

1987

Utah v. Hank Cobb : Brief of Appellant

Utah Supreme Court

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UTAH SUPREME COURT
BRIEF

UTAH
DOCKET NO.
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DOCKET NO.

IN THE SUPREME COURT OF THE STATE OF UTAH

870304

THE STATE OF UTAH,

Plaintiff-Respondent,

v.

HANK COBB

Defendant-Appellant.

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Case No. 870304

Priority No. 2

BRIEF OF APPELLANT

This is an appeal of a conviction on one count of Criminal Homicide, Murder in the Second Degree, a first degree felony, and on one count of Threatening with or Using a Dangerous Weapon a in Fight or Quarrel, a Class B misdemeanor. The matter was heard before the Honorable Judge John F. Wahlquist, sitting with a jury.

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TABLE OF CONTENTS

JURISDICTION.....	1
NATURE OF THE PROCEEDINGS.....	1
STATEMENT OF THE ISSUES PRESENTED ON APPEAL.....	2
STATEMENT OF THE FACTS.....	2
SUMMARY OF THE ARGUMENT.....	7
ARGUMENT.....	9

POINT I

THE TRIAL COURT ABUSED ITS DISCRETION BY ALLOWING THE PROSECUTOR TO SHOW THE JURY GRUESOME AND GORY COLOR PHOTOGRAPHS OF THE DEAD VICTIM WHEN THE INFLAMMATORY NATURE AND PREJUDICIAL EFFECT OF SUCH PHOTOGRAPHS OVER-SHADOWED ANY POSSIBLE PROBATIVE VALUE WITH RESPECT TO A FACT IN ISSUE.....	9
--	---

POINT II

THE LOWER COURT COMMITTED PREJUDICIAL ERROR IN FAILING TO DISMISS FOR CAUSE, TWO PERSPECTIVE JURORS.....	12
--	----

POINT III

THE EVIDENCE PRESENTED BY THE STATE WAS INSUFFICIENT TO ESTABLISH BEYOND A REASONABLE DOUBT THAT APPELLANT WAS GUILTY OF COMMITTING SECOND DEGREE MURDER.....	21
--	----

POINT IV

THE TAPE RECORDED CONFESSION OF THE DEFENDANT SHOULD HAVE BEEN EXCLUDED FROM EVIDENCE BECAUSE IT WAS A WASTE OF TIME AND WAS INFLAMMATORY.....	22
--	----

POINT V

THE FIVE YEAR ENHANCEMENT FOR USING A FIREARM DURING THE COMMISSION OF A CRIME WAS IMPOSED WITHOUT A PROPER CONSIDERATION OF THE FACTS, AND WAS INAPPROPRIATE CONSIDERING THE CIRCUM- STANCES OF THE KILLING.....	23
---	----

CONCLUSION.....	26
ADDENDUM.....	26

TABLE OF AUTHORITIES
CASES CITED

<u>Jackson v. Virginia</u> , 443 U.S. 307 (1979).....	22
<u>State v. Brooks</u> , 563 P.2d 799 (Utah 1977).....	17
<u>State v. Cloud</u> , 722 P.2d 750 (Utah 1986).....	11
<u>State v. Garcia</u> , 663 P.2d 60 (Utah 1983);.....	11
<u>State v. Hewitt</u> , 689 P.2d 22 (Utah 1984).....	18
<u>State v. Howell</u> , 649 P.2d 91 (Utah 1982).....	22
<u>State v. Kerekes</u> , 622 P.2d 1161 (Utah 1980).....	22
<u>State v. Lacey</u> , 665 p.2d 1311 (Utah 1983).....	17
<u>State v. Lafferty</u> , 73 Utah Adv. Rep. 57 (Jan. 1988).....	10
<u>State v. Linden</u> , 657 P.2d 1367 (Utah 1983).....	22
<u>State v. McCardle</u> , 652 P.2d 942 (Utah 1982).....	22
<u>State v. Petree</u> , 659 P.2d (Utah 1983).....	21
<u>State v. Poe</u> , 441 P.2d 512 (Utah 1968).....	10, 11
<u>State v. Wells</u> , 603 P.2d 810 (Utah 1979).....	11
<u>In re Winship</u> , 397 U.S. 358. 364 (1970).....	22

STATUTORY AUTHORITY

Utah Code Annotated §77-35-26(2)(a).....	1
Utah Code Annotated §76-3-203(1),(2),(3).....	1,24
Utah Rules of Evidence, Rule 403.....	9,22,23

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
	:	
Plaintiff/Respondent	:	
	:	
vs.	:	Case No. 870304
	:	
HANK COBB	:	Priority #2
	:	
Defendant/Appellant	:	

BRIEF OF APPELLANT

JURISDICTION

Jurisdiction to hear the above entitled appeal is conferred upon the Supreme Court of Utah, pursuant to Utah Code Annotated, 1953 (as amended), §77-35-26(2)(a).

STATEMENT OF THE CASE

This is an appeal of a jury conviction of Criminal Homicide, Murder in the Second Degree, entered on August 4, 1987. On August 19, 1987, the Defendant was sentenced to serve a term of not less than five (5) years and which may be for life at the Utah State Prison. Defendant was additionally sentenced to an enhanced punishment for firearm use pursuant to U.C.A. §76-3-203(1),(2) or (3), of a term not to exceed five (5) years at the Utah State Prison. Defendant was also ordered to pay restitution in the amount of \$10,799.23 to the Adult Probation and Parole Department. The Notice of Appeal was filed with the Second District Court of Weber County on August 21, 1987.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. The trial court abused its discretion by allowing the prosecutor to show the jury gruesome and gory color photographs of the dead victim when the inflammatory nature and prejudicial effect of such photographs over-shadowed any possible probative value with respect to a fact in issue.

2. The lower court committed prejudicial error in failing to dismiss for cause, two perspective jurors.

3. The evidence presented by the state was insufficient to establish beyond a reasonable doubt that appellant was guilty of committing second degree murder.

4. The tape recorded confession of the defendant should have been excluded from evidence because it was a waste of time and was inflammatory.

5. The five year enhancement for using a firearm during the commission of a crime was imposed without a proper consideration of the facts, and was inappropriate considering the circumstances of the killing.

STATEMENT OF THE FACTS

On May 20, 1987, at approximately 11:15, the Defendant, Hank Cobb, went to an establishment called The Billiard Parlor located at 1195 Wall Avenue in Ogden, Utah. The Defendant's former girlfriend, Miss. Ann Sant, was at the Billiard Parlor with a man named Lonnie Wilson. Eye witnesses stated that they saw Mr.

Wilson come out of the Billiard Parlor and run across the top of a tan car and begin fighting with the Defendant. After the two had been fighting for a moment, some shots were heard. Eyewitnesses stated that they saw the Defendant fire some shots into the Billiard Parlor and leave the scene.

The Defendant was taken into custody at the Warren House Apartments at 1352 Canyon road in Ogden, without incident at about 2:20 a.m., on May 21, 1987.

The circumstances giving rise to the shooting center in a relationship between Mr. Cobb, and Miss Anne Sant. At one time, Ann and Hank lived together. (Record at 133). Miss Sant had known the victim, Mr. Lonnie Wilson, for some time prior to her relationship with the Defendant, and in fact introduced Mr. Wilson to Mr. Cobb. (Record at 133). The relationship between Miss Sant and the Defendant was at times turbulent.

Miss Sant and Mr. Cobb became engaged at some time in 1986, (Record at 102) however, in January of 1987, they broke their engagement, and Miss Sant moved out of the mobile home that they acquired together. (Record at 102) After breaking their engagement, the couple continued to date, until the day of the shooting.

On the day of the shooting, the Defendant and Raymond Duane King, a friend from work, went to a barbecue at the home of Kelly and Terry Woodsen. (Record at 471). Terry had been married to Mr. Cobb's sister, after their divorce, he had remained friends with Hank Cobb. Mr. Cobb often visited Terry's daughters who

were Mr. Cobb's nieces. (Record at 470).

While at the barbecue, Mr. Cobb received a phone call from Miss Sant, who broke a date that they had scheduled for the upcoming weekend. (Record at 130).

After taking Mr. King home from the barbecue, Mr. Cobb went to Mastercuts, a beauty salon in the Ogden City Mall where Miss Sant worked, in order to talk with her. Upon arrival at Mastercuts, Mr. Cobb saw Miss Sant leave with Lonnie Wilson. (Record at 414). Miss Sant and Mr. Wilson went to an establishment called The Billiard Parlor to shoot pool and drink beer. (Record at 414). While at the bar Miss Sant received a phone call from a man identifying himself as Ricky, Ann's brother. However, when she answered the phone she found that it was Mr. Cobb, he accused her of going home that night to sleep with Mr. Wilson. Miss Sant replied that it was none of his business whom she slept with. (Record at 136).

Later that night the Defendant drove past The Billiard Parlor and there saw Mr. Wilson's car parked. Mr. Cobb parked the vehicle he was driving and punctured Mr. Wilson's tire with a knife. (Record at 415). Mr. Cobb then went back to his vehicle and watched as Mr. Wilson came out of the bar and changed the tire on his car. (Record at 563). Mr. Cobb then grabbed a couple of nails that were in his vehicle and went back toward the car to put the nails under the tire of Mr. Wilson's car. (Record at 513). The nails were placed under the tire so that when the car backed out, the nails would pierce the tire.

Prior to approaching Mr. Wilson's car for the second time, the Defendant took a gun that he kept in his car and placed it in his waistband. (Record at 428). Although it was normal for the gun to be kept in the car, Mr. Cobb did not normally carry the gun loaded. (Record at 413). On that occasion, however, as Mr. Cobb testified at trial, he had planned to go to the firing range in Eden, Utah that night, and had loaded the gun for that reason. (Record at 524). Defendant further testified at trial that due to the lateness of the hour, and the fact that Mr. Cobb had been drinking prior to going to the Billiard Parlor, he decided not to go to the shooting range that evening. (Tr. at 433). He did not, however, unload the gun.

As the Defendant approached Mr. Wilson's car, for the second time, he crouched and crept quietly in order to avoid detection. (Record at 166). At that time, there appeared to have been no thoughts of killing Lonnie Wilson, and Hank Cobb's intent was merely to place the nails under Wilson's car tire. (Record at 427). Lonnie Wilson, after changing the tire on his car, suspected that the Defendant was involved and watched his car from the doorway of the bar. (Record at 115). When Wilson saw Cobb approach his car, he ran out of the bar, jumped over the top of his car and began wrestling with the Defendant. (Record at 140). According to the testimony of Miss Sant, there was no gun brandished during the fight (Record at 142). Mr. Cobb testified at trial that as the two were fighting, they fell to the ground and the gun came out of his waistband so he grabbed for the gun

but Mr. Wilson grabbed Hank's hand and the gun went off. (Record at 189). As Lonnie fell backward after the shot, the gun went off again, striking Wilson a second time. Cobb then turned and fired two shots toward the bar, one shot struck the outside wall of the bar, and the other went through the open door imbedding itself in the south wall of the bar.

Mr. Cobb then left the area and went to Duane King's house. He told Mr. King that he thought that he had just shot someone. (Record at 323). After talking with the Defendant, Mr. King left his apartment, and told his landlord to call the police and inform them that Mr. Cobb was in his apartment. The police arrived and arrested the Defendant without incident.

In the subsequent interrogation at the police station, Mr. Cobb indicated that he had not gone to the Billiard Parlor with the intent to shoot Lonnie Wilson. (Record at 444). He also indicated that he had not slept much during the five or six days prior to the incident, because he had been on amphetamines, and had not been taking his Dilantin medicine, which controls his epilepsy. According to the testimony of Duane King, Hank Cobb made several comments that he was going to shoot himself, (Record at 300, 483) and that he wished the police officers would have killed him. (Record at 432). Mr. Cobb displayed much torment and remorse over the shooting. (Record at 299, 324).

Trial began on July 30, 1987 and continued through the 4th August. At the conclusion of the voir dire of the jury, Defendant's counsel made challenges for cause to two potential

jurors; the challenges were denied. (Record at 88). Defendant, through the course of the trial made objections to his tape recorded confession being played for the jury. Defendant also objected to his written statement being read to the jury. Both of these items were admitted into evidence (Record at 588, 598) over the Defendant's objections. (Record 349-353, 355-356).

The jury was allowed to view the murder scene even though the testimony and evidence admitted into evidence, included a diagram and layout of the area. (Record at 356).

During the trial, certain inflammatory pictures of the body of the deceased, Lonnie Wilson, were placed into evidence over objection of the defendant. (Record at 349-53, 355-56).

Following the trial, the jury came back with a verdict of guilty to the charge of second degree murder, a felony of the first degree. On August 19, 1987, Hank Cobb was sentenced to serve from five years to life at the Utah State Prison with an additional five year enhancement for using a gun in the commission of a crime. Mr. Cobb filed a Notice of Appeal on August 21, 1987, in the District Court of Weber County.

SUMMARY OF THE ARGUMENT

The Defendant contends that the trial Court abused its discretion when it allowed the admission into evidence of gruesome and gory photographs of the Victim's body after the manner of death had already been established by expert and eye witness testimony. Since there was no probative value in

admitting the photographs, the photographs should have been excluded from evidence under Rule 403 of the Utah Rules of Evidence.

Counsel for Defendant was forced to use two peremptory challenges to jurors when the facts indicate that the two jurors should have been dismissed for cause. There is Utah case law standing for the proposition that it is reversible error to force a party to use a peremptory challenge when the juror should have been dismissed for cause.

The facts of the case indicate that it should have more been charged as manslaughter rather than second degree murder because the state has failed to prove that the defendant intended to kill the victim.

The tape recorded confession of the Defendant was transcribed and reviewed during two days of testimony at the trial. The state moved to admit the tape recorded confession itself even though the transcribed confession had been the center of two days of testimony at trial. The tape recorded confession was unnecessary, a waste of time, and inflammatory, contrary to Rule 403 of the Utah Rules of Evidence.

The trial court erred by granting the State's motion for a five year enhancement for the use of a firearm during the commission of a crime. The court failed to properly consider the circumstances surrounding the killing when it hastily sentenced the defendant to an extra five years for the use of a firearm during the commission of the crime.

ARGUMENT

POINT I

THE TRIAL COURT ABUSED ITS DISCRETION BY ALLOWING THE PROSECUTOR TO SHOW THE JURY GRUESOME AND GORY COLOR PHOTOGRAPHS OF THE DEAD VICTIM WHEN THE INFLAMMATORY NATURE AND PREJUDICIAL EFFECT OF SUCH PHOTOGRAPHS OVER-SHADOWED ANY POSSIBLE PROBATIVE VALUE WITH RESPECT TO A FACT IN ISSUE.

When color photographs are offered into evidence for a demonstration to the jury, their admissibility depends upon whether they are relevant and probative with respect to a fact in issue. If the value of the evidence is substantially outweighed by the danger that it would prejudice the jury against the defendant, the otherwise admissible evidence may be excluded by the trial court. Rule 403 of the Utah Rules of Evidence, states:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Rule 403, Utah R. Evid., Utah Code Ann. (1953).

Whether the inflammatory nature of the color photographs is outweighed by their probative value with respect to a fact in issue is a matter within the sound discretion of the trial court. Defendant contends that the admission of vivid color photographs depicting the condition of the victim's body after the chest had been opened in order to resuscitate the victim, were far more prejudicial than probative of a matter in issue. The photograph, (State's Exhibit 30-P, Record 346-50) graphically depicted in

gruesome detail, parts of the body where a ten inch incision had been made by doctors. Over defense objections on the basis of prejudice and lack of probativeness, the State proffered the photos. (Record at 350).

