, Defendant's
25 Exhibit Number 28, if it would help you to refresh

1 your recollection, just take your time and read it.

2 A (Witness complies).

3 THE COURT: Mr. Thompson.

4 BY MR. THOMPSON:

5 Q Have you read that statement? I mean, are
6 you finished?

7 A Yes.

8 Q How many pages is that, Mr. Demery?

9 A 15. I didn't have to read the whole
10 thing. I mean, the -- I feel like I could go ahead
11 and answer the question, as far as every statement
12 that I gave, that I know you'll ask. I mean --

13 Q Mr. Demery, there's some things that you
14 told Mr. Lea back on August the 15th of 1993, you
15 don't remember, is that right?

16 A Yes, some things, and then there's some
17 things that I do remember.

18 Q And Defendant's Exhibit Number 28 is a
19 paper writing of the statement that you gave Mr. Lea
20 back on August the 15th of 1993, is that right?

21 A Yes.

22 Q And you testified that you could use
23 Defendant's Exhibit Number 28 to refresh your memory
24 as to what if anything you said to Mr. --

25 THE COURT: Specific question,

1 Mr. Thompson, that you asked Mr. Demery,
2 you never mentioned in your second
3 statement to SBI Agent Barry Lea that there
4 was a truck parked on Highway 74, did you,
5 when you gave your statement on August 15th
6 of 1993.

7 His answer was remember -- at that
8 point, you gave it to him to refresh his
9 recollection as to that specific matter.

10 MR. THOMPSON: Excuse me, Your
11 Honor. May I be heard?

12 THE COURT: Yes, sir. Ladies and
13 gentlemen, there's a matter of law the
14 Court must take up at this time out of the
15 hearing and presence of the jury. Please
16 recall my instructions, don't worry or
17 speculate about what takes place in the
18 courtroom in your absence. Please step to
19 the jury room.

20 (Jury out at 4:31 p.m.)

21 THE COURT: Let the record
22 reflect the following is being heard in the
23 absence of the jury. 198, line 20. Your
24 question, I mean, would you read -- would
25 it help you to refresh your recollection as

1 to what you told Officer Barry Lea August
2 the 15th, 1993, referring back to the
3 earlier question with the truck.

4 Answer: Yes, I guess it would.

5 Would you read it then.

6 So your question was as to a specific
7 matter that you contend he told officer, or
8 didn't tell Officer Barry Lea on August
9 15th, 1993. Now you're broadening the
10 scope of your question to saying a whole
11 lot of things that you don't recall. So in
12 fairness to the witness --

13 MR. THOMPSON: I understand.

14 THE COURT: Okay.

15 MR. THOMPSON: And I'm sorry, I
16 see exactly what you mean.

17 THE COURT: No problem. Bring
18 the jury back in.

19 (Jury in at 4:32 p.m.)

20 THE COURT: Mr. Thompson, yes,
21 sir.

22 BY MR. THOMPSON:

23 Q Mr. Demery, you never told Brant Clifton
24 back on January the 11th of 1994 when you -- when he
25 interviewed you that you saw a truck on Highway 74

1 during the early morning hours of July 23rd of 1993,
2 did you?

3 A May have, may not have. I don't remember.

4 Q You never told the reporter at the High
5 Point newspaper that you saw a truck back there on
6 the highway on July the 23rd of 1993, did you?

7 A May have, may -- I may not.

8 Q Well, Mr. Demery, would it be -- and of
9 course, you've never seen a copy of the transcription
10 of the interview that you gave to Mr. Clifton, is
11 that right?

12 A No, I haven't seen it.

13 Q Would a copy of the transcription of that
14 tape recording, Mr. Demery, with Mr. Brant Clifton
15 refresh your memory?

16 MR. BRITT: ^{I saw} Objection.

17 THE COURT: ²⁰ Basis?

18 MR. BRITT: Assumes the
19 transcription is correct.

20 THE COURT: Well, he can answer
21 it then. Overruled. How long is the
22 document, Mr. Thompson?

23 MR. THOMPSON: It's very long.
24 It's long, Your Honor, and I can say --
25 it's long, and probably something that we

1 can do --

2 THE COURT: Tomorrow?

3 MR. THOMPSON: Today and
4 tomorrow, yeah, with the jury out.

5 THE COURT: Ladies and gentlemen
6 of the jury, it appears that we have
7 matters that need to be heard outside the
8 jury's presence. Again, don't worry or
9 speculate about what takes place in the
10 jury room in your absence. I'm going to
11 release you at this time.

12 Folks, I apologize. I should have
13 inquired into this earlier this morning
14 when you folks initially showed up. Did
15 anybody have any problems getting here this
16 morning in terms of the weather conditions
17 in your individual neighborhoods or
18 otherwise? Any problems that I need to be
19 aware of? All right. Please be careful
20 out there. And is it a difficulty for
21 anyone to report at 9:30 tomorrow? If so,
22 raise your hands if you think that's a
23 problem in any respect.

24 We'll see you at 9:30. Please don't
25 talk about the matters among yourselves

1 overnight. Don't allow anyone to say
2 anything to you or in your presence about
3 this case. If anyone communicates with you
4 about this matter or attempts to do so, or
5 if anyone says anything about this case in
6 your presence, it's your duty to inform us
7 of that immediately. Don't form or express
8 any opinions about this case. Don't have
9 any contact or communication with any of
10 the attorneys, parties, witnesses,
11 prospective witnesses or directly with the
12 Court. Avoid any exposure to any media
13 accounts which may exist in connection with
14 this matter, and don't conduct any
15 independent inquiry or investigation or
16 research of any kind.

17 Everyone else please remain seated,
18 the members of the jury are excused until
19 9:30 tomorrow morning. Be careful going
20 home.

21 (Jury out at 4:36 p.m.)

22 THE COURT: Let the record
23 reflect the following is being conducted in
24 the absence of the jury.

25 Mr. Thompson, I'm -- I think I

1 understand where you're going is attempting
2 to lay the groundwork for prior
3 inconsistent statements?

4 MR. THOMPSON: Yes, sir. And
5 Your Honor, what I would rather do, these
6 are long documents, and in the interest of
7 time --

8 THE COURT: If the purported
9 statements were made by the witness to
10 someone else, then you can ask him point
11 blank, "you made the statement." If he
12 denies it, and it's material, not
13 extrinsic, you can contradict him through
14 the testimony of another witness.

15 MR. THOMPSON: Yes, sir. And
16 Your Honor, I understand that. I would
17 like to present this witness with a copy of
18 these statements.

19 THE COURT: Yes, sir.

20 MR. THOMPSON: He can have the
21 night to read them.

22 THE COURT: Yes, sir. I mean,
23 that's why --

24 MR. THOMPSON: Yes, sir.

25 THE COURT: Anyway you want to do

1 it, that's fine. Do you want to give him
2 copies now?

3 MR. THOMPSON: Yes, sir.

4 THE COURT: Mr. Britt, are you
5 going to be heard as to that?

6 MR. BRITT: As to whether
7 Mr. Thompson gives Mr. Demery a copy of the
8 statement of the purported transcript?

9 THE COURT: Yes.

10 MR. BRITT: Give him a copy of
11 the tape as well to review it as well.
12 That's the only way to make a determination
13 whether or not the transcript is accurate.

14 THE COURT: Occurs to me that
15 probably not the entire transcript is
16 inconsistent. There may be specific
17 instances of what you contend are
18 inconsistencies. And if it's a material --
19 that impeachment chart I gave you folks
20 indicates whether the question has to be
21 asked of the witness, witness given an
22 opportunity to answer and explain, whether
23 extrinsic evidence can be introduced under
24 what rule of law. And, I mean, you can
25 handle it the way you think is

1 appropriate. I'm just trying to move us
2 along.

3 MR. THOMPSON: Yes. And what I
4 want to do, and I think really he's not had
5 an opportunity based on his testimony to --

6 THE COURT: Well --

7 MR. THOMPSON: -- review --

8 THE COURT: Let me say this.
9 There is a difference between recollection
10 refreshed and recollection revived and
11 impeachment. Recollection refreshed and
12 revived, you may be bound by the answer in
13 some instances. There may not be a
14 foundation to bring in somebody else and
15 say, "t'aint so."

16 MR. BRITT: While we're on that
17 subject, it's my understanding that they
18 issued a subpoena to Mr. Clifton for the
19 taped interview, and that Mr. Stephens may
20 be filing a motion to quash that subpoena
21 under First Amendment rights as it relates
22 to freedom of the press.

23 THE COURT: I'm going to cover
24 the whole gambit of law in this case.

25 MR. THOMPSON: I don't

1 understand. You know, he said that before
2 lunch, and he's saying that now, and I've
3 already addressed that issue, Your Honor.

4 THE COURT: Well, folks, I take
5 it up as it comes.

6 MR. BRITT: That's the
7 information that's been provided to me.

8 MR. THOMPSON: I've already
9 indicated --

10 THE COURT: Mr. Hugh Stephens may
11 make yet another trip from Raleigh to
12 Robeson County. He represents many of the
13 Press Associations.

14 MR. THOMPSON: I know Mr. Hugh
15 Stephens.

16 THE COURT: We will come to know
17 him better, I think.

18 MR. THOMPSON: I have possession
19 of the tape, so --

20 THE COURT: Okay. All I'm
21 saying, there are some situations where the
22 foundation needs to be laid in certain
23 ways. Recollection refreshed or revived
24 may not do it.

25 MR. THOMPSON: Yes, sir. Well --

1 THE COURT: Any other --

2 MR. THOMPSON: May I have a
3 moment?

4 THE COURT: Do you still want to
5 give Mr. Demery copies?

6 MR. CAMPBELL: We're getting to a
7 point where I would like to be heard.

8 THE COURT: Yes, sir. The jury
9 is out now. Yes, sir.

10 MR. CAMPBELL: It's our
11 considered opinion and judgment and our
12 advice to this client, if he gives him all
13 these things, not to read. He ain't got to
14 read them. If he wants to ask him
15 questions about it, let him ask them. We
16 say right now not to read them.

17 MR. ROGERS: He's asked you, he's
18 answered them.

19 MR. THOMPSON: Fine, Your Honor.
20 I won't give them.

21 THE COURT: Folks, it may be a
22 situation tomorrow you cross-examine this
23 witness about what these lawyers have said
24 on the open record.

25 MR. THOMPSON: He's already said

1 it on the open record.

2 THE COURT: So -- all right.
3 I'll take it up when it comes.

4 MR. THOMPSON: Not going to
5 give -- and he's heard it and everybody in
6 here has heard it.

7 MR. BRITT: What purpose is it
8 going to be offered for? Mr. Campbell's
9 statement is hearsay as far as the jury is
10 concerned.

11 MR. THOMPSON: When I asked
12 him --

13 THE COURT: How is it impeachment
14 as to him? Mr. Demery, how is it
15 impeachment as to Mr. Demery?

16 MR. THOMPSON: Because I expect
17 to show when I asked him about it --

18 THE COURT: That his lawyers made
19 a statement, and how does that impeach him
20 without any nexus connection as to him
21 following that statement? Aren't you
22 assuming that he's going to follow --

23 MR. THOMPSON: I'll ask him
24 tomorrow if he wants -- well, their having
25 said that and his lawyers advise him not to

1 read it --

2 THE COURT: I'm not going to rule
3 in advance. I'll just have to take it up
4 like it comes. But folks, we are getting
5 lost in a morass of minutia.

6 MR. THOMPSON: I mean, I'll
7 handle the impeachment, I mean, handle the
8 statement more than likely by recollection
9 refreshed, and he can answer. You know, I
10 will not hand him the statement in light of
11 what his lawyers advise him. I'm just not
12 going to do it.

13 THE COURT: Anything further from
14 counsel?

15 MR. BRITT: No, sir.

16 THE COURT: If you'll recess us
17 until 9:30 tomorrow morning.

18 THE BAILIFF: All rise.

19 (Court adjourned.)

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NORTH CAROLINA
ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 93 CRS 15291-93

STATE OF NORTH CAROLINA)
)
)
vs.)
)
DANIEL GREEN, aka AS-SADDIQ)
AL-AMIN SALLAM U'ALLAH,)
)
DEFENDANT.)
- - -)

VOLUME 24

ALL
DEMERY

Transcript of Proceedings before the
Honorable GREGORY A. WEEKS, Judge Presiding,
before Steve S. Huseby, Registered Professional
Reporter and Notary Public, Robeson County
Courthouse, Lumberton, North Carolina, on
the 6th day of February, 1996.



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*** Offices also in South Carolina and Tennessee ***

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10 and

11 WOODBERRY A. BOWEN, Esq.
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13

14

15 (February 6, 1996. Proceedings in open court.)

16

17 THE COURT: Good morning, folks.

18 Let the record show that all counsel are
19 present, the defendant is present in open
20 court. If we could have Mr. Demery brought
21 in, please.22 While we're waiting for Mr. Demery,
23 folks, Mr. Horne handed me a juror summons
24 which was apparently mailed to one of the
25 members of our jury, Ms. Paula Locklear

1 Manuel. It's my intent to give this to Ms.
2 Gaines, have Ms. Gaines reflect in the
3 Clerk's records that Ms. Locklear Manuel is
4 currently a member -- Mr. Demery if you'll
5 take the witness stand -- of this jury, and
6 because of her service in connection with
7 this case, she is exempt from further jury
8 service for the next two years as is by
9 statute provided. If you'll note that on
10 the records and inform Ms. Locklear.

11 Any other matters before we continue
12 with the cross-examination of Mr. Demery,
13 Mr. Thompson?

14 MR. THOMPSON: No, sir.

15 THE COURT: Mr. Britt?

16 MR. BRITT: No, sir.

17 THE COURT: If you'll bring our
18 jurors in, sir.

19 MR. BRITT: May I approach the
20 Clerk?

21 THE COURT: Yes, sir.

22 (Jury in at 9:34 a.m.)

23 THE COURT: Good morning, ladies
24 and gentlemen.

25 Ms. Manuel, first of all, thank you

1 for bringing that matter to our attention.
2 Let me inform you that I have given the
3 juror summons to Ms. Gaines, she will make
4 sure the Clerk records properly reflect
5 that you are a member of this jury, and
6 because of your service in connection with
7 this case you were exempt from further
8 service for a 2-year period following the
9 conclusion of this case. So don't worry
10 about that matter.

11 Mr. Thompson, yes, sir.

12 CROSS-EXAMINATION (Continued)

13 BY MR. THOMPSON:

14 Q Good morning, Mr. Demery. Mr. Demery, you
15 testified that the first time -- well, the first time
16 that you mentioned seeing a truck being on Highway 74
17 across from the Lexus was in your May 2nd, 1995
18 statement to SBI Heffney, is that right?

19 A I may have said something about it in prior
20 statements, but then it was a for sure thing, you
21 know, straight up.

22 Q All right. Are you saying that you may
23 have mentioned something about that truck in a prior
24 statement to one of the law enforcement officers?

25 A Yes, I may have.

1 Q But right now you can't recall who if
2 anyone you mentioned a truck being across from the
3 Lexus other than SBI Agent Heffney?

4 A Like I said, I could have.

5 THE COURT: So that we're clear,
6 Mr. Demery, are you indicating that you
7 don't recall specifically?

8 THE WITNESS: No, not
9 specifically.

10 THE COURT: Mr. Thompson.

11 BY MR. THOMPSON:

12 Q And you, when you mentioned the statement
13 to Mr. Heffney about this truck being across from the
14 Lexus on 74 on May the 2nd of -- well, the truck
15 being there on July the 23rd of 1993, but your
16 statement was May 2nd, 1995, and that was some five
17 days after you had pled guilty to some felonies, is
18 that right?

19 A Yes.

20 Q And you had entered into a plea agreement
21 with the State that you would testify truthfully?

22 A Yes.

23 Q And that you would assist the State in
24 obtaining a conviction against the defendant, is that
25 right?

1 A Yes, understanding that I got that I would
2 testify, yes.

3 Q And -- I'm sorry, I didn't mean to cut you
4 off?

5 A Yes.

6 Q And your lawyer, Mr. John Campbell, was
7 present when you told SBI Agent Heffney about this
8 truck being across 74 from the Lexus, was he not?

9 A Yes, he was, yes.

10 Q And you were over there in the district
11 office in Fayetteville SBI office, is that right?

12 A Yes.

13 Q Now, Mr. Heffney never asked you to
14 describe the truck that you saw across from the
15 Lexus, did he?

16 MR. BRITT: Objection.

17 THE COURT: To the form,

18 sustained.

19 BY MR. THOMPSON:

20 Q Did you ever describe the truck to
21 Mr. Heffney back on May the 2nd of 1995, Mr. Demery?

22 A I remember telling him that a truck was
23 there, seeing park lights.

24 Q You told Mr. Heffney that a truck was there
25 and the truck had its park lights on, Mr. Demery?

1 A I said -- I may have said that the lights
2 were on, but I did tell him that I saw the truck
3 there.

4 Q Did you tell Mr. Heffney while your lawyer
5 was present that the truck's engine was running,
6 Mr. Demery?

7 A I don't -- I don't recall telling him that,
8 but --

9 Q Did you tell Mr. Heffney while your lawyer
10 was present that the truck was some 20 or 30 feet
11 down the road but across on the other side of the
12 road, Mr. Demery?

13 A I told him it was across the road. Like I
14 said, I told Mr. Heffney that the truck was there,
15 but --

16 Q Did you tell Mr. Heffney while your lawyer
17 was present, Mr. Demery, or describe -- strike that.
18 Did you describe, Mr. Demery, while your lawyer was
19 present to Mr. Heffney what kind of bed or trailer
20 that was on this truck?

21 A I don't remember that question being asked,
22 I don't remember, you know.

23 Q Now, earlier in your testimony here at
24 trial, Mr. Demery, you identified State's Exhibit
25 Number 59 as being the gun used to shoot the man in

1 want a limiting instruction?

2 MR. BRITT: Yes, sir.

3 THE COURT: Members of the jury,
4 the matters now being elicited by counsel
5 for the defendant are being offered and
6 received for the limit purpose of
7 impeachment. As I previously explained to
8 you, the term impeachment means as tending
9 to discredited or contradict. Again, I
10 instruct you that it is for you, the
11 members of the jury, to determine what the
12 evidence in this case does show, but I
13 instruct you further that you may consider
14 this evidence for the limited purpose of
15 impeachment and for no other purposes.
16 Anything further?

17 MR. BRITT: No.

18 THE COURT: Mr. Thompson, repeat
19 or rephrase.

20 BY MR. THOMPSON:

21 Q Do you deny making the statement, answering
22 a question, the one that -- the one that Mr. Jordan
23 was supposed to be shot with, do you deny making that
24 statement?

25 A No, I don't deny making it, but I can't sit

1 here and say that I did, because I can't remember.

2 Q And do you deny, Mr. Demery, saying no
3 three times when asked, did you see the gun?

4 A I don't deny saying that, but I can't say
5 that I did, because I don't remember.

6 Q Now, Mr. Demery, you have been testifying
7 here at trial about all that you heard the person in
8 the Lexus saying after he had been shot, is that
9 right?

10 A Yes.

11 Q And in your January the 11th, 1994
12 telephone interview with Brandt Clifton, you talked
13 about this case, did you not?

14 A Yes.

15 Q And now, you indicated, Mr. Demery, that in
16 this telephone call with Mr. Clifton, you had to --
17 the phone was disconnected several times, was it not?

18 A Yes.

19 Q And the reason the phone was disconnected
20 is because you can only speak so long or so many
21 minutes on the phone from a jail cell at the Robeson
22 County jail, is that right?

23 A Yeah, there's a ten minute time limit on
24 each call.

25 Q And you called Mr. Brant Clifton collect

1 the Lexus, is that right, 59-A, I'm sorry?

2 A 59-A was the .38 Smith & Wesson, yes.

3 Q Now, in your tape-recorded interview on
4 Sunday back in August the 15th of 1993, you told Art
5 Binder that you never saw a gun, isn't that right?

6 A No, I don't believe I did. I don't --

7 Q Mr. Demery --

8 A The first statement, like I said, I
9 don't --

10 Q Mr. Demery --

11 A Only thing that I said in there that I
12 don't remember, I mean, I forgot about saying them.

13 Q Mr. Demery, you recall Art Binder or one of
14 those officers specifically asking you did you see a
15 gun, didn't you?

16 MR. BRITT: Objection.

17 THE COURT: Overruled.

18 BY MR. THOMPSON:

19 Q You may answer.

20 A No.

21 Q Mr. Demery, you deny that one of those
22 officers said that you said the one that -- the one
23 that Mr. Jordan was supposed to be shot with, do you
24 deny making that statement?

25 THE COURT: Mr. Britt, do you

1 several times, did you not?

2 A Yes.

3 Q And you called him several times so that
4 you could give him a complete interview, isn't that
5 right?

6 A Yes.

7 Q And you talked to Mr. Brant Clifton for
8 well over an hour, is that right?

9 A Yes, I remember it as being about an hour
10 and a half.

11 Q And you recall Mr. Brant Clifton asking you
12 about whether you had just -- and is it true that you
13 guys just found that car, do you recall that?

14 MR. BRITT: Objection.

15 THE COURT: For what purpose is
16 it being offered, sir?

17 MR. THOMPSON: Impeachment, Your
18 Honor.

19 THE COURT: Mr. Britt?

20 MR. BRITT: Anything Mr. Clifton
21 said would be hearsay.

22 THE COURT: Well, he's offering
23 it in context, I believe he intends to
24 elicit a response.

25 MR. THOMPSON: Yes, sir.

1 THE COURT: Do you want a
2 limiting instruction?

3 MR. BRITT: Yes, sir.

4 THE COURT: Members of the jury,
5 again, these matters are being offered and
6 received for the limited purpose of
7 impeachment as I was previously defined
8 that term for you. You may consider this
9 matter or this line of questioning for that
10 limited purpose and for no other purpose.
11 Yes, sir, Mr. Thompson.

12 BY MR. THOMPSON:

13 Q Do you recall that question being asked to
14 you Mr. Demery?

15 A No, I don't recall whether it had been or
16 not.

17 Q Mr. Demery, do you recall making this
18 comment in answer to a question, sir, "The truth is
19 that I don't know how Daniel came upon the car, you
20 know, but the first time I ever saw it, he, you know,
21 I mean, I went to his house, you know, wait on him,
22 and that was the first time I ever, you know, seen
23 the car, you know, and when I saw it, I also saw
24 Mr. Jordan in the car, you know." Do you deny making
25 that statement?

1 A I don't deny it but I can't say that I
2 didn't either, I mean, I don't remember.

3 Q You told the SBI Agent Heffney with
4 Mr. Campbell present on May 2nd of 1995, that the man
5 never said anything, did you not?

6 A No, I didn't tell Mr. Heffney that.

7 Q You deny telling Mr. Heffney that -- you
8 deny that you ever told Mr. Heffney that the man,
9 meaning the man in the Lexus, never said
10 anything?

11 MR. BRITT: Objection, asked and
12 answered.

13 THE COURT: Overruled.
14 Cross-examination.

15 THE WITNESS: No, I never told
16 Mr. Heffney that.

17 BY MR. THOMPSON:

18 Q When you held the telephone interview,
19 Mr. Demery, with Brant Clifton back on January 11th
20 of 1994, you made the statement, "Sir, I've -- okay,
21 there was something I wanted to say to you, you
22 know. Okay, like all that's been in the newspaper,
23 right, you know, things that have been said, they
24 really hurt me, you know, I think they have hurt me,
25 and I'm hoping, you know, this time by talking to you

1 maybe something, you know, something might help me
2 out." Did you tell Brant Clifton that?

3 A I may have, I don't remember.

4 Q Do you deny that you told him that?

5 MR. BRITT: Objection,
6 argumentative.

7 THE COURT: Overruled.

8 THE WITNESS: I don't deny it but
9 I can't say that I didn't say that either.
10 I don't know.

11 BY MR. THOMPSON:

12 Q Mr. Demery, you called Brant Clifton on
13 January 11th, 1994 by telephone from your jail cell,
14 and Mr. Clifton identified himself as the reporter
15 from The Robesonian, did he not?

16 MR. BRITT: Objection.

17 THE COURT: Sustained. I move to
18 strike. Allowed.

19 MR. BRITT: Would ask for
20 instruction.

21 THE COURT: Members of the jury,
22 don't consider the last question of counsel
23 for the defendant, Mr. Thompson. That
24 matter is not to take any part in your
25 deliberations in this case in any respect.

1 Yes, sir, Mr. Thompson.

2 BY MR. THOMPSON:

3 Q Where did you get the number, Mr. Demery,
4 when you dialed Mr. Clifton?

5 A The number, reason I got on the phone to
6 start with, there was a cellmate, a guy that I was in
7 the cell with, he had called over to The Robesonian
8 asking to speak with Mr. Clifton concerning his --

9 Q Where did you get the number from?

10 MR. BRITT: Objection.

11 THE COURT: He's completing his
12 answer. Go ahead and complete your answer.

13 THE WITNESS: This guy had called
14 over there, he had a subscription to the
15 newspaper, it was coming in all mixed up,
16 he wanted to find out why.

17 MR. THOMPSON: Your Honor I
18 object. This is unresponsive.

19 THE COURT: You asked him where
20 he got the number, he's trying to tell
21 you. Mr. Demery.

22 THE WITNESS: This guy that was
23 in the cell with me told Clifton that he
24 was in the cell with me. Clifton asked
25 could he speak with me. And I got on the

1 phone and talked with him.

2 BY MR. THOMPSON:

3 Q Mr. Demery, is it your testimony here at
4 trial -- it's your testimony, is it not, here at
5 trial that you came to the conclusion that the person
6 in the Lexus who had been shot was James Jordan when
7 you were out there in the cornfield somewhere between
8 Rowland and Bob's Landing Mobile Home Park, is that
9 right?

10 A Yes. Out in the cornfield.

11 Q Yes, sir, and Mr. Demery, on August the
12 15th of 1993, in your tape-recorded interview, do you
13 recall saying, "I don't know, I mean, when -- when
14 did I find out whose car the Lexus was? Well, it was
15 the night." Do you recall saying that?

16 A I don't recall, but I may have. I just
17 don't remember.

18 Q Mr. Demery, you maintained as late as May
19 the 2nd of 1995, after you agreed to testify
20 truthfully for the State, that you knew the person in
21 the Lexus was James Jordan, did you not?

22 A Yes, knew that's who the person was.

23 Q And James Jordan, Michael Jordan's father,
24 is that right?

25 A Yes.

1 Q And Mr. Demery, you continue to maintain
2 here today that back on July the 23rd of 1993,
3 Mr. Jordan's credit cards and other papers were
4 thrown out in that cornfield, don't you?

5 A Yes.

6 Q And this is where you first went to the
7 trunk of the Lexus?

8 A Yes.

9 Q And it's where the -- you saw some jewelry
10 being taken off the man, is that right?

11 A Yes.

12 Q And there was a wedding band that you saw?

13 A Yes.

14 Q Which hand was the wedding band on?

15 A On his left hand.

16 Q But Mr. Demery, you went out there to this
17 cornfield with the Sheriff, Sheriff Stone, did you
18 not?

19 A No, I didn't.

20 Q Who did you go out there to the cornfield
21 with?

22 A The morning I was arrested, early -- well,
23 Sunday morning, I went out to the cornfield one time
24 with Detective Anthony Thompson, and Special Agent
25 Barry Lea, and then I went back -- last year around

1 May, it was about the second day I had been up there
2 to the SBI lab in Fayetteville, I went out there with
3 Special Agent Kim Heffney and Detective Thompson.

4 Q And when you went out there to this
5 cornfield, before you went out there to this
6 cornfield back in August 15th of 1993 that was on a
7 Sunday, wasn't it?

8 A Yes.

9 Q Before you went out there, you described
10 how you got to this cornfield from Bob's Landing
11 Mobile Home Park, did you not?

12 A Yes.

13 Q And Mr. Demery, when you arrived to the
14 cornfield that you had described, you couldn't find
15 any of the personal items, could you?

16 A I didn't go out there and look.

17 Q Well, Mr. Demery, did you see these
18 officers looking around in that cornfield?

19 A Last time I went, Special Agent Heffney and
20 Detective Thompson did walk around some looking for
21 it.

22 Q First time you went somebody walked and
23 looked?

24 A First time we went out there, that was for
25 the purposes of showing them where we had stopped.

1 Q Nobody got out of the car?

2 A May have, I don't remember.

3 Q Did Mark Locklear go with you?

4 A Yes, it was Mark Locklear and Special Agent
5 Barry Lea.

6 Q You showed them where you turned in that
7 cornfield off of that unpaved dirt road, didn't you?

8 A I showed them, I had told them as we were
9 going down 301 that we had taken a right on a state
10 maintained dirt road, we had to ride down through
11 that area, and just -- there were a few different
12 ones, and we road down them a little ways, and the
13 one that I was telling them about, we found it,
14 but --

15 THE COURT: Mr. Demery, for the
16 purposes of clarification in the record,
17 you testified that there were different
18 ones. What were you referring to.

19 THE WITNESS: Dirt roads, state
20 maintained dirt roads. I couldn't tell
21 them specifically at the time which one it
22 was because I didn't know myself, but I
23 knew the area that we were in to describe
24 it to them.

25 BY MR. THOMPSON:

1 Q How many unpaved dirt roads off of Highway
2 301 between 74 and Rowland did you turn down?

3 A About two or three -- like I said, there
4 were several down in that area, but --

5 Q Now, Mr. Demery, you gave the description
6 as to how you got to this cornfield when you
7 turned -- you made a left on Back Swamp Road as you
8 turned down the canal, isn't that right?

9 A Well, from the bridge --

10 Q Yes, sir.

11 A -- starting off, we did take a left but
12 that was like from the canal bank.

13 Q That's right. And then when you got to
14 301, you made a right, did you not?

15 A Yes.

16 Q Made a right on 301, headed toward Rowland,
17 isn't that right?

18 A Yes.

19 Q You told them that you got to this state --
20 you got to this dirt road and you made another right,
21 did you not?

22 A Somewhere down in that area, I told them
23 that we had made a right on the state maintained dirt
24 road.

25 Q When you went out there with these officers

1 you made a right on the dirt road, didn't you?

2 A Well --

3 Q The first dirt road?

4 A I don't remember whether it was the first,
5 second -- like I said, we found the one that I was
6 telling them about.

7 Q When you found the one that you were
8 telling them about, they didn't pick up anything out
9 there, did they?

10 MR. BRITT: Objection --
11 withdraw.

12 THE COURT: You may answer.

13 THE WITNESS: No, they didn't,
14 no.

15 BY MR. THOMPSON:

16 Q When you found the one that you were
17 telling them about, did you -- that's when you sat in
18 the car? You never got out of the car?

19 A I don't remember getting out of the car.
20 The second time I got out of the car and stood. It
21 was hot out, but as far as going out looking for
22 anything, no.

23 Q It was in this cornfield that you also
24 testified, I believe, papers were thrown out?

25 A Credit cards and stuff.

1 Q And stuff, what stuff?

2 A Well, credit cards.

3 Q Just credit cards?

4 A I remember credit cards specifically.

5 There may have been something else, but if there was,
6 I couldn't honestly sit here and tell you that I saw
7 it, but there was credit cards, I saw credit cards
8 thrown out.

9 Q Well, did you ever see those credit cards
10 again?

11 A No, no, I didn't.

12 Q Mr. Demery, you know that this cornfield
13 that you described is only a figment of your
14 imagination, didn't you?

15 MR. BRITT: Objection, move to
16 strike.

17 THE COURT: Motion to strike is
18 allowed. Members of the jury, don't
19 consider the last question by counsel for
20 the defendant. That matter is not to take
21 any part in your deliberation in this case
22 in any way. You may rephrase,
23 Mr. Thompson.

24 BY MR. THOMPSON:

25 Q Was there any physical evidence that was

1 recovered from that cornfield that you know of?

2 A Not that I'm aware of, I mean --

3 Q Now, you testified, Mr. Demery, that the
4 defendant here stuck his arm into the Lexus window
5 and he fired .38 caliber gun while you were there
6 near the rear of the vehicle, is that right?

7 A Yes.

8 Q Now, on August the 15th of 1993, when you
9 made a statement to SBI Agent Barry Lea, you
10 indicated to him that you got in your car and drove
11 your car to the defendant's house, did you not?

12 A I did tell him that, yes.

13 Q You told him that -- you didn't tell him
14 you were there at the rear of the car, did you?

15 A No.

16 Q May the 2nd of 1995, in your interview with
17 SBI Agent Heffney. While you were there in the
18 presence of your lawyer. Mr. Campbell, five days
19 after you agreed to testify truthfully in this case,
20 you stated that after hiding behind the sign, you
21 went to your car, did you not?

22 A Yes.

23 Q You stated that Daniel pulled a gun out and
24 went toward the Lexus, did you not?

25 A Yes.

1 Q You said that you were running towards your
2 car, didn't you?

3 A Yes.

4 Q You said Daniel was running toward the
5 Lexus, didn't you?

6 A Yes.

7 Q You stated that you and Daniel had been
8 separated a matter of seconds before you heard the
9 gunshot, isn't that right?

10 A Yes, I did.

11 Q You stated you were approximately 60 feet
12 away when Daniel fired the gun, isn't that right?

13 A Roughly, yes.

14 Q That's what you told Mr. Heffney in front
15 of your lawyer back on May 2nd of 1995, isn't that
16 right?

17 A Yes, it is.

18 Q Right after, five days after you told --
19 you signed a plea agreement and said you were going
20 to testify truthfully, isn't that right?

21 A Yes.

22 Q Now, Mr. Demery, you testified earlier that
23 the defendant pushed and you pulled the person in the
24 driver's seat across the console, isn't that right?

25 A Yes.

1 Q Now, on May the 2nd of 1993, when you held
2 your interview with Mr. Heffney in the presence of
3 your lawyer, Mr. Campbell, you said that after
4 getting into your car, you crossed over 74 and saw
5 Daniel in the driver's seat of the Lexus, did you
6 not?

7 A Yes, I did.

8 Q On May the 2nd of 1995 while you were in
9 the presence of your lawyer there being interviewed
10 by Mr. Heffney, you told them that you arrived at
11 Daniel's -- when you arrived at Daniel's house, you
12 saw the headlights coming down the canal bank down
13 Daniel's house, didn't you?

14 A Yes, over to the side of Daniel's house.

15 Q August the 15th of '93 you told SBI Agent
16 Lea that you noticed carlights coming down that
17 canal bank, didn't you?

18 A I may have. I don't recall for sure.

19 Q Mr. Demery, but you never mentioned to
20 Mr. Heffney, while in the presence of your lawyer,
21 that there was a radio pumping in that Lexus as you
22 saw these headlights coming down the canal, did you?

23 A No, I didn't, but if he would have asked.

24 Q You never told Mr. Lea that there was this
25 radio pumping in this Lexus as these headlights were

1 coming down the canal, did you?

2 A I don't recall whether I did or not. If
3 you -- if you would like, I could give an explanation
4 to, you know, give account of every statement that I
5 gave and every lie that I told, if that's what you
6 would like.

7 Q Mr. Demery, I want you to answer the
8 questions. Mr. Demery, you've testified that the
9 defendant drove the Lexus to Rowland Waste Treatment
10 Plant and then he went on Highway 71 -- Highway 501
11 to Pea Bridge as you were giving him directions, did
12 you not?

13 A Yes.

14 Q And on August the 15th of 1993, in your
15 handwritten, signed statement, Mr. Demery, you
16 stated, "After deciding to go to Pea Bridge, I then
17 got into the driver's seat and Daniel got into the
18 back seat and I took Highway 501 to Laurinburg and
19 then I believe I took a left on John's Road, crossed
20 over North Carolina-South Carolina line, and went to
21 Pea Bridge." That's what you said then, didn't you?

22 A I may have.

23 Q Well, if it's in your signed statement you
24 said it, didn't you?

25 MR. BRITT: Objection to the

1 form.

2 THE COURT: Mr. Thompson,
3 sometimes tone can make the question
4 argumentative, and I'm going to sustain the
5 objection.

6 MR. BRITT: Move to strike and
7 ask for instruction.

8 THE COURT: Allowed. Members of
9 the jury, don't consider last question by
10 counsel for defendant, that matter not to
11 take any part in your deliberation in any
12 respect. You may rephrase.

13 BY MR. THOMPSON:

14 Q Mr. Demery, on August 15th of 1993, in your
15 handwritten statement, you said, "I then got into the
16 driver's seat and Daniel got into the back seat, I
17 took Highway 501 to Laurinburg, I then" -- I believe
18 I took, I let -- excuse me. "I took a left on John's
19 Road, crossed over to the North Carolina-South
20 Carolina line, and I went to Pea Bridge." That's
21 what you told Agent Lea on August the 15th of 1993;
22 is that right?

23 A If it's in the statement, yes, I told him
24 that.

25 Q Thank you. Now, Mr. Demery, August the

1 15th of '93, in the signed handwritten statement that
2 you gave to Agent Lea, you indicated that it was
3 about 4:30 a.m. to 5:00 a.m. when the body was
4 dumped; isn't that right?

5 A I may have.

6 Q Well, if it's in the signed statement, you
7 said it, didn't you?

8 MR. BRITT: Objection to the
9 form.

10 THE COURT: Overruled.

11 THE WITNESS: If it's in the
12 statement, yes, I did say it.

13 BY MR. THOMPSON:

14 Q You testified in court that it was around
15 4:00 that you dumped the body at the -- that you left
16 the bridge; isn't that right?

17 A Yes, I did.

18 Q You got to the bank around 6:30?

19 A Yes.

20 Q Mr. Demery, you remember talking to Brandt
21 Clifton about where you had dumped the body or where
22 the body was found?

23 A Yes, yes.

24 Q Do you remember telling Mr. Clifton,
25 Mr. Demery, back on January the 11th of 1994, that

1 it -- the spot they say, you know, the authorities
2 say, they determined where Mr. Jordan was found,
3 that's -- that's not true at all?

4 A Wait a minute. Say that again. Repeat the
5 question, please.

6 Q This is you talking to Mr. Brandt Clifton.
7 Do you want me to repeat the question and then the
8 answer?

9 A I would like you to ask me the question
10 again, sir.

11 Q Do you recall Mr. Brandt Clifton saying to
12 you, "Okay, off 74 kind of by the bridge over by
13 I-95, is it right about where, right about there?"
14 And then in response to that question, you said it,
15 "The spot that they say, you know, the authorities
16 say they determine where Mr. Jordan was found, that's
17 not true at all." Do you recall making that comment
18 to Mr. Brandt Clifton?

19 A No, I don't. I don't recall saying that,
20 no.

21 Q But if it was in an audiotape of your
22 conversation with Mr. Brandt Clifton, you wouldn't
23 deny it, that you said it?

24 MR. BRITT: Objection.

25 THE COURT: Sustained.

1 MR. BRITT: Move to strike.

2 THE COURT: Allowed.

3 MR. BRITT: I ask for
4 instruction.

5 THE COURT: Don't consider the
6 last question asked by Mr. Thompson. That
7 matter is not to take any part in your
8 deliberations in this case in any respect.

9 BY MR. THOMPSON:

10 Q Mr. Demery, at some point you became aware
11 there was an audiotape of the conversation that you
12 had with Mr. Brandt Clifton, did you not?

13 A Yes, just a few hours later.

14 Q And how did it come to your attention?

15 A 6:00 news, Channel 11, they were talking
16 about it. And played about five seconds of it.

17 Q And that was your voice that you heard on
18 the 6:00 news, was it not?

19 A Yes, it was, yes. Yes.

20 Q And what you heard on the 6:00 news being
21 your voice was what you said, was it not?

22 MR. BRITT: Objection.

23 THE COURT: Well, rephrase, based
24 on his response.

25 BY MR. THOMPSON:

1 Q Mr. Demery, what you heard on the 6:00 news
2 was what you told Mr. Brandt Clifton --

3 MR. BRITT: Objection.

4 MR. THOMPSON: -- wasn't it?

5 THE COURT: That portion?

6 BY MR. THOMPSON:

7 Q The portion that you heard?

8 THE COURT: Overruled.

9 BY MR. THOMPSON:

10 Q That's what you told Mr. Clifton, wasn't
11 it?

12 A Yes.

13 Q And so I'll ask you, Mr. Demery, if you
14 heard your voice on an audiotape and it indicated
15 that you said it, "The spot they say, you know, the
16 authorities say they determined where Mr. Jordan was
17 found, that's not true at all," you wouldn't deny it
18 if it was your voice, would you?

19 MR. BRITT: Objection.

20 THE COURT: Sustained at this
21 point.

22 MR. BRITT: Might have to strike,
23 ask for instruction.

24 THE COURT: Allowed. Members of
25 the jury, Mr. Thompson, it's not been

1 established that that was contained in any
2 portion that may have been heard.

3 MR. THOMPSON: I understand.

4 THE COURT: Members of the jury,
5 don't consider the last question asked by
6 counsel for the defendant, that matter not
7 to take any part in your deliberation in
8 any respect.

9 BY MR. THOMPSON:

10 Q Do you deny saying this to Mr. Clifton
11 during that January 11th, 1994, interview:
12 Mr. Demery, I mean, I know this is going to sound
13 unbelievable but as I meant, he just didn't, he just
14 did not tell me, and really, you know, I wanted to
15 know, but then again, I didn't, you know, I'm not --
16 I just didn't want to hear it, you know, the only
17 thing I wanted to do is, you know, just get
18 uninvolved with it, you know. Did you say that to
19 Mr. Clifton?

20 A I'm going to have to ask you to say that
21 again.

22 Q All right, sir. Did you say these words to
23 Mr. Clifton. "I mean, I know, this is going to sound
24 unbelievable, but I meant he just didn't, he just did
25 not tell me, and really, you know, I wanted to know

1 but then again, I didn't, you know. I'm just -- I
2 just didn't want to hear it, you know. The only
3 thing I wanted to do, you know, was get, you know,
4 just get uninvolved with it, you know." Did you say
5 that to Mr. Clifton?

6 A If it was in the audiotape, I did say it,
7 but I don't recall saying it.

8 Q And Mr. Demery, if it was in -- if it's in
9 the audiotape that it's "the spot that they say, you
10 know, the authorities say they determined where
11 Mr. Jordan was found, that's not true at all," then
12 you wouldn't deny it?

13 MR. BRITT: Objection.

14 THE COURT: Sustained, it's
15 repetitious.

16 MR. BRITT: Move to strike.

17 THE COURT: Denied at this
18 point. It's repetitious.

19 MR. THOMPSON: May I have a
20 moment?

21 THE COURT: Yes, sir.

22 BY MR. THOMPSON:

23 Q Mr. Demery, you testified earlier that you
24 left the teller machine in Laurinburg and you went to
25 the canal bank about one mile from your house, and

1 that's when you began to throw papers out?

2 A No, I said we left the teller machine and
3 went to the canal bank there from the house. And at
4 the canal bank was one mile from my parents' house.

5 Q Okay. And you didn't throw any papers out?

6 A I never said that. I said earlier that I
7 did throw papers out at the canal bank.

8 Q And that's when you threw papers out after
9 you left the teller machine in Laurinburg and went to
10 the canal bank, is that when you threw papers out?

11 A Yes, when I got to the canal bank, yes.

12 Q And the canal bank is only about one mile
13 from your parents' house?

14 A Well, yeah, the bridge is not even like a
15 quarter of a mile, but like I said, before we drove
16 up the canal a good ways. And I would say from that
17 point where we stopped to the house, be about a mile.

18 Q And Mr. Demery, on August the 15th of 1993,
19 in your signed statement that you gave to Barry Lea,
20 SBI Agent Barry Lea, you stated that after buying
21 some \$10 worth of gas at Citgo on Highway 401, "We
22 then went back to Daniel's house and I drove."
23 That's what you told Mr. Lea on the 15th, did you
24 not, in your signed statement?

25 A I don't believe I did, but if it's in the

1 statement, I did say it.

2 Q And you told Mr. Lea in your signed
3 statement that, "We slept a couple of hours and then
4 we went near my house and went down behind the
5 canal." That's what you told Mr. Lea on the 15th,
6 didn't you, of August of 1993?

7 A If it's in the statement, I did say it.

8 Q Mr. Demery, earlier you testified in court
9 that you are certain that the defendant took the
10 shoes off of the man at Pea Bridge and he took the
11 jacket off in the cornfield; is that right?

12 A Yes.

13 Q Well, now, on May the 2nd of 1995, in -- in
14 the interview with SBI Agent Heffney there while your
15 lawyer Mr. John Campbell was present, some five days
16 after you agreed to testify truthfully for the State,
17 you told SBI Agent that at the bridge, Mr. Jordan's
18 jacket was taken off and possibly his shoes. That's
19 what you told Mr. Heffney then, did you not?

20 A If it's in the statement, I did say it,
21 yeah.

22 Q Now, Mr. Demery, you saw persons make call,
23 people make calls on that Lexus telephone besides the
24 defendant, didn't you?

25 A Yes.

1 Q You saw Dee make calls, Dee Sullivan?

2 A I don't recall seeing her make any.

3 Q Saw Melinda make calls?

4 A I can't recall seeing her make any.

5 Q You admit to at least one call that you
6 made on that Lexus?

7 A Yes, one.

8 Q Do you recall telling Brandt Clifton that
9 back on January the 11th of 1994 when he suggested to
10 you that somebody called the, quote, a 900 sex
11 number, end of quote, you told Brandt Clifton, "I
12 didn't make one phone call on that phone, you know."
13 Did you tell Mr. Clifton that?

14 A If it's on the audiotape, that's what I
15 told him.

16 Q Now, you took possession of the wedding
17 band, didn't you?

18 THE COURT: I'm sorry, repeat
19 your question.

20 BY MR. THOMPSON:

21 Q You took possession of the wedding band?

22 A I had it in my possession for a few days.

23 Q And you wore the golf shoes that were in
24 the trunk?

25 A One time on the way back from Fayetteville.

1 Q Mr. Demery, the first time you told the
2 story about you and the defendant going up to the
3 Lexus and stopping and -- I mean stooping, and the
4 defendant shooting a man in the Lexus and the man
5 saying anything, was on Monday, May the 8th of 1993
6 in Mr. Campbell's office; isn't that right?

7 A Yes, yes.

8 Q And because on May 2nd, 1995, then, when
9 Mr. Campbell was present, you never said anything
10 about seeing a man raise up in the Lexus, did you?

11 A No, I didn't, no.

12 Q I'm sorry, for reasons of clarity,
13 Mr. Demery, the first time that you -- excuse me. On
14 May the 2nd of 1995, when you were present with
15 Mr. Campbell in the SBI office over there in
16 Fayetteville, you never said anything about seeing a
17 man raise up in the Lexus, did you?

18 A No, I didn't, no.

19 Q Now, May the 2nd was on a Tuesday, isn't
20 that right, of 1995?

21 A I can't remember whether it was Tuesday
22 or --

23 Q All right. Do you remember that May the
24 8th of 1995 was on a Monday?

25 A It was, I don't remember what day it was.

1 I don't remember.

2 Q Now, Mr. Demery, between the time --
3 between May the 2nd of 1995 up until May the 8th of
4 1995, when you were in Mr. Campbell's office with SBI
5 Agent Heffney, had you talked to your lawyer, Hugh
6 Rogers?

7 A No.

8 Q Now, it was only May the 8th of 1995 at
9 some point during that interview that Mr. Rogers
10 entered into the room of Mr. Campbell?

11 A Yeah, that was the last day of -- that I
12 gave any kind of statement, the last day.

13 Q And you didn't come up with this last story
14 about how the man in the Lexus was killed until the
15 May 8, 1995, interview was just about over; isn't
16 that right?

17 MR. BRITT: Objection to the
18 form.

19 THE COURT: Ladies and gentlemen
20 of the jury, there's a matter of law the
21 Court must take up at this time out of the
22 hearing and presence of the jury. Please
23 recall my instructions in that regard.
24 Don't worry or speculate about what takes
25 place in the courtroom in your absence. If

1 all members of the jury would step to the
2 jury room, please.

3 (Jury out at 10:15 a.m.)

4 THE COURT: Let the record
5 reflect the following is being heard in the
6 absence of the jury. Mr. Britt.

7 MR. BRITT: Not only do I object
8 to the form of the question, but I make a
9 general objection there's an implication
10 that Mr. Rogers may have said something to
11 Mr. Demery to cause him to --

12 THE COURT: State versus Ligon,
13 Ligon is L-I-G-O-N, there's another case
14 I'm trying to remember the name of it now,
15 but two cases that I normally carry around
16 in my bench book that deal primarily with
17 argument and the impropriety of either
18 counsel for the State or counsel for the
19 defendant to allude to the jury in argument
20 that a lawyer has engaged in misconduct.

21 MR. THOMPSON: How did -- did I
22 do that?

23 THE COURT: Let me back up.

24 MR. BRITT: Page 38.

25 THE COURT: Yes, sir, that's

1 where I am.

2 MR. BRITT: Question, May 8,
3 1995, that Mr. Rogers entered into the room
4 with Mr. Campbell, yes, the last day, and
5 you didn't come up with this last story
6 about the man in the Lexus was killed until
7 May the 8th, 1995 interview was just about
8 over.

9 THE COURT: Until Mr. Rogers came
10 into the room.

11 MR. BRITT: Yes, sir.

12 THE COURT: And further
13 implication was as a result of Mr. Rogers
14 entering into the room, something was
15 suggested to the witness which led to the
16 revision of this statement in the later
17 part of that interview.

18 MR. THOMPSON: Well --

19 THE COURT: If you'll look at
20 question beginning on line 23, page -- I'm
21 sorry, line 24 page 38, "You didn't come up
22 with this last story about how the man in
23 the Lexus was killed until the May 8, 1995,
24 interview was just about over." That
25 follows the question, "Now, it was on May

1 the 8th of 1995 at some point during the
2 interview that Mr. Rogers entered into the
3 room." So you've got Mr. Rogers coming
4 into the room, and then some change or
5 revision about a critical point.

6 MR. THOMPSON: Well, that's what
7 happened. I mean, why does it have to
8 implicate --

9 THE COURT: My point is that if
10 that's argued to the jury, that there was
11 some nexus, some connection, in my view
12 that would violate State versus Ligon.

13 MR. THOMPSON: There's no
14 evidence of any impropriety of Mr. Rogers.

15 THE COURT: That's exactly
16 right. Then what's the point in making
17 that reference, that connection.

18 MR. THOMPSON: Because that's
19 what happened. Mr. Rogers came into the
20 interview at some point on May the 8th, as
21 I recall around 12:00, Mr. Heffney states
22 in his statement that it was at the end of
23 the interview where Mr. Demery --

24 THE COURT: What does the fact
25 that Mr. Rogers entered into the room and

1 then subsequently there was some change in
2 the statement mean to any issue in this
3 case?

4 MR. THOMPSON: Well, now, I don't
5 know at this point, and I'm not suggesting
6 that there is --

7 THE COURT: Well, if there isn't,
8 and you don't know, what is the purpose of
9 asking the question?

10 MR. THOMPSON: Because that's
11 what happened.

12 THE COURT: Lot of stuff
13 happened, which may or may not be relevant
14 or germane to matters at issue in this
15 case.

16 MR. THOMPSON: If he conducted
17 with him, I haven't gotten to that point,
18 you know, he made -- he could have
19 conducted with him.

20 MR. BRITT: Could have.

21 THE COURT: And what does that
22 mean, if that is established? Is your
23 ultimate point that whatever change in Mr.
24 Demery's statement was suggested to him by
25 counsel? Because that's where you're

1 headed. And unless you have a good faith
2 basis for that, that's in violation of
3 Ligon.

4 MR. THOMPSON: Well, I don't
5 necessarily -- well, I disagree with that,
6 Your Honor. Mr. Campbell was present
7 during all of the interview, nobody
8 suggested at this point that he's done
9 anything wrong. He was present at all the
10 interview, when he told things on May the
11 2nd that he thereafter changed on May the
12 8th. I mean, why does that necessarily --
13 it could be a logical inference, doesn't
14 have to be. Simply because they were
15 present.

16 THE COURT: Folks, what I'm
17 saying is that I'm going to provide you
18 folks with a copy of Ligon and the other
19 case. The citation on that other case
20 escapes me for the moment. That's
21 something I take very seriously. In the
22 past, I have stopped prosecutors from
23 arguing inferential matters along those
24 lines when there is no evidence to
25 supports. In my view, no good faith basis

1 for such a matter, unless such basis does
2 exist. It's inappropriate for lawyers to
3 engage in that line of questioning or to
4 argue it or set up inferences from which it
5 may be drawn if it's not relevant or
6 germane to the case.

7 At this point, the objection is
8 overruled. But I'm going on the record as
9 saying I will cut you off at the knees if
10 you argue this to the jury.

11 MR. THOMPSON: I've never
12 indicated that I was going to argue it to
13 the jury.

14 THE COURT: I'm just stating what
15 I'm going to do for the record.

16 Anything further?

17 MR. BRITT: Your Honor, I think
18 I'm entitled to a motion to strike, a
19 limited instruction, and based on --

20 THE COURT: I'm going to see
21 where he's going to take it on voir dire,
22 Mr. Thompson.

23 BY MR. THOMPSON:

24 Q Now, Mr. Demery, did you consult with
25 your -- strike that.

1 When was it during the interview on May the
2 8th of 1995 that you changed -- that you began to
3 tell this last story about you and the defendant
4 going up to the vehicle, him stooping down, him
5 shooting into the vehicle?

6 A Yes, May 8, right?

7 Q Yes, sir.

8 A I don't remember -- like I said -- the
9 date, the last date. But if it was on May the 8th
10 that I did that, it was -- if May the 8th was the
11 last day, then it was done on the 7th, 6th or the
12 7th. But see, Mr. Rogers was in Jamaica or somewhere
13 at that time. That's the reason he hasn't been
14 present during the whole thing.

15 Q So you're saying it was on May the 7th that
16 you began to tell this story to Mr. Heffney about you
17 and the defendant going up to the Lexus, you and the
18 defendant stooping down, the defendant shooting into
19 the vehicle, that was on May the 7th?

20 A Could have been 6th, 7th. Like I said, I
21 don't remember the dates for sure, but there were
22 only four days. It was about the third day that I
23 did change it, if I'm not mistaken.

24 Q And that's when you told -- so you're
25 saying it was the third day that you were interviewed

1 that you first gave the statement to SBI Agent
2 Heffney that you and the defendant went to the Lexus
3 vehicle together, you and the defendant stooped down,
4 the defendant stood up and shot into the vehicle,
5 that was on the third day that you were interviewed
6 in May of 1995?

7 A I remember it as being the third day.
8 Could have been the second.

9 Q Did you just bring that up in the middle of
10 the interview or had there been a break in the
11 interview when you brought it up?

12 A There had been -- I remember it as being a
13 weekend, like that Saturday and Sunday in between,
14 right? Okay, the day that I came out told this last
15 part, that morning before Mr. Heffney was even in the
16 building, I had -- Detective Thompson was the one
17 going over to the prison getting me, taking me over
18 here to Lumberton. And when we got to my attorney's
19 office, we got in there together, and like I say,
20 Mr. Heffney wasn't even in there yet. I told them
21 that morning, first thing when we got in there, I
22 told them that I had lied, deliberately lied about
23 something, and I wanted to tell it. And then when
24 Mr. Heffney came in, that's when I told him, and
25 that's when it was written down.

1 Q Who did you talk to over the weekend?

2 A Myself and people over the radio. I was at
3 the prison, I didn't talk to nobody over there. I
4 was in the hole, and when -- I meant when I say,
5 talking with "people over the radio," sitting there
6 listening to programs and giving them my comments,
7 even though they couldn't hear it, you know. I
8 didn't --

9 Q What do you mean giving them your
10 comments? I don't understand what you mean.

11 A Listening to the radio, right, program
12 comes on, they are talking about something, and they
13 would say something that I had a tendency to disagree
14 with, and I would say "That's bullshit," thing of
15 that nature.

16 Q Okay.

17 A Like I say, nobody was there with me.

18 THE COURT: Talking out loud.

19 THE WITNESS: Talking out loud.

20 MR. THOMPSON: I understand what
21 he's saying.

22 THE WITNESS: Just doing
23 something to keep from flipping, you know,
24 going crazy, losing my mind being in there
25 all by myself.

1 BY MR. THOMPSON:

2 Q So now that you recall it was on the
3 weekend, on a weekend when you decided that you were
4 going to tell this new story or this last story that
5 you've been testifying to --

6 A Yes.

7 Q -- and now do you recall that it was May
8 the 8th, that following Monday, May the 8th of 1995,
9 that you gave your last interview to SBI Agent
10 Heffney with Mr. Campbell present in his office, and
11 on that same day, Mr. Rogers walked into the office?

12 A If that Monday was the 8th, like I say, I
13 don't remember the dates, but if Monday was the 8th,
14 then it was the 9th that was the last date or the
15 last day of giving statements and all. And that's
16 the date that Mr. Rogers came back.

17 Q But you -- it's your testimony you had
18 given this statement about you and the defendant
19 coming to the Lexus, stooping down, the -- you and
20 the defendant standing up, and the defendant firing
21 into the Lexus, the day before at least Mr. Rogers
22 came into the office?

23 A Yes.

24 THE COURT: What nexus? So
25 there's no connection.

1 MR. THOMPSON: Yes, sir, I think
2 there is a connection. If it's nothing but
3 for a point of reference, Your Honor. I
4 mean, we're having now some problems
5 establishing when he gave this statement.
6 I think that's critical. This is cross.
7 We have a good faith reason for believing
8 that that's not when he gave it, when he's
9 testified to. And if he's going to use
10 Mr. Rogers as the --

11 THE COURT: You brought that, you
12 injected that in.

13 MR. THOMPSON: Well, right now
14 from the voir dire, that's the point of
15 reference in which he's made the statement,
16 that he made the statement changing this
17 story the day before Mr. Rogers.

18 THE COURT: Mr. Thompson, you
19 have the absolutely right to disagree.
20 Ultimately it's my decision to make. And
21 as I have already explained to you folks
22 already, any disagreement that we have, I
23 win.

24 MR. THOMPSON: Yes, sir.

25 THE COURT: So the objection is

1 sustained, motion to strike is allowed.
2 Exception is noted for the record. I'm
3 going the instruct the jury to disregard
4 that question and any inference that may be
5 drawn from that question. If you want to
6 rephrase for a point of reference as to
7 time, that's another matter.

8 MR. THOMPSON: As I did --

9 THE COURT: But as to the
10 question now phrased, I'm going to instruct
11 the jury that's an improper question and
12 not to be considered by them.

13 MR. THOMPSON: All right, sir.

14 THE COURT: Your exception is
15 noted for the record.

16 MR. THOMPSON: Now, for a matter
17 -- sake of clarity, Your Honor, and I mean
18 this clearly from what he's testified to on
19 voir dire, he's made his mind up prior
20 to --

21 THE COURT: You want to establish
22 a point of inconsistency for impeachment
23 purpose, then you may rephrase. But as
24 phrased, I'm going to sustain the
25 objection, allow the motion to strike, and

1 give an instruction to the jury.

2 MR. THOMPSON: Yes, sir.

3 THE COURT: Your exception is
4 noted for the record.

5 Bring the jury back in, sir.

6 (Jury in at 10:29 a.m.)

7 THE COURT: The objection is
8 sustained, motion to strike is allowed.

9 Members of the jury, I instruct you
10 that any question asked by counsel for the
11 defendant Mr. Thompson about when
12 Mr. Thompson -- strike that. -- When
13 Mr. Rogers may have entered the room in
14 reference to an interview or interrogation
15 of this witness, and any subsequent change
16 in this witness's statement, is to be
17 disregarded by you. That's an improper
18 question. And I instruct you that you are
19 not to consider that matter in any
20 respect. It's not to take any part in your
21 deliberations in any respect.

22 Exception is noted by the defendant on
23 the record. You may rephrase.

24 MR. THOMPSON: Thank you.

25 BY MR. THOMPSON:

1 Q Mr. Demery, at some point, you made up your
2 mind that you were going to change your statement
3 with respect to your being present when the man in
4 the Lexus was shot; isn't that right?

5 A Yes.

6 Q Now, when did you decide to change this
7 statement?

8 A I had a weekend to think about it.

9 Q And after that weekend, were you
10 interviewed again by SBI Agent Heffney?

11 A Yes, yes.

12 Q And who was present at that interview?

13 A My attorney, John Campbell, and Detective
14 Thompson.

15 THE COURT: When did this occur
16 in the context of what you've testified
17 about the weekend, was it the Monday
18 following, the Tuesday following?

19 THE WITNESS: The Monday, the
20 Monday.

21 BY MR. THOMPSON:

22 Q And did you tell SBI Agent Heffney on the
23 Monday following the weekend, that you and Daniel,
24 the defendant, went up to the Lexus, you -- and the
25 defendant stooped down, the -- you and the defendant

1 raised up, and the defendant stuck his hand in the
2 window and shot the man in the Lexus, was that on
3 Monday?

4 A Yes. Well, Monday, Monday. The very next
5 time we talked.

6 Q And now, did you give a statement to SBI
7 Agent Heffney at any time when both Mr. Campbell and
8 Mr. Rogers were present?

9 A Yes, that was -- well, discussions about
10 some other matters, not the murder.

11 Q Well, did you give it to him on Tuesday?
12 Did you give him a statement on Tuesday, Mr. Demery,
13 when Mr. Heffney, when Mr. Rogers and Mr. Campbell
14 was present?

15 A Yeah, Tuesday, Tuesday.

16 Q And wasn't that the day, Mr. Demery, that
17 you gave the first time that you told Mr. Heffney
18 that you and the defendant went over to the Lexus,
19 stooped down, stood up, and the defendant shot into
20 the Lexus?

21 A No, it was not. I could -- the reason it
22 was put at the very end of like everything is
23 because, like I said, there were several matters that
24 I was interrogated about, and at the very end I was
25 asked was there anything that I wished to change or

1 -- well, I mean, if I had lied in there anywhere,
2 was there anything that I wanted to clear up. And
3 that's the reason it was put at the end. And from
4 the understanding I got out of it, it was for
5 everything that we had discussed, you know. The
6 murder and other things, you know.

7 Q Mr. Demery, during the first interrogation
8 back in August the 15th of 1993, the officers there --
9 that was the tape-recorded conversation,
10 interrogation between you and the officers there at
11 the Robeson County Detention Center, they began to
12 tell you how they thought Mr. Jordan was killed; is
13 that right?

14 A Yes.

15 Q And they began to tell you that -- they
16 began to threaten you; is that right?

17 MR. BRITT: Objection to the
18 form.

19 THE COURT: Form?

20 MR. BRITT: And objection to the
21 question is hearsay.

22 THE COURT: Sustained.

23 BY MR. THOMPSON:

24 Q Well, Mr. Demery, do you recall filing an
25 affidavit in this case that was attached to a motion

1 to suppress your statement back on August the 15th of
2 1993?

3 MR. BRITT: Objection, would like
4 to be heard.

5 THE COURT: Ladies and gentlemen,
6 there's a matter of law the Court must take
7 up out of the hearing and presence of the
8 jury. Please recall my instructions in
9 that regard, don't worry or speculate about
10 what takes place in the jury room in your
11 absence. Please the step to the jury
12 room.

13 (Jury out at 10:38 a.m.)

14 THE COURT: The following is
15 being heard in the absence of the jury.
16 Mr. Thompson, if you show the affidavit,
17 have you got a copy of the affidavit?

18 MR. BRITT: Yes, sir.

19 THE COURT: What's the basis of
20 the objection?

21 MR. BRITT: One, it relates to
22 his trial, matters that were filed in his
23 trial are not relevant to his trial.

24 THE COURT: He's attempting to
25 impeach him by an affidavit that he signed

1 that he attested to as to prior statements
2 given, not what the officers may have said,
3 what the officers may have done, but his
4 affidavit.

5 MR. BRITT: At the same time it's
6 attached to a motion to suppress. If the
7 defendant was on the stand and I asked him
8 about matters --

9 MR. THOMPSON: But this is his
10 trial.

11 THE COURT: Let him finish.

12 MR. BRITT: If the defendant were
13 on the stand testifying on
14 cross-examination in this case, and I
15 attempted to cross-examine him about
16 matters contained in an affidavit to
17 suppress, I would not be allowed to do so.

18 THE COURT: You're correct. The
19 objection to reference to motion to
20 suppress is sustained. As to the
21 affidavit, it's overruled. Impeachment --
22 the affidavit without reference to what it
23 may have been attached to, do you want an
24 instruction?

25 MR. BRITT: Yes, sir.

1 THE COURT: Bring the jury back
2 in. Ask them to hold up, please.

3 MR. BRITT: One matter that was
4 not addressed yesterday, I think needs to
5 be addressed at this point. When -- there
6 was some matters that the Court admitted
7 for the limited purpose in regard to his
8 knowledge involving handguns and purchase
9 of guns. And the Court had informed the
10 jury that it would give an appropriate
11 instruction at the conclusion of that
12 examination in regard to the limited
13 purpose --

14 THE COURT: I thought I did. Let
15 me check the record.

16 MR. BRITT: You gave a limited
17 instruction at the beginning to establish
18 it was being offered for purpose of
19 impeachment, and then you indicated that
20 you were going to give an additional --

21 THE COURT: Access and
22 opportunity.

23 MR. BRITT: Yes, sir. And that
24 did not occur.

25 THE COURT: I apologize. There's

1 another matter we need to take up at this
2 point. State have a contention as to last
3 line of question developed on
4 cross-examination?

5 MR. BRITT: Yes, sir, I do.

6 THE COURT: May be premature on
7 at this point, what is your contention?

8 MR. BRITT: Your Honor, State's
9 contention as to the statement, go back to
10 page 53.

11 THE COURT: Yes, sir.

12 MR. BRITT: Beginning with the
13 question, "And now, did you give a
14 statement to SBI Agent Heffney at any time
15 with both Mr. Campbell and Mr. Rogers were
16 present?"

17 "Answer: Yes, that was -- well,
18 discussions about some other matters, not
19 the murder.

20 "Question: Well, did you give it to
21 him on Tuesday, did you give him a
22 statement on Tuesday, Mr. Demrey, when
23 Mr. Heffney, Mr. Rogers, Mr. Campbell were
24 present?

25 "Yes, Tuesday, Tuesday.

1 "Wasn't that the day that you gave the
2 first time that you told Mr. Heffney that
3 you and the defendant went over to the
4 Lexus, stooped down, stood up, and the
5 defendant shot into the Lexus?"

6 "Answer: No, it was not. I could --
7 the reason it was put at the very end," if
8 you go to the last line of that answer,
9 "you know, the murder and other things,
10 you know."

11 It's the State's position that the
12 defense has opened the door to the entire
13 statement given to Mr. Heffney.

14 THE COURT: Which would include
15 the July 4th Rowland matters.

16 MR. BRITT: Yes, includes a
17 break-in of a truck that's discussed,
18 includes the breaking and entering of
19 residence of David McClain, the subsequent
20 burning of David McClain's home, and would
21 also include a matter that occurred at the
22 Quality Inn in the week following the
23 murder of James Jordan where Mr. Demery has
24 stated that he and the defendant were back
25 out there for the purpose of robbing

1 someone.

2 MR. THOMPSON: Well, I certainly
3 don't think it opened the door, Your
4 Honor. This came after voir dire, where
5 the witness said that it was the day after
6 he gave the statement that Mr. Rogers and
7 Mr. Campbell was present. Now, he
8 indicated on voir dire that it was over the
9 weekend when he thought that -- when he
10 thought about changing his statement.
11 Based on that voir dire, I asked a good
12 faith question, I asked him when did he
13 think about changing that statement. He
14 indicated it was on the weekend. He then
15 said it was on Monday. During the voir
16 dire, he said it was on Tuesday. And
17 I'm --

18 THE COURT: I'm going to go back
19 and look at that question, but my
20 recollection is that is what he was
21 indicating in terms of when Mr. Rogers came
22 in.

23 MR. BRITT: Your Honor, go back
24 to page 52, the voir dire.

25 "Question: And after that weekend,

1 were you interviewed again by SBI Agent
2 Heffney.

3 "Answer: Yes, yes.

4 "Question: Who was present at that
5 interview?

6 "My attorney, John Campbell, and
7 Detective Thompson.

8 Question by the Court: "When did this
9 occur in the context of what you testified
10 about the weekend, was it the Monday
11 following the Tuesday following?"

12 "Answer: The Monday, the Monday.

13 Question by Mr. Thompson: "And did
14 you tell SBI Agent Kim Heffney on the
15 Monday following the weekend that you and
16 Daniel, the defendant, went to the Lexus,
17 you and the defendant stooped the -- you
18 and the defendant raised up, and the
19 defendant stuck his hand in the window and
20 shot the man in the Lexus, was that on
21 Monday?"

22 "Answer: Yes, well, Monday, Monday,
23 the very next time we talked."

24 Next question: "Did you give a
25 statement to SBI Heffney at any time when

1 both Mr. Campbell and Mr. Rogers were
2 present?" They opened the door.

3 THE COURT: Well, folks, I
4 understand your position. Mr. Thompson, my
5 ruling is that you did open the door. To
6 what extent, I want to think about, I want
7 to see a copy of the statement.

8 MR. BRITT: Yes, sir.

9 THE COURT: 403 also is a
10 consideration here.

11 MR. THOMPSON: Your Honor, if
12 there is a -- may I be heard with respect
13 to that? That statement indicates that
14 Mr. Rogers came in on May the 8th. That
15 was the last day of him giving the
16 statement, and that is when it's indicated
17 he changed -- it was inserted into the
18 statement Mr. Heffney says at the end of
19 this interview defendant -- I mean the --
20 Mr. Demery decided to change his
21 statement. Now, that was on May the 8th.
22 There is no indication in the statement
23 that we received from Mr. Britt that there
24 was a statement on Tuesday.

25 Now --

1 THE COURT: Folks I'm going to
2 look at the statement. I'm not going to
3 rule at this point as to what may come in.
4 My view is that you opened the door, but I
5 want to look at the statement first.

6 It's now almost 11:00. How much
7 additional cross-examination do you
8 anticipate Mr. Thompson?

9 MR. THOMPSON: Probably about 20,
10 20-something minutes, maybe not that long.

11 THE COURT: And I'm understanding
12 this is a matter that you intend to pursue
13 on redirect?

14 MR. BRITT: Yes, sir. This is a
15 matter that the Court cautioned the defense
16 about, especially in regard to July 4th,
17 after the 404(b) hearing that you would not
18 allow me to present that evidence unless
19 they opened the door to it. They have had
20 this statement that Mr. Demery gave
21 Mr. Heffney and Mr. Thompson since back in
22 May of 1995, they know the contents of this
23 statement. They know the parameters of the
24 ruling the Court has made, and they stepped
25 across those lines.

1 THE COURT: Early on, on
2 Mr. Demery's testimony on direct
3 examination, he referred without objection
4 to another robbery.

5 MR. BRITT: Yes, sir, and I did
6 not pursue that.

7 THE COURT: It came in early on
8 direct without objection.

9 MR. BOWEN: And may I speak?

10 THE COURT: Yes, sir.

11 MR. BOWEN: He said very quietly,
12 Mr. Thompson and I both knew we had heard
13 something, we both went to the record, we
14 saw it here, had we fully heard it, we
15 would have jumped up and objected, however
16 we saw it on the record, spoke quietly, and
17 we figured we would do more damage then to
18 jump up and talk about it, and discussed it
19 together. Just one of those things that
20 slipped in, I just did not hear it.

21 THE COURT: Let me look at the
22 statement. It's now quarter 'til. I'm
23 going to allow Mr. Thompson to complete his
24 cross-examination, we'll take a break.

25 MR. BRITT: Yes, sir.

1 THE COURT: Bring the jury in,
2 please.

3 (Jury in at 10:46 a.m.)

4 THE COURT: Members of the jury,
5 the objection to the question as phrased is
6 sustained. I instruct you that you are not
7 to consider the last question asked by
8 counsel for the defendant, Mr. Thompson.
9 It's not to take any part in your
10 deliberations in this case in any respect.

11 You may rephrase.

12 BY MR. THOMPSON:

13 Q Mr. Demery, you filed an affidavit back
14 on -- and signed -- excuse me. You signed an
15 affidavit dated November 30th of 1994 related to the
16 interrogation which took place back on August the
17 15th of 1993, did you not?

18 A If -- I don't remember the dates, but if it
19 was like an affidavit, motion, whatever, for the
20 suppression of that statement, yes.

21 Q And Mr. Demery, in that affidavit, you
22 indicated that the interrogation that took place on
23 August the 15th of 1993 had up to eight or nine
24 officers present while you were being interrogated;
25 is that right? That's what you put in your

1 affidavit.

2 A I don't know -- well, it was read to me,
3 but I can't remember what was put in it. I mean, my
4 attorneys handled that.

5 Q You stated in your affidavit that the
6 interrogation was conducted in a room at the Robeson
7 County Detention Center, did you not?

8 A I didn't put it -- like I said before, I
9 didn't put it in there. My attorneys did their job,
10 and I did mine.

11 Q And --

12 THE COURT: Mr. Thompson, do you
13 want to establish what an affidavit is?

14 MR. THOMPSON: Well, not at this
15 point, Your Honor.

16 THE COURT: Okay.

17 BY MR. THOMPSON:

18 Q Mr. Demery, you were alone in the Robeson
19 County Detention Center with no friends or family
20 members present back on August 15th of 1993?

21 A Yeah, there wasn't any family members
22 around. It was just law enforcement officers.

23 Q You were told that you were under arrest
24 but they, meaning the officers, had not decided what
25 you were going to be charged with yet?

1 MR. BRITT: Objection.

2 MR. THOMPSON: Your Honor, this
3 is for subsequent conduct.

4 THE COURT: Overruled.

5 MR. BRITT: Ask for an
6 instruction.

7 THE COURT: Members of the jury,
8 the matters now being elicited are being
9 elicited for twofold purposes. First, for
10 purpose of impeachment as I previously
11 defined that term for you. But I instruct
12 you that as to any matters relating to
13 statements which were purportedly made by
14 others, you may not consider such matters
15 for the truth of the matters asserted, but
16 simply to explain the subsequent conduct of
17 this witness. And you may consider these
18 matters for those limited purposes and no
19 others. Yes, sir.

20 MR. THOMPSON: Thank you, Your
21 Honor.

22 BY MR. THOMPSON:

23 Q Let me ask you this question again. You
24 were told that you were under arrest but they,
25 meaning the officers, had not decided what you were

1 going to be charged with yet; is that right?

2 A Referring to the night of the 15th?

3 Q Yes, sir.

4 A I don't remember. I may have been told
5 that, I don't remember.

6 Q The officers made State's Exhibit to you
7 that indicated to you that you would face lighter
8 charges and punishment if you made a statement and
9 would face harder charges and punishment, including
10 the death penalty, if you did not make a statement?

11 MR. BRITT: Objection.

12 THE COURT: Sustained.

13 MR. BRITT: Move to strike.

14 BY MR. THOMPSON:

15 Q You stated, Mr. Demery, that in your
16 affidavit that "The officers made statements to me
17 that indicated to me that I would face lighter
18 charges and punishment if I made a statement and
19 would face harsher charges and punishment, including
20 the death penalty, if I did not make a statement."

21 A You mean on the affidavit?

22 Q Yes, sir.

23 A I didn't state anything. Like I said
24 before, I let my attorneys do their job.

25 Q But the officers told you that?

1 MR. BRITT: Objection.

2 THE COURT: Sustained.

3 MR. BRITT: Move to strike.

4 THE COURT: Allowed.

5 BY MR. THOMPSON:

6 Q During this interrogation, you stated in
7 the affidavit that you felt intimidated by the group
8 of officers?

9 A Again, I didn't state anything in the
10 affidavit, I allowed my attorneys to do their job.

11 Q Did you feel intimidated by the group of
12 officers, Mr. Demery, back on August the 15th of
13 1993, when you were interrogated?

14 A I don't recall being, feeling intimidated.
15 I was scared, of course, but --

16 Q Your answer is you were scared but you
17 don't recall being intimidated?

18 A Like I say -- well, yes, yes, that's my --

19 Q So you were intimidated?

20 A No.

21 Q Oh, your answer is that you recall that you
22 were scared but you don't recall being intimidated,
23 that's your answer?

24 A Scared about what I was getting ready to
25 get, all these charges. But as far as letting these

1 men in this room intimidate me, or that room, that
2 night, no, I didn't.

3 Q Several of them were -- you stated in your
4 affidavit, "Several of them were interrogating me at
5 one time and were using profanity"?

6 A I didn't state that in an affidavit, but
7 that did happen, yes.

8 Q You stated that statement. In your
9 affidavit, statements were made which indicated that
10 you could not get a fair trial because of the
11 identity of the victim?

12 MR. BRITT: Objection.

13 THE COURT: Overruled. Is that
14 what you stated?

15 THE WITNESS: Not in the
16 affidavit, no, sir, I did not, no.

17 BY MR. THOMPSON:

18 Q "Statements were made to me," you stated in
19 the affidavit, "statements were made to me regarding
20 the presence of an FBI agent which led me to think
21 that I might be charged with Federal crimes as well
22 as whatever charges the interrogating officers
23 decided to charge me with." You stated that in your
24 affidavit?

25 A No, I did not, no.

1 Q You stated in your affidavit that "A
2 portion of the interrogation was tape-recorded and I
3 did not mind the tape recorder running because I
4 wanted the interrogation to be accurately recorded."
5 You stated that, didn't you?

6 A No, I did not.

7 Q In fact a portion of the interrogation was
8 tape-recorded, was it not?

9 A Yes, a portion was.

10 Q And you did not mind that the tape recorder
11 run because you wanted the interrogation to be
12 accurately recorded; isn't that right?

13 A It wasn't my place, I mean, whether I
14 minded or not, they were going to run the tape
15 recorders. What could I have said?

16 MR. THOMPSON: May I approach the
17 witness?

18 THE COURT: Yes, sir.

19 (Defense Exhibit 29 was
20 marked for identification.)

21 BY MR. THOMPSON:

22 Q Mr. Demery, I hand you what's been marked
23 as Defendant's Exhibit Number 29. What is
24 Defendant's Exhibit Number 29?

25 A Is an affidavit.

1 Q And on the second page of Defendant's
2 Exhibit Number 29, is that your signature above the
3 typewritten name "Larry Martin Demery"?

4 A Yes, it is.

5 Q And it is dated November the 30th of 1994?

6 A Yes.

7 Q And it was "Sworn to and subscribed before
8 me, this 30th day of November, 1994."

9 A Yes.

10 Q Sworn to you before Hubert N. Rogers, III?

11 A Yes.

12 Q Hubert N. Rogers, III, your attorney?

13 A Yes, he is, yes.

14 Q And this affidavit is -- in this affidavit,
15 you state that you were interrogated with up to eight
16 or nine officers being present at one time including
17 members of the Cumberland County Sheriff's
18 Department, Robeson County Sheriff's Department,
19 State Bureau of Investigation, and Federal Bureau of
20 Investigation, did you not?

21 MR. BRITT: Objection, document
22 speaks for itself.

23 THE COURT: Okay. It's being
24 offered for impeachment purpose?

25 MR. THOMPSON: Yes, sir.

1 THE COURT: Overruled.

2 THE WITNESS: I did not state
3 anything in this affidavit.

4 BY MR. THOMPSON:

5 Q You signed the affidavit?

6 A Yes, I did. But like I've said before, I
7 allowed my attorneys to do their job. My attorney
8 came to me, had put this together. Like I said, he
9 was doing his job. The State appointed my these two
10 men at the end of this table to worry about me, take
11 care of me. They never appointed me to myself. I've
12 never been paid a dime to worry about this and try to
13 get me off of it. That was their job. And I hadn't
14 worried myself about it.

15 Q Mr. Demery, you were interrogated with up
16 to eight or nine officers being present at one time,
17 weren't you?

18 A Yes, the night of August the 15th.

19 Q And that's true, isn't it?

20 A Yes.

21 Q And including members of the Cumberland
22 County Sheriff's Department, Robeson County Sheriff's
23 Department, State Bureau of Investigation, and
24 Federal Bureau of Investigation?

25 A Yes, but --

1 THE COURT: Mr. Thompson, counsel
2 table. You can impeach him there.

3 MR. THOMPSON: Yes, sir.

4 THE COURT: You may continue.

5 MR. THOMPSON: Yes, sir.

6 BY MR. THOMPSON:

7 Q And that included members of the Cumberland
8 County Sheriff's Department, Robeson County Sheriff's
9 Department, State Bureau of Investigation, and
10 Federal Bureau of Investigation; isn't that right?

11 A I remember several different law
12 enforcement agencies being involved.

13 Q This interrogation was conducted in a room
14 at the Robeson County Detention Center; isn't that
15 right?

16 A Yes, it was.

17 Q And that's in your affidavit?

18 A Yes, it's in there.

19 Q And you were alone with no friends or
20 family member present, that's in your affidavit?

21 A Yes, I guess it is. I didn't --

22 Q Well, you just saw, read your affidavit,
23 didn't you, Mr. Demery?

24 THE COURT: You can ask him if
25 that's so, let him point that out.

1 THE WITNESS: That is true, you
2 know, but --

3 BY MR. THOMPSON:

4 Q But it's also in your affidavit, isn't it?

5 A I didn't see it. It just scanned over the
6 part that you were pointing out.

7 MR. THOMPSON: May I?

8 THE COURT: Yes, sir.

9 BY MR. THOMPSON:

10 Q In your affidavit, it says, "I was alone
11 with no friends or family members present." Doesn't
12 it?

13 A Yes, it does.

14 Q That's what it states?

15 A Yes.

16 Q And that's what you said in your affidavit?

17 A No, I did not. Mr. Thompson, you keep
18 asking me did I state this in this affidavit. No, I
19 didn't. I've never denied that these things didn't
20 happen or that I didn't say this, but not in this
21 affidavit.

22 Q All right. The interrogation lasted
23 approximately nine hours, didn't it?

24 A It was a long time.

25 Q That was in your affidavit?

1 A I didn't see -- you'll have to bring it
2 back and let me read it again.

3 THE COURT: Let's take a break at
4 this time, Mr. Thompson, we'll come back.

5 Ladies and gentlemen, we're going to
6 take the mid-morning recess at this time.
7 There's some matters that I anticipate will
8 take us a little longer than the normal 20
9 minutes, so I'll give you now until 11:30.
10 Please recall that it is your duty to abide
11 by all prior instructions of the Court
12 concerning your conduct. Everyone else
13 please remain seated, the members of the
14 jury are excused.

15 (Jury out at 11:01 a.m.)

16 THE COURT: Let the record
17 reflect the following is being heard in the
18 absence of the jury.

19 If the affidavit was filed in the
20 court filed, it's public record. If
21 information contained in the affidavit was
22 information communicated by the witness to
23 his lawyers, then placed into a public
24 document, it's not privileged, it's not
25 confidential, and he can be asked whether

1 or not he told his lawyers that
2 information, whether that information is
3 true, and we can eliminate all the talk
4 about what he put in the affidavit because
5 what he told us is that he didn't prepare
6 the affidavit. The point is to establish
7 that the information in the affidavit came
8 from him. True?

9 MR. THOMPSON: Yes, sir.

10 THE COURT: Okay. Why don't we
11 take a break, folks, then we'll come back.

12 MR. THOMPSON: Your Honor.

13 THE COURT: Yes, sir,
14 Mr. Thompson.

15 You can ask him, didn't you tell your
16 lawyers this, wasn't it true, didn't you
17 contend it was true at the time the
18 affidavit was filed.

19 MR. THOMPSON: Yes, sir. The
20 thing is, it was sworn to before --

21 THE COURT: Yes, sir.

22 MR. THOMPSON: -- before
23 Mr. Rogers, and I don't want to be --

24 THE COURT: I understand. That's
25 public document.

1 MR. THOMPSON: I understand.

2 Okay.

3 THE COURT: You can establish
4 that. You've already done that without
5 objection.

6 MR. THOMPSON: I've already done
7 that, yes, sir.

8 THE COURT: I mean, you don't
9 have any difficulty in that respect because
10 it's part of the public record.

11 MR. THOMPSON: Okay.

12 THE COURT: We'll come back.
13 Folks, I anticipate that I'm going to need
14 some time to look at the statement.

15 MR. BRITT: Yes, sir.

16 THE COURT: What I'll propose is
17 that we'll go forward with your
18 cross-examination at 11:30, see where we
19 are in terms of the lunch hour, that will
20 give me an opportunity to at least review
21 the materials.

22 Do you folks have some case law you
23 want me to look at, let me look at it. But
24 there is an abundance of case law out there
25 about opening the door through matters

1 excluded you had under 404(b) hearing.

2 MR. BOWEN: If you don't have a
3 calendar handy, I do want you to be aware
4 that May the 2nd is on a Tuesday, so there
5 is at least a Tuesday during which you'll
6 see in that statement that nothing was
7 talked about other than this case which we
8 talked about here.

9 THE COURT: That's fine.

10 MR. BOWEN: Basically that's true
11 all throughout the statement.

12 THE COURT: That's fine, you're
13 entitled to go into that.

14 MR. BOWEN: We were not on
15 notice, at least not at that filing of
16 statement, that anything else occurred on
17 the Tuesday following, in fact --

18 THE COURT: Any disagreement that
19 you folks were on notice about the danger
20 of matters excluded by the Court's order on
21 the 404(b) hearing potentially coming in on
22 cross or redirect if doors were opened on
23 cross.

24 MR. BOWEN: Yes, sir, but we just
25 simply say that we were innocuously trying

1 to determine who was present on that
2 Tuesday that statements were made about
3 this case. I mean, I don't think
4 Mr. Thompson alluded to anything except
5 what involved this case and who was there.

6 THE COURT: I'm not disagreeing
7 that that was not his intent, but folks, in
8 this area, I mean, essentially a lawyer is
9 dancing on the precedents.

10 MR. BOWEN: But our information
11 is there was no interview on Tuesday. The
12 following Tuesday on only the first
13 Tuesday, nothing as far as we know what we
14 were given indicates anything was discussed
15 at all about other robberies on the first
16 Tuesday, May 2nd. Our discovery indicates
17 that no interviewing took place at all on
18 the following Tuesday, which would have
19 been the 9th.

20 MR. BRITT: They have in their
21 possession a 26 page document that was made
22 and dictated from the information that
23 Larry Demery gave Mr. Heffney, begins on
24 May the 2nd, 1995, where they talked --
25 where he tells them about the matters

1 involving the death of Mr. Jordan. Let me
2 go back, because he was interviewed on May
3 the 2nd, 3rd, May the 4th, and then again
4 on the 8th.

5 MR. THOMPSON: And Mr. Rogers
6 only came in there on the 8th at some time
7 on the 8th.

8 MR. BRITTE: This goes back to the
9 hearing that we had outside the presence of
10 the jury where you said there was no nexus
11 that they could show Mr. Rogers in any way
12 influenced -- I mean, by Mr. Thompson's own
13 statement, that's the purpose they are
14 trying to go back for, that was the purpose
15 for asking the question. And in asking the
16 question, they didn't say, did you talk to
17 Mr. -- were you present when you gave the
18 interview when Mr. Campbell and Mr. Rogers
19 were present and you only talked about the
20 Jordan murder case. They asked an
21 open-ended question, knowing full well what
22 was contained in the interview and the
23 documents that they have, they they have
24 opened the door. They can't deny it.

25 MR. THOMPSON: We'll deny it.

1 The purpose of the question was as I stated
2 before, Your Honor.

3 THE COURT: You have an
4 opportunity to be heard.

5 MR. BRITT: The art of
6 cross-examination is to control the
7 witness. You don't ask questions that you
8 don't know the answer to. They asked a
9 question knowing that this information was
10 in this document, knowing we had a 404(b)
11 hearing where you had put them on notice,
12 if you open the door on cross-examination
13 as to July the 4th, it can come in.

14 They did that.

15 THE COURT: Mr. Thompson?

16 MR. THOMPSON: I've already
17 stated my position, Your Honor, I mean
18 that -- it was in the statement that
19 Mr. Rogers came in on the 9th. It's in the
20 statement that the change was made on the
21 9th, which was a Monday. There is nothing
22 in the statement.

23 MR. BRITT: I'll let you read the
24 statement.

25 THE COURT: I understand your

1 positions. I'm going to look at the
2 statement, rule based on what is before
3 me. If you'll hand it up, please.

4 MR. BRITT: I need to make a copy
5 of it.

6 THE COURT: We're at ease until
7 11:30.

8 (Brief recess.)

9 THE COURT: Let the record show
10 that all counsel are present, the defendant
11 is present in open court. Let's bring
12 Mr. Demery in. What I would like to do is
13 go forward with the cross-examination,
14 conclude that.

15 The Court has been provided a copy of
16 the statement purportedly made by
17 Mr. Demery during the time period beginning
18 May 2nd through, according to this
19 document, May 8th, 1995, but has not had
20 the opportunity to review it. I've been
21 looking at some case law.

22 I what I propose to do, folks, is go
23 forward with the cross-examination. Prior
24 to doing any redirect examination, we'll
25 take the other matter up. Is that

1 agreeable?

2 MR. THOMPSON: Yes, sir.

3 THE COURT: Bring the jury in,
4 please.

5 (Jury in at 11:30 a.m.)

6 THE COURT: Yes, sir,

7 Mr. Thompson.

8 BY MR. THOMPSON:

9 Q Mr. Demery, did you tell your lawyers that
10 the interrogation lasted approximately nine
11 hours?

12 MR. BRITT: Objection.

13 THE COURT: Rephrase in the time
14 frame.

15 BY MR. THOMPSON:

16 Q With respect to your affidavit, Mr. Demery,
17 Defendant's Exhibit Number 29, did you -- it appears
18 in your affidavit that you stated the interrogation
19 lasted approximately nine hours. Is that what you
20 told your lawyers?

21 THE COURT: Now, what specific
22 interrogation are you referring to and what
23 date?

24 MR. THOMPSON: Okay.

25 BY MR. THOMPSON:

1 Q We're talking about the interrogation on
2 August the 15th of 1993. This is what the affidavit
3 is referring to, is it not?

4 A Yes, roughly nine hours.

5 Q And is that statement true, that it was
6 approximately nine hours, the interrogation?

7 MR. BRITT: Objection to the
8 form.

9 THE COURT: Overruled. You may
10 answer.

11 THE WITNESS: Not approximately.
12 Like I said before, roughly.

13 MR. THOMPSON: May I proceed?

14 THE COURT: Yes, sir.

15 BY MR. THOMPSON:

16 Q It's in your affidavit that I was told that
17 "I was under arrest but that they," parenthesis,
18 officers, parentheses close, "had not decided what I
19 was going to be charged with." Did you tell your
20 lawyers that?

21 MR. BRITT: Objection, asked and
22 answered.

23 THE COURT: Well, we have been
24 over it, but I'm going going to allow it.
25 You may answer.

1 THE WITNESS: Yes, I'm sure at
2 some time I did tell them that.

3 BY MR. THOMPSON:

4 Q Was that statement true?

5 A Yes.

6 Q And you stated in your affidavit, didn't
7 you, that "The officers made statements to me that
8 indicated to me that I would face lighter charges and
9 punishment if I made a statement and would face
10 harsher charges and punishment, including the death
11 penalty, if I did not make a statement." That
12 appears in your affidavit, does it not?

13 MR. BRITT: Objection.

14 THE COURT: Overruled. If you
15 can answer, you may.

16 THE WITNESS: Like I say, before
17 I didn't state anything in the affidavit.
18 But at times that was said, yes.

19 BY MR. THOMPSON:

20 Q And you told your lawyers that?

21 A Yes, I told my lawyers that, yes.

22 Q And it appears in the affidavit that you
23 stated, "During this interrogation I felt intimidated
24 by the group of officers," and that's true, isn't
25 it?

1 MR. BRITT: Objection, as to the
2 form, it appears in the affidavit.

3 BY MR. THOMPSON:

4 Q You stated -- excuse me.

5 THE COURT: Rephrase.

6 BY MR. THOMPSON:

7 Q You stated in the affidavit that "During
8 this interrogation I felt intimidated by the group of
9 officers," did you not?

10 A Like I said before, I didn't state until
11 anything in that affidavit.

12 Q You told your lawyers --

13 A Well --

14 Q -- that you felt intimidated by the group
15 of officers?

16 A That I may have been put in there, I don't
17 remember telling them that. I told them I was
18 scared, you know, but like I said before, they -- my
19 attorneys prepared this affidavit, they went on
20 transcripts from the initial interrogation and from
21 things that I had told them. But like I said, I
22 haven't read it all the way through.

23 THE COURT: If you'll listen to
24 Mr. Thompson's questions, please,
25 Mr. Demery, if you'll phrase your questions

1 accordingly.

2 BY MR. THOMPSON:

3 Q Well, is it true that you felt intimidated
4 by the group of officers?

5 MR. BRITT: Objection, asked and
6 answered three times.

7 THE COURT: Overruled. You may
8 answer.

9 THE WITNESS: No.

10 BY MR. THOMPSON:

11 Q But you indicate that you weren't sure
12 whether it was in your affidavit, is that your
13 testimony, whether you made that statement or
14 not?

15 MR. BRITT: Objection.

16 THE COURT: Ask him additional
17 questions, Mr. Thompson.

18 BY MR. THOMPSON:

19 Q Did you state in your affidavit that
20 "Several of them were interrogating me at one time
21 and were using profanity," Mr. Demery?

22 A I didn't state in the affidavit that I said
23 that, but like I said before, my attorneys put it
24 together.

25 Q Did you tell your lawyers, Mr. Demery, that

1 "Several of them were interrogating me at one time
2 and were using profanity"?

3 A Yes, I have told my lawyers that.

4 Q And is it true that several of them were
5 interrogating you and one time -- were interrogating
6 you at one time and were using profanity?

7 A Yes.

8 MR. BRITT: Objection, asked and
9 answered.

10 THE COURT: Overruled.

11 BY MR. THOMPSON:

12 Q Did you tell your lawyers that "Statements
13 were made which indicated that I could not get a fair
14 trial because of the identity of the victim"?

15 MR. BRITT: Objection, to the
16 form.

17 THE COURT: Do you want to be
18 heard, Mr. Britt?

19 MR. BRITT: Involves a privileged
20 matter, as phrased.

21 THE COURT: Overruled. You may
22 answer.

23 THE WITNESS: Yes.

24 BY MR. THOMPSON:

25 Q And is that statement true, that statements

1 were made which indicated you could not get a fair
2 trial because of the identity of the victim?

3 A Yes, that statement was made, yes.

4 Q Who was it made by?

5 MR. BRITT: Objection.

6 THE COURT: Sustained.

7 BY MR. THOMPSON:

8 Q Did you tell your lawyers that statements
9 were made to you regarding the presence of an FBI
10 agent that led you to think that you might be charged
11 with Federal crimes as well as whatever charge the
12 interrogating officers decided to charge you with?

13 A Yes.

14 Q And was that true?

15 A Yes.

16 Q And did you tell your lawyers that "A
17 portion of the interrogation was taped recorded and I
18 did not mind the tape recorder running because I
19 wanted to interrogation to be accurately recorded"?

20 A No, I didn't tell them that, no.

21 MR. THOMPSON: May I approach the
22 witness?

23 THE COURT: Yes, sir.

24 BY MR. THOMPSON:

25 Q I hand you what's been marked, again, as

1 Defendant's Exhibit Number 29, your affidavit.

2 Mr. Demery, does it state in your affidavit that "A
3 portion of the interrogation was tape-recorded and I
4 did not mind the tape recorder running because I
5 wanted the interrogation to be accurately recorded"?

6 A Yes, it is there, yes.

7 Q Is that true?

8 A No, it's not. But like I said before, I
9 didn't have a choice in the matter. I mean, if I --

10 Q What do you mean, you didn't have a choice,
11 Mr. Demery?

12 MR. CAMPBELL: Well --

13 THE COURT: Does anybody want to
14 be heard?

15 MR. CAMPBELL: Yes, sir.

16 THE COURT: Ladies and gentlemen,
17 there's a matter of law the Court must take
18 up out of the hearing of the jury. Please
19 recall my instruction, don't worry or
20 speculate about what takes place in the
21 courtroom in your absence. Please step to
22 the jury room.

23 (Jury out at 11:39 a.m.)

24 MR. THOMPSON: I can be seated,
25 Your Honor?

1 THE COURT: Yes, sir.

2 Mr. Campbell?

3 MR. CAMPBELL: Yes, sir. My
4 objection is to the, pardon the expression,
5 in-your-face approach to the examination of
6 this witness. The document he has in his
7 hand, I don't see that there's any
8 advantage in getting up in the box with
9 him --

10 THE COURT: Now, that,
11 Mr. Campbell, I understand your concern,
12 but that's a trial objection. That's an
13 objection made by counsel for the State,
14 Mr. Johnson Britt. You and Mr. Rogers are
15 here to protect any attorney-client
16 privilege or communicated matters that may
17 exist, any confidential matters. That
18 that's the only, in my view, that's the
19 only basis upon which you have to object.
20 Any other trial matters are for counsel for
21 the State. That's a trial matter. So that
22 objection is overruled. Exception is noted
23 for the record.

24 MR. THOMPSON: Request
25 instruction, Your Honor, to the jury.

1 THE COURT: Well, I'm simply
2 going to tell them that the objection is
3 overruled, and that's it.

4 MR. BRITT: Then I'll join in
5 Mr. Campbell's motion in his objection.

6 Mr. Thompson has repeatedly gone to
7 the witness stand. The rules state you can
8 go to the witness stand for purpose of
9 interrogation to show a witness an
10 exhibit. When you concluded that --

11 THE COURT: Did predicate.

12 MR. BRITT: -- you are to sit
13 down. He shows it to him, he takes it away
14 from him, and then continues to ask him
15 matters unrelated to the exhibit.

16 MR. THOMPSON: Your Honor, may I
17 be heard with respect to that?

18 THE COURT: Yes, sir.

19 MR. THOMPSON: I went to the
20 witness, asked him, he denied telling his
21 lawyers that "A portion of the
22 interrogation was tape-recorded, and I does
23 not mind the tape recorder running because
24 want it to be accurate." Then I approached
25 the witness, asked him, showed him the

1 exhibit, and asked him was it not in his
2 affidavit that the "A portion of the
3 interrogation was tape-recorded, and I did
4 not mind the tape recorder running because
5 I want the interrogation to be accurately
6 recorded."

7 He said yes, then he volunteered and
8 said while I was standing there this stuff
9 about his lawyers. And then there was an
10 objection. And -- no, not about his
11 lawyers, but -- what was his comment. I
12 said, "What do you mean by that?" And
13 that's when the objection was.

14 THE COURT: Mr. Thompson, I asked
15 you earlier on if you want to establish for
16 purposes of the record what an affidavit
17 is, it's a statement under oath.
18 Presumably before one signs a statement
19 under oath, one would have the opportunity
20 to review it, make sure it's correct, make
21 any corrections that are known; something
22 that a person places his left hand on the
23 Bible, raises his right, and swears to tell
24 the truth, the whole truth and nothing but
25 the truth.

1 MR. THOMPSON: Yes, Your Honor,
2 and I indicated to you at that time that I
3 did not want to establish it, and as soon
4 as I finish --

5 THE COURT: Has to be established
6 that it has been reviewed in its entirety,
7 no corrections were made, and he's had an
8 opportunity to make any changes if he
9 wished to in the affidavit for purposes of
10 using it for impeachment. Ask him whether
11 it was sworn to.

12 MR. THOMPSON: Yes, sir. That
13 was --

14 THE COURT: Okay.

15 MR. THOMPSON: That is the last
16 question on this, and then I'm getting to
17 where it was sworn to. That's what I
18 intend to do that.

19 THE COURT: What is the purpose
20 of the affidavit in what are you using the
21 affidavit for?

22 MR. THOMPSON: As you indicated
23 to the jury, instructed the jury for
24 impeachment.

25 THE COURT: Bearing on

1 credibility under 611-B. Any other matters
2 that may apply in the interest of
3 statements with whatever, but if you're
4 using it for a purpose, then you have to
5 lay a foundation for that.

6 The objection is overruled at this
7 point, but I'm going to direct that you
8 rephrase your question.

9 MR. THOMPSON: Well, let me go
10 back to -- the question was what did you
11 mean -- let me go back to that, Your
12 Honor.

13 THE COURT: Let's do that on voir
14 dire so we can eliminate the need for the
15 jury going out again. Your last question
16 to the witness.

17 MR. THOMPSON: Was "What do you
18 mean by that," or something, that's what I
19 said.

20 THE COURT: Prior question, line
21 91 -- strike that.

22 Page 91, line 6, "Hand you what's been
23 marked again as Defendant's Exhibit 29,
24 your affidavit, does it state in your
25 affidavit that 'A portion of the

1 interrogation was tape-recorded and I'" --
2 meaning the witness -- "'did not mind the
3 tape recorder running because I'" --
4 meaning the witness -- "'wanted the
5 interrogation to be accurately recorded'?"

6 "Answer, yes, it is there.

7 "Question: Is that true?"

8 And that's where he started to
9 explain. And --

10 MR. THOMPSON: And he said,
11 "Answer: No, it's not, but like I said
12 before, I didn't have a choice in the
13 matter."

14 THE COURT: My point,
15 Mr. Thompson, if you have previously
16 established that an affidavit is
17 purportedly a truthful statement under
18 oath, then his admission that something in
19 the affidavit is not true constitutes
20 impeachment, does it not?

21 MR. THOMPSON: Yes, sir.

22 THE COURT: Bring the jury back
23 in, Mr. Horne.

24 (Jury in at 11:45 a.m.)

25 THE COURT: The objection is

1 overruled.

2 Mr. Thompson you may rephrase your
3 question, sir.

4 BY MR. THOMPSON:

5 Q Mr. Demery, what did you -- you indicated
6 that you had no choice, that was your testimony; is
7 that correct?

8 A Referring to the tape recorder that night
9 that I was interrogated, yes.

10 Q Okay. Now, Mr. Demery, you signed this
11 affidavit on November 30th, 1994?

12 A Yes.

13 Q And you took an oath, did you not, before
14 you signed it?

15 A Yes.

16 Q And you swore to -- that the matters that
17 were contained in the affidavit were true, did you
18 not?

19 A Yes.

20 Q And when you -- you swore to it, did you
21 put your hand on a Bible?

22 A No, I don't believe I did, no. I don't
23 remember.

24 Q Where were you when you swore to it?

25 A Over in the county jail.

1 Q And who was present when you swore to it?

2 A My attorney, Hugh Rogers.

3 Q And did he administer the oath to you?

4 A Yes.

5 Q And so you swore that it was correct, then,
6 Mr. Demery, that a portion of the interrogation was
7 tape-recorded and you did not mind the tape recorder
8 running because you wanted the interrogation to be
9 accurately recorded, isn't it?

10 A That's what it says in there, yes.

11 Q And you swore that that was correct, didn't
12 you?

13 A Yes.

14 Q And is it correct, is it true?

15 A It's correct that I didn't care, I've told
16 my attorneys that. And I've made that statement
17 here, well, just a little while ago, that night,
18 well, that night while I was interrogated, like I
19 said before, I didn't care, but if I did, what would
20 it have mattered, you know, I couldn't have said
21 anything about it anyway.

22 Q You want -- go ahead.

23 A If I said this to my attorney, which I did,
24 I told them I didn't care. If they went further into
25 it than what I intended, that's not -- you know,

1 that's on them, that's not me.

2 Q You swore that the affidavit was true?

3 A Yes.

4 Q And the affidavit says that you wanted
5 interrogation to be accurately recorded, did it not?

6 A Yes, it does say that in there, yes.

7 Q And you swore, Mr. Demery, in the affidavit
8 that during this interrogation you felt intimidated
9 by the group of officers, didn't you?

10 A That's in there, but my attorney's
11 definition of intimidation might be different than
12 mine.

13 Q You swore to it in the affidavit, didn't
14 you?

15 A Yes, I did.

16 Q And the word "intimidation" is in the
17 affidavit?

18 A Yes.

19 Q You were asked if you wanted to make any
20 corrections, did you not?

21 A Yes.

22 Q And you did not make any corrections, did
23 you?

24 A No, I didn't read it. I didn't even read
25 it. Like I say, it's in there, I mean, but like I

1 said just a second ago, Mr. Thompson, their
2 definition of intimidation might be different than
3 mine.

4 Q Mr. Demery, do you recall earlier in your
5 testimony you made, when I was asking you about who
6 was present in the interrogation room, you said that
7 attorney -- I mean, excuse me, Detective Anthony
8 Thompson was present, SBI Agent Barry Lea was
9 present, and you indicated that some other person was
10 there who broke you, you remember making that
11 comment?

12 A Yes.

13 Q Now, the person that broke you is, you
14 don't know his name, do you?

15 A No, but I could point him out to you if he
16 was sitting here in the courtroom, but I couldn't
17 tell you his name.

18 MR. THOMPSON: Your Honor, if I
19 may have just a moment.

20 THE COURT: Yes, sir.

21 MR. THOMPSON: Your Honor, and
22 this is being offered again for to show
23 subsequent conduct and for impeachment.

24 THE COURT: Let me hear the
25 question and I'll rule on any objections

1 that are made.

2 BY MR. THOMPSON:

3 Q And Mr. Demery, the person that broke you
4 told you that "we're talking about first degree
5 murder, capital, you understand. Capital, that's the
6 needle up your ass, son, and you don't wake up from
7 it. All right. Capital. You get a good prosecutor
8 that wants to push it, son, I'm talking capital, all
9 right. Let this man shove it up your ass." Is that
10 the person that broke you?

11 A No, the person who said that was a
12 little -- I don't remember his name, but he was a
13 little short bald-headed guy with a smart mouth, but
14 that's not the same person.

15 Q The person that broke you, Mr. Demery, did
16 he tell you that, "See, Larry, Daniel can't be
17 guilty of the heinous crime if what he said is true,
18 if all he did was help dump the body in the river.
19 Everything he did according to him was after
20 Mr. Jordan was dead, not before. He can't be guilty
21 of a heinous crime. But he sure shoved that needle
22 up your rear end," is that the person who broke you
23 who said that?

24 MR. BRITT: Objection, move to
25 strike.

1 THE COURT: At this time, the
2 objection is sustained, motion to strike is
3 is allowed.

4 Members of the jury, don't consider
5 the last question asked by counsel for the
6 defendant, Mr. Thompson, that is matter not
7 to take any part in your deliberation in
8 this case in any respect.

9 MR. THOMPSON: Your Honor, I need
10 to be heard.

11 THE COURT: Okay. Members of the
12 jury, there's a matter of law the Court
13 must take up. Don't worry or speculate
14 about what takes place in the courtroom in
15 your absence. Please step to the jury
16 room.

17 (Jury out at 11:54 a.m.)

18 THE COURT: Let the record show
19 the following being heard in the absence of
20 the the jury.

21 MR. THOMPSON: Your Honor, I
22 would like an answer, please.

23 THE COURT: Your purpose is to
24 establish who broke him, correct?

25 MR. THOMPSON: Yes.

1 THE COURT: He indicated he
2 didn't know the name of the individual,
3 correct?

4 MR. THOMPSON: Yes, sir.

5 THE COURT: You're asking him
6 about statements made by unnamed
7 individuals in an attempt to establish,
8 referring to what was said, whether that in
9 fact broke him, and thereby identify the
10 person who broke him, correct?

11 MR. THOMPSON: Yes, sir. And
12 explain subsequent conduct, Your Honor,
13 also.

14 THE COURT: The objection is --
15 I'll give you, do you want to make an offer
16 of proof?

17 MR. THOMPSON: Yes, sir.

18 THE COURT: The objection is
19 sustained. Court has given curative
20 instructions as requested, but you may make
21 your offer of proof at this time.

22 BY MR. THOMPSON:

23 Q Mr. Demery, there was an officer there in
24 that interrogation room who told you, "See, Larry,
25 Daniel can't be guilty of the heinous crime, that

1 what he said is true, if all he did was help dump the
2 body in the river, everything he did according to him
3 was after Mr. Jordan was dead, not before, he can't
4 be guilty of a heinous crime, but he sure shoved that
5 needle up your rear end." Is that the person who
6 broke you, who said those words to you?

7 A It may have been. There was more than one
8 good guy in there that night.

9 THE COURT: We've got a jury out
10 that's been out a fair amount this
11 morning.

12 Mr. Demery, do you recall whether the
13 person that you say, quote, unquote, broke
14 you was with the Cumberland County
15 Sheriff's Department?

16 THE WITNESS: I couldn't say,
17 Your Honor.

18 THE COURT: So you don't remember
19 what agency he worked with?

20 THE WITNESS: No.

21 THE COURT: Can you describe that
22 individual.

23 THE WITNESS: He was a --

24 MR. BRITT: May I? I mean, to
25 cut to the chase, they have in their

1 possession the document, an interview that
2 was conducted by Mr. Heffney, Sergeant Don
3 Smith of the Cumberland County Sheriff's
4 Department. There was a pretrial hearing
5 which both Messrs. Thompson and Bowen
6 attended.

7 THE COURT: That's what I think
8 they're referring to, then, Lieutenant Don
9 Smith, but I wanted to get that from the
10 witness.

11 MR. THOMPSON: He said that was
12 not Don Smith.

13 MR. BRITT: Don Smith is --

14 MR. THOMPSON: Excuse me. First
15 time I asked the question, Your Honor, that
16 was a comment made by Don Smith. He said
17 that he did not make that comment. This
18 comment is being made by --

19 THE COURT: Well, we can ask
20 about, according to what he indicated up to
21 this point, there was eight or nine folks
22 in there, and we can go through statements
23 made by eight or nine folks with the
24 statements themselves really don't do
25 anything except create inferences with the

1 jury, they really don't lead to the
2 identity of the person who he says, quote,
3 unquote, broke him.

4 And that's what you indicated you
5 really want. And he told you he doesn't
6 know the name of that person, and I'm not
7 going to let you go through a bunch of
8 statements in the presence of the jury,
9 when the real purpose is not the identify
10 the person that he says broke him but to
11 get the statements in before the jury, in
12 my view. And that's not going to happen.

13 If you want to put those statements in
14 for whatever offer of proof you want, we
15 can take 30, 40 minutes, go through all
16 those persons who may have spoken during
17 that eight or nine --

18 MR. THOMPSON: Yes --

19 THE COURT: Or.

20 MR. THOMPSON: Yes, sir. I want
21 to find out who it was.

22 THE COURT: What does it mean in
23 the context of the case, what issue does
24 it --

25 MR. THOMPSON: Particularly what

1 he said, Your Honor. Goes to, again --

2 THE COURT: What you really want
3 is not who broke him, but how, quote,
4 unquote, he may have been broken?

5 MR. THOMPSON: That's what I
6 want, is who broke him, how he broke him,
7 and as a result of him being broken, what
8 he did and why he did -- that's what it's
9 going to Your Honor.

10 THE COURT: Isn't to August 15th
11 statement the one that you've been
12 attacking as being a false statement? And
13 isn't that what we're talking about here,
14 the August 15th, 1993, statement?

15 MR. THOMPSON: Your Honor, the
16 problem with this witness and his
17 statements that all of them contained some
18 inconsistent statements. Now granted, this
19 is not a, what I call a clear case, where
20 you've got a statement and a prior
21 inconsistent statement and you use one the
22 defense takes one and impeaches one using
23 that statement. This man has given several
24 statements, all of which are inconsistent
25 with each other, interlocking, and that

1 makes it a little different. This is not
2 your run-of-the-mill prior inconsistent
3 statement.

4 THE COURT: Mr. Green, also known
5 as U'Allah, were on the stand and the State
6 was seeking to introduce his statement, you
7 would be entitled to explain the
8 circumstances under which the statement was
9 made. Correct? What has that got to do
10 with Mr. Demery? How does that bear on his
11 credibility with regard to August 15th,
12 1993, the matters you're now getting into?

13 MR. THOMPSON: Your Honor, I just
14 stated that it bears on the credibility
15 because of what he says, broken. He was
16 being threatened, intimidated. He filed an
17 affidavit that says he was intimidated.

18 THE COURT: Can't you impeach the
19 folks that you contend made the threatening
20 statements?

21 MR. THOMPSON: I suspect maybe I
22 can do that, but I wouldn't think I'm
23 constrained to do that.

24 THE COURT: Well, with this
25 witness, there's a hearsay constraint.

1 MR. BRITT: May I? In light of
2 Mr. Thompson's last statement saying that
3 he was threatened, there's also a court
4 order in his case where you found as a
5 matter of law his rights were not
6 violated. I know I can't bring that up in
7 front of this jury, but if I were to
8 attempt, they would just jump up and down
9 and holler.

10 MR. THOMPSON: I don't know
11 whether I would or not because I've known
12 many of times jurors didn't believe --
13 except what, Your Honor --

14 THE COURT: You just did. You
15 just did.

16 MR. THOMPSON: No, I'm jumping up
17 because he's saying that I would jump up
18 and holler if he tried to do that. And I'm
19 not saying that I would jump up and holler,
20 I may want him to do that. But the point
21 is this, Your Honor. He's talking about I
22 jump up and holler because folks, jurors
23 don't have to accept finding of fact by the
24 Court.

25 THE COURT: Mr. Demery was on

1 cross-examination Tuesday, beginning late
2 Tuesday morning, through approximately
3 midday Wednesday, all day yesterday, all
4 day today. And folks, I understand our
5 case law gives wide latitude on
6 cross-examination. North Carolina's rule
7 is cross-examination basically is wide
8 open, for the most part.

9 But there are limitations under the
10 case law. And we're dealing with a lot of
11 extraneous matters. You have other folks
12 that you can impeach with this matter.
13 Okay.

14 MR. THOMPSON: And I'm about
15 through.

16 THE COURT: If you want to make
17 an offer of proof -- we've been "about
18 through" now for a good hour or so.

19 MR. THOMPSON: Your Honor, I
20 understand that, because of denials, I mean
21 that obviously prolongs the
22 cross-examination, things that I didn't
23 anticipate necessarily that he would deny.

24 THE COURT: From a tactical point
25 of view, the story that we can attack, you

1 don't want the wheat to be mixed up with
2 the chaff, okay.

3 MR. THOMPSON: What I'm trying to
4 do is separate the wheat from the chaff.

5 THE COURT: That's for them to
6 decide. But the objection is sustained.
7 Do you want to make an offer of proof now
8 or do you want to go on now? It's up to
9 you, folks.

10 MR. BOWEN: I want to get correct
11 that this is also proffered under 15-A
12 1152, 1154 to explain his motivation for
13 later deal with the State, how that may --

14 THE COURT: I sat here when
15 Mr. Demery was called to the stand with
16 1152 and 1154, nobody made a motion from
17 that side of the room for instruction under
18 1152. Nobody.

19 The case law, as I pointed out on a
20 number of earlier occasions, tends to
21 suggest that this is really a matter under
22 1054 and not 1052, but under 1054, the
23 instruction is not mandatory. But I've not
24 heard anybody say we want an instruction
25 under either 1052 or discretionarily we

1 want an instruction under 1054.

2 MR. BOWEN: Nevertheless, we're
3 going to ask for instruction in the Court's
4 ending instruction to the jury, whether
5 before he testifies or after, nevertheless.

6 THE COURT: 1052 makes it
7 mandatory before the testimony comes in.

8 MR. BOWEN: I just threw out both
9 statutes, but actually I think we are
10 probably tending toward 1054. But the
11 point is this goes to his understanding,
12 his motivation to turn State's evidence and
13 cooperate with these folks. So while one
14 can impeach or one can interrogate other
15 officers about whether or not the statement
16 was made, the only person that can talk
17 about the affect of that statement is
18 Mr. Demery.

