

STATE OF ALABAMA
IN THE CIRCUIT COURT FOR THE COUNTY OF MOBILE
THIRTEENTH JUDICIAL CIRCUIT
CRIMINAL

STATE OF ALABAMA,

v.

CASES NO. CC-92-2313,

RODNEY KARL STANBERRY,

92-2314 and 92-2315

Defendant

REPORTER'S OFFICIAL TRANSCRIPT ON APPEAL

Before:

Hon. Ferrill D. **McRae** and Jury

Mobile, Alabama - November 10, 1993, April 3,

April 4, April 5, April 6, April 7, and

May 11, 1995

APPEARANCES:

For the State:

Joe Carl Jordan, Esq.
Assistant District Attorney

For the Defendant:

Kenneth A. **Nixon**, Esq.
Attorney at Law

Stephen Tunstall, Esq.
Attorney at Law

Barbara Ausborn
Official Court Reporter

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NOVEMBER 10, 1993

(The Defendant being present in court with his attorney, Mr. Kenneth R. **Nixon**, and the assistant district attorneys, Mr. Joe Carl Jordan and Mr. Thomas Harrison, the following occurred before the Hon. Ferrill D. **McRae**:)

THE COURT: All right, for the record, these are the cases of the State of Alabama v. Rodney Karl Stanberry, attempted murder, and **that's** case No. 92-2313; 92-2314 is robbery in the first degree; 92-2315 is burglary in the first degree.

We have a number of motions filed by the State and that is most unusual, but those motions are as follows: Motion for Protective Order filed by the State. I don't know what that is, but I'm going to hear it. Number two, Motion in **Limine** filed by the State.

You have the floor, Mr. Prosecutor.

ME. JORDAN: Your Honor, initially the motion in limine, I want to take this pro-trial because when we start to trial we've got a lot of matters that will take care of themselves and I wanted Your Honor to hear this prior to trial so we'd have some time to argue it.

I expect that there is a lot of hearsay testimony that may be available to the Defense in this case and I would ask that he be restricted from discussing any of those matters in opening

1 > statements or during the course of the trial unless or until --

2 THE COURT: You better tell me what we're talking about.

3 MR. JORDAN: This case involves an attempted murder case
4 where a woman was at home and two people came to the house, shot
5 her in the head, and she survived. She is in a wheelchair.

6 There are -- after it happened the Defendant did a lot
7 of things as to telling the police who supposedly did it. Sup-
8 posedly two guys out of New York and then the Defense **investigator**
9 came up with a guy confessing to the murder on video tape and
10 cassette recording, which the two guys from New York I don't
11 expect are going to be here to testify on behalf of the Defense.
12 The guy who's confessed to the attempted murder, if he takes the
13 stand and testifies, well, then I will impeach him and cross
14 examine him. However, I expect they may try to introduce either a
15 cassette recording or a video tape without putting that witness
16 on. And they may refer to some things like that without putting
17 that witness on.

18 And there is also a friend of the Defendant -- I named the
19 five people in the motion in **limine**. Tyrell Moore is first named.
20 He's the supposed person **that's** confessed to this crime. There's
21 a guy named Taco Jones, who's a friend of the Defendant and who
22 was involved with the Defendant after this incident occurred. The
23 Defendant himself, who has given several statements, which I have
24 a right to use in my case in chief, but I may or may not use
25 those, and he cannot use them unless the Defendant testifies. So,

1 I **don't** want him making comments about that, about what the
2 Defendant would say, blah, blah, blah, and then the Defendant not
3 testify. And then the other two people mentioned in the motion in
4 **limine** are the two people from New York supposedly, a Rene or
5 Rennie Whitecloud and an Angel **Melindez**. I'm not vouching that
6 any of these people exist or do not exist, because there are
7 serious questions about that as well.

8 However, Im opposed to the Defendant creating a theory of
9 argument or theory of the case in his opening statement based on a
10 lot of hearsay testimony --

11 THE COURT: In other words, you're going to say he wants to
12 put in testimony about an alibi to the extent that not only it
13 **wasn't** I, but I'm going to tell you who it was.

14 MR. JORDAN: Exactly, through witnesses who may or may not
15 testify. If the witnesses testify, then I have a right to cross
16 examine and then I can make direct objections to hearsay. **Because**
17 what has happened in this case is after this crime occurred there
18 was a lot of collusion going on between different parties and they
19 were all -- like two people made a tape recording, and there are
20 all these other statements going on, and I'm sure one witness
21 could stand up here and say, well, he told me such and such did it
22 and he told me such and such did it and all this other stuff.

23 THE COURT: That **won't** happen.

24 MR. JORDAN: Well, that's why I'm trying to preclude that
25 too, as having that come out in opening statement when it will **not**

1 > perhaps come out during the trial.

2 So, **that's** the basis of the motion in **limine**.

3 THE COURT: Of course, I think one of the worst things an
4 attorney can do is stand before a jury and tell them we expect to
5 prove so and so and then never prove it. You know, that comes
6 under the heading of not being real bright.

7 MR. JORDAN: I understand --

8 THE COURT: And I've seen thousands and thousands of juries,
9 as you know. They hold you accountable to what you expect them to
10 be. Now, why would -- and I'll let Mr. **Nixon** speak for himself in
11 a minute. Why would Mr. **Nixon** go before a jury and say I expect
12 to show you this and show you this and expect the evidence to be
13 this when he knows good and well there **isn't** going to be any
14 evidence. Why would he do that?

15 MR. JORDAN: Well, specifically there's a cassette tape made
16 between Stanberry and Taco that he may attempt to introduce and he
17 may want to refer to in opening statement. There's a cassette
18 recording from Tyrell Moore and there's a video tape from Tyrell
19 Moore which he may anticipate trying to get in and may want to
20 talk about that in his opening statement when at this time --

21 THE COURT: Let's let Mr. **Nixon** talk, because all that sounds
22 ludicrous to me.

23 MR. **NIXON**: Number **one**, Judge, it sounds ludicrous to me
24 also. What has happened is Mr. Jordan has filed a motion listing
25 every conceivable witness that I may call and saying I can't say

1 anything in my opening argument about what they're going to say.
2 Now, if I subpoena these witnesses, which I do intend to subpoena
3 the majority of them, I have no reason to believe that any of them
4 wouldn't testify.

5 In fact, the one that he's talked about has already told
6 me I did -- the man confessed to being a participant in the crime
7 and he told who did it and I -- and he told my investigator this
8 and my investigator took a -- went back and took a taped statement
9 and a video statement of him and on the statement he even said
10 that he knew he was going to go to jail and he knew he was going
11 to serve time for this and that was -- that was it, and he said
12 who was with him when he did it and it was not my client. It was
13 another person from out of state. This guy is not out of state.
14 He's a local guy. But in any event, he has represented that he
15 would come to court and testify.

16 THE COURT: That's enough.

17 MR. JORDAN: Judge, if I --

18 THE COURT: What's this other motion?

19 MR. JORDAN: If I may be heard on that, he has an attorney
20 and I expect that he will invoke the Fifth Amendment at trial.
21 Now, if Ken goes into -- allowed to --

22 THE COURT: If his attorney invokes the Fifth Amendment there
23 ain't -- and this is not any Freudian slip; I meant to say it --
24 there ain't going to be no TV cassette played. Now, what else are
25 you worried about?

1 MR. JORDAN: I'm sorry, there's not going to be any what?

2 THE COURT: I made it about as strong as I could. There
3 ain't going to be no cassette played unless that man's here to
4 testify.

5 Now, what else are you worried about?

6 MR. JORDAN: The second thing, Judge, is there's a protective
7 order in the file --

8 (Off the record interruption.)

9 MR. JORDAN: Judge, there is certain inculpatory evidence in
10 this case that is not discoverable under --

11 THE COURT: Inculpatory or exculpatory?

12 MR. JORDAN: Inculpatory, which is not discoverable under
13 Brady or under the Rules of Alabama Criminal Procedure. I'm new
14 to your courtroom, Your Honor, so I didn't know how to go about --

15 THE COURT: Well, I'll tell you the rule in here --

16 MR. HARRISON: And he doesn't want to hear it either.

17 THE COURT: We don't try by ambush. In here it's an open
18 file and you show him whatever he wants to see. His client is the
19 one that's going to be going to the penitentiary for life, not the
20 district attorney's office, if they find him guilty. So, for that
21 reason I say open file discovery.

22 You know, one day I was standing right where you are on
23 the other side and we had a D.A. at that time that wouldn't show
24 you the time of day, let alone anything, and I said if I ever had
25 the opportunity they'd open up those files, and for 28 years I've

1 > made them open them up.

2 Have I not, Tommy?

3 MR. HARRISON: Absolutely, Judge.

4 MR. NIXON: Judge, if I may, we came down here before Your
5 Honor several months ago and you ordered -- I can get the exact
6 date. You said the same thing that you just said today. You
7 ordered an open file.

8 THE COURT: And I'll say it again tomorrow.

9 MR. NIXON: Mr. Jordan represented to me that he was not
10 going to give me open file. I subsequently filed a motion --

11 THE COURT: Well, we're not going to argue about that; he is.
12 Now have you got anything else?

13 MR. NIXON: Yes, sir, Judge. I have some specific Brady
14 motions. I have about five of them that I would ask the Court to
15 rule on that have been pending and when you said open file you
16 didn't rule on the -- my specific Brady motions and here's the
17 problem that I'm afraid we're going to get into, Judge. I believe
18 that Mr. Jordan has some information, some exculpatory information
19 and -- that I'm not being provided with. This stuff is dribbling
20 on. I get a little bit here and a little bit there ever since
21 this case has begun.

22 THE COURT: Well, I tell you what you do. When you leave
23 here in a few minutes, you go up there and look at his file. If
24 there's anything exculpatory, Brady applies. It applies in
25 Mobile, it applies in Trenton, New Jersey, it applies in Miami,

1 Florida. We don't have any special rules down here.

2 MR. HARRISON: Sometimes in California.

3 THE COURT: He says sometimes in California.

4 MR. NIXON: Well, Judge, I've had such a difficult time with
5 obtaining discovery in this case, what I'm afraid of is --

6 THE COURT: Let me see your motion.

7 MR. NIXON: Is the same thing --

8 MR. JORDAN: Judge, if I may respond to this as well.

9 THE COURT: Oh, my gosh, you got a book there.

10 Now, on the other hand, I'm not going to make the
11 district attorney's office be an investigator for you. I'm not
12 going to make the district attorney's office go seek material that
13 you can get for yourself.

14 MR. NIXON: I understand, Judge.

15 THE COURT: "Comes now the Defendant, Rodney Karl Stanberry,
16 by and through his attorney, and moves the Court for an order
17 pursuant to Brady to provide the following exculpatory informa-
18 tion." And I'm not reading it verbatim. "Any and all evidence in
19 the possession of the district attorney, the Prichard --" See,
20 you've already gone too far as far as I'm concerned. "Any and all
21 evidence in the possession of the district attorney." If he's got
22 it, you're entitled to it. I'm not going to make him go to the
23 Prichard Police Department. You can go out to the Prichard Police
24 Department yourself. I'll give you an order which says you can.

25 MR. NIXON: That would be fine, Judge.

1 THE COURT: Which tends to show that Rodney Karl Stanberry
2 was not at the residence of the victim at the time the residence
3 was burglarized, at the time the victim was shot. "Any and all
4 evidence in the possession of the district attorney," and you can
5 leave out this Prichard Police Department because I'm not going to
6 make him do your leg work, "or other agents which tend to show
7 someone other than Rodney Karl Stanberry participated in, per-
8 formed or carried out the commission of the shooting." I grant
9 your motion.

10 Defendant's Specific Brady Motion Number Two. "Whether
11 the victim, or any eyewitness in this present case, Valerie
12 Finley, ever stated that she could not see the assailant's face or
13 ever stated she could not identify her assailant." If he's got
14 that information, he'll supply that for you. "Whether any eye-
15 witness ever stated that anyone observed someone other than the
16 Defendant enter or leave the residence of the victim." If he has
17 that in his file, he will show you that.

18 Good day, gentlemen.

19 MR. NIXON: Judge, I will be glad to go out to Prichard if
20 you will give me an order, and I will look it all up myself.

21 THE COURT: Just type me up an order and I'll be happy to
22 give it to you, but you can do your own investigating.

23 MR. NIXON: Thank you, Your Honor.

24 MR. JORDAN: Judge, one other thing just to make this clear.
25 My notes are not discoverable, I hope.

1 THE COURT: No.

2 MR. JORDAN: And my interviews that I conducted, my work
3 product is not discoverable; is that correct?

4 THE COURT: Well --

5 MR. JORDAN: I've done a lot of work on this case.

6 THE COURT: -- that all depends.

7 MR. JORDAN: Well, I've interviewed witnesses --

8 THE COURT: That all depends. You know, an awful lot of
9 people think work product includes sitting down talking to police
10 officers about who shot who. That's not work product.

11 MR. NIXON: That's --

12 THE COURT: Work product for the D.A.'s office, but that's
13 something that's discoverable.

14 MR. NIXON: That's the same thing that I'm -- that's why I'm
15 trying to get clear. Judge, and I think --

16 THE COURT: Well, I'm going to make matters real simple for
17 you. Tommy, you go explain this thing to Buzz.

18 I grant your motions.

19 MR. NIXON: Thank you, Your Honor.

20 * * * * *

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APRIL 2, 1995

(The Defendant being present in court with his attorneys, Mr. Kenneth **Nixon** and Mr. Stephen Tunstall, and the assistant district attorney, Mr. Joe Carl Jordan, the following occurred before the Hon. **Ferrill M. McRae** prior to a jury venire being called in:)

THE COURT: All right, for the record, these are the cases of State of Alabama v. Rodney Karl Stanberry. The first, 92-2313 is attempted murder; 2314 is robbery in the first degree, 2315 is burglary in the first degree.

I have been handed a motion in **limine** which I will go into in a minute, but right now --

MR. JORDAN: Judge, is that --

THE COURT: Briefly --

MR. JORDAN: Do I have a copy of that motion? Is it ny motion or is it --

THE COURT: No, it's not your motion. I would hope that you would **know** what motions you filed.

MR. JORDAN: I ~~don't~~ know what **you're** referring to then.

THE COURT: One more time. What do you expect the evidence to be in this case, and I would hope that you know. So, ~~don't~~ look at me at that way. What is the evidence in this **case**?

MR. JORDAN: What do you mean, **Your** Honor?

1 THE COURT: Well, if I was asked that question, I would say,
2 Judge, I expect the evidence to be in this case that the **Defendant**
3 allegedly entered the premises of one Valerie **Findley** and that he
4 attempted to rob her and then he shot her. Is that the facts?

5 MR. JORDAN: Either he or his accomplice. Yes, Your Honor.

6 THE COURT: You see, I have a reason for asking that and my
7 reason for asking that is simply that we have attempted murder, we
8 have burglary, and we have robbery.

9 MR. JORDAN: Yes, Your Honor.

10 THE COURT: And I wanted to hear the facts to support three
11 charges as opposed to two.

12 MR. JORDAN: Your Honor, he --

13 THE COURT: For example, do we have sufficient facts to
14 support both a burglary one and robbery one?

15 MR. JORDAN: In **my** opinion, yes, we do, Your Honor. We have
16 the Defendant and an accomplice initially entering the house by
17 permission.

18 THE COURT: By permission?

19 MR. JORDAN: Initially by permission. But then as he **entered**
20 the house his accomplice pulled out a gun which thereupon **supports**
21 the burglary charge. The statute reads that you enter or remain
22 unlawfully in a residence, a dwelling, and this was a dwelling
23 residence. The initial entry was legal, but then it became with-
24 out authority as a weapon was pulled. The victim was ordered to
25 sit down at gunpoint, was -- her keys were obtained, a vault was

1 entered in the house where items of property were taken from the
2 house at gunpoint, including weapons, and the victim was subse-
3 quently shot on top of the head with a gun. She spent a long time
4 in the hospital. She survived, but is now --

5 THE COURT: Is that gunshot wound the cause of her being in a
6 wheelchair now?

7 MR. JORDAN: Yes, Your Honor.

8 THE COURT: Okay. I know nothing about the facts in the
9 case, but I just saw all three of these charges and there always
10 is a question when you have three different charges, so I was
11 asking before we get started.

12 I have, for the record, ordered a jury in this case and
13 one should be here as soon as they're impaneled.

14 Next I have been handed a motion in **limine** which was
15 filed by the Defendant through his attorney and it reads as
16 follows, without me reading it verbatim:

17 "This Court instructed the District Attorney to refrain
18 from making any direct or indirect reference whatsoever,
19 in person, by counsel or through witnesses, to the
20 evidence or testimony hereinafter described.

21 1. Defendant believes and hence alleges that the State
22 will attempt to introduce into evidence or make
23 reference to alleged statements made by **him**."

24 If he made them, I certainly would expect them to too.

25 "2. The alleged statements were obtained by **law**

1 enforcement officers and assistant district attorney Joe
2 C. Jordan."

3 Who's Joe C. Jordan?

4 MR. JORDAN: That's me, Your Honor.

5 THE COURT: Gosh, I thought you were Buzz.

6 MR. JORDAN: My alias.

7 THE COURT: "-- in violation of the constitution of the
8 United States and the State of Alabama.

9 The Defendant moves this Court to conduct a hearing
10 outside the presence of the jury pursuant to
11 Jackson v. Dino."

12 And I will.

13 Do I have my list of witnesses yet?

14 MR. JORDAN: No, Your Honor, I'm almost finished writing them
15 for you.

16 Judge, I had previously tiled this motion in limine
17 which, since you're talking that one up, we need to take that one
18 up also.

19 MR. NIXON: Judge, this may help you.

20 THE COURT: Dennard Jones, also known as Tacko (phonetic)?

21 MR. NIXON: Taco, Your Honor.

22 THE COURT: Where is this witness?

23 MR. TUNSTALL: He's been served, Judge. I haven't seen him
24 here.

25 MR. NIXON: I haven't seen him here.

1 THE COURT: You know, usually when a person has an alias
2 there's a reason for that alias. And this is you all's witness?

3 MR. NIXON: Yes, sir, Judge.

4 THE COURT: Pine.

5 MR. NIXON: He's a disc jockey or something, Judge, and I
6 just wanted you to qualify the jury on that name.

7 THE COURT: Fine.

8 The State's motion in limine, and I don't know why we
9 have all these motions in limine, but we'll see, and they also ask
10 for me to, "prohibit the Defendant from mentioning, making
11 reference to any statements or tape recording made by Tyrell Moore
12 unless and until Terry (sic) Moore testifies in open court. Other-
13 wise, such statement would be hearsay."

14 I have no idea what he's talking about, Ken, but is
15 Terry Moore, Tyrell Moore., going to be a witness in this case?

16 MR. NIXON: Yes, Your Honor!

17 THE COURT: I have your word that he's going to be a witness
18 in this case?

19 MR. NIXON: He's out in the hall this morning, Judge. He's
20 been subpoenaed and he's here.

21 THE COURT: Sit down.

22 Now, for the record, Mr. Buzz Jordan wants to speak and
23 I won't let him speak until I get through.

24 "Any statements made by Dennard "Taco" Jones unless
25 and until Taco Jones testifies."

1 And I say is he -- do I have your word he's going to
2 testify?

3 MR. NIXON: Judge, he has been served. I haven't seen him
4 today. He is a hostile witness. He was here the last time this
5 case was set.

6 THE COURT: "Any statements made by Ronald Stanberry."

7 Now, you know, isn't this something. The District
8 Attorney asked me not to let the Defendant say anything about the
9 Defendant's statement and the Defendant asked me not to let the
10 State say anything about his statement. Most unusual.

11 We're going to take care of his statement in just a
12 minute. But I don't know of -- I don't believe this is in any way
13 proper. I'm not going to force them to tell me whether Ronald
14 Stanberry is going to be a witness. Under the Fifth Amendment of
15 the Constitution that's a right he has to invoke, not me, and
16 certainly not the State.

17 "Before any statements made by Rene Whitecloud," and,
18 you know I get the same thing in each one of these, "unless and
19 until" she's going to be a witness. Is she going to be a witness's

20 MR. NIXON: It's a he, Judge, and Mr. Jordan told me Friday--

21 THE COURT: Rene is a he?

22 MR. NIXON: Yes, sir. It's Rennie (phonetic), is the proper
23 pronunciation of that name. Rennie -- I assume you're talking
24 about Rene Barbasa or Rene Whitecloud.

25 THE COURT: That may be the way he pronounces it, but all of

1 > them I've seen like this has been Renay (phonetic). Rene
2 Whitecloud is a he?

3 MR. NIXON: Yes, Your Honor.

4 THE COURT: Well, is he going to testify?

5 MR. NIXON: Your Honor, my understanding from Mr. Jordan
6 Friday is that he is incarcerated in New York and has not been
7 brought down.

8 THE COURT: Well, I believe that would be -- so far as him
9 testifying is concerned, would be, I don't think, very possible.

10 "5. Any statements made by Angel Melindez."
11 And the same thing as -- also known as Wish?

12 MR. NIXON: Yes, Your Honor.

13 THE COURT: Is Angel Melindez going to testify? It's not on
14 your list.

15 MR. NIXON: Not for the Defense, Your Honor.

16 THE COURT: We will take up this motion outside of the
17 presence of the jury or, i.e., in just a few minutes.

18 But as to these others, what did you wish to say now,
19 Mr. Jordan?

20 MR. JORDAN: Judge, specifically with regard to Tyrell Moore,
21 Tyrell Moore has previously taken the Fifth Amendment at grand
22 jury and his attorney has indicated to me that he will take the
23 Fifth Amendment at any trial proceedings. I expect that if Mr.
24 Nixon puts him on the stand that he will take the Fifth Amendment.
25 He has given a cassette recording to the Defense. He has made a

1 video tape for the Defense, all of which are -- he has given
2 statements outside of court, all of which are hearsay statements,
3 all of which are not admissible. If he takes the stand and
4 testifies without taking his Fifth Amendment, then I'll have the
5 right to cross examine him and we'll proceed from there, but I
6 don't want any reference made to his statement that he's given to
7 investigators by video tape or cassette unless or until he --

8 THE COURT: I agree 100 percent. To do otherwise would be
9 trying -- and, by the way, the same thing applies to you. To do
10 otherwise would be trying this case by he said, she said, we said,
11 I heard this at the beauty parlor, or whatever and, of course, I
12 hope everybody knows that's hearsay.

13 MR. NIXON: Judge, may I be heard?

14 THE COURT: Certainly.

15 MR. NIXON: I don't know how the Court would like to handle
16 this, but I would like to give a little bit of background on the
17 witness, Tyrell Moore, that is out in the hall today.

18 THE COURT: If Tyrell Moore wishes to testify, of course, he
19 has a right to. But the only thing he's saying, Ken, and I know
20 you know that it's proper, that if Tyrell Moore gave a statement
21 earlier to this investigator or to any investigator, I would
22 assume we all know that that wouldn't be subject to cross examina-
23 tion by the State.

24 Go ahead.

25 MR. NIXON: If I may respond, Judge, what happened, a very

1 brief outline for Your Honor, Tyrell Moore took the Fifth at the
2 grand jury and refused to testify. Subsequently, Mr. Jordan, as
3 assistant 'district attorney, contacted Mr. Moore, granted him
4 immunity in a written immunity agreement, sat down with Detective
5 [Smith and Mr. Jordan and Mr. Moore's lawyer, with a court reporter
6 present, after granting him immunity, and took Mr. Moore's state-
7 ment. It has been transcribed and I have a copy of it, and in
8 that statement Mr. Tyrell Moore gives a detailed outline of --
9 stating that he did this and who did it with him and how he did it
10 and he gave that to Mr. Jordan and it was reported by a court
11 reporter. That was after my investigator had already contacted
12 him and got a video-taped confession from him before he was ever
13 subpoenaed to the grand jury. So, I have, Judge -- the sequence
14 of events, my investigator found this man, got a confession from
15 him before he went to the grand jury --

16 THE COURT: He did?

17 MR. NIXON: Yes, sir, sure did, an audio tape confession and
18 a video tape confession, and he went to the grand jury, he took
19 the Fifth --

20 THE COURT: Are you telling me that your investigator sitting
21 over there -- and he's smiling; I wouldn't be smiling -- knew that
22 someone had committed a crime and did not report it?

23 MR. NIXON: He knew that he had -- he had given testimony,
24 that he had participated in this crime, yes, sir, Judge, and he
25 reported it to me and I reported it to Mr. Jordan.

1 > THE COURT: Most unusual.

2 MR. NIXON: Yes, sir.

3 THE COURT: Even an attorney doesn't have a right to invoke
4 the attorney-client privilege if a crime has been committed. If
5 he represents that person who came to him, yes, and, in addition,
6 on any future crime no one has any privilege. But you're telling
7 me that your investigator knew that this man committed not one,
8 not two, but three crimes, did not report it to the police, did
9 not report it to the district attorney's office, and proceeded to
10 take that person's video deposition?

11 MR. NIXON: Judge, it had already been reported to --

12 THE COURT: Or statement.

13 MR. NIXON: Excuse me. It had already been reported to the
14 police, had -- that information had been given to the police. He
15 reported it to me and I reported it to Mr. Jordan. They already
16 had that information in their possession. They chose not to
17 believe that person is the one who committed the crime. They
18 chose to believe that my client was the one who committed the
19 crime, and that is how they're proceeding today.

20 And, Judge, we have a -- I don't know whether he's going
21 to --

22 THE COURT: You're telling me that your client -- I mean that
23 your investigator did not conceal the fact that someone else com-
24 mitted this crime, as you all have alleged?

25 MR. NIXON: Correct, Judge.

1 THE COURT: But reported it to the police or to you and you
2 contacted the police?

3 MR. NIXON: Yes, sir. And, Judge, the police had already --

4 THE COURT: [After that, after they had been notified, then
5 your investigator proceeded to get a video statement from this
6 person who said he committed a crime?

7 MR. NIXON: Yes, sir.

8 THE COURT: And after this person gave a video deposition
9 saying, no, I committed this crime, Mr. Buzz Jordan through the
10 district attorney's office granted that person absolute immunity?

11 MR. NIXON: Judge, I didn't say absolute immunity. 'Immunity
12 agreement.' There's a written immunity agreement that I have been
13 provided a copy by Mr. Jordan and I don't know if you would con-
14 sider it absolute immunity or not. It is derivative immunity. It
15 says that it gives -- grants him immunity from anything he says to
16 Mr. Jordan during that statement and anything whatsoever that was
17 derived from anything he said cannot be used against him for that
18 crime or any other crime and -- and I can show Your Honor a copy
19 of the immunity agreement and let you review it.

20 THE COURT: I wish you would.

21 (Off the record interruption.)

22 (State's Exhibits 1 through 38 were
23 marked for identification.)

24 THE COURT: I want this made a Court's Exhibit.

25 MR. NIXON: Judge, I have a copy of that interview too that I

1 > would ask that you make a copy as a Court's Exhibit 2.

2 THE COURT: I know that I'm reading this out of -- without
3 reading the other it's not going to make a lot of sense in the
4 record, but I'm putting this in the record, but the reason I'm
5 reading this, Buzz, is I want some comment.

6 "This immunity does not extend to trial testimony."

7 What does that mean?

8 MR. JORDAN: That means that if he takes -- comes into this
9 courtroom and testifies, either perjures himself or implicates
10 himself in this act with Mr. Stanberry, then we have the absolute
11 right to use that testimony against him, arrest him, prosecute
12 him, or do whatever, whatever may be appropriate.

13 THE COURT: Where is this guy? And who is his lawyer?

14 MR. JORDAN: Bob Clark, Your Honor.

15 MR. NIXON: You want me to go get him, Judge?

16 THE COURT: No, but I think all this needs to be explained to
17 him.

18 MR. NIXON: Judge, I would ask that if we're going to discuss
19 this statement of Tyrell Moore and the events of what he said, I
20 would ask that you ask the witnesses to step out in the hall or
21 that we --

22 THE COURT: I will, if it comes to that.

23 MR. NIXON: Yes, sir.

24 THE COURT: "This provision is intended ..." Im skipping
25 down for the record.

1 "This provision is intended to protect the State of
2 Alabama from the effects of any materially false
3 statements and to insure that Mr. Moore understands
4 that he has no license to **lie**."

5 THE COURT: Barbara, put this in the record, **Court's** Exhibit.

6 (Court's Exhibit 1 was marked by the
7 court reporter.)

8 THE COURT: I have some problem with all this, Buzz.

9 MR. NIXON: What problem?

10 THE COURT: The problem I have is simply this. You get
11 someone by the name of Tyrell Moore into your office and, of
12 course, I understand that there had to be some discovery or,
13 stated differently, some reason for you to do so, but you get **this**
14 gentleman into your office and you say tell me what you can tell
15 me and I'll give you **immunity**. Now, why you do that, I **don't**
16 know, but you had to have some reason for doing it.

17 Then they have a video deposition, a video statement of
18 him --

19 I think Ken wants to tell me they got theirs first; is
20 that right?

21 MR. NIXON: Yes, sir.

22 THE COURT: That really **doesn't** make any difference.

23 MR. NIXON: Yes, sir.

24 THE COURT: And then at the time you interviewed him in your
25 office, did you know that he had given this video tape to the

1 attorney for the Defendant?

2 MR. JORDAN: I had known that. I **didn't** see it or know what
3 he said on it, because nobody -- I could not get it. But I knew
4 that he had given the Defense something. I **didn't** know the
5 content of what he said, I **didn't** know anything else.

6 Judge, what happened was, he apparently got with Mr.
7 Ryan Russell -- well, first he apparently got with Mr. Stanberry.
8 After meeting with Mr. Stanberry, then he got with Ryan Russell
9 and gave a cassette taped interview.

10 MR. NIXON: Judge, he never met with Mr. Stanberry.

11 MR. JORDAN: Well, he says he did.

12 Then he -- in the video tape -- he made a video tape
13 with Mr Ryan Russell. Now, I had no access to any of those items.
14 They were defense discovery, defense things that I could not get
15 my hands on. They would not give them to me, but they told me
16 that somebody had confessed to this or whatever. I subpoenaed Mr.
17 Tyrell Moore to the grand jury. He takes the Fifth Amendment.
18 So, I **don't** know what he's -- what information he has or what he's
19 going to say or anything.

20 THE COURT: At the time you subpoenaed him to the grand jury,
21 was this before or after he gave this --

22 MR. JORDAN: After. **After** he had met with Mr. Ryan Russell,
23 and after Mr. Ryan Russell had sent him to a lawyer. After he had
24 cassette recorded him and video taped him, Mr. Ryan Russell
25 advised him to go see a lawyer.

He went and saw a lawyer; he came to grand jury. On advice of his counsel, he took the Fifth Amendment. So, he was -- he was not available to me. I didn't know what he was going to say. I had no access to what he had given the Defense. Mr. Ryan Russell had sent him to a lawyer. He had gone to a lawyer and he took the Fifth Amendment.

MR. NIXON: Judge, when I first got information that my investigator had gotten his confession and his statement nailed down in audio tape and video tape, **that's** when I contacted Mr. Jordan and I told Mr. Jordan that I could put that man in his office to tell him he did it and tell him who did it with him and that he would have him and he would be able to prosecute him. He would have his confession.

I said, but **he's** not going to say that Rodney **Stanberry** was in the house, cause he wasn't. **He's** going to tell you who **was** and where you can find him and all that other good stuff, and Mr. Jordan told me at that time that he -- I **don't** remember his exact words, but basically it was that he **wasn't** interested in it because his victim had told him that Rodney Stanberry was the one who did it and **that's** who he was going to prosecute.

I had suggested that if I did that then he would -- if he would nolle pros the case against Mr. Stanberry until -- with leave to reinstate until he had completed his investigation and if any-- and that way, if anything came up, if he found out that Mr. Moore was not being truthful or he had evidence otherwise and

1 'couldn't verify it, he could reinstate the charges against Mr.
2 Stanberry. He wasn't interested in doing that because he said his
3 victim had made a statement identifying Mr. Stanberry.

4 MR. JORDAN: Judge, as part of my investigation in attempting
5 to give the Defendant any credit for what may have existed out
6 there that may have been credible, I granted -- talked with Mr.
7 Bob Clark and asked him to interview his client based on that
8 testimonial agreement form, testimonial agreement only. Basically
9 what he told me that day meant I could not go out and arrest him,
10 for what he had just told me that day. Not for any testimony in
11 this courtroom, not for any statements otherwise stated.

12 Now, once I had interviewed him and learned what he had
13 said, what he said could not be corroborated. I didn't believe
14 it, I don't give it credit, I think it's a pack of lies'. I think
15 it's created by the Defendant; not by his lawyer, but by the
16 Defendant. I'm convinced of that.

17 I have shown the video tape -- I've looked at it,
18 Lebarron's looked at it. Neither one of us can corroborate it,
19 and it's -- it's a pack of lies and it he gets up there and waives
20 his Fifth Amendment on the basis of his lawyer's advice, then I'm
21 free to cross examine him and I will go after him and I will call
22 Mr. Ryan Russell as a witness and I will play the video tape and
23 the cassette tape, as well as an interview he gave to Lebarron
24 Smith originally where he's given three or four or five different
25 stories outside of court which is hearsay. It's all hearsay.

1 If he is -- if he takes the Fifth Amendment, then Mr.
2 **Nixon** is not free to discuss the cassette and tape recording,
3 video tape recording, or any other statements given by Tyrell **More**
4 because they are all statements made outside of court --

5 THE COURT: I agree.

6 MR. JORDAN: -- they are all hearsay.

7 THE COURT: If he takes the stand and agrees to testify, **then**
8 this prior video cassette is admissible. If he does not, it is
9 not admissible.

10 MR. **NIXON**: Judge, may I respond briefly?

11 THE COURT: Yes.

12 MR. **NIXON**: Judge, if you look at that immunity agreement --

13 THE COURT: I just read it.

14 MR. **NIXON**: Yes, sir, and the way that that is phrased, that
15 immunity agreement is phrased, particularly the sentence that you
16 picked out and you read, it is clear from reading that agreement
17 what the intent of that agreement was, Mr. Jordan on behalf of the
18 State. It was basically, if you tell me something I can use
19 against Mr. Stanberry, then we'll extend this to trial testimony
20 and we'll use you as our witness and you can testify. If you --

21 THE COURT: You know, I have a problem with this whole
22 procedure. You know, lawyers know -- investigators may not, but
23 lawyers know that we've got a case called Brady, and if there was
24 anything in the world out there to clear this man, under the **Brady**
25 case there's a duty on the district attorney, there's a duty on

1 > the attorney for the Defendant, there's a duty on everybody to
2 make sure that information is brought forward. Not in any video
3 cassette. But this is an absolute constitutional right belonging
4 to the Defendant.