The photographs should not have been shown to the jury because the material facts that were meant to be adduced from the photographs could have been established by less gruesome means such as the expert testimony of Dr. Todd Cameron Gray. (Record 343-66).

In State v. Poe, 441 P.2d 512 (Utah 1968), The Utah Supreme Court reversed a first degree murder conviction because the prosecutor introduced prejudicial and gruesome photographs. The Court noted that while initially it is within the trial court's discretion to weigh the probative value of such evidence against its prejudicial effect, in that case, all material facts that could be adduced from the photos had been adequately established by other less prejudicial testimony and evidence presented by both lay and expert witnesses.

Poe is directly on point with the case at hand. In this case there is a situation in which the prosecutor introduced the inflammatory picture knowing that it was inflammatory. Whether the victim was shot by the Defendant was never a fact in issue, and any use of pictures to prove such were unnecessary and prejudicial.

In the most recent case decided on the issue of inflammatory photographs, State v. Lafferty, 73 Utah Adv. Rep. 57 (Jan. 1988),

the Utah Supreme Court reiterated the standard that in order to introduce gruesome photographs, "we have required a showing of unusual probative value before it gruesome photographic evidence is admissible under rule 403." Id., at 66. In the case at hand, there was no issue of fact established by the gruesome photographs that could not be established by other less inflammatory and prejudicial methods. Any reference to the picture for the purpose of showing the condition of the body was unnecessary since the jury was advised of the body's condition through the testimony of witnesses. If photographs have little or no utility in proving a fact in dispute, but, on the contrary they tend to inflame the jury, they are inadmissible. See, State v. Cloud, 722 P.2d 750 (Utah 1986); State v. Garcia, 663 P.2d 60 (Utah 1983); State v. Wells, 603 P.2d 810 (Utah 1979); State v. Poe, 441 P.2d 512 (Utah 1968).

In State v. Wells, supra, the Utah Supreme Court ruled that the use of photographs, even though not particularly gruesome, was improper where there was no valid evidentiary use for them. The Court stated:

Because the defendant did not dispute shooting Dirks, and because the medical examiner testified that the victim died as a result of the gunshot, the admission of the photographs was superfluous. We do not condone the admission of the photographs in this case, since we are able to find no evidentiary value for the photographs other than the hoped-for emotional impact on the jury. 603 P.2d at 813.

Clearly the prosecutor's use of the gruesome and grotesque photographs in the present case served no evidentiary purpose,

but on the other hand, tended to inflame the emotions of the jury.

The trial court's failure to prohibit the prosecution from misusing the gruesome and grotesque color photographs of the victim over the objections of defense counsel, was unequivocally reversible error.

POINT II

THE LOWER COURT COMMITTED PREJUDICIAL ERROR IN FAILING TO DISMISS FOR CAUSE, TWO PERSPECTIVE JURORS.

At the conclusion of the voir dire of the prospective jurors, defense counsel moved to challenge for cause two perspective jurors, Mrs. Joyce Lloyd and Mr. Jesse Holden. (Record at 88). The Defendant's challenges to both jurors were overruled. The trial court's refusal to dismiss these perspective jurors was prejudicial and amounted to reversible error.

The first prospective juror, Mrs. Joyce Loyd, in response to questions from the court stated, "I don't know anything about the case. However, I do know the prosecutor for the State Chris Davis. It's been 15 years since I saw him, but I know who he is." When asked by defense counsel how she came to know the prosecutor Mr. Davis, Mrs. Lloyd stated, "My husband was working in Washington, D.C., and Chris and his family moved back there and we were in the same church organization for a while, about a year." (Transcript of the jury selection and sentencing, (Tr.)

at p. 8). Defense counsel further questioned Mrs. Lloyd later in the voir dire. The following questioning occurred between defense counsel and the prospective juror:

Mr. Godfrey: Okay. Mrs. Lloyd, you said that you were in the same ward for a while with Chris Davis, is that right?

Mrs. Lloyd: That's correct.

Mr. Godfrey: Did you -- did you have any social contact with the Davis family?

Mrs. Lloyd: Other than church meetings, Chris was in my home, I have daughters his age, and they were friends.

Mr. Godfrey: He's been in your home?

Mrs. Lloyd: Yeah.

Mr. Godfrey: Did you ever teach him or anything or --

Mrs. Lloyd: No.

Mr. Godfrey: -- Supervise him in any of the church functions?

Mrs. Lloyd: No.

Mr. Godfrey: Okay. How old was he at the time, do you remember?

Mrs. Lloyd: Well, I remember that Karen was a senior in high school, Katherine was a junior, and Leslie was a sophomore. And he's in there somewhere.

Mr. Godfrey: So --

Mr. Davis: If its any consolation, I was senior.

Mrs. Lloyd: Okay.

Mr. Davis: But I had contact with Karen and Kathy.

Mr. Godfrey: What was your impression of him?

Mrs. Lloyd: Nice kid.

Mr. Godfrey: Do you think knowing that he's here representing the state, participating in representing the state, do you think that in your -- your association with him, do you think that would cause you any -- or cause you to be swayed to one side or to this side basically?

Mrs. Lloyd: No. No, I guess you were a nice kid when you were that age, too, but It's been a long time since I saw him. I've had no personal connection with him for a long time.

Mr. Godfrey: He could have changed?

Mrs. Lloyd: He could have changed, yeah.

Mr. Davis: I hope not.

Mr. Godfrey: Now, you said that your family has -- some of your family has been in police officer work. Are any of them currently?

Mrs. Lloyd: No. My uncles are way past that age and so is my father-in-law.

Mr. Godfrey: Your son was when he was in the Air Force, but he's --

Mrs. Lloyd: He was in the Air Force.

Mr. Godfrey: But he's been out for how long?

Mrs. Lloyd: Five years.

Mr. Godfrey: Do you see any problem with that?

Mrs. Lloyd: No.

Mr. Godfrey: The fact that your family has been in law enforcement?

Mrs. Lloyd: No. Because as I said, my father-in-law was there before I got married, and so that's history. That's in the family -- family talking occasionally. And my uncles, I was so young when they were in it, it was just romantic, if you want to call it that, they had uniforms on. I didn't know anything about what was going on. (Tr. pp. 32-34).

Defense counsel objected to Mrs. Lloyd's inclusion in the panel

at the conclusion of the voir dire of the jury, the objection was overruled. (Record at 88).

Mr. Jesse Holden, the second prospective juror, was another case of prejudice. The following questioning occurred between the Judge and the perspective juror:

Mr. Holden: As I said earlier, I'm a former police officer. I spent 1967 and '68 with the Ogden City Police Reserve, 1972 and '73 with the City of Willard in Box Elder County. As far as the jury goes, I was the foreman at the last jury in this court on Monday and Tuesday in a civil case. As far as trying the case, I have very, very strong feelings about the taking of human life.

The Court: But you must understand we -- It's awful easy to feel bad if somebody gets killed, but what I'm going to be asking you to make a decision about is responsibilities for it. Is there any reason why you can't answer these questions objectively for us?

Mr. Holden: No.

The Court: Okay. Next. (Tr. at p. 11).

A further dialogue occurred between prosecutor, Mr. Daroczi and the witness:

Mr. Daroczi: All right. Okay. Mr. Holden, you're strongly against the taking of human life.

Mr. Holden: Yes.

Mr. Daroczi: Now, you realize that I think most -- I think probably everybody on the panel is of that mind. Does that state of mind, would that prejudice you against this defendant as you sit there?

Mr. Holden: As I sit here this moment, no. .

Mr. Daroczi: Okay. You have an open mind to hear the evidence and make up your mind if you were picked as a juror on the evidence you hear?

Mr. Holden: That's correct.

Mr. Daroczi: And you could be fair to both sides?

Mr. Holden: I believe so. I would certainly hope so.
(Tr. at p. 18).

After the foregoing discussion, defense counsel began inquiring of the perspective juror as to his experiences as a police officer, and the effect such experiences may have had upon his ability to be an objective juror. The following dialogue ensued:

Mr. Godfrey: Mr. Holden, Did you -- When you were a police officer, did you ever arrest anybody that you didn't think was guilty?

Mr. Holden: Yes.

Mr. Godfrey: Do you think that -- do you realize that there are two sides to every case, right?

Mr. Holden: That's correct.

Mr. Godfrey: And do you understand that the state is the one that has the burden to prove that the defendant committed this crime?

Mr. Holden: (Mr. Holden nods.)

Mr. Godfrey: And you understand that the state does get to go first with their case?

Mr. Holden: Yes.

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Mr. Godfrey: And do you feel that you can -- even with job as a former police officer and the that the state gets to go first, do you you can hold off making a decision as to guilt or innocence of the defendant until after you hear all of the evidence?

Mr. Holden: I believe one of the charges we receive is that we will not choose or decide the case until after, and I believe I can do that, yes.

Mr. Godfrey: Do you think you can be fair?

Mr. Holden: I think so. I should hope so. (Tr. at 35).

At the conclusion of the voir dire of the prospective jurors, defense counsel challenged Mr. Holden as a prospective juror and the challenge was denied. (Record at p. 6).

When the jury was picked from the prospective panel, defense counsel exercised two of its four peremptory challenges, on Mrs. Joyce Lloyd and Mr. Jesse Holden. (Record pp. 23(a), 23(b)). All peremptory challenges were utilized by the defense. Id. Defendant contends that both Mrs. Lloyd and Mr. Holden should have been dismissed for cause under Rule 47(f)(6) of the Utah Rules of Civil Procedure. Rule 47(f)(6) states that a juror may be challenged for cause where it is shown:

That a state of mind exists on the part of the juror with reference to the cause, or to either party, which will prevent him from acting impartially and without prejudice to the substantial rights of the party challenging...
(Id.)

It is prejudicial error to compel a party to exercise peremptory challenges to remove a venireman who should have been excused for cause. State v. Lacey, 665 P.2d 1311 (Utah 1983). Two cases of this Court clearly illustrate this principle.

In State v. Brooks, 563 P.2d 799 (Utah 1977) a prospective juror was a neighbor and personal friend of a witness and victim of a robbery. Another prospective juror was an acquaintance of a police officer and had a regular business relationship with the police officer's wife.

This Court quoted the dialogue in which the potential jurors

spoke of their friendships with the victim and officer and also the dialogue of the court in which the jurors stated that they thought they could fairly judge the case even though they had these previous relationships. This Court reversed the conviction and remanded for new trial holding that the lower court erred in failing to release these two prospective jurors from the panel. This Court stated:

A juror is not in any position to weigh the evidence of his friend against the evidence of strangers and of the defendant so as to strike a balance between them as the law requires, viz., stand indifferent between the state and the accused. Where there have been personal associations, such as the ones here; to remain uninfluenced, unbiased, and unprejudiced; runs counter to human nature. One cannot be deemed indifferent or impartial (Id. at 802).

In State v. Hewitt, 689 P.2d 22 (Utah 1984) a perspective juror stated that if the evidence pointed to the defendant's not being guilty he could be impartial but if the evidence came near being close, then he would feel that the detective deserved the benefit of the doubt. He then stated that he had a problem with believing the testimony of the accused over that of the police officer since he felt that police officers worked hard in many instances their efforts were refuted in court and that often people are found not guilty when they should be found guilty. This Court noted that the perspective juror stated, "In essence, I would prefer not to be here."

The facts in this case are equally strong if not stronger than the two cited cases. Here, Mrs. Lloyd had known mr. Davis

for approximately 15 years, and had frequent contact with him when he was in his senior year of high school. Mr. Davis had often visited Mrs. Lloyd's home, and he had also been a member of the same church congregation.

Knowing that Mr. Davis was a member of her church, and a "nice kid," from her social relationship with him when he was younger, Mrs. Lloyd was likely to have been prejudiced toward the Defendant and to have believed that the prosecutor, Mr. Davis had the more believable case. The trial court erred by not dismissing Mrs Lloyd for cause, and forcing the Defendant to use a peremptory challenge.

Venireman Holden was an equally serious example of the trial court's refusal to challenge for cause an obviously impartial and prejudiced potential juror. Mr. Holden stated during voir dire: "I have very, very strong feelings about the taking of human life." (Tr. at 11). The trial court was put on notice at that time that Mr. Holden was either impartial and likely to be prejudiced, or that he wanted to avoid jury duty since he had served as a jury foreman the previous week in the same court in a civil matter.

The efforts by the trial court to rehabilitate Mr. Holden do not cure the error. The trial court questioned him,

The Court: "But you must understand we -- its awful easy to feel bad if somebody gets killed, but what I,m going to be asking you to make a decision about is responsibilities for it. Is there any reason you can't answer these questions objectively for us?"

Mr. Holden: No.

The Court: Okay. Next. (Tr. at 11-12).

Mr. Daroczi, co-counsel for the prosecution further attempted to rehabilitate Mr. Holden during the following line of questioning:

Mr. Daroczi: All right. Okay. Mr. Holden, you're strongly against the taking of human life.

Mr. Holden: Yes

Mr. Daroczi: Now, you realize that I think most I think probably everybody on the panel is of that mind. Does that state of mind, would that prejudice you against this Defendant as you sit there?

Mr. Holden: As I sit here this moment, no.

Mr. Daroczi: Okay, you have an open mind to hear the evidence and make up your mind if you were picked as a juror on the evidence you hear?

Mr. Holden: That's correct.

Mr. Daroczi: And you could be fair to both sides?

Mr. Holden: I believe so. I would certainly hope so.

Mr. Daroczi: Yeah. Have any of you taken an interest in law enforcement, police -- police work, other than we've heard now you're an ex-police officer?

Mr. Holden: Yes. (Tr. at 18).

A review of the transcript shows that Mr. Holden's responses to the court were only one or two words and that he obviously was trying to redeem herself in the eyes of the court by trying to cooperate.

This Court noted in Hewitt that a statement made by a perspective juror that he intends to be fair and impartial loses

its meaning in light of other testimony or facts that suggest a bias. Thus, the nervous replies of the perspective juror in answer to the court's inquiries are hardly sufficient to negate the specific affirmative statements and facts illicit by defense counsel.

It would have been impossible for either venireman Lloyd or Holden to objectively weigh the testimony of the case presented in the trial court, yet It would have been an easy matter for the lower court in a case such as this to dismiss these perspective jurors rather than forcing defense counsel to use two peremptory challenges to do so. The failure to dismiss these two perspective jurors for cause was clearly prejudicial and reversible error.

POINT III

THE EVIDENCE PRESENTED BY THE STATE WAS
INSUFFICIENT TO ESTABLISH BEYOND A REASONABLE
DOUBT THAT APPELLANT WAS GUILTY OF COMMITTING
SECOND DEGREE MURDER.

The elements of Second Degree Murder are found in §76-5-203 of the Utah Code Annotated. A review of the record of the trial will clearly reveal that the Defendant did not intend to kill the victim when he went to the pool hall to sabotage the victim's car. The pistol went off during a struggle between the Defendant and the victim.

Recently this Court in State v. Petree, 659 P.2d (Utah 1983) stated:

Considering that question . . . (W)e review the

evidence and all inferences which may reasonably be drawn from it in the light most favorable to the verdict of the jury. We reversed the jury conviction for insufficient evidence only when the evidence so viewed is sufficiently inconclusive or inherently impalatable that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime for which he was convicted. Id., at 444.

See also, State v. Linden, 657 P.2d 1367 (Utah 1983); State v. McCardle, 652 P.2d 942 (Utah 1982); State v. Howell, 649 P.2d 91 (Utah 1982); State v. Kerekes, 622 P.2d 1161 (Utah 1980).

The Petree standard restates the Due Process requirement which prohibits a criminal conviction in all cases except upon proof beyond a reasonable doubt every fact necessary to constitute the crime with which a defendant is charged. Jackson v. Virginia, 443 U.S. 307 (1979); In re Winship, 397 U.S. 358. 364 (1970).