19 THE COURT: He already has. I
20 don't mean to cut you off, but he already
21 has. He said he was scared because of the
22 prospect of what he was looking at in terms
23 of the charges, but he wasn't intimidated.

24 MR. BOWEN: I think the jury has
25 to hear that in context to the question

1 that was given as bearing on credibility.
2 The man has been told somebody is going to
3 stick a needle in his anatomy, that may
4 make the jury believe he was a little bit
5 more than scared, more than intimidated.

6 THE COURT: I think you've got a
7 point, but wrong witness.

8 The objection is sustained. Bring the
9 jury back in.

10 (Jury in at 12:06 p.m.)

11 THE COURT: Mr. Britt, before we
12 continue with cross-examination, let me go
13 back to that instruction that you
14 requested.

15 MR. BRITT: Yes, sir.

16 THE COURT: Members of the jury,
17 earlier in the cross-examination of the
18 witness now before you, Mr. Demery, the
19 line of questioning was pursued by counsel
20 for defendant relating to Mr. Demery's
21 access as they contend it existed and
22 opportunity as they contend it existed to
23 possess a .38 caliber revolver and/or .38
24 caliber ammunition.

25 I instructed you at that time that

1 that evidence was being offered for the
2 purpose of impeachment as I previously
3 defined that term for you that you could
4 consider it for that limited purpose.

5 I now instruct you that you may also
6 consider it for the limited purpose of
7 determining if you find it to be credible,
8 any opportunity to possess or any access to
9 a .38 caliber revolver or .38 caliber
10 ammunition on the part of this witness.
11 Now you may consider this evidence for the
12 limited purpose of about which you have
13 been instructed and for no other purpose.

14 Is there anything further Mr. Britt?

15 MR. BRITT: No, sir.

16 THE COURT: Mr. Thompson, you may
17 continue with cross-examination.

18 BY MR. THOMPSON:

19 Q Mr. Demery, what have you been tried and
20 convicted of within the last ten years punishable by
21 more than 60 days in confinement?

22 A It was '90 -- '91, I got a damage to real
23 property conviction, well pled guilty to it,
24 misdemeanor charge, but.

25 Q What else?

1 A And that was -- well, until I went to court
2 last year and pled guilty to all those other charges,
3 that was it.

4 Q And what did you plead guilty to?

5 A Murder, three armed robberies, three
6 breaking and enterings, larceny of a firearm, two
7 counts of assault with a deadly weapon with intent to
8 kill, inflicting serious bodily injury. I believe
9 that's it.

10 Q And you were convicted of those last series
11 of felonies that you talked about -- testified about
12 on April 27th of 1995?

13 A Yes.

14 Q And what was the maximum punishment for
15 which you could receive for those felonies that
16 you've just testified to?

17 MR. BRITT: Objection.

18 THE COURT: Do you want to be
19 heard as to the form of the question?

20 MR. BRITT: Yes, sir.

21 THE COURT: The objection as to
22 the form is sustained. Rephrase.

23 BY MR. THOMPSON:

24 Q Mr. Demery, you pled to breaking and
25 entering, three counts of breaking and entering, and

1 larceny?

2 A Yes.

3 Q The robbery with a dangerous weapon, three
4 counts of robbery with a dangerous weapon?

5 A Yes.

6 Q And the two counts of assault that you just
7 testified to?

8 A Yes.

9 Q First degree murder?

10 A Yes.

11 Q And conspiracy to commit robbery with a
12 dangerous weapon or --

13 A The understanding I had at the time was the
14 conspiracy was kind of, it was put out because the
15 robbery actually took place, but I may have
16 misunderstood.

17 Q All right. And the maximum punishment for
18 which you could have received for each of those
19 crimes except for the first degree murder was 240
20 years; is that right?

21 A I was told, I was told that, and have
22 heard. I know it was way out there somewhere.

23 Q And the maximum punishment for the first
24 degree murder was death; is that right?

25 A Yes.

1 Q And you pled guilty pursuant to a plea
2 bargain; is that right?

3 A Yes.

4 Q Otherwise known as a plea arrangement?

5 A Yes, yes.

6 Q As a result of that plea bargain, you
7 received a mandatory -- well, strike that. You
8 received -- strike that. Was there -- there were
9 mandatory minimum sentences for the armed robberies
10 of 14 years, is that right --

11 MR. BRITT: Objection.

12 BY MR. THOMPSON:

13 Q -- for each armed robbery?

14 THE COURT: Overruled. You may
15 answer.

16 THE WITNESS: Only thing I was
17 told is I would get 40 years for everything
18 other than the murder.

19 BY MR. THOMPSON:

20 Q But you were also told that the mandatory
21 minimum fine in sentences were 42 years, is that
22 right, a total of 42 years?

23 A No, I was told I would get 40 years for
24 everything other than the murder.

25 Q And what you received, Mr. Demery, as a

1 result of your n State was a
2 sentence of ?

3 A murder.

4
5 Mr. Thomp

6 BY MR. THOMPSON

7 Q What yo Mr. Demery, in
8 those cases pursuar a plea bargain is a
9 sentence of 40 years, what right?

10 A For charges other than the murder, yes.

11 Q And that sentence, the discretion in the
12 Court may run concurrent -- and those -- all of those
13 charges were consolidated, were they not? That was a
14 part of the plea bargain?

15 THE COURT: You need to be
16 specific about all of those charges.

17 BY MR. THOMPSON:

18 Q All of the charges except the murder
19 charge?

20 A When you say "consolidated," you mean
21 rolled all into one?

22 Q Yes, sir.

23 A Yes, yes.

24 Q And you were, pursuant to the plea bargain,
25 to testify truthfully in this case; is that correct?

Key Issue: whether there was also a deal for the murder sentence to run concurrently

1 A Yes.

2 Q And you understand, Mr. Demery, from the
3 very beginning of your first interrogation that law
4 enforcement officers in this case told you what they
5 considered to be the truth; isn't that right?

6 MR. BRITT: Objection.

7 THE COURT: Sustained.

8 MR. BRITT: Move to strike.

9 THE COURT: Allowed.

10 MR. BRITT: Ask for an
11 instruction.

12 THE COURT: Members of the jury,
13 don't consider that last question asked by
14 Mr. Thompson. That matter is not to take
15 any part in your deliberation in this case
16 in any respect.

17 BY MR. THOMPSON:

18 Q Mr. Demery --

19 MR. THOMPSON: Your Honor, if I
20 may have just a second.

21 THE COURT: Yes, sir.

22 BY MR. THOMPSON:

23 Q Mr. Demery, you testified earlier in this
24 case about the -- seeing the man lying in the Lexus
25 and that the -- as you observed him there, the watch

1 was on his right arm; is that right?

2 A Yes.

3 Q And Mr. Demery, you testified earlier in
4 this case and identified a man that was in State's
5 Exhibit Number 9; is that right? Do you recall that,
6 what State's Exhibit 9 was?

7 A The photograph of James Jordan, yes.

8 MR. THOMPSON: May I approach?

9 THE COURT: Yes, sir.

10 BY MR. THOMPSON:

11 Q State's Exhibit Number 9, you were shown
12 that by the State, were you not?

13 A Yes.

14 Q And State's Exhibit Number 9 is the man
15 that you say you saw there in the Lexus sleeping?

16 A Yes.

17 Q And on State's Exhibit Number 9, the
18 individual in that exhibit is wearing a watch, is he
19 not?

20 A Yes.

21 Q What arm is it on?

22 A It's on his left.

23 MR. THOMPSON: That's all.

24 THE COURT: Members of the jury,
25 there's a matter of law the courts must

1 take up at this time. We're going to allow
2 you to take the lunch recess a little bit
3 earlier than normal.

4 Would it pose any problem for anyone
5 if we were to reconvene at 2:00? If you
6 would please report directly back to the
7 jury room at 2:00 p.m., and hopefully we'll
8 be in a position to go forward with the
9 presentation of evidence at that time.

10 During lunch recess don't talk about
11 this matter among yourselves or with anyone
12 else, don't allow anyone to say anything to
13 you or in your presence about this case.
14 If anyone communicates with you about this
15 matter or attempts to do so or anyone says
16 anything about the case in your presence,
17 it remains your duty to inform us of that
18 immediately.

19 Don't form or express any opinions
20 about this matter, don't have any contact
21 or communication of any kind with any of
22 the attorneys, parties, witnesses,
23 prospective witnesses, or directly with the
24 Court. Don't allow yourself to be exposed
25 to any media accounts which might exist in

1 connection with this matter, and don't
2 conduct any inquiry or investigation or
3 research of any kind.

4 Everyone else please remain seated,
5 the members of the jury are excused until
6 2:00 p.m.

7 (Jury out at 12:18 p.m.)

8 THE COURT: Let the record
9 reflect the following is being heard in the
10 absence of the jury. Folks if you'll give
11 me about two or three minutes, let me
12 complete reviewing the document provided to
13 me.

14 Mr. Britt, you wanted to be heard as
15 to contention that the count for the
16 defendant opened the door as to previous
17 appearing on State's 404(b) motion.

18 MR. BRITT: Yes, sir, in addition
19 to the argument that I previously made, if
20 the Court will refer to page 115 of today's
21 record.

22 THE COURT: Let me get up to
23 that.

24 MR. BRITT: And continuing there,
25 after where Mr. Thompson asked Mr. Demery

1 what did he plead guilty to.

2 Answer: Murder, three armed
3 robberies, three breaking and entering,
4 larceny of a firearm, two counts of assault
5 with a deadly weapon with intent to kill,
6 inflicting serious injury.

7 THE COURT: Which of those do you
8 contend also involved this defendant?

9 MR. BRITT: The July the 4th
10 robbery of the Tedeschi and Rezendes
11 families.

12 THE COURT: Rowland robbery.

13 MR. BRITT: Yes, sir. And as to
14 the Rowland robbery, it's my contention
15 they opened the door again.

16 MR. THOMPSON: 609 --

17 MR. BRITT: -- to that.

18 THE COURT: Okay.

19 MR. BRITT: As to the conspiracy
20 charge, that's already been the jury, but
21 they again have opened the door as far as
22 who was involved in that conspiracy, and
23 July the 22nd, 23rd, 1993, that being the
24 defendant.

25 THE COURT: Well, that's already

1 been testified to.

2 MR. BRITT: Yes, sir. If you
3 continue on, Mr. Thompson then asked about
4 entering into a plea agreement.

5 THE COURT: Where are you
6 specifically? I'm on page 118, line 1,
7 "Where you pled pursuant to a plea
8 bargain."

9 MR. BRITT: Yes, sir.

10 THE COURT: "Otherwise known as a
11 plea arrangement. As a result of that, you
12 received a mandatory -- strike that, strike
13 that." All right.

14 MR. BRITT: Continued down page
15 118, page 119, line, I believe it's 25 or
16 26, "Question: And you were, pursuant to
17 the plea bargain, to testify truthfully in
18 this case, is that correct?" "Yes." That
19 is, under Rule 106, I believe I am entitled
20 because it is a written document, they
21 addressed certain portions of that written
22 document, being the plea agreement that was
23 entered --

24 THE COURT: What do you contend
25 was omitted from the question or would add

1 to the rule?

2 MR. BRITT: Third paragraph, "The
3 defendant agrees to testify truthfully at
4 the trial of Daniel Andre Green. Defendant
5 agrees to be interviewed by Special Agent
6 Kim Heffney, SBI, and Detective Anthony
7 Thompson, Robeson County Sheriff's
8 Department about his activities with
9 Daniel Green including but not limited to
10 the murder of James R. Jordan, the robbery
11 and assault of Clewis Demory and the
12 robbery of the Tedeschi and Rezendes
13 families."

14 THE COURT: So your contention is
15 by exploring the plea arrangement, they
16 opened the door to the complete plea
17 arrangement?

18 MR. BRITT: Yes, sir.

19 THE COURT: That only involves,
20 as I understand it, aside from that
21 "included but not limited to language,"
22 the specifics deal with the Rowland
23 robbery.

24 MR. BRITT: Says not --
25 "including but not limited to."

1 THE COURT: I understand that.
2 But setting that aside, all the other
3 language pertains to the Rowland robbery.

4 MR. BRITT: Yes, sir. That's not
5 before the jury at this time.

6 THE COURT: Yes, sir. Folks?

7 MR. BOWEN: Your Honor, first let
8 me take his last point first. I think to
9 have laced a comment about the other crimes
10 such as the Rowland matter and this other
11 Clewis Demory matter, to have put that into
12 the plea bargain to have done that to have
13 the effect of affording 1154 and 1155,
14 which otherwise allows us to talk about the
15 effect of the plea bargain, seems to me
16 that it is not reasonable in light of the
17 Court's prior ruling that those matters may
18 not be touched upon. And I think we have a
19 reasonable expectation that the Court's
20 order stands as far as keeping those
21 materials out unless we specifically open
22 the door. And of course, that's why
23 Mr. Thompson stayed away from that
24 particular paragraph at all. In fact, the
25 only --

1 THE COURT: Your contention is
2 you're entitled to get in a part of it but
3 State can't get in the rest of it?

4 MR. BOWEN: Don't mind the
5 paragraph, but the reference to that which
6 the Court has already ruled off limits,
7 this is what we have a reasonable
8 expectation on. And 609 simply allows him
9 to talk about those three things, the
10 charges and the dates and where the plea
11 was entered. And he stuck to precisely
12 what 609 requires.

13 THE COURT: I'm not going to --
14 your 609 argument is interesting.

15 For the record, the Court will not
16 allow introduction of any other alleged
17 acts of misconduct under your argument as
18 to rule 609. So that's out of the way for
19 appellate purpose should that become
20 necessary. I'm going to let it in. I'm
21 going to let it in on the ground, first of
22 all, that the defendant opened the door
23 through cross-examination. And by "it,"
24 I'm referring to the Rowland robbery only.

25 I'm also going to let that in because

1 by establishing by plea of not guilty, he
2 raised the issue of identity, and alibi is
3 also being raised in this case. He has
4 attacked the witness on cross-examination
5 as to the defendant's participation with
6 this witness on the matters which are now
7 before the jury. That in and of itself I
8 don't think opens the door to the Rowland
9 matters, but I think the line of
10 questioning pursued on cross-examination
11 does, including the line of questioning
12 relating to the plea arrangement.

13 The Court, upon request, will give an
14 instruction that it is -- the Rowland
15 matter is being admitted for the purposes
16 of showing knowledge and common scheme or
17 plan. The Court makes these findings, for
18 the purpose of the record, potential
19 appellate review.

20 Folks, if you look at the statement
21 that was given by Mr. Demery, third
22 paragraph of the statement reads, the
23 statement is in reference to his, referring
24 to Mr. Demery, and Daniel Green's -- Daniel
25 Andre Green's involvement with the death of

1 James Jordan, comma, the robbery of two
2 Rhode Island couples, comma, the robbery of
3 Clewis Demery, fire at the residence of
4 Mr. McClain, and any other crimes that have
5 been committed.

6 In my view, that among other things
7 puts you on notice that you went after
8 these matters on cross-examination and in
9 the manner that you did at your own peril.

10 The Court further finds that there
11 are, with regard to the July 23rd events,
12 the stated purpose, stated in
13 Mr. Demery's -- that's too redundant.

14 The purpose as stated in Mr. Demery's
15 statement was that they went to the area of
16 the Quality Inn because they knew a tourist
17 would be there and would have plenty of
18 money. Further on, it indicates that they
19 arrived in that area sometime approximately
20 2:00 a.m. in the morning. Consistent with
21 the stated purpose, they left their
22 vehicle, went to the parking lot of the old
23 store at the motel and walked around the
24 parking area looking for victims.

25 Picking up on page 16, which deals

1 with the Rowland matter, first paragraph
2 indicates that the witness was at Daniel's
3 house and they discussed robbing someone.
4 Few days went by, the conversation about
5 robbery or robbing someone was
6 reinitiated. Discussed it again on
7 Saturday, July 3rd, 1993. On that date,
8 plans were apparently made consistent with
9 those plans, they went to the Family Inn
10 about 3:00 a.m. in the morning. Walked
11 around the parking lot of the Family Inn,
12 looking for tourists to rob. That they saw
13 some possibilities, did not act on those
14 possibilities until sometime around 4:00
15 a.m.

16 After the July 3rd incident, as is
17 true with the July 23rd incident, they left
18 the area where the robbery occurred, ran
19 into a cornfield, went from one cornfield
20 to another where they went through property
21 taken, leaving in the cornfield credit
22 cards and other items tying them to the
23 offense.

24 In both instances, they arrived back
25 at either the defendant's residence or his

1 grandmother's residence in Rowland.

2 Based upon the similarities, including
3 the use of this defendant's vehicle on all
4 occasions, among the other matters already
5 stated, the Court is going to allow it,
6 one, because the door was opened on
7 cross-examination; two, because of the
8 common scheme or plan, and as it relates to
9 guilty knowledge.

10 Note the defendant's exception for the
11 record to the Court's ruling that other
12 matters set out in Mr. Demery's statement
13 on dates from May 2nd through May 8, 1995,
14 the Court's exclusion of those other
15 matters at this time is under Rule 403, the
16 Court finding that the cumulative effect of
17 these other matters are not deemed the same
18 kinds of similarities, is more
19 substantially, more prejudicial than
20 probative, and at this point I'm not
21 letting that in.

22 You may be entitled to get it in in
23 rebuttal, depending on what additional
24 evidence might be developed, if any, by the
25 defendant during the presentation of his

1 case. But at this point, I'm not letting
2 it in. Note the State's exception to that.

3 MR. BRITT: I don't want to --
4 the Court to think that I'm arguing with
5 you, but I would like to get a matter on
6 the record as to why I think I'm also
7 entitled.

8 THE COURT: Please feel free to
9 make a record, both sides.

10 MR. BRITT: Evidence as to the
11 other cases, they have attacked his
12 credibility, and on -- on cross, and have
13 attacked his credibility in regard to
14 whether or not he was truthful with
15 Mr. Heffney during the course of this four
16 day interview.

17 THE COURT: Well, the specific
18 area of credibility being attacked is
19 participation by this defendant with this
20 witness in those other acts.

21 MR. BRITT: The other area what
22 they contended are prior inconsistent
23 statements made by Mr. Demery, and on
24 redirect I'm entitled to rehabilitate the
25 witness to bolster his credibility, as I

1 attempted to do during the direct. They
2 have attacked that credibility. I think
3 that it's -- credibility is a matter for
4 the jury to determine. Whether he was
5 truthful, being truthful with Mr. Heffney,
6 Mr. Thompson, during this course of that
7 four day interview, is an issue for the
8 jury to determine. And those other matters
9 related to his credibility and his
10 openness.

11 THE COURT: Your argument
12 essentially is his admission against his
13 penal interest is an indicia of reliability
14 of truthfulness?

15 MR. BRITT: Yes, sir.

16 THE COURT: And to the extent
17 that that truthfulness relating to prior
18 criminal acts on the part of this witness
19 involved this defendant, that's just the
20 way it is.

21 MR. BRITT: And --

22 THE COURT: And goes to the issue
23 of identity, negates alibi, and enhances a
24 finding of participation by Mr. Green.
25 It's a good argument, does have merit. And

1 I'll be real candid with you, I'm being
2 cautious on the record.

3 MR. BRITT: I understand the
4 Court's position. I just wanted it on the
5 record.

6 THE COURT: Yes, sir. I think
7 you've got an argument. Your exception is
8 noted.

9 I'm going to let in the Rowland matter
10 at this time. Again, folks, if additional
11 doors are opened, either on
12 cross-examination or during the
13 presentation of any evidence by the
14 defendant, the Court will reconsider its
15 position as to matters now being excluded.
16 And frankly, folks, I don't mind stating it
17 for the record, this is a real dangerous
18 area. If I'm going to err, I'm going to
19 err on the side of the defendant.

20 Everybody's exception is noted. Any
21 specific exception you folks want to note?

22 MR. BOWEN: We have our exception
23 preserved on the record.

24 THE COURT: All right. I am
25 allowing in the Rowland matter. And I will

1 give the instruction pursuant to 10415
2 showing knowledge and common scheme and
3 plan.

4 (Lunch recess).

5 THE COURT: Good afternoon,
6 folks. Let the record reflect that all
7 counsel are present, the defendant is
8 present in open court. Mr. Demery is again
9 on the witness stand, and I remind you once
10 again, sir, that you remain under oath.

11 Before we bring the jury in, Mr. Horne
12 indicated to me just as I was coming in a
13 few moments ago that one of the members of
14 the jury, Ms. Daniel, if you will recall
15 has suffered some back difficulties and had
16 apparently asked Mr. Horne where I got the
17 cushion that I'm using, which is the heat
18 massage cushion.

19 I've got with me an advertisement for
20 the back massage device that I'm using both
21 at home and in my car, as well as the newer
22 model of the cushion. State have any
23 opposition to me giving this to Mr. Horne
24 and asking Mr. Horne pass it on?

25 MR. BRITT: No, sir.

1 THE COURT: Do you want to
2 examine it?

3 MR. BRITT: ^ no, sir. Along
4 those lines, let me put something on the
5 record. I brought some exhibits into the
6 courtroom. Mr. McGirt, at the corner of
7 the hallway, Mr. McGirt said here, I'll
8 help. He said look up we've got a couple
9 coming. I was the only one in the hallway
10 at this time I let her pass.

11 THE COURT: She apparently having
12 much difficulty.

13 THE COURT: Mr. Thompson, Mr.
14 Bowen, you folks have any opposition?

15 MR. THOMPSON: No, sir.

16 MR. BOWEN: No, sir.

17 THE COURT: Mr. Green, do you
18 have any opposition to that, sir, to my
19 handing the advertisement for the two back
20 devices that I've indicated to Mr. Horne
21 and having Mr. Horne give this to members
22 of the jury?

23 MR. GREEN: No, sir.

24 THE COURT: Mr. Horne, if you'll
25 do so, please, if you'll step forward. If

1 you'll simply hand it to her when she comes
2 in, please. Any other matters before we
3 bring in the jury?

4 If you'll bring the jury in, please.

5 (Jury in at 2:09 p.m.)

6 THE COURT: Good afternoon,
7 ladies and gentlemen.

8 Mr. Thompson, you had concluded your
9 cross-examination, is that correct?

10 MR. THOMPSON: Yes, sir.

11 THE COURT: All right.

12 Mr. Britt, any redirect examination as to
13 Mr. Demery?

14 MR. BRITT: Yes, sir.

15 THE COURT: Yes, sir.

16 REDIRECT EXAMINATION

17 BY MR. BRITT:

18 Q Mr. Demery, you testified on
19 cross-examination that at some point prior to July
20 1993 that you possessed a Colt .38 revolver?

21 A Yes.

22 Q When was the last time that you had
23 possession of that .38 -- Colt .38 revolver?

24 A The first few days, the 3rd, 4th, of
25 October, '92.

1 Q To your knowledge, who has possession of
2 that Colt .38 revolver at this time?

3 A The last time I saw it, it was in Detective
4 Rodney Demery's hands, but I guess it's still over
5 there in the police department.

6 MR. THOMPSON: Object, move to
7 strike.

8 THE COURT: You may not
9 speculate. You may testify based on
10 personal knowledge and personal knowledge
11 alone.

12 If you'll rephrase your question.
13 Motion to strike is allowed.

14 Members of the jury, don't consider
15 the witness's guess or speculation about
16 where the item referred to might be. That
17 matter is not to take any part in your
18 deliberations in this case in any respect.
19 Mr. Britt, you may rephrase.

20 BY MR. BRITT:

21 Q When was the last time you saw the Colt .38
22 revolver and who had it?

23 A It was being placed in a locker by
24 Detective Rodney Demery of the Pembroke Police
25 Department.

1 Q When was that?

2 A That was -- I remember it as being, seemed
3 like it was the 6th.

4 MR. THOMPSON: Object.

5 THE COURT: Complete your answer
6 and I'll rule.

7 THE WITNESS: The 6th.

8 THE COURT: Of what, sir?

9 THE WITNESS: Of October. That
10 is the day that I was taken to the Robeson
11 County detention center.

12 THE COURT: What year,
13 Mr. Demery?

14 THE WITNESS: '92.

15 THE COURT: Overruled.

16 BY MR. BRITT:

17 Q And the one hundred rounds of .38 caliber
18 ammunition that you purchased from this man whose
19 nickname is Frog Lever, when was the last time you
20 had any of those rounds of ammunition?

21 A That was prior to the gun being taken out
22 of my car.

23 Q You testified that of the one hundred
24 rounds that you purchased from this man you've
25 identified as Frog Lever, there were six of those

1 bullets left over?

2 A Yes.

3 Q Where were those six bullets?

4 A There were six bullets left in the chamber
5 of the gun, but --

6 Q Is that the .38 caliber Colt revolver that
7 Detective Rodney Demery of the Pembroke Police
8 Department had when you last saw it on October the
9 6th of 1992?

10 A Yes, but could -- I wanted to say that the
11 bullet, the six bullets that were left in the gun I
12 said came from the hundred rounds, they didn't. The
13 six bullets that were left in the chamber was part of
14 the first box that I bought the full metal jackets.

15 Q Were those the bullets that were purchased
16 at Service Star in Pembroke?

17 A Yes. I had -- I didn't have any intention
18 to shooting those out anyway, because they had messed
19 the gun up. That's the reason those six were left.

20 Q Between October the 6th of 1992 and July
21 the 15th of 1993, did you ever have an occasion to
22 possess a .38 caliber revolver?

23 A Between -- could you state the time?

24 Q Between October the 6th, 1992 when Rodney
25 Demery -- you testified you observed Rodney Demery

1 place the Colt .38 into an evidence locker, and July
2 15th of 1993, did you ever possess a 38 caliber
3 revolver?

4 A No, I didn't.

5 Q During that same time period, did you ever
6 possess any .38 caliber ammunition?

7 A No.

8 Q July the 15th, 1993, the .38 caliber
9 revolver that you've identified that's marked as
10 State's Exhibit 59-A, where did that .38 caliber
11 revolver come from?

12 A It came out of Lowry's Texaco, the store
13 Clewis Demory was running up on Highway 72.

14 Q First time you saw that .38 caliber
15 revolver that was taken from Clewis Demory during the
16 robbery of July 15th, in whose hands was it?

17 A Daniel's.

18 Q On July the 3rd, 1993, you testified that
19 you and the defendant went to Marion, South Carolina?

20 A Yes.

21 Q And you saw Melinda Moore?

22 A Yes.

23 Q And after leaving Marion, South Carolina,
24 where did you go?

25 A Headed back towards South of the Border.

1 Q And when you left Marion, South Carolina
2 after being there on the 3rd, what time of the day or
3 night was it when you left Marion on your way back
4 towards South of the Border?

5 A It was late over into the -- well, Sunday
6 morning hours, about --

7 MR. THOMPSON: Object to the form
8 of the question, Your Honor.

9 THE COURT: Overruled.

10 BY MR. BRITT:

11 Q You may answer.

12 A 2:00.

13 Q What car were you in?

14 A Mine, the '84 Ford Tempo.

15 THE COURT: Was that 2:00 a.m. or
16 p.m.?

17 THE WITNESS: A.m., a.m.

18 BY MR. BRITT:

19 Q And would that have been 2:00 a.m. on
20 Sunday, July the 4th?

21 A Yes.

22 Q When you left Marion you were driving your
23 Ford Tempo?

24 A Yes.

25 Q Who was driving, actually driving the car?

1 A I was.

2 Q And prior to going to Marion on July the
3 3rd, did either you or the defendant have in your
4 possession any type of gun?

5 A Yes.

6 Q Who had a gun?

7 A Daniel did in his --

8 Q What type of gun did the defendant have
9 prior to going to Marion on July the 3rd, 1993?

10 A .380 semiautomatic.

11 Q And do you know where he had gotten that
12 gun?

13 A Yes.

14 Q Where had he gotten that gun?

15 A It belonged to his mother.

16 Q And prior to going to Marion on July 3rd,
17 1993, had you and the defendant had any discussion
18 about committing any robbery during that time?

19 A Yes.

20 Q When had you had that discussion and what
21 was said?

22 A Well, it was a few days prior to July the
23 3rd, about a week later after my first -- Daniel and
24 I's first visit or whatever, and like I said, we were
25 discussing some charges that I had pending in court,

1 and like it was just Daniel was telling me about --
2 well, while he was --

3 MR. THOMPSON: Object.

4 THE COURT: Do you want to be
5 heard, sir?

6 MR. THOMPSON: Yes, sir.

7 THE COURT: Okay. Members of the
8 jury, there's a matter of law the Court
9 must take up at this time. Please recall
10 my instructions in that regard, don't worry
11 or speculate about what takes place in the
12 courtroom in your absence, and if you will
13 step to the jury room.

14 (Jury out at 2:19 p.m.)

15 THE COURT: The following is
16 being heard in the absence of the jury.
17 Yes, sir, Mr. Thompson.

18 MR. THOMPSON: Your Honor, again,
19 as a precautionary matter, my concern was
20 the witness getting ready to testify as to
21 matters which the Court has already
22 instructed about as to the defendant having
23 been in prison. I don't know what he was
24 getting ready to say--

25 THE COURT: I suspect he was

1 about to say that they discussed robbing
2 somebody.

3 MR. THOMPSON: Well, "and like it
4 was just Daniel was just telling me
5 about -- well, while he was --" and that's
6 when I objected. I thought he may be
7 saying --

8 THE COURT: Complete your answer.

9 THE WITNESS: I was going to say
10 that we were separated for a while, and
11 Daniel had moved away. I never had any
12 intentions of saying he was in prison.

13 MR. THOMPSON: I just wanted, as
14 a precautionary --

15 THE COURT: You understand that
16 you're not to make any reference to the
17 defendant having been in prison, do you
18 understand that?

19 THE WITNESS: Yes, sir, I do.

20 THE COURT: Bring the jury back
21 in, please.

22 (Jury in at 2:20 p.m.)

23 THE COURT: Mr. Britt, you may
24 repeat or rephrase your question, sir.

25 BY MR. BRITT:

1 Q Mr. Demery, prior to going to Marion, South
2 Carolina on July the 3rd, 1993, had you and the
3 defendant had any discussion about committing any
4 robbery at that time, and if so, what was said and by
5 whom?

6 A Yes, we had. And like I say, we were
7 discussing some pending charges that I had, and see,
8 Daniel had moved away, he had -- we were --

9 THE COURT: Mr. Demery, what he
10 asked you was on the way to Marion, was
11 there any discussion on the way to Marion
12 or before you left for Marion about armed
13 robbery.

14 THE WITNESS: Yes, there was,
15 yes.

16 BY MR. BRITT:

17 Q Where were you and who was with you at the
18 time of that discussion about committing any robbery?

19 A Daniel and I were together in my car, the
20 Tempo, going to Marion.

21 Q You've testified that the defendant had
22 a .380 pistol --

23 A Yes.

24 Q -- in his possession when you went to
25 Marion?

1 A Yes.

2 Q Had you seen where he had gotten that .380
3 pistol?

4 A Like I say, it belonged to his mother,
5 there was -- he got it out of his mom's purse, out of
6 her purse.

7 Q Now, on the way to Marion, you've testified
8 there was a discussion about committing a robbery.

9 A Yes.

10 Q What was said about committing a robbery
11 while you were on your way to Marion?

12 A Well, we both discussed, like I said,
13 robbing somebody around in the South of the Border
14 area. This was like first of July, tourist season.
15 We were going to rob a tourist or something,
16 somebody. And the discussion of about there being a
17 lot of tourists around, ought to have plenty of money
18 in their pockets.

19 THE COURT: For the purposes of
20 clarification, you indicated in your
21 testimony that this was the "first of
22 July." By that you mean July 1st or the
23 first part of July?

24 THE WITNESS: No, sir, the first
25 part of July, the first week.

1 THE COURT: Mr. Britt.

2 BY MR. BRITT:

3 Q Why did you talk about robbing someone at
4 South of the Border?

5 A Like I said, that's a -- South of the
6 Border being a big tourist attraction, we just
7 discussed possibility of those tourists having lots
8 of money in their pocket, out on vacation.

9 Q Did you discuss where this robbery might
10 take place?

11 A Well, we didn't say at the time any place
12 specific, just the area of South of the Border.

13 Q And for the record, what businesses are
14 located there in the area of South of the Border?

15 A Well, Pedro's, got all kind of shops,
16 coffee shops, souvenir shops. There's motels, a few
17 convenience stores, that's -- a little theme park,
18 video game rooms.

19 Q Did anyone have a gun other than the .380
20 that the defendant had?

21 A No, that was the only gun.

22 Q Were there any articles of clothing that
23 you -- that were in the car that were to be used in
24 this robbery?

25 A Yes, there were.

1 Q What articles of clothing were in the car
2 that were to be used during this robbery?

3 A A gray sweat shirt with a hood on it, a
4 black zip-up type sweat shirt with a Raider's logo on
5 the back, had a hood.

6 Q Were those the same articles of clothing
7 that were worn by you and the defendant during the
8 robbery of Clewis Demory on July 15th of 1993?

9 A Yes.

10 Q After going to Marion, you and the
11 defendant left Marion sometime in the early morning
12 hours of July the 4th, 1993, is that correct?

13 A Yes.

14 Q Where were you going when you left Marion
15 on July 4th, 1993?

16 A We were going back to the South of the
17 Border area.

18 Q And for what purpose were you going back to
19 South of the Border on July 4th, 1993?

20 A Find somebody to rob.

21 Q Who drove?

22 A I did.

23 Q Did you experience any type of problem with
24 your car as you were coming back from Marion?

25 A Yes.

1 Q What if any car problems did you
2 experience?

3 A Well, coming back, it was like, coming off
4 the exit to go back into the Border area, my car had
5 cut off. And what had happened was like, it had ran
6 hot, I mean, it had gotten so hot to the point it
7 just went dead. And --

8 Q What did you do with your car?

9 A Well, we got -- not quite off the ramp, but
10 like I said, we got off and checked it over and all,
11 and just saw that it wasn't going to -- it wasn't
12 going anywhere else that night. Pushed it off the
13 ramp far enough so it wouldn't be in the way of other
14 cars, got -- already out, took the tags off, got the
15 sweat shirts and the gun out of the car, and started
16 walking.

17 Q Where were you when your car broke down?

18 A In the -- well, right on the North Carolina
19 line. The overhead bridge, I guess that's -- well,
20 I'm only assuming that's where the line is at, but --

21 Q Were you in the area of South of the
22 Border?

23 A Yes, yes.

24 Q Now, you testified that the sweat shirts
25 were taken out of the car?

1 A Yes.

2 Q Did you take one of the sweat shirts out of
3 the car?

4 A Yes.

5 Q Which one did you take out?

6 A I had on the gray one.

7 Q And did the defendant take one of the sweat
8 shirts?

9 A Yes, the black one with the Raider's logo.

10 Q Did both of you put those sweat shirts on?

11 A Yes.

12 Q You testified that a gun was taken from the
13 car?

14 A Yes.

15 Q What type of gun was taken out of the car?

16 A A .380 semiautomatic, and --

17 Q Who took the gun out of the car?

18 A Daniel had the gun.

19 Q At any time after the gun was taken out of
20 the car, did you come in possession of that .380?

21 A Yes, yes.

22 Q When did you get the .380 in your hands?

23 A That was a little while later on when we
24 had went over to the Family Inn motel. Me, I would
25 say it was still in the South of the Border area, but

1 Family Inn being on the other side of the line
2 considered in Rowland, that's where we were.

3 Q Now, after removing the .380 and the hooded
4 sweat shirts from the car, where did you and the
5 defendant go?

6 A Well, first place, we walked over into the
7 South of the Border area, walked around the shops and
8 looking for -- well, looking for a potential victim
9 to rob, you know, somebody to rob.

10 Q How long did you walk around in the shops,
11 the area of the shops at South of the Border?

12 A Hour.

13 Q And did anyone have the .380 pistol with
14 them when you walked around in the shopping area of
15 South of the Border?

16 A Yes, Daniel still did.

17 Q Did there come a time when you left the
18 area of the shops there at South of the Border?

19 A Yes.

20 Q Where did you go when you left?

21 A We walked down, back over into Rowland, and
22 went over to the Family Inn motel.

23 Q Now, where was your car at this time?

24 A It was still sitting off of the bottom of
25 the ramp, broke down.

1 Q And when you walked over to the Family Inn
2 motel, where did you go at that business?

3 A Well, when we got over there, we had walked
4 around the parking lot a few times looking for
5 somebody, and then like hung around at the back of
6 the motel, peeking around corners, looking for
7 somebody to come out.

8 Q And at that time did you have the .380 in
9 your possession?

10 A Yes.

11 Q When had the defendant given you the .380?

12 A It was around the time that we first got to
13 the motel.

14 Q And what were you looking for there in the
15 parking lot area of the Family Inn motel?

16 A Well, a person, persons to rob.

17 Q And during the time that you and the
18 defendant were in the parking lot area of the Family
19 Inn motel, did you ever see anyone in the parking
20 lot?

21 A Yes.

22 Q How many times did you see people in the
23 parking lot?

24 A Three different times that I can remember.

25 Q On the first occasion that you saw someone

1 in the parking lot, did you and the defendant say
2 anything to one another about robbing that person?

3 A Yes.

4 Q What was said, and if you will describe the
5 person that you saw in the parking lot and what that
6 individual was doing at the time?

7 A Well, we saw this guy, he appeared to me
8 that he was coming out of his room. He was, I
9 remember him being a tall, slender guy. He was
10 driving a moving truck. And like I say, we discussed
11 robbing this person. The reason we didn't is because
12 our timing was off, didn't really have it together
13 enough, and the lack of nerve just to go ahead and do
14 it.

15 Q And did you ever approach this individual
16 and attempt to rob him?

17 A No, we didn't, no.

18 Q Now, after seeing this individual, did
19 there come a time when you saw other individuals
20 there in the parking lot?

21 A Yes, the --

22 Q Describe those individuals for us and tell
23 us what was said and done in regard to those
24 individuals.

25 A Well, the next people, there was a man and

1 a woman, they had came out of a motel, one of the
2 rooms, they were leaving. I remember them driving a
3 Maverick. The reason I can remember this car, there
4 had been a lot of work put into it. Well, what I
5 would say it had been "hopped up." That's the term I
6 would use. And we discussed robbing these people
7 too, but again, the same thing, we didn't, timing was
8 off, and lack of nerve.

9 Q Who had the gun at that time?

10 A I did.

11 Q And after you saw this man and woman come
12 out of the motel, did you see anyone else there in
13 the parking lot?

14 A Yes.

15 Q Do you recall about what time it was when
16 you saw anyone else in the parking lot area of the
17 Family Inn motel?

18 A It was around 4:00, 4:30.

19 Q Where were you and the defendant at the
20 time that you saw anyone else in the parking lot?

21 A We were standing in the back behind the
22 motel looking around the corner.

23 Q Did you see anyone?

24 A Yes.

25 Q Did you see a man or woman?

1 A Saw two males at first.

2 Q Where were they when you saw them?

3 THE COURT: I'm sorry, you were
4 about to say something. You saw who?

5 THE WITNESS: Two males then,
6 right then.

7 THE COURT: I'm sorry, go ahead.

8 BY MR. BRITT:

9 Q Where were these two men when you saw them?

10 A They were up towards the front part of the
11 motel. They were coming out of the room, and I
12 observed them putting things in the car, in a car,
13 and these are the two individuals that Daniel and I
14 started -- well, approached.

15 Q When you say that you and the defendant
16 approached these individuals, tell us what you did.

17 A Well, before we had, you know, made a move
18 to go towards these people, before they ever came
19 out, we had had a discussion about what time it was
20 getting to be, getting late, if we were going to rob
21 somebody, we needed to go ahead and do it. So the
22 very next people that come out, being these two men,
23 we started walking down towards them.

24 First time up, we walked along the
25 sidewalk, just to appear that like we were supposed

1 to have been there, guests in the motel somewhere,
2 and we walked past these two men, walked up to the
3 front part of the motel, made a circle, and came back
4 around like on the other side of them. And it was
5 during the time that we first passed them, two women
6 had came out. Okay.

7 Like I say, we circled around, came back on
8 the other side of them, and we went down about -- we
9 passed these individuals about, I would say, here to
10 the door. And that's when we turned around and came
11 back up on them. And that's when I pulled out the
12 gun. I held my finger up to my lip to like let them
13 know -- well, this one guy, let him know not to say
14 nothing, don't scream or anything. And that's when
15 we approached these people and started taking their
16 things.

17 Q When you say "we approached these people
18 and started taking their things," who are you
19 referring to as "we"?

20 A Well, Daniel, myself.

21 Q And at the time you approached, you and the
22 defendant approached these individuals in the parking
23 lot of the motel, were both you and the defendant
24 still wearing the hooded sweat shirts that you had
25 taken out of your car earlier?

1 A Yes.

2 Q Can you describe for us these four
3 individuals?

4 A Two males, two females, one of the guys --
5 well, one that I made the motion to to be quiet, he
6 was kind of tall, real slender. The other guy, he
7 was more or less on the heavy side, kind of short.
8 The women, one of the women, she -- kind of short, I
9 would say a little heavy. And the other woman, she
10 was about the same height, but more petite than the
11 other one.

12 Q And when you and the defendant approached
13 these individuals at this car, where were each of
14 these people positioned?

15 A Well, the tall slender guy, he was on the
16 driver's side, around the driver's door area. And
17 two women, they were around the front of the car.
18 And this short heavy-set guy, he was kind of over on
19 the passenger side.

20 Q From which side of the car did you and the
21 defendant approach?

22 A Well, passenger side.

23 Q And which of the two men did you motion not
24 to say anything?

25 A Well, to the slender guy. He was the first

1 one that saw us coming up.

2 Q When you motioned to the slender man not to
3 say anything, what else were you doing at that time?

4 A Well, like I say, I had the gun drawn, I
5 was pointing it in the direction of these people, and
6 had my finger up to my lip.

7 Q After you told this man not to say
8 anything, what did you and the defendant then do?

9 A Well, we approached these people, I went
10 over to this guy that I had, using the gesture, just
11 told to shut up, not to scream or anything. I went
12 over to him and Daniel went over, around these two
13 women, the other guy. And while I was over on the
14 driver's side, I had told this guy to empty his
15 pockets. He did, he reached in his pocket and pulled
16 out some money, and dropped it on the ground. I
17 thought the guy was getting ready to try something,
18 so I told him to back up.

19 When he did, I reached down and picked up
20 the money and put it in my pocket. All right. I
21 leave the driver's side and go over to the passenger
22 side for the purposes of trying to get this short
23 kind of heavy set lady, she had -- she was letting us
24 have it, I mean, asking -- yelling, screaming, why
25 are we doing this. And the reason I went over to the

1 passenger side was to try and make her shut up, you
2 know. While I was doing this, Daniel was collecting
3 things from these people, and --

4 Q Which side of the car was the defendant on?

5 A The passenger side.

6 Q And what if anything did you see him do
7 while he was on the passenger side of the car?

8 A I had saw him get a purse from one of the
9 ladies, go inside the car and get out a black bag,
10 and just saw -- heard him talking to these people.

11 Q At any time, did you say or threaten any of
12 the individuals there?

13 A Yes, I did.

14 Q And what if anything did you say to or
15 threaten any of the individuals with?

16 A I told this -- well, the short heavy-set
17 lady that was giving us -- well, being loud, I called
18 her a bitch and told her if she didn't shut up, I
19 would shoot her.

20 Q After you saw the defendant take the lady's
21 pocketbook and take the black bag out of the inside
22 of the car, were any other items taken from any other
23 individual?

24 A Only other thing I remember seeing taken
25 was Daniel had took the keys out of the car, and it

1 was like from there, we just took off, started
2 running.

3 Q Where did you run?

4 A We ran to the back of the motel, cut across
5 a grassed area. There was a little playground area
6 out behind the motel. Went across there, got on a --
7 well, a paved road, and it came to a dead end just a
8 little ways down; got into a cornfield, we ran
9 through this first cornfield, crossed over a dirt
10 road, and went over into another cornfield. Then we
11 stopped, started going through the things that we had
12 taken from these people, and I heard a car start
13 coming. Turns out it was a police car. But we had
14 backed up into the cornfield far enough so we
15 wouldn't be seen.

16 And after this police car went by, things
17 that we had left that hadn't been thoroughly checked,
18 we picked it up and moved on into the cornfield a
19 little ways, and about halfway before we got out of
20 the second cornfield, we stopped again, and went
21 through the things, decided what we were going to
22 keep, what we were going to get rid of, and from
23 there, we came out of the cornfield, ended up in
24 town, in Rowland, went to Daniel's grandmother's
25 house that stays in Rowland.

1 Q When you stopped in the cornfield the first
2 time and you went through the items that had been
3 taken from these individuals, what things did you
4 find that you had taken?

5 A Well, in the black bag, there was a video
6 camera and a 35 millimeter camera. Out of the purse,
7 I remember, there were some credit cards, I remember
8 taking -- well, I had took about \$130, between \$150
9 out of this purse. Like I say, I had in my pocket,
10 about \$17, no more than \$20 I had got off this other
11 guy. I had that in my pocket. And there was a
12 shaving kit bag, had two bottles of cologne, just
13 toiletry items. And then Daniel just came out of his
14 pocket with a big wad of money that he said he had
15 gotten from this other guy, this short, heavy-set
16 guy.

17 Q Now, prior to him taking this big wad of
18 money, prior to the defendant taking this big wad of
19 money out of his pocket, had you said anything to him
20 about only getting \$20 off of the man?

21 A Well, what I said to him, I meant, \$20 and
22 the money that I had got out of the purse, I made a
23 statement well, comment to him, like, man, there
24 wasn't -- something like, there wasn't any money, "No
25 fucking money came out of this deal here." And

1 that's when Daniel said to me, "Don't worry about
2 that shit man, I got it." And that's when he reached
3 down into his pocket and pulled out this big wad of
4 money, and that's when he told me this had came off
5 this heavy-set guy.

6 Q Now, this video camera that was inside the
7 black bag, was that the same bag that the defendant
8 had taken out of the back seat of the car?

9 A Yes, yes.

10 Q What if anything was done with the video
11 camera?

12 A Well, the video camera was kept.

13 Q And who kept the video camera?

14 A Daniel did.

15 Q You say you ended up at the defendant's
16 grandmother's house in Rowland?

17 A Yes.

18 Q Was it dark or was it light outside at the
19 time you arrived at his grandmother's house?

20 A By this time it was daylight outside, but
21 it was still early.

22 Q When you went to the defendant's
23 grandmother's house, what was done with the items
24 that had been taken during the robbery?

25 A It was left, like Daniel's grandmom's

1 house, under the carport there's a bench out there.
2 All that stuff was left there. Then we went in the
3 house and I made a phone call to my mother, she came
4 and picked us up.

5 Q Now, when you say all the stuff was left
6 there, what items were left outside the defendant's
7 grandmother's?

8 A The video camera, the 35 millimeter camera,
9 toiletry bag, and the things that were inside the
10 toiletry bag. The money was in there, too.

11 Q Was in where?

12 A Had been put inside the toiletry bag.

13 Q Where was the .380 pistol?

14 A It was in the black video camera bag.

15 Q And at what point had you given -- who had
16 the black video camera bag?

17 A Daniel did.

18 Q And at what point was the .380 pistol
19 placed inside the black video camera bag?

20 A It was somewhere in one of those two
21 cornfields, I don't remember for sure when I give it
22 back.

23 Q And after making a telephone call to your
24 mother, did your mother arrive there at the
25 defendant's grandmother's house?

1 A Yes, yes, she did.

2 Q When she arrived, what was done with the
3 items that had been placed inside the black video
4 camera bag and the bag itself?

5 A It was put on the back of momma's truck,
6 and --

7 Q Who placed the items in the back of your
8 mother's truck?

9 A Daniel did.

10 Q And from there, where did you go?

11 A To Daniel's trailer, to drop him off, and
12 then from there back to my parents' house.

13 THE COURT: Does this conclude
14 this line of questioning?

15 MR. BRITT: As to the --

16 THE COURT: July 4th?

17 MR. BRITT: I've got a few more
18 questions as it relates to that incident
19 and items.

20 THE COURT: Okay.

21 BY MR. BRITT:

22 Q When you went back to the defendant's
23 trailer -- excuse me. When you went to the
24 defendant's trailer on July 4th and dropped him off,
25 what if anything happened to the black video camera

1 bag?

2 A Well, it was taken in the house, everything
3 we had gotten from that robbery earlier on,
4 everything went with Daniel because, well, there was
5 nobody home and we had already discussed that I would
6 go back over there later on that day if I got my car
7 fixed.

8 MR. BRITT: Your Honor, as to the
9 events of July 4th that relate to the
10 robbery, that would conclude my questioning
11 as it relates to that event.

12 THE COURT: If you'll bear with
13 me.

14 Members of the jury, evidence has just
15 been offered and received tending to show,
16 and again I instruct you that what the
17 evidence in this case does show is for you
18 the members of the jury to determine, but
19 evidence has been received tending to show
20 that the defendant in this case, Daniel
21 Andre Green, also known as U'Allah, and the
22 witness now before you, Larry Martin
23 Demery, committed a robbery with a
24 dangerous weapon in the parking lot or in
25 or about the parking lot of the Family Inn

1 in the Rowland area of four individuals as
2 described in the testimony.

3 Now, I instruct you that this evidence
4 is received for the purpose of showing that
5 the defendant, Daniel Andre Green, also
6 known as U'Allah, had the intent or
7 knowledge, which is a necessary element of
8 the crime or crimes charged in this case,
9 specifically the offense of robbery with a
10 dangerous weapon, of James Raymond Jordan,
11 and conspiracy to commit robbery with a
12 dangerous weapon of James Raymond Jordan.

13 Now, members of the jury, I further
14 instruct you that this evidence has been
15 received for the purpose of corroboration.
16 And I previously explained to you that the
17 term corroboration means as tending to
18 strengthen or support.

19 Now, I instruct you that you may, to
20 the extent that you believe this evidence
21 relating to the purported events of July
22 4th, 1993, you may consider it for the
23 limited purpose about which I have
24 instructed you, including for the purpose
25 of corroboration. But you may not believe

1 it for -- use it, pardon me, for any other
2 purpose in this case.

3 Now, do each of you understand that
4 instruction? If each member of the jury
5 understands and can apply the instruction
6 that I've just given you, please so
7 indicate by raising your right hands at
8 this time.

9 Let the record reflect that all 13
10 members of the jury have responded
11 affirmatively. Mr. Britt, any additional
12 redirect examination of this witness?

13 MR. BRITT: Yes, sir.

14 BY MR. BRITT:

15 Q After you and your mother dropped the
16 defendant off at his trailer on July the 4th, 1993,
17 where did you go?

18 A We went home, back to my parents' house.

19 Q How long did you stay at your parents'
20 house at that time?

21 A When I got there, I went -- well, mom went
22 to church, I went to sleep. Just say when I left,
23 left that day and went back to Daniel's house or
24 should I --

25 Q Did you make any arrangements about having

1 your car towed?

2 A Yes, when we got back to the house that
3 morning, I called a tow truck and told this guy where
4 my car was and all, and I needed him to go pick it
5 up. And he --

6 Q As a result of that phone call, was your
7 car brought to your house?

8 A Yes, it was, yes.

9 Q And after your car was brought to your
10 house, did you or anyone else at your request do any
11 work to your car?

12 A Yes.

13 Q Who did any work to your car?

14 A I had asked my dad to help me out, check it
15 over, see what was wrong with it. And come to find
16 out, there's just a small piece of hose under the
17 bottom area had busted and caused all the water to
18 leak out. And daddy had told me --

19 MR. THOMPSON: Object.

20 THE WITNESS: -- I needed to --

21 MR. THOMPSON: Object.

22 THE COURT: Offered to --

23 MR. BRITT: Explain subsequent
24 conduct.

25 THE COURT: Ladies and gentlemen,

1 the evidence now being offered of the
2 witness as to statements he contends were
3 made to him by someone else are not being
4 offered for the truth of the matters
5 asserted but simply to explain the
6 subsequent conduct of Larry Martin Demery.
7 You may consider this evidence for that
8 purpose and no other purpose.

9 BY MR. BRITT:

10 Q What if anything did your father say in
11 regard to your car and what you needed to do?

12 A We told him whenever momma came in from the
13 church, have her go into the town of Pembroke and get
14 a small piece of pipe, only costs like a quarter, and
15 told me to get a clamp in order to pinch this thing
16 down on there. And whenever mom came in, she took me
17 to town, we got these things, came back, and my old
18 man put them on. He told me, too, that the fan on my
19 car, it was messed up. And I didn't get it
20 straightened out, but he helped me get it running
21 again.

22 Q Now, after your father worked on your car,
23 did you take your car and leave and go anywhere?

24 A Yes.

25 Q Where did you go?

1 A I went back to Daniel's trailer.

2 Q And when you went -- and this was on July
3 4th, 1993?

4 A Yes.

5 Q When you went to the defendant's trailer,
6 was anyone at home?

7 A Yes, Daniel was.

8 Q Anyone else?

9 A No, he was alone.

10 Q And when you went to the trailer on July
11 4th, 1993 after your father had worked on your car,
12 what did you do when you got there?

13 A Well, I was only there a few minutes. I
14 went in, Daniel wanted me to watch some video that he
15 had made that morning, well, since the time that we
16 had been separated that morning. He was -- while he
17 was changing his clothes --

18 MR. THOMPSON: Object.

19 THE COURT: Overruled.

20 BY MR. BRITT:

21 Q And did you watch any video there at his
22 house?

23 A Yes.

24 Q What if anything did you see when you
25 watched this video?

1 A Daniel had recorded himself in front of the
2 camera. They had this big wad of money that we had
3 taken from these people earlier on. He had his
4 mom's .380 in his hand.

5 MR. THOMPSON: Object, Your
6 Honor.

7 THE COURT: Overruled.

8 THE WITNESS: He was singing a
9 rap song he had made up, just dancing,
10 putting on a show, and right at the end
11 when it cut off, his mom had came in and
12 looked at the camera, and she -- there was
13 a comment made like "Where did this come
14 from," click.

15 MR. THOMPSON: Move to strike.

16 THE COURT: The objection as to
17 comments made -- who's -- who are you
18 referring to when you say there was a
19 comment made?

20 THE WITNESS: Daniel's mother.
21 It was on the videotape.

22 MR. THOMPSON: Object.

23 THE COURT: Objection is
24 sustained. Members of the jury, you're not
25 to consider the testimony of Mr. Larry

1 Martin Demery as to any statement he
2 contends was made by the mother of the
3 defendant in this case at the time in
4 question. I instruct you that that matter
5 is not to take any part in your
6 deliberations in this case in any way.

7 Yes, sir, Mr. Britt.

8 BY MR. BRITT:

9 Q After you observed the defendant's mother
10 on this videotape, did the video continue?

11 A It went off. It was turned off.

12 Q Now --

13 MR. THOMPSON: Object, Your
14 Honor, to the question. Move to strike.

15 THE COURT: Overruled, and
16 denied.

17 MR. THOMPSON: Desire to be
18 heard.

19 THE COURT: Okay. Members of the
20 jury, there's a matter of law the Court
21 must take up at this time out of the
22 hearing and presence of the jury. Please
23 recall my instructions in that regard.
24 Don't worry or speculate about what takes
25 place in the courtroom in your absence.

1 And if you would step to the jury room.

2 (Jury out at 2:53 p.m.)

3 THE COURT: Yes, sir. The
4 following is occurring in the absence of
5 the jury. Mr. Thompson?

6 MR. THOMPSON: Line one -- page
7 173, line 25.

8 THE COURT: Yes.

9 MR. THOMPSON: Basis of my
10 objection is assuming matters not yet in
11 evidence.

12 THE COURT: I'm on 170 --

13 MR. THOMPSON: Three, line 25.

14 THE COURT: "After you observed
15 the defendant's mother on this videotape
16 did the videotape continue."

17 MR. THOMPSON: Yes. I didn't
18 recall his mother -- him testifying that
19 his mother was on the videotape.

20 MR. BRITT: Go to page 173, line
21 13.

22 MR. THOMPSON: Well, Daniel's
23 mother, it was on the videotape, Your
24 Honor, that's -- I thought was referring to
25 money, and that's the problem with him

1 narrating. Maybe he did, but that's the
2 problem with his narrative answers that
3 he's giving. I did not understand that to
4 mean that his mother was on the tape.

5 THE COURT: Well, I suspect that
6 we're all going to get to see the tape if
7 the State is going to move it for
8 corroborative purposes and if I allow it.

9 MR. THOMPSON: Well, anyway the
10 objection was sustained to that question,
11 and it's not in evidence.

12 THE COURT: Your objection is
13 overruled. Exception is noted for the
14 record. The objection to the hearsay
15 statement was sustained. Note
16 Mr. Thompson's exception for the record.

17 Mr. Britt, am I correct that you're
18 going to link the 4th, 15th, 23rd? That's
19 the reason I didn't give the second
20 instruction.

21 MR. BRITT: Yes, sir.

22 THE COURT: That earlier point
23 that will be given at the appropriate
24 time. If you'll bring the jury back in,
25 please.

1 (Jury in at 2:56 p.m.)

2 THE COURT: The objection is
3 overruled, exception is noted. You may
4 repeat or rephrase your question, Mr.
5 Britt.

6 BY MR. BRITT:

7 Q You've testified that you watched a video
8 on July 4th at the defendant's residence?

9 A Yes.

10 Q And a portion of that video, you saw the
11 defendant's mother on the video?

12 A Yes, yes.

13 Q And after you saw the defendant's mother on
14 that portion of the video where she appears, does the
15 video continue after that?

16 A Ends, cuts off.

17 Q And after watching this video at the
18 defendant's trailer on July the 4th, 1993, what did
19 you and the defendant do?

20 A After he was dressed, we went -- we came to
21 Lumberton, and went to Dobb's -- it was like Dobb's
22 convenience store or --

23 Q Why did you go to Dobb's store?

24 A Because they had a 24 hour mechanic
25 service, and I wanted to go there in order to get a

1 fan put on the car.

2 Q And what money did you use to have --
3 strike that. Was your car repaired that day?

4 A Yes, it was.

5 Q And what money was used to pay for the
6 repairs on your car on July 4th, 1993?

7 A Money taken from the robbery Daniel and I
8 committed earlier.

9 Q And do you recall how much money you spent
10 to have your car repaired on July 4th, 1993?

11 A Best I can remember, it was around \$130,
12 something like that.

13 (State's Exhibit 92 was
14 marked for identification.)

15 MR. BRITT: May I approach?

16 THE COURT: Yes, sir.

17 BY MR. BRITT:

18 Q I'll show you what has been marked as
19 State's Exhibit Number 92, clear plastic bag that
20 contains a written document. Can you identify the
21 document contained inside the clear plastic bag
22 marked as State's Exhibit Number 92?

23 A Yes, it's a --

24 Q How are you able to identify the document
25 contained inside of State's Exhibit Number 92?

1 A Well, this is the receipt where I paid this
2 guy for repairing my car.

3 Q When you say this is the receipt where you
4 paid the guy to repair your car, is that the receipt
5 that you received at Dobb's Mobile, located on West
6 Fifth Street here in Lumberton on July the 4th, 1993?

7 A Yes, it is.

8 Q And is it in substantially the same
9 condition as it was in when you received a copy of
10 the receipt on July 4th, 1993?

11 A Yes.

12 MR. BRITT: Your Honor, at this
13 time I move for admission of State's
14 Exhibit Number 92.

15 THE COURT: Admitted without
16 objection.

17 MR. BRITT: Ask that 92 be
18 published to the jury.

19 THE COURT: Yes, sir.

20 Mr. Horne, if you'll publish State's
21 Exhibit 92. Ladies and gentlemen, recall
22 that it is your duty to examine any exhibit
23 given to you individually and carefully and
24 without any comment. Yes, sir.

25 (Exhibit shown to the jury).

1 BY MR. BRITT:

2 Q Mr. Demery, other than the repairs that
3 were made to your car, what was the money used for
4 that was taken during the robbery July the 4th?

5 A Daniel and I just blew it, had a good time
6 with it.

7 Q And when you say that you just blew it and
8 had a good time with it, what do you mean by that?

9 A I mean by going in stores and stuff, just
10 buying things on impulse that we would throw down
11 later on that day and forget about them, just blowing
12 money, throwing it around like we had all the money
13 in the world to spend.

14 Q Was all the money that was taken during the
15 robbery on July the 4th spent by you and the
16 defendant?

17 A Yes.

18 Q Now, at this time in July of 1993, were you
19 still working as an escort driver for Angela's
20 stepfather?

21 A That was around the time that I quit.

22 Q And when you quit working as an escort
23 driver for Angela's stepfather, did you have any
24 other means of income?

25 A Other than committing crimes, taking

1 people's stuff, no.

2 Q The video camera that was taken during the
3 robbery of July the 4th, who had it?

4 A Daniel.

5 Q And where was it kept, to your knowledge?

6 A When we were over at the trailer, in the
7 trailer, when we were out, just kicking around, it
8 was in the car.

9 Q Now, prior to July the 4th of 1993, to your
10 knowledge did the defendant have a video camera?

11 A No, he did not.

12 Q And after the robbery of July the 4th,
13 1993, did the defendant have more than one video
14 camera in his possession?

15 A That's the only video camera that Daniel --
16 that I ever saw him have.

17 Q Now, the video camera, was the video camera
18 ever taken to Marion, South Carolina?

19 A Yes.

20 Q And who took it to Marion?

21 A Daniel did.

22 Q And when was the first time you recall the
23 defendant taking the video camera to Marion, South
24 Carolina?

25 A First time I remember was the 15th, 15th of

1 July.

2 Q On the 15th of July when you went to
3 Marion, South Carolina and the defendant took the
4 video camera, was that before or after the robbery of
5 Lowry's Texaco where Clewis Demory was shot?

6 A After.

7 Q During this time period, was the defendant
8 working?

9 A No.

10 Q To your knowledge, did he have any other
11 means of income?

12 A No.

13 Q Who was with you when you went to Lowry's
14 Texaco on the morning of July 15th, 1993?

15 A Daniel.

16 Q On the morning of July 15th, 1993, were any
17 articles of clothing worn that were worn during the
18 July the 4th, 1993 robbery?

19 A Yes.

20 Q What articles of clothing were worn on July
21 15th that had been worn on July the 4th?

22 A Black sweat jacket with a hood that had the
23 Raider's logo on the back, and the gray sweat jacket
24 with the hood.

25 Q On July 4th, 1993, what if anything was

1 done with the .380 pistol that the defendant had
2 taken from his mother's purse?

3 A After my mother drove Daniel home, his mom
4 had got it in between the time that -- before I ever
5 went back over there.

6 Q Now, on July 15th of 1993, what guns did
7 you and the defendant have possession of when you went
8 into Lowry's Texaco?

9 A Two .32 caliber pistols.

10 Q Which .32 did you have?

11 A The black one with the black handles on it.

12 Q Which .32 did the defendant have?

13 A Black one with the bone type handles.

14 Q Who shot Clewis Demory?

15 A Daniel did.

16 Q And after Clewis Demory was shot and you
17 were back in the car, how many guns did the defendant
18 have in his possession?

19 A Two.

20 Q What two guns did he have in his possession
21 after Clewis Demory was shot and the two of you were
22 back in your car?

23 A .32 caliber pistol with the white bone
24 handles and a .38 caliber Smith & Wesson.

25 Q The video camera that was taken -- strike

1 that. The .38 caliber pistol that was taken in the
2 robbery of Clewis Demory, is that the same .38
3 caliber pistol that was taken to Marion, South
4 Carolina on July 15th, 1993?

5 A Yes.

6 Q And the video camera that the defendant
7 took with him to Marion, South Carolina on July 15th,
8 1993, is that the same video camera that was taken in
9 the robbery of July 4th at the Family Inn in Rowland?

10 A Yes.

11 Q What was done with the money that was taken
12 during the robbery of Clewis Demory on July 15th,
13 1993?

14 A Other than a hundred dollars and some food
15 stamps, the rest, Daniel and I blew. Should I give
16 an account of the hundred dollars and the food
17 stamps?

18 Q What did you do with the money?

19 A Well, the hundred dollars, or the rest of
20 the money?

21 Q The hundred dollars that you referred to,
22 what was done with it?

23 A Daniel gave it to his mother.

24 Q What was done with the remaining cash that
25 was taken during the robbery?

1 A Daniel and I spent it. Used some of it
2 later on that day for the two motel rooms.

3 Q What if anything was done with the food
4 stamps that were taken during the robbery?

5 A After Daniel and I came into the possession
6 of the Lexus, we went over to Kayeol's house where
7 his mother was, got them from her and went to Red
8 Springs to a grocery store.

9 Q Who took the money and the food stamps out
10 of the cash register at Lowry's Texaco July 15th,
11 1993?

12 A Daniel did.

13 Q Who had possession of the video camera
14 after you returned from Marion, South Carolina on
15 July the 15th, 1993?

16 A Daniel did.

17 Q At any time did you take the video camera
18 home with you?

19 A Not by myself, I didn't. There was a time
20 that we were over there, Daniel and I, and the camera
21 was over there at the house.

22 Q From the time that the video camera was
23 taken in the robbery on July 4th, 1993, did you and
24 the defendant use it to make videos?

25 A Other than kidding around, I mean, no.

1 Q On July the 22nd, 1993, did either you or
2 the defendant have the video camera in your
3 possession on that date?

4 A Daniel did.

5 Q On July the 22nd, 1993, did either you or
6 the defendant have possession of the .38 caliber
7 Smith & Wesson revolver that was taken from Clewis
8 Demory on July 15th?

9 A Yes, Daniel did.

10 Q On July the 22nd, 1993, after going to
11 Angela's, where did you go?

12 A I went back to Daniel's trailer.

13 Q Who was there when you arrived on July
14 22nd, 1993?

15 A Daniel.

16 Q Approximately what time of the day or
17 evening was that?

18 A It was between 9:00 and 10:00 p.m.

19 Q Now, what was your purpose in going to the
20 defendant's trailer on July 22nd, 1993?

21 A We had discussed and planned to go out and
22 commit a robbery that night, and that's about the
23 time that I told him I would be back.

24 Q Where had you talked about going and
25 committing this robbery?

1 A Out at the Quality Inn.

2 Q And why was the Quality Inn chosen as a
3 place to commit robbery on July 22nd, 1993?

4 A Well, it was close by Daniel's residence,
5 and had the convenience of places that we could hide,
6 you know, duck, without really being seen.

7 Q Who were you anticipating robbing at the
8 Quality Inn on July 22nd, 1993?

9 A Tourists.

10 Q And when you went to the defendant's
11 trailer on July 22nd, 1993, around -- between 9:00
12 and 10:00 p.m., where did you and the defendant go
13 after you arrived?

14 A Kayeol Hernandez's house.

15 Q When you went to Kayeol Hernandez's house
16 the 22nd of July, 1993, were there any people there?

17 A Yes.

18 Q At any time after you arrived on July the
19 22nd, 1993, did you leave by yourself?

20 A No, no.

21 Q How long did you stay at Kayeol Hernandez's
22 house July 22nd, 1993?

23 A About two and a half hours.

24 Q And when you left Kayeol Hernandez's that
25 evening, approximately what time was it?

1 A Like 1:00, 1:30 a.m.

2 Q What date would that have been?

3 A Technically, Sunday, July 23rd. Well, no,
4 Friday morning, excuse me.

5 Q And when you left Kayeol Hernandez's on
6 July 23rd, who left with you?

7 A Daniel did.

8 MR. BRITT: May we approach?

9 THE COURT: Yes, sir. Is this a
10 good time for a break?

11 MR. BRITT: Well --

12 THE COURT: Come on up. If all
13 counsel would come up, please.

14 (Whereupon a bench conference ensued
15 as follows.)

16 MR. BRITT: For the record,
17 Mr. Rogers handed me this. That's the
18 reason I asked to approach. When he handed
19 it to me, I moved over. She's sitting in
20 front of her seat.

21 THE COURT: How much longer do
22 you anticipate?

23 MR. BRITT: I think it may be
24 appropriate as to inquire as to her
25 condition.

1 let us know. We'll do the best we can to
2 accommodate you.

3 Let me give -- let's take until 15
4 until. That will at least give you an
5 opportunity to relieve some of the pain.
6 We'll be at ease until that time. During
7 this recess, recall that it is your duty to
8 abide by all prior instructions of the
9 Court concerning your conduct. Everyone
10 else please remain seated, we are excused
11 until 3:45.

12 (Jury out at 3:20 p.m.)

13 THE COURT: Let the record
14 reflect the following is being heard in the
15 absence of the jury.

16 Folks, anybody want to be heard about
17 the propriety or any objection to the Court
18 providing Ms. Manuel with my cushion? It
19 does have some relief, gives some massage
20 relief and some heat. State want to be
21 heard?

22 MR. BRITT: No, sir.

23 THE COURT: Defendant want to be
24 heard? I take that as a no.

25 MR. THOMPSON: No, sir.

1 THE COURT: Mr. Green, do you
2 want to be heard?

3 MR. GREEN: No, sir.

4 THE COURT: All right. Sergeant
5 Meares, if you'll approach the bench. If
6 you'll explain all she has to do is push
7 the button down for high, up for low, and
8 that cuts it off.

9 We're at ease.

10 (Brief recess.)

11 THE COURT: Let the record
12 reflect all counsel are present, the
13 defendant is present in open court.
14 Mr. Demery, if you'll again take the
15 witness stand. And again, you remain under
16 oath.

17 Any matters before we bring our jury
18 back in?

19 MR. BRITT: Are we going to
20 inquire of her condition or just going to
21 play it by ear from here?

22 THE COURT: I would prefer
23 playing it by ear. We've got 13, and
24 unless I -- my intent, few moments ago at
25 the time we recessed, was let them know if

1 there's anything at all relating to their
2 comfort, they shouldn't hesitate to let us
3 know that.

4 If you'll bring the jury in, please,
5 Mr. Horne.

6 (Jury in at 3:45 p.m.)

7 THE COURT: Mr. Britt.

8 BY MR. BRITT:

9 Q Mr. Demery, when you left, when you and the
10 defendant left Kay Hernandez's on the morning of July
11 23rd, did either of you have a gun in your
12 possession?

13 A Yes, Daniel did.

14 Q And what gun did the defendant have in his
15 possession when you left Kay Hernandez's house?

16 A The .38 that had been taken out of the
17 robbery at Lowry's Texaco store on July 15th.

18 Q And where did you and the defendant go when
19 you left Kay Hernandez's?

20 A To the Quality Inn -- well, around that
21 area.

22 Q And what was your purpose in going to the
23 area around the Quality Inn after leaving Kay
24 Hernandez's on July 23rd, 1993?

25 A To find a person, somebody to rob.

1 Q And after going to the area of the Quality
2 Inn on July the 23rd and seeing this red Lexus that
3 was parked along 74, who approached that car?

4 A Both Daniel and I.

5 Q And the first time that you approached the
6 car, from which direction did you approach it?

7 A Crossing over -- well, on the passenger
8 side -- crossing the northbound lane, we walked
9 behind it. The westbound lane.

10 Q Now, there in that area along 74 where the
11 Lexus was parked, how many lanes of traffic are
12 there?

13 A Four.

14 Q And --

15 THE COURT: Mr. Britt, if you'll
16 bear with me before we get into matters
17 relating to the 23rd.

18 Members of the jury, as I previously
19 instructed you with regard to evidence
20 offered in this case, as to a purported
21 robbery with a dangerous weapon of Lowry's
22 Texaco on July 15th, 1993, and a purported
23 robbery with a dangerous weapon of four
24 individuals in or about the parking lot of
25 the Family Inn in the area of Rowland,

1 North Carolina on or about July 4th, 1993,
2 that you may consider that evidence for
3 limited purposes, and I instructed you as
4 to what those purposes were.

5 I further instruct you at this time
6 that in addition to the purposes about
7 which you have already been instructed, you
8 may consider evidence as to those matters
9 insofar as you find that it bears on
10 whether or not there existed in the mind of
11 the defendant, Daniel Andre Green, and the
12 witness now before you, Larry Martin
13 Demery, a plan or scheme or system or
14 design involving the crime or crimes
15 charged in this case, specifically, the
16 allegations relating to July 23rd, 1993,
17 and specifically to the allegations of the
18 first degree murder of James Raymond
19 Jordan, the robbery with a dangerous weapon
20 of James Raymond Jordan, and the conspiracy
21 to commit robbery with a dangerous weapon.

22 Now, in addition to the other purposes
23 about which you have already been
24 instructed, I now instruct you that you may
25 consider that evidence relating to the

1 events of July 4th, and July 5th, 1993, are
2 for the purpose you are now being
3 instructed about.

4 Do each of you understand that
5 instruction? If all members of the jury
6 understand and can apply that instruction,
7 please so indicate by raising your right
8 hand.

9 Let the record reflect that all 13
10 members of the jury have responded
11 affirmatively.

12 Yes, sir, Mr. Britt.

13 BY MR. BRITT:

14 Q There in the westbound lane of U.S. 74 near
15 the intersection of I-95, how many lanes are there?

16 A Two.

17 Q In the eastbound lane along U.S. 74, how
18 many lanes are there?

19 A Two.

20 Q Is there anything that divides the east and
21 westbound lanes of U.S. 74 at the area where the
22 Lexus was parked?

23 A A median.

24 Q And in terms of the width of that median,
25 how would you describe the width of that median?

1 A 55, 60 feet across, just -- you mean just
2 the median, right?

3 Q Just the median?

4 A Between 55, maybe 60 feet across.

5 Q Now, when you approached the Lexus on July
6 23rd, 1993, you've testified that there was a truck
7 parked on the other side of U.S. 74?

8 A Yes.

9 Q Where was that truck parked in relationship
10 to the Lexus?

11 A It was parked across the road, eastbound
12 lane facing towards Wilmington, about -- seemed like
13 the front bumper of this Lexus going across the road
14 and standing in front of this truck, 60, 65 feet.

15 Q And the truck that was parked there on the
16 morning of July 23rd, you've previously stated that
17 you weren't concerned -- strike that. The truck that
18 was parked there on July 23rd, did that cause you any
19 concern?

20 A No.

21 Q And why didn't the truck being there on the
22 morning of July 23rd cause you any concern?

23 A Well, because it was just, even though I
24 had noticed it going up, the thought of it just
25 didn't cross my mind.

1 Q In all, how many times did you cross from
2 one side -- from the westbound side of 74 to the
3 eastbound side of 74 on the morning of July 23rd?

4 A Four, four times.

5 Q And who was with you on each of those
6 occasions when you crossed from the westbound side of
7 74 to the eastbound side of 74?

8 A Daniel.

9 Q And at any time after you saw that red
10 Lexus parked along U.S. 74, was that red Lexus ever
11 moved to an area near the Quality Inn motel?

12 A No, it wasn't, no.

13 Q Was the man inside the red Lexus ever taken
14 out of the car there along U.S. 74 and taken in the
15 area where your car was parked on the dirt road along
16 the canal bank?

17 A No, he wasn't.

18 MR. BRITT: May I approach?

19 THE COURT: Yes, sir.

20 BY MR. BRITT:

21 Q I'll show you what has been marked and
22 previously admitted into evidence as State's Exhibit
23 Number 87, a photograph that you've previously seen
24 before and made some identifying marks on it.

25 A Yes.

1 Q State's Exhibit Number 87, included in that
2 photograph, is there a photograph of the sign that
3 you and the defendant ran and hid behind before
4 approaching the Lexus for the last time on August
5 3rd, 1993?

6 A Yes.

7 Q And where was that sign located in
8 relationship to the bushes that you and the defendant
9 ran and hid behind on the previous trip to the car?

10 A They were back behind the sign area, I
11 mean, like in feet, distance --

12 THE COURT: Speak up.

13 BY MR. BRITT:

14 Q Where were they in terms of location?

15 A The sign was closest to the car, the bushes
16 were farther off.

17 (State's Exhibit 89 was
18 marked for identification.)

19 BY MR. BRITT:

20 Q I'll hand you what's been marked as State's
21 Exhibit Number 89, ask you to look at that and tell
22 me if you can identify that photograph?

23 A Yes.

24 Q And how are you able to identify State's
25 Exhibit Number 89?

1 A It shows, well, the sign and the area, the
2 bushes where where we ran.

3 Q And does State's Exhibit Number 89 fairly
4 and accurately depict the scene as you recall it on
5 the morning of July 23rd, 1993?

6 A The sign appears to me to be in a different
7 position, but yes, that's--

8 Q And can you use State's Exhibit Number 89
9 to help you in illustrating your testimony to the
10 jury as to the location of these bushes in
11 relationship to where the sign was located on the
12 morning of July 23rd, 1993?

13 A Yes.

14 MR. BRITT: Your Honor, at this
15 time I ask that State's Exhibit Number 89
16 be admitted for illustrative purposes.

17 THE COURT: It's admitted for
18 that purpose without objection.

19 Members of the jury, please recall my
20 instructions. State's Exhibit 89 is being
21 offered for the limited purpose of
22 illustrating the testimony of the witness
23 now before you, Mr. Larry Martin Demery.
24 To the extent that you find it of aid or
25 assistance in understanding that testimony

1 you may consider it for that limited
2 purpose and no other purpose.

3 Yes, sir.

4 (State's Exhibit 91 was
5 marked for identification.)

6 BY MR. BRITT:

7 Q I'll show you what has been marked as
8 State's Exhibit Number 91, ask you to look at that
9 and tell me if you can identify it?

10 A Yes, that's a overhead view of like 74, 95,
11 crossing -- it shows part of the parking lot at the
12 Quality Inn, parking lot at the abandoned store.

13 Q State's Exhibit 91, is it a photographic
14 enlargement of what has previously been admitted into
15 evidence as State's Exhibit 88?

16 A Yes.

17 Q State's Exhibit Number 91, can you use it
18 in illustrating your testimony to the jury as to the
19 location of the motel where your car was parked,
20 location of the red Lexus, location of the truck that
21 was parked there along 74 on the morning of July
22 23rd, 1993?

23 A Yes.

24 Q Does State's Exhibit Number 91 better
25 depict the scene than does State's Exhibit Number 88?

1 A Yes.

2 MR. BRITT: Your Honor, at this
3 time I ask that State's Exhibit Number 91
4 be admitted for illustrative purposes.

5 THE COURT: It's admitted.
6 Recall my instruction just a moment ago as
7 to how you are to use illustrative
8 exhibits.

9 MR. BRITT: Your Honor, at this
10 time I ask that Mr. Demery be allowed to
11 step down.

12 THE COURT: Yes, sir.

13 MR. THOMPSON: Your Honor, may I
14 approach?

15 THE COURT: Yes, sir.

16 MR. BRITT: If the record would
17 reflect, I have in my hands at this time
18 State's Exhibit Number 87, it's previously
19 been admitted. Defendant referred to it in
20 foundation that was laid for State's
21 Exhibit Number 89.

22 THE COURT: Yes, sir.

23 BY MR. BRITT:

24 Q Mr. Demery, using State's Exhibit Number
25 87 -- you've previously marked State's Exhibit number

1 87 with a red X, the location where the red Lexus was
2 located on the morning of July 23rd, 1993. Does
3 State's Exhibit Number 87 also shown show the sign
4 that you and the defendant hid behind before
5 approaching the red Lexus for the last time?

6 A Yes, it does.

7 Q If you'll use State's Exhibit Number 87 to
8 show the jury the location of that sign.

9 A (Witness complies).

10 Q If you'll step -- same thing.

11 A (Witness complies).

12 Q Hand you now what's been marked as State's
13 Exhibits number 89. Can you use State's Exhibit
14 Number 89 to show the members of the jury the
15 location of the bushes where you and the defendant
16 hid in relationship to the location of the sign there
17 along U.S. 74?

18 A Yes.

19 Q If you would do that at this time.

20 A Sign.

21 Q You need to speak up so the court reporter
22 can take down anything that you say.

23 A Here's the bushes right here.

24 THE COURT: Mr. Demery, don't let
25 your voice drop. Keep it up.

1 THE WITNESS: The bushes right
2 here (indicating).

3 BY MR. BRITT:

4 Q I'm going to hand you what's been marked as
5 State's Exhibit Number 91, ask you to use State's
6 Exhibit Number 91 to illustrate your testimony to the
7 jury as to the location of the Quality Inn motel, the
8 location of where your car was parked on the morning
9 of July 23rd, the path that you and the defendant
10 took in approaching the red Lexus parked along U.S.
11 74, the location of the red Lexus at that time, the
12 location of the truck that was parked across U.S.
13 74 --

14 THE COURT: Mr. Britt, may I
15 suggest that as he holds the exhibit, you
16 put specific questions to him as to
17 specific items?

18 MR. BRITT: Yes, that would be
19 fine.

20 BY MR. BRITT:

21 Q Mr. Demery, start with the first four
22 jurors. Can you point out the location of the motel?

23 A Yes.

24 Q If you'll do that at this time. And can
25 you point out to those jurors the area where your car

1 was parked prior to going to the Quality Inn on July
2 23rd, 1993?

3 A Yes (indicating).

4 Q And when you went from the area where your
5 car was parked to the Quality Inn, can you indicate
6 or point along the exhibit the path that you and the
7 defendant took in going to the Quality Inn?

8 A Yes, (indicating). Little dirt road out --

9 THE COURT: Mr. Demery, your
10 voice is dropping.

11 THE WITNESS: We walked down this
12 little road here. Walked the service road,
13 back up to the motel.

14 BY MR. BRITT:

15 Q Using State's Exhibit Number 91, can you
16 indicate, show the jury where the red Lexus was
17 parked when you saw it on July 23rd, 1993?

18 A This area (indicating).

19 Q And using State's Exhibit Number 91, can
20 you show the jury the area where the truck was
21 parked?

22 A Yes (indicating).

23 Q And using State's Exhibit Number 91, can
24 you indicate to the jury the westbound lane of U.S.
25 74 and the eastbound lane of U.S. 74?

1 A Yes. Westbound, eastbound (indicating).

2 Q And can you indicate for the members of the
3 jury the median located between the east and
4 westbound lanes?

5 A Yes (indicating).

6 Q How many times did you and the defendant
7 cross U.S. 74 from the west to eastbound lane, and
8 indicate that using State's Exhibit Number 91?

9 A Four. Crossed over from westbound to east,
10 back over, to here, third time, from here, across,
11 and around the front of the car.

12 Q Can you indicate or show on State's Exhibit
13 Number 91 the location of the bushes where you and
14 the defendant hid prior to approaching the red Lexus?

15 A Yes. (Indicating).

16 Q If you'll move down towards the center of
17 the jury box. And let these four members of the
18 jury, if you will, indicate the location of the
19 motel, location where your car was parked.

20 A (Indicating) here.

21 Q The path that you took from your car to the
22 motel.

23 A Down this little dirt road, up the service
24 road.

25 Q The location of where the red Lexus was

1 located on U.S. 74.

2 A Here (indicating).

3 Q Location of the truck that was parked
4 across U.S. 74.

5 A Here (indicating).

6 Q The west and eastbound lanes of U.S. 74.

7 A West lane, east (indicating).

8 Q The median that separates the west and
9 eastbound lanes.

10 A (Indicating).

11 Q And using State's Exhibit Number 91, the
12 path that you and the defendant took in crossing U.S.
13 74 in approaching the car.

14 A First time, crossed -- first time. Back
15 across, to here, the car was parked from here back
16 across, and then around the front of the car.

17 Q Can you indicate or point out the bushes,
18 where they are located on State's Exhibit 91, where
19 you and the defendant hid prior to approaching the
20 red Lexus?

21 A After the car came?

22 Q Yes, after the car came.

23 A (Indicating).

24 Q If you'll step down to this end of the jury
25 box. To these jurors' benefit, if you'll point out

1 the location of the motel.

2 A (Indicating).

3 Q The location where your car was parked.

4 A (Indicating).

5 Q The path that you and the defendant took
6 from where your car was parked to the motel.

7 A (Indicating).

8 Q The location where the red Lexus was on
9 July 23rd, 1993.

10 A (Indicating).

11 Q The location of where the truck was parked
12 along U.S. 74 on that morning.

13 A (Indicating).

14 Q The east and westbound lanes of U.S. 74.

15 A West, east (indicating).

16 Q The median that separates the west and
17 eastbound lanes.

18 A Here.

19 Q And the path that you and the defendant
20 took when approaching the red Lexus.

21 A First time, from here down the service
22 road, crossed over, back across to here. From here,
23 back across again, and around the front of the car
24 (indicating).

25 Q The bushes that you and the defendant hid

1 behind when a car came along U.S. 74.

2 A Here (indicating).

3 Q Thank you. If you will return to the
4 witness stand.

5 On each of the occasions that you and the
6 defendant approached the red Lexus, who had the .38
7 caliber revolver?

8 A Daniel did.

9 Q And when you and the defendant left the
10 area behind the sign along U.S. 74 and approached the
11 red Lexus for the last time, who had the .38 caliber
12 Smith & Wesson revolver?

13 A Daniel did.

14 Q When you and the defendant went to the
15 passenger side of the car and squatted down beside
16 the red Lexus, who had the .38 caliber Smith & Wesson
17 revolver?

18 A Daniel did.

19 Q And when you stood, started to stand up to
20 look inside the red Lexus, who had the .38 caliber
21 Smith & Wesson revolver?

22 A Daniel.

23 Q Who stuck the .38 caliber Smith & Wesson
24 revolver inside the red Lexus when the man asked what
25 was going on?

1 A Daniel.

2 Q Who pulled the trigger on the .38 caliber
3 Smith & Wesson revolver on July 23rd, 1993?

4 A Daniel did.

5 Q Who retained possession on July the 23rd,
6 1993, of the .38 caliber Smith & Wesson revolver that
7 was used to shoot James Jordan?

8 A Daniel did.

9 Q Whose idea was it to go to the Quality Inn
10 located at 74 and 95 on the night of July 22nd, the
11 early morning hours of July 23rd, 1993?

12 A The both of us, Daniel and myself.

13 Q Who drove off in the red Lexus on the
14 morning of July 23rd, 1993 after James Jordan's body
15 was moved from the driver's side to the passenger
16 side of the car?

17 A Daniel did.

18 Q And who was driving the red Lexus on the
19 morning of July 23rd, 1993 when you saw headlights
20 coming along the canal bank near Bob's Landing
21 Trailer Park?

22 A Daniel was.

23 Q Who drove the red Lexus from the area of
24 the canal bank at Bob's Landing Trailer Park south
25 along U.S. 301 to the cornfield where you stopped?

1 A Daniel.

2 Q Who took off Mr. Jordan's watch?

3 A Daniel did.

4 Q Who took Mr. Jordan's rings off of his
5 fingers?

6 A Daniel.

7 Q Who took his credit cards?

8 A Daniel did.

9 Q Who was it that said anything about the man
10 being Michael Jordan's father?

11 A Daniel was the first one mentioned it.

12 Q Whose idea was it to dump the body?

13 A Both of us.

14 Q Whose idea was it to take the body to
15 Rowland to the waste water treatment plant?

16 A Daniel's.

17 Q Whose idea was it to take the body to the
18 Pea Bridge Road area of South Carolina?

19 A Mine.

20 Q And when you say it was your idea to take
21 the body to the Pea Bridge Road area of South
22 Carolina, why did you suggest taking it there?

23 A It was -- I was familiar with the area, it
24 was close by the place that I worked.

25 Q How long did you wait at Bob's Landing

1 Trailer Park before the defendant arrived with the
2 red Lexus with Mr. Jordan's body in the car?

3 A About 15, 20 minutes.

4 Q And where did you wait for the defendant
5 there in the area of Bob's Landing Trailer Park?

6 A For the first few minutes there in the
7 yard, Daniel's yard, and the rest of the time, around
8 the bridge.

9 MR. BRITT: May I approach?

10 THE COURT: Yes, sir.

11 (State's Exhibit 90 was
12 marked for identification.)

13 MR. BRITT: May I approach the
14 witness?

15 THE COURT: Yes, sir.

16 BY MR. BRITT:

17 Q I'll show you what has been marked as
18 State's Exhibit Number 90, ask you to look at it and
19 tell me if you can identify it?

20 A It's an overhead view of the trailer park
21 that Daniel lived in.

22 Q State's Exhibit Number 90, is that an
23 aerial photograph?

24 A Yes.

25 Q And does State's Exhibit Number 90 fairly

1 and accurately represent or depict the area of Bob's
2 Landing Mobile Home Park as you knew it to be back in
3 July of 1993?

4 A Yes, it does.

5 Q And does State's Exhibit Number 90 also
6 depict the road that runs along the canal near Bob's
7 Landing Mobile Home Park?

8 A Yes.

9 Q And the road that is depicted along the
10 canal, is that the road that you saw the headlights
11 coming up and eventually saw the red Lexus being
12 driven by the defendant on the morning of July 23rd,
13 1993?

14 A Yes.

15 Q Can you use State's Exhibit Number 90 to
16 illustrate your testimony as to where you parked your
17 car on the morning of July 23rd, 1993, the area where
18 you waited for the defendant on the morning of July
19 23rd, 1993, and the path that you saw the headlights
20 coming along the canal bank on the morning of July
21 23rd, 1993?

22 A Yes.

23 MR. BRITT: Your Honor, at this
24 time I ask that State's Exhibit Number 90
25 be admitted for illustrative purposes.

1 THE COURT: Admitted without
2 objection. Please recall my instruction as
3 to how you are to use or consider
4 illustrative evidence, members of the
5 jury.

6 Yes, sir.

7 BY MR. BRITT:

8 Q Mr. Demery, when you left the area of 74
9 and 95 on the morning of July 23rd, where did you go?

10 A To Daniel's trailer.

11 Q And when you went to Daniel's trailer,
12 where did you park your car?

13 A In the front, the front yard.

14 Q And after parking your car there, where did
15 you go?

16 A From there, to the bridge.

17 Q And there at the bridge, how long were you
18 there and what if anything did you see, or hear?

19 A I was at the bridge about ten minutes. I
20 noticed headlights coming down the canal, and then I
21 heard music playing, loud music.

22 Q When you first saw headlights coming down
23 the canal, what did you do?

24 A Made a dash, hid behind some bushes,
25 because I didn't know -- even though Daniel and I had

1 discussed meeting at the bridge, I didn't know he was
2 going to take this, going to come up there.

3 MR. BRITT: Your Honor, at this
4 time I ask that he be allowed to step down.

5 THE COURT: Yes, sir.

6 Mr. Thompson, Mr. Bowen, feel free,
7 folks -- Mr. Britt, if you'll allow them to
8 get into position.

9 MR. BRITT: Yes, sir.

10 BY MR. BRITT:

11 Q Using State's Exhibit Number 90, if you
12 will, show the jury where you parked your car on the
13 morning of July 23rd, where you went and waited for
14 the defendant, and the path along the canal bank
15 where you observed headlights and eventually saw the
16 defendant driving the red Lexus.

17 A All right. This is Daniel's trailer. I
18 parked my car right in here, the front, front yard
19 area. From leaving here, I went here, the bridge.
20 This is the canal bank where I saw the headlights
21 coming when Daniel came up. And -- is that --

22 THE COURT: Mr. Demery, keep your
23 voice up.

24 THE WITNESS: I was going to ask
25 if that's --

1 BY MR. BRITT:

2 Q Using State's Exhibit 90, can you show
3 where you ran and hid when you first saw these
4 headlights coming, when you ran and hid along the
5 canal bank?

6 A The bridge here, right across this little
7 sprig of bushes sticking out at the bottom of the
8 picture, right here, across the road.

9 Q If you'll step down and do the same to
10 these four jurors, where you parked, where you went
11 and waited for the defendant, where you saw the
12 headlights and where you went and hid.

13 A This is Daniel's trailer here. I parked my
14 car right along in the front yard. From here, I went
15 to here, bridge (indicating). This is the canal bank
16 that runs alongside of the bridge. That's when I
17 first saw the headlights coming, down here at the
18 bottom, this little -- the bushes coming out right
19 here, this is where I hid when I first saw the lights
20 coming.

21 This is Daniel's trailer right here. This
22 is the area where I parked my car, front yard. I
23 went here, this is the bridge. This is the canal
24 bank runs alongside of the bridge where I saw the
25 headlights coming. And this section right here of

1 bushes, well, across the road, this is where I hid
2 when I first saw the lights coming (indicating).

3 Q If you'll return to the witness stand.

4 A (Witness complies).

5 Q After you and the defendant -- strike
6 that. You testified earlier that you were wearing a
7 watch on the morning of July 23rd, 1993?

8 A Yes, may have -- I may have been. That's
9 best as I can recall, I had one on.

10 Q On the morning of July 23rd, 1993, were you
11 paying attention to the time?

12 A No, there was just one specific time I
13 remember seeing what time it was.

14 Q Why were you not paying any attention to
15 the time on the morning of July 23rd, 1993?

16 A Well, because -- before or after?

17 Q At any time were you paying attention?

18 A No. We were out to rob somebody, Daniel
19 and I. And then after we came into the possession of
20 this car, there was a matter of a dead person to get
21 rid of. And like I say, that was the time, trucks,
22 that was the furthest thing in my mind, but I just
23 wanted to get this body out of the car.

24 Q And the one particular time, one specific
25 time that you remember looking at a clock was when?

1 A Down in Rowland, right around the park
2 area, looking for a way inside the waste treatment
3 plant.

4 Q What time do you recall that being?

5 A Being 3:45.

6 Q How long did you and the defendant ride
7 around looking for a way inside the waste treatment
8 plant?

9 A Just a few minutes, no more than five.

10 Q And from the waste treatment plant, where
11 did you go?

12 A From there, to Pea Bridge.

13 Q And at Pea Bridge, how long were you and
14 the defendant there?

15 A 20, 30 minutes at the most.

16 Q And why were you there for that length of
17 time?

18 A Well, like I say, we went there for the
19 purpose of getting rid of this body. We got out one
20 time to check each bridge, look on each side to see
21 which would be the best side to drop this body. And
22 then there was a -- some time was taken up trying to
23 get the hazard lights cut off. And that was --

24 Q You testified that you went to a Citgo
25 station and bought some gasoline?

1 A Yes.

2 Q When you first arrived at that station, was
3 it open?

4 A Yes.

5 Q How long did you stay there at the station?

6 A About 30 minutes.

7 Q And what did you do there while at the
8 station?

9 A Well, when we got there, I went into the
10 store to pay for the gas and all. When I come out,
11 Daniel was trying to figure out how to get the lid
12 open to put the gas in. And that's what took up most
13 of the time. Finally, we -- well, I found it. And
14 then put the gas in.

15 Q After leaving the Citgo station, it's your
16 testimony you went to a bank?

17 A Yes.

18 Q Do you recall what bank you went to?

19 A First Union.

20 Q Did you know where a First Union bank was
21 located in Laurinburg?

22 A Yes.

23 Q And from there, you went where?

24 A From leaving the bank?

25 Q From the bank, where did you go?

1 A To the canal close to my parents' house.

2 Q And at the canal, items were thrown away?

3 A Yes.

4 Q And from the area of the canal, where did
5 you and the defendant then go?

6 A Back to Daniel's trailer.

7 Q Who had the .38 caliber Smith & Wesson
8 revolver when you went back to the defendant's
9 trailer?

10 A Well, it was in the car, Daniel had put it
11 in the car, and it had just been there since --

12 Q Was it at the defendant's trailer where you
13 previously testified you saw him making marks on the
14 barrel of the gun?

15 A No.

16 Q Where was that?

17 A When I first started -- when I first saw
18 Daniel make marks on the .38, we were coming -- the
19 morning after we robbed the store over on 72, we --
20 after we went back to Daniel's trailer and switched
21 up cars again, it was going down the road I first
22 noticed him attempting to make marks on this gun
23 using a screwdriver.

24 Q Other than that occasion, did you ever see
25 him make any marks or scratching the barrel of the

1 gun with any item?

2 A Yes.

3 Q Where was that and what was he using?

4 A That was the same morning, well, after we
5 got back to the house, the second time, my parents'
6 house, and he was using a chain saw file.

7 Q Was that on the morning of July 15th, 1993?

8 A Yes.

9 Q And had you said anything to him about
10 using a chain saw file to remove numbers or make
11 marks on the barrel of the gun?

12 A Yes, I had.

13 Q And what if anything had you said to him
14 about using a chain saw file to make marks, remove
15 numbers from the barrel of the gun?

16 A I had told him that I had used a chain saw
17 file before in order to -- taking numbers off of a
18 gun, and that it worked pretty good. And I told him
19 there was one right there in the house, I gave it to
20 him.

21 Q You and the defendant went to Fayetteville
22 on August the 26th of 1993, is that correct?

23 A August the 26th? No, July.

24 Q What day did you go the Fayetteville?

25 A It was July.

1 Q Excuse me. July the 26th. Was it July the
2 26th, 1993 when you and the defendant went to
3 Fayetteville?

4 A Well, that's the time we arrived -- Monday
5 morning, early hours, about 1:30, 2:00.

6 Q When you went to Fayetteville in the red
7 Lexus on 26th, 1993, did the defendant carry the
8 black bag that the video camera was in?

9 A Yes.

10 Q Did he have the video camera with him when
11 the two of you went to Fayetteville on July 26th,
12 1993?

13 A Yes.

14 Q And from the time that you arrived in
15 Fayetteville on the 26th of July of 1993 until you
16 returned, when you came back to the Rowland area on
17 the 27th, who had possession of that video camera?

18 A Daniel did.

19 Q And when you came home on July the 27th of
20 1993, did you have the video camera with you?

21 A No, I didn't.

22 Q Who had the video camera when you came home
23 July 27th, 1993?

24 A Daniel still had it.

25 Q After July the 27th, 1993, did you ever see

1 that video camera again?

2 A Yes.

3 Q When did you next see it and who had it?

4 A Over at Kayeol's house, Kayeol Hernandez's
5 house.

6 Q And who had it at that time?

7 A I remember seeing Monica playing around
8 with it.

9 Q Was the defendant at Kayeol Hernandez's at
10 that time?

11 A Yes.

12 Q At any time after July the 27th, 1993, did
13 you place the .38 caliber Smith & Wesson revolver
14 that was stolen from Clewis Demory and was used to
15 shoot James Jordan inside a vacuum cleaner at the
16 defendant's trailer?

17 A No, I didn't, no.

18 Q On August the 14th of 1993, did you see --
19 strike that. When was the last time you saw the .38
20 caliber Smith & Wesson revolver that was stolen from
21 Clewis Demory and used to kill James Jordan?

22 A Before -- August the 14th, before 12:00,
23 Daniel and his mother had came to the house, picked
24 up -- Daniel got the gun and a pair of shorts from
25 me, and that is the last time I saw it.

1 Q At any time on August 14th, 1993, after
2 12:00 noon, did you go to the defendant's trailer?

3 A No.

4 Q On August the 15th of 1993, did you go to
5 the defendant's trailer?

6 A No, I didn't.

7 Q On August the 16th of 1993, did you go to
8 the defendant's trailer?

9 A No.

10 Q On August the 15th of 1993 and on August
11 the 16th of 1993, why were you not able to go to the
12 defendant's trailer?

13 A I was incarcerated at the Robeson County
14 detention center.

15 Q On August the -- the night of August the
16 14th, 1993, you've previously testified that you were
17 at home listening to the scanner?

18 A Yes.

19 Q On the early morning hours of August 15th,
20 1993, you testified you went to the Robeson County
21 Sheriff's Department with officers that came to your
22 home, is that correct?

23 A Yes.

24 Q On August the 15th of 1993, you were
25 questioned by officers about the red Lexus?

1 A Yes.

2 Q And on August the 15th of 1993 when you
3 were first questioned by the officers about the red
4 Lexus, what if anything did you tell them?

5 A First time was, I gave them the story that
6 Daniel had told me to -- concerning Rick coming to
7 the trailer, Daniel and myself getting in the car
8 with him, going to Fayetteville, getting out of
9 Daniel's brother's, David's house, and not seeing the
10 car anymore after that.

11 Q Why did you tell the officers that story?

12 A Because that's the story that Daniel had
13 told me to tell, and it was supposed to have covered
14 us both, you know, covered us both up, you know.

15 Q Now, during the morning of August 15th,
16 1993, did you ever change your story about Rick
17 bringing the car or getting -- about Rick coming to
18 the trailer and you and the defendant getting the car
19 from him?

20 A Yes, I did.

21 Q And when you changed your story on the
22 morning of August the 15th, 1993, what did you tell
23 the officers?

24 A I had told them the statement, going to
25 Kay -- starting about 5:30, 6:00 or so, leaving

1 Daniel's trailer, and going to Angel's, from Angel's
2 back to Daniel's, Kayeol's, pretty much the same
3 statement that I have told here with the exception of
4 around the -- my location at the time this man was
5 shot, that was -- that's what I remember
6 intentionally lying about, you know, as to where I
7 was at.

8 Q When you say that you intentionally lied
9 about where you were, when you say that you lied
10 about where you were, what did you tell the officers?

11 A I told them that I had about -- Daniel and
12 I had discussed taking this car and all, and that I
13 went to my car, and Daniel went to the Lexus, and
14 then came up a little while later, 15, 20 minutes
15 later.

16 Q And in the August the 15th, 1993 statement,
17 did you tell the officers that you saw Daniel Green
18 shoot James Jordan?

19 A No, I didn't.

20 Q And why did you not tell the officers that
21 you saw Daniel Green shoot James Jordan on August the
22 15th, 1993?

23 A Still trying -- make a small attempt to try
24 and cover his ass as well as mine.

25 Q Did there come a time following August the

1 15th, 1993 when you changed your statement about the
2 events that led to the death of James Jordan?

3 A August the 15th, '93?

4 Q Following August the 15th of 1993.

5 A Yes, there were, three other occasions.

6 Q When were those occasions?

7 A One, I don't remember the exact -- well,
8 the month. I gave one to the High Point Enterprise.
9 The other one to Brant Clifton, and then the last to
10 Special Agent Kim Heffney.

11 Q And when you talked with Mr. Heffney, that
12 was after you had entered your guilty plea in April
13 of 1995, is that correct?

14 A Yes, it was.

15 Q And when you entered your guilty plea in
16 April of 1995, one of the conditions of that plea was
17 that you were to testify in the trial of the
18 defendant?

19 A Yes.

20 Q And that you would be interviewed by
21 Mr. Heffney and Detective Anthony Thompson of the
22 Robeson County Sheriff's Department about matters
23 relating to the James Jordan --

24 MR. THOMPSON: Object, leading.

25 THE COURT: Complete your

1 question.

2 BY MR. BRITT:

3 Q -- about matters relating to the murder of
4 James Jordan, the robbery of Clewis Demory, and the
5 robbery that occurred in Rowland on July 4th, 1993.

6 THE COURT: It is leading, but in
7 my discretion it's overruled.

8 BY MR. BRITT:

9 Q Is that correct?

10 A Yes.

11 THE COURT: Do you want to be
12 heard, Mr. Thompson?

13 BY MR. BRITT:

14 Q Is that correct?

15 A Yes, yes.

16 Q And when you spoke with Mr. Heffney
17 following your plea in April of 1995, did you change
18 your account of where you were at the time that James
19 Jordan was shot and killed?

20 A Yes.

21 Q And what did you tell Mr. Heffney following
22 your plea in April of 1995 about where you were when
23 the defendant shot and killed James Jordan?

24 A First time I told him that I was about 60
25 feet away.

1 Q And when you told him that, were you being
2 truthful with him?

3 A No, I wasn't, no.

4 Q Why did you change your statement to say
5 that you were approximately -- about 60 feet away at
6 the time that the defendant shot and killed James
7 Jordan?

8 A Why did I change it to --

9 Q Why did you -- on August the 15th, 1993,
10 you told the officers that you were not present, is
11 that correct?

12 A That's -- yes.

13 Q In May, May the 2nd, 1995, you told
14 Mr. Heffney that you were 60 feet away at the time
15 that the defendant shot James Jordan.

16 A Yes.

17 Q Why did you tell -- why did you change from
18 not being present to being 60 feet away?

19 A Well, because I knew what I had told them
20 at first just wouldn't wash. I mean, it wouldn't --
21 that's the expression -- what I had told them that
22 the plan was to wake this guy up, take him, tie him
23 up and all, that was the intent from go. But I had
24 told them that at one time when I asked Daniel why he
25 had shot this man, I said that Daniel had said

1 something about he was waking up, he saw my face,
2 and, you know, that's why I changed it then.

3 Q And after telling Mr. Heffney that you were
4 60 feet away at the time the defendant shot James
5 Jordan, did you change that?

6 A Yes.

7 Q Why did you change and what change did you
8 make to your statement?

9 A Why and what -- well, reason I changed it,
10 because I had lied again, and what I changed it to
11 was that I was there, two feet away from Daniel when
12 this man was shot and killed.

13 Q Were you there on July the 4th, 1993 during
14 the robbery at Family Inn?

15 A Yes.

16 Q Were you there on July 15th, 1993 when the
17 defendant shot Clewis Demory?

18 A Yes.

19 Q Were you there on July 23rd, 1993 when the
20 defendant shot and killed James Jordan?

21 A Yes, I was.

22 Q On the morning of August the 15th, 1993,
23 after your interview, did you accompany any officers
24 and go anywhere?

25 A Yes.

1 Q Where did you go?

2 A Out to -- well, the area where the Lexus
3 was where Jordan had been killed, and out to the
4 cornfield in Rowland, and to the bridge, Pea Bridge,
5 we went out in that area.

6 Q After you left Pea Bridge, did you go
7 anywhere else?

8 A Best I can remember, after then, that's
9 when I was taken back to the jail and booked in.

10 Q What if any officers took you to those
11 locations?

12 A Special Agent Barry Lea and Mark Locklear,
13 Detective Mark Locklear.

14 Q Mr. Thompson earlier ask asked you if you
15 were intimidated by the officers during the
16 interrogation of August 15th, 1993, do you recall
17 that question?

18 A Yes.

19 Q What does the word "intimidation" mean to
20 you?

21 A Well, to me it's like where, by being in
22 somebody's presence, you know, it makes me afraid,
23 and that's what I would call intimidation.

24 Q When you say that you were scared on the
25 morning of August the 15th, does being scared have a

1 different meaning to you than being intimidated?

2 A Yes, it does.

3 Q You testified on cross that there was some
4 suits or some clothing in the trunk of the Lexus.

5 A Yes, one in the trunk, one in the car.

6 Q When you say one in the trunk and one in
7 the car, what are you referring to when you say there
8 was one in the trunk?

9 A A gray suit, a light gray suit.

10 Q When you say that there is one in the car,
11 what are you referring to?

12 A A dark bluish pinstripe type suit that was
13 hanging up in the car.

14 Q Were those suits in the car when you first
15 looked -- was that -- the suit located in the trunk
16 when you first looked in the trunk at the cornfield?

17 A Yes, the gray one.

18 Q And the blue pinstripe type suit that was
19 hanging up in the car, was it there when you first
20 looked inside the red Lexus?

21 A When we first looked in, I didn't -- like I
22 say, I didn't pay any attention. It was after I had
23 gotten in the car, the hassle getting in behind
24 Daniel, the seat laying down, the suit, it was sort
25 of a nuisance, too.

1 Q What if anything happened to those suits
2 that were in the red Lexus?

3 A Meaning the --

4 Q The blue one and the grey one that you've
5 described.

6 A They were kept by Daniel.

7 Q When you say they were kept by Daniel, what
8 do you mean by that?

9 A I mean he kept them in his possession.
10 I've seen him wearing them.

11 Q Were they taken back to his trailer?

12 A Yes.

13 Q You testified that you had the wedding
14 ring --

15 A Yes.

16 Q -- at some point?

17 A Yes.

18 Q When did you get the wedding ring?

19 A Sometime that morning, I don't remember
20 specifically. I did have it in my possession.

21 Q And after you got the wedding ring sometime
22 the morning of the 23rd of July, 1993, what did you
23 do with it?

24 A When I put it down, I put it -- it was in
25 Daniel's trailer. I remember it as being the night I

1 came back from Fayetteville. And while I was in the
2 house getting my tennis shoes, talking with Daniel's
3 mother, I had left it there. It was on a little
4 shelf that were used for whatnot's, flowers. I
5 didn't intentionally leave it there. It was just
6 forgotten. If I hadn't have forgotten it, the law
7 enforcement would have more than likely found it at
8 my house when they searched it.

9 Q Did you ever have the watch in your
10 possession?

11 A No.

12 Q Who had the watch the last time you saw it?

13 A Daniel did.

14 Q Did you ever have the NBA All-Star ring?

15 A No.

16 Q Who had it last time you saw it?

17 A Daniel did.

18 Q At any time did you bury the NBA All-Star
19 ring?

20 A No, I did not.

21 Q Did you and the defendant ever have a
22 conversation about burying the NBA All-Star ring and
23 the watch?

24 A Yes.

25 Q When did you have that conversation?

1 A This was, I remember it as being while we
2 were in Fayetteville, if -- that's about the time
3 that I remember having this conversation.

4 Q What was said about burying the watch and
5 the ring?

6 A Daniel said that -- after he came, bury it,
7 and probably like in 20 years or so, it would be
8 worth a lot of money.

9 Q And at any time after you came home from
10 Fayetteville, did you see either the NBA All-Star
11 ring or the watch that had been taken off of
12 Mr. Jordan's arm?

13 A No, I didn't, no.

14 Q And who was in possession of the NBA
15 All-Star ring and the watch when you last saw it?

16 A Daniel was.

17 Q Who was in possession of the .38 caliber
18 Smith & Wesson revolver --

19 MR. THOMPSON: Well, I object,
20 asked and answered.

21 THE COURT: Well, we have been
22 over this material. So the objection is
23 sustained.

24 BY MR. BRITT:

25 Q When was the last time you saw the .38

1 caliber Smith & Wesson revolver?

2 MR. THOMPSON: Object.

3 THE COURT: Sustained.

4 BY MR. BRITT:

5 Q You've testified that there were two suits
6 in the car?

7 A Yes.

8 Q When have you seen the defendant wear the
9 suits?

10 A The last time I saw one of the suits being
11 worn was, well, it was only the pants, but just last
12 week here in this courtroom.

13 MR. BRITT: Thank you. I don't
14 have any other questions.

15 THE COURT: We're going to stop
16 at this point, folks. Mr. Demery, you may
17 step down -- I'm sorry, you may step down
18 at this time.

19 Ladies and gentlemen, we're going to
20 recess until 9:30 tomorrow morning. During
21 the overnight recess, don't talk about the
22 case among yourselves or with anyone else.
23 Don't allow anyone to say anything to you
24 or in your presence about the case. If
25 anyone communicates with you about the

1 matter or attempts to do so, or anyone says
2 anything about the case in your presence,
3 it's your duty to inform us of that
4 immediately.

5 Don't form or express any opinions,
6 don't have any contact of any kind with any
7 of the attorneys, parties, witnesses,
8 prospective witnesses, or directly with the
9 Court. Don't allow yourselves to be
10 exposed to any media accounts which may
11 exist in connection with this case, and
12 don't conducted any independent inquiry or
13 investigation or research of any kind.

14 Have a good evening, be careful going
15 home. See you tomorrow morning at 9:30.
16 Everyone else please remain seated, the
17 members of the jury are excused at this
18 time.

19 (Jury out at 4:51 p.m.)

20 THE COURT: Anything from either
21 counsel? We will go in to any additional
22 cross first thing tomorrow morning.

23 MR. THOMPSON: Yes, sir.

24 THE COURT: All right. If you'll
25 recess us until 9:30, please, sir.

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THE BAILIFF: All rise, please.
(Court adjourned.)

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 P.O. Box 846
Lumberton, North Carolina 2835914
15 (February 7, 1996. Proceedings in open court.)16
17 THE COURT: Good morning, folks.

18 Is Mr. Demery here?

19 THE BAILIFF: Yes, sir, he's on
20 the way.21 THE COURT: Let the record
22 reflect all counsel are present, the
23 defendant is present in open court. All
24 members of the jury are secured in the jury
25 room.

1 Folks, I referred yesterday to two
2 cases, State versus Ligon and State versus
3 Vines. Let me give the cites on those
4 cases. Ligon, spelled L I G O N, 332 NC
5 224, 1992 case. Pertinent part is at page
6 243, Headnote 11, dealing with closing
7 argument, reference to defense counsel
8 raising smoke screens. In Ligon a number
9 of federal cases are referred to.

10 Vines was the other case, I couldn't
11 recall the cite on Vines, State versus
12 Vines, V I N E S. That is at 105 NC App at
13 147, pertinent part is at 156, Headnote 5,
14 improper jury argument, integrity of
15 witness and defense counsel challenged.
16 Vines also cites State versus Kirkley,
17 State versus Craig and State versus
18 Anthony, proposition -- a proposition
19 relating only to the standard of review,
20 the alleged error having been unobjected to
21 at the time.

22 Essentially in Vines, the argument was
23 that a State's -- strike that. A defense
24 witness was, quote, testifying for pay.
25 Vines, as I recall it, arose out of

1 Cumberland County. Prosecutor there argued
2 that by implication, the testimony was
3 contrived, fabricated, bought and paid
4 for. And in essence, that an expert would
5 say anything for anybody willing to pay for
6 it.

7 Court held that it was improper
8 argument but not of such gross impropriety
9 to justify ex mero motu, and instruction or
10 correction by the Court. Number of cases
11 that I've seen in this light indicate it is
12 of grounds, if it's objected to and
13 egregious enough, for either a mistrial or
14 a reversal. And again, I think that Vines
15 and Ligon apply not only to argue but to
16 other matters as well. And if you folks
17 will review both lines in Ligon prior to
18 argument.

19 Mr. Demery is now present in court.
20 Sir, you remain under oath. You understand
21 that?

22 THE WITNESS: Yes, sir.

23 THE COURT: Mr. Thompson,
24 Mr. Bowen, you folks ready to go forward?

25 MR. BOWEN: Except for one thing,

1 Your Honor. You recall we subpoenaed
2 Mr. Heffney to be able to see certain
3 photographs, and he knows which items those
4 are. Mr. Heffney takes the position that
5 he will not open the packages except in
6 Court. I'm not sure what that means.

7 THE COURT: Is there a concern
8 about chain of custody?

9 MR. BOWEN: I will be happy to
10 stipulate that --

11 THE COURT: You folks willing to
12 stipulate on the record as to chain of
13 custody on those items?

14 MR. BOWEN: He can keep them in
15 his custody, we would just like to see
16 them.

17 THE COURT: I think the concern,
18 those items would be presented to a witness
19 in a sealed form.

20 MR. BOWEN: We'll waive any
21 problem with them being opened and would
22 have from the start.

23 MR. THOMPSON: I don't
24 understand -- yes, sir, we've gone through
25 this stuff through discovery. I mean, I

1 don't see -- but anyway.

2 THE COURT: What we've got on the
3 record is a stipulation as to the chain of
4 custody, is that correct?

5 MR. BOWEN: As I understand it,
6 he's still on redirect. Before recross we
7 would need to see them.

8 THE COURT: I thought redirect
9 had been concluded. So you need to see
10 those items first?

11 MR. BOWEN: Yes.

12 THE COURT: If you'll open them
13 at this time, based on the stipulation of
14 record.

15 MR. BRITT: One other matter. It
16 was brought to my attention by Major Watson
17 that Juror Number Four was having some
18 difficulty again this morning.

19 THE COURT: I saw her walk past
20 my chambers, she was moving very slowly,
21 appeared to be in pain. It's my intent to
22 inquire into that early on this morning as
23 to her condition.

