

2003

Utah v. Ellroy Tillman : Brief of Appellant Addenda

Utah Supreme Court

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IN THE SUPREME COURT OF UTAH

STATE OF UTAH, :

Appellant/Respondent, : Case No. 20030148-SC

v. :

ELROY TILLMAN, :

Appellee/Petitioner. :

BRIEF OF APPELLANT ADDENDA

APPEAL FROM AN ORDER GRANTING A PETITION FOR POST-
CONVICTION RELIEF IN THE THIRD JUDICIAL DISTRICT COURT IN
AND FOR SALT LAKE COUNTY, UTAH, THE HONORABLE LESLIE A
LEWIS PRESIDING.

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Addenda

Addendum A

**IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH**

JAN 28 2003

SALT LAKE COUNTY

By Deputy Clerk

ELROY V. TILLMAN

Petitioner,

vs.

STATE OF UTAH,

Respondent

**RULING ON PETITION FOR
POST-CONVICTION RELIEF**

Case No

010908894

Honorable Leslie A. Lewis

This case is before the court on a Petition for Post-Conviction Relief. An evidentiary hearing on Petitioner's discovery violation claim was held on December 16 and 17, 2002. The court has reviewed the parties' memoranda and accompanying documents, the relevant case law, and all applicable statutory provisions. Additionally, the court has thoroughly considered the evidence presented and the arguments provided by counsel at the evidentiary hearing. Now being fully advised, the court addresses the facts and makes the following ruling:

Procedural History

Petitioner was convicted by a jury of capital murder in the death of Mark Schoenfeld on January 14, 1983. On January 20, 1983, following a penalty hearing, he was sentenced to death. Petitioner has subsequently taken advantage of and exhausted all avenues for relief in both state and federal courts. Following the denial of his writ of certiorari by the United States Supreme Court, an execution date was set for June 24, 2001. On May 5, 2001, Petitioner filed a petition for commutation of his death sentence before the Board of Pardons. In connection with that petition, and in compliance with an order from the Chairman of the Board of Pardons, the State provided counsel with two previously undisclosed partial transcripts of audiotaped interviews conducted by Sgt. Ken Thirsk in conjunction with his polygraph examinations of Carla Sagers. Due to health problems of Petitioner's

counsel, the commutation hearing was vacated and a new execution date of October 12, 2001 was set. By stipulation of the parties, this execution date was stayed. Petitioner filed his current petition for post-conviction relief on September 11, 2001. The State filed its response on February 19, 2002.

Two claims were asserted by Petitioner in his petition: First, that the prosecution violated his rights under the Due Process Clause of the Fourteenth Amendment by failing to disclose exculpatory evidence contained in the recently disclosed partial transcripts; and second, that the prosecutor improperly injected religion into his closing argument at the penalty phase, also in violation of the Fourteenth Amendment. Petitioner requested that an evidentiary hearing be convened for the purpose of presenting evidence on these claims. The State responded on July 17, 2002, with a Motion to Strike Evidentiary Hearing Date. On August 30, 2002, the court dismissed Petitioner's second claim as being procedurally barred. The court also concluded, however, that important factual issues related to the discovery violation claim were still in dispute and, therefore, that an evidentiary hearing would be necessary. This hearing was held on December 16 and 17, 2002.

Summary of the Parties' Arguments

Petitioner argues in the memorandum accompanying his petition that he is entitled to either a new trial, as to both his conviction and his sentence, or a reduction of his death sentence to life in prison, because the State violated his rights under the Due Process Clause of the Fourteenth Amendment by failing to provide trial counsel with critical impeachment and exculpatory evidence contained in the recently disclosed partial transcripts. According to Petitioner, the rule articulated in *Brady v. Maryland*, 373 U.S. 83 (1963), addressing the standard applicable to the non-disclosure of exculpatory evidence, was violated by the State. Petitioner contends that the standard was violated because the suppressed evidence was of such a nature that had it been presented to the jury, there is a *reasonable probability* that the guilt

and penalty phases of the trial would have been different¹ In addition, during oral argument at the evidentiary hearing, Petitioner also asserted that the prosecutor adduced false testimony from a witness during the trial and, therefore, he is entitled to relief “if there is any reasonable likelihood that the false testimony *could* have affected the judgment of the jury ” *United States v. Agurs*, 427 U S 97, 103 (1976) (emphasis added) (citing *Giglio v. United States*, 405 U S 150, 154 (1972))

The State initially responded that the partial transcripts constitute newly discovered evidence If this standard were applied, Petitioner would only be entitled to relief if he could show that the new evidence is not merely cumulative, is not simply impeachment evidence, and that, when “viewed with all the other evidence, the newly discovered material evidence demonstrates that no reasonable trier of fact could have found the petitioner guilty of the offense or subject to the sentence received ” State’s Mem in Resp at 38 See Utah Code Ann § 78-35a-104(1)(e)(iv) According to the State, the evidence contained in the partial transcripts is merely cumulative and has impeachment value only Moreover, the State argues that even if the newly discovered evidence had been presented to the jury at trial, this would not warrant the conclusion that no reasonable trier of fact could have found Petitioner guilty or subject to the sentence he received

In a subsequent trial brief, and during oral argument at the evidentiary hearing, while not abandoning the argument that Petitioner must satisfy the standard for newly discovered evidence in section 78-35a-104(1)(e)(iv) in order to receive the relief he seeks, see State’s Trial Br at 7 n 1, the State focused on the due process claim raised by Petitioner. In this context, the State argues primarily that although the partial transcripts may have contained evidence favorable to Petitioner, he cannot demonstrate that had the transcripts been disclosed, there is a reasonable probability that his

¹During oral argument at the conclusion of the evidentiary hearing, counsel for Petitioner appeared to concede that had the suppressed evidence been presented to the jury at the guilt phase, it would not have altered the jury’s verdict of capital murder Notwithstanding this apparent concession, however, the court has opted to fully consider all of the arguments raised by Petitioner in his original discovery violation claim.

conviction or sentence would have been different

Relevant Facts

The following facts appear uncontroverted On April 26, 1982, Mark Schoenfeld was found dead in his apartment On the basis of information provided by his former girlfriend, Lori Groneman,² Petitioner was arrested Several days later, Petitioner's current girlfriend, Carla Sagers, was also arrested Although she initially supported the alibi provided to the police by Petitioner, she later withdrew this support In exchange for full immunity from the prosecution, she became the State's key witness against Petitioner Prior to trial, as part of the prosecution's alleged "open file" policy, transcripts of numerous statements made by Ms Sagers during various interviews were made available to defense counsel These statements were used at trial by counsel in an attempt to demonstrate that Ms Sagers was untrustworthy and lacked credibility, and that her participation and role in the murder of Mr Schoenfeld was greater than that acknowledged and to which she was testifying *See generally* State's Ex 7 and 8 Ultimately, however, on the basis of Ms Sagers' testimony Petitioner was convicted of capital murder on January 14, 1983 At the conclusion of a subsequent penalty hearing on January 20, 1983, the jury returned a verdict sentencing Petitioner to death

Following years of appeals, Petitioner finally exhausted all avenues of state and federal review of his case and an execution date of June 24, 2001 was set On May 5, 2001, he filed a petition for commutation of his death sentence before the Board of Pardons Prior to the commutation hearing, on May 11, 2001, the Board of Pardons ordered the State to produce all documents of polygraph examinations upon Ms Sagers as well as the immunity agreement The State provided Petitioner with the immunity agreement as well as two uncertified and undated typed partial transcripts of pre- and post-polygraph test interviews conducted upon Ms Sagers Neither of these partial transcripts had previously been disclosed to defense counsel

²Ms Groneman was Mark Schoenfeld's girlfriend at the time of his death

Additionally, the tapes likely containing the full statement of Ms Sagers were never produced. These clearly existed at some point enabling transcription, but still have not been provided to the defense.

The facts presented to the court indicate that the testimony of Ms Sagers before the jury was critical to the State's case, both during the guilt phase of the trial and the penalty phase. This is clear because no forensic evidence directly tied Petitioner to the crime scene and Ms Sagers was the only witness that could place Petitioner at the scene of the crime on the night of the murder. Also, Ms Sagers was the only person who could testify about the conduct of Petitioner, as well as her own, and the events leading up to the murder of Mr Schoenfeld.

According to Michael Christensen, who was the lead prosecutor in the case, in light of the clear importance of her testimony, Ms Sagers was granted full immunity from prosecution. Because so much of the State's case rested upon her credibility before the jury, the State tested Ms Sagers' truthfulness on at least three occasions by means of a polygraph examination. Mr Christensen testified at the evidentiary hearing that defense counsel were aware that polygraph examinations were being conducted upon Ms Sagers because he had spoken with counsel about this issue and, moreover, they were involved in the selection of Sgt Ken Thirsk as the polygrapher for two of the examinations. Mr Christensen even indicated he believed defense counsel may have been present for the polygraph interviews and tests.³ However, Sgt Thirsk testified that he never spoke with defense counsel about conducting polygraph examinations and interviews of Ms Sagers prior to the examinations and interviews being performed. Moreover, both defense counsel in the case, James Barber and Martin Verhoef, testified that they did not speak with Mr Christensen about the polygraph examinations and interviews and were not present for the same. They stated that they only became aware of one polygraph test on the

³Mr Christensen stated in his affidavit that "[i]t was no secret that we were polygraphing Carla Sagers. Tillman's defense team knew, and they could have been present in the observation room if they had chosen to be there." Aff. of Michael Christensen at 4.

eve of trial through an unexpected chance meeting. They only became aware of the other two polygraph tests during trial. No transcripts were ever provided to them.

According to testimony provided at the evidentiary hearing, polygraph examinations were conducted in the polygraph suite located on the Eighth Floor of the Metropolitan Hall of Justice. This suite was composed of two separate, but connected, rooms. In one room, polygraph examinations and interviews were conducted, while in the other room two to four persons could unobtrusively observe an examination or interview by means of a one-way glass. In addition, the observation room was equipped with two audio recording devices. These taping devices were not voice activated and could only be turned on by a person in the observation room. Sgt. Thirsk indicated that he was unaware of the existence of any audio recordings and his staff did not type any transcripts. Mr. Christensen testified that from the observation room he personally witnessed, at least in part, the pre- and post-test interview sessions conducted by Sgt. Thirsk. He had access to the taping equipment and any tapes made. While Mr. Christensen opined that he believed defense counsel witnessed at least one of the post-test interviews, *see* Aff. of Michael Christensen at 4, no one verifies this. In fact, Mr. Barber and Mr. Verhoef both testified that they never attended, and were never invited to attend, any polygraph tests administered upon Ms. Sagers. Certainly in a capital case they would have a desire to be present or be fully advised, in a timely manner, of any tapes or transcribed statements. The court finds these two witnesses were credible and that a common sense analysis supports their testimony.

On May 22, 2001, in response to a discovery request made by Petitioner's current counsel in connection with his petition for a commutation hearing before the Board of Pardons, the State provided two uncertified and undated typed partial transcripts of pre- and post-polygraph examination interviews conducted upon Ms. Sagers by Sgt. Thirsk. *See* Pet'r Ex. 1 and 2. Petitioner's trial counsel testified that neither of these partial transcripts had previously been disclosed to them, *see also* Aff. of Loni DeLand at 3, and the tape recordings themselves have never been disclosed

Although the exact location of the transcripts when discovered is disputed,⁴ the facts provided to the court indicate that they were found in one of the prosecution case files. They were provided to counsel by Mr. Brunker of the Attorney General's Office.

Sgt. Thirsk indicated during the evidentiary hearing that, while most polygraph tests of defendants are recorded, Ms. Sagers was not being tested as a defendant and, therefore, he did not record his examinations and interviews of her. He also testified in response to questions posed to him by Mr. Christensen at trial that he did not know of any pre- and post-test interrogation recordings. *See* State's Ex. 8 at 1598-99, 1715, 1721, 1723. His knowledge of the transcripts occurred in connection with Petitioner's commutation hearing (some 18 to 19 years after the fact). Mr. Christensen testified that although he had observed the pre- and post-test interviews, he did not record them and was unaware that any recordings had been made or transcribed. *See also* Aff. of Michael Christensen at 4-5. Indeed, according to Mr. Christensen, he would have benefitted from the recordings because he could have used them to impeach Sgt. Thirsk at trial when he testified that no recordings had been made.⁵

⁴Mr. DeLand contends that Mr. Brunker told him that the partial transcripts "were found in prosecutor Mike Christensen's personal Tillman file and that the only other material in that file was Mr. Christensen's personal notes." Aff. of Lori F. DeLand at 3. Mr. Brunker, on the other hand, has stated that he "do[es] not recall referring to the file as Mr. Christensen's 'personal file' [and] that [i]f [he] referred to the file as Mr. Christensen's 'personal file,' [he] did not mean to imply that it was a file Mr. Christensen maintained separately from the DA office's file." Aff. of Thomas Brunker at 3.

⁵It is noteworthy that during the motion hearing conducted on January 13, 1983, on two occasions Mr. Christensen lamented that the failure of Sgt. Thirsk to record the pre- and post-test interviews would effectively prevent the trier of fact from assessing Sgt. Thirsk's questions and Ms. Sagers' responses. At one point in Mr. Christensen's cross-examination of Sgt. Thirsk, he asks Sgt. Thirsk whether he had ever explained to Ms. Sagers his meaning of certain words used in the polygraph tests. Mr. Christensen then asks "Don't you think it would have been helpful to a trier of fact to determine your explanations versus her interpretations of the words used in the question?" State's Ex. at 1715. Later in the examination, Mr. Christensen asks Sgt. Thirsk if he ever told Ms. Sagers after the first polygraph test that he did not believe her. Sgt. Thirsk responds that he did not and, following an objection by Mr. Verhoef, the following colloquy takes place: "Q (by Mr. Christensen) You indicated you didn't record any of the conversations you had with Miss Sagers, is that Correct? A That's correct. Q And so it would be basically her word against yours unless

The partial transcripts contain numerous statements made by Ms. Sagers in response to questions posed by Sgt. Thirsk concerning the events surrounding the murder of Mr. Schoenfeld and her participation in that murder. The court has not been made aware of statements made by Ms. Sagers in interviews with law enforcement that were disclosed to trial counsel prior to trial,⁶ but it is the State's contention that the statements contained in the partial transcripts are merely cumulative of previously disclosed statements. However, after a careful review of the partial polygraph transcripts as well as the trial transcripts of the examinations of Ms. Sagers and Sgt. Thirsk, the information relevant to the credibility of Ms. Sagers contained in the partial transcripts is largely the same information that was used during trial to undermine Ms. Sagers' truthfulness. Additionally, Sgt. Thirsk's skepticism toward Ms. Sagers' responses was briefly explored on direct examination. *See State's Ex. 8 at 1588.* However, it is noteworthy that Sgt. Thirsk's expressions of incredulity and his assertions that details were missing were far more vehement and frequent in the partial transcripts. The missing tapes from which the partial transcripts were made would have likely been extremely enlightening as to the totality of Ms. Sagers' statements and the manner in which she articulated them. Obviously, the actual tapes existed at some point and were partially transcribed by someone other than Sgt. Thirsk's regular typist.

The partial transcripts also contain approximately sixty notations indicating levity on the part of Ms. Sagers during Sgt. Thirsk's questioning of her about the murder. Although some of these notations refer to nothing more than nervous laughter, Sgt. Thirsk testified at the evidentiary hearing that there were situations where he believed her laughter was odd, given the gravity of the matters being discussed. The ability to listen to the tapes and consider the entirety of their contents was unavailable to Sgt. Thirsk and to defense counsel. The significance of this seems

someone else was there that observed what took place? A. That's correct." *State's Ex. 8 at 1721.*

⁶Petitioner acknowledges that several transcribed statements by Ms. Sagers were provided to trial counsel prior to trial.

obvious

Legal Analysis

The Prosecutor's Duty to Disclose

Due process requirements under both the Fourteenth Amendment to the United States Constitution as well as article I, section 7 of the Utah Constitution, obligate prosecutors in criminal cases to disclose to the defense evidence that has or may have exculpatory or impeachment value, regardless of whether such evidence has been requested. *See Strickler v. Greene*, 527 U.S. 263, 280 (1999) (outlining requirements of the *Brady* rule and its progeny which hold that federal due process requires prosecutors to disclose favorable evidence even if it has not been requested), *State v. Bakalov*, 1999 UT 45, ¶30, 979 P.2d 799 (“It is fundamental that the prosecution has a constitutional duty under both the Utah and United States Constitutions to disclose material, exculpatory evidence to the defense. This is true irrespective of whether the defense requests the favorable evidence.”)

In addition, procedural and ethical rules applicable to Utah criminal prosecutions mandate that “the prosecutor shall disclose to the defense upon request evidence known to the prosecutor that tends to negate the guilt of the accused, mitigate the guilt of the defendant, or mitigate the degree of the offense for reduced punishment.” Utah R. Crim. P. 16(a)(4). *See also* Utah R. Prof. Conduct 3.8(d) (“The prosecutor in a criminal case shall [m]ake timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense.”) *These rules impose upon a prosecutor both a legal and ethical duty to “disclose materials which he [or she] knows or should know contain evidence that is exculpatory or that would otherwise be helpful to the defendant in the preparation of his defense.”* *State v. Pliego*, 1999 UT 8, ¶12, 974 P.2d 279 (emphasis added). *See also State v. Archuleta*, 850 P.2d 1232, 1242-43 (Utah 1993) (“Utah Rule of Criminal Procedure 16(a) imposes a duty on the

prosecutor to provide discovery material to the defense on request ”)⁷

Commenting on the State’s duty to disclose favorable evidence to the defense, the Utah Supreme Court has noted that “[i]t is fundamental that the State, in vigorously enforcing the laws, has a duty not only to secure appropriate convictions, but perhaps *an even higher duty to see that justice is done, even if that means disclosing to defense counsel in a criminal case evidence which is exculpatory*” *Codianna v. Morris*, 594 P 2d 874, 877 (Utah 1979) (emphasis added) *See also State v. Williams*, 656 P 2d 874, 877 (Utah 1979) (“[T]he State in a criminal case is duty-bound by law and professional ethics to treat a defendant fairly. A prosecutor may not suppress evidence favorable to defendant to obtain a conviction ”) Indeed, a “prosecutor has the responsibility of a minister of justice and not simply that of an advocate.” This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence.” Utah R. Prof. Conduct 3.8 cmt. Consistent with these obligations the Supreme Court has held that

a criminal proceeding is more than an adversarial contest between two competing sides. It is a search for truth upon which a just judgment may be predicated. Procedural rules are designed to promote that objective, not frustrate it. When a request or an order for discovery is made pursuant to [Rule 16], a prosecutor must comply

State v. Carter, 707 P 2d 656, 662 (Utah 1985)

Federal Due Process Disclosure Standard—The *Brady* Rule

The United States Supreme Court held in *Brady v. Maryland*, 373 U.S. 83 (1963) that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Id.* at 87. In a subsequent case, the Court succinctly stated that there are “three components of

⁷It should be noted that the duty to disclose applies on a continuing basis. *See* Utah R. Crim. P. 16(b). *See also State v. Carter*, 707 P 2d 656, 662 (Utah 1985) (“To meet basic standards of fairness . . . a defendant’s request for information which has been voluntarily complied with must be deemed to be a continuing request.”)

a true *Brady* violation [1] The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching, [2] that evidence must have been suppressed by the State, either willfully or inadvertently, and [3] prejudice must have ensued ” *Strickler*, 527 U S at 281-82 In the context of a possible *Brady* violation, impeachment evidence is favorable because “if disclosed and used effectively, it may make the difference between conviction and acquittal ” *United States v. Bagley*, 473 U S 667, 676 (1985) This is particularly so when the evidence relates directly to the credibility of a key prosecution witness In addition, even if the existence of the undisclosed evidence was not within the direct knowledge of the prosecutor, it is still considered a suppression of evidence because each “individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government’s behalf in the case, including the police ” *Kyles v. Whitley*, 514 U S 419, 437 (1995) *See also Pliego*, 1999 UT 8, ¶13, 974 P 2d 279 (“[A]lthough the rule refers to the prosecutor’s knowledge, it is not so limited. The knowledge of the prosecutor’s staff is imputed to the prosecutor.”), *State v. Jarrell*, 608 P 2d 218, 224 (Utah 1980) (“[N]on-disclosure resulting from the failure of other members of the prosecutorial team to inform the defense attorney of exculpatory or other relevant evidence may also result in a violation of due process ”).

Finally, a failure to disclose exculpatory evidence to the defense warrants relief only if prejudice to the defendant ensued as a result of the non-disclosure Prejudice occurs if the State’s failure adversely affects a defendant’s fundamental rights, such as his right to a fair trial. *See Bagley*, 473 U S at 678 (the government’s “suppression of evidence amounts to a constitutional violation only if it deprives the defendant of a fair trial.”). A defendant’s due process rights are undermined only where the undisclosed evidence is material, that is, where “there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.”⁸ *Id.* at 682. “A ‘reasonable probability’ of a different result is

⁸This standard, however, is significantly relaxed in situations where “the undisclosed evidence demonstrates that the prosecution’s case includes perjured testimony and that the

shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial '" *Kyles*, 514 U S at 434 (quoting *Bagley*, 473 U S at 678) Thus, failure by the prosecutor to disclose exculpatory evidence to the defense constitutes a violation of due process if the probability of a different outcome, in the absence of the State's failure, is sufficiently high so as to undermine confidence in the outcome of the trial

In applying the *Brady* standard, several aspects bear emphasis First, it is not required that Petitioner "demonstrate that the evidence if disclosed probably would have resulted in acquittal" *Bagley*, 473 U S at 680 Second, in shouldering his burden of proving the facts necessary for relief by a preponderance of the evidence, *see* Utah Code Ann § 78-35a-105, it must still be kept in mind that in the context of a *Brady* violation claim, "[t]he question is not whether [Petitioner] would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence" *Kyles*, 514 U S at 434 Third, sufficiency of the evidence is not the touchstone of whether there is a reasonable probability of a different outcome *See id.* ("The second aspect of materiality bearing emphasis here is that it is not a sufficiency of evidence test") The inquiry is not simply one of "determining whether, after discounting the inculpatory evidence in light of the undisclosed evidence, the remaining evidence is sufficient to support the jury's conclusions" *Strickler*, 527 U S at 290 Rather, the issue for the court is whether "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict" *Kyles*, 514 U S at 435

Fourth, the undisclosed evidence "must be evaluated in the context of the entire record." *United States v. Agurs*, 427 U S 97, 112 (1976), *accord State v*

prosecution knew, or should have known, of the perjury" *United States v Agurs*, 427 U S 97, 103 (1976) When this type of situation arises "the [United States Supreme] Court has consistently held that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony *could* have affected the judgment of the jury" *Id* (emphasis added)

Martin, 1999 UT 72, ¶9, 984 P 2d 975. See also *Jarrell*, 608 P 2d at 225 (undisclosed police reports were considered “in light of the totality of the evidence”) This means that the amount of evidence supporting the verdict, whether great or small, will have an effect on the likelihood that the trial would have resulted in a different outcome had the evidence not been suppressed. For example, if

one of only two eyewitnesses to a crime had told the prosecutor that the defendant was definitely not its perpetrator and if this statement was not disclosed to the defense, no court would hesitate to reverse a conviction resting on the testimony of the other eyewitness. But if there were fifty eyewitnesses, forty-nine of whom identified the defendant, and the prosecutor neglected to reveal that the other, who was without his badly needed glasses on the misty evening of the crime, had said that the criminal looked something like the defendant but he could not be sure as he had only a brief glimpse, the result might well be different.

Agurs, 427 U S at 113 n 21. Thus, the less evidence supporting the jury’s verdict, the more likely the trial would have resulted in a different outcome had the exculpatory evidence been disclosed. See *Jarrell*, 608 P 2d at 224 (“[I]f the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient to create a reasonable doubt.”)

Fifth, in ascertaining the probability of a different outcome, although the court may “evaluate the tendency and force of the undisclosed evidence item by item,” *Kyles*, 514 U S at 437 n 10, it is the cumulative effect of the suppressed evidence that determines the likelihood of a different outcome. See *id.* at 436 (the undisclosed evidence must be “considered collectively, not item by item.”) Finally, it is the defendant’s “burden to establish a reasonable probability of a different result.” *Strickler*, 527 U S. 291.

Findings and Conclusions

Introduction

The United States Supreme Court has consistently held that “the penalty of death is qualitatively different from a sentence of imprisonment, however long.” *Woodson v. North Carolina*, 428 U S 280, 305 (1976). See also *Furman v. Georgia*,

408 U S 238, 306 (1972) (Stewart, J , concurring) (“The penalty of death differs from all other forms of criminal punishment, not in degree but kind”) For a defendant, “it is different in both its severity and its finality [and for] society, the action of the sovereign in taking the life of one of its citizens also differs dramatically from any other legitimate state action” *Gardner v. Florida*, 430 U S 349, 357-58 (1977) The severity and finality of a death sentence mandates that careful judicial scrutiny be given to the capital sentencing decision to assure that it does not run afoul of a defendant’s due process rights or the Eighth Amendment’s prohibition against cruel and unusual punishment *California v. Ramos*, 463 U S 992, 998-99 (1983) (“The Court has recognized that the qualitative difference of death from all other punishments requires a correspondingly greater degree of scrutiny of the capital sentencing determination”) The court’s general obligation in relation to Petitioner’s claims is to “see to it that he [received] a fair trial” *State v. Stenback*, 2 P 2d 1050, 1063 (Utah 1931) *See also State v. Bishop*, 753 P 2d 439, 473 (Utah 1988) (it is “the trial court’s duty to insure that defendant and the State receive[] a fair trial”) In the context of the death penalty, when an error relating directly to the appropriateness of a death sentence is raised, as it has been in the present case, it is the responsibility of the court to ensure that there are no significant doubts as to the integrity and the fairness of the death sentencing process *See Gardner*, 430 U S at 358 (“It is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion.”).

Preclusion Issues

It is uncontested that the tape recordings and transcripts of the pre- and post-test interviews conducted by Sgt Thirsk were not disclosed to defense counsel prior to or during trial. It is also clear that recordings and transcripts were made and existed Further, the partial transcripts were ultimately found in the prosecutor’s file on the case

The State contends that counsel for Petitioner could have discovered this

evidence in preparation for his prior appeals and post-conviction petitions had they exercised reasonable diligence and subpoenaed the prosecutor's files. Therefore, the State argues, he is procedurally barred from obtaining the relief he seeks. *See* Utah Code Ann. § 78-35a-106(c) ("A person is not eligible for relief upon any ground that could have been but was not raised at trial or on appeal.") Petitioner argues, on the other hand, that his trial counsel relied in good faith upon the prosecution's representations, via an "open file" policy, that all exculpatory evidence had been disclosed and therefore, that his appellate and post-conviction counsel could not reasonably have been expected to anticipate that the prosecutor's file would, in fact, contain exculpatory evidence. The court finds Petitioner's arguments on this issue persuasive. It belies common sense to suggest that the defense could have discovered this evidence when the polygrapher and the State affirmatively denied the existence of the same. It took some 18 to 19 years for this evidence to be found and then it was found only because Mr. Brunker acknowledged its existence and provided it to Petitioner. It is the court's conclusion that Petitioner has shown, by a preponderance of the evidence, that his claim is not one that could have been previously raised. It follows, therefore, that his discovery violation claim is not procedurally barred.

In addition, the State has also asserted that even if Petitioner's claim is not precluded on procedural grounds, it should nevertheless be rejected because he cannot satisfy the stringent requirements applicable to newly discovered evidence under section 78-35a-104(1)(e)(i)-(iv).⁹ However, although the State's memorandum states

⁹The Post-Conviction Remedies Act states that a person may seek to have his or her conviction or sentence vacated or modified on the ground that

(e) newly discovered material evidence exists that requires the court to vacate the conviction or sentence because:

- (i) neither the petitioner nor petitioner's counsel knew of the evidence at the time of trial or sentencing or in time to include the evidence in any previously filed post-trial motion or post-conviction proceeding, and the evidence could not have been discovered through the exercise of reasonable diligence,
- (ii) the material evidence is not merely cumulative of evidence that was known,
- (iii) the material evidence is not merely impeachment evidence, and
- (iv) viewed with all the other evidence, the newly discovered material evidence demonstrates that no reasonable trier of fact could have found the

that “Petitioner specifically argues that his claim concerning the discovery issue is based on newly discovered evidence,”¹⁰ State’s Mem in Resp at 8, it is the court’s considered view, based upon a careful reading of the petition as well as counsel’s presentation during oral arguments, that the central thrust of Petitioner’s claim is that he is entitled to relief because his “conviction was obtained or [his] sentence was imposed in violation of the United States Constitution or Utah Constitution ” Utah Code Ann § 78-35a-104(1)(a) Clearly, the partial transcripts constitute “new evidence” as that term is colloquially used because they were only recently discovered Petitioner’s primary argument, though, is not that the evidence constitutes “newly discovered evidence” as that term is used in section 78-35a-104(1)(e),¹¹ but rather that “[b]y failing to disclose complete transcripts or audio recordings of the interviews with Carla Sagers, the prosecution violated [his] rights under the Due Process Clause of the Fourteenth Amendment ” Pet’r Mem in Supp at 4.