Appellant contends that there was insufficient evidence on the charge of second degree murder to meet the above standard. Defendant believes that the facts of the case more closely warrant a charge of manslaughter and not second degree murder.

POINT IV

THE TAPE RECORDED CONFESSION OF THE DEFENDANT
SHOULD HAVE BEEN EXCLUDED FROM EVIDENCE BECAUSE
IT WAS A WASTE OF TIME AND WAS INFLAMMATORY.

During cross examination the state questioned defendant extensively regarding a transcript of a taped confession. The state then moved to have the tape played for the jury Defense objected on the basis of Rule 403 which objection was overruled.

(Record at 588).

Rule 403 of the Utah Rules of Evidence states that;

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Rule 403, Utah R. Evid., Utah Code Ann. (1953).

After an exhausting three days of direct and cross-examination, Mr. Daroczi attempted to play a tape recorded confession made by the Defendant. Defense Counsel objected to the motion and argued that it would be a waste of the court's time, and would be inflammatory in view of the fact that the jury had already heard most of the contents of the confession during the previous days of trial. The trial court erred when it ruled to allow the prosecution to play the tape for the jury.

The fact that the prosecutor played the tape recorded confession to the jury immediately prior to the jury's deliberations evidences the fact that the prosecutor intended to inflame the minds of the jury against the Defendant prior to their deliberations. The trial court improperly allowed the tape recorded confession into evidence contrary to Rule 403 of the Utah Rules of Evidence.

POINT V

THE FIVE YEAR ENHANCEMENT FOR USING A FIREARM DURING THE COMMISSION OF A CRIME WAS IMPOSED WITHOUT A PROPER CONSIDERATION OF THE FACTS, AND WAS INAPPROPRIATE CONSIDERING THE CIRCUMSTANCES OF THE KILLING.

In cases where a firearm has been used in the commission or furtherance of felony, Utah law provides for enhancement of the sentence for an indeterminate time not to exceed five years in the case of a second degree felony,§ and the aforesaid enhancement is to be served consecutively rather than concurrently. Utah Code Ann. §76-3-203(2).

During the sentencing, the prosecutor and the Defendant were about to leave when the prosecutor in what appeared to be an after thought, asked the court to impose a five year enhancement onto the Defendant's 5 to life sentence. The following exchange took place after the judge had sentenced the Defendant:

Mr. Godfrey: Thank you, your Honor.

Mr. Daroczi: Your Honor, we'd ask that the Court impose a five-year sentence for the use of a gun.

The Court: The Court will sentence the -- come back. The Court will sentence the defendant to an additional five years on the --

Mr. Godfrey: Well, your Honor, we'd like to address that. Your Honor heard the trial, and on the one to five enhancement, we would ask your honor to sentence him to less than the five years, or less than the five-year enhancement. The trial indicated that there were some -- there were some mitigating circumstances involved in this. Mr. Cobb was under some stressful time. Your Honor heard all of the evidence on that point. There was also some indication that -- well, the evidence was clear that Mr. Cobb did not start that fight that evidently ended in Mr. -- Mr. Wilson's death. We would ask for that reason, your Honor, that for those reasons, that you would impose less than the five years. As I understand it, five years is the maximum based on very aggravating circumstances, and I don't think there are any in this case.

The Court: The Court finds that he deliberately armed himself for just such an eventuality. The court will require the five years.

Mr. Godfrey: Well, if its' only because he has a gun, your Honor, I don't think that's reason enough under the statute. Otherwise, it would be just a straight five-year enhancement for use of a gun.

The Court: The Court notes previous offenses involving violence and also a use of firearms.
(Transcript of the sentencing at 42-43).

From the transcript of the sentencing, it appears that very little thought was involved in the enhancement of Defendant's sentence. In light of the gravity of a five year enhancement, an off the cuff addition of the maximum five year enhancement under the circumstances of this case, clearly reaches the level of abuse of discretion. At a minimum, the Defendant should have an opportunity to have evidence presented to justify the enhancement. The circumstances of this killing clearly do not justify the maximum enhancement penalty of five years. No evidence was heard at the sentencing upon which to base the enhancement. The motion was made upon the case as it was heard at trial. The Judge mentioned that the Defendant has had previous offenses involving violence, and the use of firearms. However, no previous offenses were discussed at the sentencing.

Defendant believes that the trial court abused its discretion in adding the maximum enhancement to his sentence in view of the circumstances of the case, and asks this Court to reject the trial court's enhancement, or in the alternative, to grant a rehearing on the enhancement issue.

CONCLUSION

Based upon the foregoing arguments and a thorough review of the evidence, the Defendant respectfully requests this Court to reverse his conviction, or in the alternative to grant a new trial on the issues, or at least a rehearing on the issue of the five year enhanced sentence for the use of a firearm during the commission of a crime.

ADDENDUM

There are no rulings of the lower court, rules or other documents necessary for one reading this brief. A copy of the Reporter's transcript of the sentencing is attached.

RESPECTFULLY SUBMITTED this 28th day of March, 1988.

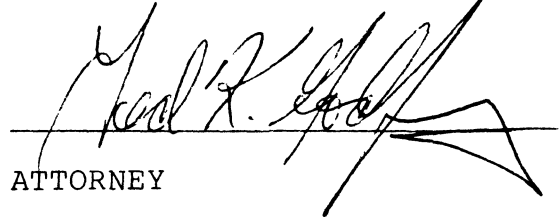


TED K. GODFREY
Attorney for Defendant

CERTIFICATE OF MAILING

I hereby certify that I mailed (4) true and correct copies of the foregoing Brief of Appellant, postage prepaid, on this 28th day of March, 1988, to the following:

DAVID L. WILKINSON
UTAH STATE ATTORNEY GENERAL
236 State Capitol Building
Salt Lake City, Utah 84114



A handwritten signature in dark ink, appearing to read "David L. Wilkinson", is written over a horizontal line. The signature is stylized with a large, sweeping initial "D" and a long, horizontal stroke extending to the right.

ATTORNEY

1 INDEX

2 JURY SELECTION (JOYCE LLOYD AND JESSE

3 HOLDEN: P 2

4 SENTENCING: 40

5 OGDEN, UTAH JULY 30, 1987 9:30 A.M.

6 THE CLERK: NUMBER 3, GRAY, ROGER GRAY. 21,
7 LEATHEROW, LAMAR LEATHEROW.

8 MR. DAROCZI: LEATHEROW?

9 THE CLERK: YES. 5. RICHAN. ALBERT RICHAN. 7.
10 CAMPBELL. PAMELA CAMPBELL. 20. SMITH. EARL SMITH. 18.
11 ANDREWS. RENEEN ANDREWS. 10. BYBEE, LUCILLE BYBEE. 19.
12 HADLEY. RICHARD HADLEY. 11. SHUPE. NANCY SHUPE. 9. BAIRD.
13 DALE BAIRD. 23. MCBRIDE, VENNA MCBRIDE. 8, LLOYD. JOYCE
14 LLOYD. 12. HOLDEN, JESSE HOLDEN. 14. MCLENDON, REBECCA
15 MCLENDON. 1, HUNT, KIM HUNT. 13, HANSEN, KELLY HANSEN.

16 THE COURT: ASK THESE JURORS TO TAKE AN OATH TO TRUE
17 ANSWERS MAKE AS TO YOUR QUALIFICATIONS TO TRY THIS PARTICULAR
18 CASE. WOULD YOU STAND AND TAKE SUCH AN OATH?

19 (WHEREUPON THE CLERK SWORE THE JURY PANEL.)

20 THE COURT: WE'RE GOING TO PROCEED SOMEWHAT LIKE WE
21 DID BEFORE. SOME OF YOU HAVE DONE THIS BEFORE. THE FIRST
22 THING THEY'RE GOING TO ASK YOU TO DO IS TO INTRODUCE
23 YOURSELVES. IN OTHER WORDS, THEY WANT TO KNOW FIRST YOUR NAME
24 AND ADDRESS, AND SECOND. THEY WANT TO KNOW THE FAMILY
25 MEMBERSHIP. IN OTHER WORDS, WHO LIVES IN THE FAMILY HOME WITH

1 YOU OR WHERE YOU -- WHO LIVES WITH YOU. MAYBE YOU LIVE WITH
2 ANOTHER PERSON OR MAYBE YOU HAVE A FAMILY AND MAYBE YOU LIVE
3 WITH PARENTS. THEY WOULD LIKE TO KNOW THAT. THE THIRD THING
4 THEY WANT TO KNOW IS THE JOBS OR EMPLOYMENT OF THOSE IN THE
5 HOME. SO I BELIEVE THE FIRST JUROR'S DONE THIS ONCE. WOULD
6 YOU START US OFF?

7 *****

8 THE COURT: OKAY.

9 MRS. LLOYD: I'M JOYCE LLOYD. I LIVE AT 898 EAST 3100
10 NORTH IN NORTH OGDEN. MY HUSBAND WORKS FOR THE FOREST SERVICE
11 IN RESEARCH. I'M A HOUSEWIFE AND MOTHER AND WORK AS A
12 TEACHER'S AIDE FOR THE WEBER SCHOOL DISTRICT. WE HAVE 11
13 CHILDREN. THREE OF THEM STILL LIVING AT HOME. AND THEY'RE
14 STUDENTS.

15 THE COURT: OKAY.

16 MR. HOLDEN: I'M JESSE HOLDEN. I LIVE AT 1335 - 5TH
17 STREET WITH MY WIFE OF 25 YEARS. WE HAVE FOUR CHILDREN. TWO
18 GROWN. TWO REMAINING AT HOME. I'M A LICENSED MULTI-LINE
19 INSURANCE AGENT WITH AN AGENCY HERE IN TOWN. AND MY WIFE IS A
20 TAX EXAMINER FOR I.R.S.

21 THE COURT: OKAY.

22 *****

23 THE COURT: GOING TO HAVE ANOTHER TURN. THE FIRST
24 THING THEY'RE GOING TO ASK IS IF YOU ALREADY KNOW SOMETHING
25 ABOUT THIS CASE OR IF YOU'RE ACQUAINTED WITH SOME OF THE

1 PEOPLE WHO ARE GOING TO BE PARTICIPATING IN THE TRIAL. FOR
2 THAT PURPOSE, IN A FEW MINUTES I'LL BE ASKING THE LAWYERS TO
3 INTRODUCE THEMSELVES AND SO FAR AS PRACTICAL TO INTRODUCE BY
4 NAME ANY WITNESSES WHO MAY BE TAKING PART SO THAT YOU CAN TELL
5 US IF YOU ALREADY KNOW SOMETHING ABOUT THIS CASE OR -- THEY
6 DON'T WANT TO KNOW WHAT YOU KNOW ABOUT IT, BUT THEY JUST WANT
7 TO KNOW HOW DO YOU KNOW ABOUT IT. IN OTHER WORDS, MAYBE YOU
8 READ A NEWSPAPER THAT MAKES YOU REMEMBER IT. YOU CAN TELL US
9 THAT, OR IF YOU TALKED WITH SOMEBODY ABOUT IT, JUST TELL US
10 WHO YOU TALKED TO. SO THAT'S GOING TO BE PART OF THE
11 QUESTION. BUT NOW, SO THAT YOU CAN MAYBE IDENTIFY IT, I'LL
12 TELL YOU A LITTLE BIT ABOUT THE CASE.

13 NOW, WHEN I TRY TO TELL YOU ABOUT THE CASE, YOU MUST
14 UNDERSTAND THAT I FOUND OUT I WAS GOING TO TRY THIS CASE FOR
15 CERTAIN YESTERDAY, AND I REALLY COULD BE MISTAKEN BECAUSE I
16 DON'T KNOW VERY MUCH ABOUT THIS CASE. SO IF I MISUNDERSTAND
17 IT, JUST GO BY THE EVIDENCE AND IGNORE ANYTHING I SAY. BUT IN
18 A GENERAL SORT OF WAY, THIS IS A CASE IN WHICH THE STATE OF
19 UTAH BRINGS TWO CHARGES. THEY CHARGE THAT THE DEFENDANT SHOT
20 AND KILLED ANOTHER MAN. THEY SAY THAT THE MAN -- VICTIM'S
21 NAME WAS WILSON. LONNIE WILSON?

22 MR. DAROCZI: LONNIE, LONNIE WILSON.

23 THE COURT: THEY SAY HE WAS SHOT AND KILLED BY THE
24 DEFENDANT, SO THEY'RE CHARGING WHAT THEY CALL MURDER TWO,
25 MURDER IN THE SECOND DEGREE, WHICH IS A -- THERE'S A -- WE

1 HAVE CAPITAL MURDER. THEY DO NOT CHARGE CAPITAL MURDER HERE.
2 THAT'S WHERE YOU COULD HAVE A DEATH PENALTY AND THAT, BUT THEY
3 DO BRING A MURDER CHARGE WHICH COULD BE PUNISHABLE BY FIVE
4 YEARS TO LIFE, NOT LESS THAN FIVE NOR MORE THAN LIFE. SO
5 THAT'S THE ONE CHARGE. AND THE OTHER THEN, NEXT CHARGE IS
6 THEY SAY THAT IN THE SAME GENERAL EPISODE, HE ATTEMPTED TO
7 SHOOT A WOMAN, I BELIEVE HER NAME'S SANT.

8 MR. DAROCZI: ANN SANT.

9 THE COURT: AND THEY SAY THEY'RE BRINGING THAT --
10 THEY SAY HE TRIED TO SHOOT AND KILL HER. NOW, TO THESE
11 CHARGES HE'S ANSWERED WITH A NOT GUILTY PLEA WHICH IS A DENIAL
12 OF CRIMINAL RESPONSIBILITY FOR THESE THINGS, WHICH THE STATE
13 IS ACCUSING HIM OF.

14 YOU'LL ALSO HEAR SOME TALK ABOUT CHARGES OF THE USE OF
15 GUNS. THE LEGISLATURE'S PASSED SOME LAWS THAT SAY THAT IF A
16 PERSON ATTEMPTS TO USE A GUN IN THE COMMISSION OF A CRIME, THE
17 JUDGE IS SUPPOSED TO ADD EITHER ONE YEAR OR FIVE YEARS TO THE
18 SENTENCE. IT'S JUST A MECHANICAL WAY OF DISCOURAGING PEOPLE
19 FROM USING GUNS. AND THE STATE IS GOING TO BE ALLEGING THAT
20 THERE WAS A GUN USED IN EACH OF THOSE CRIMES, SO TO SPEAK.

21 I UNDERSTAND ALL THIS IS SUPPOSED -- ALLEGED TO HAVE
22 OCCURRED HERE IN WEBER COUNTY SOMEWHERE AROUND WALL AND 12TH
23 STREET. THE STATE MAY INTRODUCE THE PROSECUTORS AND
24 WITNESSES. YOU CAN CORRECT ME IF YOU FEEL I ERRED.

