

1 A I don't know.

2 Q -- with your eyes, ma'am.

3 A I don't know.

4 Q You don't know what you saw?

5 A I don't know whether a white female was out in the
6 Bronco or not.

7 Q Please listen to my question. You said you saw the
8 Bronco clearly when you looked out the window.

9 A Yes, I saw the Bronco clearly.

10 Q I'm asking you here today, when you saw it clearly, did
11 you see a white female in the Bronco?

12 A I don't -- I didn't.

13 Q You did not?

14 A I'm not sure.

15 THE COURT: Ken, put a red mark wherever you are.

16 We'll go to lunch. We'll be back at 1:15.

17 (Lunch recess.)

18 * * * * *

19 AFTERNOON SESSION

20 (Jury present.)

21 THE COURT: You want me to tell you your last
22 question?

23 MR. NIXON: Yes, sir, Judge, please.

24 THE COURT: Well, I'm not sure if what I'm
25 thinking about is the last one. Read him his

1[>] last question, Barbara.

2 (Whereupon, the previous two questions
3 were read back by the reporter.)

4 THE COURT: Yeah, that's it. Her answer to you
5 before that was the glasses were tinted. she
6 didn't say this but insinuated that no one
7 could see inside the car because of the
8 tinted glasses on the car. Then you asked
9 her again, are you saying there was not a
10 white girl in the car, and **that's** when --
11 **that's** the last thing **I** remember. So you
12 pick it up from there or any way you wish to
13 pick it up.

14 MR. NIXON: **That's** the first time that you **didn't**
15 tell me right off the bat, Judge, since **I've**
16 been practicing law.

17 THE COURT: Well, I thought, it was, but I wasn't
18 sure.

19 Q Mrs. **Finley**, I just have a few more questions for you.
20 That first statement that you **made** to Detective
21 Fletcher in the hospital, I **don't** have the date on
22 mine. Do you recall the date or do you recall when it
23 **was?**

24 A No, I **don't**.

25 Q But it; was at a point when you still could not talk; is

1 that right?

2 A Not good.

3 Q Now, the second statement that you gave to Detective
4 Smith and Detective Fletcher, that was on April the
5 14th, 1992; is that correct?

6 A I'm not sure.

7 Q Does that sound right to you?

8 A I don't know.

9 Q Was that at the Rotary Rehabilitation Center when you
10 made that statement?

11 A April?

12 Q Yes, sir -- Yes, ma'am.

13 A I went to Rotary some time in April. I don't know
14 when.

15 Q Do you remember this detective right here, Detective
16 Smith and Detective Fletcher, the big detective, coming
17 out there to the Rotary Rehab and speaking with you?

18 A Yes.

19 Q And taking a recorded statement from you at that time?

20 A Yes.

21 Q Okay. I'm just gonna ask you a few questions about
22 that statement, please. Did you tell Lebarron Smith in
23 that statement that the other guy went in the back
24 door?

25 A No, I didn't.

1 MR. NIXON: Judge, may I approach the witness?

2 THE COURT: certainly.

3 Q Mrs. Finley, I'm going to ask you to read this portion
4 of this statement where it says **Finley** with a colon and
5 see if that refreshes your **memory**, please.

6 A That might have been what I said, but the guy was
7 standing at the back door.

8 Q Can you read what -- Did you say that? Did you say
9 that the other guy went in the back door?

10 A No, I didn't,

11 Q Are you sure about that?

12 A Positive.

13 Q Now, in that same statement that you made to Detective
14 Smith and to Detective Fletcher that **was** recorded, did
15 you tell Detective Smith that the glass screen door was
16 locked and they messed it, the door, the glass door, on
17 open and came on in?

18 A **No**, I didn't.

19 Q You sure about that?

20 A Positive.

21 MR. NIXON: Judge, may I approach the witness
22 again?

23 THE COURT: certainly.

24 Q Let me ask you to read that portion of this paragraph
25 where it. **says Finley** colon, please.

1 A What -- messed? How do you mess the door?

2 Q Ma'am, I'm just asking you if that's what you said --

3 A No, it's not.

4 Q -- to Detective Smith.

5 A That might been the way they -- they assumed I said,
6 but I never heard nobody mess the door.

7 Q You never told Detective Smith that the **glass** screen
8 door was locked and that he messed it, the door, the
9 glass door, an open?

10 A That was -- not with the back door. It was just --

11 Q You never told him that it was locked? You're telling
12 us now that it wasn't locked; is that correct?

13 A No, I'm not. I **don't remember**.

14 Q You had told us before on my cross **examination**--

15 A He was shaking that door at the back door.

16 Q **No**, I'm talking about the front door.

17 A The front door?

18 Q Yes, **ma'am**. **Didn't** you tell us before --

19 A I said --

20 Q Please, let me finish my question, please. Just listen
21 carefully. Didn't you tell me before we broke for
22 lunch, when I asked you a question, that the screen
23 door on the front was unlocked?

24 A Yes, I did.

25 Q And **you've** read this statement here that says the glass

1' screen door was still locked, and they messed it, the
2 door, the glass door, on open. You read that on this
3 statement, **didn't** you?

4 A He messed it? What messed mean?

5 Q Are you denying that you told Corporal Smith that the
6 screen door was locked?

7 A I don't even know how you can mess the door.

8 Q Let me rephrase the question. Did you tell Corporal
9 Smith during this interview that the front screen glass
10 door was locked?

11 A No, I **didn't**.

12 Q **You're** sure about that?

13 A I **don't** recall because I know Stan walked on in the
14 door.

15 Q But now **you're** certain that it wasn't locked, right?

16 A He came in **the** door when I opened the wood door,
17 unlocked the wood door with my key, and he came on in
18 the door.

19 Q I've heard your testimony, **ma'am**. I'm just trying to
20 nail it down. **You're** telling us now that the front
21 glass screen door was not locked?

22 A I **don't** remember.

23 Q Now you **don't** know?

24 A I know he came through the door without any assistance
25 from me.

1 Q Well, you knew -- before lunch when I was asking you,
2 you were certain that it was locked, weren't you?

3 Isn't that what you testified to?

4 A I **don't** know. I don't recall that.

5 Q Now, have you told us everything else that these --
6 have you told us everything that these two people said
7 to you while they were in there? Mr. Buzz **asked** -- Mr.
8 Jordan asked you in detail what they said and what they
9 did, and **I've** questioned you about that. Is there
10 anything that you recall that either Mr. **Stanberry** or
11 the other person that you say was in your house said to
12 you?

13 A No, not that I can recall right now.

14 Q Do you recall them asking you if you had a pistol
15 permit?

16 A **No.**

17 Q They never asked you that?

18 A No. They asked me did I have a pillow slip.

19 Q A pillow slip?

20 A Yes.

21 Q And you reviewed this statement, **haven't** you?

22 A Yes.

23 Q And this transcript **of** this **statement**, did you see in
24 there where you said that they asked me did I have a
25 pistol permit?

1 A Yes.

2 Q And you're saying that **that's** not what that is?

3 A No.

4 Q **You're** saying that was a pillowcase?

5 A Pillow slip.

6 Q Pillow slip?

7 A Yeah.

8 Q When did you make that correction on this statement?

9 You told Mr. Jordan **that that's** what it said. didn't
10 you?

11 A Yes, I did.

12 Q **And** when did you tell him that?

13 A The first time I saw that statement.

14 Q And when was that?

15 A I **can't** recall.

16 Q Years ago, **wasn't** it?

17 A No, it **wasn't**.

18 Q It was not?

19 A No.

20 Q Was it a year ago?

21 A I don't recall exactly when it was.

22 Q It was a long time **ago** when you told him, wasn't it?

23 A It **wasn't** in the past month.

24 Q Mrs. **Finley**, this case has been going on for several
25 years, **hasn't** it?

1' A yes, it has.

2 Q **And** the first time it was set you reviewed your
3 statement, **didn't** you?

4 A No, I **didn't**.

5 Q You did **not**?

6 A No.

7 Q Now, you said, also, if I understand you correctly,
8 that while you were sitting on the floor, Rodney
9 **Stanberry** found the key in the **front** door.

10 A He discovered the key in the front door.

11 Q You told him where the key was, **didn't** you?

12 A No, I did not.

13 Q Are you sure about that?

14 A I'm positive.

15 Q No doubt in your mind?

16 A No doubt.

17 MR. NIXON: May I approach the witness, Judge?

18 Q Im gonna again show you that same statement, Mrs.
19 **Finley**, and ask you if you could read the sentence
20 **that's** underlined. It says, **Finley**, in response to Mr.
21 **Smith's** question. Would you please read that?

22 MR. JORDAN: What page are you on?

23 MR. NIXON: Page three.

24 A I read it.

25 Q What does it say?

1 A And I told Stan the key was in the front door, but I
2 did not tell Stan that.

3 Q Okay. That's what this says, isn't it?

4 A That's what that say.

5 Q And that's what you told Lebarron Smith back in April
6 of 1992, isn't it?

7 A No, it is not.

8 Q You didn't tell him that?

9 A Ho, I didn't.

10 Q You know he recorded this statement?

11 A Yes, he told me that.

12 Q So if that's on that tape, that's not your voice; is
13 that what you're telling us?

14 A It might be my voice, but they -- whoever --

15 Q You're positive you never said that?

16 A I'm positive.

17 Q Okay. And in response to Mr. Jordan's question about
18 holding the gun, you said that the man held a gun with
19 one hand on you. Did he hold it with two hands on you?

20 A Yes, sometimes. He'd hold it with one hand for a
21 while. Then he would hold it with two hands.

22 Q And, by the way, you've reviewed this statement. You
23 didn't say anywhere in here in this statement at all
24 that Rodney Stanberry ever had a gun or held a gun on
25 you, did you?

1' A I don't recall.

2 Q Would you like to review it?

3 A No. It would take too long, because I know -- I know
4 what happened.

5 Q And did you tell Lebarron Smith that Tyrone, your
6 neighbor, told Mike **Finley** that he saw Stanberry come
7 into your house that day?

8 A That's what Mike told me.

9 Q Yes. You told that to Lebarron Smith, **didn't** you?

10 A I **don't** know what who I told that.

11 Q Now, Mrs. Finley, do you recall -- you were trying to
12 get your husband to sell his guns, **weren't** you?

13 A No, I **wasn't**.

14 Q Do you recall your husband discussing with you selling
15 his guns to the person from New York?

16 A He did not do it. **There** was no discussion about that.

17 Q The answer is no?

18 A NO.

19 Q And you **didn't** have any discussions with him about
20 selling his **guns** to anyone?

21 A No.

22 Q At that time?

23 A Not at all

24 Q Did you want him to sell his guns?

25 A No.

1 Q Did you hear Rodney Stanberry tell your husband not to
2 sell his guns to these people from New York?

3 A No, I did not.

4 Q You don't recall that?

5 A I didn't hear it.

6 Q I believe **that's** all I have. Thank you, **Mrs. Finley**.

7 REDIRECT EXAMINATION

8 BY MR. JORDAN:

9 Q Valerie, have you kept any diary of all the visits that
10 Lebarron and I have made to you?

11 A No, I haven't.

12 Q And have we come out to talk to you quite a bit on this
13 case?

14 A Not that often.

15 Q But more than three or four times?

16 A Yes.

17 Q And you **don't** keep track of the notes that I keep of
18 our conversations, do you?

19 A No, I **don't**.

20 Q But you know that you told **Lebarron** and myself about
21 Stan having a gun, **don't** you?

22 A Yes, sir.

23 Q **And** you know you told us both about --

24 MR. NIXON: Object to leading.

25 THE COURT: **Don't** lead her.

1' Q Did you ever tell Officer **Lebarron** Smith about Stan, in
2 fact, having a gun?

3 A Yes, sir.

4 Q Did you also tell him about the gun being held with
5 both hands sometimes and sometimes with one hand?

6 A Yes, sir.

7 Q Now, I have not gone over my notes with you, have I?

8 A No.

9 Q And who knows about what happened out there? Do I --
10 Have I told you what happened at that house?

11 A No.

12 Q Why not?

13 A You wasn't there. You couldn't told me.

14 Q Okay. You said that Stan has had different things on
15 his car, or his Bronco, on the front and back and he's
16 changed those from time to time.

17 A Yes.

18 Q Do you know what he had on there at the time this
19 happened?

20 A Im not sure. I think it -- I'm not sure. I can't be
21 definite.

22 Q But you know at some times **he's** had on there --

23 A "One night stand."

24 Q "**One** night stand." Do you know if that was even on
25 there when this happened?

1 A I didn't, pay it no attention.

2 Q It was not: important to you at the time?

3 A No.

4 Q Mr. **Nixon** asked you about going up to Axis. What's the
5 name of the person that supposedly owned the trailer?

6 A Dick.

7 Q And did you meet his wife?

8 A She never did come out.

9 Q But who told you about the wife?

10 A Mike.

11 Q Okay. And were there kids out there?

12 A Yes.

13 Q What was your attention to that day? Was your
14 attention to target shooting with the **boys**, or what
15 exactly were you more attentive to?

16 A At first, I was target shooting with them, and then I
17 saw the kids come out the trailer, and then I stopped
18 target shooting because I was scared the kids might
19 been in danger.

20 Q Did you go around and get **everybody's** name that was up
21 there that went target shooting and write them down?

22 A No, I did not.

23 Q Did you expect that to be important in any way
24 whatsoever?

25 A No, I did not.

1 Q Now, Mr. **Nixon** has referred to a **tape**. Do you remember
2 when Detective Fletcher came out and saw you at the --
3 you were still at the hospital at that time.

4 A Yes, sir.

5 Q Were you still in intensive care?

6 A No, sir. I had been moved to a room.

7 MR. **NIXON**: Which tape are you talking about?

8 MR. **JORDAN**: Number one.

9 Q I'll show you **what's** been introduced as State's Exhibit
10 42 and 43. Have you ever seen those pictures before,
11 to your recollection?

12 A I can't recall.

13 Q Do you know if those are the photographs -- I mean, do
14 you know whether or not those are the photographs that;
15 Detective Fletcher brought out to you?

16 A No, these not them.

17 Q Do you see Rodney **Stanberry** in those photographs?

18 A Yes, sir.

19 Q Is he in **both** of them?

20 A Let me see. He is.

21 MR. **NIXON**: I renew my objection on leading,
22 Judge.

23 THE COURT: He is but those pictures are already
24 admitted.

25 Q Now, do you know or are you aware that you **didn't** even

1 > talk that **time** that he came and saw you?

2 A Yes, sir.

3 Q Let me go ahead and play this for you and see if you
4 remember this happening.

5 (Whereupon, audio tape was played)

6 Q Now, do you remember that happening?

7 A Yes.

8 Q Do you remember that conversation?

9 A Yes, sir.

10 Q Tell us what you remember about it.

11 A He came over to the -- and had the thing and so he
12 asked could I -- well, he asked me could I talk at all
13 and so my voice must have been my sister voice, and --

14 Q Could you talk at that time, Valerie?

15 A I **couldn't** talk clear or nothing because my throat and
16 everything was still messed up.

17 Q **Didn't** you still have a tube in your throat?

18 MR. NIXON: Same objection, Judge. I renew **my**
19 objection, leading, continuous.

20 THE COURT: That **wasn't** leading. Overruled.

21 Q Now, have you ever, ever told anybody with your voice
22 that you did not know who broke into your house?

23 A No, I **haven't**.

24 Q Ever?

25 A Never.

1 Q Since March 2nd -- since day one until today?

2 A Never.

3 Q Have you ever stated it was anybody but Rodney

4 Stanberry and Ponytail?

5 A Never.

6 Q Ever?

7 A Never.

8 Q Now, Mr. **Nixon** asked you about **Rodney** Stanberry holding
9 the gun, having the gun. When was that? Take us back
10 to where -- At what point in time did Stan have the
11 gun?

12 A When Ponytail was doing other things.

13 Q Let's go back to that because I **didn't** ask you about
14 that. **I'm** sorry. **That's** my fault. What other things
15 was Ponytail doing?

16 A **That's** when he went in the kitchen and spotted the
17 microwave. **That's** when he was trying to tell Stan
18 other things that they could pick up. So Stan had the
19 **gun** on me at that time. So **that's** why I **wasn't** sure
20 which one shot me.

21 Q Okay. Well, let's go back to this. Did you see where
22 Stan got the gun from?

23 A No, I didn't.

24 Q Do you know if he brought the gun with him?

25 A I **don't** know.

1 Q How would you describe Ponytail?

2 A He was light skin with hair pulled to the back in a
3 rubber band and it was plaited.

4 Q Light skinned?

5 A Uh-huh.

6 Q Did anybody come in through the back door?

7 A No, they didn't.

8 Q You know that now?

9 A I know it.

10 Q I mean, you know that from that time.

11 A Yes.

12 Q I'm not asking you about what you may have said to the
13 police on April 14th while you were at Rotary, but did
14 anybody, in fact, come through the back door?

15 A No one.

16 Q Which door did both of them come through?

17 A Through the front door.

18 Q Did your house have any burglar bars?

19 A No, they didn't.

20 Q Was there any reason for you not to let -- open the
21 door for Stanberry?

22 A No, there wasn't.

23 Q Any reason whatsoever?

24 A I didn't think so.

25 Q No, I'm asking. Is there any reason why you would not

1 let Stanberry come into your house?

2 A There was no reason.

3 Q Valerie, do you normally let strangers into your house?

4 A No, I don't.

5 Q Would you have let anybody else into that house?

6 A No, I wouldn't.

7 Q Mr. Nixon asked you about, being suspicious of your
8 husband. Tell us what things happened or what things
9 came to mind after you got. -- when you started being
10 able to talk again, things of that nature that caused
11 you to be suspicious of your husband.

12 A Because we normally keep our locked from top to bottom,
13 keep all the windows locked and everything, the doors
14 locked. And so when I got up that morning, I saw the
15 back door wide open. He had left the door open, and he
16 had told Stan --

17 Q Hold on. That's one thing. Let's go one by one.

18 A He had told me Stan was coming by the house to pick up
19 a tree stand. When Stan got to the house, he ain't
20 said nothing about no tree stand.

21 Q Never even mentioned the tree stand?

22 A Never.

23 Q What else made you suspicious?

24 A When he told me, tried to convince me somebody else had
25 did this to me after I had told him who did it, who was

1 in the house. Then he tried to convince me somebody
2 else did it.

3 Q Anything else you can think of that made you suspicious
4 that something just wasn't right?

5 A (Inaudible) That was all I needed.

6 Q Mr. Nixon stated that if Stanberry's convicted, that
7 you're gonna get your kids back. What --

8 A That don't have nothing to do with my kids. He don't
9 have nothing to do with my kids.

10 Q Does he have custody of your kids?

11 A No, he don't.

12 Q I mean, temporary custody?

13 A No, he don't..

14 Q Has he ever had temporary custody of your kids?

15 A Never. I hate be was even around then now at all.

16 Q Now, let me ask you about, the brown Bronco, when you
17 looked at the brown Bronco, Did you see anybody in the
18 brown Bronco?

19 A No, I did not.

20 Q Did you see anybody get out of the brown Bronco?

21 A No, I did not.

22 Q Did you see anybody get into the brown Bronco?

23 A No, I did not.

24 Q Now, tell us how -- You had to open the front door with
25 your dead-bolt key; is that correct?

1 A Yes.

2 Q Now, tell us specifically what happened. You opened
3 the front, the big wood front door, and then what
4 happened?

5 A Then Stan opened the storm door, came on in, and then
6 he yelled -- cause he could see Ponytail through the --
7 from the front door, and so he was becked and hollered
8 for him to come on around to the front. And so when he
9 came to the front door, he had the gun on me, and I
10 started shaking.

11 Q Valerie, I want you to listen to something, too. I
12 want you to listen to your voice on April 14th. I
13 couldn't play your voice on this one because you didn't
14 say anything. I want you to hear your voice on the
15 14th, which would have been about six weeks after this
16 happened.

17 (Whereupon, audio tape was played.)

18 Q Now, on there, you say the glass screen door was still
19 locked, what the voice said. What I'm asking is, was
20 it, in fact, locked or not, from what you can tell us
21 now with your full voice?

22 A It wasn't.

23 Q It was not?

24 A No.

25 Q Okay. So when Mr. Nixon asked you that, you were

1 mistaken about what you told the detective: is that
2 correct?

3 A Yes.

4 MR. NIXON: No, sir. Judge, she **told** -- she just
5 said that. Excuse me. **I'm gonna** object to
6 **mischaracterization**. The tape just said she
7 said it was locked.

8 THE COURT! We heard the tape.

9 MR. JORDAN: **That's** what I just said, the tape
10 said it was locked, and she was mistaken when
11 she told you that it was not locked, as far
12 as telling the detective.

13 Q But, in fact, when you just **went** through and told us
14 exactly what happened, did you ever unlock the door for
15 Stan and the ponytail guy to come through the front?

16 A No, I did not.

17 (Whereupon, audio tape was played.)

18 Q Mr. **Nixon** asked you about a pistol permit. Let me just
19 rewind this.

20 (Whereupon, audio tape **was** played)

21 Q Are you talking about a pillow slip there?

22 A A pillow slip.

23 Q It's kind of hard to hear. Valerie, your voice sounds
24 a little bit -- sounds a lot different on that tape on
25 the 14th of April of '92 than it does today. Were you

1 under medication at that **time**?

2 A Yes, I was.

3 Q Pretty heavy medication?

4 A Yes, I was.

5 Q **Were** you still in pretty bad shape?

6 A Yes, sir.

7 Q You had about how many more months to go at rehab, at
8 Rotary?

9 A About six.

10 Q So you were just; -- You had been released from the
11 hospital on April the 6th straight to Rotary?

12 A Yes, sir.

13 Q And this was April the **14th**, so this is eight days
14 after you got out of the hospital?

15 A Yes, sir.

16 Q Valerie, could you have been mistaken about some things
17 that you remember telling **Lebarron** Smith on that tape
18 recorder?

19 THE COURT: Pardon me. I didn't understand your
20 question.

21 Q Could you have been mistaken about your remembering or
22 what you can recall?

23 A No, sir.

24 Q I mean, **specifically** the words **that** you said, not as
25 far as what happened.

1 A The words, I was trying to say pillow slip, but it was
2 evidently that wasn't what I was saying.

3 Q I mean, I don't know. I'm just saying, your voice is a
4 lot different then than it is now.

5 A Yes.

6 Q Valerie, just so we're absolutely clear on this, did
7 anybody else come into your house on that Monday
8 besides Stan and Ponytail?

9 A I didn't see anyone else.

10 Q They were the only two people?

11 A Yes, sir.

12 Q That you saw come in?

13 A That I saw.

14 Q And you're absolutely sure that Stanberry and Ponytail
15 were the two individuals that came in your house and
16 that assaulted you?

17 A Positive.

18 RECROSS EXAMINATION

19 BY MR. NIXON:

20 Q Mrs. Finley, Mr. Jordan showed you State's Exhibit
21 Number 43 and Number 42 just a minute ago, right?

22 A Yes.

23 Q And you told him that these were not the photographs
24 that Detective Fletcher showed you in the hospital that
25 first time; is that right?

1 A Yes.

2 Q They were not?

3 A No, sir.

4 Q You're sure about that, right?

5 A I'm not positive, but I know Stan is on those two
6 pictures.

7 Q Well, you told Mr. Jordan just a minute ago that those
8 weren't; the photographs.

9 A The other pictures looked newer than those.

10 Q They were other photographs but not these photographs?

11 A No. They were pictures that looked -- they weren't so
12 old and worn, the pictures that I saw, but those, it's
13 been so long ago, they could have been worn since then.

14 Q Now you're telling us that these could have been the
15 photographs that he showed you? Do you remember the
16 photographs what photographs Detective Fletcher showed
17 you?

18 A Some photographs with Stan in them and Ponytail.

19 Q Can you tell us if those are the photographs or not?

20 A I can't be for sure because those photographs have been
21 worn. it's been three years.

22 Q You told Mr. Jordan that they were not, but now you're
23 saying they could have been?

24 A They could have been.

25 Q You don't know?

1 A X don't think so. They might be, because I **didn't**
2 think about the **worn** -- worn and tear that three years
3 could put on a picture.

4 Q **Now**, you were asked **about** the -- You just told Mr.
5 Jordan that Mr. **Stanberry** and this other person were
6 going through, lifting the pillows up and going through
7 the couch. Did you tell him that?

8 A Yes, sir.

9 Q And **you** saw that?

10 A **Yes**, sir.

11 Q And today is the first day you've told anybody that
12 that happened, **didn't** you?

13 A **No**, sir.

14 Q You **didn't** tell Detective Smith that, did you?

15 A Yes, sir.

16 Q In either one of these interviews?

17 A **I'm not** for certain.

18 Q You **don't** know?

19 A I **don't** know but **that's** what they did.

20 Q You didn't tell us that earlier today in your testimony
21 when **you** were telling us everything that happened,
22 either, did you?

23 A You **didn't** ask.

24 Q Okay. Mr. Jordan played part of the first tape, Mrs.
25 **Finley**. This is the first tape with **Detective** Fletcher

1 at the hospital.

2 (Whereupon, audio tape was played.)

3 MR. JORDAN: Ken, stop it. **Judge**, we need to take
4 something up at side-bar.

5 THE COURT: **Do** what?

6 MR. **NIXON**: I'm sorry. I **didn't** hear you.

7 MR. JORDAN: We need to take something up on
8 side-bar.

9 (Whereupon, an off-the-record
10 side-bar conference was held.)

11 THE COURT: Ladies and gentlemen, I have been
12 advised that this tape -- in the tape someone
13 not Mrs. **Finley** made a statement, and this is
14 the statement -- They're playing this tape of
15 the statement of Mrs. **Finley**. I was advised
16 that somebody present, made a statement about
17 what Valerie did or **didn't** do. Just consider
18 **Valerie's** testimony in this tape. They can
19 call -- Valerie **Finley's** statement. This
20 other person, if identified, they can call.
21 I'll make sure that if anyone has any problem
22 getting her here, I'll make sure that person
23 is here. But I want to tell you that in
24 advance. I haven't heard -- I'm not really
25 sure what they're talking about, either, but

1 we'll listen to it together and find out.

2 Go ahead.

3 MR. NIXON: And, Judge, this is just the remainder
4 of the tape that Mr. Jordan played a portion
5 of.

6 THE COURT: You told me that.

7 MR. NIXON: It's very short.

8 THE COURT: Now, this tape was made when she was
9 in the hospital; is that correct?

10 MR. JORDAN: Yes, Your Honor.

11 MR. NIXON: Yes, sir.

12 MR. JORDAN: When she couldn't talk. Her voice is
13 not on this tape. Valerie's voice --

14 (Whereupon, audio tape was played.)

15 Q Did you hear that, Mrs. Finley?

16 A I heard it.

17 Q Did you hear it clearly?

18 A Yes.

19 Q Did you hear the voice when one female said, does she
20 know who hurt her, and another female said, she told me
21 she doesn't remember -- or she told me she doesn't
22 know?

23 A Yes.

24 Q Did you say that?

25 A No, I did not.

1 Q And whose voice **was** that that said she told me she
2 **didn't** know?

3 A I have no idea.

4 Q You **don't** know?

5 A Let me hear it again.

6 (Whereupon, audio tape was played.)

7 A I **don't** know who that was.

8 Q Hear that?

9 A Yes, I heard it, but it's so **faint**, I **couldn't**
10 recognize who it was.

11 (Whereupon, audio tape was played.)

12 Q That voice right there. Is that your sister?

13 A I **don't** know. It could be. That tape is all -- People
14 don't sound the same on tapes.

15 Q Well, the only people that were in there that were
16 **female**, were you and your sister and the police
17 **officer**, a female police **officer**, isn't it?

18 A Yes, sir.

19 Q And you were awake, weren't you?

20 A Yes, sir.

21 Q And it would have been your sister or the police
22 **officer**, correct?

23 A Yes, sir.

24 Q And you **can't** tell from listening to that tape whether
25 that's your **sister's** voice or not?

1 A No, sir.

2 Q But you did hear that person say she told me she
3 doesn't know?

4 A But I never told no one I never knew, never.

5 Q And you said that, in response to Mr. Jordan's
6 questions, that Tyrone was not good friends with Mike.
7 That's Tyrone, the neighbor you were talking about,
8 right.?

9 A Yes. I **didn't** say he -- he was not his best friend.
10 He was just a friend.

11 Q Your neighbor?

12 A Yes.

13 Q How, Mr. Jordan played a part of this second tape that
14 was made on **April** the **14th**, 1992.

15 MR. JORDAN: Judge, I'd **play** it all if I could
16 hear it better. I have a hard time hearing,
17 but we'll play it all, if Mr. **Nixon** wants to.