5 Now, for him to be able -- allowed to say, here's what
6 happened, without the benefit of any cross examination, without
7 the benefit of anything, and he gets up and tells a wonderful
8 story -- I haven't seen it -- no cross examination. No, I have a
9 problem.

10 MR. NIXON: Judge --

11 THE COURT: Let me finish.

12 Second, then he goes to the grand jury and says, I
13 invoke my Fifth Amendment rights. That defies logic and common
14 sense to me. But we **have.it** all in the record.

15 MR. NIXON: Judge, can I just -- just to clarify, I have a
16 copy of the transcript of the questioning from Mr. -- Mr. Jordan
17 did cross examine **Tyrell** Moore.

18 THE COURT: When?

19 MR. NIXON: When he took his statement. This is it.

20 THE COURT: **I'm** not talking about when he took his statement.
21 Im talking about at this -- and **I'm** not making light of it --
22 this Hollywood production. Was anybody there to cross examine
23 this man?

24 MR. NIXON: No, Judge. That was when we first got -- when we
25 first approached him. This was when he first made the statement

1 to my investigator. Im talking about after that when Mr. Jordan
2 -- after he had subpoenaed him to the grand jury and he took the
3 Fifth, he made the deal and granted him immunity. He gave this --
4 Mr. Jordan sat down and questioned him in detail. So did Mr.
5 Smith, in front of his lawyer, and they granted him immunity when
6 they got that -- they had it transcribed by a court reporter.

7 THE COURT: Was this before or after he gave this -- who is
8 this?

9 MR. NIXON: Judge, this is Stephen Tunstall. He's doing some
10 research on the case for me.

11 THE COURT: But again, was this deposition -- was this ques-
12 tioning that you're talking about, was that at the time this video
13 deposition was taken?

14 MR. NIXON: No, sir, it was afterwards, Judge. He told the
15 same thing to Mr. Jordan that he said in the video, but it was
16 after --

17 THE COURT: And had Mr. Jordan seen that video production?

18 MR. NIXON: Yes, sir. My understanding is he had.

19 MR. JORDAN: Now I have. I had not at the time of that
20 interview.

21 THE COURT: My same ruling goes.

22 MR. NIXON: And your ruling, Judge?

23 THE COURT: If Mr. Moore, whoever he may be, if he wants to
24 take this stand and raise his right hand and testify, he has every
25 right to do so. If he does not, Im not going to let this video

1 > tape be used because the State had no cross examination and he
2 came before the grand jury and he said he invokes the Fifth. If
3 he wants to invoke the Fifth again he has a right to do so.

4 But so that everything will be in the **record**, **I** want
5 **that** cassette made a part of the Court's record. I want that
6 deposition that was subsequent to this made a part of the Court's
7 record. I was everything in the record to protect this **man's**
8 rights.

9 MR. **NIXON**: Yes, sir, Judge, and if I may, my position basic-
10 ally is that I do not believe that the State -- I believe that the
11 State, if this man does take the Fifth Amendment --

12 THE COURT: Let's put another thing in the record. And
13 anyone who reads this record is certainly going to have the
14 expertise to understand. With the immunity that **I've** already put
15 in the record as a Court's Exhibit, I see nothing detrimental to
16 this fellow taking the stand. Nothing. The way I read that
17 immunity that was given to him by the State -- and, by the way,
18 let me say this is the first time in 30 years I've seen one that
19 complete. The only thing I know could have been done better is
20 going -- well, I was going to say the Federal Government **didn't**
21 give immunity, but they have no interest in this anyhow.

22 But with that immunity, I **don't** know where this --
23 what's his name, Tyrell Moore?

24 MR. **NIXON**: Yes, sir.

25 THE COURT: Where he would be prejudiced in the least bit in

1 taking this stand. And if he takes this stand and subject to
2 cross examination, then all of this video before is admissible.

3 MR. NIXON: Yes, Judge. My only response that I want to put
4 in the record is that I feel that the State has through their
5 immunity agreement by specifically excluding trial testimony --
6 and that's the first time I've ever seen that in an immunity
7 agreement --

8 THE COURT: I've never seen it period.

9 MR. NIXON: -- Judge, that you can tell me this and I'll give
10 you immunity for anything you tell me, but if you take the witness
11 stand and testify under oath, you're not getting immunity. And my
12 position in that regard, Judge --

13 THE COURT: Well, by the way, there's another part in there
14 that says it there's any conflict in what it means, the Circuit
15 Court will interpret it. Well, this is the Circuit Court, so --

16 MR. NIXON: Yes, sir.

17 THE COURT: -- let us proceed.

18 MR. NIXON: And I would ask that you do determine that when
19 he takes the witness stand. I would ask that you make a deter-
20 mination as a Circuit Court Judge as to whether that immunity
21 agreement extends to his trial testimony here today or whether it
22 doesn't and that you explain that to him or his lawyer, if he does
23 take the Fifth.

24 THE COURT: Certainly.

25 MR. NIXON: By the terms of that agreement, Judge, it says

1 that it's to be decided by the Circuit Court Judge, and you are
2 the Circuit Court Judge, and my position --

3 THE COURT: Yeah, and I have been since 1965.

4 As plain as I know how to say it, I don't know of any
5 way you can say I'm going to give you immunity and then I'm not
6 going to give you immunity. You either give immunity or you
7 don't.

8 MR. NIXON: Yes, sir.

9 THE COURT: Now, he did put in there that if he lies, then
10 any agreement is null and void. Those exact words were not used,
11 but **that's** implied in there.

12 MR. JORDAN: Judge, the point of this immunity agreement, **and**
13 it's stated in here, was that if he in fact gets on that witness
14 stand and confesses to being involved in the **commission** of a
15 crime, he can be prosecuted. He is not protected, and anything **he**
16 says under oath in that setting can be used against him. That --
17 you know, this is a contract. This is an agreement. It was a
18 very specific agreement tailored --

19 THE COURT: Tell me what your agreement was.

20 MR. JORDAN: That purely as an investigative tool we wanted
21 to interview him and let his lawyer know that what he told me
22 during that interview. I could not haul him into court, try him
23 on what he told me during the interview, and use that interview
24 statement against him.

25 THE COURT: Well, I'm going to take Mr. Moore's side. If he

1 comes into the interview and he says, Mr. Jordan, I committed act
2 A, B, C, and D. Did you not say that you wouldn't prosecute him
3 for that?

4 MR. JORDAN: I did not say I would not prosecute, no. There
5 are two types of immunity. Judge. One is testimonial and one is--

6 THE COURT: Well, you tell me in your own words what -- what
7 you did grant him.

8 MR. JORDAN: Basically I cannot use his statement that he
9 gave me against him, period. That's all. I -- if I can arrest
10 him on -- based on other evidence or if I could prove that he com-
11 mitted a crime, I **can't** come into court and I cannot use this
12 statement that he gave me against him. **That's** all. I just can't
13 use his statement that he gave me against him. That initial
14 statement that -- that's all. That's all he got.

15 THE COURT: Folks, I have been told that the jury is ready **to**
16 come. I'm ready for him to come. **I've** made the ruling on this.

17 But your interpretation on the immunity, somebody go get:
18 me some cases before I make any ruling on that. I think Mr. **Nixon**
19 is 100 percent right. It's in the breast of the Circuit Court.
20 Let the Circuit Court rule.

21 MR. JORDAN: Judge, you do see the distinction between --

22 THE COURT: I see the distinction you're trying to make.
23 Nobody is going to get --

24 MR. JORDAN: Well, the Courts have recognized two type of
25 immunity. I mean that's --

1 THE COURT: Well, good. There **won't** be any problem in you
2 finding it then, will there?

3 MR. JORDAN: Well --

4 MR. NIXON: Judge, if I can just say two things in the **record**
5 before we go, just so I make sure that **I've** covered myself, numbe
6 one, my position is if does take the Fifth, he becomes unavail-
7 able. Normally I agree that that is not grounds for having --

8 THE COURT: He's out there in the hall. If you want me to
9 make sure that **he's** available, **I'll** have him locked up.

10 MR. NIXON: No, Im talking about it he takes the Fifth, but
11 my position is if he does that, then I think the case law says
12 that that is still not grounds to admit a tape or hearsay **evidence**
13 unless the State made him unavailable, and my position is that **the**
14 State made him unavailable by drafting this plea agreement which
15 clearly says what it says.

16 THE COURT: I can't agree with that, but your position is in
17 the record.

18 MR. NIXON: Yes, sir.

19 THE COURT: And you would further for the record say that **I'm**
20 sure that this Court's interpretation is totally wrong, and you
21 respectfully except from the rulings of the Court, **don't** you?

22 MR. NIXON: Judge, I think you're going to decide this when
23 it comes up; is that correct?

24 THE COURT: **I've** already decided on that -- on the **question**
25 of that video being used. If he takes the stand, you can use it.

1 > If he **doesn't**, you can't.

2 MR. NIXON: Yes, sir.

3 MR. JORDAN: Judge, the purpose --

4 THE COURT: If he takes the stand and says I invoke the
5 Fifth, you can't. But now the other part, somebody is going to
6 have to get me some case law before I rule.

7 Go get the jury and let me --

8 MR. NIXON: Thank you, Your Honor.

9 MR. JORDAN: Judge, as to the -- the purpose of the motion in
10 **limine** is that nothing be mentioned in opening statement until --

11 THE COURT: A H of these other people, nothing will be men-
12 tioned about them, yes.

13 And, by the way, the sane thing applies to you --

14 MR. JORDAN: I won't mention anything the Defense says until
15 we get --

16 THE COURT: -- nothing until we have a hearing outside the
17 presence of the jury. You can't say anything to the jury about
18 any statement the Defendant may have made to you.

19 MR. JORDAN: Yes, Your Honor.

20 (Court's Exhibits 2 and 3 marked by
21 by the court reporter.)

22 (Recess.)

23 (A jury venire was sworn and qualified,
24 during which the following occurred:)

25 THE COURT: The next question I'm going to ask is about **three**

1 > questions in one. I do not do this accidentally. I'm doing it on
2 purpose, and the reason for me doing it is if any member of the
3 jury wishes to come up and tell me in private, they have every
4 right to do so. I do not wish to embarrass anyone.

5 Has any member of this jury had any dealings with the
6 district attorney's office such as the district attorney's office
7 ever investigated any matter for you; two, has the district
8 attorney's office ever prosecuted some matter in which you were
9 interested; three, have you ever been a witness for the district
10 attorney's office in any case; and, four, has any member of your
11 family ever been indicted by the district attorney's office? If
12 any of those questions apply to anyone, please stand. And if
13 anyone wishes to come up and tell me in private the answer to any
14 of these questions, you have a right to do so.

15 I'll get with you all in a minute, if that's all right
16 with you.

17 (Off the record discussion between the
18 Court and jurors.)

19 THE COURT: Strike number 12, gentlemen. I'll tell you why
20 in a minute.

21 * * * * *

22 THE COURT: Buzz, you may ask anything that I have not
23 already asked.

24 MR. JORDAN: Your Honor, I don't know your procedure. When
25 do you identify the entire panel?

1 THE COURT: When I get through.

2 MR. JORDAN: Ladies and gentlemen, I'll ask you a few
3 questions that the Judge may not have covered and initially does
4 anybody -- the Defendant, Mr. Rodney Stanberry, does he look
5 familiar to anybody, like I think I know him or I may know him,
6 because if you have any contact with him or know him in any way
7 whatsoever we need to know that before **you're** selected.

8 The same is true with his lawyer, Mr. **Nixon**, if you
9 think you might know him, even though you **don't** -- you **don't**
10 personally know him? Anybody that may know him or any of the
11 other lawyers mentioned?

12 Have any of you ever worked for a law firm? Except for
13 -- I'm sorry.

14 JUROR: I worked for an oil company in -- Tidewater, Inc., in
15 New Orleans and I worked with staff lawyers.

16 MR. JORDAN: Okay, and what kind of law did they practice?

17 JUROR: It was more like litigation and --

18 THE COURT: Oil and gas, Buzz.

19 JUROR: Yeah, oil and gas.

20 MR. JORDAN: All civil, civil work, and what kind of work did
21 you do with them?

22 JUROR: Mainly handled all their files and computer and stuff
23 like that. I worked in central filing for that company.

24 MR. JORDAN: I'm sorry, I **didn't** get your name and panel
25 number.

1 JUROR: It's Beva Thomas.

2 MR. JORDAN: Thank you, Mrs. Thomas.

3 THE COURT: Number 6.

4 MR. JORDAN: Except for the single nurse that has identified
5 herself as a nurse, does anybody else in here have medical train-
6 ing or medical background? Yes, sir, on the first row, if you'd
7 stand and give us your name and panel number, please.

8 JUROR: Ronald Peppenhorst. I'm not sure of my panel number.

9 THE COURT: Twenty-five.

10 MR. JORDAN: And what kind of experience do you have, **sir**.

11 JUROR: I'm a --

12 THE COURT: He's a radio technologist, USA Medical.

13 MR. JORDAN: USA.

14 JUROR: Six years.

15 MR. JORDAN: Thank you.

16 Yes, sir?

17 JUROR: William Elliott. In the past worked as an RN and
18 also a medical technologist.

19 THE COURT: Number 26.

20 MR. JORDAN: How long have you been an RN, sir?

21 JUROR: Seven years. **Medical** technologist seven years.

22 MR. JORDAN: Thank **you**, Mr. Elliott.

23 THE COURT: Excuse me just a minute.

24 Mr. Elliott, where are you **employed** now?

25 JUROR: Right now unemployed. Im taking care of a sick

1 > relative.

2 THE COURT: Okay. Go ahead.

3 JUROR: Donald **Barnett**.

4 MR. JORDAN: I'm sorry?

5 JUROR: Donald **Barnett**.

6 THE COURT: Mr. **Barnett** is number seven.

7 What kind of work did you do, Donald?

8 JUROR: I do -- put in fire sprinklers for a living, but I
9 took a EMT course at Southwest a couple of years ago to ride on
10 the County ambulance.

11 THE COURT: Okay. Thank you very much.

12 MR. JORDAN: Anybody else?

13 JUROR: I'm Rebecca **Willis**. I worked at Providence Hospital,
14 but I don't work no more there, but I worked in medical records.

15 MR. JORDAN: Okay. Thank you, Mrs. **Willis**.

16 Do any of you know any employees at B.F.I.? B.F.I. is
17 out on Halls Mill Road. Do any of you have any contact with any
18 employees out there, know anybody that works for that company?
19 Drives a truck **for them** or any other capacity? Yes, sir.

20 JUROR: I just know Hickenbottom at B.F.I. and I don't have
21 any contact with him or anything like that.

22 MR. JORDAN: That's Mr. Russell; is that correct?

23 JUROR: Huh?

24 MR. JORDAN: Your name is Mr. Russell?

25 JUROR: (Inaudible.)

1 MR. JORDAN: Anybody else?

2 Are any of you familiar with the area of 1736 Meadow
3 Avenue off of Whistler? I mean **it's** in Whistler. It's off of I-
4 65. Anybody familiar with that specific street or that area,
5 Meadow Avenue? Yes, ma'am?

6 JUROR: I live in Whistler, but I **don't** know that street.

7 MR. JORDAN: **Don't** know that particular street or whether
8 you've ever been down it?

9 JUROR: **I've** never been down it.

10 MR. JORDAN: Okay.

11 **Mr.** Russell?

12 JUROR: Yeah, I live in that area. I live on Wellington
13 Street, but I **don't** even know where Meadow Avenue is.

14 MR. JORDAN: Okay. Thank you.

15 Anybody else?

16 Is anyone familiar with the specific facts of this
17 case that occurred on March the **2nd**, 1992, which was a Monday,
18 Monday before Fat Tuesday? Anybody familiar with the incident
19 that occurred on Meadow Avenue on that day?

20 Ladies and gentlemen, in every criminal case the State
21 is required to prove its case beyond a reasonable doubt. The
22 Judge will charge you and tell you what that definition of that
23 term is, but do any of you personally believe the State should be
24 required to prove its case beyond all doubt? Do any of you have
25 that personal conviction that you would require the State to prove

1 a higher burden than what's required by the law? Anybody at all?

2 **Ladies and gentlemen, there** will be no fingerprints in
3 this case. There will be no weapon that was used. There will be
4 no ballistics. There will be no blood. There will be no **finger-**
5 **'prints**, no video tape of the actual crime being committed. Do any
6 of you require those things before you would personally convict
7 somebody? Would **you actually have to have physical** scientific
8 **evidence before** you could be satisfied that a crime had been **com-**
9 **mitted or that a particular person had** committed a crime? **Anybody**
10 at all?

11 My last question since the Judge was so thorough, do any
12 of you have any reason or know any reason whatsoever that either
13 Judge **McRae** may not have asked you or that I may not have asked
14 you at this time that you need to bring up or you should make us
15 aware of before you're selected to sit on this particular jury?
16 Anything at all? Yes, ma'am.

17 JUROR: Im friends with Cathy.

18 MR. JORDAN: And that's Mrs. --

19 JUROR: Mackdanz.

20 MR. JORDAN: Mackdanz.

21 Cathy, by the way, is Cathy Dorsey, who is a trial
22 coordinator, paralegal, works with our office.

23 Anything else?

24 **That's** all I have at this time. Thank you very much.

25 THE COURT: Judge **McRae** was so thorough he forgot to ask you

1 one of the most important questions.

2 This Defendant, Rodney Karl Stanberry -- I read to you
3 the indictments in all three of these cases. I told you that
4 these cases had been consolidated for trial, and they have. Mr.
5 Buzz Jordan talked about reasonable doubt. I will explain that
6 later. But more important than that, this Defendant, Rodney Karl
7 Stanberry, sits there today in front of you as innocent of these
8 charges right now as you are or I am until the State meets the
9 burden of proving his guilt beyond a reasonable doubt. Is there
10 any member of this jury who thinks that -- for example, that he's
11 been indicted; he must be guilty of something, because I tell you
12 no such presumption exists. It's just the opposite.

13 Does anyone have any problem with our law that says that
14 all persons are presumed to be innocent of a crime until the State
15 meets the burden of proving that person's guilt beyond a reason-
16 able doubt?

17 Another thing, Mr. Jordan asked it one way; I'll ask it
18 another, does anybody know of any reason whatsoever, because of
19 the nature of the charges against this Defendant, or any reason
20 best known only to you, does any member of this jury feel that he
21 or she, if they were selected, could not sit as a fair and
22 impartial juror?

23 Now, you may proceed, Ken.

24 MR. NIXON: By the time it gets to me about all the questions
25 have been asked. So, I won't have but just a very few for you.

1 Just to elaborate a little bit on what the Judge said, is there
2 anybody here that feels that because Rodney Stanberry is sitting
3 here and is fixing to go trial that **he's** probably guilty? Any of
4 you feel that way right now as you sit here in the -- these jury
5 seats?

6 Do you all understand that he stands here and the Judge
7 is going to tell you that as a matter of law right now it is your
8 job to presume that he is innocent and completely innocent of
9 this? Does anybody have a problem with that concept at all?

10 Now, the people that answered -- there's quite a few of
11 you answered that you had been a victim of a crime or some member
12 of your family had been a victim of a crime. Could you all raise
13 your hand again, please? Now, I assume that you participated in
14 trials, people -- how many of the members of the jury have been a
15 victim of crime went to trial and participated when they called
16 for persons who did the crime? Could you all raise your hand,
17 please? Nobody? Do I assume that none of the people who com-
18 mitted these crimes you talked about were ever caught? Is that
19 correct?

20 JUROR: Well, the guy doing time that killed my nephew. I
21 didn't --

22 MR. NIXON: He got caught and convicted?

23 JUROR: Right.

24 MR. NIXON: The people who are victims of crime that the
25 Defendants were not caught, do you all have any feeling that

1 > you're going to try to make up for that here in this case as a
2 juror? And that wouldn't prejudice you at all in this case? Do
3 you honestly feel like you can give the facts of this case
4 adequate consideration and decide this case based solely on the
5 merits of this case and the law that the Judge tells you without
6 having any influence from your past victimization? Is there
7 anybody that doesn't feel they can do that?

8 Now, ma'am, you said the person was caught and convicted
9 and went to jail. Does the fact that that happened to a family
10 member of your have any bearing on your ability to render a fair
11 verdict in this case?

12 JUROR: No.

13 MR. NIXON: Now, did your experience as being a victim in
14 those trials at -- when dealing with the police department, and
15 the district attorney's office -- I'm sure you talked with the
16 police department, the detectives, or you talked with members of
17 the district attorney's office who was investigating the case.
18 You heard the names of the witnesses that are going to testify,
19 the police officers in this case and the members of the district
20 attorney's office. Any of the crimes that you were involved in or
21 your family members were victims of, does anybody recognize or
22 remember dealing with any of the police officers that were
23 mentioned or any of the district attorneys that are here now in
24 Mobile County? Nobody had any conversations with district
25 attorneys?

1 Ma'am, did you?

2 JUROR: Not none of those.

3 MR. NIXON: Okay. Any of them in this office now?

4 JUROR: His name is Mike something.

5 MR. NIXON: And when was that?

6 JUROR: About three years ago.

7 MR. NIXON: Okay. Do you -- the district attorney's name was
8 Mike?

9 JUROR: His first name, right.

10 MR. NIXON: Okay, and do you know --

11 JUROR: Michael Davis, Mike --

12 MR. NIXON: Mike Davis?

13 JUROR: Yes.

14 MR. NIXON: He is a district attorney.

15 JUROR: Yes.

16 MR. NIXON: And was he the one -- the prosecutor who
17 prosecuted the case?

18 JUROR: Yes, sir.

19 MR. NIXON: And you've dealt with him and talked with him?

20 JUROR: Not really. My sister-in-law and my niece-in-law,
21 his wife.

22 MR. NIXON: Okay. And the fact that you've talked with Mr.
23 Davis, and he is still in the district attorney's office, as a
24 matter of fact, would that relationship, limited relationship you
25 had affect your ability to render a fair and impartial verdict in

1 > this case based on the evidence?

2 JUROR: No, sir. Because the reason why, the guy that
3 actually killed my nephew, his family and I are real close. We --
4 I still talk to them.

5 MR. NIXON: Okay. So, that wouldn't affect your ability to
6 hear the facts in this case and decide this case solely on the
7 facts?

8 JUROR: No, it would not.

9 MR. NIXON: Now, the Judge is going to tell you what the law
10 is in the case. He's already told you about the presumption of
11 innocence, and Mr. Jordan has mentioned reasonable doubt and the
12 burden of proof that the State has to prove. And the sequence of
13 events is after this trial is over with, and you've all seen
14 Matlock, I'm sure, after the trial is over with, that's the time
15 when the judge tells you what the law is and it's your job to
16 apply the facts that you've heard and that you believe from this
17 witness stand to the law that the Judge gives you.

18 Now, what I'm going to ask you now, is there anybody
19 here that doesn't for any reason feel that they can follow the law
20 that the Judge gives you? Is there anybody here that feels that
21 they would not be able to follow the law that the Judge gives you
22 if they disagree with it?

23 Now, I know some people disagree with the status of the
24 law right now and if the Judge tells you what the law is and you
25 have personal feelings and you don't agree that's the way the law

1 > should be, can you still follow the law that the Judge gives you?
2 Is there anybody that **doesn't** feel that they can or that may have
3 a problem with that? You all understand that this is not the time
4 and place to change the law, that **you're** just following it? Do
5 you **under--** you understand that? Anybody that doesn't or that has
6 a problem with that concept.

7 Now, as Mr. Stanberry sits here today, we've already
8 told you that he's presumed innocent and the Judge is going to
9 tell you that the burden of proof is on the State to prove and to
10 convince you, if you're chosen as a juror, beyond a reasonable
11 doubt that he committed each and every element of each and every
12 offense that **he's** charged with. If the State fails to prove to
13 you beyond a reasonable doubt that he did what he is accused of
14 doing, it will be your duty to find in favor of the Defendant and
15 acquit him. Is there anybody that doesn't feel for any reason
16 that they can do that?

17 Is everybody here today, when this case is over with, if
18 you're not convinced, that the State has not proven to you beyond
19 a reasonable doubt that Mr. Stanberry did what he is accused of
20 doing, I assume that you can all find **him** not guilty? Is there
21 anybody that ~~can't~~ for any reason?

22 Now, **there's** going to be some testimony from police
23 officers in this case, quite a bit of testimony from police
24 officers and testimony from physicians and doctors. Is there
25 anybody here that, based on their prior experiences, will or would

1 believe a police officer or a **doctor's** testimony more than **someone**
2 else's testimony just because they are a police officer or a
3 doctor? I assume that everybody would evaluate the credibility of
4 each witness that testifies, regardless of whether they're a
5 police officer or a doctor or a plumber or a carpenter. Is there
6 anybody that **can't** do that for any reason?

7 Is there -- and we expect that this is -- was a **terrible**
8 crime and that Mrs. Finley, the victim in this crime, was injured
9 and suffered and still suffers the effects from being shot. Is
10 there anybody here, and the Judge -- we expect the Judge is going
11 to tell you that you are to strike sympathy and prejudice from
12 your deliberations. **You're** to exclude that and base your decision
13 in this case on the facts that are presented. Is there anybody
14 that feels they cannot overcome any sympathy or prejudice that
15 they have in this case for any reason?

16 Is there anything that any of you have that I have not
17 asked you or the Judge has not asked you or Mr. Jordan has not
18 asked you that feels that may -- that you feel may impair your
19 ability to render a fair and impartial verdict in this case based
20 solely on the evidence presented, for any reason whatsoever?

21 Thank you very much.

22 THE COURT: **All** right, ladies and gentlemen, as your name is
23 called, please stand to be identified. **I'm** going to ask one of
24 those questions that you **don't** know why **we're** asking it now. **When**
25 you stand, if you are married, tell us what your husband or wife's

v
1 occupation or profession may be. And as sure as my hair is white,
2 **you're** sitting there saying why in the world do they want to know
3 that, and the answer is simply this. At the end of the day you go
4 home and talk about your work or that day, and I submit to you if
5 you **don't** have that much conversation you're not going to be
6 married very long anyhow. But now that I've said that, it is none
7 of these lawyers' business and certainly none of my business if
8 **you're** getting a divorce or if you have gotten a divorce. We
9 **don't** want to know that. Okay? But if **you're** married, what is
10 your husband or wife's occupation?

11 (Said jurors were identified.)

12 THE COURT: All right, I have to give these attorneys time to
13 go over this list and, in addition, I have to put something in **the**
14 record, so **I'm** going to ask all the jurors to step outside and
15 we'll get you back in here in about 15 minutes.

16 (Jurors not present.)

17 THE COURT: For the record and for the benefit of the
18 attorneys, number **10**, David E. **McIntyre**, told me that his **wife's**
19 car was stolen, that that in no way could affect him from render-
20 ing a fair and impartial verdict in this case.

21 Number 11, Carol J. Head. She said her son was killed in a
22 vehicular homicide. She has no ill feelings towards the district
23 attorney's office. She said that she could hear any kind of case
24 unless it was a vehicular homicide. So, with that exception she
25 said she could be a fair and impartial juror in this case.

1 Number 12, Robert L. Ross, came up and told me he had a
2 severe kidney problem, that he could not sit longer than 20
3 minutes at a time. He also told me that his wife did not pack his
4 protection for him today. Well, I don't know why he blames it on
5 his wife, but in addition he said he could only hear about one-
6 third of what anybody said. For all those reasons I excused him.

7 Number 26, William M. Elliott, said his cousin was convicted,
8 tried and convicted for LSA. He said he had no hard feelings
9 towards the district attorney's office. He felt he could be a
10 fair and impartial juror.

11 William J. **Manley** said his brother-in-law was convicted for
12 vehicular homicide. Again, he said he had no problem, that he
13 could render a fair and impartial verdict.

14 Since I took all this information and you all told me I **could**
15 up here to keep from embarrassing anyone, if either side would
16 like to ask these people any questions, I will call them in one at
17 a time.

18 Do you have any additional questions you would like to
19 ask them. Ken?

20 MR. **NIXON**: If I may, Judge. I'll be very brief.

21 THE COURT: Who?

22 MR. **NIXON**: I'd like to speak to number 26.

23 THE COURT: Certainly.

24 MR. **NIXON**: And number 11.

25 THE COURT: Certainly. You're asking and I'll grant it.

1 Cathy, go out there and tell Carolyn J. Head to come in.
2 You're going to have to do the same thing for William Elliott. Is
3 it William Elliott or do you want Manley?

4 MR. NIXON: Number 26, Mr. Elliott.

5 THE COURT: Get me Carolyn J. Head right now.

6 (Juror enters courtroom.)

7 THE COURT: Carolyn, come on up. You know, I didn't want to
8 ask anybody any question that could in any way embarrass them, but
9 I told these attorneys and they would like to ask you one question
10 or two questions. I said fine.

11 What would you like to ask her?

12 MR. NIXON: Mrs. Head, the judge has told us what you told
13 him and it seems like you've had some unfortunate problems in the
14 last few years. My understanding is that your son was killed in
15 an automobile vehicular homicide case. When was that?

16 JUROR: It's been 16 years ago. Graddick was --

17 MR. NIXON: Charlie Graddick?

18 JUROR: Mm-hm.

19 MR. NIXON: Was -- he prosecuted the person who did that?

20 JUROR: Mm-hm.

21 MR. NIXON: Was he convicted?

22 JUROR: Mm-hm.

23 MR. NIXON: And I have in my notes where you said that your
24 mother was kidnapped at one point?

25 JUROR: He killed himself.

1 MR. NIXON: Who?

2 JUROR: The man that kidnapped her.

3 MR. NIXON: When did that happen?

4 JUROR: It's been about 14 years ago.

5 MR. NIXON: The man who kidnapped your mother?

6 JUROR: Mm-hm. They -- in Mississippi --

7 MR. NIXON: Mm-hm.

8 JUROR: -- the law enforcement, and she got out of the car
9 and he shot **hissself** in the car. So, they **didn't** go to a jury.

10 MR. NIXON: Did -- was she injured in any way in that?

11 JUROR: Not really, no.

12 MR. NIXON: Okay. Those are very traumatic events, I'm sure.
13 Both of them have been quite a while ago. Do you think that that
14 would affect your ability to hear this case and decide it?

15 JUROR: Mm-mn.

16 MR. NIXON: You **don't** feel that you're prejudiced against
17 people charged with crimes or --

18 JUROR: NO.

19 MR. NIXON: You think **you could do** that?

20 JUROR; Yes.

21 MR. NIXON: Okay. Thank you very much. I appreciate that.

22 THE COURT: Thank you, Mrs. Head.

23 * * * * *

24 (Juror enters courtroom.)

25 THE COURT: Mr. Manley, I asked these questions -- I mean I

1 let people come up and tell me what they wanted because I didn't
2 want to embarrass anyone.

3 JUROR: Elliott.

4 THE COURT: Excuse me, Mr. Elliott. I'm looking at Manley.

5 You told me that your cousin was convicted for an LSA;
6 is that correct? Or charged with an LSA?

7 JUROR: He has been charged with an LSA.

8 THE COURT: Oh, that's right, and his case is coming up.

9 JUROR: Yes, sir. I **don't** know when. I have no idea.

10 THE COURT: With that in mind, one or more of the attorneys
11 said they wanted to ask you a question.

12 Do you have any question, Buzz?

13 MR. JORDAN: Yes, sir.

14 Mr. Elliott, is that being handled by our office?

15 JUROR: Sir, I really **don't** know. I really **don't** know the
16 details. All I know, he is --

17 THE COURT: Is it here in Mobile?

18 JUROR: Yes, uh huh.

19 THE COURT: Okay.

20 MR. JORDAN: How does that make you feel that -- that
21 specifically people in my office may be involved in kind of the
22 case that might involve one of your family members? Does that
23 cause you to have any --

24 THE COURT: **He's** really not asking it right. What he wants
25 to know is does that cause any hard feelings for the district

v
1 attorney's office and with that in mind could you still render a
2 fair and impartial verdict?

3 JUROR: There are no hard feelings. Id render a fair
4 judgment.

5 THE COURT: Ken, do you have any questions?

6 MR. NIXON: Is that case pending now?

7 THE COURT: Yes.

8 JUROR: Yes. **It's** coming up. It was postponed. I think it
9 came up last week and was postponed and I don't know when **it's**
10 going to occur.

11 MR. NIXON: What is your cousin's name that was charged?

12 JUROR: Edward Bryant.

13 MR. NIXON: Did you participate in any of the investigation?
14 Did anybody talk to you about it?

15 JUROR: No one did.

16 MR. NIXON: Thank you very much.

17 THE COURT: Thank you very much, sir.

18 Anything else, Ken?

19 MR. NIXON: Judge, it was number -- **I'm** sorry, I had them
20 confused. I had number 27.

21 THE COURT: **That's** what I thought.

22 * * * * *

23 THE COURT: Well, **I'm** glad we brought him in because I had **it**
24 he had been convicted. I forgot that the case ~~hasn't~~ come up **yet**.
25 So, I told you all wrong on that. So, **I'm** glad we did bring him

1 in because I certainly don't want to tell anybody something wrong.

2 MR. JORDAN: Judge, are all the jurors out there or just
3 these few?

4 THE COURT: All of them.

5 MR. JORDAN: Because there's one woman that looked familiar
6 to me on the jury and her name and everything. Could --

7 THE COURT: We're going to take about a ten minute break.

8 MR. JORDAN: -- you bring her in just to make sure I don't --

9 THE COURT: I don't know which one you're talking about.

10 MR. JORDAN: **It's** Barbara **Purifoy**.

11 THE COURT: Yeah, we'll bring her in in a minute.

12 You all go ahead.

13 (Recess.)

14 (Juror enters courtroom.)

15 THE COURT: Mr. Manley, you know, I asked everybody to come
16 up so I -- again, I **didn't** want to embarrass anybody. You told
17 me, I believe, that your brother-in-law was convicted in a
18 vehicular homicide?

19 JUROR: Not convicted; charged.

20 THE COURT: Charged, I mean. Is that case still pending?

21 JUROR: **Yes**, sir.

22 THE COURT: And I asked you, I think, up here, but let me do
23 it again. Do you have any hard feelings towards the district
24 attorney's office because of that?

