

1 found. It was a wooded area. At that time of year,
2 there was greenery, trees, shrubs, things of that
3 nature that had grown up in the area.

4 Q And when you went to the Dunn Road area on
5 the morning of the 15th of August, 1993, did you
6 locate any items?

7 A Yes, sir.

8 Q What items did you locate there?

9 A There was a pair of light blue colored
10 shorts, two golf shoes, and numerous compact discs
11 and compact discs cases.

12 Q And where were those items found?

13 A They were scattered along the north side of
14 Dunn Road in the wooded area, just prior to reaching
15 the intersection of Kenny Biggs Road.

16 Q And who if anyone seized any items from
17 that area?

18 A I seized the pants from a tree limb and
19 Special Agent Myers physically picked up the compact
20 discs, compact disc cases and the two shoes that were
21 there, and he handed them to me.

22 Q Did you have a camera with you that
23 morning?

24 A Yes, sir, I did.

25 Q Was that camera working properly?

1 A Yes, sir.

2 Q And did you take photographs of the area
3 where the search was conducted and then the location
4 of the items where they were found?

5 A Yes, sir.

6 (State's Exhibits 102 through 111 were
7 marked for identification.)

8 MR. BRITT: May I approach the
9 witness?

10 THE COURT: Yes, sir.

11 BY MR. BRITT:

12 Q Mr. Underwood, I'm going to show you what's
13 been marked as State's Exhibits 101 through 111, ask
14 you to look at each of those.

15 THE COURT: Excuse me, Mr. Britt,

16 I think you already have 101.

17 MR. BRITT: Excuse me.

18 BY MR. BRITT:

19 Q 102 through 111, ask you to look at those
20 and tell me if you can identify each of those
21 photographs?

22 A Yes, sir, I can.

23 Q Now, on the morning of August 15th, 1993,
24 you've testified that you had in your possession a
25 camera and that camera was working properly, is that

1 correct?

2 A Yes, sir.

3 Q Did you load that camera with film on the
4 morning of August 15th, 1993?

5 A Yes, sir.

6 Q And who retained -- after photographs were
7 taken on the morning of August 15th, 1993, what if
8 anything did you do with the film at the time that
9 the photographs were taken along the scene of Dunn
10 Road?

11 A I submitted the film to the is SBI photo
12 lab in Raleigh for development.

13 Q And after submitting the film for
14 development, did you receive negatives and a
15 spreadsheet along with photographs that were taken
16 from that film?

17 A Yes, sir.

18 Q And did you compare the negatives with the
19 spreadsheet that you had received?

20 A Did I compare the negatives?

21 Q The negatives with the spreadsheet?

22 A I didn't -- I was never returned the
23 negatives, I just received a spreadsheet.

24 Q And the spreadsheet and the photographs
25 that you received, did they accurately depict the

1 scene as you found it on August the 15th, 1993 at the
2 time you took the photographs?

3 A Yes, sir.

4 Q And who retained custody of the photographs
5 from the time that you received it?

6 A I did.

7 Q And at any time did you transfer them to
8 Special Agent Kim Heffney?

9 A I retained a copy of them, I may have given
10 him a second copy, I don't recall.

11 Q State's Exhibits 102 through 111, how are
12 you able to identify those?

13 A I can identify State's Exhibits 102 through
14 111 by my initials that appear on the back of each
15 photograph along with the date that I received this
16 photograph back from the photo lab.

17 Q And State's Exhibits 102 through 111, do
18 they depict the items that you saw on the morning of
19 August 15th along Dunn Road in the condition that you
20 found them in?

21 A Yes, sir.

22 Q And do they fairly and accurately reflect
23 the condition of the scene as you found it on August
24 the 15th, 1993?

25 A Yes, sir.

1 Q For the record, can you state what is
2 depict in State's Exhibit 102?

3 MR. THOMPSON: May I, Your
4 Honor?

5 THE COURT: Yes, sir.

6 THE WITNESS: Yes, sir, State's
7 Exhibit 102 is a photograph taken from Dunn
8 Road looking towards the intersection of
9 Kenny Biggs Road. I stepped away from the
10 area where the pants were located in a tree
11 limb and aimed the camera towards the
12 intersection of Kenny Biggs Road and made a
13 photograph of that, and that's what State's
14 Exhibit 102 reflects.

15 BY MR. BRITT:

16 Q State's Exhibit 103, can you tell what is
17 depicted there?

18 A Yes, sir. State's Exhibit 103 is a very
19 similar photograph to State's Exhibit 102 taken of
20 the same general area standing in the road looking
21 towards the intersection of Kenny Biggs Road.

22 Q State's 104?

23 A Yes, sir. State's Exhibits 104 is a
24 photograph taken from just off the edge of Dunn Road
25 looking towards the tree limb where an item of

1 clothing was found hanging from the limb.

2 Q And what item of clothing was found hanging
3 from that limb?

4 A A pair of light blue colored Nike shorts.

5 Q And State's Exhibit 105?

6 A Yes, sir. State's Exhibit 105 is a
7 photograph that I made of the pair of shorts hanging
8 in the tree limb. It's just a closer up view.

9 Q State's 106?

10 A State's Exhibit 106 is a photograph I made
11 taken in the wooded area where some of the compact
12 discs were lying there on the ground.

13 Q State's 107?

14 A State's Exhibit 107 is another photograph I
15 made taken in the wooded area off of Dunn Road
16 showing additional compact discs there in the woods.

17 Q State's 108?

18 A State's Exhibit 108 is a photograph I made
19 taken off the Dunn -- taken off of Dunn Road in the
20 wooded area looking down on a white colored golf
21 shoe, the right shoe.

22 Q State's 109?

23 A State's Exhibit 109 is a photograph I made
24 in the wooded area off of Dunn Road looking down at
25 some compact discs that were scattered there in the

1 wooded area.

2 Q State's 110?

3 A State's Exhibit 110 is another photograph I
4 made in the wooded area off of Dunn Road showing
5 additional compact discs and compact disk cases.

6 Q And State's 111?

7 A State's Exhibit 111 is another photograph
8 showing compact discs and compact disk cases taken in
9 the wooded area of Dunn Road.

10 MR. BRITT: Your Honor, at this
11 time I move for admission of State's
12 Exhibit 102 through 111.

13 MR. BOWEN: Object, unless for
14 limited purpose.

15 THE COURT: Do you want to be
16 heard?

17 MR. BOWEN: No, sir.

18 THE COURT: The objection is
19 overruled. State's Exhibit 102 through 111
20 are admitted.

21 MR. BRITT: Your Honor, I ask at
22 this time that they be published to the
23 jury for their view.

24 THE COURT: Yes, sir. Sergeant
25 Meares, if you'll assist us, please.

1 MR. BRITT: Your Honor, to speed
2 this along, I'm going to divide the
3 exhibits, 102, 103, 104, 105, 106 would be
4 in one group.

5 THE COURT: If you'll start them
6 on the front row, please.

7 MR. BRITT: And 107 through 111
8 in a second group.

9 THE COURT: Yes, sir, if you'll
10 start those on another row.

11 While that's being done, may I
12 approach the Clerk?

13 THE COURT: Yes, sir.

14 (Exhibits published to the jury.).

15 BY MR. BRITT:

16 Q Mr. Underwood, the items that were
17 photographed along Dunn Road, what if anything was
18 done with those items?

19 A I collected the items from the wooded area
20 off of Dunn Road and took them to the Robeson County
21 Sheriff's Department where I packaged each item
22 individually in a separate bag.

23 Q And did anyone assist you in collecting
24 those items?

25 A Yes, sir, Special Agent Myers assisted me

1 with collecting them.

2 Q And what if anything did you observe
3 Special Agent Myers do in collecting the items?

4 A I don't recall specifically the manner that
5 he used. I know he was very careful when he picked
6 each item up and in handling that item so as not to
7 jeopardize the possibility of any latent fingerprints
8 that might be on the items.

9 Q And what if anything were these items
10 placed in there at the location on Dunn Road?

11 A Initially we placed them in either two or
12 three large plastic bags, and from there, I
13 transported all of those items back to the Sheriff's
14 office, and from there, I separated each of them into
15 an individual package.

16 Q And why did you separate them and place
17 them in individual packages?

18 A So they could be submitted to the SBI
19 laboratory for examination.

20 Q And who retained custody of the items that
21 had been seized along Dunn Road?

22 A I kept them, if I remember correctly, until
23 August the 16th, and then I turned them over to the
24 custody of Special Agent Heffney.

25 Q And why would you have turned them over to

1 Special Agent Heffney?

2 A Well, he was the case agent for the SBI in
3 this matter, and he retained most of the evidence.

4 (State's Exhibit 112 was
5 marked for identification.)

6 BY MR. BRITT:

7 Q Mr. Underwood, I'll show you what's been
8 marked as State's Exhibit 112, ask you to examine
9 this box, and if you will, what condition is this box
10 in at this time?

11 A It's in a sealed condition.

12 Q And do you recognize any markings on
13 State's Exhibit 112?

14 A No, sir.

15 Q With the Court's permission, may I unseal
16 the box?

17 THE COURT: Yes, sir.

18 MR. BRITT: The record will
19 reflect I have broken the seal on State's
20 Exhibit 112.

21 THE COURT: Yes, sir.

22 (State's Exhibit 113 was
23 marked for identification.)

24 BY MR. BRITT:

25 Q Mr. Underwood, when you packaged the

1 compact disks in individual packages, what type of
2 material did you use to package those?

3 A If I recall correctly, it was brown paper
4 bags.

5 Q I'm going to show you what's been marked as
6 State's Exhibit 113. If you will, for the record,
7 what condition is State's Exhibit 113 in at this
8 time, if you will describe State's Exhibit 113,
9 please?

10 A State's Exhibit 113 is a brown paper bag in
11 a sealed condition.

12 Q An do you recognize any markings on the
13 outside of State's Exhibit 113?

14 A No, sir.

15 Q With the Court's permission, may I open
16 this?

17 THE COURT: Yes, sir.

18 MR. BRITT: The record will
19 reflect that I have opened State's Exhibit
20 113.

21 THE COURT: Yes, sir.

22 BY MR. BRITT:

23 Q Mr. Underwood, I'm going to hand you
24 State's Exhibit 113. Again, for the purposes of the
25 record, will you describe the contents of State's

1 Exhibit 113?

2 A Yes, sir. State's Exhibit 113 is a brown
3 paper package containing the individual compact disks
4 and compact disk cases that were located in the
5 wooded area off of Dunn Road on the morning of August
6 15th, 1993, and these are the individual packages
7 that I placed the compact disks and the cases in that
8 same morning.

9 Q And how are you able to identify each of
10 the packages?

11 A Do you want me to look at each individual
12 one?

13 Q For the purpose of the record, will you
14 count the number of packages that are contained
15 inside of State's Exhibit 113?

16 A It's going to be difficult to do without
17 taking them out.

18 Q If you'll take portions of them out.

19 A I counted 39.

20 Q And do each of the 39 pages bear markings
21 that you recognize?

22 A Yes, sir.

23 Q And what markings do each of those packages
24 bear that you recognize?

25 A Each of those packages bears my initials,

1 T.A.U. on the seal. Also the description of the
2 contents of each package that I placed on it, the
3 date and time it was recovered, the SBI case file
4 number and item number assigned to this package.

5 Q And do each of the 39 packages contain CD's
6 that were located off of Dunn Road on the morning of
7 August 15th, 1993?

8 A Each of the packages contain either a
9 compact disk, a compact disk case or combination of
10 the two.

11 Q And after placing the items in the
12 individual packages you've testified that you turned
13 those items over to Special Agent Heffney on August
14 the 16th of 1993?

15 A Yes, sir.

16 Q And do the packages containing each
17 individual CD or CD case and CD's, do the packages
18 appear to be in substantially the same condition as
19 they were in when you first sealed the items?

20 A Yes, sir.

21 Q Are there any markings that appear on the
22 packages that were not present at the time you sealed
23 them?

24 A Yes, sir.

25 Q What if any markings appear on each of the

1 individual packages that you did not place there?

2 A There is a laboratory number assigned by
3 the SBI analyst who examined the item, and also that
4 analyst's initials.

5 Q And for the purposes of the record, are
6 each of the individual packages at this time sealed
7 as best you can tell based on your examination?

8 A Yes, sir.

9 MR. BRITT: If I could have just
10 a moment.

11 THE COURT: Yes, sir.

12 BY MR. BRITT:

13 Q Mr. Underwood, after leaving the area of
14 Dunn Road and going to -- where did you go to package
15 these items?

16 A In the conference room of the Robeson
17 County Sheriff's Department.

18 Q And after doing that, did you leave the
19 Robeson County Sheriff's Department?

20 A Yes, sir, I did sometime that morning.

21 Q Later on the day of August the 15th of
22 1993, did you have an occasion to return to the
23 Robeson County Sheriff's Department?

24 A Yes, sir.

25 Q What if anything occurred that caused you

1 to return to the Robeson County Sheriff's Department
2 later in the day on August the 15th of 1993?

3 A A telephone conversation that I had with
4 Sheriff Hubert Stone.

5 MR. BOWEN: Object.

6 THE COURT: As to the telephone
7 conversation itself, overruled. Exception
8 is noted for the record. Ask additional
9 questions.

10 MR. BRITT: Yes, sir.

11 BY MR. BRITT:

12 Q And what if anything did Sheriff Stone tell
13 you in that telephone conversation?

14 MR. BOWEN: Object.

15 THE COURT: You folks want to be
16 heard? For what purpose is this being
17 offered.

18 MR. BRITT: To explain
19 Mr. Underwood's conduct.

20 THE COURT: You folks want to be
21 heard or want a limiting instruction?

22 MR. BOWEN: Want to be heard,
23 Your Honor.

24 THE COURT: Ladies and gentlemen,
25 there's a matter of law the Court needs to

1 take up, and don't worry or speculate about
2 what takes place in the courtroom in your
3 absence. And if you would please step to
4 the jury room.

5 (Jury out at 10:39 a.m.)

6 THE COURT: The following is
7 being heard in the absence of the jury. So
8 that we can put it in context, why don't
9 you ask the question on the record and get
10 the answer and then I can hear the
11 objection.

12 BY MR. BRITT:

13 Q What if anything did Sheriff Hubert Stone
14 tell you in that conversation?

15 A He told me that Daniel Green had sent word
16 to him that he wanted to fess up and that he wanted
17 him to take him to where the ring and the watch were
18 buried, and he asked me to accompany him to recover
19 those items. And he further asked me to proceed to
20 the rear entrance door of the Robeson County
21 Sheriff's office that led directly into his office.

22 Q As a result of that conversation, what did
23 you do?

24 A I went to the Robeson County Sheriff's
25 office and met him at the rear entrance door.

1 MR. BRITT: For the purposes of
2 the voir dire, that would be the showing.

3 THE COURT: So that I can figure
4 out where we're going, when you arrived at
5 the Robeson County Sheriff's Department,
6 then Sheriff Stone's office, who was
7 present.

8 THE WITNESS: Sheriff Stone and
9 the defendant, Daniel Green.

10 THE COURT: Did you have any
11 conversation with the defendant or was
12 there any conversation by the defendant
13 with someone else in your presence during
14 that time period after you arrived.

15 THE WITNESS: Yes, sir, there was
16 conversation subsequent to my arrival, yes,
17 sir.

18 THE COURT: And what if anything
19 was said by the defendant after your
20 arrival in Sheriff Stone's office.

21 MR. BRITT: I don't mean to
22 interrupt, but this has already been the
23 subject of a previous hearing.

24 THE COURT: I understand. What
25 I'm trying to figure out is how much if any

1 of it is coming in. What I'm concerned
2 about is the phrase "fess up," and I'm
3 trying to figure out if I can establish or
4 it can be established on the record that he
5 had a conversation with Sheriff Stone
6 pursuant to that conversation, he went to
7 Sheriff Stone's office and then what
8 occurred.

9 MR. BRITT: I understand.

10 THE COURT: What was said, if
11 anything, by the defendant once you arrived
12 to Sheriff Stone's office by Mr. Green.

13 THE WITNESS: Immediately upon my
14 arrival there, Sheriff Stone asked, did we
15 want to take my car or his car? And I
16 suggested we take his car because he had a
17 four door. We got into his car, and then
18 the Sheriff asked Mr. Green where we were
19 going, something to that effect, and
20 Mr. Green told him we were going out to
21 highway 710. And then there was additional
22 conversation, I don't recall the exact
23 words, between Sheriff Stone and Mr. Green
24 about the specific location where we were
25 going. I don't recall exactly what they

1 said, but Mr. -- Sheriff Stone knew where
2 he was talking about.

3 THE COURT: Folks, I recall the
4 testimony in the motion to suppress, and
5 that's what I was trying to get clear in my
6 mind. You folks object to the
7 characterization based on the conversation
8 with Sheriff Stone about the defendant
9 wanting to fess up.

10 MR. BOWEN: Yes, first, double
11 hearsay, and second, he testified he got a
12 phone call, and from whom, and that
13 explains where he went, what he did. All
14 that other material is simply an attempt to
15 get in by indirection what he cannot get in
16 by direction, even with the Court's
17 instruction I think under Rule 403 it's so
18 obviously prejudicial and --

19 THE COURT: Well, he could get it
20 in if he offered it in through Sheriff
21 Stone.

22 MR. THOMPSON: Yes.

23 THE COURT: Folks, I'm going to
24 sustain the objection to conversation
25 Mr. Underwood had with Sheriff Stone. You

1 can establish there was a conversation with
2 Sheriff Stone, pursuant to that
3 conversation he went to the Robeson County
4 Sheriff's Department, Sheriff Stone's
5 office, and what occurred thereafter.

6 MR. BRITT: That would be fine.

7 THE COURT: The State's exception
8 is noted for the record to the ruling of
9 the Court, but the basis of the ruling, for
10 purposes of the record, is under Rule 403,
11 any limited instruction I give in my view
12 would not cure the substantial prejudice
13 that would occur.

14 Bring the jury back in, please, sir.

15 (Jury in at 10:44 a.m.)

16 THE COURT: The objection is
17 sustained. Mr. Britt, you may ask the
18 witness what if anything was done pursuant
19 to any conversation

20 BY MR. BRITT:

21 Q As a result of your telephone conversation
22 with Sheriff Stone, Mr. Underwood, what if anything
23 did you do?

24 A I went to the Robeson County Sheriff's
25 office, met with Sheriff Stone and the defendant,

1 Daniel Green.

2 Q Where did you meet with the Sheriff and
3 Daniel Green?

4 A On the walkway outside of Sheriff Stone's
5 office located at the rear entrance into the
6 Sheriff's office.

7 Q After arriving there at the Sheriff's
8 Department, what if anything occurred?

9 A Sheriff Stone, the defendant, Daniel Green,
10 and I left the Sheriff's office in Sheriff Stone's
11 county vehicle. We proceeded west on Highway 74
12 until we arrived at Highway 710. Once there, we
13 turned left on Highway 710 and traveled south to the
14 Tom M. Road, turned right there and traveled down to
15 the Austin Loop Road. We turned right on the Austin
16 Loop Road and went down to a green cinder block
17 residence located on the right and we stopped there.

18 Q What if anything occurred after you
19 stopped?

20 A We got out of the car, the defendant Daniel
21 Green walked over to the right rear corner of the
22 house, what I termed as the southeast corner of the
23 residence. He indicated with his foot where an item
24 could be found. And then from there, I started
25 digging in that area with my hand.

1 Q Prior to the defendant indicating that an
2 item could be found there, were you looking for a
3 specific item?

4 A Yes, sir.

5 Q What specific item were you looking for?

6 A A ring and a watch.

7 Q What type of ring were you looking for?

8 A At that time, I didn't know.

9 Q And after the defendant indicated with his
10 foot that an item could be found there beneath the
11 surface of the ground, what did you do?

12 A I continued digging in that area until I
13 located a clear plastic bag buried a few inches
14 underground. Inside that clear plastic bag I believe
15 were two additional clear plastic bags, and an NBA
16 All-Star ring that had on one side, 1986, and on the
17 other side, the name Jordan.

18 Q And who actually recovered that ring?

19 A I did.

20 Q And in whose possession did that ring
21 remain after it was recovered there at this
22 residence?

23 A In my possession.

24 Q And after you recovered this ring inside
25 these plastic bags, what if anything did you do with

1 those items?

2 A I sealed them in another clear plastic bag
3 and placed my initials along the seal and a
4 description on the outside of the bag of the contents
5 therein, and I maintained custody of that item at the
6 Fayetteville SBI office in my evidence locker there
7 until sometime later I transferred custody of that
8 item to Special Agent Heffney

9 (State's Exhibit 114 was
10 marked for identification.)

11 MR. BRITT: May I approach?

12 THE COURT: Yes, sir

13 BY MR. BRITT:

14 Q Mr. Underwood, I'm going to hand you what
15 has been marked as State's Exhibit Number 114, ask
16 you to examine that and tell me if you can identify
17 State's Exhibit Number 114? State's Exhibit 114 is
18 the bag itself?

19 A Yes, sir. I can.

20 Q How are you able to identify State's
21 Exhibit 114?

22 A I can identify State's Exhibit 114 by my
23 initials that appear along the seal at the top, also
24 I recognize my handwriting that I placed on this bag,
25 the SBI case file number, and the description of the

1 items within the bag, the date and time this item was
2 recovered and the location of the recovery.

3 Q And what if any writings did you place on
4 the outside of the bag marked as State's Exhibit 114?

5 A I placed the SBI case file number 491-H-16
6 and the written description "one Ziplock bag
7 containing two plastic bags containing a silver
8 colored NBA 1986 All Star ring with name Jordan," my
9 initials T.A.U. item 42, 6:20 p.m., 8-15-93,
10 southeast corner of Elizabeth Austin residence.

11 Q Mr. Underwood, is State's Exhibit 114 in
12 substantially the same condition it was in after you
13 placed the items in the plastic bags on August the
14 14th, 1993 with the exception of the bag being
15 opened? For purposes of the record, State's Exhibit
16 114 is not in a sealed condition at this time, is
17 that correct?

18 A Yes, sir.

19 Q The record will reflect that I'm removing
20 the contents of State's Exhibit 114?

21 THE COURT: Yes, sir.

22 BY MR. BRITT:

23 Q Mr. Underwood, having removed the contents
24 of State's Exhibit 114, ask you to examine those
25 items. For the record, will you state what has been

1 removed from State's 114?

2 A What is being removed from State's Exhibit
3 114 is a Ziplock plastic bag containing two
4 additional Ziplock bags, and in one of those bags is
5 an NBA All-Star ring, 1986 appearing on one side and
6 the name Jordan on the other.

7 Q The plastic bag containing the ring which
8 you referred to, has it previously been marked as
9 State's Exhibit Number 7?

10 A Yes, sir.

11 Q And the plastic bag that you removed from
12 State's Exhibit 114, are they in substantially the
13 same condition they were in at the time that you
14 found them on August 15th of 1993?

15 A Yes, sir.

16 Q Plastic bag marked as State's Exhibit 7, if
17 the record will reflect I'm removing the contents.
18 Mr. Underwood, do you recognize what has removed from
19 State's Exhibit Number 7?

20 A Yes, sir.

21 Q How are you able to recognize the contents
22 of State's Exhibit Number 7?

23 A I can recognize it by the engraving and the
24 inscriptions on the ring, 1986, NBA All-Star and the
25 name Jordan.

1 Q And for the record, is the contents of
2 State's Exhibit Number 7 a silver colored ring with a
3 blue stone?

4 A Yes, sir.

5 Q And is that ring in substantially the same
6 condition as it was in when you found it on August
7 the 15th, 1993 at the defendant's grandmother's
8 residence?

9 A Yes, sir.

10 MR. BRITT: Your Honor, at this
11 time, I move for admission of State's
12 Exhibit 114 and State's Exhibit Number 7.

13 THE COURT: Without objection,
14 State's Exhibits 114 and, I'm sorry, the
15 other number?

16 MR. BRITT: Number 7.

17 THE COURT: Are admitted.

18 MR. BRITT: And at this time I
19 would ask that State's Exhibit Number 7 and
20 its contents be published to the jury.

21 THE COURT: Yes, sir. There's a
22 question as to whether or not the exhibit
23 may be taken out. Does either counsel want
24 to be heard?

25 MR. BRITT: No, sir, that's fine

1 with the State.

2 MR. THOMPSON: No, sir.

3 THE COURT: Yes, sir, you may.

4 (Exhibit published to the jury.)

5 MR. BRITT: If I may approach.

6 THE COURT: Yes, sir.

7 MR. BRITT: Your Honor, at this
8 time, can we take a morning recess?

9 THE COURT: Yes, sir, thank you.
10 Mr. Underwood, you may come down. Ladies
11 and gentlemen we're going to be at ease
12 until 20 after. Please recall the Court's
13 prior instructions concerning your conduct
14 during the recess. Everyone else please
15 remain seated, the members of the jury are
16 excused.

17 (Jury out at 10:58 a.m.)

18 THE COURT: We're at ease,
19 folks.

20 (Brief recess.)

21 MR. BRITT: May it please the
22 Court, going back to the matters that were
23 put on the record at the beginning of court
24 this morning involving Mr. Michael
25 Holtzclaw, at this time I would provide the

1 Court, make it part of the record, the
2 statement that was obtained, typewritten
3 statement that was obtained from
4 Mr. Holtzclaw. I'm providing that to
5 defenses counsel at this time. And we'll
6 be providing a copy of the --
7 Mr. Thompson's notes in regard to the
8 interview for the Court to examine in
9 camera pursuant to the Court's previous
10 order.

11 THE COURT: I'll direct that the
12 Court mark this or file this as an exhibit
13 for the purposes of the record. Ready to
14 go forward?

15 MR. BRITT: Yes, sir.

16 THE COURT: Mr. Underwood, if
17 you'll return to the stand, please. Bring
18 the jury in.

19 (Jury in at 11:22 a.m.)

20 THE COURT: Any additional
21 questions, Mr. Britt?

22 MR. BRITT: Yes, sir.

23 BY MR. BRITT:

24 Q Mr. Underwood, after the NBA ring was
25 recovered, was the defendant taken back to Robeson

1 County Sheriff's Department?

2 A Yes, sir.

3 Q And did you have any further contact with
4 the defendant on August the 15th, 1993, after he was
5 returned to the Robeson County Sheriff's Department?

6 A No, sir.

7 Q On Monday, August 23rd, 1993, did you,
8 along with other officers, go to the area of a canal
9 bank off of Highway 710 here in Robeson County?

10 A Yes, sir.

11 Q How did you -- where was that canal bank
12 located in relationship to highway 710?

13 A The canal bank was on, if traveling south
14 on Highway 710 from U.S. 74, the canal bank would be
15 on the right, actually the west of highway 710.

16 Q And what if -- what other officers went
17 there with you?

18 A Robeson County Sheriff's Office Detective
19 Anthony Thompson.

20 Q Were there any other individuals there that
21 accompanied you?

22 A There were numerous individuals who met us
23 there, and they were all members of the Robeson
24 County Search and Rescue Team.

25 Q What was your purpose in going to this

1 canal bank off of Highway 710 on August 23rd, 1993?

2 A To look for items that may possibly be
3 there in the wooded area.

4 Q And what time of the day did you go to this
5 canal bank?

6 A This was evening time, shortly after 6:00
7 p.m. on Monday, August the 23rd, 1993 when we arrived
8 there.

9 Q On that occasion did you take your camera
10 with you as well?

11 A I believe Detective Thompson had a camera
12 with him. If I recall correctly I was riding with
13 him.

14 Q And there at the canal bank, did you take
15 any photographs of any items that were recovered?

16 A I did not.

17 Q Were any items recovered along this canal
18 bank on Highway 710?

19 A Yes, sir.

20 Q And do you recall what if any items were
21 recovered along this canal bank?

22 A There were numerous items, there were five
23 Federal Express packages, a section from a newspaper,
24 payroll checks, credit cards, various papers and
25 documents.

1 Q And who if anyone seized any of these
2 items?

3 A I seized all of the items that were located
4 there.

5 Q And after seizing the items, what if
6 anything did you do with them?

7 A I packaged all of the items up in separate
8 packages, and I later transferred those items to the
9 custody of Special Agent Heffney.

10 Q Why did you seize these various items there
11 along the canal bank along Highway 710?

12 A Most of the items had the victim's name
13 somewhere on the item, that being James Jordan.

14 Q And after the items were seized along the
15 canal bank on Highway 710, who retained custody of
16 those items?

17 A I did until the time that I turned them
18 over to Special Agent Heffney.

19 Q Do you recall when you turned those items
20 over to Special Agent Heffney?

21 A I don't recall the specific date, it should
22 be on the individual packages.

23 Q And where did you store those items from
24 the time that you seized them until you turned them
25 over to Special Agent Heffney?

1 A Well, if it was sometime later after the
2 23rd when I turned it over, it would have been stored
3 in the Fayetteville SBI locker, evidence locker

4 (State's Exhibit 115 was
5 marked for identification.)

6 MR. BRITT: May I approach the
7 witness?

8 THE COURT: Yes, sir.

9 BY MR. BRITT:

10 Q I'll show you what has been marked as
11 State's Exhibit Number 115. For the record, can you
12 describe what this item is?

13 A State's Exhibit 115 is a white, large white
14 cardboard box.

15 Q And in what state is this large -- this
16 cardboard box, sealed or unsealed?

17 A Unsealed condition.

18 MR. BRITT: With the Court's
19 permission, if the record will reflect --
20 State's Exhibit 115 is in an unsealed
21 condition, and I am opening that box.

22 THE COURT: Yes, sir.

23 MR. BRITT: The record will
24 reflect I have removed items from State's
25 Exhibit 115.

1 THE COURT: Yes, sir.

2 (State's Exhibit 116 was
3 marked for identification.)

4 BY MR. BRITT:

5 Q I'll show you what has been marked as
6 State's Exhibit 116, ask you to examine that and tell
7 me if you can identify it?

8 A Yes, sir, I can.

9 Q How are you able to identify State's
10 Exhibit Number 116?

11 A I can identify State's Exhibit number 116
12 by my initials, T.A.U., that appear on the seal and
13 also by the item number 68 that I placed on here, and
14 the handwritten description of the contents within
15 this package. Also, the SBI case file number,
16 491-H-16, my name, the date and time it was
17 recovered, August 23rd, 1993, 6:45 p.m.

18 Q For the record, what is State's Exhibit
19 Number 116?

20 A Brown paper bag, sealed brown paper bag.

21 Q At the time you placed any items in State's
22 Exhibit 116, did you seal the bag containing the
23 item?

24 A Yes, sir.

25 Q And what if any markings did you place on

1 the outside of State's Exhibit 116?

2 A The written description of the contents
3 within this package, five Federal Express packages
4 with mailers bearing the name Schiff, S C H I F F,
5 Hardin & Waite, numerous paper documents from
6 Attorney Wayne A. McCoy to James R. Jordan.

7 Q Is State's Exhibit 116 in substantially the
8 same condition as it was in at the time you sealed
9 the package?

10 A Yes, sir.

11 (State's Exhibit 117 was
12 marked for identification.)

13 BY MR. BRITT:

14 Q Hand you what's been marked as State's
15 Exhibit 117, can you identify that?

16 A Yes, sir.

17 Q How are you able to identify State's
18 Exhibit 117?

19 A I can identify State's Exhibit 117 by my
20 initials, T.A.U., that appear along the seal, front
21 and back, and the item number that I assigned to this
22 item, item number 70, the written description,
23 correspondence from attorney David B. Falk, F A L K,
24 to James R. Jordan, the SBI case file number,
25 491-H-16, the date, August 23rd, 1993, 6:45 p.m., and

1 my name.

2 Q And after placing the item inside of
3 State's Exhibit Number 117, did you seal the package?

4 A Yes, sir.

5 Q And is that package in substantially the
6 same condition today as it was at the time you sealed
7 it?

8 A Yes, sir.

9 (State's Exhibit 118 was
10 marked for identification.)

11 BY MR. BRITT:

12 Q Handing you what's been marked as State's
13 Exhibit 118, ask you to look at that and tell me if
14 you can identify it?

15 A Yes, sir, I can.

16 Q How are you able to identify State's
17 Exhibit 118?

18 A I can identify State's Exhibit 118 by my
19 handwriting that I recognize on the package, also my
20 initials, T.A.U., that I signed on the back, the
21 description I placed on the contents, shipping
22 invoice and other documents pertaining to a 1992
23 SC400 two-door coop Lexus, VIN number JT8UZ30C9 -- I
24 can't make out all the numbers. From Bredemann
25 Lexus, Glenview, Illinois and Henry Lexus, Charlotte,

1 North Carolina showing the customer's name James R.
2 Jordan, SBI indication number, dates, August 23, 1993
3 6:45 p.m.

4 Q After placing the item inside State's
5 Exhibit 118, did you seal the bag?

6 A Yes, sir.

7 Q Is the bag in substantially the same
8 condition today as it was at the time you sealed it?

9 A It appears to have been resealed at some
10 later time.

11 (State's Exhibit 119 was
12 marked for identification.)

13 BY MR. BRITT:

14 Q Handing you what's been marked as State's
15 Exhibit 119, ask if you can identify that?

16 A Yes, sir.

17 Q How are you able to identify State's
18 Exhibit 119?

19 A I can identify State's Exhibit 119 by my
20 initials, T.A.U., that appear along the seal and the
21 description and the writing that I placed on the
22 outside of the bag, item number 72, payroll checks
23 from J.V.L. Enterprises, and other J.V.L. Enterprise
24 documents, date of recovery, August 23rd, 1993, 6:45
25 p.m., location of the recovery, canal bank, one mile

1 east of N C 710, recovered by Special Agent T.A.
2 Underwood, suspect's name, victim's name.

3 Q And State's Exhibit 119, after you placed
4 the items inside the bag, was the bag sealed?

5 A Yes, sir.

6 Q And is State's Exhibit 119 in substantially
7 the same condition today as it was at the time you
8 sealed it?

9 A Yes, sir.

10 (State's Exhibit 120 was
11 marked for identification.)

12 BY MR. BRITT:

13 Q Handing you what's been marked as State's
14 Exhibit 120, ask if you can identify that?

15 A Yes, sir.

16 Q And how are you able to identify State's
17 Exhibit Number 120?

18 A I can identify State's Exhibit 120 by my
19 initials, T.A.U., the SBI case file number, item
20 number 73, and the description I placed on the
21 outside, billing notice from Elected Insurance to
22 James R. Jordan and Delores P. Jordan, P.O. Box 23236
23 Charlotte, North Carolina, my name, date, August
24 23rd, 1993, and the time 6:45 p.m.

25 Q After recovering the item, was it placed in

1 the bag and was the bag sealed?

2 A Yes, sir.

3 Q Is State's Exhibit 120 in substantially the
4 same condition today as it was at the time you sealed
5 it?

6 A Yes, sir.

7 (State's Exhibit 121 was
8 marked for identification.)

9 BY MR. BRITT:

10 Q I'm going to hand you what has been marked
11 as State's Exhibit 121, ask if you can identify it?

12 A Yes, sir, I can.

13 Q How are you able to identify it?

14 A I can identify State's Exhibit 121 by my
15 initials, T.A.U., the SBI case file number, item
16 number 74, and the writing that I placed on the
17 outside, documents from the Croisland Group,
18 Incorporated to James R. Jordan, my name, the date
19 August 23rd, 1993, 6:45 p.m.

20 Q After recovering the item was the item
21 placed in the bag and was the bag sealed?

22 A Yes, sir.

23 Q Is State's Exhibit Number 121 in
24 substantially the same condition today as it was at
25 the time you sealed it?

1 A Yes, sir.

2 (State's Exhibit 122 was
3 marked for identification.)

4 BY MR. BRITT:

5 Q Hand you what's been marked as State's
6 Exhibit 122, ask if you can identify it?

7 A Yes, sir, I can.

8 Q How are you able to identify it?

9 A I can identify State's Exhibit 122 by my
10 initials, T.A.U., that appear along the seal, item
11 number 75, the writing that I placed on the outside
12 of the package, First Union National Bank documents
13 for J.V.L. Enterprises, and Hilton Head settlement.
14 My name, date, August 23rd, 1993, 6:45 p.m.

15 Q After recovering the documents were they
16 placed inside the paper bag and sealed?

17 A Yes, sir.

18 Q Is State's Exhibit 122 in substantially the
19 same condition today as it was at the time you sealed
20 it?

21 A Yes, sir.

22 (State's Exhibit 123 was
23 marked for identification.)

24 BY MR. BRITT:

25 Q I'm going to hand you what has been marked

1 as State's Exhibit 123, ask if you can identify it?

2 A Yes, sir, I can.

3 Q How are you able to identify it?

4 A I can identify State's Exhibit 123 by my
5 initials, T.A.U. and the handwriting that I placed on
6 the exterior of the package, item number 76, SBI case
7 file number, and the description of the contents,
8 Advantage Scratch Pad with handwritten entries, pad
9 contains a computer printout entitled J.M.G.
10 Operating Budget and Projections. Pad further
11 contains several canceled checks from James R.
12 Jordan, the date August 23rd, 1993, 6:45 p.m.

13 Q State's Exhibit 123, were the items placed
14 inside the paper bag and was the paper bag sealed?

15 A Yes, sir.

16 Q State's Exhibit 123, is it in substantially
17 the same condition today as it was at the time you
18 sealed the items?

19 A Yes, sir.

20 (State's Exhibit 124 was
21 marked for identification.)

22 BY MR. BRITT:

23 Q I'm going to hand you what has been marked
24 as State's Exhibit 124, ask if you can identify it?

25 A Yes, sir, I can.

1 Q How are you able to do that?

2 A I can identify State's Exhibit Number 124
3 by the handwriting on the outside of the package,
4 item number 77 and the scripts I placed on the
5 outside, a typewritten letter from James R. Jordan in
6 care of J.V.L. Enterprises, Incorporated, dated July
7 14th, 1993 to Elaine, the SBI case file number, my
8 name and the time.

9 Q And after recovering the documents, were
10 the documents placed inside the paper bag and was it
11 sealed?

12 A Yes, sir.

13 Q Is State's Exhibit 124 in substantially the
14 same condition today as it was at the time you sealed
15 it?

16 A Yes, sir.

17 (State's Exhibit 125 was
18 marked for identification.)

19 BY MR. BRITT:

20 Q I'm going to hand you what has been marked
21 as State's Exhibit 125, ask if you can identify it?

22 A Yes, sir, I can.

23 Q How are you able to identify State's
24 Exhibit 125?

25 A By my initials, T.A.U. and the writing I

1 placed on the exterior of the package, item number
2 78, miscellaneous documents, some bearing the name
3 James Jordan, date and time of recovery, August the
4 23rd, 1993, 6:45 p.m., location of the recovery,
5 victim's and suspect's name.

6 Q And after the items were recovered, were
7 they placed in a paper bag and paper bag sealed?

8 A Yes, sir.

9 Q Is it in substantially the same condition
10 today as it was at the time you sealed the item?

11 A Yes, sir.

12 (State's Exhibit 126 was
13 marked for identification.)

14 BY MR. BRITT:

15 Q Hand you what's been marked as State's
16 Exhibit 126, ask you to examine that and tell me if
17 you can identify it?

18 A Yes, sir.

19 Q How are you able to identify State's
20 Exhibit 126?

21 A By the initials T.A.U. on the outside of
22 the package, SBI case file number, item number I
23 assigned, item number 79, the written description,
24 manila envelopes, one containing an attached envelope
25 addressed to Flight 23, by Jordan, Incorporated,

1 number one, P.O. Box 23236, Charlotte, North
2 Carolina, 28212, my name, the date August 23rd, 1993,
3 6:45 p.m.

4 Q After the items were recovered, were they
5 placed in the paper bag and was the paper bag sealed?

6 A Yes, sir.

7 Q Is State's Exhibit 126 in substantially the
8 same condition today as it was at the time you sealed
9 it?

10 A Yes, sir.

11 (State's Exhibit 127 was
12 marked for identification.)

13 BY MR. BRITT:

14 Q I'm going to hand you what has been marked
15 as State's Exhibit 127, ask if you can identify that
16 and how?

17 A Yes, sir, I can. I can identify State's
18 Exhibit Number 127 by my initials, T.A.U. that appear
19 along the seal, the SBI case file number 491-H-91,
20 the item number 80, and the written description,
21 envelope from Carlson Travel Network, containing
22 airline ticket stubs from U.S. Air in name of James
23 R. Jordan, the date and time of recovery, August
24 23rd, 1993, 6:45 p.m.

25 Q After the items were recovered, were they

1 placed in a paper bag and was the paper bag sealed?

2 A Yes, sir.

3 Q Is State's Exhibit 127 in substantially the
4 same condition today as it was at the time you sealed
5 the items?

6 A Yes, sir.

7 (State's Exhibit 128 was
8 marked for identification.)

9 BY MR. BRITT:

10 Q Hand you State's Exhibit Number 128, ask if
11 you can identify that and how?

12 A Yes, sir, I can. I can identify State's
13 Exhibit Number 128 by my initials, T.A.U. that appear
14 along the seal, the SBI case file number, item number
15 I assigned, item 81, the written description, papers
16 from the Optima card to James R. Jordan, date and
17 time of recovery, August 23rd, 1993, 6:45 p.m.

18 Q After the items were recovered were they
19 placed in a paper bag and sealed?

20 A Yes, sir.

21 Q Is State's Exhibit Number 128, is it in
22 substantially the same condition today as it was at
23 the time it was sealed?

24 A Yes, sir.

25 (State's Exhibit 129 was
marked for identification.)

1 BY MR. BRITT:

2 Q Handing you what's been marked as State's
3 Exhibit 129, ask if you can identify that and how?

4 A Yes, sir, I can identify State's Exhibit
5 129 by my initials, T.A.U., that appear along the
6 seal, the SBI case file number, the item number
7 assigned, 82, the written description, one blue
8 plastic checkbook with ledger, one blank loose check,
9 number 445 in name of James R. Jordan, date and time
10 of recovery, August 23rd, 1993, 6:45 p.m.

11 Q After the items were recovered, were they
12 placed in the paper bag and paper bag sealed?

13 A Yes, sir.

14 Q Is State's Exhibit Number 129 in
15 substantially the same condition today as it was at
16 the time the bag was sealed?

17 A Yes, sir.

18 (State's Exhibit 130 was
19 marked for identification.)

20 BY MR. BRITT:

21 Q Handing you what's been marked as State's
22 Exhibit 130, ask if you can identify that and how.

23 A Yes, siring I can identify State's Exhibit
24 Number 130 by my initials, T.A.U., the SBI case file
25 number, item number 84, and the written description,

1 torn telephone directory pages showing Fayetteville,
2 Hope Mills, Spring Lake telephone numbers, date
3 August 23rd, 1993, my name, 6:45 p.m.

4 Q After the items were recovered were they
5 placed the paper bag and paper bag sealed?

6 A Yes, sir.

7 Q Is State's Exhibit Number 130 in
8 substantially the same condition today as it was at
9 the time you sealed it?

10 A Yes, sir.

11 (State's Exhibit 131 was
12 marked for identification.)

13 BY MR. BRITT:

14 Q Handing you what's been marked as State's
15 Exhibit 131, ask if you can identify that and how?

16 A Yes, sir, I can. State's Exhibit Number
17 131 is a sealed brown paper bag bearing my initials,
18 T.A.U., the SBI case file number item number 85, and
19 the written description on the exterior of the
20 package, two white golf tee's and a business card
21 bearing the name Paul A S M U L S O N, the date
22 August 23rd, 1993, my name, 6:45 p.m.

23 Q After the items were recovered, were they
24 placed in the paper bag and paper bag sealed?

25 A Yes, sir.

1 Q Is State's Exhibit 131 in substantially the
2 same condition today as it was at the time it was
3 sealed?

4 A Yes, sir.

5 (State's Exhibit 132 was
6 marked for identification.)

7 BY MR. BRITT:

8 Q Handing you what's been marked as State's
9 Exhibit 132, ask you to examine that and tell me if
10 you can identify it?

11 A Yes, sir, I can. State's Exhibit 132 is a
12 sealed brown paper bag containing the written
13 description I placed on the exterior of the package,
14 cellular phone documents bearing name James Raymond
15 Jordan, the date and time of recovery, August 23rd,
16 1993, my name, 6:45 p.m., my initials, T.A.U., along
17 the seal along with the SBI case number, and item
18 assigned, number 83.

19 Q And after the items were recovered were
20 they placed in the paper bag and was the bag sealed?

21 A Yes, sir.

22 Q Is State's Exhibit 132 in substantially the
23 same condition today as it was at the time you sealed
24 the bag?

25 A Yes, sir.

1 (State's Exhibit 133 was
2 marked for identification.)

3 BY MR. BRITT:

4 Q Handing you what's been marked as State's
5 Exhibit 133, ask if you can identify that and how?

6 A Yes, sir, I can. I can identify State's
7 Exhibit Number 133 by my initials that appear along
8 the seal, T.A.U., also the white sealed envelope that
9 I placed the items contained within this package,
10 items number 86-A through 86-G, and the written
11 description I placed on the exterior of the package,
12 seven credit cards and one Blockbuster Video card,
13 all issued to James R. Jordan, the date August 23rd,
14 1993, time of recovery 6:45 p.m.

15 Q Is -- after the items were recovered, were
16 the items placed inside the envelope and was the
17 envelope sealed?

18 A Yes, sir.

19 Q Is State's Exhibit Number 133 in
20 substantially the same condition today as it was at
21 the time you sealed it?

22 A Yes, sir.

23 Q State's Exhibit 116 through 133, where were
24 all those items recovered?

25 A In the wooded area off of the canal bank

1 which ran to the west of Highway 710, south of
2 Highway 74.

3 MR. BRITT: May I?

4 THE COURT: Yes, sir.

5 MR. BRITT: Your Honor, if
6 Mr. Underwood may step down.

7 THE COURT: Yes, sir.

8 BY MR. BRITT:

9 Q Ask you to look at State's Exhibit Number
10 94, ask you if you can identify what is depicted in
11 this diagram.

12 A Yes, sir. State's Exhibit Number 94 is a
13 diagram or a sketch of Robeson County, in particular,
14 the southern part of Robeson County.

15 Q And State's Exhibit Number 94, is it a map
16 of portions of Robeson County, Scotland County, and
17 also a portion of South Carolina?

18 A Yes, sir.

19 Q And can you use State's Exhibit Number 94
20 in illustrating your testimony to the jury as to the
21 route that you took on August 15th of 1993 when you,
22 Sheriff Stone, and the defendant went to the
23 residence off of Highway 710?

24 A Yes, sir.

25 Q Using this pointer, Mr. Underwood, if you

1 will, where did you, Sheriff Stone and the defendant
2 leave from?

3 A We left from the Robeson County Sheriff's
4 Department which is located by the number one. At
5 that time was Sanchez Drive off of Highway 41 near
6 U.S. 74.

7 Q And where did you go from there?

8 A I went down to Highway 74 and traveled west
9 across Interstate 95. We proceeded on the Highway
10 710 and we turned to the left here at Highway 710
11 (indicating), traveled south to the Tom M. Road, we
12 turned right, traveled west up to the Austin Loop
13 Road which is here, we turned to the right on Austin
14 Loop Road and stopped at the residence which was
15 somewhere down here on the right on Austin Loop Road.

16 Q For the purposes of the record, if you will
17 take this green marking pen and mark the route that
18 you took on August the 15th from the Robeson County
19 Sheriff's Department to the residence located off of
20 Austin Loop Road?

21 A (Witness complies).

22 Q And the area where you stopped, if you will
23 place a green mark at that location, and if you will
24 place the number 9 beside that in the caption or the
25 margin of State's Exhibit Number 94, Mr. Underwood,

1 if you'll write the number 9 and write in the
2 description.

3 A (Witness complies).

4 Q And for the purposes of the record, your
5 Honor, would the record reflect that Mr. Underwood
6 has used a green marking pen and drawn a line on
7 State's Exhibit Number 74 with that green marking pen
8 from an area previously identified as the Robeson
9 County Sheriff's Department that's designated with
10 the number 1 from that location, has used the green
11 marking pen and has traced the route of U.S. 74 west
12 as it is depicted on State's Exhibit Number 94, with
13 that green marking pen, the intersection of Highway
14 710 and U.S. 74, Mr. Underwood has drawn a mark that
15 proceeds in what would be a southerly direction to
16 the intersection of what is designated as the Tom M.
17 Road, and that the line he has drawn stops in an area
18 designated as the Austin Loop Road where there is a
19 green circle that appears with the number 9, and in
20 the margin he has written in the number 9 and the
21 following description, "Green's grandmother's
22 residence".

23 THE COURT: Yes, sir, the record
24 may so show.

25 BY MR. BRITT:

1 Q Mr. Underwood at the area that you
2 designated as number 9, is that where the NBA
3 All-Star ring was recovered?

4 A Yes, sir.

5 Q Mr. Underwood, can you use State's Exhibit
6 Number 94 to illustrate to the jury the location of
7 the canal bank off of Highway 710 where State's
8 Exhibits 116 through 133 were recovered?

9 A Yes, sir.

10 Q Using the pointer, can you point out to the
11 jury the location of that canal and the area where
12 these items were recovered?

13 A (Indicating). Yes, sir, the canal is
14 located here, runs to the west of Highway 710. It's
15 a short distance south of Highway 74 and runs west of
16 Highway 710.

17 Q With this blue marking pen, will you mark
18 that area where the search was conducted and State's
19 Exhibits 116 through 133 were recovered?

20 A This is an approximation on the distance
21 down this canal (indicating).

22 Q And if you will place the number 10 by the
23 blue dot that you have drawn there?

24 A (Indicating).

25 Q And in the margin of State's Exhibit Number

1 94 if you'll write in the number 10 and a
2 description.

3 A (Witness complies).

4 MR. BRITT: Your Honor, if the
5 record will reflect that Mr. Underwood has
6 taken --

7 MR. THOMPSON: Your Honor, I
8 object to the District Attorney -- he can
9 ask specific questions.

10 THE COURT: Overruled.

11 MR. BRITT: The record will
12 reflect that Mr. Underwood has used a blue
13 marking pen and has marked an area
14 designated off of Highway 710 as depicted
15 on State's Exhibit Number 94, with that
16 blue marking pen has drawn in a blue circle
17 and placed the number 10 by that and then
18 in the margin has written in the number 10
19 and the then the description canal west of
20 Highway 710.

21 THE COURT: Yes, sir, the record
22 may so show.

23 MR. BRITT: And with the Court's
24 permission, if I may remove this item.

25 THE COURT: Yes, sir.

1 MR. BRITT: Mr. Bowen indicated
2 he needs it for cross. I'm going the lean
3 it against the jury box.

4 THE COURT: Yes, sir.

5 MR. BRITT: Your Honor, at this
6 time the State would move for admission
7 into evidence State's Exhibits 116 through
8 133.

9 THE COURT: Without objection,
10 State's Exhibits 116 through 133 are
11 admitted.

12 MR. BRITT: May I approach the
13 Clerk?

14 THE COURT: Yes, sir.

15 THE COURT: 115 has not been
16 offered.

17 MR. BRITT: 115 -- marked for
18 purposes of identification.

19 THE COURT: Okay.

20 (State's Exhibit 134 was
21 marked for identification.)

22 MR. BRITT: May I approach the
23 witness once again?

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 134, ask you to examine it and
3 tell me if you can identify it?

4 A Yes, sir, I can.

5 Q How are you able to identify State's
6 Exhibit 134?

7 A I can identify State's Exhibit Number 134
8 by my initials, T.A.U., that appear along the seal,
9 my handwriting that appears along the outside of the
10 package bearing the SBI case file number 491-H-16,
11 item number 69 and the written description I placed
12 on the outside of the package, Sports section, the
13 Daily Item newspaper, dated June the 1st, 1993, with
14 headlines, "Jordan Scores 54 in Bullets Rout," my
15 name, the date, August 23rd, 1993, the time it was
16 recovered 6:45 p.m.

17 Q Where was the Sports section of the Daily
18 Item recovered?

19 A It was recovered in the woods there off the
20 Canal Road off of Highway 710.

21 Q And after placing the newspaper section
22 into the envelope was the envelope sealed?

23 A Yes, sir.

24 Q Is State's Exhibit Number 134 in
25 substantially the same condition today as it was at

1 the time you sealed it?

2 A Yes, sir.

3 (State's Exhibit 135 was
4 marked for identification.)

5 BY MR. BRITT:

6 Q Hand you what's been marked as State's
7 Exhibit Number 135, ask if you can identify that?

8 A Yes, sir, I can.

9 Q How are you able to identify State's
10 Exhibit 135?

11 A I can identify State's Exhibit Number 135
12 by my handwriting and initials that appear on the
13 outside of the package, the SBI case file number I
14 placed on this item, 491-H-91, item number 49, a
15 written description of the items, various paper
16 writings containing directions to numerous
17 locations.

18 Q And what if anything did you place inside
19 of State's Exhibit 135 prior to sealing it?

20 A Just pieces of paper with handwriting
21 entries on numerous pieces of paper.

22 Q And where were those pieces of paper with
23 the handwriting located or found?

24 A They were found inside of a 12 gallon Genie
25 vacuum at the residence of the defendant Daniel Green

1 on August the 16th, 1993 at 8:37 p.m.

2 Q Are those the paper writings that you found
3 inside the Genie vacuum cleaner at the time the .38
4 caliber Smith & Wesson revolver was seized August the
5 16th, 1993 in the defendant's trailer?

6 A Yes, sir.

7 Q Are those items in substantially the same
8 condition today as they were at the time you seized
9 them?

10 A Yes, sir.

11 MR. BRITT: Your Honor, at this
12 time I move for admission of State's
13 Exhibit 134 and 135.

14 THE COURT: They are admitted
15 without objection.

16 MR. BRITT: I don't have any
17 other questions.

18 THE COURT: Any
19 cross-examination?

20 MR. BOWEN: Yes. May we reset
21 the exhibit?

22 MR. BRITT: Sure.

23 MR. BRITT: Mr. Underwood, would
24 you come around, please?

25 THE WITNESS: (Witness complies).

1 CROSS-EXAMINATION

2 BY MR. BOWEN:

3 Q The area in which you say that you found
4 the items, or, some of the items that you've
5 described here in evidence, that is, the items on the
6 ditch bank, you found that in area number 10 where
7 you've marked the blue mark, correct?

8 A Yes, sir.

9 Q All right. And that is a canal, or a canal
10 ditch bank?

11 A Canal road.

12 Q Now, across from that road is the residence
13 of whom?

14 A Mr. Larry Demery.

15 MR. BRITT: Objection.

16 THE COURT: Well, if you know,
17 you may answer.

18 THE WITNESS: Mr. Larry Martin
19 Demery.

20 BY MR. BOWEN:

21 Q And in fact, Mr. Demery's residence, you
22 have the words "dirt road, Demery residence" is here,
23 but a very small line points with an arrow to a blue
24 rectangle, correct, if you look at it rather closely
25 where my pointer is?

1 A That's correct.

2 Q And that blue rectangle represents the
3 exact spot where Mr. Demery's house is, right?

4 A I don't know, sir, I didn't prepare the
5 exhibit.

6 Q Okay. When one -- you have been to
7 Mr. Demery's house, haven't you?

8 A Yes, sir.

9 Q When one looks out the front of
10 Mr. Demery's house, one can see the area where items
11 were found, one can see area number 10 on the map
12 here, can't you?

13 MR. BRITT: Objection.

14 THE COURT: If he knows he may
15 answer.

16 BY MR. BOWEN:

17 Q Or you saw, didn't you?

18 A I don't know if you could actually -- it's
19 close, I don't know if you can actually see it or
20 not.

21 Q What distance would you say it is from the
22 front of Larry Demery's house to area number 10 as
23 you have indicated here on the map? I'm sorry, I'm
24 in front of the jury. I'll move.

25 A It is my estimation and it was rough, to

1 where these items were recovered was approximately
2 one mile down off the canal of Highway 710 and
3 Mr. Demery's residence is a short distance off of
4 710, so approximately one and one fourth miles or a
5 little less than that actually.

6 Q The distance between Mr. Demery's house and
7 the area where the objects were recovered marked
8 number 10?

9 A Yes, sir.

10 Q Now -- you may return to the stand.

11 A (Witness complies).

12 Q The place marked as Mr. Demery's residence
13 was the place that you know that Mr. Demery lived all
14 the time at that particular point in time, is that
15 correct or not?

16 A Yes, sir, that's correct.

17 Q You knew that there were approximately how
18 many officers searching Mr. Green's trailer on the
19 14th?

20 A I have no idea, sir.

21 Q How many officers were out with you
22 searching the area around the ditch bank that you've
23 numbered ten on the diagram?

24 A The only officers present were Detective
25 Thompson and myself.

1 Q Did you ever take a group of officers and
2 go looking for a cornfield as had been described by
3 Mr. Demery down in the Rowland area?

4 A No, sir, I didn't.

5 Q Did you ever put together a search team and
6 go down and look around the area of the treatment
7 plant in Rowland for tracks or anything of that
8 nature?

9 A No, sir, I didn't.

10 Q Do you know of anybody else that did any
11 follow up search at the -- around any cornfield or
12 road area in the Rowland area? Was there ever a
13 search team organized?

14 A I don't recall there ever being a search
15 team being organized.

16 Q In your law enforcement experience, if you
17 want to find something in a wide area such as a
18 cornfield or something like that, you usually get a
19 group of officers together and you start in some kind
20 of systematic way to working spirally outward or
21 dividing the area up into sections and you search it,
22 don't you?

23 A Yes, sir.

24 Q None of that was ever done looking for any
25 kind of credit cards or other objects that Mr. Demery

1 had mentioned as being deposited or left in a
2 cornfield in Rowland, was there?

3 MR. BRITT: Objection.

4 THE COURT: Sustained.

5 Misstates. Rephrase.

6 BY MR. BOWEN:

7 Q Well, you --

8 THE COURT: Mr. Bowen -- members
9 of the jury, if you'll go to the jury room
10 for just a few moments, there's a matter of
11 law the Court must take up out of the
12 hearing and presence of the jury. Don't
13 worry or speculate about what takes place
14 in the courtroom in your absence.

15 (Jury out at 12:18 p.m.)

16 THE COURT: Let the record
17 reflect that the following is being
18 conducted in the absence of the jury.

19 Folks, in the context of the Ritchie
20 motion, I asked that portions of
21 Mr. Demery's cross-examination be prepared
22 for the Court so that I could review that.
23 4717 and 4718 -- strike that. 4716, 17, 18
24 deal with the introduction of the statement
25 made by Mr. Demery in that statement which

1 was introduced into evidence before the
2 jury, beginning on page 4715 at the bottom,
3 line 25, "We had taken 63 dollars from
4 Mr. Jordan's front pocket in a clip, paid
5 for the gas in this money, I believe the
6 denominations and bills taken from
7 Mr. Jordan were two 20 dollar bills, five
8 dollar bills and eight one dollar bills,
9 paid for the gas, then went back to
10 Daniel's house. I drove. Slept a couple
11 of hours and then went near my house. We
12 went down the side of the canal, checked
13 the car out real good, took blank checks
14 and other papers from the car and threw
15 them in the water."

16 So you're statement about the
17 cornfield and items being thrown in there
18 needs to be rephrased. There was some
19 testimony about some items being disposed
20 of but you can't use a broad statement to
21 implicate or suggest to the jury that all
22 of that occurred in the cornfield. That's
23 not consistent with the testimony.

24 MR. BOWEN: I understand. You're
25 talking about two areas that were

1 deposited. But since there was testimony
2 about having opened a wallet down in a
3 cornfield, having discovered at that point
4 that it was the belongings of James Jordan,
5 and some things, as I understand it,
6 including some credit cards were left or
7 deposited in that field.

8 Now, to the extent that my question
9 has suggested that's the only place those
10 kinds of things have been deposited I would
11 certainly rephrase. But does the Court
12 recall the testimony about the cornfield in
13 Rowland?

14 THE COURT: Looking at that right
15 now. Page 4712, "We then turned into a
16 dirt road near Rowland, Daniel then turned
17 the car into a cornfield. This was about
18 seven miles from the bridge near Daniel's
19 house. We began to look through everything
20 in the car, we were still -- and are still
21 trying to decide what we're going to do
22 with the dead man. As we were going
23 through the car, that conversation about
24 the identity of the person occurred, Daniel
25 then started showing me a ring with NBA on

1 the side, initials MJ on the side,
2 All-Star '86 on the top with big blue
3 stone. Daniel then showed me a watch with
4 engraving, North Carolina license was
5 shown, opened the car trunk, saw golf
6 clubs, we then, again, began to discuss
7 what to do with the body."

8 4714, picking up from there, "We then
9 went to, or we went to the waste treatment
10 plant." So it has to be consistent with
11 the evidence presented.

12 MR. BRITT: Your Honor, there was
13 also testimony --

14 THE COURT: This came from the
15 statement. There was also testimony
16 adduced to some matters. My point is, to
17 suggest to the jury that all of it occurred
18 at one location is not consistent with the
19 evidence.

20 MR. BOWEN: I didn't mean to do
21 that. I'll rephrase.

22 MR. BRITT: Just so the point --
23 there was testimony from Mr. Lea in regard
24 to events that occurred after Mr. Demery's
25 statement was taken that Mr. Demery took

1 them to various locations, and as a result
2 of that he was not able to positively
3 identify the cornfield but they stopped.

4 THE COURT: Yes, sir, yes, sir.
5 All I'm saying, folks, is we have to be
6 careful about the questions being phrased
7 so that a misstatement is not made in the
8 context of the question to the jury.

9 MR. BOWEN: Judge, while we have
10 the jury out, there's something I think the
11 Court would probably prefer be voir dired
12 first.

13 THE COURT: I appreciate that.

14 MR. BOWEN: This is offered under
15 803, parens, 19.

16 THE COURT: Okay.

17 BY MR. BOWEN:

18 Q Mr. Underwood, how long have you lived in
19 Robeson County and dealt with law enforcement work
20 here?

21 A How long did I -- I don't currently live
22 here.

23 Q Well, how long all together did you?

24 A Just a little less than five years, and I
25 was involved in law enforcement work throughout the

1 time I lived here.

2 Q And you were very familiar with drug
3 enforcement officers and some drug enforcement
4 activities here in the county, is that correct?

5 A Yes, sir.

6 Q You also came in contact with federal
7 officers who were involved in various drug
8 enforcement operations?

9 A Sometimes, yes, sir.

10 Q You knew a number of citizens in the
11 community who both lived and work here, is that
12 right?

13 A Yes, sir.

14 Q You knew of and knew both defendants,
15 informants and others who were familiar with the --
16 some of the drug trafficking within the county, and
17 those who had to do with that drug trafficking, is
18 that correct?

19 A Yes, sir.

20 Q Do you know who Hubert Larry Deese is?

21 A I know of him, I don't know him personally.

22 Q Do you know that Hubert Larry Deese, by
23 reputation in the community, is the illegitimate son
24 of Hubert Stone?

25 A I don't know that to be factual. I've

1 heard that.

2 Q Do you know it by reputation, that is, what
3 people say within the community?

4 A Yes, sir.

5 Q What is that representation?

6 A That he is his son.

7 MR. BOWEN: That's all. That's
8 our showing.

9 THE COURT: 803 what?

10 MR. BOWEN: 803 19, Your Honor.

11 THE COURT: What has it got to do
12 with the case?

13 MR. BOWEN: One of the telephone
14 numbers, sir, is Hubert Larry Deese, and
15 that will be established by Agent Heffney.
16 It's in the discovery. We know that Hubert
17 Larry Deese was called from that car. We
18 also know that Larry Demery testified that,
19 although he first tried to say he didn't
20 know Hubert Larry Deese. He then in his
21 testimony said he knew him or knew of him
22 and knew he was currently housed in the
23 federal facility. Mr. Thompson and I heard
24 it different. He thought Atlanta. I
25 thought it South Carolina. I'll just have

1 to look it up, I probably missed it.

2 THE COURT: Still, what has that
3 got to do with the case?

4 MR. BOWEN: That Larry Hubert
5 Deese was called from that car, that -- and
6 it was after the 900 number, it was
7 basically the first call of the morning.

8 Now, what we're going to find is
9 that -- we're going to find that the call
10 was made to Hubert Larry Deese, that
11 Mr. Larry Demery had more knowledge of
12 Mr. Deese and not going to be able to show
13 that our client had any knowledge of Hubert
14 Larry Deese, and that, therefore, Hubert
15 Larry Deese was more likely to have been
16 called by Larry Demery.

17 Now, you've got Mr. Larry Demery
18 making a phone call the night before to
19 Huntington, New York, telling Joey that
20 he's going to bring him a package up in New
21 York. One of the first calls he makes the
22 next morning is to Hubert Larry Deese who
23 is in the Federal penitentiary somewhere in
24 South Carolina or Atlanta.

25 THE COURT: At this point, the

1 Court finds that the proffer -- as a matter
2 of record, the Court finds that as far as I
3 can tell at this point, based on what is
4 now before me, there is no relevance under
5 Rule 401 that any minimal probative value
6 that it might have, and the Court finds
7 that it has none, is outweighed by the
8 considerations sets out in Rule 403,
9 confusion of the issues, misleading of the
10 jury, and substantial risk of prejudice to
11 the State of North Carolina, there being no
12 relevance apparant to this evidence. And
13 the State's objection is sustained.

14 MR. BRITT: In the presence of
15 the jury, any question would have been
16 objected to.

17 THE COURT: Any matters before me
18 based on what is now before me.

19 MR. BOWEN: We would offer it
20 again under relevance grounds of identity
21 and the establishing identity of a phone
22 record, when that phone call was made,
23 State is allowed to establish all the
24 folks --

25 THE COURT: You've not indicated

1 anything to me that would link any phone
2 call purportedly made to Mr. Demery. What
3 you said is by process of elimination,
4 because our guy didn't do it, he must have
5 done it.

6 MR. BOWEN: Well, there were
7 only -- evidence is, there were only two
8 that had control of the car here during
9 this particular time.

10 THE COURT: Have you ever dialed
11 the phone and got a wrong number?

12 MR. BOWEN: Judge --

13 THE COURT: Have you?

14 MR. BOWEN: We're not allowed to
15 speculate on that.

16 THE COURT: Have you ever done
17 that?

18 MR. BOWEN: Yes, of course I've
19 done that. We all have done it. But just
20 to speculate that might have been it, when
21 here this man is calling a known drug
22 dealer in Robeson County who's in the
23 federal penitentiary doing time --

24 THE COURT: How do you know he
25 called him?

1 MR. BOWEN: We know exactly what
2 you said, by elimination there's only two
3 people in the car.

4 THE COURT: They can stand up and
5 argue your client called him.

6 MR. BOWEN: Fine, let them argue,
7 but we know the man was called from that
8 automobile, and they have established the
9 identity of everybody they wanted to who
10 was called from that automobile.

11 THE COURT: Well --

12 MR. BOWEN: And it's right there
13 on the State's exhibit. And all along,
14 things have been allowed by this Court to
15 be explained by the other party when
16 brought up by the original party, and here
17 we have no --

18 THE COURT: You're about that far
19 apart in terms of your assumption and your
20 premise. That's the logical leap that is
21 not apparent to me. There's no connection
22 to it at this point. Your argument
23 essentially is it must be him. And "it
24 must be" never satisfies me unless I see
25 something that shows that it must be.

1 MR. BOWEN: No, sir, we don't
2 have -- it doesn't have to be "must be"
3 before it goes to the jury. It can be "can
4 be," and if the jury decides in their
5 wisdom which it is.

6 THE COURT: Well, I thought
7 speculation and conjecture deals with "can
8 be" --

9 MR. BOWEN: It is not speculation
10 or conjecture when we can show one man in
11 the car has no connection with this Hubert
12 Larry Deese and the other man knows who he
13 is and where he is. Now, that's enough
14 from which a jury can conclude that Demery
15 is more likely to have called Deese than
16 our client.

17 THE COURT: The evidence is not
18 going to get before the jury.

19 MR. BOWEN: Sir?

20 THE COURT: The evidence will not
21 get before the jury.

22 MR. BOWEN: I understand that,
23 you're ruling --

24 THE COURT: Your exception is
25 noted for the record.

1 MR. THOMPSON: May I be heard,
2 Your Honor?

3 THE COURT: Yes, sir.

4 MR. THOMPSON: On State's Exhibit
5 56-B, there's a phone call, the date is
6 7-23 at 10:36, phone number (919) 521-3365,
7 to Pembroke. That's on State's Exhibit
8 56-B.

9 THE COURT: Yes, sir.

10 MR. THOMPSON: Now, we're in a
11 position, and I argue to the point that at
12 some point the defendant wishes to
13 establish who the owner of that number
14 that's on State's Exhibit Number --

15 THE COURT: There are ways to do
16 that.

17 MR. THOMPSON: I understand, Your
18 Honor. And who owns that number. Now, the
19 other thing is, as to the identity, we are
20 also, and I contend, should be able to show
21 through this witness and any other witness
22 who that person is, who Hubert Deese is --
23 Hubert Larry Deese is. If the connection
24 later is made that a Hubert Larry Deese is
25 the owner of that phone number, that is

1 certainly relevant, I certainly think
2 it's -- it's admissible. I don't see why
3 it's incompetent. It's on the State's
4 Exhibit.

5 THE COURT: You folks want to go
6 beyond establishing who may be the owner of
7 record of the phone call. What you folks
8 want to do is say a call was made to that
9 number, the call must have been received by
10 Hubert Larry Deese. No evidence of that
11 but it must have been. And the call must
12 have been made by Larry Martin Demery. No
13 evidence of that, but it must have been.
14 And the call must have involved drug
15 trafficking. No evidence of that, but it
16 must have been. Do you understand my
17 point?

18 MR. THOMPSON: I understand.

19 THE COURT: And that Hubert Larry
20 Deese is the purported son of former
21 Sheriff Hubert Stone. No evidence of that
22 but must be because that's what folks say
23 in the community. And that must mean
24 something in the context of this case. You
25 all have enough "must have been's" to make

1 mustard.

2 MR. THOMPSON: And may I be
3 heard?

4 THE COURT: Yes, sir.

5 MR. THOMPSON: And the point I
6 was attempting to make, Your Honor, is that
7 the identity of that individual --

8 THE COURT: You may be able to
9 get that in, Mr. Thompson.

10 MR. THOMPSON: May I be heard?

11 THE COURT: You may be able to
12 get that in.

13 PSON
13 MR. THOMPSON: The point I was
14 trying to make is that the identity of that
15 individual is relevant, the phone number is
16 already in the evidence as to -- through
17 the State's exhibit. We certainly are
18 entitled to show who is the owner of that
19 phone number and --

20 THE COURT: I'm not saying you
21 can't.

22 MR. THOMPSON: And who that
23 individual is, and something about that
24 individual.
 PSON

25 THE COURT: Not unless you can

1 show some connection to this case.

2 MR. THOMPSON: Well, it is a
3 connection to this case because the phone
4 number was dialed from the Lexus. That's
5 the connection, just like any of the other
6 phone numbers were dialed from the Lexus.

7 THE COURT: Okay. I understand
8 your position.

9 MR. THOMPSON: Now, the argument
10 as to those other matters may or may not --
11 the evidence may not establish that, and if
12 it doesn't we certainly would not be
13 entitled to ask --

14 THE COURT: Folks, I promise you
15 one thing, if you make a showing that
16 convinces me under -- Rule 401 is a very
17 broad rule. Says that any evidence having
18 any logical tendency, any tendency to prove
19 some fact at issue is relevant evidence.
20 That's about as broad as you can get under
21 Rule 401. You folks are so far away from
22 any at this point, based on what is now
23 before me, that it doesn't even approach
24 Rule 401.

25 MR. THOMPSON: There's also a --

1 and if I may continue to be heard, Your
2 Honor. There's also a reference in the
3 interrogation of Larry Demery, specifically
4 by Art Binder, to the effect that we
5 know -- we know you made a call to your
6 buddy in Pembroke, referring to the phone
7 call --

8 THE COURT: Where is the evidence
9 that that refers to the phone call, or is
10 that an assumption?

11 MR. THOMPSON: That -- I'm
12 telling you, Your Honor, that is a
13 statement contained in the transcript.

14 THE COURT: I accept the
15 statement is in the transcript. How do you
16 know that statement, we know you made a
17 phone call to your buddy, refers to this
18 phone call and that the buddy refers to
19 Hubert Larry Deese?

20 MR. THOMPSON: It's the same
21 number.

22 THE COURT: Is it referred to in
23 that context?

24 MR. THOMPSON: It's referred
25 to -- whatever it's referred to, it's

1 referred to in the transcript. If you give
2 me --

3 THE COURT: I'm going to give you
4 folks all the leave you want to make the
5 connection.

6 MR. THOMPSON: Excuse me, if
7 you'll -- may I be heard?

8 THE COURT: Yes, sir.

9 MR. THOMPSON: If you'll give me
10 leave to read the exact portion of that
11 transcript to the Court.

12 THE COURT: Mr. Thompson, all I'm
13 saying is that if you stand up and make a
14 proffer before me, be ready to support it.
15 If you're not, I'm going to overrule or
16 sustain the objection to it. I'll note
17 your exception. The appellate courts can
18 decide whether I'm right or wrong, and
19 that's the way it is.

20 MR. BOWEN: Let's talk about one
21 element about Your Honor's statement about
22 maybes, and let's go directly to Rule 803,
23 when you say that having a representation
24 in the community is a maybe. Now,
25 factually that's true, but if you look at

1 the requirements of Rule 803 19,
2 establishing a representation.

3 THE COURT: I know what the rule
4 says, but you can't read the rules in
5 isolation. Rule 803 19 also ties
6 everything ties to Rule 401. If it's not
7 relevant then 803 doesn't mean anything.

8 MR. BOWEN: I'm just addressing
9 your issue of maybe with reference to the
10 reputation.

11 THE COURT: First hurdle is
12 relevance.

13 MR. BOWEN: -- then there is no
14 maybe about Rule 803 19. Now, I agree with
15 you that you have to be convinced of
16 relevancy. We are and Your Honor is not,
17 and that's where we have the disagreement.
18 But as far as reputation in a community
19 being a maybe, Rule 803 doesn't look at it
20 as a maybe. If you can establish the
21 reputation then you have satisfied Rule
22 803, then conceivably as Your Honor says
23 you must satisfy Rule 401 and 403.

24 THE COURT: You're going at it
25 backwards. You don't establish 803 first

1 and then go back to 401. 401 comes first
2 and then you go to the other rules.

3 MR. BOWEN: Well --

4 THE COURT: That's the way it
5 goes. The proponent of any evidence always
6 has the burden of first establishing
7 relevancy of the evidence. That's the
8 threshold consideration. And then after
9 establishing relevancy of the evidence
10 that's being proffered, there may be other
11 evidentiary considerations that come into
12 play. But Rule 401 is paramount, it comes
13 first.

14 Okay. I'm saying that if you folks
15 can make the showing, I will give you the
16 opportunity to make the showing, but what
17 we're doing now is you're arguing to me
18 that you've made it and I've told you you
19 haven't.

20 MR. THOMPSON: May I be heard?

21 THE COURT: Yes, sir.

22 MR. THOMPSON: Your Honor, the
23 relevant portion of the transcript that I
24 was referring to was interrogation of Larry
25 Martin Demery, that is a tape-recorded

1 portion of that interrogation that we've
2 been referring to here.

3 THE COURT: Okay.

4 MR. THOMPSON: Several times.
5 Captain Binder, "Well, let me tell you the
6 one thing that is going to hurt you worse
7 than anything, Larry, and I'm not trying to
8 load up on you. I'm just trying to tell
9 you you need to get some light at the end
10 of your tunnel. Because your man down the
11 hall has got it real dark. You can't
12 hardly see through it. You need to help
13 yourself. But the one thing that is going
14 to hurt you worse than anything is you made
15 a telephone call to Pembroke and you made
16 it at the same time, just after, not long
17 after, but just after Mr. Jordan went in
18 the water. It's going to be your friends
19 to Pembroke, and you think about it,
20 because that's the call that's going to get
21 you, okay? Only just an hour or two after
22 he hit the water, you made that phone
23 call. And that telephone call told us
24 where you were at, and it was the great
25 State of South Carolina," and that's the

1 portion of the transcript --

2 THE COURT: Did Mr. Demery
3 anywhere in the transcript say, yes, I made
4 that call?

5 MR. THOMPSON: No, and he did not
6 deny it either.

7 MR. BRITT: He denied it on
8 cross-examination.

9 THE COURT: Yes, sir.

10 MR. THOMPSON: Well, just like --
11 but on this date, he didn't deny it, just
12 like he didn't deny many things that were
13 said to him, many questions -- excuse me,
14 many propositions that were posed to him.

15 THE COURT: So in other words,
16 the transcript that you referred to earlier
17 does not support your position that you can
18 prove that Larry Demery made that call, and
19 more importantly, that that call was made
20 to the named person in Pembroke, that
21 person being the person that you're
22 referring to, Mr. Demery -- or Deese.

23 MR. THOMPSON: I don't quite
24 understand what you're saying, but what I'm
25 saying is this: That the phone call --

1 THE COURT: How many folks live
2 in Pembroke?

3 MR. THOMPSON: That's not
4 relevant to me, Your Honor, because the
5 phone call that we're concerned with is the
6 phone call that's on State's Exhibit 56.

7 THE COURT: Which you can't prove
8 was made by Larry Martin Demery, which you
9 can't prove was made to that individual,
10 which you can't prove dealt with the
11 subject matter that you want to suggest for
12 the jury, none of which you can prove.

13 MR. THOMPSON: And who that
14 individual is, who's the owner of that
15 phone.

16 THE COURT: Not prove beyond a
17 reasonable doubt, not prove by --

18 MR. THOMPSON: We don't have to
19 prove anything beyond a reasonable doubt.

20 THE COURT: Listen to me. But
21 prove within the meaning of Rule 401,
22 having any tendency to prove anything at
23 issue, which is rock bottom, bare minimum
24 burden for anybody who's the proponent of
25 evidence.

1 MR. THOMPSON: And I suggest to
2 you that it's at issue, it's certainly been
3 put at issue because it's on the State's
4 Exhibit. Everyone of those phone calls.
5 That's just my argument.

6 THE COURT: Anything further?

7 MR. THOMPSON: No, sir.

8 THE COURT: Okay. Have a seat.
9 Bring the jury back in.

10 (Jury in at 12:41 p.m.)

11 THE COURT: Mr. Bowen, if you'll
12 rephrase your question, please, sir.

13 MR. BOWEN: Yes, sir.

14 BY MR. BOWEN:

15 Q The newspaper article that was taken out of
16 the automobile, Mr. Underwood, let me get the
17 number -- number 134 is an envelope containing a
18 newspaper or newspaper article. Are you familiar
19 with the one I'm talking about?

20 A Yes, sir.

21 Q Did you yourself read that article in its
22 entirety?

23 A No, sir.

24 Q Have you read any part of it?

25 A I just saw the headline and sealed it up.

1 Q Now, you never yourself organized a group
2 of individuals to go search for a cornfield in the
3 Rowland area, did you?

4 A No, sir.

5 Q You never did know of any group of
6 individuals being organized by anybody in law
7 enforcement to go search a cornfield in the Rowland
8 area, correct?

9 A Not to my knowledge.

10 Q Nor do you know of any group of law
11 enforcement people or otherwise who were sent to
12 search any area around a waste treatment plant in
13 Rowland?

14 A Not that I'm aware of, no, sir.

15 Q Did you ever go to a waste treatment plant
16 near Rowland?

17 A I've been there, but I don't recall going
18 there specifically for any purpose connected to this
19 case.

20 Q This case. Do you know of any officer who
21 did go there with a purpose associated with this
22 case, to the waste treatment plant?

23 A I know that Mr. Demery took some officers
24 by there, I don't know if they went in, but I wasn't
25 with them, so I don't know what they did while there.

1 Q To your knowledge, nobody went to the waste
2 treatment plant to look, for example, for car tracks
3 or anything like that, did they?

4 A I don't know.

5 Q In fact, nobody looked for any car tracks
6 anywhere, did they?

7 A I don't know.

8 Q Now, you had an operating 35 millimeter
9 camera when the search on the 16th occurred, didn't
10 you?

11 A Yes, sir.

12 Q Did you use that camera?

13 A The search at Mr. Green's residence?

14 Q Yes, sir.

15 A I didn't use my camera, no, sir.

16 Q Whose camera did you use?

17 A Detective Hackney's camera was used as well
18 as Special Agent Heffney's.

19 Q When you undertake to document a scene, you
20 don't have any difficulty acquiring a camera from
21 somewhere, do you?

22 A I'm sorry.

23 Q You didn't have any trouble acquiring a
24 camera from somewhere when you desire to document a
25 scene such as the Green home, do you?

1 A Usually not, no, sir.

2 Q But you know that no camera was employed on
3 the 14th of August of 1993 when Mr. Green's home was
4 also searched, is that right?

5 A I don't know, sir.

6 Q Now, Mr. Underwood, when you went out to
7 the area where you retrieved the ring from the earth,
8 was Mr. Daniel Green's uncle present?

9 A Yes, sir.

10 Q When that occurred?

11 A Yes, sir.

12 Q And you were able to drive to that place by
13 virtue of directions given by Mr. Daniel Green,
14 correct?

15 A Yes, sir.

16 MR. BRITT: Objection, assumes
17 that Mr. Underwood drove.

18 BY MR. BOWEN:

19 Q Did you drive? I'm sorry.

20 A No, sir, I didn't drive, I was in the front
21 passenger seat. Sheriff Stone drove.

22 Q I beg your pardon. Did Mr. Green provide
23 directions?

24 A Yes, sir.

25 Q You wouldn't have known how to get to this

1 place, would you?

2 A No, sir.

3 Q Some of the papers in the Lexus with
4 Mr. Jordan's name on them were from the IRS, weren't
5 they?

6 A I don't recall.

7 Q Have you looked at all these papers
8 recently?

9 A I didn't look through them, I basically
10 looked at just to get a description of what the
11 papers were, I didn't physically read the documents
12 or in detail look at them.

13 Q And you knew that several sets of paper
14 were from one or more lawyers or law firms, is that
15 correct?

16 A Yes, sir.

17 Q And there were a number of plane tickets to
18 Chicago, weren't there?

19 A I recall there being some airline ticket
20 stubs. I don't recall if they had been used or not.

21 Q You don't recall there was some unused
22 tickets?

23 A I remember there being some airline ticket
24 stubs, I don't know if they had been used or not.

25 Q At the canal bank that you have described

1 that's out in the area of the Demery residence --

2 A Yes, sir.

3 Q -- did you see any corn at or near that
4 canal bank?

5 A I don't remember.

6 MR. BOWEN: That's all, Your
7 Honor.

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

10 MR. BRITT: Yes, sir.

11 REDIRECT EXAMINATION

12 BY MR. BRITT:

13 Q Mr. Bowen asked you about footprints, on
14 August the 15th of 1993, when you Sheriff Stone and
15 the defendant were en route to the house located off
16 of Highway 710 did anyone in vehicle say anything
17 about footprints?

18 MR. BOWEN: Object, didn't ask
19 him about footprints.

20 THE COURT: Restate it.

21 BY MR. BRITT:

22 Q On August 15th, 1993, did the defendant in
23 your presence say anything about footprints as you
24 were en route to the residence on Highway 710?

25 A Yes, sir.

1 Q What if anything did the defendant say
2 about footprints while you were en route to this
3 residence off of Highway 710?

4 MR. BOWEN: Object.

5 THE COURT: Overruled.

6 THE WITNESS: As we traveled west
7 on Highway 74, just as we crossed
8 Interstate 95, there was a media vehicle
9 parked there on the north shoulder of
10 Highway 74 near Interstate 95. Mr. Green,
11 who was seated in the back seat, asked the
12 question, could they get footprints. I
13 asked him what he was referring to, and he
14 nodded with his head in the direction where
15 the media vehicle was parked. And I told
16 him that it was a media vehicle and they
17 were probably not looking for footprints.

18 BY MR. BRITT:

19 Q On which side of Interstate 95 was that
20 media vehicle parked?

21 A It was on the west side of I-95.

22 Q And as you proceed west along U.S. 74, was
23 it on the right or left-hand side of U.S. 74?

24 A On the right.

25 Q And was that media vehicle located in an

1 area near a flea market located along U.S. 74?

2 A Yes, sir.

3 MR. BRITT: I don't have any
4 other questions.

5 THE COURT: Anything further?

6 MR. BOWEN: No, sir.

7 THE COURT: Okay. May the
8 witness step down?

9 MR. BRITT: Yes, sir.

10 THE COURT: Thank you, sir.
11 We're going to take the break at this
12 point. Folks, as I indicated yesterday, as
13 to Ms. Dial, it's my intent to break until
14 2:45. State want to be heard as to that?

15 MR. BRITT: No, sir, I don't.

16 THE COURT: Counsel for the
17 defendant want to be heard as to that?

18 MR. BOWEN: What is that?

19 THE COURT: Break until 2:45.

20 MR. BOWEN: That's fine.

21 THE COURT: That's about as much
22 as we can do for today. Ladies and
23 gentlemen, during the lunch recess, please
24 don't talk about the matters among
25 yourselves or anyone else, don't allow

1 anyone to say anything to you or in your
2 presence about the case. If anyone
3 communicates with you or attempts to do so,
4 or says anything about the case in your
5 presence, it's your duty to inform us of
6 that immediately.

7 Don't form or express any opinions
8 about the matter, don't have any contacts
9 with any of the folks who are involved in
10 this case in any respect. Avoid any
11 exposure to any media accounts and don't
12 conduct any independent inquiry or
13 investigation or research of any kind.

14 If you would please reassemble at
15 2:45, we'll go forward at that time. Thank
16 you, folks, you're free to go at this
17 time.

18 (Jury out at 12:52 p.m.)

19 THE COURT: In the absence of the
20 jury, folks, we had anticipated taking
21 lunch recess for about an hour to an hour
22 and 15 minutes. You've got additional
23 witnesses coming in at 2:00.

24 MR. BRITT: They are scheduled
25 to arrive about 2:00, 2:30. That would be

1 Special Agent Richardson, fingerprint
2 expert who has previously testified, and
3 Stewart McPhatter who used to be the
4 evidence technician for Robeson County, who
5 did a major case prints for Mr. Green and
6 Mr. Demery that were submitted to the SBI
7 laboratory for comparison with items that
8 Mr. Underwood has identified as having been
9 seized from Dunn Road. And then also
10 Ms. Oxendine, who is the owner of H&R Pawn
11 Shop -- C&R Pawn Shop, where bullets were
12 purchased by the defendant.

13 THE COURT: Okay. If we
14 reconvene at 2:15, that will give us about
15 30 minutes to deal with the remaining
16 matters as to the video.

17 MR. BRITT: That will be fine.

18 THE COURT: I think 30 minutes
19 should be enough time. Succinctly, can you
20 state your position, the Court has ruled
21 previously that the audio portion could not
22 come in. For what purpose would you be
23 offering the video?

24 MR. BRITT: Your Honor, the
25 purpose of offering the video is to show

1 the defendant in possession of items
2 belonging to the victim, James Jordan,
3 specifically, the NBA All-Star ring, the
4 watch, and the NBA championship ring that
5 Mr. Jordan's son, Michael, had given to
6 him. That's contained in the stipulation
7 that was entered.

8 Also, Your Honor, during the testimony
9 of Jamie Moore -- Mr. Moore testified on
10 January 18th, 1996. During the testimony
11 of Mr. Moore, the following questions were
12 asked by the State. There was no objection
13 made by the defense.

14 Begins on page 2025. "Question: And
15 there at the Perry's do you recall watching
16 the videotape that had been -- excuse me,
17 that was in the video camera earlier that
18 day?

19 "Answer: Yes, sir.

20 "And on that, you watched the entire
21 videotape, is that correct?

22 "I watched some of it because I was in
23 and out.

24 "And do you recall how much of the
25 videotape that you watched?

1 "Answer: I'm not sure.

2 "And a portion of the videotape that
3 you watched depicted Daniel at your brother
4 David's house, did it not?

5 "Answer: Yes, sir.

6 "And at that time, Daniel was by
7 himself?

8 "Answer: Yes, sir.

9 "Question: Daniel was rapping.

10 "Answer: Yes.

11 "Question: Was he dancing.

12 "Answer: Yes.

13 "Question: Was he wearing the watch?

14 "Answer: Yes.

15 "Question: Was he wearing the silver
16 ring?

17 "Answer: Yes, sir.

18 "Question: And then you watched a
19 portion of the video that occurred at
20 Fayetteville State?

21 "Answer: Yes, sir.

22 "Question: And then -- and then what
23 was reported at the Suburban Mart?

24 "Answer: I didn't watch all the
25 Suburban Mart thing.

1 "Question: Did you watch any portion
2 of the videotape where you were at the
3 Perry's house?

4 "Answer: I'm not sure.

5 "Question: And the videotape that you
6 watched Larry Martin Demery is not anywhere
7 this that video.

8 "Answer: He was not there and stuff
9 because as I said, he had to hurry up and
10 go back to Lumberton."

11 THE COURT: The entire videotape
12 is how long?

13 MR. BRITT: The length is
14 approximately two, two and a half hours.

15 THE COURT: Do you intend to play
16 the entire tape?

17 MR. BRITT: No, sir, there's
18 already one portion that you have said is
19 off limits, and that came out during the
20 testimony of Terrance Patterson, that
21 involved matters that occurred at the
22 Perry's's house where the defendant and
23 another individual had a cat and the
24 defendant pulled a pocketknife from out and
25 put --

1 THE COURT: That specifically is
2 out. But with regard to the remaining
3 portions, do you intend to play the entire
4 remaining positions of the tape?

5 MR. BRITT: Yes, sir, Terrence
6 Patterson on cross-examination -- there is
7 a date that appears on that videotape. The
8 date is July 31st, 1993, Mr. Patterson,
9 during cross-examination, stated that it
10 occurred on another date because that was
11 his birthday. The tape would be used
12 basically to impeach Mr. Patterson's
13 testimony as to the date that the filming
14 was done.

15 THE COURT: Offered for purposes
16 of establishing the date, establishing
17 possession of items of evidence already
18 introduced, and for purposes of
19 corroborating testimony?

20 MR. BRITT: Yes, sir.

21 THE COURT: Okay. How much of
22 the tape do you know, do you intend to
23 play.

24 MR. BRITT: The first portion of
25 the tape where the defendant is at his

1 brother David's house is approximately 25
2 to 30 minutes in length, best estimate.
3 There is a segment of the tape where they
4 go the Fayetteville State University, then
5 walk from there to a residence somewhere
6 near the campus. That residence would be
7 the Perry's residence. They then go the
8 Suburban Mart where Jamie Moore testified
9 that he advises his brother to remove the
10 watch and the ring because of the
11 reputation there in that area that, someone
12 might steal it from him, and he wore it
13 anyway. Then there is a portion of the
14 tape that involves things that occurred at
15 the Perry residence, which the defendant
16 really is not a part of, involves the other
17 individuals who were present.

18 THE COURT: Do you intend to play
19 that portion?

20 MR. BRITT: No, sir. Then
21 there's a portion of the tape that involves
22 the defendant, his brother David, his uncle
23 Gary and others who went to White Lake on
24 July 1st, 1993. I do not intend to play
25 that. And there is a portion of the tape

1 where the defendant is in a residence in
2 Fayetteville that I know to be the former
3 residence of his uncle Gary, where he and a
4 cousin by the name of Lakiesha Harris,
5 another -- a younger child, a little boy,
6 are there, and the defendant is singing,
7 sitting on a sofa singing, and in that
8 portion of the video he is wearing the
9 watch and the rings, and those are clearly
10 depicted on the tape.

11 THE COURT: So it sounds like
12 what you intend to, if allowed, is to offer
13 about an hour's worth of the tape or
14 thereabouts.

15 MR. BRITT: Maybe a little
16 longer.

17 THE COURT: That's an issue that
18 we need to revolve in terms of the specific
19 portion that you would intend to offer so
20 they have an opportunity to be heard in
21 opposition as to those specific portions.

22 MR. BOWEN: I wonder if he has it
23 edited down so we don't run into the thing
24 just going into some forbidden territory
25 and then we have to stop.

1 THE COURT: That's what I would
2 prefer.

3 MR. BRITT: It is not edited.
4 What I would propose to the Court is before
5 it's played, I will go back, start the
6 counter at zero, stop at the point that I
7 think is necessary. Then exclude portions
8 and then go to numbers on the counter to
9 ensure --

10 THE COURT: Do you have those
11 numbers for counsel and the Court?

12 MR. BRITT: I do not have them
13 right now. I can do that prior to
14 proffering the tape for exhibition.

15 THE COURT: Stop and start
16 points?

17 MR. BRITT: Yes, sir.

18 THE COURT: On the tape
19 register?

20 MR. BOWEN: To frame the issue,
21 our objection will go to this: We made a
22 calculated decision to allow questions,
23 letting him somewhat describe on the tape,
24 just as we have voluntarily entered into a
25 stipulation about one photograph, which is

1 their chosen frame from the entire
2 photograph. I am satisfied that it's the
3 one that has Daniel Green with the ugliest,
4 most unattractive face that they can find
5 on the whole thing. But of course we
6 stipulated to it, and we allowed other
7 evidence about generally what the
8 individual saw on the tape for this
9 reason: Ever since Elvis Pressley shook
10 his pelvis in front of national television
11 and wasn't allowed to do so by Ed Sullivan,
12 people have known that certain body
13 language can evoke a very strong emotional
14 thing. It's no secret that some folks are
15 not attracted to rap music, they abhor it,
16 and they abhor the gyrations that go with
17 it, just like they felt the same way about
18 Elvis doing it.

19 Seems to me that the State has enough
20 by virtue of the stipulated photograph,
21 enough by what was on the tape which
22 included that he was rapping, what was
23 there, what was shown, and if the rings
24 were described, and that the rings were
25 recognized, and under all those things

1 that -- although the material is relevant
2 under Rule 401, we propose that as much as
3 we voluntarily allowed them to go forward
4 with this other material, we did so so that
5 it would take away their argument of the
6 crucial necessity that they show the best
7 evidence of this, which was the tape
8 itself.

9 We've allowed them to do it the way
10 they wanted to up to the tape and we think
11 now having let them do it, Your Honor
12 should strongly consider Rule 403 and say
13 this doesn't really add anything, and these
14 gyrations and body language that they will
15 see, particularly with the rap music, even
16 without the sounds on, while objectively
17 it's not prejudice, doesn't bother me, sure
18 doesn't bother a lot of people, but may be
19 prejudice and bother some of these jurors,
20 and not without taking the risk under
21 403 --

22 THE COURT: Folks, frankly, that
23 is a concern as I expressed earlier, but I
24 intentionally did not foreclose the
25 possibility of the tape minus the audio

1 coming in depending on how matters
2 developed at trial. What I would like to
3 do before I make any ruling, obviously, is
4 to see those portions that the State would
5 like to offer, give you folks the
6 opportunity to be heard as to those
7 specific portions and then make my ruling.

8 MR. BRITT: Well, I hate to get
9 back in it, but it will be the State's
10 position, based on Mr. Bowen's statements,
11 that they allowed this to happen, they
12 waived the objection to the tape, including
13 the audio portion. And I would ask the
14 Court to go back and review the audio
15 portion, because I have, along with
16 Mr. Heffney and Mr. Thompson, since the
17 Court's previous order about the audio, and
18 it is clearly stated on that audio portion
19 by the defendant about talking about
20 contemplating killing someone, he talks
21 about bam, bam, two shots to the head, and
22 then makes a statements in regard to his
23 name being Daniel Green, not as in Green as
24 in trees, but Green as in money. That is
25 clearly on the first portion of the audio

1 tape where he is by himself.

2 MR. THOMPSON: Your Honor, what
3 he is referring to is a rap song that can
4 be -- that's ridiculous, what he's saying,
5 because that is the kind of thing that I
6 suggest to the Court 403 deals with. And
7 then the context of him singing that song,
8 which is a commercial artist who made the
9 song, I mean --

10 THE COURT: My concern is, folks,
11 I don't know if that case in California is
12 over at this point, but if that kind of
13 stuff is admissible, Snoop Doggy Dog is in
14 bad awful trouble. And the prejudicial
15 impact of it is, in my view, significantly
16 substantial. And I will certainly keep an
17 open mind, but I think that before we can
18 go any further, I need to review those
19 portions that you intend to offer.

20 MR. BRITT: Yes, sir.

21 THE COURT: So well do that at
22 2:15.

23 MR. THOMPSON: For the record,
24 it's Cypress Hill, the song that --

25 MR. BRITT: Not that song.

1 THE COURT: Recess us until 2:15.

2 (Lunch recess.)

3 THE COURT: Good afternoon,
4 folks. Let the record show that all
5 counsel are present, the defendant is
6 present in open court. And in the absence
7 of the jury, we're proceeding with matters
8 related to evidentiary considerations.

9 Mr. Britt, are you in a position at
10 this point to indicate -- I think the best
11 way to do it is to show what it is that you
12 intend to proffer.

13 MR. BRITT: Yes, sir.

14 THE COURT: In terms of the
15 videotape.

16 MR. BRITT: Yes, sir, I am. And
17 if the record will reflect, previously, the
18 bag containing the videotape that was
19 seized from the defendant's residence was
20 marked as State's Exhibit Number 79. I'm
21 going to remove the videotape from the
22 bag -- can you see this?

23 THE COURT: Yes, sir.

24 THE COURT: Mr. Bowen and Mr.
25 Thompson, can you folks see?

1 MR. BOWEN: Yes, sir.

2 MR. BRITT: I placed the
3 videotape into a combination videotape
4 player and TV.

5 THE COURT: Now, the videotape
6 was seized from the defendant's residence
7 on what date for the record?

8 MR. BRITT: August 16th, 1993,
9 seized by Special Agent Tony Underwood, who
10 then gave the videotape to Special Agent
11 Heffney, and the videotape has been in
12 Special Agent Heffney's custody since that
13 time.

14 THE COURT: Yes, sir.

15 (Whereupon a videotape was played in
16 open court.)

17 THE COURT: Can we stop at this
18 point?

19 MR. BRITT: Yes, sir.

20 THE COURT: What do you contend
21 is depicted up to this point that has any
22 bearing on any of the issues in this case?

23 MR. BRITT: Up to this point,
24 what the video shows is the defendant is
25 wearing a watch. The defendant has a ring

1 on his right hand and has a ring on his
2 left hand.

3 THE COURT: Now, what if any
4 testimony are you going to offer to
5 establish that the watch and the ring are
6 relevant to the case?

7 MR. BRITT: The watch -- it's
8 already been testified to by Jamie Moore
9 that he watched this portion of the video,
10 that the ring that he described here in
11 court, being the silver ring with the blue
12 stone, was visible on the videotape and
13 that his brother was wearing it, and the
14 watch that he described here in court, that
15 being the watch with the bull's head face
16 on it, had the inscription on the back of
17 it, "from Michael and Juanita."

18 THE COURT: So the link is
19 between the testimony already offered and
20 the identification of items already entered
21 into evidence, watch and ring, is
22 corroborated by what is depicted in this
23 portion of the tape?

24 MR. BRITT: Yes, sir.

25 THE COURT: All right. Yes, sir,

1 we can go ahead.

2 MR. BRITT: For the Court's
3 information, the first segment, when I was
4 reviewing it during the lunch recess, it
5 starts at 00.04 on the counter, and
6 continues to 20.12, 20 minutes and 12
7 seconds.

8 THE COURT: 20 point --

9 MR. BRITT: One two.

10 THE COURT: One two.

11 MR. THOMPSON: Your Honor, may I
12 be heard just briefly with response to
13 that? Your Honor, he's offering this to
14 show a watch, that he was wearing a watch
15 and a ring in 20 minutes of a video to show
16 a watch and ring?

17 THE COURT: That's what I'm
18 trying to find out.

19 MR. THOMPSON: That's, I think,
20 overreaching. I can't imagine that it
21 would take a 20 minute video to show those
22 two items. I've seen the watch already.

23 THE COURT: I'm trying to break
24 it down in my own mind to specific portions
25 and then you folks can have a specific

1 opportunity to be heard.

2 MR. BRITT: It is during this
3 segment of the videotape that the defendant
4 states that his name is Daniel Green, Green
5 not as in trees but Green as in money.
6 That occurs at nine minutes and 42 seconds
7 of the tape. At 11 minutes and 14 seconds
8 of the tape, the defendant states he
9 contemplates how he can kill a man, two
10 shots to the head. And at 19 minutes and
11 35 seconds, both rings, the NBA All-Star
12 ring and the NBA championship ring in my
13 opinion are clearly visible.

14 (Whereupon the video was re-started.)

15 MR. THOMPSON: That's the only
16 part I don't object to.

17 THE COURT: Now, that's -- all
18 right. Let's take -- is this the first
19 portion?

20 MR. BRITT: That's not the entire
21 first portion.

22 THE COURT: Is there anything
23 additional that you think is relevant?

24 MR. BRITT: Yes, sir.

25 THE COURT: In this first

1 portion?

2 MR. BRITT: Yes, sir.

3 THE COURT: Okay. Go ahead.

4 (Whereupon the video was re-started.)

5 MR. THOMPSON: Your Honor, can he
6 give us the counter number of the portions
7 that he is saying is relevant? I mean --

8 THE COURT: That's what we're
9 going to do.

10 MR. THOMPSON: I'm talking about
11 while we're watching.

12 THE COURT: So he can make his
13 record.

14 (Video remains playing.)

15 MR. BRITT: Your Honor, the
16 portion where it switches from the trailer
17 to Fayetteville State, is the first
18 segment.

19 THE COURT: Do you have -- there
20 was one still that was introduced that came
21 from the video.

22 MR. BRITT: Yes, sir.

23 THE COURT: Do you have any other
24 stills from the video.

25 MR. BRITT: Yes, sir, we do.

1 THE COURT: May I see them? I'm
2 sorry, from this portion, this first
3 portion now?

4 MR. BRITT: Yes, sir. May I
5 approach?

6 THE COURT: Yes, sir. For the
7 record, the Court has been handed numerous
8 photographs some of which are black and
9 white, appear to be black and white, some
10 of which appear to be color.

11 With the smaller photographs,
12 approximately five by seven, two of which
13 appear to have some color and others appear
14 to be black and white, I have separated out
15 five, two color, three black and white, all
16 of which show both the face of the
17 defendant and either a watch and/or a
18 ring. I have put in a separate pile one,
19 two, three, four which show someone with a
20 watch and a ring but do not show the face
21 of that individual.

22 There are some smaller three and a
23 half by fives that appear to be
24 repetitious, they are color, and they are
25 apparently -- yeah, repetitious of the one,

1 two, three, four, five photographs that I
2 previously mentioned.

3 There's a second group of larger
4 photographs, one, two, three, four, five,
5 six, seven in number. One, two -- two of
6 which show someone whose face is not
7 depicted but show items of jewelry
8 including a ring in one and a ring and a
9 watch apparently in the other. One of
10 which also shows apparently nothing in
11 terms of items of jewelry that are clearly
12 discernible.

13 Folks, all these are involved in the
14 first segment, is that right?

15 MR. BRITT: Yes, sir.

16 THE COURT: All right. Let me
17 ask that you show these to counsel.

18 MR. BRITT: They have copies of
19 them.

20 MR. THOMPSON: Well, Your Honor,
21 we don't -- the copies that we have were
22 taken by Mr. Bowen with his -- yeah, we
23 need to see those. Ours aren't as clear.

24 THE COURT: Look at those and
25 tell me if you want to be heard as to

1 those.

2 I've got one, two, three, four, five,
3 six, seven, eight, nine additional
4 photographs up here, as I've previously
5 indicated, that I'm going to put aside for
6 the moment.

7 MR. BRITT: Your Honor, for the
8 purposes of the record and for the purposes
9 of the inquiry, State's Exhibit Number 10,
10 which is a stipulation of fact that has
11 attached to it a photograph that was taken
12 from the first portion of the video.

13 THE COURT: Okay. And I believe
14 this is the one that's already entered.

15 MR. BRITT: Yes, sir.

16 THE COURT: Which is duplicitous
17 of one of the ones that you've got now.
18 It's a copy.

19 MR. THOMPSON: Yes. I don't even
20 think we have that one.

21 THE COURT: It's in that group
22 you've got there. It may be up here with
23 the ones that I've got. Are you sure it's
24 not down there, Mr. Thompson?

25 MR. THOMPSON: But I mean it

1 shows the same thing but it's not that
2 exact photograph, that's my point. I think
3 it's duplicitous as to what it shows. No,
4 I've got the smaller ones here.

5 THE COURT: Folks, this one is
6 really not that clear, although it does
7 show the watch.

8 You folks want to be heard as to
9 this -- this one is in. All right. These
10 aren't marked so it's going to be difficult
11 for me to put them into the record without
12 them being marked.

13 MR. BRITT: I'll be glad to mark
14 them.

15 THE COURT: If you'll mark this
16 group first

17 (State's Exhibits 136 through 143 were
18 marked for identification.)

19 MR. BRITT: For the purposes of
20 identification, these photographs have been
21 marked as State's Exhibits 136 through 143.

22 THE COURT: Let me give those to
23 those folks and let you folks have an
24 opportunity to make a specific objection to
25 any of those or be heard as to any of

1 those.

2 If we could do this. I know you folks
3 need to look at it. What I propose we do
4 is deal with this segment, put that
5 evidence on, and then come back either late
6 this afternoon or early tomorrow morning.
7 You folks want to be heard as to that?

8 MR. THOMPSON: As to these
9 exhibits, yes, sir.

10 THE COURT: Speak quickly.

11 MR. THOMPSON: May I hand them
12 back to you?

13 THE COURT: Yes, sir.

14 MR. THOMPSON: As to State's
15 Exhibit 137 and 136, they are duplicate --

16 THE COURT: Of each other or
17 something else?

18 MR. THOMPSON: Of each other.

19 THE COURT: Yes, sir.

20 MR. THOMPSON: As to 141 and 142
21 those are the two large ones, one is black
22 and white, one is color, they are
23 duplicative to each other. And the black
24 and white seems to be the one of better
25 quality, but --

1 THE COURT: Okay. So I take it
2 as to -- let's take it in groups, 136 and
3 137, your contention these both being black
4 and white is that they are duplicates?

5 MR. THOMPSON: Yes, sir.

6 THE COURT: Your objection to 137
7 is sustained. As to 136, I'm understanding
8 you have no objection to that?

9 MR. THOMPSON: No, sir.

10 THE COURT: As to 140 and 141?

11 MR. THOMPSON: Yes, sir.

12 THE COURT: Were those the
13 numbers?

14 MR. THOMPSON: 141 and 142.

15 THE COURT: Your contention is
16 that these are --

17 MR. THOMPSON: Duplicates.

18 THE COURT: One being color, that
19 being 142, one being black and white, 141.
20 I understand your position. The color in
21 my view more accurately reflects the
22 jewelry, so your objection to 142 is
23 overruled. Your objection to 141 on the
24 grounds that it's repetitious is
25 sustained. All right. As to 140, and 143,

1 do you want to be heard?

2 MR. THOMPSON: We don't have any
3 objection just as to those.

4 THE COURT: As to 140 and 143
5 there being no objection, the Court is
6 allowing in lieu of this portion of the
7 video the following exhibits: 136, 140,
8 142, and 143. The objection as to 141,
9 137, is sustained. Note the State's
10 exception for the ruling -- to the ruling.

11 Mr. Britt, I certainly don't mean to
12 suggest anything by what I'm about to say,
13 but we are a society where unfortunately we
14 tend often to judge folks according to
15 stereotypes. There are stereotypes, for
16 example, about folks who are in law
17 enforcement who may wear mirrored glasses.
18 There are stereotypes about folks who drive
19 pickup trucks and wear baseball caps. And
20 there are stereotypes about folks who are
21 folks of color and who happen to be in an
22 age category where images are conjured up
23 that are negative.

24 A case, like a human being, it ought
25 to be judged on the basis of its merits,

1 and in my view, this is inflammatory, it
2 adds little in terms of probative value
3 that the stills don't accomplish. I think
4 that the inflammatory nature of it in my
5 view would rise to the level where it would
6 be prejudicial, given the purpose that it's
7 being offered for, that we can accomplish
8 the same things by offering in the stills
9 without the inflammatory stereotypical
10 images being conjured up. So that's my
11 concern. I understand your position. Your
12 exception is noted for the record, but I'm
13 not allowing this portion of the video in.

14 Now, what I would like to do, folks,
15 since we've got folks from out of town who
16 are here, is go forward with that evidence,
17 and then we can come back, depending on
18 where we are this afternoon or again
19 tomorrow morning and deal with the
20 remaining portion, so you can still make
21 your record and I can be open minded both
22 as far as the State is concerned, as far as
23 the defendant is concerned. Is that
24 agreeable?

25 MR. THOMPSON: Yes, sir.

1 THE COURT: These are out. These
2 are in for our purposes right now. Yes,
3 sir.

4 MR. THOMPSON: I just wanted to
5 get the numbers off of those.

6 THE COURT: Okay.

7 MR. THOMPSON: The ones that are
8 in.

9 THE COURT: And I meant to also
10 say there are stereotypes about women in
11 our society, and we can't afford to
12 tolerate those kinds of things anymore than
13 we can afford to tolerate other kinds of
14 stereotypes that exist.

15 MR. BRITT: Just so the record is
16 clear, those are not my intentions to show
17 those. It's my position not only does it
18 show that it's exclusive possession by the
19 defendant at a relevant time, in effect it
20 is an admission by the defendant.

21 THE COURT: Well, that's where I
22 have the concern. Let me explain why. I
23 take off this robe, go out in the street, I
24 walk down in the street, there are folks
25 who will cross the street to avoid walking

1 on the same side of the street that I do
2 because of stereotypes. And it's that kind
3 of inflammatory content that I think does
4 not need to be injected into any case.

5 MR. BRITT: Just so -- it's our
6 opposition under Rule 801, this is an
7 admission by the defendant, it is a product
8 that he made, and as is indicated on the
9 videotape, no one else was present. He had
10 exclusive possession of the items in
11 question at a time shortly after the
12 murder, and it corroborates the testimony
13 of previous witnesses.

14 THE COURT: That's why I think
15 the stills come in. That's why I think the
16 stills come in.

17 These matters we haven't gotten to
18 yet. The ones I gave you are the ones you
19 just got, or Mr. Britt just got, are the
20 ones we already dealt with. We haven't
21 gotten to these yet. This is the one
22 that's already attached.

23 MR. THOMPSON: Yes, sir.

24 THE COURT: So we've got this one
25 and those that are potentially coming into

1 evidence.

2 We ready to go forward?

3 MR. BRITT: I need to move this
4 out of the way.

5 THE COURT: Why don't we do
6 this: With your consent, if we'll just
7 shut that off for right now --

8 MR. BRITT: I was going to move
9 it over here.

10 THE COURT: Move it into the
11 corner. Okay. That will work.

12 MR. THOMPSON: But the ones that
13 are coming in you still have up there,
14 don't you?

15 MR. BRITT: No, sir, those are
16 the ones that you have --

17 MR. THOMPSON: That I just gave
18 back?

19 MR. BRITT: Gave back to me,
20 which are these on this table.

21 THE COURT: These are ones we
22 haven't gotten to yet.

23 Are you ready folks? Sergeant Meares,
24 if you'll bring our jury in.

25 (Jury in at 3:12 p.m.)

1 THE COURT: Good afternoon,
2 ladies and gentlemen.

3 If you'll bear with us for just a
4 moment, please. You may call your next
5 witness.

6 MR. BRITT: Your Honor, at this
7 time we call Stuart McPhatter.

8 THE COURT: If you'll come up and
9 be sworn, please.

10 GLENN STUART MCPHATTER,
11 being first duly sworn was examined and testified as
12 follows:

13 DIRECT EXAMINATION

14 THE COURT: If you'll state your
15 full name please for the record, sir.

16 THE WITNESS: Glenn Stuart
17 McPhatter.

18 THE COURT: If you will spell
19 your name for the record.

20 THE WITNESS: Last name M C P H A
21 T T E R.

22 THE COURT: Your first name is
23 spelled with one or two N's.

24 THE WITNESS: Two N's.

25 THE COURT: Middle name S T U or

1 S T E?

2 THE WITNESS: S T U.

3 BY MR. BRITT:

4 Q By whom are you presently employed?

5 A State of North Carolina, Department of
6 Corrections. I work for the division of --

7 THE COURT: I apologize. Folks
8 at the end are having difficulty hearing
9 you, Mr. McPhatter. If you'll speak
10 directly into the microphone.

11 BY MR. BRITT:

12 Q Where do you presently work?

13 A Work for the State of North Carolina with
14 Department of Corrections, Division of Adult
15 Supervision and Parole.

16 Q How long have you worked for the Department
17 of Corrections?

18 A June of '95.

19 Q Prior to that, by whom are you employed?

20 A Robeson County Sheriff's Department.

21 Q How long did you work for the Robeson
22 County Sheriff's Department?

23 A Approximately nine years.

24 Q And in what capacity did you work with the
25 Robeson County Sheriff's Department during your

1 tenure there?

2 A I was a Deputy Sheriff assigned as a crime
3 scene officer.

4 Q Were you working in that -- and did you
5 work in that capacity the entire time you worked for
6 the Sheriff's Department?

7 A First year and a half I was a patrolman,
8 and I was promoted to crime scene officer.

9 Q As a crime scene officer, did you receive
10 training in the processing of crime scenes?

11 A Yes, sir.

12 Q Did you also receive training as a law
13 enforcement officer in the taking of fingerprints
14 from subjects?

15 A Yes, sir.

16 Q What training did you receive in regard to
17 taking fingerprints from subjects?

18 A We rolled, in a class, rolled individual's
19 prints which are rolled latent prints.

20 Q And during the nine years that you worked
21 with the Robeson County Sheriff's Department,
22 approximately how many individuals did you roll
23 fingerprints from?

24 A Well over 200.

25 Q What is meant by major case prints?

1 A The basic fingerprints that are rolled are
2 just typical fingerprints. Major case prints are
3 where you roll all -- try to roll all the ridges of
4 the hands. That would be the palms of the hands, the
5 fingers, the side of the hands, and the area in
6 between your thumb and your index finger.

7 Q And how are latent prints rolled? Strike
8 that. How do you take the prints of an individual?

9 A You can use an ink pad or chemical pad, and
10 you just roll their fingers or the hands on that pad,
11 then transfer it to paper by rolling it or placing
12 the prints on -- or the hands on the paper to get the
13 prints on the paper.

14 Q And back in September of 1993, did you work
15 in that capacity as a crime scene officer with the
16 Robeson County Sheriff's Department?

17 A Yes, sir, I did

18 (State's Exhibit 144 was
19 marked for identification.)

20 MR. BRITT: May I approach the
21 witness?

22 THE COURT: Yes, sir.

23 BY MR. BRITT:

24 Q Mr. McPhatter, I'm going to hand you what's
25 been marked as State's Exhibit Number 144, ask you to

1 examine that envelope and tell me if you can identify
2 it?

3 A Yes, sir.

4 Q And how are you able to identify State's
5 Exhibit 144?

6 A I wrote the name Green on the front of the
7 envelope, it's my handwriting.

8 Q And you recognize your handwriting that
9 appears on State's Exhibit 144?

10 A Yes, sir.

11 Q What if anything had you placed inside the
12 envelope prior to -- prior to, after writing the name
13 Green on State's Exhibit 144?

14 A Major case prints of Daniel Green.

15 Q And at this time, is -- what condition is
16 State's Exhibit 144?

17 A State's Exhibit 144 has been sealed with
18 tape on both ends.

19 MR. BRITT: With the Court's
20 permission --

21 THE COURT: Yes, sir.

22 MR. BRITT: Record will reflect
23 that I have opened State's Exhibit 144 on
24 the side of the envelope where there are no
25 markings that appear.

1 THE COURT: The record will so
2 show.

3 MR. BRITT: I'm going to remove
4 the contents of State's Exhibit 144.

5 (State's Exhibits 144-A through 144-G
6 were marked for identification.)

7 MR. BRITT: Your Honor, for the
8 purposes of the record, I have marked each
9 of the documents that were taken from
10 State's Exhibits 144 the following exhibit
11 numbers: 144-A, 144-B, 144-C, 144-D,
12 144-E, 144-F, 144-G.

13 THE COURT: Okay.

14 BY MR. BRITT:

15 Q Mr. McPhatter, I'm going to hand you what
16 has been marked as State's Exhibit 144-A, ask you to
17 examine State's Exhibit 144-A and tell me if you can
18 identify it?

19 A Yes, sir, I can.

20 Q How are you able to identify State's
21 Exhibit 144-A?

22 A Has my signature and a date the prints were
23 taken on it.

24 Q For the record, what is State's Exhibit
25 144-A?

1 A State's Exhibit 144-A is a fingerprint card
2 with the rolled prints of Daniel Green.

3 Q And State's Exhibit 144-A, is that document
4 a front and back document?

5 A Excuse me?

6 Q Is there a front and back to that document?

7 A Yes, sir, two sides.

8 Q On the back side of State's Exhibit 144-A,
9 are there any initials that you recognize there?

10 A No, sir.

11 Q On what date did you sign State's Exhibit
12 144-A?

13 A 9-23-93.

14 Q Hand you what's been -- is State's Exhibit
15 144-A in substantially the same condition that it was
16 in at the time that the fingerprints from Daniel
17 Green were rolled on to the document?

18 A Yes, sir.

19 Q On the back of State's Exhibit 144-A, what
20 is depicted there?

21 A On the back of State's Exhibit 144-A are
22 the palm prints, the right hand and left hand, of
23 Daniel Green.

24 Q Hand you what's been marked as State's
25 Exhibit 144-B and ask if you can identify that?

1 A Yes, sir.

2 Q How are you able to identify State's
3 Exhibit 144-B?

4 A I have signed it, and had the date, with
5 RCSD, and that stands for Robeson County Sheriff's
6 Department.

7 Q And what date appears there?

8 A 9-23 of '93.

9 Q Whose handwriting is that?

10 A Mine.

11 Q For the record, what is State's Exhibit
12 144-B?

13 A State's Exhibit 144-B is the ink impression
14 in between your -- the thumb and index finger of the
15 right hand of Daniel Green.

16 Q Is State's Exhibit 144-B in substantially
17 the same condition that it was in at the time when
18 you finished taking the print from the defendant?

19 A Yes, sir.

20 Q And hand you what's been marked as State's
21 Exhibit 144-C, ask if you can identify that?

22 A Yes, sir.

23 Q And how are you able to identify State's
24 Exhibit 144-C?

25 A I also signed it, the date, and the

1 initials RCSD on it.

2 Q For the record, the date that appears there
3 is what?

4 A 9-23-93.

5 Q And what -- for the record, what is
6 depicted in State's Exhibit 144-C?

7 A State's Exhibit 144-C is the left hand, the
8 inked impression between the thumb and index finger
9 of Daniel Green.

10 Q And State's Exhibit 144-C, is it in
11 substantially the same condition as it was in after
12 the time you took that inked impression?

13 A Yes, sir.

14 Q Hand you what's been marked as State's
15 Exhibit 144-D, and ask you if you can identify it?

16 A Yes, sir.

17 Q How are you able to identify 144-D?

18 A State's Exhibit 144-D has my signature on
19 it, the date, and initials RCSD on it.

20 Q And the date that appears --

21 A 9-23 of '93.

22 Q For the record, what is depicted in State's
23 Exhibit 144-D?

24 A State's Exhibit 144-D is the right inked
25 impression of Daniel Green's hand.

1 Q Is State's Exhibit 144-D in substantially
2 the same condition that it was in after the inked
3 impression was made on the document?

4 A Yes, sir.

5 Q Hand you what's been marked as State's
6 Exhibit 144-E and ask you if you can identify it?

7 A Yes, sir.

8 Q How are you able to identify State's
9 Exhibit 144-E?

10 A State's Exhibit 144-E has my signature on
11 it, date that the inked impressions were taken, and
12 initials RCSD on it.

13 Q And what if any date appears there?

14 A The date 9-23 of '93.

15 Q For the record, what is depicted in State's
16 Exhibit 144-E?

17 A State's Exhibit 144-E is the right hand
18 inked impressions of the side of Daniel Green's
19 hand. The five fingers from the tips as far down as
20 I could get to roll it on a paper, and also the
21 actual tips of each finger, of all five. And that
22 would be of the right hand.

23 Q Is State's Exhibit 144-E in substantially
24 the same condition that it was in after the time that
25 the inked impressions were rolled on to the document?

1 A Yes, sir.

2 Q Hand you what's been marked as State's
3 Exhibit 144-F and ask if you can identify it?

4 A Yes, sir.

5 Q And how are you able to identify State's
6 Exhibit 144-F?

7 A State's Exhibit 144-F has my signature on
8 it with the date.

9 Q And what if any date appears there?

10 A The date is 9-23 of '93.

11 Q For the record what is depicted in State's
12 Exhibit 144-F?

13 A State's Exhibit 144-F is the left hand of
14 the inked impression of Daniel Green.

15 Q And is State's Exhibit 144-F in
16 substantially the same condition that it was in at
17 the time immediately following the impression that
18 was made on the document?

19 A Yes, sir.

20 Q Hand you what's been marked as State's
21 Exhibit 144-G, and ask if you can identify it?

22 A Yes, sir.

23 Q How are you able to identify State's
24 Exhibit 144-G?

25 A State's Exhibit 144-G has my signature and

1 a date on it.

2 Q What if any date appears there?

3 A Date is 9-23 of '93.

4 Q For the record what is depicted on State's
5 Exhibit 144-G?

6 A State's Exhibit 144-G is the left hand
7 inked impressions of the side of the left hand, the
8 five fingers from the top of the fingers as far down
9 as the hand gets, and the tip of all five fingers.

10 Q Is State's Exhibits 144-G in substantially
11 the same condition that it was in at the time
12 following the making of the inked impression on the
13 document?

14 A Yes, sir.

15 MR. BRITT: Your Honor, at this
16 time I move for admission of State's
17 Exhibit 144 through 144-G.

18 THE COURT: Without objection
19 State's Exhibit 144 through 144-G are
20 admitted.

21 (State's Exhibit 145 was
22 marked for identification.)

23 BY MR. BRITT:

24 Q I'll show you what has been marked as
25 State's Exhibit 145, and ask if you can identify

1 that.

2 A Yes, sir.

3 Q And how are you able to identify State's
4 Exhibit 145?

5 A State's Exhibit 145 has the name Demery on
6 it. It's my handwriting.

7 Q Are you able to recognize the envelope
8 based upon your handwriting that appears there?

9 A Yes, sir.

10 Q At this time what if any condition is
11 State's Exhibit 145 in?

12 A State's Exhibit 145 is sealed with tape at
13 both ends.

14 Q What if anything did you place inside of
15 State's Exhibit 145?

16 A State's Exhibit 145 has the major case
17 prints of Demery. I can't think of his first name.

18 MR. BRITT: With the Court's
19 permission.

20 THE COURT: Yes, sir.

21 MR. BRITT: The record will
22 reflect I have opened State's Exhibit 145
23 along an edge of the envelope that bears no
24 markings.

25 THE COURT: Yes, sir.

1 MR. BRITT: That I am removing
2 the contents of State's Exhibit 145.

3 THE COURT: Okay.

4 (State's Exhibits 145-A through 145-G
5 were marked for identification.)

6 MR. BRITT: Your Honor, for the
7 purposes of the record, the record will
8 reflect that I have marked the contents of
9 State's Exhibit 145 with the following
10 exhibit numbers: 145-A, 145-B, 145-C,
11 145-D, 145-E, 145-F and 145-G.

12 THE COURT: Yes, sir.

13 BY MR. BRITT:

14 Q I'm going to hand you what has been marked
15 as State's Exhibit 145-A through G. Referring your
16 attention to State's Exhibit 145-A, can you identify
17 that document?

18 A Yes, sir.

19 Q How are you able to identify State's
20 Exhibit 145-A?

21 A State's Exhibit 145-A has my signature and
22 a date the prints were taken.

23 Q What if any date appears by your signature?

24 A 9-23 of '93.

25 Q For the record what is State's Exhibit

1 145-A?

2 A State's Exhibit 145-A is a fingerprint card
3 with an inked impression of Larry Demery.

4 Q And is State's Exhibit 145-A in
5 substantially the same condition as it was in at the
6 time that the fingerprints were made?

7 A Yes, sir, they are.

8 Q Referring your attention to State's Exhibit
9 145-B, ask if you can identify that and tell us how.

10 A Yes, sir. State's Exhibit 145-B has my
11 signature on it, date.

12 Q And the date that appears there?

13 A 9-23 of '93.

14 Q And for the record what is State's Exhibit
15 145-B?

16 A It is an inked impression of Larry Demery's
17 prints between his thumb and index finger on his
18 right hand.

19 Q Is State's Exhibit 145-B in substantially
20 the same condition that it was in at the time the
21 impression was made on the document?

22 A Yes, sir.

23 Q State's Exhibit 145-C, can you identify it
24 and how.

25 A Yes, sir, has my signature on it, date.

1 Q And the date that appears there?

2 A 9-23 of '93.

3 Q For the record what is State's Exhibit
4 145-C?

5 A State's Exhibit 145-C is the right hand
6 inked impression of Larry Demery, the palm of the
7 hands -- excuse me, the right side of the hand, not
8 the palm, five fingers off his right hand and the
9 tips of the fingers. The fingers were rolled from
10 the top to the bottom as far as going down to the
11 hand.

12 Q State's Exhibit 145-C, is it in
13 substantially the same condition it was in at the
14 time immediately following the making of the inked
15 impression on the document?

16 A Yes, sir.

17 Q Hand you what's been marked as State's
18 Exhibit 145 and ask if you can identify it -- excuse
19 me, 145-D, excuse me.

20 A State's Exhibit 145-D is -- has my
21 signature on it, the date. Date is 9-23 of '93. It
22 is the left inked impression between the index finger
23 and the left thumb.

24 Q From whose hand?

25 A Larry Demery.

1 Q Is State's Exhibit 145-D in substantially
2 the same condition that it was in at the time
3 immediately following the making of the inked
4 impression on the document?

5 A Yes, sir.

6 Q Hand you what has been marked as State's
7 Exhibit 145-F -- excuse me, E, and ask if you can
8 identify it?

9 A Yes, sir.

10 Q How are you able to do so?

11 A Has my signature on it, date, and it's
12 Larry Demery's left-hand inked impression. Date on
13 it is 9-23 of '93.

14 Q Is State's Exhibit 145-E in substantially
15 the same condition that it was in at the time
16 immediately following the making of the inked
17 impression on to the document?

18 A Yes, sir.

19 Q Hand you what's been marked as State's
20 Exhibit 145-F, and ask you if you can identify it?

21 A Yes, sir.

22 Q How are you able to do so?

23 A Has my signature on it, date, date is 9-23
24 of '93. It's the right hand inked impression of
25 Larry Demery.

1 Q Is State's Exhibit 145-F in substantially
2 the same condition that it was in at the time
3 immediately following the making of the inked
4 impression on the document?

5 A Yes, sir.

6 Q Handing you what's been marked as State's
7 Exhibit 145-G, ask you if you can identify that
8 document?

9 A Yes, sir.

10 Q How are you able to do so?

11 A Has my signature on it.

12 Q And does any date appear there?

13 A Yes, sir, and a date, 9-23 of '93.

14 Q Is what if anything is State's Exhibit
15 145-G?

16 A State's Exhibit 145-G is the left side
17 impression, inked impression of Larry Demery's hand.
18 His five fingers off his left-hand and the tips of
19 his fingers off his left hand.

20 Q Is State's Exhibit 145-G in substantially
21 the same condition that it was in at the time
22 immediately following the making of the inked
23 impression on to the document?

24 A Yes, sir.

25 MR. BRITT: Your Honor, at this

1 time I move for admission of State's
2 Exhibit 145 through 145-G.

3 THE COURT: They are admitted
4 without objection.

5 MR. BRITT: At this time, Your
6 Honor, I ask that State's Exhibits 144
7 through 144-G be published to the jury and
8 145 through 145-G be published to the jury.

9 THE COURT: So that we can keep
10 them separate, if we could pass 144 through
11 144-G on the front row, sir, and then 145
12 through 145-G on the second row. And
13 again, folks, please recall my
14 instructions, examine any exhibit given to
15 you individually and carefully and without
16 any comment.

17 THE COURT: Can we do something
18 to lower the temperature here, please?
19 Thank you, sir.

20 (Exhibits published to the jury.)

21 THE COURT: What we should have
22 is 144 --

23 JUROR: I'm missing B, 144-B.

24 THE COURT: Which is the manila
25 envelope.

1 JUROR: I've got it.

2 THE COURT: Yes, ma'am.

3 JUROR: Thank you.

4 THE COURT: Yes, sir, Mr. Britt.

5 BY MR. BRITT:

6 Q Where were these inked impressions taken?

7 A Robeson County Sheriff's Department.

8 Q After the inked impressions were taken,
9 what if anything did you do with those impressions?

10 A I turned them over to Detective Anthony
11 Thompson with the Robeson County Sheriff's
12 Department.

13 MR. BRITT: No other questions.

14 THE COURT: Any
15 cross-examination?

16 MR. BOWEN: No questions.

17 THE COURT: May the witness be
18 released, folks?

19 MR. THOMPSON: Yes, sir.

20 THE COURT: Thank you, sir,
21 you're free to go.

22 THE WITNESS: Thank you, Judge.

23 THE COURT: Mr. Britt, you've got
24 two additional folks here at this time?

25 MR. BRITT: Yes, sir.

1 THE COURT: Ladies and gentlemen,
2 we have not had an afternoon break. I
3 would like to take about ten minutes. Is
4 that satisfactory? And then we will come
5 back.

6 MR. BRITT: That would be fine.

7 THE COURT: You folks are at ease
8 until five after. Please report directly
9 back to the jury room at that time, and
10 we'll go forward at that time. Everyone
11 else please remain seated.

12 (Jury out at 3:55 p.m.)

13 THE COURT: We're at ease until
14 five after, folks.

15 (Brief recess.)

16 THE COURT: All counsel are
17 present, the defendant is present in open
18 court. Do we have all members of the jury
19 in the jury room?

20 THE BAILIFF: Yes, sir.

21 THE COURT: If you'll bring them
22 in, please.

23 (Jury in at 4:08 p.m.)

24 THE COURT: Mr. Britt, you may
25 call your next witness.

1 MR. BRITT: Your Honor, at this
2 time we call -- re-call Special Agent Jerry
3 Richardson.

4 THE COURT: You've previously
5 been sworn, sir, so you remain under oath.
6 If you'll take the witness stand, sir.

7 JERRY RICHARDSON,
8 having been previously duly sworn, was examined and
9 further testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BRITT:

12 Q Mr. Richardson, in your capacity with the
13 latent evidence section of the SBI laboratory on
14 August the 18th of 1993, was a 1992 red Lexus
15 submitted for analysis?

16 A Yes, there was.

17 Q And was that red Lexus transferred to your
18 custody on August the 18th of 1993?

19 A Yes, sir, it was.

20 Q Where did you take custody of that red
21 Lexus?

22 A Custody was taken in one of our SBI garages
23 which is near the SBI campus in Raleigh, North
24 Carolina.

25 Q After you took custody of the 1992 red

1 Lexus, what if any examination did you perform?

2 A I performed a number of examinations.
3 Initially, a visual examination to see if there were
4 any visual items that I needed to remove from the
5 car. At that point, we started a number of different
6 sequences of techniques, light sources, powders,
7 different lines, things like that that were used on
8 the vehicle in order to develop latent prints, along
9 with other people who also did analysis on the
10 vehicle.

11 Q As a result of the examination that you
12 performed, were you able to find any latent
13 fingerprints on the -- on or in the red Lexus?

14 A On the car, there were some items that were
15 actually removed from the vehicle prior to me
16 processing that item. Items that could be processed
17 back in the laboratory. There were some latent palm
18 prints that were developed on the exterior of the
19 vehicle the very next day.

20 Q How were those latent palm prints lifted
21 from the exterior of the vehicle?

22 A They were lifted by powdering techniques.
23 We use a number of different powders to powder the
24 exterior and the interior of the vehicle. And on the
25 outside of the vehicle, there were areas of what I

1 referred to earlier as ridge detail. You could tell
2 a hand or something had touched it. And those prints
3 were actually powdered and lifted from the vehicle
4 and placed on a lifting card at that point.

5 Q What is a lifting card?

6 A A lifting card is simply a white card that
7 has a glossy or shiny front surface. And when the
8 print is powdered, the powder is placed on it, and
9 with sticky tape or what we call lifting tape, that
10 print is removed and placed on that card. Generally
11 they are white, because of the contrast, the powder
12 being black. However, there are black cards if the
13 print was lifted with another type of powder or a
14 silver type of powder, but that lifting card is just
15 a card that has a glossy finish on it to record those
16 latent prints.

17 Q After a latent print is lifted from an item
18 and then transferred to the lifting card, is that
19 print then preserved?

20 A Yes, sir, at that point that print is
21 preserved with the tape, with the powder adhering to
22 the tape and the formation of the ridge detail that
23 is recorded, it is recorded at that point and marked
24 accordingly.

25 Q Are those lifting cards and the prints that

1 appear on lifting cards used for the purposes of
2 comparison with known prints?

3 A Yes, they are.

4 Q And how can you compare the prints from a
5 lifting card with the known prints of an individual?

6 A What we do initially is we place the actual
7 area of ridge detail as close to the known ink
8 impressions as possible, and through a small
9 magnifier we look for the points of identification,
10 looking for the same points of identification in the
11 prints that were lifted versus the card of the known
12 ink impressions or the known individual that we are
13 comparing, and they are placed side by side and under
14 a small magnifier, we look for those similarities and
15 points and we make an identification if we find a
16 sufficient number of points of identification in
17 that.

18 Q And the palm prints that were lifted from
19 the exterior of the red Lexus, were they compared
20 with any other -- with any fingerprints there at the
21 lab?

22 A Yes, they were compared to a set of major
23 ink impressions and two sets of inked impressions
24 which were on file with the SBI at that time.

25 Q And were you able to make an identification

1 of those palm prints that were lifted from the
2 exterior of the red Lexus?

3 A Well, the palm prints that were lifted from
4 the exterior, there was no identification against the
5 individuals that I compared at that point.

6 Q And what individual did you compare those
7 prints with?

8 A They were compared to the inked impressions
9 on file of the name of Daniel Andre Green and Larry
10 Demery.

11 Q Other than on the exterior portion of the
12 red Lexus, were there any other latent prints that
13 were lifted from any items inside the red Lexus?

14 A Yes, there were.

15 Q What items -- from what items were latent
16 prints lifted?

17 A Latent prints were lifted from what is my
18 item 59-H, which was one rear view mirror which was
19 removed from the red Lexus. There was some other
20 areas of ridge detail which were developed on other
21 items, however they weren't of sufficient value for
22 identification purposes.

23 Q And from the rear view mirror that was
24 there in the Lexus, were you able to compare that
25 latent print on the -- that was taken from the rear

1 view mirror with any known ink impressions?

2 A Yes, I was able to compare that latent
3 print at that time.

4 Q And with what known ink impressions did you
5 make that comparison?

6 A I compared it to both sets, and in my
7 comparison it was identified as belonging to one of
8 the individuals that I compared it to.

9 Q And who did you identify that print
10 belonging to?

11 A That print was identified as having been
12 made by the card bearing the name of Larry Demery.

13 Q Were there any other identifiable prints
14 lifted from any items in the Lexus or from the Lexus
15 itself?

16 A From the other items there were no
17 identifiable latent prints which were developed.

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 59-A and also State's Exhibit 59-C
24 and ask if you can identify those?

25 A State's Exhibit 59-A, I can as a tag which

1 is attached to the gun. State's Exhibit 59-C, I can
2 identify because it bears my case number, item
3 number, and the date on it.

4 Q And on August the 18th, 1993, did you
5 examine a .38 caliber Smith & Wesson revolver for any
6 latent fingerprints?

7 A I'm going to refer to my notes. Yes, I
8 received item -- well, what is my item, State's
9 Exhibit 59-C, my item 48, on August 18th, 1993, and
10 it was examined.

11 Q And at the time what was State's Exhibit
12 59-C attached to?

13 A State's Exhibit --

14 Q What if anything did you attach State's
15 Exhibit 59-C to?

16 A State's Exhibit 59-C was attached to one
17 .38 caliber Smith & Wesson revolver, serial number
18 V83470, and there were along with that item, there
19 are also six .38 caliber bullets.

20 Q And the serial number from the .38 caliber
21 Smith & Wesson revolver, is that the same serial
22 number that appears on State's Exhibit 59-A. I'll
23 ask you to examine that.

24 A Yes, the number is the same.

25 Q And when you examined State's Exhibit 59-A

1 for any latent fingerprints, can you the tell the
2 jury what you did in terms of trying to locate any
3 latent prints on State's Exhibit 59-A?

4 A On an item such as State's Exhibit 59-A,
5 initially I did what we call basically a visual
6 examination, to see if there were any prints there.
7 And this is also using different light sources to see
8 if any prints would fluoresce on their own, utilizing
9 a laser or other light source. I then Super-Glued
10 this particular item, which is a process where we
11 heat Super-Glue up in an attempt to have the areas of
12 ridge details that may be present on the item, have
13 Super-Glue attached to it, which could make it
14 visible at that point to be photographed.

15 I then would powder the item to see if I
16 could develop any print that may be lifted. At that
17 point, I would apply a chemical to it, one of the
18 different dyes that we use in the lab, and follow
19 that up with a laser examination to see if any prints
20 would also be there which may be photographed.

21 Q Were you able to locate any latent prints
22 on State's Exhibit 59-A?

23 A No, there were no identifiable latent
24 prints developed on State's Exhibit 59-A.

25 Q And is State's Exhibit 59-A in

1 substantially the same condition today as it was when
2 you examined it on August the 18th, 1993?

3 A Yes, it is.

4 Q After you completed your examination of the
5 .38 caliber revolver on August the 18th, 1993, what
6 if anything did you do with it or to whom did you
7 transfer it?

8 A At that point it was transferred to Special
9 Agent R.N. Marrs of the SBI firearms section.

10 Q On August the 24th of 1993, did you receive
11 a package containing compact discs there in the
12 laboratory?

13 A Yes, I did.

14 Q And from whom did you receive that package?

15 A It was received from Special Agent Kim
16 Heffney on that date.

17 MR. BRITT: May I approach?

18 THE COURT: Yes, sir.

19 BY MR. BRITT:

20 Q I'll show you what has been marked
21 previously as State's Exhibit Number 113. Ask you to
22 examine that package and tell me if you're able to
23 identify it.

24 A Yes, I can. It bears my case number, the
25 date I received it, date I opened it, and the item

1 number on it.

2 Q And at the time you received State's
3 Exhibit Number 113, in what condition was the
4 package?

5 A It was in a sealed condition.

6 Q And upon opening State's Exhibit Number
7 113, what if anything did you find inside?

8 A When I opened it, I found a number of
9 compact discs, 32 to be exact, 32 compact disc cases
10 containing compact discs. It also had six empty
11 compact disc cases, and one compact disc which was
12 not in a case at that time.

13 Q And the items contained inside of State's
14 Exhibit Number 113, in what condition were they when
15 you first received them?

16 A They were in a sealed condition.

17 Q And what if anything did you do after
18 receiving State's Exhibit Number 113 and its
19 contents?

20 A I examined it for the presence of latent
21 prints at that time.

22 Q And what examination -- in terms of your
23 examination, what did you do in trying to identify or
24 locate any latent prints on any of the compact disc
25 cases and the compact discs that were contained

1 inside of State's Exhibit 113?

2 A State's Exhibit 113, I did a similar
3 sequence of analysis to develop latent prints, visual
4 examination with the laser to see if any prints would
5 fluoresce on their own. Also followed up with the
6 Super-Glue process, powdering process, and then later
7 with the lasering process to see if any prints would
8 come up with the chemicals that I applied.

9 Q As a result of that examination, were you
10 able to locate any latent prints on the CD cases and
11 the CD's contained inside of State's Exhibit 113?

12 A Yes, there were 13, a total of -- total of
13 13 identifiable latent fingerprints which were
14 obtained from State's Exhibit 113. Yes.

15 Q And did you compare those latent prints
16 with any known prints?

17 A Yes, I did. And sir, if I may back up. In
18 my report, there were 30 total identifiable latent
19 prints which were developed on State's Exhibit
20 113.

21 THE COURT: So there was 30
22 instead of 13?

23 THE WITNESS: Yes, sir.

24 BY MR. BRITT:

25 Q And of those 30 identifiable latent prints,

1 did you compare those with any known fingerprints or
2 ink impressions there at the laboratory?

3 A Yes, I compared them to the known inked
4 impression bearing the name of Daniel Andre Green and
5 of Larry Martin Demery at that time.

6 Q And as a result of your comparison, were
7 you able to identify any of the 30 identifiable
8 latent prints that were lifted from the CD cases and
9 the CD's contained in State's Exhibit Number 113?

10 A Yes, I was.

11 THE COURT: Would you like some
12 water, Mr. Richardson?

13 THE WITNESS: Yes, sir.

14 BY MR. BRITT:

15 Q And of those 30 identifiable latent prints
16 that were lifted from the CD cases and the CD's
17 contained inside of State's Exhibit Number 113, were
18 any of them matched to the known ink impressions of
19 the defendant, Daniel Green?

20 A Yes, there were.

21 Q How many of the 30 identifiable latent
22 prints matched the known ink impressions of the
23 defendant?

24 A There were a total of 13 identifications
25 which I matched to the card or impressions bearing

1 the name of Daniel Andre Green.

2 Q How many of the 30 identifiable latent
3 prints were you able to match to Larry Martin Demery?

4 A There were a total of six identifiable
5 latent prints which were matched to the card or
6 impressions bearing the name of Larry Demery.

7 Q And after you completed your examination of
8 the CD's and the CD cases contained in State's
9 Exhibit Number 113, what if anything did you do with
10 those items?

11 A I sealed the items and they were sealed and
12 held in my possession until they were turned over at
13 that point.

14 Q To whom did you turn them over?

15 A I'm sorry, they were turned over to our
16 evidence control unit, and they were mailed back to
17 Mr. Kim Heffney at that point.

18 MR. BRITT: May I approach?

19 THE COURT: Yes, sir.

20 BY MR. BRITT:

21 Q Mr. Richardson, I'll ask you to examine
22 State's Exhibit Number 113. Other than the fact that
23 State's Exhibit Number 113 is now open, is State's
24 Exhibit Number 113 and its contents in substantially
25 the same condition they were in at the time you

1 completed your examination and sealed the package?

2 A Yes, they are.

3 MR. BRITT: Your Honor, at this
4 time I move for introduction of State's
5 Exhibit 113 and it's contents.

6 THE COURT: Yes, sir. It's
7 admitted without objection.

8 BY MR. BRITT:

9 Q On September the 23rd of 1993, did you
10 examine any other -- another item or items that were
11 submitted to the latent section that related to this
12 case?

13 A On September 23rd, 1993, I also received a
14 total of seven credit cards and one Blockbuster Video
15 card at that point.

16 Q And what if any examination did you do on
17 the seven credit cards and the Blockbuster Video
18 card?

19 A On the cards and the Blockbuster Video
20 card, the same type of sequence process was applied,
21 utilized the visualization and light sources, and
22 Super-Glue process, powdering, applying one of the
23 chemical dyes, and viewing it under the laser to see
24 if any of the prints could be developed.

25 Q Were you able to locate any latent

1 fingerprints on any of the cards?

2 A No. There were areas of ridge detail,
3 however there were no prints which were of value for
4 identification found on that particular item.

5 Q And on October the 12th of 1993, did you
6 receive major case inked impressions of the defendant
7 Daniel Green and also major case inked impressions of
8 Larry Martin Demery?

9 A Yes, I did.

10 Q Did you utilize those in your examination?

11 A Yes, I did

12 (State's Exhibits 146 through 150 were
13 marked for identification.)

14 MR. BRITT: May I approach?

15 THE COURT: Yes, sir.

16 BY MR. BRITT:

17 Q I'm going to hand you what has been marked
18 as State's Exhibit 146 through 150, ask you to
19 examine each of those and tell me if you can identify
20 those exhibits?

21 A Yes, I can.

22 Q How are you able to identify State's
23 Exhibit 146 through 150?

24 A They bear my case number, item number, and
25 date also, and initials on the packaging.

1 Q And for the record, what is State's Exhibit
2 Number 146?

3 A State's Exhibit 146 is a sealed envelope
4 which I have labeled with my case number, item number
5 and has 36 latent lifts obtained from item JR-4.

6 Q What was item JR-4?

7 A Item JR-4 was the package of compact discs
8 that I received in the lab for analysis.

9 Q And State's Exhibit Number 146, does it
10 contain the 30 identifiable latent prints that were
11 lifted from the compact discs cases and the compact
12 discs that were submitted for analysis?

13 A Yes, does.

14 Q Is State's Exhibit Number 146 sealed at
15 this time?

16 A Yes, it is.

17 MR. BRITT: Record will reflect
18 that I've opened State's Exhibit 146.

19 THE COURT: Yes, sir.

20 BY MR. BRITT:

21 Q Mr. Richardson, I'm going to ask you to
22 simply count the number of items --

23 MR. BRITT: And for the record,
24 I've removed the contents of State's
25 Exhibit Number 146.

1 BY MR. BRITT:

2 Q And Mr. Richardson, for the record, if you
3 will count the items that were removed from 146.

4 A There were 36 total lift cards removed from
5 State's Exhibit 146.

6 Q And the lift cards that were used in your
7 examination of the contents of State's Exhibit number
8 113, that being the CD and CD cases, on the lift
9 cards did you place notations indicating which of the
10 lift cards matched the known impressions of any
11 individuals that you compared those lift cards with?

12 A Yes. You will find that on each one that
13 there is a print of value, I have a small circle on
14 it, and for the prints that I have identified as
15 belonging to an individual, in this particular case,
16 the -- there is some writing with that person's --
17 that individual's name, the date, the finger number,
18 and also there are my case number, item number, and
19 date is also on this particular item.

20 Q And the contents of State's Exhibit Number
21 146, are they in substantially the same condition
22 they were in immediately following your examination
23 of the identifiable latent prints and the comparison
24 with the known ink impressions of the defendant Larry
25 Martin Demery?

1 A Yes, they are.

2 MR. BRITT: Your Honor, at this
3 time I move for admission of State's
4 Exhibits 146 and its contents.

5 THE COURT: Yes, sir, it's
6 admitted.

7 BY MR. BRITT:

8 Q Mr. Richardson, for the record, State's
9 Exhibit 147, what is that?

10 A Sealed envelope which bears my case number,
11 item number, and date also on this, on the outside.

12 Q And what if any other markings are on the
13 envelope marked as State's Exhibit Number 146?

14 A My markings, has four photographs and two
15 negatives on the outside of it.

16 Q And during your examination, did you take
17 photographs of the latent prints in the areas where
18 they were located?

19 A Yes. What I was doing at this point is
20 taking photographs of areas of ridge detail for later
21 use in my comparison purposes.

22 Q For the record, is State's Exhibit Number
23 147 in a sealed state at this point?

24 A Yes, it is.

25 MR. BRITT: With the Court's

1 permission.

2 THE COURT: Yes, sir.

3 MR. BRITT: The record will
4 reflect that I've opened State's Exhibit
5 Number 147 and I'm removing its contents.

6 BY MR. BRITT:

7 Q Mr. Richardson, I'll ask you to examine the
8 contents of State's Exhibit Number 147, tell me if
9 you can identify those?

10 A Yes, I can.

11 Q How are you able to identify the contents
12 of State's Exhibit 147?

13 A They are negatives and photographs which
14 bear my case number, item number, and date also on
15 the photographs and the negatives.

16 Q And the photographs and the negatives that
17 were contained inside of State's Exhibit Number 147,
18 are they in the same condition as they were in when
19 you placed them inside of State's Exhibit 147 and
20 sealed them?

21 A Yes, they are.

22 Q And what if anything is depicted in the
23 photographs, in the negatives contained inside of
24 State's Exhibit 147?

25 A In State's Exhibit 147, there is a

1 photograph that I took of the rear view mirror which
2 was removed from the red Lexus, and the negatives,
3 simply a photograph, and of a Polaroid which comes
4 with the negative, which was also photographed at a
5 later time to reverse those images back to their
6 correct position. And they are in the same state
7 that I had them in the laboratory.

8 Q And the latent print that was located on
9 the rear view mirror, you were able to match it with
10 the known inked impression of Larry Martin Demery?

11 A That's correct.

12 Q And State's Exhibit -- they are in the same
13 condition today as they were at the time you took the
14 photographs?

15 A Yes, sir, they are.

16 MR. BRITT: Your Honor, I ask
17 that State's Exhibit 134 and its contents
18 be admitted.

19 THE COURT: Yes, sir, it's
20 admitted.

21 BY MR. BRITT:

22 Q State's Exhibit 148, what is that?

23 A Sealed envelope that bears my case number,
24 item number and date on it also.

25 Q What other markings other than item number

1 and date and initials appear on it?

2 A I have listed below that four photographs
3 and two negatives.

4 Q For the record, is State's Exhibit 148 in a
5 sealed condition at this time?

6 A Yes, it is.

7 MR. BRITT: With the Court's
8 permission.

9 THE COURT: Yes, sir.

10 MR. BRITT: The record will
11 reflect I have opened State's Exhibit
12 Number 148 and I'm removing its contents.

13 BY MR. BRITT:

14 Q Mr. Richardson, I ask you to examine the
15 contents of State's Exhibit 148 and tell me if you
16 can identify those?

17 A Yes, I can. They are negatives of
18 photographs which bear my case number, item number,
19 and date.

20 Q And for the record, what was removed from
21 State's Exhibit 148?

22 A There were four photographs which are, I
23 stated earlier, the actual Polaroids of areas of
24 ridge detail that I noted which were recorded with a
25 negative, and the other photographs are photographs I

1 also took to reverse the image to their correct
2 position at that time.

3 Q And were you able to compare those latent
4 prints with any known ink impressions?

5 A The photograph that I took here, there were
6 no -- there was no area of identifiable ridge
7 detail. There was an area of ridge detail, however,
8 it was not identifiable for comparison purposes.

9 Q And State's Exhibit 148 and its contents,
10 are they in substantially the same condition today as
11 they were at the time you sealed them?

12 A Yes, they were.

13 MR. BRITT: Ask that State's
14 Exhibit 148 be admitted.

15 THE COURT: Yes, sir.

16 BY MR. BRITT:

17 Q State's Exhibit 149, ask you what is that?

18 A State's Exhibit 149 is a sealed envelope
19 which bears my case number, item number, and date.

20 Q And what if any other markings appear on
21 State's Exhibit 149?

22 A 149, I have one photograph taken prior to
23 analysis.

24 MR. BRITT: With the Court's
25 permission.

1 THE COURT: Yes, sir.

2 MR. BRITT: The record will
3 reflect I have opened State's Exhibit 149
4 and am removing the contents.

5 THE COURT: Yes, sir.

6 BY MR. BRITT:

7 Q If you'll examine the contents, tell me if
8 you're able to identify it.

9 A There's a photograph which bears my case
10 number, item number, and date. And it's a photograph
11 of what appears to be a Rolodex card which was found
12 in the red Lexus.

13 Q Were you able to locate any latent prints
14 on it?

15 A No, I was not.

16 Q Is it in the same condition today as it was
17 at the time you placed it and sealed it inside of
18 State's Exhibit 149?

19 A Yes, it is.

20 MR. BRITT: Your Honor, at this
21 time I ask that it be admitted.

22 THE COURT: It's admitted.

23 BY MR. BRITT:

24 Q State's Exhibit 150, what if anything is
25 it?

1 A It is a sealed envelope which bears my case
2 number, item number, and date on the packaging.

3 Q And what other markings appear on State's
4 Exhibit 150?

5 A Below that, I have 25 latent lifts.

6 Q And is it in a sealed condition at this
7 time?

8 A Yes, it is.

9 MR. BRITT: With the Court's
10 permission.

11 THE COURT: Yes, sir.

12 MR. BRITT: The record will
13 reflect I have opened State's Exhibit
14 Number 150 and am removing its contents.

15 BY MR. BRITT:

16 Q Mr. Richardson, will you please count the
17 number of items that were removed from State's
18 Exhibit 150.

19 A There are 21 total lift cards, and some of
20 the lift cards will contain lifts on either side of
21 it or may contain two or three lifts on them, but
22 they are the standard lift cards that we use in
23 transferring prints that we lift from an item on to a
24 lift card to record those impressions.

25 Q And were you able -- the lifts cards, were

1 you able to transfer latent prints from the red Lexus
2 to the lift card?

3 A Yes. This was when I was actually doing
4 the powder technique on the car and impressions or
5 areas of ridge detail that I noted, they were lifted,
6 powdered, lifted with a tape and placed on these
7 cards for later comparisons.

8 Q Were you able, during your examination, to
9 identify any of those latent prints with any known
10 ink impressions?

11 A The prints that were identifiable, I was
12 not able to identify any of these prints as belonging
13 to any individual that I compared at that time.

14 Q And State's Exhibit 150 and its contents,
15 are they in the same condition today as they were at
16 the time you placed them in the envelope and sealed
17 them?

18 A Yes, they are.

19 MR. BRITT: Your Honor, I ask
20 that State's Exhibit 150 be admitted.

21 THE COURT: It's admitted.

22 BY MR. BRITT:

23 Q As a result of your examination of the
24 various items, did you file a report in connection
25 with that examination?

1 A Yes, I did

2 (State's Exhibit 151 was
3 marked for identification.)

4 MR. BRITT: May I approach?

5 THE COURT: Yes, sir.

6 BY MR. BRITT:

7 Q I'm going to hand you what has been marked
8 as State's Exhibit Number 151, ask if you can
9 identify that?

10 A Yes, I can.

11 Q How are you able to identify State's
12 Exhibit Number 151?

13 A It is a copy of the report that I prepared
14 and it bears my name, actual item numbers, and the
15 results of my analysis and the disposition of the
16 evidence in the report.

17 Q And State's Exhibit Number 151, the copy of
18 your report, does it contain all the information that
19 you noted in your report as it related to the
20 examinations that you conducted?

21 A Yes, it does.

22 MR. BRITT: Your Honor, at this
23 time I ask that State's Exhibit 151 be
24 admitted.

25 THE COURT: It's admitted.

1 MR. BRITT: If I could approach
2 once more.

3 BY MR. BRITT:

4 Q Mr. Richardson, I'm going to hand you
5 State's Exhibits 144 and 145 and ask if you can
6 identify those?

7 A State's Exhibit 145 is a sealed envelope
8 which bears my case number, item number, and date.
9 And State's Exhibit 144 is also an envelope which
10 bears my case number, item number, and date on it.

11 Q For the record, what is State's Exhibit
12 144?

13 A State's Exhibit 144 are a set of major case
14 ink impressions. They were submitted to me for
15 comparison purposes.

16 Q State's Exhibit 145?

17 A State's Exhibit 145 are also a set of major
18 case ink impressions which were submitted to me for
19 comparison purposes.

20 Q Mr. Richardson, how are prints utilized in
21 the identification of individuals?

22 A Fingerprints are utilized in the
23 identification of an individual -- when you refer to
24 latent lifts, whether it be a photograph or a print
25 that's actually lifted, we look for, as I stated

1 earlier, through a small magnifier, we look for the
2 same identifying characteristic in the latent and in
3 the known inked impressions. And if a sufficient
4 number of those characteristics are found, we can
5 then affect an identification to that individual or
6 to the card that was submitted to us, and prints are
7 utilized in that manner in affecting identifications.

8 Q And once you make a match between a latent
9 print and a known inked impression of an individual,
10 do you then do any examination or have any other
11 examination performed to verify the match that you've
12 made?

13 A Yes. In our section, and in most sections
14 throughout the country, there are standard policy
15 that any time an identification is made, whatever
16 kind of identification, made from a latent lift or
17 from ink impressions to ink impressions or whatever,
18 is re-compared independently by a second examiner
19 prior to any report being issued. And that person
20 will also sign --

21 MR. BOWEN: Object to that.

22 THE COURT: Overruled. This is
23 as to policy within the department?

24 MR. BRITT: Yes, sir.

25 THE COURT: Overruled. Exception

1 is noted for the record. You may complete
2 your answer.

3 THE WITNESS: And it is
4 reexamined by a second examiner who also
5 compares those prints and comes to the same
6 conclusion --

7 MR. BOWEN: Object.

8 THE COURT: You want to be
9 heard?

10 MR. BOWEN: Yes, sir.

11 THE COURT: Members of the jury,
12 if you will step to the jury room. Don't
13 worry or speculate about what takes place
14 in the courtroom in your absence. I expect
15 we'll be with you momentarily.

16 (Jury out at 4:51 p.m.)

17 THE COURT: In the absence of the
18 jury, basis, Mr. Bowen?

19 MR. BOWEN: Yes, sir. Basis is
20 it violates the defendant's due process,
21 because we will not get to cross-examine
22 this second opinion testimony, so to speak,
23 and what he's doing is putting in
24 corroboration on the coattails of some sort
25 of custom and practice notion. Now, I

1 think Your Honor's prior ruling is correct
2 to allow him to describe a custom and
3 practice, but I think if he wants to get a
4 result from a second opinion, he needs to
5 get that person here.

6 THE COURT: I understand. About
7 80 percent of the cross-examination you've
8 conducted dealt with "what do you know that
9 other officers know," and "what are the
10 policies and practices and the customs,"
11 which elicited the same information that
12 you're now objecting to.

13 MR. BOWEN: Judge, I'm sorry,
14 what he's trying to do is elicit a result.
15 I have not asked any officer to --

16 THE COURT: 80 percent of the
17 cross-examination be conducted --

18 MR. BOWEN: -- what some other
19 officer found independently on a scientific
20 experimentation --

21 THE COURT: How many times have
22 you asked, "Well, you know based on what
23 someone else told you in the course of this
24 investigation that this is true, don't
25 you? " Is that or is that not hearsay in

1 terms of policy --

2 MR. BOWEN: I'm going to do the
3 same thing the State did. State didn't
4 object. I'm now objecting because what
5 he's doing is trying to get in something
6 that he's not going to give me the
7 opportunity to cross-examine about. It
8 violates the due process and I object.

9 THE COURT: Noted, overruled.
10 Exception is noted. You can ask him about
11 the policy before his report is mailed out.

12 MR. BRITT: I would simply say
13 for the record, when Mr. Richardson
14 previously testified in this case in regard
15 to the identification of James Jordan,
16 Mr. Bowen asked him --

17 THE COURT: Same thing.

18 MR. BRITT: -- about the policy
19 there, and his testimony was that another
20 examiner came behind him and reached the
21 same conclusion that he did in terms of the
22 identification of James Jordan through the
23 fingerprints.

24 MR. THOMPSON: And after all
25 that, still we object as to this testimony.

1 THE COURT: And I overruled the
2 objection and noted your exception. Folks,
3 what is good for the goose is good for the
4 gander. If you folks are going to pursue
5 that line of cross-examination, I'm going
6 to allow the State to do the same thing.
7 Your exception is noted. Other folks can
8 decide whether it's right or wrong. Bring
9 the jury back in.

10 (Jury in at 4:53 p.m.)

11 THE COURT: The objection is
12 overruled. Exception is noted. You may
13 repeat or rephrase your question to the
14 witness.

15 BY MR. BRITT:

16 Q Mr. Richardson, what was the policy in the
17 SBI laboratory before your laboratory report is
18 published?

19 A Any time an identification is affected
20 within the section, a second examiner will also
21 independently compare the identification -- compare
22 the same prints to the known set of ink impressions
23 and come to the same conclusion the initial examiner
24 came to, at that point the person signs the card and
25 they are returned to the initial examiner for return

1 at that point.

2 Q Is it at that point that a laboratory
3 report is then filed?

4 A Yes, at that point a laboratory report
5 would be filed.

6 Q And can any two people have the same
7 fingerprints?

8 A No. Throughout history, no two people have
9 ever been found to have the exact same fingerprints.

10 Q So when a latent print is discovered on an
11 item and compared with the known ink impressions of
12 an individual, no other person in the world has that
13 same fingerprint impression?

14 A That is correct. The impressions that are
15 put down by an individual and compared would be the
16 individual that actually touched that particular
17 item.

18 Q Is that how latent prints are left on an
19 item, by touching?

20 A Yes. Latent prints are touched -- on your
21 surface of your hands you've got areas of raised
22 peaks and valleys types, or different ridges that
23 flow around your finger. And when you touch an item,
24 there's a transfer of the moisture or other
25 substances from your finger on to that item. And

1 then as I spoke of earlier, with the powdering
2 techniques or photography techniques, it can be
3 captured and compared at a later date to known set of
4 ink impressions.

5 Q When you examined State's Exhibit Number
6 113, the package containing the CD's and the CD
7 cases, and you found latent prints that matched the
8 known ink impressions of the defendant Daniel Andre
9 Green, do you have an opinion as to whether or not
10 Mr. Green touched or handled the CD's and CD cases
11 that you examined?

12 A The latent prints that I lifted from the CD
13 and set of known inked impressions bearing the name
14 of Daniel Andre Green that I had for comparison were
15 in fact made by the same individual.

16 MR. BRITT: I don't have any
17 other questions.

18 THE COURT: Any
19 cross-examination?

20 MR. BOWEN: Yes, Your Honor.
21 Shall I start?

22 THE COURT: Do you want to hold
23 off until tomorrow?

24 MR. BOWEN: Could we, please?

25 THE COURT: Yes, sir. Yes, sir.

1 I apologize, Mr. Richardson. If you'll
2 return at 9:30 tomorrow morning, we'll
3 continue with cross-examination at that
4 time. You may step down for the moment,
5 sir.

6 I haven't gotten your situation, sir.
7 It appears at this point that I will not be
8 in a position to give you any definitive
9 answer until sometime tomorrow. So let me
10 suggest that you come prepared, and if I
11 can accommodate you, I certainly will do
12 the best that I can.

13 During -- folks, we're going to recess
14 until 9:30 tomorrow morning. During the
15 overnight recess, please don't talk about
16 this matter among yourselves or with anyone
17 else. Don't allow anyone to say anything
18 to you or in your presence about the
19 situation. If anyone communicates with you
20 about this case or attempts to do so, or if
21 anyone says anything about the case in your
22 presence, it's your duty to inform us of
23 that immediately.

24 Don't form or express any opinions
25 about the case, don't have any contact of

1 any kind with anyone involved in the case.
2 Avoid any exposure to any media accounts
3 which may exist in connection with this
4 matter, and don't conduct any independent
5 inquiry or investigation or research of any
6 kind.

7 If you will report promptly at 9:30,
8 we expect to be in a position to go forward
9 immediately at that time. Have a good
10 evening folks, see you then.

11 (Jury out at 4:58 p.m.)

12 THE COURT: In the absence of the
13 jury, Mr. Britt, without attempting to pin
14 you down at this point, can you give us a
15 general figure of how many more witnesses
16 you've got?

17 MR. BRITT: Yes, sir. Witness
18 that follows Mr. Richardson is Ms. Annie
19 Ruth Oxendine who is present in the
20 courtroom. She lives in the Pembroke
21 area. Following Ms. Oxendine would be
22 Special Agent Heffney. And there may be
23 one additional witness that involves the
24 actual making of the photographs that we
25 were discussing earlier. Just so the Court

1 is aware, Mr. Heffney was present at the
2 time the photographs were made.

3 THE COURT: The foundational
4 requirements are basically -- they are
5 relaxed in that extent. I don't think you
6 need the person as long as we got someone
7 who was present at the time.

8 MR. BRITT: Yes, sir. And based
9 on State versus Barbara Stager, which
10 really relaxed the requirements and
11 foundation for tape recording, video
12 recordings, I think that foundation can be
13 laid through Mr. Heffney, in that he has
14 viewed the videotape and was present when
15 the photographs were made.

16 THE COURT: In fairness to you,
17 you folks contest that and dispute that in
18 any way?

19 MR. THOMPSON: No, sir.

20 THE COURT: That takes care of
21 that. I don't think that's an issue.

22 MR. BRITT: Depending on what the
23 Court's ruling is as to the other portions
24 of the videotape.

25 THE COURT: In all candor, I want

1 to keep an open mind, but consistent with
2 what I have said up to this point, if they
3 are stills, the likelihood, unless there's
4 something that is probative to a
5 significant degree, and that probative
6 value clearly outweighs risk of substantial
7 prejudice, I'm likely to rule -- without
8 ruling at this point.

9 MR. BRITT: There were stills of
10 the latter portion of the video portion.
11 There are stills of portions of the other
12 section that I would like to go into.
13 However, on those particular stills, they
14 involve the events surrounding July 31st,
15 1993, and the date is not depicted on those
16 photographs.

17 THE COURT: So you may need
18 something with regard to the date for the
19 purposes --

20 MR. BRITT: Yes, sir. And the
21 segment of the tape involving the date --
22 let me check my notes -- is approximately
23 five minutes in length.

24 THE COURT: That shouldn't be a
25 problem.

1 MR. BRITT: That involves the --
2 as testimony was previously received, the
3 group of individuals who went to -- from a
4 residence near Fayetteville State
5 University to the Suburban Mart and
6 surrounds -- shows the depiction of the
7 events there at the Suburban Mart.

8 THE COURT: Obviously that's one
9 of the things that I have to keep paramount
10 in my mind in order -- for what purpose is
11 it being offered, is there any other
12 evidence that would prove the same thing
13 that is less risky.

14 MR. BRITT: Yes, sir.

15 THE COURT: And if it's offered
16 for a nonsubstantive purposes, for
17 corroboration, impeachment, something like
18 that, that's a factor that has to be taken
19 into account, or factors that have to be
20 taken into account.

21 MR. BRITT: As I understand the
22 Court's ruling, I am prohibited at this
23 point --

24 THE COURT: The portion that we
25 viewed this afternoon.

1 MR. BRITT: I'm prohibited from
2 displaying that to the jury?

3 THE COURT: Yes, sir.

4 MR. BRITT: But in the event we
5 get later into the case, I may be able to
6 revisit that?

7 THE COURT: Two ways that the
8 videotape may come in: Cross-examination
9 opens doors, or in rebuttal.

10 MR. BRITT: Yes, sir.

11 THE COURT: Two ways that the
12 videotape may come in.

13 MR. BRITT: I just wanted to --

14 THE COURT: Yes, sir. And I want
15 to be abundantly clear so you folks don't
16 feel ambushed. If the doors are opened on
17 cross-examination in some way, or if the
18 defendant offers evidence in rebuttal, it
19 assumes a different stature.

20 MR. THOMPSON: Yes, sir.

21 MR. BRITT: I just wanted to make
22 sure the door hasn't been completely shut.

23 THE COURT: No, sir. As a matter
24 of fact, more often than not, when it comes
25 in in these kinds of situations, it either

1 comes in because doors were opened or in
2 rebuttal.

3 MR. BRITT: Yes, sir.

4 THE COURT: Okay. We're at ease
5 until 9:30 tomorrow morning.

6 Pursuant to the Court's prior order in
7 regard to turning over notes from officers
8 for the Court's review in chambers, at this
9 time I would like to approach the bench and
10 hand the Court the rough notes of the
11 interview conducted with Michael Holtzclaw.

12 THE COURT: Yes, sir. And for
13 the record, am I correct in assuming from
14 that that there are no other rough notes as
15 to any other witnesses beyond the period of
16 May 8, 1995?

17 MR. BRITT: There are some
18 others. I would provide those to the
19 Court.

20 THE COURT: Okay. All right. We
21 are at ease until 9:30 tomorrow morning.

22 (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 31

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 15th day of February, 1996.



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13

14

15 (February 15, 1996. Proceedings in open court.)

16

17

THE COURT: Good morning, folks.

18

We're at ease for just a moment. Mr. Britt

19

indicated he needed to make some copies.

20

Let the record show all counsel are

21

present, the defendant is present in open

22

court. Mr. Britt, you indicated there was

23

some matters we needed to take up before

24

the jury was brought in.

25

MR. BRITT: Yes, sir. Yesterday

1 matter was brought up about discovery and
2 about Brady matters, and the Court inquired
3 if there were any other notes since May of
4 1995 that had been received. There have
5 been several interviews that have been
6 conducted since that point. Most recently
7 during the course of this trial.

8 At this time I'm going to hand up to
9 the Court those notes and so that it's on
10 the record, the notes I'm handing up to the
11 Court, handwritten notes that were taken
12 during interview of one Claire Methina,
13 handwritten notes that was done with a Rosa
14 Lee Wallace. Handwritten notes involving a
15 Rosa A. Osborne. Handwritten notes of an
16 interview with a Kay Hernandez.
17 Handwritten notes of an interview that was
18 conducted with a Ronald Fletcher.
19 Handwritten notes of interview with a
20 Derrick Shaw Locklear. Handwritten notes
21 of an interview that was conducted with
22 Melinda Moore back in January. Handwritten
23 notes of George Wilson Hunt. And
24 handwritten notes of a Richard Terry
25 Locklear.

1 If I could have just a second.

2 THE COURT: Yes, sir.

3 MR. BRITT: We had previously
4 provided information regarding Angelo
5 Thompson, who was an inmate at the North
6 Carolina Department of Corrections. That
7 was given here -- that notice was given
8 here in court. If I could have a few
9 minutes, I have now received Mr. Heffney's
10 dictated statement that was taken from
11 Angelo Thompson, the handwritten notes had
12 previously been provided.

13 Also there is a dictated statement
14 from Melinda Moore that corresponds with
15 the notes that I'm going to hand up to the
16 Court. In addition to that, there are
17 attached to that, copies of the letters
18 that Ms. Moore gave us that were written to
19 her by the defendant. Also there's a copy
20 of a statement from an Eric Darnell
21 Thompson who was interviewed originally in
22 connection with this case by the Cumberland
23 County Sheriff's Department, and then was
24 re-interviewed recently after we had some
25 difficulty in locating him.

1 Also there are statements from
2 individuals who we -- who were interviewed
3 in connection with trying to locate Eric
4 Thompson. Handwritten notes from a
5 telephone conversation that Detective
6 Thompson had with a Barbara Jackson, who is
7 an employee of the Department of
8 Corrections, who was the one who called in
9 reference to Angelo Thompson. If I could
10 have just a minute to make those copies.
11 Those items arrived this morning.

12 THE COURT: Okay.

13 MR. BRITT: May it please the
14 Court.

15 THE COURT: Yes, sir.

16 MR. BRITT: In addition to the
17 handwritten notes that I've previously
18 mentioned on the record, I've also handed
19 up a copy of handwritten notes from an
20 interview that was done with Barbara
21 Jackson the night Mr. Anthony Thompson and
22 Mr. Heffney went to Morrison Youth Center
23 to interview Angelo Thompson, for the
24 Court's review.

25 THE COURT: Okay. Thank you

1 Mr. Britt. For the record, the Court has
2 reviewed the handwritten notes relating to
3 an interview conducted on Monday, February
4 12th, 1996 at approximately 7: 30 p.m. That
5 interview being conducted of Michael
6 Vaughan, V A U G H A N, Holtzclaw,
7 H O L T Z C L A W. That interview being
8 apparently conducted by Special Agent Kim
9 Heffney, and appears to be consistent with
10 the submission of the State in typed form
11 as to the results of that interview.

12 MR. BRITT: Mr. Thompson is the
13 one that conducted that interview.

14 THE COURT: I apologize, it does
15 say Anthony Thompson, and Special Agent Kim
16 Heffney.

17 MR. BRITT: In regard to Mr.
18 Holtzclaw as I said yesterday on the
19 record, I received a phone call Friday
20 night. During the course of that phone
21 call, I made notes, they are legible to me,
22 they may not be to anybody else, and I have
23 brought those with me to court today.

24 THE COURT: Folks, essentially it
25 tracks the information that you provided to

1 counsel for the defendant.

2 MR. BRITT: Yes.

3 THE COURT: And if you'll
4 place -- I need an envelope marked in
5 camera review of law enforcement notes.

6 Yes, sir, any additional matters?

7 MR. BRITT: Yes, just so this is
8 in the record, these are the notes I took
9 from my conversation with Mr. Holtzclaw, I
10 noted his name is Mike Holtzclaw, 231
11 Spruce Drive, Wilmington, North Carolina,
12 beside Cape Fear Hospital, (910) 799-8244.
13 Truckdriver. I-95 south on the exit ramp
14 on the shoulder, two trucks, maroon car
15 parked in front of him, wasn't there when
16 he went to sleep, saw story on TV. Car
17 there at 5:00 a.m. doesn't remember date.
18 No one in the car. New model, small car,
19 12 to 2:00 a.m., pulled over, little L on
20 back of the car, doesn't have log books,
21 didn't look at license plate.

22 THE COURT: Which is also
23 consistent with the notes taken by
24 Mr. Heffney, Mr. Thompson, and the
25 information provided to counsel for the

1 defendant.

2 Okay. And --

3 MR. BRITT: And at this time I'm
4 providing counsel with the typed statements
5 of interviews of Derrick Locklear, Richard
6 Locklear, Rosa Lee Wallace, Rosie Osborne,
7 Ronald Fletcher, Claire Methina. Kay
8 Hernandez. Dominique Enrique Hales. This
9 is the notes that were previously provided
10 but this is the dictated statement that was
11 received by Mr. Heffney, I believe this
12 morning, from dictation pool.

13 Yesterday, I referred to an anonymous
14 phone call that the District Attorney's
15 office had received. Here's a typed
16 statement from Gail Hickman, who is one of
17 the secretaries in my office, she was the
18 one that received the phone call and
19 relayed the information on to us. This
20 person never called back, to my knowledge.

21 THE COURT: Yes, sir.

22 MR. BRITT: Typed statement from
23 Derrick Thompson, excuse me, Eric Thompson,
24 a taped statement from a Darnell Thompson.
25 Statement from an Angeline Lamar. A report

1 filed by Mr. Heffney in connection with
2 items being taken to Dallas, Texas for the
3 purposes of ballistics examination as
4 ordered by the Court on behalf of the
5 defendant, a cover sheet attached to Mr.
6 Anthony Thompson's handwritten notes in
7 regard to his telephone conversation with
8 Barbara Jackson. A report filed by
9 Mr. Heffney in regard to the crime scene,
10 basically a synopsis.

11 THE COURT: Yes, sir.

12 MR. BRITT: Typed statements from
13 Melinda Moore, and attached to that are a
14 series of letters that she received from
15 the defendant. And a typed statement from
16 Angelo Thompson.

17 THE COURT: Those materials are
18 being provided to counsel for the defendant
19 at this time.

20 MR. BRITT: Yes, sir.

21 THE COURT: Let the record so
22 show.

23 Folks, what has been provided by the
24 State up through this point is beyond what
25 is required by statute, beyond what is

1 required by the case law. But it's
2 consistent with the Court's order, and I
3 appreciate it.

4 Any other matters before we bring the
5 jury in?

6 MR. BRITT: No, sir.

7 THE COURT: Mr. Richardson, if
8 you'll return to the stand, please, sir,
9 you remain under oath. And Sergeant Meares
10 if you'll bring our jury in.

11 (Jury in at 9:55 a.m.)

12 THE COURT: Good morning, ladies
13 and gentlemen.

14 Cross-examination?

15 MR. BOWEN: Yes, thank you Your
16 Honor.

17 CROSS-EXAMINATION

18 BY MR. BOWEN:

19 Q Agent Richardson, do you recall about what
20 the mirror looked like that you dusted and examined
21 for fingerprints in this case?

22 A The mirror that was removed from the car?

23 Q Yes.

24 A The mirror was in the vehicle when I
25 initially looked at it. There were some substances

1 on the mirror at that time and other than that it
2 looked like a standard mirror which would be in a
3 vehicle.

4 Q Can you tell the jury whether it appears to
5 be the kind of rear view mirror one finds inside a
6 car or outside a car?

7 A Type of mirror you would find on the
8 interior of a vehicle.

9 Q So it would be the type that you expect
10 would be mounted sort of in the middle of the car up
11 toward the roof, fastened to the roof or fastened to
12 the glass?

13 A Yes, it would be one that would be fastened
14 to the area in the center of the vehicle.

15 Q Now, when you found the fingerprint that
16 you say in your opinion was that of Larry Martin
17 Demery, did you find it on the frame of the mirror or
18 the glass reflected portion?

19 A It was found on the glass reflected portion
20 of the mirror.

21 Q Now, which thumb or finger did you say, in
22 your opinion, that it was?

23 A It was identified as having been the right
24 thumb from the card bearing the name Larry Demery.

25 Q Now, looking at the mirror, were you able

1 to tell what would have been the top of the mirror
2 and the bottom of the mirror at a time when it was
3 properly affixed in the car, assuming that it was?

4 A When I examined the vehicle, the mirror was
5 in the normal position.

6 Q Oh, it was actually up there?

7 A Yes, sir.

8 Q Then can you tell the jury based upon where
9 you found the thumb print, can you give the jury, and
10 you can use your hands to describe it, can you give
11 the jury some idea of the position of the hand of the
12 person that you believe to be Mr. Demery, position of
13 his hand when he touched the mirror to make that
14 thumb print?

15 MR. BRITT: Objection.

16 THE COURT: Sustained. Where was
17 the print on the mirror itself?

18 THE WITNESS: I would have to
19 actually see the mirror, if I could see the
20 mirror I could show the exact location of
21 the print at this time. It was on the
22 reflective surface. I don't have a
23 notation --

24 THE COURT: Was the mirror square
25 in shape, rectangular in shape or oval in

1 shape.

2 THE WITNESS: It was more of. I
3 guess you could say, rectangle with
4 rounded --

5 THE COURT: Would the print have
6 been on the right side of the mirror as you
7 faced it from the interior of the vehicle,
8 or the left side of the vehicle as you
9 faced it from the interior?

10 THE WITNESS: I think I would
11 have to see the mirror. If I could see the
12 mirror I could show the exact location.

13 BY MR. BOWEN:

14 Q You turned the mirror back over to whose
15 custody?

16 A The mirror was returned via first class
17 mail to Special Agent Heffney.

18 MR. BRITT: Mirror is in the
19 evidence locker in Fayetteville.

20 THE COURT: Okay.

21 BY MR. BOWEN:

22 Q You did not note or make any diagram of how
23 the thumb print appeared in reference to the
24 direction of the thumb that made the print, is that
25 right?

1 A I don't have any of that in my notes.
2 However, on the photographs which I viewed yesterday,
3 I think that would maybe illustrate if possible to
4 show how the print was located.

5 THE COURT: Yes, sir.

6 BY MR. BOWEN:

7 Q See if that's in this material.

8 A I don't think so. It would be marked my
9 item 59 H.

10 Q See if this is it.

11 A Yes, it's in State's Exhibit 147.

12 Q All right, sir. Now, you have pulled out
13 some Polaroid photos, positives?

14 A That's correct.

15 Q Within State's Exhibit 147. And can you
16 use that photograph to more particularly illustrate
17 to the jury the position of that thumb print on the
18 glass and whether a thumb would be pointed north,
19 south, east, west, up, down, right or left on the
20 glass when it made that print?

21 A I really don't have the exact location, but
22 it is on the corner of the mirror.

23 Q First of all, can you use that photograph
24 to illustrate to the jury the location and which way
25 the print is pointed?

1 A I think -- I'm not sure if the print -- I
2 would have to see the entire mirror to see the base
3 of it, give an exact location, but I can show from
4 the photograph exactly what is here.

5 Q Okay.

6 THE COURT: What's that exhibit
7 number, Mr. Richardson?

8 THE WITNESS: State's Exhibit
9 147.

10 THE COURT: Okay.

11 BY MR. BOWEN:

12 Q Let's, for clarity of the record, let's
13 please mark this one 47-A if we could please.

14 (Defendant's Exhibit 47-A was marked).

15 BY MR. BOWEN:

16 Q This is now Defense Exhibit 47-A, and I'll
17 ask you if you can use that particular photograph to
18 show what you saw on that mirror regarding that thumb
19 print of Larry Demery, can you or can you not?

20 A I can use it to show the location.
21 However, when I actually develop a print on an item,
22 I mark on the actual item where it actually came
23 from, so there's a notation on the mirror and I can't
24 really see where the base of it is, but I can show
25 the location of where it is and how it would have

1 been placed.

2 Q To that limited extent, would you step
3 around the jury and in three different sections?

4 THE COURT: Yes, you may

5 Mr. Richardson.

6 MR. BOWEN: Thank you, Your

7 Honor.

8 BY MR. BOWEN:

9 Q Would you show that in three different
10 sections to the jury what you saw on that mirror?

11 A What you're looking at here is the corner
12 of the mirror, and around the surface, and this, the
13 black part on the inside would be the reflective
14 surface. The print is placed in a manner like that
15 on the mirror (indicating). You look, that's the
16 outside of the mirror, around -- that's the actual
17 print in the center there. And the ruler is just a
18 scale, used in my analysis.

19 Looking at here is the outside of the
20 mirror, the black part, the inside being the mirror
21 of the reflective surface, the print being right
22 there. Placed down in a manner as such. What you're
23 seeing is, once again, the outside of the mirror, the
24 reflective surface, the glass being this area here,
25 the actual print is there, placed down in a manner

1 like that.

2 Q Thank you. Agent Richardson, the position
3 that you found that fingerprint on the inside --

4 THE COURT: I apologize for the
5 interruption so we don't get those exhibits
6 losses or mixed up, if you could put them
7 back in the envelope.

8 Yes, sir, Mr. Bowen.

9 BY MR. BOWEN:

10 Q Agent Richardson, the fingerprint in the
11 position that you saw it on the rear view mirror,
12 that is the fingerprint that you say is that of Larry
13 Demery, position of that fingerprint is not
14 inconsistent with an individual in the driver's seat
15 of that car reaching up and touching that mirror with
16 his right hand, is it?

17 A Yes, from -- it would be in a manner a
18 person would reach up with their right hand and touch
19 a mirror like that, yes.

20 Q It would be consistent with that having
21 happened, is that correct?

22 A That is correct.

23 Q Okay. Now, when you have fingerprints
24 visible, fingerprints that you are able to find and
25 to see, the lift often overlay the oils and the

1 deposits of fingerprints put on objects earlier, is
2 that true?

3 A Yes, sir, that could be true.

4 Q In other words, as we touch things again
5 and again, it is the discernible or recognizable
6 fingerprints are, generally speaking, the last prints
7 put on on objects, not always, but generally
8 speaking, is that right?

9 A That is correct. In a lot of situations
10 you will find if a print is put down and another
11 print on top of it, it's going to depend on the
12 environment and different effects on the surface or
13 on the actual item, and a print that may be placed
14 down, another placed on top of it could distort or
15 overlap a print that was previously placed there.

16 Q Now, so we will understand our nomenclature
17 completely, when you say no prints of value on an
18 object, that means that you found maybe some partial
19 ridges and swirls and everything but not enough to
20 make an identification, is that correct?

21 A Yes, that's correct.

22 Q Now, when you say no identifiable prints,
23 that means that you found some prints that you might
24 be able to compare but you didn't have anything to
25 compare it to, is that correct?

1 A No, that's not correct. When a print is --
2 when I say a print is not a value, generally that
3 means that I found some type of ridge detail or
4 something where I can determine that a person has
5 touched an item. If I say a present is identifiable,
6 then it is a print which I could identify if I had
7 known standards to compare it to at that point.

8 Q But if you say that something has no
9 identifiable prints, that doesn't mean that it
10 doesn't have any prints at all, does it?

11 A That is correct, yes. There could actually
12 be prints or areas of what we call ridge detail on an
13 item. However, they have an insufficient number of
14 characteristics to compare it to any known standards
15 to effect an identification.

16 Q What would you say if an object had prints
17 that had a sufficient number of ridge details for
18 identification, but you just didn't have anybody to
19 compare it to or any cards to compare it to?

20 A If there were a sufficient number of
21 characteristics in there that I -- in my opinion, I
22 could identify the print, I would say that print is
23 of value or it's identifiable for comparison
24 purposes. And I would mark it as such and maintain
25 it at that time if the known standards that were

1 available.

2 Q Now, you found identifiable prints on the
3 Lexus that were not Larry Demery's didn't you?

4 A That is correct.

5 Q You found identifiable prints that were not
6 Daniel Green's on the Lexus?

7 A That is correct.

8 Q And you found no identifiable prints that
9 were Daniel Green's on the Lexus?

10 A That is correct.

11 Q Now you also had a fingerprint card of
12 Mr. James Jordan, a known inked impression of
13 Mr. James Jordan at the time you compared prints on
14 the car, too, didn't you?

15 A That fingerprint card was on file with the
16 identification section, and I did have it in my
17 custody at one point during the analysis.

18 Q Now, Mr. Richardson, you examined State's
19 Exhibit 59-A, a revolver, did you not? Agent
20 Richardson, you examined State's Exhibit 59-A, did
21 you not, sir?

22 A Yes, I did.

23 Q And did you find any identifiable
24 fingerprints on State's 59-A?

25 A Not on State's Exhibit 59-A. There were

1 areas of ridge detail. However, there were
2 insufficient number of characteristics to compare
3 them to any known standards.

4 Q And you did not find Daniel Green's
5 fingerprints anywhere on 59-A, did you?

6 A That is correct.

7 Q Now, you say that this weapon is in the
8 same condition now here in the courtroom as when you
9 saw it when you performed your analysis?

10 A It's in basically the same condition, yes.

11 Q Did you do any fingerprint analysis on any
12 bullets, sir?

13 A Yes, I did.

14 Q All right. And I'll show you an item
15 marked State's 59-B that has come out of State's
16 59-A, and ask you if you recognize those?

17 A If I could open the bag --

18 THE COURT: Yes, sir.

19 BY MR. BOWEN:

20 Q Yes, sir.

21 A Yes, these are some bullets that, total of
22 six bullets that I had in my possession that I did do
23 analysis for latent prints on.

24 Q And did you find any latent prints of value
25 on any of those bullets?

1 A No, I did not.

2 Q Now, in your career, you have -- it is
3 possible sometimes to find a fingerprint or a print
4 of value on a bullet, is it not?

5 A It is possible, and I have done it, found
6 prints on bullets. However, it is an extremely
7 difficult surface to develop prints on.

8 Q But it's not unusual to find a print on a
9 weapon such as State's Exhibit 59-A, is it?

10 A We -- a number of prints have been
11 developed on weapons. However, you have other things
12 that come into effect, different oils and other types
13 of substances that may be on a weapon, and how it was
14 handled and things like that may affect whether a
15 print could be developed on a particular item like
16 that.

17 Q Now, you actually used all of the
18 techniques that you had available, including the
19 laser technique, in order to get any usable or
20 identifiable fingerprints off State's 59-A, didn't
21 you?

22 A Everything, ever technique that was
23 available to me, and in my opinion, I thought might
24 be successful in developing a print on the item, I
25 did utilize in that case.

1 Q And that would include the laser?

2 A Yes, sir, it would include the laser.

3 Q Now, the weapon, State's 59-A, when you
4 received it, was described in the paperwork as having
5 serial number 387767, wasn't it?

6 A On the submission form that I received, it
7 does have serial number 387767.

8 Q And what if anything had serial number
9 V8347, you don't know, do you?

10 A On the weapon I was just handed, I
11 contacted our firearms section to make sure that was
12 the correct number or the number that I should use as
13 a serial number for that particular weapon.

14 Q So then did you make the correction on
15 that?

16 A No, I just took the actual number from the
17 weapon and noted it in my notes and in my report at
18 that time.

19 Q So you recognize the fact that 387767 was
20 not the serial number, did you?

21 A For that particular weapon, no it was not.

22 Q Now, you did some analysis on some credit
23 cards and found no prints of value?

24 A Yes, sir, that is correct.

25 Q And your latent lifts on some compact discs

1 were the only thing in all of your analysis that in
2 your opinion displayed some fingerprints of Daniel
3 Green, also some fingerprints of Larry Demery?

4 A In that particular submission, that is
5 correct.

6 Q Now, where those fingerprints got on there,
7 or how, you have no way to say, or even when, do you?

8 A That is correct.

9 Q The laser technique Agent Richardson,
10 allows you to actually light up for the purposes of
11 seeing and photographing ridges and detail of
12 fingerprint, correct?

13 A Yes, what the laser will do, either what we
14 call inherit luminescence where a print will
15 luminesce on its own, or applying some type of
16 chemical dye to it, the actual area where the ridge
17 detail comes in, comes in contact with an object,
18 will fluoresce, and it can be photographed at that
19 point utilizing proper camera and proper filters.

20 Q Do you have the proper camera and equipment
21 to do that with?

22 A Yes, we do.

23 Q You've brought in some photographs of some
24 of your work and your analysis in connection with
25 this particular case on this trip to the witness

1 stand, haven't you?

2 A I'm sorry, I don't --

3 Q Did you bring some Polaroid photographs
4 with the negatives?

5 A That were with the state's exhibit?

6 Q Yes, sir.

7 A Those were sent back when I finish --

8 Q I beg your pardon for my question.

9 Actually you used a camera and photographed using the
10 Polaroid techniques where you make not only a
11 positive but a negative?

12 A That's correct.

13 Q Then when you sent the evidence back to
14 Agent Heffney you sent that material back with it,
15 okay?

16 A Yes, sir.

17 Q So you didn't bring it in here today, but
18 it was shown to you yesterday and you recognized
19 those items, right?

20 A That's correct.

21 Q Now, you've got black and white, two and a
22 quarter, three and a quarter negatives, don't you?

23 A I do believe that's the approximately size.

24 Q You can take those size negatives this big
25 and blow up a tremendous photograph, can't you?

1 A With the actual item of evidence and/or
2 photographs, that can be done, yes, sir.

3 Q So you could have used this or similar
4 photograph to photograph the results in that laser
5 examination?

6 A With ones I actually took, is that your
7 question?

8 Q Yes, sir.

9 A Yes, that is possible.

10 Q But you didn't photograph the results of
11 your laser analysis, did you?

12 A Outside of the photographs which I did
13 return, those are the photographs I took of the
14 actual items, or the actual prints that were
15 developed.

16 Q Was that under the laser examination?

17 A Some were and some weren't, it just
18 depends.

19 Q All right. Now, since we talked last time
20 on the stand, you still have not had any request to
21 make enlargements or photographs which the jury could
22 see concerning your analysis of the alleged James
23 Jordan print?

24 A That is correct.

25 MR. BOWEN: That's all.

1 THE COURT: Anything further

2 Mr. Britt?

3 REDIRECT EXAMINATION

4 BY MR. BRITT:

5 Q Mr. Richardson, when you examined the .38
6 caliber revolver, State's Exhibit 59-A, are there any
7 techniques, or the materials that you used that would
8 have discolored the wooden handles on the gun?

9 A In my analysis, this was one chemical
10 treatment which we call basic yellow which was used
11 on the weapon. I'm not sure of length of time or it
12 could have colored, but it could have darkened the
13 surface a little bit, especially on wood grain type
14 surfaces, it may have some EFFECT on that, but very
15 little effect.

16 Q And when you say that you found ridge
17 detail on the .38 caliber revolver, but it was not of
18 sufficient quantity to make any identification, what
19 area of the revolver was this ridge detail located?

20 A There were a number of areas on the barrel
21 of the gun, on the side of the gun, there were a
22 number of areas that were fragmentary which contained
23 areas of ridge detail, which a person had actually
24 touched it. However, in one group there was not
25 enough characteristics in any group to make any

1 comparisons.