24 Also for the record, I asked someone,
25 I don't know who it was, one of the

1 bailiffs, to hand in at a time when no one
2 was present, to place on the table the
3 material relating to the back, Home-Medics
4 back cushion, so that's been provided to
5 her on the record. She did appear to be in
6 considerable discomfort or pain.

7 MR. BOWEN: Too, Your Honor, let
8 the record show the purpose of my camera in
9 the courtroom is solely for the purpose of
10 photographing these items of evidence.

11 THE COURT: Yes, sir. You folks
12 need an opportunity to look at those
13 items?

14 MR. THOMPSON: Yes, sir. With
15 the defendant present, can we go to the
16 room, Your Honor?

17 THE COURT: Yes, sir.

18 MR. THOMPSON: Side room.

19 MR. BRITT: If I may?

20 THE COURT: Yes, sir.

21 (All counsel and defendant step into
22 side room.)

23 THE COURT: Mr. Demery, you may
24 step down. You may make Mr. Demery
25 comfortable while we wait. You may step

1 down.

2 We're at ease.

3 (Brief recess.)

4 THE COURT: If we could bring
5 Mr. Demery in, please.

6 Mr. Demery, if you'll again take the
7 witness stand, sir. Any other matters
8 before we bring the jury in?

9 MR. THOMPSON: No, sir.

10 THE COURT: Yes, sir, bring the
11 jury in.

12 (Jury in at 9:56 a.m.)

13 THE COURT: Good morning, ladies
14 and gentlemen.

15 The State having concluded its
16 redirect examination, will there be any
17 further cross-examination, Mr. Thompson?

18 MR. THOMPSON: Yes, sir, Your
19 Honor.

20 RE-CROSS EXAMINATION

21 BY MR. THOMPSON:

22 Q Good morning, Mr. Demery. You indicated --
23 strike that. You were over in the Department of
24 Corrections, incarcerated, that is, in the Department
25 of Corrections back in 1995, is that right?

1 MR. BRITT: Objection, outside
2 the scope of redirect.

3 THE COURT: Well, redirect is
4 fairly broad in scope, and I'm not sure
5 where we're going at this point so the
6 objection at this point is overruled.

7 THE WITNESS: Yes.

8 BY MR. THOMPSON:

9 Q You were in a cell by yourself?

10 A Yes.

11 Q It was causing you some emotional problems?

12 A No. It was just --

13 Q Go ahead.

14 A About the only problem I had with this cell
15 was the fact that I never got to come out and get to
16 go outside or anything.

17 Q You had a radio in that cell?

18 A Yes.

19 Q You used to talk to the radio?

20 A Well, making comments out loud, more or
21 less to myself. I would respond out loud to things
22 that had been said on the radio.

23 Q You were -- this condition over there in
24 the Department of Corrections was sort of making you
25 crazy?

1 A No, it wasn't, no.

2 Q Have you ever been treated by a
3 psychologist or psychiatrist for mental illness?

4 MR. BRITT: Objection.

5 THE COURT: Overruled. You may
6 answer.

7 THE WITNESS: There was one time
8 about right after I first turned 16, I went
9 to a psychiatrist, or psychologist, here in
10 Lumberton, just a few times, but wasn't
11 because I was crazy or anything, just
12 something that I agreed to, you know, do,
13 in order to -- my mom and dad had asked me
14 to do it, trying to find out why I was
15 going out there getting into things,
16 getting into trouble. But as far as
17 twisted mind, no, huh-uh

18 BY MR. THOMPSON:

19 Q You said you went on two occasions?

20 A No, I said a few times.

21 Q How many times did you go?

22 A I remember going about four times. It was
23 a once a week thing for about an hour.

24 Q Was that here in Robeson County?

25 A Yes, it was at the -- I forgot the exact

1 name of it but it's located on Roberts Avenue right
2 across the road from Hardee's.

3 Q Would the name of that facility be Robeson
4 Professional Counseling Services?

5 A That sounds about right. I wouldn't say
6 for sure.

7 Q Were you -- you went voluntarily?

8 A Yes, yes.

9 Q Did you complete your treatment or did you
10 just stop going?

11 MR. BRITT: Objection.

12 THE COURT: The objection is
13 overruled. Do you want a limiting
14 instruction, Mr. Britt?

15 MR. BRITT: Yes, sir.

16 THE COURT: Members of the jury,
17 the matters now being elicited are being
18 elicited for the limited purpose of bearing
19 on the issue of credibility. Now, I
20 instruct you that you may consider this
21 evidence for that limited purpose to the
22 extent that you find that it has some
23 bearing, if any, on the witness's ability
24 to recall, recount, remember, or to testify
25 about matters which may be germane to the

1 issues in this case. And you may not
2 consider it for any other purpose.

3 BY MR. THOMPSON:

4 Q Did you complete your treatment,
5 Mr. Demery, or did you just stop going?

6 A I just stopped going.

7 Q Did any of your family members accompany
8 you when you went to treatment?

9 MR. BRITT: Objection, relevance.

10 THE COURT: Sustained.

11 MR. BRITT: Move to strike.

12 THE COURT: Allowed.

13 BY MR. THOMPSON:

14 Q Now, again, this was what year, what year
15 was this?

16 A '91.

17 Q What month in '91, do you know?

18 A I don't --

19 MR. BRITT: Objection.

20 THE COURT: Overruled.

21 THE WITNESS: It was after
22 August.

23 BY MR. THOMPSON:

24 Q And it was all -- you were treated four
25 times -- the times that you went to the treatment it

1 all occurred in 1991?

2 MR. BRITT: Objection assumes --

3 BY MR. THOMPSON:

4 Q Between August and --

5 MR. BRITT: Assumes matters not
6 in evidence.

7 THE COURT: It's
8 cross-examination, overruled. You may
9 answer if you can.

10 THE WITNESS: It was -- like I
11 say, after August, maybe one of those
12 months, December, between August and
13 December. It could have been maybe January
14 or February, first part of the next year,
15 but the reason I specifically remember it
16 being after August is because that's when I
17 had turned 16, had gotten into trouble, and
18 like I said, I was taken to the Sheriff's
19 Department and questioned and all. I was
20 old enough to get locked up.

21 BY MR. THOMPSON:

22 Q Now, since you've been incarcerated since
23 August the 15th of 1993, have you been seen or
24 treated by a psychologist or psychiatrist?

25 A I wouldn't --

1 MR. BRITT: Objection.

2 THE COURT: Overruled.

3 THE WITNESS: I went and talked
4 to one a few times -- well, twice, over at
5 the jail, and then when I went over to the
6 prison across the road, there was a
7 psychologist -- well, she came around every
8 week, making the rounds, and then there was
9 a few different occasions she set up an
10 appointment to talk with a psychiatrist,
11 but --

12 BY MR. THOMPSON:

13 Q And did you make those appointments?

14 A No, she made them on her own. Like I said
15 this psychologist, it was something mandatory she had
16 to do, was going around at least once a week and stop
17 and ask everybody how they are doing.

18 Q So you talked to a psychologist when you
19 were in the Department of Corrections?

20 A Yes, and a psychiatrist.

21 Q And how many times did you see a
22 psychologist while you were over there in the
23 Department of Corrections?

24 A Like I said, she came at least once a week,
25 every week that I was over there, and that was almost

1 six months. About 24 times.

2 Q And how many times did you see a
3 psychiatrist while you were in the Department of
4 Corrections?

5 A About five, six times. He came out like
6 every two weeks or so.

7 Q Were you recommended by the psychologist to
8 see the psychiatrist?

9 MR. BRITT: Objection.

10 THE COURT: Sustained to the
11 form.

12 MR. BRITT: Move to strike.

13 THE COURT: Allowed.

14 BY MR. THOMPSON:

15 Q Were you referred to the psychiatrist by
16 the psychologist?

17 MR. BRITT: Objection.

18 THE COURT: Rephrase,

19 Mr. Thompson.

20 BY MR. THOMPSON:

21 Q Did the psychologist whom you saw refer you
22 to or make the arrangements for you to see the
23 psychiatrist?

24 MR. BRITT: Objection.

25 THE COURT: Sustained. You can

1 ask him whether or not he saw the
2 psychiatrist as a result of seeing the
3 psychologist.

4 BY MR. THOMPSON:

5 Q Did you see the psychiatrist as a result of
6 seeing the psychologist?

7 A Yes, because she asked me would I talk to
8 them. I told them yes. There was a concern, I had
9 been sleeping a lot. And this was like all during
10 the day. And I would stay up all night, and --
11 should I give the reason why she --

12 THE COURT: If you feel an
13 explanation is required, you may explain
14 it.

15 THE WITNESS: Well, yes, over in
16 the dorm I was in, every hour an officer
17 had to come in and check in, look in the
18 cell, and then they had to write a report
19 as to what this person inside the cell was
20 doing, whether they were sleeping, reading
21 writing, whatever. And the psychologist
22 checked over the records. And like I said,
23 there was a while that I would sleep all
24 day long and then stay up all night. And
25 they felt like that might be signs, said it

1 was a sign of severe depression, this is
2 what she's telling me. And as a result of
3 that, she asked me would I talk to a
4 psychiatrist. Yeah, no problem. We did.
5 I did.

6 BY MR. THOMPSON:

7 Q And I believe you indicated that you saw a
8 psychologist or psychiatrist over in the Robeson
9 County Detention Center since August the 15th of
10 1993?

11 A Yes.

12 THE COURT: Rephrase. Omit the
13 "I believe".

14 BY MR. THOMPSON:

15 Q You saw a psychiatrist or psychologist in
16 the Robeson County Detention Center since August the
17 15th of 1993?

18 A Yes.

19 Q Who did you -- I mean, was it a
20 psychologist or psychiatrist or both?

21 A The persons over at the jail were
22 psychiatrists.

23 Q And how many times have you seen a
24 psychiatrist at the Robeson County Detention Center
25 since August the 15th of 1993?

1 A Well, there was twice that I requested to
2 see them, and then there was a few other times I was
3 referred to -- see, over at the jail, I didn't -- the
4 nurses that come around, all they have to do is just
5 write you down, all they have to do is feel like you
6 need to see them, and that's what they would do.
7 Like I requested twice, and there were other times
8 that I just called out to talk with them a minute or
9 two.

10 Q When did you make your first -- you made a
11 request to see a psychologist or psychiatrist?

12 A Well, there's only psychiatrist in the
13 jail.

14 Q When was the first time you made a request
15 to see a psychiatrist?

16 A First time was -- well, a year, a year
17 after I was locked up. Well, I had been incarcerated
18 a year, and around that time.

19 Q Do you know what month that would have
20 been?

21 A It was in August, yeah.

22 Q So would have been August of 1994?

23 A Yes.

24 Q And when was the second time you saw the
25 psychiatrist, you requested to see a psychiatrist?

1 A Second time was after I left the prison and
2 went back to the jail, couple of weeks later.

3 Q And were you given any medication by a --
4 or prescribed any medication by the psychiatrist?

5 A Over at the jail --

6 Q That you saw?

7 A Over at the jail?

8 Q Yes.

9 MR. BRITT: Objection.

10 THE COURT: Members of the jury,
11 I instruct you that you may consider this
12 only for the limited purpose that you find
13 that it bears to any extent, and that is
14 for you to determine, on the witness's
15 ability to perceive, retain, or recount
16 about matters that are at issue in this
17 case. And you may consider it only for
18 that limited purpose and no other purpose.
19 Yes, sir, you may answer the question.

20 BY MR. THOMPSON:

21 Q You may answer.

22 A I asked to be twice -- well, those two
23 times that I requested to go, I asked for something.

24 Q What kind of medication did you
25 receive?

1 MR. BRITT: Objection, assumes --

2 THE COURT: Rephrase.

3 BY MR. THOMPSON:

4 Q The first time that you saw a psychiatrist,
5 you asked for medication?

6 A Yes.

7 Q Did you ask --

8 A First time I requested to see him.

9 Q Did you ask for a specific type or kind of
10 medication?

11 A No, I didn't, no. He just -- he gave me
12 something he felt might would help.

13 Q And do you know what medication was
14 prescribed?

15 A It was Diazepam. Should I say what that
16 is?

17 Q Yes, sir.

18 A Psychiatrist told me what it was, a weaker
19 form of Valium, right, but it was -- I only stayed on
20 it for about two months.

21 Q And that would have been two months from
22 August of 1994?

23 A Yes.

24 Q And then the next time that you requested
25 to see a psychiatrist, you also requested medication?

1 A Yes.

2 Q And I'm sorry, you may have mentioned this
3 but I just did not recall it. When was the next time
4 you saw the psychiatrist, requested to see the
5 psychiatrist?

6 A That I requested?

7 Q Yes, in Robeson County?

8 A Right after I left the prison and went back
9 over to the jail.

10 Q And what month would that have been?

11 A October, '95.

12 Q Of last year?

13 A Yes.

14 Q And you also requested medication on that
15 occasion?

16 A Yes.

17 Q And were you prescribed medication?

18 A Yes, he gave it to me.

19 Q And what kind of medication?

20 A Name of it is Artane.

21 Q And what -- do you know how to spell that?

22 A A R T A N E.

23 Q What is Artane?

24 A Well, it's, what I would say, the wonder
25 drug of the '90s. It did everything for me. Should

1 I give -- it's got several kind of uses.

2 Q Yes, go ahead.

3 A It can be used for -- sometimes it's used
4 along with what I would call crazy medications.
5 Reason being is because that -- it's like a person on
6 Thorazine or something like that, a real heavy drug.
7 This can be used for -- its side effects to keep this
8 Thorazine from reacting on them, but really what it's
9 a strong form of Benadryl, because Benadryl is used
10 for the same thing. But like I said. It had many
11 uses.

12 Q Do you remember the dosage that you were
13 taking of Artane?

14 A Yes, five milligrams in the morning, five
15 at night. And I'm still getting it, too.

16 Q You are still on Artane?

17 A Yes, sir, yes.

18 Q And you still take five milligrams in the
19 morning?

20 A Yes.

21 Q And five milligrams at night?

22 A Yes.

23 Q Have you ever taken medication -- I mean
24 any other -- of the other inmate's medication,
25 medication that was prescribed for other

1 inmates?

2 MR. BRITT: Objection.

3 THE COURT: Overruled.

4 THE WITNESS: Yes, there was one
5 time that I did, yes.

6 BY MR. THOMPSON:

7 Q When was that?

8 A This was -- I hadn't been locked up a year
9 yet.

10 Q What kind of medication was that?

11 A Kemadrin, something, I could spell it for
12 you.

13 Q You can spell it.

14 A K E M O D R I N.

15 Q And who's medication did that belong to?

16 A A fellow by the name of Henry Lee Hunt, and
17 he's known as Mulehead around here in Robeson County.

18 Q Have you ever made the statement,
19 Mr. Demery, to anybody that you were cracking up over
20 there in the Department of Corrections while you were
21 listening to radio?

22 A I said flipping out, but that didn't mean
23 that -- when I said that, which was yesterday here in
24 court, I mean, I didn't mean I was losing my mind or
25 anything. It was just like when I said I was

1 responding back to the radio and all that stuff, it
2 was just small measures I was taking to prevent that
3 from happening, you know, not that I thought it
4 would, but --

5 Q All right, sir. Mr. Demery, you and the
6 defendant went to Marion, South Carolina on July the
7 3rd of 1993?

8 A Yes.

9 Q And you drove your Ford Tempo?

10 A Yes.

11 Q And you saw Melinda Moore in Marion?

12 A Yes.

13 Q Now, what was the route that you took to
14 Marion, South Carolina? In other words, what
15 highways did you travel to get to Marion? First of
16 all, where did you leave from?

17 A I can't remember where we left from.

18 Q Okay. Well, what highway did you take when
19 you went to Marion, South Carolina, how did you get
20 there, what highways?

21 A I remember crossing over 501, might have
22 went down that way just a little bit, and then on 95,
23 got off at the exit.

24 Q Are you saying you took 95 south from the
25 Rowland area?

1 A I remember it as being something like
2 that. I mean, I could --

3 Q Just tell me as best as you can remember
4 how you got down there on July the 30th, 1993?

5 A Seemed like I remember crossing 501
6 somewhere, being on 95 for a while, getting off at an
7 exit going into Marion, that's as best I could
8 remember. I mean I could --

9 Q And --

10 A I could, if you want, we could use your car
11 and I could take you exactly, the same way we went,
12 but road numbers and all that, it's --

13 Q Mr. Demery, did you have your watch on when
14 you went to Marion on July the 3rd of 1993?

15 A I can't -- I may have had a watch on, but
16 it wasn't the Mickey Mouse watch, if that's the one
17 that you're thinking about.

18 Q It wasn't the one that Angel gave you?

19 A No, no.

20 Q Did you go the Melinda's house when you got
21 to Marion, South Carolina?

22 A Well, her grandmother's house.

23 Q And what time was it when you arrived at
24 Melinda Moore's grandmother's house?

25 A Around 1:00.

1 Q You mean in the morning?

2 A Yeah, it was over in the morning hours.

3 Q July the 4th?

4 A Yes.

5 Q Of 1993?

6 A Yeah.

7 Q And did you get out of the car?

8 A No.

9 Q Did you have a conversation at all with
10 Melinda?

11 A If we said anything at all to one another,
12 it was probably just exchanging pleasantries, I mean,
13 hey, hi, hello. We were only there 30 minutes. When
14 we got out, Daniel -- they walked down the street a
15 little ways, and walked back up.

16 Q When you say they, you mean the defendant
17 and Melinda walked down the street?

18 A Yes.

19 Q And you stayed in the car?

20 A Yes.

21 Q And how long did the defendant and
22 Melinda -- how long were they out of your presence
23 there in the car as they walked down the street?

24 A Like I said, it was only about 30 minutes
25 at the longest.

1 Q And I believe you testified that --

2 THE COURT: Rephrase

3 Mr. Thompson.

4 MR. THOMPSON: I'm sorry.

5 BY MR. THOMPSON:

6 Q You testified that you left Marion, South
7 Carolina around 2:00 a.m. in the morning?

8 A Somewhere around that time frame, yes.

9 Q How did you -- what route did you take to
10 get back to North Carolina?

11 A We came back on 95.

12 Q Was it the same route that you took to get
13 to Melinda's grandmother's house?

14 A No. Partially, but when we came back --
15 like I say, we were on 95. Once we got on 95, we
16 took it all the way back to South of the Border.

17 Q What highway did you take from Marion to
18 get to 95?

19 A I don't remember the street names.

20 Q How long did it take you to get to Marion,
21 South Carolina, Mr. Demery, back on July 3rd of 1993?

22 A It took us -- I would say almost two
23 hours. Reason being, once we got into Marion and
24 all, we got pulled over. The reason we got pulled
25 over is because the light was out, one of my

1 taillights was out. And like I said, whether the
2 officer, the Marion officer went to check for my
3 license and all that stuff, I didn't have them.
4 Well, when he called in, called in to Raleigh,
5 wherever it is where they did that at, they couldn't
6 find my name in the computer. Reason for that being,
7 on my driver's license, it's Larry Martin Demery but
8 on the computer it's marked Larry Demery. So there
9 was some confusion. They took us into the police
10 department, we had to sit around there for a while,
11 finally they found it and let us go.

12 Q You weren't given a citation?

13 A No, nothing. He just told me to get on out
14 of town and get that tail lighted fixed.

15 Q Now, what was your address at that time,
16 your home address, residence?

17 A Route 3, Box 251-A2, Rowland.

18 Q And you had lived at that residence for how
19 long?

20 A I had been back -- it was my parents'
21 house, I had been back about two months.

22 Q Now, Mr. Demery, when you and the defendant
23 first met Melinda Moore and her cousin, it was at
24 South of the Border?

25 A Yes.

1 Q Melinda was crying and upset about
2 something, do you recall?

3 A The night we met?

4 Q Yes.

5 A No, huh-uh.

6 Q Do you recall whether her cousin Patricia
7 Williams was with her or not?

8 A Yes, I remember that girl -- well, find out
9 later she was Patricia, but it was the same girl that
10 lived at Melinda's grandmother's house with them.

11 Q Now, you testified that when you came back
12 from -- strike that. Did you see any car or vehicle
13 in which Melinda Moore or Patricia were riding, did
14 you see them in it?

15 A No, huh-uh. Like I said, the night we met
16 down there --

17 Q Yes.

18 A -- see, Daniel and I went into a game room,
19 Las Vegas Casino.

20 Q My question, did you see them there?

21 A No, I didn't, only saw them back of this
22 building, walking out.

23 Q When you came back from Marion on July 4th,
24 during the early morning hours that you testified to,
25 around 2:00, you exited off of interstate 95, that's

1 your testimony, is that right?

2 A Yes.

3 Q And the car cut off as you were exiting
4 down the ramp?

5 A Yes.

6 Q And you had to push the car or you did push
7 the car off the ramp?

8 A Just a little ways, just a few feet.

9 Q And you took the tags off the car?

10 A Yes.

11 Q Was the car located on the exit ramp of
12 Interstate 95 when you took the tags off?

13 A No, had already pushed it off the ramp. I
14 mean, not far off but far enough to where it wasn't
15 on it.

16 Q Well, describe where you pushed the car
17 to.

18 A Like I said, just off the ramp. It was
19 over off the road out of the way to any other traffic
20 that might come through there.

21 Q When you exit off that ramp, you exit off,
22 that's 301 -- is that right?

23 A Could be.

24 Q 301 runs through South of the Border from
25 Rowland, does it not?

1 A Yes, it was on 301.

2 Q Are you saying the car was parked, I mean,
3 you pushed the car on the shoulder of 301 or did you
4 push the car on the shoulder of exit ramp?

5 A Like I say, right off the exit ramp right
6 off the road, that's -- if the road was 301 --

7 Q Excuse me, I can't talk while you're
8 talking. Go ahead?

9 A I'm finished.

10 Q Go ahead and describe to me, where was the
11 car facing, in which direction?

12 A Pointing back towards Rowland, across --
13 pointing towards North Carolina, well, in --

14 Q Okay. When you exited off of that ramp you
15 were pushing the car, did you push the car then, you
16 said it was pointed towards Rowland. That would have
17 been to the left, you had to push the car to the
18 left, is that right?

19 A No, all we did is just rolled it a few feet
20 get it off the ramp, didn't have to -- as far as --

21 Q Can you draw a diagram to illustrate --

22 A I could try to.

23 Q All right.

24 A I'll try to.

25 MR. THOMPSON: May I, Your

1 Honor?

2 THE COURT: Yes, sir.

3 MR. BRITT: Mr. Thompson, you can
4 use that pad if you want to.

5 THE COURT: Yes, sir.

6 BY MR. THOMPSON:

7 Q Can you draw a diagram using this pad over
8 here?

9 A I can try to, yeah, I'll try.

10 Q All right.

11 THE COURT: You can step up --

12 MR. THOMPSON: May he step over
13 there, Your Honor?

14 THE COURT: Probably the easiest
15 thing to do is position the pad in front of
16 the jury box, and then you folks position
17 yourself accordingly.

18 MR. THOMPSON: All right, sir.

19 THE COURT: I think closer would
20 be better.

21 MR. THOMPSON: I was trying to
22 position it so you could see.

23 THE COURT: I'm fine.

24 MR. THOMPSON: May Mr. Demery
25 step down?

1 THE COURT: Yes, sir.

2 MR. THOMPSON: Grab one of those
3 Magic Markers, Mr. Demery, and step down.

4 THE COURT: I appreciate it.
5 Thank you.

6 (Witness draws diagram.)

7 THE WITNESS: I'm trying.

8 MR. THOMPSON: I understand.
9 Take your time.

10 THE WITNESS: The road going back
11 down through South of the Border and
12 through 301.

13 THE COURT: What do you recall it
14 as being, do you know?

15 THE WITNESS: I can't remember
16 the name of the highway oh, the road.

17 THE COURT: Okay.

18 THE WITNESS: That's --

19 BY MR. THOMPSON:

20 Q All right. Using your diagram, which way
21 would Rowland be?

22 A It was on -- Rowland would be on up here
23 out of the picture.

24 Q Would you draw that road, please, on the
25 other side of that bridge and put "Toward Rowland "or

1 point an arrow directing it toward Rowland?

2 A (Witness complies).

3 Q And which way would South of the Border be
4 going into South Carolina on that highway? Which
5 direction?

6 A Which direction -- to Rowland or --

7 Q It would be the opposite direction from
8 Rowland, is that right?

9 A South of the Border is somewhere down here
10 some back over in this area, in this --

11 Q Which direction is 95 north?

12 A (Indicating).

13 Q And this bridge here crosses 95 north, is
14 that right?

15 A Well, right over this road right here, line
16 is right here somewhere.

17 Q All right. Where was your car located when
18 it came to a rest and you left it?

19 A This being the end of the ramp right here,
20 this highway, it was pushed off, off the ramp just
21 enough, I guess slightly up under the bridge.

22 Q All right. Was it on this highway right
23 here, was the car actually on the shoulder of this
24 highway?

25 A I would say the shoulder of the highway,

1 the ramp, you know, the bridge.

2 Q Mr. Demery, isn't it highway 301 that goes
3 through Rowland, do you recall whether this is
4 highway 301 or not?

5 MR. BRITT: For the purposes of
6 the record, the State would stipulate that
7 Interstate 95, 301 and 501 intersect at
8 North Carolina-South Carolina line at South
9 of the Border.

10 THE COURT: Let the record so
11 reflect.

12 MR. THOMPSON: Write 301 right
13 here on this highway.

14 THE WITNESS: (indicating)

15 BY MR. THOMPSON:

16 Q Now, using that diagram, can you show in
17 which direction your car was faced at the time that
18 you left it there on the highway or off the ramp?

19 A Yes.

20 Q Would you use a different color pen? Let
21 me give you one. Use a red pen to show which
22 direction your car was faced.

23 A (Indicating).

24 THE COURT: Do you want to mark
25 that, Mr. Thompson, as an exhibit?

1 BY MR. THOMPSON:

2 Q Well, your car wasn't in the middle of the
3 ramp, was it? Which side of the ramp was it in? It
4 was off the ramp, this being the end of the ramp --

5 THE COURT: I think what
6 Mr. Thompson is trying to establish is when
7 you finally stopped your vehicle, was the
8 vehicle on the ramp itself or was it on the
9 road that the ramp fed into.

10 THE WITNESS: On the road that
11 the ramp fed into.

12 BY MR. THOMPSON:

13 Q On which side of the ramp was it on?

14 A Down at the bottom of the ramp, off the
15 ramp.

16 THE COURT: Right at the point
17 where the road and the ramp intersect?

18 THE WITNESS: Yes, yes. I mean,
19 if -- it would be on the left side of this
20 highway, 301 --

21 MR. THOMPSON: I understand. But
22 if the ramp runs into 301, Mr. Demery,
23 would it be on this side or on this side?

24 THE WITNESS: This side. Like
25 I've got it drawn right here, this being

1 the right side of the ramp, you know.

2 BY MR. THOMPSON:

3 Q Well, if this is a lane, Mr. Demery, what
4 I'm trying to ask you is, is it on this side of the
5 ramp lane or is it on the north side of the ramp
6 lane?

7 A Up here, the north side where you referred
8 to as the north side.

9 Q You sort of have it in the middle of the
10 ramp lane the way it's drawn now.

11 A I would have to draw it this way unless --
12 the only other way would be to go down there and let
13 me show you.

14 Q But it was definitely on the north side of
15 that ramp lane?

16 A Well, yes, yes.

17 MR. THOMPSON: That's all I have
18 of him.

19 THE COURT: Do you want to mark
20 that as an exhibit?

21 (Defense Exhibit 30 was
22 marked for identification.)

23 BY MR. THOMPSON:

24 Q Mr. -- excuse me a minute.

25 Mr. Demery, how many times did you go to

1 Marion, South Carolina during the month of July?

2 A About six, seven times.

3 Q What was the -- and the first time you went
4 to Marion was on July the 3rd, that was the first
5 time of 1993?

6 A Yes, yes.

7 MR. THOMPSON: Your Honor, if I
8 may have just one minute.

9 THE COURT: Yes, sir.

10 BY MR. THOMPSON:

11 Q Mr. Demery, when did you and the defendant
12 meet Melinda Moore, meaning what date was it, at
13 South of the Border?

14 A I remember it as being maybe the 2nd, could
15 have been the 1st, 2nd of July, sometime.

16 Q Could have been the 1st or 2nd of July?

17 A Well, yes, yes.

18 Q Could have been the 3rd of July?

19 A We went down there on the 3rd. Probably
20 the 2nd, around the 2nd sometime.

21 Q It was the 2nd of July?

22 A Could have been.

23 THE COURT: Mr. Demery, do you
24 recall specifically, sir?

25 THE WITNESS: No, no.

1 BY MR. THOMPSON:

2 Q But it was before you and the defendant
3 went to Marion?

4 A Yes, yes.

5 Q On July the 3rd?

6 A Yes. Like I said, it could have been like
7 the night prior. The reason -- I never talked to
8 these girls or nothing. When we come out of the game
9 room that night and ran into them, Daniel started
10 talking with one, and then him and Melinda started
11 talking, and here I am getting ill ready to get out
12 of there, and I go back in the game room and shoot a
13 couple of games of pool. Little while later he comes
14 in.

15 Q Mr. Demery, you testified earlier that on
16 July the 23rd of 1993, this is the morning of July
17 23rd, 1993, you testified that you and the defendant
18 were walking down 74 as if you were just walking when
19 you approached the Lexus, is that right?

20 A Well, yeah, crossing over and then the last
21 time walking over.

22 Q Well, did you not earlier testify that you
23 were just walking as if you were just walking down
24 the highway?

25 A Attempting to appear that we were just

1 walking down the highway.

2 Q And you were trying to make it appear as if
3 you were just walking down the highway?

4 A Yes.

5 Q Now, you testified on yesterday that
6 Highway 74 is a four lane highway?

7 A Yes.

8 Q And --

9 A During this -- this specific area that we
10 were in.

11 Q Yes, sir. Where the Lexus and the truck
12 were parked?

13 A Yes, yes.

14 Q And it was divided by a 55 to 60 foot
15 median?

16 A Yes, that's what I said.

17 Q Now, using a distance here in the
18 courtroom, Mr. Demery, from where you're seated, how
19 wide would the median be?

20 THE COURT: Now, that assumes
21 that the length is given versus the width
22 or the distance is given versus the
23 length -- that needs to be established.

24 MR. THOMPSON: Let me withdraw
25 that question.

1 THE COURT: Yes, sir.

2 BY MR. THOMPSON:

3 Q May I approach?

4 THE COURT: Yes, sir.

5 BY MR. THOMPSON:

6 Q I hand you what's been -- well, hand you
7 what is State's Exhibit Number 91, which has been
8 described as an enlarged photograph of the
9 intersection of Interstate 95 and Highway 74. Now,
10 what area specifically are you pointing to in the
11 median, are you referring to when you say the median
12 was 55 to 65 feet wide?

13 A When I said that yesterday, I was referring
14 to this area right here (indicating).

15 Q Okay. Now, you're talking about the width
16 from the eastbound lane to the westbound lane of the
17 median? The width of the median measuring from the
18 eastbound lane to the westbound lane, is that right?

19 A From here to here (indicating).

20 Q Yes, sir.

21 A Yes, that's what I was --

22 THE COURT: Now, you need to show
23 what is being referred to by "here to
24 here," Mr. Thompson.

25 MR. THOMPSON: Yes, sir.

1 BY MR. THOMPSON:

2 Q We'll do that first. Using State's Exhibit
3 Number 91, would you show to the jury three different
4 sections --

5 THE COURT: Mr. Demery, if you'll
6 stand facing the jury. If you'll hold the
7 photograph from the top in front of you.

8 MR. THOMPSON: Yeah, like that.

9 THE COURT: From your neck down,
10 and then point down to where you're
11 directing, show everybody at one time.

12 MR. THOMPSON: Okay.

13 THE WITNESS: (indicating).

14 BY MR. THOMPSON:

15 Q And use number -- that exhibit to
16 illustrate where you are measuring from when you
17 describe the width of the median.

18 A Right in here where I was talking about
19 yesterday, this area (indicating). Here, here.

20 Q Turn it this way.

21 A From here to here, that's what I was
22 referring to yesterday as 55, 60 feet.

23 Q And using a distance here in the
24 courtroom -- you may take your seat, please. Using a
25 distance here in the courtroom, what, in your

1 estimation, would be 55 to 60 feet from where you're
2 seated, Mr. Demery?

3 A From where I'm seated to maybe the second
4 to last bench.

5 Q Second to the last bench, is that what you
6 are saying?

7 A Yes.

8 Q Okay. Do you recall, Mr. Demery, yesterday
9 on redirect by Mr. Britt, you were asked where was
10 the truck parked in relation to the Lexus?

11 A Yes.

12 Q And your answer was, it was parked across
13 the road eastbound lane facing toward Wilmington
14 about, seemed like the front bumper of this Lexus
15 going across the road and standing in front of this
16 truck, was 60 to 65 feet?

17 A Yes.

18 Q Now, using State's Exhibit Number 91, would
19 you -- can you use it to illustrate where you're
20 measuring the 60 to 65 feet from the front bumper of
21 the Lexus to the truck?

22 A Yes.

23 Q All right. May he do that, Your
24 Honor?

25 THE COURT: Yes, sir.

1 BY MR. THOMPSON:

2 Q You may step down.

3 A (Witness complies).

4 Q Use that pen.

5 A Right here where the Lexus was parked, from
6 the front --

7 THE COURT: Mr. Demery, I'm
8 sorry, sir, keep your voice up so the court
9 reporter can hear you.

10 THE WITNESS: Okay. The truck
11 being right over here, from like the front
12 bumper of the Lexus, crossing over, from
13 this point to here.

14 BY MR. THOMPSON:

15 Q Where is the 60 to 65 feet, from which
16 point to which point?

17 THE WITNESS: Your Honor, I could
18 better hold it --

19 THE COURT: Yes, sir, any way
20 you're comfortable.

21 THE WITNESS: The Lexus being
22 right here, to the front bumper, crossing
23 over the road, here to right where the
24 truck was parked, I was going about 60, 65
25 feet.

1 BY MR. THOMPSON:

2 Q All right.

3 A Lexus right in here, from the front bumper,
4 crossing the road, truck parked right in here, 60, 65
5 feet.

6 Lexus right in here, front bumper crossing
7 over, truck right in here, 60, 65 feet.

8 Q All right. You may take your seat,
9 Mr. Demery. Now, Mr. Demery, using the courtroom,
10 estimate that 60 to 65 feet being from where you're
11 seated to the back door -- I mean to the door of the
12 courtroom is, is that right?

13 A Yes, that's what I stated before.

14 Q And that's how far the truck was parked
15 from the Lexus on the other side of the road?

16 A Yes, going on -- the bit of knowledge that
17 my attorneys turned me onto, that's what I was going
18 by with the truck.

19 Q But now, the distance that you're
20 estimating in the courtroom is not based on what your
21 attorneys said, it's based on what you see as being
22 the distance?

23 A Yeah, but as far as --

24 Q But as far as the feet you don't know?

25 A To the point in feet, I don't know, no.

1 Q Mr. Demery, do you know what the dimensions
2 are of those panels up there on the ceiling?

3 A Two feet wide.

4 Q I beg your pardon?

5 A Maybe two feet wide.

6 Q Two feet by what?

7 A Two by two.

8 Q Now, Mr. Demery from where you're seated
9 can you count the panels in the top of this ceiling
10 to the back of that courtroom? Can you do it, first
11 of all?

12 A Yeah, I can do it.

13 Q Would you do it, please?

14 A Do I absolutely -- do I have to -- Your
15 Honor, do I have to?

16 THE COURT: Mr. Thompson asked
17 you to, yes, sir.

18 THE WITNESS: Okay. I can.

19 BY MR. THOMPSON:

20 Q Just stand up and count the panels from
21 where you're seated all the way to the back of the
22 courtroom?

23 A 20.

24 Q 20 panels?

25 A 21 and a half -- well, 20 and a half if you

1 consider that little piece right there.

2 Q And if -- if they are two feet panels, that
3 means it's 40 feet, isn't that right, from where you
4 are to the back of the courtroom?

5 MR. BRITT: "Objection.

6 THE COURT: "The jury can count
7 just as good as anybody. Overruled.

8 BY MR. THOMPSON:

9 Q You may answer?

10 A Yeah, 20 times two would be 40.

11 Q And maybe a half?

12 A Maybe.

13 Q All right, sir. You testified yesterday --
14 well, Mr. Britt asked you, "And why didn't the truck
15 being there on the morning of July the 23rd cause you
16 any concern?" Do you remember him asking you that
17 question?

18 A Yes.

19 Q And you remember your answer was, "Well,
20 because it was just -- even though I noticed it going
21 up, the thought of it just didn't cross my mind"?

22 A Yes, that's right.

23 Q And again, as you've earlier testified, the
24 diesel engine on that truck was running, is that
25 right?

1 A Yes, best I remember.

2 Q The whole time?

3 A Yes.

4 Q The park lights were on?

5 A The park lights were on, yes.

6 Q You testified earlier, Mr. Demery, that
7 there was some light that seemed to be in the area
8 there about the, where the Lexus and the truck was
9 parked?

10 A Yes.

11 Q What kind of light are you referring to?

12 A Night lights, I remember them as being
13 orangeish looking night lights.

14 Q Orange looking night lights? Do you know
15 where that night light -- was it on a pole?

16 A It could -- it was on a pole, some kind of
17 pole because it was up in the air.

18 Q Where was it located, was it on 74 or --

19 A It was around in that area. I mean, that's
20 another thing that it just didn't cross my mind is
21 where these lights were. There was light, but --

22 Q Using State's Exhibit Number 91, can you
23 indicate or illustrate the general area where you saw
24 these lights up in the air?

25 A Like I say, I can show you the area that

1 was lit up.

2 MR. THOMPSON: May I?

3 THE COURT: Yes, sir.

4 BY MR. THOMPSON:

5 Q Where is the general area there where the
6 light was that you saw up in the air?

7 A There was light around in this area, best
8 as I can remember.

9 Q Would you -- Your Honor, may he step down
10 and use State's Exhibit Number 91 to show the area
11 where you saw the light up in the air, is that
12 right?

13 A I never said I saw a light up in the air.
14 I said there had to have been because they were up,
15 there was light.

16 Q But would you show the general area, using
17 State's Exhibit Number 91, where you saw -- say the
18 general area was where the light was?

19 A Around that area, I remember it being lit
20 up around in here (indicating), around this area.

21 Q Okay. Mr. Demery, you testified that on
22 August the 14th of 1993, the defendant came over to
23 your house and picked up a pair of shorts and a .38
24 caliber?

25 A Yes.

1 Q -- gun. Would you describe the shorts that
2 he picked up?

3 A They were orange, orange Duck Head shorts.

4 Q Are those the shorts -- strike that. You
5 referred to earlier in your testimony to some items
6 that the defendant was supposed to have purchased
7 with some of the money that you all stole or got from
8 the robbery, is that right?

9 A Yes.

10 Q Were the Duck Head shorts, the orange Duck
11 Head shorts some of these clothing items that he
12 purchased with the money?

13 A I don't remember, I can't recall.

14 Q Well, what did he purchase?

15 A Now, Daniel told me he had bought some
16 clothes and stuff. I remember seeing a pair of Fila,
17 they were flip-flops. That's where Daniel said he
18 got them that morning before I ever got back over to
19 his house that day.

20 Q What date are you talking about, what date
21 in July?

22 A July the 4th, that Sunday evening.

23 Q Filas, what else?

24 A Shoes and clothes.

25 Q What kind of clothes?

1 A Clothes and shoes. Should I tell you the
2 reason I remember these Fila flip-flops? He had said
3 he bought them that morning.

4 Q The morning of the 4th?

5 A That's when he said he got them, yes.

6 Q All right.

7 A Before I left and went to the prison across
8 the road, I was still seeing them on his feet as he
9 walked around the jailhouse going outside, you know.

10 Q I understand that. But that's how you --

11 A That's how I specifically recall -- he --
12 him telling me these Fila flip flops, I've seen them
13 a lot.

14 THE COURT: Mr. Thompson, we're
15 going to take two shorter breaks this
16 morning.

17 Ladies and gentlemen, we're going to
18 take about a 15 minute break at this time.
19 It's my -- Ms. Manuel, how are you, ma'am?
20 We're going to take two short breaks in the
21 morning. We'll see what our situation is
22 in the afternoon. Please, ladies and
23 gentlemen, reassemble in the jury room at
24 20 after. We'll go forward at that time.

25 Remember that it is your duty to abide

1 by all prior instruction of the Court
2 concerning your conduct during this recess,
3 everyone else please remain seated, the
4 members of the jury are excused until
5 11:20.

6 (Jury out at 11:04 a.m.)

7 THE COURT: Let the record
8 reflect this is being heard in the absence
9 of the jury.

10 Folks, having observed Ms. Manuel, and
11 it appears to the Court that she's still
12 suffering from some discomfort, some pain,
13 it's my intent to take shorter breaks in
14 the morning session, especially in the
15 afternoon session, depending on what the
16 situation may be. We're at ease until
17 11:20.

18 (Brief recess.)

19 THE COURT: All counsel are
20 present, the defendant is present in open
21 court.

22 Mr. Demery, if you'll again take the
23 witness stand. You remain under oath.

24 If you could bring our jurors in,
25 please, sir.

1 (Jury in at 11:22 a.m.)

2 THE COURT: Mr. Thompson.

3 BY MR. THOMPSON:

4 Q Mr. Demery, back on July the 3rd,
5 Mr. Demery, when you went -- you and the defendant
6 went to Marion, did you -- did the defendant call
7 Melinda and let her know that he was coming?

8 MR. BRITT: Objection.

9 THE COURT: If you know, you may
10 answer.

11 BY MR. THOMPSON:

12 Q If you know.

13 A Yes.

14 Q And you were present when he called?

15 A Yes.

16 Q And where were you -- where was that call
17 made from?

18 A It was made from a pay phone at some
19 store -- I don't remember the name of the store or
20 anything, but it was upon leaving that store, getting
21 a little ways down the road when we got pulled over.

22 Q Now, you indicated it took you two hours to
23 get there, but part of that reason was because you
24 got pulled over?

25 A Yes.

1 Q Now, how long did it take you to get back
2 from Marion to where your car cut off?

3 A I say maybe 35, 45 minutes at the most. I
4 mean, it wasn't that long, because like I say, we
5 didn't have any trouble -- well, the trouble was
6 happening but I didn't know it until we got there at
7 this ramp, and then the car cut off.

8 Q Every time that you went to Marion, did you
9 go the same route?

10 A I can't say for sure. There may have been
11 times we took a different route. I don't remember
12 for sure about every time.

13 Q Now, Mr. Demery, you indicated -- back on
14 the 23rd, where we were before, we were talking about
15 the 23rd of July before we had this break. You
16 indicated that you got in your car there on the canal
17 bank behind the abandoned store, and you drove to the
18 Bob's Landing Mobile Home Park, this was after the
19 man in the Lexus was shot?

20 A Yes.

21 Q And you testified that you parked your car
22 there in the defendant's yard and then you walked
23 over toward the bridge and waited?

24 A Yes.

25 Q And you walked over toward the bridge and

1 waited but didn't know that the defendant was coming
2 down the canal bank, that that was the route he was
3 going to take, is that right?

4 A No, like I said before, we were going to
5 meet at the bridge, but I didn't know he was coming
6 up from that direction.

7 Q And you stayed there at the bridge about
8 ten minutes before you saw the headlights?

9 A Like I say, 10, 15, altogether --

10 Q Ten to --

11 A From the time getting there at the trailer
12 and all, 15, 20 minutes. Around 10 at the bridge.

13 Q And about how far down the road, dirt road
14 there on the canal bank near the bridge where you
15 were was the car when you first saw the lights?

16 A When I first, when I found out, well, this
17 is Daniel, he was about 20 feet away.

18 Q And using a position here, a distance here
19 in the courtroom, how far would that be from where
20 you're seated?

21 A From where I'm seated to the middle of the
22 benches out there somewhere.

23 Q And that's when you first saw the light?

24 A No, that's when I first -- when I realized
25 who it was for sure.

1 Q That's when you first realized it was the
2 Lexus, is that correct?

3 A Well, the Lexus and Daniel in it.

4 Q When he was about 20 feet away from you and
5 you've described that, estimated that using a
6 distance in the courtroom as being to which bench,
7 the third bench?

8 A About the fourth, middle ways.

9 Q Fourth bench from where I'm located in the
10 courtroom, from where you're seated to the fourth
11 bench in the courtroom is when you first realized
12 that it was the Lexus and Daniel was in it?

13 A Yes.

14 Q And the headlights were on?

15 A Yeah, the headlights were on, but I saw the
16 headlights coming on up the road a little bit, the
17 canal bank.

18 Q And the radio was pumping?

19 A Yes.

20 Q And the car was much further away when you
21 heard the radio pumping?

22 A Well, I heard the radio, too, but it was
23 like 20 feet away when I knew for sure, yeah, this is
24 Daniel.

25 Q When you heard the radio pumping, the car

1 was further than 20 feet away, it was further than 20
2 feet is what you're saying?

3 MR. BRITT: Objection, this is
4 outside the scope.

5 THE COURT: He's answered that
6 question.

7 BY MR. THOMPSON:

8 Q Using a distance in the courtroom, where
9 was the car located when you first heard the music or
10 the radio pumping?

11 MR. BRITT: Objection, asked and
12 answered.

13 THE COURT: Mr. Demery, did you
14 first hear the radio before you recognized
15 that it was the Lexus coming down that
16 road?

17 THE WITNESS: Well, yes, yes.
18 But when I first --

19 THE COURT: When you first heard
20 the radio, can you tell us about how far
21 the vehicle was from where you were.

22 THE WITNESS: I don't -- no.

23 THE COURT: Mr. Thompson.

24 BY MR. THOMPSON:

25 Q On the early morning of the 4th of July

1 when you were there at the Family Inn, you indicated
2 you ran to a cornfield located behind the Family Inn?

3 A Well, not behind, but we ran around the
4 back part of the Family Inn. It was over --

5 Q As you were running, did you see a car come
6 around the back of the Family Inn?

7 A Yes. Well, right -- yes, around the back.
8 Went up to the front area.

9 Q What kind of car was it?

10 A Like a Lincoln, a Lincoln.

11 Q Did you know what model Lincoln?

12 A I couldn't say what model, but I can tell
13 you it was the car that folks were in that we robbed
14 there.

15 Q It was what?

16 A It was the car that the people were driving
17 that we had robbed.

18 Q So that's the only car that you saw as you
19 were running toward the cornfield, was that car
20 coming around the back of the building?

21 A That's the only car that caught my
22 attention. The reason being, it was going at a high
23 rate of speed. Like I said, they went up at the
24 front part of the motel.

25 Q And the first cornfield that you ran into,

1 how tall was the corn?

2 A It was taller than me.

3 Q Can you stand up and use your hands to show
4 how tall that corn was over your head?

5 A Yes, I think I can.

6 MR. THOMPSON: May he do that,
7 Your Honor.

8 THE COURT: Yes, sir.

9 THE WITNESS: Maybe about this
10 high up over me (indicating) maybe a little
11 higher.

12 BY MR. THOMPSON:

13 Q Did you -- was -- the second cornfield that
14 you ran into, about how tall was that corn?

15 A I remember it as being about the same
16 height.

17 Q Did you break any of that corn down when
18 you were running through the cornfield?

19 A I'm sure there was many stalks in the area
20 tore up that night.

21 Q Did you see a car leave the back of the
22 motel near that first cornfield that you ran into,
23 other than the car that you testified to as being
24 that of the people you robbed?

25 A Ask the question again, please.

1 Q Did you see a car leave the back of that
2 motel or the side of that motel where you ran into
3 that cornfield, in the area where you ran into the
4 cornfield, did you see a car leave when you ran into
5 that cornfield?

6 A No. When we ran into the cornfield, I
7 couldn't see anything, I mean that was -- it wasn't
8 right there at the motel. Like I said before, we had
9 to go down a little stretch of paved road, came into
10 a dead end, and from there we went into the
11 cornfield.

12 Q All right. Was that paved road near the
13 corner of the motel?

14 A No, it wasn't at the corner. We had to cut
15 across that little playground area behind the motel,
16 and from there, it was -- we had to run up just a
17 little ways before we ever hit the paved road. And
18 we got on that, went down that way a while.

19 MR. THOMPSON: Your Honor, may I
20 have just a moment.

21 BY MR. THOMPSON:

22 Q Mr. Demery, the area where the people were
23 robbed there at the Family Inn, is that what you
24 refer to as the side of the motel, would that be on
25 the side of the motel?

1 A In the area where --

2 Q The people were robbed.

3 A Yes.

4 Q All right. When you ran from that area,
5 did you run around the corner of the motel?

6 A Yes, we had to.

7 Q And when you ran around the corner of the
8 motel, did you see a car?

9 A Not then, no.

10 Q That was moving around the motel?

11 A No, not then. This was -- when I saw this
12 car, we were like in the area where the little
13 playground place is. And like I said, then, from the
14 position that we were in, it would have been over to
15 the side.

16 THE COURT: What car are you
17 referring to, Mr. Demery?

18 THE WITNESS: The Lincoln that
19 those --

20 THE COURT: Other than the
21 Lincoln that you've testified about, did
22 you see any other vehicle at that time?

23 THE WITNESS: That was the only
24 vehicle that caught my attention.

25 BY MR. THOMPSON:

1 Q Any other moving vehicle?

2 A No, I didn't.

3 Q You testified it was around 4:00 or 4:30
4 when these people were robbed?

5 A Yes.

6 Q On July the 4th, 1993?

7 A Somewhere around that time, yes.

8 Q And what time was it, Mr. Demery, when you
9 got to the defendant's grandmother's house?

10 A I remember it as being around maybe 6:30.
11 Because like I said, it was about 7:00 when my mom
12 came out there.

13 Q Did you have your watch on?

14 A Yes.

15 Q When you got to the defendant's
16 grandmother's house, did you immediately make the
17 phone call to your mother?

18 A No. When we got there, like I said, it
19 took a few minutes before anybody ever came to the
20 door. And once we got in, you know, Daniel told --
21 well, explained to his grandmother that the car had
22 broken down, needed to use the phone, got a drink of
23 water, and then I called my mom.

24 Q About what time was it when you called your
25 mom?

1 A We got there around 6:30. It wasn't maybe
2 five minutes after we went in the house, that's when
3 I made the call.

4 Q That would be around 6:35 more or less?

5 A Yes, more or less.

6 Q What time was it when your mother came to
7 the house, how long did it take her to get to the
8 house?

9 A It was about 7:00 when she got there, so
10 about -- about 25 minutes getting there.

11 Q And your mother left the defendant's
12 grandmother's house and took him home?

13 A Yes.

14 Q And how long did it take to get from the
15 defendant's grandmother's house to his home, the
16 defendant's home in Bob's Landing Mobile Home Park?

17 A I would say about 30 minutes.

18 Q Which would have put him there around 7:30?

19 A Around 7:30.

20 Q And you left the defendant's house and went
21 back to your house?

22 A Yes.

23 Q About what time -- what time was it when
24 you arrived back to your house?

25 A About 8:00.

1 Q When you called your mother on the phone
2 from the defendant's grandmother's house, did you
3 tell your mother about the car breaking down?

4 A Yes.

5 Q After you called the wrecker, Mr. Demery,
6 you went to sleep?

7 A Yes.

8 Q And what time was it when you woke up?

9 A I slept about two hours, maybe around 10:00
10 sometime. That's when my dad came in and woke me up.

11 Q And did you immediately go outside and work
12 on your car?

13 A No. Then, when I got up this time, I went
14 out, I paid the man his fee for bringing the car to
15 the house, and I went back in and went to bed.

16 Q So when your daddy woke you up, the car was
17 outside, the wrecker had your car outside?

18 A Yes.

19 Q And when you went back to bed this second
20 time, how long did you sleep?

21 A I slept about two more hours, two and a
22 half, something like that.

23 Q And you woke up then about what time?

24 A Around 12:00, little after.

25 Q And was it at this time that you began

1 working on your car with your father, is that when
2 you did that?

3 A Well, that was about that time I went out
4 there to see what was the deal with it, what was
5 wrong, you know. It only took a few minutes, because
6 my old man, other than my dad being a gun repairman,
7 he's an A-1 mechanic. He went right to the car,
8 found out what the problem was, and had to wait on my
9 mother to come in from church in order to go get the
10 part.

11 Q Did you call the wrecker, Mr. Demery, or
12 did you have your mother call the wrecker?

13 A I remember me calling her. Yeah, because I
14 had asked him about, I had my keys on me, and like a
15 lot of -- well, the person can't move the car without
16 the keys, but then I told this guy that it was a
17 straight drive and all, and they said it wouldn't be
18 no problem, he would get the car and get it to the
19 house. And then jokingly he said if I have to break
20 the window and go in there and put it in neutral,
21 jokingly he said that.

22 Q Now, you went there and worked on your car
23 sometime after 12:00. How long did it take you to
24 fix that car?

25 A Like I said, it didn't -- we didn't work on

1 it right then. My mom got in from church about 1:00,
2 and when she came in, we ran over to town and got
3 this little piece of pipe, little clamp that the old
4 man told me I needed. And we went straight back to
5 the house. And it took him maybe ten minutes at the
6 most to get up under there and put it on.

7 Q And it was sometime after that that you
8 went over to Dobb's, is that correct?

9 A I remember it as being around 2:00, a
10 little after, went to Daniel's and from there to
11 Dobb's.

12 Q You went to Daniel's and then you went to
13 Dobb's?

14 A Yes.

15 Q And it was around 2:00 when you got there?

16 A That was about the time I remember leaving
17 the house and shortly after getting to Daniel's.

18 Q You're saying then it was around 2:00 when
19 you got to Daniel's? Or what time was it, about what
20 time was it when you got to Daniel's?

21 A About that time, about 2:00, little after.

22 Q How long did you stay there?

23 A Just a few minutes.

24 Q And you left there and you went to Dobb's?

25 A Yes.

1 Q Did your car cut off over there at the
2 Burger King?

3 A At Burger King?

4 Q You know, the Burger King right there at
5 Dobb's, did your car cut off there?

6 A No, the car was -- Daniel and I walked from
7 Dobb's, we walked over to McDonald's but the car
8 stayed there at Dobb's the whole time.

9 Q Mr. Demery, had that car, meaning the Ford
10 Tempo, ever been towed before by a wrecker, had you
11 ever had it towed before by a wrecker?

12 A No, I hadn't, no.

13 Q Mr. Demery, at one point during your direct
14 examination, you testified that you purchased a
15 hundred reloads from a man by the name of Frog Lever
16 back in September of 1992.

17 A Well, around September, somewhere in that
18 time.

19 Q They were .38 caliber reloads?

20 A Yes.

21 Q And do you know how to make reloads?

22 A I could. I believe I could.

23 Q You have seen them made before?

24 A I have seen a little bit of it.

25 Q And can you make reloads out of old

1 casings?

2 A Old casings?

3 Q Yeah, casings that have been used.

4 A Well --

5 Q Spent rounds, in other words?

6 A Depending on the condition. As long as
7 they are not all bent up, rusted, yeah.

8 Q Have you ever seen reloads being made out
9 of old casings?

10 A Spent cases, no, I wouldn't -- old, I
11 wouldn't say old.

12 Q You're right. Spent casings meaning they
13 have been fired, the bullet's been fired before, is
14 that right?

15 A Yes.

16 Q However the projectile has gone -- what you
17 have is an empty casing, that's what you refer to as
18 a spent casing?

19 A Yes.

20 Q Okay. And with that type casing that you
21 can make, that you know that you can make reloads as
22 long as the casing is not all bent up or too damaged,
23 is that right?

24 A Yes.

25 Q Now, were the reloads that you purchased

1 from Frog Lever made out of spent casings or new
2 casings?

3 A All of them was spent. Like I said, if
4 there were -- if they were new, they wouldn't be
5 reloads.

6 Q Well, can you -- all right. What were some
7 of the brand names of those -- were the casings with
8 the names on them, the casings that you make the
9 reloads out of, did they have the names on them?

10 A Majority of the time they are stamped up
11 under the bottom, yes.

12 Q And out of that hundred or so reloads, what
13 was some of the brand names on those .38
14 caliber?

15 MR. BRITT: Objection.

16 THE COURT: Basis?

17 MR. BRITT: Relevance.

18 THE COURT: We'll take that up in
19 a few moments. You may answer.

20 THE WITNESS: I don't recall -- I
21 know there were different sizes but as far
22 as name brands then, I don't recall.

23 BY MR. THOMPSON:

24 Q Mr. Demery, you testified earlier that you
25 fired 94 of the 100 reloads that you purchased from

1 Frog Lever?

2 A Yes, that's what I said earlier, yes.

3 Q And were all of those 94 rounds fired from
4 the Colt .38 caliber?

5 A Yes. Well -- the 100, the 100 was fired in
6 the Colt. Would you like me to --

7 Q Okay. Now, Mr. Demery, when you testified
8 earlier that only 94 of the reloads were fired --

9 A Yes.

10 Q -- that was on cross-examination, wasn't
11 that right, when I was asking you the questions?

12 A Yes. I remember that being the first time,
13 when the first time I was asked.

14 Q Yes, sir. And I never asked you what you
15 did with those other six live rounds, did I?

16 A Seemed like -- I remember telling you there
17 was six left in the chamber. But I could --

18 Q Okay. Yes, sir.

19 A I could tell, where the confusion came, it
20 was entirely on my part. It wasn't anything that you
21 or anybody else may have said. But like I say, I was
22 saying 94, there was six left. What happened was,
23 remember me telling you about the half of box of top
24 of the line bullets I had bought previously before
25 this hundred rounds? It was six of those bullets

1 that were left and put in the gun. The reason those
2 six were left, because there were 20 bullets. I
3 fired -- I emptied the gun twice using these bullets,
4 and, well, the second time was to see if I just
5 wasn't screwed up. What was happening around the end
6 of the barrel, these bullets were so powerful they
7 were busting the chrome off. And that's the
8 reason -- there were six -- six full metal jackets in
9 the chamber. Those hundred reloads, I had fired all
10 of them. I mean, that was my fault, I'm excusing --

11 Q And those full metal jackets, the top of
12 the line bullets, were the bullets you bought over
13 there at Kurt's store in Pembroke, is that right?

14 A Yes, yes.

15 Q Mr. Demery, those full metal jacketed
16 bullets, were they hollow points?

17 A I think I remember -- hollow point. May
18 have. I remember them, the entire bullet was metal.
19 I mean, even the -- what -- the projectile, the whole
20 thing was metal. I mean, there was -- they were some
21 powerful bullets.

22 Q Expensive bullets?

23 A Yes, they were about a dollar apiece, yeah.

24 Q Not the kind you use for target
25 practice?

1 MR. BRITT: Objection. May I be
2 heard?

3 THE COURT: Yes, sir. Ladies and
4 gentlemen, there's a matter of law the
5 Court must take up at this time. Please
6 recall my instructions in that regard.
7 It's now about five minutes until. Let me
8 give you folks until ten after to take the
9 second short break. Please recall that it
10 is your duty to abide by all prior
11 instruction of the Court concerning your
12 conduct during this recess, and please
13 report directly back to the jury room at
14 12:10. You folks are excused. Everyone
15 else please remain seated.

16 (Jury out at 11:53 p.m.)

17 THE COURT: Mr. Britt.

18 MR. BRITT: Your Honor, basically
19 the objection is under Rule 403. In my
20 opinion, this is a waste of time, needless
21 waste of time and cumulative evidence.

22 THE COURT: Mr. Thompson, what is
23 the point, not only of this line of
24 questioning, but of other lines of
25 questioning developed on cross-examination

1 before him?

2 MR. THOMPSON: They were matters
3 gone into on redirect.

4 THE COURT: Okay. I hear you say
5 that they explored it on redirect, so you
6 explored them on cross. What was the point
7 other than they brought it up so I'm going
8 into it.

9 MR. THOMPSON: For
10 clarification.

11 THE COURT: Okay. Folks, rule
12 611-A as we all know gives the Court
13 control in -- well, reasonable control in
14 exercising it's discretion in terms of the
15 mode and order of interrogation of
16 witnesses, presentation of evidence so as
17 to make the ascertainment of truth
18 effective, avoid needless consumption of
19 time and to protect witnesses from
20 harassment or undue embarrassment. In my
21 view, I mean, I've asked you in the absence
22 of the jury what the relevance is, I see
23 little if any relevance to the matters
24 developed on cross-examination.

25 MR. THOMPSON: Yes, sir, well --

1 THE COURT: You may be able to
2 demonstrate all this but I don't see it.

3 MR. THOMPSON: The relevance,
4 Your Honor, is, it is matters that were
5 dealt with and admitted on redirect
6 examination. Now, the -- excuse me for
7 sitting down.

8 THE COURT: That's okay.

9 MR. THOMPSON: The State, once
10 you allowed this evidence in concerning the
11 Rowland robbery, the -- excuse me, Family
12 Inn, I refer to it as the Family Inn
13 robbery, the State went into every one of
14 these areas that I've gone into on
15 redirect.

16 And I mean, they did not just talk
17 about it before. Not only that, the State
18 came back to the July 22nd robbery, 23rd,
19 they went down into South Carolina, he
20 talked about the Colt .38 being the only
21 gun that he had. He talked about -- and
22 it's --

23 THE COURT: I understand what
24 you're saying. And to the extent that
25 there is a point, let's get to it. To the

1 extent that there is one.

2 MR. THOMPSON: Well, I suggest
3 that that's exactly what I've been doing,
4 Your Honor.

5 THE COURT: Well, yes, sir. I
6 don't necessarily see it that way. I
7 understand that the rule is that wide
8 latitude is allowed on cross-examination,
9 and that's why I haven't interjected. But
10 there are instances where nine questions
11 were asked of where one would have done it.

12 The objection at this point is
13 overruled in the discretion of the Court.
14 I am going to direct that the -- any
15 additional cross-examination to the extent
16 possible, be pointed.

17 MR. THOMPSON: Yes, sir.

18 THE COURT: Yes, sir.

19 THE COURT: Mr. Demery, you may
20 step down.

21 Folks, I couldn't recall the case, and
22 I don't mean this in the context of your
23 cross-examination, just for point of
24 reference, because Mr. Bowen asked me
25 earlier about citation State versus

1 Sanderson or Sandeson, 336 NC 142 Southeast
2 2nd, 33, 1994 case. The questioner may not
3 distort the witness's testimony by
4 purposely misconstruing an answer and then
5 cross-examining the witness on the basis of
6 the misconstruction.

7 There is a '95 case under 611 that I
8 think deals with the same point, and I'll
9 try to find that cite as well. For
10 Mr. Bowen's benefit, he indicated he wanted
11 the citation on some of the matters that I
12 earlier referred to.

13 MR. BOWEN: Thank you.

14 THE COURT: We're at ease
15 until -- did I say ten after?

16 MR. BRITT: Yes, sir.

17 THE COURT: Okay.

18 (Brief recess.)

19 THE COURT: All counsel are
20 present, the defendant is present in open
21 court. Before we bring in Mr. Demery and
22 the jury, Major Watson brought to my
23 attention that Ms. Manuel apparently was
24 coming up a bare staircase or in the back
25 hallway.

1 THE BAILIFF: In the back
2 hallway.

3 THE COURT: And apparently asked
4 an attorney with the public defender's
5 office Ms. Gala Biggs.

6 THE BAILIFF: She asked me if I
7 would ask Ms. Gala Biggs.

8 THE COURT: Why don't you tell
9 me.

10 THE BAILIFF: She was coming in
11 the back hallway, and she asked if I would
12 ask Ms. Gala Biggs to see about her pack on
13 her back. And she didn't know her, and
14 then I told her that she was an attorney,
15 that she could not do that.

16 THE COURT: Ms. Biggs.

17 THE BAILIFF: That Ms. Biggs was
18 an attorney, she could not do that, and
19 that I would get one of the jurors to do
20 that. So her and Ms. Biggs did not have a
21 conversation or anything.

22 THE COURT: Just putting it on
23 the record. Anybody want to be heard?

24 If you'll ask Mr. Demery to come in,
25 please.

1 If you'll again take the witness
2 stand, you remain under oath.

3 Any matters before we bring the jury
4 in?

5 MR. THOMPSON: Are you waiting on
6 me, sir?

7 THE COURT: Yes, sir, any matters
8 before we bring the jury in?

9 MR. THOMPSON: No, sir.

10 THE COURT: Yes, sir.

11 (Jury in at 12:16 p.m.)

12 THE COURT: Mr. Thompson.

13 BY MR. THOMPSON:

14 Q Mr. Demery, you indicated that you and the
15 defendant pulled over outside of Marion on July 3rd
16 of 1993 and called Melinda at a pay telephone?

17 A Yes.

18 Q But now, were you present when you and the
19 defendant made a call to Melinda before you left
20 Robeson County?

21 MR. BRITT: Objection.

22 THE COURT: As to whether or not
23 you were present on such occasion you may
24 answer yes or no.

25 THE WITNESS: Yes, if he made a

1 call down there.

2 THE COURT: Well --

3 Mr. Thompson. Do you know that a call was
4 made by the defendant before you left to go
5 to Marion, and were you present?

6 THE WITNESS: No, sir, I can't
7 say that I -- a phone call was made, but we
8 were together. I mean, we had been
9 together about all day.

10 THE COURT: Mr. Thompson.

11 BY MR. THOMPSON:

12 Q The phone call that you're referring to,
13 where were you when the defendant made that phone
14 call?

15 MR. BRITT: Objection.

16 THE COURT: Overruled.

17 THE WITNESS: Sitting in the car.

18 THE COURT: Now, are you
19 referring to the phone call made at a phone
20 booth.

21 THE WITNESS: Yes.

22 THE COURT: Is that the only
23 phone call that you're aware of that you
24 personally know about?

25 THE WITNESS: Yes, as to calling

1 Melinda, yes.

2 BY MR. THOMPSON:

3 Q On July 3rd, that was on July 3rd?

4 A Yes.

5 Q Mr. Demery, do you know Hubert Larry Deese,
6 who lives in the Pembroke area?

7 MR. BRITT: Objection, outside
8 scope of redirect, outside the scope of
9 direct.

10 THE COURT: Sustained, unless you
11 want to be heard.

12 MR. THOMPSON: Yes, sir, I do
13 want to be heard.

14 THE COURT: Members of the jury,
15 please don't worry or speculate about what
16 takes place in the courtroom in your
17 absence. And if you'll step to the jury
18 room, the Court has to take up a matter of
19 law.

20 (Jury out at 12:19 p.m.)

21 THE COURT: The following is
22 being heard in the absence of the jury.
23 Mr. Thompson.

24 MR. THOMPSON: Yes, sir. Your
25 Honor, again, this is -- I asked the

1 question did he -- the question was, did
2 you know Hubert Larry Deese. Now, the
3 State, again, during its redirect has gone
4 over, as I indicated, several dates,
5 areas --

6 THE COURT: What does that
7 individual have to do with anything where
8 he's gone on direct?

9 MR. THOMPSON: Phone calls.
10 Phone calls that were made and to whom they
11 were made.

12 THE COURT: Anything further?

13 MR. THOMPSON: From the Lexus.

14 THE COURT: Anything further?

15 MR. THOMPSON: And the hours that
16 were gone over during redirect. And desire
17 to make a proffer.

18 THE COURT: Yes, sir. Make your
19 proffer.

20 MR. BRITT: For the record, there
21 were no phone calls asked about on
22 redirect.

23 THE COURT: Make your proffer.

24 This is an offer of proof for the record.

25 BY MR. THOMPSON:

1 Q Do you know Hubert Larry Deese who lives in
2 the Pembroke area, Mr. Demery?

3 A I know that name, but you mean personally
4 or know of?

5 Q Well --

6 THE COURT: Well, which is it?

7 BY MR. THOMPSON:

8 Q How do you know?

9 A I know of an individual that goes by the
10 name of Larry Deese.

11 Q Larry Deese that you know, where does he
12 live, where did he live, or where does he live?

13 A The Larry Deese that I know of is living in
14 a federal penitentiary in South Carolina right
15 now.

16 THE COURT: Prior to that, where
17 did he live.

18 THE WITNESS: Somewhere in the
19 Pembroke area.

20 BY MR. THOMPSON:

21 Q At any time during the investigation of
22 this case, were you shown a phone number and asked
23 whether you made a call to a Hubert Larry Deese from
24 that Lexus?

25 MR. BRITT: Objection.

1 THE COURT: It's an offer of
2 proof. Overruled.

3 THE WITNESS: Yes, I was. Yes.

4 BY MR. THOMPSON:

5 Q By whom?

6 A You mean --

7 THE COURT: The germane issue is,
8 did you make such a call.

9 THE WITNESS: No, no.

10 THE COURT: Anything further?

11 MR. THOMPSON: By whom were you
12 seen --

13 THE COURT: It's not relevant.
14 Didn't make the call, there's no
15 relevance. The objection is sustained.

16 MR. THOMPSON: May I have a
17 moment, Your Honor?

18 THE COURT: Yes, sir.

19 MR. THOMPSON: That's it, Your
20 Honor.

21 THE COURT: Anything further?

22 MR. THOMPSON: That's all.

23 THE COURT: Any additional
24 argument?

25 MR. THOMPSON: No, sir.

1 THE COURT: The objection by
2 counsel for the State on the grounds that
3 the matters inquired into are outside the
4 scope of redirect is allowed. Note the
5 defendant's exception to the ruling of the
6 Court. If you'll bring the jury back in,
7 please, sir.

8 (Jury in at 12:25 p.m.)

9 THE COURT: The objection is
10 sustained, exception is noted.

11 Mr. Thompson, any additional matters,
12 sir?

13 MR. THOMPSON: Yes, sir.

14 BY MR. THOMPSON:

15 Q Mr. Demery, the .38 caliber gun that you've
16 testified that you received from the defendant on
17 August the 14th of 1993 --

18 THE COURT: Rephrase,
19 Mr. Thompson.

20 BY MR. THOMPSON:

21 Q Well, you testified that you received a
22 .38 -- a .38 caliber gun from the defendant on
23 August the 13th of 1993, is that right?

24 A Yes.

25 Q And was that gun loaded?

1 A Yes, yes.

2 Q How many bullets did it have in it?

3 A Six.

4 Q And were they the same bullets as the ones
5 that were purchased from C&R Pawn Shop?

6 A Yes.

7 Q And when you gave -- you testified that you
8 gave that gun back to the defendant on the 14th of
9 August of 1993?

10 A Yes.

11 Q Were those same bullets in that .38 caliber
12 gun that were purchased from C&R Pawn Shop?

13 A Yes.

14 MR. THOMPSON: That's all.

15 THE COURT: Anything further on
16 behalf of the State? And any further
17 redirect or reredirect will be limited to
18 matters developed on recross.

19 MR. BRITT: Yes, sir, just a
20 couple.

21 THE COURT: Yes, sir.

22 FURTHER REDIRECT EXAMINATION

23 BY MR. BRITT:

24 Q Mr. Demery, does this medication that
25 you've testified that you take affect your memory?

1 A No, huh-uh, no. No, it was -- the first --
2 the first medication that I was put on over at the
3 jail, it didn't affect my memory, but it drug me
4 out. I felt like hanging myself. You know, it was
5 supposed to have been an antidepressant but it did
6 the absolute opposite of what it was supposed to
7 do.

8 MR. BRITT: I don't have any
9 other questions.

10 THE COURT: Mr. Thompson,
11 anything further?

12 MR. THOMPSON: No questions, Your
13 Honor.

14 THE COURT: Mr. Demery, you may
15 step down, sir.

16 Any additional showing by the State?

17 MR. BRITT: Yes, sir, at this
18 time we call Special Agent Barry Lea.

19 THE COURT: If you'll come up and
20 be sworn, please, sir.

21 BARRY M. LEA,
22 being first duly sworn was examined and testified as
23 follows:

24 DIRECT EXAMINATION

25 THE COURT: If you'll state your

1 full name for the record, please, sir?

2 THE WITNESS: Barry M. Lea.

3 THE COURT: If you'll spell your
4 last name for the record?

5 THE WITNESS: L E A.

6 THE COURT: Mr. Britt.

7 MR. BRITT: Yes, sir.

8 BY MR. BRITT:

9 Q Mr. Lea, by whom are you employed?

10 A The North Carolina State Bureau of
11 Investigation.

12 Q And how long have you worked for the SBI?

13 A 26-and-a-half years.

14 Q And in what capacity do you work for the
15 SBI?

16 A I am a Special Agent.

17 Q Did you participate in the investigation of
18 the murder of James Jordan?

19 A Yes, sir, I did.

20 Q When did you first become involved in the
21 investigation surrounding the murder of James Jordan?

22 A August 14th, 1993.

23 Q And first information that you received in
24 regard to the murder of James Jordan, where were you
25 when you received that information?

1 A I was notified by my supervisor by
2 telephone to report to Cumberland County Sheriff's
3 Department, and which I did, and at the Sheriff's
4 Department I was advised by my supervisor of the
5 division what was getting ready to transpire in
6 Robeson County, and I was dispatched to Robeson
7 County at that time.

8 Q Were you the only SBI Agent that was
9 dispatched to Robeson County as part of the
10 investigation?

11 A No, sir, I was not.

12 Q Where did you go when you came to Robeson
13 County?

14 A Initially I came to the Sheriff's
15 Department and from the Sheriff's Department I went
16 to a mobile home residence at Bob's Landing Mobile
17 Home Park.

18 Q What other officers went to that residence,
19 and what date was that?

20 A This was on August the 14th, 1973 --

21 Q 73?

22 A Excuse me. 1993. Accompanying me was
23 Special Agent Kim Heffney of the Bureau, and prior to
24 arriving at that residence, I met with Special Agent
25 Randy Myers.

1 Q What if anything did you do when you went
2 to this mobile home on August the 14th, 1993?

3 A At this mobile home, I met with
4 a Ms. Green, other officers in Robeson County
5 Sheriff's Department, including Detective Anthony
6 Thompson, and at that mobile home residence, we
7 conducted a search of the residence and also
8 participated off and on in an interview with the
9 occupant of the residence, Ms. Green.

10 Q At the time you went to this mobile home on
11 August the 14th, 1993, was the defendant present?

12 A No, sir, he was not.

13 Q And approximately how long did you stay at
14 this mobile home, and where was this mobile home
15 located?

16 A The mobile home was located on Back
17 Swamp -- or off of Back Swamp Road in Bob's Landing
18 Mobile Home Park.

19 Q And you testified that a search was
20 conducted of the residence. How many officers were
21 involved in the search of the residence?

22 A Four or five officers.

23 Q Do you recall what officers participated in
24 any search that occurred?

25 A Yes, sir. Myself, Detective Thompson,

1 Derrick Cannon from Cumberland County, and
2 Detective -- I can't recall the other officer's name,
3 sir.

4 Q What area of the mobile home did you search
5 on August the 14th, 1993?

6 A I searched in the kitchen area and in the
7 area behind the kitchen, in a bedroom or a storage
8 room, which was in very bad disarray. Another
9 bedroom back in that direction, and in a bathroom.

10 Q And on August the 14th, 1993, were any
11 items seized during the search of the mobile home at
12 Bob's landing?

13 A Yes, sir, it was.

14 Q What items do you recall being seized on
15 August the 14th?

16 A I remember a briefcase being seized.

17 Q And where was that briefcase located?

18 A That briefcase was found in the room which
19 I described that was in bad disarray behind the
20 kitchen.

21 Q Can you describe the briefcase that was
22 located there?

23 A Yes, sir. It was a -- it was either a
24 leather or simulated leather type briefcase, two
25 hinges with a locking mechanism.

1 MR. THOMPSON: Object.

2 THE COURT: I'm sorry,
3 Mr. Thompson, basis?

4 MR. THOMPSON: Need to be heard,
5 Your Honor.

6 THE COURT: Members of the jury,
7 there's a matter of law the Court must take
8 up. Don't worry or speculate about what
9 takes place in the courtroom in your
10 absence. If you will step to the jury
11 room, please.

12 (Jury out at 12:35 p.m.)

13 THE COURT: The following is
14 being heard in the absence of the jury.
15 Yes, sir, Mr. Thompson.

16 MR. THOMPSON: Yes, sir. Your
17 Honor, as part of the discovery, and we've
18 -- I think the State has talked about
19 this.

20 THE COURT: Is it your point that
21 there was no notice as to a briefcase?

22 MR. THOMPSON: No, sir, there was
23 a notice, but this is dealing with getting
24 into an area of a Johnny Booker. It
25 appears a truckdriver that -- they are

1 talking about another -- well, a breaking
2 into a truck, and we've been -- we've been
3 provided through discovery items that at
4 least were identified as having come from
5 this truck --

6 THE COURT: That were contained
7 in the briefcase?

8 MR. THOMPSON: Yes, sir.

9 THE COURT: Mr. Britt, do you
10 intend to go into that.

11 MR. BRITT: No, sir, what I
12 intend to go into, Your Honor, this
13 briefcase that was found at the defendant's
14 trailer was missing a button. When the
15 investigators went to Larry Demery's
16 residence and did a consent search, a
17 button matching the one that was on this
18 briefcase was located in Mr. Demery's car.
19 The State's position is that button found
20 in Demery's car was the button missing from
21 the briefcase at the defendant's residence.

22 THE COURT: What has that got to
23 do with the case?

24 MR. BRITT: One of the things, it
25 involves the search on August the 14th, and

1 then on August the 16th there was an
2 additional search which Mr. Lea also took
3 part in, where the murder weapon was
4 recovered.

5 THE COURT: All right. Still,
6 what has the briefcase got to do with the
7 case?

8 MR. BRITT: Ties the defendant
9 and Larry Demery together.

10 THE COURT: Okay.

11 MR. THOMPSON: Ties them
12 together --

13 THE COURT: Button and
14 briefcase. Folks, an issue has been made
15 that at issue in this case is identity and
16 participation. Alibi has been raised. The
17 contention of the defendant, primarily
18 through opening statement, but also as
19 developed on cross-examination, is that if
20 a crime or crimes were committed, they were
21 not committed by the defendant. That's
22 essentially the defendant's contention note
23 know essentially. That if a crime or
24 crimes were committed, they were committed
25 by Larry Martin Demery and others, not

1 including the defendant.

2 Although this is -- may be considered
3 a small point, the State's contention is
4 this is additional evidence that
5 links the defendant and the briefcase. My
6 concern is, what does the link of the
7 button presumably and the briefcase have to
8 do with the events of the 23rd of July,
9 1993 and thereafter?

10 MR. BRITT: Actually, if we are
11 allowed to get into it, Mr. Booker's truck
12 was broken into, parked at the abandoned
13 gas station located by the Quality Inn
14 location at the intersection of I-95 and 74.

15 THE COURT: Which is related to
16 the events of the 23rd, 22nd and 23rd.

17 MR. BRITT: Well, it's part of
18 the same common scheme or plan, because the
19 information that Mr. Demery provided us, he
20 and the defendant broke into this truck at
21 the same location, they were there for the
22 same purpose of planning to rob someone.

23 MR. THOMPSON: That's --

24 THE COURT: So in essence, the
25 State does plan to get into the break-in?

1 MR. BRITT: If allowed.

2 THE COURT: Because the break-in
3 puts both of them through the link of the
4 briefcase and the button there in that area
5 at the time in question?

6 MR. BRITT: Yes, sir.

7 MR. THOMPSON: Again, you are --
8 because -- this is from the -- he's trying
9 to use 404(b) evidence, and --

10 THE COURT: Yes, sir.

11 MR. THOMPSON: We will offer
12 that, and don't concede at this point that
13 it's admissible under 404(b), but even if
14 it were, it would, under 403, the -- we
15 would object to that.

16 THE COURT: Well, the probative
17 value is certainly strong if the connection
18 to the briefcase puts them in the area in
19 question at the time in question.

20 MR. THOMPSON: What time?

21 MR. BRITT: The truck was broken
22 into on the night of the 14th of August,
23 which was the night before the Clewis
24 Demory robbery.

25 THE COURT: What has that got to

1 do with 22nd and 23rd?

2 MR. BRITT: All going to common
3 scheme and plan they had. Evidence on the
4 4th that they --

5 THE COURT: I misunderstood, I
6 thought this occurred on or about the time
7 in question involved in this case.

8 MR. BRITT: August the 14th is
9 the date -- excuse me July the 14th.

10 THE COURT: Objection is
11 sustained. Note the State's exception for
12 the record. Court finds that the probative
13 value is minimal, Court further finds that
14 the risk of substantial prejudice outweighs
15 any probative value the evidence might be,
16 and the State's exception is noted for the
17 record.

18 MR. THOMPSON: Your Honor, we
19 would ask an instruction.

20 THE COURT: I'll tell them to
21 disregard that question.

22 Bring the jury back in.

23 MR. THOMPSON: Well, Your Honor,
24 excuse me.

25 THE COURT: Close the door,

1 please, and ask them to stop.

2 MR. THOMPSON: We're going -- we
3 want to move to strike the testimony with
4 regard to the briefcase first.

5 THE COURT: Well, the State is
6 entitled to establish that a search was
7 conducted.

8 MR. THOMPSON: Okay.

9 THE COURT: On the night of
10 August 14th. The State is entitled to
11 establish that subsequent searches were
12 also conducted if that is in fact what
13 occurred. The ruling of the Court deals
14 only with the briefcase.

15 MR. THOMPSON: Yes, sir, that's
16 what -- that's what I'm moving to strike,
17 the testimony related --

18 MR. BRITT: The seizure of the
19 briefcase is related to the search. I
20 think I'm entitled to go into the fact that
21 they seized an item during the search on
22 August 14th.

23 THE COURT: Without reference to
24 where it came from, that's my point.

25 MR. BRITT: In regard to

1 Mr. Booker?

2 THE COURT: Exactly.

3 MR. BRITT: I didn't intend to
4 get into that.

5 THE COURT: We're all on the same
6 accord, I think. Yes, sir, I think we're
7 ready for the jury now. I'm not striking
8 the testimony now at this point based on
9 that.

10 MR. THOMPSON: Yes, sir.

11 (Jury in at 12:42 p.m.)

12 THE COURT: If you'll bear with
13 me for one moment, please, folks. The
14 objection is overruled. Note
15 Mr. Thompson's -- counsel for the
16 defendant's exception to the ruling of the
17 Court consistent with what was stated.
18 Mr. Britt, you may proceed.

19 BY MR. BRITT:

20 Q Mr. Lea, can you describe for us this
21 briefcase that was seized during the search of August
22 14th, 1993?

23 A Yes, sir. The briefcase was either a
24 leather or simulated leather type briefcase. It had
25 a combination type lock on it. And there was a

1 missing button from one of the two opening sides.

2 Q Can you describe the button that was
3 located on the briefcase?

4 A It is a --

5 MR. THOMPSON: Object.

6 THE COURT: Overruled.

7 THE WITNESS: It is a slide type
8 button or button that an individual would
9 slide simultaneously with one on the
10 opposite side so that the catches would
11 spring open.

12 MR. THOMPSON: Move to strike.

13 THE COURT: Denied.

14 BY MR. BRITT:

15 Q What color was the button that was present
16 on the briefcase?

17 MR. THOMPSON: Object, relevance.

18 THE COURT: Overruled.

19 THE WITNESS: A brass type
20 finish.

21 MR. THOMPSON: Move to strike.

22 THE COURT: Denied.

23 BY MR. BRITT:

24 Q After the search was conducted on August
25 the 14th, 1993, where did you go when you left the

1 trailer?

2 A After I left that residence, myself and
3 Agent Heffney and other officers went to the
4 residence of Larry Demery.

5 Q And where was that residence located?

6 A That is located at Route 3, Box 251 A-2, in
7 Rowland.

8 Q What if anything did you do when you
9 arrived at that residence?

10 A At that residence, Special Agent Heffney
11 met with Ms. Demery and talked with her, and I was
12 present inside of that residence there.

13 Q Was any type of search conducted at the
14 Demery residence on August 14th, 1993?

15 A Yes, sir, but I didn't participate in the
16 search.

17 Q And how long did you remain at the Demery
18 residence on August the 14th, 1993?

19 A Approximately an hour, sir.

20 Q Was Larry Martin Demery present when you
21 arrived at that residence on August 14th, 1993?

22 A No, sir, he was not.

23 Q At any time while you were at that
24 residence on that occasion on August 14th, 1993, did
25 Larry Martin Demery ever come there?

1 A No, sir, he didn't.

2 Q From the Demery residence, where did you
3 go?

4 A I went to the residence of Elizabeth and
5 Eugene Gentry, which is also the residence of Angela
6 Louise McClain.

7 Q And your purpose in going to that residence
8 was for what?

9 A To talk to Ms. McClain to see if she knew
10 of the current whereabouts of Larry Martin Demery.

11 Q And did you, in fact, talk with
12 Ms. McClain?

13 A Yes, I did.

14 Q After talking with Ms. McClain, where did
15 you go?

16 A Returned to the Robeson County Sheriff's
17 Department.

18 Q And when you arrived at the Robeson County
19 Sheriff's Department, was it still August the 14th,
20 1993 or had the day changed?

21 A The day had changed.

22 Q Approximately what time did you go back to
23 the Robeson County Sheriff's Department?

24 A Got back to the Sheriff's Department at
25 approximately 1:00, or 1:00 a.m.

1 Q When you arrived at the Robeson County
2 Sheriff's Department were there other officers who
3 were participating in the investigation of the murder
4 of James Jordan present?

5 A Yes, there were.

6 Q What departments were represented in that
7 investigation?

8 A Cumberland County Sheriff's Department,
9 State Bureau of Investigation, Robeson County
10 Sheriff's Department.

11 Q And when you arrived at the Robeson County
12 Sheriff's Department approximately 1:00 a.m. on
13 August the 15th, 1993, was Larry Martin Demery
14 present at that time?

15 A No, sir, he was not.

16 Q After your arrival around 1:00 a.m. on
17 August 15th, 1993, did Larry Martin Demery come to
18 the Robeson County Sheriff's Department?

19 A I was notified that Mr. Demery was at his
20 residence. Myself, Sergeant Junior Mitchell and
21 Detective Mark Locklear returned to Larry Demery's
22 residence where we talked with Mr. Demery at his
23 residence.

24 Q After talking with Mr. Demery at his
25 residence, was Mr. Demery taken into custody?

1 A Yes, sir.

2 Q After he was taken into custody, where was
3 he taken?

4 A Carried back to the Robeson County
5 Sheriff's Department.

6 Q And when you arrived at the Robeson County
7 Sheriff's Department with Larry Martin Demery, where
8 in the Sheriff's Department was he taken?

9 A He was taken to what at that time was the
10 Narcotics Unit office.

11 Q And in your presence, was Mr. Demery
12 advised of his Miranda Rights?

13 A Yes, he was.

14 Q Who advised Mr. Demery of his Miranda
15 Rights, if you recall?

16 A A Lieutenant Henley from the Cumberland
17 County Sheriff's Department.

18 Q And when Mr. Henley advised Mr. Demery of
19 his Miranda Rights, was that done orally and in
20 writing?

21 A Yes, sir, it was.

22 Q After Mr. Demery was advised of his Miranda
23 Rights, in your presence, did Mr. Demery orally or in
24 writing waive his rights and agree to talk with the
25 officers?

1 A Yes, sir, he did.

2 Q Did he do it orally and in writing or one
3 or the other?

4 A Both, both orally and in writing.

5 Q And after Mr. Demery had waived his rights
6 and agreed to talk with the officers, was there an
7 interview or interrogation conducted of Larry Martin
8 Demery?

9 A Yes, sir, it was.

10 Q Were you present when the interview or
11 interrogation began?

12 A I was present during portion of it, sir.

13 Q Who was present in the room at the time
14 Mr. Demery was advised of his rights, other than
15 yourself and Mr. Henley?

16 A Detective Anthony Thompson, and Detective
17 Massengill from the Cumberland County Sheriff's
18 Department. And I think also present in the room was
19 Detective Don Smith.

20 Q Do you recall if there was a tape recorder
21 present in the room?

22 A Yes, there was.

23 Q Was it present in the room during a portion
24 or all of any interview or interrogation that took
25 place involving Larry Martin Demery?

1 A It was present and I believe was recording
2 or was functional during the entire interview, sir.

3 Q During the course of the interview, were
4 there times when you asked questions of Mr. Demery?

5 A Yes, sir.

6 Q And on those occasions when you asked
7 questions of Mr. Demery, did he respond to your
8 questions and answer them?

9 A Yes, sir, he did.

10 Q Were other officers also present in asking
11 him questions?

12 A Yes, sir, there were.

13 Q Can you describe for us Mr. Demery's
14 demeanor and his appearance at the time -- well,
15 during the course of this interview?

16 A During the course of the interview, I would
17 describe Mr. Demery's demeanor as being cooperative.
18 He would listen to our questions, he would respond to
19 our questions.

20 Q Was Mr. Demery asked questions in your
21 presence about a red Lexus automobile belonging to
22 James Jordan?

23 A Yes, sir, he was.

24 Q And during the course of the interview, did
25 Mr. Demery acknowledge anything about the red Lexus

1 automobile?

2 A Yes, sir, he did.

3 Q Approximately how long was Mr. Demery
4 interviewed?

5 A The interview with Mr. Demery started at
6 approximately 1:45 a.m. on August the 15th, 1993. He
7 was advised of his rights at 1:53 a.m. on August
8 15th, 1993. And I completed taking a statement from
9 him at 8:45 a.m. on August 15th, 1993. And then with
10 his consent, he directed myself and Detective
11 Locklear to various locations around Robeson County.

12 Q Now, during the time that Mr. Demery was
13 being interviewed beginning at approximately 1:53
14 a.m., 2:00 a.m. on the morning of August 15th, did
15 Mr. Demery's answers to your questions in regard to
16 the red Lexus change at any time during the course of
17 the interview?

18 A Yes, it did.

19 Q What did he initially tell you about this
20 red Lexus that you were questioning him about?

21 A He initially talked about someone bringing
22 the car to him and Mr. Green.

23 Q And you've testified that Mr. Demery
24 changed his answers in regard to the red Lexus at
25 some point?

1 A Yes, sir, he did.

2 Q How many times during the interview on
3 August the 15th of 1993 did Mr. Demery change his
4 answers in regard to the red Lexus?

5 A Initially he made denials about
6 participation in the theft of the car.

7 MR. THOMPSON: Object, narrative,
8 Your Honor.

9 THE COURT: Overruled.

10 BY MR. BRITT:

11 Q You may continue.

12 A Then during the interview, he changed his
13 statement and made admissions to his participation in
14 the theft of the vehicle.

15 Q And you say he changed his statement and
16 made admissions to his participation in the theft --

17 MR. THOMPSON: Object.

18 THE COURT: Complete your
19 question, then I'll rule on the objection.

20 BY MR. BRITT:

21 Q His participation in the theft of the
22 vehicle.

23 MR. THOMPSON: Object.

24 THE COURT: Complete your
25 question, I'll rule on the objection.

1 MR. BRITT: Yes, sir.

2 BY MR. BRITT:

3 Q And at that time, did you take any
4 statement from Mr. Demery?

5 THE COURT: Sustained as to the
6 phrasing. Rephrase.

7 BY MR. BRITT:

8 Q At any point did you take a handwritten
9 statement from Larry Martin Demery?

10 A Yes, sir, I did.

11 Q At what point did you take a handwritten
12 statement from Larry Martin Demery?

13 A Beginning at approximately 5:00 a.m. on
14 August the 15th, 1993.

15 Q And who was present in the room when you
16 began this handwritten statement from Larry Martin
17 Demery?

18 A When I began taking the handwritten
19 statement, Detective Anthony Thompson was present.

20 MR. BRITT: Can we approach?

21 THE COURT: Opportunity to stop
22 at this point?

23 MR. BRITT: Yes, sir.

24 THE COURT: Members of the jury,
25 we're going to take the lunch recess until

1 2:30. During the recess don't talk about
2 the case among yourselves or anyone else,
3 don't allow anyone to say anything to you
4 or in your presence about this case. If
5 anyone communicates with you about this
6 matter or attempts to do so, or says
7 anything about the case in your presence,
8 it's your duty to inform us of that
9 immediately.

10 Don't form or express any opinions
11 about that matter, don't have any contact
12 of any kind with any of the attorneys,
13 parties, witnesses, prospective witnesses,
14 or directly with the Court. Avoid any
15 exposure to any media accounts which may
16 exist in connection with this case, and
17 don't conduct any independent inquiry or
18 research or investigation of any kind.

19 Everyone else please remain seated,
20 the members of the jury are excused until
21 2:30.

22 (Jury out at 12:56 p.m.)

23 THE COURT: Thank you, sir, you
24 may step down. Anything from either
25 counsel before we recess?

1 We're at ease until 2:30.

2 (Lunch recess.)

3 THE COURT: Good afternoon, folks.

4 MR. BRITT: Good afternoon.

5 THE COURT: All counsel are
6 present, the defendant is present in open
7 court. Any matters before we continue with
8 the presentation of evidence?

9 MR. BRITT: No, sir.

10 THE COURT: Mr. Lea, if you'll
11 again take the witness stand. And you
12 remain under oath, sir.

13 If you'll bring the jury in, please.

14 (Jury in at 2:31 p.m.)

15 THE COURT: Good afternoon,
16 ladies and gentlemen.

17 Mr. Britt.

18 MR. BRITT: Yes, sir.

19 BY MR. BRITT:

20 Q Mr. Lea, prior to the lunch break, you
21 testified that on the morning of August 15th, 1993,
22 you took a handwritten statement from Larry Martin
23 Demery while at the Robeson County Sheriff's
24 Department?

25 A That's correct, sir.

1 Q Was that handwritten statement in your
2 handwriting or Mr. Demery's handwriting?

3 A In my handwriting.

4 Q And the handwritten statement that was made
5 on August the 15th, 1993, did Mr. Demery sign the
6 statement at the conclusion?

7 A Yes, sir, he signed each page of the
8 statement at the conclusion of giving the statement,
9 and he initialed any corrections that was needed to
10 be made as we reviewed it together.

11 Q Did anyone else sign the handwritten
12 statement?

13 A Yes, sir, they did.

14 Q Who was that?

15 A Detective Mark Locklear.

16 Q And did you sign that statement?

17 A Yes, sir, I did.

18 (State's Exhibit 93 was
19 marked for identification.)

20 MR. BRITT: May I approach?

21 THE COURT: Yes, sir.

22 BY MR. BRITT:

23 Q Mr. Lea, I'm going to hand you what has
24 been marked as State's Exhibit 93. It's a 15 page
25 written document. Can you identify that document?

1 A Yes, sir, I can.

2 Q How are you able to identify State's
3 Exhibit Number 93?

4 A I can identify State's Exhibit Number 93
5 because it bears my signature, B.M. Lea, and also I
6 can recognize my own handwriting.

7 Q Is State's Exhibit Number 93 the entire
8 handwritten statement that you took from Larry Martin
9 Demery on the morning of August 15th, 1993 at the
10 Robeson County Sheriff's Department?

11 A Yes, sir, it is.

12 Q Mr. Lea, what if anything did Mr. Demery
13 tell you on August the 15th, 1993 during the portion
14 of the interview that resulted in the handwritten
15 statement?

16 THE COURT: You folks want a
17 limiting instruction?

18 MR. THOMPSON: Yes, sir.

19 THE COURT: Members of the jury,
20 the testimony now being elicited from Mr.
21 Lea regarding statements Mr. Lea contends
22 were made to him by the previous State's
23 witness Larry Martin Demery are being
24 offered for the limited purpose of
25 corroboration.

1 Now, I've previously explained that
2 the term corroboration means as tending to
3 strengthen or support. It is for you the
4 members of the jury to determine what the
5 evidence in this case does show, but I
6 instruct you that you may consider State's
7 Exhibit 93 for the limited purpose of
8 corroboration and for no other purpose, to
9 the extent that you find it is
10 corroborative of the prior testimony of
11 Larry Martin Demery.

12 Anything further, sir? Yes, sir, Mr.
13 Lea, you may answer his question.

14 THE WITNESS: When I took this
15 statement from Mr. Demery and as I wrote
16 it, I wrote it in first person tense, and
17 it is as follows:

18 I Larry Martin Demery have been
19 advised of my Constitutional rights against
20 self-incrimination. I waive these rights
21 without any threats or promises being made
22 to me by anyone to make this statement.

23 On July 22, 1993, I went to my
24 girlfriend's house to give her a birthday
25 present. My girlfriend is Angela McClain,

1 and she lives at 404 Cemetery Road, Maxton,
2 North Carolina.

3 After I left Angela's house, I went
4 home and then to Daniel Green's house.
5 Daniel Green lives in a trailer in a
6 trailer park outside Lumberton. Daniel
7 Green and I have been friends for years.
8 All day Thursday, July 22, me and Daniel
9 had planned to rob someone. We did not
10 have anyone in particular to rob. We
11 had -- we had a tourist in mind.

12 Me and Daniel went to the area close
13 to the Quality Inn at I-95 and Highway 74.
14 I was driving my Ford Tempo and Daniel was
15 in the passenger side seat. I pulled my
16 car door down the dirt -- down the dirt,
17 beside of a canal off the service road and
18 parked. We then walked back to the closed
19 service station beside of the Quality Inn
20 and watched the motel from the station
21 parking lot.

22 Daniel Green had an old .38 caliber
23 revolver, but I did not have a gun. As we
24 were going toward the Quality Inn, I saw
25 parked beside Highway 74 on the shoulder of

1 the road about in front of the flea market
2 a car with its park lights on. After
3 leaving the old service station and headed
4 back to my car, we again saw the car parked
5 beside Highway 74.

6 Daniel said the car looked like a cop
7 car, an undercover kind of car. I
8 disagreed with Daniel, and we decided to
9 walk past the car to check it to see if it
10 was the cops. I noticed the car had
11 specialized plates with UNC on it. We
12 walked past the car and noticed it was a
13 Lexus. We did not see anything in the car
14 and crossed Highway 74 to the other side.
15 We then crossed back over Highway 74 and
16 then walked past the Lexus a second time.
17 We then went back to the Quality Inn and
18 watched the parking lot for about an hour.

19 Me and Daniel got tired watching the
20 parking lot and decided to leave. When me
21 and Daniel saw the UNC on the license plate
22 of the Lexus, we thought the driver was a
23 college student. Daniel and I decided that
24 we could go steal the Lexus from beside the
25 road.

1 We go up to the car and see that a
2 person is inside sleeping. The person in
3 the car had the driver's seat laid back and
4 was asleep. I noticed that the passenger
5 window was down. Some cars started coming,
6 so we got behind a sign to talk about
7 stealing the car. Me and Daniel then
8 walked back to the Lexus another time. As
9 we approached the car again, another car
10 approaches. We then hide behind some
11 bushes beside of the road, a little further
12 off than the sign.

13 Daniel then told me to go get my car
14 and meet him at the bridge on the road
15 Daniel lives on. Daniel said he was going
16 to go get the Lexus, pull his gun out, get
17 into the car and make the person inside
18 drive to the bridge. I asked Daniel what
19 were we going to do with the driver.
20 Daniel said we were going to tape him up
21 and put him out beside of the road. I get
22 my car and drive to Daniel Green's house.
23 I then walk over to the bridge. I then
24 noticed the car -- the car lights traveling
25 along beside the canal on the dirt road.

1 I then saw that the car was a Lexus
2 from beside Highway 74, and Daniel Green
3 was driving it. When the car stopped, I
4 opened the driver's side door. I saw
5 Daniel behind the steering wheel and a
6 person laying across the passenger seat.
7 This person looked like he had been pushed
8 across the seat and had a leg across the
9 console. When I looked in the car, I knew
10 the man was hurt -- was hurt bad or dead.
11 I asked Daniel what had happened. Daniel
12 told me when he started toward the car,
13 this driver started to wake up. Daniel
14 then told me he, Daniel, just shot him. I
15 asked him why, and Daniel said he was
16 waking up. Daniel said something about the
17 driver seeing his face.

18 I knew we had to leave the area. I
19 then moved the driver seat back up and got
20 into the back seat. We first discussed
21 what we were going to do with the dead
22 man. At this time, we were traveling on
23 Highway 301. We then turned onto a dirt
24 road near Rowland. Daniel then turned the
25 car into a cornfield. This was about seven

1 miles from the bridge near Daniel's house.
2 We began to look through everything in the
3 car. And are still trying to decide what
4 we're going to do with the dead man.

5 As we were going through the car,
6 Daniel said, quote, damn, I believe we
7 killed Michael Jordan's daddy, end of
8 quote. I replied, no, we didn't. Daniel
9 then told me again, he thought it was
10 Michael Jordan's daddy. I asked why he
11 thought this. Daniel then started showing
12 me a ring with NBA on the side, the
13 initials MJ on the side, All-Star '86 on
14 the top, with a big blue stone.

15 Daniel then showed me a watch with
16 90/91 world's champions, MJ's initials, and
17 MVP on the face. And on the back there was
18 the engraving "from Michael and Juanita."
19 Daniel then showed me a North Carolina
20 license with the name James R. Jordan
21 displayed. Daniel had taken the license
22 from the dead man's wallet, and he had
23 taken the wallet from Jordan's rear pants
24 pocket. We opened the car trunk and saw
25 golf clubs. We then again began to discuss

1 what to do with Mr. Jordan's body.

2 I saw blood under the man's right arm
3 on his shirt. We then got back into the
4 car and went to Rowland. Daniel was
5 driving. I was in the back seat and
6 Mr. Jordan was still on the passenger side
7 of the car.

8 We went to the waste treatment plant.
9 Daniel said we could put the body in one of
10 the tanks and the chemicals would eat him
11 up. We could not get into the waste
12 treatment plant because the gate was
13 locked. It was still dark. Daniel kept
14 driving around trying to find a way into
15 the plant. I wanted to get out of the area
16 before someone saw us. Daniel asked if I
17 had a better idea, and I said I did.

18 I then got into the driver's seat and
19 Daniel got into the back seat. I took
20 highway 501 to Laurinburg and then I
21 believe I took a left on John's Road. We
22 crossed the North Carolina-South Carolina
23 line and went to a bridge. We checked out
24 the bridge and decided this was where we
25 would dump the body. This was about 4:30

1 a.m. to 5:00 a.m.

2 Me and Daniel Green took the body out
3 of the car and dropped it over the edge of
4 the bridge. When we picked the body up
5 from the car, the body made a gurgling
6 sound for about five seconds. The sound
7 scared me so bad, I almost dropped the
8 body.

9 When we dropped the body -- dropped
10 the body off the bridge, we got back into
11 the car and left. When we left the bridge
12 in South Carolina, I was driving, and Green
13 was in the passenger seat. We went down
14 the road a short distance when I pulled
15 over. The hazard lights were on and we
16 could not figure out how to cut them off.

17 Daniel then got in the driver's seat
18 and got them cut off. We then drove back
19 to Laurinburg. We went to the First Union
20 bank and Daniel went to the teller
21 machine. Daniel tried to use Mr. Jordan's
22 City Bank card in the machine but could not
23 get it to work. I then got back into the
24 driver's seat and we went to get gas. We
25 got ten dollars worth of gas at the Citgo

1 station, possibly on business highway 401,
2 near the Pine Lodge motel.

3 We had taken 63 dollars from
4 Mr. Jordan's front pocket in a clip, and
5 paid for the gas from this money. I
6 believe the denominations of bills taken
7 from Mr. Jordan was two 20 dollar bills, a
8 ten dollar bill, a five dollar bill, and
9 eight one dollar bills. I paid for the
10 gas. We then went back to Daniel's house,
11 and I drove. We slept a couple of hours,
12 and then went near my house. We went down
13 beside the canal and checked the car out
14 real good. We took blank checks and other
15 papers from the car and threw it into the
16 water.

17 We then went back to Daniel's house
18 and called Daniel's girlfriend Melinda in
19 Marion, South Carolina. I think Daniel
20 called from the telephone in the Lexus.
21 Daniel and I showered at his house, and
22 then went to Melinda's house in Marion,
23 South Carolina.

24 We then picked up one of Melinda's
25 friends, Dee, and messed around Marion the

1 remainder of the day. Daniel told Melinda
2 that we had bought the car and Melinda did
3 not ask anything else. Me, Daniel, and the
4 two girls then came back to Daniel's house
5 and spent the night.

6 On Saturday morning, we got up and
7 took the two girls back to Marion, South
8 Carolina. Again, we messed around Marion,
9 with the two girls. We left Marion at
10 about 3:00 p.m. and returned to Daniel's
11 house. Me and Daniel began to discuss what
12 to do with the car.

13 We talked about taking it to a chop
14 shop and Daniel called a friend of his in
15 Philly. I believe Daniel felt this friend
16 would know who we could take the car to.
17 Daniel used the car phone to make this
18 call. All day Saturday, we rode around in
19 the car. I telephoned a relative in New
20 York from the car phone to see if this
21 cousin, Joy Baculik knew how we could get
22 rid of the car.

23 He advised he never could get in
24 contact with it, this relative. We
25 considered driving the car to Philly or New

1 York. We went to Rockingham, changed our
2 minds about going north, turned around, and
3 went back to Laurinburg. I fell asleep in
4 the car in Laurinburg along with Daniel.
5 Daniel tried to call his cousin in Rowland
6 from the car phone, but could not get him.
7 We then went to Fayetteville Sunday
8 morning, me and Daniel went to Daniel's
9 brothers trailer in Spring Lake. The
10 brother is named David Moore.

11 Delores is Dee, and she was called
12 from the car phone. Her number is
13 423-1551. I heard Daniel tell David Moore
14 he got the Lexus by trading two rocks to a
15 dope head for the weekend use of the car.
16 When I say two rocks, I mean crack
17 cocaine. Daniel told David he had no
18 intentions of returning the car and David
19 was going to call Eric. Eric was going to
20 help us get rid of the car. David Moore is
21 in the U.S. Army.

22 On Monday morning, Eric came to David
23 Moore's house. Eric then carried me and
24 Daniel with the car to Rick. Then Rick
25 carried the three of us to Joe's house. I

1 remember Eric then called somewhere in
2 Florida on the car phone because Eric said
3 it was a free call. Eric and Rick then
4 carried us to another man who was going to
5 introduce us to still another man who might
6 buy the car. This other man would not buy
7 the car because it was too high dollar of a
8 car.

9 We then took the car and abandoned it
10 in the woods outside Fayetteville. We were
11 going to strip the car that Monday night,
12 but Eric never came back to get us. Me and
13 Daniel spent Monday night with David
14 Moore. The next day, we kept trying to get
15 up with Eric, but could not find him.
16 Daniel stayed with David another week.
17 David Moore brought me home on this Tuesday
18 night.

19 After the murder, Daniel Green kept
20 the .38 caliber revolver. When Daniel came
21 back from Fayetteville, he brought the gun
22 to my house and left it. I kept the gun
23 beside my brother's bunk bed until Daniel
24 got it from me after two or three days.

25 Daniel then brought the gun back to

1 me, and I kept it again until this past
2 Saturday. I don't know what Daniel has
3 done with the gun. This past Friday night,
4 me and Daniel Green threw CD's, shoes, and
5 clothes belonging to Mr. Jordan out in the
6 woods behind the Food Lion off Fifth
7 Street, Lumberton. We did this because the
8 news was reporting the body and car had
9 been found.

10 Daniel Green had the ring and watch
11 taken from Mr. Jordan. Daniel told me he
12 wanted to bury these items but never said
13 he did. The golf clubs taken from
14 Mr. Jordan's car is in the woods around
15 David Moore's mobile home park, Spring
16 Lake. Daniel told me David told him to put
17 the clubs in the woods.

18 I got about 30 dollars from this
19 robbery of Mr. Jordan. I did have
20 Mr. Jordan's wedding band but left it in
21 Daniel Green's trailer on a shelf.

22 The above statement is true and
23 correct. No one forced me to give this
24 statement and no one promised me anything
25 to give this statement. I gave this

1 statement after being advised of my
2 constitutional rights against
3 self-incrimination and I waived these
4 rights. Signed Larry M. Demery, August
5 15th, 1993.

6 BY MR. BRITT:

7 Q And after you wrote the statement that
8 Mr. Demery gave you, did you give him an opportunity
9 to read over the statement or was it read to him?

10 A I read the statement to him and he sat
11 beside of me as we went through the entire statement.

12 Q Did he make any changes or corrections to
13 the statement that was taken?

14 A Yes, sir.

15 Q What if any changes or corrections did he
16 make?

17 A They --

18 Q And how were they indicated on the
19 exhibits?

20 A If words were omitted or changed, they were
21 written in. I wrote in the word or the change and
22 then Mr. Demery would initial beside of that change.

23 Q What time on August the 15th, 1993 did the
24 written, the handwritten statement conclude?

25 A 8:45 a.m.

1 Q And following the conclusion of the
2 interview with the handwritten statement was taken,
3 what then happened?

4 A After the statement was taken, myself and
5 Detective Locklear, we asked Mr. Demery to go with us
6 and point out locations to us in Robeson County and
7 in Scotland or Marlboro County, South Carolina that
8 was -- that would relate back to his statement.

9 Q And did Mr. Demery agree to do that?

10 A Yes, he did.

11 Q After he agreed to do that, what did you
12 do?

13 A We placed Mr. Demery in my Bureau-issued
14 vehicle and we left the Sheriff's Department and,
15 following his directions as given in the statement
16 and directions he was giving in the car, we proceeded
17 to go to the area where he said that Mr. Jordan was
18 murdered.

19 Q When you say following his directions, who
20 are you referring to?

21 A I'm referring to Mr. Demery's directions.

22 Q When you say we proceeded to the area where
23 he said that Mr. Jordan was murdered, who are you
24 referring to there?

25 A Larry Demery.

1 Q What area did you go to when he said, told
2 you that was the area where Mr. Jordan was murdered?

3 A Larry Demery directed us from the Sheriff's
4 Department onto Highway 74. We crossed highway 95 on
5 Highway 74, went past the exit ramp from 95 south,
6 past the service road, to an area to the right side
7 of Highway 74 that was a gravelled portion of the
8 road, or off of the side of the roadway, near a flea
9 market.

10 Q And on which side of Highway 74 were you on
11 at that time?

12 A At that time, that would have been the
13 right-hand side or the north side of Highway 74.

14 Q Eastbound or westbound lanes?

15 A That would be in the westbound lane.

16 Q How long did you stay at that location or
17 did you even stop?

18 A Yes, sir, we momentarily stopped. I pulled
19 my vehicle off at Mr. Demery's directions to where he
20 was showing us as to where the Lexus was stopped when
21 he and Mr. Green saw it. I momentarily stopped,
22 backed up until he said this was the approximate
23 area. Once I determined that from him, then we
24 proceeded to Highway 74 to Back Swamp Road, made a
25 left-hand turn off of Highway 74 on to Back Swamp

1 there at the Sterling Mobile Home Park and went just
2 past Bob's Landing Mobile Home Park to a bridge.

3 Q Why did you go to that area?

4 A We went to that area because Larry Demery
5 advised that it was at this location just prior to
6 crossing the canal bridge is where he met Daniel
7 Green in the Lexus containing the body of Mr. Jordan
8 when it came beside of the canal on the dirt road.

9 Q And from the area of the bridge by Bob's
10 Landing Mobile Home Park, did you go anywhere else?

11 A Yes, sir, we did. We proceeded on Back
12 Swamp Road to the intersection of that road with
13 Highway 301. Mr. Larry Demery directed me to make a
14 right-hand turn onto highway 301, which I did. We
15 proceeded toward the City of Rowland on Highway 301,
16 until we got to a dirt road to the right which is
17 identified as Blue Pate Road. Mr. Demery directed me
18 to turn on this road, that he thought it was down
19 this road where they had gone down to a cornfield
20 where they first searched the car.

21 Mr. Demery could not locate the cornfield
22 as described in the statement where they searched
23 this road, Blue Pate Road being a road that is a loop
24 road, turning to the north side or approximate north
25 side of Highway 301. I rode through the road at

1 least one time and he still could not satisfy himself
2 that that was the road. Then he directed me on into
3 the town of Rowland and directed to take a right hand
4 turn on Highway 501.

5 Q When you turned onto Highway 501 in the
6 town of Rowland, where did you go?

7 A We proceeded west on Highway 301 to -- and
8 entered into Scotland County, and at Stewartsville
9 Fire Department, which is the intersection of Highway
10 501, Old Maxton Road, and Pea Bridge Road, Larry
11 Demery directed me to make a left-hand turn, which I
12 did, and then we proceeded south from Highway 501,
13 crossing in to South Carolina from North Carolina,
14 and Mr. Demery directed me to stop on a bridge going
15 across a creek at that location.

16 Q And after you turned off of Highway 501 in
17 Scotland County, did you ever pass the location of
18 Crestline Mobile Home?

19 A Yes, sir, we did.

20 Q And where did you pass that plant?

21 A That plant is approximately two to three
22 miles south of Highway 501 at approximately a mile
23 and a half or two miles north of the North
24 Carolina-South Carolina state line.

25 Q When you drove in to South Carolina and

1 stopped on a bridge, can you describe that area for
2 us?

3 A Yes, sir. There is a -- as you're going
4 toward the bridge, going toward South Carolina, you
5 have a residence on the left-hand side of the road.
6 Then you have a small nightclub on the left-hand side
7 of the road as you are proceeding south, and then you
8 have a bridge that's crossing a creek and a swampy
9 area in there.

10 Q What if anything occurred when you stopped
11 at that bridge on August the 15th, 1993?

12 A Once we stopped on the bridge as Mr. Demery
13 directed me to do, he advised that it was from this
14 bridge that they throwed the body of James Jordan
15 into the creek.

16 Q Did you do anything else there in the area
17 of the bridge?

18 A No, sir. At this time I turned my -- went
19 on across the bridge, turned my vehicle around and
20 proceeded back to the Robeson County Sheriff's
21 Department.

22 Q When you got back to the Robeson County
23 Sheriff's Department, what if anything was done with
24 Mr. Demery at that time?

25 A Mr. Demery was charged with crimes in this

1 case and was photographed, fingerprinted and
2 incarcerated in the county jail.

3 MR. BRITT: May I approach the
4 witness?

5 THE COURT: Yes, sir.

6 BY MR. BRITT:

7 Q Mr. Lea, I'm going to hand you what has
8 been marked as State's Exhibit Number 91, ask you to
9 look at that and tell me if you can identify it?

10 A Yes, sir, I can.

11 Q How are you able to identify State's
12 Exhibit Number 91?

13 A I can identify it by recognizing the area
14 of what this photograph is made.

15 Q For the record, what is depicted in State's
16 Exhibit Number 91?

17 A State's Exhibit 91 shows a portion of
18 Highway 74, a portion of Interstate Highway 95, and
19 in the top corner there is a structure which I
20 recognize to be the Quality Inn, abandoned service
21 station, and a service road running in front.

22 Q Does State's Exhibit 91 depict the area
23 where Larry Demery directed you on August 15th, 1993
24 after completing the interview with him at the
25 Robeson County Sheriff's Department?

1 A Yes, sir, it does.

2 Q And the area, is the area depicted where he
3 told you to stop along U.S. 74 where James Jordan was
4 murdered?

5 A Yes, sir, it is.

6 Q Can you use State's Exhibit Number 91 in
7 illustrating your testimony to the jury in regard to
8 the matters where Mr. Demery, directed you to stop in
9 the area where he said James Jordan was murdered?

10 A Yes, sir, I can.

11 MR. BRITT: Your Honor, at this
12 time I ask that he be allowed to step down.

13 THE COURT: Yes, sir.

14 Mr. Thompson, Mr. Bowen, feel free to
15 position yourselves.

16 BY MR. BRITT:

17 Q Using State's Exhibit Number 91, if you
18 will, in illustrating your testimony, show the area
19 where Larry Demery directed you to stop along U.S.
20 74.