25 MR. DAROCZI: THANK YOU, YOUR HONOR. I'M LES DAROCZI,

6

1 DEPUTY COUNTY ATTORNEY. I REPRESENT THE STATE. THIS IS CHRIS
2 DAVIS, DEPUTY COUNTY ATTORNEY. HE'LL BE ALSO TRYING THE CASE
3 WITH ME. AND DETECTIVE ALEXANDER IS THE OGDEN POLICE OFFICER
4 IN CHARGE OF THIS HOMICIDE INVESTIGATION. THE WITNESSES FOR
5 THE STATE WILL BE ANN SANT. ANN, WOULD YOU PLEASE STAND? AND
6 NEXT TO ANN ARE HER MOM AND DAD, BUT THEY WON'T BE WITNESSES.
7 AND SOME OF THE NAMES THAT I'LL READ TO YOU WILL ALSO NOT
8 NECESSARILY APPEAR AS WITNESSES, BUT THEY ARE INVOLVED IN THE
9 CASE. JUANITA FREDRICKSEN, THE DECEASED'S MOM. AND ALSO
10 WE'LL BE CALLING OFFICER SANGBERG, DETECTIVE ALEXANDER,
11 OFFICER MILLER, OFFICER MILLER HERE. ALL OF THESE OFFICERS
12 ARE WITH THE OGDEN POLICE DEPARTMENT. OFFICER DRAPER, OFFICER
13 JERRY SMITH, OFFICER CLIFFORD, OFFICER MCGREGOR, OFFICER KEITH
14 BRADY, RICK CHILDRESS, OFFICER RUDY VANBEEKUM, DR. TODD GRAY
15 WITH THE MEDICAL EXAMINER'S OFFICE. JIM GASKILL, A
16 CRIMINALIST WITH THE WEBER STATE COLLEGE CRIME LAB. RAYMOND --
17 RAYMOND DWAYNE KING, PAUL SMITH, CORBIN SPENCER. AND I
18 BELIEVE THAT, YES, WE HAVE ANOTHER YOUNG LADY BY THE NAME OF
19 TRACY TOLES. AND WE DON'T ANTICIPATE CALLING ALL OF THESE
20 WITNESSES, BUT THESE WILL BE THE NAMES MENTIONED THAT ARE
21 INVOLVED IN THE CASE.

22 THE COURT: DEFENSE.

23 MR. GODFREY: MY NAME IS TED GODFREY. I AM WITH THE
24 PUBLIC DEFENDER'S OFFICE. I'M ALSO WITH THE LAW FIRM OF --
25 CALLED FARR, KAUFMAN, AND HAMILTON. THIS IS ROBERT FROERER.

1 HE'S ALSO AN ATTORNEY WITH THE PUBLIC DEFENDER'S OFFICE. SOME
2 OF THE WITNESSES THAT WE INTEND TO CALL ARE -- OR POSSIBLY TO
3 CALL ARE PART OF THIS, THE DEFENDANT HANK COBB. PART OF HIS
4 FAMILY, KELLY WOODSEN, POSSIBLY A ROOMMATE, TODD CRAWFORD.
5 AND THEN POSSIBLY ANOTHER WITNESS AT THE -- WHERE THIS WAS
6 SUPPOSED TO HAVE TAKEN PLACE NAMED MIKE KISSEL.

7 THE COURT: SO THE FIRST QUESTION IS GOING TO BE IF
8 YOU KNOW ANYTHING ABOUT THIS CASE, TELL US HOW YOU KNEW IT.
9 NOT WHAT YOU KNOW. WE DON'T WANT TO TALK ABOUT THE MERITS OF
10 THE CASE, BUT JUST TELL WHO YOU TALKED TO OR WHERE YOU READ IT
11 OR ANYTHING OF THIS SORT, IF YOU DID. AND MAYBE YOU DON'T
12 REMEMBER FOR CERTAIN WHETHER YOU EVER KNEW ANYTHING ABOUT IT
13 OR NOT. WE DIDN'T -- YOU CAN TELL US ABOUT THAT.

14 AND THE SECOND THING THEY WANT TO KNOW IS, HAVE YOU EVER
15 BEEN CLOSE TO A SITUATION IN WHICH ONE PERSON IS ALLEGED TO
16 HAVE CAUSED THE DEATH OF ANOTHER ILLEGALLY. WHETHER IT WAS AN
17 AUTOMOBILE ACCIDENT OR A CRIMINAL HOMICIDE CASE OR WHATEVER IT
18 WAS, HAVE YOU EVER BEEN CLOSE TO A CASE IN WHICH ONE PERSON
19 WAS ACCUSED OR AT LEAST BELIEVED TO BE RESPONSIBLE FOR THE
20 DEATH OF ANOTHER PERSON.

21 THE THIRD THING THEY WOULD LIKE TO KNOW IS SOMETHING
22 ABOUT YOUR EXPERIENCE WITH GUNS. TELL US WHETHER YOU OWN GUNS
23 OR MAYBE YOU'VE HAD MILITARY TRAINING WITH GUNS OR MAYBE
24 YOU'RE A SPORTSMAN WITH GUNS. IN GENERAL, TELL US ABOUT YOUR
25 EXPERIENCE WITH GUNS.

1 SO THEY'RE ASKING THREE THINGS: DO YOU KNOW ANYTHING OF
2 THESE PEOPLE OR ANYTHING ABOUT THIS CASE. THE SOURCE OF
3 KNOWLEDGE. SECOND, HAVE YOU HAD ANY EXPERIENCE WITH SO-CALLED
4 DEATH CASES. AND THIRD, DO YOU HAVE ANY EXPERIENCE WITH
5 GUNS. MR. GRAY.

6 *****

7 THE COURT: OKAY. NEXT.

8 MRS. LLOYD: I DON'T KNOW ANYTHING ABOUT THE CASE.
9 HOWEVER, I DO KNOW CHRIS DAVIS. IT'S BEEN 15 YEARS SINCE I
10 SAW HIM, BUT I KNOW WHO HE IS. AND I HAVE NOT HAD ANYTHING TO
11 DO WITH DEATH-RELATED CASES OR CAUSES. AND I FIRED HANDGUNS
12 RIGHT AFTER I GOT MARRIED, BUT THAT'S BEEN 35 YEARS. THAT'S
13 ALL.

14 THE COURT: HOW DID YOU HAPPEN TO RUN INTO MR. DAVIS?

15 MRS. LLOYD: MY HUSBAND WAS WORKING IN WASHINGTON,
16 D.C., AND CHRIS AND HIS FAMILY MOVED BACK THERE AND WE WERE IN
17 THE SAME CHURCH ORGANIZATION FOR A WHILE, ABOUT A YEAR.

18 THE COURT: I SEE. NEXT.

19 MR. HOLDEN: WHAT I KNOW ABOUT THE CASE IS WHAT I'VE
20 READ AND HEARD IN THE MEDIA. AS FAR AS THE DEATH SITUATIONS,
21 I'M A FORMER POLICE OFFICER, SO WE'VE HAD -- I'VE BEEN
22 INVOLVED IN AUTOMOBILE TYPE SITUATIONS THERE AND ASSAULTS, NOT
23 NECESSARILY RESULTING IN DEATH. I'M A MARKSMAN WITH A .357
24 MAGNUM. I ALSO OWN SEVERAL GUNS.

25 THE COURT: DO YOU STILL DO POLICE WORK IN ANY WAY?

1 MR. HOLDEN: NO, I DON'T.

2 THE COURT: YOU'RE NOW STRICTLY INSURANCE, THAT TYPE
3 THING?

4 MR. HOLDEN: YES, SIR.

5 THE COURT: ALL RIGHT. NEXT.

6 MR. HOLDEN: BEFORE THE FACT RATHER THAN AFTER.

7 THE COURT: ALL RIGHT.

8 *****

9 THE COURT: OKAY. WE'LL HAVE ANOTHER TURN. THE
10 FIRST THING THEY WANT TO KNOW IS THE EXTENT TO WHICH YOU MAY
11 HAVE BEEN CLOSELY ASSOCIATED WITH POLICEMEN OR PERSONS DOING
12 THE TYPE OF WORK WHERE YOU MIGHT SAY THEY KEEP THE PEACE.
13 THIS MIGHT BE A GUARD AT A GATE OR SOMETHING LIKE THAT. BUT A
14 POLICEMAN OR PERSON WHO IS RESPONSIBLE FOR ENFORCING PEACEFUL
15 LAW.

16 THE NEXT THING THEY WANT TO KNOW IS YOUR EXPERIENCE AS A
17 JUROR. SOME OF YOU HAVE TRIED A CASE LAST WEEK AND -- WELL, I
18 GUESS IT'S THIS WEEK. SOME OF YOU TRIED A CASE THIS WEEK AND
19 SOME OF YOU HAVE TRIED CASES BEFORE. THEY WOULD LIKE TO KNOW
20 IN A GENERAL SORT OF WAY WHAT EXPERIENCE YOU'VE HAD IN
21 DECIDING CASES AS A JUROR.

22 THE THIRD THING THEY WOULD LIKE TO KNOW IS ANY REASON
23 BEST KNOWN TO YOURSELF WHY YOU WOULD HAVE DIFFICULTY IN TRYING
24 THIS CASE FAIRLY. SOME OF YOU KNOW SOMETHING ABOUT NEWS MEDIA
25 REPORTS AND THAT KIND OF THING. IN GENERAL, IF YOU'RE GOING

1 TO TRY THE CASE, YOU'D HAVE TO SET ASIDE ANY INFORMATION YOU
2 MAY HAVE HEARD FROM A NEWS MEDIA OR RUMOR OR ANYTHING OF THAT
3 NATURE, AND JUST DEPEND ON THE ASSUMPTION THAT ANYTHING THAT'S
4 IMPORTANT ENOUGH TO KNOW ABOUT THE CASE WILL PROBABLY COME OUT
5 IN THE CASE, AND OTHER THINGS SHOULD BE IGNORED. OR IF YOU
6 KNOW A WITNESS AND YOU REALLY THINK IT'S GOING TO INTERFERE
7 WITH THE TRIAL OF THE CASE BECAUSE YOU KNOW A WITNESS, YOU CAN
8 TELL US ABOUT THAT. OR MAYBE TELL US WHETHER YOU THINK IT
9 WOULD OR WOULDN'T. SO THE THIRD THING IS, THAT WE'RE GOING TO
10 ASK YOU TO TALK ABOUT, IS WHETHER THERE'S ANY REASON YOU
11 SHOULDN'T TRY THIS CASE.

12 SO WE'LL BE TALKING ABOUT THREE THINGS: EXPERIENCE WITH
13 POLICEMEN OR LAW ENFORCEMENT PEOPLE. SECOND, EXPERIENCE AS A
14 DECIDING JUROR. AND THIRD, REASONS YOU SHOULD OR SHOULDN'T
15 TRY THIS CASE. MR. GRAY.

16 *****

17 THE COURT: OKAY. NEXT.

18 MRS. LLOYD: I HAVE TWO UNCLES AND A FATHER-IN-LAW WHO
19 WERE INVOLVED IN POLICE WORK. MY TWO UNCLES WERE ALSO ON THE
20 SHERIFF'S -- IN THE SHERIFF'S DEPARTMENT IN LAS VEGAS. IN THE
21 '40'S AND EARLY '50'S, MY FATHER-IN-LAW WAS A CHIEF OF POLICE
22 IN A SMALL IDAHO TOWN LONG BEFORE I EVER KNEW HIM. MY SON WAS
23 IN SECURITY WORK IN THE AIR FORCE. AND THAT'S MY EXPERIENCE
24 WITH THAT. I SERVED --

25 THE COURT: WHAT WAS IT, EIGHT CHILDREN?

1 MRS. LLOYD: ELEVEN.

2 THE COURT: ELEVEN. HOW OLD IS THIS SON?

3 MRS. LLOYD: GEE, HE WAS BORN IN 1960. DOES THAT
4 HELP? I DON'T KNOW HOW OLD HE IS. HE'S NOT IN THE AIR FORCE
5 NOW.

6 THE COURT: DID YOU TALK TO HIM ABOUT HIS WORK?

7 MRS. LLOYD: OH, YEAH. BUT IT WAS -- IT WAS KIND OF
8 WHAT MY HUSBAND CALLS THE AIR FORCE'S VERSION OF THE INFANTRY
9 GUARD, SO HE WAS --

10 THE COURT: OKAY.

11 MRS. LLOYD: HE'S NOT IN THE AIR FORCE NOW. I WAS ON
12 JURY DUTY EARLIER THIS WEEK. AND THAT WAS MY FIRST
13 EXPERIENCE, AND SO -- THAT WAS A CIVIL CASE. AND I DON'T SEE
14 ANY REASON WHY I WOULDN'T BE CAPABLE OF HANDLING THIS
15 PARTICULAR ASSIGNMENT.

16 THE COURT: OKAY.

17 MR. HOLDEN: AS I SAID EARLIER, I'M A FORMER POLICE
18 OFFICER. I SPENT 1967 AND '68 WITH THE OGDEN CITY POLICE
19 RESERVE, 1972 AND '73 WITH THE CITY OF WILLARD IN BOX ELDER
20 COUNTY. AS FAR AS JURY GOES, I WAS THE FOREMAN AT THE LAST
21 JURY IN THIS COURT ON MONDAY AND TUESDAY IN A CIVIL CASE. AS
22 FAR AS TRYING THIS CASE, I HAVE VERY, VERY STRONG FEELINGS
23 ABOUT THE TAKING OF HUMAN LIFE.

24 THE COURT: BUT YOU MUST UNDERSTAND WE -- IT'S AWFUL
25 EASY TO FEEL BAD IF SOMEBODY GETS KILLED, BUT WHAT I'M GOING

1 TO BE ASKING YOU TO MAKE A DECISION ABOUT IS RESPONSIBILITIES
2 FOR IT. IS THERE ANY REASON YOU CAN'T ANSWER THESE QUESTIONS
3 OBJECTIVELY FOR US?

4 MR. HOLDEN: NO.

5 THE COURT: OKAY. NEXT.

6 *****

7 THE COURT: ALL RIGHT. GOING TO PERMIT THE STATE TO
8 QUESTION JURORS.

9 MR. DAROCZI: THANK YOU, YOUR HONOR. MISS HANSEN, YOUR
10 DAD'S FRIEND IS A POLICE OFFICER IN DENVER?

11 MISS HANSEN: MY FRIEND'S DAD IS -- WAS.

12 MR. DAROCZI: YOUR FRIEND'S DAD. DO YOU -- DID YOU --
13 DO YOU TALK TO YOUR FRIEND'S DAD AT ALL ABOUT CASES?

14 MISS HANSEN: NO.

15 MR. DAROCZI: SO THERE DOESN'T REALLY -- WOULDN'T HAVE
16 ANYTHING TO DO WITH HAVING A CLOSE ASSOCIATION WITH A POLICE
17 OFFICER?

18 MISS HANSEN: (MISS HANSEN SHAKES HEAD.)

19 MR. DAROCZI: OKAY. LET ME ASK YOU THIS AS A PANEL:
20 ARE ANY OF YOU -- NOW, MRS. BYBEE, YOU INDICATED THAT YOU MAY
21 NOT BE STRONG ENOUGH TO -- TO STAND UP TO A MURDER TRIAL.
22 THERE WILL BE BLOOD, A COUPLE OF BULLET HOLES, THERE WILL BE --
23 THERE WILL BE EVIDENCE THAT ONE OF THE SHOTS WENT RIGHT
24 THROUGH THE GROIN AREA, THROUGH THE GENITALS. DO YOU, MRS.
25 BYBEE, OR ANY OF YOU FEEL THAT YOU'RE TOO SQUEAMISH TO SIT

1 THROUGH A TRIAL AND LISTEN TO THIS EVIDENCE?

2 MRS. BYBEE: I REALLY DO.

3 MR. DAROCZI: YOU COULD --

4 MRS. BYBEE: UH-HUH.

5 MR. DAROCZI: WOULD YOU RATHER BE EXCUSED, MRS. BYBEE?

6 MRS. BYBEE: I WOULD.

7 MR. DAROCZI: YOU DO REALIZE THAT YOU HAVE A DUTY AND
8 AN OBLIGATION TO YOUR COMMUNITY TO SERVE --

9 MRS. BYBEE: YES.

10 MR. DAROCZI: -- AS A JUROR? AND YOU JUST DON'T FEEL
11 THAT YOU'D BE STRONG ENOUGH TO BE OBJECTIVE AND CALM ENOUGH TO
12 RATIONALLY ANALYZE THE EVIDENCE AND LISTEN TO IT AS IT COMES
13 OFF THE WITNESS STAND, AND WOULD BE OFFSET BY MAYBE YOUR
14 EMOTIONAL CONDITION SO THAT YOU COULDN'T POSSIBLY FOCUS YOUR
15 ATTENTION OBJECTIVELY ON THE EVIDENCE? DO YOU THINK THERE --

16 MRS. BYBEE: WELL, I'VE NEVER HAD ANYTHING TO DO WITH
17 ANYTHING LIKE THIS BEFORE, AND I JUST DON'T KNOW WHETHER I
18 COULD HANDLE IT OR NOT.