18 MR. NIXON: We can **do** that.

19 Q Have you heard that tape?

20 A I **don't** know.

21 Q Detective Smith and Detective Fletcher were at the
22 Rotary Rehab when that tape was **taken**, correct?

23 A I **think** so.

24 Q Do you remember that?

25 A Yes.

1 Q That's the one where you were speaking.

2 A Yes.

3 Q And the questions that I asked you regarding that
4 interview on my cross examination a minute ago when you
5 said that you didn't say, are you now saying that you
6 could have been wrong, that you could have said those
7 things?

8 A Say what?

9 Q Well, for example, on the tape, are you denying that
10 you said, that you told Detective Smith that the glass
11 screen door was locked and they messed it, the door,
12 the glass door, on open and cane in?

13 A Yes, I am.

14 (Whereupon, audio tape was played.)

15 A That; is incorrect;.

16 Q Ma'am?

17 A That is incorrect.

18 Q What is incorrect, Mrs. Finley?

19 A That address. I said 1736 Meadow Avenue.

20 Q And what did you say here? what did this voice say?

21 A Middle Avenue.

22 Q You said that, though, didn't you?

23 A Huh?

24 Q On this tape?

25 A That's what it sounds like.

1 (Whereupon, audio tape was played.)

2 A That was incorrect.

3 Q What was incorrect, Mrs. Finley?

4 A I was born August the **19th**, 1962, not '52.

5 Q Okay. That was your voice on that tape, **wasn't** it?

6 A Yes.

7 (Whereupon, audio tape was played.)

8 A **That's** not correct. His name was **Malthus**. His name
9 was not **Malcomb**.

10 Q Is that your voice, also, on the tape?

11 A Yes.

12 (Whereupon, audio tape was played.)

13 Q In the transcript that was provided to me by the
14 district **attorney's** office of this interview, it says
15 that you said the other guy went in the back door.

16 A You couldn't hear what I said. That might be what it
17 sounds like, but he was at the back door.

18 (Whereupon, audio tape was played.)

19 Q Is that your voice?

20 A Yes.

21 Q Did you hear what it said, that the glass screen door
22 **was** still locked and they messed it, the door, the
23 glass door on open?

24 A No, **that's** not what I said. They mashed the -- **That's**
25 supposed to be mashed, not messed. They mashed the

1 door where you have to squeeze the handle.

2 Q Did you say the glass screen door was still locked?

3 A I said it was unlocked.

4 Q I'm gonna let you hear that again. Okay?

5 (Whereupon, audio tape was played.)

6 Q Now, that is your voice. Did you say the glass screen
7 door was still locked?

8 A If I did, it **wasn't**, because the door was not locked.

9 Q You were mistaken?

10 A **Stan** came in as soon as I opened -- unlocked the wood
11 door. Stan mashed the screen door and came on in and
12 called the other guy. Ponytail come around --

13 Q You ~~don't~~ dispute that was your voice on this tape
14 saying that?

15 A If you all say it was.

16 Q Now, I'm also going to ask you about on page three of
17 this transcript that was provided to me **of** this
18 interview by the district **attorney's** office. It says,
19 "**And I told Stan the key was in the front door.**"

20 A I did not tell Stan that.

21 Q Did you tell **Lebarron** Smith that you told Stan that?

22 A No, I did not.

23 (Whereupon, audio tape was played.)

24 A I **didn't** see them leave.

25 Q Ma'am?

1 A I **didn't** see them leave.

2 Q Okay.

3 (Whereupon, audio tape was played.)

4 Q Did you say that?

5 A I **don't** recall saying that Stan saw --

6 Q Did you hear that?

7 A I heard it, but Stan saw the key in the front door
8 **hissself** (sic).

9 Q Okay. Your voice said, and I told Stan the key was in
10 the front door, right?

11 A I'm not sure. I **couldn't** make that out myself.

12 (Whereupon, audio tape was played.)

13 A **That's** what it said, but that's **not** what happened.

14 MR. NIXON: Judge, I would move to admit both of
15 these tapes into evidence.

16 THE COURT: Fine. **They're** introduced.

17 MR. NIXON: You want to mark then?

18 MR. JORDAN: Yeah, let's **mark** them.

19 (**State's** Exhibits 47 and 48 admitted in
20 evidence.)

21 Q Thank you, **Mrs. Finley**.

22 MR. NIXON: **That's** all I have of that witness,
23 Your Honor.

24 THE COURT: **Anything** further?

25 MR. JORDAN: NO, Your Honor.

1

THE COURT: Before you take your next witness,

2

let's take a few minutes. Is that all right

3

with y'all or do you want to wait another

4

hour?

5

(Recess.)

6

(Jury present.)

7

MR. JORDAN: The State rests at this time.

8

THE COURT: First witness. I know you got -- Do

9

you mind waiting for your motion a few

10

minutes?

11

MR. NIXON: No, sir, Judge, If you'll just have

12

-- record them as having been today, having

13

been filed now --

14

THE COURT: I wish this had been done before the

15

jury came back in, but --

16

MR. NIXON: Excuse me just a minute, Judge. I

17

call Tyrone Dortch, and if you will consider

18

the motions that I filed having been filed at

19

the close of the Plaintiff's case, Judge, we

20

can argue those when the jury goes back out,

21

if that's okay.

22

THE COURT: Sure.

23

TYRONE DORTCH

24

was sworn and testified as follows:

25

MR. NIXON: Give me one second, Judge.

DIRECT EXAMINATION

BY MR. NIXON:

Q Please state your name.

A My name is Tyrone Dortch.

Q And where do you live now, Mr. Dortch?

A 2435 Denmark Street.

Q Is that in Mobile?

A Yes, sir.

Q And where were you living on May the -- Excuse me -- on
March the 2nd, 1992?

A With my aunt;

Q And what is her name?

A Hazel Dickinson.

Q And where were you living at that time, what address?

A I think it was 1735 Meadow Avenue.

Q And do you know Valerie Finley?

A Yes, sir.

Q And do you know Michael Finley?

A Yes, sir.

Q Did you live next door to them?

A Yes, sir.

Q And do you recall the day that the police came to
Valerie Finley's home?

A Yes, sir.

Q And paramedics came?

1 A Yes, sir.

2 Q How many cars did you own at that time, Mr. Dortch?

3 A Two.

4 Q And what kind of cars were they?

5 A A '76 Pontiac Grand Prix.

6 Q What color?

7 A One was blue and white, and one was kind of like a rose
8 color and burgundy.

9 Q Did you have three Grand Prix?

10 A No, sir.

11 Q Did you ever have three Grand Prix while you lived at
12 that area on Meadow Avenue?

13 A No, sir.

14 Q Now, I'm gonna call your attention -- Well, prior to
15 this, you were a neighbor of Mike and Valerie Finley.

16 Would you describe your relationship with Mike and
17 Valerie Finley?

18 A I just knew them as neighbors.

19 Q Did you go out to dinner with them?

20 A No, sir.

21 Q Did you go to nightclubs with them, anything special --
22 Did you have any kind of special relationship with Mike
23 Finley?

24 A No, sir.

25 Q Just a neighbor?

1 A Yes, sir.

2 Q Did you speak to him in the neighborhood when you saw
3 him?

4 A Yes, sir.

5 Q Now, I call your attention to March the 2nd. 1992.
6 That was the day before Mardi Gras; is that right?

7 A I can't, remember from back that far.

8 Q The day that the paramedics came to Mrs. Finley's home.
9 Do you recall that was a Monday?

10 A I couldn't remember the day.

11 Q Okay. But you recall when they came out there?

12 A Yes, sir.

13 Q That morning of the same day, can you tell the jury
14 what you did from the time that you got up?

15 A Well, my mechanic, friend of mine that work on cars
16 like, Tony come by --

17 Q What's his name?

18 A Tony Mauldin.

19 Q Mauldin?

20 A Yes, sir.

21 Q And you said a mechanic friend of yours named Tony
22 Mauldin?

23 A Yes, sir.

24 Q You have to speak kind of slowly and loudly where the
25 court reporter can understand you.

1 A Okay.

2 Q Okay. And do you know what time he came by that
3 morning?

4 A He was kind of early, probably about eight or nine
5 o'clock.

6 Q Do you recall the time?

7 A No, sir.

8 Q **And** had Tony come by and worked on your cars before?

9 A Yes, sir.

10 Q On more than one occasion?

11 A Yes, sir.

12 Q Now, this particular occasion, tell us what happened
13 when he came by.

14 A After we got up, we started working on the car. I
15 observed the car in the **Finley's** driveway pull forward.

16 Q Let me slow you down. You started working on the car
17 with Tony?

18 A Yes, sir.

19 Q Where did you work on the car with **Tony**?

20 A In the median where the grass is growing at.

21 Q That's the grass medium on Meadow Avenue?

22 A Yes, sir.

23 Q Now, how many cars were parked there?

24 A TWO.

25 Q What kind of cars were those two cars?

- 1 A My blue and white **Pontiac** and Tony's brown **Toyota**.
- 2 Q Who owned the blue and white **Pontiac**?
- 3 A I did.
- 4 Q Where was your other Pontiac?
- 5 A **Behind** the gate covered up under a car cover.
- 6 Q Behind whose gate?
- 7 A My **aunt's**.
- 8 Q Where you lived?
- 9 A Yes, sir.
- 10 Q What kind of car did **Tony** have?
- 11 A I think it was a '70 Toyota **Corrolla**.
- 12 Q What color was that Toyota **Corrolla**?
- 13 A A dark brown.
- 14 Q Was it facing the **Finley** house?
- 15 A It was facing my house, my **aunt's** house, I think.
- 16 Q If you would, please, step down **from** the witness **box**
- 17 and come to this chart, please.
- 18 A (Witness complies.)
- 19 Q Does that resemble the circle on Meadow Avenue?
- 20 A Yes, sir.
- 21 Q Now, if you will, please draw where you live and where
- 22 the **Finley's** home was.
- 23 A This is the street here?
- 24 Q Yes, sir, this is the street. If you're in a car, you
- 25 would drive around like this. This is the grass

1 medium. Okay? I know **that's** not to scale, but draw it
2 as best you can.

3 A This is our house here.

4 Q Does your house sit far off the road?

5 A Yeah, sits further back. The **Finley's** house was right
6 about, here.

7 Q The **Finley** house is right next to your house?

8 A Yes, sir.

9 Q Okay. Draw the driveway, if you will, please.

10 A (Witness complies.)

11 Q okay. Now, first, with this show me where your Grand
12 **Prix** that was parked in your yard or in your driveway
13 was parked.

14 A I'd say his was right here, and my car was back here.

15 Q Back out of sight?

16 A Yeah.

17 Q And what color was that Grand Prix?

18 A Kind of like a rose color and a burgundy --

19 THE REPORTER; Rose color?

20 THE WITNESS: Yes, sir.

21 THE REPORTER: And what?

22 THE WITNESS; A burgundy top.

23 Q Okay. Back in your yard?

24 A Yes, sir.

25 Q All right. **Now**, show me where -- Was there a light

1 pole in the medium?

2 A A light pole right here, right here -- over by the
3 bushes.

4 Q Speak up, please, where the court reporter can hear
5 you. Okay? Turn sideways, if you will. Speak loudly.
6 I know this is a small courtroom. But draw the cars,
7 please, that were in the medium that morning when you
8 were there working.

9 A **Tony's** car was right here, about; right here facing the
10 front of the house.

11 Q Put an arrow which way it was facing.

12 A That way.

13 Q Okay.

14 A My car was right up under the tree, like.

15 Q Was it next: to **Tony's** car?

16 A Yes, sir.

17 Q Which way was it facing?

18 A The front, facing --

19 THE REPORTER: Facing?

20 THE WITNESS: Forward, front.

21 Q Frontwards. This car would have been a Grand **Prix**?

22 A No, **that's Tony's** car, the **Toyota**.

23 Q **Toyota**?

24 A Yes, sir.

25 Q Brown?

- 1 A Yes, sir.
- 2 Q Do you know Mr. Rogers, **Emmet** Rogers, that lived in the
- 3 neighborhood?
- 4 A Yes, sir.
- 5 Q **And** where was his house, if you know?
- 6 A About right there.
- 7 Q Okay. So if Mr. Rogers -- It someone was in Mr.
- 8 **Rogers'** front yard looking this way, they would **have**
- 9 been looking at the side **of** both of these vehicles and
- 10 the back?
- 11 A Yes, sir.
- 12 Q Is that right?
- 13 A The side and the back, yes, sir.
- 14 Q And this color Grand **Prix** was what?
- 15 A **Blue** with a white top.
- 16 Q Now, when you first went out there to work on these
- 17 **cars**, did you notice anything in the driveway of the
- 18 **Finley** home?
- 19 A Yes, sir.
- 20 Q Excuse me, to work on your car. What did you notice?
- 21 A I noticed a little car right here parked in the
- 22 driveway, a Ford.
- 23 Q Draw us **a** photograph of that -- I mean, excuse me, draw
- 24 a picture of that.
- 25 A (Witness complies.)

1 Q All right. You could take the stand again, if you
2 would, so the court reporter can hear you.

3 A (Witness complies.)

4 Q Mr. Dortch, do you recall what time you went out there
5 that morning?

6 A It probably was about 9:00, I think.

7 Q And how long had you been -- You said you noticed that
8 car in the Finley driveway when you went out?

9 A Yes, sir.

10 Q And describe to the jury that car, please.

11 A I believe it was like a faded out grey with a rallye
12 stripe.

13 Q What kind of car was it?

14 A Mercury Capri.

15 Q Is that the Mercury Capri that resembles a Mustang?

16 A Yes, sir.

17 Q Are you familiar with cars?

18 A Yes, sir.

19 Q Do you have any doubt in your mind that that's what it
20 was?

21 A No, sir.

22 Q Do you have any doubt in your mind about the color of
23 the car?

24 A No, sir.

25 Q And it was parked in the Finley's driveway at nine

1 a.m?

2 A Yes, sir.

3 Q Now, how long did you work on the car? You and Tony
4 **Mauldin** worked on your car, right?

5 A Yes, sir.

6 Q What were you doing to your Grand Prix?

7 A Taking off the water pump.

8 Q Okay. And -- Well, let me ask you this: The entire
9 tine that you were out here working on your water pump
10 with Tony, **was** there ever any other vehicle in that
11 medium?

12 A **No**, sir.

13 Q Was your other Grand **Prix** ever pulled into that medium?

14 A **No**, sir.

15 Q **You're** sure about that?

16 A **Yes**, sir.

17 Q Now, this brown **Toyota** that Tony **Mauldin** drove and
18 parked in the medium, do you know what year that was?
19 Is that an older car?

20 A Yes, sir.

21 Q **And** what color brown **was** it?

22 A Like a real dark brown, coffee brown, like.

23 Q Sir?

24 A Like a coffee brown.

25 Q **Was** it a four door, or do you recall?

1 A I believe it was four door.

2 Q Now, how long did you -- Well, did you see anybody
3 around the vehicle in the **Finley** house?

4 A No, sir.

5 Q At any time that day did you see anybody get in the
6 vehicle at the **Finley** house?

7 A Yes, sir.

8 Q Now, how long after you went out and started working on
9 the car with Tony was it before you saw someone come
10 out of the **Finley** house and get into that vehicle?

11 A Probably an hour and a half or two.

12 Q Were you keeping track of the time?

13 A No, sir.

14 Q And tell the jury what you saw, please.

15 A I observed two black guys **come** from the back of the
16 **Finley** house and got into the car with a sack, **Army-**
17 like fatigue sack.

18 Q What kind of sack?

19 A Like an Army green sack, something you use in the **Army**
20 to tote with.

21 Q Did they have anything else that you saw?

22 A No, sir.

23 Q Do you recall how they were dressed?

24 A No, sir.

25 Q Do you recall which one was driving or can you describe

1 the two guys?

2 A I can remember one of them, because I just glanced up
3 and looked and, like, started doing what I was doing.
4 I can remember one of **them's** face, though.

5 Q And you can remember one of **them's** face?

6 A **Yes**, sir.

7 Q And describe that **person** for me.

8 A **Kind** of tall, brown skinned, low haircut.

9 Q Had you ever seen him before?

10 A Yes, sir.

11 Q Where?

12 A In the Lynnwood Court area.

13 Q Where is that?

14 A Off **Stanton** Road.

15 Q And what. caused you to be in Lynnwood Court area?

16 A **Just** hanging out.

17 Q And **had** you seen **him** before this day, March the **2nd**?

18 A Yes, sir.

19 Q Did you make the connection that that was the person
20 you had seen before on this day?

21 A Well, I didn't quite think about it then, but after I
22 thought about it, I remembered I had seen him in
23 **Lynnwood Court** before.

24 Q **And what** did you call that person?

25 A Oh, I never did really know his name. I just knew his

1 face.

2 Q Have you seen him since then?

3 A Yes, sir.

4 Q When?

5 A In nightclubs, outside court right now.

6 Q Sir?

7 A He's outside the courtroom now.

8 Q Describe the person that you saw getting into the
9 vehicle coming out of the Finley house on March the 2nd
10 that you say is outside of the courtroom now. How is
11 he dressed now?

12 A The black hat on and a light colored jacket with a
13 necklace around the neck.

14 Q And you knew him from Lynnwood court?

15 A Yes, sir.

16 Q Now, the other person that you saw, did you get a look
17 at him?

18 A I didn't quite -- I can't remember his face because I
19 don't know him.

20 Q Was it Rodney Stanberry?

21 A No, sir.

22 Q Are you sure?

23 A Yes, sir.

24 Q Are you absolutely positive?

25 A Yes, sir.

1 Q Did you know Rodney **Stanberry**?

2 A Yes, sir.

3 Q And how did you know **Rodney** Stanberry at that time?

4 A Through Mike.

5 Q Mike **Finley**?

6 A Yes, sir.

7 Q Did you see him when **he'd** come over to visit Mike?

8 A Yes, sir.

9 Q Did you ever go hunting with Rodney Stanberry or
10 clubbing with **him** or go out with him?

11 A No, sir.

12 Q Is the only way you knew him by when he would come to
13 visit Mike?

14 A Yes, sir.

15 Q Now, and you're absolutely positive that Rodney
16 **Stanberry** was not one of those guys that came out of
17 that house and got into that car?

18 A Yes, sir.

19 Q Now, did you at any time see a brown Bronco in the
20 driveway that day?

21 A No, sir.

22 Q Did you know what kind **of** Bronco Rodney **Stanberry** had?

23 A Yes, sir.

24 Q Had **you** seen him drive it in the neighborhood before?

25 A Yes, sir.

1' Q If he had -- Now, y'all were parked working on the car
2 almost directly across from the Finley driveway; is
3 that correct?

4 A Yes, sir.

5 Q So if a Bronco had come to that driveway --

6 MR. JORDAN; object to leading. Object to
7 leading.

8 MR. NIXON: I haven't asked the question yet,
9 Judge.

10 MR. JORDAN: It's a leading question.

11 THE COURT: Go ahead.

12 Q If a Bronco or any other vehicle had come into that
13 driveway of the Finley house, you would have been able
14 to see it, wouldn't you?

15 A Yes, sir.

16 Q There was nothing to block your view?

17 A No, sir.

18 Q And the car that you saw, the Mercury Capri, blue gray,
19 when you saw it in the Finley driveway, how far away
20 from that car were you?

21 A About, I guess, about 12 feet, I guess.

22 Q As far as from me to you?

23 A Maybe a little farther, 15.

24 Q About here? I'm just estimating. I'm not asking you
25 to be exact.

1 A Probably a little bit farther.

2 Q Okay. Maybe the second row of the bleachers here?

3 A Yes, sir.

4 Q And from that distance you could clearly see what type
5 of car it **was**?

6 A Yes, sir.

7 Q And what color it was?

8 A **Yes**, sir.

9 Q Could you see clearly the person that you see out here
10 in the courtroom today?

11 A Yes, sir.

12 MR. JORDAN: I'm sorry. Is the person in the
13 courtroom?

14 THE WITNESS: No, sir.

15 MR. NIXON: Outside the courtroom.

16 Q Now, Tyrone, did you know what happened to Mrs. **Finley**
17 that day?

18 A No, sir, I **didn't** know what happened right then, but I
19 heard rumors in the neighborhood.

20 Q Okay. But that day you **didn't** know what happened?

21 A **No**, sir.

22 Q Now, tell us what you did. Well, first, did you see
23 the people leave?

24 A Yes, sir.

25 Q Get into the blue-gray car and leave -- Mercury Capri

1' and leave?

2 A The car was a faded out gray. I **didn't** say it **was**
3 blue.

4 Q I'm sorry. A faded out gray car?

5 A With a rally stripe on it.

6 Q And tell us about them leaving. Tell us what you saw.

7 A I observed two black guys come from the back area and
8 threw a bag in the car and pulled off and left.

9 Q Okay. Now, when they pulled off, did they back out or
10 did they pull out?

11 A They almost bumped into us one time.

12 Q When did they almost bump into you?

13 A When they were pulling out.

14 Q Okay. Did they come up onto the grass medium?

15 A **Yes, sir.**

16 Q And were you working on the car at that time?

17 A Well, I was helping Tony, **yes**, sir.

18 Q Tony was working on the car?

19 A Me and him.

20 Q When they came out, did they **come** -- I tell you what,
21 if you will, step up and show the jury how they came
22 out, please, on this board.

23 A (Witness complies.) When they came out, when they
24 backed up, we was, like, almost behind. I **don't** really
25 have this drawing too perfect, but they come out --

1 THE COURT: If you will, get on this side, **please**.

2 Stand on this side.

3 THE WITNESS: This side?

4 THE COURT: Yeah.

5 Q Speak loudly, now, Tyrone.

6 A When he come out, he backed up. He almost bumped into
7 us, like, and he pulled back up and drove on out.

8 Q So he backed up, and **y'all** were actually --

9 A He almost bumped into us.

10 Q Almost directly behind the driveway?

11 A Yes, sir. I guess he must have come out crooked or --
12 I know he almost bumped into us.

13 Q And what **was** Tony doing when they came up, backed the
14 car up?

15 A He was up under the hood.

16 Q Up under the hood **of** the car?

17 A Yes, sir.

18 Q You can take the witness stand.

19 A (Witness complies.)

20 Q Okay. After you saw them leave, what, if anything, did
21 you do?

22 A I **didn't** know nothing was wrong. We just kept working
23 on the car.

24 Q And did you leave at one point?

25 A Yes, sir.

- 1 Q And how long after they left was it before you left?
- 2 A Probably about 20, 30 minutes.
- 3 Q All right. And where did you go?
- 4 A To Auto Zone.
- 5 Q Did **Tony** go with you?
- 6 A Yes, sir.
- 7 Q And you say it was about 20 or 30 minutes after the two
- 8 **people** left in the Mercury that you left?
- 9 A Yes, sir.
- 10 Q **And** why did you go to Auto Zone?
- 11 A **To** get a water pump.
- 12 Q For the car that you were fixing?
- 13 A Yes, sir.
- 14 Q What Auto Zone did you go to?
- 15 A The one on **Springhill**.
- 16 Q Did you purchase a water pump?
- 17 A Yes, sir.
- 18 Q From that **Auto** Zone on **Springhill**?
- 19 A Yes, sir.
- 20 MR. NIXON: Judge, may I approach the witness?
- 21 THE COURT! certainly.
- 22 MR. JORDAN: No objection. Introduce it.
- 23 Q I'm going to show you this and ask you if you can tell
- 24 me what that is.
- 25 A A warranty receipt.

1 Q Did you buy that?

2 A Yes, sir.

3 Q Is this the receipt for the water pump?

4 A Yes, sir.

5 Q That you purchased at Auto Zone?

6 A Yes, sir.

7 Q Was Tony with you when you purchased that?

8 A Yes, sir.

9 Q At what time did you make that purchase?

10 A The receipt says 12:05.

11 Q Is that consistent with what you remember?

12 A Yes, sir.

13 MR. NIXON: That's a Defendant's Exhibit.

14 MR. JORDAN: I have no objection, Judge. I was
15 going to introduce it for this witness.

16 THE COURT: It's introduced.

17 (Defendant's Exhibit G admitted in
18 evidence.)

19 Q Now, how long did it take you to get from your house to
20 the Auto Zone?

21 A Maybe --

22 Q Excuse me, from here, the medium area.

23 A To Auto Zone? Probably about 20 minutes.

24 Q And how long were you in the Auto Zone before you
25 purchased the water pump, if you recall?

- 1 A Probably about 15 or 20 minutes.
- 2 Q And did you stop anywhere on the way back?
- 3 A No, sir.
- 4 Q You came straight back?
- 5 A Yes, sir.
- 6 Q What did you see when you got back?
- 7 A Paramedics and detectives.
- 8 Q The police and the paramedics were already there?
- 9 A And all the neighbors was out -- all the neighbors was
- 10 out in the yard.
- 11 Q Did you know what happened at that point?
- 12 A Well, someone said she had been shot, I think. I can't
- 13 remember who said it.
- 14 Q Did the police ask you any questions that day?
- 15 A No, sir.
- 16 Q Did you continue, you and Tony, continue to work on
- 17 your car out; in the medium?
- 18 A Yes, sir.
- 19 Q So your cars were still parked there in the medium?
- 20 A Well, we went: to get the water pump in Tony's car. My
- 21 blue car stayed there.
- 22 Q The Grand Prix did?
- 23 A Yes, sir.
- 24 Q Did Tony park his car, his brown car, back in the
- 25 medium when y'all returned?

- 1 A Yes, sir.
- 2 Q In the same place?
- 3 A Yes, sir.
- 4 Q And how long did it take you and Tony to put the water
- 5 pump back on the car?
- 6 A Probably another hour and a half or two hours.
- 7 Q And when you were out there working on the car and the
- 8 police were there, nobody asked you any questions?
- 9 A No, sir.
- 10 Q Now, after that time in April of 1992, did Mr. Jordan
- 11 come see you or someone from the police department or
- 12 the D.A.'s office?
- 13 A Those two guys right, there came and saw me.
- 14 Q And when was that?
- 15 A I don't remember the correct date.
- 16 Q Did you give them the receipt?
- 17 A Yes, sir.
- 18 Q Now, you don't save receipts every time you purchase
- 19 something, do you?
- 20 A Yes, sir.
- 21 Q You do?
- 22 A Yes, sir.
- 23 Q On this particular one, you bought a warranty, didn't
- 24 you?
- 25 A Well, they always give you a warranty when you buy the

1 part.

2 Q Is that why you saved the receipt, the warranty?

3 A Yes, sir.

4 Q You have to have that if something goes wrong with the
5 water pump?

6 A Yes, sir.

7 Q And you gave that to the police when they came out
8 there later to see you?

9 A I gave it to Buzz and the guy sitting next to him.

10 Q Now, you said that the -- I think you said that the car
11 that you saw had a rallye stripe. What is a rallye
12 stripe?

13 A Kind of like a racing stripe, like, black and orange, I
14 think.

15 Q Was it a linear stripe down the side?

16 A Across the trunk.

17 Q And across the trunk?

18 A Yes, sir.

19 Q And what color was that?

20 A Black and orange, I think.

21 Q At any time while you lived on Meadow Avenue, did you
22 have three Grand Prixes?

23 A No, sir.

24 Q And the person that you saw out here in court today,
25 you didn't know his name; is that right?

1 A I **didn't** know **his** name, no, sir.

2 Q Or outside court today. **Did** you see him outside court
3 yesterday?

4 A Yes, sir.

5 Q Did either one of the two people that you saw coming
6 out of that; house that. day have a **ponytail**?

7 A I **can't** recall. No, sir, I **don't** think so.

8 Q You would have been able to see it, if they did,
9 wouldn't you?

10 A Yes, sir.

11 Q Now, did you see -- Do you recall seeing Rodney
12 **Stanberry's** Bronco cone down that circle later that
13 day?

14 A Yes, sir.

15 Q And **was** that after the police left?

16 A Yes, sir.

17 Q And tell us about- that.

18 A He just asked me where was Mike, and I said I **don't**
19 know. I was saying, **what's** wrong? He was saying
20 somebody tried to break in his house and take his
21 stuff, his guns, the collection.

22 Q Did he say anything else that you recall?

23 A **No**, sir.

24 Q Now, when he came, you say **this** was -- Do you know what
25 time this would have been?

1 A It could have been about;, I guess, an hour after the
2 police left, I guess.

3 Q Everybody was gone at that time?

4 A Yes, sir.

5 Q Now, when he came that afternoon, did he come down this
6 way?

7 A Yes, sir.

8 Q That's the only way you can get there, isn't it?

9 A Yes, sir.

10 Q You and Tony were still in the medium?

11 A Yes, sir.

12 Q Now, if you will, tell us what he did. Did he pull up
13 in the medium, or did he pull in the driveway, or did
14 he pull on the road, or do you recall?