In light of the court’s conclusion, it is irrelevant whether the partial transcripts are merely impeachment evidence or whether, based upon that evidence, no reasonable trier of fact could have found Petitioner guilty of first degree murder or subject to the death penalty See Utah Code Ann § 78-35a-104(e) What is relevant is the standard that applies in determining whether the non-disclosure of evidence by a prosecutor violates the federal constitution and whether the facts satisfy that

petitioner guilty of the offense or subject to the sentence received
Utah Code Ann. § 78-35a-104(1)(e)(i)-(iv)

¹⁰Although Petitioner refers to the partial transcripts as “newly discovered evidence,” Pet for Post-Conviction Relief at 2, the court has been unable to find any reference where he “specifically argues,” or even indirectly indicates, that his discovery claim is *based upon* newly discovered evidence.

¹¹The court is aware that heading B in Petitioner’s reply memorandum states that “[t]he interview transcripts constitute newly discovered evidence ” At best, this is simply a response to the State’s arguments based upon its characterization of Petitioner’s claim as one of newly discovered evidence Moreover, the argument provided under heading B does not, strictly speaking, fully argue that the partial interview transcripts constitute newly discovered evidence under section 78-35a-104(1)(e), but only that this evidence could not have been discovered through the exercise of due diligence See Utah Code Ann § 78-35a-104(e)(i)

standard.

Discovery Violation Claim

The first component of the *Brady* test requires that the suppressed evidence be favorable to the defense because it has either exculpatory or impeachment value. It is certainly true that information relevant to the credibility of Ms. Sagers contained in the partial transcripts is, for the most part, the same information that was used during trial to attack Ms. Sagers' truthfulness. Nevertheless, it is also the case that there are certain aspects about the information which were not previously known at trial and which could have been used to impeach Ms. Sagers' testimony. During trial, Sgt. Thirsk was not allowed to testify that he believed Ms. Sagers' responses to the polygraph test questions were deceptive. *See State v. Tillman*, 750 P.2d 546, 557 (Utah 1987). Nevertheless, Sgt. Thirsk was permitted to testify about various occasions when Ms. Sagers had responded to similar questions about the murder with inconsistent answers. During direct examination, Mr. Verhoef elicited from Sgt. Thirsk testimony that "[d]uring that conversation *at one point* I told her that I did not believe her answers to my questions and told her that I believed she had in fact struck Mark and I made that accusation." State's Ex. 8 at 1588 (emphasis added). The partial transcripts disclose, however, that Sgt. Thirsk did not simply make a one-time display of incredulity about whether Ms. Sagers had struck Mr. Schoenfeld, but rather that he repeatedly made statements and asked questions expressing disbelief about numerous facets of Ms. Sagers' account.¹²

It is also true that while Sgt. Thirsk's skepticism was coupled with encouragement to tell the truth, some of his statements and questions suggest that he was encouraging her to simply tell a story that could be believed. For example, in explaining to Ms. Sagers why he is going to ask a polygraph question in a particular way, the following conversation takes place:

¹²The expressions of disbelief are numerous. Nearly every page of the first partial transcript, *see* Pet'r Ex. 1, and many of the pages of the second partial transcript after page 23, *see* Pet'r Ex. 2, include statements and questions where Sgt. Thirsk indicates that he believes Ms. Sagers is excluding details or not telling a credible story.

Q [Question by Sgt Thirsk] A I'm not going to ask you if you took part in lighting the fire because obvious you were part of the situation ok Then I'm going to ask you then, did you personally light the fire to Marks bed?

A [Answer by Ms Sagers] No

Q Now the reason why I emphasize the meaning of the question did you personally so that you can remove yourself from indirect involvement because, what I'm saying is direct You personally holding the match or what ever it was that lit the fire, ok? That allows you to get away from if I said did you light the fire or did you take any part in lighting the fire, well obviously you were part of the situation and that may confuse the issue

A Yea

Pet'r Ex 2 at 17 Later in the interview, Sgt Thirsk asks Ms Sagers if she is ready to take a polygraph test She responds in the affirmative and shortly thereafter the following colloquy occurs

Q I understand the defense council is not going to be very friendly And he is'nt going to be saying Gee Carla how did you know where the light was

A Yea I know that.

Q She's going to hit you with it like that how did you know where the light was and you know what that applies to the jury?

A That I've been there before

Q That's right Or something that adds to do you see what I mean?

A

Q How did you know he was going to hit him again? I felt it, nobody buys that

A Well I (laugh)

Q Ok, nobody buys that Even if it's true nobody buys it, something has to have been happened either within you visual,

A Well why else would he have a cover his head up and

Q Don't ever say that. Why else would he, it does'nt answer the question.

Pet'r Ex. 2 at 23.

Finally, it is significant that the partial transcripts contain numerous references to levity on the part of Ms Sagers during Sgt Thirsk's questioning Some of these references clearly indicate nothing more than nervous laughter Others, however, appear inappropriate in circumstances where the violent death of a human being and

her involvement in that death are being discussed. For example, in the first partial transcript, Sgt. Thirsk has expressed some skepticism about Ms. Sagers' responses and has told her to provide as much detail as possible. The following conversation then occurs:

Q: Say it happened. If something was said, say it was said. If you felt something, say why you felt it. Because it is totally unbelievable and understandable if a person does something or feels something without being able to explain why they did it and for what reason they felt it. Only an action or statement can prompt a person to make a decision. If when he [Schoenfeld] was struck, you turned back. You made the decision to turn your back before he was struck for some reason.

A: I didn't want to see it.

Q: You didn't see. Wanna see what?

A: I didn't want to see him getting hit.

Q: How did you know he was going to be hit?

A: (laugh)

Pet'r Ex. 1 at 4-5. In the second partial transcript, at one point in the interview Ms. Sagers answers a question by stating that Petitioner was going to strike Mr. Schoenfeld with an ax when he walked into the house. The following colloquy ensued:

Q: How was he [Tillman] going to do it?

A: Just knock him [Schoenfeld] out when he walked in the door.

Q: Well did he say before that he was going to wait until he was gone then wait for him inside or how did he say he was going to ya know accomplish this feat.

A: (laugh)

Q: There must have been some details?

A: No there was'nt, that's how he

Pet'r Ex. 2 at 11.

It is difficult, of course, without having the opportunity to review a complete transcript of the interviews and all of the statements made or to play the recordings and actually hear the laughter to accurately determine when Ms. Sagers' laughter was inappropriate and when it was not. Nevertheless, the context of the above situations,

as well as others in which laughter occurs,¹³ indicates that Ms Sagers was likely exhibiting inappropriate levity. Exhibiting such flippancy, while in her immunized situation, about the homicide and the role she played in carrying it out certainly would

¹³Consider the following examples. In the first partial transcript, Sgt Thirsk is trying to obtain additional information on the position of Mr Schoenfeld at the time he was murdered.

Q I don't want you to tell me I want you to show me. O k Cause he's [Petitioner] on the side of Mark now right? How's Mark laying? On his side or on his back? Which way is he facing?

A He's still diagonal this way

Q Well I know. But diagonal what way? Is he laying on this side. Laying on his back

A His head was to the side

Q This way or this way?

A (laugh)

Pet'r Ex 1 at 10 In the second partial transcript Sgt Thirsk is pressing Ms Sagers on her claim that Petitioner exited the house just as she drove up to the house.

Q How did you know when to come back?

A I just did. I thought well I'll go wait a little bit longer, (laugh) I didn't know I just went back.

Q When he came back out?

A He came back out,

Q And you went to the car?

A And he said, he's in the bedroom doing something he has gone to bed I guess.

Q Doing what?

A I don't know.

Q For an hour he's doing something in the bedroom?

A I don't know.

Q Listening to the stereo, is he watching tv, is he reading or?

A So, I think he's something about papers he was shuffling papers around or something (laugh)

Pet'r Ex 2 at 29 Finally, at the end of the interview, Sgt Thirsk is warning Ms Sagers not to hold back in her explanations in order to make herself look better. At that point the following colloquy takes place.

Q Carla, did you know long before the event that you and Tillman were going there to kill Mark? _____ answer

A I knew he was going to do it

Q But you,

A But I didn't know _____

Q: Were going there, you meeting Mark and you were going there, I mean Tillman and you were going there to kill Mark Schoenfeld, did you know that ahead of time?

A No

Q Watch yourself Carla,

A (laugh)

Q Cause that's the way they'll ask you. There leading questions

A I knew he was

Pet'r Ex 2 at 36

have assisted trial counsel in painting a picture of Ms. Sagers as someone who was not to be believed.

The information contained in the partial transcripts relating to Sgt. Thirsk's incredulity toward Ms. Sagers' account of her involvement, the appearance of coaching during the interviews, and the displays of inappropriate laughter could all have been used to attack the credibility of Ms. Sagers. Moreover, each of these areas of impeachment evidence would likely have had added impact upon the jury had the audio recordings themselves been disclosed and played. This would have permitted defense counsel to focus on any of Ms. Sagers' patterns of speech, intonation, pauses, or other nuances of speech that may be relevant to her credibility. Thus, it is the court's conclusion that the partial transcripts contained information favorable to Petitioner in the form of impeachment evidence. The actual tapes and full transcripts, which are still unavailable, may have been even more valuable to Petitioner.

The second component of the *Brady* test mandates that error is not committed by the non-disclosure of favorable evidence unless it was willfully or inadvertently suppressed by the State. Although it is clear that audio recordings and transcriptions were made of portions of the pre- and post-polygraph test interviews, it is unclear who was responsible for making the recordings and having them transcribed. Based upon the testimony provided at the evidentiary hearing, it is the court's considered view that no one on the defense team had an opportunity to be present at the interviews and they were not, therefore, in a position to make any recordings. However, the fact that the pre- and post-test interviews occurred within the confines of the Metropolitan Hall of Justice suggests that any number of law enforcement or prosecution personnel had access to the observation room and the audio recording equipment. In addition, the partial transcripts were themselves discovered in files created by and, at least until the conclusion of Petitioner's trial, under the control of the prosecution. It is highly likely, therefore, that whoever recorded the interviews was someone affiliated with the police or the District Attorney's Office. These facts lead the court to conclude that prosecutors knew, or should have known, of the

existence of the partial transcripts and, therefore, either knowingly or inadvertently failed to disclose this important information to defense counsel prior to trial. In fact, the information took some 18 years to be disclosed and the tapes are still missing and the transcripts are still incomplete.

The final component of the *Brady* test requires that prejudice must have ensued as a result of the non-disclosure of favorable evidence. As explained above, prejudice occurs only if the probability of a different outcome, in the absence of the State's failure to disclose, is sufficiently high so as to undermine confidence in the outcome of the trial. Given the importance of Ms. Sagers as a witness for the State, the credibility of her testimony and her degree of culpability for the murder of Mr. Schoenfeld became crucial issues during trial. Since only Ms. Sagers and Petitioner were present at the time of the murder, much of her testimony involved inculcating Petitioner and exculpating herself. Thus, to the extent the credibility of her statements could be undermined, to that same extent her degree of culpability for the homicide would rise in the minds of the jurors.

The court is fully aware that the Utah Supreme Court held in Petitioner's direct appeal that "the issues of [Ms.] Sagers' credibility and own degree of culpability had been well developed for the jury's deliberation and consideration *Tillman*, 750 P.2d at 559. This holding, however, was based solely on information available at the time the opinion was issued. At the same time it was not known that taping had occurred and partial (or complete) transcripts had existed in the prosecutor's file or were in his control. It is the nature of judicial decision-making that decisions can only be rendered based upon the information provided by the parties. When previously unknown evidence is disclosed, a re-hearing on an issue may provide a different result. *See, e.g., In re Inquiry Concerning a Judge (Young)*, 1999 UT 6, 976 P.2d 581. In this context, issues which an appellate court may have previously concluded were well-developed at trial can, with the addition of previously unknown evidence, appear not to have been as well-developed after all. In relation to Petitioner's case, few were aware, none of whom were members of the Court, that

tape recordings and partial transcripts of pre- and post-polygraph test interviews existed which contained additional impeachment evidence that could have been used by trial counsel to undermine the credibility of the State's key witness

Although the disclosure of the previously unknown impeachment evidence contained in the partial transcripts puts Petitioner's case in a new light, based upon the evidence and arguments presented at the evidentiary hearing and the numerous memoranda and documents filed by the parties, the court is unconvinced that a different outcome of the guilt phase of the trial would have resulted even if the additional impeachment evidence had been known and utilized by defense counsel. The same cannot be said, however, of the court's confidence in the outcome of the penalty phase of Petitioner's trial. In support of this, it is important to consider the testimony (at the most recent hearing) of Petitioner's trial counsel, Mr. Barber, who stated that he did not believe that the undisclosed material would have affected the outcome in the guilt phase of Petitioner's trial, but would have, in his opinion, likely affected the penalty phase of Petitioner's trial.

Unlike the guilt phase, where criminal culpability is determined, jurors at the penalty phase are required to make an individualized assessment of the moral culpability of the defendant based not only upon his background and character, but the circumstances of the crime as well. *See California v. Brown*, 479 U.S. 538, 545 (1987) (O'Connor, J., concurring) ("The individualized assessment of the appropriateness of the death penalty is a moral inquiry into the culpability of the defendant [and] should reflect a reasoned moral response to the defendant's background, character, and crime . . ."). In the instant case, given the relationship between Ms. Sagers' truthfulness and her degree of moral culpability, the less credible her testimony was shown to be, the more likely her degree of moral culpability for the homicide would have risen in the minds of the jurors. Moreover, it is the court's view that the greater her degree of moral culpability, the less likely jurors would have voted to impose a sentence of death upon Petitioner. Ms. Sagers' moral culpability for the murder of Mr. Schoenfeld, therefore, is evidence that mitigates against imposition of

a death sentence against Petitioner

While it is true that before a death sentence may be imposed jurors must come to a unanimous agreement that the totality of aggravating evidence outweighs the totality of mitigating evidence beyond a reasonable doubt and moreover, that the death penalty is appropriate in the circumstances beyond a reasonable doubt, it is also true that aggravating and mitigating factors do not need to be found by all members of the jury in order to be considered in an individual juror's assessment. Additionally, aggravating and mitigating circumstances need not be proved beyond a reasonable doubt to the satisfaction of all jurors in order to be considered by an individual juror. This is significant because even if particular mitigating evidence has an affect on only one of the twelve jurors, this alone could alter that juror's assessment of whether, in his or her own mind, the aggravating evidence outweighs the mitigating evidence beyond a reasonable doubt and whether the death penalty is appropriate in the circumstances beyond a reasonable doubt. This would, ultimately, affect whether jurors reach a unanimous agreement on imposing a death sentence.

Based upon the above analysis, it is probable that, armed with the additional impeaching information contained in the partial transcripts and the audio recordings, defense counsel would have further undermined the credibility of Ms. Sagers testimony concerning her participation in the murder of Mr. Schoenfeld and, therefore, it is also probable that her moral culpability for the homicide would have risen in the mind of at least one juror. It is the court's conclusion, based upon the evidence, that this would have altered at least one juror's assessment, to the benefit of Petitioner, of whether the totality of aggravating evidence outweighed the totality of mitigating evidence beyond a reasonable doubt or whether the death penalty was appropriate in the circumstances beyond a reasonable doubt. There is, therefore, a reasonable probability that had the partial transcripts been disclosed, the outcome of the penalty phase would have been different.¹⁴ It follows from this conclusion that the

¹⁴Petitioner has argued that because Mr. Christensen elicited false testimony from Sgt. Thirsk concerning whether audio recordings were made of his pre- and post-test interview sessions

State's failure to disclose the partial transcripts prejudiced Petitioner, thereby violating the *Brady* rule and Petitioner's rights under the Due Process Clause of the Fourteenth Amendment

Summary and Conclusion

Because this is a capital case, it is the responsibility of the court to ensure that Petitioner's due process rights were not violated and that there are no significant doubts as to the integrity and the fairness of the death sentencing process. Federal case law mandates that a defendant's due process rights are violated if (1) the evidence at issue is favorable to the defendant because it is either exculpatory or impeaching, (2) the evidence was suppressed by the State, either willfully or inadvertently, and (3) prejudice resulted from the non-disclosure. Although much of the information contained in the partial transcripts is merely cumulative of evidence that was already known to trial counsel, it is also true that the transcripts contain additional information relating to Sgt. Thirsk's incredulity toward Ms. Sagers' account of her role in the murder of Mark Schoenfeld, the appearance of coaching during the interviews, and displays of inappropriate levity that were not known and which could have been used to further undermine the credibility of Ms. Sagers. This evidence was clearly favorable to Petitioner. In addition, although it is unclear who made the audio recordings of the pre- and post-test interviews, given the location where the interviews occurred, it is the court's conclusion that the recordings were made by someone affiliated with the police or the District Attorney's Office. Thus, prosecutors knew, or should have known, of the existence of the partial transcripts and, therefore, either knowingly or inadvertently failed to disclose them to defense

with Ms. Sagers, the standard that should apply is whether there is any reasonable likelihood that the false testimony *could* have affected the judgment of the jury. However, although the court believes that a member of law enforcement or the District Attorney's Office made the audio recordings of Sgt. Thirsk's pre- and post-test interviews, there is insufficient evidence for the court to conclude that Mr. Christensen was actually aware that he was eliciting false testimony when he inquired of Sgt. Thirsk about whether these interviews had been recorded. Therefore, the court cannot rely upon the relaxed *Brady* standard applicable in situations where the prosecution's case includes false testimony and that the prosecution knew, or should have known, of the untruthful statements

counsel prior to trial. This court is cognizant of a prosecutor's high ethical responsibilities and is unwilling to give the imprimatur of propriety to prosecutorial action that results in the non-disclosure of exculpatory information, especially where a human being is subject to the death penalty.

Finally, Ms. Sagers' moral culpability for the death of Mr. Schoenfeld was directly related to the credibility of her testimony concerning her participation in the murder, i.e., the less credible her testimony was shown to be, the greater her degree of moral culpability would have been in the minds of the jurors. Moreover, the greater her moral culpability, the less likely jurors would have voted to impose a sentence of death upon Petitioner. Based upon the evidence presented, it is the court's conclusion that, armed with the additional impeaching evidence contained in the partial transcripts, defense counsel would have further undermined the credibility of Ms. Sagers' testimony at trial. It is probable, therefore, that her moral culpability for the murder would have risen in the mind of at least one juror.

Again, while the court is unconvinced that this would have changed the outcome of the guilt phase of the trial, there appears to be a reasonable probability that, had the transcripts been disclosed (and the tapes provided), the outcome of the penalty phase would have been different. Therefore, this court finds that the non-disclosure of the partial transcripts prejudiced Petitioner. It follows that his rights under the Due Process Clause of the Fourteenth Amendment were violated by the State. Consequently, his sentence "was imposed in violation of the United States Constitution . . .," Utah Code Ann. § 78-35a-104(1)(a), and he is, therefore, entitled to relief with respect to his sentence of death.

As required by the Post-Conviction Remedies Act, "[i]f the court grants the petitioner's request for relief, it shall either . . . modify the original conviction or sentence; or . . . vacate the original conviction or sentence and order a new trial or sentencing proceeding as appropriate." Utah Code Ann. § 78-35a-108(1)(a)-(b). Although the court has the option of either modifying or vacating a sentence, given the nature of a sentence of death, it is not possible for the court to modify a death

sentence.

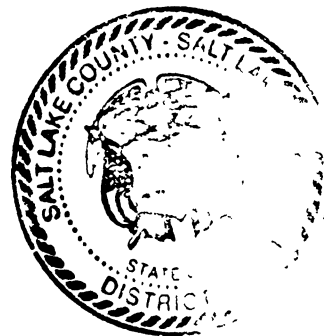
It is hereby ORDERED that Petitioner's sentence of death be vacated and that a new sentencing hearing be convened pursuant to sections 76-3-207 and 76-3-207.5 of the Utah Criminal Code. This order shall be stayed for five days, pursuant to section 78-35a-108(2)(a), to permit the State time to provide the court and Petitioner with written notice whether it will pursue a new sentencing proceeding.

DATED this 27th day of January, 2003.

BY THE COURT



Judge Leslie A. Lewis
Third Judicial District Court



CERTIFICATE OF DELIVERY

I certify that on the 24th day of January, 2003, I hand-delivered a true and correct copy of the foregoing Ruling on Petition for Post-Conviction Relief to counsel as follows:

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Addendum B

Section	
78-35a-107	Statute of limitations for post-conviction relief
78-35a-108	Effect of granting relief — Notice
78-35a-109	Appointment of counsel.
78-35a-110	Appeal — Jurisdiction.

Part 2

Capital Sentence Cases

78-35a-201	Post-conviction remedies — 30 days
78-35a-202	Appointment and payment of counsel in death penalty cases

Part 3

Postconviction Testing of DNA

78-35a-301.	Postconviction testing of DNA — Petition — Sufficient allegations — Notification of victim.
78-35a-302.	Effect of petition for postconviction DNA testing — Requests for appointment of counsel — Appeals — Subsequent postconviction petitions.
78-35a-303.	Consequences of postconviction DNA testing when result is favorable to person — Procedures.
78-35a-304.	Consequences of postconviction DNA testing when result is unfavorable to person — Procedures.

PART 1

GENERAL PROVISIONS

78-35a-101. Short title.

This act shall be known as the "Post-Conviction Remedies Act." 1996

78-35a-102. Replacement of prior remedies.

(1) This chapter establishes a substantive legal remedy for any person who challenges a conviction or sentence for a criminal offense and who has exhausted all other legal remedies, including a direct appeal except as provided in Subsection (2). Procedural provisions for filing and commencement of a petition are found in Rule 65C, Utah Rules of Civil Procedure.

(2) This chapter does not apply to:

- (a) habeas corpus petitions that do not challenge a conviction or sentence for a criminal offense,
- (b) motions to correct a sentence pursuant to Rule 22(e), Utah Rules of Criminal Procedure; or
- (c) actions taken by the Board of Pardons and Parole

1996

78-35a-103. Applicability — Effect on petitions.

Except for the limitation period established in Section 78-35a-107, this chapter applies only to post-conviction proceedings filed on or after July 1, 1996. 1996

78-35a-104. Grounds for relief — Retroactivity of rule.

(1) Unless precluded by Section 78-35a-106 or 78-35a-107, a person who has been convicted and sentenced for a criminal offense may file an action in the district court of original jurisdiction for post-conviction relief to vacate or modify the conviction or sentence upon the following grounds:

- (a) the conviction was obtained or the sentence was imposed in violation of the United States Constitution or Utah Constitution,
- (b) the conviction was obtained under a statute that is in violation of the United States Constitution or Utah

CHAPTER 35a

POST-CONVICTION REMEDIES ACT

Part 1

General Provisions

Section	
78-35a-101.	Short title.
78-35a-102.	Replacement of prior remedies.
78-35a-103	Applicability — Effect on petitions.
78-35a-104	Grounds for relief — Retroactivity of rule.
78-35a-105.	Burden of proof.
78-35a-106	Preclusion of relief — Exception.

Constitution, or the conduct for which the petitioner was prosecuted is constitutionally protected,

(c) the sentence was imposed in an unlawful manner, or probation was revoked in an unlawful manner,

(d) the petitioner had ineffective assistance of counsel in violation of the United States Constitution or Utah Constitution, or

(e) newly discovered material evidence exists that requires the court to vacate the conviction or sentence, because

(i) neither the petitioner nor petitioner's counsel knew of the evidence at the time of trial or sentencing or in time to include the evidence in any previously filed post-trial motion or post-conviction proceeding, and the evidence could not have been discovered through the exercise of reasonable diligence,

(ii) the material evidence is not merely cumulative of evidence that was known,

(iii) the material evidence is not merely impeachment evidence, and

(iv) viewed with all the other evidence, the newly discovered material evidence demonstrates that no reasonable trier of fact could have found the petitioner guilty of the offense or subject to the sentence received

(2) The question of whether a petitioner is entitled to the benefit of a rule announced by the United States Supreme Court, Utah Supreme Court, or Utah Court of Appeals after the petitioner's conviction became final shall be governed by applicable state and federal principles of retroactivity. 1998

78-35a-105. Burden of proof.

The petitioner has the burden of pleading and proving by a preponderance of the evidence the facts necessary to entitle the petitioner to relief. The respondent has the burden of pleading any ground of preclusion under Section 78-35a-106, but once a ground has been pled, the petitioner has the burden to disprove its existence by a preponderance of the evidence. 1998

78-35a-106. Preclusion of relief — Exception.

(1) A person is not eligible for relief under this chapter upon any ground that

(a) may still be raised on direct appeal or by a post-trial motion,

(b) was raised or addressed at trial or on appeal;

(c) could have been but was not raised at trial or on appeal,

(d) was raised or addressed in any previous request for post-conviction relief or could have been, but was not, raised in a previous request for post-conviction relief; or

(e) is barred by the limitation period established in Section 78-35a-107.

(2) Notwithstanding Subsection (1)(c), a person may be eligible for relief on a basis that the ground could have been but was not raised at trial or on appeal, if the failure to raise that ground was due to ineffective assistance of counsel. 1998

78-35a-107. Statute of limitations for post-conviction relief.

(1) A petitioner is entitled to relief only if the petition is filed within one year after the cause of action has accrued.

(2) For purposes of this section, the cause of action accrues on the latest of the following dates.

(a) the last day for filing an appeal from the entry of the final judgment of conviction, if no appeal is taken;

(b) the entry of the decision of the appellate court which has jurisdiction over the case, if an appeal is taken,

(c) the last day for filing a petition for writ of certiorari in the Utah Supreme Court or the United States Supreme Court, if no petition for writ of certiorari is filed,

(d) the entry of the denial of the petition for writ of certiorari or the entry of the decision on the petition for certiorari review, if a petition for writ of certiorari is filed or

(e) the date on which petitioner knew or should have known, in the exercise of reasonable diligence, of evidentiary facts on which the petition is based

(3) If the court finds that the interests of justice require a court may excuse a petitioner's failure to file within the time limitations

(4) Sections 78-12-35 and 78-12-40 do not extend the limitations period established in this section. 1998

78-35a-108. Effect of granting relief — Notice.

(1) If the court grants the petitioner's request for relief it shall either:

(a) modify the original conviction or sentence, or

(b) vacate the original conviction or sentence and order a new trial or sentencing proceeding as appropriate

(2) (a) If the petitioner is serving a felony sentence the order shall be stayed for five days. Within the stay period the respondent shall give written notice to the court and the petitioner that the respondent will pursue a new trial or sentencing proceedings, appeal the order, or take no action

(b) If the respondent fails to provide notice or gives notice at any time during the stay period that it intends to take no action, the court shall lift the stay and deliver the order to the custodian of the petitioner

(c) If the respondent gives notice that it intends to retry or resentence the petitioner, the trial court may order any supplementary orders as to arraignment, trial, sentencing, custody, bail, discharge, or other matters that may be necessary. 1998

78-35a-109. Appointment of counsel.

(1) If any portion of the petition is not summarily dismissed, the court may, upon the request of an indigent petitioner, appoint counsel on a pro bono basis. Counsel who represented the petitioner at trial or on the direct appeal may not be appointed to represent the petitioner under this section

(2) In determining whether to appoint counsel, the court shall consider the following factors:

(a) whether the petition contains factual allegations that will require an evidentiary hearing, and

(b) whether the petition involves complicated issues of law or fact that require the assistance of counsel for proper adjudication

(3) An allegation that counsel appointed under this section was ineffective cannot be the basis for relief in any subsequent post-conviction petition. 1998

78-35a-110. Appeal — Jurisdiction.

Any party may appeal from the trial court's final judgment on a petition for post-conviction relief to the appellate court having jurisdiction pursuant to Section 78-2-2 or 78-2a-3. 1998

PART 2

CAPITAL SENTENCE CASES

78-35a-201. Post-conviction remedies — 30 days.

A post-conviction remedy may not be applied for or entertained by any court within 30 days prior to the date set for execution of a capital sentence, unless the grounds for application are based on facts or circumstances which developed or first became known within that period of time. 1997

78-35a-202. Appointment and payment of counsel in death penalty cases.

(1) A person who has been sentenced to death and whose conviction and sentence has been affirmed on appeal shall be

advised in open court, on the record, in a hearing scheduled no less than 30 days prior to the signing of the death warrant, of the provisions of this chapter allowing challenges to the conviction and death sentence and the appointment of counsel for indigent defendants.

(2) (a) If a defendant requests the court to appoint counsel, the court shall determine whether the defendant is indigent and make findings on the record regarding the defendant's indigency. If the court finds that the defendant is indigent, it shall promptly appoint counsel who is qualified to represent defendants in death penalty cases as required by Rule 8 of the Utah Rules of Criminal Procedure.

(b) A defendant who wishes to reject the offer of counsel shall be advised on the record by the court of the consequences of the rejection before the court may accept the rejection.

(c) Costs of counsel and other reasonable litigation expenses incurred in providing the representation provided for in this section shall be paid from state funds by the Division of Finance according to rules established pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act. 1997

PART 3

POSTCONVICTION TESTING OF DNA

78-35a-301. Postconviction testing of DNA — Petition — Sufficient allegations — Notification of victim.