19 MR. DAROCZI: WOULD YOU RATHER BE EXCUSED?

20 MRS. BYBEE: I REALLY WOULD.

21 MR. DAROCZI: AND IF YOU'RE SELECTED AS A JUROR --

22 MRS. BYBEE: I WOULD DO MY VERY BEST.

23 MR. DAROCZI: YOU WOULD SERVE. LET ME ASK YOU, ASK A
24 LITTLE BIT MORE ABOUT YOUR EMOTIONAL NATURE. DO YOU CRY AT
25 SAD MOVIES, AT THE END OF A --

1 MRS. BYBEE: SOMETIMES.

2 MR. DAROCZI: THAT'S NOT UNUSUAL?

3 MRS. BYBEE: NO, THAT'S NOT UNUSUAL. I THINK A LOT OF
4 PEOPLE DO.

5 MR. DAROCZI: DO YOU THINK YOU WOULD BE AGITATED TO THE
6 POINT THAT YOU COULDN'T POSSIBLY -- THAT MAYBE YOU COULDN'T
7 CONCENTRATE FULLY AND EVALUATE THE EVIDENCE AS YOU HEAR IT
8 FROM THE WITNESS STAND?

9 MRS. BYBEE: I DON'T THINK I WOULD BE THAT EMOTIONAL.

10 MR. DAROCZI: YOU DON'T THINK SO. YOU WOULDN'T BE
11 BREAKING DOWN AND CRYING --

12 MRS. BYBEE: I DOUBT IT.

13 MR. DAROCZI: OKAY. ALL RIGHT. ANY OF YOU -- ANY OF
14 THE OTHERS HAVE ANY COMMENTS ALONG THAT LINE? WOULD YOU
15 RATHER NOT SIT THROUGH A CASE LIKE THIS? AND LET ME ASK YOU A
16 RELATED QUESTION. WOULD THIS BE A HARDSHIP FOR ANY OF YOU TO
17 SIT THROUGH A TWO, THREE, MAYBE A FOUR-DAY TRIAL? THIS WILL
18 POSSIBLY GO INTO NEXT WEEK, MONDAY. IT WOULDN'T BE AN EXTREME
19 HARDSHIP FOR ANY OF YOU TO SPEND THE TIME HERE AS JURORS?
20 OKAY. MR. HADLEY, YOU KNOW SEVERAL POLICE OFFICERS. DO YOU
21 DISCUSS CASES WITH THEM?

22 MR. HADLEY: NO. NO, I -- NO. WELL, LIKE I KNOW RON
23 VANBEEKUM, HE LIVES IN OUR AREA. AND I'VE BEEN TO SOME
24 PARTIES WITH HIM AND THINGS, BUT I DON'T RECALL EVER TALKING
25 SHOP WITH A POLICEMAN.

1 MR. DAROCZI: NOW, YOUR ASSOCIATION, THE NATURE OF YOUR
2 ASSOCIATION WITH POLICE OFFICERS, DOES THAT MAYBE PUT YOU IN A
3 FRAME OF MIND THAT YOU WOULD -- YOU WOULD BE PULLING FOR THE
4 POLICE OFFICERS AND YOU WOULD GIVE MORE CREDENCE TO THE
5 TESTIMONY OF THE POLICE OFFICERS THAN THE OTHER WITNESSES?
6 WOULD THIS PREJUDICE YOU IN FAVOR OF THE STATE AND IN FAVOR OF
7 THE POLICE OFFICERS AND AGAINST THE DEFENDANT JUST BY NATURE
8 OF YOUR ASSOCIATION WITH THESE POLICE OFFICERS?

9 MR. HADLEY: THE NATURE OF MY POSITION IS IN SUPPORT
10 OF THE AIR FORCE, IN THE MUNITIONS WORLD, SO BASICALLY WHAT WE
11 DO IS WE PROVIDE THE WEAPONS AND THE STORAGE AND HANDLING AND
12 INSTRUCTIONS ON THE USE OF WEAPONS TO THE SECURITY POLICE. SO
13 WE REALLY DON'T GET INTO THE WORKINGS OF SECURITY POLICE OTHER
14 THAN PROVIDING THE WEAPONS FOR THEM TO DO THEIR JOBS.

15 MR. DAROCZI: SO DO YOU THINK YOU'D BE AN IMPARTIAL
16 JUROR IF YOU WERE PICKED AND YOU COULD ANALYZE THE EVIDENCE
17 AND WEIGH IT IN FAIRNESS TO BOTH SIDES?

18 MR. HADLEY: I THINK I COULD.

19 MR. DAROCZI: LET ME ASK YOU THIS: DO YOU AS YOU SIT
20 THERE, HAVE YOU ALREADY MADE UP YOUR MIND THAT THIS DEFENDANT
21 SEATED HERE IS GUILTY WITHOUT HAVING HEARD THE EVIDENCE?

22 MR. HADLEY: I --

23 MR. DAROCZI: OR THAT HE WOULDN'T -- OR ELSE HE
24 WOULDN'T BE HERE?

25 MR. HADLEY: I DON'T KNOW ANYTHING ABOUT THIS CASE. I

1 USUALLY READ THE PAPER PRETTY WELL, BUT THIS IS ONE CASE I
2 DIDN'T EVEN READ ANYTHING ABOUT.

3 MR. DAROCZI: I UNDERSTAND SOME PEOPLE MIGHT FEEL THAT,
4 LOOK, IF A PERSON DIDN'T -- WAS INNOCENT, HE WOULDN'T BE -- HE
5 WOULDN'T BE SITTING HERE IN THE COURTROOM. ARE YOU OF THAT
6 MIND?

7 MR. HADLEY: NO. I'VE LEARNED THAT JUST BECAUSE
8 SOMEBODY TELLS YOU SOMETHING, IT ISN'T NECESSARILY -- YOU
9 KNOW, YOU HAVE TO MAKE JUDGMENTS ON YOUR OWN.

10 MR. DAROCZI: OKAY. THERE IS A PRINCIPLE OF LAW THAT
11 SAYS -- THAT PROVIDES AN ACCUSED THE PRESUMPTION OF INNOCENCE
12 AND A FAIR TRIAL. DO YOU AGREE WITH THAT?

13 MRS. HADLEY: YES, I DO.

14 MR. DAROCZI: THAT AS HE SITS HERE AND IF YOU HAVEN'T
15 HEARD ANY OF THE EVIDENCE, HE'S PRESUMED TO BE INNOCENT UNTIL
16 HE'S PROVEN OTHERWISE. DO YOU AGREE WITH THAT?

17 MR. HADLEY: YES.

18 MR. DAROCZI: AND YOU THINK YOU'RE A FAIR-MINDED ENOUGH
19 PERSON TO SIT IN THIS CASE?

20 MR. HADLEY: I HOPE I AM.

21 MR. DAROCZI: YOU'RE NOT PULLING FOR EITHER SIDE AS YOU
22 SIT THERE?

23 MR. HADLEY: RIGHT NOW, I DON'T KNOW ANYTHING ABOUT
24 THE CASE --

25 MR. DAROCZI: OKAY.

1 MR. HADLEY: -- AND SO I COULDN'T --

2 MR. DAROCZI: YOU'RE NOT PREDISPOSED TO --

3 MR. HADLEY: I HAVE -- NO.

4 MR. DAROCZI: OKAY. ARE ANY OF YOU PREDISPOSED TOWARDS
5 EITHER SIDE? MRS. MCLENDON, TOM CRAWFORD -- LET'S SEE, I
6 UNDERSTAND HE WAS LIVING WITH THE DEFENDANT PRIOR TO THE
7 SHOOTING.

8 MRS. MCLENDON: I DON'T KNOW.

9 MR. DAROCZI: HOW DO YOU -- HOW WELL DO YOU KNOW TOM
10 CRAWFORD?

11 MRS. MCLENDON: LIKE I SAID, I WORKED WITH HIM A LITTLE
12 OVER A YEAR AGO IN THE SAME AREA.

13 MR. DAROCZI: HOW CLOSE WAS YOUR ASSOCIATION WITH HIM?

14 MRS. MCLENDON: HE WAS MY LEADMAN.

15 MR. DAROCZI: HE WAS YOUR LEADMAN, SO YOU -- YOU HAD NO
16 CONTACT OTHER THAN JUST SAYING HELLO AND GOOD-BYE?

17 MRS. MCLENDON: YES.

18 MR. DAROCZI: DID YOU EVER SOCIALIZE WITH HIM?

19 MRS. MCLENDON: NO.

20 MR. DAROCZI: DID YOU SEE HIM OUTSIDE OF WORK AT ALL?

21 MRS. MCLENDON: NO. JUST BY CHANCE MAYBE.

22 MR. DAROCZI: DID YOU GET ALONG WITH HIM? DID YOU LIKE
23 HIM?

24 MRS. MCLENDON: YES.

25 MR. DAROCZI: OKAY. AND IF HE TESTIFIES HERE, WOULD

1 YOU BE INCLINED TO BE PREJUDICED TOWARDS HIS TESTIMONY?

2 MRS. MCLENDON: THAT'S HARD TO SAY. I DON'T KNOW WHAT
3 HIS TESTIMONY WOULD BE.

4 MR. DAROCZI: WELL, I UNDERSTAND, BUT FROM YOUR
5 KNOWLEDGE OF HIM, MAYBE IS IT YOUR OPINION THAT HE COULDN'T --
6 HE COULDN'T TELL A FALSEHOOD?

7 MRS. MCLENDON: I DON'T KNOW HIM THAT WELL.

8 MR. DAROCZI: ALL RIGHT. OKAY. MR. HOLDEN, YOU'RE
9 STRONGLY AGAINST THE TAKING OF HUMAN LIFE.

10 MR. HOLDEN: YES.

11 MR. DAROCZI: NOW, YOU REALIZE THAT I THINK MOST -- I
12 THINK PROBABLY EVERYBODY ON THE PANEL IS OF THAT MIND. DOES
13 THAT STATE OF MIND, WOULD THAT PREJUDICE YOU AGAINST THIS
14 DEFENDANT AS YOU SIT THERE?

15 MR. HOLDEN: AS I SIT HERE THIS MOMENT, NO.

16 MR. DAROCZI: OKAY. YOU HAVE AN OPEN MIND TO HEAR THE
17 EVIDENCE AND MAKE UP YOUR MIND IF YOU WERE PICKED AS A JUROR
18 ON THE EVIDENCE YOU HEAR?

19 MR. HOLDEN: THAT'S CORRECT.

20 MR. DAROCZI: AND YOU COULD BE FAIR TO BOTH SIDES?

21 MR. HOLDEN: I BELIEVE SO. I WOULD CERTAINLY HOPE SO.

22 MR. DAROCZI: YEAH. HAVE ANY OF YOU TAKEN AN INTEREST
23 IN LAW ENFORCEMENT, POLICE -- POLICE WORK, OTHER THAN WE'VE
24 HEARD NOW YOU'RE AN EX-POLICE OFFICER?

25 MR. HOLDEN: YES.

1 MR. DAROCZI: MR. HOLDEN, AND WE'VE HEARD MR. HADLEY'S
2 CONNECTION WITH POLICE. HAVE ANY OF YOU TAKEN AN INTEREST IN
3 POLICE WORK, LAW ENFORCEMENT, MAYBE LAW, YOU'VE TAKEN SEVERAL
4 COURSES? MRS. SHUPE?

5 MRS. SHUPE: YES.

6 MR. DAROCZI: DO YOU KNOW OFFICER MILLER?

7 MRS. SHUPE: YES, I DO.

8 MR. DAROCZI: DO YOU DISCUSS CASES WITH HIM?

9 MRS. SHUPE: NO.

10 MR. DAROCZI: NEVER DISCUSS HIS WORK?

11 MRS. SHUPE: NO.

12 MR. DAROCZI: OKAY. HOW DO YOU KNOW HIM?

13 MRS. SHUPE: I USED TO LIVE BY HIM.

14 MR. DAROCZI: OKAY. HOW LONG?

15 MRS. SHUPE: HOW LONG AGO?

16 MR. DAROCZI: HOW LONG AGO. AND HOW LONG DID YOU LIVE
17 NEAR HIM?

18 MRS. SHUPE: TWO YEARS.

19 MR. DAROCZI: TWO YEARS AGO, AND HOW LONG DID YOU --

20 MRS. SHUPE: FOUR YEARS.

21 MR. DAROCZI: WERE YOU NEIGHBORS?

22 MRS. SHUPE: FOUR YEARS.

23 MR. DAROCZI: FOUR YEARS?

24 MRS. SHUPE: UH-HUH.

25 MR. DAROCZI: NOW, HE TAKES PICTURES AND OTHER THINGS.

1 WORKS IN THE CRIME LAB OF THE POLICE DEPARTMENT --

2 MRS. SHUPE: YES.

3 MR. DAROCZI: -- DO YOU KNOW THAT?

4 MRS. SHUPE: NO.

5 MR. DAROCZI: YOU DIDN'T EVEN KNOW THAT?

6 MRS. SHUPE: NO.

7 MR. DAROCZI: SO THAT ASSOCIATION WOULDN'T HAVE TO DO
8 WITH THIS CASE AT ALL?

9 MRS. SHUPE: NO.

10 MR. DAROCZI: OKAY. YOU COULD BE A FAIR AND OPEN-
11 MINDED JUROR IN THIS CASE?

12 MRS. SHUPE: I COULD -- FEEL LIKE I COULD, YES.

13 MR. DAROCZI: DO ANY OF YOU ADVOCATE OR HAVE YOU
14 ADVOCATED IN THE PAST LAWS AGAINST HANDGUNS, WEAPONS? HAVE
15 ANY OF YOU TAKEN A STRONG STAND? NOW, THIS YOUNG MAN IS --
16 THE DEFENDANT IS 28, 29 YEARS OLD. HE'S QUITE A YOUNG MAN.
17 DO ANY OF YOU AS YOU SIT THERE FEEL THAT BECAUSE OF HIS YOUNG
18 AGE, YOU WOULD BE SWAYED BY SYMPATHY OR FEELINGS OF PITY
19 TOWARD HIM TO THE POINT THAT IT WOULD INTERFERE WITH YOUR
20 BEING FAIR AND IMPARTIAL JURORS TO BOTH SIDES? SOME OF YOU
21 ARE OLD ENOUGH TO HAVE HIM AS A SON AND YOU HAVE SONS AS OLD
22 AS HE IS OR LIKE HE IS. DO ANY OF YOU FEEL THAT BECAUSE OF
23 YOUR MAKE-UP, EMOTIONAL MAKE-UP, YOUR NATURE, YOU WOULD BE
24 SWAYED BY PITY AND COMPASSION REGARDLESS OF WHAT THE EVIDENCE
25 SHOWED TO THE POINT THAT IT WOULD INTERFERE WITH YOUR