15 A He stayed about, right there where he stopped at.

16 Q Right here?

17 A No, back up --

18 Q About here?

19 A Back up a little more. About right there, yes, sir.

20 Q Was he in the roadway?

21 A Yes, sir.

22 Q In that Bronco that has "One night stand" on the front
23 of it?

24 A Yes, sir.

25 Q And did you come over and talk to him?

- 1 A Yes, sir.
- 2 Q Did he ever get out of the Bronco?
- 3 A No, sir.
- 4 Q At any time that day, Tony, (sic) out there in the
5 medium, were there three people working on your car?
- 6 A No, **sir**.
- 7 Q And other than the time when Rodney Stanberry came up
8 after the police and everybody left and asked you where
9 Mike was and told you somebody had burglarized his
10 house, or words to that effect, were there ever three
11 people in the medium area?
- 12 A No, sir.
- 13 Q And you were there from, you say, 8:30 or nine, is that
14 what you said, in the morning?
- 15 A Yes, sir.
- 16 Q Until you left to go get the water pump that you
17 purchased at **12:05**?
- 18 A Yes, sir.
- 19 Q And then when you came back **from** the Auto Zone -- You
20 were there for how many hours?
- 21 A Probably about two or three till I got it home.
- 22 Q And you're absolutely positive that Rodney **Stanberry**
23 was not one of the two guys that you saw coming out of
24 the house?
- 25 A Yes, sir.

1 Q Do you have any reason not to?

2 A No, sir.

3 MR. NIXON: That's all I have of this witness.

4 CROSS EXAMINATION

5 BY MR. JORDAN:

6 Q Mr. Dortch, why have your times changed by about three
7 hours from the time this happened until today? Why did
8 you first state that you went outside around 11 or --
9 You stated that around 11 or 11:30 you saw two guys
10 walking to a faded gray or tan Mercury Capri. Today
11 you're saying you saw it at 8:30?

12 A No. I'm saying they got there -- they probably was
13 there about 8:30 or nine.

14 Q No, sir. When this first happened, you stated that you
15 saw those people at the house at about 11 or 11:30 in
16 the morning. Today, three years later you're telling
17 us now that you saw there at 8:30 in the morning.

18 A I ain't said I saw them at 8:30. I saw the car there
19 at 8:30 or nine.

20 Q So what time did you see them?

21 A When they come out.

22 Q What time was that?

23 A Probably about 11 or 11:30 when we went to get the
24 water pump.

25 Q Okay. So now what you're telling us is that they were

1 in the house for about three hours, right?

2 A I don't know what time they got there. I **didn't** see
3 them arrive.

4 Q At least three hours. What **you're** telling us now is
5 that you went out at **8:30** and saw that car in the
6 drive, right?

7 A It was in there when I got to start working on the car,
8 yes, sir.

9 Q And what you said when this first happened was that you
10 saw them walking out at about 11 or **11:30** in the
11 morning.

12 A That's about **right**.

13 Q And **8:30** to **11:30** is about three hours, right?

14 A Yes, sir.

15 Q **You're** saying they might have been in there longer
16 because you **didn't** see them when they drove up.

17 A No, sir, I **didn't** see them when they arrived.

18 Q So we've got those two people in the house for three
19 hours, right?

20 A (No audible response.)

21 Q Now, let me see if this is right. Did I hear you say
22 this right, that the first person you saw after this
23 incident was Rodney Stanberry; is that right?

24 A The first person, what, now?

25 Q The first person that you saw after this happened --

1 MR. NIXON: **That's** not what he said, Judge. He
2 said he came back and there was a whole slew
3 of people there, police, paramedics. He
4 never said --

5 Q I'm sorry. Did you talk to the police and the
6 paramedics?

7 A No, sir.

8 Q **Who** was the first person you talked to?

9 A Rodney asked me a question and I answered it.

10 Q **That's** what I thought you said. Let me see if this is
11 right, now. The first person that you had contact with
12 at the time of this incident was Rodney Stanberry; is
13 that right?

14 A I **didn't** see him at the time of the incident. He just
15 drove up and he asked me what happened.

16 Q He drove up to the scene, **didn't** he?

17 A And told me somebody tried to break in Mike's house.

18 Q Were the police still there?

19 A No, sir.

20 Q So **he's** driving up there and seeing you -- **He's** riding
21 in his brown Bronco, right?

22 A Yes, sir.

23 Q And telling you that somebody had broken into **Val's**
24 house, right?

25 A Yes, sir.

1 Q And who was the first person -- What else did y'all
2 talk about at that time?

3 A That was it.

4 Q That was it? You **didn't** tell Rodney anything else?

5 A No, sir.

6 Q And Rodney left and went on his **way**?

7 A Yes, sir.

8 Q Now, Mike **Finley testified** under oath yesterday that
9 you told him --

10 MR. NIXON: Judge, Im **gonna** object to him stating
11 Mike **Finley's** testimony. If he wants to ask
12 this witness a question, did he say
13 something, that's fine, but I **don't** want Mr.
14 Jordan giving his rendition of their
15 testimony.

16 MR. JORDAN: **He's** been doing the same thing.

17 MR. NIXON: I **haven't**, Judge.

18 THE COURT: Ask him your question, Buzz. I don't
19 know what your question is, yet.

20 Q Mike **Finley testified** under oath yesterday --

21 MR. NIXON: **Excuse** me.

22 Q -- that you saw two people --

23 MR. NIXON: **Excuse me**, please. There again, **it's**
24 **not proper, Judge.**

25 THE COURT: Let him ask the question and then I'll

1 rule.

2 Q That you saw two people walking up the front steps,
3 going inside the house. Now, is that -- did you tell
4 Mike Finley that?

5 A No, I told Mike I saw two guys leaving the back.

6 Q So you did not ever tell Mike **Finley** that, did you?

7 A That I saw two guys going to the house?

8 Q Right.

9 A No, sir.

10 Q Would you do me a favor, too, would you go outside and
11 get the guy that **you're** talking about and bring him up
12 here, up front with you so we can all see what he looks
13 like?

14 A Go get him?

15 Q Yes. Just walk out to the front and ask him to come
16 stand in the courtroom.

17 A Okay.

18 MR. NIXON: Judge, I'm gonna object to that and --

19 MR. JORDAN: Judge, he has identified somebody.

20 MR. NIXON: -- and I think you know why.

21 THE COURT: I **don't**. You better come tell me.

22 MR. NIXON: Judge, if he can go point him out and
23 get somebody else to bring him in here, but I

24 **don't** want him going out to this guy --

25 MR. JORDAN; That's fine. I'll invite him in, but

1 > I need him to show me, **if** I could do that:.

2 THE COURT: You can go with him.

3 MR. JORDAN; **Come on.**

4 (Witness complies.)

5 Q Okay. **Now**, a little while ago --

6 MR. NIXON: Judge -- Excuse me.

7 THE COURT: Ask your question.

8 Q You testified that you saw somebody outside the
9 courtroom who was one of the two people that you
10 testified you **saw** leaving Mrs. Finley's residence about
11 11:30 in the morning on March **2nd**, 1992; is that
12 correct?

13 A Yes, sir.

14 Q And is this the person that you're telling us you saw
15 leaving the house?

16 A Yes, sir.

17 Q And **that's** the person you saw leaving the house?

18 THE COURT: Young man, you can go outside.

19 MR. JORDAN: Go back outside.

20 Q Now, when it is --

21 MR. NIXON: Judge, I'd like the record to **reflect**
22 that he **identified** Tyrrell Moore.

23 MR. JORDAN: If **he's** a witness to that, I --

24 THE COURT: Go right ahead. You're the one that
25 asked **for** him to be brought in here. I see

1 > nothing wrong with him telling who he is. Go
2 ahead.

3 Q When is it that you saw that person after this
4 happened?

5 A When I seen him?

6 Q Yes. First, of all, how long **did** you see **him that day**?

7 A That day?

8 Q Uh-huh.

9 A **Long** enough for him to leave the back and get in the
10 car.

11 Q How long **was** that, 10 minutes?

12 A **About** ten or **15** seconds.

13 Q Did you ever know him before this event occurred?

14 A I knew his face.

15 Q Oh, so you knew his face?

16 A I **didn't** know his name.

17 Q Let me get this straight now, on March the 2nd of 1992
18 you knew that guy's face, and you bad seen **him** before
19 that **day**.

20 A **Yeah**, way before this happened. I been knowing his
21 face way before this happened.

22 Q **You'd** been knowing his face. **You'd** been knowing him,
23 right?

24 A I didn't know his name. I didn't know him personally.
25 I just **knew** him from --

1 Q But you knew -- You knew from where?

2 A **Lynnwood** Court Apartments.

3 Q **Vow**, you realize that **you've** never told this detective
4 anything about knowing the person's face, right?

5 A He never showed me a picture or anything.

6 Q No, no, no. That **wasn't**, my question. My question was,
7 you never said, hey, **Detective**, I know the guy's face.
8 I know him from somewhere. I know his face. **I've** seen
9 him before. You've never said that before, have you?

10 A I **can't** recall.

11 Q Well, let me let you look at -- let me let you read the
12 statement that you gave. It's got your signature on
13 there. I want you to read through that entire
14 statement for me, if you would.

15 A Start at the top?

16 Q Yeah, all the way.

17 MR. NIXON: Read it to yourself, first.

18 A (Witness complies.) What is your name? Tyrone
19 **Dortch**. What is your address? 17 --"

20 MR. NIXON: Excuse me.

21 Q Just read the whole statement.

22 MR. NIXON: Read it to yourself.

23 Q You can read it all.

24 MR. NIXON: Then he's **gonna** ask you questions
25 about it.

1 Q Have you read it all?

2 A Yes, sir.

3 Q All pages? You read front to back?

4 A No, sir.

5 Q **Why don't** you go ahead and read that real quick.

6 A (Witness complies.)

7 Q Now, did you ever tell the detective that you had, in
8 fact, recognized the person's face that you saw leaving
9 the house?

10 A No, sir.

11 Q **Wasn't** that important to you? **Didn't** you think that
12 was important, Tyrone?

13 A At the time, I **can't** really remember.

14 Q You **couldn't** really remember what?

15 A Because he **didn't** show me a Polaroid picture **of** him.

16 Q Well, when did his face become familiar to you?

17 A When I saw it again on a picture.

18 Q When did you see it? Who showed it; to you?

19 A Ryan.

20 Q Wait a minute. So Ryan Russell brought you a picture.

21 MR. JORDAN: Can I have copy of the picture,
22 please, Ken?

23 MR. NIXON: **It's** in discovery. **It's** the one you
24 gave in discovery.

25 MR. JORDAN: If **you'd** show it to me.

1 MR. NIXON: I **don't** know where it is. Give me
2 your **pictures**.

3 Q When did this happen?

4 A **When** he showed me pictures?

5 Q Yeah.

6 A I think about three or four days ago.

7 Q Three or four days ago?

8 A Yes, sir.

9 Q And where were you?

10 A At home.

11 Q **And** he came by your **house**?

12 A Yes, sir.

13 Q And where is your home?

14 A **2435** Denmark.

15 Q It's **not** on Meadow Avenue?

16 A I moved.

17 Q **Who** do you live there with?

18 A My parents.

19 Q Your parents moved, too?

20 A I lived on Meadow with --

21 Q **Oh**, your aunt lives on Meadow.

22 A My parents live at **2435** Denmark.

23 Q So Ryan Russell came over to your house four days ago,
24 and what did he show you?

25 A He **showed me numerous Polaroids**. He **showed** me numerous

1 ran off pictures.

2 Q I'm sorry.

3 A He showed me more than one run-off copies of pictures.

4 Q He showed you copies, photocopies of pictures?

5 A Yeah.

6 Q This was only four days ago, so you should remember.

7 Show me how he did it. How many pictures were there?

8 A It was a lot of them.

9 Q How many?

10 A Probably 20, I guess.

11 Q Oh, he showed you 20 pictures?

12 A Twenty faces, yeah.

13 Q He showed you 20 faces. And how did he arrange them?

14 A He just had them together.

15 MR. JORDAN: Can I get exactly what he showed him?

16 MR. NIXON: It's two photo spreads.

17 MR. JORDAN: It's a copy. Do you still have that?

18 Q First of all, take a look at that and see if you
19 reviewed all those pictures.

20 A Yes, sir.

21 Q Did you see any more?

22 A Sir?

23 Q Did you see any more than that?

24 A This was all of them.

25 Q How many were they?

1 A This is it here.

2 Q How many are there? Go ahead and count them for me.

3 A Seventeen.

4 Q Seventeen.

5 MR. JORDAN; Let's mark these an exhibit.

6 (State's Exhibit 49 marked for
7 identification.)

8 MR. JORDAN: What's been marked as State's Exhibit
9 Number 49, I'll go ahead and introduce that
10 at this time, Your Honor. Your Honor, go
11 ahead and mark it in?

12 THE COURT: Go ahead.

13 (State's Exhibit 49 admitted in
14 evidence.)

15 Q Now, which person is it that you were able to identify
16 as the person leaving the Finley residence?

17 A Right here.

18 Q Go ahead, circle that, would you. Is that the only
19 picture you were able to identify?

20 A Yes, sir.

21 Q You want to go ahead and turn it over to this one, too.
22 Anybody on that one?

23 A That's the same guy here.

24 Q Okay. Circle that. Now, what was it that Mr. Russell
25 told you as he was showing you that photo spread, those

1 photographs?

2 A What was he telling me?

3 Q Yeah, what did he tell you?

4 A He said that one of the guys that I picked was one of
5 the guys who confessed to it.

6 Q That's what he told you?

7 A Yes, sir.

8 Q He told you you picked the right guy; is that what he
9 told you?

10 A He told me I picked one of the guys who confessed to
11 the crime.

12 Q Now, what did he tell you before you picked out any
13 photographs?

14 A Tell me your name.

15 Q He just showed you -- **threwed** some photographs out and
16 that's it?

17 A He just asked me to look through and see if I see the
18 person that was leaving the house that day.

19 Q Now, you said you had seen that guy before this
20 incident, but you never told the police about it,
21 right?

22 A Because it **wasn't** really in my head then.

23 Q Well, when did it get in your head?

24 A It come back to me when I saw the pictures.

25 Q So have you seen him since March the 3rd of '92?

1 A Have I seen them since?

2 Q Yeah, have you seen that person since March the 3rd of
3 '92?

4 A What do you mean? Since that day?

5 Q This happened on a Monday, right, Tyrone?

6 A I **don't** remember **the exact** day.

7 Q It was March the 3rd of 1992, a Monday. Okay?

8 A Okay.

9 Q Or March **2nd**, I'm sorry, March **2nd**, 1992. Since March
10 the 2nd **of** 1992 until today, tell us all the times
11 **you've** seen him.

12 A I **can't** recall. I **don't** think none.

13 Q So you have not seen him in over three and a half
14 years, right?

15 A Yes, sir.

16 Q And you saw him very briefly on March the **3rd**, right?

17 A I **saw** him before the incident, a lot.

18 Q You saw him before the incident a lot?

19 A Yeah.

20 Q Where?

21 A In Lynnwood Court.

22 Q Where?

23 THE COURT: Lynnwood Court.

24 Q But where at Lynnwood Court?

25 A Hanging out by where he lives, I guess.

1 Q Where did he live?

2 A I **don't** know exactly where he lived.

3 Q Well, where did you see him? Where at Lynnwood Court?

4 Be specific.

5 A Around the duplex.

6 Q Around whose duplex?

7 A Around the apartments.

8 Q Who do you know that lived over there?

9 A A guy named Johnny Ray Mahan.

10 Q So Johnny Ray Mahan **was** this guy's neighbor; is that

11 what you're telling us?

12 A I **don't** know all that.

13 Q You **didn't** tell the **police** that, either, did you? You

14 never told them that I saw the guy coming out from the

15 **Finley** house staying at **Lynnwood** Court hanging out by

16 that **person's** name you just gave me.

17 A His face **didn't** come back to **my** memory until I saw the

18 picture.

19 Q Three and **a** half years later when Ryan Russell showed

20 it to you, right?

21 A Yes, sir.

22 Q On your statement that you gave to the police, you were

23 **asked** this specific question, Tyrone. "Tyrone, can you

24 describe^H -- Well, first you were asked tills, **Tyrone:**

25 Wave you seen the two guys that **was** at the **Finley's**

1 house the morning of March the **2nd**, 1992 before?" You
2 were asked that question face to face by a police
3 officer, weren't you?

4 A Yes, sir.

5 Q Huh?

6 A Yes, sir.

7 Q And you said no.

8 A Yes, sir.

9 Q Then you were asked, "**Can** you describe the two guys or
10 what they were wearing," and you answered, "All I know
11 is one of them was light skinned, and one was dark;
12 they both had short hair. I **don't** remember what they
13 were wearing." Is that what you told them?

14 A Yes, sir.

15 Q Tyrone, if you learned of this four days ago that you
16 had information as to perhaps who may have tried to
17 kill your neighbor, Mrs. Finley, why **didn't** you
18 immediately notify me of this?

19 A He didn't show me the picture then. I **couldn't**
20 remember.

21 Q No, no, no. I'm saying, four days ago Mr. Russell came
22 and you picked out who the person was that you saw
23 walking out of the back of the house, right?

24 A Yes, sir.

25 Q Why didn't you at that time call me or **Lebarron** and

1 **say, hey,** I just saw a photograph of the guy that was
2 walking out.

3 A I **didn't** know I was obligated to do that.

4 Q Huh?

5 A I **didn't** know I had to do that, obligated to do that,
6 such things.

7 Q **You're** not obligated to. I'm just asking you why you
8 **didn't** do it. I mean, this was your neighbor, right,
9 Tyrone? You must have cared something about this case,
10 right?

11 A X do.

12 Q And it must have been kind of important to you that you
13 might; have **information** about who did this.

14 A Yes, sir.

15 Q And you didn't **notify** either one **of** us, did you?

16 A I **don't** know how. I **don't** have either one of **y'all's**
17 **numbers.**

18 Q Now, **let's** talk a little bit about the green **Amy** bag.
19 Which person was carrying the green **Amy** bag? The guy
20 right there, that guy?

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

22 Q Now, **what;** a minute, Tyrone. You **can't** remember which
23 one was carrying the green Army bag?

24 A **No,** sir. **It's** been three years **ago.**

25 Q You can remember **it's** him, but you **can't** remember if he

1 had a green **Army** bag?

2 A I can't remember everything. I remember that face.

3 Q Describe that green Army bag to us.

4 A Stands about, I guess, four feet.

5 Q Huh?

6 A Extends from the ground, stands about four feet, green.

7 Q Four feet tall? Army bag about this tall?

8 A A little shorter.

9 Q A little shorter?

10 A Go down a little more. **Yeah**, about like that.

11 Q About right here?

12 A Yes, sir.

13 Q **Are** you talking about one **of** those big ole green Army
14 duffle bags?

15 A Yes, sir.

16 Q That you see **military** people carrying around? **It's**
17 about four feet tall and pretty wide, right?

18 A Around, yes, sir.

19 Q And **that's** what you saw somebody carrying out that --
20 Were they carrying it with both hands, like this? Were
21 they carrying it like this or how were they -- over the
22 shoulder or two hands dragging it in front of them or
23 dragging it on -- how were they carrying it?

24 A One hand, I think.

25 Q Oh, one hand. The green Army bag?

- 1 A Yes, sir.
- 2 Q And could you see the guns sticking out of the top of
- 3 it?
- 4 A I couldn't tell you what was in it.
- 5 Q Couldn't tell anything that was in it.
- 6 A I **couldn't** tell what was in it. I **don't** know what was
- 7 inside.
- 8 Q **When's** the first time -- Let me get my time straight
- 9 here, too. You left the Auto Zone at **12:05**.
- 10 A I bought the water pump, yes, sir.
- 11 Q Bought the water pump. **11:30 was** when you saw the two
- 12 guys leaving the house, right?
- 13 A **I'm** not exact on the time frame because I **can't**
- 14 remember the exact time.
- 15 Q Well, **that's** what you told the police right after this
- 16 happened, was **11:30**. Do you dispute that now?
- 17 A What I said then -- yes, sir.
- 18 Q And you told us today when Mr. **Nixon** asked you
- 19 questions, you said that you got outside at 8:30.
- 20 A Or nine o'clock.
- 21 Q 8:30 or nine?
- 22 A Or early after.
- 23 Q And the car was already there?
- 24 A Yes, sir.
- 25 Q **And** you also told us that you never saw Rodney

1 Stanberry's Bronco out; there around eight or 8:30 in
2 the morning, right?

3 A Yes, sir.

4 Q But you have a relationship with Mike Finley, don't
5 you?

6 A I just know him as a neighbor.

7 Q And you know Rodney Stanberry, right?

8 A Through Mike.

9 Q And you've described the car as a Mercury Capri?

10 A Yes, sir.

11 Q What color?

12 A It was faded-out gray with a rally stripe.

13 Q Faded-out gray, rally stripe?

14 A Yes, sir.

15 Q And where is it that Mike Finley drove you over to to
16 look at a car? He drove you to Lynnwood Court?

17 A Yes, sir.

18 Q He drove you to the same location where you just
19 identified knowing that guy from, right?

20 A Yes, sir.

21 Q And he showed you a Mercury Capri, didn't he?

22 A I can't remember what kind of car it was. I don't
23 know.

24 Q Well, he showed you a car --

25 A But it wasn't the car, though.

- 1 Q And you told him right then it was not the car?
- 2 A Yes, sir.
- 3 Q **And** you told this jury a little while ago neither one
- 4 of the people coming outside had a ponytail; is that
- 5 correct?
- 6 A I can't remember.
- 7 Q Well, **let's** look at your statement here. You said they
- 8 both had short hair. Can you remember that?
- 9 A Yes, sir.
- 10 Q You just read over this statement, right?
- 11 A I **didn't** see a ponytail.
- 12 Q So you can remember that. Who **was** the first person you
- 13 told that you recognized his face before, that you knew
- 14 the **guy**? Was that also Ryan Russell?
- 15 A When he brought the pictures, yes, sir.
- 16 Q Did you tell him before that you had seen the guy
- 17 before?
- 18 A That I seen him before?
- 19 Q Right.
- 20 A Around **Lynnwood**.
- 21 Q You told him that?
- 22 A Yes, sir.
- 23 Q When did you tell him that?
- 24 A About three or four days ago.
- 25 Q Do you remember Mike **Finley** telling you that Rodney

1 > kept coming over wanting to know how his wife was doing
2 and if she was talking?

3 A I can't quite remember that far back, everything.

4 Q Let me show you -- I thought -- Did you just read this?
5 Let me just ask you **to** read this again. Read this
6 paragraph right here. Did you tell the police that?

7 A I guess so. It's there.

8 Q So **that's** what Mike **Finley** had told you, right?

9 A Yes, sir.

10 Q That Rodney kept coming over wanting to know how his
11 wife was doing and if she was talking. Talking, right?
12 **That's** what **you specifically** told the police when they
13 asked you that; is that correct?

14 A I guess so.

15 Q Tyrone, is this your signature on this form right
16 there?

17 A Yes, sir.

18 Q Are you Tyrone **Dortch**?

19 A Yes, sir.

20 Q And you gave this statement on April **30th**, 1992, didn't
21 you?

22 A Yes, I **guess** so.

23 Q You guess so or --

24 A That's my signature there.

25 Q Well, are you guessing so or --

1 A I can't remember what I said three years ago.

2 Q You don't remember any of this?

3 A Not all of it.

4 Q Even reading this, you can't remember telling that to
5 the police?

6 A Not all of it.

7 Q Now, Tyrone, you never heard a gunshot, did you?

8 A No, sir.

9 Q The entire time you were out there, from 8:30 to 11:30
10 when the guys were leaving, prior to the guys leaving,
11 you never, ever heard a gunshot, did you?

12 A No, sir.

13 Q Who brought you some photographs to look at after this
14 happened? Do you remember that?

15 A I guess about two weeks later Rodney had some photos.

16 Q Exactly. Rodney brought some photographs by, too, to
17 show you, didn't he? Is that not State's Exhibits 42
18 and 43? Those are the two photographs he brought by to
19 you, aren't they?

20 A I don't think those are it.

21 Q There were some other photographs?

22 A I can't really remember. I don't think those are the
23 ones.

24 Q How many were there?

25 A I can't remember how many it was.

1 Q And what did they look like? Were they single
2 photographs of people, or were they group photographs
3 like that?

4 A I think one was a **group** and *some* was one *or* two people,
5 I think.

6 Q All right. And what was it that Rodney asked you about
7 those photographs? **Didn't** he tell you that the two
8 guys that did it were in those photographs, the two
9 friends of his from **New** York, and he wanted you to pick
10 out the two?

11 A I **couldn't** recognize them when he said that.

12 Q But **that's** what he told you, **didn't** he? He showed you
13 **the** photographs and he said, these are the two guys
14 *from* New York, my two friends that were down here, and
15 **they're** the two guys that did this, and he asked you if
16 you could pick them out, and you said you **couldn't** pick
17 them out.

18 A Yes, sir.

19 Q **That's** exactly what happened, **isn't** it?

20 A Something like that.

21 Q Did Rodney tell you the two friends *from* New York or
22 two names of the two friends from *Mew York* that he told
23 you **who** did this?

24 A If he did, I **can't** remember.

25 Q Do you remember the name **Rene** and **Ihoe**?

1 A No, sir.

2 Q He never told you those names?

3 A No, sir. I **can't** remember the names.

4 Q Let me just read this to you to just help you to
5 refresh what happened. The question was, on April the
6 30th, '92, "Have you talked to Rodney since Mrs. **Finley**
7 was **shot?**" You said, "One time Rodney showed me some
8 pictures of the guys he thought done it. Question:
9 Did you recognize the guys on the pictures? Answer:
10 No, sir. Question:"

11 MR. **NIXON:** Judge, is he -- Excuse me. Is he
12 asking him if he said this?

13 MR. **JORDAN:** Yes.

14 MR. **NIXON:** Or is he just reading this?

15 MR. **JORDAN:** I'm asking if he said it.

16 Q Were you next asked, "What Kind of pictures did Rodney
17 show you?" And you answered, "**They** were Polaroid
18 shots. The pictures **was** clear." Did you say that?

19 A I **can't** remember specific.

20 Q Well, is that **what's** written down here?

21 A Yes, sir.

22 Q The next question was, "When did Rodney show you these
23 pictures?" And what was your answer on April 30th of
24 '92, Tyrone?

25 A "**About** a day or two after it happened."

1 Q So it was a day or two after this happened when Rodney
2 brought around the pictures **of** his two friends from Sew
3 York and showed them to **you**; is that right?

4 A I guess so.

5 Q **That's** what you said. **That's** all.

6 REDIRECT EXAMINATION

7 BY MR. NIXON:

8 Q Tyrone, you remember Rodney coming by later that same
9 day?

10 A Yes, **sir**.

11 Q And asking you about where Mike was?

12 A Yes, **sir**.

13 Q And it was after that, sometime after that, days after
14 that **that** he came back by and showed you some
15 photographs?

16 A Yes, **sir**.

17 Q Now, Mr. Jordan showed you these two photographs,
18 **State's** Exhibit 42 and 43, and you said that -- you
19 **didn't** know if that -- is that the photos or not?

20 A I **dn't** think they were. They **don't** look like it.

21 Q Do you remember what photos he showed you, then?

22 A No, **sir**.

23 Q **Tyrrell** Moore, the person who just came in here, that
24 Mr. Jordan brought in here, is not in these
25 photographs, is he?

1 A No, sir.

2 Q The photos -- Do you recall how many photos were shown
3 to you?

4 A No, sir. It was about three or four.

5 Q Now, all this conversation that Mr. Jordan was asking
6 you about, did he tell you this and did he tell you
7 that, do you remember what; Rodney told you on that day
8 when he showed you those photos? Do you remember
9 exactly what he said three years ago?

10 A Not exactly, no, sir.

11 Q Do you remember that he was just trying to get you to
12 identify someone in the photographs?

13 MR. JORDAN: Judge, this is leading. This is
14 leading. This is leading.

15 THE COURT; Don't lead him.

16 Q Is that what you're telling us?

17 MR. JORDAN; Judge, again, **it's** leading. I'd like
18 the witness to answer instead of Mr. **Nixon**
19 telling the witness what to say.