25 JUROR: No, sir.

1 THE COURT: Do you want to ask anything, Ken?

2 JUROR: I think that he was going to represent my brother-in-
3 law at one time.

4 MR. NIXON: Who is your brother-in-law?

5 JUROR: Randy Nall (phonetic). I'm not sure of that.

6 MR. NIXON: That is correct, Judge. I was contacted about
7 representing him. I had represented him in the past and --

8 THE COURT: What's his name?

9 MR. NIXON: Randy Nall. And I had a conflict and I didn't
10 represent him and I never talked to him, but **that's** --

11 THE COURT: All right.

12 Buzz, do you want to ask him anything?

13 MR. JORDAN: I'm sorry, **it's** Mr. William Manley?

14 JUROR: Yes, sir.

15 MR. JORDAN: Thank you, sir.

16 THE COURT: Do you?

17 MR. JORDAN: **No.**

18 THE COURT: Okay. Thank you very much. You can go ahead **and**
19 have a seat now.

20 Now, who is it you wanted me to bring in?

21 MR. JORDAN: Mrs. Barbara Purifoy.

22 * * * * *

23 (Juror enters courtroom.)

24 THE COURT: Barbara, one of the **attorneys** --

25 Was it you, Buzz?

1 MR. JORDAN: Yes, Your Honor.

2 THE COURT: Said he thought he remembered you from somewhere.

3 Have you ever had any --

4 MR. JORDAN: I don't -- Mrs. **Purifoy**, when you walked in, you
5 looked very familiar to me and Captain Dees -- **you're** just
6 familiar to us. So, I wondered if I had ever met you or talked to
7 you in my office or had any dealings with you personally.

8 JUROR: Not that I know of.

9 MR. JORDAN: Okay, because sometimes --

10 THE COURT: Anybody that ugly, **you'd** remember, wouldn't you,
11 Barbara?

12 MR. JORDAN: Thank you.

13 THE COURT: Go ahead and have a seat, Barbara. **We're**
14 bringing all the jury in.

15 JUROR: Thank you.

16 THE COURT: Go get them all for me.

17 Each side has eight strikes. The State's first strike,
18 and wait until they get in here.

19 MR. **NIXON**: Judge, just for the record, is Mrs. Linda **Pearce**
20 from the **D.A.'s** office going to be sitting with the victim,
21 putting her --

22 THE COURT: She's not.

23 MR. **NIXON**: -- arm up around her --

24 THE COURT: She's not. I can promise you.

25 MR. **NIXON**: She went out to get the jury and I don't -- I

1 don't want the jury to be confused.

2 THE COURT: What's her name? I'll make her sit in the back.

3 MR. JORDAN: Linda Pearce.

4 THE COURT: Linda, sit back there in the back right now.

5 (All jurors present in courtroom; a jury
6 was struck and seated in the jury box.)

7 THE COURT: All right, where you are, if you will, just raise
8 your right hand for me.

9 (Jurors sworn.)

10 THE COURT: Let me tell you a few things and then we'll go
11 ahead and go to lunch. First of all, at no time during the trial
12 of this case can you discuss the case among yourselves or allow
13 the case to be discussed in your presence. There's an awful lot
14 of people out here. If anyone attempts to discuss this case with
15 you or in your presence, by law you must let me know of that.

16 Now, when we take a break and you go out there in the hall,
17 if any of these people want to come up to you, hey, just walk the
18 other way. If you want to go to the jury room, you may. If you
19 want coffee, I can make sure you get it, and you won't have to go
20 out there at all.

21 But the main reason that I tell you that is simply this, and
22 I promise you this case is not going to be over with today. At
23 the conclusion of this case you twelve people are going to be
24 called upon to return a verdict. Verdict comes from a Latin word
25 which means true saying and it will be for you to determine what

1 that true saying is, but consistent with the facts that come from
2 this witness stand or the lack of facts that come from that
3 witness stand and any exhibit which I authorize to be introduced
4 into evidence, and not what somebody else thinks about it. Okay?

5 I promise you when you go home tonight your husband, your
6 wife, your boyfriend, girlfriend, son, daughter, somebody is going
7 to say did you get selected on a jury today and, of course, the
8 answer is yes, and, as sure as my hair is white, the next question
9 is **what's** that case all about. I promise you that's going to
10 happen, and at that time you got to say that white-headed judge
11 said I can't discuss it with you until after this case is over.
12 Okay? In other words, the same thing that applies at home applies
13 out there. **Don't** discuss it with anyone.

14 Now, when we go to lunch and we come back I believe you may
15 see these attorneys out in the hall. If they walk right on by you
16 as if you're not there, please don't think they're a couple of
17 snobs. They're not. **They're** doing exactly what they're supposed
18 to do. They cannot try to gain the favor of any particular juror
19 or jurors and, furthermore, they can't give the appearance of
20 that. so, if they walk right on by you, just remember they're
21 doing exactly what they're supposed to do.

22 Any time during the trial of this case when we take a break,
23 and there's going to be a number of times, always keep the same
24 seat you have there now. And I'll tell you the only reason **for**
25 that is simply if someone is missing I can tell Billy to go find

1 me this person or that person instead of having a roll call each
2 time. Other than that, it means nothing. Okay?

3 One more thing. Any time during the trial of this case if
4 you have any question, ask me, and although you're going to be **the**
5 sole absolute triers of the facts in this case, I will make sure
6 that you get an answer to your question. Okay?

7 Now, **it's** quarter til. Do you have a witness you can put on
8 for 15 minutes or do you want until you come back from lunch.

9 MR. JORDAN: **I'd** better wait, Judge.

10 THE COURT: Okay. You all are going to get a long lunch
11 then. See you all back here at **1:15**. The reason I say that is I
12 have to meet somebody for lunch at 12:00 and **I'm** going to take an
13 hour and 15 minutes for lunch. So, now **you're** going to get an
14 hour and a half. See you all back here at 1:15. Thank you very
15 much.

16 (Jury not present.)

17 THE COURT: Linda -- sit down, Ken -- I know that you were
18 coming up here to assist Valerie Finley. I'm not going to be able
19 to let you do that and the reason is simply this. You went out in
20 the hall to get the jury for me and I **dn't** want the jury to place
21 some emphasis on you being with Valerie and, you know, them put-
22 ting one and one together and coming up with two. So, if Valerie
23 needs any assistance at all, we can get somebody else to help her.
24 All right? But that's the reason for it and this is not something
25 that **I'm** making up on my own. Mr. Ken **Nixon** has asked that I do

1 > that as the attorney for the Defendant.

2 Am I correct, Ken?

3 MR. NIXON: That's correct, Your Honor.

4 THE COURT: And I agreed. So, it is done.

5 See you all back at 1:15.

6 * * * * *

7 (Jury present.)

8 (Bench conference as follows:)

9 THE COURT: All right, for the record, come here just a
10 minute, and I'm going to pronounce it wrong. That's the reason
11 I've got you. Beeva?

12 JUROR: Beva.

13 THE COURT: Beva Thomas just advised me that she recognized
14 one of the witnesses because her son and their son -- not of the
15 witnesses, one of the people in the audience. I don't know
16 whether they're going to be a witness or not, and that her son and
17 one of her relatives goes to the same school.

18 JUROR: Right.

19 THE COURT: But she said that in no way would affect her from
20 rendering a fair and impartial verdict. So, no problem. Okay?

21 JUROR: Okay.

22 MR. NIXON: Who was the witness, Judge?

23 THE COURT: The lady in red back there.

24 MR. NIXON: Could we get her name, please?

25 THE COURT: Ma'am, what is your name?

1 THE COURT: Any more?

2 MR. JORDAN: Those are the only witnesses I'll be calling,
3 Judge.

4 THE COURT: The same thing applies, Ken, even though you
5 asked for the rule. Have you got any witnesses in here?

6 MR. NIXON: No, Your Honor.

7 THE COURT: Go ahead.

8 (Mr. Jordan continued his opening state-
9 ment to the jury without objection
10 thereto.) ? where's the rest of his
statement??

11 (Mr. Nixon presented his opening state-
12 ment to the jury, during which the
13 following occurred:)

14 MR. NIXON: He has been working for BFI as a truck driver for
15 six years. He is a trusted employee there, well liked, well
16 respected --

17 MR. JORDAN: Judge, none of this -- Judge, I object to this
18 because this is not proper evidence, even irrespective of anything
19 else.

20 THE COURT: He's correct. GO ahead.

21 MR. NIXON: Excuse me, Judge.

22 THE COURT: I say Mr. Jordan is correct, but you go ahead and
23 make your opening statement.

24 MR. NIXON: He has -- the evidence will show that he has a
25 commercial driver's license. He's a truck driver, been so for six

1 years. He's never been in trouble for anything.

2 MR. JORDAN: Judge, again, none of this is proper and it's
3 wrong and I object to it.

4 MR. NIXON: It's clearly proper. Opening statement is what
5 we expect "the evidence to show and that's what --

6 THE COURT: If you expect the evidence to show it, there's
7 nothing wrong with it.

8 Go ahead.

9 (Mr. Nixon completed his opening
10 statement without further objection.) ??

11 THE COURT: Any rebuttal?

12 MR. JORDAN: Yes, Your Honor.

13 (Mr. Jordan presented his rebuttal
14 statement, to the jury without
15 objection thereto.) ??

16 THE COURT: First witness.

17 * * * * *

18 MR. LARRY JOHNSON MALONE, JR.

19 was sworn and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. JORDAN:

22 Q Would you tell us your name for the record, please?

23 A Larry Johnson **Malone, Jr.**

24 Q Larry, let me stick: this in front of your face here and
25 see if you can talk in there. Get a little bit closer.

1 Q Larry, do you have a nickname?

2 A Pig and Shune (phonetic).

3 THE COURT: Pardon me?

4 A Pig and Shune.

5 Q Pig?

6 A And Shune.

7 THE COURT: I'll take your word for it. Let's go.

8 A I have two.

9 Q How long have you been knowing Valerie Finley?

10 A Well --

11 Q Roughly?

12 A About ten years.

13 Q Now, Larry, what grade are you in at school?

14 A Eleventh.

15 Q And what school do you go to?

16 A LeFlore.

17 Q How old are you now?

18 A Seventeen.

19 Q And how old were you when this happened, if you
20 remember?

21 A I was 15, I believe.

22 Q Okay. Now, where do you live in relationship to Valerie?

23 A Well, you could say across the street.

24 Q Okay. Can you see her house from your house?

25 A Yes, sir.

1 Q And do you know her husband, or who was her husband at
2 that time, Mike **Finley** ?

3 A Yes, sir.

4 Q And how long have you been knowing him?

5 A All my life.

6 Q How did you know him?

7 A Me and Mike, we stayed next door to each other.

8 Q Okay. Mike used to live in that neighborhood when you
9 were first growing up?

10 A Yes, sir.

11 Q Who did he live there with?

12 A His **mother**, Ruth.

13 Q At **some** point in time did he and his mama move out of
14 the neighborhood?

15 A Let's see. His mother did.

16 Q okay. Now, do you remember what kind of car **Valerie was**
17 driving at this time?

18 A A Ford.

19 Q Was it a new car or an old car?

20 A A new car.

21 Q Had you ever seen a brown Bronco come in the
22 neighborhood?

23 A Yes, sir.

24 Q And do you **know** who drove that brown Bronco?

25 A Yes, sir.

1 Q Who was that?

2 A Stan.

3 Q And who was Stan?

4 A **Let's** see. Stan was **Mike's** friend.

5 Q Okay. Larry, I want **to** show you what has been marked as
6 **State's** Exhibit Number 39, and do you recognize that
7 Bronco?

8 A Yes, sir.

9 Q And who did **that** belong to?

10 A Stan.

11 MR. JORDAN: We move to introduce **State's** 39 at
12 this time.

13 THE COURT; **It's** introduced.

14 (**State's** Exhibit 39 marked in evidence.)

15 Q Now, on that day, do you recall seeing that brown Bronco
16 at Valerie **Finley's** house that morning?

17 A Yes, sir.

18 Q And did you **see** who **was** driving it at that time?

19 A No, sir.

20 Q Did you see how **many** people were in the brown Bronco?

21 A **No**, sir.

22 Q How, **some** time later that morning, did you have an
23 occasion to go over to **Valerie's** house?

24 A Yes, sir.

25 Q And tell us what happened as you went to her house.

1 A Well --

2 Q You've got to speak up a little bit, Larry. okay?

3 A Okay.

4 Q Go ahead. First of all, could you just walk to her
5 house?

6 A Yes, sir.

7 Q Did you walk to her house?

8 A Yes, sir.

9 Q And which door did you walk to?

10 A The front door.

11 Q And what did you find the condition of the door?

12 A The door was locked.

13 Q And what did you do when you found the door was locked?

14 A Let's see.

15 Q What did you do?

16 A Let's see. I knocked a couple of times.

17 Q Is that on the front door?

18 A Yes, sir, on the front door. I knocked a couple times,
19 but no one came to answer the door. So that's why I
20 proceeded to the back door.

21 Q And what was the condition of the back door?

22 A Let's see. The door was cracked.

23 Q Did that surprise you?

24 A Yes, sir.

25 Q And what did you do then? Did you actually go in the

1 back door?

2 A Yes, sir.

3 Q Was anybody with you at that time?

4 A My little brother.

5 Q How old is he?

6 A Nine.

7 Q And what did you guys -- what room do you enter into
8 when you go through the back door?

9 A The kitchen.

10 Q And what happened as you entered the kitchen with your
11 little brother? Did you see Val at that time?

12 A No, sir.

13 MR. NIXON: Judge, I'm going to object with
14 respect to leading.

15 THE COURT: He is leading. Don't lead him.

16 MR. JORDAN: Judge, he has a little bit of a hard
17 time talking, and **that's** why I was trying to
18 just move it along, but I'll make him --

19 Q Larry, what did you do as you entered the kitchen?

20 A I called out Val's name.

21 Q Is that what you called, Val?

22 A Yes, sir.

23 Q Did she respond?

24 A No, sir.

25 Q **What** did you do then?

- 1 A That's when I proceeded on to the living room, den.
- 2 Q Okay. Did you see her there?
- 3 A No, sir.
- 4 Q Where did you go next, Larry?
- 5 A To Tiffany and Mallory's room.
- 6 Q And who are Tiffany and Mallory?
- 7 A Her daughters.
- 8 Q They had their own room in the house?
- 9 A Yes, sir.
- 10 Q Did you know where that room was?
- 11 A Yes, sir.
- 12 Q Had you been to that room before?
- 13 A Yes, sir.
- 14 Q Did you see Valerie in there?
- 15 A No, sir.
- 16 Q Where did you go then?
- 17 A So then I went to Val's room.
- 18 Q And tell us what you saw in Val's room.
- 19 A Val laying on the floor. Val was laying on the floor
- 20 on a pile of clothes, so --
- 21 Q Basically, tell us what you did at that time. You saw
- 22 Val laying in her bedroom on a pile of clothes?
- 23 A Yes, sir.
- 24 Q Was she on the floor or on the bed?
- 25 A On the floor.

1 Q What did you do at that time?

2 A So **that's** why I called out her name, let's see, about
3 two or three times. But she **didn't** do nothing or
4 respond to me in any kind of way. So, so, so therefore
5 I went to the bathroom, got a towel and wet it.

6 Q You wetted a towel down?

7 A Yes, sir.

8 Q **What** did you do with the towel, Larry?

9 A Placed it on her face.

10 Q Did she answer you calling her name after you put the
11 towel on her face?

12 A **Let's** see. She mumbled something, but I couldn't
13 understand it. So that's why I told Val to be quiet
14 and, and -- so **that's** when I told Val to be quiet and
15 just lay there. **Let's** see.

16 Q **What** did you do with your little brother then?

17 A I sent **my** little brother home to get my mother, and my
18 little brother, he, my little brother, he went home and
19 got my mother, and, and, and she came back.

20 Q Who actually called 911?

21 A I did.

22 Q You did?

23 A Yes, sir.

24 Q **And** were you there when the paramedics arrived, Larry?

25 A Yes, sir.

- 1 Q Were you there when the police arrived?
- 2 A Yes.
- 3 Q Were you there when Mike **Finley** arrived?
- 4 A Yes, sir.
- 5 Q And did they take Valerie away in an ambulance?
- 6 A Yes, sir.
- 7 Q Now, did you have an idea as to what had happened to
- 8 Valerie at that time?
- 9 A No, sir.
- 10 Q Larry, that's all I have. If you would, answer any of
- 11 Mr. **Nixon's** questions.

12 CROSS EXAMINATION

13 BY MR. NIXON:

- 14 Q Larry, you hesitated before you answered a few of Mr.
- 15 **Jordan's** questions today. You had a little problem
- 16 remembering what happened that day, exactly what
- 17 happened that day?
- 18 A No, sir.
- 19 Q Your memory is clear about that, about what you saw
- 20 that day?
- 21 A Yes, sir.
- 22 Q How many times have you told what you said just now
- 23 from the witness stand to someone else since it
- 24 happened?
- 25 A About five.

1' Q You told it to Mr. Jordan several times, **didn't** you,
2 before you got here today?

3 A Oh, about ten, then.

4 Q About ten times?

5 A Yes, sir.

6 Q You told the story to Mr. **Lebarron** Smith here?

7 A Yes, sir.

8 Q Mr. Jordan?

9 A **Yes**, sir.

10 Q Both police officers?

11 A Yes, sir.

12 Q Now, you said that you saw **Rodney's** Bronco over there
13 that morning. Is that what you said?

14 A **Yes**, sir.

15 Q What **time** did you say that you saw **Rodney's** Bronco that
16 morning?

17 A I can't recall the time.

18 Q Well, what time did you go and find Valerie **Finley's**
19 back door unlocked?

20 A About, nine or ten.

21 Q Are you sure about that?

22 A No, sir.

23 Q What makes you think it **was** about nine **or** ten?

24 A My mother, she went to **the** bank.

25 Q Okay. Now, in relation to what time -- you said you

1 found her between nine and ten. When did you **see** the
2 Bronco that resembled Mr. Stanberry's there that **day**?

3 A It was about 8:30, 8:30 or earlier-

4 Q 8:30 or earlier?

5 A Yes, sir.

6 Q Where was the Bronco when you **saw** it at 8:30?

7 A In the yard.

8 Q Where in the yard?

9 A In the driveway.

10 Q Was it facing the house?

11 A Yes.

12 Q Or facing the street?

13 A **Facing** the house.

14 Q Did you see anybody in the yard?

15 A No, sir.

16 Q How do you know it was 8:30 in the morning?

17 A I'm not **sure**.

18 Q You could **be** confused about the time?

19 A Yes, sir, you could say that.

20 Q When is the first time that you told the district
21 attorney or a police officer or anybody else
22 investigating this case that you saw **Rodney's** -- or a
23 Bronco that resembles **Rodney's** in the yard that morning
24 at 8:30 or sometime near that?

25 A That day.

1' Q And who did you tell that day?

2 A The district attorney.

3 Q Mr. Jordan here?

4 A Yes, sir. Yes, sir.

5 Q You told Mr. Jordan here that you saw Rodney
6 **Stanberry's** Bronco in the driveway of Valerie **Finley's**
7 home at approximately 8:30 in the morning on March the
8 2nd. You told Mr. Jordan this on March the **2nd**, the
9 same day this happened; is that what **you're** saying? Is
10 that what you told us, Mr. **Malone**?

11 A Yes, sir.

12 Q Okay. Are you **sure** about that?

13 A Yes, sir.

14 Q And it was this district attorney **right** here sitting at
15 this table?

16 A Yes, sir.

17 Q And where were you when you told this district attorney
18 that? Were you in the neighborhood at the house?

19 A Sir?

20 Q Were you at Mrs. **Finley's** house when you told him
21 that?

22 A Yes, sir.

23 Q You **don't** have any doubt in your mind that **that's** when
24 it happened and where it happened and **that's** who you
25 told on March the **2nd**, the day the shooting occurred,

1' that you saw Rodney's Bronco, correct?

2 A Yes, sir.

3 Q Did you use Rodney's name?

4 A Stan.

5 Q You told him you **saw** Stan's vehicle there?

6 A Yes, sir.

7 Q Did you talk with Lebarron Smith, this detective right
8 here, that day?

9 A Yes, sir.

10 Q The same day of the shooting?

11 A The same day of the shooting.

12 Q And what; did you tell Lebarron **Smith** that day?

13 A The same thing.

14 Q Are you sure that it **was** Lebarron Smith, this
15 detective, and --

16 A I'm positive.

17 Q And you're sure it was the same day of the shooting and
18 it was at Ms. **Finley's** house?

19 A Yes, sir.

20 Q You told him that you saw **Stan's** Bronco there, correct?

21 A Yes, sir.

22 Q Okay. Did you talk with anybody else and tell them
23 what you saw that day other than Mr. Jordan and Mr.
24 Smith here?

25 A My mother and my father.

1 Q Anybody other than your mother and your father?

2 A No, sir.

3 Q And after that day that it occurred, how long after
4 that: was it before somebody from the police department
5 or the district attorney's office came back to talk to
6 you again?

7 A It was within that week.

8 Q And who came to talk to *you* then?

9 A Mr. Smith.

10 Q Lebarron Smith?

11 A Yes, sir.

12 Q Are you sure about that?

13 A Yes, sir.

14 Q Did he come to your house?

15 A Yes, sir.

16 Q Was your mother present?

17 A Yes, sir.

18 Q What did you tell him then?

19 A The same thing that I told you.

20 Q That you **saw Rodney's** Bronco in **the** driveway that
21 morning at about 8:30?

22 A Yes, sir.

23 Q Now, since that time, a week after, over the past
24 **couple** of years -- this happened in 1992, correct?

25 A Correct.

1' Q And you've been to the D.A.'s office, up in the D.A.'s
2 office and given them statements since then, haven't
3 you?

4 A Yes, sir.

5 Q On how many occasions? A bunch of times?

6 A No, sir.

7 Q Five times?

8 A No, sir, just once.

9 Q Just once?

10 A Yes, sir.

11 Q Are you sure about that, Mr. Malone?

12 A Yes, sir, I'm sure.

13 Q When was that?

14 A I can't remember when.

15 Q A year ago, two years ago, a week ago?

16 A In 1994, I believe.

17 Q 1994? And did Mr. Lebarron Smith or any of the police
18 officers or the members of the district attorney's
19 office, did they keep you informed on the case and
20 their investigation in the case when they talked to
21 you?

22 A Would you go a little further with that?

23 Q Yeah. When you talked with Lebarron Smith and Mr.
24 Jordan or somebody from the D.A.'s office or the police
25 department on these occasions over the last couple of

1 years, did they tell you about their investigation?
2 Did they tell you that Rodney was a suspect and that
3 Rodney **was** arrested?

4 A No, **sir**.

5 Q But you **knew** that, didn't you?

6 A Yes, **sir**.

7 Q You knew he had been arrested and when he **was** arrested,
8 **didn't** you?

9 A No, **sir**.

10 Q Well, shortly after he was arrested everybody in **your**
11 neighborhood knew that Rodney was arrested.

12 MR. JORDAN: Judge, I object to what everybody
13 else in the neighborhood did or did not **know**.
14 **It's** what this witness knew.

15 THE COURT: Sustained.

16 MR. NIXON: I withdraw that.

17 Q You learned at some point "that Rodney had been
18 arrested, **didn't** you?

19 A Yes, **sir**.

20 Q Can you tell us when you learned that?

21 A No, **sir**.

22 Q Was it three years ago, one year ago, two years ago or
23 a week ago?

24 A I **can't** remember.

25 Q Do you have **some** problems **with your** memory, Mr. **Malone**?

1 A Yes, sir.

2 Q And what is the nature of those **problems**?

3 A The nature? **What do you mean?**

4 Q Well, what is the **problems** that you **have** with **your**
5 **memory?**

6 A I had surgery.

7 Q **what** kind of surgery did you **have?**

8 A **Brain surgery.**

9 Q Yes, sir, and when was that?

10 A **Let's** see. It was in '89.

11 Q '89 or '85?

12 A 89.

13 Q Sure about that?

14 A I'm positive.

15 Q And did you have an injury to your -- a head injury?

16 A Let's see, a blood clot.

17 Q Okay. And **we've** never talked before, have we?

18 A No, sir.

19 Q You've never seen me and I've never seen you. We've
20 never talked on the phone, have we?

21 A No, sir.

22 Q And this brain surgery that you had --

23 A I mean, I have seen you before, though.

24 Q Okay, well. But **we've** never talked about this case or
25 anything else, have **we?**

1' A No, sir.

2 Q The surgery that you had in 1989, **you** say that it did
3 affect your **memory** and you still suffer some effects
4 from it?

5 A Yes, sir.

6 Q And you can't remember things as well now after the
7 surgery as you could before the surgery; is that right?

8 A Yes, sir, that's true.

9 Q **And** your **communication** skills are a little slow because
10 of your surgery?

11 A Yes, sir.

12 Q And **I'm** not trying to embarrass you. I'm just trying
13 to get the truth out here. After your surgery, what
14 other effects did you have as a result of the blood
15 clot?

16 A Seizures, speech problems.

17 Q So **we've** got your memory and your speech problems, and
18 you have seizures on occasion?

19 A **Yes**, sir.

20 Q Anything else?

21 A Plus physical problems.

22 Q Do you have coordination, motor skill problems?

23 A Let's see. There's a limp in my walk.

24 Q **Okay**. And you say you go to **LeFlore**. Do you attend
25 regular school now or do you have a special class that

1 you go to?

2 A LD.

3 Q And **that's** learning disabled?

4 A Yes, sir.

5 Q And **that's** at LeFlore High School?

6 A **Yes, sir.**

7 Q Now, are you taking medication for that?

8 A Yes, sir.

9 Q What kind of medication do you take?

10 A **Dilantin.**

11 Q And how often do you **take** that **Dilantin**?

12 A Three **times** a day. I take all three pills in the
13 morning.

14 Q And you were taking **Dilantin** in 1992 when this
15 happened, **weren't** you?

16 A Yes, sir.

17 Q And some other medication, as well?

18 A I can't remember **that**.

19 Q Now, you said that you knew Stan because Stan was
20 Mike's friend; is that right?

21 A Yes, sir.

22 Q And Stan is Rodney **Stanberry**, this man sitting right
23 here?

24 A **Yes, sir.**

25 Q And you knew him as Stan because **that's** what people

1> called him?

2 A Yes, sir.

3 Q And you've shown the **jury** this Bronco. Excuse me. You
4 identified this photograph of his Bronco. His Bronco
5 was very distinctive, wasn't it?

6 A Yes, sir.

7 Q And it had "One night stand," I believe, across the
8 front of it?

9 A Yes, sir.

10 Q Right? And it had a sticker on the back, too, didn't
11 it?

12 A I **can't** remember that?

13 Q Have you talked to Valerie **Finley** about any of this
14 that happened on March the 2nd since you were at her
15 house that day and found her?

16 A Well, yes, sir.

17 Q And on several occasions yfall discussed it?

18 A No, sir.

19 Q On one occasion?

20 A You could say several.

21 Q Several occasions?

22 A Yes.

23 Q And do you recall, Mr. **Malone**, when the first **time** was
24 that you talked to her about what happened that day?

25 A No, **sir**.

1' Q Had she returned to the home? Did she ever return to
2 the **home** place on Meadow Avenue that you know of?

3 A Meadow.

4 Q Yes, sir, Meadow.

5 A Yes, sir.

6 Q And was it after she returned that you talked to her,
7 or did you go to the hospital or rehab center and talk
8 to her?

9 A I **can't** remember just where I talked to her at, but I
10 do know that I talked to her.

11 Q And did she tell you what happened before she was shot
12 that morning?

13 A Me, myself?

14 Q Yes, sir.

15 A No, sir.

16 Q When **y'all** talked about it, did she tell you that
17 Rodney **Stanberry** and somebody else came in her house
18 and pulled a gun on her and took some guns and shot
19 her?

20 A Yes, sir.

21 Q Did she tell you that she didn't know what happened,
22 when you first talked to her?

23 A Sir?

24 Q Do you recall her telling you that she **didn't** remember
25 what happened, when she talked to you?

1 A No, sir. Sir?

2 Q You **don't** recall her saying that?

3 A No, sir.

4 Q But you **don't** recall when it was that you had this
5 conversation with Valerie, correct?

6 A Yes, sir.

7 Q Now, did you see any other vehicles in the neighborhood
8 close to Mrs. **Finley's** house that day?

9 A Yes, sir.

10 Q **And** tell us about those vehicles.

11 A Well, I remember seeing Tyrone. I remember seeing
12 Tyrone fixing up his car on the boulevard.

13 Q Where are you calling the boulevard?

14 A **Let's** see.

15 Q Let me help you out a little bit. That street comes
16 down and makes a circle, **doesn't** it?

17 A Yes, sir.

18 Q And in that circle is a grass medium (sic), **isn't** it?

19 A Yes, sir.

20 Q Now, is that where you saw Tyrone's car?

21 A Yes, sir.

22 Q And you're saying it was **parked** in the medium on the
23 grass?

24 A Yes, sir.

25 Q Was it facing the **Finley** house, or was it facing the

1' opposite direction?

2 A I can't remember which way it was facing, but I do
3 remember seeing Stan out. on the boulevard under his car
4 fixing the --

5 Q You saw Stan under **Tyrone's** car?

6 A No. No, **Tyrone was** under his -- fixing under his car.

7 Q Did you see anybody else?

8 A No, sir.

9 Q Are you sure?

10 A Yes, sir.

11 Q You only saw one person and one car in the medium?

12 A Yes, sir.

13 Q And what time did you see that, Mr. **Malone**?

14 A I can't remember the time.

15 Q Well, was it; before or after you saw Rodney **Stanberry**
16 -- you say you **saw** Rodney **Stanberry's** Bronco in the
17 driveway?

18 A It was after.

19 Q Okay. Now, when you say you saw **Rodney's** vehicle in
20 the driveway, **Rodney's** Bronco in the driveway that
21 morning, are you telling us that at **that** time that
22 **Tyrone's** car was -- there were no cars in the median?

23 A No, sir.

24 Q Do you understand my question, Mr. **Malone**? I can
25 rephrase it, if you want me to. It wasn't a very good

1 question, anyway.

2 A Would you, please?

3 Q When you saw **Rodney's** -- You say you saw Rodney's car
4 or Bronco in the driveway that morning about 8:30; is
5 **that** right?

6 A Yes, sir.

7 Q How, when you saw that., did you see any other cars in
8 the **medium** at that time?

9 A At that time, no, sir.

10 Q You could have seen them, but your testimony is there
11 were no cars in the medium at that time, at 8:30 in the
12 morning?

13 A My testimony is that I **didn't** see no cars in the
14 median.

15 Q And where were you when you saw Rodney's, or the Bronco
16 that you say you saw in the driveway? Where were you?

17 A In the house.

18 Q In your house?

19 A Yes, sir.

20 Q **And** your house is located where in relation **to** Mrs.
21 **Finley's** house?

22 A Across the street, you may as well say.

23 Q **And** the medium is between your house and Mrs. **Finley's**
24 house, if you're looking, isn't it?

25 A Okay. Okay. **Here's** the circle, and **my** house is right;

1' here. Val's house is right, here. Do you understand?

2 Q Okay. If you're standing on Valerie's front porch
3 looking toward the medium, is your house to the right
4 or to the left? Let me do it this way. Judge, may I
5 approach the Bench -- the witness for a minute?

6 THE COURT: Sure.

7 Q Mr. Malone, let me show you this, and I'm gonna ask
8 that you assume that this is the street, this is the
9 circle and "this is the medium. Does that vaguely
10 resemble the street?

11 A Yes, sir.

12 Q Now, if Mrs. Finley's house is right here -- That's
13 approximately where her house is located, isn't it?

14 A Somewhat, yes.

15 Q Right about there?

16 A Yes, sir.

17 Q The driveway there?

18 A Yes, sir.

19 Q Show us where your house is, please.

20 A okay. Let's see. Tyrone's house is right here.

21 Q Tyrone's house is right next to Mrs. Finley's?

22 A Yes, sir.

23 Q Okay. That's Tyrone Dortch, correct?

24 A Yes, sir.

25 Q Okay.

1 A Ms. **Roeshell's** house is right here.

2 Q Ms. Roeshell?

3 A **Yes**, sir. And here is my house.

4 Q Okay.

5 A This is my house.

6 Q All right.. So if this is the **Finley's** house, then the
7 house right, next to Mrs. **Finley's** house and Mr.
8 **Finley's** house is Tyrone **Dortch's** house; is that
9 correct?

10 A Yes, sir.

11 Q That's the person that you **saw** out in the medium
12 working on his car?

13 A Yes, sir.

14 Q And then **Roeshell's** house is next to theirs?

15 A Yes, sir.

16 Q And then your house is next to **Roeshell's**. And **you're**
17 saying that you looked out your window and looked to
18 Mrs. **Finley's** driveway and saw Rodney's Bronco; is **that**
19 right?

20 A Yes, sir.

21 Q Now, what **I'm** asking you is, when you say you looked
22 out of your window and saw Rodney's vehicle here, **I'm**
23 asking you were there any vehicles in the medium here
24 at that time.

25 A I didn't pay much attention at that time to the median.

1' So, therefore --

2 Q Your answer is you don't recall?

3 A No, sir, I don't.

4 Q If there were vehicles in the medium, you could have
5 clearly seen them, couldn't you?

6 A Yes, sir.

7 Q In fact, they would have been easier to see, vehicles
8 in the medium, than it would to see the vehicle parked
9 in the driveway of the **Finley's** house, wouldn't it?

10 A Yes, sir.

11 Q And the vehicles in the medium would be quite a bit
12 closer to your house than the vehicle in the driveway
13 of the **Finley's** house, wouldn't it?

14 A No, sir.

15 Q It would not?

16 A No, sir.

17 Q Would it be closer, period?

18 A Yes, sir, it would be closer.

19 Q You'll admit that you had a better view of the medium
20 from your window than you did Mrs. **Finley's** driveway,
21 wouldn't you? Isn't that true, Mr. **Malone**?

22 A Yes, sir.

23 Q Now, you had seen **Rodney's** Bronco in that driveway on
24 numerous occasions, haven't you?

25 A Yes, sir.

1 Q And this was Tuesday. This was **Mardi Gras** Day -- no,
2 excuse me. This was Monday, the day before **Mardi Gras**,
3 correct? Do you recall what day of week this was?