1 OBJECTIVE DELIBERATIONS IN THE JURY ROOM? MRS. ANDREWS:

2 MRS. ANDREWS: YES. NO --

3 MR. DAROCZI: YOUR SON'S OLD ENOUGH TO --

4 MRS. ANDREWS: YES, I HAVE.

5 MR. DAROCZI: YOU DO. YOU DO ALL REALIZE THAT
6 SYMPATHY, PITY, SHOULD NOT ENTER THE DELIBERATIONS OF A JURY,
7 THAT YOU SHOULD BE FAIR AND IMPARTIAL AND OBJECTIVE ABOUT THE
8 EVIDENCE YOU HEAR FROM THE WITNESS STAND. NOW, WHAT ABOUT THE
9 FACT THAT IF YOU CONVICT A YOUNG MAN SUCH AS THE DEFENDANT,
10 AND IF HE GOES TO PRISON, DO ANY OF YOU FEEL THAT -- THAT A
11 PRISON SENTENCE FOR A YOUNG MAN WOULD BE SUCH THAT HE WOULD
12 COME OUT EVEN WORSE THAN HE IS NOW, THAT IT WOULD BE A
13 MISCARRIAGE OF JUSTICE IN AND OF ITSELF? ANY OF YOU FEEL THAT
14 WAY? YOU DO REALIZE THAT A SENTENCE A DEFENDANT MIGHT RECEIVE
15 REALLY DOES NOT AND SHOULD NOT ENTER YOUR DELIBERATIONS IN THE
16 JURY ROOM, BUT IT'S UP TO THE JUDGE, IF YOU CONVICT A MAN,
17 IT'S UP TO THE JUDGE TO IMPOSE A SENTENCE. AND THEY CAN RANGE
18 FROM SUSPENDED SENTENCE UP TO PRISON? OKAY. YOU FEEL AN
19 OBLIGATION TO BE FAIR TO BOTH SIDES, AND I REALIZE THAT YOU
20 PROBABLY FEEL AN OBLIGATION TO THE DEFENDANT TO BE FAIR. GIVE
21 HIM A FAIR HEARING, HE'S ENTITLED TO A FAIR TRIAL. DO YOU
22 FEEL THAT YOU CAN BE CLEAR AND OBJECTIVE TO THE STATE AS WELL?
23 ARE ALL OF YOU OF SUCH A STATE OF MIND THAT IF THE FACTS
24 PROVED THE GUILT OF THIS DEFENDANT, YOU CAN RETURN A VERDICT
25 OF GUILTY? THERE MAY BE SOME -- AND FROM TIME TO TIME WE HAVE

1 THAT SITUATION WHERE BECAUSE OF A RELIGIOUS OR PHILOSOPHICAL
2 CONVICTION, A JUROR COULD NOT RETURN A VERDICT OF GUILTY
3 REGARDLESS OF THE -- OF WHAT THE FACTS SHOWED. NONE OF YOU
4 HAVE ANY PROBLEM WITH THAT? THE FIREARM IN THIS CASE THAT
5 WE'LL PRODUCE FOR YOU IS A .38 SPECIAL. ANY OF YOU HAVE .38
6 SPECIAL HANDGUNS? NONE OF YOU, NOT A ONE OF YOU. OKAY. AND
7 ARE YOU FAMILIAR WITH HOLLOW POINT -- ANY OF YOU FAMILIAR WITH
8 HOLLOW POINT BULLETS? YOU -- AND LET'S SEE, HOLLOW POINTS,
9 OKAY. I THINK MOST OF YOU ARE FAMILIAR WITH HOLLOW POINTS.
10 WHAT ABOUT THE BILLIARD PARLOR? A BEER HALL, POOL HALL,
11 LOCATED AT 12TH AND WALL NEXT TO TUNEX, I BELIEVE. JUST --
12 ARE YOU --

13 MRS. SHUPE: I'VE JUST DONE DEPOSITS FOR THEM IS ALL.
14 I DON'T KNOW THEM PERSONALLY.

15 MR. DAROCZI: OKAY. YOU DON'T KNOW WHERE IT IS?

16 MRS. SHUPE: UN-UNH. BASICALLY, BUT I DON'T KNOW THE
17 PEOPLE WHO OWN IT OR HAVE NEVER BEEN THERE.

18 MR. DAROCZI: YOU DON'T FREQUENT THERE TO PLAY POOL?
19 YOU, SIR.

20 MR. HOLDEN: I KNOW WHERE IT IS. I DON'T FREQUENT IT,
21 THOUGH.

22 MR. DAROCZI: OKAY. THERE WILL BE DISCUSSION ABOUT THE
23 WARREN HOUSE DURING THIS CASE. WARREN HOUSE APARTMENTS ARE
24 LOCATED AT 12TH AND CANYON ROAD. LET'S SEE, 12TH AND HARRISON
25 WHERE -- AS YOU GO UP THE CANYON, AND HARRISON, THERE'S A

1 CLUSTER OF APARTMENT BUILDINGS. ANY OF YOU -- ANY OF YOU LIVE
2 THERE?

3 MRS. LLOYD: I DON'T LIVE THERE, BUT MY HUSBAND DID
4 FOR ABOUT THE FIRST TWO MONTHS, HE CAME -- HE MOVED OUT HERE
5 BEFORE WE DID, AND THAT'S WHERE HE STAYED.

6 MR. DAROCZI: OKAY. ARE THERE ANY OF YOU WHO WOULD
7 RATHER NOT SERVE, NOT FOR ANY REASON OTHER THAN YOU JUST DON'T
8 WANT TO, TELL US WHAT THE -- YOU WOULD RATHER NOT SERVE AS A
9 JUROR? THAT'S ALL I HAVE.

10 THE COURT: DEFENSE:

11 MR. GODFREY: MR. GRAY AND MR. LEATHEROW, YOU SAID THAT
12 YOU HAVE READ SOMETHING IN THE PAPER ABOUT THIS CASE. DO YOU
13 THINK THAT WHAT YOU'VE READ IN THE PAPER WOULD -- HAS CAUSED
14 YOU TO ALREADY TO HAVE SOMEWHAT OF AN IDEA OF WHETHER THE
15 DEFENDANT IS GUILTY OR NOT GUILTY?

16 MR. LEATHEROW: NO.

17 MR. GODFREY: EITHER WAY?

18 MR. LEATHEROW: NO.

19 MR. GODFREY: YOU FEEL THAT IF -- IF WHAT WAS INCLUDED
20 IN THE PAPER OR THAT IF THE EVIDENCE SHOWED THAT THE PAPER WAS
21 WRONG IN WHAT IT REPORTED, THAT YOU COULD RETURN A VERDICT
22 CONSISTENT WITH WHAT THE EVIDENCE DID SHOW? BOTH OF YOU?

23 MR. LEATHEROW: (MR. LEATHEROW NODS.)

24 MR. GODFREY: IN OTHER WORDS, WHAT IS -- WHAT THE -- IS
25 WHAT YOU READ IN THE PAPER GOING TO INFLUENCE YOUR DECISION IN

1 ANY WAY?

2 MR. GRAY: NO.

3 MR. LEATHEROW: NO.

4 MR. GODFREY: BOTH OF YOU FEEL LIKE YOU COULD KEEP AN
5 OPEN MIND THROUGHOUT THIS PROCEEDING AND LISTEN TO ALL THE
6 EVIDENCE?

7 MR. GRAY: YES.

8 MR. LEATHEROW: YES.

9 MR. GODFREY: OKAY. NOW, MR. GRAY, DID I CATCH THAT
10 YOU HAVE BEEN A VICTIM OF A CRIME IN THE PAST?

11 MR. GRAY: NO, SIR.

12 MR. GODFREY: YOU SAID SOMETHING ABOUT A THEFT AT YOUR
13 HOME.

14 MR. GRAY: OH, THAT WAS JUST A NEIGHBOR KID RIPPING
15 ME OFF SOME TOOLS. HE BROUGHT THEM BACK.

16 MR. GODFREY: SO YOU WERE A VICTIM?

17 MR. GRAY: YES.

18 MR. GODFREY: OKAY. WAS THE NEIGHBOR KID EVER CHARGED
19 WITH A CRIME?

20 MR. GRAY: NO. JUVENILE.

21 MR. GODFREY: OKAY. AND THE FACT THAT YOU'VE BEEN
22 VICTIMIZED LIKE THAT, DO YOU THINK THAT WOULD INFLUENCE YOUR
23 DECISION IN ANY WAY?

24 MR. GRAY: NO, SIR.

25 MR. GODFREY: YOU WERE INVOLVED IN -- MR. GRAY, YOU

1 WERE INVOLVED IN THIS CIVIL JURY EARLIER THIS WEEK, IS THAT
2 CORRECT?

3 MR. GRAY: YES, SIR.

4 MR. GODFREY: WHO RAISED YOUR HANDS? THOSE THAT WERE
5 ON THAT SAME CIVIL JURY AS MR. GRAY, DID ALL OF YOU REACH THE
6 SAME DECISION IN THAT CIVIL JURY? JURY TRIAL? DID YOU ALL --
7 DID ANYBODY -- WELL DID ANYBODY REACH AN DIFFERENT DECISION
8 THAN THE OTHER JURY MEMBERS? YOU CAME BACK WITH A VERDICT,
9 RIGHT? WAS IT THE SAME, DID EVERYBODY AGREE ON THE VERDICT?
10 EVERYBODY THAT WAS INVOLVED IN THAT TRIAL? YES OR NO?

11 MR. HOLDEN: THE VERDICT WAS NEGOTIATED AT LENGTH.

12 MR. GODFREY: OKAY. DID YOU HAVE TO -- DID THE JURY
13 THEN HAVE TO MAKE A DECISION IN THAT TRIAL? WHEN YOU SAY
14 NEGOTIATED, DO YOU MEAN --

15 MR. HOLDEN: AMONG OURSELVES.

16 MR. GODFREY: OKAY. SO YOU ALL WORKED TOGETHER AT
17 ARRIVING AT THAT?

18 MR. HOLDEN: YES.

19 MR. GODFREY: MR. RICHAN -

20 MR. RICHAN: YES, SIR.

21 MR. GODFREY: -- YOU SAID THAT YOU WORKED WITH OFFICER
22 MILT GARRETT, IS THAT RIGHT?

23 MR. RICHAN: YES.

24 MR. GODFREY: WHAT -- CAN YOU TELL ME WHAT YOU DID WITH
25 HIM?

1 MR. RICHAN: HE WAS A PACKER, SAME AS I WAS.

2 MR. GODFREY: OH, THIS WAS --

3 MR. RICHAN: THAT WAS BEFORE -- WELL, HE WAS ON THE
4 VOLUNTARY FORCE THEN.

5 MR. GODFREY: OKAY. DID YOU KNOW HIM VERY WELL WHILE
6 YOU WERE WORKING WITH HIM?

7 MR. RICHAN: I WORKED WITH HIM PROBABLY THREE, FOUR
8 YEARS.

9 MR. GODFREY: DO YOU THINK THAT YOUR ASSOCIATION WITH
10 HIM WOULD CAUSE YOU TO HAVE ANY BIAS ONE WAY OR ANOTHER ON
11 POLICE OFFICERS' TESTIMONY?

12 MR. RICHAN: NO.

13 MR. GODFREY: DO YOU THINK YOU CAN KEEP AN OPEN MIND?

14 MR. RICHAN: YES.

15 MR. GODFREY: DO YOU THINK POLICE OFFICERS ARE ALWAYS
16 RIGHT?

17 MR. RICHAN: NO.

18 MR. GODFREY: OKAY. MR. SMITH, YOU SAID THAT YOU'D
19 BEEN ON TWO JURY TRIALS, IS THAT RIGHT?

20 MR. SMITH: YES.

21 MR. GODFREY: WERE THEY CIVIL OR CRIMINAL?

22 MR. SMITH: THEY WERE CIVIL.

23 MR. GODFREY: OKAY. HOW LONG AGO WERE THEY?

24 MR. SMITH: LAST WEEK AND ABOUT 20 YEARS AGO.

25 MR. GODFREY: OKAY. DID EITHER OF THOSE TRIALS -- OR

1 WHAT WERE THE BASIC FACTS OF THOSE TRIALS, THE ONE LAST WEEK
2 AND THEN THE OTHER ONE THAT YOU --

3 MR. SMITH: WELL, IT WAS AN ACCIDENT, INDUSTRIAL
4 ACCIDENT OR AN ACCIDENTAL SUIT BROUGHT, I GUESS.

5 MR. GODFREY: OKAY. THAT WAS THE ONE LAST WEEK?

6 MR. SMITH: UH-HUH.

7 MR. GODFREY: WAS THERE A DEATH INVOLVED IN THAT?

8 MR. SMITH: NO.

9 MR. GODFREY: WAS THERE AN INJURY?

10 MR. SMITH: YES.

11 MR. GODFREY: OKAY. WAS IT A NEGLIGENCE TYPE OF
12 ACCIDENT?

13 MR. SMITH: YES.

14 MR. GODFREY: AND THE OTHER JURY TRIAL THAT YOU'VE BEEN
15 ON --

16 MR. SMITH: IT WAS A -- I THINK PARTS OF -- THEFT
17 FROM AN AUTOMOBILE.

18 MR. GODFREY: OKAY. BUT IT WAS A CIVIL TRIAL, NOT A
19 CRIMINAL?

20 MR. SMITH: YES. I GUESS, YES.

21 MR. GODFREY: DID YOU HAVE TO FIND THAT PERSON GUILTY
22 OR NOT GUILTY?

23 MR. SMITH: YES.

24 MR. GODFREY: DO YOU REMEMBER HOW YOU DECIDED IN THAT
25 CASE?

1 MR. SMITH: I DON'T QUITE -- I THINK IT WAS GUILTY.

2 MR. GODFREY: MRS. BYBEE, YOU SAID THAT -- YOU
3 DESCRIBED FOR THE PROSECUTOR AND ALSO FOR THE COURT A LITTLE
4 BIT OF YOUR FEELING OF BEING UNCOMFORTABLE. DO YOU THINK
5 THAT'S -- IS THE UNCOMFORTABLENESS THAT YOU FEEL BECAUSE YOU
6 ARE A JUROR OR BECAUSE OF JUST WHAT THE EVIDENCE MUST SHOW?

7 MRS. BYBEE: MAYBE A LITTLE OF BOTH.

8 MR. GODFREY: A LITTLE OF BOTH. BUT DO YOU THINK THAT
9 IF YOU WERE CALLED AND SWORN IN AS A JUROR TO HEAR THE CASE
10 THAT YOU COULD KEEP AN OPEN MIND AND LISTEN TO ALL THE
11 EVIDENCE BEFORE YOU REACHED A DECISION?

12 MRS. BYBEE: I THINK SO.

13 MR. GODFREY: MR. HADLEY, YOU SAID THAT YOU'VE HAD A
14 DAUGHTER KILLED BY A CAR ACCIDENT --

15 MR. HADLEY: YES.

16 MR. GODFREY: -- IS THAT CORRECT? WAS SHE ALSO IN A --
17 IN THE CAR?

18 MR. HADLEY: NO, SHE WASN'T. SHE WAS WAITING FOR A
19 SCHOOL BUS, GOT IN THE ROAD TO SEE IF SHE COULD SEE IT COMING,
20 AND WAS STRUCK BY A CAR.

21 MR. GODFREY: OKAY. WAS THERE CRIMINAL CHARGES BROUGHT
22 AGAINST THE DRIVER OF THE CAR?

23 MR. HADLEY: NO, THERE WASN'T.

24 MR. GODFREY: IT WAS AN ACCIDENT?

25 MR. HADLEY: YES.

1 MR. GODFREY: HOW LONG AGO DID THIS HAPPEN?

2 MR. HADLEY: A LITTLE LESS THAN TWO YEARS.

3 MR. GODFREY: TWO YEARS AGO?

4 MR. HADLEY: YES.

5 MR. GODFREY: DO YOU THINK THAT THE DEATH OF YOUR
6 DAUGHTER, KNOWING, YOU KNOW, THE REMORSE OR THE GRIEF THAT YOU
7 WENT THROUGH AT HER LOSS, DO YOU THINK THAT THAT WOULD SWAY
8 YOU IN ANY WAY KNOWING THAT THE DEFENDANT HAS BEEN CHARGED
9 WITH KILLING SOMEONE'S SON?