21 A First off, we were coming down from this
22 direction from the Sheriff's Department, proceeding
23 west on Highway 74. We come over 95, pass the
24 service road entrance, and he directed me to pull
25 over to approximately this area right here

1 (indicating).

2 Q So the record is clear, can you describe
3 the area where he directed you to stop?

4 A Yes, sir. It is a gravel portion off of
5 Highway 74 west, to the north side of Highway 74.

6 Q Hand you what's been marked as State's
7 Exhibit Number 90, ask you to look at that and tell
8 me if you can identify it.

9 A Yes, sir, I can.

10 Q How are you able to identify State's
11 Exhibit Number 90?

12 A By recognizing the area as Bob's Landing
13 Mobile Home Park and seeing a bridge at the bottom
14 portion and a canal coming toward it, and a road
15 coming off of that.

16 Q Does State's Exhibit Number 90 depict the
17 area where Larry Demery directed you after you left
18 the area of highway 74 where he indicated James
19 Jordan was murdered?

20 A Yes, sir, does.

21 Q Does it fairly and accurately represent the
22 area as you saw it on the morning of August 15, 1993?

23 A Yes.

24 Q Can you use it in illustrating your
25 testimony to the jury as to where it was Larry Demery

1 directed you to stop after going in the area of Bob's
2 Landing Mobile Home Park?

3 A Yes, sir, I can.

4 MR. BRITT: Your Honor if he may.

5 THE COURT: Yes, sir.

6 THE WITNESS: The area would have
7 been approximately right in here.

8 BY MR. BRITT:

9 Q From which direction did you approach that
10 area?

11 A I approached from Highway 74, proceeding
12 toward Highway 301. 74 is up this way. 301 would be
13 down this way. Basically in that area (indicating).

14 BY MR. BRITT:

15 Q I'm going to hand you what has been marked
16 as State's Exhibit Number 14, ask you to look at that
17 and tell me if you can identify it.

18 A Yes, sir, I can.

19 Q How are you able to identify State's
20 Exhibit Number 14?

21 A By having seen this area before and
22 recognizing the store or the nightclub that's in this
23 picture.

24 Q And for the record, what is depicted in
25 State's Exhibit Number 14?

1 A This is a photograph of Pea Bridge Road.
2 It is made from South Carolina looking into North
3 Carolina, I believe.

4 Q And does State's Exhibit --

5 MR. THOMPSON: Well, I object.

6 THE COURT: Basis?

7 MR. THOMPSON: To what he
8 believes.

9 THE COURT: Sustained as to that.

10 MR. THOMPSON: Motion to strike.

11 THE COURT: Allowed, as to any
12 speculation or conjecture.

13 BY MR. BRITT:

14 Q Do you know what is depicted in State's
15 Exhibit Number 14?

16 A Yes, sir. It is a photograph of Pea Bridge
17 Road looking from South Carolina into North Carolina
18 at a nightclub.

19 Q And State's Exhibit Number 14, does it
20 depicted an area where Larry Demery directed you to
21 on the morning of August 15th, 1993?

22 A Yes, sir, it does.

23 Q Does it fairly and accurately depict that
24 area as you remember it to be on the morning of
25 August 15th, 1993?

1 A Yes, sir.

2 Q Can you use State's Exhibit Number 14 in
3 illustrating your testimony to the jury as to where
4 you were directed by Larry Demery to stop along the
5 bridge?

6 A Yes, sir.

7 MR. BRITT: If he may.

8 THE COURT: Yes, sir.

9 THE WITNESS: He directed me to
10 stop in the middle of that -- not this
11 first bridge, but the second bridge.

12 BY MR. BRITT:

13 Q You've referred to two bridges.

14 THE COURT: Mr. Lea, I believe
15 the folks on this end may not be able to
16 see.

17 THE WITNESS: (Indicating) one
18 bridge, the second bridge being right
19 there.

20 BY MR. BRITT:

21 Q I don't know if members of the jury at this
22 end of the box can see or not.

23 A First bridge, second bridge.

24 Q If you would return to the witness stand.

25 MR. BRITT: May I approach the

1 witness once again?

2 THE COURT: Yes, sir.

3 MR. THOMPSON: Your Honor, may we
4 approach the bench before he does that?

5 THE COURT: Yes, sir. If the
6 court reporter would also come up, please.

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

9 THE COURT: Let the record
10 reflect that present at this time are
11 counsel for the State, counsel for the
12 defendant, the defendant, the presiding
13 Judge and the court reporter.

14 MR. THOMPSON: I'm sorry, I have
15 to go to the bathroom, and I don't need a
16 break. If I could just run out and come
17 back in.

18 THE COURT: Yes, sir.

19 (Bench conference concluded.)

20 (Short pause).

21 THE COURT: Mr. Britt?

22 MR. BRITT: May I approach the
23 witness once again?

24 THE COURT: Yes, sir.

25 (State's Exhibit 94 was
marked for identification.)

1 MR. BRITT: If I could, because
2 of the size of this, ask Mr. Lea to step
3 down.

4 THE COURT: Yes, sir.

5 BY MR. BRITT:

6 Q I'll show you what has been marked as
7 State's Exhibit Number 94, ask you to look at that
8 and tell me if you can identify State's Exhibit
9 Number 94.

10 A Yes, sir, I can.

11 Q How are you able to identify State's
12 Exhibit Number 94?

13 A I can recognize State's Exhibit 94 as a
14 road map, a portion of Robeson, Scotland Counties
15 with a small portion of Marlboro County, South
16 Carolina.

17 Q Can you use State's Exhibit -- does State's
18 Exhibit Number 94 fairly and accurately depict the
19 areas that are represented on this diagram?

20 A Yes, sir, it does.

21 Q Can you use State's Exhibit Number 94 in
22 illustrating your testimony as to the locations where
23 Larry Demery took you and the route that you followed
24 on the morning of August 15th, 1993?

25 A Yes, sir, I can.

1 MR. BRITT: Your Honor, at this
2 time I ask that State's Exhibit 94 be
3 admitted for illustrative purposes.

4 THE COURT: Admitted without
5 objection. Please recall my instructions,
6 members of the jury, as to how you are to
7 consider illustrative evidence and for what
8 purpose.

9 MR. BRITT: If I could have an
10 opportunity to --

11 THE COURT: Yes, sir.

12 BY MR. BRITT:

13 Q Mr. Lea, if you will -- I'll hand you a
14 pointer. I'm also going to hand you a red marking
15 pen. If you will, on State's Exhibit Number 94, with
16 the red marking pen, will you mark the location of
17 the Robeson County Sheriff's Department?

18 A Yes, sir.

19 Q With a number, place a number one.

20 A Yes, sir. The Robeson County Sheriff's
21 Department would be in this approximate area right
22 there, sir.

23 Q And in the margin beneath the sticker,
24 number 94, if you'll write a "one" and write what
25 that represents.

1 A (Indicating). Number one is Robeson County
2 Sheriff's Department.

3 Q And with the red marking pen, will you draw
4 a line depicting the route that you, Detective Mark
5 Locklear and Larry Martin Demery took when leaving
6 the Robeson County Sheriff's Department on the
7 morning of August the 15th, 1993 to the various
8 locations that you have previously testified about.

9 A Yes, sir. We left the Robeson County
10 Sheriff's Department on Legend Road, come to Sanchez
11 Road, took highway 41 to Highway 74, proceeded
12 Highway 74 to this approximate area right here, and
13 that being the scene of the murder of James Jordan.

14 Q And when you say this area approximately
15 right here, you've drawn in a red circle?

16 A Yes, sir.

17 Q If you will place a "two" beside that. And
18 in the margin, if you'll write the numeral two and
19 the description of the area where you stopped.

20 A (Indicating).

21 Q And for the record, you've written into the
22 caption the numeral two with the words "murder seen
23 of James Jordan"?

24 A Correct.

25 Q From the second location, where did you go?

1 A From the second location, we proceeded west
2 on Highway 74 to Back Swamp Road, which is rural road
3 1164, and then proceeded down Back Swamp Road to just
4 about the bridge area or the bridge that crosses the
5 canal there, and I've placed another red dot there.

6 Q If you will place the numeral three, and in
7 the caption if you'll write the number three and the
8 location that it represents.

9 A (Indicating). I've written "three" the
10 caption "bridge, Back Swamp Road."

11 Q In the area where you've written the number
12 three, is Bob's Landing Mobile Home Park located near
13 this area?

14 A Yes, sir, it is, it's located a little bit
15 north of the red dot three right in there area here.

16 Q And with this green pen, will you circle
17 the area where Bob's Landing Mobile Home Park is
18 located?

19 A (Witness complies).

20 Q And in the margin, if you'll number that --
21 if you will number the green circled area four, and
22 in the margin if you'll write the number four, Bob's
23 Landing Mobile Home Park.

24 A (Witness complies).

25 Q And with the red pen, if you will, continue

1 to draw the route that you followed on the morning of
2 August 15th as directed by Larry Demery.

3 A I'll draw it first and then describe it, if
4 that's -- we came from the bridge at Back Swamp Road,
5 number three, to the intersection of Back Swamp with
6 Highway 301 -- excuse me for blocking. From 301,
7 proceeded through Raynham on Highway 301 and kept
8 coming until we get to Blue Pate Road, which is a
9 circle road to the north, northwest side of Highway
10 301.

11 Q And Blue Pate Road, is that the area where
12 Mr. Demery indicated the cornfield was located?

13 A Yes, sir, it is. He directed me to turn
14 off of Highway 301 until I got to Blue Pate Road.
15 When I got to Blue Pate, we pulled up, looked at the
16 whole area in here, then he directed -- he could not
17 be sure that this was the area. Then he directed me
18 on, and I came back onto 301, and I came into the
19 town of Rowland.

20 Q In the area of Blue Pate Road where you
21 continued with the route, if you will place the
22 number five. And in the margin, if you'll write the
23 number five, Blue Pate Road:

24 A (Indicating).

25 Q From Blue Pate Road, where did you go?

1 A We came in to the corporate limits of the
2 town of Rowland, and we came to the intersection of
3 Rowland where Highway 501 makes a right-hand turn,
4 501 running -- yeah, we came in -- 301 until it
5 intersected with 501, made a right-hand turn on to
6 501 and went through town, and proceeded on out of
7 town, and proceeded right on -- from Robeson County
8 into Scotland County and went up, it's not depicted
9 on this map, Stewartsville Fire Department is
10 somewhere right along in here, where Pea Bridge Road
11 intersects with Highway 501 and Old Maxton Road would
12 go off that way.

13 Q In the area of the town of Rowland as
14 depicted on the map, if you would place the number
15 six.

16 A (Witness complies).

17 Q And in the margin if you'll write the
18 number six.

19 A (Indicating).

20 Q Simply write in the word "Rowland."

21 A (Witness complies).

22 Q 501 intersected with Pea Bridge Road, what
23 did you do?

24 A Made a left-hand turn on to Pea Bridge
25 Road, proceeding basically in a southwesterly, or

1 southerly direction toward the North Carolina-South
2 Carolina line.

3 Q If you will draw in on the diagram the
4 route that was taken.

5 A (Witness complies). And we came down,
6 Crestline Mobile Home manufacturing is here. This is
7 Crestline Road Crossing, proceeded on across that
8 intersection, just in to South Carolina until we got
9 right along in here, and that's where the bridge is
10 over Gum Swamp Creek or the creek down there, and
11 that's where he directed me to stop on the bridge --
12 Mr. Demery directed me to stop on the bridge.

13 Q And on the diagram you have drawn a red dot
14 in the area where the bridge was located?

15 A Yes, sir.

16 Q If you will number that seven.

17 A (Witness complies).

18 Q In the margin, if you'll write "seven."

19 A (Witness complies).

20 Q And the description.

21 A (Witness complies). I've labeled number
22 seven as the spot where Larry Martin Demery had me to
23 stop and where he advised that he and Daniel Green
24 put the body of Mr. Jordan into the Gum Swamp Creek
25 and I've labeled it as Gum Swamp bridge on Pea Bridge

1 Road.

2 Q Thank you. If you would return to the
3 witness stand at this time.

4 MR. BRITT: If I may have a
5 moment.

6 THE COURT: Yes, sir.

7 MR. BRITT: May I continue?

8 THE COURT: Yes, sir.

9 BY MR. BRITT:

10 Q Mr. Lea, after Mr. Demery was taken back to
11 the Robeson County Sheriff's Department on August the
12 15th of 1993, on the following day, August the 16th,
13 1993, did you participate in a search that was
14 conducted at the residence of the defendant?

15 A Yes, sir, I did.

16 Q What officers were present when that search
17 was conducted on August the 16th, 1993?

18 A Myself, Agent Kim Heffney, Detective
19 Anthony Thompson, and Special Agent T.A. Underwood of
20 the State Bureau of Investigation.

21 Q And at that time, on the 16th of August,
22 1993, did you or any other officer have in your
23 possession at that time the search warrant that had
24 been issued by a Magistrate here in Robeson County?

25 A Yes, sir, Special Agent Underwood had a

1 search warrant for that residence.

2 Q And when you went to the defendant's
3 residence on August 16th, 1993, was anyone present at
4 the time you and the other officers arrived?

5 A No, sir, there was not.

6 Q And after determining there was no one
7 present, was there any attempt to locate the
8 defendant's mother or any other relative of the
9 defendant prior to executing the search warrant and
10 entering the house?

11 A Yes, sir, we tried to locate Ms. Green and
12 tried to locate I believe his uncle in an attempt to
13 either get a key or to find Ms. Green. When neither
14 could be located, then we forced entry into the door
15 of the residence.

16 Q And after entry was made, was the search
17 warrant then executed?

18 A Yes, sir, it was.

19 Q Were you assigned a specific area of the
20 trailer to search?

21 A Yes, sir, I was.

22 Q What area of the trailer were you assigned
23 to search?

24 A I was assigned to search the front bedroom
25 of the mobile home residence, and if I can describe

1 where that front bedroom was, as you enter the living
2 room or den door of the residence, which would be the
3 main, or the front door, what I would term being the
4 front door of the residence, you would turn to the
5 right and go through the den and you would be in to
6 the front bedroom or a room that was being used as a
7 front bedroom.

8 Q Can you describe the room that you went
9 into off of the den?

10 A Yes, sir. It was a room, it was a closet,
11 there was a bath off of it, there was a bed, a
12 dresser I believe, and a night stand and a -- and
13 some -- various articles of clothing around, and a
14 Genie vacuum cleaner.

15 Q When you say a Genie vacuum cleaner, what
16 do you mean by that?

17 A I mean like a shop vac type canister vacuum
18 cleaner.

19 Q And tell us what you did upon first going
20 in to that room.

21 A I conducted a search of the room, looking
22 in all areas of the room or all spaces within the
23 room and went to the Genie vacuum cleaner and popped
24 the top off of it, which is the motor portion for
25 this vacuum cleaner, to look into the barrel or the

1 canister portion of the cleaner.

2 Q And what if anything did you see when you
3 removed the top portion of the vacuum cleaner?

4 A I found various paper writings or various
5 papers containing writings which appeared to be some
6 type of log, and I then found a .38 caliber Smith &
7 Wesson revolver in the bottom of this canister, the
8 Genie vacuum cleaner.

9 Q Upon discovering this .38 caliber Smith &
10 Wesson revolver in the bottom canister portion of the
11 vacuum cleaner, what did you do?

12 A I notified Special Agent Underwood, who was
13 in charge of the search, who in turn came to the room
14 and photographs were made of that item.

15 Q At any point prior to notifying Special
16 Agent Underwood of your findings, did you touch or
17 remove the .38 caliber Smith & Wesson revolver from
18 the vacuum cleaner?

19 A No, sir, I did not.

20 MR. BRITT: May I approach?

21 THE COURT: Yes, sir. While
22 you're marking that, we'll go ahead and
23 take the afternoon break, mark those items
24 and come back.

25 Members of the jury, we're going to

1 take a break at this time until 15 until.
2 Please recall the instructions -- well,
3 it's almost 3:30 by my watch, so let me
4 give you until ten until. Please recall
5 the instructions that I've previously given
6 you concerning your conduct. Those
7 instructions remain in effect, and please
8 report directly back to the jury room at
9 ten until. Everyone else please remain
10 seated.

11 (Jury out at 3:28 p.m.)

12 THE COURT: Mr. Lea, you may come
13 down, sir. We're at ease until ten until.

14 (Brief recess.)

15 THE COURT: Let the record
16 reflect all counsel are present, the
17 defendant is present in open court. Are we
18 ready to go forward, folks?

19 MR. BRITT: Yes, sir. If we
20 could, because of the materials that are
21 used on the exhibit with the plastic
22 overlay, and using a dry erase marker, if
23 we could, with the Court's permission, take
24 a photograph of the exhibit the way it is,
25 because the more it's handled, the more

1 likely it is that the marks will be
2 removed. And the photograph that's taken,
3 have that placed in the record in the event
4 something does happen.

5 THE COURT: Do you intend to
6 examine Mr. Lea any more regarding Exhibit
7 94?

8 MR. BRITT: No, sir.

9 THE COURT: Then is there any
10 objection by counsel for the defendant to
11 the State's request to photograph the
12 exhibit as it is at this point?

13 MR. THOMPSON: No, sir.

14 THE COURT: Yes, sir, you may.
15 Ready to go forward now?

16 MR. BRITT: Yes, sir.

17 THE COURT: Bring the jury back
18 in, please. Mr. Lea, if you'll again take
19 the witness stand, please.

20 (Jury in at 3:54 p.m.)

21 THE COURT: Yes, sir, Mr. Britt.

22 MR. BRITT: May I approach the
23 witness?

24 THE COURT: Yes, sir.

25 BY MR. BRITT:

1 Q Mr. Lea, will you describe for us please
2 the residence that you went to on August 16th, 1993
3 for the purpose of conducting a search?

4 A Yes, it was a single wide mobile home that
5 was white with green trim.

6 Q I'm going to hand you what's been
7 previously marked as State's Exhibit Number 64, ask
8 you to look at that photograph and tell me if you can
9 identify what is depicted there?

10 A Yes, sir, I can.

11 Q How are you able to identify what is
12 depicted in State's Exhibit Number 64?

13 A I can recognize this as a mobile home
14 residence of Mr. Green, the defendant.

15 Q And does State's Exhibit Number 64 fairly
16 and accurately depict the condition of the exterior
17 portion of the defendant's mobile home as it appeared
18 on August 16th, 1993?

19 A Yes, sir, it does.

20 Q Can you describe for us -- the room in
21 State's Exhibit Number 64, does it show the door that
22 you entered prior to conducting the search on August
23 16th, 1993?

24 A Yes, sir, it does.

25 Q Can you describe for us the room that you

1 enter from that doorway?

2 A From that doorway, you enter into a
3 den/living room area of the mobile home.

4 Q I'll hand you what's previously been marked
5 as State's Exhibit Number 80, ask you to look at that
6 and tell me if you can identify it?

7 A Yes, sir, I can.

8 Q How are you able to identify what is
9 depicted in State's Exhibit 80?

10 A I can identify this by having been inside
11 of this room, sir.

12 Q Does State's Exhibit Number 80 fairly and
13 accurately depict the room as you saw it on August
14 16th, 1993?

15 A Yes, sir, it does.

16 Q And the room that's depicted in State's
17 Exhibit Number 80, is that the room that you enter
18 after -- upon entering the residence through the door
19 that you went through on August 16th, 1993?

20 A Yes, sir. When you enter the residence
21 through the door depicted on State's Exhibit 64, you
22 first enter into the room as depicted in State's
23 Exhibit Number 80.

24 Q And the room depicted in State's Exhibit
25 Number 80, is the doorway to the room that you've

1 described as a bedroom that you searched August 16th,
2 1993 depicted?

3 A Yes, sir, it is.

4 Q Hand you what's been marked as State's
5 Exhibit Number 78, ask you if you can identify it?

6 A Yes, sir, I can.

7 Q How are you able to identify State's
8 Exhibit Number 78?

9 A 78, I can identify exhibit 78 by having
10 been inside of this room on August the 16th, 1993.

11 Q Does State's Exhibit 78 fairly and
12 accurately depict the bedroom area that you searched
13 on August 16th, 1993?

14 A Yes, it does.

15 Q And the condition you found it in?

16 A Yes, sir, it does.

17 Q Does State's Exhibit 78 depict the location
18 of the Genie vacuum cleaner that you previously
19 testified to?

20 A Yes, sir, it does.

21 Q I'm going to hand you what has been marked
22 as State's Exhibit Number 72, ask you if you can
23 identify what is depicted in that photograph?

24 A Yes, sir, I can.

25 Q And how are you able to identify what is

1 depicted that State's Exhibit Number 72?

2 A By having been present when it was made and
3 having found the weapon that is in the canister of
4 the Genie vacuum cleaner.

5 Q Does it fairly and accurately depict the
6 scene as you found it on August the 16th, 1993 after
7 removing the top portion of the vacuum cleaner?

8 A Yes, sir, it does.

9 Q Can you use State's Exhibit 72, 78, 80, and
10 64 in illustrating your testimony to the jury?

11 A Yes, sir, I can.

12 MR. BRITT: Your Honor, at this
13 time I ask that he be allowed to step down.

14 THE COURT: Yes, sir.

15 BY MR. BRITT:

16 Q I'll hand you what has been marked as
17 State's Exhibit Number 64. Can you show the jury the
18 doorway that you entered into the trailer on August
19 16th, 1993 when you went there to conduct a search?

20 A Yes, sir. This is the defendant's mobile
21 home residence, and this is the door or the doorway
22 that we entered when we entered the residence.

23 Q And the room that you ultimately went into,
24 you've described as a bedroom, in which direction do
25 you turn after entering the doorway to go to that

1 room?

2 A You turn to the right going in the door,
3 and it's this room up here that has this window on
4 this end of the mobile home.

5 Q For the record, State's Exhibit Number 64
6 is a photograph of the exterior of the green and
7 white mobile home that you went to on August 16th,
8 1994?

9 A That's correct, sir.

10 Q And on State's Exhibit Number 64, there are
11 two windows depicted on that trailer in that
12 photograph?

13 A Yes, sir, it is.

14 Q And the --

15 A Actually there's three, sir. There's one
16 back here from the kitchen.

17 Q Two windows depicted on the photograph to
18 the right of the door?

19 A Correct.

20 Q As you face the trailer?

21 A Correct.

22 Q Which of the two windows corresponds with
23 the room that you went in and searched?

24 A The farthest window from the door, or the
25 second window. This window here would be in the room

1 that I searched.

2 Q I'm going to hand you what has been marked
3 as State's Exhibit Number 80. Using State's Exhibit
4 Number 80 -- State's Exhibit Number 80 is a
5 photograph of the room that you enter from the
6 doorway that's depicted in State's Exhibit Number 64?

7 A Yes, sir, it is.

8 Q And is State's Exhibit Number 80, is the
9 doorway leading to this bedroom that you searched on
10 August 16th, 1993 depicted?

11 A Yes, sir, it is.

12 Q So that -- if you will identify that
13 doorway for the jury.

14 A The doorway right there. (Indicating).

15 Q I'm going to hand you what has been marked
16 as State's Exhibit Number 78. State's Exhibit Number
17 78, is that a photograph taken of the bedroom area
18 that you searched on August 16th 1993?

19 A Yes, sir, it is.

20 Q Does State's Exhibit Number 78 show the
21 location of the Genie vacuum cleaner as you found it
22 when you first entered that room on August 16th,
23 1993?

24 A Yes, sir, does.

25 Q Using State's Exhibit Number 78, if you

1 will show the jury the location of that vacuum
2 cleaner.

3 A (Indicating).

4 Q Handing you State's Exhibit Number 72. Is
5 State's Exhibit Number 72 a photograph depicting the
6 vacuum cleaner with the top portion of it being
7 removed and revealing the contents?

8 A Yes, sir, it does.

9 Q And State's Exhibit Number 72, if you can
10 point out to the jury where it was that you found or
11 what you found inside the vacuum cleaner upon
12 removing the top?

13 A Clearest item that can be depicted from
14 this photograph is a handgun in the canister of the
15 vacuum cleaner.

16 Q Prior to opening the Genie vacuum cleaner
17 depicted in State's Exhibit Number 72, and in State's
18 Exhibit Number 78, did you have in your possession
19 a .38 caliber Smith & Wesson revolver?

20 A No, sir.

21 Q And upon finding a .38 caliber Smith &
22 Wesson revolver inside the Genie vacuum cleaner of
23 the defendant's trailer, is that the first time you
24 had ever seen that revolver?

25 A Yes, sir, it was.

1 Q If you'll return to the witness stand.

2 A (Witness complies).

3 Q I'm going to hand you what has been marked
4 as State's Exhibit 59-A, ask you to examine that and
5 tell me if you can identify it?

6 A I would need to see the bag that contained
7 the weapon, sir.

8 Q Hand you what's been marked as State's
9 Exhibit 59, ask you to examine that.

10 A This bag has been changed and -- there is
11 what appears to be writing up here, sir, but I cannot
12 discern it as to say they are my initials. But I
13 would have placed my initials in up here in red.

14 Q State's Exhibit 59-A -- strike that. After
15 you discovered the .38 caliber Smith & Wesson
16 revolver in the bottom of the vacuum cleaner, at any
17 time did you handle the weapon?

18 A No, sir, I never handled the weapon.

19 Q Who if anybody did you observe handle the
20 weapon?

21 A Spacial Agent Underwood.

22 Q What if anything did you observe
23 Mr. Underwood do with the .38 caliber Smith & Wesson
24 revolver?

25 A He removed the weapon out of the vacuum

1 cleaner, he took it and put it in a large plastic
2 bag. He placed markings on the bag, his case number,
3 in my presence, his initials. I then placed my
4 initials and the date.

5 Q For what purpose did you place your
6 initials and the date on the bag Mr. Underwood placed
7 the .38 caliber Smith & Wesson revolver in?

8 A So it could later be identified.

9 Q At the time did you ever take the plastic
10 bag containing the .38 caliber Smith & Wesson into
11 your possession?

12 A No, sir, I didn't.

13 Q After the .38 caliber Smith & Wesson
14 revolver was removed from the vacuum cleaner, did you
15 ever examine the weapon?

16 A No, sir, I didn't. If I can make an
17 explanation on that. The reason we didn't, we --
18 Agent Underwood advised the weapon was loaded. Of
19 course, we wanted to protect it from that, and also
20 because of any other evidentiary value that may be on
21 or in the weapon, the weapon was not handled.

22 Q And who retained possession of the plastic
23 bag containing the .38 caliber Smith & Wesson after
24 the gun was removed from the vacuum cleaner?

25 A Special Agent Underwood.

1 Q Thank you. Did you seize any other item or
2 cause to be seized any other item there in the
3 trailer on August 16th of 1993?

4 A Yes, sir, I did.

5 Q What other items did you seize or cause to
6 be seized?

7 A I caused to be seized or pointed out to
8 Special Agent Underwood and he in my presence seized
9 various paper writings which appeared to be some type
10 of log record that was -- and that was also found
11 inside of the Genie vacuum cleaner.

12 Q Was that the only other item that you
13 seized or caused to be seized there during the search
14 of August 16th, 1993?

15 A Yes, sir, it is.

16 Q After the search was concluded, where did
17 you go when you left the trailer?

18 A At this time, I'm not sure, but I believe
19 back to the Robeson County Sheriff's Department, sir,
20 best of my recollection.

21 Q On August the 17th of 1993, did you have an
22 occasion to go to the Marlboro County Sheriff's
23 Department, Bennettsville, South Carolina?

24 A Yes, sir, I did.

25 Q For what purpose did you go to the Marlboro

1 County Sheriff's Department in Bennettsville, South
2 Carolina?

3 A To meet with Sheriff Charles Foley.

4 Q When you went to the Marlboro County
5 Sheriff's Department in Bennettsville, South Carolina
6 on August the 17th, had you previously contacted
7 Sheriff Foley and told him you were en route there?

8 A Yes, sir.

9 Q When you arrived, was Sheriff Foley
10 present?

11 A Yes, he was.

12 Q And why did you go to Bennettsville to meet
13 with Sheriff Foley?

14 A I met with Sheriff Foley for several
15 reasons, primarily to discuss with him what
16 transpired at the Gum Swamp Creek when the body of
17 James Jordan was removed from that area, and the
18 investigation that his agency, the Marlboro County
19 Sheriff's Department, had conducted.

20 Q And during the time that you met with
21 Sheriff Foley, were any items of evidence transferred
22 to your custody?

23 A Yes, sir, there were.

24 Q What if any items of evidence were
25 transferred to your custody?

1 A A .38 caliber shell casing, and a Tokay
2 cigarette lighter.

3 Q What if anything did you do with the .38
4 caliber shell casing that was transferred to you?

5 A I placed it in a bag, put my initials on
6 that bag, dated it, and the following day, August the
7 18th, 1993, turned the item over to Special Agent Kim
8 Heffney.

9 MR. BRITT: May I approach?

10 THE COURT: Yes, sir.

11 BY MR. BRITT:

12 Q I'll show you what has been marked as
13 State's Exhibit Number 24. I'll ask you to examine
14 that envelope and tell me if you can identify it.

15 A Yes, sir, I can.

16 Q How are you able to identify State's
17 Exhibit Number 24?

18 A State's Exhibit Number 24 is a manila
19 envelope that has my initials, the date, the case
20 number, and a description of the item that is
21 contained therein in my handwriting.

22 Q What if any description of the item did you
23 place on the envelope?

24 A I placed the description Winchester .38
25 Special casing.

1 Q And what if anything did you do after you
2 placed the .38 casing that you received while in
3 Bennettsville, South Carolina?

4 A I placed it in a manila envelope, sealed
5 the envelope, and turned the envelope and its
6 contents over to Special Agent Heffney on August the
7 18th.

8 Q And at the time you turned the sealed
9 envelope over, was it still in a sealed condition?

10 A Yes, it was.

11 Q Did you make any markings on the shell
12 casing that you received while in Bennettsville,
13 South Carolina?

14 A No, sir.

15 Q I'm going to remove the contents of State's
16 Exhibit Number 24, ask you to examine what was
17 contained inside of State's Exhibit Number 24. For
18 the record, can you identify the contents of State's
19 Exhibit Number 24?

20 A State's Exhibit Number 24 contains a
21 Winchester .38 Special fired shell casing.

22 Q And are there markings on the shell casing
23 that identify it as a Winchester type casing?

24 A Yes, sir, there are. On the base of the
25 casing, there is the word "Winchester," and under

1 Winchester there is 38 SPL.

2 Q And the shell casing and the envelope
3 containing the shell casing, are they in
4 substantially the same condition they were in when
5 you first placed it inside the envelope and sealed it
6 back in August of 1993?

7 A Since that time, there has been numerous
8 writings placed all over State's Exhibit 24, and
9 different tape was placed on State's Exhibit 24 since
10 I saw it. The casing, as far as I can recall, is the
11 same as I remember it on that day.

12 MR. BRITT: May I have just a
13 moment?

14 THE COURT: Yes, sir.

15 BY MR. BRITT:

16 Q Mr. Lea, when you went to Bennettsville in
17 August, on August 17th of 1993, did you interview
18 Sheriff Foley?

19 A Yes, sir, I did.

20 Q Did you take a statement from him?

21 A Yes, sir, I did.

22 Q What if anything did Sheriff Foley tell you
23 about the recovery of the .38 caliber shell
24 casing?

25 MR. BOWEN: Objection, desire

1 instruction.

2 THE COURT: Members of the jury,
3 the matters now being elicited of Mr. Lea
4 as to statements Mr. Lea contends were made
5 to him by the Sheriff Foley, previous
6 State's witness in this case, are being
7 offered for the limited purpose of
8 corroboration. Again, to the extent that
9 you find this testimony is corroborative of
10 the prior testimony of Sheriff Foley at
11 this trial, you may consider it for that
12 limited purpose and for no other purposes.
13 Anything further, Mr. Bowen?

14 MR. BOWEN: No, sir.

15 THE COURT: Yes, sir, you may
16 answer.

17 BY MR. BRITT:

18 Q What if anything did Sheriff Foley tell
19 you?

20 A Let me make a correction, sir. I did talk
21 with Sheriff Foley on the 17th. And I did receive
22 from him a copy of his department case report. I
23 returned to Bennettsville on November 22nd, and that
24 is when I conducted an interview with him in
25 reference to the shell casing and the lighter.

1 Q Thank you. What if anything did he tell
2 you when you returned to Bennettsville on November
3 2nd, 1993?

4 A Sheriff Foley stated that he found the .38
5 caliber shell casing in a clearing between Gum Swamp
6 Creek and a path leading from Pea Bridge Road. He
7 described the path as being located across the bridge
8 from North Carolina and to the left of the paved
9 roadway. The Sheriff estimated that the shell casing
10 was found approximately 10 feet to 12 feet from the
11 creek and between 20 feet and 30 feet from the paved
12 roadway.

13 Sheriff Foley stated he found this .38
14 caliber shell casing on either August 4 or August 5,
15 1993. The witness stated that on the same day, he
16 found -- on the same day he found the shell casing,
17 he found a blue Tokay cigarette lighter in the same
18 immediate vicinity as the casing. He stated this
19 lighter was found approximately 50 feet to 60 feet
20 from Pea Bridge Road and on the South Carolina side
21 of Gum Swamp Creek.

22 Sheriff Foley stated Detective Jerry
23 Starnes was present when he found the above two
24 items. He advised he gave both items to Starnes to
25 retain as evidence. The witness stated he believes

1 the two items were placed in a plastic bag and the
2 bag was marked with the date the items were found.
3 Sheriff Foley stated on August 17, 1993, he got the
4 above described two items from Detective Starnes and
5 released them to Special Agent Lea. Sheriff Foley
6 stated he does not have any case report reflecting
7 the locating of these two items.

8 BY MR. BRITT:

9 Q Mr. Lea, on August 16th, 1993 when you were
10 in the defendant's trailer, were you present when a
11 videotape was seized?

12 A Yes, sir.

13 Q And who if anyone seized the videotape in
14 the defendant's trailer on August 16th of 1993?

15 A Special Agent Tony Underwood.

16 Q After Special Agent Underwood seized the
17 videotape on August 16th of 1993, did he keep it in
18 his possession from the time it was seized until the
19 search was concluded?

20 A Yes, sir, he did.

21 Q And do you know from where this videotape
22 was seized?

23 A I'm not sure, sir.

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

1 THE COURT: Any
2 cross-examination?

3 MR. THOMPSON: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. THOMPSON:

6 Q Good afternoon, Agent Lea. Agent Lea, when
7 you conducted the search at the Green's residence on
8 August the 14th of 1993, you indicated there were
9 four officers present?

10 A That's correct.

11 Q Three of which was Anthony Thompson, Durry
12 Cannon, SBI Agent Heffney, and another officer whose
13 name you just can't remember?

14 A I do now recall the name, and that was
15 Detective Don Smith of the Cumberland County
16 Sheriff's Department.

17 Q Now, Agent Lea, how long have you been in
18 law enforcement?

19 A 26 and a half years.

20 Q And how long have you been with the SBI?

21 A 26 and a half years.

22 Q And what kind of training have you had,
23 sir, with respect to -- since you've been with the
24 SBI some 26 and a half years?

25 A I received basic training as a bureau agent

1 in 1969. I've been through numerous investigative
2 schools, numerous interrogation schools, various
3 interviewing schools, been through drug investigator
4 schools. I've been through polygraph school. I've
5 had numerous schools of varying lengths. I've had
6 various management schools that would range anywhere
7 from one to two days to 12 weeks.

8 Q And have you supervised individuals during
9 your tenure with the State Bureau of Investigation?

10 A Yes, sir, I have.

11 Q Over your 26 and a half years, how many
12 individuals would you estimate you've supervised?

13 A Since approximately 1987 or '88, I began to
14 supervise some bureau agents. Prior to that time, I
15 worked with a local narcotics unit that I supervised
16 in Cumberland County.

17 Q And about how many individuals would you
18 estimate that you supervised since you have been with
19 the SBI?

20 A Since being -- if you're talking about
21 bureau personnel, I would say about five, six
22 different agents during that period of time.

23 Q Were you present, were you in a
24 supervisory -- were you supervising anyone back on
25 August the 14th of 1993?

1 A Yes, sir. I am assigned to this county as
2 a Special Agent Four, which has supervisory capacity
3 to it. And I was at that time working with the
4 agents, plus overseeing their investigative activity.

5 Q What agents were under your supervision
6 back on August 14th of 1993?

7 A Special Agent Underwood, of course Special
8 Agent Heffney is an Agent Three, which is a grade --
9 my grade would be -- I would say I would be a limited
10 supervisory capacity for him.

11 Q So of the two SBI agents who assisted you
12 in the search on August 14th, 1993, SBI Agent Heffney
13 and SBI Agent Underwood were under your supervision?

14 A Yes, sir.

15 Q And you indicated that you have been to
16 drug investigation schools?

17 A Correct.

18 Q And management schools. And SBI Agent Lea,
19 have you had any training in conducting searches --

20 A Yes, sir.

21 Q -- of residence?

22 A Yes, sir.

23 Q What type training have you had with
24 respect to conducting searches?

25 A Sir, I've been to numerous schools where

1 the conducting of searches was discussed, where mock
2 searches were conducted, both for physical evidence
3 of homicides, of drugs, and of this type thing.

4 Q And I take it you've been in a number of
5 searches involving drugs of residences?

6 A That's correct.

7 Q About how many?

8 A I have no figure, sir.

9 Q Would you give me your best estimate?

10 A Sir, I have no idea how many searches I've
11 either participated in or been in charge of.

12 Q Have you trained individuals on how to
13 conduct searches?

14 A On-the-job-type training, yes.

15 Q And with respect to homicide cases, how
16 many searches have you been involved in?

17 A Sir, as I stated, I have no idea how many
18 searches I've done during my career.

19 Q Well, would they be -- all the searches
20 that you've been involved in be over a hundred?

21 A I do not have a figure, sir.

22 Q Would they be over ten searches?

23 A Again, Mr. Thompson, I do not have a
24 figure.

25 Q Agent Lea, you were in charge of the search

1 at the Green residence on August the 14th of 1993, is
2 that right?

3 A No, sir.

4 Q Who was in charge?

5 A Special Agent Tony Underwood.

6 Q Nevertheless, you supervised Agent
7 Underwood?

8 A Yes, sir.

9 Q And were you assigned to a specific
10 location to search on August 14th of 1993 with
11 respect to the Green residence?

12 A On August the 14th?

13 Q Yes, sir.

14 A Yes, sir, I was.

15 Q And what areas were you assigned to search
16 on August the 14th of 1993 in the Green residence?

17 A My area to search was from the den/living
18 room back toward the opposite end of the trailer,
19 into the kitchen, into a room which Ms. Green
20 referred to as the dungeon, to a bedroom, and into a
21 bathroom.

22 Q Did you search the bedroom that you have
23 testified to as being to the right as you walk
24 through the front door?

25 A No, sir.

1 Q Who was assigned that area to search?

2 A On August the 14th --

3 Q August the 14th, thank you, sir.

4 A August the 14th, 1993, Detective Don Smith
5 and detective Durry Cannon conducted that search.

6 Q Both individuals -- I'm sorry, I didn't
7 mean to cut you off, Agent Lea. Go ahead and
8 finish.

9 A Those two officers conducted that search.

10 Q Did you see both Don Smith and Durry Cannon
11 go into that room to the -- the bedroom to the right
12 as you entered the front door on August the 14th,
13 1993?

14 A Yes, sir, I did.

15 Q Now, Don Smith is with the Cumberland
16 County Sheriff's Department, is that right?

17 A That's correct.

18 Q Durry Cannon, what agency is he with?

19 A With the Cumberland County Sheriff's
20 Department.

21 Q When you left the Green residence on August
22 the 14th -- well, first of all, strike that. How
23 long did you stay at the Green residence on August
24 the 14th, 1993?

25 A Approximately two and a half to three

1 hours, sir.

2 Q What time did you get to the residence?

3 A Sir, I do not recall.

4 Q And do you recall what time you left the
5 residence on August the 14th, 1993 during that
6 search?

7 A No, sir, I do not have those notes.

8 Q And during the two and a half to three
9 hours that you were at the Green residence conducting
10 the -- strike that. After the two and a half or
11 three hours that you were at the Green's residence
12 conducting a search, you left and went to the Demery
13 residence?

14 A That's correct.

15 Q When you left the Green residence, who did
16 you leave there at the residence?

17 A I think when we left the Green residence,
18 we all left.

19 Q Were you in a vehicle by yourself?

20 A I believe I was riding with Special Agent
21 Heffney.

22 Q So you were with Special Agent Heffney, you
23 and Special Agent Heffney went to the Demery
24 residence?

25 A That's correct.

1 Q Did Don Smith and Durry Cannon show up at
2 the Demery residence?

3 A They also --

4 Q -- on August the 14th of 1993?

5 A Yes, sir, they also went to the Demery
6 residence.

7 Q Did Detective Anthony Thompson show up at
8 the Demery residence on August the 14th, 1993?

9 A Yes, sir, August the 14th, 1993, Detective
10 Anthony Thompson went to the Demery residence.

11 Q When you arrived to the Demery residence,
12 were there any other officers there other than those
13 whom you've testified showed up?

14 A We all arrived at approximately the same
15 time, sir.

16 Q So I take it then there were no other
17 officers there at the Demery residence that you can
18 recall other than the ones that you've testified to
19 that were at the Green residence?

20 A What I have named as the officers that I
21 recall being at the Demery residence.

22 Q You don't know what time you arrived at the
23 Demery residence?

24 A It was between 10:30 to 11:30 p.m. on
25 August the 14th.

1 Q And you remained at the Demery residence
2 for about one hour?

3 A Approximately, yes, sir.

4 Q Did you go in to that residence?

5 A Yes, sir, I did.

6 Q Did the other officers who you've testified
7 to as going to the Demery residence go in to that
8 residence?

9 A Yes, sir, we all did.

10 Q Were you assigned a specific location to
11 search in the Demery residence?

12 A I wasn't, no, sir.

13 Q Who was in charge of the search of the
14 Demery residence?

15 A Special Agent Heffney, myself, and
16 Detective Thompson left from that location, and
17 leaving Detective Smith, Detective Cannon, and
18 Special Agent Heffney at the Demery residence.

19 Q Who makes the decision, or who made the
20 decision as to who was in charge of the search of,
21 for example, the Green residence back on August the
22 14th, 1993?

23 A It was no formal decision made on it. We
24 were working together in concert. And at that time,
25 we all basically decided what functions to follow,

1 and we followed those functions. No one person was
2 giving orders as to who was in charge or who wasn't
3 in charge. Special Agent Heffney at the Green
4 residence interviewed Ms. Green. He secured a
5 consent search, and we then divided up and went to
6 the search.

7 Q Well, you testified --

8 THE COURT: Mr. Thompson's
9 questioned is directed as to how did Agent
10 Underwood come to be designated as the case
11 agent with regard to the search.

12 THE WITNESS: Not on the 14th,
13 sir. He was in charge of the search on the
14 16th.

15 THE COURT: Was there a
16 designated agent as to the search on the
17 14th?

18 THE WITNESS: No, sir.

19 THE COURT: Yes, sir.

20 BY MR. THOMPSON:

21 Q Now, for the sake of clarification, I'm a
22 little confused but I think I understand. You're
23 saying there was nobody designated in charge of the
24 search on the 14th at the Green residence nor nobody
25 designated specifically in charge of the search at

1 the Demery residence on August the 14th?

2 A No formal designation. But Agent Heffney
3 at the Green residence and at the Demery residence
4 was -- he was the one that was going to take evidence
5 or was taking statements and he was going to be the
6 eventual case agent of the investigation. So
7 therefore he would be, if you would, one of the
8 leaders of the search.

9 Q And explain to the jury what the job of the
10 case agent is, please, sir.

11 A Job of the case agent is to conduct
12 interviews, conduct searches, to assimilate facts and
13 information, put those facts and information together
14 and present it to the District Attorney.

15 Q And is any particular person during the
16 search designated as the individual to collect and
17 retain evidence that's obtained during a search?

18 A Yes, sir. Every search should have an
19 agent named or an officer named as the evidence
20 custodian or the person to take custody of evidence
21 seized during the course of the search. A lot of
22 times, that individual is the case agent.

23 Q And on August the 14th of 1993, who was the
24 custodian of the evidence at the Green residence
25 search?

1 A At that time, it was either going to be
2 Agent Heffney or the local officer on the scene,
3 Detective Anthony Thompson.

4 Q And the local officer on the scene would
5 have been Anthony Thompson?

6 A During that search, yes, sir.

7 Q And at the Demery residence, do you know
8 who was the designated custodian of the evidence at
9 that search?

10 A Sir, I left prior to that search being
11 conducted at that residence, I do not know.

12 Q You don't know. Now, you left the Demery
13 residence and went to the residence of Elizabeth and
14 Eugene Gentry?

15 A That's correct.

16 Q And also that's the residence of Angela
17 McClain?

18 A That's correct.

19 Q On August the 14th -- did you take any
20 statements from either of those individuals on August
21 the 14th?

22 A Not on August the 14th, sir.

23 Q Subsequently, you took statements from one
24 or more of those individuals?

25 A I took a statement from Ms. McClain on

1 August the 15th.

2 Q The purpose of you going to the Gentry
3 residence was to try to get some information as to
4 where you could locate Larry Demery, was it?

5 A That's correct.

6 Q Now, you returned to the Robeson County
7 Sheriff's Department about 1:00 a.m. on the --

8 A Approximately.

9 Q Approximately, on the 15th, the morning of
10 the 15th?

11 A That's correct, sir.

12 Q Of August of 1993. Now, when you returned
13 to the Robeson County Sheriff's Department, was Larry
14 Demery in your custody?

15 A He was with me, Detective Locklear, and
16 Sergeant Junior Mitchell.

17 Q And in whose car was Mr. Demery transported
18 to the Robeson County Sheriff's Department?

19 A All of us were together in Sergeant
20 Mitchell's assigned vehicle.

21 Q Now, Agent Lea, you testified on direct
22 examination that -- and described Larry Demery as
23 being cooperative during the interview which took
24 place on August the 14th of 1993 there at the Robeson
25 County Sheriff's Department, is that right?

1 A Well, the interview itself took place after
2 midnight, so it would have been early morning hours
3 of August the 15th.

4 Q Yes, sir. Thank you. And you described
5 Larry Demery as being cooperative?

6 A That's correct.

7 Q Now, were you present during the entire
8 interview of Larry Demery on August the 15th of 1993
9 from when it began at approximately 1:45 a.m. until
10 it ended at 8:45 a.m.?

11 A No, sir, not continuously.

12 Q But now you were there in the immediate
13 area there at the Robeson County Sheriff's Department
14 from 1:45 a.m. until 8:45 a.m., weren't you?

15 A What do you mean by immediate area?

16 Q You were there in the Robeson County
17 Sheriff's Department?

18 A Yes, sir, I stayed at the Robeson County
19 Sheriff's Department that whole time.

20 MR. THOMPSON: Your Honor, if I
21 may have just a moment.

22 THE COURT: Yes, sir.

23 BY MR. THOMPSON:

24 Q Now, Agent Lea, in describing Larry Demery
25 as being cooperative -- well, you tell me, what do

1 you mean by Larry Demery was cooperative?

2 A Well, by that I mean that Mr. Demery
3 accompanied us to the Sheriff's Department, he came
4 down, he came in the room, he waived his
5 Constitutional rights against self-incrimination, he
6 agreed to talk with us. He didn't resist in talking
7 to us. If he had asked to use the restroom, we would
8 allow that. He would come back in the room. He
9 never made any gestures or never made any requests to
10 leave the room or not to talk with us.

11 Q Then cooperative, you do not mean when you
12 say that Larry Demery was cooperative that you felt
13 that he was honestly asking questions -- answering
14 the questions that you posed to him, is that
15 right?

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

18 THE COURT: Sustained.
19 Rephrase.

20 BY MR. THOMPSON:

21 Q Well, was he cooperative, Mr. Lea --

22 THE COURT: All right, let's --
23 members of the jury, if you'll step to the
24 jury room for a moment. There's a matter
25 of law that the Court must take up at this

1 time out of the hearing and presence of the
2 jury. Hopefully it will be very brief. If
3 not, I'll let you now, but don't worry or
4 speculate about what takes place in the
5 courtroom in your absence.

6 (Jury out at 4:42 p.m.)

7 THE COURT: Let the record
8 reflect the following is being conducted in
9 the absence of the jury. Mr. Thompson, if
10 you ask this witness whether he believed
11 that Mr. Demery was being truthful with
12 him, that implicates not only any
13 involvement that Mr. Demery may have had,
14 but also potentially implicates any
15 statements that he made to the witness as
16 to your client.

17 MR. THOMPSON: I withdraw the
18 question, Your Honor.

19 THE COURT: Yes, sir. Simply --

20 MR. THOMPSON: Yes, and I
21 understand.

22 THE COURT: Okay. Bring the jury
23 back in, please, sir.

24 (Jury in at 4:44 p.m.).

25 BY MR. THOMPSON:

1 Q Mr. Lea, were you in the room with
2 Detective Donnie Smith of the Cumberland County
3 Sheriff's Department during the interview of Larry
4 Demery there at the Robeson County Sheriff's
5 Department during the early morning hours of August
6 15th of 1993?

7 A During a part of it, not during all of his
8 interview.

9 Q And Larry Demery, again, in your opinion
10 was cooperative when Detective Smith was there, is
11 that right?

12 A I can only speak for Mr. Demery for when he
13 was in my presence, not when he was in Detective
14 Smith's presence alone.

15 Q Were you in Mr. Demery's presence and
16 Detective Smith's presence when Detective Smith told
17 Mr. Demery, first degree murder, capital --

18 MR. BRITT: Objection.

19 THE COURT: Objection is
20 sustained. It's hearsay.

21 MR. THOMPSON: It's not offered,
22 Your Honor, for the truth of the matter
23 asserted therein.

24 THE COURT: Okay. This -- we'll
25 stop here and pick up tomorrow morning at

1 9:30.

2 Ladies and gentlemen, we're going to
3 stop at this point. We will continue with
4 the presentation of evidence at 9:30
5 tomorrow morning. During the overnight
6 recess, don't talk about the matter among
7 yourselves or with anyone else. Don't
8 allow anyone to say anything to you or in
9 your presence about the case. Don't form
10 or express any opinions about this matter.
11 Don't have any contact or communication of
12 any kind with any of the attorneys,
13 parties, witnesses, prospective witnesses,
14 or directly with the Court. Avoid any
15 exposure to any media accounts which may
16 exist in this matter, and don't conduct any
17 investigation or research of any kind.

18 Have a good evening, we'll see you
19 tomorrow morning at 9:30. Everyone else
20 please remain seated.

21 (Jury out at 4:46 p.m.)

22 THE COURT: The following is
23 being heard in the absence of the jury.
24 Yes, sir, for what purpose is it being
25 offered?

1 MR. THOMPSON: Your Honor, it's
2 being offered to -- first of all, for
3 impeachment.

4 THE COURT: Of who?

5 MR. THOMPSON: For impeachment of
6 this witness with respect to his testimony
7 that Mr. Demery was cooperative. He
8 indicated that he was present. I laid the
9 foundation at least at some of the
10 interview in which Mr. Don Smith was --

11 THE COURT: How does a statement
12 purportedly made by another officer, even
13 if it was made in this witness's presence,
14 impeach him?

15 MR. THOMPSON: Well, because I
16 think that's a question for the jury as to
17 whether --

18 THE COURT: First, it's a
19 question of law.

20 MR. THOMPSON: Yes, sir, I
21 understand. You're exactly right. And I
22 would contend to you that if Mr. -- Agent
23 Lea was present when Don Smith was telling
24 Mr. Demery he was going to stick a needle
25 up his ass so far that he'd never wake up,

1 and he considers Mr. Demery being
2 cooperative, that goes to impeachment.

3 THE COURT: I read the same
4 discovery. I don't recall anything in the
5 discovery indicating that Mr. Smith said
6 that he was going to stick a needle --

7 MR. THOMPSON: Excuse me, Your
8 Honor. I was going to read it right from
9 the transcript. Whoever is going to stick
10 it up his -- let the man shove it up your
11 ass, is what he said. I don't think you're
12 going to enjoy it. It's all right --

13 THE COURT: Now, the context of
14 that, if I'm reading the discovery
15 correctly, was a reference to the
16 defendant.

17 MR. THOMPSON: Sir, and if --

18 THE COURT: If you're contention
19 is that a statement made by Detective
20 Smith, purportedly made by Detective Smith
21 to the defendant in this witness's presence
22 impeaches him in his statement or testimony
23 that the witness was cooperative --

24 MR. THOMPSON: I want to know if
25 he was present -- first of all when the

1 statement was made, and if, and if when the
2 statement was made, was Mr. Demery
3 cooperative, because if the statement -- if
4 he was cooperative, and this man is telling
5 him that somebody is going to shove a
6 needle up his ass, I think it indicates
7 otherwise.

8 THE COURT: Mr. Thompson --

9 MR. THOMPSON: I mean, I contend.

10 THE COURT: The appropriate
11 witness that this ought to come in through
12 would be through Mr. Smith, if Mr. Smith
13 were to testify. It doesn't necessarily
14 have to come in through Mr. Smith, from a
15 State's witness. Under Rule 607, anybody
16 can impeach anybody. Now, you can impeach
17 Mr. Lea as to any statements you contend he
18 made that contradict his contention that
19 Mr. Demery was cooperative.

20 MR. THOMPSON: Yes, sir, and I
21 understand that. And then, Your Honor, I
22 felt also, and your ruling -- I mean, it's
23 your call, and you decide it, but I in good
24 faith felt also that I could impeach him
25 with any statement or any matters that were

1 going on while Mr. Lea was present, which
2 would indicate --

3 THE COURT: You've got to set it
4 up. You've got to set it up. And there
5 are ways to set it up.

6 MR. BOWEN: May I add something,
7 Your Honor? I think the theory here is
8 obviously we're not going for the truth of
9 the matters asserted. In fact, what is
10 asserted in that statement may not even be
11 true --

12 THE COURT: Mr. Bowen, all I'm
13 saying is it's not been set up at this
14 point. Now, if there's a contention that
15 somebody has been cooperative, and there's
16 evidence to indicate a predicate, a
17 foundation has got to be laid to impeach
18 his testimony as to that. It can be done.

19 MR. THOMPSON: You're saying it
20 can be?

21 THE COURT: Hasn't been yet.

22 MR. THOMPSON: You mean the
23 foundation can be laid?

24 THE COURT: Arguably, yes, sir.
25 Strong argument can be made for that, yes,

1 sir.

2 We're at ease, folks.

3 MR. THOMPSON: Excuse me, Your
4 Honor. I didn't even hear what you said.

5 Your Honor, are we getting ready to
6 break for the day?

7 THE COURT: Yes.

8 Anything from either counsel? If
9 you'll recess us.

10 THE BAILIFF: All rise, please.

11 (Court adjourned.)

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1 APPEARANCES OF COUNSEL:

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13

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14

15 (February 8, 1996. Proceedings in open court.)

16

17 THE COURT: Good morning, folks.
18 Let the record reflect all counsel are
19 present, the defendant is present in open
20 court. All available members of our jury
21 are secured in the jury room. I say
22 "available" because the Court was apprised
23 earlier this morning that a member of the
24 jury, Juror Number 12, Mr. Phillip Burnette
25 as I understand it showed up at the clerk's

1 office this morning, indicating that he was
2 ill with a stomach virus.

3 Apparently, based on the information
4 that I had, he left shortly thereafter and
5 indicated that he was too ill, or prior to
6 his leaving indicated he was too ill to be
7 available for today's proceedings.

8 We have 12 members of the jury in the
9 jury room. Mr. Burnett is the only missing
10 members of the jury. That being the
11 situation, it's my intent to bring the
12 remaining members of the jury in, excuse
13 them until 9:30 tomorrow morning.

14 Ma'am, if you will assist us in
15 calling Mr. Burnett, Mr. Burnett's number
16 has been provided to me through the Clerk's
17 office. He apparently left the number with
18 the Clerk's office when he appeared there
19 this morning. And if you'll inform him
20 that if he is able, he is to report at 9:30
21 tomorrow morning. If he is unable to do
22 so, he'll need to call the Clerk's office
23 by 8:30, let us know that. Is that
24 agreeable with the State?

25 MR. BRITT: Yes, sir.

1 THE COURT: Agreeable with
2 counsel for the defendant?

3 MR. THOMPSON: Yes, sir.

4 THE COURT: Let's bring the
5 remaining members of the jury in and we'll
6 excuse them.

7 (Jury in at 9:38 a.m.)

8 THE COURT: Good morning, ladies
9 and gentlemen. Folks, as you already know,
10 a member of the jury, Mr. Burnett, is not
11 available to participate in today's
12 proceedings. He's ill, as I understand
13 it. I'm going to recess the proceedings at
14 this time until 9:30 tomorrow morning. I
15 have directed the Clerk's office to
16 communicate with Mr. Burnett, and indicate
17 to him that if he is able, he is to report
18 at 9:30 tomorrow morning with the other
19 members of the panel. If he is unable to
20 do so, then I have asked the Clerk's office
21 to inform him that he needs to call the
22 Clerk's office by 8:30 and let us know
23 that. So once we know what our situation
24 is tomorrow we will pass that information
25 on to you.

1 Now, again, I instruct all members of
2 the panel that during this recess you're
3 not to talk about this case among
4 yourselves or with anyone else, not allowed
5 to have anyone say anything to you or in
6 your presence about the case. If anyone
7 talks about this matter or attempts to do
8 so, or anyone says anything about the case
9 in your presence, it's your duty to inform
10 us of that immediately.

11 Don't form or express any opinions
12 about the matter. Don't have any contact
13 or communication with any of the attorneys,
14 parties, witnesses, prospective witnesses
15 or directly with the Court. Avoid any
16 exposure to my media accounts which may
17 exist in connection with this proceeding,
18 and don't conduct any inquiry or research
19 or investigation about the case at all.

20 If you will, please report directly to
21 the Court tomorrow morning, that's what I
22 was getting to, at 9:30 tomorrow, and
23 depending what our situation is, we inform
24 you accordingly. We very much appreciate
25 your cooperation, and again I want to

1 emphasize, if there's anything at all
2 relating to your comfort or convenience or
3 anything relating to your health, please
4 let us know that and we will do the best to
5 accommodate you.

6 Everyone else please remain seated,
7 the members of the jury are excused until
8 9:30 tomorrow morning.

9 (Jury out at 9:41 a.m.)

10 THE COURT: Any matters that we
11 need to address in the absence of the
12 jury?

13 MR. BRITT: No, sir.

14 THE COURT: Mr. Thompson, you
15 indicated you had a matter you wanted to
16 bring to the Court's attention.

17 MR. THOMPSON: May it please the
18 Court, we have visiting with us this
19 morning the business law class from St.
20 Paul's High School, and wanted to recognize
21 that.

22 THE COURT: Well, it's always a
23 pleasure, folks, to have members of our
24 community present and able to observe our
25 judicial process. And you folks are

1 certainly welcome to come back at any
2 time. Personally, I think it is a great
3 idea to have our young folks observe court
4 proceedings for a variety of reasons, not
5 only in the context of your academic
6 exposure to our judicial process, but as
7 members of the community, you need to know
8 what's going on in our institution of
9 government, and that includes the judicial
10 system as well.

11 Unfortunately, you will see many folks
12 whom you know standing before the Bar, and
13 to the extent that that might deter folks
14 from finding themselves in similar
15 situations, I think it's beneficial, and to
16 the extent it helps you understand the
17 judicial process, I think that's
18 beneficial. But I welcome you, and I
19 invite you to come back at any time,
20 individually or as a class. I hope you
21 folks can join us again. It's a pleasure
22 to have you with us. Sorry the proceedings
23 were short today.

24 Anything further?

25 MR. THOMPSON: I did want to

1 inform them there are proceedings across
2 the hall, another Superior Court is --

3 THE COURT: Please take advantage
4 while you're here, even though there isn't
5 anything to observe in the courtroom,
6 Robeson County has just expanded its
7 Cumberland County facilities, so there are
8 additional courtrooms on the opposite side
9 of the hallway where matters are being
10 heard, and I invite you folks to go into
11 those courtrooms. It's good to have you
12 folks with us.

13 Mr. Britt, anything further?

14 MR. BRITT: No, sir.

15 THE COURT: Mr. Thompson, Mr.
16 Bowen?

17 MR. THOMPSON: No, sir.

18 THE COURT: If you'll recess us
19 until 9:30 tomorrow morning.

20 THE BAILIFF: All rise, please.

21 (Court adjourned)

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25

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14
15 (February 9, 1996. Proceedings in open court.)

16

17 THE COURT: Good morning, folks.

18 Let the record show that all counsel
19 are present, the defendant is present in
20 open court, and we have all members of the
21 jury secured, is that right, Mr. Horne?

22 THE BAILIFF: Yes, sir.

23 THE COURT: -- in the jury room.

24 Mr. Thompson, I indicated to Mr. Bowen I
25 believe and Mr. Britt this morning that

1 whatever bug is going around today I've got
2 it. So we're going to go until 1:00 today
3 and then stop. You ready to go forward?

4 MR. BRITT: Yes, sir.

5 THE COURT: You were on
6 cross-examination, Mr. Thompson, you ready
7 to go forward?

8 MR. THOMPSON: Yes, sir.

9 THE COURT: If you'll bring the
10 jury in.

11 (Jury in at 9:31 p.m.)

12 THE COURT: Good morning, ladies
13 and gentlemen.

14 Members of the jury, we're going to
15 stop at 1:00 today. Whatever virus is
16 going around, I've got it too. So we're
17 going to stop at 1:00 and continue with the
18 proceedings at 9:30 next Monday.

19 Mr. Thompson, you may continue with
20 cross-examination.

21 MR. THOMPSON: Thank you, Your
22 Honor.

23 CROSS-EXAMINATION (Continued)

24 BY MR. THOMPSON:

25 Q Good morning, Agent Lea.

1 A Good morning.

2 Q Agent Lea, you were present during the
3 entire tape-recorded interview of Larry Demery on
4 August the 15th, 1993, beginning about 1:55 a.m. in
5 the morning, were you not?

6 A As I testified the other day, I was present
7 during portions of that interview. I wasn't present
8 during the entire time.

9 Q You were present at the beginning of that
10 interview, were you not?

11 A Yes, sir.

12 Q You have read a transcription of that
13 tape-recorded interview, have you not?

14 A No, sir, I haven't.

15 Q Who was operating the tape recorder?

16 A At the beginning of the interview,
17 Detective -- Detective Henley of the Cumberland
18 County Sheriff's Department is the officer that was
19 operating that recorder.

20 Q Who else did you see operating the tape
21 recorder?

22 A That's the only one that I recall, sir.

23 Q You were present in the room during that
24 interview when the tape-recorded position of that
25 interview ended, were you not?

1 A I do not recall, sir.

2 Q All right. Do you know what time the
3 tape-recorded interview ended? Do you know?

4 A No, sir, I do not have that time.

5 Q Now, you testified earlier that the
6 defendant -- I mean that Larry Demery was cooperative
7 at all times you were present in the interview, did
8 you not?

9 A I testified, sir, that he was cooperative
10 during the interview with us, yes, sir.

11 MR. THOMPSON: May I approach,
12 Your Honor?

13 THE COURT: Yes, sir.

14 (Defense Exhibit 31 was
15 marked for identification.)

16 BY MR. THOMPSON:

17 Q I hand you what's been marked as
18 Defendant's Exhibit Number 31, Agent Lea, which is a
19 transcription of the interview of Larry Martin
20 Demery, taped interview, on August 15th, 1991. Would
21 you look at page 79 and read from page 79 until the
22 end of the interview and see if that will refresh
23 your memory as to whether you were present or not
24 during the end of the -- until the end of the
25 interview, at least from some portion of the

1 interview until the end of the interview?

2 A Would you like me to read it out loud?

3 Q Read it to yourself, I said. Read it to
4 yourself, please.

5 A (Witness complies). Yes, sir starting on
6 page 78, I see some places in there that are credited
7 to me and I accept that I made.

8 Q And Agent Lea, would you back up three
9 pages, please. You started reading on page 79?

10 A 78.

11 Q Well, would you back up to 76 and read
12 pages 76 and 77.

13 A Yes, sir. That's credited to me also, or
14 portions of it.

15 Q So you were present during the interview,
16 at least during the times there that is indicated on
17 the transcript from page 76 until the end of the
18 interview, is it not?

19 MR. BRITT: Objection.

20 THE WITNESS: If my name is
21 reflected in this document.

22 THE COURT: The objection to the
23 form of the question is sustained.

24 BY MR. THOMPSON:

25 Q Well --

1 THE COURT: You can ask him
2 whether he was there during that time
3 period.

4 BY MR. THOMPSON:

5 Q Were you there during the time period,
6 Agent Lea, in the interview from where you -- from
7 page 76 until the end of the interview?

8 MR. BRITT: Objection.

9 THE COURT: Well, Mr. Lea, do you
10 understand his question, sir?

11 THE WITNESS: I think, Your
12 Honor. I can say that I was there in the
13 interview if I am -- if the space reflects
14 that I was there in the interview.

15 THE COURT: But you have no
16 specific recollection?

17 THE WITNESS: Specifically, as I
18 testified, I said I was there during
19 portions of it.

20 BY MR. THOMPSON:

21 Q But you were there during this portion of
22 it, were you not?

23 MR. BRITT: Objection.

24 THE COURT: Well, it's
25 cross-examination --

1 MR. BRITT: May I be heard?

2 THE COURT: Pardon?

3 MR. BRITT: May I be heard?

4 THE COURT: Yes, sir. Members of
5 the jury, there's a matter of law that I
6 need to take up. Don't worry or speculate
7 about what takes place in your absence. If
8 you will step to the jury room.

9 (Jury out at 9:44 a.m.)

10 THE COURT: The following is
11 being heard in the absence of the jury.
12 Mr. Britt?

13 MR. BRITT: Your Honor, the
14 objection is based on the continued
15 reference to the transcript. There's no
16 evidence that's presented authenticating
17 the transcript that was prepared from any
18 tape. And as such, the contents of any
19 such purported transcript would be hearsay.

20 THE COURT: It's also not
21 necessary, Mr. Thompson. Do you have
22 specific statements that you attribute to
23 Mr. Lea? You need to go to those.

24 MR. THOMPSON: I withdraw that
25 question, and I understand.

1 THE COURT: If you'll bring the
2 jury back in.

3 (Jury in at 9:45 a.m.)

4 THE COURT: The question is
5 withdrawn, Mr. Thompson?

6 MR. THOMPSON: Yes, sir.

7 THE COURT: Any additional
8 examination?

9 MR. THOMPSON: Yes.

10 BY MR. THOMPSON:

11 Q Mr. Lea, were you present during the
12 interview when Sergeant Don Smith made these comments
13 to --

14 MR. BRITT: Objection.

15 THE COURT: Sustained as to any
16 hearsay statements.

17 BY MR. THOMPSON:

18 Q Mr. Lea, were you present -- you made the
19 following comment to Larry Demery: "All right. Why
20 don't you tell us your story other than that
21 bullshit, that cock and bull story that you've been
22 giving us for the last hour, son, tell us the whole
23 truth, tell us your side."

24 You were -- was Mr. Demery cooperating with
25 you when you made that comment?

1 MR. BRITT: Objection. That's a
2 compound question, one -- second question
3 assumes --

4 MR. THOMPSON: Withdraw it, Your
5 Honor. Withdraw it.

6 BY MR. THOMPSON:

7 Q Did you make the following comment, Mr.
8 Lea: "All right. Why don't you tell us your story
9 other than that bullshit, that cock and bull story
10 that you've been giving us for the last hour, son,
11 tell us the whole truth, tell us your side." Did you
12 make that comment?

13 A Could you refer me to what part of the --

14 Q Certainly.

15 A -- where you're reading from sir?

16 Q On page 91 of the transcript.

17 MR. BRITT: Objection.

18 THE COURT: Yes, sir, do you want
19 to be heard?

20 MR. BRITT: As it relates to the
21 transcript.

22 THE COURT: You're asking for a
23 limiting instruction?

24 MR. BRITT: Yes, sir, and --

25 THE COURT: For what purpose is

1 this being offered?

2 MR. THOMPSON: For impeachment.

3 THE COURT: Being offered for
4 impeachment purposes?

5 MR. BRITT: I'd ask for an
6 instruction.

7 THE COURT: Members of the jury,
8 the testimony now being elicited by the
9 counsel for the defendant, Mr. Thompson, is
10 being offered and received for the limited
11 purpose of impeachment. Now, as I have
12 previously instructed you, the term
13 "impeachment" means as tending to
14 contradict or discredit. It is for you the
15 members of the jury to determine what the
16 evidence in this case does show. The
17 evidence is being offered for that limited
18 purpose. You may consider it for that
19 limited purpose and no other. Anything
20 further?

21 MR. BRITT: No, sir.

22 THE COURT: Mr. Thompson.

23 THE WITNESS: According to the
24 transcript, I made that comment, yes, sir.

25 MR. BRITT: Objection, move to

1 strike.

2 THE COURT: Do you want to be
3 heard?

4 MR. BRITT: Yes, sir.

5 THE COURT: Okay. Ladies and
6 gentlemen, please step to the jury room.
7 Don't worry or speculate about what takes
8 place in the courtroom in your absence.
9 There's a matter of law I must take up.

10 (Jury out at 9:49 a.m.)

11 THE COURT: The following is
12 being heard in the absence of the jury.
13 Mr. Britt.

14 MR. BRITT: Your Honor, again
15 goes back to my previous objection in
16 regard to the contents of the transcript.
17 There's --

18 THE COURT: I understand the
19 objection, but what he's asking him is, he
20 has established that Mr. Lea was present at
21 certain times during the interrogation of
22 Mr. Demery. Having established that, he's
23 entitled to ask him about statements that
24 are attributable to him. Now he can deny
25 those statements or say "I don't recall."

1 But he's entitled to impeach his prior
2 testimony on direct examination that
3 Mr. Demery was cooperative.

4 MR. BRITT: As to what the
5 transcript reflects is hearsay. The
6 transcript is not a self-authenticating
7 document.

8 THE COURT: It's not being
9 offered for substantive purpose, only for
10 the limited purposes of impeachment. And
11 he's entitled to ask this witness on
12 cross-examination in contradiction to his
13 testimony on direct examination that
14 Mr. Demery was cooperative, didn't you say
15 those things, and establish the context in
16 which they were said.

17 MR. BRITT: But the answer
18 according to the transcript --

19 THE COURT: But that's your
20 witness's answer.

21 MR. BRITT: Yes, sir. The
22 transcript itself is not evidence.

23 THE COURT: I understand.

24 MR. BRITT: At this point, I'm
25 not willing to open the door to the

1 contents of the transcript.

2 THE COURT: I understand. But if
3 the witness doesn't recall, the witness
4 needs to say "I don't recall making this
5 statement." So are you moving to strike
6 the witness's answer?

7 MR. BRITT: Yes, sir.

8 THE COURT: Which is really his
9 objection?

10 MR. BRITT: Yes, sir.

11 THE COURT: Then the motion to
12 strike is denied because that's the
13 examiner's objection. I'm letting it in
14 for impeachment purposes based on the
15 testimony on direct examination.

16 Note the State's exception to the
17 ruling of the Court. If you'll bring the
18 jury back in. And you haven't opened the
19 door.

20 MR. BRITT: That's why I'm
21 objecting.

22 THE COURT: You haven't opened
23 the door.

24 (Jury in at 9:51 a.m.)

25 THE COURT: Members of the jury,

1 the objection is overruled. Exception is
2 noted for the record. You may repeat or
3 rephrase your question.

4 MR. THOMPSON: Yes, sir. Your
5 Honor, may I retrieve the exhibit from the
6 witness?

7 THE COURT: Yes, sir. Let the
8 record reflect that the exhibit previously
9 identified as Defendant's Exhibit 31 is now
10 in Mr. Thompson's possession and is no
11 longer before the witness. Yes, sir.

12 BY MR. THOMPSON:

13 Q Agent Lea, after reading pages 76 through
14 the end of the transcript on Defendant's Exhibit
15 Number 31, did it refresh your memory at all as to
16 your being there in the room during portions, during
17 a specific portion of the interview with Larry
18 Demery?

19 MR. BRITT: Objection.

20 THE COURT: Overruled. He may
21 answer yes or no. Mr. Lea?

22 THE WITNESS: Mr. Thompson, I
23 never denied being present in that room
24 during portions of the interview, and I did
25 read the transcript and did see portions

1 where my name appeared.

2 BY MR. THOMPSON:

3 Q And you read those portions where your name
4 appeared?

5 A I read parts of those places, yes, sir.

6 Q Yes, sir. From page 76 through the end of
7 the transcript, you read to yourself, didn't you?

8 A I scanned those places.

9 MR. BRITT: Objection.

10 THE COURT: Overruled as to what
11 he read.

12 BY MR. THOMPSON:

13 Q And as to what you read, did it refresh
14 your memory?

15 A It refreshed my memory that comments were
16 made and that I was present during portions of that
17 interview, yes, sir.

18 Q And some of those comments were made by
19 you?

20 A Yes, sir.

21 Q Now, did you make the following comment:
22 "All right. Why don't you tell us your story other
23 than that bullshit, that cock and bull story that
24 you've been giving us for the last hour, son, tell us
25 the whole truth, tell us your side"?

1 A Mr. Thompson, I have no notes and no
2 independent recollection of that statement other than
3 what might appear in a transcript.

4 Q All right. Do you have any independent
5 recollection or any notes of Mr. Demery telling you
6 or saying while in your presence, "I already told it
7 three times, it's on the tape, right there, both
8 sides of it"?

9 MR. BRITT: Objection.

10 THE COURT: For what purpose is
11 it being offered?

12 MR. THOMPSON: Again, Your
13 Honor --

14 THE COURT: Do you want a
15 limiting instruction?

16 MR. BRITT: Yes, sir.

17 THE COURT: Members of the jury,
18 again, I instruct you that the evidence now
19 being elicited of Mr. Lea is being offered
20 for the limited purpose of impeachment. As
21 I have previously defined that term for
22 you, you may consider it for that purpose
23 and no other purposes. Yes, sir.

24 THE WITNESS: I have no
25 independent recollection nor do I have any

1 notes of such statement being made.

2 MR. THOMPSON: Yes, sir.

3 BY MR. THOMPSON:

4 Q Mr. Lea, have you heard the tape, audiotape
5 portions of the interview of Larry Demery back on
6 August 15, 1993, have you listened to the tape?

7 A I heard portions, but I've not listened to
8 the entire tape.

9 Q Agent Lea, do you recall Larry Demery
10 saying that he never saw a gun when -- during the
11 tape-recorded portion of the interview back on August
12 the 15th of '93?

13 MR. BRITT: Objection.

14 THE COURT: Sustained to the form
15 of the question.

16 MR. BRITT: Move to strike, ask
17 for instruction.

18 THE COURT: Allowed. Members of
19 the jury disregard the last question asked
20 by counsel for the defendant, Mr. Thompson,
21 that matter not to take any part in your
22 deliberation in any respect. Mr. Thompson,
23 you're going to have to put your questions
24 in context.

25 MR. THOMPSON: Yes, sir. Your

1 Honor?

2 THE COURT: Yes, sir, you may go
3 ahead.

4 BY MR. THOMPSON:

5 Q During that interview, Mr. Lea, while you
6 were present, did Larry Demery say that he never saw
7 a gun?

8 A Mr. Thompson, again, I do not have any
9 notes nor do I have any independent recollection of
10 any statement being made during that time.

11 Q You don't have any independent recollection
12 of anything that was said during the tape-recorded
13 portion of the interview?

14 A No, sir.

15 THE WITNESS: Your Honor, may I
16 make an explanation?

17 THE COURT: Yes, sir.

18 THE WITNESS: During this portion
19 of the interview of Mr. Demery, we were at
20 that time soliciting Mr. Demery to tell --
21 to make truthful statements to us and to
22 make statements to us in regard to the
23 incident under investigation. We were in
24 an interview, or an interrogation mode, and
25 I do not make notes during those phases of

1 the interview or interrogation.

2 BY MR. THOMPSON:

3 Q Yes, sir, Mr. Lea, and your answer is you
4 don't have any independent recollection of anything
5 that wasn't on in that interview, is that -- that was
6 your answer?

7 A As to specific questions and answers made
8 by various persons or participants during that
9 interview, no, sir.

10 Q And that interview was from 1:45 and ended
11 up until you took the written statement from
12 Mr. Demery?

13 A I started taking a statement with him at
14 5:00 in the morning, which concluded at approximately
15 8:45.

16 Q And the only independent recollection you
17 have as to what Mr. Demery said on the morning of
18 August the 15th of 1993 is that that was contained in
19 the signed written statement of Larry Martin Demery,
20 is that right?

21 A That is what I have notes of, sir.

22 Q And that's the only independent
23 recollection that you have, is that right?

24 A Of what I have record of, yes, sir.

25 Q Yes, sir. Agent Lea, during the interview

1 where you were taking a written statement of Larry
2 Martin Demery, he never said anything to you about a
3 truck being there on 74 across from the Lexus, did
4 he?

5 MR. BRITT: Objection.

6 THE COURT: Do you want to be
7 heard, Mr. Britt?

8 MR. BRITT: Would ask for a
9 limited instruction.

10 THE COURT: Limiting
11 instruction?

12 MR. BRITT: Yes, sir.

13 THE COURT: Again, members of the
14 jury, this is being elicited for the
15 limited purpose of impeachment. You are to
16 consider it only for that purpose and no
17 other purpose. Yes, sir, you may answer.

18 THE WITNESS: No, sir, he didn't.

19 BY MR. THOMPSON:

20 Q Mr. Demery never told you during that
21 interview on August 15th that you do recall that
22 nothing -- he never told you nothing about he and
23 Mr. Green going to a car and stooping down, did he?

24 A No, sir.

25 Q Mr. Demery never told you anything about a

1 radio in the car pumping as the defendant was coming
2 down the canal, did he?

3 A Let me check my notes, sir. No, sir, he
4 didn't.

5 Q Mr. Demery never told you during that
6 interview on August the 15th, 1993, that he moved the
7 seat in the Lexus when he was in the cornfield, did
8 he, meaning the driver's seat?

9 A At what portion? In the cornfield, sir?

10 Q Yes, sir.

11 A No, sir, other than saying he sat in the
12 back seat.

13 Q And Mr. Lea, how many dirt roads are
14 located -- did you see off of Highway 301 to Rowland
15 on the route that you went with Mr. Demery?

16 A On the route that I took -- and I'm no
17 expert on this county -- but on the route I took
18 following the directions given to me by Mr. Demery, I
19 saw the road that I turned onto, and then that road
20 feeds back out to Highway 301, it's a loop road.

21 Q One dirt road, and that's a loop road,
22 isn't that right, on the right?

23 A That is where he directed me to, yes, sir.

24 Q And that's the only dirt road that you saw
25 on the right?

1 A Yes, sir, to my recollection.

2 Q And Mr. Demery never told you back on
3 August the 15th of 1993 during the interview with you
4 that the defendant drove to Pea Bridge from Rowland,
5 did he?

6 A Let me check the notes, sir. Mr. Demery
7 stated to me that "Daniel asked if I had a better
8 idea, and I said I did, I then got into the driver's
9 seat and Daniel got in the back seat. I took Highway
10 501 to Laurinburg an then I believe I took a left on
11 John's Road."

12 Q Agent Lea, Mr. Demery never told you that
13 the defendant drove the car from Rowland to Pea
14 Bridge, did he?

15 A No, sir.

16 Q All right, sir. Now, Agent Lea, on page 7
17 of that signed statement, there appears -- did you
18 insert there, "I saw blood under the man's right arm
19 on his shirt"?

20 A Yes, sir, that was inserted.

21 Q When was that inserted?

22 A That was inserted when me and Mr. Demery
23 were reviewing the statement. I was reading the
24 statement to him, and as we went to or got to this
25 part, he recalled that statement. He made that

1 statement to me, I inserted it into the statement,
2 and his initials appear at the end of it.

3 Q That was after the -- after you had written
4 the entire signed statement, I mean, written the
5 entire statement?

6 A The statement had been written in totality
7 and we went back and were reviewing it, and he added
8 that portion.

9 Q Mr. Demery didn't tell you, Agent Lea, that
10 he and the defendant went to the canal bank first
11 after leaving the bank in Laurinburg, did he?

12 A No, sir.

13 Q Mr. Demery never told you that he was at
14 the defendant's house when he got the .38 caliber gun
15 when he returned from Fayetteville, did he?

16 A I didn't understand your question, sir.

17 Q Mr. Demery never told you that he was at
18 the defendant's house when he got the .38 caliber gun
19 from the defendant after returning from Fayetteville,
20 did he?

21 A No, sir. He said that Mr. Green brought
22 the .38 caliber revolver to his house after Daniel
23 had come back from Fayetteville.

24 Q And Agent Lea, when you were out there
25 riding around with Mr. Demery on the 15th, he never

1 showed you the cornfield where the credit cards were
2 supposed to have been thrown out, did he?

3 A He could not locate the field, sir.

4 Q Now, Agent Lea, on the route that you took
5 from the Robeson County jail to Rowland and from
6 Rowland to Pea Bridge, Mr. Demery never showed you
7 where a waste treatment plant was, did he?

8 A No, sir.

9 Q Now, did you come back the same route that
10 you took to Pea Bridge in returning Mr. Demery back
11 to the Robeson County jail?

12 A I know we came back to Rowland the same
13 way. I carried Mr. Demery to Hardee's after we
14 arrived back in Rowland, and I do not remember from
15 that point how we returned to the Sheriff's
16 Department.

17 Q Did you buy him anything at Hardee's?

18 A Yes, sir, I did.

19 Q What did you buy him?

20 A Bought him a biscuit and a drink.

21 Q Where was that Hardee's located?

22 A In Rowland.

23 Q Mr. Demery never took you to a Citgo gas
24 station, did he?

25 A No, sir, I didn't ask him to.

1 Q You went to a Citgo gas station located
2 there near Pea Bridge later on during your
3 investigation, did you not?

4 A I wouldn't say near Pea Bridge. It was on
5 I believe Highway 401 south of Laurinburg.

6 Q You went to a Citgo station on Highway 401
7 south of Laurinburg?

8 A Yes, sir.

9 Q And do you recall what date that you went
10 there?

11 A No, sir, I don't.

12 MR. THOMPSON: May I, Your
13 Honor?

14 THE COURT: Yes, sir.

15 (Defense Exhibit 32 was
16 marked for identification.)

17 BY MR. THOMPSON:

18 Q I hand you what's been previously marked as
19 Defendant's Exhibit Number 32. Can you use
20 Defendant's Exhibit Number 32 to refresh your memory
21 as to what date you went to the Citgo service
22 station?

23 A Yes, sir, I can.

24 Q All right, sir. What date did you go to
25 the Citgo service station?

1 A August 17th.

2 Q Now --

3 MR. THOMPSON: Your Honor, may I
4 approach?

5 THE COURT: The witness?

6 MR. THOMPSON: Yes.

7 THE COURT: Yes, sir.

8 BY MR. THOMPSON:

9 Q Do you know how to get -- first of all --
10 to the Citgo gas station from the Pea Bridge where
11 Mr. Demery showed you where the body was dumped?

12 A If I was in the area, I could find my way
13 there.

14 Q Do you live in Scotland County?

15 A No, sir.

16 Q If you were in the area, you could find
17 your way there, but using Defendant's Exhibit --
18 State's Exhibit Number 94, you could not -- or could
19 you show where Highway 401 South is located and where
20 the Citgo service station is located?

21 A Not accurately, sir.

22 Q All right. So you're familiar with the
23 area in general, aren't you, Agent Lea, where the
24 Citgo gas station is located an Pea Bridge, isn't
25 that right?

1 A Yes, sir, generally.

2 Q How far is the Citgo gas station from Pea
3 Bridge?

4 A A guesstimate would be ten miles.

5 MR. THOMPSON: Your Honor, may I
6 have a moment?

7 THE COURT: Yes, sir.

8 BY MR. THOMPSON:

9 Q Now, Agent Lea, on the 16th of August of
10 1993, you went to the residence and you participated
11 in the search?

12 A Which residence, sir?

13 Q Of the Green residence?

14 A The mobile home residence?

15 Q Yes, sir.

16 A Yes, sir.

17 Q And you entered the door and you went
18 through the living room or dining room area and
19 walked straight to the bedroom, is that right?

20 A I went into the mobile home, went into the
21 den or living room area, and from there, I went into
22 the bedroom.

23 Q And you had never been in that bedroom on
24 the previous search --

25 A That's correct.

1 Q -- on the 14th, is that correct?

2 A That's right.

3 Q During the interview with Larry Demery,
4 particularly during the -- specifically during the
5 tape-recorded portion of the interview on August 15th
6 of 1993, had you obtained copies of any phone records
7 or log from the Lexus?

8 A As for myself, no, sir.

9 Q Had you seen copies of the phone log at any
10 time during the tape-recorded portion of the
11 interview with Larry Demery?

12 A I cannot recall, sir.

13 Q Do you know who the person is that
14 Mr. Demery refers to as the little short bald-headed
15 guy with the smart mouth, do you know who he's
16 referring to what when he said that's the person that
17 broke him?

18 MR. BRITT: Objection.

19 THE COURT: If you know, you may
20 answer, sir.

21 THE WITNESS: No, sir, I don't
22 know who he's referring to.

23 BY MR. THOMPSON:

24 Q You don't?

25 A No.

1 THE COURT: Mr. Thompson if
2 you'll bear with me for one moment, and if
3 you'll bear with me.

4 MR. BRITT: Yes, sir.

5 (Short pause).

6 THE COURT: I apologize folks,
7 I'm having a difficult time keeping stuff
8 down, so bear with me.

9 BY MR. THOMPSON:

10 Q Agent Lea, the detective, Captain Art
11 Binder with the Cumberland County Sheriff's
12 Department, did he have a bald head back on August
13 the 14th of 1993 -- I mean, August the 15th of 1993?

14 A Not that I recall, sir.

15 Q Lieutenant Jimmy Henley of the Cumberland
16 County Sheriff's Department, did he have a bald head
17 and a smart mouth back on August the 15th of
18 1993?

19 MR. BRITT: Objection.

20 THE COURT: Sustained to the form
21 of the question.

22 BY MR. THOMPSON:

23 Q Well, did he have a bald head?

24 A He has receding hair, I believe, sir.

25 Q Partly bald, is that your -- is that fair

1 to say?

2 A Yes.

3 Q Don Smith, Cumberland County Sheriff's
4 Department, did he have a bald head back on August
5 15th, 1993?

6 A Not that I recall, sir.

7 Q Did Detective Sgt. Cliff Massengill, did he
8 have a bald head back on August 15th of 1993?

9 A Not that I recall, sir.

10 Q Detective Ray Wood, did he have a bald head
11 back on August the 15th of 1993?

12 A Not that I recall, sir.

13 Q And Detective Anthony Thompson of the
14 Robeson County Sheriff's Department, did he have a
15 bald head back on August 15th of '93?

16 A About as bald as it is today, sir.

17 Q Was the demeanor of Larry Demery when he
18 appeared to you to be cooperative back on August the
19 15th of 1993, the same demeanor that he exhibited
20 here in the courtroom on the witness stand?

21 MR. BRITT: Objection.

22 THE COURT: Sustained to the form
23 of the question.

24 MR. BRITT: Move to strike.

25 THE COURT: Allowed.

1 MR. BRITT: Ask for instruction.

2 THE COURT: Members of the jury,
3 disregard question from counsel for the
4 defendant, Mr. Thompson. That matter is
5 not to take part in your deliberations in
6 any respect. Yes, sir.

7 BY MR. THOMPSON:

8 Q Did you ascertain, Mr. Lea, whether
9 Mr. Demery was on any medication back on August the
10 15th of 1993 when you interviewed him?

11 A Just a moment, sir. No, sir, I
12 didn't.

13 MR. THOMPSON: That's all that I
14 have.

15 THE COURT: Mr. Britt, any
16 redirect?

17 MR. BRITT: Yes, sir.

18 REDIRECT EXAMINATION

19 BY MR. BRITT:

20 Q Mr. Lea, when you say Mr. Demery was
21 cooperative with the officers there on August 15th,
22 1993, with the officers in the room from the Robeson
23 County Sheriff's Department, what do you mean by
24 that?

25 A I mean by that, he came with us from his

1 residence, didn't try to flee from his residence,
2 knowing that his parents had telephoned the Sheriff's
3 Department and knew that officers were going to be en
4 route to his house, he did not flee or attempt to
5 flee. He came into the department, came into the
6 room with us, knowing that we were there and knowing
7 that there was several officers in this room.

8 He -- when he entered the room, he was
9 advised of his rights, he was advised of what we were
10 going to be discussed with him, and he waived his
11 constitutional rights against self-incrimination and
12 agreed to sit there and talk with us.

13 Q At any time did he refuse to answer
14 questions?

15 A No, sir, he continued to talk with us
16 during the entire session.

17 Q And you've testified that during a portion
18 of the interview, you did not take any notes about
19 any answers that were given nor any questions that
20 were asked. Why is that?

21 A That is the way that I normally do
22 interviews, interrogations of individuals suspected
23 of crimes. He was making statements which were not
24 consistent with case facts, and we were trying to
25 solicit full and truthful statement of him during

1 that portion and therefore did not make notes of the
2 statements.

3 Q You say he was making statements that were
4 not consistent with case facts, had already been
5 gathered during the course of this investigation?

6 A Yes, sir.

7 Q Did any of that information pertain to any
8 cellular telephone calls that were made from the red
9 Lexus, to your knowledge?

10 A Sir, to my knowledge, I recall discussion
11 of telephone calls being made from the Lexus. But as
12 to subscribers of numbers and all, I was not privy to
13 that information at that time.

14 Q Part of the information that had been
15 gathered during the course of the investigation, did
16 that involve the recovery of the red Lexus in
17 Cumberland County?

18 A Yes, sir.

19 Q And the information that had been gathered
20 during the course of the information --
21 investigation, did that involve the identification of
22 individuals in Cumberland County who were responsible
23 for stripping the red Lexus?

24 A Yes, sir.

25 Q And the information that had been gathered

1 at that point during the investigation involved
2 statements made from those individuals who had
3 acknowledged stripping the red Lexus?

4 A Yes, sir.

5 Q And the information that had been gathered
6 up to the point of August the 14th of 1993, did that
7 information include statements that Daniel Green and
8 an individual named Larry had brought the car to
9 Cumberland County?

10 MR. THOMPSON: Object to the form
11 of the question.

12 THE COURT: Sustained.

13 Sustained.

14 BY MR. BRITT:

15 Q Was Larry Demery's identity known when you
16 came from Cumberland County to Robeson County on
17 August the 14th, 1993?

18 A No, sir, it wasn't.

19 Q Was Daniel Green's identity known when you
20 came from Cumberland County to Robeson County on
21 August the 14th of 1993?

22 MR. THOMPSON: Object.

23 THE COURT: Mr. Britt is this
24 being offered to corroborate prior
25 witnesses?

1 MR. BRITT: Yes, sir.

2 THE COURT: Limiting instruction
3 or do you want to be heard?

4 MR. THOMPSON: First of all, my
5 objection is to the form of the question,
6 known to whom? And then --

7 THE COURT: Rephrase, Mr. Britt,
8 then I'll give a limiting instruction.

9 BY MR. BRITT:

10 Q Prior to coming to Robeson County on August
11 14th, 1993, Mr. Lea, were you aware or did you know
12 if a David Moore had been interviewed by Cumberland
13 County authorities?

14 A I do not recall.

15 Q Do you know if the defendant had been
16 identified by individuals in Cumberland County to
17 authorities with the Cumberland County Sheriff's
18 Department?

19 A Yes, sir.

20 Q Who did Mr. Demery tell you had a gun when
21 he and the defendant were at the location along U.S.
22 74 on the morning of July 23rd, 1993?

23 A Daniel Green.

24 Q And what type of weapon did Mr. Demery tell
25 you that the defendant had in his possession on the

1 morning of July 23rd, 1993?

2 A Just a moment, sir. .38 caliber revolver.

3 Q What type of weapon did you find in the
4 defendant's home on August 16th, 1993, in the bottom
5 of the vacuum cleaner?

6 A 38 caliber revolver.

7 Q During the time that Mr. Demery took you to
8 various locations on the morning of August the 15th
9 of 1993, did you go into the town of Rowland?

10 A Yes, sir.

11 Q Prior to going into the town of Rowland,
12 had Mr. Demery told you about wastewater treatment
13 plant?

14 A Yes, sir.

15 Q Did you ask Mr. Demery to take you to the
16 wastewater treatment plant in Rowland?

17 A No, sir.

18 Q Why did you not ask him to do that?

19 A Of my own knowledge, I knew where this
20 treatment plant was. And I did not, since no
21 activity transpired at that location or anything of
22 significance transpired there, I didn't ask him to do
23 it.

24 Q To your knowledge, where is that plant
25 located?

1 A That plant is off Highway 501. As you're
2 proceeding toward Scotland County or outside of the
3 city limits toward Scotland County, I think it would
4 possibly be in the south -- in a southerly direction
5 from Highway 501.

6 Q On page 6 of the statement that you took
7 from Mr. Demery, who did Mr. Demery tell you
8 identified the body of the man in the red Lexus?

9 A The defendant, Daniel Green.

10 Q And who did Mr. Demery tell you showed him
11 a watch and any rings?

12 A The defendant, Daniel Green.

13 Q During the course of the interview, did you
14 ever tell Mr. Demery where Mr. Jordan had been shot?

15 A No, sir.

16 THE COURT: By "where,"

17 Mr. Britt --

18 MR. BRITT: Do you ever tell him
19 the location on the body where he had been
20 shot?

21 THE WITNESS: No, sir, I didn't.

22 BY MR. BRITT:

23 Q How many phone calls did Mr. Demery tell
24 you he made from that red Lexus?

25 A Sir, on page 11, he advised that he made a

1 telephone call from the car and that he telephoned a
2 relative in New York by the anyway of Joy Baculik.

3 Q Did he tell you why he called his cousin,
4 Joy Baculik?

5 A To see if his cousin knew how to get rid of
6 the car.

7 Q And after Mr. Jordan was shot, who did
8 Mr. Demery tell you kept the .38 caliber revolver?

9 A The defendant, Daniel Green.

10 Q And who did Mr. Demery tell you shot and
11 killed James Jordan?

12 A He stated that he left prior to the gunshot
13 but did advise that when he again encountered
14 Mr. Green, Mr. Green was in the Lexus with the body
15 of James Jordan, and that he questioned him about it
16 and -- or about what had happened, and that Daniel
17 Green told him that he had just shot him.

18 MR. BRITT: I don't have any
19 other questions.

20 THE COURT: Mr. Thompson.

21 RE CROSS EXAMINATION

22 BY MR. THOMPSON:

23 Q Now, Agent Lea, you indicated Mr. Demery
24 was cooperative and he didn't flee?

25 A That's correct.

1 Q That's what you testified to?

2 A That's correct.

3 Q Did Mr. Demery tell you where he had been
4 when you had gone out to that residence before?
5 Where he was, excuse me.

6 A No, sir, he didn't. I didn't ask.

7 Q During the interview on the 15th of August,
8 1993, did you hear anybody say anything about
9 needles?

10 A About what?

11 Q About needles.

12 MR. BRITT: Objection.

13 THE COURT: Do you want to be
14 heard, sir? I don't know the basis, what
15 is the basis?

16 MR. BRITT: Hearsay.

17 THE COURT: Ladies and gentlemen,
18 there's a matter of law the Court must take
19 up out of the hearing and presence of the
20 jury. Don't worry or speculate about what
21 takes place in the jury room in your
22 absence. If you'll step to the jury room.

23 MR. BRITT: I withdraw the
24 objection, I apologize.

25 THE COURT: Have a seat, folks, I

1 apologize.

2 The objection being withdrawn, you may
3 answer the question.

4 THE WITNESS: No, sir, I didn't,
5 not that I recall.

6 BY MR. THOMPSON:

7 Q And you went to Angela's house on August
8 the 14th of 1993 after leaving the Demery residence,
9 did you not?

10 A Yes, sir.

11 Q And you went there to try to find out where
12 Larry Demery was, didn't you?

13 A Yes, sir.

14 Q Now, Mr. Demery, on August the 15th, when
15 he was riding with you showing where everything was
16 and different locations, he showed you how to get to
17 Pea Bridge?

18 A Correct.

19 Q Without any problems, didn't he?

20 A Yes, sir.

21 Q And when Mr. Demery was telling you that he
22 heard the defendant identify the man in the Lexus as
23 being James Jordan, Michael Jordan's daddy, and when
24 he took off the watch, he was in the cornfield,
25 Mr. Demery told you that?

1 A Yes, sir.

2 Q The cornfield that you never saw, is that
3 right?

4 A Cornfield that he could not point out to
5 me, sir.

6 Q And a cornfield that you never found any
7 credit cards in?

8 A Correct.

9 THE COURT: Mr. Thompson, he's
10 indicated that they weren't able to locate
11 the cornfield.

12 BY MR. THOMPSON:

13 Q And Mr. Demery showed you the place where
14 the man was supposed to have been killed on Highway
15 74, didn't he?

16 A Yes, sir, he did.

17 Q Just like he showed you where the cornfield
18 was that you couldn't find, isn't that right?

19 MR. BRITT: Objection.

20 THE COURT: Sustained to the form
21 of the question.

22 MR. BRITT: Move to strike.

23 THE COURT: Allowed.

24 MR. BRITT: Ask for instruction.

25 THE COURT: Members of the jury,

1 don't consider the last question asked by
2 Mr. Thompson, counsel for defendant. That
3 matter is not to take any part in your
4 deliberations in any respect.

5 BY MR. THOMPSON:

6 Q Where he showed you where the Lexus was
7 supposed to have been on Highway 74 when the man in
8 the Lexus was shot, you didn't see any blood there,
9 did you?

10 A Did not look for any, sir. We never got
11 out of my car.

12 Q Didn't look for anything, didn't see
13 anything there related to a Lexus, did you?

14 A No, sir.

15 Q All right, sir.

16 MR. THOMPSON: No further
17 questions.

18 THE COURT: Anything further
19 Mr. Britt?

20 MR. BRITT: No, sir.

21 THE COURT: May Mr. Lea step
22 down?

23 MR. BRITT: Yes, sir.

24 THE COURT: Mr. Britt?

25 MR. BRITT: Can we take a short

1 recess at this point? I would like to
2 check on the availability on my next
3 witness.

4 THE COURT: Ladies and gentlemen,
5 we're going to be at ease until 11:00.
6 Please report back at 11:00, and hopefully
7 we'll be in a position to go forward then.
8 It's your duty to abide by all prior
9 instructions of the Court concerning your
10 conduct.

11 (Jury out at 10:39 a.m.)

12 THE COURT: We're at ease,
13 folks.

14 (Brief recess.)

15 MR. BRITT: Your Honor, my next
16 witness is here, that is April Grant
17 Sweatt, formerly with the SBI crime scene
18 investigators, also a crime scene
19 technician.

20 Next witness after Ms. Sweatt is Ron
21 Marrs who works at the SBI lab. He is en
22 route. During the break, we checked on his
23 location. At that point, which was about
24 ten minutes ago, he was approximately an
25 hour away from Lumberton. Knowing that you

1 do not feel well, if he gets here, there's
2 no problem in breaking his testimony up in
3 direct and having him come back.

4 THE COURT: Well, I'll survive.
5 We may be able to get it all in.

6 MR. BRITT: He previously
7 testified during the 404(b) hearings and
8 his testimony will be somewhat lengthy.

9 THE COURT: We've got another
10 matter. Folks, all counsel present, the
11 defendant is present in open court. The
12 Court was handed a note by Mr. Horne that
13 was passed to Mr. Horne apparently by a
14 member of the jury, Mr. Kotai.

15 The note reads as follows: "Sir, this
16 statement that we are now discussing, is
17 this the very first statement that Larry
18 Demery made? It was brought out through
19 testimony that Larry Demery made more than
20 one statement." It's a question.

21 My response to his question is that it
22 is the duty of the jury -- what I intend to
23 tell him and other members of the jury is
24 that it is the duty of the jury to base any
25 verdict reached solely on the evidence

1 presented. Now, you folks can deal with
2 his question through other witnesses to the
3 extent that you think it is appropriate.
4 But I am not responding to his question
5 except to give the instruction that I've
6 indicated.

7 State want to be heard?

8 MR. BRITT: No, sir, think that's
9 appropriate.

10 THE COURT: Defendant want to be
11 heard?

12 MR. THOMPSON: No, sir.

13 THE COURT: Okay.

14 MR. BRITT: Only thing that could
15 possibly be added is that the evidence is
16 still being presented.

17 THE COURT: Yes, sir. Yes, sir,
18 and I apologize, I intend to let them know
19 that. If you'll bring the jury in,
20 please.

21 (Jury in at 11:01 a.m.)

22 THE COURT: Ladies and gentlemen,
23 the Court has been provided with a note
24 from a member of the jury which reads as
25 follows: "This statement that we are now

1 discussing is this the very first statement
2 that Larry Demery made? It was brought out
3 through testimony that Larry Demery made
4 more than one statement."

5 Now, in response to this question, let
6 me say first of all that it would not be
7 appropriate for me to respond directly to
8 the question because, as I indicated
9 earlier, you the members of the jury are
10 the exclusive finders of the facts. It is
11 your exclusive province to find the facts
12 in this case based on the evidence
13 presented in the courtroom.

14 Let me further instruct you that the
15 evidence in this case is not completed
16 yet. The evidence is still being
17 presented. But it is for you the members
18 of the jury to determine what the facts are
19 based on the evidence presented in the
20 courtroom.

21 Mr. Britt, do you have another witness
22 at this time?

23 MR. BRITT: Yes, sir. Your
24 Honor, at this time state would call April
25 Grant Sweatt.

1 THE COURT: If you'll be sworn,
2 please, ma'am.

3 APRIL GRANT SWEATT,
4 being first duly sworn was examined and testified as
5 follows:

6 THE COURT: If you'll state your
7 full name please, ma'am?

8 THE WITNESS: April Grant Sweatt.

9 THE COURT: If you'll spell your
10 last name.

11 THE WITNESS: S-W-E-A-T-T.

12 THE COURT: Thank you, ma'am.
13 Mr. Britt.

14 DIRECT EXAMINATION

15 BY MR. BRITT:

16 Q Ms. Sweatt, by whom are you employed at
17 this time?

18 A At this time, present time, I'm presently
19 employed by the Richmond County Sheriff's Department.

20 Q What capacity do you work for the Richmond
21 County Sheriff's Department?

22 A I'm assigned to the detective division and
23 I work as a crime scene specialist.

24 Q Is that Richmond County, North Carolina?

25 A That's right. It's in Rockingham.

1 Q How long have you worked for the Richmond
2 County Sheriff's Department?

3 A Just a little over a year.

4 Q Prior to going to work for the Richmond
5 County Sheriff's Department, by whom are were you
6 employed?

7 A By the North Carolina State Bureau of
8 Investigation, assigned as a crime scene specialist
9 with the southern district of North Carolina.

10 Q And how long did you work for the State
11 Bureau of Investigation?

12 A Approximately eight years.

13 Q And in what capacity -- strike that. What
14 training did you receive while at the SBI in the area
15 of crime scene investigation?

16 A I didn't bring my list of schools with me
17 today, but I've testified to that previously.

18 Q Did you participate in the collection of
19 evidence in the investigation of the homicide of
20 James Jordan?

21 A Yes, I did.

22 Q And you've previously testified that in
23 August of 1993, you went to Bennettsville, South
24 Carolina, and recovered -- strike that. You went to
25 SLED laboratory in Columbia, South Carolina, and

1 retrieved certain articles of evidence?

2 A That's correct.

3 Q Other than the evidence that you retrieved
4 from the laboratory, SLED laboratory in Columbia,
5 South Carolina, did you retrieve any other evidence
6 or take into custody any other evidence that's
7 connected to this case?

8 A Yes. On the same day that I collected the
9 items of evidence from SLED in Columbia, South
10 Carolina, after leaving SLED, I came to the Robeson
11 County Sheriff's Department in Lumberton. And while
12 there, I collected a Smith & Wesson six-shot revolver
13 and six live bullets. I collected a sealed envelope
14 which was marked as containing a Winchester .38
15 Special shell casing, and I also collected -- that
16 was from Special Agent Tony Underwood. And I also
17 collected from Deputy Stewart McFadder one spent
18 bullet and four ten dollar bills.

19 Also, the day before this, which was
20 Tuesday, August the 17th, I collected a blue and
21 white golf bag which had the name Michael Jordan
22 imprinted down the side of the bag, and another golf
23 bag which was a black and red Miller brand golf bag
24 which had some golf clubs, were assorted brands of
25 golf clubs, Nike golf balls and some Michael Jordan

1 tees.

2 Q The golf clubs and golf bags that were
3 recovered on August the 17th of 1993, where were
4 those items recovered from?

5 A They were in Spring Lake. It was on McKay
6 Drive across the street from the Farmview Trailer
7 Park.

8 Q And where in the area across from McKay
9 Drive in Spring Lake, North Carolina, were the golf
10 clubs and bags recovered?

11 A They were in a wooded area down a slight
12 embankment in a wooded area, and there was a speed
13 limit sign on the other side of the road. And it was
14 almost directly in front of that area, the wooded
15 area.

16 Q Were there other officers -- did you
17 personally take into custody or in your possession
18 the golf bags and the golf clubs?

19 A Yes, I did.

20 Q Were there other officers assisting in the
21 search of this wooded area?

22 A Yes.

23 Q How many other officers were involved in
24 the search of this wooded area?

25 A I would have to check my notes and count.

1 There was Pat Pressler of the Richmond County
2 Sheriff's Department, Paul Lemond of the Scotland
3 County Sheriff's Department, Art Binder of the
4 Cumberland County Sheriff's Department, Lori Shank
5 with the SBI, Detective Jim Osborne of the Hoke
6 County Sheriff's Department, and Officer Hubert of
7 the Hoke County Sheriff's Department. There was also
8 present someone with the security firm of Michael
9 Jordan. So that was seven people other than myself.

10 Q Did you personally locate the golf bags and
11 golf clubs or did another officer locate those?

12 A I located the blue and white golf bag. And
13 Paul Lemond, Detective Paul Lemond of the Scotland
14 County Sheriff's Department, he located the black and
15 red Miller golf bag.

16 MR. BOWEN: Object, unless she
17 was there.

18 THE COURT: Were you present,
19 ma'am?

20 THE WITNESS: Yes, I was.

21 THE COURT: Overruled.

22 MR. BRITT: May I approach?

23 THE COURT: Yes, sir.

24 BY MR. BRITT:

25 Q I'll show you what has been previously

1 marked as State's Exhibit Number 57, ask you to
2 examine this item and tell me if you can identify it?

3 A Number 57, is that right?

4 Q Yes, ma'am.

5 MR. THOMPSON: I can't hear.

6 THE WITNESS: I was asking if
7 it's Number 57.

8 State's Exhibit Number 57 is the blue
9 and white golf bag which I located in the
10 wooded area. I tagged it and I gave it an
11 item number, put the case number on it, the
12 date and time that I collected it,
13 describing what it is, as well as my
14 initials.

15 BY MR. BRITT:

16 Q And the tag that you placed on the bag is
17 it still present and secure?

18 A Yes, it is.

19 Q Is State's Exhibit 57 in substantially the
20 same condition it was in when you recovered it in
21 from the wooded area across from Farmview Trailer
22 Park, Spring Lake, August 17th, 1993?

23 A It is.

24 MR. BRITT: Your Honor, at this
25 time I move to admit State's Exhibit Number

1 57.

2 THE COURT: Without objection,
3 it's admitted.

4 BY MR. BRITT:

5 Q Show you now what's previously been marked
6 as State's Exhibit Number 58, ask you to examine
7 State's Exhibit Number 58 and tell me if you can
8 identify it.

9 A State's Exhibit Number 58 is the black and
10 red golf bag which I mentioned earlier that I
11 collected, has the golf clubs inside. It's tagged
12 with the tag that I placed on it that has item
13 number, the case number, the date and time that I
14 collected it, a description of it, and my initials.

15 Q And the tag that you placed on the black
16 and red and gray golf bag, is it still in place and
17 secured?

18 A Yes, it is.

19 Q Is State's Exhibit Number 58 in
20 substantially the same condition as it was in when
21 you found this item in the wooded area across from
22 Farmview Mobile Home Park in Spring Lake, North
23 Carolina on August the 17th --

24 A Yes, it is.

25 Q -- 1993?

1 A When this was located, it was this bag, not
2 the other bag. This bag was covered with plastic
3 trash bags.

4 MR. BRITT: Your Honor, at this
5 time I move for admission of State's
6 Exhibit 58.

7 THE COURT: It's admitted without
8 objection.

9 MR. BRITT: May I approach?

10 THE COURT: Yes, sir.

11 BY MR. BRITT:

12 Q Ms. Sweatt, let me show you what's
13 previously been marked as State's Exhibit Number 24,
14 ask if you can identify State's Exhibit Number 24?

15 A Yes.

16 Q How are you able to identify State's
17 Exhibit Number 24?

18 A Has my initials, and the date which I
19 collected it on it.

20 Q And for the record, what is State's Exhibit
21 Number 24?

22 A It's a brown envelope which is marked as
23 containing a Winchester .38 Special shell casing.

24 Q At the time you received the envelope
25 marked as State's Exhibit Number 38, in what

1 condition was it in, was it sealed or opened?

2 A It was sealed.

3 THE COURT: You referred to
4 State's Exhibit Number 38.

5 BY MR. BRITT:

6 Q Excuse me, 24, I apologize. And what, if
7 any, markings did you place on State's Number 24?

8 A My initials and the date when I collected
9 it.

10 Q And what, if any, initials and any date did
11 you place on it?

12 A And the case number. I'm sorry.

13 Q What, if any, initials, date, and case
14 number did you place on State's Exhibit Number 24?

15 A My initials, AGS, the date 8-18-93, and the
16 cases number 491H16.

17 Q And what, if anything, did you do with the
18 sealed envelope that was marked as State's Exhibit
19 Number 24 when you received it back on August the
20 18th of 1993?

21 A When I left the Robeson County Sheriff's
22 Department, I went straight to the SBI crime
23 laboratory in Raleigh and submitted this to the crime
24 laboratory.

25 Q And at the time you submitted it to the

1 crime laboratory, was the envelope in a sealed or
2 unsealed condition?

3 A Sealed.

4 Q Show you what's been marked as State's
5 Exhibit Number 42-A. State's Exhibit Number 42-A,
6 are you able to identify it?

7 A No.

8 Q Show you what's been marked as State's
9 Exhibit Number 41, are you able to identify State's
10 Exhibit Number 41?

11 A Yes, I am.

12 Q And for the record, what is State's Exhibit
13 Number 41 and how are you able to identify it?

14 A State's Exhibit Number 41 is a sealed
15 envelope which has markings on it, it has markings
16 that I placed on it of item number, case number, the
17 date and time that I collected it, a description of
18 what's inside, and my initials.

19 Q What, if any, markings did you place on the
20 envelope marked as State's Exhibit Number 41?

21 A Item Number 63, Case Number 491H16, date
22 8-18-93, 1:18 p.m., bullet, and my initials AGS.

23 Q At the time you received State's Exhibit
24 Number 41, was it in a sealed or unsealed condition?

25 A Sealed.

1 Q At any time you, did open State's Exhibit
2 Number 41 while it was in your possession?

3 A No.

4 Q What, if anything, did you do with State's
5 Exhibit Number 41 and the contents of that envelope
6 after you received it?

7 A Again, when I left the Sheriff's
8 Department, I went to the SBI crime laboratory in
9 Raleigh, and I took this with me and submitted it at
10 that time.

11 Q Show you what's been marked as State's
12 Exhibit 41-A, ask you to examine that and tell me if
13 you can identify it?

14 A Yes.

15 Q How are you able to identify State's
16 Exhibit 41-A?

17 A 41-A is a sealed plastic bag and it has my
18 initials and the date that I collected it. And
19 inside is a spent bullet.

20 Q State's Exhibit 41-A, at the time that you
21 received it, was it in a sealed or unsealed
22 condition?

23 A Sealed.

24 Q After taking it into your possession, at
25 any time did you open State's Exhibit 41-A?

1 A No.

2 Q From whom did you receive State's Exhibit
3 41-A?

4 A This I received from Deputy Stewart
5 McFadder of the Robeson County Sheriff's Department.

6 Q What date did you receive it from
7 Mr. McFadder?

8 A 8-18-93.

9 Q At the time you received it from
10 Mr. McFadder, was it, the plastic bag containing the
11 spent bullet, in a sealed condition?

12 A Yes.

13 Q On August the 18th of 1993, you referred
14 that you took into your custody a .38 caliber Smith &
15 Wesson revolver that was given to you by Special
16 Agent Tony Underwood?

17 A That's correct.

18 Q Show you what's been marked as State's
19 Exhibit Number 59, it's a large plastic bag. Are you
20 able to identify State's Exhibit Number 59?

21 A The markings are off the bag. And in
22 holding this up, I can see where the markings were
23 out, holding it up to the light, I can make out some
24 of the markings, but I can't make out my initials any
25 longer.

1 Q At the time you received the .38 caliber
2 Smith & Wesson revolver from Special Agent Underwood,
3 was it packaged in anything?

4 A It was packaged in that plastic bag.

5 Q And at the time you received the .38
6 caliber Smith & Wesson revolver inside of the plastic
7 bag, was the plastic bag sealed or unsealed?

8 A Sealed.

9 Q At any time did you open the plastic bag
10 containing the .38 caliber Smith & Wesson revolver?

11 A No, I did not.

12 Q What, if anything, did you do with the
13 plastic bag and the .38 caliber Smith & Wesson
14 revolver that was contained inside of it?

15 A I submitted it to the SBI crime laboratory
16 on the same date after I left the Sheriff's
17 Department.

18 Q Show you what's been marked as State's
19 Exhibit 59-A, and ask you if you can identify that?

20 A This is a Smith & Wesson six-shot revolver
21 and has a number on the barrel of the gun, which is
22 387767. I marked in my notes that I received a Smith
23 & Wesson six-shot revolver handgun with serial number
24 387767.

25 Q And is State's Exhibit Number 59-A, is that

1 the .38 caliber Smith & Wesson revolver that Special
2 Agent Tony Underwood transferred to your custody on
3 August 18th, 1993?

4 A Yes, it is.

5 Q Is that revolver in substantially the same
6 condition that it was in when you received it on
7 August the 18th of 1993?

8 A Yes, it is.

9 Q At the time you received the plastic bag
10 containing the .38 caliber Smith & Wesson revolver,
11 was the gun loaded or unloaded?

12 A To my knowledge, it was unloaded.

13 Q After submitting the item of evidence to
14 the laboratory in Raleigh, were any of these items
15 ever returned to your possession?

16 A No.

17 MR. BRITT: I don't have any
18 other questions.

19 THE COURT: Any
20 cross-examination?

21 MR. BOWEN: Yes, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. BOWEN:

24 Q Agent Sweatt, when you put together an
25 inventory of property that you're going to be

1 responsible for transport to the SBI, you make up the
2 inventory sheet or document, don't you?