2 Q And the photographs that are contained in
3 the State's Exhibits that you opened yesterday, those
4 are the actual photographs you took during your
5 examination of the various items that were submitted?

6 A That is correct.

7 MR. BRITT: I don't have any
8 other questions.

9 THE COURT: Anything further.

10 MR. BOWEN: Yes.

11 RECROSS EXAMINATION

12 BY MR. BOWEN:

13 Q The bullets that are in the bag marked
14 State's 59-B, were they in a separate container or
15 were they loaded into the revolver State's 59-A when
16 you first saw it?

17 A They were all in a bag, but they weren't
18 loaded when I read them.

19 Q Now, Agent Richardson, you were truthful
20 with us when you told both the District Attorney and
21 me that the gun, State's 59 A, looked at the time you
22 saw it, your examination, the way it looks today,
23 weren't you?

24 A Basically in the same condition, yes.

25 Q Well, and if the handles were discolored

1 when you -- if the handles are discolored today in
2 court, they were also discolored when you first saw
3 it when you received it, weren't they?

4 MR. BRITT: Objection, calls for
5 speculation.

6 THE COURT: Overruled. You may
7 answer.

8 THE WITNESS: Well, that's
9 something I really can't determine, because
10 the day I processed the gun, I didn't note
11 any discoloration or anything like that.
12 However, over a period of time, that
13 chemical being applied to, say, a wood
14 grain could discolor it, and that I can't
15 honestly say for sure if that was the case.

16 BY MR. BOWEN:

17 Q But if you had noticed a discoloration as
18 compared to the first day that you saw it and when
19 you saw it here in the courtroom, you wouldn't have
20 answered that the gun looked the same, would
21 you?

22 MR. BRITT: Objection,
23 argumentative.

24 THE COURT: Restate it. It is.

25 BY MR. BOWEN:

1 Q Well, if you had seen a difference between
2 the time you first saw it, the way it looked, and the
3 way it looked here in the courtroom, you would have
4 testified accordingly?

5 MR. BRITT: Objection.

6 THE COURT: Restate, still
7 argumentative.

8 MR. BOWEN: All right.

9 BY MR. BOWEN:

10 Q You did not notice or note at the time you
11 first saw the gun -- strike that.

12 Did you make any notes at all with respect
13 to what the handles looked like?

14 A No, I did not.

15 Q But you did observe the entire gun?

16 A Yes, I did.

17 Q And you have testified that what you saw
18 about the entire gun when you first saw it is that it
19 looks the same in court now, is that right?

20 A That's correct.

21 MR. BRITT: Objection.

22 THE COURT: Overruled.

23 MR. BOWEN: That's all.

24 THE COURT: Anything further?

25 MR. BRITT: No, sir.

1 THE COURT: Mr. Richardson, for
2 purposes of clarification, so the jury can
3 understand your testimony, how is a
4 fingerprint, how does it come to be placed
5 on a substance, what causes a fingerprint
6 to leave an impression on any substance
7 that may be touched?

8 THE WITNESS: What happens on
9 the -- as I spoke of the ridges on the --
10 the ridges on your finger, the -- they are
11 constantly secreting agents, oils,
12 moisture, perspiration from the ends of the
13 finger. That oil is continuously coming
14 off. If I was to touch an object, there
15 would be a transfer of those oils, moisture
16 and other substances that may be found on
17 my finger, a lot of times different
18 substances like oils, greases, even blood,
19 touching an object, there would be a
20 transfer of that same substance in that
21 pattern of ridge detail onto a surface.
22 And with the use of powders, chemicals
23 and/or laser and light sources, you could
24 make that print visible, and at that point,
25 it could be photographed or lifted and

1 recorded for later comparisons. But the
2 basic principal of it is that there's
3 moisture on the finger, there are other
4 substances found on the finger, and with
5 the finger constantly excreting those
6 moistures, perspiration, oil, that's what
7 actually leaves the impression or the area
8 of ridge detail that is left on an object.

9 THE COURT: When a human hand
10 touches a substance, is there always a
11 fingerprint of value left as a result of
12 that contact?

13 THE WITNESS: No, it's not. It's
14 going to depend a lot of times on the hands
15 and the surface. The hands could be
16 extremely dry at the time. Even though the
17 hands are secreting moisture, there are
18 situations where the hands could be
19 extremely dry, and you would touch an
20 object and there would be no transfer of
21 the ridge detail from your finger.

22 Also, the surface, whether you could
23 develop a print on the surface is also
24 going to come into effect because of the
25 environment, type of surface. Some

1 surfaces aren't very conducive to latent
2 prints being left. And the condition, the
3 environment and those factors are all going
4 to come into play whether a print can or
5 cannot be left.

6 THE COURT: What effect, if any,
7 would any movement of the hand have on the
8 ability to leave an identifiable print?

9 THE WITNESS: When an object is
10 handled, lots of times if you were to, say,
11 handle an object, and the movement, those
12 prints could be distorted. Or when you
13 move it, you could leave a smear or
14 fragmentary areas of ridge detail. So
15 there are numerous times when you could
16 touch an object, or if you move the finger
17 or whatever, that area within that movement
18 would leave an area which probably would
19 not be identifiable at that point.

20 THE COURT: Anything further on
21 behalf of the State?

22 MR. BRITT: No, sir.

23 THE COURT: Anything further on
24 behalf of counsel for the defendant?

25 FURTHER CROSS-EXAMINATION.

1 BY MR. BOWEN:

2 Q However, sometimes you'll get something
3 called a smudge and it will be apparent to you that
4 somebody's finger moved, is that correct?

5 A Yes, sir, that's right.

6 Q Did you see any such smudges on State's
7 Exhibit 59 A that would indicate somebody left a
8 print but moved?

9 A There were areas of ridge detail, also
10 areas that were distorted and areas that were
11 smeared. As far as actually determining if the
12 person touched it and moved it, I can't say, but you
13 could see there were a number of areas the item had
14 been touched a number of times.

15 Q So there was an indication that somebody
16 had touched the gun, is that right?

17 A That's correct.

18 Q And by looking at what was left, you were
19 not able to tell who, is that correct?

20 A That is correct.

21 Q Agent Richardson, were you ever able --
22 were you ever asked to dust a shop vac vacuum
23 cleaner?

24 A No, sir, I was not.

25 MR. BOWEN: That is all.

1 THE COURT: Mr. Britt, anything
2 further?

3 MR. BRITT: I don't have anything
4 further.

5 THE COURT: May the witness be
6 released?

7 MR. BOWEN: Yes, sir.

8 THE COURT: Thank you, sir. You
9 may step down. Mr. Britt.

10 MR. BRITT: Your Honor, at this
11 time State calls Annie Ruth Oxendine.

12 THE COURT: If you'll come up and
13 be sworn, please.

14 ANNIE RUTH OXENDINE,

15 being first duly sworn was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 THE COURT: If you'll take the
19 witness stand.

20 You have a very soft voice, and it's
21 necessary that everybody be able to hear
22 your testimony so if you'll speak directly
23 into the microphone, and if you'll tell us
24 what your full name is, please, ma'am?

25 THE WITNESS: Annie Ruth

1 Oxendine.

2 THE COURT: And if you'll spell
3 your last name for the court reporter?

4 THE WITNESS: O X E N D I N E.

5 THE COURT: Thank you, ma'am.

6 Mr. Britt.

7 BY MR. BRITT:

8 Q Ms. Oxendine, where do you live. Ma'am?

9 A Union Chapel, out from Pembroke.

10 Q Where do you work at the present time?

11 A I work with Fleetwood Homes in St. Joseph's
12 of the Pines.

13 Q Now, prior to working at Fleetwood and at
14 St. Joseph's, were you the owner an operator of C&R
15 Pawn Shop in Pembroke?

16 A Yes, sir.

17 Q How long did you operate that business?

18 A Four and a half years.

19 Q And where in Pembroke was that business
20 located?

21 A 107 East Third.

22 Q And did you -- other than yourself, were
23 there other employees of the business?

24 A Yes, sir.

25 Q How many other employees were there?

1 A Two.

2 Q And as the owner and operator of C&R Pawn,
3 were you also responsible for keeping the records of
4 the company?

5 A Yes, sir.

6 Q And at C&R Pawn, did you sell bullets and
7 other forms of ammunition?

8 A Yes, sir.

9 Q Did you sell both factory ammunition and
10 what are commonly referred to as reload ammunition?

11 A Yes, sir.

12 Q And is C&R Pawn Shop in business today?

13 A No, sir.

14 Q When did you close your business?

15 A October '95.

16 Q And the records that were maintained at C&R
17 Pawn Shop, who has possession of those records today?

18 A The records are still at the place of
19 business even though it's closed we're still paying
20 rent.

21 Q Now, in the sale of bullets and ammunition,
22 are there certain regulations that you were required
23 to follow?

24 A Yes, sir.

25 Q What if any regulations were you required

1 to follow in the sale of bullets and ammunition?

2 A Proper identification, picture ID, also
3 have forms to fill out.

4 Q And for each sale of bullets or ammunition
5 are you required to keep a record of that sale?

6 A Yes, sir.

7 Q And did you keep a record of that sale in
8 the form of sales receipts?

9 A Yes, sir.

10 Q And are those records kept in the regular
11 course of your business activities there at C&R Pawn
12 Shop?

13 A Yes, sir.

14 Q And were they back at the time of -- and
15 was your business -- were you doing business as C&R
16 Pawn Shop back on July 20th of 1993?

17 A Yes, sir.

18 Q And in the course of doing business on --
19 during the time of July of 1993 were you maintaining
20 the records of the sales of bullets and ammunition?

21 A Yes, sir

22 (State's Exhibit 152 was
23 marked for identification.)

24 MR. BRITT: May I approach?

25 THE COURT: Yes, sir.

1 BY MR. BRITT:

2 Q Ms. Oxendine, I'm going to show you what's
3 been marked as State's Exhibit 152, it's a clear
4 plastic bag. At this time, I ask you to examine the
5 bag. Is that bag sealed?

6 A Yes, it is.

7 Q With the Court's permission?

8 THE COURT: Yes, sir.

9 MR. BRITT: The record will
10 reflect that I have broken the seal in
11 State's Exhibit 152 in an area where there
12 are no identifying marks. I'm removing the
13 contents of State's Exhibit 152 and marking
14 that as State's Exhibit 153.

15 (State's Exhibit 153 was
16 marked for identification.)

17 BY MR. BRITT:

18 Q Ms. Oxendine, I'm going to hand you what's
19 been marked as State's Exhibit 153 and ask you if you
20 recognize that document?

21 A Yes, I do.

22 Q How are you are you able to recognize the
23 document marked as State's Exhibit 153?

24 A It's my writings, sales slip in C&R Pawn
25 Shop.

1 THE COURT: I'm sorry, it's a
2 what.

3 THE WITNESS: Sales slip.

4 BY MR. BRITT:

5 Q And State's Exhibit 153, is that a record
6 that was made and kept during the regular business
7 activities at C&R Pawn Shop?

8 A Yes, sir.

9 Q Do you have personal knowledge of the
10 transaction that's reflected on state 153?

11 A Yes, sir.

12 Q And is State's Exhibit 153 a duplicate or a
13 copy of the original sales slip that you wrote in
14 connection with State's Exhibit 153?

15 A It's a copy.

16 Q And does State's Exhibit 153 contain all
17 the information that was written on the original
18 sales slip?

19 A Yes, sir.

20 MR. BRITT: Your Honor, at this
21 time, I ask that State's Exhibit 153 be
22 admitted.

23 MR. BOWEN: Object.

24 THE COURT: Overruled. It's
25 admitted.

1 BY MR. BRITT:

2 Q Ms. Oxendine, for the record, can you tell
3 the jury what State's Exhibit 153 is?

4 A State's Exhibit 153 is a sales slip from
5 C&R Pawn Shop, has a sales ticket number, date,
6 purchaser's name, item, total price, and my initials.

7 Q What --

8 A As seller.

9 Q What ticket number appears on State's
10 Exhibit 153?

11 A 48133.

12 Q And what date appears there?

13 A 7-20-93.

14 Q And what name of the purchaser appears
15 there?

16 A Daniel Green.

17 Q And can you read for us the description of
18 the item that was purchased by Daniel Green on July
19 20th, 1993?

20 A One box of .38 Specials.

21 Q What was the price?

22 A \$10.50 plus sales tax of 69 cents.

23 Q And what was the total price paid for the
24 one box of .38 Specials?

25 A \$11.19.

1 Q An whose initials appear at the bottom of
2 that sales receipt as being the person who made the
3 sale?

4 A A.R.O., Annie Ruth Oxendine.

5 Q Do you recall if the defendant purchased
6 factory ammunition or if he purchased reloads?

7 MR. THOMPSON: Object.

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

10 MR. THOMPSON: As to --

11 THE COURT: Whether she
12 remembers?

13 MR. THOMPSON: No, sir.

14 THE COURT: Overruled. She may
15 answer.

16 MR. THOMPSON: Your Honor, I
17 desire to be heard then, yes.

18 THE COURT: All right. There's a
19 matter of law the Court must take up.
20 Please recall my instruction in that
21 regard, don't worry or speculate about what
22 takes place in the courtroom in your
23 absence. Please step to the jury room.

24 (Jury out at 10:36 a.m.)

25 THE COURT: The following is

PSCM:

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then

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P:

1 being heard in the absence of the jury.

2 Yes, sir, Mr. Thompson, what's the basis?

3 MR. THOMPSON: As to the question
4 referring to the individual as the
5 defendant without her making an
6 identification that it was the defendant
7 who made the purchase.

8 THE COURT: Mr. Britt, do you
9 want to be heard further?

10 MR. BRITT: No, sir.

11 THE COURT: He's right.

12 MR. BRITT: Well, Your Honor --

13 THE COURT: You've got a name.

14 MR. BRITT: That's no problem.

15 THE COURT: But she has not
16 identified that person as being the person
17 who sits in the courtroom.

18 MR. BRITT: That's no problem.

19 THE COURT: There's a predicate
20 step that needs to be taken at this time.

21 MR. BRITT: That's no problem.

22 THE COURT: The objection at this
23 point is sustained. Bring the jury back
24 in. You may rephrase.

25 (Jury in at 10:38 a.m.)

1 THE COURT: Mr. Thompson,
2 anything further.

3 MR. THOMPSON: No, sir.

4 THE COURT: The objection is
5 sustained. You may rephrase.

6 BY MR. BRITT:

7 Q Ms. Oxendine, do you recall the person that
8 came in and made the purchase?

9 A Yes, sir, I do.

10 Q Can you describe that person for us,
11 please?

12 A When I sell -- when I sold ammunition or
13 bullets, I identified the person by the ID he showed
14 me. As far as me telling you today how tall he was,
15 I cannot do that.

16 Q The individual that you sold the bullets to
17 on July 20th, was he black, Indian or white?

18 A Black.

19 Q And do you see that individual in court
20 today?

21 A Yes, sir.

22 Q Where do you see him?

23 A Over here.

24 Q Can you --

25 A Mr. Green.

1 Q Can you point in the direction?

2 A (Indicating).

3 MR. BRITT: The record will
4 reflect the witness pointed to the
5 defendant, Mr. Daniel Green.

6 THE COURT: The record will so
7 show.

8 BY MR. BRITT:

9 Q Do you recall if the bullets that the
10 defendant purchased were factory ammunition or reload
11 ammunition?

12 A This was the last box of bullets I had,
13 they were reloads.

14 MR. BRITT: I don't have any
15 other questions.

16 THE COURT: Any
17 cross-examination?

18 MR. THOMPSON: Good morning,
19 Ms. Oxendine.

20 CROSS-EXAMINATION

21 BY MR. THOMPSON:

22 Q Ms. Oxendine, you recall being interviewed
23 by Detective Anthony Thompson and Kim Heffney back in
24 May of last year?

25 A Yes, sir, I do.

1 Q And Ms. Oxendine, do you recall if any
2 person was with the individual who purchased these
3 bullets that you've testified to back when they were
4 purchased?

5 A No, sir, I don't. The only thing I
6 remember is Mr. Green coming up to the counter,
7 asking for the bullets and I sold them. There could
8 have been someone else, but at that time he was my
9 only eye contact that I was dealing with.

10 Q And you indicated to Detective Thompson and
11 SBI Agent Heffney when they interviewed you back in
12 May that you could not remember one way or another,
13 is that right?

14 A Right. When I first spoke to them, I was
15 relating to -- they asked me if I remembered seeing
16 Mr. Green or Mr. Demery, and I was trying to
17 associate them with a pawning person that would come
18 in regularly, on a regular basis. At that time, I
19 didn't know anything about the bullets was involved.

20 Q Yes. Ms. Oxendine, the bullets that you
21 sold back on July the 20th of 1993, did they have --
22 well, let me strike that. Do reloads have brand
23 names on them?

24 A I don't recall. I know they have markings,
25 seems like there was numbers on them.

1 Q Well, you've sold several reloads before?

2 A Yes, sir, reloads are cheaper. They sold
3 better.

4 Q Have you seen reloads with brand names on
5 them?

6 THE COURT: On what?

7 BY MR. THOMPSON:

8 Q On the bullets, on the reload bullets,
9 that's what I'm asking. I'm sorry.

10 A From my recall, the box is very plain
11 looking. I do recall seeing markings on the end of
12 the bullet, the flat side.

13 Q But no brand names?

14 A I don't recall if it was brand name or
15 numbers. There was markings.

16 MR. THOMPSON: That's all I have.

17 THE COURT: Mr. Britt, anything
18 further?

19 MR. BRITT: I don't have any
20 other questions.

21 THE COURT: May Ms. Oxendine be
22 released? Thank you, ma'am, you're free to
23 go.

24 MR. BRITT: Your Honor, at this
25 time I ask that State's Exhibit 153 be

1 published to the jury.

2 THE COURT: Yes, sir. Sergeant
3 Meares --

4 (Exhibit published to the jury.)

5 THE COURT: Mr. Britt, do you
6 have additional witnesses.

7 MR. BRITT: Yes, sir.

8 THE COURT: How many.

9 MR. BRITT: One, but I would like
10 to be heard on a matter.

11 THE COURT: Is this an
12 appropriate time to take a recess?

13 MR. BRITT: Yes, sir.

14 THE COURT: Ladies and gentlemen,
15 let me give you until ten after 11:00 by
16 the clock on the wall. If you'll report to
17 the jury room at ten after, we will be in a
18 position to go forward at that time.
19 Please recall that it is your duty to abide
20 by all prior instructions of the Court
21 concerning your conduct during this
22 recess. The members of the jury are
23 excused.

24 (Jury out at 10:47 a.m.)

25 THE COURT: Mr. Britt.

1 MR. BRITT: Your Honor, my last
2 witness is Mr. Heffney, but before I call
3 Mr. Heffney, I would like to take up the
4 remaining issues regarding the videotape.

5 THE COURT: Yes, sir.

6 MR. BRITT: The other portion
7 that I would desire to show the jury occur
8 approximately 20 minutes and 12 seconds
9 into the video. From that point to 28
10 minutes and 50 seconds, that's a segment
11 that took place at Fayetteville State
12 University. The next -- we'll stop it at
13 that point, advance it to approximately 36
14 minutes and 7 seconds, which is the first
15 time frame in which the date is shown on
16 the videotape. We would play it until
17 approximately 41 minutes and 23 seconds.

18 THE COURT: So total play time
19 would be what?

20 MR. BRITT: Of that section, a
21 little more than five minutes.

22 THE COURT: Okay.

23 MR. BRITT: That involves -- and
24 what is depicted there, when the date is
25 initially shown, the operator of the camera

1 is coming out of a residence, individual is
2 standing outside the residence, and then
3 what is depicted from that point were the
4 activities that occurred at the Suburban
5 Mart off of Murchison Road.

6 THE COURT: And primarily, you're
7 offering that for twofold purpose, one is
8 to corroborate prior testimony as to the
9 possession of the watch and ring; second is
10 to corroborate the prior testimony as to
11 the date in question?

12 MR. BRITT: Yes, sir.

13 THE COURT: Okay.

14 MR. BRITT: Then at 41:23, stop
15 the video, advance it to approximately one
16 hour 22 minutes and five seconds into the
17 video, and that is a segment that is
18 approximately 33 minutes in length, where
19 the defendant is at his uncle's residence
20 in Fayetteville.

21 THE COURT: For what purpose
22 would that be offered?

23 MR. BRITT: Shows him in
24 exclusive possession of the watches and the
25 rings -- excuse me, the ring and the watch.

1 THE COURT: Again, purpose being
2 what I have to be concerned with, you've
3 got really a twofold purpose, as I
4 indicated in that first segment. Part of
5 that purpose is duplicative as to the
6 latter segment. Possession.

7 MR. BRITT: Yes, sir.

8 THE COURT: I mean, that's all
9 that is added to that. It's a repetition
10 of the issue of possession.

11 MR. BRITT: Yes, sir.

12 THE COURT: You folks want to be
13 heard as to the time-periods?

14 MR. BOWEN: Yes, sir. Your
15 Honor, we say that as far as the possession
16 of the items, that's cumulative of what has
17 already come in and your Honor has put in
18 from elsewhere in the tape, also cumulative
19 of the stipulation.

20 THE COURT: What about the date?

21 MR. BOWEN: What we say about the
22 date is this: State has got to show some
23 kind of basis for how the date got there,
24 and one of the ones -- witnesses, I'm
25 sorry, I think it was the one of the Perry

1 brothers -- I believe it was one of the
2 Perry brothers, I would have to go back and
3 find it. I recall he said at some point he
4 did some of the taping. He looked into the
5 viewfinder, there was no date showing up,
6 as it were, if that particular camera were
7 putting the date on it. If you remember,
8 they went to the house and it didn't play
9 one time, and then went to another house,
10 and it played. And when they saw that date
11 at that time. There was no date in the --

12 THE COURT: Same individual
13 testified in court.

14 MR. BOWEN: Yes. Terrence
15 Patterson, and he says, however, when he
16 looked at the tape again in the DA's
17 office, then suddenly the date appeared. I
18 think with that testimony from their own
19 witness they have at least a burden to show
20 that the video camera was putting the date
21 on there simultaneously with the recording,
22 whether the date was right or not. But
23 they have actual -- their witness set up a
24 situation how that date got on there.

25 THE COURT: That's why they want

1 it in. Their contention is it goes to
2 rebut matters raised on cross-examination,
3 it goes to impeach and it goes to -- in
4 effect, becomes a factual issue for the
5 jury to resolve.

6 MR. BRITT: For the record, the
7 date is not in the right-hand corner, it's
8 in the lower left-hand corner.

9 THE COURT: If a foundation is
10 laid, generally then as to the first
11 portions you've referred to, their
12 objection is noted for the record,
13 exception would be noted for the record.
14 If a foundation is laid. I will allow the
15 playing of those portions. The latter
16 portion which is a reiteration of the
17 possession issue, their objection is
18 sustained. Your exception is noted for the
19 record. Again, if the foundation is laid
20 for it. And I think the foundation has in
21 part been laid from the testimony of other
22 folks.

23 MR. BRITT: Yes, sir.

24 THE COURT: Beginning with Agent
25 Underwood and others who took possession of

1 it at the time in question.

2 MR. BRITT: Agent Underwood
3 seized it, he turned it over to Heffney,
4 Mr. Heffney has been in possession of it
5 since that time.

6 THE COURT: Which is basically
7 it.

8 MR. BRITT: Yes, sir.

9 THE COURT: And folks, I think
10 your argument goes to the issue of weight,
11 not the admissibility, and I'm going to let
12 those first two, the shorter portions in.
13 The latter portion is out. And everybody's
14 exception is noted for the record.

15 MR. THOMPSON: What was -- we
16 still need to see them though.

17 MR. BRITT: We can do that.

18 THE COURT: Do that right now.

19 MR. BRITT: Take -- that
20 shouldn't be a problem. My concern is the
21 jurors may be in the hallway.

22 THE COURT: What I would prefer
23 to do is, let's go ahead and take our
24 break. Once we get the jurors secured in
25 the jury room at ten after, once we are

1 confident that they are in the jury room
2 and will not inadvertently view the tape,
3 we'll come back and do that.

4 MR. BRITT: That would be fine.

5 THE COURT: All right. We're at
6 ease.

7 (Brief recess.)

8 THE COURT: Let the record
9 reflect all counsel are present, the
10 defendant is present in open court.

11 Do we have all members of the jury
12 secured in the jury room?

13 THE BAILIFF: Yes, sir.

14 THE COURT: Mr. Britt, you may
15 proceed with the videotape.

16 MR. BRITT: The record will
17 reflect I've placed the tape inside the
18 machine.

19 THE COURT: Yes, sir.

20 MR. BRITT: This is where we
21 ended yesterday. This is Fayetteville
22 State University.

23 (Whereupon videotape played in open
24 court.)

25 MR. BRITT: This completes that

1 segment.

2 THE COURT: You folks want to be
3 heard?

4 MR. BOWEN: Particularly the last
5 section that was played, and the material
6 in the gym, none of that is close enough to
7 distinguish any watch or jewelry from ten
8 million other pieces of jewelry. What does
9 this add to anything? I can't actually
10 argue that there's tremendous prejudicial
11 value, seems to me that if the jury is
12 present, it has some kind of useful value
13 an who knows what is jury --

14 THE COURT: State is offering
15 this for corroboration to some extent the
16 testimony of Jamie Moore, Xavion Perry,
17 Marcus Perry, and Terrance Patterson in
18 part, and corroboration in part.

19 MR. BRITT: Yes, sir.

20 MR. BOWEN: Now, as to the date.

21 THE COURT: We haven't gotten to
22 that part.

23 MR. BRITT: No, sir.

24 MR. BOWEN: As to the date
25 material, I'm totally confused. As I

1 understand it, as we see this screen right
2 now, the videotape is stopped, it's not in
3 any kind of freeze frame, yet I see some
4 sort of purported date.

5 MR. BRITT: Mr. Bowen, the number
6 that you see at the bottom of the left-hand
7 side portion of the screen is the counter
8 number.

9 THE COURT: This portion doesn't
10 reflect any date.

11 MR. BOWEN: But you see, as I
12 looked at it, it looked like to me it was
13 saying August 24, 8-25.

14 MR. BRITT: It's a counter.

15 MR. BOWEN: Fine. But if the
16 jury mistakes that for the date, I wasn't
17 sure what it was put on there for, then
18 we've got confusion.

19 MR. BRITT: I'll be glad to fast
20 forward to the next section which shows the
21 date and there is a marked difference
22 between the counter that appears and the
23 date on the tape.

24 THE COURT: Okay.

25 MR. BOWEN: I would like the

1 record to reflect, if it may please Your
2 Honor, that during the time we were playing
3 this, there were on the lower left-hand
4 corner in approximately a turquoise color,
5 there were numbers, first of which said 823
6 and 824 during most of the presentation.

7 THE COURT: No, sir, it started
8 at 812.

9 MR. BOWEN: Did it?

10 THE COURT: And went from about
11 812 to about eight --

12 MR. BRITT: Actually it's 2851 is
13 what it's showing right now.

14 THE COURT: Or thereabouts.

15 MR. BOWEN: All right, sir. But
16 there's some numbers there, and the first
17 one was eight.

18 THE COURT: All right. Two
19 matters. First of all, I previously ruled
20 that the audio was excluded. That ruling
21 remains in effect. Audio will be
22 excluded. As to the video portion,
23 beginning at approximately 812 and running
24 until approximately 829, again, I
25 understand the State's proffer as to that

1 is it's corroborative, prior testimony of
2 Jamie Moore, Xavion Perry, Marcus Perry and
3 to some extent, Terrance Patterson.

4 MR. BRITT: Yes, sir.

5 THE COURT: As to the events that
6 they testified about occurring at the time
7 in question in the area off -- and in some
8 respects on the campus of Fayetteville
9 State University.

10 MR. BRITT: Yes, sir.

11 THE COURT: Let's go to the next
12 portion. That begins where on the
13 counter?

14 MR. BRITT: That begins on my
15 notes, should begin at 3607.

16 THE COURT: Okay.

17 Well, let me stop, also to some extent
18 it corroborates the testimony of Larry
19 Demery as to the possession of the camera.

20 MR. BRITT: Yes, sir.

21 THE COURT: All right.

22 MR. BRITT: If I may, I have to
23 back this up.

24 THE COURT: Do you have stills as
25 to any of these matters?

1 MR. BRITT: As to these, no, sir.

2 THE COURT: Matters between 812
3 and 829 approximately.

4 MR. BRITT: Yes, sir but they are
5 primarily of the individuals who were
6 there. I'll hand those up if you would
7 like to examine those.

8 THE COURT: Yes, I'm obligated to
9 while you're looking for those, folks --

10 MR. BRITT: I have them.

11 THE COURT: Hennis deals with the
12 use of photographs as illustrative
13 evidence, but to some extent, I think it's
14 authority for the situation we're now in.
15 Hennis stands for the following
16 proposition: Where a prejudicial photograph
17 is relevant, competent and therefore
18 admissible, the admission of an excessive
19 number of photographs depicting
20 substantially the same scene may be
21 sufficient grounds for a new trial when the
22 additional photographs add nothing in the
23 way of probative value but tend solely to
24 inflame the jurors.

25 Cites a number of cases for the

1 proposition that excessive use of
2 photographs is not favored by our appellate
3 courts. In general, the exclusion of the
4 evidence under the balance test of Rule 403
5 of the North Carolina Rules of Evidence is
6 within the trial court's sound discretion.
7 Whether the use of photographic evidence is
8 more probative than prejudicial and what
9 constitutes an excessive number of
10 photographs in light of the illustrative
11 value of each likewise lies within the
12 discretion of the trial court.

13 The test for excessive is not
14 formulaic: There is no bright line
15 indicating at what point the number of
16 crime scene or autopsy photographs becomes
17 too great. The trial court's task is
18 rather to examine both the content and the
19 manner in which photographic evidence is
20 used and to scrutinize the totality of the
21 circumstances composing that presentation.
22 What a photograph depicts, its level of
23 detail and scale, whether it is color or
24 black and white, a slide or a print, where
25 and how it is projected or presented, the

1 scope and clarity of the testimony that it
2 accompanies -- these are all factors the
3 trial court must examine in determining the
4 illustrative value of photographic evidence
5 and in weighing its use by the State
6 against its tendency to prejudice the
7 jury.

8 In addition, the trial court must
9 probe the relevance of the scene depicted
10 and concludes that its irrelevant portions
11 do not obscure those elements that are
12 pertinent to the proffered testimony.

13 Finally, critical to the trial court's
14 inquiry into the admissibility of a
15 photograph is the determination that it
16 does not unduly reiterate illustrative
17 evidence already presented. When a
18 photograph adds nothing to the State's
19 case, then its probative value is nil, and
20 nothing remains but its tendency to
21 prejudice.

22 MR. BOWEN: If I may add briefly,
23 that which they intend to corroborate, that
24 which the group went over to Fayetteville
25 State is not even contested, at least in

1 the cross-examination.

2 THE COURT: The date is.

3 MR. THOMPSON: Well, the date is
4 not on that portion.

5 THE COURT: I understand that,
6 but I just want to establish that for the
7 record. Only thing being contested, as I
8 understand it, about those events primarily
9 is the date.

10 MR. BOWEN: But contest was
11 raised by their own evidence in chief, we
12 followed it up on cross-examination to be
13 sure, but they raised it
14 (State's Exhibits 154 through 161 were
15 marked for identification.)

16 MR. BRITT: I've marked 154
17 through 161, those photograph segments that
18 were taken from the videotape just viewed.

19 THE COURT: Mr. Britt, I'm
20 looking at 161 which depicts someone in
21 possession of the video camera. What does
22 that show?

23 MR. BRITT: That's the young man
24 that was shown on the video with a boom
25 box.

1 MR. THOMPSON: That's a boom box,
2 not a video.

3 THE COURT: Is that it?

4 MR. BRITT: Yes, sir, those are
5 the photographs. The entire set of
6 photographs that I have that relate to that
7 section.

8 THE COURT: I'm looking at 158
9 which shows someone who might be the
10 defendant along with another individual.

11 MR. BRITT: That shows the
12 witness, Jamie Moore.

13 THE COURT: 157, what does that
14 show?

15 MR. BRITT: Shows the witness
16 Jamie Moore and the witness Xavion Perry --
17 excuse me, Marcus Perry.

18 THE COURT: 156, what does that
19 show?

20 MR. BRITT: Again, shows the
21 witness Jamie Moore and the witness Marcus
22 Perry.

23 THE COURT: 155, what does that
24 show?

25 MR. BRITT: Again, shows the

1 witness Jamie Moore and again shows the
2 witness Marcus Perry.

3 THE COURT: 154, what does that
4 show?

5 MR. BRITT: Shows the witness
6 Marcus Perry, the defendant Daniel Green
7 and the witness Terrance Patterson.

8 THE COURT: What if anything does
9 it show with regard to the possession of
10 any items --

11 MR. BRITT: That photograph shows
12 nothing.

13 THE COURT: Okay. 160, what does
14 that show?

15 MR. BRITT: Shows a profile of
16 the defendant Daniel Green and also a --
17 also contained in that photograph is the
18 witness Jamie Moore.

19 THE COURT: And finally, 159?

20 MR. BRITT: It's a profile of
21 Marcus Perry with the portion of the
22 defendant's face being present.

23 THE COURT: So none of the
24 photographs reflect anything that is
25 probative of any matter in issue at this

1 case except these folks were present at
2 some time?

3 MR. BRITT: Yes, sir.

4 THE COURT: That's all?

5 MR. BRITT: That's all.

6 THE COURT: Okay. I'm sorry.

7 All right. Let's go on to the next
8 portion.

9 MR. BRITT: This is not going to
10 start exactly where the date appears. The
11 numbers that appear on the screen now are
12 3601.

13 THE COURT: Yes, sir.

14 (Whereupon the videotape was
15 restarted.)

16 MR. BRITT: This completes that
17 segment.

18 THE COURT: Okay. As to that,
19 what is the State's contention, that it
20 shows possession of a watch?

21 MR. BRITT: Yes, sir.

22 THE COURT: Possession of a
23 ring?

24 MR. BRITT: Yes, sir. It also
25 corroborates the testimony of Jamie Moore,

1 Xavion Perry, Marcus Perry, and Terrance
2 Patterson.

3 MR. BRITT: Yes, sir.

4 THE COURT: You folks want to be
5 heard as to that portion?

6 MR. THOMPSON: Is that at 41:27?

7 MR. BRITT: That shows 41:27.

8 THE COURT: Started at
9 approximately 36:07 or thereabouts to about
10 41:27.

11 MR. BOWEN: We object on the
12 grounds of authentication, especially as it
13 concerns the date and as it concerns the
14 previous State's witnesses who have said
15 the date was not present at other times.

16 THE COURT: There was some
17 testimony as to that date or thereabouts.

18 MR. BOWEN: There was some
19 question about seeing the date. There were
20 some assertions, at least one of the
21 witnesses I recall saw the date on the
22 video for the first time when it was
23 replayed in the District Attorney's office
24 but knows it was not present when it was
25 played earlier at somebody's house was his

1 testimony, so on authentication grounds we
2 object to it. Also on the grounds that it
3 is cumulative, it is confusing, that it
4 doesn't really go to the presence of the
5 watch or ring, maybe I missed it, but I
6 don't see that it does. And other matters
7 have taken place that can confuse and
8 certainly potentially prejudice the jury.
9 And it adds so very little of a probative
10 nature, and in fact, when we're talking
11 about the number of witnesses that it
12 purports to show, the State has had ample
13 opportunity to corroborate the prejudices
14 of those people among each other of those
15 people as witnesses, or in fact, has put
16 them on as witnesses, and we think that it
17 would be cumulative and unnecessary.

18 THE COURT: Time being a
19 contested or dispute factor in this case,
20 defendant's exception, or objection and
21 exception to that portion of the tape,
22 beginning at approximately 812 through
23 approximately 829, is allowed. Note the
24 State's exception to that, that portion is
25 not coming in.

1 MR. BRITT: That's the
2 Fayetteville State portion?

3 THE COURT: Yes. As to the
4 portion at 36:07 through 41:27, the
5 defendant's objection is overruled.
6 Exception is noted for the record on behalf
7 of the defendant.

8 MR. THOMPSON: Wait a minute,
9 Your Honor, may we have a moment?

10 THE COURT: Yes, sir.

11 As to the audio portion in that latter
12 part, that is also consistent with the
13 Court's ruling, the audio portion will not
14 be played. It's not necessary.

15 MR. BRITT: Yes, sir.

16 MR. BOWEN: We merely renew our
17 objection on the basis that to authenticate
18 this thing as to -- for substantive
19 evidence it must reflect --

20 THE COURT: It's not coming in
21 substantive evidence.

22 MR. BOWEN: Illustrative
23 purposes.

24 THE COURT: It's not coming in
25 for illustrative purposes; for

1 corroborative purposes.

2 MR. BOWEN: To corroborate, it
3 must show that somebody actually saw and
4 there's contra evidence to that, that the
5 individual saw in the viewfinder, he did
6 not see a date, never saw a date on the
7 screen in the DA's office and consequently,
8 at least as far as the date is concerned --
9 and I think this, I think you could handle
10 that by allowing the date portion of the
11 screen to be covered and let them see what
12 else he wants to get in, but I think the
13 date is what has not been authenticated.

14 THE COURT: The objection, for
15 the third time, is noted for the record,
16 the exception is noted for the third time
17 for the record.

18 Folks, it's coming in for
19 corroborative purposes and to some extent
20 impeachment purposes as relates to
21 Mr. Terrence Patterson in his prior
22 testimony as to the date. Court finding as
23 to the matters now before the Court that as
24 to the portion allowed in, probative value
25 outweighs the risk of prejudice simply

1 because you folks raised the issue of
2 time. And since that is a matter which is
3 in dispute which has been raised by counsel
4 for the defendant, the Court finding that
5 this evidence is more probative than any
6 other evidence available to the State,
7 finding that the probative value is not
8 substantially outweighed by the risk of
9 prejudice or confusion of the issues, and
10 the Court finding that it has excluded
11 other portions of the videotape on the
12 grounds that it is repetitive, and that
13 this portion depicts what it is that the
14 State wants to offer before the jury, those
15 factors being matters relating to the
16 possession of the items in question on the
17 date in question, that 403 considerations
18 do not come into play.

19 MR. THOMPSON: Your Honor, and
20 this is not -- but as I understand the
21 Court's order, and the State's position,
22 with respect to this last segment, they
23 want to show the date being July the 31st
24 as well as --

25 THE COURT: To corroborate the

1 prior testimony of Jamie Moore, Xavion
2 Perry, Marcus Perry, to some extent,
3 Terrance Patterson and to some extent also
4 to impeach --

5 MR. THOMPSON: I understand, but
6 other than the date, the still photographs
7 could show the other matters. And we may
8 be in a position -- I mean, if that's what,
9 that what it's being offered for --

10 THE COURT: You want to
11 stipulate --

12 MR. THOMPSON: To stipulate as to
13 the date of July 31st.

14 MR. BRITT: No, they contested it
15 during cross-examination of Terrance
16 Patterson, and now they want to go back and
17 stipulate to avoid this coming in. They
18 can't have it both ways. I'm not going to
19 stipulate to that.

20 THE COURT: Even if they are
21 willing to, you don't have to stipulate to
22 that.

23 MR. BRITT: I'm not going to.

24 MR. THOMPSON: Yes, he didn't
25 have to. But it cuts both ways.

1 Mr. Patterson said that in examination, and
2 obviously we were entitled to go into it.
3 It was a shock to us. Just like it was, I
4 guess, to Mr. Britt.

5 THE COURT: I think all issues
6 are preserved for appellate review, folks.
7 That latter portion is coming in, the first
8 portion dealing with Fayetteville State, in
9 effect, you don't need that if this comes
10 in, because it shows the same thing, and
11 more importantly the Fayetteville State
12 portion doesn't relate to any date.

13 MR. THOMPSON: We need the entire
14 portion, Your Honor.

15 THE COURT: Yes, sir from 367
16 41:27 without audio is coming in.

17 MR. THOMPSON: All right.

18 THE COURT: Defendant's exception
19 is noted, having conducted the balancing
20 test required by Hennis in Rule 403 and
21 having ruled accordingly. Ready to go?

22 MR. BRITT: There's another
23 portion of the videotape that --

24 THE COURT: That's what I'm
25 saying.

1 MR. BRITT: Yes, sir. Before we
2 get to that, there is a section the Court
3 has already put off limits that involves
4 this cat. There is a photograph -- doesn't
5 picture -- doesn't show the cat.

6 THE COURT: What more does this
7 latter portion add to the twofold purpose
8 that you want?

9 MR. BRITT: Again, it continues
10 to show at a date beyond July 31st, that
11 the defendant was in sole position of the
12 items in question.

13 THE COURT: What date is
14 reflected in --

15 MR. BRITT: There is no date --
16 there's a date and section that I do not
17 intend to play, and that is the date of
18 August the -- I believe it's the 1st, where
19 they go to White Lake.

20 THE COURT: So what if anything
21 is proven by this section you want to get
22 into now?

23 MR. BRITT: Again, the
24 defendant's sole possession of the items.

25 THE COURT: That's already been

1 dealt with, you can play it if you like,
2 but I think we've got enough evidence as to
3 that, and I think at that point it would
4 becomes excessive and repetitive. You can
5 play it for the record if you want to but
6 unless it shows something in addition to
7 what is already showed in that portion I've
8 allowed in --

9 MR. BRITT: And there are still
10 photographs of the latter section.

11 THE COURT: May I see those?

12 MR. BRITT: Yes, sir, but the one
13 photograph I wanted to discuss occurs
14 approximately in the time frame of 36
15 minute mark. The Court has already viewed
16 a portion of this that shows the defendant
17 wearing a particular type of shirt with a
18 specific design. Photograph from the 36
19 minute mark that I would like to be able to
20 present to the jury shows both rings and
21 the watch. It shows a portion of the
22 defendant from the neck down with that
23 unique shirt on.

24 THE COURT: Yes, sir.

25 MR. BRITT: And I'll mark these

1 for purposes of identification.

2 THE COURT: Okay.

3 MR. BOWEN: While he's doing
4 that, for the record, Your Honor, I do want
5 to interject as an officer of the Robeson
6 Humane Society, the cat is alive and well
7 and doing well, and never been harmed,
8 there's nothing wrong with the cat.

9 THE COURT: Folks, my position is
10 this. If you've got a case that is a
11 fairly clean case, you know, there's no
12 sense in -- there are two ways you can
13 perform brain surgery, one with a scalpel
14 and the other one with a chain saw. Lot of
15 folks want to opt for the other method,
16 chain saw. The entire time I was in the
17 Public Defender's office with Robeson
18 County I can only recall one case that
19 stood up on appeal that was not reversed on
20 appeal for overkill.

21 (State's Exhibits 162 through 165 were
22 marked for identification.)

23 MR. BRITT: May I approach.

24 THE COURT: Yes, sir.

25 MR. BRITT: That's been marked for

1 purposes of identification 162 through 165.

2 THE COURT: I've got 163. How
3 are you going to lay the foundation for
4 these?

5 MR. BRITT: Mr. Heffney.

6 THE COURT: As having viewed the
7 videotape.

8 MR. BRITT: Yes, sir.

9 THE COURT: And this deals with
10 matters depicted on the videotape which do
11 not reflected any date?

12 MR. BRITT: That's correct.

13 MR. THOMPSON: May I see them
14 Your Honor?

15 THE COURT: Yes, sir.

16 While you're looking at those, let me
17 read on from the Court's decision in
18 Hennis.

19 The record reflects such repetition
20 even in the testimony of one of the
21 pathologists, who at one point had nothing
22 to say concerning a slide depicting a
23 child's neck wound except to identify it
24 and add, this looks like the one we saw
25 before.

1 Likewise, the several color images of
2 the same victim's neck wound taken at the
3 autopsy cannot be said to have added
4 anything in the way of probative value to
5 the color images of that same wound taken
6 at the crime scene and projected before the
7 jury in illustration of the previous
8 testimony, even when the witness was
9 testifying to different facts. Although
10 this court has not disapproved the
11 illustrative use of autopsy photographs,
12 the majority of the 26 photographs taken at
13 the victims' autopsy here added nothing to
14 the State's case as already delineated in
15 the crime scene slides and their
16 accompanying testimony.

17 Given this absence of additional
18 probative value, these photographs --
19 grotesque and macabre in and of
20 themselves -- had potential only for
21 inflaming the jury.

22 In addition, the prejudicial effect of
23 photographs used repetitiously in this case
24 was compounded by the manner in which the
25 photographs were presented. The erection

1 of an unusually large screen on a wall
2 directly over defendant's head such that
3 the jury would continually have him in its
4 vision as it viewed the slides was a manner
5 of presentation that in itself quite
6 probably enhanced the prejudicial impact of
7 the slides themselves.

8 Finally, the 35 duplicative
9 photographs published to the jury one at a
10 time just before the State rested its case
11 were excessive in both their redundancy and
12 in the slow, silent manner of their
13 presentation.

14 A good case. Many instances can be
15 ruined because of overkill.

16 Yes, sir.

17 MR. THOMPSON: Your Honor, as to
18 State's Exhibit 135, 164 -- excuse me.
19 State's Exhibit 165, 164, 163, and 162
20 every one of these photographs depicts the
21 same items defendant in possession.

22 THE COURT: There's no way of
23 knowing whether 100 photographs were taken
24 at one time or over a period of time, which
25 shows exclusive possession over a period of

1 time. There's nothing in the photographs
2 which show possession from a date certain
3 or time period to another time period.
4 They also basically are the same thing.

5 MR. THOMPSON: Yes, sir, they are
6 repetitive. And for those reasons we
7 object.

8 THE COURT: I'm going to allow in
9 the portion from 367 through 41:27. All
10 other matters are excluded pursuant to
11 Hennis and Rule 403. State's objection and
12 exception noted for the record.

13 MR. BRITT: Does that include
14 matters --

15 THE COURT: No, sir, not other
16 matters. Ones we talked about yesterday
17 are included. And for the record, if
18 you'll read those numbers in, Mr. Britt.

19 MR. BRITT: Those numbers that
20 were approved yesterday, State's Exhibit
21 136, State's Exhibit 142, State's Exhibit
22 140, and State's Exhibit 143, already a
23 matter in evidence that's State's Exhibit
24 Number 9, I believe it is, stipulation.

25 THE COURT: And so that I can

1 make sure that we don't have an issue as
2 to -- these, as I recall, were not objected
3 to. That's what the record, I believe,
4 reflects as to yesterday. I want to
5 establish that for the record at this time.

6 MR. THOMPSON: Let me, Your
7 Honor -- again let me see.

8 THE COURT: These are the ones we
9 discussed yesterday.

10 MR. BRITT: State's Exhibit 10 is
11 the stipulation of fact.

12 THE COURT: These are the ones
13 that were reviewed in the context of
14 yesterday, and they were not objected to.

15 MR. BRITT: That was just so I
16 could place it over so the paper clip
17 wouldn't damage the photograph.

18 MR. THOMPSON: Well, these are
19 the ones we discussed yesterday. He said
20 State's Exhibit Number 90 now needs
21 stipulation --

22 MR. BRITT: I said nine, it's
23 actually ten.

24 THE COURT: So we've got the
25 stipulation, Number 10, which came in by

1 way of stipulation. We've got 143, 140,
2 142, and 136 which are unobjected to, and
3 then the portion on the videotape beginning
4 approximately 367, running through
5 approximately 41:27, which the defendant
6 does object and except to, and which is
7 allowed in by the ruling of the Court.
8 That's where we stand.

9 MR. BRITT: Simply for the
10 purposes of the record, the Court would
11 note my exceptions.

12 THE COURT: Yes, I did.

13 MR. BRITT: I would ask that the
14 photographs that have been proffered to the
15 Court that have been excluded be made a
16 part of the record.

17 THE COURT: I gave them to Ms.
18 Gaines, she made them part of the record.
19 I'm going to include these, too, for the
20 record, so the record is complete, State
21 notes its exception to the Court's rulings
22 as to State's Exhibit 161, 158, 157, 156,
23 155, 154, 160, 159, 163, 164, 165, 162.

24 MR. BRITT: So the record is
25 clear, I have retrieved State's Exhibits

1 136, 142, State's Exhibit 140, State's
2 Exhibit 10, and State's Exhibit 143.

3 THE COURT: Yes, sir.

4 MR. BRITT: If I may rewind this
5 to 36:07.

6 THE COURT: Yes, sir.

7 MR. BRITT: So that it is in
8 proper --

9 THE COURT: Are we rewound,
10 Mr. Britt?

11 MR. BRITT: Yes, sir, and I can't
12 get it to stop exactly. It stopped at
13 36:02, for the Court's -- it will be easier
14 to stop it in that mode.

15 THE COURT: That's fine.

16 MR. BRITT: Well, the date is
17 actually reflected in.

18 THE COURT: All right.

19 MR. BRITT: That's stopped at
20 36:07.

21 THE COURT: Yes, sir. If you'll
22 bring the jury in, please, sir.

23 MR. BRITT: May I, before doing
24 that, reposition this.

25 THE COURT: Yes, sir.

1 Yes, sir, Sergeant Meares.

2 (Jury in at 12:08 p.m.)

3 THE COURT: Mr. Britt.

4 MR. BRITT: Your Honor, at this
5 time we call Special Agent Heffney.

6 THE COURT: If you'll come up and
7 be sworn, please.

8 KIM HEFFNEY,
9 being first duly sworn was examined and testified as
10 follows:

11 DIRECT EXAMINATION

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

14 THE WITNESS: Kim Heffney.
15 Spelling of last name, H E F F N E Y.

16 BY MR. BRITT:

17 Q By whom are you employed?

18 A North Carolina State Bureau of
19 Investigation.

20 Q How long have you been employed by the SBI?

21 A 13 years.

22 Q What capacity do you work for the SBI?

23 A A primary description would be as an arson
24 agent, but in that capacity in addition to working
25 arson, I work all other crimes to include any other

1 crimes committed in North Carolina criminal
2 violation.

3 Q And where is your primary place of work?

4 A My office is in Fayetteville and it's known
5 as the Southern District Office.

6 Q Are you assigned to a specific county
7 within the Southern District of North Carolina?

8 A No, the Southern District covers at the
9 present time eight counties, one of which includes
10 Robeson County. Myself being stationed in Cumberland
11 County where the district is, I go throughout the
12 entire eight counties covering the district which
13 includes Robeson County.

14 Q And what role did you play in the
15 investigation of the murder of James Jordan?

16 A I was assigned as the case agent to the
17 homicide investigation of James Jordan.

18 Q What does it mean to be assigned as the
19 case agent to an investigation?

20 A That's the agent who's responsible for the
21 case or the ultimate responsibility of the case, the
22 information in the case and basically the person who
23 coordinates the efforts in the case.

24 Q And in that capacity, were you also the
25 custodian of any evidence that was seized and

1 collected in that investigation?

2 A Yes, I was. I had kept custody of all the
3 evidence in this investigation even though I may not
4 have actually seized it myself, I kept custody of it.

5 Q And where was custody of the evidence that
6 was collected in this investigation stored?

7 A The evidence in this case was stored in my
8 locker in Fayetteville at the district office. The
9 locker is solely assigned to me, I have the only
10 key. The security standpoints for the office is that
11 you have to have two people to actually get you into
12 the room, one person has to be a supervisory position
13 and then the agent himself who would have a key to
14 the actual door. Once inside the evidence room, each
15 individual agent, to include myself, is assigned a
16 locker. And which that agent has the only key to.

17 Q And is that where the evidence in this case
18 has been stored since the time it was initially
19 collected?

20 A Yes, sir, has been.

21 Q Have there been occasions when certain
22 items of evidence have been removed from the evidence
23 locker for the purposes of court appearance or
24 purpose of examination?

25 A Yes, sir, it has been.

1 Q And after those times when evidence was
2 removed from the evidence locker for either court
3 appearances or for examination, was that evidence
4 returned to you?

5 A The evidence was returned to me, and only
6 accessible by me.

7 Q When did you become involved in the
8 investigation surrounding Mr. Jordan's homicide?

9 A I initially became involved in this
10 investigation on, I believe it was, Saturday, August
11 14th, 1993, at approximately, I believe, around 5:00
12 p.m. I was called at my residence by, at that time,
13 my supervisor, R.W. Davis, who advised me to go to
14 the Cumberland County Sheriff's Department where I
15 met with detectives of the Cumberland County
16 Sheriff's Department to include Mr. R. W. Davis.

17 Q And when you went to the Cumberland County
18 Sheriff's Department on August the 14th, 1993, were
19 you advised of any investigation that the Cumberland
20 County Sheriff's Department had undertaken in
21 connection with Mr. Jordan's death?

22 A Yes, I was. I was advised by, at that
23 time, Captain Art Binder who was in charge of the
24 detective division for Cumberland County that a red
25 Lexus was found in the Dunn Road area of Cumberland

1 County. It came back to Mr. James Jordan. And that
2 individuals in Cumberland County, to include a David
3 Moore, had been interviewed, indicating that the
4 defendant, Mr. Green --

5 MR. BOWEN: Object.

6 THE COURT: Mr. Britt.

7 MR. BRITT: This is being offered
8 to corroborate previous testimony.

9 THE COURT: You folks want a
10 limiting instruction?

11 MR. BOWEN: Yes, Your Honor.

12 THE COURT: Members of the jury,
13 the testimony now being elicited is being
14 offered and received for the limited
15 purpose of corroboration as I have
16 previously defined that term for you. You
17 are to consider it for this limited purpose
18 and no other purposes. Yes, sir.

19 THE WITNESS: That the defendant,
20 Daniel Green, was from Robeson County and
21 that the investigation at that point
22 started moving toward Robeson County. At
23 which time the SBI became involved due to
24 the fact you cross county lines, and the
25 SBI is state wide jurisdiction. At that

1 time, all the rest of the agents, to
2 include Randy Myers, was contacted, and
3 myself to include officers with the
4 Cumberland County Sheriff's Department,
5 then came to the Robeson County Sheriff's
6 Department, and I myself went to the
7 Robeson County Sheriff's Department.

8 BY MR. BRITT:

9 Q And from the Robeson County Sheriff's
10 Department, did you go to any location here in
11 Robeson County?

12 A Yes, sir, I did.

13 Q Where did you go?

14 A I went to -- eventually ended up at the
15 residence of Mr. Daniel Green.

16 Q Who went with you there at that time?

17 A If I remember correctly, in my vehicle,
18 which I was driving, there was Detective Don Smith
19 with the Cumberland County Sheriff's Department, and
20 Durward Cannon also with the Cumberland County
21 Sheriff's Department. Initially we met, I can't
22 remember exact road number, but it's -- it's Back Gum
23 Swamp Road. There was, I believe, a large parking
24 area or a trailer park area where I met Special Agent
25 Randy Myers there.

1 Q And at the time you met Special Agent Myers
2 at this particular area, was he alone or was other
3 individuals with him?

4 A Special Agent Myers was accompanied by the
5 defendant, Daniel Green, and also I recall being with
6 him, Captain Art Binder.

7 Q And prior to meeting Mr. Myers at that
8 location, had you had any type of radio communication
9 or conversation with Mr. Myers?

10 A Yes, I had. Via radio, Special Agent
11 Myers --

12 MR. BOWEN: Object.

13 MR. BRITT: Offered to
14 corroborate Mr. Myers' testimony.

15 THE COURT: Members of the jury,
16 again, the matters now being elicited are
17 being offered for the purpose of
18 corroboration, you may consider it for that
19 limited purpose and no other purpose. Yes,
20 sir.

21 THE WITNESS: As I said, via
22 radio communications Special Agent Myers
23 and myself had -- Special Agent Myers asked
24 if I had a consent to search form. That's
25 my recollection. I told him I did. He

1 asked that I meet him at this location or
2 intersection of Back Gum Swamp, which I
3 did.

4 BY MR. BRITT:

5 Q And this area where you met Mr. Myers, is
6 that along U.S. 74?

7 A Yes, it is.

8 Q And when you met with Mr. Myers in that
9 area, you've testified that the defendant and Captain
10 Binder were present with you?

11 A Yes, sir.

12 Q Did you provide Mr. Myers with any consent
13 to search form at that location?

14 A I don't recall giving Special Agent Myers a
15 consent form. I believe he did have one of his own
16 but I also did have a consent to search form.

17 Q Did you talk with Mr. Myers at that
18 location?

19 A Yes, I did.

20 Q What if anything did he tell you in regard
21 to the residence where he had been?

22 MR. BOWEN: Object.

23 MR. BRITT: Offered to
24 corroborate.

25 THE COURT: Again, folks, it's

1 being offered for corroborative purposes,
2 you may consider it for that limited
3 purpose and no other purpose. Yes, sir.

4 THE WITNESS: I was advised by
5 Special Agent Myers that he had just
6 previously left Daniel Green's residence,
7 at which time he had spoken with
8 Mr. Green's mother, Ms. Elizabeth Green,
9 and advised her that myself, particularly
10 because he couldn't call me by name, that I
11 would be coming to her residence along with
12 other officers to conduct a consent to
13 search of her residence, and also to
14 explain to her why we were coming to her
15 residence.

16 BY MR. BRITT:

17 Q And from that location, did you proceed to
18 the defendant's residence?

19 A Yes, I did.

20 Q Where did you go when you went to his
21 residence?

22 A Well, when I went to the residence
23 initially, I parked in front of the mobile home,
24 which I believe was located on the dirt road there
25 off of Back Gum Swamp Road, in a mobile home park

1 called Bob's Landing Mobile Home Park. As I said, I
2 believe it was the fourth or fifth mobile home on the
3 left. I know it was a white mobile home with green
4 trim.

5 Upon getting there, I recall seeing
6 Ms. Green. Accompanied with me were Detective Don
7 Smith, Cumberland County Sheriff's Department,
8 Durward Cannon, also Special Agent Berry Lea,
9 Detective Anthony Thompson, and I believe there was
10 also a deputy sheriff who was already there. I
11 believe that was Junior Mitchell.

12 Q And when you arrived was Mr. Mitchell
13 inside or outside the trailer?

14 A Best of my recollection, I believe he was
15 outside.

16 Q And when you arrived, you said that you saw
17 Ms. Green, did you introduce yourself to any woman
18 that was present?

19 A Yes, I did, I introduced myself to
20 Ms. Green, showed her my credentials. She came --
21 she was at the front door, she stepped onto the
22 wooden steps that came or took you into the mobile
23 home. They had a little small landing, best of my
24 recollection. Again, I introduced myself to her,
25 told her why we were there, best of my recollection,

1 I told her that we were there concerning the, I
2 believe, red Lexus that was owned by Mr. James
3 Jordan. I recall Ms. Green becoming somewhat
4 surprised and she --

5 MR. BOWEN: Object.

6 THE COURT: Members of the jury,
7 the objection is sustained. I instruct you
8 that you are not to consider the
9 characterization of Mr. Heffney. That
10 matter is not to take any part in your
11 deliberations.

12 MR. BOWEN: Motion to strike.

13 THE COURT: Motion to strike is
14 allowed.

15 BY MR. BRITT:

16 Q Did you tell her you were there in regard
17 to a red Lexus?

18 MR. BOWEN: Object to leading.

19 THE COURT: Overruled.

20 THE WITNESS: Yes, I did, upon
21 telling Mrs. Green that, she sat down on
22 the steps.

23 BY MR. BRITT:

24 Q Did you ask Ms. Green for permission to
25 search the trailer?

1 A Yes, I did, I did ask Ms. Green for consent
2 to search. She did grant consent to search, and she
3 signed a consent to search form

4 (State's Exhibit 98 was
5 marked for identification.)

6 MR. BRITT: May I approach?

7 THE COURT: Yes, sir.

8 MR. BRITT: This is State's 98.

9 BY MR. BRITT:

10 Q I'm going to show you what's been marked as
11 State's Exhibit Number 98 and ask if you can identify
12 that document?

13 A Yes, I can.

14 Q How are you able to identify State's
15 Exhibit Number 98?

16 A Because, one, it's has my handwriting on
17 it, and also has my signature.

18 Q And does State's Exhibit Number 98 contain
19 any other signatures that you saw placed on it?

20 A Yes, it does. It contains the signature of
21 Elizabeth Green that I saw her place on it. Also
22 contains the signature of Special Agent Barry Lea,
23 signed as B.M. Lea, the time that he put on it, and
24 also has the time that I put on it.

25 Q Is State's Exhibit Number 98 a copy of the

1 original consent to search form that you used back on
2 August the 14th of 1993?

3 A Yes, it is a copy of the original.

4 Q And does the copy contain the same
5 information that the original contained?

6 A Yes, it does.

7 Q And is State's Exhibit Number 98 in the
8 same condition today that it was at the time the
9 original was made on August the 14th of 1993?

10 A Yes, it is.

11 MR. BRITT: Your Honor, at this
12 time, I ask that State's Exhibit Number 98
13 be admitted.

14 THE COURT: Yes, sir, it's
15 admitted.

16 BY MR. BRITT:

17 Q After Ms. Green gave consent to search the
18 trailer, what then occurred, Mr. Heffney?

19 A Upon giving consent to search the trailer,
20 I interviewed Ms. Green while other officers,
21 Detective Don Smith and Durward Cannon searched one
22 portion of the residence, and Special Agent Barry Lea
23 and Anthony Thompson searched another portion of the
24 residence.

25 Q And why did you interview Ms. Green?

1 MR. BOWEN: Object.

2 THE COURT: Do you want to be
3 heard, sir?

4 MR. BOWEN: Yes, sir.

5 THE COURT: Ladies and gentlemen,
6 there's a matter of law the Court must take
7 up. Please recall my instructions in that
8 regard, don't worry or speculate about what
9 takes place in the courtroom in your
10 absence. And if you will please step to
11 the jury room.

12 (Jury out at 12:24 p.m.)

13 THE COURT: The following is
14 being heard in the absence of the jury.
15 Mr. Britt, what is it you intend to elicit
16 and for what purpose?

17 MR. BRITT: At issue in this case
18 is the activities of law enforcement
19 officers on the night of August 14th,
20 1993. Mr. Heffney has already testified he
21 was -- at this juncture he had not been
22 assigned as case agent, he was there,
23 simply to establish what he did in the
24 residence and why he did it. Not the
25 contents of Ms. Green's statement but to

1 put things into perspective.

2 THE COURT: So you're not asking
3 for any conversation.

4 MR. BRITT: No, sir, asking him
5 why --

6 THE COURT: Explain subsequent
7 conduct.

8 MR. BRITT: That's right. Asking
9 him why he interviewed. Because he
10 interviewed her during the course of this
11 search.

12 THE COURT: Okay.

13 MR. BRITT: And at issue in this
14 case is the fact that a gun was not found
15 there on August 14th, 1993.

16 THE COURT: Okay.

17 MR. BRITT: But was found there
18 on August 16th, 1993.

19 THE COURT: I think I understand,
20 but so that we don't mess up, if you'll
21 respond to his question, why did you
22 interview Ms. Green.

23 THE WITNESS: I interviewed
24 Ms. Green simply because other officers who
25 were in the trailer were tied up as far as

1 conducting the search. I was the only
2 OTHER officer and I conducted the interview
3 of Ms. Green.

4 THE COURT: Okay.

5 MR. BOWEN: To that much --

6 THE COURT: Another way of asking
7 it is what were you doing while the search
8 was going on. Objection is sustained.
9 Bring the jury back in.

10 (Jury in at 12:26 p.m.)

11 THE COURT: Members of the jury,
12 the objection to the question as phrased is
13 sustained but you may rephrase.

14 MR. BRITT: Yes, sir.

15 BY MR. BRITT:

16 Q Mr. Heffney, after Ms. Green gave you
17 consent to search, what did you do while the trailer
18 was being searched?

19 A While the trailer was being searched, I was
20 interviewing Ms. Green.

21 Q And during the time that you were in the
22 trailer on August 14th, 1993, what if any handgun or
23 firearm did you see there?

24 A I did not see any handgun or firearm other
25 than what Ms. Green showed me.

1 Q And did Ms. Green show you a handgun or
2 firearm on August 14th of 1993?

3 A Yes, she did.

4 Q And what if any handgun or firearm did she
5 show you on August 14th, 1993?

6 A She showed me a small .380 semiautomatic
7 pistol.

8 Q When you say a small .380 semiautomatic,
9 what do you mean by the term semiautomatic?

10 A Semiautomatic is basically like the gun
11 that I'm issued in that it's not a revolver, it's a
12 semiautomatic, has a slide, fires somewhat more
13 rapidly than a revolver.

14 Q How long were you there in the residence on
15 August 14th, 1993?

16 A Approximately an hour and 15 minutes.

17 Q And during the hour and 15 minutes that you
18 were there on August the 14th, 1993, what if anything
19 were the other officers doing, to your knowledge?

20 A Well, as I said before, they initially were
21 searching the mobile home. Once they completed their
22 search, which did not take an hour and 15 minutes,
23 they basically gathered in there where I was.

24 Q What if any officers participated in the
25 search that you know of?

1 A The officers that I know of that
2 participated were detective Don Smith, Durward
3 Cannon, both with the Cumberland County Sheriff's
4 Department. Special Agent Berry Lea, with the SBI,
5 Detective Anthony Thompson with the Robeson County
6 Sheriff's Department. Deputy Junior Mitchell who was
7 in uniform at the time, basically stood there in the
8 living room area where I was.

9 Q And do you know which areas of the trailer
10 that each of these officers searched?

11 A Yes, I do.

12 Q What area did Special Agent Lea search?

13 A Special Agent Lea searched the area or the
14 bedroom in the center of the residence that was --
15 that was referred to as the dungeon.

16 Q And what area did Detective Anthony
17 Thompson search?

18 A Detective Anthony Thompson was also in the
19 same area with special Agent Lea, best of my
20 recollection.

21 Q And Detective Smith and Detective Cannon,
22 what area did they search?

23 A They searched the front bedroom of the
24 residence, this being the bedroom once you enter the
25 trailer, would have been the bedroom to your right.

1 Q And what if any area did Deputy Mitchell
2 search?

3 A Deputy Mitchell, best of my recollection,
4 did not conduct a search. He stood there, as I said,
5 in the living room area where I was.

6 Q Did you search any area?

7 A No, I didn't.

8 Q On the night of August the 14th, 1993, did
9 you have in your possession a .38 caliber Smith &
10 Wesson re -- six-shot revolver?

11 A No, I did not.

12 Q To your knowledge, did any other officer
13 who went there on August 14th, 1993 have in their
14 possession a .38 caliber Smith & Wesson revolver?

15 A To my knowledge, no, they did not.

16 Q And when you left the residence on August
17 the 14th, 1993, who if anyone was -- remained at the
18 residence?

19 A Ms. Green.

20 Q And when you left, did all the other
21 officers leave at the same time that you did?

22 A Yes, best of my recollection, I was the
23 last person out, because I was the one that was
24 talking to Ms. Green.

25 Q And on August the 14th of 1993, was any

1 item seized during that consent search?

2 A Yes, the only item seized during August
3 14th consent search was a brownish or burgundy Airway
4 briefcase.

5 Q And what material was that briefcase made
6 of?

7 A The briefcase is an imitation leather, it's
8 like a vinyl type covering.

9 Q And were there any items missing from the
10 exterior portion of that briefcase?

11 A Yes, there was. It was a button, small
12 button, if I remember correctly, it was the right
13 latch button missing off of the briefcase. The other
14 button which I believe was on the left side had a
15 little insignia, like Airway, on it, but that's the
16 only part that was missing off the briefcase.

17 Q Why was that briefcase seized?

18 A Briefcase was seized --

19 MR. BOWEN: Object.

20 MR. THOMPSON: Object.

21 MR. BRITT: Explains conduct.

22 THE COURT: Okay. Do you folks
23 want to be heard?

24 MR. BOWEN: Yes, sir.

25 THE COURT: Members of the jury,

1 there's a matter of law, please don't worry
2 or speculate about what takes place in your
3 absence. If you'll step to the jury room.

4 (Jury out at 12:32 p.m.)

5 THE COURT: The following is
6 being heard in the absence of the jury.

7 Yes, sir, Mr. Heffney, if you'll
8 answer in the absence of the jury so that I
9 can rule, sir?

10 THE WITNESS: The briefcase was
11 seized because when asked if Ms. Green knew
12 who the briefcase belonged to, she advised
13 she had not seen it before, that it did not
14 belong to her and she didn't know who it
15 belonged to.

16 THE COURT: You folks want to be
17 heard?

18 MR. BOWEN: We don't object to
19 that.

20 THE COURT: Okay. Bring the jury
21 back in, please, sir.

22 MR. THOMPSON: Withdraw our
23 objection.

24 THE COURT: Okay.

25 (Jury in at 12:34 p.m.)

1 THE COURT: For the record,
2 counsel for defendant is withdrawing the
3 objection, is that correct?

4 MR. THOMPSON: That's correct.

5 THE COURT: If you'll repeat your
6 question.

7 BY MR. BRITT:

8 Q Mr. Heffney, why was the briefcase seized
9 on August 14th, 1993?

10 A The briefcase was seized because when asked
11 Ms. Green about the briefcase, she advised she did
12 not -- she had not seen the briefcase before, she did
13 not know who it belonged to, and that she didn't know
14 where it had come from.

15 Q And from what -- in what room was that
16 briefcase located?

17 A The briefcase was found in the dungeon
18 room, what was called the dungeon, this room being
19 the middle bedroom of the mobile home.

20 Q Can you describe that room for us and its
21 contents?

22 A Best of my recollection, this center
23 bedroom contained, I believe, one dresser and the
24 floor was basically piled with clothing throughout.
25 I don't recall any heavy furnishings or a bed in this

1 room.

2 Q And after you completed your interview with
3 Ms. Green -- strike that. Was the search completed
4 before you completed your interview with Ms. Green?

5 A Yes, it was.

6 Q And when the officers completed the search,
7 did they remain there inside the trailer or did they
8 go out?

9 A Best of my recollection, I believe they
10 stayed in the living room area with me.

11 Q And once you completed your interview with
12 Ms. Green, what did you do and where did you go?

13 A Upon completing the interview of Ms. Green,
14 we left and went to the residence of Larry Demery.

15 Q Where was that residence located?

16 A I don't know exactly how to get there, I
17 was following someone else, and even to this day, I
18 probably couldn't go by myself.

19 Q And when you went to the residence of Larry
20 Demery, did you find anyone there?

21 A When we initially got to the residence of
22 Larry Demery there was no one there. And we waited
23 for -- or I waited for someone to arrive. To my
24 recollection, the first person that arrived was
25 Larry's brother, younger brother.

1 Q And after his brother arrived, did you
2 continue to remain there at the trailer?

3 A Yes, we did. I asked his brother if he
4 knew where Larry's whereabouts were. He said he did
5 not. So we continued to wait for his parents to come
6 home.

7 Q Shortly thereafter did Mr. and Mrs. Larry
8 Demery, Sr. arrive?

9 A Yes, they did.

10 Q Did you talk with them?

11 A Yes, I did.

12 Q Were there any other officers there with
13 you when you went to the Demery residence?

14 A Yes, the officers who were there were the
15 same officers who were with me at the Green
16 residence, to include Detective Donald Smith, and
17 Durward Cannon who were riding with me, Detective
18 Anthony Thompson, Special Agent Barry Lea, and Deputy
19 Junior Mitchell, because I remember there being a
20 marked car there.

21 Q And after Mr. and Mrs. Demery arrived, did
22 you make any requests of them in regard to any
23 search?

24 A Yes, did. I asked -- well, first I
25 introduced myself to Ms. Demery, asked -- told her

1 why we were there, and asked if we could search her
2 residence. At which time I presented her with a
3 consent to search form that she signed.

4 Q And when you told Ms. Demery why you were
5 there, what did you say to her?

6 A I told Ms. Demery that we were
7 investigating the -- if I remember correctly, the red
8 Lexus that belonged to James Jordan and also possible
9 homicide of James Jordan and any information she may
10 know concerning any involvement that her son Larry
11 Demery may have.

12 Q And after -- who gave you consent to search
13 the Demery residence?

14 A I think Ms. Demery did.

15 Q After consent was given, was there a search
16 conducted at the Demery residence?

17 A Yes, it was.

18 Q Did you participate in that search?

19 A No, I did not participate. Again, I
20 interviewed Ms. Demery while Detective Don Smith and
21 Durward Cannon conducted the search. I continued the
22 interview.

23 Q And did you complete your interview with
24 Ms. Demery before or after the search had been
25 completed?

1 A Best of my recollection, I completed my
2 interview long time after the search had been
3 completed. Exactly how long, I don't know. But the
4 interview took longer than the actual search.

5 Q And were any items seized during that
6 search?

7 A There were no items seized in the
8 residence. There was items seized outside.

9 Q What if anything was seized from outside
10 the residence?

11 A The items seized outside was a small
12 goldish or brass color button that was similar to
13 that of the button that was on the briefcase that was
14 found earlier at the residence of Ann Green.

15 Q And after completing the interview with
16 Ms. Demery and the completion of the search, where
17 did you go?

18 A Myself, Detective Don Smith and Durward
19 Cannon had left and went to the area of the South of
20 the Border, some hotels in that area. Detective
21 Anthony Thompson and Special Agent Barry Lea had left
22 while I was interviewing Ms. Demery. And I believe
23 Detective -- excuse me, Deputy Mitchell had gone back
24 to the Sheriff's Department.

25 Q And for what reason did you go to the area

1 of the South of the Border?

2 A During the interview of Ms. Demery, she
3 advised that --

4 MR. BOWEN: Object.

5 THE COURT: Yes, sir, you may --
6 without referring to any conversation, as a
7 result of any conversation what did you do.

8 THE WITNESS: As a result of
9 conversation, we went to the South of the
10 Border, some hotels -- to a hotel, to
11 locate anyone there who may be employed by
12 a chicken processing or chicken catching
13 company.

14 BY MR. BRITT:

15 Q And were you able to find anyone employed
16 in that capacity?

17 A No, we were not.

18 Q And from there, where did you go?

19 A Back to the Sheriff's Department.

20 Q Now, did you participate in any interview
21 of Larry Demery?

22 A No, I did not.

23 Q Other than the interview of Ann Green and
24 Virginia Demery, on August the 14th, 1993, did you
25 participate in any other interview on that night?

1 A Not that I recall, no, I did not.

2 Q On August the 15th of 1993, did you
3 participate in any interview at the Robeson County
4 Sheriff's Department?

5 A Not on August 15th, no.

6 Q During the daylight hours of the morning of
7 August 15th, 1993, did you leave the Robeson County
8 Sheriff's Department?

9 A Yes, I did, at approximately 6:00 a.m., or
10 possibly a quarter to 6:00, myself and Detective
11 Anthony Thompson left and went to Marion, South
12 Carolina.

13 Q And whom if anyone did you speak with in
14 Marion, South Carolina?

15 A We spoke with Delores Sullivan in Marion,
16 South Carolina.

17 Q And from Marion, South Carolina, did you go
18 anywhere?

19 A Yes, from Marion, South Carolina, we went
20 to -- I can't remember the name of it, it's an area
21 in South Carolina where Vorhees College is located.
22 Right now the name escapes me. Excuse me, Bamberg, I
23 believe that's the name of it.

24 Q And for what purpose did you go to -- did
25 you actually go to Vorhees College?

1 A Yes, we did.

2 Q For what purposes did you go there?

3 A To interview Melinda Moore.

4 Q And did you locate Melinda Moore at Vorhees
5 College?

6 A Yes, we did.

7 Q And did you have an interview with her?

8 A Yes, I did.

9 Q From Vorhees College, where did you go?

10 A I believe we came back again to Marion,
11 South Carolina, where the interview of Melinda --
12 excuse me, Delores Sullivan was conducted that
13 afternoon. I said that earlier we had talked to
14 her. We also had talked to other people in Marion
15 that morning and found out where --

16 MR. BOWEN: Object.

17 THE COURT: The objection is
18 sustained.

19 BY MR. BRITT:

20 Q Based on conversations you had in Marion,
21 South Carolina is that how you located Melinda Moore?

22 A Yes, it was.

23 Q On August the 16th of 1993, did you
24 participate in a search of the defendant's mobile
25 home in Bob's Landing Mobile Home Park?

1 A I didn't actually participate in the
2 search.

3 Q Did you go to the defendant's residence
4 with other officers on August the 16th 1993?

5 A Yes, I did.

6 Q What other officers did you go there with?

7 A Went with Special Agent Tony Underwood,
8 Special Agent Barry Lea, Detective Anthony Thompson,
9 and at that time Detective Eric Hackney.

10 Q What -- were you present when officers
11 entered the residence on August the 16th, 1993?

12 A No, I was not present when they entered on
13 August 16th.

14 Q What were you doing there in that area on
15 August the 16th, 1993?

16 A I was conducting the neighborhood canvas or
17 neighborhood interviews of other residents who lived
18 in the mobile home park.

19 Q What is a neighborhood canvas?

20 A A neighborhood canvas is when an officer or
21 agents would go to surrounding homes in the area and
22 to conduct interviews to determine what information
23 anyone in the surrounding area may have.

24 Q And approximately how long did it take you
25 to conduct this neighborhood canvas?

1 A Approximately 45 minutes to an hour.

2 Q And when you completed the neighborhood
3 canvas, where did you go?

4 A Went back to the residence of Elizabeth
5 Green.

6 Q And who was present at that time when you
7 went back to the residence?

8 A In addition to the officers I mentioned,
9 being Special Agent Berry Lea, Tony Underwood, Eric
10 Hackney, Anthony Thompson, there was a Mr. Burnie
11 Green also there.

12 Q And did you interview Mr. Green there at
13 that time?

14 A I didn't interview Mr. Green, just
15 basically spoke with him.

16 Q And when you returned to the defendant's
17 trailer after conducting the neighborhood canvas, at
18 some point after that, did anyone -- officer give you
19 any item that had been seized in the residence?

20 A I was given a .38 revolver weapon and also
21 given a videotape.

22 Q When you received this .38 revolver, what
23 was it contained in?

24 A It was contained in a plastic bag.

25 Q Can you describe for us the gun that was

1 given to you and by whom was it given to you?

2 A The gun is described as a metallic or --
3 excuse me. It's described as a blue steel or dark
4 colored six-shot revolver with approximately a four
5 inch barrel with brown wooden handles.

6 Q At the time you received the gun, was it
7 loaded or unloaded?

8 A When I received it, I believe --

9 MR. BOWEN: Object to what he
10 believes.

11 THE COURT: If you recall you may
12 testify, based on your recollection.

13 THE WITNESS: When I received the
14 gun, or actually took custody of the gun,
15 it was unloaded. When I initially saw the
16 gun, it was loaded.

17 BY MR. BRITT:

18 Q When you say that -- when you actually took
19 custody of the gun, it was unloaded, what do you mean
20 by that?

21 A When I actually took custody of the gun is
22 after it had gone to, best of my recollection, to the
23 SBI lab.

24 MR. BOWEN: Object.

25 MR. THOMPSON: Move to strike.

1 THE COURT: Rephrase.

2 MR. THOMPSON: Move to strike.

3 THE COURT: Motion to strike is
4 allowed.

5 MR. THOMPSON: Request
6 instruction.

7 THE COURT: Members of the jury,
8 don't consider the last response of the --
9 you indicated, Mr. Heffney, that at some
10 point you went back to the Green trailer?

11 THE WITNESS: Yes, sir.

12 THE COURT: What happened when
13 you got there?

14 THE WITNESS: When I went back to
15 the Green residence, I was shown a .38
16 revolver that was found in a vacuum
17 cleaner.

18 MR. BOWEN: Object.

19 THE COURT: You may describe what
20 was done.

21 THE WITNESS: When I went back to
22 the residence -- well, initially I was
23 conducting an interview and was told what
24 was found --

25 MR. BOWEN: Object.

1 THE COURT: All right. When you
2 went back to the Green trailer, what
3 happened when you arrived, and where did
4 you go?

5 THE WITNESS: When I went in, I
6 went into the front living room area of the
7 structure. I was shown a .38 revolver --

8 THE COURT: By whom?

9 THE WITNESS: Special Agent Tony
10 Underwood.

11 THE COURT: What happened then?

12 THE WITNESS: They continued the
13 search and other items were found.

14 THE COURT: Mr. Britt?

15 BY MR. BRITT:

16 Q Now, when Special Agent Underwood showed
17 you this .38 caliber revolver, did Special Agent
18 Underwood tell you where it had been found?

19 MR. BOWEN: Object.

20 THE COURT: Overruled. You may
21 answer.

22 THE WITNESS: Yes, he did.

23 BY MR. BRITT:

24 Q Did he show you where it had been found?

25 A Yes, he did.

1 Q Where did Mr. Underwood tell it had been
2 found, and where did he show you it had been found?

3 A He told me it was found.

4 MR. BOWEN: Object.

5 THE COURT: It's being offered
6 for corroborative purposes.

7 MR. BRITT: Yes, sir.

8 THE COURT: Do you want an
9 instruction?

10 MR. THOMPSON: Yes.

11 THE COURT: Members of the jury,
12 the matters now elicited are being offered
13 for the purposes of corroboration. You may
14 consider it for that limited purposes and
15 no other purposes.

16 BY MR. BRITT:

17 Q Where did Mr. Underwood tell you it had
18 been found?

19 A He told me it had been found in a front
20 bedroom in a vacuum cleaner.

21 Q And did you go to that room?

22 A Yes, I did.

23 Q Where was that room located in the
24 relationship to the front door?

25 A As you entered the front door, would have

1 been the bedroom to your right.

2 Q When you went into that bedroom were you
3 shown the exact location where the .38 revolver had
4 been found?

5 A Yes, I was.

6 Q And what area were you shown?

7 A I was shown the area of the vacuum cleaner
8 that was in the bedroom.

9 Q Can you describe the vacuum cleaner?

10 A Vacuum cleaner, best of my recollection,
11 was a large shop vac type vacuum cleaner that had a
12 black hood that was attached to it, I believe it
13 was -- best of my recollection, it was 2.5
14 horsepower, and that's my recollection.

15 THE COURT: Mr. Britt, this is
16 probably a good point for us to stop for
17 the lunch recess.

18 MR. BRITT: That's fine.

19 THE COURT: We'll come back at
20 2:30 and continue with the presentation of
21 evidence. You may step down, Mr. Heffney.

22 Folks, we're going to recess until
23 2:15. Does that cause any problems for
24 anyone? We will resume with the
25 presentation of evidence at that time.

1 Please recall it is your duty to abide
2 by all prior instructions of the Court
3 concerning your conduct. Don't talk about
4 the case among yourselves. Don't let
5 anybody talk with you about the case or say
6 anything about the case in your presence.
7 Don't form or express any opinions about
8 this matter. Don't have any contact of any
9 kind with anybody involved in the case.
10 Avoid any exposure to any media accounts
11 which may exist in connection with this
12 matter, and don't conduct any independent
13 inquiry or investigation or research of any
14 kind.

15 Everyone please remain seated, the
16 members of the jury are excused until 2:15.

17 MR. THOMPSON: You --

18 THE COURT: Sir.

19 MR. THOMPSON: Your Honor, before
20 they are excused, may we approach?

21 THE COURT: If you'll have a
22 seat, folks.

23 (Whereupon a bench conference ensued
24 as follows.)

25 THE COURT: This is a bench

1 conference. Present at this time are all
2 counsel, the presiding Judge and the court
3 reporter. Yes, sir.

4 MR. THOMPSON: You indicated that
5 you were going to deal with
6 Mr. Campbell's --

7 THE COURT: I've indicated that
8 we're not going to be able to by
9 implication. I didn't say but I probably
10 need to. Thank you, because he is gone for
11 the rest of the day. And we're going to
12 finish this today. All right.

13 (Bench conference concluded.)

14 THE COURT: Mr. Campbell, I
15 didn't mention it directly, and I
16 apologize, but because of our situation,
17 again, I apologize for not being able to
18 accommodate you. I ask that all of you
19 return at 2:15 today. I apologize for
20 that. You folks are free to go until
21 2:15.

22 (Jury out at 12:55 p.m.)

23 THE COURT: Anything further from
24 either counsel? Then we're at ease until
25 2:15.

1 (Lunch recess.)

2 THE COURT: Let the record show
3 all counsel are present, the defendant is
4 present in open court. Mr. Heffney, thank
5 you, sir, if you'll retake the witness
6 stand. All members of the jury secured,
7 Sergeant Meares?

8 THE BAILIFF: Yes, sir.

9 THE COURT: If you'll bring them
10 in, please.

11 (Jury in at 2:14 p.m.)

12 THE COURT: Good afternoon,
13 ladies and gentlemen.

14 Mr. Britt.

15 MR. BRITT: Yes, sir.

16 BY MR. BRITT:

17 Q Mr. Heffney, on August the 16th of 1993,
18 was the .38 caliber revolver that you were shown at
19 the defendant's residence ever given to you on that
20 date?

21 A No, sir, it was not.

22 Q Who had possession and custody of the .38
23 caliber revolver on August the 16th, 1993 when it was
24 shown to you?

25 A Special Agent Tony Underwood.

1 Q Did there come a time when that .38 caliber
2 Smith & Wesson revolver came into your possession and
3 custody?

4 A Yes, there was a time when I did receive
5 the item.

6 Q When did you first receive possession and
7 custody of the .38 caliber Smith & Wesson revolver
8 that was found in the defendant's residence?

9 A I received the Smith & Wesson .38 caliber
10 revolver, to include six bullets, on September 17th,
11 1993, from the SBI lab in Raleigh, and I personally
12 picked up the item myself.

13 MR. BRITT: May I approach.

14 THE COURT: Yes, sir.

15 BY MR. BRITT:

16 Q I'm going to hand you what's been marked as
17 State's Exhibit Number 59, ask you to examine the
18 package and tell me if you can identify it?

19 A Yes, I can.

20 Q How are you able to identify State's
21 Exhibit Number 59?

22 A It has -- it bears my handwritten
23 signature, also indicates my initials in essential
24 places, also indicates the last time I personally
25 opened the item and resealed it.

1 Q And at the time -- for the record, what is
2 State's Exhibit Number 59?

3 A State's Exhibit 59 is a clear plastic bag.

4 Q And at the time you received it at the SBI
5 laboratory, in what condition was that bag?

6 A Bag was sealed.

7 Q And after it came into your possession at
8 any time was the bag ever opened?

9 A Yes, it was.

10 Q When was it initially, first time it was
11 opened after it came into your possession?

12 A First time it was opened after I received
13 it on September 17th, 1993, would have been on July
14 7th and also on July 4th, 1994. It was opened by me
15 at that time during discovery were counsel for the
16 defendant, Mr. Green were present, and they viewed
17 the item. Also, you're not able to see it on the bag
18 because the writing is off of it, but all counsel who
19 physically handled the item also initialed the bag.

20 Q And at the time you received State's
21 Exhibit 59, what if anything was contain inside of
22 it?

23 A Inside State's Exhibit 59 was one blue
24 steel Smith and Wesson .38 revolver to include six
25 bullets.

1 Q I'm going to remove the contents of State's
2 Exhibit 59. Handing you what's been marked as
3 State's Exhibit 59-A, can you identify that?

4 A Yes, I can.

5 Q How are you able to identify State's
6 Exhibit 59-A?

7 A I'm able to identify State's Exhibit 59-A
8 as being the Smith & Wesson .38 caliber revolver that
9 was placed inside item 59 and also item 59 when I
10 received it from the SBI lab to include some bullets
11 on September 17th, 1993.

12 Q And State's Exhibit 59-A is a .38 caliber
13 Smith & Wesson revolver that you were shown at the
14 defendant's residence on August 16th, 1993 by Special
15 Agent Underwood?

16 A Yes, it is.

17 Q And is State's Exhibit 59-A in
18 substantially the same condition today as it was when
19 you first saw it on August the 16th of 1993?

20 A Yes, it is.

21 Q Is State's Exhibit 59-A in substantially
22 the same condition that it was in when you received
23 it from the SBI laboratory?

24 A Yes, it is.

25 Q And in whose possession is State's Exhibit

1 59-A been in since you received it at the SBI
2 laboratory?

3 A State's Exhibit 59-A had been solely in my
4 custody and care since receiving on September --
5 excuse me -- September 17th, 1993. It's been in my
6 possession when any examinations have been done of
7 State's Exhibit 59-A.

8 Q Showing you what's been marked as State's
9 Exhibit 59-B, a clear plastic bag, can you identify
10 it?

11 A State's Exhibit 59-B, yes, I can.

12 Q How are you able to do that?

13 A These are the projectiles that were in
14 State's Exhibit 59. The reason they are in one bag
15 like this, when I initially received them they were
16 loose inside the bag. On October 25th, 1995, I
17 personally took the bullets out of the bag. They
18 were individually placed in each bag inside here, and
19 place them in a single bag for transport.

20 Q And why were the items removed from State's
21 Exhibit 59 and placed in the individual plastic bags
22 inside that bag marked as State's Exhibit 59-B?

23 A Due to FAA regulations, the bullets could
24 not be transported with the gun itself in the same
25 container. Therefore, I had to take them out and

1 place them in a separate bag, and that's why they
2 were taken out.

3 Q On October 25th of 1995, where did you take
4 the bullets and State's Exhibit 59-A?

5 A Took State's Exhibit 59-A and the bullets,
6 State's Exhibit 59-B to Dallas, Texas.

7 Q For what purpose did you take it to Dallas,
8 Texas?

9 A Pursuant to a court order to be examined by
10 firearms expert Larry Fletcher, pursuant to a request
11 from defense counsel.

12 Q And at the time you took State's Exhibit
13 59-A and State's Exhibit 59, 59-A, 59-B to Dallas,
14 Texas did you take any other items with you for the
15 purposes of that examination?

16 A Yes, I did.

17 MR. BRITT: May I approach?

18 THE COURT: Yes, sir.

19 BY MR. BRITT:

20 Q I'm going to show you what's been marked as
21 State's Exhibit 41, can you identify that?

22 A Yes, I can.

23 Q How are you able to identify State's
24 Exhibit Number 41?

25 A I'm able to identify it as being -- because

1 it has my initial on it, also has some handwriting
2 that I personally placed on it.

3 Q And when did you first receive State's
4 Exhibit 41?

5 A I first received State's Exhibit 41 or the
6 contents therein on September 17th, 1993, again from
7 the SBI lab in Raleigh. Again, I personally picked
8 up State's Exhibit 41 which was marked by my item
9 number, being 63.

10 Q And at the time you received the package
11 marked as State's Exhibit 41 in what condition was
12 it?

13 A It was in a sealed condition.

14 Q At any time after you received it on
15 September the 17th, of 1993, was State's Exhibit
16 Number 41 ever opened?

17 A Yes, it was.

18 Q When and for what purpose was State's
19 Exhibit 41 opened?

20 A State's Exhibit 41 was opened on July 7th,
21 1994 by myself at approximately 12:35 p.m. It was
22 opened during discovery with counsel for defendant
23 Daniel Green and defendant Larry Demery, but they
24 were opened at different times. One time it was
25 opened at 12:35 p.m. Again, it was sealed, and it

1 was reopened again on the same date, July 7, 1994 at
2 7:52 p.m. Again, it bears my initials on it. It
3 also bears the initials of all the attorneys who
4 physically went into the item and viewed it.

5 Q On July the 7th of 1994, when State's
6 Exhibit 41 was opened, what if anything was removed
7 from inside of State's Exhibit 41?

8 A Inside State's Exhibit 41 contained a vial,
9 a brown vial that contained a bullet that came from
10 the body of James Raymond Jordan.

11 Q Removing the contents of State's Exhibit
12 Number 41?

13 THE COURT: Yes, sir.

14 BY MR. BRITT:

15 Q I'm going to hand you what's previously
16 been marked as State's Exhibit 42-A. Do you
17 recognize that?

18 A Yes, I do.

19 Q How do you recognize it?

20 A Again, State's Exhibit 42-A, the plastic
21 bag, again it bears my signature or my initials and
22 time and date when this bag was opened by me.

23 Q And on what date was State's Exhibit 42-A
24 ever opened?

25 A State's Exhibit 42-A was opened by myself

1 on September 7th, 1994 and resealed on that same date
2 during discovery of items for the counsel for the
3 lawyers involved, and again, once the item was taken
4 out and handled by anyone other than myself, those
5 persons also initialed the bag.

6 Q What if any other initials appear on
7 State's Exhibit 41 and State's Exhibit 42-A that bear
8 the date of 7-7-94?

9 A The initial of A.B.T., which I've known and
10 witnessed to be Angus Thompson, also W.B., to be the
11 initials of Woodberry Bowen. Also H. Rogers to be
12 the initials of Hugh Rogers. J.R.T., which the
13 initials of -- I believe that to be Richard Townsend,
14 the District Attorney at that time. Also bears the
15 signature or -- excuse me, the initials of I believe
16 that's L.F., but that signature is at a later date.

17 Q Now, the initials that you just identified
18 appear on the outside of State's Exhibit Number 41?

19 A Yes, sir.

20 Q And when did you witness those initials
21 being placed on State's Exhibit 41?

22 A The last initial I witnessed being placed
23 on State's Exhibit 41, the L.F., was on October 26th,
24 1995. The other initials I spoke of were placed on
25 there on July 7th, 1994.

1 Q And what if any initials appear on State's
2 Exhibit 42-A that bear the date 7-7-94?

3 A Again, the initials on -- that bear the
4 date 7-7-94 are A.B.T., W.B. on that date.

5 Q And after those initials were placed on
6 State's Exhibit 42-A, what if anything was done with
7 that package and its contents?

8 A Will you repeat that?

9 Q After the initials were placed on State's
10 Exhibit 42-A, what if anything was done with that
11 package?

12 A After the initials were placed on there,
13 the package was resealed by me. After -- once I
14 opened the package and it was viewed and after all
15 parties viewed the item, I sealed it back and had
16 everyone initial it saying that they did -- that it
17 would signify that they did physically see and touch
18 the item therein.

19 Q Was that package placed inside of State's
20 Exhibit 41?

21 A Yes, it was.

22 Q Was that package also initialed by those
23 that handled the evidence at the time after the
24 evidence was placed inside and the package was
25 sealed?

1 A Yes, it was.

2 Q Handing you what's been previously marked
3 as State's Exhibit Number 24, can you identify that
4 package?

5 A Yes, I can.

6 Q How are you able to identify it?

7 A Able to identify it because it has my
8 handwriting on it, also has my initials and have a
9 date on it of when I sealed it that I can make out.

10 Q When did you first -- for the record, what
11 is State's Exhibit Number 24?

12 A State's Exhibit 24 is a small manila
13 envelope that contains my item 65, which would have
14 been one caliber -- one .38 caliber Winchester spent
15 shell casing.

16 Q When did you first receive that package and
17 its contents?

18 A I received it again on September 17th, 1993
19 from the SBI lab, and I personally picked the item
20 up.

21 Q At that time was State's Exhibit Number 24,
22 the manila envelope, sealed?

23 A Yes, it was.

24 Q Was that envelope ever opened after it came
25 into your possession?

1 A Yes, it was.

2 Q When was it opened?

3 A It was opened on July 7th, 1994 by myself
4 at 12 -- I believe 30 p.m. that I can make out.

5 Q For what reason was State's Exhibit 24
6 opened on that date?

7 A It was opened for discovery purposes.

8 Q And after it was opened for discovery
9 purposes on July 7th of 1994, was it resealed after
10 that conference with the attorneys?

11 A Yes, it was resealed, and again, it was
12 opened again on that date, July 7th, 1994 at 7:49
13 p.m., again, it was sealed I believe that's 7:54 p.m.
14 on July 7th, 1994.

15 Q Are there initial that appear on State's
16 Exhibit 24 that also appear on State's Exhibit 41 and
17 42-A?

18 A Yes, there are.

19 Q And are those the same initials that appear
20 on 24 that appear on those other two exhibits?

21 A Yes, sir.

22 Q And is State's Exhibit 24 in substantially
23 the same condition today as it was at the time you
24 received it?

25 A Yes, with the exception of it being opened,

1 yes, it is.

2 Q I'm going to hand you what has been marked
3 as State's Exhibit Number 73, ask you to look at that
4 and tell me if you can identify the contents of
5 State's Exhibit 73?

6 A Yes, I can.

7 Q How are you able to do that?

8 A I'm able to identify it because it has my
9 initials on it of when I received it from Special
10 Agent Tony Underwood.

11 Q And on what date did you receive it from
12 Mr. Underwood?

13 A August 19th, 1993.

14 Q And ask you to examine the contents of the
15 plastic bag marked as State's Exhibit Number 73 --
16 for the record what is State's Exhibit Number 73 and
17 its contents?

18 A State's Exhibit 73 itself is a clear
19 plastic evidence bag on one side that bears the
20 marking of my case number, 491-H-16, item Number 66,
21 described as one .32 six-shot revolver, Model 332,
22 serial number A as in Adam, Y as in young, 010056.
23 Weapon also has Smith & Wesson barrel and H & R
24 frame. The contents of item -- of State's Exhibit 53
25 is one .32 caliber weapon, blue steel in color, that

1 has bone type handles.

2 Q And --

3 A I --

4 Q Excuse me.

5 A Item State's Exhibit 73 was submitted to
6 the SBI lab by myself on August 20th, 1993. Again,
7 the item or State's Exhibit 73 was picked up at the
8 SBI lab by myself in person on September 17th, 1993.

9 Q And at the time you picked up State's
10 Exhibit 73 at the SBI lab, in what condition was the
11 bag?

12 A It was in a sealed condition.

13 Q At any time after it came into your
14 possession was the bag opened?

15 A Yes, sir.

16 Q When was it opened?

17 A It was opened on October 26th, 1995.

18 Q Do you know by whom it was opened on that
19 date?

20 A Mr. Larry Fletcher.

21 Q And where was Mr. Larry Fletcher at at the
22 time he opened it?

23 A Dallas, Texas.

24 Q On July the 7th of 1994 was State's Exhibit
25 73 opened during the discovery conference that took

1 place where the defendant's attorneys were present?

2 A No, sir, it was not.

3 Q I'm going to hand you what has been marked
4 as State's Exhibit 74, ask if you can identify it and
5 its contents?

6 A Yes, I can.

7 Q How are you able to do that?

8 A Able to identify State's Exhibit Number 74
9 because of my initials that appear above the top seal
10 on the day that I received it from Special Agent Tony
11 Underwood. State's Exhibit 74 is described as a
12 clear plastic bag on one side. The other side being
13 an evidence label reading my case number, 491-H-16,
14 item assigned to it was item 67, the description of
15 the evidence is one .32 six-shot revolver, model 732,
16 serial number A as in Adam, E as in Edward, 18405.
17 Weapon has a Smith & Wesson barrel, and an H&R
18 frame. The evidence was collected on August 19th,
19 1993 at approximately 7:45 p.m. from the residence of
20 Larry Demery, Sr. The contents of item, State's
21 Exhibit 74 is one blue steel .32 revolver with black
22 handles.

23 Q And from whom did you receive State's
24 Exhibit 74?

25 A I received State's Exhibit 74 from Special

1 Agent Tony Underwood on August 19th, 1993. This
2 item, State's Exhibit 74 was submitted to the SBI lab
3 on August 20th, 1993 by myself in person. Again,
4 State's Exhibit 74 was picked up by me in person at
5 the SBI lab in Raleigh on September 17th, 1993, at
6 which time when I received it it was in a sealed
7 condition.

8 Q And after you received it on September the
9 17th of 1993, was State's Exhibit 74 ever opened?

10 A Yes, it was.

11 Q When and where?

12 A It was opened on October 26th, 1995 by
13 Mr. Larry Fletcher in Dallas, Texas.

14 Q Was State's Exhibit 74 ever opened on July
15 7th, 1994 during the discovery conference?

16 A No, it was not.

17 Q I'm going to hand you what has been marked
18 as State's Exhibit Number 42 and ask if you can
19 identify it?

20 A Yes, I can.

21 Q How are you able to identify State's
22 Exhibit 42?

23 A Because it has my initials on it.

24 Q And for the record what is State's Exhibit
25 42?

1 A State's Exhibit 42 is a manila -- excuse
2 me, a mailer type envelope, padded envelope.

3 Q And when did you receive State's Exhibit
4 42?

5 A I received State's Exhibit 42 from Special
6 Agent -- last time from Special Agent Tony Underwood
7 on September 6th, 1994, after the case was
8 transferred to me. I picked up the evidence from
9 Raleigh at the SBI lab on September 23rd, 1993 and
10 transferred it back to Special Agent Tony Underwood
11 on September 24th, 1993.

12 Q And at the time you picked up State's
13 Exhibit 42 at the SBI lab in what condition was it?

14 A It was in a sealed condition.

15 Q After it came into your possession and
16 before transferring it to Special Agent Underwood on
17 the 24th of September, had it ever been opened? Was
18 it opened between the time you picked it up on the
19 23rd and when you gave it to Mr. Underwood on the
20 24th?

21 A No, it was not.

22 Q And did you receive item State's Exhibit 42
23 back from Mr. Underwood?

24 A Yes, I did. I received it back from
25 Special Agent Underwood on September 6, 1994.

1 Q And at the time you received State's
2 Exhibit 42 at that time from Mr. Underwood, was the
3 package sealed or unsealed?

4 A It was sealed.

5 Q And after it came into your possession in
6 September of 1994, was it ever opened?

7 A Yes, it was. It was opened again on
8 October 26th, 1995 by Mr. Larry Fletcher in Dallas,
9 Texas.

10 Q And was State's Exhibit 42 opened during
11 the discovery conference on July the 7th of 1994?

12 A No, it was not.

13 MR. BRITT: Moving into the
14 contents of State's Exhibit 42.

15 THE COURT: Yes, sir.

16 BY MR. BRITT:

17 Q I'll show you what has been marked as
18 State's Exhibit 41-A. Are you able to identify that?

19 A Other than knowing exactly what it is, no,
20 because it does not bear any of my markings.

21 Q You did not place any markings on State's
22 Exhibit 41-A?

23 A No, I did not.

24 Q Are there any initials dated 7-7-94 on
25 State's Exhibit 41-A?

1 A No, there's not.

2 Q For the record do you know what that is and
3 what it contains?

4 A Yes, I do. State's Exhibit 41-A is the
5 plastic bag containing a .32 bullet that came from a
6 store.

7 Q Now, when you went to Dallas, Texas in
8 October of 1995, what items did you take with you?

9 A Took State's Exhibit 42, State's Exhibit
10 74, State's Exhibit 73, State's Exhibit 41, State's
11 Exhibit 24, State's Exhibit 59 and the contents
12 therein all of them.

13 Q I'm going to hand you what has been marked
14 as State's Exhibit 55, do you recognize it?

15 A Yes, I do.

16 Q How are you able to identify State's
17 Exhibit 55?

18 A It bears my initials on the seals.

19 Q And for the record what is State's Exhibit
20 55?

21 A State's Exhibit 55 is a clear plastic bag
22 inside which contains a black film canister.

23 Q And for the record is the film canister
24 contained in 55 marked?

25 A It's marked as State's Exhibit 55-A.

1 Q What if anything is State's Exhibit 55-A?

2 A State's Exhibit 55-A is, again, a black
3 film canister that I received on August 16th, 1993.

4 Q And from whom did you receive State's
5 Exhibit 55-A?

6 A From Special Agent John Strong with the
7 SBI.

8 Q And where were you at the time you received
9 that item?

10 A I was in the conference room of the Robeson
11 County Sheriff's Department.

12 Q And at the time you received State's
13 Exhibit 55-A did you open it and see what was
14 contained inside of it?

15 A No, I did not.

16 Q Was State's Exhibit 55-A sealed at the time
17 you received it from Special Agent John Strong?

18 A Yes, it was.

19 Q What if anything did you do with State's
20 Exhibit 55-A and it's contents after you received it
21 on August the 16th of 1993?

22 A I retained custody of it and on August
23 20th, 1993 it was submitted to the SBI lab and on
24 September 17th, I personally picked up State's
25 Exhibit 55-A from the SBI lab in a sealed condition.

1 Q And after you received it on September the
2 17th of 1993, was State's Exhibit 55, 55-A ever
3 opened?

4 A Yes, it was.

5 Q When and where?

6 A It was opened on July 7th, 1994 by myself
7 in the south -- in my office in Fayetteville. It was
8 opened during discovery with the attorneys.

9 Q And the initials that appear on the other
10 exhibits that were opened, do those initials also
11 appear on State's Exhibit 55 and 55-A?

12 A One of the initials I can clearly see on
13 State's Exhibit 55 is being that of Hugh Rogers. The
14 others are faded out. I'm able to look at State's
15 Exhibit 55-A. State's Exhibit 55-A only contains my
16 signature -- my initials and the initials of L.F.,
17 but State's Exhibit 55 does contain one of the
18 initials that I can clearly make out.

19 Q And other than July the 7th of 1994,
20 State's Exhibit 55 or 55-A ever opened again?

21 A Yes, it was. It was opened on October
22 26th, 1994 by Mr. Larry Fletcher in Dallas, Texas.

23 Q When you went to Dallas Texas, you took
24 State's Exhibit 55 and its contents?

25 A Yes, I did.

1 Q Along with the others exhibits that you've
2 identified?

3 A Yes, I did.

4 Q Where did you meet with Mr. Fletcher?

5 A Met with him in his office of the -- his
6 office located at the forensic -- excuse me. His
7 office located at the Institute of Forensic Scientist
8 Building located at 5230 Medical Center Drive,
9 Dallas, Texas.

10 Q At the time you took State's Exhibits 59,
11 41, 42, 24, 73, 74, and 55 to Dallas, Texas in what
12 conditions -- what condition were each of those
13 packages?

14 A They were all sealed.

15 Q From July the 4th of 1994 until October the
16 25th of 1995, had those packages been opened?

17 A No, they had not.

18 Q And after -- were you present -- when you
19 met with Mr. Fletcher and you gave him the items,
20 were you present when the items were opened?

21 A Yes, sir, I was present when the items were
22 opened.

23 Q And were you present during any examination
24 that Mr. Fletcher performed on the items?

25 A I was present when Mr. Fletcher did the

1 examination on October 26th. I was present when he
2 did all of his examinations that involved the
3 firearms themselves. During the actual examination
4 of the ballistic materials, myself and Detective
5 Thompson were not there. But when those examinations
6 were being conducted, I kept sole custody of all
7 firearms.

8 THE COURT: When you say
9 ballistic materials, what are you referring
10 to?

11 THE WITNESS: Talking about
12 bullets.

13 BY MR. BRITT:

14 Q Now, there in Dallas, did you receive the
15 packages containing the bullets and the various
16 handguns at the same time, did you receive those from
17 Mr. Fletcher after his examinations?

18 A When we went back after he had conducted
19 examination with the bullets, as I said I had the
20 firearms. He, after completing the ballistics with
21 the bullets, he placed them back in the envelopes or
22 the plastic bags, and he initialed them and we left.

23 Q And from there where did you take the items
24 that were submitted to Dallas?

25 A I kept them in a locked hardened case that

1 I got from the SBI lab and kept that with me.

2 Q Mr. Heffney, do you know of your own
3 personal knowledge on July 7th of 1994 when you
4 opened State's Exhibit 41, was there a .38 caliber or
5 .32 caliber slug contained inside the envelope marked
6 as State's Exhibit 41?

7 A 38 -- yes, I do.

8 Q And what -- what type of slug was located
9 in State's Exhibit 41 when you opened it on July the
10 4th, 1994?

11 A A .38 caliber slug.

12 Q And what type of slug did you place back
13 into the envelope marked as State's Exhibit 41?

14 A .38 caliber slug, the one that came out of
15 State's Exhibit 41.

16 THE COURT: What is the caliber
17 of the slug that's now contained in that
18 exhibit number?

19 THE WITNESS: 38.

20 BY MR. BRITT:

21 Q For purposes of the record, State's Exhibit
22 42-A has been placed inside of State's Exhibit 41.
23 Mr. Heffney, on July the 7th of 1994, was State's
24 Exhibit 42 ever opened during the discovery
25 conference?

1 A No, it was not.

2 Q And to your knowledge what if anything was
3 contained inside of State's Exhibit 42 when you
4 received it from Mr. Marrs?

5 A .32 caliber slug.

6 Q Any time prior to taking the exhibits to
7 Dallas, Texas, was State's Exhibit 42 ever opened?

8 A No, it was not.

9 Q State's Exhibit Number 41 was opened in
10 court some weeks ago?

11 A Yes, it was.

12 Q You were present when that occurred?

13 A Yes, I was.

14 Q You were present when the contents of
15 State's Exhibit 41 were removed?

16 A Yes, I was.

17 Q What if anything do you recall being
18 removed from State's Exhibit 41 when it was opened
19 here in court?

20 A When State's Exhibit 41 was opened in
21 court, it contained a .32 caliber slug.

22 Q You were present when State's Exhibit 42
23 was opened in court?

24 A Yes, I was.

25 Q At the time State's Exhibit 42 was opened

1 in court, what if anything did it contain?

2 A A .38 caliber slug.

3 Q Who was the last person to place any items
4 in the envelope marked as State's Exhibit 41 and the
5 envelope marked as State's Exhibit 42?

6 A Mr. Larry Fletcher of the Institute of
7 Forensic Scientists, a forensic firearms expert in
8 Dallas, Texas on October 26th, 1995.

9 Q And the item contained inside of State's
10 Exhibit 42 at the time it was opened was the .38
11 caliber slug that's marked as State's Exhibit 42-A,
12 is that correct?

13 A Excuse me?

14 Q When State's Exhibit 42 was opened, the
15 item inside of it, was the bag marked as State's
16 Exhibit 42-A containing the .38 caliber bullet?

17 A When it was opened --

18 Q In court.

19 A -- in court it did. But not when it was
20 opened in Dallas, Texas.

21 Q When you opened State's Exhibit 41 in
22 Dallas, Texas prior to Mr. Fletcher's examination,
23 what if anything was contained in State's Exhibit 41?

24 A I did not open it. I observed Mr. Fletcher
25 open it. But inside State's Exhibit 41 contained

1 a .38 caliber slug that was contained in a brownish
2 vial.

3 Q And is that the package marked as State's
4 Exhibit 42-A now?

5 A Yes, it is.

6 Q And when he opened State's Exhibit 42 in
7 Dallas, what if anything did you observe him take
8 out?

9 A A small plastic bag that contained a .32
10 caliber slug.

11 Q And is that the item that is now marked as
12 State's Exhibit 41-A?

13 A Yes, it is.

14 Q Were you present when Mr. Fletcher
15 repackaged the bullets?

16 A I was present when he initialed the
17 bullets -- the packaging as far as sealing them back
18 up.

19 Q But the packages containing the bullets had
20 already been placed inside the envelopes?

21 A Yes, they had been.

22 Q You've had an opportunity to examine each
23 of these items. Are each of these items in
24 substantially the same condition they were in when
25 you initially received them?

1 A Yes, they are.

2 MR. BRITT: Your Honor, at this
3 time the State would move to introduce to
4 State's Exhibit 59, 59-A, 59-B.

5 THE COURT: You folks want to be
6 heard for the proffer 59, 59-A, 59-B?

7 MR. THOMPSON: May we have a
8 moment?

9 THE COURT: Yes, sir.

10 MR. BOWEN: No, sir.

11 THE COURT: They are admitted.

12 MR. BRITT: Also State's Exhibit
13 59-C, which was contained inside of State's
14 Exhibit 59, which is the evidence tag that
15 Mr. Richardson identified.

16 THE COURT: Yes, sir, that's
17 admitted as well.

18 MR. BRITT: State's Exhibit 41,
19 State's Exhibit 42-A, State's Exhibit 42,
20 and 41-A.

21 THE COURT: You folks want to be
22 heard as to that proffer?

23 They are admitted as well.

24 MR. BRITT: State's Exhibit
25 Number 24.

1 THE COURT: Yes, sir.

2 MR. BRITT: State's Exhibit 55.

3 THE COURT: Okay.

4 MR. BRITT: State's Exhibit 74
5 and its contents, including the .32 caliber
6 revolver with black handles, and State's
7 Exhibit 74-A, the projectiles that were
8 removed from that revolver.

9 THE COURT: Without objection,
10 those items are also admitted.

11 MR. BRITT: State's Exhibit 73,
12 including its contents, the .32 caliber
13 revolver with the bone colored handles, and
14 State's Exhibit 73-A, the six projectiles
15 that were removed from that revolver.

16 THE COURT: 73 and 73-A are
17 admitted.

18 MR. BRITT: If I could have just
19 a second.

20 THE COURT: Yes, sir.

21 MR. BRITT: If I may approach the
22 Clerk.

23 THE COURT: Yes, sir.

24 MR. BRITT: So the record is
25 clear, State's Exhibits 59-A and 59-B, the

1 video has been returned to State's Exhibit
2 59. And packaged inside of State's Exhibit
3 59 at this time are State's Exhibits 24,
4 State's Exhibit 55, and State's Exhibits 41
5 and 41-A.

6 THE COURT: Yes, sir.

7 MR. BRITT: Again, for the
8 purposes of the record, State's Exhibit 73,
9 73-A, 74, and 74-A and State's Exhibit 42
10 and 41-A have been packaged inside a clear
11 plastic bag for the purposes of storage.

12 THE COURT: Yes, sir.

13 BY MR. BRITT:

14 Q Mr. Heffney, in May of 1995, did you have
15 an occasion along with Detective Anthony Thompson to
16 interview Larry Martin Demery beginning on May the
17 2nd of 1995?

18 A Yes, I did.

19 Q Where did that interview take place?

20 A The interview on May 2nd, 1995 took place
21 at my office in Fayetteville, North Carolina, the
22 southeastern district office. There was subsequent
23 days of the interview, the 3rd, the 4th, and the
24 8th. The 4th and the 8th interview were conducted in
25 the office of attorney John Campbell here in

1 Lumberton.

2 Q And on the occasions when you interviewed
3 Mr. Demery, who was present other than yourself,
4 Detective Thompson and Mr. Demery?

5 A During the interviews conducted on the 2nd,
6 3rd, and 4th, attorney John Campbell was present.
7 Interview conducted on May 8th, in addition to
8 attorney Campbell, attorney Hugh Rogers was also
9 present.

10 Q And during the time of that interview were
11 you writing down the things that Larry Demery told
12 you?

13 A Yes, I was.

14 Q Explain to the jury the procedure that you
15 followed during this interview in regard to asking
16 questions and taking the down of those answer?

17 A In the interview of Larry Demery that was
18 conducted on May 2nd, 3rd, 4th, and 8th, we would
19 initially ask Larry Demery to tell us what happened.
20 We would listen, and I mean we by me and those who
21 were present, listen to what he had to say. After
22 listening to what he had to say, we would ask him
23 questions, and then commence to writing what he said.

24 Q And approximately how many hours were spent
25 interviewing Mr. Demery over that four day period?

1 A Approximately 24 to 28 hours.

2 Q You have referred to a document that you
3 have there on the stand?

4 A Yes, I have.

5 Q Is that a typed version of the statement
6 that you took from Mr. Demery over that time period?

7 A Yes, it is.

8 Q And when you were interviewing Mr. Demery,
9 were you handwriting the statement?

10 A Yes, I was.

11 MR. BRITT: May I approach.

12 THE COURT: Yes, sir.

13 MR. THOMPSON: Your Honor, we
14 need to be heard.

15 THE COURT: Ladies and gentlemen,
16 there's a matter of law the Court must take
17 up. Please recall my instructions, don't
18 worry or speculate about what takes place
19 in the courtroom in your absence, and if
20 you will please step to the jury room.

21 (Jury out at 3:05 p.m.)

22 THE COURT: In the absence of the
23 jury, yes, sir.

24 MR. THOMPSON: Yes, sir. Your
25 Honor, pursuant to the Court's previous

1 rulings, there are certain things that have
2 obviously been testified to that you ruled
3 that we've opened the door to concerning
4 specifically the motel robbery, the Clewis
5 Demory robbery which has been testified to,
6 as well as these matters pertaining to
7 James Jordan.

8 The documents that I just received
9 from Mr. -- Johnson contains all of the
10 interview, and that's my concern. You
11 know, if he's -- in other words, it
12 contains other matters that are not yet
13 testified to and to which the Court has not
14 yet ruled the doors have been opened.

15 MR. BRITT: At this time, the
16 purpose is to have Mr. Heffney identify the
17 documents, 49 page document that's in his
18 handwriting. It contains matters related
19 to Mr. Demery's statements regarding the
20 Jordan homicide, regarding the Clewis
21 Demory robbery, the July 4th robbery.
22 There are other matters that are contained
23 in that.

24 THE COURT: What do you intend to
25 do with the document?

1 MR. BRITT: I do not intend to
2 publish it. I intend Mr. Heffney to read
3 the relevant portion that the Court has
4 already ruled on.

5 THE COURT: It's for
6 corroboration?

7 MR. BRITT: Yes, sir, for
8 corroboration.

9 MR. THOMPSON: Yes, sir, that
10 being the case, I just wanted to as a
11 matter of precaution make sure that only
12 those matters as to which the Court has
13 ruled are admissible, unless we, you know,
14 open the door.

15 MR. BRITT: As a matter of
16 caution, I will specifically ask him about
17 statements Mr. Demery made in regard to the
18 Jordan homicide. I'll ask him the question
19 in regard to the Clewis Demory robbery and
20 the July 4th robbery. I will not go into
21 the other matters.

22 THE COURT: Okay. If you'll
23 bring the jury back in, please.

24 (Jury in at 3:08 p.m.)

25 (State's Exhibit 166 was
marked for identification.)

1 MR. BRITT: May I approach the
2 witness.

3 THE COURT: Yes, sir.

4 BY MR. BRITT:

5 Q I'm going to hand you what has been marked
6 as State's Exhibit 166, ask you to examine that and
7 tell me if you're able to identify it.

8 A Yes, I can.

9 Q How are you able to identify State's
10 Exhibit 166?

11 A The statement that I've taken from Larry
12 Demery on May 2nd, 3rd, 4th, and 8th, and I recognize
13 that because it's in my own handwriting.

14 Q And is State's Exhibit Number 166 a
15 complete statement that you took from Larry Demery on
16 the 2nd, 3rd, 4th and 8th?

17 A Yes, it is.

18 Q Is it signed by anyone?

19 A Yes, it is.

20 Q And who is it signed by?

21 A It's signed by myself, Detective Anthony
22 Thompson, Mr. Larry Demery, Mr. John Campbell, and
23 Mr. Hugh Rogers.

24 Q And prior to Mr. Demery signing State's
25 Exhibit 166, did you go over the statement with him

1 and give him an opportunity to make any corrections
2 or any changes to the contents of State's Exhibit
3 166?

4 A Yes, I did.

5 Q Did Mr. Demery make any corrections or any
6 changes to the contents of State's Exhibit 166?

7 A Yes, he did.

8 Q What if any changes or corrections did he
9 make to the contents of State's Exhibit 166?

10 A The only correction or change that he made
11 would have been done at the end of the interview, but
12 as far as having the statement re-read back to
13 Mr. Demery, he waived that through his counsel.

14 Q On May the 2nd of 1995, did you question
15 Mr. Demery about the homicide of James Jordan?

16 A Yes, I did.

17 Q And what if anything did Mr. Demery tell
18 you on May the 2nd in regard to the homicide of James
19 Jordan?

20 A Mr. Demery told me the following accounts
21 of the interview on May 2nd, 1993 -- excuse me, '95,
22 concerning Mr. James Jordan:

23 Mr. Demery stated on the night of Thursday,
24 July 22nd, 1995, as I have printed here, he spent the
25 night at Daniel's house. When he got up on the

1 morning of July 22nd, 1993, they had planned on
2 robbing a tourist at the Quality Inn. They picked
3 this site because they knew a tourist would be there
4 and have plenty of money.

5 At around 4:30 or 5:00 p.m., he left
6 Daniel's house in his tan or beige Ford Tempo. He
7 went to Right Aide and bought a Winnie The Poo
8 character, the donkey, which had a videotape and
9 maybe a book with it. The gift came in a box and
10 cost approximately \$20.00. He then went to Jones's
11 Store in Pembroke and purchased three or four
12 children's books. He bought this because he was
13 expecting a baby, he and his girlfriend Angela
14 McClain.

15 Also while at Right Aide, he bought a
16 birthday card and balloon. He also bought a bag of
17 miniature Snickers bars while in the Jones department
18 store. After leaving Jones's Store, went to mother's
19 house where he called his girlfriend Angela. He was
20 at his mother's house only for short time. He told
21 his mother he was going to Angela's house.

22 After leaving mother's house he went to
23 Angela's house and got there around 7:00 or 7:30 p.m.
24 While at Angela's he gave her the presents for her
25 19th birthday. Stayed there for about one to one and

1 a half hours, told her he was in a hurry because the
2 story was for the family that he and Daniel had been
3 catching chickens for a guy out of Rowland. He did
4 not recall the man's name but they did do it one
5 time, catch chickens.

6 He stated he dropped Angela off at Kim
7 Reeve's house about 8:00 p.m. When he left Angela at
8 Kim's house, he went straight back to Daniel's
9 house. When he left Daniel's earlier, he told Daniel
10 he would return around 9:00 or 10:00 p.m.

11 When he got to Daniel's house, he was home
12 alone. After getting there he stayed a very short
13 time and they went to Kay Hernandez's house, close to
14 Parrot's grocery store. While there, Kay and
15 Daniel's mother was watching a movie while he and
16 Daniel and Kay's younger -- Monica were in the other
17 room playing videos. He and Daniel stayed at Kay's
18 house until about 1:30 a.m. After leaving Kay's
19 house they went straight back to the Quality Inn
20 motel located off of exit 14 on the service road of
21 I-95. He parked the car on a dirt road off of the
22 service road, and the time was approximately 2:00
23 a.m.

24 They left the car and went to the parking
25 lot of the old store at the motel and from there they

1 watched the parking lot of the motel. Stayed there
2 for approximately one hour but never saw anything at
3 the hotel.

4 After leaving the abandoned store, they
5 went back to his car and they started paying
6 attention to the Lexus that was parked on the side of
7 Highway 74. When they parked his car on the dirt
8 road, they got to the service road from McNeil's
9 Bridge Road and they never traveled Highway 74 to get
10 to the service road. When the car was parked, he did
11 not remember seeing the Lexus on Highway 74 but he
12 did recall seeing a truck parked on the other side of
13 the highway from the Lexus.

14 Daniel noticed the Lexus initially on the
15 highway. While they were at the abandoned store
16 watching the hotel parking lot, they went back to his
17 car two times and the car was noticed then, but they
18 never said anything to each other about the car.
19 Demery stated when they went back to his car the last
20 time and started paying attention to the Lexus,
21 Daniel thought the car was an undercover car because
22 the parking lights were on. When they walked to the
23 car, they approached it from behind and was walking
24 on Highway 74. Their main objective was to see what
25 type of car it really was and to see the license tag

1 to determine if it was state tags or not.

2 At the time, he recalled the tag had the
3 University of North Carolina emblem on the tag.
4 After seeing tag, they went across the road, they
5 then went across the road -- they got a good look at
6 what type car it was, and the car was a red Lexus.
7 They then went back across the road where the car was
8 parked. They were standing approximately seven to
9 eight feet behind the car and continued to walk. He
10 and Daniel then discussed taking the car. The plan
11 was for him to take his car back to Daniel's house
12 and Daniel was to take the gun and wake up the person
13 in the car and make the person drive to Daniel's
14 house. Once at Daniel's house they were going to tie
15 up the driver and put him out beside the road
16 somewhere.

17 They knew someone was in the car because
18 the parking lights were on. They then walked back
19 across the road in order to come back and get closer
20 to the car to see how many people were in the car.
21 They were behind the car when they went across. They
22 then went back to the car the fourth time, they came
23 up on the driver's side of the car and saw a man
24 appeared to be asleep in the driver's seat with the
25 seat back and no one else in the car.

1 The driver's side window was up but they
2 did notice the passenger window to be down. They
3 were approximately two to three feet from the car at
4 the time. They crossed the road to the flea market
5 sign. There were cars passing and they hid behind
6 some bushes near the flea market sign. They also
7 decided -- excuse me. They also discussed their
8 plans again. They walked up to the passenger side of
9 the car and another car came and they hid behind a
10 sign. The sign was tent shaped and big enough for
11 them to hide behind.

12 After the car passed they were behind the
13 sign and their last conversation was that they were
14 in it together. When they left the sign, he went
15 towards his car like planned, and Daniel pulled the
16 gun out and went towards the Lexus. He was running
17 towards his car and Daniel was running towards the
18 Lexus. They had been separated a matter of seconds
19 when he heard the gunshot. He was approximately 50
20 feet away from Daniel when the gun was fired.

21 After getting to his car, he crossed over
22 Highway 74 and saw Daniel in the driver's seat of the
23 Lexus. It was dark but could tell it was Daniel
24 because of the movement and he was wearing a cap. He
25 took Old 301 back towards Daniel's house. He was at

1 Daniel's house approximately 15 minutes before he saw
2 car lights coming down the canal bank behind Daniel's
3 house.

4 After Daniel arrived at the house, Daniel
5 told him to get in the car, which he did. He got in
6 the back seat behind the driver's seat. Upon getting
7 into the car, he asked Daniel what happened. Daniel
8 told him the man started waking up and something
9 about the man seeing his face. He observed the man's
10 body pushed over in the passenger seat. One of the
11 man's legs was still over the console of the car.
12 The man never said anything.

13 At the time, he knew the man had been shot
14 and knew pretty much before Daniel arrived with the
15 car that the man had been shot. Mr. Demery stated as
16 soon as he got in the car, he and Daniel discussed
17 getting rid of the car. When they left Daniel's
18 house, they turned left at the end on Daniel's road
19 and traveled the road to Highway 301. At Highway
20 301, they turned right on to 301 heading towards
21 Rowland. They had traveled 301 approximately four or
22 five miles prior to getting to Rowland, but not sure
23 if they went through Raynham. They turned right on
24 to a state maintained dirt road.

25 When they turned on to the dirt road, there

1 were woods on the left and an open field to the
 2 right. The dirt road was a wide road. Traveled the
 3 dirt road to the end of the road on the right and
 4 turned left into a smaller dirt road. At the end of
 5 the road, which was not very long, there was a
 6 cornfield. When they stopped the car, the engine was
 7 turned off but not the headlights. He stated Daniel
 8 got out of the car, and then he got out of the back
 9 seat. When he got out, he got the keys out of the
 10 ignition and opened the trunk.

11 While at the trunk of the car, he saw two
 12 golf bags, one Carolina blue and white, the other was
 13 a burgundy or deep red color, a brown case with CD's,
 14 a red bag with Chicago Bulls on it. The bag
 15 contained shaving cream, razor, deodorant, and
 16 cologne, a couple of pair of golf shoes, white/black
 17 or gray/white wing tip type shoes. The shoes were
 18 identical. There was a burgundy combination
 19 briefcase, fairly new, and about two inches wide.
 20 Papers and manila envelopes in trunk, a light gray
 21 suit in the trunk, and there was a darker grey suit
 22 hanging on the inside of the car.

23 Inside the car, there was a pair of brown
 24 shoes in the floorboard, lace up type. While at the
 25 trunk of the car, he did not see anything with James

1 Jordan's name on it. While he was at the trunk of
2 the car, Daniel had gotten the personal items from
3 Mr. Jordan's pocket. He was standing at the
4 passenger door while Daniel was going through the
5 credit cards. He watched Daniel take the credit
6 cards from the right front pocket, the money clip
7 from the same pocket, the watch taken off,
8 Mr. Jordan's ring -- excuse me. Mr. Jordan's right
9 arm, NBA ring from right hand, and wedding band from
10 left hand.

11 He believed this was the jewelry he was
12 wearing. There was \$63 in the money clip. The money
13 clip had a golf ball and two golf clubs crossed over
14 emblems on it, and it was gold. The wedding ring was
15 a thin gold band. The watch was 18 carat gold. The
16 face was black, a bull's head, and '90 dash '91 world
17 champions or '91 dash '92 world champions on the
18 inside. And on the back it had, to dad from Michael
19 and Juanita. The NBA ring was silver or light gold,
20 with '86 All-Star, and on top it had a large blue
21 stone. And did not find a wallet on Mr. Jordan.

22 Demery stated with the large number of
23 credit cards there was Mr. Jordan's license, which
24 were wrapped in a rubber band. What confirmed it for
25 him that the man in the passenger seat was Mr. James

1 Jordan was the inscription on the back of the watch.
2 After Daniel saw the driver's license he said it was
3 Michael Jordan's father. Some of the credit cards,
4 about half of them, were thrown out along with the
5 driver's license at the edge of the woods at the
6 cornfield.

7 After leaving this area, they backed out on
8 to the dirt road and went back to Highway 301. They
9 turned right and headed towards Rowland. While
10 Mr. Jordan was being moved around, he observed an
11 area of blood under his right arm. Mr. Jordan was
12 wearing a pair of light pants, a light shirt, a cloth
13 brown Member's Only jacket, brown lace-up casual
14 shoes with something like sandals. He could not see
15 the socks through the shoes -- excuse me, but could
16 see socks through shoes. Daniel had tried on one of
17 the shoes, and they did fit Daniel.

18 While going to Rowland, they talked about
19 getting rid of the body and the body was still in the
20 passenger seat. They got to Rowland around quarter
21 to 4:00 on Friday morning. He stated when they got
22 to Rowland, they went directly to the waste treatment
23 plant. It was Daniel's idea to go to the treatment
24 plant because the chemicals would eat up the body.
25 Once at the treatment plant, they found a gate was

1 put up, and they could not get to the treatment
2 plant.

3 Daniel drove back and forth around the
4 plant but could not find a way in. He was real
5 nervous because the police station was nearby and
6 they were near a housing project, and they passed by
7 a police car when going to the treatment plant. He
8 told Daniel, let's get out of here, and Daniel asked
9 if he had a better idea, and he said yes.

10 He told Daniel about a bridge near where he
11 used to work in Laurinburg. From Rowland, he
12 directed Daniel to take Highway 501 out of Rowland
13 and made a left on John's Station, and this road went
14 straight to the bridge. On this road, they passed
15 through Hasty, where Crestline Mobile Home
16 manufacturing was located. He used to work for
17 Crestline. The bridge was located about one mile
18 from Crestline.

19 Mr. Demery stated upon getting to the
20 bridge, they crossed over the first bridge and left
21 the car on the road and they got out to determine
22 what side to throw the body out. He stayed on the
23 outside of the car while Daniel turned the car
24 around. While Daniel was turning the car around, he
25 almost ran the car off the road at the bridge. After

1 the car was turned around, the body of Mr. Jordan was
2 taken out of the car. At the bridge, Mr. Jordan's
3 jacket was taken off and possibly the shoes. There
4 was a comment made at the bridge by Daniel in
5 reference to clothing worn by Mr. Jordan but he did
6 not remember the exact statement.

7 Mr. Demery stated they both reached in the
8 car and got Mr. Jordan out of the car and he was
9 practically on the road. He reached down and grabbed
10 the feet and Daniel had chest area. They raised the
11 body just high enough to clear the bridge and dropped
12 him in the water.

13 Q Now, did that complete the interview of May
14 the 2nd?

15 A May 2nd, yes, it does.

16 Q Did the interview resume on May the 3rd?

17 A Yes, it did.

18 Q On May the 3rd, did Mr. Demery continue to
19 tell you about the events associated with
20 Mr. Jordan's death?

21 A Yes, he did.

22 Q What did he tell you on May the 3rd about
23 the events associated with Mr. Jordan's death?

24 A Mr. Demery advised me that at the bridge,
25 there was nothing thrown out of the vehicle, no

1 personal effects of Mr. Jordan were thrown out. He
2 did not throw away a fired cartridge case from the
3 gun and he did not see Daniel throw away a cartridge
4 case.

5 They left the bridge at approximately 4:15
6 a.m. on Friday, July 23rd, 1993, and he began driving
7 the car. While at the bridge with the body of
8 Mr. Jordan, a car never passed by. He knew they were
9 at the North Carolina and South Carolina line where
10 the body was dropped, but he was not thinking
11 anything about it. When they left the bridge, he
12 made a left at Crestline and continued on, crossed
13 over highway 401 and went to the Citgo gas station
14 and purchased ten dollars worth of gas. He paid for
15 the gas with the ten dollars that came from
16 Mr. Jordan. He pumped the gas after finding the
17 release button for the gas tank.

18 After getting gas, they went to the First
19 Union Bank where Daniel tried to use the City Bank
20 Visa card. He sat in the car while the card was
21 being used. Daniel tried to use the card for about
22 ten minutes but he never got anything out.

23 During that time, their conversation was
24 that they hoped they would not get caught and they
25 had planned on keeping the car. Daniel mentioned

1 about his mother's boyfriend in Philadelphia could
2 advise them about a chop shop where all the numbers
3 on the car could be changed.

4 While they had the car, he drove in an
5 excess of 150 miles an hour, and Daniel also drove
6 the car in excess of 150 miles per hour. Daniel told
7 him some of the numbers on the credit cards were used
8 to access the ATM machine. He told Daniel the code
9 numbers were not on the card. After Daniel got back
10 in the car, they never attempted to use any more
11 credit cards.

12 After leaving the bank, they travelled
13 Highway 74 towards his house and went to the canal
14 bank at his house. The time was around 6:00 a.m. it
15 was getting daylight but the sun had not yet come up.

16 While on their way to the canal bank,
17 Daniel was messing with the car phone but he never
18 talked with anyone. They went to the canal bank to
19 thoroughly check out the car and learn more about the
20 workings of the car. While at the canal bank, they
21 threw the paperwork out of the car into the canal and
22 he specifically recalls throwing out a large number
23 of payroll checks. He also saw some checks that had
24 been written out to people. He hit a few golf balls
25 while at the canal. He hit several golf balls and

1 there may have been some golf tees in the area.
2 While he checked the hood and hit golf balls, Daniel
3 was on the inside of the car messing with the phone.
4 He did not exactly know how long they stayed at the
5 canal bank, but it could have been as long as an
6 hour.

7 When they left the canal bank, they went
8 directly to Daniel's house and parked the car behind
9 the trailer which was across the road from Daniel's
10 house. No one was living in the trailer at the time
11 but people did live in the trailer a few days prior,
12 but were put out.

13 Prior to parking car across the street, the
14 car was parked behind Daniel's house. He carried the
15 gun, toiletry bag, and golf shoes in the house. He
16 stated Daniel carried the suits and briefcase in the
17 house. While at the canal bank, he observed blood in
18 the passenger seat. After getting items out of the
19 car, he wiped the blood out of the passenger seat.
20 There was not much blood in the car and it was
21 located on the back rest of the seat. After cleaning
22 up the blood, the car was parked across the street
23 behind the trailer. The golf clubs were left in the
24 car because Daniel wanted to pawn the clubs.

25 After going into Daniel's house they both

1 went to sleep. He slept for at least two hours.
2 Daniel woke him up and told him they had to leave.
3 While he was asleep the car had been moved by Daniel
4 to some bushes located near the pond behind Daniel's
5 house. Daniel told him an officer had come out to
6 the house looking for a suspicious looking car, and
7 Daniel and the officer rode together towards the
8 pond. He did not believe Daniel.

9 When they left the trailer, they went to
10 get the car. After getting the car, they went to Kay
11 Hernandez's house where Daniel got \$40 in food stamps
12 from his mother. He parked the car at Parrot's
13 grocery store. They then went to the grocery store
14 at Red Springs and took the food back to Daniel's
15 house. They stayed at Daniel's for approximately 15
16 minutes and headed towards Marion, South Carolina.
17 They did not get to Marion until nightfall and got
18 there around 9:00 p.m. on Friday night.

19 After getting to Marion, they went to
20 Melinda Moore's house and picked her up. Melinda was
21 Daniel's girlfriend. Melinda rode in the back seat
22 of the car while he drove around Marion looking for
23 Delores, last name unknown. They went to one club
24 and found Patricia, last name unknown, Melinda's
25 cousin, who they asked about Delores. They went to

1 another club where they found Delores. He drove
2 around Marion for one hour before finding Delores.

3 After finding Delores, they headed back to
4 Lumberton the same way they went to Marion. He
5 stopped at a store where he purchased some juice and
6 Delores began driving. Both he and Daniel told her
7 not to be afraid to drive the car if a cop happened
8 to come up behind them with the blue lights. She
9 asked them why, but they did not give her a clear
10 answer.

11 He was not sure of the time they arrived
12 back at Daniel's house, could have been around 12:30
13 p.m. on Friday night or early Saturday morning.
14 After getting to Daniel's they sat around and then
15 everyone started getting hungry. He and Delores then
16 went to Hardee's on Roberts Avenue in Lumberton and
17 returned back with the food. After eating, they sat
18 around and then went to bed. He and Delores went to
19 bed in Daniel's room and Daniel and Melinda went to
20 bed in Daniel's mother room.

21 THE COURT: Mr. Britt, this may
22 be a good point for us to --

23 MR. BRITT: That would be fine.

24 THE COURT: -- take a break.

25 Ladies and gentlemen, let me give you until
food.

1 4:00. You may step down. During the
2 recess, please recall that it is your duty
3 to abide by all prior instructions of the
4 Court concerning your conduct. Everyone
5 else please remain seated, the members of
6 the jury may step down.

7 (Jury out at 3:38 p.m.)

8 THE COURT: Folks, it appears
9 that we will be at least in
10 cross-examination through tomorrow
11 morning. We are, what, in our seventh week
12 now? In a case that in my view should have
13 taken three to four weeks. Those folks go
14 back there for the purpose of deliberation,
15 they are going to have to weed back through
16 evidence over a period of time and they
17 will have a difficult responsibility of
18 trying to remember that which is important
19 from that which is not. And a lot of what
20 has come out in this case really doesn't
21 deal with any of the issues involved. It's
22 not my case to try. It's your case to
23 try. And to some it may be an advantage to
24 confuse the issues. To others it may not.
25 But they have got a mass of materials to go

1 through, almost nothing to work with in
2 terms of discerning what is significant and
3 what is not.

4 MR. THOMPSON: Judge --

5 THE COURT: We're at ease.

6 MR. THOMPSON: Yes, sir.

7 (Brief recess.)

8 THE COURT: Do we have all
9 members of the jury secured?

10 THE BAILIFF: Yes, sir.

11 THE COURT: All counsel are
12 present, the defendant is present in open
13 court. Both sides ready to go forward?

14 MR. BRITT: Yes, sir.

15 THE COURT: Okay. Bring the jury
16 in.

17 (Jury in at 4:00 p.m.)

18 THE COURT: Mr. Britt.

19 BY MR. BRITT:

20 Q Mr. Heffney, if you will continue from
21 where you stopped regarding Mr. Demery's statement.

22 A Yes, sir. They were awakened Saturday
23 morning around 9:00 a.m. by Melinda. After getting
24 up, they got dressed and left and went back to
25 Marion. Delores was driving. While on the way to

1 Marion, they stopped at Patricia's boyfriend's house
2 he believes in Mullin, South Carolina so the girls
3 could get their story straight about being away from
4 the home for the night.

5 They then stopped somewhere and picked up
6 Melinda's sister, and then went to Marion. They then
7 dropped Delores off first and then went to Melinda's
8 house where they sat around. Daniel then drove to
9 Daniel's grandmother's house. The dropped them off,
10 the time was around 12:00 noon. They then left and
11 rode around and returned to Melinda's grandmother's
12 house. Daniel called her on the phone while parked
13 in the yard.

14 Melinda and her grandmother had an argument
15 and Patricia came out and Daniel went into the
16 house. Patricia then drove around the block and when
17 they returned Melinda, her sister, Patricia, he and
18 Daniel all went to Wal-mart. After leaving Wal-mart
19 they went to Delores's house where she and Melinda
20 talked for a while. They then took Melinda, her
21 sister, and Patricia back home and returned to
22 Delores's house. They picked Delores up and while
23 riding around he and Daniel mentioned they wanted to
24 rob somebody, and Delores mentioned some drug dealers
25 who were at the basketball court.

1 They did go to the basketball court and
2 then parked, and then backed out. They did not plan
3 to rob the drug dealers because it was only him and
4 Daniel and they only had the .38 and they knew the
5 drug dealers would be strapped.

6 They then took Delores back home. They
7 rode around Marion and still talked about robbing
8 someone, and they were also waiting for Melinda
9 because the plan was for them to return to
10 Lumberton. They decided to leave. They stopped at a
11 gas station that was real busy and filled the car up
12 and drove off. He pumped the gas and Daniel was
13 driving. He did not know what time it was but it was
14 dark.

15 After leaving Marion, they went back to Kay
16 Hernandez's house and parked the car behind the store
17 again. They stayed for about one hour and then left
18 and went to the BP station. They went back to
19 Daniel's house where they went to change clothes.
20 They stayed in the house a short time and were
21 leaving when Eddie Sharp pulled up with two guys.
22 They stayed a short time and they did see the car but
23 did not go to the car and no one went into the trunk
24 of the car. They came by just to visit Daniel as a
25 matter about -- when they left the house, they

1 intended to go to Marion but stopped in Florence
2 where they went to a girl's house whom Daniel knew.
3 And the time was around 3:00 a.m. on Sunday morning.

4 He stayed in the car while Daniel talked
5 with the girl. Around the time, he and Daniel's
6 conversation was about getting rid of the car.
7 Daniel started -- excuse me. Demery stated after
8 leaving Florence he was driving and ended up in
9 Laurinburg. He went to a store where they did
10 another drive-off. It was a Quick Pick store that
11 had just opened.

12 Daniel drove to his old school and talked
13 with a guy who was there, and went to Daniel's
14 friend's house where Daniel called a classmate in New
15 York. He made the call from the lady's yard while
16 parked in the yard.

17 From there, they went back to Daniel's
18 house where they got some clothes and he went home
19 and got some clothes and told his mother that he and
20 Daniel were going to Georgia to pick up Daniel's
21 brother. The plan was for them to drive to New York
22 or Philadelphia and decide what to do with the car
23 along the way.

24 When they went to his mother's house, the
25 car was parked on the canal bank. When they left his

1 mother's house, he was driving and headed up Highway
2 74 towards Laurinburg. While in Laurinburg, he used
3 the phone to call New York to talk with his cousin,
4 but he was not in, and the headed to Rockingham.

5 They turned around and headed back towards
6 Laurinburg because he was tired and wanted Daniel to
7 drive. He stopped the car at John's Station and took
8 a nap. Daniel woke him up about -- woke him up after
9 about one hour of sleep. When he stopped at the BP
10 station at John's Station, it was getting dark and
11 when he was awakened, it was dark.

12 When Daniel started driving, they headed
13 towards Rowland and Daniel was calling his cousin
14 June Bug but never talked with him but did talk with
15 June Bug's mother. Once they left Rowland, they took
16 Highway 301 and got on I-95 and headed towards
17 Fayetteville because Daniel had a brother who lived
18 in Fayetteville -- in the Fayetteville area. Daniel
19 woke him up while Daniel was talking on the phone to
20 his brother, and he wrote down some directions to
21 Spring Lake that Daniel was giving him. The time
22 they got to Daniel's brother house was around 1:00
23 a.m. on Monday morning.

24 Once at the house, Daniel's brother David
25 came out and looked at the car and asked where the

1 car came from. Daniel told David that they had
2 gotten the car from a crack head for two pieces of
3 crack. The car was parked away from the trailer and
4 they took their bags into David's house and a pair of
5 shoes that belonged to Mr. Jordan.

6 Once in David's house, David told them he
7 would contact a guy named Eric, last name unknown,
8 who may help them get rid of the car. David went to
9 bed and he and Daniel went to sleep in the living
10 room. They were awakened by David as he left for
11 work. David told him that he was going to work and
12 Eric would be by later. They went back to sleep and
13 were awakened around 10:00 a.m. on Monday morning by
14 Eric who was at the front door.

15 Eric made a phone call to Rick, last name
16 unknown, about getting rid of the car. They followed
17 Eric to Rick's house which was located on a dirt
18 road. They picked up Rick and went to Jovan Carter's
19 house. At Jovan's house, Rick and Eric left to find
20 someone who might be interested in the car.

21 When they left, he, Daniel and Jovan left
22 to get some marijuana and Jovan was driving then, and
23 they returned to Jovan's house. They went behind
24 Jovan's house where Jovan rolled a large marijuana
25 joint before Eric and Rick and another unknown male

1 arrived. They then drove to the mechanic's house.
2 They went to the mechanic's, however he stated he did
3 not know the mechanic or where they were located.
4 The mechanic made a phone call but the contact person
5 was not there, and the mechanic had to wait until
6 3:00 p.m. to call back.

7 While waiting, Eric went to get beer in the
8 truck. While waiting for 3:00 p.m., everyone stood
9 around and hit golf balls. At 3:00 p.m. the mechanic
10 made the call. The mechanic's contact would not take
11 the car because its price range but said if it was a
12 Mustang he would take it. The golf clubs were placed
13 in Eric's trunk. He, Jovan and Daniel followed in
14 the Lexus Eric, Rick and someone else who was in the
15 truck into a wooded area where the car was left.
16 They all got into the truck with Eric and went to
17 Jovan's house where he got out and then went to
18 Rick's house where Rick and the other person got out.

19 They were going to get together around 7:00
20 p.m. and go back to the car. While in Fayetteville,
21 trying to get rid of the car, the guys that Eric had
22 contacted had taken charge of getting rid of the
23 car. The truck driven by Eric was a blue GMC Jimmy.
24 After he dropped Rick off, he, Daniel and Eric
25 stopped for gas, went to McDonald's and then back to

1 David's house.

2 When Eric dropped him at David's, he said
3 he would be back in touch with him. They stayed
4 around the trailer and when 7:00 p.m. arrived, Daniel
5 tried to call Eric but could not get him. They spent
6 the night.

7 On Tuesday, Daniel continued to call Eric
8 and believed he did make contact about the car, and
9 Eric told Daniel he could not make it back to him
10 after dropping him off and Eric would contact Rick
11 about the car.

12 When David came in on Tuesday, David and
13 Daniel took him home. Before going home, David
14 stopped at his girlfriend's house and they then went
15 to Daniel's half brother's trailer where he recalls
16 seeing a girl, Daniel's cousin, who had long braided
17 hair. And from there he went back to Lumberton where
18 they went to Daniel's house and Daniel's mother was
19 there. He called his mother to come pick him up
20 because Angela's stepfather had picked the car up
21 sometime earlier.

22 Daniel and David left, going back to
23 Fayetteville prior to his mother picking him up. He
24 talked with Daniel's mother while waiting for his
25 mother. Daniel's mother asked about the car and he

1 told her the guys in Fayetteville were taking care of
2 it.

3 Mr. Demery stated when his mother came to
4 pick him up, he had the gun and wedding band and one
5 pair of golf shoes were at his house. He had left
6 the golf shoes at his house the Sunday he stopped by,
7 and told his mother they were going to Georgia.

8 The driver's license and some credit cards
9 which belonged to Mr. Jordan were thrown out of the
10 car in the wooded area of the cornfield when they
11 found out who the dead man was, and when -- and they
12 were thrown out on the morning of July 23rd, 1993,
13 Mr. Jordan was still in the car. The checks and
14 paperwork were thrown out of the car at the canal
15 bank near his house after the body was dumped at the
16 bridge and the credit card was used at the bank in
17 Laurinburg. It was also thrown out on the morning of
18 July 23rd, 1995 when they stopped at the canal bank
19 prior to going to Daniel's house.

20 They went to the canal bank to check out
21 the car more thoroughly and to get rid of anything
22 they may need to. He did not go to his house or
23 Daniel's to discard anything because people may have
24 been around and may have seen them. The golf clubs
25 and bag were left in the woods near David's house,

1 because when they left the mechanic's house they put
2 the clubs in the Jimmy, driven by Eric, along with
3 the CD's.

4 David did not want the golf clubs to get
5 into his house. The golf clubs and bags were put in
6 the woods by Daniel. The CD and toiletry bag were
7 left in David's house. The clubs were put in the
8 woods on the Monday afternoon, and he believed it was
9 after David got home. He believed Daniel came back
10 the weekend after he did. He came home on Tuesday
11 and believed Daniel came home on Saturday. When
12 Daniel came home, he had Mr. Jordan's toiletry bag,
13 CD's, NBA ring, watch, and one or both of the
14 briefcases that belonged to Mr. Jordan.

15 Mr. Demery stated when he came home on
16 Tuesday, he still had Mr. Jordan's wedding band and
17 golf shoes, the gun and his clothing. Mr. Demery
18 stated after Daniel came home, he went to his house
19 with the gun and gave it to Daniel possibly that
20 Tuesday or Wednesday. Mr. Demery stated on Friday,
21 August 13th, 1993, Daniel called him from Kayeol's
22 house and said he, Daniel, was coming to his house to
23 get rid of the CD's.

24 Daniel came to his house around 9:00 p.m.
25 in his mother's car. When Daniel came to his house,

1 he put the golf shoes in the car. They were in the
2 area -- they were in the area where they dumped the
3 items because Daniel was looking for a girl's house.
4 He was driving Daniel's mother's car while -- and
5 while driving, he was heading towards the Food Lion
6 and pulled on to the side of the road and Daniel
7 threw out the CD's, golf shoes, a shirt, and there
8 may have been other clothes. To his knowledge,
9 Daniel still had the suits, briefcase, rings,
10 toiletry bag and watch. He had left the wedding ring
11 at Daniel's house. After dumping the stuff, they
12 went to the girl's house. After leaving the girl's
13 house, they may have gone back to Kayeol's house and
14 then he went back home.

15 When he got home, he took the gun into the
16 house. The next morning, Saturday, August 13th,
17 1993, Daniel came to his house, just prior to noon,
18 and picked up the gun and a pair of shorts. While
19 there they talked about the Lexus and that it had
20 been found stripped in Fayetteville, and all the
21 agencies involved in the investigation.

22 They talked about him going to Philadelphia
23 and the only way they could be linked to the car was
24 through the use of the phone. Mr. Demery stated that
25 entire day he stayed around the house and received a

1 call from Daniel around 6:00 p.m., and Daniel told
2 him that the police had surrounded his house and for
3 him to get away.

4 He continued to stay at the house and
5 started listening to the scanner. He heard someone
6 describe his house and he left, going to his uncle's
7 Richard Strickland's house. He stayed a short time
8 and left, and from a nearby field he saw his mother
9 and brother drive in while the police were at the
10 house. After the police left, he went home and his
11 mother told him why the police were there. His
12 mother called the Sheriff's Department while he took
13 a bath and waited for the police to arrive. After
14 the police arrived, he went with them to the
15 Sheriff's Department.

16 Mr. Demery stated he and Daniel had talked
17 about the ring and watch and Daniel told him that he
18 is going to bury them because they would be worth
19 some money in 20 years. He did not know where Daniel
20 may have buried the ring or the watch.

21 On May 8, 1995, the interview of Larry
22 Demery continues. On the morning of May 8th, 1995,
23 Mr. Demery came in accompanied by Detective Anthony
24 Thompson and wanted to make some changes to the
25 statement that he had given during the prior days.

1 Q What changes did he make to the statement?

2 A The changes he made were as follows:

3 Mr. Demery advised the entire statement concerning
4 the murder of James Jordan was accurate with the
5 exception of where he said he and Daniel separated at
6 the sign and Daniel went to the Lexus and he went to
7 the car. The amendment -- or the changes he made is
8 that when they left the sign for the last time, he
9 and Daniel went to the Lexus. They ran up to the car
10 and while on the way to the car, Daniel pulled the
11 gun out and they had -- that they had taken from
12 Mr. Demory.

13 When they got to the car, they both
14 squatted down beside the passenger door. He was
15 closest to the car handle and Daniel was closer to
16 the front. But they were beside the door. Even
17 though squatted down, he was able to look into the
18 car. While beside the door they gave each other
19 encouragement and he was able to see Mr. Jordan
20 getting up. And about that time, Daniel stood up,
21 and before Mr. Jordan was shot, Mr. Jordan said
22 something to the effect of "what's going on," or
23 "what is this."

24 Daniel then shot Mr. Jordan. When
25 Mr. Jordan was shot, he was approximately two feet

1 away from Daniel. He stated when Daniel shot
 2 Mr. Jordan, Daniel reached into the car and shot.
 3 After Mr. Jordan was shot, Mr. Jordan squirmed around
 4 in the seat, and the last statement made by
 5 Mr. Jordan, made in a groaning voice, was "oh, baby,
 6 I'm sorry." He stated he then asked Daniel "Why in
 7 the fuck did you shoot him?" He stated Daniel did
 8 not respond to his question with an answer, but
 9 Daniel told him to help him.

10 He got -- told him to help him to get the
 11 man in the passenger seat. He did not -- he stated
 12 he did not help push the man over into the passenger
 13 seat. Daniel went to the driver's side of the car
 14 and pushed Mr. Jordan into the passenger seat. He
 15 then told -- Daniel then told him to go get his car,
 16 which he did, and he met Daniel at his house. When
 17 he went to the -- he stated when he went by the
 18 Lexus, Daniel was in the car moving around as
 19 mentioned prior.

20 He said everything stated concerning the
 21 murder of Mr. James Jordan is true and correct. The
 22 corrections were made after careful deliberations and
 23 wanting to tell the complete truth as agreed upon.

24 And that concludes the statement that was
 25 taken from Mr. Larry Demery between the dates of May

1 2nd and May 8th, 1995.

2 Q Did Mr. Demery tell you where the .38
3 caliber revolver that was used to shoot James Jordan
4 had come from?

5 A Yes, he did.

6 Q Where did he tell you it came from?

7 A He told me the revolver, .38 revolver came
8 from Mr. Clewis Demory, the store.

9 Q And did he tell you who had shot Mr. Demery
10 during that robbery?

11 A He told me that Daniel Green, the
12 defendant, seated there, shot Mr. Clewis Demory.

13 Q And did Mr. Demery tell you about a video
14 camera that had been taken during July the 4th, 1993
15 robbery at the Family Inn in Rowland?

16 A Yes, he did. He told me that during that
17 robbery of a Rhode Island couple, he -- there was a
18 camera, a video camera, along with a 35 millimeter
19 camera and case for the video camera, was taken.

20 Q And did he tell you about the use of that
21 video camera after it was stolen during the July 4th,
22 1993 robbery?

23 A Yes, he did.

24 Q Who did he tell you kept possession of that
25 video camera after it was stolen?

1 A He told me that the defendant Daniel Green
2 kept possession of the video camera and the bag.

3 Q On August the 16th of 1993, other than
4 the .38 caliber revolver that was recovered at the
5 defendant's residence, did you receive or see any
6 other item that was seized during that search?

7 A Yes, sir, I did.

8 Q What if anything did you see or was given
9 to you that was seized during the search of August
10 16th of 1993?

11 A On August 16th, 1993, during the search of
12 Elizabeth Green's trailer, I received an unlabeled
13 VHS cassette tape. Also received other items during
14 the search.

15 MR. BRITT: May I approach?

16 THE COURT: Yes, sir.

17 MR. BRITT: This has previously
18 been marked as State's Exhibit 79.

19 BY MR. BRITT:

20 Q I'm going to hand you what has been marked
21 as State's Exhibit 79, ask if you can identify that?

22 A Yes, I can. State's Exhibit 79 I can
23 identify.

24 Q How are you able to identify State's
25 Exhibit 79?

1 A Because it contains or written upon it
2 handwriting that I personally put on it.

3 Q And for the record what is State's Exhibit
4 79?

5 A State's Exhibit 79 itself is a packaging,
6 plastic envelope to cushion the contents therein.

7 Q And what if anything did you place inside
8 of State's Exhibit 79?

9 A I placed inside State's Exhibit 79 a VHS
10 tape.

11 MR. BRITT: Record will reflect
12 I'm opening State's Exhibit 79, removing
13 the contents. For the purposes of
14 identification I'm marking the video
15 cassette removed from State's Exhibit 79 as
16 State's 79-A.

17 BY MR. BRITT:

18 Q Mr. Heffney, handing you State's Exhibit
19 79-A, can you identify it?

20 A Yes, I can.

21 Q How are you able to identify State's
22 Exhibit 79-A?

23 A Because it has a label that was placed on
24 the back of it by me for identification purposes only
25 and the writing on that label was in my own hand.

1 Q And State's Exhibit 79-A, from where was it
2 taken or seized?

3 A This videotape was seized from a bookcase,
4 if I remember correctly, approximately it had three
5 shelves on it in the living room slash den area of
6 Daniel Green's residence.

7 Q From the time -- who if anyone gave you
8 State's Exhibit 79-A?

9 A Special Agent Tony Underwood.

10 Q When did he give it to you?

11 A He gave it to me the day of the search,
12 August 16th, 1993.

13 Q From August 16th, 1993 until today's date,
14 whose possession has State's Exhibit 79-A been in?

15 A Mine.

16 Q Where has it been stored?

17 A It's been stored in my evidence locker that
18 I described earlier, and it has also been kept --
19 when not in that locker, under my sole control, care
20 and custody.

21 Q Did you place the label on State's Exhibit
22 79-A on it on August the 16th, 1993?

23 A No, I placed this on there on August 20th,
24 1993.

25 Q At any time after it was initially seized,

1 did you have an opportunity to view State's Exhibit
2 79-A in its entirety?

3 A Yes, I did.

4 Q At any time after it came in to your
5 possession, has the contents of the videotape marked
6 as State's Exhibit 79-A been altered in any fashion?

7 A No.

8 Q Is State's Exhibit 79-A in the same
9 condition today that it was in when you first
10 received it?

11 A With exception of the markings, the
12 identification tape that I put on it, and the
13 markings of when photographs were put on it, or made
14 from it, it is exactly the same.

15 Q And State's Exhibit 79-A, have any matters
16 been added to or erased from that videotape?

17 A No, sir.

18 Q I'll show you what has been marked as
19 State's Exhibit 136, ask you to examine that and tell
20 me if you can identify it?

21 A Yes, I can.

22 Q How are you able to identify State's
23 Exhibit 136?

24 A This is a photograph that was taken off of
25 State's Exhibit 79-A on or about September 13th,

1 1993.

2 Q How was that -- were you present when that
3 photograph was made from the videotape?

4 A Yes, I was.

5 Q Where was that done and how was that
6 accomplished?

7 A It was done in Washington D.C. at the FBI
8 headquarters. It was done by agent Merinda Ellis,
9 who was in charge of the photography section of -- or
10 who worked in the photography section for the FBI.
11 What she did was place the tape inside a recorder,
12 and hooked to the recorder there were various camera
13 type of equipment, and the film was viewed, stopped,
14 and photographs were taken at selected portions of
15 the film. And the portions or the selected portions
16 that were taken were determined by myself or
17 Detective Thompson.

18 Q And State's Exhibit Number 136 is a
19 photograph that was made from the videotape marked as
20 State's Exhibit 79-A that was seized at the
21 defendant's residence on August the 16th, 1993?

22 A Yes, it is.

23 Q The contents of State's Exhibit 136 are
24 depicted in State's Exhibit 79-A?

25 A Yes, it is.

1 Q And does State's Exhibit 136 fairly and
2 accurately reflect the scene as depicted from the
3 videotape of 79-A?

4 A Does reflect the frame on 79-A.

5 Q I'm going to hand you what has been
6 previously marked as State's Exhibit 140, 142, and
7 143, and ask if you can identify those documents?

8 A Yes, I can.

9 Q How are you able to identify those
10 photographs?

11 A Because I was present when these
12 photographs were taken off of the film. Two of the
13 photographs, State's Exhibit 140, and State's Exhibit
14 143 were done on October 30th, 1995 by SBI Agent
15 Frankie Davis of the SBI photography lab. Again, the
16 process of taking this video frame was stopped at my
17 request, Special Agent Frankie Davis made a
18 photograph of that picture that was on the video in
19 my presence.

20 Q And State's Exhibits 140, 142 and 143, do
21 they fairly and accurately represent the scene as
22 depicted in State's Exhibit 79-A that was
23 photographed by Special Agent Davis?

24 A Yes.

25 Q And are they a portion of State's Exhibit

1 79-A?

2 A Yes, they are.

3 Q I'll show you what has previously been
4 marked as September as State's Exhibit 10, and
5 accompanying photograph. Do you recognize the
6 photograph attached to State's Exhibit Number 10?

7 A Yes, I do.

8 Q How are you able to recognize it?

9 A Again, I'm able to recognize it because
10 it's a frame that is actually on the video of State's
11 Exhibit 79. Again, I was present when this
12 photograph was taken from State's Exhibit 79 by
13 Special Agent Frankie Davis.

14 Q And the photograph attached to State's
15 Exhibit Number 10 fairly and accurately represents
16 the frame that was photographed with Special Agent
17 Davis from State's Exhibit 79-A?

18 A Yes.

19 Q And State's Exhibit -- for the record,
20 State's Exhibit -- the photograph attached to State's
21 Exhibit Number 10, is that a photograph of the
22 defendant Daniel Green?

23 A Yes, it is.

24 Q State's Exhibit Number 140, for the record,
25 is that a photograph of the defendant Daniel Green?

1 A Yes, it is.

2 Q State's Exhibit 143, is that a photograph
3 of the defendant Daniel Green?

4 A Yes, it is.

5 Q State's Exhibit 142, is that a photograph
6 of the defendant Daniel Green?

7 A Yes, it is.

8 Q State's Exhibit 136, is that a photograph
9 of the defendant Daniel Green?

10 A Yes, it is.

11 MR. BRITT: Your Honor, at this
12 time I would move for admission, pursuant
13 to the Court's previous orders, of State's
14 Exhibits 136, 142, 143, 140, and State's
15 Exhibit 79-A -- State's Exhibit 10 having
16 previously been admitted, and the
17 photograph attached to it.

18 THE COURT: Consistent with the
19 prior ruling of the Court, those exhibits
20 are admitted at this time.

21 MR. BRITT: Your Honor, at this
22 time I would ask permission to play a
23 portion of State's Exhibit 79-A pursuant to
24 the Court's previous rulings.

25 THE COURT: Consistent with the

1 Court's previous ruling, you may do so.

2 Members of the jury, a portion of
3 State's Exhibit 79-A is going to be played
4 to you at this time. That's been offered
5 and received as is true with State's
6 Exhibits 136, 140, 142, and 143 for the
7 limited purpose of corroboration of the
8 prior State's witnesses, Jamie Moore,
9 Xavion Perry, Marcus Perry, and Terrence
10 Patterson.

11 State's Exhibit 79-A insofar as it is
12 now to be shown to you is also being
13 offered and received for the limited
14 purpose of impeachment as it relates to the
15 prior State's witness Terrence Patterson.

16 Now members of the jury, please recall
17 the instructions that I've previously given
18 you as to how you are to consider evidence
19 offered for corroborative purposes and for
20 impeachment purposes as I have previously
21 defined those terms for you, and you may
22 consider these exhibits for that limited
23 purpose and for no other purpose.

24 Yes, sir.

25 MR. BRITT: Your Honor, if I can

1 inquire if each members of the jury is able
2 to see the television screen?

3 The record will reflect I'm going to
4 turn the TV-VCR combination unit on.
5 Pursuant to the Court's order, the volume
6 is going to -- actually, I'm going to place
7 it on mute.

8 THE COURT: Members of the jury,
9 there's going to be no audio portion. A
10 portion of the audiotape 79-A will be shown
11 to you at this time.

12 MR. BRITT: I'm placing State's
13 Exhibit 79-A into the unit.

14 THE COURT: Yes, sir.

15 MR. BRITT: For the purposes of
16 the record, by having cut the machine off
17 earlier, the counter has now gone back to
18 zero. With the Court's permission I'll cut
19 it off at the appropriate time. I have it
20 marked on my notes.

21 THE COURT: Okay. Yes, sir.

22 MR. BRITT: The reading at this
23 point is 00.04, and the segment that you
24 previously ordered the jury may view is
25 approximately five minutes and 16 seconds

1 in length, so I'll cut it off at five
2 minutes and 20 seconds. The record will
3 show I've -- the video is now playing.

4 (Whereupon video was played in open
5 court.)

6 THE COURT: If you want to put
7 any questions to the witness now, you may
8 do so.

9 MR. BRITT: Mr. Heffney, are you
10 in a position to see the monitor?

11 THE WITNESS: Yes.

12 BY MR. BRITT:

13 Q For the purposes of the record, what if any
14 date is displayed on the monitor?

15 A Date displayed is July 31st, 1993. Time
16 being 6:23 p.m.

17 Q And at the time you first viewed State's
18 Exhibit 79-A, was that date depicted on the
19 videotape?

20 A On the very first portion of the video?

21 Q First time you saw this section of the
22 video.

23 A Yes, sir.

24 Q And for the purposes of the record, can you
25 identify the individuals that are displayed in the

1 monitor?

2 A I can identify some of them, yes, sir.

3 Q Can you identify the individual in the blue
4 shirt with the white shorts?

5 A That's Jamie Moore.

6 Q Can you identify the individual with the
7 orange or reddish T-shirt on and what appear to be
8 blue jean shorts?

9 A Marcus Perry.

10 Q Can you identify the individual with the
11 black and white Chicago Red Sox baseball cap, multi
12 colored golf shirt and what appear to be blue jean
13 shorts?

14 A That's the defendant Daniel Green.

15 Q And can you identify -- based on your
16 observations of the videotape, can you identify any
17 item that Mr. Green is wearing?

18 A Yes, I can see a ring on his left arm --
19 excuse me, a watch on his left arm.

20 Q And do you know where the location that is
21 depicted in the portion of the video is?

22 A This is in the Murchison Road area of
23 Fayetteville behind the Suburban Mart. Also on his
24 right index finger, I can observe a ring -- excuse
25 me, on his left index finger, I can observe a ring,

1 and his right ring finger, I see a ring.

2 Q And the photographs that have -- you
3 previously identified from the stand, is the
4 defendant wearing a watch and rings in those
5 photographs?

6 A Yes, sir.

7 (Whereupon the video was stopped.)

8 MR. BRITT: That completes that
9 portion of the videotape.

10 THE COURT: Yes, sir.

11 MR. BRITT: Your Honor, at this
12 time I would ask that State's Exhibit
13 Number 10, State's Exhibit 136, 140, and
14 142 be published to the jury.

15 THE COURT: Members of the jury,
16 please recall my instructions. Examine the
17 exhibit individually and carefully and
18 without any comment.

19 MR. BRITT: If the record will
20 reflect I'm going to remove the videotape
21 marked 79-A from the recorder.

22 THE COURT: Yes, sir.

23 MR. BRITT: May it please the
24 Court, I would also request that State's
25 Exhibit 151 which is Mr. Richardson's

1 fingerprint report be published to the
2 jury.

3 THE COURT: Yes, sir. If you'll
4 give them to Sergeant Meares.

5 (Exhibits published to the jury.)

6 THE COURT: Folks, for those of
7 you who have finished with 151, if you'll
8 pass that exhibit to your left, please.
9 Folks, take whatever time you need with any
10 remaining exhibits.

11 (Brief pause.)

12 THE COURT: Have all members of
13 the jury had adequate opportunity? And
14 have if you haven't, folks, take whatever
15 time you need to examine all exhibits to
16 you. If so, please indicate by raising
17 your right hands.

18 All right. Thank you. Mr. Britt, any
19 additional examination?

20 MR. BRITT: No other questions
21 for Mr. Heffney.

22 THE COURT: We'll take up
23 cross-examination tomorrow morning at 9:30.

24 MR. BOWEN: We're going to need
25 to be heard about the remaining two

1 minutes.

2 THE COURT: Okay. Ladies and
3 gentlemen, we're going to stop at this
4 point. For the purposes of information,
5 Mr. Britt, do you have any additional
6 witnesses at this time?

7 MR. BRITT: No, sir. Mr. Heffney
8 is the State's final witness.

9 THE COURT: Ladies and gentlemen,
10 during the overnight recess, don't talk
11 about the cases among yourselves or with
12 anyone else. Don't allow anyone to say
13 anything to you or in your presence about
14 the case. If anyone communicates with you
15 about the matter or attempts to do so, or
16 if anyone says anything about the case in
17 your presence, it's remains your duty to
18 inform us of that immediately.

19 Don't form or express my opinions
20 about the case, don't have any contact or
21 communication of any kind with anybody
22 involved in the case. Don't allow yourself
23 to be exposed to any media accounts, or
24 don't conduct any independent inquiry or
25 research or investigation of any kind. For

1 the purposes of your planning, if you will
2 bear with me for one moment, please.

3 May I see counsel at the bench.

4 (Whereupon a bench conference ensued
5 as follows.)

6 THE COURT: All counsel are
7 present, the defendant is present along
8 with the presiding Judge and the court
9 reporter. You don't have to answer if you
10 don't want to or you're not in a position,
11 but if you know that you intend to offer
12 evidence, what I would like to do is
13 indicate that following cross-examination
14 of Mr. Heffney tomorrow, we will recess for
15 the balance of the day and resume any
16 defense evidence or any additional evidence
17 next week. I mean, however you folks want
18 to do it.

19 MR. THOMPSON: Right.

20 THE COURT: I thought you might
21 be, but if you're not that's okay.

22 MR. BRITT: Judge, Monday is a
23 federal holiday. Is it a state holiday as
24 well?

25 THE COURT: Monday is what?

1 MR. THOMPSON: President's Day.

2 THE COURT: I don't think so.

3 MR. BRITT: I knew at one time
4 schools were not scheduled.

5 MR. THOMPSON: Banks are closed.

6 MR. BRITT: Schools may be out
7 but they are using it as a makeup day.

8 MR. THOMPSON: But isn't a state
9 holiday.

10 THE COURT: You folks comfortable
11 with that?

12 MR. THOMPSON: Yes, sir.

13 MR. BOWEN: Yes, sir.

14 THE COURT: What I'm going to do
15 is announce that the Court has been
16 informed that the defendant does intend to
17 put on evidence.

18 MR. THOMPSON: Well --

19 THE COURT: And that we will
20 begin that evidence Monday of next week.

21 MR. THOMPSON: Okay. That's it.

22 THE COURT: Agree?

23 MR. BOWEN: Defense intends to
24 put on evidence, nothing about the
25 defendant.

1 THE COURT: No, the defense.
2 Well -- yeah, okay. I understand what
3 you're saying. All right.

4 (Bench conference concluded.)

5 THE COURT: Members of the jury,
6 I was attempting to obtain information, if
7 that were at all possible, that may help
8 you in planning your day tomorrow. The
9 Court has been informed that following the
10 cross-examination of the State's last
11 witness, Mr. Heffney, who is now on the
12 stand, that the defense in this case does
13 intend to offer evidence and will be in a
14 position to begin their evidence Monday of
15 next week.

16 So for the purposes of your planning,
17 once cross-examination of Mr. Heffney has
18 been concluded tomorrow, you folks will be
19 released until Monday morning of next
20 week. Is that correct, counsel?

21 MR. THOMPSON: Yes, sir.

22 THE COURT: All right. I simply
23 wanted to give you that information so that
24 you could plan your day accordingly.

25 Ladies and gentlemen, recall that it

1 is your duty to abide by all prior
2 instructions of the Court concerning your
3 conduct now and throughout your involvement
4 in this case. Have a good evening, we'll
5 see you at 9:30 tomorrow morning.

6 (Jury out at 5:03 p.m.)

7 MR. BRITT: May I approach the
8 Clerk.

9 THE COURT: Yes, sir. So that
10 the record is absolutely clear, that
11 statement was made with the consent of all
12 counsel and the defendant, is that
13 accurate?

14 MR. THOMPSON: Yes, sir.

15 THE COURT: Mr. Green, is that
16 accurate?

17 MR. GREEN: Yes, sir.

18 THE COURT: And the language
19 indicated was used that the defense
20 intended to put on evidence commencing
21 Monday morning, is that agreeable?

22 MR. THOMPSON: Yes, sir.

23 THE COURT: You indicated, Mr.
24 Bowen, there was a matter you wanted to
25 take up?

1 MR. BOWEN: Yes, Your Honor. I
2 wanted to bring to the Court's attention
3 that when Ms. Patricia Locklear was excused
4 from the jury, it was Mr. Thompson's
5 recollection that the Court of course did
6 say she's a free citizen and can of course
7 discuss matters with jurors as long as it
8 doesn't pertain to the case. And so I mean
9 no suggestion that she's done anything
10 improper.

11 However, I wanted to point out to the
12 Court that it's our understanding from what
13 has been said in the media and otherwise,
14 that at this point Ms. Locklear is either
15 in the process or intends in the future to
16 write a book. And so my position is, and
17 Mr. Thompson has seen Ms. Locklear of
18 course and a number of times, agreeable
19 with the Court's instruction that she's
20 allowed to do so, she's been mixing and
21 talking with the jurors. My only point is
22 this:

23 It seems to me that if she is in a
24 position of intending to author a book,
25 whether she does or not, she's preparing

1 for that, to the extent that she has
2 contact with the jurors not about the case
3 but about that, seems to me she comes under
4 the purview of the orders of the Court
5 concerning the media.

6 Now, the media are not allowed to mix
7 with jurors. Scott Rahb out here writing a
8 book is not allowed to talk to jurors.
9 Seems to me for the remainder of the case,
10 Ms. Locklear has been interviewed a number
11 of times on TV, she has some strong
12 opinions about the case, and that is
13 absolutely her right. But seems to me it's
14 inappropriate with her position at this
15 time of being a potential author, to
16 continue to mix socially with the jurors.
17 And I think that she now comes under the
18 purview of the orders of the Court
19 regarding the media, I suggest that this be
20 dealt with in that fashion.

21 THE COURT: Mr. Britt?

22 MR. BRITT: Your Honor, as I
23 understand the situation, Ms. Locklear is a
24 citizen of this county, that this court is
25 open to any and everyone who desires to

1 come in here, and as a member of the
2 general public she's entitled to do that.

3 THE COURT: I don't think that's
4 his position.

5 MR. BRITT: I don't think she
6 falls under the category of media.

7 THE COURT: I think their
8 position is that she's absolutely entitled,
9 I mean, our courts are open to the public.
10 She's absolutely entitled to come here.
11 Their concern is that as a potential
12 author, her interaction with the jury
13 raises at least -- raises a number of
14 concerns.

15 MR. BRITT: Well, this court
16 established media guidelines which was --
17 were published to members of, in quotes,
18 the professional media. Ms. Locklear did
19 not come to this courtroom as a member of
20 the media. She came here as a citizen who
21 was called for jury service. And due to
22 circumstances after she was selected, she
23 was removed. And she has, as I understand
24 it, has continued to come as an interested
25 party and interested citizen in seeing the

1 outcome of this trial.

2 I see nothing inappropriate about
3 Ms. Locklear -- I assume that if -- and I
4 know that's a dangerous thing to do in this
5 case -- if she's writing a book, that she
6 is probably taking notes. I see nothing
7 inappropriate about that, and I see nothing
8 inappropriate about her contact with any of
9 the jurors as long as they are not
10 discussing the case.

11 MR. BOWEN: Her contact with
12 Mr. Britt's first cousin was inappropriate,
13 and the Court so ruled, so that's why I'm
14 particularly sensitive about this case, it
15 having gone on so long.

16 THE COURT: I'm sorry?

17 MR. BOWEN: I'm particularly
18 sensitive about this because her contact
19 with Mr. Britt's first cousin was
20 inappropriate and the Court so ruled, and
21 that's how come she was excused from jury
22 service. So seems to me it's appropriate
23 that we be very careful at this stage of
24 the trial, because if she had contact of an
25 inappropriate way with someone else that

1 gave rise to her excusal, now seems to me
2 that if she has shown a propensity not to
3 be able to follow the Court's specific
4 orders, if she is in this media category,
5 that she needs to follow the same rules as
6 everybody else who are writing books or
7 writing articles or developing electronic
8 media.

9 THE COURT: All right. Without
10 indicating that the Court takes a position
11 as to whether or not this is something --
12 well, for public information, for the
13 purposes of public edification, let me read
14 the following statute: North Carolina
15 General Statute, section 14-225.2, which is
16 entitled Harassment Of And Communication
17 With Jurors.

18 Subsection A reads, a person is guilty
19 of harassment of a juror if he or she --
20 that's my language -- one, with the intent
21 to influence the official action of another
22 as a juror, harasses, intimidates or
23 communicates with the juror or his spouse.
24 Communication being -- or communicate being
25 the key word there.

1 Two, as a result of the prior official
2 action of another as a juror in a grand
3 jury proceeding or trial, threatens in any
4 manner or any place or intimidates a former
5 juror or spouse. B reads in this section,
6 juror, meaning grand juror or petit juror,
7 includes a person who has been drawn or
8 summonsed to attend as a prospective
9 juror. Effective January 1, 1995. A
10 person who commits the offense defined in
11 subdivision A-1 of the section is guilty of
12 a Class I felony. A person who commits the
13 offense defined in subsection A-2 of this
14 section is guilty of a misdemeanor and upon
15 conviction shall be punished as provided in
16 GS 14.3(a).

17 Also effective January 1, 1995,
18 subsection C: A person who commits the
19 offense defined in subsection A-1 in this
20 section, is guilty of Class H felony.
21 Person who commits the offense defined in
22 subdivision A-2 of the section is guilty of
23 a Class I felony.

24 Folks, the Court has indicated to
25 Ms. Locklear what the parameters of her

1 conduct are. In addition to statutory
2 provision, there is also the inherent
3 authority of the Court to punish as by
4 powers of contempt or otherwise.

5 I'm confident that Ms. Locklear will
6 abide by the Court's previous orders and
7 I'm confident that no misconduct will
8 occur.

9 But if matters do rise to that level,
10 the State has recourse in terms of
11 violations or potential violations of law.
12 The Court has recourse in terms of inherent
13 authority and contempt powers. I think
14 that's sufficient.

15 MR. BRITT: Yes, sir.

16 THE COURT: Anything further?

17 MR. BRITT: Just so the record is
18 clear, this individual that Mr. Bowen
19 referred to as being my cousin, as my first
20 cousin, that is not the relationship. The
21 degree of relationship -- I can't tell you
22 how close it is. That's --

23 THE COURT: We have to get out
24 the chart?

25 MR. BRITT: I don't even know if

1 it's on the chart.

2 THE COURT: All right. Okay.
3 See you folks tomorrow morning at 9:30.

4 MR. BRITT: Oh, I apologize. For
5 future purposes, if the jury requests
6 copies of State's Exhibit 151, which is the
7 fingerprint report, the copies that they
8 viewed in the jury box were returned to
9 me. If I could give those to the clerk.

10 THE COURT: I think that would be
11 appropriate. Because we may -- well, why
12 don't we take just a moment to talk about
13 that.

14 Folks, if and when we get to jury
15 deliberations in this case, if there is a
16 request -- all of us know what the
17 applicable law is for jurors to see items
18 of evidence. If there is no objection,
19 items go back into the jury room. If there
20 is objection, the Court in its discretion
21 can bring the jurors in and allow them to
22 examine requested items in the box.

23 So I think that may fall into one or
24 the other of those categories.

25 MR. BRITT: Yes, sir.

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THE COURT: Okay. Sorry. We're
at ease until 9:30.

MR. BRITT: If I could leave
these with the Clerk.

THE BAILIFF: All rise.
(Court adjourned.)

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

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13

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14

15 (February 16, 1996. Proceedings in open court.)

16

17 THE COURT: Let the record show
18 all counsel are present, the defendant is
19 present in open court. One matter I need
20 to bring to the attention of all parties.
21 About 15 minutes ago Mr. Horne came into
22 the chambers and indicated, I believe it's
23 Juror Number 1, indicated that she has a
24 detached retina, apparently has some
25 appointment, medical appointment which she

1 must make no later than 1:00 today.

2 MR. THOMPSON: That's not going
3 to be a problem.

4 THE COURT: Okay. In the event
5 that it does become a problem, what I
6 intend to do is she's apparently upset
7 about it, from what was explained to me,
8 her demeanor, she's very upset.

9 MR. THOMPSON: Unless that's not
10 the State's last witness, that's not going
11 to be a problem.

12 THE COURT: I intend to ensure
13 her that she will be allowed to make the
14 medical appointment.

15 MR. BOWEN: Seems to me, Your
16 Honor, we may still need to be heard about
17 this matter concerning the medical records.

18 THE COURT: Yes, sir. I would
19 like to get Mr. Rogers and Mr. Campbell
20 over here, and Mr. Demery.

21 Ma'am, if you will call Mr. Hugh
22 Rogers and indicate they need to be over
23 here by about 11:00 this morning, and if we
24 could have Mr. Demery brought over here by
25 that same time so we will be in a position

1 to go forward. It may be that we could do
2 it earlier.

3 Ready to go?

4 MR. BRITT: Your Honor, for I
5 guess Major Watson's information, I assume
6 he would be the one who contacts the jail
7 about bringing Mr. Demery, does he need to
8 be dressed out?

9 THE COURT: Yes.

10 MR. BRITT: If you'll let him
11 know that.

12 THE COURT: I'm sorry, okay. If
13 you'll bring the jury in.

14 MR. BRITT: Mr. Heffney has gone
15 to retrieve the evidence from the evidence
16 room.

17 THE COURT: Okay.

18 (Jury in at 9:33 a.m.)

19 THE COURT: Good morning, ladies
20 and gentlemen. Ms. Haley, I understand
21 that you have a medical appointment this
22 afternoon. Is that at 1:00?

23 JUROR: I have to be there before
24 2:00, so I should -- if I leave here by
25 1:00, it will be all right.

1 THE COURT: We don't anticipate
2 that that will be a problem. If it does
3 appear that it will be a problem, I'm going
4 to give you our assurance that you be
5 allowed to make that appointment.

6 Mr. Heffney, if you will retake the
7 stand, sir, and you remain under oath.
8 Mr. Bowen or Mr. Thompson.

9 CROSS-EXAMINATION

10 BY MR. BOWEN:

11 Q Agent Heffney, as a result of a search at
12 the Ann Green residence, were some amateur
13 photographs taken into custody?

14 A The search, yes, sir.

15 Q Do you have those photographs here, sir?

16 A Yes, sir, I do.

17 Q May I see them please?

18 THE COURT: Mr. Heffney do you
19 need to step down and get them?

20 MR. BRITT: I'll bring the bag to
21 him, Your Honor.

22 THE COURT: Okay.

23 (Defense Exhibits 34, 35 were
24 marked for identification.)

25 BY MR. BOWEN:

1 Q I show you what objects are now marked
2 Defense Exhibits 34 and 35, do you recognize those
3 objects, sir?

4 A Yes, sir, I do.

5 Q What are they, sir?

6 A Defendant's Exhibit 34 is a plastic
7 envelope containing a K-Mart envelope that contains
8 pictures. Defendant's Exhibit 35, again, is another
9 plastic envelope containing a K-Mart Photo Center
10 paper envelope, inside containing pictures.

11 Q Now, how did you come into possession of
12 Defense Exhibits 34 and 35, sir?

13 A I came into possession of Defendant's
14 Exhibits 34 and 35 on August 16th, 1993. I obtained
15 these items from Special Agent Tony Underwood.

16 Q All right. Now, did you obtain those items
17 at or just after a search of the Green residence?

18 A Yes, sir, on August 16th, 1993.

19 Q Was it your understanding from Agent
20 Underwood that Defense Exhibits 34 and 35 were items
21 found during that search in the Green residence?

22 MR. BRITT: Objection.

23 THE COURT: Sustained to the form
24 of the question.

25 BY MR. BOWEN:

1 Q Do you know where those items came from?

2 A I know they came from the Green residence,
3 yes, sir.

4 Q Now, you are familiar with a revolver which
5 has been denominated for this case as State's 59-A;
6 is that correct?

7 A Yes, sir.

8 Q And that weapon is in the same condition
9 today as it was when you first saw it back on the
10 16th of August of 1993, is it not?

11 A Yes, sir, with the exception of the tags
12 being on it and it being unloaded.

13 Q Tell us if you know, Mr. Heffney, who, if
14 anyone, unloaded that gun?

15 A I don't know for certain because I didn't
16 see it personally being unloaded. I would assume --

17 MR. BRITT: Objection.

18 THE COURT: Sustained.

19 BY MR. BOWEN:

20 Q So you don't know?

21 A No.

22 Q But you do know that it was loaded when
23 Mr. Underwood got it or found it, correct?

24 A Yes, sir.

25 Q And it came to be unloaded at some later

1 time?

2 A At some later time, yes, it did.

3 Q Mr. Heffney, Agent Heffney, did you ever
4 organize or cause to be organized any sort of search
5 for a cornfield in the Rowland area?

6 A Yes, sir.

7 Q And was a cornfield located which contained
8 credit cards or other objects related to this case?

9 A A cornfield was located, but as far as
10 being able to find credit cards, they were not
11 located simply because on or about May 2nd, 1995,
12 after the interview, myself, Detective Anthony
13 Thompson, along with Larry Demery, went to a loop
14 road off of Highway 301. This area Mr. Demery
15 pointed out a turnoff off the dirt road into a
16 cornfield. And beside the cornfield, there was a row
17 of trees. This area at that time of year had grown
18 up. We were unable to find anything in that
19 particular location.

20 We again went down, further down the road
21 and located a clearing or a path for a car that's
22 also where the cornfield was located. Again, due to
23 the growth, we were unable to locate any credit
24 cards. Subsequently, we found out who owned the
25 property. My recollection serves me correct it, it

1 was a Mr. Pate. Myself and Mr. Thompson went to
2 Mr. Pate, he went with us out to the property.
3 Mr. Pate advised --

4 MR. BOWEN: Object.

5 THE COURT: Do you want to be
6 heard?

7 MR. BRITT: Yes, sir.

8 THE COURT: Members of the jury,
9 there's a matter of law the Court must take
10 up very briefly. Please recall my
11 instructions, don't worry or speculate
12 about what take place in the courtroom in
13 your absence. If you'll step to the jury
14 room.

15 (Jury out at 9:41 a.m.)

16 MR. BRITT: Your Honor, if you go
17 back to page 7, the question asked by
18 Mr. Bowen: Did you ever organize or cause
19 to be organized any search for a cornfield
20 in the Rowland area? The answer was yes.

21 "And was a cornfield located which
22 contained credits cards or other objects to
23 the case?"

24 Mr. Heffney is in the process of
25 explaining that. Mr. Pate's comments to

1 them will be offered to explain their
2 subsequent conduct and explain why there
3 were no credit cards or other matters found
4 in that cornfield.

5 THE COURT: What would your
6 answer be, for the record, as to any
7 conversation that you had with Mr. Pate,
8 sir?

9 THE WITNESS: Mr. Pate advised us
10 after going out in the location with us
11 that during the fall of 1994, he burned off
12 the undergrowth in the area. We were -- we
13 talked with Mr. Pate and there was corn
14 growing at that time in the cornfield and
15 spoke with him in relation to possibly
16 using a herbicide, possibly Roundup, to
17 clear the debris, or not the debris, but
18 the growth and vegetation in the
19 undergrowth and treeline area to get a
20 closer look or better look at the ground.

21 Due to the fact that Roundup would
22 kill the vegetation and the corn, that
23 there was a large number of acres, I felt
24 the possibility of the loss of the crop far
25 outweighed the possibility of finding

1 credit cards, that Mr. Pate advised us that
2 he had burned the undergrowth the fall
3 prior to.

4 THE COURT: Folks want to be
5 heard?

6 MR. BOWEN: I think it's way
7 beyond responsive. All I asked him, did he
8 organize a search party and send it out
9 there, did they find a cornfield. And he's
10 used this as a springboard to go forward
11 and literally try to argue to the jury why
12 there are no credit cards. I don't think
13 our question opened that door. Now, if I
14 had said why didn't you find any credit
15 cards, I would have to sit here and take my
16 licking. But I think we were a little more
17 surgical than that.

18 THE COURT: All right. He will
19 be allowed to explain. Note the
20 defendant's objection and exception for the
21 record. The Court finds that the question
22 did open the door to an answer and an
23 explanation.

24 Bring the jury back in.

25 (Jury in at 9:44 a.m.)

1 THE COURT: The objection by
2 counsel for the defendant is overruled.
3 The Court finds that the door was opened by
4 the asking the question. You're entitled
5 to answer and explain.

6 THE WITNESS: As I said, on
7 May 2nd we located a cornfield. And
8 myself, Detective Thompson and Larry Demery
9 went out to the cornfield. At a later
10 date, myself and Detective Thompson located
11 the owner of the property. The owner of
12 the property took us to the cornfield and
13 the path there I described.

14 We were advised by the owner that the
15 fall -- during the fall of 1994, he had
16 burned the undergrowth in the cornfield and
17 in the treeline. And at this time, the
18 vegetation had just started growing and
19 there was corn in the field. We discussed
20 the possibility of using a herbicide,
21 Roundup, to kill the vegetation and in
22 hopes to get a closer examination of the
23 ground to try to find the credit cards.

24 But due to the fact that there was
25 corn in the field, growing corn in the

1 field, in -- I felt that the possibility of
2 losing the corn far outweighed the
3 possibility of finding credit cards. And
4 as I mentioned prior, the owner of the
5 property advised that he had burned the
6 undergrowth during the fall of '94.

7 THE COURT: Mr. Bowen.

8 BY MR. BOWEN:

9 Q But after the corn was harvested in the
10 fall and winter of 1995, you didn't go back, did you?

11 A No, sir, I did not.

12 Q And in fact, you had been the chief agent
13 in this case since sometime in August of 1993,
14 haven't you?

15 A Yes, sir.

16 Q And you had not gone looking for a
17 cornfield since one time in 1993, had you?

18 A I had gone looking in a cornfield in 1995
19 after talking with Mr. Demery.

20 Q Well, you know that they went down there
21 looking in 1993, too, didn't you?

22 A Yes, sir.

23 Q And they didn't find credit cards then, did
24 they?

25 A No, sir.

1 Q And Mr. Pate didn't tell you anything about
2 having seen any or run across any down there in the
3 field either, did he?

4 A No, sir.

5 Q Now, you spoke, Agent Heffney, to Ms. Annie
6 Ruth Oxendine when you were there along with
7 Detective Thompson; is that correct?

8 A Detective Thompson did the interview with
9 Ms. Oxendine.

10 Q Well, you didn't go along with Detective
11 Thompson to the interview?

12 A I was present with Detective Thompson, yes.

13 Q Then you were there when Ms. Oxendine told
14 Mr. Thompson --

15 MR. BRITT: Objection.

16 MR. BOWEN: -- that she did not
17 remember --

18 THE COURT: There's an objection
19 Mr. Bowen. Do you want to be heard?

20 MR. BRITT: Yes, sir.

21 THE COURT: Members of the jury,
22 please step to the jury room, please recall
23 my instructions, don't worry or speculate
24 about what takes place in the courtroom in
25 your absence.

1 (Jury out at 9:47 a.m.)

2 THE COURT: Mr. Britt, what is
3 the basis of the objection?

4 MR. BRITT: Your Honor, the
5 objection is that first Ms. Oxendine's
6 statement would be hearsay. If they are
7 trying to offer it as a prior inconsistent
8 statement it was not present to her during
9 their cross-examination for her to admit or
10 deny that, and as such, extrinsic evidence
11 is not admissible under Rule 613.

12 MR. BOWEN: But she admits having
13 made a statement to officers, and to extent
14 that this is necessary to make that
15 statement completed which we have right in
16 front of us which the DA had also.

17 THE COURT: She was here and
18 testified, was she impeached about that
19 statement, the attempted, you're now
20 attempting to get in?

21 MR. BOWEN: I don't think she was
22 specifically.

23 THE COURT: What is it that you
24 intend to ask

25 BY MR. BOWEN:

1 Q Mr. Heffney, Ms. Oxendine was asked about
2 her ability to identify Mr. Green, is that correct,
3 when you were there with Mr. Thompson?