10 MR. HADLEY: I DON'T THINK IT WOULD SWAY ME, BUT I --
11 I KNOW SOMEWHAT WHAT THEY FELT.

12 MR. GODFREY: DO YOU THINK WHAT THEY FELT WOULD CAUSE
13 YOU OR WOULD MAKE YOU MORE INCLINED TO FIND THE DEFENDANT
14 GUILTY?

15 MR. HADLEY: I THINK THE EVIDENCE IS THE ONLY THING
16 THAT, YOU KNOW, IF A PERSON IS INNOCENT OR GUILTY OR UNLESS
17 YOU'RE SAYING THERE'S A CERTAIN DEGREE OF INNOCENCE OR GUILT,
18 THEN I -- LIKE I SAID, IT HAS TO BE WEIGHED BY THE EVIDENCE.

19 MR. GODFREY: SO YOU FEEL YOU COULD LISTEN TO ALL THE
20 EVIDENCE BEFORE YOU MADE THAT DECISION?

21 MR. HADLEY: YES, I THINK SO.

22 MR. GODFREY: AND YOU THINK THAT YOU COULD CONFINE YOUR
23 DECISION TO THE EVIDENCE THAT'S PRESENTED?

24 MR. HADLEY: YES.

25 MR. GODFREY: OKAY. YOU SAID THAT YOU WERE A NEIGHBOR

1 TO OFFICER VANBEEKUM?

2 MR. HADLEY: I'M A NEIGHBOR TO RON VANBEEKUM, AND
3 THE -- THEY SAY IT'S RUDY THAT'S --

4 MR. GODFREY: IS RON ALSO A POLICE OFFICER?

5 MR. HADLEY: YES, HE IS.

6 MR. GODFREY: HOW -- WHAT'S YOUR RELATIONSHIP WITH HIM?

7 MR. HADLEY: HE JUST -- HE LIVES ON THE NEXT BLOCK
8 AND --

9 MR. GODFREY: DO YOU HAVE ANY SOCIAL ACQUAINTANCE?

10 MR. HADLEY: I HAVE BEEN TO A FEW WARD PARTIES WITH
11 HIM AND THINGS. HIS WIFE HAS PROBLEMS WHEN SHE'S IN ABOUT HER
12 SIXTH MONTH OF PREGNANCY, SO THE NEIGHBORHOOD KIND OF HAS TO
13 GET TOGETHER AND HELP HER AND HIM WHILE THEY GET THROUGH THE
14 LAST TRIMESTER OR WHATEVER SO --

15 MR. GODFREY: DO YOU THINK THAT YOUR RELATIONSHIP WITH
16 HIM WOULD CAUSE YOU ANY PROBLEM? KNOWING THAT HE'S A POLICE
17 OFFICER AND THAT THERE WILL BE POLICE OFFICERS TESTIFYING IN
18 THIS CASE? WOULD YOU BE MORE INCLINED TO BELIEVE THE POLICE
19 OFFICERS BECAUSE OF YOUR RELATIONSHIP WITH OFFICER VANBEEKUM?

20 MR. HADLEY: NO.

21 MR. GODFREY: YOU SAID ALSO THAT YOU PARTICIPATED IN A
22 GRAND LARCENY CASES?

23 MR. HADLEY: YES, I DID.

24 MR. GODFREY: YOU WERE A JUROR ON THAT?

25 MR. HADLEY: YES.

1 MR. GODFREY: DO YOU REMEMBER WHAT YOUR DECISION WAS IN
2 THAT CASE?

3 MR. HADLEY: YES. WE -- THIS WAS JUST ABOUT THE TIME
4 THE LAW HAD BEEN CHANGED RAISING THE LIMITS OF PETTY LARCENY,
5 AND THERE WASN'T A REAL ARGUMENT ON GUILT, IT WAS MORE ON
6 WHETHER OR NOT IT SHOULD HAVE BEEN A LESSER CHARGE OR -- AND
7 HE WAS FOUND GUILTY OF GRAND LARCENY.

8 MR. GODFREY: THE HIGHER CHARGE, NOT THE LESSER CHARGE?

9 MR. HADLEY: YES.

10 MR. GODFREY: NOW, MRS. SHUPE, YOU ALSO SAID THAT YOU
11 KNEW RON VANBEEKUM, IS THAT RIGHT?

12 MRS. SHUPE: YES, I DO.

13 MR. GODFREY: WHAT'S --

14 MRS. SHUPE: I HAVEN'T -- I HAVEN'T TALKED TO HIM FOR
15 PROBABLY ABOUT TEN YEARS. I DID GROW UP WITH HIM, THOUGH.

16 MR. GODFREY: YOU GREW UP WITH HIM?

17 MRS. SHUPE: (MRS. SHUPE NODS.)

18 MR. GODFREY: DO YOU THINK THAT THAT WOULD CAUSE YOU
19 ANY PROBLEMS ON --

20 MRS. SHUPE: NO, I --

21 MR. GODFREY: -- AS FAR AS BEING FAIR OR ANYTHING?

22 MRS. SHUPE: I CAN'T SEE ANY.

23 MR. GODFREY: OKAY. DO YOU THINK THAT YOU COULD
24 CONFINE YOUR DECISION TO THE EVIDENCE THAT'S PRODUCED AT THE
25 TRIAL?

1 MRS. SHUPE: I FEEL LIKE I COULD, YES.

2 MR. GODFREY: OKAY. AND YOU SAID THAT YOU DO DEPOSITS
3 FOR THE BILLIARD PARLOR, IS THAT RIGHT?

4 MRS. SHUPE: I DID, BUT IT'S BEEN PROBABLY FIVE YEARS
5 THAT I'VE WORKED AT THAT BRANCH.

6 MR. GODFREY: BUT YOU HAVEN'T HAD ANY CONTACT WITH
7 ANYBODY THAT WORKS THERE?

8 MRS. SHUPE: NO, I HAVEN'T.

9 MR. GODFREY: MRS. MCBRIDE, YOU SAID THAT YOU HAVE FOUR
10 CHILDREN, IS THAT RIGHT?

11 MRS. MCBRIDE: YES, SIR.

12 MR. GODFREY: ARE THEY -- HOW OLD ARE THEY?

13 MRS. MCBRIDE: THEY'RE ALL MARRIED. THE YOUNGEST IS 37.

14 MR. GODFREY: OKAY. HAVE YOU -- YOU SAID THAT YOU
15 DIDN'T KNOW ANYTHING ABOUT THIS CASE?

16 MRS. MCBRIDE: I NEVER HEARD OF IT AT ALL.

17 MR. GODFREY: YOU HAVEN'T READ ABOUT IT IN THE PAPER?

18 MRS. MCBRIDE: IF I HAVE, I CAN'T REMEMBER IT.

19 MR. GODFREY: OKAY. MRS. LLOYD, YOU SAID THAT YOU WERE
20 IN THE SAME WARD FOR A WHILE WITH CHRIS DAVIS, IS THAT RIGHT?

21 MRS. LLOYD: THAT'S CORRECT.

22 MR. GODFREY: DID YOU -- DID YOU HAVE ANY SOCIAL
23 CONTACT WITH THE DAVIS FAMILY?

24 MRS. LLOYD: OTHER THAN CHURCH MEETINGS, CHRIS WAS IN
25 MY HOME, I HAVE DAUGHTERS HIS AGE, AND THEY WERE FRIENDS.

1 MR. GODFREY: HE'S BEEN IN YOUR HOME?

2 MRS. LLOYD: YEAH.

3 MR. GODFREY: DID YOU EVER TEACH HIM OR ANYTHING OR --

4 MRS. LLOYD: NO.

5 MR. GODFREY: -- SUPERVISE HIM IN ANY OF THE CHURCH

6 FUNCTIONS?

7 MRS. LLOYD: NO.

8 MR. GODFREY: OKAY. HOW OLD WAS HE AT THE TIME, DO YOU

9 REMEMBER?

10 MRS. LLOYD: WELL, I REMEMBER THAT KAREN WAS A SENIOR

11 IN HIGH SCHOOL, KATHERINE WAS A JUNIOR, AND LESLIE WAS A

12 SOPHOMORE. AND HE'S IN THERE SOMEWHERE.

13 MR. GODFREY: SO --

14 MR. DAVIS: IF IT'S ANY CONSOLATION, I WAS A SENIOR.

15 MRS. LLOYD: OKAY.

16 MR. DAVIS: BUT I HAD CONTACT WITH KAREN AND KATHY.

17 MR. GODFREY: WHAT WAS YOUR IMPRESSION OF HIM?

18 MRS. LLOYD: NICE KID.

19 MR. GODFREY: DO YOU THINK KNOWING THAT HE'S HERE

20 REPRESENTING THE STATE, PARTICIPATING IN REPRESENTING THE

21 STATE, DO YOU THINK THAT IN YOUR -- YOUR ASSOCIATION WITH HIM,

22 DO YOU THINK THAT WOULD CAUSE YOU ANY -- OR CAUSE YOU TO BE

23 SWAYED TO ONE SIDE OR TO HIS SIDE BASICALLY?

24 MRS. LLOYD: NO. NO, I GUESS YOU WERE A NICE KID WHEN

25 YOU WERE THAT AGE, TOO, BUT IT'S BEEN A LONG TIME SINCE I SAW

1 HIM. I'VE HAD NO PERSONAL CONNECTION WITH HIM FOR A LONG
2 TIME.

3 MR. GODFREY: HE COULD HAVE CHANGED?

4 MRS. LLOYD: HE COULD HAVE CHANGED, YEAH.

5 MR. DAVIS: I HOPE NOT.

6 MR. GODFREY: NOW, YOU SAID THAT YOUR FAMILY HAS --
7 SOME OF YOUR FAMILY HAS BEEN IN POLICE OFFICER WORK. ARE ANY
8 OF THEM CURRENTLY?

9 MRS. LLOYD: NO. MY UNCLES ARE WAY PAST THAT AGE AND
10 SO IS MY FATHER-IN-LAW.

11 MR. GODFREY: YOUR SON WAS WHEN HE WAS IN THE AIR
12 FORCE, BUT HE'S --

13 MRS. LLOYD: HE WAS IN THE AIR FORCE.

14 MR. GODFREY: BUT HE'S BEEN OUT FOR HOW LONG?

15 MRS. LLOYD: FIVE YEARS.

16 MR. GODFREY: DO YOU SEE ANY PROBLEM WITH THAT?

17 MRS. LLOYD: NO.

18 MR. GODFREY: THE FACT THAT YOUR FAMILY HAS BEEN IN LAW
19 ENFORCEMENT?

20 MRS. LLOYD: NO. BECAUSE AS I SAID, MY FATHER-IN-LAW
21 WAS THERE BEFORE I EVER GOT MARRIED, AND SO THAT'S HISTORY.
22 THAT'S IN THE FAMILY -- FAMILY TALKING OCCASIONALLY. AND MY
23 UNCLES, I WAS SO YOUNG WHEN THEY WERE IN IT, IT WAS JUST
24 ROMANTIC, IF YOU WANT TO CALL IT THAT, THEY HAD UNIFORMS ON.
25 I DIDN'T KNOW ANYTHING ABOUT WHAT WAS GOING ON.

1 MR. GODFREY: MR. HOLDEN, DID YOU -- WHEN YOU WERE A
2 POLICE OFFICER, DID YOU EVER ARREST ANYBODY THAT YOU DIDN'T
3 THINK WAS GUILTY?

4 MR. HOLDEN: YES.

5 MR. GODFREY: DO YOU THINK THAT -- DO YOU REALIZE THAT
6 THERE ARE TWO SIDES TO EVERY CASE, RIGHT?

7 MR. HOLDEN: THAT'S CORRECT.

8 MR. GODFREY: AND DO YOU UNDERSTAND THAT THE STATE IS
9 THE ONE THAT HAS THE BURDEN TO PROVE THAT THE DEFENDANT
10 COMMITTED THIS CRIME?

11 MR. HOLDEN: (MR. HOLDEN NODS.)

12 MR. GODFREY: AND YOU UNDERSTAND THAT THE STATE DOES
13 GET TO GO FIRST WITH THEIR CASE?

14 MR. HOLDEN: YES.

15 MR. GODFREY: AND DO YOU FEEL THAT YOU CAN -- EVEN WITH
16 YOUR JOB AS A FORMER POLICE OFFICER AND THE FACT THAT THE
17 STATE GETS TO GO FIRST, DO YOU THINK YOU CAN HOLD OFF MAKING A
18 DECISION AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT UNTIL
19 AFTER YOU HEAR ALL OF THE EVIDENCE?

20 MR. HOLDEN: I BELIEVE ONE OF THE CHARGES WE RECEIVE
21 IS THAT WE WILL NOT CHOOSE OR DECIDE THE CASE UNTIL AFTER, AND
22 I BELIEVE I CAN DO THAT, YES.

23 MR. GODFREY: DO YOU THINK YOU CAN BE FAIR?

24 MR. HOLDEN: I THINK SO. I SHOULD HOPE SO.

25 MR. GODFREY: LET ME TURN TO SOME GENERAL QUESTIONS FOR

1 ALL OF YOU. YOU'VE HEARD ME TALK TO MR. HOLDEN ABOUT THIS.
2 YOU REALIZE THAT -- ALL OF YOU REALIZE THAT THE STATE DOES
3 HAVE THE BURDEN IN THIS CASE, THEY HAVE TO PROVE THAT THE
4 ELEMENTS, EACH AND EVERY ELEMENT TO CONSTITUTE THE CRIME, THAT
5 THE DEFENDANT HAS COMMITTED OR BEEN CHARGED WITH COMMITTING,
6 HAS OCCURRED, AND DO YOU THINK THAT YOU CAN WAIT UNTIL ALL --
7 OR DO ANY OF YOU HAVE A FEELING THAT YOU WOULD NOT BE ABLE TO
8 MAKE A DECISION BASED ON ALL THE EVIDENCE? DO ANY OF YOU FEEL
9 THAT YOU WOULD BE UNABLE TO KEEP AN OPEN MIND UNTIL YOU'VE
10 HEARD THE DEFENDANT'S SIDE OF THE STORY? ANY OF YOU HAVE ANY
11 PROBLEMS WITH THAT? DO YOU THINK THAT IF YOU FIND IN THIS
12 CASE THAT THE DEFENDANT -- OR THAT THE STATE HAS NOT PROVED
13 EACH AND EVERY ELEMENT, DO YOU THINK THAT YOU COULD FIND THE
14 DEFENDANT -- OR DO ANY OF YOU -- EXCUSE ME, LET ME START OVER
15 ON THAT QUESTION. IF YOU FIND THAT THE STATE HAS NOT PROVED
16 EACH AND EVERY ELEMENT OF THE CASE, BUT PERHAPS THEY HAVE
17 PROVED SOME OTHER CRIME HAS BEEN COMMITTED, WOULD ANY OF YOU
18 HAVE PROBLEMS IN FINDING THE DEFENDANT GUILTY OF THE LESSER
19 CRIME RATHER THAN THE CRIME THAT HE'S CHARGED WITH? DO YOU
20 THINK, ALL OF YOU THINK THAT YOU COULD DO THAT?