(1) As used in this part, "DNA" means deoxyribonucleic acid.

(2) A person convicted of a felony offense may at any time file a petition for postconviction DNA testing in the trial court that entered the judgment of conviction against him if the person asserts his actual innocence under oath and the petition alleges:

(a) evidence has been obtained regarding the person's case which is still in existence and is in a condition that allows DNA testing to be conducted;

(b) the chain of custody is sufficient to establish that the evidence has not been altered in any material aspect;

(c) the person identifies the specific evidence to be tested and states a theory of defense, not inconsistent with theories previously asserted at trial, that the requested DNA testing would support;

(d) the evidence was not previously subjected to DNA testing, or if the evidence was tested previously, the evidence was not subjected to the testing that is now requested, and the new testing may resolve an issue not resolved by the prior testing;

(e) the evidence that is the subject of the request for testing has the potential to produce new, noncumulative evidence that will establish the person's actual innocence; and

(f) the person is aware of the consequences of filing the petition, including those specified in Sections 78-35a-302 and 78-35a-304, and that the person is waiving any statute of limitations in all jurisdictions as to any felony offense he has committed which is identified through DNA database comparison.

(3) The petition under Subsection (2) shall be in compliance with Rule 65C, Utah Rules of Civil Procedure, including providing the underlying criminal case number.

(4) The court may not order DNA testing in cases in which DNA testing was available at the time of trial and the person did not request DNA testing or present DNA evidence for tactical reasons.

(5) After a petition is filed under this section, prosecutors, law enforcement officers, and crime laboratory personnel have a duty to cooperate in preserving evidence and in determining the sufficiency of the chain of custody of the evidence which may be subject to DNA testing.

(6) (a) A person who files a petition under this section shall serve notice upon the office of the prosecutor who obtained the conviction, and upon the state attorney general. The attorney general shall, within 30 days after receipt of service of a copy of the petition, or within any additional period of time the court allows, answer or otherwise respond to all proceedings initiated under this part.

(b) After the attorney general is given an opportunity to respond to a petition for postconviction DNA testing, the court shall order DNA testing if it finds by a preponderance of the evidence that all criteria of Subsection (2) have been met.

(7) (a) If the court grants the petition for testing, the DNA test shall be performed by the Utah State Crime Laboratory within the Criminal Investigations and Technical Services Division created in Section 53-10-103, unless the person establishes that the state crime laboratory has a conflict of interest or does not have the capability to perform the necessary testing.

(b) If the court orders that the testing be conducted by any laboratory other than the state crime laboratory, the court shall require that the testing be performed under reasonable conditions designed to protect the state's interests in the integrity of the evidence, and that the testing be performed according to accepted scientific standards and procedures.

(8) If the person is serving a sentence of imprisonment and is indigent, the state shall pay for the costs of the testing under this part, but if the result is not favorable to the person the court may order the person to reimburse the state for the costs of the testing, pursuant to the provisions of Subsections 78-35a-302(4) and 78-35a-304(1)(b).

(9) Any victim of the crime regarding which the person petitions for DNA testing, who has elected to receive notice under Section 77-38-3 shall be notified by the state's attorney of any hearing regarding the petition and testing, even though the hearing is a civil proceeding. 2001

78-35a-302. Effect of petition for postconviction DNA testing — Requests for appointment of counsel — Appeals — Subsequent postconviction petitions.

(1) The filing of a petition for DNA testing constitutes the person's consent to provide samples of body fluids for use in the DNA testing.

(2) The data from any DNA samples or test results obtained as a result of the petition may be entered into law enforcement DNA databases.

(3) The filing of a petition for DNA testing constitutes the person's waiver of any statute of limitations in all jurisdictions as to any felony offense the person has committed which is identified through DNA database comparison.

(4) The person filing the petition for postconviction DNA testing bears the cost of the testing unless:

(a) the person is serving a sentence of imprisonment,

(b) the person is indigent, and

(c) the DNA test is favorable to the petitioner.

(5) (a) Subsections 78-35a-109(1) and (2), regarding the appointment of pro bono counsel, apply to any request for the appointment of counsel under this part.

(b) Subsection 78-35a-109(3), regarding effectiveness of counsel, applies to subsequent postconviction petitions and to appeals under this part. 2001

Addendum C

C

WEST'S UTAH RULES OF COURT
UTAH RULES OF CIVIL PROCEDURE
PART VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

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Current with amendments received through 7-1-2003

RULE 65C. POST CONVICTION RELIEF

(a) Scope. This rule shall govern proceedings in all petitions for **post- conviction** relief filed under Utah Code Ann 78-35a-101 et seq , **Post- Conviction Remedies Act**

(b) Commencement and Venue. The proceeding shall be commenced by filing a petition with the clerk of the district court in the county in which the judgment of **conviction** was entered The petition should be filed on forms provided by the court The court may order a change of venue on its own motion if the petition is filed in the wrong county The court may order a change of venue on motion of a party for the convenience of the parties or witnesses

(c) Contents of the Petition. The petition shall set forth all claims that the petitioner has in relation to the legality of the conviction or sentence Additional claims relating to the legality of the conviction or sentence may not be raised in subsequent proceedings except for good cause shown The petition shall state

(1) whether the petitioner is incarcerated and, if so, the place of incarceration,

(2) the name of the court in which the petitioner was convicted and sentenced and the dates of proceedings in which the conviction was entered, together with the court's case number for those proceedings, if known by the petitioner,

(3) in plain and concise terms, all of the facts that form the basis of the petitioner's claim to relief,

(4) whether the judgment of conviction, the sentence, or the commitment for violation of probation has been reviewed on appeal, and, if so, the number and title of the appellate proceeding, the issues raised on appeal, and the results of the appeal,

(5) whether the legality of the **conviction** or sentence has been adjudicated in any prior **post-conviction** or other civil proceeding, and, if so, the case number and title of those proceedings, the issues raised in the petition, and the results of the prior proceeding, and

(6) if the petitioner claims entitlement to relief due to newly discovered evidence, the reasons why the evidence could not have been discovered in time for the claim to be addressed in the trial, the appeal, or any previous post-conviction petition.

(d) Attachments to the Petition. If available to the petitioner, the petitioner shall attach to the petition

(1) affidavits, copies of records and other evidence in support of the allegations,

(2) a copy of or a citation to any opinion issued by an appellate court regarding the direct appeal of the petitioner's case,

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(3) a copy of the pleadings filed by the petitioner in any prior **post- conviction** or other civil proceeding that adjudicated the legality of the **conviction** or sentence, and

(4) a copy of all relevant orders and memoranda of the court

(e) Memorandum of Authorities. The petitioner shall not set forth argument or citations or discuss authorities in the petition, but these may be set out in a separate memorandum, two copies of which shall be filed with the petition

(f) Assignment. On the filing of the petition, the clerk shall promptly assign and deliver it to the judge who sentenced the petitioner. If the judge who sentenced the petitioner is not available, the clerk shall assign the case in the normal course

(g)(1) Summary Dismissal of Claims. The assigned judge shall review the petition, and, if it is apparent to the court that any claim has been adjudicated in a prior proceeding, or if any claim in the petition appears frivolous on its face, the court shall forthwith issue an order dismissing the claim, stating either that the claim has been adjudicated or that the claim is frivolous on its face. The order shall be sent by mail to the petitioner. Proceedings on the claim shall terminate with the entry of the order of dismissal. The order of dismissal need not recite findings of fact or conclusions of law

(2) A petition is frivolous on its face when, based solely on the allegations contained in the pleadings and attachments, it appears that:

(A) the facts alleged do not support a claim for relief as a matter of law,

(B) the claims have no arguable basis in fact, or

(C) the petition challenges the sentence only and the sentence has expired prior to the filing of the petition

(3) If a petition is not frivolous on its face but is deficient due to a pleading error or failure to comply with the requirements of this rule, the court shall return a copy of the petition with leave to amend within 20 days. The court may grant one additional 20 day period to amend for good cause shown

(4) The court shall not review for summary dismissal the initial post- conviction petition in a case where the petitioner is sentenced to death

(h) Service of Petitions. If, on review of the petition, the court concludes that all or part of the petition should not be summarily dismissed, the court shall designate the portions of the petition that are not dismissed and direct the clerk to serve a copy of the petition, attachments and memorandum by mail upon the respondent. If the petition is a challenge to a felony conviction or sentence, the respondent is the state of Utah represented by the Attorney General. In all other cases, the respondent is the governmental entity that prosecuted the petitioner.

(i) Answer or Other Response. Within 30 days (plus time allowed under these rules for service by mail) after service of a copy of the petition upon the respondent, or within such other period of time as the court may allow, the respondent shall answer or otherwise respond to the portions of the petition that have not been dismissed and shall serve the answer or other response upon the petitioner in accordance with Rule 5(b). Within 30 days (plus time allowed for service by mail) after service of any motion to dismiss or for summary judgment, the petitioner may respond by memorandum to the motion. No further pleadings or amendments will be permitted unless ordered by the court

(j) Hearings. After pleadings are closed, the court shall promptly set the proceeding for a hearing or otherwise dispose of the case. The court may also order a prehearing conference, but the conference shall not be set so as to delay unreasonably the hearing on the merits of the petition. At the prehearing conference, the court may

- (1) consider the formation and simplification of issues;
- (2) require the parties to identify witnesses and documents, and
- (3) require the parties to establish the admissibility of evidence expected to be presented at the evidentiary hearing.

(k) Presence of the Petitioner at Hearings. The petitioner shall be present at the prehearing conference if the petitioner is not represented by counsel. The prehearing conference may be conducted by means of telephone or video conferencing. The petitioner shall be present before the court at hearings on dispositive issues but need not otherwise be present in court during the proceeding. The court may conduct any hearing at the correctional facility where the petitioner is confined.

(l) Discovery; Records. Discovery under Rules 26 through 37 shall be allowed by the court upon motion of a party and a determination that there is good cause to believe that discovery is necessary to provide a party with evidence that is likely to be admissible at an evidentiary hearing. The court may order either the petitioner or the respondent to obtain any relevant transcript or court records.

(m) Orders; Stay.

(1) If the court vacates the original conviction or sentence, it shall enter findings of fact and conclusions of law and an appropriate order. If the petitioner is serving a sentence for a felony conviction, the order shall be stayed for 5 days. Within the stay period, the respondent shall give written notice to the court and the petitioner that the respondent will pursue a new trial, pursue a new sentence, appeal the order, or take no action. Thereafter the stay of the order is governed by these rules and by the Rules of Appellate Procedure.

(2) If the respondent fails to provide notice or gives notice that no action will be taken, the stay shall expire and the court shall deliver forthwith to the custodian of the petitioner the order to release the petitioner.

(3) If the respondent gives notice that the petitioner will be retried or resentenced, the trial court may enter any supplementary orders as to arraignment, trial, sentencing, custody, bail, discharge, or other matters that may be necessary and proper.

(n) Costs. The court may assign the costs of the proceeding, as allowed under Rule 54(d), to any party as it deems appropriate. If the petitioner is indigent, the court may direct the costs to be paid by the governmental entity that prosecuted the petitioner. If the petitioner is in the custody of the Department of Corrections, Section 64-13-23 and Sections 21-7-3 through 21-7-4.7 govern the manner and procedure by which the trial court shall determine the amount, if any, to charge for fees and costs.

(o) Appeal. Any final judgment or order entered upon the petition may be appealed to and reviewed by the Court of Appeals or the Supreme Court of Utah in accord with the statutes governing appeals to those courts.

[Adopted effective July 1, 1996.]

Committee Note

This rule replaces former paragraph (b) of Rule 65B. It governs proceedings challenging a conviction or sentence, regardless whether the claim relates to an original commitment, a commitment for violation of probation,

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or a sentence other than commitment. Claims relating to the terms or conditions of confinement are governed by paragraph (b) of the Rule 65B. This rule, as a general matter, simplifies the pleading requirements and contains two significant changes from procedure under the former rule. First, the paragraph requires the clerk of court to assign post-conviction relief to the judge who sentenced the petitioner if that judge is available. Second, the rule allows the court to dismiss frivolous claims before any answer or other response is required. This provision is patterned after the federal practice pursuant to 28 U.S.C. § 2254. The advisory committee adopted the summary procedures set forth as a means of balancing the requirements of fairness and due process on the one hand against the public's interest in the efficient adjudication of the enormous volume of post-conviction relief cases.

The requirement in paragraph (l) for a determination that discovery is necessary to discover relevant evidence that is likely to be admissible at an evidentiary hearing is a higher standard than is normally used determining motions for discovery.

Rules Civ. Proc., Rule 65C

UT R RCP Rule 65C

END OF DOCUMENT

Addendum D

UTAH CODE, 1953

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TITLE 76. CRIMINAL CODE
CHAPTER 3. PUNISHMENTS
PART 2. SENTENCING

76-3-207. Capital felony -- Sentencing proceeding.

(1) When a defendant has pled guilty to or been found guilty of a **capital felony**, there shall be further **proceedings** before the court or jury on the issue of **sentence**. In the case of a plea of guilty to a **capital felony**, the **sentencing proceedings** shall be conducted by the court which accepted the plea or by a jury upon request of the defendant. When a defendant has been found guilty of a **capital felony**, the **proceedings** shall be conducted before the court or jury which found the defendant guilty, provided the defendant may waive hearing before the jury, in which event the hearing shall be before the court. If, however, circumstances make it impossible or impractical to reconvene the same jury for the sentencing proceedings the court may dismiss that jury and convene a new jury for such proceedings. If a retrial of the sentencing proceedings is necessary as a consequence of a remand from an appellate court, the sentencing authority shall be determined as provided in Subsection (4) below.

(2) In these sentencing proceedings, evidence may be presented as to any matter the court deems relevant to sentence, including but not limited to the nature and circumstances of the crime, the defendant's character, background, history, mental and physical condition, and any other facts in aggravation or mitigation of the penalty. Any evidence the court deems to have probative force may be received regardless of its admissibility under the exclusionary rules of evidence. The state's attorney and the defendant shall be permitted to present argument for or against sentence of death. Aggravating circumstances shall include those as outlined in 76-5-202. Mitigating circumstances shall include the following:

- (a) The defendant has no significant history of prior criminal activity;
- (b) The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance;
- (c) The defendant acted under extreme duress or under the substantial domination of another person;
- (d) At the time of the murder, the capacity of the defendant to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirement of law was substantially impaired as a result of mental disease, intoxication, or influence of drugs;

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- (e) The youth of the defendant at the time of the crime;
 - (f) The defendant was an accomplice in the murder committed by another person and his participation was relatively minor,
 - (g) And any other fact in mitigation of the penalty.
- (3) The court or jury, as the case may be, shall retire to consider the penalty. In all proceedings before a jury, under this section, it shall be instructed as to the punishment to be imposed upon a unanimous verdict for death and that to be imposed if a unanimous verdict for death is not found. If the jury reports unanimous agreement to impose the **sentence** of death, the court shall discharge the jury and shall impose the **sentence** of death. If the jury is unable to reach a unanimous verdict imposing the **sentence** of death, the court shall discharge the jury and impose the **sentence** of life imprisonment.
- (4) Upon any appeal by the defendant where the **sentence** is of death, the appellate court, if it finds prejudicial error in the **sentencing proceeding** only, may set aside the **sentence** of death and remand the case to the trial court for new **sentencing proceedings** to the extent necessary to correct the error or errors. No error in the **sentencing proceedings** shall result in the reversal of the conviction of a **capital felony**. In cases of remand for new **sentencing proceedings**, all exhibits and a transcript of all testimony and other evidence properly admitted in the prior trial and **sentencing proceedings** shall be admissible in the new **sentencing proceedings**, and:
- (a) If the **sentencing proceeding** was before a jury a new jury shall be impaneled for the new **sentencing proceeding**;
 - (b) If the **sentencing proceeding** was before a judge, the original trial judge shall conduct the new **sentencing proceeding**; or
 - (c) If the **sentencing proceeding** was before a judge and the original trial judge is unable or unavailable to conduct a new **sentencing proceeding**, then another judge shall be designated to conduct the new **sentencing proceeding**.
- (5) In the event the death penalty is held to be unconstitutional by the Utah supreme court or the United States supreme court, the court having jurisdiction over a person previously **sentenced** to death for a **capital felony** shall cause such person to be brought before the court, and the court shall **sentence** the person to life imprisonment, and any person who is thereafter convicted of a **capital felony** shall be **sentenced** to life imprisonment.

History: C. 1953, 76-3-207, enacted by L. 1973, ch. 196, § 76-3-207; L. 1982, ch. 19, § 1.

NOTES, REFERENCES, AND ANNOTATIONS

Compiler's Notes. -- The 1982 amendment inserted "pled guilty to or" in the first **sentence** of subsec. (1); substituted "**sentence**" for "penalty" at the end of

the first **sentence** of subsec. (1); inserted the second **sentence** of subsec. (1); inserted "When a defendant has been found guilty of a **capital felony**" at the beginning of the third **sentence** of subsec. (1); added the fourth and fifth **sentences** to subsec. (1); designated the former second paragraph of subsec. (1) as subsec. (2); inserted "**sentencing**" in the first **sentence** of subsec. (2); redesignated former subsecs. (2) to (4) as (3) to (5), substituted "appellate court" for "supreme court" in the first **sentence** of subsec. (4); substituted "for new **sentencing proceedings** to the extent necessary to correct error or errors" in the first **sentence** of subsec. (4) for "in which event the trial court shall impose the **sentence** of life imprisonment"; added the last two **sentences**, including subds. (a), (b) and (c) to subsec. (4); and deleted "in a **capital felony**" after "death penalty" in subsec. (5).

Effective Date. -- Section 2 of Laws 1982, ch. 19 provided that the act should take effect upon approval. Approved February 16, 1982.

Cross-References. -- Appeals to the Supreme Court where death sentences imposed, procedure, § 77-35-26.

ANALYSIS

Constitutionality.

Appeals.

Comparison of aggravating and mitigating factors.

Factors in determining penalty.

Guilty plea.

-- Conditional.

-- Refusal to comply with agreement.

Prejudicial penalty hearing.

Psychiatric examinations.

Standard of proof.

Constitutionality.

The fact that this section does not necessarily require application of the exclusionary rules of evidence does not render it unconstitutional. *State v. Brown*, 607 P.2d 261 (Utah 1980).

The Utah death penalty statute is constitutional. *Andrews v. Shulsen*, 600 F. Supp. 408 (D. Utah 1984), *aff'd*, 802 F.2d 1256 (10th Cir. 1986), *cert. denied*, U.S. , 107 S. Ct. 1964, 95 L. Ed. 2d 536 (1987); *Selby v. Shulsen*, 600 F. Supp. 432 (D. Utah 1984), *aff'd*, 802 F.2d 1282 (10th Cir. 1986); *State v. Bishop*, 75 Utah Adv. Rep. 9 (1988).

Subsection (2) complies with the letter and spirit of the federal constitutional requirements for imposition of the death penalty. The only restriction on the admission of such evidence is that it must not be unfairly prejudicial to the accused. *State v. Lafferty*, 73 Utah Adv. Rep. 57 (1988).

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Appeals.

In reviewing the imposition of the death penalty in a **capital** case, Supreme Court has the duty to determine whether the **sentence** of death resulted from error, prejudice or arbitrariness, or was disproportionate. State v. Wood, 648 P.2d 71 (Utah), cert. denied, 459 U.S. 988, 103 S. Ct. 341, 74 L. Ed. 2d 383 (1982).

On direct appeal in capital cases, supreme court will review an error, even though no proper objection was made at trial and even though the error was not raised on appeal, if the error was manifest and prejudicial. State v. Wood, 648 P.2d 71 (Utah), cert. denied, 459 U.S. 988, 103 S. Ct. 341, 74 L. Ed. 2d 383 (1982).

Supreme court will review errors raised on appeal in death penalty cases, even though no proper objection was made at trial, but will reverse a conviction based upon such errors only if they meet the manifest and prejudicial error standard. In addition, the court has the power to notice manifest ("palpable") error apparent in the record and correct a conviction based upon the same if the error is prejudicial, even though such error is not objected to at trial or assigned on appeal. State v. Tillman, 72 Utah Adv. Rep. 6 (1987).

A case-by-case (comparative) proportionality review was not required in regard to defendant's contention that his sentence of death was disproportionate to the crime committed, the immunity granted his accomplice, and the sentences meted out in other first-degree murder cases. State v. Tillman, 72 Utah Adv. Rep. 6 (1987).

Comparison of aggravating and mitigating factors.

In comparing the totality of the mitigating factors against the totality of the aggravating factors, the comparison is not in terms of the relative numbers of the aggravating and the mitigating factors, but is in terms of their respective substantiality and persuasiveness. State v. Wood, 648 P.2d 71 (Utah), cert. denied, 459 U.S. 988, 103 S. Ct. 341, 74 L. Ed. 2d 383 (1982).

Factors in determining penalty.

The extended abuse of alcohol need not produce outright insanity before it is relevant in the penalty phase of a capital offense trial; diminished mental capacity short of legal insanity is a mitigating factor. State v. Wood, 648 P.2d 71 (Utah), cert. denied, 459 U.S. 988, 103 S. Ct. 341, 74 L. Ed. 2d 383 (1982).

In sentencing defendant to death for his conviction of first degree murder for murder committed in the course of a robbery, trial court's reliance on the "ruthlessness and brutality" of the murder as the only aggravating factor, without any indication in the record that the robbery was considered in the weighing process, was constitutionally impermissible and flawed the **sentencing** process since such factor describes all murders and fails to provide any guideline for channeling discretion; as to any class of **capital** murders under Utah law, "ruthlessness and brutality" as an aggravating factor must be limited to those murders involving an aggravated battery or torture. State v. Wood, 648 P.2d 71 (Utah), cert. denied, 459 U.S. 988, 103 S. Ct. 341, 74 L. Ed. 2d 383 (1982).

Guilty plea.

-- Conditional.

This section and Rule 11, U.R.Cr.P. permit a trial judge to accept a guilty plea conditioned upon the judge's promise not to impose the death penalty. *State v. Kay*, 717 P.2d 1294 (Utah 1986).

-- Refusal to comply with agreement.

Considerations of fundamental fairness embodied in the due process clause did not require specific enforcement of a broken plea agreement. While the defendant acted in reliance on the promise that he would not be sentenced to death if he entered a guilty plea and gave a full confession, that confession certainly could not be used at a subsequent trial, nor could the prosecution make use of the confession or any evidence derived from it. The defendant's remedy was to either withdraw the guilty plea given as part of the aborted plea agreement and enter a new plea, or choose to stand on his guilty plea and proceed to sentencing under the provisions of this section with no guarantee as to sentence. *State v. Kay*, 717 P.2d 1294 (Utah 1986).

Prejudicial penalty hearing.

Where assistant county attorney inaccurately imputed an inflammatory obscenity to the defendant in the penalty phase which constituted hearsay on hearsay and the court failed to adequately instruct the jury on the burden of proof on the penalty phase, these prejudicial errors required that the defendant's sentence be reduced from death to life imprisonment. *State v. Brown*, 607 P.2d 261 (Utah 1980). (Note that one of the concurring justices felt that the penalty phase itself is unconstitutional.)

Psychiatric examinations.

Although psychiatric assistance had been afforded defendant prior to trial, it was an abuse of discretion for trial court to deny indigent defendant's timely motion for psychiatric assistance in the penalty phase of a capital case where it appeared there was not a full and complete examination prior to trial because of defendant's belief that the psychiatrist appointed was to be used to establish his defense counsel's theory of defense, which was inconsistent with his own theory of defense, there was evidence defendant was suffering from alcoholism and depression at the time of the offense, and defendant's actions were not designed to disrupt or unduly prolong the trial. *State v. Wood*, 648 P.2d 71 (Utah), cert. denied, 459 U.S. 988, 103 S. Ct. 341, 74 L. Ed. 2d 383 (1982).

Standard of proof.

Before the death penalty may be imposed, the sentencing authority, after considering the totality of the aggravating and mitigating circumstances, must be

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persuaded beyond a reasonable doubt that the total aggravation outweighs total mitigation, and must be further persuaded, beyond a reasonable doubt, that the imposition of the death penalty is justified and appropriate after considering all the circumstances. State v. Wood, 648 P.2d 71 (Utah , cert. denied, 459 U.S. 988, 103 S. Ct. 341, 74 L. Ed. 2d 383 (1982)).

State not only has the burden of persuading the sentencer beyond a reasonable doubt that the totality of the aggravating circumstances outweighs the totality of the mitigating circumstances, but also has the burden of proving to the sentencer beyond a reasonable doubt that the defendant actually committed the violent crime which is to be treated as an aggravating factor. State v. Lafferty, 73 Utah Adv. Rep. 57 (1988).

Law Reviews. -- Double Jeopardy and Resentencing in Bifurcated Criminal Proceedings: Bullington v. Missouri, 1982 B.Y.U. L. Rev. 192.

Recent Developments in Utah Law -- Judicial Decisions -- Criminal Law, 1987 Utah L. Rev. 137.

A.L.R. -- Propriety under Federal Constitution of evidence or argument concerning deterrent effect of death penalty, 78 A.L.R. Fed. 553.

U. C. A. 1953 § 76-3-207

UT ST § 76-3-207

END OF DOCUMENT

Addendum E

UTAH CODE, 1953

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TITLE 76. CRIMINAL CODE
CHAPTER 3 PUNISHMENTS
PART 2 SENTENCING

76-3-207. **Capital felony -- Sentencing proceeding.**

(1) When a defendant has pled guilty to or been found guilty of a **capital felony**, there shall be further **proceedings** before the court or jury on the issue of **sentence**. In the case of a plea of guilty to a **capital felony**, the **sentencing proceedings** shall be conducted by the court which accepted the plea or by a jury upon request of the defendant. When a defendant has been found guilty of a **capital felony**, the **proceedings** shall be conducted before the court or jury which found the defendant guilty, provided the defendant may waive hearing before the jury, in which event the hearing shall be before the court. If, however, circumstances make it impossible or impractical to reconvene the same jury for the sentencing proceedings the court may dismiss that jury and convene a new jury for such proceedings. If a retrial of the sentencing proceedings is necessary as a consequence of a remand from an appellate court, the sentencing authority shall be determined as provided in Subsection (4) below.

(2) In these sentencing proceedings, evidence may be presented as to any matter the court deems relevant to sentence, including but not limited to the nature and circumstances of the crime, the defendant's character, background, history, mental and physical condition, and any other facts in aggravation or mitigation of the penalty. Any evidence the court deems to have probative force may be received regardless of its admissibility under the exclusionary rules of evidence. The state's attorney and the defendant shall be permitted to present argument for or against sentence of death. Aggravating circumstances shall include those as outlined in 76-5-202. Mitigating circumstances shall include the following:

- (a) The defendant has no significant history of prior criminal activity;
- (b) The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance;
- (c) The defendant acted under extreme duress or under the substantial domination of another person;
- (d) At the time of the murder, the capacity of the defendant to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirement of law was substantially impaired as a result of mental disease, intoxication, or influence of drugs;

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the first **sentence** of subsec. (1); inserted the second **sentence** of subsec. (1); inserted "When a defendant has been found guilty of a **capital felony**" at the beginning of the third **sentence** of subsec. (1); added the fourth and fifth **sentences** to subsec. (1); designated the former second paragraph of subsec. (1) as subsec. (2); inserted "**sentencing**" in the first **sentence** of subsec. (2); redesignated former subsecs. (2) to (4) as (3) to (5), substituted "appellate court" for "supreme court" in the first **sentence** of subsec. (4); substituted "for new **sentencing proceedings** to the extent necessary to correct error or errors" in the first **sentence** of subsec. (4) for "in which event the trial court shall impose the **sentence** of life imprisonment"; added the last two **sentences**, including subds. (a), (b) and (c) to subsec. (4); and deleted "in a **capital felony**" after "death penalty" in subsec. (5).

Effective Date. -- Section 2 of Laws 1992, ch. 19 provided that the act should take effect upon approval. Approved February 16, 1992.

Cross-References. -- Appeals to the Supreme Court where death sentences imposed, procedure, § 77-35-26.

ANALYSIS

Constitutionality.

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Factors in determining penalty.

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-- Conditional.

-- Refusal to comply with agreement.

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Constitutionality.

The fact that this section does not necessarily require application of the exclusionary rules of evidence does not render it unconstitutional. *State v. Brown*, 607 P.2d 261 (Utah 1980).

The Utah death penalty statute is constitutional. *Andrews v. Shulsen*, 600 F. Supp. 408 (D. Utah 1984), *aff'd*, 802 F.2d 1256 (10th Cir. 1986), *cert. denied*, U.S. , 107 S. Ct. 1964, 95 L. Ed. 2d 536 (1987); *Selby v. Shulsen*, 600 F. Supp. 432 (D. Utah 1984), *aff'd*, 802 F.2d 1282 (10th Cir. 1986); *State v. Bishop*, 75 Utah Adv. Rep. 9 (1988).

Subsection (2) complies with the letter and spirit of the federal constitutional requirements for imposition of the death penalty. The only restriction on the admission of such evidence is that it must not be unfairly prejudicial to the accused. *State v. Lafferty*, 73 Utah Adv. Rep. 57 (1988).

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Appeals.