4 A She was asked to identify the person who
5 brought the bullets.

6 Q And she was unable -- she said that she
7 was -- now, did Ms. Oxendine state that she did not
8 remember what Daniel Green looked like when she sold
9 him the box of bullets?

10 A The best of my recollection, without
11 looking at what you have before you, she was unable
12 to give a description of the person other than being,
13 if I remember correctly, a black male.

14 THE COURT: Now, folks, wasn't
15 she asked on cross-examination whether she
16 could describe the person?

17 MR. BRITT: She was asked on
18 direct examination.

19 THE COURT: Or direct
20 examination, could she describe the
21 person? She said she couldn't. All she
22 knew is that whoever bought presented ID
23 and that she based the transaction on the
24 showing of the ID? Well, how is this
25 inconsistent with what she said on direct

1 examination?

2 MR. BRITT: I guess the question
3 isn't so much that it's inconsistent, the
4 question is this is not the proper witness
5 for them to try to impeach Ms. Oxendine.

6 THE COURT: My recollection
7 prior, Mr. Thompson asked her on
8 cross-examination, "You couldn't describe
9 the person?" And her response was,
10 "Anytime I sell bullets, I require ID."

11 MR. BRITT: Yes, sir.

12 THE COURT: And it was on the
13 basis of the identification of the person
14 standing before me being shown to me and my
15 observing that person that I recall these
16 events.

17 MR. BRITT: Yes, sir.

18 THE COURT: So the objection is
19 overruled. Now, you're entitled to come
20 back and explain on redirect what is meant
21 by that because it's somewhat confusing or
22 has a tendency to -- what exactly is the
23 statement?

24 MR. BOWEN: The statement
25 according to Mr. Thompson's written

1 statement, Anthony Thompson, is:

2 "Ms. Oxendine stated she did not remember
3 what Daniel Green looks like when she sold
4 him the box of bullets and" --

5 THE COURT: In terms of being
6 able to describe him is essentially what
7 she meant.

8 MR. BOWEN: And she says she does
9 not remember if she was alone or if
10 somebody was with him because it's been
11 almost two years.

12 THE COURT: And those matters
13 were gone into on cross-examination.
14 Essentially, I mean, that's subject to
15 argument, but essentially given her
16 testimony what that means or may mean is
17 that you ask me to give a description of
18 the person, I couldn't, but I can tell you
19 whoever bought presented me with ID, and I
20 remember that ID and that's the person.

21 MR. BRITT: Yes, sir.

22 THE COURT: Bring the jury back
23 in. The objection is overruled, exception
24 is noted for the record. And you may
25 explain your answer.

1 (Jury in at 9:52 a.m.)

2 THE COURT: Objection is
3 overruled. Folks, you may repeat your
4 question.

5 BY MR. BOWEN:

6 Q Agent Heffney, did Ms. Oxendine state in
7 your presence and in the presence of Detective
8 Anthony Thompson the following: She did not remember
9 what Daniel Green looked like when she sold him a box
10 of bullets?

11 A If that's what you're reading from, yes,
12 sir.

13 Q Did she further say that she did not
14 remember if he was alone or if someone was with him
15 because it had been almost two years?

16 A Without having what you're reading in front
17 of me, I would have to say yes, take your word for
18 it.

19 MR. BOWEN: May I approach, Your
20 Honor?

21 THE COURT: Yes, sir.

22 BY MR. BOWEN:

23 Q Show you a paper writing, Mr. Heffney, and
24 ask you to read it without comment, sir.

25 A Ms. Oxendine --

1 Q Without comment -- read it silently, I'm
2 sorry.

3 A Yes, sir.

4 Q Did that paper writing refresh your
5 recollection? Let the record show I've removed the
6 paper writing.

7 THE COURT: Yes, sir.

8 THE WITNESS: Of that particular
9 paragraph, yes, sir.

10 BY MR. BOWEN:

11 Q And is it true that Ms. Oxendine stated
12 that she did not remember what Daniel Green looked
13 like when she sold him the box of bullets?

14 MR. BRITT: Objection, asked and
15 answered.

16 THE COURT: Overruled. You may
17 answer.

18 THE WITNESS: Yes, sir.

19 BY MR. BOWEN:

20 Q Did she further state that she does not
21 remember if he was alone or with somebody because it
22 had been almost two years?

23 A Yes, she did.

24 Q And she was interviewed on May the 31st,
25 1995; was that true?

1 A On or about that day, yes, sir.

2 Q Yes, sir. Agent Heffney, you proceeded in
3 the course of this investigation to carry certain
4 items including weapons and bullets to Dallas, Texas,
5 to be looked at by a man named Larry Fletcher; is
6 that right?

7 A Yes, I did.

8 Q And before you left Dallas, in part, you
9 brought those bullets and those items of evidence,
10 bullets, shell casings, weapons, to Mr. Fletcher and
11 you opened the envelopes that you've described here
12 that contained those items, correct?

13 A No, I did not open the envelope before
14 Mr. Fletcher. What I did was show him the evidence.
15 I did not open any of the envelopes for him.

16 Q All right. Did you allow him to open the
17 evidence outside your presence?

18 A No, I did not.

19 Q He opened them then in your presence; is
20 that right?

21 A Yes, he did.

22 Q In fact, one of the first things that he --
23 the first thing that he opened was the evidence
24 concerning State's Exhibit 59-A and the purported .38
25 shell casings and purported bullet; is that

1 correct?

2 MR. BRITT: Objection to form.

3 THE COURT: Overruled.

4 THE WITNESS: I don't recall
5 exactly which item of evidence he opened
6 first. I know the item, State's Exhibit
7 59-A, that is the .38 revolver, was opened
8 before me. The other weapons were opened
9 before me. The bullets were opened before
10 me.

11 BY MR. BOWEN:

12 Q And isn't it true that he performed his
13 experiments and so forth on the matters, .38 caliber
14 weapon and bullet and shell casings and shells first;
15 isn't that true?

16 MR. BRITT: Objection.

17 THE COURT: Sir? Do you want to
18 be heard?

19 MR. BRITT: Yes, sir.

20 THE COURT: Members of the jury,
21 again, there's a matter of law, don't worry
22 or speculate about what takes place in the
23 courtroom in your absence. If you'll step
24 to the jury room.

25 (Jury out at 9:57 a.m.)

1 THE COURT: Mr. Britt?

2 MR. BRITT: Your Honor --

3 THE COURT: Assertion of conduct.

4 MR. BRITT: Yes, sir, under 801.

5 THE COURT: Conduct can be
6 hearsay, if it's assertive, but it's
7 offered for that purpose. Hearsay, conduct
8 can be hearsay as well as spoken words. Do
9 you want to be heard?

10 MR. BOWEN: I'm just -- how could
11 one say it is hearsay, to establish which
12 items he examined first?

13 MR. BRITT: Rule 801 A-2 states
14 the following definitions apply under this
15 article: A-1, statement. A statement is,
16 one, oral written assertion; or, two,
17 nonverbal conduct of a person. It is
18 intended by him as an assertion.

19 THE COURT: For the truth of the
20 matters asserted.

21 MR. BRITT: Yes, sir.

22 MR. BOWEN: I intend to establish
23 the truth of the matter asserted that he
24 examined certain items before he examined
25 others --

1 THE COURT: May I make a
2 suggestion without belaboring the point?

3 MR. BOWEN: Yes, sir.

4 THE COURT: You can ask him what
5 he observed.

6 MR. BOWEN: Well, excuse me, Your
7 Honor, but that would be --

8 THE COURT: Because some of the
9 questions assume things in terms of
10 conducted examinations which may or may not
11 have been done in his presence based on his
12 observations. Okay.

13 MR. BOWEN: Yes, sir. Well, you
14 know, but it occurs to me that Your Honor
15 is suggesting that I offer what is in
16 essence a nonleading question, a question
17 that one would find on a direct
18 examination.

19 THE COURT: No, sir, it can be
20 phrased in a leading way.

21 MR. BOWEN: Argument can be both
22 ways.

23 THE COURT: It can be in a
24 leading way. All right. Bring the jury
25 back in.

1 (Jury in at 10:00 a.m.)

2 THE COURT: Rephrase, if you will

3 Mr. Bowen.

4 BY MR. BOWEN:

5 Q Agent Heffney, can you tell us what order
6 if you know that Mr. Fletcher processed the items in
7 in terms of not necessarily each item, but in terms
8 of which came first, the .38 weapon and the materials
9 associated with it or the .32 weapons and the
10 materials associated with them?

11 MR. BRITT: Objection.

12 THE COURT: Sustained to the form
13 of the question.

14 BY MR. BOWEN:

15 Q Tell us what you observed then, please.

16 A What I observed and the best of my
17 recollection is that during the examination of
18 Mr. Larry Fletcher of the items, the .38 revolver,
19 what Mr. Fletcher did and what I observed, he tested
20 the trigger pull on it, he test dry fired it, that
21 means firing it without a round in the chamber. He
22 then took the gun -- and this is a big office,
23 there's a small room that's the test firing room. We
24 were not allowed to go in that due to their policy
25 and due to the sound of the gun. But there was a

1 window that we could observe.

2 He took the gun, fired it into a large
3 tank, I can't recall the number of times he fired.
4 He then fired the other two weapons. And prior to
5 firing the other two weapons, he again, if I remember
6 correctly, in this order, he did the dry firing and
7 tested the trigger pulse on them.

8 After getting his test bullets or his
9 comparison bullets, he began comparing with the other
10 bullets. I recall looking into a magnifying glass
11 where you could see the question bullet and the test
12 bullet or the known bullet together. I'm not trained
13 as far as what to look for, but that's what I saw.

14 Q And then there came a time when all of the
15 evidence was put back in envelopes; is that correct?

16 A Yes, there was.

17 Q Well, now, your purpose in going to Dallas
18 -- and you had agent Anthony Thompson with you; is
19 that right?

20 A Yes, sir.

21 Q Your purpose of going was to accompany this
22 important State's evidence down there and see to it
23 that you had it in your care, custody, and control;
24 is that right?

25 A Yes, sir.

1 prior, State's Exhibit 59-A, the .38 revolver, and
2 the other .32 revolvers. We stayed with them up
3 until approximately 9:30, 10:30 that evening.
4 Mr. Fletcher advised us that he was basically
5 finished for the day. We asked him did he need the
6 guns anymore, okay.

7 We left Mr. Fletcher with the bullets. I
8 took State's Exhibit 59-A, which is the .38 revolver,
9 and the other two handguns, put them in the case that
10 I had, locked it, took that case with me.
11 Mr. Fletcher kept the bullets. He kept the question
12 bullets, he kept the unfired bullets that were in the
13 .38 and then in the .32.

14 Myself and Detective Thompson returned on
15 the morning of the 27th at approximately 9:00 a.m.
16 Mr. Fletcher refired the .38 revolver. Mr. Fletcher
17 advised us that it would take him most of the day to
18 finish his comparison with the bullets, that he did
19 not need the firearms anymore.

20 At that time, he said we could leave or we
21 could stay, it was entirely up to us. We left but
22 when we left, I took the guns. Mr. Fletcher kept the
23 evidence as far as the bullets themselves. We
24 returned at approximately 4:00 p.m. that afternoon.
25 When Mr. Fletcher had finished, I had the guns, Mr.

1 Fletcher was packaging the bullets back in the
2 envelopes. I noticed that one of the envelopes were
3 sitting on his desk, and he had put the bullet back
4 in. And I just made reference or asked him would he
5 initial it where he put -- or seal it back up to put
6 his initials, that's how his initials appeared on the
7 envelopes.

8 Upon Mr. Fletcher finishing with his
9 examination of the bullets, I took the bullets back,
10 put them back in the case where the guns were already
11 located, locked the case back, and myself and
12 Detective Thompson then left.

13 Q So in fact at least part of the evidence
14 you left there in that building and you went
15 elsewhere; is that correct?

16 A The evidence concerning the bullets, yes,
17 because that's what he was examining. He had
18 completed his examinations with the bullets, he did
19 not require us or needed us to stay there with the
20 bullets. And we did not.

21 Q Okay. And you elected to leave although
22 you could have stayed?

23 A Yes, sir.

24 Q And when Mr. Fletcher finished, you say he
25 had the envelopes and the materials laid out there

1 with the envelopes opened; is that correct?

2 A No, I said I recall seeing one envelope on
3 his desk that had an item placed in it and that the
4 seal had been broken. I asked Mr. Fletcher if he
5 would seal it and initial it, he did, and he did the
6 others.

7 Q So you did not check or inventory to see
8 the situation regarding what went in those envelopes
9 before you took them back?

10 A No, once he sealed it, no, I did not go
11 back in it because it was sealed. He initialed it, I
12 have no reason to go back in because once I do, that
13 breaks the integrity, and I have to go back in and
14 initial it.

15 Q Now, Officer Heffney, on that trip, you did
16 not go anywhere near Birmingham, Alabama? You did
17 not go to Birmingham, Alabama, did you?

18 MR. BRITT: Objection.

19 THE COURT: Relevance?

20 MR. BOWEN: Be glad to show it to
21 you. Let me go about it by another
22 question.

23 BY MR. BOWEN:

24 Q Earlier you said that when you took the
25 guns and the ammunition and the materials to Dallas,

1 you were going to go by Birmingham, Alabama, and
2 interview a witness, did you not?

3 A No, I did not.

4 Q Were you aware through an FBI report --

5 MR. BRITT: Objection.

6 THE COURT: Folks, step to the
7 jury room, there's a matter of law the
8 Court must take up. Don't worry or
9 speculate about what takes place in the
10 courtroom in your absence. If you'll go to
11 the jury room.

12 (Jury out at 10:09 a.m.)

13 THE COURT: In the absence of the
14 jury, where are we going with this,
15 Mr. Bowen?

16 MR. BOWEN: Mr. Heffney became
17 aware of a statement by an individual out
18 of Birmingham by the name of James Romeo
19 Ryan. The statement came as a consequence
20 of one of our investigators and we
21 contacted an investigator who works with a
22 rather prestigious law firm down in
23 Birmingham. So happened that they knew
24 Romeo Ryan, Romeo Ryan was a physician, he
25 traveled around the South doing Christian

1 rock concerts. And we had learned that
2 Romeo Ryan had overheard a conversation
3 among four people that occurred in Atlanta
4 during the time of the very basketball game
5 that is reported in the news article that's
6 part of the evidence here, where Michael
7 Jordan scored 34 points.

8 The conversation among the four people
9 had to do with first, the fact that in
10 essence Michael Jordan was scoring too well
11 and that was not expected, some comments
12 about how harm might come to his family,
13 some comments about how he might never play
14 basketball again, two interestingly
15 pathetic matters.

16 Now, I can see the expression on Your
17 Honor's face, and the same expression was
18 on my face with regard to that sort of
19 thing. However, I told the investigator
20 that we had a duty to turn it over to
21 whatever authority was appropriate. He
22 said, "Well, I'm going to turn it over to
23 the FBI, I know a couple of agents down
24 here, I'll be glad to do that." I said,
25 "Do, we've got the obligation to do it."

1 He did, the FBI got it. The FBI timely
2 related the thing back to Mr. Heffney.

3 Now, the reason I asked Mr. Heffney,
4 of course, Your Honor is going to say I had
5 a -- I should have had a private
6 investigator standing here, but I didn't,
7 he was in the courtroom.

8 Mr. Heffney told me that when he
9 planned to go down to Dallas, also on the
10 same trip they were going to go to
11 Birmingham. And he's nodding his head, but
12 I know darn well he did.

13 I'm just asking him did he ever go
14 down there or not. And he said he was to
15 me in this courthouse over in that
16 courtroom over there. And now he said he
17 didn't bother to go. I don't know whether
18 as to subsequent conduct or lack of conduct
19 regarding to this statement I can show that
20 it really points up the select activity of
21 this kind of investigation that has
22 transpired. We did everything we could to
23 get the proper statement into the hands of
24 whoever needed to have it and there it
25 stopped.

1 THE COURT: Did you ever go to
2 Birmingham, Alabama?

3 THE WITNESS: No, sir.

4 THE COURT: Objection is
5 sustained. Bring the jury back in.

6 (Jury in at 10:13 a.m.)

7 THE COURT: Members of the jury,
8 I instruct you that you are not to consider
9 the last two questions asked by counsel for
10 defendant, specifically when counsel for
11 defendant, Mr. Bowen, referred to his
12 contention that the witness went to
13 Birmingham, Alabama, for whatever
14 purposes. Neither of those matters are to
15 take part in your deliberations in this
16 case in any respect. Mr. Bowen.

17 BY MR. BOWEN:

18 Q The revolver, State's Exhibit 59-A, Agent
19 Heffney, was given to you and inventoried under
20 serial number 387767, was it not?

21 A Yes, sir.

22 Q Did you know at the time you received it
23 that that was not a serial number?

24 A No, sir.

25 Q In your inventory -- and you made an

1 inventory of most all the evidence in this case that
2 was used in the discovery process, didn't you?

3 A Yes, sir.

4 Q Do you have that handy, sir?

5 A Yes, sir.

6 Q Could you look on your item number 47 --

7 A Yes, sir.

8 Q Now that was a videotape, correct?

9 A Yes, sir.

10 Q Is the videotape that was in this courtroom
11 part of which was played yesterday?

12 A Yes, sir.

13 Q And that videotape was given to you by
14 Agent Tony Underwood?

15 A Yes, sir.

16 Q Is that right?

17 A Yes, sir.

18 Q That was the only videotape that was the
19 products of the search at the Green residence, true?

20 A Yes, sir.

21 Q And Mr. Underwood -- don't say what he
22 said, but he told you the circumstances under which
23 he found that videotape; is that right?

24 A He told me where it was found.

25 Q And as a result, you wrote it down in your

1 report, didn't you?

2 A I miswrote it down in my report, yes, sir.

3 Q You miswrote it down?

4 A The videotape that was admitted yesterday
5 was found, as I mentioned yesterday, in the living
6 room, slash, den area, and the photograph in State's
7 Exhibit 80, it depicts the shelf that I had mentioned
8 where the tape was found. When I did my dictation,
9 which is the report, I erroneously said "bedroom,"
10 and that's what appears in the report.

11 Q Now, as part of your investigation, you
12 attempted to identify or find the identity of
13 telephone numbers and who they belonged to, didn't
14 you?

15 A We were told who the numbers belonged to,
16 yes.

17 Q All right. Now, you did an investigation,
18 yourself, personally, to try to determine who
19 (919) 521-3365 in Pembroke, North Carolina, was
20 registered to, didn't you?

21 A I was told who it was registered to.

22 Q Whose phone number that was?

23 A Yes, sir.

24 Q Now, whom did you, without saying what they
25 told you, whom did you contact to find out whose

1 telephone number that was?

2 A I was told who that number was registered
3 to in addition to other numbers by, if I remember
4 correctly, FBI Agent John Strong.

5 Q Do you know where he got his information?

6 A No, sir, I don't.

7 Q Now, as a result of the conversation with
8 Agent Strong, did you write up a report?

9 A No, sir.

10 MR. BOWEN: May I approach, Your
11 Honor?

12 THE COURT: Yes, sir.

13 BY MR. BOWEN:

14 Q I'm going to hand you a piece of paper,
15 calling your attention to a --

16 MR. BRITT: Mr. Bowen, may I see
17 it?

18 THE COURT: Yes, sir.

19 MR. BRITT: And can we have it
20 marked?

21 THE COURT: Yes, sir.

22 (Defendant's Exhibit 36 was marked.)

23 BY MR. BOWEN:

24 Q Defendant's 36, Agent Heffney, do you
25 recognize that piece of paper?

1 A Yes, I do.

2 Q What is that piece of paper, State's
3 Exhibit Number 36 -- Defense Exhibit, excuse me.

4 A Defendant's Exhibit Number 36 is a copy of
5 my SBI record reflecting telephone tolls and
6 subscriber information of which, in addition to the
7 number that was spoken by Mr. Bowen appears, in
8 addition to other telephone numbers.

9 Q So as a result of your investigation, did
10 you set down in that report and do you now know --
11 strike that.

12 Did you set down in that report the owner
13 of Number (919) 521-3365 in Pembroke, North Carolina,
14 as it appears on State's Exhibit 56-B? I believe, I
15 can't read it.

16 A As to who it was registered, yes, sir.

17 Q Who is that?

18 MR. BRITT: Objection.

19 THE COURT: Do you want to be
20 heard, sir?

21 MR. BRITT: Yes, sir.

22 THE COURT: Members of the jury,
23 please step to the jury room, 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 at this time.

2 (Jury out at 10:20 a.m.)

3 THE COURT: In the absence of the
4 jury.

5 MR. BRITT: Your Honor,
6 Defendant's Exhibit 36 is not in evidence,
7 and also Mr. Heffney's knowledge of that
8 registered -- person to whom that phone is
9 registered is hearsay.

10 THE COURT: Well, it's in
11 evidence.

12 MR. BRITT: The number is, yes,
13 sir. But not who it's registered to.

14 THE COURT: How do you -- how did
15 you come by that information, Mr. Heffney?

16 THE WITNESS: I believe Detective
17 John Strong with the FBI told me who that
18 number was registered to.

19 THE COURT: So your only source
20 of information is someone who
21 coincidentally happened to testify at this
22 trial as a witness, could have been asked
23 about it at the time he testified, but was
24 not.

25 MR. BRITT: Yes, sir. Other

1 the burden on us if we put on evidence to
2 bring in the phone people and everything is
3 fine, but it shows what it shows, that he
4 obtained some information, he wrote it
5 down.

6 MR. BRITT: If Mr. Bowen wants to
7 present and admit the entire document.

8 THE COURT: Are you offering the
9 document?

10 MR. BOWEN: No.

11 MR. BRITT: Then the contents of
12 the document are not admissible.

13 MR. BOWEN: He first said he
14 didn't remember doing any report at all. I
15 only brought it to him to refresh his
16 recollection.

17 MR. BRITT: His testimony was he
18 didn't do a report as to the conversation
19 in reference to Agent Strong, not as to the
20 cellular phone records.

21 MR. BOWEN: Then he got the
22 information somewhere else because what he
23 did was wrote down whose number it was, and
24 if --

25 THE COURT: Well, folks,

1 eventually it is going to come in, who that
2 number belongs to.

3 MR. BRITT: Certainly, but they
4 have got to jump through the hoops to get
5 it there.

6 THE COURT: Yes, sir, yes, sir.
7 And the objection at this point -- let me
8 back up to see what questions were asked of
9 Mr. Bowen.

10 Folks, I'm not a real stickler for
11 formality in most instances. In fact, I
12 generally only open court one time at the
13 beginning of the week formally and then
14 after that it's pretty much at ease. But
15 the rules -- although I'm real lax with the
16 rules, but counsel shall remain seated at
17 all times. All examinations of witnesses
18 and jurors shall be conducted from a
19 sitting position behind the counsel table
20 except as otherwise permitted by the
21 Court.

22 And the way I was taught is before you
23 stand, you say, "May I approach?" "May I
24 approach the exhibit table, may I approach
25 the court reporter, may I approach the

1 witness?" And I understand that there are
2 differences from jurisdiction to
3 jurisdiction. I'm simply pointing out that
4 this is part of Rule 12, part of courtroom
5 decorum. Unless they bring --

6 MR. BOWEN: Judge, I generally
7 would never bring something that we
8 discussed outside of the courtroom into the
9 courtroom. But I'm sorry, sir, I went back
10 to your chambers yesterday to talk about
11 this very thing.

12 THE COURT: Yes, sir.

13 MR. BOWEN: As to whether as many
14 times as we've gotten up or sat down or
15 anything, as to whether or not you have
16 required us to say those magic words which
17 I don't mind --

18 THE COURT: That's another
19 instance where you distorted the
20 conversation. What you came back to talk
21 to me about was an incident with
22 Mr. Richardson, where you asked him to step
23 down before the jury. That specific
24 incident was the only matter you
25 discussed.

1 And you apologized and I indicated to
2 you that there was no reason for you to
3 apologize because what had occurred when
4 you told Mr. Richardson to step down,
5 before inquiring of the Court,
6 Mr. Richardson turned to his left, looked
7 at me, and said "May I?" And I said, "Yes,
8 sir, you may." That was the specific --

9 MR. BOWEN: And what I was --

10 THE COURT: Not just what you
11 related on the record.

12 MR. BOWEN: What I was asking
13 you, sir, is is that the way you want it
14 done, to ask every time. Because I'm
15 perfectly happy to do that, and we will
16 certainly --

17 THE COURT: Mr. Bowen, how long
18 have you been practicing law?

19 MR. BOWEN: Lot of years, 20
20 years.

21 THE COURT: Are you aware that
22 Rule 12 is in effect?

23 MR. BOWEN: Yes, sir, that's why
24 I brought it up.

25 THE COURT: No, sir, it's not.

1 You brought it up in the specific context
2 of Mr. Richardson. That's the only thing.

3 MR. BOWEN: And to find out if
4 you wanted us each and every time --

5 THE COURT: You never raised that
6 subject.

7 MR. BOWEN: I wanted to know the
8 specific answer to it.

9 THE COURT: You never raised that
10 subject. You never at all broached the
11 issue of "am I required to do that." You
12 talked specifically about Mr. Richardson
13 and only Mr. Richardson.

14 MR. BOWEN: You went on to talk
15 about just what you talked about, I mean --

16 THE COURT: I have told you I was
17 not --

18 MR. BOWEN: I will specifically
19 abide by Rule 12 and would have had I not
20 thought that you had given the go-ahead
21 otherwise.

22 THE COURT: Mr. Bowen, we are
23 seven weeks into this trial, and I don't
24 recall one instance prior to
25 Mr. Richardson, except on a few occasions,

1 where you have abided by Rule 12. Bring
2 the jury back in.

3 (Jury in at 10:26 a.m.)

4 THE COURT: If you'll bear with
5 us for one second, please. The objection
6 to the form of the question is sustained.
7 You may rephrase, Mr. Bowen.

8 BY MR. BOWEN:

9 Q Agent Heffney, did you make -- you did
10 write a report concerning a telephone number that
11 we've been discussing, have you not?

12 A Yes, and -- yes, sir.

13 Q And what was the substance of that entry,
14 sir?

15 A Sir?

16 Q What did you write down?

17 A As to what?

18 MR. BRITT: Objection.

19 THE COURT: Sustained as to form.

20 MR. BRITT: Move to strike.

21 THE COURT: Allowed.

22 BY MR. BOWEN:

23 Q As to (919) 521-3365, what did you write
24 down in your report?

25 MR. BRITT: Objection.

1 THE COURT: Sustained as to what
2 was written in any report that is not in
3 evidence.

4 BY MR. BOWEN:

5 Q Now, Agent Heffney, did you interview a
6 person named Helen Norris?

7 A Yes, sir.

8 Q Interview a person named Donald Hugh
9 Fowler?

10 A Best of my recollection, yes, sir.

11 Q Interview a person named Robert Kaiser?

12 A I can't recall if I have. I may have.

13 Q Did you receive an FBI interview concerning
14 Emily Gordon?

15 A I may have, I received -- I received a lot
16 of names and talked to a lot of people.

17 Q Did you receive an interview from FBI Agent
18 John Strong concerning C.E. Davis?

19 MR. BRITT: Objection.

20 THE COURT: Sustained to the form
21 of the question.

22 BY MR. BOWEN:

23 Q All right. An interview of C.E.
24 Davis?

25 MR. BRITT: Objection.

1 THE COURT: As to whether or not
2 the interview was received? Your
3 objection, Mr. Britt?

4 MR. BRITT: Oh, no, sir, I
5 withdraw the objection.

6 THE COURT: You may answer.

7 THE WITNESS: Again, I may have.
8 I received a lot of interviews from Agent
9 John Strong. And again I've talked to a
10 lot of people, I can't remember everyone's
11 name.

12 BY MR. BOWEN:

13 Q Did you receive from FBI agent Vincent
14 Flamini an interview of a Thomas French?

15 A Again, I may have.

16 Q FBI provide you a copy of an interview of
17 Bobby Miller?

18 MR. BRITT: Objection to the
19 form.

20 THE COURT: Rephrase, Mr. Bowen.

21 BY MR. BOWEN:

22 Q Did you receive a paper writing report
23 through the FBI purporting to be an interview of
24 Bobby Miller?

25 MR. BRITT: Objection as to form.

1 THE COURT: Rephrase, sir.

2 BY MR. BOWEN:

3 Q Did you -- do you have in your possession a
4 purported interview of Bobby Miller?

5 A Not up here with me, no.

6 Q I didn't mean that, I meant in your -- in
7 the file of this case, if you remember.

8 A Again, I very well may have it. I received
9 a lot of reports from the FBI. And if I have it,
10 it's in the books that's on the table.

11 Q Have you received a copy through Agent John
12 Strong of an interview or purported interview of
13 Cynthia Taylor?

14 MR. BRITT: Objection.

15 THE COURT: Sustained to the form
16 of the question. Rephrase, Mr. Bowen.

17 BY MR. BOWEN:

18 Q Do you have a -- what purports to be an
19 interview of Cynthia Taylor, not up on the stand with
20 you, but in your file somewhere?

21 A Again, it very well may be in the file.

22 Q Do you have in your file somewhere an
23 interview of Sharon Landry or Laundry?

24 MR. BRITT: Objection as to the
25 form.

1 THE COURT: Rephrase, sir.

2 BY MR. BOWEN:

3 Q Do you have as far as your case file, not
4 up there with you but someplace, a purported
5 interview with Sharon Laundry?

6 MR. BRITT: Objection to the
7 form.

8 THE COURT: Rephrase, Mr. Bowen.

9 BY MR. BOWEN:

10 Q Do you have a statement of Sharon Laundry?

11 A Again, if I do have a statement of
12 Ms. Laundry, it would be in my complete file.

13 Q How about a statement of Julie
14 Glasmond?

15 MR. BRITT: Objection to the
16 form.

17 THE COURT: Overruled. You may
18 answer.

19 THE WITNESS: Again, if I do of
20 Ms. Glazner, it's would be in my files.

21 BY MR. BOWEN:

22 Q Did you yourself interview a Joseph Abraham
23 Young?

24 A I don't remember the name, but I may have.

25 Q Did you yourself interview a Theodore David

1 Ormond?

2 A Yes, sir.

3 Q Do you have a statement of Mary
4 Causby?

5 MR. BRITT: Objection to the
6 form.

7 THE COURT: Well, is -- I don't
8 know from the context exactly what is being
9 asked, so if you'll rephrase. Is that
10 something you're contending was an
11 interview conducted by this witness?

12 BY MR. BOWEN:

13 Q Do you have -- did FBI Agent John Strong
14 send to you and do you now have a statement of Mary
15 Causby?

16 A Again, if he did and I have it, it would be
17 in my case file.

18 Q Did you yourself -- strike that. To your
19 knowledge, did Agent Lea conduct an interview with
20 Christopher Callahan?

21 MR. BRITT: Objection.

22 THE COURT: Sustained, to the
23 form.

24 BY MR. BOWEN:

25 Q Do you have a statement in your case file

1 of Christopher Mark Callahan?

2 MR. BRITT: Objection to the
3 form.

4 THE COURT: Sustained as to form.

5 BY MR. BOWEN:

6 Q Do you have a paper writing which concerns
7 Christopher Mark Callahan?

8 MR. BRITT: Objection.

9 THE COURT: You can ask him if he
10 received it, sir.

11 BY MR. BOWEN:

12 Q Did you receive a statement from
13 Christopher Callahan?

14 A If I did and it was done by Special Agent
15 Lea, it's in that file.

16 Q Did you yourself interview Christopher
17 Houston Rumfelt?

18 A Yes, sir.

19 MR. BOWEN: That's all.

20 THE COURT: Any redirect
21 examination, Mr. Britt.

22 MR. BRITT: Yes, sir. I
23 apologize Your Honor, may I approach the
24 exhibit table?

25 THE COURT: Yes, sir.

1 MR. BRITT: May I approach the
2 witness?

3 THE COURT: Yes, sir.

4 REDIRECT EXAMINATION

5 BY MR. BRITT:

6 Q Mr. Heffney, let me show you what's been
7 admitted as State's Exhibit 153. Do you know how
8 State's Exhibit -- for the record, can you identify
9 State's Exhibit 153?

10 A Yes, sir.

11 Q And how are you able to identify it?

12 A Because I've seen it prior.

13 Q And do you know how State's Exhibit 153 was
14 obtained?

15 A Yes, sir.

16 Q How was it obtained?

17 A It was obtained by Detective Anthony
18 Thompson by -- from Ms. Oxendine at C&R Pawn Shop.

19 Q Were you present when Mr. Thompson went to
20 C&R Pawn Shop and obtained the State's Exhibit 153?

21 A Yes, sir.

22 Q And what, if any, information -- from whom
23 had you received information about the existence of
24 State's Exhibit 153?

25 A Larry Demery.

1 Q And for the record, what is State's Exhibit
2 153?

3 A State's Exhibit 153 is a carbon of a
4 Receipt Number 48133, dated 7-3 -- excuse me,
5 7-20-93; name, Daniel Green; one box of .38 Special;
6 10.50 price; tax, .69; total, 11.19; initials ARD
7 appears at the bottom -- excuse me, ARO appearing at
8 the bottom.

9 MR. BRITT: I don't have any
10 other questions.

11 THE COURT: Anything further on
12 recross?

13 MR. BOWEN: No, sir.

14 THE COURT: May the witness step
15 down?

16 Thank you, Mr. Heffney.

17 They have been marked but have not
18 been introduced, I'm talking about
19 Defendant's Exhibits 34 and 35. Do you
20 folks want to retain possession?

21 MR. BRITT: Actually, they are in
22 Mr. Heffney's custody.

23 MR. THOMPSON: I believe we would
24 rather keep them with the officer.

25 THE COURT: Thank you, sir.

1 clear on what it is that you're saying, I
2 think I hear you saying that you anticipate
3 there may be some evidentiary hearing that
4 will carry over until Monday morning
5 concerning the medical records.

6 MR. BOWEN: No, Your Honor, I
7 don't think it's going to take a whole lot
8 of time to deal with, but will take a
9 little time.

10 Thing that concerns me most, Your
11 Honor, the fact that we have been presented
12 in the last, as I recall it, two days some
13 additional discovery materials which we now
14 have an investigator working on, in fact we
15 have two investigators out there working on
16 right now.

17 Frankly, Your Honor, to do the
18 defense, the job that we think we need to
19 do for him -- I don't want to delay this
20 case any longer. So I want to give you the
21 good news and bad news. Bad news is we
22 will really prefer to start on Tuesday
23 morning, bad news. Good news is our
24 evidence is not going to last anywhere near
25 as long as the State's did.

1 THE COURT: I'm certainly glad to
2 hear that.

3 MR. BOWEN: I can assure you. So
4 we feel in order to run these leads through
5 the weekend, get the statements we need to
6 with the investigators we have given, we've
7 just been given this extra material, to see
8 where they are going with all or any of
9 that, plus the other things. I don't know
10 what, if anything, we may be given pursuant
11 to this motion to see Mr. Demery's medical
12 records, and that --

13 THE COURT: I don't anticipate
14 these going to take very long, folks. And
15 I understand Mr. Campbell was here, is
16 Mr. Rogers here? He was here a moment ago.

17 MR. BRITT: I have not seen him.

18 THE COURT: Also need
19 Mr. Demery. I have reviewed the records,
20 don't want to comment further without both
21 Mr. Demery's attorneys being present and
22 Mr. Demery being present. But there's one
23 narcotic or drug sheet in there that I
24 think resolves everything.

25 MR. THOMPSON: And while -- while

1 we're waiting for Mr. Rogers, Your Honor,
2 and we have begun to interview some of
3 these and reinterview some of these
4 witnesses, and it's been brought to my
5 attention this morning that some of these
6 witnesses have -- the investigators, SBI
7 agents, or particularly I think Anthony
8 Thompson with the Robeson County Sheriff's
9 Department has gone back to one in
10 particular witness and asked whether there
11 were any corrections on the statement, and
12 corrections were made. And it was the
13 written statement where the corrections
14 were made on. We've gotten a typewritten
15 statement, and I'm just -- if there are any
16 written statements of these witnesses,
17 where the corrections have been made, then
18 we just -- we just bring it to the
19 attention. If they don't exist, then fine,
20 but --

21 THE COURT: I've got those, I
22 think.

23 MR. BRITT: Yes, sir, they were
24 handed up yesterday.

25 MR. THOMPSON: But it's -- in

1 other words, it's been brought from our
2 investigation -- to our attention from our
3 investigation that there may be statements
4 out there that were correct and not
5 typewritten, but that's --

6 THE COURT: Folks, the case law
7 is that -- well, I mean the case that you
8 folks cited in Ritchie, the authority that
9 you're relying on, Ritchie stands for the
10 proposition dealing with the right of
11 confrontation, which was an issue raised in
12 Ritchie. Court says that the confrontation
13 right is a trial right designed to prevent
14 improper restrictions on the type of
15 questions that defense counsel may ask
16 during cross-examination. The ability to
17 question adverse witnesses however does not
18 include the power to require the pretrial
19 disclosure of any and all information that
20 may be used for in contradicting
21 unfavorable testimony.

22 MR. THOMPSON: Judge, I'm not
23 asking you to order them to do it. I'm
24 just making a statement to the Court and
25 for Mr. Britt that that's been brought to

1 our attention, that's all I'm saying.

2 THE COURT: The State has gone,
3 pursuant to my order, the State has gone
4 beyond what is required by statute, beyond
5 what is required by discovery provisions of
6 our statutes, beyond what is required under
7 existing case law. And I don't
8 understand -- I mean, my purpose in
9 requiring the State to do that was so that
10 that information could be provided to you
11 folks early on so we could minimize
12 delays. And I'm having difficulty
13 understanding why we have to hold off until
14 Tuesday morning when this stuff has been
15 given to you as come in.

16 MR. BOWEN: Well, Your Honor, it
17 has not been given to us as it comes in.
18 In the first place, we're aware from some
19 of our own witnesses that they have
20 interviewed that it's been at least ten
21 days or two weeks delay on some of them.

22 Now, I concede it's not been a big
23 deal because we've known about some of
24 these witnesses, I don't know what was
25 asked and so forth, but it hasn't -- for

1 example, this truck driver. I mean, nobody
2 knew until the last minute on that, and
3 that's one thing we've been working on
4 without stopping.

5 THE COURT: Well, folks, we've
6 got the balance of today, we've got the
7 weekend, I'm going to -- I'm sorry,
8 Mr. Thompson?

9 MR. BOWEN: Angus is pointing out
10 that a lot of the things that we've got to
11 do require business hours, records, record
12 keeping agencies and so forth to be open to
13 do some of these.

14 THE COURT: Absent some
15 compelling reason, we're going to start at
16 9:30 Monday morning, absent some compelling
17 reason.

18 MR. BRITT: Just so that -- I
19 mean, so the record is complete, the
20 discovery procedure that's been followed is
21 voluntary on my part. I sat in that
22 courtroom in August of 1993 or '94 when the
23 Rule 24 hearing was held and listened to
24 the arguments that they made, the arguments
25 that my predecessor made and could see,

1 could not see their expressions, but could
2 see the Court's expressions. I know the
3 problems associated with withholding
4 discovery. That's why I came forward with
5 an open file policy in providing them --
6 they, you know, Mr. Bowen's
7 cross-examination of Mr. Heffney, do you
8 have a statement of so and so? So, yes,
9 the statement is there because we gave it
10 to him.

11 THE COURT: Folks, frankly it was
12 because of the conduct of your
13 predecessor --

14 MR. BRITT: Yes, sir.

15 THE COURT: -- that I ordered
16 what I believed to be extraordinary
17 measures to provide you folks with
18 discovery in this case because I felt that
19 the provisions of our discovery statute had
20 been violated.

21 MR. BRITT: Yes, sir. And the
22 other thing is this. I mean, Mr. Thompson
23 and Mr. Bowen have been in this case since
24 August the 15th of 1993, when the defendant
25 was arrested.

1 I, as a prosecutor for this district,
2 have only been in the case since November
3 the 1st of 1994.

4 They were in it a year and four or
5 five months prior to my ever getting into
6 this case. There was a trial date set by
7 this court. We picked a jury for November
8 13th. Until shortly before Christmas,
9 December of '95, there was a date set
10 certain for the trial of this case to begin
11 January the 3rd, 1996.

12 We have been in this courtroom since
13 January the 3rd, 1996, on a daily basis
14 trying this case, when matters were brought
15 to our attention through people calling in
16 saying "I have information." Mr. Thompson,
17 Mr. Heffney, while being in court all day
18 were going out to places in South Carolina
19 to interview people in Marion, to Morrison
20 Youth Center towards Charlotte, down to
21 Wilmington this past Monday night to
22 interview Mr. Rumfelt. We've been
23 constantly working on this case 24 hours a
24 day, even while we've been in court. And
25 to say --

1 MR. THOMPSON: I don't know what
2 all that means because I've been working on
3 this case, not quite 24 hours a day, I do
4 get some sleep, but I mean what is that got
5 to do with it, Judge? I mean, we've been
6 working on this case too, we've been just
7 as diligent.

8 THE COURT: Folks, the record
9 will reflect what it reflects in terms of
10 Ake motions that have been presented to the
11 Court ex parte, and the Court's allowance
12 of those motions ex parte, so the resources
13 are fairly even.

14 And I don't see any reason why we
15 can't start up Monday morning at 9:30,
16 unless you folks can tell me. I'll be glad
17 to listen to you.

18 MR. BOWEN: We can do that.

19 THE COURT: Okay. All right.

20 MR. THOMPSON: Wait, Your Honor.

21 MR. BOWEN: One other thing, Your
22 Honor.

23 Your Honor, I will relate to the Court
24 request by the defendant himself, he is
25 very concerned with this contact, if any, I

1 don't know it of my own notion. But
2 Mr. Thompson has seen some contact, we're
3 not suggesting that it had anything to do
4 with the case, by Ms. Patricia Locklear
5 with the jurors. Green has asked me to
6 relay to the Court his request that the
7 jurors be questioned about whether or not
8 any of that conversation -- I think it's
9 well established there has been
10 conversation -- had anything to do with the
11 case, whether or not they have been
12 prejudiced.

13 THE COURT: State want to be
14 heard?

15 MR. BRITT: Other than to say
16 this, Ms. Locklear was discharged from this
17 jury the second week of this trial. We've
18 now gone five weeks. And to now complain
19 about any alleged contact between
20 Ms. Locklear and the jury I think is a bit
21 tardy. There's no information that they
22 have brought forward alleging there's been
23 any impropriety in regard to that contact.

24 I think this jury has demonstrated
25 their understanding of the Court's orders

1 in regard to matters that are brought to
2 their attention. If you'll recall, I
3 believe Juror Number 1 and Juror Number 6
4 brought to the Court's attention a matter
5 where they were standing on the steps when
6 comments were made about the case, and they
7 were immediately brought to the Court's
8 attention.

9 I think that's the type of
10 conscientious people that are on this
11 jury. I think if there had been anything
12 inappropriate or questionable, they would
13 have brought it to the Court's attention.

14 THE COURT: All right. Folks,
15 there has been some intimation that there
16 has been contact between Ms. Locklear and
17 members of the jury. Has that been
18 personally observed by counsel for the
19 defendant?

20 MR. THOMPSON: Your Honor, it's
21 been brought to my attention by -- well,
22 first of all, I mean, I personally observed
23 it, and -- but you know, from the very day
24 that you dismissed her or the day after,
25 you told her she could, you know, you

1 could -- you're welcome to talk to the
2 jurors and as long as you're not -- I mean,
3 well, you told her that -- you said as long
4 as there is no, nothing about the case that
5 was discussed, she was dismissed, she was a
6 public citizen. I think she raised the
7 issue. So my point was it's clearly been
8 contact --

9 THE COURT: No, I mean, we're
10 saying there's clearly been, and you --

11 MR. THOMPSON: As far as I'm
12 concerned, as far as my personal
13 observations, I'm telling you, yeah, yeah.

14 THE COURT: And -- the record
15 will reflect what it reflects in terms of
16 what you see.

17 MR. THOMPSON: Yes, sir. I'm not
18 trying to suggest that you did anything
19 wrong.

20 THE COURT: Folks, I understand
21 your position.

22 MR. THOMPSON: The point is that
23 it's a concern now of a client, and he
24 wants to have the inquiry about it.

25 THE COURT: Okay. Anybody else

1 have anything else to say?

2 MR. BRITT: As it relates to
3 that, no, sir.

4 THE COURT: Okay. I'm going to
5 bring the jury in, I'm going to make
6 inquiry and then release them, unless you
7 folks have any additional matters for them.

8 MR. THOMPSON: No, sir.

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

11 (Jury in at 10:53 a.m.)

12 THE COURT: Members of the jury,
13 there's a matter that's been brought to the
14 Court's attention that I want to inquire
15 into, if you don't understand anything I
16 ask, please don't hesitate to let me know
17 that.

18 As you folks recall, you've been told
19 numerous times and instructed numerous
20 times by the Court that you're not to have
21 any contact of any kind with any of the
22 folks who are involved in this case in any
23 respect. As you are also aware, two
24 members of the jury initially selected in
25 this case have been excused by the Court.

1 Now, I need to know whether any member
2 of the jury panel as it is now constituted
3 has had any contact or any communication of
4 any kind with any or either of the jurors
5 excused about this case, not have you
6 talked to those folks, but have you talked
7 with members of the jury who have been
8 excused about the case?

9 If none of the jurors -- this becomes
10 a little bit awkward, so bear with me. If
11 none of you have had any contact with
12 either Ms. Ellerbe, who was formerly a
13 member of the jury, or Ms. Locklear, who
14 was formerly a member of the jury, about
15 this case, would you please indicate that
16 you had no contact with either of them
17 about the case by raising your right
18 hands?

19 Did you understand the question?

20 JUROR: Yes, but I would like --
21 Ms. Ellerbe did call me, and she just
22 wondered how I was doing.

23 THE COURT: I'm not talking about
24 conversation.

25 Question is: Did you talk with either

1 Ms. Ellerbe or Ms. Locklear about the
2 case?

3 JUROR: No.

4 THE COURT: If you have not
5 talked with either one of them about the
6 case, raise your hands.

7 Okay. Any questions by counsel for
8 the State?

9 MR. BRITT: No, sir.

10 THE COURT: Any questions by
11 counsel for the defendant.

12 MR. THOMPSON: No, sir.

13 THE COURT: Folks, I indicated it
14 gets a little confusing because we don't
15 mean to suggest that you can't talk to
16 folks, you can talk to anybody as long as
17 you do not talk about the case.

18 Now, having said that, let me back up
19 and say: When I say you can talk to folks,
20 I'm not referring to any of the folks
21 involved in this case. You can't talk with
22 Mr. Britt at all about anything. You can't
23 talk with Mr. Thompson at all about
24 anything. You can't talk with Mr. Bowen
25 about anything. You can't talk with any of

1 the parties about anything. You can't talk
2 with the Court about anything. Now, other
3 than those who are involved in this case,
4 you can talk with anybody as long as you do
5 not talk about the case. Is that
6 understood?

7 I appreciate it folks. Mr. Britt, I'm
8 going to ask that the record reflected that
9 all members of the jury have raised their
10 hands affirmatively in response to the
11 Court's question. And by "affirmatively" I
12 am indicating on the record that the jurors
13 have indicated to the Court that they have
14 had no conversation or communication of any
15 kind with either Ms. Ellerbe or
16 Ms. Locklear about this case.

17 State want to be heard in that
18 respect?

19 MR. BRITT: No, sir, that's
20 satisfactory.

21 THE COURT: Counsel for the
22 defendant want to be heard in that
23 respect?

24 MR. THOMPSON: No, sir.

25 THE COURT: Mr. Bowen?

1 MR. BOWEN: No, sir.

2 THE COURT: Thank you very much
3 folks. I'm going to excuse you until 9:30
4 Monday morning. During the weekend recess
5 don't talk about this case among
6 yourselves.

7 Now, let me explain what I mean by
8 that. It would be inappropriate for you to
9 discuss any aspect of this case until all
10 of the evidence has been presented. The
11 only time it would be appropriate for you
12 to discuss this case is after all of the
13 evidence has been presented, after you've
14 listened to the arguments of the attorneys,
15 and after you've received the Court's
16 instructions on the law and you have
17 specifically been instructed, you may begin
18 your deliberations in this case.

19 At that point it would be appropriate
20 for you to discuss the case among
21 yourselves. But until we reach that point,
22 you may not talk about the case among
23 yourselves. You may not talk about the
24 case with anyone else, including members of
25 your own family. You may not form or

1 express any opinions about this case until
2 all of the evidence in the case has been
3 presented, until you've had the opportunity
4 to hear the arguments of the attorneys, and
5 until you have had the opportunity to
6 receive the Court's instructions on the law
7 and you have specifically been instructed
8 to begin deliberations in the matter.

9 You're not to allow yourselves to be
10 exposed to any media accounts which may
11 exist in connection with this matter.
12 You're not to conduct any inquiry or
13 investigation or research of any kind.

14 And as to that latter instruction, the
15 verdict of a jury in any case must be based
16 only and exclusively on evidence brought
17 out in the courtroom under oath and
18 subjected to cross-examination, not some
19 independent investigation that any one of
20 you or more of you may conduct or anything
21 else. It has to be based on matters
22 brought out in the courtroom subject to
23 cross-examination and presented under oath.

24 Folks, we appreciate your cooperation
25 and indulgence. If you'll report directly

1 to the jury room at 9:30, we will continue
2 with the presentation of evidence at that
3 time.

4 Anything from either counsel before
5 the jury is recessed?

6 MR. BRITT: No, sir.

7 MR. THOMPSON: No, sir.

8 THE COURT: Folks you're free to
9 go until 9:30 Monday morning. Ms. Haley,
10 take care.

11 (Jury out at 10:59 a.m.)

12 THE COURT: Folks, having
13 indicated to you that we're going to start
14 Monday morning, if we reach a point where
15 you need to be heard as to any recess or
16 delay, I will hear you. I indicated at the
17 outset of these proceedings a long time ago
18 that it's my intent to give both sides a
19 full and fair opportunity to be heard, and
20 it's still my intent to do so. I do ask
21 that we proceed as expeditiously as we can
22 because we've got these folks to keep in
23 mind as well.

24 THE COURT: Anything further from
25 either counsel before we proceed to the

1 other matter?

2 MR. BRITT: The other matter
3 being Mr. Campbell and Mr. Rogers?

4 THE COURT: Yes, sir.

5 MR. BRITT: Just so the record is
6 complete, I would like to make inquiry if
7 there's a motion to dismiss on the close
8 State's evidence.

9 THE COURT: Folks?

10 MR. THOMPSON: Yes, Your Honor,
11 we do move to dismiss as to the charge of
12 First Degree Murder on the grounds of
13 insufficiency of the evidence.

14 THE COURT: Well, interesting
15 situation develops at this point. The
16 State has indicated, as it's entitled to
17 do, that it is proceeding on both theories
18 of First Degree Murder, premeditated and
19 felony First Degree Murder?

20 MR. BRITT: Yes, sir.

21 THE COURT: All the evidence is
22 not complete at this point, but do you want
23 to be heard specifically as to any theory
24 of First Degree Murder?

25 MR. THOMPSON: As to, in that

1 respect, as to First Degree Murder, based
2 on the theory of premeditation and
3 deliberation, as well as First Degree
4 Murder under the theory of felony First
5 Degree Murder.

6 THE COURT: Okay. Mr. Britt, do
7 you contend State has offered any evidence
8 of premeditated First Degree Murder?

9 MR. BRITT: Yes, sir.

10 THE COURT: What do you contend
11 that is?

12 MR. BRITT: Through the testimony
13 of Larry Martin Demery, that he observed
14 the defendant stick the gun into the car,
15 pull the trigger. Also the evidence
16 related to the Clewis Demory robbery, in
17 that the defendant is alleged to have shot
18 Mr. Demory three times. And the Court
19 specifically admitted that evidence under
20 Rule 404-B as evidence of his intent as it
21 related to the murder of Mr. Jordan.

22 THE COURT: Well, intent --

23 MR. BRITT: Specific intent to
24 kill.

25 THE COURT: Yes, sir, I

1 understand that. But at this point, I'm
2 going to take the matter under advisement.
3 I'm not going to rule on it at this point.
4 I think an argument can be made that
5 evidence is lacking. But I'm going to wait
6 until all the evidence is in as to
7 premeditated, without foreclosing that
8 issue at this point.

9 MR. THOMPSON: Yes, sir. As to
10 the offense of conspiracy to commit armed
11 robbery, desire to dismiss those grounds on
12 the grounds of insufficiency of evidence.
13 Don't desire to be heard.

14 THE COURT: Do you want to be
15 heard as of the charge of robbery with
16 dangerous weapon?

17 MR. THOMPSON: And as to the
18 charge of robbery with dangerous weapon, we
19 also move to dismiss on those grounds of
20 insufficient evidence.

21 THE COURT: At this time, all
22 motions to dismiss are denied without
23 prejudice to the defendant's right to renew
24 those motions at a subsequent time.

25 MR. THOMPSON: Yes, sir.

1 THE COURT: We have Mr. Demery
2 here? Can we bring Mr. Demery in? Let the
3 record reflect that counsel for Mr. Demery,
4 Mr. Rogers and Mr. Campbell, are present in
5 the courtroom. You folks have a motion
6 that's been filed?

7 MR. ROGERS: Yes, sir, that's
8 correct.

9 THE COURT: All right.

10 (Mr. Rogers and Mr. Campbell come
11 forward.)

12 THE COURT: Folks, while we were
13 waiting, somebody was indicating they saw a
14 news clip last night depicting Mr. Heffney
15 on the stand, and that it was apparently
16 seen on Channel 6.

17 MR. BRITT: I watched Channel 6
18 news at 6:00 and 11:00. What the depiction
19 I saw of Mr. Heffney was a courtroom artist
20 sketch.

21 THE COURT: Someone -- I heard
22 this morning that it was not a sketch, it
23 was him on the stand.

24 MR. BRITT: I don't -- and I
25 have --

1 THE COURT: I'm trying to figure
2 out how that happened if it happened.

3 MR. BRITT: If it happened.

4 MR. THOMPSON: Sometimes they
5 have -- I don't speak for them, but
6 sometimes they have file footage of an
7 officer on another case, or could have been
8 earlier. I've seen both and Mr. Thompson
9 and Mr. Britt in earlier file footage when
10 we were over there --

11 THE COURT: That was my first
12 thought, but --

13 MR. BRITT: The impression --

14 THE COURT: Person I talked to
15 said he saw him on the stand handle State's
16 Exhibit 59, and I couldn't recall the prior
17 hearing whether that was done.

18 MR. THOMPSON: Man think I saw,
19 apparently the State was handed out
20 disputed tape to put on there.

21 MR. BRITT: The only time that
22 the gun was brought into the court where
23 there was -- where there were cameras, if
24 you will recall during the motion for
25 appropriate relief, there were cameras

1 present. And at the conclusion of that
2 hearing, we did a Watson hearing in the
3 Demery case. And both the .38 caliber
4 revolver and the .32s were brought into
5 court, and there is a pretrial exhibit
6 sticker on State's Exhibit 59 as it relates
7 to the Demery matter.

8 THE COURT: Okay.

9 MR. BRITT: That's the only time
10 that I could think that it would have been
11 out.

12 THE COURT: Let the record
13 reflect that Mr. Demery is present,
14 Mr. Hugh Rogers, Mr. John Campbell, counsel
15 for Mr. Demery, are present. Counsel for
16 the defendant, Daniel Andre Green, also
17 known as U'Allah, are present, and the
18 defendants Daniel Green also known as
19 U'Allah are present in the courtroom at
20 this time. Representing the State of North
21 Carolina is District Attorney Johnson
22 Britt.

23 These matters are being heard in the
24 absence of the jury, pursuant to the motion
25 filed on behalf of the defendant Daniel

1 Andre Green, also known as U'Allah,
2 pursuant to Pennsylvania versus Ritchie,
3 and motions, response motions filed on
4 behalf of the defendant Larry Martin Demery
5 asserting privilege and motion to quash
6 subpoena.

7 I think the first matter we need to
8 take up procedurally is the motion to quash
9 the subpoena filed on behalf of
10 Mr. Demery.

11 Mr. Rogers, Mr. Campbell, I've read
12 your motion. Anything in addition to that
13 up you folks want to say?

14 MR. ROGERS: No, sir, other than
15 as you're likely aware, the basis for the
16 motion is that it seeks information that is
17 privileged.

18 THE COURT: And you're under
19 853. Do you folks disagree that 853 gives
20 court discretion in the interest of
21 justice?

22 MR. CAMPBELL: Do not disdegrade.

23 MR. ROGERS: That's correct,
24 under the statute that's set forth, under
25 that statute of course, and then there's a

1 case that says disclosure should only be
2 compelled in exceptional as opposed to
3 ordinary situations.

4 THE COURT: Okay. The assertion
5 of the privilege is noted. The Court
6 further notes for the record that before
7 the written motion asserting privilege and
8 the motion to quash subpoena was filed,
9 that testimony related to the subject
10 matter now before the Court, was elicited
11 in open court on cross-examination of
12 Mr. Demery by counsel for defendant
13 Mr. Angus Thompson and Mr. Woodberry Bowen,
14 and at that time no privilege was
15 asserted. Is there any disagreement as to
16 that?

17 MR. BRITT: I do not disagreeable
18 there was no privilege. I did object to
19 the line of questioning, and pursuant to I
20 believe it's State versus Williams, the
21 Court allowed it for the limited purpose of
22 impeachment.

23 THE COURT: Yes, sir.

24 MR. BRITT: It would be my
25 position, over the State's objection along

1 that line of questioning, that he was
2 taking a medication, I believe his
3 testimony was he took diazepam.

4 THE COURT: Form of Valium, and
5 Artane.

6 MR. BRITT: Yes, sir. The
7 diazepam was taken for a period, if I
8 recall correctly, I think two weeks or
9 possibly two months, would have been
10 prescribed approximately one year after the
11 date of his confinement, somewhere in that
12 time frame, and that the Artane -- that he
13 took the diazepam for a short period of
14 time and stopped. The Artane was
15 prescribed sometime back in the spring or
16 summer of 1995.

17 For the purposes of impeachment, he
18 has answered the questions as to what he
19 has taken. To then come back in
20 presentation of their case, to present
21 matters which he has acknowledged taking
22 and then try to -- I don't even know what's
23 in the file. But to present matters in
24 addition to that, I believe, are collateral
25 and should not be admitted.

1 THE COURT: The motion to quash
2 is denied. Assertion of privilege is noted
3 for the record. Privilege can be overcome
4 by the -- statutorily, 853 upon a
5 compelling showing or under the authority
6 of Pennsylvania versus Ritchie in due
7 process grounds.

8 Folks, having reviewed the file, the
9 Court finds that materials contained in the
10 file under Ritchie would not be subject to
11 disclosure, in that they would not
12 materially benefit defendant beyond that
13 which has been presented through
14 cross-examination already adduced before
15 the jury in this case.

16 Ritchie cites a number of cases and in
17 footnote 15 on page 58 says that the
18 commonwealth of Pennsylvania also argues
19 that Ritchie is not entitled to disclosure
20 because he did not make a particularized
21 showing, type that is shown by Brady Versus
22 Maryland, United States Versus Agurs, A G U
23 R S, as to what information he was seeking
24 or how it would be matured. And quotes
25 language from Agurs for the following

1 proposition: Mere possibility that an item
2 of undisclosed information might have
3 helped the defense does not establish
4 materiality in the constitutional sense.

5 Court went on to say that at a
6 subsequent hearing, the case was remanded
7 for further hearing. Ritchie must show or
8 must at least make some plausible showing
9 of how the testimony sought would have have
10 been both material and favorable.

11 Having reviewed the file in camera and
12 having determined that the materials set
13 out in the file do not amount to the kind
14 of materiality that is the subject of Brady
15 versus Maryland, United States versus Agurs
16 or the due process reasoning set out in
17 Pennsylvania versus Ritchie, the Court is
18 going to direct that the file be sealed for
19 appellate review. The medical records are
20 essentially consistent with the testimony
21 adduced. In some instances, the testimony
22 went beyond. But I'm ordering that it be
23 sealed for appellate review.

24 Note the defendant's objection and
25 exception so your issue is preserved as to

1 the Court's ruling.

2 Any other matters?

3 MR. BRITT: No, sir.

4 THE COURT: We're at ease.

5 MR. BRITT: May Mr. Demery be
6 excused?

7 THE COURT: May be returned, may
8 be excused.

9 MR. ROGERS: Thank you, Your
10 Honor.

11 THE COURT: All right. We're at
12 ease until 9:30 Monday morning.

13 THE BAILIFF: All rise.

14 (Court adjourned.)

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Trial wk 8

Feb 19-23

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13

14

15 (February 19, 1996. Proceedings in open court.)

16

17 THE COURT: Good morning, folks.

18 Let the record show all counsel are
19 present, the defendant is present in open
20 court. There's one matter we need to take
21 up this morning before we bring the jury
22 in. One of the bailiffs, Mr. Horne, passed
23 me a note from Ms. Haley. She has a
24 medical appointment Monday the 26th in
25 Pinehurst. The information I have is she

1 will need to leave at about 1:00.

2 That will work out fine as far as I am
3 concerned. Judge Pone is being sworn in
4 next Monday in Fayetteville and I'm
5 supposed to introduce him for that
6 ceremony, so that will work out okay.
7 Appears that we will go until about 1:00 on
8 Monday. Is that okay with the defense, and
9 the State?

10 MR. BRITT: Yes, sir, that's
11 fine.

12 THE COURT: You folks ready to go
13 forward?

14 MR. BOWEN: Judge, one thing
15 before we go, if the Court please. We
16 looked at some photographs last week,
17 Mr. Heffney was kind enough to let us have
18 them, the two packages of K-Mart
19 photographs. I think they are Defense
20 Exhibits 50 or 51, something like that. We
21 need, if the Court please, to have five
22 minutes to show those photographs to our
23 witnesses. And we're asking -- Mr. Heffney
24 may want to inventory those photographs.
25 Perhaps the Court would like to inventory

1 those photographs.

2 But we're requesting to be able to
3 show those photographs and discuss those
4 photographs with our witnesses out of the
5 presence of any officers.

6 THE COURT: Do you want to do
7 that this morning?

8 MR. BOWEN: Could we, please?

9 THE COURT: Do you have the
10 photographs? We'll do that now.

11 While you're doing that, let me get
12 something.

13 (Brief pause.)

14 MR. BOWEN: If Your Honor please,
15 I have just learned that despite our
16 instruction, part of our witnesses have not
17 arrived. One is in school. They are
18 available. It's just a matter of a few
19 minutes to get them here. They are
20 expecting to be called but they didn't
21 expect they had to be here first thing, and
22 we assumed they were going to be here first
23 thing.

24 THE COURT: How much time do you
25 need?

1 MR. BOWEN: I think probably 45
2 minutes. And again, I assure the Court
3 that once this thing starts, it's going to
4 move very expeditiously.

5 THE COURT: Okay. I'm trying to
6 decide what to do with the jury. I think
7 we will leave them there for right now.

8 MR. BOWEN: Yes, sir.

9 THE COURT: Let me know as soon
10 as possible. If I don't hear from you
11 about 30 or 45 minutes I'm going to have to
12 do something.

13 MR. BOWEN: Yes, sir.

14 (Brief recess.)

15 MR. BOWEN: Your Honor, we
16 appreciate your indulgence, we are ready to
17 go.

18 THE COURT: If you'll bring the
19 jury in, please, sir.

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

21 THE COURT: Good morning, ladies
22 and gentlemen.

23 Ms. Haley, the information that you
24 provided to us about your appointment next
25 week, I understand that you'll have to

1 leave about 1:00 to make that?

2 JUROR: Around 1:30.

3 THE COURT: We'll go until
4 approximately 1:00 or 1:30 next Monday so
5 you can have that information for your
6 planning purposes.

7 The State having rested, will there be
8 evidence offered by the defendant?

9 MR. BOWEN: Yes, Your Honor.
10 Your Honor, the defense calls Nellie
11 Montes.

12 THE COURT: If you'll come up and
13 be sworn, please. If you'll come around to
14 the witness stand, place your left hand on
15 the Bible and raise your right, please.

16 NELLIE MICHAEL MONTES,
17 being first duly sworn was examined and testified as
18 follows:

19 DIRECT EXAMINATION

20 THE COURT: If you'll have a
21 seat, please. Ma'am, if you'll state your
22 full name.

23 THE WITNESS: Nellie Michael
24 Montes.

25 THE COURT: If you'll spell your

1 last name for the benefit of the court
2 reporter?

3 THE WITNESS: M-O-N-T-E-S.

4 BY MR. BOWEN:

5 Q Ms. Montes, would you give us your current
6 address, please?

7 A Route 3, Box 650, Sanford Street,
8 Lumberton, North Carolina.

9 Q And your date of birth?

10 A 7-27-64.

11 Q Now, Ms. Montes, are you employed in this
12 area?

13 A Yes, sir.

14 Q Where do you work, please?

15 A I'm the assistant manager at Kentucky
16 Finance.

17 Q How long have you been doing that type of
18 work?

19 A For about ten years now.

20 Q And how long have you been employed with
21 Kentucky Finance?

22 A About a year and a half.

23 Q And before that, what type of
24 establishment did you work for?

25 A I was employed -- or going to school at

1 Robeson County Community College.

2 Q In what field did you go to school?

3 A I have a double major, business
4 administration and computer programming.

5 Q Now, Ms. Montes, how long have you known
6 Daniel Green?

7 A All of his life.

8 Q And what has been your occasion to know
9 him, how have you known him?

10 A His mother and my mother are best friends.

11 Q And who is your mother, please?

12 A Kayeol Hernandez.

13 Q Where does your mother, Kay Hernandez,
14 live?

15 A In Clyburn Pines.

16 Q During the time that your mother and Daniel
17 Green's mother have been good friends, have they
18 visited to your personal knowledge, back and forth in
19 each other's home frequently?

20 A Yes, sir, all through the years.

21 Q Do they sometimes cook or have dinners or
22 meals or cookouts, that sort of thing?

23 MR. BRITT: Objection, if she
24 knows.

25 THE COURT: If you know, you may

1 answer.

2 THE WITNESS: Yes, sir.

3 BY MR. BOWEN:

4 Q Do you recall the month of July of 1993?

5 A Yes, sir.

6 Q Was anything unusual happening in your
7 family in the month of July of 1993?

8 MR. BRITT: Objection to the
9 relevance.

10 THE COURT: Overruled. You may
11 answer.

12 THE WITNESS: Yes, sir.

13 BY MR. BOWEN:

14 Q What was that please?

15 A We were planning a trip, my family,
16 planning a trip to go to Puerto Rico.

17 Q State whether or not you have any relatives
18 in Puerto Rico.

19 A My in-laws.

20 Q What is your husband's full name?

21 A Ismael Montes.

22 Q And Mr. Montes, was he employed back in
23 July of 1993?

24 A He's a respiratory therapist at Columbus
25 County Hospital.

1 Q Is he still so employed?

2 A Yes, sir.

3 Q Now, then, state whether or not --

4 THE COURT: Folks are apparently
5 having difficulty in hearing the witness.
6 If you'll speak directly into the
7 microphone, please.

8 MR. BOWEN: May I approach the
9 witness, Your Honor?

10 THE COURT: Yes, sir.

11 MR. BOWEN: Let the record show
12 I'm going to move this microphone closer to
13 you please, can you move closer to it now?

14 THE WITNESS: Yes, sir.

15 MR. BOWEN: Thank you.

16 BY MR. BOWEN:

17 Q Let me drop back on that question. Where
18 did you say that your husband worked Ms. Montes?

19 A At Columbus County Hospital.

20 Q And in what capacity does he work?

21 A There he is a respiratory therapist.

22 Q Would you mind slipping up a little closer
23 to that microphone?

24 A Yes.

25 Q Does he still work there in that capacity?

1 A Yes, sir.

2 Q Back in July of 1993, did your husband have
3 relatives in Puerto Rico?

4 MR. BRITT: Objection, asked and
5 answered.

6 THE WITNESS: Yes, sir.

7 THE COURT: Overruled.

8 BY MR. BOWEN:

9 Q What -- who, if anyone, in your family was
10 scheduled to go to Puerto Rico in July of 1993?

11 A Myself, my husband, and my two children.

12 Q And can you tell us the date that that trip
13 was to take place?

14 A July 24th, 1993.

15 Q And can you tell the jury what day of the
16 week July 24th, 1993, was?

17 A A Saturday.

18 Q And where were you to take off for your
19 flight to Puerto Rico?

20 A Raliegh-Durham Airport.

21 Q Approximately when in the day of the 24th,
22 Saturday, 1993, were you to take off in the airplane?

23 A 9:40 a.m.

24 Q Now, did you in fact take off for Puerto
25 Rico at 9:40 or approximately about that time on the

1 morning of the 24th of 1993, July 24th?

2 A Yes, sir.

3 Q Now, I call your attention to two days
4 prior to that, the 22nd of July of 1993. Do you
5 recall that day?

6 A Yes, sir.

7 Q Now, at that time, state whether or not you
8 were working or in college at that time.

9 A I was in college.

10 Q And state what, if any status, you were on
11 with regard to vacation or break or were you in
12 full-time school at that time.

13 A I was registered full-time but I had to
14 take summer vacation because of the trip.

15 Q How long has your husband been employed at
16 Columbus County Hospital as a respiratory
17 therapist?

18 MR. BRITT: Objection to the
19 relevance.

20 THE COURT: Mr. Bowen?

21 MR. BOWEN: I'll withdraw it,
22 Your Honor.

23 BY MR. BOWEN:

24 Q Had you ever with your family made the trip
25 to Puerto Rico before July of 1993?

1 MR. BRITT: Objection.

2 THE WITNESS: Yes, sir.

3 THE COURT: Yes, sir, what's the
4 relevance?

5 MR. BOWEN: To show that it's an
6 unusual event.

7 THE COURT: Okay.

8 BY MR. BOWEN:

9 Q How long before had you gone prior to July
10 of 1993?

11 A The summer of 1989.

12 Q Now, who was to accompany you by name on
13 this flight, who did accompany you by name on this
14 flight?

15 MR. BRITT: Objection, asked and
16 answered.

17 THE COURT: Well, not exactly.
18 You may answer, ma'am.

19 THE WITNESS: Myself, Nellie
20 Montes; my husband, Ismael Montes; my son
21 Daniel Miller, and my other son, Collin
22 Montes.

23 BY MR. BOWEN:

24 Q And the approximate ages of the children?

25 A Daniel was about eight. And Collin was

1 four.

2 Q Now, I call your attention to the evening
3 of July 22nd. Do you recall what day of the week
4 that was?

5 A Yes, sir.

6 Q What day of the week was it?

7 A Thursday.

8 Q Where were you that evening?

9 A At my mother's.

10 Q And approximately when did you arrive at
11 your mother's and for what purpose?

12 A I was there off and on all day, we were
13 helping my mother clean.

14 Q State what, if any, state of health that
15 your mother was in that day, if you know.

16 A I knew she wasn't feeling well that day and
17 all week.

18 Q State whether at that time you spent a lot
19 of time at your mom's house.

20 MR. BRITT: Objection.

21 THE COURT: Overruled. You may
22 answer, ma'am.

23 THE WITNESS: Then and always.

24 BY MR. BOWEN:

25 Q Now, for the evening meal, can you describe

1 to the jury what was done at your mother's house, if
2 anything?

3 A Yes, sir. We cooked outside.

4 Q And can you tell the jury who was present
5 when you cooked outside?

6 A Yes, sir.

7 Q Please do that.

8 A Myself; my two children, Daniel Miller and
9 Collin Montes; my mother, Kay Hernandez; my sister
10 Monica; my sister Sebette Boulet; Hector Leones,
11 which was her boyfriend at the time; Ann Green;
12 Daniel Green; Ebony Green; Catina Jacobs; and Donna
13 Turner; and Bobbie Jo Morillo.

14 Q About how old was Bobbie Jo, if you know,
15 at that time?

16 A Safely to say 14 or 15.

17 Q Now, can you tell approximately when Daniel
18 Green came there to your mother's house on the 22nd,
19 Thursday?

20 A He was there basically all day, sir.

21 Q Okay. Now, do you remember any time that
22 Mr. Larry Demery came to your mother's house on that
23 Thursday?

24 A He was there off and on all day that day,
25 too.

1 Q All right. Now, did you see any alcohol
2 whatsoever in anybody's possession that night?

3 A No, sir.

4 Q Now, state whether to your knowledge
5 Mr. Hector Leones was -- whom you mentioned was there
6 that night, state whether or not he was employed, to
7 your knowledge.

8 A Yes, sir.

9 Q What time approximately that evening did
10 you actually eat dinner and where?

11 A Well, it was kind of a floating eating
12 because there were so many people. And we started
13 around 9:30.

14 Q Who was doing the cooking?

15 A Hector.

16 Q Where was the meal eaten, was it eaten in
17 various places or --

18 A No, sir, it was eaten at the dining room
19 table.

20 Q State whether or not you recall Daniel
21 Green and/or Larry Demery eating anything.

22 A Yes, sir.

23 Q Did both of them eat?

24 A Yes, sir.

25 Q Now, do you recall Larry Demery and Daniel

1 Green being in your mother's house anywhere?

2 A Yes, sir.

3 Q And what part of that house did you see
4 them in?

5 A Various locations throughout the house, but
6 mainly in the den.

7 Q Now, when you say "the den," where was that
8 located with reference to the front door of the
9 house?

10 A It was located at the back of the house.

11 Q And behind the house, what was there
12 behind -- in the area behind the house?

13 A There's a deck, a front porch -- or back
14 porch, I'm sorry.

15 Q Is the den the room that is the furthest
16 back on the house?

17 A Yes, sir.

18 MR. BOWEN: May I approach the
19 witness, Your Honor?

20 THE COURT: Yes, sir.

21 (Defense Exhibits 36, 37 were
22 marked for identification.)

23 MR. BOWEN: May I approach?

24 THE COURT: Yes, sir.

25 BY MR. BOWEN:

1 Q Ms. Montes, I'm going to show you Defense
2 Exhibit Number 37, ask you what that paper writing
3 is.

4 A It's a drawing of my mother's home.

5 Q Could you use that diagram to more fully
6 illustrate to the jury where the various rooms and
7 the layout, where the various rooms are and what the
8 layout of your mother's house is?

9 A Yes, sir.

10 MR. BOWEN: Your Honor I desire
11 to introduce it for the limited purpose.

12 MR. BRITT: No objection.

13 THE COURT: Ladies and gentlemen,
14 Defendant's Exhibit Number 37 is being
15 admitted for the limited purpose of
16 illustrating the witness now before you,
17 and you may consider that for that limited
18 purpose and no other.

19 MR. BOWEN: Your Honor I request
20 that the witness be allowed to come down
21 and stand before the jury.

22 THE COURT: Yes, sir.

23 MR. BRITT: May I position
24 myself?

25 THE COURT: Yes, sir.

1 BY MR. BOWEN:

2 Q Ms. Montes -- we're going to do this in
3 three stages, please, ma'am. Would you please take
4 Defense Exhibit Number 37 and show, if you will, what
5 you call the den area of your mother's house?

6 A This area.

7 Q All right. Now, can you tell me what is
8 behind the den area?

9 A It's an open space with a concrete slab
10 over here.

11 Q What is done with that area --

12 A It's a parking area.

13 THE COURT: Ms. Montes, if
14 you'll -- if you would keep your voice up
15 so the court reporter can hear you.

16 THE WITNESS: I'm sorry.

17 BY MR. BOWEN:

18 Q Let's come to the middle part of the jury.
19 And please show where the middle part of that den is
20 on that area.

21 A This is the den.

22 Q Can you show where the parking area is?

23 A This is the parking area.

24 Q All right. We'll come to these jurors and
25 do the same thing.

1 A This is the den. And all this is parking
2 area.

3 Q You may return to your seat. Now,
4 Ms. Montes, can you tell the jury what, if any,
5 entertainment devices were in the den?

6 A At the time, I think there still is a
7 stereo and a television, VCR.

8 Q When you were there did you go in and out of
9 that room some that evening?

10 A Yes, sir, that's the only access to the
11 back side of the house.

12 Q State whether or not the TV was going when
13 you went in and out of there.

14 A All day long.

15 Q What type of programming was on?

16 A Videos and comedy shows.

17 Q Now, do you mean videos like you play on a
18 VCR?

19 A No, sir, the music videos, like MTV.

20 Q Now, about what time did you see Mr. Larry
21 Demery arrive there? You say he had been there most
22 of the day?

23 A Yes, sir.

24 Q Have you got any idea what time he got
25 there?

1 A He was there when I got there.

2 Q And he was there perhaps around the time of
3 the evening meal?

4 MR. BRITT: Objection to the
5 form.

6 THE COURT: Sustained.

7 MR. BOWEN: I'll withdraw it.

8 BY MR. BOWEN:

9 Q What time, if you did, did you leave your
10 mother's home that day or night?

11 A It was 1:00 in the morning.

12 Q So it was over then on the 23rd?

13 A Yes, sir.

14 Q Now, at the time that you left, state
15 whether or not Larry Demery was still there?

16 A Yes, sir.

17 Q State whether or not Daniel Green was still
18 there.

19 A Yes, sir.

20 Q And what room were they in when you last
21 saw them?

22 A In the den.

23 Q And who else was in the den when you last
24 saw Larry and Daniel there?

25 A My sister, Monica Hernandez, Bobbie Jo

1 Morillo, my two children, and Ebony.

2 Q Now, can you tell us mostly where Catina
3 spent her time, that is Catina Jacobs?

4 A Throughout the house with me. I mean where
5 I was at, she was at mostly.

6 Q To your personal knowledge did she
7 sometimes go back into that den room also?

8 A Yes, sir.

9 Q Now --

10 MR. BOWEN: May I approach the
11 witness, Your Honor?

12 THE COURT: Yes, sir.

13 MR. BOWEN: Court please I would
14 like to have these four objects marked and
15 show them to the District Attorney.

16 (Defense Exhibits 35-A through 35-D
17 were marked for identification.)

18 MR. BOWEN: May I approach the
19 witness, Your Honor?

20 THE COURT: Yes, sir.

21 BY MR. BOWEN:

22 Q Ms. Montes, I would like to show you
23 Defense Exhibit 35-A. And I ask you if you know on
24 sight, do you know who Monica Hernandez is?

25 A Yes, sir.

1 Q Could you recognize her if you saw her in a
2 photograph?

3 A Yes, sir.

4 Q Could you use this photograph, Defense
5 35-A, to illustrate to the jury what she looks like?

6 A Yes, sir.

7 Q Now, I show you Defense Exhibit 35-B, and
8 ask you if you know Mr. Larry Demery?

9 A Yes, sir.

10 Q And could you use this photograph to
11 illustrate to the jury what Mr. Demery looks like?

12 A Yes, sir.

13 Q Now, are you familiar with the interior of
14 the room that you've referred to as the den in your
15 mother's house?

16 A Yes, sir.

17 Q Could you use either or both of these
18 photographs to illustrate to the jury what part of
19 the interior of that den in your mother's house looks
20 like?

21 A Yes, sir.

22 Q And I show you Defense Exhibit 35-C and ask
23 you if you know Daniel Green and Bobbie Morillo?

24 A Yes, sir.

25 Q And could you use Defense Exhibit 35-C to

1 illustrate to the jury what Bobbie Morillo looks
2 like?

3 A Yes, sir.

4 Q And can you further use Defense Exhibit
5 35-C to illustrate to the jury what more of that room
6 in your mother's house you call the den looks like?

7 A Yes, sir.

8 Q And Defense Exhibit 35-D, do you recall
9 what the couch looked like that Bobbie Morillo and
10 Daniel Green sat on that night, if they did?

11 A Yes, sir.

12 Q And state whether or not that couch was in
13 the den.

14 A Yes, sir.

15 Q And could you use Defense Exhibit 35-D to
16 illustrate to the jury what the couch looked like
17 that you saw Daniel Green and Bobbie Morillo on?

18 A Yes, sir.

19 MR. BOWEN: Desire to introduce these
20 four photographs, State's 35 -- I mean Defense 35-A,
21 B, C, and D for the limited purpose, Your Honor.

22 THE COURT: Mr. Britt.

23 MR. BRITT: Objection,
24 foundation.

25 THE COURT: Members of the jury,

1 there's a matter of law the Court must take
2 up at this time. Please recall my
3 instructions in that regard. And if you
4 folks would step to the jury room, don't
5 worry or speculate about what takes place
6 in the courtroom in your absence.

7 (Jury out at 10:43 a.m.)

8 THE COURT: Let the record show
9 the following being conducted in the
10 absence of the jury. Mr. Bowen, are you
11 offering them as photographs of matters
12 that were -- that occurred on the night in
13 question.

14 MR. BOWEN: Yes, and I should
15 have asked her if this represents what it
16 looked like at that time.

17 THE COURT: And that is not clear
18 in the foundation.

19 MR. BOWEN: Yes, sir, and I
20 should ask her.

21 THE COURT: At this point, the
22 objection is sustained. But you can ask
23 additional foundational questions.

24 MR. BOWEN: Yes, sir.

25 THE COURT: Bring the jury back

1 in.

2 (Jury in at 10:44 a.m.)

3 THE COURT: The objection is
4 sustained at this time, but you may ask
5 additional questions.

6 MR. BOWEN: May I approach, Your
7 Honor?

8 THE COURT: Yes, sir.

9 BY MR. BOWEN:

10 Q Ms. Montes, specifically with regard to the
11 22nd of July of 1993, can you use these photographs,
12 Defense 35-A, B, C, and D, to more particularly
13 illustrate to the jury how the den of your mother's
14 house looked on that particular evening, July 22nd,
15 1993?

16 A Yes, sir.

17 Q And can you more fully illustrate to the
18 jury using these photographs what Mr. Green, Bobbie
19 Morillo, Larry Demery, and Monica Hernandez looked
20 like on the evening of July 22nd, 1993?

21 A Yes, sir.

22 MR. BOWEN: Desire to introduce
23 them for the limited purposes.

24 MR. BRITT: Objection.

25 THE COURT: Sustained at this

1 point. Foundational questions are
2 incomplete.

3 BY MR. BOWEN:

4 Q Now, did you see these individuals on the
5 night in question?

6 A Yes, sir.

7 Q Do these photographs depict the way they
8 looked on the night in question, that is, July 22nd,
9 1993?

10 A Yes, sir.

11 Q Did you see this room that's depicted here
12 in these photographs that is the den of your mother's
13 house on July 22nd, 1993?

14 A Yes, sir.

15 Q And do the photographs depict what you saw
16 on that particular evening with regard to the
17 arrangement of the room and everything the room
18 looked like?

19 A Yes, sir.

20 Q And does the photograph show the couch as
21 it looked on the 22nd day of July of 1993, when you
22 saw it?

23 A Yes, sir.

24 Q Now, were you present at the exact moment
25 these photographs were made?

1 A I was there at the house, but not as the
2 photos were being taken.

3 Q Okay. But you saw all these things on the
4 22nd of July, 1993, that the photographs show?

5 A Yes, sir.

6 Q And you can use these photographs to more
7 particularly illustrate to the jury what you saw with
8 regard to the people, how they were dressed, how the
9 room looked, and the arrangement of the furniture; is
10 that correct?

11 A Yes, sir.

12 MR. BOWEN: Desire to introduce
13 them for the limited purpose, Your Honor.

14 MR. BRITT: Objection.

15 THE COURT: Sustained.

16 Ma'am, do the matters depicted in
17 Defendant's Exhibit 35-A, B, C, D, fairly
18 and accurately represent the persons you
19 saw there at your mother's home on that
20 night?

21 THE WITNESS: Yes, sir.

22 THE COURT: And the activities
23 that were going on there at your mother's
24 home on that night, July 22nd, 1993?

25 THE WITNESS: Yes, sir.

1 THE COURT: Mr. Bowen.

2 MR. BOWEN: Desire to introduce
3 them for the limited purpose, Your Honor.

4 THE COURT: Mr. Britt.

5 MR. BRITT: Simply for the
6 record, I would object.

7 THE COURT: Overruled. 35-A
8 through D are admitted for the limited
9 purpose of the limited purposes of the
10 witness before you. You may consider these
11 for that limited purpose and no other
12 purpose.

13 MR. BOWEN: Your Honor, May the
14 witness stand before the jury please?

15 THE COURT: Yes, sir.

16 MR. BRITT: May I?

17 THE COURT: Yes, sir.

18 BY MR. BOWEN:

19 Q If you'll stand here. Defense Exhibit
20 35-A, who is that in the photograph?

21 A My sister, Monica Hernandez.

22 Q Is that how she looked on July 22nd, 1993?

23 A Yes, sir.

24 Q Where in the house is she seated?

25 A On the forewall in the den.

1 Q How do you recognize that as the den room?

2 A The way it's decorated and the furniture.

3 Q Is that way it looked on the 22nd of July,
4 1993?

5 A Yes, sir.

6 Q Is this your sister, Monica Hernandez?

7 A Yes, sir.

8 Q Is that the way she looked and was dressed
9 on the night in question?

10 A Yes, sir.

11 Q Is this the den she was in in your mom's
12 house?

13 A Yes, sir.

14 Q Come down here. Monica your sister?

15 A Yes, sir.

16 Q Is the way she was dressed on the night of
17 the 22nd, two days before you went to Puerto Rico?

18 A Yes, sir.

19 Q Where is she seated on the forewall in the
20 den, is that the way the den looked then?

21 A Yes, sir.

22 Q While we're down here, move to Defense
23 Exhibit 35-D. Do it exactly in order, but I want to
24 know, do you see Bobbie Morillo?

25 A Yes, sir.

1 Q Is that the way she looked on July 22nd,
2 1993?

3 A Yes, sir.

4 Q Do you see what Bobbie Morillo is seated
5 on?

6 A Yes, sir.

7 Q What is that?

8 A Dan, in Daniel's lap on the couch.

9 Q And where was that couch located on the
10 22nd?

11 A In my mother's den.

12 Q Of July of 1993?

13 A Yes, sir.

14 Q And did you see them on that couch
15 repeatedly as you came into that room?

16 A Yes, sir.

17 Q Let's move to the middle of the jury,
18 please. Can you identify for these jurors Bobbie
19 Morillo?

20 A This lady.

21 Q And where is she seated?

22 A On Daniel's lap on the couch.

23 Q And did you see her there when you went in
24 the room several times on the night of the 22nd of
25 July?

1 A Repeatedly.

2 Q Can you identify Bobbie Morillo for us?

3 A This lady here.

4 Q And she is seated where?

5 A On Daniel's lap on the couch.

6 Q Did you see her there on numerous occasions
7 on the night in question, July 22nd, 1993?

8 A Yes, sir.

9 Q Now, I'm going to show you Defendant's
10 Exhibit 35-C and ask you what that shows, if
11 anything?

12 MR. BRITT: Objection.

13 THE COURT: Sustained to the form
14 of the question.

15 BY MR. BOWEN:

16 Q All right. Now, can you tell from this
17 photograph who is in the picture, first of all?

18 MR. BRITT: Objection.

19 THE COURT: Sustained to the
20 form.

21 BY MR. BOWEN:

22 Q Who was this that is depicted in that
23 photograph?

24 MR. BRITT: Objection.

25 THE COURT: Overruled. You may

1 answer.

2 THE WITNESS: Bobbie Jo Morillo
3 and Daniel Green.

4 BY MR. BOWEN:

5 Q What area is depicted, please?

6 A The den.

7 Q Of whose house?

8 A My mother's.

9 Q And is that a depiction of the den as it
10 looked on July 22nd, 1993?

11 A Yes, sir.

12 Q Would you move here to this area, the
13 persons depicted in the picture, please?

14 MR. BRITT: Objection.

15 THE COURT: Sustained to form.

16 BY MR. BOWEN:

17 Q All right. What area in your house, if
18 anything, does this photograph show?

19 MR. BRITT: Objection.

20 THE COURT: Well, it's in for
21 illustrative purpose. Ask questions that
22 will help her use it to aid or illustrate
23 her testimony, sir.

24 MR. BOWEN: All right.

25 BY MR. BOWEN:

1 Q Where -- did you see Bobbie Morillo and
2 Daniel Green in your mom's house?

3 A Yes.

4 Q Where?

5 A In the den.

6 Q Particularly at or near what piece of
7 furniture?

8 A Couch.

9 Q Can you use this photograph to show to the
10 jury what that couch looked like?

11 A Yes, sir.

12 Q Can you use the photograph to show what --
13 how Bobbie Morillo and Daniel Green looked the
14 several times that you saw them on that couch?

15 A Yes, sir.

16 Q Can you point that out please?

17 MR. BRITT: Objection.

18 THE COURT: Overruled.

19 BY MR. BOWEN:

20 Q Can you point out the couch?

21 A Yes, sir.

22 Q Can you point out Daniel and Bobbie
23 Morillo?

24 A Yes, sir.

25 Q Did you see them that close on several

1 occasions that evening?

2 A Yes, sir.

3 Q Now, can you point other to the jury on
4 this photograph the layout of the rest of the den?

5 A I don't quite understand.

6 Q Can you point out to the jury what the rest
7 of the den looked like behind the couple in the
8 couch?

9 A My mother had stereo cabinets and as you
10 see various chairs and there was the window at the
11 back door.

12 Q Is that the way it looked July 22nd, 1993?

13 A Yes, sir.

14 Q Now, again, can you point out Mr. Green and
15 Bobbie Morillo?

16 MR. BRITT: Objection.

17 THE COURT: Sustained as to form.

18 MR. BOWEN: All right.

19 BY MR. BOWEN:

20 Q You knew what Bobbie Morillo and Daniel
21 Green looked like, didn't you?

22 A Yes.

23 MR. BRITT: Objection.

24 THE COURT: Overruled.

25 BY MR. BOWEN:

1 Q Did you see them on the night of the 22nd
2 of July, 1993?

3 A Yes, sir.

4 Q Whereabouts did you see them?

5 A In the den at my mother's.

6 Q Can you use this photograph to show the
7 jury what they looked like when you saw them in the
8 den?

9 MR. BRITT: Objection.

10 THE COURT: Overruled.

11 BY MR. BOWEN:

12 Q Where were they in the den?

13 A On the love seat.

14 Q Can you point that seat out for me?

15 A Yes.

16 Q Can you point them out for me?

17 A Yes, sir.

18 Q Daniel and Bobbie?

19 A Yes.

20 Q And can you use the photograph to help you
21 illustrate to the jury what the rest of your mother's
22 den looked like back on the 22nd of July, 1993?

23 MR. BRITT: Objection to the
24 form.

25 THE COURT: Overruled.

1 BY MR. BOWEN:

2 Q Can you describe the rest of the
3 surroundings in your mother's den --

4 A Yes.

5 Q -- using the photograph?

6 A Yes.

7 Q Do so, please.

8 A That's the door to the hallway. This is
9 the back of the den and the back door.

10 Q Now, I want to show you Defense Exhibit
11 35-B, and I'm going to let you hold it. Okay. And
12 if you will, Ms. Montes, you say that you knew Larry
13 Demery?

14 A Yes, sir.

15 Q Okay. Did you know what he looked like on
16 the 22nd day of July, 1993?

17 A Yes, sir.

18 Q Can you use that photograph to describe to
19 the jury what he looked like --

20 MR. BRITT: Objection.

21 MR. BOWEN: -- on that day?

22 THE COURT: Rephrase, Mr. Bowen.

23 BY MR. BOWEN:

24 Q Can you use that photograph to more fully
25 illustrate to the jury what Mr. Demery looked like on

1 the 22nd of July, 19 --

2 MR. BRITT: Objection.

3 THE COURT: Sustained.

4 BY MR. BOWEN:

5 Q Describe Larry Demery as you saw him on the
6 22nd of July, 1993.

7 MR. BRITT: Objection.

8 THE COURT: Overruled.

9 BY MR. BOWEN:

10 Q Go ahead.

11 A Cut-off jeans and a T-shirt and hat on his
12 head.

13 Q What hat was that?

14 A Like a Harley hat.

15 Q Can you point that hat out on this
16 photograph?

17 A Yes. This hat.

18 Q Did he look on the night as he looks in the
19 photograph?

20 MR. BRITT: Objection.

21 THE COURT: Sustained.

22 MR. BRITT: Move to strike, ask
23 for instruction.

24 THE COURT: Members of the jury
25 disregard the last question of Mr. Bowen,

1 that matter not to take any part in your
2 deliberation in any respect.

3 BY MR. BOWEN:

4 Q Come down here to the middle please, ma'am,
5 and you may hold the photograph. And can you
6 describe to the jury what Mr. Demery looked like on
7 the night in question, July 22nd, 1993?

8 A Yes, sir. Blue jeans, T-shirt, and a
9 Harley hat.

10 Q Can you point out the Harley hat in that
11 photograph?

12 A Yes, sir. The one he's wearing there.

13 Q Would you come to these jurors please and
14 do the same thing.

15 A That's the hat.

16 Q Thank you, ma'am. Did you see -- first of
17 all, did you know what Larry Demery drove on that
18 particular night, Ms. Montes?

19 A Yes, sir.

20 Q What type of vehicle was that, please?

21 A It's a beige, tan-colored Tempo.

22 Q Now, do you know where, if anywhere, that
23 vehicle was parked on the night in question?

24 A Yes, sir.

25 Q And where was it parked with relation to

1 the area that you have described as the den?

2 A Right beside the back porch.

3 Q And state whether or not if you had ever
4 heard that car run.

5 A Yes, sir.

6 Q Did that car make any kind of a distinct
7 noise when it ran?

8 MR. BRITT: Objection.

9 THE COURT: Sustained as to
10 form. Rephrase.

11 BY MR. BOWEN:

12 Q Can you describe what, if anything, that
13 you heard when Mr. Demery's car ran on or about the
14 22nd of July, 1993?

15 MR. BRITT: Objection.

16 THE COURT: Overruled. You may
17 answer.

18 THE WITNESS: Yes, sir, then and
19 before, the muffler, very loud muffler.

20 BY MR. BOWEN:

21 Q State whether or not you could hear it
22 coming some distance away.

23 MR. BRITT: Objection to the
24 leading.

25 THE COURT: Sustained.

1 BY MR. BOWEN:

2 Q Now, do you recall at any time, passing by
3 that automobile, that is, Larry Demery's Tempo,
4 during the daylight hours on the 22nd of July of
5 1993?

6 MR. BRITT: Objection to the
7 leading.

8 THE COURT: Overruled. You may
9 answer.

10 THE WITNESS: Yes, sir.

11 BY MR. BOWEN:

12 Q Can you tell the jury approximately when
13 that was?

14 A All through the day, various times during
15 the day. Every time you went out to back door, you
16 had to go around the car by the front of it or by the
17 back of it because it was right there on the porch.

18 Q Now, Ms. Montes, did you ever have occasion
19 to see into Mr. Demery's car?

20 A Every time I passed by it.

21 Q Did you -- what, if anything, did you see
22 in that car?

23 A Clothes, trash, and on one instance, a gun.

24 Q And on what instance was that? Could you
25 fix it's as best you can in terms of time?

1 A Later that evening, I really safely would
2 say around 6:00.

3 Q Was it still daylight at that time?

4 A Yes, sir.

5 Q Now, can you tell the jury what that gun
6 looked like?

7 A I don't know much about guns. It was a big
8 gun like the deputies carry.

9 MR. BOWEN: Can I have 59-A?

10 MR. BRITT: It's over there, it's
11 in evidence.

12 MR. BOWEN: I'm sorry, may I
13 approach, Your Honor?

14 THE COURT: Yes, sir.

15 MR. BRITT: Your Honor, may I
16 retrieve something from the court
17 reporter's table.

18 THE COURT: Yes, sir.

19 BY MR. BOWEN:

20 Q I'm going to show you an object that has
21 been marked for this court proceeding as State's
22 59-A. And I ask you with reference to what you saw
23 in Mr. Demery's automobile, can you identify State's
24 Exhibit 59-A?

25 A It was a gun, it kind of looked like that.

1 Q And when you say "kind of looked like
2 that," in what ways is it similar and what ways, if
3 any, was it dissimilar?

4 A I'm sorry, I'm scared of guns so I'm
5 moving --

6 Q I'm sorry.

7 A It had the long barrel and the thing in the
8 middle.

9 Q Now, by this thing, I'm pointing to the
10 cylinder of a revolver, is that what you mean by "the
11 thing"?

12 A Yes, sir.

13 Q Any other similarities that you saw?

14 A The handle.

15 Q What color was the handle of the gun that
16 you saw?

17 A The gun was the same color.

18 Q All right. Was the gun -- was the metal
19 part of the gun dark or like nickel colored like
20 shiny silver?

21 A It was all the same color.

22 Q Same color of what, same color of 59-A?

23 A Yes, sir that, gray color.

24 Q All right. Was the barrel length of
25 State's 59-A about the same barrel length as about

1 what you saw?

2 A As I recall.

3 Q Now, Ms. Montes, when you saw this weapon
4 in Mr. Demery's vehicle, can you tell the jury where
5 the butt of the gun was and where the barrel was
6 pointed?

7 A The barrel was pointed towards the
8 passenger door.

9 Q And where was the butt of the gun?

10 A I don't know what the butt of the gun is.

11 Q Well, the butt would be the handle.

12 MR. BRITT: Objection to

13 Mr. Bowen's commentary.

14 MR. BOWEN: Let me rephrase it.

15 BY MR. BOWEN:

16 Q Where was the handle of the gun?

17 A Down, like you've got the driver's seat
18 here, and the passenger seat here, the handle was
19 over here.

20 Q On which side?

21 A The driver's side. And the barrel was
22 pointed that way. It was like in a backwards seven.

23 Q Ms. Montes, when you saw that weapon in
24 Mr. Demery's Tempo, was anybody else around when you
25 observed that?

1 A Hector and Sebette, they were getting the
2 grill ready for us to cook.

3 Q Did you make any remarks or statements
4 about what you had seen?

5 A Yes, sir.

6 Q And to whom did you make those remarks or
7 statements?

8 A I told Hector, my brother-in-law now, my
9 sister Sebette, and my mother.

10 Q And when was it, with reference to the time
11 that you saw it, that you told these other people
12 about it?

13 A Immediately.

14 Q Now, Ms. Montes, that evening, did there
15 come a time to your knowledge that Mr. Demery left
16 and came back for a short time during the evening
17 hours?

18 MR. BRITT: Objection.

19 THE COURT: Rephrase, Mr. Bowen.

20 BY MR. BOWEN:

21 Q State whether or not there came a time that
22 Mr. Demery left and returned a short time later.

23 MR. BRITT: Objection.

24 THE COURT: Overruled. You may
25 answer.

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1 THE WITNESS: Yes, sir.

2 BY MR. BOWEN:

3 Q Did anybody go with him at that time?

4 A Yes, sir.

5 Q Who was that?

6 A Larry Demery.

7 Q Well, and who went with Larry Demery for
8 that short period of time?

9 A Daniel Green.

10 Q And what time of the night was that?

11 A Around 6:00. It hadn't quite got dark yet.

12 Q On the 22nd?

13 A Yes, sir.

14 Q How long would you say they were gone?

15 A I know they were gone for a while because I
16 went home and came back.

17 Q So what would be your best estimate as to
18 how long --

19 A About an hour and a half, two hours.

20 Q So that by what time of the evening would
21 you say that they were back at your mother's house?

22 A About 9:30.

23 Q 9:30 or so?

24 A Yes, sir.

25 Q Now, from 9:30 until the time that you left

1 approximately 1:00 a.m., state whether or not both
2 Daniel Green and Larry Demery were there at your
3 mother's house continuously.

4 MR. BRITT: Objection, leading.

5 THE COURT: Overruled. You may
6 answer.

7 THE WITNESS: Yes, sir.

8 BY MR. BOWEN:

9 Q Now, before your leaving approximately
10 1:00, did anybody else that was there that night
11 leave your mother's house before 1:00, before when
12 you left?

13 A Yes, sir.

14 Q Who was that?

15 A My sister Sebette Leones and my
16 brother-in-law, Hector Leones.

17 Q Approximately when did they leave?

18 A 10:30, 11:00.

19 Q Now, to your knowledge, did they return?

20 A Yes, sir.

21 Q And when did they come back?

22 A Around 12:00.

23 Q Now then, from 12:00 to 1:00, when you
24 left, then Hector and her - Hector and his
25 girlfriend Sebette were there; is that correct?

1 A Yes, sir.

2 Q Now, talking about the den area, how many
3 times would you say that you went in the den for any
4 reason during that evening after it got dark, say?

5 A Mr. Bowen, more times really than I can
6 count.

7 Q And what was your purpose in going in
8 there?

9 A To quiet the children down.

10 Q And when you would go into the den, who
11 would be there?

12 A All the kids, my two, Daniel and Collin,
13 and Monica Hernandez, Bobbie Joe Morillo, Daniel
14 Green, Larry Demery, and Ebony.

15 Q Now, was Larry Demery paying any particular
16 attention to any of the girls?

17 MR. BRITT: Objection.

18 THE COURT: Sustained.

19 BY MR. BOWEN:

20 Q Well, did you see Larry Demery sitting with
21 any of the girls?

22 MR. BRITT: Objection to the
23 relevance.

24 THE COURT: Overruled. You may
25 answer.

1 THE WITNESS: Yes, sir. He had
2 tried to sit close to my sister, but my
3 mother kind of intervened.

4 BY MR. BOWEN:

5 Q When you went in there, did you ever see
6 Daniel Green sitting other than with Bobbie Jo?

7 A No, sir.

8 Q And state if you can how closely they were
9 sitting?

10 A As the pictures say they were sitting on
11 top of each other.

12 Q Now, while they were in there, what if any
13 entertainment was going?

14 A The kids were dancing, singing, just
15 going -- having a ruckus, I mean they were wild.

16 Q And where was Ann Green and your mother at
17 this time?

18 A In the living room.

19 Q State whether or not either of them ever
20 came into the den to your knowledge.

21 A Yes, sir, several times.

22 Q And what happened when they came into the
23 den?

24 MR. BRITT: Objection.

25 THE COURT: If you know, you may

1 answer. If you were present and you have
2 personal knowledge, you may answer.

3 THE WITNESS: Yes, sir. Calming
4 them down, telling them to be quiet or they
5 were going to separate them.

6 BY MR. BOWEN:

7 Q Now, state whether or not the TV was on.

8 A Yes, sir.

9 Q And programming was still music videos or
10 something else?

11 A It varied.

12 Q All right. Now, what, if anything, did you
13 do with reference to the cleaning up after the meal?

14 A We cleaned up all the dishes and pots,
15 cleaned up the kitchen after cooking.

16 Q Now, your sister Sebette, do you know when
17 Sebette retired, if she did that evening?

18 A Yes, sir.

19 Q And with whom did she retire that evening,
20 if anyone?

21 A Hector Leones.

22 Q And whereabouts did they retire that
23 evening?

24 A In their bedroom.

25 Q And where was it with reference to what you

1 call the den area?

2 A The first door to the left.

3 MR. BOWEN: May I approach her,
4 Your Honor?

5 THE COURT: Yes, sir.

6 BY MR. BOWEN:

7 Q Ms. Montes, previously introduced for
8 illustrative purposes is Defense Exhibit 37. This
9 you have identified as a diagram of your mother's
10 home; is that correct?

11 A Yes, sir.

12 Q Could you use this diagram to more fully
13 illustrate to the jury the location of the bedroom
14 where you say that Hector and your sister Sebette
15 retired for the evening?

16 A Yes, sir.

17 MR. BOWEN: Desire to reintroduce
18 it for the limited purpose.

19 THE COURT: It's already in.

20 MR. BOWEN: Judge, may she step
21 down in front of the jury?

22 THE COURT: Yes, sir.

23 MR. THOMPSON: Your Honor may

24 I --

25 THE COURT: Yes, sir.

1 BY MR. BOWEN:

2 Q Now, Ms. Montes, if you'll hold the exhibit
3 please, ma'am.

4 A Yes, sir.

5 Q And can you show to the jury using that
6 diagram for illustrative purpose where the bedroom is
7 into which Sebette and Hector Leones retired with
8 reference to the den area that you previously
9 described?

10 A Yes, sir.

11 Q Please do that.

12 A This bedroom here, first bedroom off the
13 den.

14 Q So part of a common wall is between these
15 two rooms; is that correct?

16 A Yes, sir.

17 Q Would you come forward and show to these
18 jurors where those rooms are?

19 A This bedroom.

20 Q Common wall is here?

21 A Yes, sir. This bedroom here, that's the
22 common wall.

23 Q You may return. Do you know whether or not
24 that home of your mother's is a factory-built home or
25 a site-built home?

1 A It's factory built.

2 Q State, if you know, how well sound
3 penetrates through what you have described as the
4 common wall as between the den and the bedroom
5 area.

6 MR. BRITT: Objection.

7 THE COURT: Sustained.

8 BY MR. BOWEN:

9 Q Now, can you say where the TV was in the
10 den, on which wall?

11 A Yes, sir.

12 Q And which wall was it on?

13 A The forewall, the -- I mean, I'm not good
14 with north, west --

15 Q Was it the one toward the bedroom or away
16 from the bedroom?

17 A Away from the bedroom.

18 Q On July 22nd, 1993, were there any clocks
19 on the wall in that room in the den room?

20 A Yes, sir.

21 Q And where were they located?

22 A On the walls, I mean, one was over the TV.

23 Q Now, state if you know if there were any
24 clocks in the living room area where your mother and
25 Ms. Green were?

1 A Yes, sir, several.

2 Q Did anybody else other than yourself,
3 Ms. Green, and your mother go into the den,
4 attempting to calm down the kids?

5 A Sebette did.

6 Q Where to your knowledge did Catina Jacobs
7 spend most of the evening?

8 A At my mother's.

9 Q What part of the house, if you know?

10 A In the living room, kitchen.

11 Q Approximately -- strike that. Did Hector
12 and Sebette retire at the same time?

13 A Approximately, within a few minutes of each
14 other.

15 Q After they retired to that bedroom with the
16 common wall, portion of the common wall between the
17 two rooms there with the den, did the noise quiet
18 down or did it stay about the same?

19 MR. BRITT: Objection.

20 THE COURT: Overruled.

21 THE WITNESS: Yes, sir, it stayed
22 about the same.

23 BY MR. BOWEN:

24 Q And were there times after Sebette and
25 Hector retired that one or more time went in there

1 and attempted to quiet them down?

2 MR. BRITT: Objection.

3 THE COURT: Overruled. You may
4 answer.

5 THE WITNESS: Yes, sir.

6 BY MR. BOWEN:

7 Q Now, at approximately 1:00, you say you
8 left?

9 A Yes, sir.

10 Q And with whom did you leave?

11 A Myself, my two children, and a friend.

12 Q That would have been still dark, early
13 morning hours of the 23rd; is that right?

14 A Yes, sir.

15 Q 1:00 a.m.

16 A Yes, sir.

17 Q Now, as you left, where did you see Larry
18 Demery, if you did?

19 A Sitting in the arm chair.

20 Q And what room was that in?

21 A The den.

22 Q You saw Larry Demery seated in the arm
23 chair. How far away was Daniel Green, if he was
24 there?

25 A Not far. My mother's den is not very big.

1 Q On that last glimpse of Daniel Green, who
2 was closest to him, if you know?

3 A Well, there was three of them, Daniel,
4 Bobbie, and Monica.

5 Q And where were they seated?

6 A Daniel and Monica were sitting side by side
7 on the couch, and Bobbie Jo was laid out across them.

8 Q Now, if you sat on the couch with the
9 arrangement that was in that room on the 22nd of
10 July, 1993, where was the television pointed with
11 reference to the couch?

12 A On the forewall.

13 Q Well, was it in front of the couch, behind
14 the couch, beside the couch, where?

15 A In front.

16 Q And what did Daniel and Bobbie Jo appear to
17 be doing as you left?

18 MR. BRITT: Objection.

19 THE COURT: Sustained.

20 BY MR. BOWEN:

21 Q Was the TV still running --

22 A Yes, sir.

23 Q -- as you left? What were Bobbie Jo and
24 Daniel doing as you left?

25 MR. BRITT: Objection.

1 THE COURT: Well, you can
2 describe what you saw, ma'am.

3 THE WITNESS: I mean, they were
4 becoming intimate. I mean, they were
5 close, I mean, like boyfriend, girlfriend.
6 I mean, they were very touchy and huggy,
7 and --

8 BY MR. BOWEN:

9 Q Did you notice the time as you left?

10 A Yes, sir.

11 Q How -- where did you notice the time?

12 A My wristwatch.

13 Q How did you leave from your mother's that
14 night, did you have a vehicle?

15 A Yes, sir, by my vehicle.

16 Q Larry Demery's car still there when you
17 left?

18 A Yes, sir.

19 Q Now, did you have occasion to come back to
20 your mother's later that Friday, that is, later on
21 the 23rd, having left at 1:00 a.m. on the 23rd?

22 A Yes, sir.

23 Q And what time of the day did you come back?

24 A Well, I came back that evening, I was back
25 and forth by my mother's, but not stopping.

1 Q Let's talk about what you mean by
2 "evening." Every evening, you mean afternoon or
3 night/evening or what --

4 A Evening, sixish, sevenish, maybe even just
5 a little bit later.

6 Q Had you been there any during the day?

7 A No, sir.

8 Q Can you recall when you came back from your
9 trip to Puerto Rico?

10 A Yes, sir.

11 MR. BOWEN: May I approach her,
12 Your Honor?

13 THE COURT: Yes, sir.

14 (Defense Exhibit 38 was
15 marked for identification.)

16 BY MR. BOWEN:

17 Q Ms. Montes, I show you what's been marked
18 for identification as Exhibit 38 and ask you what
19 that paper writing is, please?

20 MR. BRITT: Objection.

21 THE COURT: Do you want to be
22 heard, Mr. Britt?

23 MR. BRITT: Yes, sir.

24 THE COURT: All right. Folks,
25 this is probably a good point for me to

1 allow you to take mid-morning recess.
2 Please reassemble at 20 until. And we'll
3 continue with the presentation of evidence
4 at that time. Please also recall that it
5 is your duty to abide by all prior
6 instructions of the Court concerning your
7 conduct. Everyone else please remain
8 seated, the members of the jury are
9 excused.

10 (Jury out at 11:18 a.m.)

11 THE COURT: Ms. Montes, you may
12 come down.

13 What's the basis of the objection, Mr.
14 Britt?

15 MR. BRITT: First of all, there's
16 no foundation that she can identify the
17 document. Mr. Bowen's question was can you
18 tell us what this is. Secondly, it appears
19 to be a purported travel itinerary, which
20 if they intend to introduce it, my position
21 is they have to lay the foundation through
22 another witness and not Ms. Montes.

23 THE COURT: May I see the
24 exhibit?

25 MR. BOWEN: Yes, sir. If I may

1 approach. I'll just tell Your Honor, we
2 have the official record keepers from this
3 travel agency, and we intend to --

4 THE COURT: Was this her
5 itinerary?

6 MR. BOWEN: Yes, sir.

7 THE COURT: She can identify that
8 if it was her itinerary. The magic words
9 are, "Do you recognize it, can you tell us
10 what it is?" And once you do that, if she
11 can establish that it's her itinerary, then
12 I understand your objection, but that can
13 be established through personal knowledge.

14 MR. BOWEN: And we intend to go
15 further than that by bringing in the travel
16 agency people and putting on the best
17 evidence that they have.

18 THE COURT: That's up to you, but
19 it's cumulative.

20 For purposes of the record, do you
21 want Ms. Montes back up for the purpose of
22 establishing the answers to her questions?

23 MR. BRITT: Yes, sir, so every --
24 just so it's on the record.

25 THE COURT: I apologize, ma'am.

1 If you'll come back up. Mr. Bowen, if
2 you'll retrieve this.

3 MR. BOWEN: May I approach the
4 witness?

5 THE COURT: Yes, sir.

6 BY MR. BOWEN:

7 Q Ms. Montes, showing you Defendant's Exhibit
8 Number 38, do you know what that paper writing is?

9 A Yes, sir.

10 Q What is that?

11 A That's my flight itinerary.

12 Q Now, Ms. Montes, have you had this
13 document --

14 THE COURT: Establish the time
15 frame.

16 BY MR. BOWEN:

17 Q When did you first obtain this document?

18 A The original or this one, this one?

19 Q Tell us about the original first.

20 A The original was got months before the
21 trip.

22 Q Okay. Do you still have the original?

23 A I'm sure I've got it somewhere.

24 Q Did you obtain this document later on?

25 A Yes, sir.

1 Q And how and under what circumstances did
2 you obtain this document?

3 A I remember the date. And too, I keep
4 things like this for my records.

5 Q How did you get it, how did you come --

6 A I contacted the travel agency.

7 Q And what happened?

8 A I asked the lady for a copy of it, and she
9 said she would have to check to see if she had one.
10 And indeed she did, she faxed it to me.

11 Q Can you tell from anything on this paper
12 writing or do you know independently of your own
13 knowledge when it was faxed to you?

14 A Yes, sir.

15 Q When was it faxed to you?

16 A June 2nd, 1995.

17 Q By whom?

18 A The travel agency.

19 THE COURT: Is that an exact
20 duplicate of the original?

21 THE WITNESS: Yes, sir.

22 BY MR. BOWEN:

23 Q Has this, Defense Exhibit Number 38 been
24 kept among your valuable records and --

25 THE COURT: This is not coming in

1 as a business record, she can testify to
2 it.

3 BY MR. BOWEN:

4 Q This itinerary that is reflected in
5 Defendant's Exhibit 38, does it accurately reflect
6 what you did, that is, the airport that you took off
7 from and when you came back?

8 A Yes, sir.

9 MR. BOWEN: That's all.

10 THE COURT: Mr. Britt.

11 MR. BRITT: Just so it's on the
12 record, when did you return from Puerto
13 Rico?

14 THE WITNESS: August 4th.

15 MR. BRITT: 1993?

16 THE WITNESS: Yes, sir.

17 THE COURT: Thank you. If you'll
18 hand me that, please, Mr. Bowen.

19 State want to be heard further?

20 MR. BRITT: No, sir.

21 THE COURT: When we come back,
22 you can lay the foundation.

23 MR. BOWEN: May I approach?

24 THE COURT: Yes, sir. And then
25 we can go forward.

1 MR. BOWEN: Yes, sir.

2 THE COURT: We're at ease until
3 20 until.

4 (Brief recess.)

5 THE COURT: All counsel are
6 present, the defendant is present in open
7 court. Do we have all members of the jury
8 secured in the jury room?

9 THE BAILIFF: Yes, sir.

10 THE COURT: Bring them in,
11 please.

12 Ms. Montes, if you'll again take the
13 witness stand, please.

14 (Jury in at 11:39 a.m.)

15 THE COURT: Mr. Bowen.

16 MR. BOWEN: Yes. May I approach,
17 Your Honor?

18 THE COURT: Yes, sir.

19 BY MR. BOWEN:

20 Q Ms. Montes, I again hand you what's been
21 marked as Defendant's Exhibit 38, and ask you if you
22 recognize that paper writing, ma'am?

23 A Yes, sir.

24 Q What is that?

25 A It's my flight itinerary.

1 Q What trip is that flight itinerary for?

2 A My trip to Puerto Rico.

3 Q Is that the trip that you have described
4 earlier in your testimony as beginning on Saturday
5 morning after 9:00 on the 23rd of July, 1993?

6 A No, sir, on the 24th of July.

7 THE COURT: I'm sorry, ma'am --

8 THE WITNESS: 24th.

9 BY MR. BOWEN:

10 Q Started on the 24th, Saturday morning?

11 A Yes, sir.

12 Q You came back when?

13 A On the 4th of August.

14 Q Where did you get this document?

15 A Summey Travel Agency.

16 Q That's a copy?

17 A Yes.

18 Q Is that the very same as the original of
19 your itinerary?

20 A Yes, sir.

21 Q Did you receive an original of the
22 itinerary when you first booked the trip?

23 A Yes, sir.

24 Q Did you receive that prior to the 24th of
25 July, 1993?

1 A Yes, sir.

2 MR. BOWEN: At this time, Your
3 Honor, I desire to move -- introduce
4 Defense 38 into evidence.

5 THE COURT: Mr. Britt.

6 MR. BRITT: No objection.

7 THE COURT: Defendant's Exhibit
8 38 is admitted in evidence.

9 MR. BOWEN: Your Honor, I move
10 that this document be published to the
11 jury.

12 THE COURT: Yes, sir. Folks
13 please recall my instruction, examine the
14 exhibit individually and carefully and
15 without any comment.

16 (Exhibit published to the jury.)

17 THE COURT: Yes, sir, Mr. Bowen.

18 BY MR. BOWEN:

19 Q Ms. Montes, after midnight when Sebette and
20 Hector retired to the bedroom next to the den area,
21 state whether or not Sebette came out of that bedroom
22 and asked you to do anything. And if Your Honor
23 please, I offer that for the purposes of explaining
24 subsequent conduct.

25 MR. BRITT: Objection.

1 THE COURT: Do you want to be
2 heard, sir, or do you want a limiting
3 instruction.

4 MR. BRITT: No, I want to be
5 heard. The question assumes facts not in
6 evidence.

7 THE COURT: Rephrase, Mr. Bowen.

8 MR. BOWEN: All right.

9 BY MR. BOWEN:

10 Q State when Hector and Sebette retired?

11 A Right after they got back, around midnight.

12 Q State whether or not the bedroom in which
13 they retired was close by the den?

14 A Yes, sir.

15 Q In fact, was -- was part of a wall, a
16 common wall, between the two rooms?

17 A Yes, sir.

18 Q Did there come a time when you saw Sebette
19 come out of that room?

20 A Yes, sir.

21 Q Did Sebette ask you to do anything, without
22 saying what she asked?

23 A Yes, sir.

24 Q As a result of that conversation, what did
25 you do?

1 A Raised my hands and shook my head no, and
2 told her to go tell my mother.

3 THE COURT: About what time was
4 this, ma'am, if you recall?

5 THE WITNESS: After 12:00, about
6 12:30.

7 BY MR. BOWEN:

8 Q What, if anything, did Sebette ask you to
9 do? And we offer it solely for the purpose of
10 subsequent conduct.

11 MR. BRITT: Objection, ask for
12 limiting instruction.

13 THE COURT: Members of the jury,
14 the testimony now being elicited as to the
15 statement the witness contends was made to
16 her by someone who has not testified at the
17 this trial is being offered for the limited
18 purposes of explaining the subsequent
19 conduct of this witness. You may consider
20 this evidence for that limited purpose and
21 no other purposes.

22 BY MR. BOWEN:

23 Q What, if anything, did Sebette say?

24 A Told me to go in the den and tell the kids
25 to be quiet because of Hector having to work in the

1 morning.

2 Q Your response was what, what did you do or
3 say?

4 A I just kind of, "Go tell Momma, I've told
5 them a thousand times."

6 Q For the purposes of the record, you made
7 some hands gestures. Could you describe those so the
8 court reporter could write them down?

9 A Yes, I kind of shook my hands like, I'm
10 not, you go in the living room.

11 Q After you told Sebette that, what if
12 anything did Sebette do?

13 A She went in the living room and told my
14 mother.

15 Q And following that conversation, what if
16 anything happened?

17 MR. BRITT: Objection.

18 THE COURT: Overruled. You may
19 answer.

20 THE WITNESS: First, my mother
21 called Monica, which is my baby sister,
22 into the living room where she was at, then
23 and went into the room where the kids was,
24 and kind of blowed them out.

25 BY MR. BOWEN:

1 Q Now, then, where did Sebette go?

2 A Back to her room.

3 Q Now, on the 23rd of July, the day before
4 your trip to Puerto Rico, give the jury some idea of
5 the kind of things you were doing during the daylight
6 hour?

7 MR. BRITT: Objection, relevance.

8 THE COURT: What's the relevance,
9 Mr. Bowen?

10 MR. BOWEN: I'll move to the
11 issue.

12 BY MR. BOWEN:

13 Q Did you travel on the roads Friday in that
14 car?

15 A Yes, sir.

16 Q Did you travel by your mother's house?

17 A Yes.

18 Q Was this during the daylight hours?

19 A Yes, sir.

20 Q Did you see Daniel Green on your mother's
21 property sometime during the daylight hours of July
22 23rd, 1993?

23 A Yes, sir.

24 Q And about what time did you see him?

25 A About 3:30.

1 Q And what was Daniel Green doing at that
2 time?

3 A Mowing grass.

4 Q And where were you when you saw him?

5 A In the car going back to my home.

6 MR. BOWEN: That's all, sir.

7 THE COURT: Any

8 cross-examination?

9 CROSS-EXAMINATION

10 BY MR. BRITT:

11 Q Ms. Montes, it's your testimony when you
12 arrived at your mother's on July 22nd, 1993, that
13 Larry Demery and Daniel Green were already there?

14 A Yes, sir.

15 Q And it's your testimony that they left
16 together sometime around 7:30, 7:00, 7:30 p.m. that
17 night?

18 A It was around sixish, sevenish.

19 Q They were gone for about one-and-a-half to
20 two hours?

21 A Yes, sir.

22 Q Returned somewhere around 9:30?

23 A Yes, sir.

24 Q From 9:30 until 1:00 a.m. when you left,
25 they were both there?

1 A Yes, sir.

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

4 THE COURT: Any redirect
5 examination?

6 MR. BOWEN: No, sir, Your Honor.

7 THE COURT: May the witness step
8 down, folks?

9 MR. BRITT: Yes, sir.

10 MR. BOWEN: Yes, sir.

11 THE COURT: You're free to go.

12 Mr. Bowen.

13 MR. BOWEN: Defense calls Monica
14 Hernandez.

15 THE COURT: If you'll place your
16 left hand on the Bible raise your right

17 **MONICA HERNANDEZ,**
18 being first duly sworn was examined and testified as
19 follows:

20 **DIRECT EXAMINATION**

21 THE COURT: Speak up loudly and
22 clearly enough for everyone to hear you.

23 MR. BOWEN: Right into the
24 microphone.

25 THE COURT: Spell your last name

1 for the record.

2 THE WITNESS: H-E-R-N-A-N-D-E-Z.

3 THE COURT: And first name as
4 well, please.

5 THE WITNESS: M-O-N-I-C-A.

6 THE COURT: Thank you, ma'am.

7 BY MR. BOWEN:

8 Q Monica, what is your birthday?

9 A 7-28-79.

10 Q And you're how old now?

11 A 16.

12 Q Now, what is your address?

13 A Route 3, Box 185, Dublin.

14 Q That is in what area of Robeson County?

15 A Clyburn Pines.

16 Q Back in July of 1993, where were you
17 living?

18 A In the same area, of Clyburn Pines.

19 Q What is your mother's name?

20 A Kay Hernandez.

21 Q And in July of 1993, whom were you living
22 with?

23 A My mother and my sister Sebette and her
24 boyfriend, Hector.

25 Q Now, do you still live with your mother in

1 that Clyburn Pines area?

2 A Yes, sir, I do.

3 Q Where do you go to school?

4 A Lumberton Senior High School.

5 Q Were you in school today before you came
6 here?

7 A Yes, sir.

8 Q What grade are you in, Monica?

9 A 11th.

10 Q Now, Monica, do you recall the month of
11 July of 1993?

12 A Yes, sir.

13 Q Do you remember anything about your sister
14 going on a trip to Puerto Rico?

15 A Yes, sir.

16 Q Now, do you recall July the 22nd, two days
17 before she went to Puerto Rico? That is on a
18 Thursday.

19 A Yes, sir.

20 Q Now, state whether or not you were at home
21 that day?

22 A Yes, sir, I was.

23 Q And at that day, did you know Ann Green?

24 A Yes, sir.

25 Q And what kin is Ann Green, if any, to

1 Daniel Green?

2 A Her son.

3 Q And did you know Daniel Green back on the
4 22nd of July, 1993?

5 A Yes, sir.

6 Q How long had you known Daniel Green?

7 A Most of my life.

8 Q At that time, did you know Larry Demery?

9 A Yes, sir.

10 Q And how had you come to know Larry Demery?

11 A Through Daniel.

12 Q And about how long had you known Larry
13 Demery?

14 A Not long, when Daniel had introduced us.

15 Q Now, were you familiar with the car that
16 Larry Demery usually drove?

17 A Yes, sir.

18 Q What type and color of car was that?

19 A It was a tan-like color, and it was Tempo.

20 Q Describe how it sounded, if you can?

21 MR. BRITT: Objection.

22 THE COURT: Overruled. You may
23 answer.

24 BY MR. BOWEN:

25 Q On the 22nd of July or thereabout, 1993.

1 A It sounded like the motor was blowed up.
2 It was raggedy.

3 Q Could you recognize the car from its sound
4 alone?

5 A Yes, sir.

6 Q Now, what was the relationship, Monica, if
7 you will, between your mother, Kay Hernandez, and Ann
8 Green, Daniel's mother?

9 A They were best friends.

10 Q State whether or not from time to time your
11 mother and your family would visit in Ann Green's
12 home and Ann Green and her family would visit in your
13 mother's home back in July of 1993, did that happen
14 some?

15 A Yes, sir.

16 Q Now, on July 22nd, 1993, were you in school
17 or were you on vacation?

18 A On vacation.

19 Q On the 22nd of July, 1993, describe what
20 was being done in preparation for the evening meal,
21 if you know?

22 A We were cooking on the outside.

23 Q Who all was there?

24 A Me, my cousin Bobbie Jo.

25 Q What is Bobbie Jo's last name?

1 A Morillo.

2 Q All right.

3 A My sister, Nellie Montes; her two children,
4 Daniel Miller and Collin Montes; and my sister,
5 Sebette Leones; and Ann Green and Ebony Green and
6 Daniel Green and Larry Demery and Catina Jacobs.

7 Q Now, was Hector Leones there?

8 A He was after he had got off work.

9 Q He came later. Who was doing the cooking
10 that night?

11 A Hector was.

12 Q Once he got off work?

13 A Yes, sir.

14 Q Catina Jacobs, how long have you known
15 Catina?

16 A For a while.

17 Q Well, let me ask this way: How long had
18 you known her back in July of 1993?

19 A For a while, a long time.

20 Q Is Catina here in the courtroom with us
21 today?

22 A Yes, sir.

23 Q Now, since that -- well, Sebette and
24 Hector, back in July of 1993, were they married at
25 that time?

1 A No, sir, they weren't.

2 Q Now, since that time have they married?

3 A Excuse me?

4 Q Did they get married sometime after that,
5 are they married now?

6 A Yes, sir, they are.

7 Q What room of the house did you spend most
8 of your time in that evening?

9 A In the den.

10 Q And if you know, what room did Daniel Green
11 spend most of his time that evening in?

12 A In the den.

13 Q And what room did Bobbie Jo spend most of
14 her time in that evening?

15 A In the den.

16 Q Did you ever see Bobbie Jo and Daniel Green
17 sitting close?

18 A Yes, sir.

19 Q Did you ever see them hugging each other?

20 A Yes, sir.

21 Q Did you ever see Bobbie Jo sitting on
22 Daniel's lap?

23 A Yes, sir.

24 Q Now, did you see Larry Demery in that den
25 room?

1 A Yes, sir.

2 Q Where did he mostly sit, if he did?

3 A At the back of the den on a chair.

4 Q And can you describe what kind of head
5 covering he had, if he wore a hat, while he was in
6 the house?

7 A Black leather Harley Davidson hat.

8 Q Did you ever see him take it off?

9 A No, sir.

10 Q Now, who else was in that den room there
11 where you've described that you were and Daniel was
12 and Bobbie Jo was and Larry Demery was?

13 A Myself and Daniel Green and Larry Demery,
14 and Bobbie Jo Morillo and Ebony Green.

15 Q Did you ever see Catina come into that
16 room?

17 A Yes, sir.

18 Q And do you know whether or not Catina
19 stayed there all night long that night?

20 A Yes, sir.

21 MR. BRITT: Objection.

22 THE COURT: Overruled. You may
23 answer.

24 THE WITNESS: Yes, sir.

25 MR. BOWEN: She did.

1 BY MR. BOWEN:

2 Q State whether or not Ann Green ever came
3 back into that den for brief periods.

4 MR. BRITT: Objection to the
5 leading.

6 THE COURT: Well, did you see
7 Ms. Green in the den area during the course
8 of that night, ma'am?

9 THE WITNESS: Yes, sir.

10 THE COURT: Tell us about that.

11 THE WITNESS: She would come in
12 and fuss at us about how loud we were
13 being.

14 BY MR. BOWEN:

15 Q Did your mother, Kay Hernandez, ever come
16 back into that den area?

17 A Yes, sir.

18 Q When she did, what did she do?

19 A She told us to --

20 MR. BRITT: Objection.

21 THE COURT: Overruled.

22 THE WITNESS: She told us to
23 quiet down.

24 BY MR. BOWEN:

25 Q What was the source of the noise, Monica?

1 A Loud.

2 Q Well, was any kind of music playing?

3 MR. BRITT: Objection to the
4 leading.

5 THE COURT: Describe what was
6 happening.

7 THE WITNESS: We were sitting in
8 the den, laughing, and singing and dancing
9 and carrying on.

10 BY MR. BOWEN:

11 Q Was there any sort of device of any sort
12 making noise in there, any appliances of any sort?
13 Did you have a TV?

14 A The television.

15 Q What was the television playing or making
16 noise with?

17 A The sound.

18 Q Yeah, but what kind of program was on?

19 A BET.

20 Q And for those of us that don't know, what
21 kind of programming was BET that evening?

22 A Black Entertainment TV.

23 Q Now, do you remember a time when your
24 sister Nellie left the house?

25 A Yes, sir.

1 Q And what is your best estimate of about
2 when Nellie left?

3 A Around 1:00.

4 Q And who left with Nellie, if anyone?

5 A Her two children and one of her friends.

6 Q Now, when she left, were the same people
7 that you described a moment ago still in that den
8 area?

9 A Excuse me?

10 Q Were the same people that you named a
11 moment ago being in the den watching BET, were they
12 still there when Nellie left?

13 A Yes, sir.

14 Q Now then, do you remember any time after
15 Nellie left when anybody from -- that was in the den
16 area left the house?

17 A Yes, sir.

18 Q Who left?

19 A Larry Demery.

20 Q And when?

21 A I would say about an hour after my sister
22 had left.

23 Q Okay. So did you look at a clock exactly,
24 do you know exactly what time it was?

25 A I didn't look at the clock, but I can say

1 it was.

2 MR. BRITT: Objection.

3 THE WITNESS: After my sister had
4 left.

5 THE COURT: Is that an
6 approximation on your part, are you
7 approximating the time?

8 THE WITNESS: I don't understand.

9 THE COURT: Are you guessing
10 about how much time had passed after your
11 sister left.

12 THE WITNESS: Yes, sir.

13 THE COURT: Mr. Bowen.

14 BY MR. BOWEN:

15 Q So then approximately an hour after Nellie
16 Montes left --

17 A Yes, sir.

18 Q -- then what did Daniel -- what did Larry
19 do or say?

20 A He left the house.

21 Q Were you there in the den when he left the
22 house?

23 A Yes, sir.

24 Q What, if anything, did he say to Daniel
25 before he left the house? And I offer it for

1 purposes of explaining subsequent conduct.

2 MR. BRITT: Objection. Like to
3 be heard.

4 THE COURT: Ladies and gentlemen,
5 there's a matter of law the Court must take
6 up. Don't worry or speculate about what
7 takes place in the courtroom in your
8 absence. And if you would please step to
9 the jury room.

10 (Jury out at 12:06 p.m.)

11 THE COURT: Following is being
12 heard in the absence of the jury. If you
13 will answer Mr. Bowen's questions so I can
14 rule in context, ma'am.

15 THE WITNESS: Yes, sir.

16 BY MR. BOWEN:

17 Q What, if anything, did Larry say to Daniel
18 just before he left, anything concerning going with
19 him?

20 THE COURT: Let her answer.

21 THE WITNESS: He called him on
22 the outside for about three minutes to tell
23 him something, I don't know what it was.

24 BY MR. BOWEN:

25 Q As a result, what did you hear Larry say if

1 anything to, as you say calling on the outside, what
2 did he say?

3 MR. BRITT: Objection, she
4 testified she doesn't know what was said.

5 THE COURT: Ma'am, before
6 Mr. Demery left the den area, did you hear
7 him saying anything at all to Daniel
8 Green?

9 THE WITNESS: No, sir.

10 THE COURT: What exactly did
11 occur when Mr. Demery left the den area.

12 THE WITNESS: Daniel and Larry
13 sitting on the outside.

14 THE COURT: Did anybody say
15 anything to anybody before they both
16 stepped outside?

17 THE WITNESS: No, sir.

18 THE COURT: So they got up and
19 left together?

20 THE WITNESS: Yes, sir.

21 THE COURT: And Mr. Green stayed
22 out there how long?

23 THE WITNESS: My best guess is
24 three minutes.

25 THE COURT: And then what

1 happened?

2 THE WITNESS: Larry left and
3 Daniel came back inside.

4 THE COURT: Mr. Bowen.

5 MR. BOWEN: I withdraw it, Your
6 Honor. I withdraw it.

7 THE COURT: All right. Well,
8 there's nothing to rule on. Bring the jury
9 back in.

10 (Jury in at 12:09 p.m.)

11 THE COURT: The question is
12 withdrawn, Mr. Bowen?

13 MR. BOWEN: Yes, sir.

14 BY MR. BOWEN:

15 Q Approximately 2:00 a.m., what if anything
16 did Mr. Larry Demery do?

17 MR. BRITT: Objection to the
18 form. Assumes matters not in evidence.

19 THE COURT: Sustained. Rephrase.

20 BY MR. BOWEN:

21 Q Well, at the time whenever it was -- strike
22 that.

23 After your sister left, Nellie Montes, did
24 there come a time when Larry Demery left?

25 A Yes, sir.

1 Q And when was that in reference to the time
2 your sister left?

3 A I would say about an hour.

4 Q Now, when Larry left the room, that is, he
5 left the den; is that right?

6 A Yes, sir.

7 Q And what did Daniel do at that moment?

8 A He stayed in the den.

9 Q Then did you hear any noise outside?

10 A Larry's car cranking up to leave.

11 Q Could you recognize that from the sound as
12 Larry's car?

13 A Yes, sir.

14 Q At that point what, if anything, did Daniel
15 do?

16 A He stayed inside.

17 Q And who was he still with, if anyone?

18 A Bobbie Jo.

19 Q Did you then hear Daniel's car -- did you
20 hear Larry's car further?

21 A Yes, sir, as it was leaving.

22 Q Now, just before Larry left, did Daniel
23 step outside a moment?

24 A Yes, sir.

25 Q How long would you say Larry -- that Daniel

1 was outside?

2 A About three minutes.

3 Q And then what, if anything, did Daniel
4 do?

5 THE COURT: Who, if anyone, did
6 he go outside with.

7 THE WITNESS: He went outside
8 with Larry.

9 BY MR. BOWEN:

10 Q When he stepped back inside, was Larry with
11 him?

12 A No, sir.

13 Q Where was the sound of the car, if you
14 heard any, when Daniel stepped back in the house?

15 A It was cranking up.

16 Q And did you hear the sound of that car do
17 anything or go anywhere that you could hear?

18 MR. BRITT: Objection.

19 THE COURT: Well, what happened
20 after you heard the car crank up, ma'am.

21 THE WITNESS: I heard it leaving.

22 BY MR. BOWEN:

23 Q And as you heard the sound of the car
24 leaving, where was Daniel?

25 A Inside the house.

1 Q Who was he with?

2 A Bobbie Jo.

3 Q And what piece of furniture was he on?

4 A On the couch.

5 Q And what room was that couch in?

6 A The den.

7 Q Now did you remain awake after that,
8 Monica?

9 MR. BRITT: Objection to the
10 leading.

11 THE COURT: Overruled. You may
12 answer, ma'am.

13 THE WITNESS: Yes, sir.

14 BY MR. BOWEN:

15 Q How long did you stay up that night or that
16 morning?

17 A Almost all night.

18 Q And when you stayed up, where did you stay
19 up, what room did you stay up in?

20 A In the den.

21 Q And during the time that you were in that
22 den, after the time that Daniel Green came back in,
23 after those three minutes with Larry Demery, did you
24 ever again see Daniel Green leave that den?

25 A No, sir.

1 Q Who else was in that den throughout that
2 evening, throughout that night, early morning hours
3 of the 23rd?

4 A Myself, Bobbie Jo Morillo, Daniel Green,
5 Ebony Green.

6 Q Now then, did there come a time when you
7 heard a noise outside?

8 A Yes, sir.

9 Q And describe that noise to the jury.

10 A There was a knock at the door.

11 MR. BRITT: Objection, move to
12 strike, not responsive.

13 THE COURT: Overruled.

14 BY MR. BOWEN:

15 Q And describe what you did when you heard
16 that knock?

17 A I went to the door.

18 Q Where were you when you heard that knock?

19 A On an orange chair.

20 Q In what room?

21 A In the den.

22 Q And who was in the den then when you first
23 heard that knock?

24 A Myself, Bobbie Jo Morillo, Daniel Green,
25 Ebony Green.

1 Q Had you been to sleep at all during that
2 time, from the time that Larry Demery left until the
3 time you heard that knock?

4 A No, sir.

5 Q What, if anything, did you do with
6 reference to the knock?

7 A I got up out of my seat and I walked to the
8 door.

9 Q And what happened?

10 A I opened up the door.

11 Q What then happened?

12 A Larry came inside.

13 Q Can you describe Larry Demery to the jury
14 when he came inside, that is, how he looked and how
15 he acted?

16 A He was nervous, he was shaking, kind of
17 like he was anxious and ready to go.

18 Q And what then happened?

19 A He told Daniel that he was --

20 MR. BRITT: Objection.

21 THE COURT: You can describe what
22 happened, ma'am.

23 THE WITNESS: He told Daniel --

24 MR. BRITT: Objection.

25 THE COURT: I apologize, that's

1 confusing. Without going into what was
2 said, what did you see occur?

3 BY MR. BOWEN:

4 Q Without saying what he said, did Larry say
5 anything to Daniel? Just yes or no, did he say
6 anything to Daniel?

7 A Yes, sir.

8 THE COURT: Then what did Daniel
9 do, if anything?

10 THE WITNESS: He spoke back to
11 Larry.

12 THE COURT: And then what
13 happened?

14 THE WITNESS: Daniel told him,
15 Larry, to give him a few minutes.

16 BY MR. BOWEN:

17 Q Then what did Daniel do after he had told
18 him to give him a few minutes?

19 A He finished talking to Bobbie Jo.

20 Q How long did he spend with Bobbie Jo?

21 A My best guess is about ten more minutes.

22 Q What was Larry doing and where was Larry
23 during the time that Daniel was talking to Bobbie Jo?

24 A He was standing up behind the couch.

25 Q Now then, did there come a time when Daniel

1 left with Larry Demery?

2 A Yes, sir.

3 Q Now, following that, when did you go to
4 sleep, when did you go to bed that morning?

5 A After Larry and Daniel had left.

6 THE COURT: About what time was
7 it, based on your best recollection, that
8 this occurred, the matters you've just
9 testified about, ma'am?

10 THE WITNESS: Around 4:30.

11 BY MR. BOWEN:

12 Q And how are you able to fix that time?

13 A By looking at the clock above the
14 television.

15 Q And when did you have occasion to look at
16 the clock and why?

17 A After Daniel and Larry had left, I was
18 cutting off the TV and I looked at the clock, and the
19 time was 4:57.

20 Q 4:57?

21 A Yes, sir.

22 Q So how long had Larry and Daniel been gone
23 would you say when you saw that time 4:57 on the
24 clock?

25 A About five minutes.

1 Q About five minutes. Okay. Can you tell
2 the jury when you, if anytime, retired that morning,
3 went to bed?

4 A Maybe about a little bit after 5:00.

5 Q Now, did Daniel have any kind of a vehicle
6 over there that Thursday night the 22nd or early
7 morning of the 23rd? Did he have a car or any kind
8 of conveyance of his own?

9 A No, sir.

10 Q How many times, if you recall, did Tina
11 come in to the room, that is, into the den room that
12 night, if you recall?

13 A She came in a couple, I can't give you an
14 exact time how many times she came in.

15 Q Did she come in any time during the time
16 that you recall that Daniel Green was still there but
17 Larry Demery had already left?

18 A No, sir.

19 Q You don't recall that?

20 A No, sir.

21 Q When Larry Demery came knocking the
22 morning, you went to the door, who else was awake in
23 the den?

24 A Bobbie Jo and Daniel.

25 Q What was Sebette doing -- I'm sorry, what

1 was Ebony doing?

2 A She was asleep on the floor.

3 Q Do you remember anybody else coming into
4 the room from elsewhere in the house?

5 MR. BRITT: Objection, she
6 testified no one else was in the room.

7 THE COURT: Rephrase, Mr. Bowen.

8 BY MR. BOWEN:

9 Q Do you remember -- do you recall anybody
10 else, any sound in the house or any indication that
11 anybody else was up?

12 MR. BRITT: Objection.

13 MR. BOWEN: When -- and just
14 after Larry came and knocked.

15 THE COURT: Overruled. You may
16 answer.

17 THE WITNESS: My mother and Ann
18 Green and Catina were in the room awake
19 watching television.

20 MR. BOWEN: That's all, Your
21 Honor.

22 THE COURT: Any
23 cross-examination?

24 MR. BRITT: Yes, sir.

25 CROSS-EXAMINATION

1 BY MR. BRITT:

2 Q Ms. Hernandez, you've known the defendant
3 most of your life?

4 A Yes, sir.

5 Q You describe him as a good friend?

6 A Yes, sir.

7 Q You describe the relationship between your
8 families as being very close?

9 A Yes, sir, I would.

10 Q Who was the first person that you spoke
11 with about your testimony?

12 A My mother.

13 Q And when was that?

14 A Not too long ago.

15 Q When you say "not too long ago," you mean
16 within the last month?

17 A Yes, sir.

18 Q So within the last month is the first time
19 you've said anything to anyone about Larry Demery
20 leaving your house on the morning of July 23rd, 1993?

21 A Yes, sir.

22 Q And other than your mother, have you talked
23 with Mr. Garth Locklear?

24 A Yes, sir.

25 Q Have you talked with Mr. Bowen?

1 A Yes, sir.

2 Q Talked with Mr. Thompson?

3 A Yes, sir.

4 Q Talked with any of the other investigators
5 in connection with the case?

6 A No, sir.

7 Q Did you talk with those individuals after
8 you talked to your mother within the last month?

9 A Yes, sir.

10 MR. BRITT: I don't have any
11 other questions.

12 THE COURT: Anything on
13 redirect?

14 MR. BOWEN: Yes, sir.

15 REDIRECT EXAMINATION

16 BY MR. BOWEN:

17 Q Since right after July of 1993, Monica, did
18 any police officer ever come talk to you?

19 A No, sir.

20 Q Specifically after May the 8th, 1995, did
21 any police officer ever come to talk to you right
22 after that time?

23 A Police officer?

24 Q Yes, ma'am. Any police officer, detective,
25 anybody from the law?

1 A Yes, sir.

2 Q Right after May of 1995?

3 A I believe so.

4 Q Who came to talk to you?

5 A I don't know, there were two men.

6 Q Did you talk to them?

7 A Yes, sir.

8 Q Folks that have talked to you, have you
9 answered their questions as best you could?

10 MR. BRITT: Objection.

11 THE COURT: Sustained.

12 BY MR. BOWEN:

13 Q Have you refused to talk to anybody?

14 A Nobody has asked me besides Mr. Garth and
15 you yourself, Mr. Thompson.

16 MR. BOWEN: That's all.

17 THE COURT: Anything further.

18 MR. BRITT: I don't have any
19 other questions.

20 THE COURT: Thank you, ma'am.

21 You may come down. Mr. Bowen.

22 MR. BOWEN: Yes, Your Honor.

23 Mr. Hector Leones.

24 THE COURT: If you'll place your
25 left hand on the Bible and raise your right

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HECTOR LEONES,

being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

THE COURT: If you will spell both your first and last name for the benefit of the court reporter.

THE WITNESS: H-E-C-T-O-R, L-E-O-N-E-S.

BY MR. BOWEN:

Q Mr. Leones, where do you live, sir?

A Route 3, Box 317-A, Lumberton.

Q Are you married, sir?

A Yes, sir.

Q To whom?

A Sebette.

Q And Sebette's maiden name is Hernandez; is that right?

A No, sir.

Q I'm sorry, is she Kay's daughter?

A Yes, sir.

Q Kay Hernandez's daughter?

A Yes, sir.

Q You all have been married about how long now?

1 A About two years, two and a half years.

2 Q Back on the 22nd of July of 1993, were you
3 all going together?

4 A Yes, sir.

5 Q And where were you living at that time?

6 A With my mother-in-law, Kay Hernandez.

7 Q And at that time, do you remember the 22nd
8 day of July, 1993?

9 A Yes, sir.

10 Q Do you remember the time that your
11 sister-in-law went to her trip to Puerto Rico?

12 A Yes, sir.

13 Q And do you remember what day of the week
14 that they went on that trip?

15 A It think it would be that weekend, that
16 Saturday.

17 Q So two days before was the Thursday, the
18 22nd of July; is that correct?

19 A Yes, sir.

20 Q And where were you that evening?

21 A I worked earlier that day.

22 Q And when did you get off of work,
23 approximately?

24 A Around 5:00.

25 Q And where did you go after work?

1 A Home.

2 Q Where was that?

3 A Kay's house.

4 Q And what was going on when you got there,
5 if anything?

6 A We had some friends over.

7 Q Who were those friends?

8 A Daniel and Ann.

9 Q Ann Green, you mean?

10 A Yes, sir, Catina Jacobs, Nellie.

11 Q Now, Catina Jacobs; is that right?

12 A Yes, sir.

13 Q Who else?

14 A Larry Demery. My wife Sebette. Monica and
15 Bobbie Jo.

16 Q Who cooked that night?

17 A I did.

18 Q And whereabouts did you cook, in the house
19 or outside?

20 A On the grill outside.

21 Q And about what time did you all eat the
22 evening meal, if you did?

23 A Kind of late, I would say 9:30, 10:00.

24 Q Where were you working Mr. Leones?

25 A Pinecrest Country Club.

1 Q How long had you been doing that work at
2 that time?

3 A I would say eight, nine months.

4 Q How are you employed now?

5 A I work with Wilbert Vault.

6 THE COURT: Would you spell that
7 last name, sir? Wilbert who?

8 THE WITNESS: Vault, V-A-U-L-T.

9 BY MR. BOWEN:

10 Q Did we bring you from your work today?

11 A Yes, sir.

12 Q On the 22nd, can you recall -- can you
13 recall when you all sat down to eat and where?

14 A Time?

15 Q About, if you recall.

16 A I would say 9:30, 10:00. And we ate in
17 the -- well, it's the living room, dining room.

18 Q Now, do you know where the den area is in
19 the house?

20 A Yes, sir.

21 Q Back at the den, generally, who was
22 congregating back at the den, if anyone, and what was
23 going on back there?

24 A Daniel Green, Larry Demery, Monica
25 Hernandez, Bobbie Jo, Ebony, and Daniel and Collin.

1 Q And what was going on back there, what were
2 they doing?

3 A Having fun, I mean, you know --

4 Q Were they enjoying any kind of particular
5 entertainment?

6 A Dancing, singing.

7 Q Was there a TV?

8 A Yes, sir.

9 Q Was it running?

10 A Yes, sir.

11 Q What was playing?

12 A Videos, music videos.

13 Q Now then, you and your wife and the rest of
14 the adults, what area of the house did they tend to
15 stay in, if they tended to stay in any?

16 A Well, must have stayed on the outside and
17 the ladies stayed in the living room.

18 Q Now, to your knowledge, did any of those
19 folks go back to the den from time to time, the
20 adults go back to the den from time to time, or do
21 you know?

22 A No, sir, I really --

23 Q All right. Now, what time did you have to
24 get to work the next morning?

25 A 7:00.

1 Q Now, did there come a time that evening on
2 the 22nd that you and your wife left Kay Hernandez's
3 house?

4 A Yes, sir.

5 Q What time was that?

6 A After we ate dinner, I would say around
7 11:00.

8 Q And did you come back?

9 A Yes, sir.

10 Q When did you arrive back?

11 A 12:00, 12:30.

12 Q When you arrived back at 12:00, 12:30, how
13 did you come into the house?

14 A Through the den.

15 Q When you came back into the house at 12:00
16 or 12:30, who was in the den?

17 A Daniel Green, Larry Demery, Bobbie Jo,
18 Monica Hernandez, Ebony, and Collin and Daniel.

19 Q Now, how close were Daniel and Bobbie Jo
20 sitting, if they were?

21 A Side by side, next to each other.

22 Q Where was Larry Demery sitting in the den,
23 if you recall?

24 A In the corner, in a recliner-like chair.

25 Q Now, Mr. Leones, when approximately did you

1 retire to the bedroom that evening, if you did?

2 A As soon as I got back, around 12:30.

3 Q Was that a bedroom that partially adjoined
4 the den?

5 A Yes, sir.

6 Q And when you retired that night, state what
7 conditions of noise, if any, were existing in the den
8 at that time?

9 A As far as loud noise?

10 Q Yes, sir.

11 A Yes, sir, it was loud.

12 Q How loud?

13 A Disturbing.

14 Q Are you a pretty heavy sleeper?

15 A Yes, sir.

16 Q Were you able to get to sleep that night?

17 A Yes, sir.

18 Q Got any idea when you might have dropped
19 off to sleep?

20 A 10, 15 minutes after I laid down.

21 Q Now you when you retired to that bedroom,
22 state whether or not your now wife, then fiancée,
23 retired with you?

24 A Yes, sir.

25 Q You don't know whether she went to bed

1 immediately, do you, went to sleep immediately, do
2 you?

3 A No, sir.

4 Q Do you recall approximately when you woke
5 up the next day?

6 A 6:30.

7 Q To be at work at about 7:00?

8 A Yes, sir.

9 MR. BOWEN: That's all.

10 THE COURT: Mr. Britt.

11 CROSS-EXAMINATION

12 BY MR. BRITT:

13 Q Mr. Leones, how long did you live with Kay
14 Hernandez before you married her daughter?

15 A Year and a half, two years.

16 Q And during that year and a half to two
17 years, it was common for Ann Green and Daniel Green
18 to come to that residence and visit?

19 A Yes, sir.

20 Q It was common for them to borrow things?

21 A Yes, sir.

22 Q Kay Hernandez owned a Shop Vac vacuum
23 cleaner, didn't she?

24 A Yes, sir.

25 Q And that Shop Vac vacuum cleaner was kept

1 in a storage building behind Ms. Hernandez's trailer,
2 wasn't it?

3 A Yes, sir.

4 Q And that building was not -- that storage
5 building was not locked, was it?

6 A Yes, sir.

7 Q At all times?

8 A Most of the time.

9 Q Who had keys to the building?

10 A My mother-in-law, Kay. They hung up in the
11 house.

12 Q Now, they hung up in the house?

13 A Yes, sir.

14 Q Who had keys to the residence?

15 A I have a key.

16 Q Did Ann Green have a key?

17 A Not that I know of.

18 Q Ann Green lived there off and on during the
19 summer of 1993, didn't she?

20 A Yes, sir.

21 Q During July of 1993, that was her primary
22 place of residence, wasn't it?

23 A Yes, sir, you could say that.

24 Q And during this time when this cookout was
25 held in July of 1993, Ann Green was staying there at

1 Kay Hernandez's residence, wasn't she?

2 A I can't say for sure.

3 Q Daniel did not stay there as often as his
4 mother, did he?

5 A Correct.

6 Q Daniel spent a lot of time with Larry
7 Demery whenever you saw him?

8 A Yes, sir.

9 Q And on every occasion when you saw Daniel
10 Green, you saw Larry Demery, didn't you?

11 A Yes, sir, most of the time.

12 Q Do you recall in July of 1993 watching a
13 videotape at Kay Hernandez's?

14 A No, sir.

15 Q Do you remember coming in from work one
16 evening and seeing a videotape of Daniel Green
17 playing on the television?

18 A Yes, sir, I think so.

19 Q And in that video, the defendant was
20 rapping and his mother was standing in an area behind
21 him as depicted in that video?

22 MR. BOWEN: Object.

23 THE WITNESS: I can't recall.

24 THE COURT: For what purpose is
25 this being offered Mr. Britt?

1 MR. BRITT: Offered to
2 corroborate previous testimony from State's
3 witnesses.

4 THE COURT: Overruled. Do you
5 want a limiting instruction?

6 MR. BOWEN: Yes, sir.

7 THE COURT: Members of the jury,
8 the testimony now being elicited from Mr.
9 Leones is being offered for the limited
10 purpose of corroboration. And to the
11 extent that you find that it is
12 corroborative of other testimony at this
13 trial, you may consider it. That evidence
14 for that limited purpose and no other
15 purpose.

16 BY MR. BRITT:

17 Q Mr. Leones, do you remember being
18 interviewed on August the 20th, 1993, by an SBI Agent
19 by the name of Tony Underwood and Detective Anthony
20 Thompson from the Robeson County Sheriff's
21 Department?

22 A Yes, sir.

23 Q Do you remember telling them on -- excuse
24 me, on August the 20th of 1993, you told them about
25 watching a video where Daniel was rapping and his

1 mother was standing behind him in that video, didn't
2 you?

3 A Yes, sir, I guess I did.

4 Q And you told them on that video that Daniel
5 was wearing rings on his hands, didn't you?

6 A I don't recall.

7 Q You told him that video was made inside the
8 defendant's residence?

9 A I don't recall.

10 Q The vacuum cleaner that -- the Shop Vac
11 vacuum cleaner that Kay Hernandez owned that was a
12 2-1/2 horsepower Shop Vac, wasn't it?

13 A I know it was a Shop Vac, I couldn't tell
14 you what horsepower.

15 Q Was it black?

16 A Yes, sir.

17 Q Had red lettering on it?

18 A Yes, sir.

19 Q August the 20th when you were interviewed
20 by Mr. Thompson and Mr. Underwood, you told them the
21 last time you had used that vacuum cleaner prior to
22 the 20th was on August the 8th of 1993 when you had
23 vacuumed out cars; is that correct?

24 A Yes, sir, I have used it to vacuum out
25 cars.

1 Q They also interviewed about a suitcase that
2 was found in that storage building, didn't they?

3 MR. BOWEN: Object.

4 THE WITNESS: Yes, sir.

5 THE COURT: Do you want to be
6 heard?

7 MR. BOWEN: Yes, sir.

8 THE COURT: Ladies and gentlemen,
9 there's a matter of law the Court must take
10 up. Don't worry or speculate about what
11 takes place in the courtroom in your
12 absence. And if you will step to the jury
13 room, please.

14 (Jury out at 12:36 p.m.)

15 THE COURT: Following is being
16 heard in the absence of the jury. For what
17 is this being offered, Mr. Britt?

18 MR. BRITT: Your Honor, when Mr.
19 Leones was interviewed in August of 1993,
20 it was his statement that this large
21 suitcase that was later seized was in the
22 same place that the Shop Vac was normally
23 stored. That Shop Vac was the Shop Vac
24 that was found in the defendant's residence
25 on August the 16th, 1993, and the contents

1 of that suitcase that was found in Kay
2 Hernandez's storage building contained
3 items, specifically a bank statement of the
4 defendant's mother and other personal items
5 belonging to her. It's to establish a link
6 between the suitcase and the vacuum cleaner
7 that was found at the defendant's
8 residence.

9 THE COURT: Folks?

10 MR. BOWEN: Well, as I read his
11 statement, it says that -- statement they
12 give us, says he really doesn't know if the
13 black suitcase was in the building when he
14 used the Shop Vac. It was in the building
15 about every day and so forth. The suitcase
16 as I understand it is tied or related to
17 some areas that the Court has forbidden the
18 State to go into.

19 THE COURT: At this point all
20 he's wanting to establish is that the
21 suitcase was there in close proximity to
22 the Shop Vac if that's what the testimony
23 shows. And that presumably has some link
24 with Ms. Green's staying at that residence
25 and subsequent link to the Shop Vac being

1 found in Mr. Green's residence.

2 MR. BOWEN: Yes, sir, I hear what
3 he's saying. I believe however, if I'm not
4 mistaken, that that suitcase is forbidden
5 area of inquiry.

6 THE COURT: I mean, I haven't
7 heard anything that would violate my order
8 in terms of any other misconduct.

9 MR. BOWEN: Yes, sir.

10 THE COURT: I think what he's
11 doing is setting this up for rebuttal to
12 introduce through the officers the items
13 tied to Ms. Green that were tied -- is that
14 accurate?

15 MR. BRITT: Yes, sir.

16 MR. THOMPSON: Your Honor,
17 Mr. Britt stood up and said that when Mr.
18 Leones was interviewed in August -- in
19 August of 1993, it was his statement that
20 this large suitcase that was later seized
21 was in the same place that the Shop Vac was
22 normally stored. But that was not his
23 statement.

24 MR. BRITT: The last statement
25 reads he related that the suitcase was

1 sitting where the Shop Vac used to be. He
2 does not know where the Shop Vac is now.
3 The description is mine.

4 THE COURT: Fair game for cross.
5 If you think it's inconsistent with what is
6 written down in his statement, you can
7 rehabilitate.

8 I'm going to overrule the objection.
9 Allow it in. You folks, if you think we're
10 getting into an area that is the subject of
11 a prior ruling, let me know.

12 MR. BOWEN: Yes, sir.

13 MR. BRITT: Your Honor, if we
14 could have just a second, Mr. Heffney has
15 gone to retrieve the suitcase to bring it
16 into court. If we can have just a second
17 for him to get it here.

18 THE COURT: Yes, sir.

19 MR. BOWEN: Your Honor, while we
20 have a moment, let the record show, please,
21 our objection on the basis of relevance.

22 THE COURT: Yes, sir. Objection
23 is noted, exception is noted for the
24 record.

25 MR. BOWEN: I think this is an

1 area which a voir dire might be more
2 fruitful at this later stage of the trial.

3 THE COURT: Unless there's some
4 risk that this witness knows something
5 about other acts of misconduct that might
6 come in in violation of the Court's order,
7 what is the need for voir dire?

8 MR. BOWEN: I don't see any in
9 the statement.

10 THE COURT: That would be the
11 only matter that I would think voir dire
12 would be necessary.

13 (Jury in at 12:42 p.m.)

14 THE COURT: The objection is
15 overruled. Exception is noted for the
16 record. Mr. Britt you may repeat your last
17 question.

18 BY MR. BRITT:

19 Q Mr. Leones on August the 20th of 1993, you
20 were questioned about a large black suitcase that had
21 been found in Kay Hernandez's storage building,
22 weren't you?

23 A Yes, sir.

24 Q And that large black suitcase that was in
25 Kay Hernandez's storage building was in the spot

1 where the vacuum cleaner was normally kept, wasn't
2 it?

3 A I do remember seeing the suitcase now.

4 Q Now --

5 A I didn't recall earlier

6 (State's Exhibit 167 was
7 marked for identification.)

8 MR. BRITT: May I approach?

9 THE COURT: Yes, sir.

10 BY MR. BRITT:

11 Q I'll show you what has been marked as
12 State's Exhibit 167. You mentioned a minute ago that
13 you do recognize what's been marked as State's
14 Exhibit 167.

15 A Yes, sir.

16 Q That's the large black suitcase that was
17 found in Kay Hernandez' storage building, wasn't it?

18 A Yes, sir, it could have been.

19 THE COURT: I'm sorry?

20 THE WITNESS: Yes, sir, it could
21 have been.

22 THE COURT: Okay.

23 BY MR. BRITT:

24 Q Do you know a Steve Carter?

25 A No, sir, I don't.

1 MR. THOMPSON: Object.

2 THE COURT: Sustained.

3 MR. THOMPSON: Move to strike.

4 THE COURT: Allowed. Anything
5 else?

6 MR. THOMPSON: Request
7 instruction.

8 THE COURT: Members of the jury,
9 don't consider either the last question
10 asked by counsel for the State or the
11 answer if one was given by the witness.
12 Those matters are not to take any part in
13 your deliberation in this case in any
14 respect.

15 BY MR. BRITT:

16 Q There is a name tag on the suitcase marked
17 as State's Exhibit 167, isn't there?

18 MR. BOWEN: Object.

19 MR. THOMPSON: Object.

20 THE COURT: Sustained.

21 MR. BOWEN: Most move to strike.

22 THE COURT: Allowed. Members of
23 the jury don't consider that question
24 either.

25 BY MR. BRITT:

1 Q Suitcase is in the same condition today as
2 it was when you found it in the storage building; is
3 that correct?

4 A No, sir, I don't remember seeing the tape
5 and stuff.

6 Q You're talking about the brown tape that is
7 around the edges?

8 A Right.

9 Q Other than that, is it in the same
10 condition?

11 MR. THOMPSON: Object.

12 THE COURT: Overruled. You may
13 answer.

14 THE WITNESS: Yes, sir.

15 BY MR. BRITT:

16 Q Do you know how the suitcase came to be in
17 Kay Hernandez's storage building?

18 MR. THOMPSON: Object.

19 THE COURT: Sustained.

20 BY MR. BRITT:

21 Q Now, when the officers came and talked with
22 you on August the 20th of 1993, the Shop Vac vacuum
23 cleaner was not in the storage building; is that
24 correct?

25 A Yes, sir.

1 Q And you didn't know where it was at that
2 time?

3 A No, sir.

4 Q The Shop Vac vacuum cleaner that you used
5 while there at Kay Hernandez's, who owned that?

6 A Kay did, I think.

7 Q Do you know when she bought it?

8 A No, sir.

9 MR. BOWEN: Object to what he
10 thinks.

11 THE WITNESS: No, sir --

12 THE COURT: If you know, you may
13 answer.

14 THE WITNESS: I think it belonged
15 to my mother-in-law.

16 MR. BOWEN: Object, motion to
17 strike.

18 THE COURT: Overruled, motion
19 denied.

20 BY MR. BRITT:

21 Q Do you know where she bought it?

22 A No, sir, I don't.

23 Q Do you know when she bought it?

24 A No, sir, I don't.

25 MR. BRITT: Your Honor, may I be

1 heard on a matter?

2 THE COURT: Well, is it
3 appropriate to let them go for lunch at
4 this point?

5 MR. BRITT: Yes, sir.

6 THE COURT: Members of the jury,
7 I'm going to release you until 2:30 -- I'm
8 sorry. Sir, you may step down for a
9 moment.

10 MR. BRITT: It involves him.

11 THE COURT: If you would please
12 remain where you are.

13 During the lunch recess, don't talk
14 about the case with anyone or among
15 yourselves, don't allow anyone to say
16 anything in your presence about the case,
17 don't form or express any opinions about
18 this matter, don't have any contact with
19 anyone who is involved in this case.

20 Avoid any exposure to any media
21 accounts which might exist in connection
22 with this matter, and don't conduct any
23 investigation or research of any kind.

24 If you will please reassemble at 2:30,
25 we'll be in a position to go forward at

1 that time. Thank you, folks. Everyone
2 else please remain seated.

3 (Jury out at 12:47 p.m.)

4 THE COURT: Following is being
5 heard in the absence of the jury. Yes,
6 sir, Mr. Britt.

7 MR. BRITT: If I may voir dire
8 the witness.

9 BY MR. BRITT:

10 Q Mr. Leones, in July of 1993, did you
11 purchase a television set and a VCR from Ann Green?

12 A No, sir.

13 Q Did you purchase a TV and VCR from Kay
14 Hernandez in July of 1993?

15 A I bought a TV from my mother-in-law.

16 Q Is that a 20-inch or 19-inch television
17 set?

18 A It's -- yes, sir, I guess --

19 Q Is it black in color?

20 A Yes, sir.

21 Q Did it have red letters on it?

22 A Can you give me a name?

23 Q Was it a Emerson brand television set?

24 A Yes, sir, I have Emerson.

25 Q Was that a remote control television?

1 A Yes, sir.

2 Q You purchased it from Kay Hernandez?

3 A Yes, sir.

4 Q Was Ann Green present when you purchased it
5 from Kay Hernandez?

6 A I can't recall.

7 Q Were the defendant and Larry Demery present
8 when you purchased it from Kay Hernandez?

9 A No, sir, not that I can recall.

10 Q Were you aware that the TV you purchased
11 from Kay Hernandez belonged to a David McClain?

12 A No, sir.

13 Q Were you aware that Mr. McClain's house had
14 been burglarized in July of 1993?

15 A No, sir.

16 Q Were you aware that Mr. McClain's house was
17 burned down in July of 1993?

18 MR. THOMPSON: Object, Your

19 Honor.

20 THE COURT: It's for voir dire
21 purposes. Overruled. You may answer.

22 THE WITNESS: No, sir.

23 BY MR. BRITT:

24 Q How much did you pay for the television?

25 A \$150.

1 Q Did you pay for that in cash?

2 A Yes, sir.

3 Q Who did you give the money to?

4 A My mother-in-law.

5 MR. BRITT: I don't have any
6 other questions.

7 THE COURT: All right. I'm
8 assuming this is for the purposes of an
9 offer of proof at this point.

10 MR. BRITT: Your Honor, at this
11 point, to establish that he purchased this
12 TV in July of 1993, again, it's possibly to
13 set it up on rebuttal.

14 THE COURT: You don't intend to
15 ask those questions at that time?

16 MR. BRITT: I don't intend to ask
17 questions about Mr. McClain's house being
18 broken into and it being burned down. But
19 I intend to ask questions whether he
20 purchased it, the brand, the color, because
21 that is consistent with prior statements
22 that Larry Demery has given us.

23 THE COURT: Okay. You folks want
24 to be heard?

25 MR. BOWEN: Yes, sir, we would

1 object in that I'm wary about -- this man
2 got this TV, he's had this TV the whole
3 time. No officers have ever come to look
4 at it, take a serial number or anything
5 else.

6 THE COURT: Sounds like somebody
7 took a serial number.

8 MR. BOWEN: Sir?

9 THE COURT: Sounds like somebody
10 took a serial number. Is that the good
11 faith basis?

12 MR. BRITT: Yes, sir. We have
13 interviewed -- Mr. McClain was interviewed
14 in regard to the burning of his home. He
15 has inventoried items not only for criminal
16 investigation but for insurance purposes.
17 And the evidence will show, if we're
18 allowed to get into it, that inside this
19 bag --

20 THE COURT: The evidence is that
21 the TV in possession of this gentleman?

22 MR. BRITT: We've not been able
23 to locate Mr. Hernandez or find the TV.

24 THE COURT: Is the only evidence
25 that a stolen TV is in his possession

1 through Larry Martin Demery?

2 MR. BRITT: And Mr. Demery's
3 statement to us in May of 1995 involved the
4 breaking and entering -- actually, the
5 burglary of Mr. McClain's residence and the
6 subsequent arson of that residence, and
7 that he and the defendant and another
8 individual were the ones responsible for
9 doing it. There's also evidence that not
10 only links that TV, but when this suitcase
11 was recovered at Kay Hernandez home, there
12 was a satellite receiver found in the
13 suitcase. That satellite receiver belongs
14 to David McClain.

15 THE COURT: How do you link
16 that?

17 MR. BRITT: Through Mr. McClain,
18 through the business records of Prospect
19 Satellite.

20 THE COURT: So there's some
21 numbers somewhere that identify it?

22 MR. BRITT: Yes, sir.

23 THE COURT: All right.

24 MR. BOWEN: But -- and I'm sure
25 he's got some numbers on the TV. I'm

1 talking about the numbers on the TV that
2 Mr. Leones has.

3 THE COURT: Well, sounds like the
4 only link that they've got at this point is
5 Mr. Demery having told them that.

6 Folks, my concern about going into
7 this in the presence of the jury is on the
8 surface, on the face of it, it doesn't have
9 any relevance to the cases. I will allow
10 you to recall him on cross-examination if
11 that becomes necessary.

12 But I'm going to sustain the objection
13 about getting into this matter in the
14 presence of the jury because at this point
15 any ruling still remains in effect. Note
16 the State's exception to my ruling. Any
17 other matters?

18 MR. BOWEN: No, sir.

19 THE COURT: We're at ease until
20 2:30.

21 THE BAILIFF: All rise.

22 (Lunch recess)

23 THE COURT: Good afternoon,
24 folks.

25 MR. BRITT: Your Honor, may I

1 approach the exhibit table?

2 THE COURT: Yes, sir. Do we have
3 additional matters --

4 MR. BRITT: I don't.

5 THE COURT: If you'll come back
6 to the witness seat, please, sir.

7 Ready to go forward, Mr. Britt?

8 MR. BRITT: Yes, sir.

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

11 (Jury in at 2:28 p.m.)

12 THE COURT: Good afternoon,
13 ladies and gentlemen.

14 Mr. Britt.

15 BY MR. BRITT:

16 Q Mr. Leones, when you showed the officers
17 the suitcase, the Shop Vac was not located in the
18 storage building, was it?

19 A No, sir.

20 Q Did you know where the Shop Vac was at that
21 time?

22 A No, sir.

23 Q Now, the Shop Vac is a brand name of that
24 type of vacuum cleaner, is it not?

25 A Yes.

1 Q Kay Hernandez owned a Genie vacuum -- a
2 Genie Shop Vac type vacuum clean, do you know?

3 A The only one I know is the red and black
4 one.

5 Q And it's your testimony that when you -- on
6 the night of -- excuse me. On the morning of July
7 23rd, 1993, you went to bed between 12:30 a.m. and
8 1:30 a.m.?

9 A Between -- yes, sir, between -- that's
10 right, 12:30.

11 Q After you went to bed, you never got up and
12 complained about the noise in the den?

13 A I got up one time to use the restroom.

14 Q And you left at 6:30 in the morning -- left
15 at six --

16 A I got up at 6:30 to go to work.

17 MR. BRITT: I don't have any
18 other questions.

19 THE COURT: Mr. Bowen.

20 MR. BOWEN: That's all, Your
21 Honor.

22 THE COURT: Thank you, sir. You
23 may step down.

24 THE WITNESS: Thank you.

25 MR. BOWEN: Sebette Leones.

1 THE COURT: Please place your
2 left hand on the Bible and raise your
3 right.

4 KAUNDAA SEBETTE LEONES,
5 being first duly sworn was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 THE COURT: You may have a seat.

9 MR. BOWEN: If you will sit close
10 to the microphone.

11 THE COURT: State your full
12 name.

13 THE WITNESS: Kaundaa Sebette
14 Leondes.

15 THE COURT: If you will spell
16 that for the court reporter.

17 THE WITNESS: K-A-U-N-D-A-A,
18 S-E-B-E-T-T-E, L-E-O-N-E-S.

19 THE COURT: Thank you.

20 MR. BOWEN: Thank you, Your
21 Honor.

22 BY MR. BOWEN:

23 Q Ms. Leones, where do you now live?

24 A Route 3, Box 317-A, Clyburn Pines.

25 Q State of birth?

RECORDED
INDEXED
ISS: [unclear]
[unclear]

1 A November 27, 1971.

2 Q And are you married at this time?

3 A Yes, sir.

4 Q To whom are you married?

5 A Hector Leones.

6 Q Now, back in July of 1993, particularly on
7 the 22nd of July of 1993, what if anything was your
8 relationship to Mr. Hector Leones?

9 A He was my fiancée at that time.

10 Q And how long at that time had you all known
11 each other?

12 A Since 1986. We went to high school
13 together.

14 Q Now, then, on the 22nd of July, 1993, do
15 you recall where you were?

16 A Yes, sir.

17 Q And where were you during that day?

18 A At my mother's home in the evening.
19 Earlier that day I was at work.

20 Q Where do you work?

21 A I was a private caretaker for an elderly
22 lady.

23 Q And for whom -- who was your actual
24 employer at that time?

25 A Dr. Pissano.

1 Q Now, at this time by whom are you employed?

2 A At this time?

3 Q Yes, ma'am.

4 A No one. I'm a homemaker.

5 Q And what was your educational background to
6 do the work that you were doing on or about the 22nd
7 day of July, 1993?

8 A None. I met Dr. Pissano, I was a waitress,
9 and I waited on them. Just for my personality, they
10 thought I would do well with his mother-in-law, so I
11 just graduated from high school, that's all the
12 education that I have.

13 Q So you worked in the lady's home?

14 A Yes, sir.

15 Q At that time, what type of work was your
16 husband Hector doing? I'm sorry, your fiance Hector
17 at that time.

18 A He was a chef.

19 Q And what does he do now?

20 A He is a vault man. He buries people when
21 they pass away.

22 Q And when he was a chef, by whom was he
23 employed?

24 A Pine Crest Country Club.

25 Q Now, who is Nellie?

1 A My sister.

2 Q Nellie Montes?

3 A Yes, sir.

4 Q And back on the 22nd of July of 1993, did
5 you know about any upcoming trip to Puerto Rico for
6 Nellie?

7 A Yes, sir.

8 Q And when was that to happen with respect to
9 the 22nd day of July, 1993?

10 A Saturday, which would be the 24th.

11 Q And the 22nd was what day of the week?

12 A Thursday.

13 Q And what if anything over at your mother's
14 house was done about an evening meal on the 22nd of
15 July, 1993?

16 A We were preparing -- myself and my mother,
17 we were the ones that were really getting the food
18 out of the freezer to thaw it out, and Nellie and
19 Catina were doing the preparing. Hector actually
20 cooked the food on the grill when he came home from
21 work that evening.

22 Q Who do you refer to when you mention
23 Catina?

24 A She's sitting in between my two sisters.
25 Catina Jacobs, that's my sister's friend. She's

1 actually a friend of the family, but she's more or
2 less --

3 Q So she -- is she any kin to the Hernandez
4 family or your family or your husband's family?

5 A No, sir.

6 Q Is she kin as far as you know to the Green
7 family?

8 A No, sir.

9 Q Who else was there that night that you
10 recall?

11 A Myself, and my husband Hector, Ann Green,
12 and Ebony, her brother Daniel, and my two sisters,
13 her two children, Daniel and Collin, Donna Jacobs
14 which is a mutual friend of Catina, my sister's, and
15 my mother, and Bobbie Jo Morillo, Larry, Daniel, I
16 think I said that.

17 Q Now, do you recall where the den area of
18 the house is, your mother's house?

19 A Yes, sir.

20 Q What portion of the house was that located
21 on?

22 A In the back.

23 Q And state whether or not there was any
24 parking area at or near that room.

25 A Yes, sir, you have to go around to the back

1 of our house to park -- to my mother's home to park,
2 and when you walk in the back door, you're in the
3 den.

4 Q Were you at all familiar with a vehicle
5 driven usually by Mr. Larry Demery back on the 22nd
6 of July of 1993?

7 A Yes, sir.

8 Q What type vehicle was that, please?

9 A It's a light brown Ford Tempo.

10 Q Do you recall ever about that time hearing
11 that automobile run?

12 A Yes, sir.

13 Q What did it sound like?

14 A It sounded loud like it needed a muffler.

15 Q Could you recognize that car coming even
16 without seeing it?

17 A Yes, sir.

18 Q By the sound?

19 A Yes, sir.

20 Q Now, back on the 22nd of July of 1993, when
21 do you first recall seeing Larry Demery at your
22 mother's house, if you did?

23 A It was that night, around 9:00.

24 Q And with whom did Mr. Demery come there if
25 anyone?

1 A With Daniel.

2 Q What portion of the house did Mr. Larry
3 Demery stay in if any one portion?

4 A In the den.

5 Q And who was in the den when you know that
6 Mr. Larry Demery was there after he had gotten there?

7 A Larry and Daniel and Bobbie Jo and Monica,
8 and Ebony.

9 Q Now, did you go in the den and stay or were
10 you in and out of the den or did you have occasion to
11 see in the den?

12 A I was in and out.

13 Q Okay. And when you would go in, who if
14 anyone would Daniel Green be sitting with?

15 A He was sitting with Bobbie Jo Morillo.

16 Q And what was going on in the room when you
17 would go back in there?

18 MR. BRITT: Objection.

19 THE COURT: Rephrase.

20 BY MR. BOWEN:

21 Q What if anything was occurring?

22 MR. BRITT: Objection.

23 THE COURT: You can describe what
24 you saw, ma'am.

25 THE WITNESS: I saw them watching

1 television, listening to music videos and
2 just doing kid things, playing back and
3 forth.

4 BY MR. BOWEN:

5 Q Now, were you there at the time the evening
6 meal was served?

7 A Yes, sir, I was.

8 Q Where was that meal cooked?

9 A Outside on the grill.

10 Q By whom?

11 A By Hector.

12 Q And about what time do you recall the
13 evening meal was eaten?

14 A About 9:30 that night.

15 Q Was it eaten in one particular place?

16 A No, sir, it wasn't even eaten in one
17 particular place. We were in the kitchen because we
18 didn't have enough -- we were in the living room and
19 dining room, which is kind of connected because my
20 mother lives in a double wide. Not a lot of room for
21 that many people, so some were sitting in the kitchen
22 eating too, but you could see everyone where you were
23 seated at.

24 Q Did everybody eat at about the same time?

25 A Yes, sir, we all ate at the same time.

1 Q And over what time period did they eat
2 dinner?

3 A From 9:30 until 10:30. It was late. We
4 always eat late when we cook on the grill in the
5 summertime.

6 Q What if anything did you do about cleaning
7 up?

8 A I didn't help clean up.

9 Q What did you do?

10 A I left and went to Hector's uncle's house.

11 Q And who if anyone went with you?

12 A My husband Hector.

13 Q And why did you make that trip?

14 A To return some swim suits I had borrowed.
15 I didn't want to go because I was tired. But I
16 went. Went just long enough to drop them off and
17 came back.

18 Q And you came back where?

19 A My mother's home.

20 Q Arriving approximately when?

21 A Midnight.

22 Q When you were back there midnight, how did
23 you enter through your mother's house?

24 A Through the den.

25 Q Who if anyone did you see in the den when

1 you came back through?

2 A Well, Ebony was on the floor asleep, but
3 Daniel and Bobbie Jo was on the couch. My sister
4 Monica was in there also, and Larry.

5 Q And except for Ebony, were they all awake?

6 A Yes, sir.

7 Q And describe what you saw in terms -- what
8 you saw and heard as you passed through the den, not
9 what people were saying but what was happening in
10 there.

11 A They were still doing the same thing they
12 were before we left. They were kidding around and
13 watching TV, and joking and laughing.

14 Q Now, during the earlier part of the
15 evening, did anybody ever come in there and attempt
16 to calm them down?

17 MR. BRITT: Objection.

18 THE COURT: Rephrase, Mr. Bowen.

19 BY MR. BOWEN:

20 Q Did anybody ever come in and yell at
21 them?

22 MR. BRITT: Objection.

23 THE COURT: Well, overruled. You
24 may answer.

25 THE WITNESS: Yes, sir.

1 BY MR. BOWEN:

2 Q Who came in there and yelled at them?

3 A My mother and Ann.

4 Q Now, what time, if you know, did your
5 fiancée Hector have to be at work the following
6 morning, Saturday?

7 A 7:00 a.m.

8 Q I'm sorry, Friday -- okay. The same Friday
9 would be after -- Friday morning, when did he have to
10 be at work?

11 A At 7:00 a.m.

12 Q 7:00?

13 A Yes, sir.

14 Q Now, then, when did you and he retire, if
15 you did?

16 A Shortly after I got home at midnight.

17 12:30.

18 Q So then that would have been Friday the
19 23rd?

20 A Yes, sir.

21 Q And where did you retire with respect to
22 the location of the den?

23 A When you walk in the door of my mother's
24 back -- the back door, there's the den, you walk
25 straight through, our bedroom is the one on the left.

1 Q So did part of the wall of the bedroom that
2 you were to retire in share a common wall, part of a
3 common wall with the den?

4 A Yes, sir.

5 Q Now, when you and Hector retired, describe
6 to the jury what if anything that you could hear
7 within that bedroom in which you retired.

8 A I could hear Monica and Daniel and Ebony,
9 Ebony had woke up herself to tell them to be quiet.
10 Just doing the same thing they were when we came in,
11 playing, and I could still hear them after I got into
12 the bedroom. They were making a lot of noise.

13 Q Were you able to go to sleep?

14 A No.

15 Q Now, did there come a time when you heard
16 Larry Demery's car?

17 A Yes, sir.

18 Q Did you hear it -- what did you hear it do?

19 A I heard the car crank up.

20 Q Now, why did you know that it was Larry's
21 car that you heard?

22 A Because of the distinct sound his muffler
23 makes.

24 Q Now, what if any other sound did you hear
25 with respect to that car?

1 A You can hear the gravel, you can hear the
2 gravel when his car went around our bedroom window.

3 Q And then what did you hear?

4 A I heard his car leaving off into the
5 distance.

6 Q Now, after you heard that, did you remain
7 awake?

8 A Yes, sir, I did.

9 Q And at any later time, did you hear Daniel
10 Green in the den area?

11 MR. BRITT: Objection.

12 THE COURT: Well, overruled. You
13 may answer.

14 THE WITNESS: Yes, sir, I did.

15 BY MR. BOWEN:

16 Q All right. And did you hear Bobbie Jo in
17 the den area?

18 A Yes, sir, I did.

19 Q Did you ever hear Daniel Green's voice and
20 Bobbie Jo's voice any closer than -- any closer to
21 your room than in the den?

22 A Yes, sir, I did.

23 Q Where did you hear it?

24 A They had to begin in the hall or in the
25 laundry room. I can't tell you which one that it

1 was, but I know they were not in the den because they
2 had to be right there at the bedroom door, right
3 outside of it, because I could hear them talking.

4 Q All right. Now, describe to me what they
5 said and how they said it.

6 MR. BRITT: Objection.

7 THE COURT: Sustained.

8 MR. BOWEN: Offer this not for
9 the truth of the matters asserted, but for
10 what was heard.

11 THE COURT: Members of the jury,
12 there's a matter of law that the Court must
13 take up. Please step to the jury room.
14 Don't worry or speculate about what takes
15 place in the courtroom in your absence.

16 (Jury out at 2:44 p.m.)

17 THE COURT: The following is
18 taking place in the absence of the jury.
19 Mr. Bowen, what is it that you want to
20 establish?

21 MR. BOWEN: I would like to
22 establish, Your Honor, that she can
23 recognize the voice of Daniel Green and
24 Bobbie Morillo, the young lady with whom
25 Daniel was spending a lot of time. That

1 she heard them very distinctly right
2 outside room, either the hallway or kitchen
3 area, and she was very curious because they
4 were sort of talking sweet to each other
5 and so forth. And we aren't interested in
6 what was said --

7 THE COURT: How does that explain
8 her subsequent conduct?

9 MR. BOWEN: Well, that's not the
10 only reason that nonhearsay material can be
11 put in, as long as it does not -- is not
12 offered for the truth of the matter
13 asserted. In a sense, it explains her
14 subsequent conduct, because as I understand
15 it she'll say that she was curious about
16 it, she thought it was kind of cute, kind
17 of sweet, she listened to it, and she was
18 observant of what was going on. The main
19 thing we're asserting it to show is that
20 Mr. Green and Ms. Morillo were still there
21 talking to each other long after Mr. Demery
22 left. And I think the extent to which she
23 can show the jury that she can recall
24 specific memorable things about it, shows
25 how believable it is. I mean, what they

1 had to say to each other is immaterial.

2 THE COURT: I don't mean to cut
3 you off, but the objection is sustained.
4 You can establish that there was a
5 conversation and that the conversation took
6 place over a period of time.

7 MR. BOWEN: All right.

8 THE COURT: The objection is
9 sustained. Bring the jury back in.

10 Mr. Bowen, apparently the jury can't
11 hear your questions, so if you'll turn the
12 mic towards you.

13 MR. BOWEN: Yes, sir. I don't
14 think it's on.

15 (Jury in at 2:46 p.m.)

16 THE COURT: The objection is
17 sustained. You may ask additional
18 questions, sir.

19 BY MR. BOWEN:

20 Q Now, Sebette, were you able to at any time
21 hear or recognize Daniel Green after the Demery car
22 left any closer than in the den?

23 A Yes, sir.

24 MR. BRITT: Objection, asked and
25 answered.

1 THE COURT: Well, overruled.

2 BY MR. BOWEN:

3 Q Now, without saying anything about the
4 words of the conversation, can you describe the
5 manner in which the words were spoken between
6 Mr. Green and Bobbie Morillo?

7 MR. BRITT: Objection.

8 THE COURT: Sustained.

9 BY MR. BOWEN:

10 Q Well, can you tell the jury how long that
11 conversation took place?

12 A It was briefly. They weren't in there no
13 longer than 12, 15 minutes at the most.

14 Q When you say in there, where did you mean?

15 A In the hall or in the laundry room.

16 Q Is that a place closer to your doorway than
17 the den is?

18 A Yes, sir. When you walk through the den,
19 you have to walk into the hallway before you get to
20 our room on the left. If you were to make a right,
21 there's the laundry room, so they were -- I think
22 they were, could have been in that little section.

23 Q Now, when that conversation was over,
24 thereafter, did you hear Daniel Green's voice back in
25 the den area?

1 A Yes, sir.

2 Q And did you hear Bobbie Jo and some of the
3 others as well?

4 A Yes, sir, I did.

5 Q Now, Sebette, before Mr. Demery, before you
6 heard Mr. Demery's car crank up and leave, before
7 that occurred, could you occasionally hear
8 Mr. Demery's voice in the den?

9 A Yes, sir.

10 Q After you heard Mr. Demery's car crank up
11 and leave, did you hear Mr. Demery's voice anymore in
12 the den until a specific later time?

13 A No, sir, I didn't.

14 Q Now, then, did the noise continue in that
15 den area through the night?

16 A Yes, sir, it did.

17 Q As a result, were you able to go to sleep
18 at all?

19 A No, sir, I wasn't.

20 Q Did there come a time in which, or at which
21 you heard any commotion in the den area apart from
22 what you were hearing through the night?

23 A Yes, sir. I heard Ann, Daniel's mother.

24 Q All right. And what did you hear her do
25 without repeating the words she said?

1 MR. BRITT: Objection.

2 THE COURT: Is this strenuously
3 disputed, Mr. Britt.

4 MR. BRITT: No, sir.

5 THE COURT: Overruled. You may
6 answer.

7 THE WITNESS: She was arguing
8 with Daniel about the noise, and she was
9 arguing with him about the fact that they
10 are welcome in our home any time, but let
11 still with it. They weren't at their home
12 so to keep it down.

13 BY MR. BOWEN:

14 Q Did that have any effect?

15 A Somewhat.

16 Q Okay. Now, later, did you hear any noise
17 or anything unusual in the den area?

18 MR. BRITT: Objection to the
19 form.

20 THE COURT: Rephrase, please,
21 sir.

22 BY MR. BOWEN:

23 Q In the early morning hours, did you at any
24 time hear Larry Demery again?

25 A Yes, sir, I did.

1 Q And approximately what time of the morning
2 did you hear Larry Demery's voice again?

3 A I can give you an approximate time.

4 Q Best you can.

5 A 4:30.

6 Q And how did you fix that time as best you
7 can?

8 A By the fact that I hadn't been asleep and
9 that I -- you know, you can kind of tell about how
10 far time goes on when you're lying there in bed all
11 night and can't sleep.

12 Q Now, what if anything caught -- what
13 directed your attention to Larry Demery's voice, what
14 was it that caught your attention?

15 A Well, I heard his car come up.

16 Q All right. Was it a sound you recognized?

17 A Why, I knew it was Larry's car by the sound
18 that the muffler makes when it came up.

19 Q Then how long went by before you heard his
20 voice inside?

21 A Two minutes, maybe.

22 Q And what occurred once you started hearing
23 Larry's voice again?

24 A I could hear Ann yelling at Daniel, telling
25 him that it wasn't right for Larry to come back at

1 the time he came back, because he wasn't supposed to
2 come back at all.

3 MR. BRITT: Objection, move to
4 strike, ask for instruction.

5 THE COURT: Sustained. Motion
6 allowed. Members of the jury, don't
7 consider the last statement of the
8 witness. That matter is not to take any
9 part in your deliberations in this case in
10 any respect.

11 BY MR. BOWEN:

12 Q When Ann Green was saying words to Larry
13 Demery without -- well, Larry Demery and Daniel, can
14 you state whether or not her voice was elevated?

15 MR. BRITT: Objection. Assumes
16 matters not in evidence.

17 THE COURT: Overruled.

18 MR. BRITT: As to who the words
19 were directed to.

20 THE COURT: Overruled.

21 THE WITNESS: Yes, it was.

22 BY MR. BOWEN:

23 Q Was she talking fast?

24 A Yes, she was.

25 Q Talking loud?

1 A Yes, she was.

2 Q Appear to be excited?

3 A Yes.

4 Q Appear to be mad?

5 A Yes.

6 Q Appear to be upset?

7 A Yes.

8 THE COURT: Mr. Bowen -- let's --

9 MR. BOWEN: 803, excited
10 utterage, Your Honor.

11 THE COURT: Let's move on.

12 MR. BOWEN: Like to be heard,
13 Your Honor.

14 THE COURT: Okay. Members of the
15 jury, there's a matter of law the Court
16 must take up. Please step to the jury
17 room, don't worry or speculate about what
18 takes place in your absence.

19 (Jury out at 2:53 p.m.)

20 THE COURT: Let the record
21 reflect the following is occurring in the
22 absence of the jury. Yes, sir, Mr. Bowen.

23 MR. BOWEN: Your Honor, that
24 would be our foundation. Basically, I
25 don't have anything to add but she said she

1 appeared to be loud, excited, mad, upset,
2 talking very loudly, very fast. I think
3 that would come under 803, excited
4 utterage.

5 THE COURT: Do you intend to call
6 Ms. Green?

7 MR. BOWEN: No, sir.

8 THE COURT: What is it that you
9 want to establish that she said?

10 BY MR. BOWEN:

11 Q All right. What did you say, Sebette?

12 A She said that Daniel and Ebony and herself
13 were welcome in our home, but the fact that Larry was
14 coming back in there was causing her a problem. He
15 wasn't supposed to come back that night. Supposed to
16 have been gone for good. Coming back at that time in
17 the morning, it was upsetting my mother.

18 Q And all these words that you've just
19 related, were they said by Ann loudly?

20 A Yes.

21 Q Appear to be mad?

22 A Yes.

23 Q You had seen Ann mad before, hadn't you?

24 A Yes, sir.

25 Q And she was talking fast?

1 A Yes, she was.

2 THE COURT: You've already
3 established that, Mr. Bowen.

4 MR. BOWEN: Yes, exactly. That's
5 our showing.

6 THE COURT: Mr. Britt, does the
7 State object to this? The gist of it,
8 according to this witness, Ms. Green said
9 that Larry Demery was not supposed to come
10 back. And other testimony has established
11 that after that point, the defendant left
12 with Larry Demery. Does the State object?

13 MR. BRITT: No, sir. I'll
14 withdraw the objection.

15 THE COURT: Okay. Bring the jury
16 back in.

17 (Jury in at 2:55 p.m.)

18 THE COURT: Is the objection
19 withdrawn, Mr. Britt?

20 MR. BRITT: Yes.

21 BY MR. BOWEN:

22 Q Sebette, would you please tell what Ann
23 Green said that you heard that night?

24 A Yes, sir. She was telling Daniel that
25 Larry coming back at the time of morning that he came

1 back at was uncalled for and that it was making my
2 mother angry, and for him not to do that anymore.