4 A Monday.

5 Q And it was the Monday before **Mardi Gras**, which was
6 Tuesday, was it not?

7 A No. There was to be a parade that day.

8 Q Monday?

9 A Yes, sir.

10 Q Were you out of school that day?

11 A Yes, sir.

12 Q Because of 'a holiday?

13 A Yes, sir.

14 Q **Mardi Gras**?

15 A Yes, sir.

16 Q The parade **you're** talking about was the parade in
17 **Prichard**?

18 A Yes, sir.

19 Q I'm talking about -- when I said **Mardi Gras**, I'm
20 talking about Fat Tuesday would have been the next day.
21 Is that right?

22 A Yes, sir.

23 Q Okay. Now, do you recall at any time that day seeing -
24 - strike that. Did you come **out** of your house that day
25 at any time before you went to Mrs. **Finley's** house?

1 A Yes, sir.

2 Q And when **was** that? What time was that?

3 MR. JORDAN: Judge, **I'm** gonna object to the time
4 sequence. He said he **couldn't**: remember the
5 specific times.

6 THE COURT: He did. But at another time he said
7 around **8:30**, and I **don't**, see anything wrong
8 with him asking that.

9 MR. NIXON: Thank you, **Your Honor**.

10 Q What time did you come **out of** your **house**, Mr. **Malone**,
11 on March the 2nd that morning?

12 A I **can't** remember.

13 Q **Was** it. in the morning?

14 A It **was** in the morning.

15 Q **Was** it before **8:30** or after **8:30**?

16 A Before **8:30**.

17 Q Okay. So you came outside before --

18 A **To get** the newspaper.

19 Q Okay. **And** when you came out to get the newspaper, did
20 you see a **Bronco** in the driveway of Mrs. **Finley's** house
21 at that time?

22 A **No**, sir.

23 Q And did you see any cars in the medium at that time?

24 A **No**, sir.

25 Q There were no cars in the medium; is that your

1 testimony?

2 A Yes, sir, that's my testimony.

3 Q And **you're** sure about that, when you went out to get
4 the newspaper?

5 A Yes, sir.

6 Q Were there any cars at all in the driveway of Mrs.
7 **Finley's** home at that time?

8 A Yes, sir.

9 Q **And** what car was in the driveway of Mrs. **Finley's** house
10 at that time?

11 A ~~I only seen Val's car, Mrs. Finley's car:~~

12 Q What kind of car is that?

13 A **A Ford.**

14 Q What color was it? You **don't** remember?

15 A **Let's** see. Close to the color of that shirt right
16 there.

17 Q I **don't** know what color **you're** pointing to, Mr. **Malone.**

18 A **Let's** see.

19 Q **You're** pointing at my shirt?

20 A **Let's** see. The lady with the white hair, her shirt.

21 Q Are you referring to the -- excuse me, **ma'am**, but the
22 lady with the glasses with the dress on?

23 A Yes, sir.

24 Q That appears to be a **teal** color. Is that what color,
25 greenish teal?

1 A Yes, sir, **that's** close to the color-

2 Q Did you see any other cars besides the green teal car
3 in the driveway that morning?

4 A No, sir.

5 Q And how long before you say you saw Rodney's Bronco was
6 it before **you** went outside? Was it an hour or two
7 hours or ten minutes? I'm not trying to confuse you,
8 but this is very important. I want you to think
9 carefully.

10 A Repeat the **question**, please. Simplify the **question**, in
11 other words.

12 Q Okay. Let me rephrase it. You went outside sometime
13 that morning to get the newspaper, correct?

14 A Correct.

15 Q And you saw no cars in the **medium**, and **you** saw a
16 greenish teal colored car in Ms. **Finley's** driveway; is
17 that right?

18 A Yes, sir.

19 Q And then at some point, I **assume**, you went back in the
20 house when you got the newspaper.

21 A I did.

22 Q And then at some point after that you looked out the
23 window and you say you saw a brown Bronco in the
24 driveway, right?

25 A **Yes**, sir.

1 Q What I'm trying to ask you is how long after you came
2 back in from getting the paper was it before you looked
3 out the window and saw the brown Bronco in the
4 driveway?

5 A About 25 minutes.

6 Q Twenty-five?

7 A Yes, sir, a rough guess.

8 Q Sir?

9 A A rough guess.

10 Q Now, what, caused you to go to **Valerie Finley's** house in
11 **the** first, place that day?

12 A Routine.

13 Q Well, do you go to her house every day?

14 A Every day that I'm off, **yes**, sir.

15 Q You go to **her** house every day that **you're** out of
16 school?

17 A Yes, sir.

18 Q **Why** was that?

19 A Sir?

20 Q Why was that? Why did you go to Valerie **Finley's** house
21 every day when you were out of school?

22 A Because we were close.

23 Q You and Valerie or you and **Valerie's** children?

24 A All of us*

25 Q How long have you known Valerie?

1 A Roughly, ten years.

2 Q And when you went to the house, were you just going to
3 visit?

4 A Yes, sir.

5 Q Had you called before you went?

6 A No, sir.

7 Q You and your brother were going over there to visit?

8 A Yes, sir.

9 Q And her children were not there, were they?

10 A No, sir.

11 Q Now, you went to the back door first, didn't you?

12 A No, sir, the front door.

13 Q The front door first? Valerie and Mike normally don't
14 use the front door, do they, or did they?

15 A Yes, sir.

16 Q And you know Mike Finley, don't you?

17 A Yes, sir.

18 Q Were you friends, close with him, also?

19 A Yes, sir.

20 Q And you knocked on the front door and nobody answered.

21 A Yes, sir.

22 Q And did you see any vehicles in the driveway at that
23 time?

24 A It was just Val's.

25 Q Oh, Val's car was in the driveway?

1 A Yes, sir.

2 Q Was it parked in the same spot that the Bronco had been
3 parked in?

4 A No, sir.

5 Q Where was it parked, around back?

6 A No, sir, a little further up.

7 Q Just so we're clear --

8 MR. NIXON: Judge, may I approach the witness a
9 minute?

10 THE COURT: Certainly.

11 MR. JORDAN: Can I see what **you've** drawn? Judge,
12 I'll just point out that that is not to scale
13 and the **driveway is** cut off.

14 THE COURT: Certainly.

15 MR. JORDAN: I don't know if **it's** an accurate
16 drawing.

17 MR. NIXON: Well, Judge, I **just** scratched it on
18 here, and I guarantee you it's not.

19 THE COURT: I'm sure it **isn't** so go ahead.

20 MR. NIXON: I guarantee **you** it's not.

21 Q Mr. **Malone**, this is not to scale. This is not
22 measured, and this is not an accurate drawing, but I
23 want to ask you to assume that this is the circle, the
24 **medium**, okay, and let's assume that this is Valerie
25 **Finley's** house right here. Okay? Her driveway runs on

1 this side of the house, **doesn't** it?

2 A Yes, sir.

3 Q If you will, draw me where you saw the Bronco when you
4 saw the Bronco. It doesn't have to be exact but just
5 the best you can remember. And I'm gonna ask you to
6 draw Mrs. **Finley's** car, where it was, and the Bronco,
7 so you can do that at the same **time**, if you want to.

8 A (Witness complies.)

9 Q Okay. Which one is which?

10 A (Witness indicates.)

11 Q Okay. Now, **you've** already told us, I believe, on
12 direct examination that you **couldn't** recall whether the
13 Bronco was pointed in or pointed out, right?

14 A **Yes**, sir. Hold up, hold up. Repeat the question.

15 Q Okay. I asked you earlier if you could recall whether
16 the Bronco **was** pointed facing in or pointed facing --

17 A It was **facing in**.

18 Q Excuse me?

19 A The Bronco was pointed facing in.

20 Q Facing in?

21 A Yes, sir.

22 Q So you were looking at the back of it?

23 A Yes, sir.

24 Q Okay. You remember that now?

25 A Yes, sir.

1' MR. JORDAN; Judge, I object to him remembering it
2 now. **That's** what he testified to a little
3 while ago.

4 MR. **NIXON**: NO, he said he didn't remember a
5 while ago, Judge.

6 **THE COURT**: Go ahead.

7 **THE WITNESS**: No, I **didn't**.

8 Q Okay. Well, excuse me. If I'm mistaken, I apologize.
9 Now, and Mrs. **Finley's** car was here, correct?

10 A Yes, sir.

11 Q So the Bronco you saw was closer to the street?

12 A Yes, sir.

13 Q And, Mr. **Malone**, do you know a man named Willie White?

14 A Who?

15 Q A **man** named Willie white. Do you remember going to a
16 fish fry last year at a man named Willie White's house?

17 A If I know him, it's not by Willie white.

18 Q Did you go to a fish fry last year at a **man's** house,
19 September of last year?

20 A I **don't** think so.

21 Q Okay. Do you remember talking -- Have you ever seen
22 **this** man right here, Mr. Russell? Do you remember
23 talking to him, an investigator?

24 A Yes, sir.

25 Q And you talked to him at a fish fry at Willie **White's**

1 house, didn't you, last year?

2 A No, sir.

3 Q You **don't** recall that?

4 A **No**, sir.

5 Q When did you talk to him?

6 A **Let's** see. He came by my house questioning me.

7 Q When was that?

8 A I can't remember exactly when.

9 Q Well, a year ago, two years ago or a month ago?

10 A Oh, oh, oh. Oh, yeah. **Let's** see. He came to my
11 school and questioned me.

12 Q Excuse me?

13 A He came "to my school and began questioning me.

14 Q I want you to think carefully, now, Mr. **Malone**.

15 A I am.

16 Q Are you sure that Mr. Ryan Russell came to your school
17 and questioned you?

18 A I believe so.

19 Q And you're sure that you didn't, or he didn't meet you
20 at a fish fry at Willie White's house and question you
21 there?

22 A Yes, sir, **I'm** sure about that.

23 Q And you **don't** know a person named Willie **White**; is that
24 right?

25 A Not to my knowledge

1 Q Sir?

2 A Not to my knowledge.

3 Q And was this at LeFlore School?

4 A Yes, sir.

5 Q Do you remember when that was?

6 A No, sir.

7 Q Do you remember what grade you were in?

8 A Tenth, I believe.

9 Q So that would have been how many years ago? A year
10 ago?

11 A Yes, sir.

12 Q And where in LeFlore were you questioned by this man,
13 Ryan Russell: in a school room or the office or where?

14 A In the office.

15 Q Sir?

16 A In the office.

17 THE COURT: How much longer are you going to be?

18 MR. NIXON: Just about two minutes, Judge.

19 THE COURT: We've kept this jury sitting here a
20 long time. You can have all the time you
21 want, but if you need more, we're gonna take
22 a break. If it's only gonna be two minutes,
23 we'll go ahead.

24 Q You remember talking to Mr. Ryan Russell, don't you?

25 A Yes. sir.

1 Q Do you remember him asking you about what you saw that
2 day?

3 A Yes, sir.

4 Q Do you remember telling him that the only thing you
5 know was that you went in there and found Mrs. Finley
6 lying in the bedroom?

7 A Yes, sir.

8 Q Do you remember him specifically asking you if you saw
9 Rodney's car that day or his Bronco that day or him
10 that day?

11 A No, sir.

12 Q You don't remember that?

13 A No, sir, I don't.

14 Q You don't remember telling him that. you didn't see
15 Rodney's car that day?

16 A No, sir, I sure don't.

17 Q And you don't remember telling him that you didn't see
18 Rodney that day?

19 A No, sir.

20 Q And you're sure that that was in the LeFlore School,
21 right?

22 A sure.

23 Q Now, just briefly, approximately -- tell this jury
24 approximately, in your own estimation, how many times
25 prior to this occasion that you saw that Bronco in that

1 driveway in the same or similar position before that.

2 THE COURT: You **don't** mean on that day. You mean
3 any time **before** that: day?

4 MR. NIXON: Before that day, yes, sir.

5 Q Fifty or a hundred **times**?

6 A Yes, sir.

7 MR. NIXON: **That's** all I have, I believe. Thank
8 you, Mr. **Malone**.

9 MR. JORDAN: Briefly.

10 THE COURT; Go ahead.

11 REDIRECT EXAMINATION

12 BY MR. JORDAN:

13 Q Valerie **Finley** has only been shot one time; is that
14 **right**?

15 A Yes, sir.

16 MR. NIXON: Objection, Judge, **argumentative** and
17 outside his scope of knowledge.

18 THE COURT; He's probably correct but overrule it.

19 Q Go ahead.

20 A Yes, sir.

21 Q And were you writing down or looking at clocks or
22 watches or anything to keep track of time?

23 A No, sir.

24 Q Thank you. **That's all**.

25 MR. NIXON: Just one.

RECROSS EXAMINATION

BY MR. NIXON:

Q Would it be fair to say that you **can't** be accurate on the times that day?

A Yes, sir.

Q Thank you.

THE COURT: Let us take a break.

(Recess.)

(Jury not present.)

THE COURT: For the record, he wants who excluded from **the** courtroom?

MR. NIXON: Judge, I believe her name is Eugenia Patrick and Brenda Gay, who is a sister and mother of the victim, Mrs. Valerie **Finley**.

THE COURT: Under the act of the State of Alabama which **says** that the family members of the victim are excluded from the act, I **don't see** where I should do that, so I deny it.

MR. NIXON: Thank you, Your Honor, I'd just like to represent that I think they have information that is material and relevant regarding impeachment testimony **of** the victim, and for that reason I would request that they -- I have requested that they be asked to wait outside while the victim

testifies.

THE COURT: Go ahead, get the jury.

(Jury present.)

ERIC WEBBER, M.D.

was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. JORDAN:

Q Doctor, would you tell us your name for the record, please?

A Eric Webber.

Q And, Dr. **Webber**, who do you work for?

A For the University of South Alabama Medical Center.

Q Doctor, you speak very softly, so I'm gonna put that in front of you so it will amplify a little bit, hopefully.

And, Doctor, **you're** what we all refer to as a brain surgeon; is that correct?

A I am a **neurosurgeon, yes**, sir.

Q And **you're**, in fact, licensed to practice medicine in the State of Alabama?

A Yes, sir.

Q And did you have occasion on **March** the 2nd of 1992 to come into contact with Mrs. Valerie **Finley**?

A Yes, sir.

Q Would you tell us, Doctor, just pretend we are **lay-**

1 people with virtually no knowledge of medical terms, or
2 just pretend we **don't** know anything about medicine or
3 anything. Talk to us, explain things so we can
4 understand it as lay people the condition that you
5 first found Valerie in when she was brought to USA
6 Medical Center.

7 **THE COURT;** The only thing **I'm gonna** correct you
8 on, you said pretend. There's **not** any
9 pretending. We **don't** know,

10 Q Okay. As a fact, we **don't** know anything.

11 A Yes, sir. I first saw Mrs. **Finley** in the emergency
12 room on a hospital stretcher. She was on a board that
13 patients are placed by the EMTs or the emergency
14 medical technicians. At that time, she would respond
15 to questions with, perhaps, a **moan** or sort of a nod of
16 her head. She could move her right arm but not her
17 other extremities. **As** I said, she was not conversant,
18 but she was able to follow some simple directions or
19 simple commands for things that I asked her to do.

20 Q For example?

21 A Move your hand or lift your leg up off the bed; can you
22 hear me, and she may moan or nod. She would either be
23 able to move or **not** move her **arm** or her leg, depending.

24 Q Doctor, what was your first information as to what the
25 nature **of** her injury might be?

1 A There were a number of historical or a number of
2 histories that were obtained that changed as time went
3 on. It is my recollection that the first thing --

4 MR. NIXON: Judge, I'm gonna, excuse me. I'm
5 going to respectfully object to what he's
6 gonna testify. I don't know what it is, but
7 it obviously would be hearsay.

8 THE COURT: How do we know that? Go ahead.

9 Overruled.

10 MR. NIXON: Well, I would object, unless he has
11 first-hand knowledge of the history of this
12 particular case.

13 Q You may answer.

14 THE COURT: Isn't it a fact, Doctor, that you were
15 the one that saw this young lady at the
16 hospital?

17 THE WITNESS: Yes, sir.

18 THE COURT: And aren't, you relating what was told
19 to you and how you were able to converse with
20 Mrs. Finley?

21 THE WITNESS: With Mrs. Finley and a variety of
22 other people.

23 THE COURT: And didn't you just testify that
24 some things that you could relate to, that
25 she shook her head or whatever?

1 THE WITNESS: Yes, sir.

2 THE COURT: I don't understand your objection.

3 MR. NIXON: Judge, I don't have any objection to
4 the history as related to him by Mrs. Finley.
5 She's here and prepared to testify. I just
6 have an objection to him relating history,
7 and I don't know what it is, that was related
8 to him by someone else that's not going to be
9 here to testify. That would be hearsay.

10 THE COURT; Restate your question and let's go.

11 Q I'll restate it this way: Were you aware, initially,
12 when she was brought in that she had been, in fact,
13 shot in the head with a gun?

14 A No, sir.

15 Q Tell us, as you found her laying there, what was it you
16 began to do to try to find out what had happened to
17 Mrs. Finley, what was wrong with her?

18 A I initially examined her. I spoke with some family
19 members in an effort to find out what happened to her.
20 I listened -- there were a number of other physicians
21 who were also involved in her care who had also
22 obtained information from the emergency medical
23 technicians, and I asked them what they had obtained as
24 a history in terms of what happened to this particular
25 patient.

1 Q And what did **you** begin **to do to** try to help her or to
2 try to diagnose what her problem was?

3 A She had a variety of diagnostic studies, x-rays, blood
4 work. She had some treatments, IVs, catheters. She
5 eventually had tubes placed in her bladder and her
6 throat. She had a CT scan of the head, some x-rays of
7 her head, her neck, her chest, a variety of other
8 studies.

9 Q And from those CAT scans and x-rays, what were you able
10 to find out and **determine**?

11 A In addition to her physical examination, first of all,
12 she had an open -- by physical examination, she had an
13 open wound on the top of her head that **was** bleeding.

14 Q Let me show you what has been marked as State's Exhibit
15 Number 38 and ask you if you can identify that
16 photograph.

17 A Yes, sir. This is a photograph that was taken when I
18 took Mrs. **Finley** to the operating room later on that
19 same day.

20 Q Prior to you beginning an operation, you had shaved the
21 top of her head so you could go into her skull and do
22 your operation?

23 A Yes, sir. This was in preparation for her operation.

24 Q Does that picture fairly and accurately depict the
25 nature of the injury to the top of her head?

1 A It accurately depicts the scalp injury. Of course, the
2 injury that is really critical to Mrs. **Finley** was the
3 injury to her brain, and it does not depict that. This
4 shows the scalp injury.

5 MR. **JORDAN**: We would move to introduce State's 38
6 at this time.

7 MR. **NIXON**: Judge, may **we** approach for a quick
8 second, please?

9 THE COURT: Sure.

10 (Whereupon, a side-bar conference
11 occurred as follows:)

12 MR. **NIXON**: Judge, for the record, I'm gonna
13 object to the introduction of those photo-
14 graphs (inaudible) prejudicial (inaudible).

15 THE COURT; I overrule the objection.

16 (State's Exhibit 38 marked in evidence.)

17 Q May I publish this to the jury?

18 A Certainly.

19 THE COURT: Ms. Curtis, this is gonna eventually
20 get to you. You **don't** have to hold it. You
21 can just put it on that seat next to you.

22 MR. **JORDAN**: I was just: **gonna** publish it this way,
23 Judge, to save time.

24 THE COURT: **That's** fine.

25 MR. **JORDAN**; I think everybody can see the blow-up

1 pretty well.

2 Q Doctor, would you tell us what the x-rays or the CAT
3 scans revealed to you prior to your operation?

4 A They showed that she had both fragments of bone and
5 metal in both her scalp and deep within her brain.

6 Q And would you tell us about what you did to help her,
7 to save her life?

8 A Yes, sir. Let's see. We took her to the operating
9 room. I had to extend the scalp laceration that you
10 saw on the picture in both directions in order to have
11 enough room to remove the bone **from** the very top which
12 had been fractured or broken in a number of pieces.
13 Those pieces of bone were removed both from underneath
14 the scalp and from within the brain. To leave them
15 there would present her problems from an infection
16 point of view. So I removed those fragments of bone,
17 the fragments of hair, and "there were metal -- metallic
18 fragments in there, as well. She had some bleeding of
19 her brain around where those fragments of bone were
20 driven through the tissue. I stopped the bleeding and
21 did the best I could to repair the blood vessels and
22 the covering of the brain called the **dura** to repair
23 that so she **wouldn't** leak fluid, brain fluid, through
24 her scalp laceration and then repaired her scalp
25 laceration to the best that I could. I **wasn't** able to

1' replace all of the bone fragments that had to be
2 removed, some of them were so small and this and that,
3 that I couldn't replace them all, so there is an area
4 where it is not covered by bone.

5 Q And where would that be? On top of her head?

6 A Yes, sir.

7 Q So she's got, basically, a space on top without skull?

8 A Yes, sir.

9 Q Or **there's** a hole there?

10 A **There's** an area **that's** not covered by bone, yes, sir.

11 Q Is the injury that was made to her head, is that
12 consistent with a bullet being fired into her skull?

13 A Yes, sir.

14 Q And the metallic fragments that you recovered, describe
15 those to us.

16 A I can either read from the report or I can describe --
17 There was some metallic dust within the wound and also
18 a number of small metal fragments that were sort of
19 **small** pieces of **metal** that had been flattened, for
20 instance, and I think there were **two**, three or four
21 pieces in various areas of the wound.

22 Q Specifically, Doctor, were you able to recover a full
23 size bullet from the injury location of her head?

24 A No, sir. There is not a fragment that looks as you and
25 I would think of a bullet before it gets fired, and

1 understand I'm not a ballistics expert, but when
2 bullets hit something hard like bone or whatever, they
3 become flattened, and the fragments that were renewed
4 were consistent with that, in my opinion.

5 Q So consistent with a bullet, but you did not actually
6 recover a flat bullet from her head?

7 A No, sir, not a fragment like one pictures a bullet when
8 someone says bullet.

9 Q Okay. Now, she was discharged from the hospital on
10 April 6th of 1992. Did you continue to see her after
11 that?

12 A Yes, sir.

13 Q And what reasons would you see her for after she was
14 discharged from the hospital?

15 A I've seen Mrs. Finley a number of -- about every two or
16 three months until this past year for a variety of
17 neurosurgical problems that she's had. She had a
18 seizure, or developed a seizure disorder as a result of
19 her --

20 Q This injury?

21 A Yes, sir. And she is treated with anticonvulsive
22 medication for that disorder, and I followed her for
23 some time with that. I think she's now following, for
24 that particular problem, with someone else. She had
25 also had difficulty for about, well, for at least two

1 or two and a half years with fluid leaking from her
2 nose.

3 Q What kind of fluid?

4 A This is the fluid that surrounds the brain called
5 cerebral spinal fluid.

6 Q This is actually fluid in the brain area?

7 A It's the same fluid that circulates both within and
8 over the surface of the brain.

9 Q Would you explain to the jury why, if it is the case,
10 why this is a serious complication or a serious concern
11 to you as a doctor and especially for Valerie as a
12 patient?

13 A First of all, if fluid can get out, that means that
14 there's an open pathway which is open to organisms or
15 bacteria getting in. The fact that the fluid comes out
16 is not particularly a problem, although it can
17 sometimes give people a headache. It's bothersome, but
18 it's not much more than that. But the problem is that
19 people that have a cerebral spinal fluid leak are very
20 susceptible to getting meningitis or infection in and
21 around the brain.

22 Q And what can meningitis do?

23 A People can die from meningitis.

24 Q So it's a serious --

25 A It's a threatening --

1' Q Was that also as a result of the injury from the bullet
2 to the head?

3 A Yes, sir.

4 Q Doctor, would you tell us about the permanence of her
5 injuries that she sustained now, specifically her
6 limbs?

7 A Mrs. **Finley** can move her right arm quite well and
8 fairly normally. She has very little in the way of
9 voluntary movement **in** her left arm. She can move her
10 left shoulder, but she has no use of her left hand, and
11 she has no useful function in either of her legs. So
12 she can manage or she manages with her right arm.

13 Q And are these injuries a result of the gunshot wound to
14 the head that she sustained?

15 A Yes, sir.

16 Q Doctor, will, in your opinion, will Mrs. **Finley** ever
17 walk again?

18 A No, sir.

19 Q Doctor, thank you for coming down here. Thank you for
20 all the work you did on Valerie. If you would, answer
21 any of the **Defense's** questions.

22 CROSS EXAMINATION

23 BY MR. NIXON:

24 Q Dr. **Webber**, if you could, please -- my **name** is Ken
25 **Nixon**. We've never met before, have we?

1 A Not to my knowledge, sir.

2 Q I've never talked to you before. If you will, could
3 you please outline briefly the dates? You started
4 treating her, or you **performed** surgery on her on
5 3/2/92, correct?

6 A **That's** correct.

7 Q The date she was admitted, and **that's** the date you did
8 the surgery?

9 A **Yes**, sir.

10 Q And when was she discharged from the hospital?

11 A I believe the date was April 6th of that same year. It
12 was slightly more than a month after her admission.

13 Q Okay. And was she discharged to go home at that time?

14 A No, sir. She was discharged to Rotary Rehabilitation
15 Hospital.

16 Q And was that per your instruction?

17 A Yes, sir.

18 Q And the Rotary Rehabilitation Hospital is a rehab
19 hospital that helps people such as Mrs. **Finley** to
20 regain their motor skills and their speech and
21 communication skills; is that correct?

22 A Yes, sir.

23 Q **And** was that the purpose of you sending her there or
24 referring her there?

25 A **Yes**, sir.

1 Q Now, do you practice at USA?

2 A Yes, sir, among other hospitals, but, yes, sir.

3 Q And when you send -- I assume that you saw Mrs. Finley
4 on a regular and routine basis for the first 30 days
5 while she was at USA; is **that** right?

6 A Yes, sir, just with the exception of a day off here and
7 there, but continually.

8 Q Sure. You wrote her orders and she was on your rounds
9 every day?

10 A We saw her every day on rounds, and there were
11 residents and other physicians involved in her care, so
12 I probably would not have personally written her
13 orders, but the orders that **were** written were written
14 at my direction.

15 Q I understand. And when she was discharged to Rotary
16 Rehab, did you go by Rotary Rehab and monitor her
17 progress, or did you change -- or did you refer her to
18 some other physician?

19 A No, sir. Your first question, no, I did not monitor
20 her progress while she was at Rotary. I believe -- I
21 could check, but I believe it was Dr. Brown **who** managed
22 her medical care while she was at Rotary Rehabilitation
23 Hospital.

24 Q Did he consult with you during that time or did he
25 pretty much take over the case at that point?

1 A He pretty much assumed the management of the day-to-day
2 care. I would receive communications from them on a
3 periodic basis but certainly not on a daily basis. If
4 you're asking did I speak with him on the telephone or
5 something, I do not recall any interaction.

6 Q Mould it be fair to say that he managed her **day-to-day**
7 care while she was at Rotary Rehab, and you may have
8 been consulted from time to time, but he was primarily
9 telling her what to do or supervising what she **was**
10 doing each day while at Rotary Rehab?

11 A Yes, sir, he was managing her day-to-day care, and I do
12 not believe that I was formally consulted.

13 Q Okay. Would you give her routine examinations and
14 check-ups while she **was** there? Do you recall whether
15 or not you checked her after she went to Rotary Rehab?

16 A Not during her in-patient stay at Rotary
17 Rehabilitation. I did not see her between the time
18 that she was discharged from her acute care
19 hospitalization at the University of South Alabama
20 Medical Center until she returned to my office for
21 follow-up care toward the end of June, June **25th**, I
22 believe. I **don't** believe I saw her in and between
23 those two dates.

24 Q Okay. And you have seen her on occasion since then?

25 A On the order of every two months or so, yes, sir, many

1' times.

2 Q And you have monitored her progress?

3 A Yes, sir.

4 Q Now, this type of injury entered -- what lobe of the
5 brain did the bone fragments and metal fragments enter?

6 A Primarily her frontal lobe. There were portions of the
7 injury that involved the parietal lobe, as well, also
8 the vasoganglia and the deeper structures of the brain.

9 Now, understand that; those were the areas
10 that were directly underneath the skull injury and
11 in the direct trajectory of the operation. When
12 people have trauma of a significant nature like
13 that, there is injury diffusely spread in a wide
14 area of the brain, not necessarily just in those
15 two -- in that focal area. Do you understand what
16 I'm saying? I'm saying that although the injury
17 looks most severe right in the center, which is
18 where Mrs. Finley's injury was, that doesn't mean
19 that the remainder of the brain was perfectly
20 fine. It sustained some injury, as well. It's
21 just not as severe or significant as that we could
22 see.

23 Q And you were able to detect that injury or that damage
24 to the brain matter through a CT scan?

25 A The central area of injury, yes, sir. The more

1' peripheral or the injury elsewhere, one may or nay not
2 see on a CT scan.

3 Q In Mrs. **Finley's** case, you've already told us the other
4 areas that you felt were damaged or received some
5 injury as a result of this, other than the peripheral
6 area where the initial contact was made, did you make
7 that determination about those other areas and the
8 injury to those other areas from a CT scan or MRI, or
9 did you do that based on your observations of her and
10 what motor skills were affected?

11 A **Both.**

12 Q Did you see that damage or could you see that damage to
13 the other areas of the brain on your CT scan that you
14 reviewed in Mrs. **Finley's** case?

15 A Yes, sir, you could see areas of injury, and I saw it
16 at the time with my eyes at the time of operation.

17 Q Yes, sir. Now, you said that you recovered some
18 metallic fragments. I want to touch on that briefly.
19 **You're** not a forensic pathologist, are you?

20 A No, sir, I'm not.

21 Q You **haven't** had any training in that field?

22 A No, sir.

23 Q And **you've** already admitted that. you're not a gun
24 expert or any expert in bullet trajectory? is that
25 correct?

1 A I am not a ballistics expert, yes, sir. **That's**
2 absolutely correct.

3 Q Now, you said that the fragments you received were not
4 the size of a bullet, and you made mention or talked
5 about a flat bullet as if a bullet had hit a flat
6 surface. **You're** not telling the jury that you found a
7 flat projectile, are you, or a flat piece of metal?

8 A I found several small fragments, and they were small
9 pieces, and they would be, maybe, less than a quarter
10 of an inch in size that would have been flattened with
11 curl wedges and that sort of thing and very irregularly
12 shaped.

13 Q And would that have been consistent with the -- or
14 would her injury, in your opinion, be consistent with a
15 bullet having hit her and bounced off and some of the
16 **fragments** having entered her head, bone fragments, and
17 **some** of the metal dust. and small fragments going into
18 her brain area?

19 A Yes, sir, that is consistent with an injury such as
20 that, yes, sir.

21 Q And if that had happened, then the major missile or
22 projectile would have went off somewhere else, but
23 **small** portions would have been left in Mrs. **Finley's**
24 brain. Would that be consistent, based on what you
25 **saw?**

1 A Yes, sir. There were a variety of fragments, some in
2 the bone, some in the brain, some in the scalp. Those
3 that were in more superficial or top areas were larger
4 than those that made it all the way in, but, yes,
5 whether the fragments I recovered represented a bullet
6 or pieces of a bullet, I'm not certain.

7 Q You **didn't** see -- There was no exit wound that you
8 observed, was there?

9 A **That's** correct. **No** discreet exit wound. You
10 understand that her wound was quite large. Whether
11 that represents both entry and exit or simply a large
12 entry wound, I -- but there was no separate exit wound
13 that I was ever able to locate.

14 Q Yes, sir. Now, the entire time that you treated her or
15 that she was at the hospital, would it be fair to say
16 that she had family members present in her room almost
17 constantly?

18 A My recollection is a little shaky in that regard, but
19 it seems to me she had family members visit. How often
20 they were there and how much time they spent there with
21 her, I **can't** speak to that at three years later.

22 Q And did you know that she had been shot before you
23 performed your surgery?

24 A I had suspicions with regard to the appearance of her
25 wound and the initial history I was given, which seemed

inconsistent with each other. Her x-rays showed that there was both metal and bone deep within her brain. Again, that was inconsistent with the history as was given to me on her initial presentation. I put that together as my hypothesis, if you will, how I put the pieces together, so to speak, that it was a gunshot wound.

Q So it would be fair to say at the time you performed the surgery you had a suspicion that it **was** a gunshot wound and not what you had been told, but you weren't sure until you did the operation?

A That's -- Yes, sir, I think that's --

Q Now, what is the coma scale, Dr. Webber?

A I presume **you're** referring to **the** Glasgow coma scale?

Q Yes, sir.

A Which is a way of simplifying the neurologic examination to four numbers and, really, to a single number, which is useful in **communication** with regard to a patient's neurologic status.

Q **That's** basically the way you rate them from good to bad, isn't it?

A Yes. Rather than A, B, C, it happens to pick actually 15 **numbers**, but, yes, sir.

Q It would be one to 15?

A Yes, sir.

1 Q With what number being the best and what number being
2 the worst?

3 A Actually, three is the lowest you can go.

4 Q You're in pretty bad shape **if** you're three on the
5 Glasgow, aren't you?

6 A Yes, sir. You're in pretty bad shape with a three.
7 **Eight** is coma -- Anything lower than eight is comatose,
8 and 15 is essentially normal.

9 Q And did you do that as part **of** your course of treatment
10 with Mrs. **Finley**, did you do the Glasgow **scale** and note
11 it in the record?

12 A I **don't** recall making a formal entry in that regard.
13 One **of** the nice things about the **Glasgow** coma scale is
14 that you can go back and **figure** it out, usually, **from**
15 the information obtained in the record, which is how
16 the scale was originally developed in the first place.

17 Q And do you recall whether or not -- Well, you said that
18 when Mrs. **Finley first** came in, 'that she appeared to
19 nod in response to some questions?

20 A Yes, sir.

21 Q Could you make any impression at that time whether she
22 was understanding what you were asking her or whether
23 she was just hearing you, or could you tell? Would she
24 respond appropriately to your questions?

25 A Yes, sir, she seemed to respond appropriately.

1' Q Now, after the surgery, did you check her at that point
2 when she woke up?

3 A Yes, sir.

4 Q When she woke up?

5 A Yes, sir.

6 Q And; ~~did~~ her abilities to respond appropriately decrease.
7 ~~for a time?~~

8 A At some point during the hospitalization I believe that
9 they did. I **don't** recall at the **moment** exactly when
10 that was. It seems to me it was a **number** of days after
11 ~~her operation~~ that **she** began to have some difficulty,
12 but I do not recall specifically.

13 Q And the difficulty that **you're** talking about was a
14 difficulty in understanding what you were saying,
15 understanding or responding to questions; is that
16 correct?

17 A She was generally less responsive.

18 Q Right. And during that hospital **stay** there were
19 occasions when you questioned her that she appeared to
20 be disoriented and non-responsive?