3 A Yes.

4 Q And on that document, you write down a
5 description of the item, correct?

6 A That's correct.

7 Q And you write down certainly any kind of
8 serial numbers or markings that that document has, is
9 that true?

10 A That's correct.

11 Q And -- I'm sorry, that object has, I meant
12 to say.

13 Now, you look over the object to see any
14 kind of identifying markings that it has, such as
15 numbers, right?

16 A If it's not in a sealed package, I inspect
17 it.

18 Q All right. Well, a lot of times you can
19 see through a plastic package?

20 A That's correct.

21 Q Such as the package that State's Exhibit
22 49-A is in, you can see through that package?

23 THE COURT: 49 or 59?

24 MR. BOWEN: I'm sorry.

25 THE COURT: Which one were you

1 referring to?

2 MR. BOWEN: 59-A, the revolver.

3 You can see through that package, can't
4 you.

5 THE WITNESS: That's correct.

6 BY MR. BOWEN:

7 Q And you can see those numbers that you've
8 talked about through that plastic, can't you?

9 A I think so.

10 Q Just, for example, if you were doing an
11 investigation and a camera were the object of -- were
12 the object that you had to have custody of and
13 transport, if you found a serial number on the lens
14 and a serial number on the body, you would put both
15 down for that camera, wouldn't you?

16 A Not necessarily. I'm just not that
17 familiar with a separate serial number.

18 Q If you found two -- if you saw two serial
19 numbers, you would put them down, wouldn't you?

20 A Yes.

21 Q And in your training for the SBI you have
22 had -- although you're not an expert in firearms and
23 tool marks examining, you have had some training
24 concerning firearms and how they are marked and
25 identified?

1 A That's correct.

2 Q And you're trained to observe and recognize
3 a serial number, aren't you?

4 A That's correct.

5 Q And you have had training about the
6 difference between a serial number and what is called
7 a proof test number, have you not?

8 A I've never heard the words "proof test."

9 Q All right. You did look all over the
10 revolver, State's 59-A, did you not?

11 A Usually there's a number inside where the
12 cylinder is at, and I refer to that as the frame
13 number. And since it was in the plastic bag and
14 sealed, I did not check that.

15 Q Did you look for a number on the butt of
16 the weapon?

17 A I don't recall if I did or not.

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

20 THE COURT: Yes, sir.

21 BY MR. BOWEN:

22 Q Show you State's Exhibit 59-A, and ask you
23 if you see anything on the butt of that weapon?

24 A I see an S on the wooden grip part itself
25 and I see what looks like some numbers, but I can't

1 make them out.

2 Q Now, you see the S on just one handle of
3 that grip or both?

4 A One.

5 Q All right. And there appear to be some
6 numbers elsewhere that you can't make them out on the
7 butt of that gun, is that correct?

8 A Yes, on the metal section.

9 Q And in the -- you would have expected to
10 find what you call a frame number on this weapon,
11 correct? Can you find me a frame number?

12 A Not on this weapon. Well, it's usually
13 right here. They are all marked different.

14 Q So that it's fair to say that the number
15 that you put down is the number that you took to be a
16 serial number?

17 A That's correct.

18 Q And a serial number, if it were a serial
19 number, would distinguish that weapon from -- that
20 particular weapon from all other weapons that Smith &
21 Wesson made, wouldn't it?

22 A We would -- you can have the same serial
23 numbers on other weapons, but there are other
24 identifying factors to go with it.

25 Q Have you since found out what a proof

1 number is?

2 A No.

3 Q Now, the only number that you placed on
4 your log of evidence with which you transmitted
5 State's 59-A and other items was this number that you
6 have earlier testified to, is that right?

7 A That's correct.

8 Q And your job is to keep these items, these
9 objects such as State's 59-A in the same condition in
10 which you received them and then transmit them on to
11 the State's Bureau of Investigation for further tests
12 or examinations or further safekeeping, is that
13 right?

14 A That's correct.

15 Q And you keep these items in lockers and
16 under keys and under safe conditions so that they
17 cannot -- their condition cannot be changed in any
18 way while you have possession, is that right?

19 A That's correct.

20 Q And you do that very carefully pursuant to
21 your training in this case, in all other cases,
22 correct?

23 A That's correct.

24 Q And you did that with all these items here?

25 A I didn't put them in a locker because I had

1 them in the car with me, took them -- when I took
2 them, I locked them in the trunk of my car until I
3 got to the lab.

4 Q You always secure items such that nobody
5 can change or alter the items?

6 A That's correct.

7 Q Now, do you recall the case of State versus
8 Kerry Morrison?

9 MR. BRITT: Objection.

10 THE COURT: Do you want to be
11 heard, sir?

12 MR. BRITT: Yes, sir.

13 THE COURT: Ladies and gentlemen,
14 there's a matter the Court needs to take up
15 out of the presence and hearing of the
16 jury. Please don't worry or speculate
17 about what takes place in the courtroom in
18 your absence. If you would step into the
19 jury room, please, at this time.

20 (Jury out at 11:29 a.m.)

21 THE COURT: Following is being
22 heard in the absence of the jury.

23 Mr. Britt, what's the basis?

24 MR. BRITT: Who is Kerry
25 Morrison, and how is it relevant to this

1 case?

2 THE COURT: Yes, sir.

3 MR. BOWEN: I'll establish it on
4 voir dire, how about that?

5 THE COURT: Okay.

6 BY MR. BOWEN:

7 Q You do recall the State of North Carolina
8 versus Kerry Morrison, heard a couple of years back
9 in Hoke County?

10 A Not right off.

11 Q Do you recall the death of Ed Harris?

12 A Yes, I do.

13 Q Mr. Harris being the deceased in a case in
14 Hoke County?

15 A Yes, I do.

16 Q Do you recall testifying in that case and
17 being the keeper of certain objects, in addition, to
18 that case?

19 A Yes.

20 Q Do you recall going to the home of Ed
21 Harris, viewing an area near the victim, Ed Harris's
22 back door around a doorbell?

23 A Yes.

24 Q And you recall testifying in court that
25 when you approached the doorbell, you looked at the

1 doorbell and you saw actual visible signs of a
2 discernible fingerprint, is that correct?

3 A Yes.

4 Q And you said in your testimony as a
5 consequence of that, you took that doorbell, you took
6 your tools and you removed that doorbell from its
7 housing and placed it in a plastic bag, is that
8 right?

9 A I'm not sure how I packaged it.

10 Q You took custody of it?

11 A Yes.

12 Q And you took custody of it in the same way
13 that you took custody of the items in this case, that
14 is, in the sense that you kept them in a circumstance
15 where they could not be altered or changed, is that
16 right?

17 A That's correct.

18 Q Now, the purpose, the reason that you did
19 not touch that fingerprint was because you could
20 actually see it, is that right?

21 A That's correct.

22 Q And you didn't want to mess it up.

23 A It was such a small area, I knew that the
24 lab can do further tests than I can, and I didn't
25 want to mess up anything that they might be able to

1 get.

2 Q So you sent it on to the lab, is that
3 right?

4 A That's right.

5 Q And when the doorbell was exhibited in
6 court, the testimony in connection with that doorbell
7 by your fellow agent was that it was so smudged with
8 powder when he got it that he couldn't do anything
9 with it, isn't that correct?

10 A I don't recall.

11 Q You don't recall?

12 A I did dust that, I do recall that I dusted
13 it, and I testified to that.

14 Q When did you dust it?

15 A I testified to that. Now, I would have to
16 pull the testimony, I'm sure, but I dusted that
17 area. In fact, I was shown on television dusting
18 that area.

19 Q You didn't dust that doorbell when you
20 first took it off that housing, did you?

21 A Before I took it off. In fact, as I
22 recall, that is when the print was visible, when I
23 dusted it.

24 Q Are you denying that you testified in that
25 case that you specifically did not dust it, but

1 rather packaged it and sent it on to the lab because
2 they could more properly test it at the lab?

3 A I don't think that I did. I would have to
4 pull the testimony. But I do remember dusting that
5 area and I recall I was even shown on television
6 dusting the area.

7 Q You did dust another area around the door,
8 in the door facing, didn't you?

9 A Yes.

10 Q But you say that you dusted specifically
11 the doorbell?

12 A Yes.

13 MR. BOWEN: That's all. I'm not
14 going to use it.

15 THE COURT: Objection is
16 sustained. Motion to strike will be
17 allowed. Jury will be instructed to
18 disregard the question. Bring the jury
19 in.

20 (Jury in at 11:34 a.m.)

21 THE COURT: Members of the jury,
22 the objection is sustained. Motion to
23 strike is allowed. And I instruct you that
24 you are not to consider the last question
25 asked by counsel for the defendant,

1 Mr. Bowen. That matter is not to take any
2 part in your deliberations in this case in
3 any respect.

4 Yes, sir, Mr. Bowen any additional
5 matters?

6 MR. BOWEN: And also --

7 THE COURT: Yes, sir.

8 BY MR. BOWEN:

9 Q Agent Sweatt, you say you went out to an
10 area and retrieved the golf bags that you identified
11 earlier?

12 A That's correct.

13 Q And that area was in what portion of North
14 Carolina?

15 A Spring Lake.

16 Q And you made a diagram of that area, didn't
17 you?

18 A Yes, sir.

19 Q And when you made a diagram of that area,
20 you had had conferences with your other agents, had
21 you not?

22 A No.

23 Q Did you know anything about the, quote,
24 James Jordan case at that time?

25 A Oh, yes. Yes, sir.

1 Q Did you know approximately where it had
2 been alleged Mr. Jordan had been killed?

3 A Yes.

4 Q You knew it was in Robeson County
5 somewhere, right?

6 A Yes.

7 Q And no allegation that any crime had been
8 committed at this area up in Spring Lake, correct?

9 A Any allegation that one had been committed
10 in Spring --

11 Q Yes, ma'am.

12 A Not that I was aware of.

13 Q But now, made out an SBI activity report on
14 August the 17th, 1993, did you not entitle file
15 491H16?

16 A On what date?

17 Q On August the 17th, 1993?

18 A Yes.

19 Q You did.

20 A Yes.

21 Q Could you look at the cover page to which
22 you attached that diagram that you drew? Okay?

23 A Uh-huh.

24 Q Now as to the cover page, do you see the
25 words photographic copy of diagram of crime scene?

1 A Photostatic copy.

2 Q "Photostatic copy of diagram of crime
3 scene." Is that correct?

4 A Yes.

5 Q And you designated an area around the
6 mobile home park in Spring Lake as a crime scene, is
7 that correct?

8 A That's correct.

9 Q Did, to your knowledge, did any charges
10 arise out of anything that occurred in the Spring
11 Lake area with regard to that specific mobile home
12 park?

13 A No, but I wasn't in on -- the only part of
14 the investigation I was in on dealt with crime scene.

15 Q But you knew what the alleged crime scene
16 in this case was, didn't you?

17 A Yes, but there can be multiple scenes.

18 Q Now, as to the bullet that you retrieved
19 the casing -- I'm sorry, the casing, the .38 caliber
20 shell casing, is it your responsibility to request
21 any further forensics tests by the SBI or does the
22 investigating agent do that?

23 A Investigating agent.

24 Q So if any further fingerprint testing or
25 anything like that were asked for on the .38, that --

1 it would not have been yours to do?

2 A That's right.

3 Q If were those requests made separately or
4 put with the item or how is that transmitted to the
5 SBI?

6 A You fill out a submission form that is
7 submitted at the same time that the evidence is
8 submitted. So --

9 Q Did you receive such a submission form from
10 any of the agents requesting further testing,
11 forensic testing of any sort?

12 A I don't even recall what was listed on the
13 submission form.

14 Q Did you see any sort of masking tape or any
15 other type of tape anyplace on either of the two golf
16 bags?

17 A There was some type of tape on the blue and
18 white bag. In fact, there was a name on it, and I
19 don't recall what the name was.

20 Q The name was on -- the name written on the
21 masking tape was not that of Michael Jordan or
22 anyone's whose last name was Jordan, is that correct?

23 A That's correct.

24 Q Would it please, if you will, if I may
25 approach the witness, Your Honor, if you will please

1 point out, Agent Sweatt, where the tape was on the
2 bag?

3 A I don't recall.

4 Q Let me ask you, what do you see, if
5 anything, at or near the name Michael Jordan?

6 A I see where it appears that the tape has
7 been, but I don't recall if that was the tape that
8 was on the bag, I don't recall.

9 Q Well, when you first saw this bag, is it
10 fair to say that you did not see the name Michael
11 Jordan but some other name?

12 A I don't recall. I know that in my
13 description, when I collected it, I described it as
14 having Michael Jordan imprinted down the side, and a
15 section of tape was on the golf bag with a name and
16 address on it.

17 Q Do you know what was done with the tape,
18 Agent Sweatt?

19 A No, I do not.

20 Q Do you know if any other agents or officers
21 got the tape?

22 A I don't know. I know that at the time, the
23 tape was just barely on there, but I don't know what
24 happened to the tape. But it was there the last time
25 that I saw it.

1 Q Well, it was on there, but you don't know
2 where it was on there?

3 A No.

4 Q Do you see the outline or the evidence or
5 residue of any tape other than over the name Michael
6 Jordan? And feel free to examine the bag, if you
7 like.

8 A No.

9 Q You have examined it before?

10 A Uh-huh.

11 Q So the only residue or only outline of any
12 tape is here above Michael Jordan's name?

13 A That's correct.

14 Q And you would have had just as much
15 responsibility to keep that tape as any other part of
16 that item of evidence, would you not?

17 A That's correct.

18 Q But you can't account for that tape now,
19 can you?

20 A No.

21 Q Now then, in this particular case, Agent
22 Sweatt, did you dust for any fingerprints?

23 A No, I did not.

24 Q You sent them on to the lab for whatever
25 forensic tests, including fingerprint analysis, that

1 the case agent might request?

2 A I didn't send those to the lab.

3 Q You didn't handle the bags?

4 A No.

5 Q Okay. Will let me rephrase? Whatever it
6 was that you did send, you did not, did you say, for
7 fingerprints or conduct any forensic tests?

8 A No. All I did was collect it and deliver
9 it.

10 Q Requests for those tests were transmitted
11 by way of form through the case agent?

12 A Yes.

13 Q All right.

14 A Now, I might have completed the forms, but
15 whatever was put on them was at the instruction of
16 those agents.

17 Q And those items went to various sections of
18 the SBI, they went to different sections, didn't
19 they?

20 A Yes.

21 Q Now, did you ever handle anything that was
22 taken from a 1992 Lexus which is the subject matter
23 of this case?

24 A Not to my knowledge. I didn't go to a
25 Lexus and get anything myself, no.

1 Q You do not know who handled or how it was
2 handled, any of the items that you took custody of,
3 do you, before you got --

4 A I wasn't present, no.

5 Q Well, now, --

6 MR. BOWEN: That's all, thank
7 you.

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

10 MR. BRITT: No, sir, I don't have
11 any other questions.

12 THE COURT: May Ms. Sweatt be
13 released, folks?

14 MR. BOWEN: Excuse me, sir, I'm
15 hearing something I did not hear before,
16 excuse me.

17 MR. BOWEN: Your Honor, I didn't
18 hear something from my client. Would you
19 allow me for a few more questions?

20 THE COURT: Yes, sir.

21 BY MR. BOWEN:

22 Q Agent Sweatt, you said that State's 59-A
23 when you received it was empty, is that correct?

24 A To my knowledge.

25 Q Empty of bullets?

1 A Yes, to my knowledge.

2 Q You never received any -- bullets that had
3 come out of that gun to your knowledge?

4 A There are bullets also in that plastic bag.

5 Q How many?

6 A Let me check my notes. Six live bullets.

7 Q Six live bullets. Were there any other
8 bullets that you transmitted or received?

9 A The spent bullet that I got from Stewart
10 McFadder and a shell casing --

11 Q I'll clarify. Any other live rounds other
12 than those six?

13 A No.

14 Q Did you identify the names and the brands
15 of those six rounds that you did get, that is, the
16 live rounds?

17 A No, I didn't, no.

18 MR. BOWEN: That's all, Your
19 Honor.

20 THE COURT: Mr. Britt?

21 MR. BRITT: Yes, sir, just a
22 couple of questions.

23 REDIRECT EXAMINATION

24 BY MR. BRITT:

25 Q Ms. Sweatt, Mr. Bowen asked you about a

1 report that you had -- an activity report that you
2 had made on August the 17th of 1993?

3 A Yes.

4 Q Involving a crime scene off of McKay Drive,
5 Spring Lake, North Carolina?

6 A Yes.

7 Q What do the words "crime scene" mean?

8 A A crime scene is where something illegal
9 has taken place.

10 Q Now, for what purpose did you go to this
11 area off of McKay Drive in Spring Lake, North
12 Carolina?

13 A To retrieve golf bags that were reportedly
14 stolen from James Jordan's vehicle.

15 MR. BRITT: I don't have any
16 other questions.

17 THE COURT: Anything further,
18 folks?

19 RE-CROSS EXAMINATION

20 BY MR. BOWEN:

21 Q No one was in possession of those bags when
22 you got there other than police officers?

23 A Nobody was in possession of them, we went
24 to look for them.

25 Q So you had no crime to charge, did you?

MARRS

1 A I didn't.

2 MR. BOWEN: That's all.

3 THE COURT: Anything further,
4 folks?

5 Thank you, Ms. Sweatt, you're free to
6 go.

7 MR. BRITT: Your Honor, at this
8 time we call Special Agent Ron Marris.

9 THE COURT: Okay.

10 THE COURT: If you'll come up and
11 be sworn, please, sir.

12 RONALD MARRS,
13 being first duly sworn was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 THE COURT: State your full name,
17 please, sir.

18 THE WITNESS: Ronald Marris,
19 M-A-R-R-S.

20 THE COURT: Thank you.
21 Mr. Britt.

22 BY MR. BRITT:

23 Q By whom are you employed?

24 A Employed by the North Carolina State Bureau
25 of Investigation.

1 Q And in what capacity do you work for the
2 SBI?

3 A I'm employed as a senior firearms and tool
4 marks examiner, I'm a special agent assigned to the
5 crime lab in Raleigh.

6 Q How long have you been employed by the
7 State Bureau of Investigation and how long have you
8 been assigned to the firearms and tool marks section
9 of the laboratory?

10 A I've been a Special Agent for the last 21
11 years. I've been in the firearms and tool marks
12 section for the last ten years.

13 Q What is meant by firearms and tool marks
14 examinations?

15 A Firearms and tool marks identification,
16 firearms identification is a discipline of forensic
17 science that deals with the examination of bullets,
18 cartridge cases, shotgun shells, in an attempt to
19 determine if they were fired in or from a particular
20 weapon. Tool mark identification deals with
21 examining tool marks left at crime scene, and
22 attempting to determine if they were made by a
23 particular tool.

24 Q Firearms identification, what makes such an
25 identification possible?

1 A There are two types of identification that
2 we look at. Identifying a bullet to a specific,
3 particular gun, also identifying cartridge cases.
4 For bullets, a firearms examiner looks for two
5 criteria in order to determine if it was fired from a
6 particular gun. The first of these criteria is
7 called class characteristics. Class characteristics
8 are those characteristics that limit something to a
9 group or set of items.

10 If someone was asked to describe a car and
11 they said it was a white Chevrolet, that would limit
12 it to all white Chevrolets. But if they said it was
13 a white four-door Bel Aire Chevrolet from model 1959,
14 that limits that group to a smaller group, and that's
15 what class characteristics are. And bullets, what
16 the class characteristics that we are interested in
17 are those that are found in the barrel of the
18 firearm.

19 If you look down the muzzle of the barrel
20 of a firearm, on the inner circumference you would
21 see what look like small hills and valleys. These
22 are called, in firearms terminology, lands and
23 grooves. There are always the same number of lands
24 as there are grooves in the barrel of a firearm. The
25 number of lands and grooves is determined by the

1 manufacturer of that firearm before it is made.

2 Most Smith & Wesson weapons have five lands
3 and grooves. Most Colt weapons have six lands and
4 grooves. If you held that barrel up to the light and
5 looked through it, you would see that the lands and
6 grooves would twist, either twist to the right or
7 twist to the left inside the barrel. This is another
8 class characteristic.

9 So when a bullet is fired, the bullet being
10 either soft lead or copper jacketed, is softer than
11 the hard barrel of the steel barrel of the firearm.
12 And the bullet expands slightly in the barrel, and as
13 it goes through the barrel it picks up these
14 impressions. The twisting part of the barrel is to
15 impart spin on the bullet as it leaves the barrel.
16 Kind of like a quarterback throwing the football,
17 when he spins the football, it flies farther and
18 straighter. That's the purpose of the lands and
19 grooves in the barrel. They grab the bullet and put
20 spin on it as it leaves the barrel, so the bullet
21 flies farther and straighter.

22 But the bullet being softer than this
23 barrel, it picks up those lands and grooves on its
24 side, what we call the bearing surface. So it
25 gets -- if I get an evidence bullet, if I can examine

1 it under a microscope, I can determine how many lands
2 and grooves it has and whether these lands and
3 grooves lean to the right or lean to the left, I can
4 determine what the twist of that barrel of that
5 bullet was fired from.

6 Next I would put that bullet under a
7 microscope and measure the width of the lands and
8 grooves. This is another class characteristic, how
9 wide are these lands and grooves, and I measure them
10 to about a thousandth of an inch.

11 So the class characteristics of a bullet
12 would be its caliber, how many lands and grooves it
13 has, what was the twist of that barrel it was fired
14 from, and how wide were those lands and grooves. So
15 if I have an evidence bullet and it has a particular
16 amount of lands and grooves and has a particular
17 twist and it has a width of lands and grooves of a
18 certain amount, and I compare it to bullets that I
19 have fired from a test gun or an evidence gun, and
20 those bullets have the same class characteristics,
21 the same caliber, the same number of lands and
22 grooves, the same twist, the same width of those
23 lands and grooves, I could say at that point that
24 that bullet could have been fired from that gun or
25 could have been fired from any other gun that had

1 those same class characteristics.

2 So we next look for the next criteria, and
3 this is called individual characteristics. These are
4 characteristics that are unique only to the firearm
5 that gun was fired from. When the bullet was fired
6 and it goes into the barrel and comes in contact with
7 the structure in the barrel, the way the machinist
8 had cut the lands and grooves in the barrel of the
9 gun leaves imperfections in the barrel. These
10 imperfections would be very tiny pits, burrs,
11 scratches. Then when the bullet comes in contact
12 with these imperfections, it gets scratched. And we
13 call these striations. And these striations may
14 reproduce on bullet to bullet that are fired through
15 the same barrel of the gun.

16 So the next thing a firearms examiner will
17 do is fire bullets, put them under a microscope, what
18 we call a comparison microscope. A comparison
19 microscope is actually two microscopes that are
20 connected by one optical bridge. What that allows me
21 to do, put one bullet on one stage, another on
22 another stage, and looking through a pair of
23 microscopic lenses, I see these two bullets side by
24 side. And by shining the light across these bullets,
25 it highlights those scratches, those striations. I

1 can rotate these bullets until I can align these
2 striations.

3 First I look at my test bullets that I
4 fired from the gun. Do my tests bullets have these
5 striations on them? Can I match my test bullets to
6 each other? That's the first thing I look for. If I
7 can't, then I take the test bullet and compare it to
8 the evidence bullet. If there are sufficient number
9 of matching striations between the test bullet and my
10 evidence bullet, I can say at that point that that
11 bullet was fired from that gun and no other gun.

12 And cartridge cases work in a similar
13 fashion. A cartridge consists of a bullet, a
14 cartridge case, gun powder inside the cartridge case,
15 and for center fire cartridges, which is what we're
16 talking about today, there is a primer, a metal cap
17 in the base of the cartridge case. That metal cap
18 contains an impact sensitive compound. So when it's
19 struck with force by the firing pin, it emits a
20 flame. This flame ignites the gunpowder inside the
21 cartridge case. This gunpowder burns very, very
22 fast. And as it does so, it builds up gas pressure
23 inside the cartridge case. The bullet, being the
24 point of least resistance in that cartridge case, is
25 forced out of the cartridge case, down the barrel,

1 and out of the gun. But that gas pressure is in all
2 directions, so the cartridge case expands inside what
3 is called a chamber, and is pushed back against an
4 area of the firearm called the breech face.

5 During the machining and process of the
6 making of that gun, that breech face is finished, a
7 machine -- it's ground or broached or filed and in
8 some way it leaves machine marks on the breech face.
9 And these marks may be impressed onto the base of
10 that primer and onto the base of that casing. So I
11 examine test cartridges I fire in the gun and see if
12 they have these marks on them. I also look for marks
13 that may be inside the firing pin itself,
14 imperfections within the firing pin that may leave
15 marks inside the firing pin.

16 If I have marks that I can match them to
17 each other on my test cases, then I can compare them
18 to the evidence cases. If I have a sufficient number
19 of impressions or individual marks on my cartridge
20 cases when compared to the evidence, I can say that
21 that cartridge case was fired in that gun.

22 Q And what training or education or
23 experience do you have in the area of firearms
24 identification?

25 A There is no college course that teaches one

1 to be a firearms and tool mark examiner, so when I
2 entered the firearms section ten years ago, I
3 underwent training under a senior firearms examiner
4 at that time. This training including forensic
5 identification which I told you dealing with looking
6 at bullets and cartridge cases and shotgun shells,
7 dealt with gun function, how the guns function, how
8 may they malfunction. Part of this training was by
9 visiting gun manufacturing facilities on the East
10 Coast, there talking to designers, talking to the
11 machinists who actually made the weapon, talking to
12 the people who put the weapons together and tested
13 them to determine if they functioned properly.

14 I also went to armorers courses, which are
15 courses put on by gun manufacturers where you learn
16 how to repair their weapons and in doing so, you
17 learn how their guns may malfunction. Those courses
18 that I went to, Smith & Wesson, Ruger, Glock,
19 Sig-Sauer, Colt, Remington, and some other gun
20 companies where I went to their armorers courses and
21 learned how to repair their guns.

22 I received training in ammunition,
23 ammunition components, how to identify ammunition,
24 received training in gunshot and primer residue as it
25 pertains to the distance the muzzle of a firearm was

1 from an object at the time it was fired. Part of
2 that training was received at the Federal Bureau of
3 Investigation in Quantico, Virginia. I received
4 training in tool mark and tool mark identification,
5 received training in restoring the obliterated serial
6 numbers that someone has obliterated the serial
7 number on the firearm, how to attempt to restore
8 that. I received training in writing my reports, and
9 testifying in court.

10 Q And have you previously testified as an
11 expert in court as a forensic firearms identification
12 expert?

13 A Yes, sir. I've testified in state and
14 federal courts as a forensic firearms and tool mark
15 expert.

16 MR. BRITT: Your Honor, at this
17 time I tender Mr. Marrs and an expert in
18 the area of forensic firearms
19 identification.

20 THE COURT: Witness may so
21 testify without objection.

22 MR. BRITT: May I approach the
23 witness?

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 59, ask you to examine that
3 and tell me if you can identify it?

4 A It's a large clear plastic bag containing a
5 firearm. The marks have been worn off the outside of
6 the bag, any markings that I placed on it.

7 Q Let me ask you to remove the contents of
8 State's Exhibit Number 59, ask you to examine State's
9 Exhibit 59-A and tell me if you can identify it?

10 A Yes, sir, I can.

11 Q How are you able to identify State's
12 Exhibit 59-A?

13 A I can identify it by a tag, white tag,
14 which I placed on the trigger guard which has the
15 item number assigned to it when it was received by
16 me, the laboratory case number which was assigned to
17 the case when it came into the laboratory, the date I
18 received it, my initials. I can also identify it by
19 the serial number which I have recorded in my report
20 and which is found in several areas of this firearm.

21 Q How many areas of that firearm is the
22 serial number recorded?

23 A It's recorded in five different locations,
24 three of the locations I was able to read the number.

25 Q And what three areas were you able to read

1 the number?

2 A There's a number recorded underneath the
3 barrel on the inside of what is called the extractor
4 star, and on I believe the right side of the grip
5 handle when the grip handles were removed.

6 Q What if any serial number appears?

7 A The serial number is V as in Victor,
8 83470. Yes, V, Victor, 83470.

9 Q And on what date did you receive State's
10 Exhibit 59-A?

11 A I received it on the 21st of August of 1993
12 from Special Agent Jerry Richardson of the latent
13 evidence section of the SBI crime lab.

14 Q At the time you received State's Exhibit
15 59-A was it packaged in any container?

16 A It was in this large clear plastic bag.

17 Q And did it have any markings on it or any
18 tags on it at the time that you received it?

19 A Yes, it had a white tag on it when I
20 received it, which I removed to facilitate me firing
21 the weapon.

22 THE COURT: Mr. Marrs, are there
23 other numbers on State's Exhibit 59-A other
24 than the numbers that you have indicated
25 sir?

1 THE WITNESS: Yes, sir, there
2 are.

3 MR. BRITT: I was going to that.

4 THE COURT: Okay.

5 (State's Exhibit 59-C was
6 marked for identification.)

7 BY MR. BRITT:

8 Q For the record, Mr. Marrs, let me show you
9 what I have now marked as State's Exhibit 59-C. It's
10 a white marker with certain handwritten markings on
11 it.

12 A Yes, sir.

13 Q Is that the white tag that was removed from
14 the larger plastic bag marked as State's Exhibit 59?

15 A Yes, sir, it's the -- it's the white tag
16 which had been placed on the trigger guard, and I cut
17 off and removed so I could fire the weapon.

18 Q And State's Exhibit 59-A, is it in
19 substantially the same condition today as it was when
20 you first received it back on August 24th of 1993?

21 A Yes, sir, it is, other than the tag which I
22 placed on the trigger guard.

23 Q What if any other number markings appear on
24 State's Exhibit 59-A?

25 A It has on the barrel, there's some

1 markings. There's the letter 38 S&W, CTG, which
2 stands for "cartridge" and then in italics is
3 "special." Also on that same side, very light
4 markings, someone has -- looks like some markings
5 through it with the numbers .38, then 767 in
6 parentheses -- excuse me, with quotation marks before
7 and after that, and then 3.5 tons.

8 Q What if anything did those numbers refer
9 to?

10 A These were markings that were placed on the
11 barrel at the time the barrel was placed on. They
12 are called proof markings, and they are by the --
13 this is a gun that was made around 1942, 1943. The V
14 stands for Victory model, which was a model made by
15 Smith & Wesson during World War II. Some of these
16 were made in .38 Specials, some in special cartridge
17 38200. Those were shipped to England to use by the
18 Britain commonwealth. Some of those guns were
19 rebarreled by .38 Special in England.

20 This gun was by a Cotswold & Harrison
21 Limited in London. There's a name inscribed on the
22 side. This gun had been rebarreled at .38 Special.
23 So they mark -- these proof marks are used when they
24 test the weapon, they fire heavier loads than are
25 meant to be fired in the weapon to determine that it

1 can handle the normal loads, and these are proof
2 loads that they fire. Then they stamp those markings
3 on the side of the barrel.

4 Q And the numbers that appear on the side of
5 the barrel, 38767, that is a proof test number?

6 A I believe so, yes, sir.

7 Q That is not a serial number?

8 A No, it is not.

9 Q Now, you say that you are able to visibly
10 locate the serial number on this gun in three
11 location?

12 A Yes, sir, I was able to locate it under the
13 barrel, on the extractor star, and on the right
14 inside of the grip. If you take the grip off, the
15 metal, it's stamped there.

16 Q The serial number in the area of the grip
17 is actually beneath the wooden portion?

18 A That's correct, and there's a serial number
19 on the butt also, and also another on the yolk. Some
20 of those numbers were partially visible but not
21 completely visible.

22 Q And at the time you received State's
23 Exhibit 59-A, did you perform any tests or any
24 examination upon the revolver to determine if it was
25 in working condition?

1 A Yes, sir, I did.

2 Q What if any test or examination did you do
3 to determine if it was in working condition?

4 A I examined the gun, and we did our standard
5 operating procedure on all weapons that we receive.
6 I examined the weapon, I determined if it cocked and
7 fired. This gun fires in two different modes, two
8 different methods. One is called a single action,
9 and the other is called double action.

10 Single action is the method whereby the
11 hammer is manually cocked, and then the trigger,
12 there's a spring, a release spring in the butt, and
13 that -- when the hammer is pulled back, it compresses
14 that spring, and the hammer is then caught by what is
15 called the seer. The hammer being held back by the
16 seer. Under spring tension, when the trigger is
17 pulled, it removes the seer and allows the hammer
18 under spring tension to fly forward. That's called
19 the single action mode, when it has to be manually
20 cocked.

21 This gun has what is called a trigger pull,
22 which is the amount of pressure it takes to pull the
23 gun off of seer, of single action greater than five
24 pounds or less than six pounds. And we measure that
25 by what's call a hanging weight method with a bar

1 with weights attached to it, and we hang it from the
2 trigger. At five pounds, the gun would never fire.
3 At six pounds it would always be fired in the single
4 action mode.

5 The next method of firing the gun is called
6 double action. By simply pulling the trigger, the
7 internal mechanism moves the hammer to the rear until
8 it reaches a point until it falls from the seer and
9 flies forward. Double action greater than 13 and a
10 half pounds but less than or equal to 14 and a half
11 pounds. I fired the gun in a shoot tank and also at
12 a range, and it functioned properly.

13 Q What is a shoot tank?

14 A We have in our laboratory a method of
15 recovering fired bullets. What it is is a tank
16 that's two foot square, ten feet deep, with water in
17 it. We lower a basket down into the water with --
18 basket has holes in it. Lower the lid, fire guns
19 into the tank, then raise the basket up and recover
20 the bullets that we fire. That way we can have our
21 test bullets to compare to evidence.

22 Q At the time you fire a weapon into the
23 shoot tank, are there any projectiles in the basket
24 or in the shoot tank?

25 A No.

1 Q When you received this gun on August the
2 24th of 1993, do you recall whether it was loaded or
3 unloaded at the time?

4 A It was not loaded.

5 Q Were there any bullets that accompanied the
6 gun when you received it on August the 24th, 1993?

7 A Yes, there were.

8 Q I'll hand you what's been marked as State's
9 Exhibit Number 59-B, ask you to open that and remove
10 the contents and tell me if you can identify the
11 contents of State's Exhibit 59-B.

12 A Yes, sir, I can.

13 Q How are you able to identify the contents
14 of the plastic bag marked as State's Exhibit 59-B?

15 A Well, there are six smaller plastic bags.
16 Each of these bags has markings which I placed on the
17 outside of them with the item number, the laboratory
18 case number, the date, and my initials. And also
19 inside of each of these bags was one caliber .38
20 Smith & Wesson, that is a caliber designation,
21 cartridge. And the cartridge is a -- means a
22 non-spent round or a live round. And I've also
23 marked each of those bullet cartridges with my
24 markings.

25 Q And each of the rounds that were contained

1 inside of State's Exhibit 59-A, do they appear to be
2 in substantially the same condition they were in as
3 you found them on August 24th, 1993?

4 A Yes. These were Remington brand .38 Smith
5 & Wesson cartridges. These were not reloaded rounds
6 but factory ammunition.

7 Q What is a reload?

8 A A reload or a remanufactured cartridge is a
9 cartridge that has -- where a cartridge case has been
10 previously used, and by removing the fired primer,
11 adding a new primer, adding gunpowder and a new
12 bullet, you have a new cartridge, or a reloaded or a
13 remanufactured cartridge.

14 Q At the time you received State's Exhibit
15 59, 59-A, 59-B, and the tag that's been marked as
16 State's Exhibit 59-C, did you also receive any
17 projectile to conduct any type of analysis in
18 comparison with the .38 caliber revolver?

19 A Yes, I had received a projectile earlier
20 before I had -- from the -- before I received the gun
21 and the ammunition components from Special Agent
22 Richardson, I had received some evidence previously.

23 Q Let me hand you what's been marked as
24 State's Exhibit 41, ask you to examine that large
25 manila envelope and tell me if you can identify it.

1 A Yes, sir, I can.

2 Q How are you able to identify State's
3 Exhibit Number 41?

4 A I have -- it's got my item number which I
5 assigned to this item, my date, and my initials on
6 the outside.

7 Q Is there any laboratory report -- any
8 laboratory number that was assigned to State's
9 Exhibit Number 41 and the contents?

10 A Yes, sir, there is.

11 Q What if any lab number was assigned to
12 State's Exhibit 41 and its contents?

13 A R 93, which stands for Raleigh, 1993,
14 16441, which would have been the sixteen thousand
15 four hundred forty-first case we received that year
16 in 1993.

17 Q And at the time you received State's
18 Exhibit Number 41, in what condition was that
19 envelope?

20 A It was sealed.

21 Q And at some point after -- strike that.
22 Upon receiving State's Exhibit Number 41, what if
23 anything did you do with the envelope and its
24 contents?

25 A Well, I marked my number, initials and

1 date, and my item number. Then I opened the manila
2 envelope to examine the contents of the inside.

3 MR. BRITT: If the record will
4 reflect, I'm removing the contents of
5 State's Exhibit Number 41.

6 BY MR. BRITT:

7 Q Mr. Marrs, let me show you what's been
8 marked as State's Exhibit Number 41-A. Can you
9 identify State's Exhibit Number 41-A?

10 A Yes, sir, I can.

11 Q How are you able to identify State's
12 Exhibit Number 41-A?

13 A It's a medium sized manila bag -- clear
14 plastic bag, excuse me. Has my markings, a
15 laboratory case number, the date I read it, and my
16 initials.

17 Q The laboratory case number that appears on
18 State's Exhibit 41-A, is that the same laboratory
19 case number that appears on the large manila envelope
20 marked as State's Exhibit Number 41?

21 A No, sir, it is not.

22 Q What number appears on State's Exhibit
23 41-A?

24 A The number that appears on State's Exhibit
25 41-A is R 9316453.

1 Q At the time you opened State's Exhibit
2 Number 41 on August the 19th of 1993, what if
3 anything did you remove from inside of it?

4 A I removed from inside of State's Exhibit 41
5 a clear plastic bag marked SLED, which is South
6 Carolina Law Enforcement, and inside that clear
7 plastic bag was a red plastic vial with a lid.
8 Inside that was a fired bullet.

9 Q Looking at State's Exhibit 41-A that's in
10 front of you, based on your observation of the
11 projectile contained in it, what type of projectile
12 is that?

13 A This is a caliber .32 fired lead round nose
14 bullet.

15 Q I'll show you what has been marked as
16 State's Exhibit 42. Ask you to look at that and tell
17 me if you can identify it?

18 A Yes, sir, I can.

19 Q How are you able to identify State's
20 Exhibit Number 42?

21 A This is a padded mailing envelope or padded
22 envelope which I had sealed and placed the laboratory
23 case number and my initials on the front.

24 Q What number did you place on the front of
25 the envelope marked as State's Exhibit Number 42?

1 A It's R 9316453.

2 Q And what if anything had you placed inside
3 of State's Exhibit Number 42 at the time it was
4 sealed?

5 A State's Exhibit 42, I placed it inside the
6 sealed container for State's Exhibit 41-A and then I
7 sealed this package.

8 Q And the laboratory number that appears on
9 the outside of State's Exhibit Number 42, is that the
10 same lab number that appears on the plastic bag
11 marked as State's Exhibit 41-A containing the .32
12 caliber projectile?

13 A Yes, sir, it is. They both have R
14 9316453.

15 MR. BRITT: If the record will
16 reflect, I'm going to remove the contents
17 of State's Exhibit Number 42.

18 THE COURT: Yes, sir.

19 BY MR. BRITT:

20 Q Let me show you what's been marked as
21 State's Exhibit Number 42-A and ask if you can
22 identify it?

23 A Yes, sir, I can.

24 Q How are you able to identify State's
25 Exhibit 42-A?

1 A This is the South Carolina Law Enforcement
2 Division clear plastic bag which I placed my item
3 number, laboratory case number, date I received, my
4 initials, and contains a red plastic vial with a lid
5 which also has my markings on it.

6 Q What if any laboratory number appears on
7 it?

8 A R93 16441.

9 Q Is that the same laboratory number that
10 appears on the larger manila envelope marked as
11 State's Exhibit 41?

12 A Yes, sir, it is.

13 Q On State's Exhibit Number 41, do you see
14 markings ABT 7-7-94?

15 A Yes, sir, I do.

16 Q Do you also see markings HR 7-7-94 on
17 State's Exhibit 41?

18 A Yes, sir, I see some initials that appear
19 to be HR 7-7-94.

20 Q Do you see markings that read, opened by
21 K.H. on 7-7-94 at 12:35 p.m.?

22 A Yes, sir, I do.

23 Q Do you also see, reopened by K.H. on 7-7-94
24 at 7: 52 p.m.?

25 A Yes, sir, I do.

1 Q On State's Exhibit 42-A, are there markings
2 that appear, resealed on 7-7-94 at 12:39 p.m.?

3 A Yes, sir.

4 Q And markings that read, resealed 7-7-94 at
5 8:20 p.m. --

6 A 8:00 p.m.

7 Q Do you also see markings A B T 7-7-94 an
8 State's Exhibit 42-A?

9 A Yes, sir.

10 Q An markings that appear opened by K.H. on
11 7-7-94 at 12:30 six p.m.?

12 A Yes, sir.

13 Q Also see marking that appear to be a W J B,
14 7-7-94?

15 A Yes, sir.

16 Q On State's Exhibit 41-A, envelope
17 containing the .32 caliber projectile, do you see any
18 markings reflecting a 7-7-94 date?

19 A No, sir, none.

20 Q And on State's Exhibit Number 42, the
21 mailing envelope that has your initials and the lab
22 number R 9316453, do you see any markings or does it
23 contain any markings of 7-7-94?

24 A No, sir, it does not.

25 Q You conducted analysis and a comparison of

1 State's Exhibit number 42-A -- excuse me. Strike
2 that. Show you what's been marked as State's Exhibit
3 Number 42 B, ask you to look at that and tell me if
4 you can identify that?

5 A Yes, sir, this is a red plastic vial with a
6 lid. Also has my markings, the lab number R93 16441,
7 date and initials.

8 Q And that laboratory number is the same
9 number that appears on the outside of State's Exhibit
10 Number 41, is that correct?

11 A Yes, sir.

12 Q What if anything was contained inside of
13 State's Exhibit 42-B when you received it?

14 A Inside of State's Exhibit 42-B is a caliber
15 38 or 357 fired lead round nose bullet. This is a
16 cast bullet or a hand made bullet.

17 Q How are you able to say it's a cast or hand
18 made bullet?

19 A By examining it under a microscope. Cast
20 bullets are made in a lead mold, and this mold is
21 actually two parts that come together and then lead
22 is poured down into the center of it. If you examine
23 this under a microscope, you can see die marks where
24 these two sides come together. It's a slight crease
25 and that allows some of that lead to go into the

1 crease, very small amount. But that's visible on
2 this bullet.

3 Q After you performed any examination and
4 comparison between the bullet and the .38 caliber
5 revolver that's marked as State's Exhibit 59-A, what
6 if anything did you do with the bullet at the
7 conclusion of your examination?

8 A At the conclusion of my examination, it was
9 placed back in the red vial, lid was placed on it, it
10 was sealed. It was placed back inside State's
11 Exhibit 42-A, the envelope, which was then sealed and
12 marked by me, and placed back inside State's Exhibit
13 41, and then this was sealed, and I placed my initial
14 over the seal.

15 Q And what was done with State's Exhibit
16 Number 59-A after you completed your examination and
17 comparisons?

18 A After I completed my examination and
19 comparisons, I placed this tag on the trigger guard,
20 placed it inside the clear plastic bag and sealed the
21 bag.

22 Q Mr. Marrs, if you will, what if any
23 examination and comparison did you do in connection
24 with the .38 caliber Smith & Wesson revolver that's
25 been marked as State's Exhibit 59-A and the .38

1 caliber projectile that's contained inside of State's
2 Exhibit 42-B?

3 A Yes, sir. I compared test bullets which I
4 fired and -- which included factory ammunition, it
5 also included lead bullets which I cast and made and
6 fired through State's Exhibit -- reloaded these
7 bullets in some cartridge cases and fired them
8 through State's Exhibit 59-A.

9 Q For what purpose did you do that?

10 A In an attempt to determine if I could reach
11 a determination if State's Exhibit 42-A --

12 Q 42-B?

13 A -- 42-B had been fired from State's Exhibit
14 59-A.

15 Q And in trying to make that comparison, in
16 doing that comparison, the analysis, did you compare
17 the bullet contained inside of State's Exhibit 42-B
18 with any of the bullets that you fired there in the
19 laboratory?

20 A Yes, sir, I did.

21 Q What mechanism did you use to compare the
22 bullets?

23 A I used the comparison microscope that we
24 mentioned earlier.

25 Q As a result -- strike that. Were you able

1 to determine the twist and lands and grooves
2 contained inside of State's Exhibit 59-A?

3 A Yes, State's Exhibit 59-A has class
4 characteristics had five lands and grooves with a
5 right-hand twist.

6 Q And the bullet contained inside of State's
7 Exhibit 42-B, were you able to identify any lands and
8 grooves on it?

9 A Yes. There was what I would call --

10 Q -- or markings, let me put it that way.

11 A The examination of this bullet revealed it
12 was slightly undersized. The bore of a .38 caliber
13 revolver has a diameter of .357, which is -- they
14 call it 38 but actually the bore diameter is .357
15 inches. The bullet that was in State's Exhibit 42-B
16 had a diameter that was about .354 inches, slightly
17 undersized. It exhibited what I would call gas
18 melting. And that's when the bullet did not expand
19 completely to fill up the lands and grooves, and some
20 of the hot gasses were allowed to travel along to the
21 sides of the bullet, and it melted some of the
22 surface near the base of the bullet.

23 Also, because it was undersized, it did not
24 grab the lands and grooves of the gun it was fired
25 from cleanly, and there is evidence that the bullet

1 slipped as it went down the barrel, which is bullet
2 slippage. Still, I was able to determine that the --
3 by examining the lands and grooves that were present
4 at the base or at the nose, that it had lands and
5 grooves on the bullet that -- five lands and grooves
6 with a right-hand twist, and that the width of the
7 lands and grooves was consistent with the width of
8 the lands and grooves from the bullets I fired from
9 State's Exhibit 59-A.

10 Q The test bullets that were fired and used
11 in comparing with the bullet contained inside State's
12 Exhibit 42-B, what if any markings were present on
13 those bullets after firing it from State's Exhibit
14 59-A?

15 A The factory ammunition I fired, which was
16 caliber .38 Special lead round nose bullets,
17 exhibited five lands and grooves with a right-hand
18 twist, with little or no slippage and little or no
19 gas melting.

20 The bullets which I made myself, and I made
21 them -- when I made them, I sized them to be slightly
22 undersized of the barrel, they also, the cast bullets
23 that I fired also exhibited the gas melting around
24 the base of the bullet, and the slippage that was
25 present on State's Exhibit 42 -- bullet inside

1 State's Exhibit 42-B.

2 Q And the gas melting and slippage that you
3 found on the bullets that you cast and made in the
4 laboratory, was it similar in nature to the gas
5 melting and slippage that you had observed on the
6 bullet contained inside of State's Exhibit 42-B?

7 A Yes, sir, it was.

8 Q Did you do any other comparison with this
9 gun as it related to bullets that were used?

10 A I examined it to the factory ammunition I
11 fired and all the test bullets that I fired and the
12 evidence bullets and State's Exhibit 42-B had some
13 visible striations on it. And I compared those
14 striations to the striations I found on my test
15 bullets, and there was some strong similarities but I
16 could not reach a positive -- or a conclusive
17 determination that the bullet in State's Exhibit 42-B
18 had been fired from State's Exhibit 59-A.

19 Q What if any effect does the age of a
20 particular weapon have on the striations that are
21 left on bullet fired from it?

22 A It could have various -- it could have a
23 number of different possibilities. Because of the
24 age, there could be more use and abuse and wear, and
25 could actually be more markings on the bullet. Or it

1 could have been shot a lot of times and the barrel
2 has been what is referred sometimes as shot out,
3 where the riffling is very narrow, and you get fewer
4 markings. So I was able to match my factory
5 ammunition which I fired in these to each other, but
6 I could not match my test bullets that I made myself,
7 the lead bullets which I poured and cast, I could not
8 match them to each other. And State's Exhibit 42-B
9 was a similar type cast bullet and could not match it
10 to test bullets.

11 Q The bullet contained insigned of 42-B, are
12 you able to say if that is a factory loaded bullet or
13 is that a reload?

14 A It's the type of bullet that would be used
15 in reloads. Factory ammunition that you get from
16 Remmington, Federal, Winchester, the like, do not use
17 cast bullets, they use what are called swaged
18 bullets. That is where a lead wire is force through
19 an opening to give you the size of the bullet that
20 they need.

21 Q Let me show you what's been marked as
22 State's Exhibit Number 24, and ask you if you can
23 identify that?

24 A Yes, sir, I can.

25 Q And how are you able to identify State's

1 Exhibit Number 24?

2 A It has my item number, the laboratory case
3 number, R 9316441, date I received it, my initials on
4 the outside of the small manila envelope.

5 Q What if any -- strike that. At the time
6 you received State's Exhibit 24, in what condition
7 was that envelope?

8 A It was sealed, and I opened it.

9 Q And as it appears today in court, does
10 State's Exhibit Number 24 bear markings "opened
11 7-7-94"?

12 A Yes, opened by K.H. on 7-7-94. Resealed
13 7-7-94 at -- looks like 4:54 p.m., and I believe
14 that's K.H. And then sealed on 7-7-94, 12:34 p.m.,
15 by K.H. Then there's also HR 7-7-94 appearing on the
16 outside of the envelope.

17 Q At the time you received State's Exhibit
18 Number 24, what if anything did you find inside of it
19 when you opened it?

20 A Inside was a fired Winchester caliber .38
21 Special cartridge case.

22 Q And did you do any comparison or
23 examination of the Winchester shell casing that was
24 located in State's Exhibit Number 24 as it related to
25 the .38 caliber Smith & Wesson revolver marked as

1 State's Exhibit 59-A?

2 A Yes, sir, I did.

3 Q What if any comparison or examination did
4 you do?

5 A I compared it to the fired cartridge cases
6 with all the cartridges that I fired in State's
7 Exhibit 59-A, looking for marks on the primer and in
8 the firing pin impression to see if I can determine
9 if it had been fired in State's Exhibit 59-A.

10 Q When a bullet is fired from a revolver of
11 this type, are there marks left on the cartridge
12 casing?

13 A They may be, yes, sir.

14 Q And what if anything can make a mark on the
15 cartridge casing?

16 A The cartridge casing can be marked by, like
17 I said, the firing pin itself, and also the breech
18 face, which is that area of the firearm where the
19 base of the cartridge rests against, and where it has
20 been machined during the manufacturer's process,
21 these marks may be imparted on to the soft primer or
22 on to the base of the cartridge / (.

23 Q In comparing the contents of State's
24 Exhibit Number 24 with the cartridge cases that you
25 fired from State's Exhibit 59-A there in the

1 laboratory, did you do that under comparison
2 microscope as well?

3 A Yes, I examined the cartridge cases which I
4 fired and in comparison with State's Exhibit 24 under
5 a comparison microscope.

6 Q As a result of your examination of the
7 cartridge casing marked as State's Exhibit 24 and the
8 test cases that you had there in the lab, what if any
9 finding did you make?

10 A I determined that this cartridge case had
11 the same class characteristics, firing pin impression
12 and some similar breech face marks but very, very
13 little marks on this cartridge case for me to make a
14 conclusive determination that it had been fired in
15 State's Exhibit 59-A.

16 Q Show you what's been marked as State's
17 Exhibit 50, State's Exhibit 55. Do you recognize
18 that item?

19 A Yes, I do.

20 Q How are you able to recognize State's
21 Exhibit 55?

22 A There are markings which I placed on the
23 outside of the container, 16441, the date I received
24 it, my initials. And inside there's a black film
25 canister, and on the outside of that canister are

1 also my markings.

2 Q What if anything did you find contained in
3 the canister inside of State's Exhibit 55 when you
4 received it?

5 A Inside State's Exhibit 55, inside the
6 canister was a cartridge that had a Winchester .38
7 Special plus P cartridge case and a cast lead round
8 nose bullet, and that bullet was consistent in size,
9 shape, and design with the bullet that was -- is in
10 the container in State's Exhibit 42-B.

11 Q And at this time is State's Exhibit Number
12 55, the plastic bag, in a sealed condition?

13 A Yes, it is.

14 MR. BRITT: Your Honor, with the
15 Court's permission --

16 THE COURT: Yes, sir.

17 MR. BRITT: If the record will
18 show Mr. Marrs has unsealed State's Exhibit
19 Number 55 and has removed the canister from
20 that bag.

21 THE COURT: Yes, sir.

22 BY MR. BRITT:

23 Q If you will, open the canister. For the
24 purposes of the record, I'm going to mark the
25 canister as State's Exhibit 55-A. For the record,

1 what if anything have you removed from inside the
2 canister marked as State's Exhibit 55-A?

3 A There's a clear plastic bag which contains
4 a fired bullet. I fired State's Exhibit K-4 --
5 excuse me, State's Exhibit 55, in State's Exhibit
6 59-A, as an attempt to get test bullet and cartridge
7 case.

8 Q And for the purposes of the record, I'm
9 going to mark the plastic bag that was contained
10 inside of -- the canister marked as State's Exhibit
11 55-A as State's Exhibit 55-B. Handing you what's
12 been marked as State's Exhibit 55-B, Mr. Marrs, can
13 you describe for us what is contained inside of
14 State's Exhibit 55-B?

15 A 55-B has a bullet which was loaded in this
16 cartridge case. I fired this in the laboratory in an
17 attempt to determine, and compare it to State's
18 Exhibit, the bullet in State's Exhibit 42-B. Also
19 examined State's Exhibit 42-B and in comparison with
20 this bullet to determine if they were consistent with
21 each other in design and size and shape.

22 Q And what if any opinion, I mean
23 conclusion -- and conclusion did you come to as
24 related to the bullet contained inside of State's
25 Exhibit 55-B and the bullet contained inside of

1 State's Exhibit 42-A?

2 A The bullet in 55-B is a cast bullet, which
3 means made in a mold, a lead mold, and is similar in
4 design and size with the bullet in 42-B. It has the
5 same number, what we call cannelures. Cannelures are
6 the grooves that go around the bullet. Some of them
7 have narrows in them, some of them are plain. Has a
8 large, thick cannelure that is called a lubrication
9 cannelure where a lubricant, a grease is forced into
10 that cannelure during the process of sizing it. And
11 that's for the purpose of making the bullet load
12 easily in the cartridge case when they are making
13 them, and also in firing -- not leading up the barrel
14 as bad. So this bullet is consistent in size and
15 design and the number of cannelures and the position
16 of cannelures as the bullets in 52-B.

17 Q A after firing the bullet contained inside
18 of State's Exhibit 55-B, did it exhibit the gas
19 melting and slippage that you had observed on the
20 bullet contained inside of State's Exhibit 42-A?

21 A Yes, sir, it did.

22 MR. BRITT: Your Honor, if I may
23 have just a second to collect some things.

24 THE COURT: Yes, sir.

25 BY MR. BRITT:

1 Q After completing your examination and
2 comparisons of the bullets, shell casings, and the
3 Smith & Wesson .32 revolver, what did you do with all
4 those items?

5 A They were repackaged in their original
6 containers, sealed and -- seal marked by me, and then
7 they were turned over to Special Agent Kim Heffney,
8 picked up the evidence on the 17th of September of
9 1993.

10 Q Are all the items that you used in your
11 firearms identification and comparison as related to
12 the .38 caliber revolver marked as State's Exhibit
13 59-A in the same condition today as they were when
14 you completed your examination of those items?

15 A Yes, except for some other extraneous
16 markings on the containers which I did not place
17 there.

18 Q Let me show you what's been marked as
19 State's Exhibit Number 73, ask you to examine that
20 plastic bag and tell me if you can identify it.

21 A Yes, sir, I can.

22 Q How are you able to identify State's
23 Exhibit Number 73?

24 A I can identify it by my item number,
25 laboratory case number, R9316441, the date and my

1 initials.

2 Q And the laboratory report, is there any
3 other lab numbers that appears on State's Exhibit
4 Number 73?

5 A No.

6 Q I'll show you what has been marked as
7 State's Exhibit 73-A and ask if you can identify
8 those?

9 A Yes, sir, I can.

10 Q How are you able to identify State's
11 Exhibit 73-A?

12 A By the markings I placed on the outside of
13 the container, my item numbers, laboratory number R
14 9316441, the date and my initials.

15 Q And on what date did you receive State's
16 Exhibit 73-A -- for the record what is contain inside
17 of State's Exhibit 43-A?

18 A It contains six caliber -- Remington
19 caliber .32 Smith & Wesson cartridges.

20 Q For the record, what if anything is
21 contained inside of State's Exhibit Number 73?

22 A State's Exhibit 73 contains --

23 Q If you'll remove the item from the bag.

24 A State's Exhibit 73 contains an H & R,
25 stands for Harrington & Richardson, model 632 caliber

1 .32 Smith & Wesson long revolver.

2 Q For the record, can you describe the color
3 of the revolver and the handle?

4 A Has a black -- blue barrel, a black matt
5 finish, frame, and plastic, cream colored bone, fake
6 bone handles.

7 Q And what if any -- excuse me. What if any
8 serial number appears on that gun?

9 A It's AY10056.

10 Q Hand you what's been marked as State's
11 Exhibit Number 74 and ask you if you can identify the
12 bag marked as State's Exhibit Number 74 and the
13 contents?

14 A Yes, sir, I can.

15 Q And how are you able to identify State's
16 Exhibit Number 74 and its contents?

17 A The -- I can identify the bag by markings I
18 placed on the outside, which would be item number
19 assigned to it, case number, R9314661, and the date
20 and initials. I can identify the weapon inside.
21 It's an H & R caliber .32 Smith & Wesson revolver,
22 model 732. And I can identify it by the tag which I
23 placed on the trigger guard and by the serial number
24 which I recorded.

25 Q And what if any serial number appears on

1 that .32 caliber pistol?

2 A It's A, Alpha, E, Edward, 18405.

3 Q For the purposes of the record, can you
4 describe the color of that .32 caliber revolver, the
5 frame and the handle?

6 A Yes. It's got a black matt frame, dark
7 matt frame, and black plastic grips or handles.

8 Q Show you what's been marked as State's
9 Exhibit Number 74-A, ask if you can identify that?

10 A Yes, sir, I can.

11 Q How are you able to identify State's
12 Exhibit 74-A?

13 A I can identify it by markings I placed on
14 the outside of the bag, which are my item number,
15 laboratory number R9316441, my date and my initials.
16 Inside is contained six Remington caliber .32 Smith
17 & Wesson cartridges.

18 Q And the six .32 caliber cartridges
19 contained inside of State's Exhibit 74-A, were they
20 loaded into the .32 caliber pistol contained inside
21 of State's Exhibit Number 74?

22 A Not at the time I received them, no.

23 Q From whom did you receive State's Exhibit
24 73, 73-A, 74, and 74-A?

25 A They were submitted by Special Agent Kim

1 Heffney.

2 Q At the time you received State's Exhibits
3 73, 73-A, 74, 74-A, in what condition were those
4 packages?

5 A They were sealed.

6 Q After receiving State's Exhibit 73, 73-A,
7 74, 74-A, did you perform any type of examination or
8 comparison between those weapons and the bullet that
9 you had previously received that was marked as
10 State's Exhibit 41-A?

11 A Yes, sir, I did.

12 Q What if any examination or comparison did
13 you do of the two .32 caliber revolvers that were
14 received as compared with State's Exhibit 41-A, .32
15 caliber projectile?

16 A The two revolvers, State's Exhibit 73 and
17 State's Exhibit 74, I examined them to determine if
18 they functioned properly. Both guns did function
19 properly. The model 632, the one with the bone
20 grips, had a single action trigger pull of greater
21 than six and a half pounds but less than or equal to
22 seven and one half pounds, and double action trigger
23 pull of greater than 15 but less than or equal to 17
24 pounds.

25 The model 732 H & R revolver also

1 functioned properly. It has a single action trigger
2 pull of greater than four pounds, but less than or
3 equal to five pounds, and double action trigger pull
4 of greater than 11 but less than or equal to 12
5 pounds. I then test-fired both of these weapons in
6 our shoot tank, compared the test bullets to each
7 other, from the test bullets I fired from State's
8 Exhibit 73, I compared to each other and determined I
9 couldn't match them to each other. There were a
10 large amount of matching striations.

11 And I compared the test bullets I fired
12 from State's Exhibit 74 to each other and determined
13 I could match them. I then compared the test bullets
14 from State's Exhibit 73 and the test bullets from
15 State's Exhibit 74 against State's Exhibit 41-A, the
16 fired caliber .32 lead round nose bullet, and I
17 determined that the test bullets from State's Exhibit
18 73, the model 632 with the fake bone grips, had fired
19 State's Exhibit 41-A to the exclusion of all other
20 firearms.

21 Q When you say to the exclusion of all other
22 firearms, what do you mean by that?

23 A It was fired in that gun and that gun
24 alone.

25 Q And after you completed your examinations

1 of the two .32 caliber revolvers, what if anything
2 was done with each of those revolvers?

3 A A white tag was placed on the trigger guard
4 by me, they were then resealed within their packages
5 and turned over to Special Agent Kim Heffney on the
6 17th of December of 1993.

7 Q After you made the comparisons between the
8 .32 caliber bullets, excuse me, the .32 caliber
9 revolvers with State's Exhibit 41-A, the .32 caliber
10 lead projectile, what if anything did you do with
11 State's Exhibit 41-A?

12 A I folded the package and placed it inside
13 this sealed -- this envelope, this padded envelope,
14 sealed the envelope.

15 Q And are the .32 caliber revolvers, State's
16 Exhibit 73 and 74 in the same condition today as they
17 were in when you performed your comparison and your
18 analysis on them in the laboratory in Raleigh?

19 A Yes, sir.

20 Q And State's Exhibit Number 41-A, the .32
21 caliber lead projectile, is that envelope sealed at
22 this time?

23 A Yes, sir, it is.

24 Q And --

25 A It's got where I placed my -- the seal,

1 with a clear tape and then wrote my initials over the
2 seal.

3 Q Now, there is a number that appears on
4 State's Exhibit 41-A, R93-16453.

5 A Yes, sir.

6 Q What is that number?

7 A That is a -- a laboratory case number that
8 was assigned to this bullet. It was different than
9 the other case number, pertained to a different
10 situation.

11 Q Does that same number, R93-16453 appear on
12 State's Exhibit 42?

13 A Yes, sir, it does.

14 Q In how many locations?

15 A Two locations.

16 Q And do your initials appear in both of
17 those locations?

18 A That's correct.

19 Q Did you place State's Exhibit 41-A inside
20 of State's Exhibit Number 42 before sealing it?

21 A Yes, sir. I had folded it in order to make
22 it fit better and then placed it inside the envelope.

23 Q State's Exhibit 42-A contains -- do you see
24 markings R9316441?

25 A Yes, sir.

1 Q And do your initials appear by that?

2 A Yes, sir.

3 Q And what if anything did you do with
4 State's Exhibit 42-A after you sealed it and upon
5 completing your examination?

6 A I sealed it, placed the -- sealed the bag
7 and placed it inside the -- the long -- large manila
8 envelope, and then resealed this bag and then signed
9 over where I had opened it.

10 Q And State's Exhibit 41 contains markings of
11 R9316441?

12 A Yes, sir.

13 Q And contains your initials?

14 A That's correct, sir.

15 Q And 9316441 was the laboratory number
16 assigned to the .38 caliber Smith & Wesson revolver
17 and the ammunition used in that examination?

18 A That's correct, sir.

19 Q An 93 CR -- excuse me. R9316453 was the
20 laboratory number assigned to the examination of the
21 .32 caliber revolvers and the ammunition used in that
22 examination?

23 A It was the number assigned to this bullet,
24 and I compared it against the revolvers that were
25 submitted in R9316441.

1 MR. BRITT: If I may have just a
2 second.

3 THE COURT: Yes, sir.

4 BY MR. BRITT:

5 Q Mr. Marrs, as a result of the examinations
6 that were done on the .38 caliber Smith & Wesson
7 revolver and that ammunition, did you file a report
8 in connection with that examination?

9 A Yes, sir, I did.

10 Q And did you also file a report containing
11 your results of the examination that you performed on
12 the .32 caliber revolvers that you received and the
13 .32 caliber spent projectile that was received and
14 marked as State's Exhibit 41-A?

15 A Yes, sir, I did

16 (State's Exhibits 95, 96 were
17 marked for identification.)

18 MR. BRITT: May I approach?

19 THE COURT: Yes, sir.

20 BY MR. BRITT:

21 Q Let me show you what's been marked as
22 State's Exhibit Number 95. Can you identify the
23 document marked as State's Exhibit Number 95?

24 A Yes, sir, I can.

25 Q How are you able to identify State's

1 Exhibit Number 95?

2 A Examined it and compared it to my copy of
3 the report, and it also has my signature, a -- it's a
4 copy of my signature.

5 Q State's Exhibit Number 95, is that a
6 photostatic copy of the laboratory report that you
7 filed in connection with your examination of the .38
8 caliber Smith & Wesson revolver that was marked as
9 State's Exhibit 59-A?

10 A Yes, sir, it is.

11 Q I'll show you what's been marked as State's
12 Exhibit Number 96, and can you identify State's
13 Exhibit Number 96?

14 A Yes, sir, I can.

15 Q How are you able to identify State's
16 Exhibit Number 96?

17 A Comparison with the report I issued in
18 R9316453, it is the same report.

19 Q And State's Exhibit Number 96 is a
20 photostatic copy of the report you filed in
21 connection with your examination of the .32 caliber
22 revolver and spent .32 caliber projectile?

23 A Yes, sir, it is.

24 Q State's Exhibit Number 95, the heading on
25 your report, does it read -- contain the name James

1 Raymond Jordan?

2 A Yes, sir, it does.

3 Q And State's Exhibit Number 96, in the
4 heading does it contain the name Clewis Demory?

5 A Yes, sir, it does.

6 Q State's Exhibit Number 95 is a lab report
7 you filed in connection with the James Jordan
8 homicide case, is that correct?

9 A That's correct.

10 Q And State's Exhibit Number 96 is the
11 laboratory report that you filed in connection with
12 the Clewis Demory robbery and assault case?

13 A Yes, sir, it is.

14 MR. BRITT: Your Honor, I ask
15 that State's Exhibit 95 and 96 be admitted.

16 THE COURT: They are admitted
17 without objection.

18 MR. BRITT: May I be heard on a
19 matter?

20 THE COURT: Yes, sir. Ladies and
21 gentlemen, there's a matter I must take up
22 with counsel at this point. Don't worry or
23 speculate about what takes place in the
24 courtroom in your absence, and if you'll
25 step to the jury room for just a moment,

1 please.

2 (Jury out at 1:03 p.m.)

3 THE COURT: Let the record show
4 the following is being heard in the absence
5 of the jury. Yes, sir, Mr. Britt.

6 MR. BRITT: Your Honor, I note
7 that the time now is a little after 1:00 by
8 the courtroom clock. Taking into
9 consideration that you do not feel well and
10 you have made the --

11 THE COURT: Do I look that bad?

12 MR. BRITT: You do not look well
13 and you've made the statement that you've
14 had trouble holding things down, the next
15 part of Mr. Marrs's examination deals with
16 the clothes that were recovered. The odor
17 associated with these clothes is rather
18 pungent, and I don't want to --

19 THE COURT: I appreciate that,
20 Mr. Britt. Mr. Marrs, am I correct that
21 coming back Monday morning won't pose a
22 significant inconvenience for you, sir?

23 THE WITNESS: None whatsoever.

24 THE COURT: I appreciate that as
25 well. Thank you. I hope you step down

1 before you get this, sir. Thank you.
2 We're going to stop at this point, folks.
3 I appreciate it. Thank you both very
4 much. We'll come back at 9:30 on Monday
5 morning.

6 MR. BRITT: That will be fine.

7 THE COURT: If you'll bring the
8 jury in, please, sir.

9 (Jury in at 1:04 p.m.)

10 THE COURT: Ladies and gentlemen,
11 we're going to stop at this point. We will
12 continue with the presentation of evidence
13 in this case at 9:30 Monday morning.
14 During the extended recess, weekend recess,
15 please recall that it is your duty not to
16 talk about this case with anyone. That
17 includes members of your own families.
18 It's your duty not to allow anyone so say
19 anything to you about this matter.

20 Again, if anyone communicates with you
21 about the matter or attempts to do so, or
22 if anyone says anything about the case in
23 your presence, it's your duty to inform us
24 of that immediately. Don't form or express
25 any opinions about the case, don't have any

1 contact or communication of any kind with
2 any of the attorneys, parties, witnesses,
3 prospective witnesses, or directly with the
4 Court.

5 It's again absolutely important that
6 you avoid any exposure to any media
7 accounts which might exist in connection
8 with this matter. And don't conduct any
9 independent inquiry or investigation or
10 research of any kind. Have a good weekend
11 folks, see you at 9:30 tomorrow morning.
12 Every else please remain seated, the
13 members of the jury are excused.

14 (Jury out at 1:06 p.m.)

15 THE COURT: I appreciate it.
16 Again folks, thank you all for the
17 consideration. If you'll recess us until
18 9:30 Monday.

19 (Court adjourned.)
20
21
22
23
24
25

1 APPEARANCES OF COUNSEL:

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10 and

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14 - - -

15 (February 12, 1996. Proceedings in open court.)

16 THE COURT: Good morning, folks.

17 Let the record reflect all counsel are
18 present, that the defendant is present in
19 open court. All members of the jury are
20 secured in the jury room.

21 Folks, anybody want to put anything in
22 the record as to the reason for the delay
23 this morning?

24 MR. BRITT: Other than to say it
25 should be attributable to the defendant,

1 no, sir.

2 MR. BOWEN: I resist any such
3 thing in the record. There's no evidence
4 of that, I don't even know what happened at
5 this point.

6 THE COURT: Well, let's leave it
7 in this manner, that's the State's
8 contention, we understand your contention
9 is there. There has been a delay, and
10 there's some other matters that we need to
11 address with regard to the jury before we
12 bring the jury in.

13 I received three notes this morning
14 from the jury. First is dated 2-9-96,
15 signed -- strike that. February 12th,
16 1996. Ms. Dial, Juror Number 11, is
17 requesting to be excused from 1:00 to 3:00
18 on Wednesday, February 14th, in order to
19 visit her students and give them Valentines
20 gifts on that date.

21 Ms. Angie Coverdale, Juror Number 6,
22 indicates that she also has a stomach
23 virus, and that's she's going to try to
24 stay with us in court but may need to be
25 excused on a couple of occasions. My

1 response is going to be simply raise your
2 hand if you need to be excused.

3 Last question is from Michael
4 Campbell, Juror Number 8, indicating a
5 friend of his passed away and the funeral
6 service is February 15th, at 3:00, and he's
7 requesting permission to attend that.

8 Folks, as to both Mr. Campbell and
9 Ms. Dial, I don't know what our schedule is
10 going to be in terms of when the State may
11 conclude its evidence, but if it coincides
12 with that, then I have no problem in
13 accommodating that. If it does not
14 coincide with that, then I'm going to have
15 to bite the bullet, because I'm going to
16 get this trial back on track and let these
17 folks know while I certainly appreciate
18 their situations, it's my responsibility to
19 see to it, consistent with the objective of
20 giving both sides a fair trial, to get this
21 trial moving, and I'm simply going to have
22 to deny that request unless it coincides
23 with the conclusion of the State's evidence
24 and our schedule. Anybody want to be heard
25 further as to that?

1 MR. BRITT: No, sir.

2 THE COURT: Mr. Thompson,
3 Mr. Bowen, you folks want to be heard
4 further as to that?

5 MR. BOWEN: No, sir.

6 THE COURT: It's my intent to
7 bring them in, let Ms. Coverdale simply
8 raise her hand to let us know. As to
9 Mr. Campbell and Mr. Dial, as I indicated
10 on the record, unless our schedule happens
11 to coincide with that, I'm sorry, we won't
12 be able to accommodate that. All right?
13 If you'll bring the jury in, please.

14 (Jury in at 10:08 a.m.)

15 THE COURT: Good morning, ladies
16 and gentlemen.

17 Members of the jury, I received
18 several communications from the jury, and
19 I'm going to respond to them at this time.

20 Ms. Coverdale, you indicated that you
21 also were suffering from the stomach virus,
22 I certainly understand that. If you need
23 to be excused, don't hesitate to let us
24 know, simply raise your hand.

25 Mr. Campbell, first of all, my

1 condolences about the passing of your
2 friend. And Ms. Dial, I received your
3 request as well, ma'am. As to your
4 request, and Mr. Campbell's request, folks,
5 let me say this: This trial has taken
6 longer than we anticipated, and we
7 certainly appreciate the fact that there
8 have been some delays caused by the storms,
9 some delays caused by illnesses of the
10 members of the jury, the Court, or other
11 folks, but it's my responsibility to get
12 this trial back on track consistent with
13 the objectives of the State of North
14 Carolina and the defendant in this case,
15 given a full opportunity to be heard, and
16 if we can accommodate you, Mr. Campbell and
17 Ms. Dial, we anticipate that the State's
18 evidence may conclude at some point this
19 week. If that coincides with the time
20 frame you folks are talking about, I'll do
21 the best I can to accommodate you. If that
22 doesn't occur, I apologize to you and I
23 hope you understand that it is necessary
24 that we go forward with the matter now
25 before us. But to the extent that I can

1 accommodate you, I certainly will try. And
2 I'll give you as much notice as I possibly
3 can.

4 We ready to go forward, folks?

5 MR. BRITT: Yes, sir.

6 THE COURT: Mr. Marrs, if you'll
7 return to the witness stand, please.

8 DIRECT EXAMINATION (Continued)

9 BY MR. BRITT:

10 Q Mr. Marrs, in addition to examining the
11 guns that were submitted to you, did you examine any
12 other items that had been submitted?

13 A Yes, I did.

14 Q What other items did you examine?

15 A I examined some clothing that I received.

16 Q Can you describe the clothing that you
17 received and when did you receive that clothing?

18 A Clothing was submitted to the laboratory
19 August 18th by Aprille Sweatt, I received a Grand
20 Slam brand man's golf shirt, pair of Docker's brand
21 man's slacks, a pair of Jockey brand man's
22 undershorts and a pair of socks.

23 Q At the time you received those items, how
24 were they packaged?

25 A They were packaged in a bag and that was

1 inside -- they were inside a red plastic bag that was
2 inside a cardboard box.

3 Q What if any examination did you perform on
4 the clothing items that were submitted?

5 A I examined the items for possible holes,
6 bullet holes, if such were found. Then I examined
7 those areas for the presence of gunshot residue. The
8 two chemical tests on those areas where I found
9 possible holes, and if a pattern was found, I was
10 going to fire the same type gun and the same type
11 ammunition to determine the distance.

12 Q And did you find any such holes or defects
13 in any of the clothing that you examined?

14 A Yes, sir, I did.

15 Q On what items did you find any holes or
16 defects?

17 A In the Grand Slam brand man's golf shirt, I
18 found approximately eight holes. There was one hole
19 in the upper right chest area. That was a hole that
20 was approximately five-sixteenths inches in diameter
21 and had a dark elliptical ring around it. Then I
22 found three holes in the lower right abdomen area.
23 One was a three-eighths by one quarter inch irregular
24 hole, one one-eighth inch regular hole and
25 three-eighths inch irregular hole, and they were

1 three holes in a line such as this. Then I found
2 four holes in the back shoulder sleeve area of the
3 shirt. One was a one-quarter by a five-eighths inch
4 regular hole, and then three very small one-eighth
5 inch holes in line.

6 Q The hole that you found in the area of the
7 -- corresponding to the right upper chest, you said
8 that it had a dark elliptical ring around it?

9 A Yes, sir.

10 Q What do you mean by that?

11 A Examination just by viewing it under a
12 microscope, I saw a dark ring, elliptical means it
13 was oval shaped. Part of the ring circled the top
14 part of the hole and the bottom part of the ring
15 extended a little lower than this hole and back up
16 again.

17 Q And did you find any other holes or defects
18 on any other article of clothing?

19 A No, sir, I did not.

20 Q After finding these eight holes or defects
21 in the shirt, what if anything -- what type of test
22 did you run?

23 A I examined them visually, the holes, and
24 examined the holes under a microscope, looked at
25 gunshot residue, and burned particles with gunpowder,

1 possible small pieces of lead particulate. I did not
2 see anything under the microscope. So then I did two
3 chemical tests on all the holes. First of these
4 chemical tests is called the Griess test. The Griess
5 test is a test that looks for nitrites. Gunpowder is
6 composed of a compound called nitrites. When it
7 decomposes or burns, it changes into a compound
8 called nitrites, so the test I'm looking for is a
9 test that is looking for the residue of burned
10 gunpowder. It's a color producing test, and how it
11 is done is that we have specially treated paper that
12 we place over the hole that we're trying to examine.
13 And it covers the hole and the area around the hole.
14 And then by applying heat and another chemical to the
15 back of this shirt, if the nitrites are present, they
16 show up on this paper as orange dots, orange dots.

17 Examining all the holes, I found one
18 nitrite reaction around the hole, right at the hole
19 in the upper right chest area. I found no other
20 nitrite reaction on any of the other holes around any
21 of the other holes.

22 The second test we do is called a sodium
23 rhodizonate test. This is a test that looks for lead
24 or lead vapor. And this lead or lead vapor primarily
25 comes from the primer compound in the primer of the

1 cartridge case. This contains a normally lead
2 compound, some of them are called lead sulfates.
3 What they do is when they burn they give off this
4 lead vapor, and carried out of the gun is the hot
5 gases that follow the bullet out of the gun. The hot
6 gases carry with it this lead vapor, also carry with
7 it the partially burned and unburned particles of gun
8 powder. I examined all the holes in the shirt with
9 the sodium rhodizonate test and found no evidence of
10 lead or lead vapor.

11 Q And with the nitrite test, which holes in
12 the shirt did you have any type of reaction with?

13 A I found one reaction at the hole in the
14 upper right chest area.

15 Q And the reaction that you received as a
16 result of that chemical test, did you form any
17 opinion based upon the testing on that particular
18 hole?

19 A I formed the opinion that there were
20 physical characteristics consistent with the passage
21 of a bullet in the hole in the upper right chest
22 area. The one nitrite reaction, I could not use that
23 to base any distance determination. The test we do
24 is based on the presence of evidence. I need a
25 pattern of gunshot residue in order to fire a gun and

1 try to reproduce that pattern. The presence of one
2 reaction is insignificant, I cannot use that to make
3 a determine of distance.

4 Q And in performing tests to determine
5 whether a bullet had passed through an object, are
6 there certain characteristics that you do look for?

7 A I looked for a clean hole, and a -- there
8 are other holes, they may possibly have been bullet
9 holes but they were irregular an jagged in shape, and
10 they were not as consistently round as the hole in
11 the upper right chest area. Also the dark elliptical
12 ring may have been caused by the soot that was on the
13 bullet as it passed through or may have been caused
14 by the lubricant. As I said, the bullet removed from
15 the body was a cast bullet, had a lubrication ring
16 around it. And that may have caused that
17 discoloration. Although when I received the clothing
18 they were soaking wet, so I had to dry them for two
19 weeks before you could work on it. So the
20 environmental damage to the clothing may have
21 destroyed any evidence that was on there before.

22 Q And when you say the environmental damage,
23 are you referring to the condition in which you
24 received them?

25 A Yes.

1 Q The fact that they were wet?

2 A They were wet, that they had been on a body
3 that had been decomposing, so any -- there may have
4 been some chemical reaction with the clothing also
5 due to the decomposing body.

6 MR. BRITT: May I approach?

7 THE COURT: Yes, sir.

8 BY MR. BRITT:

9 Q I'll show you what has been marked as
10 State's Exhibit Number 19, which is a box with brown
11 paper wrapping. Removing the brown paper covering,
12 ask you to examine State's Exhibit Number 19, tell me
13 if you can identify it?

14 A Yes, I can.

15 Q How are you able to identify State's
16 Exhibit Number 19?

17 A The laboratory case number is on there, my
18 initials and the date.

19 Q And when you say the laboratory case number
20 is on there, what number appears?

21 A It's R93 16441.

22 Q And what date appears with your initials?

23 A 8-19-93.

24 Q At the time you received State's Exhibit
25 Number 19, what condition was the box?

1 A It was sealed.

2 Q I'll hand you what's previously marked as
3 State's Exhibit 20, and ask you to examine that and
4 tell me if you can identify it?

5 A This appears to be the red plastic bag that
6 the clothing came in.

7 Q And State's Exhibit 20, is it in
8 substantially the same condition as it was in when
9 you first received it?

10 A Yes, sir.

11 Q Hand you what's been marked as State's
12 Exhibit number 21, ask you to look at that and tell
13 me if you can identify it?

14 A Yes, sir, I can. It's a paper bag that I
15 placed the articles in after I was through with it.

16 Q And ask you to remove the contents of
17 State's Exhibit 21, or if you can examine the
18 contents of State's Exhibit Number 21, and tell me if
19 you can identify them?

20 A Yes, this was the pair of Jockey shorts and
21 the two socks.

22 Q And State's Exhibit Number 21 and its
23 contents, do they appear to be in substantially the
24 same condition they were in at the time you received
25 them back in August of 1993?

1 A Yes, sir.

2 Q I'm going to hand you what has been marked
3 as State's Exhibit Number 22 and ask you to examine
4 State's Exhibit Number 22 and tell me if you can
5 identify it?

6 A Yes, sir, paper bag in which I placed this
7 item. It contained the golf shirt that I described
8 earlier.

9 Q And ask you to examine State's Exhibit --
10 the shirt contained inside of State's Exhibit Number
11 22.

12 A Yes, sir.

13 Q And does the shirt that is contained inside
14 of State's Exhibit Number 22 appear to be in
15 substantially the same condition as it was in when
16 you first received it back in August of 1993?

17 A Yes, sir.

18 Q Hand you what's been marked as State's
19 Exhibit Number 23, can you to examine that and tell
20 me if you can identify it?

21 A Yes, this was the pair of Docker's slacks
22 with the belt that I received in 1993.

23 Q Ask you to examine the contents of State's
24 Exhibit Number 23 and tell me if it compares -- are
25 those items in substantially the same condition as

1 they were in when you first received them?

2 A Yes, sir, they are. But they are drier
3 now.

4 Q Mr. Marrs --

5 MR. BRITT: Your Honor may he
6 step in front of the jury box?

7 THE COURT: Yes, sir.

8 BY MR. BRITT:

9 Q Referring to the golf shirt that was
10 contained inside the paper bag marked as State's
11 Exhibit Number 22, if you will, you've testified you
12 found eight holes?

13 A Yes, sir.

14 Q In the shirt, can you point those eight
15 holes out?

16 A The first hole I stated is a hole in the
17 upper right chest area. Then there were three holes,
18 one, two, three, in the lower right abdomen area.
19 And then there were four more holes in the back which
20 would include this large hole and one, two, three
21 small holes. One, two, three small holes, 8 inch
22 holes.

23 Q And which of the holes did you receive the
24 chemical reaction in when you ran the nitrite test?

25 A I got one nitrite reaction right around --

1 right at the edge of this hole.

2 Q And for the purposes of clarity, if you
3 will use this red marker and circle the hole which
4 you received a chemical reaction?

5 A (Witness complies) And the dark ring is
6 visible around the hole.

7 MR. THOMPSON: Some of the jurors
8 are not able to see.

9 MR. BRITT: If you'll step down.

10 THE WITNESS: There's a hole in
11 the upper right chest and then dark ring
12 visible and that hole. Around top and
13 slightly below the hole. Then there were
14 three holes in the lower right area, one,
15 two, three. Then there were holes in upper
16 right area, large hole and three smaller
17 holes.

18 MR. BRITT: If I could inquire if
19 all members of the jury were able to see
20 the exhibit?

21 THE COURT: Yes, sir.

22 BY MR. BRITT:

23 Q Mr. Marrs, after you completed your
24 examination of the clothing items, what if anything
25 did you do with them?

1 A I placed a tag on each clothes so I could
2 identify it later with my item number, the laboratory
3 case number, my initials. Then I placed the -- they
4 were air dried before I examined them and I placed
5 them in the paper bag that is visible here.

6 Q At the time you placed the items in the
7 paper bags, were the paper bags sealed?

8 A Yes, sir.

9 Q Did you place the paper bags with each of
10 the clothing items back into the box that is marked
11 as State's Exhibit Number 19?

12 A Yes, sir, I did.

13 Q And are State's Exhibits 19, 20, 21, 22, 23
14 in the same condition they were in when you completed
15 your examination back on August of 1993?

16 A Yes, sir, they are.

17 Q And do you know to whom or how State's
18 Exhibit 19 and its contents were returned?

19 A It was turned over to Special Agent Heffney
20 on the 17th of September of 1993.

21 MR. BRITT: Your Honor, at this
22 time I move for admission of State's
23 Exhibit Number 12, 30, 21, 22, 23.

24 THE COURT: Without objection,
25 State's Exhibits 19 through 23 are

1 admitted.

2 BY MR. BRITT:

3 Q Mr. Marrs, in the lab report that you filed
4 in connection with your ballistics examination, did
5 that laboratory report also cover your examination
6 and testing of the clothing?

7 A Yes, sir, it did.

8 MR. BRITT: Your Honor, at this
9 time I ask that State's Exhibits 95 and 96,
10 which were previously admitted into
11 evidence on Friday, be published to the
12 jury.

13 THE COURT: If you'll bear with me
14 one second. That would be Mr. Marrs's
15 report with reference to the .38 caliber?

16 MR. BRITT: Yes, sir.

17 THE COURT: And reported .32
18 caliber?

19 MR. BRITT: Yes, sir.

20 THE COURT: Yes, sir, if you'll
21 publish --

22 MR. BRITT: I have copies.

23 THE COURT: If you'll show the
24 copies to counsel for defendant first.

25 MR. BOWEN: Seen it.

1 THE COURT: You folks have
2 examined it?

3 MR. BOWEN: Yes, sir.

4 THE COURT: Members of the jury,
5 please recall my instruction. Each of you
6 will be provided with an individual copy of
7 State's Exhibits 95 and 96. Please examine
8 those exhibits individually and carefully
9 and without any comment. Yes, sir.

10 MR. BRITT: May I approach the
11 witness.

12 THE COURT: Yes, sir.

13 (Exhibits published to the jury.)

14 MR. BRITT: May I be excused?

15 THE COURT: Yes, sir. Mr. Marrs,
16 if you would like to step down and wash
17 yours as well.

18 THE WITNESS: Yes, sir. Thank you,
19 Your Honor.

20 THE COURT: Yes, sir.

21 THE COURT: Ladies and gentlemen,
22 take whatever time you need to examine
23 State's Exhibits 95 and 96 but if you have
24 completed your examination, if you'll pass
25 the exhibits down to your left, please.

1 MR. BOWEN: Defense would request
2 that they be allowed to keep them during
3 cross-examination.

4 THE COURT: Yes, sir. Folks, if
5 you'll hold onto them, please.

6 Folks, again, take whatever time you
7 need but have all members had ample
8 opportunity to examine both State's
9 Exhibits 95 and 96? If so, please raise
10 your hands so we will know. Thank you,
11 folks.

12 Mr. Britt.

13 MR. BRITT: I don't have any
14 other questions.

15 THE COURT: Cross-examination?

16 MR. BOWEN: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. BOWEN:

19 Q Agent Marrs, you've indicated that you are
20 the senior firearms and tool marks examiner for the
21 North Carolina State Bureau of Investigation,
22 correct?

23 A No, sir, I am -- I am a senior firearms and
24 tool marks examiner.

25 Q And that seniority comes with, I believe

1 you said, 21 years, is that right?

2 A 21 years as an agent, ten years as a
3 firearms and tool marks examiner.

4 Q Now, Agent Marrs, the specialty of firearms
5 and tool marks examiner is not something that one
6 goes to a formal college and gets a specific degree
7 for that discipline, is that true?

8 A That's correct, sir.

9 Q It is self-taught in some ways, it is
10 taught as an apprentice to other master tool marks
11 examiners, correct?

12 A In general, yes, there are some classes
13 that we do attend, courses we do attend. Different
14 gun manufacturers put on courses that we attend.
15 I've attended gunshot primer residue put on by the
16 FBI, but most of it is on-the-job training and
17 self-study.

18 Q So you visited a lot of the manufacturers'
19 actual plants where they show you guns being
20 produced, is that true?

21 A That's correct, sir.

22 Q You take journals that have to do with the
23 methods of production of guns, don't you?

24 A Yes, I am a regular member of the
25 Association of Firearms and Tool Marks Examiners.

1 Q You are familiar with the manufacture of a
2 gun as it goes through the prototype process into the
3 actual die or tool making process to make the gun and
4 then through the final manufacturer and
5 assembly?

6 THE COURT: I apologize. Had you
7 completed your last answer, sir.

8 THE WITNESS: No, sir, I said I
9 am a regular member of the firearm and tool
10 marks examiner, and we do receive a
11 quarterly journal which articles of other
12 tool mark examiners concerning the
13 discipline of firearms and tool marks

14 BY MR. BOWEN:

15 Q I see. Now, you are familiar with the way
16 that the manufacturer first makes a prototype of the
17 weapon, then makes the dies and tools to make the
18 weapon, and then finally manufacturers it, is that
19 safe to say?

20 A I don't know if I'm that familiar with the
21 design process where they sit down and talk over --
22 I've never been involved in that. But I am familiar
23 with the tool making process and the manufacturing
24 process.

25 Q Are you generally familiar with the kinds

1 of numbers that we're talking about in terms of
2 number of weapons manufactured, that is, when a large
3 manufacturer in America tools up to make a certain
4 gun, and commits to make that gun, and makes IT over
5 a certain number of years, do you -- does your study
6 and research and your discipline give you some idea
7 whether we're talking about thousands, ten of
8 thousands, or million of guns of that particular
9 manufacturer?

10 A Yes, sir, gives me an idea.

11 Q You've got some rough idea of those kinds
12 of things?

13 A Yes, sir.

14 Q Now, you have indicated that when you
15 examine a weapon, you can look in the barrel in most
16 cases and see examples of some sort of rifling, is
17 that correct?

18 A In most cases, yes, sir.

19 Q Most cases. And that rifling is basically
20 a spiral twist that will either go to the right or to
21 the left?

22 A That is correct, sir.

23 Q And that is one of what you call the class
24 characteristics of that particular weapon, whether
25 that spiral goes to the right or to the left?

1 A Yes, sir.

2 Q And then you also determine what kind of
3 lands or grooves are in that barrel, correct?

4 A What kind of lands and grooves.

5 Q And they are made by the cutting tool that
6 goes through that barrel to make that rifling which
7 turns either to the right or to the left?

8 A That's one -- there are several methods of
9 cutting in the rifling in a barrel, but it could be a
10 one pass approach or it could be a single cut where
11 each of the grooves is cut in. But there are
12 different methods, yes, sir.

13 Q And part the class characteristics include
14 the width as between those lands and grooves?

15 A That's correct.

16 Q Many manufacturers have a particular twist
17 to one direction and other manufacturers have a twist
18 to the other direction, is that correct?

19 A Yes and no. Most Smith & Wesson weapons
20 have five lands and grooves, with a right-hand
21 twist. However, there are some particular guns made
22 by Smith & Wesson that have six lands and grooves
23 with a right-hand twist.

24 Q And there are many other manufacturers that
25 also have five lands and grooves to the right just

1 like Smith & Wesson?

2 A There are several. I wouldn't know if I
3 would categorize it as many. But there are several
4 other manufacturers that have made guns with five
5 lands and grooves with a right-hand twist.

6 Q And there are several other guns or
7 manufacturers that have five lands and grooves with
8 the same direction of twist as -- as the typical
9 Smith & Wesson, and they are the same width of lands
10 and grooves, is that true?

11 A That's correct.

12 Q So with those class characteristics that
13 you observed in State's Exhibit 59-A, the revolver,
14 you were not even able to narrow down to a particular
15 brand of weapon through those characteristics, were
16 you?

17 A It was not requested of me to determine the
18 type of guns that could have fired that bullet. I
19 was given a specific gun and asked to compare that
20 specific gun to a specific bullet, and I did that
21 examination.

22 Q Now, if you had been required to assemble a
23 list of manufacturers's names which had the right
24 twist, the same width lands and grooves, and same
25 numbers of lands and grooves, you have a database

1 available from which you could have put together a
2 list?

3 A Yes, sir, we have either a manual or
4 computerized program put out by the Federal Bureau of
5 Investigation where they list the gun, general
6 rifling characteristics of numerous guns that they
7 have come in contact with or other people have
8 advised them about.

9 Q Now, in addition to the particular Smith &
10 Wesson type of weapon that is State's 59-A, there are
11 other sub types of .38 and .357 Smith & Wesson guns
12 besides the type of 59-A is, which would make five
13 lands and grooves right hand twist with the same
14 width between the lands and grooves?

15 A That's correct, sir.

16 Q And there are -- strike that. And as far
17 as you can tell by examining the bullet, once you
18 determine the number of lands and grooves, the width
19 between the lands and grooves, and whether it's a
20 right-hand or left-hand twist, once you determine
21 that about the subject bullet that you're looking at,
22 you are then able to put together a class of weapons
23 that could have fired that bullet, correct?

24 A If that's the request that I had, yes, sir.

25 Q Well, now, the class characteristics that

1 you found could have been several sub classifications
2 of Smith & Wesson in addition to and other than
3 State's 59-A, is that correct?

4 A That's correct, sir.

5 Q Most of the weapons that have been made in
6 the country of Spain by the various manufacturers in
7 Spain also have five lands and grooves, same lands
8 and grooves width, and a right-hand twist, don't
9 they?

10 A I wouldn't know about that particularly. I
11 know there are several guns, Lama and others, that
12 have five right, and they are made in Spain. I don't
13 know if I could make the general statement that most
14 of the guns in Spain have five lands and grooves, I
15 don't know that for a fact.

16 Q Okay. You do know that guns made in Spain
17 are imported into that country?

18 A Yes, sir, they are.

19 Q And you have seen in your studies and in
20 your experience, been in the presence of those
21 Spanish guns from time to time, haven't you?

22 A As far as I can remember, I have not --
23 except I may have had a Lama once, but as the other
24 guns that you mentioned to me previously, I don't
25 have any -- have never come in contact with them

1 myself.

2 Q What about and Ira Johnson?

3 A Yes, sir.

4 Q That's an American gun?

5 A Yes, sir.

6 Q Now, and Ira Johnson has five lands and
7 grooves, same width between lands and grooves, and
8 right hand twist, doesn't it?

9 A Some of the older Ira Johnson do, and from
10 my recollection, most of them were .38 Smith &
11 Wessons, not .38 Special.

12 Q So -- all right. Rohm, R O H M, where is
13 that weapon made?

14 A That's German made, that's imported into
15 the United States, it's also known as RG and RG
16 Industries.

17 Q RG and RG Industries you say?

18 A Yes, sir.

19 Q Now, that weapon in its .38 model and
20 several of its .38 models has five lands and grooves,
21 twist to the right and same width between the
22 grooves, doesn't it?

23 A It may, I don't recall, most reasons that I
24 came in contact with were eight lands and grooves
25 with right hand twist, may have made some that I'm

1 not aware of.

2 Q Now, Ruger Arms is a very large American
3 manufacturer?

4 A Is that correct.

5 Q It manufacturers its .38 weapons based on
6 five lands and grooves, correct?

7 A It manufacturers some of its .38 weapons in
8 five lands and grooves, old Security Six, and other
9 weapons of that ilk were made in five lands and
10 grooves with right hand twist.

11 Q And it makes weapons with the same distance
12 between the five lands and grooves as are exhibited
13 on the bullet that you studied in this case?

14 A Yes, the width of the lands and grooves are
15 consistent with the bullets I had in this case.

16 Q And also the right-hand twist, same as the
17 bullets and the weapon, State's 59-A and the bullet
18 that you examined?

19 A That's correct, sir.

20 Q Have you heard of a gun called and Alpha?

21 A No, I have never heard of and Alpha.

22 Q What about a weapon known as U.S. Revolver?

23 A A U.S. Revolver is an old gun manufacturer,
24 most of those guns were those old top break type
25 revolver, most of them were in .38 Smith & Wesson but

1 they may have made a .38 Special.

2 Q They also have five lands and grooves to
3 the right, same twist?

4 A They may have.

5 Q You mentioned a Lama, that's the Spanish
6 gun?

7 A Yes, sir.

8 Q Has five lands and groove, same right hand
9 twist to the right?

10 A Some of their guns do.

11 Q What about a Taurus?

12 A Taurus made some guns in five lands and
13 grooves and some with six.

14 Q Ones made with five lands and grooves were
15 also made twist to the right?

16 A Yes, sir.

17 Q And with the same width in between the
18 lands and grooves that are exhibited in State's
19 Exhibit's 59-A, the revolver, and the bullets that
20 you testified about?

21 A Yes, sir.

22 Q And H & R is a very large American
23 manufacturer, isn't it?

24 A Yes, sir.

25 Q Is it currently in business?

1 A They are under a new name, New England
2 Firearms.

3 Q When they became --

4 A And they still make guns under an H&R, Inc.
5 name.

6 Q Do they still make the same lines and
7 designs of guns?

8 A Relatively, yes, sir. In fact some of the
9 guns, the other guns that we had here were .32, were
10 H&R's.

11 Q They basically took over the same package
12 where the old H&R?

13 A I believe so.

14 Q And continued making those guns?

15 A Yes.

16 Q So their guns are currently distributed in
17 this country?

18 A Yes, sir.

19 Q They are H&R .38s. In fact, the majority
20 of the H&R .38s, now, the New England which have five
21 lands and grooves twist to the right and same width
22 between the lands and grooves?

23 A I imagine some of the older. The new guns,
24 I believe, are six right.

25 Q Be many, many of the old ones are?

1 A Yes, sir.

2 Q How about a brand called I&A?

3 A Yes, sir. That's another import, I
4 believe.

5 Q Do you know where it's made?

6 A It's either Brazil, I believe it's Brazil.

7 Q And the I&A .38s will have twist to the
8 right, five lands and grooves and same distance
9 between the lands and grooves that the bullets that
10 you studied?

11 A Is that correct, sir.

12 Q How about Coonan Arms?

13 A That's a Canadian manufacturer. I'm not
14 familiar with their general rifling characteristics
15 at all. I've never seen Coonan Arms fired in my
16 experience.

17 Q How about Hollis?

18 A I'm not familiar with a Hollis.

19 Q How about Sport Arms?

20 A Sport Arms does make a gun in five right.
21 I've never seen one, but they do make a gun with five
22 right, five lands and grooves and right hand twist.

23 Q And they are making guns in this country?

24 A I believe so, I'm not familiar with the
25 Sport Arms make.

1 Q Any of these larger manufacturers, such as
2 Smith & Wesson or Ruger, when they gear up to produce
3 a weapon to design and produce prototype and test a
4 weapon, it takes a lot of time and money, doesn't it?

5 A Yes, sir.

6 Q And so when they gear up and commit to
7 producing a gun to be sold to the general consuming
8 public, exported for use, they gear up in terms of
9 making millions of these guns, don't they?

10 MR. BRITT: Objection.

11 THE COURT: Overruled, you may
12 answer if you know.

13 A They may or may not. They first make the
14 gun. It's going to be for sale to the public, then
15 they are going to make a limited run to see how they
16 sell. If they don't sell, then they are not going to
17 make a whole lot more of them.

18 BY MR. BOWEN:

19 Q There are many .38 weapons in the lines and
20 the product lines of each and every one of these
21 manufacturers that have sold without interruption for
22 ten or more years, correct?

23 A I don't know if I could categorically state
24 that, but that is possibly a true statement.

25 Q And if it is a gun that is -- that sells

1 well, moves well, and they continue making the gun,
2 it's not unlikely that millions or more of that model
3 will be sold and exported, correct?

4 A It would take many years to make a million
5 guns. This particular gun, the model 859, it's a
6 military and police. And it started production in
7 1905. They produced their millionth gun in 1942. So
8 it took 37 years to make a million guns.

9 Q So a hundred thousand would probably be
10 more likely in a typical run, is that right?

11 A That would probably be more likely, yes,
12 sir.

13 Q You would be comfortable with the
14 suggestion that probably a gun that was reasonably
15 well accepted by the buying public would have been
16 manufactured if it lasted five to ten years in
17 production, it would have produced at least a hundred
18 thousand guns?

19 MR. BRITT: Objection to the
20 form.

21 THE COURT: Well, if you know you
22 may answer. Overruled.

23 THE WITNESS: I would say that's
24 not an unlikely statement.

25 BY MR. BOWEN:

1 Q And that would be true as to each model
2 of .38, in other words, we are just talking that
3 figure in terms of a particular model of one gun?

4 A Some gun manufacturers make much smaller
5 runs, more exclusive. So I wouldn't -- as far as
6 each model, I wouldn't know that.

7 Q And each one of these manufacturers,
8 particularly the large American ones like Ruger,
9 Smith, U.S. Revolver, some of those, are typically
10 making many models of the .38 or .357 revolver with
11 similar lands and grooves, right hand twist and width
12 between the grooves, aren't they?

13 A Smith & Wesson has a large model, different
14 types of models in .38, .357 and five right. Ruger
15 only had three or four that I can remember. I'm not
16 sure of the other manufacturers, how many different
17 models they may have had of each of the caliber .38
18 Special or .357 Magnum.

19 Q But Ruger has at least three or four models
20 of the .38?

21 A Yes.

22 Q That have sold for many years?

23 A Yes, sir.

24 Q Beyond the class characteristics, you begin
25 to look for individual characteristics to see if you

1 can match a particular bullet with a particular gun?

2 A That's correct, sir.

3 Q Because it's fair to say that in just
4 looking at the class characteristics alone, you
5 haven't narrowed the class characteristics found on
6 the bullet, you haven't narrowed it down even within
7 a million weapons to a gun, have you?

8 A Depending on the class characteristics and
9 the ammunition I'm looking at, yes, sir.

10 Q In this particular case, you haven't
11 narrowed it down even within a million weapons, have
12 you, just on class characteristics?

13 A That would be correct.

14 Q And it may be tens of millions?

15 A That -- possible.

16 Q Now, what you look for basically are
17 striations in the bullet, is that correct?

18 A That's correct.

19 Q And you can't see corresponding striations
20 in the barrel of a gun, can you, Agent Marrs?

21 A How do you mean?

22 Q In other words, the only way you can
23 compare striations is to fire another bullet down the
24 barrel of the gun you want to analyze and then
25 compare the striations on your test bullet versus the

1 suspect bullet?

2 A That is a procedure we use, yes, sir.

3 Q In other words, you don't have any way of
4 saying, here, I've got some striations here, let me
5 look in this barrel and see if I can find anything
6 that accounts for these striations?

7 A No, sir, we normally don't do that, that's
8 correct.

9 Q Now, you have a tool, that is, has been the
10 mainstay of your profession for years, called the --
11 what kind of microscope is it?

12 A Comparison microscope.

13 Q And that allows you to set two bullets on a
14 microscope stage, is that right, and look at them
15 side by side?

16 A That's correct.

17 Q And that enables you to see if these
18 striations, if you will, the signature of a
19 particular gun, gun barrel, on a bullet, is present,
20 correct?

21 A That's correct.

22 Q Now, the microscope that you have there at
23 SBI in Raleigh, do you have one or more?

24 A We have one for each examiner.

25 Q That microscope that you have or one that

1 is available to you, is it possible to be fitted with
2 a 35 millimeter camera or some type of camera to take
3 a picture of what you see?

4 A That's possible. But it would not take a
5 picture of what I see, it would take a two
6 dimensional picture. And what I'm seeing is three
7 dimensional.

8 Q Do you have camera equipment to take a
9 picture of what is on that stage?

10 A I have on mine, but I don't use it for case
11 work, I use it for training.

12 Q Okay. But it is within your capability to
13 take a picture of what you see, at least a two
14 dimensional version of what you see, is that right?

15 A I have that capability, yes, sir.

16 Q And a two dimensional picture would at
17 least show the design, the length of a particular
18 striation, wouldn't it?

19 A Not necessarily. It depends. We don't
20 take, as a matter of policy, take photographs of case
21 work in our section. And most firearm sections that
22 I know of do not. There are some that do, but most,
23 as a matter of policy, do not take photographs
24 because it is a two dimensional representation of
25 what we are seeing. And it is not an accurate

1 representation of what is being seen under the
2 microscope.

3 Q But striation is a line, is it not?

4 A It could be considered a line. It was a
5 scratch on what is called the bearing surface of the
6 bullet caused by an imperfection in the barrel.

7 Q Scratch on the surface?

8 A That's correct.

9 Q Very often it has a particular length,
10 correct?

11 A It may. It may have a length as long as
12 the lands impression or may have a short length at
13 the edge of the land impression or groove impression,
14 depending.

15 Q The striation or line has a width?

16 A Yes, sir.

17 Q It has a design that has a particular
18 curvature or some unique curve or bend in it, does
19 it?

20 A Normally, we're not looking at curves and
21 bends in striations, we're just trying to align
22 matching striations, striations of the same width,
23 when the light is shown across it from the same angle
24 that they highlight these striations in similar
25 fashion, so we'd be rotating the bullets on both

1 stages of the comparison microscope, align striations
2 that match each other.

3 Q And certain striations appear on a
4 particular part of a bullet?

5 A They may appear on any part, yes, sir.

6 Q What I'm saying, when you're looking to
7 match two sets of striations, you expect those
8 matching striations to occur on the same segment of
9 the bullet?

10 A That's correct.

11 Q And this is something that can be shown in
12 a two dimensional pictures, that is, the distance
13 from the nose of the bullet to the point where the
14 striation begins, you can see that two dimensionally,
15 couldn't you?

16 A Still would be a misrepresentation of what
17 is seen, because it's not exactly what we're looking
18 at under the microscope which is why we don't take
19 photographs.

20 Q Are you saying the microscope in some way
21 distorts the picture?

22 A No, what I'm saying, I look at a three
23 dimensional bullet, when you took a photograph, it's
24 a two dimensional picture. And therefore, it is not
25 the same. And if it would, for our purposes, that's

1 why we do not photograph.

2 Q Well, let me ask you if we can make this
3 comparison. Let's say I have a globe of the world
4 sitting here, and a flat map of the world sitting
5 here. Is there any reason why I can't measure the
6 same distance from one place to another using the
7 globe and measure the same distance using the flat
8 map?

9 A Yes, sir. That flat map has been altered
10 in order to make it flat. By doing so, they have
11 changed, they had to alter the surface and move
12 things around in order to make a flat map. That's
13 why a globe is much more accurate in measuring
14 distances than a flat projection map.

15 Q Now, Agent Marrs, are you not looking at
16 both bullets through the very same microscope?

17 A Yes, sir.

18 Q So whatever spherical aberration may exist,
19 or whatever aberration may occur because of the three
20 dimensional matter, that aberration is occurring as
21 to both bullets side by side through the same
22 microscope, isn't it?

23 A If the microscope has been built correctly,
24 yes, you would have the -- the lens systems are equal
25 on both sides, yes, sir.

1 Q You mean -- has your microscope been
2 tested to see if it was built properly or whether or
3 not it's giving distortions?

4 A Doesn't matter whether my microscope is
5 giving distortions, I'll see the same way. I'm just
6 saying as a matter of principle we do not photograph
7 evidence.

8 Q I understand that. But what I'm saying,
9 your three dimensional view, and whatever distortions
10 accompany that three dimensional view, those
11 distortions are the same as far as you know for both
12 bullets sitting side by side, correct?

13 A Correct.

14 Q So that if those distortions exist, they at
15 least cancel each other out, because they are the
16 same for both bullets?

17 A That's an accurate statement I would say.

18 Q So then if they were slight distortions
19 because of the three dimensional effect, there would
20 still be no reason why a two dimensional picture
21 could not show the distance between the nose of the
22 bullet and the starting point of a striation that you
23 wanted to talk about, correct?

24 A It may.

25 Q All right. So the point is, you never,

1 with the equipment that you had available, because of
2 policy of the SBI, you never took any photographs of
3 the suspect bullet in this case or any of your test
4 bullets, did you?

5 A That's correct.

6 Q And you did not make any photographs of
7 those bullets side by side?

8 A No, sir, did not.

9 Q And you're not able to come into court with
10 any kind of photographs or photographic
11 representation or slides or anything of that nature
12 and show to the jury what it was that you saw about
13 striations in any bullet?

14 A No, sir. What I can do is explain to the
15 jury what I saw.

16 Q But you could have, at least if you had so
17 chosen, or if it had not been the policy of the SBI
18 otherwise, you could have brought in at least a two
19 dimensional photographic representation of what you
20 saw?

21 A Could have or may have. By policy I would
22 not have. So --

23 Q But it was possible, I mean, it was
24 technologically possible?

25 A Technologically possible that I could have

1 taken a photograph.

2 Q And the State has issued you the camera
3 equipment that fits to that microscope to do that
4 particular picture-taking and you use it for training
5 purposes?

6 A Yes, sir.

7 Q So you know that it works?

8 A Yes, sir.

9 Q Is it written down anywhere in SBI policy
10 that you're not to take a photograph with that state
11 provided equipment for any reason other than for
12 training?

13 A No, sir.

14 Q So that's whose decision?

15 A That's the decision of the supervisor of
16 the section, has been the decision of the section for
17 as long as I have been in there that photographs are
18 not taken of evidence.

19 Q Well, now, you're saying that the
20 photograph would not be useful for evidence, correct?

21 A That's correct.

22 Q But the photograph is useful to train
23 people in the discipline which you practice but it's
24 not no use in evidence?

25 A I would say that's correct, yes, sir.

1 Because while we're talking to them, we tell them
2 this is a two dimension. This is not a clear
3 representation of what they will see under the
4 microscope.

5 Q Can't you tell the jury the same thing?

6 A I explained to the jury my findings. I did
7 not have to show them a photograph.

8 Q Now, then, along with individual
9 characteristics, there is the breech tool marks, if
10 any, on a bullet casing which you study, is that
11 right?

12 A That's correct, sir.

13 Q And those breech tool marks are caused when
14 there is some particular aberration in the surface of
15 the breech of the gun that leaves a mark or
16 impression when the bullet is fired, is that right?

17 A Mostly they are caused by machining marks
18 that are left after the machining process to smooth
19 that area of the breech face.

20 Q And most guns have some sort of machining
21 mark that you can discern, don't they?

22 A A lot of guns do, I would not categorize
23 most guns.

24 Q Now, then you say there is another
25 individual characteristic that you study and that is

1 the imperfections or marks inside the firing pin
2 itself?

3 A Yes, sir.

4 Q So in other words, the firing pin may have
5 some sort of imperfection or ridge of some sort that
6 will leave an imprint, is that right?

7 A That's correct.

8 Q And you look for that?

9 A Yes, sir.

10 Q Most firing pins are about the same size,
11 aren't they?

12 A Depending on the weapon. Shotgun firing
13 pins are larger than revolver.

14 Q Most revolver firing pins are about the
15 same size?

16 A Categorically I would say that's probably
17 correct.

18 Q You can't conclude anything much in that,
19 can you?

20 A From the size?

21 Q Yes, size of firing pin?

22 A No, sir.

23 Q You would have to have that actual
24 signature or imprint of a particular firing pin that
25 had some sort of tool mark or some type --

1 A Some center fire firing pins have a flat
2 nose which would be another class characteristic of
3 that firing pin, instead of having a hemispherical,
4 some have a flat nose, some have a gnarly area where
5 it was done roughly, and so leaves more marks that
6 way.

7 Q When you examined State's Exhibit 59-A,
8 that would be the revolver, if you recall, did you
9 find anything the matter, or wrong with that gun?

10 A No, sir, did not.

11 Q Did you find any excessive wear or
12 looseness about any part of its mechanical structure?

13 A I don't recall any, no, sir.

14 Q And if you had you would have noted it down
15 in your report?

16 A If there had been excessive wear or
17 looseness.

18 Q Specifically, you noticed no wear in the
19 hammer or in the spring mechanism that pulls back the
20 firing --

21 A By test firing the weapon and measuring the
22 trigger pull, all that -- those particular parts of
23 the firearm functioned properly and were in working
24 condition.

25 Q So if somebody said that a gun -- that the

1 particular gun had a looseness to it in terms of its
2 mechanical structure, you would not be talking about
3 State's 59-A, would you?

4 A That might be a relative term, what someone
5 else considered looseness, to what I considered
6 looseness.

7 Q You don't consider it loose?

8 A From my examination, it didn't appear to
9 be.

10 Q The hammer was not loose in 59-A?

11 A As far as I could remember it was not. It
12 functioned properly.

13 Q You handle hundreds of guns, thousands of
14 guns, don't you?

15 A Yes, sir.

16 Q In other words, State's 59-A had no
17 mechanical indications of having been fired a lot,
18 did it?

19 A No, I can't say that. Smith & Wesson
20 weapons are made well, they could be fired thousands
21 of times and still remain tight or unloose.

22 Q But it is possible and sometimes can be
23 told from the barrel of a gun that gun is what we
24 call shot out?

25 A That's a possibility.

1 Q And that means it's just been shot so much
2 that friction has just worn the barrel down inside,
3 correct?

4 A That's a possibility, yes, sir.

5 Q And you saw no evidence of that in State's
6 59-A, did you?

7 A I didn't see that it had been shot out, and
8 I couldn't determine how many times it had been
9 fired.

10 Q Now, the Smith & Wesson revolver, State's
11 59-A, you have testified in your opinion has been
12 rebarreled at some point, is that right?

13 A Yes, sir, I believe it has, because of the
14 markings of the Cotswold, Limited. And that was just
15 from my reading up on that particular model, the
16 Victory model, that that gun was made in '42 and '43
17 during World War II and some of them were shipped to
18 England to the British Commonwealth countries, and
19 they were shipped as .38 200s, .38 Smith & Wesson
20 which fired a 200 grain bullet. And if this gun had
21 been in England and had been -- now was a .38
22 Special, so it could be concluded that it had been
23 rebarreled in England.

24 Q Now it's possible on State's 59-A as well
25 as with many revolvers to actually, if you're an

1 experienced gunsmith, you can take the barrel off and
2 put another barrel on, can't you?

3 A That's possible, yes, sir.

4 Q And when a weapon is manufactured,
5 sometimes it goes through what is called a proof
6 test, is that correct?

7 A Yes, sir.

8 Q A proof test is a firing of the weapon with
9 a hotter or powerful load in the cartridge to see if
10 that barrel was -- will withstand that hotter or
11 heavier load, is it not?

12 A That's correct, sir.

13 Q If it will, then one could conclude that
14 the weapon will work well and safely with the regular
15 commercial load?

16 A That's correct, sir.

17 Q And when a weapon passes that proof test,
18 it is often stamped with a proof test number or proof
19 test mark, is that correct?

20 A Yes.

21 Q And State's 59-A has such a proof test
22 mark, is that right?

23 A It has what I believe probably is several
24 marks like that put on by the company that rebarreled
25 it.

1 Q And that's an assurance that that high
2 powered load had been fired through there and
3 everything is okay?

4 A Yes, sir.

5 Q Now, does your familiarity with the
6 manufacturer and specifically with that process of
7 proof testing allow you to say that numbers of guns
8 went through that same proof test when they were
9 rebarreled, correct?