3 Q And then what do you recall happening?

4 A I recall hearing Larry's car leave
5 again.

6 MR. BOWEN: One moment, Your
7 Honor.

8 THE COURT: Yes, sir.

9 BY MR. BOWEN:

10 Q What time did you arise, get up from bed
11 that morning?

12 A I got up around a quarter to 6:00.

13 Q And what time did Hector get up?

14 A 6:30.

15 Q Now, when you arose the next morning, was
16 Catina Jacobs still in the house?

17 A Yes, sir, she was.

18 Q Was Monica still there?

19 A Yes, sir.

20 Q Was Bobbie Jo still there?

21 A Yes, sir.

22 MR. BOWEN: May I approach, Your
23 Honor?

24 THE COURT: Yes, sir.

25 (Defense Exhibit 39 was
marked for identification.)

1 MR. BOWEN: May I approach her
2 Your Honor?

3 THE COURT: Yes, sir.

4 BY MR. BOWEN:

5 Q Ms. Leones, I'm going to show you what's
6 been marked as Defendant's Exhibit Number 39, and ask
7 you what that is.

8 MR. BRITT: Objection.

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

11 MR. BRITT: The predicate
12 question is can she identify what it is.

13 MR. BOWEN: All right. I'll
14 rephrase.

15 BY MR. BOWEN:

16 Q Can you identify what that is?

17 A Yes, sir. It's my mother's home.

18 Q Well, is it a diagram of your mother's
19 home?

20 A Yes, sir, a diagram of my mother's home.

21 Q Can you use that diagram to more fully
22 illustrate your testimony as to the locations and
23 relationships between places on your mother's home
24 and properties?

25 A Yes, sir.

1 MR. BOWEN: Desire to introduce
2 it for limited purpose.

3 THE COURT: Isn't that a blowup
4 of 37?

5 MR. BOWEN: Yes, it is.

6 THE COURT: All right.

7 Mr. Britt, do you want to be heard?

8 MR. BRITT: No. Just so the
9 Court is -- there are some items shown on
10 39 that are not shown on 37.

11 MR. THOMPSON: Thank you.

12 THE COURT: Without objection,
13 Defendant's Exhibit 39 is admitted for
14 illustrative purposes.

15 MR. BOWEN: Your Honor, may she
16 come around before the jury?

17 THE COURT: Yes, sir.

18 MR. BRITT: May I?

19 THE COURT: Yes, sir.

20 BY MR. BOWEN:

21 Q Would you step around here in front of this
22 end of the jury. I'm going to ask that you hold this
23 diagram, please, with one hand if you will, and then
24 I'll ask you to point out for these jurors where the
25 den is that you've been talking about in this house.

1 A Right here (indicating).

2 Q Put your finger on the den.

3 A (Witness complies).

4 Q Can you show to the jury the bedroom in
5 which you and Hector retired that night?

6 A Right here.

7 Q Can you show us the area that you refer to
8 as the hall or the laundry where you say you heard
9 Daniel's Green's voice --

10 A Right in this area.

11 Q Could you come down here and do the same
12 thing to the jurors in the middle?

13 A This is the den that they were in, this is
14 our bedroom, and this is the area that I think I
15 heard the voices. I'm not sure where they were at.
16 I know I heard their voices, but this is where I
17 think they were, in this little L or curve.

18 Q Come down to this end, please.

19 A This is the den. Daniel and -- this area
20 is the den. This is our bedroom, and this is the
21 hall and the laundry room that Daniel and Bobbie were
22 in.

23 Q While you're here at this end, Ms. Leones,
24 could you point out where the cooking was being done
25 by your now husband Hector?

1 A Yes, sir. Right outside the den here,
2 right there beside the back porch.

3 Q And can you point out where if you know
4 Larry Demery's car was parked?

5 A Right by the back door where Hector was
6 cooking out at, right over here.

7 Q Could you step to the middle of the jury
8 and point out those two things, where Hector was
9 cooking and where Mr. Demery's car was parked?

10 A Hector was cooking right here and Larry's
11 car was right here in this area.

12 Q Over here, please.

13 A This is where Hector was cooking, and this
14 is where Larry's car was over in here.

15 Q While you're at this end of the jury, can
16 you show where on that diagram where the driveway was
17 and where, if there was one, was there a window to
18 your bedroom?

19 A Yes, sir, I can. This is the front of the
20 house where the driveway is. You have to drive
21 around to the back, and this is a parking area in
22 here. If you're leaving out, you go by our bedroom,
23 we have a window right here, and you can hear every
24 car that comes in and out.

25 Q And what is that driveway covered with, if

1 anything?

2 A It's covered with gravel.

3 Q Could you go to the middle of the jury,
4 please?

5 A Yes, sir.

6 Q And show the same thing to them, where the
7 driveway is and your bedroom window.

8 A This is the front of the house, this is the
9 driveway. You have to go up to get to the back of
10 our house. When you're leaving out of coming in, you
11 pass by our window. We hear every car that comes in
12 and out.

13 Q Sebette, one more time at this far end,
14 please.

15 A This is the driveway that you have to go
16 past our bedroom window to get to the back yard, so
17 the part that comes in, every car that comes in
18 there, you can hear it.

19 Q Thank you, ma'am. You may return to the
20 stand. Do you recall your sister Nellie being at
21 your mother's home part of that evening?

22 A Yes, sir.

23 Q And did there come a time when Nellie left?

24 A Yes, sir.

25 Q Can you recall about when that was?

1 A Yes, sir. It was after we got in, it was
2 an hour after we got in, it was 1:00.

3 Q Can you tell the jury where Catina spent --
4 where in the home, if you know, did Catina spend most
5 of the evening?

6 A In the living room with my mother and my
7 sister before she left, Donna Jacobs, who was there
8 earlier who was the friend that was referred to that
9 left with my sister and her two children when they
10 left for the evening.

11 Q From time to time, did you observe Catina
12 go back to the den area?

13 A Yes, sir.

14 MR. BOWEN: One moment, Your
15 Honor.

16 THE COURT: Yes, sir.

17 MR. BOWEN: That's all, Your
18 Honor.

19 THE COURT: Mr. Britt?

20 CROSS-EXAMINATION

21 BY MR. BRITT:

22 Q Ms. Leones, is it your testimony that you
23 left your mother's residence on the night of July
24 22nd, 1993 somewhere after 10:30 p.m.?

25 A Yes, sir.

1 Q And you were gone until 12:00 a.m.?

2 A Yes, sir.

3 Q And then from 12:00 a.m. to 12:30, you
4 spent time visiting with individuals that were there
5 at the house?

6 A No, sir. I just walked through.

7 Q You walked straight into the house to go to
8 bed?

9 A Yes, sir. I didn't go to sleep, but I did
10 go into the bedroom to go to bed.

11 Q And it's your testimony that you observed
12 Catina Jacobs go to the den from time to time that
13 evening?

14 A Yes, sir, prior to the -- when I left, the
15 only time that I left prior to that.

16 Q So that would have been before you actually
17 ate dinner?

18 A Yes, sir.

19 Q So what she may or may not have done after
20 you went to bed, you have no knowledge of it?

21 A That's right.

22 Q And you say you heard a car drive away?

23 A Yes, sir, I did.

24 Q You never looked to see who was driving
25 that car?

1 A No, sir.

2 Q Never went back into the den after you went
3 to bed at midnight?

4 A Yes, sir, I did. I went to get my sister
5 Monica to tell her that my mother wanted her.

6 Q And at what time was that?

7 A Around 12:30.

8 Q Around 12:30?

9 A Yes, sir, when my husband was trying to get
10 to sleep.

11 Q And Larry Demery was still there?

12 A Yes, sir, he was.

13 Q The defendant Daniel Green was still there?

14 A Yes, sir, he was.

15 Q Now, you've testified about a conversation
16 or words that you heard Ann Green state to the
17 defendant?

18 A Yes, sir.

19 Q Now, you've previously stated that
20 Ms. Green told her son that Larry Demery was not
21 supposed to come back, is that correct?

22 A That's correct.

23 Q And that he was supposed to have gone home
24 for good?

25 A He was supposed to have gone wherever he

1 was going for good.

2 Q And the defendant left with Larry Demery
3 after that, didn't he?

4 A Yes, sir.

5 Q He was not present in the house when you
6 got up at 5:45 on the morning of July 23rd, was he?

7 A No, sir.

8 Q You don't know where he was, do you?

9 A No, sir.

10 Q And Larry Demery was not there at 5:45 when
11 you got up that morning?

12 A No, sir.

13 Q And when was the first time you talked with
14 anyone about your testimony in this case?

15 A This week.

16 Q This week is the first time you have spoken
17 to anybody?

18 A That's right, that's correct.

19 Q And you're aware that the defendant was
20 arrested back on August the 15th of 1993?

21 A That's right.

22 Q And prior to this week, which is February
23 the 19th of 1996, you've not spoken to anyone?

24 A I've spoken to Mr. Garth Locklear, I guess
25 maybe a week and a half, couldn't have been no more

1 than two weeks ago. I don't have the date down in my
2 head.

3 Q Do you not know when -- on what date that
4 you spoke to Mr. Locklear?

5 A No, sir, I do not.

6 Q But yet you can testify about dates that
7 occurred two years earlier?

8 A I certainly can.

9 Q And when you spoke with Mr. Locklear some
10 two weeks ago, that's the first time you've ever
11 spoken to anyone in connection with your testimony?

12 A First time I've been asked and first time
13 I've spoken about it.

14 Q And that was during the trial, that's been
15 during this trial?

16 A Yes, sir.

17 MR. BRITT: I don't have any
18 other questions.

19 THE COURT: Mr. Bowen.

20 REDIRECT EXAMINATION

21 BY MR. BOWEN:

22 Q Ms. Leones, did any police officer ever
23 come and attempt to question you whatsoever?

24 A No, sir.

25 Q Specifically, after May the 8th of 1995,

1 did anybody from the State or law enforcement contact
2 you at all?

3 A No.

4 Q Do you know who if anyone within the family
5 went to the Raleigh Durham Airport on Saturday
6 morning with the Montes family to go to board a plane
7 for Puerto Rico?

8 A You say in the family?

9 Q Yes, ma'am.

10 A Not in the family.

11 Q Who went?

12 A Catina Jacobs and Donna.

13 Q Where does Catina Jacobs reside now, if you
14 know?

15 A In California.

16 MR. BOWEN: That's all.

17 MR. BRITT: No other questions.

18 THE COURT: Thank you, ma'am, you
19 may step down. Mr. Bowen.

20 MR. BOWEN: Yes, sir. Defense
21 calls Catina Jacobs.

22 THE COURT: Okay. If you'll
23 place your left hand on the Bible and raise
24 your right.

25 CATINA L. JACOBS,

1 being first duly sworn was examined and testified as
2 follows:

3 DIRECT EXAMINATION

4 THE COURT: Have a seat, please.

5 And if you will state your full name for
6 the court reporter.

7 THE WITNESS: My name is Catina
8 Lynn Jacobs.

9 THE COURT: Spell your first and
10 last -- spell your hole name.

11 THE WITNESS: C-A-T-I-N-A, middle
12 name L-Y-N-N, and last name J-A-C-O-B-S.

13 THE COURT: Thank you. Mr.
14 Bowen.

15 BY MR. BOWEN:

16 Q Ms. Jacobs, where do you now live?

17 A San Bernadino, California.

18 Q I'm going to ask you to come up real close
19 to that microphone.

20 A I'm sorry.

21 Q Sit up just as close as you will. Where
22 are you living now?

23 A San Bernadino, California.

24 Q What is your date of birth?

25 A 9-11 of '72.

1 Q What type of work are you doing now if
2 you're working outside the home?

3 A I work as a teacher's aide.

4 Q How long have you been working as a
5 teacher's aide out in California?

6 A For almost a year now.

7 Q By what school are you employed?

8 A Called the Children's Center of Riverside.

9 Q And what is your educational background
10 that qualifies you to do that?

11 A I went to school at Robeson Community
12 College as -- trying to get my Associate's degree in
13 that.

14 THE COURT: Ma'am, I apologize.

15 If you'll keep your voice raised so all
16 members of the jury are able to hear.

17 MR. BOWEN: Pull that mic as
18 close as you want to.

19 THE WITNESS: Okay. I'm sorry.

20 BY MR. BOWEN:

21 Q Ms. Jacobs, do you have kinfolks still here
22 in Robeson County?

23 A Yes, sir, I do.

24 Q Your mother is living, is that correct?

25 A Yes, sir.

- 1 Q What is her name?
- 2 A Her name is Linda Barnes.
- 3 Q Where does Ms. Barnes living?
- 4 A Clyburn Pines area.
- 5 Q Is that where you were brought up?
- 6 A No, sir.
- 7 Q Where were you brought up most of your
8 life?
- 9 A I live with my grandmother behind -- it's
10 called the O.K. Barn area, out West Fifth Street.
- 11 Q What's your grandmother's name?
- 12 A Noble Mae Jacobs.
- 13 Q Is that the community in which you were
14 raised?
- 15 A Yes, sir.
- 16 Q Did you go to school here in Robeson
17 County?
- 18 A Yes, sir, I did.
- 19 Q Are you any kin to the Kay Hernandez
20 family?
- 21 A No, sir.
- 22 Q Are you any kin to the Ann Green or Daniel
23 Green family?
- 24 A No, sir.
- 25 Q Did you know -- back on the 22nd of July of

1 1993, did you know anybody in the Kay Hernandez
2 family?

3 A Yes, sir.

4 Q Who did you know?

5 A I knew Nellie Montes, I knew Sebette --
6 well she was Boulet.

7 Q Do you know how to spell Boulet?

8 A B O U L -- I think it's L E T, I think.

9 Q All right. Go ahead.

10 A I knew her, I knew Kay, I knew Monica, and
11 her family, just about.

12 Q How was it that you knew these folks?

13 A Through Nellie Montes.

14 Q Now, how well did you know Daniel Green?

15 A I didn't really know Daniel that well, just
16 by, you know, meeting at Kay's house, seeing at
17 Kay's.

18 Q Did you know Larry Demery?

19 A No, sir, not -- just by seeing him also.

20 Q Did you know who Larry was?

21 A Yes, sir.

22 Q Now, back on the 22nd of July of 1993,
23 state whether you were at the Kay Hernandez home.

24 A Yes, sir, I was.

25 Q And how -- why were you there and what time

1 did you get there?

2 A It was about mid-afternoon. We were -- I
3 just went over to visit and everything. I knew they
4 were having a cookout, you know, cooking outside.

5 Q Now, did you know anything about Nellie
6 Montes and her family's upcoming trip to Puerto Rico?

7 A Yes, sir, I did.

8 Q How did you know about that?

9 A Through speaking with Nellie.

10 Q Did you know when this trip was to occur?

11 A Yes, I did.

12 Q When was it to occur?

13 A Saturday.

14 Q In fact, did you go anywhere in the
15 vicinity of the airport regarding that trip?

16 A Actually I took her to the airport.

17 Q You drove your vehicle?

18 A No, sir.

19 Q You drove what vehicle?

20 A The van, Kay Hernandez's van.

21 Q And about what time did you get them to the
22 airport and which airport was it?

23 A Raleigh Durham Airport, and it was maybe
24 9:00, close to 9:00.

25 Q This was what day?

1 A Saturday.

2 Q Saturday?

3 A Yes, sir.

4 Q So on Thursday the 22nd, you were at the
5 Hernandez home?

6 A Yes, sir.

7 Q During that day, at any time did you see
8 Daniel Green and Larry Demery?

9 A Yes, sir, I did.

10 Q When do you first recall seeing them?

11 A Well, I saw Daniel there later, and Larry
12 came up.

13 Q Was this day or night?

14 A It was day.

15 Q Then did -- did there come a time when
16 Larry and Daniel left for a short time?

17 A Yes, sir, there did.

18 Q And what time did that occur?

19 A Maybe around 6:00.

20 Q Okay.

21 A Around 6:00.

22 Q What was the latest by which you would say
23 they came back?

24 A They came back around 9:30 because it was
25 the time we were getting ready to eat.

1 Q So were they there and present when the
2 dinner bell rang, so to speak?

3 A Yes, sir.

4 Q Did they eat with the whole group?

5 A Yes, sir, they did.

6 Q And what part of the house did you all eat
7 in?

8 A In the -- well, it's the living room and
9 dining area combined.

10 Q Who would cook the food that night?

11 A Hector.

12 Q Where had he cooked it?

13 A On the outside.

14 Q On the outside there behind the den area of
15 the house, were there any parking spaces?

16 A Yes, sir.

17 Q And where if -- did you see or hear Larry
18 Demery's car that night?

19 A That night or that day?

20 Q That day.

21 A Yes, sir.

22 Q Did -- can you tell the jury how Larry
23 Demery's car sounded, if you recall?

24 MR. BRITT: Objection, assumes
25 that she heard.

1 THE COURT: You may answer,
2 overruled.

3 THE WITNESS: It was very loud.

4 BY MR. BOWEN:

5 Q In what respect, what part of the car, if
6 you know?

7 A It had to be the muffler.

8 Q Now, would you -- were you able to
9 recognize Larry Demery's car merely by the sound?

10 A Yes, sir.

11 Q And did you see that car as well?

12 A Yes, sir, I did.

13 Q Can you describe it to the jury?

14 A It was a light colored Ford Tempo.

15 Q Now then, after the evening meal, state
16 whether or not Larry Demery and Daniel Green remained
17 at the house?

18 A Yes, sir, they did.

19 Q And whereabouts in the house, if you know,
20 did they stay?

21 A In the den.

22 Q And who else to your knowledge was in that
23 den with them?

24 A Bobbie Jo and Monica.

25 Q Now, how -- were you there in the den the

1 whole time or part of the time or none of the time?

2 A Part of the time. I was just throughout
3 the house.

4 Q So how many times would you say that you
5 walked back to the den and saw those same people
6 there?

7 A Several times. I couldn't give you a
8 number. It was just several times.

9 Q Now, did you go to bed before 1:30?

10 A No, sir, I did not.

11 Q Around 1:30 in the morning, did anything
12 happen that you recall?

13 A Yes, sir.

14 Q What happened?

15 A Nellie left.

16 Q Okay. Nellie Montes?

17 A Yes, sir.

18 Q And who was with Nellie?

19 A Her son Daniel and her other son Collin.

20 Q Now, a little after that, did anybody else
21 leave to your knowledge?

22 A Later on, yes, sir.

23 Q About -- well, who left and about when?

24 A Larry Demery left and it was about maybe
25 2:00.

1 Q Now, were you there in the den when that
2 occurred?

3 A No, sir.

4 Q How did you know that Larry Demery left?

5 A Through the sound of his car which I had
6 heard prior to that day.

7 Q Now then, when -- where did you hear the
8 car go?

9 A When he left that time?

10 Q Yes, ma'am.

11 A He just pulled out of the driveway, I don't
12 know in which direction.

13 Q Short time after you heard that, short time
14 after 2:00, did you have occasion to go back into the
15 den?

16 A No, sir, I did not.

17 Q All right. When did you next go back into
18 the den?

19 A I didn't go into the den.

20 Q All right. Then what is the next thing
21 that you heard with reference to -- first of all, was
22 there any unusual noise coming out of the den?

23 A Yes, sir, there was.

24 Q All right. And describe that for the
25 jury.

1 A Just being generally loud and, kids
2 laughing, joking around.

3 Q You were in what room to hear all this?

4 A In the living room.

5 Q Now, when you heard that loud talking and
6 kids laughing and whatever they were doing, did you
7 recognize Daniel Green's voice in amongst the voices
8 that you heard?

9 A Yes, sir, I did.

10 Q Did you recognize Daniel Green's voice
11 after you had heard the Demery vehicle leave the
12 premises?

13 A Yes, sir, I did.

14 Q Now, before the Demery vehicle left the
15 premises, did you also hear Larry Demery's voice from
16 time to time?

17 A Yes, sir, I did.

18 Q After Larry Demery's vehicle left the
19 premises, did you anymore hear Larry Demery's voice
20 from the den?

21 A No, sir, I did not.

22 Q Did you remain awake throughout the
23 evening, Ms. Jacobs?

24 A Not all through the evening, no, there was
25 a time I laid down.

1 Q Can you tell the jury about when it was
2 that you laid down?

3 A It was about 2:30.

4 Q And then did you go to sleep at that time
5 or did you doze and wake up periodically, or how was
6 it?

7 A I drifted off to sleep.

8 Q Then did there come a time when you were
9 awake?

10 A Yes, sir, there did.

11 Q Can you describe what it was that awakened
12 you?

13 A Ann's voice.

14 Q And can you describe Ann's voice with
15 regard to whether it was loud and intense or soft and
16 sweet?

17 A Loud and intense.

18 Q Was she talking fast?

19 A She was talking loud, I don't remember if
20 it was fast.

21 Q Did she appear to be angry?

22 A Yes, sir, she did.

23 Q Where was the voice coming from?

24 A I know it wasn't in the living room area,
25 because the bedroom I was sleeping in is right after

1 the living room, so sounded more like in the hallway.

2 Q And could you tell who she was yelling at?

3 A Yes, sir.

4 Q And who was she yelling at?

5 MR. BRITT: Objection.

6 THE WITNESS: She was --

7 MR. BRITT: No, I withdraw that.

8 THE COURT: You may answer.

9 THE WITNESS: She was yelling at

10 Daniel.

11 BY MR. BOWEN:

12 Q What did she yell?

13 A She was just telling him that Larry had no
14 right to come back up there, and the time it was, it
15 wasn't their house, and she also told him he better
16 not leave that house.

17 Q Now, what time of the day or night was it
18 that you heard Ann yelling this way?

19 A It felt like later in the morning hours.

20 Q You can't exactly put a time to it?

21 A No, sir.

22 Q Now, then, what did you do when you heard
23 that?

24 A I just laid in the bed.

25 Q And did you ever go in the den at that

1 point?

2 A No, sir.

3 Q And after you heard Ann yelling, did you
4 ever hear the sound of Larry's car again?

5 A Yes, sir, I did.

6 Q How long from the time you heard Ann
7 yelling until the time you heard Larry's car?

8 A Shortly thereafter. It wasn't a long time.

9 Q Can you give us some best estimate about
10 how many minutes?

11 A Maybe 15 minutes, somewhere around that
12 time.

13 Q All right. And then could you tell the
14 path that the car whose sound you recognized took as
15 it left the premises, if it did?

16 A Actually, all I could tell is that it went
17 out the driveway.

18 Q Okay. Did you hear -- what kind of
19 material was the driveway made of?

20 A Gravel.

21 Q Could you hear gravel?

22 A Yes, sir, you could hear it.

23 Q Then following that, did you hear Daniel
24 Green's voice in the den anymore?

25 A No, sir, I did not.

1 Q And then did you go back to sleep, back to
2 bed, or did you get up at that point?

3 A I kind of dozed back off.

4 Q Did you get up shortly thereafter?

5 A Yes, sir, I did.

6 Q And that morning, did you remain at Kay's
7 house or did you go someplace?

8 A I went somewhere else. I had to go to
9 work.

10 Q Where were you working?

11 A Sara Lee Hosiery.

12 Q How long had you been employed at Sara Lee
13 at that time?

14 A I think around two years, somewhere around
15 that time.

16 MR. BOWEN: One moment, Your
17 Honor.

18 BY MR. BOWEN:

19 Q Let me ask you, did you help anyone be
20 dispensing their medicine there in the household that
21 night?

22 A Yes, sir, I did.

23 Q Whom did you help?

24 A Kay.

25 Q And do you remember what time it was that

1 that medicine was to be dispensed and what time you
2 did dispense it?

3 MR. BRITT: Objection to
4 relevance.

5 THE COURT: Overruled. You may
6 answer.

7 THE WITNESS: It was supposed to
8 be given at 2:00, but she didn't take it
9 until 2:30.

10 BY MR. BOWEN:

11 Q Did you actually look at a clock to know
12 when you were dispensing it?

13 A Yes, sir, did I.

14 Q At that hour of 2:30, had you already heard
15 Larry Demery's car leave the premises or had it left
16 yet?

17 A It had left at that time.

18 Q Do you have any feel for how long it had
19 been gone when you dispensed the medicine at 2:30?

20 A It was not long, very -- I know it wasn't
21 very long at all.

22 Q Ms. Jacobs, what is your best estimate as
23 to how long it was before Larry Demery's car returned
24 to Kay's after you dispensed the medicine?

25 A After I -- because I had laid down

1 afterwards. It wasn't -- because I was not in a deep
2 sleep. It was probably maybe two, two and a half
3 hours or so.

4 MR. BOWEN: That's all.

5 THE COURT: Mr. Britt.

6 CROSS-EXAMINATION

7 BY MR. BRITT:

8 Q Ms. Jacobs, you live in San Bernadino,
9 California?

10 A Yes, sir.

11 Q Your date of birth is September the 11th,
12 1972?

13 A Yes.

14 Q You live at 69 San -- is it Jacin --

15 A 691 San Jacinto.

16 Q Can you spell that?

17 A S A N, J A C I N T O.

18 Q And you are employed at the Children's
19 Center which is located at 7177 Potomac Street,
20 Riverside, California?

21 A Yes.

22 Q And it's your testimony that in July of
23 1993, you went to Kay Hernandez's for a cookout or a
24 party for Nellie Montes, is that correct?

25 A No, sir, it wasn't a party. We were just

1 cooking out.

2 Q And you had known Daniel Green prior to
3 that?

4 A I had seen him prior to that, yes, sir.

5 Q Met him at Kay Hernandez's?

6 A Yes, sir.

7 Q And that you met Larry Demery at Kay
8 Hernandez's?

9 A Yes, sir.

10 Q Now, when you were there in July, was that
11 the first time you ever met Larry Demery?

12 A I had seen him before there.

13 Q On how many occasions had you seen him
14 there?

15 A Very few.

16 Q On how many occasions had you seen this car
17 that you've described?

18 A To my recollection, that's the first time
19 that it just came to my attention that I noticed his
20 car.

21 Q First and only time you had seen that car?

22 A Yes, sir, as I recall.

23 Q And when you saw the car was someone
24 operating it or was it parked there in the yard?

25 A It was parked behind my car.

1 Q Behind your car?

2 A Yes, sir.

3 Q And it's your testimony that the defendant
4 came up to -- excuse me, the defendant was there at
5 Kay Hernandez's, and that sometime later, Larry
6 Demery came there?

7 A Yes, sir.

8 Q And then the defendant and Larry Demery
9 left around 6:00 p.m. that night?

10 A It was around 6:00, yes.

11 Q And they didn't come back until about 9:30?

12 A Yes, sir.

13 Q And that was shortly before everyone was to
14 eat?

15 A It was about the time we were eating, yes,
16 sir.

17 Q And it's your testimony on direct
18 examination there that was a Thursday night?

19 A Yes, sir.

20 Q Now, when you heard this car crank, you
21 were in a bedroom?

22 A The living room.

23 Q You were in the living room?

24 A Yes, sir.

25 Q Who else was in the living room at that

1 time?

2 A Ann and Kay.

3 Q And this was around 2:00 in the morning?

4 A Yes, sir.

5 Q When was it that you went to bed?

6 A Shortly after I gave Kay her medicine,

7 which would have been around 2:30.

8 Q And you drifted off to sleep?

9 A Yes, sir.

10 Q And you say you heard this car come back?

11 A Yes, sir.

12 Q And that you heard Ann Green yelling at the

13 defendant?

14 A She was very loud with him.

15 Q Very angry?

16 A She was upset.

17 Q You heard her tell him not to leave the

18 house?

19 A Yes, sir.

20 Q And after you heard her say, tell him not

21 to leave the house, you heard the car drive off?

22 A Shortly afterwards.

23 Q You didn't hear the defendant's voice

24 anymore after you heard the car drive off?

25 A No, sir, the conversation kind of died

1 down.

2 Q When you got up the next morning to go to
3 work, the defendant was not there, was he?

4 A No, sir.

5 Q Larry Demery was not there, was he?

6 A No, sir.

7 Q And you say this occurred on a Thursday
8 night?

9 A Yes, sir.

10 Q On January 30th of 1996, Ms. Jacobs, you
11 were interviewed by a detective with the San
12 Bernadino police department by the name of Jeff
13 Brighton?

14 A Yes, sir.

15 Q He came to your place of employment?

16 A Yes, sir, he did.

17 Q When you talked with Mr. Brighton on
18 January the 30th of 1996, you told him that this
19 cookout that you attended at Kay Hernandez's was on a
20 Friday, didn't you?

21 A No, sir, I did not.

22 Q Told him that you were positive that it was
23 a Friday?

24 A No, sir, I did not.

25 Q Told him that you did not remember the

1 date?

2 A No, sir, I did not.

3 Q Do you remember telling him that you didn't
4 think you were supposed to talk with him about the
5 case because Woody had told you not to talk to
6 anyone?

7 A Yes, sir, I did.

8 Q When you referred to Woody, you were
9 referring to Mr. Bowen?

10 A Yes, sir, I did.

11 Q And had Mr. Bowen instructed you not to
12 talk to anyone about the case?

13 A He just simply said, you know, you can or
14 you cannot. It's your decision.

15 Q And you told Mr. Brighton that you didn't
16 think you were supposed to talk to him?

17 A I told him I didn't feel comfortable
18 speaking with him.

19 Q Ms. Jacobs, when was the first time you
20 talked with anyone about matters related to your
21 testimony?

22 A Shortly after, you know, Daniel had been
23 arrested.

24 Q And who did you talk with at that time?

25 A Nellie Montes.

1 Q And when did you talk with anyone
2 associated -- did you ever talk to Mr. Garth
3 Locklear?

4 A Yes, sir, I did.

5 Q When was that?

6 A Saturday -- well, no, I talked with him on
7 the phone I think a couple of days before I came
8 home.

9 Q When was that?

10 A I don't know the exact date.

11 Q What month?

12 A What month was it?

13 Q Yes.

14 A Was February -- I'm sorry, February.

15 Q February of --

16 A When I came home or what year?

17 Q February of 1996?

18 A Yes, sir.

19 Q Just this month?

20 A Yes, sir.

21 Q And when did you talk with Mr. Bowen?

22 A It was in, I think, January.

23 Q Of 1996?

24 A Yes, sir.

25 MR. BRITT: I don't have any

1 other questions.

2 THE COURT: Mr. Bowen?

3 REDIRECT EXAMINATION

4 BY MR. BOWEN:

5 Q When Officer Jeff Brighton came and talked
6 with you Catina, where were you at the time?

7 A I was at my job, my employer's.

8 Q All right. And did -- was Mr. Brighton a
9 uniformed officer or a plain clothed officer?

10 A He was in a suit like you guys are.

11 Q Did he show a badge?

12 A Yes, sir, he did.

13 Q And he told you that he was coming -- did
14 you have any warning whatsoever that he was going to
15 be there?

16 A Actually, no, sir, I didn't. He --
17 afterwards, my employer was apologizing to me, and I
18 explained to her you can't help that, it's not your
19 fault. And she told me, no, I knew he was coming but
20 he told me that she couldn't tell me that he was
21 coming.

22 Q Now, what were you doing on your job when
23 this officer arrived?

24 A I was in the classroom.

25 Q Doing what?

1 A Teaching our kids.

2 Q And what category of children do you work
3 with?

4 A I work with disabled kids.

5 Q And so when the officer arrived, did you
6 get any advanced notice whatsoever?

7 A No, sir. They called me to the office to
8 speak with -- you know, she just told me I needed to
9 come to the offices, and when I entered the office,
10 she said someone is here to see you.

11 Q And did you express any concern to the
12 officer then that you did not want to talk to him?

13 A Yes, sir, I did.

14 Q Okay. And why was that?

15 A Because the type of work I do, it's -- I
16 mean, I have parents coming in and out of the office,
17 I didn't feel comfortable sitting down, you know,
18 with someone that I didn't even know, you know.

19 Q Did you have a residence there in
20 California?

21 A Yes, sir, I did.

22 Q Did you have a phone number at your
23 residence?

24 A Yes, sir, I did.

25 Q Would it have been possible for the officer

1 to have made an appointment with you at your
2 residence?

3 A Yes.

4 MR. BRITT: Objection.

5 THE COURT: Sustained.

6 MR. BRITT: Move to strike.

7 THE COURT: Allowed. Members of
8 the jury, don't consider the last question
9 or answer if one was given on matters
10 raised by counsel for the defendant, Mr.
11 Bowen.

12 BY MR. BOWEN:

13 Q Did the officer ever call you at home?

14 A No, sir, he did not.

15 Q Now, where did he interview you Ms. Jacobs?

16 A In my place of business, in the office.

17 Q Describe to the jury the officer's behavior
18 and his manner of talking to you.

19 MR. BRITT: Objection.

20 THE COURT: Sustained.

21 BY MR. BOWEN:

22 Q Can you describe to the jury the audible
23 level of his voice as he was questioning you?

24 MR. BRITT: Objection.

25 THE COURT: Overruled. You may

1 answer, ma'am.

2 THE WITNESS: He was pretty
3 loud.

4 BY MR. BOWEN:

5 Q And what kind of walls if any divided you
6 and your supervisors?

7 A They are very -- actually, it's a house and
8 it's converted into an office, but where they built
9 or added on to the inside, they are thin walls just
10 like you would build -- I don't know how to explain
11 it, but they are thin walls. You can hear each
12 other's conversations in between rooms.

13 Q Did the officer to your knowledge record
14 what you told him, get a tape recording of the
15 questions and answers?

16 A No, sir, he did not.

17 Q Did he appear to be writing anything down?

18 A Yes, sir, he did.

19 Q When he got done interviewing you, did he
20 read back what he had?

21 A Yes, sir, he did.

22 Q Did he let you read anything that he had
23 written down?

24 A No, sir, he did not.

25 Q When he would ask you things, did you

1 correct him on certain things?

2 A He would say things like back to me and I
3 would tell him no, sir, that's not what I said.

4 Q That is when he read it back to you?

5 A Yes, sir.

6 Q And when he read it back to you and you
7 said that's not what I said, did you see him making
8 any corrections there?

9 A No, sir, he kept asking questions.

10 Q So did you see him make any corrections as
11 he read it back to you and as you tried to correct
12 it?

13 A No, sir, he did not.

14 Q Did you try to correct him on the date that
15 you were trying to suggest you were talking to him?

16 A I kept telling him that is not what I said,
17 but then he would ask another question, he just kept
18 moving on with the conversation.

19 Q Did you know who he had talked to before he
20 came to talk with you?

21 A No, sir. Well, he mentioned that -- he
22 mentioned your name and -- your name is the only one
23 that I recognized.

24 Q He didn't mention any officers out here?

25 A No, sir.

1 Q How long did this interview take?

2 A I know it was probably about 20 minutes,
3 because I was late going to lunch and it was a pay
4 day, so I wasn't able to go cash my check.

5 Q Did he ever offer you a statement for you
6 to sign and adopt if it were true?

7 A No, sir, he did not.

8 Q Did he ever contact you anymore after that
9 day?

10 A No, sir, he did not.

11 Q How do you come to be here today, by what
12 process if any are you here?

13 MR. BRITT: Objection.

14 THE COURT: Sustained.

15 BY MR. BOWEN:

16 Q Are you -- have you been subpoenaed for
17 this case?

18 A Yes, sir, I have.

19 Q Now, Ms. Jacobs, when you -- in the daytime
20 there at Kay Hernandez's house, were you driving a
21 vehicle?

22 A Which day are you speaking of?

23 Q On the Thursday, the 22nd?

24 A Yes, sir.

25 Q And what type of vehicle were you driving?

1 A It's a turquoise colored Sunbird.

2 Q And did there come a time when Mr. Demery's
3 vehicle, the Tempo that you described, was parked at
4 or near your vehicle?

5 A He had blocked me in, yes, sir.

6 Q And about what time of day did you discover
7 that?

8 A It was afternoon hours.

9 Q And what anything --

10 A Afternoon hours.

11 Q I'm sorry. What if anything did you do or
12 ask Mr. Demery to do?

13 A I asked him to move his car.

14 Q Was that the first time that you heard the
15 car crank up?

16 A Yes, sir.

17 Q And were you looking at the car when it
18 made the noises that it did?

19 A I kind of just glanced at it as I was, you
20 know, pulling off.

21 Q Was that the only car cranking up at that
22 time?

23 A Yes, sir, it was.

24 MR. BOWEN: May I approach the
25 witness, Your Honor?

1 THE COURT: Yes, sir.

2 BY MR. BOWEN:

3 Q Ms. Jacobs, if I may, I would like to show
4 you Defendant's Exhibit Number 39. Do you recognize
5 what that is a diagram of?

6 A It's a diagram of Kay's house.

7 Q Can you use that diagram to more fully
8 illustrate to the jury where the rooms were and where
9 the people were located and where the things were
10 that you've described in your testimony?

11 A Yes, sir, I can.

12 MR. BOWEN: And it's our desire
13 to introduce it for the limited purpose as
14 to this witness, Your Honor.

15 THE COURT: Yes, sir.

16 MR. BOWEN: And may she come down
17 around for the jury?

18 THE COURT: Yes, sir.

19 BY MR. BOWEN:

20 Q Ms. Jacobs, if you will hold the diagram,
21 please? I would like for --

22 MR. THOMPSON: May I?

23 THE COURT: Yes, sir.

24 BY MR. BOWEN:

25 Q I would like for you to point out please

1 the area that you refer to as the den. Go ahead.

2 A This is the den.

3 Q Do you remember about what wall the TV was
4 at on the den, in the den?

5 A I think it was -- I can't remember.

6 Q All right. Now, was there a couch in the
7 den?

8 A Yes, sir, there was.

9 Q Can you point out where the couch would be?

10 A I think it was -- if I can remember -- I
11 can't remember but I know there was a couch. It was
12 a light brown colored couch.

13 Q Can you point out the living room that you
14 say that you and Ann and Ms. Hernandez were in?

15 A Yes, sir, (indicating).

16 Q And is it this -- can you show to the jury
17 what corridor separates those two rooms?

18 A I'm sorry?

19 Q What corridor or hallway separates those
20 two rooms?

21 A These rooms?

22 Q Well, the den and the living room, I'm
23 sorry.

24 A This whole area, the kitchen and --

25 Q Is it open?

1 A No. This part is where the laundry room,
2 you can walk through, this is the kitchen, and this
3 is her bath. Well, not her bath.

4 Q Can you come to this part of the jury and
5 show them where the den is?

6 A Yes, sir (indicating).

7 Q And the living room area.

8 A This is living room.

9 Q The open way or corridor that goes between
10 the den and living room.

11 A You can go through the laundry room and
12 also go through the kitchen.

13 Q Show them where the driveway is.

14 A This is the driveway.

15 Q Where Larry Demery's car was?

16 A He was parked behind the railing of the
17 porch.

18 Q Come down here, if you will, please. Show
19 these jurors where the den is.

20 A This the den.

21 Q Where you were located in the living room.

22 A This is the living room.

23 THE COURT: Keep your voice up,
24 please ma'am, so the court reporter can
25 hear you.

1 THE WITNESS: Okay. I'm sorry.

2 BY MR. BOWEN:

3 Q And the corridor area between the living
4 room area and the den?

5 A You can go through the laundry area or
6 through the kitchen to get to the den.

7 Q Where was Larry Demery's car parked?

8 A Behind the railing to the porch.

9 Q All right. Thank you. Ma'am, you may
10 return to your seat.

11 MR. BOWEN: That's all, Your
12 Honor.

13 THE COURT: Anything further,
14 Mr. Britt?

15 RE CROSS EXAMINATION

16 BY MR. BRITT:

17 Q You never saw who drove the car away from
18 the house, did you?

19 A No, sir. Are you speaking about earlier
20 that morning?

21 Q When you say you heard a car drive away
22 from the house, you never saw who was driving the
23 car?

24 A No, sir, I didn't.

25 MR. BRITT: I don't have any

1 other questions.

2 THE COURT: Mr. Bowen?

3 MR. BOWEN: Yes, sir.

4 FURTHER REDIRECT EXAMINATION

5 BY MR. BOWEN:

6 Q But you did hear Daniel's voice still in
7 the house after that car drove away?

8 A I thought -- are you speaking about the
9 time in the morning hours when I woke up or speaking
10 about the time when he left? I mean, there's
11 different times that he left. Which time are you
12 speaking about?

13 THE COURT: I'm not sure.

14 THE WITNESS: That's why I'm
15 asking.

16 THE COURT: Which one are you
17 talking about?

18 BY MR. BOWEN:

19 Q Let's talk about the time around 2:30.
20 2:30 in the morning.

21 A Uh-huh, yes, sir.

22 Q And you testified that some few minutes
23 before that, before you gave Kay her medicine, the
24 Demery car had driven away?

25 A Yes, sir.

1 Q And then after you gave Kay her medicine,
2 it was approximately two and a half hours later when
3 that same sounding car returned?

4 A Yes, sir, yes, sir.

5 Q Now, after the car left something before
6 2:30 in the morning, state whether or not you
7 continued to hear Daniel Green's voice coming from
8 the den area.

9 A Daniel was still there, yes.

10 Q Okay.

11 MR. BOWEN: That's all.

12 THE COURT: Mr. Britt.

13 FURTHER RECROSS EXAMINATION

14 BY MR. BRITT:

15 Q You didn't see who drove the car on any
16 occasion when you heard it leave, did you?

17 A No, sir.

18 MR. BRITT: I don't have any
19 other questions.

20 THE COURT: May the witness step
21 down?

22 MR. BOWEN: Yes, sir.

23 THE COURT: Thank you, ma'am.

24 We're going to take the afternoon recess at
25 this time until five after 4:00 by the

1 clock on the wall. Please recall that it
2 is your duty to abide by all prior
3 instructions of the Court concerning your
4 conduct. Everyone else please remain
5 seated, you folks are excused.

6 (Jury out at 3:46 p.m.)

7 MR. BOWEN: Your Honor, may we be
8 heard?

9 THE COURT: Yes, sir.

10 MR. BOWEN: If Your Honor,
11 please, pleased to say, we have been
12 through a large segment of our witnesses.
13 We have out-of-town witnesses coming in.
14 They are checking in the motels even now.
15 We'll be ready to go with a whole group of
16 those tomorrow, and I can assure you it
17 will be first thing, start off first thing
18 in the morning. I realize we're letting
19 the jury take a break, I'm mindful that
20 you've dismissed them. If you think so,
21 we're recommending that -- sorry for the
22 gap in time, but we think we proceeded
23 expeditiously today and we'll do the same
24 tomorrow moving on with our evidence.

25 THE COURT: So you're through for

1 today?

2 MR. BOWEN: Yes, sir.

3 THE COURT: Do you know if our
4 folks have left the jury room?

5 THE BAILIFF: Some of them left.

6 THE COURT: Rather than running
7 folks down, I think the more appropriate
8 thing to do is go ahead and take a break,
9 come in at five after.

10 MR. BOWEN: I should have done it
11 before we left them get away, but I'm
12 sorry.

13 THE COURT: That's okay. We'll
14 come back at five after 4:00 and recess at
15 that point.

16 (Brief recess.)

17 THE COURT: All counsel are
18 present, the defendant is present in open
19 court. If we could bring the jury in,
20 please. Hold on one minute.

21 MR. THOMPSON: And I don't know
22 whether we can -- it's proper to do it now
23 or later, but with respect to Ms. Catina
24 Jacobs, who's -- we just finished with, we
25 wanted to know if she could be released.

1 She's under subpoena.

2 MR. BRITT: She can be released.

3 THE COURT: Yes, sir.

4 MR. THOMPSON: All right.

5 THE COURT: If you'll prepare
6 whatever paperwork is necessary. Okay?

7 MR. BOWEN: Yes, sir.

8 MR. THOMPSON: Yes, sir.

9 THE COURT: Anything else?

10 MR. THOMPSON: That's all.

11 MR. BOWEN: That's all.

12 THE COURT: Yes, sir, Sergeant
13 Meares.

14 (Jury in at 4:03 p.m.)

15 THE COURT: Members of the jury,
16 I apologize to you. Counsel for the
17 defendant indicated at the time I released
18 you folks that they had completed their
19 last witness for today. And I didn't
20 realize that at the time I gave you folks a
21 break. So we have completed the
22 proceedings for today. I'm going to
23 release you folks in just a moment until
24 9:30 tomorrow morning.

25 During the overnight recess, please

1 recall all prior instructions of the Court
2 concerning your conduct. And again I
3 instruct all members of the jury that
4 you're not to talk about this matter with
5 anyone, you're not allowed to have anyone
6 say anything to you or in your presence
7 about this case. Don't form or express any
8 opinions about this matter. Don't have any
9 contact of any kind with anyone involved in
10 the case. Avoid any exposure to any media
11 accounts which may exist in connection with
12 these proceedings, and don't conduct any
13 independent inquiry or investigation or
14 research of any kind. Have a good evening
15 and we will see you tomorrow morning at
16 9:30.

17 (Jury out at 4:05 p.m.)

18 THE COURT: Folks, if you're not
19 comfortable answering this, feel okay, but
20 can you give us an estimate about how many
21 more witnesses you have?

22 MR. THOMPSON: Yes, sir. Your
23 Honor, possibly no more than seven or
24 eight. And the thing is by way of time,
25 it's clearly possible that if we -- and

1 conceivable that we will finish this week.

2 THE COURT: Tuesday or Wednesday,
3 is that realistic?

4 MR. THOMPSON: Tuesday is
5 tomorrow.

6 THE COURT: Yes.

7 MR. THOMPSON: More like, I would
8 think maybe Wednesday or Thursday. I
9 wouldn't say Wednesday -- I mean, Tuesday.

10 THE COURT: Well, I'm asking for
11 two reasons. One, the State may intend to
12 put on rebuttal.

13 MR. BRITT: State does intend to
14 put on rebuttal.

15 THE COURT: Secondly, I need to
16 prepare for the charge conference.

17 MR. THOMPSON: I understand.

18 THE COURT: Okay. Well, I
19 appreciate that. About Wednesday or
20 Thursday. Okay.

21 MR. THOMPSON: But it's
22 conceivable then that we will finish before
23 the week.

24 THE COURT: Well, I appreciate
25 that.

1 MR. THOMPSON: Yes, sir.

2 THE COURT: Anything else?

3 MR. BRITT: No, sir.

4 THE COURT: All right. We'll see
5 you tomorrow morning at 9:30.

6 THE BAILIFF: All rise.

7 (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 34

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 20th day of February, 1996.



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*** Offices also in South Carolina and Tennessee ***

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3
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15 and

16
17 WOODBERRY A. BOWEN, Esq.
18 Bowen & Byerly
19 P.O. Box 846
20 Lumberton, North Carolina 2835921
22 (February 20, 1996. Proceedings in open court.)23
24 THE COURT: Good morning, folks.
25 Major Watson, what's the status of the
microphone, sir? Do we have the microphone
working now, sir?26
27 THE BAILIFF: We think we do,
28 Judge.29
30 THE COURT: Let the record show
31 all counsel are present, the defendant is
32 present in open court? Do we have all

1 members of the jury secured in the jury
2 room, sir?

3 THE BAILIFF: Yes, sir, we do.

4 THE COURT: Anything from either
5 counsel before we go forward?

6 MR. BRITT: No, sir.

7 THE COURT: If you'll bring the
8 jury in, please.

9 (Jury in at 9:30 a.m.)

10 THE COURT: Good morning, ladies
11 and gentlemen.

12 Mr. Bowen, Mr. Thompson, you folks
13 ready to go forward?

14 MR. THOMPSON: Yes, sir, Your
15 Honor.

16 THE COURT: You may call your
17 next witness.

18 MR. THOMPSON: Call
19 Mr. Christopher Rumpfelt to the stand,
20 please.

21 THE COURT: Okay. If you'll come
22 up and be sworn, please, sir. If you'll
23 place your left hand on the Bible and raise
24 your right, please.

25 CHRISTOPHER HOUSTON RUMFELT,

1 being first duly sworn was examined and testified as
2 follows:

3 DIRECT EXAMINATION

4 THE COURT: You may have a seat,
5 sir. And if you'll state your full name
6 for the record.

7 THE WITNESS: Christopher Houston
8 Rumfelt.

9 THE COURT: If you'll spell your
10 first name and last name.

11 THE WITNESS:
12 C-H-R-I-S-T-O-P-H-E-R, R-U-M-F-E-L-T.

13 THE COURT: Thank you, sir.

14 BY MR. THOMPSON:

15 Q Good morning, Mr. Rumfelt.

16 A Good morning.

17 Q If you'll pull up and speak loudly and
18 clearly and into the microphone, please.

19 Mr. Rumfelt, what address do you reside at?

20 A 2170 Rumfelt Drive, Marion, North Carolina.

21 Q How long have you lived in Marion, North
22 Carolina?

23 A All my life, with the exception of when I
24 was in the Air Force.

25 Q With --

1 A All my life with the exception of when I
2 was in the Air Force.

3 Q How long were you in the Air Force?

4 A Almost two years.

5 Q And where are you employed?

6 A North Carolina Department of Corrections.

7 Q How long have you been employed with the
8 North Carolina Department of Corrections?

9 A Almost two years.

10 Q And in what capacity?

11 A Correctional officer.

12 Q Mr. Rumfelt, calling your attention back to
13 the summer of July of 1993, did you have an occasion
14 to go to Wrightsville Beach?

15 A Yes, I did.

16 Q When was that?

17 A July the 20th.

18 Q How did you get to Wrightsville Beach?

19 A Myself, Alan McKinney, Donald Fowler, and
20 Greg Stevenson went. I drove one car and Hugh Fowler
21 and Donald Fowler drove the other car.

22 Q What kind of car were you driving?

23 A A Pontiac Fiero.

24 Q And where did you leave from going to
25 Wrightsville Beach?

1 A Marion.

2 Q Where did you -- where did Mr. McKinney and
3 Mr. Fowler leave from?

4 A They also left from Marion.

5 Q Now, when you got to Wrightsville Beach,
6 did you have any living accommodations?

7 A Yes, we stayed at a suite in Wrightsville
8 Beach.

9 Q And how many people stayed in the room?

10 A All four of us.

11 Q Do you recall the name of the -- was that a
12 motel or a resort area that you stayed in?

13 A It was kind of a resort, but I don't recall
14 the name now.

15 Q Was that your first time ever going to
16 Wrightsville Beach?

17 A Yes, it was.

18 Q And how did you get -- what route did you
19 take from Marion to get to Wrightsville Beach?

20 A Took I-77 to Charlotte and then 74 East.

21 Q And how long did you stay there at
22 Wrightsville Beach when you went back in July of
23 1993, Mr. Rumfelt?

24 A Two days.

25 Q And do you know on what date it was that

1 you left?

2 A It was early in the morning on the 23rd.

3 Q Would that be July 23rd of 1993?

4 A Yes.

5 Q Approximately what time was it when you
6 left early in the morning of July 1993?

7 A It was after 2:00 a.m. but probably before
8 3:00 a.m.

9 Q Is there anything that you were doing near
10 or about 2:00 a.m. in Wrightsville Beach that would
11 help you to testify -- that would help in determining
12 about what time you left?

13 MR. BRITT: Objection.

14 THE COURT: Rephrase,

15 Mr. Thompson.

16 BY MR. THOMPSON:

17 Q Prior to leaving, Mr. Rumfelt, what were
18 you doing?

19 A Alan and myself had went to a club right
20 beside the hotel and we --

21 THE COURT: I apologize for
22 interrupting, but folks are having
23 difficulty hearing you. So if you'll lean
24 forward and speak into the microphone
25 please, sir.

1 THE WITNESS: Yes, sir.

2 BY MR. THOMPSON:

3 Q Repeat your answer.

4 A Alan and myself had went to a club beside
5 the hotel, and we stayed until they closed at 2:00
6 a.m.

7 Q And after the club closed at 2:00 a.m.,
8 where did you and Alan go?

9 A Went back to the hotel. And then I had
10 already packed, and I put my things in the car and
11 left back towards Marion.

12 Q And who left with you?

13 A Greg Stevenson.

14 Q Who was driving?

15 A I was.

16 Q Were you still in your Fiero?

17 A Yes, sir.

18 Q And what route did you take going back to
19 Marion?

20 A 74 West.

21 Q As you were travelling on 74 West, did you
22 talk to anyone?

23 A Talked to a truckdriver, via CB radio.

24 Q You had a CB radio in your Fiero?

25 A Yes, sir.

1 Q And what kind of truck -- where was the
2 truck located that you --

3 MR. BRITT: Objection.

4 THE COURT: Well, if you know
5 from your own personal knowledge, not
6 something somebody said to you, but if you
7 know of your own personal knowledge, you
8 may answer.

9 THE WITNESS: It was directly in
10 front of me.

11 BY MR. THOMPSON:

12 Q You were -- the truck was traveling
13 westward on Highway 74?

14 MR. BRITT: Objection to
15 Mr. Thompson's leading.

16 MR. THOMPSON: Strike that.

17 BY MR. THOMPSON:

18 Q You were traveling westward on Highway
19 74?

20 MR. BRITT: Objection to the
21 leading.

22 THE COURT: What direction were
23 you going sir?

24 THE WITNESS: I was traveling
25 west on 74.

1 BY MR. THOMPSON:

2 Q Did there come a time when the truck turned
3 off of Highway 74?

4 A At the intersection of Interstate 95.

5 Q And just prior to turning off of 94 at the
6 intersection of 74 and 95, did you have a
7 conversation with the truckdriver about a specific
8 subject?

9 MR. BRITT: Objection.

10 THE COURT: As to whether or not
11 there was a conversation, the objection is
12 overruled. You may answer yes or no.

13 THE WITNESS: Yes, we had a
14 conversation.

15 MR. THOMPSON: And Your Honor,
16 this is to explain subsequent conduct.

17 THE COURT: Do you want to be
18 heard, Mr. Britt?

19 MR. BRITT: No, sir.

20 THE COURT: Do you want a
21 limiting instruction?

22 MR. BRITT: Yes, sir.

23 THE COURT: Members of the jury,
24 the matters now being elicited from the
25 witness before you, Mr. Rumfelt, are being

1 explained offered to explain his subsequent
2 conduct, and you may consider that for that
3 limited purpose and no other purpose.

4 BY MR. THOMPSON:

5 Q Mr. Rumfelt, what was the nature of that
6 conversation you had with the truckdriver?

7 A I was looking for a place to use the
8 restroom.

9 Q And what, if anything, did the truckdriver
10 say to you?

11 A He said if we were going to stay on 74,
12 there were no stores open in the near vicinity,
13 however there was a pull-off that a lot of people
14 used as a rest area.

15 Q And about how long was it prior to the
16 truckdriver turning on Interstate 95 did this
17 conversation take place?

18 A Approximately ten minutes.

19 Q And which direction did the truck turn off
20 of 74?

21 A He turned left on I-95 south.

22 Q And were you directly behind the
23 truckdriver when he turned left?

24 A Yes, I was.

25 Q And after the truckdriver turned left, what

1 did you do?

2 A I continued traveling west on 74.

3 Q Did you pull off?

4 MR. BRITT: Objection to the
5 leading.

6 THE COURT: Rephrase, sir. What
7 did you do?

8 THE WITNESS: I traveled west on
9 74 for approximately two to three minutes.

10 THE COURT: Then what happened?

11 THE WITNESS: Then there was a
12 big gravel area and I pulled into it.

13 THE COURT: Mr. Thompson.

14 BY MR. THOMPSON:

15 Q And when you pulled into the gravel area,
16 did you get out of the car?

17 A Yes, I did.

18 Q Did you see anything there where you pulled
19 off into the gravel?

20 A There was a car parked there.

21 Q What kind of car was it?

22 A I have no idea.

23 Q What color car was it?

24 A I have no idea.

25 Q And how far was the car from where you

1 pulled off?

2 A At least 50 feet away.

3 Q At the point where you pulled off on
4 Highway 74, was that two-lane highway or
5 four-lane?

6 MR. BRITT: Objection to the
7 leading.

8 THE COURT: Overruled. You may
9 answer.

10 THE WITNESS: It was two-lane
11 highway.

12 BY MR. THOMPSON:

13 Q After seeing the car parked some 40 feet or
14 so behind you, did you have a conversation with Greg
15 concerning the car?

16 A Yes, I did. He was concerned if we should
17 use the restroom there.

18 MR. BRITT: Objection.

19 MR. THOMPSON: Offered, Your
20 Honor --

21 MR. BRITT: Withdraw.

22 THE COURT: Okay.

23 BY MR. THOMPSON:

24 Q You may answer.

25 A He was concerned if we should use the

1 restroom there because there was a car parked there,
2 and we had no idea if it was occupied or not.

3 Q And did you -- after you had that
4 conversation, what did you do?

5 A I used the restroom.

6 Q And after using the restroom, what did you
7 do?

8 A Got back in the car and proceeded on up 74
9 West.

10 Q Now, as you were proceeding down 74 West,
11 did anything unusual happen that caught your
12 attention?

13 MR. BRITT: Object to the form of
14 the question.

15 THE COURT: Restate it, sir.

16 BY MR. THOMPSON:

17 Q As you were proceeding down 74 West, what
18 happened?

19 A Approximately at least 15 minutes later, I
20 saw a car coming up my rear view mirror at a high
21 rate of speed.

22 Q And what did that car do?

23 A It passed me.

24 Q And were you on the two-lane highway or
25 four-lane highway?

1 A It was still two-lane highway.

2 Q Now, when the car passed you, did you
3 notice what kind of car it was?

4 A It was a Lexus.

5 Q What color was the Lexus?

6 A Red.

7 Q Was there anything else you noticed about
8 the red Lexus?

9 A It had a personalized license plate.

10 Q And what do you recall about that license
11 plate?

12 A It was either UNC 0023 or UNC 00023.

13 Q Did you and Mr. Stephens have a
14 conversation about the red Lexus?

15 A Yes, we did.

16 Q And what was the nature of that
17 conversation?

18 MR. BRITT: ^{chick} Objection.

19 MR. THOMPSON: Well, I withdraw
20 that. I withdraw that.

21 THE COURT: Okay.

22 BY MR. THOMPSON:

23 Q When the Lexus passed you -- after the
24 Lexus passed you, Mr. Rumfelt, did it ever get out of
25 your sight?

- 1 A No, it didn't.
- 2 Q Was there any car -- after the Lexus passed
3 you, Mr. Rumfelt, what did you do?
- 4 A I sped up to keep up with it.
- 5 Q And were you still traveling west on 74?
- 6 A Yes, I was.
- 7 Q At any time did the -- did you ever hit a
8 four-lane highway?
- 9 A Yes, it turned into four-lane highway.
- 10 Q And did you notice anyone in the Lexus?
- 11 A There were, as far as I could remember, two
12 people in it.
- 13 Q And where were they located?
- 14 A Driver's seat and passenger's seat.
- 15 Q Can you tell whether it was male or female?
- 16 A No, I could not.
- 17 Q Could you tell what race the individual
18 was?
- 19 A No, I could not.
- 20 Q And how far did you follow the Lexus?
- 21 A Probably 30 miles at least.
- 22 Q And what did the Lexus do?
- 23 A We came into Laurinburg and the Lexus got
24 into a left-hand turn lane. I pulled into a
25 left-hand turn lane behind it, and we both turned

1 left. And then I turned into a store and the car
2 proceeded on.

3 Q And do you know about what time this was
4 when the Lexus turned left?

5 A No, I sure don't.

6 THE COURT: What time did you
7 leave Wrightsville Beach, sir.

8 THE WITNESS: It was probably
9 between 2:15 and 2:45 a.m.

10 THE COURT: How much time does it
11 take to get from Wrightsville Beach to the
12 area you were talking about.

13 THE WITNESS: I'm not really
14 sure, that's the first trip I made.

15 MR. THOMPSON: May I?

16 THE COURT: Yes, sir.

17 BY MR. THOMPSON:

18 Q After leaving this store -- did you leave
19 this store in the Laurinburg area?

20 A Yes.

21 Q And when you left the store in the
22 Laurinburg area, where did you go?

23 A To Rockingham.

24 Q And what did you do when you got to
25 Rockingham?

1 A Stopped at Hardee's.

2 Q And when you stopped at Hardee's in
3 Rockingham, was it dark?

4 A It was dawn, it wasn't -- the sun hadn't
5 come up, but it was light, the sky was light.

6 Q Did you know how far Rockingham is from
7 Laurinburg? Do you know?

8 A Not right offhand, no, I don't.

9 Q Mr. Rumfelt, were you interviewed by any
10 law enforcement officers in this case?

11 A Yes, I was.

12 Q Do you know who that was?

13 A Mr. Heffney.

14 Q Mr. Heffney who's seated here on the
15 DA's -- well, next to the DA?

16 A Yes, sir.

17 Q And did you contact Mr. Heffney?

18 A No, I did not.

19 Q Did he contact you?

20 A No, not to begin with. Later on he did.

21 Q How did you come to be interviewed in this
22 case by Mr. Heffney?

23 MR. BRITT: Objection.

24 THE COURT: Sustained. Do you
25 want to be hear, sir? Do you want to be

1 heard?

2 MR. THOMPSON: Yes, sir.

3 THE COURT: Ladies and gentlemen,
4 there's a matter of law the Court must take
5 up out out of the hearing and presence of
6 the jury. Don't speculate about what takes
7 place in the courtroom in your absence.
8 And if you will please step to the jury
9 room.

10 (Jury out at 9:48 a.m.)

11 THE COURT: Let the record show
12 the following is being heard in the absence
13 of the jury. Mr. Thompson, what purpose is
14 this being offered, sir?

15 MR. THOMPSON: To show subsequent
16 conduct, how -- subsequent conduct.

17 THE COURT: In what way?

18 MR. THOMPSON: As to how he was
19 put in contact with Mr. Heffney and the
20 circumstances surrounding --

21 THE COURT: What does that mean
22 to the case?

23 MR. THOMPSON: I beg your pardon.

24 THE COURT: What does that mean
25 to the case? What issue does it go to in

1 the case?

2 MR. THOMPSON: Goes to the
3 circumstances surrounding the interview and
4 as to why and when he was interviewed as
5 to -- that's what it goes to, Your Honor.
6 Excuse me for sitting down.

7 THE COURT: That's okay. Am I
8 correct that what you really want it in for
9 is to show they interviewed him and they
10 didn't call him, but you did?

11 MR. THOMPSON: No, sir. Well,
12 that's a fact, the jury can see that.

13 THE COURT: What is it that you
14 want to get from the witness?

15 MR. THOMPSON: Well, may I voir
16 dire?

17 THE COURT: Yes, sir.

18 BY MR. THOMPSON:

19 Q Mr. Rumfelt, did you call the -- did you
20 call any law enforcement officer concerning what you
21 had observed back on July the 23rd of 1993?

22 A To begin with, I had received a phone call
23 from someone stating they were from the SBI in
24 Asheville.

25 Q Do you know who that person was?

1 A No, I don't.

2 Q And did that person instruct you to do
3 anything?

4 A That I needed to contact the Sheriff's
5 Department.

6 Q Which Sheriff's Department?

7 A Robeson County.

8 Q And what did you do?

9 A I called the Robeson County Sheriff's
10 Department.

11 Q Do you recall who you talked with?

12 A No, I don't.

13 Q Did you receive any instructions -- did you
14 talk -- you did talk with someone?

15 THE COURT: How did you come to
16 be interviewed? Go ahead and explain that
17 to us.

18 MR. THOMPSON: That's what I
19 initially asked.

20 THE WITNESS: I called the
21 Sheriff's Department, and in turn they gave
22 me another number to call the SBI office
23 down here, I assume, and I called them.

24 THE COURT: What happened after
25 that?

1 THE WITNESS: Approximately two
2 days later, Mr. Heffney contacted me by
3 phone.

4 THE COURT: Then what happened?

5 THE WITNESS: He came to my
6 residence and interviewed me.

7 THE COURT: Mr. Thompson.

8 BY MR. THOMPSON:

9 Q And did Mr. Heffney, during that interview,
10 question you as to why you not given any information
11 or contacted the police?

12 A I can't recall now, I'm not sure.

13 Q Had you seen any news stories concerning
14 the death of James Jordan, Mr. Rumfelt, prior to this
15 interview?

16 A Yes, I had.

17 Q Had you talked to anybody about what you
18 saw July 23rd, 1993, after hearing the news stories
19 about James Jordan being missing?

20 A Yes, I did.

21 Q And who did you talk to?

22 A Some friends and family.

23 Q Was there any particular reason,
24 Mr. Rumfelt, that you did not call the police
25 concerning what you had seen on July 23rd of 1993?

1 A I didn't want to get involved in this case.

2 Q And did Mr. Heffney -- well, Mr. Rumfelt,
3 you gave Mr. Heffney a statement, did you not?

4 A Yes, I did.

5 Q Did he -- after giving him that
6 statement -- well, did he record that interview with
7 you?

8 A I don't think so. I don't recall.

9 Q Have you seen a copy of the statement that
10 you gave to Mr. Heffney?

11 A Yes, I have.

12 Q Have you read that statement?

13 A Yes, I have.

14 Q In the statement that Mr. -- do you have
15 that statement with you?

16 A I don't have it up here with me.

17 Q Do you recall telling Mr. Heffney that the
18 reason you did not call the police earlier with the
19 information was because on Friday when the news broke
20 on television, reports said the car was found in
21 Fayetteville and Mr. Jordan had reportedly called
22 home on July 26th of 1993?

23 A Like I say, I'm not sure, I don't recall.
24 That's been almost two and a half years ago.

25 Q Okay. Do you deny making that statement?

1 A No, I don't deny it.

2 MR. THOMPSON: That's the
3 showing.

4 THE COURT: What does it go to
5 show in the case Mr. Thompson?

6 MR. THOMPSON: Well, again, Your
7 Honor, it's going to show the circumstances
8 under which he was interviewed, who
9 contacted him, how he was contacted, and
10 the circumstances surrounding giving a
11 statement. That's what it shows. And I
12 think, Your Honor, that is certainly
13 relevant, as it would be with the
14 circumstances of anybody else, any other
15 witnesses.

16 THE COURT: Well --

17 MR. THOMPSON: -- under which
18 they gave a statement.

19 THE COURT: In part you're
20 attempting to bolster before he's been
21 attacked. You're attempting to explain why
22 he didn't come forward before that issue is
23 raised on cross-examination. You can't
24 bolster before impeachment. It comes after
25 impeachment, under form of rehabilitation

1 and in form of what -- he gave Mr. Heffney
2 a statement and you chose to call him as
3 opposed to the State choosing to call him,
4 really doesn't mean anything in the case.

5 MR. THOMPSON: Your Honor, you're
6 raising that, I'm not. That's a fact. I
7 didn't raise that as a purpose for this.

8 THE COURT: What is the purpose?

9 MR. THOMPSON: As I stated, to
10 show circumstances under which he gave a
11 statement.

12 THE COURT: How is that
13 meaningful to any issues in the case?

14 MR. THOMPSON: Because it deals
15 with the circumstances under which he gave
16 a statement. It's as meaningful as any
17 other inquiry that we've made of every
18 witness in this case.

19 THE COURT: I agree with that. I
20 agree with that.

21 MR. BRITT: As I understood their
22 opening statement, they argued to the --
23 stated to the jury they would show evidence
24 that the State had ignored evidence that
25 would -- that somehow was in disagreement

1 with the State's theory.

2 I would simply say this for the
3 purposes of the record: If Mr. Thompson is
4 allowed to go into this and I'm allowed to
5 question him about his knowledge in regard
6 to why he was not called, because
7 Mr. Thompson fails to go into an area that
8 on August the 27th, the following week,
9 Mr. Rumfelt took a polygraph test as
10 related to his statement. Mr. Rumfelt
11 failed that polygraph test.

12 Now, I know the prohibition against
13 the use of even mentioning a polygraph in
14 court, and especially in front of the jury,
15 and the fact --

16 THE COURT: The objection to the
17 line of questioning is sustained. Note the
18 defendant's exception for the record.

19 MR. BOWEN: I would like to
20 further object in this sense: Mr. Britt
21 not only knows that the mention of
22 polygraph is not acceptable in front of the
23 jury, the mention of the polygraph is not
24 acceptable in any proceedings whatsoever at
25 all. And I object and move to strike that

1 he even mentioned it here.

2 THE COURT: Your objection is
3 sustained. Motion to strike is allowed.
4 Anything further?

5 MR. BOWEN: No, sir.

6 THE COURT: Bring the jury back
7 in.

8 (Jury in at 9:56 a.m.)

9 THE COURT: The objection is
10 sustained, members of the jury.

11 Additional questions for the witness,
12 Mr. Thompson?

13 MR. THOMPSON: Yes, sir.

14 THE COURT: Okay.

15 BY MR. THOMPSON:

16 Q Mr. Rumfelt, going back to the time that --
17 after the Lexus went past you on 74, did any car ever
18 get between you and the Lexus before you saw it pull
19 off?

20 A No.

21 Q Mr. Rumfelt, I believe you -- excuse me.
22 You indicated that you were contacted by law
23 enforcement officer, a law enforcement officer in
24 this case?

25 A Yes.

1 Q And Mr. Rumfelt, did you talk about -- did
2 there come a time that you heard on the media or saw
3 through the media about the death of Mr. James Jordan
4 or Mr. James Jordan being missing?

5 MR. BRITT: Objection.

6 THE COURT: Sustained.

7 BY MR. THOMPSON:

8 Q Mr. Rumfelt, did you discuss with anyone
9 prior to talking to any law enforcement officers in
10 this case about what you had observed back on July
11 the 23rd of 1993?

12 A Yes, I did.

13 Q And about what -- strike that. Who did you
14 talk to about what you had seen or observed back on
15 July 23rd of 1993?

16 A Family --

17 MR. BRITT: Objection.

18 THE COURT: Mr. Thompson, I
19 sustained the objection to the line of
20 questioning. Either ask other questions or
21 move on.

22 MR. THOMPSON: Well, that's all.

23 THE COURT: Okay. Any
24 cross-examination, Mr. Britt?

25 MR. BRITT: Yes, sir.

1 CROSS-EXAMINATION

2 BY MR. BRITT:

3 Q Mr. Rumfelt, what was the name of the club
4 you went to in Wrightsville Beach?

5 A I can't recall right offhand.

6 Q How long were you there that night?

7 A Approximately two hours.

8 Q And is that a club where they sell alcohol?

9 A Yes, it is.

10 Q And were you drinking that night?

11 A No, I wasn't.

12 Q And you say the club closed at 2:00 a.m.?

13 A Yes.

14 Q And you went back to the motel?

15 A Yes.

16 Q Got your stuff?

17 A Yes.

18 Q And got in your car and headed home?

19 A Yes, that's correct.

20 Q And according to your testimony, that's
21 somewhere between 2:15 and 2:45 a.m.

22 A That's correct.

23 Q Do you have any idea how far it is from
24 Wrightsville Beach, North Carolina, to Lumberton,
25 North Carolina?

1 A No, I don't.

2 Q Do you have any idea -- strike that. Do
3 you have any idea how far it is from Lumberton, North
4 Carolina, to Laurinburg, North Carolina?

5 A Exactly, no, I don't. I could estimate.

6 Q Now, when you left Wrightsville Beach, you
7 had to drive across Wilmington; is that correct?

8 A That's correct.

9 Q Stopped several times by stop lights?

10 A Correct.

11 Q Crossed the Cape Fear River and got onto
12 four-lane portion of Highway 74 east of Wilmington?

13 A I can't recall. I crossed a bunch of
14 waterways, I'm not sure exactly.

15 Q You drove west on U.S. 74 on that four-lane
16 portion of road? Was it a four-lane portion of road
17 that you drove out of in Wilmington?

18 A I can't recall.

19 Q You drove from Wilmington nonstop, your
20 testimony is, talking to a truckdriver on a CB radio?

21 A Part of the way.

22 Q And -- part of the way?

23 A Part of the way.

24 Q Did you stop between Wilmington and where
25 the truckdriver turned off?

1 A No, I drove nonstop, but I talked to the
2 truckdriver part of the way.

3 Q And the truckdriver turned off on
4 Interstate 95?

5 A That's correct.

6 Q Headed south?

7 A Yes.

8 Q And it's your testimony you drove for two
9 or three more minutes from that location?

10 A Yes.

11 Q And then you pulled over?

12 A Yes.

13 Q And you say there was a car pulled over on
14 the shoulder of the road?

15 A That's correct.

16 Q In the area where you stopped?

17 A Yes.

18 Q You don't remember anything at all about
19 that car?

20 A No, I don't.

21 Q Don't remember what color it was?

22 A No.

23 Q Don't remember what make it was?

24 A No, I don't.

25 Q Don't remember if it's a two-door or

1 four-door?

2 A No, I don't.

3 Q Don't remember seeing anyone in it?

4 A No.

5 Q And this area where you pulled over, were
6 there houses?

7 A There were some buildings. It was dark, I
8 don't know if they were houses or not.

9 Q And it's your testimony that your friend
10 expressed some concern about using the bathroom
11 because that other car was parked there?

12 A That's correct.

13 Q And did your friend go to the bathroom, as
14 well as you?

15 A I don't think he did, I'm not sure.

16 Q And then you got in your car?

17 A Correct.

18 Q And you drove off?

19 A Yes.

20 Q And you drove another 10 or 15 minutes from
21 that location?

22 A Yes.

23 Q And that location was approximately two to
24 three minutes west of Interstate 95?

25 A Yes.

1 Q And you drove on on U.S. 74 towards
2 Laurinburg?

3 A Correct.

4 Q And was that a two-lane or four-lane road
5 from where you had stopped to use the bathroom as you
6 drove towards Laurinburg?

7 A It was two-lane.

8 Q Did it remain two-lane until you got to
9 Laurinburg?

10 A At some point, I'm not sure exactly where I
11 was at, it turned into four-lane highway.

12 Q You say you pulled over into a left-hand
13 turn lane?

14 A Yes, in Laurinburg.

15 Q That was on 74?

16 A It was in Laurinburg.

17 Q Did you get off of 74?

18 A Stayed on 74, got on to Business 74.

19 Q And where did you get on Business 74?

20 A Laurinburg.

21 Q In Laurinburg?

22 A Yes.

23 Q And did you -- you pulled off onto an exit
24 ramp?

25 A I don't recall if it was an exit ramp or

1 not, I believe the road just split.

2 Q Is it your testimony you came to a
3 stoplight on U.S. 74?

4 A Correct.

5 Q On the four-lane portion of the road?

6 A I'm not sure -- yeah, it was four-lane
7 because there was a turn lane.

8 Q Had you ever traveled U.S. 74 before?

9 A No, I have not.

10 Q Were you aware there's not a stoplight
11 between -- shortly east of Whiteville, North
12 Carolina, on U.S. 74 and Laurel Hill, North Carolina
13 which is west of 74?

14 MR. THOMPSON: Object.

15 THE COURT: Overruled. This is
16 cross-examination. Do you know that or
17 not?

18 THE WITNESS: As I stated, we
19 were on Business 74.

20 BY MR. BRITT:

21 Q And you turned off -- it's your testimony
22 you turned off of the bypass in Laurinburg?

23 A Yes.

24 Q Did you come to a stop sign or stoplight
25 when you turned off?

1 A Came to a stoplight.

2 Q And this red Lexus pulled off there, as
3 well?

4 A Correct.

5 Q And it's your testimony that the first time
6 you saw this car, it came by you at a high rate of
7 speed?

8 A That's correct.

9 Q Approximately how fast were you traveling
10 when the car passed you?

11 A I would say approximately 70 miles per
12 hour.

13 Q So you were speeding?

14 A Yes.

15 Q And when this car came by you, it was
16 traveling much faster?

17 A Correct, yes.

18 Q And you say you speeded up to about -- you
19 speeded up to catch up with the car?

20 A Yes.

21 Q And how fast did you speed up to catch up
22 with this car?

23 A Approximately 80 to 85 miles per hour.

24 Q Is it your testimony that you gained ground
25 on this car?

1 THE COURT: Overruled.

2 THE WITNESS: Probably 80 to 85
3 miles per hour.

4 BY MR. BRITT:

5 Q As that car zipped by you, is it your
6 testimony you were able to read the license plate?

7 A Not at that point. After it pulled in
8 front of me.

9 Q After it pulled in front of you?

10 A Yes.

11 Q And how far ahead of you was the car when
12 you say you were able to read the license plate?

13 A Approximately 75 feet.

14 Q And is it your testimony that the car, you
15 state there was a distance between your car and this
16 red Lexus of approximately 75 feet from the time it
17 passed you until it turned off in Laurinburg?

18 A Not the entire time, it sped up and then it
19 would slow down, and I would speed up and slow down.

20 Q Now, your lights were working, weren't
21 they?

22 A Yes, they were.

23 Q And your lights when they were turned on
24 were pointed directly in the direction of the Lexus?

25 A Correct.

1 Q And it's your testimony you pulled up
2 behind this red Lexus at the stoplight, didn't you?

3 A Yes.

4 Q And you say there were still two people in
5 it?

6 A As far as I remember. By then, I wasn't
7 really paying attention to it.

8 Q You weren't paying any attention to the
9 car?

10 A At that point, no, I had no reason to.

11 Q Well, you had paid attention to it so much
12 when it sped by you that you wanted to keep up with
13 it?

14 A Yes, I was in a hurry to get home, and I
15 was looking for someone to drive fast to follow.

16 Q Now, when you got to this stoplight, the
17 area was lit up?

18 A As far as I remember, yes.

19 Q You could see inside the car in front of
20 you?

21 A I wasn't paying any attention.

22 Q Well, it was directly in front of you,
23 wasn't it?

24 A Yes. But like I said, I was not paying any
25 attention.

1 Q Is it your testimony you could see the
2 individuals inside the car?

3 A At that point, I was not really paying any
4 attention to the car, I was looking for a place to
5 eat.

6 Q No one inside that car was wearing a hat,
7 were they?

8 A I don't recall.

9 Q And it's your testimony you don't know if
10 it was a man or woman in the car?

11 A No, I don't.

12 Q If they were black or white?

13 A I have no idea.

14 Q If they were Indian?

15 A I have no idea.

16 Q If they were oriental?

17 A I have no idea what race or sex they were.

18 Q And then you drove on to Rockingham; is
19 that correct?

20 A Correct.

21 Q And then sometime later you were contacted
22 by Mr. Heffney with the SBI?

23 A Yes.

24 Q And Mr. Heffney came to your residence in
25 Marion, North Carolina, and interviewed you?

1 A That's correct.

2 Q And then on August the 27th of 1993, you
3 were interviewed by another SBI agent, weren't you?

4 A Yes, I was.

5 Q That was in Asheville?

6 A Yes.

7 Q That was Special Agent Miller?

8 A I don't recall what his name was.

9 Q And you recall telling Mr. Miller that you
10 were not sure of exactly what you had seen because
11 you had heard so much concerning the murder of James
12 Jordan?

13 A I told him I could not remember a lot of
14 the details he was asking, I was not paying attention
15 at the time because I had no reason to pay
16 attention. And there had been a lot on the news and
17 a lot of wild allegations out there.

18 Q Now, you stated that you talked with some
19 friends of yours?

20 A Yes.

21 Q Donald Hugh Fowler was one of the
22 individuals that was at Wrightsville Beach with you?

23 A That's correct.

24 Q You recall telling him that the license tag
25 on the car you said spelled the word "Jordan"?

1 A No, I did not.

2 Q Now, the friend that was with you in the
3 car, Greg Stevenson, he slept a good portion of the
4 trip, didn't he?

5 A Yes, he did.

6 Q And it's your testimony you never saw a
7 white sedan with this red Lexus when it passed you?

8 A No, I don't recall seeing any vehicles.
9 There were vehicles we passed on the highway that --
10 I don't recall any specific vehicle.

11 Q And it's your testimony you never saw an
12 Arab looking man with dark black hair driving?

13 MR. THOMPSON: Object, this has
14 been asked and answered.

15 THE COURT: It has, Mr. Britt.

16 BY MR. BRITT:

17 Q You never saw more than two people in the
18 car?

19 MR. THOMPSON: It's been asked
20 and answered.

21 THE COURT: Sustained.

22 BY MR. BRITT:

23 Q How was the passenger seated in the car
24 that you saw?

25 A I was not really paying that much

1 attention, it was just in the passenger seat.

2 Q Person setting up?

3 A Yes.

4 Q You could see a head?

5 A Yes.

6 Q You couldn't tell if it was a man or
7 woman?

8 MR. THOMPSON: Object, asked and
9 answered.

10 THE COURT: Go ahead Mr. Britt,
11 ask additional matters. We're going over
12 the same ground again.

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

15 THE COURT: Anything further on
16 redirect, Mr. Thompson?

17 MR. THOMPSON: Yes, sir

18 REDIRECT EXAMINATION

19 BY MR. THOMPSON:

20 Q Mr. Rumfelt, at the time -- where were you
21 when you were interviewed by SBI Agent Heffney?

22 A At my residence.

23 Q Was anyone else there with Mr. Heffney when
24 he interviewed you?

25 A He was by himself.

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1 Q Do you recall what date it was when you
2 were interviewed by Mr. Heffney?

3 A It was sometime in August.

4 THE COURT: 1993, sir?

5 THE WITNESS: 1993, yes.

6 BY MR. THOMPSON:

7 Q Was it after you had heard or seen on the
8 media events concerning James Jordan?

9 A Yes, it was.

10 Q Did Mr. Heffney question you, Mr. Rumfelt,
11 as to why you had not come forward with the
12 information as to the -- what you had observed on
13 July 23rd of 1993?

14 MR. BRITT: Objection.

15 THE COURT: Rephrase,

16 Mr. Thompson.

17 BY MR. THOMPSON:

18 Q Did Mr. Heffney ask you why you had not --

19 THE COURT: Rephrase, that's
20 hearsay.

21 BY MR. THOMPSON:

22 Q Mr. Rumfelt, --

23 THE COURT: You can ask him what
24 he said or explained to Mr. Heffney.

25 MR. THOMPSON: Yes.

1 BY MR. THOMPSON:

2 Q Mr. Rumfelt, what, if anything, did you say
3 to Mr. Heffney or explain to Mr. Heffney concerning
4 your not coming forward -- well, what, if anything,
5 did you explain or say to Mr. Heffney concerning what
6 you had seen back on July the 23rd of 1993 when he
7 interviewed you?

8 A I told him what I had saw. But at the same
9 time, I told him I wasn't sure of a lot of details
10 because I was not paying real close attention to the
11 vehicle or the road, I was just in a hurry to get
12 home.

13 MR. THOMPSON: Your Honor, this
14 is offered for purpose of impeachment.

15 THE COURT: Okay. Of whom, sir?

16 MR. THOMPSON: Of this witness.

17 THE COURT: Okay.

18 BY MR. THOMPSON:

19 Q Mr. Rumfelt, did you tell Mr. Heffney that
20 the reason you did not call the police earlier with
21 the information was because on Friday when the news
22 broke on television, reports said the car was found
23 in Fayetteville --

24 THE COURT: Mr. Thompson.

25 MR. BRITT: Objection, like to be

1 heard.

2 THE COURT: Yes, sir. Members of
3 the jury, there's a matter of law the Court
4 must take up out of the hearing and
5 presence of the jury. Please step to the
6 jury room. Don't worry or speculate about
7 what takes place in the courtroom in your
8 absence.

9 (Jury out at 10:15 a.m.)

10 THE COURT: Mr. Britt, what's the
11 basis of your objection, first of all? I
12 think I know, but for the record, if you'll
13 state it.

14 MR. BRITT: The statement he's
15 alluding to is based on hearsay, and that
16 is what the response would be based on.

17 THE COURT: Yes, sir, news
18 reports?

19 MR. BRITT: Yes, sir.

20 THE COURT: Mr. Thompson, what
21 purpose is this being offered?

22 MR. THOMPSON: For impeachment.

23 THE COURT: Okay. Mr. Thompson,
24 you are not going to get in any James
25 Jordan sightings, any Elvis sightings, or

1 anything else through this witness.

2 The objection is sustained.

3 Defendant's exception is noted for the
4 record. Bring the jury back in.

5 MR. THOMPSON: But I do want --

6 THE COURT: Sir, if you will
7 close the door please, tell the --

8 MR. THOMPSON: And Your Honor,
9 for the purposes of a proffer, just so that
10 I can complete the question for the
11 purposes of a proffer.

12 BY MR. THOMPSON:

13 Q Mr. Rumfelt, did you not -- didn't you tell
14 Mr. Heffney that the reason you did not call the
15 police earlier with the information was because on
16 Friday when the news broke on television, reports
17 said the car was found in Fayetteville and Mr. Jordan
18 had reportedly called home on July the 26th of 1993?

19 A I don't recall that exactly. I'm not sure
20 exactly what the conversation was. That's been over
21 two and a half years ago.

22 Q But you could have said it?

23 A I could have, yes.

24 THE COURT: Anything further
25 Mr. Thompson?

1 MR. THOMPSON: That's all, Your
2 Honor.

3 THE COURT: Bring the jury back
4 in, sir.

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

6 THE COURT: The objection is
7 sustained. Any additional questions, sir?

8 MR. THOMPSON: Yes, sir.

9 BY MR. THOMPSON:

10 Q Mr. Rumfelt, did you ever tell any law
11 enforcement officers that you had seen any Arab
12 driving a car back on July 23rd of 1993?

13 A No, I did not.

14 Q Any white sedan, did you ever tell any
15 officer that, that you had seen one?

16 A No, I did not.

17 MR. THOMPSON: That's all.

18 THE COURT: Anything further,
19 Mr. Britt?

20 MR. BRITT: No, sir.

21 THE COURT: May the witness be
22 released, folks?

23 MR. THOMPSON: Yes, sir, Your
24 Honor.

25 THE COURT: Thank you, sir. You

1 may step down. Any additional showing?

2 MR. THOMPSON: Yes, sir. Your
3 Honor, we would call Gregory Stevenson.

4 THE COURT: If you'll come up and
5 be sworn, please, sir. If you'll place
6 your left hand on the Bible and raise your
7 right

8 GREGORY TODD STEVENSON,
9 being first duly sworn was examined and testified as
10 follows:

11 DIRECT EXAMINATION

12 THE COURT: Have a seat sir, if
13 you'll state your full name for the record,
14 please.

15 THE WITNESS: Gregory Todd
16 Stevenson.

17 THE COURT: And if you will spell
18 your first and last name for the court
19 reporter.

20 THE WITNESS: G-R-E-G-O-R-Y,
21 S-T-E-V-E-N-S-O-N.

22 THE COURT: Mr. Thompson.

23 BY MR. THOMPSON:

24 Q Good morning, Mr. Stevenson.

25 A Good morning.

1 Q Mr. Stevenson, where do you live sir?

2 A I live in Marion, North Carolina.

3 Q How long -- what address do you live in
4 Marion?

5 A 2190 Rumfelt Drive.

6 Q How long have you lived in Marion, North
7 Carolina, Mr. Stevenson?

8 A All my life.

9 Q Mr. Stevenson, do you know Christopher
10 Rumfelt?

11 A Yes, sir, I do.

12 Q How long have you known Christopher
13 Rumfelt?

14 A All my life.

15 Q Mr. Stevenson, did you and Mr. -- did you
16 have an occasion back in July of 1993 to go to
17 Wrightsville Beach, North Carolina?

18 A Yes, sir, I did.

19 Q And when was that?

20 A It was in July of '93.

21 Q And who did you go with?

22 A I rode with Chris Rumfelt. And also Alan
23 McKinney and Hugh Fowler, they were in another
24 vehicle.

25 Q And what kind of vehicle were you riding

1 in?

2 A Pontiac Fiero.

3 Q When you got to Wrightsville Beach, did you
4 meet anyone?

5 A Yes, sir, I did.

6 Q Who did you meet?

7 A Hugh Fowler and Alan McKinney.

8 Q They were there when you got there?

9 A Yes, sir.

10 MR. BRITT: Objection to the
11 leading.

12 THE COURT: Overruled.

13 Mr. Thompson, go ahead.

14 BY MR. THOMPSON:

15 Q And where did you stay when you were in
16 Wrightsville Beach?

17 A It was at a motel, I don't recall the name
18 of it.

19 Q Was this your first time going to
20 Wrightsville Beach?

21 A Yes, sir, it was.

22 Q And how did you travel from Marion to
23 Wrightsville Beach, what route did you take?

24 A I don't recall the exact road numbers, I do
25 know that we went in through Charlotte and got onto

1 Highway 74 on into Wrightsville Beach.

2 Q How long did you stay in Wrightsville
3 Beach?

4 A Two, three days.

5 Q Do you know what date it was when you left
6 Wrightsville Beach?

7 A No, sir, I don't.

8 Q Do you know -- well, how did you leave
9 Wrightsville Beach?

10 A We left in Chris' car.

11 Q When you say "we," who is we?

12 A Myself and Chris.

13 Q And do you know about what time it was when
14 you left?

15 A It was sometime after 2:00 a.m.

16 Q And which route did you take? When you
17 left Wrightsville Beach, were you going back to
18 Marion?

19 A Yes, sir, we were.

20 Q And which route did you take?

21 A We took Highway 74.

22 Q Mr. Stevenson, do you recall whether there
23 was a CB radio in the Fiero?

24 A Yes, there was.

25 Q Do you recall whether anybody was talking

1 on that CB radio on the trip back to Marion?

2 A Yes, sir. Chris was talking on the CB
3 radio.

4 Q Do you know who he was talking to?

5 A A truckdriver that was in front of us.

6 Q And about how long did Mr. Rumfelt talk to
7 that truckdriver that was in front of him?

8 A I don't know exactly how long it was. I
9 was asleep and woke up while he was talking to him.

10 Q At some point did you recall any
11 conversation about a bathroom or somebody having to
12 use the bathroom?

13 A Yes, sir.

14 Q And when was that?

15 A It was near the end of their conversation
16 because I was the one that was needing to use the
17 restroom, as well as Chris.

18 Q And where were you on Highway 74 when this
19 conversation took place, do you know?

20 A No, sir, I don't.

21 Q Do you recall where that -- if that
22 truckdriver that was in front of you turned off of
23 Highway 74?

24 MR. BRITT: Objection to the
25 leading.

1 THE COURT: Rephrase.

2 BY MR. THOMPSON:

3 Q What happened to the truckdriver that was
4 in front of you?

5 A The truckdriver turned off of Highway 74.

6 Q And which direction did it go?

7 A He turned on I-95 left.

8 Q And what happened after the truckdriver
9 turned left on I-95?

10 A We continued going straight.

11 Q And what happened next?

12 A We went on down the road and pulled off at
13 a gravel area on the right-hand side.

14 Q And what did you see when you were down
15 there when you pulled off on the gravel area on the
16 right-hand side?

17 A As we pulled in, I could see a vehicle
18 sitting at the gravel area.

19 Q And was -- where was that vehicle located
20 in relation to your car, the car in which you were
21 riding?

22 A Sort of to the right, behind us.

23 Q And how far was it from your vehicle?

24 A Approximately 50, 55 feet.

25 Q And do you recall the color of the vehicle?

1 A No, sir, I don't.

2 Q Do you recall what make the vehicle was?

3 A No, sir, I don't.

4 Q And was there conversation concerning the
5 vehicle?

6 A Yes, there was.

7 Q And what was the conversation concerning
8 the vehicle?

9 MR. BRITT: Objection.

10 MR. THOMPSON: Again, Your Honor,
11 this is offered for subsequent conduct.

12 THE COURT: Members of the
13 jury --

14 MR. THOMPSON: And corroborate --

15 THE COURT: -- the matters now
16 being elicited from Mr. Stevenson are being
17 offered for twofold purpose: First, to
18 corroborate the prior testimony of the
19 defense witness, Christopher Rumfelt. It
20 also is being offered, is that correct,
21 sir, to explain subsequent conduct on the
22 part of this witness?

23 MR. THOMPSON: Yes, sir.

24 THE COURT: And you may consider
25 this evidence for those limited purposes

1 and no other purposes. Yes, sir.

2 BY MR. THOMPSON:

3 Q And what was the conversations concerning
4 that car that was parked there behind you?

5 A I told Chris that I didn't know whether I
6 wanted to use the bathroom there or not because I
7 didn't know if anyone was inside of the vehicle.

8 Q And what did you do?

9 A I didn't use the bathroom.

10 Q Did you stay inside the vehicle?

11 A I don't recall whether I did or not.

12 Q And did Mr. Rumfelt use the bathroom?

13 A I don't recall.

14 Q And what happened next?

15 A Mr. Rumfelt got back in the car and we
16 continued back on Highway 74.

17 Q And did you stop again while on Highway 74?

18 A Yes, sir, we did.

19 Q Where was that?

20 A It was at a convenience store.

21 Q Was there anything there in the road where
22 the convenience store was located?

23 A There was a signal light.

24 Q Was this -- was the place where you
25 stopped, convenience store where you stopped on

1 Highway 74, was that on two-lane or four-lane?

2 A It was on a two-lane road.

3 Q Can you describe it, anything particular
4 about the signal that you saw there on Highway 74?

5 A I remember that it was blinking.

6 Q And what did you do when you got to the
7 convenience store?

8 A I went inside and used the restroom.

9 Q Can you describe the convenience store that
10 you went inside and used the restroom?

11 A As you walk in the door, I remember that
12 the checkout counter is on the right. And I asked
13 for where the bathroom was, and I turned left and
14 walked down a hallway to the bathroom down an aisle.

15 Q And when you walked down the hallway where
16 the bathroom was, where was the bathroom?

17 A It was on my right.

18 Q And what happened after you used the
19 bathroom?

20 A I come back out of the store and left.

21 Q And did you see anybody in the store,
22 Mr. Stevenson, at the convenience store?

23 A Yes, sir, I did.

24 Q Who did you see there?

25 A I seen two individuals.

1 Q And what gender were they?

2 A They were I guess Indian.

3 Q That's race -- I mean, were they male or
4 female?

5 A One female, one male.

6 Q Where were they located inside the store?

7 A The lady was behind the register, and the
8 male was standing sort of to the end of the counter.

9 Q At the time you left the store, which
10 direction did you and Mr. Rumfelt go in?

11 A We continued back on 74 West.

12 Q 74 West?

13 A Yes, sir.

14 Q And did there come a time that you noticed
15 a car passing you?

16 A Yes, there was.

17 Q When was that?

18 A Approximately 10, 15 minutes later.

19 Q And were you on the two-lane or four-lane
20 portion of the highway?

21 A Four lane -- no, I'm sorry, two-lane.

22 Q And describe the car that passed you.

23 A It was a red sporty type Lexus.

24 Q Did you notice anything about the -- did
25 you notice anything about the license tags from the

1 Lexus?

2 A No, sir, I didn't.

3 Q Was there a conversation about the license
4 tags on the Lexus?

5 MR. BRITT: Objection.

6 THE COURT: For what purpose,
7 sir? Are you offering it to corroborate
8 the prior witness?

9 MR. THOMPSON: Yes, sir.

10 THE COURT: Members of the jury,
11 the matters now being elicited as to any
12 conversation between the witness before
13 you, Mr. Stevenson, and the prior defense
14 witness, Mr. Christopher Rumfelt, is being
15 offered for the limited purpose of
16 corroboration. As I previously explained,
17 that means as tending to strengthen or to
18 support. It is for you, the members of the
19 jury, to determine what the evidence in the
20 case does show.

21 Do you want to be heard?

22 MR. BRITT: May I be heard? Yes,
23 sir.

24 THE COURT: Folks, there's a
25 matter of law the Court must take up.

1 Please step to the jury room. Don't worry
2 or speculate about what takes place in the
3 courtroom in your absence.

4 (Jury out at 10:31 a.m.)

5 THE COURT: The following is
6 being heard in the absence of the jury.
7 Yes, sir, Mr. Britt.

8 MR. BRITT: Your Honor, there's
9 no testimony from Mr. Rumfelt about a
10 conversation in the --

11 THE COURT: My recollection is he
12 testified about the license plate or
13 conversation about a license plate. I may
14 be mistaken in that. Is -- let me scroll
15 up. It is being offered to corroborate
16 Mr. Rumfelt; is that correct?

17 MR. THOMPSON: Yes, sir.

18 THE COURT: Why don't you ask him
19 questions on voir dire.

20 MR. THOMPSON: I'll withdraw it,
21 Your Honor.

22 THE COURT: Okay. Bring the jury
23 back in, sir.

24 (Jury in at 10:33 a.m.)

25 THE COURT: Ladies and gentlemen,

1 disregard my previous instruction, the
2 instruction I was giving you at the time
3 you were sent to the jury room. Counsel
4 for the defendant has withdrawn the
5 question. You may ask additional
6 questions.

7 BY MR. THOMPSON:

8 Q Mr. Stevenson, did you ever see the Lexus
9 that passed you stop?

10 A Yes, sir, I did.

11 Q Where was that?

12 A It was at another signal light.

13 Q And from the time that the -- you pulled
14 over on 74 in that gravel area on 74 to the time that
15 you saw the Lexus stop, did you see any stores open
16 other than the one you've testified to?

17 A No, sir.

18 Q Only store you saw open was the one there
19 at the blinking traffic light?

20 A Yes, sir.

21 Q Do you recall stopping in Rockingham, North
22 Carolina?

23 MR. BRITT: Objection to the
24 leading.

25 THE COURT: Overruled. You may

1 answer, sir.

2 THE WITNESS: Yes, sir, I do.

3 BY MR. THOMPSON:

4 Q About how many -- about how long was it,
5 after you saw the red Lexus stop, did you stop in
6 Rockingham, North Carolina?

7 A I don't know. I was back asleep again.

8 Q At the time you stopped in Rockingham --
9 well, where did you stop in Rockingham?

10 A It was at a Hardee's restaurant.

11 Q Was it dark or light at the time that you
12 stopped at Hardee's in Rockingham?

13 A It was just beginning to get light.

14 Q Do you know what time it was?

15 A No, sir, I don't.

16 Q Were you interviewed by any law enforcement
17 officers concerning this matter?

18 A Yes, sir, I was.

19 Q About what you had seen back on July 23rd
20 of 1993?

21 A Yes, sir.

22 Q Mr. Stevenson, I don't recall asking you
23 this, but where are you employed?

24 A I'm employed at Builder Supply of McDowell.

25 Q And what do you do there?

1 A I drive a delivery truck.

2 Q Back in July of 1993, where were you
3 employed?

4 A At Columbia Carolina Corporation.

5 Q And what kind of business is that?

6 A It's a place where they make plywood.

7 Q And what were you doing at Columbia
8 Carolina Corporation?

9 A I was a spreader operator.

10 Q Are you presently taking any courses,
11 Mr. Stevenson?

12 A Yes, sir, I am.

13 Q What are they?

14 A Basic law enforcement training.

15 Q And where is that?

16 A That is --

17 Q Where are you taking that course?

18 A I'm taking that course at Mayland Community
19 College.

20 MR. THOMPSON: That's all.

21 THE COURT: Mr. Britt.

22 CROSS-EXAMINATION

23 BY MR. BRITT:

24 Q Mr. Stevenson, it's your testimony you left
25 Wrightsville Beach, North Carolina, on the morning of

1 July 23rd, sometime after 2:00 a.m.?

2 A Yes, sir.

3 Q Did you go to this club with Christopher
4 Rumfelt?

5 A No, sir, I did not.

6 Q And the exact time that you left
7 Wrightsville Beach, you don't know?

8 A No, sir.

9 Q Was that the first occasion that you had
10 ever been to Wrightsville Beach?

11 A Yes, sir, it was.

12 Q So you don't know how far it is from
13 Wrightsville Beach, North Carolina, to Lumberton,
14 North Carolina?

15 A No, sir, do not.

16 Q You don't know how far it is from
17 Lumberton, North Carolina, to Laurinburg, North
18 Carolina?

19 A No, sir, I do not.

20 Q Now, it's your testimony that you slept a
21 good portion of this trip from Wrightsville Beach to
22 the various portion where you stopped; is that
23 correct?

24 A Yes.

25 Q Now, had you been drinking --

1 A No, sir.

2 Q -- on the night of July 22nd?

3 A No, sir.

4 Q And you say somewhere along the way, you
5 woke up and Chris was talking to a truckdriver on the
6 CB radio?

7 A Yes, sir, that's right.

8 Q And after you woke up, the truckdriver --
9 you said the truckdriver was in front of you?

10 A Yes, sir.

11 Q Was he within eyesight?

12 A Yes, sir.

13 Q And sometime after you woke up, trucker
14 turned off on I-95 and headed south?

15 A Yes, sir.

16 Q And you and Chris continued on U.S. 74?

17 A Yes, sir.

18 Q Two to three minutes?

19 A Yes, sir.

20 Q And how fast was he driving at the time, if
21 you know?

22 A I don't recall. I didn't look at the
23 speedometer.

24 Q And some two or three minutes after you
25 passed the intersection of I-95 and 74, he pulled

1 over?

2 A Yes, sir.

3 Q You were looking for a place to go to the
4 bathroom?

5 A Yes, sir.

6 Q And it's your testimony that you don't
7 recall whether you got out of the car or not?

8 A That's correct.

9 Q That there was a car parked there on the
10 side of the road?

11 A Yes, sir.

12 Q You don't know what make that car was?

13 A No, sir.

14 Q Don't know what color it was?

15 A No, sir.

16 Q Don't know whether it was a two-door or
17 four-door car?

18 A No, sir.

19 Q Don't know whether anybody was inside the
20 car?

21 A No, sir, I don't.

22 Q Didn't see anybody around the car, did you?

23 A No, sir.

24 Q And you expressed some reservations to
25 Chris about going to the bathroom there because that

1 car was present?

2 A That's correct.

3 Q And it's your testimony that after stopping
4 there, the two of you then got back on 74 and
5 continued west?

6 A Yes, sir.

7 Q And at a blinking traffic light along U.S.
8 74, you pulled into a station?

9 A Yes, sir.

10 Q Was that station on the right-hand side of
11 the road or the left-hand side of the road?

12 A The left.

13 Q Was that an Exxon station?

14 A I don't recall.

15 Q Are you familiar with Highway 710 at the
16 intersection with 74 in Robeson County?

17 A No, sir, I'm not.

18 Q Did you come into Robeson County on U.S.
19 74?

20 A Yes, sir.

21 Q And that's the same path you took that
22 night going back to Marion?

23 A Yes, it is.

24 Q And did you pass this store yesterday when
25 you came in that you stopped July the 23rd, 1993?

1 A When myself and these gentlemen were
2 talking about this earlier, they took me back to this
3 store, and I didn't remember it. And yesterday when
4 we come through, I still didn't remember it, nothing
5 about it.

6 Q And you say you went into the store and
7 asked to go to the restroom?

8 A Yes, sir.

9 Q And it's your testimony there was a woman
10 working there?

11 A Yes.

12 Q And was your testimony that there was
13 another person there?

14 A Yes.

15 Q Was that a man --

16 A A man, yes.

17 Q Older man, younger man?

18 A Older man.

19 Q Did Chris get out of the car?

20 A I don't recall.

21 Q You got back in the car, you drove on to
22 towards 74 -- on 74, towards I-95?

23 A Yes.

24 Q And some 15 minutes after stopping at this
25 store, you were passed by a red Lexus?

1 A Yes, sir.

2 Q You didn't see the license plate on the
3 car?

4 A No, sir.

5 Q Did you see anybody inside the car?

6 A No, sir, did not.

7 Q Was there more than one person in the car?

8 A I couldn't tell you.

9 Q Was there a man or woman driving?

10 A I don't know.

11 Q Was there a white sedan with two people
12 inside of it with that car?

13 A I have no idea.

14 Q Did you see an Arab looking man driving
15 that car?

16 A No, sir, I didn't.

17 Q And after this car passed, did you go back
18 to sleep?

19 A Yes, sir, I did.

20 Q And you woke up at some point, and you all
21 had stopped again?

22 A Yes, sir.

23 Q And it's your testimony you don't know the
24 date when you left --

25 A No, sir.

1 Q -- Wrightsville Beach?

2 A No, sir.

3 MR. BRITT: I don't have any
4 other questions.

5 THE COURT: Mr. Thompson.

6 REDIRECT EXAMINATION

7 BY MR. THOMPSON:

8 Q Mr. Stevenson, did you ever tell any law
9 enforcement officer that you had seen any Arab
10 guy?

11 MR. BRITT: Objection -- well, I
12 withdraw that.

13 THE COURT: You may answer, sir.

14 THE WITNESS: No, sir, I didn't.

15 BY MR. THOMPSON:

16 Q And a white sedan?

17 A No, sir.

18 MR. THOMPSON: That's all.

19 MR. BRITT: No other questions.

20 THE COURT: May the witness be
21 released?

22 MR. THOMPSON: Yes, sir.

23 THE COURT: Mr. Thompson.

24 MR. THOMPSON: Would call

25 Ms. Nancy Williamson to the stand. Nancy

1 Williamson.

2 THE COURT: If you'll place your
3 left hand on the Bible and raise your
4 right, please, ma'am.

5 NANCY C. WILLIAMSON,
6 being first duly sworn was examined and testified as
7 follows:

8 DIRECT EXAMINATION

9 THE COURT: Have a seat please,
10 ma'am. And if you'll state your full name
11 for the record, please.

12 THE WITNESS: Nancy Carol
13 Williamson.

14 THE COURT: And if you'll spell
15 your first and last name for the court
16 reporter.

17 THE WITNESS: N-A-N-C-Y,
18 W-I-L-L-I-A-M-S-O-N.

19 THE COURT: Thank you, ma'am.
20 Mr. Thompson.

21 BY MR. THOMPSON:

22 Q Good morning, Ms. Williamson.

23 A Good morning.

24 Q Ms. Williamson, where do you live, ma'am?

25 A Rowland.

1 Q And where are you employed?

2 A Lowry's Texaco.

3 Q How long have you lived in Robeson County?

4 A All of my life.

5 Q And Ms. Williamson, how long have you been
6 employed at Lowry's Texaco?

7 A Four years.

8 THE COURT: Pardon the
9 interruption, if you could keep your voice
10 raised so all members of the jury could
11 hear you. Mr. Thompson, I'm sorry.

12 BY MR. THOMPSON:

13 Q Where is Lowry's Texaco located?

14 A Highway 74, 710 crossing.

15 Q Is there any traffic signal located there
16 at that intersection?

17 A Yes, sir.

18 Q Back in July of 1993, was there a traffic
19 signal located at that intersection?

20 A Yes, sir.

21 Q Describe the traffic signal.

22 A A yellow blinking signal light.

23 Q And the yellow -- in which direction was
24 the yellow blinking signal light? I mean, was it on
25 74 or 710?

1 A 74.

2 Q And back in July of 19 -- specifically,
3 back July 23rd of 1993, who was the owner-operator of
4 Lowry's Texaco?

5 A Larry Lowry.

6 Q And do you know about what time you, Mr. --
7 well, strike that.

8 Who opened the store back on July 23rd of
9 1993?

10 A Mr. Larry Lowry.

11 Q Do you know about what time the store
12 normally opened?

13 A Sometimes he would get in there at 5:00,
14 and we would mainly try to have it opened at quarter
15 after 5:00.

16 Q And what time would you normally get there?

17 A About a quarter after 5:00.

18 THE COURT: Is that a.m., ma'am?

19 THE WITNESS: A.m., yes, sir.

20 MR. THOMPSON: Thank you, Your

21 Honor.

22 BY MR. THOMPSON:

23 Q And would you describe, where is that store
24 located on 74, is it on the left side or the right
25 side?

1 A Going east, it's on the right; going west,
2 it's on the left.

3 Q And would you -- as you entered the door of
4 that store, would you describe where the counter is?

5 A It's to your right.

6 Q And where is the bathroom?

7 A Down the hall to the left, you go down the
8 left.

9 Q And when you go down the hall to your left,
10 where is the bathroom located?

11 A On the right.

12 Q Ms. Williamson, is it unusual for travelers
13 to stop in at Lowry's Texaco to use the bathroom?

14 A No, sir, it's not.

15 Q Do you recall, Ms. Williamson, specifically
16 the events that occurred back on the specific date of
17 July 23rd of 1993?

18 A Yes, sir. I heard it, seen it on the TV
19 and heard --

20 MR. BRITT: Objection, move to
21 strike, unresponsive.

22 THE COURT: What he's asking you,
23 there at the store that morning, did you
24 work that morning?

25 THE WITNESS: Yes, sir, I did.

1 THE COURT: Do you recall
2 anything about what happened at the store
3 that day?

4 THE WITNESS: No, sir.

5 MR. THOMPSON: That's what I
6 was --

7 BY MR. THOMPSON:

8 Q Now, Ms. Williamson, is Mr. -- about how
9 old is Mr. Lowry, Larry Lowry?

10 MR. BRITT: Objection to the
11 relevance.

12 THE WITNESS: He's in his 30's.

13 MR. BRITT: I'll withdraw the
14 objection.

15 THE COURT: Okay.

16 BY MR. THOMPSON:

17 Q And Ms. Williamson, how many stores -- how
18 many traffic lights are on 74? How many traffic
19 lights were there on 74 between the intersection of
20 Interstate I-94 and 74 and Laurinburg back in July of
21 1993?

22 A Just one.

23 Q And where was that located?

24 A 74 and 710.

25 Q And is that where Lowry's Texaco is?

1 A Lowry's Texaco, yes, sir.

2 Q How many stores, Ms. Williamson, are
3 located between Highway 74 and Laurinburg, around
4 5:00 in the morning, that opened around 5:00 in the
5 morning, back in July of 1993?

6 A None. Mainly, us.

7 MR. THOMPSON: That's all.

8 THE COURT: Mr. Britt.

9 CROSS-EXAMINATION

10 BY MR. BRITT:

11 Q Ms. Williamson, Lowry's Texaco has been
12 there for a numbers of years?

13 A Yes, sir.

14 Q And that blinking light on 74 has been
15 there for a number of years?

16 A Yes, sir.

17 Q And that is a single blinking light. That
18 is, there's only a yellow light that is emitted from
19 that signal?

20 A Yes, sir. There's not -- as it faces 74,
21 as it faces 710, there's a blinking red light, isn't
22 there?

23 A Now there is, sir.

24 Q And there's a stop sign there?

25 A Yes, sir.

1 Q But there's no left-hand turn lane there on
2 74 where a red light can stop traffic, is there?

3 A No, sir.

4 Q And if you turn left on 710, you go to
5 Rowland; is that correct?

6 A Yes, sir.

7 Q You turn right on 710, you go to Pembroke?

8 A Yes, sir, you do.

9 Q And the intersection of Highway 74 and 710
10 is located in Robeson County, isn't it?

11 A Yes, it is.

12 Q It's not in Laurinburg, is it?

13 A No, sir.

14 MR. BRITT: I don't have any
15 other questions.

16 MR. THOMPSON: No questions.

17 THE COURT: May the witness be
18 released folks?

19 MR. THOMPSON: Yes, sir.

20 THE COURT: Thank you, ma'am.

21 You may step down.

22 MR. THOMPSON: May we approach?

23 THE COURT: You want an
24 opportunity to take a break?

25 MR. THOMPSON: I think so, Your

1 Honor.

2 THE COURT: Ladies and gentlemen,
3 we're going to take a recess -- I'm sorry.

4 MR. THOMPSON: Your Honor, may we
5 approach?

6 THE COURT: Yes, sir, come on up
7 (Whereupon a bench conference ensued
8 as follows.) (2-20-96).

9 THE COURT: Let the record show
10 that all counsel are present, the defendant
11 is present, presiding Judge and the court
12 reporter are present. Yes, sir.

13 MR. THOMPSON: We would request
14 an extended break of about a half hour. We
15 need to talk to a couple of folks. We may
16 not use them and may have something to do
17 with how expeditiously we move.

18 THE COURT: 30 minutes?

19 MR. THOMPSON: Yes, sir.

20 THE COURT: Yes, sir. Thank
21 you.

22 (Bench conference concluded.)

23 THE COURT: Members of the jury,
24 we're going to take a fairly extended
25 recess at this point for about 30 minutes.

1 I'm going to ask that -- at 25 after,
2 Mr. Thompson?

3 MR. THOMPSON: Yes, sir.

4 THE COURT: If you would, please
5 reassemble in the jury room at 25 after
6 11:00 by the clock on the wall.

7 Again, recall that it is your duty to
8 abide by all prior instructions of the
9 Court concerning your conduct during this
10 recess. Everyone else please remain
11 seated, the members of the jury are
12 excused.

13 (Jury out at 10:53 a.m.)

14 THE COURT: Folks, if you need
15 some additional time, let me know.

16 MR. THOMPSON: Yes, Your Honor.

17 THE COURT: We're at ease.

18 (Brief recess.)

19 THE COURT: All counsel are
20 present, the defendant is present in open
21 court. At last count we were short one
22 juror, so we're waiting for that juror.

23 You folks ready to go forward, Mr.
24 Thompson, Mr. Bowen?

25 MR. THOMPSON: Yes, sir, Your

1 Honor.

2 THE COURT: If you'll bring them
3 in, please.

4 (Jury in at 11:27 a.m.)

5 THE COURT: Yes, sir, you may
6 call your next witness.

7 MR. THOMPSON: Yes, sir. Defense
8 would call Richard McKinney, please.

9 THE COURT: If you'll place your
10 left hand on the Bible and raise your
11 right, please.

12 RICHARD MCKINNEY,
13 being first duly sworn was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 THE COURT: Have a seat. It's
17 going to be necessary that you speak up
18 loudly and clearly so all members of the
19 jury and all parties can hear you, sir. If
20 if you'll speak directly into the
21 microphone. State your full name for the
22 record.

23 THE WITNESS: Richard Alan
24 McKinney, Jr.

25 THE COURT: If you'll spell your

1 first and last name.

2 THE WITNESS: R-I-C-H-A-R-D,
3 M-C-K-I-N-N-E-Y.

4 THE COURT: Thank you. Mr.
5 Thompson, Mr. Bowen.

6 MR. THOMPSON: Thank you.

7 BY MR. THOMPSON:

8 Q Good morning, Mr. McKinney.

9 A Good morning.

10 Q Mr. McKinney, where do you live, sir?

11 A I live in Rock Hill, South Carolina.

12 Q And how long have you lived in Rock Hill?

13 A Just over two years.

14 Q Where are you employed now, sir?

15 A I'm employed with BW3 Grill and Pub in
16 Charlotte.

17 THE COURT: In where, sir?

18 THE WITNESS: In Charlotte.

19 BY MR. THOMPSON:

20 Q How long have you been employed with BW3
21 Grill in Charlotte?

22 A Six months.

23 Q And prior to working at BW3 Grill in
24 Charlotte, where did you work?

25 A Embassy Suites Hotel.

1 Q Where was that?

2 A In Charlotte.

3 Q How long did you work there?

4 A A year.

5 Q And prior to working at Embassy Suites,
6 where you did you work?

7 A I worked for Southern Machine Services in
8 Marion, North Carolina.

9 Q How long did you work for Southern Machine
10 Services?

11 A Approximately eight, nine months.

12 Q Back in July of 1993, where were you
13 working, sir?

14 A I was working for Southern Machine Services
15 at that time.

16 Q And where were you living in July of 1993?

17 A In Marion.

18 Q Do you know Christopher Rumfelt?

19 A Yes, I do.

20 Q How long have you known Christopher
21 Rumfelt?

22 A Approximately 18 years.

23 Q Do you know Gregory Stevenson?

24 A Yes, I do.

25 Q How long have you known Gregory Stevenson?

1 A Also approximately 18 years.

2 Q Do you know a Hugh Fowler?

3 A Yes, I do.

4 Q How long have you known Hugh Fowler?

5 A About six years.

6 Q Mr. Alan, back in July of 1993, did you go
7 the Wrightsville Beach?

8 A Yes, I did.

9 Q How did you get to Wrightsville Beach?

10 A Hugh Fowler and I took his car.

11 Q And what kind of car did you ride in?

12 A It was a burgundy Toyota, Nissan, something
13 along those lines.

14 Q How did you get -- what route did you take
15 to Wrightsville Beach?

16 A Hugh and I took I-40 to Greensboro and 421,
17 I believe, to Wrightsville Beach.

18 Q And was there any discussion between
19 Mr. Rumfelt, Mr. Stevenson, Mr. Fowler, and yourself
20 about how to get to Wrightsville Beach?

21 A Yes.

22 MR. BRITT: Objection.

23 THE COURT: The objection at this
24 point is sustained. You may ask additional
25 questions, though.

1 BY MR. THOMPSON:

2 Q Mr. Alan --

3 THE COURT: This is Mr. McKinney.

4 BY MR. THOMPSON:

5 Q I mean Mr. McKinney, Richard Alan McKinney,
6 how did -- when you got to Wrightsville Beach, what
7 did you do?

8 A Hugh and I checked into the hotel, and we
9 waited for Chris and Greg.

10 Q What hotel did you check into?

11 A I don't recall the name of it.

12 Q Describe -- did you check into a room?

13 A It was a suite, a two-bedroom suite.

14 Q And how long did you stay in Wrightsville
15 Beach?

16 A I was there three days.

17 Q Were you there, Mr. McKinney, when Gregory
18 Stevenson and Chris Rumfelt left?

19 A Yes, I was.

20 Q On what date was it when Christopher
21 Rumfelt and Greg Stevenson left?

22 A The 23rd.

23 Q Of July --

24 A Of July of 1993.

25 Q And approximately what time was it when

1 they left?

2 A Approximately 2:30 a.m.

3 Q Did you and Mr. Christopher Rumfelt do
4 anything during the early morning hours of July 23rd
5 of 1993?

6 A For --

7 Q Prior to their leaving?

8 A For probably three, maybe three and a half
9 hours, we were at a club, bar, right beside the
10 hotel.

11 Q Did Mr. Rumfelt have anything to drink?

12 A No, sir, he didn't.

13 Q And what time did you leave that bar or
14 club?

15 A Shortly after 2:00, no more than five or
16 ten minutes after 2:00.

17 Q And how far, how long would it take -- did
18 it take for you to walk from the bar back to your
19 room there at the hotel or motel?

20 A Approximately five minutes, it was just a
21 walk across the parking lot.

22 Q When Mr. Rumfelt and Mr. Stevenson left at
23 2:30 a.m. in the morning, did you know why they were
24 leaving going back to Marion?

25 A Yes.

1 Q Why was that?

2 MR. BRITT: Objection.

3 THE COURT: Sustained.

4 BY MR. THOMPSON:

5 Q What was Mr. Rumfelt and Mr. Stevenson
6 riding in, what kind of car was it?

7 A A Pontiac Fiero.

8 Q When did you go back to Marion?

9 A About 10:00 the same morning.

10 Q The same morning of July 23rd?

11 A July 23rd, 1993.

12 Q After you got back to Marion, did you see
13 either Hugh Stevenson or Christopher Rumfelt?

14 A I didn't see Chris or Greg either for at
15 least three days probably, two or three days.

16 Q Did you have a conversation with either
17 Chris or Greg after you saw them three days later?

18 A We had a conversation, yes.

19 Q Did you specifically, did you and
20 Christopher Rumfelt have a conversation concerning
21 anything that he observed back on July the 23rd of
22 1993?

23 MR. BRITT: Objection.

24 THE COURT: Well, as to whether
25 or not the conversation occurred, you may

1 answer yes or no.

2 THE WITNESS: Yes, we had a
3 conversation.

4 BY MR. THOMPSON:

5 Q And what was the nature of that
6 conversation?

7 MR. BRITT: Objection.

8 MR. THOMPSON: Your Honor, this
9 is being offered for corroborative.

10 THE COURT: Yes, sir. The
11 objection is sustained. There's no
12 testimony. There's nothing to corroborate.

13 MR. THOMPSON: Desire to be
14 heard.

15 THE COURT: Yes, sir. Members of
16 the jury, there's a matter of law the Court
17 must take up. Don't worry or speculate
18 about what takes place in the court room in
19 your absence. And if you will step to the
20 jury room, please.

21 (Jury out at 11:36 a.m.)

22 THE COURT: The following is
23 being heard in the absence of the
24 jury.

25 Mr. Thompson, the problem is that

1 Mr. Rumfelt, to my recollection, and I may
2 be wrong, never testified about a
3 conversation with this gentleman.

4 MR. THOMPSON: Well, Your Honor,
5 and he didn't specifically, but he did say
6 that he had conversations with friends and
7 family concerning what he had observed.

8 THE COURT: Yes, sir. That may
9 or may not include this witness.

10 MR. THOMPSON: I understand. And
11 Your Honor, I would contend that -- the
12 defense would contend that if he's able to
13 relate that he had a conversation with
14 Mr. Rumfelt concerning the Lexus, that
15 would be corroborative.

16 THE COURT: Why don't you ask him
17 some questions in the absence of the jury,
18 we'll see where we are.

19 BY MR. THOMPSON:

20 Q What was the nature of that conversation,
21 Mr. McKinney, that you had with Mr. Rumfelt as to
22 what he had observed back on July 23rd of 1993?

23 A The whole of the conversation was mostly as
24 to which route, his or mine, was the quickest to or
25 from Wrightsville Beach. In that conversation, we

1 discussed various routes or such as roads that we
2 took, and speeds that --

3 THE COURT: I don't mean to
4 interrupt you, sir, but specifically did
5 you talk to Mr. Rumpfelt about his seeing
6 any Lexus on the way back?

7 THE WITNESS: Yes.

8 THE COURT: Let's talk about
9 that, sir.

10 THE WITNESS: The only thing that
11 was mentioned to me at that time about a
12 Lexus was that on their way back from
13 Wrightsville Beach, a red Lexus passed them
14 at a high rate of speed. They followed it
15 for several miles. It turned off, they
16 went one way, it went the other.

17 BY MR. THOMPSON:

18 Q Was there any conversation concerning
19 license plates on that Lexus?

20 A Yes, there was.

21 Q What was the conversation concerning the
22 license plates?

23 A Something to the effect that whoever was
24 driving that car would have to be a big North
25 Carolina fan or a Jordan fan.

1 Q And do you know what -- did that have any
2 significance to you or to Mr. Rumfelt or
3 Mr. Stevenson concerning the person driving, that
4 person driving that Lexus being a North Carolina
5 fan?

6 MR. BRITT: Objection.

7 THE COURT: We're on voir dire.

8 What do you want to ask him, sir?

9 BY MR. THOMPSON:

10 Q What kind of fans were Mr. Rumfelt or
11 Mr. Stevenson?

12 A They are not Carolina fans.

13 Q What kind of fans were they?

14 A Virginia fans.

15 Q And did that come up during the
16 conversation, concerning the Lexus?

17 A If I'm not mistaken, it did. I can't say
18 for sure that it did.

19 Q Did anybody, either Mr. Stevenson or
20 Mr. Rumfelt, indicate to you that the --

21 THE COURT: Well, you need to
22 establish that there was more than one
23 conversation with more than one person.

24 MR. THOMPSON: Okay.

25 BY MR. THOMPSON:

1 Q The conversation that you testified to, was
2 that with Mr. Rumfelt?

3 A If I'm not mistaken, but I can't say for
4 sure.

5 THE COURT: Did you also have a
6 conversation with Mr. Stevenson?

7 THE WITNESS: I'm sure I had a
8 conversation with Mr. Stevenson, but I
9 don't remember which one I had the actual
10 conversation concerning the car with.

11 THE COURT: Okay.

12 BY MR. THOMPSON:

13 Q But it was one or the other?

14 A I'm sure it was one or the other, but I'm
15 not sure exact time or which one it was.

16 THE COURT: Anything further?

17 MR. THOMPSON: That's all.

18 THE COURT: Mr. Britt, any
19 questions of the witness on voir dire?

20 MR. BRITT: No, sir.

21 THE COURT: State want to be
22 heard further?

23 MR. BRITT: Yes, sir. One, based
24 upon his answer that he doesn't know who he
25 talked to, it doesn't -- can't be offered

1 for corroborative purpose.

2 THE COURT: Want to ask
3 additional questions, Mr. Thompson?

4 MR. THOMPSON: Mr. McKinney, when
5 did you -- where were you when you first
6 saw Chris Rumfelt after you returned
7 back -- and you -- when you held a
8 conversation with Chris Rumfelt after you
9 returned back from Wrightsville Beach?

10 THE COURT: You need to clarify
11 what -- Do you recall a conversation with
12 Mr. Rumfelt specifically after you returned
13 to Marion, sir?

14 THE WITNESS: On what --

15 THE COURT: About the route that
16 they may have taken coming back.

17 THE WITNESS: Yes.

18 THE COURT: You recall the
19 conversation with him specifically?

20 THE WITNESS: With him
21 specifically.

22 BY MR. THOMPSON:

23 Q And during that conversation, did a --
24 during that conversation, was -- did a red Lexus come
25 up during that conversation?

1 A Yes, yes.

2 Q And what did Mr. Rumpfelt tell you about the
3 red Lexus?

4 A Nothing more than when they were coming
5 back up 74, a red Lexus passed them at a high rate of
6 speed, which they followed for several miles.

7 Q And did he mention anything to you about
8 the license plates on that red Lexus?

9 A Only that it had to be a Jordan fan or a
10 Carolina fan to put that on their tag.

11 MR. THOMPSON: All right, sir.

12 That's all.

13 THE COURT: Anything further
14 Mr. Britt?

15 MR. BRITT: No, sir.

16 THE COURT: Do you want to be
17 heard further, sir?

18 MR. BRITT: No, sir.

19 THE COURT: I'm going to let it
20 in with a limiting instruction for whatever
21 it's worth to the jury, and you folks can
22 argue your contention at the appropriate
23 time. If you'll bring the jury back in,
24 please.

25 (Jury in at 11:42 a.m.)

1 THE COURT: Mr. Thompson, this is
2 being offered for purposes of
3 corroboration; is that correct?

4 MR. THOMPSON: Yes, sir.

5 THE COURT: Members of the jury,
6 the testimony about to be elicited from the
7 witness before you, Mr. McKinney, as to a
8 conversation he contends he had with
9 Mr. Rumfelt is being offered to corroborate
10 the prior testimony at this trial of
11 Mr. Rumfelt. And as I have explained to
12 you previously, the term "corroboration"
13 means as tending to strengthen or to
14 support.

15 Again, I instruct you that it is for
16 you the members of the jury to determine
17 what the evidence in this case does show.
18 But to the extent that you find that it is
19 corroborative of the prior testimony of
20 Mr. Rumfelt, you may consider it for that
21 limited purpose and for no other purpose.
22 Yes, sir.

23 MR. THOMPSON: Thank you.

24 BY MR. THOMPSON:

25 Q Mr. McKinney, did you, upon returning from

1 Wrightsville Beach, see Mr. Christopher Rumfelt?

2 A At least two or three days later I saw him,
3 not upon returning.

4 Q And then the two or three days later that
5 you saw Mr. Rumfelt, did you have a conversation with
6 him?

7 A Yes.

8 Q And what was the nature of that
9 conversation?

10 A The conversation was based on which route,
11 his or mine, was the quickest from Wrightsville
12 Beach.

13 Q And did you discuss -- did anything come up
14 during that conversation specifically concerning a
15 Lexus?

16 A Yes.

17 Q And what was said about a Lexus?

18 A That while driving up 74 coming back from
19 Wrightsville Beach, a red Lexus passed them at a high
20 rate of speed, which they followed for several miles.

21 Q And did anything, during that conversation,
22 did anything come up about license plates on the
23 Lexus?

24 A The license plate on the car made a
25 reference to the University of North Carolina or to

1 Michael Jordan, and whoever was driving that car must
2 be a Jordan or a Carolina fan.

3 Q If you know, what kind of fan was
4 Christopher Rumfelt?

5 MR. BRITT: Objection.

6 THE COURT: Overruled. You may
7 answer, sir.

8 THE WITNESS: Virginia fan.

9 BY MR. THOMPSON:

10 Q If you know, what kind of fan was Gregory
11 Stevenson?

12 MR. BRITT: Objection,
13 Mr. Stevenson wasn't a part of the
14 conversation.

15 THE COURT: Sustained.

16 BY MR. THOMPSON:

17 Q What kind of fan were you back on July
18 1993?

19 A A North Carolina fan.

20 Q Now, Mr. McKinney, you said said that this
21 conversation with Mr. Rumfelt took place about three
22 days after you returned?

23 A Approximately three days.

24 MR. BRITT: Objection, asked and
25 answered.

1 THE COURT: Okay. Go ahead,

2 Mr. Thompson.

3 BY MR. THOMPSON:

4 Q That conversation then would have been in
5 July of 1993?

6 A Would have been in July of 1993.

7 Q And did you hear any or see any media
8 accounts concerning Mr. James Jordan being missing or
9 the death of James Jordan?

10 MR. BRITT: Objection.

11 THE COURT: You may answer yes or
12 no, sir.

13 THE WITNESS: Yes.

14 BY MR. THOMPSON:

15 Q Did the conversation that you had with
16 Mr. Rumfelt take place prior to any media accounts
17 which you heard concerning Mr. James Jordan's death?

18 A The conversation regarding the trip back?

19 Q Yes, sir, and the Lexus.

20 A Yes, sir.

21 MR. THOMPSON: That's all, Your
22 Honor.

23 THE COURT: Mr. Britt.

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

1 THE COURT: May the witness be
2 released?

3 MR. THOMPSON: Yes, sir, Your
4 Honor.

5 THE COURT: Yes, sir
6 Mr. Thompson.

7 MR. THOMPSON: Would call to the
8 witness stand, Marlyn Locklear.

9 THE COURT: If you'll place your
10 left hand on the Bible and raise your
11 right.

12 MARLYN D. LOCKLEAR,
13 being first duly sworn was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 THE COURT: If you'll state your
17 full name.

18 THE WITNESS: Marlyn Denise
19 Locklear.

20 THE COURT: Spell first and last
21 name for the court reporter.

22 THE WITNESS: M-A-R-L-Y-N,
23 L-O-C-K-L-E-A-R.

24 BY MR. THOMPSON:

25 Q Good morning, Ms. Locklear.

1 A Good morning.

2 Q Would you move up please and speak loudly
3 into that microphone so that the jury can hear you?
4 Ms. Locklear, where do you live now?

5 A Pembroke.

6 Q And what address?

7 A Route 1, 11-K, Lot 11-K.

8 Q Back in July -- I'm sorry?

9 THE COURT: They can't hear.

10 THE COURT: You'll need to speak
11 louder if you will, please. If you'll
12 repeat your address, ma'am.

13 THE WITNESS: Route 1, Lot 11-K,
14 Race Court.

15 BY MR. THOMPSON:

16 Q Back in July of 1993, where were you living
17 Ms. Locklear?

18 A Bob's Landing.

19 Q And in which trailer were you living?

20 A The first trailer as you come in the
21 trailer park.

22 Q Again Ms. Locklear, if you'll hold your
23 voice up please. Now, do you recall what month you
24 moved into Bob's Landing Mobile Home Park?

25 A Yes, sir, in February.

1 Q When was that?

2 A In February.

3 Q Of what year?

4 A '93.

5 Q And who was living with you in your trailer
6 at Bob's Mobile Home Park back in July of 1993?

7 A Me and my two sons and James Deese and one
8 of their friends named - we called him Godfather,
9 first name was Larry.

10 Q And describe what Godfather looked like.

11 A He was about 5-5, black male, dark skin,
12 and weighed 140 to 150 pounds.

13 Q When was it that Godfather moved into your
14 trailer back in 1993?

15 A Around the first of July.

16 Q And where was he living prior to then?

17 A In a motel at South of the Border, Family
18 Inns.

19 Q Ms. Locklear, where did JC work back in
20 July of 1993? That's your boyfriend?

21 A He worked catching chickens with this
22 company, I don't know the name of the company.

23 Q And how long did he work catching chickens?

24 A Probably two or three months.

25 Q And where did Godfather worked?

1 A He done the same thing, catching chickens.

2 Q Was there any particular reason why
3 Godfather moved into your trailer back in July of
4 19 --

5 MR. BRITT: Objection.

6 THE COURT: Sustained.

7 BY MR. THOMPSON:

8 Q Ms. Locklear, do you know Daniel Green?

9 A Yes, I do.

10 Q And when did you meet Daniel Green?

11 A Back in July.

12 Q All right. And --

13 THE COURT: I'm sorry, ma'am,
14 July of when?

15 THE WITNESS: '93.

16 BY MR. THOMPSON:

17 Q When did -- and where did Mr. Green live in
18 relation to your trailer?

19 A He stayed three trailers behind mine.

20 Q Do you know Larry Demery?

21 A I spoke to him.

22 Q And did you know Larry Demery back in July
23 of 1993?

24 A Yes, I did.

25 Q Did you ever see Larry Demery driving a

1 vehicle --

2 A Yes, I did.

3 Q -- back in July of 1993?

4 A Yes, I did.

5 Q Describe the vehicle.

6 A It was a red Lexus.

7 Q Did you see him drive any other vehicle
8 other than a red Lexus?

9 A Yes, I did.

10 Q What kind of vehicle?

11 A It was a cream or tan -- I'm not for sure
12 the name of the car.

13 Q Okay. Did you ever see Larry Demery with a
14 gun, Ms. Locklear, back in July of 1993?

15 A Yes, sir, I did.

16 Q And when was that?

17 A The first time I seen him with a gun, he
18 had took me and my sister-in-law to a station to pick
19 up my boyfriend, and he had the gun laying beside him
20 in the car.

21 Q Who else was with you when he took you and
22 your sister-in-law to the service station?

23 A Daniel.

24 Q And what service station did you go to?

25 A The Texaco station there on 74 where 710

1 and 74 crosses.

2 Q And what happened when you got there at the
3 service station on 74 and 710?

4 MR. BRITT: Objection, like to be
5 heard.

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

13 (Jury out at 11:52 a.m.)

14 THE COURT: The following is
15 being heard in the absence of the jury.
16 Yes, sir.

17 MR. BRITT: Your Honor, this is,
18 I anticipate, that they are going into an
19 incident that Mr. Demery was cross-examined
20 about. At that time I objected on the
21 grounds that it was collateral, and at this
22 time I object that it is collateral as
23 well. It's not relevant to any issue in
24 this trial.

25 THE COURT: Mr. Thompson.

1 MR. THOMPSON: This is for
2 impeachment, Your Honor.

3 THE COURT: But his argument is
4 that it relates to a collateral matter, and
5 that --

6 MR. THOMPSON: Your Honor, it
7 relates to a gun that he was in possession
8 with.

9 THE COURT: Ask questions about
10 that so we can see where we are.

11 MR. THOMPSON: All right.

12 THE COURT: Yes, sir.

13 BY MR. THOMPSON:

14 Q First of all, Ms. Locklear, where were you
15 located in the car, where were you seated?

16 A I was sitting behind Daniel.

17 Q And where was Daniel seated?

18 A On the passenger side.

19 Q And where was the other individual seated?

20 A She was sitting behind Larry.

21 Q And describe what happened when you got to
22 the Texaco station?

23 A We got there, JC had already left, had
24 caught a ride home. We got our gas, and Larry got in
25 this car. And this young guy come up, this little

1 boy, they went to playing, and he popped him in the
2 mouth.

3 Q Who popped who in the mouth?

4 A The little boy popped Larry in the mouth.

5 Q What happened?

6 A Larry got upset, got mad. And he turned
7 and looked at Daniel, put his hand on the gun and
8 said, "I ought to shoot the little fucker."

9 Q When he said "I ought to shoot the little
10 fucker," what happened?

11 A Daniel looked at him and told him to,
12 "Let's go."

13 Q And where did you go?

14 A We left and went back home.

15 Q To your trailer?

16 A They dropped me off.

17 Q All right. Did you see Mr. Demery do
18 anything with the gun after you got back to your
19 trailer?

20 A He -- no, I didn't see him when he got out
21 of the car because he dropped me off at my trailer.

22 Q When was --

23 MR. THOMPSON: Your Honor, this
24 is voir dire, I'm going to go into it.

25 BY MR. THOMPSON:

1 Q When was the -- did you see Larry Demery
2 with the gun on another occasion?

3 A Yes, sir, I did.

4 Q And where was that?

5 A In the trailer park, he had the gun stuffed
6 down in front of his pants.

7 Q Was it the same gun that you observed back
8 during the time when you were at the -- I mean at the
9 Texaco station?

10 A Yes, sir, it was.

11 Q Describe the gun that you saw when you were
12 at the Texaco station.

13 A It was a handgun, had a long barrel on it,
14 and the handle was a dark color, like a dark brown.

15 Q And describe the barrel, what color was the
16 barrel?

17 A It was dark.

18 Q Now, do you know what caliber of gun it
19 was?

20 A No, sir, I don't.

21 THE COURT: Do you want to ask
22 her when this occurred?

23 MR. THOMPSON: Oh, yes.

24 BY MR. THOMPSON:

25 Q The time that you went back in, that you

1 and Mr. Demery, Mr. Green, and the other
2 individual -- what was her name?

3 A Mary Ann Locklear.

4 Q -- Mary Ann went to this Texaco station,
5 was that in July of 1993?

6 THE COURT: Not suggestion --

7 BY MR. THOMPSON:

8 Q When was it?

9 A It was back in July, the last of June,
10 first of July.

11 THE COURT: Anything further?

12 BY MR. THOMPSON:

13 Q And what month was it that you saw the gun,
14 the second time when you said you saw it stuck down
15 in his pants pocket?

16 A It was in July.

17 THE COURT: How much after the
18 first incident, how much time had passed
19 approximately?

20 THE WITNESS: Probably about a
21 week.

22 THE COURT: Mr. Thompson,
23 anything further?

24 MR. THOMPSON: That's all.

25 THE COURT: State got anything on

1 voir dire?

2 MR. BRITT: No, sir.

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

5 MR. BRITT: Your Honor, again,
6 it's my contention this is a collateral
7 matter, doesn't have any relevance to any
8 issue in the trial.

9 THE COURT: It's being offered
10 for impeachment purposes, Mr. Britt. And
11 Mr. Demery testified about what occurred,
12 and Mr. Demery testified about this
13 defendant's involvement --

14 MR. BRITT: Yes, sir.

15 THE COURT: -- to that extent.
16 So I'm letting it in for impeachment
17 purposes. I'll give a limiting
18 instruction. You can cross-examine her
19 about the time and any other matters you
20 feel are relevant. Bring the jury back
21 in.

22 (Jury in at 11:58 a.m.)

23 THE COURT: Members of the jury,
24 the testimony now being elicited is being
25 offered for the limited purpose of

1 impeachment. As I have previously
2 explained to you, the term "impeachment"
3 means as tending to discredit or to
4 contradict. And specifically, this
5 evidence is being offered as impeachment
6 evidence based on the prior testimony at
7 this trial of Larry Martin Demery. You may
8 consider this evidence for that limited
9 purpose and for no other purposes.

10 Yes, sir, Mr. Thompson.

11 BY MR. THOMPSON:

12 Q Ms. Locklear, when was the first time you
13 saw Larry Martin Demery with a gun?

14 A The first day I met him in the trailer
15 park.

16 Q And where did he have the gun?

17 A He always toted it in front of his
18 pants.

19 MR. BRITT: Objection, not
20 responsive.

21 THE COURT: Sustained.

22 MR. BRITT: Move to strike. Ask
23 for instruction.

24 THE COURT: Allowed. Members of
25 the jury don't consider the last response

1 of the witness. That matter is not to take
2 any part in your deliberations in any
3 respect. But you may ask additional
4 questions.

5 BY MR. THOMPSON:

6 Q When you saw Larry Martin Demery with the
7 gun the first time in the trailer park, where was the
8 gun located?

9 A In the front of his pants.

10 Q And when was the next time you saw Larry
11 Martin Demery with a gun?

12 A In the car when we left.

13 Q You're going to have to --

14 THE COURT: Is this the same day
15 ma'am?

16 THE WITNESS: Huh-uh, this was
17 before, the day before. Because every time
18 I saw him, he always had a gun.

19 THE COURT: What he is asking you
20 is when you first saw him with the gun.
21 When did that occur in point of time, what
22 month?

23 THE WITNESS: Around July.

24 THE COURT: Okay. What part of
25 July?

1 THE WITNESS: I'm not for sure,
2 first of July.

3 THE COURT: First of July.
4 Mr. Thompson.

5 MR. THOMPSON: Your Honor, would
6 you instruct her to hold her voice up?

7 THE COURT: Yes, sir. Yes,
8 ma'am, if you'll speak up, please.

9 THE WITNESS: Okay.

10 BY MR. THOMPSON:

11 Q Ms. Locklear, at some point, did you and --
12 did Mr. Demery take you someplace?

13 A Yes, sir, he did.

14 Q And where did he take you?

15 A To the Texaco station on 74.

16 THE COURT: When did this occur
17 in point of time to when you just testified
18 you first saw him with the gun, same day or
19 the next day?

20 THE WITNESS: The first time I
21 saw him. This was before he took me to the
22 station.

23 THE COURT: How much before?

24 THE WITNESS: Maybe a week or
25 two.

1 THE COURT: Mr. Thompson.

2 BY MR. THOMPSON:

3 Q And we're talking about --

4 THE COURT: They can't hear. Go
5 ahead.

6 MR. THOMPSON: Again, Your Honor
7 would you instruct her to speak up.

8 THE COURT: They need to be able
9 to hear your testimony, ma'am, so you'll
10 need to speak directly into the microphone.

11 MR. BOWEN: May I approach her
12 and push the microphone?

13 THE COURT: If you'll just pull
14 it up to you. Okay. Mr. Thompson.

15 BY MR. THOMPSON:

16 Q Ms. Locklear, we're talking about the
17 occasion, the second time you saw the gun, you were
18 in the car with Mr. Demery, along with Mr. Green and
19 another person?

20 MR. BRITT: Objection to the
21 leading.

22 MR. THOMPSON: Point of
23 reference, Your Honor.

24 THE COURT: On the day that you
25 went to Texaco station, who was in the

1 car?

2 THE WITNESS: Me and Daniel and
3 Larry and my sister-in-law, Mary Ann.

4 THE COURT: What car were you
5 in?

6 THE WITNESS: A tan car.

7 THE COURT: Who was driving the
8 car?

9 THE WITNESS: Larry.

10 THE COURT: Mr. Thompson.

11 BY MR. THOMPSON:

12 Q What happened when you got to the Texaco
13 station?

14 A We got there, and JC had already caught a
15 ride home, and we got our gas. And this young boy
16 came up to the car and went to playing with Larry,
17 and he popped Larry in the mouth, and he went to
18 bleeding.

19 Q Who went to bleeding?

20 A Larry did.

21 Q And what happened next?

22 A He got mad and he reached for the gun and
23 he said, "I ought to shoot the little fucker."

24 Q Who reached for the gun?

25 A Larry did.

1 Q And then what happened?

2 A Daniel looked at him and told him to "Let's
3 go."

4 Q And what did you do?

5 A We left and they took us home.

6 Q How old was the little boy that you saw
7 there that popped Larry in the mouth?

8 MR. BRITT: Objection, unless she
9 knows.

10 THE COURT: Do you know, ma'am?
11 Can you give us an approximate age?

12 THE WITNESS: Anywhere from 10 to
13 12 years old.

14 BY MR. THOMPSON:

15 Q Would you describe the gun that you saw
16 Mr. Demery with?

17 A It was a handgun, had a long barrel, and
18 the handle was a dark color, dark brown.

19 Q And would you -- what color was the barrel?

20 A It was dark, too.

21 Q Did the little boy have a baby in his
22 hands?

23 A No, sir, he didn't.

24 Q Now, you mentioned that on one occasion you
25 saw Larry Demery driving a Lexus?

1 A Yes, sir, I did.

2 Q What month was this?

3 A About the last -- in July, around the last
4 of July.

5 Q Of 1993?

6 A Yes, sir, it was.

7 Q And what time in the day was it that you
8 saw Mr. Demery driving a Lexus?

9 A It was at night.

10 Q What time was it?

11 A Anywhere from 2:00 to 3:00 that morning.

12 Q In the morning?

13 A Yes, sir.

14 Q And describe what you saw when you saw
15 Mr. Demery driving the Lexus 2:00 or 3:00 in the
16 morning.

17 THE COURT: First of all, where
18 were you.

19 THE WITNESS: On my front porch.

20 BY MR. THOMPSON:

21 Q And describe what you saw.

22 A He come in the trailer park, he had the
23 radio real loud. And when he pulled in, he stopped
24 there on the road and rolled his window down and he
25 just looked at me, didn't say anything, and he sat

1 there for a few minutes, and he drove off.

2 Q When you say he had the radio real loud,
3 could you hear with the window closed?

4 A Yes, sir. Yes, sir.

5 Q Did you ever see Larry Demery and the
6 Godfather together in a vehicle?

7 MR. BRITT: Objection.

8 THE WITNESS: Yes, sir.

9 THE COURT: Sustained.

10 MR. BRITT: Move to strike, ask
11 for an instruction.

12 THE COURT: Motion to strike is
13 allowed.

14 Members of the jury, you're not to
15 consider the last question asked by counsel
16 for the defendant, Mr. Thompson, and any
17 answer that may have been given by the
18 witness. Those matters are not to take any
19 part in your deliberations in any respect.

20 MR. THOMPSON: That's all.

21 THE COURT: Anything further?

22 MR. THOMPSON: That's all, Your
23 Honor.

24 THE COURT: Mr. Britt, any
25 cross-examination?

1 CROSS-EXAMINATION

2 BY MR. BRITT:

3 Q When you saw this gun in Larry Demery's
4 car, Daniel Green was sitting in the passenger seat?

5 A Yes, sir, he was.

6 Q And that's a -- there's no console in
7 between the driver's seat and passenger seat of that
8 Tempo, is there?

9 A I'm not for sure.

10 Q And you don't know who put that gun in that
11 car, do you?

12 A No, sir, I don't.

13 THE COURT: Where was the gun
14 when you saw it?

15 THE WITNESS: In the front seat,
16 laying beside Larry.

17 THE COURT: Okay.

18 BY MR. BRITT:

19 Q Now, you lived in the first trailer --

20 A Yes, sir.

21 Q -- at Bob's Landing?

22 A Yes, sir.

23 Q Were drugs sold out of that trailer?

24 A No, sir.

25 Q Did JC Deese live there?

1 A Yes, sir, he did.

2 Q Did Larry Graves live there?

3 A I know Godfather's name was Larry.

4 Q Does Bridget Scott live there?

5 MR. THOMPSON: Object, move to
6 strike.

7 THE COURT: Members of the jury,
8 there's a matter of law the Court must take
9 up. Please recall my instructions, don't
10 worry or speculate about what takes place
11 in the courtroom in your absence. And if
12 you'll step to the jury room.

13 (Jury out at 12:07 p.m.)

14 THE COURT: Folks, the objection
15 came late, but the same rules apply to
16 everybody. What rule of evidence are you
17 proceeding under in terms of "were drugs
18 sold there"?

19 MR. BRITT: Their
20 cross-examination of Larry Demery. Beyond
21 that, the question that I'm going to is on
22 August the 16th of 1993, Mr. Heffney did a
23 neighborhood canvass at Bob's Landing
24 Mobile Home Park. August the 16th of 1993,
25 he went to Lot Number 1. He spoke with JC

1 Deese, he spoke to this witness. At the
2 same time, he spoke to Larry Graves,
3 Bridget Scott, and Dwight Scott. This
4 witness told Mr. Heffney on August 16th,
5 she had never seen a red Lexus. That's
6 where I'm going.

7 THE COURT: You can ask her that,
8 but 609, 608, none of the impeachment
9 rules allow for "were drugs sold there."
10 If you've got a conviction on this witness
11 or anybody else, you can ask under the
12 proper rule.

13 MR. BRITT: Basis of the
14 objection wasn't the fact "were drugs sold
15 in the house," it was, "does Larry Scott
16 live there," and she said, well, the
17 Godfather's name was Larry. That's when
18 the objection came.

19 THE COURT: Well, it came late.

20 MR. THOMPSON: Yes, sir. And I'm
21 moving to strike all that testimony
22 concerning the drugs and Mr. Larry Graves.

23 THE COURT: All right. I'm going
24 to instruct the jury that they are not to
25 consider the question about "were drugs

1 sold there," that's not a proper question.
2 But you can impeach her with her prior
3 statement.

4 MR. BRITT: Yes, sir.

5 THE COURT: Bring the jury back
6 in.

7 (Jury in at 12:10 p.m.)

8 THE COURT: Members of the jury,
9 I instruct you that you're not to consider
10 the question asked by counsel for the
11 State, Mr. Johnson Britt, of this witness
12 as to whether or not drugs were sold at the
13 residence being described in the
14 testimony. That matter is not to take any
15 part in your deliberations in this case in
16 any way. But you may ask additional
17 questions.

18 MR. BRITT: Yes, sir.

19 BY MR. BRITT:

20 Q Ms. Locklear, did you live with JC Deese at
21 Lot 1, Bob's Mobile Home Park?

22 A Yes, sir, I did.

23 Q Did other people stay in that mobile home
24 park?

25 A Yes, sir.

1 Q Did a Larry Graves stay in that mobile home
2 park?

3 MR. THOMPSON: Object.

4 THE COURT: Overruled. You may
5 answer.

6 BY MR. BRITT:

7 Q Larry Graves, did he stay in that mobile
8 home?

9 A I don't know Godfather's last name.

10 Q Did Bridget Scott stay in that mobile home?

11 A Yes, she did.

12 Q Did Dwight Scott stay in that mobile home?

13 A From time to time.

14 MR. THOMPSON: Object as to when.

15 THE COURT: Overruled.

16 MR. THOMPSON: Move to strike.

17 THE COURT: Denied. Put it in a
18 time frame, Mr. Britt.

19 BY MR. BRITT:

20 Q On August the 16th of 1993, was Dwight
21 Scott staying in that mobile home?

22 A Yes, he was.

23 Q On August the 16th of 1993, was Bridget
24 Scott staying in that mobile home?

25 A Yes, she was.

1 Q On August the 16th of 1993, was Larry
2 Graves staying in that mobile home?

3 A Yeah, think I he was.

4 Q August the 16th of '93, was JC Deese or
5 James Deese staying in that mobile home?

6 A Yes, he was.

7 Q August the 16th of 1993, was -- were you
8 staying in that mobile home at Lot 1, Bob's Landing
9 Mobile Home Park?

10 A Yes, I was.

11 Q August the 16th of 1993, you spoke with
12 Mr. Heffney in that mobile home, didn't you?

13 A I'm not for sure. I believe he come there.

14 Q August the 16th of 1993, you told Mr.
15 Heffney you had never seen a red Lexus in Bob's
16 Landing Mobile Home Park?

17 A I didn't know what kind of car it was until
18 I seen a picture of it.

19 THE COURT: The question is, did
20 you make that statement?

21 THE WITNESS: I'm not for sure, I
22 can't remember if I talked with him or not
23 because there were so many coming up there.

24 THE COURT: Anything further, Mr.
25 Britt?

1 BY MR. BRITT:

2 Q You never told Mr. Heffney that you saw
3 Larry Martin Demery driving a red Lexus at Bob's
4 Landing Mobile Home Park, did you?

5 A No, sir, I didn't.

6 Q Never told Mr. Heffney that you saw that
7 red Lexus at 2:00 or 3:00 in the morning from your
8 front porch, did you?

9 A No, sir, I didn't.

10 Q And when you say you saw Larry Demery with
11 this gun in the car, that was the last of June, the
12 first of July of 1993, wasn't it?

13 A Yes, sir.

14 Q And you don't know what kind of gun it was?

15 A All I know, it was a handgun.

16 Q You don't know what caliber it was?

17 A No, sir, I don't.

18 MR. BRITT: I don't have any
19 other questions.

20 THE COURT: Mr. Thompson.

21 MR. THOMPSON: That's all with
22 this witness.

23 THE COURT: May the witness be
24 released?

25 MR. THOMPSON: May she be

1 released?

2 THE COURT: Yes, sir.

3 MR. THOMPSON: Yes, sir.

4 THE COURT: You're free to go.

5 Yes, sir. Any additional evidence?

6 MR. THOMPSON: Yes.

7 THE COURT: Call your next

8 witness.

9 MR. BOWEN: If Your Honor please,
10 we call Shannon Levister.

11 THE COURT: If you'll come up and
12 be sworn, please, ma'am. Place your left
13 hand on the Bible and raise your right.

14 SHANNON A. LEVISTER,

15 being first duly sworn was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 THE COURT: If you'll have a
19 seat. If you'll state your full name for
20 the record.

21 THE WITNESS: Shannon Arnethe
22 Levister.

23 THE COURT: You'll need to speak
24 up so those people can hear you. Spell
25 your first and last name.

1 THE WITNESS: S-H-A-N-N-O-N,
2 L-E-V-I-S-T-E-R.

3 THE COURT: Thank you, ma'am.

4 BY MR. BOWEN:

5 Q Where do you live, please?

6 A I live at 2061 Greenway Avenue in
7 Charlotte.

8 Q And back in the early '90's, state how you
9 were employed.

10 A From August of 1989 until June of 1991, I
11 was employed with Flight 23 by Jordan.

12 Q And that was, was that a corporation?

13 A Yes, as a matter of fact, it was.

14 Q And who was the principal executive officer
15 of that corporation?

16 A There were actually two, James and Delores
17 Jordan.

18 Q Now, that would be Mr. James Jordan, who is
19 the deceased in this case?

20 A Yes.

21 Q Now, can you describe for the jury your
22 duties when you were working for the Flight 23
23 corporation?

24 MR. BRITT: Objection, would like
25 to be heard.

1 THE COURT: Members of the jury,
2 there's a matter of law the Court must take
3 up. If you folks would step to the jury
4 room, don't worry or speculate about what
5 takes place in the courtroom in your
6 absence.

7 (Jury out at 12:16 p.m.)

8 THE COURT: Let the record show
9 the following is being heard in the absence
10 of the jury. Where are we going to with
11 this?

12 MR. BOWEN: Your Honor, this
13 proffered evidence will be offered under
14 Rule 406, entitled Habit, Routine or
15 Practice, and where we're going is this:
16 Ms. Levister had occasion when she and
17 Mr. Jordan were setting up stores for this
18 corporation to travel extensively between
19 Charlotte and Greensboro. Mr. Jordan was a
20 hard worker, very often worked all day long
21 and late into the evening, and very often
22 they were both very tired, when -- you want
23 to get it in by her -- I am. I'll just cut
24 to the chase here if you like.

25 THE COURT: What is the point?

1 MR. BOWEN: The point is that she
2 knows his habit and practice with regard --

3 THE COURT: For what?

4 MR. BOWEN: For not pulling off
5 the road and taking catnaps or going to
6 sleep, but rather for either pushing on
7 through or staying in a motel if he was
8 extremely tired.

9 THE COURT: State want to be
10 heard?

11 MR. BRITT: The time frame isn't
12 relevant. We're talking two years prior to
13 this incident.

14 THE COURT: I want to make sure
15 I'm understanding. You want to have her
16 testify that during the time period that
17 she worked for another organization,
18 Mr. Jordan had the habit of when he was
19 traveling never pulling off on the side of
20 the road, stopping, if at all, at a motel.
21 That's it?

22 MR. BOWEN: That's correct, Your
23 Honor. And she is able to say that she
24 traveled extensively with him after an
25 arduous day, after he was very tired and

1 late at night.

2 THE COURT: I'm going to let you
3 make an offer of proof for the record.
4 Evidence is not coming in. Objection is
5 sustained. But you can put the matter into
6 the record for any appellate review. That
7 may take some time. If you'll bear with
8 me, I'll bring the jury in, we'll excuse
9 them for lunch. Bring the jury back in.

10 (Jury in at 12:18 p.m.)

11 THE COURT: Ladies and gentlemen,
12 it appears that the matter before me is
13 going to take more time that I initially
14 had anticipated, so I'm going the release
15 you for the lunch recess until 2:30. If
16 you will report directly back to the jury
17 room at that time, we will be in a position
18 to go forward with the presentation of
19 evidence in this case.

20 During the lunch recess, it's your
21 duty not to talk about the matter among
22 yourselves or with anyone else, you're not
23 to allow anyone to say anything to you or
24 in your presence about the case. If anyone
25 communicates with you about this matter or

1 attempts to do so, or anyone says anything
2 about the case in your presence, it remains
3 your duty to inform me of that
4 immediately.

5 Don't form any opinions, don't allow
6 yourself to be exposed with any media
7 accounts in connection with this matter.
8 Don't have any contact or communication of
9 any kind with anyone involved in the case,
10 and don't conduct any independent inquiry
11 or investigation or research of any kind.
12 Everyone else please remain seated, the
13 members of the jury are excused until
14 2:30.

15 (Jury out at 12:20 p.m.)

16 THE COURT: Let the record show
17 the following is occurring in the absence
18 of the jury. And at this time counsel for
19 the defendant is making an offer of proof
20 for the purposes of the record.

21 BY MR. BOWEN:

22 Q Ms. Levister, you say that you were
23 employed by by Flight 23 which is a company or
24 corporation, is that right?

25 A Yes.

1 Q And Mr. James Jordan and his wife Delores
2 Jordan were the principal executive officers of that
3 corporation, is that right?

4 A Yes.

5 THE COURT: If you'll state the
6 time frame of your employment for the
7 record, ma'am.

8 THE WITNESS: My employment was
9 from August of 1989 until June of 1991.

10 BY MR. BOWEN:

11 Q During that time what kind of duties did
12 you perform for the corporation?

13 A Really a wide variety. At one point
14 Mr. Jordan described me as his right arm. I began as
15 a sales associate in one of the stores and I
16 eventually moved into the office management for the
17 stores, for the entire group of stores.

18 Q Did your duties entail a great deal of
19 traveling?

20 A Yes, at one point they entailed a great
21 deal of travel.

22 Q Was it specifically between two particular
23 cities?

24 A Yes. The travel was mostly between
25 Charlotte and Greensboro.

1 Q And that extensive travel occurred how many
2 times would you say, over what time frame?

3 A Oh, gosh, five to ten times or five to ten
4 trips in the stays of maybe two months at the most.

5 Q And when you made those trips, did you make
6 those trips alone or with someone?

7 A Usually made those trips with Mr. Jordan or
8 with someone else.

9 Q And with -- well, how many of those trips
10 would you say were with Mr. Jordan?

11 A The majority were.

12 THE COURT: I'm sorry, you said
13 this occurred over a two-month period?

14 THE WITNESS: Yes, sir.

15 THE COURT: All right. Two
16 months when?

17 THE WITNESS: Two months in 1990.

18 THE COURT: Okay. Yes, sir.

19 BY MR. BOWEN:

20 Q And in what vehicle were you riding, in
21 your vehicle or his vehicle or rented vehicle or
22 what?

23 A Usually, actually every time, it was his
24 vehicle, it was either his truck or at the time, he
25 was -- he owned a Mercedes.

1 Q And who was driving?

2 A One or the other of us.

3 Q Now, did these trips, did all of them occur
4 in the day or in the night or some were both?

5 A Some of both. Usually we would leave early
6 in the day, at the latest early afternoon. Most of
7 the times, we wouldn't get back before 10:00, 11:00
8 at night. There were some occasions that we didn't
9 get back until 1:30.

10 Q Do I understand that you left Charlotte and
11 went to Greensboro and came back to Charlotte?

12 A Uh-huh.

13 Q So when you were on the return leg of the
14 trip, it would always be night, wouldn't it?

15 A Yes, sir.

16 Q And what is the latest that you recall
17 during that series of trips, returning to Charlotte?

18 A I remember returning about 1:30, 1:45 one
19 evening.

20 Q You mean like past 1:30 in the morning?

21 A Yes, in the morning, a.m.

22 Q During that period -- approximately how
23 long does it take to get from Greensboro back to
24 Charlotte?

25 A About an hour and a half.

1 Q So up until the time that you left to go
2 from Greensboro back to Charlotte, would the two of
3 you have worked all during the day except for meals?

4 A Yes, sir.

5 Q And this day, for example, that you
6 traveled as late as 1:30 in the morning, had you --
7 do you know when you left Charlotte to start that
8 workday, approximately?

9 A Oh, gosh, no. Usually if we were going to
10 Greensboro, we wouldn't leave any later than 1:30,
11 2:00 in the afternoon, simply because we were trying
12 to put in as full a day as possible.

13 Q Before that, would you have worked at the
14 Charlotte operation?

15 A Yes.

16 Q So by 1:30 in the morning on that
17 particular day, for example, you would work all
18 during the day except for taking meals and your
19 travel?

20 A Yes.

21 Q Is that right? Would it be fair to say
22 that you were fatigued?

23 A Definitely.

24 Q Did you form the impression whether or not
25 Mr. Jordan was fatigued?

1 A Yes, he was.

2 Q Now, at any time during those trips, did
3 you ever see him pulling off the road and take
4 catnaps or anything when he was tired?

5 A No.

6 Q Did you see him at other times when in your
7 opinion he was fatigued?

8 A Did I see him at other times that I thought
9 he was fatigued?

10 Q That you thought he was tired or fatigued,
11 but traveling in the car.

12 A Yes. Usually on the way back from
13 Greensboro we were both very, very tired, very, very
14 fatigued, because it would have been an extremely
15 long day.

16 Q Did he ever stop on the side of the road
17 where there was no gas station or any kind of
18 building of any sort, did he ever stop at the side of
19 the road for any purpose?

20 A No, sir.

21 THE COURT: Anything further?

22 BY MR. BOWEN:

23 Q Would you say it was not his habit to do
24 that?

25 A Yes, sir, I would say it was not his

1 habit.

2 MR. BOWEN: That's all.

3 THE COURT: Mr. Britt, any
4 questions on voir dire?

5 MR. BRITT: I don't think he
6 finished.

7 THE COURT: Excuse me.

8 MR. BOWEN: Another unrelated
9 matter, but it's time.

10 BY MR. BOWEN:

11 Q Can you tell the Court what Mr. Jordan's
12 habit was when you knew him regarding the wearing of
13 jewelry?

14 A He was never a very flashy person. The
15 most jewelry that I observed him wearing was his
16 wedding band, a watch, and maybe a gold chain. But
17 it was not his habit to wear anything more than that,
18 that I observed. I also observed that if his watch
19 became too cumbersome for him, that he would take it
20 off and put it on the desk or store it in the desk,
21 in his desk.

22 Q Did you ever see him take it off in the
23 car?

24 A Yes, sir.

25 MR. BOWEN: That's all.

1 THE COURT: Mr. Britt?

2 Anything?

3 MR. BRITT: No, sir.

4 THE COURT: Ma'am, you indicated
5 that on occasion both you and Mr. Jordan
6 drove?

7 THE WITNESS: Yes, sir.

8 THE COURT: Did you ever drive
9 back to Charlotte?

10 THE WITNESS: Yes, sir.

11 THE COURT: Did you ever pull
12 over on the side of the road?

13 THE WITNESS: No, sir.

14 THE COURT: Anything from
15 anybody?

16 MR. BOWEN: That's all.

17 THE COURT: You may step down.
18 Thank you, ma'am.

19 THE WITNESS: Thank you.

20 THE COURT: The objection is
21 sustained. The defendant's exception is
22 noted for the the record. The issue is
23 preserved for appellate review.

24 You folks ready to go forward with
25 additional witnesses at 2:30?

1 MR. BOWEN: Yes, sir.

2 THE COURT: Anything further from
3 either counsel?

4 MR. BRITT: No, sir, not at this
5 time.

6 THE COURT: I'm sorry?

7 MR. BRITT: Not at this time.

8 THE COURT: If you'll recess us
9 until 2:30.

10 THE BAILIFF: All rise, please.
11 (Lunch recess.)

12 THE COURT: Good afternoon.
13 We're a little bit early so we're at ease.
14 Let the record show all counsel present,
15 the defendant is present in open court.

16 Mr. Horne, do we have all members of
17 the jury secured in the jury room?

18 THE BAILIFF: Yes, sir, we do.

19 THE COURT: Is there anything
20 from either counsel before we go forward?

21 MR. BRITT: No, sir.

22 THE COURT: Okay.

23 MR. THOMPSON: Your Honor, wait a
24 minute.

25 MR. BOWEN: Judge, for your

1 planning purposes, by my count we've
2 probably gone through six or seven
3 witnesses or will have by the time we
4 finish this afternoon. I do anticipate
5 finishing somewhat early today. One of the
6 reasons is because we've got a subpoena
7 that's been out for about two weeks that we
8 have just learned today has been served.
9 We can't rest until we see what is going to
10 be forthcoming in the morning from that.
11 That will materialize first thing in the
12 morning. As a consequence we may need
13 about 45 minutes to deal with that.

14 Now, nevertheless, as I say, we've
15 done six or seven witnesses today. We'll
16 have at least one more this afternoon and
17 then we're going to ask the Court's
18 indulgence. Now, for planning purposes,
19 we're probably going to finish overall even
20 earlier --

21 THE COURT: That's fine. If we
22 need to break earlier today, we can do
23 that. And if you folks -- am I
24 understanding correctly that you have a
25 subpoena served that you anticipate will

1 involve testimony tomorrow morning or you
2 made that diagnosis --

3 MR. BOWEN: We have some activity
4 that subpoena is going to generate, may be
5 able -- probably will not involve
6 testimony, but that will be something we're
7 going to have to deal with in the course of
8 about 45 minutes, because that's the first
9 access we have had to this material.

10 THE COURT: I appreciate you
11 letting me know that. I'm simply trying to
12 figure out where we are so I can let you
13 know if you intend to put on rebuttal
14 evidence.

15 MR. BRITT: Yes, sir. And I do
16 intend to put on rebuttal evidence. We've
17 already began making contact with our
18 rebuttal witnesses. One of those is Art
19 Binder, he is in Greenville, North Carolina
20 today. We have talked with him. He is
21 available the remainder of the week and we
22 told him we would call him back later this
23 afternoon, let him know definitely when he
24 needed to be here. It's anticipated I can
25 have him tomorrow morning if necessary.

1 THE COURT: Sounds like you folks
2 will either decide tomorrow whether or not
3 you're going to rest or whether or not
4 you'll put on additional evidence.

5 MR. BOWEN: That is correct.

6 THE COURT: If that's the case, I
7 guess you need to be ready tomorrow
8 morning. Or at the latest tomorrow
9 afternoon.

10 MR. BRITT: (Nods head
11 affirmatively.)

12 THE COURT: Okay.

13 MR. BOWEN: That's all.

14 THE COURT: If you'll bring the
15 jury in, Mr. Horne.

16 (Jury in at 2:33 p.m.)

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

19 Mr. Bowen, Mr. Thompson, if what I say
20 is not accurate, please feel free to let me
21 know that.

22 Folks, I've just conferred with
23 counsel about our schedule. Appears we may
24 be able to recess a little early this
25 afternoon. We will be able to go forward

1 tomorrow morning. We'll ask that you
2 return at 9:30 tomorrow morning. Is that
3 essentially accurate?

4 MR. BOWEN: Yes, sir.

5 THE COURT: You ready to call
6 your next witness?

7 MR. BOWEN: Yes, Your Honor.
8 Defense calls Richard Locklear.

9 THE COURT: Okay.

10 MR. BRITT: May I be heard on a
11 matter?

12 THE COURT: Yes, sir. Ladies and
13 gentlemen, Mr. Locklear, if you'll come up
14 for a moment. If you'll step to the jury
15 room, there's a matter the Court must take
16 up out of the hearing and presence of the
17 jury. Please recall my instructions, don't
18 worry or speculate about what takes place
19 in the courtroom in your absence.

20 (Jury out at 2:34 p.m.)

21 THE COURT: Let the record show
22 the following is being heard in the absence
23 of the jury before Mr. Locklear is sworn.

24 MR. BRITT: Your Honor, it's
25 anticipated that Mr. Locklear is being

1 called to testify regarding matters that he
2 may have learned during his employment as a
3 jailer at the Robeson County jail.

4 THE COURT: Okay.

5 MR. BRITT: Based on
6 conversations he alleges that he has had
7 with Larry Martin Demery.

8 THE COURT: I've got that up
9 here, I think. Go ahead.

10 MR. BRITT: Yes, sir. In that
11 vein, Mr. Locklear is a law enforcement
12 officer. Mr. Demery at the time of these
13 alleged conversations was represented by
14 counsel, and would have Sixth Amendment
15 right to counsel. That stays with him at
16 all times, which would preclude
17 conversations initiated by law enforcement
18 without a waiver of that Sixth Amendment
19 right to counsel, and I think that's an
20 issue that needs to be addressed.

21 THE COURT: Well, we need both
22 counsel for Mr. Demery and we need
23 Mr. Demery here. Let the record show that
24 Mr. John Campbell is present. If you'll
25 call Mr. Hugh Rogers, ask him to come over,

1 and if you'll call and have Mr. Demery
2 brought over. He's entitled to be present
3 as well.

4 I'm accepting your statement
5 Mr. Locklear is a sworn officer, because I
6 don't want to proceed even with voir dire
7 without everybody being present.

8 MR. BRITT: Mr. Locklear is a
9 former police officer in Whiteville, North
10 Carolina. He presently is a certified
11 jailer at the Robeson County Sheriff's
12 Department. Mr. Locklear, so the Court
13 will know where we're going if he's allowed
14 to testify, Mr. Locklear was charged in --

15 THE COURT: This is essentially
16 it? The substance of --

17 MR. BRITT: The statement that he
18 gave us.

19 THE COURT: Okay.

20 MR. BRITT: I worked as an
21 Assistant District Attorney in the 13th
22 District of North Carolina. During that
23 time, I prosecuted this potential witness
24 for crimes of attempted rape and attempted
25 sex offense and assault on a female. The

1 witness was acquitted by a jury, however --

2 THE COURT: The witness was?

3 MR. BRITT: Mr. Locklear.

4 THE COURT: Okay.

5 MR. BRITT: At the time he was a
6 sworn police officer in Whiteville, North
7 Carolina. There's been an administrative
8 hearing, as Mr. Locklear was fired --

9 THE COURT: In DOC?

10 MR. BRITT: No, sir,
11 administrative hearing before an
12 administrative law judge, where training
13 standards for the Police Chief's
14 Association and the Sheriff's Association
15 are proceeding to strip Mr. Locklear of his
16 certification.

17 MR. BOWEN: Object. It's on
18 appeal, it's civil in nature.

19 MR. BRITT: There are matters
20 that are involved in the administrative
21 hearing dealing with Mr. Locklear's honesty
22 and his truthfulness in terms of the
23 applications that he filed for employment.
24 Robin Pendergraft, who works for the North
25 Carolina Attorney General's Office,

1 appeared on behalf of either the Sheriff's
2 Association, or Police Chief's
3 Association. She is faxing me a copy of
4 Findings of Fact that two commissions have
5 made in connection with Mr. Locklear's
6 administrative hearing that involve his
7 veracity.

8 THE COURT: You expect there may
9 be evidence to the State under Rule 608?

10 MR. BRITT: Yes, sir.

11 MR. BOWEN: I can spare him some
12 time, I'll give him a copy of those.
13 Mr. Locklear had a perfect record with the
14 law enforcement officers, and in the course
15 he uncovered and exposed some corruption in
16 the police department in Columbus County,
17 Whiteville, North Carolina, which resulted
18 in the resignation of the Chief and one
19 sergeant, and other things outcropped from
20 there. And I'm very familiar with it and
21 I'll give Mr. Britt copies of papers that
22 he wanted.

23 The issue is rather interesting to me
24 that Mr. Britt somehow has standing to
25 raise Sixth Amendment issues as to

1 Mr. Demery. I see Mr. Campbell here in the
2 audience and somehow seems to me it ought
3 to be Mr. Campbell and Mr. Rogers doing
4 that. But I guess it's going to get done
5 enough notwithstanding that, so we're ready
6 to meet those issues.

7 THE COURT: Let's wait until
8 everybody gets here.

9 Mr. Locklear, for the moment you may
10 step down, sir.

11 Folks, I'm looking at the substance of
12 a statement, oral statement, apparently
13 taken from Mr. Richard Terry Locklear by
14 Special Agents -- Special Agent Kim Heffney
15 and Anthony Thompson. Is this essentially
16 the gist of what you intend to elicit
17 testimony --

18 MR. BOWEN: Yes, sir. And it
19 goes to, if Your Honor please, so that you
20 can see where we're coming from, it will go
21 to either corroborate or impeach as the
22 case may be, the cross-examination that
23 Mr. Thompson conducted, which is found at
24 page 141 of February 5th's business, and it
25 begins on line 1 and continues through line

1 53.

2 THE COURT: I recall he was
3 cross-examined about it.

4 MR. BOWEN: Yes.

5 THE COURT: Mr. Campbell, is
6 there any motion filed on behalf of
7 Mr. Demery by either you or Mr. Rogers?

8 MR. CAMPBELL: In this regard,
9 no, sir.

10 THE COURT: So there is no motion
11 to suppress any statement purportedly made
12 by your client to Richard Terry Locklear on
13 his behalf?

14 MR. CAMPBELL: Not at this
15 moment. One of the -- main reason being
16 that we didn't know anything about it.

17 MR. BRITT: I've talked to
18 Mr. Rogers about it.

19 THE COURT: Okay.

20 Let the record show that Mr. Rogers is
21 now present. Mr. Demery is not present.
22 Mr. Rogers, I asked Mr. Campbell, I'll ask
23 you, have you filed any motion on behalf of
24 Mr. Demery under the Sixth Amendment to the
25 United State's Constitution or any state

1 constitution provisions seeking to suppress
2 any purported statement made by Mr. Demery
3 to Mr. Richard Terry Locklear.

4 MR. ROGERS: I can't say I was
5 aware of such a statement.

6 THE COURT: Okay. Folks, we're
7 going to wait for Mr. Demery. That's going
8 to take some time. We've got a jury out,
9 but my concern is this, I'll say this on
10 the record whether Mr. Demery is here or
11 not. Mr. Demery testified to these matters
12 on cross-examination without an objection
13 being made by his counsel, without
14 asserting any rights under the United
15 State's Constitution, State Constitution,
16 Sixth Amendment or otherwise. Isn't there
17 an issue of weight since the testimony came
18 out --

19 MR. BRITT: No, sir, and the
20 reason I don't think there is, is because
21 this allegedly, according to Mr. Locklear,
22 occurred some three months prior to the
23 date that he disclosed it to Mr. Bowen. If
24 the Court will recall, the State was
25 accused of planting snitches in the jail to

1 obtain statements from Mr. Demery, and
2 Richard Terry Locklear as I understand it
3 is a client of Mr. Bowen's.

4 THE COURT: When Mr. Bowen stood
5 up, thought did occur to me that he might
6 perhaps be representing Mr. Locklear in the
7 administrative action.

8 MR. BOWEN: That's correct. I do
9 not represent him in the criminal matter
10 Mr. Johnson talks about.

11 THE COURT: Folks, bottom line is
12 that fact can be brought out on
13 cross-examination, that he's represented by
14 Mr. Bowen. Once you get your hands on the
15 administrative matters, you can deal with
16 anything that comes in under 608 in that
17 regard and on the issue of bias, whether it
18 resulted in a conviction or not. You can
19 ask him about the fact that you prosecuted
20 him in the 13th District. All of that is
21 admissible.

22 MR. ROGERS: Once you gave the
23 full name of that individual, I recognized
24 the name of Richard Locklear, I believe is
25 the way I've known that individual, and

1 Mr. Britt has mentioned that name to me.
2 But we've not been furnished with any
3 written substance.

4 THE COURT: I'm going to give
5 everybody an opportunity to be heard. I
6 think Mr. Demery is entitled to be heard
7 even though he's not on trial at this
8 time. But my recollection is that the
9 testimony came in without a privilege being
10 asserted, without any claims of violation
11 of the constitution, by counsel who were
12 present in court at the time he gave both
13 his direct and cross-examination, and an
14 argument can be made that any Sixth
15 Amendment right was waived by not asserting
16 them in a timely fashion.

17 I do think that you're entitled to
18 time to obtain any materials that may be
19 used for impeachment under 608, 609 or
20 otherwise. When do you expect that
21 material to come in?

22 MR. BRITT: Your Honor, I talked
23 with Ms. Pendergraft about 2:15, she's
24 going to go -- as I understand it, there
25 are a hundred and seventy some-odd

1 findings. She was going to go through
2 those and either highlight the numbers that
3 relate to truthfulness and honestly and
4 then fax those to me immediately.

5 THE COURT: All right. Well, it
6 may be what we'll do, to give everybody an
7 opportunity to be heard, is once Mr. Demery
8 comes, I can hear you on the Sixth
9 Amendment grounds, rule on that, if you
10 still need time, we can hold off until
11 tomorrow morning, if that's agreeable.

12 MR. BRITT: That will be fine.

13 MR. BOWEN: This would have been
14 the only witness this afternoon.

15 THE COURT: Well, seems like I've
16 dealt with every other constitutional issue
17 in the context of this case, so we might as
18 well deal with this one. And if you folks
19 need time, we can hold off until tomorrow
20 morning, go forward with your direct and
21 your cross tomorrow morning. That will
22 also give you time to make a decision about
23 any additional witnesses.

24 MR. BOWEN: Yes, sir.

25 THE COURT: Now, before anything

1 is brought out under 608, I'm going to ask
2 Mr. Britt that you apprise the Court of
3 what you intend to elicit under 608 so
4 these folks have an opportunity to be heard
5 and I can rule.

6 MR. BRITT: And I will provide
7 the Court with a copy of what I obtained,
8 and I will provide a copy to defense
9 counsel.

10 THE COURT: I appreciate that.
11 We can deal with it that way. How long did
12 they say it will take for Mr. Demery to get
13 here?

14 THE BAILIFF: Let me check with
15 sergeant.

16 THE COURT: I hate to keep the
17 jury there but I don't see any
18 alternative. We'll be at ease until
19 Mr. Demery comes, and then take up the
20 Sixth Amendment issue.

21 THE BAILIFF: Court stands at
22 ease.

23 (Court at ease.)

24 THE BAILIFF: Remain quiet,
25 please.

1 THE COURT: Let the record
2 reflect counsel for the State is present,
3 Mr. Johnson Britt, counsel for the
4 defendant, Daniel Andre Green, also known
5 as U'Allah, Mr. Woodberry Bowen, Mr. Angus
6 Thompson, the defendant Daniel Green is
7 present. Counsel for Mr. Larry Martin
8 Demery, Mr. Hugh Rogers and Mr. John
9 Campbell are present, and also present is
10 Larry Martin Demery. On behalf of
11 Mr. Demery, Mr. Rogers and Mr. Campbell, do
12 you folks want to be heard?

13 MR. ROGERS: Yes, sir. It would
14 appear, after conferring amongst ourselves
15 and reviewing a summary of an interview
16 conducted on Monday, the 5th of February of
17 1996 by Anthony Thompson of the Robeson
18 County Sheriff's Department, that Richard
19 Terry Locklear, the individual whom you
20 mentioned earlier, did have a conversation
21 with Mr. Demery. And we would on his
22 behalf move that that be suppressed under
23 the Sixth Amendment. And with respect to
24 waiver, go ahead and address that, this
25 statement did not come out either -- as I

1 recall it either on direct or
2 cross-examination or any subsequent
3 examination of Mr. Demery.

4 THE COURT: Well, you folks got a
5 copy of the pertinent pages of the
6 transcript?

7 MR. BOWEN: Yes, Your Honor,
8 begins on page 140.

9 THE COURT: Have you got it
10 printed out?

11 MR. BOWEN: No, sir, I do not.
12 I'm afraid I don't. I've got it written in
13 my handwriting. May I read it for the
14 record?

15 THE COURT: Yes, sir.

16 MR. BOWEN: Starts with a
17 question by Mr. Thompson to Mr. Demery.
18 "And you've talked to inmates about your
19 case, other inmates from the Robeson County
20 Detention Center. His answer, certain
21 things. You have talked to jailers there
22 in the Robeson County detention center
23 about your case. Answer, yes. And since
24 you pled guilty, you've talked to jailers
25 about your plea bargain with the State,

1 haven't you. Answer, the ones that have
2 asked, yes.

3 Question, do you know a jailer by the
4 name of Richard Locklear. Answer, yes.

5 Question, you've talked to inmates and
6 jailers down at the Robeson County
7 Detention Center about your -- the sentence
8 that you expect to receive in this case.

9 Objection by Mr. Britt. By Mr. Thompson,
10 haven't you. The Court, overruled.

11 Mr. Thompson, you may answer. Answer, the
12 ones that have asked, I've told them.

13 THE COURT: My recollection is he
14 was specifically asked about the gist of
15 this statement too, is that accurate?

16 MR. BOWEN: In those terms that
17 I've just read, yes, sir.

18 MR. ROGERS: Well, that's not
19 with any specificity to the point that it
20 would put us on notice as to this.

21 THE COURT: Mr. Thompson, do you
22 have your notes from your
23 cross-examination? Didn't you ask him
24 about terms of sentence, 40-year term?

25 MR. BOWEN: Yes, sir, that was --

1 MR. THOMPSON: Yes.

2 THE COURT: Didn't you ask him
3 about whether or not he told anybody he was
4 going to get life running with it? That he
5 had been told that by Mr. Johnson Britt?

6 MR. THOMPSON: Yes, I did.

7 MR. BOWEN: Also asked didn't he
8 say he was going to be out in eight years,
9 and he denied it.

10 THE COURT: All that was covered
11 under cross-examination without objection.

12 MR. CAMPBELL: Maybe so, that's
13 not the test here. Test is not whether he
14 testified to that on cross-examination as a
15 fact. Test is whether it is competent for
16 this police officer to say what he told
17 him.

18 THE COURT: Well, that's an
19 interesting question, because Messiah --
20 United States versus Messiah, and it's
21 Prodigy, Sixth Amendment right to counsel;
22 and Miranda versus Arizona, Fifth Amendment
23 right to counsel, all say the Constitution
24 prohibits the government, the State from
25 evidence obtained in violation of Messiah

1 or Merinda. This is not the government
2 attempting to introduce this evidence.
3 This is the defendant. There's no showing
4 that the defendant engineered, set up a
5 conversation between Mr. Locklear and
6 Mr. Larry Martin Demery.

7 MR. CAMPBELL: Well, if you pass
8 the waiver, then we're talking about
9 something else. My point is this: The
10 fact that he has testified that he had a
11 conversation with this jailer doesn't avail
12 him in this scenario, because there's no
13 testimony as to what that conversation
14 was. And --

15 THE COURT: I thought you folks
16 had it printed out in full.

17 MR. BOWEN: I'm sorry, I've got
18 it written in my handwriting, and I'll hand
19 you that, but on page 142, starting at line
20 39, Mr. Thompson says: Mr. Demery, you
21 told individuals while being in the custody
22 of the Robeson County Detention Center that
23 in exchange for your testifying against the
24 defendant in this case you might be out in
25 eight years, didn't you.

1 And Mr. Demery denies that, says no,
2 huh-uh, no.

3 MR. CAMPBELL: And excuse me,
4 just because I didn't hear you, you told
5 whom?

6 MR. BOWEN: You told
7 individuals --

8 MR. CAMPBELL: Individuals.

9 MR. BOWEN: While being in the
10 custody of the Robeson County detention
11 center. Now, that was a few lines down
12 from having asked if he knows Richard
13 Locklear.

14 THE COURT: Bottom line, this is
15 not a case where the State or government is
16 seeking to introduce evidence in violation
17 of Messiah or Miranda. The defendant --

18 MR. BRITT: And the issue as I
19 see it, I apologize for interrupting, but
20 the defendant is using a government agent
21 to do what the government is prohibited
22 from doing, in that ^{was} using a government
23 agent to elicit information from an
24 individual who has a Sixth Amendment
25 right. I cannot send an officer to go talk

1 to a represented client about anything
2 unless, one, that individual initiates it
3 and waives the Sixth Amendment right, or
4 two, counsel is present, and through
5 counsel, the individual agrees to
6 communicate with him.

7 If Richard Locklear had not been a
8 jailer at the time of this conversation, he
9 would not have had access to Larry Demery
10 when this conversation allegedly had taken
11 place, so as a direct result, it does
12 emanate from his position as a government
13 official. And as such, he is prohibited
14 under the Sixth Amendment from
15 communicating with a represented
16 individual.

17 THE COURT: As I read the cases,
18 the State, the government, would be
19 prohibited from introducing that kind of
20 evidence.

21 MR. BRITT: In his capacity as a
22 jailer, he is an agent of the State.

23 THE COURT: But the State is not
24 offering the evidence.

25 MR. BRITT: No, the defendant is

1 attempting to offer the evidence through a
2 State agent.

3 MR. BOWEN: And where is
4 Mr. Britt's standing to assert Sixth
5 Amendment objection as to Mr. Demery, whom
6 he does not --

7 THE COURT: These folks have a
8 standing.

9 MR. BRITT: I would argue that I
10 have standing in seeking the fair
11 administration of justice, too.

12 MR. THOMPSON: Your Honor, may I
13 be heard with respect to a matter? Because
14 it bears on my integrity as a lawyer, I
15 feel. First of all, for the record, I have
16 not initiated any contact through
17 Mr. Locklear to contact Mr. Demery. And I
18 wouldn't do so. I would be -- I think it
19 would be unethical to do so, I'm sure it
20 would be, knowing that this man is
21 represented by counsel. For the record, I
22 have not initiated any contact, and if the
23 State is suggesting that, they are going
24 to -- they can prove it, but it didn't
25 happen. Like a whole lot of other stuff in

1 this case, didn't happen.

2 THE COURT: Well, folks, having
3 given everybody an opportunity to have
4 their say, we're going to try this case in
5 the courtroom with 12 citizens who are
6 going to decide what did happen and what
7 didn't. What you folks want to disseminate
8 for public consumption may be interesting
9 and make interesting reading, but doesn't
10 mean a thing in terms of the merits of the
11 case. The merits of the case will be
12 decided by the 12 citizens sitting in the
13 jury box, who ultimately go into that
14 deliberation room and based on the evidence
15 presented in the Court, decide what the
16 facts are. So for whatever purposes you
17 folks have in mind in terms of getting
18 stuff out for public consumption, that's
19 well and good. But ultimately, the case is
20 going to come down to where it should be,
21 decided on the basis of the evidence
22 presented.

23 Now, anybody else want to say anything
24 else?

25 MR. CAMPBELL: Question. I have

1 a question. Has the Court read
2 Mr. Locklear's statement?

3 THE COURT: Yes, sir.

4 MR. CAMPBELL: It's patent on the
5 transcription that I have that Locklear
6 initiated whatever conversation there was.
7 He didn't go running out there to try and
8 tell something.

9 THE COURT: It's certainly
10 subject to that interpretation. We have
11 come this far, with a view towards giving
12 both sides an actual opportunity to be
13 heard. We've got the balance of this
14 afternoon. I'm going to bring this jury
15 in, I'm going to send the jury home until
16 tomorrow morning. You folks can file
17 whatever written motion, because at this
18 point you folks have filed an oral motion
19 citing no provisions as a basis for your
20 position. And I want to give you the
21 opportunity to do that on behalf of
22 Mr. Demery, because Mr. Demery still has
23 pending matters before this Court. And I
24 want the record to be complete in terms of
25 his opportunity to be heard and you folks

1 having the opportunity to represent him
2 fully.

3 I'm going to give the State the
4 opportunity to obtain any materials that
5 the State feels that it needs for the
6 purposes of any potential
7 cross-examination. We will convene at 9:00
8 tomorrow morning. We'll go forward with a
9 voir dire at that time. Any authority that
10 you folks have, either on behalf of the
11 State on on behalf of Mr. Demery or on
12 behalf of Mr. Green, also known as U'Allah,
13 if you will present that authority tomorrow
14 morning at 9:00, we will take that up.

15 I'm going to have the jury come in at
16 10:30, and we will go forward with whatever
17 remaining evidence there is at that time.
18 Anybody want to be heard further?

19 MR. BRITT: I would just inform
20 the Court I have received the fax from the
21 Attorney General's office. It consists of
22 a number of pages and is being copied at
23 this time. I have not had an opportunity
24 to read it, but I will hand up a copy to
25 the Court and also provide a copy to the

1 defense as soon as possible.

2 MR. BOWEN: Thank you, Mr. Britt,
3 I have a copy already. I'll just use that
4 one.

5 THE COURT: Let's bring the jury
6 in, let me send them home.

7 MR. CAMPBELL: Do you want us out
8 of here?

9 THE COURT: Mr. Demery, if you'll
10 step into that room for a moment. And if
11 you folks would join him.

12 (Jury in at 3:21 p.m.)

13 THE COURT: Mr. Bowen,
14 Mr. Thompson, you folks correct me if
15 anything I say is wrong. As I understand
16 it, we are close to the completion of the
17 defense evidence in this case, is that
18 accurate?

19 MR. BOWEN: Yes, sir.

20 THE COURT: My understanding
21 based on what you folks have represented is
22 that it is entirely likely that we will
23 complete the defense evidence at some point
24 tomorrow, is that accurate?

25 MR. BOWEN: Yes, sir.

1 THE COURT: If not, let me know.

2 Folks, that is the state of our
3 situation at this time. There are matters
4 before the Court which will take longer
5 than I anticipated. Rather than keeping
6 you back there in the jury room, I'm going
7 to release you folks.

8 I'm going to further direct that you
9 report at 10:30 tomorrow morning, we'll go
10 forward at that time. During the overnight
11 recess, you're not to talk about this case
12 among yourselves or with anyone else.
13 You're not allowed to have anyone say
14 anything to you or in your presence about
15 the case. Don't form or express any
16 opinions about this matter. Don't have any
17 contact or communication with anyone
18 involved in the case. Continue to avoid
19 any exposure to any media accounts which
20 may exist in connection with this matter,
21 and don't conduct any independent inquiry
22 or investigation or research of any kind.
23 You folks are excused at this time until
24 10:30 tomorrow morning. Thank you.

25 (Jury out at 3:23 p.m.)

1 THE COURT: Major Watson, if you
2 will have Mr. Demery present here at 9:00
3 tomorrow morning, as well as Mr. Green.

4 THE BAILIFF: Yes, sir.

5 THE COURT: If all counsel will
6 be present, ready to go, at 9:00, which
7 means that you need to bring materials, you
8 need to start about 8:30, 8:45 so your
9 materials are here and we're ready to gear
10 up at 9:00 a.m. tomorrow morning, we will
11 go forward with the hearing at that time.

12 If you folks want to make any offers
13 of proof or any showing of any kind, please
14 expedite it so we can be prepared to go
15 forward when the jury arrives at 10:30
16 tomorrow morning. Again, if you've got any
17 law or authority you want to present to the
18 Court, if you'll present that at the
19 outset, 9:00 tomorrow morning, we'll be
20 ready to go forward at that time. I expect
21 we'll be ready to complete that matter and
22 be in position to go forward promptly at
23 10:30 with whatever evidence there may be.

24 Mr. Britt, in that regard if you
25 intend to offer rebuttal witnesses, if

1 you'll have your witnesses available so we
2 can go immediately into any rebuttal
3 evidence tomorrow.

4 MR. BRITT: Yes, sir.

5 THE COURT: Any questions from
6 any counsel?

7 MR. BOWEN: No, sir.

8 THE COURT: Specifically, folks,
9 if you will find, research any law that you
10 contend prohibits the defendant or a
11 private citizen from introducing evidence
12 that would otherwise arguably be
13 inadmissible under the Sixth Amendment or
14 Fifth Amendment if offered by the State or
15 by the Government.

16 And if you folks have any specific
17 cases dealing with impeachment in any form
18 that you want me to consider, if you'll
19 bring those cases with you tomorrow
20 morning. Because you're offering this in
21 part for impeachment purposes and to some
22 extent for corroborative purposes. Also,
23 if you will print out the pertinent pages
24 of Mr. Demery's cross-examination so that
25 that is not an issue and we can deal with

1 that tomorrow morning. And if you'll
2 provide copies of that to counsel for the
3 State, counsel for Mr. Demery and to the
4 Court tomorrow morning.