21 A There were periods when she was less responsive than at
22 other times. I **don't** recall her being disoriented, but
23 there were times when she was less responsive than, for
24 instance, than she had the day before.

25 Q And when was it when she was able to speak to you; do

1' you recall?

2 A No, sir, not from my memory.

3 Q Do you recall whether it was weeks or days after the
4 operation?

5 A I **don't** recall without additional reference to a
6 record.

7 Q Now, did you ever experience any problem with her
8 responding to you while she was in the hospital,
9 appropriately responding to your questions?

10 A I'm not sure I understand your question. I think that,
11 yes, I mean, there were times when she was clearly
12 poorly responsive. In other words, she was not very
13 well -- and **that's** to me, as well as to other people
14 that were taking care of her.

15 Q Okay. I guess what **I'm** saying, as part of your follow
16 up after you do brain surgery on someone, **it's** part of
17 your follow up that you ask them questions regarding
18 their identity and whether or not **they're** oriented to
19 the date and time and place, **isn't** it?

20 A Yes, sir.

21 Q And **that's** part of your check to see how they're doing
22 after surgery?

23 A Yes, sir.

24 Q And did you do that with Mrs. **Finley**?

25 A Yes, sir.

1' Q In fact, every day when you went in the room you would
2 ask her some questions to elicit that response, right?

3 A Yes.

4 Q And what I'm asking you now is were there occasions
5 during that period when she did not; respond to you
6 appropriately.

7 A Yes, sir. If I remember correctly, there were times
8 when she did not respond at all.

9 Q Okay. I'm not really asking you about those. What I'm
10 asking you is, in other words, did you ask her at any
11 time, do you know what year it is and she told you the
12 wrong year, or do you know where you are and she told
13 you the wrong place? Do you recall that happening?

14 A I don't recall.

15 Q You don't know?

16 A As I say, I could probably refer to a record and
17 refresh my memory, but I **don't** recall at this point.

18 Q Now, just briefly, the areas of her brain that received
19 the injuries, could you tell us what those areas
20 generally are responsible for, as far as, for example,
21 speech, motor skills, etcetera?

22 A Well, the things **that** most significantly impact her,
23 she had an injury to the anterior cerebral artery,
24 which is the blood vessel that supplies the area of the
25 brain which controls the legs, and, **of** course, the

1 injury to that blood vessel is why her legs don't work
2 well for her.

3 There was area of white matter or the **axons**, which
4 is more like the cable portion of the nerves in the
5 central area of her brain, injury to that area is most
6 likely responsible for the trouble that she has with
7 her left arm.

8 She also has areas of her brain where the fiber
9 bundle where the nerves from one half of the brain talk
10 to the other half of the brain, those have also been
11 injured to a very significant extent.

12 Q Would it be common for a person who receives an injury
13 such as the one you observed in Mrs. **Finley** to suffer
14 some effect to her memory and her capability to
15 remember events?

16 MR. JORDAN: Judge, I would object to "somebody
17 **like.**" I would like him to be referred to
18 this particular patient through his
19 experience, instead of a generality. I
20 object to the form of the question.

21 THE COURT: Overruled.

22 A Im sorry. Could you ask the question again?

23 Q **Yes**, sir. Would it be common for a person, a person
24 who received an injury as Mrs. **Finley** did, to suffer
25 some type of problems with her memory?

1 A Patients that have had very severe injuries,
2 particularly head injuries, may have some memory
3 problems in the acute period. Surprisingly,
4 considering the magnitude of her injury, I've never had
5 that particular problem with Mrs. Finley.

6 Q But you said you haven't reviewed your records
7 completely, have you?

8 A I haven't reviewed -- I have my records. I do not have
9 the hospital records.

10 Q As far as you know, Mrs. Finley has never voiced any
11 memory problems to you; is that what you're saying?

12 A That is correct, and I never had any difficulty. She's
13 been a wonderful patient. She's done everything I've
14 asked and she's followed my instructions every time
15 we've had interaction. I've had no reason to question
16 her memory in my interactions with her.

17 Q Did you refer her to speech therapy because her speech
18 was not appropriate when she was discharged from the
19 hospital?

20 A Her speech was not appropriate when she was discharged
21 from the hospital. I don't recall whether I referred
22 her specifically for the speech therapy or whether that
23 was part of her rehabilitation program.

24 Q And do you recall when you came by discussing her
25 condition with family members who had been in the

1' hospital with her, her husband, her mother, her sister?
2 I know **it's** been a long time, Doctor.

3 A Yes. **I'm** sorry. The question?

4 Q Do you have any independent recollection of **speaking** to
5 **her** family members when you came around, **made** your
6 rounds to check on her?

7 A Yes, sir. I **don't** remember specific conversations, but
8 I do remember speaking to a number of her family
9 members.

10 Q Do you remember speaking to her husband?

11 A Yes, sir.

12 Q Do you remember speaking to her mother?

13 A I remember speaking to a number of female family
14 members. **I'm** not sure I can identify who was who. In
15 other words, whether **the** person I was speaking with was
16 the mother or sister, aunt or -- **I'm** uncertain there.

17 Q And would they tell you how she had been doing while
18 they had been sitting in there?

19 A Yes, sir.

20 Q I believe ~~that's~~ all. Thank you, Doctor.

21 THE COURT: Anything further?

22 MR. JORDAN: Doctor, thank you very much **for**
23 coning down.

24 THE COURT: Thank you very much, Doctor.

25 I was asked by **Mary** was there a chance

1' we would go past 5:00, and the answer is no,
2 there is no chance. We will be out of here
3 by five or before, and I realize **it's** five
4 after four.

5 All right. Captain, **you've** already been
6 sworn in, right?

7 MR. DEES: **Yes**, sir.

8 CAPTAIN FRANK DEES

9 having previously been sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. JORDAN:

12 Q Tell us your name for the record, please.

13 A Frank Dees.

14 Q **And**, Frank, **you're** a captain now with **Prichard** Police
15 Department; is that correct?

16 A Yes, sir.

17 Q And did you have an occasion back on March 2nd of 1992
18 to go to the home of Mrs. Valerie **Finley**?

19 A I did.

20 Q **And** is that; address on that home 1736 Meadow Avenue?

21 A Yes, it is.

22 Q Is that in Whistler, Alabama?

23 A Yes, sir.

24 Q Is that in Mobile County?

25 A It is.

1 Q Frank, tell this jury how you get there. If we got up
2 on 1-65, what exit we would take to get to Valerie's
3 house?

4 A Okay. If you're coming from Mobile, you would head out
5 on the Prichard exit going north, and you go about two
6 blocks and make a left turn.

7 Q It's basically right off the interstate, isn't it?

8 A Right.

9 Q Right off of 1-65?

10 A Right.

11 Q And would you tell us what occurred as you got to that
12 house?

13 A Yes. I got there about the same time that the
14 paramedics got there.

15 Q And was that at about 11:20 in the morning?

16 A Yes, it was. And I was met by Mrs. Malone.

17 Q And what time -- Do you know what time the call came
18 into the police station?

19 A I guess about, probably, 11:20 when we got the call.

20 Q And how long did it take you to get to the --

21 A About two minutes. I was very close to the place.

22 Q So 11:20 is when we have official word that Mrs. Finley
23 -- something's wrong at the house?

24 A Right.

25 Q How, what happened when you got there?

1' A Okay. I was met by Mrs. **Malone**.

2 Q Did you, in fact, go inside the house?

3 A I did.

4 Q And would you tell us -- describe the **house** to us as
5 you came inside,

6 A Yes. When I went in the living room, the furniture was
7 turned upside-down, and I went to the back bedroom
8 where I saw the lady laying, in the **back room** on the
9 floor by the bed with not a pillow but some pants under
10 her head.

11 Q Now, did you ask Mrs. **Malone** about that couch being
12 turned upside-down?

13 A Yes, I did.

14 Q **And** what did she tell you?

15 MR. **NIXON**: Object to hearsay, Judge.

16 MR. **JORDAN**: Judge, this is not offered for the
17 truth of the statement; it's offered merely
18 for the fact **the** statement was made to
19 Captain Dees.

20 THE COURT: Who said it?

21 MR. **JORDAN**: Clara **Malone**.

22 THE COURT: Is she going **to** testify?

23 MR. **JORDAN**: No. I mean, **it's** not offered **for** the
24 truth. **It's** basically information he had and
25

THE COURT: Go ahead.

Q What did she tell you?

A She told me that **that's** the way the **lady** cleaned up.
She turned furniture upside-down when she cleaned up.

Q Did you think anything suspicious then about the couch
being turned up after you talked to Clara **Malone**?

A No, I didn't. After that, I **didn't**.

Q And let me show you some photographs. Some of those
may be duplicates.

MR. NIXON: Judge, I **don't** have any problems with
photographs that Captain Dees can identify as
representing the scene as he saw it, but I
think there are some others included in there
that were taken later, and I would object to
those being introduced at this time.

MR. JORDAN: I haven't introduced anything. The
later ones, I'll let **somebody** else introduce
them.

Q Do you recognize those photographs, Captain?

A Yes.

Q And do those photographs fairly and accurately depict
the scene at the time that you arrived there at the
house?

A Yes.

MR. NIXON: What numbers are those?

1 MR. JORDAN: I'll go through them all, **State's** 26,
2 35, 37, 33, 32, 36, 28, 29, 12, 11, 14, 9,
3 10, 15 and 13. I'll put these in order.

4 MR. NIXON: Judge, may I ask this witness one **voir**
5 **dire** question, for the record?

6 THE COURT: Certainly.

7 MR. NIXON: captain Dees, these photographs that.
8 you have -- just so we're clear, these
9 photographs that you've just reviewed, is it
10 your testimony that they accurately reflect
11 what you saw and the way it was positioned
12 the day that you were in the house?

13 THE WITNESS: Yes. **Some** of them are. **A** lot of
14 them are. **A** few **of** them I **don't** recognize.

15 MR. NIXON: Can you distinguish which ones?

16 THE WITNESS: Yes, I will **do** that.

17 THE COURT: **Let's** do that.

18 MR. NIXON: Thank you.

19 MR. JORDAN: Just. pick out the ones you **don't**
20 recognize. You can give those to the Judge.

21 THE COURT: For the record, **he's** given me 26 and
22 27. How about all the rest of them, Frank?

23 THE WITNESS: I recognize this one.

24 THE COURT: Those two, 26 and 27 **are** not
25 introduced

at this time.

(State's Exhibits 9, 10, 11, 12, 13, 14,
15, 28, 29, 32, 33, 35 and 37
admitted in evidence.)

Q Frank, I'll show you what has been marked and
introduced as State's 15 and 32. What do those
pictures depict?

A This is the front of the residence.

Q The front of the **residence**?

A yes.

Q Is that the door you entered when you arrived? Did you
go through the front door or the back door, or do you
recall?

A I went through the front door.

MR. JORDAN: Let me give these back to the jury.

May I publish these, Your Honor?

THE COURT: Certainly.

Q **Now**, let me show you what has been marked as state's
Exhibit Number 13. Would you tell us what that is a
photograph of?

A **That's the** sofa that was turned upside-down.

Q Okay. I believe we have another little bit **lighter**
photograph, State's **Exhibit 11**. Is that also a
photograph of that?

A It is.

1 THE COURT: And what is that, Frank?

2 THE WITNESS: A sofa that was turned upside-down.

3 THE COURT: Tell the jury that.

4 Q And is that the condition of the sofa when you arrived?

5 A Yes, it is.

6 Q Now I show you what's been marked as State's Exhibits
7 12 and 14. What are those photographs of?

8 A This is the kitchen area here.

9 Q It shows a table and the back door to the kitchen?

10 A Yes, it does.

11 Q Let me show you what's been marked as -- I forgot one
12 of the kitchen photographs -- State's Exhibit Number
13 33. What is that a photograph of?

14 A The kitchen area.

15 Q Okay. Now, the rest of these photographs, Frank,
16 State's 9, 10, 28, 36, 35 and 29, what are those
17 photographs of?

18 A Okay. This is a photograph of the back room area.

19 Q That's the bedroom area where you found Valerie?

20 A Yes, sir.

21 Q And how was she laying back there, Frank?

22 A She was laying with her head back towards the foot of
23 the bed, just back on the back of the bed.

24 Q Were you able to communicate or talk to her at all?

25 A No. She was unconscious.

1 Q Frank, would you tell us what else you did at that
2 time?

3 A At that time, I called for the detectives and the
4 identification man who took those pictures.

5 Q Did you also see Larry **Malone** there at the time? They
6 call him a nickname of Pig. They call him Pig.

7 A I **don't** know the name.

8 Q Did you see Clara **Malone**?

9 A Yes, I did.

10 Q Did Mike **Finley** ever arrive while you were there?

11 A There was a lot of peoples coming and going.

12 Q Okay. A lot of people came and just checked out what
13 was going on?

14 A Right.

15 Q **That's** all I have. If you would, answer any Defense
16 questions.

17 CROSS EXAMINATION

18 BY MR. **NIXON**:

19 Q Sergeant: Dees -- Excuse me. Captain Dees, after that
20 day, was that the extent of your involvement in this
21 investigation?

22 A It was. Yes, **it** was.

23 Q And you did not participate in the investigation after
24 that day?

25 A No, I did not.

1' Q Now, you said that you called I.D.

2 A Right.

3 Q And a detective.

4 A Right.

5 Q Now, I.D. is an identification officer? is that
6 correct:?

7 A That's correct.

8 Q And the identification officer with **Prichard** at that
9 time was **Eddie Ragland**; is that right?

10 A That's correct.

11 Q And the detective that you Called, did you call a,
12 specific detective, or did you just call and tell them
13 to send a detective?

14 A I just called for a detective.

15 Q And did they send one?

16 A Yes, they did.

17 Q Would that have been Al Fletcher?

18 A Yes.

19 Q And why did you call for a detective and an
20 identification officer? Well, strike that. You
21 normally -- Isn't it normal police procedure when you
22 go on a scene that if a felony or a serious crime has
23 been committed or you think it has been committed, then
24 you call for a detective and identification officer?

25 A Yes.

1' Q And that's standard police procedure?

2 A Yes, it is.

3 Q And in this particular case, did you think that a crime
4 had been committed?

5 A I didn't know.

6 Q Okay. Did you have any indication in front of you, or
7 at the time you were there, did anything indicate to
8 you that someone had broken into the house or stolen or
9 assaulted -- stolen things or assaulted Mrs. Finley?

10 A Like I said, the furniture was turned upside-down.
11 That was suspicious there. Also --

12 Q Excuse me. And Mrs. **Malone** had told **you** that the
13 furniture, that **that's** how Mrs. **Finley** did the
14 furniture when she cleaned up?

15 A Yes. When I first walked in, I saw that. **That's** the
16 first thing I saw. And I also saw a briefcase sitting
17 up there of some type.

18 Q A briefcase sitting where, the counter?

19 A Like on the sofa there where it was turned upside-down.

20 Q Okay. Did you ever open that briefcase?

21 A **No**, I did not. I didn't touch anything. I preserved
22 the **crime** scene.

23 Q And what led you to -- Did you see any blood when you
24 looked at Mrs. Finley?

25 A I **saw** a lot of blood, yes.

1' Q Did you check her wounds?

2 A No. The paramedics did that.

3 Q So your testimony is that you called for an I.D.
4 officer, and you called for a detective because you did
5 not know what had happened there?

6 A Right.

7 Q Now, Mr. Jordan asked you if you saw Mike **Finley** there.
8 Do you recall Mike **Finley** coming to the scene?

9 A I **don't** know Mike **Finley**.

10 Q You **don't remember** talking to someone who represented
11 himself to be this **lady's** husband?

12 A I don't think I talked to him.

13 Q Do you recall anybody telling you, coming -- a man --

14 MR. JORDAN: Judge, I object to hearsay.

15 MR. NIXON: I **haven't** asked the question **yet**,
16 Judge.

17 THE COURT: Go ahead.

18 Q Do you recall a man coming in, a black **man** coming in
19 the house that day and telling you that some guns had
20 been stolen?

21 A No, he **didn't** tell me.

22 Q Were there any other police officers there?

23 A Yes, a lot of police officers there.

24 Q Can you tell me what other police officers were there?

25 A I **don't** remember. It's been three years. I **don't**

1> remember. It was someone on my shift, all I know.

2 Q Do you know why there were so many police officers? At
3 **this** time, **y'all didn't** know whether she had fallen
4 down or what had happened, did you?

5 A No, we didn't.

6 Q And do you know why there were so many police officers
7 there? Can you tell us that?

8 A One thing, in case if it was a crime had been
9 **committed**, they **wouldn't** have contaminated the crime
10 scene.

11 Q Who would have?

12 A The peoples coning in and out.

13 Q **No**, my question was how come there were so many police
14 officers there at this particular scene when it was
15 unknown what the origin was?

16 MR. JORDAN: Judge, I object to his --

17 THE COURT: If he knows, he may answer.

18 A Repeat your question, now.

19 Q How come there were so many **Prichard** police officers
20 there at this scene when there was basically, the
21 origin was unknown?

22 A Well, just in case. It might have -- in case something
23 cone up later on. We do that -- if it's an accident,
24 we would do the same thing, if it's a terrible
25 accident. We would do our best to just preserve that

1' scene until we finished with it.

2 Q And was that -- Were you trying to do that on this
3 occasion?

4 A Yes, we are.

5 Q Did you instruct the other officers under you to
6 preserve the scene?

7 A Yes, try to keep people out of certain areas of the
8 house.

9 Q Correct. And the reason you were preserving the scene
10 was because you **didn't** know what had happened there and
11 you wanted to protect the evidence?

12 A Exactly.

13 Q And did they, did the police officers do that while you
14 were there?

15 A They did.

16 Q Now, were you there when the identification officer
17 arrived?

18 A Yes, I was.

19 Q And your testimony is that Officer **Ragland** came to the
20 scene that day?

21 A He did.

22 Q And he is the **Prichard** identification officer?

23 A He was then at that time.

24 Q His duties as identification officer is to take
25 photographs and to gather evidence?

1 A Exactly.

2 Q Take fingerprints. And he has been trained in that
3 field; is that right?

4 A That's right.

5 Q And did you observe him on March the 2nd take
6 fingerprints?

7 A I observed him taking pictures.

8 Q Did you observe him take any fingerprints?

9 A No, I did not.

10 Q Were you there until he left, or did you leave before
11 he did?

12 A I left before he did.

13 Q You saw him take photographs?

14 A Yes, I did.

15 Q Did you see him do anything else, as far as gathering
16 evidence?

17 A I saw him take pictures. Like I said, I left. When he
18 got there, I stayed there a little while and then I
19 left.

20 Q So the only thing you saw him do was take photographs?

21 A Yes.

22 Q When you left, did you take anything from "the scene?"

23 A No, I did not.

24 Q You didn't gather any evidence?

25 A No, I did not.

1 Q That would have been Officer Ragland's duty?

2 A That's correct.

3 Q Are you aware whether or not he -- Have you been made
4 aware of whether or not. Eddie Ragland gathered any
5 evidence?

6 MR. JORDAN: Judge, again, this is hearsay, and
7 it's outside -- he has no personal knowledge
8 of it, and I object to it.

9 THE COURT; He may answer whether he does or
10 doesn't.

11 A I do not.

12 Q Now, you said you saw this brief case. Did you see --
13 well, excuse me. You said you didn't see Eddie Ragland
14 take any fingerprints, right?

15 A No, I did not.

16 Q Now, approximately how many officers were there? You
17 said a bunch of them.

18 A I didn't say a bunch of them.

19 Q I'm sorry.

20 A I guess about four or five of us.

21 Q And you don't recall who they were other than you and
22 Officer Ragland?

23 A No, I don't remember.

24 Q Do you recall whether Detective Fletcher ever came out
25 there that day?

- 1 A He did.
- 2 Q Did you talk to any witnesses other than Cora (sic)
- 3 Malone?
- 4 A No, I did not.
- 5 Q You did not talk to Larry Malone?
- 6 A No, I did not.
- 7 Q When you arrived on the scene, you came down and went
- 8 around the circle and pulled in the **Finley's** driveway?
- 9 A I did, behind the paramedic thing.
- 10 Q And you went in the front door?
- 11 A Yes, I did.
- 12 Q And that front door had a screen -- a storm door on it,
- 13 didn't it?
- 14 A I don't remember whether it had a storm door or not.
- 15 Q You **don't** remember what type of door?
- 16 A No, I **don't**.
- 17 Q But you went in through the front.?
- 18 A I did.
- 19 Q **And** it was not locked at the time?
- 20 A No, it was not.
- 21 Q When you came there that day, did you see any vehicles
- 22 in the **medium**? You know, the grass medium.
- 23 A No, I didn't.
- 24 Q If there were some vehicles there, would you have seen
- 25 them?

1 A I'm not sure. I was concerned about what was going on
2 in the house. I **didn't** notice the vehicles.

3 Q How long did you stay there before you left?

4 A I guess about 20 minutes, I guess.

5 Q And when you left, did you notice any vehicles parked
6 in the grass median?

7 A No, I didn't.

8 Q You just don't remember?

9 A I don't remember.

10 Q And other than the police officers that you testified
11 to, there were some neighbors in the house, too,
12 weren't there?

13 A Yes, some neighbors and people that I didn't -- in
14 **fact**, I **didn't** know anybody there.

15 Q Okay. Can you give me an approximate number of the
16 people, other than police officers, that were in that
17 house when **you** were there?

18 A Okay. When I got there, there **wasn't** anybody in the
19 house.

20 Q Nobody was in the house?

21 A No, **wasn't** anybody in the house. Mrs. **Malone** and her
22 children was outside.

23 Q And then after you went in, some other people came in
24 the house?

25 A Yes.

1' Q **And** can you give me an approximate number of how many
2 people?

3 A I guess four or five people. I **don't** know who they
4 were, but we made them leave.

5 Q Okay. Thank you, Captain Dees.

6 MR. JORDAN: That's all. Thank you.

7 THE COURT: Do you have a short witness?

8 MR. JORDAN: I think so, Judge.

9 EMMET ROGERS

10 was sworn and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. JORDAN:

13 Q Tell us your name for the record, please.

14 A **Emmet Alfons** Rogers.

15 Q **Emmet**, how old are you?

16 A Fifty-three.

17 Q **And** where do you reside?

18 A 1728 Meadow Avenue.

19 Q And where is that in relationship to the residence or
20 what was the residence of Valerie **Finley**?

21 A Two doors down.

22 Q So you're right there on that same --

23 A On the **same** side, two doors down.

24 Q **And** do you have to drive by your house to get to her
25 house?

1 A Right.

2 Q Because she lives at the end of the street, and a car
3 would have to go down and circle around the cul-de-sac
4 and come back out and come by your house?

5 A Right.

6 Q Do you know Valerie **Finley**?

7 A Yes.

8 Q How long you been knowing her?

9 A At that time, it was four years.

10 Q Do you know Mike **Finley**?

11 A Yes.

12 Q How long you been knowing him?

13 A Same time, four years.

14 Q **Emmet**, where did you used to work?

15 A Scott Paper Company.

16 Q And what did you do out there?

17 A I worked in the maintenance **department**.

18 Q How long did you work there?

19 A Twenty-three years.

20 Q Are you able to work anymore?

21 A No.

22 Q What do you have now?

23 A I've got degenerative disc disease. I had back
24 surgery, three discs removed, had to retire,
25 disability.

1 Q What kind of car do you drive?

2 A I've got an '84 Cadillac Sedan Deville, '74
3 Volkeswagon.

4 Q What year Volkeswagon?

5 A 74.

6 Q And do you know Tyrone Dortch?

7 A I don't know him by the last name. I only know him by
8 first name.

9 Q Tyrone. Okay. Do you know the Malones?

10 A Yes.

11 Q Mr. Malone, Sr.?

12 A Right.

13 Q Do you know Larry, Jr.?

14 A Right.

15 Q Also known as Pig, some people call him that., his
16 nickname.

17 A Right.

18 Q Do you know Clara?

19 A Right.

20 Q And her other child?

21 A Rodrick.

22 Q Where do they live in relationship to you?

23 A Directly across from me. I don't know the address, but
24 it's directly across the circle from me.

25 Q Do you remember on March 2nd of 1992 when there was

1 some kind of commotion down the neighborhood at about
2 eleven, 11:30 in the afternoon?

3 A Yeah.

4 Q What was going on?

5 A Well, I cone out at 11:30 that day to check my mail.
6 When I looked down, I seen paramedics, policemen, just
7 a whole commotion. And I asked what had happened, and
8 then they told me that, you know, that Valerie had --
9 at first they said they thought she had fell and bumped
10 her head. But they found out later that she **hadn't**.

11 Q And at **some** point in time did you talk to a police
12 officer?

13 A Yes.

14 Q That same day?

15 A Yes.

16 Q Did you make a report to that police officer?

17 A No, not that day. They told me that someone would come
18 out and talk to me.

19 Q I mean, did you tell him something, the police officer?

20 A Yeah.

21 Q What did you tell him?

22 A I told him **that morning** at about; ten minutes to eight I
23 **seena brown Bronco**, and it was two **more cars**. It was
24 **a blue and white Pontiac and a plum color convertible**
25 **Pontiac with gold wire wheels**, and at that tine there

1 was three guys present. There was two guys working on
2 the car and another guy standing, but I couldn't
3 identify nobody but Tyrone. That's the onliest (sic)
4 guy that I could identify because I didn't know the
5 others, but it was three guys there.

6 The Bronco was parked on the right-hand side of
7 the circle where you come by my house. The other two
8 cars were on the left-hand side together. They was
9 taking parts off the blue car, putting on to the plum
10 color car.

11 Q Now, was that a uniform police officer?

12 A Yes.

13 Q With Prichard?

14 A Prichard.

15 Q Do you know who it was?

16 A No. He didn't identify himself.

17 Q Do you know was it a black officer or a white officer?

18 A It was a white officer.

19 Q And he told you what?

20 A He asked me did I, you know, see anything, and I told
21 him at that time what I seen that morning.

22 Q And he said somebody would get back with you?

23 A He said somebody would get back to me.

24 Q Now, what were you doing that morning at about 8:00?

25 A Well, what happened was, that morning, my sister -- I

1 keeps my nephew.

2 Q What's his name?

3 A Thomas, Thomas Rogers.

4 Q *How* old is he?

5 A At that time, he should have been about six or seven, I
6 believe, somewhere in that area. And by school being
7 out and she was working that morning at Harco Drug on
8 the morning shift, which would have been from eight to
9 12.

10 Q And why was school out that day?

11 A Because of **Mardi** Gras, the Monday and Tuesday **Mardi**
12 **Gras**. It was on that Monday. And she had asked me to
13 keep him that Monday morning because she had to work
14 from eight to 12. So she was kind of late bringing
15 him. So I walked out to the driveway to look for them.
16 And this is when I looked down and I saw these **guys**
17 working on the car. And that should have been around
18 anywhere from ten minutes to eight to five to eight,
19 because she had to be to work at eight, and she was
20 kind of late.

21 Q Let's draw on here. Let's draw kind of big. I'll draw
22 this as Meadow Avenue. What road is this gonna be up
23 here?

24 A Now, that little short street has no name, so I don't
25 know what that -- it runs between Meadow and Nova.

1 Wow, what **the** name, I **don't** know. **There's** no name
2 there.

3 Q Well, this is Meadow Avenue.

4 A Yeah. And in the middle -- This would be somewhere in
5 the middle, not up on the end.

6 Q Okay. What would be the end?

7 A Up on the end?

8 Q Yeah.

9 A Would be Highway 45.

10 Q Highway 45. **I'll** just draw it up here so we know what
11 we're talking about.

12 A Okay. Right in here.

13 Q Let: me draw this cul-de-sac. If you would, put a house
14 on there for the **Malone's** house.

15 A Okay. Over here, (witness **complies.**)

16 Q Put **Malone's** -- spell **Malone's** up there.

17 A (Witness **complies.**)

18 Q Put your house.

19 A (Witness **complies.**)

20 Q Put Rogers.

21 A (Witness **complies.**)

22 Q Put the **Finley** house.

23 A (Witness **complies.**)

24 Q Put **Finley** down there at the **bottom**. **We'll** show the
25 jury this in just a second.

- 1 A (Witness complies.)
- 2 Q Show where the Bronco was.
- 3 A (Witness complies.)
- 4 Q Show the direction it was facing.
- 5 A (Witness complies.)
- 6 Q Put Bronco down there.
- 7 A (Witness complies.)
- 8 Q Then show the other two vehicles you just described.
- 9 A (Witness complies.)
- 10 Q What's that gonna be?
- 11 A That's the old blue and white one.
- 12 Q Put B and W.
- 13 A Okay. And then right here is what's the plum color.
- 14 Now, right here is a light pole.
- 15 Q Okay. Step down here with me a second.
- 16 A (Witness complies.)
- 17 Q If you came down Highway 45, this would be 1-65 up
- 18 here, right?
- 19 A Uh-huh.
- 20 Q You take a left onto Meadow Avenue?
- 21 A Right.
- 22 Q You drive down Meadow, and your house is here on the
- 23 right?
- 24 A Right.
- 25 Q If you keep going, this is a cul-de-sac here?

- 1 A Right.
- 2 Q **Finley's** house is right here?
- 3 A Right.
- 4 Q And then you said the Rogers -- I'm sorry. The Malones
- 5 live right over here?
- 6 A Right.
- 7 Q Now, this is where you drew the Bronco being.
- 8 A Right.
- 9 Q At this location, facing in this direction.
- 10 A Right.
- 11 Q So that car, if it were to drive off, it could drive
- 12 right into the **Finley** driveway at the direction **it's**
- 13 going?
- 14 A Right into it.
- 15 Q And you drew a light post here?
- 16 A **There's** a light post there.
- 17 Q Is this all grass up here?
- 18 A Yeah.
- 19 Q And you say -- what was this car you described for the
- 20 jury?
- 21 A It's a blue and white old model **Pontiac**. What year, I
- 22 don't know.
- 23 Q B and W, meaning blue and white, just for the **jury's**
- 24 reference. **And** this was what kind of car?
- 25 A A plum colored convertible.

1' Q Okay. Now, tell the jury who you saw out there at that
2 time.

3 A Well, I know Tyrone was one of them, but the other two
4 I **can't** identify.

5 Q Okay. So Tyrone was there?

6 A He was there.

7 Q Could you tell what he was doing?

8 A They were working on -- They were taking parts off this
9 old blue and white car and putting them on the plum
10 car.

11 Q Okay. I'm **gonna** draw an arrow to like this. They were
12 doing something with the blue and white and putting it
13 to the plum.

14 A Right, putting it to the plum.

15 Q And Tyrone -- About where was Tyrone standing?

16 A I **can't** say that. I know it was three guys in front of
17 these two cars, in front of this car over here. In
18 **front** of the plum colored car **was** "three guys.

19 Q Did you recognize the other two **guys** with Tyrone?

20 A No.

21 Q Do you know Rodney **Stanberry**?

22 A No.

23 Q Do you know Rene **Whitecloud**?

24 A No.

25 Q Okay. Now, at the time, was there anything that would

1' have blocked Tyrone from seeing this brown Bronco out
2 there?

3 A No, sir.

4 Q Was it broad daylight?

5 A Yes.

6 Q ~~Was~~ it raining?

7 A No.

8 Q Snowing?

9 A No.

10 Q Clear visibility?

11 A Yes.

12 Q Go ahead and have a seat back up there.

13 A (Witness **complies.**)

14 Q I show you what has been marked as **State's Exhibit**
15 Number 39, a picture of a brown Bronco. Is that
16 consistent with the brown Bronco that you saw in your
17 neighborhood that morning that **you've** just described to
18 us?

19 A **Yes.**

20 Q Had you seen that Bronco before?

21 A No, not before **that** day-

22 Q Did you see it after?

23 A Yes.

24 Q Tell us about seeing it -- **Let's** go to Tuesday, the
25 very next day.

1 A Okay. The next day my **wife's** church had a concession
2 stand at the **Mardi** Gras, so I left that evening. I
3 told her I would be back. I was going home to **turn**
4 some lights on. When I got home, Larry, Sr. was on the
5 porch, so I walked over, and I asked him had he seen
6 Mike because I wanted to know how Valerie was doing.
7 He said, yeah, **he's** in the house. So when Mike come
8 out, I said, How is Valerie doing. He said okay;
9 walked off. By the time he walked off, this Bronco
10 came up on the side that my house is on. Mike got into
11 the Bronco. It went out the cul-de-sac up to the short
12 street. It's a short street in the center off to the
13 right. It turned there and backed up, came back down
14 to his house. He got a shotgun and got back in the
15 Bronco and left.

16 Q So, now, Monday we've got you seeing that brown Bronco
17 at the cul-de-sac in the morning.

18 A Right.

19 Q Tuesday about what time of day is it that you see the
20 Bronco?

21 A Between 4:30 and five.

22 Q And the Bronco picks up who?

23 A Mike, Mike **Finley**.

24 Q This woman's husband?

25 A Right.

1' Q After she had been shot?

2 A Right.

3 Q He **gets** into **that** Bronco?

4 A Right.

5 Q Could you see who was driving the Bronco at that time?

6 A I **didn't** pay it no attention who **was** driving.

7 Q Okay. Now, when is the next time you saw that Bronco?

8 A Wednesday night.

9 Q And tell us where you saw it then.

10 A In the driveway.

11 Q Of whose driveway?

12 A Michael **Finley**.

13 Q About what time of night is this?

14 A It had to be after -- between 8:30 and nine because I
15 kept **my** nephew at night down at my sister's house at
16 523 **Summerville** Street, and she gets off at eight, and
17 she generally gets home around **8:30**. I leave her house
18 about 8:30. It takes me about 15 minutes to drive
19 home. So I would say between 8:30 and a quarter to
20 nine.

21 Q And could **you** tell what was going on down at the **Finley**
22 house?

23 A Well, It seemed to be partying in the driveway.

24 Q Partying in the driveway, at the **Finley** house?

25 A Yeah.

1 Q On Wednesday after this happened?

2 A Yeah.

3 MR. NIXON: Excuse me, Judge. Judge, I'm gonna
4 make an objection that if he'd ask him what
5 he saw, what he heard, rather than --

6 Q What did you see? What did you hear?

7 A Well, I just seen the Bronco and guys standing in the
8 driveway,.

9 Q What did you see then doing?

10 A Well, they were drinking.

11 Q Were they making noise?

12 A Not loud, no.

13 Q What made you think they were partying?

14 A Well, I guess they were drinking -- you know.

15 Q Okay. So that was the third -- You saw the Bronco
16 three consecutive days?

17 A Three days.

18 Q Is that correct?

19 A Right.

20 MR. JORDAN: Judge, if I could mark this.

21 (State's Exhibit 40 marked for
22 identification.)