20 THE COURT: He's correct. Don't lead him.

21 MR. JORDAN: Thank you.

22 Q Do you remember the exact conversation?

23 A No, sir.

24 Q That you had with Rodney **Stanberry**?

25 A No, sir.

1 Q Now, you did tell the police -- Now, who took this
2 statement? Who came **and** took this statement from you?

3 A Those two guys right there.

4 Q This man right **here**, Detective **Lebarron** Smith, and this
5 man right **here**, Buzz Jordan?

6 A Yes, sir.

7 Q They **came** and took this statement. **Did** they take one
8 statement or two statements?

9 A It was more than one.

10 Q At different times?

11 A I believe one time I talked to him at the precinct, Mr.
12 -- the colored guy.

13 Q Okay. **And** when was that?

14 A I can't remember.

15 Q Was it days after this shooting?

16 A Probably months after.

17 Q Do you remember the first time the police contacted you
18 and asked you to tell them about what you saw?

19 A I guess when he took that statement is the first time I
20 encountered them.

21 Q On April the **30th**?

22 A Yes, sir.

23 Q And that was Mr. Jordan and Mr. Smith?

24 A Yes, sir.

25 Q And you told them on April the 30th of 1992 that you

1 saw that gray Mercury Capri in the driveway that day,
2 didn't you?

3 A Yes, sir.

4 Q And you told them that you saw two guys coming out of
5 that house and that the guy that you saw was not Rodney
6 Stanberry, didn't you?

7 A I don't believe they asked me whether it was Rodney.

8 Q They didn't ask you?

9 A I don't think they did.

10 Q Okay. Did you tell them --

11 MR. JORDAN: Judge, it's leading. Leading,
12 leading, leading.

13 THE COURT: Ask him.

14 MR. NIXON: Judge, I'm asking about the statement.
15 He just read the whole statement in the
16 record.

17 MR. JORDAN: No. Here's the statement. If you
18 want to ask him --

19 MR. NIXON: I have the statement right here.

20 THE COURT: Go ahead and ask him.

21 MR. NIXON: If you would let me ask my question
22 before you object, you'd know what I'm fixing
23 to ask him.

24 MR. JORDAN: Object to leading.

25 Q You told Mr. Jordan and Mr. Smith on April 30th that

1 > you --

2 MR. JORDAN: Judge, I have to object to the
3 leading.

4 THE COURT: I have to overrule.

5 Q -- **didn't** you? That statement, **he's** been asking you
6 questions about **what** you **didn't** say. I'm asking you
7 about what you did say. You told him on April 30th
8 that you **were** working on your car with Tony **Mauldin** out
9 in the **medium**, **didn't** you?

10 A Yes, sir.

11 Q And you told him that you saw a Mercury Capri in the
12 driveway of the **Finley** home, **didn't** you?

13 A Yes, **sir**.

14 Q And you told him that you saw two guys walking out of
15 **the Finley** house with a bag, **didn't** you?

16 A **Yes**, sir.

17 Q You told him that about ten minutes later you and Tony
18 left to go get a water pump, **didn't** you?

19 A Yes, sir.

20 Q And you told him where you went to get the water pump?

21 A Yes, sir.

22 Q And you gave him that receipt and you gave him that
23 warranty, **didn't** you?

24 A Yes, sir.

25 Q You told him you **didn't** hear a gunshot; is that

1 correct?

2 A Yes, sir.

3 Q Do you recall whether or not you had a watch on that
4 day, Tony (sic)?

5 A I **didn't** have a watch on. I **don't** wear watches.

6 Q Are you doing the best you can about times to remember
7 the time?

8 A Yes, sir.

9 Q Other than the fact that that receipt is stamped at
10 **12:05**, can you be certain about any of the other times?

11 A No, sir.

12 Q And, your best estimate, how long **does** it take to get
13 to Auto Zone?

14 A Probably, if the traffic's not any problem, about 20
15 minutes.

16 Q Now, did Mr. Jordan or Mr. Smith ever show you any
17 photographs?

18 A No, sir.

19 Q And I was with Mr. Russell when we came to see you the
20 other night, wasn't I?

21 A Yes, sir.

22 Q **And** you knew you were going to testify in this trial
23 after you got served with a subpoena, didn't you?

24 A Yes, sir.

25 Q And is that the first time that you saw those

1 photographs?

2 A Yes, sir.

3 Q And you picked out the person you said you thought you
4 remembered from **Lynnwood** Court.?

5 A Yes, sir.

6 Q The same person you brought in today?

7 A Yes, sir.

8 Q And had Mr. Smith showed you these photographs before
9 that day?

10 A No, sir.

11 Q In the three years that this case has been pending, has
12 Mr. Smith come over to you and showed you a line-up?

13 A No, sir.

14 Q Or any photographs?

15 A No, sir.

16 Q Has any other police officer?

17 A No, sir. The big heavy-set guy did, showed **me** some
18 cars.

19 Q Some cards?

20 A Some cars, pictures of cars.

21 Q Pictures on a card?

22 A He showed me some pictures of vehicles.

23 Q Cars?

24 A Yes, sir.

25 Q **And** when was that?

1 A I can't quite remember, probably some months after.

2 Q After the event?

3 A Yes. sir.

4 Q Other than that, did any police officers come show you
5 any photographs?

6 A No, sir.

7 MR. NIXON: That's all I have. Thank you.

8 THE COURT: Anything further, Buzz?

9 MR. JORDAN: One second. No further questions.

10 THE COURT; You may step down. Next witness.

11 MR. NIXON: I call Tony Mauldin. I have to step
12 outside and get him.

13 (Pause.)

14 MR. NIXON: Judge, I call Tyrrell Moore.

15 THE COURT: certainly.

16 MR. NIXON: And ask the Judge to qualify him as a
17 hostile witness.

18 (witness sworn.)

19 MR. JORDAN: Judge, there's one thing we need to
20 take up outside the presence of the jury.

21 THE COURT: I know you people are getting tired of
22 me moving you, but I have to do it. I'm
23 sorry.

24 (Recess.)

25 (Jury not present.)

1 THE COURT: For the record, Ken, I had no idea
2 that Buzz was going to rest. Had I known
3 that, I would have taken that motion prior to
4 the jury coming back out here. But while "the
5 jury is out, why **don't** you go ahead and make
6 that motion, and then we'll hear whatever
7 this new matter is. Is it the standard
8 **motion** that you file a notion for a directed
9 verdict based on the insufficiency of the
10 evidence and, **i.e.**, that the State has failed
11 to prove a **prima facie** case in each case?

12 MR. NIXON: That is correct, Judge, motion for a
13 judgement of acquittal at the close of the
14 Plaintiff's case. They have failed to prove
15 by sufficient, and competent evidence each and
16 every element **of** the case. And,
17 particularly, Judge, I would ask that you pay
18 attention to the indictment for burglary, and
19 I would offer that by her, Mrs. **Finley** --

20 THE COURT: I have already noticed the indictment
21 for burglary, and, Buzz, what he particularly
22 has emphasis on is, it says, "**Did** knowingly
23 and unlawfully enter **or** remain unlawfully in
24 the dwelling of **Valerie Finley** with intent to
25 commit a crime therein, to wit, theft, and

1 while effecting entry or while in the
2 dwelling or in the **immediate** flight therefrom
3 the said Rodney Karl **Stanberry** was armed with
4 a deadly weapon or dangerous **instrument.**" It
5 does not say and/or participant.

6 MR. JORDAN: The evidence shows that Rodney K.

7 **Stanberry** did, in fact, have a gun and that
8 he, in fact, left the residence with a bag
9 full of guns.

10 THE COURT: I wrote down verbatim what Valerie
11 said that -- well, I say I wrote it **verbatim.**
12 I would not be totally truthful if I said
13 **it's** verbatim. But she said at one time or
14 another that they both had the gun on her in
15 the house. In addition, she said, and I did
16 write this down -- I hope it's verbatim, I'm
17 not going to guarantee that it is -- **"One** or
18 **the other shot me."** But that is particularly
19 what he has emphasis to.

20 In the other indictment for the robbery,
21 it says, and I have no intentions of reading
22 it all, **"and** during the course of committing
23 the theft of said property, the said Rodney
24 Karl **Stanberry** or another participant in this
25 theft: did cause serious physical injury to

1 Valerie **Finley**." But I know **that's** what **he's**
2 talking about. Right now I deny the motions
3 for directed verdict.

4 MR. NIXON: Judge, just for the record, as
5 additional grounds on the burglary charge,
6 the evidence from Mrs. **Finley** was that she
7 opened the door and let Mr. **Stanberry** in the
8 house.

9 THE COURT: I **don't** think **there's** any question,
10 and I know **I'm** probably interrupting you, I
11 **don't** think **there's** any question that the
12 State has not and cannot prove unlawfully
13 entered in the dwelling. To me, **that's**
14 absolutely obvious, based on the testimony
15 that **we've** heard. However, under the statute
16 and the law of the State of Alabama, it says
17 specifically unlawfully entered and/or
18 unlawfully remained. So, you know, while
19 we're -- it is tapping too numerous and
20 **there's** too many cases on it to say that,
21 well, you know, prior you had to have an
22 unlawful entry. What was that, that caused a
23 lot of problems -- I mean, a breaking. And
24 what was a breaking, and, you know, we had
25 some, I think, pretty ridiculous cases on

1 > what a breaking was.

2 Under the new statute, **it's** unlawfully
3 enter or remain. I **think** everyone **that's**
4 been in here knows that the testimony is that
5 she allowed these people to come in. There
6 is some testimony that they pushed their way
7 in, but --

8 MR. NIXON: She denied that, Judge.

9 THE COURT: I said there is some testimony that
10 was pushed in. I don't think there's any
11 question, again, whether it's unlawfully
12 entered. But once you are lawfully in, then
13 if you perceive to do an unlawful act, **you're**
14 unlawfully remaining.

15 MR. NIXON: Judge, just as an additional grounds
16 for the record is that there's been no
17 testimony elicited from this witness or any
18 other witness that they were instructed to
19 leave or told **to** leave or any permission was
20 revoked. Mr. Jordan never asked then, did
21 they have permission to come in or did they
22 have permission **to** remain. Now, albeit, **it**
23 can be inferred --

24 THE COURT: Ken, if I was in your position, I
25 would be **making** all of these arguments, too,

1 but let me say for the record, I **think** common
2 sense has to kick in somewhere.

3 MR. NIXON: I understand.

4 THE COURT: But your exceptions are noted. Turn
5 the machine off.

6 (Off the record.)

7 THE COURT: Go ahead.

8 MR. NIXON: I just wanted the record to be clear,
9 Judge, that as an additional ground on the
10 burglary charge was that there was no
11 evidence in the record that the permission
12 that was granted by Mrs. **Finley** to the person
13 who entered her home was revoked at any time.

14 THE COURT: I think if you're taking the position
15 that you **must** say when you let somebody in
16 and you think **it's** for a lawful purpose and
17 it turns out **it's** not and that it's
18 unlawfully, that they have to then say, hey,
19 get out **of** my house, I don't think **that's** --
20 common sense tells me **that's** not correct, but
21 we have all that in the record.

22 MR. NIXON: And I would also note, as far as the
23 other two charges go, a deficiency in the
24 testimony as to her, the nature of her
25 injuries, that it **was** insufficient evidence

1 to support the required degree of injury to
2 the victim.

3 THE COURT: Ken, again, I don't **want** to make this
4 record any more voluminous than it is, but
5 when **you're** taking -- Are you taking the
6 position that someone who is shot from the
7 top **of** their head down and they were a
8 normal, healthy female and then after that
9 shot they cannot move anything except their
10 right arm, that that's not a serious physical
11 injury? If that's your argument, I've
12 totally missed something.

13 MR. NIXON: I'm just saying, Judge, for the record
14 and for the protection of my client, that the
15 record is deficient regarding the medical
16 testimony to support **the** degree **of** injury
17 necessary*

18 THE COURT: Again, all your exceptions are noted,

19 MR. NIXON: Thank you, Your Honor.

20 THE COURT; Now, let me ask a question and see if
21 we can shorten this some. Is this the young
22 man that I was told before **we** started the
23 trial of this case that you had in your
24 office and questioned?

25 MR. JORDAN: **Bob Clark's office.**

1 THE COURT; And gave what purports to be a
2 qualified immunity to?

3 MR. JORDAN: Right, as to his -- just as to that
4 specific interview.

5 THE COURT: I stated, and by the way, I have been
6 handed a case which was authored by Justice
7 Oscar Adams, who is now retired, and it is
8 styled Ex Parte Graddick 501 So.2d 444, and
9 it says, I think, as we all know, that there
10 can be an immunity that's valid under the law
11 of the State of Alabama. He set out
12 guidelines and, by the way, they, in effect,
13 adopt a reasoning in the Gipson, G-i-p-s-o-n,
14 versus State 375 So.2d 514 case, but in
15 effect they, at page 446, state, and I quote,
16 "In other words, we are of the opinion that
17 non quote statutory grants of immunity can be
18 valid in Alabama, so long as they follow the
19 guidelines hereinafter announced."

20 One of the reasons we have the
21 terminology, of course, non-statutory grants,
22 is because there is no statute in Alabama,
23 unless one's been passed in the last
24 legislative session, on immunity.

25 At page 446, they also try to make a

1 distinction and do make a distinction, and I
2 quote, Mr. **Nixon**, "For example, a person
3 might agree to testify on the belief that he
4 had been granted transactional, quote,
5 transactional close quote, immunity when, in
6 reality, he **only** had been given quote, use
7 close quote, immunity, in which case the
8 prosecution could still seek a conviction
9 with regard to his participation in the
10 illegal activities about which he testified.
11 Therefore, in an attempt to prevent any
12 potential dangers involved in granting
13 immunity, in order for an immunity agreement
14 to be valid, it **must**," and again I emphasize,
15 "**it** must be signed by the district attorney
16 and approved by the trial judge." That **has**
17 not been done in this case.

18 **MR. NIXON:** Judge, can I see --

19 **THE COURT:** I don't want to get into a lengthy
20 discussion because I said about everything I
21 know to say on immunities Monday morning. But
22 I see no good reason for me to change what I
23 said Monday morning. If this young man
24 wishes to take the stand and testify, he has
25 every right to do so. I, on the other hand,

I believe, have an absolute duty to advise him of his 5th amendment rights if he does voluntarily testify.

In addition, since this court is aware that Mr. Robert Clark was his attorney at the time, I would not ask him anything without Mr. Clark being here. I would not even ask him if he wants to waive his Fifth Amendment right to testify until Mr. **Clark** is here. So if **I'm** not asking this gentleman any questions, **it's** on purpose. **He's** sitting here and hearing everything **I'm** saying, but I have no intentions to ask him anything until Mr. **Clark** comes in here. **Even** if Mr. **Clark** just says, Judge, he invokes the Fifth Amendment. Okay?

But, again, let me **state** that ~~that~~ statement can be used, if he takes this stand and he testifies. If not, **I'm** not gonna let that statement be used. I had it marked, I believe, Monday morning. It is a **part** of the **Court's** exhibits. Of course, it is not an exhibit that goes to the jury room, but **it's** a **Court's** exhibit for the appellate courts to later review if it should become necessary.

1 Now, is someone going to tell me **some** good
2 reason why I should change that ruling I made
3 Monday morning?

4 MR. NIXON: Judge, I **wasn't** aware that you had
5 made a ruling Monday morning.

6 THE COURT: **Didn't** I say that for the record,
7 Barbara?

8 THE REPORTER: Yes, sir.

9 THE COURT: That's what I thought. What I did
10 say -- and there may be **some** misunderstanding
11 on Ken's part -- I did say I wanted to read
12 this case. I **didn't** say this case. I said I
13 want to read the case he had. By the way,
14 did you read it last night?

15 MR. NIXON: Which case are you referring to,
16 Judge?

17 THE COURT: The **Ex Parte Graddick** case that I just
18 read from.

19 MR. NIXON: I read that case. Judge. I'm familiar
20 with it.

21 THE COURT: Okay. I **don't** really see where it
22 adds too much more than the **Gipson** case, but

23
24 MR. NIXON: I **don't** think **it's** relevant. Judge.
25 and I hate to do this to the Court, but I

1 "think this is a very significant; issue, and I
2 think it will be necessary for me to **ask** Mr.
3 Jordan some questions about that statement in
4 the record.

5 THE COURT: Certainly.

6 MR. JORDAN: I'll be glad to.

7 THE COURT: But I **don't** want you doing anything
8 until Mr. **Clark** gets here. We can have him
9 here. He's right across the street. We can
10 have him here in three minutes.

11 MR. NIXON: Judge, do you have the immunity
12 agreement that I **gave** you? That was my --
13 have we marked it in?

14 THE COURT: Yes. You know, I'm gonna say one more
15 thing, and **that's** the last thing I'm gonna
16 say. I **don't** know **of** anything **that's** more
17 sacred to a defendant charged with a crime
18 than **Brady** material. And I can **see** where
19 someone might contend that this is in some
20 form **Brady** material. I **don't** have the
21 statement in front of my hand. By that I
22 mean, **this** man **didn't** commit this act; I did.
23 I'm not gonna go any further than **that**, but -
24 - Somebody go back there and call Mr. **Clark**
25 and tell him I said to pay us a **visit**.

1 > (Recess)

2 (Jury not present.)

3 MR. NIXON: Can we mark the statement in, Judge?

4 THE COURT: **Sure.** Give it to me. Without me
5 sitting here reading 30 something pages,
6 where is the part that **you're** really
7 interested in?

8 MR. NIXON: You want me to find it for you, Judge?

9 THE COURT: **Yes.**

10 MR. NIXON: Here's where he starts talking about
11 the car that he's in, **the** Capri, and **goes** on
12 to tell what he did.

13 THE COURT: I think **that's** already marked as a
14 **Court's** Exhibit.

15 THE REPORTER: The agreement is but not the
16 statement.

17 THE COURT; We'll get this in just a minute.

18 (Off the record.)

19 THE COURT: **Where's** Ken? Do you have that
20 statement now?

21 MR. NIXON: The statement?

22 THE COURT; I mean that case that you want **me** to
23 look at now. For the record, I have let the
24 jury go. **It's** one **minute** to five. I **don't**
25 mind reading that case right now and making a

1 decision.

2 MR. JORDAN: Judge, I may have a chance to do some
3 research. **We've** got a case upstairs that may
4 be more current than Ken's. I just found out
5 about it.

6 THE COURT: How do you know that? How do you know
7 what case **he's** got?

8 MR. JORDAN: **I don't** know that, but I don't think
9 he's got a case that supports my position,
10 not one that **he'll** rely on.

11 MR. NIXON: Judge, I dropped my file, and I've got
12 them mixed up. Judge, I would cite you the
13 State of Alabama v. Karl **Lionell** Mosley,
14 appeal from Mobile Circuit Court.

15 THE COURT: Let me see it.

16 MR. NIXON: Released February the **11th**, 1994.

17 MR. JORDAN: Could I have the cite? And I believe
18 that is the case that has been reversed, Your
19 Honor.

20 THE COURT: **Who** tried this one?

21 MR. NIXON: I'm not sure, Judge, although I did
22 represent Mr. Mosley at one time. I **didn't**
23 represent **him** in that case.

24 (Pause.)

25 THE COURT: You **don't** remember who this was?

1 > MR. NIXON: The judge?

2 THE COURT: Yeah.

3 MR. NIXON: **No**, sir, I sure don't. I don't know
4 if I ever knew who it was. Judge.

5 (Pause.)

6 **THE COURT:** **Don't** put this in the record yet.

7 (Off the record.)

8 (Mr. Robert **Clark** enters courtroom.)

9 THE COURT: You say was it reversed. Yeah, it was
10 reversed. You know why it was reversed?

11 MR. JORDAN: Why?

12 THE COURT: A witness has the right to invoke the
13 Fifth Amendment and refused to testify.

14 However, that witness must take the stand in
15 the presence of the jury and be asked
16 questions that would elicit **incriminating**
17 evidence if answered before the witness can
18 invoke the Fifth Amendment privilege. Hence
19 the trial court erred in failing to require
20 that witness to take the stand.

21 MR. JORDAN: Judge, let me just --

22 THE COURT: According to this he has a right to
23 put him on the stand and ask him --

24 MR. JORDAN; Let me read to you a quote of a case
25 that I -- that **we're** looking for right now.

1 > It's the case of Sanford -- it's Criminal,
2 93-499, cited July 8, 1994. We don't have
3 the Southern Second cite yet. It's an
4 Alabama Court of Criminal Appeal. It says it
5 is improper for the Defense to call a witness
6 to the stand knowing that the witness will
7 take the Fifth Amendment in order to suggest
8 the guilt of the witness. Wow, that is the
9 most recent pronouncement. We are looking
10 for that case right now. It's -- I will --
11 We can get it faxed down from --

12 MR. NIXON: What's the cite of it.

13 MR. JORDAN: I don't have the cite on it.

14 MR. CLARK: You can go to my office across the
15 street. We've got it.

16 MR. JORDAN: Well, we don't have the cite yet.

17 MR. CLARK: You don't, have to have the cite. You
18 got the slip, we got it across the street.

19 MR. JORDAN: I don't have the slip.

20 MR. CLARK: You got the name of the case?

21 MR. JORDAN: I got the name of the case.

22 MR. CLARK: We can get it across the street.

23 MR. JORDAN: Okay. Thank you.

24 (Pause.)

25 (Robert Clark present in court

representing **Tyrrell** Moore.)

THE COURT: For the record, Mr. Clark, I advised this gentleman I would not let anybody ask him anything until you were here, told him I **didn't** even want then to ask him his name. I was told this off the record, but is it **my** understanding that your client has advised you that he intends to **invoke** the Fifth Amendment?

MR. CLARK: Yes, sir.

THE COURT: Huh?

MR. CLARK: Yes, sir.

THE COURT: Well, that leaves me with Mr. **Nixon** wants to put him on the stand and ask him did you say these things, and have him invoke the 5th amendment each time. And I can readily understand why he wants to do that. But, on the other hand, **I'm** not sure that **that's** proper. In the case of Karl **Lionell Mosley**, the case he gave **me** dated February 11, 1994, clearly it says that **that's** -- it was error for **some** judge here in the 13th judicial circuit not to allow that to be done. I **don't** think it could be any clearer when they say a witness has the right to invoke the

1 Fifth Amendment and refuse to testify;
2 however, that witness must, take the stand in
3 the presence of the jury and be asked the
4 questions that would elicit incriminating
5 evidence if answered before the witness can
6 invoke his Fifth Amendment privilege. Hence,
7 the trial court errored in failing to require
8 the witness to take the stand. I don't know
9 how it could be any clearer than that. But
10 Mr. Jordan says he has a case dated in July
11 which says the exact opposite of what this
12 case says. It's ten minutes after five, and
13 I don't, intend to look any longer. I'll see
14 y'all tomorrow morning, and y'all have those
15 cases.

16 MR. NIXON: Judge, will I be allowed at that time
17 to put on my proffer of what I would expect
18 to show for the record?

19 THE COURT: No question, but let's do that at
20 nine. The jury **is gonna** be back at 9:30.

21 MR. CLARK: Do you want me back in the morning,
22 Judge?

23 THE COURT: No. You don't want your man to
24 testify to anything; is that right?

25 MR. CLARK: Only his name. I **don't** think he has

1 an expectation of privacy in his name.

2 MR. NIXON: Can we stipulate that Mr. dark signed
3 that immunity agreement, that you entered
4 into it with him?

5 MR. JORDAN: Absolutely. Do you want to ask me
6 some questions? Should we do that now?

7 MR. NIXON: Do that in the morning, he said.

8 (Whereupon, court adjourned for the
9 evening.)

1 > STATE OF ALABAMA

2 v.

CASES NO. CC-92-2313,

3 RODNEY KARL STANBERRY,

CC-92-2314 AND CC-92-2315

4 Defendant

5 Mobile, Alabama - April 6, 1995

6 (Trial resumed. Jury not present.)

7 THE COURT: Have you read this case?

8 MR. NIXON: Yes, sir. I have some cases for you too, Judge.

9 THE COURT: You better get them.

10 MR. NIXON: Judge, I think you have the Moseley case: is
11 that correct?

12 THE COURT; Mm-hm.

13 MR. NIXON: I'll give it to you.

14 THE COURT: I already have -- already read it..

15 MR. NIXON: You asked me yesterday. That was Judge
16 Kittrell, I believe, I've learned since then that was on the
17 Moseley case. I would also provide the Court with James -- State
18 of Alabama v. James Reeves, Reeves v. State, 463 So. 2d 177.
19 That was also affirmed by the -- or I believe that was a Supreme
20 Court case.

21 MR. JORDAN: May I see it.

22 MR. NIXON: That was a Judge Mashburn case, Judge. The
23 supreme Court rendered an opinion in that one. Matthews v.
24 State, also Felton Matthews v. State, 611 So. 2d 1207, 1992, and
25 J.D.S. v. State. I'd like for you to look at those, Judge.

1 THE COURT: I will, but this is the last one I have? Is
2 this -- do you have any case later than this one?

3 MR. NIXON: No, sir, Judge, but if I may, that case that
4 **you're** reading right there, the Sanford case, if **you'll** look at
5 it, that provision -- **it's** one paragraph that says, "**Additionally**
6 we note that it was improper for defense counsel, knowing **Barnett**
7 planned to invoke the Fifth, to call him as a witness and
8 question him. Then that case goes on, Judge, if you read the
9 entire --

10 THE COURT: I read that in there and I think you ought to
11 re-read that.

12 MR. NIXON: Yes, sir.

13 THE COURT: What **you're** talking about is the next page -- I
14 mean the -- where he said, "**Although** the accused has a **right** to
15 inquire into the terms of the agreement..." **They're** talking
16 about **two** different matters there.

17 MR. NIXON: Yes, sir, Judge, I understand.

18 THE COURT; And they go back and say, "**Barnett** did not
19 testify against the appellant --"

20 MR. NIXON: No, sir.

21 THE COURT: "-- much less ...," and he **gave** no testimony of
22 any substance at all.

23 MR. NIXON: That's correct.

24 THE COURT; **And that's** what somebody would be doing if they
25 say I invoke the Fifth, I invoke the Fifth, I invoke the Fifth.

1 MR. NIXON: I understand, Judge.

2 THE COURT: "The reason for the rule allowing the Defense to
3 impeach an accomplice -- an accomplice -- with the terms of his
4 plea bargain is so that the jury may better understand the
5 possible motivation of the accomplice who testified against the
6 defendant."

7 MR. NIXON: Yes, sir.

8 THE COURT: This guy **ain't** here to testify against his
9 friend.

10 MR. NIXON: **No**, sir, Judge. **You're** talking about the
11 Sanford case, the one that Buzz --

12 THE COURT: I'm talking about the gentleman that took the
13 stand yesterday is not here to testify against his friend.

14 MR. NIXON: No, sir, he **isn't**.

15 THE COURT: And if you read this case, unless **I'm** misreading
16 it, they're saying if you know **he's** going to take the Fifth and
17 he has nothing to say, why do you allow an attorney for the
18 defendant -- now, this is not in this case, but allowed to **go**
19 through this charade?

20 MR. NIXON: Judge --

21 THE COURT: Because the testimony is no testimony. The only
22 thing it would be is the Defendant saying, **Isn't** it a fact you
23 said so-and-so, so-and-so, so-and-so? I take the Fifth. **Isn't**
24 it fact that you also said so-and-so, so-and-so? I take the
Fifth. So, when you get through, the only thing **you've** got is

1 > the attorney tor the Defendant in effect giving testimony.

2 MR. NIXON: Judge, if I may respond briefly. The Sanford
3 **case** that Mr. Jordan provided you, the only issue on appeal in
4 that case, in that case the judge did let **the** witness take the
5 witness stand because **that's** what the law suit. Judge, and he did
6 make him take the stand and he made **him** invoke the Fifth as to
7 every question that was asked him and the only time that it came
8 up was when he asked **him** about the plea agreement and at. that
9 point the judge sustained an objection from the State by ask--
10 when they asked him about his plea agreement, they said that
11 didn't have anything to do because he had not offered any testi-
12 mony and that paragraph that says it's improper. Judge, **that's**
13 just dictum in this opinion. **The** opinion, **if** you read it, talks
14 about the issue of whether they could have been able to ask him
15 that question about -- about plea bargain when he had offered no
16 testimony and the only -- the case that's cited and relied upon
17 on this opinion, Judge, the Sanford case, is the Gardner v. State
18 case which is the only case that I found that said the sane thing
19 and that case involved -- this is when one lawyer was represent-
20 ing two co-defendants and --

21 THE COURT: How could he do that?

22 MR. NIXON: He **couldn't**, but he was, and put one of the co-
23 defendants on the stand and advised **him** to take **his** Fifth Amend-
24 ment and then started asking **him** wasn't that **your** dope, which was
25 just a ludicrous case from the beginning, Judge, and **that's** the

1 case that they relied on when the Court said that he couldn't do
2 that, which I think everybody knows he couldn't do that.