In reviewing the imposition of the death penalty in a **capital** case, Supreme Court has the duty to determine whether the **sentence** of death resulted from error, prejudice or arbitrariness, or was disproportionate. State v. Wood, 648 P.2d 71 (Utah), cert. denied, 459 U.S. 988, 103 S. Ct. 341, 74 L. Ed. 2d 383 (1982).

On direct appeal in capital cases, supreme court will review an error, even though no proper objection was made at trial and even though the error was not raised on appeal, if the error was manifest and prejudicial. State v. Wood, 648 P.2d 71 (Utah), cert. denied, 459 U.S. 988, 103 S. Ct. 341, 74 L. Ed. 2d 383 (1982).

Supreme court will review errors raised on appeal in death penalty cases, even though no proper objection was made at trial, but will reverse a conviction based upon such errors only if they meet the manifest and prejudicial error standard. In addition, the court has the power to notice manifest ("palpable") error apparent in the record and correct a conviction based upon the same if the error is prejudicial, even though such error is not objected to at trial or assigned on appeal. State v. Tillman, 72 Utah Adv. Rep. 6 (1987).

A case-by-case (comparative) proportionality review was not required in regard to defendant's contention that his sentence of death was disproportionate to the crime committed, the immunity granted his accomplice, and the sentences meted out in other first-degree murder cases. State v. Tillman, 72 Utah Adv. Rep. 6 (1987).

Comparison of aggravating and mitigating factors.

In comparing the totality of the mitigating factors against the totality of the aggravating factors, the comparison is not in terms of the relative numbers of the aggravating and the mitigating factors, but is in terms of their respective substantiality and persuasiveness. State v. Wood, 648 P.2d 71 (Utah), cert. denied, 459 U.S. 988, 103 S. Ct. 341, 74 L. Ed. 2d 383 (1982).

Factors in determining penalty.

The extended abuse of alcohol need not produce outright insanity before it is relevant in the penalty phase of a capital offense trial; diminished mental capacity short of legal insanity is a mitigating factor. State v. Wood, 648 P.2d 71 (Utah), cert. denied, 459 U.S. 988, 103 S. Ct. 341, 74 L. Ed. 2d 383 (1982).

In sentencing defendant to death for his conviction of first degree murder for murder committed in the course of a robbery, trial court's reliance on the "ruthlessness and brutality" of the murder as the only aggravating factor, without any indication in the record that the robbery was considered in the weighing process, was constitutionally impermissible and flawed the **sentencing** process since such factor describes all murders and fails to provide any guideline for channeling discretion; as to any class of **capital** murders under Utah law, "ruthlessness and brutality" as an aggravating factor must be limited to those murders involving an aggravated battery or torture. State v. Wood, 648 P.2d 71 (Utah), cert. denied, 459 U.S. 988, 103 S. Ct. 341, 74 L. Ed. 2d 383 (1982).

Guilty plea.

-- Conditional.

This section and Rule 11, U.R.Cr.P. permit a trial judge to accept a guilty plea conditioned upon the judge's promise not to impose the death penalty. *State v. Kay*, 717 P.2d 1294 (Utah 1986).

-- Refusal to comply with agreement.

Considerations of fundamental fairness embodied in the due process clause did not require specific enforcement of a broken plea agreement. While the defendant acted in reliance on the promise that he would not be sentenced to death if he entered a guilty plea and gave a full confession, that confession certainly could not be used at a subsequent trial, nor could the prosecution make use of the confession or any evidence derived from it. The defendant's remedy was to either withdraw the guilty plea given as part of the aborted plea agreement and enter a new plea, or choose to stand on his guilty plea and proceed to sentencing under the provisions of this section with no guarantee as to sentence. *State v. Kay*, 717 P.2d 1294 (Utah 1986).

Prejudicial penalty hearing.

Where assistant county attorney inaccurately imputed an inflammatory obscenity to the defendant in the penalty phase which constituted hearsay on hearsay and the court failed to adequately instruct the jury on the burden of proof on the penalty phase, these prejudicial errors required that the defendant's sentence be reduced from death to life imprisonment. *State v. Brown*, 607 P.2d 261 (Utah 1980). (Note that one of the concurring justices felt that the penalty phase itself is unconstitutional.)

Psychiatric examinations.

Although psychiatric assistance had been afforded defendant prior to trial, it was an abuse of discretion for trial court to deny indigent defendant's timely motion for psychiatric assistance in the penalty phase of a capital case where it appeared there was not a full and complete examination prior to trial because of defendant's belief that the psychiatrist appointed was to be used to establish his defense counsel's theory of defense, which was inconsistent with his own theory of defense, there was evidence defendant was suffering from alcoholism and depression at the time of the offense, and defendant's actions were not designed to disrupt or unduly prolong the trial. *State v. Wood*, 648 P.2d 71 (Utah), cert. denied, 459 U.S. 988, 103 S. Ct. 341, 74 L. Ed. 2d 383 (1982).

Standard of proof.

Before the death penalty may be imposed, the sentencing authority, after considering the totality of the aggravating and mitigating circumstances, must be

persuaded beyond a reasonable doubt that the total aggravation outweighs total mitigation, and must be further persuaded, beyond a reasonable doubt, that the imposition of the death penalty is justified and appropriate after considering all the circumstances. *State v. Wood*, 648 P.2d 71 (Utah), cert. denied, 459 U.S. 938, 103 S. Ct. 341, 74 L. Ed. 2d 383 (1982).

State not only has the burden of persuading the sentencer beyond a reasonable doubt that the totality of the aggravating circumstances outweighs the totality of the mitigating circumstances, but also has the burden of proving to the sentencer beyond a reasonable doubt that the defendant actually committed the violent crime which is to be treated as an aggravating factor. *State v. Lafferty*, 73 Utah Adv. Rep. 57 (1988).

Law Reviews. -- Double Jeopardy and Resentencing in Bifurcated Criminal Proceedings: *Bullington v. Missouri*, 1982 B.Y.U. L. Rev. 192.

Recent Developments in Utah Law -- Judicial Decisions -- Criminal Law, 1987 Utah L. Rev. 137.

A.L.R. -- Propriety under Federal Constitution of evidence or argument concerning deterrent effect of death penalty, 78 A.L.R. Fed. 553.

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END OF DOCUMENT

Q. He wanted you to shoot him with the gun you had then?

A. No.

Q. Was it the gun that...

A. It was the fired gun?

Q. he was going to fit the silencer for?

A. Ya.

Q. And he's already filed the side off of it?

A. Ya.

Q. O.k. so this is what? A week, day..before?

A. Oh a couple of weeks maybe.

Q. And that's the same gun you had with ya the night Mark was killed?

A. Ya the last gun ya.

Q. O.k. It was in your purse? What happened to it?

A. It stayed there.

Q. Is it still there?

A. No (laugh).

Q. What happened to the gun?

A. O.k. I took it to my place and hid it.

Q. Where is it? You still hid it?

A. Detective Chapman has it.

Q. You gave it to him?

A. Ya.

Q. O.k. that's what I ask ya. Where's the gun? Cause you just told me Chapman had it.

A. (Laugh) Well you didn't want me to skip any details. I'm trying to...

Q. Boy your really..your starting to get along here. Your starting to get idea. You better not skip any details and you have done so so far.

A. But I didn't...

Q. And that's what makes this gawd dam test look bad Carla. When you skip details and you miss details and you don't include details. Polygraph tests ain't going to work for you.

A. But I didn't mean to skip em. I didn't!

Q. Do you want me to believe ya.

A. Well you better. (laugh)

Q. O.k. is the jury going to believe ya?

A. Who knows what their going to believe?

Q. That's right. So it better be right.

A. It is right.

Q. There's only way to believe anything and that's if it's the truth. If something comes out on that stand, on the cross examination that was not mentioned in direct or is in conflict with what is correct. That can violate your amunity arraignment.

A. I know...

Q. O.k. Carla I'm on your side. I'm trying to keep you from getting to _____
o.k.

A. I know your trying to help me.

Q. O.k. All I want is the truth.

A. I'm telling the truth.

Q. That's what we do in this room. We prevent truth decay. O.k.

A. I can't help what that machine shows but I'm telling you the truth.

Q. The machine doesn't do anything. Your...see...the switch is on.

A. Well it sounds..you know sounds..

Q. O.k. let me show you something. The switch is on. Pushed this little thing and paper starts moving. You see these pens?

A. Ya.

Q. Are they moving? Do you know why? They can't.

A. Cause I'm not hooked up to it.

Q. That's right. In other words, all by itself it can't do a damn thing. So the machine doesn't do anything.

A. I know but...

Q. What when on that paper is what came from you. O.k.

A. I know. But I'm telling the truth.

Q. O.k. I..

A. But I can't help...

Q. Have I said your not. Have I told you that.

A. No you but said that that...

Q. Have I even once here said that Carla has been lying to me?

A. No but you said...

Q. One of them told...

A. I had a hard time getting past that....

Q. Your having a hard time telling me the truth is what probably.. your not lying. your having a hard time telling the truth. Your having a hard time getting out with everything and all the details. You've told a surface story of an event. O.k.

A. I haven't told the surface. I have told everything.

Q. I know. But everytime somebody talks to you a little more comes out doesn't it.

A. Because they ask a different kind of a question.

Q. Somebody's asking the right questions aren't they. Right?

A. But I tried to tell them everything I remember. And they...they says well we know your not going to remember every detail. But try you know.

Q. Ah ah. Do you write letters to people?

A. Not very often.

Q. When you write letters do you write long letters or short letters?

A. Short.

Q. Why.

A. Nothing to say.

Q. O.k. can you write a detailed description...

A. Don't ask me to write it..

Q. No I'm asking, can you write detailed description of an event easier than you can tell it? Do you find it easier to write than to talk about it?

A. No.

Q. Just asking?

A. No.

Q. O.k. then don't write it. I don't even want it. It's just that some people find that they can be very very detailed descriptive in writing where they can't verbalize it o.k? And sometimes it helps. You see the problem is Carla, is here we have....

A. Could it...could it be that I...

Q. Here we have a very tramatic and a very..in your 29-30 yrs. of your life. I would say er I would guess, or I would hope so, this is the most tramatic experience of your life time?

A. Ya.

Q. It's difficult if not impossible..at least very difficult or anyone listening to you describe this event to believe that that's all there is there... There is to many...

A. Why?

Q. To many gaps. To many things missing. To many things..There are there just are. There are too many things missing. Now there are a number of reasons why people have a tendency by human nature, it's a self protection mechanism to block out events and have kinda like a scatter brain of an event o.k. There's only one way to bring all events out, those details out and that's continual re-living of the experience o.k. That's what were doing here. I'm asking some questions that you haven't heard before and your remembering things you haven't stated before. Right

A. Ya.

Q. O.k. what I'm saying is I think maybe there's more there.

A. I don't know what though.

Q. You didn't know before did ya?

A. No.

Q. Til I ask ya right? O.k. so there may be more there so let's get this thing resolved before.

A. But I know participation and I don't..I know that for sure.

Q. O.k. and what are you going to say when the Defense Council says you were part partial of every detail applying to kill Mark Schoenfield, weren't ya?

A. Ya.

Q. O.k. alright. Don't shirk any issue or detail. For fear that it's either going to make you look bad or unbelievable.

A. But...

Q. It's happened

A. But there's a.....

Q. Say it happened. If something was said, say it was said. If you felt something say why you felt it. Because it is totally unbelievable and understandable if a person does something or feels something without being able to explain why they did it and for what reason they felt it. Only an action or statement can prompt a person to make a decision. If when he was stuck, you turned back. You race

Con't

Q. the decision to turn your back before he was struck for some reason.

A. I didn't want to see it.

Q. You didn't see..wanna see what?

A. I didn't want to see him getting hit.

Q. How did you know he was going to be hit?

A. (laugh)

Q. Do you see what I'm getting at? Why did you turn your back. I didn't want to see it. It..did...didn't want to see what? I didn't want to see him get hit. How the hell did you know he was going to get hit? Did a markee flash up and say turn your back. This guy's going to get hit?

A. No.

Q. Of course not. Something happened, something occurred which made you make a decision to do something and that's the reason for. O.k. Is it possible, is it probable is it true you were inside that bedroom when Mark was hit any of the time?

A. I was on my way out. I turned around, I was on my way out...

Q. Is the bottle half full or half empty?

A. It was half full.

Q. Your an optimist. If your on your way out which side of the room of the door are you on?

A. What? (laugh)

Q. If your on your way out, which side of the door you on?

A. Your on the inside.

Q. Ah...

A. I told ya that though.

Q. O.k. which..where were you at?

A. I was inside....

Q. Were you in the bedroom or outside the bedroom when he was hit?

A.I tol...I'll tell you what happened.

Q. O.k. If your on your way out of the bedroom, where were you at? If you were on your way out of the bedroom when Mark was hit the last time, where were you at?

A. I could of been in and I could of been out.

Q. O.k. How could you be out if you were on your way out?

A. (laugh) You..I was on the way....I could see he put that thing on his head

Q. O.k.

A. I knew he was going do..hit him again for some reason.

Q. I want you to come over here and stand here. I'm..I'm going to be Mark O.k. I'm laying here..I can't lay all the way down..I want you to stand up in the posit you were from Mark at the time til he put the thing over this head.

A. Well....

Q. Stand up. I'm Mark right here. O.k. were going to use that side of the room. Your over this side.

A. Well it's all backwards here.

Q. It doesn't matter. From my feet...if my feet are his feet, which side of his feet you were on. Is that the side of his feet you were on or were you over here?

A.I had to _____ well he was...he was up in the corner thing.

Q. O.k. Right there.

A. And I was on this side then.

Q. O.k. Where was the door.

A. But the door would of been clear down here.

Q. O.k. but you were over here?

A. No I was standing by the door.

Q. O.k. Which side..of of..my..my feet are his feet. Which side of his feet were y on?

Q. Were you directly in line with his body in other words?

A. Well he was laying diagonally on the bed.

Q. But that glass there, that mirror is that the door? If you use that as a door, which direction should I be?

A. He was laying diagonally along...

Q. O.k. this way. Is that right?

A. More this way?

Q. Which way?

A. This way.

Q. You keep moving me around until you got me in the right spot. O.k. Alright your by the door.

A. Ya about...

Q. Is that the door right there. Is that how close you were to the door?

A. No like that.

Q. Move that chair if it's in the road.

A. I can't. It's too heavy...(laugh).. O.k. I wasn't..wasn't far away from the door.

Q. How close to his feet were ya? Could you have touched his feet?

A. No.

Q. O.k. now Tillman does what?

A. He puts that thing on his head.

Q. That you handed him?

A. Ya.

Q. Did you throw it to him?

A. He came around..

Q. He was on this side of the bed?

A. Ya.

Q. And he came around..

A. And I handed it to him..

Q. And then he came back.

A. Or maybe I took his _____ or something. I don't know but he came.. he came around.

Q. Did he say hand me that or did he come and get it from ya?

A. He said hand me. He said hand me something and that was the closest thing and I picked it up and gave it to him.

Q. He said hand me something? How come you didn't pick up a paperclip? That someth How did you know what he wanted to use it for?

A. Cause he...I didn't know what he was going to do?

Q. So then he didn't say hand me something. What did he say? Hand me something to put over his face?

A. No.

Q. How did you know what to hand him.

A. (Sign)

Q. Did he say, I'm going to hit him again and you said put something over him I didn't want to see him?

A. No I didn't say that.

Q. O.k.

Q. But he said hand me what?

A.Now I don't know.....I don't know if he wiped the wall off with a towel before or after. Now I don't know.

Q. But you remember that for sure.

A. I remember him doing.

Q. Wiping the wall....

A. But I don't remember if that was.....before he put this other thing on his head or after. I don't remember which..how it came.

Q. You mean what? How does this refer in the order of when you handed it to him?

A. Well I don't know..

Q. If he wiped it off after he hit him...

A. I'm just trying...

Q. Then you had to be back in the bedroom.

A.I don't know what he said.

Q. O.k. you....

A. I know...I know he ask me to hand...

Q. Hand him something...

A. Hand him something...

Q. Hand me what? Did he say hand me a shirt, hand me a towel, hand me a coat, hand me a blanket? Hand me something?

A. I don't remember.

Q. Why did he...if he said hand me something. Why did you decide to hand him a shirt? I'm cold give me a shirt? You had a reason for handing him a shirt.

A. Cause he asked me to.

Q. Did you throw him a shirt and said put that over him.

A. No.

Q. Did he say give me something to cover him so when I hit him the blood doesn't splatter? It's rather obvious that he didn't want blood all over the place.

A. Ya.

Q. Cause he wiped it off didn't he?

A. Ya.

Q. Did he say something like that. Do you recall something like that? Hand me a shirt er hand me a coat er hand me something to put over his head so that when I hit him the blood doesn't splatter. Or hand me something to cover him over so I can finish him off?

A. I don't know.

Q. He's still breathing. He isn't dead yet? What prompted you to hand him something to put over this guy?

A. He ask me to hand him it, something. But I...but he didn't say what for.

Q. Did he describe what he wanted you to hand him?

A. No.

Q. How did you know what to hand him?

A. I don't know.

Q. Come on Carla.

A. I don't remember.

Q. You had to know what he wanted it for. What are you thinking on that?

A. I don't...

Q. You hand it to him. Does he walk around here and go over and you go over and give it to him back or did you bring it to him over here.

A. No he came around.

Q. Up until this time you did every..

A. And I...

Q. Thing he tells you to but this time he comes to you.

A. Well I took a couple of steps.

Q. O.k.

A. But he came around.

Q. And he reached out and handed it to ya. Like this? O.k. He takes it then what does he do?

A. He goes back and puts it on his head.

Q. How did he put it on his head?

A. _____

Q. O.k. Now I'm going to change positions here a moment long enough for you to be telling it.

A. Me?

Q. I want you to be telling..showing me exactly how you saw him..lay that over that guys head. Over Mark's head. Use your jacket if you want.

A. He just layed...

Q. Show me how he did it.

A. Lay flat across his head.

Q. I want you to come over here and show me.

A. Well...

Q. I don't want you to tell me I want you to show me. O.k. Cause he's on the side of Mark now right? How's Mark laying? On his side or on his back? Which way is he facing?

A.He's still diagonal this way.

Q. Well I know. But diagonal what way? Is he laying on this side. Laying on his back.

A. His head was to the side.

Q. This way or this way?

A. (laugh).

Q. Try to help your memory. O.k. while you think on that show me how..

A. Well...

Q. How he put his hand.

A. This way. Like that.

Q. O.k. Hanging over the edge of the bed er on the bed this way.

A. No it was on the bed.

Q. Like this?

A. He was kinda.....on his back with his head to the side.

Q. This side or this side?

A. That side.

Q. O.k. this way?

A. Ya.

Q. Alright. Show me how. Tell me to cover...

A. He just covered his head. The side of it.

Q. O.k. where's the hatchet? You just used both hands to cover my head.

A. (laugh)

Q. Where's the hatchet?

A. Well I have no ideaI don't know...I don't...

Q. That's why I ask you to do it so you can just use....

A. Well I just did it the way that I would do it.

Q. O.k.

A. Would of done it.

Q. Little difficult to do it with one hand isn't it?

A. Ya.

Q. But you can hold the hatchet and do that can't ya?

A. But I don't remember doing it....

Q. But you didn't see the hatchet? When did you next see the hatchet?
He covers his face.

A. I must of seen him....

Q. Come on...come on you must of seen him....

A. But I don't know for sure....I can't say for sure. If I said I seen him go up
like this...

Q. You done this...

A. If I say that...

Q. I want you to say something you didn't see.

A. But I'm..I'm not sure.

Q. Why did you turn your back?

A. I knew he was going to do it.

Q. Do what?

A. Hit him.

Q. Why?

A.To make sure I guess. He didn't say.

Q. You guess?

A. He didn't say.

Q. Why did you turn your back?

A. I didn't want to see it.

Q. You didn't want to see what?

A. I didn't want to see him hit him.

Q. Why was he going to hit him?

A. He wanted him dead.

Q. How do you know that?

A. Cause he told me that.

Q. When?

A. When he shut the bedroom door _____.

Q. Just after he _____. Or did he go back.

A. No. I only remember him hitting him twice. Two times.

Q. First time or the second time?

A. _____

Q. Ah ha you say he hit him several times while you were out of the room and you.....

A. I heard....I heard it.

Q. O.k. But you saw him hit him twice?

A. No I didn't see it. I heard.

Q. You said I only know you hit him twice.

A. Cause I heard it.

Q. O.k. The first time or the second time?

A. I heard it both times.

Q. Two times each time.

A. No. One time each time.

Q. One time each time.

A. He says I want him dead.

Q. Shall I hit him again. I want him dead?

A. No he said...he said, shall I hit again and I says no and he says, I want him dead.

Q. And you said what?

A. And that...that's when I said the carbon monoxide from the fire will probably.. probably do it.

Q. O.k. is that you..your words that you used at that time or did you just say fire er did you find out about carbon monoxide later on?

A. Well I knew about it.

Q. O.k.

A. Well...I don't know if I used carbon monoxide but I said the fire will do it.

Q. O.k.

A. I don't remember if I used carbon....

Q. Then don't use words you didn't use.

A. I don't remember. It's hard to remember exact words what was said.

Q. O.k..Let me see if Chapman's still here. You've obviously got alot of ground work to cover with him and Mike Christensen.

A. (laugh) I thought I already had.

Q. No your only in the beginning _____.

A. (laugh)

Q. If you think this is bad. Wait until you get in court. This is nothing. You'll be on that stand for hours. Maybe days. And you better have it right. O.k. You know what I'm saying? O.k.

Addendum F

POLYGRAPH - NO INTRODUCTION

A: He told me Laurie had gone into his house and switched it. That's why it didn't work cause she'd switched it with another gun. And then he um...told me he started getting these notes....they're pinning them up on his door or something, him and this other black guy that lives close to him. And they were signing them the Clan. And they told me....that this friend of his car, somebody had smashed all the window in it. And that he wanted me to get another gun for him. Cause he didn't know what was going to happen with these notes and everything.

Q: Did you ever see any of the notes?

A: No.

Q: Ok.

A: ...So I got him a gun,

Q: What was this gun?

A: This was a...a .22. This is the part I forgot to tell. Cause I just remembered last night I was...a he had me get one I don't remember what it was...but the bullets were like \$14.00 a box. And he said this gun is too powerful.

Q: This was the second gun?

A: Yea this was the second gun.

Q: Where did you buy it?

A: National Jewelrt. And....

Q: What did it look like?

A: I can't remember. I....

Q: Was it a revolver or an automatic, do you know the difference between a revolver and an automatic?

A: I think this was an automatic. But it, he says this is too powerful. I just walked out of the pawnshop and he says it was too powerful, so I just walked back in and changed it.

Q: Oh, he was outside?

A: Yea.

Q: Ok.

A: And changed it to a .22 automatic.

Q: Had you bought the box of shells, you said the shells were \$14.00?

A: Yea.

Q: Had you bought them with the gun, did you take the gun and shells back in there?
A: Yea.

Alright.

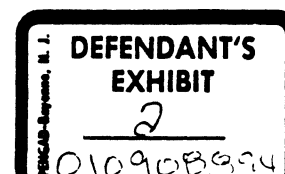
The automatic is those things you slide on the back right?

Yea right there on the back right there.

Ok, yea. And I got,

And that's what this was was the big gun?

....No,



A: No it...I don't even remember what it even looked like.

Q: Now the revolver has the cylinder in the middle a round cylinder in the middle turns as you cock the handle and it turns.

A: Yea.

Q: Ok, an automatic has an action that you slide back on top,

A: Ok, I exchanged it for a .22 automatic.

Q: Ok.

A: And then, let's see what else happened.

Q: Do you recall when he said it was too powerful too powerful for what?

A:He just said it was too powerful.

Q: Ok.

A: And then let's see what else happened. There was so many things that happened.

Q: Ok.

A: Um.....

Q: Plus the, you bought, you bought the second gun, and gave it to him?

A: Ok, then.....he said he told me he had some he put some things in storage, and then this Lauri and her boyfriend, who was Mark had had broken in and stolen all of his things out of it.

Q: How long after you bought him the second gun or before was the did he talk to you about that? Was this before or after the second gun?

A: This was.....oh.....I think it was after.

Q: Can you recall when you bought the second gun?

A:I think it's about January or February.

Q: Of this year?

A: Of this year.

Q: Ok, go on.

A: And then when he found, when he told me she had stolen all of his stuff.....a.... he told me he had gone to the police and reported it but they didn't do nothing about it. And then he went to a lawyer and talked about it, talked to him about that.

Q: Did he say who the lawyer was?

A: I think his last name is Evans. That's all I remember.

Q: Ok.

A: And I went, I was well I didn't go in the building but I waited out in the parking lot of a and this was over at ex....at exchange place.

Q: Ok.

A: And he went to the lawyer, and then....

Q: How long was he gone when he went to the lawyer?

A: Oh....maybe a half hour.

Q: Ok.

A:And let's see.....well all this since he didn't get any results from the about getting his stuff back he started talking about killing Laurie. And he had me buy some rat poison. And then a,

Q: Did he say how he was going to use the poison.
A: He was going to try, he said that she carried drugs around in her purse and we was going to try and get it in there. And he bought some....weed poison or something that stuff you get whatever get rid of weeds with.

Q: Where did he buy that?
A: I don't know. I wasn't with him when he got that. And then,

Q: Did you see it?
A: He brought the balls up to my place after, But I threw them out.

Q: Ok. about when was this?
A:Maybe about April.

Q: Ok.
A: And then a he kind of gave that idea up. And then he started talking about dynamite. If he, if he could get some dynamite he was going to blow, blow them up in their car.

Q: Who did he mean by them?
A: Mark and Laurie.

Q: Did he say Mark and Laurie?
A:

Q: Ok.
A: And.....oh before, before the dynamite he wanted me this one night he come and got me and followed Mark out to Laurie's, and a he went back to his house and they were barbequeing out on their patio. And he told me he was going to do it then, with a gun. And a,

Q: How was he going to do it?
A: Just go up and shoot them.

Q: At Laurie's place or Mark's place.
A: Mark's place.

Q: How was he going to do that if Mark was at Laurie's?
A: Oh he brought Laurie back to his house.

Q: Oh Mark came back, ya mean?
A: Yea.

Q: After you followed them you followed them to Laurie's place and followed them back to Mark's?
A: Well we lo...we lost him and then.....found them again on their way back.

Q: A huh.
A: And that night, I tried, I tried to talk him...I was trying to talk him out of it.

Q: What was this about a barbeque, you said something about a barbeque?
A: Yea they was just out barbequeing.

Q: Who Mark and Laurie were?
A: Yea.

Q: Ok.And you were in the car?

A: A nun.

Q: He said he was going to do it then?

A: Yea.

Q: What did he have the gun with him?

A: Yea. This was the automatic.

Q: And when was this about?

A:A.....I don't remember when this happened.

Q: You don't have to give me an exact date your best recollection?

A: A.....March.

Q: Ok.

A: (laugh).

Q: Now where in this situation did the third gun come in place. You said he had the automatic well which gun are you talking about now?

A: Ok, were, were still on the automatic with the automatic gun.

Q: This is the .22 that you exchanged for the bigger gun, the second gun in other words that you bought or?

A: Yea this is the second gun.

Q: Ok.

A: And I.....I...I was trying to talk him out of it. And a.....I took the gun from him, I told him I would do it.

Q: Ok, now he was going to kill them both right?

A: Yea.

Q: And then you took the gun from him and said you would do it?

A:

Q: This is where, out in the car outside their place?

A: Yea, like a street over.

Q: Ok.

A: But I had no intention of doing it, I just.....and I told him to go home. Well, I stayed out all night. Walking around (laugh).

Q: You just got out the car and walked around?

A:

Q: With the gun?

A: Yes.

Q: Ok.

A: And a.....then he got on, well he wan.....he also wanted me to just walk up and knock on Mark's door and shoot him ya know, and I wouldn't do that.

Q: When was this, that same night or before?

A: No, this was.....before.

Q: Ok.

A: And then.....then he started talking about the dynamite and he got some dynamite.

Q: This is after the night you walked around all night again?

A: Yea.

Q: Ok.

A: Oh he went, his brothers came up and got him took him back down to California for about ten days.

Q: Ok, his brothers?

A: Yea.

Q: Natural brothers or, are you talking about street brothers?

A: Oh I think they were natur....natural brothers. And a after he came back from them he got some dynamite.

Q: He did get it?

A: Yea he did get it.

Q: Did you see it?

A: I didn't actually see the, the sticks or whatever it comes in, but he had made a little bomb and a....he come and got me this one night, go out and try it out. And we went down.....I guess it would be Redwood Road, some trucking company that stays open all night. We stopped there in the parking lot and put it on somebody's truck. And he had me, light it a I...he just drove up right next to it and stuck the fuse in the window and have me light it. He got in and as I threw, threw it out I guess it went out or the wind blew it out. It was windy that night.

Q: What did it look like?

A: It was just a little...little bottle I guess all wrapped up in tape, with a a long fuse on it.

Q: Well did he hold the bottle?

A: No it was on the truck.

Q: Ok.

A: He we...

Q: How long was the fuse, pretty long?

A: Yea.

Q: Ok.

A: It was.....Oh maybe about like that.

Q: Ok, and he had you light the fuse?