23 MR. JORDAN: Judge, I move to introduce State's 40
24 at this time, which is the diagram that Emmet
25 Rogers drew for me.

1 THE COURT: It's introduced.

2 (State's Exhibit 40 admitted in
3 evidence.)

4 Q Mr. Rogers, **that's** all I have at this time. If you
5 would, answer any Defense questions.

6 CROSS EXAMINATION

7 BY MR. NIXON:

8 Q Mr. Rogers, my name is Ken **Nixon**. Now, first, let me
9 ask you --

10 THE COURT: Ken, are you going to be through with
11 this cross examination by five?

12 MR. NIXON: No, sir, **Judge**.

13 THE COURT: Because I have a juror that has to
14 pick her child up.

15 MR. NIXON: I'll start in the morning, if you want
16 me to, Judge.

17 THE COURT; We'll do that. Sir, you be back
18 tomorrow morning at 9:15.

19 THE WITNESS: Okay.

20 THE COURT: Ladies and gentlemen, see you tomorrow
21 'morning here at 9:15. If you will, stay out
22 in the hall. You may be asking yourself why
23 are we getting started that late. The answer
24 is I will start at 8:30, but I have another
25 docket at 8:30. I anticipate being through

1' by that time, but if y'all would, just stay
2 right outside that door and you'll see.

3 Okay? See y'all then. Goodnight.

4 (Jury not present.)

5 THE COURT: Any witness who's in court, don't
6 discuss this case any. If you discuss it
7 with the district attorney or the attorney
8 for the defendant, that's fine, but don't
9 discuss it with anyone else.

10 MR. JORDAN: Oh, Judge, also, I'm entitled to once
11 the Defense questions a witness about a
12 statement that he's given on a previous
13 occasion, I then am entitled to a copy of
14 that **statement, it's** my understanding of the
15 Rules of discovery and/or evidence. That was
16 done in this case on one witness, and I
17 suspect **it's gonna** be done again, and I --

18 THE COURT: I don't know what **you're** talking
19 about. Just tell me what you want.

20 MR. JORDAN: Larry **Malone's** statement that Ken
21 impeached him with. Now, if **there's** no such
22 statement, fine. But if there is one, I'm
23 entitled to it.

24 THE COURT: Do you have any statement?

25 MR. NIXON: He **made** a statement. I have testimony

1 that he made a **statement** to my investigator,
2 not what he said at his school or anything,
3 Judge, but he did talk -- **it's** an oral
4 statement. My understanding, **it's** not been.
5 reduced to writing.

6 MR. JORDAN: There's no recording? No recording,
7 no written, just --

8 MR. NIXON: Judge, he's not entitled -- My
9 position is **he's** not entitled to a statement
10 or a recording of a statement unless I
11 introduce it into evidence.

12 MR. JORDAN: No. Once **he's** impeached, once he's
13 brought it out and discussed it with him, **how**
14 can I rebut it or respond to it unless I can
15 see it and have a copy of it? Now, if
16 there's no copy, I have no problem.

17 MR. NIXON: Judge, all I did was ask him if he
18 made a statement to Mr. Russell.

19 THE COURT: **That's** fine. Go out there and see if
20 that jury has left yet.

21 MR. JORDAN: **Judge**, I do move for a copy of any
22 tape recordings and/or transcribed statements
23 of any witnesses once they have been
24 attempted to be impeached with that because
25 he specifically asked Larry **Malone**, **didn't**

1 you tell Ryan Russell at this fish place that
2 you didn't see the Bronco.

3 THE COURT: We all heard that.

4 MR. JORDAN: Okay. Well --

5 THE COURT: He just got through telling you there
6 wasn't any statement.

7 MR. NIXON: Judge, Mr. Rogers is in here and some
8 other witnesses in here, and I really don't
9 think **it's** proper for Mr. Jordan to start
10 reciting testimony about what was said or
11 what was not said or elicited from these
12 witnesses.

13 THE COURT: Is the jury gone? See **y'all** tomorrow
14 morning at 9:15.

15 MR. NIXON: Thank you, Your Honor.

16 (Whereupon, court adjourned for the
17 evening.)

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STATE OF ALABAMA,

CASE NO. CC-92-2313,

VS.

92-2314, 92-2325

RODNEY KARL STANBERRY

(Mobile, Alabama, April 4, 1995.)

(Trial resumed, Jury present.)

THE COURT: Go ahead.

CROSS EXAMINATION (Continued)

BY MR. NIXON:

Q You are Emmet Rogers, correct?

A Yes.

Q You testified yesterday?

A Yes.

Q Mr. Rogers, you live on, is it Meadow Avenue?

A Yes.

Q If you would, please, I want to ask you before we get started if you would step down and step over here to this blackboard.

A (Witness complies.)

Q And I apologize for not having a better place to be seen more easily, but this is the best we could come up with. Let me get you to speak up loudly so she can hear you. Okay?

Let me let you -- if you will, let's start with putting the medium right here. This is a grass medium,

1' isn't it?

2 A Uh-huh.

3 Q And the street comes in like this, correct?

4 A Right.

5 Q Circles around?

6 A Circles around.

7 Q Now, this is not to scale, but if you would, I would
8 like for you to draw the houses or the position of the
9 houses, starting with Mrs. **Finley's** house.

10 A Mrs. **Finley's** house?

11 Q Yes, sir.

12 A Okay. We should've **drawed** it this way, then. **As** you
13 come in, you come in here. I'm on the right, so I'm
14 here. Her house is here.

15 THE COURT: Can y'all hear him over there? Ken.

16 MR. NIXON: Yes, sir.

17 THE COURT: They can't hear anything **he's** saying
18 over there. You know, I **don't** know what to
19 tell you to do. We have this non-functional
20 courtroom. Let's try something else. Buzz,
21 how about you moving.

22 MR. JORDAN: To where?

23 THE COURT: Back here. Just move your chair up
24 just for this witness. Ken.

25 MR. NIXON: Yes, sir.

1 THE COURT: Try to pull this over here closer so
2 the jury can hear him.

3 MR. JORDAN: May I sit here. Your Honor?

4 THE COURT: Yes. I think **it's** an absolute shame a
5 brand new courtroom is not functional, but
6 it's not.

7 By the way, did you ever see a **courtroom**
8 that **didn't** have a blackboard in it?

9 MR. NIXON: Is that what you suggest, Judge?

10 THE COURT: **Yes.** I understand that in doing this
11 **you're** going to have your back to the jury,
12 but I know of nothing else you can do. If
13 you get over here, the jury **can't** hear.

14 Q Mr. Rogers, I'm just **gonna** ask you to speak loudly.
15 Okay?

16 A Okay. (Inaudible.) This is the grass median here.
17 Mrs. **Finley's** house sits right in the --

18 Q That's the street. Don't put it in the street. Put it
19 where it is.

20 A Okay. **It's back** over in here. This is my house. This
21 is the house next to me. This is her house. This is
22 the house --

23 Q There's a house right here, isn't it?

24 A **There's** a house right --

25 THE COURT: Mr. Rogers, why **don't** you go ahead and

1 do your drawing and then step back to the
2 side and explain it to them. Just put all
3 the drawing you want on there.

4 A Okay. This is Meadow Avenue coming in from Highway 45,
5 a **left** turn off of 45. You come down, you come in
6 here, and when you get to my house, the circle starts.
7 This is my house. Okay. This is Mr. **Pettway**, Finley.
8 This is my house. This is Mr. **Pettway's** house. This
9 is the **Finley's** house. In the grass median --

10 Q Who is next to Finley?

11 A Who is next? I **don't** -- This is where Tyrone was
12 staying at that time.

13 Q Is there a house next. to Finley?

14 A Right, right here.

15 Q You've got a big gap right here.

16 A Well, **it's** not that much **of** a gap. **It's** just a fence
17 line, and the house sits back. It's not up close. It
18 sits back, and this is where a guy named Tyrone -- I
19 **don't** know his last time.

20 Q Draw that, please.

21 A Okay. That house sits right here. That's where he was
22 staying at the time.

23 Q All right.

24 A Okay. Out in this grass median --

25 Q All right, now this is the medium, right?

1 A This is the median. Okay. Right about middle ways is
2 a street light. **It's** a telegram pole with a street
3 light. Now, this is where the Bronco was, right here,
4 right off the driveway there. It was two cars on the
5 other side of the pole, right here. There was three
6 guys standing in front of these two cars.

7 Q Okay.

8 A Like I said yesterday, who it was, I **can't** identify.
9 But it was three guys. The only guy that I can
10 identify was Tyrone by name. That was it.

11 Q Okay. Now --

12 A That's the way it goes.

13 Q All right. Thank you. Now, if you will, step right
14 here where you can see the drawing. What I want **to** do
15 is I want to draw the medium a little larger right
16 here. Okay? All right. ~~Let's~~ assume that **that's** the
17 grass medium. Okay? And this is the **street** that
18 circles around it and comes up Meadow Avenue this way,
19 right? You with me?

20 A I'm following.

21 Q Now, you say that your house is right about here?

22 A Right where the circle starts. My house is right where
23 the circle starts.

24 Q Right about here?

25 A Bight about right there.

1 Q Here?

2 A Right there.

3 Q Okay. **That's** your house?

4 A Right.

5 Q Do you have a driveway?

6 A Yes.

7 Q Is it on this side?

8 A It's on the other side.

9 Q This side?

10 A Right there.

11 Q Okay. Now, and is there a house starting right here?

12 A Mr. Pettway.

13 Q **That's** right about here?

14 A That's **my fence** line. Right about there.

15 Q Okay. **That's** Pettway.

16 A Pettway.

17 Q All right. Now, does **he** have a driveway on this side
18 or this side?

19 A His driveway is on this **side**.

20 Q **This** side?

21 A Right in there, between my house and his house.

22 Q And is this the house right here that --

23 A It **don't** sit that close. It sits back. **It's** back some
24 more.

25 Q Here?

- 1 A Go back some more.
- 2 Q Here?
- 3 A Go on back.
- 4 Q Okay.
- 5 A Go back some more.
- 6 Q Here?
- 7 A Back there.
- 8 Q It sits way back here?
- 9 A Right, it sits way back.
- 10 Q Is that about where it was?
- 11 A Right, where it is now.
- 12 Q **That's** where Tyrone lived?
- 13 A No, that's the **Finley's**.
- 14 Q **Okay.** That's **Finley**?
- 15 A Right.
- 16 Q Now, you've got the **Finley** house sitting on the right
- 17 side of the **medium coming** in. Is "**that** what you're --
- 18 A It sits on the right side.
- 19 Q **Okay.** It's not over in this area?
- 20 A NO.
- 21 Q Now, and next to the **Finley's** house is the house that
- 22 Tyrone was staying in?
- 23 A Yeah. His house sits just **about** as far **back** as theirs
- 24 **was.**
- 25 Q Okay. About here?

- 1' A Right in there.
- 2 Q That's Tyrone Dortch was staying there, right?
- 3 A I don't know what his last name was.
- 4 Q You know him as Tyrone?
- 5 A Tyrone.
- 6 Q You've seen him here today?
- 7 A Yes.
- 8 Q And is Tyrone's -- Well, Finley has a driveway coming
9 here, right?
- 10 A Right.
- 11 Q The Finley driveway goes that way?
- 12 A It's on the other side, between -- their driveway, if
13 you come in the house, it's back. The driveway is on
14 the left-hand side of the house.
- 15 Q Are you telling us that if you look out the Finley's
16 front door, that the Finley's driveway is on the left
17 side?
- 18 A I say if you come in on the right going down from my
19 house on the left.
- 20 Q Listen to me, Mr. Rogers, please. If you're on the
21 Finley's front porch, okay? Do you follow me?
- 22 A I've got sense enough to know.
- 23 Q And you're looking straight ahead, is the Finley's
24 driveway to your right or to your left?
- 25 A It's to the right.

1 Q Okay. So it would be right here?

2 A To the right, if you cone out the front door.

3 Q Yes, sir.

4 A Yeah.

5 Q Right where I drew it, correct?

6 A Yeah, if you're looking out the front door.

7 Q Okay. That's what I'm asking you. All right. And
8 Tyrone Dortch's house is right here?

9 A Yes.

10 Q And if you're looking out his front door, is his
11 driveway to the right or to the left?

12 A To the right.

13 Q Here, correct?

14 A To the right.

15 Q Right here, correct, like I drew it?

16 A To the right.

17 Q Mr. Rogers, you just saw how I drew it, is that how --

18 A His driveway is to the right, just off the median to
19 the right.

20 Q Is that --

21 A Looking out his front door, the driveway is to the
22 right.

23 Q Okay. Is it like I drew it here, Mr. Rogers?

24 A If you --

25 Q Just look right here, please. Is it like I drew it?

1 > MR. JORDAN: Judge, the only objection I have is
2 basically the drawing is upside down to Mr.
3 Rogers, where **he's** standing. And **it's** hind
4 of hard to write left to know -- could we
5 turn the drawing upside down so he could see
6 it from that angle?

7 MR. NIXON: Judge, all I'm -- I wanted it at this
8 angle, and I just asked him if the driveway
9 is right -- Are you confused about the angle?

10 A I'm trying to answer your question. **You're** cutting me
11 off every time I try to answer.

12 THE COURT: **Let him** answer.

13 Q Okay.

14 A The median comes around. If you come in from the left-
15 hand side of the median, his driveway goes in to the
16 right of the house facing this way. See, the median is
17 a horseshoe, in effect, and the houses sit around the
18 median. The houses sit around the circle.

19 Q Yes, sir.

20 A Tyrone's house and the **Finley's** house. So if you were
21 coming from the right and look out his door from the
22 front, the driveway sits to the right.

23 Q Correct.

24 A But if you came in on the left, you can go straight
25 into this driveway from the circle.

1 Q All right. Now, my question is, if this is Meadow
2 Avenue right here, okay, coming in making the circle,
3 **you've** told **me** where these houses are. Are you
4 oriented to this drawing right **now**?

5 A Yeah.

6 Q Okay. Now, **you've** told me where to put Tyrone **Dortch's**
7 house.

8 A Right.

9 Q And you told **me** where to put the driveway. I'm just
10 asking you, is that correct?

11 A **That's** correct.

12 Q Okay. Thank you. Now, is there a house around here?

13 A Yeah, but I **don't** know the name of the house next to
14 theirs?

15 Q Next to Tyrone? Is it back off?

16 A About right here.

17 Q Is it as far back as Tyrone's?

18 A No, it sits close to the circle.

19 Q Like that?

20 A Right.

21 Q And is the driveway on the right side to that house?

22 A Looking out the door, **it's** on the right.

23 Q Like **that**. Now, if you would, tell me where Mr.

24 **Malone's** house is.

25 A See, **that's** what I say, you got it mixed because his

1 house is directly across the median here from mine.

2 His house sits **right** directly across from mine.

3 Q Okay. Let's do it this way. **There's** a house next to
4 Mr. **Dortch**. **That's** not Mr. **Malone's**, is it?

5 A No.

6 Q All right. Is there a house next to there -- that
7 house?

8 A **That's** Mr. **Malone's** house **next** to that house.

9 Q Would it be right about here?

10 A You would have to put it here to make it direct across
11 from mine, because his house is directly across the
12 circle from mine.

13 Q Okay, so over here?

14 A Right.

15 Q Okay. So these would all be moved around a little bit?

16 A Right. Between **Tyrone's** house and this yellow house
17 **there's** an opening. You **can** move around. But if you
18 put the **Malone's** house direct from **my** house, **it's**
19 directly across from each other.

20 Q Okay. Now, this is grass medium, right?

21 A Yes.

22 Q And **there's** a telephone pole in the medium.

23 A Yes.

24 Q I'm going to put a little green in here so we'll know
25 that that's grass. Now, draw me the telephone pole

1' where you say the telephone pole was.

2 A The telephone pole sits right in --

3 Q Draw a circle, please.

4 A It would be right here.

5 Q Okay. So it would be in the medium on the right-hand
6 side of the medium coming in, right?

7 A So it would be on the left coming --

8 Q It's left if you make the circle?

9 A Left, after you make this.

10 Q All right. Show me where the cars were that were in
11 the medium.

12 A Two was on this side of it.

13 Q Which way were they facing?

14 A Facing the house.

15 Q Okay.

16 A One here, and there was one over --

17 Q Wait. I **can't** tell from your drawing how the cars were
18 parked. Excuse me just a second.

19 A **Here's** a car here. This is the pole. **Here's** a car.

20 They was facing toward's Tyrone's house. **Here's** the
21 other car.

22 Q All right. Now draw me where **the** Bronco was.

23 A (Witness complies.)

24 Q So the Bronco was in the grass?

25 A Sitting right on the edge of the median.

1 Q Okay. My question was, the Bronco was in the grass
2 medium, was parked on the grass?

3 A Yes.

4 Q And which way was it facing, the same way as the other
5 car?

6 A Same way as the other car.

7 Q That way?

8 A That way.

9 Q And that way?

10 A Right.

11 Q And that way.

12 A Right.

13 Q You're sure about that?

14 A Sure.

15 Q And you said that that was at what time?

16 A Had to be between, I'd say, 8:45 -- I mean, 7:45 and
17 7:55.

18 Q Okay. You can take the witness stand.

19 A (witness returns to witness box.)

20 Q Now, Mr. Rogers, do you remember giving a statement to
21 Mr. Russell here, talking to him?

22 A Yes.

23 Q And giving a recorded statement?

24 A Yes, between beers. He was drinking.

25 Q Yes, sir.

1' A Yeah.

2 Q You gave him a statement?

3 A Between beers he was drinking, I do.

4 Q You drank beer, too?

5 A No. I **don't** drink-

6 Q Okay. That was at a fish fry, wasn't it?

7 A Yes.

8 Q And that fish fry; was where?

9 A Willie White's.

10 Q And Willie White lives in the neighborhood?

11 A On **Nova** Avenue.

12 Q **And** he has a fish **fry** every week or --

13 A Well, we generally cooked every Monday, not necessarily
14 fish, but we cooked -- we had a little neighborhood
15 group. We cooked every Monday.

16 Q Yes, sir. **And** Mr. Russell asked you if you would give
17 him a statement about what happened, and you told him
18 you would?

19 A Yes.

20 Q And you did?

21 A Yes.

22 Q And it was recorded?

23 A Yes.

24 Q **Was** Mr. Malone, Larry **Malone**, Pig, at that fish fry?

25 A Yes.

1 Q Okay. And **that's** the young Larry **Malone** who appeared
2 here yesterday?

3 A Junior, yes.

4 Q The one that has some problems?

5 A Yes.

6 Q How, ~~do you remember telling~~ Mr. Russell during that-
7 -interview that: you saw the **Bronco** and you **saw** the Grand-
8 **Prix**, ~~that~~: there were **two cars there**?

9 A Yes.

10 Q You **didn't** tell him that there were three cars there,
11 did you?

12 A I told him **it** was two -- it was **three** cars, sure I did.

13 Q Okay. Are you sure about that?

14 A Yes. I told him it was two cars. There was an old
15 blue and white Pontiac, a plum colored Pontiac and the
16 Bronco. Sure I did.

17 Q Yes, sir.

18 MR. NIXON: Judge, may I approach the witness?

19 Q Mr. Rogers, I'm going to show you a transcript **of** your
20 interview with Mr. **Russell** and ask you to read this and
21 see if it refreshes your memory. Okay?

22 A What you want me to read?

23 Q This sentence right there.

24 A Well, I **didn't** tell **him** that.

25 Q Okay. **Where** it says, **"I seen** an old **car** in the'

1' driveway --"

2 A I did not tell him that, no, sir.

3 Q Are you saying that that never happened?

4 A Im saying that that- never happened.

5 Q Now, in fact, during that interview, you never told him
6 that you saw three cars, did you?

7 A I told him I **saw** three cars.

8 Q **You're** sure about that?

9 A Im sure.

10 Q The fact is, you told him throughout that whole
11 interview that you only saw two cars--

12 A No.

13 Q -- in the medium.

14 A No.

15 Q One was a Bronco and the other was a Grand Prix.

16 A No. Undoubtedly, he changed the tape, because I **didn't**
17 **get** a copy of the tape. I **didn't** tell him that. I
18 told him there were three cars there. It was two
19 **Pontiacs** and one Bronco. I didn't tell him it was one
20 car there, no.

21 Q Did you tell him that it was a brown Bronco and there
22 was an old **Pontiac** Grand **Prix** that they were taking
23 parts off of?

24 A Taking parts off **of** one and putting on the other one.
25 **That's** exactly what I told him.

1 Q And you're sure about that?

2 A Sure, I'm sure.

3 Q You told him there were three guys standing there?

4 A Yes.

5 Q The only one you can identify is Tyrone; is that right?

6 A Yes, yes.

7 Q Now, you said your sister -- Did you say your sister
8 had to go to work at eight o'clock?

9 A Yes.

10 Q And where does she work?

11 A Harco Drugs, pharmacist for **Harco** in Eight Mile, St.
12 Stephens Road.

13 Q And what -- her work is at eight o'clock?

14 A That morning's was. She had to be there at eight, and
15 she had to ask me to keep my nephew, which I keeps and
16 been keeping for the last three years, and she was kind
17 of late bringing him by the house, and I came to the
18 driveway because I wondered why she was late, and I
19 stood in the driveway, and it was between 7:45 and five
20 minutes to eight. And this is when I seen the guys out
21 working on two cars, and it was a Bronco on that grass
22 median at that time. So, now, where he got the one
23 car, I **don't** know. I told **him** it was two cars. They
24 were taking parts off of one car, putting on the other.
25 And that's **the exact thing** that I told him.

1 Q Now, was your sister on time for work that day or was
2 she late?

3 A I couldn't say. She might have been late, might have
4 been **five minutes** late.

5 Q **You're** not sure?

6 A I'm not sure.

7 Q And did she drop the children off in your driveway?

8 A She dropped my nephew off right at the driveway.

9 Q Did you walk up to the station?

10 A When she dropped **him** off, we walked up to the first
11 service station.

12 Q Who is we?

13 A Me and my nephew, Thomas Rogers.

14 Q All right. And how long did you stay at this first
15 station?

16 A **Just** long enough to bring a newspaper out the rack and
17 walk back.

18 Q And were the vehicles that you saw still there when you
19 came back?

20 A I didn't pay it no mind. The Pontiacs, yes. The
21 Pontiac was still there.

22 Q You don't know about the Bronco?

23 A I **didn't** really pay it no mind.

24 Q Did you see that Bronco that day any more?

25 A Not that day.

- 1 Q You're sure about that?
- 2 A I'm sure.
- 3 Q You went out there at 11:30 or so, didn't you?
- 4 A Yes.
- 5 Q The police were out there?
- 6 A Yes.
- 7 Q And what caused you to go out there then?
- 8 A Because my mailman run in at 11:30, something to 12,
- 9 and I went out to check the mail. When I went out to
- 10 check the mail, I looked down to the Finley's house,
- 11 and there was a lot of cars, policemen, paramedics and
- 12 what have you.
- 13 Q And you went down there?
- 14 A No.
- 15 Q You did not go --
- 16 A I stood inside my fence.
- 17 Q Did you come outside your fence at any time?
- 18 A No.
- 19 Q Did you tell us on direct examination that you talked
- 20 with a police officer that day?
- 21 A Yes.
- 22 Q Is that what you told us?
- 23 A He came to me.
- 24 Q Were you inside your fence?
- 25 A Yes.

1 Q Was he in uniform?

2 A Yes.

3 Q And that's the police officer that said somebody would
4 **get**; back **with** you later?

5 A Would get back with me.

6 Q And are you telling us **that** you told the police that
7 day that you saw the Bronco?

8 A Yes.

9 Q There?

10 A Yes.

11 Q Do you **know** that police officer's name?

12 A No.

13 Q Was he white or black?

14 A White.

15 Q Did he take that information down?

16 A I **couldn't** answer that.

17 Q Did he take your name down?

18 A I gave my name. I **don't** know whether he took it down,
19 but somebody did.

20 Q Did he **take** out a **pen** and write something while you
21 were talking to him?

22 A I **couldn't** say that at that time. I **didn't** see him
23 take out a pen, no, sir.

24 Q ~~Was~~ he on **foot** or in a police car?

25 A On foot. He was on foot when he talked to me.

1 Q Okay. And tell me exactly what you told him then.

2 A He came to me and asked me did I see anything or had I
3 heard anything down there at that time. He said
4 between eight and 8:45. I told him the only thing that
5 I seen was some cars in the median. And at that time
6 he asked me **what** kind of cars, and I told him I seen
7 two **Pontiacs** and a brown Bronco, and that was it. He
8 say somebody would be out to talk to you in a day or
9 so.

10 Q Okay.

11 A Okay. After a day or so, Mr. Smith did come out and
12 talk to me.

13 Q All right. And you remember -- in your interview with
14 Ryan Russell, do you remember him asking you that
15 question? "Did you tell the police that **day**?"

16 A I **don't** know whether he asked me or not.

17 Q You **don't** remember that?

18 A I **don't** remember. I **don't** know whether he asked me or
19 not. I **didn't** get a copy **of** the tape.

20 MR. NIXON: May I approach the witness?

21 Q Mr. Rogers, I'm gonna show you a copy of a transcript
22 of your interview that day and ask you to read this to
23 yourself and see if that refreshes your memory.

24 A I **don't** remember saying that. I **don't** know where he
25 got that but, like I say --

1 Q You *don't* remember --

2 A It looks like he turned the whole thing around.

3 Q Read that, if you will, please.

4 A I read it.

5 Q Would you read it to the jury.

6 A I can't -- he got it reading no.

7 Q It says, "Did you tell --

8 MR. JORDAN: Judge, ~~Im~~ going to object to him
9 reading from any -- I mean, he *hasn't*
10 verified that as being --

11 MR. NIXON: I *will*, Judge. I have the tape.

12 MR. JORDAN: I mean, he can just ask the question.

13 Q Do you remember Ryan Russell -- Did Ryan Russell ask
14 you, "*Did* you tell the police that *day*?"

15 A I told them that day.

16 Q No, *my* question is, did Mr. Russell ask you, "Did you
17 tell the police that *day*?"

18 A I *don't* know. You talking about two years and two
19 months. I can't -- I'm not photostatic. I *don't* know
20 whether I said that: or not.

21 Q I understand. But do you know whether you said, "I
22 *can't* re -- no, *it was* after that. It was a couple of
23 days after that."

24 A I already answered. I said no.

25 Q 'They told me that day that someone would be out to

1' talk to me."

2 A I said no, I can't remember that.

3 Q Okay. You said, no, you didn't say that that day,
4 didn't you, Mr. Rogers?

5 A No, I can't- remember saying that I didn't say that.

6 Q Okay. Are you telling us that you did not say this, or
7 are you telling us you don't remember whether you said
8 this?

9 A I'm saying that I don't know.

10 Q The fact is, you told Mr. Russell you didn't tell them
11 about: it that day, didn't you?

12 A I said I can't remember.

13 Q Well, do you remember now?

14 A I said I can't remember.

15 Q You're telling this jury now that you did. So you
16 remember three years later; is that correct? Is that
17 correct, Mr. Rogers?

18 A I told you what I told the police.

19 Q I understand. You're telling this jury today that you
20 remember that you told the police that day, and you
21 just told them a minute ago that when you talked to
22 Ryan Russell you told him you didn't remember.

23 A I don't know what Ryan Russell put down.

24 Q Okay. And in May of 1994 you say you didn't remember -

25 -

1' A I **don't** know **what** Ryan Russell put down because, like I
2 say, he didn't give me a copy of the tape. The tape
3 could have been altered or changed.

4 Q Well, we're **gonna** take care of that, but I'm asking you
5 right now --

6 A I **don't** know about taking care or not, but I'm just
7 saying that I **didn't** get a copy of the tape, so I **don't**
8 know what I said.

9 Q When you told Mr. Russell that you **didn't** tell them
10 **about** it that day, that it was a couple days later, was
11 that correct?

12 A I **don't** remember telling Mr. Russell that.

13 Q Well, is that the way it happened, Mr. Rogers?

14 A I say I **don't** remember telling Mr. Russell that.

15 Q Well, you wouldn't have lied to Mr. Russell, would you?

16 A I **don't** have no reason to lie to Mr. Russell.

17 Q Yes, sir. Now, how many times have you talked to Mr.
18 Jordan about this, Mr. Rogers?

19 A Maybe two or three times, maybe.

20 Q Could have been more than that?

21 A **No** more than two or three times.

22 Q Okay. How many times did you talk to **Lebarron** Smith
23 about this?

24 A Well, generally when they came, they came together.

25 Q You talked to him two **or three times**?

1 A Yes.

2 Q And when was the next time after this happened that you
3 talked to a police officer or district attorney?

4 A I **can't** remember specific dates.

5 Q A week, a month?

6 A I **don't** know exactly, but it might have been a week or
7 two weeks, somewhere in that area. I **can't** remember
8 the exact time.

9 Q Who came to talk to you?

10 A Buzz Jordan and Mr. **Smith**.

11 Q And did you find out -- Had you found out before then
12 what happened to Valerie Finley? **You** knew she had been
13 shot, **didn't** you?

14 A Yeah.

15 Q And you knew that they had a suspect, **didn't** you?

16 A NO.

17 Q **You didn't** know that?

18 A NO.

19 Q Did you talk to any of **Valerie's** family members?

20 A No.

21 Q **Nobody** at all?

22 A No.

23 Q Did you read anything in the newspaper --

24 A The only person I talked to that day that it happened,
25 her husband, Mike **Finley**, came to my back door and told

1 me -- knocked on my door and said, I heard you seen
2 something. I said, I seen a brown Bronco down on the
3 median on the grass facing your house. And I said, it
4 was two more cars out there they were working on, and
5 Tyrone was out there. When I told him this, he had a
6 shotgun and some shells. I asked him to give me the
7 'shotgun because it was already enough; let the police
8 handle it. He said, no, -I got an idea of what's going
9 on. He ran out of my driveway --

10 Q Yes, sir. I didn't ask you --

11 MR. JORDAN: Judge, he's answering the question.

12 MR. NIXON: He's not answering my question.

13 MR. JORDAN: He's cutting him off. He's answering
14 the question.

15 THE COURT: Let him finish. Go ahead.

16 A He ran out of my driveway, jumped in Valerie's car,
17 which was a blue Chevette & something of that nature,
18 and left.

19 Q Valerie's car was a blue Chevette?

20 A If I remember right. I said of that nature. I don't
21 know exactly what it was.

22 Q It wasn't a teal green Ford, was it?

23 A I can't remember now what it was. It was bluish in
24 color.

25 Q When you looked out that day, you never saw this Bronco

1 in the **Finley** driveway, did you, Mr. Rogers?

2 A No, sir.

3 Q Did you ever see a teal green Ford **Festiva** in the
4 driveway that day?

5 A No.

6 Q Did you ever see a teal green car or a green car in the
7 driveway there at all that day?

8 A Not -- the car looked blue to me. I know Valerie had a
9 little blue looking car.

10 Q You said that Tyrone **Dortch** was under the car; is that
11 what you said?

12 A I said he was standing -- They had the hood up.

13 Q Yes, sir.

14 A They had the hood up on the car.

15 Q Yes, sir. Did you not say on direct examination that
16 Tyrone was under the car?

17 A No, I **didn't** say that.

18 Q You **didn't** say that?

19 A No.

20 Q So you never saw anybody under the car?

21 A No. They all was standing in front of the two cars.

22 Q And did you notice how those people were dressed?

23 A No.

24 Q Nothing about how they were dressed?

25 A No.

1 Q Were they all black people?

2 A Yes.

3 Q Did the district attorney or the police officers ever
4 show you any photographs of any vehicle?

5 A No.

6 Q They've never shown you a photograph of the vehicle?

7 A No. The first photograph I seen of a vehicle was
8 yesterday.

9 Q Now, when you told them about the brown Bronco -- well,
10 let me strike this. The brown Bronco that you saw that
11 day -- do you recall seeing it?

12 A Yes.

13 Q And were you looking at the side of it, the front of it
14 or the back of it?

15 A Back.

16 Q And did you notice anything, any distinguishing marks
17 of that Bronco?

18 A I **didn't** pay it no attention, no more than I seen a
19 brown Bronco.

20 Q Okay. So the answer is no?

21 A No.

22 Q And you say you could see it clearly?

23 A Yes.

24 Q Did you notice **a big sign on the back of it, the big**
25 **sticker that said, "Heartbreaker?"**

1 A Like I say, I didn't pay none of that no attention. I
2 just seen a brown Bronco.

3 Q So your answer is no to that question?

4 A No.

5 Q You **didn't** tell the police about that, either, did you?

6 A No.

7 Q **Now**, the photograph that you saw yesterday of the
8 vehicle, you identified that as the one that you saw or
9 one similar to?

10 A One similar.

11 Q Okay. So you **can't** be sure that's the same one you
12 saw, right?

13 A No.

14 Q Did you notice from that photograph that there were
15 stickers on that Bronco, Mr. Rogers? Well, this
16 photograph doesn't show any stickers on it.

17 Have you ever seen Rodney Stanberry before that
18 day?

19 A The first time I seen him was yesterday.

20 Q Okay. The first time you ever saw him?

21 A Ever seen him, yeah.

22 Q And you testified yesterday that you had never seen
23 that brown Bronco before in the neighborhood?

24 A Not before that day, not before that.

25 Q **You're** sure about that?

1 A Not to pay it any attention, because the neighborhood
2 is a quiet neighborhood, and to pay some attention to
3 something, you have to be -- You know, most people are
4 inside, inside-type people. The only thing that
5 brought me out that morning was my sister being late
6 bringing my nephew and to check the postman.

7 Q And you **don't** know whether or not your sister was on
8 time for work that day?

9 A No, I **can't** answer that. I **don't** know whether -- she
10 **couldn't** have been no more than five minutes late, if
11 she **was** late.

12 Q How do you know that?

13 A Because she dropped him off, I'd say, five minutes to
14 eight or ten to eight.

15 Q How do you know that? How do you know what time she
16 dropped him off?

17 A **Because** I checked my watch.

18 Q You had your watch on that day?

19 A Right.

20 Q Were you working that day?

21 A I **don't** work. I'm retired on disability, I've been on
22 disability since 1988.

23 Q And if that Bronco had been coming in that neighborhood
24 on a regular basis for several years, you would have
25 probably seen it?