3 But if you look -- Judge, all I ask you to do is just
4 to take two minutes and read those cases that I gave you that I
5 cited in the Moseley case --

6 MR. JORDAN: Can I have a copy of them?

7 MR. NIXON: I only have one copy.

8 These are the cases that I cited in the Moseley case,
9 and I think when you read those cases. Judge, and **that's** an
10 Alabama Supreme Court case, the Reeves case is, you'll see that
11 the law is absolutely clear on it.

12 **THE COURT:** What I have is a Court of Criminal Appeals
13 opinion written by **Tyson**.

14 MR. NIXON: If you look at the last of it, **Judge, it's**
15 attached, I think, where the Supreme Court's opinion is attached
16 to the last -- at the end of the Reeves case.

17 MR. JORDAN: Judge, I don't have a copy of any of those
18 cases.

19 **THE COURT:** The only thing I got in the back is -- year, the
20 second --

21 MR. NIXON: Page 177.

22 **THE COURT:** The last part is the Supreme Court.

23 MR. NIXON: Page 177.

24 (Pause.)

25 **THE COURT:** Have you read this case?

1 > MR. JORDAN: I **don't** have a copy of it.

2 THE COURT: Do you have another copy?

3 MR. NIXON: I have my copy, Judge.

4 THE COURT: **Give it** to him.

5 MR. NIXON: I would also ask you, Judge, to take a look at
6 **Matthews v. State --**

7 THE COURT: Well, why **dn't** you just stick with what you
8 got? **It's** good enough.

9 MR. NIXON: Okay.

10 THE COURT: Of course, I say again for the umpteenth time, I
11 have no idea why Buzz entered into this --

12 (Off the record interruption.)

13 THE COURT: If they want to go any further, they can. The
14 Supreme Court has spoken.

15 MR. JORDAN: Which one is the Supreme Court case, Judge?

16 THE COURT: Reeves. No offense to Mr. **Montiel**, but I put a
17 little bit **Store** credence on the Supreme Court's opinion in the
18 case of Matthews.

19 MR. JORDAN: Judge, I think the next question is how much
20 can be asked of a witness who takes the Fifth **Amendment**, and I
21 think **that's** the **specific** issue that -- that Solomon -- Sanford
22 has addressed.

23 THE COURT: I **don't**.

24 MR. JORDAN: Basically, Ken has a right to put the witness
25 up there --

1 THE COURT: Yes.

2 MR. JORDAN: Identify him. Do you plan on taking the Fifth
3 Amendment to any question that will be asked you? Yes. End of
4 questions.

5 THE COURT: Wrong.

6 MR. JORDAN: Judge --

7 THE COURT: Read the case before you start talking. You
8 have a terrible habit; of talking before you read.

9 MR. JORDAN: Judge, I know that Chris **Galanos** did the exact
10 same thing and **it was** --

11 THE COURT: How about reading the case.

12 (Pause.)

13 MR. JORDAN: Judge, there are two issues that we need to
14 address before we go any further. The first issue is whether --

15 THE COURT: No, you ~~don't~~ have to worry about that, friend.
16 We're going to address it.

17 MR. JORDAN: I **appreciate** that. **The** issue is whether or not
18 Ken has a right to call that witness to the witness and where
19 that witness has to invoke his Fifth Amendment in front of the
20 jury. Fine and dandy. But now the question is this. Ken could
21 stand up here and talk for two hours. Did you do this, did you
22 do that, did you do that? I take the Fifth, I take the Fifth, I
23 take the Fifth, I take the Fifth.. Mow, that is entirely
24 improper. **It's** improper. **It's** either to do it --

25 THE COURT: Show me any **case** that says it's improper.

1 MR. JORDAN: Okay. Let me -- can I go upstairs for a
2 second?

3 THE COURT: Sure.

4 MR. JORDAN; I've got something -- let me see if I've got
5 something in my tile.

6 THE COURT; Well, why don't you have it here?

7 MR. JORDAN: Well, because I was relying on this issue
8 initially.

9 THE COURT: Come on, come on.

10 MR. JORDAN: Okay.

11 (Recess.)

12 THE COURT: This is one of the cases where the attorney
13 represents both people. This case is absolutely worthless on our
14 question.

15 MR. NIXON: That's the case I was telling you about, Judge.

16 THE COURT; I don't know who found it, but it -- it has
17 absolutely nothing to do with the facts in this case, and that's
18 Garner v. State, 606 So. 2d 177. In this case I don't know where
19 it was and I don't want to comment on some other county, but up
20 in Madison County, in Huntsville, they allowed some lawyer to
21 represent two defendants in a drug case. Now, how you do that, I
22 don't, know.

23 Young man, sit. down.

24 How you do that, I don't know, because it's impossible
25 for their interest not to be diametrically opposed. The State

1 > objected -- wait a minute. "During the Appellant's trial the
2 Defense counsel --" You got to remember he represented both of
3 them and again I **don't** know how in the world you can ever do
4 that. But "-- the Defense counsel asked Alexander if the drugs
5 in the house that night were his. The **Stake** objected, arguing
6 that this question, if answered, would incriminate Alexander in
7 this case." Well, I **don't** really think they were worried about
8 Alexander, but let's go one step further. "The Trial Court
9 ascertained that Defense counsel also represented Alexander.
10 Defense informed the Court that Alexander was not going to
11 incriminate himself, that he was going to assert his Fifth Amend-
12 ment right against self incrimination." Well, of course, he
13 would do that. I mean that makes perfectly **common** -- everyday
14 **common** sense to me. if you allowed that to happen and the
15 Defense represented two people, he would one on the stand and
16 say, Is those drugs yours? Didn't, you **say** they were yours? Oh,
17 I object to answer on "the grounds the Fifth Amendment might
18 incriminate **me**, and **then** when he got the other one to trial, he
19 would do the same thing, and, you know, that just **doesn't** make
20 sense.

21 I will let this man, who the attorney has already advised us
22 yesterday is going to take the Fifth, that he has an absolute
23 right to be put on that stand and asked that question. In
24 addition, I rule, but I **don't** want you going through 39 pages of
25 that deposition -- well, let ~~me~~ change "that. If you think you

1 have to, you go ahead and do that too. And he has a right to
2 invoke each and every time he's asked one of these questions that
3 I take the Fifth.

4 MR. JORDAN: Judge, then I have the right to do the same
5 thing; is that correct?

6 THE COURT: Of course, you do.

7 MR. JORDAN: Especially -- certainly **questions** -- okay.

8 THE COURT: Of course, you do.

9 MR. **NIXON**: Judge, now, X would ask --

10 THE COURT; I think it's very, very remedial, what's good
11 for the goose is good for the gander.

12 MR. JORDAN: Thank you, Your Honor.

13 MR. **NIXON**: That's correct, Judge, but I would ask that you
14 make sure that he has some basis for the questions that he asks.

15 MR. JORDAN: I've got basis for everything.

16 THE COURT: **That's** fine.

17 Now, **let's** go on. Bring this man in.

18 MR. **NIXON**: Judge, **he's** not here now.

19 THE COURT: **He's** what?

20 MR. **NIXON**: **He's** not here.

21 Can you go check? He had called and said that he
22 didn't have a ride and he was walking. **He's** coming, but --

23 THE COURT: Well, why **didn't** you send that fellow to go ride
24 him in?

25 MR. **NIXON**: I'll call another witness.

1 > He had already started walking, Judge.

2 I can call some other witnesses, but first, Judge,
3 I think **we** need to -- we may can do this by stipulation, but **I'd**
4 like to **get** in the record the -- my objections into evidence as
5 far as the video tape and the taped statement of this Tyrrell
6 Moore and just brief argument on **the immunity** issue.

7 THE COURT: I **don't** know what **you're** talking about, but I
8 can tell you as plain as I know how to tell you -- **I'm** going to
9 let you explain that for the record.

10 MR. NIXON: Yes, sir.

11 THE COURT: But I'm not going to let you do something and
12 then say, well, now, **I've** let you do that, but I'm not going to
13 let the State do that.

14 MR. NIXON: I understand, Judge. I just -- we talked in
15 chambers yesterday about this situation and I just wanted to put
16 in the record, and I can do it by making a proffer, was that
17 Tyrrell Moore initially gave a statement to my investigator, Mr.
18 Ryan Russell, which in that statement he said that he burglarized
19 this house with a person **named** Wish and that the person named
20 Wish show Mrs. **Finley** and he described in detail how that was
21 done. That was on a tape-recorded statement given to Mr.
22 **Russell**. Shortly after that Mr. Russell got bin in and got a
23 video statement from him. I think Mr. Jordan had already been
24 informed by several **people that** Mr. Moore was a participant **in**
25 this crime. After that Mr. Jordan issued a grand jury subpoena

v
1 to Mr. Moore. Mr. Moore appeared at the grand jury and asserted
2 his Fifth Amendment privileges. Subsequent to that, Mr. **Jordan**
3 entered into an immunity agreement which I **would** like made part
4 of the record.

5 THE COURT: Why, I don't, know, but he did.

6 MR. NIXON: Sir?

7 THE COURT: I'm saying why, I **don't** know, but he did.

8 Go ahead.

9 MR. NIXON: Yes, sir. But he did and a court reporter was
10 present and Mr. Jordan and **Lebarron** -- Detective Lebarron Smith
11 and Attorney Bob **Clark** and Mr. **Tyrrell** Moore sat down and Mr.
12 Jordan and Mr. Smith questioned Mr. Moore and he told them that
13 he participated in that crime --

14 THE COURT: By the way, yesterday in referring to the case
15 on qualified **immunity** or **non-statutory immunity**, I referred to
16 the case of **Ex Parte Graddick**. I said yesterday for the record
17 that if the Legislature had passed a statutory enactment it had
18 to have been in the last session of the legislature. Well, that
19 **wasn't** exactly so, because under the new proposed Rules that is
20 explicitly covered. Now, whether anyone has gone to the trouble
21 to look at that or not, I **don't** know.

22 Have you, Mr. Jordan?

23 MR. JORDAN: I'm sorry, Your Honor?

24 THE COURT: Under the new criminal Rules of Court, State of
25 Alabama, **immunity** is **covered** in those Rules. Number one, did you

1 know that?

2 MR. JORDAN: No, Your Honor.

3 THE COURT: Number two, that was not in any way followed?

4 MR. JORDAN: No, Your Honor.

5 THE COURT: Because the case of Ex Parte Graddick, which was
6 written by my good friend, Oscar Adams, has been superseded to
7 some extent by the new Rules of Criminal Procedure of the State
8 of Alabama, but that's not a question we need to address right
9 now.

10 Go ahead.

11 MR. NIXON: In that statement that Tyrrell Moore gave to Mr.
12 Jordan and Mr. Smith Mr. Jordan and Mr. Smith asked him all the
13 questions that they wanted to ask him. He answered all of those
14 questions that they asked him. And the immunity -- I mean I
15 would like that statement made part of the record also. I think
16 it already is, but I would like it made part of the record.

17 THE COURT: It is a part of the Court's record.

18 MR. NIXON: In that transcript, Judge, Tyrrell Moore is
19 questioned repeatedly by Mr. Jordan and Mr. Smith and he answers
20 those questions and that was after the immunity agreement was
21 given. My understanding is that Mr. Moore's lawyer provided with
22 -- Mr. Jordan with a copy of Tyrrell Moore's video tape statement
23 or confession to Mr. Russell some time either that day or after-
24 wards. I have given it to him since then, Judge, and my basic
25 position is that I think that if Mr. Moore does take the Fifth

1 > here today, which we know he is going to do --

2 THE COURT: We all know that he is.

3 MR. NIXON: -- then I should be able to admit into evidence
4 the statement that Mr. Moore gave to Mr. Jordan and Mr. Smith --

5 THE COURT: Mix **haben**. German; means never happen.

6 MR. NIXON: Yes, sir. And I would except to your ruling on
7 that. In the alternative, I would request that I be able to
8 admit the video tape which I would -- that Mr. Russell took and
9 the audio taped statement also and I would proffer those state-
10 ments, Judge, and --

11 THE COURT: I have already put in the record at least three
12 times -- it seems like in this case I have to put everything in
13 there four times -- there was no right of cross examination at
14 that video procedure or cameo procedure that your investigator
15 produced, directed, and whatever else, and in the absence of the
16 right of the State to cross examine, there's no way that it could
17 be admissible, and the same would be absolutely true if it; was
18 the other way around.

19 MR. NIXON: Well, Judge, they cross --

20 THE COURT: How would I let somebody introduce a statement
21 opposed to your client when you **didn't** have the right to cross
22 examine that person?

23 MR. NIXON: Judge, I'm asking you to introduce a statement
24 where they did cross examine "that person and I was not there to
25 cross examine him. I'm wanting that admitted into evidence.

1 That's the statement that I'm wanting admitted into evidence.
2 They did -- Mr. Jordan cross examined Mr. Moore in front of a
3 court reporter with Mr. Smith --

4 THE COURT: ah, you're not talking about the video that your
5 investigator took?

6 MR. NIXON: No. First I would like the statement. I think
7 that would be the simplest thing, is to get the statement where
8 Mr. Jordan asked **Tyrrell** Moore all these questions and let the
9 jury read it, read his answers to it, Judge. That would be the
10 simplest thing to do and this whole thing would be over with. I
11 asked about the video tape if you **don't** let the statement in, and
12 Mr. Jordan did cross examine him in that statement after he gave
13 him **immunity**.

14 THE COURT: You mean this is where he gave somebody immunity
15 to --

16 MR. JORDAN: Judge, may I be heard? May I just place this
17 on --

18 THE COURT: Go right ahead.

19 MR. JORDAN: When we were initially investigating this case
20 and after Mr. Stanberry had been arrested and had his preliminary
21 hearing, Ryan Russell or somebody tells me that **they've** got some-
22 body who's confessed to this crime. They **don't** tell me who or
23 what or anything like that. They **don't** turn over anything to me.
24 **So**, I run this person down. Eventually I think they tell me a
25 name and he comes to a preliminary hearing and I ask to talk to

1 him and he says, No, I have a lawyer, George **Hardesty**. So, I
2 say, George, set this up for me. **Let's** -- I want to talk to your
3 guy; I want to interview him. Is that any problem? **That's** no
4 problem. You can interview him.

5 So, I keep trying to interview him, interview him; nobody
6 will let me interview him. **So**, then I subpoena him to the grand
7 jury. So, he comes to the grand jury. Valerie **Finley** is at the
8 grand jury because **she's** also a witness, and his girlfriend comes
9 to the grand jury, who I've subpoenaed, because she had informa-
10 tion about this. **They're** all set for grand jury. He comes in
11 and now **he's** represented by -- he's represented by either George
12 Hardesty or Bob **Clark**, but he **takes** the Fifth Amendment.

13 So, I **don't** have any -- and nobody will give me the cassette
14 recording of an accomplice or somebody **who's** confessing. Nobody
15 would give me the video tape of what he says. Valerie **Finley**
16 says no, **that's** not -- Tyrrell Moore was not the person that came
17 into my house. **I'm** sorry. You know, as much as I wish it was
18 either the -- the **guy** that **was** with **Stanberry**, she -- it's not
19 him. Valerie **Finley** is sure about it.. She tells me that. So,
20 then I go -- then I find out he's got a lawyer, Bob dark. So, I
21 want to find out what this witness knows, if he -- I mean as part
22 of the investigation we want to know what he -- okay, maybe he
23 does -- maybe **he's** -- maybe **he's** telling the truth, maybe he
24 really did go in there, and maybe we got the wrong person and I
25 want to know **that**. So, I write up a **specific**, very specific,

1 > **limited** immunity only as to that one statement, and I drew that
2 up **very -- there** was **never** any immunity **from prosecution**. That
3 wasn't even **considered**. It was **never** discussed with Mr. **Clark**.
4 It was **never** mentioned in that -- I mean we have to distinguish
5 the two. I would **never** have given him immunity **from this**
6 **prosecution**.

7 But I have no idea what **he's** going to say. So, then he
8 shows up and we **interview** him to find out what he knows --

9 THE COURT: I read **your immunity** agreement.

10 MR. NIXON: Judge, I could **over** it in detail with you, but I
11 -- I mean I'll do that at some point in time, but I -- but it
12 **never** states that he is immunized **from prosecution, ever, ever,**
13 **ever**. That was not the intent, that was not the **agreement**. Mr.
14 **Clark** would be the first one to tell you that. Mr. **Clark** knew
15 the only thing that immunity **covered** was that specific **interview**
16 with him and nothing else.

17 THE COURT: It said **"and everything said in that interview."**

18 MR. NIXON: And everything **derived from** anything said in
19 that **interview**.

20 MR. JORDAN: That he said, yes. In other words, if he told
21 me something, I could go, but -- so, during that interview I came
22 to find out that he -- that he talks to **Mr. Ryan Russell** and in
23 the interview with **Mr. Ryan Russell** he's coming clean and he's
24 going to come testify and he's going to tell all he knows, and
25 then at the end of the **interview** Ryan Russell sends him to a

v
1 > lawyer. Ryan Russell **sends him to** a lawyer. After he has **gotten**
2 him on a cassette and after **he's** gotten him on video, he sends
3 somebody who has just admitted to a murder to a **lawyer** so I
4 cannot talk to him. So, I cannot examine him.

5 Now, **that's** what the Defense -- not Mr. Ken **Nixon**, but
6 **that's what** was done in this case.

7 THE COURT: Well, first of all, we **don't** -- thankfully, we
8 **dn't** have a murder in this case, but --

9 MR. JORDAN; Exactly. The attempted murder. So, then he's
10 -- **he's** interviewed at that time. That's when **I'm** provided with
11 a copy of the video tape.

12 THE COURT: **You** know, I haven't heard anything different
13 today than I heard Monday morning. I heard this same statement
14 Monday morning.

15 MR. JORDAN: Well, I just want to make sure we have it on
16 the record.

17 THE COURT; I think you got it -- like everything else, I
18 think **it's** in there about three times.

19 MR. JORDAN: Well, Your Honor has asked **me** one thing. You
20 Honor is like, Why **haven't** -- I **dn't** know if you've asked me.
21 Why haven't you gone out and arrested **Tyrrell Moore**.

22 THE COURT: Ho, I **haven't** asked that.

23 MR. JORDAN; okay. I mean I -- I asked my **office** that
24 today, I said --

25 THE COURT: **I'm** not going to be the police officer and I'm

1 > not going to be the district attorney, and I don't think you
2 ought to be the police officer either, but that's neither here
3 nor there.

4 MR. JORDAN: Well, I'd like to -- I'd sure like to arrest
5 Tyrrell Moore.

6 THE COURT: We're trying this case.

7 MR. JORDAN: I'd like to be able to call Ryan Russell --

8 THE COURT: Let's get going.

9 MR. JORDAN: I'm sorry.

10 THE COURT: I said we're trying this case. So, let's get
11 going.

12 MR. JORDAN: Okay.

13 THE COURT: Everybody knows exactly what we're going to do.

14 Now, I want -- as far as admitting that statement into
15 evidence --

16 MR. NIXON: Judge, we can do that, I would not -- we don't
17 have to fool with anything else. And that was Mr. Jordan asking
18 the questions and Mr. Jordan getting the answers from him.

19 THE COURT; Not too sure of that.

20 MR. NIXON: And he gave him the immunity and, you know,
21 everything that --

22 MR. JORDAN: I object to that.

23 MR. NIXON: -- that I've ever read about immunity, Judge,
24 says that the Prosecution deal in good faith and when you're --
25 when a -- I don't know whether Mr. Jordan --

1 > THE COURT: I don't want to point the finger at anybody.
2 Okay? But we've got somebody that says, Hey, we got some inform-
3 ation about this case, but we're not going to tell the police.
4 We're not going to tell the district attorney. We're going to
5 get -- take a picture of him, get his audio, video, and then this
6 person goes to the D.A., and I -- I don't know -- I don't want
7 any finger-pointing about dealing in good faith.

8 MR. NIXON: Well, Judge, this interview -- you got to under-
9 stand. Mr. Russell caught him at a nightclub at about three
10 o'clock in the morning and that's when he got the recorded
11 statement and then he made him promise and went and found out
12 where he lived and went the very next day to get a video just to
13 make sure the guy didn't run away, and he hasn't run away.

14 THE COURT: I don't mind telling you. Ken, I have some
15 problem with the D.A. taking this statement, why it's not
16 admissible, but I have no idea what -- why the D.A. went through
17 this. Again, they don't work for me, I don't run their office.

18 MR. NIXON: I would suggest a better course of action,
19 Judge, would be to admit the statement and if Mr. Jordan wants to
20 ask him question and he take the Fifth about it, he can do that.
21 I won't ask him anything. I think the jury is entitled to hear
22 what this man has to say, what the man told Buzz Jordan, and
23 because of his structured immunity, it's excluded testimony --
24 testimonial immunity, then he has prevented me from any valuable
25 -- valuable evidence and testimony for my client. This man says

1 > on the video tape he was **going** to come in. His conscience **was**
2 bothering him. He was going to come and testify.

3 And if we let the jury see that statement, Judge, **that's** all
4 that I need from this end and I think **they're** entitled to see it.
5 I **don't** think the District Attorney can -- if not, they -- Judge,
6 they would do that to everybody, and come out and make an
7 **immunity** agreement and say, look, you tell me something I can
8 use. Then **I'll** extend it to trial testimony, but if **it's** some-
9 thing that hurts me, you can't get on the witness stand and
10 testify for the Defendant because **I'm** going to put you in jail
11 then.

12 And if you think that **Tyrrell** Moore had told Buzz Jordan
13 that Rodney Stanberry did it that that immunity agreement, would
14 not have been modified and he would not have been on that witness
15 stand and testified, then I think you -- **you've** been on the bench
16 long enough to realize that that -- that certainly would never
17 happen, Judge. He would sitting right up there pointing his
18 finger at Rodney Stanberry and he would have **immunity**.

19 THE COURT: Well, since you mentioned that, **I've** been here
20 thirty years and I've never heard anything like this in my life.
21 But you have to deal with, you know, **what's** fair for both sides
22 and again I say for about the fourth time I **don't** have any idea
23 why we got this statement in the first place, but -- and I agree
24 with Mr. Jordan to this extent, had he seen what I think he
25 should have been entitled to see, we **wouldn't** have had any of

1 > that.

2 MR. NIXON: I gave it to him, Judge.

3 MR. JORDAN: That is not correct.

4 MR. NIXON: I gave him the video tape. You told me to give
5 -- you ordered me to give it to him, Judge, and the audio tape.

6 THE COURT: It was after the fact, though, wasn't it?

7 MR. NIXON: Well, my understanding is that Mr. Clark gave
8 him a copy of the video tape.

9 MR. JORDAN: After.

10 MR. NIXON: After you took this statement?

11 MR. JORDAN: After the immunity.

12 THE COURT: **We're** not getting anywhere. Bring this -- what
13 I'm going to do is reserve the -- whether **I'll** let that be intro-
14 duced or not and **I'm** going to let you ask this man anything he
15 wants and let him take the Fifth as he wants. But I hope he
16 understands that, because Mr. Clark is not here right now, but
17 Mr. **Clark** said yesterday that this man was only going to give his
18 name and that was it. **He's** out there.

19 MR. NIXON: Yes, sir.

20 THE COURT; **Don't** bring this man in yet.

21 Billy, bring this **jury** in. This jury is so upset it's
22 unreal. I **don't** blame them.

23 (Jury present.)

24 THE COURT: Billy advised me -- Billy **Clausen** is my bailiff
25 and he has been for 18 years. He told me that several jurors

1 asked him this question: Is this case ever going to end? I
2 **don't** want to add anything to it and I **don't** want to take any-
3 thing away from it, and I think Billy said, **You** all need to ask
4 the Judge and he will tell you. Am I correct?

5 (Jurors answer in the affirmative.)

6 THE COURT: You have my word, it will end.

7 Now, let us proceed.

8 MR. NIXON: Call **Tyrrell** Moore back to the stand, Judge.

9 THE COURT: I swore Tyrrell Moore in yesterday in front of
10 **this** jury.

11 MR. NIXON: Yes, sir. I promise **I'll** try to move as fast as
12 I can.

13 MR. TYRRELL MOORE, recalled

14 being still under oath, testified further as follows:

15 DIRECT EXAMINATION

16 BY THE COURT:

17 Q Mr. Moore, I swore you in yesterday in front of this
18 jury. You remember that?

19 A **Yes**, sir.

20 Q And although this jury was not present, you were
21 present when we had and awful lot of conversation about
22 your testifying or not testifying. Do you **remember**
23 that?

24 A Yes, sir.

25 Q **This** Court has been advised by your attorney in open

1 court that you intend to invoke your Fifth Amendment
2 **right** in this particular case. That is, you are going
3 to refuse to answer questions on the grounds that those
4 answers may incriminate you. **Isn't** that correct?

5 A Yes, sir.

6 Q Your attorney is not here, but he has advised us of
7 that and I have had a conversation in open court with
8 Mr. **Nixon**. He's going to ask you some questions. I
9 know that. If you would like for me to call Mr. dark
10 over here, I'd be happy to do so. **At** the end of each
11 question, if you choose to do so, you have a right to
12 say I refuse to answer or I take the Fifth. Any way
13 you wish to do it. Do you understand that.

14 A Yes, sir.

15 Q Now, do you wish for me to call Mr. **Clark** over here?

16 A Sure. Yes, sir.

17 THE COURT; Step down.

18 Call Mr. dark over here. Put another witness on now.

19 MR. **NIXON**: Judge, I would call Brenda Gay to the stand,
20 and I would like her to be an adverse witness.

21 THE COURT: You have that right.

22 * * * * *

23 MRS. BRENDA GAY

24 was sworn and testified as follows:

25 DIRECT EXAMINATION

BY MR. NIXON:

Q State your name, please.

A Brenda **Gay**.

Q And, Mrs. Gay, are you related to **Valerie Finley**?

A Yes, **she's** my sister.

Q **You're** her sister, correct?

A Yes.

Q **And** you were talking to her on the telephone on March the **2nd**, 1995, when this occurred; were you not?

A Yes.

Q You talked to her twice on that day?

A yes.

Q **And** the first time you talked to her was what time in the morning?

A **We** started talking at 5:25 a.m.

Q And what time did you hang up?

A **Some** time after seven.

Q And did you hear her husband in the background when he left for work?

A Yes, I did.

Q That was approximately **seven** o'clock?

A I **don't** know what time it was.

Q Well, you said you hung up at seven?

A I said some time after seven.

Q Do you know whether -- well, did you hear him leave?

1 A I heard him. I **didn't** actually hear him leave, no,
2 THE COURT: Pardon me? Who did you ask her did you hear
3 leave?

4 MR. NIXON: Valerie's husband, Mike **Finley**.

5 THE COURT: I **don't** understand your question, but go ahead.

6 Q You hung up around seven?

7 A Somewhere after seven.

8 Q And then you called her back?

9 A I **don't** know if she called me or I **called** her.

10 Q You started talking to her again?

11 A Yes.

12 Q **And** what time was that --

13 A I **don't** know.

14 Q -- Mrs. Gay?

15 A I **don't**.

16 Q Well, what time do you think: it was, Mrs. Gay?

17 A Some time that morning.

18 Q What **time** that morning?

19 A I **don't** know.

20 Q You **don't** have any recollection of it?

21 A No, I **don't**.

22 Q Mrs. Gay, **you've** talked to the police, **haven't** you,
23 and the district attorney?

24 A Yes, I have, mm-hm.

25 Q And you told them what time it was, **didn't** you?

1 A Well, maybe I did then. I don't, remember now what time
2 it was.

3 Q Pretty specific when you told the detective, weren't
4 you?

5 A I don't know at that time how specific I was. I'm
6 pretty sure I was just guessing on the -- I know the
7 5:25 a.m. was exact, but that's the only time --

8 Q How do you know that?

9 A Because I looked at the clock. I always look at the
10 clock when someone calls me early in the morning or
11 late at night.

12 Q Do you remember giving your statement to the police?

13 A Yes, I do remember giving a statement to the police.

14 MR. NIXON: Judge, may I approach the bench.

15 THE COURT: Certainly.

16 Q Please read your statement and see if that refreshes
17 your recollection.

18 NOR. JORDAN: Can I see what you're referring to, please, Mr.
19 Nixon?

20 MR. NIXON: The statement that you gave me.

21 MR. JORDAN: Could I look at it, please?

22 MR. NIXON: You've got a copy of it. You gave me -- this is
23 the copy you gave me of her statement. It's the only
24 one I have.

25 MR. JORDAN: Can I look at it, please. Just so I see what

1 > you're --

2 THE COURT: He doesn't remember what he gave you. Let h i
3 look at it.

4 (Pause.)