10 A I would probably guess that would be true,
11 yes, sir.

12 Q And every one of those guns that went
13 through that same proof test received that very same
14 number on the barrel, didn't they?

15 A Depending on the proof test it underwent,
16 yes, sir.

17 Q In other words, that is not a number that
18 is just one unique number assigned to that particular
19 weapon and no other such as a serial number, is it?

20 A That's correct, sir.

21 Q Now, you know that when the State's 59-A
22 was first handled by your colleagues at the SBI, you
23 know that the paperwork coming up through did not
24 have the serial number V 83470 with regard to State's
25 59-A, did it?

1 A No, sir, did not. And it's V 834 --

2 Q I have 83470, is that correct? Whatever
3 the V number.

4 A V 83470, yes, sir.

5 Q 83470, so I have it right?

6 A That's correct.

7 Q Now, instead, they wrote down what you've
8 described as the proof test number?

9 A That's correct.

10 Q Now, a serial number would be a number that
11 presumably, at least the Smith & Wesson family of
12 guns manufactured, the serial number would denote one
13 particular gun to the exclusion of all others within
14 Smith & Wesson's family of guns, correct?

15 A Within that particular -- two guns at Smith
16 & Wesson could have the same serial number, they
17 would be different models.

18 Q So then within this model it would denote
19 one particular gun excluding all others?

20 A Yes, sir.

21 Q But the proof test number would likely not
22 represent only one gun?

23 A That's correct.

24 Q Represent many guns?

25 A Yes, sir.

1 Q Maybe thousands of guns?

2 A I would have no way of knowing but that's
3 possible.

4 Q On the bottom of State's 59-A is a -- for
5 lack of a better term, a screw hole?

6 A Yes, sir.

7 Q And that is for, for lack of a better term,
8 a lanyard hook, isn't it?

9 A That's correct.

10 Q And lanyard is usually a piece of cowhide
11 used to hold onto your gun so it wouldn't drop out of
12 your holster, is that right?

13 A Yes, sir.

14 Q Not many people use lanyards, do they?

15 A That particular model was made with a
16 lanyard hold, ones that went to England.

17 Q Not uncommon for folks to take the lanyard
18 off and --

19 A I could --

20 Q You see some with and some without?

21 A I would say yes, sir.

22 Q Now, you mentioned something in your lab,
23 Agent Marrs, called a shoot tank, is that right?

24 A That's correct, sir.

25 Q That is a square column of water, two feet

1 by two feet square, correct?

2 A That's correct.

3 Q And it's ten feet deep?

4 A Yes, sir.

5 Q And bottom of it you have this basket that
6 you pull up --

7 A We lower the basket with a wench and the
8 basket has holes on all four sides, goes down and
9 fits into the bottom of the tank.

10 Q Now, why does the tank have to be ten feet
11 deep?

12 A Doesn't have to be. It was ten feet when I
13 got there. How they decided on ten feet, I don't
14 know.

15 Q You've studied the physics of the velocity
16 of bullets through various medium, including water,
17 haven't you?

18 A I've never studied the physics of shooting
19 bullets in the water.

20 Q Let me ask you this: How close did you get
21 to the surface of the water when you fired State's
22 Exhibit 59-A?

23 A I would say we have -- we lower a large
24 metal lid, has a hole in the center, put the barrel
25 through that, I would say probably 18 inches from the

1 surface of the water at the time it was fired.

2 Q Now, when it fires, the velocity of the
3 bullet increases as the explosion takes place back in
4 the cartridge, correct?

5 A Yes, the expanding gasses in the cartridge
6 case push the bullet forward out of the barrel.

7 Q Forces the bullet through that 18 inches of
8 air, air doesn't slow it down virtually at all?

9 A Slows down the minute it hits the air,
10 that's one of the things about the trajectory. As
11 soon as it hits air, the resistance of the air, the
12 bullet starts to slow.

13 Q But not appreciably as compared to water or
14 other solids?

15 A That is correct.

16 Q And then when it hits the surface of the
17 water, it begins to slow some?

18 A Much faster.

19 Q Much faster. Do you have an opinion how
20 far that bullet will travel down into that ten feet
21 of water before it completely loses velocity
22 propelled by the charge and merely begins to fall by
23 gravity to the bottom of the tank?

24 A No, sir, I don't.

25 Q Well, you know that the tank was made ten

1 feet tall for some reason, don't you?

2 A Yes, sir.

3 Q You know that the bullet doesn't hit the
4 screen or the basket at the bottom with enough
5 velocity to dent or make a mark in the basket, right?

6 A I would say that's correct. I read
7 articles that .22 bullets lose their complete
8 velocity around 24 inches, doesn't take much longer,
9 so I would just be guessing as to what a .38 Special
10 would do. I would say probably three or four feet,
11 four or five feet, but that's just a wild guess.

12 Q .38, you've got a lot more powder although
13 it's a larger bullet?

14 A Yes, also has a larger surface, so the
15 water would react to it more.

16 Q So your best general opinion would be
17 probably that that bullet would be under the -- would
18 be propelled by the gas charge down for perhaps four
19 or five feet, at which time it would lose its
20 propellant from the shell and merely fall by gravity
21 to the bottom?

22 A It would lose all its momentum and then
23 just float to the bottom, yes, sir.

24 Q Now, then, when you fired the test bullet,
25 that is, the test bullets, the ones that you

1 prepared, you had a standard charge in those, didn't
2 you?

3 A I varied the charge in that to try --
4 because I did not know what the charge had been on
5 the evidence bullet or within the K-4, so I varied
6 the charge and tried different charges.

7 Q And you also fired a bullet that had been
8 brought to you in a film cartridge case, didn't you?

9 A Yes, sir, I did.

10 Q And when you fired that bullet, were you
11 there to hear the report from the gun?

12 A Yes. Well, I fired that bullet, not into
13 the shoot tank. I fired that bullet into a cotton
14 box, and I fired it remotely, due to safety
15 precautions. Since this was a reloaded cartridge and
16 I myself did not reload it, then as far as safety
17 purposes, we're not sure that someone may have put a
18 double load of powder in there, left the powder out
19 completely, so I fired that remotely. I put it into
20 a machine called a Ransom rest, which clamped the gun
21 in, held it solid, tied a string to the trigger,
22 moved back and fired it into a box full of waste
23 cotton. That was just for safety purposes, because I
24 was not sure how the cartridge was loaded.

25 Q And you were present when that cartridge

1 fired?

2 A I fired it, yes, sir.

3 Q From all indications you got, it was a
4 pretty normal load, wasn't it?

5 A Yes, sir.

6 Q And then you retrieved that bullet, the one
7 fired from the cartridge that came in the film case?

8 A Yes, sir.

9 Q And you compared it to some of the others
10 that you fired into the shoot tank?

11 A No, I compared it to the evidence bullet.

12 Q Oh, to the evidence bullet. But now you
13 had fired other cartridges through State's 59-A into
14 the shoot tank?

15 A Yes, sir.

16 Q Now, those were bullets of two kinds.
17 First you fired regular manufactured ammunition?

18 A Yes, sir, 158 grain lead round nose,
19 factory bullets.

20 Q And then you fired some bullets that you
21 yourself made, hand made casting out of lead?

22 A Yes, sir.

23 Q And you fired those?

24 A Yes, sir.

25 Q You fired those into the tank, right?

1 A Yes, sir.

2 Q You retrieved them, and you compared them
3 under the comparison microscope?

4 A Yes, sir.

5 Q How many of those did you fire, that is,
6 those hand reloads that you made, how many did you
7 fire?

8 A My guess is ten.

9 Q About ten.

10 A Yes, sir.

11 Q And the fact is that you weren't even able
12 to match any of those ten bullets that you fired to
13 each other, were you?

14 A No, sir.

15 Q In other words, all of the marks that were
16 made by the barrel of State's 59-A on the hand
17 reloads that you made, were random in the sense that
18 you saw no pattern that you could match up any bullet
19 with any of the others within the ten?

20 A I couldn't call them random. There was
21 similarities of the markings between all the bullets
22 except for two of the bullets which I fired at the
23 hottest load, and those two bullets showed gas
24 melting or gas cutting throughout the length of the
25 bullets but the other ones that did not, there was

1 similarity between each of them on the striations,
2 there is not enough for me to make a conclusive match
3 but there was similarities.

4 Q But you're not able, you didn't photograph
5 any of those comparisons and you're not able to point
6 out anything that you saw to us, are you?

7 A No, sir, I'm not.

8 Q Now, the gas melting that you mentioned,
9 gas melting occurs because a bullet is somewhat
10 undersized compared to the size barrel that it's to
11 be fired in, correct?

12 A Yes, sir. Well, there's what we call gas
13 melting and gas cutting. Cutting may be where if the
14 lands or width are very deep or some of the gas may
15 escape right at the edge of the lands and cut up the
16 edge of the bullet, but the melting of the surface of
17 the base itself is due most likely to an undersized
18 bullet.

19 Q So what you did when you made your bullets,
20 you measured the suspect bullet and determined that
21 instead of an exact .357 diameter that the suspect
22 bullet had a .354?

23 A Four, yes, sir.

24 Q So when you made your bullet, you took away
25 that three thousands of an inch in order to make it

1 more or less size comparable with the suspect bullet,
2 correct?

3 A Yes, I made them smaller a bit. I don't
4 know if I went down to .354, but I was able to size
5 them down so they were less than .357.

6 Q Did you put the same number of cannelures,
7 same width of cannelures, same length?

8 A I used a Lyman mold and made 150 to 168
9 lead grain bullet, and that mold, the bullets that I
10 made were consistent with the bullets in State's --
11 that was the unfired cartridge that I received and
12 the evidence bullet that I received.

13 Q So a Lyman mold is something that you had
14 there at the lab, right?

15 A We purchased it specifically to make these
16 bullets.

17 Q And those Lyman molds are readily available
18 to sportsmen and other gun enthusiasts who reload
19 their own ammunition, correct?

20 A Yes, sir.

21 Q So when you fired your handmade ammunition,
22 you were satisfied that you were firing a bullet of
23 the same manufacturing characteristics, about the
24 same size, manufactured in the same kind of mold, as
25 the suspect?

1 A Yes, sir.

2 Q And one of the things that you mentioned
3 was the way the gas escapes around the bullet.
4 That's a function of that down-sized bullet, isn't
5 it?

6 A I believe it was, yes, sir.

7 Q In other words, you would have that kind of
8 gas characteristics if you fired a down-sized bullet
9 from virtually any barrel with five lands and
10 grooves, twist to the right, and same width between
11 the lands and grooves, correct?

12 A That's a possibility, yes, sir.

13 Q So that doesn't help you narrow down
14 anything to this particular gun, does it?

15 A No, sir, does not.

16 Q 59-A?

17 A No, sir.

18 Q And those are the kind of similarities that
19 you were talking about as between your ten bullets?

20 A No, sir.

21 Q You had striations --

22 A I was talking about striation
23 similarities. I would never compare the two bullets
24 because they had gas burning, that they could have
25 been fired from the same gun. What I was looking at

1 was the striations on the bullet surface caused by
2 imperfections in the barrel, not gas burning.

3 Q But you could have gas striation
4 similarities from two bullets that were not fired
5 from the same gun?

6 A You would have a few similarities possible,
7 you may not have any similarities, you may have a
8 few. I had strong similarities between some of the
9 bullets that I fired through State's Exhibit 59-A and
10 the evidence bullet.

11 Q You cannot tell us where those striations
12 began with reference to the nose of the bullet, can
13 you?

14 A No, sir, I cannot.

15 Q You cannot tell us what pattern the
16 striations occurred, can you?

17 A What do you mean by what pattern they --

18 Q What was unusual about the pattern?

19 A No, I -- we never recorded how unusual the
20 patterns are. We examine the guns, we make a
21 determination, do the striation match, are there
22 similarities between the striations, and then that's
23 our notes that we take. I would never go into
24 describing each particular striation in relation to
25 each other. That would be too time consuming, and

1 wouldn't give anything more than I'm saying right
2 now.

3 Q It would be easier to just take a picture,
4 wouldn't it?

5 A No, sir, I don't believe so.

6 Q You mean a photograph right now of those
7 striations would not assist you in illustrating to
8 this jury what you saw under that microscope?

9 A I believe I've explained to the jury what I
10 saw under the microscope.

11 Q But it does assist you in describing to
12 your students the difference in those striations of
13 patterns, correct?

14 A Our students look through the microscope
15 before we take pictures, they learn to see it, and
16 then we teach them how to use the camera, but
17 primarily it's for instructional purpose only.

18 Q But if the pictures don't add anything, why
19 do you use them?

20 A They are just as instructional aids.

21 Q So they do add something, don't they?

22 A For instructional purposes, not for
23 evidence purposes.

24 Q You were not able to match the suspect
25 bullet with the State's 49-A, were you?

1 A That's correct.

2 THE COURT: Wrong number.

3 THE WITNESS: 59.

4 MR. BOWEN: I'm sorry,.

5 BY MR. BOWEN:

6 Q You were not able to match the suspect
7 bullet with 59-A, were you?

8 A That's correct, sir.

9 Q Now, I want you specifically to look at
10 Exhibit 24, that being a shell casing?

11 A Yes, sir.

12 THE COURT: We're going to take a
13 break at this point, Mr. Bowen. Mr. Marrs,
14 you may step down for a moment. Ladies and
15 gentlemen, we're going to be at ease until
16 ten until. Please recall that it is your
17 duty to abide by all prior instruction of
18 the Court. Everyone else please remain
19 seated, the members of the jury are
20 excused.

21 (Jury out at 11:32 a.m.)

22 THE COURT: We're at ease,
23 folks.

24 (Brief recess.)

25 THE COURT: Let the record

1 reflect, all counsel are present, the
2 defendant is present in open court.
3 Mr. Marrs, if you'll again take the witness
4 stand. If you'll bring our jury in,
5 please.

6 (Jury in at 11:52 a.m.)

7 THE COURT: Ms. Coverdale, if I
8 forgot, please don't hesitate to speak up.
9 I apologize. All right. --

10 MR. BOWEN: Thank you.

11 BY MR. BOWEN:

12 Q Mr. Marrs, if the Court permits I would
13 like to approach you now with State's Exhibit Number
14 40, ask you what that is?

15 A It's a photograph of a bullet.

16 Q Can you tell us which bullet?

17 A Which bullet in reference to what?

18 Q In reference to this case, sir?

19 A No, sir, I can't.

20 Q Now, can you please examine State's Exhibit
21 24, if it's near. If it's not I'll be glad to try to
22 locate it for you.

23 A It would be the cartridge case.

24 Q Yes, sir. Now, State's Exhibit Number 24,
25 Mr. Marrs, you have previously identified as a

1 cartridge case of a particular brand or manufacturer,
2 and you feel free to look at it and refresh your
3 memory if you want to.

4 A Yes, sir, it was a Winchester caliber .38
5 Special fired cartridge case.

6 Q Now, you testified on Friday that that
7 shell casing had some consistency in size and shape
8 and design with the bullet 42-B, correct, State's
9 42-B?

10 A I don't think I ever said that any type of
11 comparison between the casing and the bullet.

12 Q All right. Well, in other words, it isn't
13 possible to show that a particular bullet was fired
14 out of a particular case, is it?

15 A To my knowledge, it's very difficult if not
16 impossible.

17 Q So if it had been said in this case that
18 evidence will show that the shell casing, Exhibit 24,
19 conclusively matched the test bullet fired from
20 the .38 gun, that is State's 55-B --

21 A 59.

22 THE COURT: Wrong number.

23 MR. BOWEN: That would not be
24 possible.

25 THE WITNESS: 59-A.

1 BY MR. BOWEN:

2 Q I'm sorry, is 59-A the bullet?

3 THE COURT: Rephrase your
4 question, Mr. Bowen.

5 THE WITNESS: I thought you
6 mentioned the gun --

7 BY MR. BOWEN:

8 Q Let me back up here a minute. There may be
9 some confusion. Now, Agent Marrs, what is State's
10 55-B, is that not a bullet --

11 A I have no idea what State's 55-B.

12 MR. BOWEN: Let me have 55-B, if
13 I may.

14 THE WITNESS: I thought 42-A was
15 the evidence bullet.

16 BY MR. BOWEN:

17 Q I'm going to hand you what has been marked
18 as State's Exhibit 55, and inside of that is State's
19 55-A. For clarification, please tell us again, I
20 know you have before, but what are those items?

21 A 55 is a clear plastic bag that contained
22 this black film canister with evidence tape. Inside
23 of that is a clear envelope which contained a fired
24 cartridge case and the bullet which had been loaded
25 in the cartridge case.

1 Q And what State's label do you find on the
2 bullet itself, if you will, please?

3 A 55-B.

4 Q 55-B?

5 A Yes, sir.

6 Q That's a bullet that came out of the
7 cartridge case, 55-A?

8 A That's correct.

9 Q That's contained in 55, the exhibit that's
10 the bag or whatever?

11 A That's correct, sir.

12 Q Now, again, for clarification, Exhibit 24
13 is a shell casing?

14 A It's a fired cartridge case, yes, sir.

15 Q Fired cartridge case. If someone said in
16 this case that evidence will show --

17 MR. BRITT: Objection.

18 BY MR. BOWEN:

19 Q That the shell casing --

20 MR. BRITT: Objection.

21 THE COURT: Opportunity to be
22 heard?

23 MR. BRITT: Yes, I do.

24 THE COURT: Members of the jury,
25 there's a matter of law that the Court must

1 take up. Don't worry about --

2 MR. BOWEN: Judge, in the
3 interest of time, I'll be glad to rephrase.

4 THE COURT: Okay. Have a seat,
5 folks.

6 BY MR. BOWEN:

7 Q Mr. Marrs, is it true to say that Exhibit
8 24, a shell casing, cannot be conclusively matched up
9 with a bullet, 55 A? That can't be done, can it?

10 A You mean the bullet 55-B?

11 Q 55-B, I'm sorry, being the bullet, cannot
12 be matched with Exhibit 24, the shell casing, can it?

13 A No, but I fired 55-B and 55-A, so I know
14 that 55-B didn't come from Exhibit 24.

15 Q Correct. All right. Then asked another
16 way, there's no way that Exhibit 24, the shell
17 casing, and any .38 bullet can be matched up, can it?

18 A That's correct.

19 Q Okay. Now, you --

20 A May I return this evidence?

21 MR. BOWEN: Yes, sir.

22 THE COURT: Mr. Marrs, for the
23 purposes of clarification, you indicated
24 that you fired 55-B --

25 THE WITNESS: Yes, sir.

1 THE COURT: -- Which is for the
2 record, what, sir.

3 THE WITNESS: 55-B was a
4 cartridge, fired cartridge case.

5 THE COURT: 55-A, for the record,
6 is what.

7 THE WITNESS: Excuse me, 55-B was
8 the bullet. 55-A was the cartridge case, I
9 believe maybe the -- 55-A is the black
10 plastic film canister.

11 THE COURT: So if one placed
12 a .38 cartridge in a revolver, fired that
13 cartridge, one could conclusively match the
14 bullet, if the bullet were retrievable to
15 that cartridge case.

16 THE WITNESS: No, sir. One could
17 match the bullet to the gun, but they
18 couldn't say that bullet came out of that
19 particular cartridge.

20 THE COURT: If you fired that
21 bullet into a ten foot tank, that's the
22 only bullet that you fired from that
23 weapon --

24 THE WITNESS: Then I would know
25 that bullet came out of that cartridge.

1 THE COURT: All right.

2 BY MR. BOWEN:

3 Q But as a general proposition, you can't
4 take a bullet over here and a cartridge case over
5 here, without the knowledge that you have that you
6 fired the bullet from that cartridge, you can't take
7 an unknown bullet of unknown origin and a cartridge
8 of unknown origin and say that the two were ever
9 together, can you?

10 A No, sir.

11 THE COURT: That's what I wanted
12 to clear up, the term match and knowledge
13 as indicated with the prior answer.

14 MR. BOWEN: Yes, sir.

15 THE WITNESS: There's a hole in
16 both ends, sir.

17 MR. BOWEN: All right, sir. I'll
18 give that back to these folks.

19 BY MR. BOWEN:

20 Q Agent Marrs, the report that you made out,
21 copies of which the jury still has, do you have a
22 copy of that in front of you?

23 A Yes, sir, I do.

24 Q Would you turn please to page three of that
25 report?

1 A Yes, sir.

2 Q Now, the first lower case writing on page
3 three refers to a physical examination of a Lexus
4 automobile, doesn't it?

5 A Yes, sir, it does.

6 Q And this is a matter that the District
7 Attorney didn't ask you anything about on direct, is
8 that so?

9 A That's correct.

10 Q Now, you caused or were requested to make
11 an examination of that car and the interior of that
12 car for gunpowder residue, weren't you?

13 A Yes, sir.

14 Q Now, generally speaking, when a weapon is
15 fired inside an enclosed area such as a car, gas
16 comes out the end of the barrel of that weapon,
17 doesn't it?

18 A Yes, sir.

19 Q And what we see and what we lay folks
20 commonly refer to as smoke, is largely made up of
21 unburned powder, is it not, gunpowder?

22 A Could be unburned powder, it's hot gasses,
23 it's soot, it's ashes, yes, sir.

24 Q Soot and ashes of powder that was burned as
25 well as particles of powder that was not burned, is

1 that correct?

2 A Correct.

3 Q Now, that material has specific chemical
4 properties that can be analyzed and tested for,
5 correct?

6 A Yes, sir.

7 Q If --

8 A Possibly.

9 Q The soot and ashes, as well as the unburned
10 or unspent powder?

11 A It's possible, yes, sir.

12 Q And often when a weapon is fired into a
13 closed surface, that unspent or unburned powder or
14 the ash from the powder that was burned, very often
15 falls on surfaces or is thrust up into surfaces
16 around the area of the firing of the weapon, is it
17 not?

18 A It may be, may not be.

19 Q But, there was reason for somebody to
20 request the tests that they did that you look for
21 gunpowder residue in this automobile, is that
22 true?

23 MR. BRITT: Objection to the
24 form.

25 THE COURT: Objection is

1 sustained.

2 BY MR. BOWEN:

3 Q All right. You received a request from
4 someone to conduct these tests, didn't you?

5 A Yes, sir.

6 Q And from whom?

7 A As best as I recall, Special Agent
8 Richardson advised me that he had custody of the car
9 and that it was requested that I process the car for
10 any gunshot residue.

11 Q For clarity, the car we're talking about is
12 a 1992 Lexus 400 that's the subject of this case, is
13 that correct?

14 A Yes, sir.

15 Q So the Lexus was where, with reference to
16 your first call physically there in Raleigh?

17 A It was at one of the los that the SBI uses.

18 Q And it had been secured by the SBI, had it
19 not?

20 A Yes, sir.

21 Q Meaning that nobody can could get to it
22 without some sort of record of their having been
23 there, is that right?

24 A That's correct, sir.

25 Q And it hasn't been cleaned or vacuumed out

1 or touched in any way had it since it became in
2 custody of the SBI?

3 A Yes, but I believe there had been other
4 examinations done on that vehicle prior to my
5 examination.

6 Q But you were aware from the record of those
7 examinations that none of those examinations would
8 have contaminated the existence of any gunpowder
9 residue if there had been any?

10 A I don't know that as a fact. Anybody
11 moving around in the vehicle would move around -- if
12 there had been gunshot residue in the vehicle, people
13 moving around inside the vehicle would move that and
14 may obliterate that.

15 Q Well, may. And let's talk about the
16 composition of the car itself. There was a fabric
17 headliner, wasn't there, in that car?

18 A I believe so, yes, sir.

19 Q And you actually saw the interior of the
20 car, didn't you?

21 A Yes, sir.

22 Q And you actually personally performed the
23 chemical tests, looked for the residue?

24 A Yes, I did the sodium rhodizonate test
25 looking for the lead or lead vapor.

1 Q And you know that in the floorboard of the
2 car were some fabrics, some rugs and so forth down
3 there?

4 A Yes, sir.

5 Q Now, the actual seats of the Lexus were
6 pretty much mostly leather, weren't they?

7 A The best as I can recall, they may have
8 been.

9 Q And those leather seats weren't entirely
10 smooth, there was some crevices and some cracks and
11 some indentions, weren't there?

12 A I don't recall.

13 Q Well, there were some areas where the seat
14 would abut the wall of the car, and there would be a
15 V type crack or valley in there, correct?

16 A I honestly don't recall what the seats
17 looked like, but that may be true.

18 Q And there were surfaces around the
19 instruments that were either made of glass or some
20 sort of clear plastic?

21 A Yes, sir.

22 Q Now, normally you would expect that any
23 gunpowder residue that would fall onto a surface such
24 as fabric or rug or carpet, those particles would be
25 or would tend to imbed down into that carpet and

1 pretty well stay there unless somebody cleaned them
2 out with a vacuum cleaner, don't you think?

3 A I really wouldn't know. Of all the cars
4 that I've examined looking for gunshot residue after
5 someone had fired in the car, I don't believe I ever
6 found any. I think I found some from the outside and
7 had some residue on the window, but as far as
8 examining the interior of the car, which I did
9 because I was requested to, I never had any luck.

10 Q Then you're not saying in all those other
11 cases, it may have been that your test showed that
12 the gun was not fired in the car?

13 A No, it may have showed that the gun was
14 close enough to the victim that all the gunpowder
15 residue had been deposited on the victim and not in
16 the car.

17 Q But you didn't find gunpowder residue
18 deposited on the victim or on his clothing, did you?

19 A He's also, the clothing was also damp, had
20 been soaked and wet. And from my understanding the
21 victim had been in a swamp for two weeks, so any
22 gunpowder residue that may have been there may have
23 been dissolved or dissipated because of the
24 environmental and the weather conditions.

25 Q Well, if the gunshot residue was dissolved

1 around the bullet hole, then how was it that you were
2 able to find some sort of chemical evidence of a
3 bullet passing through inside the bullet hole?

4 MR. BRITT: Objection.

5 THE COURT: Overruled.

6 THE WITNESS: I found a dark ring
7 which could be consistent with soot and the
8 lubricant which would be grease, which
9 wouldn't dissolve in the water. Now,
10 whether that nitrite reaction was gunpowder
11 from a gunshot, I can't say. I had one
12 nitrite reaction, but the dark ring was
13 mostly -- is consistent in my mind with the
14 passage of a bullet.

15 BY MR. BOWEN:

16 Q So you didn't get -- you didn't find any
17 evidence of antimony, did you?

18 A Excuse me.

19 Q Did you find any evidence of chemical
20 compounds in gunpowder?

21 THE COURT: Antimony is what he's
22 asking.

23 THE WITNESS: We don't look for
24 antimony. I tested for nitrites which are
25 the residue of burned gunpowder and lead.

1 We do not do any tests for antimony, it is
2 a very trace amount in lead, so we wouldn't
3 do that test.

4 BY MR. BOWEN:

5 Q But you say that you got a positive
6 reaction right around the bullet hole for nitrites,
7 correct?

8 A I got one reaction at the hole for
9 nitrites, yes, sir.

10 Q Now, if the gun had been so close that the
11 gunpowder would have been thrust into the clothing,
12 then you would have expected to get a nitrite
13 reaction all over the area where that gunpowder would
14 stick into the clothing, wouldn't you?

15 A I can't say, because I've never done a test
16 where I've had a clothing on a body for two weeks in
17 a swamp, so I wouldn't know what I would expect to
18 find then.

19 Q But if nitrites were present in some place
20 where you would expect to find them, like directly
21 around the bullet, it would follow that you would
22 expect to find them elsewhere if that's where they
23 had been imprinted or deposited, correct?

24 MR. BRITT: Objection, calls for
25 conjecture.

1 THE COURT: Argumentative. You
2 may rephrase.

3 BY MR. BOWEN:

4 Q Wouldn't you expect that if there was some
5 gunpowder residue that gave you the positive nitrite
6 test directly around the hole that would have been
7 washed away also?

8 A I was surprised I found one nitrite
9 reaction, but it may have been gunpowder, may have
10 been some other type of nitrite, I can't say. It may
11 have been one particle of gunpowder that got imbedded
12 in that hole and didn't get washed away with others,
13 I don't know.

14 Q You mean other things can give a positive
15 reaction for nitrites?

16 A Nitrites give positive for nitrites.

17 Q So doesn't have to be just gunpowder?

18 A We do a test with sodium nitrite, which is
19 not to detect to see if our solution is working which
20 is not gunpowder.

21 Q When a weapon a fired closer than two feet
22 to an individual, do you not generally expect a
23 significant amount of gunpowder to be deposited
24 either on the bare flesh if the person is not wearing
25 clothing, or on the clothing if the person is wearing

1 clothing?

2 A Less than two feet, I would expect a good
3 bit or most of it, yes.

4 Q Those are often called powder burns?

5 A No, they -- they might be called
6 erroneously powder burns, powder burns would be when
7 the gun was close enough that the soot and everything
8 burned the skin, but stippling, you would find on
9 skin out to a certain distance, and what that is, is
10 the gunpowder actually bruising -- the piece of
11 gunpowder actually bruising the skin, causing a red
12 mark.

13 Q And what is it called when it merely
14 imprints on the clothing or embeds in the clothing?

15 A Gunshot residue.

16 Q Now, normally speaking, you've got a bullet
17 opening up a hole in a fabric, right?

18 A Yes, sir.

19 Q And all those gases and all that powder
20 residue and so forth is coming in not only around
21 that bullet, but it's coming in behind that bullet,
22 correct?

23 A Depends on how far away we're shooting into
24 the fabric.

25 Q Less than two feet.

1 A You're still going to -- most of the gases
2 are going to be dissipated out at two feet, very
3 rarely find lead vapor, it just dissipates and you
4 don't find it. But less than two feet, there may be
5 some lead vapor. So most of the gases would not be
6 following the bullet into the hole.

7 Q But some of the particulate matter will,
8 won't it?

9 A That's a possibility.

10 Q So the particulate matter, that is, the
11 burned and unburned powder, will sometimes and
12 probably follow that bullet into the hole, through
13 the hole and into some of the flesh of the victim,
14 correct?

15 A It's a possibility, although it depends on
16 the distance. Again, powder has very little mass, so
17 as it leaves the barrel and strikes the air, it's
18 acted on almost immediately, as far as
19 aerodynamically slows down rather quickly. So as it
20 slow down, spreads away from the only or away from
21 the bullet. So at two feet you may not get -- if you
22 get one or two flecks of powder that follow the
23 bullet in, that would be unusual, I would think.

24 Q But it's possible to detect that powder in
25 the flesh, is it not, if it's there?

1 A I'm not a doctor but I imagine they can
2 look and see what they see.

3 Q In other words, the powder itself would not
4 chemically decompose, would it?

5 A I don't know that. I would -- I have never
6 read an article or know the test about what happens
7 to powder in a decomposing body.

8 Q So you're saying even at a couple of feet
9 of distance from muzzle to surface, that the gases
10 expand and you've indicated with your hands what
11 looks like to me an expansion area of a couple of
12 feet?

13 A The gas billows out both at the barrel and
14 at the chamber.

15 Q So that gas, with the velocity of the
16 bullet and the forcing the gas out of that barrel in
17 the inside of the car that material would be blown in
18 all directions, wouldn't it?

19 A It's possible, but then it would dissipate
20 to such small minute quantities I wouldn't be able to
21 find it with my test.

22 Q But it also would indicate that perhaps the
23 gun was never fired inside that car, too, wouldn't
24 it?

25 A Again, it's kind of like the absence of

1 gunshot residue, I could not give a distance
2 determination based on the absence of evidence. I
3 cannot say the gun was fired in the car based on the
4 absence of evidence, or the gun was not fired in the
5 car based on the absence of evidence.

6 Q It would be consistent with a weapon not
7 having been fired in that car and not left any
8 residue, correct?

9 MR. BRITT: Objection.

10 THE COURT: Can you answer the
11 question, sir?

12 THE WITNESS: It would also be
13 consistent with a gun having been fired in
14 the car and not leaving any residue.

15 BY MR. BOWEN:

16 Q In reference to my earlier question,
17 Mr. Marrs, if you look in the middle of page two,
18 just under the large case words "results of
19 examination"?

20 A Yes, sir.

21 Q I had asked you earlier about the function
22 of the weapon and whether or not the hammer or
23 anything else was loose. Your first sentence there
24 in lower case says the K-1 revolver, now, that's
25 State's 59-A, is it not?

1 A That's correct, sir.

2 Q Functions properly?

3 A Yes, sir.

4 Q That's what you said?

5 A Yes, sir.

6 Q Mr. Marrs, do you know when any records of
7 the purchase or dispossession of firearms in this
8 country were begun?

9 A 1968 was the gun control of 1968, all guns
10 had to be -- there may have been some record keeping
11 before that, but the gun control law of 1968 mandated
12 that records be kept and guns be serial numbered and
13 records be kept.

14 Q Do manufacturers, large manufacturers such
15 as Winchester, Remington, H&R and others, do they
16 manufacture reloads?

17 A To my knowledge, they manufacture
18 components, they don't manufacturer the reloads. In
19 other words, you can buy primed Remington cases for
20 someone -- a personal individual who want to reload
21 their own ammunition, you can buy casings that have a
22 primer in them from Winchester and Remington.

23 Q So as a general proposition, you don't walk
24 into a store and buy reloads?

25 A Well, there are some companies that make

1 remanufactured ammunition and sell it, such as 3-D.
2 We buy remanufactured ammunition for range use when
3 we're shooting for qualification for practice rounds.

4 Q Typically, you'll find reloads obtainable
5 either through making them yourself or going to a
6 person on a sort of amateur basis does a lot of
7 reload, is that correct?

8 A That's possible, then again, there are
9 companies that make remanufactured ammunition.

10 Q You mentioned an elliptical ring around the
11 hole in the shirt that you had described here in
12 court. Is that ring composed of any chemical
13 compound that you can identify?

14 A I did not have it tested. I would not
15 know.

16 Q So you would have been able to find out
17 whether it was oil or whatever, but you didn't?

18 A I don't know if I could have found that out
19 or not, I just did not have it tested.

20 Q You don't know whether that elliptical ring
21 has anything to do with that hole or gunshot or any
22 weapon, do you?

23 A As a matter of fact, no, it's consistent
24 with a soot running ring or loop lubrication ring,
25 but I cannot say that that's what it is.

1 Q Well, how close would a gun have had to be
2 or -- let's not just a gun. How close in your
3 opinion would State's 59-A have had to be to make
4 such an elliptical ring like that on a piece of
5 clothing?

6 A If it's soot, and that soot that travels
7 with the bullet on the bullet, not soot that follows
8 the bullet, or if it's lubricant, it could have been
9 fired from any distance, and it would have -- could
10 have been deposited as long as there was no
11 intervening targets before it struck the clothing,
12 could have been fired from any distance to leave that
13 ring.

14 Q So that's not evidence at all of close
15 fire?

16 A As I said, I cannot give a distance.

17 Q Okay. Now, when a bullet strikes a
18 surface, be it water, flesh, whatever, the closer
19 that bullet is to the muzzle of the gun -- I'm sorry,
20 strike that. The closer the muzzle of the gun is to
21 that receiving substance, be it skin, water,
22 whatever, all things being equal, that is, assuming
23 no obstruction, the bullet just passes into the
24 medium, whatever it is, the closer the muzzle is to
25 that receiving medium, the further that bullet will

1 travel when it gets in the medium?

2 A Everything else -- loads of the bullet and
3 everything else being equal, I would say that it
4 would probably be, depending if you're only talking
5 inches, if you increase it by one inch every time, I
6 would say the distance would probably be
7 insignificant. But it also depends on the medium
8 you're shooting into. Is it going to strike a bone,
9 is there other things that it's going to strike that
10 would slow it down quicker or do something to it.

11 Q That's why I would hate to say everything
12 else being equal. For the purpose of my question
13 we're going to assume, let's say, the bullet strikes
14 flesh, we're going to assume it does not strike any
15 bone or anything else, but let's assume that there's
16 a shot fired from over where I am, and it strikes
17 human flesh where you are, and then doesn't strike
18 any bone, nothing to impede it, goes through the same
19 part of the body, same trajectory. Then let's assume
20 that same flesh, through that same area, same
21 trajectory, is fired from, say, 18 inches away. You
22 would expect that bullet to travel farther if it was
23 fired closer, wouldn't you?

24 A I would expect that the difference in
25 velocity from you shooting there and someone shooting

1 here would be so small that I really couldn't
2 determine if there had been any difference. Just a
3 distance of 15 feet would slow the bullet down maybe,
4 if it's going 900 feet per second to 899 feet per
5 second, I don't know how much difference there would
6 be based on distance you're now making. If we get
7 over longer distance where the bullet has time to
8 react to the atmosphere and become slower in flight,
9 we can therefore -- slower velocity, then the slower
10 the velocity, the less penetration, I would expect.

11 Q Given the background that you've had from
12 your present specialty, you have taken other courses
13 in science, have you not?

14 A Yes, I have taken some science courses.

15 Q You've had biology?

16 A Yes, sir.

17 Q Had physics?

18 A Yes, sir.

19 Q Had a little bit of anatomy?

20 A No, I never took anatomy.

21 Q You've studied the human body in some ways,
22 haven't you?

23 A As part of my training.

24 MR. BOWEN: May I approach, Your
25 Honor?

1 THE COURT: Yes, sir.

2 BY MR. BOWEN:

3 Q You have seen in your training a number of
4 bullets before that have been known to have struck
5 hard objects, correct?

6 A Yes, sir.

7 Q And many of the bullets that you have seen
8 in your career have known to have struck bones in the
9 human body?

10 A Is that correct, sir.

11 Q Now, I want you to look at State's Exhibit
12 Number 40, at that bullet, and ask you if you see any
13 evidence or indication that that bullet in that
14 photograph --

15 A From the photograph?

16 Q Yes, sir, that bullet in that photograph,
17 if it had struck any hard object such as a human
18 bone.

19 A I can't tell from this photograph.

20 Q All right.

21 A I would have to look at it under a
22 microscope, to see the if there are bone particles
23 possibly imbedded in the nose, if there were trace
24 matter body part on it.

25 Q Did you look at the suspect bullet in this

1 case, I believe it's -- did you look at the suspect
2 bullet in this case, 42-B, to see whether or not in
3 your opinion that bullet had struck any hard surface
4 such as bones in the human body?

5 A I examined it. I did not note any bone,
6 body matter or bones. It may have been cleaned off
7 by the medical examiner, I'm not sure, but I did not
8 note any in my notes. It does not mean it did not
9 strike any hard matter, I just did not note anything
10 on it.

11 Q The striking of a bone often causes serious
12 deformity to a bullet, doesn't it?

13 A That also, too, depends on what bone it
14 strikes. A skull being hard and thick deforms the
15 bullet more than, say, a rib.

16 Q Now, in other words, what you saw about
17 that bullet is not inconsistent with that bullet
18 having passed through the soft tissues of flesh,
19 correct?

20 A I would say yes.

21 Q Not inconsistent with having passed through
22 the soft tissues of an artery such as the aorta?

23 A It may have.

24 Q Not inconsistent with the passing through
25 of certain underlayments to the ribs, not the ribs

1 themselves, but cartilage type underlayments?

2 A It may have.

3 Q Not inconsistent with the passing through
4 the lungs of the wall and the chest cavity?

5 A Again, it may have.

6 Q Would you agree that the human body is made
7 up of better than 97 percent water?

8 A That's what everybody says, but that's
9 water that is in organic compounds, mixed into
10 organic compound. You couldn't squeeze the human
11 body and get 97 percent water. It's all mixed into
12 organic compounds which are the human body.

13 Q Without the bones that are included, most
14 of the soft tissues are very high percentage of
15 water, aren't they?

16 A Yes, sir.

17 Q And what is the same medium that you used
18 in your test tank through which you believe that
19 a .32 bullet fired at 18 inches from the surface of
20 that water usually goes about five feet?

21 A You mean a .38?

22 Q .38, excuse me.

23 A Said again, that is a wild guess on my
24 part, because I've never done a test to see how far
25 the bullet goes. I know it stopped before it hits

1 the bottom of the basket.

2 Q Your opinion would be four or five feet?

3 A That would be a guess on my part, yes, sir.

4 Q But an educated guess, correct?

5 A I would say so.

6 Q You found no evidence of lead or primer
7 vapors having struck the surface of the shirt,
8 correct?

9 A I found no evidence, that is correct.

10 Q So it's fair to say, Agent Marrs, nothing
11 about your testing that you did about that shirt and
12 bullet really tells us with any degree of certainty
13 how far the muzzle of the gun was away from the
14 individual who was wearing that shirt, does it?

15 A That's correct, based on the absence of
16 evidence, I cannot give a distance determination.

17 Q Could have been several dozen yards,
18 couldn't it?

19 A It could have been six inches, could have
20 been several dozen yards, yes, sir.

21 Q Could have been fired by any number of a
22 million or more guns, couldn't it?

23 A It had to be fired by any gun with a five
24 lands and grooves, right hand twist and with a
25 certain measurement which could be up to a million

1 guns, yes, sir.

2 Q Or more?

3 A Or more, yes, sir.

4 Q Now, Agent Marrs, when you got State's 59-A
5 into your custody, did you see any rust whatsoever on
6 the surface of that weapon?

7 A Yes, sir, I said there was some oxidation,
8 the gun was faded and worn blue, but there was some
9 oxidation on that weapon, yes, sir.

10 Q Where did you say you saw it?

11 A Basically it was all over the weapon.
12 Slight oxidation. I didn't see any deep pitting that
13 you might see with rusting or whatever, but it was an
14 old gun, and there was some oxidation on it.

15 Q Did you know who had handled it before you
16 got to it?

17 A As far as ever?

18 Q No, I'm sorry, just who in the SBI had
19 handled it and how it had been stored?

20 A It had been received by me from Jerry
21 Richardson. He had, I'm sure, processed it for
22 fingerprints. And then Jerry had received it from
23 Aprille Sweatt, I'm sure, in a sealed container.

24 Q What is used in the agent of fingerprint
25 powder?

1 A Excuse me?

2 Q What is fingerprint powder, what is it made
3 of?

4 A It's dark -- well, depends on the surface,
5 they are using it. Either lighted colored or silver
6 powder. I'm not sure what are the chemical compound
7 that make up fingerprint powder, I don't know.

8 Q And you don't know whether that fingerprint
9 powder promotes or impedes rust, do you?

10 A I've had guns that I've received from
11 latent prints that have been processed with
12 fingerprint powder throughout the years, and from my
13 experience it hasn't increased oxidation in the short
14 period of time that you had the gun.

15 Q Well, you don't -- you didn't see them in
16 the condition that they were before they came?

17 A Yes, sir, sometimes I received a gun, and
18 then requested before I done my examination that it
19 go to latent. So it would go down to them, and from
20 me, and then come back to me.

21 Q Now, did you take -- you did get the
22 fingerprint powder off of State's 59-A?

23 A I don't know if used fingerprint powder or
24 some other method. From my notes, I didn't note that
25 it had fingerprint powder on it.

1 Q So you don't know whether it was
2 fingerprinted or not, do you?

3 A I can only assume, and that would be
4 wrong. It came from Mr. Richardson who was the
5 latent print examiner, he turned the gun over to me,
6 had been requested to process it for fingerprints.

7 Q Nothing that you did changed the color of
8 either one of those handles on that weapon, did it?

9 A Nothing I did, no, sir.

10 Q As far as you know, nothing in the
11 fingerprint section did anything to change the color
12 of those handles, did it?

13 A I don't know.

14 Q Show you State's 59-A, sir.

15 A Yes, sir.

16 Q Did you see rust on that gun?

17 A I think if you looked under a microscope,
18 you would see there might be some slight oxidation on
19 the barrel, and possibly around the letters here that
20 are etched in, and the engraving, but it's not that
21 apparent, but I looked under a microscope.

22 Q So if I were carrying this gun around among
23 associates or somebody that I was near, and they saw
24 it a few feet away, they couldn't tell there was any
25 rust on it, could they?

1 MR. BRITT: Objection,.

2 THE COURT: Sustained.

3 MR. BRITT: Move to strike.

4 THE COURT: Allowed. Members of
5 the jury, don't consider the last question
6 by counsel for the defendant, Mr. Bowen.
7 That matter calls for speculation and
8 conjecture. It's not to take any part in
9 your deliberations in this case in any way.

10 BY MR. BOWEN:

11 Q The rust that is on State's Exhibit Number
12 59-A now, in your opinion, would it take a microscope
13 to see?

14 A You could see it better with a microscope.
15 I don't know if anybody else who is more attuned to
16 examining rusted objects than me would say what they
17 would say, but I think it would be better visible
18 under a stereo microscope, which is just --

19 Q Two-eyed microscope?

20 A Yes.

21 Q Now, when you saw this weapon for the first
22 time in your lab, State's 59-A, you had to have a
23 microscope to see the rust then, didn't you?

24 A Well, I normally look at the gun under the
25 microscope to look for any damage, and at the same

1 time examine the exterior, so I do that with all guns
2 whether there's visible rust, I always look into a
3 microscope.

4 Q You didn't see the rust when you had it
5 under the microscope?

6 A I really wasn't looking at it to see what
7 was there until I put it under microscope.

8 Q You wouldn't disagree that it is in
9 substantially the same shape then and now, State's
10 59-A?

11 A No, I would agree with that statement, yes,
12 sir.

13 MR. BOWEN: That's all -- wait a
14 minute, just wait a minute, just a second.
15 That's all, Your Honor.

16 THE COURT: Any redirect
17 examination, Mr. Britt?

18 MR. BRITT: Yes, sir

19 REDIRECT EXAMINATION

20 BY MR. BRITT:

21 Q Mr. Marrs, when you say that the bullet
22 that you examined, State's Exhibit -- that's
23 contained inside of State's Exhibit 42-B, examined it
24 with bullets that you fired there in the lab from
25 State's Exhibit 59-A, and you say that there were

1 strong similarities in the striations, what do you
2 mean by that?

3 A The striations that were present on State's
4 Exhibit 42-B, when compared to test bullets that I
5 fired, had some strong similarity. It wasn't
6 tantalizing to me, I was hoping I could see some
7 more. What I saw looked pretty good, but wasn't
8 enough to reach any positive or conclusive
9 conclusion.

10 Q And what if any effect did the gas melting
11 and slippage have on your ability to compare the
12 bullet contained inside of State's Exhibit 42-B with
13 any of the test bullets that you fired?

14 A It marred the surface, a large area of the
15 surface of the bullet. If I had had more area to
16 examine, I might have reached a different conclusion,
17 or may not have.

18 Q And the gas melting and slippage was due to
19 the fact that State's Exhibit 42-B was an undersized
20 bullet?

21 A Yes, sir.

22 Q When you fired the test bullets from
23 State's Exhibit 59-A, did you see similar gas melting
24 and slippage with those bullets?

25 A The bullets that I made myself and sized to

1 be undersized all exhibited the gas melting and the
2 slippage.

3 Q And based upon your examination of the
4 bullet that was contained in State's Exhibit 42-B
5 when compared with the bullets fired from State's
6 Exhibit 59-A,, can you exclude State's Exhibit 59-A
7 as having fired the bullet contained in State's
8 Exhibit 42-B?

9 A No, sir. I cannot say that 59-A did not
10 fire that bullet.

11 Q Mr. Bowen asked you about gunshot residue
12 test you did on the interior of the car. What if any
13 effect would the car having been exposed to the
14 elements, weather conditions, have on the presence of
15 any gunshot residue?

16 A If there was gunshot residue present, and
17 then the vehicle was exposed to the elements, that
18 may affect the test or whether -- it may wipe away
19 any evidence of gunshot residue.

20 Q And what if any effect would people getting
21 in and out of that car have on any gunshot residue
22 that was present in the car?

23 A Again, depending on where -- if there was
24 gunshot residue present and getting in and out of the
25 car may destroy that evidence or move that evidence.

1 Q And would the passage of time have any
2 effect on the presence of gunshot residue on the car?

3 A Again, depending on what happens to the
4 interior of the car.

5 Q And is the amount of gunshot residue in a
6 particular case dependent upon the type of weapon and
7 type of ammunition that's being used?

8 A Yes, our tests are very specific. In doing
9 distance, we want to use the same weapon and same
10 type of ammunition to do the testing.

11 Q Is gunshot residue testing primarily done
12 to determine the muzzle of the target to the target
13 distance?

14 A Yes, sir, it is.

15 Q Mr. Bowen asked you about a series of
16 different manufacturers. You mentioned one
17 specifically, U.S. Revolver?

18 A Yes.

19 Q Your answer was they made a .38 Smith &
20 Wesson but no .38 Special, what did you mean by that?

21 A I said as best I recalled they made a gun
22 in a .38 Smith & Wesson which is a different caliber
23 than .38 Special. Smaller chamber, they may have
24 made a .38 Special, I'm not aware of it.

25 Q And the same thing is true of Ira Johnson?

1 A Yes, sir.

2 MR. BRITT: I don't have any
3 other questions.

4 THE COURT: Anything further?

5 REXCROSS EXAMINATION

6 BY MR. BOWEN:

7 Q Mr. Marrs, you did not test -- make these
8 tests in the blind sense that you did not know which
9 case this was, did you?

10 A What do you mean, sir?

11 MR. BRITT: Objection to the
12 form.

13 THE COURT: The objection is
14 sustained.

15 BY MR. BOWEN:

16 Q These striations that you have spoken about
17 in redirect testimony that you talk about as strange
18 are the very striations that you were unable to
19 draw --

20 A Yes, I don't believe I used the word
21 strange. I said tantalizing, but I could not --
22 there were lots of similarities and what was present,
23 the small amount that was present, there was
24 similarity but not enough for me to reach a
25 conclusion.

1 Q You didn't use the word strange last Friday
2 in your testimony?

3 A I don't recall, I may have.

4 Q And those are the very striations that
5 you're unable to give us a diagram or a photograph or
6 anything with which we here in the courtroom,
7 including the jury, can look and make our own
8 conclusion, is that correct?

9 A That's correct.

10 Q And the gas melting and slippage
11 characteristics, as you've testified to, that's only
12 a function of the undersized bullet, correct?

13 A That's correct.

14 Q And any one of those million or so guns
15 with the five lands and grooves and other similar
16 class characteristics, if an undersized bullet were
17 fired down their barrels, they would also exhibit the
18 same type of gas melt and slippage characteristic,
19 wouldn't they?

20 A I would expect to see that, yes, sir.

21 Q So that doesn't help us in narrowing down
22 the gun?

23 A It's not one of the class characteristics I
24 used.

25 Q And when Mr. Britt asked you whether or not

1 you can exclude this gun, that is, State's 59-A, as
2 the weapon that fired the suspect bullet, your
3 evidence -- your testimony also is that you can't
4 exclude a million or more other guns, too, correct?

5 A That's right, I cannot say this was the
6 gun, I cannot say this was not the gun.

7 MR. BOWEN: One moment, please,
8 Your Honor.

9 THE COURT: Yes, sir.

10 MR. BOWEN: That's all, Your
11 Honor.

12 THE COURT: Anything further,
13 Mr. Britt?

14 MR. BRITT: No, sir.

15 THE COURT: Mr. Marrs, for
16 purposes of clarification, sir, you
17 indicated that the cartridge you examined,
18 42-B, I believe it was, is that correct?

19 THE WITNESS: 42-B was the
20 bullet.

21 THE COURT: The bullet, I'm
22 sorry, was undersized.

23 THE WITNESS: Yes.

24 THE COURT: When a properly sized
25 bullet is fired down a barrel, how would

1 you describe the effect of the bullet as it
2 proceeds through the barrel.

3 THE WITNESS: That when the
4 bullet is fired, in a revolver, there is a
5 distance between where the bullet leaves
6 the cartridge case until it strikes the
7 rifling, it's an area called a forcing cone
8 in a revolver, which is an area slightly
9 oversized, which, in other words, just so
10 the bullet can reach -- then when it
11 strikes the rifling, it may have what is
12 first called the skidding, where the bullet
13 attempts to seat itself, and there's some
14 slight slippage, very little. And then the
15 bullet is seated into the rifling, the gas
16 behind the bullet is forcing the bullet
17 along the rifling, and it follows the
18 curvature of the rifling. And as it leaves
19 the barrel, it's spinning, has imparted a
20 spin to the bullet.

21 THE COURT: If the barrel has a
22 right-hand twist, how would that affect the
23 path of the bullet as it goes through the
24 barrel, the twist to the right or left?

25 THE WITNESS: Bullet would be

1 twisting to the right, or following the
2 right twisting grooves in the bullet, and
3 turning right as it leaves the barrel, the
4 bullet would be spinning to the right.

5 THE COURT: What does the number
6 of lands and grooves in the rifling mean in
7 terms of any markings that may be imparted
8 to the bullet?

9 THE WITNESS: The bullet being
10 either lead or copper, soft jacketed,
11 softer than the hard steel barrel, so it
12 picks up the imprint of these lands and
13 grooves, because the gases behind it
14 can't -- sometimes, if the bullet is not
15 undersized will obturate or force the
16 bullet to expand slightly at its base.

17 THE COURT: If the bullet is
18 undersized -- I'm sorry did I cut you off?

19 THE WITNESS: No.

20 THE COURT: If the bullet is
21 undersized, how would that affect the path
22 of a bullet as it proceeds down the barrel
23 after the charge has been ignited?

24 THE WITNESS: The bullet being
25 slightly undersized will attempt to grasp

1 the rifling but it would overspin slightly
2 and move through the barrel and depending
3 on how long the barrel is and what the rate
4 of twist is, the bullet would jump maybe to
5 another land impression or another groove,
6 and you have this slippage in the bullet.

7 THE COURT: Am I correct that it
8 would kind of bounce as it goes down the
9 barrel from side to side?

10 THE WITNESS: That's a
11 possibility, too.

12 THE COURT: Would it be possible
13 with undersized bullet bullets to duplicate
14 the gas melting as to each bullet fired?

15 THE WITNESS: You would have to
16 know the exact charge that was in the
17 cartridge that was fired. And then again
18 it may not duplicate it exactly.

19 THE COURT: Would the striations
20 be cable of being duplicated with an
21 undersized bullet?

22 THE WITNESS: It's possible,
23 depending -- again, depending on what the
24 bullet strikes as it's going through the
25 barrel. If it struck the right area that

1 had very good markings, and another bullet
2 repeated that by striking the exact same
3 area, it had those good markings it's
4 possible that you could match that to the
5 gun.

6 THE COURT: So if you had ten
7 undersized bullets fired down the barrel of
8 the same weapon, it's possible -- how would
9 that affect the markings on those ten
10 bullets?

11 THE WITNESS: They may or may not
12 have the same markings on them. Some of
13 them could jump more or jump less as they
14 are going in the barrel, and then do it at
15 a different point in the barrel, so I
16 couldn't match my ten bullets that I fired
17 to each other.

18 THE COURT: Anything further on
19 behalf of the State?

20 MR. BRITT: Yes, sir.

21 FURTHER REDIRECT EXAMINATION

22 BY MR. BRITT:

23 Q State's Exhibit 55 which was the .38
24 caliber bullet that you fired there in the
25 laboratory?

1 A Yes, sir.

2 Q Was it an undersized bullet?

3 A Yes, sir, it exhibited the same gas melting
4 and slippage that I had on the other bullets that I
5 fired.

6 Q And that would include the bullet contained
7 in State's Exhibit 42 B?

8 A Yes, sir.

9 MR. BRITT: I don't have any
10 other questions.

11 THE COURT: Anything further on
12 behalf of the defendant?

13 FURTHER CROSS-EXAMINATION.

14 BY MR. BOWEN:

15 Q You're talking about, Agent Marrs, about
16 undersized bullet having ability to slip and slide
17 through the barrel and so forth, and you say
18 sometimes -- am I to understand sometimes it skips a
19 land or groove and goes on to the next one?

20 A It may, depending if it was -- had enough
21 room in the barrel to do that.

22 Q So actually, that characteristic of an
23 undersized bullet would cause you to be even less
24 sure that the gun that fired it even had five lands
25 and grooves, wouldn't it?

1 A No, sir, because at one point, the bullet
2 either at the base or at the nose there was a
3 sufficient -- you could examine, you can determine
4 the class characteristics of the gun it was fired
5 from. At some point along that bullet there was
6 clear indications of the class characteristics.

7 Q But it's less distinct?

8 A Excuse me?

9 Q It's less distinct in the undersized
10 bullet?

11 A Less, but less to determine the class
12 characteristics of the gun it was fired from.

13 Q Less distinct than store bought ammunition?

14 A It was less distinct than the factory
15 ammunition I fired, yes, sir.

16 MR. BOWEN: That's all.

17 THE COURT: If you know the
18 circumference of the bullet and you know
19 the measurements of the lands and grooves,
20 what does that tell you?

21 THE WITNESS: That can give
22 you -- well, that tells you it was fired
23 from a certain caliber of gun, and what the
24 general rifle characteristics of that gun
25 were.

1 THE COURT: Anything further,
2 folks?

3 MR. BRITT: No, sir.

4 MR. BOWEN: That's all.

5 THE COURT: Thank you, sir. You
6 may step down.

7 MR. BRITT: May Mr. Marrs be
8 released?

9 THE COURT: Yes, sir.

10 It's ten until, do you want to start
11 now or hold off until 2:30?

12 MR. BRITT: Can we go ahead and
13 take lunch at this point?

14 THE COURT: Ladies and gentlemen,
15 we're going to take the lunch recess until
16 2:30. Please recall that it is your duty
17 not to talk about the matters among
18 yourselves or to anyone else, you are not
19 allowed to have anyone say anything to you
20 or in your presence. Don't form or express
21 any opinions about this case, don't have
22 any contact or communication of any kind
23 with any of the attorneys, parties,
24 witnesses, prospective witnesses, or
25 directly with the Court. Avoid any

1 exposure to any media accounts which might
2 exist in connection with this matter, and
3 don't conduct any independent inquiry or
4 investigation or research of any kind.

5 Everyone else please remain seated --
6 yes, sir, if you'll leave them in your
7 seats. Do we need them anymore, folks? 95
8 and 96.

9 MR. BOWEN: They can be
10 retrieved.

11 THE COURT: If you'll leave them
12 in your seats, we'll retrieve them.

13 (Jury out at 12:52 p.m.)

14 THE COURT: We're at ease until
15 2:30.

16 (Lunch recess.)

17 THE COURT: Good afternoon,
18 folks. Let the record show that all
19 counsel are present, the defendant is
20 present in open court. Are all members of
21 our jury secured, Mr. Horne?

22 THE BAILIFF: Yes, sir, they are.

23 THE COURT: State ready to go
24 forward, Mr. Britt?

25 MR. BRITT: Yes, sir, we are.

1 THE COURT: If you'll bring the
2 jury in, please.

3 (Jury in at 2:31 p.m.)

4 THE COURT: Good afternoon,
5 ladies and gentlemen. Yes, sir, Mr. Britt.

6 MR. BRITT: Your Honor, at this
7 time we call Detective Don Smith.

8 DONALD SMITH,
9 being first duly sworn was examined and testified as
10 follows:

11 DIRECT EXAMINATION

12 THE COURT: Mr. Smith, I don't
13 think the court reporter is going to have
14 any trouble spelling your name.

15 THE WITNESS: I don't think so
16 either.

17 BY MR. BRITT:

18 Q For the record, state your name and
19 occupation.

20 A Don Smith, detective, Cumberland County
21 Sheriff's Department, homicide.

22 Q How long have you worked for the Cumberland
23 County Sheriff's Department?

24 A 17 years, approximately.

25 Q How long have you worked for the homicide

1 division of the Cumberland County Sheriff's
2 Department?

3 A Approximately the last eight years.

4 Q Presently, what capacity do you serve in
5 the homicide division of the Cumberland County
6 Sheriff's Department?

7 A I'm head of homicide, sir.

8 Q Back in August of 1993, did you participate
9 in the Cumberland County Sheriff's Department's
10 investigation into the homicide of James Jordan?

11 A Yes, sir, I did.

12 Q Did you also participate in the
13 investigation regarding the recovery of the 1992 red
14 Lexus east of Fayetteville in Cumberland County?

15 A Yes, sir, I did.

16 Q August the 14th of 1993, did that
17 investigation bring you to Robeson County?

18 A Actually it was August 14, sir, the night
19 of the 14th and led into the morning hours of the
20 15th, yes, sir.

21 Q And what officers accompanied you from
22 Cumberland County to Robeson County on August 14th of
23 1993?

24 A It was Captain Binder, myself, Sergeant
25 Wood, Sergeant Massengill, Lieutenant Durry Cannon.

1 There was some SBI officers contacted, Special Agent
2 Myers, I believe was contacted by Captain Binder.
3 Later on, sir, I believe we were joined at the law
4 enforcement office in Robeson County by the Sheriff
5 from Cumberland County, and I believe that was it,
6 sir.

7 Q Prior to coming to Robeson County on August
8 14th, 1993, was there a meeting between members of
9 the Cumberland County Sheriff's Department and the
10 State Bureau of Investigation that took place at
11 Cumberland County Sheriff's Department?

12 A Yes, sir.

13 Q And as a result of that meeting on August
14 the 14th, 1993, did you and those other officers that
15 you named here then proceed to Robeson County?

16 A Yes, sir, we did, except I missed one
17 officer, would have been Lieutenant Jim Henley was
18 present with us also.

19 Q When you came to Robeson County on August
20 14th of 1993, specifically where did you first go?

21 A I was told to meet on an area just off of
22 exit 14 down Highway 74. They did not want us near
23 the trailer park that -- that was listed as Black
24 Swamp Road, I believe is the name it was. They were
25 supposed to meet at a trailer manufacturing plant

1 that was located just about at the junction of Black
2 Swamp Road and Highway 74.

3 Q And were there other officers that went to
4 that location with you?

5 A Not at first, sir, I was the first one
6 there. Captain Binder and the SBI had already
7 proceeded down and had made contact with the subject.

8 Q Now, after you went to the location there
9 at the mobile home manufacturing plant, did there
10 come a time when you saw the defendant Daniel Green?

11 A Not at first, sir. Captain Binder came
12 back and I believe the first time I saw Mr. Green was
13 when he was in the vehicle. I had walked up to the
14 vehicle and asked Captain Binder if they had got
15 ahold of the subject that they had gone down for
16 which was Mr. Green.

17 Q And when you saw Mr. Green, who else was in
18 the car other than the defendant and Captain Binder?

19 A Both Captain Binder and Mr. Myers were
20 outside of the vehicle. The subject was in the
21 vehicle by himself at the time I saw him, sir. No
22 one else was in the vehicle.

23 Q And at that location, Mr. Smith, did you
24 witness a consent to search form that was signed by
25 the defendant?

1 A I did, sir.

2 Q And do you recall approximately what time
3 of the evening that occurred?

4 A I'm not sure of the exact hour sir, it was
5 early evening, approximately 21:00 hours, sir.

6 (State's Exhibit 97 was
7 marked for identification.)

8 MR. BRITT: May I approach?

9 THE COURT: Yes, sir.

10 BY MR. BRITT:

11 Q Let me show you what's been marked as
12 State's Exhibit Number 97, ask you if you can
13 identify that document?

14 A Yes, sir, I can.

15 Q How are you able to identify State's
16 Exhibit Number 97?

17 A It bears my signature, sir, at the bottom
18 portion as a witness, and it was -- the time of the
19 signing was 9:00 p.m. That would be 21:00.

20 Q And for the record, is State's Exhibit
21 Number 97 a photostatic copy of the original consent
22 to search form that you signed or witnessed on the
23 evening of August the 14th, 1993?

24 A Yes, sir, it is.

25 Q Does State's Exhibit Number 97 bear any

1 other signature?

2 A Yes, it does.

3 Q What other signatures does it bear?

4 A Special Agent Myers, from the SBI.

5 Q And for the record, State's Exhibit Number
6 97 is a consent to search form?

7 A Yes, sir, it is.

8 Q Does it bear any name and address?

9 A Yes, sir. At the top it bears the name of
10 Daniel Andre Green. Do you want me to read this,
11 sir?

12 Q If you will, please.

13 A Starts at the top, North Carolina State
14 Bureau of Investigation, consent to search. I,
15 Daniel Andre Green, having been informed of my
16 Constitutional right not -- not to have a search made
17 of the premises or vehicle hereafter described
18 without a search warrant and my right to refuse to
19 consent to a search, hereby authorize Special Agent
20 Barry Lea -- or B.M. Lea is the way it's written
21 here, and Special Agent Kim Heffney, agents of the
22 State Bureau of Investigation, to conduct a complete
23 search of the premises or vehicle under my control,
24 described as my bedroom, at mother's residence, I
25 believe that says, on Black Swamp Road. This written

1 permission is given by me voluntarily without threats
2 or promises of any kind being made to me. It's
3 signed David -- correction, Daniel Green, 8-14-93.
4 Witnesses are Special Agent Myers from the SBI, and
5 it was timed at 21:00 hours, or 9:00 p.m., as
6 witnessed by Donald R. Smith. That's myself.

7 Q Is State's Exhibit Number 97 in
8 substantially the -- strike that. Is State's Exhibit
9 Number 97 a fair and accurate duplicate copy of the
10 original consent to search form that you signed on
11 August the 14th, 1993?

12 A Yes, sir, it is.

13 Q And after you witnessed the consent to
14 search form marked as State's Exhibit Number 97, did
15 you then proceed to a mobile home located in Bob's
16 Landing Mobile Home Park off of the Back Swamp Road?

17 A Yes, sir, we did.

18 Q How many officers went to that home?

19 A Special Agent Barry Lea, Special Agent Van
20 Parker, SBI, Durry Cannon from the Cumberland
21 County. I'm not sure of Robeson County officers,
22 sir, but I think there was at least two or three
23 Robeson County officers.

24 Q When you went to that residence on August
25 the 14th after obtaining the consent to search, was

1 anyone -- was there anyone present at that residence
2 when you first arrived?

3 A Lady that was identified to me as
4 Ms. Green.

5 Q Upon arriving at the residence, was any
6 search conducted of the residence on August 14th?

7 A Yes, sir. Barry Lea, Special Agent Lea,
8 was in communication with Ms. Green. Agent Van
9 Parker was talking to Ms. Green. Lieutenant Cannon
10 and myself proceeded to the bedroom, which was
11 located at the front of the trailer. There was one
12 other Robeson County officer with us there, and I
13 cannot remember who that subject was. And we
14 proceeded to search the living room -- or the
15 bedroom, sir.

16 Q Can you describe for us the bedroom that
17 you and Detective Cannon went into?

18 A The bedroom was located at the front of the
19 mobile home. On the left-hand side was a group of --
20 well, chest of drawers. Sitting in front of that was
21 a -- I would describe it as a shop vac or dry vac,
22 wet-dry vac. It was a large vacuum cleaner. Going
23 around the room was a closet, located over in the
24 left corner. There was a bed up against the forward
25 part of the trailer, and I believe there was a pile

1 of clothing located off to the right-hand side as we
2 walked in.

3 Q And when you went to this residence on
4 August 14th of 1993, did you have in your possession
5 any type of firearm?

6 A My own service weapon, sir.

7 Q What type of firearm did you use as a
8 service weapon?

9 A A Glock 19, nine millimeter, sir, my
10 automatic.

11 Q When you went to this residence August 14th
12 of '93, did you have in your possession a .38 caliber
13 Smith & Wesson six-shot revolver?

14 A No, sir, I did not.

15 Q To your knowledge did any other officer
16 have in their possession a .38 caliber six-shot
17 revolver?

18 MR. THOMPSON: Object.

19 THE COURT: If he knows he may
20 answer. Overruled.

21 THE WITNESS: As far as the
22 officers from Cumberland County, they are
23 not issued nor do they carry revolvers. As
24 far as Robeson County officers, I cannot
25 answer. SBI I know went to semiautomatic

1 weapons years ago.

2 BY MR. BRITT:

3 Q And what area of the bedroom did you
4 search?

5 A I searched in a clockwise manner, starting
6 to the left-hand side of the room working my way
7 around to where Lieutenant Cannon had already started
8 a search. We met and ended the search of the bedroom
9 at that point.

10 Q While you were in the bedroom, you've
11 testified that there was a shop vac type vacuum
12 cleaner there?

13 A Yes, sir.

14 Q At any point did you open that vacuum
15 cleaner?

16 A Did not open it, sir, but I fell over that
17 thing about three times and moved it about three
18 times.

19 Q When you say that you fell over it as you
20 moved around the room, was it in your way?

21 A Yeah, basically, yes, sir.

22 Q Is there any reason why you did not open
23 the vacuum cleaner on the 14th?

24 A I cannot explain why I did not open it,
25 sir, it's just the fact it never occurred to me, and

1 the fact that the thing was in my way, and the fact
2 that our officers from Cumberland County had been up
3 for quite a long period of time.

4 Q And when had the investigation into
5 Mr. Jordan's death actually been started by the
6 Cumberland County Sheriff's Department?

7 A Shortly after 17:00 hours, that would be
8 shortly after 5:00 p.m. on the 11th of August is when
9 we received information that the car had been
10 identified basically as belonging to Mr. Jordan, and
11 also Cumberland County officers thinking that we
12 possibly had a homicide within the confines of
13 Cumberland County. That's why homicide was called in
14 to begin with, sir.

15 Q From the 11th of August when the
16 investigation began until August the 14th of 1993
17 when you went to the defendant's home, approximately
18 how much sleep had you had in that three, four day
19 period?

20 A It's hard to estimate, sir, but I would
21 estimate somewhere between probably an hour, hour and
22 a half per night. And most of that was taking time
23 to change clothes and clean up a little bit to get
24 back on the road.

25 Q When you searched the defendant's bedroom

1 on August 14th of 1993, was there or were there any
2 other officers in that room with you?

3 A If I remember correctly, sir, there was a
4 Robeson County officer assisting us in that room. I
5 cannot remember who he was.

6 Q And was Detective Cannon there with you?

7 A Yes, sir, he was.

8 Q At any time while you were in that bedroom
9 on August 14th, did any other officer open the vacuum
10 cleaner?

11 A No, sir.

12 Q Other than when you moved the vacuum
13 cleaner out of your way as you searched this room,
14 did any other officer touch or move that vacuum
15 cleaner in any way?

16 A To my knowledge, sir, I'm the only one that
17 touched the vacuum cleaner, and that was to pick it
18 up by the handles and move it out of the way.

19 Q And as you searched through the defendant's
20 bedroom on August 14th of 1993, were there any items
21 seized?

22 A Yes, sir. We not only searched the bedroom
23 area that was given permission, but we also got --
24 received permission from Ms. Green for an area she
25 referred to as the dungeon. And I guess it's typical

1 of every family to have --

2 MR. THOMPSON: Object to what he
3 guesses.

4 THE COURT: Sustained.

5 BY MR. BRITT:

6 Q I'll ask you to describe this room that
7 you've referred to as the dungeon.

8 A In my house, it's referred to as a junk
9 room, sir.

10 MR. THOMPSON: Object, move to
11 strike.

12 THE COURT: Sustained. Motion to
13 strike is allowed. Members of the jury,
14 don't consider the last response of
15 Mr. Smith. That matter is not to take any
16 part in your deliberation in any respect.

17 BY MR. BRITT:

18 Q What if anything did you see in that room
19 that's been referred to as the dungeon?

20 A It was a brown briefcase, and what brought
21 this to our attention was the fact that it was just
22 sitting out in the open. We asked Ms. Green if this
23 briefcase belonged to her son, she said --

24 MR. THOMPSON: Object as to what
25 Ms. Green said, move to strike.

1 THE COURT: Sustained. Well, the
2 motion to strike is allowed.

3 BY MR. BRITT:

4 Q Based upon anything that Ms. Green said to
5 you, did you take the briefcase?

6 A Yes, we did.

7 Q Can you describe for us the briefcase that
8 you found there?

9 A It was a brown leatherette type briefcase,
10 had gold colored fasteners to keep it from fastening
11 the lid down. From what Ms. Green told --

12 MR. THOMPSON: Object.

13 THE COURT: Sustained.

14 BY MR. BRITT:

15 Q You've referred to some gold colored
16 fasteners on the briefcase. Were there buttons on
17 that briefcase to open those fasteners?

18 A Yes, sir.

19 Q Were both buttons present?

20 A No, sir, were not.

21 Q How many of those buttons were present?

22 A Just one, sir.

23 Q What if anything was done with the
24 briefcase that was found in this room referred to as
25 the dungeon?

1 A It was taken into custody.

2 Q Now, after the search was completed, who do
3 you recall being the last officer to leave the
4 interior portion of the Green residence?

5 A I'm really not sure, sir, who was the last
6 officer out. Agent Lea and Agent Van --

7 MR. THOMPSON: Object.

8 THE COURT: Complete your answer,
9 Mr. Smith.

10 THE WITNESS: Agent Lea and agent
11 Van Parker were talking to Ms. Green. I'm
12 really not sure who was the last person.

13 MR. THOMPSON: Move to strike.

14 THE COURT: Overruled.

15 BY MR. BRITT:

16 Q And did you leave the residence before the
17 SBI agents did who were talking to Ms. Green?

18 A Again, I'm not really sure, sir.

19 Q From the Green residence there on Back
20 Swamp Road, did you and the other officers then go to
21 another residence?

22 A Yes, sir, we did.

23 Q Where was that residence located?

24 A Sir, this is Robeson County, I'm not really
25 sure where that residence is located. If I lost

1 sight of a Robeson County officer, I was lost.

2 Q You left the Green residence and went to
3 another residence?

4 A Residence of Mr. Demery, sir.

5 Q And there at that residence, was there any
6 type of search conducted?

7 A Not at first, sir, we could not get any
8 answer to the door. After a period of time, the
9 family did return, and there was a search by
10 permission given, written permission.

11 Q After permission was obtained to conduct
12 the search there at the Demery residence, did you
13 participate in any search there?

14 A Yes, sir, I did.

15 Q What areas did you search?

16 A We searched Mr. Demery's bedroom, we
17 searched the grounds outside, we searched a vehicle
18 that was described to us as Mr. Demery's vehicle.

19 Q Do you recall the make and model of that
20 vehicle?

21 A It was a Ford Tempo, sir, light in color,
22 cream colored. I don't remember the year.

23 Q Were any items seized from Mr. Demery's
24 bedroom?

25 A Not from the bedroom, as I recall, sir.

1 Q Was any item seized there in the area of
2 the grounds outside the home?

3 A Yes, yes, sir, inside the vehicle.

4 Q What if anything was seized from inside the
5 vehicle?

6 A A gold button was found that resembled the
7 one on the leatherette briefcase. Lieutenant Cannon
8 found that.

9 Q And when you refer to the -- that it
10 resembled the leatherette briefcase that had been
11 found, is that the briefcase that was found in the
12 defendant's home?

13 A Yes, sir.

14 Q After any search was completed at the
15 Demery residence, where did you then go?

16 A Special Agent Heffney and myself were
17 running down some possible leads and locations around
18 Robeson County. This was after we had left the
19 Demery residence.

20 Q And eventually did you go back -- did you
21 go to the Robeson County Sheriff's Department?

22 A Yes, sir, we did.

23 Q Did you participate in any interview or
24 interrogation of Larry Demery on the morning of
25 August the 15th, 1993?

1 A At first, sir, my participation with
2 talking to Mr. Demery was not directly. There were
3 three officers already talking to Mr. Demery, and I
4 was basically just monitoring in the room at the
5 time.

6 Q How long were you in the room where Larry
7 Demery was being interviewed?

8 A I was in and out probably about two or
9 three times during the time that Lieutenant Henley
10 was leading an interview with Mr. Demery.

11 Q And did there come a time when you and
12 Mr. Demery were in the room alone together?

13 A Not alone, sir. Lieutenant Henley was
14 talking to Mr. Demery. Again, most of my officers
15 were tired. They basically --

16 MR. THOMPSON: Object.

17 THE COURT: Complete your answer,
18 Mr. Smith.

19 MR. THOMPSON: Narrative.

20 BY MR. BRITT:

21 Q You may continue.

22 A Most of my officers were tired. Mr. Henley
23 had informed Mr. Demery that he was going to ask --

24 MR. THOMPSON: Object.

25 THE COURT: For what purpose is

1 this being offered, sir?

2 MR. BRITT: This is being offered
3 to explain Mr. Demery's subsequent conduct,
4 also being offered to corroborate the
5 testimony of Special Agent Lea.

6 THE COURT: You want a limiting
7 instruction, Mr. Thompson?

8 MR. THOMPSON: Yes.

9 THE COURT: Members of the jury,
10 the testimony now being elicited from
11 Mr. Smith as to statements Mr. Smith
12 contends were made by others are not being
13 offered for the truth of the matters
14 asserted but are being offered to either
15 explain the subsequent conduct of a prior
16 State's witness, Mr. Demery, or to
17 corroborate the prior testimony of the
18 State's witness Mr. Barry Lea with the
19 State Bureau of Investigation. You may
20 consider this evidence for that limited
21 purpose and no other purpose.

22 Anything further, sir?

23 MR. THOMPSON: No, sir.

24 THE COURT: Mr. Britt.

25 BY MR. BRITT:

1 Q You testified that Mr. Henley had informed
2 Mr. Demery of a matter?

3 A Yes, sir, that he was going to ask him one
4 or more times for the truth, and if he didn't get it,
5 he was going to get up and just leave. Mr. Demery
6 advised that what he had to say was already on tape.
7 Mr. Henley got up at that time and left. At that
8 time, Detective Wood joined me, we sat down and I
9 continued the interview with Mr. Demery with myself
10 and Detective Wood present.

11 Q At that time, was the tape recorder still
12 being operated?

13 A Yes, sir, tape recorder was still going on.

14 Q Was the tape recorder subsequently turned
15 off?

16 A Yes, sir.

17 Q Who turned off the tape recorder?

18 A I did.

19 Q Why did you turn off the tape recorder
20 during the interview of Larry Demery?

21 A With Larry Demery, we were telling him what
22 we had, telling him about the people we talked to,
23 the evidence of the red Lexus, people that have seen
24 him with Mr. Green, basically going down the list of
25 items that we were getting, that we had talked to

1 from different people up in Cumberland County, the
2 evidence that we had against him. The young man
3 refused to basically defend himself, and every time
4 we would ask him a question, he would look down at
5 that tape recorder before answering. I felt that it
6 was bothering him, I shut the tape recorder off.

7 Q After you turned it off, what if anything
8 then happened?

9 A We started talking to Mr. Demery again,
10 just myself basically, Detective Sergeant Wood was in
11 the room as a witness more or less. Mr. Demery still
12 coming up with the same answers. We were going over
13 with more evidence, what we had on him, try to get
14 the young man to come up and at least defend
15 himself. Several different occasions we received
16 information from down the hall that Mr. Green was
17 giving statements that was basically placing
18 Mr. Demery as the one that pulled the trigger. All
19 this information was passed on to Mr. Demery. And at
20 approximately about 30 or 40 minutes after we had
21 shut the tape off, Mr. Demery decided that he needed
22 to go to the restroom. We let him go to the restroom
23 at that time. He came back in, advised us that he
24 was going to tell us what happened, and he proceeded
25 to talk to myself and Sergeant Wood.

1 After he had gone through roughly what had
2 taken place, we contacted Special Agent Lea, and he
3 came in I believe with him and Robeson County Officer
4 Locklear, came in and proceeded to take a written
5 statement from Mr. Demery.

6 Q What if anything did Mr. Demery tell you
7 had happened in connection with the death of
8 Mr. Jordan?

9 A He advised that earlier that day that he
10 had gone to his girlfriend's house to take a birthday
11 gift --

12 MR. THOMPSON: Object, Your
13 Honor.

14 THE COURT: Limiting instruction,
15 Mr. Thompson?

16 MR. THOMPSON: Yes, sir.

17 THE COURT: Members of the jury,
18 the testimony now being elicited of
19 Mr. Smith as to statements Mr. Smith
20 contends were made to him on a prior
21 occasion by the prior State's witness Larry
22 Martin Demery are being offered for the
23 purpose of corroboration. You may consider
24 it for that limited purpose and no other
25 purpose. You may answer.

1 THE WITNESS: He basically
2 started out by letting us know that he had
3 gone earlier that Thursday over to his
4 girlfriend's house, that he had taken a
5 gift over there, that he had gotten up with
6 Mr. Green, that they had talked about going
7 over to exit 14, that they were going to
8 rob somebody, and that they had planned on
9 robbing a tourist, and that they had drove
10 his vehicle over to a dirt road that was
11 near exit 14, parked that vehicle on that
12 dirt road, and gone down to a closed
13 filling station that was right next to the
14 motel there. That they had noticed the red
15 vehicle, and that it was parked in the
16 vicinity of the flea market up on 74.

17 That Daniel Green had made a statement
18 that he thought it was a cop car, that it
19 was a setup, a decoy, something to that
20 effect. Mr. Demery advised us that he told
21 Daniel that he didn't believe it was, that
22 they had walked by the car, they looked at
23 the plates, they noticed the UNC plates,
24 and they figured it was possibly a college
25 student that had pulled over to go to

1 sleep.

2 They had approached the car a couple
3 of three times, and each time they got up
4 into the area of the car, a vehicle would
5 come up, they would hide in the wooded area
6 or the bushes alongside. It was then that
7 Mr. Demery advises us that Mr. Green told
8 him to go get his vehicle, that he was
9 going to go get the car, meet him back at
10 the bridge that was near his residence on
11 Black Swamp Road. He advises us that he
12 drove to Daniel's house, that he parks the
13 vehicle at Daniel's house, a light colored
14 Tempo, that he walks back over to the
15 bridge, that he sees a vehicle coming up,
16 and that this vehicle is the red Lexus.

17 He advises us that when he gets over
18 to the passenger side, that he notices that
19 there is a subject that has been pushed
20 across the center console, and that when he
21 gets inside the -- tries to get inside the
22 car, that he notices the subject is either
23 hurt bad or dead. That he goes ahead and
24 releases the lock on the passenger side
25 seat, gets into the back seat, and then

1 they proceed in the direction of Rowland.

2 And when they head toward Rowland,
3 they pull into what he referred to as a
4 cornfield, they started going through the
5 contents of the car. And it is at this
6 point that Mr. Demery advises us that
7 comments are made between the two that they
8 believe that they have just killed
9 Mr. Jordan, Michael Jordan's father.

10 They then advise that they have a
11 problem on how to get rid of the body, that
12 a suggestion has come up from Mr. Green to
13 dump the body into a sewage plant that is
14 nearby. That if they put the body inside
15 of one of the tanks, that the chemicals
16 inside of the tank should eat up the body.

17 They get there, find that the gate is
18 locked, they can't get in. They then --
19 Mr. Green asks Demery if he has any better
20 idea. They proceed down to the South
21 Carolina area where they come to the bridge
22 area where the swamp is located, and that's
23 where they decide to throw the body off the
24 bridge.

25 When they leave there, Mr. Demery

1 advises us that he was operating the car,
2 that the four-way flashers were going, and
3 they could not shut them off. So they
4 pulled the vehicle over to the side of the
5 road, Mr. Green got out of the car, came
6 around, he was able to shut off the
7 four-way flashers. And from there, that
8 point on, I'm not sure who was operating
9 the car.

10 At that point is about where we
11 stopped. One thing Mr. Demery did add,
12 that he advised that while we were at his
13 residence the night we searched it, that he
14 was in an area nearby and observed us at
15 his residence. And that is when I
16 contacted Special Agent Lea and he came in
17 to take the handwritten statement from
18 Mr. Demery.

19 BY MR. BRITT:

20 Q And after you finished talking with
21 Mr. Demery, did you have any other contact with
22 either he or the defendant on the morning of the 15th
23 of August?

24 A No, sir, did not.

25 Q Did you participate in any further

1 investigation that occurred on the 15th of August,
2 1993 as it related to the Jordan murder?

3 A The only part of the investigation we did
4 was assist Special Agent Kim Heffney, the case agent,
5 I believe Detective Cannon did some aerial working
6 photographic-wise. As far as other investigation, we
7 were basically putting evidence together, sir.

8 MR. BRITT: Thank you. I don't
9 have any other questions.

10 THE COURT: Any
11 cross-examination?

12 MR. THOMPSON: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. THOMPSON:

15 Q Good afternoon, Detective Smith.

16 A Good afternoon, sir.

17 Q Detective Smith, how long have you been
18 involved in law enforcement?

19 A About 17 years, sir.

20 Q And what law enforcement agencies have you
21 worked for?

22 A Cumberland County Sheriff's Department,
23 that's all, sir.

24 Q During the whole time?

25 A Yes, sir.

1 Q And what kind of training have you had with
2 respect to your law enforcement duties?

3 A Basic law enforcement training. It goes
4 through investigation, homicide investigation,
5 numerous schools, medical examiner's courses as it
6 pertains to homicide. I'm an arson investigator, I'm
7 a firearms instructor, both for rifle, shotgun,
8 handguns, numerous basic law enforcement training
9 courses myself. Prior to law enforcement, sir, I'm a
10 retired Special Forces, 20 years. I'm a qualified
11 Army sniper. All this was used by Cumberland County
12 Sheriff's Department, I ran the SWAT team for years.
13 That's about it.

14 Q Conducted numerous searches over these 17
15 years?

16 A Yes, sir.

17 Q Been involved in narcotics investigations?

18 A Yes, sir.

19 Q Approximately how many searches prior to
20 August 14th had you conducted during your law
21 enforcement career?

22 A Not -- numerous, sir. I would say close to
23 a hundred, little over a hundred, maybe.

24 Q And you've trained other officers in how to
25 conduct searches?

1 A Yes, sir.

2 Q Approximately how many officers have you
3 trained, sir?

4 A I really couldn't say, sir. Have to be up
5 in the hundreds.

6 Q And Detective Smith, back on August the
7 14th of 1993 when you went to the Green's residence
8 to conduct a search, was there any particular
9 individual who was in charge of the search that was
10 to be conducted at the Green's residence?

11 A As far as actually being in charge of the
12 search, sir?

13 Q Yes, sir.

14 A When I'm out of my jurisdiction, sir,
15 usually SBI is in charge of the investigation at that
16 point.

17 Q What SBI Agent was there on August 14th of
18 1993 when you conducted your search?

19 A Barry Lea and Special Agent Van Parker.

20 Q And were you assigned a specific area to
21 search, Detective Smith, when you conducted the
22 search back on August 14th of 1993? In other words,
23 I'm talking about a specific area of the residence.

24 A We were basically given that area to search
25 by Mr. Green himself, sir. He told us we could only

1 search his bedroom, which is what we did.

2 Q So you and Detective Cannon -- was it you
3 and Detective Cannon who searched his bedroom?

4 A Yes, sir, we did.

5 Q And did any individual point out where that
6 bedroom was?

7 A We asked -- I believe it was asked of
8 Ms. Green which bedroom was Mr. Green's.

9 Q When the defendant signed the consent to
10 search, where was he located?

11 A That was located up on Black Swamp Road, I
12 believe is the name of that road, but it was in the
13 vehicle --

14 Q I'm sorry, yes, sir.

15 A And it was adjacent to the trailer
16 manufacturer, I'm not sure of the name.

17 Q But he was seated in the vehicle when he
18 signed State's Exhibit Number 97?

19 A If I'm not mistaken, I believe that's
20 correct, sir.

21 Q How long were you there at the Green's
22 residence conducting the search back on August the
23 14th of 1993?

24 A I would say not more than 45 minutes to an
25 hour, sir.

1 Q Do you know what time you got there, you
2 arrived there?

3 A I don't recall the time, I didn't make a
4 note, sir.

5 Q And you did not make any notes as to when
6 you left?

7 A No, sir.

8 Q And during the 45 minutes to an hour, you
9 were in the defendant's bedroom conducting a search?

10 A Not that entire time, sir. Again, as I
11 say, Special Agent Berry Lee had received permission
12 to go into what Ms. Green referred to as the dungeon,
13 so between the time we were there, was the front
14 bedroom and the area about halfway down the trailer
15 which Ms. Green referred to as the dungeon.

16 Q How long were you in the defendant's
17 bedroom conducting the search?

18 A I would say probably not more than about 20
19 minutes, sir.

20 Q And you indicated that you searched
21 clockwise, in a clockwise manner?

22 A Yes, sir.

23 Q And you indicated that you fell across the
24 shop vac about three times?

25 A I -- let me correct that. I moved it about

1 three times, sir. Actually backed into it from when
2 I was searching the chest of drawers, the shop vac or
3 wet-dry vac, whatever you want to call it, was
4 sitting a few feet in front of the chest of drawers.

5 Q And when you indicate that you searched
6 clockwise, did you go around the entire room or only
7 search the portion of the room until you met
8 Detective Cannon at a point in that room?

9 A Yes, sir, Detective Cannon started at the
10 closet, which was over in the left-hand corner of the
11 trailer. He was moving to the right. When I got to
12 that point, I jumped ahead of him and went to the
13 clothing piled up, and the rest of the room was
14 basically empty except for that shop vac.

15 Q And it's your testimony that between August
16 the 11th of 1993 and August the 14th of 1993, you
17 only had about an hour, hour and a half's sleep per
18 night?

19 A If you got that impression, sir, it's
20 wrong. I'm talking per night, about an hour and a
21 half, maybe two hours per night, giving time for
22 clean up.

23 THE COURT: That's what he said.

24 THE WITNESS: I'm sorry, I
25 misunderstood you. You're correct.

1 BY MR. THOMPSON:

2 Q Now, after leaving the Green's residence,
3 you went over to the Demery residence and you
4 participated in a search there?

5 A That's correct.

6 Q Who was in charge of that search?

7 A Again, sir, Special Agent Barry Lea was
8 present and I'm out of my jurisdiction, I assume he
9 was.

10 Q Now, you signed State's Exhibit Number 97,
11 did you not?

12 A That's correct, sir.

13 Q Did you present that to the defendant to
14 sign? I mean -- he signed, meaning the defendant
15 signed State's Exhibit Number 97, the consent to
16 search also, is that right?

17 A That's correct, sir.

18 Q Did you present him that paper writing to
19 sign?

20 A I did not, sir. Special Agent Myers did,
21 then he signed, then handed me it to me to witness.

22 Q Now, when you went to the Demery residence,
23 was there a consent to search that residence?

24 A I believe there was, and again that would
25 be Special Agent Barry Lea that was talking to

1 Ms. Demery.

2 Q You signed no -- or witnessed no document
3 at the Demery residence?

4 A Not at that location, no, sir.

5 Q Were you assigned a specific location to
6 search in the Demery residence?

7 A Again, sir, because of the -- it's a
8 residence and the subject that we were interested was
9 Mr. Demery's bedroom and his personal sleeping area
10 or living area. And as far as searching the rest of
11 the house, the Demerys gave us permission to do so.

12 Q Detective Smith, weren't you aware that at
13 the Green's residence Ms. Green will signed a consent
14 to search?

15 A Yes, sir.

16 Q As well as the defendant?

17 A That's right, sir.

18 Q And when you went to the Demery residence,
19 did Ms. Demery sign a consent to search?

20 A I believe so. Again, to my knowledge, sir,
21 I don't know. Mr. Lea, Agent Barry Lea was the one
22 that was talking to Ms. --

23 Q But you're certain that Mr. Demery signed a
24 consent to search? Or -- at the Demery residence?

25 A Mr. Demery was not present at the time that

1 we --

2 Q Okay. Right. So in any event, Ms. Demery
3 was the only one there that would have given you
4 permission to search the residence, isn't that right?

5 A Mr. Demery was present, sir, not the
6 defendant.

7 THE COURT: We've established --
8 son or father?

9 THE WITNESS: This is the
10 father. Mr. Demery, Sr. was there.

11 BY MR. THOMPSON:

12 Q Did you talk to him? I didn't mean to cut
13 you off.

14 A Yes, sir, I talked to Mr. Demery, Sr., the
15 father, and Barry Lea was talking to the mother.

16 Q And then my question is either Mr. Demery,
17 Mr. Larry Demery, Sr. or Ms. Demery, either one or
18 both of them, gave you permission to search that
19 residence, is that right?

20 A Yes, sir.

21 Q That was not only permission to search
22 Larry Demery, Jr.'s room but the entire residence,
23 wasn't it?

24 A They gave us permission for the entire
25 residence.

1 Q And you only -- what part of the residence
2 did you search of the Demery residence?

3 A I believe I was in a combined bedroom where
4 Mr. Demery shared it I believe with a younger
5 brother, if I'm not mistaken. I'm not sure about
6 that. And then I ended up searching on the outside,
7 and the vehicle area.

8 Q Did you ever go into Mr. Larry Demery,
9 Sr.'s bedroom?

10 A Yes, sir, I did.

11 Q Who was in that bedroom when you went into
12 that bedroom?

13 A Mr. Demery.

14 Q Did you search that bedroom?

15 A Yes, sir.

16 Q Was any other officer present when you
17 searched that bedroom?

18 A I don't recall another officer there, sir,
19 but I do recall Mr. Demery, Sr. being there present
20 when I searched.

21 Q And did you see any weapons or firearms in
22 Mr. Demery bedroom?

23 A Yes, sir, I did.

24 Q Approximately how many weapons or firearms
25 did you see in Mr. Demery's bedroom?

1 A There was a .32 caliber revolver that was
2 pointed out to be by Mr. Demery. I asked him if
3 there was any weapons in there, and he pointed them
4 out to me before I found it.

5 Q There was only one weapon in that bedroom?

6 A At that time, yes, sir.

7 Q And you searched the outside grounds of the
8 residence?

9 A Yes, sir, uh-huh. Mr. Demery also advised
10 me, sir, that there was a second weapon, a .32, I
11 believe he carried it in the truck, if I'm not
12 mistaken, in his truck.

13 Q That he carried it in his truck?

14 A Yes, sir.

15 THE COURT: For the record,
16 Mr. Smith, can you describe the .32 caliber
17 that you indicated you received from
18 Mr. Demery in his bedroom?

19 THE WITNESS: Yes, sir, blue
20 steel, .32 caliber revolver, brand name, I
21 do not recall, sir. It was loaded at the
22 time. I unloaded it, and just let the
23 weapon out in my plain sight.

24 THE COURT: Will you describe the
25 handles?

1 THE WITNESS: They were plastic
2 handles, if I remember correctly, sir, but
3 they were wood grain color, brown.

4 BY MR. THOMPSON:

5 Q And did you seize that .32?

6 A No, sir, I did not seize that. I was
7 looking for a particular caliber of gun.

8 Q And have you ever seen that .32 that you
9 described with the wood grain handles since that
10 time?

11 A No, sir, I have not.

12 Q Now, Detective Smith, you have testified
13 that at some point you came down to the Robeson
14 County detention center where Mr. Demery was being
15 interviewed, is that correct?

16 A Yes, sir, the interview was already in
17 progress.

18 Q Would that have been during the early
19 morning hours of August the 15th?

20 A Yes, sir, it was.

21 Q Of 1993?

22 A Yes, sir, it was.

23 Q Did you take notes with respect to anything
24 that was said during that -- the interview of Larry
25 Demery?

1 A Well, when I first walked in, sir, I was
2 not aware of a tape recorder being activated. The --
3 once I found out there was a tape recorder activated,
4 I did not take any notes because this was all being
5 transcribed. After that I was basically interested
6 in getting the young man to talk to me, besides the
7 fact of coming up with a story that we've heard ten
8 thousand times that night. Once he did start to
9 talk, I did not bother to take notes, because I knew
10 Special Agent Lea always takes handwritten statements
11 from subjects when -- they do not use a tape
12 recorder, SBI does not.

13 THE COURT: I apologize for the
14 interruption. We'll take about a five or
15 ten minute break, ma'am. Ladies and
16 gentlemen, we're going to be at ease for
17 about ten minutes. Please recall that it
18 is your duty to abide by all prior
19 instructions of the Court concerning your
20 conduct. At 25 after, please reassemble.
21 Is it warm in here, folks? Thank you,
22 we'll do something about that.

23 Thank you, sir, you may come down.

24 (Jury out at 3:17 p.m.)

25 THE COURT: Folks, given our

1 situation, we may end up taking a couple of
2 shorter breaks this afternoon to try to
3 accommodate Ms. Coverdale. And it's also
4 warm in here. We're at ease.

5 (Brief recess.)

6 THE COURT: All counsel are
7 present, the defendant is present. Are we
8 ready to go forward, Mr. Britt?

9 MR. BRITT: Yes, sir.

10 THE COURT: If you'll return to
11 the witness stand, please, Mr. Smith. And
12 if you'll bring our jury in, please, Mr.
13 Horne.

14 (Jury in at 3:26 p.m.)

15 THE COURT: Is that cooler,
16 folks? Appears to be cooling somewhat.
17 Ms. Coverdale, if you need to be excused,
18 simply let us know.

19 If you'll bear with me for one second,
20 I need to get a number for Ms. Gaines.

21 (Brief pause.)

22 THE COURT: I apologize, yes,
23 sir.

24 MR. THOMPSON: It's my cross.

25 BY MR. THOMPSON:

1 Q Mr. Smith, you didn't take any notes on
2 the -- during the morning hours of August the 15th of
3 1993 with respect to Mr. Demery's statement, did you?

4 A No, sir, I did not.

5 Q Did you take any notes when you were
6 conducting the search there at the Green's residence?

7 A No, sir, did not.

8 Q What about any notes when you were there at
9 the Demery's residence conducting a search?

10 A No, sir, did not.

11 Q But you are testifying today using notes,
12 aren't you, Mr. Smith?

13 A Yes, sir, these are basically a chronology
14 of events that took place, yes, sir.

15 Q And may I see those, please?

16 A Yes, sir.

17 Q You also have some other notes up there,
18 Detective Smith?

19 A I have a copy of the statement that I had
20 given Special Agent Barry Lea. I have a copy of the
21 statement that was taken by Barry Lea from
22 Mr. Demery, and I have a copy of the taped interview
23 of Mr. Larry Martin Demery.

24 Q And during your testimony have you been
25 referring to the copy of the statement of Larry

1 Demery to Barry Lea?

2 A Yes, sir, that's just refreshed my memory,
3 I have read them earlier sir, I have not been
4 referring to them on the stand.

5 Q When is the last time you read it?

6 A Prior to going on the stand, sir.

7 Q Today?

8 A Yes, sir.

9 Q And have you also looked at the transcript
10 that you have before you of the tape-recorded
11 interview of Larry Demery which is consisting of a
12 hundred and six pages?

13 A Yes, sir, I skimmed through that.

14 Q And you used that to refresh your memory?

15 A Yes, sir.

16 Q When is this last time you looked at that
17 prior to taking the stand? Today, yesterday?

18 A Today I scanned through it, sir. I've read
19 it numerous times.

20 MR. THOMPSON: Your Honor, desire
21 to be heard.

22 THE COURT: Okay. Ladies and
23 gentlemen, there's a matter of law the
24 Court must take up. Don't worry or
25 speculate about what takes place in the

1 courtroom in your absence, and if you will
2 please step to the jury room.

3 (Jury out at 3:34 p.m.)

4 THE COURT: Let the record
5 reflect the following is being heard in the
6 absence of the jury. Mr. Thompson.

7 MR. THOMPSON: Your Honor, what
8 I'm holding is a copy of a -- purports to
9 be a statement that Mr. Smith gave to Barry
10 Lea. And it was something that I've not
11 seen before. I'm not saying again that
12 it's something that the State didn't give
13 us but --

14 THE COURT: My recollection is
15 that's in discovery.

16 MR. BRITT: Yes, sir. As a
17 matter of fact, it was a matter that was
18 gone into.

19 THE COURT: Supplemental.

20 MR. BRITT: Yes, but also the
21 subject of a hearing involving Mr. Demery's
22 statement.

23 THE COURT: Yes, sir.

24 MR. THOMPSON: Subject of a
25 hearing involving --

1 MR. BRITT: Mr. Demery's
2 attorneys filed a motion to suppress the
3 statements he made. Mr. Smith was
4 interviewed in regard to the activities
5 that occurred in the interview room from
6 the time he participated to the point that
7 the tape recorder was turned off, and what
8 transpired after the tape recorder was
9 turned off, and then that is the time in
10 between Mr. Henley, the taped interview
11 when Special Agent Lea took the handwritten
12 statement.

13 MR. THOMPSON: Just wanted to
14 have a few minutes, Your Honor, to review
15 this before continuing with the
16 cross-examination. He's indicated that
17 this was during the hearing with
18 Mr. Demery, and Mr. Demery's suppression
19 hearing I take it what he's referring to --

20 THE COURT: In the matters that
21 were given to the Court for in camera
22 review, my recollection is that's a later
23 statement, came sometime after '93. Is
24 that right? What's the date on that?

25 MR. THOMPSON: September of 1994

1 it would appear.

2 THE COURT: Yes.

3 MR. THOMPSON: Okay.

4 THE COURT: But that's included
5 in the discovery.

6 MR. THOMPSON: Yes, sir. All
7 right.

8 THE COURT: Mr. Thompson, I want
9 to give you as much time as you need. What
10 do you need, about ten or 15 minutes or
11 so?

12 MR. THOMPSON: Yes, sir.

13 THE COURT: If you'll step down
14 Mr. Smith. We're at ease, folks.

15 MR. THOMPSON: Can I get a copy
16 of it?

17 THE COURT: Yes, sir.

18 (Brief recess.)

19 THE COURT: Ready to go forward,
20 Mr. Thompson?

21 MR. THOMPSON: Yes, sir.

22 THE COURT: Bring the jury in,
23 please. Mr. Smith, if you'll again take
24 the witness stand.

25 (Jury in at 3:50 p.m.)

1 THE COURT: Mr. Thompson?

2 MR. THOMPSON: Thank you.

3 BY MR. THOMPSON:

4 Q Mr. Smith you testified that you had been
5 using several paper writings there before you to
6 refresh your memory?

7 A Yes, sir.

8 Q And Mr. Smith, going back to the Green
9 residence, when you walked into the front door, that
10 bedroom was to the right, is that right?

11 A That's correct, sir.

12 Q And when you went into the bedroom, you
13 searched a chest of drawers?

14 A Yes, sir.

15 Q Now, describe those chest of drawers.

16 A If I remember correctly, sir, I think they
17 were about four or five drawer, wood in color, brown
18 wood in color, if I'm not mistaken.

19 Q As you walked into the room, the chest of
20 drawers would have been to your left?

21 A I believe that's correct, sir.

22 Q Directly to your left, is that right?

23 A If I remember correctly, sir.

24 Q And then what's next to the chest of
25 drawers?

1 A Excuse me, sir?

2 Q What is next to the chest of drawers, in
3 that room?

4 A I don't recall, sir. I don't recall.

5 Q Well, is there anything in your notes that
6 would refresh your memory?

7 A Not in these notes, no, sir.

8 Q There was no chest of drawer in that room,
9 was there Mr. Smith?

10 A If I remember correctly, there was a chest
11 of drawers.

12 Q Is there anything about chest of drawers in
13 your notes being in that bedroom?

14 A No, sir.

15 Q Mr. Smith, next to the -- the chest of
16 drawers that you say was in the bedroom, would that
17 have been -- that would have been on the wall to your
18 left as you enter in through the bedroom door?

19 A If I remember the room correctly, yes, sir.

20 Q The room had four walls, didn't it?

21 A Yes, sir.

22 Q And on the wall to your right, what was on
23 that wall?

24 A There was a plain wall, sir, if I'm not
25 mistaken.

1 Q And on the wall directly in front of you,
2 what was on that wall?

3 A If I'm not mistaken, there should have been
4 a bed up against that wall.

5 Q And on the wall to your right, what was on
6 that wall?

7 A To my right, sir --

8 Q As you enter into that bedroom, the wall to
9 your right.

10 A The door was right up next to the wall,
11 sir.

12 Q All right, sir. Now, other than the bed in
13 the bedroom, the chest of drawers that you say was in
14 the bedroom, what other -- and the shop vac cleaner,
15 what else was in that bedroom?

16 A I remember clothing, sir, being on the
17 right-hand side of the room, if I'm not mistaken, and
18 that's about it.

19 Q And you were in there 20 minutes, searching
20 clockwise, is that correct?

21 A That's correct.

22 Q That -- when you say clockwise, are you
23 talking about as you face -- entering into the room,
24 are you saying that you began to search from your
25 left around the room?

1 A From my left around the room, yes, sir.

2 Q And how far did you get around the room
3 before you met Detective Cannon?

4 A He was at the closet area and then we
5 switched over to the bed area if I'm not
6 mistaken.

7 MR. BRITT: Mr. Thompson, if
8 you've looking for State's Exhibit Number
9 78, I have it.

10 MR. THOMPSON: Yes, sir.

11 BY MR. THOMPSON:

12 Q I hand you what's been previously marked --
13 may I Your Honor?

14 THE COURT: Yes, sir.

15 BY MR. THOMPSON:

16 Q Previously marked as State's Exhibit Number
17 78, which is a photograph of the bedroom. Detective
18 Smith, as you entered the door of that bedroom, is
19 the bed located where it's positioned on State's
20 Exhibit Number 78?

21 MR. BRITT: Objection.

22 THE COURT: Sustained as to the
23 form.

24 BY MR. THOMPSON:

25 Q Well --

1 THE COURT: Clarify.

2 BY MR. THOMPSON:

3 Q Can you use State's Exhibit Number 78 to
4 illustrate anything with regards to what you observed
5 in the room back on August the 14th of 1993?

6 A Looks a little bit different than I recall
7 it, sir, but I believe I can, sir.

8 Q Now, where are those chest of drawers?

9 A If these are the ones I'm thinking of, sir,
10 it's over here on the left-hand side.

11 Q And you -- when -- can you use State's
12 Exhibit Number 78 to show the part where you met
13 Detective Cannon?

14 A Should have been back over in this area
15 here in that corner.

16 Q So --

17 THE COURT: Mr. Thompson, you
18 have to establish that the exhibit fairly
19 and accurately represents the scene as
20 Mr. Smith saw it on the day in question.

21 BY MR. THOMPSON:

22 Q With respect to the walls, Detective Smith,
23 does it fairly and accurately represent the bedroom
24 as you observed it back on August the 14th of 1993?

25 A As far as the walls, yes, sir, but as far

1 as the positioning of the bed, I remember the bed
2 being up in this area, sir.

3 Q Up in which area?

4 A Up against this wall over here, sir. I
5 don't recall this bed being over on the right side.

6 Q Do you recall there being a sink in the
7 bedroom?

8 A No, sir, I do not

9 (Defense Exhibit 33 was
10 marked for identification.)

11 BY MR. THOMPSON:

12 Q I hand you what's been previously marked as
13 Defendant's Exhibit number 33. Detective Smith, do
14 you recall seeing -- first of all, what is
15 Defendant's Exhibit Number 33?

16 MR. BRITT: Objection.

17 THE COURT: Do you know, sir?

18 THE WITNESS: What it is, sir?

19 THE COURT: Not in terms of what
20 is represented, but do you know of your own
21 knowledge?

22 THE WITNESS: Not --

23 THE COURT: From having seen what
24 is depicted on a prior occasion?

25 THE WITNESS: No, sir, not this

1 location.

2 BY MR. THOMPSON:

3 Q Defendant's Exhibit 33 is a photograph, is
4 it not?

5 A Yes, sir.

6 Q And you don't recall ever seeing what is
7 being depicted in Defendant's Exhibit Number 33 in
8 the bedroom that you searched back on August 14th,
9 1993?

10 A No, sir, I do not.

11 MR. THOMPSON: Your Honor, again,
12 if I may approach.

13 THE COURT: Yes, sir.

14 BY MR. THOMPSON:

15 Q The chest of drawers that you described
16 seeing in the bedroom back on August the 14th of 1993
17 in the defendant's bedroom, did it have a white top
18 on it?

19 A I don't recall the white top, sir, I just
20 recall the chest of drawers. And they would have
21 been in about the same location as depicted in the
22 photograph, here.

23 Q Exactly. And do you recall any piece of
24 furniture in the bedroom having a white top as
25 depicted in State's Exhibit Number 78?

1 A I can't recall, sir.

2 Q Now, Detective Smith, the tape-recorded
3 interview of Larry Demery back on the early morning
4 hours of August the 15th of 1993, began at
5 approximately 1:55 a.m. in the morning, is that
6 right?

7 A According to the document, yes, sir. I was
8 not present when the tape recording was started.

9 MR. BRITT: Objection, move to
10 strike.

11 THE COURT: The objection is --
12 do you want to be heard, Mr. Britt?

13 MR. BRITT: As it relates to the
14 document.

15 THE COURT: The objection is
16 allowed. Motion -- sustained, pardon me,
17 motion to strike is allowed. Members of
18 the jury, don't consider the reference made
19 by counsel for defendant, Mr. Thompson, to
20 what any document which is not in evidence
21 may show or may not show, and don't
22 consider the answer if one was given. I
23 instruct you that those matters are not to
24 take part in your deliberations in any
25 respect.

1 BY MR. THOMPSON:

2 Q Detective Smith, you gave an interview to
3 SBI Agent Barry Lea back on September the -- excuse
4 me -- September the 2nd of 1994?

5 A Yes, sir, I did.

6 Q And that interview was given -- where were
7 you when you gave that interview?

8 A At the Law Enforcement Center at -- in
9 Cumberland County at my desk.

10 Q You told SBI Agent Barry Lea that you and
11 Ray Wood were present during the tape-recorded
12 interview of Larry Demery back on August 15th of
13 1993?

14 A Yes, sir, that should have been portions of
15 the interview.

16 Q You told SBI Agent Barry Lea that the
17 interview of Larry Demery was recorded from
18 approximately 1:55 a.m. until 3:59 a.m., didn't you?

19 A Probably did, sir. Again, that's --

20 Q You used the statement that you -- the
21 typewritten statement that you gave to SBI Agent
22 Barry Lea to refresh your memory, didn't you?

23 A Yes, sir.

24 Q And you have that statement up there before
25 you, don't you?

1 A Yes, sir.

2 Q And didn't you tell Barry Lea that the
3 interview of suspect Larry Demery was recorded from
4 approximately 1:55 a.m. until 3:59 a.m.?

5 A Yes, sir, I did.

6 Q All right, sir. And you also told SBI
7 Agent Barry Lea that beginning at approximately 3:45
8 a.m., you and Sergeant Wood were in an office at the
9 Robeson County Sheriff's Department alone with Larry
10 Demery, didn't you?

11 A Yes, sir. That is prior to the time that
12 Lieutenant Henley walked out, sir.

13 Q And you told SBI Agent Lea that the tape
14 recorder which was lying on the desk and which had
15 been operated during the entire interview was making
16 the suspect nervous, you said that?

17 A Yes, sir, I did.

18 Q And it appeared to you that it was the tape
19 recorder that was making Mr. Demery nervous?

20 A Yes, sir.

21 Q And you said, Mr. -- Detective Smith, to
22 SBI Agent Lea that after the tape recorder was cut
23 off, you continued to use the same theme with Larry
24 Demery as you were using during the later portions of
25 the tape-recorded interview, isn't that right?

1 A Is that correct, sir.

2 Q And that's what you told SBI Agent Lea?

3 A That's correct.

4 Q And now you have used also a copy of the
5 transcription of that tape-recorded interview to
6 refresh your memory, haven't you?

7 A Yes, sir.

8 MR. BRITT: Objection.

9 THE COURT: As to the question,
10 overruled.

11 BY MR. THOMPSON:

12 Q And the fact is, Detective Smith, it was
13 your threats and intimidation of Larry Demery that
14 was making him nervous, not the tape recorder, isn't
15 that right?

16 MR. BRITT: Objection.

17 THE COURT: The objection to the
18 characterization is sustained.

19 MR. BRITT: Move to strike.

20 THE COURT: Members of the jury,
21 there's a matter of law the Court must take
22 up at this time. Please recall my
23 instructions in that regard. Don't worry
24 or speculate about what takes place in the
25 courtroom in your absence, and if you'll

1 step to the jury room, please.

2 (Jury out at 4:05 p.m.)

3 THE COURT: Let the record show
4 the following is being conducted in the
5 absence of the jury. Mr. Thompson, if I
6 understand correctly, if I'm not
7 understanding, let me know, what I think
8 you're trying to do is to impeach
9 Mr. Demery's statement insofar as it may
10 implicate your client to establish that
11 there's a lack of trustworthiness as to any
12 statement made by Mr. Demery which impacts
13 on your client as to the issues involved in
14 this case. Is that correct?

15 MR. THOMPSON: That among other
16 things, yes, sir.

17 THE COURT: What are the other
18 things?

19 MR. THOMPSON: Well, for the sake
20 of this proceeding, that, yes, sir, Your
21 Honor, what you just stated.

22 THE COURT: If there's anything
23 else, I need to know about it. Is that
24 essentially it?

25 MR. THOMPSON: Well, yes, sir.

1 THE COURT: You can't
2 characterize, you can't say that a
3 statement was threatening.

4 MR. THOMPSON: Okay.

5 THE COURT: Or intimidating.
6 That's for them to decide.

7 MR. THOMPSON: Okay. Yes, sir.

8 THE COURT: Now, you may use
9 specific statements that you contend were
10 made by the witness to Mr. Demery.

11 MR. THOMPSON: Yes, sir.

12 THE COURT: And let the jury
13 decide what they think it means.

14 MR. THOMPSON: Yes, sir.

15 THE COURT: Mr. Britt, what is
16 the basis of your objection?

17 MR. BRITT: The characterization
18 of intimidation, coerced, threatened.

19 THE COURT: Do you want a
20 limiting instruction?

21 MR. BRITT: Yes, sir.

22 THE COURT: I would instruct the
23 jury that these matters are being offered
24 and received for limited purpose of
25 impeachment, and they previously have been

1 instructed as to what that term means, and
2 you folks can argue what you contend it's
3 worth in closing arguments. Is that
4 agreeable?

5 MR. THOMPSON: Yes, sir.

6 THE COURT: All right. Bring the
7 jury back in, please, sir.

8 MR. THOMPSON: But you're saying
9 I'm not to use those --

10 THE COURT: You can't
11 characterize.

12 MR. THOMPSON: So I can't use
13 "threats" and "intimidation"?

14 THE COURT: Unless those words
15 were used in a specific question.

16 MR. THOMPSON: Yes, sir.

17 THE COURT: You can say, "didn't
18 you say to Mr. Demery".

19 MR. THOMPSON: Yes, sir.

20 THE COURT: "Isn't that a threat"
21 and "isn't that intimidation" goes too
22 far. That's for the jury to decide.

23 MR. THOMPSON: I understand.

24 THE COURT: Yes, sir.

25 (Jury in at 4:08 p.m.)

1 THE COURT: Members of the jury,
2 I think I have sustained the objection and
3 allowed the motion to strike, but I'm
4 instructing you that you're not to consider
5 the last statement made by counsel for the
6 defendant, Mr. Thompson. That matter is
7 not to take any part in your deliberations
8 in this case in any respect.

9 BY MR. THOMPSON:

10 Q Detective Smith, it was what you were
11 saying to Mr. Demery that was making him nervous, not
12 the tape recorder, wasn't it?

13 A I don't believe that made Mr. Demery
14 nervous. At the time we were talking, sir, it was a
15 typical conversation and --

16 Q All right, Detective Smith. It was a
17 typical conversation, and you told Mr. Demery, did
18 you not, during the tape-recorded portion of that
19 interview, that "any law person sitting in here and
20 any judge is going to tell you a confession to a
21 felony makes their story credible, and they are going
22 to eat your ass alive, son." You said that to
23 Mr. Demery, didn't you, sir?