1 A I would have seen it.

2 Q When did you first realize that Mrs. **Finley** had been
3 shot?

4 A I guess around -- I didn't realize she had been shot
5 because, what they said when they came out and I asked
6 what happened, they said she had fell and hurt her
7 head. Now, it was three to five days when I found she
8 had been shot, after **the** incident.

9 Q That was before Mr. Jordan and Mr. Smith came back to
10 talk to you, right?

11 A Yes.

12 Q And you **don't** recall whether or not the Bronco you saw
13 was in the medium when you came back?

14 A **No.**

15 Q Do you remember whether any vehicles were in the medium
16 when you came back?

17 A The two **Pontiacs** were still there.

18 Q Were there two Pontiacs there when the police arrived?

19 A I **can't** recall that. I **didn't** pay that no mind.

20 Q Well, you were looking down there, **weren't** you?

21 A Well, it was so many people there and so **much**
22 **commotion**, I didn't pay two cars no mind. I was
23 concerned about what was going on at the residence.

24 Q Were there any cars in the medium at that time?

25 A It **was** so many cars there, I **don't** know whether it was

1 any in the median. Most of them **was** parked some of
2 everywhere, in the circle, in the median and some
3 everywhere.

4 Q And those two cars that were parked in the medium and
5 those people that were working there, they were very
6 close **to** the **Finley** driveway, weren't they?

7 A Yes.

8 Q I want to ask you one more time, Mr. Rogers; did you
9 tell **Ryan** Russell when you talked to him during his
10 interview that you seen an old car and a brown Bronco?

11 A No, I **didn't** tell him that.

12 MR. NIXON: Judge, **that's** all I have at this time.

13 I would like to be able to recall the
14 witness.

15 THE COURT: Certainly.

16 MR. NIXON: Thank you.

17 MR. JORDAN: Judge, at this time we need a side
18 bar, too.

19 THE COURT: certainly.

20 (Whereupon, an **off** the record bench
21 conference
22 occurred.)

23 THE COURT: Do **y'all** need this man any more right
24 now?

25 MR. JORDAN: Yeah, I do, redirect.

1 THE COURT: Go ahead.

2 MR. JORDAN: It's just gonna take me a second to
3 review.

4 (Pause.)

5 MR. NIXON: While he's doing that, can I ask this
6 witness just two more questions?

7 THE COURT: The answer is yes.

8 MR. NIXON: Thank you.

9 THE COURT: I wish y'all would do something. This
10 silence --

11 BY MR. NIXON:

12 Q Mr. Rogers --

13 THE COURT: I didn't like hurrying up and waiting
14 in the Amy, and I don't like it here.

15 Q Just so I won't misrepresent anything --

16 MR. NIXON: May I approach the witness. Judge?

17 Q Is -- I'm going to ask you to read that and tell us if
18 you meant -- well, if you will, read that, please.

19 When it is "That's when I told him I seen a Bronco
20 and it was a Grand Prix, and Tyrone had another Grand
21 Prix, did you mean in that that there were two Grand
22 Prixs?

23 A That's the two cars.

24 Q So when you said that in this statement earlier when
25 you were talking about an old Grand Prix and a Bronco

1' and an old Grand Prix and a Bronco (sic), at the end of
2 the statement when you said, "I seen a Bronco and it
3 was a Grand Prix and Tyrone had another Grand Prix,"
4 did you mean that there were two Grand Prixes?

5 A There were two Grand Prixes, and they were taking the
6 parts off.

7 Q Okay.

8 A Taking one off of one Grand Prix and putting the parts
9 on the other Grand Prix.

10 Q All right. I didn't want to misrepresent anything. So
11 that's what that sentence meant?

12 A That's what that meant.

13 Q Now, did you tell him that --

14 A So I did have two cars.

15 Q Yes, sir. If you will, read that and see if it
16 refreshes your memory of the location of the cars.

17 A Yeah, in the median, in the yard. The second car was
18 in the yard. He had bought a car from Clara Malone,
19 another Grand Prix. He had three of them there.

20 Q Did you tell him that you were trying to remember was
21 it in the median or in the yard? You can't remember
22 it's been so long ago?

23 A I may have.

24 Q Okay. At that point in time, you didn't remember
25 whether the cars were in the medium or the yard?

1' A I told him two was by the telegram post in the center.
2 The brown one and the other one -- I **was** trying to
3 remember was the other car in the yard or behind the
4 fence. They have a fence there.

5 Q And you **don't** remember whether that other car --

6 A I **don't** remember whether it was sitting **in** the driveway
7 or behind the fence. They got a driveway, **and** then
8 **it's** a fence right behind the driveway, a high wooden
9 fence.

10 Q Okay. Just so we're sure, you saw three cars, but you
11 **don't** remember whether all three were in the medium or
12 whether two were in the medium and one was by the fence
13 in the driveway?

14 A Of his cars?

15 Q **Yes**, sir.

16 A It was two in the median, and I told him that one might
17 have been in the driveway or behind the fence.

18 Q A H right. You said one might have been in the
19 driveway?

20 A In the driveway.

21 Q What one might have been in the drive?

22 A The third car. He had three Grand **Prix**s. He bought
23 one from the Malones, and then he got one white one out
24 there that they was taking parts **off** of, a blue and
25 white one, putting on a plum colored convertible that

1 he had reconditioned and fixed up. He was taking some
2 parts off that. Three men was standing at the hood.
3 They had the hood up, and they was standing **in front** of
4 the hood **of** the car. How, as far as me seeing the
5 faces, no, but I knew it was three men there, and I
6 knew he was one of them.

7 Q But you said you **didn't** remember where one car was,
8 whether it was in the **medium** or the driveway; is that
9 right?

10 A No. You misunderstand what I'm saying. I said it was
11 two cars in the median. And he had a third car.

12 Q Oh, he had three Grand **Prizs**?

13 A Three. He had three. He had a third car. Now,
14 whether it was in the driveway or behind the fence, I
15 can't remember.

16 Q Did you see that third car?

17 A No. **That's** why I was telling him I can't remember
18 because -- whether it was in the driveway or behind the
19 fence. Some time he took them and put them behind the
20 fence, which was a wooden fence, I guess, about eight
21 feet tall -- six or eight feet tall.

22 Q So you didn't see that third Grand **Prix** that day?

23 A No, no, no.

24 Q So **you're** saying that the bottom line is you saw three
25 cars in the medium?

1 A In the median.

2 Q And it was two cars and a Bronco. **That's** what **you're**
3 saying?

4 A Yes.

5 Q And you're saying that he had three Grand **Prixs**, and
6 you **don't** know where the third Grand **Prix** was?

7 A Where the third Grand Prix was, whether it was in the
8 driveway or behind the fence.

9 Q Do you know what color that Grand **Prix** is?

10 A It was somewhat of a maroon and white. It had faded.
11 The paint was faded, but it was a white top with a
12 maroon body, if I **remember** right.

13 Q **That's** the one you didn't see there?

14 A **That's** the one I **didn't** see, yes.

15 Q And they all belong to Tyrone?

16 A Yes.

17 Q Now, this is a very important question. **Did** you see
18 any other car there at that time?

19 A **No.**

20 Q You're sure about that?

21 A KO.

22 Q Thank you.

23 REDIRECT EXAMINATION

24 BY MR. JORDAN:

25 Q **Emmet**, when Ryan Russell came out and talked to you,

1 how did he identify himself?

2 A ~~He told me~~ he was Ryan Russell, private detective., and
3 worked for Mike Finley.

4 Q Working for Mike Finley?

5 A That's what he told me.

6 Q And did he ask you to talk to him?

7 A Yes.

8 Q And Mike Finley is this woman's husband -- or was her
9 husband?

10 A Yes.

11 Q That Ryan Russell came to talk to you for?

12 A Yes.

13 Q Did he tell you that he was working for the guy that
14 drove the brown Bronco?

15 A No.

16 Q And did he ask you to talk to him?

17 A Talk to him?

18 Q Right.

19 A Yes.

20 Q Did you agree to talk to him?

21 A Yes.

22 Q Did you agree that he could tape record it?

23 A Yes.

24 Q Did he ever tell you that he would give you a copy of
25 the tape recording or the transcript?

- 1 A No.
- 2 Q Did you ever ask him for that.?
- 3 A No.
- 4 Q Did he ever bring it back to you?
- 5 A NO.
- 6 Q Have you ever had a chance to review this since the
7 time he took it or listen to the tape recording?
- 8 A NO.
- 9 Q Mr. Russell never came back and let you listen to it or
10 review this?
- 11 A No. Mr. Russell said -- that Monday when he came by
12 Mr. Willie **White's** house, we was cooking fish, he
13 identified himself, told me who he **was** working for, and
14 in about five to ten minutes later Mike drove by, Mike
15 **Finley** drove by. Him and Mike talked for a period of
16 time, and then he starts to talk to little Larry.
- 17 Q To little Larry, Pig?
- 18 A Right, Pig.
- 19 Q Did he tape record that or do you remember?
- 20 A I **don't** remember. I **don't** know whether he did or not.
21 And then he talked to me. After he finished talking to
22 me, I went to Clara, Clara **Malone**, and told her that
23 Ryan Russell was talking to Pig without an adult being
24 present, and it kind of made Clara **mad**, and at that
25 time she told Pig not to talk to anyone unless **they**

1 came to talk to her or her husband first.

2 Q And at that time -- So you did, in fact, tell Ryan
3 Russell about the two vehicles and the Bronco?

4 A Sure, I did.

5 Q In this statement.

6 A Sure, I did.

7 Q So **we're** clear, and **that's** what Mr. **Nixon** just cleared
8 up with you.

9 A Yes.

10 Q And when Mr. **Nixon** was first asking you those
11 questions, you said **you** did tell him, and, in fact, you
12 did tell him?

13 A I did tell him.

14 Q Because it's right here.

15 A **It's** there.

16 Q I mean, you **haven't** seen **this**.

17 A No, but it's there.

18 Q **It's** right; here on page 12 of the transcript.

19 A Yes.

20 Q You haven't seen it, but -- Now, this fish fry, **is**
21 this something that is something real formal, or is it
22 like something that is done once in a blue moon and
23 **it's** something that --

24 A Well, we've got a neighborhood thing where we meet at
25 Mr. Willie **White's** house on Monday, generally, and we

1 cook, not only fish, we just have a -- it's just the
2 guys in the neighborhood.

3 Q What else do you cook?

4 A Maybe chicken, fish, just whatever we think of, steaks,
5 whatever we feel like we want to eat that day. We all
6 put up -- pool money together.

7 Q And is this just people from the neighborhood come over
8 there?

9 A Yes.

10 Q It's done on a frequent basis?

11 A On a frequent basis, on Mondays.

12 Q Now, when you first came out there, your sister was
13 running late and you saw the Bronco and what you
14 described as the other two vehicles. At the time you
15 saw the Bronco, it was parked -- it was not actually in
16 the **Finley** driveway at that time, was it?

17 A NO.

18 Q Now, when you returned from the Spur Station, you told
19 Mr. **Nixon** you weren't paying attention to the vehicles
20 at that time.

21 A No.

22 Q So you **don't** know what was there or where they were or
23 anything at that time.

24 A Right.

25 Q At the time this **didn't** seem important to you, did it?

1 A No.

2 Q I mean, **you** had no idea what might be happening down at
3 the **Finley** residence, did you?

4 A None whatsoever.

5 Q So you see the **brown** Bronco, you see some other cars.
6 Did you go up and inspect the brown Bronco?

7 A NO.

8 Q Did you go up and check what it might have on the
9 windows?

10 A No.

11 Q Did you go up to check who might have been driving it?

12 A No.

13 Q Where is **your** mailbox located?

14 A **My** mailbox is **located** on the front porch.

15 Q Okay.

16 A It sits right on the side of the house. **I've** got a
17 small front porch. The mail box sits right **on** the
18 front of the house.

19 Q And from that location, can you see the **Finley**
20 residence?

21 A Sure.

22 Q And could you see the paramedics and police vehicles?

23 A Sure.

24 Q At that time, did you go down **and** inspect what may have
25 been going on?

1 A No, I never did leave out of my yard. I went to my
2 fence.

3 Q Now, Mr. Nixon asked you about the incident where Mike
4 Finley came over to your house that very same day, and
5 tell us what happened.

6 A He came to Toy house that day about, I guess it was 12
7 or thereafter, somewhere in that area, and knocked on
8 my back door.

9 Q This is after you see the brown Bronco in the morning?

10 A Yeah.

11 Q This is after you'd been to the mailbox?

12 A Right.

13 Q After you've seen the paramedics?

14 A The paramedics.

15 Q Then Mike Finley shows up where?

16 A He shows up at my back door.

17 Q Your back door?

18 A Right, sitting on my steps loading a shotgun. He got a
19 box of shells and a shotgun. He said, I heard that you
20 seen "something. I said, Mike, the only thing I seen"
21 down there was two cars and a Bronco.

22 Q You told Mike Finley about the Bronco?

23 A Yes. When I told him about the Bronco, he said, I've
24 got an idea of what's going on. I asked him to give me
25 the shotgun. He said no. He said, I got to take care

1 of this. He left out of my driveway running, got in
2 Valerie's car.

3 Q Vow, describe Valerie's car to us.

4 A As far as I can remember, the best -- okay. I thought
5 it was blue.

6 Q Did you ever inspect that car?

7 A NO.

8 Q Did you ever go determine what kind of car it was?

9 A No.

10 Q Whether it was a Ford or Chevy?

11 A No, didn't interest me.

12 Q And the best color to you, is what color?

13 A It was some sort of blue.

14 Q Any color on your shirt that might be similar to it?

15 A Maybe this color here or maybe a little darker.

16 Q And you call that blue?

17 A Yeah, to me it's blue. But, like I say, the car never
18 interest me or never fazed me.

19 Q Where was that car parked when Mike Finley jumped into
20 it?

21 A In the driveway.

22 Q In whose driveway?

23 A In his driveway.

24 Q In Mike Finley's driveway of his house?

25 A Yes.

1 Q And you saw him drive off?

2 A Yeah, because I walked to the front.

3 Q Now, at some point in time, did Lebarron Smith come and
4 talk to you soon after that?

5 A Yeah.

6 Q And sometimes I would come out with Lebarron?

7 A with him.

8 Q And did you tell **Lebarron** smith about the brown Bronco
9 being there that morning?

10 A Yes.

11 Q The morning that **Valerie** was shot?

12 A Yes.

13 Q Now, to this day, do you know how significant that is
14 or why **it's** important?

15 A I never -- at that time I didn't -- you know.

16 Q I mean, you just **saw** something and you told the police?

17 A Right. I thought they was just out there working on
18 cars because, like I said, the lapse of time from, **I'll**
19 say ten minutes to eight, five minutes to eight I
20 looked down there, and from the time I went to the Spur
21 Station and back it would take about, **I'd** say, eight to
22 ten minutes to walk up there and back or maybe a little
23 more, and that was it until about 11:30 or something to
24 12 when I came out and all the commotion was going on.
25 So, not knowing --

1 Q You **didn't** have any idea what was going on?

2 A No.

3 Q And you **weren't** investigating this case.

4 A No.

5 Q You **weren't** the detective, obviously.

6 A No.

7 Q Now, on Tuesday you said you saw the **same** Bronco in the
8 neighborhood.

9 A One **of** the same description.

10 Q And what was it doing?

11 A That Tuesday evening **my** wife and then, that church, had
12 a concession stand down at the **Mardi Gras**, the Fat
13 Tuesday. I told her, I said, I'm going home and turn
14 some lights on. I left to come home and turn some
15 lights on that Tuesday. Larry **Malone** was sitting on
16 his porch.

17 Q Now, that's **gonna** be -- is this the **Malone** house?

18 A Yeah.

19 Q So **that's** where you were actually sitting?

20 A Right, on his front steps. He was sitting on his front
21 steps.

22 Q Okay. I walked over there, and I said, you seen Mike,
23 because I wanted to know how Valerie was doing. **Ha**
24 said, yeah, he in the house. When he came out --

25 Q When who came out?

1 A When Mike came out, I said, Mike, how --

2 Q Out of whose house?

3 A Came out of Malone's house over here. That's the
4 Malone's. When he came out, me and Mr. Malone were
5 sitting at the steps, I said, Mike, how is Valerie
6 doing. He said, okay, and kept going. By the time he
7 said that, a Bronco fitting the same description I seen
8 drove up.

9 Q Drove up right here?

10 A Right in front of my house, stopped on the side of --
11 right by my house.

12 Q Right over here?

13 A Right past my driveway. Mike got in. Then went out,
14 around the circle and on out. It's a short street
15 between 45 and the circle. It's a short street. It
16 has no name. It goes from Meadow to Nova. They
17 stopped there, backed up, turned around, came back. He
18 got his shotgun, got back in the Bronco and left.

19 THE COURT: Mr. Rogers, it's not your fault, but
20 isn't this the third time you've told us
21 this, Monday and Tuesday, and you're getting
22 ready to ask about Wednesday. Isn't this the
23 third time you've told us this?

24 THE WITNESS: Yes, sir.

25 MR. JORDAN: Let me just see if I need to ask

anything else, Judge.

THE COURT: We **don't** need it a fourth time.

Q When Mr. **Nixon** asked if you had ever seen the Bronco before, you replied that **you'd** probably seen it but **you** never paid attention to it. What do you mean by that?

A No, I said, I probably, if I seen it, I **didn't** pay it no attention, because, see, things like that **don't** interest me. I mind my own business.

Q So you could have seen it before in the neighborhood, but --

A If I did, I didn't pay it no attention, like I said. I mind my own business. I'm a person to myself, and I'm not that friendly a person. I stay to myself and, you know. The neighborhood, really -- the only people that I really deal with in the neighborhood is people that I've been knowing all my life, like the **Malones**. I know Larry. I've been knowing Larry **from** a boy.

Q Big daddy Larry?

A Yeah, the senior. But the other people I didn't know, so I **didn't** mix too well with them, because I had only been in the neighborhood at that time about four years. I came from what they call the other side of the tracks, which I've been in whistler all my life. I used to live on the north side of it before I got married. At that time, I had only been married --

1 well, **that** August would have been four years, so I
2 **didn't** know too many people. The only people I really
3 knew closely was the Malones.

4 Q Did you really know the **Finleys** at all?

5 A No more than my wife told me that she had taught
6 Valerie in school. My wife is a school teacher, and
7 she told me that she had taught Valerie in school.
8 Now, my wife might have knew her better than I know
9 her. But as far as me knowing **them** personally, no, no
10 more than that: they were neighbors.

11 Q So, really, the only people you would have socialized
12 there with would have been the Malones?

13 A On a daily basis would have been the Malones because,
14 like I say, I knew Larry, **Sr.**, from the time he was,
15 you know, that small, all his life.

16 MR. JORDAN: Thank you, Your Honor.

17 MR. NIXON: Just briefly, Judge.

18 RE CROSS EXAMINATION

19 BY MR. NIXON:

20 Q Mr. Rogers.

21 A Yes.

22 Q Did you say that when you were at that fish fry, that
23 Larry **Malone, Jr.** was there and you saw him talk to
24 Ryan Russell?

25 A Yes.

1 Q You're sure about that?

2 A Sure, I'm sure.

3 Q So if Larry said that that never happened, he would be

4 --

5 MR. JORDAN: Judge, I object to referring to
6 another witness with this witness.

7 THE COURT: Overruled.

8 Q Is that right? If Larry, Jr. said that that never
9 happened, that he never talked to Ryan Russell at a
10 fish fry or he never went to that fish fry, he would
11 not be correct, would he?

12 A No, he wouldn't.

13 Q Because you saw him and you're sure you saw him?

14 A Yes.

15 Q And you saw him talk to Mr. Russell?

16 A Yes.

17 Q Now, I understand that you had no reason to look
18 carefully at the Bronco, and, in fact, you didn't look
19 carefully that morning, did you?

20 A No.

21 Q You were concentrating on waiting on your sister?

22 A Yes.

23 Q And you just glanced down there and saw the Bronco?

24 A Right.

25 Q Did you see the back of the Bronco?

1 A Like I said, I **didn't** pay no marks or no whatever no
2 mind. I know that I seen a Bronco.

3 Q Okay. You **dn't** have any recollection of seeing the
4 back or the front or --

5 A No. The back, I seen it from the back. The back was
6 facing my driveway. If I looked out of my driveway and
7 looked down, the only thing I could see is the back and
8 the passenger's side.

9 Q And you could tell it was a Bronco looking at the back?

10 A Yes, sure.

11 Q Okay.

12 A Now, what it had **on it** and all, I **can't** say because I
13 didn't pay it no attention.

14 Q Approximately how far away from **that** Bronco were you,
15 Mr. Rogers? And **let's** use the back of the courtroom as
16 a reference guide.

17 A No, **it's** not that --

18 Q Not that far?

19 A No. It's more -- I'd say about five benches behind
20 you, somewhere in that. area.

21 Q About the middle of the benches?

22 A Yeah, my driveway to theirs.

23 Q Did you notice anything on the -- Did you notice
24 whether there was a rack or anything on the back of the
25 truck?

1 A So, like I said before, and I'll say it again, I **didn't**
2 pay **nothing** that close attention because at the time I
3 had no feeling that anything was going on or anything
4 was happening, so I **didn't** pay it that close, whether
5 it had a rack on it, whether it had a spare tire on it
6 or anything of that nature. I **don't** remember.

7 Q So you **can't** tell us if it had a rack for a spare tire?

8 A No, I **couldn't** answer that.

9 Q You **can't** tell us whether it had any stickers on the
10 front or the back, correct?

11 A **No**, I **can't**.

12 Q Do you know whether -- Can you tell us whether it was
13 two-tone or one color?

14 A It was a chocolate-looking brown, one color; One color.

15 Q Okay. And **that's** all you can remember?

16 A **That's** all I can tell about it.

17 Q Now, are you assuming that that was the same Bronco you
18 saw the next day and the next day?

19 A Yes.

20 Q And you **can't** be positive about that, can you? **You're**
21 just making that assumption because you looked at it
22 clearly on the second day.

23 A **That's** an assumption that it was the same one that I
24 seen the day before.

25 Q Okay. So **you're** just assuming it was the same one?

1 A Yeah.

2 Q And you saw that one the next day, three days, or two
3 days in a row, right?

4 A Yes.

5 Q And that was before you talked to Mr. Jordan and Mr.
6 smith?

7 A Yes.

8 Q And you got a good look at it the second day and the
9 third day?

10 A I seen it. I didn't pay it much attention then because
11 at that time, like I say, it **wasn't** told to me that
12 they had a suspect or anything. I **don't** remember ever
13 being told, until way later, that they had a suspect.

14 Q I understand, Mr. Rogers. Just to summarize your
15 testimony, you **didn't** look clearly at it the day on
16 March 2nd --

17 MR. JORDAN: Judge, this is fairly cumulative.

18 I --

19 THE COURT: Yeah, this is about the third time
20 we've heard this, too. Go ahead.

21 Q You didn't look clearly at it that day because you had
22 no reason to, March the 2nd.

23 A Right.

24 Q And you're assuming that it was the same Bronco that
25 you did see clearly on Tuesday and Wednesday?

1 A Yes.

2 Q Okay. Thank you.

3 MR. JORDAN: Thank you, Mr. Rogers.

4 THE WITNESS: Are they through altogether?

5 THE COURT: They're through altogether.

6 THE WITNESS: I mean, do I need to stay around?

7 THE COURT: No. You can go.

8 THE WITNESS: Thank you.

9 THE COURT: You know, one thing they didn't ask
10 you; who does the cooking out. there?

11 THE WITNESS; I do most of it.

12 THE COURT; Okay. Let's take about ten minutes.

13 (Recess.)

14 (Jury not present.)

15 MR. JORDAN: Judge, at some point I'm going to
16 call Michael Finley to the stand. He is a
17 hostile witness. He is biased against, his
18 wife. They are currently involved in a,
19 fairly bitter --

20 THE COURT: If you're asking me can you lead him
21 as a hostile witness, I've already heard that
22 they're divorced.

23 MR. JORDAN: They're divorced, but they're still
24 involved in a very serious child custody
25 situation where he is attempting to take,

1> custody away from his wife, et cetera.

2 MR. NIXON: I think it's just the opposite, Judge.
3 He has custody, but they reset it until **after**
4 this trial to make it permanent.

5 THE COURT: He has custody?

6 MR. NIXON: Yes, sir.

7 THE COURT: How did he get custody?

8 MR. NIXON: He got custody through the divorce
9 with Judge Kennedy, temporary custody, and
10 the case has been continued for making it
11 permanent custody until after this case is
12 over with.

13 MR. JORDAN: Which basically means that custody
14 has not been determined yet. He is
15 reluctant. He was supposed to be down here
16 yesterday. He **didn't** come down at all.

17 THE COURT: If you want to know whether you can
18 lead him, **the** answer is yes.

19 MR. NIXON: Judge, for the record, I would object
20 to that.

21 THE COURT: Certainly. Bring them in.

22 MR. NIXON: He didn't come down here yesterday
23 because I had him on call because Mr. Jordan
24 **hadn't** subpoenaed him.

25 (Jury present.)

1 MR. JORDAN: We call Eddie Ragland to the stand.
2 Eddie.

3 EDDIE RAGLAND

4 was sworn and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. JORDAN:

7 Q Tell us your name for the record, please.

8 A Sergeant Eddie Ragland.

9 Q And, Sergeant, who do you work for?

10 A Prichard Police Department.

11 Q And what department do you work in?

12 A I'm presently in the patrol division of Prichard Police
13 Department as of April of last year.

14 Q Back on March the 2nd of 1992, where were you working
15 at that time?

16 A I was working in the identification division of
17 Prichard Police Department.

18 Q And there was an incident that occurred at 1736 Meadow
19 Avenue on March the 2nd, which would have been a
20 Monday, of 1992. Did you go to the house on that
21 Monday, March the 2nd?

22 A No, I did not.

23 Q And do you know the reason why you were not called out
24 there at that time?

25 A As I recall, it was put out as a home accident.

1 Q Okay. So there **was** no necessity for I.D. for a home
2 accident?

3 A No, it was not.

4 Q Subsequently, were you called out to go to that scene
5 for the first-time'?

6 A Yes, sir. I believe that was on a Wednesday, two-days
7 later.

8 Q Okay. And when you arrived at the scene, who was
9 present there?

10 A The husband.

11 Q Mike **Finley**?

12 A Yes.

13 Q And what did you do at that time?

14 A I looked over the interior of the house and began
15 talking to him for a few minutes. Information was
16 obtained that there was guns missing. I began to
17 question him in reference to the guns, did he have
18 serial numbers for identification purposes, and he said
19 on this particular date, Wednesday, that he had gotten
20 the guns back, and I began to question him how he got
21 the guns back. He said he had found them in the woods.
22 I got him to go with me. We went around to a location
23 of **Antoine** Street between Wolf Ridge Road and 1-65
24 Service **Road and located a woody area.** The guns **were**
25 not there, but he showed me a general location of where

1 he had found them.

2 I questioned him as to how he knew the guns were
3 there. He said somebody had told him that the guns
4 were there, that he could get them.

5 Q Did he identify that person to you?

6 A No.

7 Q And what did you do while you were out there in the
8 woods?

9 A I got my camera equipment out of the car, took several
10 photographs showing the street location from two
11 different angles and also the wooded area and --

12 Q I'm sorry. Let me interrupt you just briefly and show
13 you **State's** Exhibits Four, Five, Six, Seven and Eight
14 and ask you if you can identify those photographs.

15 A Yes, I can.

16 Q And do those pictures fairly and accurately depict the
17 location that Mike **Finley** took you to where he told you
18 he had recovered the stolen guns?

19 A Yes, sir, it is.

20 MR. JORDAN: We move to introduce those at this
21 time.

22 THE COURT: It's introduced.

23 (State's Exhibits Four, Five, Six, Seven
24 and Eight admitted in evidence.)

25 MR. JORDAN: May I publish those, **Your** Honor?

THE COURT: Sure.

Q Now I show you what has already been introduced into evidence as State's 15, 11, 13, 14, 12, 10, 9, 28, 36, 35, 27, 33 and 32. Are "those photographs that you took there at the scene of the residence on Wednesday?

A Yes.

Q I want to show you some additional photographs that have not been introduced yet. **State's** Exhibit Number 26 and 37. Can you identify those, please?

A **Yes.** State's Exhibit Number 26 is a picture of a gun vault that was located in the hallway of the house. State's Exhibit Number 37 is a cardboard box on a bed, I believe it is, with the blood pattern that's on the bed.

Q Did you, in fact, take both of those pictures?

A Yes, I did.

Q Did they fairly and accurately depict the scene of the residence on that Wednesday when you took the photographs?

A Yes, it does.

MR. JORDAN: I move to introduce those at this time.

THE COURT: Sure.

(**State's** Exhibits 26 and 37
admitted in evidence.)

1 Q I show you what has been marked as State's Exhibit
2 Numbers 25 and Number Two. Can you identify those?

3 A State's Exhibit Two and 25 are the kitchen area.
4 Located in this area is a green facial mask and a pair
5 of gloves.

6 Q Now, how did you come about taking that photograph?

7 A When we go to serious crime scenes, I do a general
8 search of the entire house.

9 Q Now, this was on Wednesday, right?

10 A Yes.

11 Q Michael Finley is there with you at the house?

12 A Yes.

13 Q Okay. Were those items laid out like that when you
14 took the photographs?

15 A Yes.

16 Q Did you recover those items?

17 A I do not recall right now.

18 Q Did you have anything to do with those items?

19 A I do not recall that right now.

20 Q Who would have placed them there on the counter like
21 that, or would they have already been there when you
22 got there?

23 A They were there prior to my arrival.

24 Q You didn't recover any items of evidence from the
25 woods, did you?

MR. NIXON: Judge, he answered that question. Oh,
excuse me. I withdraw the objection.

Q Did you recover any items of evidence from the woods?

A No, I did not.

Q Did you recover the guns that were stolen in this case?

A No, I did not.

Q Did you recover the pillowcase that was stolen in this case?

A No, I did not.

Q Did you recover the items that were with the guns in the pillowcase when these were recovered from wherever they were recovered from?

A No, I did not.

Q Does this picture fairly and accurately depict the scene, though, the picture of the kitchen that you took at this time?

A Yes, it does.

MR. JORDAN: We move to introduce State's Exhibit 25 and Two.

THE COURT: They're introduced.

(State's Exhibits Two and 25 admitted in evidence.)

Q Now, did you attempt, to lift fingerprints from that house?

A Yes. I processed the gun safe and area for latent

1 fingerprints.

2 Q You say you processed it. What do you mean?

3 A Our identification way of doing this is to take black
4 carbide type powder, put it on a phototype dust or
5 spread it on a hard metal surface, glass or wherever to
6 attempt to lift -- to indicate that there is latent
7 prints there. If we do locate any latent prints, we
8 then go through a process **of** using lifting tape to lift
9 the latent prints up and transfer it to an index card,
10 thereby preserving the latent prints.

11 Q So you actually went to the house and you took out your
12 black powder and dusted around the house. Is that what
13 **you're** telling us?

14 A Yes, I did.

15 Q And did you attempt to lift any prints?

16 A Yes, I did.

17 Q So you actually took **some** tape, stuck it on a surface,
18 peeled it off?

19 A Yes, I did.

20 Q And were you able to find any fingerprints of any value
21 to you?

22 A No, I did not.

23 Q Okay. What did you find?

24 A **Several smudges but no latent print value to it.**

25 Q So no prints with enough detail to where you could make

1 any kind of identification?

2 A No.

3 Q You could not tell us whether or not Rene **Whitecloud's**
4 fingerprints were on that safe or not, could you?

5 A No, I could not.

6 Q You could not tell us whether or not Rodney **Stanberry's**
7 fingerprints were on that safe or not, could you?

8 A No, I could not.

9 Q You **can't** even tell us if Mike **Finley's** fingerprints
10 were on that; safe or not, can you?

11 A Ho, I could not.

12 Q or Valerie **Finley**?

13 A No, I could not.

14 Q Or any of the children?

15 A No.

16 Q **That's** all I have at this time- If you would, answer
17 Mr. **Nixon's** questions.

18 CROSS EXAMINATION

19 BY MR. NIXON:

20 Q Sergeant **Ragland**, you were the identification officer
21 on that day on March the **2nd**, and it was your duty to -
22 - well, tell us what the duties of an identification
23 officer are, please.

24 A Collect and preserve evidence of various crime scenes,
25 to photograph various crime scenes and to do a general

1 search of the area to look for any physical evidence
2 that could be helpful in relation to the prosecution of
3 the case.

4 Q And **you've** been a police officer **for** how long?

5 A Fourteen and a half years.

6 Q And is it your experience as a police officer that
7 generally a uniformed officer arrives on the scene
8 first, and if **it's** a serious crime or appears to be, he
9 calls a detective, and the detective calls an
10 identification officer, if necessary? Is that the
11 general chain of the way it works?

12 A Yes, in normal procedure.

13 Q Now, in this case, this event occurred on March the
14 **2nd**, which was on a Monday. You said on direct
15 examination that you **didn't** go out there on Monday; **is**
16 that right?

17 A **That's** correct.

18 Q You were not called out there Monday?

19 A **No.**

20 Q And all these photographs that you identified, the ones
21 that were previously admitted into evidence and the
22 ones that have just been -- that you identified and
23 admitted into evidence were taken by you; is that not
24 correct?

25 A That is correct.

1 Q And they were taken by you on Wednesday?

2 A Correct.

3 Q And who was with you on Wednesday when you went out
4 there to take these photographs?

5 A If I recall correctly, I was by myself.

6 Q Nobody was with you?

7 A No.

8 Q And the only people there were you and Mike Finley when
9 you "took these photographs?

10 A Yes.

11 Q And did you ever go back out there any more at any
12 other time to take photographs or gather evidence?

13 A No.

14 Q You only went there one time? And were you called to
15 that scene on that Wednesday by someone else?

16 A Yes, sir. I was advised by a detective I was needed
17 out there.

18 Q Do you recall what detective asked you to go out there?

19 A I believe it was Lieutenant Smith.

20 Q Okay. Now, if Detective -- You know Captain Dees,
21 correct?

22 A Yes, I do.

23 Q So if Captain Dees said that he called you out there
24 Monday -- .

25 MR. JORDAN; Object. This wasn't said. There

1 wasn't testimony to that, and it's an
2 improper question. I object to the form.

3 MR. NIXON: I haven't finished yet.

4 THE COURT: I haven't heard it yet.

5 Q If Captain Dees said that you were out there Monday and
6 took those photographs in his presence, he would be
7 incorrect, wouldn't he?