5 Q Did you read that?

6 A Yes.

7 Q Does that refresh your recollection? Read that
8 sentence to the jury, what you told the police officers
9 when they asked you what time it was.

10 A "The next time I talked to Valerie was just after 9:00
11 a.m. We were talking about going to Prichard parade.
12 we had talked about 13 minutes when Valerie said, 'Hold
13 on. Somebody is at the door.'"

14 Q And she never came back to the phone, did she?

15 A No, she didn't.

16 Q And you gave this statement back in April of 1992,
17 didn't you?

18 A Yes. I guess it was April. I'm not sure.

19 Q It was fresh on your mind at that time and the police
20 were questioning you and you knew that she had --

21 A I was guessing the time even then.

22 Q You didn't say you were guessing, did you?

23 A Well, I was.

24 Q You said 13 minutes.

25 A About.

1 Q You said 13 minutes. That's pretty --

2 A Well, I **didn't** time it. I said about. I'm sure was
3 about that time --

4 Q From 9:00 a.m. to 9:13 and then she told you to hang
5 on?

6 A Hang on; someone's at the door.

7 Q Never came back to the phone?

8 A No, she **didn't**.

9 Q And you had talked to her for two hours from 5:26 in
10 the morning until --

11 A Until after seven.

12 Q -- 7:30 that same day?

13 A Until after seven.

14 Q So, you had one long conversation earlier?

15 A Yes.

16 Q Two hours?

17 A Mm-hm.

18 Q Then you had a thirteen minute conversation when she
19 told you to hold on and nobody came --

20 A I **don't** know. I was guessing. I didn't time **it**.

21 Q Now, were you present in the hospital when Detective
22 **Fletcher** came to see Valerie?

23 A Yes, I was.

24 Q And was **there** a female police officer there also?

25 A Yes, it was.

1 > Q And did you hear -- you've been sitting in court here,
2 haven't you?

3 A Yes, I have.

4 Q And did you hear the tape that was played yesterday?

5 A Yes.

6 Q And **that's** your voice that says on that tape she told
7 me --

8 A I need to hear that tape.

9 Q -- she **didn't** know.

10 A I can't -- I **couldn't** hear it good back there.

11 Q Are you -- do you recall saying that. --

12 A No, I **don't**.

13 Q -- she told me she **didn't** know?

14 A No, I **don't**.

15 Q If I showed you a copy of that tape that was provided
16 to me by the District Attorney would it --

17 A If you let me hear it, I can see.

18 Q -- refresh your recollection?

19 A I could try to figure out if **that's** my voice or not.

20 MR. NIXON: May I approach, Judge?

21 THE COURT; Certainly. She said she wants to hear it, not
22 **see** it. I believe **that's** what I heard her say.

23 MR. NIXON: Okay.

24 Do you have the tape?

25 MR. JORDAN: You introduced it, I think.

1 (Off the record discussion.)

2 Q I'm going to let you follow this transcript of the tape
3 that was given to me by the District Attorney's office.
4 Okay?

5 (Audio cassette tape played.)

6 MR. JORDAN: I think you need to back it up, Ken.

7 (Audio cassette tape played.)

8 Q That's your voice, **isn't** it?

9 A Yes, sir.

10 Q She told me she **didn't** know?

11 A Yes.

12 Q **That's** what Valerie told you, **wasn't** it?

13 A I **don't** remember her telling me that.

14 Q **Ma'am.**

15 A I **don't** remember her ever telling me that.

16 Q **You** told the police that Valerie told you --

17 A I said that was my voice, but I do not remember her
18 ever telling me that.

19 Q Why would you tell the police that Valerie told you she
20 **didn't** know who did it?

21 A Because I --

22 Q **Why** would you do that?

23 A Because I figured she **didn't** know. She never --

24 Q You **didn't** say you figured, did you? You said --

25 A No, I **didn't**; say it --

1 Q -- that she told you she **didn't** know?

2 A -- but she never told me that.

3 Q How many days after this happened was it before you --
4 before that statement was taken, Mrs. Gay?

5 A I **don't** know.

6 Q Was it a week after?

7 A Well, she was in the room. She was out of intensive
8 care. She was in a hospital room at that point.

9 Q Okay. Was it days or a week or do you know?

10 A I **don't** know. She was -- I know she was out of the
11 intensive care. She **was** in **the** room at that point.

12 Q It was after her husband had came to the hospital with
13 the jewelry, wearing the jewelry that had been stolen,
14 and after he had recovered the **guns**?

15 A Yes, she was still in intensive care when he did that.

16 Q You got a little suspicious when you saw him come to
17 the hospital with those -- with the jewelry that he
18 claimed was stolen, **didn't** you?

19 A No, I didn't get suspicious until his **mother** told me
20 that she was suspicious.

21 Q **Mm-hm**. You were suspicious in the hospital, **weren't**
22 you?

23 A When **Mike's** mother told me that she was suspicious, I
24 started --

25 Q And your mother was suspicious, too?

1 > A I don't know if she **was** suspicious or not.

2 MR. NIXON: **That's** all I have.

3 THE COURT: Any questions?

4 MR. JORDAN: Yes, a few, Your Honor.

5 CROSS EXAMINATION

6 BY MR. JORDAN;

7 Q Brenda, do you recall when you talked to the police
8 officer about this first. Well, let me back up first
9 of all. When you talked to Valerie that morning were
10 you keeping track of the -- now, you said in the very
11 first time you kept track of when. Who called who
12 first?

13 A She called me first.

14 Q And what time was that?

15 A About 5:25.

16 Q Okay, was that unusual?

17 A No.

18 Q Was it unusual for you all to talk on a daily basis --

19 A No, it wasn't.

20 Q -- for a long time?

21 A We talk all the time. We still do.

22 Q And during that time when -- like during all the time
23 you all were talking and at the time when she said
24 somebody was at the door, did you go look **at** a clock or
25 anything?

1 A No, I **didn't**.

2 Q At that time was it important to you?

3 A No, it **wasn't**.

4 Q I mean did you have any idea what had happened to Val?

5 A No, it **wasn't** unusual for her to put me on hold.

6 **Wasn't** unusual for her to tell me to hold on. We did
7 it all the time.

8 Q And when she put the -- when she put the phone down and
9 she went to the door, did you stick around and listen
10 for a long time or how did --

11 A I waited for a while because sometimes she would put me
12 on hold and forget and then I would call her back or
13 she will call me back later. I waited for a while and
14 so I figured maybe she was talking to somebody and then
15 I hung up.

16 Q And did you look a the time that you hung up?

17 A No, I **didn't**.

18 Q Was it important to you at that moment in time?

19 A It **wasn't**.

20 Q Okay. Did you think anything **about** it? Anything
21 unusual about Val just leaving you to hang on the phone
22 and going on?

23 A No. She still do put me on hold and forget about me
24 sometimes.

25 Q Okay. Now, what's the next time you tried to get in

1 > contact with Val?

2 A I **don't know** exactly what time, but I do know I tried
3 to call her back.

4 Q Did you realize at that time that something had
5 happened to her?

6 A No.

7 Q Did you have any idea?

8 A No, I **didn't**.

9 Q What time was it, if you even know, that you finally go
10 over to her house that day?

11 A I **didn't** go over to her house, but **it's** eleven --
12 around eleven-something and my mother called me and
13 told me that something was wrong over there.

14 Q Okay.

15 A And so, you know, I called back and I talked to the
16 neighbors --

17 Q Where did you go then?

18 A I went to the hospital. I -- the neighbor told me,
19 Clara **Malone** told me that they had gone to the hospital
20 so I went straight to the hospital from my house.

21 Q Okay. Were you shocked to find Val in the condition
22 she was in?

23 A I was very shocked.

24 Q Now, when is it that you talked to -- first of all, is
25 this your handwriting --

1 A No, it's not.

2 Q -- that Mr. Nixon referred you to?

3 A No, it's not mine.

4 Q He called it your statement.

5 A It's not my hand--

6 Q Is this your handwriting at all?

7 A No.

8 Q Okay. Who did you actually talk to? Do you remember?

9 Who was it. that you talked to when you were --

10 A Smith.

11 Q Okay, Detective Smith, and do you remember when, about
12 when that was?

13 A No. Wait. Oh, yes, I talked to him when I went up to
14 the station.

15 Q I'm sorry.

16 A When I went to the police station.

17 Q And about how long? Was it the same day?

18 A No. This was a few days later. I don't know exactly
19 when.

20 Q Okay. I notice in the thing that Mr. Nixon referred
21 you to you said about 6:35, you said about three times,
22 you said just after, you said about, you said about,
23 you said about some time, you said around.

24 A Mm-hm.

25 Q You kept talking about and around. Is that because you

1 could not --

2 A Because I wasn't exactly -- the only time I knew
3 precisely was the first call, and because it was early
4 in the morning.

5 Q Would it be fair to say that she put down the phone
6 somewhere between 8:30 and 10:00 in the morning?

7 MR. NIXON: Judge, I'm going to object to that.

8 MR. JORDAN: This cross examination?

9 THE COURT: Restate it. Restate your question.

10 Q Would **it** be fair to give a range of about the time that she
11 hung up the phone or put you on **hold** or when she went to
12 door, could it have been in the area between 8:30 and 10:00
13 in the morning?

14 A It could have.

15 Q Is that a round ball **park** figure?

16 A Yes.

17 Q You know it **wasn't** 5:30?

18 A I know that.

19 Q And you know it **wasn't** before her husband went to work?

20 A I know that, right.

21 Q And you know it wasn't at eleven o'clock **when** your --

22 A Right.

23 Q -- when your mother called you and said something **was** wrong
24 **or around** eleven o'clock?

25 A Right.

1 Q Now, Mr. **Nixon** asked you about the tape recording. Tell **the**
2 **jury** the condition **that** Valerie was in the day that **Al**
3 Fletcher and Jackie Arnold came out there to see her.

4 A She was very heavily medicated. When they came over there
5 the nurses was just getting her out of bed and putting her
6 in a chair, but she wasn't used to even sitting up and she
7 was in a lot of pain and she couldn't hardly talk and I
8 would talk for her and do a lot of things for her.

9 Q In fact, and **didn't** -- did she still have the **intubate** --
10 the --

11 A Her -- I **don't** know if she still, but she still had a lot of
12 stuff stuck on her body too.

13 Q How long had she been out of intensive care at that time?

14 A I **can't** say exactly how long.

15 Q But the police come out there?

16 A Yes.

17 Q And on the tape **you're** actually trying to talk for her?

18 A Right.

19 Q And you actually told the police that she told you --

20 A Yes.

21 Q -- that she **didn't** know who did it?

22 A Right.

23 Q Well, had she ever talked to you, Brenda?

24 A **Wo, we didn't** -- I tried not to even mention this because I
25 **didn't** want to get her upset and get her crying because she

1 > was in bad shape.

2 Q But you were trying to be helpful?

3 A I was trying to be helpful. I talked to her doctors for her
4 and nurses for her, everything.

5 Q Is her voice even on that tape recording?

6 A I **didn't** hear it at all because you would have -- she just
7 **couldn't** really communicate.

8 Q When she finally could talk, Brenda, did she tell you who
9 did it?

10 A She **didn't** tell me. She told somebody else and they told
11 me --

12 MR. NIXON: Object, object, Judge.

13 A -- but that was later.

14 THE COURT: Object to what?

15 MR. NIXON: Hearsay. She starts to say what somebody
16 else -- she told somebody else.

17 THE COURT: **He's** correct.

18 Q But she's never told you in her own voice, **she's** never said,
19 Brenda, I don't know who did it?

20 A No, she didn't.

21 Q She's never said, Brenda, it wasn't Stan and Ponytail?

22 A No, she **didn't**.

23 Q Now, I want to be very clear on that. That has never ever
24 happened --

25 A No.

1 Q -- from the time she came out of ICU until this very day?

2 A Not ever.

3 MR. JORDAN: That's all I have.

4 MR. NIXON: Judge, I would -- the **tape's** in evidence
5 of that interview. I would move to introduce a
6 copy of the transcript of that tape.

7 THE COURT: I'll be happy to introduce whichever one you
8 want introduced; not both.

9 MR. NIXON: The **tape's** already in.

10 MR. JORDAN: I'd like to introduce the -- **that's** fine.

11 REDIRECT EXAMINATION

12 BY MR. NIXON:

13 Q Ms. Gay, you -- Mr. Jordan said you were trying to be
14 helpful and you were trying to do the best you could? is
15 that right?

16 A **That's** right.

17 Q And you were trying to do the best you could when you told
18 them what time it was too; right?

19 A I was guessing, yes.

20 Q And **that's** when you said, "**just** after 9:00 a.m. we was
21 talking about going to **Prichard** parade. We talked about 13
22 minutes when **Valerie** said hold on." **That's** pretty specific,
23 **isn't** it, between nine and thirteen minutes.

24 A Im sure I was guessing on that. I **wasn't** taking the time.

25 Q You **didn't** say you were guessing though, did you?

1 > A I didn't come out; and say that I'm guessing, but I was
2 guessing.

3 Q Now, in this statement at the hospital you didn't tell
4 Detective Smith that she couldn't talk, couldn't tell you
5 what had happened to her. You said that she did tell you
6 that she didn't know who did it, didn't it?

7 A The tape say I did. I guess I did tell him, but she never
8 told me that.

9 Q And you wouldn't suggest that Detective -- you said this is
10 not your handwriting. You reviewed this statement, didn't
11 you? This is Detective Smith's handwriting?

12 A I guess I did, but this is my first time looking at it today
13 when you put it up here.

14 Q This Detective Smith took this statement, didn't he?

15 A I told him these things?

16 Q You're not suggesting Detective Smith would write something
17 on here that you didn't say?

18 MR. JORDAN: Judge, she's not suggesting anything like
19 that and I object to that question.

20 THE COURT: Let her answer the question.

21 Q Have you reviewed the statement?

22 A When you brought it up here a few minutes ago I looked at
23 it.

24 Q Do you deny that you told Detective Smith anything that's in
25 your statement?

1 > A I don't deny anything on there.

2 MR. NIXON: Thank you.

3 That's all I have of that witness, Judge.

4 THE COURT: Anything else?

5 MR. JORDAN: No.

6 Brenda, thank you very much.

7 THE COURT: Thank you very much.

8 Next witness.

9 (Mr. Robert, Clark and witness enter.)

10 THE COURT: Come on up here, please, sir.

11 Ladies and gentlemen of the jury, this is Mr. Bob
12 Clark. He's the attorney for Mr. Moore. He has
13 every -- young man, come on up here.

14 MR. CLARK: You want him on the stand?

15 THE COURT: Yes. For the record, I asked him did --
16 that we were fully aware of what his answers would
17 be, but I asked him would he like for you to be
18 here. He said he would. That's the reason you're
19 here.

20 Proceed.

21 TERRELL MOORE, recalled
22 previously sworn, testified further as follows:

23 DIRECT EXAMINATION

24 BY MR. NIXON:

25 Q State your name, please.

v
1 A Terrell Moore.

2 MR. NIXON: Judge, I -- again I would like for him
3 to be a hostile witness.

4 THE COURT: Perfectly all right. Go ahead.

5 Q Where do you live, Mr. Moore?

6 A I plead the Fifth Amendment;.

7 Q Did you ever live at Lynwood Court?

8 A Plead the Fifth Amendment.

9 Q Mr. Moore, in March of -- March the 2nd of 1992, did you own
10 own or did you drive a faded Mercury Capri automobile?

11 A I plead the Fifth Amendment.

12 Q Did you meet during March of 1992, two people from New York,
13 one named wish and one Rene?

14 A I plead the Fifth Amendment.

15 Q And did the one named Wish pay you a sum of money on or
16 about March the 2nd, 1995 (sic) to take him in your car to
17 Valerie Finley's home on Meadow Avenue?

18 A I plead the Fifth Amendment.

19 Q And you went to that home on Meadow Avenue, didn't you?

20 A I plead the Fifth Amendment.

21 Q And you put a mask on and you went in the house through the
22 front door, didn't you?

23 A I plead the Fifth Amendment,.

24 Q And the person that was with you was a person from New York
25 named Wish; is that correct?

1 A I plead the Fifth Amendment.

2 Q And you took the guns out of **the** safe in that house and you
3 were wearing a mask at the time and put them in your car,
4 didn't you?

5 A I plead the Fifth Amendment.

6 Q And you were present at the scene in Valerie **Finley's** home
7 on March the **2nd**, 1995 -- 1992, when the person you knew as
8 Wish fired a gunshot and shot Mrs. **Finley**, weren't you?

9 A I plead the Fifth Amendment.

10 Q And after the shot was fired you got into your faded gray
11 Mercury Capri and backed out and left the scene and you were
12 driving that car; **isn't** that correct?

13 A I plead the Fifth Amendment.

14 Q And the guns were placed in **that** car before you left?

15 A I plead the Fifth Amendment.

16 Q And while you were driving that car when you backed out you
17 almost; hit two people in the median that were working on a
18 car. One of them was a Tyrone **Dortch**. **Isn't** that true?

19 A I plead the Fifth **Amendment**.

20 Q And, Mr. Moore, you told the details of what you did that
21 day --

22 MR. JORDAN; Judge, at this time -- we need to see you
23 at sidebar.

24 (Off the record sidebar conference.)

25 Q Mr. Moore, on or about October the **6th**, 1992 (sic), at

1 approximately 1:53 in the morning at the parking lot of the
2 **Galaxie** Club in **Prichard**, Alabama, you told my investigator,
3 this person sitting right here, Ryan Russell, you confessed
4 that you did that **crime** and you told him that Wish was with
5 you and that Wish had shot the lady; **isn't** that true?

6 A I plead the Fifth Amendment.

7 Q You told him the details about it, **didn't** you?

8 A I plead the Fifth Amendment.

9 Q And you also, Mr. Moore, you also appeared at the grand jury
10 when you were subpoenaed to appear at the grand jury and
11 refused to testify and took the Fifth like **you're** doing
12 today, **didn't** you, Mr. Moore?

13 A I plead the Fifth Amendment.

14 Q And after you took the Fifth Amendment at the grand jury,
15 and specifically on April the **2nd**, 1993, with a court
16 reporter present and with your attorney, **Mr. Clark**, present
17 and Mr. Buzz Jordan present and Mr. Lebarron **Smith** present,
18 you told Mr. Buzz Jordan the sane thing, **didn't** you?

19 A I plead the Fifth Amendment.

20 Q And you told him the details of what you did in that house
21 and who did it with you, **didn't** you?

22 A I plead the Fifth Amendment.

23 Q You told **Mr. Jordan** and **Mr. Smith** and you answered their
24 questions and told them that you **were** driving a faded gray
25 Mercury Capri that day and that you and Wish went that house

1 and stole the guns and that Wish shot the lady; **isn't** that
2 what you told them?

3 A I plead the Fifth Amendment.

4 Q And you told them all the details of how the furniture got
5 turned over and where you looked and where you found the
6 **guns** and where you went in and when you came out; **didn't**
7 you?

8 A Plead the **Fifth**.

9 Q And the only people present that day when you gave that
10 recorded statement **was** your lawyer, Bob **Clark**, yourself, Mr.
11 Jordan, and Mr. Smith; **isn't** that correct.

12 A Plead the Fifth Amendment.

13 MR. NIXON: Judge, I would move to introduce the
14 statement in evidence at this time.

15 **THE COURT; No.** Do you have any other questions to
16 ask him?

17 MR. NIXON: Not at this time, Your Honor.

18 **CROSS EXAMINATION**

19 Q And you are friends with Rodney **Stanberry**, right?

20 A I plead the Fifth Amendment.

21 Q And you met with **Lebarron** Smith, who was investigating this
22 case, on April the 21st of 1992, **didn't** you?

23 A I plead the Fifth **Amendment**.

24 Q And you gave him a complete alibi as to not being anywhere
25 near Mrs. **Finley's** house; isn't that correct?

1 A I plead the **Fifth** Amendment.

2 Q And then you had a conversation with your buddy, Rodney
3 **Stanberry**, at the mall, **didn't** you?

4 A I plead the Fifth Amendment.

5 Q Rodney Stanberry approached you at the mall about this case,
6 **didn't** he?

7 A I plead the Fifth Amendment.

8 Q Then Rodney **Stanberry's** investigator came and interviewed
9 you at night, **didn't** he?

10 A I plead the Fifth Amendment.

11 Q And you told Rodney **Stanberry's** investigator, you told him
12 that it was Rene, Rene who did these things, but he
13 corrected you and told you, oh, no. In fact, he told you
14 that it was Wish and you agreed with him, **didn't** you?

15 A I plead the Fifth **Amendment**.

16 Q And then Mr. Ryan Russell, after you told him it was Rene
17 who went up to **the** house, Ryan Russell told you, no, **it** was
18 With that went to the house, **wasn't** it?

19 A I plead the Fifth Amendment.

20 Q Mr. Ryan Russell told you everything that happened in this
21 case, **didn't** he?

22 A I plead the Fifth Amendment.

23 Q He went through all the details of what happened at Mrs.
24 **Finley's** house, **didn't** he?

25 A I plead the Fifth Amendment.

1 Q And when you told him the wrong **neighbor, the** person who was
2 supposedly there, he corrected you, didn't he?

3 A I plead the Fifth Amendment.

4 Q He corrected you on two separate occasions, **didn't** he?

5 A I plead the Fifth Amendment.

6 Q And after he got through talking to you, ha told you to go
7 see a lawyer, didn't he?

8 A I plead the Fifth Amendment.

9 Q And you went and saw a lawyer, didn't you?

10 A I plead the Fifth **Amendment.**

11 Q And then you **wouldn't** talk to me, would you, after Mr. Ryan
12 Russell sent you to a lawyer?

13 A I plead the Fifth.

14 MR. NIXON: Judge, I object to that. He did talk to
15 and Mr. Jordan is making a **mischaracterization of**
16 what happened. He knows he talked to him. We
17 have a transcript of it.

18 THE COURT; Sustained.

19 Q **Mr.** Ryan Russell sent you to see a lawyer, **didn't** he?

20 A I plead the Fifth Amendment.

21 Q And then I subpoenaed you to the grand jury so you could
22 come and tell the truth about this event, didn't I?

23 A I plead the Fifth Amendment.

24 Q And after Mr. Ryan Russell sent you to a lawyer, you went **to**
25 a lawyer and you came to the grand jury and you took the

1 fifth amendment, did you?

2 A Plead the Fifth Amendment.

3 Q In fact, you and Rodney Stanberry concocted this entire
4 story, didn't you?

5 A Plead the Fifth Amendment.

6 MR. JORDAN; That's all I have.

7 REDIRECT EXAMINATION

8 BY MR. NIXON:

9 Q You did tell him -- you told this man right here the truth,
10 didn't you?

11 A Plead the --

12 Q In front of a court reporter and in front of that police
13 officer right there and in front of your lawyer, didn't you?

14 A I plead the Fifth.

15 Q And when you told him the truth that day you told him that
16 Rodney Stanberry didn't have anything to do with it, that
17 you went in that house and Wish went in that house and Wish
18 shot the girl and you took the guns out, didn't you?

19 A Plead the Fifth Amendment.

20 MR. NIXON: That's all I have, Judge.

21 BY MR. JORDAN;

22 Q You told him exactly what Rodney Stanberry and his
23 investigator told you to tell me?

24 A I plead the Fifth Amendment.

25 THE COURT: Anything else?

1 MR. NIXON: No, Your Honor.

2 THE COURT: Buzz?

3 MR. JORDAN: No, sir.

4 THE COURT: You may **step** down,

5 MR. CLARK: Are **we** excused, Judge.

6 THE COURT; Yes.

7 MR. CLARK: Thank you, sir.

8 THE COURT: Thank you very much.

9 MR. NIXON: Judge, I call Tony **Mauldin** to the stand.

10 THE COURT: Tony **Mauldin**.

11 MR. TONY MAULDIN

12 was sworn and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. NIXON:

15 Q State your name, please.

16 A My name **is** Tony **Mauldin**.

17 Q How old are you, Mr. **Mauldin**?

18 A **Forty-one**.

19 Q Where do you live?

20 A 2436 Denmark Street, Mobile.

21 Q Do you know Tyrone Dortch?

22 A Yes.

23 Q How do you know him?

24 A His daddy stay across the street from me. I used to work
25 for him.

1 Q How long have you known him?

2 A I reckon about ten years, maybe a little longer.

3 Q And are you skilled in repairing automobiles?

4 A Yes, sir.

5 Q Did you know Tyrone Dortch in March of 1992?

6 A Yes.

7 Q Had you worked on his automobiles before?

8 A Yes.

9 Q On how many occasions?

10 A Lot of times.

11 Q Do you remember the day -- I'll call your attention to
12 March the 2nd of 1992. Do you remember that day?

13 A Yes.

14 Q And did you go to Tyrone's home on Meadow Avenue on that
15 day?

16 A Yes.

17 Q And what was your purpose for going there?

18 A To work on his car.

19 Q And what type of work were you doing on his car?

20 A Taking off the water pump.

21 Q And what kind of car was that?

22 A Grand Prix.

23 Q And, if you would, please, sir, can you tell us what time
24 you got there?

25 A Somewhere between 9:30 and 10:30, I reckon. It was still

1 in **the** morning time **though**.

2 Q Do **you** recall the exact time?

3 A No, sir.

4 Q And how did you get **from** your house to Mr. **Dortch's**
5 house?

6 A I drove my car.

7 Q And what kind of car did you drive on March the 2nd of
8 **1992?**

9 A A brown **Toyota**.

10 Q Two doors or four doors?

11 A Four-door.

12 Q What color brown was your **Toyota?**

13 A Dark brown.

14 Q Sir?

15 A Dark brown.

16 Q And if you would, please, sir, would you step off the
17 witness stand and come **to** the board for **me?**

18 (Witness complies.)

19 Q Now, Mr. **Mauldin**, this is Meadow Avenue coning in. It
20 makes a circle, **doesn't** it?

21 A Yes. sir. .

22 Q And if this is a grass -- this is a grass median?

23 A Yes, sir.

24 Q And, **let's** see, **Tony's** house about here?

25 A Tyrone's house, yes.

1 Q Tyrone. I'm sorry.

2 THE COURT; Mr. **Nixon**, if you want the jury to see
3 that, they can't see through him.

4 MR. NIXON: Yes, sir.

5 Q Let me ask you, if you will, if that is -- starting with
6 Tyrone's house, if you would, draw **Tyrone's** driveway.
7 Are you oriented to this?

8 A I think Tyrone driveway come out right here.

9 Q Okay. Now, did you see some paramedics at a house that
10 day, police officers?

11 A After I came back from the parts store.

12 Q Draw the house where you saw the paramedics.

13 A Well, I **don't** know paramedics. I know it **was** a bunch of
14 polices there.

15 Q Okay. Is that the house next door to Tony's?

16 A Tyrone.

17 Q Tyrone. I'm sorry.

18 A Yeah. Okay, The other house was right here.

19 Q Okay, and did it have a driveway?

20 A Yeah, it had a driveway.

21 Q Draw that. (Witness **complies.**)

22 A Right about here.

23 Q Now, tell the jury where you fixed **Tyrone's** car? Where
24 were you working on his car?

25 A **Tyrone** car was parked right here (indicating).

1 Q Okay, which way was it facing?

2 A Towards his house.

3 Q Was it like that (indicating)?

4 A Yes.

5 Q Okay, and draw your car.

6 A My car **was** right on the side of his.

7 Q And your car was parked that way?

8 A My car was facing his house too.

9 Q Okay. Was it the same way as his?

10 A Yes.

11 Q If I draw it wrong, you **tell** me.

12 A Okay.

13 Q Was it like that?

14 A Yes.

15 Q And **it** was facing this way?

16 A Yes.

17 Q And this car **was** facing **that** way also?

18 A Yes, sir.

19 Q **Now**, why did you -- this is in the grass median?

20 A Yes, sir.

21 Q And why did you park your car next to his Grand Prix?

22 A Cause I had my tool box in the trunk and I **didn't** want to
23 tote them across the street over there, so I parked it
24 right there.

25 Q So, you just pulled up in the median?

1 A Yes, sir.

2 Q What color was the Grand Prix that you were working on?

3 A White and red.

4 Q And did you see another Grand Prix that day?

5 A I think he had one in the back yard. I'm not for sure.

6 Q Did you know how many cars he had, how many Grand Prixs
7 he had at that time?

8 A He had two. I don't know what --

9 Q Did you ever know him to have three?

10 A No, sir.

11 Q Now, you came out here and you were working on the car.

12 A Yes, sir.

13 Q Who was with you?

14 A Tyrone.

15 Q And how long did you work? At some point you left,
16 didn't you?

17 A Yeah, we went to get the part.

18 Q Where did you go to get the part?

19 A We went to Auto Zone on Spring Hill Avenue.

20 Q Do you recall what time you left?

21 A I reckon about 11:00 or 11:30, something like that. Im
22 not for sure.

23 Q Did you stop anywhere on the way?

24 A No.

25 Q From the time you started working out here on the car

1 > until the time you left to go to **Auto** Zone after **11:00**,
2 **11:00** or **11:30**, did you ever see anybody else in the
3 median?