24 A What page are you on, sir?

25 Q Page 83.

1 A Yes, sir, that's correct.

2 Q And you told Mr. Demery during a typical
3 conversation, Detective Smith, that his attorneys,
4 you said "going to make a deal with the prosecution.
5 My client would testify for the prosecution. He's
6 already set it up, he's going to be the best damn
7 witness that the prosecution has. Why? Because you
8 two are friends, close friends, have been for
9 years." You told Mr. Demery that during the --

10 THE COURT: You need to get it in
11 context as to who the "he" is,
12 Mr. Thompson.

13 MR. THOMPSON: Well, he can
14 explain -- well, my question, Your Honor,
15 is did he tell Mr. Demery those words.

16 THE COURT: Yes, sir. Can you
17 answer that question?

18 THE WITNESS: What page are you
19 on, sir?

20 MR. THOMPSON: That's on page
21 88.

22 THE WITNESS: That's correct,
23 sir.

24 BY MR. THOMPSON:

25 Q Detective Smith, you told Mr. Demery,

1 "We're talking about first degree murder, capital,
2 you understand. That's a needle up your ass, son,
3 and you don't wake up from it, all right. Capital.
4 You get a good prosecutor that wants to push it son,
5 I'm talking capital, all right. Let the man shove it
6 up your ass. I don't think you're going to enjoy
7 it. We got the truth, we got his side of the story.
8 We would like to hear your side. You know what I
9 mean? Because investigator, son, sat her and
10 listened to his side of the story." You told him
11 that, didn't you?

12 A Yes, sir, I did.

13 Q On page 99 of that transcript,
14 Mr. Smith --

15 MR. BRITT: Objection, reference
16 to "the transcript."

17 MR. THOMPSON: Strike that.

18 THE COURT: Yes, sir.

19 BY MR. THOMPSON:

20 Q You told Mr. Demery during a typical
21 conversation, Mr. Smith, that "for first degree
22 murder there's no bond, okay, that means no bond.
23 They just lock you up and that's it. You stay there
24 for a year, a year and a half, two years, until they
25 get around calendar space time to put you up for

1 trial, okay." You told him that, didn't you?

2 A Yes, sir.

3 Q During the tape-recorded portion of the
4 interview and interrogation?

5 A Yes, sir.

6 Q And you told Mr. Demery during that year,
7 year and a half, two years, Daniel's lawyers down
8 there is going to be talking to the District
9 Attorney, all right. You told him that, didn't you?

10 A Yes, sir.

11 Q And they are going to be making deals, you
12 told Mr. Demery that, didn't you?

13 A Yes, sir.

14 Q And you told Mr. Demery, now your attorneys
15 are going to try to make a deal but he hasn't got a
16 damn thing to work with. You told him that, didn't
17 you?

18 A I recall saying that, sir. What page are
19 you on?

20 Q Page 100.

21 A All right, sir, yes, sir.

22 Q And then after using all that language in
23 your typical conversation, Detective Smith, you told
24 Mr. Demery: "I don't give a damn about a bus,
25 because we work for God, okay, and I tell you that

1 shit right now, we work for God." You told
2 Mr. Demery that, didn't you, during the tape-recorded
3 portion of that conversation?

4 A I remember it, sir. What page are you on?

5 Q On page 105.

6 A Yes, sir.

7 Q God tell you to use that language,
8 Detective Smith?

9 A Excuse me, sir?

10 MR. BRITT: Objection.

11 THE COURT: You can ask him
12 questions, Mr. Thompson, you can't argue
13 with him.

14 BY MR. THOMPSON:

15 Q And you told Mr. Demery a homicide cop
16 works for God, didn't you?

17 A That's right, sir.

18 Q And then, Detective Smith, you told Agent
19 Barry Lea in your interview with him that you
20 continued to use the same theme with suspect Demery
21 as you were using during the latter portion of the
22 tape-recorded interview, did you not, after the tape
23 recorder was cut off?

24 A I told him that, yes, sir.

25 Q "Using the same theme" is your words, isn't

1 it?

2 A Excuse me, sir?

3 Q You were using the same theme, isn't that
4 right?

5 MR. BRITT: Objection, asked and
6 answered.

7 THE COURT: Third time.

8 BY MR. THOMPSON:

9 Q Isn't that right?

10 MR. BRITT: Objection, asked and
11 answered.

12 THE COURT: He's answered it
13 twice before.

14 BY MR. THOMPSON:

15 Q You told agent Barry Lea that you told
16 Mr. Demery, the person pulling the gun's trigger is
17 viewed by jurors, judges and prosecutors as the
18 meanest or worst of the two people committing the
19 crime. You said that to Mr. Demery, didn't you?

20 A Well, that's true, sir.

21 Q And you said it to Mr. Demery, didn't you,
22 sir?

23 A I said that.

24 Q Yes, sir. And none of this stuff that you
25 told Mr. Demery made him nervous, just that tape

1 recorder, isn't that right?

2 MR. BRITT: Objection,
3 argumentative.

4 THE COURT: Sustained. Rephrase.

5 MR. BRITT: Move to strike, ask
6 for instruction.

7 THE COURT: Motion is allowed.
8 Members of the jury, don't consider the
9 last question asked by Mr. Thompson,
10 counsel for the defendant. That matter is
11 to take no part in your deliberations in
12 any respect.

13 BY MR. THOMPSON:

14 Q After you continued to use the same theme
15 that you were using during the tape-recorded portion
16 of the interview is when Mr. Demery started telling
17 you about the defendant going up there, pulling the
18 trigger, isn't that right?

19 A When Mr. Demery decided to talk to us, sir,
20 it was after I told him I was going to give up on it,
21 because the man would not defend himself.

22 Q And it was also after you started using all
23 that bad language in talking to Mr. Demery too,
24 wasn't it?

25 A No, sir.

1 Q It was after you told him you worked for
2 God, wasn't it?

3 A The biggest part of the tape recording that
4 you're referring to was not me leading it, it was my
5 interjection as to when we were receiving information
6 from down the hall. The man who was leading that
7 particular part of your taped interview, sir, was
8 Lieutenant Jim Henley. When I took over, sir, was
9 back around quite a bit further into the tape
10 recording when Lieutenant Henley got up and left the
11 room, left Ray Wood there.

12 Q Detective Smith, you told Mr. Demery those
13 things that you just testified to during the
14 tape-recorded portion of the interview?

15 A That's correct.

16 Q It's on tape, isn't it?

17 A Yes, sir.

18 Q What you said to him?

19 A Yes, sir.

20 Q And after the tape-recorded portion of the
21 interview, you began to talk to Mr. Demery with the
22 tape recorder cut off, isn't that right?

23 A Yes, sir.

24 Q And you used the same theme as what you
25 told Mr. Lea after the tape recorder was cut off,

1 that you used during the latter portion of the
2 tape-recorded interview, isn't that right?

3 MR. BRITT: Objection, asked and
4 answered.

5 THE COURT: Overruled. You may
6 answer.

7 THE WITNESS: Sir, we went on --

8 BY MR. THOMPSON:

9 Q Is your answer yes?

10 MR. BRITT: Objection.

11 THE COURT: Mr. Thompson, let him
12 complete his answer.

13 THE WITNESS: May I answer the
14 whole thing?

15 THE COURT: Yes, sir.

16 THE WITNESS: After we shut the
17 tape recording off, we started talking to
18 Mr. Demery --

19 MR. THOMPSON: Your Honor, I
20 object. But -- Your Honor, he can explain
21 his answer but he's got to answer the
22 question first.

23 THE COURT: Ladies and gentlemen,
24 step to the jury room. Don't worry or
25 speculate about what takes place in the

1 courtroom in your absence, please.

2 (Jury out at 4:19 p.m.)

3 THE COURT: The following is
4 being conducted in the absence of the
5 jury. Mr. Thompson, the question was, "And
6 you used the same theme as what you told
7 Mr. Lea after the tape recorder was cut
8 off, that you used during the latter
9 portion of the tape-recorded interview,
10 isn't that right? "

11 That's a compound question. He's
12 entitled to explain. Objection was made, I
13 ruled on the objection. You're entitled to
14 note your exception but don't argue with
15 him. Okay? Your exception is noted for
16 the record to the ruling of the Court. He
17 can complete his answer, and if you want to
18 rephrase with the type of question that
19 elicits only a yes or no answer, then he
20 would be required to answer yes or no and
21 then explain. Okay?

22 MR. THOMPSON: Yes, sir.

23 THE COURT: Bring the jury back
24 in.

25 (Jury in at 4:20 p.m.)

1 THE COURT: Mr. Thompson, do you
2 want to withdraw the question and put
3 another question to the witness?

4 MR. THOMPSON: Yes, sir.

5 BY MR. THOMPSON:

6 Q Detective Smith, it was after the tape
7 recorder was cut off where you indicated you were
8 using the same theme that you were using during the
9 latter portions of the tape-recorded portion of the
10 interview?

11 A What I indicated by the same theme, sir,
12 was the simple fact that we were asking him the same
13 questions as we were before, going through the
14 evidence and letting him answer to the questions that
15 we had put to him.

16 Q And were you still telling him about
17 needles that were going to be shoved up his behind?

18 A Did not, sir.

19 Q Did you still tell him that you were still
20 working for God?

21 A Did not, sir.

22 Q Now, Detective Smith, was the interview
23 that you gave to Barry Lea back in September of 1994,
24 was that interview recorded?

25 A No, sir, was not.

1 Q Was Agent Barry Lea writing down what you
2 were telling him during that interview as you were
3 telling him --

4 A Yes, sir, he was.

5 Q -- giving the interview?

6 A Yes, sir.

7 Q And when was the first time you saw a copy
8 of that interview of your statement to Barry Lea?

9 A I was able to read over his handwritten
10 notes prior to him leaving the office. I did not see
11 a typed copy of that, sir, until after it had been
12 dictated. I'm not sure of the exact date and time.

13 Q But prior to Barry Lea conducting that
14 interview with you back on September the 24th --
15 excuse me -- September the 2nd of 1994, you had seen
16 and viewed Larry Demery's statement to -- signed
17 statement to Barry Lea, hadn't you?

18 A No, sir. Again, this had to be dictated,
19 and I hadn't read a copy of that since then.

20 Q Well, let me ask you a different question,
21 maybe I'm not making myself clear. You had seen the
22 signed statement that Larry Demery made to Barry Lea
23 back on August the 15th of 1993?

24 A Yes, sir, I have that right here.

25 Q Right. And you saw that statement prior to

1 giving your statement to Barry Lea on September the
2 2nd of 1994?

3 A I believe --

4 Q Let me withdraw that question.

5 A I understand what you're saying, sir. Yes,
6 sir, I did, and prior to me talking to Barry Lea, I
7 had read that statement, yes, sir.

8 MR. THOMPSON: May I approach?

9 THE COURT: Yes, sir.

10 BY MR. THOMPSON:

11 Q I'm going to hand you what has been marked
12 as Defendant's Exhibit number 28, which is a copy of
13 the signed statement of Larry Demery. Is that the
14 statement that you're referring to and that you have
15 in front of you as the statement of -- the signed
16 statement of Larry Demery to Barry Lea?

17 A This is a handwritten portion of the
18 dictated copy I have before me, sir.

19 Q All right. And the dictated portion of the
20 handwritten statement you had seen on how many
21 occasions prior to giving your interview to Barry
22 Lea?

23 A Once.

24 Q All right. Where did you get the dictated
25 portion of that statement from Detective Smith?

1 A Excuse me, sir?

2 Q Where did you get the dictated portion of
3 Larry Demery's statement to Barry Lea, sir?

4 A From the District Attorney, sir.

5 Q And it was only after you got the dictated
6 portion of Larry Demery's statement to Barry Lea that
7 you were then interviewed by Barry Lea on September
8 the 2nd of 1994, is that right?

9 A No, sir, no, sir. I received a copy of the
10 dictated statement of Mr. Demery from the District
11 Attorney since this trial has been going on.

12 Q But you had read the statement of Larry
13 Demery to Barry Lea prior to being interviewed by
14 Barry Lea?

15 A Yes, sir.

16 Q But it wasn't a dictated portion, it was
17 the handwritten portion?

18 A It was the copy you just showed me, sir,
19 similar to that.

20 Q Which is a handwritten, signed statement?

21 A Yes, sir.

22 MR. THOMPSON: That's all at this
23 time.

24 THE COURT: Anything further by
25 the State, Mr. Britt?

1 MR. BRITT: Yes, sir.

2 REDIRECT EXAMINATION

3 BY MR. BRITT:

4 Q Mr. Smith, when you told Mr. Demery that
5 you worked for God, is that a philosophy that you've
6 adopted as a homicide detective?

7 A That's what a lot of homicide detectives
8 adopt, sir. It's a teaching of Colonel Geberth from
9 the New York City Homicide Bureau, and he teaches a
10 lot of classes, he teaches a lot of classes in
11 investigation of homicide, and he also prints a lot
12 of signs, slogans and notes that a homicide detective
13 does work for God.

14 Q And do you keep such an oath in your office
15 in Cumberland County?

16 A Yes, sir, I do.

17 Q Do you have that on your wall?

18 A Yes, sir, I do.

19 Q Is that an oath that you have adopted in
20 your use as a homicide detective?

21 A Yes, sir.

22 Q And your philosophy in conducting
23 investigation into homicides?

24 A Yes, sir, it is

25 (State's Exhibit 99 was
marked for identification.)

1 MR. BRITT: May I approach the
2 witness?

3 THE COURT: Yes, sir.

4 BY MR. BRITT:

5 Q Mr. Smith, let me show you what's been
6 marked as State's Exhibit Number 99. Can you
7 identify that, sir?

8 A Yes, sir, I can.

9 Q How are you able to identify State's
10 Exhibit Number 99?

11 A It's a copy of the oath of the practical
12 homicide investigation, and it's put out by
13 Lieutenant Commander retired Vernon J. Geberth, the
14 New York City Police Department, Commanding Officer,
15 Bronx Homicide Task Force.

16 Q Does that contain the oath that you have
17 adopted in regard to the homicide investigations that
18 you've conducted?

19 A Basically, yes, sir.

20 Q And does State's Exhibit Number 99 contain
21 the entire oath as enunciated by Mr. Geberth?

22 A Yes, sir.

23 Q If you would read for us State's Exhibit
24 Number 99.

25 MR. THOMPSON: I object.

1 THE COURT: At this point, the
2 objection is sustained. It's not in
3 evidence, it's not been offered at this
4 point.

5 BY MR. BRITT:

6 Q And the oath as contained in State's
7 Exhibit Number 99 is the oath that you were referring
8 to when you made the statement to Larry Demery that
9 you worked for God?

10 A Yes, sir.

11 MR. BRITT: Your Honor, at this
12 time I move for admission of State's
13 Exhibit 99.

14 MR. BOWEN: Object, in reference
15 to 610.

16 THE COURT: Members of the jury,
17 there's a matter of law the Court must take
18 up. Don't worry or speculate about what
19 takes place in the courtroom in your
20 absence.

21 (Jury out at 4:30 p.m.)

22 THE COURT: Let the record
23 reflect the following is being conducted in
24 the absence of the jury. 610 provides that
25 evidence, beliefs or opinions of a witness

1 on matters of religion is not admissible
2 for the purpose of showing that, by reason
3 of their nature, his credibility is
4 impaired or enhanced. However, such
5 evidence may be admitted for the purpose of
6 showing interest or bias.

7 Now, you have argued essentially that
8 this goes -- your cross-examination went to
9 impeachment?

10 MR. BOWEN: It did, and the State
11 did not object. Had they objected, we
12 would have said that it went to the limited
13 purpose of showing the effect upon Larry
14 Demery as to whether or not it made him
15 nervous as opposed to the tape.

16 THE COURT: Even for that limited
17 effect, he's entitled to explain what was
18 meant. And if this is offered as
19 explanation of what was meant, then it
20 comes in.

21 MR. BOWEN: And he has made that
22 explanation. The question is how far will
23 the Court let him go in explaining an
24 entire philosophy, an entire religious
25 belief surrounding this. I think that's

1 the issue. We've let him go a ways, but
2 we're taking the position under 610 that
3 he's gone far enough.

4 THE COURT: I understand what
5 your position is. The door was opened on
6 cross-examination. The objection is
7 overruled. The exception is noted for the
8 record. It's coming in. Bring the jury
9 in.

10 (Jury in at 4:32 p.m.)

11 THE COURT: For the record, the
12 objection is overruled. Exception is
13 noted. You may repeat your question,
14 Mr. Britt -- I'm sorry, there's a tender
15 before me. What is that number, 99?

16 MR. BRITT: 99.

17 THE COURT: 99 is admitted at
18 this time. State's 99 is admitted, and you
19 may put additional questions to the
20 witness.

21 BY MR. BRITT:

22 Q If you will, please read State's Exhibit 99
23 in its entirety to the jury.

24 A All right, sir. The Lord God said thou
25 shall not kill, the Fifth Commandment. Book of

1 Exodus, twenty, of the Holly Bible. The oath of the
2 practical homicide investigation. Homicide
3 investigation is a profound duty. As an officer
4 entrusted with such a duty, it is incumbent upon you
5 to develop an understanding of the dynamics and
6 principals of professional homicide investigation.

7 Practical homicide investigation suggests
8 that things be done right the first time, and
9 knowledge is power, knowledge which has been enhanced
10 with experience, flexibility and common sense.
11 Practitioners must be prepared to use tactics,
12 procedures and forensic techniques in their pursuit
13 of the truth and then follow the course of the events
14 of facts as they developed to their ultimate
15 conclusion. Deaths investigation constitutes a heavy
16 responsibility, and as such let no person deter you
17 from the truth and your own personal commitment to
18 see that justice is done, not only for the deceased
19 but for the surviving family as well. And remember,
20 you're working for God. Signed Vernon J. Geberth,
21 Lieutenant Commander retired, Vernon J. Geberth, New
22 York City Police Department Commanding Officer, Bronx
23 Homicide Task force.

24 Q When you told Larry Demery that you worked
25 for God, were you referring to the philosophy that's

1 enunciated there in State's Exhibit 99?

2 A Yes, sir, I was.

3 Q Now, Mr. Thompson asked you about a
4 statement that you made to Mr. Demery. He asked you
5 about the following statement: "You sit there and
6 provide that statement he made -- and prove that that
7 statement is a pack of lies. You've ruined your own
8 credibility, okay. Put you on the damn stand, jury
9 sits there and they turn their ears off. We've heard
10 his side of the story. You know who else has got to
11 hear his side of the story, the jury. The jury is
12 going to hear his side of the story because one
13 thing, his attorney is going to make a deal with the
14 prosecution. My client will testify for the
15 prosecution. He has already set it up. He's going
16 to be the best damn witness the prosecution has.
17 Why? Because you two are friends, close friends.
18 You have been for years." Do you recall making that
19 statement?

20 A Yes, sir, I did.

21 Q When you were referring to "you've heard
22 his side of the story," who were you making that
23 story to?

24 A I was making that statement to Mr. Demery.

25 Q And the "he" in that statement is who?

1 A Mr. Green.

2 Q When you told him -- do you recall making
3 the statement, first degree murder, capital, you
4 understand, capital?

5 A Yes, sir, I did.

6 Q And you were making that statement to whom?

7 A I was making that statement to Mr. Demery.

8 Q And you said, "That's a needle up your ass,
9 son, you don't wake up from it, all right." Do you
10 recall making that statement?

11 A Yes, sir, I do.

12 Q What did you mean by that statement?

13 A The fact that capital is usually a death
14 penalty if it goes that way.

15 Q You stated that you had heard a story from
16 Mr. Demery, and I believe you used the number 10,000
17 times on the tape-recorded portions of the interview?

18 A Yes, sir.

19 Q And after the tape recorder was turned off,
20 did Mr. Demery continue to give you that same story
21 that he had been giving you during the tape-recorded
22 portion of the interview?

23 A Basically it stayed the same, sir. A man
24 named Rick bringing the car, and it went right on
25 from there, the same story we had listened to all the

1 way through the hundred and some odd pages of the
2 taped interview.

3 Q Did you tell Mr. Mr. Demery about evidence
4 that had been collected?

5 A We kept telling Mr. Demery about evidence
6 that had been collected.

7 Q What different evidence did you tell him
8 about collected?

9 A We told him about the cellular phone
10 tracers that had come back showing the location of
11 the vehicle, told him about telephone calls made to
12 relatives of his up north. We also had that
13 confirmed by his own mother that had made contacts
14 with a certain person that he had made telephone
15 conversation to.

16 We made -- told him about the fact that the
17 cellular phone bill showed basically a road map
18 wherever that car was at the time that a certain call
19 was made. We also told him that different witnesses
20 up there identify Mr. Green and a white male being up
21 there, bringing the car up to the Fayetteville area
22 and doing away with that car, and the fact that he
23 didn't stick around, and the fact that he left early,
24 and the fact that Mr. Green stayed in that area and
25 the fact we wanted his side of the story.

1 Q And after telling him those things, did
2 Mr. Demery then change the story about Rick bringing
3 the car?

4 A After going through this story after the
5 tape recorder had been turned off, Mr. Demery still
6 was looking down at the table. I stood up and made a
7 comment to him that everybody else has given up on
8 him, that I thought I was going to give up on him
9 too. I made a gesture of turning around and slapping
10 the table and told him no, I wasn't going to do that,
11 that I thought he was worth more than that, I was
12 going to give him one more chance to tell me the
13 story.

14 Mr. Demery looked down, Mr. Demery had a
15 little moistness around the eyes, and then he advised
16 that he would like to go to the bathroom. When we
17 allowed him to go to the bathroom which was right
18 across the hall. He came back out, sat down and
19 started telling us the story. He finally agreed to
20 us that he did not believe the fact that Mr. Green
21 would have told or put him into that position, they
22 were long friends, and that he really thought -- he's
23 believing us, and that he's going to tell us the
24 whole story. And that's when he started telling
25 it.

1 Dr. Geberth, or that you testified to that's State's
2 Exhibit Number 97, does it mention anything about
3 sticking needles up people's rear ends?

4 A No, sir.

5 Q Now, Detective Smith, the oath that you
6 took from Dr. Geberth -- strike that. You indicated
7 on redirect that you told Mr. Demery "they just lock
8 you up and that's it, you stay there for a year, year
9 and a half, two years, until they get around calendar
10 space to put you up for trial. During that year,
11 year and a half, two years, Daniel's lawyers down
12 there is going to be talking to the District
13 Attorney, all right. They are going to be making
14 deals." You told him that, didn't you?

15 MR. BRITT: Objection, that was
16 stated on cross-examination.

17 THE COURT: Yes, sir.

18 BY MR. THOMPSON:

19 Q You told Mr. Britt on -- you told Mr. Britt
20 on redirect examination that you told Mr. Demery that
21 those lawyers down there are going to be making
22 deals, didn't you?

23 A Yes, sir.

24 Q And that's not true, is it?

25 A Excuse me, sir?

1 Q That's not true, what you told Mr. Demery,
2 is it?

3 A What I've told Mr. Demery is what I have
4 seen on many, many occasions from experience.

5 Q That's not true, what you told Mr. Demery,
6 that the defendant's lawyers down there was going to
7 be making deals; that's not true, is it?

8 A I don't believe I understand your question,
9 sir.

10 Q Well, you told Mr. Demery that then
11 Mr. Green's lawyer was going to be down there making
12 deals, that's what you told him?

13 THE COURT: Mr. Thompson, I think
14 this is probably a good point for us to
15 stop for the day. There's a matter of law
16 we need to take up.

17 Ladies and gentlemen, we're going to
18 stop until 9:30 tomorrow morning. During
19 the overnight recess, please recall that
20 you're not to talk about these matters
21 among yourselves. You're not allowed to
22 have anyone say anything to you or in your
23 presence about this case. If anyone does
24 so or attempts to do, it is your duty to
25 inform us of that immediately. Don't form

1 or express any opinions about this case.
2 Don't have any contact or communication of
3 any kind with any of the attorneys,
4 parties, witnesses, prospective witnesses
5 or directly with the Court. It's your duty
6 avoid any exposure to any media accounts,
7 and don't conduct any independent inquiry,
8 investigation or research of any kind.
9 Everyone else please remain seated, you
10 folks are dismissed until 9:30 tomorrow
11 morning. Have a good evening.

12 (Jury out at 4:46 p.m.)

13 THE COURT: Mr. Thompson, the
14 reason -- let the record first of all
15 reflect the following is being heard in the
16 absence of the jury. The reason I thought
17 it was appropriate for us to stop at this
18 point is, folks, I don't know whether any
19 plea overtures have been made in this
20 case --

21 MR. BRITT: None.

22 THE COURT: I don't know what
23 response might be forthcoming from the
24 witness as to the State's position as to
25 any plea offers to be made to your

1 defendant. I mean, the question is so
2 broad that he could have responded in a
3 number of ways that are disadvantageous to
4 your client. And rather than run the risk
5 of that, I mean, you're here at trial on a
6 plea of not guilty. So you can argue to
7 the jury that that statement is not true.

8 But by asking that broad question, a
9 lot of stuff is opened up. You understand
10 what I'm saying?

11 MR. THOMPSON: Yes, sir, I
12 understand what you're saying.

13 THE COURT: I'm not going to tell
14 you you can't ask the question. I'm saying
15 it's perhaps a question that you may want
16 to think about. I mean, his response could
17 run the gamut of a lot of things that may
18 bring in what is otherwise inadmissible
19 evidence in against your client.

20 Mr. Smith, you may step down, sir.
21 Thank you, sir.

22 THE WITNESS: Thank you, sir.

23 THE COURT: Anything further from
24 either counsel?

25 MR. BRITT: Your Honor, I was

1 served with two motions this afternoon.

2 THE COURT: One I believe is a
3 Ritchie motion, I left my copy inside. Is
4 that it? Pennsylvania versus Ritchie?

5 MR. BRITT: Yes, sir. The other
6 is a motion for --

7 THE COURT: In camera inspection
8 which is tied to the Ritchie motion.

9 MR. BRITT: That's what Ritchie
10 says, but that's not what the motion
11 involves.

12 MR. BOWEN: I told his Honor, I
13 drew the motion before I read Ritchie and
14 before I obtained Ritchie. If I may amend
15 it orally. I am asking -- the written
16 motion simply asks for the opportunity to
17 see records that I have subpoenaed, medical
18 records through Dr. Strawcutter, in the
19 interest of justice I be allowed of seeing
20 those records in advance of putting them on
21 or cross-examining him about them. The
22 basis of that is this:

23 Mr. Demery testified that he was
24 taking Artane. I called Jim Tripp, who is
25 the head pharmacist at the hospital, and

1 after drawing the motion, I also talked to
2 Dr. John Warren, who's got extensive
3 background in pharmacology and psychoactive
4 drugs. Actually, what Mr. Demery said on
5 the stand is pretty much right. Artane is
6 seldom used by itself. It's usually used
7 in connection with Thorazine and other
8 psychoactive drugs.

9 That gives me a reasonable basis to
10 suspect that he is probably taking other
11 drugs than what he has admitted to.
12 Thereby, if he has and the records show
13 that, there will be some basis for
14 impeachment in two ways. First, he didn't
15 tell us the truth about it. And second,
16 that's further medication that may impair
17 his ability to be truthful, to have
18 judgement, and to be free and clear of
19 psychoactive medication when he formulated
20 his positions in this case, and when he
21 testified.

22 I'm therefore modifying my motion to
23 ask the Court that those records be brought
24 forward from the jail and from any medical
25 facility that has treated Mr. Demery since

1 the commission, the alleged commission of
2 this crime, and see if there is any
3 exculpatory material in that regard that
4 the defense should know about. I note that
5 Ritchie goes off on a due process theory
6 where they finally send it back for the
7 Court to look into those files and see. So
8 perhaps if we can do it now, we'll
9 alleviate anything. I didn't know if he
10 was on any kind of medication, we didn't
11 know until it came up on cross-examination,
12 which is why it's just come up now.

13 THE COURT: Okay. Mr. Britt?

14 MR. BOWEN: Nor did I know even
15 while we were in the process of cross,
16 again, that he was correct, that Artane is
17 usually only used in connection with
18 something else.

19 THE COURT: Mr. Britt?

20 MR. BRITT: My -- well, first of
21 all, as to Mr. Demery's statement that
22 Artane was used in connection with
23 something else, he didn't testify to that.
24 He testified he was taking five milligrams
25 of Artane in the morning, five milligrams

1 of Artane at night. No other medication.
2 Until he testified to that in court, I was
3 not even aware of it. I think Mr. Rogers
4 may have been aware of it, but that's his
5 attorney and that would have been
6 privileged.

7 The other thing, Ritchie deals with
8 what's commonly referred to here as DSS
9 records as to whether or not there were
10 other statements made by a witness that
11 were in those confidential records that
12 were inconsistent with the trial
13 testimony. Here, in this particular
14 instance, we're dealing with a matter of
15 patient/physician confidentiality, a
16 privilege.

17 THE COURT: Due process grounds
18 of Ritchie were to provide evidence which
19 may be exculpatory or may be impeachment.
20 And that's essentially what they are
21 looking for, the latter aspect of it. And
22 to that extent, to the extent that it's
23 impeachment, their agent is it also tends
24 to be exculpatory.

25 MR. BRITT: I guess you get in

1 there, what is impeachment, because they
2 did not ask Mr. Demery if his recollection
3 is correct if he was taking any other
4 medications. You can't impeach something
5 that has not been put before a witness.

6 MR. THOMPSON: I did ask him.

7 THE COURT: I'll need to look at
8 the transcript.

9 MR. BRITT: He talked about
10 taking diazepam, which he said was a form
11 of Valium, which it is, and then Artane.
12 And those are the only medications that he
13 had been taking. Mr. Bowen goes on to
14 further say in the motion that he's been
15 diagnosed as having profound depression.
16 There's been no diagnosis that's on the
17 record in regard to having profound
18 depression, whatever that means.

19 MR. BOWEN: He said it.
20 Mr. Demery himself said depression,
21 profound depression, serious depression,
22 something along those lines. And I do
23 recall Mr. Thompson asking him what all he
24 was taking, and he only admitted to the
25 Valium and the Artane. At that time, we

1 didn't know Artane is general taken to
2 counteract the symptoms of other things
3 such as Thorazine, and I seem to think he
4 made some mention of that, but I would have
5 to check the transcript.

6 THE COURT: I've just been handed
7 a note by Ms. Gaines that Dr. Strawcutter
8 has apparently delivered Mr. Demery's
9 medical records to Ms. Stone. I'll conduct
10 an in camera review and see what's
11 appropriate and what is not under Ritchie.

12 The other matter is -- well, before I
13 leave that subject, my concern is that what
14 we're dealing with are collateral matters.
15 And I'm going to look at what may be in the
16 records and the case law.

17 The next matter, motion for issuance
18 of certificate of -- for a material
19 witness, is this the matter we've already
20 addressed or another one?

21 MR. BOWEN: No, sir, this is
22 another one. What has happened on
23 Mr. Demery's testimony is that he has at
24 first completely disclaimed a phone call to
25 New York and a conversation with Janine

1 Baculik, and then he sort of backs up and
2 says, yeah, maybe I've talked to her just a
3 minute but I didn't get through to Joey or
4 whatever. It's quite unclear, he's
5 certainly not confirming the conversation
6 that Janine herself gives to the FBI, and
7 it appears to us that that conversation is
8 highly material because it refers to
9 Mr. Demery before he had gotten possession
10 of any car, indeed before Mr. Jordan had
11 even left Wilmington, Mr. Demery is calling
12 up north about 9:00 and --

13 THE COURT: What date?

14 MR. THOMPSON: July 22nd.

15 MR. BOWEN: July 22nd.

16 THE COURT: That is reflected in
17 any statement given to the FBI?

18 MR. BOWEN: Yes, sir, statement
19 dated 8-16-1993, statement of S.A. Robert
20 Aldrich, and I should have attached -- if
21 yours doesn't have it, I'll give you one,
22 and it says on July 22nd, 1993 Janine
23 Baculik, at approximately -- it's written
24 in 9:00 p.m. This is the way we got the
25 statement, we didn't write this. About

1 9:00 p.m., took the telephone from her
2 mother and talked to Larry Demery.

3 Now, that telephone call was on Larry
4 Demery's parents' phone bill at that same
5 time. And there's an 11 minute phone --
6 which he denies making at first, and of
7 course it goes on --

8 THE COURT: Mr. Thompson, I heard
9 that whisper all the way over here.

10 MR. THOMPSON: Your Honor, I have
11 a raspy voice so I whisper loud.

12 MR. BOWEN: He didn't ever truly
13 admit it, and it's so significant because
14 Ms. Baculik talks about Demery saying he's
15 going to bring something up to Joey, going
16 up there, and this was even before
17 Mr. Demery went out and connected with a
18 Lexus. We think it's highly significant.
19 We think it should be significant
20 impeachment of Mr. Demery. It is not
21 collateral, it goes to his intent, his
22 denial of this phone call, what he intended
23 to go up there to do, and also ties into
24 what purpose he was about that night.

25 THE COURT: Mr. Britt?

1 MR. BRITT: Well, they have a
2 copy of the phone records, the tolls that
3 were obtained through a subpoena that was
4 issued by a federal magistrate. There was
5 a phone call made on July 22nd at 10:03
6 p.m. to Huntington, New York. There is
7 also a phone call July 25 at 9:21, and then
8 phone call that occurred July 28th, 11:09
9 a.m. to Huntington, New York. Mr. Demery
10 testified as to the July --

11 THE COURT: That is Mr. Demery's
12 phone records that you're referring to?

13 MR. BRITT: Yes, sir.

14 THE COURT: Home phone numbers?

15 MR. BRITT: Home phone numbers.

16 THE COURT: Are reflected in

17 the --

18 MR. BRITT: Discovery.

19 THE COURT: -- company's records
20 for that phone number?

21 MR. BRITT: Yes, sir.

22 THE COURT: Which do not include
23 this call?

24 MR. BRITT: Not for the time they
25 said, 9:00 on the night of July 22nd. And

1 they have attempted at various times to
2 impeach individuals with these very phone
3 records.

4 MR. BOWEN: She said -- I suppose
5 she said around 9:00. I don't know where
6 the 9:00 came from. This was the way it
7 was when we got it. We assumed that FBI
8 agent or someone put it in. But there is a
9 call that's on that 9:00 to 10:00 area in
10 the phone bill. If I misstated it to the
11 exact time, I don't know, I wasn't looking
12 at the phone bill. I was looking at their
13 notes. So maybe their notes are wrong. So
14 somewhere around this time 9:00 or 10:00,
15 this call took place. The important thing
16 is Ms. Baculik says that a conversation
17 occurred between her and Mr. Demery that
18 talked about bringing a package up to
19 Joey. And there was --

20 THE COURT: My concern is this.
21 In order for me to issue an order, I've got
22 to make a finding of materiality. I would
23 hate to do that and have either Ms. Baculik
24 or an FBI witness come down here and say,
25 folks, we made a mistake about the date or

1 the time. What we're really talking about
2 was the 23rd or the 25th. That's my
3 concern.

4 MR. BOWEN: There's no confusion
5 about the date.

6 THE COURT: Any time you have
7 anybody writing down what somebody else
8 says, there's always room for confusion.

9 MR. THOMPSON: We would ask you
10 give that instruction to the jury.

11 MR. BOWEN: There's no confusion
12 as far as the typewritten material.

13 THE COURT: Let me put it in
14 context. Between question and answer, and
15 additional question, we have confusion, all
16 right, about what was asked or what was
17 said.

18 MR. BOWEN: Somebody for the
19 government put down at approximately 9:00
20 p.m. Now, Mr. Britt concedes a call about
21 10:00, I believe.

22 MR. BRITT: That's what the
23 records show, but even Mr. Bowen's
24 attachment to the motion, there's a note
25 across that says this is a rough draft,

1 signed Bob.

2 MR. BOWEN: Well --

3 THE COURT: Who is Bob?

4 MR. BOWEN: I don't know, but
5 ain't any of us.

6 MR. BRITT: Bob is Robert
7 Aldrich, who is the FBI agent.

8 THE COURT: Folks, is it too much
9 to ask that we call and get a final copy of
10 this record before --

11 MR. BOWEN: Not at all. I have
12 no problem with that. We'll run down Agent
13 Aldrich and try to do that. I'm surprised
14 the State doesn't have it.

15 MR. BRITT: The -- just so
16 everything is clear, if you turn to the
17 first page of the exhibit that's entitled
18 Exhibit A, Mr. Anthony Thompson and Mr. Kim
19 Heffney went to Huntington Station, New
20 York and interviewed Ms. Baculik about her
21 knowledge.

22 THE COURT: That's my concern.

23 MR. BOWEN: And the first thing,
24 in the first paragraph, it says that they
25 did so on -- and the first thing she said

1 would Baculik be given an opportunity to
2 read for accuracy, her statement that she
3 gave to Robert Aldrich, dated 8-15-93,
4 Baculik said her statement she gave to FBI
5 was correct. So there we are back at their
6 statement.

7 THE COURT: Paragraph three,
8 Baculik stated Larry told her he had a
9 friend with him and he wanted his friend to
10 stay with him. Baculik stated Larry told
11 her he was driving up and his friend Daniel
12 Green was with him. This was a friend he
13 was talking about. She knew Daniel was a
14 friend of Larry Martin's from school.

15 MR. BOWEN: And some of those
16 conversations did occur later on. But what
17 she convenient -- the local officers
18 conveniently leave out is the phone call
19 we're most concerned with, which is the
20 first one. I think they correctly describe
21 some of the later conversations that
22 occurred after they were in the Lexus and
23 after they called her again.

24 THE COURT: That's what worries
25 me. I don't mean this in a disparaging

1 way. What we're talking about here is
2 spins being put on the evidence. I don't
3 mean spins in the terms of intentionally
4 I'm wrong, make it that way. But there are
5 different interpretations.

6 MR. BOWEN: I don't think there's
7 anything unclear. Let me say this, we --
8 we concede that Mr. Green was with
9 Mr. Demery in the Lexus. That was conceded
10 in opening argument. We know there were
11 some calls later that Mr. Demery made in
12 the Lexus.

13 THE COURT: That's --

14 MR. BOWEN: -- in the Lexus to
15 Huntington, New York. He even testified
16 about one or more of those. Now, what he
17 did not fully admit was that the first
18 telephone call, and what is significant
19 about that first telephone call is it talks
20 about at perhaps 9:00, certainly no later
21 than 10:00, when Mr. Jordan hasn't even
22 left Wilmington, it talks about bringing
23 something up to Joey in New York. It can't
24 possibly be a car.

25 THE COURT: Why?

1 MR. BOWEN: Unless he's got a
2 crystal ball and knows he's going to take
3 the car a few hours later.

4 THE COURT: Unless the date is
5 wrong.

6 MR. BOWEN: Okay. The FBI agent
7 took the statement. The local officers
8 went back a year ago, the witness verified
9 the statement. I don't mind talking to the
10 FBI officer. I think that's a good idea.

11 THE COURT: Bear with me for a
12 moment. Aren't you assuming that her
13 references to Mr. Demery and Mr. Green
14 occurred on the later occasion and not
15 necessarily that they happened in that
16 first phone call?

17 MR. BOWEN: Well, because they --
18 the facts fit what we know about those
19 later --

20 THE COURT: But isn't that an
21 assumption on your part?

22 MR. BOWEN: No, sir. No, because
23 I know something --

24 THE COURT: Talk to Ms. Baculik
25 and determine that there is no reference to

1 Larry Green when you say the call was made
2 at the 22nd at 9:00.

3 MR. BOWEN: I am referring to
4 other information that I know. The answer
5 to your question is no, but look, what we
6 do know is that there was no Lexus at 9:00
7 or 10:00.

8 THE COURT: Which means the time
9 could be wrong or the date could be wrong,
10 but if there was a reference to Larry in
11 that first phone conversation with her.

12 MR. BOWEN: And she says that
13 there was -- I mean, she says in the first
14 conversation at -- what Bob has pencilled
15 in here I guess is 9:00, all she says is
16 that, is going to bring something up here.
17 Well, the important thing is Mr. Demery is
18 denying the substance of that first call.
19 That first call exists, we know it was on
20 the phone records, whether 9:00 or 10:00,
21 it did exist before there was a Lexus,
22 before Mr. Jordan left Wilmington. And it
23 makes reference to bringing something up to
24 Joey. Now, for whatever reason, Mr. Demery
25 has been unwilling to admit that first

1 call. Now --

2 THE COURT: Look at the last
3 sentence of what you've got down here,
4 subsequent call beginning with paragraph of
5 subsequent call. Read that. Let me read
6 it in for the record.

7 Subsequent call was made by Alice
8 Strickland, which is the person you want
9 brought down --

10 MR. BOWEN: Janine, Janine.

11 MR. BRITT: Virginia Strickland
12 is Ms. Demery --

13 THE COURT: I understand that.
14 But listen to the time frame. Quote, Larry
15 Martin's mother, Virginia Strickland, call
16 was made back to her, and asked what is
17 going on. Larry Martin called here, talked
18 to Janine, and said he was in Virginia.
19 What's the last sentence of that say, with
20 the quotes?

21 MR. BOWEN: How can that be, he
22 was here with friend, Daniel, last name
23 unknown, and just left here 30 minutes ago
24 to go to Georgia and pick up a friend. Of
25 course he didn't do either so he was lying

1 to his mom. So I don't mind talking to the
2 FBI. You're asking me, as I understand it,
3 to talk to the FBI agent for sure, and
4 Janine if she will talk to me.

5 THE COURT: Folks, do you recall
6 Mr. Demery testifying about -- prior to the
7 events of 22nd, about clothes being taken
8 and the story being concocted about going
9 to visit a friend in Georgia?

10 MR. BRITT: Going to pick up the
11 defendant's brother in Georgia.

12 MR. THOMPSON: Not the 22nd.

13 THE COURT: On the 22nd.

14 MR. BOWEN: Bottom line is you're
15 suggesting we --

16 THE COURT: I'm not suggesting
17 anything. I'm just saying what we may end
18 up doing is bringing down a material
19 witness for the State.

20 MR. BOWEN: I don't want to do
21 either one of these things. But
22 nevertheless, based upon what the FBI has
23 written down, it appears to me this is a
24 material witness for the defense.

25 THE COURT: If you'll check with

1 them and if you still want to pursue it,
2 I'll be glad to entertain it tomorrow
3 morning.

4 MR. BRITT: She's under subpoena
5 from the State.

6 THE COURT: She's already under
7 subpoena, who --

8 MR. BRITT: And she has expressed
9 a willingness to come in the event we need
10 her to come down here.

11 THE COURT: I kind of suspected
12 that.

13 MR. BRITT: As is Alice Baculik.
14 As are a number of people.

15 THE COURT: I kind of suspected
16 that. So it kind of makes the issue moot.
17 You can have her down here for purposes of
18 any defense evidence, is that right?

19 MR. BRITT: All we need to do is
20 make arrangements with the airlines and fly
21 her down here.

22 THE COURT: Okay.

23 MR. BOWEN: Very well.

24 THE COURT: Anything else? We're
25 at ease until 9:30 tomorrow morning.

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(Court adjourned.)

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NORTH CAROLINA
ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 93 CRS 15291-93

STATE OF NORTH CAROLINA)
)
)
vs.)
)
DANIEL GREEN, aka AS-SADDIQ)
AL-AMIN SALLAM U'ALLAH,)
)
DEFENDANT.)

VOLUME 29

CANNON
+
ELWELL

Transcript of Proceedings before the
Honorable GREGORY A. WEEKS, Judge Presiding,
before Steve S. Huseby, Registered Professional
Reporter and Notary Public, Robeson County
Courthouse, Lumberton, North Carolina, on
the 13th day of February, 1996.



HUSEBY & ASSOCIATES, INC.
Certified Shorthand Court Reporters

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1316 Harding Place : Suite 160
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*** Offices also in South Carolina and Tennessee ***

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10 and

11 WOODBERRY A. BOWEN, Esq.
12 Bowen & Byerly
13 P.O. Box 846
Lumberton, North Carolina 28359

14

15 (February 13, 1996. Proceedings in open court.)

16

17 THE COURT: Good morning, folks.

18 Let the record show that all counsel are
19 present, the defendant is present in open
20 court. Before -- Mr. Horne, do we have all
21 members of the jury secured in the jury
22 room?

23 THE BAILIFF: Yes, sir, we do.

24 THE COURT: One matter before we
25 bring in the jury in this morning,

1 Mr. Rogers, Hugh Rogers, one of the lawyers
2 representing Mr. Demery, indicated he
3 wanted me to hold off on any ruling with
4 regard to Mr. Demery's medical records
5 until they had an opportunity to be heard.
6 They wanted to file something. He said --
7 I indicated that would work out well,
8 because I left the medical records on my
9 kitchen table this morning. I'm a single
10 parent this week, my wife is out of town,
11 so in the madness that occurs every
12 morning, I left them on my kitchen table.

13 MR. BRITT: That will be fine. I
14 called Mr. Rogers yesterday after the
15 motion was filed and notified him that the
16 defense had filed a motion requesting a
17 copy of Mr. Demery's medical records.

18 THE COURT: They wanted to hold
19 off until tomorrow, if that's agreeable,
20 folks. I apologize for the delay. Any
21 other matters before we bring the jury in?

22 Mr. Smith is present?

23 MR. BRITT: Yes, sir.

24 THE COURT: Okay.

25 MR. THOMPSON: I was asking about

1 State's Exhibit 98.

2 MR. BRITT: It's marked, has not
3 been proffered at this point. That is
4 consent to search form that Ms. Green
5 signed.

6 THE COURT: Folks, one point of
7 clarification, with regard to the medical
8 records, understanding that a ruling hasn't
9 been made yet, is it the defendant's intent
10 to introduce those records if allowed
11 through a custodian, is that how you folks
12 would proceed?

13 MR. BOWEN: Yes, sir, as a
14 regular business record.

15 THE COURT: Reason I'm asking you
16 is because I'm trying to keep in mind the
17 form in which it might come in if allowed.
18 It would be extrinsic evidence, in that
19 sense, because it would be offered through
20 another witness. Is that right?

21 MR. BOWEN: That would be
22 correct. Now, Your Honor, we have not
23 foreclosed the possibility of making a
24 motion to be allowed to reopen
25 cross-examination on Mr. Demery because

1 these matters were found out for the first
2 time only through him, so it's not
3 impossible that we would attempt to set up
4 a situation where we would actually impeach
5 something he said about that medication by
6 those records. We think we have it in the
7 record, however we need to -- he testified
8 that these are the only drugs he was
9 taking, the ones he was mentioning.

10 THE COURT: That's what I'm
11 trying to clear up in my own mind. I
12 don't -- without getting into any contents
13 of the records because I didn't look at
14 them last night, it occurred to me that
15 there are two possible ways to do it. One
16 way is through a custodian, and that would
17 necessarily involve extrinsic evidence.
18 Other way is to ask the Court for leave to
19 recall Mr. Demery for additional
20 cross-examination. In that case it would
21 be offered for impeachment of the witness.
22 But the substance of the impeachment would
23 be as an example, you indicated in your
24 previous examination that you had only
25 taken these drugs, isn't it true that you

1 took additional drugs, if that were the
2 case.

3 And that will be the substance of the
4 impeachment, is that accurate.

5 MR. BOWEN: An confined to that
6 very extremely narrow range.

7 THE COURT: I'm trying to in my
8 own mind think of the value of the evidence
9 and the form that the evidence might come
10 in.

11 MR. BOWEN: And also, if it led
12 to an answer that he was taking some other
13 psychoactive drug then some questions
14 regarding what effect of the drug had on
15 him.

16 THE COURT: We will, all right, I
17 have think I understand where you're coming
18 from.

19 MR. BOWEN: In terms of memory
20 and ability to perceive and remember.

21 THE COURT: Mr. Britt, anything
22 further?

23 MR. BRITT: No, sir.

24 THE COURT: Mr. Smith, if you'll
25 return to the stand, please. And if you'll

1 bring the jury in.

2 (Jury in at 9:33 a.m.)

3 THE COURT: Good morning, ladies
4 and gentlemen. Mr. Thompson.

5 MR. THOMPSON: Thank you.

6 RECROSS EXAMINATION (Continued)

7 BY MR. THOMPSON:

8 Q Good morning, Detective.

9 A Good morning, sir.

10 Q Detective Smith, Ray Wood, do you know Ray
11 Wood?

12 A Yes, sir.

13 Q Did he have a bald head back on August the
14 15th of 1993?

15 A Excuse me, sir?

16 Q Did he have a bald head, Ray Wood, does he
17 have a bald head?

18 A No, sir, he's a young man.

19 Q Durry Cannon, he works for Cumberland
20 County Sheriff's Department?

21 A Yes, sir.

22 Q Did he have a bald head back on August
23 15th, 1993?

24 A No more than he does right now.

25 Q Is he in the courtroom?

1 A Standing right there, first row.

2 Q Seated in the first row?

3 A Yes, sir.

4 Q Now, you've testified that it was your
5 philosophy, it is your philosophy as a homicide
6 detective you work for God, is that right?

7 A That's a -- we represent a client, sir,
8 that cannot speak for himself, yes, sir.

9 Q And that's your philosophy?

10 A Yes, sir.

11 Q You work for God?

12 A Yes, sir.

13 Q You revere God?

14 A Excuse me, sir?

15 Q You revere God, don't you?

16 A Yes, sir.

17 Q And you told back on -- during the
18 tape-recorded portion of the interview of Larry
19 Demery, you told Mr. Demery, you made a reference to
20 the FBI, and those two gentlemen out there now, you
21 will probably see them wearing dark suits and looking
22 more important than they really are, but they have a
23 hell of a laboratory up there and they are going to
24 take the projectile out of Mr. Jordan and take the
25 projectile out of -- that bullet that was left in the

1 Lexus, and they are going to pull elemental analysis
2 on the head and they are going to tell us if those
3 bullets were made at the same time at the same
4 factory and in the same box of ammunition. You said
5 that to Mr. Demery, did you not?

6 A Yes, sir, I did.

7 Q Did you submit any evidence to the FBI lab
8 for elemental analysis?

9 A It's not my job to submit, sir --

10 Q But you did not submit?

11 A I did not, no, sir.

12 Q -- any evidence for elemental analysis?

13 A No, sir.

14 Q You told Mr. Demery back during the
15 tape-recorded portion of the interrogation,
16 Mr. Smith, that I would not have probable cause to
17 lock your ass up tonight without that statement right
18 down there that's being signed and sworn to right
19 now. You said that, did you not?

20 A I believe I did, yes, sir.

21 Q And you said, okay, I think you still
22 thinking -- think I'm bullshitting, but son you're
23 going to jail tonight, there's no ifs ands or buts
24 about it. First degree murder, because of that
25 statement down there that's been signed, you said

1 that to Mr. Demery, did you not?

2 A Yes, sir, and I had probable cause to back
3 it up.

4 Q Yes, sir. And you told Mr. Demery, and he
5 is too, and he understands that shit. And he is
6 already preparing his defense. He done it when he
7 signed that piece of paper down there. You told that
8 to Mr. Demery, did you not?

9 A I believe I did, yes, sir.

10 Q You were referring to the defendant, were
11 you not?

12 MR. BRITT: Objection.

13 A I believe so.

14 THE COURT: Sir?

15 MR. BRITT: Objection. No, I
16 withdraw the objection, excuse me.

17 THE COURT: Okay. It's
18 withdrawn, you may continue.

19 BY MR. THOMPSON:

20 Q And you were referring to the defendant
21 having signed some paper down there, isn't that
22 right?

23 A Yes, sir.

24 Q And then Detective Smith, you referred to
25 some witnesses up in Fayetteville that told you about

1 a gun in Cumberland County, did you not?

2 A Yes, sir, I did.

3 Q And how did you refer to those witnesses?

4 A I believe I referred to them as people that
5 we had talked to, but those witnesses turned out to
6 be the half brother of the subject right here,
7 Mr. Jovan Carter, Farrior brothers, and person that
8 was known as T, Mr. Teasley.

9 Q On page 104 of the transcript --

10 MR. BRITT: Objection.

11 THE COURT: Do you want to be
12 heard, Mr. Britt?

13 MR. BRITT: Reference to "the
14 transcript."

15 THE COURT: You can cite him to a
16 specific statement, Mr. Thompson.

17 MR. THOMPSON: Yes, sir, I am,
18 Your Honor.

19 THE WITNESS: That page number
20 again.

21 BY MR. THOMPSON:

22 Q Page 104 of the transcript.

23 A Yes, sir.

24 Q When you said to Mr. Demery, and he's
25 already prepared his defense, he's done it when he

1 signed that piece of paper down there, what did you
2 then tell Mr. Demery?

3 A There was an answer after that, just a
4 response, uh-huh. And he is too. And he understands
5 that shit, and he is already preparing his defense,
6 he's done it when he signed this piece of paper down
7 there, but my goddamn witnesses tell me, son, they
8 tell me that they had the gun in Cumberland County
9 the whole time.

10 Q And when you used, Mr. Smith, blasphemy in
11 God's name, were you working for him there?

12 MR. BRITT: Objection.

13 Q When you blasphemed?

14 MR. BRITT: Objection, move to
15 strike, ask for instruction.

16 THE COURT: Motion to strike the
17 argument statement for counsel from the
18 defendant, is allowed. Members of the
19 jury, don't consider that. That's not to
20 take any part in your deliberations in this
21 case in any respect. You may put questions
22 to him.

23 BY MR. THOMPSON:

24 Q Mr. Smith, you told Mr. Demery after you
25 made that statement, son, I have had jurors put

1 people that wanted to play dumb in jail before for
2 the rest of their life, okay. Playing dumb only
3 works so long, okay, and when you sit over there and
4 they look at you and they analyze you, they analyze
5 what you say, they analyze the witness. This is why
6 they don't let jurors take notes. Because they want
7 them to analyze, okay. What they are doing is
8 listening and they are analyzing. You told
9 Mr. Demery that, did you not?

10 A That's correct, sir.

11 Q Then you told him they get a police officer
12 up there, police officers are pretty polished. They
13 have testified on the stand before, 12 people in
14 crowds, don't bother them. They listen to a
15 detective. You told him that, did you not?

16 A Yes, sir.

17 Q And the oath that you took, Detective
18 Smith, upon becoming a law enforcement officer, you
19 swore as an oath to uphold, preserve and defend the
20 constitution of -- the laws of North Carolina, did
21 you not?

22 A That's correct, sir.

23 Q And of the United States Constitution?

24 A That's correct, sir.

25 Q And you took that oath upon becoming a law

1 enforcement officer?

2 MR. BRITT: Objection, asked and
3 answered.

4 Q And you swore on the Bible?

5 THE COURT: Mr. Thompson there's
6 an objection, sir.

7 MR. BRITT: Asked and answered.

8 THE COURT: It's
9 cross-examination. You may continue,
10 Mr. Thompson.

11 BY MR. THOMPSON:

12 Q And you swore on the Bible, did you not?

13 A Yes, sir.

14 Q And before God that you would uphold the
15 Constitution, did you not?

16 A That's correct.

17 Q Based on your law enforcement training, you
18 swore that -- excuse me. Based on your law
19 enforcement training you know that the U.S.
20 Constitution prevents coercion and threats?

21 MR. BRITT: Objection, arguing
22 with the witness.

23 THE COURT: Members of the jury,
24 there's a matter of law the Court must take
25 up at this time out of the hearing and

1 presence of the jury. Please don't
2 speculate about what takes place in the
3 courtroom in your absence, and if you will
4 please step to the jury room.

5 (Jury out at 9:42 a.m.)

6 THE COURT: Mr. Thompson, you're
7 entitled to wide latitude on
8 cross-examination.

9 MR. THOMPSON: Yes, sir.

10 THE COURT: Your characterization
11 of coercion is your characterization, and
12 that is certainly something that you may
13 argue based on facts and inferences that
14 are raised, but it's not appropriate to go
15 into this line of questioning with this
16 witness. State want to be heard further?

17 MR. BRITT: Yes, sir. And my
18 position would be if it continues that I am
19 entitled to ask the Court to take judicial
20 notice of its own order in regard to
21 Mr. Demery's statement, and the Court found
22 as a matter of law that there was no
23 threat, there is no coercion that took
24 place on the morning of August 15th, 1993.

25 THE COURT: Well, folks, we know

1 what the constitutional law is. The
2 constitutional law is whether any conducts
3 or any statements were of such a nature to
4 overbear the will of a suspect. That issue
5 has been determined. It is an issue that
6 is subject to appellate review. It is
7 something that you would be entitled to
8 argue if your client were on the stand and
9 he was being questioned about his
10 statement. You can argue to the jury the
11 voluntariness of that statement, and you
12 would be entitled to go into it. But
13 you're going into it, another person,
14 Mr. Demery, are you not?

15 MR. THOMPSON: Yes, sir.

16 THE COURT: You're arguing in
17 effect that this witness coerced
18 Mr. Demery's statement when that issue is
19 really not before the jury.

20 MR. THOMPSON: Well, Your Honor,
21 I'm arguing that coercion was used, threats
22 were made, he's testified, and again this
23 is impeachment.

24 THE COURT: You can offer his
25 statements, Mr. Thompson.

1 MR. THOMPSON: Excuse me?

2 THE COURT: You can offer his
3 statements in whatever source you've got,
4 you can refer to statements, but you're
5 characterizing the evidence at this point.
6 Whose interpretation is it that the conduct
7 was coercive?

8 MR. THOMPSON: Well, Your Honor,
9 that's what I'm arguing and contending.
10 Now, he has an opportunity to deny it.

11 THE COURT: Well, the point about
12 the ruling coming in is a real possibility.

13 MR. THOMPSON: I understand, Your
14 Honor. But you're talking about the point
15 about your ruling?

16 THE COURT: Yes, sir.

17 MR. BRITT: That's the law of the
18 case.

19 THE COURT: That's the law of the
20 case.

21 MR. THOMPSON: Well --

22 MR. BRITT: I'll be happy to let
23 Mr. Thompson continue this line of
24 questioning and I'll offer the Court's
25 ruling --

1 THE COURT: Well, folks, we're
2 getting into some grounds, some areas here
3 that are real problematic.

4 MR. THOMPSON: And I understand
5 that, Your Honor, still --

6 THE COURT: Do you want to make
7 an offer of proof of this witness right now
8 as to what you intend to get into?

9 MR. THOMPSON: Just asking that
10 question -- yes, sir.

11 THE COURT: Okay. Go ahead.

12 BY MR. THOMPSON:

13 Q And based on your law enforcement training,
14 Detective Smith, you know that the United States
15 Constitution prevents you from using coercion and
16 threats to get a statement from a suspect, don't you?

17 A That's correct, sir.

18 Q And from overpowering the will of a
19 suspect, you know that, don't you?

20 A That's correct, sir.

21 Q But it's your testimony that you did not
22 back on August the 15th of 1993, during the
23 tape-recorded portion of the interrogation, that you
24 did not threaten Mr. Demery?

25 A I said nothing more or less to Mr. Demery

1 than I would say to my own children under the certain
2 circumstances, and I love them.

3 Q And it's your testimony that you did not
4 threaten Mr. Demery?

5 A Nothing more than he was facing at the
6 particular time.

7 Q Is it your statement that you did not
8 threaten -- testimony that you did not threaten
9 Mr. Demery?

10 A No, sir.

11 THE COURT: That's what you
12 intend to get into?

13 MR. THOMPSON: All right, sir,
14 that's my proffer.

15 THE COURT: And that's what you
16 intend to get into in the presence of the
17 jury?

18 MR. THOMPSON: Yes, sir.

19 THE COURT: Mr. Britt?

20 MR. BRITT: I withdraw the
21 objection.

22 THE COURT: Bring the jury back
23 in.

24 (Jury in at 9:47 a.m.)

25 THE COURT: Mr. Thompson.

1 BY MR. THOMPSON:

2 Q Detective Woods -- I mean, Detective Smith,
3 do you deny that the language you were using back
4 there on August the 15th of 1993 during the
5 tape-recorded portion of that interview with
6 Mr. Demery were threats to Mr. Demery?

7 A They were not intended by me toward
8 Mr. Demery as threats, sir.

9 Q Were they intended by you to intimidate
10 Mr. Demery?

11 A I thought Mr. Demery had the right to
12 understand what he was facing and the seriousness of
13 the charges that was possibly going to be placed on
14 him before the end of the day.

15 Q Were they intended by you to intimidate
16 Mr. Demery?

17 A They were given to Mr. Demery in the hopes
18 that he would at least understand what he was facing
19 and the fact that he would defend himself.

20 Q Was it your intent to intimidate
21 Mr. Demery?

22 A Not my intent to intimidate Mr. Demery, no,
23 sir.

24 Q Were you attempting to frighten Mr. Demery?

25 A Excuse me, sir?

1 Q Were you attempting to frighten Mr. Demery?

2 A No, sir, I believe Mr. Demery understanding
3 what he was facing was frightened enough without me
4 trying to frighten him.

5 Q And is that the reason you talked to him in
6 that typical conversation language that you used,
7 Mr. Smith, because he was already frightened?

8 A Talking to Mr. Demery, sir, was I believe
9 Mr. Demery was falling back on the fact of
10 friendship, and he did not believe what we were
11 trying to tell him about what was being said about
12 him down the hall way.

13 MR. THOMPSON: That's all.

14 THE COURT: Mr. Britt?

15 MR. BRITT: If I could have just
16 a second.

17 THE COURT: Yes, sir.

18 FURTHER REDIRECT EXAMINATION

19 BY MR. BRITT:

20 Q When you answered Mr. Thompson's question
21 in regard to your witnesses in Cumberland County, who
22 did those individuals tell you had the gun the whole
23 time in Cumberland County?

24 A People I talked to, sir, said Mr. Green had
25 the weapon.

1 MR. BRITT: Your Honor, may I
2 have a moment to retrieve something from my
3 office?

4 THE COURT: Yes, sir.

5 MR. BRITT: Thank you, I'll just
6 be a second.

7 May I be heard on a matter?

8 THE COURT: Yes, sir. Ladies and
9 gentlemen, there's a matter of law I must
10 take up. Don't worry or speculate about
11 what takes place in the courtroom in your
12 absence, and if you will please step to the
13 jury room.

14 (Jury out at 9:54 a.m.)

15 THE COURT: Mr. Britt.

16 MR. BRITT: Your Honor, outside
17 the presence of the jury, so the matters do
18 not in any way -- are presented to the jury
19 that should not be, at this point I would
20 ask the Court to take judicial notice of
21 its own order that was filed -- that was
22 entered on March the 21st, 1995 in Robeson
23 County, Superior Court File Number 93 CRS
24 15288, 1529 -- excuse me, 15289, and 15290,
25 entitled State of North Carolina versus

1 Larry Martin Demery, wherein the Court
2 found that none of Mr. Demery's federal
3 or -- federal constitutional rights or
4 state constitutional rights or any rights
5 that arise by means of statutes were
6 violated during the course of the
7 interrogation of Larry Martin Demery on
8 August 15th, 1993.

9 THE COURT: Folks?

10 MR. BOWEN: Well, for the
11 purposes of cross-examination, what we have
12 asked him is does he not consider what he
13 did as a threat. Now, I don't argue with
14 the fact that what Your Honor found in the
15 case is the law of the case. But for
16 cross-examination purposes, we are
17 inquiring into his technique, what he did,
18 the purpose of it, what he considered it to
19 be, how it fit in with his concept of his
20 own oath, what his obligations to God were,
21 to be fair and do all these things that
22 came in --

23 THE COURT: Well, Mr. Bowen, is
24 it fair to let you folks go that far and
25 not let the State offer its evidence?

1 allow what he does. The Court could find
2 that that particular behavior was not in
3 fact a threat regardless of what the
4 officers thought, in a legal context. And
5 so what we're -- we're trying to find out
6 is what did he think this amounted to and
7 how did he relate this to his oath to God
8 to preserve and defend the Constitution and
9 act in a Godlike manner.

10 THE COURT: Well, folks, a lot of
11 matters have been injected into this
12 cross-examination that have opened doors
13 that didn't have to be opened when -- you
14 cross-examined Mr. Demery about whether he
15 felt threatened or intimidated, didn't
16 you? He responded to your questions and
17 told you he did not. Now you're trying to
18 get the same thing in before the jury
19 through one of the officers. And you're
20 saying the State ought not to be entitled
21 to bring before the jury that. That issue
22 was raised before the Court, the Court
23 heard evidence and made a ruling.

24 MR. BOWEN: Well, except for the
25 fact that it's entirely possible that this

1 officer who considered these threats,
2 Mr. Demery swore a written oath, and it's
3 Defendant's Exhibit Number 29, in which he
4 swore under oath that during this
5 investigation I felt intimidated by a group
6 of officers.

7 THE COURT: And he was
8 cross-examined about that.

9 MR. BOWEN: Exactly. And so what
10 we're looking at is the context of this
11 examination and how it relates to his
12 oath. The fact that the Court may not have
13 decided objectively from analysis of the
14 facts and the law in the totality of the
15 circumstances that these were threats, it
16 seems to me should not chill us from
17 examining this man about his tactics in
18 light of his professed Godlike behavior.
19 And while his -- a jury could well find
20 that while his behavior might not have
21 risen to the level of a violation of the
22 law, they may well find that his behavior
23 may have risen to the level of violating
24 the kind of Godlike behavior that he
25 professes and therefore bear on his

1 credibility.

2 MR. THOMPSON: And, Your Honor,
3 query, which I don't think is dispositive
4 of the issue necessarily, because I think
5 we, as succinctly stated by co-counsel,
6 this is an issue that was brought out on
7 cross, and the jurors can determine from
8 the evidence at this trial through this
9 witness, through Mr. Demery, whether they
10 consider that to be threats or not. The
11 legal issue that you decided was in fact
12 a -- it's really a mixed issue of law and
13 fact.

14 THE COURT: Yes.

15 MR. THOMPSON: But the facts are
16 for the jury to decide in this case, not
17 Your Honor. And that's the -- you decide a
18 mixed issue of law and fact.

19 And the other thing that I want to say
20 is I don't know query whether the motion --
21 Your Honor's order was appealed or not, I
22 don't know. Be interesting, because in
23 many instances, suppression orders on
24 suppression motions are reserved for
25 appeal. And I don't know, that may be --

1 THE COURT: It was asked for
2 belatedly, and in my discretion I allowed
3 it. It was asked for after the plea was
4 entered. Statute provides that notices to
5 be given to counsel for the State and the
6 Court prior to entry of the plea, and even
7 though the notice came in late, in my
8 discretion I allowed it.

9 MR. THOMPSON: See, I don't know,
10 and if that's so, then I offer that as
11 another reason. I think the first reason
12 that is stated by counsel is sufficient,
13 but I would offer that as an additional
14 grounds for not allowing the State to use
15 that.

16 THE COURT: All right. Folks,
17 I'm looking at 201, particularly 201 A and
18 G. A, B and G.

19 MR. THOMPSON: What --

20 THE COURT: Rule of Evidence,
21 201. G in particular provides that in
22 pertinent part in a criminal case, the
23 Court shall instruct the jury that it may
24 be, but is not required to, accept as
25 conclusive any fact judicially noticed.

1 The State is asking that the Court
2 take judicial notice of the order and
3 instruct the jury accordingly, is that
4 correct?

5 MR. BRITT: Yes, sir.

6 MR. BOWEN: I want to further
7 object on the notion that there will become
8 a time, I believe, in Your Honor's charge
9 where Your Honor will tell this jury that
10 Your Honor has no opinion about this case
11 and therefore derived no opinion --

12 THE COURT: Folks, I didn't bring
13 it into the cross-examination.

14 MR. BOWEN: We brought it in
15 because we thought it was limited in the
16 ways that I have described. Now, the State
17 disagrees and possibly the Court will
18 disagree, but we did not bring this in
19 intending to open any doors. We think it's
20 confined to what this man believes in terms
21 of his oath. That was the way all the
22 questions were couched.

23 Now, if you tell this jury that the
24 Court is going to take judicial notice of
25 some fact that is going to bear directly on

1 this issue when it's a fact that counsel
2 can ask this witness about, that's the fair
3 way to do it. Let him have his opportunity
4 to recross -- or redirect the man. But if
5 the Court interjects itself into this, it's
6 going to be very difficult, seems to me,
7 for the jury to accept the fact that the
8 Court has no opinion about this case and
9 court has and takes --

10 THE COURT: If the Court
11 interjects itself, it will be reluctantly.
12 Because I've asked you folks on a number of
13 occasion, when you have an area that you
14 feel is problematic, before you bring it
15 out before the jury, make a proffer.

16 MR. BOWEN: We don't think that's
17 problematic. We think it's confined.

18 MR. THOMPSON: Your Honor, and
19 when I -- after the voir dire, I
20 cross-examined him about the -- did he -- I
21 asked him specifically, did he threaten,
22 did he intimidate, he said no. Your Honor,
23 your decision on the motion to suppress is
24 a mixed question of law and fact. And I'm
25 suggesting that that invades the province

1 of the jury if now you give -- the State is
2 allowing the Court to give judicial notice
3 of a factual issue in this case, and -- as
4 to a factual issue. And I think -- I
5 suggest to the Court that that would be
6 prejudicial error.

7 THE COURT: The door was opened
8 on cross-examination.

9 MR. THOMPSON: But the point is
10 that the jury -- it's the jury's province.

11 THE COURT: Mr. Thompson, how
12 many times did I indicate to you that if
13 you confined your questions to statements
14 that you contend were made by this witness,
15 how many times did I suggest that, if you
16 confined your cross-examination not to
17 characterizations but to statements, then
18 you are on safe grounds?

19 MR. THOMPSON: Yes, sir, Your
20 Honor, I understand. And I understand that
21 I took the position and as a defense
22 counsel, it's -- that I felt that this was
23 an area that we could inquire into, and it
24 does not give grounds for the State to ask
25 of this Court to give judicial notice and

1 instruct the jury as to that, to a question
2 which I considered to be a mixed question
3 of law and fact, and one in which would in
4 fact invade the province of the jury. And
5 that's the position of the defense, and
6 that it would be prejudicial under Rule
7 403.

8 MR. BRITT: If it please the
9 Court, if you go back, beginning on page 14
10 on the transcript from today,
11 Mr. Thompson's question was, based on your
12 law enforcement training, you swore that --
13 excuse me. Based upon your law enforcement
14 training you know that the U.S.
15 Constitution prevents coercion and
16 threats. Objection. Jury was excused at
17 that point. The Court, outside the
18 presence of the jury, informed Mr. Thompson
19 of the following:

20 Mr. Thompson you're entitled to wide
21 latitude on cross-examination.
22 Mr. Thompson: Yes, sir. The Court: Your
23 characterization of coercion is your
24 characterization, and that is certainly
25 something you may argue based on facts and

1 inferences that are raised, but it's not
2 appropriate to go into this line of
3 questioning with this witness.

4 State wanted to be heard any further.
5 My response is yes, sir. And my position
6 would be if it continues that I am entitled
7 to ask the Court to take judicial notice of
8 its own notice in regard to Mr. Demery's
9 statement that the Court found as a matter
10 of law there was no threats, there was no
11 coercion, during that interrogation on
12 August the 15th, 1993.

13 The Court: Well, folks, you know what
14 the constitutional law is. The
15 constitutional law is whether any conduct
16 or any statements were of such a nature to
17 overbear the will of a suspect. That issue
18 has been determined. It is an issue that
19 is subject to appellate review. It is
20 something that you would be entitled to
21 argue if your client was on the stand and
22 he was being questioned on the statement.
23 You can argue to the jury the voluntariness
24 of that statement and you would be entitled
25 to go into it, but you're going into it

1 with another person, Mr. Demery, are you
2 not?

3 Mr. Thompson: Yes, sir.

4 The Court: You're arguing in fact
5 that this witness coerced Mr. Demery's
6 statement when that issue is really not
7 before the jury.

8 Mr. Thompson: Well, Your Honor, I'm
9 arguing that coercion was used, threats
10 were made. He's testified, and again this
11 is impeachment.

12 The Court: You can offer his
13 statements, Mr. Thompson.

14 Mr. Thompson: Excuse me?

15 The Court: You can offer his
16 statements in whatever source you've got,
17 you can refer to statements, but you're
18 characterizing the evidence at this point.
19 Whose interpretation is it that the conduct
20 was coercive?

21 Mr. Thompson: Well, Your Honor,
22 that's what I'm arguing and contending now,
23 he has an opportunity to deny it.

24 The Court: Well, the point about the
25 coming in I understand Your Honor but we're

1 talking about the point about your ruling.

2 The Court: Yes, sir.

3 Mr. Britt: That's the law of the
4 case.

5 The Court: That's the law of the
6 case.

7 Mr. Thompson: Well --

8 Mr. Britt: I'll be happy to let
9 Mr. Thompson continue this line of
10 questioning, and I'll offer the Court's
11 ruling --

12 The Court: Well, folks, we're getting
13 into some grounds, some areas that are real
14 problematic.

15 Mr. Thompson: And I understand that.
16 You're still --

17 The Court: Do you want to make an
18 offer of proof of this witness right now as
19 to what you intend to get into,
20 Mr. Thompson?

21 Then there was an examination of
22 Mr. Smith outside the presence of the
23 jury. I then withdrew the objection. The
24 Court asked defense, is that what you
25 intend to get into.

1 Mr. Thompson: That's my proffer.

2 Again, the question from the Court,
3 and that's what you intend to get into
4 before the jury.

5 Mr. Thompson: Yes, sir. I withdrew
6 the objection. The jury was brought back
7 in, and Mr. Bowen has argued that they
8 couched the questions in terms of limiting
9 it to some reference to Godlike work.
10 These were the questions that were asked.

11 Detective Woods -- these are questions
12 by Mr. Thompson, detective woods, I mean
13 Detective Smith, do you deny that the
14 language you were using back on -- back
15 there on August 15th of 1993 during the
16 tape recorded portion of that interview
17 were threats to Mr. Demery, question mark.
18 The answer, they were not intended by me
19 toward Mr. Demery as threats, sir.

20 Next question. Were they intended by
21 you to intimidate Mr. Demery, question
22 mark. Answer, I thought Mr. Demery had the
23 right to understand what he was facing and
24 the seriousness of the charges that were
25 possibly going to be placed on him by the

1 end of the day.

2 Question by Mr. Thompson: Were they
3 intended by you to intimidate, question
4 mark. They were given to Mr. Demery in the
5 hopes that at least he was facing and the
6 fact that he would defend himself.

7 Question by Mr. Thompson: Was it your
8 intent to intimidate Mr. Demery, question
9 mark. Not my intention to intimidate.
10 Mr. Thompson, that was Mr. Demery's
11 response.

12 Question: Were you attempting to
13 frighten Mr. Demery, question mark.

14 Answer, excuse me, sir. Question: Were
15 you attempting to frighten Mr. Demery,
16 question mark. Answer, no, sir. I believe
17 Mr. Demery understanding what he was facing
18 was frightening enough without me trying to
19 frighten him.

20 Question: Is that the reason you
21 talked to him in that typical conversation
22 language that you used Mr. Smith, because
23 he was already frightened?

24 Answer: Talking to Mr. Demery, sir, I
25 believe Mr. Demery was falling back on the

1 fact of friendship, and he did not believe
2 what we were trying to tell him about what
3 was being said about him down the hall
4 way.

5 Mr. Thompson: That's all.

6 There was no limitation in regard to
7 the questions that were asked and trying to
8 confine the focus. Mr. Thompson had
9 already stated they intended to argue to
10 this jury that Mr. Demery had been
11 intimidated, was threatened and was coerced
12 by these officers, as the Court has noted.
13 They opened the door, they opened the door
14 as to this line of questioning. They were
15 put on notice twice during the voir dire,
16 that if they continued to do this, that I
17 would move the Court to take judicial
18 notice of its own order. And yet, they
19 continued to do it.

20 MR. BOWEN: And we did it because
21 this: Those questions were confined to the
22 notions of what the officers' intent was.
23 The reference to --

24 THE COURT: Even on motion to
25 suppress, the officers intent is

1 irrelevant.

2 MR. BOWEN: In a motion to
3 suppress, Your Honor, that's why these two
4 things are completely different. That's
5 why to get this element that the state
6 wants in, that is, judicial notice of Your
7 Honor's prior order, is going to confuse
8 the issues before the jury. And that's
9 something Your Honor has tried again and
10 again to keep from confusing the issues,
11 when he tells the jury I did or did not
12 intend to do something.

13 Now, they can hear the language and
14 figure out what the truth is or the lack of
15 truth of what this man intended to do. The
16 fact that the Court found the legal effect
17 was something else is totally apart from
18 the issue. The issue was what was in his
19 mind, what he intended to do, and does the
20 jury believe him when he says that.

21 THE COURT: Mr. Britt, if I -- I
22 take it what you intend to do is to publish
23 the order?

24 MR. BRITT: Yes, sir.

25 THE COURT: 23-page order?

1 MR. BRITT: Yes, sir.

2 THE COURT: With findings of
3 facts and conclusions of law?

4 MR. BRITT: Yes, sir.

5 THE COURT: What I'm going to do,
6 folks, is a lot of the doors were opened on
7 cross-examination. I'm going to allow the
8 State to go into matters related to the
9 interview or interrogation of Mr. Demery as
10 the doors were opened. At this point, I'm
11 not going to take judicial notice of the
12 order. I think that would create more
13 problems than we have already.

14 MR. BRITT: Your Honor, I would
15 ask the Court to look at Rule 201 D.

16 THE COURT: Yes, sir I have.

17 MR. BRITT: When it's mandatory
18 to take judicial notice. I think that I
19 have complied with 201 D. 201 D for the
20 record states that the Court shall take
21 judicial notice --

22 THE COURT: It's mandatory.

23 MR. BRITT: -- if requested by a
24 party and supplied with the necessary
25 information. That has been done.

1 THE COURT: Give me some law.

2 MR. BOWEN: We're going to object
3 on the additional grounds that these
4 trials, we're talking about the law of this
5 case, but these trials --

6 THE COURT: I keep hearing you
7 folks say that, but I keep saying in my own
8 mind, you brought it in, and I at least on
9 two occasions told you folks, confine your
10 cross-examination to the statements that
11 you contend were made by the witness
12 without characterizations. You folks
13 interjected characterizations into the
14 cross-examination.

15 MR. BOWEN: You see, what we
16 cannot agree to, Your Honor, we
17 respectfully disagree, to ask an officer
18 whether he conveyed threats is not a
19 characterization in this life. How many
20 suppression hearings have you been involved
21 in as a prosecutor or defense attorney or
22 Your Honor, where a police officer is flat
23 asked, did you threaten, did you
24 intimidate, did you do all those things
25 that you can't do, and the officer answers

1 as to whether he did or did not do those
2 things. If they are characterizations,
3 then when the State wants to get its
4 statements in, and not have its statements
5 suppressed, it gets to refer constantly to
6 whether or not there were threats.

7 MR. THOMPSON: Your Honor, may I
8 be heard?

9 THE COURT: If you'll bear with
10 me one second, please, folks, I'll let you
11 speak.

12 Look at the commentary under 201.
13 When a court or agency finds facts
14 concerning the immediate parties, who did
15 what, where, when, how and what motive or
16 intent, the Court or agency is performing
17 an adjudicative function, and the facts are
18 conveniently called adjudicative facts.
19 Stated in other terms, the adjudicated
20 facts are those to which the law is applied
21 in the process of adjudication. They are
22 the facts that normally go to the jury in a
23 jury case. They relate to the parties,
24 their activities, their properties, their
25 businesses, citing two administrative law

1 treatise at 353.

2 C and D govern when judicial notice is
3 discretionary, and when it's mandatory.
4 Under subdivision C, the Judge has
5 discretionary authority to take judicial
6 notice regardless of whether he is so
7 requested by a party. The taking of
8 judicial notice is mandatory under
9 subsection D only when a party requested
10 and the necessary information is supplied.

11 Scheme is believed to reflect existing
12 practice that is simple and workable and
13 avoid troublesome distinctions in the many
14 situations in which the process of taking
15 judicial notice is not recognized as such.

16 The State is asking them to take
17 judicial notice having supplied me with the
18 necessary information, the prior order of
19 the Court. The State's position is that
20 this is mandatory now.

21 MR. THOMPSON: May I be heard?

22 THE COURT: Yes, sir.

23 MR. THOMPSON: And defense
24 position is that it is not mandatory, and
25 it's not even proper. And the reason, Your

1 Honor, is this: First of all, the kind of
2 facts, a judicial subdivision B, kinds of
3 facts, a judicially noticed fact must be
4 one not subject to reasonable dispute in
5 that it is either, one, generally known
6 within the territory, jurisdiction of the
7 Trial Court or, two, capable of accurate
8 and ready determination by the Court to
9 sources whose accuracy cannot be reasonably
10 questioned.

11 THE COURT: Is there any
12 reasonable dispute that I entered an order
13 denying Mr. Demery's motion to suppress?

14 MR. THOMPSON: But that is not
15 the issue.

16 MR. BRITT: That is the very
17 issue. What Mr. Thompson is asking the
18 Court to do is to allow him to argue to the
19 jury --

20 MR. THOMPSON: Excuse me, Your
21 Honor, may I be heard, please?

22 THE COURT: Folks, sit down. Sit
23 down, both of you.

24 THE COURT: Mr. Britt,
25 Mr. Thompson, was speaking.

1 MR. BRITT: I apologize.

2 THE COURT: I'll give you
3 opportunity in just a moment.
4 Mr. Thompson.

5 MR. THOMPSON: And the issue is,
6 Your Honor, whether in fact the conduct as
7 exhibited by this officer and with respect
8 to even Mr. Demery and his testimony is
9 credible and it was offered for
10 impeachment. Now, even in a case in which,
11 assuming hypothetically, in Mr. Demery's
12 case, he would be able to argue and in any
13 case, notwithstanding an order of the Court
14 on a motion to suppress, and that order
15 being found against the defendant, the
16 movant, to suppress the statement on the
17 ground of voluntariness, the defendant, or
18 the party in that case can argue
19 voluntariness, I mean, involuntariness.

20 THE COURT: That's what I'm
21 thinking now, Mr. Britt, to be honest.
22 Because say this was Mr. Green's statement
23 that was being challenged on the issue of
24 voluntariness, and the Court had previously
25 entered an order denying a motion to

1 suppress as to Mr. Green, if they raised
2 the issue of voluntariness as to the
3 statement would the State be then entitled
4 to introduce --

5 MR. BRITT: At that point the
6 State would be entitled to introduce the
7 actual statements.

8 THE COURT: But would the State
9 be entitled to do that?

10 MR. BRITT: In terms of the Court
11 having judicially found, I don't believe --
12 but we're not talking about that defendant
13 in that particular case. We're talking
14 about a witness. They don't even have
15 standing to contest.

16 THE COURT: But it wasn't
17 objected to when it was initially raised.
18 The standing objection was not initially
19 raised by the State.

20 MR. BRITT: I waited for the sole
21 reason I knew they were going to continue
22 with this line of question, and what they
23 were asking the Court to do is allow them
24 to characterize in jury arguments this
25 interrogation and to say that this Larry

1 Demery was intimidated, he was coerced, he
2 was threatened, but yet without the Court
3 taking judicial notice of it's own order, I
4 cannot get up there and argue, because it's
5 not in evidence.

6 THE COURT: Let's leave
7 Mr. Demery out for the moment. Say it was
8 Mr. Green's statement.

9 MR. BRITT: Not be entitled to do
10 that, I concede that.

11 THE COURT: Then how is it
12 different that it's Mr. Demery's
13 statement?

14 MR. BRITT: Because he's not the
15 one on trial.

16 THE COURT: Doesn't rule 201
17 apply to the parties?

18 MR. BRITT: Applies to the
19 parties. This is the State. This is a
20 State's witness.

21 THE COURT: Yes, sir.

22 MR. BRITT: But they, again, they
23 have introduced this information, and
24 that's what they are going to do.
25 Mr. Thompson has already stated on the

1 record they are going to get up here and
2 argue that he was threatened, coerced he
3 was frightened into making these
4 statements.

5 MR. THOMPSON: Well, I don't know
6 what --

7 MR. BRITT: Are you finish?

8 MR. THOMPSON: I'm sorry.

9 MR. BRITT: If I'm not allowed to
10 introduce into evidence the fact that those
11 matters have been adjudicated and
12 judicially found that there was no threat,
13 there was no coercion, I can't argue that
14 to the Court, and you know that.

15 THE COURT: There's another way
16 you can get it in, Mr. Britt. You can go
17 into the same transcript that they went in
18 to and bring out on direct those matters
19 which support voluntariness and argue your
20 contentions to the jury. You can go in
21 through the doors that were opened by them
22 on cross-examination by what information
23 that officer may have had which related to
24 either this defendant or to Mr. Demery,
25 which caused him to take the position that

1 he did take during that interview, because
2 they opened the doors.

3 MR. BRITT: And we've already
4 done that.

5 THE COURT: No, sir.

6 MR. BRITT: We went into matters
7 about statements that were received from
8 Cumberland County in regard to who had the
9 gun.

10 THE COURT: They opened the door
11 to a lot of hearsay stuff.

12 MR. BRITT: Yes, sir, I know.

13 THE COURT: About the case.

14 MR. BRITT: Yes, sir, I know they
15 did.

16 THE COURT: My concern is we are
17 dealing with a situation here where they
18 injected matters related to the statement
19 of someone else. The State's position is
20 that under 201 that applies to the
21 parties. I don't see it that way
22 necessarily. Applies to one of the
23 parties, the State, as it relates to
24 Mr. Demery, but doesn't necessarily apply
25 to the State as opposed to that party, but

1 you can go into the doors opened on
2 cross-examination as it may relate to this
3 defendant.

4 MR. BRITT: And as it relates to
5 this defendant's trial, they opened the
6 door to the Court's previous order. And
7 201 D, it's a mandatory matter.

8 THE COURT: Only when it relates
9 to the parties in 201.

10 MR. BRITT: Relates to State's
11 ability to receive a fair trial, because if
12 I am precluded from this, they get up and
13 argue that there have been threats and
14 coercion used, and it's like they want the
15 cake and they want to be able to eat it
16 too, because they only want to tell half
17 the story. And I'm entitled to get into
18 the other half that relates to the truth.

19 THE COURT: Okay. I'm going to
20 give you the opportunity to provide me with
21 some law. Because I want to be fair both
22 to the State and to the defendant. I'm
23 going to send the jury home until 2:30.
24 You folks have until 2:00 to give me some
25 law. You folks raised the issue, you folks

1 research it and bring me back some law.

2 Bring the jury in, please.

3 I'm going to give both sides a full
4 opportunity to present their authorities.

5 (Jury in at 10:24 a.m.)

6 THE COURT: Members of the jury,
7 it appears that the matter now before the
8 Court is going to take more time than was
9 initially anticipated. Rather than keeping
10 you back in the jury room, I'm going to
11 release you folks until 2:30 this
12 afternoon. If you will report directly to
13 the jury room at 2:30, we'll be in a
14 position to go forward at that time with
15 the continuation of evidence in this case.

16 During this recess, folks, again,
17 recall that it is your duty not to talk
18 about the matter among yourselves or with
19 anyone else. Don't allow anyone to say
20 anything to you or in your presence about
21 this case. If anyone communicates with you
22 about this matter or attempts to do so, or
23 if anyone says anything about it in your
24 presence, it remains your duty to inform us
25 of that immediately.

1 and in doing so, they opened the door.

2 MR. BRITT: Yes, sir.

3 THE COURT: I understand that's
4 your position, I need to see some law to
5 that effect. Because my view is, and I
6 think the State concedes, if it were Mr.
7 Green, and if Mr. Green's statement was
8 being challenged on the issue of
9 voluntariness, first of all, the State
10 agrees that defendant would have the right
11 to do that.

12 MR. BRITT: They would have
13 standing to do that.

14 THE COURT: Yes, but the standing
15 issue is something we also need to address,
16 because standing needs to be objected to,
17 and when they got into it. There was no
18 objection on the ground of standing.

19 MR. BRITT: Yes, sir.

20 THE COURT: So that that's
21 interwoven with the issue. Are we talking
22 about the parties as contemplated by 201 or
23 has that issue been waived because standing
24 was not objected to, and does the mandatory
25 provision of 201 apply under these facts.

1 That's my concern.

2 We've come too far and invested too
3 much time in this case at this point to
4 risk error over something like this when I
5 think that the matter can be addressed by
6 allowing the State on redirect examination
7 to go into matters related to the
8 transcript as they apply both to
9 Mr. Demery, and because they ask questions
10 related to the defendant, several of the
11 questions were "didn't you tell Mr. Demery
12 that statements were being made by the
13 defendant," that that opens a lot of doors
14 to matters which otherwise may not be
15 admissible.

16 MR. BRITT: Well, as to the
17 statements that were made by the defendant,
18 the Court has already ruled on those as
19 well.

20 THE COURT: Yes, sir. But if it
21 were Mr. Green's case, I keep coming back
22 to that, if it were Mr. Green's case, and
23 they challenged it, the mere fact that they
24 did would not entitle the State to
25 introduce the Court's order, saying folks,

1 disregard that, because I have already
2 found that his constitutional rights were
3 not violated. That's in effect a comment
4 by the Court on an issue to be resolved by
5 the jury. And if it were true in that
6 scenario that I could not do it, then I've
7 got problems with how can I do it in this
8 case when it relates to Mr. Demery's
9 statement.

10 MR. BRITT: Whether or not
11 Mr. Demery's statement was as a result of
12 threats or coercion is not an issue for
13 this jury to determine either.

14 THE COURT: I know that. I
15 understand. And it --

16 MR. BRITT: They opened it.

17 THE COURT: It never should have
18 come into the case except in a very limited
19 concept, and I thought I said that several
20 times.

21 MR. BRITT: Yes, sir, you did.
22 And as I said, I put them on notice twice
23 of what my intent was.

24 THE COURT: But I'm going to have
25 to see some law. So if you folks have

1 whatever law you are going to have by --
2 well, I'm not going to keep this jury
3 waiting. They have been waiting enough.
4 We will be back at -- it's now 10:30. You
5 folks need to be back in court at 12:30.

6 MR. BRITT: That would be fine.

7 THE COURT: Well, let me back
8 up. 12:00. If you need more time, come to
9 me, but 12:00, with whatever law you've
10 got.

11 We're at ease until 12:00.

12 (Court at ease.)

13 THE COURT: Let the record
14 reflect that all counsel are present, the
15 defendant is present in open court in the
16 absence of the jury.

17 Folks, let me put on the record that I
18 called both the District Attorney's office
19 and the public defender's office and
20 requested that copies of the following
21 cases be pulled, and I'm going to give you
22 the cites at this time. The first case is
23 in 760, Fed 2nd, beginning at page 1060.
24 It is United States versus Estep, E S T E
25 P. The pertinent headnotes are on page

1 1063, headnotes three through six.

2 Also United States versus Montemayor,
3 and I've already provided the spelling of
4 that name for the court reporter. That is
5 at 666, Fed 2nd, beginning at page 235,
6 pertinent headnotes appearing on 237.
7 Headnotes two and three and -- well,
8 actually just two and three in that case.

9 And Colonial Penn Insurance Company
10 versus Coil, spelling also been provided to
11 the court reporter. That is in 887 Fed
12 2nd, beginning at page 1236, pertinent
13 headnotes beginning on page 1239.

14 I've also found State versus Hunt, and
15 I indicated to I believe Mr. Britt, I don't
16 know if I mentioned this to you folks, I
17 thought I did, 100 NC App at page 43. Hunt
18 is the only case I could find. Haven't had
19 the opportunity to shepardize it, have
20 you?

21 MR. BRITT: Not to shepardize
22 Hunt, no, sir. I have -- I've just had an
23 opportunity to briefly scan it.

24 THE COURT: Do you have any
25 additional authorities you want me to

1 consider, Mr. Britt?

2 MR. BRITT: Yes, sir, and those
3 matters are being copied at this time.
4 Originally I had made -- instructed my
5 staff to make one copy so I could read it,
6 and they are in the process now of making
7 copies for all parties and the Court.

8 THE COURT: Defendant have any
9 additional --

10 MR. BOWEN: Judge, we're trying
11 to find Crane versus Kentucky.

12 MR. BRITT: I have that, that's
13 one of the cases being copied.

14 MR. BOWEN: And we've taken a
15 look at State versus Sanchez 328 NC 247,
16 1991 case. And also had a look at Georgia
17 Pacific versus Bondurant, 81 --

18 THE COURT: Most of the cases are
19 civil cases. Georgia Pacific was one of
20 the cases that I found. That deals with
21 something else in my view. All right.
22 State want to be heard further?

23 MR. BRITT: Yes, sir. If I could
24 approach.

25 THE COURT: Okay.

1 MR. BRITT: Your Honor, these are
2 the cases that I would ask the Court to
3 consider. These cases are cited as In Re:
4 Trucking Company, in the matter of appeal
5 of McLean Trucking, 285 North Carolina
6 Reports at 552. Also in re: Stokes,
7 appears at 29 NC App 283, 1976. State
8 versus Smith that appears at 73 NC App,
9 673, 1985 opinion of the Court. Crane
10 versus Kentucky has been copied as well.
11 Crane really isn't -- doesn't address the
12 issue at hand. It really addresses the
13 issue of the defendant's right to
14 present -- contest the voluntariness of the
15 State.

16 THE COURT: 201 G controls, Crane
17 is 201 G case. Most of the criminal cases
18 that I was able to find say that
19 essentially the instruction that was given
20 falls under 201 G in a criminal context.

21 MR. BRITT: Yes, sir.

22 THE COURT: The other cases deal
23 with the instruction that's given in a
24 civil context, which is a conclusive
25 instruction.

1 MR. BRITT: In State versus Smith
2 that's Alton Gordon Smith, a case that
3 arose here in Robeson County, the opinion
4 that appears at 73 NC App is the appeal
5 from a rehearing, resentencing hearing,
6 wherein the resentencing hearing, Judge
7 Barnette found or took judicial notice of
8 the aggravating circumstances -- excuse me,
9 aggravating factors that had been found by
10 Judge Herring at the previous sentencing.
11 And the Court ruled that such matters were
12 subject to judicial notice and found no
13 abuse of discretion in Judge Barnette's
14 taking judicial notice of Judge Herring's
15 previous findings.

16 State -- excuse me. Story versus
17 Story that appears 27 NC App, which is also
18 cited in Brandison and Brown on North
19 Carolina Evidence, fourth edition, page
20 104, section 26, in footnote number 37,
21 Story stands for the proposition that the
22 Court can take judicial notice of the
23 minutes, sessions of the Court showing the
24 date entry of judgment and notice of
25 appeal.

1 In Stokes, in re: Stokes, appears 29
2 NC App, 283, again it is cited in the
3 footnote in Brandison and Brown on North
4 Carolina Evidence that appears under the
5 heading, section 26, footnote number 37,
6 Stokes stands for the proposition that a
7 juvenile court judge could take judicial
8 notice of a previous order in the judicial
9 record to determine the age of the juvenile
10 that was appearing in court at that time.

11 And in re: Trucking Company, Appeal of
12 McLean Trucking, 285 North Carolina, 552,
13 stands for the proposition that the Supreme
14 Court will take judicial notice of other
15 matters that appear, or cases that they
16 have heard --

17 THE COURT: In its own records.

18 MR. BRITT: Yes, sir.

19 THE COURT: Yes, sir.

20 MR. BRITT: Now, looking at cases
21 that the Court referred us to from the
22 federal cases, in United States versus
23 Montemayor, that appears at 666 Federal
24 Second, 235, Montemayor dealt with the
25 Court taking judicial notices of forfeiture

1 case that was pending on the civil docket,
2 while Montemayor had a criminal matter that
3 was pending before the Court, and they
4 found that that was -- was not err for the
5 Court to take judicial notices of the
6 matters pending on the dockets.

7 In United States versus Estep that
8 appears at 760 Federal Second, at 1060,
9 1985 opinion, Tenth Circuit Court of
10 Appeals, I find that to be the most
11 persuasive language of any of the cases
12 that I was able to find. While nothing is
13 on all fours, and I'll read from page 1063,
14 beginning headnotes three through six,
15 judicial notice permits a judge to accept,
16 quote, a matter as proved without requiring
17 the party to offer evidence of it, end
18 quote. Because a court so acts to remove a
19 party's evidentiary burden, doctrine
20 demands that a court only notice matters
21 that are verifiable with certainty, citing
22 St. Louis Baptist Temple, 605 F.2d, 1169,
23 another Tenth Circuit case.

24 Going on, the Court writes, this court
25 adopted the general rule that judicial

1 notice is particularly applicable to the
2 Court's own records of prior litigation
3 closely related to the case before it, end
4 quote.

5 We recognized in Mansell versus
6 Carroll at 379 F.2d, 682, Tenth Circuit,
7 that a judge looks to other court records
8 in order to pierce the formalities of all
9 the transactions in questions. Although a
10 court is not bound to notice other legal
11 proceedings, it is often done for a part of
12 the record in the same proceeding, or in --
13 and this is in italics -- in a prior stage
14 of the same controversy.

15 They go on to say, it was clearly
16 within the Court's discretionary authority
17 to judicially notice the trial transcript
18 of the earlier portions of the same
19 proceeding.

20 Another matter which involved the
21 defendant, as I read it, Estep --

22 THE COURT: What about that
23 preceding sentence, the evidentiary hearing
24 in the case before us springs from one
25 controversy, the criminal trial of the

1 appellant, in that case Gary Estep.
2 Motions for the return of property used as
3 evidence in the criminal trial are
4 procedurally at a later stage of the same
5 action.

6 Going down to headnote seven, it says
7 that the appellants in that case argue that
8 judicial notice taken in that case was an
9 abuse of the Court's discretionary power
10 because the appellant's attorney and
11 another party were not present at the
12 criminal trial. Appellants argue that
13 their attorney lacked an opportunity to
14 hear testimony and examine the full record.

15 We find no abuse of discretion. The
16 Court provided the notice which is required
17 under due process provision of the
18 Constitution. It is fairly close on point.

19 MR. BRITT: Yes, sir, and I think
20 that the language that they quote on 1063,
21 about adopting the general rule of judicial
22 notice, the Court's own records of prior
23 litigation closely related to the case
24 before it, I think it can be argued and
25 argued persuasively that while Mr. Green

1 and Mr. Demery's cases were not joined for
2 purposes of trial, that they are closely
3 related for --

4 THE COURT: Counsel had a full
5 opportunity to examine the transcript of
6 the proceedings of that motion to suppress.

7 MR. BRITT: If I recall correctly
8 both Mr. Bowen and Mr. Thompson were
9 present for all if not most of the
10 proceedings that related to Mr. Demery's
11 suppression hearing. Because at the same
12 time, if the Court will recall, Mr. Green's
13 suppression hearing was scheduled, this was
14 in January -- I believe January of last
15 year or March of last year, I can't recall
16 the exact date, but that due to the length
17 of Mr. Demery's hearings and the fact that
18 there was a motion for appropriate relief
19 as related to the defendant's prior
20 conviction for assault, that the Court
21 entered a stay on the proceedings involving
22 the defendant Mr. Green until the motion
23 for appropriate relief could be heard and
24 brought to some sort of finality, and that
25 they were present during all those

1 proceedings.

2 THE COURT: Okay. Mr. Thompson,
3 Mr. Bowen?

4 MR. BOWEN: If Your Honor,
5 please, it's rather interesting Mr. Britt
6 had highlighted or had his attention called
7 to the very same portions in United States
8 versus Estep, earlier cited, at page 1063
9 that I did. I highlighted the same areas,
10 but to me they mean something quite
11 different. Because when the Court says
12 because a court so acts to remove a party's
13 evidentiary burden, that begs the question
14 in my mind, burden of what.

15 In this case, we go back to the issue,
16 the issue is Mr. Smith's credibility, his
17 interpretation of what was going on in that
18 hearing in terms of whether he is
19 believable when he says that he was
20 following these dictates of this oath that
21 he took. It seems to me that that is the
22 kind of burden that should never be taken
23 away from a jury. If it is, then due
24 process is violated, for that's part and
25 partial of the burden of proof and the

1 requirement that the jury have a trial and
2 be able to decide the issues.

3 Now, what I want to go to now is State
4 versus Sanchez, 338 NC 241 -- all right.
5 If we may distribute copies of that, Your
6 Honor, we just got it.

7 THE COURT: Yes, sir.

8 MR. BOWEN: And at the top of
9 page 251 of the opinion, which appears
10 about three-quarters of the way down, at
11 page three of our computer generated
12 opinion, I think in that paragraph just
13 under the words "page 251," I think Justice
14 Martin sums it up as well as can be said
15 about a suppression hearing. He says,
16 admissibility is for the determination by
17 the Judge, unassisted by the jury.
18 Credibility and weight are for the
19 determination by the jury, unassisted by
20 the Judge.

21 Now, all that says is that even though
22 the Court may determine the issue of
23 credibility to its own satisfaction to make
24 a decision on admissibility, nevertheless
25 in the defendant's own case, Your Honor has

1 pointed out in the statement proceeding it,
2 nowhere is the State allowed to bring in
3 the Court's finding of credibility for the
4 purposes of --

5 THE COURT: I'll resolve that.
6 In my mind if anything comes in, the Court
7 simply instructs the jury that a motion to
8 suppress was filed on a date certain by
9 counsel for Larry Martin Demery, that basis
10 for that motion to suppress was the
11 contention made on behalf of Larry Martin
12 Demery that the statement made by him or
13 purportedly made by him on August 15th,
14 1993, was involuntary and obtained in
15 violation of his constitutional rights.
16 The Court having heard evidence on that
17 motion found that the statement was not in
18 violation of any of his constitutional
19 rights and was voluntary and then
20 instructed them that they are free to
21 accept or reject that contention, giving
22 the following language:

23 When the Court declares that it has
24 taken judicial notices of some fact or
25 event, I instruct you that you may accept

1 the Court's declaration as evidence and
2 regard as proved the fact or event which
3 has been judicially noticed. You are not
4 required to do so, however, since you are
5 the sole triers of the facts.

6 MR. BOWEN: In other words,
7 you're instructing them that it happened.

8 THE COURT: That's all.

9 MR. BOWEN: And that's the
10 distinction as we found it between the
11 civil case and the criminal case. In the
12 civil case you can instruct them and charge
13 them, require them to accept that.

14 THE COURT: 201 G.

15 MR. BOWEN: And 20 -- and
16 arguably that takes care of the due process
17 issue.

18 THE COURT: Without admission of
19 the actual findings or the conclusion, just
20 the judicial notice taken by the Court.

21 MR. BOWEN: Yes, sir. Well, we
22 simply say that there is a distinct
23 possibility of under Rule 611 confusion of
24 the jury as between what was found for the
25 purposes of an admissibility issue versus

1 what now is to them a pure credibility
2 issue, and it does allow in essence the
3 Court to speak to the jury with, in effect,
4 an opinion about how they should treat that
5 issue of credibility coming from a
6 completely different context in which it
7 dealt with it before, and I think this can
8 be confusing. That's the one thing Your
9 Honor has tried to do is avoid confusion.

10 THE COURT: State versus Hunt
11 deals with a defendant after the close of
12 the evidence, belatedly requested that the
13 Court take judicial notice of the guilty
14 pleas of three codefendants, and inform the
15 jury about those guilty pleas. Apparently,
16 part of the defense in the case was there
17 was four assailants, one of whom had a
18 weapon. The issue was who had the weapon.

19 After the evidence was concluded,
20 without offering any evidence that the
21 other defendants had pled guilty, and
22 thereby setting up the argument if they
23 pled guilty, couldn't have been me who had
24 the weapon, the Court raised the issue sua
25 sponte on its own, and said should I

1 instruct the jury in this case that the
2 other co-defendant's plead guilty, dealing
3 with other records, related incident, which
4 accrued to the defendant's benefit. And
5 the Court decided not to, one, because
6 evidence hadn't been offered by the
7 defendant during the course of the trial,
8 and no request had been made by the
9 defendant under 201 to so instruct the
10 jury. And the appellate court said that
11 was appropriate. But the implication upon
12 it is that the Court can resort to other
13 records of a related nature if the issue is
14 raised.

15 MR. BOWEN: And in our reading of
16 it, it is not a mandatory matter for Your
17 Honor to do.

18 THE COURT: Well, question: If
19 the defendant had requested it during the
20 trial of the case, would it have fallen
21 under 201 B at that point, if requested?
22 And if the records had been supplied to the
23 Court?

24 MR. BOWEN: Well, it would be an
25 easier question if we were talking about a

1 weight or a distance or boundary line or
2 something like that that had been forever
3 established. But come back to the words of
4 United States versus Estep, and we're
5 talking about matters that are verifiable
6 with certainty. And I understand it's
7 verifiable with certainty that those words
8 exist on the order in question, that's
9 true, but the implication of all that is
10 that the Court is somehow putting a seal of
11 approval on what this officer has done, and
12 negating the cross-examination of the
13 defendant, and that's wherein we say that
14 there's a violation of due process.

15 THE COURT: Well, frankly that's
16 where my concern is, folks, in all candor,
17 because none of the cases that I found
18 dealt with a motion to suppress, and a
19 motion to suppress is a mixed question of
20 fact and analog. And I'm very concerned
21 about the fact that the Court, in
22 judicially noticing the Court's ruling, may
23 be commenting on the evidence. That's my
24 real concern, it always has been.

25 Even though the defendant raised it,

1 arguably your position is they opened the
2 door, but an equal argument can be made
3 that the objection that you had was
4 waived. And as much as I try to avoid it,
5 I keep coming back to the same point, it is
6 arguably a comment on the credibility of
7 the evidence. And any comment on the
8 credibility of the evidence or the
9 believability of the evidence is
10 prohibited.

11 MR. BRITT: And I think in Rule
12 201 G, that any perceived admonition from
13 the Court -- or excuse me, any comment by
14 the Court about the evidence is cured by
15 the language in 201 G, which reads in a
16 criminal case, the Court shall instruct the
17 jury that it may but is not required to
18 accept as conclusive any fact judicially
19 noticed.

20 THE COURT: Yes.

21 MR. BOWEN: That gives them in
22 essence a rebuttable contention, where one
23 could argue that is not an absolute
24 requirement that the jury did do, still
25 it's --

1 THE COURT: Mr. Britt's position
2 is that you have attempted to rebut that by
3 introducing it. And by introducing it, you
4 in effect opened the door to the judicial
5 notices being taken, by raising the issue.

6 MR. BOWEN: That's where we
7 respectfully disagree. We say he has the
8 adequate tools on the same playing fields
9 that we did, to go back into his
10 witnesses -- my gosh, he had five or six
11 officers, he can put them all on, he can do
12 with the facts on the equal and level
13 playing field.

14 THE COURT: Goes back through an
15 entire mini trial about whether or not
16 Larry Martin Demery's statement was
17 voluntary in the State of North Carolina
18 versus Daniel Andre Green.

19 MR. BOWEN: Since we are entitled
20 to probe credibility, it may be that those
21 issues will come up in the context of those
22 officers that did talk to Mr. Demery, but
23 we were dealing with credibility, so what
24 you come back to is that if the Court's
25 approximation comes into the record, then

1 Mr. Britt and I are no longer on equal
2 playing fields as advocates. His position
3 then has gotten the seal of approval of
4 this high court. And that's where we think
5 it is a violation of due process, and it is
6 comment on the evidence by the Court.

7 MR. BRITT: I don't want to
8 belabor this point, but at this juncture
9 the evidence that -- and I think I'm
10 entitled to judicial notice. I'm not going
11 to back away from that position. They have
12 evidence before the Court that -- before
13 this jury that they can argue this was an
14 involuntary statement, it was a product of
15 coercion, product of threats, product of
16 physical intimidation, however you want to
17 describe it, however they intend to
18 describe it.

19 THE COURT: Mr. Demery testified
20 about the motion to suppress in his
21 testimony.

22 MR. BRITT: Yes, sir.

23 THE COURT: He testified in his
24 testimony that his lawyers filed that
25 document, they were doing his job.

1 MR. BRITT: Their job.

2 THE COURT: Their job, excuse
3 me. That he didn't agree with many of the
4 statements that were contained in his
5 purported affidavit, that, in fact,
6 according to his testimony, he did not feel
7 intimidated, he did not feel threatened in
8 any way by the officers. Mr. Britt, when
9 you balance all of that, yes, sir --

10 MR. BRITT: Well, I think they
11 are taking it beyond a credibility issue.
12 They are taking it to the point that based
13 upon what Mr. Smith may have said and they
14 were totally disregarding what Larry Martin
15 Demery has testified about in regard to the
16 statement he made that night and the
17 contents of that statement. I think that's
18 where we're going. And to allow such and a
19 argument when there is already an order in
20 place that this Court has found as a matter
21 of law, not as a matter of fact but as a
22 matter of law, there were no threats, there
23 was no coercion, there was no threatening
24 to overcome the will of Larry Demery on
25 August the 15th, and allows them in essence

1 to perpetrate a fraud on this jury.

2 MR. THOMPSON: Well, Your Honor,
3 may I be heard in response?

4 THE COURT: Yes, sir.

5 MR. THOMPSON: I take issue to
6 anybody perpetrating a fraud on the jury,
7 by arguing that Mr. Demery's statement was
8 involuntary and as a result of frightened,
9 as a result of the vulgarities that were
10 used, the language, and by the way, that's
11 what the Court said in its order, you
12 described it as vulgarities and profanity
13 used by law enforcement officers. It is no
14 perpetration of a fraud on the jury.

15 The thing is, is that what you did at
16 that suppression hearing was determine a
17 mixed question of law and fact. And if it
18 were just -- what we're trying to present
19 to the jury is an issue of fact, not an
20 issue of law. And the standards are
21 different. The standards of review are
22 different for mixed questions of law and
23 fact. In fact, during jury selection, I
24 can't remember the case, but it just came
25 down from the Supreme Court --

1 THE COURT: U.S. Supreme Court?

2 MR. THOMPSON: Yes, which dealt

3 with --

4 THE COURT: Habeas relief.

5 MR. THOMPSON: Yes, that on

6 issues of mixed questions of fact. It's a

7 whole different ball game.

8 THE COURT: Prior rulings had

9 held it was purely a question of law.

10 MR. THOMPSON: That's right. And

11 your standard that you applied was a

12 different standard than what we're talking

13 about.

14 THE COURT: Well, we're saying

15 the same thing, we're saying that whenever

16 fact is involved and the Court comments on

17 it, it's prohibited by statute.

18 MR. THOMPSON: Yes, sir.

19 THE COURT: That's what we're

20 saying, and that's what my concern is.

21 What I'm going to do is this, folks: The

22 following is black letter law. Judicial

23 notice may be taken at any stage of the

24 proceedings of such matter properly within

25 the purview of Rule 201. Any stage of the

1 proceedings. At this point, during jury
2 argument, after jury argument judicial
3 notice may be taken. The Court declines at
4 this time to take judicial notice. The
5 Court specifically denies the State's
6 request to introduce the Court's order,
7 because I think that's going too far. If
8 anything is done, it would be a statement
9 of judicial notice by the Court with
10 appropriate instructions.

11 But the introduction of the Court's
12 prior order is denied, to which the State
13 objects and excepts for the record so your
14 issue is preserved.

15 MR. BRITT: Yes, sir.

16 THE COURT: Court is putting all
17 parties on notice that pursuant to Rule
18 201, if the issue is raised in closing
19 argument, the Court, depending on the facts
20 and circumstances then present, may resort
21 to 201 D and/or G. Does everybody
22 understand my ruling?

23 MR. BRITT: I do.

24 MR. THOMPSON: I understand.

25 THE COURT: Folks -- the State

1 has an argument that you folks opened the
2 door. I'm not entirely persuaded by that
3 argument simply because I think that it may
4 impinge on the jury's role as fact finder,
5 and I'm reluctant to do that. You can
6 argue the evidence in this case. You can
7 argue inferences from the evidence. You
8 cannot argue matters of law outside the
9 scope of the evidence in this case.

10 MR. THOMPSON: I can't use that
11 word "threat," and I can't use that word
12 "coercion."

13 THE COURT: Well, you can
14 characterize, but you run a risk.

15 MR. THOMPSON: Yeah, I
16 understand.

17 MR. BOWEN: So in terms of jury
18 arguments, direct references to behavior or
19 actions or words contained in the record --

20 THE COURT: You can argue Larry
21 Martin Demery's credibility, you can argue
22 any witness's credibility. You can argue
23 the evidence presented and you can argue
24 reasonable inferences from that evidence.
25 The State in turn is entitled to raise the

1 issue of judicial notice, if it is
2 appropriate to do so. And then I'm just
3 going to have to bite the bullet and do
4 what I think is required under the facts
5 and the law. Okay?

6 MR. BOWEN: Yes, sir.

7 THE COURT: Okay. State want to
8 note any further exceptions to the ruling
9 of the Court?

10 MR. BRITT: No, sir, I think that
11 the objection and exceptions have been
12 noted. I understand the Court's ruling and
13 at this juncture I can accept it.

14 THE COURT: Frankly, I'm
15 concerned that the full implications of the
16 most recent United States Supreme Court
17 case aren't fully understood by us yet and
18 probably won't be until further cases
19 expand on it. And I'm not sure what that
20 latest case means because it was decided in
21 the context of habeas, which was sent back
22 for further determination by the lower
23 courts. And I'm not sure how far the case
24 is going to go in terms of 201 or
25 otherwise.

1 MR. THOMPSON: But what it
2 said --

3 THE COURT: Mixed question of
4 fact and law.

5 MR. THOMPSON: And the judge's
6 determination that a motion and suppression
7 hearing is reviewable.

8 THE COURT: Under different
9 standards that have been previously
10 contemplated. I understand that, but I'm
11 not sure what the implications of that are
12 and how far ranging it may be in terms of
13 where we are now. And I'm really reluctant
14 to violate the statutory provision that the
15 judge is not to comment on the evidence or
16 the credibility of the evidence. And in
17 effect, I think that we run that risk if I
18 do that, even with a shortened instruction
19 to the jury.

20 MR. THOMPSON: And I think you've
21 established for the record that that order
22 is on appeal, has been appealed.

23 THE COURT: My recollection is
24 that Mr. Rogers belatedly, after the plea
25 was entered by Mr. Demery, after --

1 pursuant to 15-A 900 and I brought it to
2 his attention at that time, that the
3 statute required that the notices be given
4 prior to the entry of the plea. We took a
5 recess, I looked at the statute, came back
6 in, and exercised my discretion to note the
7 appeal. I think an argument can be made
8 that it wasn't timely made, because if you
9 don't raise the issue under the statute at
10 the appropriate time, then you may waive
11 your right to appeal. But in my discretion
12 I allowed him to note his appeal even
13 though in my view it wasn't timely made,
14 and I think that's the finding I made.

15 MR. BRITT: Yes, sir. In
16 addition to that, Mr. Rogers, as the record
17 would indicate, had previously informed me
18 orally that they --

19 THE COURT: But had not informed
20 the Court.

21 MR. BRITT: That's right.

22 THE COURT: When it's required
23 that he inform both counsel for the
24 state -- and the Court, when the right to
25 preserve appellate issues are being

1 exercised in the context of a guilty plea.

2 MR. THOMPSON: Yes, sir.

3 THE COURT: I am going to allow
4 the State latitude on redirect examination.

5 Are we going to be ready to go forward
6 at 2:30?

7 MR. BRITT: Yes, sir.

8 THE COURT: Any other matters at
9 this point?

10 MR. THOMPSON: No, sir.

11 THE COURT: We're at ease until
12 2:30.

13 THE BAILIFF: All rise, please.

14 (Lunch recess).

15 THE COURT: Do we have all
16 members of the jury secured, Mr. Horne?

17 THE BAILIFF: Yes, sir, we do.

18 THE COURT: Both sides ready?

19 MR. BOWEN: Your Honor, I need to
20 let you know, we got a call in to someone
21 important to us. When that call comes,
22 that person may be on the move, and we're
23 going to ask for a very short recess so we
24 can return that call. Is it critical.