A: He had me light the fuse. And I guess as as I dropped it out the window.....it wer out. Anyway it didn't go off. So we went up to this,

Q: Did you leave it there or did you go get it?

A: We came back and took it off and....went up to the _____ this little stree that goes in between Redwood Road and that Sperry Univac road, I don't know what it was. And there was this cement block just along the road there and he put it i there and I went back.....and a it went off but it didn't do anything to the ceme block.

Q: Did it make a big explosion or a big blast or what?

A: Oh it sounded like a gun going off.

Q: Just about that loud?

A: Yea.

Q: Ok.

A: So when that didn't work, he gave up on that idea.

Q: Why didn't it work, did he say why he wasn't satisfied with it?

A: I guess it just wasn't powerful enough.

Q: Ok.

A: And he...when he was talking about blowing up their cars, he wanted me to do that too.

Q: Did he give you any plans or?

A: Um...well...

Q: Discuss it with you?

A: He was just a hook it on the car before they came out and he had me walk up and lig it before they got in. I don't know how he was going to do it (laugh). Um....,when that one didn't blow up that cement block he gave up on that idea. And then...he was just getting more obsessed with getting....getting Mark.

Q: How did you come to the conclusions to say that he was getting,

A: Well he was he was um...

Q: What made you feel that?

A:he wasn't eating he was real nervous all the time. Well maybe he wasn't real obsessed with it, but,

Q: Did he talk about it?

A: Yea he was always talking about it.

Q: What would he say?

A: He would say, the only way to get rid of to solve a problem is to get rid of the problem. He'd get real depressed sometimes and well he didn't really come out and say this one night but he, he said it's either got to be him or me ya know he was incinuating suicide the way I took it.

Q: A huh.

A: And.....that came to that night, I was suppose to go to a conference in San Franc and I,

Q: What kind of conference?

A: A conference for the my job. My, my bosses were already down there. And they told me to take the government car out to the....drive the government car out to the airport so we could all have a way home. And I'd asked Elroy if he'd drive....dri me down...all this time I'd let him...use my car too. So he,

Q: Your personal car or the,

A: Yea my personal car. And I asked me if he'd take me down to pick it up...and he s. he would and when he took me down, he got out of my car and he jumped in the Government car.

Q: Where was this at the Federal Building?

A: Yea. Well, the courthouse the old post office.

Q: Ok.

A: And he drove it, out to his place.

Q: How did he get the key for it?
A: Well I told him I said you can't drive this car out there and he said and he said I'll do it careful. (laugh). so I gave him the keys and a I drove my car back up to my apartment and.....and packing for my trip back there and he told me he say come out and stay with me tonight. Um.....

Q: When were you suppose to leave?
A: Um.....the next morning.

Q: What time?
A:

Q: Do you remember the flight?
A: (laugh)....It was about 11:00.

Q: Did you have your tickets already?
A: Yea.

Q: What Airline?
A:It was Western I think.

Q: Who arranged for your tickets?
A: I did.

Q: When did you do that?
A: Oh.....probably about.....two or three weeks before that. So I got all three of my tickets together.

Q: So you knew well in advance about this conference?
A: Yea.

Q: Ok.
A: And he said come and get packed and come out to my place. And you then you can you can stay there and then just go to the airport from there. And so I got ready and went out there, and.....

Q: Wheres his place at?
A: A it was out in Bountiful. A I don't know the address.....And then a.....I had go to the store so we went ya know get some things for the trip down there, he took me over there.

Q: From his place or on the way to your place. After you got there or,
A: After I got there.

Q: Ok.
A: He took me over to K Mart and it was closed.

Q: Were you in the Government car?
A: No we was in my car.

Q: How were you going to get the other car?
A: It was out there. He drove it out.

Q: Oh to the airport?
A: To his place.

Q: Oh. ok. So he had the car?

: Yea. And then.....um we came back and his roommate had fixed.....something to eat for us so,

Q: Who's his roommate?
A: Mark.

Q: Mark who?
A: I don't know his last name (laugh).

Q: Ok. And he had this roommate all along?
A: A....No not too long, he had he had his son up here, Elroy did for awhile. And after his son went back,....a this Mark moved in with him.

Q: How old was Elroy's son?
A:te....about ten or eleven.

Q: How old's Mark?
A: I don't know.

Q: Guess?
A: Well I only saw him a couple of times (laugh). Oh...his later twenties.

Q: Ok.
A: I don't even remember what he looks like even. So...he he didn't eat, he hasn't been eating for quite awhile.

Q: So this is after you had gone to the store.
A: Yea this is when we came back.

Q: Ok, what did you get at the store?
A:I think I got some panty hose. (laugh). And a we just sitting there and talking and he said, he said to me tonight, it's got to be the night...And a ya know I know what I knew what he meant. I was trying to talk him out of it.

Q: Where was Mark then?
A: Um...by this time another guy had come, and him and Mark were outside talking. And then um...he said let's go for a ride...

Q: What time was this about?
A: It would be probably close around 7:00 or 7:30.

Q: Ok,
A: And a...

Q: Light outside or dark outside?
A: It was light.

Q: Ok.
A: And he said let's go for a ride, I said ok. And a he got in the government car, and I didn't know what he was doing. So we went for a ride in the, well we stopped and got some gas in it....And then he he went straight towards Marks place and then I knew what he was up to. And a see before this he told me he said, while your in California and when you come back, everything is going to be fine. And so we we d around Marks place quite awhile and just watching his house. And then.....we left and went back to my apartment for a few minutes. and then we went back back up to Marks and as we drove by.....we saw two people getting in, in a car, we couldn't tell who it was. So we figured it was Mark with someone.

: How was the lighting at this time?
 : It was dark. And so we went up the street and parked the car,.....and we went down
 : to the house and he stood, had me stand in back of the house and he went in.

: And the back of the house what's the back of his house like?
 : ...Theres a bunch of bushes around it.

}: Is there an alley or is there access where, from the back of the house from a
 different way or anywhere there?
 A: ...Well theres a.....the patio is is up like this and the gara....theres a garage
 underneath it and I just went around the corner....

}: From the front?
 A: In the back on the side. laugh).

Q: How did you get to the back of the house?
 A: I don't know how the, I just walked back there.

Q: I know but from where the front of the house, the side of the house or what?
 A: Well we walked.....ok, we we had to walk on the side of the house to get to the bac
 I don't know how to explain it(laugh).

Q: Is this a corner lot?
 A: Yea it's on a corner.

Q: Oh ok. That really helps.
 A: (laugh).

Q: The sidewalk goes down both sides of the house?
 A: ...Ok it goes...the sidewalk goes in front and down one side like this.

Q: Ok.
 A: He had me stand in back, he climbed up on the patio and in the back door.

Q: Ok now from the back of the house where you were standing, what could you see from
 there?
 A: Just bushes. I couldn't see anything.

Q: Why did he have you stand there?
 A: He just said wait for me there.

Q: Oh ok. Go ahead?
 A:

Q: So you both had been there and he just said wait for me here and then he?
 A: And he went in. The door was unlocked and he just walked in.

Q: Now climbing up on the patio, how do you mean, how does he ha....climb up on the
 patio?
 A: He just....climbed up. It was'nt,

Q: High of the ground or?
 A: Um...well theres a kind of a wall, there by the garage he stepped on that he jus
 he could reach to pull himself up.

Q: Ok.
 A: And then,

The door you say was unlocked, is this a sliding glass door or is it a regular door? It's a regular door. He tried it and it was unlocked so he just went in. So I was standing back there, I heard the car come back, I suppose it was Mark's car,

Did you see it?

No I just heard it. And then a,

What did you do?

I just stayed there. And he was in there along time and I was getting real nervous so I walked around for awhile.

Did you holloer at him and say look out someone is coming or anything like that?

No. I didn't do anything like that.

Ok.

And then a.....

Did you figure at that time where you thinking at that time that Mark was home?

.....

: Was that your believe at that time?

: Well when I heard this car drive up I figured it was Mark coming back.

: Mark alone, Mark with Laurie or what?

:Probably a....well I thought he would probably be alone.

: What did you think was happening,

: But I couldn't see.

: Inside the house at this time?

: Well he told me he was going to knock him out when he walked in the door.

: How was he going to do that?

: He ha... an axe. With him.

: How big was his axe?

: Oh it was about like this. Short handled axe.

: And he had this when you were standing out back he went in with it?

: Yea.

: where did he get it from?

: I don't know, he he just had it with him...He go...he got it out of the trunk of a car.

: Out of the government car?

: I guess.

: When you stopped?

: Ya know I know where he got it but he had it with him. And a...that's what he was going to do when Mark walked in he was going to knock him out.

Q: When did he tell you this?

A: Just before.

Q: Just before he went in or what?

A: Well.....I guess when we was driving around, and sitting watching his house

: Talked about doing that.

: How was he going to do it?
: Just knock him out when he walked in the door.

: Well did he say before that he was going to wait until he was gone then wait for him inside or how did he say he was going to ya know accomplish this feat?
.: (laugh).

): There must have been some details?
A: No there was'nt, that's how he.....

): Ok.
A: He was'nt much for details. He just,

): Ok your out back the car, your car ran up and you leave right?
A: Well I stayed there for awhile,

Q: How long is awhile?
A: Oh it seemed like along time....An hour, well.....all the time I was standing there plus the time I was walking around. Seemed like an hour and a half(laugh).

Q: Ok.
A: And,

Q: How far did you walk?
A: I was just walking up and down the street.

Q: Along the side and the front door?
A: Well I went...I walked down the street quite a ways and then I walked back and I'd go down another street and walk back.

Q: Did you ever go to the front of the house?
A:I think I might have done on the other side of the street.

Q: Did you see a car?
A:I saw a car a that looked like Mark's yea. When I came by the house.

Q: Ok.
A: And a.....so finally he came back out, Elroy did.

Q: And where were you at that time?
A: I was...I went back to the back of the house then.

Q: And how long had you been there when he come out?
A: Oh maybe another.....ten or fifteen minutes.

Q: Ok, and where did he come out of?
A: He came out from the front door. And he said,

Q: How did you know that?
A: Cause he came around.

Q: Ok.
A: From the front way.

Q: Did you see him come out the front door or is that what your assuming he did that

: Oh I assumed he did.

: Ok.

: And then he came back and got me, I was in the back.

: What did he say?

: He said he didn't do it, that's or he said he didn't get a chance to do it.

: How did he say it, what words did he use?

: A (laugh). I don't remember.

: Best you can remember?

:

: I'm sure he didn't walk up and say well it's a nice even but I didn't do it, Ok.

: (laugh).

: The best you can remember is what he said to you when he first approached you?

:I think um.....I guess he didn't get a chance to do it I don't know if that's the right words but,.....

: Your him talking what words did you use?

: I don't know. I don't remember.

: Ok. How did you know that that's what happened unless he didn't say it. He must have said something?

: He said something like that but he didn't get a chance.

: Ok.

: And so, we went back up to the Government car, and he said Mark was in his bedroom doing something he says were going to wait until he goes to bed.

: What did he tell you what he'd been doing all this time?

: Just sitting in there, in another room I guess. There's a you go in the front door there's a room right next to

FLIPS OVER TO ANOTHER TAPE ON DIFFERENT SUBJECT: NO INTRODUCTION.

A: Then he started the bed on fire.

: And how did he do that. You holding the stuff?

A: Yes.

: How did he do it?

A: With a cigarette lighter.

: Ok.

A: And he put some cigarettes some of Marks cigarettes down there by the fire, _____

: How did he do it, what did you see him do?

A: Well he put...he walked around there was a little stand by the bed and took some cigarettes out and put it down the bottom of the bed.

: Some cigarettes or a cigarette or what?

A: It was more than one I don't know how many.

: Ok, what about the pack?

: No.

: Ok.

: And then he started it on fire.

: Did he use just the cigarette lighter or did he use any kind of a fluid or anything like that or just?

: Just a cigarette lighter.

Q: Ok.

A: And then after the fire started,

Q: Now was this the a sheet on the mattress or the sheet or the bedding or what?

A: It was the bedding we,

Q: What part of the bed?

A: Down towards the bottom.

Q: Ok.

A: And.....he went to close the door and when I asked him if he'd turn the bedroom, bathroom light on, no he turned the light out and he co...I said the bedroom or the bathroom lights still on, so he went in there and turned that off.....And....then he shut the bedroom door and we left.

Q: And went right back up the front door and,

A: Went back up the front door,

Q: Ok, now you were inside the bedroom when he started the fire?

A: Yea.

Q: Ok. Anything else that you can think of that a we may have forgotten before or?

A:

Q: The reason for having you go back over and you'll do it again and again and again, is because alot of times when when you've explained something if if you do go over it again mentally as well as verbally to someone you recall, different things a yo recall several things here that you have'nt recalled before Ok, so about the light and things like that so that's the reason for it. To get your memory back and to play or on the right line ok? Alright, so that you can be absolutely sure when I a you a question about an incident a the exactly what the situation is ok? If when I ask you a question you cannot answer, a about that incident you cannot answer it, an emphatic absolutle yes or not I want you to say so. Ok?

A: Ok.

Q: Alright?

A: Is that as far as you want to go?

Q: What?

A: Is that as far as you want to go with that?

Q: A. If theres some more you need to tell me, Go by me so you left and you walked o and what did you do after that?

A: Well, we put the stuff, I was still carrying the stuff and we went up to the car, went down the freeway,

Q: What did you do with the stuff when you got to the car?

A: I was still holding it.

Q: Who drove?
A: He was driving.

Q: This is the Government car?
A: Yea. Went down, 13th East to get on the freeway, and he went out to that.....
he went out to that Sperry Univac road took a little turn off and theres some trees
there, he burned the stuff, the towel and the other things he burned it. And then
got back in and went up Redwood road what is it, the river goes under the road
and through that that all...

Q: Where it goes into Redwood Road?
A: Yea I think that's Redwood Road.

Q: Pardon?
A: I think it's Redwood Road. He threw the axe in that. And then.....we was driving
up towards Bountiful he had me throw the gloves out the window.

Q: The gloves?
A:

Q: What gloves was that?
A: He was wearing gloves all this time.

Q: Oh what kind of gloves were they?
A: It was cloth gloves, dark cloth gloves.

Q: A the type you'd use for gardening and stuff like that?
A: Yea that's,

Q: Utility gloves?
A: Yea.

Q: When did he put those gloves on?
A: Um.....

Q: When did you first recall him having gloves?
A: Inside the house when I was in there with him.

Q: Do you recall him having them on before?
A:He probably did but I don't remember him, I don't remember seeing him put t
on.

Q: When you drove down to Bountiful who was driving?
A: He was driving, he was driving all the time.

Q: Ok, think about his hands on the way coming from Bountiful, driving with them on?'
A: (laugh).

Q: Did he smoke?
A: Yea he smoked. No..he didn't,....he does smoke but I don't think he did. Oh...I do
know.

Q: Ok. But you don't recall seeing his hands or what he had on his hands before that?
A: I'm sure he had them on when he went into the house the first time. But....then we
went back to his place, and I stayed there that night, um....the next morning

I got up and went back to my place. I took the government car. and I took a bath and all that and a,

: You left your car at his place and drove the government car to your place?
: Yea. And he.....he came back, he came out to my place before I.....went off. And he told me to tell the police we were up.....to PineView is that up Ogden Canyon , that's the one up Ogden Canyon. We was just riding around up Pineview and we decided to drive up to Logan but we didn't go all the way up, we turned around and come back So he told me to _____.

: What do you suppose he was telling you that at that time?
.: Cause he had'nt told me nothing before.

): Did he figure you were going to be caught or questioned?
(: He knows that, cause he said he asked me if I wanted to go to jail and I go no, he said well tell them that. And then I went down th...well he left, I left my dark, my sunglasses out at his place and he was going to go back out and get them and meet me at the airport. And then.....he brought them to me at the airport, and the Poli had called me while I was down there called me.

): Down in Frisco?
A: A huh.

Q: So you did leave on the plane to fly down?
A: Yea.

Q: How long had you been there when the police called?
A: ...I I guess they called before I even got there. And then they called the next day.

Q: When he came down to talk to you before you left, and told you to tell the police that you were at Pineview did he tell you the police were trying to get a hold of him?
A: No.

Q: Does'nt it seem strange that he'd be giving you instructions at that particular tir
A:No.

Q: Ok. Ok, now you talked to a Detective you've talked to Attorneys and you've been over this several times but that we've seen already there are things that you reca even now, ok? that you didn't recall before. And that's the purpose of discussion try and get all these memories out, as much as possible ok? So that you can be honestly sure when I ask you questions about the incidents ok?
A: Yea.

Q: now as we've been talking, as you've been talking I should say, telling me about th I've been formulating questions in my mind some of which I want to try you with ok and that does'nt mean I'll ask all these questions but I may ask some of them ok?
A: Ok.

Q: The type of question we've heard before, on the previous test you heard a question was a regarding your statement to Mike Christensen or Detective Chapman do you intend to answer truthfully to each question about that. do you recall that quest
A: A huh.

Q: Alright. I'm going to ask you regarding, the night that Mark was killed, do you intend to answer truthfully to each question about that?

Ok.

Do you think you can handle that question ok?

Yea.

Ok. And what is your answer to that question?

Yes

Ok. The first question I'm going to ask you is do a friends call you Carla?

Yea.

Easiest question on the test.

(laugh).

The purpose of a innocuous question like that is just to introduce the test format, we know the answer to it, we don't care. It's just like jumping into a pool of water till you get into the water you really know how it feels and that's what the question does is to allow you to get into the test format ok? Now the next question is very important you must be absolute about it. At the exact moment that Mark was struck, Now I'm talking about the blows that caused his death ok, or lead to his death ok, At the exact moment that Mark was struck, were you inside that bedroom?

No.

Where he was? Ok. No problem at all?

No. Your talking about the first time right?

Either time.

Ok, yea.

Ok the exact moment that Mark was struck were you inside the bedroom where Mark was

No.

Now this is either time ok, cause he was struck many times right? Next question very important also, to the situation to you obviously. Did you ever strike Mark with any object of any kind?

No.

Ok. Ok it's very important now and I want you to go back and remember the whole incident. You mentioned to me, that that Tillman wanted you to shoot Mark, he also wanted to light a fuse that will set a bomb to kill Mark and Laurie. Laurie?

Yea.

On this particular evening did he ask or request or tell you to hit Mark with the hatchet?

No.

Ok. He never tried to include you in this particular evening at all?

He just had me be there.

What?

I, I guess he just wanted me to be there, because he knew I wouldn't do it.

He what?

He knew I wouldn't do it, or,

Well why did he need you there?

I don't, Alibi I guess.

Q: Ok.
A: He didn't say but I kind of figured.

Q: did he ask or request you, to do it, or a to light the fire or to set the fire, or discuss setting the fire with you or why he was setting the fire, did he ever discuss it with you at all?
A: He discussed that?

Q: Yea, did he ever tell you,
A: He didn't a...ask me to do it.

Q: Ok. How did he discuss it with you?
A: Um.....while we sitting there on the floor before.

Q: Before?
A: Yea.

Q: Ok, what did he say at the time?
A:He says, we says, we could a set the fire and make it look like he was smoking in bed.

Q: Is this this is before you went into the bedroom?
A: Yea.

Q: What your saying is that you knew that he was going to kill Mark and that he was going to cover up by, by setting fire to the house?
A: Yes.

Q: Did he ever say Carla you light it, or Carla I want you to light the fire or here you hold the match or you hold the lighter or you do it or anything, did he ever say anything like that?
A: No.

Q: You said when the fire was lit as you were standing inside the bedroom, in the doorway in the bedroom?
A: Yea.

Q: Well then the obvious question of course is did you light the fire I suppose?
A:

Q: A.....I'm not going to ask you if you took part in lighting the fire because obvious you were part of the situation ok. Then I'm going to ask you then, did you personally light the fire to Marks bed?
A: No.

Q: Now the reason why I emphasize the meaning of the question did you personally. so that you can remove yourself from indirect involvement because, what I'm saying is direct. You personally holding the match or what ever it was that lit the fire, or That allows you to get away from if I said did you light the fire or did you take any part in lighting the fire, well obviously you were part of the situation and that may confuse the issue.
A: Yea.

Q: What I'm talking about is you personally. Doing it ok? And same thing in striking Mark ya know when I say did you ever strike Mark with an object of any kind, a ti

Q: What I mean ok?

A: Ok.

Q: Not, not what he did or the fact that you knew what was going on, did you personally do it. Ok, do you understand all that?

A: Yea.

Q: Ok, do you see why I'm doing this?

A: Yea.

Q: Now is there anyway that you could possibly, confuse your answer or think that your answer is wrong?

A: No.

Q: It's pretty absolute isn't it?

A: Yes.

Q: Ok, it's a definite yes or no, to an exact and specific situation, ok, not did you tell the truth because what is the truth? It's pretty broad.

A: Yea.

Q: Ok. Did you hit did you strike did you light ya know, these are definite questions specific questions you should have no problem with them. Ok?

A:

Q: Alright. Now on the previous test, the examiner had you I believe write some letter a number and a color.

A: Yea.

Q: Ok, that's one method or technique to be used, ok? I'm going to use a different method or technique with you ok, and I want you to help me. Whenever a person, is questioned or asked about an issue, ok, in a polygraph test for instance if I'm testing a person regarding say a bank robbery ok, then it is not very pertinent to ask them if they ever poked anybody in the eye with their finger, ya know what's that got to do with a bank robbery ok, but it would be pertinent if I asked if they ever stole anything from a person. Ok, because then it gives me some knowledge and idea if they have that propensity or the ability to do, ok, it gives me an idea of their background alright

A: A huh.

Q: In other words if I may be questioning somebody about a theft I want to know if they are a thief, do you see what I mean?

A:

Q: Ok, because if they're a thief then, it helps to understand the motivation and reasoning for doing something. Same thing in this particular case, were talking about a person who has met his death by a violent reason ok?

A:

Q: So it would help to know whether or not you've committed a violent act of any kind Or harmed or hurt or injured anybody ok? do you understand what I'm saying?

A: Yea.

Q: It pertains to the issue. Ok, now this occurred your birthday was in July and you were 29 years old,

A: Yea.

Q: Ya know by exact standards 29 and so many montns older at the time. So I'm going to ask you before age 29, ok, so exclude this entire year ok. Before age 29 have you ever caused harm or injury to another person ?

A: No.

Q: Ok, before this year, now were still in 1982, all _____ ok, that this station period in July ,

A: Are we talking, are we talking about like when I was a little kid and,

Q: Before age 29. What's before age 29, have you ever caused harm or injury to another person.

A: Well I threw some scissors at my mom. (laugh).

Q: Say what?

A: Some scissors and put a whole in,

Q: Did you hit him?

A: Yea.

Q: Where did you hit him?

A: In the back.

Q: Ok.

A: But that's cause I was mad at him I hit him in,

Q: How old were you?

A: I was real little.

Q: How old is little , Carla how old is little?

A: (laugh) I don't know.

Q: Three, four, five, six?

A:Oh I don't know grade school age whatever that is, eight.

Q: Eighth grade?

A: Eight or nine years old.

Q: Eight or nine years old?

A:

Q: Ok, before age ten at least right?

A:

Q: Ok, between ten and 29 years of age did you ever cause harm or injury to another person?

A: (laugh)..... No.

Q: Ok. I knew we'd get it out of the way.

A: Ok. (laugh).

Q: Before last year, and including the situation with your brother now, when you said the scissors there what was the situation ? He teased you so you,

A: Yea.

Q: you took off and you wipped the first thing you got in your hand at him right?

A:

Q: I use to throw tin cans, clubs, and rocks or anything to get my brother cause ne'd beat me up and run.
A: (laugh).

Q: I couldn't catch him so I'd throw something at him. I'd get him pretty good at times But doing something out of revenge and impulse is 'nt necessary intending to cause anything really harmful on them.
A: Ok.

Q: So including that situation before last year have you ever injured someone while intending to cause serious injuries ,
A: A huh.

Q: So let's put it this way before last year have you every intended to cause another person serious harm or anything like that?
A: No.

Q: Since.....ok, let's put it this way before this year have you ever threatened to kill another person?
A:Um I almost forgot to tell you,

Q: Ok.
A: During all this, Elroy had me call Lauri,.....trying to scare her like well, jus to get her off his back,

Q: A huh.
A: Um.....I would say, he wanted me to pretend I was somebody else that she had trouble with that last,

Q: Out where?
A: In Bountiful.

Q: Ok.
A: And he was,

Q: Who's this other person you were pretending to be?
A: Um, I guessall the time that shes lived out there, she's had fights with the other family, a girl.

Q: Do you remember the name you used?
A:Um.....Swain....Swain.

Q: Twain?
A: Swain.

Q: Swain, this was another girl that she'd had trouble with?
A: Yea, well that entire family.

Q: Ok, oh that was the last name, Swain?
A: Yea.

Q: Ok, what was the name of the girl you were suppose to be?
A: I don't know, I think there was a couple, I think one was Cathy.

Q: So when you called would you say this is Cathy Swain?
A: No, I would'nt say who I was, but try and give the impression that I was part of it

Q: How could you give the impression?
A: That I was part of the family or something.

Q: Ok, How would you do that?
A:Oh.....Well this one time he had me say.....um.....you better tell that black friend of yours get out...get out of town or something like that.

Q: And who would the black friend be?
A: Meaning Elroy. Um...

Q: So you were making threats toward Elroy to her?
A: Yea.

Q: What was the purpose of that?
A: He had....well..he said, she had done this to them.

Q: Meaning them who's them?
A: The Swain's.

Q: Who?
A: The swains they were hazzling them.

Q: Oh.
A: And he he said that maybe if, she thought it was them that she would....quit hazzli him.

Q: Ok.
A: Do you understand what I mean?

Q: A huh.
A: So um.....I guess you would call them threats , but I was'nt going to do ya know,

Q: Ok, what were the threats?
A: Were going to get you and stuff like that.

Q: Ok, anything more specific than that?
A: No.

Q: Get you can mean alot of things?
A: Yea. (laugh). Just were going to get you and,

Q: Anything specific, like what you were going to do?
A: No.

Q: Ok,
A: But,

Q: Did you ever threaten to kill her?
A: No.

Q: Ok. That was the question before this year did you ever threaten to kill a person
A: No. But I didn't know if that would come in,

Q: Not going to get you.
A: To m.....

Q: Is that saying I'm going to kill you?

A:Could mean alot of things.

Q: Ok.

A: But I,

Q: What did you mean by it?

A: I was talking it didn't mean anything to me.

Q: Alright, didn't mean anything to you that you were threatened because of,

A: Cause I wasn't going to do it, do anything it's just,

Q: Ok, if it didn't mean anything to you, and you never used the word kill, then do you think you were threatening to kill someone?

A: ...Not kill her no.

Q: The question is before this year have you threatened to kill another person?

A: No.

Q: Ok. Ok, these other two questions you heard, before on your other test ok, and I'm let's talk about them because the examiner probably explained them to you but let's go over them again, ok, one of the questions is and I'm sure recall it now is are you afraid that I will ask you,

A: (laugh).

Q: Something else even though I promised you I wouldn't ok? Do you recall that question?

A: Yea.

Q: Did he tell you why the question was asked ?

A:No.

Q: Ok, then what I'll tell you right now is that we have now finished formulating the questions I'm going to ask you about this incident. Ok, there are going to be no other questions regarding that. Or your past or anything else. Alright? having that in mind, are you now afraid I will ask you a question about something else even though I promised you that I wouldn't?

A: No.

Q: Ok, are you confident then, that I will abide by my promise and not ask you something else.

A: Yea.

Q: Do you feel comfortable with that?

A: A huh.

Q: Because I won't, I'm not going to lose my license ,

A: (laugh).

Q: By letting the code of ethics Ok? Are you completely convinced that I won't ask you a question about something we haven't talked about ?

A: No.

Q: Ok, that's a problem. Are you ready to take a polygraph test?

A: Yea.

Q: Do you have to go to the bathroom or get a drink of water?

A: (laugh) I'd like a drink.

Q: Ok. Do you want me to bring you one or?

A: No I can come out.

Q: Out comes the door, now it gets stuffy in here ok.

A: (laugh).

Q: Now I apologize for that, but like I say I meet these people who decide to do all these neat things,

A: Yea.

Q: I understand the defense council is not going to be very friendly. And he isn't going to be saying Gee Carla how did you know where the light was.

A: Yea I know that.

Q: She's going to hit you with it like that how did you know where the light was and you know what that applies to the jury?

A: That I've been there before.

Q: That's right. Or something that adds to do you see what I mean?

A:

Q: How did you know he was going to hit him again? I felt it, nobody buys that.

A: Well I (laugh).

Q: Ok, nobody buys that. Even if it's true nobody buys it, something has to have been happened either within your visual,

A: Well why else would he have a cover his head up and

Q: Don't ever say that. Why else would he, it doesn't answer a question.

A: I know it doesn't but.....

Q: It's not why he did this or what he did, it's what you did, and what you saw that's important. And it's got to be the absolute truth. It can be a variation truth, and it can't be a truth that's leaving something out, it's got to be told, now no one can tell the same story twice. Do you see what I mean?

A: Yea.