21 DO EACH AND EVERY ONE OF YOU AGREE THAT IF YOU'RE CALLED
22 TO SIT ON THIS JURY THAT YOU WOULD BE ABLE TO HOLD TO -- HOLD
23 THE STATE TO THE STANDARD OF PROVING THE ELEMENTS BEYOND A
24 REASONABLE DOUBT? EVERYBODY'S FAMILIAR WITH THAT STATEMENT,
25 RIGHT? BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND WHAT

1 THAT MEANS? OR HAVE AN IDEA? THAT THE STATE -- THAT IF THERE
2 IS ANY DOUBT IN YOUR MIND AS TO WHETHER THE DEFENDANT IS
3 GUILTY, THAT IF THAT DOUBT IS REASONABLE, THAT YOU HAVE TO
4 FIND HIM NOT GUILTY? DO EACH OF YOU THINK THAT IF THE
5 EVIDENCE RAISES THAT TYPE OF A DOUBT IN YOUR MIND THAT YOU
6 COULD FIND THE DEFENDANT NOT GUILTY?

7 MAYBE THE STATE SHOULD HAVE DONE THIS, PAM, BUT DO YOU
8 THINK THAT WE -- WE'VE KNOWN EACH OTHER FOR EVER SINCE I'VE
9 MOVED INTO THE NEIGHBORHOOD. DO YOU THINK THAT THE
10 RELATIONSHIP, SOCIAL RELATIONSHIP WE'VE HAD BETWEEN YOUR
11 FAMILY AND MY FAMILY WOULD CAUSE YOU ANY PROBLEMS?

12 MRS. CAMPBELL: NO.

13 MR. GODFREY: DO YOU THINK YOU COULD BE FAIR AND TO
14 LISTEN TO ALL OF THE EVIDENCE?

15 MRS. CAMPBELL: YES.

16 MR. GODFREY: THANK YOU.

17 THE COURT: ARE THERE ANY FURTHER QUESTIONS?

18 MR. DAROCZI: IF I MAY, YOUR HONOR, I HAVE A COUPLE
19 MORE.

20 THE COURT: ALL RIGHT.

21 MR. DAROCZI: HAVE ANY OF YOU HAD MAYBE SOME BAD
22 EXPERIENCES WITH POLICE, SUCH AS MAYBE A TICKET YOU FEEL YOU
23 DIDN'T DESERVE, THAT WOULD -- WHERE YOU STILL HAVE A BAD TASTE
24 IN YOUR MOUTH ABOUT THAT AND YOU HOLD THAT AGAINST THE POLICE
25 HERE IN THIS CASE? HOW ABOUT THE COUNTY ATTORNEY'S OFFICE, MY

1 OFFICE, HAVE YOU -- HAVE ANY OF YOU HAD RUN-INS WITH THE
2 COUNTY ATTORNEY'S OFFICE OR SOME EXPERIENCE, UNPLEASANT
3 EXPERIENCE? I DON'T KNOW, HAVE YOU -- AND ALL OF YOU WILL
4 ACCEPT THE LAW, THE JUDGE WILL GIVE YOU THE LAW, WILL READ THE
5 LAW TO YOU AT THE END OF THIS CASE THAT YOU HAVE TO ACCEPT.
6 DO ALL OF YOU AGREE THAT YOU WILL ACCEPT THAT LAW AND UPHOLD
7 IT AND APPLY IT TO THE FACTS OF THIS CASE REGARDLESS OF HOW
8 YOU PERSONALLY FEEL? AND, MRS. CAMPBELL, IF YOU VOTE GUILTY
9 IN THIS CASE. WOULD YOU BE EMBARRASSED TO FACE TED AT THE
10 NEXT --

11 MRS. CAMPBELL: CERTAINLY NOT.

12 MR. DAROCZI: -- NEXT MEETING? THANK YOU. THAT'S ALL.

13 MR. GODFREY: LET ME ASK A SIMILAR QUESTION TO WHAT
14 YOU'VE BEEN ASKED BY THE STATE. DO ANY OF YOU THINK THAT THE
15 FACT THAT THE DEFENDANT IS REPRESENTED BY THE PUBLIC
16 DEFENDER'S OFFICE, THAT THAT WOULD CAUSE YOU PROBLEMS IN
17 FINDING HIM NOT GUILTY? ANYBODY?

18 THE COURT: SUPPLY YOUR LIST.

19 MR. GODFREY: YOUR HONOR, COULD WE APPROACH THE BENCH?

20 THE COURT: YES.

21 (WHEREUPON A CONFERENCE WAS HELD AT THE
22 BENCH.)

23 MR. DAROCZI: THE STATE PASSES FOR CAUSE, BY THE WAY,
24 YOUR HONOR.

25 THE COURT: SUPPLY YOUR LIST. WHAT'S GOING TO HAPPEN

1 NOW, EACH SIDE GETS TO EXCUSE FOUR OF YOU WITHOUT GIVING ANY
2 REASON, THEN THOSE EIGHT WILL LEAVE AND TH OTHER EIGHT WILL BE
3 SITTING THERE. THEN THE JUDGE WILL GET AN ALTERNATE JUROR.
4 SO THE JURORS THAT ARE STILL SITTING OUT THERE, THERE'S SIX OF
5 YOU, HE'LL CALL THREE OF YOU IN JUST A FEW MINUTES, AND
6 THEY'LL CHOOSE AN ALTERNATE JUROR. AN ALTERNATE JUROR IS JUST
7 A JUROR THAT SITS THROUGH THE TRIAL, AND IF ANYBODY GETS SICK,
8 HE TAKES THEIR PLACE.

9 MR. DAVIS IS GOING TO CALL THE NAMES OF THE JURORS THAT
10 WERE NOT CHALLENGED. IF YOUR NAME IS CALLED, IT MEANS YOU'RE
11 GOING TO TRY THE CASE. STAND AND REMAIN STANDING SO THAT WE
12 ALL UNDERSTAND ONE ANOTHER. IF HE DOES NOT CALL YOUR NAME, IT
13 MEANS SOMEBODY CHALLENGED YOU AND WE'LL BE EXCUSING YOU IN A
14 FEW MINUTES.

15 THE CLERK: NUMBER 1 IS ROBERT GRAY. 2, LAMAR
16 LEATHEROW. 3, ALBERT RICHAN. 4, PAMELA CAMPBELL. 5, RENEEN
17 ANDREWS. 6, RICHARD HADLEY. 7, NANCY SHUPE. AND EIGHT, DALE
18 BAIRD.

19 THE COURT: IS THERE ANY QUESTION FROM PLAINTIFF THAT
20 THIS IS THE JURY?

21 MR. DAROCZI: NO, YOUR HONOR.

22 THE COURT: FROM DEFENSE?

23 MR. GODFREY: NO, YOUR HONOR.

24 THE COURT: ALL RIGHT. THE OTHER EIGHT THAT ARE
25 SEATED MAY GO, BUT THE SIX THAT ARE OUT IN THE AUDIENCE MUST

1 STAY WITH US FOR A FEW MINUTES. SEAT THESE EIGHT. DO NOT
2 SWEAR THEM, BUT SEAT THEM.

3 (WHEREUPON AN ALTERNATE JUROR WAS
4 SELECTED.)

5 *****

6 OGDEN, UTAH AUGUST 19, 1987 2:00 P.M.

7 THE COURT: STATE OF UTAH VERSUS COBB, HANK COBB.
8 HAVE YOU SEEN THE INFORMATION THAT I WAS PROVIDED WITH?

9 MR. GODFREY: YES, YOUR HONOR.

10 THE COURT: WHAT DO YOU SAY ABOUT THAT INFORMATION?

11 MR. GODFREY: YOUR HONOR, THE ONLY DISPUTE THAT WE HAD
12 WITH IT, THAT MR. COBB WANTED ME TO BRING TO YOUR ATTENTION,
13 IS THAT ON THE -- IN THE STATEMENT WHERE IT SAYS THAT HE WAS
14 PUT ON PROBATION FOR DESTRUCTION OF PROPERTY, DURING THE EIGHT
15 MONTHS THAT THE DEFENDANT WAS ON PROBATION, HE WAS ARRESTED
16 THREE SEPARATE TIMES FOR PUBLIC INTOX, TRESPASS, AND ASSAULT.
17 MR. COBB DISPUTES THE PUBLIC INTOXICATION ONE. HE, AND I
18 BELIEVE THE RECORD INDICATES, THAT THE HARRISVILLE COURT HAD
19 NO DISPOSITION, AND I THINK THAT WOULD SUBSTANTIATE HIS
20 RECOLLECTION THAT HE HAD THAT HE WAS NOT ARRESTED FOR PUBLIC
21 INTOXICATION. BUT OTHER THAN THAT, THE REPORT, WE HAVE NO
22 DISPUTE WITH IT.

23 THE COURT: WHAT DOES HE SAY ABOUT THE RESTITUTION
24 FIGURES IN THAT REPORT?

25 MR. GODFREY: WE'RE NOT GOING TO DISPUTE THAT.

1 THE COURT: DOES THE STATE HAVE ANY COMMENT THEY WISH
2 TO MAKE IN THIS MATTER?

3 MR. DAINES: OTHER THAN THE CRIME SENTENCES ITSELF, WE
4 WOULD SUBMIT IT, YOUR HONOR.

5 THE COURT: DEFENSE HAVE ANYTHING ELSE THEY WANT TO
6 SAY?

7 MR. GODFREY: NO, YOUR HONOR.

8 THE COURT: VERY WELL. THE COURT HERE SENTENCES THE
9 DEFENDANT TO SERVE A TERM OF NOT LESS THAN FIVE YEARS AND
10 WHICH MAY BE FOR LIFE IN THE UTAH STATE PRISON. THE COURT
11 WILL -- ON THE MISDEMEANOR CHARGE, THE COURT WILL SENTENCE THE
12 DEFENDANT TO SERVE 90 DAYS IN THE COUNTY JAIL. THE COURT WILL
13 PROVIDE THAT THE SENTENCE MAY BE SERVED CONCURRENTLY WITH THE
14 PRISON SENTENCE HERE PASSED. THE RESTITUTION FIGURE, THE
15 COURT ACCEPTS. \$6,000 PLUS DOLLARS.

16 MR. DAINES: YOUR HONOR, DOES YOUR HONOR NOTE THAT IN
17 THE -- ON PAGE FOUR OF THE PRE-SENTENCE REPORT, THERE ARE
18 VARIOUS COSTS THERE, AND THEY ADD UP TO MORE THAN \$6,000?
19 THEY SAY RESTITUTION IN THIS CASE TOTALS \$6,000. THE
20 BREAKDOWN IS AS FOLLOWS: AND IT COMES OUT TO \$10,799 --

21 THE COURT: LET ME SEE MY REPORT.

22 MR. DAROCZI: THIS IS THE COURT'S REPORT. THANK YOU,
23 YOUR HONOR. I'VE ADDED UP THE FIGURES. THERE'S AN
24 ARITHMETICAL MISTAKE THERE.

25 MR. GODFREY: ARE ANY OF THE FIGURES INCORRECT?

1 MR. DAROCZI: PARDON ME?

2 MR. GODFREY: ARE ANY OF THE FIGURES INCORRECT?

3 MR. DAROCZI: LEAVING OFF THE LAST TWO ITEMS, STILL THE
4 FIGURES ADD UP TO OVER \$10,000.

5 THE COURT: IS THE ARITHMETIC CORRECT THAT IT'S
6 \$10,799.23?

7 MR. DAROCZI: WITH THE LAST TWO ITEMS BEING LEFT OFF,
8 YOUR HONOR.

9 THE COURT: THE LAST TWO ITEMS WOULD NOT BE -- COME
10 UNDER THE STATUTORY DEFINITION OF RESTITUTION. WHAT DO YOU
11 SAY AS TO THAT?

12 MR. GODFREY: WE AGREE, YOUR HONOR. WHATEVER ONE AND
13 ONE ADDS UP TO, THAT'S WHAT WE'LL TAKE AS THE --

14 THE COURT: IT'S OBVIOUSLY OVER SIX. THERE'S ALMOST
15 THREE IN THE HOSPITAL AND -- AND ALMOST FIVE IN THE MORTUARY.

16 MR. GODFREY: WHATEVER THE FIGURE IS, YOUR HONOR,
17 WITHOUT THOSE LAST TWO.

18 THE COURT: THE COURT SETS RESTITUTION AT \$10,799.23.
19 PURSUANT TO THE CONVERSATION THAT WAS HELD BEFORE, THE COURT
20 WILL START THE SENTENCES THE DATE OF CONVICTION.

21 MR. GODFREY: THANK YOU, YOUR HONOR.

22 MR. DAROCZI: YOUR HONOR, WE'D ASK THAT THE COURT
23 IMPOSE A FIVE-YEAR SENTENCE FOR THE USE OF A GUN.

24 THE COURT: THE COURT WILL SENTENCE THE -- COME BACK.
25 THE COURT WILL SENTENCE THE DEFENDANT TO AN ADDITIONAL FIVE

1 YEARS ON THE --

2 MR. GODFREY: WELL, YOUR HONOR, WE'D LIKE TO ADDRESS
3 THAT. YOUR HONOR HEARD THE TRIAL. AND ON THE ONE TO FIVE
4 ENHANCEMENT, WE WOULD ASK YOUR HONOR TO SENTENCE HIM TO LESS
5 THAN THE FIVE YEARS, OR LESS THAN THE FIVE-YEAR ENHANCEMENT.
6 THE TRIAL INDICATED THAT THERE WERE SOME -- THERE WERE SOME
7 MITIGATING CIRCUMSTANCES INVOLVED IN THIS. MR. COBB WAS UNDER
8 SOME STRESSFUL TIME. YOUR HONOR HEARD ALL OF THE EVIDENCE ON
9 THAT POINT. THERE WAS ALSO SOME INDICATION THAT -- WELL, THE
10 EVIDENCE WAS CLEAR THAT MR. COBB DID NOT START THAT FIGHT THAT
11 EVIDENTLY ENDED IN MR. -- MR. WILSON'S DEATH. WE WOULD ASK
12 FOR THAT REASON, YOUR HONOR, THAT FOR THOSE REASONS, THAT YOU
13 WOULD IMPOSE LESS THAN THE FIVE YEARS. AS I UNDERSTAND IT,
14 FIVE YEARS IS THE MAXIMUM BASED ON VERY AGGRAVATING
15 CIRCUMSTANCES, AND I DON'T THINK THERE ARE ANY IN THIS CASE.

16 THE COURT: THE COURT FINDS THAT HE DELIBERATELY
17 ARMED HIMSELF FOR JUST SUCH AN EVENTUALITY. THE COURT WILL
18 REQUIRE THE FIVE YEARS.

19 MR. GODFREY: WELL, IF IT'S ONLY BECAUSE HE HAS A GUN,
20 YOUR HONOR, I DON'T THINK THAT'S REASON ENOUGH UNDER THE
21 STATUTE. OTHERWISE, IT WOULD BE JUST A STRAIGHT FIVE-YEAR
22 ENHANCEMENT FOR USE OF A GUN.

23 THE COURT: THE COURT NOTES PREVIOUS OFFENSES
24 INVOLVING VIOLENCE AND ALSO A USE OF FIREARMS.

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CERTIFICATE

STATE OF UTAH)
) SS
COUNTY OF WEBER)

THIS IS TO CERTIFY THAT THE FOREGOING 43 PAGES OF
TRANSCRIPT CONSTITUTE A TRUE AND ACCURATE RECORD OF THE
PROCEEDINGS TO THE BEST OF MY KNOWLEDGE AND ABILITY AS A
CERTIFIED SHORTHAND REPORTER IN AND FOR THE STATE OF UTAH.

DATED AT OGDEN, UTAH THIS 10TH DAY OF MARCH 1988.

Dean C. Olsen
DEAN C. OLSEN