4 A No, I **don't** think so. I was mostly up under the hood.

5 Q Now, did you see a car in the **Finley** driveway that
6 morning?

7 A Yes.

8 Q You can take the stand again. Well, just a second.
9 What kind -- describe that car for me, please.

10 A It was a kind of a gray faded-out brown car, look like a
11 two-tone and it was a Capri, mid size car.

12 Q Are you familiar with cars?

13 A Yes, sir

14 Q And are you certain that it was a Mercury Capri?

15 A Yeah.

16 Q And you said faded gray or brown.

17 A Yeah.

18 Q And how did -- and where **was** that car parked?

19 A It was parked in this yard here facing **me**.

20 Q And was it there when you first went out to start working
21 on the cars?

22 A I can't quite **remember**, but I know later on I -- you
23 know, when you up under the hood, you **try** to **stay** up
24 under there. I **don't** know was it there when I first **got**
25 there or not.

1 Q **can't** be sure?

2 A No, sir.

3 Q Did you ever see anybody come out of the **Finley** house
4 that morning?

5 A No, I **ain't** seen nobody come out the house.

6 Q Did you see someone get in that faded --

7 MR. JORDAN: Judge, object to leading. object to
8 leading. I'd like the witness to tell.

9 Q Did you see **the** car leave?

10 A Yeah.

11 Q All right. Before you saw the car leave, did you see
12 anybody get in the car?

13 A I seen two people get into the car from the back. I
14 never did see their face.

15 Q Never saw the face? Can you describe anything about
16 them?

17 A The guy getting in on the driver side was taller than the
18 guy getting in on the passenger side.

19 Q Were you paying close attention to that?

20 A Well, not too **much**. I started back working on the car
21 again.

22 Q Did you think anything unusual when you saw that?

23 A NO.

24 Q Now, tell us what happened when they left.

25 A Well, I was up under the hood **of** the car and when they

1 backed out the yard they almost pin me up **against**
2 Tyrone car.

3 Q If you would, show us how they --

4 A When they backed out the driveway and almost pin me
5 against Tyrone car, and I turned around and I say, Damn,
6 **almost** run over me, and they pulled **off** and left.

7 Q Did you ever see a brown Bronco that morning down there?

8 A No.

9 Q **Was** there any other brown car there other than your brown
10 **Toyota?**

11 A Not as I knows of.

12 Q Was there ever two Grand **Prix**s out here in this median
13 that morning?

14 A No, mm-mm, just my car and his.

15 Q Is **your** car a four-door?

16 A **Yes**, sir.

17 Q You can return to the stand. (Witness complies.) Do you
18 know Rodney **Stanberry?**

19 A No.

20 Q Do you know Mike Finley?

21 A No.

22 Q Do you know Valerie **Finley?**

23 A No.

24 Q To you know Tyrrell Moore?

25 A No.

1 Q Did you buy anything else at the Auto Zone?

2 A Nope, nothing but the water pump.

3 Q And did Tyrone buy that?

4 A Yeah.

5 Q Were you present when he bought it?

6 A Yeah. I had the water pump and he paid for it.

7 Q Did you see him take anything with him other than the
8 water pump, any documents?

9 A He got the receipt and the warranty. That's about all.

10 MR. NIXON: May I approach the witness, Judge?

11 Q I'll show you a copy of what's been admitted into
12 evidence, a warranty and a receipt. Does that -- can you
13 say whether or not that's the warranty and the receipt?

14 A Yeah, that's what it is. Same day, yeah.

15 Q Now, this says on the receipt 12:05. Would that be
16 consistent with your recollection as to what time you
17 were at the Auto Zone?

18 A Yes.

19 Q Now, how long does it take to get or how long did it take
20 you to get to the Auto Zone from Tyrone's house on Meadow
21 Avenue?

22 A About 15 minutes.

23 Q okay. And how long did you stay in the Auto Zone?

24 A About 15 minutes.

25 Q So, it took about 15 minutes into Auto Zone, getting the

1 pump and paying for it, and it took you about 15 minutes
2 to get there from Meadow Avenue?

3 A Yes.

4 MR. NIXON: Please answer Mr. Jordan's questions.

5 Oh, excuse me. One more question.

6 Q Mr. **Mauldin**, did the police **ever** come to talk to you?
7 **Did** any police talk to you that day?

8 A Not that day.

9 Q Did they ask you any questions?

10 A Not that day. I think it was --

11 Q I'm asking you about that day right now.

12 A No, **unh** unh.

13 Q And did they see you out there? Were you still working
14 on the car out there when the police and the
15 paramedics
16 were there?

17 A When I came back, they was leaving, looked like to me.

18 Q **Okay**. Did they come to talk to you? Did someone **come**
19 talk to you, take your statement afterwards?

20 A Yeah, at home.

21 Q Do you recall when that was?

22 A I think it was **about** a day or two later. I'm not for
23 sure, you know.

24 Q And did you tell **there what you** saw?

25 A Yes.

1 Q Do you recall who that was that you talked to?

2 A No.

3 MR. NIXON: **That's** all I have.

4 CROSS EXAMINATION

5 BY MR. JORDAN:

6 Q Mr. **Mauldin**, just to back up a little bit, after you saw
7 the **guys** come from the **Finley** house or from the house,
8 you left, what, about ten minutes later to go get a water
9 pump at Auto Zone; **is** that right?

10 A No.

11 Q **What's** right.?

12 A We left about -- yeah, maybe about ten or fifteen minutes
13 later.

14 Q Okay. So, **you're** at the Auto Zone at 12:05, according to
15 that receipt, right? You say it took you 15 minutes in
16 there. That would put you back to about -- I'll just put
17 Auto Zone here. That would put you back at the house
18 roughly around -- **is** it 15 minutes or 10 minutes to get
19 to Auto Zone?

20 A Around 15 minutes.

21 Q So, it would take you about **12:20** to get home, and you
22 say the police were already pretty much leaving?

23 A Right.

24 Q Twelve oh five, **Auto** Zone. You were in there about
25 fifteen **minutes**. That would put you about eleven fifty

1 > when you got there, right? Roughly. So, you would have
2 left the house at about eleven thirty-five, is when you
3 left to go to Auto zone?

4 A Yeah, I reckon so.

5 Q Okay. And you saw those people at about 11-- that would
6 put it at about **11:25 a.m.** is when you saw the two men.
7 Where were they at the house?

8 A Beg your pardon?

9 Q Where did you see then?

10 A I seen them getting into the car.

11 Q Okay. You said you didn't see their faces?

12 A No.

13 Q And which -- Where were they coming from?

14 A Well, **when** I came from up under the hood car, only thing
15 I seen was the back of them and the dude opened the door.
16 I **couldn't** see their faces, and they got in the car.

17 Q Okay. So, you **don't** know where they came from the house?

18 A No, I did not see them come from the house.

19 Q And you **don't** remember **Lebarron** Smith talking to you
20 about this at some point in time? Does he look familiar
21 to you?

22 A No, not really.

23 Q You never heard a shot?

24 A No.

25 Q So, while you were out there you never heard any kind of

1 > shot?

2 A No, I had my mind on working on the car.

3 Q And you didn't see any -- When you saw the two people
4 going to the car, you **didn't** see anything in their hands?

5 A No.

6 Q Did they have masks and gloves on?

7 A No. I don't know cause I didn't see their face.

8 Q Well, I mean did you see them with masks on?

9 A No.

10 Q You just didn't recognize -- you **couldn't** see their face?

11 A No, I **couldn't** see their face.

12 Q You never told anybody they had masks and gloves on?

13 A No.

14 Q You remember telling Lebarron that you **saw** a **Mustang** out
15 there?

16 A I don't know. I might have said Mustang, but it was a
17 **Capri**. Or Mustang, one of the two. They look just
18 alike.

19 Q Okay. You remember telling him it was a two-tone color
20 car, green and gold, **maybe** three-tone? Does that sound
21 familiar to what you told **Lebarron**?

22 A I **don't** know.

23 Q Think back. Two, two-tone color car, maybe three-tone,
24 green and gold. Nice looking car, fresh paint **job** on the
25 **car**. Did it look like it had a fresh paint job on the

1 > car? Is that what you told **Lebarron**?

2 MR. NIXON: Judge, may we approach the bench just
3 a minute, please.

4 A I **don't** know. I **don't** know.

5 MR. NIXON: Excuse me, Mr. **Mauldin**.

6 (Off the record side-bar conference.)

7 Q Mr. **Mauldin**, thinking back, did the car look like a nice
8 looking car with a fresh paint job on the car, the car
9 that you saw pulling out?

10 A I **don't** know. You know, I'm -- I remember it was a **two-**
11 **tone** color car. Now, what the color was, I **can't**
12 remember exactly, but I knowed it had a -- looked like a
13 faded gray with a two-tone, you know, with a two-tone
14 paint job on it. I just **can't**, you know, just tell
15 exactly what color it was and was it a fresh paint or not
16 cause, like I say, my mind was mostly on putting the car
17 back together.

18 Q I understand. You **weren't** really paying attention; is
19 that correct?

20 A **Right**.

21 Q Were you -- When you **left** your house did you drive to
22 Tyrone's by yourself?

23 A Yes.

24 Q He **didn't** come pick you up?

25 A No.

1 Q You didn't ride with him?

2 A No.

3 Q And **could** you have gotten there at 10:00 or 10:30? When
4 you arrived?

5 A Possibly.

6 Q If you got there at 10:00 or 10:30, as late as that in
7 the morning, you only went over there to do work on the
8 car, right?

9 A Right.

10 Q You **didn't** go over there to spend a lot of time
11 socializing or anything like that?

12 A Right.

13 Q You went over there -- Your purpose was to change the --
14 If you got over there at 10:00 or 10:30, where was Tyrone
15 when you got there?

16 A When I got. at Tyrone house, he was in the house.

17 Q And when you got there at 10:00 or 10:30 did you notice
18 if the car **was** in the driveway or not?

19 A I hadn't noticed it then.

20 Q So, the first time you saw it was at about the time you
21 left to go to Auto Zone or I mean right before when you
22 saw the -- you said you saw the two **men**?

23 A Right. I seen the car just before I seen the men.

24 Q Did Tyrone see the **men** too?

25 A I **don't** know.

1 Q Did he say anything to you?

2 A Nope.

3 Q Did he say anything to you like, hey, somebody's coming
4 out of there that I recognize from somewhere?

5 A I don't -- I don't remember.

6 Q Has he *ever* told you that?

7 A No.

8 Q Huh?

9 A Mm-hmm.

10 Q He's never told you he recognized anybody that came out
11 of that house, has he?

12 A No, I don't think he has.

13 Q Has anybody brought any photos by to show you to *try* to
14 pick out: who the two people were you saw about that time?

15 A Mr. Russell came by my house Sunday and showed me some
16 photos, asked me did I know them and I told him no.

17 Q You *couldn't* identify anybody, could you?

18 A Nobody.

19 Q Let me just put this down there too. You could have
20 arrived as late as 10:00 or 10:30; *is* that right?

21 A Yeah, maybe.

22 Q And obviously you *don't* know what could have happened
23 before you got there, do you?

24 A No.

25 Q And you *don't* know what vehicles may have been in the

1 > driveway before you arrived?

2 A No.

3 Q Honestly. One other thing too, just one last thing. The
4 people you saw **didn't** have anything in their hands; is
5 that correct?

6 A Not as I noticed.

7 MR. JORDAN: Thank you, sir.

8 REDIRECT EXAMINATION

9 BY MR. NIXON:

10 Q When you first **saw** these people you said you **didn't** see
11 them coming out, you **didn't** see then walking to the car,
12 you just glanced up and saw them getting in the car?

13 A Right. Their back was turned to me and I seen the guy
14 putting the key in.

15 Q So, if they had something and had already put it in the
16 car, you certainly wouldn't have seen it, would you?

17 A I **wouldn't** have seen it.

18 Q Now, you told us about the car. Is it your best
19 recollection **that** it was a Mercury Capri?

20 A It was a Capri.

21 Q Are **you** sure it wasn't a Bronco?

22 A It **wasn't** a Bronco.

23 Q **There's** a big difference between a Capri and a Bronco,
24 isn't there?

25 A It **wasn't** a Bronco there.

1 Q Was there a Bronco at any time parked out in the median
2 or in the driveway that morning?

3 A Not as I knows of.

4 MR. NIXON: That's all I have, Judge.

5 THE COURT: You may step down.

6 MR. NIXON: Judge, I call Bruce Hickbottom.

7 BRUCE HICKBOTTOM

8 was sworn and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. NIXON:

11 Q State your name, please.

12 A Bruce Hickbottom.

13 Q And how old are you, Mr. Hickbottom?

14 A Thirty-four.

15 Q Where are you employed?

16 A BFI.

17 Q How long have you been employed at BFI?

18 A Going on six years.

19 Q And what do you do there?

20 A A welder.

21 Q And were you at BFI on March the 2nd, 1992?

22 A Yes, sir.

23 Q And do you work with Rodney Stanberry?

24 A Yes, sir.

25 Q And how long have you worked with Rodney?

1 > A Me and Rodney -- Rodney started a little before me. I
2 been working for -- you know, around him ever since I
3 been at BFI.

4 Q Sir?

5 A I been working around him ever since I been at BFI.

6 Q Okay. And he was working there on -- Rodney was working
7 there on March 2, 1992?

8 A Yes, sir.

9 Q On that day what time did you arrive at work?

10 A I think I got to work about four o'clock in the morning.

11 Q And where did you park your vehicle?

12 A In the back parking lot behind -- behind where Rodney
13 park on the front parking lot, parked right behind that.

14 Q Okay. And what kind of vehicle do you drive?

15 A At the time I was driving a Cutlass at that time.

16 Q And what kind of vehicle does Rodney drive or did Rodney
17 drive at the time?

18 A A Bronco.

19 Q Does he still drive that car, that Bronco?

20 A No, sir, he got a blue Blazer now.

21 Q Okay, and was that a brown Bronco?

22 A Yes, sir.

23 Q And when you arrived at work that morning did you see
24 that; Bronco?

25 A Yes, sir.

1 Q Where did you see it?

2 A Right in front, right in front of me. When I get out my
3 car you can see it. That where he parked at every day
4 for a couple of years ~~til~~ he changed it.

5 Q What was there about that Bronco that distinguished it
6 from other Broncos?

7 A Yeah, what he had -- the writing he had wrote on it.
8 Everybody used to mess with him about it.

9 Q And what was that?

10 A One night; stand.

11 Q Now, did you see that Bronco again that day?

12 A Yes, sir.

13 Q What; time?

14 A On my ten o'clock break.

15 Q **And** is that your first break of the day?

16 A Yes, sir.

17 Q You take that at ten **o'clock** in the morning?

18 A Yes, sir.

19 Q What did you do that day on your ten **o'clock** break?

20 A Just walk outside like I **normally** do, walk outside or
21 walk upstairs to the break room.

22 Q On that particular day did you go to your car?

23 A No, I just walked outside.

24 Q And did you notice --

25 MR. JORDAN: Judge, I object to him leading.

1 Q What did you see when you went out there?

2 A See all the cars, and his Bronco was there.

3 Q You sure about that?

4 A Yes, sir. Positive.

5 Q Okay. Did you see Rodney any more that day?

6 A Yes, sir, at twelve o'clock when I was there eating,
7 getting ready to each lunch.

8 Q Okay. What time do you take lunch?

9 A At twelve.

10 Q And where did you see Rodney at twelve?

11 A Upstairs in the break room.

12 Q This is at the BPI building?

13 A Yes, sir.

14 Q And where is that located?

15 A On Varner Road, Varner Drive, I mean.

16 Q Is that off of Halls Mill Road?

17 A Yes, sir, right off Halls Mill Road.

18 Q And this was at noon.

19 A Yes, sir.

20 Q Did you have any conversation with him at noon?

21 A Yes, sir. He was talking about getting his CDL license,
22 going and taking his CDL license test and --

23 Q What is CDL?

24 MR. JORDAN: Object to hearsay.

25 A Sir?

1 **THE COURT:** Go ahead.

2 **Q** What is a CDL?

3 **A** A driver's license you **must** have to drive a truck.

4 **Q** What kind of truck does he drive?

5 **A** Front end truck.

6 **Q** Big truck?

7 **A** Yes, sir*

8 **Q** Picks up these garbage cars?

9 **A** Yes, sir.

10 **Q** **Big** garbage cans? And did you tell him anything at
11 twelve o'clock?

12 **A** Yes, sir, we were talking about it. My daddy-in-law work
13 for Waste Management, drive the same type truck, and my
14 daddy-in-law tell me you have to have your Social
15 Security card on you to go take the CDL test and I was
16 telling Rodney that and he said, well, I need to go --

17 **THE COURT:** Mr. Nixon.

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

19 **THE COURT:** Ask him questions he can answer as
20 opposed to his daddy.

21 **Q** What did you tell Rodney about his Social Security card?

22 **A** I just told him **wasn't** no sense in him going over there
23 unless he going to carry his Social Security card over
24 there with him because they won't let him take the test
25 without it.

1 Q Okay. What, if anything, did you see him do at that
2 time?

3 A He got on the telephone.

4 Q Did you see him leave that day?

5 A No, sir, I **didn't** see him leave.

6 Q So, he **was** on the telephone at BFI at what time?

7 MR. JORDAN: Judge, at some point --never mind.

8 A Twelve or a little after twelve.

9 MR. NIXON: **That's** all I have. Well, excuse me.

10 Q Have the police ever come to talk to you?

11 A No, sir.

12 Q Has anybody ever come to talk to **you**?

13 A No, sir.

14 MR. NIXON: **That's** all I have.

15 THE COURT: Do you have any questions to ask this
16 man?

17 MR. JORDAN: Yes.

18 CROSS EXAMINATION

19 BY MR. JORDAN:

20 Q Mr. **Hickbottom**, have you ever come to the police with
21 this story prior to today?

22 A No, sir.

23 Q Three and a half years, right?

24 A Three years.

25 Q Since March 2nd of '92 you've never come to the police

1 > and told anything that **you've** told here, have you?

2 Q Where **was** this Bronco on March the 15th, '92?

3 A March the 15th, '92. It was in the parking lot.

4 Q It was.

5 A If I can state it, it was --

6 Q What about March the 7th or '92?

7 A I **don't** know.

8 Q What about March the 30th of '92?

9 A I reckon it was there.

10 Q What about April 7th of '93?

11 A You know, I remember seeing him jury about every day, you
12 know. The cars be parked right there in front and **you're**
13 used to seeing them, you know, every day.

14 Q So, **you're** saying you see his -- you go out and you check
15 to make sure Rodney's Bronco is in your parking lot every
16 day since March 2nd of '92?

17 A No, I'm not a security guard. I **don't** do that.

18 Q Exactly. **You're** not a security guard, are you?

19 A I'm aware I'm not a security guard.

20 MR. JORDAN: Thank **you**, sir.

21 THE COURT: You may step down.

22 MR. NIXON: Henry Johnson.

23 THE COURT: I'll let you call anybody you want, but

24 **we're** going to take about a ten-minute break.

25 (Recess.)

1 (Staters Exhibit 50 identified.)

2 (Defendant's Exhibits I, J, K, L and M
3 identified.)

4 (Jury present.)

5 HENRY JOHNSON

6 was sworn and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. NIXON:

9 Q Tell us your name, please.

10 A Henry Johnson.

11 Q How are you employed, Mr. Johnson?

12 A How?

13 Q Yes, sir.

14 A I'm the operations manager at BFI in Mobile.

15 Q And how long have you been in that capacity?

16 A Twelve and a half years.

17 Q And BFI in Mobile is located where?

18 A Varner Drive off of Halls Mill Road.

19 Q And does Rodney Stanberry work with you or for you?

20 A Yes, sir.

21 Q And what does he do?

22 A He drives a commercial front loader, truck driver.

23 Q How long has he been working for you?

24 A Five and a half years, six.

25 Q Let me show you briefly Defendants Exhibit J and ask you

1 if you can tell us what that is.

2 A It's a commercial front loader truck.

3 Q Is that a truck like -- similar to the truck that Rodney
4 drives?

5 A Very much so.

6 MR. NIXON: I'd move to mark that in, Judge.

7 THE COURT: if you want it in, it's in. I don't
8 know how it's relevant, but if you want it in
9 it's in.

10 (Defendant's Exhibit J marked in evidence.)

11 Q During March of 1992 was Mr. Stanberry driving that type
12 of truck on a daily basis?

13 A Yes, he was.

14 Q And did he have a certain route that he ran?

15 A The same route every day.

16 Q Now, can you briefly tell us what driver -- does he have
17 a form or any paperwork that he fills out at the end of
18 the day or the beginning of the day?

19 A Yes, sir, each day he's required by our company to fill
20 out a daily driver's report. He's also required by
21 Federal Government DOT regulations to fill out a vehicle
22 inspection report of that truck. On that daily driver's
23 report he puts on it the time he starts, fuel
24 consumption, total miles driven. He writes on it some
25 information for us as far as the tonnage that he's

1 disposed of in that day. He puts on it the time that he
2 arrives at the first container that he picked up in the
3 morning, the time he picks up the last container, the
4 time he completes that afternoon, any **down** time that was
5 -- any down time being a mechanical breakdown or any time
6 associated with that truck not actually picking up trash
7 he writes on that daily driver's report.

8 On his vehicle emission report he's required by law
9 to write in "the time that he logs in to drive that truck.
10 He does a pre-trip inspection to that truck and his --
11 half **of** the form is for the ore-trip inspection that he
12 has to fill that out. At the end of the day when he
13 comes in he's required by law to fill out a post-trip
14 inspection on that truck and log in the **time** on it also.

15 Q Detailed records?

16 A Mm-hm.

17 Q And do you maintain those records?

18 A Yes, sir. Every one of those records is compiled in our
19 office by one of our secretaries and put on what we call
20 a productivity report which determines the amount of time
21 **that's** spent to pick up that route, the amount of time
22 associated with disposal, the amount of time for truck
23 down **time** and the reason why the truck was down.

24 Q Did you ever gather the records for March the **2nd**, 1992?

25 A Yes, sir, I was -- we were subpoenaed to turn those

1 > records over to **"the** courts.

2 Q And did you do that?

3 A Yes, sir.

4 Q And when was that?

5 A I'm not sure exactly when, but. it was associated with
6 about a month. Seems like they got January, February and
7 March's records.

8 Q Was that back in 1992?

9 A Mm-hm.

10 Q Sir?

11 A Yes, sir.

12 Q Now, I'm going to show you **what's** been marked as
13 **Defendant's** Exhibit I and ask you if you recognize that.
14 Do you recognize that?

15 A Yes, sir, that's daily **driver's** route report.

16 Q Okay.

17 A With a copy of his route sheet on it.

18 Q **And** the route sheet that is attached, is that --

19 A This is not a copy- This is the original that we turned
20 over with the original route sheet of the route that he
21 ran.

22 Q **And** who did **you** turn that over to?

23 A Actually I didn't turn -- we were subpoenaed for copies
24 of the work orders on the truck. I gave this original
25 copy of this -- this exact report here to Mr. **Stanberry**

1 > whenever Rodney was in court or in jail.

2 Q Okay, after his arrest?

3 A Mm-hm.

4 Q Did he contact you and request that?

5 A Yes.

6 Q Did you keep copies of it?

7 A Yeah, we have a copy of it too.

8 Q Did you provide the district attorneys a copy of it?

9 A I'm really not sure if Mr. Jordan got a copy of not, but
10 I know he's seen it.

11 Q Well, he gave me a copy of it in discovery. Would you
12 have --

13 MR. JORDAN: Judge, if Ken's going to get on the
14 witness -- if he can just ask a question. I
15 don't believe we need to get into all this.

16 Q Did you give then all the records that you had? Mr.
17 Jordan of the D.A.'s office?

18 A The records that were subpoenaed, we provided them with
19 them, yes.

20 Q Did they come up to your office and look at any records
21 that you're aware of.

22 A Mm-hm.

23 Q Sir?

24 A Mm-hm, yes.

25 Q Were you present when they did?

1 A Now, they probably went "through -- because the records
2 that are maintained for those work orders are kept in our
3 maintenance department and our maintenance manager was --
4 I'm sure was there whenever they were going through them
5 because we have to keep those records by law *for* that
6 truck. They have to be kept on file.

7 Q Now, just briefly. truck number 989.

8 A That's the truck **that's** assigned to Rodney to drive.

9 Q Okay. And this, it says start time, **2:59**. Would that be
10 the time that the truck starts?

11 A **Yes**, sir. That's one minute to 3:00 a.m.

12 Q In the morning?

13 A Right.

14 Q And the finish time at **11:55**?

15 A **That's** five minutes to twelve at noon.

16 Q Okay. Now, down here at the bottom it says "**last** stop
17 **8:43.**"

18 A **Mm-hm.**

19 Q Would that be a.m.?

20 A Yes, sir.

21 Q And that would be the last thing that was picked up?

22 A That was the last one of these stops back here in the
23 back that Rodney actually picked up.

24 Q The stops that we're talking about is when they actually
25 pick up garbage from the truck, correct?

1 A Mm-hm, at **dumpsters** at commercial locations.

2 Q And then after this stop they go and -- to the land fill
3 and dump it?

4 A Right.

5 Q NOW --

6 A With the exception of this day.

7 Q Now, have you checked or you looked at this sheet?

8 A Mm-hm.

9 Q And were you ever -- did Rodney perform his -- all the
10 functions he was supposed to perform that day?

11 A Yes, sir.

12 Q Did he make all the stops that he was supposed to make?

13 A Yes, sir.

14 MR. NIXON: I'd move to admit this in evidence,
15 Judge.

16 THE COURT: Certainly.

17 MR. JORDAN: I'll just look so I'll make sure I
18 know which one. No objection.

19 (Defendant's Exhibit I marked in evidence.)

20 Q Do you recall talking to Rodney that day or do you recall
21 that day at all?

22 A Yes, I do, the reason being -- it's not one of those
23 things you can **remember** everything, but when you look at
24 those reports, every one of them are different. He had
25 some down time that morning and what it was, he had this

top lid, which is the top door of that truck that opens up, was stuck. It had something in it, and I remember because I go to work in the morning at 6:00, 6:30, and I heard him on the radio talking to one of the mechanics trying to get some help or he was just calling in and he had a problem and he was talking to them about that top door being stuck, and I have a radio in my truck and I got on the radio and talked to him, asking him questions about where he was, because we have customers that present problems and we have to try to work them out and the debris that they put in the containers was the problem in this particular case and it got the top door hung up on his truck.

Q What time was **that**?

A Had to have been about -- If I could see that **report**, I could tell you, his daily **driver's** report.

Q Early in the morning?

A Yeah. Like I say, **he's** logged it in as the top lid jammed at **4:41**, which is a.m., and he was down from **4:41** to **5:29**, which he was -- At that time of the morning is kind of a shift change for our mechanics, so he was -- At that time of the day it takes then longer because the mechanics are not on duty. So, they have **to** actually get up and come in.

Q There's also a log in here of flat tire from **9:05** to

1 9:37.

2 A Mm-hm.

3 Q Does that mean that he had a flat tire --

4 A On that particular --

5 Q that day?

6 A Yes, sir. Because what his -- his route was on the south
7 part of the county from like **Hamilton** Boulevard area all
8 the way to Dauphin Island and Bayou la **Batre** and Grand
9 Bay and in that particular case where there was a flat,
10 and the work orders back it up, that the truck came to
11 the yard, to our physical property, and had that tire
12 repaired.

13 Q Off Halls Mill Road.

14 A Right.

15 Q And how are your drivers paid? Are they paid by the
16 hour?

17 A We have some that are paid by the hour and some that are
18 paid by the day and some that are paid incentive pay.

19 Q How are the truck drivers paid? How was Rodney paid?

20 A Incentive pay.

21 Q Is that --

22 A Actually Rodney was paid driver day rate pay at the time.

23 Q Okay, and when -- on **Rodney's** route that **you're** familiar
24 with, when he would finish collecting, where would he
25 dump everything that he'd collected?