Q: No matter how much you talk to the prosecutor or Detective Chapman or me about the situation, when you get on that stand you're going to be telling it again and you're going to have to relive it mentally, ok, and you may recall some things, and you probably will recall some things that you didn't talk about before, don't hold it back. Even if it's a surprise to the prosecutor don't hold it back. If some question by the defense council or the prosecution prompts or recalls in remembering in your mind of something that you did not review and something then at that time you recall say it. Even if it makes you look bad. Cause you'll look a lot worse if you don't

A: I know that.

Q: Even if,

A: But if I,

Q: Now you held that hatchet, right?

A: Yea.

Q: If, But what I'm saying I'm trying,

A: Well I'm not sure, I'm not sure, I just can't remember.

Q: Ok. But something told you he was going to hit him again?

A: Yea.

Q: And why did you turn your back? Why would you do it?

A: Well I must have seen something.

Q: It's not why he did, but why would you turn your back, if you didn't feel something was going to happen, that you didn't want to see?

A:

Q: Human nature is, once a situation especially a shocking situation is occurring you cannot take your eyes off of it.

A: I had to, I, I,

Q: People will see things occur and they cannot take their eyes off of it. No matter how much they want to and turn around they're going to do like this.

A: No I didn't do that.

Q: That's human nature, I'm not saying that that's what always occurs, but the understanding of human nature is that's what will usually happen. Unless, unless some specific thing makes you make an immediate decision to turn and not watch something that's going to happen, cause you know it's going to happen. Ok, something has to occur to make that decision making process in your mind. Ok, if you saw something say so, if you didn't don't say so. But you see what I'm saying is, there has to be an understanding by people listening to this as to why these things occur, ok?

A: Yea.

Q: There are going to be many, many questions, why did you take a gun with you, why did you put in your purse. The implication is that you intended to do something more than you did. And you took it with you because you were going to use it. You didn't no when or exactly how, but you were planning on using it. In other words you were planning you knew what was going to happen and you were going to take part in it. If that's the case say so. Say at what point you changed your mind. Ya I was going to shoot him but I decided not to I chickened out. If that occurred, if that occurred. You see a what I'm throwing out here is I'm trying to search out here in the situation of finding out what really happened and the only way I can do it is by stimulating your memory and as you said before by talking to me and re talking your recalling things. How did you know where the light switch was, now you recall that he turned the light on before you knew where it was ok. That would look very bad in court. It would look very bad in court.

A: Well I didn't even ya know I didn't think of that.

Q: So what you've got to do ya know if you recall that he did it, say when he did it. keep the sequence of events sequential ya know?

A: That's what I'm trying to do. (laugh).

Q: You discussed burning the place before you went in there. That hasn't been said before. And the problem that's going to happen more than anything else Carla is,

A: Well I told him that, we'd talked about how we were going to do it.

Q: Ok, but did you tell him any specifics or where or when and what was said?

A: I don't think so.

Q: Ok, And it's very difficult, it's extremely difficult for people to understand when someone says we talked about it. About what? see, and then when I say what was said and you say I don't remember well then how could you have talked about it if you remember what was said,

A: (laugh).

Q: Do you see what I mean?

A: Yea.

Q: Do you understand what I'm saying?

A: A huh.

Q: So I'm asking you that you should search your memory the best you can and my problem I have here is that I suspect, I suspect, more involvement ok.

A: There's no involvement though.

Q: Not that you did it but more involvement and more participating on your part. I said to you initially when you came in here that it is human nature and it is natural for everyone to tell a story that is in their own best interest in life. It's just have you ever heard the bull sessions, their bullshitting right?

A: Yea.

Q: Alright people go on a fishing trip and who caught the biggest fish ya know, even if it was only an inch bigger by the time the story gets told it's ten inches bigger because it makes you look better. Ok,

A: I'm not trying to make me look better I'm....

Q: I know but that is the way any story comes out in way ok?

A: I I didn't do anymore than that.

Q: Ok.

A: Could it could it be something I'm feeling?

Q: You tell me?

A: Guilt, the the um.....

Q: Well legally, legally Carla,

A: But it would of showed up on that.

Q: Under the law, under the law, you are indictable for exactly the same offense as he

A: I know that.

Q: Ok. If two people, let's get back to the bank robbery a minute, you and another person go into a bank and your intent when you go in there is to rob the thing, well you knew that was going to happen. You also knew if anybody messed around they'd get shot ok, and if somebody did and your partner shoots him your everybody as legally guilty as they are. Cause you knew it was going to happen when you went in there.

A: Yea I knew.

Q: Ok, in this case, you knew that you were going in there to kill Mark. Ok, I don't think there's any doubt about that. That was the purpose.

A: No.

Q: Ok so you took an act to realize. Alright it's done you can't change anything it's done right?

A: Yea.

Q: It's all over with. Alright but your participation in it, is going to look different from your viewpoint than Tillman's. What I'm saying as long as it is generally as close to the truth as you recall it as he recalled it, there's going to be no conflict. What I'm saying is when you're on the stand and you testify and if there's anything that you say that is absolutely diametrically opposed, to his recollection

Q: He can tell his attorney and they hes going to delve on it and he's going to rip into you. And what happens is and what ne does if all of a sudden you do recall, something different, then your hard pressed that did it are'nt ya. Because all of a sudden it makes you look worse.

A: Yea.

Q: Ok, what I'm saying is you've got to get this out before?

A: (laugh). I'm trying to.

Q: I'm trying to help you Carla I don't know if you realize that but I'm trying to help ok? But I can't put words in your mouth I can't put actions in your mouth I can only tell you what I feel and what I believe from the view point from this examination that there is something more involved here that is not being revealed either because of the shock and emotional stress of the situation you've either blacked it out, which is nature it happens and that theres a little more recollection of it and a little different involvement than what you said before ok?

A: Ok.

Q: Why don't you sit and think on it for a few minutes ok, and I'll go talk to Chapman for a few minutes and sit and think on it and if you want to discuss it with him this evening or right now, do so if not then, nothing works like self interrogation. Works like a champ when you go home and sit in a quiet place and you can interrogate yourself you'll find out that all of a sudden you can recall things, things you didn't recall before ok?

A: I've done this a million times.

Q: I know you have.

A: I wa....(laugh).

Q: And I'm going to make you do it again ok? Right?

A: Ok. Let's see. I'm I know I wasn't, I didn't see it cause I told I said I can't wait this, so I turned around and walked out.

Q: Did you say who did you say, did you say it to Elroy?

A: I don't know if he heard me but I said it. Um.....

Q: The question I'm going to repeat, I can't watch what?

A: Watching him hit him.

Q: Ok.

A: Again.

Q: This is after he's done it the first time?

A: Yea. I walked out,.....I went back in.....and that's when he handed me the stuff

Q: Did Tillman ever grab you and shove the hatchet in your hand and say hit him?

A: No.

Q: Ok, Because he wanted you to take part in it too. And maybe you just did that, missed his head or something like that?

A: No I didn't even.....then he started the fire.....ok, I told him I told him something about don't forget the cigarettes or something like that, I don't remember the exact words but I said something about them, don't forget to put them there at the bottom of the bed or something like that.

Q: So what prompted you to say that?

A:To make it,

Q: I wished you wanted something,
A: To make it look like he'd been smoking in bed.

Q: Had that been part of the discussion before that you were going to set a fire so that it would look like he'd done it himself to cover up the what you were going to do?
A: Yea.

Q: And that was the discussion you had before you went in ?
A: Well we talked about his a.....

Q: Let me ask you something, let me pose,
A: Should I take something. I said no.

Q: Should you take something?
A: Look like a robber ya know.

Q: Where was this discussion at?
A: The same place right and I said no.

Q: Do you know whats going to be the most titling thing in the world?
A: What.

Q: All this conversation is going inside the house and this guy never hears ya?
A: He was asleep.

Q: How do you know he's asleep?
A:

Q: Did you go and look, could you hear him snoring?
A: No.

Q: How did you know he was asleep?
A: The light was out.

Q: I'm going to ask you something and it's going to be rude things that everybodys thi
cause I thought of it too.
A: Why didn't I do something about it?

Q: No.
A: Stop him?

Q: No. When Tillman went in the first time, did he hit him then and he's already un-
conscious or out and then you went back in with him to finish it off?
A: No.

Q: And that's what all this conversation was not being heard by,
A: You mean the first time he went in the house?

Q: Yea.
A: No.

Q: And he's gone for an hour, he was gone for an hour. Was it possible that he hit h
and he was already out and that's why you were able to walk in and talk inside th
house and he was never worried about him hearing him?
A: No we, we,

Q: Huh?

A: We was whispering. Ya know real quiet.

Q: And you go,

A: We were right next to each other.

Q: Huh?

A: We were whispering.

Q: Were'nt you afraid to be heard?

A: Yea.

Q: What would you have done if he'd come walking out? And said what the hell are you doing here?

A: I probably would have ran. I don't know.

Q: What would have Tillman done?

A: What can you say.

Q: What would Tillman have done?

A:

Q: He wouldn't have run would he?

A: I don't know I can't say what he would have done.

Q: It is going to be definitely something obviously on his mind. Cause why is this guy laying in there patiently waiting to be hit on the head.

A:He told me.....he didn't get a chance to do it when he first came in the front door and he'd gone in the bedroom and he was...doing something in there.

Q: Doing what in there?

A: He didn't know. He just said he was doing something.

Q: Ok, where did he say he was, he must have said I was in such and such a room and I didn't watch him or hear him?

A: Well I just figured that he was in that, that room where his junk was.

Q: How did you know there was a room with junk in it?

A:Um.....cause I looked in there when I went, when I went in there.

Q: I know but that's after. how did you know that that was the room he was in?

A:One of these times, those times we were driving around he had me go look. In in the window. That's how I knew that room was there.

Q: Yea but your going to look awful bad if you keep coming up with these,

A: Well, (laugh) I.

Q: Boo boo's.

A: I didn't remember that. I didn't. He had me.....

Q: Carla I'm not in defense council. But in just a matter of a short period of time I'm on your side, to help you out. But in this are discussion here, I have an effect with my questions totally destroyed what you said. In the minds of a jury in the eyes of a jury. Too many consistencies too many things that don't link up.

A: Well I did look in there when when I went in the house.

Q: So, how did you know that he was in the house the first time he was in the room

A: I don't know. I just.....that was the only logical place for me that he could be hiding. Maybe he wasn't, I don't know where he was.

Q: But he must have told you what he did for an hour in that house?

A: He just,said he just sat there,

Q: You walked away from there,

A: Waiting. That's what he told me.

Q: What what was Mark doing all this time?

A: I have no idea I wasn't there.

Q: He stayed in the house for a whole hour?

A: It was late at night.

Q: So.

A: When,

Q: It could have been high noon. Why did he wait a whole hour why didn't he come out immediately. Mark comes home he's still awake still why not come out immediately? Why wait in there for a whole hour?

A: So he could,

Q: And then miraculously,

A: I don't know.

Q: He comes out of the house just the same time you come back to meet him in the back

A:It wasn't the same time.

Q: I don't know, how did he know you were out there, and that was the time to come out

A: Cause he told me to wait and so I did. And a,

Q: But you left?

A: A..I know.

Q: How did you know when to come back?

A: I just did. I thought..well I'll go wait a little bit longer,(laugh) I did know I just went back.

Q: When he came back out?

A: He came back out,

Q: And you went to the car?

A: And he said, he's in the bedroom doing something. he ha...gone.....to bed I guess

Q: Doing what?

A: I don't know.

Q: For an hour he's doing something in the bedroom?

A: I don't know.

Q: Listening to the stereo, is he watching tv, is he reading or?

A: So, I think he's something about papers he was shuffling papers around or something (laugh).

Q: Were you inside the house to Carla too ?

A: No, not the first time.

Q: Ok. That's what, the defense councils going to ask you and he's not going to be

Q: friendly. He's not going to say were you inside the house too Carla? he's going to say you were inside the house weren't you?

A: Not the first time.

Q: Ok.

A: He says he's in the bedroom doing something let's wait. he says I'm going to wait till he goes to sleep.....he went back up to the car,

Q: Ok.Stop there. He's going to wait till he goes to sleep. Why?

A: That's what he said.

Q: And then I'm going to go read the Sunday paper?

A: And then we'll go back in he said.

Q: Ok.

A: (laugh).

Q: And then we'll go back in and read the Sunday paper. I'm going to wait until he goes to sleep and then we'll go back in and then what are we going to do watch him for awhile?

A:

Q: There's a there's a lot of time here, where there's a lot of doing things but no conversation. It's just not natural that people don't discuss what they're going to do ya know what's going to be done and what your going to do and what I'm going to do. Now when we get inside you can do this you do that, when we get inside were going to wait for this. Were going to go here were going to go there, heres where this is heres ya know if you've never been in the house and he's going to have you walk in a dark house with him and not tell you where things are? And have you stumbled over furniture and things?

A: You could see though from out the street light.

Q: You didn't know that did you?

A: No.

Q: Ok, did you ask him ya know, what's going on how does the house look?

A: No.

Q: Wheres the bedroom at?

A:

Q: Were you inside the house when he hit him?

A:No.

Q: Ok. How did you know he was going to hit him at that particular time, the first time or the last time?

A: The first time he asked me to go turn the kitchen light off.....And when I did,

Q: See heres another thing. Inside, here you are inside the bedroom, two people on the hands and knees inside a bedroom, where a guy is supposedly asleep, and you whisper to each other?

A: Yea.

Q: Does'nt make sense.

A: Why doesn't it? (laugh)?

Q: It doesn't.
A: (laugh).

Q: Well you listening to it? You listen to yourself does it make sense, when two people are on their hands and knees wondering around in some dark bedroom and you can't see your hand from your face and your whispering back and forth and you don't know if this guy is going to wake up or not?
A: No the only time he whispered is to tell me to go turn the light off. That's the only time.

Q: (Whispering) Go turn the light off. That's only most as loud as a shout.
A: Well he, well he crawled back over towards the door.

Q: How did you know where the door was?
A: Cause he had gone through it.

Q: It's dark in there?
A: Well,.....(laugh).

Q: You can't see inside at all. Didn't you say you couldn't see at all?
A: No I couldn't.

Q: And then you crawled in till you could reach inside the doorway?
A: I just crawled , I couldn't see him I just heard him.

Q: A huh and what was he saying?
A: Go turn the kitchen light on.

Q: Did he say this before you got down and crawled in?
A:No after.

Q: What made you get down and crawl in?
A: Cause he did.

Q: You just followed him on impulse, or did he say come with me or what?
A: (laugh). No. he said,

Q: Well see everybody's going to ask Carla why are you doing these things?
A: I don't.

Q: Ya know they don't, it isn't, they can't ask him why, because he ain't on the stand
A: There going to be as....everybody's going to be wondering why is Carla, I was standing,

Q: Do this and why did she do it. He gets down on his hands and knees and he crawls in the room and then all of a sudden you get down on your hands
A: I could hear him crawling,

Q: And knees you crawl around, Why did you crawl around?
A: I could hear him crawling around.

Q: And you got curious and decided to see if you could run into something?
A: No (laugh).

Q: What did you decide to,
A: I heard him.....say my name.

Q: How did he say it?

A: Well whisper.

Q: A huh.

A: A whisper.

Q: Tell me, show me?

A: Well I don't know how loud it was loud enough that I heard him.

Q: The best you recall?

A:(whispering) Carla. Like that.

Q: One word?

A:Well I only heard him once.

Q: Where how close was a the bed to the doorway?

A:When it was shut or open, it would shut or opened.

Q: Well either way how whether the door was open or closed how to the doorway how close is the bed to the doorway.

A:Oh I'm a terrible judge at distance.

Q: Huh? How far across is this room?

A: A....

Q: Not in feet, but down from here to there. Can you tell me from here to there?

A:From the door....to the bed,

Q: The doorway to the bed?

A:

Q: From where you are to where in this room?

A: Oh maybe from me to you.

Q: About that far away?

A: Yea.

Q: Big bedroom.

A: Well the corner of the bed.

Q: The corner of the bed is from you to me?

A:Maybe a little closer.

Q: Ok, would you say that Mark, where he was laying on the bed that it was from me to you or farther away or closer?

A:Just him laying on the bed?

Q: Yea. I'm laying here, am I farther away or closer? From where he was?

A: His head?

Q: Yea.

A: It was farther.

Q: Was his feet towards you?

A: Yea.

A: Your farther.

Q: I'm farther away so he was closer? I heard you say Carla?

A: No he was, his head was farther away. From the door.

Q: Ok, I have imparative hearing but I heard you say Carla. How could you know he was asleep?

A:

Q: If you could hear Tillman, he could hear you. And you get down on your hands and knees and your going inside and he says go turn on the kitchen light, You've never been in the house before but you know where the kitchen is? Not only that but you know where the kitchen light is? And heres all this conversation going on.

A: (laugh).

Q: And this guy who is alledgedly asleep, does'nt hear it.

A: Well maybe he's a heavy sleeper, I don't know.

Q: Maybe ducks hort under water who knows.

A: (laugh).

Q: See. But you got let's see whats believeable and maybe different from whats true. See?

A: Well I figured he was asleep.

Q: Would'nt you just rather know he's asleep?

A: You could hear him, you could hear him breathing. Ya know while your asleep.

Q: Pretty quiet huh? You can hear him breathing but he can't hear you?

A:Well I can't explain that.

Q: Ok, fine.

A: (laugh).

Q: Good, I can't explain it either. You see now you know why I'm asking? Cause I can' explain it either, its the same thing that goes through the jury's mind.

A: Somebody people sleep heavier than others.

Q: You bet they do. Especially when they've been hit in the head.Sleep real heavy.

A:

Q: The question is going to arise in the jury's mind, Was he already hit in the head?

A: I don't know.

Q: And the second trip into finish the job.

A: I don't know.

Q: Would you know?

A: No.

Q: Would Tillman have told you?

A: He didn't tell me.

Q: Would he have told you?

A: I don't know.

Q: Ok.

Q: But you recall now that he had gone to the kitchen first?
A: Yea.

Q: Tillman gets up from the living room and goes,
A: I was trying to see in the bedroom,

Q: This is after he opened the bedroom door?
A: The door, he got the door open you couldn't see anything in there.

Q: So then he goes through the kitchen?
A: Switches the light on to see if he could see in there.

Q: And he comes back to the door and looks in?
A:

Q: Leaving the kitchen light on?
A: I don't remember.

Q: How would he know he could see in side he didn't come in the door?
A: He must have, but I don't remember.

Q: And then he goes back and turns the light out?
A:

Q: I need the light to see but I'll turn it out before I go in?
A:I know he....turned it on once. But I don't remember if he went in to see if he could see him or not. I don't remember.

Q: How is you now recall or you recall that he turned to light on?
A: Because you asked me that question.

Q: A huh. Didn't it seem important before?
A: No. I hadn't even thought of it.

Q: Is it plausible then or believable to say there may be alot of things that don't seem important that you have'nt mentioned?
A:Well I've even told them things that I didn't think was important

Q: That, that you've left out some things that really are important that you have'nt chosen to tell me about?
A: But I didn't,

Q: Some of these conversations?
A: I didn't remember that, until you,

Q: People don't spend hours together plotting a murder and then carry it out and not talk about it. And yet theres all this time that takes place, the time you left out there and got to Mark's place. Went in the first time, you waited out he, you go back in, you wait for him to sleep, all this time, with little or no conversation.
A: There was'nt. there was, there was'nt very much.

Q: Ok. There's only one explanation for that. And that's that people know very well, exactly what the lay out is and they pre-planned it ahead of time, got it all laye out and know exactly what their going to do. Went in to point "B" not conversation needed everybody knows what their suppose to do. Everybody knows there job. Make sense?

A: Well I didn't know I was going to go in the house.

Q: But you got out of the car and went with him?

A: Yea he said come on let's go. I didn't know we were,

Q: When you first told me that, he said he took me in there, Ok?

A: No.....(laugh).

Q: It makes you look a little better doesn't, if somebody took you there. You got out of there at your own accord and went there right?

A: Yea.

Q: Knowing what was going to happen?

A:

Q: Right?

A: Yea.

Q: Knowing you were going to take part in it?

A:

Q: Is it reasonable or is it understandable for people to believe that you took the greater role than what your saying?

A:I could have, but I didn't.

Q: Ok. I want you to know what to expect. The point is it doesn't matter. I'm telling you it does not matter.

A: I know, (laugh)

Q: Legally or otherwise?

A: I know that now.

Q: Because,

A: I ju.....

Q: My understanding is you've been granted immunity to testify?

A: Yea.

Q: Have you?

A: Yea.

Q: Hell of a break.

A: I know it is.

Q: Do'nt screw it up. By perging yourself.

A: I'm not.

Q: Cause that, do you know what immunity agreement is?

A: Yes.I read it.

Q: Yea. Even one item theres an excape clause in the immunity agreement, did you read

A: (laugh).

Q: Did you read it?

A: Yea. (laugh)

Q: If even one item, can be showed to be incorrect, or untrue the immunity agreement is a known void. And everything that you said can be used against you.

Q: So what I'm saying is, if there is anymore involvement here, than what you've talked about, now is the time to get it out. Not tomorrow, now.

A: I've told you everything that I can remember.

Q: But you keep remember things?

A: Well you keep asking me the,

Q: Good! Carla!, that's what were here for, I'm going to keep asking you so I keep jogging your memory.

A: See they never asked me these questions.

Q: Sure but the defense council will. And he ain't even going to do it friendly. Now suppose the defense council brings something up, ok, that doesn't even jog your memory and you say oh God, that's right. And that's not the same as what you told the prosecutor. Guess what that is?

A: Lying.

Q: Violation of the immunity agreement.

A: Oh.

Q: Right there under oath. Bang! the immunity agreement is now on void to go prosecution. Carla goes to the junk too. But as long as you tell the truth even if you hit him four times and Tillman hit him once.

A: I didn't hit him.(laugh).

Q: I'm saying if, even if you did,

A: I didn't.

Q: It can not be used against you if it's the truth. Ok, do you see what I mean, Do you see what I'm saying? I'm getting there Carla?

A: I know what your saying and I'm trying,

Q: Ok. I want you go talking a ride down the hill because you foolishly held back on telling something that because you don't want yourself to look worse.

A: I'm not holding back on anything.

Q: Ok. Questionings going to come back,

A: Is this,

Q: Carla, did you know long before the event that you and Tillman were going there to kill Mark?_____answer.

A: I knew he was going to do it.

Q: But you,

A: But I didn't know_____.

Q: Were going there, you meeting Mark and you were going there, I mean Tillman and you were going there to kill Mark Schoenfeld, did you know that ahead of time?

A: ..No.

Q: Watch yourself Carla,

A: (laugh).

Q: Cause that's the way they'll ask you. There leading questions.

A: I knew he was.....,

Q: Then he's going to say, you did know,
A: He said,

Q: Before you went to Mark Schoenfeld's house, that, that you were going there to kill him.

A: When I fou....when I knew which direction we were going in I knew where we were going.

Q: And you knew what you were going there for didn't you?

A: Yea. But not until then.

Q: You were going there to kill Mark Schoenfeld, weren't you?

A: Yea. But I didn't know I was going to be there. I didn't.

Q: How did you not know you was going to be there, if you were in the car all along?

A: Cause he.....

Q: Course you knew you were going to be there.

A: I did then in the car but not before that.

Q: Ok.

A: Cause he said to me,....when you get back from California, everything is going to be alright.

Q: Ok.

A: So I took that as he was going to do this while I was gone.

Q: But thats before you left the house?

A: This was before that night.

Q: Ok, but out there at your...at a his place in Bountiful, you said, he said come on let's take a ride and,

A: He said this,

Q: When as soon as you left, and you were headed for Salt Lake you knew damn well what was going on.

A: Yea.

Q: You knew where you was going,

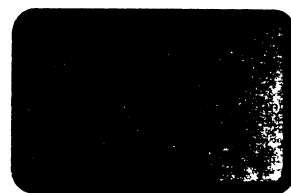
A: That's the first time.

Q: And you knew the purpose. And you knew that he had the hatchet with him. And you knew what he was going to use it for.

A: No I didn't know he had a hatchet.

Addendum G

Kenneth Thirsk's Trial Testimony
12 & 13 January 1983



581-000

FILMED

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-oo0oo-

THE STATE OF UTAH,
Plaintiff,
vs.
ELROY TILLMAN,
Defendant.

ORIGINAL

Criminal No. CR-82-1081

REPORTER'S TRANSCRIPT ON APPEAL

January 12, 1983

BEFORE THE HONORABLE ERNEST F. BALDWIN, JR.
District Court Judge

A P P E A R A N C E S:

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By *[Signature]* Deputy Clerk

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Clerk, Supreme Court, etc.

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1 gun?

2 A. Never.

3 Q Or any explosives?

4 A. Never.

5 MR. BARBER: That's all.

6 MR. CHRISTENSEN: No further questions, your
7 Honor.

8 THE COURT: Did you have anything further?

9 MR. CHRISTENSEN: No, I don't.

10 MR. BARBER: I do have one other question.

11 Q (By Mr. Barber) Where did we get that shirt?

12 A. Out of Elroy's belongings in storage.

13 Q Did you bring it to us?

14 A. Yes.

15 Q In response to what kind of an inquiry?

16 A. You asked me to find the shirt that he was
17 wearing.

18 MR. BARBER: That's all.

19

20 RECROSS-EXAMINATION

21 BY MR. CHRISTENSEN:

22 Q Who took care of storing Elroy's things?

23 A. I did.

24 Q Where were they kept?

25 A. They were kept at U-Haul self-storage in

1 Bountiful.

2 Q When did you put them into U-Haul
3 self-storage?

4 A I moved from that apartment April 30, I
5 think.

6 Q Of which year?

7 A Of 1982.

8 Q You moved from which apartment?

9 A From -- I moved all of my stuff and Elroy's
10 stuff almost exactly one month after the incident we're
11 talking about,

12 Q You are referring to May then.

13 A May, right.

14 Q Has that shirt ever been out of your
15 possession until today or yesterday?

16 A It has been in storage. It was in the
17 storage.

18 MR. CHRISTENSEN: No further questions.

19 MR. BARBER: Nothing further.

20 THE COURT: Fine. Thank you, sir. You may
21 step down.

22 MR. BARBER: Your Honor, the next witness
23 we have will be Sgt. Thirsk and I expect there are matters
24 in respect to that that we should take outside the presence
25 of the jury.

1 THE COURT: Well, do you want to start it
2 right now then? The matters that you want to do out of
3 the presence of the jury?

4 MR. CHRISTENSEN: It would be convenient for
5 the State, your Honor.

6 THE COURT: Pardon?

7 MR. BARBER: What is that?

8 MR. CHRISTENSEN: It would be convenient for
9 the State if we could do that.

10 THE COURT: Yes. Do that portion you are
11 going to do outside of the hearing of the jury.

12 MR. BARBER: Yes.

13 THE COURT: I am going to recess at noon,
14 by the way. 12:00.

15 MR. BARBER: Oh, your Honor, now I am
16 informed Officer Thirsk is next door.

17 THE COURT: Pardon?

18 MR. BARBER: Apparently he has gone next door
19 back to his office. We'll have him right over.

20 THE COURT: Let's get him right over. Can
21 he get over here in five minutes, can't he?

22 MR. BARBER: He should be able to.

23 THE COURT: All right.

24 Ladies and gentlemen, there are matters in
25 this case that are going to be presented without the

1 presence of the jury to determine whether it should be
2 presented to the jury. And I will have to hear those
3 matters and make a determination, so I am going to excuse
4 the jury until 2:00. Will that give us adequate time?

5 MR. CHRISTENSEN: I believe it will, your
6 Honor.

7 MR. BARBER: I should think so.

8 THE COURT: All right. Well, we'll come back
9 at 1:30 if we recess at 12:00. We'll come back at 1:30.
10 All right, I am going to excuse the jury until 2:00, again
11 with my admonition to speak to no one, let no one speak
12 to you, don't discuss the case with anyone. The jury may
13 be excused until 2:00. We can come back at 1:30; is
14 that right?

15 MR. BARBER: Marty, can you do it in 30, 40
16 minutes?

17 MR. VERHOEF: With Thirsk, yes.

18 THE COURT: Without the jury so you will have
19 no problems. Let's recess then. I have a 12:00
20 appointment and --

21 MR. BARBER: Be back at 1:30?

22 THE COURT: Back at 1:30 then. So we'll be
23 in recess until 1:30.

24 (Noon recess.)
25

1 (Whereupon, the following proceedings were
2 heard in chambers:)

3 THE COURT: Who is going to admonish?
4 I think you better, Jim. Then I can see what you say will
5 be more followed than what I say.
6

7 KENNETH L. THIRSK,
8 a witness called by the defendant, having been duly sworn,
9 was examined and testified on his oath as follows:
10

11 DIRECT EXAMINATION

12 BY MR. BARBER:

13 Q Would you state your name for the record.

14 A Kenneth L. Thirsk.

15 Q You are a Salt Lake City police officer?

16 A Yes, I am.

17 Q And you're a fully qualified polygraph
18 examiner?

19 A That is correct.

20 Q Did you give an examination within the last
21 two weeks to one Carla Sagers?

22 A Yes, I did.

23 Q And after that examination was given, you had
24 what we call post test interviews with her, did you not?

25 A Yes, post test interrogation.

1 Q And during that post test interrogation
2 Miss Sagers said some things we have expressed interest in
3 and desire to have you testify about; is that your
4 understanding?