5 MR. BOWEN: Yes, sir.

6 THE COURT: Anything else from
7 either counsel? All right. If you'll
8 recess us until 9:00 tomorrow morning.

9 THE BAILIFF: All rise, please.

10 (Court adjourned.)

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1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

3
4 LUTHER JOHNSON BRITT, III, Esq.
5 District Attorney
6 16-B Prosecutorial District
7 Lumberton, North Carolina 283588
9 On Behalf of the Defendant:10
11 ANGUS B. THOMPSON, Esq.
12 Public Defender
13 16-B Prosecutorial District
14 Lumberton, North Carolina 28358

15 and

16
17 WOODBERRY A. BOWEN, Esq.
18 Bowen & Byerly
19 P.O. Box 846
20 Lumberton, North Carolina 2835921
22 (February 21, 1996. Proceedings in open court.)23
24 THE COURT: Good morning, folks.25
26 Let the record show all counsel are
27 present, the defendant is present in open
28 court. We need Mr. Demery, Mr. Rogers, and
29 Mr. Campbell.30
31 MR. BRITT: I have not seen
32 Mr. Rogers and Mr. Campbell --33
34 THE COURT: I think they are in
35 your office, I passed them on the way

1 coming in.

2 MR. BRITT: Your Honor, may I
3 step to my office?

4 THE COURT: Yes, sir.

5 MR. BRITT: I can't seem to find
6 a document that I need.

7 THE COURT: Mr. Huseby, I
8 appreciate the transcript. Thank you very
9 much.

10 MR. CAMPBELL: May I approach,
11 Your Honor?

12 THE COURT: Yes, sir. Thank you,
13 sir.

14 Let the record further show that in
15 addition to counsel for the defendant
16 Mr. Daniel Andre Green, also known as
17 U'Allah, being present in open court,
18 counsel for the defendant Larry Martin
19 Demery are now present in the court along
20 with the defendant Larry Martin Demery, and
21 counsel for the State, Mr. Johnson Britt.
22 All counsel and all parties are now
23 present, and the following is occurring in
24 the absence of the jury.

25 Let the record further show that

1 counsel for defendant Larry Martin Demery
2 has handed up to the Court a motion to
3 suppress the proposed testimony of Richard
4 Terry Locklear, citing as a basis for their
5 motion Massiah, M-A-S-S-I-A-H, versus
6 United States, 377 U.S. 201, '84 Supreme
7 Court 1199, 12 Lawyer's Edition 2d, 246
8 1964 case; and Maine versus Moulton,
9 M-O-U-L-T-O-N, 474 U.S. 159, 106 Supreme
10 Court, 477, 88 Lawyer's Edition, 481, 1985,
11 and progeny.

12 Folks, by way of affidavit and my
13 understanding that you have attached the
14 rough draft of a transcript in this case
15 reflecting a portion of the
16 cross-examination occurring on February
17 5th, 1996, in the matter now before the
18 Court.

19 MR. CAMPBELL: Yes, Your Honor.

20 THE COURT: Procedurally I think
21 the best way for us to go forward is with
22 their motion, then we'll hear from the
23 State and the proponent of the evidence.
24 Is that agreeable?

25 All right. Mr. Rogers, Mr. Campbell.

1 MR. ROGERS: First of all, we
2 move to introduce the affidavit in support
3 of the motion.

4 THE COURT: And the affidavit
5 being the transcript?

6 MR. ROGERS: Yes, sir.

7 THE COURT: Okay. Anybody want
8 to be heard as to the transcript being
9 attached as an affidavit?

10 MR. THOMPSON: Well, it's -- Your
11 Honor -- yes. Transcript is a record of
12 this trial, so I mean, it's a transcript,
13 as far as it being an affidavit --

14 THE COURT: Well, that's
15 ultimately a determination that I have to
16 make.

17 MR. ROGERS: Actually the
18 transcript is incorporated by reference
19 into motion. The motion is verified and we
20 would ask the court to treat it as an
21 affidavit which would include the
22 transcript in support of the motion, that's
23 all I'm saying, same transcript that
24 Mr. Bowen read to you yesterday.

25 THE COURT: Well, apparently

1 there's no dispute that there was a
2 conversation by way of introduction of the
3 transcript, there's no dispute as to any of
4 the parties, if there was a conversation
5 between Mr. Larry Martin Demery and
6 Mr. Richard Terry Locklear.

7 MR. ROGERS: To that extent there
8 is no dispute. The contents of the
9 conversation, yes, but the initiation of
10 the conversation by Richard Terry Locklear,
11 no.

12 THE COURT: Yes, sir, anything
13 further?

14 MR. ROGERS: Our position under
15 Moulton 492, 493 of the Lawyer's Edition.

16 THE COURT: I'm familiar with
17 Moulton.

18 MR. ROGERS: I know you are.
19 Bottom of 492, top of 493 discusses the
20 fact that the Court has in the past been
21 called upon to resolve this question.

22 THE COURT: Moulton deals with a
23 situation where the Sixth Amendment right
24 accrued because governmental activity was
25 involved.

1 MR. ROGERS: Yes, sir.

2 THE COURT: Same thing with
3 Massiah.

4 MR. ROGERS: And normally when an
5 officer violates the Sixth Amendment, it
6 does occur in favor of the government. But
7 as Moulton would tell you on those two
8 pages, clearly and explicitly, the
9 prosecutor, which really isn't applicable
10 in this case, and the police have an
11 obligation not to act in a matter that
12 circumvents and thereby dilutes the
13 protections afforded by the right to seek
14 counsel. So we're not blaming anything on
15 the prosecutor, but the officer falls
16 within the purview of Moulton. It clearly
17 and explicitly separates the two
18 categories. And that's where the problem
19 lies in this case.

20 THE COURT: The police in that
21 context were being discussed as agents of
22 the government.

23 MR. ROGERS: Yes, sir. I
24 contend, though, that that language
25 prohibits the police either acting as

1 agents of the prosecutor, on their own, or
2 acting as agents of the defendant, from
3 violating this man's Sixth Amendment
4 rights. And in this case, of course, he's
5 more than just a witness. He is a
6 defendant with proceedings pending against
7 him, potentially capital proceedings
8 pending against him, so he's of a category
9 other than just an ordinary witness,
10 obviously.

11 But our contention is that Moulton, on
12 its face, is applicable to the police. It
13 separates the categories, police and
14 prosecutors. And what a police officer
15 can't do for the State, he can't do on his
16 own for whatever motivation, he can't do as
17 agents of the defendant if that's the case,
18 he simply can't violate this man's
19 constitutional right to counsel for
20 whatever reason.

21 MR. CAMPBELL: May we have one
22 moment, Your Honor?

23 THE COURT: Yes, sir.

24 MR. ROGERS: And another
25 distinction as Mr. Campbell was relating to

1 me is that in Moulton and Massiah and large
2 number of other cases that you're familiar
3 with, it was an accomplice or codefendant
4 that was instigated by the officer to
5 initiate the questioning. This case is
6 worse. It's the officer himself.

7 THE COURT: Let me throw out the
8 following scenario. Take Massiah for
9 example. In Massiah, an unindicted
10 coconspirator was elicited, recruited by
11 law enforcement. He was set up with a
12 radio transmitter, recording device, and
13 essentially told to go out and get
14 incriminating statements from the
15 defendant, Massiah in that case.

16 What if the defendant had evidence
17 that Massiah, if he hadn't had a recording
18 device, went to the police and told them
19 that he had had a conversation with that
20 defendant and that in that conversation the
21 defendant made incriminating statements;
22 and there was a jailer housed or in the
23 unit where the coconspirator was housed who
24 had a conversation with the, quote,
25 unquote, snitch; and the snitch admitted to

1 the jailer, conversation initiated by the
2 jailer, "I lied, what I said wasn't true"?
3 Would that defendant have a constitutional
4 right to present that evidence in
5 exculpation?

6 MR. ROGERS: Assuming nobody got
7 into hearsay. In other words you're
8 talking about scenario where the defense,
9 quote, lucked into it?

10 THE COURT: No. Jailer just got
11 into a conversation with the unindicted
12 coconspirator. Initiated a conversation,
13 and in that conversation, the unindicted
14 coconspirator said, what I said earlier
15 about Massiah admitting guilt to me was not
16 true.

17 MR. ROGERS: There though you're
18 talking procedurally about an unindicted
19 individual who apparently was in custody
20 for something else. We've got an indicted
21 defendant here.

22 THE COURT: Fact that he's
23 indicted or unindicted really doesn't make
24 any difference. Would the defendant who
25 was on trial have a constitutional right to

1 present the exculpatory evidence?

2 MR. ROGERS: I say no, because of
3 the violation that the officer engaged upon
4 in order to obtain what --

5 THE COURT: So the defendant on
6 trial would lose the benefit of evidence
7 that would point arguably to his innocence
8 because the activity was initiated by law
9 enforcement officers, that's your position?

10 MR. ROGERS: That's our
11 proposition, yes, sir. Although I guess,
12 might have exculpatory versus impeaching,
13 if that made any difference to anybody.

14 THE COURT: It's impeaching, but
15 it's exculpatory, same thing.

16 MR. ROGERS: That would be our
17 proposition.

18 THE COURT: What it comes down to
19 folks, we've got a situation where
20 defendant has the constitutional right to
21 put on evidence that he contends is
22 impeachment evidence which arguably is
23 exculpatory. We've got a situation where
24 the State and the testifying codefendant
25 contends that his rights were violated.

1 All the cases that I've read,
2 Esposito, all the way down through Miranda,
3 their progeny, all the progeny of the Sixth
4 Amendment right under Massiah say that the
5 prohibition Fifth and Sixth Amendment is to
6 prevent unlawful unconstitutional conduct
7 by the government, by the State, by the
8 prosecuting authority. And I haven't found
9 anything different, has anybody else?

10 MR. BRITT: No, sir.

11 THE COURT: I appreciate the
12 candor. Motion to suppress on behalf of
13 Mr. Demery is denied. Note Mr. Demery's
14 exception for the record.

15 Mr. Britt, do you want to be heard as
16 to your contention that this is
17 collateral?

18 MR. BRITT: Yes, sir. They
19 questioned Mr. Demery on cross-examination
20 about this very statement. He denied it.
21 They are not allowed, as I understand the
22 Rules of Evidence, to go into extrinsic
23 evidence to impeach him. Not only is it
24 collateral, but it also, if you read the
25 statement that was handed up, arguably it

1 brings in the question of parole, because
2 it -- contained in the statement is the
3 allegation that Mr. Demery allegedly said
4 that he was going to get 40 years with
5 armed robbery, life for the murder that
6 would run concurrent with good time and he
7 would be out in eight or nine. That's -- I
8 don't think -- arguably, I think that's a
9 direct comment on the fact that there is
10 parole in this state, and that's an issue
11 that is beyond the jury's realm.

12 THE COURT: I agree with you that
13 parole is not for their consideration, but
14 I don't think it's collateral. Essence of
15 the cross-examination dealt with what are
16 you getting in exchange for your testimony,
17 which is the heart of the case. The heart
18 of the case is what if any concessions were
19 made in exchange for Mr. Demery's
20 testimony. His credibility is the focal
21 point of the case. The only real dispute
22 in this case is who did what when. That's
23 the only real issue that I see involved in
24 this case, who pulled the trigger. And in
25 that regard, any concessions that have been

1 offered bear on that. So I don't think
2 it's collateral.

3 I understand your position, State's
4 objection is overruled. Note the State's
5 exception to the ruling of the Court. I'm
6 allowing this in for impeachment. I will
7 give a limiting instruction.

8 The State is fully entitled to
9 cross-examine Mr. Locklear on the issue of
10 bias arising out of any prosecution that
11 occurred in the 13th Judicial District.
12 The State is entitled to impeach
13 Mr. Locklear with regard to any matters
14 that may arise under Rule 609.

15 MR. BRITT: And Rule 608.

16 THE COURT: And 608. But I want
17 to clear the record on 608. What specific
18 matters do you contend are admissible under
19 608 in terms of the materials that you
20 provided to the Court and counsel for the
21 defendant yesterday?

22 And the Court is specifically
23 referring to a document which is 30 pages
24 in length and bears the caption on the
25 first page, North Carolina Department of

1 Justice, Attorney General's Office; Post
2 Office Box 629; Raleigh, North Carolina; to
3 Johnson Britt, from Robin B -- strike that,
4 T. Pendergraft, P-E-N-D-E-R-G-R-A-F-T,
5 dated February 20th, 1996; 31 pages -- I'm
6 sorry, including cover page, Re: Richard
7 Terry Locklear. There's some matters cited
8 that Ms. Pendergraft thought were pertinent
9 for our proceeding beginning on page 11,
10 finding of fact 43.

11 MR. BRITT: Yes, sir. First, I
12 would contend before we get to Article 43
13 in the area Findings of Fact and Stipulated
14 Facts.

15 THE COURT: Do you want to go
16 through those first?

17 MR. BRITT: Yes, sir.

18 THE COURT: If you'll enumerate
19 the ones that you think are appropriate.

20 MR. BRITT: Number 14,
21 petitioner --

22 THE COURT: You folks got a copy
23 of this?

24 MR. BOWEN: Yes, sir.

25 MR. BRITT: Petition applied with

1 Criminal Justice Division as certification
2 for full time law enforcement officer with
3 Whiteville Police Department in May of
4 '91. 15, that he was issued that
5 probationary certificate. That the general
6 certification was issued on May the 20th.

7 THE COURT: Okay. Those are
8 stipulated matters.

9 MR. BRITT: Yes, sir. That he
10 was separated from the Whiteville Police
11 Department November 17th of 1993.

12 THE COURT: Yes, sir. Now, 18
13 and the matters below 18 deal with 609
14 matters, arguably, those that apply.

15 MR. BRITT: Yes, sir.

16 THE COURT: 18 deals with Case
17 Number B1761, resulting in a conviction on
18 2-2-82. Anybody want to be heard about the
19 time period involved in that?

20 MR. BOWEN: Yes, sir, Your Honor,
21 it's beyond ten years.

22 THE COURT: All right. We'll
23 raise that.

24 MR. BRITT: The issue, because
25 the issues in regarded to the material

1 misrepresentations that were found.

2 THE COURT: 609 doesn't apply in
3 terms of the time period.

4 MR. BRITT: That's right, and the
5 matters that he did not --

6 THE COURT: Bear on truthfulness
7 or untruthfulness under 608.

8 MR. BRITT: Were not included in
9 his application, and the specific question
10 on the Whiteville application, "Have you
11 ever been arrested by any law enforcement
12 officer, what was the charge and when?"
13 These matters in 18, some of these matters
14 in 18 were left out of that.

15 THE COURT: To the extent that
16 they bear on truthfulness and
17 untruthfulness under Rule 608, time period
18 doesn't apply, but the extrinsic evidence
19 rule does.

20 MR. BRITT: Yes, sir, I
21 understand that.

22 THE COURT: I'll hear your
23 argument on the time period in 609, but
24 he's arguing that they come in either under
25 609 --

1 MR. BOWEN: I'm going to tell
2 you, these offenses are so minuscule and so
3 small misdemeanors, I don't care if they
4 come in or not. Let them all in.

5 THE COURT: All right. You heard
6 his position.

7 MR. BRITT: Yes, sir.

8 THE COURT: Yes, sir.

9 MR. BRITT: On page nine,
10 paragraph 27, that the petitioner, that
11 being Mr. Locklear, caused by authorities
12 at the Whiteville Police Department to sign
13 at least two documents on May 1st, mainly
14 an F-3 as a personal history and a F-5(a)
15 LE Report of Appointment form. Personal
16 history involved some questions about
17 arrests.

18 MR. BOWEN: May I be heard on one
19 thing? On the F-5, there is a foundational
20 question that will arise there, because the
21 F-3 was a document that Mr. Locklear
22 provided -- prepared. And he disclosed a
23 good deal of stuff on that. Then when the
24 chief of police provided the F-5 which went
25 to the commission, he left out everything

1 except one charge. And so one of the
2 disputed issues and all that is that
3 Mr. Locklear didn't make that, so we're
4 going to have --

5 THE COURT: That's something you
6 can bring up on redirect.

7 MR. BOWEN: Yes, sir.

8 MR. BRITTY: Paragraph 36.

9 THE COURT: Okay.

10 MR. BRITT: Involves the
11 witness's completing basic background forms
12 for his employment at Robeson County
13 Sheriff's Department. Number 30 -- back
14 up.

15 Paragraph 34, question number 50
16 personal history statement, "Have you ever
17 been charged with a criminal offense?" And
18 the blank yes, then the blank no. "If yes,
19 give details below," blank spaces are
20 provided.

21 Paragraph 35, where the witness stated
22 listed only A simple assault, B question
23 mark, C driving on suspended license, those
24 are the only three that he disclosed in his
25 application with the Whiteville Police

1 Department, and there were others.

2 36 involves the basic question
3 requirements for seeking employment as a
4 jailer. 37 again is a question about have
5 you ever been arrested by a law enforcement
6 officer or otherwise charged with a
7 criminal offense, yes or no, blank spaces
8 provided, too.

9 Then 38 was his answer that was
10 provided to Robeson County Sheriff's
11 Department, which left out matters that
12 were not -- that had been disclosed on the
13 Whiteville application.

14 42 deals with one of the offenses that
15 were disclosed -- excuse me. Well, it
16 deals with one of the offenses that's dealt
17 with earlier. 43 deals with fact that the
18 defendant -- excuse me. Witness admitted
19 the incident and it was not reported on the
20 criminal justice report.

21 THE COURT: Yes, sir.

22 MR. BRITT: 45 deals with an
23 incident that the defendant did not
24 disclose. And 46 deals with his answer --
25 excuse me, I keep referring to defendant.

1 47 also deals with that same incident
2 and his ability to recall that incident.
3 48 is his admission that he did not list
4 that on the form, on either the Whiteville
5 application or on the Robeson County
6 application. 50 deals with a harassment
7 charge that he did not disclose in the
8 application, in either application.

9 THE COURT: For the purposes of
10 the record, were the answer certified,
11 verified, or otherwise under oath?

12 MR. BRITT: As to what I'm
13 reading?

14 THE COURT: No, as to matters you
15 contend were responses or answers of
16 Mr. Locklear. On any of the documents that
17 were filled out in connection with any of
18 his law enforcement

19 MR. BRITT: I do not know, I have
20 not seen those documents.

21 MR. BOWEN: I have, and I can
22 tell you that I believe not. But I'm not
23 prepared to swear to it. I would have to
24 go to the office and get the documents. I
25 think all that there was merely a

1 signature -- that's correct, yes, he
2 knows.

3 THE COURT: All right. Yes, sir.

4 MR. BRITT: 52, deals with a
5 conviction that he did not list on either
6 application, either with Whiteville or with
7 Robeson County. 72 deals with a statement
8 made by the witness to Special Agent Dave
9 Marshall of the SBI in that he had only
10 been arrested one time and that was some 10
11 to 15 years prior to the matters that
12 Mr. Marshall was investigating. On page 25
13 under the heading of good morale conduct, I
14 don't know that I'm entitled to get --

15 THE COURT: Page 20 --

16 MR. BRITT: 25 of -- there are
17 matter there that bear more on his
18 character than they do his truthfulness,
19 and under the rules I don't think I'm
20 allowed to get into that.

21 THE COURT: I agree with you.

22 MR. BRITT: And then as to the
23 conclusions of law, I don't think I'm
24 entitled to get into that either.

25 THE COURT: I don't either.

1 MR. BOWEN: I'm familiar with the
2 document, I know what it says. As far as
3 his using it for some kind of basis for
4 these questions, I have no problem. If the
5 thrust of this is that it is going to be
6 used as some sort of collateral
7 preestablished fact or something of that
8 nature, I object because these matters are
9 still under appeal. They are --

10 THE COURT: Under 608, he can
11 simply ask the questions, and he's stuck
12 with the answer.

13 MR. BOWEN: Exactly.

14 THE COURT: There are matters
15 here that are stipulated to, as I
16 understand it, by Mr. Locklear.

17 MR. BOWEN: I don't -- that first
18 stipulation, I have no problem with it.
19 We'll probably -- yeah, that's a fact.

20 THE COURT: Anybody want to be
21 heard further?

22 MR. CAMPBELL: One thing, Your
23 Honor.

24 THE COURT: Yes, sir.

25 MR. CAMPBELL: If you go back to

1 the original motion, that is, from today,
2 and observe the alternate prayer and the
3 conclusion, as the Court is wanting to do,
4 you went to the heart of our position
5 yesterday when you said this defendant has
6 got other business with this court.

7 The order mentioned in paragraph 1 of
8 our motion is your order. We're not
9 really, as you've pointed out several
10 times, involved in this case, and we're not
11 to be heard much about it, and we're not
12 really interested in it. But we are
13 interested in that further business and we
14 would, if possible, like some assurance
15 that this business is not going to come up
16 to haunt him at a later time.

17 THE COURT: I don't know how to
18 respond to that except to say that my
19 ruling here deals only with an evidentiary
20 matter which is coming in before this jury,
21 and that's it. I mean, this is a matter of
22 evidence as far as I'm concerned, that's
23 all, for what it's worth.

24 I mean, sometimes we get real caught
25 up in putting on our evidence and we forget

1 that the purpose of putting on our evidence
2 is to persuade. And we are having such a
3 good time putting it on that we neglect to
4 look over there and see what kind of impact
5 it's having on folks. From time to time
6 that's real helpful.

7 Ready to go at 10:30?

8 MR. BRITT: Yes, sir.

9 THE COURT: All right.

10 MR. CAMPBELL: We're excused,
11 aren't we?

12 THE COURT: Yes, sir. We're at
13 ease until 10:30.

14 (Brief recess.)

15 THE COURT: Let the record
16 reflect that counsel for the State is
17 present, counsel for the defendant is
18 present. The defendant is present in open
19 court. Do we have all members of the jury
20 secured?

21 THE BAILIFF: Yes, sir.

22 THE COURT: Before calling the
23 jury in, Mr. Bowen, Mr. Thompson, you folks
24 indicated yesterday that you were going to
25 consider whether or not there would be

1 additional evidence beyond the testimony of
2 Mr. Richard Terry Locklear that you folks
3 would present. Do you know what your
4 position is?

5 MR. BOWEN: Yes, Your Honor,
6 Mr. Thompson has one witness who is from
7 the Wilmington area, should be a very short
8 witness. Mindful Mr. Demery, Mr. Campbell
9 is over here, Mr. Rogers is standing by.
10 But should not be a long witness. We would
11 like to get him off. After Mr. Locklear
12 testifies, we don't foresee any further
13 evidence.

14 THE COURT: So you're going to
15 call that witness first and then
16 Mr. Locklear?

17 MR. BOWEN: Yes, sir.

18 THE COURT: State prepared to go
19 forward with any rebuttal evidence?

20 MR. BRITT: Yes, sir, we are.

21 THE COURT: Both sides ready to
22 go forward? If you'll bring the jury in,
23 please, sir.

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

25 THE COURT: Good morning, ladies

1 and gentlemen. Mr. Thompson, Mr. Bowen,
2 you may call your next witness.

3 MR. THOMPSON: Yes, sir. The
4 defense would call Mr. Paul Hammerstein.

5 THE COURT: If you'll come up and
6 be sworn, please, sir.

7 PAUL J. HAMMERSTEIN,
8 being first duly sworn was examined and testified as
9 follows:

10 DIRECT EXAMINATION

11 THE COURT: If you'll take a seat
12 in the witness chair. If you'll state your
13 full name for the record, please sir.

14 THE WITNESS: Paul Joseph
15 Hammerstein.

16 THE COURT: And if you will spell
17 your last name for the benefit of the court
18 reporter.

19 THE WITNESS: H-A-M-M-E-R-
20 S-T-E-I-N.

21 THE COURT: Mr. Thompson.

22 BY MR. THOMPSON:

23 Q Good morning, Mr. Hammerstein.

24 A Good morning.

25 Q Where are you employed?

1 A I'm employed at the Summer Sands Motel at
2 Wrightsville Beach.

3 Q In what capacity are you employed at the
4 Summer Sands?

5 A I'm the manager.

6 Q How long have you held the position as
7 manager?

8 A Seven years.

9 Q And what kind of facility is the Summer
10 Sands?

11 A It's a motel operation with multiple
12 ownership. We have 32 apartments, motel apartments
13 with individual owners.

14 Q And what kind of apartments, can you
15 describe the nature of the apartments, the layout of
16 the apartments?

17 A Yes, sir. They are all two-room efficiency
18 apartments, one room being a bedroom and second being
19 a combination living area-kitchen area.

20 Q And what are your duties and
21 responsibilities of manager at the Summer Sands,
22 Mr. Hammerstein?

23 A I am the rental operations manager, as well
24 as the property manager, which would include
25 financial supervisory obligations, record keeping,

1 banking.

2 Q And did you bring any records with you this
3 morning pursuant to a subpoena of the defense?

4 A Yes, sir, I did.

5 Q And what type of records did you bring?

6 A I brought the record of a guest, which we
7 call a guest folio.

8 Q And who is the name of the individual on
9 the guest folio?

10 MR. BRITT: Objection.

11 THE COURT: Well, to the form of
12 the question, the objection is sustained.

13 Lay a foundation of the business records.

14 MR. THOMPSON: Yes, sir.

15 THE COURT: Go ahead.

16 BY MR. THOMPSON:

17 Q And the record that you brought, was it
18 maintained in the regular practice of the business,
19 Mr. Hammerstein?

20 A Yes, sir.

21 Q And does the guest folio have a name on it?

22 A Yes, sir.

23 Q And are you the custodian of the records?

24 A I am.

25 MR. THOMPSON: Your Honor --

1 THE COURT: Yes, sir.

2 MR. THOMPSON: May I approach?

3 THE COURT: Yes, sir.

4 (Defense Exhibit 40 was
5 marked for identification.)

6 BY MR. THOMPSON:

7 Q Mr. Hammerstein, the record that you
8 brought, is it a copy or an original?

9 A It's the original business copy.

10 Q Did you make a copy of the original?

11 A Yes, sir, I did.

12 Q And I hand you what has been marked as
13 Defendant's Exhibit Number 40. What is Defendant's
14 Exhibit Number 40?

15 A It's a copy of the business record.

16 Q You have the original there with you?

17 A Yes, sir.

18 Q Would you hold that up, please?

19 A (Witness complies).

20 Q All right, sir.

21 MR. THOMPSON: Your Honor, at
22 this time I question him using Defendant's
23 Exhibit Number 40.

24 THE COURT: Mr. Britt?

25 MR. BRITT: I object, foundation

1 is incomplete.

2 THE COURT: You need to ask
3 additional questions, sir.

4 MR. THOMPSON: Okay.

5 BY MR. THOMPSON:

6 Q Mr. Hammerstein, when was the Defendant's
7 Exhibit Number 40 made, sir?

8 A It was made in the early morning hours of
9 July 22nd, 1993.

10 Q And what name is reflected on the guest
11 folio of Defendant's Exhibit Number 40?

12 MR. BRITT: Objection.

13 THE COURT: Sustained.

14 BY MR. THOMPSON:

15 Q And was Defendant's Exhibit Number 40, the
16 copy of the original, made and maintained in the
17 regular practice and course of the business?

18 A Yes, sir.

19 Q And has it, the original, been under your
20 custody and control, sir?

21 A Yes, sir.

22 Q Since the date it was made?

23 A Yes, sir.

24 MR. THOMPSON: Your Honor, desire
25 to introduce Defendant's Exhibit Number 40.

1 THE COURT: Mr. Britt, do you
2 want to be heard?

3 MR. BRITT: Position is still the
4 same, the foundation is incomplete.

5 THE COURT: Mr. Thompson, you'll
6 need to establish what the practice is with
7 regard to the business and what was done by
8 whom and for what purpose.

9 BY MR. THOMPSON:

10 Q Mr. Hammerstein, the guest folio that
11 you've testified to, what is the purpose of that
12 document?

13 A The purpose is to maintain a financial
14 record of transactions.

15 Q And --

16 THE COURT: In connection with
17 what kind of activity, sir?

18 THE WITNESS: In connection with,
19 of course, banking deposits, making banking
20 deposits, and also payment of income to our
21 owners.

22 BY MR. THOMPSON:

23 Q And who, Mr. Hammerstein -- when is the
24 document, Defendant's Exhibit Number 40 made,
25 actually filled out?

1 A The document, as all documents, are filled
2 out at the time the guests check in, registration.

3 Q And what is done at the time of the guest
4 check-in?

5 A The clerk on duty, the desk clerk on duty
6 would complete this document and assign charges for
7 guest stay, guest occupancy.

8 Q Does Defendant's Exhibit Number 40 reflect
9 the kind of information that is obtained from a guest
10 during the regular practice and course of your
11 business?

12 A Yes, sir.

13 Q And what does Defendant's Exhibit Number 40
14 reflect, the guest folio?

15 MR. BRITT: Objection.

16 THE COURT: You have to introduce
17 it first.

18 MR. THOMPSON: Desire to
19 introduce it first.

20 THE COURT: Mr. Britt, do you
21 want to be heard?

22 MR. BRITT: Simply note an
23 objection.

24 THE COURT: Objection is
25 overruled. You're offering Defendant's

1 Exhibit 40 at this time?

2 MR. THOMPSON: Yes, sir, the
3 copy.

4 THE COURT: It's admitted.

5 BY MR. THOMPSON:

6 Q Mr. Hammerstein, what does Defendant's
7 Exhibit Number 40 reflect with respect to the
8 information obtained from the guest, sir?

9 A It indicates guest name and address, as
10 well --

11 Q I'm sorry, go ahead?

12 A As well as length of stay.

13 Q What is the guest name on Defendant's
14 Exhibit Number 40?

15 A The name is Hugh Fowler.

16 Q And what is the address?

17 A The address, 143 Ridge Road Marion, North
18 Carolina.

19 Q And what is the arrival date?

20 A July 21st, 1993.

21 Q And what is the departure date?

22 A July 24th, 1993.

23 Q And what is the amount shown for payment?

24 A The amount shown is \$283.40.

25 Q And what time did Mr. Fowler arrive,

1 Mr. Hammerstein, as reflected on Defendant's Exhibit
2 Number 40?

3 A Yes, sir, the date and time is July 22nd at
4 2:12 a.m.

5 Q And does Defendant's Exhibit Number 40
6 indicate the number of individuals in the party?

7 A No, sir.

8 Q Why is that?

9 A The copy -- in fact, the original, our
10 office copy is illegible.

11 MR. THOMPSON: That's all.

12 THE COURT: Mr. Britt.

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

15 THE COURT: May the witness be
16 released?

17 MR. THOMPSON: Yes, sir.

18 THE COURT: Thank you, sir,
19 you're free to go.

20 MR. THOMPSON: Your Honor, we
21 would request that Defendant's Exhibit
22 Number 40 be passed -- be allowed to be
23 passed to the jury.

24 THE COURT: Yes, sir, if you'll
25 pass Defendant's Exhibit Number 40 to the

RICHARD
LOCKLEAR

1 members of the jury. Folks, please recall
2 my instruction, please examine the exhibit
3 individually and carefully and without any
4 comment.

5 (Whereupon exhibit published to the
6 jury.)

7 MR. BOWEN: May I approach the
8 exhibits, Your Honor?

9 THE COURT: Yes, sir.

10 Any additional evidence for the
11 defendant?

12 MR. BOWEN: Yes, Your Honor,
13 defense calls Officer Richard Locklear.

14 THE COURT: Yes, sir. If you'll
15 come up and be sworn, please, sir.

16 RICHARD TERRY LOCKLEAR,
17 being first duly sworn was examined and testified as
18 follows:

19 DIRECT EXAMINATION

20 THE COURT: If you'll take the
21 witness stand, please. If you'll state
22 your full name for the record, sir.

23 THE WITNESS: Richard Terry
24 Locklear.

25 THE COURT: For the benefit of

1 the court reporter, if you'll spell your
2 last name.

3 THE WITNESS: L-O-C-K-L-E-A-R.

4 THE COURT: Mr. Bowen.

5 BY MR. BOWEN:

6 Q Mr. Locklear, where do you now live,
7 please?

8 A Route 8, Box 308, Lumberton.

9 Q How old are you, sir?

10 A 44.

11 Q And how are you presently employed, please?

12 A As a jailer for the Robeson County
13 Detention Center.

14 Q How long have you been so employed?

15 A Approximately 14 months.

16 Q Now, before coming to work for the Robeson
17 County Detention Center, were you working in any type
18 of law enforcement work?

19 A Yes, sir.

20 Q For whom were you working?

21 A The City of Whiteville, as a police
22 officer.

23 Q How long did you work there?

24 A Two and a half years.

25 Q Now, before that, did you have any law

1 enforcement or law enforcement related work?

2 A I worked in a prison up north in New Jersey
3 for approximately five or six years.

4 Q And that is the extent of your law
5 enforcement related background; is that correct?

6 A Yes.

7 Q Now, Mr. Locklear, were you employed by the
8 Robeson County detention facility at a time when
9 Mr. Larry Demery was housed there?

10 A Yes.

11 Q Was there a time during when you were a
12 guard in the Robeson County jail facility that
13 Mr. Demery left that facility and was put elsewhere?

14 A Yes.

15 THE COURT: Establish when that
16 was, Mr. Bowen.

17 BY MR. BOWEN:

18 Q Can you tell about when that was?

19 A Only reference I can make to it is it was
20 directly after he pled guilty.

21 THE COURT: Okay. And for the
22 record, do you know what year that was,
23 sir?

24 THE WITNESS: '95.

25 THE COURT: 1995?

1 THE WITNESS: Yes, sir.

2 BY MR. BOWEN:

3 Q Now, did there come a time in 1995 when he
4 returned to your facility?

5 A Yes.

6 THE COURT: And establish when
7 that was, Mr. Bowen.

8 BY MR. BOWEN:

9 Q Let me make sure, for clarity, are you
10 talking about after the plea -- the entry of the
11 plea, are you talking about when he went elsewhere or
12 when he came back from elsewhere?

13 A After the entry of the plea.

14 Q He did what?

15 A He came back to the Robeson County jail.

16 Q Do you know where he had been in the
17 interim?

18 A Across the road, at DOC.

19 Q What do you mean by DOC?

20 A It's Department of Corrections, the
21 Lumberton prison.

22 Q So then the month, as best you can tell
23 when he came back to Robeson County jail facility, do
24 you know?

25 A No, sir.

1 Q All right. How long -- how did you know
2 when it was that he had entered his plea in these
3 matters?

4 A I heard about it on the news and read it in
5 the paper.

6 Q Was that the plea of guilty in reference to
7 this case?

8 A Yes.

9 Q Can you give the jury how many days or
10 weeks in your best estimation it was before you saw
11 him back over in the Robeson County jail facility?

12 A It's approximately maybe a month, month and
13 a half.

14 Q Now, do you smoke?

15 A Yes.

16 Q And is smoking permitted everywhere in the
17 jailhouse facility in the Robeson County Detention
18 Center?

19 A No, it's not.

20 Q Are there certain designated areas?

21 A Yes.

22 Q Is one of those areas the outdoor
23 recreation area of the jail?

24 A Yes.

25 Q Where is it located?

1 A It's directly, it's in the center of the
2 jail.

3 Q Describe it.

4 A It's approximately 50 feet wide, maybe a
5 hundred feet long, there's basketball court, weight
6 lifting machines. And it's open air, it's outside.

7 Q Do inmates go there for the purpose of
8 recreation?

9 A Yes, sir.

10 Q Do you go there sometimes to smoke?

11 A Yes, sir.

12 Q On an occasion after Mr. Demery -- after
13 Mr. Demery's plea of guilty and after he had returned
14 to the jail facility, did there come a time that you
15 encountered him at the outdoor recreation area?

16 A Yes.

17 Q Approximately to your best recollection,
18 how long was it after you had noticed him back in the
19 Robeson County jail facility following his plea?

20 A Within a matter of days, I can't be for
21 sure.

22 Q All right. And what was he doing, if
23 anything, when you saw him there in the outdoor
24 recreation area?

25 A He was sitting on one of the weight

1 benches.

2 Q Were there any other persons out there?

3 A My best recollection, there was definitely
4 a jailer out there, and I believe there was two other
5 inmates.

6 Q And how close were they to Mr. Demery?

7 A They were playing basketball, so they were
8 maybe 40, 50 feet away.

9 Q Now, state whether or not you had known
10 Mr. Demery prior to seeing him there at the
11 recreation area?

12 A I knew him through being an inmate at the
13 jail, yes.

14 Q Had you chatted with him before?

15 A Yes.

16 Q On this occasion when you encountered him
17 in the rec area, what did you do?

18 A I went up to him, asked him how he was
19 doing, asked him how he liked being across the road,
20 and just struck up a casual conversation with him.

21 Q What did he say?

22 MR. BRITT: Objection.

23 THE COURT: The objection is
24 overruled. You want a limiting
25 instruction?

1 MR. BRITT: Yes, sir.

2 THE COURT: Members of the jury,
3 the testimony now being elicited by counsel
4 for the defendant, Mr. Bowen, is being
5 offered for the limited purpose of
6 impeachment of the prior State's witness
7 Larry Martin Demery. As I previously
8 explained to you, the term "impeachment"
9 means as tending to contradict or
10 discredit. Again I instruct you that it is
11 you, the members of the jury, to determine
12 what the evidence in this case does show,
13 but for the limited purpose of impeachment,
14 to the extent that you find that this
15 evidence is of impeachment value, you may
16 consider it for that and no other purposes.

17 BY MR. BOWEN:

18 Q What did Mr. Demery say when you said, "How
19 do you like it across the road?"

20 A He said he liked it better than being at
21 the jailhouse.

22 Q What next did you say?

23 A I asked him, I said, "How much time do you
24 think you're going to get?"

25 Q And what did he say?

1 MR. BRITT: Objection.

2 THE COURT: The objection is
3 overruled. Again it's being offered for
4 the limited purpose of impeachment as I
5 previously defined that term for you. You
6 may consider it for that purpose and no
7 other. You may answer.

8 THE WITNESS: 40 years for armed
9 robbery, life for the murder, they were
10 going to run concurrent, with good year --
11 "With good time I'll do eight, nine
12 years. I've been here for two and a half
13 years, which means I'll serve another six,
14 seven years."

15 BY MR. BOWEN:

16 Q All right.

17 A And I said, "You sound really sure about
18 that." And he said, "It's what Johnson Britt told
19 us."

20 Q Did he explain who "us" was?

21 A No, sir.

22 Q Now, what did you do, having heard that,
23 sir?

24 A After hearing that, I remember reading
25 about it in the paper, on the news, that there was --

1 there wasn't a deal struck with him. And I knew it
2 could have some type of implication.

3 THE COURT: Question, sir, asked
4 what did you do, not what you thought.

5 THE WITNESS: I walked away.

6 BY MR. BOWEN:

7 Q Now, after that, did you have any more
8 further conversation with Mr. Demery about that
9 particular subject?

10 A Yes.

11 Q And when, as best you can recall, did that
12 occur?

13 MR. BRITT: Objection.

14 THE COURT: Ladies and gentlemen,
15 there's a matter of law the Court must take
16 up at this time out of the hearing and
17 presence of the jury. Please recall my
18 instructions in that regard, don't worry or
19 speculate about what takes place in the
20 courtroom in your absence. And if you'll
21 step to the jury room.

22 (Jury out at 10:54 a.m.)

23 MR. BRITT: Your Honor, may I
24 approach the Clerk?

25 THE COURT: Yes, sir.

1 Let the record show the following is
2 being heard in the absence of jury.

3 Where are we going with this? Is
4 there another conversation that is not
5 indicated in the document that's been
6 provided?

7 MR. BOWEN: That document is
8 what, an interview of an officer?

9 THE COURT: Yes, sir.

10 MR. BOWEN: Let me just tell you
11 what this is. May I ask him a couple of
12 questions?

13 THE COURT: Yes, sir.

14 BY MR. BOWEN:

15 Q When, to the best of your recollection, did
16 any other conversation come up, sir?

17 A I would say probably a month later.

18 Q And what was the substance of that?

19 A I was inside, doing inside clock rounds in
20 the cell --

21 Q What is a clock round?

22 A At each cell there's a pad, an electronic
23 pad. And every half hour you have to hit the pad.
24 He's in a four man cell, and there's a day room.
25 After 1:00 a.m., all inmates get locked down in the

1 individual cells. So in the outside there's a pad, I
2 would have to hit that out in the hallway, then I
3 would have to go inside.

4 THE COURT: Is that really
5 important?

6 BY MR. BOWEN:

7 Q Did you have a conversation with
8 Mr. Demery?

9 A Yes.

10 Q What did he say?

11 A He was standing at the door, and I said, "I
12 hope everything works out for you." And he had said
13 something to the effect that "I trust Johnson
14 Britt."

15 Q And that was the substance of that
16 conversation?

17 A That's it.

18 THE COURT: Is there any dispute
19 that that is not reflected in anything that
20 he told the investigators for the State?

21 MR. BOWEN: May I ask him further
22 questions?

23 THE COURT: Yes, sir.

24 BY MR. BOWEN:

25 Q Did you tell that particular incident to

1 the investigator for the State?

2 A No, sir.

3 Q Did he ever ask you about any further
4 comment?

5 A No, sir.

6 Q Asked you about the specific incident that
7 you talked about?

8 A Yes, sir.

9 MR. BOWEN: That's all.

10 THE COURT: State want to be
11 heard?

12 MR. BRITT: As to the last
13 statement, it doesn't -- it doesn't impeach
14 any testimony that's previously been
15 involved in this trial.

16 THE COURT: Well --

17 MR. BRITT: And actually, this
18 whole line of questioning, not only do I
19 believe it's being offered to impeach
20 Mr. Demery, but it's being offered to
21 attack my credibility.

22 THE COURT: Have you looked at
23 the time line?

24 MR. BRITT: Yes, sir, I've looked
25 at the time line.

1 THE COURT: As I read the
2 information that was provided to the Court,
3 Mr. Locklear was charged in November in
4 Columbus County.

5 MR. BRITT: Yes, sir, November --

6 THE COURT: Fired November 17th.

7 MR. BRITT: Yes, sir.

8 THE COURT: You prosecuted him in
9 April of 1994. He was applying for
10 certification in December of '94.

11 MR. BRITT: Yes, sir.

12 THE COURT: Got employment with
13 the Robeson County Sheriff's Department at
14 that same time. Months thereafter, he was
15 informed that there was a question about
16 his certification and information he had
17 provided.

18 MR. BRITT: Actually it's prior
19 to the certification at the Robeson County
20 Sheriff's Department, ^{was} he received notice
21 from Office of Training and Standards in
22 August.

23 THE COURT: At the time, he was
24 represented by Mr. Woodberry Bowen,
25 May-June, 1995, is when he says this

1 conversation took place.

2 MR. BRITT: Yes, sir. And just
3 so we're all -- everything is above board,
4 on April the 27th of 1995, this court
5 entered a safekeeping order transferring
6 Larry Martin Demery from the Robeson County
7 jail to Department of Corrections.
8 September 27th, 1995, this court entered an
9 order rescinding his safekeeping order and
10 returning him to the Robeson County jail.

11 THE COURT: Yes, sir.

12 MR. BRITT: Yes, sir.

13 MR. BOWEN: I don't imply
14 anything about the fact that he went to the
15 Department of Corrections and came back,
16 that is what I just pegged the time with.
17 And to Your Honor's time line also you
18 might --

19 THE COURT: Not my time line.

20 MR. BOWEN: I understand, his
21 time line. We might interject that he
22 filed a federal action against the town of
23 Whiteville arising out of some of those
24 matters --

25 THE COURT: Well, do you dispute

1 that at the time that the administrative
2 matters were ongoing an in fact pending is
3 when this purported conversation took
4 place?

5 MR. BOWEN: I don't dispute that
6 one bit. In fact, they are still ongoing
7 and taking place and so is the federal
8 lawsuit.

9 THE COURT: As a matter of fact,
10 the hearings occurred in May and June of
11 '95.

12 MR. BOWEN: Absolutely and we're
13 going to hopefully go to trial this May and
14 June.

15 THE COURT: Larry Martin Demery
16 pled guilty in May of 1995.

17 MR. BOWEN: Correct.

18 THE COURT: According to your
19 witness' testimony, he came back to the
20 Robeson County jail from the detention
21 center in about June of 1995, while the
22 hearings involving this witness were
23 pending and you were representing him.

24 MR. BOWEN: That's correct. I
25 mean I do represent him. There's no

1 question about that. And I represent him
2 against the town of Whiteville arising out
3 of his having exposed corruption that got a
4 chief of police and sergeant relieved of
5 their jobs.

6 THE COURT: We're going to lay it
7 out and let the jury decide what it's
8 worth. Anything further from either
9 counsel? Do you want to be heard as to the
10 latter statement? Do you object to that
11 coming in?

12 MR. BRITT: No, I withdraw the
13 objection.

14 THE COURT: Bring the jury back
15 in.

16 (Jury in at 11:01 a.m.)

17 THE COURT: Mr. Britt, the
18 objection is withdrawn for the record; is
19 that correct?

20 MR. BRITT: Yes, sir.

21 THE COURT: You may put
22 additional questions to Mr. Locklear.

23 BY MR. BOWEN:

24 Q Officer Locklear, did you ever have any
25 further conversation with Mr. Demery concerning these

1 matters that you've just testified to?

2 A Yes.

3 Q And when approximately did it occur and
4 where?

5 A It was approximately a month later.

6 Q Where did that occur?

7 A Near -- Larry Demery was in a cell, he was
8 standing near his cell door.

9 Q What did you say and what did he say?

10 A I walked by to punch a clock, and I said to
11 him, "I hope everything works out for you." And he
12 said, "I trust Johnson Britt."

13 Q Now, at that time, who if anyone had you
14 discussed this with?

15 MR. BRITT: Objection.

16 THE COURT: What purpose is this
17 being offered, sir?

18 MR. BOWEN: I'm not offering the
19 substance of the conversation, but merely
20 whether or not he had discussed it with
21 anyone.

22 THE COURT: At this time, the
23 objection is sustained. That's a matter
24 that you may be entitled to go into on
25 redirect.

1 MR. BOWEN: All right.

2 BY MR. BOWEN:

3 Q Did there come a time when any police
4 officers talked to to you about the matters and
5 things that you've testified to?

6 MR. BRITT: Objection.

7 THE COURT: Overruled. You may
8 answer.

9 THE WITNESS: Police officers?

10 BY MR. BOWEN:

11 Q SBI officers?

12 A Yes, sir.

13 Q And what officers came to talk to you?

14 A Detective Thompson from the Sheriff's
15 Department, and I believe his name is Heffney, from
16 the SBI.

17 Q And when approximately did they come and
18 talk to you?

19 A About three weeks ago.

20 Q All right. Did you tell them substantially
21 to what you told here in court?

22 THE COURT: Sustained to form.

23 MR. BRITT: Motion to strike.

24 THE COURT: Allowed. You can ask
25 him what he told you.

1 BY MR. BOWEN:

2 Q What, if anything, did you tell them?

3 A I told them about the conversation I had
4 with Larry Martin Demery about outdoor rec.

5 Q Did you tell them about the second
6 conversation?

7 A No, sir.

8 Q Did they ask if there was any subsequent
9 conversation?

10 A No, sir.

11 Q Now, during the time that this matter --
12 that you knew about this matter, what was your
13 relationship, if any, with me?

14 MR. BRITT: Objection.

15 THE COURT: That's a matter that,
16 again, can be taken up on redirect
17 examination. It's not appropriate at this
18 time, the objection is sustained.

19 BY MR. BOWEN:

20 Q Let me ask you, Mr. Locklear, were you
21 hired by the Sheriff personally when you went to work
22 with Robeson County Sheriff's Department?

23 MR. BRITT: Objection to the
24 relevance.

25 THE COURT: Sustained.

1 MR. BOWEN: That's all.

2 THE COURT: Any

3 cross-examination?

4 MR. BRITT: Yes, sir.

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. BRITT:

8 Q Mr. Locklear, it's your testimony that
9 after Larry Demery pled guilty in Robeson County
10 Superior Court, he was returned to the Robeson County
11 jail and it was at that time that you had this
12 conversation with him at the Robeson County jail; is
13 that correct?

14 A Yes.

15 Q And you're aware that Mr. Demery pled
16 guilty on April the 27th of 1995, aren't you?

17 A I have -- I don't remember when it was.

18 Q And you say that Mr. Demery -- it's your
19 testimony that Mr. Demery was returned to the jail
20 and then short time after that was taken to the
21 prison located across the street from the Robeson
22 County jail?

23 A Correct.

24 Q And then a month later, after being taken
25 to the prison across the street from the Robeson

1 County jail, he was returned to custody at the
2 Robeson County jail?

3 A Approximately a month.

4 Q And that's approximately a month following
5 the entry of his guilty plea?

6 A Yes.

7 Q Do you know what a safekeeping order is?

8 A No.

9 Q Are you aware that a safekeeping order had
10 been entered in Mr. Demery's case?

11 A No.

12 Q Are you aware that inmates are transferred
13 from the Robeson County jail to the Department of
14 Corrections pursuant to safekeeping orders?

15 A I knew that, yes.

16 Q Are you aware that a safekeeping order was
17 in place in Larry Martin Demery's case April 27th of
18 1995?

19 A No, sir.

20 Q Were you aware that Mr. Demery was
21 transported from the Robeson County Courthouse on
22 April the 27th of 1995 directly to the North Carolina
23 Department of Corrections facility located across
24 from the Robeson County jail?

25 A I knew he was moved, yes, sir.

1 Q And were you aware that that occurred on
2 April the 27th of 1995?

3 A No, sir.

4 Q Were you aware that Mr. Demery remained in
5 the custody of the North Carolina Department of
6 Corrections from April the 27th of 1995 until
7 September the 27th of 1995?

8 A No, sir.

9 Q Were you aware that on April the 27th of
10 1995, an order was entered by the Court rescinding
11 the safekeeping order that had been entered on April
12 the 27th of 1995?

13 A No, sir.

14 Q Are you aware that at no time between April
15 the 27th of '95 and September the 27th of '95 that
16 Larry Martin Demery was ever in custody at the
17 Robeson County jail?

18 A Just when I first saw him when he was first
19 brought back.

20 Q But it's your testimony you saw him when he
21 was first brought back within a matter of days after
22 the entry of his plea?

23 A No, my testimony was I saw him in a matter
24 of days when he was brought back.

25 MR. BRITT: May I have just a

1 second?

2 THE COURT: Yes, sir.

3 BY MR. BRITT:

4 Q Mr. Locklear, did you not previously
5 testify on direct examination that after the entry of
6 the plea Mr. Demery came back to the Robeson County
7 jail?

8 A Eventually, he did come back, yes.

9 Q Was your testimony, yes or no, that he came
10 back to the Robeson County jail after he entered the
11 plea?

12 A Yes.

13 Q And it was on that occasion after the plea
14 was entered that you say you talked with him in the
15 exercise yard?

16 A Yes.

17 Q And that would have been within a matter of
18 days after the plea was entered, based upon your
19 testimony?

20 A No, sir.

21 Q Was it within a month after the plea was
22 entered?

23 A I'm really not sure of the time frame after
24 the plea was entered.

25 Q You're not sure of which time frame?

1 A From the time that he pled guilty to he was
2 put over at DOC until the time he got back.

3 Q We'll, you've testified that after the plea
4 was entered he was returned to the Robeson County
5 jail, and within a matter of days you talked with him
6 on the exercise yard. Wasn't that your testimony?

7 A Yes.

8 Q And that a month later, after you had this
9 first conversation with him, that you had this second
10 conversation where you contend he told you that he
11 trusted me?

12 A Yes.

13 Q And that would have been in May of 1995?

14 A No, that's not what I'm saying. When I
15 said within days of being brought back to the
16 jailhouse, that's within days of being brought back
17 to the jailhouse from DOC across the road.

18 Q Well, when do you recall him being brought
19 back from DOC?

20 A I'm not quite sure when he was brought
21 back.

22 Q Was this in the morning or afternoon?

23 A I have no idea. I wasn't working.

24 Q You weren't working when you talked to him?

25 A No, I wasn't working when they brought him

1 back.

2 Q Did you talk to him in the morning?

3 A Yes.

4 Q And you were working?

5 A Yes.

6 Q You initiated this conversation?

7 A Yes.

8 Q You specifically went to him to ask him
9 about how much time he was going to get?

10 A No, not specifically.

11 Q You asked him about how he liked DOC?

12 A Yes.

13 Q You asked him whether he liked DOC or the
14 jail better?

15 A No, I didn't ask him that, no.

16 Q You asked him how much time he was going to
17 get?

18 A Yes.

19 Q And you initiated that conversation?

20 A Yes.

21 Q And that was when, what was the date?

22 A I can't remember the date.

23 Q What was the day of the week?

24 A I have no idea.

25 Q What was the time?

1 A It was in the morning.

2 Q Who else was present?

3 A Present was another jailer, the outside rec
4 jailer, two other inmates.

5 Q What other jailer was present?

6 A Derrick Locklear.

7 Q What other inmates were present?

8 A I believe Darrell Locklear and I want to
9 say Purcell Locklear -- Purcell Strickland.

10 Q Now, this was sometime in the summer of
11 1995?

12 A Yes.

13 Q Best of your recollection?

14 A Best of my recollection.

15 Q Now, in the summer of 1995, Woodberry Bowen
16 was your lawyer?

17 A Correct.

18 Q Woodberry Bowen has been your lawyer since
19 December of 1993, has he not -- let me withdraw that
20 question.

21 You worked for the town of Whiteville as a
22 police officer?

23 A Yes.

24 Q And in applying for the job in the town of
25 Whiteville you were required to fill out an

1 application, were you not?

2 A Yes.

3 Q You applied for a job with the town of
4 Whiteville as a police officer in 1991?

5 A Yes.

6 Q And at that time, you filled out not only a
7 city application, but you filled out an application
8 that was submitted to the Criminal Justice Education
9 and Training Standards Commission?

10 A Yes.

11 Q And in order to be a police officer, you
12 have to be certified by the Education Training and
13 Standards Commission, don't you?

14 A Yes.

15 Q And part of that application process, you
16 have to disclose if you've been arrested or convicted
17 of any crimes?

18 A Correct.

19 THE COURT: Folks, do you want a
20 limiting instruction?

21 MR. BOWEN: Yes, Your Honor.

22 THE COURT: Members of the jury,
23 the matters now being elicited by counsel
24 for the State, Mr. Britt, are being offered
25 and received for the limited purpose of

1 impeachment of the witness now before you.
2 And as I have previously explained that
3 term for you, you may consider this
4 evidence for that limited purpose of
5 impeachment to the extent that you find
6 that it is of impeachment value and no
7 other purpose. Anything further, folks?

8 MR. BOWEN: No, sir.

9 THE COURT: Mr. Britt.

10 BY MR. BRITT:

11 Q Now, a specific question on the application
12 that you filed with Whiteville and with Training and
13 Standards in 1991 was "Have you ever been charged
14 with a criminal offense, yes or no? And if yes, give
15 details below." Blank spaces are provided to allow
16 the officer to include the particular offense
17 charged, the law enforcement agency, date and
18 disposition of the case; is that correct?

19 A Correct.

20 Q And on your form that you filed with the
21 Whiteville Police Department, you stated as an answer
22 to that question that you had been arrested and
23 convicted of simple assault by the Kearny PD in 1985
24 or '86 and you paid a fine of \$200; is that correct?

25 A Correct.

1 Q You also put down there a question mark,
2 "Clinton, New Jersey, PD," question mark, "fine of
3 \$200."

4 A Correct.

5 Q You also placed on that answer, driving on
6 a suspended license, parentheses, would like to
7 explain, close parentheses, Kearny, New Jersey,
8 Police Department, question mark, fine of, question
9 mark?

10 A Correct.

11 Q That wasn't entirely true, was it?

12 A What do you mean?

13 Q There were offenses that you had been
14 arrested for prior to filing your application with
15 the Whiteville Police Department that you did not
16 include in your application?

17 A Yes.

18 Q So when you filed your application with the
19 Whiteville Police Department, you weren't being
20 truthful with them, were you?

21 A To the best of my knowledge and ability,
22 yes, I was.

23 Q Well, you had to swear or affirm that the
24 answers in that application and that form were true?

25 A The Whiteville Police Department

1 application?

2 Q To the Whiteville Police Department?

3 A No, you didn't have to swear or affirm.

4 Q It's a certified position?

5 A Yes.

6 Q You had to go before a Notary Public and
7 affirm that the answers that you had given were
8 correct.

9 A Not on the Whiteville application.

10 Q And in that application process, you're
11 informed that any misstatement or omission of
12 information could subject you to disqualification or
13 dismissal.

14 A I really don't know what is on the
15 application right now.

16 Q You've testified that you worked in the
17 Department of Corrections in the State of New Jersey;
18 is that correct?

19 A Correct.

20 Q You didn't tell the -- in the application
21 process, the City of Whiteville, that you had been
22 fired from your job within the Department of
23 Corrections in the State of New Jersey, did you?

24 A Yes, I did.

25 Q You did?

1 A Yes.

2 Q Mr. Locklear, you were fired from your
3 position with the Department of Corrections in the
4 State of New Jersey for conduct unbecoming of an
5 officer, weren't you?

6 A Yes.

7 Q And that was for associating with a female
8 relative or companion of an inmate there in the
9 prison?

10 A Yes.

11 Q And that inmate escaped, did he not?

12 A Correct.

13 Q And you had not disclosed to your superiors
14 in the New Jersey Department of Corrections that you
15 were associating with this inmate's associate or
16 relative, did you?

17 A At the time, I didn't know she was an
18 associate.

19 Q You were living with her?

20 A No.

21 Q Now, on November the 8th of 1993,
22 Mr. Locklear, you were charged with two felony counts
23 in Columbus County, were you not?

24 A Correct.

25 Q Attempted Second Degree Rape?

1 A Correct.

2 Q Attempted Second Degree Sexual Offense?

3 A Correct.

4 Q You were also charged with a misdemeanor of
5 an assault on a female?

6 A Correct.

7 Q November the 8th, 1993?

8 A Correct.

9 Q You were a police officer with the City of
10 Whiteville at the time?

11 A Yes.

12 Q You were indicted?

13 A Yes.

14 Q Matters went to trial?

15 A Yes.

16 Q Who was the prosecutor?

17 A You were.

18 Q And as a result, since that time, you filed
19 a lawsuit against the City of Whiteville, haven't
20 you?

21 A Yes.

22 Q Who is your lawyer?

23 A Woodberry Bowen.

24 Q How long has Mr. Bowen been your lawyer in
25 your lawsuit against the City of Whiteville?

1 A To be honest, I can't remember exactly when
2 I retained him.

3 Q What was the lawsuit filed?

4 A February of last year, I believe it was.

5 Q And your association with Mr. Bowen began
6 before your employment relationship with the Robeson
7 County Sheriff's Department, didn't it?

8 A Yes.

9 Q You were aware that Mr. Bowen represented
10 the defendant Daniel Green?

11 A Yes.

12 Q You and Mr. Bowen had a close working
13 relationship at the time that you say that this
14 conversation took place with Larry Martin Demery?

15 A Close working relationship?

16 Q He was your attorney?

17 A He was my attorney.

18 Q You had filed a lawsuit?

19 A Uh-huh.

20 Q The lawsuit had been filed prior to this
21 alleged conversation between you and Mr. Demery?

22 A Uh-huh.

23 Q And Mr. Bowen also represents you in a
24 matter before the Training and Standards Commission?

25 A Correct.

1 Q As a matter of fact, in August of 1994,
2 August the 29th of 1994, you received notice from the
3 Training and Standards Commission that there was
4 probable cause to --

5 MR. BOWEN: Object.

6 THE COURT: Overruled. You want
7 a limiting instruction?

8 MR. BOWEN: Yes.

9 THE COURT: Members of the jury,
10 the matters now being offered are being
11 offered only for the purpose of
12 impeachment. You may consider this
13 evidence only for that purpose to the
14 extent that you find that it bears on the
15 credibility of the witness now before you,
16 and for no other purpose. Yes, sir.

17 BY MR. BRITT:

18 Q August the 29th of 1994, you received a
19 letter from the Training and Standards Commission
20 notifying you that there was a probable cause to
21 believe that your law enforcement certification
22 should be revoked?

23 A Correct.

24 Q And that notice that you received from them
25 about the revocation of your law enforcement

1 certification is because you failed to disclose two
2 misdemeanor convictions in your application process
3 for the City of Whiteville?

4 A Correct.

5 Q And after receiving that notification on
6 August 29th of 1994, you applied for a jailer's
7 position at the Robeson County Sheriff's Department?

8 A Yes.

9 Q Knowing that your law enforcement
10 certification was subject to being revoked?

11 A Yes.

12 Q And when you applied for your position at
13 the Robeson County Sheriff's Department as a jailer,
14 you didn't notify the hiring authority there that you
15 had received this notice of revocation of your law
16 enforcement certificate, did you?

17 A Yes, I did.

18 Q You included that in your application
19 process?

20 A I informed Lieutenant Martin.

21 THE WITNESS: Can I clarify
22 something?

23 THE COURT: Yes, sir, you may
24 explain.

25 THE WITNESS: Before, when you

1 asked me about the notice that my law
2 enforcement certification was going to be
3 revoked for two convictions of a
4 misdemeanor, I don't believe that was
5 correct because I didn't put down in the
6 application that I was charged with it. I
7 was never convicted. The charges were
8 later dropped.

9 BY MR. BRITT:

10 Q You lost your job in Whiteville November
11 17th of 1993?

12 A Correct.

13 Q And at that time, you had already been
14 convicted of the following crimes, had you not:
15 Receiving stolen property, with the disposition of
16 unlawful taking by means of conveyance in New Jersey?

17 A Yes.

18 Q You didn't put that on your application.

19 A Yes, I did.

20 Q Harassing communications?

21 A I didn't remember that one.

22 Q A worthless check in New Jersey?

23 A Didn't remember that one.

24 Q Simple assault?

25 A That was like 13 years before, I definitely

1 didn't remember that one there.

2 Q The date on the offense on simple assault
3 was July 1st, '88. Date of conviction was September
4 the 6th, 1988.

5 A That one I did put down. Yes, I did.

6 Q Driving while license suspended?

7 A I informed them of that.

8 Q The only criminal offense that you
9 disclosed to Whiteville was an assault on a female
10 charge from Kearny Police Department in New Jersey.

11 A That's incorrect.

12 Q Now, when you applied for your job at the
13 Robeson County Sheriff's Department to go work in the
14 jail, you were asked the following question in the
15 application: "Have you ever been arrested by a law
16 enforcement officer or otherwise charged with a
17 criminal offense?" Yes or no. Blank spaces are
18 provided to allow the officer to include the
19 particular offense charged, the law enforcement
20 agency, date, and disposition of the case. Do you
21 remember that question?

22 A Probably, yes.

23 Q Your answer that to question was,
24 unauthorized vehicle, Clinton, New Jersey, question
25 mark, fine. Disorderly person, Kearny PD, New

1 Jersey, question mark, fine. Assault on a female,
2 second degree attempted rape, attempted sex offense,
3 North Carolina SBI 10-3 -- excuse me, 10-93, not
4 guilty. Four harassing communication, New Jersey
5 State Police, Blairstown, New Jersey, dismissed.

6 You did not disclose in your Robeson County
7 application that you had pled guilty on February the
8 2nd, 1982, to the misdemeanor offense of unlawful
9 taking by means of conveyance in violation of New
10 Jersey state law, did you?

11 A No, I believe I did put that down.

12 Q You admitted during the administrative
13 hearing where Mr. Bowen represented you that you had
14 not included that in your application?

15 A I'm not -- I'm almost sure I did put that
16 in my application.

17 Q You did not include a 1983 assault charge
18 on your application with the Robeson County Sheriff's
19 Department?

20 A That's correct.

21 Q You did not list the August 24th, 1983,
22 arrest for harassing communications on your Robeson
23 County application?

24 A I think -- I put that on a separate sheet,
25 a blank piece of paper, and give it to Lieutenant

1 Martin.

2 Q You admitted during the administrative
3 hearing that you did not list the 1983 harassing
4 communications charge on the criminal justice form?

5 A No, what they are saying there is I didn't
6 admit to it, I know that it was not put on there.

7 Q You did not list a 1984 worthless check,
8 worthless or bad check on either the criminal justice
9 commission Form F-5A nor on the F-3 form?

10 A Correct.

11 Q You did not list a July 1st, 1988 charge of
12 simple assault on your girlfriend in Kearny, New
13 Jersey, on the criminal justice form?

14 A Yes, I did.

15 Q Did you not testify at the administrative
16 hearing that you did not list it, did not list simple
17 assault or simple assault on a female on the
18 sheriff's commission's F-3, you testified that you
19 were confused when you completed this document in
20 December of 1994 and listed this 1988 conviction as
21 disorderly person?

22 A Correct.

23 Q So you didn't list the simple assault or
24 assault on your girlfriend?

25 A Correct, I was confused on the charges.

1 Q And when you were interviewed by David
2 Marshall, an SBI Agent, in November of 1993, you told
3 Mr. Marshall you had only been arrested one time?

4 A Correct.

5 Q And that wasn't true.

6 A Correct.

7 Q So you weren't true with your employers?

8 A To the best of my ability, I was.

9 Q You weren't true with the officers who
10 investigated the incident that occurred in Columbus
11 County?

12 A Correct.

13 Q I was the one who prosecuted you?

14 A Correct.

15 Q The first person you ever told about this
16 alleged conversation with Larry Demery was Woodberry
17 Bowen?

18 A Incorrect.

19 Q Who was the first person?

20 A My wife.

21 Q Your wife?

22 A Yes.

23 Q Did you go to the sheriff?

24 A No.

25 Q Did you go to Mr. Martin, your supervisor

1 in the jail?

2 A No.

3 Q You went to Mr. Bowen and told Mr. Bowen?

4 A Yes.

5 Q All right. You have followed this case
6 closely, haven't you?

7 A Not really.

8 Q You've attended proceedings in this case?

9 A Yes.

10 Q You've come to motions hearings?

11 A Yes.

12 Q Mr. Bowen has represented you at the time?

13 A Correct.

14 Q Mr. Bowen still represents you today?

15 A Yes.

16 Q You knew Mr. Bowen represented the
17 defendant?

18 A Correct.

19 Q And you went to Mr. Bowen with this
20 information?

21 A Yes.

22 Q Didn't disclose it to any law enforcement
23 officer, did you?

24 A Absolutely not.

25 Q When was it that you went to Mr. Bowen with

1 this information?

2 A Approximately three weeks after the
3 conversation with Larry.

4 Q Would that have been in June of 1995?

5 A I really don't remember. I know --

6 Q Would it have been July?

7 A About two or three weeks after the
8 conversation with Larry.

9 Q Now, on February the 5th of 1996, you were
10 interviewed by Detective Thompson and Mr. Heffney?

11 A Correct.

12 Q And you told Detective Thompson and
13 Mr. Heffney that it was just three months ago that
14 you told Mr. Bowen?

15 A Approximately -- I'm trying to think of the
16 time, the time frame that I did tell him.

17 Q You don't know the time frame?

18 A I'm not sure of the time frame, no.

19 Q And you told Detective Thompson and
20 Mr. Heffney that you had to tell somebody because it
21 was bothering you?

22 A Correct.

23 Q And but this is information that you say
24 that you had learned in June of 1995?

25 A Well, with past experience after bringing

1 out corruption at the police department, I was very
2 leery. I should have kept my mouth shut, but I
3 wanted to, but it was just bothering me. I just kept
4 thinking about it and figured out what am I going to
5 do with this information.

6 Q You were interviewed by Mr. Bowen in June
7 of '95 about this incident?

8 A I wasn't interview by Mr. Bowen, no.

9 Q Now, three months ago -- this is February;
10 is that correct?

11 A Yes.

12 Q Three months ago would be November 1995; is
13 that correct?

14 A Yes.

15 Q Was it in November of 1995 when you first
16 told Mr. Bowen?

17 A I haven't the foggiest idea.

18 Q So that was bothering you so much that you
19 went to Mr. Bowen to tell him?

20 A Yes, I didn't go to him to tell him. We
21 were working on my case one night.

22 Q And it just happened to come up?

23 A I told him something was bothering me, and
24 I wanted to talk with him about it, yes.

25 Q You didn't talk to -- strike that. It was

1 on February the 2nd of 1996 before you ever talked to
2 a private investigator about this, wasn't it?

3 A I don't remember the date, no.

4 Q That's what you told Mr. Thompson and
5 Mr. Heffney when they interviewed you on February the
6 5th.

7 A When they asked me that, I'm trying to
8 remember, it was only maybe three, four, five days, I
9 believe, prior to that date that I spoke with the
10 private detective.

11 Q You were interviewed at the jail, weren't
12 you?

13 A When I first spoke with them?

14 Q When you spoke with private investigator on
15 February the 2nd, 1996, you were interviewed at the
16 jail?

17 A First time I spoke with the private
18 investigator was at Woodberry's office.

19 Q And when was that?

20 A I'm thinking it was five, six days before I
21 spoke with Detective Thompson.

22 Q Now, on February the 2nd, 1996, Mr. Bowen,
23 Mr. Thompson and their private investigators were at
24 the jail, weren't they --

25 A I really don't know that.

1 Q -- to talk to you?

2 A Mr. Bowen, no.

3 Q Talked to Derrick Locklear?

4 A Absolutely not.

5 Q They talked to other inmates?

6 A I mean, if they were there, I wasn't
7 there.

8 THE COURT: Mr. Britt, that is a
9 line --

10 MR. BRITT: Excuse me, I
11 apologize.

12 BY MR. BRITT:

13 Q So it's your testimony nobody interviewed
14 you about this information until sometime in February
15 of this year?

16 A Yes.

17 Q And you hadn't talked to anybody about it,
18 had you?

19 A Besides my wife and Mr. Bowen, no.

20 Q You received a subpoena to testify in this
21 case in January, didn't you?

22 A Yes.

23 Q January 16th.

24 A Yes.

25 Q So you had talked to somebody other than

1 Mr. Bowen prior to January 16th, hadn't you?

2 A Absolutely not.

3 MR. BRITT: May I approach the
4 witness?

5 THE COURT: Yes, sir.

6 MR. BRITT: The record will
7 reflect I hold file 93 CRS 15288, it's the
8 official court file entitled State of North
9 Carolina versus Larry Martin Demery.

10 THE COURT: Yes, sir.

11 BY MR. BRITT:

12 Q Mr. Locklear, I'll show you a document from
13 the court file of Larry Martin Demery, contains the
14 name of Larry Martin Demery.

15 A Yes.

16 Q Bears the signature of Gregory A. Weeks,
17 Superior Court Judge.

18 A Correct.

19 Q Bears a date of April 27th, 1995.

20 A Correct.

21 Q This is the safekeeping order, is it not?

22 A I have no idea.

23 Q Document reads, "This matter coming known
24 to be heard before the" -- "upon the request of Major
25 Austin George."

1 MR. BOWEN: Object.

2 THE COURT: You folks want to be
3 heard?

4 MR. THOMPSON: Yes, sir.

5 THE COURT: Ladies and gentlemen,
6 there's a matter of law the Court must take
7 up. Folks, let me give you the morning
8 recess at this time. If you folks would
9 please reassemble in the jury room at five
10 until, we will continue at that time.
11 Please recall that at this time your duty
12 to abide by all prior instructions of the
13 Court concerning your conduct during the
14 recess. Everyone else please remain
15 seated, the members of the jury are
16 excused.

17 (Jury out at 11:34 a.m.)

18 THE COURT: Let the record
19 reflect this following is occurring in the
20 absence of the jury.

21 Yes, sir, basis of the objection?

22 MR. BOWEN: Man says he doesn't
23 know what the document is, and then next
24 thing you know, Mr. Britt is having him
25 read a document as if to introduce it into

1 evidence.

2 THE COURT: Well, it is a court
3 record. Not really necessary, but you
4 already asked him about matters on
5 cross-examination pertaining to the
6 safekeeping order.

7 MR. BRITT: Yes, sir.

8 THE COURT: Do you want to
9 introduce the safekeeping order? You can
10 do that on rebuttal? Court can take
11 judicial notice of the matters in the court
12 file.

13 MR. BRITT: That's fine.

14 THE COURT: Do you folks want to
15 be heard?

16 MR. BOWEN: No, sir, not on that.

17 THE COURT: All right. Do you
18 have any further questions for
19 Mr. Locklear?

20 MR. BRITT: When we return, yes,
21 sir.

22 THE COURT: Mr. Locklear, you may
23 step down for the moment, if you'll return
24 at five until.

25 THE WITNESS: Yes, sir.

1 THE COURT: We're at ease until
2 five until.

3 MR. BOWEN: I have something to
4 add to the record, Your Honor.

5 THE COURT: Go ahead.

6 MR. BOWEN: If Your Honor please,
7 our redirect has not come as of yet, and I
8 think in that redirect a lot of things will
9 be clarified.

10 THE COURT: You're entitled to go
11 into a lot of matters that you initially
12 tried to do. For the record, the reason
13 the Court sustained the objection because
14 you were bolstered before attacking. But
15 you're entitled to go into that on
16 redirect.

17 MR. BOWEN: Mr. Green has asked
18 me to bring up something that he has
19 observed.

20 THE COURT: Okay.

21 MR. BOWEN: And that is this:
22 During the cross-examination of Mr. Richard
23 Locklear -- and also on direct, and I must
24 say this is not the first time -- that we
25 have observed Your Honor engaging in

1 certain types of facial behavior.

2 THE COURT: Well, make your
3 record, Mr. Bowen.

4 MR. BOWEN: Certain types of body
5 language, which the jury could easily infer
6 was a commentary on the evidence. And of
7 course this record does not show that and
8 will not show that unless we say
9 something --

10 THE COURT: Let me make a
11 suggestion to you, because I've been there
12 before. What you said is an incomplete
13 record. What you need to put in the record
14 for purposes of preserving any issue that
15 you have or that Mr. Green has is exactly
16 what you contend occurred. I told you
17 folks a long time ago if you don't make
18 your record I'll make it for you. So this
19 is your opportunity. Yes, sir.

20 MR. BOWEN: Well, all I know at
21 this point is -- obviously I was busy
22 listening to the material and examining the
23 witness -- is that my client, our client,
24 has stated that he observed Your Honor with
25 what he considers a smirk regarding some or

1 all of this evidence at a time when this
2 evidence is not complete, and that is all I
3 know at this time because I haven't had the
4 full opportunity to converse with him.

5 THE COURT: Well, I'm giving you
6 the opportunity now. I'm going to give Mr.
7 Thompson the opportunity in just a moment.
8 Anything further you want to add?

9 MR. BOWEN: That's all.

10 THE COURT: Mr. Thompson, you
11 want to put in any specific matters for
12 purposes of preservation of the issues of
13 the record?

14 MR. THOMPSON: None other than
15 that that has been stated to by Mr. Bowen
16 and the fact that it has been called to our
17 attention by U'Allah, and has been brought
18 to my attention previously --

19 THE COURT: What I'm asking you
20 is, do you want to make any matters of
21 record based on your contention of personal
22 observations, sir?

23 MR. THOMPSON: Not other than
24 that by Mr. Bowen as to what he stated, and
25 not as to anything other than what I'm

1 stating to the Court at this time.

2 THE COURT: Anything further?

3 MR. THOMPSON: No, sir.

4 THE COURT: Mr. Green, anything
5 you want to put in the record?

6 MR. THOMPSON: Oh, Your Honor,
7 yeah, I think I do need to put something in
8 the record.

9 And my client has -- after consulting
10 with him, I mean, I've observed Your Honor
11 making facial expressions. I don't expect
12 you to sit up there stone faced, but I have
13 observed them. May I put that in the
14 record?

15 THE COURT: Mr. Thompson, I just
16 explained to Mr. Britt that if you folks
17 are going to preserve this issue, then
18 simply saying "I have observed Your Honor
19 making facial expressions" doesn't do
20 anything to help your cause. You have to
21 be specific about what you contend those
22 expressions were or are.

23 MR. THOMPSON: Well, I hope it
24 would help my cause. I'm telling you I
25 have observed it and we're simply asking

1 the Court, having expressed it to the Court
2 that it's a concern, and I certainly hope
3 it would help my cause.

4 THE COURT: Do you want to put in
5 anything further?

6 MR. THOMPSON: Nothing further in
7 the record.

8 THE COURT: Mr. Green, this is
9 your opportunity. Anything you want to put
10 in the record?

11 MR. GREEN: Should I stand up?

12 THE COURT: You can remain
13 seated.

14 MR. GREEN: It just appeared to
15 me that the expression you had on your face
16 was one of amusement. It seemed as --

17 THE COURT: Let the record
18 reflect the Court just smiled. Yes, sir.

19 MR. GREEN: Smiles, smirking,
20 disbelief. And a jury is observing you as
21 much as they are observing the witness on
22 the stand.

23 THE COURT: Well, anything
24 specific you want to put in the record?

25 MR. GREEN: That's -- like I

1 said, I don't think that -- put in the
2 record, I don't think that's going to
3 reflect, you know, your body language.

4 THE COURT: Anything further?

5 MR. GREEN: And that's basically
6 it.

7 THE COURT: Okay. Mr. Britt,
8 anything you want to put in the record?

9 MR. BRITT: No, sir. I just
10 would like to correct the Court, when you
11 were addressing Mr. Thompson you stated "I
12 just explained to Mr. Britt" about putting
13 the matters in the record. I think your
14 comments were directed to Mr. Bowen.

15 THE COURT: I meant Mr. Bowen, I
16 apologize.

17 You folks have anything you want to
18 add for the purposes of the record?

19 MR. BOWEN: No, sir.

20 THE COURT: Specifically, and
21 folks, again, I told you if you don't make
22 your record, I'm going to make your record
23 for you. Specifically does either counsel
24 want to contend that there's been any
25 misconduct on the part by the Bench for the

1 purposes of the record? Mr. Bowen.

2 MR. BOWEN: As to the specific
3 question, Your Honor, both counsel and the
4 defendant decline to answer. We understand
5 the implication of that. Further, we have
6 an additional motion.

7 THE COURT: Well, that's what I
8 was going to ask you next. Is there a
9 motion on behalf of anyone at this time?

10 MR. BOWEN: We have the following
11 motion: And that is we have arguments to
12 come, we have other matters to come, and we
13 make the motion that at least during the
14 jury argument, Your Honor, notwithstanding
15 your previous order against videotaping,
16 allow that a videotape recorder be
17 discreetly set up and trained on the bench
18 and trained on Your Honor and be made a
19 part of the record.

20 THE COURT: I'll take it under
21 consideration.

22 Folks, I'm going to ask you point
23 blank, because this is the only way you can
24 preserve your issue: Is there a motion for
25 mistrial? Mr. Bowen.

1 MR. BOWEN: We are not making
2 such a motion.

3 THE COURT: Mr. Thompson.

4 MR. THOMPSON: No, sir, we're not
5 making such a motion.

6 THE COURT: Mr. Green?

7 MR. GREEN: I'm with them.

8 THE COURT: I take it that that
9 means you agree with their statement there
10 is no motion for mistrial?

11 MR. GREEN: I can't make a
12 motion.

13 THE COURT: You can make it
14 through your attorneys.

15 MR. GREEN: They have already
16 answered.

17 THE COURT: So you take the same
18 position they take?

19 MR. GREEN: No, sir, I am not
20 taking any position.

21 THE COURT: Yes, you will.

22 MR. GREEN: The position I'm
23 taking is that these --

24 MR. BOWEN: Pardon me. Don't
25 answer. Pardon me, Your Honor. This Court

1 cannot make --

2 THE COURT: Have a seat, Mr.
3 Bowen. Have a seat, Mr. Bowen.

4 MR. BOWEN: I advise you not to
5 answer.

6 THE COURT: Now, do you want to
7 state your position or not? You can say,
8 yes, I'm making a motion; no, I'm not; or I
9 decline to answer.

10 MR. GREEN: Oh, thank you, I
11 decline to answer.

12 THE COURT: Then your position is
13 taken. Without realizing, what you have
14 just said is, I'm not making a motion. You
15 understand that? You understand that?

16 MR. GREEN: No, sir.

17 THE COURT: Well, I've explained
18 it to you and the record reflected that I
19 have explained to it to you. Anything else
20 from either counsel?

21 MR. BRITT: No, sir.

22 THE COURT: We're at ease.

23 (Brief recess.)

24 THE COURT: Let the record show
25 all counsel are present, the defendant is

1 present in open court. Do we have all
2 members of the jury secured in the jury
3 room; is that correct?

4 THE BAILIFF: Yes, sir.

5 THE COURT: Any matters from the
6 State before we bring the jury in?

7 MR. BRITT: No, sir.

8 THE COURT: Mr. Bowen and Mr.
9 Thompson, any matters from the defendant?

10 MR. BOWEN: No, sir.

11 THE COURT: All right, bring the
12 jury in.

13 (Jury in at 11:56 a.m.)

14 THE COURT: Mr. Britt, any
15 additional matters on cross-examination?

16 MR. BRITT: Yes, sir, just a
17 second.

18 THE COURT: Yes, sir.

19 BY MR. BRITT:

20 Q Mr. Locklear, the matters that arose in
21 Columbus County, you were discharged from your job
22 there shortly after being arrested on those offenses?

23 A Yes.

24 Q And I was the one that prosecuted you
25 there?

1 A Yes.

2 Q You hold ill feelings towards -- as a
3 result of being fired from your job in Whiteville?

4 A Ill feelings towards who?

5 Q Ill feelings towards officers in
6 Whiteville?

7 A Officers, no.

8 Q You hold ill feelings towards me for
9 prosecuting you for that, don't you?

10 A No, I feel sorry for you.

11 THE WITNESS: May I explain that,
12 Your Honor?

13 THE COURT: You may explain.

14 THE WITNESS: I feel sorry you
15 because you were put in a position by the
16 powers that be in Columbus County to
17 prosecute me for attempted rape, attempted
18 second degree sexual offense, knowing or
19 should have known with your own evidence,
20 the store security tape, that this girl was
21 lying, and it took a jury less than 15
22 minutes to find me innocent. So I feel
23 sorry for you

24 BY MR. BRITT:

25 Q What powers that be are you referring to?

1 A Rex Gore, the DA over in Columbus County.

2 Q Were you aware that Mr. Gore was not even
3 involved in the investigation or the decisions to
4 charge you?

5 A He was your boss.

6 Q Were you aware that Mr. Marshall with the
7 SBI was contacted as a result of the complaint that
8 was filed?

9 A Yes.

10 Q Do you know who contacted Mr. Marshall?

11 A I have no idea.

12 Q Did any other prosecutor other than myself
13 ever appear in any court proceedings in your case in
14 Columbus County?

15 A In my trial?

16 Q In any proceedings in your case?

17 A No.

18 Q Anyone other than me appear there?

19 A No.

20 MR. BRITT: I don't have any
21 other questions.

22 THE COURT: Any redirect
23 examination?

24 REDIRECT EXAMINATION

25 BY MR. BOWEN:

1 Q Mr. Locklear, when you went to work for the
2 City of Whiteville Police Department, you did fill
3 out an application form, didn't you?

4 A Yes.

5 Q And did that application form ask you where
6 all you have lived in the last 10 or 15 years?

7 A Correct.

8 Q And did you answer that truthfully?

9 A Yes.

10 Q And there was a place where you put down
11 some offenses that you had either been charged with
12 or convicted of; is that right?

13 A Correct.

14 Q And is it fair to say that you put down
15 some of those offenses and did not put a couple of
16 others?

17 MR. BRITT: Objection to the
18 form.

19 THE COURT: Sustained to the form
20 of the question.

21 MR. BRITT: Move to strike, ask
22 for instruction.

23 THE COURT: Hold up. There's a
24 motion before me. Motion to strike is
25 allowed.

1 Members of the jury, you're not to
2 consider the last question asked by counsel
3 for the defendant, Mr. Bowen, and any
4 answer, if one was given. Those matters
5 are not to take any part in your
6 deliberations in this case in any respect.
7 Mr. Bowen, you may ask additional
8 questions.

9 BY MR. BOWEN:

10 Q What were the offenses that you omitted and
11 why from that application?

12 MR. BRITT: Objection.

13 THE COURT: Now, your question
14 relates to a specific application.

15 BY MR. BOWEN:

16 Q The application for the Whiteville Police
17 Department.

18 THE COURT: You may answer that
19 question first, sir.

20 THE WITNESS: Simple assault, I
21 believe, simple assault, worthless check,
22 and harassment communication.

23 THE COURT: Question had a second
24 part, do you want to ask that now?

25 MR. BOWEN: Please.

1 THE COURT: Go ahead.

2 BY MR. BOWEN:

3 Q Why did you omit those, if you did?

4 A Because I did not remember them. They were
5 so far in the past, I did not remember them.

6 Q And approximately, if you can remember now,
7 how far back were they from the time you made that
8 application to Whiteville?

9 A About 12, 13 years, I believe it is.

10 Q In other words, they were 12 or 13 years
11 old even when you applied at Whiteville?

12 A Yes.

13 Q Now you did list, did you not, the
14 unauthorized conveyance, or something like that, but
15 not by name?

16 A Not by name, I put a question mark there
17 because I didn't remember the charge.

18 Q The charge?

19 A Yes.

20 Q Now that arose out of you taking your own
21 car?

22 A Correct.

23 Q From where?

24 A It was repossessed.

25 Q And when you got it back, did you finish

1 paying for it?

2 A No, they kept it.

3 Q All right. And that was reduced to a small
4 misdemeanor fine?

5 MR. BRITT: Objection to the
6 form, move to strike.

7 THE COURT: Sustained. Members
8 of the jury, disregard the question and
9 answer, if one was given. Those matters
10 are not to take any part in your
11 deliberations in any respect. You may
12 rephrase.

13 BY MR. BOWEN:

14 Q Mr. Locklear, did you tell your chief in
15 Whiteville, that is Officer Chief Raymond, about that
16 particular offense up in New Jersey?

17 MR. BRITT: Objection.

18 THE COURT: Overruled. You may
19 answer.

20 THE WITNESS: Yes. What I did is
21 on a separate piece of paper I explained
22 what happened and stapled it to my
23 application, and then I explained to the
24 chief about it.

25 BY MR. BOWEN:

1 Q And to your knowledge, did the chief get a
2 copy of that official record from New Jersey
3 concerning that offense?

4 A I'm not sure if he did or not.

5 Q To your knowledge, did the chief have a
6 discussion with the police standards commission about
7 that?

8 MR. BRITT: Objection.

9 THE COURT: Sustained.

10 BY MR. BOWEN:

11 Q Did the chief fill out a form, Form F-5,
12 listing that particular offense in connection with
13 your being hired as a police officer?

14 MR. BRITT: Objection.

15 THE COURT: Sustained.

16 BY MR. BOWEN:

17 Q Have you ever seen a Form F-5 with the
18 Whiteville Police Department?

19 A Yes.

20 MR. BRITT: Objection.

21 THE COURT: Whether or not he's
22 seen one, the objection is overruled.

23 THE WITNESS: Yes.

24 BY MR. BOWEN:

25 Q Did you ever see one filled out in your

1 case?

2 MR. BRITT: Objection.

3 THE COURT: As to whether or not
4 you saw one, you may answer.

5 THE WITNESS: Yes.

6 BY MR. BOWEN:

7 Q Did that form bear your signature or
8 somebody else's?

9 MR. BRITT: Objection.

10 THE COURT: Overruled. You may
11 answer as to whether or not you signed it
12 or someone else signed it.

13 THE WITNESS: I signed it.

14 BY MR. BOWEN:

15 Q And who else signed it?

16 MR. BRITT: Objection, that's not
17 his testimony, if someone else signed it.

18 THE COURT: Rephrase.

19 BY MR. BOWEN:

20 Q Did anybody else sign it beyond --

21 MR. BRITT: Objection.

22 BY MR. BOWEN:

23 Q Who?

24 A Chief Raynor.

25 Q Now, who filled out the information on that

1 F-5, you or someone else?

2 A Someone else.

3 Q And state whether or not that was the form
4 that was sent police standards.

5 MR. BRITT: Objection.

6 THE COURT: Sustained.

7 BY MR. BOWEN:

8 Q Who filled out that form?

9 MR. BRITT: Objection.

10 THE COURT: Sustained.

11 BY MR. BOWEN:

12 Q Do you know who filled it out?

13 MR. BRITT: Objection.

14 THE COURT: Well, he's already
15 answered that. You may answer.

16 THE WITNESS: Yes.

17 BY MR. BOWEN:

18 Q Who?

19 A The chief's secretary.

20 Q Now, that form F-5, what was the only
21 offense that it listed, if anything?

22 MR. BRITT: Objection -- oh,
23 excuse me, I'll withdraw that.

24 THE COURT: You may answer, sir.

25 THE WITNESS: I believe it was a

1 simple assault or assault. I'm almost sure
2 it was simple assault.

3 BY MR. BOWEN:

4 Q Another form was the one, the F-3 was the
5 one you filled out in your handwriting, correct?

6 A Correct.

7 Q Now, when you applied for the job here at
8 Robeson County -- is that right?

9 A Yes.

10 Q You filled out another form; is that right?

11 A Yes.

12 Q And did you put some offenses with which
13 you had been charged or convicted on that form?

14 A Yes.

15 Q Did it -- did you leave other some?

16 A The ones that I couldn't remember.

17 Q All right. Did you intentionally leave out
18 anything?

19 A Absolutely not.

20 Q And did you hide from the personnel officer
21 here in Robeson County the fact that your
22 certification with police standards had been
23 challenged?

24 MR. BRITT: Objection.

25 THE COURT: To the form of the

1 question, objection is sustained. You may
2 rephrase.

3 BY MR. BOWEN:

4 Q Did you tell anybody here in Robeson County
5 about your status with the police standards
6 commission?

7 A Yes.

8 Q Do you know whether anybody checked the
9 record on that?

10 MR. BRITT: Objection.

11 THE COURT: You may answer yes or
12 no, Mr. Locklear.

13 THE WITNESS: Can I get a
14 clarification on that? Check what records?

15 BY MR. BOWEN:

16 Q Let me just withdraw it. What, if
17 anything, did you tell the folks down here about
18 your -- here in Robeson County about your situation
19 in Whiteville relating to police standards?

20 A I told Lieutenant Martin who is the
21 personnel officer, I believe his title is, that
22 Criminal Justice Standards Division, they are in the
23 process of trying to suspend or revoke my
24 certification.

25 Q Now, when you had worked for -- when you

1 first went to work for the City of Whiteville, for
2 the first year that you worked there, did you have
3 any kind of mark on your personnel record or any
4 report on police standards?

5 MR. BRITT: Objection, objection.

6 THE COURT: To the form of the
7 question, the objection is sustained.

8 BY MR. BOWEN:

9 Q Let me ask you this: Did there come a time
10 during your work with the City of Whiteville when you
11 wrote a letter to the city council?

12 MR. BRITT: Objection. It's
13 collateral matter.

14 THE COURT: Do you want to be
15 heard, Mr. Britt?

16 MR. BRITT: Yes, sir.

17 THE COURT: Members of the jury,
18 there's a matter of law the Court must take
19 up. Please recall my instructions, don't
20 worry or speculate about what takes place
21 in the courtroom in your absence. If you
22 will step to the jury room.

23 (Jury out at 12:06 p.m.)

24 THE COURT: Let the record show
25 the following is being heard in the absence

1 of the jury. What is the basis of the
2 objection?

3 MR. BRITT: That this matter
4 about any letter he wrote is collateral to
5 the issues at hand.

6 THE COURT: Well, what did the
7 letter deal with, Mr. Bowen?

8 MR. BOWEN: Your Honor, he had no
9 personnel problems or problems with police
10 standards, anybody else, up until the time
11 he wrote a letter to the city council
12 making them aware that Sergeant Blackmon of
13 the department was defrauding his time
14 cards, was putting in every day for time he
15 was not working, leaving the town of
16 Whiteville without supervisory sergeant on
17 the night shift. And when he wrote this
18 letter, it was found to be true, five other
19 officers confirmed it with District
20 Attorney Gore.

21 Thereafter, the chief and this
22 sergeant left, resigned under pressure.
23 And thereafter, Mr. Locklear's problems
24 began, including the false charge of rape,
25 attempted rape, including all the other

1 matters that ultimately led to his
2 discharge.

3 Now, Mr. Britt has opened all these
4 doors, seems to me we're entitled to
5 explain.

6 THE COURT: Mr. Britt?

7 MR. BRITT: If they want to go
8 into it, fine. I would -- my position
9 would be this: They want -- these are
10 allegations they made before Training and
11 Standards. I think I'm entitled at that
12 point to go into the basis for the probable
13 cause to suspend his certification, and
14 that goes to his good morale conduct. And
15 then Mr. Bowen is basically offering
16 character evidence at this point.

17 THE COURT: Well, folks --

18 MR. THOMPSON: That's not
19 character evidence.

20 MR. BRITT: I think -- my whole
21 contention is his explanation as to what
22 occurred outside of his application is
23 collateral. I didn't cross-examine him
24 about anything involving any allegations he
25 made against any officers. I

1 cross-examined him about allegations
2 specifically contained in matters related
3 to his application in Whiteville and the
4 application here in Robeson County and the
5 fact that I prosecuted him in Columbus
6 County for charges, about Mr. Bowen's
7 relationship not only with the defendant
8 but with the witness.

9 THE COURT: I understand the
10 scope of cross-examination. I was here and
11 I heard it.

12 MR. BRITT: Yes, sir.

13 THE COURT: I'm going to allow
14 the question. It may open some doors. I
15 don't know because I don't know what
16 information is going to be forthcoming.
17 But I'm going to allow the explanation in
18 the form of rehabilitation. Note the
19 State's exception to my ruling. Bring the
20 jury back in, please.

21 (Jury in at 12:09 p.m.)

22 THE COURT: Ladies and gentlemen,
23 the objection is overruled. You may repeat
24 or rephrase your question, Mr. Bowen.

25 MR. BOWEN: Thank you, Your

1 Honor.

2 BY MR. BOWEN:

3 Q Mr. Locklear, during the time you were a
4 patrol officer with the City of Whiteville, did there
5 come a time when you wrote an anonymous letter to the
6 town council of the City of Whiteville?

7 A Yes.

8 Q Approximately when did you write this
9 letter?

10 A December of '92.

11 Q December of '92?

12 A Yes.

13 Q Now, what did you say in this letter,
14 Mr. Locklear?

15 MR. BRITT: Objection to the
16 contents.

17 THE COURT: Sustained as to the
18 form.

19 BY MR. BOWEN:

20 Q Now, what complaint, if any, did you make
21 to the town council of the City of Whiteville?

22 A That Sergeant Blackmon was defrauding the
23 city out of money of time that he -- he noted that he
24 was working when actually he was not working.

25 Q All right. Now state whether or not this

1 was occurring on an ongoing basis.

2 A Every night shift.

3 Q Had you personally observed this?

4 THE COURT: Well, you can get
5 into what occurred as a result without
6 getting into any contentions as to the
7 offense.

8 BY MR. BOWEN:

9 Q Now, what, if anything, occurred after this
10 letter that you sent with respect to your job?

11 A Within about, say, eight months, I would
12 say, I was brought up on about nine different
13 departmental charges.

14 Q Prior to the time that you sent this
15 letter, how long had you been working for the City of
16 Whiteville as a patrol officer?

17 A Approximately two years.

18 Q And during that two years and before you
19 sent that letter to the City Council of Whiteville,
20 had you been brought up on any personnel charges
21 whatsoever about anything?

22 A None whatsoever.

23 Q Did anybody ever question you about your
24 employment application with police standards?

25 A No, sir.

1 Q Had the police standards commission ever
2 called you and asked you any further questions?

3 A No, sir.

4 Q Had anybody ever asked you to furnish any
5 additional information regarding your background or
6 your record or anything, either to police standards
7 in Raleigh or to the Whiteville Police Department?

8 A No, sir.

9 Q Now, what happened to the two officers
10 about whom you complained?

11 A The chief and sergeant resigned.

12 Q How soon did they resign after you made
13 known to the City Council what you described?

14 A Two months.

15 Q Now, state whether or not during that two
16 months there started to be any complaints or problems
17 against you?

18 A Yes.

19 Q And can you -- and you say how many
20 complaints came forward the next eight months?

21 MR. BRITT: Objection asked and
22 answered.

23 THE COURT: You may answer.

24 THE WITNESS: I believe it was
25 nine.

1 BY MR. BOWEN:

2 Q Now, aside from the eight or nine matters
3 that came up on your personnel record, state whether
4 or not any criminal charges were brought against you
5 during that time frame?

6 A Yes.

7 Q Now, what were those criminal charges?

8 A Second degree attempted rape, second degree
9 sexual offense, and assault on a female.

10 Q Can you tell the jury the maximum amount of
11 imprisonment that you were facing on the combination
12 of those charges?

13 MR. BRITT: Objection, relevance.

14 THE COURT: Sustained.

15 BY MR. BOWEN:

16 Q When were these charges brought with
17 reference to the time that you sent the letter to the
18 town council of the City of Whiteville?

19 A Within --

20 Q If you remember.

21 A Within nine months.

22 Q All right, sir. Those are the same charges
23 that you've indicated Mr. Britt brought and
24 prosecuted you?

25 A Correct.

1 Q And I did not represent you in those
2 charges, did I?

3 A No, sir.

4 Q Your attorney was who?

5 A Butch Pope from Whiteville.

6 Q And this tape to which you refer in your
7 testimony, this surveillance tape at the convenience
8 store, was it played for the jury?

9 MR. BRITT: Objection.

10 THE COURT: Sustained.

11 BY MR. BOWEN:

12 Q Now, Mr. Locklear, you do have presently a
13 federal action that I have brought for you against
14 the City of Whiteville, correct?

15 MR. BRITT: Objection --

16 withdrawn.

17 THE WITNESS: Correct.

18 BY MR. BOWEN:

19 Q And it concerns that discharge of you from
20 your position there, is that correct?

21 A Correct.

22 Q And you and I have met on dozens of
23 occasions in connection with that case, haven't you?

24 A Correct, yes.

25 Q And at one point you've testified that you

1 brought up to me this conversation or these two
2 conversations that happened between you and
3 Mr. Demery, is that right?

4 A Yes.

5 Q Since that time, have you asked me could I
6 please keep you out of it?

7 MR. BRITT: Objection.

8 THE COURT: Sustained.

9 MR. BRITT: Move to strike.

10 BY MR. BOWEN:

11 Q What did you say in regard to --

12 THE COURT: There's a motion
13 before me, Mr. Bowen. Motion to strike is
14 allowed. Members of the jury, I instruct
15 that you that you're not to consider the
16 last question asked by counsel for the
17 defendant Mr. Bowen. That matter is not to
18 take any part in your deliberations in this
19 case in any respect.

20 BY MR. BOWEN:

21 Q State whether or not you requested anybody
22 not to have to testify in this case?

23 MR. BRITT: Objection.

24 THE COURT: Rephrase Mr. Bowen.

25 BY MR. BOWEN:

1 Q All right. Have you asked not to be
2 here?

3 MR. BRITT: Objection.

4 THE COURT: Rephrase Mr. Bowen.

5 BY MR. BOWEN:

6 Q Would you rather not be here?

7 MR. BRITT: Objection.

8 THE WITNESS: Yes.

9 THE COURT: Sustained.

10 MR. BRITT: Motion to strike,
11 request instruction.

12 THE COURT: Members of the
13 jury --

14 MR. BOWEN: Now --

15 THE COURT: Folks, if there's an
16 objection, let me rule on the objection,
17 please. The objection is sustained.

18 Members of the jury, you're not to
19 consider the last question asked by
20 Mr. Bowen or the answer if one was given by
21 the witness. Those matters are not to take
22 any part in your deliberations in any
23 respect.

24 Mr. Bowen, ask you can ask him what
25 brought him here.

1 BY MR. BOWEN:

2 Q Yes, sir. What brought you here
3 Mr. Locklear?

4 A Subpoena.

5 Q Now, Mr. Locklear, with regard to the
6 allegations against Sergeant Blackmon, why did you
7 not go directly to the chief about this?

8 MR. BRITT: Objection.

9 THE COURT: Sustained.

10 BY MR. BOWEN:

11 Q Did there come a time when you met with
12 District Attorney Rex Gore about the allegation
13 concerning Sergeant Blackmon?

14 MR. BRITT: Objection.

15 THE COURT: Sustained.

16 BY MR. BOWEN:

17 Q Now, when you were in the rec area and
18 spoke with Mr. Demery, Mr. Derrick Locklear, how
19 close was he to you and Mr. Demery?

20 MR. BRITT: Objection.

21 THE COURT: Overruled. You may
22 answer.

23 THE WITNESS: He was quite far.

24 He wasn't -- I don't believe he was in the
25 listening --

1 BY MR. BOWEN:

2 Q Was anybody within earshot of you?

3 A No.

4 Q And you've been employed how long with the
5 Robeson County Sheriff's Department?

6 A 14 months.

7 Q And are you still employed there?

8 A Yes.

9 Q Why are you not wearing a uniform today?

10 A I'm off today.

11 Q Will you be working tonight or
12 tomorrow?

13 MR. BRITT: Objection.

14 THE COURT: Sustained

15 BY MR. BOWEN:

16 Q You still are employed, is that
17 correct?

18 MR. BRITT: Objection.

19 THE WITNESS: Yes.

20 THE COURT: He's answered that,
21 Mr. Bowen. Any additional matters?

22 MR. BOWEN: You're right. Could
23 I have just one moment, please?

24 THE COURT: Yes, sir. Take your
25 time.

1 BY MR. BOWEN:

2 Q Mr. Locklear, the letter that Mr. Britt
3 mentioned that you got from police standards, stating
4 to you that your certification was about to be
5 revoked --

6 A Yes.

7 Q -- do you remember that it contained an
8 allegation that there was a felony on your
9 record?

10 MR. BRITT: Objection.

11 THE COURT: Sustained.

12 MR. BRITT: Move to strike.

13 THE COURT: Allowed.

14 MR. BRITT: Ask for an
15 instruction.

16 THE COURT: Members of the jury,
17 don't consider the last question asked by
18 counsel for the defendant Mr. Bowen, that
19 matter is not to take any part in your
20 deliberations in any respect.

21 Mr. Bowen, any additional matters?

22 BY MR. BOWEN:

23 Q Did police standards accuse you of an
24 offense that was not even you?

25 MR. BRITT: Objection.

1 THE WITNESS: Yes.

2 THE COURT: Folks, there's a
3 matter of law the Court must take up out of
4 the hearing and presence of the jury.
5 Please recall my instructions, don't worry
6 or speculate about what takes place in your
7 absence. If you will please step to the
8 jury room.

9 (Jury out at 12:19 p.m.)

10 THE COURT: Mr. Bowen, we're not
11 going into the merits of the matter pending
12 administratively, whether there were
13 meritorious matters or not. You get in to
14 matters that rehabilitate based on what was
15 brought out in the cross-examination.

16 MR. BOWEN: The only way that I
17 would contend that it would, Your Honor, is
18 this: Mr. Britt has suggested that this
19 man is here for some ulterior motive
20 because he knows me or because he's somehow
21 is to confuse the issues or anything. But
22 now this witness is unique in this
23 exception. It can be argued that he is
24 here not only because of a subpoena, but
25 he's also testifying and he also came

1 forward with this material which he didn't
2 have to do, because he himself knows how it
3 is to be a man falsely accused of a crime,
4 not only in a court of law of Columbus
5 County but also by the Police Standards
6 Commission, for, you see, I can show if I'm
7 allowed to that he was alleged --

8 THE COURT: Two things. One,
9 he's not on trial. Two, I'm not on the
10 jury. You're making the jury argument and
11 the merits. What is the legal basis that
12 you contend that question is admissible?

13 MR. BOWEN: It goes to the
14 rehabilitation of his motives for having
15 come forward with the information,
16 ultimately knowing that he might have to
17 testify.

18 THE COURT: What has that got to
19 do with whether or not he was charged
20 erroneously or otherwise with any felony
21 offense in any administrative hearing?

22 MR. BOWEN: Because it shows how
23 he knows how it feels to be charged for
24 felonies.

25 THE COURT: Objection is

1 sustained. You folks, want to go into any
2 additional matters?

3 MR. BOWEN: And Mr. Thompson very
4 astutely comments, Your Honor, that since
5 Mr. Britt was broadly allowed to go into
6 matters of fact that the police commission
7 found, because he asked questions based on
8 that, seems to me that we would be allowed
9 to show that in fact they make some serious
10 errors as well, and this is one of the
11 errors, they said this man was convicted of
12 disposing mortgage property. It's not even
13 him. They retracted it and took it back,
14 but they started out blazing guns and
15 charging him with things he is not even
16 guilty of.

17 THE COURT: Exception is noted
18 for the record. Objection is sustained.
19 Bring the jury back in.

20 MR. BOWEN: Could we --

21 THE COURT: Yes, sir, if you'll
22 ask him to hold up for a moment.

23 MR. BOWEN: Could we simply very
24 briefly make that record, Your Honor?

25 THE COURT: Yes, sir.

1 MR. BOWEN: I'm sorry.

2 BY MR. BOWEN:

3 Q Mr. Locklear, do you recall either with the
4 Sheriff Standards Commission or the police commission
5 being accused of -- having a record for felonious
6 disposing of mortgage property?

7 MR. BRITT: Objection, there's no
8 such charge in this state.

9 BY MR. BOWEN:

10 Q All right. Disposing of mortgage property,
11 is what it is.

12 A Yes.

13 Q Can you recall which agency made that
14 allegation?

15 A I know Criminal Justice Standards Division,
16 whether the Sheriff's Division or not, I'm not sure.

17 Q Well, then as to Police Standards Division,
18 when you -- was that contained in the letter that you
19 received, Mr. Britt talked to you about?

20 A Yes.

21 Q And as a result of seeing that, did you
22 know or remember whether or not you had ever been
23 convicted of such a charge?

24 A No, I knew I wasn't.

25 Q What did you do about it?

1 A I came down to the Robeson County
2 courthouse, I ran a criminal history on Richard Terry
3 Locklear. It came back, there was three or four
4 Richard Terry Locklears, and I got a copy of the
5 warrant for the Richard Terry Locklear --

6 THE COURT: Bottom line is, it
7 wasn't you?

8 THE WITNESS: It was not me.

9 BY MR. BOWEN:

10 Q Did Police Standards retract that from
11 their allegation?

12 A Yes.

13 Q And that had formed the basis of their
14 probable cause, according to the letter?

15 A Yes.

16 MR. BOWEN: That's all.

17 THE COURT: You folks have a
18 theory that the conspiracy, what you
19 contend is involved in this case now,
20 includes the Sheriff's Commission, the
21 administrative body that's involved in
22 Mr. Locklear's hearing -- who is that
23 officer from California? That interviewed
24 one of the -- Ms. Jacobs?

25 MR. BRITT: Oh, Mr. Brighton.

1 THE COURT: Is that your theory
2 of the case, that there's a conspiracy
3 ongoing between the prosecutor's office, he
4 and the prosecutor's office in Columbus
5 County, various law enforcement agencies in
6 California, including at least that one
7 officer and now the Sheriff's Commission
8 and this administrative --

9 MR. BOWEN: I don't know where
10 you even get the basis of such a question.

11 THE COURT: I'm just trying to
12 figure out what your theory of the case is,
13 because I mean your contention is that that
14 somehow goes to his motivation in not
15 wanting to be here.

16 MR. BOWEN: No, doesn't go to his
17 not wanting to be here. What it goes to is
18 that he -- it goes to his motivation in
19 coming forward, because he knows how it
20 feels to be falsely accused of a crime and
21 standing I believe for maximum potential
22 sentence of 22 years on a matter down in
23 Columbus County, and now also being accused
24 by the Police Standards Commission, and all
25 they had to do was run the record and get

1 the information that he did, and they
2 wouldn't have ever accused him of it to
3 start with.

4 THE COURT: Any other matters you
5 want to put on in response to your --

6 MR. BOWEN: Talking about police
7 standards, I think we're entitled to
8 explain it. That's all.

9 THE COURT: Objection is
10 sustained. Exception is noted for the
11 record. Any additional matters you folks
12 want to put on in terms of an offer of
13 proof?

14 MR. BOWEN: No, sir.

15 THE COURT: Bring the jury back
16 in, please.

17 (Jury in at 12:25 p.m.)

18 THE COURT: The objection is
19 sustained. Any additional questions for
20 the witness?

21 BY MR. BOWEN:

22 Q Mr. Locklear, the charges for which
23 Mr. Britt prosecuted you, were they all felonies?

24 A Two of them were, yes.

25 Q All right. Now, notwithstanding your

1 acquittal in those cases, does the fact that you were
2 charged, does that still stand as part of your public
3 record in Columbus County?

4 A Yes.

5 Q Mr. Locklear, during the time that you have
6 been an officer with the Robeson County Sheriff's
7 Department, did there come a time that an inmate
8 offered you a bribe?

9 MR. BRITT: Objection.

10 THE COURT: Sustained.

11 MR. BOWEN: Desire to be heard,
12 Your Honor.

13 THE COURT: Ladies and gentlemen,
14 there's a matter of law the Court must take
15 up. Please recall my instructions, don't
16 worry or speculate about what takes place
17 in the courtroom in your absence, and if
18 you would please step outside -- I meant to
19 the jury room, I apologize.

20 (Jury out at 12:27 p.m.)

21 THE COURT: Mr. Bowen.

22 MR. BOWEN: Yes, Your Honor, may
23 I ask a couple of questions -- first of
24 all, this is offered under 608-B, and may I
25 begin with a couple of questions?

1 THE COURT: Yes, sir.

2 BY MR. BOWEN:

3 Q Mr. Locklear, were you -- during the time
4 that you worked in the Robeson County Sheriff's
5 Department, did an inmate offer you a bribe?

6 A Yes.

7 Q Can you tell us to the best of your
8 knowledge exactly when it was and what circumstances
9 it was? For the record, you're consulting some type
10 of paper writing?

11 A I was looking, I thought maybe I had a copy
12 of the report with me.

13 Q All right. Have you seen -- do you recall
14 testifying to this in the Police Standards Commission
15 hearing?

16 A Yes.

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

19 THE COURT: Yes, sir.

20 BY MR. BOWEN:

21 Q Directing your attention to paragraph
22 number 173 of the factual findings of that hearing,
23 and ask you --

24 THE COURT: Is this something
25 that's part of a record that was referred

1 to? It's a finding of fact?

2 MR. BOWEN: It's what Mr. Britt
3 has been using.

4 THE WITNESS: Yes.

5 BY MR. BOWEN:

6 Q Did that refresh your recollection?

7 A Yes.

8 MR. BOWEN: Let the record show
9 I'm taking the document back.

10 BY MR. BOWEN:

11 Q Mr. Locklear, can you tell us about --

12 THE COURT: Give me the finding
13 of fact number, Mr. Bowen.

14 MR. BOWEN: Sir?

15 THE COURT: The finding of fact
16 number.

17 MR. BOWEN: Number 173, Your
18 Honor.

19 THE COURT: Okay.

20 BY MR. BOWEN:

21 Q Can you tell us approximately when it was
22 that this event occurred?

23 A It was this past summer, that's the best I
24 can do time-wise.

25 Q Can you tell us the name of the inmate?

1 A His last name was Strickland. Tommy
2 Strickland.

3 Q What was the amount of the bribe offered
4 and what were you asked to do?

5 A I was offered half of six hundred thousand
6 dollars to help him escape.

7 Q Now, what kind of bond was this inmate
8 under?

9 A I believe it was a million twenty thousand
10 dollar bond.

11 Q Now, as a consequence of this offer, was
12 anybody else standing around to hear this other than
13 you and the inmate?

14 A No.

15 Q What did you do as a result and how quickly
16 did you do it?

17 A I reported it to -- immediately reported it
18 to James Campbell, Steve Loveland, and Tommy
19 Strickland of the Drug Department.

20 Q These are drug officers?

21 A Yes.

22 Q What action was taken?

23 A They just told me to write a report on it.

24 Q Did you do so?

25 A Yes.

1 MR. BOWEN: That's the showing,
2 Your Honor.

3 THE COURT: How does this come in
4 under 608-B?

5 MR. BOWEN: We believe this
6 action is action which --

7 THE COURT: It has to bear on
8 truthfulness and untruthfulness.

9 MR. BOWEN: His truthfulness and
10 honesty, opportunity --

11 THE COURT: 173.

12 MR. BOWEN: Yes, sir.

13 THE COURT: Your reference, which
14 I thought is what you were referring to,
15 Lieutenant Jeff Martin, personnel officer
16 with the Robeson County Sheriff's
17 Department testified to Locklear's good
18 character and reputation, 404, 405. Good
19 character an reputation.

20 608-B deals with matters pertaining
21 under the state case law, not federal, to
22 instances of truthfulness or
23 untruthfulness. This may relate to
24 something that would be admissible in
25 Federal Court, but not under our state

1 court case law.

2 MR. BOWEN: Well, I think there's
3 a good faith basis at least that I can
4 argue, and I understand Your Honor may rule
5 otherwise, but that this comes under the
6 umbrella of doing something to come to be
7 forthcoming about something that someone
8 could have been deceitful about and was
9 not, and therefore it relates in its way to
10 truthfulness or veracity.

11 THE COURT: Based on the matters
12 before the Court contained in finding of
13 fact 173 and based on the showing made
14 which now constitutes an offer of proof for
15 purposes of preservation of issues in the
16 record, the objection is sustained. Note
17 the defendant's exception to the Court's
18 ruling. Bring the jury back in.

19 (Jury in at 12:32 p.m.)

20 THE COURT: Ladies and gentlemen,
21 the objection is sustained. Any additional
22 matters for Mr. Locklear?

23 MR. BOWEN: Yes.

24 BY MR. BOWEN:

25 Q Mr. Locklear, following your allegations

1 and your report to the City Council of Whiteville
2 regarding the conduct of Sergeant Blackmon, did other
3 officers in your department report the same
4 thing?

5 MR. BRITT: Objection.

6 THE COURT: Sustained.

7 MR. BRITT: Move to strike.

8 THE COURT: Allowed.

9 MR. BRITT: Ask for instruction.

10 THE COURT: Members of the jury,
11 you're not to consider the last question
12 asked by counsel for the defendant
13 Mr. Bowen. That matter is not to take any
14 part in your deliberations in any respect.
15 Anything further?

16 MR. BOWEN: Yes.

17 BY MR. BOWEN:

18 Q Mr. Locklear, when you say that this matter
19 concerning Mr. Demery was bothering you and you told
20 me about it, what do you mean it was bothering you?

21 A It was bothering me just due to the fact
22 that after reading in the paper that there was no
23 deal made, then after reading in the paper that there
24 was a deal made, that something was definitely
25 wrong. And it just bothered me that I just had to

1 talk about it, tell someone.

2 MR. BOWEN: That's all.

3 THE COURT: Mr. Britt, any
4 additional matters on cross-examination?

5 MR. BRITT: Yes, sir.

6 RECROSS EXAMINATION

7 BY MR. BRITT:

8 Q Mr. Locklear, the information contained in
9 the application that you filed with the City of
10 Whiteville for a job and the information that you
11 placed in the application for your job at the Robeson
12 County Sheriff's Department, you solely provided that
13 information, didn't you?

14 A Yes.

15 Q And it's your testimony that you omitted
16 convictions and charges in the Whiteville
17 application?

18 A Intentionally omit, no.

19 Q And you said that the reason -- you forgot
20 to put them in is because they happened 10 or 15
21 years prior to the application, is that correct?

22 A Correct.

23 Q That application was filed in 1991?

24 A Correct.

25 Q Application of Robeson County Sheriff's

1 Department was filed after you had received
2 notification that Training and Standards was going to
3 pursue revoking your certification?

4 A Correct.

5 Q And you received that notification in
6 August of 1995?

7 A Correct.

8 Q You filled out the application for the
9 Robeson County Sheriff's Department to work in the
10 jail in December of '95?

11 A Correct.

12 Q And in the Robeson County Sheriff's
13 Department application you omitted convictions and
14 charges in that application, didn't you?

15 A Not intentionally, no, sir.

16 Q And you had been put on notice in August of
17 1995 about those very convictions?

18 A Correct.

19 Q And after filing your application with the
20 Robeson County Sheriff's Department and after
21 receiving a job at the Robeson County Sheriff's
22 Department in the jail, you received a second notice
23 from Training and Standards, did you not?

24 A Which Training and Standards?

25 Q From the Sheriff's Association.

1 A Yes.

2 Q And you were put on notice at that time
3 that they were seeking revocation of your
4 certification for falsifying your application with
5 the Robeson County Sheriff's Department?

6 A Correct.

7 MR. BRITT: I don't have any
8 other questions.

9 THE COURT: Mr. Bowen?

10 FURTHER REDIRECT EXAMINATION

11 BY MR. BOWEN:

12 Q Now, Mr. Locklear, Mr. Jeff Martin is your
13 personnel supervisor, is that correct?

14 A Yes.

15 Q While we were up in Raleigh having hearings
16 for days on these same issues, Mr. Martin was present
17 most of that same time, wasn't he?

18 A Yes.

19 MR. BRITT: Objection.

20 THE COURT: Ladies and gentlemen,
21 there's a matter of law the Court must take
22 up at this time. Please recall my
23 instructions, if you'll step to the jury
24 room. Don't worry or speculate about what
25 takes place in the courtroom in your

1 absence.

2 (Jury out at 12:36 p.m.)

3 THE COURT: Following is being
4 heard in the absence of the jury.

5 Mr. Bowen, yes or no, are we going to
6 "Mr. Martin testifying on your behalf"?

7 MR. BOWEN: Two questions: Was
8 Mr. Martin present during the majority of
9 these hearings; was Mr. Martin your
10 personnel supervisor; is he still your --
11 well, four questions. Is he still your
12 supervisor, and are you still employed.

13 THE COURT: The objection is
14 sustained. Your questions are in the in
15 the record. You don't have any answers in
16 the record. For the purposes of preserving
17 your issues make an offer of proof. If
18 you'll answer his questions.

19 BY MR. BOWEN:

20 Q Mr. Locklear, Lieutenant Martin is your
21 personnel supervisor, correct?

22 A Correct.

23 Q Was he there during most of the testimony
24 regarding the two police standards and the Sheriff
25 Standards Commission that we had in Raleigh?

1 A Correct.

2 Q And you're still employed with the
3 Sheriff's Department, aren't you?

4 A Yes.

5 THE COURT: And he's still your
6 supervisor?

7 THE WITNESS: No, he's. No, he's not
8 a supervisor, he's just in charge of personnel.

9 MR. BOWEN: That's it.

10 THE COURT: Anything further?

11 MR. BOWEN: That's all.

12 THE COURT: Offer of proof is in
13 the record. Defendant's exception is noted
14 for the record. Bring the jury back in.

15 (Jury in at 12:39 p.m.)

16 THE COURT: The objection is
17 sustained. Any additional questions for
18 Mr. Locklear?

19 BY MR. BOWEN:

20 Q Have you ever been convicted of any felony
21 whatsoever anywhere at any time in your life?

22 MR. BRITT: Objection.

23 THE COURT: Sustained as to form.

24 BY MR. BOWEN:

25 Q Have you ever been convicted of -- strike

1 that. Now, Mr. Locklear, have you ever been fired
2 from the Robeson County Sheriff's Department?

3 MR. BRITT: Objection.

4 THE COURT: Mr. Locklear, you're
5 still working with the Robeson County
6 Sheriff's Department?

7 THE WITNESS: Yes.

8 MR. BOWEN: Thank you, Your
9 Honor. That's all.

10 THE COURT: Anything further?

11 MR. BOWEN: No, sir.

12 THE COURT: Anything further on
13 behalf of the State?

14 MR. BRITT: No, sir.

15 THE COURT: May the witness step
16 down?

17 You're free to go, sir. Any further
18 showing for the defendant?

19 MR. BOWEN: We want to introduce
20 some documents.

21 MR. THOMPSON: May I?

22 THE COURT: Yes, sir.

23 MR. THOMPSON: Your Honor, desire
24 at this time to introduce Defendant's
25 Exhibit number 24. That was a copy of a

1 photograph of a map used by Mr. Demery to
2 depict certain things out at the
3 intersection of 74 and 95.

4 THE COURT: That was to some
5 extent a copy of State's 88 but included
6 more matters?

7 MR. THOMPSON: Yes, sir.

8 MR. BRITT: No objection.

9 THE COURT: Defendant's Exhibit
10 24 is admitted without objection.

11 MR. THOMPSON: Desire to
12 introduce Defendant's Exhibit number 25,
13 which was a diagram sketched by Mr. Demery
14 showing the amount of blood on the shirt
15 that he observed in the cornfield.

16 THE COURT: Mr. Britt?

17 MR. BRITT: No objection, as long
18 as it's for the limited purpose of
19 illustration. That was the purpose that it
20 was offered to the witness.

21 THE COURT: My recollection is it
22 was used for that purpose.

23 MR. BRITT: As was Number 24, a
24 copy of the photograph.

25 THE COURT: Yes, sir. Both being

1 introduced for the limited purpose.

2 MR. BRITT: Yes, sir.

3 THE COURT: You folks wants to be
4 heard further?

5 MR. THOMPSON: Wait a minute,
6 Your Honor, I believe I missed something.
7 No, sir. You're allowing it for the
8 purposes of illustration, is that --

9 THE COURT: Well --

10 MR. THOMPSON: I mean for the
11 limited purpose?

12 THE COURT: All right. Ladies
13 and gentlemen, I'm going to let you go to
14 lunch now. We'll take this up at 2:15.
15 Bear with me, Mr. Thompson. I'm going to
16 let you folks go to lunch until 2:15. Does
17 that pose a problem for anyone?

18 Does the State intend to offer any
19 rebuttal evidence?

20 MR. BRITT: Yes, sir, we're
21 prepared to do that.

22 THE COURT: We will present
23 additional evidence, State's rebuttal
24 evidence, beginning at 2:15. During the
25 lunch recess, please don't talk about this

1 case among yourselves or anyone else, don't
2 allow anyone to say anything to you or in
3 your presence about the case. If anyone
4 communicates with you or attempts to do so
5 or says anything about the case in your
6 presence, it's your duty to inform us of
7 that immediately.

8 Don't form or express any opinions at
9 all about this matter, don't have and
10 contact or communication with anyone
11 involved in the case. Avoid any exposure
12 to any media accounts which might exist in
13 connection with this matter, and don't
14 conduct any independent inquiry or research
15 or inquiry of any kind. Everyone else
16 please remain seated, the members of the
17 jury are excused until 2:15.

18 (Jury out at 12:44 p.m.)

19 THE COURT: The following is
20 being heard in the absence of the jury.
21 Mr. Thompson, the case law is not real
22 clear on this. The basic position I
23 understand being taken by the State is that
24 once an item has been used for illustrative
25 evidence, it comes in to illustrate the
kind

1 testimony of a witness. Having been used
2 for that purpose, it does not get passed to
3 the jury again.

4 As I say, I am not aware of any case
5 law one way or another. I do know that I
6 have successfully kept the State in cases
7 when I was a trial lawyer from introducing
8 evidence used for an illustrative reason to
9 the jury. Because it came in for a limited
10 purpose, it was used for that limited
11 purpose and that's it. I think that the
12 Court has inherent authority, that there is
13 discretion with the Court, simply because
14 there's nothing to the contrary to show me
15 otherwise to allow it to come in after its
16 been used for illustrative purposes and
17 allow it to be published to the jury. Do
18 you disagree with that?

19 MR. BRITT: No, sir.

20 THE COURT: Was that your
21 position?

22 MR. BRITT: Yes, sir. I mean,
23 and the flip side of what you just said, I
24 have argued to juries using illustrative
25 evidence and been allowed to do so.

1 THE COURT: I think it's
2 discretionary with the Court. That's what
3 I wanted to establish whether anybody
4 disagreed with that.

5 MR. BRITT: But the record at the
6 time it was established that the items were
7 being used to illustrate certain matters,
8 for instance the diagram of the red spot
9 indicating the amount of blood, that was
10 drawn for the purpose of illustrating what
11 Mr. Demery said was the amount of blood he
12 saw on his shirt. It was not introduced at
13 that time.

14 MR. THOMPSON: Right, it wasn't
15 introduced.

16 THE COURT: It was shown. He
17 stepped down.

18 MR. BRITT: No, sir. If you will
19 recall, I objected because it's had not
20 been introduced.

21 THE COURT: I'm sorry.

22 MR. BRITT: They did not want to
23 introduce evidence.

24 THE COURT: Doesn't matter,
25 because in my discretion I'm going to allow

1 it anyway. I simply want to make sure I
2 understood what your position was. In my
3 discretion, I'm going to allow it as to all
4 illustrative evidence offered by the State
5 and by the defendant.

6 MR. THOMPSON: Yes, sir, and I
7 only had a few more items to introduce, and
8 then I was going to ask that the Court
9 allow these to be passed to the jury.

10 THE COURT: We can do that at
11 2:15. I just wanted to clear this up. 24,
12 illustrative purpose, 25 which was drawn,
13 and you're correct, was not utilized at
14 that time because we were doing the State's
15 case in chief. 26 is the same thing, you
16 providing Mr. Demery with a piece of paper,
17 and he drew a side-view of a car.

18 MR. THOMPSON: Yes.

19 THE COURT: You moving that in at
20 this time?

21 MR. THOMPSON: Yes, sir.

22 THE COURT: 27?

23 MR. THOMPSON: Some reason, I
24 don't -- my next one is 29 which is the
25 affidavit of Mr. Demery that was attached

1 to his motion to suppress.

2 THE COURT: You had 28 marked,
3 Mr. Demery's statement of August 15th, '93,
4 marked.

5 MR. BRITT: I believe that's
6 already in as a State's Exhibit.

7 MR. THOMPSON: Those are at this
8 time, Your Honor, that's --

9 THE COURT: 30, you don't want it
10 in?

11 MR. THOMPSON: Your Honor, with
12 regard to the -- let me read the list and
13 then I will --

14 MR. BRITT: What exhibit is
15 this? I don't know, I didn't --

16 THE COURT: I think it's --

17 MR. BRITT: May I approach and
18 check?

19 THE COURT: Yes, sir. I'll find
20 out.

21 That's 30. That's the one I was just
22 talking about. That's the diagram --

23 MR. BRITT: July the 4th.

24 THE COURT: With the vehicle --

25 MR. BRITT: July the 4th.

1 THE COURT: -- vehicle broke
2 down.

3 MR. THOMPSON: Yes, sir.

4 THE COURT: July 4th, '93.

5 MR. THOMPSON: 29 and 30.

6 THE COURT: Okay.

7 MR. THOMPSON: And Your Honor,
8 there are some other matters, 35-A, B, C,
9 D, those items have already been introduced
10 but we're going to ask that the Court allow
11 those to be passed.

12 THE COURT: State object to any
13 of those proposed exhibits?

14 MR. BRITT: 35-A, B, C, D, those
15 small photographs, they have already been
16 published to the jury.

17 THE COURT: Do you want to
18 publish them again?

19 MR. THOMPSON: They have been
20 shown, I don't know they have been actually
21 passed to the jury. If not, we would
22 ask --

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

25 MR. BRITT: That's fine.

1 THE COURT: Why don't you get the
2 exhibits together, if you'll show the
3 proposed exhibits to Mr. Britt so there's
4 no question about what is going in to be
5 published to the jury, we'll come back at
6 2:15, do that. Are you going to be ready
7 to go forward?

8 MR. BRITT: Yes, sir. It won't
9 be necessary for Mr. Thompson to show me
10 exhibits. I know which ones they are. I
11 will, for the purpose of informing the
12 Court where we're going, my rebuttal
13 evidence will consist of two or three
14 witnesses. Those two -- definitely two of
15 those witnesses are Art Binder and Randy
16 Myers. Mr. Binder's testimony involves the
17 playing of the taped interrogation that was
18 the subject matter of the motion to
19 express.

20 THE COURT: The entire thing.

21 MR. BRITT: Yes, sir, because it
22 is the State's position that Mr. Green's
23 own words the night of August the 15th,
24 1993 rebut the defense that's been present
25 in this courtroom.

1 THE COURT: Yes, sir.

2 MR. BRITT: And the Court is
3 aware of how long the tape is. I've
4 already had transcripts of that matter
5 prepared for publication to the jury.

6 THE COURT: You need to show the
7 transcripts to counsel for the defendant so
8 there's no disputes about the accuracy of
9 the transcripts in context of the tape,
10 provide the transcripts to them at the time
11 of the -- prior to the time the tape is
12 played.

13 MR. THOMPSON: Your Honor, we're
14 going to object to that, and I can tell you
15 that also you may recall there's a
16 reference to -- I believe Mr. Green being
17 in prison, so there's some things that I
18 would say to the Court that needs to be
19 redacted, if it's going to be allowed, if
20 any of it is going to be allowed.

21 THE COURT: Well, folks, the
22 defense of alibi has been asserted,
23 portions of it is certainly relevant to
24 rebut that defense insofar as the defendant
25 made statements that are inconsistent with

1 that. Portions of it are subject to prior
2 rulings by the Court, and will need to be
3 redacted from both the audio portion,
4 omitted from the audio portion and redacted
5 from any transcripts that are provided to
6 the jury. That's going to be
7 time-consuming because we're going to have
8 to review that on the record before any
9 dissemination of any written materials are
10 provided to the jury and before they hear
11 the audiotape.

12 MR. THOMPSON: Your Honor, may I
13 be heard? You know, the defendant would
14 take issue with the statement that the
15 statement -- the statements that the
16 defendant made were not only
17 inconsistent --

18 THE COURT: That's for them to
19 decide.

20 MR. THOMPSON: Yes, sir, I just
21 want the Court to -- well, yes, that's our
22 contention.

23 THE COURT: That's rebuttal
24 evidence that their statements are
25 inconsistent with the alibi. It's not for

1 you to decide. Not for Mr. Britt to
2 decide.

3 MR. BRITT: It's for the jury to
4 decide.

5 THE COURT: It's for the jury to
6 decide.

7 MR. THOMPSON: Yes, sir, but for
8 the sake of this argument, for the purpose
9 for which he's allowing it in, I'm simply
10 arguing that it does not, and that's my
11 argument. We're objecting to it, of
12 course.

13 THE COURT: Okay. All right.
14 Who is going to be your first witness?

15 MR. BRITT: Mr. Binder.

16 THE COURT: That necessarily
17 involves the playing of the tape?

18 MR. BRITT: Yes, sir.

19 THE COURT: And the dissemination
20 of any written materials?

21 MR. BRITT: Yes, sir.

22 THE COURT: Doesn't look like
23 we're going to go forward at 2:15.

24 MR. THOMPSON: No, sir.

25 THE COURT: Folks, let me simply

1 say this. This is, what, our 8th week?
2 This jury has been exemplary in my view in
3 terms of their patience, not one complaint
4 that I'm aware of from any members of the
5 jury about the instances where they had to
6 leave the courtroom while matters of law
7 were taken up, not one complaint from any
8 member of the jury as to the delay in the
9 case.

10 If you folks recall during jury
11 selection they were told that the trial
12 would take approximately a month. That's
13 my recollection. We are now as I just
14 indicated in our 8th week, these folks have
15 been very patient with us. I'm reluctant
16 to add to their burden. It probably will
17 become necessary in the context of what you
18 intend to offer that I'm going to have to
19 send them home and we will have to deal
20 with that this afternoon.

21 I guess what I'm trying to say, folks,
22 is that inevitably all these things come in
23 to play one way or another on the jury's
24 deliberations, and the comment that I made
25 this morning was a sincere comment, not

1 made facetiously. When we present evidence
2 as advocates, we have to be mindful of how
3 that evidence impacts on the jury and what
4 affect it may have on our case.

5 Ultimately, they are the most
6 important people in the courtroom. And
7 ultimately they decide matters that pertain
8 to your clients' fate and to the State's
9 case. And we have to be considerate of
10 them to the extent that that is possible.

11 Having said that, let me say we'll
12 take up what we have to take up this
13 afternoon. I'll be the one to tell them
14 they will have to go home and come back
15 tomorrow morning.

16 Am I on safe grounds telling them that
17 it is likely we would complete any rebuttal
18 evidence by Friday at the latest?

19 MR. BRITT: I would think we can
20 complete it by tomorrow. Mr. Binder's
21 involvement involves the interrogation that
22 occurred and the tape.

23 THE COURT: That tape is fairly
24 lengthy.

25 MR. BRITT: Yes, about two, two

1 and a half hours, if I recall correctly.
2 Mr. Myers would follow him about matters
3 that were discussed after the tape
4 recording was turned off, which were the
5 matters of motion to suppress. And let me
6 say this for the record. There was a
7 motion to suppress that was made. The
8 State announced in court that it does not
9 intend to use Mr. Green's statements in its
10 case in chief, and went forward with a five
11 day hearing on that.

12 MR. THOMPSON: Tape-recorded
13 statement.

14 THE COURT: Yes, sir.

15 MR. THOMPSON: And they indicated
16 that they did not intend to use the
17 tape-recorded statement, and --

18 THE COURT: During their case in
19 chief.

20 MR. THOMPSON: Yes, sir.

21 MR. BRITT: And now --

22 THE COURT: What he was
23 indirectly telling you was, but I'm saving
24 it for rebuttal depending on what defense
25 has interposed.

1 MR. BRITT: Yes, sir. Now, this
2 defense has presented that the defendant
3 was not there, and as the Court is aware,
4 as counsel is aware, the subject of the
5 interrogation, there's no mention of an
6 alibi or being at Kay Hernandez's by this
7 defendant.

8 THE COURT: Well, I understand
9 the defendant's position. The defendant
10 contends that is not rebuttal evidence.
11 It's going to come in in some form, Mr.
12 Thompson, Mr. Bowen. The question is
13 whether it comes in in its entirety or
14 whether there are redactions consistent
15 with prior rulings of the Court, and
16 consistent with matters that are not really
17 rebuttal evidence. But the tape is going
18 to come in or the transcript is going to
19 come in or the testimony is going to come
20 in or a combination of those things is
21 going to come in.

22 MR. THOMPSON: You mentioned 2:15
23 you're going to send them home, but I do
24 want an opportunity to have these things
25 passed.

1 MR. BRITT: Your Honor, what I
2 will do the next hour and 15 minutes, I'll
3 find those portions in the transcript.

4 THE COURT: I'm going to direct
5 that counsel for the State and counsel for
6 the defendant meet immediately after we
7 conclude this morning with the transcript
8 and with the tape, and that you folks come
9 back into court at 1:45 prepared to argue
10 redaction matters or omission matters.

11 MR. THOMPSON: Your Honor, are we
12 going to have any break so we can get a
13 sandwich?

14 THE COURT: Same break I'm going
15 to have, send them across the street and
16 have them brought in.

17 MR. BOWEN: Your Honor, let me
18 say this. And again, it has to do with the
19 inconvenience of an -- of course, I'll
20 abide by the rulings of the Court, but I
21 have subpoenaed a thing which is here in
22 Robeson County which I need photographed.

23 THE COURT: A thing?

24 MR. BOWEN: A thing. And it is
25 here, and it has come from Hickory, North

1 Carolina, and there are two citizens who
2 are waiting for this court to be over so I
3 can go photograph that thing. And I think
4 I can do that in a half an hour. And that
5 is a subpoena that's been out there for
6 almost three weeks, but we just served the
7 day before yesterday, so we got it in here
8 the day before yesterday.

9 THE COURT: Where is the thing?

10 MR. BOWEN: The thing is about
11 four blocks from here.

12 THE COURT: Is the thing capable
13 of being moved closer?

14 MR. BOWEN: I think that would
15 cause a commotion if it were. It is
16 secured.

17 THE COURT: Okay. We're going to
18 meet at 1:45. Mr. Thompson, the burden
19 falls on you to meet with Mr. Britt. We're
20 going to come back at 1:45, we're going to
21 try to revolve any matters related to
22 redaction.

23 MR. THOMPSON: When you say the
24 burden falls on me, you mean the defense or
25 me personally?

1 THE COURT: No, sir. He's going
2 to be with the thing. That means you have
3 to be with Mr. Britt.

4 MR. THOMPSON: I got you.

5 THE COURT: That's what I meant.
6 Anything further?

7 MR. BRITT: No, sir.

8 THE COURT: If you'll recess us
9 until, for our purposes, 1:45.

10 THE BAILIFF: All rise.

11 (Lunch recess.)

12 THE COURT: Let the record
13 reflect all counsel are present, the
14 defendant is present in open court. All
15 members of the jury are absent at this
16 time.

17 Folks, we need to have somebody at
18 that door, make sure that jurors pass
19 directly through and that they are taken to
20 the -- or road-mapped to the jury room. If
21 we could have somebody positioned outside
22 to make sure they don't come around that
23 partition.

24 Mr. Britt, I understand you and
25 Mr. Thompson had an opportunity to go over

1 these matters in the transcript.

2 MR. BRITT: Yes, sir.

3 THE COURT: You folks want to be
4 heard -- Mr. Thompson, Mr. Bowen, it's
5 procedurally a matter for you folks in
6 terms of redaction. What matters do you
7 contend ought to be redacted from the
8 transcript?

9 MR. THOMPSON: Page 24, do you
10 have a copy of the transcript?

11 THE COURT: Yes, sir. Okay. 24.

12 MR. BRITT: Yes, sir.

13 THE COURT: Mr. Britt?

14 MR. BRITT: May I approach?

15 THE COURT: Yes, sir.

16 MR. BRITT: Your Honor, this
17 is --

18 THE COURT: Have you all got
19 something that's satisfactory between you
20 all?

21 MR. BRITT: For lack of a better
22 term, that is a working copy, whatever
23 matters have been redacted with a black
24 magic marker. Page 24 of the transcript,
25 there is a reference to the defendant

1 having been to prison. On the copy of the
2 transcript that's been handed up to the
3 court, for purposes of the record, the
4 portion that has been redacted reads as
5 follows. And if I could stand by the Court
6 to look at -- Mr. Myers has it marked, he
7 said I could use his.

8 Portions redacted read as follows:
9 Well, you, he was like yo, yo, inaudible,
10 had he ever been to prison because he
11 looked like somebody I knew, he was like
12 that, and then I told him I was in prison,
13 if I got drunk and stuff, and they was,
14 somebody was, you know what I'm saying.

15 THE COURT: Yes, same portion
16 I've got marked out.

17 MR. BRITT: Yes, sir.

18 THE COURT: Next one.

19 MR. BRITT: Page 31.

20 THE COURT: Yes, sir.

21 MR. BRITT: The portion that is
22 redacted begins at the first line.

23 THE COURT: Okay.

24 MR. BRITT: That's the guy you
25 thought was, you had been in prison with or

1 you all talked; answer yeah, yeah.

2 THE COURT: All that is redacted,
3 first three lines.

4 MR. BRITT: Yes, sir.

5 THE COURT: Next one.

6 MR. BRITT: Page 112.

7 THE COURT: Yes, sir.

8 MR. BRITT: That deals with a
9 break-in of a truck at 74 and 95.

10 THE COURT: Yes, sir.

11 MR. BRITT: Beginning about
12 midway of the page, says agent Myers,
13 portion that is redacted starts there,
14 continues for the remainder of page 112,
15 and stops on page 113.

16 THE COURT: Yes, sir.

17 MR. BRITT: Following -- at
18 line -- after line eight.

19 THE COURT: Okay.

20 MR. BRITT: Would pick up, and I
21 ain't never sold no dope before.

22 THE COURT: Okay.

23 MR. BRITT: Next entry appears at
24 page 120.

25 THE COURT: Did you all miss page

1 86?

2 MR. BRITT: Must have.

3 THE COURT: There's a reference
4 on page 86 about little bit more than half
5 the line down, answer by Mr. Green,
6 unintelligible, I got locked up, man, for
7 something, you know what I'm saying, for D,
8 you know, for defending myself and I spent
9 time in prison for something I shouldn't
10 have spent time in, and you think I'm going
11 to go through the police, I'm on parole.

12 MR. BRITT: Yes, sir, that should
13 come out.

14 THE COURT: All right.
15 Mr. Thompson, you agree with that? Page
16 86.

17 MR. THOMPSON: Yes, sir.

18 THE COURT: All right.

19 MR. THOMPSON: All the way down.

20 THE COURT: Down through "I'm on
21 parole." Next question reads, well, let me
22 tell you this, that would have been a whole
23 lot better than just trying to lie about
24 it, everything that you're telling us now.

25 MR. BRITT: That's related to the

1 answer before.

2 THE COURT: Yes.

3 MR. THOMPSON: So that comes out.

4 THE COURT: Yes, pick up with
5 Captain Art Binder, you're trying to do it
6 to yourself again, don't do it to yourself,
7 that needs to come out.

8 MR. BRITT: Yes, sir.

9 THE COURT: Then Agent Myers,
10 picks up with it's lies mixed in with the
11 truth, just a little bit, which I don't see
12 any problem with.

13 MR. BRITT: Right.

14 THE COURT: 86, beginning with
15 the defendant's answer as I've read it into
16 the record, down through the question of --
17 or statement by Captain Art Binder is out.
18 We need to mark your copy accordingly.

19 MR. BRITT: I'll do that.

20 THE COURT: All right.

21 MR. BRITT: I'll do that after I
22 retrieve this. Next entry I have would be
23 on page 120, middle of the page, Agent
24 Myers -- excuse me, 112. Involves the
25 truck break-in, I don't know if you

1 addressed that or not.

2 THE COURT: You did, 112 and
3 113. 120, answer, I done been to prison,
4 man.

5 MR. BRITT: Yes, sir.

6 MR. BRITT: And then the next
7 reference that should be deleted is on page
8 124, beginning with the answer that follows
9 Captain Binder's statement, you're going to
10 make it easy --

11 THE COURT: Cannot take a lie
12 detector test.

13 MR. BRITT: Yes, sir. From that
14 answer through the bottom of the page.

15 THE COURT: 125.

16 MR. BRITT: Over to page 125 and
17 then pick up again with Agent Myers'
18 statement, people are only going to believe
19 the truth.

20 THE COURT: Yes, sir.

21 MR. BRITT: Those were all of the
22 references that I found as we went through
23 this.

24 THE COURT: That's -- that's what
25 I've got. Anybody have anything else? 86,

1 the one that I was referring to, page 86,
2 about two-thirds, maybe a little bit more
3 than about half the way down.

4 MR. THOMPSON: On --

5 THE COURT: Yes, sir.

6 THE COURT: Question --

7 MR. THOMPSON: On page 124,
8 beginning on page 124.

9 THE COURT: 124 through 125 is
10 out, down through Lieutenant Henley's
11 questions, lie detector test --

12 MR. THOMPSON: -- tell you a lie.

13 THE COURT: Yes, all that is out.

14 MR. THOMPSON: Okay.

15 MR. BRITT: As a precautionary
16 matter, there had previously been testimony
17 that the Court had excluded involving David
18 Moore, in that he told the defendant to go
19 to the police. If the Court would turn to
20 page 58 of the transcript --

21 THE COURT: He was not questioned
22 about that either, pursuant to the order.

23 MR. BRITT: Yes, sir. If you
24 turn to page, I believe it's 58.

25 THE COURT: Captain Binder was

1 asking him questions about David Moore.

2 MR. BRITT: He's already told you
3 you needed to come talk to the police,
4 didn't he, told you two or three times, you
5 need to go turn yourself in to the police
6 and talk to them. Answer, well, he told me
7 when I called him. To comply with the
8 Court's previous ruling, that probably
9 ought to come out.

10 THE COURT: Mr. Thompson, Mr.
11 Bowen?

12 MR. THOMPSON: Wait a minute,
13 Your Honor, I'm trying to follow us.

14 MR. BRITT: Page 58, the
15 next-to-last question on that page, and the
16 answer that follows.

17 MR. THOMPSON: Your Honor, I'm
18 maybe not understanding what Mr. Britt, if
19 he'll repeat --

20 MR. BRITT: The Court previously
21 ruled that David Moore could not be
22 questioned about statements he allegedly
23 made to the defendant about advising him to
24 turn himself into the police.

25 THE COURT: Prior ruling of the

1 Court, they were not allowed to ask him
2 that on cross-examination. Consistent with
3 that ruling, the State is saying that that
4 needs to be omitted from the transcript.

5 MR. THOMPSON: Beginning at what
6 point?

7 MR. BRITT: The question, he
8 already told you you needed to come talk to
9 the police.

10 MR. THOMPSON: All the way down
11 to the end of the page.

12 MR. BRITT: No, and the answer,
13 well, he told me when I called him --

14 THE COURT: Which begins next
15 page.

16 MR. BRITT: Next line.

17 THE COURT: Next line, excuse
18 me. Tends to make the client look bad.

19 MR. THOMPSON: I understand.
20 Concerning -- all of it tends to do it. So
21 I'm concerned about the following
22 question --

23 MR. BRITT: That's relevant.

24 MR. THOMPSON: -- that follows
25 that.

1 MR. BRITT: That's relevant to
2 this proceeding. Mr. Moore has already
3 testified in his language, I saw a ring, I
4 saw a watch, I saw a car.

5 MR. THOMPSON: We'll object to
6 that.

7 THE COURT: You want it in?

8 MR. THOMPSON: I don't object to
9 the question and answer, question
10 beginning, he already told you you need to
11 come talk to police, didn't he. He told
12 you two or three times you need to go turn
13 yourself in to police and talk to him,
14 didn't he. Answer, he told me when I
15 called him -- I think that should be
16 redacted. I also think the following
17 question and answer should be redacted,
18 that's what I'm saying.

19 THE COURT: What's his answer,
20 Mr. Thompson, what is your client's
21 answer?

22 MR. THOMPSON: No.

23 THE COURT: Okay. Your objection
24 is noted for the record. Objection is
25 overruled. Exception is noted for the

1 record. Okay. Anything further, folks?

2 MR. BRITT: No, sir, those are
3 all the matters.

4 THE COURT: If you'll conform
5 this according, and any other objections
6 you folks want to note.

7 MR. THOMPSON: Yes, sir, we're
8 going to need to see all the copies of --

9 MR. BRITT: They are --

10 MR. THOMPSON: Excuse me. We're
11 going to need to see all the copies, and I
12 discussed with Mr. Britt just simply
13 marking through the copies will not suffice
14 because you can see through the ink, and he
15 agreed that what he would need to do is to
16 run a copy and then you won't see.

17 THE COURT: Not necessarily to
18 run the entire copy.

19 MR. THOMPSON: Just the pages.

20 MR. BRITT: For instance, we
21 would take page 24, run 13 copies of page
22 24.

23 THE COURT: And reinsert.

24 MR. BRITT: Yes, sir.

25 THE COURT: Yes, sir. We can do

1 that. We've got about five minutes. I
2 appreciate the effort. It now means that
3 we don't have to send the jury home. Means
4 that we can go forward this afternoon.
5 Only thing remaining is the videotape,
6 audio portion will have to be turned down.

7 MR. THOMPSON: Your Honor, the
8 other thing is that it was -- I don't know
9 who this is coming in through -- I mean --

10 THE COURT: Mr. Binder,
11 presumably.

12 MR. THOMPSON: Well, I know at
13 the suppression hearing, certain things
14 were on there with respect to who said
15 what, who asked the questions, Mr. Myers
16 specifically made corrections. The
17 transcript is not an accurate -- as it
18 stands now, does not accurately reflect who
19 said what.

20 MR. BRITT: When we went through
21 the --

22 THE COURT: I remember.

23 MR. BRITT: -- suppression
24 hearing, there were certain voices that
25 were misidentified. Mr. Myers, during the

1 suppression hearing, identified voices.

2 THE COURT: Same thing can be
3 done here in the presence of the jury.

4 MR. BRITT: From that time, from
5 my working copies I was making those
6 changes, these are made from my working
7 copy of the transcript.

8 THE COURT: Two ways to deal with
9 it. You all can stipulate as to the
10 correct version of who asked what, or raise
11 those matters and deal with them on
12 cross-examination.

13 MR. THOMPSON: Your Honor, may I
14 have a minute, please?

15 THE COURT: Yes, sir.

16 MR. BRITT: For the purposes of
17 the record, the item, the lines that appear
18 on page 58 that we discussed removing, I
19 have marked those through on this copy.

20 THE COURT: Okay.

21 MR. BRITT: And those that appear
22 on page 86 that the Court pointed out to us
23 have been removed.

24 THE COURT: Okay.

25 MR. THOMPSON: Your Honor, I'm

1 going to need time to look through the
2 transcripts.

3 THE COURT: Okay.

4 MR. THOMPSON: See if they have
5 been corrected.

6 MR. BRITT: There are -- there's
7 one copy that's been redacted. What I
8 would propose is that I take each page
9 that's been redacted, make 16 photostatic
10 copies, one for the Court, two for
11 Mr. Thompson, and Mr. Bowen, and then the
12 other 13 would be the transcripts that's
13 provided to the jury. Mr. Binder and
14 Mr. Myers have already redacted their
15 copies, and then I would retain this.

16 THE COURT: Okay.

17 MR. BRITT: Actually, I may need
18 to make an additional copy of the entire
19 transcript for the purposes of making it a
20 part of the record.

21 THE COURT: Yes, sir.

22 MR. BRITT: So that it's in its
23 entirety.

24 MR. THOMPSON: Your Honor, the
25 defendant wants me to object to the

1 transcript on the grounds that it's not
2 accurate, does not accurately reflect his
3 responses.

4 THE COURT: Noted. Overruled.
5 Exception is noted. Yes, sir.

6 MR. BRITT: Your Honor, it takes
7 about ten minutes to run an entire copy of
8 the transcript. So I would think within
9 ten minutes of making an entire copy, get
10 the others and then having to resemble
11 back --

12 THE COURT: I recognize that this
13 can't be done instantaneously. I recognize
14 it will take probably until about quarter
15 until. That is far better than losing the
16 entire afternoon.

17 MR. BRITT: Yes, sir.

18 THE COURT: That gives
19 Mr. Thompson an opportunity to examine.
20 That's no problem, we're at ease.

21 (Court stands at ease.)

22 THE COURT: Let the record show
23 that all counsel are present, and the
24 defendant is present in open court. Do we
25 have all jurors secured in the jury room?

1 Do we have copies available.

2 MR. BRITT: No, sir, not all of
3 them. I've handed 12 copies to counsel for
4 defense for them to examine, and I'm almost
5 complete making five additional copies.

6 MR. THOMPSON: Your Honor, if I
7 may be heard, the copies that we have
8 received, you can still see through the --

9 THE COURT: May I see,
10 Mr. Thompson?

11 MR. THOMPSON: Yes.

12 THE COURT: Are all the copies
13 like this?

14 MR. THOMPSON: Yes, sir. I mean,
15 I'm going to be honest, I haven't looked at
16 all the copies. I looked at three or four
17 in there, and they appeared to be the
18 same. Yes, sir. We're only talking about
19 a few pages.

20 THE COURT: Yes, sir.

21 MR. THOMPSON: Actually to be
22 exact, one, two, three, four, five, six,
23 seven pages.

24 THE COURT: What is your
25 suggestion?

1 MR. THOMPSON: They can't -- if
2 you can't do any better blacking out than
3 that, put some paper over it. You're only
4 talking about seven pages.

5 THE COURT: Who's got a black
6 marker?

7 MR. BRITT: May I approach?

8 THE COURT: Yes, sir.

9 Hand them up, Mr. Thompson.

10 MR. THOMPSON: Here, Your Honor.

11 THE COURT: Put them right there
12 on the stack.

13 If you'll read the pages off for
14 benefit of Ms. Gaines.

15 MR. BRITT: 24, 31, 58.

16 THE COURT: 86.

17 MR. BRITT: 86. 112, 120, 124,
18 125.

19 MR. THOMPSON: And Your Honor,
20 actually 112, through the top of 113.

21 THE COURT: Yes, sir. Folks, let
22 the record reflect that they will be doing
23 this in court, and anybody sees anybody
24 holding a copy up looking at the light, you
25 can put that in the record.

1 MR. THOMPSON: I beg your
2 pardon?

3 THE COURT: Jurors are going to
4 be looking at this in open court. If any
5 of the attorneys see anybody holding them
6 up, looking at them in the light, then you
7 can put that in the record.

8 MR. BRITT: Your Honor, may I
9 step to my office so I can assist in that?

10 THE COURT: Yes, sir. Ms.
11 Gaines, as you finish, if you'll hand those
12 over to defense counsel so they can examine
13 them.

14 MR. BRITT: May I approach?

15 THE COURT: Yes, sir.

16 MR. THOMPSON: Your Honor --

17 THE COURT: Yes, sir.

18 MR. THOMPSON: If we can get some
19 more magic markers, do you have any?

20 THE CLERK: Here.

21 (Brief pause.)

22 THE COURT: If you'll hand these
23 additional two copies to counsel for the
24 defendant.

25 Are they the additional copies?

1 MR. BRITT: Yes, sir, and they
2 have been marked.

3 THE COURT: We're dealing with
4 page 24, page 31, page 58, 112, 113, 124,
5 and 125.

6 MR. BRITT: And page 86.

7 THE COURT: 86, I'm sorry, I
8 forgot page 86.

9 (Brief pause.)

10 MR. THOMPSON: Your Honor, may I
11 be heard.

12 THE COURT: Yes, sir.

13 MR. THOMPSON: With respect to
14 page 122 of the transcript, the first
15 answer that appears on that page, that's
16 why I say you all assume that I killed the
17 man, you know what I'm saying, that would
18 be better, you know what I'm saying, that
19 be worse and -- inaudible. Then it reads,
20 I killed the man.

21 The defendant would object to that
22 portion of the transcript and request that
23 it -- that answer be redacted.

24 THE COURT: State want to be
25 heard?

1 MR. BRITT: Transcript reflects
2 what it reflects. It's a statement
3 allegedly made by the defendant.

4 THE COURT: Bottom line is the
5 transcript is not coming in by itself.

6 MR. BRITT: That's right.

7 THE COURT: Transcript is going
8 to come in in corroboration.

9 MR. BRITT: Yes, sir.

10 THE COURT: Have to be some
11 testimony, some foundation laid for it by
12 someone who was present during the taking
13 of the transcript, and I'm assuming that
14 there's not going to be any offer by the
15 State of a confession on the part of the
16 defendant in that regard. That's what the
17 concern is.

18 MR. BRITT: As I said, the
19 transcript speaks for itself.

20 THE COURT: It says what it says,
21 and it's a denial, it's not an admission.
22 The answer, that's why I say you all assume
23 now that I killed a man, you know what I'm
24 saying, that would be better, you know what
25 I'm saying, that would be worse -- it's a

1 denial. It's a statement that that's what
2 you law enforcement are assuming. That's
3 the way it's going to come in, correct?

4 MR. BRITT: Yes, sir, I mean,
5 there are not going to be portions that are
6 lifted.

7 THE COURT: In other words, the
8 State is not going to offer this on the
9 part of an admission of Mr. Green of any
10 kind. And you folks are free to bring it
11 out on direct examination whatever it
12 means.

13 MR. THOMPSON: Yes, sir. And the
14 objection is made to the transcript as
15 written. Previous objection was raised as
16 to the accuracy with respect to what
17 purports Mr. Green saying, and this is part
18 of the problem.

19 THE COURT: The audio is going to
20 be played, the jury is going to decide what
21 is said if anything.

22 MR. THOMPSON: Yes, sir.

23 THE COURT: Procedurally the
24 transcript is not coming in by itself.
25 State is not going to put 12 people in the

1 box, bring them back and say read this.
2 There's no foundation that's going to be
3 laid for that. State will have to elicit
4 testimony through Mr. Binder or one of the
5 officers who was present.

6 MR. THOMPSON: Yes.

7 THE COURT: Then potentially the
8 transcript can come in. During the playing
9 of any audio, which is offered in
10 corroboration.

11 MR. BRITT: Yes, sir.

12 THE COURT: Is that the way you
13 intend to do it?

14 MR. BRITT: Yes, sir.

15 THE COURT: Okay. And you folks
16 are free to bring out on cross-examination,
17 Mr. Green did not say that he killed
18 anybody, in fact he denied it.

19 MR. THOMPSON: Yes, sir, in fact,
20 that's --

21 THE COURT: Where is the harm,
22 where is prejudice?

23 MR. THOMPSON: Because it appears
24 in the transcript as a statement of fact,
25 and that's what Mr. Green's concern is.

1 THE COURT: I'm saying that can
2 be taken care of.

3 MR. THOMPSON: Yes, sir.

4 THE COURT: So your objection is
5 noted. Your objection is overruled.
6 Exception is noted for the record.
7 Transcript will only come in if a
8 foundation is laid for it, and
9 appropriately.

10 MR. THOMPSON: Your Honor,
11 there's an instruction we request,
12 precautionary instruction, I showed it to
13 Mr. Britt. It's basically something, we
14 wrote it. Basically we're asking the Court
15 to instruct the jury if this transcript is
16 given to them, that the -- the Court is
17 allowed to state -- to pass each juror a
18 document purporting to be a transcript of
19 the tape recording, a statement taken from
20 the defendant by law enforcement officers,
21 it's for you the jury to determine the
22 accuracy of the document which purports to
23 be a transcript of the tape recording.

24 THE COURT: Well, the transcript
25 would not be offered as substantive

1 evidence.

2 MR. THOMPSON: I understand.

3 THE COURT: It would only come in
4 for corroborative purposes. I would be
5 glad to give something along those lines
6 that they are to listen to the audiotape --

7 MR. THOMPSON: Yes, sir.

8 THE COURT: -- and the evidence
9 presented, the testimony presented, and
10 determine what if anything is credible
11 based on that.

12 MR. THOMPSON: Because we're
13 objecting to the transcript being passed,
14 but if the Court is going to allow it to be
15 passed, that's the instruction we request.

16 THE COURT: Have you got it
17 written out?

18 MR. THOMPSON: Yes, sir.

19 THE COURT: Hand it up.

20 MR. THOMPSON: Do I need to have
21 it marked as an exhibit?

22 THE COURT: Yes, that's the
23 appropriate thing to do.

24 (Defense Exhibit 41 was
25 marked for identification.)

1 THE COURT: State want to be
2 heard in opposition?

3 MR. BRITT: No, sir, I don't have
4 any problem with that.

5 MR. THOMPSON: Defendant's
6 Exhibit 41.

7 THE COURT: For the record, the
8 entire proposed instruction reads as
9 follows: The Court has allowed the taped
10 passage, or a document purporting to be a
11 transcript of the tape-recording of a
12 statement purportedly taken from the --
13 purportedly being my word in that later
14 context -- the defendant by law enforcement
15 officers. I instruct you that it is for
16 you the members of the jury to determine
17 the accuracy of the document which purports
18 to be a transcript of the tape-recording.

19 That's the language that you want me
20 to give. I will also instruct them if it
21 comes in, it's coming in for corroborative
22 purposes only and they are to consider it
23 for that limited purpose to the extent that
24 they find it is corroborative of any
25 testimony presented or any audiotaped

1 recording played for their benefit. Okay?

2 MR. BRITT: Yes, sir, that's
3 fine.

4 THE COURT: Ready to go?

5 MR. BRITT: Your Honor --

6 THE COURT: We've got
7 publication.

8 MR. BRITT: Yes, sir. I know
9 it's ten minutes until 4:00, and I
10 apologize for the delay that this has
11 caused in preparing these matters for
12 publication to the jury. As the Court is
13 aware, this audiotape itself is a couple of
14 hours in length. For the purposes of
15 scheduling, I don't know if it would be --
16 I don't believe it's appropriate to start
17 it today, stop it, and then come back.

18 THE COURT: We probably won't get
19 to that point today, but my point is this,
20 folks: This is the way we're going to deal
21 with it. If there's going to be a delay,
22 we're going to keep the folks there unless
23 there's some compelling reason to do
24 otherwise. The burden is on counsel and on
25 the Court to move these matters

1 expeditiously. And if it means coming
2 ready to go, if we have a delay like this
3 again, then this is what we're going to
4 do. We're going to send them into the jury
5 room while we get our stuff together, and
6 once we get our stuff together, we're ready
7 to go. But the burden is going to be
8 placed where it ought to be placed.

9 MR. THOMPSON: I wish I would
10 have had an opportunity to pass this to the
11 jury before the delay, but --

12 THE COURT: I'm not sending this
13 jury home again absent some compelling
14 reasons.

15 MR. BRITT: Yes, sir. The other
16 thing, and based upon representation of
17 counsel, I assume that they are going to
18 rest after the exhibits are published to
19 the jury. For purposes of the record, I
20 think it needs to be established, one,
21 whether the defendant intends to testify or
22 exercise his right not to testify, and that
23 he understands that right.

24 MR. THOMPSON: Your Honor, we're
25 going to -- excuse me, and thank you,

1 Mr. Britt. We're going to -- we would like
2 to address that issue, certainly outside
3 the presence of the jury.

4 THE COURT: Yes, sir.

5 MR. THOMPSON: I think it's
6 appropriate after we pass these items to
7 the jury, that the jury be dismissed for
8 the day in light of the hour, since he's
9 not going to -- so that we can make a
10 statement to the Court with respect to our
11 evidence and inquiry, proper inquiry can be
12 made, before we actually ^{going} rest. Because I
13 think that inquiry is ^{due} appropriately made --

14 THE COURT: Why can't we do that
15 now?

16 MR. THOMPSON: Because we haven't
17 rested yet. I mean --

18 MR. BOWEN: I have an issue, Your
19 Honor. I hold in my hand here a couple of
20 documents that have come from Southern Bell
21 in Atlanta, Georgia. And we have
22 subpoenaed duces tecum the custodian of
23 these records and the records themselves,
24 and the records have come pursuant to the
25 subpoena, from the wrong month. We asked

1 for records pertaining to a telephone
2 number belonging to Mr. Hubert Larry Deese,
3 521-3265. We wanted to know whether he
4 owned that number in the month of July. So
5 Southern Bell sent us the record for June.

6 Then we asked for records of the
7 Virginia Demery residence. We wanted to
8 know for July and so they also sent it for
9 June. Now, I don't know if the State wants
10 to consider this, the telephone record was
11 found by Agent Strong to belong to
12 Mr. Hubert Larry Deese in that month, and
13 it's part of Mr. Heffney's report.

14 I propose either for us to try to work
15 out a stipulation on that, or my
16 alternative request would be this: For the
17 Court to grant us leave, let us rest, let
18 the State put on rebuttal and then grant us
19 leave an surrebuttal to put these matters
20 into evidence, even though they may not
21 specifically rebut anything the State --
22 we've tried to get these items, we're in
23 good faith with it, we just ask for that.

24 THE COURT: Do you want to be
25 heard?

1 MR. BRITT: I would object. They
2 have had in their possession since January
3 1995 all the documents that were provided
4 on discovery. Included in that were the
5 telephone records identifying that
6 telephone number, including the documents
7 involving Ms. Demery. They have had an
8 opportunity, they could -- one, they could
9 have caused a writ to be issued for Larry
10 Deese to appear here, could have issued a
11 subpoena for Virginia Demery to appear
12 here, and ask her about the telephone
13 numbers.

14 THE COURT: When was your request
15 sent out, Mr. Bowen?

16 MR. BOWEN: For the telephone
17 records, Your Honor, we sent it several
18 days ago. I can't give you --

19 THE COURT: First time it was
20 sent was several days ago?

21 MR. BOWEN: Yes, sir.

22 THE COURT: I will not allow that
23 to come in in surrebuttal. You folks are
24 going to have to get the information during
25 your case in chief. You folks have had

1 ample opportunity to get it. And there are
2 alternatives that have been available to
3 you in terms of issuing subpoenas or writs
4 ad testificandum.

5 MR. BOWEN: True, but you
6 assume -- you don't assume the Bell
7 Telephone Company is going to send you the
8 wrong records. Had they given us the right
9 records, we would be okay.

10 THE COURT: I understand there's
11 been ample time. We started pretrial
12 motions in October. Jury selection started
13 in November. Trial started in January. So
14 I think you folks have had adequate time.

15 MR. THOMPSON: Your Honor, in
16 addition to the previous exhibits that we
17 indicated that we wished passed, we did not
18 include Defendant's Exhibit number 39. May
19 we be allowed to pass that also?

20 THE COURT: In my discretion,
21 yes, sir.

22 MR. THOMPSON: So we're ready for
23 the jury.

24 THE COURT: I'm going to bring
25 the jury in, I'm going to -- we still need

1 to address the matter, you intend to rest
2 tomorrow morning is what you're telling
3 me?

4 MR. THOMPSON: Yes, sir.

5 THE COURT: Okay. Sergeant
6 Meares, if we could have our jury, please.

7 (Jury in at 3:56 p.m.)

8 THE COURT: Good afternoon,
9 folks.

10 Members of the jury, by way of
11 explanation, we have been working
12 diligently to try to avoid delays in the
13 proceedings which might occur tomorrow or
14 thereafter in the context of the
15 presentation of evidence. And in that
16 regard, both counsel for the State, counsel
17 for the defendant and the Court took a
18 recess from 1:00 to 1:45 so that we could
19 attempt to accomplish those things
20 administratively that we needed to
21 accomplish, with a view toward minimizing
22 further delays in the case. And we very
23 much appreciate your continued cooperation
24 in that regard.

25 We have reached a position where we

1 think that we can go forward expeditiously
2 with the evidence with minimal delays
3 throughout the balance of this case, and
4 once again, we want to thank you for your
5 indulgence and for your cooperation.

6 Now, at this time, Mr. Thompson, you
7 have a proffer with regard to certain
8 defense exhibits for the purposes of
9 publication, is that correct?

10 MR. THOMPSON: Yes, sir.

11 THE COURT: Yes, sir, if you'll
12 state for the record what that proffer is.

13 MR. THOMPSON: Yes, sir, if it
14 please the Court, the defendant would ask
15 that Defendant's Exhibit Number 24 --
16 Defendant's Exhibit Number 24 being a
17 diagram; number 25, being another diagram
18 by Larry Demery of blood on the shirt which
19 he observed in the cornfield; Defendant's
20 Exhibit Number 26, a diagram drawn by Larry
21 Demery, excuse me, concerning the position
22 of the seat in the car; Defendant's Exhibit
23 Number 29, the affidavit, as testified to
24 by Larry Demery; Defendant's Exhibit 35-A,
25 35-B, 35-C, and 35-D, which are

1 photographs; and Defendant's Exhibit Number
2 39, the diagram of the house, residence of
3 Kay Hernandez which has been testified to
4 by several of the defendant's witnesses, we
5 desire that those items be passed to the
6 jury.

7 THE COURT: For the record, those
8 exhibits are now admitted, if they have not
9 been previously admitted, without
10 objection, is that correct?

11 MR. BRITT: That's correct.

12 THE COURT: Mr. Thompson, if
13 you'll hand those exhibits to either
14 Sergeant Meares or Major Watson. Folks, we
15 now have approximately one hour left. I'm
16 going to ask that you examine each of these
17 exhibits individually, carefully, take
18 whatever time you need, and without any
19 comment.

20 Once you have completed your
21 examination of all exhibits, that will
22 probably take the balance of the time today
23 with regard to all of you and all the
24 exhibits, but take whatever time you need,
25 we will stop at that point and go forward

1 promptly with the presentation of evidence
2 at 9:30 tomorrow morning. Again, we thank
3 you for your cooperation.

4 Sergeant Meares if you'll pass the
5 exhibits to the members of the jury.

6 While the jury is examining the
7 exhibits being published at this time, may
8 I see all counsel at the bench, please,
9 along with the defendant and the court
10 reporter.

11 (Whereupon a bench conference ensued
12 as follows.) (2-21-96.

13 THE COURT: Let the record
14 reflect all counsel present, Mr. Green is
15 present, the court reporter is present, the
16 presiding Judge is present. Can I safely
17 tell these folks that we expect the
18 evidence to be completed tomorrow? Or
19 Friday?

20 MR. BRITT: (Nods head
21 affirmatively.)

22 THE COURT: That there is a
23 conference which is required by law that I
24 hold with the attorneys, that we anticipate
25 doing that Monday morning?

1 MR. BRITT: Okay.

2 THE COURT: Okay. Unless you
3 folks feel like you may offer additional
4 evidence and that they could expect
5 arguments probably Tuesday.

6 MR. BRITT: That would be fine.

7 MR. THOMPSON: Why do we tie them
8 down? They have got to be here for the the
9 duration.

10 THE COURT: To at least at this
11 point let them know the end is --

12 MR. BRITT: In sight.

13 MR. BOWEN: Why don't you just
14 tell them realistically we expect to end
15 next week?

16 THE COURT: That's basically what
17 I'm going to tell them.

18 MR. BOWEN: That's.

19 THE COURT: See, they have got to
20 plan for Monday. We've already told them
21 that we're going to have a half day. If we
22 don't tell them that, then we expect the
23 case will get to that next week.

24 MR. BRITT: Because Monday is the
25 day you're introducing Judge --

1 THE COURT: And she has an eye
2 appointment in the afternoon.

3 MR. BOWEN: We can accommodate
4 that, I'm sure.

5 THE COURT: So with the consent
6 of all counsel, what I intend to tell them
7 is that they can expect to have the case by
8 Tuesday or Wednesday next week.

9 MR. BOWEN: Why do you want to
10 say Tuesday? Mid-week, and then --

11 THE COURT: Is that
12 satisfactory?

13 MR. THOMPSON: Mid-week.

14 THE COURT: Is that satisfactory,
15 Mr. Green? Do you consent to that?

16 MR. GREEN: Yes, sir.

17 THE COURT: Thank you, folks.

18 (Bench conference concluded.)

19 (Exhibits published to the jury.)

20 MR. BOWEN: May I step out one
21 moment, Your Honor?

22 THE COURT: Yes, sir.

23 MR. BRITT: Your Honor, may I
24 approach the Clerk?

25 THE COURT: Yes, sir. Have all

1 members of the jury had ample opportunity
2 to examine the exhibits given you to? If
3 so, please indicate by raising your right
4 hand. Let the record reflect all 13
5 members of the jury responded affirmative.

6 Folks, I've been authorized by the
7 attorneys to give you the following
8 information, and procedurally let me tell
9 you what our situation is. At the
10 conclusion of all the evidence, and we have
11 not concluded the evidence yet, the Court
12 is required to confer with the attorneys
13 about the instructions on the applicable
14 law that will be given by the Court.
15 Following that conference, you will hear
16 the arguments of the attorneys in this
17 case. Following the arguments of counsel,
18 you will receive instructions on the law
19 from the Court.

20 Now, after you have received the
21 Court's instruction on the law, the jury
22 will be allowed to deliberate in this
23 matter. I've been authorized by counsel to
24 indicate to you that we expect, anticipate,
25 that the matter will be submitted to the

1 jury about midweek of next week.

2 Now, having said that, folks, again, I
3 want to thank you on behalf of all counsel
4 for your continued patience and cooperation
5 with us. Are there any matters before I
6 release the jury, folks?

7 MR. THOMPSON: No, sir.

8 THE COURT: Ladies and gentlemen,
9 I'm going to release you until 9:30
10 tomorrow morning. During the overnight
11 recess, don't talk about the case among
12 yourselves or anyone else. Don't allow
13 anyone to say anything to you about the
14 case, to you or say anything in your
15 presence. If anyone attempts to do so,
16 it's your duty to inform us of that
17 immediately.

18 Don't form or express any opinions
19 about the matter. Don't have any contact
20 or communication of any kind with anyone
21 involved in the case. Avoid any exposure
22 to any media accounts which might exist in
23 connection with this matter, and don't
24 conduct any independent inquiry or
25 investigation or research of any kind.

1 Now as you folks are already aware, we
2 indicated that we will have a short day on
3 Monday. Ms. Haley, you'll be allowed to
4 attend that medical appointment. I may
5 have further information for you regarding
6 that tomorrow or Friday at the latest.
7 Have a good evening, we'll see you tomorrow
8 morning at 9:30. You're free to go.

9 (Jury out at 4:22 p.m.)

10 THE COURT: Folks, according to
11 my recollection, they received the exhibits
12 at approximately three minutes after 4:00,
13 is that about right?

14 MR. BRITT: I think so.

15 THE COURT: And it's now 22 after
16 4:00. What I subtly tried to communicate
17 six weeks ago to all counsel was that we
18 needed to be aware of our credibility with
19 the jury and how the way we conduct the
20 case may impact on that. I did it for both
21 sides because I felt it was in the interest
22 of both sides to be aware that in
23 presenting evidence they need to be aware
24 of what kind of reaction they were drawing
25 from the jury with regard to that evidence.

1 I'm not an advocate in this case, it's
2 not my job to try the case on behalf of the
3 State or counsel for the defendant. It is
4 my responsibility to do the best I can to
5 see to it that both sides get a fair trial
6 and a full hearing, and as I say, I subtly
7 tried to communicate that to all counsel
8 six weeks ago, two weeks into the
9 presentation of evidence.

10 Anything on behalf of either counsel?

11 MR. BRITT: No, sir.

12 THE COURT: Mr. Bowen,
13 Mr. Thompson?

14 Have a good evening, folks, see you
15 tomorrow morning at 9:30.

16 (Court adjourned.)

17

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1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

3

4 LUTHER JOHNSON BRITT, III, Esq.
5 District Attorney
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7 On Behalf of the Defendant:

8

9 ANGUS B. THOMPSON, Esq.
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10

and

11

12 WOODBERRY A. BOWEN, Esq.
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P.O. Box 846
Lumberton, North Carolina 28359

13

14

15 (February 22, 1996. Proceedings in open court.)

16

17

THE COURT: Good morning, folks.

18

Let the record show -- wait a minute,

19

Mr. Bowen is not here.

20

MR. BRITT: He's right there.

21

THE COURT: Okay. Let the record

22

show all counsel are present, that the

23

defendant is present in open court. Folks,

24

we've got a situation with one members of

25

the jury that I need to bring to

1 everybody's attention. Juror Number 11,
2 Linda Dial, apparently called Ms. Gaines
3 this morning, indicating that -- and Ms.
4 Gaines, if any of this is incorrect please
5 let me know, indicating as I understand it
6 that her child had apparently some signs
7 and symptoms of pneumonia earlier this
8 week. The child had been placed on
9 antibiotics.

10 Last night, as I understand it, the
11 child had some difficulty, and is now at a
12 medical facility in Dillon, South
13 Carolina. Is that accurate? Where they
14 are checking to determine what the child's
15 condition is. My understanding is that the
16 situation right now is that they are doing
17 chest x-rays to determine if the
18 antibiotics are working.

19 It appears that the child is on the
20 road to recovery. It's not entirely clear
21 at this point. But the bottom line is
22 Ms. Dial is not available at this time. As
23 I indicated, she did call this morning and
24 her last information was that she expected
25 to be here about two hours after she.

1 called, which would place her here
2 somewhere in the neighborhood of 11:00 this
3 morning.

4 That being our situation, obviously we
5 can't go forward at this time. My
6 immediate question is what could we do with
7 the balance of the jury. I don't like the
8 idea of sending them home because we don't
9 know exactly when Ms. Dial will arrive.
10 The only other options are to keep them in
11 the jury room for an extended period of
12 time. I'm reluctant to do that, because
13 they have spent enough time in the jury
14 room as it is over the last eight weeks.

15 MR. THOMPSON: Just let them go
16 until 11:00, or 11:30.

17 THE COURT: Well, there's some
18 chance she might come at 10:30, that's my
19 point.

20 MR. THOMPSON: Until 10:30.

21 THE COURT: That's the option
22 that I most favor. State want to be heard
23 as that?

24 MR. BRITT: No, sir, that's fine.

25 THE COURT: My intent is to bring

1 them in, apprise them generally what the
2 situation is, and release them until
3 10:30. Only risk that I see in that is
4 that it's 9:30 now, that gives them an
5 hour. There may be jurors in or about the
6 courthouse or courtroom. That's a concern,
7 but I think that's something that we can
8 eliminate by instructing them that they are
9 to return to the courtroom or the
10 courthouse at 10:30. State want to be
11 heard further?

12 MR. BRITT: No, sir, that's fine.

13 THE COURT: Mr. Thompson, Mr.
14 Bowen, you folks want to be heard?

15 MR. THOMPSON: No, sir.

16 THE COURT: Do we have all
17 remaining members of the jury secured in
18 the jury room?

19 THE BAILIFF: Yes, sir.

20 THE COURT: We've got 12 folks in
21 there now?

22 THE BAILIFF: Yes, sir.

23 THE COURT: All right. If you'll
24 bring them in. While we're waiting for
25 them to come in, are there any other

1 matters that we can address between now and
2 10:30?

3 MR. BRITT: I don't know of any.

4 THE COURT: You folks have any?

5 MR. THOMPSON: No, sir.

6 (Jury in at 9:31 a.m.)

7 THE COURT: Good morning, folks.
8 Ladies and gentlemen, I asked that you be
9 brought in so I could give you some
10 information about what our situation is
11 right now. As you are aware, Ms. Dial is
12 not with us this morning. We understand
13 that one of her children has had some
14 medical problems. It appears based on the
15 information that we have, that the child
16 apparently is on the road to recovery. But
17 the healthcare providers are checking the
18 status of the child at this point. The
19 information that we have is that Ms. Dial
20 will be available sometime around 11:00
21 this morning. She is with her child at the
22 moment at a healthcare provider.

23 I'm going to ask you folks -- I'm
24 going to release you until 10:30. If you
25 would, if you'll leave the courthouse and

1 if you'll return to the courthouse at 10:30
2 and go directly to your jury room. We
3 anticipate that we ought to be ready to go
4 somewhere between 10:30 and 11:00. We
5 don't know the exact time that she will
6 arrive, but we anticipate that we will be
7 prepared to go forward about that time.

8 Again, we very much appreciate your
9 cooperation in that regard. Again, I
10 instruct you that during this interval you
11 are to abide by all prior instructions of
12 the Court concerning your conduct. You're
13 not to talk about the matters among
14 yourselves or with anyone else, not allowed
15 to have anyone say anything to you or in
16 your presence about the case. If anyone
17 communicates with you about this matter or
18 attempts to do so, or says anything about
19 the case in your presence, it remains your
20 duty to inform us of that immediately.

21 Don't form or express any opinions
22 about this matter. Don't have any contact
23 or communication of any kind with anybody
24 involved in the case. Avoid any exposure
25 to any media accounts which may exist in

1 connection with this matter, and don't
2 conduct any independent inquiry or
3 investigation or research of any kind.
4 Again, folks, we appreciate your
5 cooperation. You folks are excused at this
6 time until 10:30.

7 (Jury out at 9:34 a.m.)

8 THE COURT: Let the record show
9 the following is being heard in the absence
10 of the jury. You folks indicated yesterday
11 you may present additional evidence. Are
12 you in a position to tell us what your
13 intentions are right now?

14 MR. BOWEN: Yes, sir, Your
15 Honor. There may be one or two very short
16 witnesses, we anticipate three exhibits and
17 one reference to an existing exhibit. I
18 would say no more than 20 minutes of
19 material.

20 THE COURT: Out of an abundance
21 of precaution, which I understand is a
22 favorite phrase of mine, are you folks in a
23 position to tell us what your exhibit is?

24 MR. BOWEN: Yes, sir. Well,
25 actually an exhibit that's already been

1 identified as defense Exhibit 14, which is
2 the telephone record.

3 THE COURT: Okay.

4 MR. BOWEN: And there are three
5 further exhibits yet unmarked --

6 THE COURT: Dealing with the
7 thing?

8 MR. BOWEN: Of a thing, yes, sir,
9 to wit, a Lexus automobile, the Lexus
10 automobile in question.

11 THE COURT: Well, quite frankly,
12 the reason that I asked is because there's
13 at least in my mind a question about a
14 change in condition which may or may not
15 make it admissible, and I thought that
16 perhaps that would be something that we
17 could deal with right now. In order for a
18 matter to be admitted in evidence for
19 illustrative purposes or otherwise,
20 condition has to remain unchanged from the
21 relevant time portion. Is that something
22 we can address right now?

23 MR. BOWEN: We can certainly
24 establish that this is the same car, via
25 the serial number. The interesting thing

1 is that all the photographs that the SBI
2 took, they never took one, or at least they
3 never gave us one, through the open window,
4 partially open window of the right-hand
5 side of this vehicle.

6 THE COURT: That in part would
7 determine admissibility, for what purpose
8 is this being offered. If it's being
9 offered for a specific purpose, and that
10 purpose indicates that there is no
11 significant change in condition, then the
12 issue of admissibility may be less
13 disputed.

14 MR. BOWEN: Then the other
15 issue -- if I may approach the bench so
16 Your Honor can see these pictures.

17 THE COURT: Yes, sir, come on up.

18 MR. BOWEN: The other significant
19 situation within the automobile is that you
20 will see that the driver's seat is tilted
21 back. It happens to be that the witness
22 will testify that he was present when it
23 was -- when the mechanism was activated, it
24 was put back as far as it will go, but the
25 interesting thing is that angle that is

1 created there is consistent with the
2 illustrative diagram that Mr. Demery drew
3 as to what the angle is, so I think we can
4 relate that to undisputable evidence.
5 Those two things, angle view into the car,
6 and situation of the reclined seat, is what
7 we intend to show.

8 THE COURT: Have you seen these,
9 Mr. Britt?

10 MR. BRITT: I've seen them. The
11 problem with Mr. Bowen's argument is while
12 he may say the back portion of the seat is
13 reclined in a manner similar to what
14 Mr. Demery described, there's no testimony
15 as to where the actual bottom portion of
16 the seat was in the car, and that would
17 affect any angle. What also affects any
18 angle is how far the defendant stuck the
19 gun inside the car when it was fired.

20 MR. BOWEN: Mr. Demery draws the
21 driver's seat with reference to the other
22 seat.

23 MR. BRITT: The other thing, Your
24 Honor, is they cannot show that that is a
25 fair and accurate representation of that

1 car as it existed on the night in question,
2 nor is the interior of the car in the same
3 position that it was in at the time.

4 MR. BOWEN: They --

5 THE COURT: We can do it one of
6 two ways, folks. We can do it now, argue
7 it -- ordinarily the foundation requires
8 someone to say yes, this is exactly the way
9 it looked on the night in question in terms
10 of the degree at which the seat is
11 reclined, the window being raised exactly
12 the way it was on the night in question,
13 any other pertinent matters being the same
14 as they were on the night in question.

15 MR. BOWEN: Interesting thing is
16 the SBI had the opportunity to do that, and
17 didn't, so we have to come and do it the
18 best that we can and let the jury relate
19 what they already have in evidence, which a
20 diagram of the interior of the car, the
21 seat, what Mr. Demery said, where
22 Mr. Demery said the window was --

23 THE COURT: Let me give you folks
24 a fair shot. Get some law between now and
25 10:00, or 10:30. We'll take it up between

1 10:30 and 11:00. I've already looked at
2 the law. So I'm going to ask you folks to
3 research the law, what you deem is
4 appropriate foundation for admissibility of
5 this. We'll take this up at 10:30, I'll
6 hear your arguments at that time, and you
7 folks can make an offer of proof at that
8 point.

9 MR. BOWEN: All right, sir.

10 MR. THOMPSON: Your Honor --

11 THE COURT: Yes, sir.

12 MR. THOMPSON: With respect to
13 the technology that's here in the
14 courtroom --

15 THE COURT: Yes, sir.

16 MR. THOMPSON: I just wanted to
17 make an inquiry to -- I mean, what's the
18 purpose of the earphones? I assume those
19 are speakers --

20 THE COURT: That's the person to
21 ask. He's the one who apparently is going
22 to utilize it.

23 MR. THOMPSON: Yes, sir.

24 MR. BRITT: Yes, sir. What you
25 see in the courtroom is a system by which

1 the audiotape interview of Mr. Green can be
2 played. The speaker that's in front of the
3 bench projects into the audience. The
4 stand to the right is an infrared signal
5 transmitter. The headphones work off of an
6 infrared signal. Each juror, participant
7 is given headphones so they can better hear
8 the video. What that enables us to do is
9 when we get to those portions that have to
10 be redacted, Mr. Green who is with the SBI
11 and Special Technical Services Division can
12 flip a switch on the console over here --

13 THE COURT: Which --

14 MR. BRITT: -- which cuts off the
15 infrared signal, which cuts the sound not
16 only from the headphones but from the
17 speakers as well, so no one hears that
18 except him through his earphones that are
19 connected to the tape recorder. And when
20 those areas have passed, he flips the
21 switch back on, and then the tape and the
22 sound picks up from that point forward.
23 This is to ensure that we don't play areas
24 that we're not supposed to get into.

25 THE COURT: Does that satisfy

1 your conscience?

2 Folks, while we're waiting --
3 apparently Ms. Dial is trying to get
4 through --

5 (Phone interruption.)

6 THE COURT: For the record, the
7 Court has just spoken to Ms. Dial who
8 indicated, and is reflected in the record,
9 hopefully that her child is apparently
10 okay. The antibiotics are apparently
11 working, she is on route, she should be
12 here by 10:30. All right.

13 Now, folks, as to Mr. Bowen, let me
14 back up to your request yesterday that the
15 Court allow camera to be focused on the
16 bench. Court denies that, notes your
17 exception to that. The Court emphatically
18 denies the Court has done anything
19 prejudicial to your client. I have given
20 you the opportunity, as well as Mr. Green,
21 to state any specifics that you want to for
22 the record.

23 The Court will continue you give you
24 that opportunity. The Court will allow you
25 to position any observers anywhere in this

1 courtroom that you want for the purposes of
2 making a record. As I indicated to you at
3 the outset of this trial, if you don't make
4 your record, I'll help you do it. So
5 that's my position. I think that that
6 would be distracting for the purpose of the
7 jury. You or Mr. Thompson, I'm assuming
8 that both of you folks aren't going to be
9 arguing at the same time. Either one of
10 you who is arguing to the jury, the other
11 person can position himself according -- or
12 designate for the purposes of the record
13 any individuals that you want to designate
14 as observers of the Court's conduct for the
15 purposes of establishing your record in the
16 case.

17 But as I say, the Court denies
18 emphatically the Court has done anything to
19 prejudice your client's right to a fair
20 trial. Anything further in that regard
21 from either Mr. Bowen or Mr. Thompson or
22 Mr. Green, you folks want to be heard
23 further?

24 MR. THOMPSON: No, sir.

25 MR. BOWEN: No, sir.

1 THE COURT: Mr. Green, do you
2 want to be heard further?

3 MR. GREEN: No, sir.

4 THE COURT: Mr. Britt, does the
5 State want to be heard further?

6 MR. BRITT: No, sir.

7 THE COURT: Any other matters we
8 need to address at this point, folks?
9 Okay. If you folks can meet back in court
10 at 10:30. Since we're going to have jurors
11 coming back in, if you'll have any
12 applicable law that you contend bears on
13 this, I can tell you that if you look up in
14 Strongs or otherwise, under demonstrations,
15 similarities, you'll find it. Okay. We're
16 at ease.

17 (Court at ease.)

18 THE COURT: Let the record show
19 that all counsel present, the defendant is
20 present in open court. Folks, I recognize
21 it's a little bit after 10:20, but in an
22 attempt to avoid the jury having to wait
23 any longer than possible, I asked Ms.
24 Gaines to call the District Attorney's
25 office and spoke with counsel for the

1 defendant shortly after we took the break
2 to indicate to them where I thought the
3 pertinent wall was in Strongs North
4 Carolina Index 4, Volume 13, Section 1440,
5 41, ad sec. Those sections deal with real
6 evidence.

7 But the principal is the same,
8 regardless of whether it's real evidence or
9 demonstrative evidence. In this case it's
10 a combination of photographs being offered
11 for the purposes of illustrating or
12 demonstrating matters related to real
13 evidence, that being the Lexus automobile
14 in question in this case, and I think the
15 law is applicable regardless of whether
16 we're talking about real or demonstrative
17 evidence.

18 But the basic law is set out in
19 Strongs Index 4 as follows. First of all,
20 under section 1440, the trial judge
21 possesses and must exercise the sound
22 discretion in determining the standards of
23 certainty require to show that an object
24 offered is the same as the object involved
25 in the incident giving rise to the trial,

1 and that the object is an unchanged
2 condition.

3 1441 deals with the burden of the
4 proponent of the evidence to establish the
5 identity in the unchanged condition of the
6 object sought to be offered. Failure to do
7 so means that the foundation is not met and
8 that the object, or in this case photograph
9 or illustrative or demonstrative evidence,
10 ought not be admitted.

11 In this case, Mr. Bowen, Mr. Thompson,
12 as I understand it, you have three
13 photographs which at this time are
14 unmarked, and we will mark them for
15 purposes of identification for the record,
16 which I understand you want to -- one
17 photograph depicts the VIN number, is that
18 correct?

19 MR. BOWEN: Yes.

20 THE COURT: That's to show the
21 identity being of the vehicle in question.

22 MR. BOWEN: And that would relate
23 to evidence already in evidence.

24 THE COURT: Other two photographs
25 purport to show views from outside the

1 vehicle taken from the passenger side
2 looking in to the vehicle, the window in
3 both of these photographs is partially
4 open, the seat is in a reclined position.
5 The difficulty that I see is that what is
6 shown with regard to the window and what is
7 shown with regard to the seat, the position
8 of the driver's seat, specifically.

9 There is no -- well, are you folks in
10 a position to offer evidence through any
11 witness that the photograph depicts the
12 window as it was on the date in question
13 and that the seat is as it was on the date
14 in question?

15 MR. BOWEN: Well, we can show
16 that the seat as it's shown in the
17 photograph relates to the diagram that
18 Mr. Demery drew as to where the thing was,
19 we can show that it relates in the sense
20 that Mr. Demery said within a couple of
21 inches, the window was about halfway down.
22 Actually the window being half way down or
23 partially way down or what we're
24 establishing is that is simply a view that
25 has not been made a part of the evidence

1 through the State --

2 THE COURT: What is the purpose
3 of offering the window down and the seat in
4 a position that it was in? Is it to
5 show -- as I understand -- in all candor,
6 as I understand comments that have been
7 attributed to you, your position is that
8 the physical evidence, presumably angle of
9 the window, angle of the seat, is
10 inconsistent, is inconsistent with physical
11 findings in the case. Trajectory, angle of
12 the wound entering the body, matters
13 related to that. Is that accurate?

14 MR. BOWEN: That is accurate.
15 And Mr. Britt's comments, while there's
16 some merit to what he says, where you've
17 got to put the seat in some position as far
18 as forward or backward, that is something
19 that he can bring out on cross-examination
20 by the witness who will have seen the
21 mechanical abilities of this seat to go
22 forward and backward? Actually, if it went
23 as far forward or far backward as it could,
24 makes no difference, it would still have
25 that same problem. That would -- that --

1 THE COURT: Who do you intend to
2 offer it through, Mr. Bowen?

3 MR. BOWEN: Mr. Garth Locklear,
4 who was present when the photographs were
5 made and he physically examined the car.

6 MR. BRITT: Mr. Locklear can't
7 testify as to the position of anything on
8 July 23rd.

9 THE COURT: Let's mark these
10 exhibits for the purposes of the record,
11 Mr. Court reporter.

12 MR. BRITT: As I understand it,
13 this is really being offered to establish
14 that it was physically impossible for the
15 events to have occurred as Mr. Demery
16 testified. Mr. Locklear wasn't there --

17 THE COURT: Testimony about --
18 from the pathologist who performed the
19 autopsy --

20 MR. BRITT: Yes, sir.

21 THE COURT: Given the other
22 testimony about physical matters related to
23 them.

24 MR. BRITT: Yes, sir.

25 THE COURT: If you'll bear with

1 me for one second. Mr. Court reporter, if
2 you'll mark these three exhibits with the
3 next three sequential numbers as
4 defendant's exhibits, please.