1 A There's only one sanitary landfill in Mobile County.
2 It's in Chestang, Alabama.

3 Q And where is **Chestang, Alabama**? How far from Halls Mill
4 Road, your BFI location?

5 A Thirty-two miles.

6 Q And do you -- have you driven that route before in a dump
7 truck?

8 A Yes, sir.

9 Q Like this?

10 A Yes, sir.

11 Q How long does it take to get there from **BFI**?

12 A To get there?

13 Q Yes, sir.

14 A If the truck is loaded, which in this particular case
15 when he left our yard with the flat tire, if that truck
16 is loaded, it will take him anywhere from -- depending
17 upon traffic, you know, it takes at least an hour to an
18 hour and ten minutes to get there.

19 Q Okay. And coming back with an empty truck, how long does
20 it take?

21 A They can drive it in 45 to 50 minutes.

22 Q And, of course, that would -- Both of those times could
23 be or would be altered with heavy traffic or light
24 traffic or anything else?

25 A Anything that -- We operate 65 pieces of equipment and

1 all of them are logged in for disposal trip time and if
2 **there's** any variations in the amount of **time** that they go
3 to and from the landfill, **it's** noted on those daily
4 **driver's** route reports.

5 Q How do you remember March the **2nd**, 1992?

6 A The easiest way I remember is that particular morning I
7 talked to him on the radio with that top door being
8 jammed up on the truck. **That's** -- We have down time
9 regularly, flat tires and mechanical failures, but those
10 particularly instances that happened that are different,
11 I just remember and then looking at that driver's route
12 report.

13 Q Do you remember when Rodney was arrested?

14 A Yes, I was there.

15 Q Was that in --

16 A Yeah, **Mr.** Jordan had called and wanted to know if he was
17 going to be there and Rodney had -- I mean he knew what
18 was going on and he was there also.

19 Q And did you pull those records at that time or before
20 that time?

21 A I think those records were subpoenaed shortly thereafter.
22 I'm really not sure about when the records were
23 subpoenaed. I just **know** that they were.

24 Q Now, do you have any special relationship with Rodney
25 other than a working relationship?

v

1 A That's all.

2 Q Has he always been a good employee?

3 A Yes, sir.

4 Q Is he still working for you?

5 A Hopefully.

6 Q Has he been working for you since 1992?

7 A Yes, sir. He's -- haven't had any problem. He's missed
8 more time from work associated with this trial than any
9 other time.

10 MR. NIXON: Thank you.

11 THE COURT: Any questions?

12 CROSS EXAMINATION

13 BY MR. JORDAN:

14 Q Mr. Johnson, the kind of job that Rodney has, he is alone
15 isn't he?

16 A Yes, sir, he is alone.

17 Q He's alone the entire time, isn't he?

18 A Except for the radio sitting in his truck.

19 Q Well, I mean is somebody riding with him?

20 A No.

21 Q Are you riding with him?

22 A No.

23 Q Absolutely not, right? Nobody else either? He's all by
24 himself.

25 A That's correct.

1 Q Now, Rodney had a habit of showering every day before he
2 left work, **didn't** he?

3 A Yeah, he would take showers. Most -- Lot of the
4 employees do.

5 Q No. **No**, no, no. Rodney specifically had a habit of
6 showering every day before he left work, **didn't** he?

7 A So did several **employees**.

8 Q Did Rodney.

9 A **Yes**.

10 Q On this day he **didn't** take a shower before he left work,
11 did he?

12 A Now, that I **don't** know. I mean I don't watch them every
13 day.

14 Q The document that was introduced here with the times on
15 it.

16 A **Mm-hm**.

17 Q Is your signature on there, sir?

18 A **No**, sir.

19 Q Do you -- Have you -- Do you swear or certify to anything
20 on that record? Is your signature on there anywhere
21 swearing or certifying to anything on that?

22 A **No**, I don't swear to it, but --

23 Q Is your signature on there at all?

24 A **No**.

25 Q Who fills out that form?

1 A Rodney.

2 Q Rodney Stanberry filled out that form, didn't he?

3 A Mm-hm.

4 Q And who actually signed the bottom of the form?

5 A Rodney.

6 Q So, Rodney is the one who puts in the times that are on
7 that form: is that correct:?

8 A Yes, sir.

9 Q Rodney had one of the newest routes back at this time,
10 didn't he?

11 A Mm-hm.

12 Q It was also one of the shortest routes, wasn't it?

13 A That's why he got through at 11:55.

14 Q Let me show you what has been marked as State's Exhibit
15 Number 50. Could you step down here a second, please?

16 A Be?

17 Q Sure.

18 (Witness complies.)

19 Q Use this pen here. This is Chestang up here; is that
20 correct?

21 A Right.

22 Q And BFI is going to be about where?

23 A Right here (indicating).

24 Q Right here right by I-65?

25 A Yes, sir.

1 Q And to get to Chestang you take 1-65?

2 A (No verbal response.)

3 Q Maybe get out of the way of the jury there, if you can.
4 Stand over this way. You come up 1-65 right here.

5 A Mm-hm.

6 Q And it passes -- the route going from 1-65 up to
7 Chestang, is whistler right here, isn't it?

8 A Mm-hm.

9 Q Whistler is right here on the map. So, part of
10 Rodney's job was to go to Chestang landfill, is that
11 correct?

12 A On the interstate.

13 Q To dump his load?

14 A Mm-hm.

15 Q How many times did he go that day?

16 A Once.

17 Q One time? How many times does he normally go?

18 A On Mondays, once.

19 Q And what about as far as -- and that would actually take
20 him right by this route, is that correct?

21 A Yes, sir.

22 Q If you would, have a seat.

23 (Witness complies.)

24 Q Do you know how long it takes to get from BFI to the
25 Whistler exit, to the exit that would be right there?

1 A The Whistler exit?

2 Q Right.

3 A Loaded truck? Fifteen or twenty minutes.

4 MR. JORDAN: Okay. That's all I have. Thank you.

5 THE COURT: Anything further?

6 MR. NIXON: No, sir.

7 THE COURT: Thank you very much.

8 Next witness.

9 MR. NIXON: Freddie Robinson.

10 JOHN FREDERICK ROBINSON

11 was sworn and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. NIXON:

14 Q Tell us your name, please.

15 A John Frederick Robinson.

16 Q Do you go by Freddie?

17 A Yes, sir.

18 Q And how are you employed, Mr. Robinson?

19 A Now?

20 Q Yes, sir.

21 A Mobile Fire Department.

22 Q How old are you?

23 A Thirty-three,

24 Q In March of 1992, where were you employed?

25 A BFI.

1 A Yeah.

2 Q And did you give him a brake adjustment;?

3 A Yes, sir.

4 Q How long did that take?

5 A About maybe 10 or 15 minutes at the most.

6 Q Do you recall doing that?

7 A I remember him pulling out and coming right back for a
8 brake adjustment.

9 Q Now, when you finished this tire this time at 9:32, is
10 that what time he left or is that what time you finished?

11 A That's what time that I finished the tire and I clocked
12 off of that ticket. Rodney left and he came back and he
13 showed me this daily write up that **he** had already written
14 up while he was out on ground that he needed a brake
15 adjustment.

16 Q So, he got you to do the brake adjustment?

17 A So, he got me to do it. Most of the drivers at **BFI**, they
18 had certain mechanics they liked to do certain things.

19 Q Okay. When you stamped this 9:32 **was** Rodney there?

20 A Yes, sir.

21 Q Okay. Did you go find him and tell him that his truck
22 was finished?

23 A I had to go upstairs and get him off the telephone and
24 that **was** a normal.

25 Q Okay. Was that after you had stamped this or before?

- 1 A Before, I believe.
- 2 Q How was Rodney dressed that day?
- 3 A Normal BFI uniform.
- 4 Q Can you describe that BFI uniform for us?
- 5 A Just a light blue shirt and regular pants, basically like
- 6 what I got on now.
- 7 Q And after that day were you ever contacted by the
- 8 district attorney or the police?
- 9 A By the district attorney.
- 10 Q And when was that?
- 11 A Three weeks, possibly a month after.
- 12 Q And were you questioned about this?
- 13 A Yes, sir.
- 14 Q Was it this district attorney right here?
- 15 A Yes, sir.
- 16 Q Did you tell him the same thing **you're** telling --
- 17 A Same identical thing.
- 18 Q Did you pull some records for him?
- 19 A Yes, sir, I did.
- 20 Q Do you recall those -- Are those the records that you
- 21 pulled?
- 22 A Yes, sir.
- 23 Q You showed them to him?
- 24 A Those are copies of the records, **yes**, sir.
- 25 Q Did you notice anything unusual about Rodney that morning

1 > at 9:30 or between 9:00 and 9:30?

2 A Just his normal self. He was joking around just like
3 normal.

4 MR. NIXON: **That's** all I have. Please answer Mr.
5 **Jordan's** questions, Mr. Robinson.

6 A Okay.

7 CROSS EXAMINATION

8 BY MR. JORDAN:

9 Q Mr. Robinson --

10 A Yes, sir.

11 Q -- on these documents that Mr. **Nixon** just showed you, on
12 the first sheet **it's** got repair order on here, is that
13 correct?

14 A Yes, sir.

15 Q **There's** no time stamped in on this, is there?

16 A No.

17 Q okay. But there is a time where it's stamped out?

18 A Right.

19 Q But nothing was stamped in?

20 A **Right.**

21 Q The in time was handwritten, is that correct?

22 A Right..

23 Q Now, the brake adjustment, when did you do that?

24 A I went back and rechecked it after he returned to the
25 shop after he had completed his route. He parked his

1 > truck on the line. That's what they all do. Then they
2 bring us in this order right here and they cannot leave
3 the yard the next morning unless this order is signed and
4 put back in their truck stating repairs had been done.
5 So, to make sure that he didn't have anything else wrong
6 with his truck between the landfill and -- the shop and
7 the landfill and back, he kept this, and I rechecked his
8 brake adjustment when I got to it that afternoon to **make**
9 sure everything was still okay and there was nothing else
10 marked on this work order needing to be done. Then I
11 signed it after I checked the truck out to --

12 Q So, you're telling us you did two brake **adjustments**?

13 A I did one and then I rechecked the VCR (sic), which is
14 the vehicle inspection **report**, to make sure that he
15 **didn't** write anything else for the day. Rechecked the
16 brake adjustment. There was no other things needed to be
17 repaired, so I signed it and put it back in the truck.

18 Q Now, you only have one repair order for a brake
19 adjustment though, is that correct?

20 A Right.

21 Q But **you're** telling us you did two of them?

22 A Right.

23 Q But you only have one order, is **that** correct?

24 A Didn't take enough **time** to worry about punching in
25 another ticket and, I mean, who would have thought it

1 > would all come to this.

2 Q All Im asking is you don't have any order to show that,
3 is that correct?

4 A No, sir.

5 Q You weren't doing any work on Rodney's truck at eight
6 o'clock in the morning, were you?

7 A No, sir.

8 Q And Rodney drives, when he drives for BPI, he drives all
9 along, doesn't he?

10 A sure.

11 Q You don't ride with him?

12 A No.

13 Q And when he's not there at the shop you don't know where
14 he is or what he's doing?

15 A If it's like that day he called in and said, Look, I've
16 got a flat tire and I'm on my way to the landfill. I'm
17 going to swing by the shop, is that okay, and we give him
18 permission. We give a driver permission you either stay
19 there and we're coming to you or else you come to the
20 shop, depending on how many mechanics we've got on the
21 road fixing stuff.

22 Q But the rest of the time you don't know where he is?

23 A No.

24 Q Or what he's doing?

25 A No.

1 > Q Nobody is out there following him, right?

2 A Correct.

3 Q Nobody is watching him?

4 A He's got a route sheet he goes by.

5 Q But you're not out there to make sure he does the route,
6 are you?

7 A No, sir.

8 Q Rodney always takes a shower, doesn't he? That's his
9 habit? That is a specific habit for Rodney K. Stanberry,
10 he takes a shower before he leaves BFI?

11 A He talks on the telephone and takes a shower.

12 Q And are you aware this day he didn't take a shower when
13 he left.

14 A I didn't see him when he left.

15 Q Now, yesterday afternoon at; about five o'clock when I
16 walked outside the courtroom when we through here with
17 what the judge was having us do, you made a comment,
18 didn't you?

19 A Sure.

20 Q And you addressed your comment and you said --

21 MR. NIXON: Judge -- let's approach the bench.

22 (Off the record side-bar conference.)

23 Q And as I was walking out. with Lebarron Smith and the
24 other people here, as we were walking out the courtroom,
25 remember that?

1 > A Yes.

2 Q And you stated, Are you ready to drop this thing? It's
3 crazy. **That's** what you said, **isn't** it?

4 A Yes, sir.

5 Q But you hollered at me down -- halfway down the hallway?

6 A So, sir, you ~~wasn't~~ halfway down the hallway.

7 Q You hollered it to ~~me~~ outside the courtroom?

8 A When you were about from here to there and that was after
9 an attorney just walked out the door singing, **We** should
10 all gather at the river, as loud as he probably could and
11 putting him arm around his client there and, When you get
12 up on the stand, you just -- you **don't say** anything but
13 your name.

14 Q And you told me, You ready to drop this thing?

15 A I asked you; I **didn't** tell you. I asked you.

16 Q You **know** this is an attempted **murder** case? Do you know
17 that?

18 A **No**, not really. I just know **I'm** up here to testify for
19 my times.

20 Q You know this -- for your tine. You know this a robbery
21 first degree case?

22 A I knew she got shot.

23 Q You know she **got** shot on top **of** the head and she is
24 paralyzed --

25 A sure.

1 Q -- from the waist down and her left arm and she'll never
2 walk again?

3 A Mm-hm.

4 Q And you're telling me to drop this thing?

5 A No, I'm not telling you, I'm asking you. I was sitting
6 outside Tuesday and I sat outside --

7 Q Did you say that, sir?

8 A I sat outside Wednesday and nobody said anything, you
9 know, or anything. Just like we don't mean anything to
10 you.

11 Q Wait;, I'm not -- I'm not responsible for when you're
12 going to be called or anything like that. Okay?

13 A Okay.

14 Q You're Rodney's friend, aren't you?

15 A I knew him at work and that was it.

16 Q You were his friend at work, weren't you?

17 A Sure. Friends with everybody at work.

18 Q And you're here today on Rodney's behalf, aren't you?

19 A True.

20 MR. JORDAN: That's all.

21 REDIRECT EXAMINATION

22 BY MR. NIXON:

23 Q What did you mean when you told Mr. Jordan that?

24 A I was just asking him a question.

25 Q How long have you been sitting out there?

1 > A Long enough to get frustrated that --

2 THE COURT; Did you subpoena this man, Mr. Jordan?

3 MR. JORDAN: No, sir.

4 MR. NIXON: I subpoenaed him, Judge.

5 THE COURT: Okay. Go ahead.

6 Q Wow, Mr. Jordan asked you about the time on that card.

7 The time out was clocked, stamped in, and the time in was
8 written in --

9 A Right.

10 Q -- at nine o'clock. Did you write that in at nine
11 o'clock?

12 A Yes, sir.

13 Q And why **didn't** you stamp that in?

14 A A lot of times if **you're** working on a truck and somebody
15 calls you on the radio and you **tell** them to come to the
16 shop, you go ahead and get your stuff ready, but rather
17 than clock it in on the ticket., you just keep up in your
18 **mind** with how much time you spent getting your stuff
19 together and then you go back to what you were working on
20 until they pull up. Then you go start on it.

21 Q Okay. But you --

22 A That way they can bill each division of the company for
23 the amount of time you spent on the trucks to know which
24 division is making money and which is not.

25 Q But you wrote that in yourself and your recollection is

1 > you started at 9:00 and you finished at 9:32?

2 A Yes.

3 Q And he went -- pulled out of the yard, turned around and
4 came back, and you did a brake adjustment?

5 A Did a brake adjustment.

6 MR. NIXON: I believe **that's** all I **have**, Judge.

7 Thank you.

8 THE COURT: Anything else?

9 MR. JORDAN: No.

10 THE COURT: **You're** excused. Thank you very much.

11 WITNESS: Thank you.

12 MR. NIXON: I call Fred Bryant.

13 THE COURT: Mot; until after lunch you won't.

14 See you all back at 1:15.

15 AFTERNOON SESSION

16 (Jury present.)

17 FRED BRYANT

18 was sworn and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. NIXON:

21 Q Tell us your name, please.

22 A Fred Bryant.

23 Q How old are you, Mr. Bryant?

24 A Forty-two.

25 Q Where are you **employed**, sir?

1 A Excuse me?

2 Q Where do you work?

3 A City of Mobile.

4 Q What do you do for the City?

5 A Drive a trash truck.

6 Q And back in March of 1992, where were you working then?

7 A **Chestang** Landfill.

8 Q And where is that located?

9 A That's in Chestang, up Highway 43.

10 Q Did you know Rodney **Stanberry** at that time?

11 A Yes, I did.

12 Q How do you know him? How did you know him?

13 A Driving a truck, coming up on the landfill.

14 Q Did you know him from any other way?

15 A No.

16 Q Now, do you recall March the 2nd, 1992?

17 A Yes.

18 MR. NIXON: May I approach the witness, Judge?

19 THE COURT: Certainly.

20 Q I'm going to **show** you what's marked as Defendant's
21 Exhibit **L**. Ask you if you recognize that?

22 A Yes.

23 Q **And** what is **that**, Mr. Bryant?

24 A **That's** the ticket for the truck that Rodney drives on the
25 landfill.

1 Q And when it says Department. Signature, who's signature is
2 that?

3 A Where is that?

4 Q Right here.

5 A **That's** mine.

6 Q And did you sign that?

7 A Yeah, I have to sign it. After he signs it, I sign it.

8 Q Now, this date here that says 3/2/92 that's stamped --

9 A Yeah.

10 Q -- and 10:40, can you tell us -- did you stamp that?

11 A Yeah, I did.

12 Q And is that your procedure?

13 A **Yes**, that's every day.

14 Q Did you stamp that when the truck **came** in to the
15 landfill?

16 A Came in, right.

17 Q Okay. So, the truck would have come in at **10:40**?

18 A **Right**.

19 Q On March the **2nd**, '92?

20 A Right.

21 Q **And when did** you sign this, before -- when the truck
22 comes in or when the truck leaves?

23 A When they cone back down. when **they** come back down
24 fixing to leave after he done dumped, he have to sign it.

25 Q So, the procedure is that the truck comes in and you

1 clock in the time?

2 A Right.

3 Q And then the truck goes in the land -- do you weigh the
4 truck too?

5 A No, uh --

6 Q When it comes in?

7 A Yeah, when he comes in I have to weigh it.

8 Q Okay.

9 A And I know that's him because he always wave. Everybody
10 wave at me. I got to see who the driver is.

11 Q Okay. Did you weigh him?

12 A Right.

13 Q Is that the weight of the truck?

14 A That's the weight of the truck, and that's what the load
15 he had.

16 Q I assume that's 64,000 pounds?

17 A Right.

18 Q Sixty-four thousand one forty?

19 A Right.

20 Q And I guess they go in and dump the truck?

21 A Right.

22 Q And come back out and weigh again?

23 A No, when he come back down he have to sign that ticket.

24 Q Okay. When he leaves?

25 A Right.

1 Q That's where it says **customer's** signature?

2 A Right, uh huh. That's him, yes.

3 Q Now, this weight here, forty-one six hundred, do you know
4 what that weight is?

5 A Yeah, **that's** the -- **Let's** see, 41,600. **That's** the weight
6 that he carried on the truck.

7 Q Is that after he dumped?

8 A Right, uh huh.

9 Q So, this is *-

10 A **That's** the tally of what **the** truck weighs right there.
11 That's empty with the truck down.

12 Q So, the truck -- According to this that you stamped in,
13 the truck was full, it weighed 64,140?

14 A Right.

15 Q **And** then after it dumped, it weighed **41,600**?

16 A Right.

17 Q Which meant it had 22,540 pounds in it?

18 A Yeah, right.

19 Q And do you remember --

20 MR. NIXON: Judge, I- & move to admit this in
21 evidence.

22 THE COURT: **Certainly.**

23 (Defendant's Exhibit L admitted in
24 evidence.)

25 Q How long **had** you been working there at that **time**?

1 A About two and a half years.

2 Q Two and a half years?

3 A Yes.

4 Q And do you recall how long Rodney had been coming in
5 there?

6 A Yeah, he been coming there since I was there.

7 Q Okay. A couple of years?

8 A Right.

9 Q Did the police ever come to talk to you or anyone from
10 the district attorney's office?

11 A Mm-mn.

12 Q You never spoke with any of them?

13 A NO.

14 Q Do you remember this day?

15 A Yes, I do.

16 Q Why do you remember it?

17 A Because me and Rodney was talking about -- when he came
18 to sign the ticket I always talk and he was talking about
19 he said -- I was talking about the Social security -- not
20 the Social Security, the -- what you call it -- Social
21 Security number. He was asking me about that, about the
22 Social Security number.

23 Q He was asking you something about a Social Security
24 number?

25 A Social Security, got to have a Social Security card, or

1 something about getting it, **cause that's** when the CDL
2 license was taking effect, then.

3 Q Had you talked to Rodney or seen Rodney other than the
4 landfill during that time?

5 A Yeah.

6 Q Where else?

7 A I seen **him** at. the parade one day.

8 Q At the **Mardi** Gras parade?

9 A Right, **uh** huh.

10 Q **Was** that before he came to the landfill or after?

11 A **Let's** see. That was after,

12 Q Okay.

13 A Or before. I **don't** know. I'm not for **sure**.

14 Q You don't recall?

15 A **Don't** recall. I know it was before or after. I know
16 that.

17 Q Did anyone ever come request your records that **you're**
18 familiar with?

19 A No.

20 Q **Nobody** has asked you any questions about, this until
21 today?

22 A Well, they was talking to the people at the office about
23 it and they talked **to** me about it.

24 Q Okay. **So**, some people at the office and you say they
25 talked to them. Do you know who "**they**" was?

1 A Talked to who, me?

2 Q You said some other people talked to some people at your
3 office about this incident?

4 A Yeah, talked about -- talked to me about it, yeah. They
5 asked me did I know about it. I told them no. The only
6 thing I could say what was on the paper.

7 Q Did they show you that -- you said the only thing you --

8 A Yeah, they showed me the copy of that paper that you just
9 showed me. They showed me another copy. **That's** the
10 original copy you got. They showed me the other copy to
11 it like that.

12 Q Did you tell them that was your signature?

13 A Yeah, **that's** my signature, yeah.

14 Q That shows that Rodney **Stanberry** was at the landfill in
15 his truck at 10:40?

16 A Yeah, and, by the way, **that's** Rodney's signature on there
17 anyway cause I **kind** of know the signatures by everybody
18 signing them.

19 MR. NIXON: Okay. Thank you. No other questions.

CROSS EXAMINATION

21 BY MR. JORDAN:

22 Q Mr. Bryant, you **don't** -- of course, you **don't** know where
23 Rodney was about eight; **o'clock** in the morning that, day,
24 do you?

25 A Eight **o'clock** in the morning? No, I **couldn't**, tell you

v

1 that. I was at the landfill.

2 Q You know where he was at 10:40?

3 A Right.

4 MR. JORDAN: That's all. Thank you.

5 MR. NIXON: Thank you, Mr. Bryant.

6 THE COURT: Thank you very much.

7 Next witness.

8 MR. NIXON: Call Palmer McDonald, Judge.

9 PALMER McDONALD

10 was sworn and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. NIXON:

13 Q State your name, please, sir.

14 A Palmer McDonald.

15 Q Mr. McDonald, where are you employed?

16 A BFI.

17 Q How long have you been employed there?

18 A Six and a half years.

19 Q And what do you do there?

20 A Safety and personnel manager.

21 Q And how were you employed at BPI in 1992, specifically on
22 March the 2nd of 1992?

23 A Assistant operations manager.

24 Q And what were your duties as assistant operations
25 manager?

1 A **Basically** over the trucks, the routing, container shop,
2 the daily running of the business.

3 MR. NIXON: Judge, may I approach the witness?

4 THE COURT: Certainly.

5 Q I want to show you **what's** been marked as Defendant's M
6 and ask you if you recognize this?

7 A Yes, I do.

8 Q What is it?

9 A **That's** a time card.

10 Q For who?

11 A Rodney **Stanberry**.

12 MR. JORDAN: Can I look at that, please?

13 MR. NIXON: Same thing you gave me in discovery.

14 MR. JORDAN: I **didn't** see the original. You have
15 the original. I just need to see the original.

16 Q Time card for Rodney **Stanberry**?

17 A Yes, sir.

18 Q **And** does it have -- could you read the dates on the side
19 here?

20 A March the 2nd, March the **4th**, March the 5th, and March
21 the 6th.

22 Q **And** that would be the days that he worked?

23 A Right.

24 Q And beside that, would that be the days that -- I mean
25 the times that he arrived at work?

1 A That's the time that he clocks in and the time that he
2 left.

3 Q Okay. Now, this is written on here -- there's some
4 handwriting on here?

5 A Right.

6 Q Specifically March the 6th is not clocked in, it's
7 written in.

8 A Okay.

9 Q And the time out is at -- is written in and not stamped
10 in at 10:50 or ten point five oh, and there's some other
11 writing on here. Can you tell me who wrote that?

12 A That's my writing.

13 Q Okay. And why did you write the out time specifically on
14 March the 2nd, 1992.

15 A Rodney did not clock out for the day. From time to time,
16 you know, people will not clock out and we'll check, you
17 know, either the route sheet or call the driver. You
18 can't get ahold of him, we'll guesstimate the time, what
19 time that he left. If there's adjustment to be made,
20 he'll bring it to our attention and we'll adjust it the
21 next week.

22 Q Is that uncommon for driver's not to clock out?

23 A No, it's very common. Like I say, we have --

24 Q And is that part of your duties, to fill it in and
25 estimate it?

1 A At that time it **was**.

2 Q **And** you estimate it based upon what the **driver's** usually
3 do?

4 A Yeah.

5 Q Okay. So, **we're** not -- you **weren't** sure what time he
6 clocked -- You **didn't** know what time he clocked out when
7 you put this ten point five oh down there?

8 A Did not.

9 Q And what does ten point five oh mean in regular time,
10 clock time?

11 A Ten thirty a.m.

12 Q Ten thirty in the **morning**?

13 A Right.

14 Q Okay. But you **don't** know whether he left or clocked out
15 -- excuse me. Whether he quit work at **10:30 a.m.** or **1:00**
16 or 2:00 in the afternoon then?

17 A Did not know.

18 MR. NIXON: Okay.

19 Judge, I'd move to admit that in evidence,
20 please.

21 THE COURT: Certainly.

22 (Defendant's Exhibit M admitted in
23 evidence.)

24 Q Did you ever talk to any police officer or any district
25 attorney about --

1 A Never --

2 Q -- the case? Sir?

3 A Never talked to anybody. I think somebody from your
4 office called me one time, was just -- but I **don't**
5 remember who it was.

6 MR. NIXON: Please answer Mr. Jordan's questions.

7 CROSS EXAMINATION

8 BY MR. JORDAN:

9 Q Just so we're clear on this, Mr. McDonald, this time
10 sheet --

11 A Right.

12 Q -- except for 3/2 does not have the clock out **time**,
13 right?

14 A Right.

15 Q And whose responsibility is it to do the clock out time?

16 A The employee.

17 Q That would be Rodney K. Stanberry?

18 A Yes, sir.

19 Q And on March the 2nd there is in **fact** no clock out time?

20 A You're correct.

21 MR. JORDAN: **That's** all. Thank you.

22 MR. NIXON: Again, that's not unusual, is it?

23 A That's not unusual.

24 MR. NIXON: **That's** all I have, Judge.

25 THE COURT; Thank you very much. You nay step down.

Next witness.

MR. NIXON: Call Dennard Jones, Judge.

Judge, I would ask **that -- this** is a hostile witness. I would **ask** that --

MR. JORDAN: Judge, could **we** have some showing of that outside the presence of the jury.

THE COURT: You already have.

MR. JORDAN: We **haven't** had that, Your Honor.

THE COURT: I thought we discussed this Monday morning. I know **it's** been a long time ago.

Come around here, please, sir.

MR. JORDAN: Judge, I'm not familiar with that on the record and I --

(Witness sworn.)

THE COURT: **Wasn't** this on the record Monday morning, Barbara?

REPORTER: I **don't remember**, sir.

MR. NIXON: State your name, please.

THE COURT: Wait a minute. I **don't want** something not to be on the record. Come on up here.

(sidebar conference **as** follows:)

THE COURT; I know we talked **about** it. I **don't** know **if it's** on the record or not.

REPORTER: If **Taco** is Dennard Jones --

THE COURT: He **is** one **of** the ones **that** was in **that**