5 A That's my understanding, yes.

6 Q The Court has asked, as you are well aware,
7 in this state by and large polygraph evidence is not
8 admissible. And the Court, therefore, in order to protect
9 the integrity of this trial from that possible undue
10 influence or improper influence, has determined to
11 admonish you that during your testimony there is to be no
12 reference whatsoever to the fact that the question and
13 answers about which you will be testifying came on the
14 heels of a polygraph examination.

15 A I understand.

16 Q Do you understand that?

17 A Yes.

18 Q Where the context of her answers or your
19 questions makes reference to that, you are to delete that
20 reference to the polygraph rendering the facts as they
21 were during that period as correct as you possibly can in
22 light of all the evidence.

23 A I understand.

24 MR. CHRISTENSEN: I would ask further, your
25 Honor, that no matter what question is asked on cross-

1 examination of Mr. Thirsk that in no way should he
2 interpret it to be my seeking from him that any polygraphs
3 were done at any time.

4 THE COURT: In no event when they have to put
5 in the contents there, he will not in any way refer to a
6 polygraph or any other detection test.

7 MR. CHRISTENSEN: And I would also ask the
8 record to reflect that Mr. Thirsk ran an additional
9 polygraph on Miss Sagers several weeks prior to this
10 particular polygraph in question and had occasion to read
11 other results from other polygraph examiners of both her
12 and other witnesses in this case and that the inquiries
13 he had on this particular occasion were not solely the
14 result of that interrogation and interview but also other
15 indications.

16 MR. BARBER: Can I put one more question?

17 THE COURT: Yes, sir.

18 Q (By Mr. Barber) Ken, do you believe you can
19 accurately render the circumstances and the facts
20 surrounding this without mentioning the polygraph?

21 A Yes.

22 MR. BARBER: That's all I have.

23 THE COURT: Do you want to add something,
24 Mr. Verhoef?

25 MR. VERHOEF: I beg your pardon?

1 THE COURT: Do you want to add something?
2 MR. VERHOEF: No, I think we have it all
3 covered, your Honor.
4 MR. CHRISTENSEN: Your Honor, also where we
5 talk about dates and times I would ask it be all inclusive.
6 I would expect even during the time he had her on the
7 polygraph that there would be no reference to it.
8 MR. VERHOEF: Also, when I make reference
9 to your occupation, would you please omit you are a
10 polygraph expert?
11 THE WITNESS: Yes, I usually do.
12 MR. VERHOEF: Okay.
13 MR. CHRISTENSEN: And, again, your Honor,
14 for the record, so it can reflect it at some convenient
15 time, I would ask leave to make my full objections and the
16 basis for those objections to Mr. Thirsk's testifying.
17 MR. VERHOEF: Why not do that right now?
18 MR. CHRISTENSEN: Well, I think it would be
19 more proper after this is over.
20 MR. VERHOEF: Okay. And we will also
21 supplement the record as far as laying a foundation for the
22 admission of the polygraph results through Mr. Thirsk
23 and perhaps Dr. Raskin.
24 THE COURT: All right.
25

1 THE COURT: The record may show all the
2 jurors are present and in the box, defendant is present
3 with counsel, State is represented. You may proceed, sir.

4 MR. BARBER: Your Honor, the defense would
5 call Sgt. Ken Thirsk and with leave of Court this
6 examination will be conducted by Mr. Verhoef.

7 THE COURT: Thank you.

8
9 KENNETH L. THIRSK,
10 a witness called by the defendant, having first been duly
11 sworn, was examined and testified in open court as follows:

12
13 DIRECT EXAMINATION

14 BY MR. VERHOEF:

15 Q Will you please state your full name.

16 A Kenneth L. Thirsk, T-h-i-r-s-k.

17 Q Where do you reside, sir?

18 A I work for Salt Lake City Police Department.
19 I reside in Salt Lake City.

20 Q How long have you been employed by the
21 Salt Lake City Police Department?

22 A Eighteen years on February 1.

23 Q Are you currently so employed?

24 A Yes, I am.

25 Q Are you acquainted with one Carla Sagers?

1 A. Yes, I am.

2 Q Have you had occasion to talk to her in
3 connection with this case?

4 A Yes, sir, I have.

5 Q And when would that have been?

6 A The last time on the 3rd of this month.

7 Q 3rd of January?

8 A Yes, sir.

9 Q And where did that conversation take place?

10 A On the eighth floor of the Metropolitan
11 Hall of Justice in the detective division.

12 Q Do you know who was present during that
13 conversation?

14 A In the room was myself and Carla Sagers.

15 Q Were there other witnesses in the area?

16 A Yes, sir.

17 Q Were they in any manner able to observe or
18 hear the conversation that you had with her?

19 A Yes, they were.

20 Q Would you explain that, how that is set up?

21 A In the interview room is a one-way glass
22 observation area leading into another adjacent office and
23 with material or equipment to listen.

24 Q There is like an intercom system of some
25 sort or a microphone?

1 A There is a microphone in the room.

2 Q Do you know who was present in the
3 observation area?

4 A From time to time various people were present.
5 I don't know if they were all together at one time or one
6 or two or three or none at all, but I know who they
7 were, yes.

8 Q Did you have occasion at that time to discuss
9 with Miss Sagers various aspects of this case?

10 A Yes, sir, I did.

11 Q Would you, Officer, be so kind as to tell
12 the jury and the Court the content of that conversation as
13 best you can recall, relating to your questions and her
14 answers in response thereto?

15 A The conversation regarded Carla's particular
16 activities herself during the incident at Mark Schoenfeld's
17 home. During that conversation at one point I told her
18 that I did not believe her answers to my questions and told
19 her that I believed she had in fact struck Mark and I made
20 that accusation.

21 Q Did she respond to that accusation?

22 A Yes, she did.

23 Q And what was her response?

24 A Her response was, "If you want me to say I hit
25 him, I will."

1 I then said, "I don't want you to say that
2 unless it's the truth. Tell me what happened."

3 She said, "I will testify that I hit him if
4 that's what you want."

5 I then asked her, "How many times did you hit
6 him," and she responded, "Twice."

7 I then asked, "Which side did you hit him?"

8 She said, "The left side."

9 I then asked, "Which side of the bed were you
10 on?"

11 And she said, "I don't recall."

12 I then asked, "Did Tillman hand you the
13 weapon?"

14 Her response was, "He must have."

15 I then asked, "Did Tillman tell you to hit
16 Mark?"

17 Her response was, "He must have."

18 I then told her I didn't want to know what
19 must have happened, I wanted to know what did happen. Her
20 response was, "I don't know why I am telling you this, it
21 isn't true anyway. I didn't hit him."

22 That was the substance of that conversation.

23 Q Did you have any further conversation with
24 her?

25 A Yes.

1 Q Would you be able to recount that as best
2 you can recall?

3 A It was in regards to her location, her
4 activities, what she did during the time that she and
5 Tillman were at Mark's house.

6 Q Was this in response to -- to any question
7 on your part?

8 A Yes, it was.

9 Q What was the question, if you can go through
10 them, and her answers?

11 A On January 3rd the questions regarded her
12 specific handling of the weapon, not where a point of the
13 beginning of the evening, but having to do with her
14 specific handling of the weapon herself.

15 Q And her activities inside the house in that
16 particular location?

17 A Yes. At that specific location in the
18 bedroom and after the event and just prior to.

19 Q Was there any question and any answer from
20 her in connection with whether or not she was in the room
21 at the time of Mark Schoenfeld's death?

22 A Yes, her response to me was that she had been
23 in the room, in the bedroom but as to where it was at the
24 exact time of death, there was no conversation regarding
25 the time of death, but at the time blows were struck, that

1 was the essence of the conversation.

2 Q Had she indicated to you previously that she
3 had not been in the room at the time the blows were struck?

4 A Yes, she had told me previously she had not.

5 Q Was that in the same conversation or was this
6 at a prior time?

7 A At a prior time.

8 Q Do you recall when that was approximately?

9 A I believe it was November 1 but I am not
10 exactly sure of the date. Pardon me, December 1.

11 Q Was there any discussion between you and
12 Miss Sagers about the manner in which Mark Schoenfeld was
13 hit?

14 A Yes.

15 Q And what was her indication to you, if any?

16 A We were talking about prior conversation
17 now -- this conversation wasn't had on the 3rd of January.

18 Q What did she tell you on the 3rd of January?

19 A On the 3rd of January the discussion was
20 limited mostly to her possession, the number of times she
21 had the weapon and where she had it.

22 Q Did she indicate to you in the January 3rd
23 conversation that she had the weapon in her possession?

24 A Yes, she did.

25 Q Inside the house?

1 A. Yes, sir.

2 Q. Inside the room?

3 A. Inside the bedroom, yes.

4 Q. Was there any conversation at all about a
5 weapon other than an ax?

6 A. Not in this conversation except briefly
7 referring to a firearm.

8 Q. And what did she indicate to you relative
9 to that firearm?

10 A. That it was in the car.

11 Q. Had you discussed that particular item with
12 her on a prior occasion?

13 A. Yes, I had.

14 Q. And did she indicate to you that at a prior
15 time inconsistent or a different answer?

16 A. Not with regard to the firearm, no.

17 Q. Did you have any discussion about a light
18 switch in the home?

19 A. Yes, this was on a prior occasion also.

20 Q. Did you have any discussion with her on
21 January 23rd of her knowledge of where the light switch was?

22 A. Not specifically, no. In the conversation
23 I remarked about the light switch in reference to the
24 previous conversation, but we had no conversation on
25 January 23rd in regards to that issue.

1 Q What was your discussion on the prior
2 occasion about the light switch?

3 A It had to do with the location of the light
4 switch after she had told me she had turned the kitchen
5 light on and I had asked her how did she know where the
6 light switch was. Her response was that she had seen
7 Tillman turn it on and off once or twice and that's why
8 she knew where the switch was.

9 Q At any time prior to your testimony here in
10 this court had she indicated to you a different response
11 to the same question relative to the light switch?

12 A It was in response to my asking her to
13 describe her activities prior to this time. She had
14 described that she had gone from the bedroom door where
15 Tillman had told her to turn on a light and that she had
16 gone directly to the kitchen and turned the light on. At
17 that particular time she didn't mention any prior contact
18 or knowledge of the light switch.

19 Q Hence your question to her on January 3rd?

20 A Later on I reminded her of that conflict, yes.

21 Q Did Miss Sagers ever indicate to you that
22 certain conversations concerning the killing of any
23 individual occurred in front of witnesses and which also
24 involved Mr. Tillman?

25 A She described -- This is on the first

1 occasion now that I talked with Carla. She described a
2 conversation regarding what they were going to do to Mark
3 at a Bountiful residence and at that time she indicated
4 there was a third party in the house who she referred to
5 as Tillman's brother. Whether or not he was present
6 during the conversation I don't know, I asked if he was
7 still in the house and she said he was.

8 Q Did you have any discussion about that
9 particular topic on January 3rd?

10 A No, sir.

11 Q Did you have any discussion about turning
12 on or off a bathroom light in Mark Schoenfeld's house?

13 A Yes.

14 Q On January 3rd?

15 A Yes, sir.

16 Q And what was the question and answer, if
17 you will recall, concerning that?

18 A I had asked what they had done upon leaving
19 the bedroom. She remarked she told Tillman to turn the
20 bathroom light off. I asked her why she did that and she
21 said, "So that no one would know we were there."

22 Q Is that consistent with what she told you
23 previously?

24 A There had been no conversation about the
25 bathroom light on the previous occasion.

1 Q Did you ever discuss with Carla the
2 happenstance that she arrived back at the Schoenfeld
3 residence at or about the same time that Mr. Tillman came
4 out of the residence?

5 A Yes, that was on, again, the first
6 conversation.

7 Q Did you have any discussion on January 3rd
8 about that?

9 A Not that I recall.

10 Q Did you have any conversation with
11 Miss Sagers on January 3rd about a phone call attempt that
12 she purportedly made on the evening of May 25?

13 A I don't believe it was on January 3rd, no.

14 Q Did you have a prior discussion with her
15 about that?

16 A On the first discussion she referred to having
17 possibly made a phone call at a location she went to when
18 she left Mark's house, but her reference to it was that,
19 "I think I made a call or I may have made a call." It was
20 never discussed further than that.

21 Q That was not discussed on January 3rd?

22 A No.

23 Q Was there any discussion of a gas can on
24 January 3rd?

25 A No, that was the previous occasion also.

1 Q And with respect to the phone call attempt
2 and the gas can, had she ever indicated to you prior to
3 your recounted conversation anything inconsistent with
4 that?

5 A There were inconsistencies that would have
6 to do with things mentioned that weren't mentioned before
7 or that things were different on the second version than
8 the previous time. This had to do with the light switch,
9 the weapon, the gas can.

10 Q Again directing your attention to the January
11 3rd conversation, did you ever indicate to Miss Sagers that
12 you wanted her to say or testify that she had hit him?

13 A No, sir, I did not.

14 Q Did you ever indicate or imply to Miss Sagers
15 that you wanted her to testify falsely?

16 A No, sir, I admonished her about doing that.

17 Q Was there ever a time in which Miss Sagers
18 described the manner in which Mark Schoenfeld was hit?

19 A Yes, on the first conversation I had with her
20 on a previous occasion.

21 Q That's prior to December?

22 A No, prior to January 3rd.

23 Q What did she indicate to you in response to
24 that general question?

25 A The conversation had to do with determining

1 whether she was physically inside the bedroom or outside
2 the bedroom at the time she either saw or heard Mark
3 struck. At that time she remarked that she knew he was
4 going to hit him, and I asked her how did she know that,
5 and her first response was, "I felt that he was."
6 I continued to ask her why and she at one point said, well,
7 she saw him raise the ax, referring to Tillman. And I
8 asked her, "How did you see him do that?"

9 Q And she demonstrated?

10 A And she indicated with her hands how she
11 saw him do it.

12 Q How did she indicate how that was done?

13 A She indicated with both hands in this manner.
14 But then she said she did not see the blow struck, she
15 turned her back and was leaving the room.

16 Q Any other statements that she made to you
17 on January 3rd that I have not asked you about?

18 A Well, there were many things that were said
19 but I responded directly to your questions directed in my
20 answers directly to the question.

21 MR. VERHOEF: Thank you. That's all.

22
23 CROSS-EXAMINATION

24 BY MR. CHRISTENSEN:

25 Q Officer Thirsk, isn't it true I am the one

1 that asked you to conduct your questioning of Miss Sagers
2 on the Saturday in question?

3 A Yes, sir.

4 Q Isn't it also true I was present with you and
5 watched various phases of that interrogation along with
6 several other people, including an officer from your office,
7 I believe, who was present there for the first portion of
8 it?

9 A Yes, Det. Kyle Jones, but as I said, I don't
10 know who was in the room or how many in the room at any
11 individual time, but, yes, I was aware you were all
12 present.

13 Q How long did this interrogation take?

14 A It began from first contact at 10:00 a.m.
15 and ended at approximately 4:00 p.m.

16 Q And basically there were no breaks during
17 that time of that interrogation; isn't that true?

18 A Only during which time I left and you entered
19 the room.

20 Q That's correct. In fact, for a period of
21 time I interrogated her and you went into the other room
22 and watched also, did you not?

23 A That's correct.

24 Q Did you ever record any of this?

25 A No, sir.

1 Q Any reason why you didn't?

2 A As I recall, at the beginning of that day I

3 asked -- I don't recall whether I asked you or co-counsel --

4 if you wanted it recorded and the response was that no one

5 either indicated to record it or not to record it, so I

6 chose not to.

7 Q You weren't instructed not to; is that

8 correct?

9 A I was not instructed to or not to.

10 Q Do you have ear phones and things that a

11 person can listen to while they are in this observation

12 room watching these interrogations?

13 A Yes. Two people can listen simultaneously

14 and it can also be recorded.

15 Q During the time you talked with Carla, and

16 you have indicated other times as well, did you ever have

17 Carla on any of these occasions lash out at you or take

18 any type of hostile action toward you at all?

19 A In a sense of verbal, yes. Verbal denial.

20 Q Did she ever physically throw anything at

21 you or take any type of an action?

22 A Oh, no. No, sir.

23 Q Is she that type of a person in your

24 observations of her?

25 A Not during my observations or presence with

1 her, no.

2 Q She's fairly passive sort of person, is she
3 not?

4 A I would describe her as that, yes.

5 Q And in fact apparently so passive that she
6 made the comment to you, "If you want me to say that I hit
7 him, I will."

8 A That was her comment, yes.

9 Q Did you, during any of your conversations
10 with her, ever find an indication of what she said or did
11 that would suggest to you by any stretch of the imagination
12 that Elroy Tillman was never in the room with her or never
13 responsible for that?

14 A There was never any contradiction to that
15 fact, no.

16 Q Or that it was his idea?

17 A Never any contradiction to that.

18 Q Did you have occasion to read what I will
19 show you now as three volumes of daily transcript of the
20 trial of Miss Sagers and Miss Groneman that has taken
21 place this last week.

22 A No, I haven't.

23 Q All right. So you don't really know whether
24 or not she has testified inconsistently with what you
25 talked about while under oath here in court during these

1 proceedings, do you?

2 A. No, sir, I have no knowledge of it.

3 Q Did you ever read approximately an inch
4 thick transcript of a preliminary hearing that was
5 conducted on August 18 of 1982?

6 A. No, sir.

7 Q I assume then by that that you also couldn't
8 compare what she testified to in that preliminary hearing
9 with what she told you to determine whether or not it was
10 inconsistent?

11 A. No, sir, I couldn't do that.

12 Q Did you ever go to the crime scene the day
13 the body was discovered?

14 A. No, sir, I have never been there.

15 Q Did you ever physically look or have told to
16 you where the lights would have been at the Schoenfeld
17 residence?

18 A. Only by Carla.

19 Q Or what the lighting conditions were like
20 at the Schoenfeld residence?

21 A. Only through her conversation with me.

22 Q You have had occasion, I assume, to conduct
23 numerous interrogations as a sergeant with the police
24 department, have you not?

25 A. Yes, sir.

1 Q Is it inconsistent in your mind's eye that
2 when numerous people are interrogating somebody and they may
3 approach a subject a little differently or ask a question
4 a little differently that that may jog a memory?

5 A Certainly.

6 Q And in fact, isn't it true -- and I think
7 even in your own statement while you had Carla in there --
8 you made a comment to her, did you not, that by going over
9 this and attacking it in a different way "we may be able
10 to piece together what really happened, what really took
11 place in as good a detail as we possibly can"? Didn't
12 you make a statement to her?

13 A Yes, it's a method that I use.

14 Q So it's not illogical then, is it, that
15 a person may go from, say, a brief statement of two pages
16 or three pages then when questions are asked and developed
17 and evidence is developed that statement may increase in
18 volume and quantity and things of that nature? That's not
19 illogical to happen?

20 A The more conversation the more contact.

21 Q Sure. In fact, depending on whether or not
22 you have been to the crime scene or you knew the victims
23 or you knew the witnesses, you may approach a set of
24 questions to a subject depending on how much you know;
25 isn't that true?

1 A. That's correct. Your questions are limited
2 to your knowledge.

3 Q And in fact, the more you know the more
4 detailed you can be about your questions; isn't that true?

5 A. That's correct.

6 Q Was she cooperative with you except for these
7 denials?

8 A. Yes.

9 Q Did she ever not show up for an appointment
10 when it was scheduled?

11 A. She was always there whenever it was scheduled,
12 yes.

13 Q Ever have her attorney with her?

14 A. No.

15 Q Ever plead the Fifth or say, "I don't want
16 to talk to you any more or don't get into that subject," or
17 anything like that whatsoever other than her denials?

18 A. No, I would correct the last statement as
19 representing counsel for the State, you were with her on
20 the second occasion, so I would have to correct that first
21 statement.

22 Q And her attorney, you know, is Earl Xaiz.
23 Was he ever there on any of these occasions?

24 A. I wasn't aware he was her counsel until now.

25 Q She never invoked the Fifth on any of your

1 interrogations, did she?

2 A No, sir.

3 Q Or any of mine?

4 A No, sir.

5 Q At the time that these conversations were
6 being had with Carla did you ever divulge to her the fact
7 that you had an attorney-client relationship with one of
8 the defense counsel in the Tillman case?

9 A No, I didn't.

10 Q Did you in fact have an attorney-client
11 relationship with Mr. Dave Yocom during that time?

12 A Yes, but I didn't know Yocom was counsel at
13 the time.

14 Q You didn't know Dave Yocom was counsel?

15 A No, sir, I did not.

16 Q Were you aware that Mr. Tillman's brothers
17 came to Salt Lake in April and went on a trip with him to
18 California?

19 A No, I wasn't aware of that.

20 Q Were you aware of the fact that Elroy Tillman
21 sent a post card to Lori Groneman while on that trip?

22 A No, I am not aware of that.

23 Q Is that an inconsistent statement then if a
24 brother was perhaps in Bountiful to pick Mr. Tillman up?

25 A No, sir.

1 Q It would have helped to have that knowledge,
2 wouldn't it, to discuss this case rationally with
3 Miss Sagers, would it not?

4 A The fact that someone was present just came
5 up in conversation. I simply described what the
6 conversation was.

7 Q And if you didn't know if a brother had
8 been in town and that conversation came up, you may think
9 to yourself, "I wonder why she didn't tell me that before"?

10 A This came up in the first conversation,
11 Counselor, that's what I was describing.

12 Q So it's not an inconsistent statement?

13 A No, I never said it was.

14 Q Do you know how many blows were struck to
15 the head of Mr. Schoenfeld?

16 A No, sir, I don't.

17 Q Was it more than two?

18 A I don't know.

19 Q Would you have liked to have known that?

20 A Not especially. I don't know whether it
21 would have been necessary at the time.

22 Q Do you know how a woman typically would raise
23 her hands if she were wielding an ax or a hatchet?

24 A From personal experience I would know, yes.

25 Q Typically two handed?

1 A Yes.

2 Q So if she's saying to you, "If you want me
3 to say I hit, here is how I hit," it would not be illogical
4 for a woman to raise her hand with two hands then, would it?

5 A Well, that movement that I described took
6 place in the first meeting with Carla Sagers. The only
7 other time I saw her do that was when she was in the room
8 with you and I was not listening to the conversation.
9 I was observing.

10 Q Isn't it true in her statements in the past
11 that she said she has never seen him personally strike the
12 blows to Mr. Schoenfeld, and "him" referring to
13 Mr. Tillman?

14 A Yes, that's correct, she said she never
15 saw it.

16 Q She heard it, didn't she?

17 A She described hearing it.

18 MR. CHRISTENSEN: If I might have just a
19 moment, your Honor.

20 THE COURT: Yes, sir, you may. I have an
21 additional question. I am sorry to keep you waiting.

22 Q (By Mr. Christensen) When a person, say for
23 instance, like Carla Sagers, who maybe never has been
24 exposed to crime in her past, maybe never been exposed to
25 violence, has something traumatic happen wherein

1 she's present when blows are struck to cave a man's head
2 in, he is set fire to and burned. Is it illogical for
3 that sort of a person to want to forget what they have
4 seen in their mind's eye?

5 A Is forgetting illogical?

6 Q Wanting to forget.

7 A No, that's not illogical at all.

8 Q In fact, aren't there occasions in
9 interrogation where a person can actually go into shock
10 because of what they have seen?

11 A I have never experienced that but I wouldn't
12 doubt it.

13 Q Wasn't Carla Sagers shocked about what had
14 happened and her involvement in this case?

15 MR. BARBER: Objection, your Honor. That's
16 leading, calls for a conclusion without foundation.

17 THE COURT: Didn't you ask her questions
18 about how she felt about this case, Mr. Thirsk?

19 THE WITNESS: I don't recall specific
20 conversation about her feelings.

21 Q (By Mr. Christensen) Did you see her cry?

22 A I saw her cry when she was with you.

23 Q She never cried when you --

24 A No.

25 Q Did she seem real happy about being there

1 and the circumstances of her involvement?

2 A No, sir, not happy at all.

3 Q Did she admit she was responsible because
4 she didn't turn him in to the police, didn't try to stop
5 it?

6 A Yes, she did.

7 Q Very much so, didn't she?

8 A Yes, sir.

9 Q She's packing around a lot of guilt, she
10 expressed to you, isn't she?

11 A I don't know how to answer that. I can say I
12 would assume she is but I don't know.

13 MR. CHRISTENSEN: No further questions, your
14 Honor.

15 THE COURT: Mr. Verhoef.

16

17 REDIRECT EXAMINATION

18 BY MR. VERHOEF:

19 Q You indicated on cross that Mr. Christensen
20 was present at that examination on January 3rd. At whose
21 request was that examination conducted, that interrogation?

22 A Mr. Christensen's.

23 Q And you indicated that only two people could
24 listen in at one time?

25 A That's correct.

1 Q At the time that Miss Sagers was talking
2 about how she -- the fact she had hit Mark Schoenfeld
3 twice, do you know if the witnesses were present at that
4 point in time?

5 A I don't know. I can't see into the room.
6 It's a one-way glass.

7 Q You indicated that Miss Sagers appeared
8 unhappy. Did she ever express shock to you directly?

9 A I wouldn't know how to describe shock in any
10 definitive terms, Counselor. The conditions of a
11 circumstance or discussion of an event like this is
12 certainly not a happy one, but I wouldn't know how to --
13 I wouldn't describe it as either myself or Carla Sagers
14 being shocked at the conversation, no.

15 Q Isn't that lack of shock inconsistent with
16 the fact that she admitted the carrying or handling of the
17 hatchet or striking Mark Schoenfeld?

18 A I wouldn't describe it as being either one,
19 either consistent or inconsistent.

20 Q With respect to the questions and answers
21 that you gave previously, what was the -- did you recount
22 the exact order of the questions and the answers on your
23 direct?

24 A In regards to the police and the retracted
25 admission, yes, that's the order of it and as best I

1 recollect, almost verbatim because it was important to me
2 at the time as I recall.

3 Q And what was the first question?

4 MR. CHRISTENSEN: Objection, your Honor.
5 We are going beyond the scope of cross-examination. It's
6 just repetitious.

7 THE COURT: Yes, Mr. Verhoef.

8 MR. CHRISTENSEN: Thank you.

9 MR. VERHOEF: That's all I have, your Honor.

10 THE COURT: Thank you, sir.

11
12 RECROSS-EXAMINATION

13 BY MR. CHRISTENSEN:

14 Q Had you at that question to -- to conduct
15 investigation divulge to me your attorney-client
16 relationship with Mr. Yocom?

17 MR. BARBER: Objection, your Honor. Irrelevant.

18 MR. CHRISTENSEN: I think it's very relevant.

19 THE COURT: Be sustained.

20 Q (By Mr. Christensen) During the time that
21 you had Carla in interrogating her, did she ever speak
22 derogatorily about Mr. Tillman, call him names or say
23 anything derogatory about him?

24 A No, she didn't.

25 MR. CHRISTENSEN: Nothing further.

1 MR. VERHOEF: We have nothing further of this
2 witness, your Honor.

3 THE COURT: You may step down, sir. I need
4 to take a very brief recess, gentlemen,

5 MR. BARBER: Thank you very much, your Honor.

6 THE COURT: How many more witnesses do we
7 anticipate?

8 MR. BARBER: On behalf of the defense, your
9 Honor, perhaps one.

10 MR. CHRISTENSEN: Perhaps one, your Honor.

11 THE COURT: All right. We'll take about a
12 five minute recess, ladies and gentlemen, and again with
13 my admonition to speak to no one, let no one speak to you
14 about the case, don't make up your mind. We'll be in
15 recess for five minutes.

16 (Short recess.)

17 THE COURT: The record may show all the
18 jurors are present, parties are present, defendant is
19 present with counsel. You may proceed

20 MR. BARBER: Thank you, your Honor. But for
21 the matter we have reserved in chambers, the defense rests.

22 THE COURT: Yes. All right.

23 MR. CHRISTENSEN: I believe I have one brief
24 rebuttal witness to call, your Honor. I would recall to
25 the stand Lori Groneman.

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-oo0oo-

THE STATE OF UTAH,

Plaintiff,

vs.

ELROY TILLMAN,

Defendant.)

Criminal No. CR-82-1081

REPORTER'S TRANSCRIPT ON APPEAL

January 13, 1983

BEFORE THE HONORABLE ERNEST F. BALDWIN, JR.
District Court Judge

A P P E A R A N C E S:

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FILED IN CLERK'S OFFICE
Salt Lake County Utah

NOV 22 1983

H. D. [Signature] Clerk of the Court
By [Signature] Deputy Clerk

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Clark Superior Court

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1 this witness, your Honor.

2 THE COURT: You may step down for now, sir.

3 MR. VERHOEF: I had hoped to call
4 Sgt. Thirsk much earlier than that, your Honor, and I
5 must apologize to the Court.

6 THE COURT: Well, why don't you call him?
7 Let's take just a few minutes then and we'll go through.
8 We'll be in recess until 12:00.

9 (Recess taken.)