5 MR. BOWEN: I'll hand up a case
6 too, Your Honor.

7 THE COURT: I've got Oliver.

8 MR. BOWEN: I've got Oliver also,
9 Your Honor, but what I thought was --

10 THE COURT: Harbison is cited in
11 Oliver. Harbison is a real evidence case,
12 Oliver is a real evidence case, but the
13 principle is the same.

14 MR. BRITT: I have Harbison and
15 Campbell.

16 MR. BOWEN: I have Campbell also,
17 and I think it's important to notice that
18 Campbell talks about the fact that the
19 Court has discretion to determine if we're
20 dealing with something that is not
21 susceptible to alteration such as we will
22 consider.

23 THE COURT: Campbell is a real
24 evidence case, too, isn't it?

25 MR. BOWEN: But I thought --

1 MR. BRITT: Yes. Campbell is a
2 rape case.

3 THE COURT: What I wanted to find
4 out is what purpose was this being
5 offered. All right. So that we can allow
6 these to be marked, let's hold up for just
7 a moment, please.

8 If you'll mark those please,
9 Mr. Huseby.

10 (Defense Exhibits 42, 43, 44 were
11 marked for identification.)

12 THE COURT: For the record, the
13 three photographs previously referred to
14 have now been marked as Defendant's Exhibit
15 44, which purports to reflect the VIN
16 number, Defendant's Exhibit 43, and --
17 strike that. 42 and 43, which are the two
18 exterior views looking in to the vehicle in
19 question from the passenger side. All
20 right. Yes, sir, Mr. Bowen, do you want to
21 be heard further?

22 MR. BOWEN: Just to call your
23 attention to a couple of cases, Your
24 Honor. Books were out of the library and
25 the case base printer in the Public

1 Defender's Office doesn't work. We have
2 tried to get the technician down on that
3 several times. But I would have pulled for
4 you State versus Neumann, which is 308 NC
5 231, and that deals with grocery items
6 which were taken from the defendant's
7 possession, and the --

8 THE COURT: I'm familiar with
9 Neumann.

10 MR. BOWEN: These were items that
11 were not susceptible to material change and
12 therefore relaxed the showing requirement.
13 Also, State versus Norwood, 289 NC 424,
14 that was a case where the subject matter
15 was handcuffs, and the court deems that
16 handcuffs were objects --

17 THE COURT: I agree with you that
18 you have to take into account the nature of
19 the items sought to be introduced, the
20 purpose for which it is sought to be
21 introduced, and whether or not there is
22 sufficient evidence in the record from
23 somebody which either tends to show
24 explicitly or implicitly, that there has
25 been no material change consistent with the

1 nature of the object and the purpose for
2 which it's being offered. I agree with
3 you. Do you want to make an offer?

4 MR. BOWEN: Yes, sir.

5 THE COURT: Do you want to
6 call --

7 MR. BOWEN: Call Mr. Locklear.

8 THE COURT: Major Watson just
9 indicated by nodding his head apparently
10 that all members of the jury are in the
11 jury room. Is that true?

12 THE BAILIFF: Yes, sir.

13 THE COURT: You need to be
14 sworn.

15 JOEL GARTH LOCKLEAR,
16 being first duly sworn was examined and testified as
17 follows:

18 DIRECT EXAMINATION

19 THE COURT: Yes, sir.

20 BY MR. BOWEN:

21 Q State your full name, Mr. Locklear?

22 A Joel Garth Locklear.

23 THE COURT: If you'll bear with
24 me. You are the investigator with the
25 public defender's --

1 THE WITNESS: Office.

2 THE COURT: You've been assisting
3 Mr. Angus Thompson and Mr. Woodberry Bowen
4 in their defense of the case now before the
5 Court?

6 THE WITNESS: Yes, sir.

7 THE COURT: And on yesterday's
8 date, did you have occasion to see a Lexus
9 automobile?

10 THE WITNESS: Yes, sir.

11 THE COURT: Where did you see
12 that automobile?

13 THE WITNESS: In a parking lot
14 just off Fifth Street.

15 THE COURT: Mr. Bowen.

16 BY MR. BOWEN:

17 Q Mr. Locklear, did you examine the serial
18 number -- may I approach Your Honor?

19 THE COURT: Yes, sir.

20 BY MR. BOWEN:

21 Q Serial number of that automobile?

22 A Yes, I did.

23 Q In your presence did you see me make a
24 photograph of that serial number tag?

25 A Yes, sir, I did.

1 Q May I show you Defense Exhibit Number 44
2 for identification.

3 A Yes, sir, that is the serial number.

4 Q Does that depict the tag that you saw on
5 the car?

6 A Yes, sir. That's the one I showed you and
7 you photographed.

8 THE COURT: By tag, you're
9 referring to vehicle identification number,
10 is that correct?

11 BY MR. BOWEN:

12 Q Yes, sir, vehicle identification number.
13 All right. Did you go to the scene with a vehicle
14 identification number written down?

15 A Yes, sir, did I.

16 Q Where did you get that written material
17 from?

18 A Off the title that was introduced here as
19 Mr. James Jordan's Lexus automobile, 92.

20 Q Now, can you use defense Exhibit Number 44
21 to illustrate to the jury, or illustrate to his Honor
22 what you saw with regard to that VIN number?

23 A Yes, sir. This VIN number was on the door
24 close to the driver's side. The number was
25 JT8UZ30C9N0011121. It was also a VIN number like

1 this in the left-hand corner of the windshield down
2 at the bottom that I observed also.

3 Q Now, Mr. Locklear, you had never actually
4 seen that Lexus automobile before live and in person,
5 had you?

6 A Not live and in person, no, sir.

7 Q How had you seen that Lexus if you had?

8 A Through photographs that was supplied in
9 discovery and plus in the newspaper.

10 Q All right. And did the vehicle that you
11 saw yesterday in the parking lot on Fifth Street
12 appear to be from physical observations the same
13 vehicle?

14 A Yes, sir.

15 Q Was it the same model?

16 A Yes, sir.

17 Q Same type Lexus?

18 A Yes, sir.

19 Q Same color?

20 A Yes, sir.

21 Q Same shape?

22 A Yes, sir.

23 Q Same design?

24 A Yes, sir.

25 Q Did anything about the overall size and

1 shape of that automobile appear to be in any way
2 different from what you had seen in the SBI
3 photographs of what has been identified to be the
4 Jordan vehicle in this case?

5 A No, sir.

6 Q Now, the vehicle is owned by whom now?

7 A Ms. Virginia Lyse of High Point North
8 Carolina.

9 Q And she accompanied the vehicle?

10 A That's correct, sir.

11 Q You looked around the outside of the
12 vehicle and also on the interior where the seats
13 were, is that correct?

14 A Yes, sir.

15 Q Now, you have seen pictures of the seats
16 and the SBI photographs of the Jordan vehicle,
17 haven't you?

18 A Yes, sir.

19 Q And did you examine the seat, particularly
20 the driver's seat and the area where it went up and
21 down on an electric track?

22 A Yes, sir, I observed it, yes.

23 Q All right. Was Ms. Lyse asked to do
24 anything with respect to that seat?

25 A Yes, she was.

1 Q What was she asked to do?

2 A Asked to move the seat back and lean the
3 top portion of it back as far as it would go.

4 Q Okay. Now, that seat does go forward and
5 backward on a track, is that correct?

6 A Yes, sir, it does.

7 Q Was there any effort to put it any
8 particular place on that track, forward or backward?

9 A Not at that time, it wasn't any effort
10 except she moved it back, and leaned back the top
11 back portion as far as it would go backwards.

12 Q Now, when we took it outside, what did we
13 do with respect to the right-hand window?

14 A You moved it down or had her to move it
15 down to approximately half way down.

16 Q Now, the photographs which are now
17 marked -- may I approach Your Honor?

18 THE COURT: Yes, sir.

19 BY MR. BOWEN:

20 Q Which are marked 42 and 43, are these
21 photographs which were made in your presence
22 yesterday in the parking lot off Fifth Street?

23 A Yes, sir, they are.

24 Q And would you be able to use those
25 photographs to illustrate your testimony as to how

1 that vehicle in question looked when you saw it
2 yesterday?

3 A Yes, sir, I will.

4 Q And?

5 MR. BOWEN: Desire to introduce
6 it for the limited purpose for Your Honor.

7 THE COURT: Well, I'm going to
8 put photographs in the record for the
9 purposes of review at some point.

10 BY MR. BOWEN:

11 Q Now, in one of the photographs, to wit, in
12 Defense Exhibit 43, there is some sort of glass roof,
13 is that correct?

14 A That's correct, sir.

15 Q Had you seen evidence of that glass roof in
16 the photographs furnished by the SBI before?

17 A Yes, sir, I had seen evidence of it.

18 Q So that glass roof has not been added or
19 changed as far as that car in any way?

20 A It was either replaced or repaired.

21 THE COURT: I don't think that's
22 in dispute, Mr. Bowen. I think what is in
23 dispute is position of the seat, position
24 of the window, those are the only matters
25 that I can see that are in dispute.

1 BY MR. BOWEN:

2 Q The seat could not be put back any further,
3 could it, sir?

4 A No, sir.

5 Q And you -- before that seat was put in the
6 position that it was, you had seen the diagram which
7 Mr. Demery had drawn on the witness stand during his
8 testimony about the angle and position of the seat,
9 correct?

10 A Yes, sir, I had.

11 Q Was an effort made to put that seat in as
12 close -- in as close a position in terms of its
13 backward lean angle, consistent with Mr. Demery's
14 testimony?

15 A Yes, sir, effort was made to put it back
16 just as far as you could put it back.

17 Q And when you put it back that far, did it
18 come close in your opinion as being consistent with
19 Mr. Demery --

20 THE COURT: That's something you
21 know he can't testify to, Mr. Bowen.

22 BY MR. BOWEN:

23 Q Did you see Mr. Demery's exhibit?

24 A I seen his exhibit, yes.

25 MR. BOWEN: That's all.

1 THE COURT: Mr. Locklear, do you
2 know what condition the seat was in on July
3 23rd, July 22nd, July 24th, 1993?

4 THE WITNESS: Not from personal
5 knowledge.

6 THE COURT: Do you know what
7 position the window was in on July 22nd,
8 July 23rd, July 24th, 1993?

9 THE WITNESS: Not from personal
10 knowledge.

11 THE COURT: Mr. Britt, anything
12 on behalf of the State?

13 CROSS-EXAMINATION

14 BY MR. BRITT:

15 Q Mr. Locklear, is it your testimony that
16 basically the photographs were staged?

17 A Repeat your question.

18 Q Photographs were staged, weren't they?

19 A Photographs was staged?

20 Q Was staged.

21 A Photographs was -- if you want to use that
22 terminology, you can.

23 Q And you can't testify about the condition
24 of the car July 23rd, 1993 from your own personal
25 knowledge?

1 A No, sir.

2 Q Can't testify about where the defendant was
3 standing at the time the shot was fired, can you?

4 A No, sir.

5 Q Can't testify about the position
6 Mr. Jordan's body was in at the time he was shot, can
7 you?

8 A No, sir.

9 MR. BRITT: I don't have any
10 other questions --

11 BY MR. BRITT:

12 Q Mr. Locklear, you're aware that that car
13 was stripped, weren't you?

14 A I was aware that it was stripped of tires
15 and other items, parts of the car.

16 Q Windows were broken?

17 A Yes, sir.

18 Q Soon roof or moon roof was broken?

19 A Yes, sir.

20 Q Windshield was broken?

21 A According to the report, yes.

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

24 THE COURT: Folks?

25 REDIRECT EXAMINATION

1 BY MR. BOWEN:

2 Q After the stripping, the seats were not
3 removed, were they?

4 A No, sir.

5 Q And nothing would indicate that the general
6 shape, design or size of the car was changed, was it?

7 A No, sir.

8 MR. BOWEN: That's all.

9 THE COURT: Well, folks, wasn't
10 there some testimony by an SBI Agent that
11 there was at least a partial removal of a
12 portion of a passenger seat?

13 MR. BRITT: Yes, sir.

14 THE COURT: And that the seat, it
15 was removed. Did I misrecollect that?

16 MR. BOWEN: I don't know.

17 THE COURT: Thank you,

18 Mr. Locklear.

19 MR. BOWEN: Mr. Thompson recalls
20 it was the passenger seat, and that's not
21 in contention.

22 THE COURT: Well, question was,
23 was a seat removed.

24 Anything further on behalf of the
25 defendant as to the showing?

1 MR. BOWEN: No, sir.

2 THE COURT: State's objection to
3 Defendant's Exhibit 41, 42, 43, 44 is
4 allowed. Note the defendant's exception,
5 Court finding any probative value the
6 evidence might have under 401, and the
7 Court finds that it is minimal if it exist
8 at all is outweighed by considerations set
9 out in 403 in terms of confusion of the
10 issues, personally misleading the jury.
11 Defendant's exception is noted to the
12 ruling of the Court. Any other matters?

13 MR. BRITT: Yes, sir. Bring to
14 the Court's attention this morning Linda
15 Price, administrative assistant in my
16 office, was served with a subpoena duces
17 tecum by Mr. Bowen to produce appeal
18 transcripts of State versus Corbett Davis
19 and Brent Sweatt in court today.

20 THE COURT: Who?

21 MR. BRITT: Corbett Davis and
22 Grant Sweatt.

23 THE COURT: Who are those
24 individuals?

25 MR. BRITT: Corbett Harvey Davis

1 was an individual prosecuted here in this
2 district in 1993. I was the prosecuting
3 attorney. Special Agent Myers was the
4 local agent that was involved in the
5 prosecution of that case. Mr. Davis was a
6 client of Mr. Bowen's present Sweatt was a
7 co-defendant in the case who was
8 represented by Arthur Lane. Mr. Davis was
9 convicted of trafficking in cocaine.

10 THE COURT: Do those records have
11 anything to do with this case, folks?

12 MR. BOWEN: They do if Mr. Myers
13 testifies, Your Honor.

14 THE COURT: Well, Court directs
15 that before we get into any matters related
16 to those records, that you alert the Court,
17 counsel for the State, so we can hold a
18 voir dire in the absence of the jury and
19 before any matters are elicited in
20 testimony or attempted to be elicited in
21 testimony.

22 MR. BOWEN: Your Honor, I simply
23 ask that in the interim, be able to see
24 them, because I'll have to be able to --

25 THE COURT: I'm sorry.

1 MR. BOWEN: I need to see the
2 records, so I'll be prepared to go
3 forward. I just need a few minutes to look
4 through them.

5 MR. BRITT: For the record, all
6 he says, when he says appeal transcripts, I
7 don't know if he's talking about trial
8 transcripts or not.

9 MR. BOWEN: Trial transcripts.

10 MR. BRITT: We don't have them.
11 They may be in the Attorney General's
12 office.

13 THE COURT: Normally in North
14 Carolina, the AG does the transcript and
15 record on appeal.

16 MR. BOWEN: That's true. When I
17 was in the DA's office they all came back
18 here, but if they are not here, they are
19 not here.

20 MR. BRITT: So that the record is
21 complete, the information that -- the
22 records that we have, they relate to the
23 case of Corbett Harvey Davis, because James
24 Grant Sweatt was acquitted, was the
25 defendant's proposed records on appeal that

1 it was filed with the Clerk on September
2 the 7th, 19 --

3 THE COURT: Proposed records on
4 appeal prepared and completed by members of
5 your office or AG's office?

6 MR. BRITT: No, this was prepared
7 by Mr. Bowen.

8 MR. BOWEN: I can save some
9 trouble here. If he doesn't have the
10 transcript, okay, of the actual trial,
11 that's what I was looking for. And in
12 particular, the testimony of Mr. Myers. If
13 that's it, he doesn't have to go any
14 further.

15 THE COURT: Folks, the basis for
16 the Court's ruling in addition to the
17 matters sets out under 401, 403, is that
18 the foundation is incomplete to show that
19 the condition of the seats and the window
20 show anything of relevance to this case.
21 And so that your issue is preserved for
22 appellate review, that's the basis,
23 incomplete foundation, failure to establish
24 a proper foundation.

25 MR. BOWEN: Even so, regardless

1 of the position of the seat, regardless of
2 the position of the window, the things that
3 I have is immutable about that car is where
4 the window is in the car. The jury can
5 visualize the fact that the seat moves up
6 and down. He can establish that. I don't
7 mind establishing that. But to say in --
8 look at Rule 401, and if anything has a
9 tendency to prove the assertion in the
10 question, which would be the significance
11 of the angle and so forth, then it seems to
12 me it'd be relevant under 401.

13 THE COURT: Mr. Bowen, you had an
14 opportunity to examine, apparently
15 recognizing you had access to the vehicle,
16 photographs could have been taken, shown to
17 Mr. Demery, that would have waived your
18 foundation.

19 MR. BOWEN: Shown Mr. Demery?

20 THE COURT: Yes, sir. That would
21 have completed your foundation, by showing
22 through someone with knowledge what the
23 condition of the seat was on it with date
24 and time in question.

25 MR. BOWEN: Judge, problem is

1 that subpoena has been out for weeks. That
2 subpoena was only served by -- I said
3 Hickory the other way day, I meant to say
4 High Point, High Point Police Department,
5 day before yesterday. And first time we
6 had access to that car was then. I
7 couldn't subpoena it before the trial
8 started.

9 THE COURT: Bottom line is, what
10 I'm telling you is that Mr. Demery would
11 have been the appropriate witness --

12 MR. BOWEN: That's right. But by
13 the time that subpoena was served, and we
14 don't know why they sat on it but they did,
15 and they didn't serve it, and so by the
16 time Mr. Demery was off the stand, that was
17 the end of it.

18 THE COURT: Yes, sir. All
19 right. Any other matters?

20 MR. BRITT: I just wanted to take
21 exception to Mr. Bowen's comment someone
22 sat on the subpoena. They have had copies,
23 they have had access to the title history
24 to this Lexus. The discovery was done back
25 on July 7th, 1994.

1 THE COURT: Court notes for the
2 record that the indictment in this case is
3 a matter of record, and from the time of
4 indictment until the time of trial,
5 opportunities existed to get access to the
6 vehicle. We ready to go forward, folks?

7 MR. THOMPSON: May I have just a
8 moment to consult with my client?

9 THE COURT: Yes.

10 MR. BOWEN: Is anybody in the
11 audience from Southern Bell? Records will
12 show that we have subpoenaed these people,
13 we have continued to talk with, I say they
14 are robots because you don't get to talk
15 with a live person, you get to talk to
16 their machines, and they know they are
17 supposed to be here.

18 THE COURT: Do you have
19 additional evidence you want to put on,
20 folks?

21 MR. THOMPSON: Your Honor, the
22 defense is going to be in a position to
23 rest when the jury comes back. You can --
24 so if you could to make --

25 THE COURT: You're going to rest

1 as soon as I bring the jury in?

2 MR. THOMPSON: There's no more
3 evidence.

4 THE COURT: Mr. Thompson, do you
5 or Mr. Bowen or Mr. Green object if we hear
6 your motion at this time? And the Court
7 will direct that the record reflect that
8 the motion was made in a timely fashion.

9 MR. THOMPSON: We would move to,
10 again, Your Honor, to renew our motions to
11 be made at the end of the State's evidence
12 to dismiss each of the charges.

13 THE COURT: Court deems and
14 directs the record to reflect that the
15 motion is made in a timely fashion.

16 MR. THOMPSON: And for the same
17 grounds.

18 THE COURT: Same grounds being
19 asserted. Motion to dismiss based on the
20 defendant's contention that the evidence is
21 insufficient as a matter of law to be
22 submitted to the jury is denied, to which
23 the defendant in a timely fashion objects
24 and excepts for the record. You will have
25 an additional opportunity to renew your

1 motion as the State, as indicated it will,
2 presents additional evidence in rebuttal.
3 Okay.

4 MR. THOMPSON: When you say both
5 charges --

6 THE COURT: All charges, I
7 thought I said.

8 MR. THOMPSON: All charges. At
9 the end of the State's evidence, Your
10 Honor, you had indicated that you would
11 hold in abeyance any ruling on the theory
12 at least --

13 THE COURT: Still doing that
14 because I anticipate more rebuttal
15 evidence. You will have an additional
16 opportunity at that time to renew your
17 motion. Any argument you folks want to
18 make at that time as to the sufficiency of
19 the evidence on either theory or both
20 theories of first degree murder or any
21 other matters we can take up at that time.
22 Is that agreeable?

23 MR. THOMPSON: Yes, sir, Your
24 Honor.

25 THE COURT: All right. State

1 ready to go forward with rebuttal
2 evidence?

3 MR. BRITT: Yes, sir, we are. I
4 inquired yesterday in regard to the
5 defendant not testifying, whether or not he
6 understands --

7 THE COURT: We'll deal with that
8 right now.

9 MR. BRITT: Just so it's on the
10 record.

11 THE COURT: Mr. Green, you
12 understands, sir, that you have an
13 absolute -- you can remain seated, that's
14 okay. You have an absolute right to offer
15 evidence on your behalf?

16 MR. GREEN: Yes, sir.

17 THE COURT: And included in that
18 absolute right, you have an absolute right
19 to testify if you wish to do so, you
20 understand that?

21 MR. GREEN: Yes, sir, I do.

22 THE COURT: That is a right that
23 cannot be denied to you. You have the
24 right to elect to testify in addition to
25 offering additional evidence or you have

1 the right to choose not to testify. Do you
2 understand both of those rights?

3 MR. GREEN: Yes, sir.

4 THE COURT: At the appropriate
5 time, at the conclusion of all the evidence
6 in this case, your attorneys at the
7 instructions conference will be given the
8 opportunity to ask the Court to give a
9 specific instruction if you elect not to
10 testify. And specifically, they have a
11 right to ask the Court to instruct the jury
12 that your decision not to testify cannot be
13 used against you in any way by the jury.
14 You understand that?

15 MR. GREEN: Yes, sir.

16 THE COURT: Now, if you'll bear
17 with me, I'm going to read the specific
18 instruction that I'm referring to into the
19 record so you will be aware of what I'm
20 talking about.

21 I'm referring specifically to 10130 in
22 the North Carolina Pattern Instructions
23 which reads as follows: The defendant in
24 this case has not testified. The law of
25 North Carolina gives him this privilege.

1 This same law also assurance him that his
2 decision not to testify creates no
3 presumption against him.

4 Therefore -- the following two words
5 are my language, three words -- I instruct
6 you that his silence is not to influence
7 your decision in any way. You understand
8 that you have a right to request that that
9 instruction be given, and that if you make
10 that request, the Court will give this
11 instruction at the appropriate time?

12 MR. GREEN: Yes, sir.

13 THE COURT: You also have a right
14 to request that the instruction not be
15 given. You understand that?

16 MR. GREEN: Yes, sir.

17 THE COURT: Do you have any
18 question about anything that I've said to
19 you?

20 MR. GREEN: No, sir.

21 THE COURT: Is it your decision,
22 not your counsel, but your decision, not to
23 testify in this case? Mr. Thompson, you
24 were talking with Mr. Bowen, let me repeat
25 my question so you'll be aware of it. I'm

1 asking him if it's his decision not to talk
2 in this case, not his attorneys, but his
3 decision.

4 MR. GREEN: Yes, sir, it's my
5 decision based on the advice of my
6 attorneys.

7 THE COURT: I'm going to be real
8 candid. The reason I'm asking you that is
9 because at a later date, I don't want any
10 issue to arise about whether or not your
11 attorneys advised you not to testify. Now,
12 if that's so, you're free to tell me that.
13 But is it your individual decision not to
14 testify in this case?

15 MR. GREEN: I agreed with the
16 advice of my attorneys.

17 THE COURT: Okay. So without
18 getting into what your attorneys may have
19 advised you, you did receive advice from
20 counsel?

21 MR. GREEN: Yes, sir.

22 THE COURT: And you independently
23 agreed with that decision, is that
24 accurate? Well, let me be very direct with
25 you. Nobody has coerced you into not

1 testifying in this case, is that accurate?

2 MR. GREEN: No, sir.

3 THE COURT: Mr. Thompson, Mr.

4 Bowen have not coerced you into not

5 testifying in this case, is that accurate?

6 MR. GREEN: No, sir.

7 THE COURT: That's not accurate?

8 MR. GREEN: Yes, sir, it is
9 accurate. I mean, they did not coerce me.

10 THE COURT: So the record is
11 abundantly clear, your decision not to
12 testify may or may not have been based on
13 advice of counsel, but independent of that
14 advice you have come to the same conclusion
15 that it's your decision not to testify in
16 this case in your own behalf, is that
17 accurate?

18 MR. GREEN: Yes, sir, based on
19 the advice, yes, sir, exactly.

20 THE COURT: Mr. Bowen, Mr.
21 Thompson, you folks have anything to add?

22 MR. THOMPSON: No, sir.

23 THE COURT: Anything from the
24 State?

25 MR. BRITT: No, sir. I think

1 that's sufficient for purposes of the
2 record.

3 MR. THOMPSON: Your Honor, simply
4 just like to be given the opportunity to
5 rest when the jury comes in.

6 THE COURT: We're going to do
7 that. I'm going to bring the jury in, give
8 you the opportunity to do that formally.

9 MR. THOMPSON: Your Honor, may I
10 step out for a moment?

11 THE COURT: Yes, sir.

12 I'm going to give you an opportunity
13 once Mr. Thompson comes back, Mr. Green.

14 Mr. Green was looking at the screen on
15 the computer, apparently, based on what I
16 saw, and this may be wrong, reading back
17 some of the questions that I had asked him
18 and some of his answer, and I wanted to
19 give him an opportunity now to add
20 anything, take away anything, or saying
21 anything that he wanted to say.

22 Anything you want to add to what
23 you've already said in response to the
24 Court's questions, or do you have any
25 questions about anything that I've said?

1 MR. THOMPSON: Your Honor, the --
2 Mr. Green was conferring with counsel --

3 THE COURT: Yes, sir.

4 MR. THOMPSON: -- concerning the
5 State putting on now -- the State is now
6 going to be putting on rebuttal evidence,
7 and if they put on rebuttal evidence, we
8 may have an opportunity to put on
9 additional evidence --

10 THE COURT: It's called
11 surrebuttal.

12 MR. THOMPSON: Yes, sir. And I
13 explained that to him on a number of
14 occasions, and again, at that time if the
15 State puts on rebuttal evidence, I think
16 this inquiry needs to be made again with
17 respect to -- that's what he was concerned
18 about, with respect to surrebuttal, if any
19 decisions will be made at that time if we
20 choose, if he elects to testify. And
21 that's what the inquiry was about.

22 THE COURT: Folks, to the extent
23 that it's possible to do so, and I'm
24 capable of doing so, I'm going to make the
25 record complete. You'll have an additional

1 opportunity if that situation does arise.
2 You understand that, Mr. Green?

3 MR. GREEN: Yes, sir, thank you.

4 THE COURT: You're welcome. You
5 folks ready to go forward? Bring the jury
6 in, Mr. Watson.

7 (Jury in at 10:59 a.m.)

8 THE COURT: Good morning, ladies
9 and gentlemen.

10 Mr. Thompson, Mr. Bowen, will there be
11 additional evidence offered on behalf of
12 the defendant?

13 MR. THOMPSON: May it please the
14 Court, at this time the defense rests.

15 THE COURT: The defense having
16 rested, Mr. Britt, will there be rebuttal
17 evidence offered by the State?

18 MR. BRITT: Yes, sir, there will
19 be.

20 THE COURT: Ready to go forward?

21 MR. BRITT: Your Honor, at this
22 time we recall Special Agent Heffney.

23 THE COURT: Sir, you have been
24 previously sworn, and you remain under
25 oath.

DIRECT EXAMINATION

1

2 BY MR. BRITT:

3 Q On August the 16th of 1993, did you go to
4 Bob's Landing Mobile Home Park?

5 A Yes, sir, did I.

6 Q On August the 16th of 1993, you've
7 previously testified that you conducted what is
8 called a neighborhood canvass?

9 A Yes, sir.

10 Q What is a neighborhood canvass and what
11 does it involve?

12 A Neighborhood canvass is when an agent goes
13 to all surrounding houses in the neighborhood that's
14 close to the residence in question to interview any
15 occupants who may be in the adjoining properties to
16 see if they know anything or have seen anything.

17 Q Did you go to a mobile home in Bob's
18 Landing designated as lot number one?

19 A Yes, sir, I did.

20 Q When you went to that mobile home, who was
21 present?

22 A Spoke with a Mr. James Deese who was the
23 initial person on the interview. Also present were
24 Ms. Maryln Locklear, Larry Graves, a Bridget Scott
25 and Dwight Scott.

1 Q And did you speak with Maryln Locklear
2 there on August the 16th, 1993?

3 A Yes, I did.

4 Q Did you speak with her about a red Lexus
5 automobile on that occasion?

6 A Yes, I did.

7 Q What if anything did Ms. Locklear tell you
8 on August the 16th in regard to the red Lexus that
9 you inquired about?

10 THE COURT: Before you answer, do
11 you folks want a limiting instruction?

12 MR. BOWEN: Yes, sir.

13 THE COURT: Members of the jury,
14 the testimony now being elicited is being
15 offered for the limited purpose of
16 impeachment. As I have previously
17 explained that term or defined that term,
18 you are to consider it only for that
19 limited purpose, to the extent that you
20 find that it does have impeachment value
21 with regard to the prior testimony at this
22 trial, of the defense witness Maryln
23 Locklear. Yes, sir you may answer.

24 THE WITNESS: She told me she had
25 not seen the red Lexus in question.

1 BY MR. BRITT:

2 Q Did she tell you anything about seeing
3 Larry Martin Demery driving that car at 2:00 or 3:00
4 in the morning?

5 A No, sir.

6 Q Did she tell you anything about Larry
7 Demery at all?

8 A No, sir.

9 MR. BRITT: I don't have any
10 other questions -- oh, I'm sorry. If I may
11 with the Court's discretion.

12 THE COURT: Yes, sir.

13 BY MR. BRITT:

14 Q Mr. Heffney, on September 21st of 1993, was
15 an item of evidence transferred to you by a member of
16 the Cumberland County Sheriff's Department?

17 A Yes, it was.

18 Q What if any item of evidence was
19 transferred to you on September 21st, 1993?

20 A A microcassette of an interview conducted
21 of Daniel Green. I received this item, this evidence
22 on September 21st from Detective Cliff Massengill of
23 the Cumberland County Sheriff's Department.

24 Q At the time you received this
25 microcassette, what if anything was it contained in?

1 A It was contained in a white envelope and it
2 was stapled.

3 Q And did you place any item number on the
4 envelope?

5 A Yes, I placed item 90 on it.

6 Q And what if anything did you do with the
7 envelope containing the microcassette that you marked
8 as item 90?

9 A I kept it in my evidence locker.

10 Q At any time after you received it, did you
11 open the envelope and play the microcassette tape?

12 A Not at that point, no, sir.

13 Q At any time while the cassette was in your
14 custody, were there any items deleted from or added
15 to the microcassette in terms of the recording?

16 A No, sir.

17 Q After the microcassette came into your
18 possession did there come a time that you took that
19 microcassette to the SBI laboratory in Raleigh?

20 A Yes, sir, I took it to the technical
21 section to have a duplicate of the tape made, make it
22 in larger cassette size.

23 Q And who did you deliver that tape to?

24 A To Special Agent Billy Green.

25 Q And did you remain there with the evidence

1 while copies of the microcassette were made?

2 A Yes, I did.

3 Q And after copies of the microcassette
4 recording was made, were you given any items by
5 Special Agent Richards -- excuse me, Green?

6 A I was given the larger cassette tapes, and
7 I retained the original microcassette

8 (State's Exhibit 168 was
9 marked for identification.)

10 MR. BRITT: May I approach the
11 witness?

12 THE COURT: Yes, sir.

13 BY MR. BRITT:

14 Q I'm going to hand you what has been marked
15 as State's Exhibit 168 and ask you if you can
16 identify that?

17 A Yes, I can.

18 Q How are you able to identify State's
19 Exhibit 168?

20 A It has my handwriting as far as item 90 is
21 concerned.

22 Q And for the record what is State's Exhibit
23 168?

24 A State's Exhibit 168 is a white envelope
25 with markings on it stating Jordan homicide, my item

1 number, case number, written by Special Agent Billy
2 Green, and the name of Daniel Green, an OCA number
3 93-65938.

4 Q And is State's Exhibit Number 168, the
5 envelope in substantially the same condition as it
6 was in when you received it in September 1993?

7 A Yes, sir.

8 MR. BRITT: If the record will
9 reflect I'm removing the contents of
10 State's Exhibit 168.

11 THE COURT: Yes, sir.

12 BY MR. BRITT:

13 Q Did you ever actually see the microcassette
14 contained inside State's Exhibit 168?

15 A I saw it when it was being dubbed by
16 Special Agent Billy Green.

17 Q Did you place any markings on State's
18 Exhibit 168?

19 A On the tape --

20 Q Did you place any markings on the
21 microcassette tape?

22 A No, sir.

23 Q For the purposes of the record, I'm going
24 to mark the contents of State's Exhibit 168 as
25 State's 169.

1 THE COURT: Yes, sir.

2 (State's Exhibit 169 was
3 marked for identification.)

4 MR. BRITT: And for the purposes
5 of the record --

6 BY MR. BRITT:

7 Q Mr. Heffney, for the record, you observed
8 me remove the contents of State's Exhibit 168?

9 A Yes, sir.

10 Q I hold the contents of State's Exhibit 168
11 in my hands at this time.

12 A Yes, sir.

13 Q It's marked as State's Exhibit 169?

14 A Yes, sir.

15 Q For the record, is that a microcassette?

16 A Yes.

17 THE COURT: For the record, is
18 that the microcassette or is that a
19 container with a microcassette?

20 MR. BRITT: Excuse me, thank you,
21 Your Honor.

22 THE WITNESS: It's a container
23 with a microcassette.

24 (State's Exhibit 170 was
25 marked for identification.)

1 BY MR. BRITT:

2 Q Handing you now what's been marked as
3 State's Exhibit 170, for the purposes of the record,
4 can you identify what has been marked as State's
5 Exhibit 170?

6 A Yes, I can.

7 Q How are you able to identify the item
8 marked as State's Exhibit 170?

9 A Because I had the item, it was dubbed by
10 Special Agent Green in my presence, and he gave it to
11 me.

12 Q When you say that item 170 was dubbed in
13 your presence, what do you mean by that?

14 A Means that a copy of State's Exhibit 169
15 was placed on a larger microcassette -- a larger
16 cassette, excuse me.

17 Q And State's Exhibit 169, the micro -- the
18 container containing the microcassette, is that the
19 item that was removed from the SBI lab when Mr. Green
20 made the copies?

21 A Yes, sir.

22 Q And is State's Exhibit 169 and the tape
23 contained inside of it in substantially the same
24 condition today as it was when the copies were made?

25 A Yes, sir.

1 Q State's Exhibit 170, did the copy remain in
2 your possession after it was made?

3 A Yes, sir.

4 Q At any time -- how many copies of the
5 microcassette were made?

6 A Four.

7 Q State's Exhibit Number 170 also bears --
8 strike that. State's Exhibit Number 170, the
9 cassette tape container, does it appear to be in
10 substantially the same condition today as it was when
11 you received it from Special Agent Green?

12 A Yes, sir.

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

15 THE COURT: Mr. Bowen, Mr.
16 Thompson?

17 MR. BOWEN: Yes, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. BOWEN:

20 Q Agent Heffney, when you got the tape and
21 when you saw it dubbed by the other agent, did you
22 know whether or not there was information on both
23 sides of the audio cassette in question? I'm talking
24 about the State's 168 and the original
25 microcassette. Excuse me -- am I giving the wrong

1 one? The microcassette contained in the container
2 marked State's 169.

3 A Yes, sir.

4 Q The small microcassette, do you know
5 whether or not there was information on side one and
6 side two or just one side?

7 A I believe it was on both sides.

8 Q Do you know if that microcassette is full,
9 that is, is side one and side two completely full?

10 A I know side one is full, I can't recall if
11 side two is totally full.

12 Q Were you present when that tape recording
13 of that microcassette now contained in State's
14 Exhibit 169 was made, not when it was dubbed but when
15 it was originally made?

16 A No, sir.

17 Q Have you ever played the microcassette
18 that's in State's Exhibit 169 to determine whether or
19 not it will play on a standard microcassette
20 recorder?

21 A Have I done it myself personally?

22 Q Yes, sir.

23 A No, sir.

24 Q The dub was made through various audio
25 enhancement devices, is that correct?

1 A I don't know the name of the equipment. I
2 know -- I observed him put it and make the
3 duplication, but as far as the name of the equipment,
4 I don't know.

5 Q Now, Agent Heffney, in all of your
6 investigation of this case, you have had available to
7 you and accessible to you a microcassette tape
8 recorder, haven't you?

9 A No, sir.

10 Q What do you dictate your reports on?

11 A It's a tape recorder, large standard size
12 cassette recorder.

13 Q All right. So you do not own or have
14 access to a microcassette tape recorder?

15 A I do not own one. If I need one, I can get
16 one.

17 Q Okay. And you have not attempted to get
18 one for use in recording any of the interviews that
19 you had in connection with this case, have you?

20 A No, sir.

21 Q But the policy of the SBI regarding
22 recording of interviews is that it is, quote, agent's
23 discretion, is that true?

24 A Yes, sir.

25 Q In other words, you may record or you may

1 not record as you wish, correct?

2 A Yes, sir.

3 Q Now, Agent Heffney, you say that you went
4 to the -- a trailer out of Bob's Landing Mobile Home
5 Park and you talked to Maryln Locklear, is that
6 correct?

7 A She was in the crowd, yes, sir.

8 Q Did you establish that there was a -- did
9 you establish what kind of relationship existed as
10 between her and Larry Demery, that is, whether or not
11 they were friends?

12 A No, sir.

13 Q So you don't even know if they were
14 acquaintances, is that true?

15 A No, sir.

16 Q Now, you, in your canvass established the
17 presence in that trailer of a Larry Graves, is that
18 true?

19 A Yes, sir.

20 Q Did you see that man?

21 A Yes, sir.

22 Q And he was a black man, was he not?

23 A If I recall correctly, yes, sir.

24 Q And he was a young black man in his
25 twenties, correct?

1 A I don't recall all the details. I know
2 that Mr. Graves along with Ms. Locklear was standing
3 outside when I was conducting the interview. I did
4 not get a bio on them.

5 Q Did you have with you when you talked to
6 Ms. Locklear a photograph of a Lexus automobile?

7 A No, sir.

8 Q Did you ask her whether or not she knew
9 what a Lexus automobile was?

10 A Not as I recall, no, sir.

11 Q You just simply assumed that she might know
12 what that car was?

13 A No, I did not assume that.

14 MR. BOWEN: That's all.

15 THE COURT: Mr. Britt.

16 REDIRECT EXAMINATION

17 BY MR. BRITT:

18 Q When you asked her about the car, what did
19 you say?

20 A She advised she had not seen the car in
21 question, and it would have been a red Lexus.

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

24 RE CROSS EXAMINATION

25 BY MR. BOWEN:

1 Q So you asked her if she had seen a red
2 Lexus?

3 A Yes, sir.

4 Q And you did not establish whether or not
5 she knew what a Lexus was or looked like, did you?

6 A No, sir.

7 MR. BOWEN: That's all.

8 MR. BRITT: I don't have any
9 other questions.

10 THE COURT: Thank you, sir. Any
11 additional showing?

12 MR. BRITT: Yes, sir. We call
13 Special Agent Green.

14 THE COURT: Okay. If you'll come
15 up and be sworn, please, sir. There's some
16 exhibits there, if you'll hand those over
17 to me, please.

18 BILLY G. GREEN, JR.,
19 being first duly sworn was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 THE COURT: If you'll take the
23 witness stand, please, sir. If you'll
24 state your full name for the record.

25 THE WITNESS: My name is Billy G.

1 Green, Jr.

2 THE COURT: If you'll spell your
3 first and last name for the benefit of the
4 court reporter.

5 THE WITNESS: B-I-L-L-Y,
6 G-R-E-E-N.

7 THE COURT: Thank you, sir.
8 Mr. Britt.

9 MR. BRITT: Your Honor, the court
10 reporter needs an opportunity to change his
11 paper.

12 BY MR. BRITT:

13 Q Mr. Green, by whom are you employed?

14 A State Bureau of Investigation.

15 Q How long have you been employed by the SBI?

16 A 27 years.

17 Q And in what capacity do you work for the
18 SBI at the present time?

19 A Present time I am a Special Agent assigned
20 to the Technical Services Section of the Intelligence
21 and Technical Services Division.

22 Q And what are your responsibilities in the
23 Technical Services Section of the Intelligence and
24 Technical Services Section?

25 A I'm a -- currently, I'm assigned to duties

1 in telephone and communication intercept, electronic
2 countermeasures, countermeasures surveys, tape
3 enhancement, audiotape enhancement, and bomb disposal
4 and removal.

5 Q When you say audiotape enhancement, what do
6 you mean by that?

7 A One of the services that we provide to the
8 bureau and to local law enforcement is the
9 enhancement of audiotapes that have some technical
10 problem impairing the ability to, during playback, to
11 understand what is being said or what should be
12 heard.

13 Q Now, when you enhance an audiotape, do you
14 remove sound from the recording?

15 A No, sir.

16 Q Can you explain the process that is used to
17 enhance an audiotape?

18 A Audiotape enhancement involves playing back
19 the original recording and taking the signal
20 generated by that playback unit, channel it through a
21 number of different possibilities of electronic
22 filters and other equipment action, and then
23 re-recorded the products of that process on another
24 cassette such that if the process is successful, it's
25 about half art and a half science. After trial and

1 error, if you come up with a product that is more
2 intelligible, you re-record that product on another
3 cassette and both cassette and copies of the
4 enhancement cassettes are then returned to the agent
5 or officer.

6 Q And what equipment do you use in enhancing
7 the tape and then also in recording or dubbing a copy
8 of the tape?

9 A That's two different processes. In
10 enhancing we would play back the original cassette on
11 an audiotape playback unit that is rendered
12 technically incapable of recording. That signal is
13 then patched through any -- we have five different
14 possible pieces of electronic equipment that can be
15 used to modify the signal in different ways to
16 suppress certain types of background noise and
17 otherwise make it more intelligible. Standard
18 cassette, which is the only thing we produce as a
19 product, the standard cassette recordings are made on
20 Nikko D-100 cassette recorders.

21 Q What is meant by dubbing a tape recording?

22 A A dubbing is simply the straight copying of
23 a tape. And that's generally done to change it from
24 one format to another.

25 Q How is that accomplished?

1 A That's accomplished by playing the
2 submitted item back on a recorder, a playback unit
3 that's rendered incapable of recording, and patching
4 that directly into a recorder that records it on a
5 standard size cassette.

6 Q When you say that you play the original on
7 a unit that has been rendered incapable of recording,
8 what do you mean by that?

9 A I mean we have playback units for
10 microcassette and for standard cassettes in which the
11 recording erase head have been removed and rendered
12 incapable of operating, so all they will do is play
13 something back. This prevents the inadvertent
14 destruction of evidence.

15 Q And so if the recording heads are removed
16 from the playback unit, there is no way to add sound
17 to a recording, is that correct?

18 MR. BOWEN: Object to leading.

19 THE WITNESS: That's correct,
20 sir.

21 THE COURT: Sustained.

22 BY MR. BRITT:

23 Q And as the originals are copied, are any
24 portions erased?

25 A No, sir.

1 MR. BRITT: May I approach the
2 witness?

3 THE COURT: Yes, sir.

4 BY MR. BRITT:

5 Q I'll show you what has been marked as
6 State's Exhibit Number 168, ask if you can identify
7 that?

8 A Yes, sir. This is an envelope that bears
9 my handwriting, an item number, and my initials.

10 Q And what item number and initial appear on
11 State's Exhibit 168?

12 A I-4, which is a designation, I was given it
13 to for inventory purposes to keep it consistent with
14 the copies that were produced.

15 Q And what initials appear there?

16 A My initials, sir, BG.

17 Q From whom did you receive State's Exhibit
18 168?

19 A I processed this in the presence of Special
20 Agent Heffney.

21 Q After you processed the contents of State's
22 Exhibit 168, were copies made from the contents?

23 A Yes, sir, they were.

24 THE COURT: Now, what is meant by
25 processing, sir?

1 THE WITNESS: There was no
2 processing, there was no enhancement
3 involved with this particular item. It was
4 simply changing it from the microcassette
5 format to the larger format, which is
6 compatible with most dictation playback
7 units and a little easier for people to use
8 the copies in investigative process.

9 MR. BRITT: Record will reflect
10 I'm removing the contents of State's
11 Exhibit 168.

12 BY MR. BRITT:

13 Q I'll show you what has been marked as
14 State's Exhibit 169, ask you to examine that and tell
15 me if you can identify it?

16 A Yes, sir.

17 Q How are you able to identify it?

18 A It has my handwriting on the container, and
19 indicating that -- I-4 indication that is consistent
20 with what was on the envelope.

21 Q And what if anything was contained inside
22 the container marked as 169 when you received it?

23 A Container contained apparently a Sony
24 microcassette, because my labeling also appears on
25 the cassette.

1 Q What if any labeling appears on the
2 microcassette?

3 A My initials, item number I-4, inventory
4 case number, and the date.

5 Q And what if anything did you do with the
6 microcassette that's been marked -- that was
7 contained inside of State's Exhibit 169?

8 A It was placed in a playback unit, the
9 signal was played, and patched in to a recorder,
10 which is consistent with a copy process. This --
11 like I said, this is not an enhancement, this was
12 simply straight copy from one format to another.

13 Q After the copy was made of the
14 microcassette contained in State's Exhibit 169, what
15 if anything was done with the tape when it was
16 removed from the playback unit?

17 A The original tape?

18 Q Yes, sir.

19 A It would have been repackaged in the
20 plastic box and returned directly to Agent Heffney.

21 Q I'll show you what has been marked as
22 State's Exhibit 170, and ask you to examine that and
23 tell me if you can identify it?

24 A Yes, sir. This is a Maxell communicator
25 C-120 cassette, which is the type of tape that we use

1 for making copies, and that -- for any of the product
2 that we generate in our section.

3 Q And State's Exhibit 170 and its contents,
4 the cassette tape, do they bear any markings that you
5 recognize?

6 A Yes, sir, my handwriting, the initial
7 labeling, indication of copy I-4, which is labeling
8 consistent with a straight copy and no enhancement.
9 My initials, and the date.

10 Q What date appears on that?

11 A 19 of July.

12 Q Of what year?

13 A 1994.

14 Q Is State's Exhibit -- the cassette
15 contained inside of State's Exhibit 170, is it an
16 exact duplication of the microcassette that is
17 contained inside of State's Exhibit 169?

18 A Yes, sir, it is.

19 THE COURT: How do you know that,
20 sir?

21 THE WITNESS: Consistent with my
22 training and experience, and with the setup
23 that is used to transfer the audio signal
24 from one cassette to another, we generate
25 the playback signal, and we record it

1 directly with another unit.

2 THE COURT: During the copying
3 process or the recording process, are you
4 able to hear the audio portion that's being
5 played?

6 THE WITNESS: Yes, sir, we do.
7 We can hear it as an output of the -- both
8 as an output of the playback unit and as an
9 input to the recorder, and again the output
10 of the recorder, so there's three different
11 places that it can be monitored. It's
12 normally monitored back and forth between
13 the output of a playback unit, and the
14 output of the recorder in order to be sure
15 that the recorder is actually placing
16 signal on the cassette.

17 THE COURT: Mr. Britt.

18 BY MR. BRITT:

19 Q After the copy that is contained inside of
20 State's Exhibit Number 170 was made, was there any
21 information or signal erased from the copy?

22 A No, sir, this was a straight line copy,
23 consistent with a process that is normally used by
24 us.

25 Q And are State's Exhibits 170 and its

1 contents, the cassette tape, State's Exhibit 169 and
2 its contents, the microcassette and State's Exhibit
3 168, the white envelope in substantially the same
4 condition today as they were when you completed your
5 examination on July 19th of 1994?

6 A Yes, sir.

7 Q Mr. Green, you have brought some equipment
8 with you here in court today, haven't you?

9 A That's correct, sir.

10 Q What equipment have you brought with you
11 here to court, and if you will explain how it works.

12 A Yes, sir. We brought with us what we refer
13 to as a courtroom system. It's a playback system
14 designed to play audiotapes in the courthouse. It
15 has unique capability in that it uses the infrared
16 light spectrum as opposed to radio frequency to
17 transmit the signal within the courtroom. This
18 assures that the signal will not leave the courtroom,
19 and it also assures that no radio signal from outside
20 the courtroom can intervene or disrupt the
21 transmission or the playback.

22 The system is designed to play back from
23 any recorder, transmit the material, the information
24 to the infrared emitters over here in the corner.
25 Those send a light signal to each individual

1 headphones and each individual speakers placed around
2 the courtroom, and then they reproduce it as audible
3 sound.

4 Q And is there a means by which to control
5 the volume of the recording?

6 A Of the playback?

7 Q Yes, sir.

8 A Yes, there are two ways it can be
9 controlled, either as a volume on transmission, and
10 there's an independent volume control on each
11 receiver.

12 Q And what if anything happens if the
13 infrared signal is turned off?

14 A There is no -- there is no transmission of
15 any electronic data, and basically if we turn off the
16 infrared emitter, the signal stays inside that
17 control console.

18 Q And do you have capability to hear the
19 sound inside the control monitor?

20 A No, sir, we have capability of hearing the
21 sound from the recorder directly. So we can monitor
22 what the recorder is playing back separately from
23 what is also being emitted from the system.

24 Q Have you received training in the operation
25 of this equipment?

1 A Yes, I have.

2 Q What training have you received in the
3 operation of this equipment?

4 A By my supervisor upon my -- upon the
5 acquisition of this equipment, my exposure to it.

6 Q There are also audio speakers that are a
7 part of this playback system, is that correct?

8 A That's correct, sir.

9 Q Do those audio speakers that are
10 freestanding operate off of the same infrared signal?

11 A Yes, sir.

12 Q The sound that comes from the speaker is
13 the same sound that is heard in the head phones?

14 A Yes, sir.

15 MR. BRITT: Your Honor, at this
16 time I would ask the Court to exercise its
17 discretion and allow Mr. Green to
18 demonstrate how the system operates, using
19 not these tapes.

20 THE COURT: What is being used as
21 a part of this demonstration?

22 MR. BRITT: Music.

23 THE COURT: You folks want to be
24 heard?

25 MR. THOMPSON: Yeah. What kind

1 of music?

2 MR. BRITT: The best way to
3 describe it, it's elevator music, Musaak.
4 I mean, there's no words. It's simply
5 instrumental.

6 THE COURT: Mr. Bowen and Mr.
7 Thompson?

8 MR. THOMPSON: No, sir.

9 THE COURT: Yes, sir. With
10 the -- without objection, and with the
11 consent of the Court, in the exercise of
12 the Court's discretion, that will be
13 allowed. Yes, sir.

14 MR. BRITT: Mr. Green, if you
15 could step down.

16 BY MR. BRITT:

17 Q For the purposes of the record, can you
18 explain what you have done in terms of setting up the
19 system?

20 A Yes, I can. I have here a Marantz tape
21 recorder, that's standard bureau equipment, that is
22 used to play back standard size cassettes of the tape
23 and copy I-1 -- I-4, I'm sorry, copy I-4. And from
24 the output of this tape recorder we have patched the
25 signal into the console here. The console allows me

1 to adjust the volume and to control the transmitter.
2 The little green lights on the emitter indicates that
3 the power is on.

4 There's a switch here, on/off switch that
5 controls the output from this console to the
6 emitter. When this switch is in the off position,
7 the light is out, telling us that no signal is being
8 transferred through this wire to the emitter, and no
9 signal will be received on any of the receivers.
10 When this switch is in the on position, this signal
11 leaves this console by wire, goes to the infrared
12 emitter and is transmitted within this courtroom
13 only.

14 The receivers are the two standard open
15 court receivers, are audio speakers and they will
16 generate sound that everyone can hear. For the
17 convenience of the jury and the Court, we also have
18 provided individual headphones which will allow each
19 person who wears them to adjust the volume to their
20 own comfort level. And these headphones have three
21 controls, and I would like to explain those if it's
22 appropriate now.

23 If everyone who has one will look at the
24 bottom of their headsets, you see a red switch on one
25 side, a blue switch, and a little grey wheel on the

1 other side. Now, the red switch is the on/off
2 switch. When that is switched from the off position
3 to the on position, a little red light above it
4 should come on indicating there's power in the
5 battery, and that turns this unit on.

6 And the little blue switch has two
7 positions, one is mono, and one is stereo. This
8 transmission will be mono, so that should be
9 positioned in the MO setting. The little gray wheel
10 is simply a volume control that will allow you to
11 adjust the volume to your comfort level.

12 What I'll do now, I have some music. It's
13 "Mantovani In A Latin Mood," Your Honor.

14 (Brief pause.)

15 MR. BRITT: Can we approach?

16 THE COURT: If all counsel will
17 come up, please, and the defendant and the
18 court reporter.

19 (Whereupon a bench conference ensued
20 as follows.).

21 THE COURT: Let the record
22 reflect all counsel are present, the
23 defendant is present, along with the Judge
24 and the court reporter.

25 MR. BRITT: We're experiencing

1 some technical difficulties. It was
2 working this morning. If we could have the
3 morning recess, he's going to try to
4 trouble-shoot the system and find out what
5 it is.

6 THE COURT: There's a problem,
7 according to the bailiffs, with the wiring
8 in the courtroom. That may be it.

9 MR. BRITT: We had it running
10 this morning. We got here and set it up to
11 make sure it would work.

12 THE COURT: We'll take a break.
13 (Bench conference concluded.)

14 THE COURT: Ladies and gentlemen,
15 we are experiencing technical
16 difficulties. We're going to take the
17 morning break at this time. During the
18 break, please recall that it is your duty
19 to abide by all prior instructions of the
20 court concerning your conduct. Everyone
21 else please remain seated, the members of
22 the jury are excused. ^{we're} let me give you
23 until 12:00, folks.

24 (Jury out at 11:37 a.m.)

25 THE COURT: We're at ease,

1 folks.

2 (Brief recess.)

3 THE COURT: Let the record show
4 all counsel are present, the defendant is
5 present in open court. Are we ready to go
6 forward, folks?

7 If you'll bring the jury in, please.

8 (Jury in at 11:59 a.m.)

9 THE COURT: Mr. Britt? Do you
10 want to continue with your demonstration.

11 MR. BRITT: Yes, sir. I think
12 we've worked out the problem.

13 THE COURT: Okay.

14 THE WITNESS: I apologize for the
15 problem. If you look at the bottom of the
16 headsets, the three switches that I've
17 already described, the individual -- the
18 volume control is the little gray switch.
19 As we turn on the emitter, we have music
20 here in open court. But if you put on your
21 headsets, and turn the little gray -- turn
22 it on, with the red switch, and then move
23 the little gray wheel, you can adjust your
24 volume independently for each individuals.
25 Again, everything that's transmitted from

1 this emitter is picked up identically by
2 the speaker and by the headsets.

3 MR. BRITT: Your Honor, at this
4 time I don't have any other questions of
5 Mr. Green.

6 THE COURT: Mr. Bowen or
7 Mr. Thompson.

8 MR. BOWEN: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. BOWEN:

11 Q Agent Green, you have been in the field of
12 this audio engineering that you do for how long, sir?

13 A Sir, I'm not in audio engineering. I'm
14 basically a Special Agent who's been specifically
15 trained, beginning in November of 1992, in audiotape
16 enhancement and the operation of the equipment that
17 the bureau owns.

18 Q So you don't have a background in audio
19 engineering?

20 A No, sir, I'm not an engineer.

21 Q And these devices that you say that you
22 used sometime to enhance tapes, does that include a
23 cone filter?

24 A Yes, sir, it does.

25 Q How does a cone filter work?

1 A A cone filter allows you to illuminate
2 certain specific frequencies and the multiple
3 harmonics of that frequency. Example being the 60
4 cycle hum that you might hear resulting from
5 something being too close to an AC power source when
6 a recording is made.

7 Q And we're experiencing some of that type of
8 hum today, aren't we?

9 A No, sir, that hum I think is indigenous to
10 this courtroom, and in my opinion it's being picked
11 up by the electronic circuitry in each individual
12 receiver because of the amount of florescent lighting
13 and other wiring in the courthouse. I do not believe
14 that occurs on the tape in the sense that you're
15 hearing it in the headset. If we turn off the
16 emitter and the receivers remain on, that hum is
17 present on all the receivers. We were checking that
18 out this morning before court.

19 Q You have a cone filter available in your
20 chain of audio devices in between player and the
21 recorder, don't you?

22 A I can patch a cone filter in to that
23 circuit, yes, sir.

24 Q What is a parametric equalizer?

25 A It's another piece of equipment using an

1 enhancement process. It allows you to adjust upwards
2 and downwards different parts of the spectrum, the
3 sound spectrum. It's basically -- a parametric
4 equalizer is a more complex version of the treble and
5 base controls on the standard radio and tape player.

6 Q You can accentuate or notch out certain
7 limited frequency ranges, can't you?

8 A With a parametric equalizer, yes, sir.

9 Q What is a graphic equalizer?

10 A I don't know, sir.

11 Q You don't have a graphic equalizer?

12 A No, sir.

13 Q What is a compressor limiter?

14 A I do not have, but a compressor limiter.

15 As I have learned from reading the literature, a
16 compressor limiter performs a function of diminishing
17 the difference between the loudest and the faintest
18 of the sounds.

19 Q You did not use a compressor limiter when
20 the chain -- when you made the dub of the tape that
21 you're about to play?

22 A No, sir. This was a direct line patch from
23 one playback unit to a recorder.

24 Q Well, did you play the original material
25 from the original microcassette that is contained in

1 State's Exhibit 169, did you play the original
2 material in the microcassette that is inside State's
3 169?

4 A The microcassette that was up here, that is
5 the microcassette, yes, sir.

6 Q And you could hear it? Sir?

7 A Yes, sir.

8 Q You could understand it?

9 A I presume. I don't recall the content of
10 the tape at all, sir.

11 Q Well, if you didn't hear the content of the
12 tape then how can you say that --

13 THE COURT: Mr. Bowen, that's not
14 what he answered. Rephrase.

15 BY MR. BOWEN:

16 Q Did you hear what was on the original tape
17 contained in State's Exhibit 169?

18 A Yes, sir, I heard the sound, yes, sir.

19 Q Well, now, those sounds would be capable of
20 being played in a standard microcassette --

21 MR. BOWEN: May I approach?

22 THE COURT: Yes, sir.

23 BY MR. BOWEN:

24 Q -- standard microcassette recorder just
25 like the one that I'm about to hand you, is that not

1 true?

2 A I presume so, yes, sir.

3 Q How much does all this equipment cost that
4 you've brought here in this courtroom today?

5 MR. BRITT: Objection.

6 THE COURT: Sustained on a
7 relevance ground.

8 BY MR. BOWEN:

9 Q What is the necessity for having dubbed
10 anything if you were able to play the standard
11 microcassette contained in State's 169 in a standard
12 microcassette recorder, what was the necessity to do
13 all this?

14 A Sir, I can't respond to that question. I
15 was responding to a request from Special Agent
16 Heffney to produce duplicates of the cassettes as I
17 recall. Our high speed duplicator only works with
18 standard sized cassettes. If we're going to make
19 multiple copies in a convenient way, we have to run
20 one real time copy between the microcassette to a
21 standard cassette and then use the high speed
22 duplicator to produce the additional copies.

23 Q How many copies did you make?

24 A I don't recall exactly. Special Agent
25 Heffney I believe indicated we made four.

1 Q But you could have made four real time
2 copies directly from the original microcassette
3 contained in State's 169?

4 A Yes, sir, we could.

5 Q Now, when you make a copy of one tape to
6 the next tape, it has been your testimony that you
7 end up with an identical copy, is that true?

8 A I end up with a recording of the audio
9 signal generated by the playback unit that was used.

10 Q Yes, sir. And when that audio signal is
11 recorded, you get an increase in noise from the
12 original to the dub, do you not?

13 A Only if the gain control or the volume
14 control, input volume control from the -- on the
15 recorder was balanced higher than the original audio
16 output of the original thing. Shouldn't be any
17 increase in noise. There may be a -- I don't -- this
18 was made as a direct line patch dub with the output
19 level and input level between the two recorders
20 matched to some midpoint so that the recording could
21 reflect as best it could an exact copy of the
22 original.

23 Q What is signal-to-noise ratio?

24 A I don't know.

25 Q Well, are you testifying that when a person

1 records one cassette to another cassette, that the
2 second cassette is not noisier, that is, does not
3 have more tape hiss or distortion than the first
4 tape?

5 A It being a first generation copy, there'd
6 be some loss in amplitude. I think though in
7 response to your question, one of the advantages of
8 going to a standard speed, standard size cassette, is
9 that the copies lose less quality going to the larger
10 format than if we made them from small format to
11 small format.

12 Q Then what you're saying, once you got your
13 standard cassette then you copied that again in a
14 high speed copier, is that correct?

15 A That's correct.

16 Q High speed copier enable you to make a copy
17 of a half hour to 45 minute cassette all in about two
18 minutes, eight times the normal speed?

19 A Not quite two minutes. I think a little
20 longer than that, but it's much shorter time period
21 than a real time copy.

22 Q You've got an eight times copier?

23 A I don't know exactly what it is, sir.

24 Q When you run it through a high speed copier
25 you pick up even more distortion and noise, don't

1 you?

2 A There will be some tape hiss. Any time the
3 tape passes over the head, it generates some hiss,
4 background hiss, yes, as -- so I've been told.

5 Q You don't know whether -- strike that. You
6 didn't see the tape recorder that made the original
7 recording, the original microcassette that is
8 contained in State's Exhibit 169, did you?

9 A No, sir.

10 Q You don't know whether or not that tape
11 recorder is equipped with a compressor limiter, do
12 you?

13 A No, sir.

14 Q But you do know that a compressor limiter
15 will make softer the loud sounds, and make louder the
16 soft sounds, won't it?

17 A I don't know if that's exactly the
18 explanation. As I said, sir, I don't have that
19 equipment. We would like to acquire one. It's used
20 in a problem that's called near-far, where one voice
21 is closer to the microphone than the other, and it
22 reduces, as I'm told and as I've read in the
23 literature, it reduces the difference between the
24 loudest and the faintest sounds.

25 Q So in other words, if a compressor limiter

1 is on, and someone is shouting, then the compressor
2 limiter will reduce that sound to where it appears to
3 be lesser in volume, correct?

4 A I don't know, sir.

5 Q Did you form an opinion whether or not a
6 compressor limiter was operating when the original of
7 the cassettes contained in State's 169 was made?

8 A No, sir.

9 MR. BRITT: Objection.

10 THE COURT: Overruled.

11 BY MR. BOWEN:

12 Q Sir?

13 A I don't have an opinion, sir.

14 Q What happened that you weren't able to play
15 your tape a little while ago?

16 A I suspect one of two things. I may have a
17 bad output connector in the other recorder. Or we
18 also had a little problem with the tape on this
19 particular -- this Mantovani tape slipping off of the
20 compressor pad in the cassette and not passing on the
21 playback head. In any event, we replaced the
22 recorder and it works now.

23 MR. BOWEN: May I approach?

24 THE COURT: Yes, sir.

25 MR. BOWEN: Do you have State's

1 169 -- may I, Mr. Britt?

2 MR. BRITT: It's right there.

3 MR. BOWEN: Let the record show
4 that I have removed the contents of State's
5 Exhibit 169, a microcassette.

6 BY MR. BOWEN:

7 Q Would you insert that into the
8 microcassette recorder in front of you?

9 A Sir, I have no experience with this
10 recorder. And I would rather not.

11 Q All right, sir.

12 THE COURT: Would you like to do
13 it, Mr. Bowen?

14 MR. BOWEN: I would be happy to.

15 THE COURT: Yes, sir.

16 MR. BOWEN: Let the record show,
17 please, that I have inserted the cassette,
18 I am pushing what is the play button. My
19 finger is at least three-eighths of an inch
20 away from the record button. May I, Your
21 Honor?

22 THE COURT: Yes, sir.

23 MR. BOWEN: I've reduced the
24 speed.

25 BY MR. BOWEN:

1 Q Could you hear that all right, sir?

2 A Yes, sir.

3 Q What is the necessity for all this?

4 MR. BRITT: Objection.

5 THE COURT: Sustained.

6 MR. BOWEN: That's all.

7 THE COURT: Anything further?

8 MR. BOWEN: No, sir.

9 THE COURT: Mr. Britt.

10 MR. BRITT: I don't have any
11 other questions.

12 THE COURT: Thank you, sir, you
13 may come down.

14 MR. BOWEN: Your Honor,
15 Mr. Thompson has properly pointed out for
16 the record, for the record, if I may, I
17 would like to place the exhibits where I
18 found them. May I approach?

19 THE COURT: Yes, sir.

20 Any further showing for the State?

21 MR. BRITT: Yes, sir. At this
22 time we call Art Binder.

23 THE COURT: If you'll come up and
24 be sworn, please, sir.

25 ARTHUR TROY BINDER,

1 being first duly sworn was examined and testified as
2 follows:

3 DIRECT EXAMINATION

4 THE COURT: If you'll take the
5 witness stand, please sir. State your full
6 name for the record, please.

7 THE WITNESS: My name is Arthur
8 Troy Binder. Last name is spelled B I N D
9 E R.

10 THE COURT: Thank you, sir.
11 Mr. Britt.

12 BY MR. BRITT:

13 Q In July of 1993, by whom were you employed?

14 A Cumberland County Sheriff's Department.

15 Q In what capacity did you work at the
16 Cumberland County Sheriff's Department in July of
17 1993?

18 A I was chief of detectives with the rank of
19 captain.

20 Q Are you presently employed by the
21 Cumberland County Sheriff's Department?

22 A No, sir, I am not.

23 Q Who are you presently employed by?

24 A Loss prevention supervisor with Wal-mart
25 Corporation.

1 Q How long were you employed with the
2 Cumberland County Sheriff's Department?

3 A Right at 11 years.

4 Q Did you have any other law enforcement
5 experience prior to that?

6 A No, sir.

7 Q As chief of detectives with the Cumberland
8 County Sheriff's Department, did you head the
9 Cumberland County Sheriff's Department's
10 investigation into the homicide of James Raymond
11 Jordan?

12 A Yes, sir, I did.

13 Q On August the 14th of 1993, did you have an
14 occasion to come to Robeson County as a part of your
15 investigation?

16 A Yes, sir, I did.

17 Q What if any officers from Cumberland County
18 accompanied you to Robeson County as part of your
19 investigation?

20 A Lieutenant Jim Henley, Sergeant Don Smith.
21 He's now Lieutenant Smith. Cliff Massengill, the
22 Sheriff at that time, Morris Bedsole, and there could
23 have been others.

24 Q On August the 14th of 1993, did you have an
25 occasion to go to a mobile home located in a small

1 mobile home park off of Back Swamp Road here in
2 Robeson County?

3 A Yes, sir, I did.

4 Q When you went to that mobile home, did you
5 go there with Special Agent Randy Myers of the State
6 Bureau of Investigation?

7 A Yes, sir, I did.

8 Q When you went to that mobile home, tell us
9 what you found there.

10 A Well, when we first drove up to the mobile
11 home, we saw someone looking out the window of the
12 mobile home. We pulled up to the front of the mobile
13 home, and myself and Agent Myers exited the car, went
14 to the front door, Agent Myers knocked on the door,
15 and a lady that come to the door, we later identified
16 as Ms. Green.

17 Q And did you identify yourself at that time?

18 A Yes, we did.

19 Q How did you identify yourself?

20 A As Captain Art Binder with the Cumberland
21 County Sheriff's Department.

22 Q Were you wearing a uniform?

23 A No, sir, I was in plain clothes.

24 Q And was anyone else at that residence,
25 after you saw this person later identified as

1 Ms. Green?

2 A Yes, later we saw Daniel Green.

3 Q And did you identify yourself to him?

4 A Yes, we did.

5 Q Did you state your purpose in being there?

6 A Yes, we did.

7 Q What if anything did you say to the
8 defendant as your purpose in being there?

9 A We told the defendant that we were there to
10 inquire about a Lexus automobile.

11 Q Did you make any request of the defendant?

12 A Yes, we did.

13 Q What if any request did you make?

14 A We asked him to accompany us to the Robeson
15 County Sheriff's Department.

16 THE COURT: Mr. Britt, if you'll
17 bear with me for one second, please.

18 Sergeant Meares, if you'll pass that water
19 up to the juror, please, sir.

20 BY MR. BRITT:

21 Q What if any response did the defendant make
22 to your request to accompany you to the Robeson
23 County Sheriff's Department?

24 A He agreed to do so.

25 Q And after agreeing to do so, did you

1 immediately leave?

2 A We didn't immediately leave, because he
3 wanted to go back in the house. He was shirtless and
4 wanted to put a shirt on.

5 Q And did you see in what direction he went
6 when he went back in the house to put on his shirt?

7 A When he went into the front, he went to the
8 right of the mobile home as he went in and then I
9 lost eye contact.

10 Q Approximately how much time passed before
11 you saw the defendant again?

12 A It was -- I wasn't looking at my watch, but
13 it was a few minutes.

14 Q And after he reappeared, what then
15 happened?

16 A We then went and got in Agent Myers'
17 vehicle and started towards the Robeson County
18 Sheriff's Department.

19 Q And upon arriving at the Robeson County
20 Sheriff's Department, where did you go there?

21 A I'm not sure what room we went in first. I
22 know we were -- we ended up in a front office of the
23 Sheriff's Department, and I don't know the office
24 numbers or anything like that. I'm not familiar with
25 Robeson County's Sheriff's Department, but we went

1 into an office there at the Sheriff's Department.

2 Q When you say "we" went into an office, who
3 went?

4 A Myself, Agent Myers, Daniel Green, also
5 Agent Strong, who is an agent with the Federal Bureau
6 of Investigation, John Strong, and Lieutenant Jimmy
7 Henley.

8 Q And for what purpose did you go into that
9 room?

10 A To interview Mr. Green.

11 Q And was anyone using -- was there an audio
12 recording device used during the course of that
13 interview?

14 A Yes, sir, there was.

15 Q Who operated that recorder?

16 A Lieutenant Jimmy Henley.

17 Q And where was that audio recorder
18 positioned in terms of its relationship to the
19 individuals that were there in the room?

20 A The recorder was as close as we could have
21 it where we felt like it would pick up everyone's
22 voice. I would say that the recorder was no more
23 than three feet from any of us.

24 Q And was there any furniture in this room?

25 A Yes, sir, there was a desk and tables, as I

1 recall.

2 Q How were the individuals that were inside
3 this room positioned?

4 A I know I was closest to Daniel, and Agent
5 Myers I think was across -- I think Agent Myers was
6 on one side, Daniel was sitting, I was sitting kind
7 of across from Daniel, probably John Strong was the
8 furthest from us, and then Jimmy Henley was to the
9 right of us because he was operating the recorder.

10 Q And was the recorder turned on?

11 A Yes, sir, it was activated.

12 Q And did the recorder remain on during the
13 time -- during the course of the interview?

14 A Could you ask that again?

15 Q Did the recorder remain on during the
16 course of the interview?

17 A It didn't remain on through the course of
18 the entire interview, but remained on for a large
19 portion of the interview.

20 Q And during the course of the interview, did
21 you ask the defendant questions in regard to this red
22 Lexus?

23 A Yes, sir.

24 Q Did you ask him questions in regard to the
25 murder of James Jordan?

1 A Yes, sir.

2 Q Did the defendant at any time tell you
3 during the course of this interview that he was at a
4 Kay Hernandez's --

5 MR. THOMPSON: Objection.

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

8 MR. THOMPSON: The leading, Your
9 Honor, the form of the question.

10 THE COURT: Overruled.

11 BY MR. BRITT:

12 Q Did the defendant at any time during the
13 course of the interview tell you that he was at a Kay
14 Hernandez's home attending a cookout?

15 A Never.

16 Q You've testified that the interview --
17 portion of the interview was tape-recorded?

18 A That's true.

19 Q And after the tape recorder was turned off,
20 did the interview continue?

21 A It did continue, but not with all the
22 people that I had previously named. It continued
23 with myself, Agent Myers, and Daniel Green.

24 Q And after the tape recorder was turned off,
25 did the defendant at any time tell you that he was --

1 that he was attending a cookout at the Kay Hernandez'
2 residence?

3 MR. THOMPSON: Object to the form
4 of the question.

5 THE COURT: Overruled. You may
6 answer.

7 THE WITNESS: Never.

8 BY MR. BRITT:

9 Q The tape that was being used during the
10 course of the interview, Captain Binder, was it
11 submitted for the purposes of preparing a
12 transcription?

13 A Yes, sir, it was.

14 Q And after a transcript was prepared, did
15 you have an opportunity to review that transcript
16 while listening to the audiotape?

17 A I have been able to do that, yes, sir.

18 Q And the transcription that was prepared,
19 does it fairly and accurately contain the information
20 that you heard on the audio tape?

21 A It does. There is some times in the tape
22 where the transcriber misidentified the voice of the
23 person, and might have said something like perhaps
24 that Agent Myers was speaking, and it might be
25 someone else that was speaking at the time.

1 Q And to your knowledge, Captain Binder,
2 after the -- at any time was the tape that was
3 utilized during the interview, any portion of it ever
4 erased?

5 A No, sir.

6 Q Was any portion added to the recording?

7 A No, sir.

8 MR. BRITT: May I approach the
9 witness?

10 THE COURT: Yes, sir.

11 BY MR. BRITT:

12 Q Captain Binder, I'm going to show you what
13 has been marked as State's Exhibit 168. Do you
14 know -- what is an OCA number?

15 A OCA number is a number that is assigned to
16 a particular case to identify that case from any
17 other case.

18 Q And can you identify any OCA number that
19 appears on State's Exhibit 168?

20 A Yes, sir, I can.

21 Q And how are you able to identify any OCA
22 number that appears on State's Exhibit 168?

23 A Well, I'm familiar with the OCA numbers
24 that Cumberland County uses in my experience in
25 working there and I can look at this number and tell

1 you it's the case number from Cumberland County.

2 Q And what if any OCA number appears on
3 State's Exhibit 168?

4 A OCA 93, which stands for the year '93, then
5 there's a dash 15938, which is that case number.

6 Q And to your knowledge, was there an OCA
7 number assigned to the murder investigation that
8 Cumberland County conducted in connection with James
9 Jordan's death?

10 A Yes, sir. When we began investigation, we
11 assigned a number to our investigation.

12 Q And is OCA 93-15938 the number that was
13 assigned to the investigation of the James Jordan
14 homicide conducted by the Cumberland County Sheriff's
15 Department?

16 A Yes, sir.

17 MR. BRITT: Your Honor, at this
18 time -- strike that.

19 (State's Exhibit 171 was
20 marked for identification.)

21 BY MR. BRITT:

22 Q I'll show you what has been marked as
23 State's Exhibit 171, ask you to examine that and tell
24 me if you can identify it.

25 A Yes, sir, I can.

1 Q How are you able to identify State's
2 Exhibit 171?

3 A This is a finished product of our word
4 processing section, and that is where they take an
5 audiotape and transcribe it, put it to words from the
6 voice on the tape.

7 Q And State's Exhibit 171, is that a copy of
8 the transcription that you reviewed when listening to
9 the audiotape that was utilized during the interview
10 of the defendant Daniel Green?

11 A Yes, sir, it is.

12 Q And State's Exhibit 171, is it a fair and
13 accurate representation of the audio recording that
14 was made during the interview of the defendant Daniel
15 Green?

16 A Yes, sir, it is.

17 Q For the purposes of the record, how many
18 pages are contained in that document?

19 A There is 142 pages.

20 MR. BRITT: Your Honor, at this
21 time I move for admission of State's
22 Exhibits 168, 169, 170, and State's Exhibit
23 171 -- 171 for the limited purpose of
24 corroborating State's Exhibits 170.

25 MR. THOMPSON: And Your Honor, we

1 renew our objection.

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

4 MR. THOMPSON: No, 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 in that regard, don't worry or
10 speculate about what takes place in the
11 courtroom in your absence, and if you'll
12 step to the jury room for just a moment.

13 (Jury out at 12:26 p.m.)

14 THE COURT: For the record,
15 folks, I'm looking at page 103, lines
16 beginning on line 15. Question by --
17 strike that. Line 14 and 15. Question by
18 Mr. Britt, on line 15: After the
19 transcript was prepared, did you have an
20 opportunity to review that transcript while
21 listening to the audiotape.

22 Answer by Mr. Binder, I have been able
23 to do that, yes, sir. Next question, and
24 the transcription that was prepared, does
25 it fairly and accurately contain

1 information that you heard on the
2 audiotape.

3 The missing element that I see in the
4 foundation at this point is whether or not
5 his hearing of the audiotape accurately
6 reflects the conversation that occurred
7 during the interview. So the objection at
8 this time is sustained.

9 Anything either counsel wants to put
10 in the record?

11 MR. BRITT: No, sir.

12 THE COURT: Bring the jury back
13 in, please, sir.

14 (Jury in at 12:28 p.m.)

15 THE COURT: At this time the
16 objection is sustained. You may ask
17 additional questions, sir.

18 BY MR. BRITT:

19 Q Mr. Binder, you testified that you had an
20 opportunity to listen to the audiotape as you were
21 reviewing the transcript that was prepared?

22 A Yes, sir.

23 Q And while listening to the audiotape, did
24 it accurately reflect the conversation that took
25 place during the tape-recorded portion of the

1 interview of the defendant Daniel Green on August
2 14th and 15th of 1993?

3 A Yes, sir, it did.

4 MR. BRITT: Your Honor, at this
5 time I renew my proffer of State's Exhibit
6 168, 169, 170, 171.

7 THE COURT: Do you want to be
8 heard further?

9 MR. THOMPSON: No, sir. Renewed
10 objection.

11 THE COURT: Renewed objection is
12 noted for the record.

13 MR. THOMPSON: Request
14 instruction.

15 THE COURT: Yes, sir. Exception
16 is noted for the record. The objection
17 being overruled, State's Exhibits 68
18 through seventy --

19 MR. BRITT: One.

20 THE COURT: 168 through 171 are
21 now admitted in evidence. At the
22 appropriate time, Mr. Thompson, Mr. Bowen,
23 I will give a limiting instruction.

24 MR. BRITT: So the record is
25 clear, State's Exhibit 171 is being offered

1 in corroboration of the audio.

2 THE COURT: That would be the
3 transcript?

4 MR. BRITT: Yes, sir.

5 THE COURT: The purported
6 transcript.

7 MR. BRITT: Yes, sir, just so the
8 record is clear.

9 THE COURT: Members of the jury,
10 as to State's Exhibit 171, I instruct you
11 that that exhibit is being offered for the
12 limited purpose of corroborating State's
13 Exhibits 168, 169, and 170. The audiotape
14 which is been marked as a State's Exhibit
15 is going to be played for you, and if
16 you'll bear with me for one second -- I
17 instruct you that the Court has allowed or
18 will allow the State to pass to each member
19 of the jury a document which purports to be
20 a transcript of the tape recording of a
21 statement purportedly taken from the
22 defendant by law enforcement officers on or
23 about August 14th and August 15th, 1993.

24 And I instruct you, members of the
25 jury, that it is for you the members of the

1 jury to determine the accuracy of the
2 document which is marked as State's Exhibit
3 171, which again, purports to be a
4 transcript of the tape-recording which I
5 believe is marked as State's Exhibit 169.

6 MR. BRITT: Actually the one that
7 will be played is State's Exhibit 170, the
8 standard sized cassette.

9 THE COURT: Or State's Exhibit
10 170. Anything further on behalf of counsel
11 for the defendant?

12 MR. THOMPSON: No, sir.

13 THE COURT: All right. Members
14 of the jury, I instruct you, as I
15 previously instructed you, that with regard
16 to evidence offered for the limited purpose
17 of corroboration, it is for you the members
18 of the jury to determine what the evidence
19 in the case does show, but to the extent
20 that you find that State's Exhibit 171 is
21 corroborative of State's Exhibit 170, then
22 you may consider it for that limited
23 purpose and for no other purpose. Anything
24 further?

25 MR. BRITT: Not in regard to the

1 instruction.

2 THE COURT: Anything further by
3 the defendant as to the instruction?

4 MR. THOMPSON: No, sir, not with
5 regard to that.

6 THE COURT: All right.
7 Preference as to the scheduling?

8 MR. BRITT: Yes, sir. May it
9 please the Court, I note it's approximately
10 12:32 by the clock on the wall. It is at
11 this -- we're at the juncture now where I
12 intend to play State's Exhibit 170. It is
13 approximately two hours and 11 minutes in
14 length. I would prefer to play it in its
15 entirety rather than play 30 minutes and
16 then break. If we could take the lunch
17 recess now and return at 2:00.

18 THE COURT: Yes, sir. Members of
19 the jury, does that pose any problem for
20 any member of the jury?

21 MR. THOMPSON: We don't have any
22 objection to that, Your Honor.

23 THE COURT: Then we'll do so
24 without objection. We're going to recess
25 until 2:00. Please recall my prior

1 instructions concerning your conduct.
2 Ladies and gentlemen, again, I'm obligated
3 to instruct you that you're not to talk
4 about this matter among yourselves or with
5 anyone else. You're not allowed to have
6 anyone say anything to you or in your
7 presence about the case. If anyone does
8 communicate with you about these matters,
9 or if attempts to do so or says anything
10 about the case in your presence, it remains
11 your duty to inform us of that
12 immediately.

13 Don't form or express any opinions,
14 don't have any contact with anybody
15 involved in the case of any kind. Don't
16 allow yourselves to be exposed to any media
17 accounts in connection with these matters,
18 and don't conduct any independent inquiry,
19 investigation or research of any kind.
20 Everyone please remain seated, the members
21 of the jury are excused until 2:00.

22 (Jury out at 12:34 p.m.)

23 THE COURT: Anything further from
24 either counsel?

25 MR. BRITT: No, sir.

1 THE COURT: Mr. Binder, you may
2 step down, thank you. We'll see you at
3 2:00.

4 THE BAILIFF: All rise.
5 (Lunch recess.)

6 THE COURT: Let the record show
7 all counsel are present, the defendant is
8 present in open court. Folks, we've got
9 two matters we need to take up before the
10 jury comes in.

11 Do we have all members of the jury
12 secured in the jury room, Sergeant Meares?

13 THE BAILIFF: I'll check.

14 THE COURT: Okay.

15 THE BAILIFF: Yes, sir.

16 THE COURT: Okay. Folks, I've
17 got two media requests, information request
18 forms on the bench. Ordinarily, the
19 protocol would be for these to go to Kim
20 Tucker, the Trial Court Administrative in
21 Cumberland County, but because of the
22 nature of where we are, it is probably
23 appropriate for me to deal with them at
24 this point.

25 First one, and I apologize I can't

1 read the name, Peter O -- looks like L U N
2 N E R or E N, number 48. How do you
3 pronounce the last name?

4 MR. O'CONNELL: O'Connell.

5 THE COURT: I apologize --
6 indicating that the speaker along the wall
7 on the defense side of the courtroom does
8 not appear to be working. Is that correct
9 Mr. O'Connell.

10 MR. O'CONNELL: Yes, sir.

11 MR. B. GREEN: It's not turned
12 on, sir.

13 THE COURT: Was it working when
14 the demonstration was done?

15 MR. B. GREEN: It was not turned
16 on.

17 THE COURT: Hasn't been turned
18 on. That apparently is the problem. The
19 other one is from Greg Barnes, WTVD, asking
20 if it would be possible to allow the
21 electronic media to put an audio recorder
22 or a wireless microphone by the speakers so
23 they can get a dub of the tape as it's
24 being played. State want to be heard as to
25 that request?

1 MR. BRITT: No, sir, other than I
2 would say shortly before coming back into
3 the courtroom, Mr. Barnes requested of me
4 if they could obtain a copy of the
5 transcript.

6 THE COURT: Yes, sir.

7 MR. BRITT: I told him I would
8 have to inquire of the Court for that.

9 THE COURT: If it's in the
10 record, it's public record, they're
11 entitled to it. That's my view. If it's
12 public record. So I think that answers
13 that question. It has been formally
14 introduced and is a matter of public record
15 at this time. If you'll bear with me
16 while --

17 MR. BRITT: I have no objection
18 to the question about being able to record.

19 THE COURT: Rule 15 appears to be
20 the applicable rule under the Superior
21 District Court Rules promulgated for our
22 statute. Mr. Bowen and Mr. Thompson,
23 counsel for the defendant want to be
24 heard?

25 MR. BOWEN: Yes, Your Honor, we

1 would like to be heard. Your Honor will
2 recall that we took no position in
3 opposition to the press having complete
4 access to this trial, video cameras or the
5 like, and still don't for that matter. But
6 to come in and excerpt one particular part
7 of the trial with the actual recording or
8 the actual sound bites of the testimony
9 where, for example, they have not had
10 opportunity to get sound bites of, for
11 example, Mr. Demery's examination and his
12 testimony --

13 THE COURT: I thought you
14 provided that to them.

15 MR. BOWEN: I beg your pardon?

16 THE COURT: I thought you
17 provided that to them.

18 MR. BOWEN: What, sir?

19 THE COURT: Sound bites of what
20 was going on on a daily basis.

21 MR. BOWEN: I'm talking about
22 playing -- Mr. Britt and I have made
23 comments on things already transpired in
24 the record. What we're talking about is
25 actual footage, for example, of

1 Mr. Demery's live testimony in here, or his
2 statements to the officers. Those have not
3 been provided to the press, and therefore
4 neither should these that involve
5 Mr. Green. Now, I understand there's
6 further -- either has been or is likely to
7 be a request for cameras to cover the jury
8 arguments. I wouldn't object to that
9 because they're going to hear everything.
10 The defense --

11 THE COURT: The ruling as to
12 cameras at any stage of the proceedings
13 requires at the outset of jury selection an
14 instruction be given. That jury
15 instruction was not given at the outset of
16 jury selection to apprise jurors that
17 cameras will be present in the courtroom.
18 It's my view, although I intend to keep an
19 open mind about it, that to allow them in
20 now without an instruction may run afoul of
21 the rule, may run afoul of Rule 15 and the
22 pattern jury instruction rule promulgated
23 for that purpose.

24 I take it your position is both you
25 and Mr. Thompson object --

1 MR. THOMPSON: Yes, sir.

2 MR. BOWEN: Yes, sir.

3 THE COURT: -- For the record?

4 MR. THOMPSON: Yes, sir.

5 MR. BOWEN: Yes, sir.

6 THE COURT: Well, folks, I've
7 attempted to be consistent throughout the
8 proceedings, and to allow this in this
9 context, I'm not sure would be
10 appropriate. I take it that once the tape
11 is introduced, media will be entitled to
12 copies of the tape.

13 Once it becomes a matter of public
14 record as it is upon introduction, they
15 would be entitled to that for whatever
16 purposes they want to use it. But it is my
17 aim to be consistent throughout the trial
18 and to treat both parties the same way and
19 to the same extent possible to be
20 consistent in all regards. So Mr. Barnes,
21 the request is denied. Defendant's
22 objection is sustained.

23 MR. BOWEN: If Your Honor,
24 please, as to the copy of the tape itself,
25 we do have those portions which have been

1 redacted and will not be played to the
2 jury. I would contend that those portions,
3 because they have not become a part of the
4 public record other than on the voir dire,
5 are not appropriate to go to the public
6 media. I didn't make a lot of fuss about
7 it, but when that video got out, apparently
8 the State made copies available to all the
9 press, and it was not just what the jury
10 saw but it was everything on there, some of
11 which had only gone as far as voir dire,
12 and I object --

13 THE COURT: Beyond this
14 courtroom, I have -- to some extent there's
15 some that say I have no control on what
16 happens in the courtroom, but beyond this
17 courtroom there is nothing I can do about
18 it. I understand your concern. I am going
19 to direct that any copy provided either by
20 counsel for the defendant or by counsel for
21 the State be consistent with what has been
22 made available on public record.

23 MR. BRITT: Just so the record is
24 clear, the copy that was admitted as
25 State's Exhibit 70 is my copy, and that's

1 the only one that I have.

2 THE COURT: Yes, sir.

3 MR. BRITT: Defense counsel has
4 the other copies that are available. As it
5 relates to the video portions, just so the
6 matter is on the record, the portions that
7 were shown through the media were the
8 portions that were shown in court as a
9 matter of public record. I -- and since
10 that day, I have received requests from a
11 law school and from another media sources
12 for the copy of the entire tape. I have
13 called Tom Lunsford with the North Carolina
14 State Bar for advice, and been advised that
15 any matters that were not played in
16 court --

17 THE COURT: Consistent with the
18 Rules of Ethics, as I understand.

19 MR. THOMPSON: Thank you.

20 MR. BRITT: -- are to remain --

21 THE COURT: You're welcome.

22 MR. THOMPSON: Well, you were
23 saying you had no control, and that's what
24 you've been reciting to us the whole
25 trial. I mean, you do have some control.

1 THE COURT: I've been saying that
2 the whole trial?

3 MR. THOMPSON: I'm talking about
4 referring to the Rules of Professional
5 Responsibility, and it's clear that Rule 15
6 I think it is deals with that.

7 THE COURT: Yes, sir.

8 MR. BRITT: Just so the record is
9 clear, the only portions that have been
10 made available to the press were those that
11 were played in court.

12 THE COURT: And let me back up
13 because you're right. I don't have any
14 control until the trial is over. Then
15 there is action I can take. Okay.
16 Anything further?

17 MR. BRITT: No, sir.

18 THE COURT: All right. Ready to
19 go forward, folks?

20 Bring the jury in.

21 MR. BRITT: Mr. Binder was on the
22 stand. For the purposes of playing this
23 audiotape, does he need to remain on the
24 stand or can he sit in the audience? I'm
25 sorry. Is he to remain there?

1 THE COURT: He needs to return to
2 the stand. This is offered for the
3 purposes of corroboration --

4 (Jury in at 2:05 p.m.)

5 MR. BRITT: Your Honor, at this
6 time the State desires to play State's
7 Exhibit Number 170, which is the cassette
8 of the recording of the interview with the
9 defendant on the evening of April -- excuse
10 me, August 14th, 1993, the morning of
11 August 15th, 1993, and also ask that copies
12 of State's Exhibit 171, the transcription,
13 be published to the jury so that they can
14 use it in assisting them.

15 THE COURT: That will be
16 allowed. Sergeant Meares, if you will
17 assist us in passing out copies of State's
18 Exhibit 171.

19 Members of the jury, please recall the
20 instruction I gave you as to State's
21 Exhibit 171, and for purposes for which you
22 are to consider it. Again, I instruct you
23 that it is being offered and received for
24 the limited purpose of corroboration to the
25 extent that you find that it is

1 corroborative of State's Exhibit 170. It
2 is for the members of the jury to determine
3 what the evidence in this case does show.
4 I'll ask that you not read ahead on State's
5 Exhibit 171, but that you keep up with the
6 taped portion which is State's Exhibit 170
7 as it may be reflected in State's Exhibit
8 171.

9 MR. BRITT: Your Honor, could we
10 request that each members of the jury turn
11 on their headsets and after doing so if
12 they will raise your hands to indicate they
13 have done that?

14 THE COURT: Yes, sir. If you'll
15 do so, folks.

16 MR. BRITT: If the Court --
17 there's music playing.

18 THE COURT: To determine whether
19 or not you can hear, and you can adjust the
20 volume at this time.

21 Appears everybody has their headsets
22 turned on. Yes, sir.

23 For the record, I've indicated to the
24 court reporter that it's not necessary that
25 he transcribe the audio portion of State's

1 Exhibit 170. The transcript will serve in
2 lieu of that. Does the State want to be
3 heard in that respect?

4 MR. BRITT: No, sir.

5 THE COURT: Counsel for the
6 defendant?

7 MR. THOMPSON: No, sir.

8 THE COURT: All right. Let if
9 record so show.

10 MR. BRITT: If the record will
11 reflect, I'm removing a cassette from
12 State's Exhibit 170. I'm going to hand it
13 to Special Agent Green, and ask him at this
14 time to place it into the playback machine.

15 THE COURT: Yes, sir.

16 MR. BRITT: The record will
17 reflect, according to the clock in the
18 courtroom it's approximately ten minutes
19 after 2:00. The tape is approximately two
20 hours and 11 minutes in length.

21 THE COURT: Mr. Green.

22 (Whereupon audiotape was played in
23 open court.)

24 THE COURT: Let's stop here and
25 take a break. Members of the jury, it's

1 now almost five after. I'm going to ask
2 that you reassemble in the jury room at 20
3 after. That will give you folks a 15
4 minute break.

5 Please recall that it is your duty to
6 abide by all prior instructions of the
7 Court concerning your conduct during this
8 break, and if you will please reassemble no
9 later than 20 after, we'll return at that
10 time.

11 MR. BRITT: Your Honor, if you'll
12 ask them to turn the power off so the
13 batteries don't die.

14 THE COURT: Yes, sir. On your
15 headphones. Thank you, folks. You're
16 released until 20 after.

17 (Jury out at 3:04 p.m.)

18 THE COURT: We're at ease,
19 folks.

20 (Brief recess.)

21 THE COURT: Folks, it's about 18
22 after. Let the record show the defendant
23 is present, all parties are present.
24 There's a request being made that I allow
25 we just back up a portion of the tape just

1 played so they can copy by hand-held
2 recorder the last two to three minutes of
3 that tape. And I indicated that if the
4 defendant didn't object, Mr. Green the
5 technician did not object, the District
6 Attorney did not object, I would have no
7 problem with it. They checked with
8 Mr. Britt --

9 MR. BRITT: I had not authorized
10 the recording of any portion of the tape.
11 I don't think I've got that authority.

12 THE COURT: Well, my position is
13 this, folks. While I understand that there
14 are folks who have deadlines to meet, I
15 have a trial record that I have to
16 protect. And that trial record is the
17 paramount concern as far as I am
18 concerned.

19 Both the State and the defendant are
20 entitled to have this trial go forward with
21 minimal disruption. The jurors are
22 entitled to that. And while I will do what
23 I can to accommodate you folks within the
24 context of protecting both the State's
25 right and defendant's right to a fair

1 trial, there may be instances, as there
2 have been in the past, when I have to say
3 no. And I apologize for that. But my
4 primary concern is the protection of the
5 record and to see to it both the State and
6 defendant get a fair trial.

7 That being the case, I'm going to ask
8 that you folks -- I understand you all have
9 deadlines -- wait until after 5:00 p.m.

10 Any other matters from the defendant,
11 Mr. Thompson, Mr. Bowen?

12 MR. THOMPSON: No, sir.

13 MR. BOWEN: No, sir.

14 THE COURT: Anything on behalf of
15 the State, Mr. Britt?

16 MR. BRITT: No, sir.

17 THE COURT: If you'll bring the
18 jury back in, Mr. Watson.

19 (Jury in at 3:21 p.m.)

20 THE COURT: Thank you for your
21 promptness, ladies and gentlemen. We need
22 to turn the receivers back on, sir? If
23 you'll do so, folks. State ready to
24 proceed, Mr. Britt?

25 MR. BRITT: Yes, sir.

1 THE COURT: Yes, sir.

2 (Whereupon, the audiotape was
3 restarted.)

4 THE COURT: Any questions,
5 additional questions for Mr. Myers?

6 MR. BRITT: Yes, sir. If the
7 record will reflect we're going to remove
8 the tape from the recorder.

9 THE COURT: Yes, sir.

10 MR. BRITT: I'm going to return
11 it to the case marked as State's Exhibit
12 70.

13 THE COURT: Is that 170?

14 MR. BRITT: Yes, sir. If I could
15 approach the exhibit table with it.

16 THE COURT: Yes, sir.

17 MR. BRITT: May I approach?

18 THE COURT: Yes, sir.

19 BY MR. BRITT:

20 Q During the interview, Mr. Green admitted to
21 you that he made certain phone calls, didn't he?

22 A Yes, sir.

23 MR. BRITT: May I re-approach?

24 THE COURT: Yes, sir.

25 THE COURT: Mr. Thompson, Mr.

1 Bowen, you folks want to position
2 yourselves?

3 MR. THOMPSON: Yes, sir.

4 BY MR. BRITT:

5 Q Mr. Binder, the phone call -- one of the
6 phone calls Mr. Green admitted making was to a
7 telephone number in Rowland of (919) 422-9007?

8 A Yes, sir, if I recall, that is correct.

9 Q I'll show you what has previously been
10 marked as State's Exhibit Number 56-C, an enlarged
11 copy of the phone records of James Raymond Jordan.
12 Have you ever seen the phone calls from Mr. Jordan's
13 cellular telephone?

14 A Yes, sir, I have.

15 Q And you were using those same phone records
16 the night that you were interrogating the defendant,
17 weren't you -- were you not?

18 A That's correct.

19 Q State's Exhibit 56-C, you see an entry
20 dated July 24th at 10:30 am, (919) 422-9007?

21 MR. THOMPSON: Object, object.

22 THE COURT: For --

23 MR. THOMPSON: For the
24 clarification.

25 BY MR. BRITT:

1 Q Excuse me, 10:13.

2 A Yes, sir, I see that.

3 Q Rowland, North Carolina?

4 A Yes, sir.

5 Q Is that the phone number the defendant said
6 he called his cousin at during the course of the
7 interview?

8 A Yes, sir, it is.

9 Q Mr. Binder, if you will, taking this red
10 marking pen, will you place the initials DG by the
11 entry 7-24, 10:13, (919) 422-9007?

12 A (Witness complies).

13 Q Mr. Green also told you about a telephone
14 call he made from the red Lexus to Philadelphia?

15 A Yes, sir. He said he called his father, or
16 the boyfriend of his mother who he considers his
17 father.

18 Q And on State's Exhibit 56-C, you see an
19 entry of July 24th at 8:56 a.m. (215) 229-2710,
20 Philadelphia, Pennsylvania?

21 A Yes, do.

22 Q Is that the phone number the defendant told
23 you he called from the cellular telephone?

24 A As I recall, yes, sir.

25 Q If you'll place the initials DG by that

1 entry.

2 A (Witness complies).

3 Q Now, the entry, the number (919) 422-9007,
4 Rowland, North Carolina, appears again on State's
5 Exhibit 56-C, does it not?

6 A Yes, sir, it does.

7 Q How many other times on State's Exhibit
8 56-C does that number appear?

9 A Three times in addition to the first time
10 we talked about.

11 Q One of those entries appear at 7-24, 15:40
12 hours?

13 A That's correct.

14 Q Rowland, North Carolina?

15 MR. THOMPSON: Well, object to
16 leading, Your Honor.

17 THE COURT: Overruled. It's in
18 reference to an exhibit.

19 BY MR. BRITT:

20 Q Is there also a record of a call on July
21 25th of 23:33 hours to (919) 422-9007, Rowland?

22 A Yes, sir, there is.

23 Q And is there also an entry of 7-25 23:47
24 hours, (919) 422-9007, Rowland?

25 A Yes, sir, there is.

1 Q Is that the same number that you placed the
2 initials DG beside it that appear at 7-24 8:56 --
3 excuse me, 7-24, 10:13 a.m.?

4 A Yes, sir, it is.

5 Q If you'll place the initials DG beside that
6 number, (919) 422-9007?

7 A (Witness complies).

8 MR. BRITT: If the record will
9 reflect Mr. Binder has done that.

10 THE COURT: Yes, sir.

11 BY MR. BRITT:

12 Q You also during the course of the
13 interrogation of the defendant asked him about an 800
14 number, is that correct?

15 A Yes, sir.

16 Q And the 800 number that you asked him
17 about, is that reflected on State's Exhibit 56-C?

18 A Yes, it is.

19 Q What is the date and entry of the 800
20 number that you asked the defendant about?

21 A July 23rd at 7:05 a.m.

22 Q What if any number was called at that time?

23 A It was (800) 999-4746. And it's referenced
24 as an 800 service.

25 Q And for the purposes of the record, you're

1 familiar with the cellular telephone records that
2 were obtained, are you not?

3 A Yes, sir, I am.

4 Q State's Exhibit 56-C, does it reflect the
5 cellular telephone service provider and the location?

6 A Yes, sir, it does.

7 Q What service provider and what tower are
8 indicated on State's Exhibit 56-C?

9 A Okay. The calls were placed on U.S.
10 Cellular, and then there's a number 01643, and that's
11 from in the tower of Chesterfield, which is in South
12 Carolina.

13 Q How far is Chesterfield, South Carolina
14 from the area where Mr. Jordan's body was found, if
15 you know?

16 A I think --

17 MR. THOMPSON: Well, I object.

18 THE COURT: If he knows he may
19 answer.

20 MR. THOMPSON: Foundation, Your
21 Honor.

22 THE WITNESS: Chesterfield County
23 is the county that Mr. Jordan's body was
24 found in.

25 BY MR. BRITT:

1 Q You asked the defendant about phone calls
2 that he had made to Marion, South Carolina?

3 A Yes, sir.

4 Q On State's Exhibit 56-B, you see entries of
5 a telephone number (803) 423-2493, Marion, South
6 Carolina?

7 A Yes, sir.

8 Q That's the telephone number that the
9 defendant told you where he called his
10 girlfriend?

11 MR. THOMPSON: Object to leading.

12 THE COURT: It's in reference to
13 an exhibit so the objection is overruled in
14 the discretion of the Court.

15 THE WITNESS: That is true.

16 BY MR. BRITT:

17 Q At the time on State's Exhibit 56-B that
18 the phone call -- that a phone call to Marion, South
19 Carolina was made, on July the 23rd, 1993, what was
20 the time of that first phone call?

21 A That was 10:50 in the a.m.

22 Q And there are more -- does State's Exhibit
23 56-B reflect more than one phone call to that number
24 in Marion, South Carolina on that date?

25 A Yes, sir, it does.

1 Q State's Exhibit 56-D, you asked the
2 defendant during the course of the examination about
3 being -- the interrogation about being in Myrtle
4 Beach, South Carolina?

5 A Yes, sir.

6 Q You recall that?

7 A Uh-huh.

8 Q State's Exhibit 56-B reflect phone calls --

9 MR. THOMPSON: Excuse me. For
10 clarification, are we talk about D or B?

11 MR. BRITT: 56-D.

12 BY MR. BRITT:

13 Q Does State's Exhibit 56-D reflect phone
14 calls that were bounced off of cellular telephone
15 tower in Myrtle Beach, South Carolina?

16 A Yes, sir, it does.

17 Q What dates are reflected in that entry?

18 A Well, they start 7-19, and they run
19 through, and I assume this is --

20 MR. THOMPSON: Well, I object.

21 THE COURT: If it's not
22 reflected, you may not assume.

23 THE WITNESS: Okay. Well, I can
24 go to the bottom. Excuse me just a
25 moment. Through 7-24.

1 BY MR. BRITT:

2 Q And the numbers that -- some of the numbers
3 that were called from off the Myrtle Beach tower were
4 (803) 423-2493, is that correct?

5 A Yes, that's correct.

6 Q And that's the number that Melinda Moore
7 told you during the course of the interview?

8 MR. THOMPSON: Object, leading.

9 THE COURT: Overruled.

10 THE WITNESS: That is what he
11 said, yes.

12 BY MR. BRITT:

13 Q After the tape-recorder was turned off, did
14 the interview continue?

15 A Yes, it's did.

16 Q Who was present during the time after the
17 tape-recorder was turned off during that interview?

18 A Myself and Special Agent Myers.

19 Q Was the defendant still present?

20 A Yes, he was.

21 Q Did the defendant continue to answer your
22 questions?

23 A Yes, he did.

24 Q During that portion of the interview where
25 the tape-recorder was not playing, did the defendant

1 ever say anything about being at a cookout at a Kay
2 Hernandez's house on the night of July 22nd, 1993?

3 A Never.

4 MR. BRITT: I don't have any
5 other questions.

6 MR. THOMPSON: Your Honor, may we
7 be heard?

8 THE COURT: Yes, sir. Members of
9 the jury, there's a matter of law the Court
10 must -- do you want to approach or be
11 heard?

12 MR. THOMPSON: Approach.

13 THE COURT: I apologize. If
14 you'll come up, please.

15 (Whereupon a bench conference ensued
16 as follows.)

17 THE COURT: Present at the bench
18 conference is the presiding Judge, the
19 court reporter, counsel for the State, both
20 counsel for the defendant, and the
21 defendant. Yes, sir.

22 MR. THOMPSON: Defendant wanted
23 to consult with me before we began
24 cross-examination, and I realize there's
25 about 20 minutes, and I ask the Court to

1 allow me to start in the tomorrow. It will
2 not be -- it will be focused and will not
3 be very long. And I still think we can
4 fit --

5 THE COURT: It's a reasonable
6 request. I'll accommodate you.

7 MR. BRITT: For the purposes of
8 planning, do you need this equipment,
9 tomorrow?

10 THE COURT: That's what we need
11 to know.

12 MR. BOWEN: As long as we got the
13 little microcassette, I don't think so.

14 MR. THOMPSON: I don't think so.
15 You can take it down.

16 THE COURT: I mean, under the
17 circumstances, we wouldn't be able to
18 complete it anyway, so I'm going to allow
19 it.

20 (Bench conference concluded.)

21 THE COURT: Ladies and gentlemen,
22 I'm going to release you at this time and
23 ask that you return at 9:30 tomorrow
24 morning. During the overnight recess,
25 please recall that it is your duty to abide

1 by all prior instructions of the Court
2 concerning your conduct, and before I again
3 instruct you in that regard, will you place
4 the exhibits in your chairs as you leave,
5 don't take them with you.

6 Again, don't talk about the case among
7 yourselves, or with anyone else, including
8 members of your own families. Don't allow
9 anyone to say anything to you or in your
10 presence about this case. If anyone
11 communicates with you about this matter or
12 attempts to do so, or if anyone says
13 anything about the case in your presence,
14 it's your duty to inform me of that
15 immediately through one of the bailiffs
16 assigned to the courtroom.

17 Don't have any contact or
18 communication of any kind with anyone
19 involved in the case. Don't form or
20 express any opinions about this matter.
21 Don't allow yourself to be exposed to any
22 media accounts which may exist in
23 connection with this matter, and don't
24 conduct any independent inquiry or
25 investigation or research of any kind.

1 If you'll report -- Ms. Dial, I don't
2 mean to pry, but is your situation okay at
3 this point?

4 JUROR: I think so.

5 THE COURT: Anything that we can
6 do, please let us know in that regard by
7 contacting Ms. Gaines again.

8 Folks, please report promptly at 9:30,
9 and again, leave your exhibits and the
10 headphones in your chairs.

11 (Jury out at 4:38 p.m.)

12 THE COURT: In the absence of the
13 jury, Mr. Thompson, Mr. Bowen, you folks
14 indicated that you wanted an opportunity to
15 consult with Mr. Green. Do you want to do
16 that here?

17 MR. THOMPSON: Well, he'll be
18 available this evening.

19 THE COURT: I was just asking if
20 you wanted to do it now, here or later at
21 the jail.

22 MR. THOMPSON: We'll do it --

23 THE COURT: Either way you want
24 to.

25 MR. THOMPSON: We'll do it

1 later. It's going to be much longer.

2 MR. BOWEN: Something I need to
3 do, Your Honor, take about three minutes.
4 I would like access to State's Exhibit 169
5 to check the position of something. And I
6 want to do it in Mr. Britt's presence.

7 MR. BRITT: It's in custody of
8 the Clerk now.

9 THE COURT: I think what he's
10 saying is he wants to do it on the record.

11 MR. BRITT: The record will show
12 I'm placing the tape on the side, B side,
13 into the recorder which I've used before,
14 putting it into the rewind mode.

15 Thank you, Your Honor. Removing the
16 tape from my machine, placing it back into
17 the container which is marked State's 169,
18 and replacing it in the envelope marked
19 State's 168. Thank you, sir.

20 THE COURT: Anything further,
21 folks? If you'll recess us until 9:30
22 tomorrow morning.

23 THE BAILIFF: All rise.

24 THE COURT: I apologize. There
25 was a question about whether or not we

1 needed to leave the equipment in place. I
2 wanted to put that on the record.

3 Counsel for defendant indicated that
4 they do not require that the equipment be
5 left in place, is that accurate?

6 MR. THOMPSON: Yes, sir.

7 THE COURT: Sorry about that, but
8 it's in the record at this point. Your
9 equipment may be retrieved. Thank you very
10 much.

11 (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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13

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14

15 (February 23, 1996. Proceedings in open court.)

16

17 THE COURT: Good morning, folks.

18 MR. THOMPSON: Your Honor --

19 THE COURT: Yes, sir.

20 MR. THOMPSON: The transcripts
21 that the jurors have, are they over here?22 THE COURT: Yes, sir. They
23 should have been retrieved last night. I'm
24 going to direct that all of those be made a
25 part of the record.

1 MR. THOMPSON: Yes, sir.

2 THE COURT: Let the record show
3 that all counsel are present, the defendant
4 is present in open court. I understand,
5 Major Watson, we have all members of the
6 jury secured in the jury room?

7 THE BAILIFF: Yes, sir.

8 THE COURT: At the time we
9 concluded yesterday, direct examination of
10 Mr. Binder had been concluded, is that
11 correct?

12 MR. BRITT: Yes, sir.

13 THE COURT: Mr. Thompson, Mr.
14 Bowen, you folks prepared to go forward on
15 cross-examination?

16 MR. THOMPSON: Yes, sir.

17 THE COURT: Mr. Binder, if you'll
18 retake the stand, sir. Any matters from
19 either counsel before we bring the jury
20 in?

21 MR. THOMPSON: No, sir.

22 THE COURT: If you'll bring the
23 jury in, please.

24 (Jury in at 9: 28 a.m.)

25 THE COURT: Good morning, ladies

1 and gentlemen.

2 Mr. Thompson or Mr. Bowen.

3 MR. THOMPSON: Thank you, Your
4 Honor.

5 CROSS-EXAMINATION

6 BY MR. THOMPSON:

7 Q Good morning, Mr. Binder.

8 A Good morning.

9 Q When you went to the defendant's trailer
10 back on August 14th, Saturday, August 14th of 1993,
11 with SBI Agent Myers, you told the defendant that you
12 wanted to talk to him about some stolen parts from
13 the Lexus 400, is that right?

14 A That's correct.

15 Q And when you arrived at -- also Mr. Myers
16 made the same statement that he wanted to talk to --
17 that you and Mr. Myers wanted to talk to the
18 defendant about the stolen parts for the 400 Lexus,
19 is that right?

20 A Yes, sir, that's correct.

21 Q And when you arrived at the defendant's
22 trailer back on August the 14th of 1993, you were
23 carrying a gun, is that right?

24 A You say --

25 Q You were wearing a gun?

1 A Yes, sir, that's correct.

2 Q And Officer Randy Myers was carrying a gun?

3 A As I recall, yes, sir.

4 Q Actually, Officer Randy Myers had his gun
5 pulled when he approached the door of the trailer,
6 isn't that right?

7 A Yes, sir, he had it pulled, but to the back
8 of him.

9 Q You mean down to his side, but it was
10 pulled from his holster. Stand up and show me what
11 you're speaking of.

12 A I'm speaking of sort of in this position
13 (indicating).

14 Q With his hand behind his back?

15 A Yes, sir.

16 Q And the gun was out of his holster and in
17 his hand?

18 A That's correct.

19 Q And when you and SBI Agent Myers approached
20 the trailer, you saw the defendant looking out
21 through the window, isn't that right?

22 A That is correct, sir.

23 Q And he was looking out when you say Agent
24 Myers had his hand behind his back?

25 A No, sir, that's not correct.

1 Q Okay. And when Agent Myers had his hand
2 behind his back, Mr. Binder, where was he in position
3 to the trailer?

4 A I would say when I saw that, maybe six,
5 seven feet from the front door.

6 Q Now, you and Agent Myers had participated
7 in extensive briefings in Fayetteville before you
8 came down here on Saturday, August the 14th of 1993?

9 A Yes, sir, there was an extensive briefing
10 but there were agents coming in during that
11 briefing. The SBI had made a decision to go ahead
12 and start the briefing, and I don't recall at what
13 point Mr. Myers come in, but there was a briefing,
14 yes, sir.

15 Q But there were several Cumberland County
16 detectives and law enforcement officials in that
17 briefing?

18 A Yes, sir.

19 Q Before Agent Myers arrived?

20 A Well, I don't know at what point, but
21 that's a possibility.

22 Q Jimmy Henley was in that briefing with you,
23 is that right?

24 A That's correct.

25 Q He had interviewed several witnesses up

1 there in Cumberland County concerning the Lexus and
2 the stolen parts?

3 A Yes, sir, that's correct.

4 Q Cliff Massengill was in that briefing with
5 you?

6 A That's correct.

7 Q Don Smith, then Sergeant Don Smith was --
8 and now Lieutenant Don Smith, was in that briefing
9 with you?

10 A That's correct.

11 Q Cliff Massengill and Don Smith had
12 interviewed individuals up in the Cumberland County
13 area regarding the stolen parties for the Lexus 400?

14 A That's also correct.

15 Q There were other Cumberland County
16 officials other than those or detectives or law
17 officials other than which I've named that were also
18 in that briefing?

19 A That's correct.

20 Q And who were they?

21 MR. BRITT: Objection.

22 THE COURT: Overruled. You may
23 answer.

24 THE WITNESS: Sheriff Morris
25 Bedsole, sheriff of town was there, and

1 possibly Jack Watts who was a major. And I
2 don't recall --

3 BY MR. THOMPSON:

4 Q And you knew on Wednesday, August the 11th
5 of 1993 that the Lexus 400 that was found in
6 Cumberland County belonged to James Jordan?

7 A I learned that late that day, yes, sir.

8 Q And before you went to the defendant's
9 residence on the night of Saturday, August the 14th
10 of 1993, you were aware that an arrest had been made
11 in Fayetteville regarding the larceny and possession
12 of those stolen parts of the 400 Lexus?

13 A That is correct.

14 Q And in the -- you and Sergeant Don Smith
15 came to Robeson County that Friday, August the 13th
16 of 1993, isn't that right?

17 A I may have said that in the past. I was
18 there, but I don't believe Sergeant Smith was there.

19 Q Was a security person from Chicago with you
20 when you came to Robeson County on August the 13th,
21 Friday, of 1993?

22 A There was a security consultant, I think is
23 his correct title, yes, sir, he was with me.

24 Q And you don't remember that person's name?

25 A Yes, sir, I do.

1 Q What was his name?

2 A Jerry Brandt. He's out of Chicago.

3 Q And when you and Jerry Brandt came to
4 Robeson County on Friday, August the 13th of 1993,
5 you went out on Back Swamp Road where Bob's Landing
6 Mobile Home Park is, isn't that right?

7 A Yes, sir, that's correct.

8 Q You had a video camera with you?

9 A That's correct.

10 Q And you took some shots of the trailer
11 park, isn't that right?

12 A I did not, but yes, sir, Mr. Brandt did.

13 Q And where is the tape of the video that was
14 shot there at the trailer park back on Friday of
15 August the 13th?

16 A Where is it?

17 Q Where is the tape?

18 A I have no idea.

19 Q The officers that were in the briefing in
20 Fayetteville, Mr. Binder, those officers reported to
21 you, did they not?

22 A Yes, sir.

23 Q You were Chief of Detectives, Homicide
24 Division?

25 A I was Chief of Detectives over the entire

1 Detective Division, yes, sir.

2 Q That means drugs, homicide, everything?

3 A That's everything.

4 Q Now, on that Saturday night of August the
5 14th of 1993, when you came down to the defendant's
6 trailer with Agent Myers, also Mark Locklear and
7 Junior Locklear went to the defendant's trailer,
8 isn't that right?

9 A Yes, sir, that's correct.

10 THE COURT: I'm sorry, Mark
11 Locklear and who, sir?

12 MR. THOMPSON: Junior Mitchell.
13 I'm sorry, what did I say? I'm sorry, I
14 meant Mark Locklear and Junior Mitchell.

15 THE WITNESS: That's correct.

16 BY MR. THOMPSON:

17 Q And Mark Locklear and Junior Mitchell had
18 guns on them, didn't they?

19 A I know that Junior would have because he
20 was in uniform. I don't know about Mark Locklear.

21 Q And both Mark Locklear and Junior Mitchell
22 when they arrived to the trailer, they went around to
23 the back of the trailer, isn't that right?

24 A They went out of my sight, yes, sir.

25 Q But they approached the trailer while the

1 defendant was looking out of the window, isn't that
2 right?

3 MR. BRITT: Objection, he can't
4 testify about anything the defendant may
5 have seen when looking out of a window or
6 what he didn't see.

7 THE COURT: Your objection is
8 noted. Do you know where the officers were
9 at the time in question?

10 THE WITNESS: No, sir, I do not.

11 THE COURT: Mr. Thompson.

12 BY MR. THOMPSON:

13 Q After telling the defendant and Ms. Green
14 that you wanted to talk to the defendant about some
15 stolen parts from the Lexus, the defendant consented
16 to search of his room, isn't that right?

17 A At one point, yes, sir.

18 Q And you and Agent Myers placed him in the
19 car?

20 A Well, he got in the car, yes, sir.

21 Q Which car?

22 A In Agent Myers' car.

23 Q Was that the car that you were riding in?

24 A Yes, sir.

25 Q And you took him to the Robeson County

1 Sheriff's Office?

2 A That's correct.

3 Q Do you recall which door you entered to get
4 into the Sheriff's Office?

5 A No, sir, I don't.

6 Q Now, you eventually took the defendant to
7 an office where he was interrogated, isn't that
8 right?

9 A Yes, sir.

10 Q Jimmy Henley was in that office?

11 A Yes, sir.

12 Q Along with John Strong?

13 A Yes, sir.

14 Q Randy Myers?

15 A Yes, sir.

16 Q And yourself?

17 A Yes, sir.

18 Q Jimmy Henley had his gun on, didn't he?

19 A Yes, sir.

20 Q John Strong, he had his gun, he's an FBI
21 agent?

22 A He had a suit on, and I never saw him with
23 a gun, but it's -- it's a possibility.

24 Q Randy Myers who also -- he still had had
25 his gun?

1 A As I recall.

2 Q Now, in August of 1993 it was a standard
3 custom of practice and procedure for the Cumberland
4 County Sheriff's Department to tape all interviews,
5 isn't that right?

6 A That's correct, sir.

7 Q And all the detectives back in August of
8 1993 were issued tape-recorders by the Cumberland
9 County Sheriff's Department?

10 A That's correct.

11 Q And you were issued of course one, a
12 tape-recorder?

13 A Yes, sir, but I might have given it to
14 someone that didn't have one, but I was issued one.

15 Q Yes, sir. And the there in the
16 interrogation room, the tape-recorder was placed in
17 front of the defendant?

18 A I don't know that it was in front of him,
19 but it was in distance that would pick his voice up.

20 Q But it was no more than three feet away
21 from him?

22 A It wasn't hidden or anything like that. It
23 was in the open.

24 Q You testified yesterday that the
25 tape-recorder was no more than three feet away from

1 the defendant or from anybody in that room, did you
2 not?

3 A That's correct.

4 MR. THOMPSON: Your Honor, at
5 this time may I approach the witness and
6 have the jurors receive the copies of
7 State's Exhibit --

8 THE COURT: Major Watson, let's
9 count those, make sure we've got 13.

10 MR. THOMPSON: Talking about
11 State's Exhibit 171, for the record, what
12 I'm handing to the witness.

13 THE COURT: Yes, sir. If you'll
14 pass those out to the members of the jury,
15 please.

16 (Exhibits passed to jurors.)

17 THE COURT: Do all members of the
18 jury have a copy of what has previously
19 been marked as State's Exhibit 171?

20 Mr. Thompson.

21 MR. THOMPSON: Thank you, Your
22 Honor.

23 BY MR. THOMPSON:

24 Q Mr. Binder, drawing your attention to page
25 eight of the transcript of State's Exhibit 171 --

1 A Yes, sir.

2 Q -- the defendant began to -- during this
3 interrogation began to tell you about a person named
4 Rick?

5 A Yes, sir.

6 Q And this person named Rick had a colostomy
7 bag?

8 A Yes, sir.

9 Q You knew at that time that the defendant
10 was talking about Rick Hales, did you not?

11 A I knew that Rick Hales in Fayetteville was
12 a person who had a colostomy bag, yes, sir.

13 Q And you knew that Rick Hales in
14 Fayetteville had gotten shot in an incident just
15 prior to August of 1993, did you not?

16 A I don't know when he got shot, but you're
17 accurate that he had been shot.

18 Q You knew that Rick Hales in Cumberland
19 County had a reputation for dealing and selling in
20 drugs, didn't you?

21 A That's correct.

22 MR. BRITT: Objection, move to
23 strike.

24 THE COURT: Do you want to be
25 heard, Mr. Britt?

1 MR. BRITT: Yes, sir.

2 THE COURT: Ladies and gentlemen,
3 there's a matter of law the Court must take
4 up. Please recall my instructions in that
5 regard. Don't worry or speculate about
6 what takes place in the courtroom in your
7 absence. If you will leave your copy of
8 State's Exhibit 171 of the transcript on
9 your seat and if you'll step to the jury
10 room.

11 (Jury out at 9:44 a.m.)

12 THE COURT: Let the record show
13 the following is being conducted in the
14 absence of the jury. Mr. Thompson, for
15 what purpose is this being offered in the
16 trial, the fact that Mr. Hales may or may
17 not have had a reputation for selling
18 drugs?

19 MR. THOMPSON: Well, first of
20 all, Your Honor I don't think he -- well,
21 it's offered to impeach the testimony of
22 Rick Hales.

23 THE COURT: What rule of evidence
24 does that come under?

25 MR. THOMPSON: 608.

1 THE COURT: 608-B deals with
2 reputation for truthfulness or
3 untruthfulness.

4 MR. THOMPSON: Then, Your Honor,
5 it also deals with the --

6 THE COURT: Specific instances
7 regarding matters relating to truthfulness
8 and untruthfulness.

9 MR. THOMPSON: Well, Your Honor,
10 what I would like to do is voir dire the
11 witness, because it's -- I want to ask him
12 some other questions about Rick Hales and
13 might as well --

14 THE COURT: Do it now.

15 MR. THOMPSON: -- get that out.

16 THE COURT: Also under 608-B,
17 extrinsic evidence can't come in. You can
18 ask the person and you have to accept the
19 answer. For the purposes of establishing
20 the record, for the purposes of voir dire,
21 yes, sir, you may proceed.

22 MR. THOMPSON: Your Honor, I'm
23 sorry, in addition to, I cited 608 for
24 impeachment but my co-counsel -- and did
25 not cite 611-B and would ask to offer it

1 under that.

2 THE COURT: 611-B deals with, if
3 you're relying on State versus Williams,
4 which is the applicable case, 611-B deals
5 with whether or not you would have the
6 opportunity to examine the witness, in this
7 case, Mr. Hales --

8 MR. THOMPSON: And I did.

9 THE COURT: -- about drug usage
10 as it may affect his ability to recall,
11 recite, or recount. But for the purposes
12 of the record, you can ask questions.

13 MR. THOMPSON: All right, sir.

14 BY MR. THOMPSON:

15 Q This individual by the name of Rick Hales
16 who had the colostomy bag, he also had a reputation
17 for carrying a gun, did he not?

18 A I don't know.

19 Q You had talked to Rick Hales -- had you
20 talked to Rick Hales prior to coming to Robeson
21 County?

22 A No, sir, I've never talked to Rick Hales.

23 Q Did any of the officers in the briefings
24 with you there in Cumberland County advise you that
25 they had talked to Rick Hales?

1 A No, sir, Rick Hales was not able to be
2 located during that investigation.

3 Q During which investigation?

4 A This investigation, the investigation of
5 which you're speaking of the car, the missing car.
6 As I understand it he was implicated through other
7 people, but I don't recall that we ever located him
8 during that time.

9 Q I understand. And the people who had
10 implicated Rick Hales were people who were involved
11 with the stolen parts from the Lexus?

12 A That is correct.

13 Q And it was brought to your attention during
14 the briefing in Fayetteville that several of these
15 individuals had implicated Mr. Rick Hales as being
16 involved with the Lexus?

17 A That's correct.

18 THE COURT: Anything further?

19 MR. THOMPSON: No, that's the
20 nature of --

21 THE COURT: Yes, sir, I
22 understand.

23 Objection is sustained. Note the
24 defendant's exception for the record.
25 Court finding that the matters inquired

1 into, specifically questions relating to
2 Mr. Hales' reputation for selling drugs and
3 carrying a weapon, are not admissible under
4 either Rule 608-B, or 611-B. The
5 defendant's exception is noted. Do you
6 want a curative instruction, Mr. Britt?

7 MR. BRITT: Yes, sir. I will
8 also note for the record that it's not
9 admissible under Rule 405 A or B.

10 THE COURT: Yes, sir. That
11 wasn't raised, but that's correct. If
12 you'll bring the jury back in.

13 (Jury in at 9:49 a.m.)

14 THE COURT: Members of the jury,
15 the State's objection is sustained, and the
16 motion to strike is allowed. And I
17 instruct you that you are not to consider
18 the question asked by counsel for the
19 defendant, Mr. Thompson, relating to
20 Mr. Hales' reputation for selling drugs.
21 That matter is not to take any part in your
22 deliberations as I've said in any respect,
23 and any answer that may have been given
24 you're also not to consider and that is not
25 to take any part in your deliberations in

1 any respect. Do each of you understand the
2 instruction?

3 Mr. Thompson.

4 MR. THOMPSON: Thank you, Your
5 Honor.

6 BY MR. THOMPSON:

7 Q Mr. Binder, you knew that Rick Hales had
8 been shot, did you not?

9 A Yes, sir.

10 Q And during the briefing in Fayetteville
11 which occurred prior to your coming down to Robeson
12 County on Saturday, August the 14th, 1993, Rick
13 Hales' name had come up with regard to the Lexus 400?

14 A I don't recall that happening, no, sir.

15 Q Mr. Binder, do you recall that individuals
16 in Fayetteville were interviewed by Cumberland County
17 Sheriff's Department law enforcement officers
18 concerning stolen parts?

19 A Yes, sir.

20 Q And the Lexus?

21 A Yes, sir.

22 Q And do you know that those individuals had
23 indicated that Rick Hales was involved or near the
24 Lexus 400?

25 A Yes, sir.

1 Q And you found that out in the briefing,
2 didn't you, during the briefing?

3 A No, sir. I'll try to clarify that if you
4 want me to.

5 Q Yes, sir.

6 A I found that out through the course of an
7 investigation as it went, but when I did the briefing
8 with the State Bureau of Investigations, Rick Hales'
9 name did not come up to my best memory.

10 Q All right. But you mentioned the name Rick
11 Hales to the defendant during the interrogation,
12 didn't you?

13 A That's correct.

14 Q And in fact, on page 26 of the transcript
15 you mention the name Hales?

16 A That is correct.

17 Q And that was the Rick Hales -- the Rick
18 Hales that you mentioned or the Hales that you
19 mentioned is the same Rick Hales that you referred to
20 as being from Fayetteville with the colostomy bag and
21 having been shot, isn't that right?

22 A That's correct.

23 Q And the defendant was telling you back on
24 page eight where we were that he had seen somebody
25 named Rick with a colostomy bag, wasn't he?

1 A Yes, sir, he spoke of Rick, named a
2 colostomy bag.

3 Q He indicated the man had a bag like he had
4 been shot, didn't he?

5 A Yes, sir, that's correct.

6 Q Now, Sergeant Don Smith, who's now
7 Lieutenant Smith of the Cumberland County Sheriff's
8 Department, had interviewed the defendant's brother
9 David Moore prior to your coming down to Robeson
10 County, had he not?

11 A Yes, sir.

12 Q And Don Smith briefed you in Fayetteville
13 prior to your coming down to Robeson County as to
14 what David Moore had told him, did he not?

15 A I was present during that interview.

16 Q So you were there?

17 A Yes, sir.

18 Q Now, on page 11 of the transcript, when the
19 defendant was telling you that he stayed at his
20 brother's house in Fayetteville and, in fact his
21 brother woke him up before he left to go to work, you
22 knew then that his brother had made the same
23 statement to you and Sergeant Smith, did you
24 not?

25 A Yes, sir.

1 MR. BRITT: Objection.

2 THE COURT: Well --

3 MR. BRITT: I'll withdraw it.

4 THE COURT: You have answered,
5 sir?

6 MR. THOMPSON: He said "yes,
7 sir."

8 THE COURT: Mr. Thompson.

9 BY MR. THOMPSON:

10 Q And during the briefing in Fayetteville
11 prior to your coming down to the defendant's trailer
12 on that Saturday, August the 14th, you knew that an
13 individual by the name of Eric had been interviewed
14 by some of your detectives?

15 A Yes, sir.

16 Q And were you present during any of those
17 interviews?

18 A I don't remember the individual interviews,
19 but I have talked with Eric, yes, sir, prior to that,
20 yes, sir.

21 Q And you knew that Eric had indicated that
22 he had gone to Mr. David Moore's house?

23 A Yes, sir.

24 Q And Eric was also one of the individuals
25 who mentioned Rick Hales' name, did he not?

1 MR. BRITT: Objection.

2 THE COURT: Sustained at this
3 point.

4 MR. BRITT: Move to strike.

5 THE COURT: Allowed. Members of
6 the jury, you're not to consider the last
7 question asked by Mr. Thompson. That
8 matter is not to take any part in your
9 deliberations in any respect.

10 Yes, sir, Mr. Thompson.

11 BY MR. THOMPSON:

12 Q Turn to page 17 of the transcript, please.
13 The defendant told you there during the tape-recorded
14 portion of the interrogation that he arrived at his
15 brother's house sometime around 12:00?

16 A Yes, sir.

17 Q And that was the same thing that David
18 Moore had told you during the interview with you, was
19 it not?

20 A Not the day that he's talking about, no,
21 sir.

22 Q Mr. Binder, are you familiar with the
23 Vander area or Downing Road Extension in Cumberland
24 County?

25 MR. BRITT: Objection.

1 THE COURT: Overruled. You may
2 answer.

3 THE WITNESS: Not real familiar.
4 I could find it if I had to.

5 BY MR. THOMPSON:

6 Q You had never been out there during the
7 investigation of this case, down in Downing Road?

8 A Yes, sir, I've been in that area.

9 Q Mr. Binder, the woods where the Lexus was
10 found is located off of Downing Road Extension, isn't
11 that right?

12 A Extension, yes, sir.

13 Q And you -- do you know where the residence
14 of Phillip Lock or Milton Lock is located on Downing
15 Road?

16 A No, sir.

17 Q Do you know where Terrellis Teasley was
18 staying back in August of 1993 off of Downing Road?

19 A I know he was in that area but I don't know
20 where his house was.

21 Q Now, Downing Road is -- could it be
22 described as being out in the country, located out in
23 the country?

24 A Rural, yes, sir.

25 Q And is there a big brick house there on

1 Downing Road that you saw right before you turn off
2 to the dirt road going down in those woods?

3 A I don't recall. There could be.

4 Q Turn to page 24 of the transcript, please.
5 Did you ever go to the -- did you ever talk to
6 Terrellis Teasley prior to coming down on August the
7 14th of 1993 to Robeson County?

8 A As I recall, I believe Mr. Teasley was in
9 possession of the wheels and tires off the Lexus, and
10 if he is the one, I did talk with him, yes, sir.

11 Q And you knew that Mr. Teasley lived there
12 on that dirt road off of Downing Road Extension?

13 A I knew Mr. Teasley lived in the close
14 proximity of where the car was found. I don't
15 know -- I didn't know then nor do I know today
16 exactly where Mr. Teasley lived.

17 Q Do you know what kind of work Mr. Teasley
18 was doing back in August of 1993?

19 A No, sir.

20 Q You knew that Mr. Teasley, along with the
21 defendant and Mr. Demery, supposedly went to some
22 mechanic's house?

23 MR. BRITT: Objection to the
24 form. Objection to the form of the
25 question.

1 THE COURT: Well, if you know you
2 may answer.

3 THE WITNESS: I didn't understand
4 it.

5 MR. THOMPSON: Let me withdraw
6 the question and ask you another question,
7 Mr. Binder.

8 BY MR. THOMPSON:

9 Q Mr. Teasley was the -- you knew that the
10 defendant and Mr. Demery along with Eric and Rick
11 Hales went to a mechanic's house, at least that was
12 in one of the individual's statements?

13 A I was told that, yes, sir.

14 Q And was Mr. -- wasn't Mr. Teasley
15 supposed -- the mechanic that they were referring to?

16 A I really don't know.

17 Q Did you ever attempt to find out the name
18 of the mechanic?

19 A No, sir.

20 Q Rick Hales that you referred to with the
21 colostomy bag and who had been shot, were you able to
22 locate or did you attempt to locate Rick Hales?

23 A At that time I was involved in an
24 investigation of a secretive nature.

25 Q Excuse me.

1 MR. THOMPSON: I'm sorry. Your
2 Honor, it's a yes or no question.

3 THE COURT: There's no time
4 period. Do you want to rephrase?

5 BY MR. THOMPSON:

6 Q Mr. Binder, at any time during this
7 investigation, have you attempted -- did you
8 personally attempt to find Rick Hales?

9 A No, sir.

10 Q Did you instruct any of your underlings or
11 your detectives who were under you to attempt to find
12 Rick Hales?

13 A I spoke with people who were attempting to
14 find a Rick Hales.

15 Q And when was the first time did you speak
16 with anybody concerning their trying to find Rick
17 Hales?

18 A I don't know a specific date, but it was I
19 would say within a couple of weeks of where we're at
20 now. Excuse me, that didn't come out right. Within
21 a couple of weeks of my coming to Robeson County.

22 Q Two weeks prior to August the 14th of 1993?

23 A No, sir, two weeks after I was here.

24 Q Okay. Two weeks after. Now, Mr. Binder on
25 page 52 of the transcript, the defendant tells you

1 that he's scared, isn't that right?

2 A Yes, sir.

3 Q And he tells you there are a lot of places
4 he would rather be other than where he was there in
5 that interrogation room, didn't he?

6 A He says that, but not to me.

7 Q He says it while in your presence?

8 A Yes, sir.

9 Q And Mr. Binder, do you recall the defendant
10 telling you that he -- that Demery was getting ready
11 to have a baby and he didn't want to get him in any
12 trouble?

13 A Yes, sir.

14 Q Do you recall the defendant telling you
15 that Larry Demery was his best friend and that's why
16 he wouldn't tell them that he was with him?

17 A Yes, sir.

18 Q Do you recall the defendant telling you
19 during the tape-recorded portion of the interrogation
20 that the watch and the ring and the stuff that you
21 were talking about during that interrogation, he
22 didn't find until the next day?

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

24 Q You told the defendant that he was in
25 Myrtle Beach, accused him of being in Myrtle Beach,

1 did you not?

2 A Yes, sir, I did.

3 Q Do you know if there's more than one tower
4 in Myrtle beach?

5 A I don't know, sir.

6 Q Do you know where any tower is located in
7 Myrtle Beach?

8 A No, sir.

9 Q Do you know how close or how far signals
10 can be bounced off of a tower in Myrtle Beach?

11 A No, sir.

12 Q And do you know, Mr. Binder, that you don't
13 have to be in Myrtle Beach for a signal to bounce off
14 of a tower in Myrtle Beach?

15 A Yes, sir.

16 Q Mr. Binder, back on page 76 of the
17 transcript, you told the defendant that he didn't
18 have but two choices, did you not? Let me withdraw
19 that question.

20 Specifically, Mr. Binder, on the bottom of
21 the page 76 and the top of page 77, you said to the
22 defendant, "now you don't have but two choices, now,
23 you either going to have to tell me the truth that
24 Larry was the one that killed Mr. Jordan, or you
25 killed Mr. Jordan," you told him that?

1 A Yes, sir.

2 Q And you said, "if you didn't kill
3 Mr. Jordan, and Larry did, you better go ahead and
4 tell me now, son." You told him that?

5 A Yes, sir.

6 Q Mr. Binder, the defendant told you several
7 times that he did not kill anybody, did he not?

8 A Yes, sir.

9 Q On page 79 of the transcript, he told you
10 that "I ain't killed nobody"?

11 A "I ain't killed nobody now."

12 Q And on page 85 of the transcript, he told
13 you "I didn't kill nobody"?

14 A That's correct.

15 Q And on page 86 of the transcript, he told
16 you "I didn't kill nobody"?

17 A Did you say 86, sir?

18 Q Yes, sir. I'm sorry, 85. At the top of
19 85.

20 A Yes, sir, he said that, yes, sir.

21 Q On page 87 of the transcript, the defendant
22 told you he "couldn't kill nobody," did he not?

23 A Yes, sir.

24 Q And on page 91 of the transcript,
25 Mr. Binder, the defendant told you "Larry didn't kill

1 the man and I didn't kill the man."

2 A Yes, sir.

3 Q Page 96 of the transcript, the defendant
4 told you "I didn't kill nobody"?

5 A That's correct.

6 Q On page 101 of the transcript, Mr. Binder,
7 defendant told you "I ain't killed that man," did he
8 not?

9 A You said page 101?

10 Q Yes, I did, and I'm -- let me withdraw
11 that, because it does not appear on 101.

12 On page 119 of the transcript, if you'll
13 turn to that, Mr. Binder, the defendant told you that
14 I ain't killed -- "I ain't never killed nobody"?

15 A That's correct.

16 Q Then Mr. Binder, you tell the defendant
17 that "what you get for accessory to murder is one
18 year, two years, or three years," don't you?

19 A I don't recall if I said it exactly that
20 way, but I told him it was a three-year presumptive.

21 Q The question at the bottom of 119 is "well,
22 what do you get for that, one year, two year, or
23 three years"?

24 A Yes, sir, that's correct.

25 Q And then on the top of 120, you say, "Well,

1 let me tell you something. I'm an investigator. I
2 investigate every day, homicides every day. And an
3 accessory to the crime is the lowest end to the
4 crime. And the presumptive on accessory charge is
5 about three years." That's what you say to the
6 defendant?

7 A Yes, sir.

8 Q On page 121, Mr. Binder, you tell the
9 defendant that you want to show him something "right
10 here in this law book," that's what you say, and "I
11 want to show you I'm not lying to you, I haven't lied
12 to you all night. Put your leg down there and lay
13 this book right there in your hand." Did you have a
14 book in your hand?

15 A Yes, sir.

16 Q And you said accessory after the fact of a
17 felony, right here, you were reading from a book?

18 A Yes, sir.

19 Q And you said a Class H felony is punishable
20 by a fine of imprisonment of up to the ten years,
21 presumptive, three years, three years presumptive,
22 three years. That's what you said to him, didn't
23 you?

24 A Yes, sir.

25 Q And then you said, what's three years in

1 prison today, 40 days, if you become accessory after
2 the homicide, tell us. That's what you said, didn't
3 you?

4 A Yes, sir.

5 Q You said tell us now, take the low end.
6 That's what you said to him?

7 A If he's an accessory, yes, sir.

8 Q On page 122, Mr. Binder, the defendant told
9 you that "you know what I'm saying, I'm an accessory,
10 yeah, I get three years, but the fact is, I'm not an
11 accessory," that's what he told you, did he not?

12 A Yes, sir.

13 Q And then, Mr. Binder, even after explaining
14 to the defendant that the accessory to a crime is the
15 lowest end to the crime, on page 120 of the
16 transcript, the defendant emphatically said no when
17 asked "did you kill him," didn't he?

18 MR. BRITT: Objection to the
19 form.

20 THE COURT: Sustained.

21 MR. BRITT: Move to strike.

22 THE COURT: Motion to strike is
23 allowed. Members of the jury, don't
24 consider the last question asked by
25 Mr. Thompson. That matter is not to take

1 any part in your deliberations in any
2 respect. Omit "emphatically."

3 BY MR. THOMPSON:

4 Q Excuse me. On page 131 of the transcript,
5 I'm sorry, 131 of the transcript, the defendant was
6 asked, "did you kill him" and he said no, did he not?

7 A Correct.

8 Q The defendant was asked, did you put him
9 out and he said no?

10 A Yes, sir, that's correct.

11 Q Now, Mr. Binder, you had obtained a copy of
12 the phone log from the Lexus during the tape-recorded
13 portion of the interrogation?

14 A Yes, sir.

15 Q And you asked the defendant if he had
16 called his cousin at a number 422-9007, you asked him
17 that?

18 A I asked him if he called that town, I
19 believe that's --

20 Q On page 27 of the transcript.

21 A I did ask him, and he said he had called
22 his cousin at that number.

23 Q At 422-9007, that's the number that you
24 initialed yesterday on State's Exhibit --

25 A Yes, sir.

1 Q And you asked the defendant if he had
2 called Philadelphia, at 227-2710 on page 40 of the
3 transcript?

4 A I believe Lieutenant Henley might have
5 asked him, but he said he called that number in
6 Philly. It could have been me. It was one of the
7 other.

8 Q On page 40 of the transcript, all right.
9 And then on -- you asked the defendant later on
10 during the tape-recorded portion of the interview,
11 you said on page 102, look, you were calling people
12 like your brother, your girlfriend, your buddy in
13 Pembroke. You said that, didn't you?

14 A Yes, sir.

15 Q And the defendant said, I ain't never
16 called anybody in Pembroke, did he not?

17 A Yes, sir.

18 Q Now, Mr. Binder, some point later on during
19 the early morning hours of August the 15th, which
20 would have been Sunday of 1993, you were
21 participating in an interrogation of Larry Demery?

22 A Yes, sir.

23 Q And during -- that interrogation, you asked
24 Larry Demery, I told Larry Demery on two times that
25 he had called his buddy in Pembroke, did you

1 not?

2 MR. BRITT: Objection, outside
3 the scope of rebuttal.

4 THE COURT: Ladies and gentlemen,
5 there's a matter of law the Court must take
6 up at this time. Please recall my
7 instructions in that regard. Don't worry
8 or speculate about what takes place in the
9 courtroom in your absence, if you'll leave
10 State's Exhibit 171 in your chairs or your
11 copies of 171 and if you'll step to the
12 jury room.

13 (Jury out at 10:20 a.m.)

14 THE COURT: Let the record show
15 the following is being heard in the absence
16 of the jury. Basis of the objection is
17 that it's outside the scope of rebuttal
18 evidence, is that correct?

19 MR. BRITT: Yes, sir.

20 THE COURT: Where are you going
21 with this, Mr. Thompson?

22 MR. THOMPSON: Simply that he
23 made -- he participated in the
24 interrogation of Larry Demery, he made
25 comments about -- to Larry Demery about

1 calling his friend in Pembroke.

2 THE COURT: What's the purpose
3 though? I mean, what is the purpose with
4 regard to the rebuttal evidence related to
5 your client?

6 MR. THOMPSON: That after he
7 asked Mr. Green, did he call that number,
8 he told him he didn't know anybody in
9 Pembroke, and later on, I mean, he
10 participated in the --

11 THE COURT: Well, it still has to
12 be limited to the scope of rebuttal, and
13 what I'm trying to clear up in my mind, are
14 you tying it to any questions that were
15 asked of Mr. Green?

16 MR. THOMPSON: Your Honor, he had
17 a list of all the phone calls, he was
18 asking Mr. Green which calls he made.
19 He -- and he suggested that he was making
20 all the phone calls, and this goes -- I
21 mean, I contend that it's certainly a
22 matter that we can get in on cross, because
23 that's what he was suggesting.

24 THE COURT: Well, it's tenuous,
25 but I'm going to let it in, limited to that

1 specific question. If you look at the
2 following two lines on page 102.

3 MR. BRITT: Yes, sir.

4 MR. THOMPSON: Your Honor --

5 THE COURT: Mr. Green's response,
6 according to what's in the transcript and
7 what was in 170 was, I didn't call, or "I
8 ain't never called anybody in Pembroke."
9 Next question by this witness, "wherever it
10 was, Rowland." Answer, "my cousin." So
11 I'm trying to figure out how it relates to
12 this matter.

13 MR. THOMPSON: Well, Your Honor,
14 in fact, the questions that I posed to
15 ask --

16 THE COURT: Why don't we go to
17 that now so we can deal with it at once.

18 MR. THOMPSON: Yes, sir.

19 BY MR. THOMPSON:

20 Q Mr. Binder, do you recall during the early
21 morning hours of August the 15th, Sunday, August the
22 15th, 1993, you participated also in an interrogation
23 of Larry Demery?

24 A Yes, sir.

25 Q And that -- a portion of that interrogation

1 was also tape-recorded?

2 A As I recall, yes, sir.

3 Q Do you recall saying to Mr. Demery, but the
4 one thing that's going to hurt you worse than
5 anything is you made a telephone call to Pembroke?

6 A I don't recall that I did, but I'm sure I
7 must have.

8 Q And you made it at the same time, just
9 after, not long after but just after Mr. Jordan went
10 in the water. It's going to be your friends to
11 Pembroke. Do you remember saying that?

12 A Probably so, yes, sir.

13 Q And at the time you made that comment to
14 Mr. Demery, you were in receipt of the phone log from
15 the Lexus?

16 A Yes, sir.

17 Q At the time you made the comment earlier to
18 Mr. Demery you were in receipt of the phone log from
19 the Lexus?

20 A Yes, sir.

21 Q And --

22 MR. THOMPSON: May I, Your
23 Honor?

24 THE COURT: Is your point that
25 there was a call listed on the phone log to

1 Pembroke and the officers were attempting
2 to find out which of these individuals made
3 that call?

4 MR. THOMPSON: Yes, sir.

5 THE COURT: Mr. Britt?

6 MR. THOMPSON: And the nature --
7 and if he knows from his own knowledge who
8 that number belonged to, because he's --
9 that's --

10 MR. BRITT: Ask him.

11 THE COURT: Yes, sir.

12 BY MR. THOMPSON:

13 Q Did you know --

14 A No, sir.

15 Q -- from your own knowledge who the phone
16 number belonged to?

17 A I was trying to find out.

18 Q Did you consult at any time anybody as to
19 who that number belonged to?

20 A No, sir.

21 THE COURT: Anything further? Is
22 it fair to say, Mr. Binder, that in both
23 the interrogation of Mr. Green and the
24 interrogation of Mr. Demery you all were
25 throwing out stuff, seeing who was going to

1 bite?

2 THE WITNESS: We were fishing,
3 sir.

4 BY MR. THOMPSON:

5 Q Did Mr. Demery ever deny making that phone
6 call when you asked him about the phone call to
7 Pembroke?

8 A As I recall, he didn't comment.

9 Q And he didn't deny it, did he?

10 A He didn't affirm it either.

11 MR. THOMPSON: Thank you, that's
12 my showing.

13 THE COURT: Okay. All that comes
14 back to, what is the significance of the
15 phone call and what does it mean to the
16 issues in the case. And there's no showing
17 at this point that it has any significance
18 or meaning to the case other than the fact
19 that it is listed in the phone records.
20 Doesn't mean anything.

21 MR. THOMPSON: Again, they are
22 trying to attribute all the calls to
23 Mr. Green, and Your Honor, the selectively
24 the prosecution is -- the phone calls were
25 made during -- based on his evidence,

1 during the possession of the Lexus by
2 either Mr. Demery or Mr. Green.

3 THE COURT: What I'm going to
4 allow you to do is I'm going to allow you
5 to ask Mr. Binder whether or not he asked
6 Mr. Demery whether Mr. Demery made that
7 phone call to what's reflected on the
8 record, to Pembroke.

9 MR. THOMPSON: And using the
10 exhibit --

11 THE COURT: You can use whatever
12 you want to.

13 MR. THOMPSON: Yes, sir.

14 THE COURT: State would then be
15 entitled to come back and ask essentially
16 what I just asked the witness, whether or
17 not they were fishing to see who was going
18 to bite.

19 MR. THOMPSON: Well, I object to
20 him asking that question, whether they were
21 fishing to see who was going to bite.

22 THE COURT: If that's -- words to
23 that effect. He can describe it anyway he
24 wants to. That's my understanding of what
25 happened.

1 MR. THOMPSON: I'm talking about
2 that language.

3 THE COURT: I don't know what
4 he's going to say, but I suspect that much
5 of the interrogation of both defendants was
6 exactly that.

7 MR. THOMPSON: I understand, but
8 he has a -- I mean, Mr. Britt on a number
9 of occasions has actually looked back in
10 the record and asked the exact question
11 that you permitted him to ask, and I'm
12 saying that the question itself -- but
13 anyway, that's all right. He can ask just
14 the same way you asked.

15 THE COURT: Whether or not he
16 asked that question to Mr. Demery, you're
17 going to be bound by the answer.

18 Folks, I don't think that it means a
19 whole lot, but for what it's worth under
20 611-B I'm going to let you ask the
21 question. Okay? Note the State's
22 objection to the Court's ruling and the
23 State's exception to the Court's ruling.

24 (Jury in at 10:28 a.m.)

25 THE COURT: The objection is

1 overruled. Mr. Thompson, you may repeat or
2 rephrase your question.

3 MR. THOMPSON: May I approach?

4 THE COURT: Yes, sir.

5 BY MR. THOMPSON:

6 Q Mr. Binder, on page 102 in the transcript,
7 when you were referring to a call asking Mr. Green if
8 he made a call to Pembroke --

9 A Yes, sir.

10 Q -- you had a copy of the phone log?

11 A Yes, sir.

12 Q And did you have a -- the number that you
13 were referring to, does it appear on State's Exhibit
14 56-B?

15 A Yes, sir, it does.

16 Q And what is that number?

17 A Area code (919) 521-3365.

18 Q Right. And the defendant told you he
19 "ain't never called nobody in Pembroke," isn't that
20 right?

21 A Yes, sir.

22 Q Now, later on during the morning of August
23 the 15th of 1993, that Sunday morning, you
24 participated in interrogation of Larry Demery?

25 A Yes, sir.

1 Q And you asked during that interrogation,
2 you had a copy of the phone log from the Lexus?

3 A Yes, sir.

4 Q And you asked Larry Demery -- excuse me.
5 You told Larry Demery, "but the one thing that is
6 going to hurt you worse than anything is you made a
7 telephone call to Pembroke," did you not?

8 A Yes, sir.

9 Q And "it's going to be your friends to
10 Pembroke," is what you told him, and when you called
11 your buddy at Pembroke. You said that to Mr. Demery,
12 did you not?

13 A Yes, sir.

14 Q And when you asked Mr. Demery -- did you
15 ask Mr. Demery if in fact he made that call to
16 Pembroke, do you recall, whether you asked or not?

17 A As I recall the way you said I more or less
18 accused him of making it.

19 Q Did Mr. Demery deny making the call to
20 Pembroke?

21 A He didn't deny it or affirm that he did.

22 Q Mr. Binder, you were employed with the
23 Cumberland County Sheriff's Department back in August
24 the 14th of 1993, you had been employed for about 11
25 years, had you not?

1 A Yes, sir.

2 Q And you were a detective for seven or eight
3 of those years?

4 A Yes, sir.

5 Q And you were Chief of Detectives for how
6 many of those years?

7 A Maybe four.

8 Q And you, being Chief of Detectives of all
9 divisions, have worked in drug as well as homicide
10 cases and other cases, have you not?

11 A That's correct.

12 Q You've had numerous courses in law
13 enforcement and training, have you not?

14 A Yes, sir, I've had numerous training.

15 Q What kind of courses have you had or
16 training have you had?

17 A Well, I've attended schools on homicide
18 investigations, I've attended schools on interviews,
19 I've attended schools for law updates. Such as that.

20 Q Have you ever taught any courses?

21 A No, sir.

22 Q And you have taken courses in interviewing
23 and interrogations?

24 A As I recall, yes, sir.

25 Q And you've conducted hundreds of

1 interrogations and interviews?

2 A Yes, sir.

3 Q Maybe even thousands?

4 A Perhaps.

5 Q And when did you leave the Cumberland
6 County Sheriff's Department?

7 MR. BRITT: Objection.

8 THE COURT: Relevance? Do you
9 want to be heard?

10 MR. THOMPSON: No, sir.

11 THE COURT: Sustained.

12 BY MR. THOMPSON:

13 Q Mr. Binder, the transcript that we've been
14 talking about of the tape-recorded proceedings of the
15 defendant, would you look through the first 50 pages
16 of that transcript very carefully, Mr. Binder, and
17 tell me, did you ask the defendant one time what he
18 was doing or where he was at on July the 23rd of
19 1993. You can look through that.

20 A I don't need to look. I didn't ask him
21 that.

22 Q You look through there and ask if you need
23 to where -- whether you asked the defendant one time
24 where he was at or what he was doing on July the 22nd
25 of 1993?

1 A No, sir. The only thing I did on the 23rd,
2 July 23rd, was when he and I was working with the
3 calendar trying to decide which Friday he said he
4 come in possession of the car. He was stuck on the
5 30th or the 23rd, and we talked about the 23rd that
6 he had the car, and he had already given his
7 explanation as to where he was on the 23rd.

8 Q And the portion that you were talking about
9 that you are referring to, Mr. Binder, that portion
10 begins on page 51 of the transcript, doesn't it, that
11 conversation, and actually ends about -- on page 53,
12 three pages of the transcript?

13 A It's on page 51, yes, sir.

14 Q And Mr. Binder, this interview,
15 tape-recorded interview took about two hours, did it
16 not?

17 A Yes, sir.

18 Q And after talking about the matters that
19 you just testified to as indicated in those three
20 pages of the transcript, would you look through the
21 rest of the hundred and 42 pages of the transcript
22 and tell me if you asked the defendant one time what
23 he was doing or where he was at on July the 23rd of
24 1993.

25 A What I just testified to is the

1 conversation we had about the 23rd. That's the time
2 we talked about it.

3 Q And did you one time ask the defendant
4 where he was at or what he was doing on July 22nd?

5 A No, sir.

6 Q Of 1993?

7 A No, sir.

8 Q During the tape-recorded interview of
9 the -- or the interrogation of the defendant,
10 Mr. Binder, particularly, specifically on page 60 of
11 the transcript --

12 A Page what, sir?

13 Q 60. You asked the defendant "what would
14 you say if I told you that right before we went and
15 got you, that we talked to Larry," meaning Larry
16 Demery, did you not?

17 A That's correct.

18 Q And of course, you never told the defendant
19 that you had talked to Larry?

20 A That's correct.

21 Q And in fact, you nor anybody else in that
22 room had talked to Larry when you made that comment,
23 did you?

24 A That's correct.

25 Q You asked the defendant, "What would you

1 say if I already know who Larry is, and you were the
2 second guy I went to get." Now, in fact, you had not
3 or anybody in that room had gotten or taken Larry
4 Demery into custody at the time that statement was
5 made?

6 A That's correct.

7 MR. THOMPSON: That's all.

8 THE COURT: Anything on redirect,
9 Mr. Britt?

10 MR. BRITT: Yes, sir.

11 REDIRECT EXAMINATION

12 BY MR. BRITT:

13 Q Mr. Binder, on page 77 of the transcript,
14 did you ask Mr. Green about the rings and the
15 watch?

16 THE COURT: Is the question did
17 this witness ask him?

18 MR. BRITT: Excuse me.

19 BY MR. BRITT:

20 Q Was Mr. Green asked about the ring and the
21 watch?

22 A Yes, sir, he was.

23 Q What was Mr. Green's response when he was
24 asked where the ring and the watch were located?

25 A He said, I'll tell you the truth about it,

1 somebody stole it.

2 Q Were you aware that on August the 15th of
3 1993 that the defendant took Sheriff Hubert Stone and
4 Special Agent Tony Underwood to a residence in
5 Robeson County where the NBA All-Star ring was
6 recovered?

7 MR. THOMPSON: Object.

8 THE COURT: The question is
9 confusing. The question is where you aware
10 at the time the question was asked,
11 preceding question?

12 MR. BRITT: No, sir.

13 THE COURT: All right. The
14 objection to the form of the question is
15 sustained. You may rephrase.

16 BY MR. BRITT:

17 Q After your interview with the defendant,
18 did you become aware, Mr. Binder, that the NBA
19 All-Star ring was recovered?

20 A Yes, sir.

21 Q And were you aware that it was recovered at
22 a residence the defendant took Sheriff Hubert Stone
23 and Special Agent Tony Underwood to?

24 MR. THOMPSON: Object.

25 THE COURT: Overruled.

1 THE WITNESS: Yes, sir, I'm aware
2 of that.

3 BY MR. BRITT:

4 Q And the ring that the defendant was asked
5 about during the course of the interview, that was
6 the NBA All-Star ring, wasn't it?

7 MR. THOMPSON: Object to the form
8 of the question.

9 THE COURT: Mr. Thompson, do you
10 want to be heard, sir?

11 MR. THOMPSON: No. Leading the
12 witness.

13 THE COURT: If you know, you may
14 answer, Mr. Binder.

15 THE WITNESS: That was the ring.

16 BY MR. BRITT:

17 Q On page 87 of the transcript, Mr. Thompson
18 asked you if the defendant told you on that page that
19 he didn't kill anybody, is that correct?

20 A Yes, sir.

21 Q On that same page, does the defendant tell
22 you that he knows that Larry Demery didn't kill
23 anybody?

24 A Yes, sir. He says, "I know Larry couldn't
25 kill anybody."

1 Q How many different stories did the
2 defendant tell you about how he came into possession
3 of Mr. Jordan's car during the course of this taped
4 interview?

5 MR. THOMPSON: Object.

6 THE COURT: Sustained.

7 BY MR. BRITT:

8 Q In the 142 pages of the transcript, does
9 the defendant ever mention the name Kay Hernandez?

10 A Never.

11 Q Does he say anything about being at a
12 cookout?

13 A Never.

14 Q The defendant asked you to do something to
15 check on his whereabouts, didn't he?

16 A Yes, sir.

17 Q What did he ask you to do about checking on
18 his whereabouts?

19 MR. THOMPSON: Object, unless we
20 narrow the time as to when, Your Honor.

21 THE COURT: Overruled. You may
22 answer.

23 THE WITNESS: He asked me to go
24 to Rowland Motel and they would say he was
25 at the Rowland Motel.

1 MR. THOMPSON: Move to strike.

2 THE COURT: Denied. Exception is
3 noted.

4 BY MR. BRITT:

5 Q Now, when you asked the defendant about
6 phone calls that were made and you asked Larry Demery
7 about phone calls that were made, what was your
8 purpose in doing that?

9 A I was --

10 MR. THOMPSON: Object.

11 THE COURT: Overruled.

12 THE WITNESS: I was fishing to
13 try to find out who made what call. I was
14 accusing both of them to see what they
15 would say.

16 BY MR. BRITT:

17 Q When you say you were fishing to find out
18 who made what call, what do you mean by that?

19 MR. THOMPSON: Object, he's
20 answered.

21 THE COURT: Overruled. You may
22 answer.

23 THE WITNESS: That means that I
24 knew the calls were made but I didn't know
25 who made them, so I was accusing each of

1 them and seeing what their response would
2 be.

3 BY MR. BRITT:

4 Q And prior to coming to Robeson County on
5 August 14th you had already talked to a number of
6 people -- or a number of people had been interviewed
7 as part of the investigation?

8 A Yes, sir.

9 Q And when Mr. Thompson asked you about Rick
10 Hales, information about Rick Hales and this car,
11 there were other people with Rick Hales in that car
12 weren't there?

13 A Yes, sir.

14 Q What other people were with Rick Hales in
15 that car?

16 A There was Terrellis Teasley. There were
17 two brothers by the last name of Farrior. There was
18 a juvenile, and seems like there was someone else,
19 but I don't recall the name.

20 Q And as a result of that information, were
21 those individuals arrested in Cumberland County?

22 A Yes, sir.

23 Q And as a result of interviews that took
24 place with individuals that were arrested in
25 Cumberland County, what did you do?

1 A In reference to their --

2 Q As a result of those interviews in
3 Cumberland County, did it change the focus of your
4 investigation?

5 A Yes, sir.

6 Q And how did it change the focus of your
7 investigation?

8 A It changed it by the information that was
9 obtained that who was in possession of the car when
10 it come in, and items that were seen in the car that
11 were related to --

12 MR. THOMPSON: Object, move to
13 strike.

14 THE COURT: Overruled. Denied.

15 BY MR. BRITT:

16 Q That information in regard to who was in
17 possession of the car and the items that were seen in
18 the car, did that bring you to the defendant's
19 residence on August the 14th of 1993?

20 A That and other information, yes, sir.

21 MR. BRITT: I don't have any
22 other questions.

23 THE COURT: Mr. Thompson.

24 RE CROSS EXAMINATION

25 BY MR. THOMPSON:

1 Q Mr. Binder, the defendant told you as
2 reflected on page 69 of the transcript that he didn't
3 find the watch and the ring and stuff you were
4 talking about, specifically the All-Star ring, you
5 said okay, until the next day, did he?

6 A That's what he said.

7 Q He didn't find it until the next day, the
8 All-Star ring -- the All-Star ring?

9 A That's what he said.

10 MR. BRITT: Objection, asked and
11 answered.

12 THE COURT: It has been.

13 BY MR. THOMPSON:

14 Q When you asked the defendant about where he
15 was on -- it was a Friday night, where he was on a
16 Friday night, he told you the Rowland Motel, or he
17 indicated to you that you could ask somebody at the
18 Rowland Motel?

19 A That's what -- yes, sir.

20 Q And which Friday night were you referring
21 to?

22 A I was referring to the 23rd. We had talked
23 about it on the calendar.

24 Q Well, show me the -- where you were
25 referring to the 23rd. It would be between pages 51

1 and 53, I believe.

2 THE COURT: Ladies and gentlemen,
3 let me give you your morning recess at this
4 time. During the recess -- if you folks
5 will please reassemble in the jury room at
6 ten after. That's a little bit more than
7 20 minutes. Again, please recall that it
8 is your duty to abide by all prior
9 instructions of the Court concerning your
10 conduct during this recess. If everyone
11 else will remain seated, the members of the
12 jury may take their recess at this time.

13 (Jury out at 10:47 a.m.)

14 THE COURT: Let the record
15 reflect the following is being heard in the
16 absence of the jury. Folks, I simply want
17 to bring to everyone's attention that we
18 may be opening some doors here. If there
19 is evidence that a call was made that was
20 admitted to by Mr. Green on or about the
21 23rd, 24th or thereafter, and if that
22 information is linked to the question which
23 was open-ended about when did you first
24 come into possession about the car, and if
25 a response is linked to those two matters

1 about check the Roland Motel out, then
2 those three things together open some
3 doors.

4 Look at the exhibits, Mr. Thompson, as
5 to any admitted phone calls and the date of
6 those phone calls in the context of when
7 did you first come into possession of a
8 car, and where were you when you came into
9 possession of it or when you first saw it.
10 And any explanations about where he had
11 been prior to that.

12 Let's take a break.

13 (Brief recess.)

14 THE COURT: Let me put this on
15 the record. All counsel are present, the
16 defendant is present in open court. All
17 members of the jury are secured in the jury
18 room, is that correct, Major Watson?

19 THE BAILIFF: That's correct.

20 THE COURT: We've got the checks
21 for the jurors for this week. Is there any
22 objection to Ms. Gaines giving those checks
23 out to the jurors at this time?

24 MR. BRITT: No, sir, not from the
25 State.

1 THE COURT: Mr. Thompson, Mr.
2 Bowen?

3 MR. THOMPSON: You know, can't we
4 wait until the break, the lunch break?

5 THE COURT: We can do that.
6 We'll hold off until lunch break and do it
7 at that time. Ready to go forward, folks?

8 Yes, sir, if you'll bring the jury
9 back in.

10 (Jury in at 11:09 a.m.)

11 THE COURT: Mr. Thompson.

12 MR. THOMPSON: I don't have any
13 further questions, Your Honor.

14 THE COURT: Any further matters
15 for the State?

16 MR. BRITT: Yes, sir.

17 FURTHER REDIRECT EXAMINATION

18 BY MR. BRITT:

19 Q Mr. Binder, if you turn to page 87 of the
20 transcript. Are you on page 87?

21 A Yes, sir.

22 Q On page 87 of the transcript was the
23 defendant asked if Larry Demery would tell the truth
24 about him?

25 MR. THOMPSON: What --

1 THE WITNESS: Could you ask your
2 question again, sir?

3 BY MR. BRITT:

4 Q On page 87, was the question asked in the
5 transcript, "Uh-huh, you think Larry Demery will tell
6 the truth about you"?

7 A Yes, sir.

8 Q And what was the defendant's answer?

9 A "Yeah".

10 MR. BRITT: I don't have any
11 other questions.

12 THE COURT: Mr. Thompson, may the
13 witness step down or do you have additional
14 matters?

15 MR. THOMPSON: I don't have any
16 more questions.

17 THE COURT: Thank you, sir. You
18 may step down.

19 Any further rebuttal evidence for the
20 State?

21 MR. BRITT: No, sir. The State's
22 rebuttal case -- that's it.

23 THE COURT: The State having
24 presented evidence in rebuttal, will there
25 be surrebuttal evidence offered by the

1 defendant?

2 MR. THOMPSON: Your Honor, we --
3 we're going to need time to consult.

4 THE COURT: Okay. Ladies and
5 gentlemen, let me do this. If anybody
6 wants to be heard, let me know. We have
7 the checks for the jurors. I'm going to
8 ask them to step down to Ms. Gaines and
9 step to the jury room. Is that agreeable?

10 MR. THOMPSON: Yes, that's fine.

11 THE COURT: Folks, we've got your
12 checks. If you'll step down and see Ms.
13 Gaines, I'm then going to ask that once you
14 receive your checks you go to the jury
15 room. Don't worry or speculate about what
16 takes place in the courtroom in your
17 absence, and if you'll leave your copies of
18 State's Exhibits 171 in your chairs,
19 please, if all members of the jury would
20 step down and see Ms. Gaines at this time.

21 (Jury out at 11:13 a.m.)

22 THE COURT: Let the record
23 reflect that all jurors are now secured in
24 the jury room. Mr. Thompson, you indicated
25 you needed an opportunity to consult?

1 MR. THOMPSON: Yes, sir.

2 THE COURT: You folks want to use
3 the same room you've been using?

4 MR. THOMPSON: Yes, sir.

5 THE COURT: Once we do that, so
6 Mr. Green will be aware what I intend to
7 do, depending on what your situation is, I
8 may need to make further inquiry of
9 Mr. Green at this point or some subsequent
10 point.

11 Are you aware of what I'm talking
12 about, Mr. Green, about whether or not you
13 wish to offer any evidence or testimony
14 yourself in this case?

15 MR. GREEN: Yes, sir.

16 THE COURT: You'll have an
17 opportunity to consult with your lawyers at
18 this time. We're at ease.

19 (Brief recess.)

20 THE COURT: Let the record
21 reflect all counsel are present, the
22 defendant is present in open court. All
23 members of the jury are secured in the jury
24 room. Court was just handed a note by a
25 member of the Robeson County Sheriff's

1 Department. The note apparently came in
2 through the District Attorney's office. I
3 asked Mr. Johnson Britt to have whoever
4 took the note present in court. And for
5 the record, ma'am, if you'll state your
6 name.

7 MS. HICKMAN: Gail Hickman.

8 THE COURT: Ms. Hickman, the note
9 that has been handed up to the Court came
10 from your office. That note reads as
11 follows: Carla Woodell, that the juror in
12 question, apparently her grandfather,
13 Willie C. Jacobs called your office.

14 MS. HICKMAN: Correct.

15 THE COURT: Indicating that
16 Ms. Woodell's child is ill, needs to be
17 taken to a doctor.

18 MS. HICKMAN: Yes, sir.

19 THE COURT: Do you know the
20 nature of the illness?

21 MS. HICKMAN: She was sick when
22 the mother left this morning, and she has
23 the dry heave's now.

24 THE COURT: State want to be
25 heard?

1 MR. BRITT: No, sir.

2 THE COURT: You folks, I presume,
3 were in the process of consulting with your
4 client?

5 MR. BOWEN: I think --

6 MR. THOMPSON: Yes, sir. Your
7 Honor --

8 THE COURT: I was just going to
9 ask if you'd had an opportunity to consult.

10 MR. THOMPSON: Yes, yes. And
11 we're not going to offer any evidence on
12 surrebuttal. So we can --

13 THE COURT: So all of the
14 evidence is in at this time?

15 MR. THOMPSON: Yes, sir. And --

16 THE COURT: What I intend to do,
17 folks, given our situation with
18 Ms. Woodell, as I indicated, I'm going to
19 ask what your position is on the record in
20 the presence of the jury. Assuming you'll
21 indicate the same thing that you've just
22 indicated on the record, I am then going to
23 give them the instructions that are given
24 prior to the charge conference, I'm going
25 to release all jurors, and inform

1 Ms. Woodell of what the status is. That
2 shouldn't take very long at all. Then all
3 jurors will be released. I'm going to tell
4 the jurors to come back Tuesday morning.
5 We will do the charge conference Monday
6 morning. Is that agreeable?

7 MR. THOMPSON: Yes, sir.

8 THE COURT: That gives all
9 counsel an opportunity to present any
10 request for special instructions or to
11 prepare for the jury instruction
12 conference. Mr. Bowen, Mr. Thompson, is
13 that agreeable with counsel for the
14 defendant?

15 MR. BOWEN: Yes, sir.

16 MR. BRITT: Yes, sir, that's
17 fine.

18 THE COURT: If you'll bring the
19 jury in, please, sir.

20 Major, I apologize if you'll bear with
21 me one second. Ask the jury members to
22 step to the jury room one second.

23 Folks, let me make sure the record is
24 absolutely complete. I'm going to do this
25 as quickly as I can. Mr. Green, you have

1 had an opportunity to consult with both Mr.
2 Thompson and Mr. Bowen?

3 MR. GREEN: Yes, sir.

4 THE COURT: You understand at
5 this stage of the proceedings, you are
6 entitled to offer surrebuttal evidence,
7 evidence which would be presented on your
8 behalf? In the context of evidence offered
9 by the State in rebuttal, you would be
10 entitled to rebut their rebuttal in
11 effect, you understand that?

12 MR. GREEN: Yes, sir.

13 THE COURT: Included in that
14 right, you have the right to offer
15 testimony of any other witnesses, and you
16 have the right to testify yourself. You
17 understand those rights?

18 MR. GREEN: Yes, sir.

19 THE COURT: Is it your decision
20 not to offer any additional testimony from
21 other witnesses at this time?

22 MR. GREEN: Yes, sir.

23 THE COURT: Is it your decision
24 not to testify on your own behalf at this
25 time?

1 MR. GREEN: Yes, sir.

2 THE COURT: And is that after
3 consultation with counsel?

4 MR. GREEN: Yes, sir.

5 THE COURT: Mr. Mr. Thompson, Mr.
6 Bowen, do you have anything to add to
7 that?

8 MR. THOMPSON: No, sir.

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

11 (Jury in at 11:28 a.m.)

12 THE COURT: The State having
13 completed it's rebuttal evidence, will
14 there be surrebuttal evidence offered by
15 the defense?

16 MR. THOMPSON: There will be no
17 further evidence from the defense, Your
18 Honor.

19 THE COURT: Members of the jury,
20 all the evidence in this case has now been
21 presented, and it will soon -- and I'll
22 have more to say about that in a minute --
23 it will soon be your duty to decide from
24 this evidence what the facts are and then
25 to apply the law which I will give you in

1 my instructions, to those facts in arriving
2 at your verdict in this case.

3 However, as I have previously informed
4 you and instructed you, the Court is
5 required under our rules of procedure to
6 confer with the attorneys in this case
7 about the law involved in this matter,
8 prior to the arguments of counsel and prior
9 to the Court's instructions on the law
10 which follow the arguments of counsel.

11 Now, you've not yet heard the
12 arguments of the attorneys in this case.
13 And you've not yet received the Court's
14 instructions on the law in this matter.
15 Therefore, it would be inappropriate for
16 you to make up your minds in any respect
17 about this matter. It is your duty to
18 continue to remain open-minded about this
19 matter until you've heard the arguments of
20 the attorneys and until you've received the
21 Court's instructions on the law in this
22 case.

23 I'm going to release you folks in just
24 a few moments. I'm going to ask that you
25 return promptly at 9:30 on Tuesday

1 morning. Ma'am, we are still mindful of
2 your medical appointment. You are free to
3 attend that appointment. Your presence
4 will not be required at all Monday
5 morning. I will use that opportunity to
6 confer with the attorneys about the law in
7 this case.

8 Now, ladies and gentlemen, during this
9 recess, you're not to discuss this matter
10 among yourselves or with anyone else,
11 including members of your own families.
12 You're not to allow anyone to say anything
13 to you or in your presence about this
14 case. If anyone communicates with you
15 about this matter or attempts to do so, or
16 if anybody says anything about the case in
17 your presence, it remains your duty to
18 inform us of that immediately through one
19 of the bailiffs assigned to this
20 courtroom.

21 I further instruct you as I have
22 previously instructed you that you're not
23 to form or express any opinions about this
24 matter. You're not to have any contact or
25 communication of any kind with any of the

1 attorneys, parties, witnesses, or directly
2 with the Court. You are to continue to
3 avoid any exposure to any media accounts
4 which may exist in connection with this
5 matter, and you're not to conduct any
6 independent inquiry or investigation or
7 verdict -- or inquiry of any kind.

8 Ladies and gentlemen, it remains your
9 duty to keep an open mind about this matter
10 until you've heard the arguments of the
11 attorneys and the Court's instructions on
12 the law.

13 Ms. Woodell, the Court has just been
14 handed a note, apparently your grandfather
15 called and left a message indicating that
16 your child is ill and that you will need to
17 come home immediately. I'm releasing all
18 of you at this time so that you can attend
19 to that, among other things. Folks, report
20 directly to the jury room at 9:30 on
21 Tuesday morning. At that time we will go
22 forward with the arguments of the
23 attorneys, and again those arguments will
24 be followed by the Court's instruction on
25 the law in this case. Have a good weekend,

1 we'll see you Tuesday morning at 9:30. You
2 folks are free to go.

3 Folks, I understand you may need some
4 excuses. Ms. Gaines will see you outside.
5 Ms. Woodell, if the bailiffs can assist you
6 in making any calls you need to make, let
7 Sergeant Meares or Major Watson know,
8 please.

9 (Jury out at 11:32 a.m.)

10 THE COURT: The following is
11 being heard in the absence of the jury. At
12 the conclusion of all the evidence, does
13 the defendant wish to be heard further as
14 to any motion?

15 MR. THOMPSON: Yes, sir. The
16 defense would renew its motion to dismiss
17 as to the charge of first degree murder
18 under the theory of premeditation and
19 deliberation as well as under the theory of
20 felony murder.

21 THE COURT: Folks, I've looked at
22 the law on this, and this is certainly not
23 the strongest case in terms of the theory
24 of premeditated first degree murder, but
25 the Court is satisfied that it is a jury

1 question based on the facts that are now
2 before the Court.

3 Now, in that regard, so you folks will
4 be aware and can come prepared to argue any
5 authority you feel is pertinent on Monday
6 morning, the Court is going to use the
7 standard verdict form as to the charge of
8 first degree murder, which denominates each
9 theory of first degree murder or both, so
10 that there is clarity in any verdict
11 returned by the jury as to jury's finding
12 either premeditated, first degree murder or
13 both of those theories. It's the standard
14 form which is attached to 206.14, among
15 others.

16 MR. BRITT: It's also attached to
17 150.10, which is the entire --

18 THE COURT: It's attached as
19 appendix A, and indicates the possible
20 verdicts with provision for answer of the
21 jury. That is without prejudice to the
22 defendant's right to bring in any
23 additional authority and ask for
24 reconsideration on Monday morning.

25 MR. THOMPSON: Yes, sir. And as

1 to --

2 THE COURT: As to all remaining
3 charges, the motion is renewed at this
4 time?

5 MR. THOMPSON: Yes.

6 THE COURT: All motions are
7 denied, to which the defendant objects and
8 excepts for the record. And again, that is
9 without prejudice to the defendant's right
10 to bring in any additional authority or ask
11 for reconsideration on Monday morning.

12 It's my intent to go forward with the
13 charge conference on Monday morning. If
14 you've got any specially requested
15 instructions, rules require that they be
16 submitted in writing, that a copy be
17 provided to opposing counsel. If you'll
18 file those requested instructions and
19 provide copies to opposing counsel, we can
20 deal with them on Monday morning.

21 Anything further from the State?

22 MR. BRITT: No, sir.

23 THE COURT: Anything further from
24 counsel for the defendant?

25 MR. THOMPSON: No, sir.

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THE COURT: Folks, see you Monday morning at 9:30. Is that agreeable?

MR. BRITT: That's fine.

THE BAILIFF: All rise.

(Couou

1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

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12 and

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15 P.O. Box 846
16 Lumberton, North Carolina 28359

17 - - -

18 (February 26, 1996. Proceedings in open court.)

19 THE COURT: Let the record
20 reflect that all counsel are present, the
21 defendant is present in open court. No
22 members of the jury are present at this
23 time, the jurors having been directed to
24 report tomorrow morning at 9:30. And at
25 this time, Court is going forward with the
Rule 21 or charge conference, as is
required by law. Does counsel for the

1 State have any special requested
2 instructions?

3 MR. BRITT: Yes, sir.

4 THE COURT: Okay. Have copies of
5 those proposed instructions been presented
6 to counsel for the defendant?

7 MR. BRITT: No, sir, I'm going to
8 do that at this time.

9 THE COURT: Okay. I've got the
10 files on 92 and 93 for the purposes of the
11 charge conference.

12 MR. BRITT: If I could approach.

13 THE COURT: Yes, sir.

14 MR. BRITT: May it please the
15 Court, as you review that, you will see the
16 requested instructions that I've asked for
17 are all pattern instructions.

18 THE COURT: Yes, sir. Does
19 counsel for the defendant have any request
20 for instructions?

21 MR. THOMPSON: Yes, sir, Your
22 Honor.

23 THE COURT: Serve a copy --

24 MR. BRITT: I have them.

25 MR. THOMPSON: If I could

1 approach the bench.

2 THE COURT: Yes, sir.

3 MR. THOMPSON: File the original
4 with the Court.

5 THE COURT: I'm looking through
6 yours, Number 4 appears to be a nonpattern
7 instruction, Mr. Thompson.

8 MR. THOMPSON: Yes, sir. And
9 Number 11 as well.

10 THE COURT: Yes, sir. Everything
11 else appears to be.

12 MR. THOMPSON: Pattern.

13 THE COURT: With the exception of
14 that, it's pattern instructions, but we'll
15 come back to that in a few moments.

16 MR. THOMPSON: Yes, sir.

17 THE COURT: Why don't we walk
18 through your proposed instruction and
19 taking the State's proposed instructions
20 first. Many of them -- the State is
21 requesting the following pattern
22 instructions, and where they are
23 duplicated, I'm going to indicate that for
24 the record. 101.05, function of the jury,
25 both State and defendant are requesting

1 that, that they be given.

2 102 -- strike that. 101.10, burden of
3 proof, reasonable doubt, which is 101.10,
4 not listed on the State's requested
5 instruction but is listed on the
6 defendant's requested instruction, that
7 will be given.

8 101.15, credibility of witnesses, that
9 will be given. We come to defendant's
10 Number 4, State's Number 4, State is asking
11 "Highest aim of every legal contest."

12 MR. BRITT: Yes, sir.

13 THE COURT: Language is flowery,
14 in this case State's got an argument that
15 it is appropriate. Defendant want to be
16 heard? 101.36, Mr. Thompson, Mr. Bowen?

17 And for the record, I'm going to read
18 the language into the record -- well, I
19 thought I was, but I don't have it with
20 me. Do you have a copy of it?

21 MR. BRITT: It's in the packet I
22 gave you.

23 THE COURT: Yeah. "Highest aim
24 of every legal contest is the ascertainment
25 of the truth. Somewhere within the facts

1 of every case, the truth abides. And where
2 truth is, justice steps in, garbed in its
3 robe, and tips the scale. In this case you
4 have no friend to award, you have no enemy
5 to punish. You have no anger to appease or
6 sorrow to assuage. Yours is a solemn duty
7 to let your verdict speak the everlasting
8 truth."

9 MR. THOMPSON: We object to it,
10 Your Honor.

11 THE COURT: Do you want to state
12 your basis, sir?

13 MR. THOMPSON: Well, I mean
14 it's -- as you stated, I mean, I know it's
15 a standard pattern jury instruction, it's a
16 lot of flowery language. Obviously in any
17 case, the jury's job is to search for the
18 truth. In some cases they can find it,
19 other cases they can't find it. And I mean
20 it's just, I think it's superfluous with
21 what the Court has already informed the
22 jury what their duty is, it's unnecessary.
23 And he can argue, you know, to the jury if
24 he wants to use that language.

25 THE COURT: Court will give the

1 requested instruction.

2 MR. THOMPSON: Well, we --

3 THE COURT: Sir?

4 MR. THOMPSON: It's -- we
5 withdraw the objection.

6 THE COURT: Okay. Your Number 4,
7 let me find that in your requested
8 instructions. This is from the Seventh
9 Circuit Court of Appeals pattern
10 instruction, modern fellow jury instruction
11 401, pages 4 through 11, reads as follows:
12 "The fact one party called more witnesses
13 and introduced more evidence than the other
14 does not mean that you should necessarily
15 find the facts in favor of the side
16 offering the most witnesses."

17 "By the same token, you do not have
18 to accept the testimony of any witness who
19 has not been contradicted or impeached. If
20 you find that the witness is not credible,
21 you may also have to decide which witnesses
22 to believe and which facts are true.

23 "As I previously instructed you to do
24 this, you must look at all the evidence,
25 drawing upon your own common sense of

1 personal experience. And after examining
2 all the evidence, you may decide a party
3 calling the most witnesses has not
4 persuaded you because you do not believe
5 its witnesses.

6 "You should keep in mind the burden
7 of proof is always on the State and the
8 defendant is not required to call any
9 witnesses or offer any evidence since he is
10 presumed to be innocent."

11 State want to be heard?

12 MR. BRITT: Yes, sir, I would
13 object to this proposed instruction. As I
14 read this, this would be surplus language
15 in addition to what is already contained in
16 the credibility of the witnesses under
17 pattern instruction 105.15. Also includes
18 same language as pattern instruction
19 101.20, weight of the evidence.

20 And if the Court -- I have not
21 completely reviewed -- well, if you go down
22 to Number 6 on the defense's requested
23 instruction, affect of the defendant's
24 decision not to testify, that language, the
25 language from that instruction I believe

1 also is covered within this proposed
2 instruction.

3 THE COURT: Okay. Anything
4 further from counsel for the defendant?

5 MR. BOWEN: Your Honor, reason we
6 advocate this particular charge is getting
7 some preview of what Mr. Britt may argue
8 from his sound bites on TV. It would
9 appear that he is using the nomenclature
10 "the mountain of evidence," that is, is
11 going to emphasize the fact that his
12 quantity of evidence, never mind the fact
13 that he proved anything at this stage which
14 he concedes in the opening statement, but
15 his general quantity of evidence should
16 overshadow anything else, and the defense
17 attempted to go very surgically with one
18 particular issue, and we think if that's
19 going to be the thrust, it's either
20 improper argument, I don't think it's
21 likely that we'll be able to successfully
22 object to his stating that he presented a
23 large number of witnesses, because he did.
24 But I think it's up to the Court, incumbent
25 upon the Court to put that in perspective,

1 that this charge does that.

2 THE COURT: The request,
3 defendant's requested jury instruction as
4 to the number of witnesses is denied, to
5 which the defendant excepts for the
6 record.

7 Weight of the evidence is already been
8 covered in the State's; again, that will be
9 allowed.

10 Affect of the defendant's decision not
11 to testify, which is found in 101.30,
12 Mr. Green, I earlier in these proceedings
13 went over that instruction with you, I'm
14 going to do it again.

15 I read as follows: "The defendant in
16 this case has not testified. The law of
17 North Carolina gives him this privilege.
18 The same law also assures him that his
19 decision not to testify creates no
20 presumption against him. Therefore, and I
21 will insert the following words, "I
22 instruct you that his silence is not to
23 influence your decision in any way."

24 Do you request that instruction in
25 open court at this time?

1 MR. GREEN: Yes, sir.

2 THE COURT: And that's after
3 conferring with your attorneys, Mr. Bowen
4 and Mr. Thompson; is that correct?

5 MR. GREEN: Yes, sir.

6 THE COURT: The instruction will
7 be given at the defendant's request.

8 Evidence of similar acts or crimes
9 which is listed on both requested
10 instructions or both lists of requested
11 instructions and set out in 104.15 will be
12 given.

13 I'm going to give it twice, folks, as
14 it relates to two incidents. By "twice," I
15 mean that I'm going to refer specifically
16 to the two incidents set forth in the
17 evidence in this case. And I pulled the
18 instruction that I gave earlier during the
19 trial and that instruction at the
20 conclusion of all of the evidence will
21 track the prior instructions given by the
22 Court.

23 Mr. Court Reporter, if you'll pull
24 those matters from your transcript for the
25 benefit of the Court so that I can

1 incorporate that language into the final
2 instruction given to the jury in this
3 case.

4 MR. THOMPSON: Excuse me.

5 THE COURT: That is, as it
6 relates to the July 15th alleged robbery
7 of --

8 MR. BRITT: Mr. Demory.

9 THE COURT: -- Mr. Clewis Demory,
10 and as it relates to the July 4th alleged
11 incidents at the Family Inns. And the
12 specific matters instructed upon will be
13 identical to those matters previously
14 instructed on: Identity, intent,
15 knowledge, and common scheme or plan.

16 Anything further from either counsel
17 in that regard?

18 MR. BRITT: No, sir.

19 THE COURT: Testimony of
20 interested witness, 104.20, both parties
21 are asking for that, that will be given.

22 The defendant is asking for the
23 instruction set out in 104.21, testimony of
24 witnesses with immunity or quasi-immunity.
25 There's another pattern instruction that

1 may apply, let me bring that to your
2 attention now.

3 MR. BRITT: 104.25?

4 THE COURT: Yes, sir, accomplice.

5 MR. BRITT: Yes, sir.

6 THE COURT: 104.25 reads as
7 follows: "There is evidence which tends to
8 show that the witness in this case Larry
9 Martin Demery was an accomplice in the
10 commission of the crime charged in this
11 case." I've never liked that language
12 because I think that language arguably
13 conveys to the jury that the Court finds
14 that the person is an accomplice.

15 And I would propose to change that
16 language as follows: "There is evidence
17 which tends to show and which the State
18 contends does show and the defendant denies
19 that the witness Larry Martin Demery was an
20 accomplice in the commission of the crime
21 charged in this case."

22 "I instruct you that an accomplice is
23 a person who joins with another in the
24 commission of a crime. The accomplice may
25 actually take part in acts necessary to

1 accomplish the crime or may knowingly help
2 or encourage another in the crime, either
3 before or during its commission. And an
4 accomplice is considered by law to have an
5 interest in the outcome of the case.

6 "If you find that the witness Larry
7 Martin Demery was an accomplice, you should
8 examine every part of the testimony of this
9 witness with the greatest care and
10 caution. If after doing so you believe his
11 testimony in whole or in part, you should
12 treat what you believe the same as any
13 other believable evidence."

14 Does the State wish to be heard?

15 MR. BRITT: No, sir, no objection
16 to that.

17 THE COURT: Defendant wish to be
18 heard as to that proposed language?

19 MR. THOMPSON: No, sir, Your
20 Honor. We'll agree to that language in
21 lieu of our request.

22 THE COURT: I think it is more
23 appropriate on the facts of this case,
24 especially given the case law dealing with
25 that subject matter.

1 MR. THOMPSON: Yes, sir. That's
2 in lieu of 104.25. Now, you mentioned that
3 also in context of 104.21, which is a
4 different instruction that deals with the
5 grant of immunity and quasi.

6 THE COURT: You want that in
7 addition?

8 MR. THOMPSON: Yes, sir.

9 THE COURT: 101.24 and 104.25.

10 MR. THOMPSON: Well, the
11 instruction that you gave, the modified
12 instruction you gave in lieu of 104.25. In
13 addition to that, we request 104.21.

14 THE COURT: State want to be
15 heard? Matter does not fall under 15-A
16 1052; falls, if at all, under 15-A 1054.

17 MR. BRITT: Yes, sir. And if you
18 look at the first sentence of their
19 proposed instruction, that being there is
20 evidence which tends to show that a witness
21 was testifying under a grant of immunity
22 and --

23 THE COURT: That would not be
24 given, that language. It would either be
25 under an agreement with the prosecutor for

1 a charge reduction -- which doesn't apply
2 in this case -- in exchange for testimony,
3 or under an agreement with the prosecutor
4 for a recommendation as to sentence
5 concession in exchange for his testimony.
6 In if any of the language applies, it's
7 that latter parenthetical.

8 MR. BRITT: Yes, sir, I think
9 that's the only language that does apply.

10 MR. BOWEN: But that's not the
11 only language. I understand where the
12 Court is coming from on the 1052 argument.
13 To have a statutory grant of immunity it
14 takes a grant of the Court and certain
15 procedures. However, that does not get us
16 around that certain paragraph in the
17 State's plea bargain with Mr. Demery about
18 the promise that they will not prosecute
19 him for any crimes that they may find out
20 about during the course of developing the
21 testimony.

22 THE COURT: Is there any evidence
23 that that was done?

24 MR. BOWEN: I don't think it
25 makes any difference as long as the promise

1 was made.

2 What I propose that you do is this: A
3 grant of immunity under statutory language
4 going to be that which 1052 talks about,
5 and I agree, is not here. Why don't we
6 change the language to a, quote, promise of
7 immunity, because not to deal with that
8 immunity issue is not to acknowledge that
9 that paragraph is in there. Telling
10 Mr. Demery that he can basically confess to
11 virtually anything and not be prosecuted.
12 I mean, it's in there, and I think we're
13 entitled to argue about it.

14 THE COURT: Pull that file, let
15 me look at that language.

16 MR. BRITT: As I recall the
17 evidence, they did not inquire into any
18 grant of immunity.

19 MR. THOMPSON: Judge, and --

20 MR. BRITT: And the --

21 MR. THOMPSON: I'm sorry.

22 MR. BRITT: -- the agreement
23 that was entered into with Mr. Demery, if I
24 recall the evidence correctly, was not
25 offered into evidence in this case.

1 THE COURT: You folks disagree
2 with that, that the defense did not offer a
3 transcript of the plea into evidence?

4 MR. BOWEN: Because doors were
5 everywhere.

6 THE COURT: I understand.

7 MR. BOWEN: I don't disagree with
8 what you said, but the exhibit is here and
9 it's --

10 THE COURT: I want the file with
11 the transcript. Is this it?

12 MR. BRITT: It's in File Number 4
13 of Mr. Demery's file.

14 THE COURT: Folks, we're in
15 agreement as to the latter parenthetical,
16 "Under agreement with the prosecutor for
17 recommendation for sentence in exchange for
18 his testimony"?

19 MR. THOMPSON: Yes, sir.

20 THE COURT: Only disagreement is
21 with some modified language dealing with
22 immunity?

23 MR. THOMPSON: Yes, sir.

24 MR. BRITT: And I do not -- I
25 mean, there is language in the agreement

1 with Mr. Demery that if he told us about
2 matters that we could not prove or
3 otherwise were unknown to us, he would not
4 be prosecuted for that. But those -- that
5 area was not gone into on cross-examination
6 nor on direct examination.