8 MR. JORDAN: Judge, I object to the form of the
9 question. That was not said.

10 MR. NIXON: Judge --

11 THE COURT: I can assure you the jury remembers
12 what was said, but I'll overrule the
13 objection and he may answer it.

14 Q That wouldn't be right, would it?

15 A Would you repeat your question, please, sir?

16 A If Captain Dees said that he was on the scene Monday,
17 the day this occurred, and that you were called out and
18 you took some photographs in his presence on March the
19 2nd, he would have been mistaken, wouldn't he?

20 A I don't know.

21 Q Well, you know you didn't go out there Monday.

22 A No, I went out there on Wednesday.

23 Q Correct. So if somebody, Captain Dees or anybody else,
24 said you went out there Monday and took photographs,
25 that wouldn't be correct, would it?

1 A Mot that I recall.

2 Q And ~~if he identified~~ these photos as being taken by you
3 in his presence, that ~~wouldn't~~ be correct, would it?

4 A I ~~don't~~ -- I testify that I went out there on Wednesday
5 and took photographs.

6 Q Right. And what I'm asking you is if Captain Dees had
7 testified that some of these photographs you took were
8 taken in his presence --

9 MR. JORDAN: Judge, again, referring to prior
10 testimony. I object to the form of the
11 question. I think ~~that's~~ improper cross
12 examination.

13 THE COURT: And for the third time I overrule your
14 objection, and ~~it's~~ not improper.

15 MR. JORDAN: Thank you.

16 Q That ~~wouldn't~~ be right, would it, Corporal Ragland?
17 Sergeant Ragland, I'm sorry.

18 A What was your question?

19 A If Captain Dees got on the witness stand and testified
20 that it was his recollection that you were out there on
21 the day this happened, ~~that~~ you took photographs in his
22 presence, that would not be true, would it?

23 A I recall going out there on Wednesday and taking
24 photographs, not on Monday.

25 Q And he ~~wasn't~~ there Wednesday either, was he, Captain

1 Dees?

2 A I do not recall.

3 Q It was only you and Mike **Finley**, right?

4 A **That's** correct.

5 Q Now, at the time you went Wednesday when you were
6 contacted by the detective, you knew that, or you had
7 been informed that it was a -- or that a crime had
8 occurred there, a serious crime occurred there; is that.
9 right?

10 A Yes, instead of a home accident.

11 Q Yes, sir. And did you know that Mrs. **Finley** had been
12 shot at that time? Did they tell you that she had been
13 shot?

14 A I had found out through another officer that a shooting
15 had occurred, but **that's** all I knew.

16 Q You knew that there had been a burglary and a shooting
17 there at that house on Monday when you went out
18 Wednesday, **didn't** you?

19 A Only thing I knew is someone had been shot when I went
20 out Wednesday.

21 Q And that was your purpose, to go out there and take
22 photographs and gather evidence?

23 A Yes, sir.

24 Q Okay. Now, you said it was part **of** your duties to
25 search the house. Did you search the house?

1 A Just random or just general walking through looking to
2 see what could be seen in plain visible sight.

3 Q You **didn't** do a detailed search, did you?

4 A No, I did not.

5 Q And you said that Mike **Finley** told you that he had
6 recovered the guns and he told you what kind of guns
7 were recovered, **didn't** he?

8 A What I recall, he said that he had recovered his guns.
9 The general conversation, I asked him where did he get
10 his guns from, and he said he got them from a wooded
11 area. And at that point I asked him to go with me and
12 show me the exact, location of where he recovered these
13 guns.

14 Q And y-all went out there?

15 A Yes, we went to that location on **Antoine** between Wolf
16 Ridge and 1-65 Service Road.

17 Q Now, did you have a list **of** the guns that were taken?

18 A **No**, I did not.

19 Q Did you ask him to give you a list of the guns that
20 were taken?

21 A No, I did not. He just said that he had gotten his
22 guns back.

23 Q Did he show you the guns?

24 A **No**. I **didn't** ask to see then.

25 Q Did he tell you that they were in a -- recovered in a

1 pillowcase?

2 A He made mention of a pillowcase but not any description
3 or anything like that.

4 Q He told you that the guns were found in a pillowcase,
5 didn't he?

6 A Yes.

7 Q Okay. And he told you that there was a stun gun in
8 there, too, **didn't** he? Do you recall that?

9 A I don't recall a stun gun. I just remember some hand
10 guns were involved.

11 Q Okay. Now, you took a picture of the mask and the
12 gloves. Do you recall Mike **Finley** telling you that the
13 mask and the gloves were recovered in the bag with the
14 guns?

15 A No, I do not.

16 Q Okay. Well, you **don't** recall Mike **Finley** telling you
17 **that** the mask that you took a picture **of** and "those
18 gloves had been recovered with the guns?

19 A Those were on the counter when I got to the house, and
20 I took pictures of those on the counter.

21 Q You **don't** remember what anybody told you about the mask
22 and the gloves?

23 A No, I do not.

24 Q And why did you **take** pictures of then?

25 A Pictures of what?

1 Q Of the mask **and** the glove.

2 A I did.

3 Q I know. I said why did you.

4 A Because they were in the kitchen area on the counter.

5 Q **Did** you call Mike **Finley** before you cane out there and
6 tell him you were coming?

7 A No. I just went on out there to see if somebody was
8 home.

9 Q You were in uniform?

10 A Yes, I was.

11 Q Mike let you in and let you look around?

12 A Yes. I told him -- identified myself as the
13 identification officer of **Prichard** Police Department.

14 Q You **didn't** take those gloves and mask, did you?

15 A No. I **don't** recall that I did.

16 Q Do you recall whether you did or not?

17 A No, I **don't**.

18 Q You **may** have taken them?

19 A I **don't** recall right now.

20 Q What did **you** take from that crime scene when you left?

21 A I processed it for latent prints and took what lifts I
22 lifted to examine them later **on** at the office. There
23 were no latent prints of value.

24 Q **What** did you take from the scene other than
25 fingerprints? Do you remember? If you **don't** remember,

1' that's fine.

2 A Just other than my photography equipment.

3 Q You **don't** recall whether you took the gloves and the
4 mask with you?

5 A **No**, I do not recall that I took them at this present
6 time.

7 Q You could have? You may have; you may not have?

8 A I do not recall that at this present time if I did or
9 not.

10 Q Did you take any sheets or pillowcases or anything that
11 you recall, or is it just you **don't** remember?

12 A I do not remember at this time.

13 Q You say you fingerprinted the whole house, the drawers?

14 ~~Did you fingerprint the drawers?~~

15 A I checked things that were out of place in the bedroom
16 area. I checked mainly the gun **safe** area because it
17 appeared to me that there were gun items missing.

18 Q Okay. Did you fingerprint, the back door?

19 A I went to the kitchen area and checked something in the
20 kitchen area. There was a counter area, possibly the
21 back door, too.

22 Q You **don't** recall?

23 A I **don't** recall everything in exact detail.

24 Q Do you recall whether you checked the front door for
25 fingerprints?

1 A I checked it, partially, but there had been so much
2 traffic in and out of the door that I didn't figure
3 there would be no print, value.

4 Q Did you check the microwave or the television for
5 fingerprints?

6 A No, I did not.

7 Q Did you check any keys for fingerprints?

8 A Any what?

9 Q Any keys.

10 A No.

11 Q Have you ever seen a key ring or a set of keys? Has
12 the I.D. officer at Prichard ever showed you any keys
13 that were connected with this case?

14 A No, I have not.

15 Q How about a purse? Did you ever fingerprint a purse?

16 A No, I didn't.

17 Q And you say you got smudges but no prints?

18 A No latent value of prints.

19 Q And latent value of prints means identifiable prints?

20 A Yes, containing rich characteristics.

21 Q And you didn't recover any hair samples, did you?

22 A No, I did not.

23 Q Did you do any search for hair?

24 A No, I did not.

25 Q ~~Did you ever look in the mask to see if there were any~~

1 ~~hair samples~~ in the mask that you took the photograph
2 of?

3 A No, I did not.

4 Q You routinely on serious crimes, when you go out and
5 investigate and gather evidence, you would gather hair,
6 if it was in a mask, for example, and you thought the
7 mask had been used in the crime?

8 A I would preserve the evidence and send it in to Alabama
9 Department of Forensic Science.

10 Q And they do the test?

11 A **They'll** do -- they have a hair specialist. I'm not
12 qualified in that category.

13 Q I know **you're** not an expert in it, but **you're** familiar
14 that they can run a DNA test on hair samples and tell
15 who it came from, aren't, you?

16 A They can do a comparison **test**, yes.

17 Q And a comparison **test** is, if you have a Hair sample
18 that you find, they can take a sample of hair from
19 someone else and compare it and see if **it's** the same,
20 **can't** they?

21 A Yes, they can.

22 Q And you've done that, or **you've** had them do that for
23 you on many occasions, **haven't** you?

24 A Yes, upon request.

25 Q And **you're** telling us that there were no prints of --

1 you didn't even find any prints of Valerie or Mike
2 Finley?

3 A No. The areas all checked out, and the only things I
4 located were smudges, no print value and
5 characteristics.

6 Q Did you ever look at the guns when Mike Finley told you
7 he-had received his guns back?

8 A No, I did not.

9 Q And do you recall whether he showed them to you or not?

10 A No, I did not.

11 Q They were not in the gun cabinet?

12 A NO.

13 Q Do you know whether those guns that were stolen,
14 whether any police officer ever obtained those and
15 looked at them?

16 A According to his statement to me, that he recovered the
17 guns himself --

18 Q I know. I understand that. I mean, after he recovered
19 them, do you know whether any police officer took those
20 guns and inspected them?

21 A I have no knowledge of that.

22 Q If they had been printed, you wouldn't have been the
23 one that would have printed them; is that right?

24 A Yes, sir.

25 Q And no detective ever requested that you do that?

1 A No.

2 Q Did you ever receive a shell casing and a bullet in
3 connection with this case?

4 A No, I did not.

5 Q Have you been made aware that a shell casing and bullet
6 was recovered from that house?

7 A No.

8 Q You didn't do a detailed search of that house or the
9 rooms, did you? I **mean**, you said you walked through
10 and did a visual.

11 A Just a visual or general search of the area to see what
12 was disturbed and what was not.

13 Q But you didn't get down on the floor and loot; carefully
14 for anything, did you?

15 A No, I did not,.

16 Q Do you recall having a conversation with Mike **Finley**
17 when you left that Wednesday?

18 A Pardon?

19 Q Do you recall talking to Mike **Finley** when you left
20 after you took the photographs that Wednesday?

21 A After I left?

22 Q Right. **As** you were leaving, did you have a
23 conversation with Mike **Finley**?

24 A Just talking in general.

25 Q And at that time, had you gathered everything you

1 needed or you felt you needed?

2 A Yes, at that point.

3 Q Do you recall him -- you **didn't** have any intentions at
4 that point in coming back, did you?

5 A Not unless I was requested by one *of* the detectives
6 with Prichard Police Department.

7 Q And do you recall telling Mike **Finley** or having -- Do
8 you recall Mike **Finley** asking you if it was okay to
9 clean up the mess now?

10 A **As** far as I was concerned, I was through with what I
11 needed at that time.

12 Q So you could have told him, yeah, it's **okay; I'm**
13 finished; you go ahead and clean up?

14 A Yes, sir.

15 Q Did you do any other tests or gather any other evidence
16 in connection **with** this case at all?

17 A **No.**

18 Q I believe **that's** all I have. Thank you.

19 MR. JORDAN: **Just;** a couple of questions.

20 **REDIRECT EXAMINATION**

21 BY MR. JORDAN:

22 Q You are not any kind of **DNA** -- You have no
23 qualifications on **DNA**, do you?

24 A **No.** I have no expertise in **DNA** at all.

25 Q And you have no qualifications on hair analysis?

1 A None.

2 Q And you **don't** know any of the facts of this actual
3 event, do you?

4 A No, I do not, other than what I was requested by a
5 detective at **Prichard** Police Department.

6 Q By Wednesday, you obviously **couldn't** interview Valerie
7 **Finley**, could you? She was in the hospital. She
8 couldn't talk. She was in intensive care.

9 MR. NIXON: Judge, I'm gonna object to that. It's

10 --

11 Q Well, did you --

12 MR. NIXON: Excuse me. I'm making an objection.

13 He's leading his witness, number one.

14 There's no predicate he was ever in a
15 position to interview Valerie **Finley**; not
16 proper.

17 THE COURT: Overruled.

18 Q You can answer.

19 A No.

20 Q So you had no idea what had happened inside the house?

21 A No, I do not.

22 Q And as far as what people -- anything that went on,
23 right?

24 A No, I did not.

25 Q That's all. Thank you.

RECROSS EXAMINATION

BY MR. NIXON:

Q You knew someone had been shot in the house during the course of a burglary or robbery or something, didn't you?

A I knew someone had been shot, but I **didn't** know the full extent of the circumstances involved.

Q Right. That's why you were going out there, because somebody had been shot, a crime had been committed, and you **were** going to gather evidence; isn't that right?

A I knew someone had been shot, but I **didn't** know of any crime other than someone being shot.

Q Okay. Thank you.

MR. JORDAN: Thank you.

THE COURT: Thank you very **much**, Officer.

THE WITNESS: You're welcome, Judge.

THE COURT: Next witness.

MR. JORDAN: Judge, we would call Mr. Mike

Finley.

MICHAEL FINLEY

was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. JORDAN;

Q Tell us your name for the record.

A Michael **Lavere** Finley.

1 Q And what is your relationship to Valerie Finley?

2 A We Were husband and wife.

3 Q What is your relationship now?

4 A We're two parents of two daughters.

5 Q Are you still married, Mr. Finley?

6 A No, sir, we've not.

7 Q She's your ex-wife?

8 A Yes, sir.

9 Q All right. But you were married at the time this
10 occurred?

11 A Yes, sir, we were.

12 Q Now, what's your relationship with Rodney Stanberry?

13 A We're old hunting friends.

14 Q Go ahead. Tell us what kind of stuff y'all would do
15 together.

16 A We used to go hunting together, to various gun shows.

17 MR. NIXON: I'm sorry.

18 THE COURT: Used to go hunting together and go to
19 various gun shows.

20 Q That-s all?

21 A That was it.

22 Q The only time you ever saw him?

23 A That was about it. We'd get together. Some weekends
24 he'd Come by. That's it.

25 Q How long you been knowing him?

1 A Well, we've been hunting together for about three,
2 maybe four ~~yea~~&.

3 Q Is it fair to call him your best friends?

4 A We were good friends.

5 Q Would it be fair to call him your best friend?

6 A When you **say** best friend, I mean, I **wouldn't** say best
7 friend, but **we** were good friends. We hunted together.

8 Q And he had -- I believe he had your Sam's card, right,
9 **Sam's** card **to** get to go "to Sam's wholesale?

10 A I might of let **him** use it one time to get in there.

11 Q **And** he would come over to your house, right?

12 A Yes.

13 Q On Meadow Avenue?

14 A Yes.

15 Q And he would **come** over there numerous times?

16 A Yes, he would come by.

17 Q Drove a brown Bronco?

18 A Yes.

19 Q What did it **say** on **the** back of it?

20 A "One night stand" or something like that.

21 Q What did it say on the front?

22 A I don't know what it said on the front. It was Stan
23 something.

24 Q Can't remember? All right.

25 A I know one probably said "**One** night stand," something

1 like that. I **don't** remember what the front said.

2 Q So you saw this Bronco hundreds of **times** and you **can't**
3 remember **what's** on the front of it?

4 A I **don't** remember exactly word for word. It said Stan
5 something. I know that. One part said "**One** night
6 **stand,**" something like that.

7 Q He had been inside your house before; is that correct?

8 A Yes, he had.

9 Q He had eaten dinner inside your house?

10 A Yes, he had.

11 Q Did he know about the kind of guns you had?

12 A Yeah, he knew.

13 Q How would he know that?

14 A Because we used to target, shoot.

15 Q Target shoot. What else?

16 A Go to the gun shows.

17 Q Had he ever sold you any guns?

18 A I think I bought one from **him**, one or two.

19 Q Had he ever seen your gun collection?

20 A When we go target shooting, he seen my guns.

21 Q **You'd** show him your gun collection. It **wasn't**
22 something you would hide **from** Stan, is it?

23 A We were friends. No, I **didn't** hide it.

24 Q And did you know about his gun collection?

25 A Yes.

1 Q And had you ever sold him any guns?

2 A NO.

3 Q Tell us where that vault was in your house.

4 A I kept my vault in my hall closet.

5 Q And who bought that vault?

6 A My ex-wife, Valerie, bought it for me,

7 Q She bought the vault? **What** was the reason she bought
8 the vault?

9 A Because I asked her to buy it for me to put my guns in.

10 Q And she actually bought it?

11 A Yes, she did.

12 Q Paid for it?

13 A **Yes.**

14 Q And why did you need a vault, in your house, Mr. **Finley**?

15 A Well, I wanted a vault to put my guns in just in case
16 my hone was ever broken into so nobody would steal them
17 and for any valuables. **That's** why I bought it, to put
18 valuables in.

19 Q Would you leave loaded guns around at your house?

20 A Would I?

21 Q Uh-hub. Did you have a habit **of** leaving loaded guns
22 around your house?

23 A My wife had a pistol of her own that she had kept
24 loaded.

25 Q My question was, did you have a habit of leaving loaded

1> guns around your house.

2 A I didn't have a habit of leaving them, no.

3 Q And why not?

4 A I **didn't** see a need to leave --

5 Q Do you have any children, Mr. Finley?

6 A Yes, I do. I **have** two daughters.

7 MR. NIXON: Judge, if he would let him answer the
8 question, please.

9 THE COURT: He already **staked** he has two
10 daughters.

11 Q And how old are they?

12 A I have a seven year old and a 12 year old.

13 Q And would you leave loaded guns around for your
14 children?

15 A No, I do not.

16 Q Okay. so you would lock them in your vault?

17 A **That's** right.

18 Q And you had a key to your vault?

19 A Yes, I did.

20 Q And Valerie had a key to the vault?

21 A Yes, she did.

22 Q And you had to open the vault -- it had a top lock and
23 a bottom lock?

24 A Yes, we did.

25 Q And you had a closet door that closed where the vault

1 would be behind?

2 A Right.

3 Q You'd open that up and there's the metal vault?

4 A Right,

5 Q That Valerie bought?

6 A Right.

7 Q Are you having a hard time hearing me?

8 A Un-uh.

9 Q I need to hear a yes or no response, if you could.

10 A Okay.

11 Q Not; **just** a nod of your head. The lady up there has got
12 to be able to hear.

13 A I'll scoot **up**, then.

14 Q Now, **what was your relationship** with **Rene Whitecloud**?

15 A I had **met him** through **Rodney**.

16 Q Tell us about that.

17 A **They** had come to visit; Rodney one day, and **Rodney**
18 **brought his friends over, and I met them.**

19 Q Who brought Rene by your house?

20 A They were riding with Rodney.

21 Q **And** Rodney brought Rene by your house?

22 A That's what I remember.

23 Q The **first** time?

24 A Yes.

25 Q How long **before** your wife was shot?

1 A My wife was shot Monday, March 2nd.

2 Q How long before that did you meet Rene Whitecloud?

3 A Oh, how long? I had met him that week before.

4 Q And what did Rodney tell you about Rene Whitecloud?

5 A They were his friends that had came down to Mardi Gras.

6 Q Who were they?

7 A Some of his friends from New York.

8 Q How many people did he introduce you to?

9 A Two people.

10 Q Who were they?

11 A -- ^{angel} Rene and Thoe (phonetic).

12 Q Who gave you those names?

13 A They did.

14 Q And what did Rodney tell you about them?

15 A Said they just came to visit him for Mardi Gras. That

16 was it.

17 Q That's all he told you?

18 A Yeah. Yes.

19 Q And he brought them by your house. What did he do --

20 What did y'all do the first time there at your house?

21 A We didn't do anything. We just talked. I met them.

22 Q And did you let Rene Whitecloud inside your house?

23 A No.

24 Q Did you let him see your gun vault?

25 A No.

1 Q Did you let them see your gun collection?

2 A No.

3 Q So Rene Whitecloud has never, ever been in your house?

4 A Correct.

5 Q And how many times had he been to your house, he and
6 Ihoe, as you told his name?

7 A The first day I met him, and I think they may have been
8 there, maybe, three-times.

9 Q Maybe?

10 A Yes, maybe three times. They come by one day during
11 the week on their way to Mardi Gras.

12 Q Who were they with?

13 A They were riding with Rodney.

14 Q Rodney?

15 A And one Saturday.

16 Q And who were they with on the Saturday?

17 A They were riding with Rodney. They were friends of
18 his.

19 Q So Rodney brought Rene and Ihoe by your house three
20 times before your wife got shot, right?

21 A Correct.

22 Q And Rodney was driving each time?

23 A Correct.

24 Q He was driving a Bronco?

25 A Correct. That's what he drove.

1 Q But you never, on any of those three occasions, you
2 never let Rene inside your house?

3 A Right.

4 Q You **never let Ihoe** inside your house?

5 A Right.

6 Q How, describe **what** Rene looked **like**.

7 A He was light skinned with a long ponytail.

8 Q Long ponytail? Is that kind of what you call it?

9 A Yeah, **that's** what we -- we more or less nicknamed him
10 Ponytail.

11 Q And **that's** what Val called him, Ponytail?

12 A Yeah.

13 Q I'm going to show you --

14 MR. JORDAN; Let me mark this, please.

15 (State's Exhibit number 41 marked for
16 identification.)

17 Q Let me show you what has been marked State's Exhibit
18 Number 41. Can you identify the person in that
19 photograph?

20 A Yeah. **That's Rene.**

21 Q And is that a photograph of Rene?

22 A Yes, it is.

23 Q And you **can't** see his -- He doesn't have a ponytail,
24 though, in that photograph, does he?

25 A Not **in** that **one**.

1' Q But when he **was** in Mobile, he did, in fact, have a
2 ponytail?

3 A Yes.

4 MR. JORDAN: **Move** to introduce 91 -- or 41 at this
5 time.

6 THE COURT: Let me see **it**. Have you seen **it yet**,
7 Ken?

8 MR. NIXON: No, sir, Judge.

9 MR. JORDAN: Well, **you've** seen it. You just.
10 haven't seen it today.

11 MR. NIXON: No objection.

12 THE COURT: Do you want this introduced?

13 MR. JORDAN: Yes, Your Honor.

14 THE COURT; **And** who is this supposed to be?

15 MR. JORDAN: Rene **Whitecloud**, also known as
16 Ponytail, that they call him.

17 THE COURT: **Ponytail**?

18 MR. JORDAN: Well, he doesn't have it now or **when**
19 this photograph was taken.

20 Q Just for the record, he did, in fact, have a ponytail
21 when he was in Mobile; is that correct?

22 A When I **met** him.

23 THE COURT: Do you want to publish that picture?

24 MR. JORDAN: **Yes**, Your Honor, I was gonna wait
25 till she marked it.

(Staters Exhibit Number 41 admitted in evidence.)

Q Now, did Rodney's friend, ^{angel}~~Thoe~~, have a ponytail?

A No, he did not.

Q Did Rene ever eat dinner at your house?

A No.

Q Did ~~Thoe~~ ever eat dinner at your house?

A No.

Q Did you ever tell Rene that you had two keys to the vault?

A No.

Q Now, Rodney worked at BFI, didn't he?

A Yes.

Q And are you aware that he would drive to **Chastang** from **BFI**?

A The dump?

Q **Right.**

A okay, the dump, yeah.

Q He told you he was -- I mean, you kind of knew what his job was?

A He drove the truck, yeah.

Q Drove a truck and he would have to drive out to the **Chastang** Landfill Dump and dump his load and drive back to BFI?

A Right.

1 THE COURT: What is BFI, Mr. **Finley**?

2 THE WITNESS: I **guess** it's one of those waste
3 garbage trucks like Waste Management or
4 whatever. Yeah, Waste Management.

5 Q And the route from **BFI** to **Chastang** is 1-65, isn't it?

6 MR. NIXON: Judge, this man **doesn't** know the route

7 --

8 THE COURT: He can say he doesn't.

9 A I **don't** know the route. I **don't** drive a BFI truck. I
10 **don't** know.

11 Q Did you know that Rodney **had** to drive **his** truck right
12 by your house to go to the dump?

13 A Like I **say**, I **don't** know the route, so I **don't** know
14 which route he took or whatever.

15 Q He never told you that?

16 A He did go to the dump. Exactly what dump it is --
17 There's one in **Chunchula**, as well.

18 Q Well, your house on Meadow Avenue is right off 1-65,
19 **isn't** it?

20 A Yes, it is. Highway 45.

21 Q Well, let **me** see. You take the A/B exit off the
22 interstate; is that correct?

23 A Yeah, You **take** the **Citronelle** exit **off** of 65 to 45.

24 Q 45 and go to your house?

25 A Yes. My house is off of 45.

1 Q All right. How long would it take you to jump on the
2 interstate from your house to go to work?

3 A Probably about 15 to 20 minutes, depending on the
4 traffic.

5 Q Wait, I'm sorry. From your house to get on the
6 interstate?

7 A Oh, to get on the interstate? oh, no. I thought, you
8 were saying from my house to work.

9 Q No. Listen to my question.

10 A From my house to get on the interstate, probably about
11 five minutes, something like that, depends on if I get
12 caught by the light.

13 Q You never timed it, though, have you?

14 A No, I never did.

15 Q Now, let me show you what has been marked as and
16 introduced as **State's** Exhibit Number 39. Do you
17 recognize this exhibit? **Whose** Bronco is that?

18 A **Rodney's.**

19 Q **That's** Rodney **Stanberry's** Bronco; is that correct?

20 A Yes, it is.

21 Q Now, ~~on Saturday a bunch of y'all went up to Axis~~
22 ~~target shooting;~~ is that ~~correct?~~

23 A Correct.

24 Q **And** you, Rodney, right, your wife, **Rene** and other
25 people, some other people, were up there. Who did you

1 drive with?

2 A Me and my wife rode together.

3 Q And how did y'all get up there?

4 A We drove our new car.

5 Q What kind of car was it?

6 A We had a **Ford Festiva**.

7 Q Ford **Festiva**. What color was it?

8 A Blue.

9 Q **And** how did you get up to Axis? Did you lead the way,
10 or did you follow Rodney?

11 A We drove up ourselves.

12 Q Did you know where to go?

13 A **Yes**.

14 Q You had been there before?

15 A Yes.

16 Q And who actually drove, you or Valerie?

17 A I drove.

18 Q And what kind of gun did Rene use **while** he **was** target
19 shooting?

20 A He had a nine millimeter.

21 Q He had a **Glock** nine millimeter; is that right?

22 A Yeah, 'nine **millimeter Glock**, yes.

23 Q And was that your gun?

24 A **No**.

25 Q Was that **Valerie's** gun?

- 1 A No.
- 2 Q Was that Rodney Stanberry's gun?
- 3 A Not that I knows of.
- 4 Q You did not. know Rodney to have a Glock nine
5 millimeter?
- 6 A No, he didn't.
- 7 Q Did Rodney tell you where Rene Whitecloud had obtained
8 that Glock nine millimeter?
- 9 A No, he did not.
- 10 Q While you were gone target shooting that day, your
11 house was vacant: is that correct?
- 12 A Yeah, we weren't there, right.
- 13 Q You and Val were gone, no kids were there. The house
14 was absolutely vacant; is that correct?
- 15 A Correct.
- 16 Q And your guns were in the gun vault?
- 17 A Yes.
- 18 Q Now, on Sunday you and your wife went to Mississippi to
19 visit your relatives.
- 20 A Correct.
- 21 Q And, again, your house was vacant, wasn't it?
- 22 A Correct.
- 23 Q Nobody at home?
- 24 A Correct.
- 25 Q All day Sunday, right?

1 A Correct.

2 Q And your gun collection was in the gun vault?

3 A correct.

4 Q And you **didn't** get home until about ten o'clock that
5 night?

6 A Correct.

7 Q And you **didn't** pick up the kids, did you?

8 A Correct.

9 Q It was just you and Val at home from ten **o'clock** that
10 night until the next morning?

11 A correct.

12 Q At what time did you go to work the next morning?

13 A I usually leave about 6:30.

14 Q What time did you have to be at work?

15 A Seven.

16 Q And where were you working at that time?

17 A Automation Technology.

18 Q **What** were you doing?

19 A A process control tech.

20 Q And let me show you some photographs. I'll come back
21 to those in just a second.

22 THE COURT: Your last question was, you worked
23 where?

24 MR. JORDAN: You worked where?

25 THE COURT: **And** your answer was?

1 THE WITNESS: Automation Technology.

2 THE COURT: Mark that in red on your little number
3 pad because that's where you're going to
4 start at 1:15 when we come back. Y'all have
5 a nice lunch.

6 (Lunch recess.)

7 * * * * *

8 AFTERNOON SESSION

9 (Jury present.)

10 Q And where did you work again, please?

11 A Automation Technology.

12 Q And, Mr. Finley, through your company, through your
13 employment, you had a 35 thousand dollar life insurance
14 policy on your wife; is that correct?

15 A I had it from where I work, yes, sir.

16 Q And that was 35 thousand; is that correct?

17 A Yes, half of 70, right, 35.

18 Q Now, what time did you -- By the way, did you ever hire
19 Ryan Russell to do any work for you on this case?

20 A No.

21 Q Would you tell us what time you found out about Valerie
22 being involved in some kind of, what was told to you at
23 the time, of an accident?

24 A Well, I had already -- we were on lunch break, and I
25 had fixed one sandwich already and was sitting there,

1 and I got a phone call from my sister-in-law saying
2 that, Mike, you need to go **home**; Valerie has fell. So
3 that's when I left.

4 Q Do you know about what time it was?

5 A I'd say 11:40, 11:45, **somewhere** along in there, because
6 I had already fixed one sandwich. I usually fix my own
7 sandwiches at work, take **my** stuff with me.

8 Q Where did **you** go at that time?

9 A I **left** work and went home.

10 Q And who was at the house?

11 A When I got there, my father-in-law was there, **our**
12 neighbor, Clara Malone, was there, her son.

13 Q Her son?

14 A Yes.

15 Q What do you call him? What was your -- What would you
16 call him? What was **the** --

17 A Larry. Anyway, he **was** there. My oldest daughter,
18 Tiffany, was there, and I think that was about it.

19 Q Were there some police officers there?

20 A No.

21 Q At the time you arrived, there was no police officers?

22 A No police officer there **when** I got there.

23 Q They had **already** left the scene?

24 A Yes.

25 Q What time do you think you arrived home, about?

1 A It's about a 15-minute ride, so I'd say I got there,
2 maybe 12, maybe five after 12, something like that.

3 Q So by that time the police had already left?

4 A Everybody was gone, except them.

5 Q Were there any paramedics there when you arrived?

6 A No.

7 Q They had already left?

8 A Yes.

9 Q Was Valerie still there?

10 A NO.

11 Q she had already been taken to the hospital?

12 A Yes.

13 Q Okay. Did you find any forced entry at the front door
14 or the back door where there had been -- the door had
15 been damaged in any way to gain entry into your house?

16 A When I went in, no, it wasn't forced or anything like
17 that that I can tell.

18 Q What did you see that -- What did you find out through
19 -- that was missing from the house at the time you
20 arrived?

21 A Well, when I arrived and I went into the house, I
22 looked around. I noticed it was in a mess.

23 Q It was not in a mess when you left that morning?

24 A No. And just as I was going down the hall towards to
25 my bedroom just looking through the house, I noticed my

1 hall closet doors were somewhat open.

2 Q Okay.

3 A And **that's** when I realized my vault was open, as well,
4 and the drawers in the dresser I had in there was open,
5 and the room was in a mess.

6 Q Okay. Were you missing any guns?

7 A Yes. My guns were missing **from** the vault.

8 Q **And** when you left that morning, the vault had been
9 locked; is that correct?

10 A Always stayed locked, right.

11 Q Now, tell us what **guns** were missing.

12 A By handguns were missing.

13 Q Do your best to itemize then for us, just so we kind of
14 know what was stolen.

15 A My **rifles**.

16 Q Well, **let's** be specific.

17 A Okay. **My .1022 was** missing.

18 Q **.1022, that's** a rifle?

19 A Yes.

20 Q **What's** the approximate value of that?

21 A About 100, 125 dollars, something like that. SKS.

22 Q **An SKS?**

23 A Yes.

24 Q That's a rifle?

25 A Yes.

- 1 Q What's the **approximate** value of that?
- 2 A Probably about 150 dollars.
- 3 Q **What's** the next item?
- 4 A My shotgun.
- 5 Q What kind of shotgun?
- 6 A It was a double-barrel shotgun.
- 7 Q What was the approximate value of that?
- 8 A About 100 dollars. That, my mini-14 was missing.
- 9 Q **What** was the approximate value of that?
- 10 A Three hundred dollars.
- 11 Q Is that a **rifle**?
- 12 A Yes, it was a rifle. My pistols were missing. I had -
- 13 -
- 14 Q You just listed four rifles?
- 15 A Yes.
- 16 Q Let's go through your pistols.
- 17 A Okay. I had a **Taurus** nine millimeter pistol.
- 18 Q What's the approximate value of that?
- 19 A **About** 300. My **.25**, it was missing.
- 20 Q **Twenty-five?** What kind of gun was that?
- 21 A It's a pistol.
- 22 Q **What's** the approximate value of that?
- 23 A About 50, **75** dollars, maybe.
- 24 Q Okay.
- 25 A **My little .380**, it was missing.

1 Q What's the approximate value of that?

2 A About 100 bucks. A .38, it was missing. It was about
3 100 dollars, as well. My tech .22. It was missing,
4 also.

5 Q A pistol?

6 A Yes.

7 Q What's the approximate value of that?

8 A About 150 dollars. That's about it, all I can
9 remember.

10 Q You just listed about nine guns.

11 A Yeah.

12 Q Four rifles and five pistols,.

13 A Yeah, I think so.

14 Q Was a stun gun taken?

15 A Yeah, it was missing also.

16 Q What's the approximate value of that?

17 A About 40 dollars.

18 Q Were any knives taken?

19 A Yeah. There were a couple of knives that were taken.

20 Q How many?

21 A There was the Old Timer I had, my hunting knife.

22 Q What was the approximate value of that?

23 A Maybe 25 dollars. That's what I paid for it at Wal-
24 Mart. That, a couple pocket knives I had. They were
25 maybe 10, 15 dollars a piece.