25 THE COURT: Is it too much to ask

CANNON

1 who? That's all right.

2 MR. BRITT: They can approach you
3 at the bench and tell you, I don't care.

4 THE COURT: That's all right.
5 Let us know when the call comes in. And
6 Mr. Smith, if you'll return to the stand,
7 please.

8 Bring the jury in, please.

9 (Jury in at 2:33 p.m.)

10 THE COURT: Good afternoon,
11 ladies and gentlemen.

12 Mr. Britt, any redirect examination,
13 further redirect examination of Mr. Smith?

14 MR. BRITT: No, sir.

15 THE COURT: You folks have any
16 additional items?

17 MR. THOMPSON: No, sir.

18 THE COURT: Thank you, sir, you
19 may come down.

20 Any additional showing for the State?

21 MR. BRITT: Yes, sir. At this
22 time we would call Durry Cannon.

23 THE COURT: If you'll come up and
24 be sworn, please, sir.

25 DURWARD CANNON,

1 being first duly sworn was examined and testified as
2 follows:

3 DIRECT EXAMINATION

4 THE COURT: If you'll state your
5 full name for the record, sir.

6 THE WITNESS: Durward Cannon.

7 THE COURT: If you'll spell your
8 name for the benefit of the court
9 reporter.

10 THE WITNESS: It's D U R W A R D,
11 C A N N O N.

12 BY MR. BRITT:

13 Q Mr. Cannon, by whom are you employed?

14 A Cumberland County Sheriff's Department.

15 Q In what capacity do you work for the
16 Cumberland County Sheriff's Department?

17 A I'm a Lieutenant assigned to the detective
18 division. I'm in charge of the identification unit
19 and evidence section.

20 Q Did you participate in an investigation of
21 and murder of James Jordan?

22 A Yes, I did.

23 Q Did you have occasion to come to Robeson
24 County on August 14th, 1993 as part of that
25 investigation?

1 A Yes, I did.

2 Q Did you participate in any search of the
3 defendant's home on August 14th, 1993?

4 A Yes, I did.

5 Q What if anything did you do in regard to a
6 search that was conducted at the defendant's
7 residence on August the 14th of 1993?

8 A I searched the closet in the bedroom area.

9 Q Were any other officers searching that
10 bedroom area other than yourself?

11 A Lieutenant Don Smith.

12 Q And during the course of your search of
13 that bedroom area, did you observe a shop type vacuum
14 cleaner in that bedroom?

15 A I noticed it as I went in to the bedroom.

16 Q At any time did you open that vacuum
17 cleaner?

18 A No, I did not.

19 Q At the time you went to the defendant's
20 residence on August 14th of 1993, did you have any
21 type of firearm with you?

22 A Yes, I had my service revolver.

23 Q And what type of firearm did you use as
24 your service revolver?

25 A Smith & Wesson nine millimeter, model 3913.

1 Q When you went to the defendant's residence
2 August 14th of '93, did you have in your possession a
3 .38 caliber Smith & Wesson six-shot revolver?

4 A No, I did not.

5 Q To your knowledge did any other officer
6 have in their possession a six-shot .38 revolver?

7 A To my knowledge, no, they did not.

8 Q Did you seize any items from the bedroom
9 area that you searched at the defendant's residence?

10 A No, I did not.

11 Q At any time did you observe any one touch
12 or move the vacuum cleaner there in the bedroom area?

13 A I recall Lieutenant Smith moving it out of
14 his way.

15 Q And after the search was completed of the
16 bedroom area did you search any other part of the
17 trailer?

18 A Not any inside. I went outside and
19 searched around the grounds and looked under the
20 trailer.

21 Q As a result of that, did you seize any
22 item?

23 A No, I did not.

24 Q After the search was completed of the
25 grounds and the interior portion of the trailer, did

1 you leave the area?

2 A Yes, I did.

3 Q And did you go to a residence, another
4 residence in Robeson County?

5 A Yes.

6 Q Was that the residence of one Larry Martin
7 Demery?

8 A Yes, it was.

9 Q Did you participate in any search of the
10 residence of Larry Martin Demery?

11 A The only area that I searched was outside,
12 it was a storage area, and I was with Lieutenant
13 Smith and Mr. Demery, the father.

14 Q And in that storage area, did you seize or
15 did you observe any officers seize any items?

16 A No, I did not.

17 Q Did you search the area of a car that was
18 located at the Demery residence?

19 A Well, while looking outside at the
20 residence, there was a Ford Tempo parked in the
21 backyard, and I looked inside and noticed a brass
22 looking button laying in the vehicle.

23 Q When you saw this brass looking button in
24 the vehicle, what if anything did you do?

25 A I advised the other officers of the button

1 being in the car, they asked Mr. Demery, the
2 father --

3 MR. BOWEN: Object.

4 THE COURT: For what purposes?

5 MR. BRITT: Offered to show his
6 subsequent conduct.

7 THE COURT: Do you want limiting
8 instruction?

9 MR. BOWEN: Yes.

10 THE COURT: Ladies and gentlemen,
11 the evidence now being offered as to any
12 statements Mr. Cannon contends were made to
13 him by others are not being offered for the
14 truth of the matters asserted but simply to
15 explain the subsequent conduct of
16 Mr. Cannon, and may consider this evidence
17 for that purpose and no other purpose.

18 Yes, sir.

19 BY MR. BRITT:

20 Q After observing this brass looking button
21 in the vehicle, what did you do?

22 A Asked for the keys to the vehicle, because
23 it was locked.

24 Q And as a result of your request, were the
25 keys provided?

1 A Yes.

2 Q And upon receiving the keys, did you unlock
3 and open the Ford Tempo?

4 A Yes, I did.

5 Q And after opening the Ford Tempo, what did
6 you do?

7 A I retrieved the brass looking button.

8 Q And why did you seize this brass looking
9 button from the Ford Tempo?

10 MR. BOWEN: Object.

11 THE COURT: Do you want to be
12 heard, sir?

13 MR. BOWEN: Yes, sir.

14 THE COURT: Okay. Ladies and
15 gentlemen, there's a matter of law the
16 Court must take up. Please recall my
17 instructions, don't worry or speculate
18 about what takes place in the courtroom in
19 your absence. If you'll step to the jury
20 room, I expect we'll be with you
21 momentarily.

22 (Jury out at 2:40 p.m.)

23 THE COURT: Basis?

24 MR. BOWEN: Just such a wide open
25 question, have no idea what's coming. I

1 assume it has something to do with a
2 briefcase but out of an abundance of
3 precaution, I wanted to see.

4 THE COURT: Having known
5 Mr. Cannon formerly in Cumberland County I
6 think I know. Okay.

7 BY MR. BRITT:

8 Q Why did you seize the brass button?

9 A I was aware of the briefcase being taken
10 from the other residence.

11 Q And the briefcase that was taken from the
12 Green residence, is it missing any button or any
13 latch?

14 A Yes, it was.

15 Q Was it missing a button or a latch?

16 A It was missing a button.

17 Q And the button you saw there at the Ford
18 Tempo, was it similar?

19 A Seemed similar.

20 Q To the button that appeared on the
21 briefcase?

22 A Yes.

23 THE COURT: You folks want to be
24 heard?

25 MR. BOWEN: No, sir.

1 THE COURT: Okay. Objection is
2 overruled. Bring the jury back in,
3 please.

4 (Jury in at 2:42 a.m.)

5 THE COURT: For the record, the
6 objection is overruled, exception is noted
7 for the record. You may repeat your
8 question, Mr. Britt.

9 BY MR. BRITT:

10 Q Why did you seize the brass button that was
11 inside the Ford Tempo?

12 A Because I was aware that a briefcase had
13 been taken from the trailer and that it was missing a
14 button.

15 Q And the button that you saw in the Ford
16 Tempo, was it similar to the button that was on the
17 briefcase that was seized at the defendant's
18 residence?

19 A Yes, it was.

20 Q Were any other items, did you seize any
21 other items there at the Demery residence?

22 A No, I did not.

23 Q On August the 11th of 1993, Mr. Cannon, did
24 you have an occasion to go to Crumpler's station in
25 the area of Stedman, North Carolina?

1 A Yes, I did.

2 Q For what purpose did you go to Crumpler's
3 station in Stedman, North Carolina on August the 11th
4 of 1993?

5 A To await the arrival of the county wrecker
6 to come pick up the Lexus that was being stored at
7 that location. Then I followed, once it was picked
8 up, I followed it to our county garage where I
9 processed the vehicle.

10 Q Can you describe for us the condition and
11 the color of this Lexus that you found at Crumpler's
12 station on August the 11th, 1993?

13 A It was red in color and had been stripped
14 and also the windows had been broken out of it.

15 Q Was there any water inside the Lexus at the
16 time you first saw it?

17 A Yes.

18 Q And in what areas of the car did you
19 observe water?

20 A The floorboard and also the passenger
21 seats.

22 Q And when you saw that you saw water inside
23 the vehicle, can you describe the amount of water
24 that you saw? Was it puddled or merely damp?

25 A It was puddled about a quarter of an inch

1 deep.

2 Q And after you arrived there on August the
3 11th of 1993, where was the vehicle taken?

4 A It was taken to the county garage and
5 stored in a locked bay.

6 Q Where is the county garage located?

7 A In Cumberland County in Fayetteville on
8 Mayfair Street.

9 Q Who had access to this red Lexus after it
10 was taken to the county garage and placed in this
11 locked bay?

12 A Myself and the chief of detectives, Captain
13 Binder.

14 Q After the car was taken to the Cumberland
15 County garage only August 11th, 1993, Mr. Cannon, did
16 you attempt in any way to process that car?

17 A Yes, I did.

18 Q First of all, can you explain for the jury
19 what is meant by processing the car?

20 A Searching and dusting the vehicle for any
21 latent fingerprints and also checking for any
22 physical evidence.

23 Q And what if anything did you do in regard
24 to processing the red Lexus that was -- that you
25 picked up at Crumpler's station on August the 11th

1 '93?

2 A I dusted the exterior surfaces for
3 fingerprints and also luminoled the interior. I got
4 a minor reaction to the luminol and
5 phenolphthalein.

6 MR. BOWEN: Object at this point.

7 THE COURT: Overruled. You may
8 complete your answer, sir.

9 THE WITNESS: And to the presence
10 of blood, but it was not enough for me to
11 determine whether or not it actually was a
12 positive reaction or not

13 BY MR. BRITT:

14 Q You say that you conducted a luminol test?

15 A Yes.

16 Q What training have you had in regard to the
17 use of luminol?

18 A I've been trained at the University of
19 North Florida in blood detection, and the use of
20 luminol and phenolphthalein.

21 Q Can you explain for the jury the procedures
22 that you followed in conducting the luminol test?

23 A Luminol is a chemical luminescent that
24 reacts to the presence of blood, and it glows in the
25 dark similar to the glow on a surface of a watch when

1 it's in the watch that has the lighted dials. But
2 the luminol itself just reacts to the blood and glows
3 in the dark.

4 Q And at the time you conducted any luminol
5 test, was that test conducted there at the county
6 garage in darkness?

7 A Yes, it was.

8 Q Where on or in the car did you receive a
9 reaction to the luminol?

10 A It was passenger seat on the -- the front
11 passenger seat on the right-hand side.

12 Q And what is phenolphthalein?

13 A Phenolphthalein is a chemical also used
14 as -- that reacts to blood, and it has a greater
15 reaction to blood than the luminol does. And it is
16 used in conjunction with luminol to show that the
17 positive testing that -- or the reaction that you get
18 to the luminol is blood.

19 Q And did you conduct a phenolphthalein test
20 before or after the luminol testing?

21 A After the luminol test.

22 Q And where was that test conducted?

23 A That was done on the seat of the passenger
24 side.

25 Q And did you get any type of reaction from

1 the phenolphthalein test?

2 A It was very minor and it was not strong
3 enough for me to determine that yes, it was blood
4 or -- or whether it was not.

5 Q Now, at the time you conducted the luminol
6 test and the phenolphthalein test, what was the
7 condition of the -- what was the condition of the
8 interior portion of that car?

9 A It was wet and the water was standing in
10 the seat.

11 Q And based upon your training and
12 experience, does water or wet conditions affect a
13 luminol or phenolphthalein test?

14 A The amount of water that was standing in
15 the seat could have affected the test results that
16 I've gotten.

17 Q Were any fingerprints -- you testified you
18 dusted the exterior portion of the Lexus. Were you
19 able to detect any fingerprints as a result of
20 testing for them?

21 A I got several latent lifts but there was no
22 positive identification made on the lifts I got.

23 Q What other steps did you do in processing
24 the vehicle?

25 A I searched the floorboards of the front and

1 back. The windows had been broken out, and there was
2 glass piled in the floorboards. And I moved the
3 glass particles around, attempting to find any
4 possible projectiles or casing that might have been
5 in the vehicle.

6 Q Did you take any photographs of the vehicle
7 there in the garage?

8 A Yes.

9 MR. BRITT: May I approach?

10 THE COURT: Yes, sir.

11 BY MR. BRITT:

12 Q I'll show you what has been previously
13 marked as State's Exhibit 50 and 51, ask if you can
14 identify what is depicted in those photographs?

15 A Yes, I can.

16 Q How are you able to identify what is
17 depicted in State's Exhibits 50 and 51?

18 A This is the photographs of the red Lexus
19 that I had gotten from Crumpler's Garage in Stedman.

20 Q And State's Exhibits 50 and 51, do they
21 show the condition of the red Lexus as you saw it on
22 August the 11th of 1993?

23 A Yes, it does.

24 Q And are State's Exhibits 50 and 51 a fair
25 and accurate representation of the condition of that

1 car as you found it on August the 11th, 1993 and at
2 the time you had it in your custody?

3 A Yes, except the tires are on in the
4 photographs. At the time that I got the vehicle, the
5 tires had been removed.

6 Q When you received the car at Crumpler's
7 station, were there tires on it?

8 A No, there was not.

9 Q Were there tires later put on the car?

10 A Yes.

11 Q Where were the tires -- when and where were
12 the tires later put on the car?

13 A They were put on prior to the 18th at the
14 county garage.

15 Q How long was the red Lexus stored at the
16 Cumberland County garage?

17 A From the 11th to the 18th.

18 Q And on August the 18th of 1993, was the red
19 Lexus removed from the Cumberland County garage?

20 A Yes, it was, myself and Special Agent Paul
21 Munson with the SBI accompanied the red Lexus that
22 was transported by Highway Patrol wrecker to the SBI
23 lab in Raleigh.

24 Q When you say it was transported by Highway
25 Patrol, did you maintain constant sight of that red

1 Lexus from the time it left the Cumberland County
2 garage until it arrived at the SBI laboratory?

3 A Yes.

4 Q And upon arriving at the SBI laboratory,
5 was the red Lexus then turned over to -- the custody
6 of the red Lexus turned over to personnel there at
7 the SBI laboratory?

8 A Yes, it was.

9 Q For what purpose was the red Lexus taken to
10 the SBI laboratory?

11 A For them to process it.

12 Q And after the red Lexus was turned over to
13 personnel there at the SBI laboratory, did you then
14 leave and return to Fayetteville?

15 A Yes.

16 Q And from the time that you received or took
17 into your custody the red Lexus on August the 11th of
18 1993, and then when you transported it to the SBI
19 laboratory on August the 18th of 1993, did that car
20 remain in substantially the same condition it was in
21 at the time you found it?

22 A Yes.

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

25 THE COURT: Any

1 cross-examination?

2 MR. BOWEN: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. BOWEN:

5 Q Officer Cannon, the photographs that
6 Mr. Britt showed to you a moment ago, were they
7 photographs that were made in Cumberland County while
8 the car was still in your custody?

9 A No, sir, those were photographs made at the
10 SBI lab.

11 Q So is it fair to say -- did you or your
12 team in Fayetteville make any photographs of the car
13 while you had it?

14 A Yes.

15 Q Now, the rear glass was out of the car, is
16 that right?

17 A Yes.

18 Q But now, the windshield, though cracked,
19 was intact, wasn't it?

20 A That's correct.

21 Q And the windows on the side of the car,
22 were they broken or were they intact?

23 A They were intact.

24 Q Were they up or down when you got the car?

25 A They were down when I got the car. Also

1 the top skylight had been removed.

2 Q Okay. Now, the back windows in that
3 particular car, do they roll down, move out or move
4 in any way?

5 A I do not recall.

6 Q Sir?

7 A I do not recall.

8 Q Did you allow the car to dry out before you
9 performed any tests that you performed?

10 A No, sir.

11 Q But you did not move any water or any
12 liquid away before you began your luminol test and
13 other tests, is that correct?

14 A The outside surface was dry enough to go
15 ahead and process for fingerprint powder and the
16 inside surface was still damp, but I went ahead,
17 because you mix the luminol with water. It is a
18 liquid, and made into a liquid itself, and you spray
19 it on. So that's -- you're spraying a liquid on to
20 the surface.

21 Q So then, do I -- so you went ahead and
22 sprayed the luminol or you did not?

23 A I went ahead and sprayed the luminol.

24 Q So moisture doesn't have a lot to do with
25 whether or not the luminol can be used, is that

1 right?

2 A No, sir, that's why I got a faint reaction,
3 but it was not enough for me to make a determination
4 or be satisfied that there was a positive reaction
5 for blood at that location at that time.

6 Q And you say that location was wet?

7 A Yes.

8 Q So the material that arrived in that
9 location -- strike that. You didn't find any luminol
10 deposited whatsoever on or about the back rest of
11 that vehicle, did you?

12 A I did not get a reaction there.

13 Q You sprayed the back rest area?

14 A Yes.

15 Q And then you followed up with a
16 phenolphthalein chemical and you tried that also on
17 the back rest, didn't you, among other places?

18 A You only use the phenolphthalein if you get
19 a positive reaction to the luminol, because --

20 Q And --

21 A Because luminol will react to other agents
22 like chlorine, also to metals that will make it glow,
23 whereas the phenolphthalein is more reactive to
24 blood, will not react to any other type of chemical
25 or chlorine or any metals, and that's why you use it

1 as a check test, to make sure that the test that
2 you're getting, reaction you're getting from the
3 luminol is correct and that it is blood.

4 Q And your check test, that is the
5 phenolphthalein where you used it where you thought
6 there was some, perhaps some luminol reaction, you
7 weren't able to confirm with the phenolphthalein
8 test, were you?

9 A I did not get a reaction to the headrest,
10 so I did not check it with the phenolphthalein. I --
11 once I got a reaction to the seat portion, that's
12 when I did the secondary testing with the
13 phenolphthalein.

14 THE COURT: For clarification,
15 were both substances used on the seat
16 portion?

17 THE WITNESS: Yes.

18 THE COURT: Luminol and
19 phenolphthalein?

20 THE WITNESS: Yes.

21 BY MR. BOWEN:

22 Q But they were not both used on the back
23 rest?

24 A No.

25 Q Because you hadn't gotten any reaction on

1 the back rest?

2 A I did not get a reaction.

3 Q The first reaction on the seat was
4 inconclusive so that's why you went on to the
5 phenolphthalein?

6 A It was not inconclusive. I got a reaction,
7 and that's why I went ahead and did the second
8 testing to ensure that was blood, which I got a faint
9 reaction. But it was so faint that I was not sure
10 that I could determine that the amount there was
11 enough to substantiate the test.

12 Q And therefore, is it fair to say that it
13 was inconclusive?

14 A No, because I did get a reaction, but I did
15 not feel like it was a good enough reaction, it was
16 so light that the amount was so small.

17 Q Okay. And beyond that, there is yet
18 another test that is available called a crystallin
19 test that bears a Japanese name, is that true?

20 A That's true.

21 Q And you don't perform that test, do you
22 sir?

23 A No.

24 Q But to your knowledge, the SBI does have
25 the capability of performing that test, don't they?

1 A Yes.

2 Q Mr. Cannon, how long, to your knowledge,
3 had the car sat up there at the garage where you got
4 it from?

5 A I do not know how long it had been at the
6 garage.

7 Q And you were there when the car was
8 retrieved from that garage, or not?

9 A When I arrived at Crumpler's Garage, the
10 car was inside the impound lot. In fact, they had to
11 move two or three cars to get to it.

12 Q Was it segregated in any way, that is, was
13 it in a particular storage area with any kind of
14 security around it?

15 A It was in a locked fence.

16 Q Well, it was in a large locked fence with
17 many other cars around it, wasn't it?

18 A Yes.

19 Q That was a locked fence that to your
20 knowledge is unlocked during the business hours of
21 Crumpler's Garage, correct?

22 A I guess it could have been unlocked during
23 the business hours, I'm not sure.

24 Q It appeared there was a gate on it, is that
25 right?

1 A Yes.

2 Q What you're saying, you don't know what
3 hours of the day they are open if they are open
4 during the day?

5 A No.

6 Q So it was county equipment that pulled the
7 Lexus in to your county garage, is that correct?

8 A That's correct.

9 Q And it stayed at your county garage
10 approximately how long?

11 A From the 11th through the 18th.

12 Q And thereafter, who took it, picked it up,
13 if anyone and took it to the SBI?

14 A The Highway Patrol garage in Elizabethtown
15 sent a wrecker up and met us there at the county
16 garage. It was put on that roll-back type wrecker
17 and transported to the SBI lab.

18 Q You don't know how the car originally got
19 to Crumpler's, do you?

20 A No, do not.

21 Q You don't know what was put in it or taken
22 out of it if anything during the time it was at
23 Crumpler's?

24 A No, sir.

25 Q How many other cars would you say were in

1 that impound, just roughly your best estimate, within
2 that fenced in area at Crumpler's when you saw the
3 Lexus?

4 MR. BRITT: Objection to the
5 relevance.

6 THE COURT: Overruled. You may
7 answer, sir.

8 THE WITNESS: 15 or 20.

9 BY MR. BOWEN:

10 Q And you dusted for prints, and did you
11 actually lift any latent prints with the cellophane
12 tape?

13 A Yes.

14 Q But you say you didn't get any matches on
15 those latent lifts, is that correct?

16 A From the exterior, no, sir.

17 Q You did not process the interior?

18 A No, sir, not for fingerprints.

19 Q Now, Mr. Cannon, you were, you say on
20 August the 14th, 1993, involved in the search at what
21 you now know is the Green, Ann Green residence, is
22 that correct?

23 A Yes.

24 Q And you say that you walked in the front
25 door, is that correct, of the mobile home?

1 A Yes.

2 Q And you searched a room which is
3 immediately to the right after you walk in the front
4 door, is that correct?

5 A That's correct.

6 Q And that room is approximately how large
7 would you say?

8 A Eight by 11.

9 Q And you saw a bed in that room?

10 A Yes.

11 Q And you searched that bed, didn't you?

12 A No, sir, I did not.

13 Q Did anybody search it in your presence?

14 A There was clothes on the bed, and someone
15 went through the clothes. I do not know who.

16 Q Did you see anybody turn up the mattress
17 and look under the mattress and under the sheets and
18 coverings for the mattress?

19 A No, sir, I did not. I was searching the
20 closet in the bedroom, and it had stuff on the shelf
21 and clothes on the hanger and stuff on the floor, so
22 the entire time that I was in that room, my main area
23 was the closet, and that's where I was the most of
24 the time.

25 Q If you're not able to tell us who was in

1 the room with you, could you tell us how many people
2 participated in the search of that room other than
3 yourself?

4 A I just know of myself and Lieutenant Smith.

5 Q Okay. And you say that you searched from
6 the top of the closet all the way down to the bottom
7 of the closet and everything in it, is that right?

8 A Yes.

9 Q Now, out of that closet, you took no item,
10 you seized no items whatsoever, did you?

11 A No, I did not.

12 Q And at the time you had gone through that
13 closet, there was no -- nobody was in a big hurry, I
14 mean, you were taking your time to carefully look at
15 what was there, right?

16 A Yes.

17 Q And was there a top shelf in the closet?

18 A Yes.

19 Q And did you position yourself in some way
20 so that you could see and make certain that you had
21 seen everything that was up on that top shelf?

22 A Yes.

23 Q Did you take down any boxes or anything and
24 look inside of them?

25 A Yes, I did.

1 Q Were there any boxes?

2 A There was boxes and some, I believe
3 sweaters on that shelf.

4 Q Bags in the closet?

5 A I don't recall any bags at this time.

6 Q Any other containers come to mind?

7 A There were other containers, but exactly
8 what kind of containers, I don't recall at this time.

9 Q Regardless of what kind they were, suffice
10 to say that you were opening containers to see if
11 there was anything inside that related to what you
12 all were looking for in that search, is that right?

13 A That's right.

14 Q And is it fair to say that probably the
15 biggest container in that whole room or biggest
16 canister in that whole room was that vacuum cleaner
17 sitting on the floor?

18 A That's correct.

19 Q And your testimony is that neither you or
20 Sergeant Smith opened that vacuum cleaner?

21 A I did not open the vacuum, yes.

22 Q You had seen a shop vac before, hadn't you?

23 A Yes.

24 Q You knew how it worked?

25 A Yes.

1 Q You knew how you were able to grab the
2 handles and activate the handles and pull the top off
3 of it, didn't you?

4 A Yes.

5 Q You knew there was a canister inside with
6 debris, perhaps, that the vacuum cleaner had sucked
7 up, things like that?

8 A That's correct.

9 Q And you knew that the inside area of that
10 vacuum cleaner was large enough to have contained
11 some of the types of things that you were looking for
12 that day on the 14th of August, 1995, didn't you?

13 A It could have some, yes.

14 Q And did you and Sergeant Smith talk about
15 that vacuum cleaner?

16 A I did not talk to him about it, no, sir.

17 Q When he kind of kicked it or pushed it out
18 of his way, did you hear a sound?

19 A No, I did not.

20 Q Did you see it moving when he got it out of
21 his way?

22 A No, I did not.

23 Q Looked under the bed, didn't you?

24 A I did not.

25 Q Sergeant Smith did that?

1 A I don't know if he did or not.

2 Q What other items of furniture if any were
3 in that room?

4 A I don't recall at this time.

5 Q So as far as you know there were no other
6 items of furniture in that room other than that bed,
7 were there?

8 MR. BRITT: Objection, that's not
9 his answer.

10 THE COURT: Rephrase, Mr. Bowen.

11 MR. BOWEN: All right.

12 Play I approach, Your Honor?

13 THE COURT: Yes, sir.

14 BY MR. BOWEN:

15 Q Mr. Cannon, I would like to show you now
16 please State's Exhibit Number 78 and ask you, sir, of
17 course that's a photograph, are you familiar with
18 what it shows?

19 A It shows the corner of the bed, the vacuum
20 cleaner, a bag, and then the corner of something
21 there.

22 Q All right. Mr. Cannon, that is a
23 photograph of the bedroom in the Green trailer the
24 room just to the right as you walk in the front door
25 of what we've been talking about?

1 A That's correct.

2 Q Can you use that photograph to more fully
3 illustrate to the jury where the bed and vacuum
4 cleaner and some other things were?

5 A Yes.

6 Q All right. Now, let me show you one more
7 picture before we approach the jury. I'm going to
8 show you this photograph which has been marked
9 Defendant's Exhibit Number 33, and ask you if you
10 recognize that as being a closer-up picture of the
11 lavatory in that same bathroom?

12 MR. BRITT: Objection.

13 THE COURT: Sustained to the
14 form.

15 MR. BRITT: Move to strike.

16 THE COURT: Motion to strike is
17 allowed.

18 BY MR. BOWEN:

19 Q Defense Exhibit Number 33, that's a
20 photograph obviously. Are you familiar with what it
21 shows?

22 A It shows --

23 MR. BRITT: Objection.

24 THE COURT: Sir, the question is
25 somewhat confusing. You can't say what's

1 depicted. What he's asking you is do you
2 recognize what is depicted from having seen
3 it before or having some firsthand
4 knowledge about it.

5 THE WITNESS: Yes.

6 THE COURT: Okay. You can answer
7 his question.

8 BY MR. BOWEN:

9 Q What does defense Exhibit 33 show, sir,
10 that you have seen before?

11 A This is the sink that's in the bedroom.

12 Q In the same bedroom?

13 A Yes.

14 Q Now, could you use Defendant's Exhibit
15 Number 33 to more fully illustrate to the jury what
16 that sink looked like and where it was positioned?

17 A Yes.

18 Q Now, with the Court's permission,
19 Mr. Cannon, would you come around to the jury and
20 bring the photographs?

21 MR. BRITT: Objection. Are they
22 offering the exhibits?

23 THE COURT: You folks offering
24 the exhibits?

25 MR. BOWEN: Not at this time.

1 THE COURT: Then the objection is
2 sustained.

3 BY MR. BOWEN:

4 Q Now, Mr. Cannon, there was a green plant on
5 the lavatory in the bedroom, wasn't there, when you
6 were there, a growing, living, green plant, wasn't
7 there?

8 A Yes.

9 Q Portions of that green plant are visible in
10 both photographs, aren't they?

11 A That's correct.

12 Q What was the composition of that lavatory
13 that you described? What was the lavatory, the sink
14 part made out of, and what color was it?

15 A It was greenish aqua blue sink with tile or
16 linoleum type tile, light white in color.

17 Q Now, are you able to take that photograph
18 or either of those photographs that I've just showed
19 to you, are you able to show anywhere in those
20 photographs the chest of drawers?

21 THE COURT: Photographs are not
22 in evidence.

23 MR. BOWEN: All right.

24 BY MR. BOWEN:

25 Q Was there a chest of drawers in that room

1 at the time that you were there on August the 14th of
2 1993?

3 A Yes.

4 Q Where do you say it was located?

5 A It was in the bedroom on, as you come in
6 the door, it was to the left.

7 Q Now, isn't it true that that's where the
8 sink is?

9 A Sink is on the left as you come in, in the
10 door.

11 MR. BOWEN: May I approach?

12 THE COURT: Are you going to use
13 the photographs, Mr. Bowen?

14 MR. BOWEN: For me to look at,
15 yes, sir.

16 THE COURT: Okay.

17 BY MR. BOWEN:

18 Q Mr. Cannon, are there -- are there two
19 doors or doorways in that room?

20 A Yes.

21 Q And one of them is what?

22 A One of them is a closet and one of them
23 goes in to where the commode was.

24 Q Where the what?

25 A Where the commode was.

1 Q So then if one is to the closet, one is to
2 the commode, where is the door that you get into the
3 room? Is it on the opposite wall?

4 A When you come into the trailer, the door to
5 the bedroom is to the right up against the wall
6 that's at the same wall where the front door is at.

7 Q When you walk in the room through that
8 door, then where are the other two doors, to your
9 right, to your left, or in front of you?

10 A To the left.

11 Q And just to the left as you walk into the
12 room, having come in through the front door of the
13 trailer, just to the left as you enter that room is
14 the sink and lavatory, is that correct?

15 A Yes.

16 Q And that lavatory is approximately how
17 wide, sir?

18 A 18 to 24 inches.

19 Q Does it move up to a corner of the room or
20 not?

21 A Yes.

22 Q And then moving around the room from that
23 corner immediately there is one of the doors, isn't
24 there?

25 A Yes.

1 Q And that particular door, is that the one
2 to the commode, to the bathroom?

3 A I don't recall which --

4 Q And then there's a space of about 18
5 inches, and then there's another corner?

6 A That's correct.

7 Q And then there's a space of 18, 24 inches
8 and then there's a corner, is that right?

9 A I do not recall.

10 Q And then coming back across there is a bare
11 wall where until you get to the head or foot of the
12 bed, correct?

13 A In that photograph, yes.

14 THE COURT: Well, that's not in
15 evidence. If you recall, you may testify.

16 BY MR. BOWEN:

17 Q How was it when you saw it.

18 A I don't remember what it was on the far
19 wall from when you come in the door.

20 Q Was the bed in a corner, was it jammed up
21 in the corner?

22 A I don't know if it went all the way up into
23 the corner or not. I know when you open the door
24 going into the bedroom, that the door did not open
25 all the way, because it would bang against the bed or

1 something there.

2 Q Bed was close enough to the wall or the
3 corner that there certainly was not a chest of
4 drawers in between the bed and the closest wall to
5 the bed, was there?

6 MR. BRITT: Objection to the
7 form.

8 THE COURT: Restate it.

9 BY MR. BOWEN:

10 Q Well, the bed, the head of the bed was up
11 against the wall, correct?

12 A Yes.

13 Q And one side of the bed was close to a wall
14 and may have been up against the wall, is that
15 correct?

16 A I don't know how far or how close to the
17 wall it was.

18 Q Your testimony is not that there is a chest
19 of drawers in between the side of the bed and the
20 wall closest to the bed, is it?

21 A No, huh-uh.

22 Q And there would not have been room for a
23 chest of drawers in between the foot of the bed and
24 the door opening into the room from the front part of
25 the trailer, would it?

1 MR. BRITT: Objection.

2 THE COURT: Do you recall a chest
3 of drawers, Mr. Cannon?

4 THE WITNESS: I do not recall.

5 THE COURT: Okay.

6 BY MR. BOWEN:

7 Q So bottom line, you simply do not recall
8 whether there was a chest of drawers or not in that
9 room?

10 A No, sir, my focus was on the closet.

11 Q Following -- what time about the 14th, what
12 time did you and your fellow officers leave the Green
13 trailer, sir?

14 A The best of my recollection, that is
15 between 9:30 and 10:00.

16 Q And Mr. Cannon, is it your knowledge that
17 Mr. Green had voluntarily accompanied officers and
18 left the area of the trailer at or before that same
19 time that you left?

20 MR. BRITT: Objection to the
21 relevance.

22 THE COURT: Sustained as to the
23 form.

24 MR. BRITT: Move to strike.

25 THE COURT: Motion to strike is

1 allowed. Members of the jury, don't
2 consider the last question of Mr. Bowen,
3 that matter is not to take any part in your
4 deliberations in any respect.

5 BY MR. BOWEN:

6 Q Had Mr. Green to your knowledge left at or
7 before the time you left?

8 MR. BRITT: Objection.

9 THE COURT: Do you know, sir?

10 THE WITNESS: I don't know.

11 BY MR. BOWEN:

12 Q Was Mr. Green around the premises
13 whatsoever when you left?

14 A He was not there when I was there.

15 Q All right. Following your leaving, you
16 don't know who if anyone came or went from that house
17 between the 14th of July and the 16th of July, do
18 you?

19 A No, sir.

20 Q And you don't know what if anything
21 happened with respect to that vacuum cleaner in that
22 period of time, do you?

23 A No, sir.

24 Q Now, were you the fingerprint man for your
25 agency?

1 A I do the fingerprints, yes.

2 Q Did you ever dust that vacuum cleaner?

3 A No, sir, I did not.

4 Q Did you ever dust -- strike that.

5 MR. BOWEN: That's all, Your
6 Honor.

7 THE COURT: Anything further of
8 this witness?

9 MR. BRITT: No, sir, I don't have
10 any other questions.

11 THE COURT: Thank you,
12 Mr. Cannon, you may step down. Any further
13 evidence from the State?

14 MR. BRITT: Yes, sir, Your Honor
15 we call Jennifer Elwell.

16 MR. BOWEN: Your Honor, if
17 Mr. Cannon could remain with us. We have a
18 subpoena for him.

19 THE COURT: If you'll come up
20 please, ma'am. If you will be sworn,
21 please.

22 JENNIFER ELWELL,
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.

3 THE WITNESS: My name is Jennifer
4 Elwell, E L W E L L.

5 THE COURT: Thank you, ma'am.

6 BY MR. BRITT:

7 Q Ms. Elwell, by whom are you employed?

8 A I'm a Special Agent with the North Carolina
9 State Bureau of Investigation. I'm assigned to the
10 laboratory as a forensic serologist.

11 Q What is a forensic serologist?

12 A A forensic serologist will examine items of
13 evidence in criminal case for the presence of blood
14 or body fluid such as semen and saliva. We then
15 compare these fluids back to known standards from
16 suspects or victims and try to determine who the
17 fluid may have originated from, and we will testify
18 to these results.

19 Q How long have you been employed in the
20 laboratory of the SBI as a forensic serologist?

21 A Since November of 1988.

22 Q What is your educational background?

23 A I've got a bachelor's degree in biology
24 with a minor emphasis in chemistry from California
25 State, University of Northridge. I have also

1 received in-house training program of two years with
2 the State Bureau of Investigation. I've attended
3 various seminars in forensic serology. I've taken
4 graduate level classes in biochemistry and genetics.
5 And I have completed various proficiency exams with a
6 hundred percent accuracy.

7 Q Have you ever testified as an expert in the
8 field of forensic serology before?

9 A Yes, sir.

10 Q How many occasions?

11 A Approximately 35 times.

12 MR. BRITT: Your Honor, at this
13 time I tender Ms. Elwell as an expert in
14 the area of forensic serology.

15 THE COURT: Witness may so
16 testify without objection.

17 BY MR. BRITT:

18 Q On August the 18th of 1993, did you have an
19 occasion to examine a 1992 red Lexus at the
20 laboratory in Raleigh?

21 A Yes, sir. We did a preliminary examination
22 on August 18th.

23 Q When you say you did a preliminary
24 examination on August the 18th, will you tell the
25 jury what you did on August the 18th as it related to

1 that 1992 red Lexus?

2 A On the 18th, we received a call. It was
3 late in the afternoon. And at the time, it was
4 approximately 3:45 in the afternoon, we did a visual
5 examination, very brief, and we were all briefed on
6 the case.

7 Q And after your visual examination of the
8 18th, did you do any other examination on the 18th or
9 the following day on the 19th?

10 A On the 19th, we returned that morning and
11 did a luminol examination on the vehicle.

12 Q Can you describe for us the condition of
13 the car as you saw it and found it on the 18th, and
14 then again on the 19th?

15 A The car was dirty, from what I remember.

16 Q And at the time you saw it on the 18th, was
17 the interior portion of that car wet?

18 A Not to my knowledge.

19 Q On the 19th, you've testified that you
20 conducted a luminol examination?

21 A Yes, sir.

22 Q What areas of the car did you conduct a
23 luminol examination?

24 A I examined the whole interior of the
25 vehicle.

1 Q And what is luminol?

2 A Luminol is a chemical reaction that we use
3 in the laboratory, which is a presumptive test for
4 the presence of blood. What I mean presumptive, it
5 will allow you to get chemical indications for
6 blood. However, luminol is not specific for blood,
7 but it is very sensitive to blood. It will detect
8 one drop of blood per million parts of water, however
9 it will react with many other things such as metals
10 and oxidants such as detergents and bleaches.

11 Q In conducting your luminol test, what if
12 anything did you do in preparation for conducting
13 that test?

14 A We mixed the chemicals on site and then
15 spray them with a garden variety spray bottle, much
16 like you use to hose plants with, and this is done in
17 the dark.

18 Q As a result of spraying -- did you spray
19 luminol on the interior portion of this 1992 red
20 Lexus?

21 A Yes, sir.

22 Q Did you get any reaction from the luminol
23 that was sprayed on the red Lexus?

24 A Yes, sir.

25 Q What area did you get a reaction in?

1 A On the passenger seat in the crack portion
2 between the top and bottom cushion.

3 Q As a result of getting a reaction to your
4 luminol test, did you perform any other type of
5 preliminary test?

6 A Yes, sir.

7 Q What did you do in following up to the
8 luminol test?

9 A I then conducted a second field test, this
10 is called a phenolphthalein test, again, this is a
11 presumptive test. It is not conclusive for blood,
12 however, it is a lot more sensitive to blood.

13 Q And can you describe for us where and when
14 you conducted this phenolphthalein test?

15 A The first time I conducted the
16 phenolphthalein test was right after I got the
17 positive reaction for luminol. Again, the lights
18 were turned on at that point, and I conducted the
19 field test on the area that had been -- had given me
20 a positive reaction with the luminol.

21 Q And as a result of the phenolphthalein test
22 that you ran, did you get any type of reaction?

23 A Yes, sir, I did.

24 Q Can you describe for us the reaction that
25 you observed and where that reaction occurred?

1 A The phenolphthalein is a test in which you
2 take a small piece of filter paper, round piece of
3 filter paper and you add chemicals to it after it is
4 rubbed on a suspect stain. We would then look for a
5 color change. The original color of the chemicals is
6 a clear, and if it is a positive reaction, the filter
7 paper with the chemicals added to it will turn pink,
8 and that would indicate a positive reaction, which
9 could give you chemical reactions for the presence of
10 blood. I found this reaction again in the cracked
11 portion where the top and bottom of the cushion come
12 together, if you separate the cushions ever so
13 slightly, the reaction was occurring in that area.

14 Q And at any time did you remove any of the
15 upholstery located on those seats?

16 A Yes, sir.

17 Q And for what purpose did you remove the
18 upholstery from the seats?

19 A I was able to see a small stain when I
20 spread the cushions apart, so I went back to the
21 laboratory to try to determine with a chemical
22 crystallin test that it was indeed blood.

23 Q And with this chemical crystallin test were
24 you able to obtain any type of result?

25 A No, sir, I was not.

1 Q Why was that?

2 A It could have possibly been to the fact
3 that it was very, very dilute. The Takayama test,
4 which is the crystallin test that I indicated
5 earlier, is not nearly as sensitive for blood, and
6 therefore you have to be able to see a pretty good
7 red color before it will work.

8 Q And were you able to see what you've
9 described as a pretty good red color in performing
10 this Takayama test?

11 A The stain was very, very weak. And I
12 wasn't sure it would work in the lab, but I wanted to
13 try. And it was just way too dilute to be able to be
14 detected with the Takayama test.

15 Q And when you say that the stain was
16 diluted, what do you mean by that?

17 A It appeared to be washed out. It had been
18 indicated to me that this car had been wet.

19 MR. BOWEN: Object.

20 THE COURT: For what purpose is
21 this being offered? Corroborative?

22 MR. BRITT: Yes, sir.

23 THE COURT: Members of the jury,
24 the testimony now being indicated -- now
25 being offered as to what information if any

1 may have been communicated to Ms. Elwell,
2 is being offered for the limited purpose of
3 corroboration. As I previously defined
4 that term for you, it's being offered to
5 corroborated the prior testimony of the
6 State's witness Mr. Cannon who just
7 appeared before you. Yes, sir.

8 BY MR. BRITT:

9 Q You testified that it had been indicated to
10 you that the car had been wet?

11 A Yes, sir.

12 Q What if any effect would water or any type
13 of cleaning solution have on a blood stain?

14 A It would dilute the blood stain out. You
15 could potentially wash a blood stain completely away
16 if enough water was added, so agents added to a blood
17 stain, but water would definitely dilute a blood
18 stain out to the point where we would not be able to
19 do anything with it in the lab.

20 Q You indicated that you had positive
21 reaction to the luminol test and the phenolphthalein
22 test in the area of the seat. Can you diagram the
23 seat in the area where you received these positive
24 reactions?

25 A Yes, sir, I could.

1 MR. BRITT: Your Honor, if she
2 could step --

3 THE COURT: Yes, sir. Yes,
4 ma'am.

5 THE WITNESS: I don't know if you
6 can see it real good --

7 MR. BRITT: Your Honor, could we
8 have just a second to obtain another
9 marker?

10 (Brief pause.)

11 MR. BRITT: For the purposes of
12 the record, I'm marking this as State's
13 Exhibit 100.

14 (State's Exhibit 100 was
15 marked for identification.)

16 BY MR. BRITT:

17 Q Ms. Elwell, you have diagrammed here in
18 court, you've made a diagram here in court of the --
19 a replica of the passenger seat of the car?

20 A Yes, sir.

21 Q And that is indicated on the pad by the
22 area drawn with the black line?

23 A Yes, sir.

24 Q And across the -- what appears to be top
25 portion or lower portion of that diagram, you've

1 drawn in a red line. The purpose of the red line,
2 does the red line indicate the area where you
3 received a positive reaction from both the
4 phenolphthalein and the luminol test?

5 A Yes, sir. This area right here was mainly,
6 it was in the bottom portion. Again, it's -- it
7 wasn't out as far as it's showing here. The seat
8 cushion comes in like this. If you notice on your
9 car, it does that. I had to kind of peel it apart.
10 And that's where I was getting this reaction. And
11 again, it had a slight discoloration to it, so I
12 removed that part of the seat. I don't mean anything
13 on the upper portion, it was the bottom portion of
14 that cracked area. And that's the portion I removed
15 and took back to the lab and tried to do further
16 analysis with it.

17 Q And the diagram you've drawn here in court,
18 does it fairly and accurately depict the passenger
19 seat of the red Lexus that you examined as a result
20 of the phenolphthalein and the luminol test?

21 A Yes, sir.

22 MR. BRITT: Your Honor, i ask
23 that State's Exhibit 100 be admitted for
24 this the limited purpose of illustrating
25 her testimony.

1 THE COURT: Members of the jury,
2 please recall my instruction how you are to
3 receive illustrative evidence.

4 BY MR. BRITT:

5 Q As a result of your examinations, did you
6 file a laboratory report in connection with those
7 examinations?

8 A Yes, sir

9 (State's Exhibit 101 was
10 marked for identification.)

11 MR. BRITT: May I approach?

12 THE COURT: Yes, sir. It's 101?

13 MR. BRITT: This will be 101,
14 yes, sir.

15 BY MR. BRITT:

16 Q I'm going to hand you what has been marked
17 as State's Exhibit 101. Do you recognize that
18 document?

19 A Yes, sir, I do.

20 Q How are you able to recognize that
21 document?

22 A State's Exhibit Number 101 bears my
23 signature at the bottom. It is an SBI laboratory
24 report that was generated with the results of the
25 evidence.

1 Q And State's Exhibit 101 shows your findings
2 as a result of the test that you conducted on the
3 passenger area of the red Lexus?

4 A Yes, sir.

5 Q And is State's Exhibit Number 100 a fair --
6 a complete and accurate -- excuse me. Is it a copy
7 of your original report filed in connection with your
8 findings?

9 A Yes, sir, it is.

10 Q And does it contain all of the findings
11 that you made?

12 A Yes, sir.

13 MR. BRITT: Your Honor, at this
14 time I ask that State's Exhibit 101 be
15 admitted.

16 THE COURT: Yes, sir, it's
17 admitted.

18 BY MR. BRITT:

19 Q In addition to your examination of the car,
20 did you also receive a -- did you also receive from
21 Special Agent April Sweatt a known blood stain of
22 James Raymond Jordan?

23 A Yes, sir, I did.

24 Q Did you attempt to perform any type of
25 examination on it?

1 A No, sir. At that time I had nothing as far
2 as evidence to compare that blood stain with. I went
3 ahead and preserved it in the ultra cold freezer in
4 the laboratory in the event that further analysis was
5 to be needed on that blood stain.

6 Q And with whom did you leave the red Lexus
7 after you completed your examinations?

8 A The vehicle was left in the custody of
9 Special Agent Jerry Richardson.

10 Q And other than removing the upholstery from
11 that portion of the passenger seat that you received
12 the positive reactions on, was the Lexus in
13 substantially the same condition when you completed
14 your examination as to when you started it?

15 A Yes, sir.

16 MR. BRITT: I don't have any
17 other questions.

18 THE COURT: Do you anticipate
19 fairly lengthy cross-examination?

20 MR. BOWEN: Yes, sir, I guess
21 so.

22 THE COURT: Ma'am, we're going to
23 take about -- do you have any additional
24 out-of-town witnesses?

25 MR. BRITT: Not here today.

1 THE COURT: All right. 20
2 minutes?

3 MR. BRITT: That would be fine.

4 THE COURT: If you'll bear with
5 us, Ms. Elwell, you may step down.

6 Ladies and gentlemen, if you'll
7 reassemble at five until in the jury room,
8 we'll continue with the evidence at that
9 time. It's your duty to abide by all prior
10 instructions of the Court concerning your
11 conduct. Everyone else please remain
12 seated.

13 (Jury out at 3:36 p.m.)

14 THE COURT: Just for purposes of
15 planning, do you have other witnesses
16 available?

17 MR. BRITT: Yes, sir. Special
18 Agent Randy Myers of the SBI is here. He
19 will be my next witness.

20 THE COURT: We're at ease until
21 five until.

22 (Brief recess.)

23 THE COURT: Bring the jury back
24 in. Ms. Elwell, if you'll again take the
25 witness stand, please, ma'am.

1 (Jury in at 4:04 p.m.)

2 THE COURT: Any

3 cross-examination?

4 MR. BOWEN: Yes, sir, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. BOWEN:

7 Q Agent Elwell, you indicated that when you
8 tested the interior of the Lexus with the luminol
9 test, that you got a faint, vague sort of reaction,
10 is that right?

11 A When I tested the inside with the luminol,
12 I got a reaction. It was a fair to strong reaction.
13 It was a reaction. It was a definite reaction.
14 There was no questioning the fact that I had a
15 luminol reaction.

16 Q As far as you know, do you use the same
17 luminol solution that was used down at the
18 Fayetteville or Cumberland County Sheriff's
19 Department?

20 A I would have no knowledge as to where they
21 get their chemicals from.

22 Q Are there different kinds of luminol or
23 does law enforcement use pretty much the same kind
24 and solutions throughout the State of North Carolina?

25 A Luminol is made up of three chemicals.

1 Sodium carbonate, which is just a laboratory grade
2 chemical, sodium carburet, again, just a laboratory
3 grade chemical, and a substance which we call
4 luminol, which is three amino dihydralazine. These
5 chemicals can be produced in many -- I believe many
6 different sources. Where the Cumberland County
7 Sheriff's Department gets their chemicals may be
8 totally different than from where our laboratory gets
9 our chemicals. I have no knowledge as to where they
10 buy our chemicals. There is no set kit per se which
11 would contain these chemicals. They are just
12 chemicals that are purchased through companies,
13 private companies.

14 Q Agent Elwell, the reaction that you get to
15 luminol is a function of the oxidation capability of
16 blood, is that correct?

17 A Yes, sir.

18 Q And can you explain to the jury what
19 oxidation is?

20 A Chemicals in organic states can be in many
21 different states. When a chemical is in an oxidized
22 state, a double bond would exist between an oxygen
23 and a chemical ring. It's a complicated reaction
24 involving inorganic chemistry, and in a reduced state
25 you have a single bond with an O H molecule coming

1 off of it. Again, it's a structural difference.
2 It's the same molecule, it's just in different
3 configurations, depending on whether or not electrons
4 are present or not.

5 And these are just two separate phases of
6 the chemical reaction that can occur with luminol.
7 What is actually happening is a very complicated
8 process, chemical process in which, when the luminol
9 is oxidized in the presence of blood, along with
10 other items such as nitrogen gas and the oxidation
11 occurring itself, energy is released. And this
12 energy is released in the form of light.

13 Q Agent Elwell, the coloring of blood, from
14 the rich redness when it's fresh to a pale rusty
15 color, that occurs as blood oxidizes, correct?

16 A I'm not quite sure what you're asking.

17 Q You know blood changes color from when it's
18 fresh to when it's dried or been around for a while?

19 A That's correct.

20 Q In fact, after it's been around a while it
21 changes to sort of a red rusty color?

22 A That's correct.

23 Q And one common example of oxidation is
24 metal rusting. That's oxidation, correct?

25 A That's correct.

1 Q You say when you saw the vehicle, you saw
2 no signs of moisture inside, correct?

3 A The vehicle, as far as I can recall, was
4 dry when I received custody, or when I did the
5 examination on the vehicle.

6 Q Do you know who if anyone wiped it dry or
7 if it was wiped dry?

8 A I don't know how it was dry, I just know
9 that when I saw the vehicle, it was dry, and it had
10 been indicated that it had at one time been wet,
11 probably was dried out.

12 Q One of the elements or materials that will
13 rust is iron or steel or anything that has iron in
14 it?

15 A That is correct.

16 Q And you saw this Lexus vehicle, did you
17 not?

18 A That's -- yes, sir.

19 Q And it would be fair to say that some of
20 the parts in this Lexus automobile are made out of
21 some type of iron or steel, is that correct?

22 A That's correct.

23 Q And so these items of metal would be
24 subject to rusting?

25 A That is correct.

1 Q And what commonly accelerates the rusting
2 process is moisture in the presence of air with these
3 iron containing metals, correct?

4 A That is correct.

5 Q And we know that many of these iron
6 containing metals on or about this car, these parts,
7 so forth, got wet, didn't they?

8 A It's been brought to my attention that they
9 had been wet.

10 Q And the interior of the car where some of
11 these metallic objects were were exposed to the
12 weather, that is, some of the glass was knocked out
13 in the vehicle, correct?

14 A That is correct.

15 Q So plenty of air could get in and out of
16 the vehicle, couldn't it?

17 A Most definitely.

18 Q And if the air was moist, plenty of moist
19 air could get in and out of the vehicle, correct?

20 A Yes.

21 Q And that would promote the rusting or
22 oxidation process of any of the metals that might be
23 present, correct?

24 A It could cause rusting to occur, I suppose.

25 Q And luminol would show positive on

1 materials capable of rusting, wouldn't it?

2 A Luminol will show positive with very, very
3 many things. Again, this is not a blood specific
4 test. It will react with bleach, it will react with
5 many soaps, many metals. In fact, when we test to
6 make sure our agents are working, we'll throw a penny
7 down and spray and see if the penny starts to light
8 up. But the clencher is you must follow up any
9 positive reactions that you get with a secondary
10 field test, the phenolphthalein test.

11 Phenolphthalein will not react with rust,
12 it will not react with any known reagents in which
13 luminol would react with. There is nothing that
14 would give you a false positive for phenolphthalein
15 and luminol. There is nothing that will give you a
16 positive reaction period with luminol and
17 phenolphthalein that is not blood, at least not known
18 to the literature. Therefore, if you have a reaction
19 with both luminol and a reaction with both
20 phenolphthalein, one can be comfortable in saying
21 that you've got a pretty good indication of blood.
22 And it is my opinion that you do have blood.

23 Q Well, if those two tests were that sure,
24 Agent Elwell, then there would have been no point in
25 performing the third test, would there?

1 A The whole purpose of doing the third test,
 2 I was trying to do confirmatory tests in the event
 3 that possibly I could go on and do further blood
 4 grouping tests. It is our laboratory policy that we
 5 cannot do further blood grouping tests unless we can
 6 get a confirmation. For many reasons, partly due to
 7 the fact that you have to have a good sample
 8 in order to get a good blood group to work.
 9 If a sample is not good enough to work with a
 10 crystallin test, it surely would probably good
 11 enough to be able to work with a carded
 12 dealing with the other blood grouping test or other
 13 enzyme test we do in the laboratory.

Handwritten note:
 Full
 Ourselves
 certainly blood
 this was
 blood

14 Q Yet you mention in your report that
 15 whatever sample of this alleged material was, that
 16 you somehow packaged it or put it in a vial and
 17 stored it away, is that right, for future serology
 18 tests? You say that you removed a stain and it was
 19 being stored in a cold freezer in the event
 20 serological evidence was obtained?

21 A No, sir, did I not remove the stain to
 22 store this stain. The stain that I had stored in the
 23 ultra cold freezer was a known blood that had been
 24 received and indicated that it had been received from
 25 James Jordan. This was a known liquid blood sample.

1 This was kept in our ultra cold freezer in the event
2 that maybe further evidence would later on come in,
3 say bloody clothes from a suspect or something, then
4 we would -- since the individual was deceased, we
5 would need a blood standard for purposes of
6 comparison.

7 THE COURT: Ms. Elwell, so that
8 there's no confusion, you indicated that a
9 blood sample was stored?

10 THE WITNESS: Yes, sir, it is a
11 known blood stain.

12 THE COURT: Now, the blood stain
13 that was stored, where did that come from?
14 Did it come from the vehicle?

15 THE WITNESS: No, sir.

16 THE COURT: Came from another
17 source?

18 THE WITNESS: This blood stain
19 was submitted to me on August 19th, 1993 by
20 Aprille Sweatt and it had been indicated to
21 me that it had come from James Jordan. It
22 would be a known blood sample collected
23 from the victim.

24 BY MR. BOWEN:

25 Q Well, you also saved your Exhibit 59 that

1 you mentioned on your report from the Lexus which was
2 a cutting from the Lexus seat, correct?

3 A No, sir, I did not.

4 Q Well, what is Exhibit 59 -- I'm sorry, you
5 turned that back over to Jerry Richardson, right?

6 A Exhibit 59 is the Lexus, the automobile
7 itself. The cutting was sent back. That was 59-A.

8 Q Who was it sent back to?

9 A This was sent back, via first class mail,
10 in the attached package, to the -- I believe the
11 Cumberland County Sheriff's Department.

12 Q Well, why is the seat cutting kept in
13 Cumberland County and the blood sample kept with you?

14 A It is our standard operating procedures
15 that when an item in evidence is submitted into our
16 laboratory, it is returned to the submitting agency,
17 whether it's the Sheriff's Department or the police
18 department. There may be a time when we would have
19 to testify to the results of analysis and the item
20 may be needed for court purposes, illustrative
21 purposes. Therefore, the Sheriff's Department would
22 keep that item.

23 After my analysis is done and I determine
24 no further analysis can be done on the item, there's
25 nothing that can be done by our laboratory, but that

1 doesn't mean that the item may not be used as
2 evidence in court, and need to be brought forth in
3 court.

4 As far as the blood sample goes, if I -- we
5 keep that in an ultra cold freezer. I believe the
6 temperature in that freezer is minus 72 degrees. It
7 is very, very cold. It will preserve that blood
8 stain for years and years and years. If any other
9 evidence was ever to come up in the case, we would be
10 able to pull that blood stain out and it would be
11 preserved and we could do any further analysis we
12 needed to from that blood stain.

13 Q Agent Elwell, were you ever told about a
14 vial or container containing some blood from the body
15 of James Jordan?

16 A No, sir. The only item that I was ever
17 given was a blood stain made on cloth.

18 Q Now, then, you never -- well, strike that.
19 It is possible to take a blood sample from one
20 source, a blood sample from another source, and
21 subject it to a DNA analysis to see if it came from
22 the same person, is it not?

23 A That is correct.

24 Q You did not cause such a test to be
25 performed, did you?

1 A In this case, we wouldn't be able to do a
2 test of that nature. DNA analysis requires a fair
3 amount of blood sample to work with.

4 Q Now, you saw lots of broken glass in that
5 car, didn't you?

6 A I don't recall if I had or not. Again,
7 my -- the whole purpose of my examination was to look
8 for the presence of blood, and whether or not glass
9 was present, I can't testify to that. It may or may
10 not have been there.

11 Q Do you recall the back window was
12 completely broken out?

13 A I don't recall.

14 Q Do you recall that the front window was
15 cracked and partially broken?

16 A I don't recall.

17 Q Did you check to see if any blood was on
18 any glass anywhere in or about the car?

19 A I examined the whole interior of the
20 vehicle, yes.

21 Q You did not dust the car for fingerprints
22 inside, did you, somebody else did?

23 A No, sir, that's not in my field of
24 expertise.

25 Q Nothing about what you did can tell us when

1 that blood, if it was blood, got on that seat, can
2 you?

3 A No, sir.

4 Q Nothing about what you did can tell us
5 whose blood that was?

6 A That is correct.

7 Q In fact, you cannot even tell us what type
8 of blood that is, can you?

9 A That is correct.

10 Q Now, when you got your phenolphthalein
11 reaction, is that something that can be seen with the
12 naked eye, Agent Elwell?

13 A Yes, sir.

14 Q And what kind of color or what kind of
15 thing happens when the phenolphthalein tests
16 positive?

17 A As I indicated before, we'll take a small
18 piece of filter paper and rub it on the stain, and
19 the chemicals that are added are clear in color. If
20 you get a positive reaction, the chemicals will turn
21 pink, so you're looking for a pink color change.

22 Q Do you have a camera issued to you in
23 connection with your SBI duties?

24 A No, sir, I do not.

25 Q Do you know when, if they were, that the

1 SBI caused photographs to be made of this car?

2 A I believe photos were taken of the vehicle,
3 but I do not know when they were done.

4 Q They were not done at the same time you
5 were there?

6 A I do not recall if they were or not.

7 Q You never caused a photograph to be made of
8 any of this result that you're describing with your
9 phenolphthalein, is that correct?

10 A No, sir, that's not standard operating
11 procedure.

12 Q Is it not permitted or you don't choose to
13 do it or somebody has told you not to photograph your
14 results or what?

15 MR. BRITT: Objection, asked and
16 answered.

17 THE COURT: Rephrase, Mr. Bowen.

18 BY MR. BOWEN:

19 Q Has anybody told you not to photograph a
20 phenolphthalein reaction?

21 MR. BRITT: Objection.

22 THE COURT: Overruled. You may
23 answer, ma'am.

24 THE WITNESS: No, sir, it's not
25 something that's has ever come up. I've

1 never even asked whether it would be
2 something that would be needed.

3 BY MR. BOWEN:

4 Q So you have no photograph by which the jury
5 can see the actual purported reaction that you got?

6 A That is correct.

7 Q And as a matter of course, you don't ever
8 take such photographs?

9 A That's correct.

10 Q But in terms of something there to be seen
11 capable of being photographed, a photo could have
12 been made, couldn't it?

13 A Possibly, yeah.

14 Q Possibly?

15 A Well, if you wanted to see a color change,
16 you know, you could have taken a photograph, but I
17 don't know as to whether or not that would have been
18 all that illustrative.

19 Q You couldn't have shown a before-and-after,
20 the color the paper was to start, and then the color
21 after the so-called reaction?

22 A You could have.

23 Q All right.

24 MR. BOWEN: That's all, Your
25 Honor.

MYERS

1 THE COURT: Mr. Britt, anything
2 further?

3 MR. BRITT: No, sir.

4 THE COURT: Thank you, ma'am.

5 MR. BRITT: May she be released?

6 THE COURT: Yes, sir.

7 MR. BRITT: At this time we call
8 Special Agent Myers.

9 W. RANDY MYERS,

10 being first duly sworn was examined and testified as
11 follows:

12 DIRECT EXAMINATION

13 THE COURT: If you'll state your
14 full name, please, sir.

15 THE WITNESS: My name is W. R.
16 Myers, M Y E R S.

17 BY MR. BRITT:

18 Q By whom are you employed?

19 A I'm a Special Agent with the North Carolina
20 State Bureau of Investigation.

21 Q And how long have you worked for the SBI?

22 A For just a little over ten years.

23 Q And what are your duties and
24 responsibilities as an SBI Agent?

25 A I am basically a field agent assigned to

1 investigate crimes, particularly originating in
2 Robeson County. That's my primary area of
3 responsibility.

4 Q And do you have in your responsibilities
5 with the SBI, do you have a particular area that you
6 work in?

7 A I -- at one time technically I did, which
8 was one time drugs, and it's changed in the last
9 couple of years.

10 Q In August of 1993, were you working in your
11 capacity as an SBI Agent here in Robeson County?

12 A Yes, I was.

13 Q On August the 14th of 1993, were you
14 notified to go to the Cumberland County Sheriff's
15 Department?

16 A Yes, I was.

17 Q And when you went to the Cumberland County
18 Sheriff's Department on August the 14th of 1993, for
19 what purpose did you go there?

20 A I went to the Cumberland County Sheriff's
21 Department to meet with other investigators regarding
22 the homicide of James Jordan and the investigation of
23 it.

24 Q And prior to going to Cumberland County
25 Sheriff's Department on August the 14th of 1993, had

1 you participated in any investigation into the murder
2 of James Jordan?

3 A No, I had not.

4 Q On August the 14th of 1993, who did you
5 meet with at the Cumberland County Sheriff's
6 Department?

7 A Specifically, when I got to the Sheriff's
8 Department, I met with my supervisor at the time
9 which was Ray Davis, Special Agent in charge of the
10 southeastern district of the SBI, and also Art Binder
11 who at that time was a captain with the Cumberland
12 County Sheriff's Department.

13 Q And at that meeting at the Cumberland
14 County Sheriff's Department, were you briefed on the
15 investigation that had been initiated by the
16 Cumberland County Sheriff's Department?

17 A Yes, I was briefed by Captain Binder, they
18 had had a meeting and I arrived just as the meeting
19 was concluding.

20 Q After being briefed by Captain Binder,
21 where did you go?

22 A I returned to Robeson County in my vehicle,
23 accompanied by Captain Binder who rode with me, and
24 during that time he was further telling me of the
25 status of the investigation that his department had

1 been conducting.

2 Q And when you returned to Robeson County,
3 did you go to a specific location?

4 A Yes, I did.

5 Q Where did you go?

6 A At first, I went to a place on Highway 74
7 here in Robeson County which was basically a parking
8 lot of a business located on 74.

9 Q And did you meet with other officers at
10 that location?

11 A Yes, I did.

12 Q What other officers did you meet with at
13 that location?

14 A Myself and Captain Binder met with
15 Detective Mark Locklear of the Robeson County
16 Sheriff's Department, and Junior Mitchell who at that
17 time was a deputy with the Robeson County Sheriff's
18 Department. He still is a deputy but he's been
19 promoted since then.

20 Q When you met with Mark Locklear and Junior
21 Mitchell of the Robeson County Sheriff's Department,
22 did you, Captain Binder, Mr. Locklear and
23 Mr. Mitchell then leave that parking lot and go to
24 another location?

25 A Yes, we did.

1 Q Where did you go?

2 A We went to the residence of Daniel Green
3 which was located in a mobile home amongst a small
4 number of other mobile homes off of Back Swamp Road,
5 which runs off of Highway 74 near where we were --
6 had been located, the four of us.

7 Q Do you recall, was there a name to this
8 mobile home park that you recall?

9 A To the best of my remembrance I think it
10 was Bob's something or other. I didn't pay much
11 attention to the name of it.

12 Q Which mobile home did you go to when you
13 went to that area? Can you describe for us the
14 mobile home that you went to?

15 A We went to a single wide mobile home. At
16 this time I don't remember the exact number of mobile
17 homes. It was not the first one nearest to Back
18 Swamp Road, it was maybe the third or so down. I had
19 been given specific directions at the time we went to
20 the mobile home, but the number exactly, I cannot
21 tell you. It was a single wide mobile home.

22 Q What type of car were you driving on this
23 occasion?

24 A I was driving a black Ford Thunderbird.

25 Q Is that car marked or unmarked?

1 A It's unmarked.

2 Q Were all -- you testified that you were
3 with Captain Binder. Was he a passenger in your car?

4 A Captain Binder rode with me. The other two
5 individuals, Detective Mark Locklear and Deputy
6 Junior Mitchell rode in Detective Locklear's unmarked
7 car.

8 Q And when you went to this mobile home off
9 of Back Swamp Road, what if anything did you observe
10 as you initially approached this mobile home?

11 A As we were coming down -- I was driving,
12 driving down the dirt road that runs along the end of
13 the trailers, we were nearing the trailer that we
14 were going to, I saw a black male look out the window
15 on the front of the trailer nearest, which would have
16 been to my right end. That occurred as we were
17 pulling up or coming down the road pulling up to the
18 trailer.

19 Q When you say you observed a black male look
20 out the window, what did you see?

21 A I saw a black male, from approximately the
22 shoulders of the neck, the head, look out of the
23 window in our direction.

24 Q Was there any type of blind or curtain over
25 that -- covering that window?

1 A I think there were some -- to the best of
2 my recollection, there were some blinds, but I saw
3 his full head and neck, and I don't recall if they
4 were open or if he pulled them open enough, but I did
5 see the gentleman.

6 Q And after observing this person, where did
7 you park your car?

8 A Parked my car behind another car that was
9 already in the driveway there at the end of the
10 mobile home, the end of the mobile home and in the
11 front of it.

12 Q And after parking your car, what did you
13 do?

14 A I got out along with Captain Binder, went
15 up to the front door of the mobile home, and I
16 knocked on the door.

17 Q And did anyone respond to your knock on the
18 door?

19 A Yes, they did.

20 Q Can you describe the individual who came to
21 the door?

22 A An individual came to the door that I now
23 know to be the mother of Daniel Green.

24 Q Did you identify yourself?

25 A Yes, I did.

1 Q And when you identified yourself, what did
2 you say?

3 A I told Ms. Green my name, showed her my
4 credentials, that I was with the State Bureau of
5 Investigations, and introduced Captain Binder who was
6 standing there as well, as Captain Art Binder of the
7 Cumberland County Sheriff's Department.

8 Q Were either you or Captain Binder wearing a
9 uniform when you went to this residence?

10 A No, we were not.

11 Q Where were Mr. Locklear and Mr. Mitchell?

12 A I had instructed Mr. Locklear and
13 Mr. Mitchell to go around to the back side of the
14 trailer, and I'm assuming that that's where they
15 were.

16 Q Were either Mr. Locklear or Mr. Mitchell in
17 uniform?

18 A To the best of my remembrance, Deputy
19 Mitchell was in a uniform.

20 Q And when this person came to the door that
21 you now know to be the defendant's mother, what if
22 anything did you say to her other than identifying
23 yourself?

24 A I told her that we were there wishing to
25 speak to her son Daniel Green, that we wanted to talk

1 to him about some stolen car parts. And I believe I
2 asked her if he was home, and she said that he
3 was.

4 MR. THOMPSON: Object.

5 THE COURT: Sir?

6 MR. THOMPSON: Object.

7 THE COURT: For what purpose --

8 MR. BRITT: This would be offered
9 to show subsequent conduct.

10 THE COURT: Members of the jury,
11 any statements testified to by the witness
12 now before you as to what he contends were
13 said or statements made to him by other
14 persons who have not testified at this
15 trial are not being offered for the truth
16 of the matters asserted but to explain the
17 subsequent conduct of this witness.

18 BY MR. BRITT:

19 Q What if anything did Ms. Green say when you
20 asked if her son was home?

21 A She indicated that he was there.

22 Q And did you get an immediate response to
23 your knock at the door?

24 A No, sir. It took approximately a minute
25 for someone to come and open the door.

1 Q And what time of the day or night was this
2 when you went to this residence?

3 A We went to the residence, it was 8:50, or
4 ten minutes until 9:00 in the evening.

5 Q Now, when you told Ms. Green that you would
6 like to talk to her son about some stolen car parts,
7 did you observe Ms. Green do or say anything?

8 A While I was talking to her, Ms. Green
9 standing at the door, looked to her left, which would
10 have been in the same direction as the window where I
11 had seen an individual when we were driving up.

12 Q And after talking with Ms. Green and asking
13 if you could speak to her son, did anyone else come
14 to the door?

15 A Yes, sir, the defendant Daniel Green did
16 come to the door.

17 Q And were you able to determine from which
18 direction he approached that door?

19 A Mr. Green walked to the door coming from
20 the same direction that Ms. Green had looked, which
21 was also the direction where the window was where I
22 had seen him look out.

23 Q And can you describe for us what the
24 defendant was wearing when he came to the door?

25 A The defendant was wearing a pair of pants

1 with no shirt.

2 Q And did you identify yourself to the
3 defendant?

4 A Yes, we did.

5 Q And after identifying yourself to the
6 defendant, did you tell him your purpose in being
7 there?

8 A Yes, we did.

9 Q What did you tell him?

10 A I told Mr. Green after identifying
11 ourselves that we wanted to talk with him about some
12 stolen car parts that we were investigating and
13 specifically some stolen car parts that came off a
14 Lexus.

15 Q And did you make any request of the
16 defendant other than saying that you would like to
17 talk with him about stolen car parts?

18 A Yes, I did.

19 Q What request did you make of him?

20 A I made two requests of the defendant, one,
21 I asked him if he would accompany us, myself and
22 Captain Binder to the Robeson County Sheriff's
23 Department where we could sit down and discuss this.
24 I also asked the defendant for permission to search
25 his room in the trailer, the mobile home.

1 Q And after requesting permission to search
2 his room, did the defendant sign any document?

3 A Later on he did, yes.

4 Q And what if any document did he sign later
5 on?

6 A He signed a consent to search form
7 authorizing the search of his bedroom there at his
8 mother's residence.

9 Q Did the defendant agree to accompany you to
10 the Robeson County Sheriff's Department?

11 A Yes, he did.

12 Q How did he indicate his willingness to go
13 with you to the Sheriff's Department?

14 A He told us he would go, and he left when we
15 were standing at the front door and went and got
16 dressed and came back and got into the car with us.

17 Q And when he left the area of the front
18 door, in which direction did he go?

19 A He went back in the same direction from
20 which he had come, which would have been the end of
21 the trailer.

22 Q And approximately how long was the
23 defendant gone, did it take the defendant to go to
24 this room and return?

25 A To the best of my remembrance, just a

1 couple of minutes.

2 Q And did you request of the defendant's
3 mother permission to search the residence?

4 A Yes, I did.

5 Q And as a result of your request to search
6 the residence, what if anything did she say?

7 MR. BOWEN: Object.

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

10 MR. BOWEN: No, sir.

11 THE COURT: Explain subsequent
12 conduct?

13 MR. BRITT: Explain conduct and
14 also to corroborate the previous testimony.

15 THE COURT: Okay. Whose prior
16 testimony?

17 MR. BRITT: Special Agent Lea's,
18 that they were given consent to search.

19 THE COURT: The matters now being
20 elicited are being offered for twofold
21 purposes, first to explain the subsequent
22 conduct of this witness and also for the
23 purposes of corroboration of a prior
24 State's witness, Agent Lea. Now, members
25 of the jury, you are to consider this

1 evidence for those limited purposes and for
2 no other purpose, to the extent that you
3 find that it does explain subsequent
4 conduct or to the extent that you find that
5 it is corroborative of a prior State's
6 witness, specifically Agent Lea.

7 Yes, sir.

8 THE WITNESS: After I made the
9 request of her, Ms. Green spoke with her
10 son. Then she told me that we would be
11 allowed to search.

12 BY MR. BRITT:

13 Q And when you say that she spoke with her
14 son, was that there in your presence?

15 A Yes, sir.

16 Q And did you hear what if anything she said
17 to the defendant at that time?

18 A Some of what she said, yes, sir.

19 Q And the portion that you heard, what if
20 anything did you hear her say at that time?

21 A I heard Ms. Green ask Daniel Green --

22 MR. BOWEN: Object.

23 THE COURT: Do you want to be
24 heard?

25 MR. BOWEN: Yes, sir.

1 THE COURT: Ladies and gentlemen,
2 there's a matter of law the Court must take
3 up briefly. Don't worry or speculate about
4 what takes place in the courtroom in your
5 absence, and if you will please step to the
6 jury room.

7 (Jury out at 4:38 p.m.)

8 THE COURT: State's offering
9 evidence of the defendant's statement under
10 801(d), is that right?

11 MR. BRITT: Yes, sir, the --

12 THE COURT: Admission?

13 MR. BRITT: Yes, sir. The
14 statement that he overheard Ms. Green ask
15 her son was "Are they going to find
16 anything," and the defendant's response to
17 that in the officer's presence was "not
18 what they are looking for," and that's been
19 the subject of a previous hearing.

20 THE COURT: You folks want to be
21 heard?

22 MR. BOWEN: We're objecting only
23 to her question at this point.

24 THE COURT: What is the basis of
25 the objection to her question?

1 MR. BOWEN: Well, at best it
2 needs an instruction.

3 THE COURT: It's being offered to
4 explain subsequent conduct of Mr. Green.

5 MR. BOWEN: Yes, sir, and
6 deserves an instruction.

7 THE COURT: Anything further?

8 MR. BOWEN: No, sir.

9 THE COURT: Okay. Limiting
10 instruction will be given. Bring the jury
11 back in.

12 (Jury in at 4:39 p.m.)

13 THE COURT: You're asking for a
14 limiting instruction?

15 MR. BOWEN: Yes, sir.

16 THE COURT: Members of the jury,
17 the testimony now being elicited as to the
18 witness before you, Mr. Myers, as to
19 statements Mr. Myers contends were made in
20 his presence by someone he has identified
21 as the defendant's mother, Ann Green, said
22 statements according to the testimony being
23 made also in the presence of the defendant,
24 are being offered for the purposes of
25 explaining the subsequent conduct of the

1 defendant, and you may consider this
2 evidence for that limited purpose to the
3 extent that you find that it does bear on
4 the subsequent conduct of the defendant.

5 Yes, sir.

6 BY MR. BRITT:

7 Q What if anything did you hear Ms. Green say
8 to her son?

9 A I heard Ms. Green ask Daniel if they,
10 meaning, as I took it, the law enforcement
11 officers --

12 MR. BOWEN: Object to how he took
13 it.

14 THE COURT: You may testify as to
15 what was said.

16 MR. BOWEN: Move to strike,
17 desire jury instruction.

18 THE COURT: Motion allowed.
19 Members of the jury, don't consider the
20 witness's assumption as to what was meant.
21 You are only to consider the evidence as to
22 what was said to the extent that you find
23 that to be credible. Yes, sir.

24 THE WITNESS: She asked Daniel
25 Green if they would find anything, and

1 Daniel replied to her.

2 BY MR. BRITT:

3 Q And what if anything did Daniel reply?

4 A Daniel told her "no, not what they are
5 looking for."

6 Q Now, at the time that you asked permission
7 to search the trailer, was there anyone else present
8 there?

9 A Other than the -- myself, Captain Binder in
10 the front, Ms. Green, Daniel Green, and the two
11 officers I knew in the back, I did not see anybody
12 else.

13 Q And after you heard the defendant say "not
14 what they are looking for," what then occurred?

15 A After that is when Ms. Green agreed that we
16 could search the trailer, and I discussed with her
17 what would be happening about the trailer being
18 searched.

19 Q And did you obtain a consent to search
20 form, a signed consent to search form from Ms. Green?

21 A No, I did not.

22 Q And when you say that you explained to her
23 or discussed with her what would be happening about
24 the trailer being searched, what did you tell her?

25 A I told her that after I, myself and Captain

1 Binder left with Daniel, that some other agents and
2 law enforcement officers would come to the trailer,
3 and one of them would have a consent to search form
4 and would ask her to sign it. And she told me that
5 she would sign it. I also mentioned, I remember
6 specifically, the name Special Agent Kim Heffney,
7 because I knew he would be coming there.

8 Q And after explaining these matters to
9 Ms. Green, did you, the defendant and Captain Binder
10 leave the area of the trailer?

11 A Yes, after Daniel returned from getting
12 dressed.

13 Q And prior to leaving the residence, did you
14 obtain this signed consent to search form from Daniel
15 Green?

16 A Not prior to leaving the residence, but
17 after we had left the residence and were stopped
18 alongside of the road.

19 MR. BRITT: May I approach?

20 THE COURT: Yes, sir.

21 BY MR. BRITT:

22 Q I'll show you what has previously been
23 marked as State's Exhibit 97, ask you to look at that
24 and tell me if you can identify it?

25 A Yes, I can.

1 Q How are you able to identify State's
2 Exhibit Number 97?

3 A I can identify it because I recognize the
4 handwriting in this exhibit as being my own.

5 Q Does your name appear, your signature
6 appear on State's Exhibit Number 97?

7 A Yes, it does.

8 Q In what portion of State's Exhibit Number
9 97 does your signature appear?

10 A My signature appears at the bottom as a
11 witness to this form.

12 Q And who if anyone did you see sign State's
13 Exhibit 97 prior to your signing it as a witness?

14 A I saw Daniel Green sign this.

15 Q Is State's Exhibit Number 97 a photostatic
16 copy of the consent to search form that you presented
17 to the defendant after requesting consent to search
18 his bedroom there in the mobile home?

19 A Yes, it is a copy of that.

20 Q And is State's Exhibit Number 97 an exact
21 duplicate of that original consent to search form?

22 A Yes, it is.

23 MR. BRITT: Your Honor, at this
24 time I ask that State's Exhibit Number 97
25 be admitted.

1 THE COURT: It's admitted without
2 objection.

3 BY MR. BRITT:

4 Q Mr. Myers, on August the 15th of 1993, did
5 you have an occasion to accompany Special Agent Tony
6 Underwood and Robeson County Detective Sandy McMillan
7 to an area known as Dunn Road in the city of
8 Lumberton or outside the city limits of Lumberton?

9 A Yes, I did.

10 Q For what purpose did you go to this area
11 known as Dunn Road?

12 A I went for the purposes of assisting
13 special Agent Underwood in the search of an area for
14 some items.

15 Q Can you describe for us where Dunn Road is
16 located?

17 A It's located on the -- right outside -- I'm
18 not sure if it's exactly in the city limits of
19 Lumberton or right outside the city limits of
20 Lumberton, on the southwestern portion of Lumberton,
21 near West Fifth Street, on the south side -- south or
22 east side of West Fifth Street, out in that
23 direction.

24 Q Can you describe for us that general area?
25 Is it a residential area, is it a wooded area?

1 A The part of the road that I was on as I was
2 conducting a search on was a wooded area with some
3 very thick brush alongside the road.

4 Q And for what purpose did you go to that
5 particular area on the morning of August 15th of
6 1993?

7 A I went there to search for some items that
8 I understood would be found there.

9 MR. BOWEN: Object.

10 THE COURT: Overruled. It's
11 offered to explain his conduct.

12 BY MR. BRITT:

13 Q What items in particular were you looking
14 for?

15 A Looking for items of clothing, including
16 shoes, compact discs and possibly other personal
17 belongings.

18 Q And at the time that you went to this area
19 on August the 15th of 1993, was that in the early
20 morning hours or was it -- excuse me. Was that in
21 a.m. or p.m. of August 15th of 1993?

22 A It was just after 8:00 in the morning.

23 Q And what means did you use in searching
24 this area for items that you were looking for?

25 A The means that I used to search is when I

1 said we, myself, Special Agent Underwood and Deputy
2 McMillian were in separate vehicles. As I came down
3 the road, I was looking on a certain side of the
4 road, the left-hand portion of the road that I was
5 driving, and I was just looking as I was driving down
6 the road. And I saw an article of clothing hanging
7 from a branch, and so I stopped there, got out of my
8 vehicle, walked back down the side of -- that same
9 side of the road looking more intently at the woods
10 and the brush. And I saw some of the items that I
11 was looking for. So I went closer to those items and
12 ended up actually searching on my hands and knees in
13 brush for these items.

14 Q Now, this article of clothing that you saw
15 hanging from a tree, did you recover that article of
16 clothing?

17 A No, sir, I pointed it out to Special Agent
18 Underwood, and he recovered it.

19 Q Can you describe for us the article of
20 clothing that you saw?

21 A Without looking at my reports, I think it
22 was a pair of shorts.

23 Q What if any other items did you find there
24 in that area along Dunn Road?

25 A A right and left pair of Nike golf shoes

1 and a large number, approximately 30 or more, compact
2 discs and cases, some in cases, some out of cases,
3 some empty cases.

4 Q Now, the pair of Nike golf shoes that you
5 found in that area, did you seize those items?

6 A Yes, I did. I actually retrieved them and
7 gave them to Special Agent Underwood.

8 Q And the approximately 30 or more compact
9 discs and cases that you found there, did you
10 actually seize those items?

11 A I actually picked them up and gave them to
12 Special Agent Underwood.

13 Q When you found these 30 or more compact
14 discs were they altogether in a stack or a pile?

15 A No, sir, they were spread out in an area,
16 some being closer to the road or a ditch as you leave
17 the road and go down a little hill to a ditch, cross
18 a ditch and into some brush or woods. There was some
19 closer to the ditch, and then there were some further
20 back into the brush and into the woods.

21 Q And what if anything did you observe
22 Special Agent Underwood do with each of the items
23 that you recovered and subsequently gave to him?

24 A I didn't -- I couldn't see exactly what he
25 did with every one. I saw he was doing some

1 photographing, and he was logging, keeping a log of
2 the items that I gave to him.

3 Q Now, at the time that the photographs were
4 being taken, was that before you had actually picked
5 up the items?

6 A No, sir, not to my knowledge.

7 Q Now, when you say you went to the area of
8 Dunn Road to look for items that you thought would be
9 found there, was that based on information that you
10 had been given earlier that day?

11 A Yes, it was.

12 Q Who had you talked with in regard to items
13 that might be found along Dunn Road?

14 MR. BOWEN: Object.

15 THE COURT: For what purpose?

16 MR. BRITT: This is -- this is
17 being offered to corroborate the testimony
18 of not only Mr. Demery but also Special
19 Agent Lea in regard to locations that
20 Mr. Demery told Mr. Lea about where
21 items -- where they had been and items that
22 were disposed of.

23 MR. BOWEN: Desire instruction.

24 THE COURT: Members of the jury,
25 the matters now being elicited are being

1 offered for the purposes of corroboration
2 as to the prior State's witness Larry
3 Martin Demery and Agent Berry Lea. You may
4 consider this evidence for that limited
5 purpose to the extent that you find that it
6 is corroborative of their testimony at
7 trial. Yes, sir.

8 BY MR. BRITT:

9 Q Mr. Myers, who had you talked with in
10 regard to finding items along Dunn Road?

11 A I actually talked to Special Agent
12 Underwood.

13 MR. BRITT: May I approach the
14 witness?

15 THE COURT: Yes, sir.

16 BY MR. BRITT:

17 Q Mr. Myers I'll show you what has been
18 previously marked as State's Exhibit Number 64, ask
19 you to look at that and tell me if you can identify
20 what is pictured there.

21 A State's Exhibit 64 is a photograph of a
22 mobile home that I recognize as being a mobile home
23 that I went to on the evening of August 14th, 1993,
24 occupied by Daniel Green and his mother.

25 Q Does State's Exhibit Number 64 depict the

1 window that you observed this black male looking out
2 of as you drove up to the mobile home on August 14th
3 of 1993?

4 A Yes, it does.

5 Q Can you use State's Exhibit Number 64 to
6 illustrate your testimony as to the location of that
7 window and where it was that you saw this black male
8 as you approached the vehicle, the mobile home in
9 your car?

10 A Yes, I can.

11 MR. BRITT: Your Honor, at this
12 time I ask that he be allowed to step down.

13 THE COURT: Yes, sir.

14 BY MR. BRITT:

15 Q Using State's Exhibit Number 64, can you
16 also use State's Exhibit Number 64 to show where you
17 parked your vehicle on the night in question?

18 A The place where I parked my vehicle would
19 have been directly behind where this vehicle here is
20 sitting. The window where I saw Mr. Green look out
21 the window as we approached the trailer is this
22 window here, (indicating).

23 Q If you could step to this end of the jury
24 box and show these jurors.

25 A This is the window, my vehicle would have

1 been parked behind this vehicle.

2 Q And the door that's pictured in State's
3 Exhibit Number 64, is that the door you went to and
4 knocked?

5 A Yes, it is.

6 Q And as you were standing there at the door,
7 from which direction did the defendant come after you
8 asked his mother if he was there?

9 A Mr. Green came from this direction to the
10 doorway.

11 Q If you'll step down and show these members
12 of the jury.

13 A Mr. Green came from this direction to the
14 doorway.

15 Q And from the doorway, in which direction
16 did Mr. Green go to put on his shirt?

17 A When he went to get dressed he went back in
18 the same direction, down that way, and when he left,
19 he returned and came out.

20 Q Thank you.

21 MR. BRITT: If I may approach
22 again.

23 THE COURT: Yes, sir.

24 MR. BRITT: Again, Your Honor,
25 due to the size, may Mr. Myers step down?

1 THE COURT: Yes, sir.

2 BY MR. BRITT:

3 Q Mr. Myers, I'm going to show you what's
4 previously been marked as State's Exhibit Number 94,
5 ask you to look at that diagram and tell me if you're
6 able to identify it?

7 THE COURT: We've got --

8 MR. BRITT: I'm going to put it
9 up on the easel.

10 THE COURT: Okay.

11 THE WITNESS: Yes, I can.

12 BY MR. BRITT:

13 Q And how are you able to identify what is
14 depicted in State's Exhibit Number 94?

15 A I can identify it because I am familiar
16 with this area that this map depicts.

17 Q Can you use State's Exhibit 94 in
18 illustrating your testimony as to the location of
19 Dunn Road in the vicinity of the city limits of
20 Lumberton?

21 A Yes, I can.

22 MR. BRITT: If I may.

23 THE COURT: Yes, sir.

24 BY MR. BRITT:

25 Q Mr. Myers, using this pointer, can you --

1 and using State's Exhibit Number 94, point to the
2 jury, show the jury where Dunn Road is located?

3 A Dunn Road is located right here at the end
4 of the pointer.

5 Q So that things are clear on the record, for
6 the purpose of the record, will you take this blue
7 marking pen and draw a line depicting Dunn Road?

8 A (Witness complies).

9 Q And Mr. Myers, for the purposes of
10 clarifying the record, will you place a number eight
11 by the blue line that you have drawn indicating the
12 location of Dunn Road?

13 A (Witness complies).

14 Q And in the margin of the left-hand side of
15 the diagram, will you write that number eight again
16 and the description, Dunn Road.

17 A (Witness complies).

18 MR. BRITT: Your Honor, if the
19 record will reflect Mr. Myers has used a
20 blue marking pen to indicate the location
21 of Dunn Road on State's Exhibit Number 94.
22 He has also placed in that location the
23 number eight and in the caption he has
24 written the number eight and also
25 description Dunn Road.

1 THE COURT: Yes, sir.

2 MR. BRITT: Mr. Myers, if you'll
3 return to the stand.

4 Your Honor, this may be a good point
5 to stop.

6 THE COURT: Okay.

7 May I see all counsel and the court
8 reporter and the defendant regarding a
9 scheduling matter. Mr. Myers, thank you,
10 sir, you may step down.

11 (Whereupon a bench conference ensued
12 as follows.)

13 THE COURT: Let the record
14 reflect all counsel are present, the
15 defendant is present, the presiding Judge
16 and the court reporter. There were some
17 folks who have some inquiries about
18 tomorrow and the next day. How many more
19 witnesses do you have?

20 MR. BRITT: Three.

21 THE COURT: If you recall, one of
22 the members of the jury wanted to go to her
23 class. Realistically, we'll finish by
24 about when?

25 MR. BRITT: Well, a portion of

1 that involves the videotape.

2 THE COURT: Okay.

3 MR. BRITT: And that involves
4 some testimony of Mr. Heffney. Mr. Heffney
5 will be my last witness. Tony Underwood is
6 scheduled to be here tomorrow. Actually, I
7 have four witnesses -- no, excuse me five
8 witnesses, I'm sorry. Mr. Underwood, Jerry
9 Richardson from the fingerprint section,
10 Stewart McFadder, evidence technician from
11 the Robeson County Sheriff's Department who
12 did major case prints of Mr. Green and
13 Mr. Demery, Mr. Underwood who collected the
14 evidence, and Mr. Myers has testified about
15 packaged it and submitted it to the
16 laboratory for the purposes of lab
17 analysis.

18 MR. THOMPSON: I suggest, I think
19 that we could take a lunch break between
20 1:00 and 3:00, from 1 to 2:30, and still
21 what's the big --

22 MR. BRITT: If I could finish
23 tomorrow, I would like to, but in terms
24 of -- I mean, tomorrow marks the seventh
25 week that we began evidence. I'm at the

1 conclusion of my evidence.

2 THE COURT: I'm going to indicate
3 to Ms. Dial that we'll take a normal lunch
4 recess and hopefully that will accommodate
5 her. I'll indicate to Mr. Campbell that we
6 will have to wait and see what our schedule
7 is on Thursday as to what his situation is.

8 MR. BRITT: As I understood the
9 question, when I rest they are going to --
10 they need some time, and I think if we
11 don't finish tomorrow, we'll finish
12 Thursday morning.

13 THE COURT: All right. Thank
14 you, sir. That concludes the bench
15 conference.

16 (Bench conference concluded.)

17 THE COURT: Members of the jury,
18 and particularly Ms. Dial and Mr. Campbell,
19 as I indicated to you earlier I was trying
20 to make inquiry as to what our schedule
21 would be tomorrow for your plans. And
22 Mr. Campbell, with regard to your situation
23 Thursday, Thursday is a little bit less
24 clear at this point. But again, to the
25 extent that we can, we'll do everything

1 that we can to accommodate you.

2 Ms. Dial, if we were to take the
3 normal lunch recess from 1:00 to 2:30
4 tomorrow, would that accommodate you at
5 least to some extent concerning your
6 request?

7 JUROR: Yes.

8 THE COURT: And it may be that we
9 can enlarge that somewhat tomorrow, we'll
10 see, but we'll do the best we can.

11 Folks, we're going to recess until
12 9:30 tomorrow morning. During the
13 overnight recess, please recall all prior
14 instructions of the Court. Again, I'm
15 obligated to instruct you that you're not
16 to talk about the case among yourselves,
17 not to talk about it with anybody else, not
18 allowed to have anyone say anything to you
19 about the case in your presence. You're
20 not to form or express any opinions about
21 this matter, you're not to have any contact
22 with anybody involved in the case. Avoid
23 exposure to any media accounts which may
24 exist in connection with this matter, and
25 don't conduct any independent investigation

1 or inquiry of any kind. Everybody please
2 remain seated, you folks are excused until
3 tomorrow morning at 9:30.

4 (Jury out at 5:06 p.m.)

5 THE COURT: In the absence of the
6 jury, the bench conference with all parties
7 including the defendant being present was
8 in an effort to ascertain what our schedule
9 would be tomorrow and when we might be able
10 to conclude the evidence in this case as
11 far as the State's evidence is concerned.
12 There's some possibilities as I understand
13 it that you will finish tomorrow.

14 MR. BRITT: Yes.

15 THE COURT: Or at the latest
16 Thursday morning?

17 MR. BRITT: Yes, sir.

18 THE COURT: Now there's a
19 remaining matter to be heard regarding the
20 video.

21 MR. BRITT: Yes, sir.

22 THE COURT: With what witness do
23 you intend to offer that?

24 MR. BRITT: Through Mr. Heffney.
25 He's been the custodian of the videotape

1 since the time it was seized.

2 THE COURT: First, second or
3 third --

4 MR. BRITT: Be my last witness.

5 THE COURT: We need a hearing
6 prior to his testimony?

7 MR. BRITT: Yes, sir.

8 THE COURT: I don't contemplate
9 that the hearing is going to take more than
10 30 or 45 minutes.

11 MR. BRITT: I don't know that it
12 will take that long considering we've
13 already had a hearing on the matter.

14 THE COURT: Yes, sir. What I'm
15 going to propose is this: We're going to
16 let the jury go from 1:00 to 2:30 tomorrow
17 morning. Only way we can accommodate
18 Ms. Dial is give them from 1:00 to 3:00.
19 We can take an hour or hour and 15 minutes
20 and come back for that hearing.

21 MR. BRITT: That will be fine.

22 THE COURT: Is that agreeable?

23 MR. BRITT: Yes, sir.

24 THE COURT: Is that agreeable
25 with counsel?

1 MR. BOWEN: Yes, sir.

2 THE COURT: We'll break from 1:00
3 to say 2:00 or 2:15, let the jury go from
4 1:00 until 3:00, and then we'll be in a
5 position to go forward with the hearing and
6 be ready.

7 MR. BRITT: Yes, sir.

8 THE COURT: Then that is the
9 schedule we'll keep tomorrow. If you'll
10 recess us until 9:30, please.

11 THE BAILIFF: All rise.

12 (Court adjourned.)

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1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

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10 and

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14
15 (February 14, 1996. Proceedings in open court.)

16
17 THE COURT: Good morning, folks.
18 Let the record reflect that all counsel are
19 present, the defendant is present in open
20 court. Any matters before we bring the
21 jury in?

22 MR. BRITT: Yes, sir, just so
23 that it's on the record, and I will be
24 providing defense counsel with a copy of
25 the statement once the typing of that

1 statement is completed. On Friday night,
2 which would have been February the 10th,
3 between 11:00 p.m. 11:00 and 12:00, I
4 received an telephone call from Andy Jones
5 of the Robeson County Sheriff's
6 Department. Mr. Jones is a dispatcher in
7 communications office.

8 He notified me that he had a subject
9 on the line who lived in Wilmington, North
10 Carolina, identified that individual was a
11 Michael Holtzclaw, H O L T Z C L A W, said
12 Mr. Holtzclaw had information regarding the
13 Jordan case.

14 He then patched me through to this
15 individual. Mr. Holtzclaw told me that he
16 was a truckdriver and he believed that he
17 was in the area on the night of the murder,
18 however, he was not certain of the date. I
19 talked with him. I obtained his telephone
20 and his address.

21 On Saturday the 11th, I contacted
22 Special Agent Heffney in regard to
23 Mr. Holtzclaw's statements to me.
24 Mr. Heffney, in turn, contacted
25 Mr. Holtzclaw and set up an interview with

1 him on Monday evening.

2 Last night on the news, Mr. Holtzclaw
3 was the subject of an interview with a
4 reporter from Channel 6. We have obtained
5 a statement from Mr. Holtzclaw pursuant to
6 Brady and the other cases in regard to
7 Brady materials. That statement will be
8 provided to the defense.

9 One, I received the typed version of
10 it here in court so that any matters
11 involving failure to disclose do not become
12 an issue at a later date.

13 I would also tell the Court that some
14 weeks ago, we received an anonymous phone
15 call from a female individual who said she
16 had information in regard to the Jordan
17 case. She spoke to one of my secretaries.
18 The secretary instructed her to call back
19 and talk with me. That individual has
20 never called back, so we were not able to
21 pursue that particular bit of information
22 that we had received. That information
23 dealt with this woman alleged that she had
24 seen the defendant with the Lexus and also
25 with Mr. Jordan's body in the car.

1 THE COURT: As to Mr. Holtzclaw,
2 can we expect that he's going to be a
3 witness?

4 MR. BRITT: Not for the State.
5 That's why, pursuant to Brady, pursuant to
6 open file discovery, that I have provided
7 them, I wanted to make it a matter of
8 record.

9 THE COURT: Okay.

10 MR. BOWEN: Just let me make a
11 note, Your Honor. Just moments before he
12 made that statement, I had a motion ready,
13 I would like to let the Court know that, if
14 I may approach. We knew this information
15 that he addresses as early as just before
16 lunch yesterday before it had broken in the
17 press. Unless the Court orders me, I would
18 rather keep my source confidential but it
19 was of concern to me that my source
20 indicated that this material had been known
21 to the State as early as Mr. Britt says,
22 and that we had not been made aware of it
23 since it was so clearly exculpatory.

24 THE COURT: Well --

25 MR. BOWEN: I'm not fussing,

1 we've got it now, we know about it. But
2 what I'm saying is this, we know they've
3 also specifically interviewed others out
4 there, a number of our witnesses, not
5 witnesses that we don't know about, but
6 they now have statements which we believe
7 probably are exculpatory given the fact we
8 know what these folks are going to say.
9 And what we would like to do, and what that
10 motion addresses the Court, we have field
11 notes, except Agent Heffney's, concerning
12 the last interview of Mr. Demery's second,
13 eighth, 1995, we haven't received any field
14 notes from anybody, and I know Your Honor
15 has ordered it from the bench, and I
16 remember talking to Detective Thompson
17 about it, saying furnish field notes.

18 We would like to have the field notes
19 of these interviews, whether our witnesses
20 or not. In the alternative, to have the
21 Court go over the materials, like the Court
22 did before, and see if there's exculpatory
23 matters there. But we now know about
24 Mr. Holtzclaw, finding out about him, we
25 sent an investigator down, that's what the

1 phone call yesterday afternoon was about.
2 So it's not an issue getting it, it's an
3 issue getting it timely. I'm surprised
4 that once it became exculpatory we weren't
5 notified about it.

6 THE COURT: When do you contend
7 you should have gotten it?

8 MR. BOWEN: When Mr. Britt knew
9 the nature of it, as soon as he knew it was
10 exculpatory. And he knows we've got an
11 investigator we can send to --

12 MR. BRITT: I have provided it,
13 and the case law also provides I'm under no
14 obligation to provide them Brady
15 information that they have knowledge of.
16 And Mr. Bowen's statement here in court is
17 they had knowledge of it as early as
18 yesterday. So had I not disclosed it,
19 there is no Brady violation.

20 As to the field notes, the Court had
21 previously entered an order that I was to
22 obtain that, I was to submit them to the
23 Court for in camera review, and if there
24 were matters contained in those field notes
25 that were exculpatory, the Court would

1 glean that information from the notes and
2 that information would be provided.

3 Now, I have a whole stack full of
4 notes that involve not only Mr. Heffney,
5 Mr. Thompson, but Special Agent Lea,
6 Special Agent Underwood, the entire
7 Cumberland County department that was
8 involved in this investigation, other SBI
9 agents, FBI agents. We have gone back and
10 interviewed some people that they may --
11 and obviously, Mr. Bowen is aware of that.
12 The information we have obtained is
13 consistent with what they have said
14 before.

15 THE COURT: Okay. There's no
16 contention that you don't have the
17 information about Mr. Holtzclaw either
18 through your own sources or as obtained
19 through the State.

20 MR. BOWEN: That's correct, we
21 filed that notion on anticipation. We
22 didn't know when they were going to tell
23 us, so apparently they have now told us.

24 THE COURT: Motion at this point
25 now is moot.

1 MR. BOWEN: Yes, sir, except for
2 the field notes, we would like to see the
3 field notes.

4 THE COURT: Well --

5 MR. BOWEN: There's going to be a
6 typewritten something or other.

7 MR. BOWEN: But we would like to
8 see the field notes.

9 THE COURT: Where is case law or
10 statutory rights to the field notes, apart
11 from my order?

12 MR. BOWEN: Your order is the law
13 of this case, and I didn't realize I had to
14 look any further than that.

15 THE COURT: Those were turned
16 over to me.

17 MR. BOWEN: Yes, sir.

18 THE COURT: That's what my order
19 was, that all notes would be turned into
20 the District Attorney's office and provided
21 to the Court for in camera review. So
22 we'll do that.

23 Okay. Any other matters before we
24 bring the jury in?

25 MR. BRITT: Oh, one other

1 matter. It was brought to my attention
2 this morning that one of the jurors, I
3 believe it was Juror Number 5, Mr. Kotai,
4 had come into the District Attorney's
5 office and requested the use of a pencil
6 sharpener. He was directed to the pencil
7 sharpener which is in an office off of the
8 main part of the office, and that was the
9 extent of that contact. I was not there at
10 the time he came in.

11 THE COURT: All right. Folks, we
12 still have the matter dealing with the
13 defendant's Ritchie motion, and I need to
14 hear from Mr. Rogers and Mr. Campbell in
15 connection with that. They indicated to me
16 that they intended to file something.

17 MR. BRITT: Yes, sir.

18 Mr. Campbell came by my office and served
19 me with a motion they had filed I believe
20 this morning, quashing the subpoena that
21 had been issued to Dr. Strawcutter, and
22 asserting Mr. Demery's privilege under the
23 doctor-patient privileges recognized in
24 this state.

25 THE COURT: There was testimony

1 by -- well, I'm not going to get into that
2 at this point except to say there was
3 testimony developed in court that may bear
4 on whether or not the privileged was
5 waived.

6 MR. THOMPSON: Yes, sir. Other
7 thing is, there's a statute they cite,
8 which is GSA-853, does not preclude the
9 Court from --

10 THE COURT: Discretionary
11 according to the administration of justice.

12 MR. THOMPSON: Exactly.

13 THE COURT: Okay. If we can
14 bring our jury in, please.

15 (Jury in at 9:42 a.m.)

16 THE COURT: Good morning, ladies
17 and gentlemen. And happy Valentine's Day.

18 Mr. Britt, you ready to go forward.

19 MR. BRITT: Yes, sir.

20 THE COURT: Okay. If you'll come
21 back up, I'm sorry.

22 Good morning, sir.

23 THE WITNESS: Good morning, sir.

24 DIRECT EXAMINATION (continued).

25 MR. BRITT: May it please the

1 Court, I don't have any other questions on
2 direct examination.

3 THE COURT: Mr. Bowen and Mr.
4 Thompson.

5 MR. BOWEN: Your Honor --

6 CROSS-EXAMINATION

7 BY MR. BOWEN:

8 Q Agent Myers, when the officers who were in
9 your company and you went to the Green residence on
10 the 14th of August, 1993, other than Daniel Green,
11 you did not leave nor did any of the other officers
12 leave that night with anything, did you?

13 A No, sir, not to my knowledge.

14 Q You know that the place was searched,
15 correct?

16 A After we had left, I understand that.

17 Q And you had conversations and conferences
18 with the officers who conducted that search, correct?

19 A I'm sure I did, different times after that,
20 yes, sir.

21 Q Who was the officer in charge of that
22 detail of going out to Mr. Green's residence and
23 bringing him to the Sheriff's Department and
24 searching the house? Who was in charge of all that?

25 A I can't necessarily say that there was one

1 person in charge of all of that. I think it more or
2 less fell upon me to be in charge of the part of
3 going to the residence, talking to Mr. Green, when
4 the decision was made that we were to leave there and
5 go back to the Sheriff's Department with Mr. Green,
6 and we received the permission for the search, I
7 arranged for that, and then I left. I didn't
8 consider myself to be in charge of anything
9 thereafter. I kind of sort of thought that Mr.
10 Heffney, Special Agent Heffney, would take the lead,
11 and that's only because from the residence, I called
12 on a radio asking for Mr. Heffney to come and
13 specifically to bring me a consent to search form and
14 I also mentioned Special Agent Heffney to Ms. Green,
15 so that's just why I would say that.

16 Q And you had already cleared -- you already
17 knew that the consent to search forms were going to
18 be executed, that is, Mr. Green and his mom had
19 agreed to execute those forms or you wouldn't have
20 sent them, right?

21 A That's correct.

22 Q Now, can you tell us which officers, if you
23 know, searched the front bedroom, and by the front
24 bedroom, I mean that room which is just to the right
25 as you walk in the front door of the trailer?

1 A I can tell you, but it's only based upon
2 what I heard this week sitting here in this
3 courtroom.

4 Q So your information is that those two
5 officers who have testified that they did, went in
6 that room and two officers searched that, is that
7 right?

8 A That's my understanding, yes, sir.

9 Q And those were officers who had
10 considerable experience, past law enforcement
11 experience, in conducting searches, to your
12 knowledge?

13 A To my knowledge, yes, sir.

14 Q And you yourself have had many of those
15 same training courses and that same instruction and
16 that same experience that those two officers have
17 had, haven't you?

18 MR. BRITT: Objection, assumes
19 matters not in evidence.

20 THE COURT: Restate it,
21 Mr. Bowen.

22 MR. BOWEN: I'm sorry?

23 THE COURT: Restate it.

24 BY MR. BOWEN:

25 Q You know what standard acceptable procedure

1 is with regard to a search in the law enforcement
2 community, don't you?

3 MR. BRITT: Objection to the
4 form.

5 THE COURT: Can you answer the
6 question, sir?

7 THE WITNESS: I have a question
8 as to the way he's asked it.

9 THE COURT: Rephrase, Mr. Bowen.

10 BY MR. BOWEN:

11 Q Don't you have a pretty standard search
12 protocol, that is, the way you conduct a search,
13 don't you, and officers with whom you work, including
14 the two that searched that room follow a pretty
15 standard search protocol?

16 MR. BRITT: Objection.

17 THE COURT: You may answer.

18 THE WITNESS: I do. Now, as what
19 other people do, I can only vouch for those
20 that I've worked with on searches.

21 BY MR. THOMPSON:

22 Q But you know of your knowledge they have
23 had many of the same law enforcement training and
24 study that you have, don't you?

25 MR. BRITT: Objection.

1 THE COURT: I think where we're
2 having some difficulty is there's an
3 assumption implicit in the question there
4 is certain training regarding certain
5 aspects of law enforcement, so that's not
6 been established.

7 BY MR. BOWEN:

8 Q Agent Myers, there are courses that a law
9 enforcement officer takes, right?

10 A Yes.

11 Q And an officer continues to take education
12 concerning his law enforcement career and his
13 procedures as a law enforcement officer, doesn't he?

14 A Yes, sir.

15 Q To your knowledge, these two officers that
16 searched the front room, the room just to the right
17 as you walk in the door of the Green trailer, they
18 have many of those same courses that you have,
19 correct?

20 A I can only assume that they have.

21 MR. BRITT: Objection, move to
22 strike.

23 MR. BOWEN: Let me just back up.

24 THE COURT: The objection is
25 sustained, motion to strike is allowed.

1 Members of the jury, disregard the last
2 question or line of questioning asked by
3 counsel for the defendant, Mr. Bowen, that
4 matter is not to take any part in your
5 deliberations in this case.

6 BY MR. BOWEN:

7 Q Who were those officers that searched,
8 Agent Myers?

9 A Best of my remembrance during the
10 testimony, it was Don Smith from the Cumberland
11 County Sheriff's Department, and Durry Cannon from
12 the Cumberland County Sheriff's Department.

13 Q Did you ever see into that particular room?

14 A No, sir.

15 Q You went back after being at the Green
16 residence, you then went back to the Robeson County
17 Law Enforcement Center, did you not?

18 A Yes, sir.

19 Q And you were there for many hours
20 thereafter until the early morning following?

21 A Yes, sir.

22 Q Now, did you see those two officers after
23 that search and did they bring you any --

24 A I remember seeing Detective Smith and no,
25 he nor did anyone else bring me anything.

1 Q So you never saw on the 14th of August of
2 1993 or the 15th of August, 1993, a gun which is
3 marked State's Exhibit 59-A, did you?

4 A On the 14th or the 15th of August, 1993,
5 no, I never saw any gun that anyone brought to me. I
6 haven't seen this exhibit that you're talking about.
7 I haven't seen it in here today, but no one produced
8 a gun to me, no, sir.

9 Q I'll show it to you. Mr. Myers, I hand you
10 what is in evidence as State's Exhibit Number 59-A,
11 and I ask you, did you see that item on August the
12 14th, 1993 or August the 15th, 1993?

13 A No, sir.

14 Q Officer Myers, the consent form that Daniel
15 Green signed, I believe you testified was not signed
16 there at the house, is that right?

17 THE COURT: Rephrase, Mr. Bowen,
18 "I believe".

19 BY MR. BOWEN:

20 Q I'm sorry. The consent to search his room,
21 that form was signed elsewhere than right at the
22 house?

23 A That's correct.

24 Q And it was signed out on the road
25 somewhere?

1 A Yes, sir, when we left the residence and we
2 were -- we went out to the dirt portion of the road
3 to Back Swamp Road, turned right going toward Highway
4 74, and at the intersection of Highway 74 and Back
5 Swamp Road, we arrived there and met the other law
6 enforcement officers who had come from the Sheriff's
7 Department who were en route back to the -- not back,
8 but were en route to the Green residence. And we
9 stopped there, they on one side of the road, law
10 enforcement officers, my vehicle on the other side of
11 the road at Back Swamp Road, and at that time I had
12 Mr. Green sign the consent to search form.

13 Q Was doing it in that location simply
14 because that's where the form arrived or you
15 intercepted somebody with the form, how did it happen
16 out in that location?

17 A To the best of my remembrance, that's
18 correct. What had happened is after asking Mr. Green
19 about the consent and he agreed to let us search his
20 room, I did not think that I had a consent to search
21 form with me. And that's why I called on the radio
22 asking for someone to bring one to me. And that's
23 why we stopped out on the road. But before they even
24 arrived I had begun to look in my own effects for
25 one, and I'm not sure if that one Special Agent

1 Heffney brought to me or if I actually found one in
2 my briefcase.

3 Q Now, did you see anything unusual about the
4 doorknob or the door area of the Green trailer, that
5 is, the front door, when you approached?

6 A I don't recall anything unusual about it.

7 Q Now, Agent Myers, were you carrying on your
8 vehicle any type of videotape equipment or any type
9 of camera equipment?

10 A I did not have any videotape equipment. I
11 have a camera but I don't always carry it in my
12 vehicle, so whether I had it on that particular date,
13 I don't know.

14 Q Now, the SBI does provide video equipment,
15 it is available to you when you need to use it, is it
16 not?

17 A That's a yes and no question. Yes, they do
18 provide it. No, it's not always available when you
19 need it because it's not provided to everyone.
20 There's only a limited number of video equipment, and
21 so if say I wanted one like it right now, I want it
22 tomorrow, I would have to make arrangements to get to
23 where I needed it or want it.

24 Q When you went out to the Green trailer, you
25 knew that you were going to request an opportunity to

1 search, didn't you?

2 A I'm sure I had it on my mind that that
3 would be something I would like to have, is consent
4 to search the trailer, yes.

5 Q And other officers that participated in
6 this search, to your knowledge, they also had access
7 to video and still photographic equipment, don't
8 they?

9 A There again, that's a yes and no answer.
10 Yes, I'm sure they have access to still camera
11 equipment as you mentioned, but video equipment, it
12 would be the same principle, not everybody has that.

13 Q To your knowledge, no video or still
14 pictures were taken on the 14th concerning that
15 search at the Green house, were they?

16 A Not that I'm aware of.

17 Q I believe you testified -- strike that.
18 You testified that your announcement to Ms. Green was
19 that you were there for the purposes of looking for
20 auto parts, is that right?

21 A No, sir, I testified that we told Ms. Green
22 that we wished to talk to Daniel, if Daniel was
23 there, wanted to know if he was there and wanted to
24 talk with him about some stolen car parts.

25 Q So when you went to search, you did not

1 find any stolen car parts or anything else that you
2 took away from that house that night, did you?

3 MR. BRITT: Objection, Mr. Myers
4 didn't conduct any search.

5 THE COURT: Rephrase.

6 BY MR. BOWEN:

7 Q You never found any auto parts, did you?

8 A No, sir, I never did.

9 Q You know that none were found, don't you?

10 A I don't know if anyone found any auto parts
11 or not. I'm not really quite aware of everything
12 that was found or what they saw later that evening
13 when they did a search.

14 MR. BOWEN: That's all, Your
15 Honor.

16 THE COURT: Mr. Britt, anything
17 further?

18 MR. BRITT: No, sir, I don't have
19 any other questions. Your Honor, at this time
20 we call Special Agent Tony Underwood.

21 THE COURT: If you'll come up and
22 be sworn, please, sir.

23 TONY A. UNDERWOOD,
24 being first duly sworn was examined and testified as
25 follows:

DIRECT EXAMINATION

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BY MR. BRITT:

Q Mr. Underwood, for the purpose of the record, would you repeat your name, please?

A Tony A. Underwood.

Q And you've previously testified that you're employed with the State Bureau of Investigation?

A Yes, sir.

Q And you were one of the agents that was involved in the investigation of the homicide of James Jordan?

A That's correct.

Q Mr. Underwood, on the morning of August the 15th, 1993, did you accompany Special Agent Myers and Robeson County Sheriff's Detective Sandy McMillian to a location along Dunn Road near or outside the city limits of Lumberton?

A Yes, sir, I did.

Q What time of the day do you recall going to that area?

A It was prior to 8:00 a.m. best I recall. It was approximately 7:40, 7:45 a.m. when we arrived in that area.

Q For what purpose did you, Agent Myers and Deputy McMillian go to this area referred to as Dunn

1 Road?

2 A We went there based upon some information
3 that had been provided by Larry Demery to search for
4 some items that were possibly discarded along the
5 shoulder of Dunn Road.

6 Q And specifically, what type of items were
7 you looking for?

8 A The best I recall, the information given
9 was there was an item of clothing and some other
10 effects that came out of the vehicle of Mr. James
11 Jordan.

12 Q Who drove to that area?

13 A I drove my SBI issued vehicle, Special
14 Agent Myers was in a second vehicle, and Deputy
15 McMillian was in a third vehicle.

16 Q And can you describe the area where you
17 went?

18 A The area where we ended up was a paved road
19 off of West Fifth Street. Dunn Road, which runs
20 alongside the Food Lion off of West Fifth Street, and
21 the area where some items were located was along the
22 north side of Dunn Road just prior to reaching the
23 intersection of Kenny Biggs Road and Dunn Road.

24 Q And along that roadway, are there houses?

25 A Not in this area where these items were