7 THE COURT: Thank you, ma'am.
8 The appropriate or pertinent paragraph
9 reads as follows: "Parties agree that the
10 defendant shall not be prosecuted for the
11 commission of any crimes in which he
12 participated that are not known to the
13 State and which would otherwise remain
14 unknown except for the defendant's
15 cooperation."

16 That's the language that you're
17 quoting?

18 MR. BOWEN: Yes, sir.

19 THE COURT: Folks, I'm going to
20 incorporate that specific language and the
21 last parenthetical so that the transcript
22 is completely out -- I mean the agreement
23 is completely out to the jury. So 104.21
24 will include, in lieu of the first two
25 parentheticals, the language set out in

1 this paragraph that I've just read and the
2 last parenthetical under -- and/or under an
3 agreement with the prosecutor for a
4 recommendation -- no, wouldn't be "or,"
5 would be "and." Under an agreement with
6 the prosecutor for recommendation for
7 sentence concession in exchange for his
8 testimony.

9 So Court will given 104.21 as modified
10 and 104.25 as modified.

11 And your Number 10, Mr. Thompson,
12 Mr. Green, deals with the accomplice
13 testimony, you consent to the matter as
14 modified; is that correct?

15 MR. THOMPSON: Yes, sir.

16 THE COURT: Next on the State's
17 requested instructions, let me back up, is
18 circumstantial evidence, 104.05. You folks
19 want to be heard?

20 MR. BOWEN: Circumstantial
21 evidence, don't have a problem.

22 THE COURT: That will be given.
23 State is asking for 104.10, motive.
24 Counsel for defendant want to be heard?

25 MR. BOWEN: No, sir.

1 THE COURT: Motive will be
2 given. I think that catches us up to --
3 State is also asking, I'm sorry, Number 9,
4 for 104.40, recent possession, doctrine of
5 recent possession. Specifically when do
6 you contend that applies to?

7 MR. BRITT: I think the doctrine
8 of recent possession and the instruction on
9 circumstantial evidence go hand in hand.
10 That, if this jury chooses to disbelieve
11 the testimony of Mr. Demery, which in my
12 opinion is an eyewitness account, direct
13 evidence; the other evidence in this case
14 is circumstantial in that the defendant was
15 in possession of Mr. Jordan's car, made
16 telephone calls from that car at a time
17 very soon after we allege that the murder
18 occurred, was in possession of items of
19 personal property belonging to Mr. Jordan.
20 Couple -- and couple that with --

21 THE COURT: So your specific
22 contention is that the possession of the
23 Lexus automobile, recent possession, is
24 evidence tending to show guilt?

25 MR. BRITT: Yes, sir.

1 THE COURT: All right. Defendant
2 want to be heard?

3 MR. THOMPSON: May I have just
4 one moment?

5 THE COURT: Yes, sir.

6 MR. BOWEN: Object for the
7 record, Your Honor.

8 THE COURT: For the record, the
9 objection is noted. Objection is
10 overruled.

11 Court will give the instruction set
12 out in 104.40, doctrine of recent
13 possession.

14 All right. As to your next proposed
15 instruction, Mr. Thompson, absence of
16 flight by the defendant, which is a
17 nonpattern instruction, let me go to that.

18 That instruction reads as follows:
19 "The defendant contends that the defendant
20 did not avoid or attempt to avoid law
21 enforcement officers. Evidence of the
22 defendant remaining in the jurisdiction may
23 be considered by you with all other facts
24 and circumstances in the case in
25 determining whether the combined

1 circumstances amount to an expression of
2 innocence. However, proof of this
3 circumstance is not sufficient in itself to
4 establish the defendant's innocence."

5 There are no authorities cited for
6 this proposed instruction. Where do you
7 contend -- what authority do you offer in
8 support of the instruction?

9 MR. BOWEN: We say it is simply
10 the logical reciprocal of the argument that
11 flight can be used by the jury to infer
12 some sort of guilt. The old Biblical
13 reference is "The guilty flee when no man
14 pursuath, where the innocent stand like a
15 lion."

16 One of the interesting things about
17 this case all the way through, has been
18 that the State has chosen to take a
19 position that not only once they picked Mr.
20 Green up from his home, when he was not
21 under arrest presumably, he was allowed to
22 go get clothing and come back out
23 voluntarily and accompany them to jail, law
24 enforcement center, their contention has
25 been that he was at all times free to leave

1 all during that evening, or so be it and
2 the Court has found that.

3 But seems now that that logic benefits
4 the defendant in that he can say with all
5 that freedom and all that authority he had
6 just to walk out of there, the fact that he
7 didn't do it can be inferred by the jury to
8 indicate some of his innocence. It's just
9 the logical reciprocal of what flight would
10 indicate.

11 THE COURT: Well, there's another
12 instruction that I think goes hand in hand,
13 and I looked for it on the State's proposed
14 instruction. It listed 105.21, deals with
15 false contradictory or conflicting
16 statements of defendant and reads as
17 follows: "The State contends,"
18 parenthetically, "and the defendant denies,
19 that the defendant made false contradictory
20 or conflicting statements. If you find
21 that the defendant made such statements,
22 they may be considered by you as a
23 circumstance tending to reflect the mental
24 process of a person possessed of a guilty
25 conscience, seeking to divert suspicion or

1 to exculpate himself. You should consider
2 that evidence along with all the other
3 believable evidence in this case."

4 "However, if you find that the
5 defendant made such statements, they do not
6 create a presumption of guilt. And such
7 evidence standing alone is not sufficient
8 to establish guilt. Such evidence may not
9 be considered as tending to show
10 premeditation and deliberation."

11 That last sentence is parenthetically
12 included. And in this case, in my view, if
13 given, it would be appropriate to include
14 that parenthetical.

15 What do you folks say as to 105.21, if
16 the Court does give your requested
17 instruction on absence of flight?

18 MR. BOWEN: Well, if Your Honor
19 please, I would like to hand up -- if I may
20 approach the bench?

21 THE COURT: Yes, sir.

22 MR. BOWEN: Two cases, State
23 versus Walker 332-NC-520, 1992 case;
24 309-NC, 78, 1983 case. And particularly in
25 Walker, where there was an issue of whether

1 or not a suicide or murder, these issues
2 were dealt with in terms of actual proven
3 facts at trial that the jury could consider
4 on these issues. And it seems to me there
5 are very few actually central proven facts
6 here at trial and that this is not
7 analogous to a situation in State versus
8 Walker. Therefore, that instruction, I
9 don't see it as being a companion to the
10 absence of flight issue.

11 THE COURT: I'm sorry, you don't
12 see it as being companion to absence of
13 flight?

14 MR. BOWEN: No, sir.

15 THE COURT: Where the proof of
16 facts contend existed in Walker and that do
17 not exist in this case in regard to false
18 or contradictory or conflicting
19 statements?

20 MR. BOWEN: Well, in the case of
21 Walker, it was physical evidence. For
22 example, there was an absolutely
23 uncontradicted time sequence. Somebody in
24 the motel heard the shot, and then it was
25 some minutes, perhaps an hour later, and

1 that is totally uncontradicted. So that
2 was a proven fact at trial.

3 By the same token here, time line in
4 this case is altogether contradicted, it is
5 altogether unconceded by either side. So
6 when you start talking about what the
7 defendant said happened as it compares with
8 proven facts, there are very few proven
9 facts.

10 THE COURT: What about the
11 statement of August 15th? On August 15th,
12 your client purportedly said that he first
13 came into possession of the automobile
14 while walking from a motel in Rowland.
15 Later he said that he made the first calls
16 from that automobile the day after he came
17 into possession of it. Going back to the
18 August 15th statement of "I first came into
19 possession of it while walking from a motel
20 in Rowland," he, in his statement, said
21 that occurred somewhere about 8:00, 9:00,
22 or 10:00 the night before he made the first
23 calls.

24 MR. BOWEN: That's why we pulled
25 Walker, because what is not disputed, what

1 is not at issue in that statement is what
2 he says seven times is that I did not kill
3 James Jordan or anybody else for that
4 matter. Now, what you're talking about is
5 some circumstantial issues relating to the
6 car. In fact even from what the officers
7 said --

8 THE COURT: No, those are
9 circumstances that tend to negate alibi.
10 If he came into possession of the vehicle
11 the night before while he was walking from
12 the motel in Rowland, 8:00, 9:00, or 10:00,
13 and he has introduced other evidence that
14 he was at a party all that night, aren't
15 they in conflict?

16 MR. BOWEN: Yes.

17 MR. BRITT: Absolutely.

18 MR. BOWEN: But this relates to
19 the theft of the car. I see what you're
20 saying, but that whole interview was in
21 reference to the car. Moreover, they never
22 asked him one time, you know, where he
23 was.

24 THE COURT: But he gave that
25 information when he said, "I first came

1 into possession of the vehicle the night
2 before, 8:00, 9:00 or 10:00. I made the
3 first call the next day after coming into
4 possession of the car." During that
5 interval, he gave information about where
6 he had gone and with whom he had gone, the
7 Arab looking guy. I mean, there was never
8 any mention during that recounting of "I
9 was at a party." And then when he offers
10 testimony that "I was at a party," aren't
11 those statements diametrically opposed?

12 MR. BOWEN: I'm not sure we're
13 talking about the same dates. I'm not
14 prepared to conclude that he was talking
15 about the 22nd, because even the State knew
16 about the get-together.

17 THE COURT: If the first calls
18 were made on the 23rd, and if there's a
19 statement of "I made the first calls the
20 day after I got the car," that makes it the
21 22nd.

22 MR. BOWEN: Well, but you're
23 talking about night -- early mornings being
24 referred to as nights, and so forth. I
25 don't have that part of the transcript with

1 me.

2 I see what you're saying, I don't
3 necessarily concede that he's talking about
4 that that night that he was over at Kay's
5 because they knew about that situation over
6 at Kay Hernandez's house, they just never
7 followed it up.

8 MR. THOMPSON: Your Honor, may I
9 be heard? With respect to Walker, as well
10 as Myers, the other case, these were
11 uncontroverted facts. And think I that's
12 the distinguishing criteria between Walker
13 and Myers and this case because the facts
14 in both Walker and Myers were proven, they
15 were the relevant facts proven at trial and
16 were uncontroverted.

17 THE COURT: Folks, I've got
18 problems with the language on this
19 instruction on constitutional grounds.
20 I've got problems with 105.21 on
21 constitutional grounds. And even though I
22 understand why the State is requesting
23 this, I think this is properly a matter for
24 argument and not necessarily for matter of
25 instruction by the Court.

1 Folks, the Court denies the
2 defendant's request for absence of flight
3 by defendant, to which the defendant
4 objects and excepts.

5 Similarly, the Court, State's request
6 for instruction under 105.21, false,
7 contradictory, or conflicting statements of
8 the defendant. I think both matters are
9 properly matters for argument by counsel.
10 Note the exception of counsel for the
11 defendant, note the objection of counsel
12 for the State as to the State's request for
13 105.21.

14 Your next one is 104.90,
15 identification of a defendant as
16 perpetrator of a crime. State want to be
17 heard as to that?

18 MR. BRITT: No, sir.

19 THE COURT: That will be given.
20 Testimony of expert witness, 104.94, is
21 listed next.

22 MR. BRITT: That's also my Number
23 13.

24 THE COURT: Yes, sir. That will
25 be given at the request of both counsel.

1 You've got 104.60, admissions?

2 MR. BRITT: Yes.

3 THE COURT: What do you contend
4 is admission made by the defendant?

5 MR. BRITT: Your Honor, the
6 State's contention of admissions would be
7 the taped interview that was offered in
8 rebuttal to the alibi, that the defendant
9 during the course of that taped interview
10 made statements in regard to admitting that
11 he had made certain phone calls, at a
12 time -- again, this relates to the
13 doctrine of recent possession -- at the
14 time shortly after this murder would have
15 occurred. Notably, the phone calls to
16 Melinda Moore and David Moore between 10:36
17 a.m. and 10:50 a.m. on the morning of July
18 23rd, and with the defendant's statement
19 that he got the car the night before, that
20 the phone calls occurred the day after he
21 got the car.

22 THE COURT: Counsel for the
23 defendant want to be heard?

24 The instruction specifically
25 reads: "There is evidence which tends to

1 show that the defendant has admitted as
2 fact, a fact relating to the crime charged
3 in this case. If you find that the
4 defendant made that admission, you should
5 consider all the circumstances under which
6 it was made in determining whether it was a
7 truthful admission and the weight that you
8 will give to it."

9 MR. BRITT: I would also argue
10 that his question to Special Agent
11 Underwood when they were en route to
12 recover the NBA All-Star ring, when they
13 passed the location at intersection of I-95
14 and his question "can they find footprints
15 there," arguably it's an implied admission,
16 "I was there." And that may be something
17 that's purely for argument.

18 MR. THOMPSON: That's stretching
19 and reaching.

20 THE COURT: What about the
21 earlier admission or arguable admission as
22 to the phone call contained in the
23 statement offered by the State in
24 rebuttal?

25 MR. THOMPSON: Well, there were

1 admissions to the phone calls, to some.

2 THE COURT: 104.60 will be
3 given. You folks want to note anything for
4 the record?

5 MR. THOMPSON: No, sir. We do
6 object for the record. Your Honor, we
7 object to the instruction.

8 THE COURT: For the record, your
9 objection is noted and exception is noted.

10 Folks, I omitted from the State's
11 requested instruction, 104.50, 104.50-A,
12 dealing with photographs maps, models,
13 diagrams, et cetera, dealing with
14 illustrative evidence, photographs,
15 videotape matters as substantive evidence.
16 I intend to give both of those.

17 You folks want to be heard?

18 MR. THOMPSON: No, sir.

19 THE COURT: Next listed on the
20 State's and the defendant's, Number 14 on
21 the State's requested instructions, 14 on
22 the defendant's requested instructions,
23 impeachment or corroboration by prior
24 statement, 105.20. That will be given.

25 Next listed by the defendant is

1 impeachment of a witness other than by the
2 defendant by proof of crime, that
3 specifically relates to Larry Martin
4 Demery. That will be given.

5 State is requesting under Number 16,
6 "Evidence related to the character of a
7 witness, including the defendant, for
8 truthfulness."

9 Mr. Britt, what do you contend the
10 evidence is that supports that?

11 MR. BRITT: This is requested in
12 light of the testimony of Richard Locklear,
13 and it's made in reference to the defendant
14 in regard to testifying, should probably
15 be -- in regard to his truthfulness should
16 probably be restricted. But in regard to
17 Mr. Locklear, Mr. Locklear testified about
18 an alleged conversation that he heard or he
19 engaged in with Mr. Demery, and matters
20 that were elicited on cross-examination
21 were established to -- for bias, matters
22 that he had previously given false
23 information in connection with. I think
24 it's appropriate under those circumstances.

25 MR. BOWEN: This particular

1 charge, as I understand it, comes from
2 somewhere in the trial as being a character
3 witness who comes forward and is
4 specifically asked the question, do you
5 know the character, representation in the
6 community which the person lives and works
7 for, truth and veracity.

8 THE COURT: That's my
9 understanding. The Court denies that
10 request. Note the State's objection and
11 exception.

12 State is asking for a definition of
13 intent. In conjunction with what other
14 pattern instruction?

15 MR. BRITT: That would be
16 202.4 -- excuse me, 206.14 in regard to --
17 and it's included in that instruction in
18 regard to specific intent.

19 THE COURT: Yes, that's what I
20 was going to say. State is also asking for
21 an instruction on acting in concert,
22 302.10, which reads as follows --
23 Mr. Britt, do you have that in here? I
24 don't see it.

25 MR. BRITT: If I could approach.

1 THE COURT: Okay. "For a person
2 to be guilty of a crime" --

3 MR. THOMPSON: Could we have a
4 copy, Your Honor?

5 THE COURT: Do you have a copy
6 for them?

7 MR. BRITT: Yes, sir.

8 THE COURT: Now, you're asking
9 for this as it relates to all three --
10 well, actually as to felonious conspiracy
11 would be redundant.

12 MR. BRITT: Yes, sir, an
13 original -- well, let me -- I'll withdraw
14 that requested instruction.

15 THE COURT: All right.

16 MR. BRITT: Because I do have
17 felonious instruction in my next request,
18 and that is one of the substantive charges.

19 THE COURT: Conspiracy?

20 MR. BRITT: Yes, sir.

21 THE COURT: Well -- are you
22 asking for 202.10 as it relates to first
23 degree murder and robbery with a firearm?

24 MR. BRITT: As it relates -- I'm
25 going to withdraw it because as I

1 understand the present law under acting in
2 concert, it would be improper to charge the
3 jury under theory of premeditation-
4 deliberation and act acting in concert
5 because requires a specific intent to kill,
6 and you can't necessarily infer --

7 THE COURT: You can do it, but
8 you have to modify the instruction
9 considerably.

10 MR. BRITT: Yes, so I'll withdraw
11 it.

12 MR. THOMPSON: For the record,
13 120.10 that was requested by the State, in
14 that it's contained in 206.14, it is my
15 understanding that you consider that
16 surplusage to give it more than one time?

17 THE COURT: I'm going to give it
18 one time.

19 MR. THOMPSON: Thank you.

20 THE COURT: That brings us to
21 substantive matters. The State having
22 withdrawn the requested instruction under
23 acting in concert. Mr. Britt, you've got
24 felonious conspiracy --

25 MR. BRITT: Yes, sir.

1 THE COURT: -- incorporated
2 217.20, robbery with a firearm, 217.20.

3 MR. BRITT: Yes, sir.

4 THE COURT: And 216.14.
5 Numerically, the indictments begin with
6 first degree murder, robbery with a
7 firearm.

8 MR. BRITT: And conspiracy is
9 last.

10 THE COURT: That's the way I
11 intend to instruct them.

12 MR. BRITT: That's fine. Mine
13 are listed in somewhat numerical order as
14 they relate to the pattern instructions.

15 THE COURT: If you'll bear with
16 me one second, please. I pulled the
17 following pattern instructions: 206.14,
18 entitled first degree murder committed in
19 the perpetration of a felony or murder,
20 with premeditation and deliberation where a
21 deadly weapon is used. If you folks have
22 copies of that, it appearing that both of
23 you were requesting instructions under
24 206.14, to go to page two, under the second
25 full paragraph, under law of the evidence

1 in this case, "It is your duty to return
2 one of the following verdicts. Listed
3 below," are the pattern instruction, "are
4 three possible verdicts. First degree
5 murder, second degree murder, not guilty."
6 State want to be heard as any lesser
7 included offense?

8 MR. BRITT: Yes, sir. If you
9 look at my requested instruction, the last
10 statement under 206.14, that heading I've
11 inserted there omitting second degree
12 murder as lesser included offense. State's
13 position based on this evidence that the
14 only charges that should be submitted for
15 the jury's consideration in regard to the
16 charge of first degree murder are first
17 degree murder pursuant to the felony murder
18 rule, and first degree murder under theory
19 of premeditation-deliberation and no lesser
20 included offense.

21 THE COURT: Defendant want to be
22 heard as to any lesser included offense?

23 MR. BOWEN: Yes, sir, because the
24 time involved even under the State's
25 proposed last version of the evidence

1 through Mr. Demery, there was very, almost
2 instantaneous rising up of the two
3 defendants, he claims, there was an almost
4 instantaneous rising of the individual in
5 the car. The jury could logically conclude
6 that the person rising up in the car
7 startled the individual who fired, not that
8 anyone had even time to think about it or
9 premeditated about it or deliberated about
10 it or that they did so. Seems to me that
11 is entirely a jury question. And if they
12 resolve that, the person did not
13 premeditate or deliberate the matter, then
14 it's got to go to second degree.

15 MR. BRITT: The defense that has
16 been proffered is one of alibi, "I was not
17 there." The evidence in this case supports
18 first degree murder. The law in the state
19 does not require the submission of lesser
20 included offenses simply because it's a
21 lesser included offense.

22 THE COURT: Well, used to be that
23 way as a matter of the caution, the Court
24 under Harris and Strickland would almost
25 always include second degree murder. But

1 there's been in our appellate decisions
2 language to the effect which is set out in
3 footnote 5 on 206.14, "If the evidence is
4 sufficient to fully satisfy the State's
5 burden of proving each and every element of
6 the offense of murder in the first degree,
7 including premeditation and deliberation,
8 and there is no evidence to negate these
9 elements other than the defendant's denial
10 that he committed the offense, possibility
11 of a side properly excludes from the jury's
12 consideration the possibility of a
13 conviction of second degree murder."

14 MR. BOWEN: But let's talk about
15 what they say in their evidence, which I
16 agree has several versions, but
17 incorporating all those versions when the
18 individual stood up, had the gun, what was
19 agreed upon, what was thought about is that
20 the gun was to be used for two things, to
21 nudge the person awake, and then to hold on
22 the person while they took the individual
23 back to Mr. Green's house, something like
24 that. That was their theory.

25 Now, they don't have any intent to

1 kill anybody in their evidence. They don't
2 have any talk about or plan about anything
3 else but to use that gun for a nonlethal
4 purpose, so where is their evidence of any
5 meditation, deliberations, and malice
6 aforethought as to kill anybody or even to
7 fire the weapon?

8 THE COURT: Would you agree that
9 under the State's evidence, if the jury
10 believes that evidence, the defendant is
11 either guilty of premeditated and
12 deliberate first degree murder or felony
13 first degree murder? Would you agree with
14 that?

15 MR. BOWEN: Excuse me, I think I
16 can resolve this with my co-counsel.

17 We're going to withdraw it. We don't
18 want it anyway.

19 MR. THOMPSON: We're going to
20 object -- we'll object.

21 MR. BOWEN: We'll object and not
22 going to be heard further.

23 THE COURT: Court will instruct
24 on -- instruct the jury that there are two
25 possible verdicts in this case: Guilty of

1 first degree murder, either on a theory of
2 premeditated first degree murder, or felony
3 first degree murder, or not guilty. As
4 to -- the objection is noted for the
5 record. Exception is noted for the record
6 to the Court's refusal to instruct under
7 second degree murder.

8 MR. THOMPSON: Yes, sir.

9 CA As to the actual pattern instruction
10 itself, folks, the first portion of the
11 pattern instruction deals with murder on
12 the basis of malice, premeditation and
13 deliberation. As to page 4, first full
14 paragraph beginning with parenthetical, "A
15 firearm is a deadly weapon," and the
16 alternative parenthetical, "A deadly weapon
17 is weapon which is likely to cause death or
18 serious injury." In this case, all the
19 evidence shows that death resulted from the
20 use of a firearm or a handgun, which is
21 alleged in the bill of indictment.

22 MR. BOWEN: Object to that part
23 if you're going to give -- may I speak now
24 or do you want to wait?

25 THE COURT: Yes, sir.

1 MR. BOWEN: Absolutely cannot
2 concede to that. And this is why: You're
3 going to give an instruction in part on
4 probable -- or proximate cause. Go back to
5 the testimony of Dr. Sexton.

6 Dr. Sexton said that the bullet
7 entered above the right nipple. It went
8 slightly down ten degrees and slightly
9 back, it went through the aorta, largest
10 blood vessel in the body, lodged in the
11 lower left lobe of the lung. Said the body
12 contains ten pints of blood. He said the
13 normal pumping rate of the heart will pump
14 that entire ten pints around the system in
15 less than a minute. He said if there is a
16 significant hole in the body, of course
17 that blood will be pumped out in the same
18 length of time. That a gun shot is such a
19 trauma as would increase the heart rate and
20 make that flow even faster.

21 THE COURT: What is your point?

22 MR. BOWEN: Further opined that
23 the individual lived between a little less
24 than a minute and up to two minutes before
25 he died. And then he said he only found a

1 little less than two pints of blood in the
2 body cavity. Now, that leaves it a
3 question as to whether that heart was
4 pumping when that aorta was severed. It
5 leaves a reasonable inference, since most
6 of the State's evidence up to this very
7 last statement of Mr. Demery has this
8 individual leaning back, apparently
9 asleep.

10 Now, didn't do a full toxicology and
11 go on into those other areas, but it leaves
12 it susceptible at least to argument or for
13 the jury to resolve as an issue whether or
14 not this human being was alive when he was
15 shot or not, based upon their -- Dr.
16 Sexton's testimony.

17 THE COURT: What has that got to
18 do with the nature of the weapon?

19 MR. BOWEN: You asked me could we
20 concede that the gun caused death.

21 THE COURT: No, I didn't ask you
22 that. There's two paragraphs, two
23 parentheticals in that first paragraph. A
24 firearm is a deadly weapon.

25 MR. BOWEN: Got no problem with

1 that.

2 THE COURT: Or a deadly weapon is
3 a weapon which is likely to cause death or
4 serious injury.

5 MR. BOWEN: Then you went on to
6 say something about can we agree that the
7 firearm caused the death.

8 THE COURT: No, I did not. What
9 I asked you was do you disagree that the
10 firearm is a deadly weapon.

11 MR. BOWEN: No disagreement with
12 that.

13 THE COURT: We don't have any
14 argument.

15 MR. BOWEN: Okay.

16 THE COURT: I'm going to instruct
17 on the first parenthetical, a firearm is a
18 deadly weapon. Omitting the second
19 parenthetical, a deadly weapon is a weapon
20 which is likely to cause death or serious
21 injury. So I will instruct on the first
22 parenthetical in concluding that first
23 element.

24 Then we go to the second element, the
25 State must prove that the defendant's act

1 was the proximate cause of the victim's
2 death, is that what you were talking
3 about?

4 MR. BOWEN: I believe so.

5 THE COURT: That instruction will
6 be given. That's required by law.
7 Proximate cause is a real cause, cause
8 without which the victim's death would not
9 have occurred.

10 I'm sorry, did you think I was going
11 to omit that?

12 MR. BOWEN: No, sir. What I
13 thought that you were looking for was a
14 stipulation that the firearm caused death.

15 THE COURT: No, sir. I
16 apologize, that's not what I was asking. I
17 was simply asking whether you agree or
18 disagreed that a firearm is a deadly
19 weapon.

20 MR. BOWEN: I have no problem
21 with that.

22 THE COURT: Second element will
23 be given as indicated on pattern
24 instruction. Third element will also be
25 given as required on the instruction.

1 Fourth element will also be given.

2 Is this where you wanted the intent
3 incorporated?

4 MR. BRITT: Yes, sir.

5 THE COURT: This is where you're
6 asking that --

7 MR. BRITT: Actually intent is
8 covered --

9 THE COURT: -- 120.10.

10 MR. BRITT: Actually, intent is
11 covered in the third element.

12 MR. THOMPSON: Yes, I was going
13 to say.

14 THE COURT: It's duplicitous at
15 this point.

16 MR. THOMPSON: It's included in
17 206.14.

18 MR. BRITT: So I'll withdraw the
19 request.

20 THE COURT: I was simply
21 clarifying for the record.

22 MR. BRITT: Yes, sir.

23 THE COURT: That's denied and
24 will be included in the third element.

25 MR. THOMPSON: Yes, sir.

1 THE COURT: And the fifth
2 element, that the defendant acted with
3 deliberation, and then the concluding
4 matters as to premeditation and deliberate
5 first degree murder.

6 Now, if you turn to page 6, first
7 element.

8 MR. BOWEN: Judge, before we
9 leave the last -- could I read you what I
10 heard before and -- this is what you said,
11 and this appears on page 44, line 5: "In
12 this case, all the evidence shows that
13 death resulted from the use of a firearm or
14 handgun, which is alleged in the bill of
15 indictment." And that's what I was
16 referring to, charging them that in this
17 case, all the evidence --

18 THE COURT: No, sir, that was
19 simply a comment on my part that that's
20 what the evidence shows. That is not
21 language that will be included in the
22 instruction.

23 MR. BOWEN: I see. Okay.

24 THE COURT: That was prefatory
25 language to "Is there any disagreement that

1 a firearm is a deadly weapon?"

2 MR. BOWEN: If you were going to
3 instruct them that, that's what I was -- I
4 just wanted to you to understand what it
5 was I was --

6 THE COURT: I apologize for the
7 confusion. That was language I was simply
8 throwing out to see if there was any
9 disagreement that a firearm is a deadly
10 weapon.

11 Now, going to page 6, first element
12 that the defendant committed or attempted
13 to commit in this case, it's alleged that
14 they attempted to commit robbery with a
15 handgun, robbery with a firearm. State
16 want to be heard?

17 MR. BRITT: Yes, sir, actually
18 two arguments I believe that can be made.
19 One is the charge in the indictment of
20 robbery with a firearm, but also the
21 evidence would support a theory that the
22 defendant intentionally --

23 THE COURT: Conspiracy?

24 MR. BRITT: But that the
25 defendant intentionally discharged a

1 firearm into an occupied vehicle.

2 THE COURT: Court will not
3 instruct on that, that not being matters
4 before the Court by way of indictment.
5 Court will instruct as to the first element
6 that the defendant committed or attempted
7 to commit robbery with a deadly weapon or
8 robbery with a firearm.

9 And in that regard, the Court will set
10 out the elements of that offense as are set
11 out in our pattern instruction, 217.20,
12 taking property from a person of another in
13 his presence, carrying away of the
14 property, person did not voluntarily
15 consent to the taking and carrying away of
16 the property; defendant knew he was not
17 entitled to take the property, that at the
18 time the defendant intended to deprive the
19 person of the use of the property
20 permanently, that the defendant had had a
21 firearm in his possession at the time he
22 obtained the property, and that the
23 defendant obtained the property by
24 endangering or threatening the life of the
25 person with a firearm.

1 Simply going to enumerate the elements
2 for the purposes of 206.14 as is required
3 by law and go on to the second element.
4 And I will also instruct them that as to
5 that first element, they will receive more
6 detailed instructions from the Court.

7 Then picking up with the second
8 element, that while committing or
9 attempting to commit felony of robbery with
10 a firearm, defendant killed the victim with
11 a deadly weapon.

12 Third, that the defendant's act was a
13 proximate cause of the victim's death.
14 Proximate cause is a real cause, cause
15 without which the victim's death would not
16 have occurred.

17 The fourth element set out in 206.14
18 does not apply in this case. Court gives
19 the third element and omits the fourth.

20 The Court would pick up on page 8 with
21 the final mandate as it relates to first
22 degree murder on the basis of malice,
23 premeditation, and deliberation, and on the
24 basis of first degree felony murder rule.

25 Having indicated that the Court will

1 not give any lesser includeds, paragraph
2 9 -- excuse me, page 9, 10, and 11 are
3 surplusage. And if you will look at
4 Appendix A attached to 206.14, the verdict
5 form, Ms. Gaines, the verdict form in this
6 case will read as follows: "We the jury
7 return the unanimous verdict as follows:
8 One, guilty of first degree murder," with
9 provision for an answer. And with the
10 following language immediately below, "If
11 you answer, quote, "yes," close quote,
12 comma, "is it A on the basis of malice,
13 premeditation, and deliberation," with
14 provision for an answer; "or B, under the
15 first degree felony murder rule," with
16 provision for an answer; "or C, under on
17 the basis of both malice, premeditation and
18 deliberation" -- well, I've not used C in
19 murder cases where this form has been used,
20 and think if they answer yes as to both A
21 and B --

22 MR. BRITT: That's satisfactory.

23 THE COURT: -- that satisfies
24 what used to be paragraph C. Is that
25 agreeable with both counsel?

1 MR. THOMPSON: Yes.

2 THE COURT: Then we'll just have
3 paragraph A and paragraph B.

4 Second possible verdict for the jury
5 will be not guilty. Provision for entry of
6 the date and signature line by the
7 foreperson.

8 And I'll give you a copy of the form
9 that will -- have you already got that?

10 So the possible verdicts will be
11 guilty of first degree murder with the
12 instructional language, and provision for
13 the jury's answer as to whether or not its
14 verdict, if returned as to first degree
15 murder, is on the basis of malice,
16 premeditation, and deliberation; or B,
17 under the first degree felony murder rule.

18 Anything else as to 206.14 on behalf
19 of either counsel?

20 MR. THOMPSON: Yes, sir. Your
21 Honor --

22 THE COURT: Yes, sir.

23 MR. THOMPSON: -- we had
24 requested in Number 17 felonious larceny
25 from the person, 216.20.

1 THE COURT: Where do you contend
2 there is evidence to support that?

3 MR. THOMPSON: We contend
4 possible lesser included offense of robbery
5 with a dangerous weapon.

6 THE COURT: We haven't come to
7 that.

8 MR. THOMPSON: Okay. We'll deal
9 with it.

10 THE COURT: Anything else as to
11 206.14?

12 MR. THOMPSON: No, sir.

13 THE COURT: Now, we can get to
14 your matter now because the next
15 substantive instruction the Court will give
16 will be 217.20, robbery with a firearm.

17 The sentencing folks, that will given
18 as set out in the pattern instructions.
19 You're asking for a lesser included of
20 larceny from the firearm as to this
21 charge?

22 MR. THOMPSON: Larceny from the
23 person.

24 THE COURT: Larceny from the
25 person, excuse me. Where do you contend

1 the evidence is to support that?

2 MR. THOMPSON: Well, I mean the
3 jury may find from the evidence that --
4 well, there was evidence that even from the
5 State, from the defendant's statement that
6 State introduced on the tape-recorded
7 portion, tape-recorded portion of his
8 statement, that he got these certain items
9 the next day. He found these items the
10 next day.

11 THE COURT: How would that
12 constitute larceny from the person?

13 MR. THOMPSON: The Lexus being --
14 if the State's evidence and the jury so
15 finds from the State's evidence that the
16 Lexus was taken after the man was killed,
17 because the indictment alleges that he
18 stole that, the robbery was to the Lexus
19 400 as well as other personal items. And
20 it could be from the State's evidence the
21 jury could find that those other personal
22 items that -- as well as the Lexus, for
23 that matter -- would support a verdict of
24 larceny --

25 THE COURT: Even the statement

1 introduced by the State, August 15th
2 statement, attributes comments or
3 statements by your client that he never saw
4 the decedent, that items were in the
5 automobile. So where would we get larceny
6 from the person?

7 MR. THOMPSON: Well, even from --
8 well, not withstanding that, from the
9 State's evidence that's been introduced
10 through -- and through the several
11 statements, even though they are
12 contradictory. But the State can put on
13 contradictory statements, and they have so
14 through Larry Demery. It's conceivable
15 that the jury may believe one scenario and
16 disbelieve another scenario.

17 THE COURT: How would we get
18 larceny from the person based on any of the
19 evidence that's been presented?

20 MR. THOMPSON: Because --

21 THE COURT: If there's a
22 conflict, the conflict is, I found the
23 items in the automobile, I never saw the
24 decedent, I never helped throw any body
25 into the creek.

1 MR. THOMPSON: Well, from the
2 State's evidence, if the one scenario that
3 Mr. Demery gave was that it was in -- the
4 body was brought to him.

5 THE COURT: Where is that in
6 Mr. Demery's scenario?

7 MR. THOMPSON: It was in one of
8 his statements. That was one of the
9 statements that he gave. And I
10 cross-examined him about the different
11 statements he gave. He wasn't even there
12 the first time. The body was brought to
13 him in the Lexus while he was over at the
14 bridge at the defendant's house. The next
15 time the -- I mean there was a statement
16 that he ran toward his car, the defendant
17 ran toward the Lexus and he heard a shot,
18 and the body was brought to him.

19 Then the next, there was the next
20 statement that he was there, both of them
21 stooped down.

22 I'm just saying with the different
23 scenarios and particularly the first one,
24 where a body was brought in a red Lexus,
25 and thereafter items were taken including

1 the Lexus as well as personal items, it may
2 support, the jury could find larceny from
3 the person.

4 THE COURT: State want to be
5 heard?

6 MR. BRITT: In my opinion it
7 should not be submitted as lesser included
8 offense.

9 THE COURT: Court denies the
10 Defendant's request for instruction for
11 larceny from the person, to which the
12 defendant objects and excepts for the
13 record.

14 I omitted one of your instructions,
15 that's alibi under 301.10. That will be
16 given. State want to be heard?

17 MR. BRITT: No, sir, that was
18 their defense.

19 THE COURT: But as to robbery
20 with a firearm, any other contended lesser
21 includeds, Mr. Thompson, Mr. Bowen?

22 MR. THOMPSON: No, sir.

23 THE COURT: Verdict form in this
24 case will be guilty of robbery with a
25 firearm, or not guilty.

1 As to the felonious conspiracy charge,
2 pattern instruction set out 202.80, in this
3 case, the indictment alleges that the
4 defendant feloniously conspired with Larry
5 Martin Demery to commit the offense of
6 robbery with a firearm. That would be the
7 instruction that is -- I mean the offense
8 referred to in 202.80.

9 First element would read that as --
10 that the defendant and Larry Martin Demery
11 entered into an agreement; second element
12 that the agreement was to commit robbery
13 with a firearm as the Court has previously
14 defined that offense; third, that the
15 defendant Larry Martin Demery intended that
16 the agreement be carried out at the time it
17 was made, with the mandate as appropriate
18 based on that language.

19 Possible verdicts on this charge would
20 be guilty of felonious conspiracy, or not
21 guilty. State want to be heard further?

22 MR. BRITT: Other than you
23 mentioned the defendant Larry Martin Demery
24 intended that the agreement be carried
25 out. I believe the language should be that

1 the defendant Daniel Green --

2 THE COURT: And Larry Martin
3 Demery.

4 MR. BRITT: I thought that's what
5 I said.

6 MR. BRITT: It just shows up on
7 the screen as the defendant Larry Martin
8 Demery.

9 THE COURT: I apologize.
10 Defendant want to be heard further?

11 Court would conclude with the
12 concluding instructions set out in
13 101.35 -- folks, Number 20, the one that
14 you objected to, is included on your list.

15 MR. THOMPSON: Yes, sir.

16 THE COURT: "Highest aim of" --

17 MR. THOMPSON: We withdrew the
18 objection, Judge.

19 THE COURT: Okay. I was just
20 interested. Any other matters from the
21 State?

22 MR. BRITT: As they relate to the
23 charge conference, no, sir.

24 THE COURT: Any other matters
25 from the defendant, other than those

1 already noted?

2 MR. THOMPSON: No, sir.

3 THE COURT: Two procedural or
4 administrative matters, one dealing with
5 the alternate juror, Ms. Odom. It's the
6 Court's intent to sequester her during the
7 deliberation of the jury. Court has
8 inquired into possible areas where she
9 might be sequestered.

10 Alternatives of the jury pool room, I
11 understand there is no Superior Court this
12 week in Robeson County.

13 MR. BRITT: I'm not sure if
14 there's civil court or not.

15 THE COURT: My understanding from
16 the bailiffs is, yeah, that there was not.
17 That appears to be the most viable
18 alternative.

19 MR. BRITT: There is a TV in
20 there. I don't know if it has an antenna
21 reception or not.

22 THE COURT: We can remove the
23 TV. The other alternative would be the use
24 the room at the far end of the hall. My
25 concern about using that room, it's close

1 proximity to the jury deliberation room.

2 MR. BRITT: There's a conference
3 room.

4 THE COURT: She'd certainly have
5 more room in jury pool room. If TV is the
6 only concern, we can move that out tomorrow
7 morning. The State want to be heard
8 further?

9 MR. BRITT: No, sir.

10 THE COURT: Defendant? Then with
11 consent of all counsel, the Court intends
12 to sequester Ms. Odom in that room with the
13 TV removed during the deliberation of the
14 jury. Sequestration in the Court's view is
15 necessary because of the potential for a
16 second phase in this case. Should that
17 potential be realized we would need
18 Ms. Odom's services as an alternate in that
19 phase.

20 Other matter is the order of argument.
21 The defendant having offered evidence in
22 this case, the State is entitled to open
23 and close. State in a position at this
24 time to indicate what its preference is?

25 MR. BRITT: Your Honor, without

1 staking myself out, my normal practice is
2 to waive the opening and reserve the
3 closing argument. I would anticipate
4 that's what I will do.

5 THE COURT: Understanding that is
6 not a commitment on your part at this time,
7 the likelihood is that you waive opening
8 and close only; is that correct?

9 MR. BRITT: Yes.

10 THE COURT: As to argument by
11 counsel for the defendant, both counsel
12 intend to argue?

13 MR. BOWEN: Yes, Your Honor.

14 THE COURT: Restrictions under
15 our rules are that in a case where the
16 death penalty is a potential verdict, there
17 is no time limit on argument. Both
18 counsel, both sides free to argue as you
19 folks deem appropriate. But it appears at
20 this time that counsel for the State waives
21 opening argument. That necessarily means
22 that you folks will have the first
23 arguments, with concluding argument being
24 given by counsel for the State.

25 You folks be ready to go forward

1 tomorrow morning, unless the State changes
2 its mind?

3 MR. BOWEN: Yes, sir.

4 THE COURT: You folks in a
5 position at this time -- if not, that's
6 absolutely okay -- to let me know what the
7 order of arguments might be, in other
8 words, who first?

9 MR. BOWEN: I believe it's
10 basically decided I will be arguing first
11 and then Mr. Thompson; is that right?

12 THE COURT: I simply asking. You
13 folks want to change your minds, that's
14 okay. I simply ask so I can inform the
15 jury tomorrow morning. The Court will give
16 the appropriate instructions which are
17 required prior to argument of counsel.

18 All counsel have been provided with
19 copies of State versus Ligon and State
20 versus Vines; is that accurate?

21 MR. BOWEN: Yes, sir.

22 THE COURT: Anything else from
23 either counsel?

24 MR. BRITT: No, sir.

25 THE COURT: All right, Court will

1 instruct as indicated on the record at the
2 Rule 21 charge conference.

3 Mr. Huseby, I'm going to need to see
4 you so I can get print-outs of this
5 proceeding and the matters related to the
6 Court's previous instructions dealing with
7 104.15.

8 MR. THOMPSON: Your Honor, I just
9 wanted for the record, I mean, you know,
10 you've given State versus Ligon and State
11 versus Vines. I've read both of them. Not
12 that I would do anything that I think would
13 violate, but I don't think it applies
14 anyway with respect to Mr. Campbell and
15 Mr. Rogers. They are not parties to this
16 case. Both State versus Vines and State
17 versus Ligon deals with counsel, opposing
18 counsel.

19 THE COURT: What are we talking
20 about Mr. Rogers and Mr. Campbell for?

21 MR. THOMPSON: Well, that was the
22 context in which it was first brought up, I
23 thought.

24 THE COURT: No.

25 MR. THOMPSON: You mentioned it

1 because you had accused me of trying to set
2 Mr. -- I thought.

3 THE COURT: What it applies to
4 are disparaging comments dealing with the
5 credibility of any lawyers involved in the
6 case. Matters not brought out in
7 evidence. Doesn't have anything to do --
8 if Mr. Rogers and Mr. Campbell were your
9 opposing counsel, then it would have
10 applicable, your comment. Doesn't have
11 anything to do with them, got to do with
12 State getting up, making arguments that you
13 folks are throwing out rabbits, throwing up
14 smokescreens, attacking your credibility,
15 saying you put on evidence that is bought
16 and paid for, psychiatric evidence.

17 MR. THOMPSON: I read the case,
18 and I understand that, I read that, I read
19 both of them. I thought you were --

20 THE COURT: No, got to do with
21 closing arguments and counsel raising
22 matters which are not supported by the
23 evidence; contending for example, State's
24 contention, for example, that defense
25 counsel has fabricated evidence, has bought

1 and paid for the testimony of expert
2 witnesses; disparaging comments as exactly
3 set out in the language of Vines and
4 Ligon. That's what it's got to do with.
5 Getting up and bad-mouthing each other when
6 it's got nothing to do with the case and
7 there's no evidence to support that, or
8 attacking each other's credibility when
9 that's not supported by the evidence and
10 that's not at issue, or contending or
11 suggesting or implying that one side or the
12 other fabricated, made up, or suppressed
13 evidence when there's no evidence to
14 support that. Violation of the rules of
15 ethics.

16 MR. THOMPSON: Whether you make
17 the argument to the jury or the press, it's
18 a violation.

19 THE COURT: Pardon?

20 MR. THOMPSON: Whether you make
21 the argument to the jury or to the press,
22 it's a violation of the rules of ethics.

23 THE COURT: Yes, sir, I agree.
24 All right. We ready to go?

25 MR. BRITT: Yes, sir.

1 THE COURT: Anything further from
2 counsel for the defendant or counsel for
3 the State?

4 MR. THOMPSON: No, sir.

5 THE COURT: See you folks at 9:30
6 tomorrow morning.

7 THE BAILIFF: All rise.

8 (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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13

14

15 (February 27, 1996. Proceedings in open court.)

16

17 THE COURT: While we have all
18 counsel present, let me make an
19 announcement for the benefit of the media.
20 There was a request made yesterday of the
21 Court. That request specifically was to
22 allow cameras in for purpose of the verdict
23 in this case.24 Court has previously stated on the
25 record that the Court's position is that

1 since Rule 15 requires that the Court give
2 an instruction to prospective members of
3 the jury prior to the commencement of jury
4 selection in a case, specifically
5 instruction set out in North Carolina
6 Pattern Instruction 100.15 in reference to
7 cameras and microphones in the courtroom,
8 and since that instruction was not given,
9 the Court's position was that it may
10 violate Rule 15 to allow cameras in the
11 courtroom for the purposes of any verdict
12 returned by the jury on the issue of guilt
13 or innocence.

14 After consultation yesterday, the
15 Court is now comfortable that its initial
16 position was the correct one. The Court,
17 however, will keep an open mind about
18 allowing cameras in the courtroom should a
19 second phase be reached in this case as to
20 any recommendation as to punishment, should
21 that become an issue.

22 The Court takes a position that that
23 would not violate Rule 15 because that
24 would be at the conclusion of any
25 proceedings. But as to the allowance of

1 cameras in the courtroom prior to that
2 time, the Court's position remains the
3 same. And I apologize, but because Rule 15
4 has what I consider to be a mandate, I
5 don't think I have any other option.

6 Let the records show that 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, we do.

12 THE COURT: Do you folks need a
13 few moments to gather whatever materials
14 that you may need for the purposes of
15 argument before we bring the jury in?

16 MR. BOWEN: I'm ready, but I'll
17 help him pull that easel down.

18 MR. BRITT: I'm ready at this
19 time. I don't need it unless they need it.

20 MR. BOWEN: Let me speak to him
21 for a second.

22 THE COURT: Yes, sir. Mr. Britt,
23 you indicated yesterday that since the
24 State has the right to open and close in
25 final argument that your normal position is

1 to waive opening. Are you still taking
2 that position?

3 MR. BRITT: Yes, sir. State
4 would waive the opening, reserve the
5 closing.

6 THE COURT: I'm going to ask you
7 formally on the record in the presence of
8 the jury what your position is, and I
9 assume your position will be the same.

10 You folks ready to go forward with
11 argument?

12 MR. BOWEN: Yes, sir, Your Honor.

13 THE COURT: Any other matters
14 before we bring the jury in for final
15 argument? Mr. Horne, if you'll bring our
16 jury in.

17 (Jury in at 9:32 a.m.)

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

20 Members of the jury, as I have
21 previously instructed you all of the
22 evidence in this case has been presented,
23 and it is now time for the final arguments
24 of the lawyers in this case. At the
25 conclusion of these arguments, I will

1 instruct you on the law in this case, and
2 then you will be taken to the jury room to
3 begin your deliberations in this matter.

4 Now, the final arguments of the
5 lawyers are not evidence, but they are
6 given to assist you in evaluating the
7 evidence that has been presented during
8 this proceeding. The lawyers are permitted
9 in their final statements to argue to you
10 to characterize the evidence and to attempt
11 to persuade you to a particular verdict.
12 However, it is improper for a lawyer in
13 final argument to become abusive, to inject
14 personal experiences, to express a personal
15 belief as to the guilt or the innocence of
16 the defendant, or to make any argument on
17 the basis of matters outside of the record
18 in this case.

19 A lawyer may, however, on the basis of
20 a lawyer's analysis of the evidence
21 presented, argue any position or conclusion
22 with respect to a matter at issue. Now, in
23 in the course of making a final argument,
24 if a lawyer attempts to restate a portion
25 of the evidence presented in this trial,

1 you are in recalling and remembering the
2 evidence in this case to be guided
3 exclusively by your own recollection of the
4 evidence and not that of counsel.

5 And Mr. Britt, under our rules of the
6 procedure, the State has both the right to
7 open and close in final argument. What is
8 the State's position?

9 MR. BRITT: Your Honor, the State
10 waives the opening, reserves the closing.

11 THE COURT: Then the jury is with
12 the defendant at this time for final
13 argument. Who will be the first of counsel
14 for the defendant to argue on behalf of the
15 defendant?

16 MR. BOWEN: I am.

17 THE COURT: Then the jury is with
18 you at this time.

19 MR. BOWEN: Thank you Your Honor.

20 Good morning, members of the jury.

21 Professor Gerhardt Weinberg,
22 professor, once addressed his class and
23 said, "We're taking up material on World
24 War II. I sent you a book." He said, "I
25 know it's a thick book, I know it's a long

1 book. But if you'll give me a shorter war,
2 I'll give you a shorter book." And I feel
3 a little bit like that with regard to this
4 argument.

5 I promise you I won't trespass on your
6 time a moment longer than I feel absolutely
7 necessary given the seriousness of the
8 charge against Mr. Green in this case. But
9 we do have a lengthy case, and it may be
10 worthwhile to summarize a good deal of what
11 has gone before to keep things that you
12 have heard about for weeks in careful
13 prospective.

14 Now, the burden of proof is on the
15 State. And the reason that I will start in
16 this argument with the request that based
17 on the evidence that you've heard once you
18 analyze it, that you find the defendant
19 Daniel Green not guilty of the charges with
20 which he's charged, is based upon the lack
21 of the burden of proof that the State is
22 required to meet.

23 Now, what does burden of proof mean?
24 Really it's pretty simple, and His Honor is
25 going to explain it to you. The State has

1 got the burden to prove its case to you
2 beyond a reasonable doubt. And the Court
3 is going to explain to you what a
4 reasonable doubt is, and first thing it
5 will tell you is what a reasonable doubt is
6 not. It's not a vain or fanciful doubt.
7 It's not an imaginary doubt. In other
8 words, it's a real doubt based upon reason
9 and common sense, arising from some of the
10 evidence, all of the evidence or lack of
11 the evidence, as the case may be.

12 Now, when you analyze this evidence,
13 you're going to have to determine whom you
14 can afford to believe based upon the other
15 evidence, based upon the consistency or
16 inconsistency of the evidence, based upon
17 the background for truthfulness and
18 veracity of the person, you will know it
19 from their backgrounds.

20 The burden of proof is on the State.
21 That is a central cornerstone principle of
22 our democratic system of government as
23 anything could ever be. So if the State
24 suggests to you, well, how dare Mr. Bowen
25 put the police on trial, put the government

1 on trial; I argue to you members of the
2 jury our great Constitution that has stood
3 us in pretty good stead for 200 years, that
4 has brought us to where we are ahead of
5 many other nations, basically started with
6 the precept of suspicion and distrust for
7 the government. It set up a system of
8 checks and balances for the various arms
9 and branches of government to watch each
10 other because they didn't trust power that
11 can become absolute, and therefore power
12 corrupts and absolute power corrupts, the
13 statement is.

14 So government is set up to watch
15 itself. And you members of the jury, what
16 is the government? The government is all
17 of us. And ultimately you are the
18 watchdogs of the government. So I don't
19 mean it in a negative way when I say the
20 police are on trial or government is on
21 trial. That is simply just a basic civics
22 lesson of literature.

23 Now, if the State can prove its case
24 to you and prove it beyond a reasonable
25 doubt so that you can go to sleep tonight

1 without a worry in the world that you've
2 got the right man, that you've done the
3 right thing, that the evidence and all of
4 the reasonable evidence points to the guilt
5 of the defendant, well, then you have a
6 duty to find this or any other defendant
7 guilty.

8 But if, as we suggest, there is not 1,
9 there is not 70, but there are a host of
10 reasonable doubts in a case that would defy
11 restful sleep, when you realize that your
12 decision is final on this case, you and
13 your conscience have to live with it. And
14 when you consider reasonable doubts on the
15 points that we will discuss, I will end
16 arguing to you as I have started arguing to
17 you, that your verdict can be nothing
18 except not guilty.

19 His Honor will give you a charge that
20 has for an instruction, if you will, that
21 has to do with the stepping in of Lady
22 Justice in a case, Justice steps in, has to
23 do with the ascertainment of the truth.
24 And the ascertainment of the truth in this
25 case is, which is the highest legal

1 contest, is to determine whether or not
2 there exists even one reasonable doubt in a
3 case. And if one reasonable doubt on any
4 or all of the elements of the State's case
5 exist, then it becomes not only your option
6 to acquit, it becomes your sworn duty to
7 acquit as you have placed your hand on the
8 Bible and stated that you will do this, as
9 all other duties that you have so
10 faithfully done so far as jurors.

11 Lady Justice is blind. The justice
12 that His Honor talks about that comes in to
13 enable to ascertainment of the highest aim,
14 the finding of the highest truth whether or
15 not there's reasonable doubt, she's blind.
16 She has a cloth over her eyes, she doesn't
17 see the color of the individual. She
18 doesn't care the race, she doesn't care the
19 religion, she cares nothing but the facts.
20 And his Lady Justice stands there, she can
21 see the face of any defendant or all
22 defendants all at the same time in her
23 mind's eye. She see your son or daughter or
24 mine, or the next-door neighbor or the kid
25 down the street, or someone around the

1 block or someone half way across the world
2 in another country of another race, another
3 language, another religion, Lady Justice is
4 blind. So when his Honor talks about the
5 time when Justice steps in and the
6 ascertainment of the ultimate truth,
7 picture in your mind the blind lady of
8 justice with her scales. We're going to
9 put some things on those scales in a little
10 while. But remember always that she's
11 blind. She doesn't see Daniel Green. She
12 doesn't see any one person. It could be
13 any of us or me or anyone out there
14 similarly charged as this defendant is
15 today.

16 Members of the jury, you must decide
17 this case. Yes, you must discuss with your
18 fellow jurors what you feel about the
19 case. Ultimately, however, you are not
20 required to surrender your conscientious
21 convictions about what you believe your
22 conscientious beliefs and your opinions are
23 yours. And though you have to listen to
24 others, you need not surrender them.

25 Now the State has spent a number of

1 weeks, a number of weeks proving matters
2 and things that the defense admitted it
3 first came up here and first talked to you.

4 There is no question that Daniel Green
5 was for a time in a red Lexus. Operating
6 we contend, primarily by Larry Demery,
7 taken by Larry Demery. There's no question
8 that Daniel made phone calls to a lot of
9 girls. Daniel has an active social life,
10 you can see that he's very interested in
11 that sort of thing, and that will come in
12 to play when we talk about the likelihood
13 that Daniel Green left the arms of the
14 young lady that he was with on the night in
15 question to go with Mr. Demery.

16 But let's talk, if we will, and review
17 briefly some of the things that the State
18 showed. Now, the first witness that the
19 State called was Ms. Annie Lee Hutchison,
20 she was a supervisor at J.V.L. Enterprises
21 for Mr. Jordan. She had been there for
22 some time and she was a very central
23 employee. Very interesting about
24 Ms. Hutchison, for some reason the State
25 brought her forward and she said she

1 admitted that to the State's officer she
2 had said that she had observed that
3 Mr. Jordan was depressed, that she had told
4 this to the officer. Yet when the defense
5 investigator came, she said, quote, "Every
6 time I saw him, he had a smile on his
7 face. And I didn't know whether he had
8 problems or not."

9 We don't know why the discrepancy in
10 that testimony, but it sort of set the tone
11 for what was to come, as witness after
12 witness came up from the State and showed
13 you that something just wasn't quite
14 copacetic about what they had to say.

15 One thing I meant to do before I
16 stopped, and I want to go back and do it.
17 And I may do things in this case that you
18 think are facetious and dumb, and I may
19 have mannerisms that bother you and I
20 certainly don't mind that. We've got cabin
21 fever, we've been there for a long time.
22 If there's something I do to bother you,
23 blame it on me, but please don't blame it
24 on my client.

25 But I want to do something. In your

1 imagination, there's a big hook that's
2 hanging right here, a great big hook. And
3 I'm going to hang on that big hook a big
4 fish, and it's going to come all the way
5 down here. I don't know what kind of fish
6 it is, it's just a scaly fish, very large
7 one, because you remember, Captain Art
8 Binder, talked about when he talked to
9 Daniel and talked to Mr. Demery, that they
10 were fishing. They were throwing out stuff
11 to see if they could catch anything.
12 Thought it would be appropriate to sort of
13 symbolize the whole State's case with this
14 fish hanging here.

15 This fish has got all different kinds
16 and parts of meat and areas of flesh, and
17 right now it's covered over with fins. We
18 can smell it a little bit, it smells a
19 little like fish, nothing wrong is with
20 it. But I thought as we go through the
21 State's case, might slice a piece of that
22 fish off a little bit and sort of smell
23 identity. Which if you slice off a piece
24 down here, it's sort of rancid and old,
25 then you can pretty well conclude that the

1 rest of the fish is bad and you ought not
2 to swallow or you may ought to throw it
3 back.

4 So Ms. Hutchison was the first
5 witness. Carolyn Robinson came on, and she
6 said that she took photographs of
7 Mr. Jordan and his clothing and the license
8 plate. She said Mr. Jordan ate some things
9 at her house that night. Among them, fish,
10 field peas, tomato, but she didn't mention
11 a thing about any mushrooms. She talked
12 about a discussion that Mr. Jordan had with
13 her about getting up with a Larry, she
14 didn't say who, to go to Rock Fish. Now of
15 course, Mr. Jordan's son is also named
16 Larry.

17 But she had known Mr. Jordan 20 years,
18 they served him a drink of vodka that night
19 in a glass two inches high and three inches
20 around. There were no mushrooms there.
21 There were none served at the funeral
22 activities where she was with Mr. Jordan.
23 And members of the jury, she ended her
24 testimony by saying when she last saw
25 Mr. Jordan, she did not remember any

1 jewelry on him whatsoever.

2 Now Larry Jordan testified -- he's in
3 the real estate business -- he last saw his
4 father on the 17th. He talks about some of
5 the jewelry and identified some of it.

6 Then we go to a witness named Mr. Hal
7 Locklear. And again, State's case gets a
8 little strange. Now, Mr. Locklear is a
9 fisherman. He watches the water, he
10 watches the rain, watches the weather. And
11 he agrees that you do most of your best
12 freshwater fishing on the low of the
13 water. The bridge at Gum Swamp area is not
14 tidal water. The only thing that raises it
15 and lowers it is either springs, and
16 there's no springs as far as he knows, and
17 the rain. And Mr. Locklear said there
18 hadn't been any rain for a month or more.
19 And he said that he had been down there to
20 that area where the body was found a week
21 or so ago, and the water was virtually at
22 the same height. And moreover, he went
23 down there a week or so later and that body
24 wasn't there because he had been down
25 there.

1 Now, Mr. Jordan's body, if that was
2 Mr. Jordan, was up above the water 18
3 inches according to substantive witnesses.
4 Up on that piece of tree branch 18 inches
5 up off the water out in the middle of the
6 Gum Branch. How did he get there? The
7 water couldn't have lifted him up, if
8 Mr. Hal Locklear, the State's witness is
9 correct, because the water didn't change
10 for a week. In fact with no rain, the
11 water, I argue to you, didn't change for a
12 month. How did he get up on those stobs?

13 Now, the defense didn't have all the
14 answers for you in this case. And that's
15 not the defenses' job. The defense' job is
16 to raise reasonable questions so that you
17 can determine if you have reasonable doubts
18 about some or all of this evidence.

19 Because you've got to believe that
20 this body was thrown off of a bridge, you
21 got to believe that it floated down on the
22 water and somehow got hung up in this
23 tree. You can't believe the body floated
24 down a ways and then jumped up on a tree.
25 You can't believe that there was a bunch of

1 rain during that 30 days that lifted up the
2 water so that the body would get on a
3 tree. Mr. Locklear said that didn't
4 happen. And nobody has argument with him.
5 And who better to know but a man that
6 fishes those waters every day.

7 This is called reasonable doubt. The
8 State is putting forward things that can't
9 be true. Common sense and reason says that
10 it cannot be true.

11 Now then, we go through the series of
12 witnesses, and I'll not dwell on that much,
13 but sends in the report after Mr. Locklear
14 has been the good citizen that he is and
15 reported what he saw and gotten help down
16 there, Sheriff Foley goes down there, and
17 he says that he picks up a bullet casing,
18 .38 bullet casing. He later says it was
19 not unusual for .38s to be down there,
20 fishermen use .38 as snake guns all the
21 time. It's an area where people go to
22 picnic and have other recreation, include
23 shooting guns. They show him the shell
24 casing that he supposedly picked up and he
25 says, "I can't tell you this is it."

1 That's a quote.

2 Question: Did you make any marks on
3 the shell case that you picked up?

4 Answer: No. No, sir, I did not make
5 any markings on it.

6 Now, he comes with a log or a report
7 that is dated December 28th, 1995. And he
8 says that that was made by his computer.
9 He didn't know much about computers. Now,
10 members of the jury, how many of you have
11 computers that put the date on a document
12 when you bring it up on the screen from
13 memory as opposed to put the date on the
14 document when you put -- when you write the
15 original document? Now, I argue to you if
16 Mr. Foley's computer is like the ones we're
17 familiar with, that December 28th, 1995,
18 just a bare few days before he testified
19 was the time that he wrote that report to
20 bring to court. And then he hauled it up
21 here and suggested that he had made it
22 three or four months before.

23 Now, it would have been all right if
24 he had made up December 28 if he had some
25 reliable notes or reliable memory, but why

1 wouldn't he tell you just the plain old
2 straight out?

3 Jennings Grooms and these other folks
4 helped get the body out, but Grooms was the
5 one that helped us determine exactly how
6 far the body was suspended above the water,
7 and he says that it was 18 to 22 inches
8 above the water. And he too agreed that it
9 wasn't unusual for handguns to be out there
10 in the Pea Bridge area. Fishermen all
11 typically have Bic lighters and other kind
12 of lighters, and there was nothing ever
13 made out of a lighter anyway.

14 Then Coroner Tim Brown took over. And
15 that is when the clothing was dealt with,
16 that's when the body was transported
17 around. It was the coroner, you recall,
18 who ordered the cremation of the body. At
19 the end of his testimony, he was asked had
20 he ever ordered the cremation of a body
21 before that hasn't even been identified.
22 And he said no.

23 And then there was some discussion
24 about the potter's field. And of course, a
25 potter's field is where paupers are buried,

1 people who can't afford burials are buried
2 in at least some proper manner. Said they
3 didn't have a potter's field. The
4 implication was this person they were
5 dealing with was some type of a pauper.
6 All they had to do is look in his mouth and
7 see that complicated dental work and know
8 that wasn't true. Obviously, this was a
9 man of substance, at least with material
10 wealth.

11 Why was there such a rush to cremate
12 this body? I'm sorry, I'm not here to give
13 you the answer. I'm here to do what a
14 defense attorney is obliged to do, to raise
15 the question, because if you have a
16 legitimate question in your mind based on
17 reason and common sense, that too is a
18 reasonable doubt. And if the State can't
19 answer that question based on reason and
20 common sense, then any one of these
21 reasonable doubts are enough to compel you
22 under your oath to find the defendant not
23 guilty.

24 He was contacted, he dealt with some
25 dental -- that is, we're talking about the

1 coroner. He dealt with some dental
2 records. He transported the body around.
3 He even arranged to transport the cremated
4 remains to Wilmington. He was the person
5 who dealt with apparently two different
6 death certificates, an original and an
7 amended one that had some additional
8 material on it.

9 And then that brought us to Dr. Joel
10 Sexton. I want to kind of dwell on Dr.
11 Sexton a moment because we're going to
12 slice a piece out of that fish in a moment
13 and take a smell of it.

14 Dr. Sexton told you that in the
15 stomach of the deceased he found black-eyed
16 peas, some tomato fragments, and some
17 fragments of what looked like sliced
18 mushrooms; mushrooms which Mr. Jordan did
19 not have at the Robinson's, mushrooms that
20 he could not have had during any of the
21 funeral activities that he went to because
22 none were served.

23 Dr. Sexton also said that he found in
24 the organs and the liver approximately 0.15
25 alcohol content. Now, to be fair, you've

1 got to understand that some alcohol occurs,
2 some alcohol formation occurs in
3 decomposition. So as an expert, Dr. Sexton
4 has to factor that out. And what he gets,
5 bottom line is, in his opinion, somewhere
6 between -- we're talking about Breathalyzer
7 figures now -- somewhere between a 0.07 and
8 a 0.10 of alcohol was in Mr. Jordan's body,
9 factoring out the alcohol decomposition
10 factor.

11 Given the time that Mr. Jordan had,
12 the small drink that the Robinsons
13 described with juice in it and vodka, would
14 you not agree that one drink of the size
15 described by the Robinsons would not have
16 brought him to the 0.07 to 0.10
17 Breathalyzer or blood alcohol or alcohol
18 content in his kidneys and liver and other
19 organs? Perhaps he stopped somewhere,
20 perhaps he went somewhere, we'll never
21 know. But the alcohol content and the
22 addition of mushrooms suggests that there
23 was at least some other activity of which
24 we're unable to account.

25 Now, most interesting part of Dr.

1 Sexton's testimony comes two places. First
2 of all, when he describes the angle of the
3 bullet. He says this bullet came into this
4 dead person above the right nipple. He
5 says it went slightly down at a 10 degree
6 angle and slightly back and it severed the
7 aorta, which was behind the heart. It
8 continued down and entered the left lobe of
9 the lung. Now, we're going to come back.
10 Starts here, down behind the heart, severs
11 the aorta, and into the left lobe of the
12 lung.

13 Now that angle we'll talk about a
14 little later. Right now I want to talk to
15 you about what Dr. Sexton told you about
16 that gaping hole in the aorta, the largest,
17 most important blood vessel in the entire
18 human body.

19 Dr. Sexton told you that the average
20 body, Mr. Jordan, if this was he, was of
21 average size, holds ten pints of blood.
22 Dr. Sexton told you that those ten pints
23 are pumped with a normal heart rate around
24 the body, all the way around in less than a
25 minute. Or in the case of a large hole in

1 the body, those ten pints are pumped out of
2 the body in less than a minute.

3 Dr. Sexton told you that this
4 individual in his opinion lived after he
5 was shot from a little bit less than a
6 minute up to two minutes. And then the
7 final clincher, when he looked into the
8 chest cavity, he only found something less
9 than two pints of blood. It was mixed with
10 decomposition fluid so you couldn't tell
11 exactly what it was, but it was of
12 significantly less than two pints of
13 blood.

14 Now what does that tell you?
15 According to his testimony, a beating
16 heart -- oh, he said one other thing too,
17 that a trauma such as a gunshot wound would
18 significantly accelerate the beat of the
19 heart. So that, you see, instead of
20 pumping the entire ten pints out in less
21 than a minute, if there were this trauma,
22 it would have pumped all of the blood out
23 in even less time than that.

24 He says the body lived for a little
25 less than a minute for up to two minutes.

1 Why wasn't all of the blood or virtually
2 all of it in the chest cavity? Now that is
3 medical scientific evidence. And on top of
4 that, it is the State's evidence. We
5 didn't call Dr. Sexton.

6 If the heart weren't beating, common
7 sense would tell you that some blood would
8 perhaps ooze out just from the general
9 pressure within the body or vascular
10 system. But to have ten pints of blood in
11 the cavity would have required the heart to
12 be beating. Has the State proved to you
13 beyond a reasonable doubt that this
14 individual was living at the time that the
15 bullet entered his body?

16 Members of the jury, let's talk about
17 Larry Demery's statement. Let me fast
18 forward to Larry Demery's statement for a
19 moment. When is the only time that Larry
20 Demery gives you anything to suggest that
21 the individual in the Lexus was animated,
22 was moving, was living? It takes that very
23 last statement of his, he didn't say --
24 now, yes, the first statement that he made
25 was on the 14th of August, 1993. That was

1 the first statement. It was made, you
2 recall, to Mr. Barry Lea. And then later
3 Mr. Lea wrote it up, I mean later that same
4 session, he wrote it up. And this was the
5 first one that Larry Demery signed, now.

6 But later on, on May the 2nd of 1995,
7 Larry Demery goes into a four-day session,
8 24 to 26 hours with Mr. Heffney. And
9 what's the first thing he does? He talks
10 about the incident at the Lexus. And he
11 claims in his first account there on May
12 the 2nd that he wasn't close by the Lexus
13 when the gun fired. He says that they had
14 gone up and looked in the Lexus, and there
15 was a man there, and he was laid back and
16 he appeared to be asleep. In other words,
17 he wasn't moving, he was laid back. They
18 didn't check his breath, they didn't check
19 his pulse. He just appeared to be asleep.

20 And then Mr. Demery says at that
21 point, he talked to the guy that was with
22 him, claims it was Daniel, and he ran the
23 other way toward his car, and he was 60
24 feet away when this shot was fired. He
25 testified to a man in the car who was not

1 moving who's -- he didn't say he wasn't
2 breathing, but he didn't say he was
3 either. He certainly wasn't moving.

4 Members of the jury -- and you see in
5 his very first statement that he gave on
6 August 14th, 1993, Demery claims to be back
7 over at Daniel's house. But he still
8 claimed that they went back and forth and
9 looked at this person in this car. And
10 again in that statement the person is lying
11 there, not moving, not budging, not
12 grunting, not snoring, not doing anything,
13 just lying there. Presumed to be asleep.

14 But you're the jury, and you can't
15 presume, you're not allowed to presume.
16 You can base your findings only on the
17 evidence. It may be that your finding will
18 end up being something that you didn't want
19 to find. You may not like what you have to
20 do. But you are sworn to do it based on
21 the evidence. And the State is sworn to
22 prove to you beyond a reasonable doubt each
23 and every element. And when the Judge
24 talks to you about the elements of murder,
25 one of the things that he's going to talk

1 about is proximate cause. What caused the
2 death of the deceased? State's got to
3 prove beyond a reasonable doubt that the
4 bullet that they claim came out of State's
5 59-A, the revolver, killed not just a man,
6 but James Jordan. And they've got to show
7 that Mr. Jordan, or whoever it was, was
8 alive before that bullet entered him. They
9 not only have not shown that, they have not
10 raised a credible presumption of that, and
11 you can't presume, anyway. They, in fact,
12 by their evidence have shown scientifically
13 otherwise.

14 And maybe that's got something to do
15 with the fact that they were in such a
16 hurry to cremate that body. Because if
17 there was a mistake made, members of the
18 jury, we can't dig that body up and find
19 out what was really in it. We didn't have
20 the benefit, it's not your fault that you
21 don't have the benefit of a complete
22 toxicology screening. All that was done is
23 screening for alcohol, barbiturates,
24 cocaine, and the couple of the so-called
25 recreational type drugs. They didn't do a

1 complete poisoning screen, they didn't do a
2 heavy metal screen.

3 There he was in a car, parked by the
4 side of the road, that even Mr. Demery
5 admits might have been running. And it
6 didn't occur to them to even do a carbon
7 monoxide test, though I concede that the
8 window was partly down, so maybe that
9 wasn't a thing that one would do. But
10 anyway, they had an obligation to really
11 look into it. They didn't save the body.
12 They just got rid of it.

13 And Dr. Sexton, he knew it was coming
14 because he wanted to get it out before I
15 did. He told you about the other time that
16 because somebody was just in a house and a
17 house had burned, he ruled that smoke
18 inhalation death by fire because that was
19 the obvious cause. He talks about what he
20 does about those kinds of things, he goes
21 to the obvious. He doesn't look for
22 anything else. He told you that. And
23 that's what he did in this case.

24 Situation was in the other case,
25 though, they were able to dig that body

1 back up. And what did they find? This
2 person who was supposed to have been killed
3 by a fire, he actually had two bullets in
4 his skull. Now Dr. Sexton says, well,
5 that's just one in several thousand. Well,
6 how would you like to be the one in several
7 thousand defendants that got convicted on
8 that evidence? And the other thing is we
9 don't know how many mistakes Dr. Sexton
10 makes because he gets to bury his
11 mistakes.

12 They have got to prove proximate
13 cause, that's the near cause, the actual
14 cause that causes death. We don't know
15 what kind of mushrooms those were. We
16 don't know what kind of problems Mr. Jordan
17 was having that night. Dr. Sexton says
18 that if he had had an arrhythmia or he was
19 pretty sure if he had had a heart attack,
20 that would involve a blockage, he could
21 find that, he was pretty sure that wasn't
22 there. If he had a stroke, he could find
23 that, and that wasn't there, so you can
24 eliminate that. But there's some things he
25 can't eliminate. If the man had had an

1 arrythmia, a tachycardia, a type of heart
2 stoppage or heart failure, there would be
3 no way to tell that on an autopsy.

4 Why does the State have to come back
5 with Larry Demery one more time where Larry
6 Demery, at the end of a statement, where
7 he's already sworn that if you give me this
8 plea bargain I'm going to tell you the
9 truth, I'm not going to hold anything back
10 this time. And first thing he does is he
11 lies about telling the truth. He tells
12 them that he was 60 feet away from the
13 car. And then they got to get one more
14 statement, and this time he's right up
15 there at the car, why? They got to put
16 some kind of evidence in this case, to
17 animate that body, to make this person's
18 alive before they can say somebody killed
19 him.

20 Now, you got to decide whether Larry
21 Demery is telling you the straight of
22 anything or whether Larry Demery is just
23 engaging in testimonial engineering to try
24 to make happy the people that he believes
25 can help him. I want to saw a little piece

1 of the fish off right here, take that
2 morsel out, and smell it a little bit.
3 Doesn't smell that good, does it?

4 Now, David Cox, forensic firearms
5 examiner, he goes through all the tool
6 marks identification, talking about
7 everything about what he's done. And two
8 things are interesting about Mr. Cox. He
9 basically agrees with Mr. Marrs, whom
10 you'll hear later, that essentially based
11 upon what he found about the bullet that he
12 looked in the bullet that's in evidence, he
13 basically went through about 17 different
14 brands of guns that that could have been,
15 and over with Agent Marrs we get a greater
16 amplification of what that can mean in
17 numbers.

18 Through Agent Marrs we found out that
19 can be a million, maybe several million
20 different guns that could have fired that
21 bullet. All it's got to have is five lands
22 and grooves, same width of the land and
23 groove, and a right-hand twist. And many,
24 many, many other guns do that. So it's
25 just simply impossible to match this gun

1 with this bullet.

2 Now, the most important thing about
3 Mr. Collins is that he starts to bring up
4 an interesting point about what I contend
5 is the State's overreaching in this case.
6 I guess for lack of a better term, it would
7 be trying too hard. We all have had people
8 who try too hard to be our friends or
9 people who don't play sports as well as
10 they could because they try too hard. It's
11 just so intense. And you can understand
12 how this case is intense for everybody.
13 It's in the public eye, right out there for
14 everybody, and you just -- it just gets
15 into you. And everybody is trying. But
16 trying too hard ought not to prejudice
17 anybody's rights and particularly the
18 defendant.

19 I want to talk to you about one thing
20 Mr. Collins says, but first I want to
21 preface it. An opening statement is just
22 sort of a road map where you're going in
23 the case. The State does one, the defense
24 does one. It's not uncommon to get up here
25 and not -- and assume that the evidence is

1 going to go one way, assuming that you're
2 going to get a witness to admit certain
3 things which he doesn't end up admitting,
4 or that you're going to deal with a case in
5 a certain way, and then you go a little bit
6 different way. That's not unusual. And
7 I'm not criticizing Mr. Britt if --

8 MR. BRITT: Objection.

9 THE COURT: Members of the jury,
10 you are to disregard the argument of Mr.
11 Bowen as to what is not usual or unusual.
12 That is not a proper argument. And I
13 instruct you that that argument is not to
14 take any part in your deliberation in this
15 case in any respect. Yes, sir, Mr. Bowen.

16 MR. BOWEN: What the purpose of
17 the opening statements is to tell what you
18 got and forecast it to begin with. You
19 can't always do that, as to everything.
20 But what I argue to you is this -- excuse
21 me a moment -- is that when you've got a
22 piece of actual scientific evidence, you've
23 got an expert, and you've got an expert's
24 report, and he sits there from the very
25 beginning and you know exactly what is

1 written down in that report, it is
2 unusual -- well, strike that.

3 I would argue that there should be a
4 difficulty found by you if the prosecutor
5 or the State says that he's going to show
6 you a particular thing by way of his
7 scientific evidence, something he's got a
8 report sitting right there on, and then he
9 goes through his evidence and doesn't show
10 you that at all or shows you something
11 else. Now, what am I talking about?

12 Prosecutor said this on opening argument --

13 MR. BRITT: Objection.

14 THE COURT: The objection is
15 sustained. There is no such thing as
16 opening argument.

17 MR. BOWEN: I'm sorry, opening
18 statement. Excuse me.

19 Evidence will show that the shell
20 casing found in the area of the bridge
21 where the body was dumped matched
22 conclusively, matched the test bullet that
23 was fired from the .38 caliber gun. In
24 other words, the bullet that was taken out
25 of Mr. Jordan, or whoever it was, matched a

1 bullet casing that was test fired in
2 State's Exhibit 59-A.

3 Now, what is interesting about that
4 statement? What is interesting about it is
5 not only was that not proved in this case,
6 but we asked Agent Collins if you could do
7 that, if a tool marks and firearms examiner
8 could match a bullet with a casing. And
9 Agent Collins said no, you can't do it.
10 It's virtually impossible to do because
11 when the bullet leaves the casing, that
12 firing powder burned up and everything
13 obliterates any striation that might
14 otherwise be there, and you can't do it.

15 Now, experts sometimes don't agree,
16 but in this case we've even got a second
17 opinion on that. You remember Agent Marrs
18 testified about that. I asked him the same
19 thing, can you match a bullet to a casing.
20 Agent Marrs says virtually impossible,
21 "next to impossible," I think his words
22 were, you can't do it. So not only did he
23 promise something in his scientific
24 evidence that was not done, he promised
25 something that could not be done according

1 to two of his own experts.

2 Now, that, I argue to you, is
3 overreaching. And that is dangerous when
4 it comes to an individual's rights who is
5 looking at a punishment of, minimal, life,
6 maximum, the death penalty.

7 Now, what was interesting about the
8 fingerprint person from South Carolina as
9 well as the fingerprint person, Mr. Jerry
10 Richardson, Agent Jerry Richardson from
11 North Carolina is this. And this is
12 another point I want to bring up to you.
13 And if I may, I would like to make a little
14 note here on the board. I want to write
15 the word "prints" because I want you to
16 think about something.

17 Every day, you're called upon to
18 figure things out and see things and
19 compare things and make decisions. There
20 are several Masters degrees among you, most
21 of you have college backgrounds. You've
22 all got fine common sense.

23 What is there that these fingerprint
24 people think that you wouldn't be able to
25 understand if they brought a big blowup in

1 here and put it in front of you and said
2 here are the ridges and swirls and so forth
3 that we found? There's something about
4 this fingerprint man, Mr. Jerry Richardson,
5 who says, yeah, we've got a photo lab up
6 here; yeah, I can make a macro image of
7 this fingerprint that was supposedly made
8 off of Mr. Jordan's thumb; yeah, I can do
9 that. And but nobody asked me to do it,
10 and therefore I don't have anything here
11 that I can show to a jury how many points
12 of identification there are.

13 There are potentially 75 to 150 points
14 of identification on any given fingerprint
15 or thumbprint. And I don't know how many I
16 found. I didn't write it down. But I know
17 it was less than 50, might have been more
18 than 20, but I'm not sure, and I don't know
19 which ones they are. And sure there are
20 dots and swirls and ridges, but I got no
21 way to show it to a jury. Nobody asked me
22 to do that, not the officer, not the DA.

23 You know what is interesting, maybe
24 that was just an oversight. Big case, lot
25 of confusion, maybe he just didn't bother

1 to ask. Guess what, folks? Jerry
2 Richardson came back three or four weeks
3 ago. Weren't you expecting at any time to
4 go back to that original evidence as he
5 could, and offer additional corroboration
6 for his opinion that that was James Jordan
7 by the fingerprint by putting a big
8 photograph up here for you of the ridges
9 and the swirls and all the things that make
10 an identification? Still, even after I had
11 raised it, even after I had raised it,
12 nobody, nobody brought back something for
13 you to see.

14 Now, think about this: Mr. Richardson
15 does not have to live the rest of his life
16 with Daniel Green's freedom or even Daniel
17 Green's death as his responsibility. You
18 have to live with that. Don't you think
19 you deserve to see the basis on which this
20 man made his decision that this was James
21 Jordan? Because you have to find beyond a
22 reasonable doubt that this was James Jordan
23 that was killed.

24 Now, as if that's not enough, let's
25 talk about the dental experts. Now, they

1 are smooth and polished, they're
2 professional, no question about it. I'm
3 sure they fix good teeth. But you know,
4 they brought stuff and they showed you
5 stuff. And I remember one of them, I
6 forget who it was, came up here and put one
7 over the other one and said this overlays.
8 You saw it. Did you see anything that
9 over -- I mean, did you see anything match
10 up one on top of the other? Sure they
11 talked about some posts where they were
12 going to hitch some teeth later on. Many
13 manufacturers of those posts couldn't even
14 tell you what the manufacturer of the post
15 was.

16 He they said that the angles of the
17 posts looked about right when you took it
18 one way, but they didn't bother to take the
19 photograph the other way, see if the angles
20 matched the other way. And then they claim
21 that they had these two charts. Well, you
22 can ask for the evidence back there in the
23 jury room. Defense certainly won't
24 object. You can take those two charts.
25 You can go through those two charts saying

1 coming up here and matched. And you look
2 at them and you see if they matched. You
3 see if they have got the same type of work
4 on both of those pieces of paper. Look for
5 yourself.

6 You got Dr. Seitlin. Bless his
7 heart. Gives Mr. Jordan a discount, good
8 old dyed-in-the-wool Carolina fan, and
9 that's fine. And he went to Carolina
10 dental school; and two witnesses later,
11 Dr. Burkes, who was his professor at the
12 dental school, testifies.

13 We asked Dr. Seitlin, "Dr. Seitlin,
14 can you look at a radiograph," that is an
15 x-ray, "and can you tell us whether to the
16 exclusion of all other dentists in the
17 world that you did a particular root
18 canal?" And Dr. Seitlin said, "Yeah, I can
19 do that. I can pick out my root canal off
20 of that x-ray."

21 Well then, you get Dr. Brown from
22 South Carolina, and he is just a regular
23 dentist, so he's just an ordinary expert.
24 Dr. Brown said you can't do that. You can
25 tell a little bit something about the style

1 that somebody learned how to do, but
2 there's no particular signature involved in
3 a root canal, you can't do that.

4 Well, if you won't take it from an
5 ordinary expert, take it from the real
6 expert, Dr. Burkes, Chapel Hill, Dr.
7 Seitlin's professors. He said that can't be
8 done. You can't look at an x-ray and tell
9 that you made a root canal.

10 See what I'm talking about about
11 overreaching? Everybody is trying too
12 hard. They are trying to be too sure when
13 the evidence in this case is anything but
14 sure. There are reasonable doubts all over
15 everywhere just like land mines waiting to
16 be tripped on, and I'm sure all this
17 evidence we haven't tripped them all.

18 Then we come to the officer I suppose
19 that we would like to give a little pat on
20 the back to, and that's Trooper Raymond
21 Battle. Raymond Battle probably of all the
22 other officers went above and beyond the
23 duty to do everything. He saw that car out
24 in woods was not reasonable. He repeatedly
25 tried to called the Jordan family. And you

1 can understand that a family that has as
2 much public profile as they do, how it
3 would be different to get through and how
4 somebody might think it was a crank call
5 after everything, we understand that. But
6 Mr. Battle was at least trying, but he
7 wasn't able to get through.

8 Mr. Scott Williams, the other officer,
9 he was more interested in 5:00 o'clock
10 getting there than anything, so he doesn't
11 do much of anything except leave the car
12 out there. According to his supervisor,
13 what he told him to do out there was leave
14 it out for or five days, and supposedly
15 they were going to continue to call the
16 family, but doesn't appear they did very
17 much.

18 Finally the car was brought to
19 Crumpler's in Stedman, and Crumpler owns a
20 big garage there, and he's got a fenced in
21 yard there and got bunches of cars, 20 or
22 30 cars in the lot. He pulled the car up
23 there, and he said you could have sold
24 tickets for a day or two, said stayed out
25 there six or eight days. Nobody from the

1 Cumberland County Sheriff's Department put
2 one of those crime scene stickers on it,
3 nobody secured the car in any way. Anybody
4 could come and go there. Crumpler said he
5 didn't see any blood in the car, he never
6 saw a bullet in the car.

7 And Mr. Hubbard, of course, wanted it
8 removed from his property, so they had no
9 trouble getting it off there. That's what
10 interesting. Apparently the owner of the
11 property could have caused it to be moved
12 at any time, but apparently the Sheriff's
13 Department didn't see fit to call the owner
14 of the property, or at least they didn't
15 for five or six days and finally it was
16 taken to Crumpler's.

17 Now, Eric Autry go out to see the
18 car. Just happens, he says, to pull a
19 silver bullet casing off of the
20 floorboard. Now, that's maybe, presumably
21 the one that Mr. Battle saw. Mr. Crumpler
22 didn't see it, but he never saw a bullet.
23 But Mr. Battle did, and he got this bullet,
24 Mr. Eric Autry does, Autry picked it up,
25 doesn't even have a .38 weapon, saw fit to

1 put it up, put it on his dresser drawers,
2 his brother may have handled it. Anyway he
3 handled it all over.

4 Incidentally, he didn't see any blood in
5 there bending down to get the bullet, and
6 he happened to be within inches of where
7 they later claimed there was blood. Then
8 Agent Strong of the FBI, happens to know
9 his wife because she works in the same
10 building, she works in the bank, and she
11 makes contact with the FBI and suggests it
12 would be a good idea if Mr. Autry turned
13 the bullet over. And agent Strong says
14 sure. And then after Autry brings it,
15 handles it on the way and so forth, and
16 then Agent Strong puts it in a very sealed
17 package, make sure no other fingerprints
18 are going to get on it. But of course,
19 then all the damage had been done by then.

20 Then we have Officer Mark McMillian.
21 Now he says that somebody went out or came
22 in the Sheriff's office and claimed that
23 they saw a red Porche at Bob's Landing
24 Mobile Home Park. And he went out there
25 and he happened to have seen Mr. Green and

1 went down by the swimming hole and he saw
2 four or five males back there there in the
3 swimming hole. And Mr. McMillian has made
4 several statements to Officer Underwood
5 about this matter. He saw the defendant
6 coming out of the woods, talked to him
7 about a red car, he said it was a Nissan,
8 and gone down to South Carolina. Green
9 showed him where he had been swimming, and
10 sure enough, he found four or five males in
11 there swimming. Got to Daniel, saw no
12 car. Took Green down by the pond, Green
13 went with him readily.

14 Now then we come into the group of
15 Fayetteville witnesses, and those are Jovan
16 Carter, Dominique Hales, that's Rick
17 Hales. Remember Rick Hales, remember the
18 guy named Rick? That was Rick Hales.
19 Terrence Patterson, all these folks talking
20 about a rusty gun, saw some kind of a rusty
21 gun. We'll, you have seen State's Exhibit
22 59-A, you have seen it, you see no big
23 patch of rust on it. You see their own
24 experts over there, Mr. Richardson agrees,
25 only way you could see any oxidation on the

1 gun is put it under a microscope, only way
2 he could see it. Excuse me, a
3 stereomicroscope, at that.

4 These folks talk about seeing some
5 kind of ring. And if you look at the kind
6 of evidence they give, one of them says he
7 saw one ring, and one of them says he saw
8 the other ring and the same time sequence,
9 and two different rings, nobody ever says
10 they saw two rings at the same time. And
11 significance of these rings is that this
12 happened way on over the next day. And I
13 think Mr. Thompson is going to talk more
14 about those kinds of things.

15 Talking about also the defendant's
16 brother, David Moore. What is interesting
17 about David Moore is that David Moore asked
18 for a copy of a tape recording of the
19 statement that he gave, asked for it when
20 he gave it. Officers gave him a reason,
21 said it's not policy, whatever, we can't
22 give it to you. Then they get up later on
23 and stuff a piece of paper in his face,
24 purportedly a transcript of what he said,
25 as we get up here right before trial. I

1 mean, that's when officers usually come to
2 talk to you about your testimony, is right
3 before trial.

4 And so they come and talk to him right
5 before trial, after it's been a couple of
6 years since he's made the statement. They
7 don't let him hear the tape. They just
8 give him this piece of paper. And he says
9 yes, he recognizes seeing that, bits and
10 pieces that he does remember saying, but
11 very much of it he doesn't remember. So as
12 a consequence he's the defendant's brother,
13 that the State has declared a hostile
14 witness. He gets up there and testifies,
15 and sure enough he doesn't remember a lot
16 of stuff. He asked for the tape,
17 remember? He couldn't have the tape.
18 Remember? They wanted to give him a
19 transcript.

20 Now, David Moore is not some scraggy
21 person. He's in the Army. When that bag
22 of golf clubs came into his house, first
23 thing he said is, "Get that mess out of
24 here, I don't want any part of it." David
25 Moore agreed to talk to the officers.

1 David Moore has agreed to do what is
2 right. But they jump all over David Moore
3 because he can't remember everything, and
4 they wouldn't give him the tape. They set
5 him up to look evasive when that's not
6 David Moore at all.

7 MR. BRITT: Objection.

8 THE COURT: Objection is
9 sustained.

10 MR. BRITT: Move to strike.

11 THE COURT: Members of the jury
12 you are to disregard Mr. Bowen's statement
13 that they set him up to look evasive. That
14 is not to take any part in your
15 deliberations in any matter in any
16 respect. That is not a proper argument and
17 I instruct you that you are to disregard
18 it.

19 MR. BOWEN: David Moore
20 legitimately could not remember, and I urge
21 you to infer just exactly that.

22 MR. BRITT: Objection.

23 THE COURT: Members of the jury
24 you are to disregard counsel's personal
25 expression as to what a witness could or

1 could not do. It is for you the members of
2 the jury to decide what the evidence in
3 this case does show. You are to disregard
4 the statement of Mr. Bowen that Mr. Moore
5 legitimately could not remember. Yes, sir.

6 MR. BOWEN: David Moore said that
7 he could not remember. Based upon all the
8 rest of the evidence that you have heard,
9 you may infer that that is the truth.

10 Now, we hear then from Ms. Thomas --
11 I'm sorry, yeah, Senetta Bell Thomas. The
12 Lexus with Daniel Green and Mr. Demery
13 comes to her house, and what do they do
14 there, Daniel's using that telephone to
15 socialize, they are calling New York, they
16 are having a good time, and this is pretty
17 much the theory -- the entire thread of the
18 theme of telephone calls, this sort of
19 thing.

20 Pamela Perry, she's got an interesting
21 history, I'll let Mr. Thompson handle
22 that. We've talked about David Moore.

23 Now, Melinda Moore and Dee, Delores.
24 These individuals are people that Mr. Green
25 and Mr. Demery went to see down in South

1 Carolina. And here's where you start
2 getting a glimpse of Mr. Demery. He's
3 engaged to Angela McClain. He tells about
4 having gone the previous day to buy some
5 gifts from Ms. McClain, including an Eor
6 donkey, an Winnie The Poo character. And
7 yet on the next day, he's on the way down
8 to South Carolina and he sees Dee. And he
9 and Dee go -- I'm sorry. On the 15th, I
10 believe it was, he and Dee met first time.

11 But on the 22nd and later on the 23rd
12 of July, he goes down and sees Dee again.
13 And this time he and Dee come back to
14 Daniel's trailer and they spend the night
15 together, as Demery tells it with little
16 Angela sitting out there on the front row,
17 spent the night in between separate
18 sheets. And you see that is wherein you
19 get to decide whether Mr. Demery is telling
20 you the straight of what he has to say.

21 He claims, Demery does, that there was
22 some sort of a robbery on the 15th. That
23 would have been the first day that he met
24 Dee, and he claims that occurred on
25 Mr. Clewis Demory's place. Mr. Clewis

1 Demory comes forward and he says, "The
2 person that was in my store looked like
3 Daniel Green. But "I see scores" -- now
4 what is a score, a score is 20 -- "I see
5 scores of young black men in my community
6 that look exactly like him." And I can't
7 say for sure -- what did he say to James
8 Carter at the hospital -- "I couldn't
9 identify him if he walked through that
10 door."

11 Now, that's an honest man. But he
12 knows what it comes right down to it, that
13 if you can't be sure, you can't swear to
14 something, and I'll argue to you that if
15 anybody in this case could be a good
16 example and a guide of what it honestly
17 means to swear and how important it is,
18 Mr. Clewis Demory could be an example for
19 us all. Because he's not going to say
20 unless he is sure. And when you swore an
21 oath as a juror, you swore that you would
22 not say guilty unless you were sure beyond
23 a reasonable doubt.

24 We talk about Mr. Underwood, in
25 connection with that identification.

1 Mr. Demery wasn't quite sure about whether
2 or not he had seen all the stuff on TV
3 about the Jordan murder and all about the
4 pictures of Daniel and Mr. Demery on TV.
5 But Mr. Underwood was. In fact,
6 Mr. Underwood said that not only did he
7 ascertain that Mr. Demery had seen all that
8 stuff on TV, but he even brought it up to
9 him and asked him, "Have you seen all this
10 stuff about the Jordan matter," and then
11 presented him a set of photos. One of
12 which was, the photo of Daniel Green, the
13 same picture that had been on TV. Was that
14 suggestive? You decide.

15 Now, Mr. Carter testified that when he
16 got there to the Demery place, there was
17 blood. There had been a shooting. And
18 what would you expect? There was blood.
19 Now, that's important as we get later on to
20 what was not present in this car that
21 Mr. Demery claims was the place where a
22 shooting took place.

23 Mr. Underwood was in the house when
24 there was a search. He took a videotape,
25 one videotape. Did you see the picture?

1 There was an entire bookshelf full of
2 videotapes. Must have been 30 of them in
3 there. Does they play any of those,
4 apparently not. Did they take any of
5 those? Apparently not. Been a big deal
6 about Daniel toting around a video camera.
7 And they are going to try to suggest some
8 nefarious way in which he obtained that
9 video camera. But folks, Daniel Green
10 didn't put together 30 or 40 videotapes
11 sitting in that piece of furniture there in
12 just a few days. That video camera was
13 never identified by anybody as other than
14 Daniel Green's. It was never argued to be
15 anybody's other than Daniel Green's, and
16 the tapes were there to prove it and all
17 they had to do was play them because you
18 see, part of those tapes put a date stamp.
19 All you had to do is play them and see when
20 they were made.

21 MR. BRITT: Objection, matters
22 outside the record.

23 THE COURT: The objection is
24 sustained.

25 MR. BRITT: Move to strike.

1 THE COURT: It is your duty to
2 recall the evidence that was presented
3 during this trial. And as I have
4 previously instructed you, if your
5 recollection of the evidence differs from
6 that of counsel, you are to disregard what
7 counsel contends the evidence in the case
8 shows and rely only on your recollection
9 during your deliberation. Yes, sir
10 Mr. Bowen.

11 MR. BOWEN: Videotapes were
12 evident in some of the State's photographs,
13 and what those photographs show is for you
14 to decide. Now, I argue to you that --
15 strike that.

16 Now, in light of Mr. Underwood's
17 testimony, members of the jury, the
18 officers went to this residence of Daniel
19 Green first on the 14th of August, 1993.
20 Right? And when he got there there was at
21 least four officers. And when they got
22 there, they requested to see Daniel, and he
23 came, and Ms. Green was there. And they
24 asked if they could search the house
25 because they said they were looking for

1 auto parts. And Ms. Green said, "Are they
2 going to find anything?" Daniel said, "Not
3 what they are looking for."

4 Plenty of things in the house. They
5 looked at everything there was. Presumably
6 that's what they went there, to look for
7 everything they had. What did they tote
8 away from there that night? What illegal
9 substance or contraband or stolen property
10 or anything did they find? Nothing.
11 Nothing.

12 Ms. Green let them in, Daniel let them
13 into his bedroom. Bedroom according to the
14 officers was an 8 by 11 foot room in a
15 mobile home. The officers first contended
16 that that bedroom had a chest of drawers in
17 it, although when we started making them
18 look at the room and go around it and look
19 at their own photographs, turned out that
20 either they mistook a chest of drawers for
21 a lavatory with a white ceramic top on it
22 or they were mistaken entirely about the
23 chest of drawers, they never could put it
24 anyway. What they did say was in there was
25 a bed, and the bedding on top of it, and

1 closet, and in the middle of the room, a
2 Shop Vac vacuum cleaner. They searched the
3 closet.

4 Who went in there first? Well,
5 Mr. Smith was in there. Officer Smith and
6 another one was in there, I can't remember
7 his name right now. But anyway Mr. Smith
8 was in there, and they went all over that
9 room and they claim that they never looked
10 in the vacuum cleaner but they went into
11 the closet and they took down every box,
12 every container, every canister,
13 everything, and looked inside of it and
14 looked in all the clothes, and claimed that
15 they looked in the chest of drawers that
16 weren't even there. But they say to you
17 that they never looked in that vacuum
18 cleaner.

19 Now, at the very time they were
20 searching, Daniel Green was already in a
21 patrol car making his way to the Law
22 Enforcement Center. Okay? And he didn't
23 come back home. He ain't been back home
24 since. So two days later, what did they
25 do? Another group of officers, with one

1 exception, was a different group, except
2 Barry Lea went with them. He was there
3 both -- they went back out there a second
4 time. Durry Cannon was the man that was
5 searching with Officer Smith the first
6 time. Now, Durry Cannon, Mr. Smith, both
7 people that got the Fayetteville Sheriff's
8 Department, they've got many years of
9 experience, they've done hundreds of
10 searches, they have been in drug
11 enforcement, they know where to look for
12 stuff. And they testified that they
13 tripped over the vacuum cleaner or kicked
14 it out of the way three times. Now, two
15 days later, they come back this time with a
16 search warrant, knowing this Ms. Green
17 would let them in, they let them in the
18 first time. And this time they come when
19 she's not there. And they claim they tried
20 to get a key or something. But at any
21 rate, they resolve this: They were going
22 to break in this time.
23 So they took the search warrant, and
24 Mr. Erich Von Hackney took his crowbar and
25 he pried open the front door, and they went

1 in. And where did they go, right back to
2 the same 8-1/2 by 11 bedroom. Two officers
3 again, and they searched. And this time
4 they went right to the Shop Vac vacuum
5 cleaner. And guess what was there?
6 State's Exhibit 59-A, the alleged murder
7 weapon, at least a gun that looks to
8 Mr. Demory something like the one he lost,
9 although nobody can explain why the handles
10 are of two different colors because
11 Mr. Demory's gun wasn't like that. And
12 Mr. Demory can't give them the serial
13 number, and the SBI can't even figure out
14 which the serial number is on the gun until
15 much later. They go in there and they find
16 that gun. Now, they dust that gun for
17 prints. And what do they find? Smudges,
18 can't get any usable print off of that
19 gun. So we don't know from the gun who put
20 it there.

21 But members of the jury, I invite you
22 to ask to see those photographs of that
23 Shop Vac and remember that description of
24 that Shop Vac. It's a shiny glossy
25 surface. And a shiny glossy surface is

1 just like that rear view mirror that where
2 the only usable fingerprint for this case
3 was found in Mr. Jordan's car. Just like
4 that mirror where Larry Demery's
5 fingerprint was found up there on that
6 mirror where he was adjusting the mirror
7 where he was driving the car. That was the
8 only print found on the car. Incidentally
9 they didn't even find Mr. Jordan's prints
10 anywhere. Certainly didn't find Mr. Daniel
11 Green's prints on the car, they found them
12 on some CD's and stuff.

13 My question to you is this: Did they
14 dust the top of that vacuum cleaner for
15 prints? Wouldn't a fingerprint on the top
16 of this vacuum cleaner have told them and
17 you positively who last took the top off of
18 that vacuum cleaner and therefore who
19 probably put that gun in there? They
20 didn't even dust it, members of the jury.
21 Now, folks, they took a 3200 pound car up
22 here to Raleigh and put it in the impound
23 and dusted it all over and did luminol test
24 for blood and every other test that you can
25 imagine, looked for powder and things of

1 that nature. Don't you think they could
2 have toted a little old vacuum cleaner up
3 to Raleigh?

4 They didn't do it, I argue to you,
5 because either they didn't want to know who
6 had been into that vacuum cleaner or worse,
7 they did know and didn't want you to. Now,
8 I think that -- strike that. What I think
9 is not important.

10 Let's slice a little piece of this
11 fish off and call it the vacuum cleaner
12 part and take a sniff of that and see if
13 you're willing to eat that piece of fish
14 because that's part of the State's case,
15 you've got to eat Andy yes, sir each an
16 ever one of these more sells and they have
17 got the set well with you or they haven't
18 proven their case beyond a reasonable
19 doubt.

20 And then we get in to Mr. Demery. And
21 of course, that's the real State's case, is
22 Mr. Demery. Let's face it. If you took
23 Mr. Demery away, they got nothing. If you
24 took Mr. Demery away, -- well, what is
25 Mr. Demery? Mr. Demery is sitting over

1 here. And remember I talked to -- we're
2 going to talk about these scales of justice
3 a little later, those balancing scales.
4 What do you have here, Mr. Demery on this
5 side saying that Daniel left Kay
6 Hernandez's house with him at 1:30 in the
7 morning, that's what he says in his
8 statement. No secret about Kay Hernandez,
9 Mr. Demery told him that. It's been known
10 to the State.

11 Now, Mr. Demery tells him that,
12 Mr. Demery is sitting on this side of the
13 scale. On the other side of the scale are
14 the other folks that know where Daniel was,
15 they are the folks that were coming down
16 the highway that know where the car was,
17 not where Mr. Demery says it was, and what
18 you've really got to ultimately decide is
19 whom can you afford to believe.

20 Well, let's just talk about Mr. Demery
21 briefly. Who in all the world would you
22 say knows you better than anyone? Not your
23 classmates in school, not even necessarily
24 your best friend, not your acquaintances or
25 your co-workers at work, but your parents.

1 And what do we know about Larry Demery and
2 his relationship with his parents? He
3 testified to you that he had stolen so many
4 things from his parents, he had violated so
5 many rules in his household, he had acted
6 so out of control with reference to his
7 patients that they had ended up padlocking
8 and deadbolting both doors to their
9 bedroom. And he had worked his time down
10 from about ten minutes down to almost
11 nothing busting their locks and getting in
12 there anyway.

13 That's what they knew about Larry
14 Demery. Larry Demery had psychiatric
15 problems, and that's an illness like any
16 other illness, and we would rejoice to know
17 that Mr. Demery found a miracle drugs of
18 the '90s, Artane, that can help you and
19 improve his situation. On the other hand,
20 it doesn't take away that the fact that he
21 needed that much help shows us that there
22 was a real problem back there. And
23 regardless of the cause, that doesn't take
24 away the existence of the problem. And his
25 mother knew it so much, that at 16 she

1 tried to get him to get some help and he
2 went for a few sessions and then stopped.

3 If you cared about Larry, he had a
4 fiancee, Angela. Now, maybe next to his
5 parents, one could argue that his fiancee
6 knew him best. And what did she say?
7 Larry admitted to you out of his own mouth
8 that Angela told him, "Larry, I'm giving
9 you your birthday present early this year
10 because," quote, "your sorry ass will be in
11 jail before your birthday," close quote.
12 Now, that's what she thought.

13 But the State asks you to believe
14 everything that Larry Demery tells you,
15 even though Larry Demery has told the State
16 three, at least three different versions of
17 what happened out at the Lexus.

18 First, he says that he concocted a
19 scheme with his companion he claims to be
20 Daniel Green that they were going to hold a
21 gun on this person and have him drive over
22 to the Bob's Landing Mobile Home Park, past
23 that sign that says Bob's Landing Mobile
24 Home Park. The man was going to do the
25 driving, he is going to go into the park

1 and then go over to the bridge by the
2 house, depending on which version you take,
3 and there they were going to tape him up
4 with all this duct tape Larry Demery
5 carried around in his car.

6 Now, folks, if you have to concoct a
7 more ridiculous story, you're telling me
8 that -- or they are telling us -- or they
9 are telling you, excuse me, that they are
10 going to take this man, bring him past with
11 his headlights on, he's going to go past a
12 sign for Bob's Landing Mobile Home Park so
13 he can read it real good, go past that and
14 then take him to a place, and tape him up,
15 and he's going to be able to take the
16 police right back to where he was. Makes
17 no sense, does it? Well, that's what he
18 claims, at any rate.

19 Next thing that he claims is that --
20 and depends on which statement you want to
21 take. First statement was he claims that
22 he, Larry, was way over yonder at Daniels's
23 house. He didn't see the man other than to
24 look in there and see him what he thought
25 was sleeping. He wasn't even there if

1 anybody shot him, doesn't know anything
2 about it, he was just over there at
3 Daniel's waiting, and claims that here
4 comes Daniel.

5 Well, got a witness later on that
6 night who says that she saw Mr. Demery with
7 the car about 2:00 or 3:00 in the morning
8 with the radio pumping. You see, what
9 you'll see is you watch what Demery does,
10 is he takes what he did and he projects it
11 on to Daniel. Whatever he did, he said
12 Daniel did it, Daniel did it.

13 You're going to see that with the
14 little boy that punched Daniel in the
15 mouth, says that in his testimony, that
16 Daniel grabbed the gun and said I'm going
17 shoot, "grab the gun and shoot the little
18 fucker." Yet we get an independent witness
19 who was there, and we find out, yes, it
20 happened, but it wasn't Daniel that picked
21 up the gun, it was Demery that had the gun
22 right at the ready, just where Nellie
23 Montes saw it in the car, right there where
24 Demery could grab it with the butt pointed
25 toward Demery. He grabbed it, and it was

1 Demery that made that remark that he ought
2 to shoot the little boy. And that's
3 typical all the way through, Demery talks
4 of the real incident, but it's he that did
5 it, not Daniel.

6 Now, Demery tells you a lot of
7 interesting things. He tells you about all
8 the trouble that he had gotten into, he
9 shared with Daniel. He tells you about his
10 prior criminal record, which is extensive.
11 So much so that even before this particular
12 charge, Mr. Demery had 230 years worth of
13 felonies that he was facing. Now, let's
14 talk about what some of them were. There
15 were three armed robberies. There were two
16 assault with a deadly weapons with intent
17 to kill, inflicting serious bodily injury
18 charges. There were some break-ins and
19 some other assorted felonies, bringing it
20 all up to 230 years. That was before this
21 even came about.

22 He was working at Crestline Mobile
23 Homes. Parenthetically, you remember where
24 Crestline was? How did they get down to
25 the Pea Bridge? Crestline Mobile Homes is

1 just a few -- the plant is just a few
2 hundred yards from the Pea Bridge. This
3 was an area where Demery was familiar with
4 the terrain. Suggested they go there. But
5 not before he tried to suggest in his
6 statement that, oh, it was Daniel's first
7 idea to, let's go down to Rowland and to go
8 to the waste treatment plant down there
9 where all the chemicals would eat up them
10 bones, and then left there and went up by
11 501 and went down Pea Bridge, that way in.

12 How do we know that's a lie? We're
13 going to talk about Mr. Rumfelt and
14 Mr. Stevenson, and we know they were going
15 on about 5:00 in the morning that Lexus was
16 not on 501, it was not in Rowland, not at
17 the waste treatment plant.

18 Mr. Rumfelt -- who is prison guard, a
19 North Carolina correctional officer, now,
20 can you believe him -- says that the car
21 blew by him. He likes to speed a little
22 bit himself, he caught up with it. Read
23 the license plate. Talked to his buddy in
24 the car about it. They talked to their
25 buddy in Charlotte about it, too.

1 Those witnesses --- and the State knew
2 about it all along --- say that Demery is
3 projecting, he's trying to put it on Daniel
4 because it's in his interest to do it.

5 They didn't go to Rowland. What else
6 did they supposedly do in Rowland? Folks,
7 in this case in this case has got several
8 cornfields. And I propose to you that
9 those are the fields of dreams, Demery's
10 dreams. Because those corn fields if there
11 were cornfields at all don't have one shred
12 of physical evidence out there that Demery
13 said that they would have. Talk more about
14 that in a minute.

15 Demery says that this individual that
16 they saw in a red Lexus, said they saw a
17 black man inclined back, apparently
18 sleeping, and had on a pair of shades.
19 Now, what is interesting is that Mr. Demery
20 also says that when this individual was
21 shot, and he saw him get shot, that this
22 individual in the dark of night at 3:00 in
23 the morning, raised up, and with his
24 shades, his dark glasses on, Mr. Demery
25 could see through and see the look of

1 surprise on this individual's face.

2 Now, this is a morbid thing to talk
3 about. And I'm sorry, but folks I want you
4 to look at this photograph. It's a 16 by
5 20 photograph. It's the State's picture.
6 You remember when Mr. Demery was showing
7 you about where all this light was coming
8 from up in this area where the car was and
9 he was circling this on the picture. Now,
10 I want you to take this picture, the
11 blowup, back in the jury room. If you ask
12 for it, the defense won't object. And you
13 look carefully at the tops of those
14 telephone poles, and I'll guarantee --
15 well, I won't say it that way. You'll see
16 for yourself that there is not nary one
17 night light on one single pole out there.

18 As Mark Twain said in the first
19 chapters of Roughing It, "It was dark as
20 the inside of a cow out there." See for
21 yourself. See up close where this light
22 came from that Mr. Demery says enabled him
23 to see a black man at 3:00 in the morning
24 with shades on give forth with some type of
25 facial expression.

1 They supposedly went to a cornfield.
2 But you know on cross-examination,
3 Mr. Demery admitted something about the
4 cornfield, and we pick it up with Agent
5 Heffney's testimony later on. Mr. Demery
6 clarified that they didn't throw the things
7 into the cornfield where the corn was, he
8 said they were on the edge of the cornfield
9 and threw it into the edge of the woods.
10 Now, that gets significant when
11 Mr. Heffney, when Mr. Heffney tries to
12 explain why they didn't use Roundup and
13 herbicide on the cornfield and so forth
14 because Mr. Heffney never looked where
15 Mr. Demery said it was on the edge of the
16 woods. They wouldn't have had to use any
17 herbicide there.

18 They are very uncomfortable with the
19 fact that nothing about Mr. Demery's story
20 checks as far as the physical evidence.
21 Let's talk about the most important piece
22 of physical evidence they have got, the red
23 Lexus. Now, Demery says that the shooter,
24 the individual who fired, stuck his arm
25 into the open window, not quite open, it

1 was somewhere between half open and two
2 inches from the top, it's hard to tell, but
3 anyway room enough to stick an arm in.
4 Okay. Stuck an arm in, State's 59 A was
5 out at the end of the arm, so you've got an
6 barrel perhaps out to here, you've got a
7 gun perhaps that far into the car. What do
8 you have? You've got an individual lying
9 there sleeping on the other side. You've
10 got a gun far. You've got almost a point
11 blank fire, you don't have a contacted
12 wound, but you've got almost a point blank
13 fire.

14 Now, let's talk about the physical
15 evidence because when we get that Lady
16 Justice up here with these weights and
17 scales out here, you're going to have Larry
18 Demery over here on this side basically all
19 by himself. Over here on this side, as
20 well as all the folks that know where
21 Daniel Green was, and all those folks that
22 know where the Lexus was and can tell you
23 that Mr. Demery is not telling you the
24 straight of it, there's the physical
25 evidence. And the beauty of physical

1 evidence is it doesn't know how to lie, it
2 just is what it is.

3 Demery says to you it occurred in the
4 car. Right? Okay. You got that arm all
5 the way in the car. Now, do you believe
6 that that gun was fired and there was no
7 blood? Nowhere?

8 Okay. Well, maybe that doesn't
9 convince you, let's add another element to
10 it. You lean back in the car, you can play
11 this one back in the jury room. You can
12 see the pictures that they have taken.
13 What is interesting is if angle that they
14 did not take, did it ever occur to you that
15 of all the pictures that you were shown by
16 the State, nobody showed you a picture that
17 was taken from the perspective where Demery
18 says that Daniel was. Demery says that
19 Daniel was standing toward the front of the
20 passenger window, right pretty close to
21 that little mirror there. And he says that
22 he stuck his hand, used his right hand,
23 stuck his right hand in the window, right
24 up there at the front of the window, and
25 the individual was back here laid back.

1 And Demery did a little diagram for you and
2 showed you how far that seat was laid back,
3 tried to argue that it was 30 degrees, I
4 don't know if that's 30 or not. But way
5 back like so.

6 And you start playing with that, and
7 you think of sure you can slide the seat
8 forward and back some, play with it either
9 way, any position you want to be. You
10 figure a man laying back, you figure a
11 handgun from coming over here at that
12 window, and then you go back and read Dr.
13 Sexton's report. It's in there, he gives
14 you angle of the entry of the bullet.
15 Bullet comes in under the right nipple
16 slightly down 10 degrees, slightly below
17 the heart, severs the aorta, and severs the
18 lower lobe of the lung. Wait a minute, he
19 is back like this. What's going to
20 happen? If it hits him in the upper right
21 above the right nipple, in that position,
22 that bullet has got to travel, may travel
23 back some, but it's got to travel across
24 this way. Not that way. The only way that
25 you could get an angle that way would be if

1 the bullet were fired from the back
2 window.

3 Look at those photographs. There's no
4 way to open the window in the Lexus, the
5 back window or if you can, it's only just
6 one of those little ways, don't roll it up
7 and down. So their angle isn't right.
8 Play with it a little bit.

9 Sure they say the individual just
10 before he was shot raised up. They knew
11 they had problems with the angle, so they
12 tried to cure it that way. Raising up the
13 individual. You roll him around any way
14 you want to, you have can't make that
15 bullet, you can't make the angle that Dr.
16 Sexton describes because if you roll him
17 around that way --

18 MR. BRITT: Objection.

19 THE COURT: Members of the jury,
20 you are to disregard any contention by
21 counsel for defendant, Mr. Bowen, that
22 there has been any fabrication of evidence
23 in this case in any respect. There is
24 absolutely no evidence to support that
25 contention. That is improper, and you're

1 not to consider that argument in any
2 respect during your deliberations in this
3 matter.

4 MR. BOWEN: I'll argue to you
5 members of the jury that Mr. Demery
6 gave three separate versions of what
7 occurred out there at that car. And in
8 many respects, none of those three versions
9 is a lie. Now, you are the determiners of
10 the fact, and you decide what that means.

11 Now, the bullet would have come from
12 here. Would have gone across. Suppose the
13 person raised up like I'm raising up now.
14 Suppose they turned, then the bullet would
15 have gone more or less through the chest.
16 You twist anyway you want to, and you won't
17 make those angles come out right.

18 That doesn't convince you? Let's go
19 another step. Think of what happens when a
20 .38 caliber bullet fires in a closed space
21 such as a car. Now, there was only one
22 window partially open, the rest of the
23 windows and doors were shut. What comes
24 out of the end of the gun, what do you see,
25 what's that blue that smokes? What really

1 is, burned and unburned powder, has
2 chemical compounds and stuff. And what
3 happens it blows all over everywhere. If
4 it's close enough to the person, it will
5 basically stick in the fabric, okay, and
6 then you've got powder residue around the
7 bullet hole.

8 If it's far enough away, it just sort
9 of dissipates everywhere. There was a
10 cloth headliner in that car, right? There
11 was a cloth rug in the car, right? There
12 were cracks and crevices that you could see
13 in the photographs all in the seats. Now,
14 I grant you over a period of several days
15 when the car was around, people sitting in
16 the seats and everything, probably would
17 have rubbed some of it off the exposed
18 surfaces. But what about the stuff that
19 got -- there was never any evidence that
20 this car got cleaned by anybody. Stuff
21 down in the cracks and crevices, stuff up
22 in the headliner, stuff down in the rug and
23 the carpet. I argue to you that it's
24 possible. That some of that residue would
25 still have been there.

1 MR. BRITT: Objection.

2 THE COURT: Overruled. You may
3 continue with the argument.

4 MR. BOWEN: And none was found.
5 No residue.

6 Now, let's talk about residue.
7 Suppose, because you're getting pretty
8 close, you're not at a contact wound, but
9 you're getting very close. If you believe
10 Larry Demery that arm was in that car and
11 that muzzle was just inches away from that
12 individual who was wearing some clothing.
13 That clothing was recovered, it was ill
14 treated, it was buried, it was not treated
15 right, but we still got it.

16 And I want to ask you: Do you
17 remember Agent Marrs was talking about
18 analyzing that clothing, do you remember
19 what he found? He found he got a nitrite
20 reaction around the bullet hole, meaning
21 that he could prove that a bullet with the
22 kind of chemicals that it carries through
23 fabric with it, that that went through that
24 hole. Nitrites were there. And now
25 members of the jury, he says that he didn't

1 find any nitrites out and around the area,
2 and he tries to explain that by saying,
3 well, the clothing was in the river down
4 there at the Pea Bridge. And we know that
5 it was. But stop and use your common
6 accepts for a minute. If the water was
7 able to wash out all of any gunpowder
8 pattern, residue pattern around the bullet,
9 don't you believe the water would have also
10 been able to wash out the nitrite residue
11 powder around the bullet hole?

12 So if there were no -- so if there was
13 nitrite around the hole, there should have
14 been nitrite reaction around the hole area
15 which would have confirmed a close-in
16 shot. It was absent. It wasn't there. If
17 the water was going to wash out the
18 nitrites, it would have washed them all
19 out. So I argue to you that that's other
20 physical evidence that says this didn't
21 happen like Larry Demery says. This was
22 not a close-in shot.

23 Still not convinced? Okay. Let's
24 talk about what Agent Marrs told you about
25 something he calls a shoot tank, ten foot

1 deep, two by two feet. Why is it ten
2 feet? He doesn't know, but I think you can
3 figure it out, because they shoot guns down
4 into it. Ironically, he shot this State's
5 59-A with a .38 special bullet into the
6 shoot tank, and he fired it from about 18
7 inches above the water. More or less,
8 that's pretty close to what they are
9 suggesting is the muzzle distance between
10 the gun and this victim. What Demery is
11 suggesting anyway.

12 Now, he says that probably, an
13 educated guess of his, is when you fire
14 that bullet down into that water, it's
15 probably goes four to five feet propelled
16 by the charge of the bullet. And then at
17 that point it loses velocity and falls by
18 gravity to the bottom of the tank. Four to
19 five feet. Okay.

20 Now, then I asked him, "Agent Marrs,
21 isn't it true that the body is 97 percent
22 water?" He said, "Well, yeah, but you've
23 got bones and other things." "Yeah, but
24 Agent Marrs, look at this photograph, does
25 this bullet look like it struck any bone?"

1 You know bone is harder than a brick.
2 "Look like it struck any bone?" No, sir.
3 "Did you see any bone fragments on this
4 when you looked at it under the magnifying
5 glass?" "No, sir, I didn't."

6 "So Agent Marrs, what you're saying
7 is if this bullet passed through what was
8 virtually all soft tissue," that is skin
9 and muscle and other tissues, the artery
10 and things of that nature, "those parts of
11 the body would be mostly water, wouldn't
12 they?" Well, yes, sir. Sure would.

13 So what's the point, members of the
14 jury? If the bullet fired 18 inches from
15 the surface of the water, travels more than
16 four feet before it loses its velocity, how
17 come this bullet, according to Mr. Demery
18 fired so close to this victim, went in,
19 went through nothing but soft tissue, hit
20 no bones at all, travel a little more than
21 a foot and stopped? How come?

22 I know bullets do curious things, if
23 they hit bones, they rattle around and do
24 curious things. And I'm not suggesting by
25 itself that is a show stopper, but when you

1 add it together with everything, wouldn't
2 you expect it more likely that bullet fired
3 from that distance would have ripped
4 through only flesh, come out the other side
5 and probably done some damage on the exit?

6 You see, when you add it all up, the
7 physical evidence is crying out there, you
8 don't swear physical evidence. It's just
9 there. It's crying out to you saying Larry
10 Demery is not telling you the truth.

11 We don't know except for what Larry
12 Demery says where that vehicle was in
13 relation to Highway 74. All we know is
14 that when Rumfelt and Stevenson stopped,
15 they saw a car 50 or more feet off the
16 road. Now, they don't know it was the
17 Lexus, can't even tell you what color it
18 was. They didn't see any Lexus there on
19 the road. And if they had come along --
20 and they came along at that time at a time
21 when according to Demery it would have
22 been, why wasn't it there? And if that was
23 it, it was way over 50 feet over yonder.

24 THE COURT: Mr. Bowen, I don't
25 mean to interrupt your argument, but it may

1 be appropriate to take a break at this
2 time. Do you have additional argument,
3 sir?

4 MR. BOWEN: Yes, sir.

5 THE COURT: If you'll bear with
6 us. Members of the jury, we're going to
7 allow you to take a 20 minute recess.
8 Please reassemble in the jury room at 11:35
9 and we will continue with the argument of
10 counsel for the defendant. Now, during
11 this recess, it remains your duty to abide
12 by all prior instructions of the Court
13 concerning your conduct. Everyone else
14 please remain seated, the members of the
15 jury are excused until 11:35.

16 (Jury out at 11:15 a.m.)

17 THE COURT: Sergeant Meares,
18 while I'm thinking about it, has that your
19 jury pool room, has that TV been removed?

20 THE BAILIFF: It's being removed
21 now.

22 THE COURT: As I indicated
23 yesterday, it's my intent to sequester the
24 alternate juror in that area during the
25 deliberations. Any matters from either

1 counsel?

2 MR. BRITT: No, sir.

3 THE COURT: We're at ease.

4 (Brief recess.)

5 THE COURT: Let the record
6 reflect that all counsel are present, the
7 defendant is present in open court. Mr.
8 Horne, do we have all members of the jury
9 secured in the jury room?

10 THE BAILIFF: Yes, sir, we do.

11 THE COURT: In the absence of the
12 jury, folks, as I indicated to all counsel
13 sometime ago, having passed out copies of
14 State versus Vines and State versus Ligon
15 to both counsel for the State and counsel
16 for the defendant, the following language
17 is pertinent as cited in State versus
18 Ligon -- strike that. State versus Vines.
19 There the prosecutor in Vines, in her
20 argument to the jury, began her, quote,
21 evaluation, close quote, of the defendant's
22 evidence with the testimony of a doctor
23 called on behalf of the defendant in that
24 case.

25 The prosecutrix in that case indicated

1 that you could get a doctor to say just
2 about anything these days. The Court noted
3 that elaboration upon this theme, the
4 prosecutrix went on to imply or suggest
5 that the expert witness's testimony in that
6 case was motivated by, quote, pay, close
7 quote. Our court noted that such argument
8 not only attacked the integrity of the
9 witness but also that of defense counsel,
10 and the Court in its opinion noted that our
11 Supreme Court vigorously disapproved of
12 this improper argument and deemed it to
13 have been of such gross impropriety as to
14 justify an ex mero motu correction by the
15 trial court.

16 Now, 8414, which previously controlled
17 closing argument, and is now codified in
18 section 7-A97, also refers in the
19 commentary to State versus Taylor, 289 NC
20 223, 221 Southeast Second, 359, 1976 case.
21 Commentary in the case that where counsel's
22 remarks are not sustained by the facts, it
23 is improper for counsel in argument to make
24 statements reflecting on the character or
25 conduct of the opposing parties or his

1 attorney.

2 The Court is making this a matter of
3 record because on several occasions in the
4 Court's view, Mr. Bowen, you have crossed
5 the line set out in State versus Ligon, and
6 in section 7-A97, formerly 8414, in
7 suggesting to the jury that the State of
8 North Carolina, through the prosecutor in
9 this district, has fabricated or attempted
10 to fabricate evidence in this case.

11 As I have previously informed all
12 counsel, that in my view is an improper
13 argument. If the argument continues, the
14 Court will again instruct the jury that
15 that argument is improper and they are to
16 disregard it. That applies to defense
17 counsel and it applies to counsel for the
18 State. As members of the Bar, we are
19 constrained by the ethical considerations
20 that control our conduct and our behavior,
21 and I'm going to see to it that we abide by
22 those ethical considerations. Do I make
23 myself clear?

24 MR. BOWEN: Yes, sir. I would
25 like to add for the record this: If Your

1 Honor will take a look at the testimony of
2 February 1st, 1996 at page 226 and the
3 language surrounding line 21, Mr. Demery
4 was talked to in cross-examination and he
5 was talked to about the differences in his
6 first, second and ultimately third
7 statements --

8 THE COURT: Anything that is in
9 the evidence is fair game.

10 MR. BOWEN: And he said as
11 follows: What I told them at first would
12 not wash. Now, we're talking about the
13 officers, we're not talking about the DA.
14 And but the reason that I argued to the
15 jury that he had given three different
16 accounts that were some of them
17 substantially different about the matters
18 that occurred at the car, I think is
19 material from which the jury can infer that
20 Mr. Demery is changing his statement to
21 satisfy some expectation of the factual
22 account that at least officers have.

23 I don't recall that I've ever involved
24 the prosecutor in any of this argument. I
25 don't intend to. If I have to I'll point

1 out specifically what I have said. I would
2 simply stay away from it. But I do suggest
3 that Mr. Demery in making his deal and
4 earning his deal, he has on several
5 occasions changed his testimony to conform
6 either what he thinks will sell best, or
7 what he says will wash, and I think that is
8 done in the context of the kind of
9 questions that these officers asked him.
10 In many cases you heard from the taped
11 interview that much of the factual material
12 in the case is suggested by the officers to
13 Mr. Demery.

14 THE COURT: All right. As I
15 previously stated to you, you can argue any
16 matters in evidence and any reasonable
17 inferences to be drawn from the evidence.
18 But to suggest that the State of North
19 Carolina, the prosecutor in this district
20 has fabricated evidence or tailored
21 evidence to fit its theory of the case when
22 there's no evidence to support that, in my
23 view is an improper argument in violation
24 of Ligon, in violation of formerly 8414,
25 now 7-A97. You can argue any matters in

1 evidence and reasonable inferences that may
2 be drawn in evidence. I stated my
3 position, I understand your position, and
4 I'm going to rule accordingly.

5 MR. BOWEN: Yes, sir.

6 THE COURT: Anything further from
7 either counsel?

8 MR. BRITT: No, sir.

9 THE COURT: Bring the jury back
10 in, please, Mr. Meares.

11 (Jury in at 11:41 a.m.)

12 THE COURT: All members of the
13 jury are again present. Mr. Bowen, you may
14 continue with your argument.

15 MR. BOWEN: Thank you, Your
16 Honor.

17 Going forward with Mr. Demery's
18 cross-examination, he talks about going to
19 the cornfield in Rowland. By the way, I
20 have a direct quote from the evidence on
21 that, because that cornfield is very
22 important. Mr. Thompson's question was,
23 that was at the edge of the cornfield, was
24 it not, talking about where the credit
25 cards were thrown. Answer, this is

1 Mr. Demery's exact words: There was a
2 stretch of woods there off to the left from
3 where you were standing, the position of
4 the car was facing, and I remember the
5 credit cards being thrown over into the
6 woods. That was Mr. Demery's testimony.
7 Cornfield was dark. Got back and talked to
8 Ms. Demery at a later time. Lied to her
9 about going to Georgia.

10 Now, in Mr. Thompson's
11 cross-examination at first of Mr. Demery,
12 he talked about where he had lived in
13 various places, and fast-forward up to
14 Richard Locklear, there's some kind of
15 issue about where Mr. Demery was at all
16 times, but this is interesting. Right at
17 the first of Mr. Demery's
18 cross-examination, he admits that he lived
19 at the Department of Corrections after his
20 conviction in April of 1995. But, his next
21 piece of testimony was he was moved back to
22 the Robeson County jail, and was allowed on
23 at least one occasion to go home to his
24 family and had dinner with his family.

25 So regardless of the safekeeping

1 order, Mr. Demery was moving at least this
2 once we know from the evidence, back and
3 forth. And he also saw his fiancée and his
4 mother and his child there, and his father
5 was there. And when he went home that
6 time, he had no handcuffs.

7 Now, Mr. Demery in talking about his
8 troubles with the law, interestingly
9 enough, names at least four people who were
10 co-perpetrators with him in some of the
11 crimes that he had committed. Remember at
12 one point, shockingly he says that he quit
13 his job, Mr. Demery did, to engage in
14 full-time pursuit of crime, or words to
15 that effect. And he named some individuals
16 that were his compatriots in that, Terrance
17 Jacobs, Chad Bullard, Randy Stewart,
18 Michael Lowry.

19 He also had association with several
20 black males with whom he caught chickens.
21 He testified that his father repairs guns,
22 assembles guns and makes guns, and has
23 guns, and named a lot of guns that his
24 father had around the house. He
25 reluctantly, admits that yes there was

1 another .38 caliber gun that he had had
2 earlier. He talks about this issue with a
3 lady called Maryln that we'll talk about
4 later. That was about the little ten year
5 old boy, and coming up to him and hitting
6 him in the lip and it made it slightly
7 bleed. And he says that Daniel grabbed the
8 gun and said, quote, shoot the little
9 mother fucker. This little fellow was ten
10 years old.

11 And he said that he grew up with the
12 little boy's mother, that he knew all the
13 folks and so forth, and admits that he knew
14 Maryln. Let's see a little later what
15 Maryln has to say about that.

16 He admitted he had a habit of stealing
17 from his own parents. Said he had stolen
18 keys to the car. Broke in hundreds of
19 times, picked the deadbolts, and took the
20 guns, and hid them from him, and threatened
21 to kill his father on too many occasions to
22 mention. And his father told him that he
23 made him sick and wished he had never been
24 born. He pulled a gun on his own father,
25 Larry Demery did. He skipped school, ran

1 away several times, but he claims he only
2 took the guns when he was mad. They didn't
3 have anything to do with the threats on his
4 father's life.

5 He said he threatened to kill his
6 father more than 500 times, maybe 50 million
7 times. So many he couldn't count them. He
8 claimed that the companion that was with
9 him when he had the robbery at Clewis
10 Demory's had shades on. He claimed he went
11 to the motel with Dee so he wouldn't have
12 to stand around, but all he did was take a
13 shower, and that was the first time that he
14 saw Dee on the 15th.

15 Well, if Dee didn't turn him on any
16 more than that, how come he went right back
17 down there again a couple of weeks later
18 and went to see her again, and this time
19 brought her back up to Daniel's trailer,
20 and this time slept under different sheets
21 with her. He wants you to believe that he
22 was true blue to little Angel out here,
23 sitting out there watching his testimony.
24 He wasn't, I argue to you, telling the
25 truth to his fiancée either, and she was

1 disgusted to make a statement like "your
2 sorry ass will be in jail by the time your
3 birthday rolls around."

4 Now, he was not only running around
5 with Dee while he had a fiance, he was
6 running around with Dee, Mr. Demery was,
7 when he had a fiancee who was six and a
8 half to seven months pregnant. What this
9 says something about Mr. Demery is this:
10 You remember he was out on the afternoon, I
11 believe it was the 22nd, he was out buying
12 a cute little toy and a balloon and some
13 other nice things, the little books for the
14 baby, and all the other kinds of things,
15 just as sweet as he could be. Just as
16 syrupy and sweet as he was up here on the
17 witness stand.

18 But what was he doing behind Angel
19 McClain's back? Running down there to see
20 Dee, sleeping with Dee overnight at the
21 house. Does that give you some notion of
22 the capacity of Larry Demery to be
23 duplicitous, to sit up here and talk sweet
24 but have a completely different agenda on
25 his mind? Can you rely on him? See, the

1 State's got to rely on him, because that's
2 all they got.

3 As far as the murder is concerned, oh,
4 they are going to make a big deal, they can
5 see Daniel driving the car here, using the
6 phone here, we don't deny any of that,
7 never have. That's the whole thing we've
8 got for weeks proving the stuff that the
9 defendant conceded from the very first day,
10 Daniel rode in the car, Daniel drove the
11 car on one occasion at least. He played
12 the jukebox, the CD player in there, and he
13 rode in the car, and he called girls on the
14 telephone. All kind of social contacts he
15 made on there. Not contested.

16 But did he kill anybody? I bet you if
17 you had a nickel -- strike that. If you
18 had a nickel for every time Mr. Demery said
19 Daniel did it, Daniel did it, Daniel did
20 it, you would have a piece of money. It
21 was like Pavlof's dog, it was a knee jerk.
22 Daniel did it, Daniel did it, Daniel did
23 it.

24 Mr. Demery comes up with this notion
25 about a truck being out there at the last

1 minute. The last statement he comes up
2 with that. Never mentioned it before.
3 Demery even says that he never saw any
4 blood in the car. Now, you know there was
5 a bunch of glass broken all over that car,,
6 and when they finally did the blood
7 analysis, nobody knows exactly where that
8 blood came from, don't know whether it was
9 human or animal blood. But Demery himself
10 never saw any blood in the car until after
11 the dust settled and all this was opened.

12 Now, then, Mr. Demery talks about
13 going to Laurinburg to a teller machine at
14 a bank, First Union Bank and talks about
15 Daniel trying to manipulate that teller
16 machine for some 20, 30 minutes. Now,
17 folks, I'm sure all teller machines are not
18 exactly alike, but let me ask you this
19 question: What did the officers do to even
20 try to inquire as to whether or not that
21 was the type of teller machine that had
22 some sort of surveillance device or some
23 sort of camera device that activates when
24 you start messing with that machine? Why
25 if it were one that had that sort of

1 surveillance capability, and Daniel Green
2 was out there operating it for 30 minutes
3 or so, it would have been taking pictures
4 like crazy, and they would have
5 photographic proof that would say that
6 Daniel was there and at that particular
7 time.

8 They didn't even seek to find out what
9 verification there could have been or what
10 magnetic media might confirm that at that
11 particular hour of the day, somebody was
12 trying to make that machine work. They
13 didn't even try. Why? Demery tells you
14 that that particular gun that was taken
15 from Clewis Demory had what? He tells you
16 it had a loose hammer. Right? A loose
17 hammer that to his knowledge was never
18 repaired.

19 What did Agent Marrs tell you? He
20 fired the weapon, it was functioning
21 properly. It did not have a loose hammer.
22 But the gun Demery was talking about did.
23 Demery had bought bullets over and over
24 again. He bought them at the Service Star
25 at least once and he got by with it then

1 even though he was underage. He had bought
2 a hundred from Frog Lever over there, those
3 were reloads, not quite sure whether he
4 fired them all. First he said he didn't,
5 then he said he did. And then finally, the
6 State is -- has introduced a piece of
7 evidence that we don't dispute. And that
8 was that on an occasion when Daniel had an
9 ID that proved himself 18 years old, Demery
10 used it to buy himself a box at the C&R
11 Pawn Shop. And the receipt is in Daniel's
12 name, and the proprietor of the shop cannot
13 remember whether or not there was anybody
14 with Daniel, but Demery remembers. Demery
15 doesn't deny that he was standing right
16 there with Daniel to get those bullets.

17 Do they show in anyplace anywhere on
18 earth that Daniel bought any bullets, other
19 than standing there with Demery the one
20 time? Demery who had been buying bullets,
21 buying bullets, as long as anybody would
22 sell it to him, but ran into a snag because
23 they got to the Service Star that day, but
24 Mr. Kurt, he could buy it from his son.
25 But Mr. Kurt was going to go by the rules,

1 and he couldn't buy them so he used
2 Daniel. The State will argue that that is
3 some large piece of proof suggesting that
4 this was all Daniel's operation.

5 Mr. Demery later admits that he told
6 Brant Clifton and Detective Henley that he
7 first saw the Lexus at Daniel house and
8 admitted to Mr. Thompson on
9 cross-examination that that was not the
10 truth. Mr. Demery admits that he did not
11 tell the truth about what happened at the
12 killing, he didn't tell it on the first
13 statement, and he didn't tell everything
14 that was the truth on the second
15 statement.

16 Now, the second statement occurred
17 after you understand he had already entered
18 into an agreement for sentence concessions
19 with the State, and part of his agreement
20 was that he had to testify truthfully.
21 First thing he did, got back into the issue
22 of the killing, and what happened? He told
23 them a lie. Or several lies. Then had to
24 go back at the end of the statement and
25 correct that. That was the third distinct

1 version that he had told. Now, what's the
2 truth? Is any of it the truth? One thing
3 we can be sure of, two out of three are
4 lies. At least. And two out of three
5 ain't bad when you're talking about
6 reasonable doubt.

7 Let's talk about his motivation for
8 telling you these things. It comes out
9 bits and pieces here and there. He
10 testified that he told Brant Clifton that
11 by talking to Brant, he admits elsewhere
12 that he told Brant some lies in his talk.
13 He said by talking to Brant, he thought it
14 might help him out.

15 Now, what you've got to decide when
16 you decide what merit to give Larry
17 Demery's testimony is is this man telling
18 what he's telling because of a love of the
19 truth? An urge to do things right? Set
20 things right in his life? Or is he doing
21 it because he thinks it will help himself
22 out if he says the right thing? Well,
23 let's talk about his testimony and how
24 truthful he is there.

25 Officers are hollering at him --

1 strike that. Officers are talking to him,
2 and they are using some fairly severe
3 language. Now, Mr. Thompson is going to
4 get in to that specifically. But he's
5 going through an interrogation, and he
6 denies that he ever felt intimidated, and
7 yet in Defense Exhibit 29, he signed a
8 sworn affidavit that he did feel
9 intimidated. He denies that all that
10 profanity that the officers were using had
11 any effect in getting him to testify, but
12 he says that he didn't say anything about
13 that in the affidavit. You read it for
14 yourself, talking about the defendant.

15 He says that portion of his interview
16 was taped and he didn't mind it being
17 taped, wanted to get it all accurately
18 recorded. Mr. Thompson asked him, did you
19 sign this affidavit. Now, this is a sworn
20 affidavit before a notary public, who
21 happens in this case to be an attorney,
22 Mr. Rogers, that the things contained in
23 here are the truth.

24 Now, when any of us sign an affidavit,
25 I argue to you we're pretty careful about

1 reading something over, making sure when we
2 put our name on it and have sworn on the
3 Bible is the truth, that we at least know
4 what was in it, know what we're swearing
5 to. Now, the following will give you some
6 idea of the deep and abiding respect that
7 what Mr. Demery has for the truth and for
8 what he does when he puts his name on --
9 where he puts his hand on the Bible and
10 swore to it, as he claims he did in this
11 affidavit.

12 Mr. Thompson's question: You signed
13 an affidavit, to Mr. Demery. Mr. Demery's
14 answer, yes, I did. But like I've said
15 before, I allowed my attorneys to do their
16 job. My attorney came to me, had this put
17 together. Like I said, he was doing his
18 job. The State appointed them to me at the
19 end of this table to worry about me, take
20 care of me. They never appointed me to
21 myself. I've never been paid a dime to
22 worry about them or to try to get me off
23 it. That's their job. I didn't worry
24 myself about it.

25 And he merely signed this document.

1 And that's the individual that the State
2 says that you should be comfortable enough
3 in believing to vote guilty on this charge,
4 expose Mr. Green either to mandatory life
5 sentence or the death penalty.

6 He admits they interrogated him for
7 roughly nine hours. Mr. Demery states
8 these words: The officers made statements
9 to me that indicated to me I would face
10 lighter charges and punishment if I made a
11 statement, and harder charges and
12 punishment including the death penalty if I
13 did not make a statement.

14 He had another .38 weapon. Officer
15 Rodney Demery of the Pembroke police
16 confiscated that. You see, when Mr. Demery
17 gets on a roll, he is trying to accuse
18 Mr. Green not only of the Jordan killing
19 and robbery but every other robbery that
20 Mr. Demery had been involved in. That's
21 the subject matter of this case. So toward
22 the end of this case, he tries to drag him
23 into yet another one. That's the Rowland
24 robbery.

25 Now, the interesting thing about that

1 is this. Mr. Demery tells you, members of
2 the jury, that the instrument of that
3 robbery was a .380 automatic pistol that
4 had come from Ms. Green. It was her
5 personal handgun that came out of her
6 purse. And Mr. Demery tells you that
7 Mr. Green got that handgun and turned it
8 over to Mr. Demery at a point, and that was
9 the handgun that Mr. Demery had pointed at
10 the tourists down at the motel in Rowland.
11 The one that he said -- excuse me, but this
12 is what he said -- shut up, bitch, or I'll
13 shoot you.

14 The guy that was with him, he says was
15 Daniel, didn't have a gun. He had the .380
16 gun. Now, folks, that .380 gun, according
17 to Mr. Demery, was the instrument of an
18 armed robbery. Nobody got hurt but it was
19 an instrument of an armed robbery. Yet
20 later that he testified when they went out
21 to see Ms. Green, and she voluntarily let
22 them in the house and talked to them and
23 everything, they asked her did she have a
24 gun. She said, why sure. And she went and
25 got her gun. It was a .380, something

1 Demery would have known because he knew the
2 Greens well. She went and got her .380,
3 and brought it out to the officers. Did
4 they confiscate it? Did they take it?

5 Now, that was the gun used in an armed
6 robbery, according to Mr. Demery, and those
7 officers didn't even have enough faith in
8 what Demery was telling them to confiscate
9 the instrument.

10 MR. BRITT: Objection.

11 THE COURT: Sustained. Members
12 of the jury, disregard that argument.
13 That's improper by counsel for the
14 defendant. It is not to take any part in
15 your deliberation in this case in any
16 respect.

17 Mr. Bowen, if you argue those matters
18 again, you and I are going to talk. You
19 may continue with your argument at this
20 time.

21 MR. BOWEN: Now, there was at the
22 so-called Rowland robbery, another set of
23 cornfields. These also were fields of
24 dreams. Dreams by Larry Demery. Because
25 you see, Larry says that they stopped in

1 two cornfields after this robbery. They
2 tramped down stalks and strewed all kinds
3 of unwanted stuff all over the cornfield,
4 stuff that was never accounted for. He
5 admits that they tramped down all kind of
6 stalks everywhere.

7 Now, don't you know that this
8 so-called robbery was investigated, don't
9 you know if the perpetrators ran around and
10 escaped through a cornfield, don't you know
11 officers would have been out there looking
12 for it? Don't you know they would have
13 found stomped down corn stalks? Don't you
14 know they would have found the goods and so
15 forth left out there. Don't you know they
16 would have done prints on it, don't you
17 know they would have solved all this?

18 There are no cornfields, there are no
19 tramped down stalks. There's no evidence.
20 Perhaps they will talk about a video
21 camera, because the people supposedly lost
22 a video camera. What size was it? What
23 brand was it? What kind of tape did it
24 make? Mr. Green obviously had a standard
25 VHS tape. Was this a Beta? You don't see

1 many of those anymore, but was it a small
2 type VHSC? Was it a Sony type eight
3 millimeter. What kind did they loose?

4 Well, see, I argue to you that the
5 seed has attempted to be planted, that
6 somehow this video camera that Mr. Green
7 had was somehow related to that incident
8 when there's not any proof of that. And
9 there's all these videotapes that were in
10 Mr. Green's house. Now, Mr. Demery said
11 that he was an escort driver working for
12 Angel's father, but he quit, and then he
13 had no other income except for committing
14 crimes, taking people's stuff.

15 Getting back to this incident, the
16 Jordan matter, Mr. Demery claims that for
17 approximately 30 minutes, the two people
18 were at the Citgo station trying to figure
19 out how to open up the gas lid and get the
20 gas in the car.

21 Now, being a gas station attendant,
22 and we don't have any direct evidence that
23 anything was opened, but presumably if they
24 pulled up to a gas station, it had signs of
25 being open, which suggests that there was

1 at least one person inside. Can you not
2 imagine the attention it would draw for two
3 individuals to be out fumbling with a
4 gas -- gas top, whatever you want to call
5 it, trying to get in to their own car for
6 nearly 30 minutes, not knowing where to put
7 the gas? Surely somebody would have
8 noticed that. Any evidence that they went
9 and talked to anybody from Citgo? Same
10 with the ATM machine?

11 Mr. Demery explains again why his
12 story keeps changing. I'll tell you what
13 he says. Mr. Thompson is talking about how
14 he changed his account from first claiming
15 he was over at Daniel's house, then claims
16 he was 60 feet away, then claims he was
17 right up t the window when the shooting
18 occurred. All these changes to the most
19 central part of the case. I'm not talking
20 about itty bitty details. Strike that. We
21 all understand that people have trouble
22 understanding or remembering details or
23 dates and times and things like that escape
24 us, but the very moment of truth in this
25 particular case was when shots were fired,

1 and he's give three different versions
2 about that. You know what he said about
3 that, when Angus asked him why he changed,
4 he said, what I told them at first wouldn't
5 wash. That's why I changed.

6 It wouldn't fit. And if it wouldn't
7 fit, there was a chance you might acquit,
8 so Mr. Demery changed his story. Not once,
9 but more than once.

10 Then we get into the -- his
11 psychiatric history. While in the system,
12 prison system, he is -- or jail, he's seen
13 a psychiatrist about 24 times for six
14 months, diagnosed with severe depression,
15 took diazepam, a generic Valium. He's now
16 on Artane, and he says it does everything
17 for me, everything that it needed doing.
18 And he said he was flipping out over there
19 in the Department of Corrections. Says he
20 wasn't losing his mind but I was just
21 talking to the radio to keep from it.

22 Now, again, the fact that Mr. Demery
23 has found the wonder drug of the nineties
24 to help him is wonderful. And I'm sure
25 everyone rejoices at that. But to need

1 that drug underscores to you what a problem
2 there may have been before. And persons
3 who are overcome with the kinds of
4 difficulties that Mr. Demery had at that
5 time, I argue to you are not always the
6 most truthful or most reliable.

7 You can take those matters into
8 consideration as you consider whether
9 you're able to afford Mr. Demery the kind
10 of believability that it would take to
11 overcome reasonable doubt in this case. He
12 tells you the truck was out there with the
13 parking lights on and the engine running.
14 Somebody commits a murder right in front of
15 that truck with a driver that's in the
16 truck, or could be in the truck or likely
17 is in the truck, you don't just turn, crank
18 your truck and turn it on and leave the
19 lights on and lock it up and walk away from
20 it, as a rule. Says he saw lights around
21 the power poles. You looked at the
22 pictures, it's not there. He goes back and
23 talks about the Rowland matter and says I'm
24 sure there were many stalks tore up that
25 night. Broken down corn stalks. None ever

1 found.

2 He bought those rounds from Frog
3 Lever. Turns out they were reloads also.
4 First he said he shot -- no, first says he
5 shot 94 of them, then says he shot all
6 hundred of them. We don't know what became
7 of those.

8 The first medication that he was on,
9 that would have been before the Artane,
10 would have been the Valium. He testified
11 that when he first went to jail, it drug
12 him out, it made him feel like hanging
13 himself. It was supposed to have been an
14 antidepressant but it did just the
15 opposite. We don't know exactly when he
16 was taking all these drugs. But we do know
17 that while he was incarcerated he was
18 coming forward giving some of these
19 statements and testimony.

20 Tells you another interesting thing.
21 When things started getting, shall we say
22 difficult, Mr. Demery admits that he had
23 Mr. Jordan's wedding band, but he left it
24 in Daniel's trailer on a shelf. Wonder why
25 he would go over to Daniel's and put a

1 wedding band that he knew or should have
2 known was evidence in this case or would
3 be, things finally caught up to him, and
4 put it in Daniel's trailer for somebody to
5 find up on a shelf. Why do you reckon he
6 would do that?

7 One thing you can say about
8 Mr. Demery, he's not stupid. He's smooth,
9 he's convincing. But you know, when he
10 talks about all those times that they
11 threatened to kill his father, and when he,
12 without wincing, tells about how he retired
13 from a life of crime and things like that,
14 what did you notice about the man? Cold,
15 there's no emotion. Altogether cold. And
16 what about a cold person? Seems to have no
17 emotions. No feeling of embarrassment,
18 remorse, accountability. What is a person
19 like that capable of? Certainly capable of
20 telling you some things that aren't the
21 truth.

22 Then we get into more of Mr. Barry
23 Lea's testimony. And Mr. Lea took charge
24 of the interview, he took the statement
25 from Mr. Demery. There was a tape-recorder

1 running for a time, and then for some
2 reason it was turned off.

3 Mr. Underwood presented Mr. Lea the
4 weapon that was taken out of the vacuum
5 cleaner, and some interesting things about
6 that weapon. Mr. Underwood advised that
7 the gun was loaded, according to Mr. Lea.
8 And it was not to be handled because it
9 might mess up evidentiary value. Now hold
10 that thought. We'll get to Ms. Sweatt in a
11 little bit.

12 By the time Ms. Sweatt got it, the gun
13 had been unloaded and the bullets were in a
14 separate container. Nobody has ever
15 explained how that happened. Now we go
16 into the second -- the first trip to the
17 Green household, which we've talked about
18 on August the 14th, four officers present.
19 Thompson, Durwood Cannon, SBI Agent
20 Heffney, and Don Smith. They talk about
21 the numerous schools that they had had in
22 drug enforcement and in doing analysis of
23 crime scenes and such. And they describe
24 what they did that night. And did not find
25 the gun in that house, and did not, they

1 say, look in that vacuum cleaner.

2 Now, they went to the cornfield also,
3 founding nothing. That night, while it was
4 fresh, I'm talking about taking Demery's
5 directions that night, and they went out to
6 the cornfield and followed his direction.
7 And elsewhere in the testimony, if you go
8 down that particular road, there's not but
9 one right hand off. And you go to that
10 field. But Demery never could find it for
11 them. Even though all those corn stalks
12 had to be knocked down and all those credit
13 cards had to be out there.

14 Now, we get to Aprille Sweatt. And
15 she says she collected the Smith & Wesson
16 six-shot revolver, that's State's 59-A, the
17 bullets were in a plastic bag. Tony
18 Underwood said he left it alone, didn't
19 take a single bullet out of there, didn't
20 want to mess up any evidence. Sweatt was
21 the first one who got the gun. Who was
22 messing with the gun, who took the bullets
23 out? Do we know whether those bullets were
24 in the bag were the same bullets that were
25 taken out of the gun? We have no testimony

1 as to that.

2 And then we have Agent Marrs. We've
3 talked a good deal about Agent Marrs, and
4 he agrees that there could be as many as a
5 million different guns that could have
6 fired this bullet. And Agent Marrs says
7 that, he tells you about the striation of
8 bullets. First of all he tells you about
9 the class characteristics of bullets, and
10 the class characteristics have to do with,
11 first of all, the caliber. Has to do with
12 the number of lands and grooves, the width
13 of the lands and grooves, and the direction
14 of the twist. Those comprise the class
15 characteristics.

16 So when you take those class
17 characteristics that he found in this
18 particular bullet, what you find is that
19 there are perhaps 12, 15 different brands
20 of firearm that could have fired the
21 bullet. Many of those brands have sub
22 models within the brand that could have
23 fired that bullet. Many of those brands
24 and models have manufactured tens if not
25 hundreds of thousands of weapons. And Mr.

1 Marris is comfortable to say that there
2 could be a million to ten million guns out
3 there somewhere that could have fired the
4 bullet in question.

5 And then he's questioned about whether
6 or not the fact that the bullet is slightly
7 undersized, and there's some gas markings
8 around the bullet, if that's significant.
9 We get in to talking with Agent Marris and
10 come to find out those particular
11 characteristics aren't significant to the
12 gun it was shot in, only significant to the
13 fact that the bullet was slightly
14 undersized. In other words, any barrel
15 that it was fired out of that has five
16 lands and grooves is going to have those
17 same gas escape patterns because of the
18 fact that the bullet is undersized. That's
19 not a function of the gun, that's not an
20 identification characteristic of the gun.

21 And so what Agent Marris is saying is
22 that he can't find the necessary
23 identification markings and striations that
24 he can say that that bullet was fired out
25 of that gun. It could have been fired out

1 of any one of ten thousand, I mean, up to
2 ten million, one to ten million. Now, what
3 else is significant and should it seems to
4 me worry you is this: Agent Marrs has said
5 that he's got a stereo microscope,
6 comparison microscope where he puts two
7 bullets on stage. He is saying he's seen
8 all those unusual markings that are, quote,
9 tantalizing to him. Look up tantalizing in
10 the unabridged dictionary, means to tease.
11 Things about those markings or striations
12 that teased him. You don't convict a man
13 because somebody saw something that teased
14 him.

15 Now, they looked tantalizing to him.
16 Now, he had a two-stage microscope. He had
17 a 35 millimeter or whatever millimeter
18 outfit, camera outfit, where he could make
19 photos and bring them up and bring them
20 into the courtroom. He does it all the
21 time when he teaches students. For the
22 life of me, can you understand why he could
23 use photographs to teach his students about
24 striations and tool marks on bullets but he
25 can't use those photographs to instruct you

1 educated members of the jury about what it
2 all means?

3 Well, he says, well, because the
4 picture takes a two dimensional picture and
5 I'm seeing three dimensional. Well, that
6 may be true, but when he takes the picture,
7 both pictures are two dimensionally. So
8 whatever aberration there are, it would
9 cancel it out. And he just doesn't want to
10 bring a picture in here and let you see
11 what he sees, the prints, together with
12 that, that's the bullet. You're not seeing
13 the evidence that you ought to see. He's
14 got the capability, but he doesn't do it.

15 Parts of interviews are taped, and
16 then they cut the recorder off. And you
17 don't get to hear other parts. Agent Marrs
18 said the gun functioned perfectly. The
19 hammer was not loose, not the gun he saw,
20 that's State's 59-A. Mr. Demery said the
21 gun he had, the hammer was loose. Now, he
22 admits what else we talked about, bullets
23 were not deformed, there were no bone
24 fragments and there was nothing
25 inconsistent with the bullet having passed

1 only through flesh. Remember that photo I
2 brought up to him, said can you identify
3 that that was the bullet? That was a
4 picture of the bullet that was supposedly
5 in the body of James Jordan. Agent Marrs
6 couldn't even identify that, and it was an
7 eight by ten photograph. Remember when I
8 showed it to him? Said what is that
9 bullet, I don't know. And then we talk
10 about his tank and so forth.

11 Then we get to Don Smith. Don Smith
12 is the head of homicide. He got the
13 permission to search the bedroom, he and
14 Durry Cannon went in there and searched.
15 They moved around the bedroom clockwise.
16 That's when we started on cross-examination
17 to make him try to show us where those
18 chest of drawers were. And as we moved to
19 each drawer, as we ended up, the chest of
20 drawers disappeared. Mr. Cannon finally
21 had to say I'm just not sure, because we
22 accounted for a lavatory, we accounted for
23 everything else around the room. Chest of
24 drawers couldn't have gone between the bed
25 and the wall, and it just wasn't there.

1 They talked about kicking over the
2 vacuum cleaner two or three times. And
3 then it's interesting, as Mr. Smith starts
4 talking, he starts saying on several
5 occasions, we received information from
6 down the hall that was basically placing
7 Mr. Demery as the one that pulled the
8 trigger. You heard Daniel's statement.
9 Did Daniel tell him that? Where was this
10 information coming from? Was it coming
11 from somewhere else? Or was Mr. Smith
12 telling Mr. Demery something that wasn't
13 true?

14 Then there came a time that the
15 tape-recorder was cut off, Mr. Demery went
16 to the bathroom and came back, and that's
17 when they say he started talking, after the
18 tape-recorder was shut off. And they
19 talked --

20 THE COURT: Mr. Bowen, again I
21 apologize for the interruption. Ma'am, are
22 you okay? Do you need a break?

23 JUROR: Ten minute break.

24 THE COURT: All right. 15
25 minutes?

1 JUROR: That would be fine.

2 THE COURT: Mr. Bowen, we're
3 going to stop at this point and allow the
4 jury to take about a 15 minute recess. If
5 you would please reassemble at 20 until in
6 the jury room.

7 Folks, it remains your duty to abide
8 by all prior instructions of the Court
9 concerning your conduct during this
10 recess. Everyone else please remain
11 seated, the members of the jury are
12 excused.

13 (Jury out at 12:24 p.m.)

14 THE COURT: For the record, the
15 Court's remarks were directed to Juror
16 Number Four, Paula Locklear Manuel. The
17 record will reflect that Ms. Manuel has
18 suffered from back problems previously in
19 this case, that appear to the Court that
20 she was grimacing in pain. Also for the
21 record, let the record reflect that counsel
22 for the State, Mr. Britt, passed up a note
23 indicating that in his view Juror Number
24 Four appeared to be in pain, appeared to be
25 in a lot of discomfort, and asked whether

1 or not there was a need for the Court to
2 inquire. The Court directs that this note
3 be made a part of the record in this case
4 as the next numbered Court's exhibit.

5 Folks, I'm going to give you folks as
6 much latitude as you folks want for the
7 purposes of argument. It's not my intent
8 to interrupt anybody's argument, but
9 appears that we will have to be mindful of
10 Ms. Manuel. If you perceive that she needs
11 to take a break or anyone else on the panel
12 needs a break, please don't hesitate to
13 bring that to my attention, and I'll go
14 from there.

15 Anything --

16 MR. BOWEN: Yes, sir, I will. In
17 fact, I noticed she was having problems,
18 and I really in my own mind didn't know how
19 appropriately -- I couldn't be familiar
20 with the jury --

21 THE COURT: Yes, sir. Let me
22 suggest the best way to deal with that, if
23 you notice it, and this holds true for the
24 State as well, simply ask to approach the
25 bench. We can deal with it that way. That

1 way we can avoid any problems.

2 Anything else from either counsel?
3 Folks, it's my intent to give them the
4 normal lunch recess. If your arguments go
5 beyond 5:00, that's fine. We'll stop at
6 whatever point is appropriate. I'm
7 prepared to go forward with my instruction
8 whether they are given today or tomorrow
9 morning, either way.

10 We're at ease.

11 (Brief recess.)

12 THE COURT: Do we have
13 Mr. Green?

14 Let the record reflect that all
15 counsel are present, the defendant is
16 present in open court.

17 Two matters, folks. First of of all,
18 I do not intend to break up the arguments,
19 have one argument carry over until tomorrow
20 morning. I don't think that is fair to
21 either side. So we will complete all
22 arguments today. If the arguments go
23 beyond 5:00, then I'll instruct them
24 tomorrow morning. But we'll complete all
25 arguments today.

1 Second matter is I intend to instruct
2 all members of the jury that if at any time
3 any member of the jury needs a break for
4 whatever reason, simply raise their hand
5 and let us know. Does either counsel wish
6 to note anything for the record as to
7 either of those matters?

8 MR. THOMPSON: No, sir.

9 THE COURT: If you'll bring the
10 jury in, please. Before they come in, I
11 also intend to inform them that we will
12 complete all arguments today.

13 (Jury in at 12:41 p.m.)

14 THE COURT: Do you need the
15 cushion, ma'am? If you'll bear with us for
16 one second. Appears that we have all
17 members of the jury in. Ladies and
18 gentlemen, it's my intent to complete all
19 arguments today. That may necessitate the
20 Court's instruction on the law being given
21 tomorrow morning. But we will complete all
22 arguments today, and if time permits, the
23 Court will go forward with the instructions
24 on the law.

25 Second matter that I wanted to bring

1 to your attention is that if at any time
2 any member of the jury needs a break for
3 any reason, please don't hesitate to raise
4 your hands and let us know that.

5 Mr. Bowen, I apologize for the
6 interruption. You may go forward with the
7 arguments.

8 MR. BOWEN: Thank you, Your
9 Honor.

10 We're back at the interrogation with
11 Agent Lea and Mr. Demery. This occurred on
12 the 14th of August, 1993. Mr. Demery is
13 down there, one of the interesting things
14 that Demery admits is the fact that Demery
15 tells Agent Lea about having heard the
16 officers coming toward his house on the
17 scanner, you'll recall, and Mr. Demery
18 instead of waiting for the officers,
19 Mr. Green didn't go anywhere, he waited
20 there, officers came and asked him, he went
21 with him. Mr. Demery on the other hand
22 left the house and says that he was off
23 hiding, waiting in a place where he could
24 see the officers come to his house.

25 Now, Mr. Lea of course is

1 cross-examined about his 17 years and the
2 number of searches he conducted and how
3 those searches were conducted -- I'm sorry,
4 Officer Smith was asked about that. He
5 admits to hundreds of searches. He's a
6 little confused about the chest of drawers
7 and whether that chest of drawers was
8 admitted or not, we're not certain by the
9 end of it.

10 But what's interesting is Mr. Smith
11 talks about speaking to Mr. Demery in the
12 interrogation. And Mr. Smith tells you in
13 his sworn argument -- excuse me, his sworn
14 testimony that he merely talked to
15 Mr. Demery in conversational tones and a
16 conversational way. And he says that he
17 told Mr. Demery at one point, any person
18 sitting in here and any judge is going to
19 tell you a confession to a felony makes
20 their story credible, and they are going to
21 eat your ass alive, son. Elsewhere he
22 tells him, his attorneys, that is the other
23 guy's attorneys are going to make a deal
24 with the prosecution. He's already set it
25 up. He's going to be the best witness the

1 State has.

2 And then he tells him something
3 that's -- I'll leave to Mr. Thompson,
4 something about his anatomy. He says to
5 Mr. Demery, they are going to give you no
6 bond for a couple of years while the
7 lawyers are down there talking to the DA.
8 All this time, Mr. Smith is saying that he
9 was just talking to him in a normal
10 conversational tone, not trying to
11 intimidate. Mr. Demery has signed an
12 affidavit saying he wasn't scared,
13 intimidated by any of this. He says now
14 your attorneys are down there trying to
15 make a deal, and he ain't got a damn thing
16 to work with, says Mr. Smith.

17 Says, I don't give a damn about a bus
18 because we work for God, okay. I'll tell
19 you that shit right now, we work for God,
20 said Mr. Smith. But none of that arouses
21 or frightens Mr. Demery. He also tells
22 Mr. Demery, I wouldn't have probable cause
23 to lock your ass up right now without that
24 statement right down the hall that is sworn
25 to. What statement? Is Mr. Smith telling

1 Mr. Demery something that's not true? You
2 be the judge.

3 You think I'm bullshitting, says
4 Smith. But you're going to jail because of
5 that signed statement right now. What
6 signed statement? What signed statement?

7 Now, the prosecutor is going to jump
8 all over Mr. Green's statement because in
9 the first place, I'll tell you right now
10 Mr. Green didn't tell the whole truth.
11 Mr. Green told some lies. And they later
12 on asked him why did you cover up for Larry
13 like that. Mr. Green says because he's
14 been my best friend for 11 years, and his
15 fiancée or his girlfriend, I think he said,
16 is pregnant with a baby, and I didn't want
17 to get him in trouble.

18 So they are going to jump right on
19 Mr. Green for telling some lies in his
20 statement, and well they should. They're
21 fair game, nothing wrong with that. That's
22 their job. But how do you feel about a law
23 enforcement officer who claims to work for
24 God sitting there claiming that he has got
25 a sworn statement from down the hall when

1 there's no such thing in evidence? And I
2 argue there was no such thing that night.
3 How does that sit with you?

4 Is that just some wild defense
5 attorney trying to, quote, put the
6 government on trial? Or is that something
7 that deeply disturbs you? Then this is key
8 to what Mr. Smith's point of view is.
9 Because in this next statement, he looks
10 forward to this day, or not this day but at
11 least these times in the courtroom when
12 officers will testify. And this is how
13 Mr. Smith says it all works: They get a
14 police officer up there, police officers
15 are pretty polished. They have testified
16 on the stand before. 12 people in crowds
17 don't bother them. They listen to a
18 detective.

19 It's pretty arrogant, isn't it,
20 members of the jury? Doesn't it say to you
21 that officers think that because they are
22 officers, they can say things and they will
23 be believed just because they are
24 officers? And remember going all the way
25 back to jury selection, when we were

1 selecting each and every one of you, every
2 single one of you was asked the question
3 would you believe an officer just because
4 he was a police officer, or would you weigh
5 his testimony or her testimony with the
6 same weights and standards that you would
7 anybody else. Every one of you said you
8 would do the latter, that you would treat
9 them the same way in the terms of the way
10 you weighed their testimony.

11 But here is an officer who is
12 expecting, because officers are smooth and
13 polished, to be able to come up here and
14 get extra weight out of the testimony
15 because of the style with which they can
16 deliver what they have to say.

17 Then Mr. Thompson aptly talked to
18 Mr. Smith about the fact that he had also
19 sworn another oath on the Bible and that
20 was an oath to uphold and maintain and
21 defend the Constitution of the United
22 States and that of the State of North
23 Carolina. And it's elementary, as any of
24 us know, that to coerce or intimidate or
25 overpower a person who gives a statement is

1 not in the spirit or the letter of our
2 Constitution. And that oath, I argue to
3 you, is one that Mr. Smith could well
4 afford to recall and be dedicated himself
5 to.

6 Mr. Cannon then talks about the search
7 that we've talked about before, the missing
8 chest of drawers, and the lack of finding
9 the gun the first time. Jennifer Elwell
10 talks about the, quote, blood. Now, it's
11 interesting. I told you a little while ago
12 that Mr. Demery first said there was no
13 blood. And that is true, that he first
14 said that. Later that was another thing
15 that Mr. Demery changed in later
16 statements, and he finally said, if you'll
17 recall, that there was some blood that
18 dribbled down in between the two seats, and
19 he put it in the passenger seat, and there
20 was some blood on the back rest.

21 Okay. But first he didn't see any
22 blood. Now, Jennifer Elwell says that she
23 got the car sometime after Durry Cannon had
24 gotten it down in Fayetteville. Durry
25 Cannon did the luminol test and the

1 phenolphthalein test.

2 It was so indistinct, the reaction was
3 so indistinct that with a man's life on the
4 line, Mr. Cannon was not able to call that
5 a significant reaction. In other words, he
6 couldn't say it told me there was blood one
7 way or another. He said he thought he saw
8 a little bit of reaction, wasn't sure.
9 Now, maybe blood like fine wine gets better
10 over age or maybe it gets more potent or
11 maybe better able to be sampled, though I
12 doubt it.

13 Later on, Ms. Elwell gets the same car
14 and she performs the very same test, the
15 phenolphthalein and the luminol test, and
16 she says by golly, she gets a reaction.
17 She's satisfied that that's blood. Tiny
18 little strip in between the two faces of
19 the seat there.

20 She doesn't bother to take a picture
21 of the reaction, she doesn't videotape it
22 even though she's got the capability so you
23 could see what's happened. She just simply
24 says it happened. But this is in conflict
25 with another law enforcement agency that

1 didn't get the same results or didn't get
2 nearly as strong a result. But what is
3 going on? Maybe the chemicals, maybe the
4 potency of the chemicals is different.
5 Maybe there's a reason, but never really
6 have had it explained to you there's a
7 difference there.

8 You know what the blood evidence that
9 Ms. Elwell gives you is this: Ultimately
10 she cannot match the DNA with that of James
11 Jordan. She can't even tell you what blood
12 type it is. Members of the jury,
13 Ms. Elwell, Agent Elwell cannot even tell
14 you whether this is animal blood or human
15 blood. Nor can she tell you whether or not
16 the blood has anything to do with the fact
17 that all that busted glass in that car,
18 whether or not anybody cut themselves
19 breaking all that glass.

20 Now, the one thing for sure, sometimes
21 you can wash away blood and the luminol
22 test will still show it up. Residue will
23 still be there. Mr. Demery said that the
24 blood spilled all over the back rest.
25 There was no blood found either in

1 Fayetteville or the SBI on the back rest.
2 So in that sense, Mr. Demery could not have
3 been right about the significant portion of
4 the blood. And the blood you see is one of
5 those parts of physical evidence that
6 suggests strongly that there was no
7 shooting inside that car. The splatter
8 effect of the bullet striking the flesh,
9 the blood that would have ensued, none of
10 it is present. After all, Mr. Demery told
11 you that at a point he got blood on his
12 arm, okay. And then what did he do? He
13 rode in the car, remember he drew you a
14 picture of where there was blood on his
15 arm.

16 What you must conclude from the
17 physical evidence is this individual was
18 not shot in that car. He was shot out
19 there elsewhere on that ditch bank, on that
20 dirt, somewhere out there, probably
21 bushwhacked from a significant distance
22 because the bullet didn't go far enough in
23 him to suggest a close wound, and there
24 weren't powder impressions around on the
25 clothing to suggest a close kind of wound

1 that he was talking about. And Demery had
2 a problem. He had this car over here, he
3 had this body over here, and he wasn't able
4 to move it.

5 May we approach, Your Honor?

6 THE COURT: Yes, sir. If all
7 counsel will come up with the defendant and
8 the court reporter, please.

9 (Whereupon a bench conference ensued
10 as follows.) (2-27-96).

11 THE COURT: For the record,
12 Mr. Bowen has indicated that he's observed
13 Juror Number 4, Ms. Manuel, and that in his
14 view she appears to be having some
15 problems. Is that correct?

16 MR. BOWEN: Yes, sir.

17 THE COURT: All right. Come on
18 up, Mr. Britt. Folks, I had indicated that
19 I was going to try to get in all arguments
20 today. How long do you intend to argue?
21 Do you have a ballpark figure?

22 MR. BOWEN: Mine is going to be
23 short for the --

24 MR. THOMPSON: Mine is going to
25 be short. When I say short, I suspect that

1 I'm going to try to keep mine less than 45
2 minutes, hopefully, Your Honor, if I can
3 push it in there.

4 THE COURT: Are you folks -- and
5 I'm asking, I've indicated I don't like to
6 break it apart, I don't feel that's fair,
7 but at the same time, I don't think it's
8 fair to have the jury turned over to the
9 State at 4:00 or 5:00.

10 MR. THOMPSON: To be honest with
11 you, I told Woody to go ahead and cover it
12 all if he wants to. That's why mine is
13 going to be short.

14 THE COURT: It still is my intent
15 if at all possible to get in all arguments
16 today, but I will keep an open mind, if the
17 State wants to be heard. We'll break at
18 this time for lunch until 2:30.

19 MR. BRITT: That's fine.

20 (Bench conference concluded.)

21 THE COURT: Folks, we're going to
22 stop for the lunch recess at this time.
23 We're going to take the normal lunch recess
24 until 2:30. During the lunch recess, I
25 again remind you that it remains your duty

1 to keep an open mind about this matter.
2 You have not yet heard all of the arguments
3 of the attorneys, and you've not yet heard
4 the Court's instruction on the law.

5 I again instruct you that during the
6 lunch recess you're not to talk about this
7 matter among yourselves or with anyone
8 else, including members of your own
9 families. You're not allowed to have
10 anyone say anything to you or in your
11 presence about this case. If anyone
12 communicates with you about this matter or
13 attempts to do so, or says anything about
14 the case in your presence, it is your duty
15 to inform us of that immediately through
16 one of the bailiffs assigned to the
17 courtroom.

18 Don't form or express any opinions
19 about this matter. Don't have any contact
20 or communication of any kind with anyone
21 involved in the case. Don't allow
22 yourselves to be exposed to any media
23 accounts which may exist in connection with
24 these proceedings, and don't conduct any
25 independent inquiry or investigation or

1 research of any kind. Everyone else please
2 remain seated, the members of the jury are
3 excused until 2:30.

4 (Jury out at 12:57 p.m.)

5 THE COURT: For the record, the
6 Court having consulted with counsel for the
7 State, counsel for the defendant, the
8 defendant being present with the presiding
9 judge and the court reporter at the bench
10 conference, has indicated as follows: That
11 while it is still the Court's intentions to
12 complete all arguments today, if that is at
13 all possible, Mr. Thompson having indicated
14 that he expects his argument -- and again,
15 I'm not holding you to this, Mr. Thompson,
16 to take no more than approximately 45
17 minutes, is that correct?

18 MR. THOMPSON: Hope I can do it
19 in less.

20 THE COURT: If that is the case,
21 then we'll attempt to complete all
22 arguments. However, I will keep an open
23 mind. If it turns out that our situation
24 is such that the jury is turned over to the
25 State for final argument at 4:00 or

1 thereafter, I'm not going to put the State
2 under the gun. I don't think that would be
3 fair to the State. And while I am
4 reluctant to separate the arguments, I
5 prefer that all arguments be completed
6 today, in an effort to be fair to both
7 sides in this case, I will keep an open
8 mind if the State wants to request holding
9 off on its argument until tomorrow morning,
10 depending on what our situation is.

11 Anything further from either counsel?

12 MR. BRITT: No, sir, not at this
13 time.

14 THE COURT: We're at ease until
15 2:30.

16 THE BAILIFF: All rise, please.
17 (Lunch recess.)

18 THE COURT: There's a matter we
19 need to address very briefly. I understand
20 from Mr. Horne that there was a request
21 from Ms. Manuel that she be allowed to
22 stand to relieve some of the discomfort
23 that she was feeling during jury
24 arguments. I indicated through Mr. Horne
25 that I would bring that to the attention of

1 all counsel. State want to be heard?

2 MR. BRITT: No, sir.

3 THE COURT: Counsel for the
4 defendant?

5 MR. THOMPSON: No, sir.

6 THE COURT: It's my intent to
7 inform Ms. Manuel once the jury is brought
8 back into the courtroom that she's free to
9 do so.

10 Both counsel ready to go forward?

11 THE COURT: Yes, sir.

12 MR. BOWEN: Shall I get in
13 position, Your Honor?

14 THE COURT: Yes, sir. If you'll
15 bring the jury in, please, sir.

16 (Jury in at 2:29 p.m.)

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

19 Ms. Manuel, my understanding, ma'am,
20 is that you have inquired as to whether or
21 not it would be appropriate for you to
22 stand if you felt the need to do so.
23 Please feel absolutely free to do so.

24 The jury at this time remains with
25 counsel for the defendant, Mr. Bowen.

1 Mr. Bowen, you may continue with your
2 argument.

3 MR. BOWEN: Thank you, Your
4 Honor.

5 Again, like Professor Weinberg, give
6 you a shorter case, give you a shorter
7 argument. Members of the jury, we'll be
8 wrapping up shortly. Let me call your
9 attention to the evidence as the State's
10 evidence finished up, there is Agent Tony
11 Underwood, who went out and found some
12 things on the Dunn Road in Lumberton back
13 behind the grocery store here on West Fifth
14 Street. And in fact there was some CD's
15 out there, and in fact there was a number
16 of prints of Daniel Green on the CD's.
17 Remember that the fingerprint, the only one
18 that was attached to the car was on that
19 rear view mirror, not inconsistent with
20 Mr. Demery having reached up from the
21 driver's seat and adjusted the rear view
22 mirror as he was driving the car. The
23 additional fingerprints on the CD's was not
24 at all inconsistent with Daniel having
25 mostly fed the music into the machine.

1 Daniel also was the one that was making the
2 majority of the phone calls, mostly social
3 calls, mostly to girls, mostly ones that
4 the State can trace to you and show to you.

5 Now, no search party according to
6 Mr. Tony Underwood was ever formed to
7 search this cornfield or these cornfields
8 in question. There is a way that officers
9 can do it, I argue to you. They form a
10 concentric circle and work out, and do it
11 in a very methodical way. But none of that
12 was done, he tells you.

13 Another point, they got the big
14 exhibit up here with Mr. Tony Underwood,
15 they made the point that while the stuff
16 that was that was found on the canal bank
17 was found not too awfully far from the
18 place where Daniel's grandmother lived.
19 Well, there was in evidence that Daniel was
20 living with his grandmother. And when the
21 defense got back up to make its point, the
22 defense showed you on that same map that in
23 fact the place where the stuff was found on
24 the canal bank was closer to and directly
25 in front of, although a little ways away

1 from Mr. Demery's actual residence, where
2 Mr. Demery did live. So in interest of
3 clarity about that, it is certainly more
4 likely that it was Mr. Demery choosing a
5 place close to where he lived.

6 Now, we talked about the car. Stewart
7 McPhatter, Mr. Richardson, came back on
8 cross-examination, still with no
9 fingerprint evidence that he could show to
10 you about who the body belonged to. They
11 never could explain why the handles on the
12 gun were different, that is, State's 59-A
13 were different from the gun that Mr. Demory
14 said that he had. They just never were
15 able to explain that nor were they able to
16 explain how the gun -- how the bullets got
17 out of the gun that Mr. Tony Underwood said
18 he never unloaded because he wanted to
19 preserve the integrity of the exhibit and
20 somehow they got into a small bag and
21 Aprille Sweatt said that she never unloaded
22 the gun.

23 Well, that was no more -- that was no
24 better explained than the fact that the
25 State spent lots of times with these folks

1 over in Fayetteville talking about this
2 rusty old gun. Then we had the opportunity
3 to ask Agent Richardson, who got it in his
4 possession not long after the incident
5 occurred and asked Agent Richardson, is the
6 gun in substantially the same shape, that
7 is, state's 59-A, the revolver, is it in
8 substantially the same shape as you had it
9 way back yonder after the investigation.
10 He said yes. I said, do you see any rust
11 on the gun. You had seen the gun too. And
12 he says, yeah, but then goes on to say that
13 he had to have a stereo microscope to see
14 it.

15 Now, I just argued to you that those
16 good folks, Dee and the folks down in South
17 Carolina and folks over in Fayetteville who
18 were talking about that rusty old gun just
19 weren't toting around a stereo microscope
20 that would enable them to see the rust like
21 Mr. Richardson had to have it to see that
22 rust at all. And it appears that we're
23 talking about a completely different gun if
24 we're talking about a rusty old gun. One
25 thing we're talking about a gun according

1 to Mr. Demery that had a bad hammer on it.
2 And Mr. Richardson said this gun didn't
3 have a bad hammer on it -- I'm sorry, Agent
4 Marrs said it didn't have a bad hammer on
5 it, it was okay.

6 Talked about Annie Ruth Oxendine, and
7 we understand why Mr. Demery used Mr. Green
8 on this occasion to buy the bullets.
9 Mr. Heffney testified, and Mr. Heffney
10 also, I believe Mr. Thompson is going to go
11 into the final statement of Mr. Demery, the
12 one that was taken over the four day period
13 by Mr. Heffney.

14 But I think something is interesting
15 and it segways very nicely into the defense
16 evidence. That is, Mr. Heffney got to
17 talking about Mr. Demery, it was then, I'll
18 argue to you, not for the first time but it
19 was at least then that it was actually put
20 down specifically in the statement where
21 Demery tells Mr. Heffney that yes, they
22 were over there at Kay Hernandez's house.
23 From about 10:00 up until what Mr. Demery
24 says was about 1:30, when Mr. Demery admits
25 that he left. He also says in his

1 statement that Daniel left with him.

2 Now, folks under our law, when
3 officers take a statement from somebody,
4 they are not allowed just to take the
5 statement and then go to court with it, say
6 this man confessed, that is all there is to
7 it. What they are supposed to do is follow
8 up even on a confession to find out if the
9 physical evidence and the other evidence is
10 consistent --

11 MR. BRITT: Objection.

12 THE COURT: Objection is
13 sustained.

14 MR. BRITT: Move to strike.

15 THE COURT: That's not a proper
16 argument. You're not to consider it any
17 respect, it's not to take any part in your
18 deliberations in any respect. You are to
19 disregard what Mr. Bowen said about under
20 our law and what officers are supposed to
21 do. I will instruct you on the law.

22 Mr. Bowen, you may continue.

23 MR. BOWEN: Well, let's talk
24 about this, what options that the officers
25 had. As a practical matter of fact, the

1 officers had the option of going out once
2 Mr. Demery told them this information, and
3 finding out whether it checked or not,
4 finding out whether or not Mr. Demery was
5 telling them the straight of it. That is
6 when he left Kay Hernandez' about 1:30 that
7 evening. Did he, that is Demery, leave
8 alone?

9 Now, Mr. Heffney, and presumably the
10 other officers were on notice of this way
11 back at least by the 8th day of May, 1995.
12 And probably knew it long before having
13 talked to Mr. Demery about things. Now,
14 why didn't they go out there and talk to
15 the folks? If they had, they would have
16 found out the very same thing we did. They
17 had have talked to Kay. They would have
18 talked to Ann. They would have talked to
19 Monica. They would have talked to Nellie.
20 They would have talked to Sebette. They
21 could have reached Catina, and they would
22 have found out from all those witnesses
23 what we found out, and that was that Demery
24 left --

25 MR. BRITT: Objection.

1 THE COURT: Sustained. Members
2 of the jury, you're to disregard
3 Mr. Bowen's statement as to what folks who
4 did not testify at this trial would or
5 would not have said. There's no evidence
6 to support that statement in its entirety,
7 and I instruct you that you are to
8 disregard it. It is not to play any role
9 in your deliberation in this case in any
10 respect.

11 You may continue with your argument as
12 relates to witnesses who testified at this
13 trial and evidence that was presented at
14 this trial, Mr. Bowen.

15 MR. BOWEN: Members of the jury,
16 I argue to you that Nellie Montes did
17 testify at this trial and could have been
18 talked to by the officers. I argue to you
19 that Sebette did testify at this trial and
20 could have been talked to by the officers.
21 I argue to you that Monica Hernandez did
22 testify at this trial and could have been
23 talked to by the officers. And there were
24 other people that could have been talked to
25 by the officers, which the State could have

1 offered as evidence in this case if they
2 had so chosen.

3 No evidence that they ever looked
4 there. But the defense did. And now we
5 have our lady -- excuse me, I bumped into
6 the fish. We're going to talk about that
7 in a minute. Got our lady of justice
8 sitting there, and so far, we've got Larry
9 Demery over here. So far, we've got all
10 this physical evidence on the defense side,
11 all these inconsistencies, all those out
12 and out untrues that Mr. Demery has come
13 forward with, all these things that don't
14 match; and I'll argue to you even at this
15 point right where we sit, that the defense
16 had argued -- had offered no evidence at
17 all, there would have been enough arising
18 out of the State's evidence --

19 MR. BRITT: Objection.

20 THE COURT: Overruled.

21 MR. BOWEN: -- to have raised
22 reasonable doubt in your minds many, many
23 times over.

24 But the defense went forward, didn't
25 have to, burden is on the State. Defense

1 didn't have to offer any evidence. But
2 what the defense brought forward was Nellie
3 Montes. Now, what about Nellie Montes? No
4 criminal record, got a responsible job at a
5 finance company as an assistant manager.
6 Been there for some period of time. She is
7 married, her husband is a respiratory
8 therapist at the Columbus County Hospital.
9 He is Puerto Rican extraction.

10 They were planning a trip on the 24th,
11 Saturday, the 24th of August. And Nellie
12 and her two little children and her husband
13 were going down there, hadn't been in four
14 years, and the ticket cost fifteen hundred
15 and twenty-two dollars. You'll remember
16 that. And their itinerary called for a
17 flight beginning at Raleigh-Durham Airport,
18 471 was the flight, beginning at 9:40 a.m.
19 on Saturday morning.

20 Now, like any other big trip, and
21 certainly a trip out of the country, day
22 before that trip is your running around
23 day. And that was the running around day
24 for Nellie Montes, getting everything in
25 the world all together and packaged up and

1 bundled up and packaged and ready. So
2 Friday night was a work night. They had to
3 leave the next morning.

4 Catina, you recall, took them to the
5 airport. Thursday night was the day they
6 sort of had the get-together, sort of had
7 the social hour. And there they were, at
8 Nellie's mom's house, which is Kay
9 Hernandez, Clyburn Pines area. It's a
10 manufactured home, it's a nice
11 double-wide. And Kay Hernandez's good
12 friend is Ann Marie. And very often, these
13 two visited back and forth between each
14 other. And I don't know, they sort of have
15 a way of doing the all night partying
16 thing, the kids go there and watch TV or
17 videos and everything, and they sort of go
18 to sleep and drop where they are, and then
19 get up the next day and go on. But they
20 were having an outdoor cookout.

21 Had Hector Montes, who was a chef out
22 at the country club, so he had the food all
23 taken care of and had all the eating, and
24 they were spilling over into the dining
25 room at 9:30, 10:00 eating. And remember

1 that Daniel and Mr. Demery were there, both
2 eating, and Demery had come with Daniel.

3 Now, Nellie, Nellie Montes, remember
4 that she was in and out of that house some,
5 and she knows what Larry Demery's car looks
6 like. In fact, she knows what it sounds
7 like, she can tell it's coming just by what
8 it sounds like. So could several others
9 out there.

10 She noticed when she walked in, she
11 happened to walk by that car and looked
12 through the glass, and there in Larry
13 Demery's car was a revolver that looked
14 very much like the one we've been
15 describing all through this case.

16 The butt of it was more over in the
17 driver seat and the barrel was pointed more
18 into the passenger seat.

19 And Nellie says it upset her a little
20 bit, she mentioned it to a couple of the
21 others. As far as we could tell from the
22 evidence, that gun was not touched and was
23 there when Larry Demery took off that night
24 alone at about 1:30.

25 Now, Nellie says that the kids, that

1 is, Daniel, Bobbie Jo Morillo, Demery,
2 Monica, Ebony -- that's Daniel's little
3 sister -- they were all back in the den
4 area, they were watching TV and they were
5 making a lot of noise. I mean, they were
6 letting it roar. And this went on through
7 the evening and they were blasted two or
8 three times, apparently Ann Green can
9 really let them have it. She came in there
10 a time or two, did that. And Catina came
11 in a time or two, saw them in there, mostly
12 she stayed in the kitchen and out in the
13 living room area, but you could sure hear
14 them back there. And you could hear them
15 and recognize their voices.

16 And all this partying was going on,
17 and so happens, members of the jury, that
18 when the officers came and searched that
19 place, they just happened to find the
20 package of photographs. These are just
21 four of them, there's a whole rolls worth.
22 But there's Monica the way she looked that
23 very night. There's Mr. Demery in that
24 very room. And this is exactly what Daniel
25 and Bobbie Jo Morillo looked like on that

1 couch, and there's a close-up of him.
2 These pictures were in the house when the
3 officers came, that show us according to
4 the witnesses exactly how these folks
5 looked on the very night in question, how
6 they were dressed, everything.

7 These photos are photographic proof of
8 where these folks were. And it's backed up
9 entirely by Nellie, who has got no reason
10 to come in here as a financial officer and
11 in a respective firm, and come in here and
12 commit the felony of perjury by telling you
13 some untruth. What possible advantage does
14 she have to gain for that? Her only reason
15 for being here is as a citizen to enable
16 you to ascertain the truth.

17 Now, she knows Daniel, sure, but not
18 all that well. And even if she did, let me
19 ask you this. If any of us had to account
20 for ourselves on any particular night of
21 any particular day, wouldn't it be about 98
22 certain that we would have to do it through
23 friends and family and co-workers? Because
24 that's who we are around. We don't spend
25 time with perfect strangers, for the most

1 part. Friends and family and co-workers is
2 who would have to come forward to say where
3 we were.

4 Now, just because you know somebody,
5 would you come in to court and put your
6 hand on the Bible and perjure for them? Of
7 course not. Not if you're the kind of
8 person that Nellie Montes is. She says she
9 was not there at the exact moment that the
10 photos were made, but those were the things
11 that she saw that night. And hey, it
12 couldn't have been after the 22nd of July,
13 because Daniel would have had jewelry on,
14 he ain't got any jewelry on in any of
15 this.

16 And by the way, don't hesitate to ask
17 for these pictures and look at them well
18 back in the jury room. The people and the
19 activities that were going on that night
20 were fairly represented by the pictures.

21 Nellie left about 1:00 because she had
22 to get ready for the trip and, so she and
23 her husband had gone to -- well, doesn't
24 matter.

25 Then we have Monica Hernandez. Now,

1 Monica is about 17 years old now. She's at
2 Lumberton High School. She's Kay's
3 daughter. She is with Bobbie Jo in the
4 den, and Daniel, and Mr. Demery. And she
5 was also there with Ebony. And she agrees
6 there was a lot of noise from the TV. She
7 admits that a time or two Ann Green came in
8 there and blasted them out, and that is
9 something that happened often. They got to
10 where they couldn't even hardly remember
11 that, because it was too often. They tried
12 to calm them down but they were having too
13 good of a time. Bobbie Jo and Daniel were
14 enjoying each other's company. At one
15 point Bobbie Jo was sitting in Daniel's
16 lap. Monica remembers seeing that.

17 And Monica remembers that there came a
18 time, oh, little after 1:30 or so, that
19 Demery started bugging Daniel to leave.
20 And Daniel and Bobbie Jo were real friendly
21 at that time. And it appeared that Daniel
22 didn't want to leave. And Demery kept
23 bugging him to leave, and Daniel kept not
24 leaving, and so there came a time that
25 Demery went out, got in his car, and left.

1 According to Monica, Daniel walked out for
2 a minute or so, saw him off, came back in
3 the house and was with Bobbie Jo pretty
4 much for the remainder of the evening.

5 Now, Monica, like a youngster, very
6 often, something like that going on, wanted
7 to stay up all night. So she stayed up all
8 night. She made it, she made it until
9 about 5:00 in the morning. Never did she
10 ever actually go to sleep. If she dozed,
11 it was just for a moment. And what Monica
12 remembers is she was still in that room,
13 and along about 5:00 in the morning or just
14 a little before, Larry came a knocking.
15 Lightly at first, and then heavily, and it
16 was Monica that went to the door.

17 Larry looked nervous. He was
18 shaking. He was anxious, according to
19 Monica and, quote, ready to go. And he
20 came in at that time and he bugged Daniel,
21 come on, let's go, and talked to Daniel.
22 Daniel wasn't interested. Even then,
23 Daniel stayed with Bobbie Jo 15 more
24 minutes or so. And it began to look like
25 he wasn't even going to leave with Larry

1 Demery then.

2 And it's in evidence that Ann Green
3 told him not to go. Don't you know he
4 wished a thousand times he had listened to
5 his mother.

6 MR. BRITT: Objection.

7 THE COURT: Sustained. Disregard
8 that last comment. That's not to take any
9 part in your deliberations in any respect,
10 members of the jury.

11 MR. BOWEN: And in the end,
12 Daniel left at something before or right
13 about 5:00. And Monica heard that ratty
14 old car of Daniel's going out the driveway,
15 crank up and go.

16 Now, she had made it almost all night
17 long, and don't you know she was curious to
18 find out how long she had managed to stay
19 up. So she looked at the clock, there were
20 plenty of them there in Kay's house, and
21 she noticed the time was 4:57. She thinks
22 that Daniel and Larry had probably left
23 maybe five minutes or more before that.

24 Now, when the State talked to Monica,
25 the first thing they had asked her was when

1 have you talked about your testimony --

2 MR. BRITT: Objection.

3 THE COURT: May I see counsel at
4 the bench with the court reporter and with
5 the defendant.

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

8 THE COURT: Let the record
9 reflect at this bench conference are all
10 counsel, the defendant, the court reporter
11 and the presiding Judge.

12 What is the basis of the objection,
13 Mr. Britt?

14 MR. BRITT: This business about
15 the State was elicited on cross
16 examination.

17 THE COURT: Yes.

18 MR. BRITT: Maybe it ought to be
19 more clear on the record.

20 THE COURT: Clarify, but at this
21 point I don't see anything --

22 MR. BRITT: That's fine. The
23 implication is someone had interviewed her
24 prior to coming to court.

25 THE COURT: Rephrase, Mr. Bowen.

1 Everyone was present at the bench
2 conference, including the defendant.

3 (Bench conference concluded.)

4 THE COURT: Yes, sir.

5 MR. BOWEN: Monica was asked if
6 anybody had previously talked to her about
7 her testimony, and she said nobody has
8 asked me besides Mr. Garth, you, and
9 Mr. Thompson.

10 Now, that confirms the fact that we
11 were talking about a moment ago, that
12 Mr. Demery had told State's officers,
13 Mr. Heffney who took the statement, about
14 the get-together out at Kay Hernandez's.
15 Kay is Monica's mother. Monica lives with
16 her mother. Nobody from the State came and
17 asked her. And when asked about her
18 testimony, I don't know exactly the
19 connotation that is, but in any case,
20 Monica said that she had talked to folks
21 from the defense and that nobody from the
22 State had approach her and talked to her.

23 Now, Hector Leones, he went to bed.
24 He had to be up at 7:00 that morning. He
25 used to work as a chef at the country

1 club. Now works as a burial vaults man.
2 Had to be at work at 7:00. Sleeps like a
3 log. Fortunately, who could go to sleep
4 with all that racket? Certainly Sebette,
5 now, Sebette is 25 years old. What she did
6 for a living, she works for Dr. Pissano's
7 mother-in-law. He's from Pembroke State,
8 and his mother-in-law requires care in the
9 home. And Sebette had been chosen--

10 THE COURT: Mr. Bowen, stick to
11 matters in evidence, sir.

12 MR. BOWEN: If Your Honor,
13 please, the record will reflect that
14 Dr. Pissano is a doctor --

15 THE COURT: You may continue with
16 your argument. Stick to matters in
17 evidence.

18 MR. BOWEN: His mother-in-law was
19 the person for whom Sebette provides
20 personal care. She testified that Catina
21 Jacobs is no kin to anybody involved in
22 this case. She testified that she can
23 recognize Larry's automobile by sound as
24 several of them do. She said that Hector
25 had left -- she and Hector had left to go

1 deliver some swim suits and got back to
2 Kay's house about midnight. She says that
3 they were extremely noisy and that Kay at
4 one time had to come quiet them down, and
5 Ann had come quieted them down.

6 She said that she and Hector went to
7 bed about 12:30 a.m. because of Hector's
8 job beginning at 7:00. Then she said the
9 next thing, she can't put an exact time on
10 this, but like some minutes later, she
11 heard Larry's raggedy old car leave, the
12 car she could recognize by sound.

13 Now, there was too much racket going
14 on, and you recall the diagram, that she
15 was actually trying to sleep in a room that
16 was actually adjacent to this den where the
17 kids were. And she says that she didn't go
18 to sleep that night, basically. She laid
19 in the bed, she laid awake, the sound kept
20 her awake. One time she enlisted her mom
21 to go in and try to help quiet them down,
22 but never was able to go to bed.

23 And part of the night she could hear
24 these voices. Now, talk about the thin
25 wall, double-wide home. In the adjacent

1 room, she recognizes Daniel's voice. She
2 knows somewhat what Larry Demery sounds
3 like. She knows what the other folks in
4 that room sound like, and she is hearing
5 after Mr. Demery leaves, she is hearing
6 Daniel's voice. And she is hearing
7 Daniel's voice interacting with Bobbie Jo,
8 and in fact they even come closer to her at
9 a point.

10 Her room door is closed but you can
11 imagine it's not a real thick one in a
12 manufactured home. So at a point she hears
13 Daniel and Bobbie Jo, and they are talking
14 about a closer distance to her, just
15 outside the hall or possibly in that little
16 hallway or little laundry area. In any
17 case, she recognizes the voice. And this
18 conversation goes on for some period of
19 time long after Larry has left. She
20 continues hearing the voices, she continues
21 recognizing people's voice as she sort of
22 lays there in a half awake, half asleep
23 state.

24 Now, Sebette knows these people, of
25 course. She's not kin to Daniel Green.

1 She's not here on this witness stand trying
2 to pull the wool over somebody's eyes to
3 commit a felony of perjury. She knows what
4 she knows. She saw what she saw, she heard
5 what she heard, and she's sharing it with
6 you.

7 Now, she comes up and says that there
8 came a time early in the morning, she can't
9 quite put a time, she can't put a time as
10 close as Monica can. She knows it was
11 early in the morning, and several hours had
12 passed, suddenly there's a ruckus, there's
13 a commotion in here. She hears people
14 running around and yelling, and she hears
15 Ann yelling and carrying on. And what do
16 you know, Larry is back.

17 Now, Sebette doesn't go in there, but
18 she hears Larry's voice, she knows Larry is
19 back, and for a time Larry is back, and
20 then Larry leaves. And then after that,
21 she doesn't hear Larry or Daniel's voice
22 anymore.

23 Last defense witness for the -- what
24 is called the alibi, and I almost hate to
25 use that word because somehow it's gotten a

1 bad connotation. It shouldn't, it's just a
2 Latin word, and I think the Judge will
3 charge you alibi means simply somewhere
4 else. That's all.

5 Catina Jacobs. She is 24 years old.
6 She teaches as a teacher's assistant for
7 handicapped children, and she's employed in
8 San Bernadino, California in the Children's
9 Center of Riverside, California. Linda
10 Barnes is her mother from here in -- Noble
11 May Jacobs is her grandmother, and she
12 lives right out behind Okay Barns, right up
13 West Fifth Street. She's not any kin to
14 the Hernandezes. She's not any kin to the
15 Greens. All she was at that time was a
16 friend of the family.

17 She's three thousand miles away. All
18 she had to say was "I don't want to get
19 involved."

20 MR. BRITT: Objection.

21 THE COURT: Sustained. Members
22 of the jury, there's a matter of law the
23 Court must take up out of the hearing and
24 presence of the jury. Please recall my
25 instructions in that regard, don't worry or

1 speculate about what takes place in the
2 courtroom in your absence. If all members
3 of the jury would step to the jury room.

4 (Jury out at 3:00 p.m.)

5 THE COURT: Let the record
6 reflect the following is being conducted in
7 the absence of the jury. Mr. Bowen, where
8 are we going with this argument, sir?

9 MR. BOWEN: Well, obviously one
10 can argue that she could be subpoenaed in
11 any case, but when somebody --

12 THE COURT: Did you apply to this
13 Court for a material witness order for this
14 witness?

15 MR. BOWEN: Sure.

16 THE COURT: Did you apply to this
17 court for extension to bring her here?

18 MR. BOWEN: Absolutely, but
19 that's --

20 THE COURT: Do you intend to
21 leave an impression --

22 MR. BOWEN: I'm going to tell
23 them exactly what you've said, but Judge,
24 let me say this. All she had to do is say
25 "I don't want to get involved" even if she

1 had no --

2 THE COURT: That's not proper.

3 MR. BOWEN: Now, wait a minute.

4 THE COURT: No, sir, you wait a
5 minute. I'm telling you that is not a
6 proper argument and I will not allow it.
7 That's outside the scope of the record in
8 this case. It's improper argument.

9 MR. BOWEN: You asked me where I
10 was going.

11 THE COURT: Bring the jury back
12 in.

13 MR. BOWEN: Okay.

14 (Jury in at 3:02 p.m.)

15 THE COURT: Ladies and gentlemen,
16 I instruct you that you are to disregard
17 Mr. Bowen's last comment as to the witness
18 Catina Jacobs, specifically his statement
19 that all she had to do was to say that she
20 did not want to get involved in this
21 matter. That's not a proper argument.
22 You're not to allow that to take any part
23 in your consideration of this case in any
24 way. It's not to play any role in your
25 deliberations in this case in any way.

1 Mr. Bowen, you may continue with your
2 argument.

3 MR. BOWEN: Thank you, Your
4 Honor.

5 When Ms. Catina Jacobs was brought --
6 she was brought here by a subpoena, I
7 believe she's testified to that. And she
8 told you what she knew, she didn't come
9 because she wanted to fly all the way out
10 here and help somebody, fool somebody on
11 the jury, or purger herself. She came here
12 because she knew what she knew and she saw
13 what she saw on that night.

14 MR. BRITT: Objection.

15 THE COURT: Sustained. Disregard
16 that last argument of the counsel for the
17 defendant, Mr. Bowen. That also is not to
18 take any part in your deliberations in this
19 case in any way.

20 Mr. Bowen, you may continue without
21 personally expressing any opinion as to the
22 credibility of any witness, you may
23 continue with your argument.

24 MR. BOWEN: She came and she
25 testified to what she herself personally

1 saw. And she came here and she testified
2 to what she herself personally heard. What
3 she personally heard and saw was that there
4 was in fact on Thursday night, the 22nd, a
5 get-together over at Kay Hernandez's
6 house. Even though that's been a while,
7 it's not hard for her to fix the date.
8 Because you see, she drove Nellie and her
9 two children and her husband to the
10 Raleigh-Durham Airport on Saturday morning
11 the 24th. And so it's not hard for her to
12 know that Friday was the running around,
13 getting ready and packing day and Thursday
14 was the final getting-together-
15 with-the-family day.

16 That was the 22nd. That was the day
17 that Catina was there. Now, in large part,
18 Catina was in the living room area with Ann
19 and with Ms. Hernandez. But, on occasion,
20 she would go back to check on the young
21 folks, back listening to the videos, back
22 at the TV, in that den area. And when she
23 would go back there, she saw the same group
24 of folks. There was Daniel, and there was
25 Bobbie Jo, on that couch. And there was

1 Monica, and there was Ebony. And there was
2 for a time, Larry Demery, sitting in that
3 chair, with that Harley Davidson hat on
4 just like that (indicating).

5 Now, through the evening, there came a
6 time when she recalls and she could hear
7 all that racket back there, she could hear
8 whose voices were back there. There came a
9 time when she heard the car that she
10 recognized of Larry Demery leave the
11 premises. It went around, you could hear
12 it crank up, you could here the raggedy old
13 engine, sounded like bad mufflers. You
14 could hear the gravel popping as it went
15 out. And she noticed that thereafter she
16 no longer heard Larry Demery's voice back
17 there, but she did hear Daniel Green's, and
18 when she checked on them, there was Daniel
19 and Bobbie Jo still there.

20 Now, Catina sort of drifted off. They
21 were watching movies in the living room
22 here, and she's not going to tell you she
23 had stayed up the whole night like Monica.
24 But she does recall, she can't tell you
25 what time, several hours had passed and

1 early in the morning, there came a ruckus
2 back there in the den. And she remembers
3 that. And when that ruckus came, she was
4 awakened enough to recall that, again, she
5 was hearing the voice of Larry Demery
6 present. And then past that hour, the car
7 left again, some 10 or 15 minutes later,
8 and thereafter she knows that neither Larry
9 nor Daniel was present.

10 You begin to look at the blind lady of
11 justice, and you begin to see that you've
12 got Larry Demery down here. And over here,
13 you've got folks like Nellie and Monica and
14 Catina who don't have a thing in the world
15 to gain here, unlike Mr. Demery, who's made
16 a deal in exchange for his -- what is
17 described as truthful testimony. Even
18 though after he made such a deal to give
19 truthful testimony, and in at least one
20 major respect when he talked to Mr. Heffney
21 on the 2nd through the 8th of May, he
22 changed that statement in such a
23 substantial way that he either had to be
24 not telling the truth at the first of the
25 statement, or not telling the truth at the

1 end of the statement, or perhaps not
2 telling the truth either place.

3 Who can you afford to rely on in this
4 case? These defense witnesses who have
5 little or nothing to gain, or Mr. Demery
6 who has his very life on the line. Now, as
7 if that's not enough, let's talk about
8 Chris Rumfelt and Mr. Stevenson. Rumfelt
9 is employed by the North Carolina
10 Department of Corrections. He's a
11 correctional officer. He works at one of
12 the North Carolina prisons. He's part, if
13 you will, of the law enforcement
14 fraternity. There's no way that you can
15 suggest that Mr. Rumfelt is not here
16 telling you simply truthfully what he
17 saw --

18 MR. BRITT: Objection.

19 THE COURT: Rephrase, Mr. Bowen.

20 MR. BOWEN: Mr. Rumfelt is here
21 under subpoena telling you that in the
22 early morning hours of the 23rd of July,
23 1993, he and his friends, Mr. Stevenson,
24 checked out early down here at Wrightsville
25 Beach, and started heading home. And

1 somewhere between 2:15 and 2:45 on that
2 morning, they started up highway 74. And
3 somewhere along about where I argue to you
4 Mr. Demery claims a red Lexus was sitting
5 beside the road at a time when Mr. Demery
6 claims it was sitting by the side of the
7 road, they came by and they stopped near
8 that place, and one of the two of them used
9 the bathroom. And the other one would not
10 use the bathroom because he saw a car, not
11 where Mr. Larry Demery says the Lexus would
12 be, but he saw a car which he cannot
13 identify, doesn't say it was a Lexus,
14 doesn't say it was red, doesn't even know
15 what it was, but it was off 50 feet or
16 more.

17 But there was a car, just not where
18 Larry Demery says. One thing for absolute
19 sure, they both agree there was not a red
20 Lexus there on the side of the road where
21 Larry Demery says at that time there would
22 have been a red Lexus.

23 Now, the gentleman, and I've forgotten
24 which one, decided he was not going to use
25 the bathroom there because somebody might

1 be in the car. They got back in their car
2 and went on down, and most of us know that
3 where they stopped was the intersection of
4 74 and 710 where the yellow blinking light
5 is.

6 MR. BRITT: Objection.

7 THE COURT: Members of the jury,
8 as I indicated to you at the outset of
9 arguments in this case, if your
10 recollection of the evidence differs from
11 that of either counsel for the defendant or
12 counsel for the State, you are in recalling
13 and remembering the evidence in this case
14 during your deliberations to be guided
15 exclusively by your recollection, and you
16 are to disregard what counsel contends the
17 evidence in this case shows if that differs
18 from your recollection.

19 Mr. Bowen.

20 MR. BOWEN: Yes, sir. They
21 stopped at a station, which is Lowry's
22 Texaco, which has a yellow blinking light.
23 Now, let me say, I argue to you that's
24 where they stopped, granted neither of
25 these men can say for sure that is the

1 store they stopped at. What they were able
2 to say for sure is that they remember the
3 yellow blinking light, and later on
4 Ms. Williamson will tell us that's the only
5 store on that road that has got a yellow
6 blinking light.

7 So they stopped there. After they
8 pulled off, here comes this Lexus in just a
9 few minutes, blasting around. They catch
10 up to it. Mr. Rumfelt doesn't mind doing a
11 little speeding. He gets in there behind
12 because he knows the officers won't catch
13 him. And when he does he sees the UNC
14 license plate, he hates UNC. They look at
15 that license plate there and they made the
16 comment to the effect that isn't that a
17 terrible shame to do to a perfectly
18 beautiful car, to put a license plate on
19 there that says UNC double zero two three
20 or triple zero two three.

21 MR. BRITT: Objection, outside
22 the record.

23 THE COURT: Objection is
24 sustained.

25 MR. BRITT: Motion to strike.

1 THE COURT: Members of the jury,
 2 you are to disregard counsel's last
 3 statement. Those matters are not to take
 4 any part in your deliberations in this case
 5 in any respect.

6 MR. BOWEN: In any respect, they
 7 testified that they saw a license plate,
 8 either UNC double zero or triple zero two
 9 three. They talked about it. Then as a
 10 matter of fact, they not only talked about
 11 it among themselves but when they got up
 12 with their friends, who was the Richard
 13 McKinney, they talked to him about having
 14 seen the Lexus, was interesting they talked
 15 to Mr. McKinney at a time before Mr. Jordan
 16 was even listed as missing, before anything
 17 had come out on the news about the car,
 18 before anything that had come out about the
 19 investigation in this case.

20 So it was something quite -- and
 21 there's three of them talk about this car
 22 that blew past them. Now, what is
 23 significant about the car? Well, look at
 24 Larry Demery's statement. Larry Demery has
 25 got them going down to Rowland. Got them

miss
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1 out in the cornfield, throwing stuff over
2 in the woods. He's got them going to the
3 waste treatment plant. He's got them
4 coming up Highway 501 and getting into the
5 Pea Bridge area that way.

6 It can't be, members of the jury.
7 It's not true. Because Chris Rumfelt and
8 Greg Stevenson, their testimony won't let
9 it be true. And they don't have an axe to
10 grind in this wide world about this case.
11 Came all the way here from Marion, North
12 Carolina under subpoena. Can you afford to
13 believe them? If you can, then the
14 evidence is rock solid that this Larry
15 Demery that the State hitches its entire
16 evidence wagon to is not telling the
17 truth.

18 And you can slice off a big piece of
19 the fish and smell it there, because it's
20 rancid. It's rotten. And if that portion
21 of it is rotten, then I will suggest that
22 the entire piece of fish is rotten.

23 Nancy Williamson tells you exactly
24 when they would have stopped, or at least
25 sets the earlier possible time they could

1 have stopped at that store with the yellow
2 blinking light. It's the only one on the
3 street, on the road. She says that they
4 get open about 15 minutes after 5:00 in the
5 morning, that's when she gets there.

6 Did Mr. Rumfelt describe the layout of
7 the store -- I mean, Mr. Stevenson describe
8 the layout of the store? You bet you.
9 Walks into the front, cash register to the
10 right, down a hall is the rest rooms. What
11 did Nancy Williamson say? That's the way
12 it is in her story. I argue to you it's
13 the same story. Mr. Stevenson can't
14 absolutely say, but he remembers that
15 blinking yellow light.

16 What happens to the car? It blows on
17 by. They follow it all the way to
18 Laurinburg. Doesn't turn there at the
19 store, it goes all the way to Laurinburg,
20 and then the Lexus turns off to the left.
21 What is that consistent with, getting to
22 Laurinburg, turn to the left. It's
23 consistent with going to South Carolina,
24 isn't it? And Mr. Rumfelt and
25 Mr. Stevenson, they turn off to the left

1 too, except they stop at a little store,
2 and then the Lexus goes on and they go
3 about their business.

4 What's the point? The point is that
5 Larry Demery is trying to put things in his
6 statement that somehow connect all these
7 things with Daniel Green. Why? Daniel was
8 from Rowland. Daniel would know the
9 Rowland area. Daniel would know about the
10 waste treatment plant. That's Daniel's
11 territory. That's why he's trying to --
12 Demery is trying to come up with a
13 statement to make it look like all this was
14 Daniel's doing.

15 But Chris Rumfelt and Mr. Stevenson
16 won't let it happen, because they went
17 straight down that highway 74, and they cut
18 off to Laurinburg. And they went to the
19 Pea Bridge that way. Did you remember how
20 evasive Mr. Demery appeared to be on the
21 connections with Highway 401? Now, he
22 pulls mobile homes. ^{why} He knows those roads.
23 He knew that 401 goes down to the Pea
24 Bridge. He knows it goes down to the
25 trailer plant where he worked. Why didn't

1 he want to admit that he was familiar with
2 that means of getting there? Because
3 that's exactly the means that they did get
4 there. If you turn left at Laurinburg,
5 that's what you do, go down 401, and you go
6 down in there that way.

7 Then you had Maryln Locklear testify,
8 folks, and this is what we talked about a
9 little earlier. And I'll skip over it
10 quickly. And that's the incident where
11 Larry Demery has tried to put on Daniel
12 Green something in fact that Larry Demery
13 did, which was to reach his hand on the
14 revolver after a little boy had smacked him
15 and said "I ought to shoot the little
16 fucker."

17 Now, you want anymore obvious example
18 of callousness than that? Moreover, Maryln
19 says that not only did she see the Lexus
20 that night about 2:00 or 3:00 in the
21 morning driven by Larry Demery, okay, now I
22 realize there's a problem with that
23 testimony, because she did not tell that to
24 the officers when they were making the
25 canvass out there that night. Maryln did

1 not say she had seen the Lexus. I argue to
2 you sometimes people don't want to get
3 involved, and they don't say things right
4 up front.

5 MR. BRITT: Objection.

6 THE COURT: Sustained. Members
7 of the jury, disregard what counsel
8 contends the evidence in this case shows or
9 means. It is for you to determine what the
10 evidence shows, and you are to disregard
11 counsel's personal expression of belief as
12 to any matter at contention or at issue in
13 this case. Mr. Bowen, you may continue
14 with the argument.

15 MR. BOWEN: In any case, Maryln
16 has come forward and testified under oath
17 that she saw Larry Demery out there at 3:00
18 in the morning, and he was riding in the
19 car. Now, Maryln's got no particular axe
20 to grind, got family out there, knows --
21 and what is interesting, when she saw him,
22 guess what? Larry was driving that car,
23 that radio was pumping real loud. That
24 remind you of anything? See, Larry Demery
25 takes things that he did and he projects

1 them, he switches them, and what he did
2 becomes the things that he claims Daniel
3 did.

4 Paul Hammerstein, he confirms all the
5 reservations and everything for Rumfelt and
6 Stevenson, and then we get into Richard
7 Locklear. Because he is 44, he's a jailer
8 now, he's a former policemen, prior prison
9 guard. And he got into a discussion with
10 Larry Demery.

11 Now, there's a little confusion about
12 exactly when this occurred. But if you'll
13 recall, and I know the State is going to
14 bring up this business about a protective
15 order and where Mr. Demery was supposed to
16 be at a particular time, but you'll also
17 recall at the outset of his
18 cross-examination that he admitted,
19 Mr. Demery admitted that at a time when he
20 was in the Department of Corrections,
21 supposedly he was brought back over to the
22 jail facility in order to be taken out to
23 his parents' home to eat dinner with his
24 mother and his father and his fiance and
25 his little bitty baby.

1 Now, Richard Locklear can't tell you
2 for absolute sure when it was that he
3 talked to Mr. Demery. Could have been that
4 time that he was pulled from over yonder
5 even under the protective order and brought
6 over to the jail. But in any case, he says
7 all I remember, it was some days after they
8 brought him back, that is, brought him back
9 to the jail facility, because obviously
10 Mr. Locklear doesn't have any access to the
11 Department of Corrections. He's a Robeson
12 County jailer.

13 What Mr. Locklear says is that he went
14 out to the rec area, he happened to see
15 Demery, couple of officers over across the
16 way, but not within earshot, and he talked
17 to Mr. Demery. He said, what do you think
18 you're going to get, or what do you think
19 is going to happen to you, or words to that
20 effect. Mr. Demery starts talking about
21 this deal that he's made with the State,
22 and he says, well, and he tells him, he
23 said, I've got all these charges, they are
24 going to roll down into 40 years and that's
25 going to be consolidated, and I'm going to

1 get a life sentence. Now, understand,
2 members of the jury, you've been told all
3 along that Mr. Demery is facing the death
4 penalty.

5 Well, if you believe Richard Locklear,
6 that ain't what Demery thinks. He says I'm
7 going to get life, and it's going to be all
8 them other 40 years is going to be
9 consolidated into it. And when I get my
10 gain time and my good time and everything
11 else I'm entitled to, and plus the two and
12 a half years that I've spent in here, they
13 are going to turn me loose in about six or
14 seven years.

15 Richard looks at him and says, you
16 sound pretty sure about that. And
17 Mr. Demery says, well, that's what Johnson
18 Britt has told us. Members of the jury,
19 Larry Demery, Larry Demery has entered into
20 a deal which on its face suggests that it's
21 more than folks are letting on. Because
22 there are provisions in there that says
23 that Larry will be forgiven and -- well,
24 not forgiven, says he will not be
25 prosecuted for any crimes which the State

1 may find out about during the investigation
2 of this case, which it otherwise did not
3 know about.

4 In other words, while Larry was out
5 admittedly engaging in a full-time life of
6 crime, whatever else if anything pops up is
7 just a free. His 240 years worth has been
8 consolidated down -- I'm sorry, 230 years
9 worth has been consolidated down to 40
10 years, saving him a hundred and ninety
11 years. And then there's a provision in the
12 deal that says that the Court, if it wishes
13 to, may consolidate that 40 years and allow
14 it to run concurrently with any sentence
15 that he gets out of this murder case.

16 Well, now, that's an interesting
17 paragraph. Right there on the face of the
18 plea bargain, that the Court may, if it
19 wishes, consolidate the 40 years into what
20 he's going to get on the murder case. How
21 do you consolidate 40 years into a death
22 penalty? Do you put him in a jail for 40
23 years and then kill him, or do you kill him
24 and then put him into a jail for 40 years?
25 It's got to contemplate on its face that

1 Larry Demery isn't going to get the death
2 penalty. Now, you got to look at this --

3 THE COURT: Members of the jury,
4 there's a matter of law the Court must take
5 up at this time. I'm going to give you
6 folks the opportunity to take the afternoon
7 recess at this time. Please recall that it
8 is your duty to abide by all prior
9 instructions of the Court concerning your
10 conduct. Everyone else please remain
11 seated, the members of the jury are
12 excused. Folks, I'm going to give you
13 until 15 until. If you'll report to the
14 jury room at that time. You folks are
15 excused at this time.

16 (Jury out at 3:24 p.m.)

17 THE COURT: Let the record
18 reflect that the following is being
19 conducted in the absence of the jury.

20 Mr. Bowen, under the case law of North
21 Carolina, there is almost no restriction
22 that the Court can place on the argument of
23 counsel in cases in which the death penalty
24 is the possible penalty. That's a
25 situation that the client finds himself

1 in. He is faced with a charge of first
2 degree murder, robbery with a dangerous
3 weapon, and conspiracy to commit robbery
4 with a dangerous weapon.

5 We are at a stage in the proceedings
6 where the jury has the awesome
7 responsibility of determining the issue of
8 guilt or innocence as to those charges. If
9 a verdict of guilty is returned as to the
10 charge of first degree murder in any case,
11 under our law that necessarily requires
12 that a sentencing hearing be held. And
13 during that sentencing hearing, both the
14 State of North Carolina and the defendant
15 involved in that case would have the
16 opportunity to present any evidence in
17 aggravation or mitigation as set out in our
18 statutes here.

19 I'm not a position at this time to
20 curtail in any respect your argument to the
21 jury, but that last argument to the jury,
22 and I want to go to the record if you'll
23 bear with me.

24 I'm at page 184, line 20. There's a
25 provision in the deal that says that the

1 Court if it wishes to may consolidate that
2 40 years and allow it to run concurrently
3 with any sentence that he gets out of this
4 murder case. Well, now, that's an
5 interesting paragraph. Right there on the
6 face of the plea bargain that the Court
7 may, if it wishes, can consolidate the 40
8 years into what he's going to get on the
9 murder case. Now, how do you consolidate
10 40 years into a death penalty? Do you put
11 him in jail for 40 years and then kill him
12 or do you kill him and then put him in jail
13 for 40 years?

14 Are you familiar with the law of North
15 Carolina as it relates to a sentence of
16 death?

17 MR. BOWEN: Sure.

18 THE COURT: Are you familiar with
19 the law of North Carolina as it relates to
20 the imposition of an active term in a death
21 sentence?

22 MR. BOWEN: Absolutely.

23 THE COURT: Are you saying that
24 that can't be done under North Carolina
25 law?

1 MR. BOWEN: Can be done, but if
2 the prosecutor chooses to pull his punches
3 picking the jury, it will never happen.

4 THE COURT: Let's not change the
5 subject. Are you saying that can't be done
6 consistent with the plea arrangements in
7 this case?

8 MR. BOWEN: It can be done if
9 the --

10 THE COURT: Then why are you
11 arguing to the jury on the face of the
12 document it's got to contemplate on its
13 face that Larry Demery isn't going to get
14 the death penalty? Where do you get the --

15 MR. BOWEN: This notion that
16 you're going to consolidate some 40 years
17 into a --

18 THE COURT: There's no notion
19 that I'm going to --

20 MR. BOWEN: That's right, says it
21 is entirely discretionary.

22 THE COURT: Yes, sir. You're
23 arguing to the jury, first of all, that
24 that's a foregone conclusion, and secondly
25 you're arguing that if that were to occur,

1 that under the law of this state, the death
2 penalty could not be imposed. Where is the
3 authority for that?

4 MR. BOWEN: Could not be
5 imposed -- will not be imposed if the
6 prosecutor seeks to pick the kind of jury
7 that will not impose it.

8 THE COURT: Where is any evidence
9 in this case that supports that contention
10 in this case?

11 MR. BOWEN: Oh, I think --
12 personally I think the evidence is all over
13 the place that they intend to let Larry
14 Demery get out of this thing light
15 because --

16 THE COURT: Mr. Thompson, are you
17 a party to this argument? I'm asking you
18 on the record, are you a party to this
19 argument?

20 MR. THOMPSON: What does the
21 party to the argument --

22 THE COURT: Do you share in the
23 position taken by your co-counsel?

24 MR. THOMPSON: With respect to --

25 THE COURT: There being some

1 implicit deal in this case on the part of
2 the State or any implicit deal that would
3 prohibit the imposition of the death
4 penalty under our law.

5 MR. THOMPSON: No, I know you can
6 consolidate and run a 40 year sentence with
7 the death penalty.

8 THE COURT: Yes, sir. I take it
9 you're not a party to this aspect of the
10 argument?

11 MR. THOMPSON: My position is as
12 I just stated.

13 THE COURT: All right. Folks,
14 I'm not going to curtail your argument in
15 this case because to do so would violate
16 the case law, and I think would deny your
17 client his rights. I'm not going to allow
18 you to argue improper matters to this
19 jury. And as I indicated to all counsel at
20 various stages of these proceedings,
21 because of the interest of the Court in
22 protecting both the rights of the State and
23 the defendant in this case, the Court will
24 not take any action regarding any
25 disciplinary measures or any action

1 regarding any violations of the code of
2 ethics or the code of professional
3 responsibility during the pendency of the
4 case, but the Court reserves the right to
5 do so after the conclusion of this case.
6 Do I make myself clear?

7 MR. BOWEN: Yes, sir.

8 THE COURT: We're at ease.

9 THE BAILIFF: Court stands at
10 ease.

11 (Brief recess.)

12 MR. BOWEN: I would like to be
13 heard a moment before the jury comes back.

14 THE COURT: Yes, sir. I need
15 Mr. Johnson Britt in and Mr. Green in.
16 These folks want to be heard.

17 Let the record reflect all counsel are
18 present, the defendant is present in open
19 court. All members of the jury are absent
20 at this time. Mr. Bowen?

21 MR. BOWEN: Yes, sir, Your Honor,
22 upon consideration and talking with
23 co-counsel and so forth, I see exactly what
24 the Court is talking about from the
25 standing that, technically, one in fact can

1 consolidate 40 years into a death
2 sentence. I just personally hadn't had
3 that experience, and I see now from a legal
4 standpoint that you can. So what I want to
5 leave of the Court to do is to, in addition
6 to your instructions, for me to be able to
7 explain to the jury that I was simply wrong
8 telling them that.

9 THE COURT: I'll give that you
10 opportunity, Mr. Bowen.

11 MR. BOWEN: And what I want to do
12 is let Your Honor kind of know where I want
13 to go with this so we don't run into it
14 again. What I really want to talk about is
15 the reasonable expectations on the part of
16 Mr. Demery --

17 THE COURT: Mr. Bowen, you've got
18 a record. The record consists of the
19 testimony of the witnesses presented, any
20 exhibits that were offered into evidence in
21 this case. You've got the testimony of
22 Richard Locklear, got the testimony of
23 Mr. Demery on cross-examination. Those
24 matters are permissible matters for
25 purposes of argument.

1 MR. BOWEN: Yes, sir.

2 THE COURT: You can submit, you
3 can contend to the jury anything that you
4 think is appropriate as to a direct result
5 of the evidence presented in this case,
6 reasonable inferences be drawn from the
7 evidence. You are on safe grounds when you
8 were arguing Mr. Demery's expectations
9 based on your contentions.

10 MR. BOWEN: Yes, sir.

11 THE COURT: Where you got into a
12 problem was arguing to the jury or
13 suggesting to the jury two things: One,
14 that the law wouldn't permit it, and then
15 arguing what has to be a personal belief
16 that he was going to get the death
17 penalty -- or was not going to get the
18 death penalty.

19 MR. BOWEN: Yes, sir.

20 THE COURT: And I suspect that
21 you were headed toward what you indicated
22 to me in your exchange with me in the
23 absence of the jury, that the State
24 intended to pick a jury to see to it that
25 that would happen. That clearly would be

1 improper.

2 MR. BOWEN: Actually, I wasn't
3 going that far, but I was going to point
4 out, for example, elsewhere in the case
5 they had seen where Rick Hales, who was
6 facing dozens and dozens and dozens of
7 years and actually got off, not
8 withstanding the law mandatory minimums,
9 with about 23 days.

10 THE COURT: Anything in the
11 record by the way of evidence, any
12 reasonable -- and I want to emphasize that
13 word -- inferences to be drawn from the
14 evidence, are permissible matters for
15 argument. The matters you were getting
16 into were outside the scope of the record.
17 Dealt with personal expressions of belief
18 and were not consistent with North Carolina
19 law.

20 MR. BOWEN: Well, I see that now,
21 Your Honor. I apologize to the Court, and
22 I'm proposing to apologize to the jury with
23 as much sincerity and I appreciate you
24 letting me do so.

25 THE COURT: I'll give you that

1 opportunity.

2 Anything further from counsel in that
3 regard?

4 MR. BRITT: Yes, sir. Just so
5 the record will reflect. It's quarter
6 until 4:00. Mr. Bowen, in essence, has
7 called me a liar, he's called me a cheat.
8 He said I perpetrated a fraud on this
9 court. And when they conclude their
10 closing arguments today, I am going to ask
11 the Court, I'm doing so now, to allow me to
12 argue in the morning, because I am very
13 angry, as I told you during the break, I
14 don't care what the rules are at this
15 juncture, and --

16 THE COURT: As I indicated to you
17 in the break, I understand what you're
18 saying, but we are bound to act within the
19 rules of professional responsibility to
20 conduct ourselves in a professional manner.

21 MR. BRITT: That's why I'm asking
22 the Court to let me argue in the morning.

23 THE COURT: Yes, sir. You folks
24 want to be heard as to that?

25 MR. BOWEN: No, sir.

1 THE COURT: That will be
2 allowed. Bring the jury back in.

3 (Jury in at 3:45 p.m.)

4 THE COURT: Mr. Bowen, consistent
5 with your request, the Court is going to
6 withhold any instruction. You may continue
7 at this time.

8 MR. BOWEN: Thank you, Your
9 Honor.

10 Members of the jury, let me say that
11 just before the break in argument here
12 almost all day, as I'm sure you're
13 painfully aware, I said something regarding
14 what the State of the law in North Carolina
15 was. And I'm simply wrong. I told you
16 about consolidated 40 years with the death
17 penalty, and in fact under the law of North
18 Carolina, that is possible to do. And my
19 statement was in error, and I apologize to
20 you. I retract that statement, and I say
21 again, one can consolidate a death penalty
22 with 40 years. I was in error, and I have
23 learned that point of law.

24 Members of the jury, what I really
25 wanted to talk to you about is what kind of

1 expectation Mr. Demery had when he entered
2 into his agreement with the State and what
3 he was expecting from the State.

4 Now, all you gōt to do is look at the
5 evidence in this case to see that sometimes
6 people can get some extraordinary
7 consideration from the Court. Let's take
8 Rick Hales, for example. Remember Rick
9 Hales? He was the person that had all
10 those dozens of years of mandatory minimum
11 sentences that he was looking at. Remember
12 what he served? 23 days. Now, when you're
13 looking at it from Larry Demery's respect,
14 it's easy for Larry Demery to believe, or
15 to infer that --

16 THE COURT: Mr. Bowen, rephrase,
17 please. You may submit, you may argue, you
18 may contend.

19 MR. BOWEN: I contend that Larry
20 Demery can believe that marvelous things
21 can be done for him on sentence
22 concessions, as in fact on the face of the
23 plea bargain they already have been, taking
24 230 years worth of potential sentence and
25 dropping it to 40 years, would you agree is

1 a pretty substantial concession? And you,
2 members of the jury, can consider those
3 kinds of concessions, and you can consider
4 what kinds of expectations you find from
5 the evidence that Larry Demery may have in
6 deciding whether in giving these statements
7 here on the witness stand, he is telling
8 the truth because of what he has to gain,
9 or lose as to case may be.

10 We have talked about a reasonable
11 doubt. Evidence beyond a reasonable doubt
12 is that which entirely satisfies, which
13 fully confines or fully convinces, entirely
14 satisfies, either way, you from the
15 evidence that the State's case has been
16 proved. And you can consider the evidence
17 or the lack of evidence in basing your
18 decision. A reasonable doubt is a doubt
19 based on reason and common sense, not a
20 vain, imaginary, fanciful doubt, but an
21 honest misgiving about some or part of the
22 evidence or a lack thereof.

23 I argue to you that all amounts to
24 when you go to sleep at night, when you're
25 in that twilight between wakefulness and

1 sleep, will the decision that you make come
2 back to haunt you in the form of a
3 question? "I wonder if I did the right
4 thing." Lady justice is stepping in
5 blind. Blind to color, blind to religion,
6 blind to nationality, blind to all things
7 except the evidence as you will find it or
8 the lack thereof.

9 Members of the jury, Mr. Thompson
10 first argued to you in opening statement he
11 didn't deny that Daniel Green rode in a car
12 that wasn't his. I argue to you now that
13 that was wrong. He didn't deny that
14 Mr. Green made telephone calls on a line
15 with an instrument that wasn't his. I
16 argue now to you that that was wrong. He
17 didn't deny that when his friend
18 desperately called on him, that he went out
19 that early morning and may even have helped
20 dispose of a body. And that was wrong.

21 If from the reasonable doubt in this
22 case you find it as your duty to acquit
23 Daniel Green, do not leave here thinking
24 that he is gone and punished. Come this
25 summer, he would have been in jail three

1 years. Don't think if you leave here
2 having found Daniel Green not guilty that
3 Mr. Jordan will have gone unavenged. The
4 State has Larry Demery.

5 Remember, ladies and gentlemen, that
6 Larry Demery was the first suspect in this
7 case -- well, let me drop back and say,
8 from the evidence, which one of these two
9 defendants is it in evidence got advised of
10 their rights? Did Daniel get advised of
11 his rights? Huh-uh. Came to his house
12 saying they were looking for parts for a
13 car, took him voluntarily. Kept repeating
14 to him that he was not under arrest. Larry
15 Demery, first thing they did when you heard
16 his statement was what? They advised him
17 of his rights. What do you do when you
18 advise them of their rights? You advise
19 them they are in custody and they either
20 have been or will be arrested, right?
21 Well, doesn't that tell you something? And
22 the State's still got Larry Demery. And I
23 propose to you Larry Demery isn't going
24 anywhere.

25 Put these folks on the blind lady of

1 justice scale, and put Larry Demery over
2 here, because all the officers and all the
3 experts and everything can do no more than
4 simply help Larry Demery a little bit.
5 State's case is Larry Demery, and he's here
6 (indicating). Defense's case is Rumfelt
7 and Stevenson, it's Richard Locklear, it's
8 Monica. It's Sebette. It's Catina Jacobs,
9 all the way from California. And it's
10 Nellie. And who do you feel comfortable
11 believing, on which side of this case?

12 State was all over Richard Locklear
13 over the fact that Mr. Britt had prosecuted
14 Mr. Locklear, and the State asked
15 Mr. Locklear, aren't you just here because
16 you're angry with me? Mr. Locklear said,
17 no, not angry at you. I feel sorry for
18 you. Powers that be caused you to come
19 after me. But I don't like the fact that
20 you had the videotape in your file showing
21 that I didn't do this rape that they
22 charged me with, and you prosecuted me
23 anyway. And the jury found me not guilty
24 in less than 15 minutes.

25 See, Mr. Locklear was a good officer

1 in the town of Whiteville until he stepped
2 forward and exposed corruption in the
3 department and got the chief and the
4 assistant -- and the sergeant an early and
5 unexpected invitation to resign. And then
6 all of a sudden, a couple of misdemeanor
7 assaults from 10 or 12 years ago, and an
8 instance where he repossessed a car, and a
9 worthless check, and one harassing
10 telephone call, all of a sudden was dredged
11 up on his record, and suddenly they went
12 after him to take his police certification
13 away, even though up until that time he
14 wrote the letter to the City Hall, he had
15 never had a problem on his personnel record
16 except, of course, with the job prison
17 part, where he had apparently been going
18 with a girl he didn't know had a family
19 relationship with one of the inmates. And
20 this was unfortunate. But that was not
21 anything particularly that he is doing.

22 He even came forward at his job at the
23 Robeson County jail and exposed a bribe, a
24 big one. I'll tell you what, they claim
25 that everybody has got their price, but one

1 thing we know, Richard Locklear's is way
2 beyond six figures. And he turned it in to
3 the authorities here, and he's still
4 employed. And when he applied for the job
5 out here in Robeson County, he disclosed
6 where he lived and what he had done. And
7 if they had a quarrel here with anything in
8 his past, all they had to do is not hire
9 him. Not only have they hired him, but
10 they have not fired him. When you hear
11 Mr. Britt attempt to beat up on
12 Mr. Locklear, I argue to you we would be
13 better off if there were a lot more
14 Mr. Locklears.

15 Members of the jury, this fish has
16 been sitting here right a good while. You
17 were probably wondering if I would ever
18 come back to him. But, you know, Earnest
19 Hemmingway wrote a book about the Old Man
20 And The Sea. Old man caught a great big
21 fish, not unlike this one that we've had
22 here hanging in our imaginations. If you
23 recall that story, the old man did his very
24 best to pull that fish in on that tiny
25 little boat. And he pulled and he pulled,

1 and he fought the raging seas. He fought
2 the weather, he fought all the elements, he
3 never would give up. And finally he got
4 that fish to shore. Just like the State
5 and the defense is finally about to rest
6 this case and put it in your solemn hands.

7 But you'll recall The Old Man And The
8 Sea, by the time he got the fish to shore,
9 the small fish had eaten the carcass away.
10 And there was nothing left. You remember I
11 told you that the fish would symbolize the
12 State's case? Well, while we've been
13 talking, little fish have been eating it.
14 The little fish are called reasonable
15 doubts. They are little fish like the
16 vacuum cleaner, little fish like the little
17 bullet that didn't match the gun, and
18 little fish like the identification that
19 couldn't be made. And little fish like the
20 alibi that put Daniel somewhere else, not
21 by two or three but four or five people.
22 Reasonable doubts like if the State wants
23 to quarrel with why we didn't call the rest
24 of them, why didn't they.

25 All those little fish have been eating

1 away on the State's carcass of this case.
2 And by the time we get it to shore, there
3 be will be nothing but bones left of the
4 State's case. You got no body of evidence
5 anymore. And without that body of
6 evidence, you cannot convict Daniel Green.
7 You may not like Daniel Green. May not
8 like his shoes, may not like his haircut,
9 may not care for his religion. Lady
10 justice is blind. And for that purpose,
11 you too are blind only to the evidence.

12 The case is now with you. Each and
13 every one of these individual sources of
14 reasonable doubt, each one by itself is
15 sufficient for you to say I cannot convict
16 because I have a reasonable doubt in this
17 case. There are dozens. There may be more
18 than dozens. Think about it, pick them
19 out.

20 Now, we don't get to argue again.
21 Mr. Thompson will have a shorter argument.
22 I know you're rejoicing in that. Mr. Britt
23 will argue to you. Law will not allow us
24 to get up and rebut anything Mr. Britt has
25 to say. So I want to say is this: If he

1 raises some point I haven't touched on,
2 Lord knows it ain't because I haven't
3 tried. And just think of what the defense
4 might have argued, what the defense's
5 position might be on that, and go on if you
6 will. Think of it -- think of lady blind
7 justice, close your eyes; don't put Daniel
8 Green's face on this case, put any man or
9 any woman's face on this case. Judge it
10 only on the evidence.

11 Again, if I've done something to
12 distract you and irritate you, I probably
13 have, I'm sorry, don't hold it against
14 Daniel, he didn't do it. Thanks. Thanks.

15 THE COURT: Mr. Thompson.

16 MR. THOMPSON: May it please the
17 Court, Mr. Britt, ladies and gentlemen of
18 the jury. This will be the last
19 opportunity that I will have a time -- a
20 chance to talk to you, to submit to you
21 what the defense contends the credible and
22 the believable evidence will show.
23 Mr. Bowen has already talked to you in
24 detail about what the defense contends the
25 evidence will show. I will only talk to

1 you a little about the things that we
2 discussed early on during jury selection,
3 and very briefly mention a few things,
4 evidentiary matters, so as not to be
5 redundant, repetitive, and to finish the
6 defense's closing statement to you.

7 Perhaps the greatest calamity that can
8 befall a human being is to be charged with
9 the capital offense of first degree
10 murder. The accusation is lodged by the
11 arm of the State, and the subject is
12 accused by the awesome power and reach of
13 the State. He is brought to court, the
14 powers amassed against the accused, and it
15 is amassed against them by the prosecutor,
16 the police, and even oftentimes by the
17 public. Accusations.

18 If it only suffice one to be accused,
19 then what will become of the innocent. Our
20 government is a system of laws and not of
21 men, and then there is this solemn oath
22 that you, ladies and gentlemen of the jury,
23 must and do take, and did take. The oath
24 that the citizens of this state as the --
25 as a jury, will follow the law, will use

1 their common sense in being or
2 participating in trials such as this, so
3 that the awesome power of the State may be
4 watched, may be judged, and may be properly
5 looked at in light of the accused, the
6 accusations that are lodged against the
7 defendant.

8 Now, ladies and gentlemen of the jury,
9 during jury selection, we talked to you
10 about, under our system of jurisprudence,
11 certain principles, presumption of
12 innocence, reasonable doubt, we went into
13 detail with you about that. We talked to
14 you, you said you understood it. And you
15 acknowledged that in order for the system
16 of laws to work for this to be a government
17 and of laws other than of just men, that we
18 have to follow rules. We have to follow
19 procedures. And we talk about the tools
20 that we use, some tools that we used as
21 well as the rules, and how we have
22 different jobs.

23 The attorneys, the lawyers, the Judge,
24 and you the jury. We talked about how the
25 Judge sits as actually the law-giver. He

1 decides what the law is in the case. And
2 regardless of what you want the law to be,
3 the defense wants the law to be, the State
4 wants the law to be, the law is as his
5 Honor will give it to you. And after I
6 argue and Mr. Britt argues, there will be
7 an instruction, or instructions, which will
8 be given to you as to the law, but we
9 talked about a little of that on jury
10 selection.

11 We talked about what the lawyers' jobs
12 and duties were in this case, and that was
13 to present the evidence through witnesses,
14 through exhibits; and we talked about what
15 evidence was, and that evidence in and of
16 itself was not a fact, because if it were,
17 we wouldn't need you. Evidence only tends
18 to prove or disprove a fact. We talked
19 about that. And you said you understood
20 that.

21 And then we talked about you and what
22 your job was to be. And that is you decide
23 what the facts are in the case. His Honor
24 can't tell you what the facts are. I can't
25 tell you what the facts are. Neither can

1 the State tell you what the facts are. We
2 can only, during this stage of the
3 proceedings, submit to you what we contend
4 them to be and what we contend the logical
5 and reasonable inferences from the evidence
6 that you've already heard.

7 Now, you have during this trial, and
8 we've observed that, have taken notes. And
9 so 12 of you will go and deliberate and
10 because you have taken notes, you should be
11 fully equipped in deliberating with each
12 other to discuss what if anything you
13 understood or heard the evidence and what
14 you contend the facts to be. But I say to
15 you and submit to you that oftentimes, and
16 we talked about this, you have to sift, if
17 you can, the truth from fiction. And
18 oftentimes that is very difficult to do,
19 particularly when it comes to the accused.
20 And you having to decide a verdict in this
21 case based on the rules.

22 The State must prove to you beyond a
23 reasonable doubt that my client is guilty
24 of each charge lodged against him. And in
25 so doing, they have to satisfy you beyond a

1 reasonable doubt of each element of each of
2 those charges. He's been accused and
3 charged with first degree murder, and the
4 State is proceeding under two theories.
5 First degree premeditation and deliberated
6 murder. We talked about that. They are
7 also proceeding under an alternate theory
8 of felony murder first degree murder, and
9 that is, we talked about that, a murder
10 committed during the perpetration of
11 another felony. And in this instance, the
12 State is contending that felony was an
13 armed robbery.

14 The State has to prove to you beyond a
15 reasonable doubt that he's guilty of an
16 armed robbery or robbery with a firearm or
17 dangerous weapon. And the State must prove
18 to you beyond a reasonable doubt each and
19 every element of the offense of conspiracy,
20 felonious conspiracy. That is a burden
21 which never shifts, it always remains right
22 here, literally, right here with the
23 State. And we talked about that.

24 And we talked about the kind of tools
25 that lawyers use. Direct examination. We

1 talked about that. Direct examination
2 where a party presents its evidence to you,
3 and then the opposing parties use the tool
4 of cross-examination. And that is a tool
5 that we talked about, if you remember
6 ladies and gentlemen of the jury, which
7 tests the veracity, it tests the
8 credibility, it tests the ability of the
9 witness to perceive, to remember, to
10 recall. And these are the tools that we
11 use just like the carpenter, just like the
12 mechanic uses tools in his trade or her
13 trade. So do we use tools in this
14 profession, and so do we have our different
15 jobs and positions with respect to making
16 sure that the system works for everybody by
17 the same rules and by -- and with the same
18 principle.

19 Now, ladies and gentlemen of the jury,
20 the defense submits that the State has
21 miserably failed in proving to you beyond a
22 reasonable doubt that our client is
23 guilty. We talked about that's the
24 standard, we talked about it, reasonable
25 doubt. It's not -- you can't find our

1 client guilty simply because it seems like
2 he's guilty. That's not the standard. You
3 can't find our client guilty simply because
4 he might be guilty. That's not the
5 standard. You can't find our client guilty
6 simply because you feel he probably is
7 guilty. The standard is whether the State
8 has satisfied you, each of you, beyond a
9 reasonable doubt that he is in fact guilty
10 of what he's charged with. That's the
11 standard. And reasonable doubt is not
12 something imaginary, it's not something
13 fanciful. It is a common sense kind of
14 thing. Ladies and gentlemen of the jury,
15 it's the kind of standard that you apply in
16 many of your daily decisions. That's what
17 reasonable doubt is. And if you have a
18 reasonable doubt as to the guilt, then you
19 must find our client not guilty.

20 We suggest to you that there's plenty
21 of doubt which arises from the State's
22 evidence or from the lack of the State's
23 evidence. You see, ladies and gentlemen of
24 the jury, the State has presented to you
25 Larry Martin Demery. And if his testimony

1 doesn't provide the reasonable doubt,
2 ladies and gentlemen of the jury, and we
3 contend that it does, serious doubt, then
4 you will have to look not only at his
5 testimony but at also the other evidence.

6 But let's look at Larry Demery.
7 Ladies and gentlemen, let's look at his
8 pedigree. What he is, what he's made of.
9 You heard him. He's a thief, I suggest to
10 you, the defense suggests to you. That's
11 his pedigree. Look at what he's done in
12 his own home. Deadbolts, padlocks, the
13 kind of things that I dare say any mother
14 or father, or very few, would put up, would
15 become a hostage in their own home to have
16 to use deadbolts and padlocks to keep this
17 scoundrel out of their room from stealing
18 from them.

19 That's his pedigree. That's the kind
20 of individual that the State will be urging
21 you to put your stock in, ladies and
22 gentlemen of the jury. That's the kind of
23 pedigree. What's his pedigree? Larry
24 Martin Demery is not only dangerous, but
25 he's violent. You heard him. He's

1 threatened his father. Hundreds of times.
 2 Threatened to kill him. Hundreds of
 3 times. Ladies and gentlemen, that's his
 4 pedigree. He's a thief. He's dangerous.
 5 He's violent.

6 What is his pedigree? 1991 and 1992,
 7 Larry Martin Demery, breaking into the
 8 Union Mart. David Locklear. That's his
 9 pedigree. Breaking into Jones Grocery,
 10 Viola Locklear's store. That's his
 11 pedigree. Assaulting or robbing Wilma Dial
 12 and pleading guilty not just to any
 13 assault, but assault with a deadly weapon,
 14 with intent to kill, inflicting serious
 15 injury. That's Larry Demery's pedigree.
 16 Breaking and entering into the residence of
 17 Larry Oxendine. That's Larry Demery's
 18 pedigree. That's who the State wants you
 19 to put your stock in.

20 Don't do it, ladies and gentlemen of
 21 the jury, because you can't trust Larry
 22 Demery. His parents couldn't trust him.
 23 His dad and mother didn't trust him, ladies
 24 and gentlemen of the jury, and you ought to
 25 put a padlock and you ought to put a

1 deadbolt around Larry Demery's testimony or
2 around yourself so that he doesn't get in,
3 because you can't trust him. What's his
4 pedigree? He can't -- he won't tell you
5 the truth. That's Larry Demery's
6 pedigree. He's untruthful. You've heard
7 him. Mr. Bowen has gone through a number
8 of his inconsistent statements.

9 Ladies and gentlemen of the jury,
10 you've taken the notes and I dare say I'm
11 going to go through them one by one. You
12 heard me cross-examine Mr. Demery, and I
13 believe you know his pedigree.

14 MR. BRITT: Objection to
15 Mr. Thompson's belief.

16 THE COURT: Restate,
17 Mr. Thompson.

18 MR. THOMPSON: Sorry, Your Honor.

19 Ladies and gentlemen of the jury, I
20 submit to you that you know his pedigree.
21 And let me say again, it's not what -- and
22 it's improper for you, for me to inject my
23 personal beliefs or for Mr. Britt, this
24 part of the proceedings is the part where
25 the State and the defense will submit to

1 you what its contentions are with regard to
2 the evidence. And if I imply anything
3 else, that's not my intentions. I'm
4 submitting to you, however, that he's shown
5 his pedigree. He's shown it at home. He's
6 shown it in his community. And ladies and
7 gentlemen of the jury, he's shown it after
8 he cut the deal with the State when he said
9 he was going to tell the truth, and he
10 didn't, with Mr. Heffney. He still changed
11 his story. He's untruthful.

12 Ladies and gentlemen of the jury, his
13 pedigree is this: Larry Demery, you can't
14 believe Larry Demery, and even if you
15 believe bits and parts or any part of what
16 he says, the other parts you can't
17 believe. Now, I'm -- the defense suggests
18 to you that that's the real danger, that's
19 the real danger in a Larry Martin Demery,
20 because you've got to sift through all of
21 the different statements and you've got to
22 buy in to one.

23 But I suggest to you ladies and
24 gentlemen of the jury that should cause you
25 the reasonable doubt in this case. Just a

1 few things during that cross-examination,
2 that I submit to you, you're satisfied are
3 just, just not true. First thing, this
4 truck. This truck. I submit to you,
5 ladies and gentlemen of the jury, that the
6 diesel engine running, the truck that had
7 the lights on that was about 40 feet, and
8 with the help of these ceiling tiles up
9 here, we know how far that truck was from
10 that Lexus, according to Larry Demery.

11 But ladies and gentlemen, do you
12 really believe there was a truck? I submit
13 to you it didn't happen and it wasn't
14 there. The cornfield. The cornfield?
15 Where the credit card were supposed to have
16 been thrown out. The cornfield where the
17 Lexus was supposed to have been taken, and
18 they went into the trunk, supposedly,
19 Mr. Demery went into the trunk, and he
20 says, our client went into the trunk. The
21 cornfield doesn't exist, ladies and
22 gentlemen of the jury.

23 Excuse me, Your Honor.

24 Co-counsel said it's a cornfield all
25 right, but it's a field of dreams. Just

1 didn't exist. But that's Larry Demery's
2 pedigree. Ladies and gentlemen of the
3 jury, look at his pedigree, his mental
4 state. His dad and mother had him go and
5 seek counseling and mental health services
6 because of what he told you out of his own
7 mouth, they wanted to find out what in the
8 world was it that caused Larry Demery to
9 behave the way he behaved. The stealing,
10 the threats, the violence. He said from
11 his own mouth, his own daddy told him he
12 wished he had never been born. That's his
13 pedigree. That's what his parents think
14 about him, ladies and gentlemen of the
15 jury. What is it that's been introduced at
16 this trial through Larry Demery that would
17 cause you to think any more?

18 That's his pedigree. We talked about
19 the cornfield. You know, there's another
20 thing in this state-- and you can look at
21 the demeanor of a witness. We talked about
22 the tools that you can use during this
23 trial in trying to determine what the truth
24 is, what the facts are. You can look at
25 the demeanor of the witness. You can look

1 at Larry Demery. Not only did you hear him
2 tell you things that weren't true, you saw
3 it. You saw it.

4 That's his pedigree. But then again,
5 ladies and gentlemen of the jury, the State
6 does some other things in its case. I
7 submit to you that the very people who are
8 here to serve and protect us, law
9 enforcement, have done some things in this
10 case, perhaps in the zealously of trying
11 to solve crime. And that's their duty. We
12 submit, but in their zealously and -- I
13 told you about the arm of the State, also
14 the power of the State. They are the
15 first, ladies and gentlemen of the jury, to
16 approach and question, oftentimes, the
17 accused, the defendant. They are the ones,
18 ladies and gentlemen of the jury, who
19 decide who to interview, I submit to you,
20 who not to interview. They are the ones,
21 ladies and gentlemen of the jury, as so
22 vividly a couple of law enforcement
23 officers in this case suggested will give
24 you the choices.

25 Art Binder, two choices. It's either

1 you or him. Those are the choices. Those
2 are the people, ladies and gentlemen of the
3 jury, who as Don Smith said, you know, when
4 we get before a jury, hey, we've been there
5 before. We're polished. We're law
6 enforcement. And behind that badge, there
7 is an indicia of honesty, of integrity.

8 But ladies and gentlemen of the jury,
9 just by way of example, this is the kind of
10 overreaching that I suggest to you is
11 indicative in this case. Officer Heffney.
12 Do you recall, ladies and gentlemen of the
13 jury, Larry Demery having made a statement
14 about this cornfield that existed between
15 Rowland and 74, and on August the 15th, he
16 took law enforcement out there. This is
17 where the cards were supposed to have been
18 thrown. And he went with Barry Lea and
19 Mark Locklear, as I recall it, first he
20 said Barry Lea and Anthony Thompson, then
21 he changed and said it was Mark Locklear,
22 said he didn't get out of the car, they
23 didn't get out of the car.

24 Now, law enforcement, this is what he
25 says on August the 15th, 1993, the cards

1 are thrown out. And by the way, on the
2 edge of the cornfield. On the edge of the
3 cornfield. And no search is conducted.
4 But this is what Mr. Heffney would have you
5 believe why they weren't found in May of
6 1992. In response to Mr. Bowen's
7 question --

8 THE COURT: Mr. Thompson, did you
9 say May of 1992, sir?

10 MR. THOMPSON: May of 1995, thank
11 you, Your Honor.

12 Was a cornfield located which
13 contained credit cards or other objects
14 related to this case?

15 Mr. Heffney: A cornfield was located,
16 but as far as being able to find the credit
17 cards, they were not located simply because
18 on or about May 2nd of 1995, after the
19 interview, myself, Detective Anthony
20 Thompson, along with Larry Demery went to a
21 loop road off of Highway 301. This area,
22 Mr. Demery pointed out a turn off the dirt
23 road into a cornfield. And beside the
24 cornfield there was a row of trees. This
25 area at that time of the year had grown

1 up. We were unable to find anything in
2 that particular location, is what
3 Mr. Heffney testifies to.

4 We again went down, further down the
5 road and located a clearing or a path for a
6 car that's also where the cornfield was
7 located. This is what a law enforcement
8 officer is telling you why the credit cards
9 weren't found. Simply because of this.
10 Again, due to the growth, we were unable to
11 locate any credit cards. This is in May of
12 1995, granted. Subsequently, we found out
13 who owned the property. My recollection
14 serves me correct, it was a Mr. Pate.
15 Myself and Mr. Thompson went to Mr. Pate
16 and he went with us out to the property.

17 Owner of the property took us to the
18 cornfield, the path there I described. We
19 were advised by the owner that the fall,
20 during the fall of 1994, he had burned the
21 undergrowth in the cornfield and in the
22 tree line. And at this time the vegetation
23 had just started growing and there was corn
24 in the field. We discussed the possibility
25 of using a herbicide, Round-Up, to kill the

1 vegetation, and in hopes to get a closer
2 examination of the ground to try to find
3 the credit cards.

4 But due to the fact that there was
5 corn in the field, growing corn in the
6 field, I felt that the possibility of
7 losing the corn far outweighed the
8 possibility of finding credit cards.
9 Simply because now, and as I mentioned
10 prior, the owner of the property advised
11 that he had burned the undergrowth during
12 the fall of 1994.

13 Now, ladies and gentlemen of the jury,
14 there's some folks up the road who either
15 think that we down here in Robeson County
16 ain't never come out of the cornfield, or
17 must think we have never been in one. Can
18 you believe that? That's the explanation
19 that this officer gave for not finding
20 credit cards in a cornfield that Larry
21 Demery told him exists. And they never
22 went out and searched it in 1992. Ladies
23 and gentlemen of the jury, this is an
24 example of reaching. Simply because.

25 Ladies and gentlemen, you've heard it

1 before, if you can't trust the message, you
2 can't trust the messenger. It won't work.
3 If you can't trust the messenger, Larry
4 Demery, you can't trust the message. And
5 if the message is so convoluted and full of
6 falsities, you really don't know, and you
7 really don't know which one or which story
8 to rely on, you can't trust the message.

9 Now, ladies and gentlemen of the jury,
10 what does all that have to do with this
11 case? And I hope to be closing very soon,
12 because I think -- I suggest to you that
13 you understand the problem that the State
14 has with Larry Demery. You understand some
15 of the things that as I indicated law
16 enforcement officers or agents of the State
17 have done in reaching. Mr. Bowen told you
18 about some other incidents with the experts
19 and how they have reached and tried to come
20 to conclusions. Ladies and gentlemen of
21 the jury, to satisfy to make things fit,
22 you know, if you please, you have seen
23 that.

24 But what does all this, what does
25 Larry Demery, the messenger, have to do

1 with your job in deciding our client's
2 guilt? You can't trust his message, ladies
3 and gentlemen of the jury, because you know
4 his pedigree. His parents know his
5 pedigree. I suggest to you Anthony
6 Thompson knew his pedigree. He told you
7 that Mr. -- he knew Mr. Thompson from
8 previous offenses that he had committed.
9 He knew his pedigree. These officers knew
10 his pedigree. But what does he do in this
11 case that's of real significance to the
12 defense?

13 In a real sense, ladies and gentlemen
14 of the jury, if Mr. Britt gets up and
15 argues or attempts to get up -- or the
16 State argues to you that this whole thing
17 about an alibi is something knew, don't you
18 buy into it. Don't you buy into it. You
19 know why? Because ladies and gentlemen of
20 the jury, if the State tries to suggest to
21 you that these witnesses just came up
22 within the last month, don't you buy into
23 it.

24 Do you remember during jury selection,
25 names of several witnesses were called.

1 And each of you was asked in the presence
2 of the State, did you know them. Now,
3 these witnesses didn't just pop up. They
4 were there during jury selection. Ladies
5 and gentlemen of the jury, do you recall
6 even in Mr. Demery's statement in May of
7 1995, he indicated on July the 23rd, he was
8 at the house or residence of Kay Hernandez
9 at least until 1:30 in the morning. That
10 evidence just didn't pop up within the last
11 30 days or -- that was there in his
12 statement, and granted you can't believe
13 him but it was one of his statements. And
14 I suggest if he had put 50 statements out
15 there, all of them like rabbits, State of
16 North Carolina had enough manpower to chase
17 each one of them until the scent got cold.
18 Do you recall as early as August the
19 15th -- well, strike that. Do you recall
20 as early as 1994, Mr. Demery talked to a
21 local reporter, Mr. Brant Clifton, and
22 remember he told him as early as 1994 he
23 was at Kay Hernandez's residence. That
24 information just didn't pop up, ladies and
25 gentlemen of the jury, during the last

1 month or year of these proceedings. That
2 information was there in 1994. Do you
3 recall, ladies and gentlemen of the jury,
4 as early as August the 15th of 1993, he
5 indicated he was at Kay Hernandez's? Now
6 we're talking about 1:30 or thereabout in
7 the morning. That information just didn't
8 pop up. Those witnesses have been out
9 there, they have been out there, ladies and
10 gentlemen of the jury, but you know the
11 interesting thing about this
12 investigation? And we -- the defense felt
13 it our obligation to point it out to you,
14 you know that this at the very best, the
15 finest. We got the FBI, SBI, Cumberland
16 County Sheriff's Department, Marlboro
17 County Sheriff's Department, South Carolina
18 Law Enforcement Division, SLED, Robeson
19 County, we had all of it in this case. And
20 you saw what kind of, at least negligence
21 was -- is present in this case, when it
22 comes to investigation. I've said to you
23 that this was -- there was selective
24 investigation. I still say to you there
25 was selective investigation.

1 The alibi witnesses, the ones that the
2 State will be referring to as alibi
3 witnesses. Any time they question them,
4 ladies and gentlemen of the jury, I want
5 you to ask one more question. Where were
6 you, because they were there in August of
7 1993. They want to talk about the defense
8 not questioning them until recently. They
9 were there. Law enforcement were there,
10 the witnesses were there. But see, the
11 interesting thing about this, and this is
12 the significance, that Larry Demery really
13 created the alibi. Think about it. It was
14 Larry Demery who said that he went to Kay
15 Hernandez's house and left at 1:30. It was
16 also Larry Demery who said that he left
17 Kay's at 1:30 with the defendant. It's
18 also Larry Demery who says in a number of
19 even his different statements, and I
20 think -- I suggest to you that the
21 uncontroverted evidence will at least show
22 there, at 3:45 a.m., the man who he says
23 was Mr. Jordan was dead.

24 Because what happened at 3:45 a.m. on
25 August -- I mean on July the 23rd of 1993?

1 He was there at this waste treatment plant
2 in Rowland, supposedly, but you haven't
3 seen any pictures of that, have you? And
4 there he looked at the panel of the Lexus
5 and he remembers 3:45. And then at trial,
6 what does he do? You see, ladies and
7 gentlemen of the jury, you talk about
8 tools. I had to use the tool of
9 cross-examination to stake Larry Demery
10 out, because Larry Demery is the biggest
11 fish in this case. He is hard to catch.
12 What did he say? He said at 4:00, he was
13 at Pea Bridge. And you remember I asked
14 him where did he go from there. He went to
15 the Citgo station. Where did he go from
16 there, he went from the Citgo station to
17 the bank, First Union Bank, and it was 6:30
18 when he left the First Union Bank.

19 And one of the statements, he goes
20 straight to Daniel's, and another statement
21 he went straight to the canal bank. But
22 the point is the relevant period of time,
23 Larry Demery did that. Because that's when
24 he said the man was killed. Well, he also
25 said the defendant was with him. I suggest

1 to you Larry Demery knew the defendant
2 wasn't with him. Larry Demery knew that he
3 left the defendant at Kay's. Larry Demery
4 knew that he came back and picked the
5 defendant up. And ladies and gentlemen of
6 the jury, I suggest to you that the
7 believable evidence is right here
8 (indicating).

9 Client had a choice to leave at 1:30
10 with Larry Demery, or stay at Kay's with
11 Bobbie Jo Morillo, and that's what he did.
12 He was there, the witnesses were there.
13 Larry Demery created the alibi. The alibi
14 existed and he made it significant in this
15 case.

16 Now, the State will argue to you,
17 well, this alibi, ladies and gentlemen of
18 the jury, if I submit Larry Demery had said
19 Mr. Jordan was killed at around 5:00 in the
20 morning, then he would have had, the
21 defendant at least having left Kay
22 Hernandez's and going with them, leaving
23 the residence of Kay Hernandez. But he,
24 from the very beginning, told you, and it's
25 corroborated by everybody in the defense

1 alibi witnesses, that he left at 1:30.
2 Problem is he left alone. But more than
3 that, the State had Chris Rumfelt and had
4 Greg Stevenson. They interviewed those
5 witnesses before we even knew about them.
6 Did they present them to you? No, because
7 why? It didn't fit.

8 Larry Demery's statement. Because
9 what Larry Demery told you didn't happen.
10 And it didn't happen, ladies and gentlemen,
11 because the defendant was not there. When
12 it happened, if anybody else was with Larry
13 Demery, it was not the defendant. So any
14 time the State begins to question the alibi
15 of our client, you remember and ask the
16 State to tell you or to say to the State,
17 well, listen, those folks were there all
18 along. Why? Why? In a case of this
19 magnitude, celebrity, James Jordan, father
20 of Michael Jordan, NBA basketball star,
21 why? In this case, were those people not
22 even questioned about on July the 23rd of
23 1993 Mr. Green's whereabouts or
24 Mr. Demery's? Why?

25 They were there. These folks were

1 the sake of me, it's hard to understand
2 why, during an investigation of a murder
3 case you don't ask the question, knowing
4 that at 1:30 Mr. Demery -- and that's who
5 they want you to put their stock in -- if
6 that's the story they are going to go on,
7 had put them at Kay Hernandez's, why didn't
8 they ask him, where were you, where were
9 you on the 22nd? Where were you during the
10 early morning hours of the 23rd?

11 I asked Mr. Binder that, did you ever
12 ask him just once. No. Well, ladies and
13 gentlemen of the jury, these are trained
14 officers. FBI, SBI. I suggest to you that
15 they could watch TV and learn to ask that
16 simple question, where were you. You don't
17 have to go to get special law enforcement
18 training to have, I suggest to you, enough
19 sense to ask individuals where were you,
20 what you were doing during the relevant
21 periods of time. And this, ladies and
22 gentlemen of the jury, should cause you to
23 have the reasonable doubt.

24 Again, I'm not going to try to, and
25 have not tried to go through every bit and

1 piece of the evidence. Mr. Bowen has done
2 it. You've taken your notes, but I've
3 tried to at least focus you in on what the
4 defense contends to be the relevant period
5 of time. And that is on July the 23rd,
6 between 1:30 and at least 6:30, where was
7 Demery, where was the defendant. And
8 through credible witnesses, not one of
9 those witnesses, not one of the defense
10 witnesses except Richard Locklear even had
11 a criminal record. These are good, decent,
12 hard working citizens. No, the defense
13 wasn't wrong --

14 MR. BRITT: Objection.

15 THE COURT: Mr. Thompson, that
16 sounds like a personal expression of
17 belief. Restate.

18 MR. THOMPSON: Withdrawn.

19 THE COURT: You're not to regard
20 to any suggestion by counsel for the
21 defendant, his personal belief as to the
22 credibility of the witnesses. But you may
23 rephrase.

24 MR. THOMPSON: No, the defense
25 did not offer to you the number of

1 witnesses that the State offered. No, the
2 State did not even offer to you things that
3 were suggested during opening statement
4 that the defense might offer by way of
5 evidence. But you got to remember, it's
6 not the defense's duty or it's certainly
7 not the defense's burden to prove anything
8 to you. The burden is where? On the
9 State. And if we had offered, if the
10 defense had offered evidence of other
11 matters that -- or other witnesses, would
12 it have really been helpful on the material
13 issue or the relevant period of time that
14 we're dealing with? I submit to you that
15 it would not have. Wouldn't have done you
16 any more good.

17 I suggest to you that Ann Green, Kay
18 Hernandez, Bobbie Jo Morillo, if it's
19 suggested to you or the question is posed,
20 well, why didn't they call her, I want you
21 to remember, ask yourself and ask the State
22 if that's suggested, well, they were there
23 in '83, '93, they are here in '95. Why
24 didn't you call them.

25 If they were there, or here in '95, if

1 they could have impeached, we suggest, the
2 witnesses that we put on, I suggest to you
3 they would have been on the stand, ladies
4 and gentlemen of the jury. They would have
5 been up there, because they would have went
6 chasing them like they went out to
7 California or had somebody out to
8 California chasing Catina Jacobs to get a
9 statement. They could have gotten
10 statements. But they didn't do it.
11 Because they didn't want, I suggest to you,
12 you to hear that evidence. They didn't
13 want you to hear from Greg Stevenson, they
14 didn't want you to hear from Chris
15 Rumfelt. They didn't want you to hear from
16 Richard McKinney, they knew about all
17 those --

18 THE COURT: That's an improper
19 argument. You're not to consider that last
20 argument by counsel for the defendant,
21 Mr. Thompson. That matter is not to take
22 any part in your deliberations in any
23 respect. There's no evidence to support
24 that. You may argue any inference or any
25 reasonable inferences to be drawn from the

1 evidence.

2 MR. THOMPSON: Well, it's a fact,
3 we argue to you, that they didn't put them
4 on. The defense put them on. And you can
5 draw from that fact, I suggest to you, any
6 reasonable inference that you so may draw.
7 Ultimately, your verdict in this case is
8 supposed to speak the truth. The truth in
9 the sense that it's fair, the truth in the
10 sense that it's just, that it's based on
11 evidence or lack of evidence that's been
12 presented to you through the witnesses,
13 through exhibits, the truth in the sense
14 that if the State's evidence doesn't rise
15 to the level that you think, that you feel
16 that it ought to, in satisfying you
17 personally, that you can put your stock in
18 and convict this individual over here of
19 murder, of robbery and conspiracy on July
20 23rd, during the early morning hours that
21 Larry Demery says the murder and robbery
22 took place, if it doesn't rise to that
23 level, ladies and gentlemen of the jury, I
24 suggest to you it's your duty to acquit, to
25 find our client not guilty. Your verdict

1 should speak to truth in the sense that if
2 the State has tried, so may it be that they
3 have tried. But if they failed, the truth
4 in the sense that they have failed, they
5 have tried but failed to satisfy you beyond
6 a reasonable doubt of our client's guilt.

7 The truth your verdict should speak in
8 the sense that if the State would use the
9 pedigree of a Larry Demery, who's pled
10 guilty, who's already pled guilty for the
11 murder of James Jordan, the robbery of
12 James Jordan, and a number of other crimes,
13 the truth in the sense that if the State
14 would use that pedigree to try to convince
15 you to put your stock in that testimony,
16 and you don't feel that you can do that,
17 the truth in the sense that your verdict
18 should speak so, it should say so, that I
19 can't do that as an individual.

20 Collectively, as a jury, your verdict
21 needs to say so. Because that is the
22 system of justice. That is the government
23 that I mentioned of laws and not of men,
24 not of personalities, not of who's the most
25 articulate, not of who you want to believe,

1 but whether in fact you can believe based
2 on what you know from the credible
3 evidence.

4 And finally, ladies and gentlemen of
5 the jury, there's one last aspect of this
6 case that I want to mention to you. If
7 Larry Demery can use the kind of theater
8 that he used to suggest that my client was
9 sitting in this courtroom wearing the pants
10 of James Jordan, if Larry Demery, if that's
11 the pedigree, if that's the kind of
12 individual the State wants you to believe,
13 and you can honestly put your stock in
14 that, then I suggest to you that the wheels
15 of justice are squeaking. That is
16 absolutely, I suggest to you, untrue.
17 That's the pedigree --

18 MR. BRITT: Objection.

19 THE COURT: The objection is --

20 MR. BRITT: Move to strike.

21 THE COURT: -- sustained. Motion
22 to strike is allowed. Members of the jury,
23 you're not to consider that last statement
24 of counsel for the defendant. It's not to
25 take any part in your deliberations in any

1 respect.

2 MR. THOMPSON: Yes, sir. I
3 suggest to you ladies and gentlemen of the
4 jury, that's the pedigree, among the other
5 things that you know about, that his
6 parents have said about him, that what he
7 said his parents have said about him, that
8 his parents have done, you can't put your
9 stock in that Larry Demery, regardless of
10 what the State and who the State puts its
11 stock in.

12 I normally would want to talk you to
13 you a little bit about the law of what the
14 felonious conspiracy is, robbery with a
15 firearm, the elements, and we've talked a
16 little on jury selection about the first
17 degree murder under both theories. But you
18 know, the defense's position in this case
19 is if you can't believe Larry Demery, and
20 if you believe the credible evidence
21 through our witnesses, he couldn't be
22 guilty of first degree murder, because he
23 wasn't there. Couldn't have been the
24 trigger man, because he wasn't there.
25 Couldn't have been guilty of robbery

1 because he wasn't there. Couldn't be
2 guilty of premeditated and deliberated
3 murder because he wasn't there, or felony
4 murder, because he wasn't there. When
5 Larry Demery says he was there.

6 And then the conspiracy of course,
7 ladies and gentlemen of the jury, you don't
8 have to be present to be guilty of a
9 conspiracy. It is simply an agreement to
10 commit a felonious act. And the State has
11 charged our client with conspiracy to
12 commit armed robbery. But -- and you don't
13 have to be there. But you would have to
14 believe, ladies and gentlemen of the jury,
15 that on July the -- on or about July 23rd
16 of 1993, under the credible evidence, that
17 this individual agreed to go out and commit
18 an armed robbery as Larry Demery has
19 testified. And if you can't believe that
20 he didn't go with Larry Demery, that he was
21 sitting there with Bobbie Jo, I suggest to
22 you that you should not believe even the
23 conspiracy theory.

24 The Judge will instruct you as to the
25 law. Again, Mr. Britt will argue to you as

1 to the contentions of the State. On behalf
2 of the defense, I want to thank you for
3 your attentiveness. It's been a long, long
4 trial. It's been, I suggest to you, a case
5 where you've had to sift through a number
6 of witnesses. As I counted them, there was
7 maybe 62 for the State. A number of
8 exhibits. But 12 people, the 12 of you,
9 and with your notes, should be able to
10 deliberate, should be able to try to find,
11 if you can, the kernel of truth in this
12 case. If you can, I suggest to you that
13 that would lead you to one possible
14 verdict, and that is that you find U'Allah,
15 also known as Daniel Green, not guilty on
16 all charges.

17 Thank you.

18 THE COURT: Mr. Britt, do you
19 want to be heard at this time, sir?

20 MR. BRITT: Yes, sir.

21 THE COURT: Yes, sir.

22 MR. BRITT: Your Honor, I need to
23 be heard outside of the presence of the
24 jury.

25 THE COURT: Ladies and gentlemen,

1 made to the advice of rights --

2 MR. BRITT: Yes, sir, not only
3 was the reference made to the advice of
4 rights, but the clear implication from
5 Mr. Bowen's argument was that Mr. Smith
6 coerced, overpowered, and violated the
7 constitutional rights of Larry Martin
8 Demery on the morning of August 15th,
9 1993.

10 I do this simply because the Court put
11 them on notice that you were declining my
12 request to take judicial notice at the time
13 that I initially requested it but said that
14 if it was argued or other questions were
15 asked in that regard, that you will
16 reconsider it. And it has now been argued
17 to this jury that Mr. Demery's rights were
18 violated. The statement was as a result of
19 coercion and overpowering, when that is
20 clearly a false statement based upon the
21 law of that case.

22 THE COURT: Mr. Britt, I
23 understand the State's position. My
24 position, however, remains the same. I
25 think at this juncture to allow in the

1 Court's findings of fact and conclusions of
2 law arguably could result in a reversal in
3 this case.

4 As I understood Mr. Bowen's argument,
5 it walked the line. But the upshot of his
6 argument was that it bore on the
7 credibility of Larry Martin Demery insofar
8 as Larry Martin Demery testified that,
9 contrary to his affidavit, any statements
10 that he gave was not the result of
11 intimidation or coercion, and I understand
12 the result that the opposite of that
13 supports your position at this point.

14 MR. BRITT: Your Honor, and I
15 would ask Mr. Huseby be requested to go
16 back, because in that argument he wasn't
17 talking about Larry Martin Demery, he was
18 talking about Detective Smith in his oath
19 to support the Constitution. That's where
20 it came in.

21 THE COURT: I understood that. I
22 saw it as it popped up on the screen. I
23 will take the matter under consideration.

24 You have requested in the absence of
25 the jury to allow, to be allowed to present

1 your argument tomorrow. I'll be very
2 candid with you people, I'm not likely to
3 change my mind. I would note your position
4 for the record. I'll rule on your position
5 tomorrow morning.

6 The likelihood is my position will, as
7 I indicated, remain the same. This jury
8 has had ample opportunity to consider the
9 evidence presented in this case. In my
10 view, this jury has conducted itself in an
11 exemplary fashion. They have been
12 conscientious in their attention to the
13 evidence in this case.

14 This jury I think will do what is
15 required under their oath, consistent with
16 the Court's instruction on the law. I
17 understand your position. I would take it
18 under advisement, rule -- if you folks
19 could all meet at 9:00, we'll need
20 Mr. Green here at 9:00 a.m. to give you
21 further opportunity to be heard in that
22 regard. I'll direct the jury to be back at
23 9:30. I'll be candid with you. Do you
24 make any request as to delay your argument
25 in the presence of the jury, or can you

1 simply deal with that in my instructions
2 today?

3 MR. BRITT: That will be fine, in
4 your instruction.

5 THE COURT: Is that agreeable
6 with counsel for the defendant?

7 MR. BOWEN: Yes, sir.

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

10 (Jury in at 5:07 p.m.)

11 THE COURT: Members of the jury,
12 because of the hour we're going to stop the
13 proceedings at this point for today. We
14 will go forward with additional argument
15 tomorrow morning at 9:30. Now, during this
16 overnight recess, as I have previously
17 instructed you, it's absolutely imperative
18 that you folks remain open-minded about
19 this matter. You've not yet heard the
20 argument of counsel for the State. You've
21 not yet received the Court's instruction on
22 the law, and it would be inappropriate and
23 improper for you to allow your minds to be
24 made up about this matter in any respect at
25 all.

1 As I have instructed you on numerous
2 occasions, the only appropriate place for
3 the jury to discuss this matter or to form
4 or express any opinions at all about this
5 case would be in the jury room, and then
6 only after the Court has specifically
7 instructed the jury to begin deliberations
8 in this case. We've not reached that point
9 yet, obviously.

10 During this overnight recess, I again
11 instruct you that you are not to talk about
12 this matter among yourselves or with anyone
13 else, including members of your own
14 families. You're not allowed to have
15 anyone say anything to you or in your
16 presence about this case. You're not to
17 form or express any opinions about this
18 matter at all, as I have already instructed
19 you. If anyone does contact you about this
20 matter or attempts to do so, or anyone says
21 anything about the case in your presence,
22 it remains your duty to inform us of that
23 immediately through one of the bailiffs
24 assigned to the courtroom.

25 Don't have any contact or

1 communication of any kind with anyone
2 involved in the case. Don't allow
3 yourselves to be exposed to any media
4 accounts which may exist in connection with
5 this matter. And again, do not conduct any
6 independent inquiry or investigation or
7 research of any kind.

8 Please report promptly to the jury
9 room at 9:30 and we will be in a position
10 to go forward at that time. Have a good
11 evening, folks, and we will see you
12 tomorrow morning at 9:30. Everyone else
13 please remain seated.

14 (Jury out at 5:10 p.m.)

15 THE COURT: Mr. Britt, you gave a
16 page citation on the record to Mr. Huseby.
17 If you'll read that again, please, sir.

18 MR. BRITT: Page 133 at the
19 time. I don't know how much Mr. Huseby
20 cleaned up the transcript during lunch.

21 THE COURT: Mr. Huseby, if you
22 can go back and locate that area, if you
23 could find the context of that argument.
24 One other alternative available to the
25 Court is to give a curative instruction if

1 that's deemed appropriate. If that is a
2 matter which the Court decides to do, the
3 Court in its discretion will hear from
4 counsel for the defendant with regard to
5 any additional argument in that line.

6 MR. BOWEN: I wouldn't --

7 THE COURT: I simply wanted to
8 give you folks the option. I'm asking that
9 the transcript be prepared, a certified --
10 a copy of the pertinent portion of the
11 transcript be provided to counsel for the
12 defendant, counsel for the State and the
13 court. Request we have that by 9:00
14 tomorrow.

15 THE COURT REPORTER: Yes, sir.

16 THE COURT: Any other matters?

17 MR. BRITT: No, sir.

18 THE COURT: Again, Major Watson,
19 I emphasize that we will need Mr. Green
20 here no later than 9:00 a.m.

21 THE BAILIFF: Yes, sir.

22 THE COURT: If you'll recess us
23 until 9:00, please.

24 (Court adjourned.)

25

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.
12 Bowen & Byerly
13 P.O. Box 846
Lumberton, North Carolina 28359

14
15 (February 28, 1996. Proceedings in open court.)

16
17 THE COURT: Let the record
18 reflect all counsel are present, the
19 defendant is present in open court, in the
20 absence of any members of the jury. State
21 want to be heard further as to the State's
22 motion to be allowed to reopen its
23 evidence? Mr. Britt.

24 MR. BRITT: Yes, sir. I believe
25 Mr. Huseby provided the Court with a

1 transcript of the pertinent part of
2 Mr. Bowen's argument.

3 THE COURT: Beginning on page
4 6831?

5 MR. BRITT: Yes.

6 THE COURT: Line 17?

7 MR. BRITT: For the record, for
8 the purposes of argument, this was the
9 argument that Mr. Bowen made beginning at
10 line 17, then Mr. Thompson aptly talked to
11 Mr. Smith about the fact that he had also
12 sworn under oath on the Bible and that he
13 was -- he was under oath to uphold and
14 maintain and defend the Constitution of the
15 United States and that of the State of
16 North Carolina. And it's elementary as
17 many -- I believe it's supposed to be TV
18 shows, as any of us know, that to coerce or
19 intimidate or overpower a person who gives
20 a statement is not in the spirit or the
21 letter of our Constitution. And that oath,
22 I argue to you, is one that Mr. Smith could
23 well afford to recall and be dedicated
24 himself to. .

25 That in my opinion is a false

1 statement based upon the evidence
2 presented, based upon this Court's own
3 ruling in the matters of the State of North
4 Carolina versus Larry Martin Demery, the
5 law of that case as of this moment is that
6 none of Mr. Demery's constitutional rights
7 or statutory rights were violated. And the
8 direct implication and the direct inference
9 that Mr. Bowen as trying to make from that
10 argument was that Mr. Demery's statement
11 was the result of coercion, it was the
12 result of duress, and it was the result of
13 fright and fear because the officers had
14 violated his constitutional rights.

15 He also makes a direct reference that
16 Mr. Demery had been advised of his rights
17 and makes a reference that their client was
18 never advised of their rights. Mr. Bowen
19 knows what the law is. I can't tell the
20 jury that the defendant was advised of his
21 rights and then exercised those rights to
22 remain silent. That is an elementary
23 principal of constitutional criminal
24 procedure. You know that, I know that, and
25 they know that. But the direct implication

1 from this argument is that Mr. Smith
2 violated Mr. Demery's rights, and that's
3 not the law of that case.

4 THE COURT: All right.
5 Mr. Bowen, Mr. Thompson.

6 MR. BOWEN: Yes, sir. Your
7 Honor, please, I don't dispute the fact
8 that Your Honor made the finding as to the
9 law of the case. But the credibility of
10 Mr. Demery is still highly at issue. Now,
11 whether he was coerced, whether he was
12 overpowered, whether he was fed or led to
13 make this confession or by attacks of the
14 officers, that would lead as a matter of
15 fact, not necessarily a matter of law, to
16 coerce and overpower. And such is
17 certainly an issue for the jury to decide
18 as to whether or not they could believe
19 what Mr. Demery had to say.

20 Now, I went through this in a case
21 just before I tried this one, had Judge
22 Ellison. We had a situation where in State
23 versus Lea the individual, the young man
24 had given a statement, and he had said that
25 he had had sexually to do with a little

1 girl living in a house that he visited.
2 And he had given this confession, and we
3 made some of the same arguments that we
4 made before Your Honor in this case. And
5 Judge Ellison overruled those arguments
6 and said that this statement was not
7 coerced and allowed the statement to go
8 before the jury. However, I was completely
9 allowed to argue that there was coercion,
10 that there was overpowering, that the young
11 man was misled, that he was not fed, all of
12 these things. And although -- and he was
13 acquitted, by the way. And the interesting
14 thing is that all of those things were
15 allowed to be considered by the jury as to
16 whether or not they could believe what was
17 actually a confession.

18 THE COURT: Well, that's entirely
19 an instruction as to confession or
20 admission, that the Court's ruling as to a
21 motion to suppress is not binding on the
22 jury. That matter can be litigated before
23 the jury as to a defendant's purported
24 statement or confession.

25 I looked through the transcript from

1 my notes of the testimony of Mr. Demery
2 last night. Mr. Britt, you've got the
3 right to argue Mr. Demery's testimony that
4 he was not intimidated, that he was not
5 coerced in any way in terms of giving his
6 statement. You have the right to argue the
7 testimony of then Sergeant Smith, now
8 Lieutenant Smith, in that regard.

9 And I think that your right to argue
10 those matters, contrary to your argument
11 presented by counsel for the defendant, in
12 my view deals with the issue. I understand
13 your position. I do think they have a
14 right to go after the credibility of
15 Mr. Demery insofar as his testimony was
16 concerned, and that includes in my view the
17 right to attack the giving of the statement
18 or the circumstances under which any
19 statement or statements were given.

20 I am absolutely satisfied that if I
21 were to allow State to reopen for the
22 purpose of introducing the Court's findings
23 of fact and conclusions of law that we
24 would be seeing this case within a year
25 back in the trial courts. That's not my

1 intent.

2 Do you want to be heard further,
3 Mr. Britt?

4 MR. BRITT: Yes, sir. In light
5 of the Court's ruling, I believe I'm
6 entitled to an instruction, curative
7 instruction that Mr. Bowen's argument in
8 that regard is not to take part in the
9 deliberations of the jury because to do so
10 would be to allow Mr. Bowen to make a false
11 statement to the jury for them to consider.

12 THE COURT: Well, what is the
13 false statement.

14 MR. BRITT: False statement is
15 based upon the law of that case, and that
16 is not contested, they don't have standing
17 to contest the law in the Demery case. And
18 the law --

19 THE COURT: They have a right to
20 attack, correct, under 611?

21 MR. BRITT: But to say that his
22 constitutional rights were violated is
23 false based upon your own order.

24 THE COURT: I understand what
25 your position is. Your argument is that

1 there is no evidence before this jury that
2 any constitutional rights of Larry Martin
3 Demery were violated.

4 MR. BRITT: Yes, sir. And I
5 think I am entitled -- and please correct
6 me if I'm wrong before I get into it. I
7 think I'm entitled to say and argue that
8 had his constitutional rights been
9 violated, you wouldn't have seen him
10 sitting on that stand.

11 MR. THOMPSON: That's not true.

12 THE COURT: That's outside the
13 scope of the record. You're absolutely
14 entitled to argue to the jury that there's
15 no evidence before them that any
16 constitutional rights of Larry Martin
17 Demery were violated.

18 MR. BRITT: And there's
19 nothing --

20 THE COURT: And the evidence
21 before them coming from the pertinent
22 parties, Larry Martin Demery and Lieutenant
23 Smith, are to the contrary, or is to the
24 contrary.

25 MR. BRITT: This argument of Mr.

1 Bowen's is outside the record.

2 THE COURT: Mr. Bowen.

3 MR. BOWEN: Mr. Demery's own
4 sworn affidavit states that he was
5 intimidated. That's not outside the
6 record.

7 THE COURT: Folks, I've looked at
8 it, I'm not going to give a curative
9 instruction. Note the State's exception to
10 the Court's ruling. I think it's a matter
11 that can be handled in the State's
12 argument. States motion is denied, to
13 which the State also objects and excepts
14 for the record.

15 MR. BRITT: And I take it my
16 request for a curative instruction is
17 also --

18 THE COURT: That's denied and the
19 State objects and excepts as to that.

20 MR. BRITT: So the record is
21 clear.

22 THE COURT: Yes, sir.

23 MR. BRITT: If it please the
24 Court, I don't have any other matters
25 related to where we left off yesterday

1 except to just say this: I owe this court
2 an apology.

3 Yesterday afternoon I made some
4 statements on the record that were
5 inappropriate in that I said I didn't care
6 what the rules of professional conduct were
7 at the time. I was very angry at the time
8 I said that. It was wrong for me to do
9 that. I owe this Court an apology for that
10 behavior, and I hope the Court will accept
11 my apology.

12 But I took offense to the personal
13 attack that was made upon me during that
14 closing argument. I think I was justified
15 in my anger if there is any time to really
16 ever be justified. I do not lose my temper
17 very often, but when I do, I lose it. And
18 that was the case yesterday.

19 THE COURT: Mr. Britt, your
20 apology is accepted.

21 As I indicated to all counsel long
22 prior to closing argument, in my view it is
23 almost always a mistake, tactically and
24 otherwise, to attack opposing counsel. I
25 don't think that that adds in any way to

1 the credibility of the counsel making that
2 argument before the jury. Best trial
3 lawyers I've ever seen are the lawyers who
4 are courteous and respectful, folks who
5 stick to the facts and marshal the facts in
6 a persuasive manner. In my view, there is
7 no other option for us as advocates except
8 to do that.

9 Anything further from either counsel?

10 MR. BOWEN: No, sir.

11 THE COURT: All right. Folks,
12 we're going to go forward with the State's
13 argument. Mr. Britt, are you in a position
14 without -- with the understanding that this
15 certainly doesn't limit you in any respect,
16 state how long you anticipate your argument
17 might take?

18 MR. BRITT: Your Honor I would
19 anticipate somewhere between an hour and
20 two hours. If I go beyond that I would be
21 surprised. I would think the case would be
22 in the jury's hands this afternoon.

23 THE COURT: My charge in my view
24 will probably take between 30 and 45
25 minutes, if that long. So I'm going to

1 follow up your argument with the charge,
2 with the possibility of a brief break
3 between your argument and the charge.

4 MR. THOMPSON: Concerning that
5 matter, Your Honor, concerning breaks,
6 yesterday we went approximately 2 hours and
7 15 minutes before the jury got a break and
8 you stopped Mr. Bowen --

9 THE COURT: I thought we went
10 from 9:30 to 11:15, 11:20.

11 MR. THOMPSON: Well, what is that
12 an hour, 15 minutes. 9:30, 10:30, that's
13 right, an hour and 45 minutes. Just wanted
14 to inquire as to whether the normal break
15 will take place or are you going to try to
16 go through the -- allow Mr. Britt to
17 continue -- I don't want to have to
18 interrupt and approach the bench because of
19 Ms. Manual or any other juror. I mean, if
20 the Judge can handle it, it's fine. I
21 think passing notes and all that is
22 something that I would rather not do. So I
23 just ask the Court --

24 THE COURT: Generally I take
25 mid-morning recess somewhere in the

1 neighborhood of 11:20 normally. If it
2 appears to me Ms. Manuel or anyone else is
3 in discomfort, then we can adjust. If it
4 appears to counsel that anybody on the jury
5 may need a break, please don't hesitate to
6 let us know that. I'm going to tell them
7 the same thing I told them yesterday, if
8 anyone is in need of a break for any
9 reason, simply let us know and we will act
10 accordingly.

11 Anything else?

12 MR. BRITT: No, sir.

13 MR. THOMPSON: No, sir.

14 THE COURT: Okay. We're at ease
15 until 9:30, jurors are coming in at that
16 time.

17 MR. BRITT: May I have permission
18 to set some things up?

19 THE COURT: Yes, sir.

20 THE BAILIFF: Court stands at
21 ease until 9:30.

22 (Brief recess.)

23 THE COURT: Let the record show
24 that all counsel are present, the defendant
25 is present in open court. Do we have all

1 members of the jury secured in the jury
2 room?

3 THE BAILIFF: Yes, sir, we do.

4 THE COURT: Mr. Britt, you ready
5 to go forward with your final argument?

6 MR. BRITT: Yes, sir.

7 THE COURT: If you'll bring the
8 jury in, please.

9 (Jury in at 9:31 a.m.)

10 THE COURT: Good morning, ladies
11 and gentlemen.

12 Members of the jury, we are about to
13 hear from counsel for the State in the
14 State's final argument in this case. But
15 before that, let me again state for all
16 members of the jury that at any time any
17 member of the jury needs a break or if any
18 of you need to stand up for any reason,
19 please don't hesitate to either let us know
20 you need a break or simply stand if that
21 puts you in a more comfortable position.

22 Mr. Britt, the jury is with the State.

23 MR. BRITT: May it please the
24 Court, ladies and gentlemen of the jury,
25 nine weeks ago today we started this trial,

1 we started the evidence. And now nine
2 weeks from the very day that we started,
3 it's your time to decide what happened on
4 the night -- the morning of July the 23rd,
5 1993.

6 What happened on the morning of July
7 23rd, 1993, as the evidence overwhelmingly
8 and so clearly shows, is that Daniel Andre
9 Green shot and killed James Jordan. Why?
10 His Honor is going to talk to you something
11 about motive. Motive. What was the motive
12 for killing James Jordan? Was there bad
13 blood between James Jordan and Daniel
14 Green? Absolutely not. Did James Jordan
15 do anything to provoke his own death? No.
16 The only thing James Jordan did was he made
17 a mistake on the morning of July the 23rd,
18 1993, when he left Wilmington at midnight
19 en route back to Charlotte.

20 He had been drinking, the evidence is
21 unrefuted. Did the defense present you
22 evidence to show that the total amount of
23 alcohol concentration in his body was as a
24 result of decomposition? No. What did Dr.
25 Sexton say the alcohol reading in the liver

1 and in the kidney may have been affected by
2 how much? Two one-hundredths of a
3 percent. Two one-hundredths.

4 What was the evidence? Robinson said
5 there was an open bottle of vodka. They
6 know he had one drink, but nobody watched,
7 they were friends. Who knows if he had
8 more than one drink, and he did because the
9 evidence shows that. The evidence shows
10 that his blood alcohol level was above the
11 legal limit at the time. The blood-alcohol
12 level in his system shows that he was
13 impaired. And you couple that with the
14 fact that he had drive from Charlotte to
15 Wilmington that day, gone to his friend's
16 funeral, visited with other friends, an
17 then decided at the last minute late in the
18 evening to go back to Charlotte because he
19 had plans the next day.

20 What did Andy Hutchison tell you? She
21 was shocked when she didn't hear from
22 Mr. Jordan. Mr. Jordan didn't miss the
23 payroll. And he missed the payroll because
24 Daniel Green and Larry Demery through the
25 payroll checks away over on the canal bank

1 off of 710. That evidence is before you,
2 that evidence sits in those exhibits on
3 that table.

4 He had the payroll checks for J.V.L.
5 with him. She didn't hear from Mr. Jordan,
6 she didn't hear from Mr. Jordan, and in the
7 Monday morning Ms. Jordan shows up at
8 J.V.L., and that's highly unusual. No one
9 has seen from him, no one has heard from
10 him. Why? He's floating in the bottom of
11 a creek in Marlboro County, South Carolina
12 where that defendant threw him.

13 Nobody came into this courtroom nine
14 weeks ago today and told you Larry Martin
15 Demery wasn't a part of this. Nobody came
16 in this courtroom nine weeks ago today and
17 told you that Larry Martin Demery was a
18 saint. But Larry Martin Demery is worthy
19 of belief. Larry Martin Demery has told
20 you in his own words what happened. They
21 want to argue to you that is the State's
22 case, Larry Martin Demery and nothing else,
23 that that the rest of the evidence shows
24 their client is an accessory after the fact
25 of murder.

1 Remember what the Judge told you in
2 opening statements, what I say, what they
3 say, isn't evidence. Did anybody take the
4 witness stand and say that Daniel Andre
5 Green was an accessory to murder? No.

6 What the evidence in this case shows
7 is that Daniel Andre Green is a
8 cold-blooded killer.

9 Mr. Thompson talked a lot yesterday
10 about pedigree, Larry Demery's pedigree.
11 Sounded like he was talking about a dog.
12 He was talking about pedigree, you don't
13 associate people with that term. Ancestry
14 yes, but pedigree, he -- made him out to be
15 animal.

16 You got to see him. You got to look
17 into his eyes, he looked into your eyes, he
18 came over to this jury box. Was he an
19 animal? No. He's a living, breathing
20 human being who came in here and told you
21 like it is, the same way he told them like
22 it was on August the 15th when they
23 interviewed him back in 1993.

24 Talk about the defense, the evidence
25 that was presented to you in this case by

1 the defense, they asked you a lot of
2 questions. Asked, "Ask Mr. Britt why he
3 didn't call Chris Rumfelt, why didn't he
4 call Mr. Stevenson, why didn't he call
5 Mr. McKinney?" You know why? Remember the
6 man from the motel? The manager, they
7 called him. To what? Verify that they
8 were there on the 22nd and that they left
9 on the 23rd? Because that's the testimony
10 that you heard from Chris Rumfelt,
11 Stevenson, and McKinney. McKinney, who was
12 called to corroborate his buddies,
13 testified under oath, I swear I'm going to
14 tell the truth, the whole truth and nothing
15 but the truth, testified that McKinney --
16 excuse me, Stevenson and Rumfelt left at
17 2:30 on the morning of July 23rd, 1993, on
18 their way back to Marion. And he's so
19 positive that it's the morning of the 23rd
20 because his testimony is he and
21 Mr. Stephens, the other person in the
22 party, left six hours later at 8:30 in the
23 morning, to go back to Marion. The
24 evidence doesn't support the claim.

25 Their evidence, I don't recall them

1 passing this to you. The hotel receipt.
2 Hugh Fowler, 143 Ridge Road, Marion, North
3 Carolina. Date, 7-22-93. Three room
4 rates, three entries for the rental of that
5 room. Arrival date, right here,
6 Defendant's Exhibit Number 40. Arrival
7 date, 7-21-93. Departure date, 7-24-93.

8 You recall the testimony, there were
9 two cars that went from Marion to
10 Wrightsville Beach. Mr. Rumfelt rode in
11 one along with Mr. Stevenson. Mr. McKinney
12 rode with Mr. Fowler. Mr. McKinney's
13 testimony that he left on the morning of
14 July 23rd, 1993, back to Marion, left at
15 8:30, swore that was the absolute truth,
16 that was the gospel. If he left on the
17 morning of July 23rd, 1993, he walked back
18 to Marion, North Carolina, because their
19 own exhibit, Defendant's Exhibit 40,
20 contradicts everything that Mr. McKinney
21 said, and it contradicts everything that
22 Mr. Rumfelt and Mr. Stevenson said.

23 What was it that Mr. Rumfelt testified
24 to? We left Wrightsville Beach, we got
25 behind a truck, we were driving 70 miles an

1 hour.

2 It's 90 miles from Lumberton to
3 Wrightsville Beach.

4 MR. THOMPSON: Object.

5 THE COURT: The objection is
6 overruled.

7 MR. BRITT: Drive 60 miles an
8 hour, you can get here hour and a half.
9 Drive 70, you can get here a lot quicker.
10 Followed a truck. That truck turns off of
11 I-95 at 74, headed south.

12 Mr. Rumfelt says, "We travel two or
13 three more minutes, two or three more
14 minutes before we pulled over." Two or
15 three more minutes and they are down there
16 by the Back Swamp Road at the mobile home
17 plant, right down the road from where the
18 defendant lives, not at the pull-over area
19 on 74 as the defense counsel would like you
20 to believe.

21 He can't tell you anything about the
22 car that he saw. He can't tell you how big
23 it was, he can't tell you how small it
24 was. He can't tell you if it was
25 four-door, two-door, green, purple, black

1 or blue. Yet he wants you to believe he
2 saw a car some two or three minutes away
3 from the intersection of I-95 and U.S. 74,
4 and it's just not so.

5 They get out and Mr. Rumfelt says they
6 both go to the bathroom. They both been to
7 a club in Wrightsville Beach. One of them
8 has been asleep. And they both deny that
9 they have had anything to drink. But they
10 didn't testify they had been drinking
11 anything from Wrightsville Beach to
12 Lumberton before they pulled over, so at
13 some point they had had something.

14 Mr. Stevenson says, "I saw that car. I saw
15 a car I don't know anything about it, but I
16 saw a car, and I wasn't going to the
17 bathroom there." Mr. Rumfelt's sworn
18 testimony is they both got out of that car
19 and they both went to the bathroom right
20 there on the side of the road.

21 And then Mr. Rumfelt says they get
22 back on and what do they do, they stop at a
23 store, flashing yellow light on U.S. 74?
24 Oh, no. No. They drive on to Laurinburg.
25 Ten or 15 minutes after they have stopped,

1 this red Lexus comes flying by them.
2 Mr. Rumfelt speeds up, he's doing 85 now.
3 They get to Laurinburg, they come to a stop
4 light, turn left off of 74. There isn't a
5 stop light between Lumberton and Laurel
6 Hill, North Carolina, on U.S. 74. So where
7 is Mr. Rumfelt's stoplight? It's in his
8 mind. It's in his dreams.

9 Mr. Stevenson. "We're riding along,
10 I'm asleep, I don't see a whole lot of
11 anything because I'm asleep. We were
12 following a truck, I know that. Truck
13 turns off of 95. We pulled over two or
14 three minutes later. I see that car, I
15 can't tell you anything about that car but
16 I wasn't going to the bathroom with a car
17 parked 40 feet away from me. Mr. Rumfelt
18 does, he gets back in the car, we drive
19 down the road a little bit. We come to a
20 store, flashing yellow light."

21 Flashing yellow lights at 710, there's
22 a store there, Ms. Williamson testified
23 about. What's the key to Ms. Williamson's
24 testimony? That store doesn't open until
25 5:15. Took them three hours to drive from

1 Wrightsville Beach, North Carolina, to the
2 intersection of 710 and 74 in Robeson
3 County? That's less than a hundred miles.
4 Three hours?

5 Because according to Ms. Williamson,
6 they don't open until 5:15 in the morning.
7 And then Mr. McKinney says, "Well, I left
8 the next morning." He left walking because
9 he sure didn't ride with Mr. Fowler, and
10 Mr. Fowler didn't leave until the 24th,
11 Saturday morning. By their own evidence.

12 And you want to know why Chris
13 Rumfelt, Stevenson, Fowler, McKinney
14 weren't called? Because they weren't
15 telling the truth about when they were in
16 the area. They may have seen that Lexus.
17 And they probably did see that Lexus. Not
18 on the morning of July 23rd, 1993, but on
19 the night of July 23rd, 1993, the morning
20 of July the 24th, 1993. You know why?
21 What's the testimony? The defendant, Larry
22 Demery, Melinda Moore, and Dee Sullivan,
23 who's riding around in that car? Who's
24 making the phone calls? Who's styling,
25 who's profiling in that Lexus? The

1 defendant.

2 They went to Marion on July 23rd,
3 1993. And what did they do? They came
4 back to the defendant's trailer. When they
5 got back, they were hungry. Who left?
6 Larry Demery and Dee. Where did they go?
7 They came up to Hardee's in Lumberton. How
8 do you go from the Back Swamp Road to
9 Hardee's in Lumberton? Very simple.

10 Back Swamp Road is shown on State's
11 Exhibit Number 94. Right here (indicating)
12 Highway 74, Back Swamp Road dead ends into
13 Highway 74. You hang a right and you come
14 back up here to 301 and 95. And Lumberton
15 is north. Where is the closest Hardee's,
16 West Fifth Street. The next closest
17 Hardee's is Roberts Avenue on 211. How do
18 you get back? Come down 95 and you go back
19 out 74 and you turn left on the Back Swamp
20 Road, and you go to Bob's Landing Mobile
21 Home Park.

22 If they saw that red Lexus, that's
23 when they did. Because they didn't see it
24 on the morning of July 23rd, 1993, because
25 they were not there.

1 Yesterday the defense spent six hours,
2 six hours arguing to you. They want you to
3 believe and they have argued to you that
4 they have an ironclad alibi. What is an
5 alibi? It's an absolute defense to a
6 crime. Absolute. That means, I wasn't
7 there, I was somewhere else. Ironclad
8 alibi is so strong, why in the world did
9 they spend over five and a half hours
10 yesterday talking about things other than
11 their ironclad alibi? Their ironclad alibi
12 is more like colander.

13 You're familiar with a colander,
14 common kitchen utensil. Bowl, may be wire
15 mesh, may be metal, it's got holes in it.
16 What do you use a colander for? You cook
17 spaghetti, cook other type of noodles, you
18 pour the noodles and the spaghetti into the
19 colander to do what? Drain off the water.
20 Colander catches the substance.

21 That's their alibi. The material that
22 flows through that colander out of those
23 holes and right down the drain. They have
24 got holes in their alibi so big, you can
25 drive a truck through them. You could

1 drive this Lexus through them. Why?
2 What's the old adage, seeing is believing,
3 a picture is worth a thousand words. Not a
4 single one of their so-called alibi
5 witnesses ever said they saw Daniel Green
6 in that mobile home after they allege that
7 Larry Demery left.

8 Nellie Montes says she left and they
9 were both there. So what is the
10 significance of her testimony? None. Does
11 it support the alibi? No.

12 Sebette. "I came home, Hector and I
13 went to bed. I never went back in that
14 room. They were both there when we got
15 home."

16 Monica. Monica, "I heard, but I
17 didn't see." Who saw him? Who is it that
18 supposedly saw him after Larry Demery
19 left?

20 Ask yourself the opposite of what they
21 asked you, why didn't they call the people
22 who supposedly saw him? His momma? She
23 had an argument with him. Wouldn't that
24 support the alibi? Absolutely. That would
25 have put him there. But the point, and

1 party. She supposedly went into that room
2 and told them to be quiet how many times
3 after Larry Demery was supposed to have
4 left? Two? Three? Why didn't they call
5 her? Certainly would have strengthened the
6 alibi if it existed.

7 What was it that each of the alibi
8 witnesses testified to? Each of you went
9 through jury selection, they argued this to
10 you, these names were called. Never once
11 did you hear the name Sebette Leones, never
12 once did you hear the name Nellie Montes.
13 Never once did you hear the name Monica
14 Hernandez. You heard the name of Hector
15 Leones. But what does he do? He puts them
16 both there at the time he goes to bed and
17 when he gets up the next morning, they are
18 both gone. Can Hector supply anything for
19 the alibi? Absolutely not.

20 Did you once in jury selections hear
21 the name Catina Jacobs? No, because they
22 didn't know about her. Did you hear Monica
23 Hernandez? No. Did you hear Sebette?
24 No. Why? Because they sat here on the
25 witness stand and they told you, each one

1 of them, told you "The first time I ever
2 talked to anybody," anybody, one said a
3 month ago. Where were we a month ago? We
4 were right here in this courtroom, trying
5 this case. The other said a week before
6 she testified. The other said two weeks
7 before she testified.

8 Where have they been for the last two
9 and a half years if this alibi supposedly
10 existed on July the 22nd and July the 23rd,
11 1993? Where have they been? They have
12 been out in a field of dreams, to borrow a
13 phrase from the defense. Two and a half
14 years they have sat back and remained
15 silent. And the testimony before you is
16 that Monica, Sebette, Nellie's mother is
17 the best friend of the defendant's mother.
18 And they don't have any interest in this
19 case? They don't have any bias to come up
20 here and try to provide him with the
21 defense?

22 MR. THOMPSON: Object.

23 THE COURT: Overruled.

24 MR. BRITT: Think about it.

25 Nobody told you to leave your common sense

1 at that door. Nobody told you to leave
2 your ability to reason at that door when
3 you came in here to be a juror. It's for
4 you to determine what the facts are in this
5 case and it's for you to determine the
6 facts from the believable evidence, the
7 credible evidence, to borrow another phrase
8 from the defense, because on January the
9 3rd, 1996, they stood up and they told you
10 what their evidence was going to show. The
11 first thing they told you was the murder
12 didn't occur where the State said it
13 occurred. They present any evidence of
14 that? No.

15 They then turned around and said their
16 client was an accessory after the fact of
17 murder. Is there any evidence of that?
18 No.

19 Then they turned around and said in
20 the very next breath that James Jordan was
21 alive and well after the date that we said
22 he was killed. Did they present you any
23 evidence of that? No.

24 They told you they were going to bring
25 witnesses in here who say that they saw him

1 after July the 23rd, 1993. They were going
2 to bring in Mr. Johnson from the library in
3 Fayetteville. They were going to bring the
4 store clerk in from a store down in
5 Brunswick County. What happened to that?
6 Then they turn around and they told you
7 that this was a selective investigation.
8 That it focused in on their client and
9 their client only. Is that what the
10 evidence in this case showed?

11 Selective. They then even claim that
12 they were going to show you evidence that
13 the State, that I had withheld evidence
14 from them during the course of this
15 investigation, during the course of the
16 history of this trial. Was there any
17 evidence of that? No.

18 They didn't fulfill their promises.
19 And they said, oh, you can't hold us to
20 that. Credibility of anybody that stands
21 in front of you is always an issue, whether
22 it's a lawyer, whether it's a witness --

23 MR. THOMPSON: Object.

24 THE COURT: Mr. Britt --

25 MR. THOMPSON: Request

1 instruction, Your Honor.

2 THE COURT: Members of the jury,
3 you are to disregard counsel for the
4 State's comment that the credibility of a
5 lawyer is before you in all instances. You
6 are the judges of the fact, you are to base
7 any decision as to the facts solely on the
8 basis of the evidence presented in this
9 case in accord with the Court's instruction
10 on the law. Mr. Britt.

11 MR. BRITT: They argued to you
12 that they would show you that the gun was
13 planted in Daniel Green's house, they would
14 show you that Larry Martin Demery had a key
15 to the door of that trailer, that he had
16 access to that house, and that he put the
17 gun in there.

18 What happened when they asked him?
19 "No, I didn't have a key. I couldn't get
20 in that trailer because the doorknob was
21 messed up." Then during the course of the
22 trial, did you feel it switch? Well, we
23 couldn't get Larry to admit. Now we got to
24 blame it on somebody else. Then they went
25 after Don Smith. That didn't hold. Then

1 they went after Barry Lea. That didn't
2 hold up. Why? Plain and simple truth is
3 that Daniel Andre Green put that gun in
4 that vacuum cleaner.

5 They hung it out there on this thing
6 called an alibi. And just like that water
7 that's in that pot when you pour the
8 noodles into that colander, their alibi
9 goes out those holes and down the drain and
10 is gone forever.

11 And who better, who better than to
12 assert this alibi than the defendant? He
13 didn't testify in this case. And the Judge
14 is going to give you an instruction on
15 that. But even though he didn't testify --

16 MR. THOMPSON: Object, Your
17 Honor.

18 THE COURT: Members of the jury,
19 there's a matter of law the Court must take
20 up at this time. Please recall my
21 instructions in that regard, don't worry or
22 speculate about what takes place in the
23 courtroom in your absence. And if all
24 members of the jury would step to the jury
25 room.

1 (Jury out at 10:00 a.m.)

2 THE COURT: Let the record
3 reflect the following is being conducted in
4 the absence of the jury. Mr. Thompson, Mr.
5 Bowen, you folks want to be heard?

6 MR. THOMPSON: Yes, sir, Your
7 Honor, we need time to consult. Obviously,
8 the comment that was made by the --
9 Mr. Britt, is impermissible. I argue to
10 you he's commented directly on the
11 defendant's decision not to testify. That
12 is a cardinal rule, I suggest to you, Your
13 Honor, which is quite frankly -- it's so
14 egregious, it would entitle the defendant
15 to a mistrial. At this point, Your Honor,
16 we would like to consult with the
17 defendant.

18 THE COURT: How much time do you
19 folks need? Folks, for the record, I'm at
20 line -- strike that.

21 Page 34, line 21. Mr. Britt's
22 comment: "Their alibi goes out those holes
23 and down the drain and is gone forever.
24 And who better, who better than to assert
25 this alibi than the defendant. He didn't

1 testify in this case. And the Judge is
2 going to give you an instruction on that.
3 But even though he didn't testify --" and
4 it was at that point that the objection was
5 made.

6 All right. I'm going to give you
7 folks a reasonable period of time. In my
8 view five or ten minutes is reasonable. Do
9 you disagree?

10 MR. THOMPSON: Yes, sir.

11 THE COURT: You do?

12 MR. THOMPSON: No. Don't.

13 THE COURT: Then you folks can
14 have the opportunity to consult. We'll be
15 at ease for a moment.

16 (Brief recess.)

17 THE COURT: Let the record
18 reflect all counsel are present, the
19 defendant is present in open court.
20 Mr. Thompson, Mr. Bowen, you folks want to
21 be heard?

22 MR. THOMPSON: Yes, sir.

23 THE COURT: All right.

24 MR. THOMPSON: Your Honor, at
25 this time, the defendant would move for a

1 mistrial conditionally -- if you'll hear me
2 out.

3 THE COURT: Yes, sir.

4 MR. THOMPSON: And ask the Court
5 to defer any decision on that motion until
6 after the -- a verdict, if a verdict is
7 reached in this case, Your Honor. And what
8 has happened we contend may very well be
9 grounds for a mistrial. It is a -- no
10 curative instruction, we argue to you, can
11 cure the comment that was made.

12 However, it -- I think about what
13 Mr. Britt, his comments that yesterday he
14 was so angry he didn't care about Rules of
15 Professional Conduct, he didn't care about
16 any rules. This is a rule, Your Honor,
17 that is elementary with respect to
18 commenting on the defendant's decision not
19 to testify.

20 Mr. Britt knows that. And what he's
21 forcing the defense to do at this point is
22 to roll the dice, so to speak, and we
23 believe that -- or we contend that the
24 sanction, he ought to be sanctioned. We
25 contend that the sanction ought to be one

1 of -- the sanction that ought to be
2 considered is the Court to defer any ruling
3 on the -- or on a motion.

4 THE COURT: Mr. Thompson, you're
5 either making a motion or you're not.
6 There is no such thing, as I understand the
7 law, as a conditional motion, we'll wait
8 and see what happens and then make a
9 motion.

10 MR. THOMPSON: Your Honor, there
11 is a thing in law called sanction.

12 THE COURT: Yes, sir.

13 MR. THOMPSON: And you have the
14 authority to sanction the State. And one
15 of those sanctions, we're arguing to you,
16 and of course you have also the authority,
17 to defer your decision on a motion for a
18 mistrial.

19 THE COURT: Well, are you making
20 a motion for mistrial pursuant to 15-A
21 1061, or not?

22 MR. THOMPSON: We're going to
23 need time to consult, Your Honor.

24 THE COURT: Yes, sir.

25 MR. BRITT: May I be heard?

1 THE COURT: Yes, sir, before you
2 folks step out.

3 MR. BRITT: So the record is
4 complete, I am in the process of arguing
5 about their alibi. The State's rebuttal
6 case in regard to that alibi was the
7 defendant's -- the defendant's statements
8 on the morning of July 15th, 1993. That's
9 the evidence that is before the Court,
10 these tapes. And that's where my argument
11 is going because they did hear from the
12 defendant, and the defendant's own words
13 rebut any claim of alibi. That's where my
14 argument is going, not on the fact that
15 he's elected not to testify in this case.

16 MR. THOMPSON: That is not what
17 Mr. Britt said, Your Honor. It's in the
18 record, it's clear. "And who better, who
19 better than to assert this alibi than the
20 defendant. He didn't testify in this
21 case." That's a direct comment on the
22 decision of the defendant not to testify in
23 this case.

24 THE COURT: Let me give you folks
25 an opportunity to consult.

1 If you'll knock on that door for a
2 moment, ask Mr. Thompson, Mr. Bowen, and
3 the defendant to step outside for just a
4 minute.

5 Folks, so that you can make an
6 informed decision, let me give you the
7 following citations: State versus Taylor,
8 340 NC 52, 455 Southeast Second, 859, a
9 1995 case. Taylor deals with remarks of
10 the prosecutor in closing argument.
11 Apparently stands for the proposition that
12 refusal of the trial court to grant a
13 mistrial based on the prosecutor's remarks
14 direct solely to the defendant's failure to
15 offer evidence to rebut the State's case
16 made in response to defendant jury
17 arguments, and based on comments in the
18 State's closing argument in which the
19 prosecutor argued that such evidence was
20 uncontradicted did not constitute error.
21 This is cited under Taylor.

22 MR. THOMPSON: I'm familiar with
23 Taylor, and Taylor was not a direct comment
24 on the defendant's decision not to
25 testify. It was on a comment on the

1 defendant not to offer rebuttal evidence.

2 THE COURT: Yes, sir.

3 MR. THOMPSON: And that's not

4 what --

5 THE COURT: Yes, sir.

6 MR. BRITT: May I have the cite?

7 THE COURT: 340 NC 552.

8 (Brief recess.)

9 THE COURT: Ask all counsel to
10 come in, please. Let the record show all
11 counsel are present, the defendant is
12 present in open court. All members of the
13 jury are secured in the jury room.

14 Folks, I've pulled State versus Monk,
15 Monk is at 286 NC, beginning at page 509.
16 The pertinent part of the opinion is
17 headnote five, which begins on page 516.

18 Monk stands for the following:
19 Improper comment on the defendant's failure
20 to testify may be cured by an instruction
21 from the Court that the argument is
22 improper, followed by prompt and explicit
23 instructions to the jury to disregard it.
24 Monk cites State versus Lindsey, at 278 NC
25 293, 179 Southeast Second, 364, 1971 case

1 for an instruction which was approved of by
2 our supreme court.

3 Lindsey's instruction reads as
4 follows, and this is the curative
5 instruction: "I instruct you members of
6 the jury, that the defendant has no duty to
7 establish anything, and that his decision
8 not to take the witness stand is not to be
9 held against him by you in the course of
10 the deliberations. So if anything was said
11 to you on that point, you are to disregard
12 it, and I will instruct you again on that
13 point in the course of the charge."

14 "The Court further instructed in the
15 instructions -- or jury charge, consistent
16 with the pattern instruction requested by
17 counsel for the defendant as follows: The
18 defendant in this case has not testified.
19 That is to say, he did not go upon the
20 witness stand and offer evidence in his own
21 behalf. In this connection, the Court
22 instructs you that the law of North
23 Carolina gives him this privilege. That is
24 to say, that the law gives him the
25 privilege to decide whether he will testify

1 or remain off the witness stand.

2 "This is the right of every defendant
3 in every criminal prosecution, and the law
4 which gives him this right to make this
5 choice also assures him that his decision
6 not to testify will not be used against
7 him. Therefore, the Court instructs you
8 that you must be very careful in the course
9 of your deliberations not to allow the
10 defendant's silence or the defendant's
11 decision not to offer testimony in his own
12 behalf to influence your decision in any
13 way. For to do so would be to penalize him
14 for exercising a right which our law says
15 he has and which our law recognizes and
16 which our law assures him that he will not
17 be prejudiced or penalized by electing to
18 do what the law says he has a perfect right
19 to do."

20 The Court will give those
21 instructions. Particularly the Court will
22 give the curative instruction, prefacing
23 that instruction by indicating to the jury
24 that the argument of counsel of the State
25 was an improper argument.

1 And then following that up with the
2 language set out in State versus Lindsey.

3 MR. THOMPSON: Your Honor --

4 THE COURT: You folks want to be
5 heard further on your motion?

6 MR. THOMPSON: May we have --

7 THE COURT: Yes, sir. Yes, sir,
8 Mr. Bowen and Mr. Thompson.

9 MR. THOMPSON: Yes, sir. May it
10 please the Court, the defendant's counsel
11 would move for a mistrial pursuant to --

12 THE COURT: 1051?

13 MR. THOMPSON: Yes, sir, 1051
14 and --

15 THE COURT: -- 1061.

16 MR. THOMPSON: 1061, and the due
17 process, Fifth Amendment of the United
18 States Constitution. As well as --

19 THE COURT: Doyle and Hoyle,
20 which I pulled, are constitutional cases
21 dealing with Fifth Amendment rights, due
22 process rights, but they involve argument
23 referencing post arrest silence.

24 MR. THOMPSON: And under Griffen
25 versus California --

1 THE COURT: Yes, sir.

2 MR. THOMPSON: -- which is a U.S.
3 Supreme Court case, a similar case in this
4 area, the grounds which the defendant
5 contends -- and was mentioned to the Court
6 State versus Porter, 340 NC 320, but the
7 grounds of which is the improper, as the
8 Court is already acknowledged, comment of
9 the District Attorney on -- direct comment
10 as to the defendant's failure to testify.
11 That comment being, again, "he didn't
12 testify in this case."

13 THE COURT: Well, more
14 particularly, so that your record is
15 preserved, "Who better than to assert this
16 alibi than the defendant."

17 MR. THOMPSON: Than the
18 defendant.

19 THE COURT: "He didn't testify in
20 this case."

21 MR. THOMPSON: And that's --
22 exactly.

23 THE COURT: In fairness to the
24 State, it's followed up by the language,
25 "And the judge is going to give you an

1 instruction on that." Still an improper
2 comment.

3 MR. THOMPSON: Still an improper
4 comment. Taylor doesn't support it.
5 You've read Taylor, he's read Taylor, that
6 has to do with rebuttal in that case. In
7 that case the defendant didn't offer
8 rebuttal evidence.

9 THE COURT: The argument held in
10 Taylor is essentially the same argument
11 that you're making here, that the comment
12 of a prosecutor was a comment on the
13 defendant's failure to testify. That's
14 what Taylor says.

15 MR. THOMPSON: No, Your Honor.

16 THE COURT: Yes, Mr. Thompson.

17 MR. THOMPSON: May I suggest --

18 THE COURT: Yes, Mr. Thompson.

19 Read page --

20 MR. BRITT: Headnote 2.

21 THE COURT: 62 -- strike that.

22 First full paragraph. "The defendant
23 asserts that the prosecutor made a direct
24 comment on his failure to testify." Are we
25 reading the same language?

1 MR. THOMPSON: Exactly. Now,
2 Your Honor, may we read on?

3 THE COURT: Yes, sir.

4 MR. THOMPSON: This is what the
5 Court is saying, that the defendant asserts
6 that the prosecutor made a direct comment
7 on his failure to testify.

8 THE COURT: Yes, sir.

9 MR. THOMPSON: Well, what does
10 the prosecutor argue? Where, quote, "Where
11 is his alibi? Where was he?" That was
12 what the prosecutor said in State versus
13 Taylor.

14 THE COURT: Are we in agreement
15 that you're asserting the same thing that
16 was asserted in Taylor?

17 MR. THOMPSON: Yes, but he didn't
18 say the same thing, that's what I thought I
19 heard Your Honor to say.

20 THE COURT: No, sir. Between the
21 time the words left my mouth and hit your
22 ears something happened.

23 MR. THOMPSON: Yes, sir,
24 something happened.

25 THE BAILIFF: All quiet, please.

1 THE COURT: Your position is
2 asserted under Griffin and Taylor and due
3 process.

4 MR. THOMPSON: As well as North
5 Carolina Constitution?

6 THE COURT: Yes, sir. You want
7 to cite the specific provisions of the NC
8 Constitution?

9 MR. THOMPSON: Yes, sir,
10 corresponding provisions of the North
11 Carolina Constitution, Your Honor, Article
12 1, Section 19.

13 THE COURT: Yes, sir.

14 MR. THOMPSON: As well as Section
15 23.

16 THE COURT: All right.
17 Mr. Green, for the purposes of the record,
18 the response you can give to the questions
19 I'm about to ask you: I agree, I disagree,
20 or I don't wish to answer.

21 Are you joining in your counsel's
22 request for mistrial, pursuant to 15-A
23 1061?

24 MR. GREEN: Your Honor, may I
25 speak freely?

1 THE COURT: Yes, sir.

2 MR. THOMPSON: Stand up.

3 THE COURT: You can be seated.

4 MR. GREEN: I understand their
5 position. I fully comprehend why they make
6 their motion and their duty to make the
7 motion, but I mean, I have -- to be honest
8 with you, I have to disagree. He set it up
9 yesterday, this man is so scared you could
10 smell it. And I honestly believe he is
11 deliberately trying to get a mistrial. And
12 no, sir, I do not want a mistrial, I do not
13 want one.

14 MR. BRITT: May the record also
15 reflect that I am not deliberately trying
16 to achieve a mistrial.

17 THE COURT: I understand that's
18 Mr. Green's contention.

19 MR. BRITT: Yes, sir, just so
20 it's on the record.

21 THE COURT: We've got a strange
22 situation here. We've got counsel moving
23 for a mistrial pursuant to statutory
24 provision on behalf of the client. The
25 client is asserting that he does not want a

1 mistrial.

2 Mr. Green, I don't mean to put words
3 in your mouth, I'm simply trying to
4 understand what your position is so that
5 the record can accurately reflect what your
6 position is. Do you want an opportunity to
7 consult with Mr. Thompson or Mr. Bowen
8 further on this matter?

9 MR. GREEN: No, sir, I really
10 don't.

11 MR. BOWEN: Your Honor --

12 THE COURT: And because this has
13 consequences for you personally, I want to
14 make sure that you absolutely understand
15 before you stake yourself out on the
16 record. If you take the position that you
17 do not want a mistrial, you may be waiving
18 some rights in that regard, in particular
19 you may be waiving some appellate rights.
20 Do you understand what I've said?

21 MR. GREEN: Yes, sir.

22 THE COURT: Do you -- having
23 explained that to you, do you now want an
24 opportunity to consult further with Mr.
25 Thompson, Mr. Bowen?

1 MR. GREEN: No, sir.

2 THE COURT: Is your position the
3 same?

4 MR. GREEN: Yes, sir, it is.

5 THE COURT: Mr. Thompson?

6 MR. THOMPSON: Yes, sir, Your
7 Honor. For the record, we have consulted
8 with our client concerning that very
9 matter.

10 THE COURT: Folks, you've got an
11 obligation to do what you think is
12 appropriate as attorneys in the case, but
13 the bottom line is the case is the client's
14 case.

15 MR. THOMPSON: I understand. And
16 you, in other instances, have asked that --
17 I mean, have allowed the defendant and
18 advised the defendant that he may consult
19 outside counsel.

20 THE COURT: I intend to do that
21 right now.

22 MR. THOMPSON: It may be
23 appropriate.

24 THE COURT: You understand that
25 your position is in opposition to the

1 position being taken by your attorneys,
2 Mr. Thompson, Mr. Bowen?

3 MR. GREEN: Yes, sir.

4 THE COURT: You have the right to
5 request this Court to give you an
6 opportunity to consult with outside
7 counsel. By outside counsel, I'm referring
8 to counsel other than Mr. Thompson,
9 Mr. Bowen. Do you wish to exercise that
10 right?

11 MR. GREEN: Yes, sir.

12 THE COURT: Okay. Who's on the
13 list, who's available? We've had prior
14 consultation with -- who was it?

15 MR. BRITT: Mr. Chavis.

16 THE COURT: Were you satisfied
17 with Mr. Chavis' consultation?

18 MR. GREEN: Yes, sir.

19 THE COURT: Do you wish the Court
20 to appoint him for that limited purpose at
21 this time?

22 MR. GREEN: Yes, sir, if you
23 will.

24 THE COURT: I certainly will.
25 Mr. Green, have a seat.

1 Call Mr. Chavis and tell him we need
2 him immediately, if he's available. Who's
3 in the room next door? Who is the attorney
4 in the room next door?

5 MR. BRITT: Mr. Ransom.

6 THE COURT: Has he got any
7 involvement in the case?

8 MR. BRITT: No, sir.

9 THE COURT: Are you aware --

10 MR. THOMPSON: He's Mr. Chavis'
11 partner. That's my thought.

12 MR. BOWEN: He's fine.

13 THE COURT: That's Mr. Chavis'
14 partner. I understand from Mr. Bowen he
15 has co-counseled a capital case with
16 Mr. Bowen?

17 MR. BOWEN: Yes, sir.

18 THE COURT: Since he's available,
19 in the interest of minimizing any time loss
20 here, do you have any objection to my
21 appointing Mr. Ransom for the purposes of
22 independent consultation?

23 MR. GREEN: No, sir, I do not.

24 THE COURT: Ask Mr. Ransom to
25 step in, if you will, please.

1 THE BAILIFF: He stepped upstairs
2 momentarily. We tried to reach him.

3 THE COURT: Let's run him down.

4 Folks, if we could have it quiet in
5 the courtroom, please.

6 Let the record reflect that Mr. Ransom
7 is now present.

8 Mr. Ransom, let me apprise you of our
9 situation. There is a motion before the
10 Court being made by counsel for the
11 defendant Mr. Bowen, Mr. Thompson. That
12 motion is for a mistrial pursuant to North
13 Carolina 15-A1061. The basis of the motion
14 is counsel for the defendant's contention
15 that counsel for the State, Mr. Johnson
16 Britt, improperly commented on the
17 defendant's failure to testify in this case
18 in closing argument in violation of case
19 law and in violation of what they contend
20 are constitutional provisions set out in
21 Griffin versus California and the due
22 process clause of the United States
23 Constitution, as well as provisions of
24 Article 1, Section 19 of the North Carolina
25 Constitution.

1 Mr. Green has been examined by the
2 Court in open court as to whether or not he
3 agrees or concurs with the motion being
4 made by counsel on his behalf. He has
5 indicated on the record that he does not
6 wish to move for a mistrial. I've asked
7 him if he wishes to have the opportunity to
8 consult independently with other counsel.
9 He's indicated that he does wish to have
10 independent consultation.

11 It's my intent to appoint you for that
12 limited purpose at this time. Do you have
13 any objection to that appointment?

14 MR. RANSOM: No, Your Honor.

15 THE COURT: I have asked that a
16 copy of the transcript be marked as the
17 Court's exhibit of the pertinent argument
18 now before the Court. I'm going to ask
19 that you step forward and receive that at
20 this time.

21 So you'll know exactly what the issue
22 is, and if you will -- with the thanks of
23 the Court, if you'll take the opportunity
24 to consult independently with Mr. Green,
25 there's a room available at the far end of

1 the courtroom.

2 Mr. Ransom, so you will be fully
3 informed of exactly what has occurred, the
4 Court has read into the record the language
5 set out in State versus Monk, 286 NC on
6 page -- strike that. 516, headnote 5. I'm
7 going to give you that at this time.

8 It also refers to State versus
9 Lindsey. The cite in Monk is 278 NC 293.
10 I'm going to give you that, as well. It's
11 the Court's intention to give the curative
12 instruction recommended by Monk set out in
13 Lindsey along with the pattern jury
14 instruction requested previously by
15 defendant as to the effect of the
16 defendant's decision not to testify.

17 MR. BOWEN: If Your Honor,
18 please, on the way, I would like the record
19 to show, if it could, that Mr. Green has
20 asked Mr. Thompson and I first to sort of
21 give Mr. Ransom a little bit further
22 background on the case and then we'll leave
23 the room.

24 THE COURT: Let the record so
25 reflect. And Mr. Ransom, I'll examine you

1 about your opportunity to independently
2 consult Mr. Green when you return.

3 We're at ease for a few moments.
4 Folks, take whatever time you need, but
5 we've got a jury waiting.

6 (Brief recess.)

7 THE COURT: Ask Mr. Green to come
8 in for a moment. He'll need to be
9 present. I'm going to bring the jury in
10 and give them a recess.

11 Mr. Thompson, Mr. Bowen, if you'll
12 take a seat at the counsel table.

13 Mr. Green, I'm going to bring the jury
14 in. And appearing from information just
15 received that you will need approximately
16 15 minutes additionally with Mr. Ransom; is
17 that accurate?

18 MR. GREEN: Yes, sir.

19 THE COURT: I'm going to bring
20 the jury in, give them a recess until
21 11:30, that should give you folks ample
22 time. Anything further on the State in
23 that regard?

24 MR. BRITT: No, sir.

25 THE COURT: Mr. Bowen and Mr.

1 Thompson?

2 MR. BOWEN: No, sir.

3 MR. THOMPSON: No, sir.

4 THE COURT: If you'll bring the
5 jury in, please.

6 (Jury in at 11:09 a.m.)

7 THE COURT: Members of the jury,
8 it appears that the matter of law which is
9 now before the Court will take a little
10 longer than we initially anticipated.
11 Rather than keeping you confined to the
12 jury room, I'm going to give you folks the
13 morning recess at this time until 11:30.
14 Please report directly back to the jury
15 room from which you've just come at 11:30,
16 and we will go forward at that time or
17 shortly thereafter. The Court will have
18 further instructions for you at the
19 appropriate time.

20 Again, I instruct you that you
21 shouldn't worry or concern yourself about
22 what takes place in the courtroom in your
23 absence. You shouldn't worry or speculate
24 in any respect about these matters. These
25 are matters of law that are required to be

1 heard by the Court in the absence of the
2 jury.

3 Also recall that it remains your duty
4 to abide by all prior instructions of the
5 Court concerning your conduct during this
6 recess. Everyone else please remain
7 seated, the members of the jury are excused
8 until 11:30.

9 (Jury out at 11:11 a.m.)

10 THE COURT: In the absence of the
11 jury, Mr. Ransom, again, thank you for your
12 assistance. And you may now continue with
13 your independent consultation with
14 Mr. Green.

15 We're at ease, folks.

16 (Brief recess.)

17 THE COURT: Mr. Ransom, if you'll
18 hand up the Reporters involving Monk and
19 Lindsey. Thank you, sir.

20 Let the record reflect all counsel are
21 present, the defendant is present in open
22 court. Also present at this time is
23 Mr. Kenneth Ransom, who has been appointed
24 by the Court for the purpose of consulting
25 independently with the defendant in this

1 matter, Daniel Andre Green, also known as
2 U'Allah.

3 Mr. Ransom, have you had had adequate
4 opportunity to consult with Mr. Green
5 independently?

6 MR. RANSOM: I have, Your Honor.
7 I discussed this matter with Mr. Green.

8 THE COURT: Have you discussed
9 with Mr. Green the law as it is set out,
10 pardon me, in State versus Monk at 286 509?

11 MR. RANSOM: We have, Your Honor.

12 THE COURT: Have you discussed
13 with Mr. Green the instruction cited with
14 approval in Monk, which is set out in State
15 versus Lindsey, 278, and particularly at
16 3 -- strike that, 293.

17 MR. RANSOM: Yes, I have, Your
18 Honor.

19 THE COURT: Are you satisfied
20 that Mr. Green understands the consequences
21 of -- possible consequences related to
22 decisions that he might make with regard to
23 the motion made on his behalf by his trial
24 attorneys, Mr. Bowen and Mr. Thompson,
25 pursuant to 15-A 1061?

1 MR. RANSOM: Yes, Your Honor.

2 THE COURT: Anything that you
3 want to report to the Court at this time
4 regarding those matters?

5 MR. RANSOM: Judge, as I've
6 indicated, I discussed these matters at
7 length with Mr. Green in the time we've had
8 to confer on this issue, which Mr. Green
9 has indicated at this time that he does not
10 wish to join in his attorney's right, or
11 motion for mistrial. He voluntarily has
12 waived that right.

13 Judge, in anticipation of this, I
14 asked Mr. Green to sign a document as to
15 that effect. He has. At this time we
16 would like to pass that matter up for the
17 Court and --

18 THE COURT: If you'll read the
19 document into the record first please.

20 MR. RANSOM: Yes, Your Honor.
21 Dated February 28th, 1996, "I, Daniel
22 Green, having been advised of my rights
23 pertaining to the pending motion for
24 mistrial by the Court, by independent
25 counsel Kenneth Ransom, am hereby

1 voluntarily waive my right to mistrial."
2 And signed by Mr. Green.

3 THE COURT: If you'll mark that
4 as the next numbered Court's exhibit in
5 this case. Before you do that -- I
6 apologize.

7 Before you do that, Mr. Green are you
8 fully satisfied that you understand the
9 consequences or possible consequences?

10 And before you answer that question,
11 let me read to you the statutory provision
12 that is involved North Carolina General
13 Statute Section 15-A1061, which is
14 entitled, Mistrial For Prejudice To
15 Defendant, reads as follows: "Upon motion
16 of a defendant or with his concurrence, the
17 Judge may declare a mistrial at any time
18 during a trial. The Judge must declare a
19 mistrial upon the defendant's motion if it
20 occurs during the trial an error or legal
21 defect in the proceedings or conducted
22 inside or outside of the courtroom
23 resulting in substantial and irreparable
24 prejudice to the defendant's case. If
25 there are two or more defendants, the

1 mistrial may not be declared as to a
2 defendant who does not make or join in the
3 motion."

4 The position as I understand it that
5 you're taking is that you do not wish that
6 a motion for mistrial on your behalf be
7 entertained by this Court. Is that
8 accurate?

9 MR. GREEN: That's correct, sir.

10 THE COURT: Specifically, you
11 understand Mr. Bowen, Mr. Thompson, have
12 made a motion on your behalf pursuant to
13 the statutory provision that I've just
14 made?

15 MR. GREEN: Yes, sir.

16 THE COURT: Specifically, am I
17 correct in understanding, that you do not
18 join in that motion; is that accurate?

19 MR. GREEN: Yes, sir.

20 THE COURT: And that the motion
21 made by Mr. Thompson and Mr. Bowen is not
22 one in which you concur or agree.

23 MR. GREEN: Yes, sir.

24 THE COURT: Is that accurate?

25 MR. GREEN: Yes, sir.

1 THE COURT: Is that still your
2 position, sir?

3 MR. GREEN: Yes, sir, it is.

4 THE COURT: If you'll mark the
5 document previously referred to as Court's
6 Exhibit for the purposes of the record.

7 The Court will give the curative
8 instruction set out in State versus Lindsey
9 immediately upon bringing the jury in. The
10 motion made on behalf of the defendant by
11 his trial counsel, Mr. Thompson and
12 Mr. Bowen, the Court deems as a
13 preservation motion made by counsel. Court
14 further notes for the record that that
15 motion is not joined in by the defendant.
16 The Court further notes that the defendant
17 has a constitutional right to have this
18 matter determined and decided by the jury
19 which was impaneled in this case.

20 You are aware of that constitutional
21 right; is that correct?

22 MR. GREEN: Yes, sir.

23 THE COURT: The Court having
24 satisfied itself that the defendant
25 understands his constitutional rights to

1 have this matter decided or determined by
2 the jury impaneled in this case and having
3 further satisfied itself that the defendant
4 does not join in and does not concur with
5 the motion made pursuant to 15-A1061 by his
6 trial counsel, denies that motion at this
7 time. In the discretion of the Court.

8 Court further notes that the
9 instruction set out in Lindsey and approved
10 in Monk will be given with regard to the
11 argument of counsel. And specifically the
12 Court intends to instruct the jury that the
13 language used by counsel for the State,
14 that "Who better than to assert this alibi
15 than the defendant," and "when the
16 defendant didn't testify in this case. The
17 Judge is going to give you an instruction
18 on that," they are to disregard any
19 reference by counsel for the State to the
20 defendant's decision not to testify. That
21 is an improper argument, and I will follow
22 that up with the language in Lindsey.

23 Mr. Thompson, Mr. Bowen, you folks
24 want to be heard further?

25 MR. THOMPSON: Yes, Your Honor.

1 With regard to the instruction, it's the
2 defendant's contention that it's improper
3 as well as unethical, and would --

4 THE COURT: What is improper and
5 unethical?

6 MR. THOMPSON: The comment
7 itself. It's improper and unethical.
8 Because we contend it's unethical in
9 addition to it's improper.

10 In addition to the other grounds that
11 we've asserted, we ask that you include
12 that language in the instruction. And we
13 also would ask -- well, either as a
14 separate or as an additional form of
15 relief, that the defendant be allowed an
16 additional time or time to an opportunity
17 to have closing additional -- excuse me,
18 time for additional closing after the State
19 finishes it's closing argument.

20 THE COURT: Both requests are
21 denied. Specifically as it relates to the
22 language and unethical, that's a matter for
23 the Court to take up if at all at the
24 conclusion of these proceedings as I
25 previously indicated.

1 Court will give the instruction set
2 out in Lindsey verbatim, and will follow
3 that up with the defendant's requested
4 instruction as to the effect of the
5 defendant's decision not to testify as part
6 of the instructions given at the conclusion
7 of all arguments.

8 Note the defendant's exception to the
9 ruling of the Court so that that issue is
10 preserved as well.

11 MR. THOMPSON: As to the second
12 request for relief?

13 THE COURT: That's denied as
14 well. In the discretion of the Court.

15 All right. Bring the jury back in,
16 please, sir.

17 MR. BRITT: Is Mr. Ransom
18 released?

19 THE COURT: Mr. Ransom, I
20 apologize. Thank you very much. If you'll
21 submit an application to the Court,
22 please.

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

24 THE COURT: Members of the jury,
25 in the course of his final arguments,

1 counsel for the State, Mr. Johnson Britt,
2 referred to the defendant's decision not to
3 testify in this case. And I instruct you
4 that the defendant has no duty to establish
5 anything and that his decision not to take
6 the witness stand is not to be held against
7 him by you in the course of your
8 deliberations in this case. I instruct you
9 further that you are to disregard that
10 argument by counsel for the State. I
11 further instruct you that that argument by
12 counsel for the State is an improper
13 argument and is not to take any part in
14 your deliberations in this case in any
15 respect.

16 Now, I will give you further
17 instructions in this regard in the
18 instructions as to the law that you are to
19 apply to the facts as you find the facts to
20 be based on the evidence presented in this
21 case at the conclusion of all the arguments
22 in this matter.

23 Mr. Britt, at this time you may
24 continue with your argument to the jury.

25 MR. BRITT: May it please the

1 Court.

2 THE COURT: Yes, sir.

3 MR. BRITT: Ladies and gentlemen
4 of the jury, on August the 15th, 1993, did
5 the defendant say anything to Art Binder,
6 Randy Myers, about being at Kay Hernandez's
7 on the morning of July the 22nd -- excuse
8 me, the night of July 22nd and the morning
9 of July 23rd? Absolutely not.

10 How many times did you hear the
11 officers on these tapes ask the defendant
12 "Tell us the truth, tell us how you got
13 this car, tell us your involvement with
14 this car." And how many times did the
15 defendant give them a story and say,
16 "That's the truth. I swear to God, that's
17 the truth." How many times? And any one
18 time did he ever mention I was not there?
19 No.

20 Why? Because the truth was not in the
21 defendant on August the 15th, 1993. You
22 listened to this tape. His -- "I got the
23 car at the Rowland Motel. I was walking
24 down a highway, some Arab looking guy
25 drives up, asked me for directions to 74.

1 Asked me if I want to go. Drive up to 74,
2 'how do I get to Fayetteville, do you want
3 to ride to Fayetteville with me?'" This is
4 an absolute stranger. "We go to
5 Fayetteville, I've got relatives in
6 Fayetteville."

7 That was the truth, he did have a
8 relative in Fayetteville. That was the
9 only part of that story that was true.

10 They go to this motel, this gas
11 station. How about taking this car to this
12 guy named Rick. Does Rick sound viable to
13 anybody? Rick, who else talked about
14 Rick? Larry Demery.

15 What was Larry Demery's testimony?
16 Larry Demery said that after all this had
17 been done and after the news broke on TV,
18 that James Jordan's body had been found and
19 that James Jordan's car had been found, he
20 and who? He and the defendant schemed,
21 concocted a story that they were going to
22 tell in the event that the police came.
23 And what was that story? Rick brought us
24 the car. Rick had the car. Rick, Rick,
25 Rick. That's what Larry Demery said.

1 That's what the defendant said.

2 But what happened? What happened?
3 Said, "That can't be true. That can't be
4 true. We've talked to your brother. There
5 was no Rick." "Yeah that's the truth, the
6 Arab guy brought me the car." Well, he
7 wasn't a Arab guy, he was a white guy, dark
8 hair, and he went on with that story.

9 Then he kept falling back to Rick,
10 what was it he said, "Me and Rick went to
11 Marion, South Carolina." To see who? The
12 defendant's girlfriend, Melinda Moore.
13 Melinda Moore ever see Rick? No. Melinda
14 Moore saw Larry Demery and she saw Daniel
15 Green, in what? That red Lexus. On what
16 date? July 23rd, 1993, the very day the
17 defendant said, "I got it from the Arab
18 guy, I drove it to Fayetteville, spent the
19 night at my brother's and then went down
20 there on Saturday," which would have been
21 the 24th. Is that what the real credible
22 and believable evidence in this case
23 shows? No.

24 So when they caught him in that lie,
25 what did he do? Well, if you won't believe

1 that story, let me tell you this one, let
2 me see if I can sell this one to you, "I
3 was at the Rowland Motel, 8:00, 9:00. July
4 the 23rd, 1993. Went to the Roland motel,
5 supposed to get some money from a man. Get
6 there and there's this white man dressed up
7 in a suit, driving this red Lexus," a
8 \$50,000 car. And the defendant says he
9 trades him two rocks of cocaine for the use
10 of that \$50,000 car. Two rocks of cocaine,
11 what is that worth? 50 bucks? Is that
12 believable? No, but that's the story he
13 told, and he swore that that was the
14 truth.

15 Never on August the 15th of 1993 does
16 he say one single solitary word about being
17 at Kay Hernandez's, about being with Bobbie
18 Jo Morillo, about watching MTV until 5:00
19 in the morning, about seeing any of these
20 people. Why? Because it wasn't true on
21 August the 15th of 1993, and it's not true
22 today, February 28th of 1996.

23 What does he do? He kept digging
24 himself a hole. What did he tell
25 Mr. Binder and Mr. Myers when they told him

1 about the phone call? I knew they would
2 come back to haunt me. I knew they would
3 catch me. They argued to you it was a
4 selective investigation. Talk about the
5 investigation.

6 This end of the jury box, we've got
7 the investigation into the discovery of
8 that car. That red Lexus that had been
9 parked in those woods since July the 26th
10 of 1993, and was found on August the 5th by
11 Chris Jones back in 1993. That car was
12 busted up, the windows were gone, the tires
13 were gone, the sunroof was gone, there was
14 water standing in it because it had been
15 raining. There had been people in and out
16 of that car.

17 So the Cumberland County Sheriff's
18 Department on August the 11th starts their
19 investigation. They start at this end, and
20 who do they find? Terrellis Teasley.
21 What does Terrellis Teasley tell you, what
22 did he tell you in this courtroom? Daniel
23 Green and some white dude brought this car
24 up here, wanting to sell it. "Well,
25 Mr. Teasley, who did you negotiate with?

1 Did you negotiate with the defendant or the
2 white dude?" Oh, man, no, the defendant
3 was in charge. "He wanted too much money
4 for that car, but I wanted those golf
5 clubs." What golf clubs? Those golf clubs
6 sitting right over there with Michael
7 Jordan's name tattooed all over them. Same
8 golf clubs that have his name on the bag.
9 And he tells Mr. Binder, "I didn't know
10 that was Michael Jordan's car."

11 They go from Terrellis Teasley to
12 Jovan Carter, what did they do? "They came
13 to my house," Rick Hales, the defendant,
14 Larry Demery. Larry Demery didn't say much
15 of anything. Daniel Green did all the
16 talking. He was the one driving the car,
17 he was the one looking to sell the car.

18 Take the next step, Rick Hales. "Ever
19 see a 1992 red Lexus at your house?" "Yes,
20 sir." "When was the first time you ever
21 saw that car?" When the defendant, some
22 guy named Larry, and Eric drove up. Eric
23 was in another vehicle, another truck.
24 What did they do? They looked for somebody
25 to buy that car, they wanted to get rid of

1 that car.

2 "Did you know this Daniel Green?" "I
3 just know he's got a brother somewhere in
4 Fayetteville by the name of Moore, David
5 Moore." He and Eric are buddies.

6 They take the next step, David Moore.
7 "You got a brother? See a 1992 red Lexus,
8 two-door, nice car?" "Yeah. My brother
9 brought that car up here. My brother and
10 his friend Larry. I don't know Larry's
11 last name, I had never met Larry before.
12 My brother brought it up here."

13 "What else did your brother have?"

14 "He had this big shiny silver NBA ring
15 on. Blue stone, said NBA All-Star, side of
16 it says Jordan. It's on his hand. I
17 didn't know that was Michael Jordan's
18 car."

19 What else did he have? "Well, he was
20 wearing a watch." "Anything about that
21 watch that you remember?" "Oh, yeah.
22 Yeah. I remember a lot. Got a Chicago
23 Bulls emblem on the front of it, 'World
24 Champions' written on it." "Ever see
25 anything else about that watch?" "Yeah,

1 had something written on the back, 'To Dad,
2 from Michael, Juanita.'" Then says he
3 doesn't know it's Michael Jordan's car.

4 He's wearing James Jordan's watch.
5 He's wearing the very ring that Michael
6 Jordan gave his father. And they
7 stipulated to that fact. That's a fact,
8 that's a fact.

9 MR. THOMPSON: Object.

10 THE COURT: Overruled.

11 MR. THOMPSON: Desire to be
12 heard.

13 THE COURT: Okay. Members of the
14 jury, there's a matter of law the Court
15 must take up at this time out of the
16 hearing and presence of the jury. Recall
17 my instructions, don't worry or speculate
18 about what takes place in the courtroom in
19 your absence. If you folks will step to
20 the jury room.

21 (Jury out at 11:49 a.m.)

22 THE COURT: Let the record
23 reflect the following is in the absence of
24 the jury. Mr. Thompson.

25 MR. THOMPSON: Your Honor, the

1 objection goes to the language that they
2 stipulated to that fact. Now, out of an
3 abundance of precaution with regards to --
4 he's referring to the stipulations or if
5 he's referring to -- I'm trying to
6 ascertain if he's referring to the
7 stipulation which was State's Exhibit --

8 THE COURT: That's the direction
9 that he pointed in, and that's what I see
10 he was arguing.

11 MR. THOMPSON: Yes, sir, and
12 that's not the stipulation.

13 MR. BRITT: I've got the
14 stipulation right here in my hand. Would
15 you like me to read it for the record?

16 THE COURT: Yes, sir.

17 MR. BRITT: The parties
18 stipulated to the following facts, the
19 following signatures appear on that
20 document: Signature line for Daniel Andre
21 Green, defendant, is blank; signature line
22 for Lord As-Saddiq Al-Amin Sallam U'Allah,
23 defendant, is signed in the defendant's
24 handwriting; Angus B. Thompson, II, counsel
25 for the defendant; Woodberry L. Bowen,

1 counsel for the defense; Luther Johnson
2 Britt, District Attorney.

3 THE COURT: Yes, sir.

4 MR. THOMPSON: And what --

5 MR. BRITT: Stipulation reads as
6 follows: "That Michael Jordan is the son
7 of James R. Jordan. In February 1986
8 Michael Jordan gave his father, James R.
9 Jordan, a 1986 NBA All-Star ring that had
10 been presented to Michael Jordan for his
11 participation in the 1986 NBA All-Star game
12 held in Dallas, Texas. Michael Jordan gave
13 his father and others a replica 1990-1991
14 championship ring as A Christmas present in
15 1991. The 1990-91 NBA ring was made by
16 Howard Kaplan, Henry Kay Jewelers, Chicago,
17 Illinois, at a cost of \$3500 per ring."

18 THE COURT: I think that covers
19 the pertinent part.

20 MR. THOMPSON: No, it doesn't, I
21 argue that it does not. We've only
22 stipulated, and he can read on, but we've
23 only stipulated that Michael Jordan
24 identified certain items as being the ring,
25 not in fact that they were, but that's

1 what, if you read the stipulation further
2 on, that is not what we stipulated to. The
3 language -- the stipulation speaks for
4 itself.

5 THE COURT: Yes, sir, it does.
6 You folks watching this jury as they parade
7 in and out of here? You folks paid any
8 attention at all to the jury?

9 MR. THOMPSON: Why, yes, I pay
10 attention to it, that's not the point.

11 The point is I argue to you, is what
12 he's asserting is improper because that was
13 not the stipulation. And he still hasn't
14 read the relevant portion because it said
15 Michael Jordan identified it as being the
16 ring. Frankly, if you look at that picture
17 and the ring that appears on the
18 defendant's finger, I don't see how Michael
19 Jordan could see it even if he had a
20 magnifying --

21 THE COURT: Overruled. Exception
22 is noted for the record. Bring the jury
23 back in.

24 MR. THOMPSON: And except --

25 THE COURT: I just said that.

1 (Jury in at 11:53 a.m.)

2 THE COURT: Objection is
3 overruled. Exception is noted. Mr. Britt.

4 MR. BRITT: May it please the
5 Court.

6 Stipulation was entered into.
7 Defendant signed it, his lawyers signed it,
8 I signed it. You all read it, you all got
9 to see the picture that was attached. You
10 got to see the ring that was recovered.
11 You got to see the photograph of a watch
12 because the watch was never recovered. You
13 got to see the photograph of the other
14 ring, the championship ring, the gold ring
15 with the bull's head on it with the
16 diamonds surrounding it. It's a fact.

17 That watch belonged to James Jordan.
18 It's a fact that that ring belonged to
19 James Jordan. It's a fact, stipulated
20 fact, undisputed, that the eyeglasses that
21 the defendant is wearing are identical,
22 identical to the ones that James Jordan
23 wore and are identical to the ones that
24 he's wearing in the picture that was
25 entered as State's Exhibit Number 9, the

1 last photograph taken of James Jordan while
2 he was alive on July the 22nd, 1993. It's
3 a fact.

4 But yet, the defendant told Mr. Binder
5 and Mr. Myers, "I didn't see that man." If
6 he didn't see the man, who put the glasses
7 on his face? Who put the glasses in his
8 hand? Who put the ring on his finger? Who
9 put it in his hands? Who put the watch on
10 his wrist? Who, Larry Demery? No. No.

11 The defendant. The defendant because
12 he was there. He was there. He said, "I
13 don't know anything about a ring." Ring
14 got stolen, remember that? Told Mr. Binder
15 the ring got stolen up in Fayetteville,
16 some boy took it. Ring was stolen. That
17 was on August the 15th of 1993.

18 The ink wasn't even dry on the
19 transcript on August the 16th of 1993, and
20 lo and behold --

21 MR. THOMPSON: Object to him on
22 the grounds of the transcript on August the
23 15th -- 16th.

24 MR. BRITT: I'll withdraw the
25 comment.

1 THE COURT: Bear with me for one
2 second, folks.

3 THE COURT: You're withdrawing
4 it?

5 MR. BRITT: I'll withdraw it.

6 THE COURT: Members of the jury
7 you're not to consider it in any respect.
8 Yes, sir.

9 MR. BRITT: August the 15th of
10 1993, he tells him, "I don't know where
11 that ring is, some boy stole it from me."
12 Some boy stole a watch. August the 16th,
13 1993, the NBA All-Star ring was recovered.
14 Where? Who took them to it? The very
15 person who the day before said it's
16 stolen. But where is it? Right there at
17 his grandmom's house, buried. Larry Demery
18 told you that Daniel Green said "I'm going
19 the bury this stuff." Why? In 20 years it
20 will be worth a lot of money.

21 Money. The motivating factor behind
22 this murder, the defendant's desire to have
23 money, the defendant's desire to have nice
24 material objects, a \$50,000 Lexus. A
25 desire to have that car was the motive for

1 this murder. He wanted it and he was going
2 to do whatever it took to get it. If it
3 meant killing a man, no problem.

4 What else did he tell them on August
5 the 15th of 1993? "Oh, yeah, I remember
6 that gun now. Some boy, I gave it to him
7 on the Murch, up on the Murch in
8 Fayetteville, I gave some boy this gun."
9 August the 16th, 1993, gun is not on the
10 Murch in Fayetteville. The gun is not in
11 some boy's hands up in Fayetteville. That
12 gun is in exactly the place where the
13 defendant left it on August the 14th, 1993,
14 before leaving with Mr. Binder and Randy
15 Myers, in the bottom of that vacuum
16 cleaner, right where he put it.

17 When did he put it there? What was
18 the testimony? Larry Demery told you he
19 got a call at 9:00, August the 14th. From
20 whom? The defendant. What did he say?
21 "Cops are at my house, you better get the
22 hell out of town." Who saw the defendant
23 peering out of the window at the end of
24 that mobile home as they drove up, looking
25 through the blinds? Randy Myers and Art

1 Binder.

2 They go to the door (indicating),
3 defendant's mother comes to the door, "My
4 name is Art Binder, I'm with the Cumberland
5 County Sheriff's Department, this is Randy
6 Myers, State Bureau of Investigation. We
7 would like the talk to Daniel Green, is he
8 at home?" "Oh, yes, my son is at home."
9 Nobody else there.

10 Where does the defendant come from?
11 What area of the trailer? The room where
12 he had been peering out the window. Where
13 is the vacuum cleaner? In the room where
14 the defendant was peering out the window.

15 He comes to the door, "I'm Art Binder,
16 Cumberland County Sheriff's Department."
17 "I'm Randy Myers, State Bureau of
18 Investigation. We would like to talk to
19 you about a stolen Lexus, stolen car
20 parts. Would you come with us to the
21 Robeson County Sheriff's Department?"
22 "Sure, no problem, be glad to go. Let me
23 go put on a shirt." Not wearing a shirt.
24 Where does he go? Back to that room.

25 Does he go and immediately return?

1 No. He goes back there, stays for a couple
2 of minutes. That's the testimony. And he
3 returns. I would submit to you ladies and
4 gentlemen, that's when the gun was put in
5 the vacuum cleaner because what's the other
6 testimony as it relates to the gun? What
7 Larry Demery came home from Fayetteville,
8 he had the gun. And he kept the gun until
9 13th of August, 1993, when he gave it back
10 to the defendant. Larry Demery took it
11 home with him again the night of August the
12 13th, 1993. But on the morning of August
13 the 14th, who comes to Larry Demery's
14 house? The defendant. What does Larry
15 Demery give him? The .38 caliber gun that
16 was found in the bottom of the vacuum
17 cleaner.

18 Any testimony that Larry Demery ever
19 went back in that trailer? No. Any
20 suggestion or inference that can be drawn
21 from the evidence that Larry Demery went
22 back into that trailer on August the 14th,
23 1993? No. The only person who knew where
24 it was was the defendant. And what's the
25 significance of that vacuum cleaner? It

1 belongs to his mother's best friend.

2 What did Hector Leones tell you? When
3 he went to check on the vacuum cleaner in
4 that storage building, he didn't find the
5 vacuum cleaner, he found a great big black
6 suitcase. Never seen it before.

7 But the defendant in his own words
8 said, "I gave the gun to a boy in
9 Fayetteville." That wasn't the truth.
10 What's that show? That shows a mind of
11 someone who has got a guilty conscience,
12 trying to avoided protection, someone
13 trying to shift the blame off himself. You
14 can consider that in reviewing this
15 evidence. Did he tell him the truth on
16 August the 15th? No.

17 His brother, David Moore, says in
18 addition to the Lexus, the ring, the watch,
19 and those golf clubs, the defendant brings
20 an old rusty looking gun into his trailer.
21 Not Larry Demery, but the defendant.
22 Mr. Bowen says well, you got to put this
23 under the stereomagnifier or microscope to
24 see this rust. Rust reddish brown?
25 Color? The defense invited you to ask to

1 look at exhibits. Look at State's Exhibit
2 59-A close. There's rust along the edge of
3 the cylinder. There's what appears to be
4 rust across the top near the hammer.
5 There's rust underneath the barrel. But
6 the defendant brought this gun.

7 Jamie Moore, the defendant's brother,
8 says, "I saw him in Fayetteville, I spent
9 time with him in Fayetteville. He's got
10 this nice ring, he's got this nice watch.
11 When I first saw him and Larry, they had a
12 gun. This gun. This gun.

13 Has Larry Demery testified about any
14 of this? No, because he wasn't there. But
15 these other people, Rick Hales, Terrellis
16 Teasley, Jovan Carter, David Moore, Jamie
17 Moore, what do they do? They pointed the
18 finger at him. At him. Not at Larry
19 Demery, they don't even know who Larry
20 Demery is. And lo and behold, just to show
21 you how much he was lying to them on August
22 the 15th, 1993, what does he do? "I don't
23 know Larry. I don't know anybody by the
24 name of Larry that's got a tattoo on his
25 arm."

1 And then he's got to make up a story
2 about why he didn't tell them about Larry.
3 Did he ever tell them that Larry killed
4 James Jordan? That Larry was the one who
5 pulled the trigger? No. What did he say?
6 "Larry couldn't kill anybody. I know
7 Larry."

8 Mr. Thompson described Larry as a
9 thief. And I would submit to you and argue
10 to you ladies and gentlemen, thieves don't
11 kill the in the manner in which James
12 Jordan was killed. What was his history?
13 Mr. Thompson talked about Larry Demery's
14 history. We'll get back to that.

15 Let's go back to the selective
16 investigation. We started at this end, we
17 went to Terrellis Teasley, to Jovan Carter,
18 to Rick Hales, to David Moore. We're going
19 to start at this end now. And what does
20 this investigation involve? State's
21 Exhibits 56-A through 56-E.

22 The phone calls. Two separate
23 investigations. Let's find out who made
24 these phone calls from James Jordan's
25 Lexus. You start at that end with

1 stripping of the car, and we're going to
2 start over here, completely separate from
3 him, and see what happens.

4 So what do they do? They start making
5 phone calls, checking out phone numbers.

6 "Did you receive a call, is this your
7 telephone number?" "Yeah."

8 Phone call, 10:49 a.m.. July 23rd,
9 1993 whose number? (919) 396-7072. Let me
10 put this up so you can see it.

11 Right here, 10:47 a.m., excuse me.
12 Whose number is that? It's David Moore's
13 telephone number at Fort Bragg. Same David
14 Moore that got us to this point on the car
15 stripping investigation.

16 Marion, South Carolina,
17 (803) 423-2493. Whose number is that?
18 Melinda Moore. 10:50 a.m., July 23rd,
19 1993. So we go from getting the records,
20 to taking that step.

21 (803) 423-1551, Dee Sullivan, Marion,
22 South Carolina. We take another step.

23 And pretty soon, we're right in the
24 middle. These two separate investigations
25 collide head on like two trains in the

1 night. And when they collide, what
2 happens? With trains, you have a wreck.
3 With criminal investigation, you've got a
4 prime suspect. What's the common link from
5 here to here and from here back to here?
6 The defendant. The defendant.

7 Who made the phone calls? How many
8 phone calls did Larry Demery tell you he
9 made? Two. You've got phone calls spread
10 out over the course of four days. July
11 23rd, July 24th, July 25th, and July the
12 26th. Who has that car? Who's in
13 control? Who's got all of Mr. Jordan's
14 property? And lo and behold, who's got the
15 murder weapon? The defendant. The
16 defendant. The man they argue to you is
17 only an accessory after the fact of murder,
18 who was simply trying to help out his
19 buddy. Does it make any sense to you? The
20 man who supposedly had such a minor role in
21 this has everything, everything.

22 What did any witness say that Larry
23 Demery had, a pair of golf shoes? He told
24 you that because he left his tennis shoes
25 at the defendant's trailer when they went

1 to Fayetteville. A wedding ring. Larry
2 Demery told you that. Nobody puts Larry
3 Demery in possession of any watch, of any
4 ring, it's always him. Why? Because he's
5 the leader. That's what your common sense,
6 that's what your reasoning should tell you,
7 that's what the evidence tells you.

8 What else is he doing with that
9 phone? He calls his cousin down in
10 Rowland. And oh, did he call his cousin.
11 (919) 422-9007. If it's on there once,
12 it's on there 15 times. Was he doing? "I
13 want to get rid of the car." Who's in
14 control? Who is it that wants to get rid
15 of the car, who is it that wants to sell
16 the car? Larry? No. The defendant.

17 Calls Philadelphia. When? 8:00 in
18 the morning, 8:56 to be exact, on July
19 24th, 1993. He calls Philadelphia. Who
20 does he call? His momma's boyfriend, and
21 he's going to help get rid of that car.
22 And they talked. It's on the record.

23 Look at the records. Shows you the
24 amount of time -- first of all shows you
25 when the call was made, on what date, what

1 time, what number, to what city. The
2 amount of time it was in use. And this
3 breaks it down, ladies and gentlemen of the
4 jury, air and land. Air is while the
5 call's being transmitted. Land is after
6 the call is being received. Then over
7 here, Philadelphia. July 24th, 1993, 8:56
8 in the morning, he talked to him for over
9 ten minutes from the car. And where were
10 they? Chesterfield, South Carolina. What
11 have they done? They've just taken Melinda
12 and Dee home.

13 The first phone call on July 23rd
14 occurred at 7:05 a.m., and of all places,
15 Chesterfield, South Carolina, that's the
16 tower it was bouncing off of. Next phone
17 call occurs 10:36, 10:43, 10:47, 10:49,
18 10:50, and goes on and it goes on and it
19 goes on. And those phone calls were like a
20 road map directly back to the defendant.

21 You heard evidence about other
22 crimes. And this is significant. Judge
23 will give you an instruction about these
24 other crimes, July 4th robbery, 1993, at
25 the Family Inn in Rowland was admissible to

1 show you a common scheme or plan on the
2 part -- on behalf of Larry Demery and the
3 defendant.

4 You recall when Mr. Underwood
5 testified, remember seeing these
6 (indicating) photographic lineups. What
7 did Mr. Underwood testify to? Photographic
8 lineups were put together for the purposes
9 of sending them to Rhode Island in an
10 investigation involving a robbery on July
11 the 4th, 1993, at the Family Inn motel in
12 Rowland, North Carolina. The same
13 photographic lineup that he used to show
14 Clewis Demory.

15 What was stolen on July 4th, 1993?
16 Video camera, whole bunch of money. Larry
17 Demery told you his car broke down on that
18 very day. On that very day his car was
19 repaired out at West Fifth Street over at
20 Dobb's, and the receipt is sitting there on
21 the table, that corroborates his
22 testimony.

23 What else corroborates his testimony?
24 Did anybody testify that Daniel Green owned
25 a video camera? No.

1 The bookshelf that has the videotapes
2 in it is beside a TV. And on that TV is
3 what? The VCR. You can play tapes without
4 owning a videotape machine, a camcorder,
5 but you can't make them. Who had that
6 video camera the entire time from July the
7 4th July 31st, 1993 when he was in
8 Fayetteville? The defendant. And in this,
9 you see him wearing Mr. Jordan's watch, you
10 see him wearing Mr. Jordan's ring. And you
11 see him with who? Marcus Perry, Xavion
12 Perry, TJ, and what did they testify to?
13 They didn't know who Larry Demery was,
14 never saw him.

15 Saw him on the Murch with his brother
16 Jamie. What was he doing? He was carrying
17 a black bag. Got a video camera in it.
18 "We were going to go make some videos.
19 Going to go to Fayetteville State. We go
20 over there, we're there, we're singing,
21 dancing." You heard the testimony. If
22 defendant was singing and dancing, showing
23 off the ring and watch.

24 I would argue to you, wasn't ashamed
25 of having people see it, he wanted people

1 to see it. What was it his brother told
2 him when he went up on the Murch, "You
3 better take that stuff off. You're going
4 to get robbed." Oh, no. He wore it.
5 Why? Because he wanted people to see it.

6 They go over behind Suburban Mart, and
7 that's where they were in this tape that
8 you saw, singing dancing, what else
9 happened while he was with the Perrys,
10 Xavion, Marcus, Pamela, TJ, he still trying
11 to sell stuff. Trying to sell the watch,
12 trying to sell it and showing it off to
13 people.

14 Everybody saw the watch. Everybody
15 saw the inscription, "To Dad from Michael
16 and Juanita." Some saw the NBA
17 championship ring. Pamela Perry and TJ saw
18 what? They saw this ring. This ring.
19 19-year-old kid, 18-year-old kid, however
20 old he was, walking around, \$3500 ring on,
21 walking around with a \$3500 watch on, and
22 bragging about he's got a Lexus hid in the
23 woods.

24 What's on the inside of this ring?
25 Initials. Pamela Perry saw it, had an

1 opportunity to see it, she had an
2 opportunity to touch it. She had an
3 opportunity to examine it. And he's got
4 it. His statement is, "I ain't never seen
5 the man." Was he telling the truth?
6 Absolutely not.

7 July the 4th, they argue to you,
8 everybody went out to a cornfield on July
9 4th, 1993. It was May the 2nd, 3rd, 4th,
10 8th of 1995 before Larry Demery ever said
11 anything about the robbery on July the 4th,
12 1993. One of those crimes that they talked
13 with you about Larry Demery pled guilty to
14 is that robbery on July 4th, 1993.

15 The agreement, Larry Demery had to
16 tell us, sits down, talked with
17 Mr. Thompson and talked with Mr. Heffney.
18 Tell us about the death of James Jordan.
19 Tell us about the robbery on July the 4th,
20 1993. Tell us about Clewis Demory. So
21 it's not until May of 1995 before anybody
22 other than Daniel Green and Larry Demery
23 know anything about a cornfield on the July
24 4th, 1993, robbery.

25 What happens at the end of the growing

1 season? Crop is harvested, ground is
2 tilled under. It's left to sit until the
3 next growing season. Next growing season,
4 ground is plowed, seed is planted, and a
5 new crop grows. The end of that season,
6 the crop is harvested, the ground is
7 tilled, and it's left to sit until the next
8 growing season.

9 So in May of 1995, cornfield they ran
10 into on the morning of July 4th, 1993, had
11 been harvested twice, had been tilled under
12 twice, had been retilled for planting, and
13 had two additional crops and one was
14 growing at the time.

15 July the 4th, 1993. July the 15th of
16 1993. Let me back up before I go to that.
17 Talked about Larry Demery heading out on
18 this life of crime. When did that start?
19 Was it the break-ins that he pled guilty
20 to? No, that was 1991. Was it the robbery
21 of the lady in Pembroke? No, that's in
22 1992. Were there any charges between that
23 '92 charge and when they got arrested --

24 MR. THOMPSON: Well, I object as
25 to charges.

1 MR. BRITT: --- and 1993?

2 THE COURT: Overruled.

3 MR. BRITT: No. When does he
4 start his life of crime? When his lifelong
5 buddy was back on the scene after being
6 away for two and a half years. And that's
7 his testimony. And it was at that point
8 that he and the defendant started talking
9 about the trouble that Larry was in. He
10 didn't hide that. He didn't try to soft
11 sell it, he buried his soul. He told you
12 what he had done and how he had done it and
13 who he had done it with.

14 These people that Mr. Bowen mentioned
15 in his argument, these four or five people,
16 was there any testimony that from the end
17 of June to the date of the arrest August
18 the 15th, 1993 that he committed any crime
19 of those people? No. He was with the
20 defendant and the defendant alone.

21 July 15th, 1993 what do they decide to
22 do? It's time to go commit another
23 robbery. We need money. They cased the
24 store on 72. Place cashes checks, going to
25 have a lot of money there that day. It was

1 a Thursday. Go, ride by, too many people,
2 too busy. Ride up 72, they got another
3 store. They are not going to settle on
4 one, they don't care. They want to rob
5 somebody, some store, somewhere. Go up to
6 the BP station on 72, they case it, too
7 busy, too many people in and out. They
8 ride back to the first store, still too
9 busy, can't go there.

10 Well, there's a store further up 72.
11 Place called Lowry's Texaco. We can go up
12 there. It's right there on 72 and 1003.
13 Ride up, ride around and talk about it.
14 What do they see there? A Pepsi Cola man,
15 Coca-Cola man, cracker man. What was the
16 testimony? Testimony if you recall was the
17 Pepsi man was there. What's the plan?
18 We'll go in and case it out, see what it
19 looks like. I'll park the car over here,
20 I'll walk in and check it out.

21 Goes in, sees the Pepsi Cola man
22 filling his trays, his racks, he's about
23 finished. Nobody else in the store except
24 the clerk --

25 THE COURT: Mr. Britt, you may

1 argue these matters consistent with the
2 purpose for which it was in there.

3 MR. BRITT: Yes, sir, I
4 apologize.

5 Judge will instruct you that the July
6 15th robbery was admitted to show the
7 defendant's intent at the time. Judge will
8 give you that instruction. That's the
9 limited purpose for which it's been
10 offered. But it bears directly on events
11 of July 23rd, 1993.

12 July 15th, they go in, one man there.
13 Clewis Demory, and the Pepsi man. They go
14 back out, they ride around. They get
15 ready. They got their sweat shirts, they
16 got their guns. Yeah, they went to Larry
17 Demery's house and got the guns. Nobody
18 denies that. Nobody denies the way he got
19 into his parents room to get it.

20 Larry gets the one with black
21 handles. Daniel picks up the one with bone
22 colored handles. Next part of the plan,
23 Daniel is going to go in. If everything is
24 clear, he's going to give a signal. When
25 this signal comes, it's time to do it.

1 Go in, the gun was drawn. One
2 problem. One problem. The defendant
3 forgets to cover his face. Doesn't think
4 about it. He's got his ball cap on. What
5 was the testimony, a dark colored hat? Got
6 a pair of sunglasses on. He's invisible,
7 right? No. No, this is significance of
8 July 15th, 1993. In addition to the fact
9 that he shot Clewis Demory three times,
10 Clewis Demory cannot identify Larry Demery
11 as one of the people who robbed him. What
12 does that mean?

13 That means when Larry Demery sits on
14 that witness stand and he tells you that
15 yes, I was there, I participated in that
16 robbery, and the person that got shot can't
17 identify him, that means he's telling the
18 truth, members of the jury. He's telling
19 the truth about his involvement. Because
20 his face was covered. Not the defendant.
21 You know, this is the one according to
22 Larry Demery who said he knew how to commit
23 crimes, gets away with them.

24 Goes around, behind that counter,
25 points the gun at Mr. Demery's head. Tries

1 to -- takes his wallet, takes his coin out
2 of his pocket. Then he's messing with the
3 cash register, can't get it open, can't get
4 it open. And here's Mr. Demory looking
5 down the barrel of a .32 caliber pistol one
6 on this side and one from Larry Demery on
7 the other side of the counter. And he
8 walks up and he opens the cash register.
9 All that money is scooped out. But he's
10 not satisfied. He wants Moore.

11 He starts going through the drawers
12 underneath Mr. Demory's counter. Reaches
13 for the drawer and Mr. Demory keeps his
14 gun, keeps his gun. What did Mr. Demory
15 say about this gun? I know it was mine. I
16 had that thing for 30 years. I would argue
17 to you it's like an old pair of shoes, you
18 know they are yours, you know they are
19 yours when you put them on. There's no
20 mistake about it. He said when I picked
21 that gun up on that day they came to me,
22 see if I could identify it, I knew it was
23 mine. I knew it was mine. And he took
24 it. The defendant.

25 And what does he do on top of that?

1 He shoots poor Mr. Demory not once, not
2 twice, but three times. Shoots him in the
3 neck, shoots him in the shoulder, and he
4 shoots him in the shoulder and the bullet
5 goes all the way out his back.

6 And what happened? Robeson County
7 Sheriff's Department, the department that
8 they tried to belittle yesterday, they go
9 out there, they recover a bullet, a .32
10 caliber bullet. And guess what? It
11 conclusively matches this gun. The very
12 gun that the defendant had on August the
13 15th, 1993. And what does that show you?
14 He shot an old man three times at point
15 blank range. He can kill. He has an
16 intent. He can form the intent to kill.
17 He can form the necessary premeditation,
18 deliberation to shoot somebody because he
19 shot Clewis Demory three times on July
20 15th, 1993. And they get that money and
21 they haul buddy out of there. They get
22 back in that Ford Tempo and they take off.

23 What else is significant about July
24 the 15th? State's Exhibit 69, Mr. Demory
25 can't pick anybody out of this lineup

1 because he can't identify Larry Demery.
2 And Larry Demery's picture is, for the
3 record, is number eight. State's Exhibit
4 Number 68. He looks at it, he studies it.
5 Number three looks like the man who shot
6 me. Who is number three? The defendant.

7 Mr. Bowen says, oh, Mr. Demery won't
8 swear to it. He won't swear to it that our
9 client shot Mr. Demory. But what did that
10 man say? 82 years old. He came in here
11 and they kept trying to break him, they
12 kept trying to break his identification of
13 the defendant. And he sat right here,
14 right here, and he looked at that table,
15 and he looked at them, he looked at the
16 defendant, and his words were, Mister, I
17 know the face of the man that shot me. And
18 that's the man. That's a powerful, a
19 powerful statement from a man who got shot
20 three times on August the 15th, 1993.
21 That's a positive identification of the man
22 that shot him, and did what else? Stole
23 his gun. And where was that gun found? In
24 that man's trailer.

25 And this is the crime of the week.

1 Been 11 days since July the 4th. July the
2 15th -- may I approach?

3 THE COURT: Yes, sir. If all
4 counsel would come up with the defendant
5 and the court reporter, please
6 (Whereupon a bench conference ensued
7 as follows.) (2-28-96).

8 THE COURT: Let the record
9 reflect that all counsel are present, the
10 defendant is present, the presiding Judge
11 and the court reporter.

12 MR. BRITT: For the record, let
13 me note Juror Number 4 is crying. I don't
14 know if it's due to physical --

15 THE COURT: She's been wincing in
16 pain.

17 MR. BRITT: I just wanted to
18 bring it to the Court's attention.

19 THE COURT: Do you folks have any
20 problem?

21 MR. THOMPSON: No, sir.

22 THE COURT: State want to make
23 any inquiry?

24 MR. BRITT: As a matter of
25 fairness to her, yes, sir. It appeared to

1 me she had been crying, and it became
2 obvious.

3 THE COURT: All right, sir. This
4 concludes the bench conference.

5 (Bench conference concluded.)

6 THE COURT: Are all members of
7 the jury okay? Do any of you folks need a
8 break at this time?

9 JUROR: I'm going to stand.

10 THE COURT: Feel free. Feel
11 free, yes, ma'am.

12 Mr. Britt.

13 MR. BRITT: Crime of the week.
14 July 15th. What do they do? They got all
15 this money, go back to the defendant's
16 trailer, switch cars. Whose car? His
17 mother's blue Cougar. What did they do
18 with that money? What did they do with
19 that .38? They put them in the car. Great
20 big wad of money in the glove compartment
21 of that blue Cougar when Melinda Moore and
22 Dee Sullivan meet with them on July 15th
23 down in Marion. They are spending money,
24 they got a gun there. Melinda Moore, Dee
25 Sullivan, that's the gun. That's the gun

1 that was in the car. That's the gun that
2 Dee picked up and played with it. Picked
3 it up and played with it at the defendant's
4 trailer. State's Exhibit 59-A. The very
5 gun that they had stolen from Clewis
6 Demory.

7 They go down to Marion, want to
8 impress these girls. Let's go back to
9 Lumberton. Stop off at the defendant's
10 grandmom's house.

11 Testimony is there's an argument
12 between the defendant and his mother.
13 Defendant gives his mother some money.
14 Where? They pull it out of his pocket?
15 Nope. Pulled it out of his glove
16 compartment. Gave her a hundred dollar
17 bill. Gave her some food stamps. And they
18 went on their way.

19 They checked into the motel. Stayed
20 there for a couple of hours, took the girls
21 back. Go back and spend the rest of the
22 night there. Things are quiet, July 15th,
23 and after, July 16th, July 17th, July 18th,
24 July 19th, July 20th, 21st. And then they
25 get the itch. We got to rob somebody. We

1 got to do something.

2 Let's go out 74 and 95 at the Quality
3 Inn. Lots of tourists on the road this
4 time of the year. We'll catch somebody in
5 the parking lot like we did down in
6 Rowland. They go there, talk about it,
7 talk about it, and they talk about it. And
8 they talked about it so much that they just
9 got to do it. It's the crime of the week.
10 There's a pattern. 14th to the 15th,
11 eleven days, 15th through the 22nd, seven
12 days. What are they doing? They are
13 engaged, I would argue to you, in what's
14 called a course of conduct. And we talked
15 a little bit about that --

16 MR. THOMPSON: Objection.

17 THE COURT: Objection is
18 sustained. Disregard that argument by
19 counsel for the State. That matter is not
20 to take any part in your deliberations in
21 any respect. Mr. Britt, you may argue
22 matters related to July 4th and July 15th
23 only for the purpose for which they were
24 admitted.

25 MR. BRITT: Yes, sir. They got

1 the itch. Problem is they don't have two
2 guns anymore. They have got the one. The
3 one from the 15th. The one that the
4 defendant has had. State's Exhibit 153.
5 Wasn't planned, wasn't a conspiracy to
6 commit a robbery. They put it in to work.
7 Conspiracy on July the 22nd, 1993, they put
8 it in to work, in to motion. Why? July
9 20th, 1993, C&R Pawn Shop, Annie Ruth
10 Oxendine works there. Who comes in?
11 Daniel Green.

12 Daniel Green shows her an ID. Shows
13 her he's over 18 years of age. He can buy
14 bullets. Larry Demery was there, because
15 he told you he was there. But Daniel Green
16 is the one who transacted the business. On
17 July the 20th, there's no testimony that
18 they went to the Service Star. There's no
19 testimony that Mr. Kurt wouldn't sell them
20 bullets on July the 20th. That was a long
21 time in the past.

22 Remember, the evidence was that .38
23 caliber revolver that Rodney Demery from
24 the Pembroke Police Department had seized
25 from Larry Demery way back, way before July

1 the 20th of 1993. That's when Larry Demery
2 went and bought bullets at the Service
3 Star. On the first occasion. And then
4 went back the second time, Mr. Kurt
5 wouldn't sell it to him. That's when he
6 went to Frog Lever and bought those
7 bullets. Not July of 1993. Over a year,
8 year and a half prior.

9 July the 20th, they buy what?
10 Reloads. Reloads. .38 caliber Specials.
11 And why? Because they got a .38 caliber
12 Special revolver. And they got to have
13 bullets to shoot in it. Reloads,
14 remanufactured ammunition. What was it
15 that was taken out of that body in South
16 Carolina? A reload slug.

17 I would argue to you one of the
18 reloads that was purchased on July the
19 20th, by him. They go to Kay Hernandez,
20 but they don't stay like these people would
21 have you believe. They go. One witness
22 said they were there all day, never left.
23 Another witness says yes they left and they
24 came back about 9:00 together. That's
25 about the time Nellie Montes says she sees

1 the gun in the car. Who's been in that
2 car? The defendant, and Larry Demery. Who
3 put the gun in the car? Nellie Montes
4 doesn't know.

5 Defense will argue to you that Larry
6 Demery did, and that's what they argued.
7 The evidence shows that Daniel Green was
8 the one who was in possession on July the
9 15th, forward, of that .38 caliber pistol.
10 Daniel Green is the one who bought the
11 bullets for that pistol. That's real
12 evidence. That's credible evidence. They
13 go, they are there. They got that itch.
14 They got to go out there and commit their
15 crime.

16 So what do they do? They leave. They
17 leave, together. Not at 4:00, not at 5:00
18 a.m. 1:30, 2:00 in the morning. And where
19 do they go? State's Exhibit 91. The
20 overhead photograph. 74, 95, service road,
21 there's the motel. There's the abandoned
22 station. The dirt road that leads back
23 into the woods along the canal where they
24 parked the car. Walked back out and they
25 walk up there.

1 Go to the station, they don't find
2 anybody. There's not any activity.
3 There's no person that they can ambush at
4 the motel. They get restless, tired of
5 sitting, tired of waiting. They go back to
6 the car. Go back to the car, and what do
7 we have? We got a car parked on the side
8 of the road along 74. And this gravel
9 pull-off, lights are on. Don't pay much
10 attention to it. They go back to the car,
11 and they stayed there for a little while,
12 and they walked back out. And you know
13 what? That car with the lights on is still
14 parked over there. They walked back from
15 the motel looking for somebody. Nothing,
16 nothing. They get restless, they decide to
17 go back to the car again.

18 But this time on the way back, the
19 defendant brings up the subject of this red
20 Lexus. This car parked on the side of the
21 road with the lights on. It is it a cop
22 car? What is it? Let's go check it out.
23 They walk over, and what do they discover?
24 A red Lexus parked in the middle of
25 nowhere, really. They walk behind it,

1 license plate, North Carolina U 0023.
2 Whose license plate is that? James
3 Jordan. The records from the Department of
4 Motor Vehicles showed. Who bought the
5 car? Michael Jordan did. Gave it to his
6 father. There it is in the middle of
7 absolutely nowhere, by itself. You got two
8 people who were just itching to rob
9 somebody.

10 Can't see anybody in the car. Walk
11 across the highway, talk a little bit. And
12 we can take this car. Somebody in it, we
13 can take them, toss them out. We can go.
14 Be ours.

15 Walk back across the road, go behind
16 the car to check it out. They see the form
17 of a person. See man, form of a person.
18 Don't know if it's black, white, yellow,
19 red. They go back. We can do this, be
20 easy. Get the tape out of the car, tape
21 him up. I've got the gun, I'll get in the
22 car with you. You drive your car near my
23 house, I'll make him drive over there. And
24 we will drive up, tape him up, dump him off
25 on the side of the road. They'll never

1 know. They go back and they approach.

2 This time, they again go behind the
3 car. They determine that it's a man, it's
4 a black man. Middle aged, leaned back in
5 his seat asleep. Window in the passenger
6 side rolled a little more than half way
7 down. Anybody testify that the engine was
8 running? No.

9 Lights were on. What happens when you
10 turn on your park lights, what other lights
11 come on in your car? Common sense tells
12 you that your panel lights come on. That
13 gives him some light in the car to see who
14 it is. They go back across the highway.
15 We can do this. They go back, they walk
16 around the front of the car, they walk
17 around, they look in, and all the sudden
18 what happens? There's a wrench thrown in
19 their plans because a car is coming down
20 highway 74. They run and they hide in the
21 bushes.

22 Coast is clear, they reproached the
23 car. They are pumping each other up. We
24 can do this, we can do this, let's get this
25 over with. They go back over to that car

1 and another car comes along 74. They run
2 and hide this time, where? Behind the
3 signs. Tent shaped sign, Mr. Demery called
4 it.

5 State's Exhibit 87, tent shaped sign.
6 Another photograph that was introduced into
7 evidence that says fish today, fish today.
8 Car is parked along a gravel road. There
9 they go back up to the car, they crouch
10 down beside it. We can do this, let's do
11 it now. Who's got the gun? He does. They
12 rise up by that window, he sticks that gun
13 in. I don't know if he's right-handed or
14 left-handed. I'm left-handed for some
15 things. Sticks that gun in the window,
16 bam. One shot. One shot. Now, what's the
17 man doing just before the the shot is fired
18 as they rise up? The man wakes up. Not
19 lying back. He's sitting up. What is
20 this, what is going on. Boom. There's a
21 shot in the dark. The bullet finds its
22 mark.

23 What was it that Dr. Sexton said in
24 the autopsy report? The bullet enters on
25 the right side, below the nipple. As it

1 enters the body, it strikes a rib. And
2 when it strikes that rib, it then is
3 deflected in a 10 degree downward angle
4 going from right to left, across the body,
5 pierces the aorta, goes through the left
6 lung, and lodges along the rib cage on the
7 left side. Piercing the aorta.

8 Larry Demery told you that Daniel
9 Green fired that shot. Said he stood there
10 and watched James Jordan die. Heard
11 gurgling sounds. What was that gurgling
12 sound? That was the blood filling up in
13 the lungs of his chest cavity, squeezing
14 the air out of his lungs. That fluid
15 virtually drowned him. Why did you shoot
16 him, why did you do that? Help me get this
17 body, help me, come on.

18 Doesn't see any blood on the outside
19 of the shirt. Why was that? What did Dr.
20 Sexton say? That bullet passed through his
21 chest, fatty tissue, the interior of that
22 body sealed off that track, prevented blood
23 from just oozing out. Some blood came out,
24 yes, because it's on the shirt. They moved
25 the body over. Move the body from this

1 side to this side (indicating). How was he
2 positioned? The side of the chest was
3 leaning over toward the door, had one leg
4 across the console, but you could still
5 drive. Where was the blood found? The
6 blood was found in the crack between the
7 passenger seat.

8 Blood. Blood from that wound. Blood
9 that came off of that shirt, smeared on the
10 back of that seat. Blood that puddled
11 there in that seat while the body lay
12 there. Blood that Larry Demery attempted
13 to clean off. And what did Ms. Elwell
14 say? Yes, you can clean off blood. Where
15 did she find that blood? She told you she
16 had to separate that fold, that blood had
17 seeped back down in there. Did anybody
18 testify as to when they found that car?
19 Chris Jones testified he found blood inside
20 that car? There was broken glass
21 everywhere. No, wasn't any blood inside
22 the car because the people, I argue to you,
23 who busted the windows and busted the glass
24 didn't use their hand. The blood was
25 already there. The blood was there from