10 THE COURT: You may proceed, gentlemen.

11 MR. VERHOEF: Thank you, your Honor. I
12 would call Officer Ken Thirsk.

13

14 KENNETH L. THIRSK,

15 called as a witness by the defendant, having been duly
16 sworn, was examined and testified on his oath as follows:

17

18 DIRECT EXAMINATION

19 BY MR. VERHOEF:

20 Q I will remind you, Sergeant, you are still
21 under oath.

22 A Pardon?

23 Q I will remind you you are still under oath.

24 A Yes, I understand.

25 Q Will you please state your full name.

1 A. Kenneth L. Thirsk.

2 Q In addition to your testimony yesterday as
3 to what your function was with the Salt Lake City Police
4 Department, do you have any other roles?

5 A I am a supervisor of the investigative
6 support section which includes, among other things,
7 polygraph examination.

8 Q Are you a licensed polygraph examiner under
9 Utah State law?

10 A Yes, I am.

11 Q Are you also certified nationally?

12 A Yes, I am an active member of the polygraph
13 association, also certified through police school
14 certification of Thormax School of Polygraph in California.

15 Q Any other schools?

16 A I have completed various seminars, workshops
17 and other schools. I am also a graduate of the Westminster
18 College with a four-year degree in behavioral science.

19 Q What is your experience in running polygraph
20 examinations?

21 A It has been limited to criminal specific
22 polygraph examinations with Salt Lake City Police
23 Department and for other outside agencies. Some interstate
24 and some limited to private polygraph work.

25 Q What other agencies have you conducted

1 polygraph examinations for?

2 A. One agency out of Illinois, Phoenix, Arizona,
3 and various agencies throughout the State of Utah.

4 Q. State agencies?

5 A. You mean police agencies? Yes.

6 Q. How about the federal agencies?

7 A. I have been consulted by the Federal Bureau
8 of Investigation on polygraph examinations, but never
9 conducted actual ones for the FBI. I have been consulted
10 in test consultation with their examiners regarding polygraph
11 examination on informants, et cetera.

12 Q. How many examinations would you say that you
13 have conducted in your experience?

14 A. I have conducted 261 criminal specific
15 examinations involving criminal violations.

16 Q. And what type of machine do you use in your
17 examinations?

18 A. I use a Stolding Model 1650 Ultrascribe.
19 I also use a Lafayette instrument, which I recently
20 purchased but I don't use that in criminal exams.

21 Q. How does the Stolding machine compare to others
22 in the field?

23 A. It's one of the latest models, including
24 electronically enhanced cardio number graph GSR and it's
25 a five-channel.

1 Q Is that machine calibrated by you on a
2 regular basis?

3 A It's calibrated on an irregular basis.
4 Whenever I clean or do periodic work on the instrument,
5 I calibrate it.

6 Q Do you use any steps to calibrate the machine
7 during a test?

8 A During the test itself?

9 Q Or before a test?

10 A Not before every test, no. I calibrate the
11 instrument or adjust the instrument according to the
12 examining, or subject I am examining. I use some methods
13 of stimulating reaction prior to conducting any test phase.

14 Q On about January 3rd of 1983 you conducted
15 a test of Carla Sagers?

16 A Yes, I did.

17 Q Did you bring the result of your charts that
18 you compiled in that test with you today?

19 A Yes, I did.

20 Q Did you bring the score sheets that you
21 utilized in evaluating that test with you today?

22 A Yes, I did.

23 Q Might I have those, please? Would you explain
24 to the Court what your basic test procedure is?

25 A My particular procedure is along the same

1 guidelines as I was taught, conducting a pretest interview,
2 to construct the questions regarding the relevant issue to
3 be tested on, also to construct control questions and
4 fulfill the form of the question series prior to any test
5 phase. Also, to establish an understanding of the
6 questions to be asked.

7 Q In this particular test, were you allowed to
8 formulate your own questions?

9 A Yes, I was.

10 Q At any time during that test or before that
11 test, did you ever hypnotize Carla Sagers?

12 A No, sir.

13 Q Did you ever threaten Miss Sagers by removal
14 of immunity or other sanctions?

15 A No.

16 Q Did you, prior to any test, have any preconceived
17 notion as to what the result might be on that particular
18 examination?

19 A I did, yes, but I try not to. I expected
20 or believed at the time prior to any test phase that the
21 test was going to run smoothly and result in a positive
22 result.

23 Q When you say "a positive result," what do you
24 mean by that, sir?

25 A Truthful.

1 Q Can you recall the -- Have you written
2 down the exact questions that you posed to Miss Sagers on
3 that particular test?

4 A Yes, I have.

5 Q Can you recall those from your memory?

6 A From memory, no, sir, I cannot, not to be
7 specific. It wouldn't be accurate if I did.

8 Q I will call your attention to Defendant's
9 Exhibit No. 51. What is that, sir?

10 A That is the test structure I used at the time.

11 Q And is that a standardized test structure?

12 A It's a military zone of comparison test form
13 which I have printed up and I keep and use.

14 Q And those are the questions that you posed to
15 Miss Sagers during that examination?

16 A These are the questions here, yes.

17 Q And during that examination you obtained
18 tracings, did you not, from your machine?

19 A Yes, from the polygraph instrument.

20 Q And might you refer to the exhibit, sir, and
21 then identify the tracings by number, if you will?

22 A Which exhibit? The tracings by number of the
23 questions by number?

24 Q Excuse me. Exhibit number. Is that Exhibit
25 No. 47?

1 A. Yes, it is.

2 Q. And those are the actual tracings that you

3 compiled in the Sagers test?

4 A. Yes, it is.

5 Q. Did you have an opportunity to apply a

6 scoring system to that particular tracing chart?

7 A. Yes, I did.

8 Q. And are those numerical computations

9 reflected in Defendant's Exhibits 48, 49, 50 and 52?

10 A. My computations are included in Exhibit No.

11 50. The others are not mine.

12 Q. The others are the computations of other

13 examiners?

14 A. Yes.

15 Q. Are their names listed on those particular

16 exhibits?

17 A. Exhibit No. 52, Lt. W. L. Robinson. Exhibit

18 No. 49, Det. Sid Elliott, County Sheriff's Office. Exhibit

19 No. 48, Mr. Larry Kelly of the Adult Probation and Parole

20 Department.

21 Q. And did you personally submit the tracings

22 to those particular individuals?

23 A. Yes, I did.

24 Q. And the purpose was to have them make a

25 comparison of your results?

1 A. Yes, it is.

2 Q. Did you use a standardized method of scoring

3 those particular tracings on your numerical score sheet?

4 A. I used one of two recognized standardized

5 methods. One I use is the military zone of comparison

6 scoring technique.

7 Q. And what is that scoring technique based on

8 or what are the numerical divisions?

9 A. Numerical divisions relate to a zone or an

10 area of minus 6 or greater to plus 6 or greater in an

11 inconclusive range. Anything greater than a minus 6 to a

12 minus 7 respectively is indicative in military zone scoring

13 as deception indicated. Anything plus 6, 7 or 8

14 respectively greater in military zone is indicative of NDI or

15 no deception indicated.

16 Q. And the numbers you placed upon your score

17 sheet, are they standardized figures in assessing the charts?

18 A. Yes, they are.

19 Q. And what is that standard?

20 A. These are standardized figures according to

21 score chart that fits or matches the military zone of

22 comparison scoring technique.

23 Q. Okay. Will you explain briefly for the Court

24 how you look at each tracing and assess a score? I take

25 it that's done to each question compared?

1 It's done to each tracing for each question for a total
2 vertically for each tracing to each question in comparison
3 to a control question bracketed on either one or both sides
4 of the relevant issue question.

5 Q And in this particular instance would you
6 explain to the Court what number is assigned -- in other
7 words, how you arrive at a zero or 1 or minus 1 or whatever
8 number you use?

9 A In the number of graph tracings both the top --
10 both of the top two tracings on the chart, a comparison is
11 made between relevant and control questions in regards
12 to a greater response to one or the other by a comparison
13 or response versus no response on one or the other and the
14 cardio tracing, the lower tracing a similar means is used.
15 In the GSR tracing, a ratio for scoring is required of a
16 2-to-1 ratio for a score of 1, a 3-to-1 ratio for a score
17 of 2, and a 3-to-1 ratio for a score of 3.

18 This is the only area that requires a greater
19 than ratio for scoring for value than a 1-to-1 or something
20 greater in intensity. It must be 2-to-1 or greater in
21 order to give it value.

22 Q How is the positive or negative valuation
23 placed upon the number?

24 A If the response is greater in the control
25 question as compared to the relevant question, it receives

1 a positive evaluation. If it is greater in the irregular
2 question as compared to the control, then it receives a
3 negative value.

4 Q And the positive indication, does that imply
5 truthfulness?

6 A That implies no deception indicated as per
7 the scoring technique.

8 Q And the negative implies?

9 A DI or deception indicated.

10 Q In applying that particular technique to the
11 charts you have before you, did you arrive at any
12 conclusions?

13 A Yes, I did.

14 Q And what were those conclusions?

15 A Deception indicated as regards a relevant
16 issue.

17 Q Deception was indicated, you say?

18 A As regards to the relevant issue.

19 Q And what was the relevant issue?

20 A Questions 5 and 7 in the test structure.

21 Q What are those questions, sir?

22 A Question 5: "At the exact instant any of the
23 blows were struck, were you holding the weapon?"

24 Question 7: "Was the weapon ever in your
25 possession when Mark was struck with it?"

1 Q As far as the strength of the response is
2 concerned, can you -- are you able to make an assessment
3 as to the strength that she responded?

4 A The strength or the assessment of value is
5 by the numerical standards.

6 Q And in this instance what was your numerical
7 total that you arrived at?

8 A My scoring for three charts of the four-
9 chart series was a minus 9. My scoring for all four charts
10 inclusive was a minus 13.

11 Q Is that as to both the relevant questions or
12 one relevant issue?

13 A That is an accumulation of both relevant
14 questions.

15 Q And from that you concluded she was showing
16 deception?

17 A Yes, in regards to the relevant issue.

18 Q When you attempted to have your conclusion
19 verified?

20 A Yes.

21 Q That was by submitted to other individuals?

22 A To other qualified examiners for a quality
23 control system we refer to as blind scoring.

24 Q And did their conclusions or their score
25 sheets indicate they agreed with your conclusion?

1 A. Yes, they do.

2 Q I would move for the admission of these
3 exhibits after I have shown them to Mr. Christensen.

4 MR. CHRISTENSEN: No objection for this
5 hearing but I would ask for a continuing objection as to
6 the whole hearing itself.

7 THE COURT: Yes, Well, I will reserve
8 receiving it but --

9 MR. CHRISTENSEN: Thank you.

10 MR. VERHOEF: I have nothing further of this
11 witness, your Honor.

12 THE COURT: Thank you.

13

14 CROSS-EXAMINATION

15 BY MR. CHRISTENSEN:

16 Q Officer Thirsk, what degrees do you hold?
17 I didn't get those.

18 A I have a -- I graduated from Westminster
19 College with honors in behavioral science, a BS degree.

20 Q Any other degrees from colleges?

21 A I am a certified examiner through a
22 certification program of Gormack School of Polygraph in
23 California. Also a licensed examiner in the State of Utah
24 under the state laws.

25 Q You also know Officer Steve Bartlett, do you

1 not, as a polygrapher?

2 A. Yes, I do.

3 Q. I believe he has similar credentials to your
4 own, does he not?

5 A. Yes, he does.

6 Q. Officer Thirsk, how many tests were run of
7 Carla Sagers, either by yourself or Officer Robinson of
8 the police department?

9 A. To my knowledge, three total, two by myself,
10 and one by Lt. Robinson.

11 Q. On the first test you performed with
12 Carla Sagers, what were the relevant questions that were
13 asked of her at that time?

14 A. I will have to consult --

15 Q. That's all right. Go ahead.

16 A. Relevant questions on the first test I
17 conducted on December 1 of 1982 were in a full scene format,
18 question 5: "Did you ever strike Mark with any object of
19 any kind?"

20 Q. Hold on just a second. "Did you ever -- "

21 A. "-- strike -- "

22 Q. " -- strike -- "

23 A. "-- Mark -- "

24 Q. " -- Mark --"

25 A. " -- with any object -- "

1 Q -- "of any kind"?
2 A -- "of any kind."
3 Q And what was the other question?
4 A Question 7: "At the exact moment that Mark
5 was struck -- "
6 Q Now, wait a minute. Is this on the same,
7 the 12-1-82?
8 A Yes.
9 Q "At the exact moment -- "
10 A "At the exact moment Mark was struck, were
11 you inside the bedroom where Mark was?"
12 Q "Were you inside the bedroom"?
13 A "The bedroom where Mark was."
14 Q All right. On that --
15 A There is a third relevant, Counselor, if
16 you want it. Question 10.
17 Q Go ahead.
18 A "Did you personally light the fire on Mark's
19 bed?" Now, if I may, in each of these tests there is a
20 fourth relevant, just to be correct, but it's a relevant
21 that's not scored or used.
22 Q Okay. What would that question be?
23 A In this particular case it was question 2.
24 "Regarding the night Mark was killed, do you intend to
25 answer truthfully each question about that?" It's called

1 a sacrifice relevant and is not scored or used.

2 Q In this first exam of December 1 of '82, was
3 her score on that occasion by yourself?

4 A By myself and a cumulative score of plus 1,
5 inconclusive.

6 Q Plus 1 inconclusive?

7 A Yes.

8 Q Did you score any of Bill Robinson's tests
9 that he had performed on her, I believe, on the first
10 polygraph that she had?

11 A I recall looking at the charts but I am not
12 sure, Counsel, whether I actually scored a score sheet. I
13 may be in error if he has one.

14 Q Is there any reason why you just didn't ask
15 her the question on your, I guess it would be the third
16 test, your second test, just simply ask her the question,
17 "Did you strike Mark Schoenfeld with an ax" or words to
18 that effect?

19 MR. VERHOEF: I will object to that question
20 whether he had any reason to ask that or not is irrelevant.

21 THE COURT: I will let him answer.

22 THE WITNESS: Is there any reason why I chose
23 not to ask it?

24 Q (By Mr. Christensen) Yes. Why not ask her
25 simply did she strike Mark Schoenfeld?

1 A. I felt at the time that the questions
2 connecting Carla Sagers with the weapon at the time the
3 blows were struck would produce a more effective
4 examination because she had already previously been asked
5 more than once had she ever struck Mark, so I was trying
6 to determine physical contact with the weapon itself at
7 that exact instant, and I felt that would be a more viable
8 exam result because of the emotionally charged effect of,
9 "Did you hit, did you strike, did you kill," questions of
10 this nature. I felt this would be a better test question.

11 Q Did you -- When you asked her the third
12 question in the third test, I believe it was, the fifth
13 question, "At the exact moment the blows were struck, were
14 you in possession of the weapon," did you ever define with
15 her what exact moment, what possession meant, or I believe
16 you had one other -- what was your number 7 question that
17 you asked her?

18 A Are you referring to the latest exam?

19 Q The last test, yes.

20 A It's the same question reworded. "Was the
21 weapon ever in your possession when Mark was struck with
22 it?"

23 Q On that question did you ever explain to her
24 what you meant by "ever" or "possession"?

25 A Yes, I did.

1 Q Did you record that?

2 A No, I did not.

3 Q Is there any reason why you did not record

4 the third test?

5 A I didn't record any of the tests, the

6 previous one or this one.

7 Q Don't you think it would have been helpful

8 to a trier of fact to determine your explanations versus

9 her interpretations of the words used in the question?

10 A Yes, I do.

11 MR. VERHOEF: Object to that, whether he

12 thinks it's helpful or not.

13 MR. CHRISTENSEN: Well, he is their expert,

14 your Honor, on this thing and I think it's appropriate

15 cross to find out what he perceives as appropriate, proper

16 test.

17 THE COURT: I have the answer. You may

18 proceed.

19 Q (By Mr. Christensen) Thank you.

20 Isn't it true, Officer Thirsk, that through --

21 MR. BARBER: Excuse me. Did he answer that

22 question?

23 MR. CHRISTENSEN: Yes, he did. Read it

24 back if you would, Bob.

25 (Record read by the court reporter.)

1 Q (By Mr. Christensen) Isn't it true,
2 Officer Thirsk, that you more or less developed a theory
3 about what you thought had happened inside the Schoenfeld
4 residence on May 25 and May 26 in terms of Carla's
5 involvement?

6 A Yes, I had.

7 Q And isn't it also true that part of that
8 theory or interpretation of what had happened was
9 based upon the prior criminal background of Mr. Tillman
10 and, in other words, his con-wise knowledge of
11 violations of the law?

12 A It was based on my knowledge from Carla on
13 the previous test meeting when I met her on the first time,
14 our discussion then plus the pretest interview of the
15 second test.

16 Q All right. Isn't it true, Officer Thirsk,
17 that you believe that there would be no way that
18 Elroy Tillman, with his prior criminal background, would
19 allow Carla Sagers to be inside the room when he struck
20 her or struck Mark Schoenfeld without him making her also
21 try to strike Mark Schoenfeld to become an accomplice?

22 A Yes, as I recall I told you that very thing.

23 Q And isn't it true that really the only
24 thing to corroborate your theory is the prior criminal
25 background and what you know of other convicts or other

1 types of felons and some of the interpretations that you
2 were perceiving on the first set of polygraphs run on
3 Miss Sagers?

4 A It's that, inclusive of my knowledge of the
5 case, my study of the case notes, discussions with the
6 investigators. It would encompass all those things.

7 Q How many hours of pre and posttest
8 interrogation did you conduct of Carla Sagers?

9 A In total I would say between eight and ten
10 hours.

11 Q And on the last occasion of the positive
12 result?

13 THE COURT: Had you answered yet?

14 THE WITNESS: Yes, sir.

15 THE COURT: I --

16 THE WITNESS: I stated I believe between
17 eight and ten hours in total.

18 THE COURT: Oh, I didn't hear between eight
19 and ten. I thought you came on and got it and I wasn't
20 sure.

21 Q (By Mr. Christensen) I am sorry. And how
22 many of those hours was associated with the third test?

23 A Well, the third test or my second test was --

24 Q Your second test, the third total test?

25 A Was from approximately 11:00 a.m. on

1 Saturday the 3rd to between 3:00 and 4:00 p.m., four to
2 six hours.

3 Q And on that previous test you performed
4 where, I believe, it would be approximately three or four
5 hours of interrogation, did Carla Sagers on that occasion
6 ever make any kind of admissions, like you described to
7 the Court yesterday in your testimony?

8 A No, she did not.

9 Q And it's a fair statement to state, is it
10 not, that Carla Sagers on the third occasion when you
11 testified she made the comments to you, "If you want me
12 to say I hit him," she also asked you if you would run her
13 on a polygraph wherein she would answer the question, "I
14 hit Mark Schoenfeld" so that you could determine whether
15 or not that was also a true statement or a false statement
16 also; isn't that true?

17 A Yes, she did ask me that.

18 Q She also told you that if you were to do that
19 you would find that she was lying to you about admitting
20 hitting Mark Schoenfeld, didn't she?

21 A Yes, but not in those exact words. But that
22 was the meaning I interpreted, yes.

23 Q Isn't it true, also, Officer Thirsk, that
24 throughout interrogation and your conversations with
25 Carla Sagers you could detect by your observations a great

1 deal of guilt or responsibility for her involvement with
2 this crime?

3 A. I would be hard put to answer that, Counselor.

4 MR. VERHOEF: I will object. No foundation
5 for his conclusions, if nothing else,

6 THE COURT: Well, based on his contact with
7 Carla.

8 THE WITNESS: In my experience as an
9 interrogator, coupled with my experience as a polygraph
10 examiner, I found that basing opinions on physical
11 manifestations alone are not valid. They are much greater
12 validity in the test itself than physical manifestations.

13 Q. (By Mr. Christensen) Weren't you in a way
14 basing your own theories of the case on physical
15 manifestations of Mr. Tillman, perhaps prior criminal
16 record, to assume she would have to become involved as an
17 accomplice in this crime?

18 A. I had never met Mr. Tillman so when I say
19 physical manifestations, I am talking about observations
20 made with the person in a personal interview. I didn't know
21 Mr. Tillman.

22 Q. Why, in your theory with Miss Sagers, would
23 she have to actually handle the weapon or the ax, or
24 actually have to hit Mark Schoenfeld in order to be an
25 accomplice under your scheme of things?

1 MR. VERHOEF: I don't understand the question
2 for one thing, and I am going to object.

3 THE COURT: I understand the question. I
4 will sustain the objection on the question.

5 Q (By Mr. Christensen) Do you know what it
6 takes to become an accomplice under Utah law, Officer?

7 MR. VERHOEF: Same objection, your Honor.

8 MR. CHRISTENSEN: Well, he is testifying
9 to theories, your Honor, regarding what his theories were.

10 THE COURT: I sustain it. It's not proper
11 cross-examination of this witness. It's argumentative,
12 purely argumentative. Now, if you want to argue it that
13 bad, I will have definitely let the jury get it. That's
14 facetious, Mr. Christensen and Mr. Verhoef. You may have
15 some need for it as all I am saying, and if you do, you may
16 do it, but at the present time all he is is a witness in
17 this lawsuit.

18 Q (By Mr. Christensen) Did you tell Carla Sagers
19 that you didn't believe her after your first test of her?

20 A No, I didn't.

21 Q And if she were to testify otherwise then
22 would there be any way to verify who was telling the truth?

23 MR. BARBER: Objection, your Honor. That's
24 improper cross.

25 THE COURT: Only one of you is going to make

1 objections, gentlemen.

2 MR. BARBER: I am sorry. I do apologize.

3 THE COURT: You start following the rules,
4 too. You both talk at once and you didn't hear your
5 objection,

6 MR. BARBER: I am sorry.

7 MR. VERHOEF: That's improper cross-
8 examination, your Honor. We make an objection for that
9 reason.

10 Q (By Mr. Christensen) You indicated you didn't
11 record any of the conversations you had with Miss Sagers,
12 is that correct?

13 A That's correct.

14 Q And so it would be basically her word against
15 yours unless someone else was there that observed what
16 took place?

17 A That's correct.

18 Q And there were people there that observed
19 what took place on the second polygraph examination you
20 ran, weren't there?

21 A To my knowledge, yes.

22 Q Isn't it true that you have told other
23 officers in the police department that you don't believe
24 Carla Sagers for one minute?

25 A I have told investigators of that, yes.

1 Q And who are those investigators that you told?

2 A Det. Sgt. Marty Vuyk, supervisor of the
3 homicide section, and Det. Steve Chapman, investigator and
4 case handler in this case.

5 Q And you also told myself and co-counsel and
6 Julie Merrill of the County Attorney's Office also, have
7 you not?

8 A That's correct.

9 Q Isn't it also true, Officer Thirsk, that
10 before you ran the polygraphs you had a statement to me
11 and co-counsel that you thoroughly believe she was lying
12 and that if you could frame or formulate the questions
13 you wanted to formulate them, that would be proven out?

14 A No, I did not.

15 Q Did you ever do any testing of
16 Lori Groneman?

17 A No, sir.

18 Q Were you aware that tests had been undertaken
19 of Lori Groneman?

20 A I was aware just shortly before we came in
21 here today when you told me. I didn't know before that.

22 MR. VERHOEF: Your Honor, that's beyond the
23 scope of direct and also irrelevant of any testimony.

24 THE COURT: I don't know. It might be merely
25 preliminary as to where it's going.

1 MR. CHRISTENSEN: It can be foundational for
2 other witnesses, your Honor.

3 THE COURT: Foundation for Lori Groneman's
4 test?

5 MR. CHRISTENSEN: That's correct.

6 THE COURT: I will sustain the objection all
7 the way down the line that have to do with Lori, unless
8 it goes to his credibility in making this test.

9 MR. CHRISTENSEN: It may do that.

10 Q (By Mr. Christensen) Officer Thirsk, can
11 you say unequivocally that Carla Sagers would not react
12 under any circumstances to the relevant question because of
13 fear, of guilt, or other things unrelated to her actual
14 involvement with this case?

15 A Not unequivocally, no.

16 Q Why?

17 A The purpose, if I can explain, the purpose
18 of designing a test structure and establishing psychological
19 set in a pretest interview is to avoid that very thing.
20 As to guilt complex reaction, my experience and knowledge
21 in workshops, studies, et cetera, and research in polygraph
22 is there is no such thing as a guilt complex reactor.
23 There have been methods and means used to try to determine
24 this but as to date there have not been any discovered.

25 Q Did you attempt to formulate your question

1 to obviate the problem of a guilt association when you
2 asked her "At the exact moment the blows were struck were
3 you in possession of a weapon"?

4 A Yes, I did.

5 Q And you feel by that question that there
6 would be no way she could interpret otherwise her involvement
7 as being there or being an accessory on the crime without
8 handling that ax?

9 A In my belief, no.

10 Q Were you aware that while blows were being
11 struck that Carla Sagers did hold the ax for a period of
12 time while the head was covered of the victim?

13 A Yes, I was.

14 Q And isn't that technically holding the ax
15 during the exact moment the blows were struck, depending
16 on how you interpret "exact"?

17 A Not if the question is discussed and
18 explained and understood and an affirmative answer in the
19 understanding of the question.

20 Q But we don't have a recording of that, do we?

21 A That's correct.

22 Q Officer Thirsk, for the record, I have got
23 to ask the question: What was your relationship with
24 Dave Yocom attorney-client-wise. I don't want you to
25 divulge any of the confidentialities of that relationship

1 but your frequency with and relationship with Mr. Yocom
2 during the time these polygraphs were being run.

3 A During the time the polygraphs were being
4 run?

5 Q And prior to May 26 of 1982.

6 MR. VERHOEF: That's a compound question.

7 Q (By Mr. Christensen) First of all, after
8 May 26 to the date of your last polygraph of Carla Sagers,
9 what was that relationship?

10 A I am not sure what the connection of May 26
11 was. However, it was during 1982 that myself and another
12 officer retained the services of Mr. Yocom regarding a
13 lawsuit on a land fraud situation. Prior to that time I
14 knew him as the county attorney. That's all.

15 Q And did you, during the course of your
16 associations with Mr. Yocom, also discuss with him your
17 various activities in polygraph with Carla Sagers?

18 A I did on Tuesday following the examination on
19 January 3rd.

20 Q What about on the first examination that you
21 conducted?

22 A No, I did not.

23 Q Why did you do so? Why did you discuss the
24 examination with him?

25 A At the time the subject came up I made contact

1 with Mr. Yocom regarding the actions pending before the
2 Attorney General's Office and in court regarding this
3 land issue. At that time he introduced me to
4 Mr. Marty Verhoef and at that time Mr. Verhoef asked me if
5 I had run a test on Carla Sagers and I told him I did.
6 He asked me what the results of that examination were and
7 I replied, "If you want to know, you will have to subpoena
8 me," and that was pretty much the end of that discussion.
9 Then we discussed the other problem.

10 Q Where did that discussion take place?

11 A Right across the street at the Stanyon Street.

12 Q Stanyond Street bar?

13 A Yes.

14 Q Did you ever reveal any information from
15 Carla Sagers in your pre or posttest interview or
16 polygraphs that would indicate she was the only one
17 responsible for the killing of Mark Schoenfeld?

18 A No.

19 MR. VERHOEF: Objection, your Honor. That's
20 beyond the scope.

21 MR. CHRISTENSEN: It is not beyond the scope
22 at all, your Honor.

23 THE COURT: He may answer.

24 Q (By Mr. Christensen) Again, your answer?

25 A No.

1 Q You indicated that you ran three or four
2 charts. Is there a name for the polygraph examination when
3 you run three charts or three relevant questions?

4 A If there are three relevant questions
5 included in the test format it is called a full zone
6 of comparison.

7 Q Or a tri-zone?

8 A Well, there is a tri-zone used by Baxter
9 and then a military spot analysis, and in essence they are
10 the same thing.

11 Q On each of the individual charts can you give
12 me a breakdown on this last exam what the individual scores
13 were on each of the charts and not the composite score,
14 but the individual chart scores?

15 A On my scoring chart number 5 minus 5 --
16 correction. I am sorry. Chart No. 1 minus 5. Chart No. 2
17 minus 4, chart No. 3, zero. Chart No. 4, minus 4.

18 Q Okay. And on the first test that you
19 conducted what was the breakdown on that?

20 A Chart No. 1, plus 4, chart No. 2, minus 4,
21 chart No. 3, plus 1.

22 Q That test there with the plus 4 and the plus
23 1, was she tending towards truthfulness, that set of scores,
24 or could you ascertain that?

25 A Well, if you analyze each chart separately

1 you could say that. However, that is not permissible under
2 examination rules or law.

3 Q Well, did you formulate an opinion whether
4 she was tending to truthfulness when she got a composite
5 score of a plus 1 on that test?

6 A The only conclusion I could reach was that
7 it was an inconclusive.

8 Q But tending to positive?

9 A That wouldn't be my terms. It's a plus 1
10 but anything within a plus 1 or minus 1 is inconclusive
11 regardless of the lean factor. I don't use lean factors.

12 Q How would you characterize or compare the
13 test question, "Did you ever strike Mark with any object
14 of any kind" with your question "At the exact moment the
15 blows were struck did you have the weapon in your hand?"
16 How would you tell which of the two questions is a better
17 question?

18 A First question has to do with the physical
19 act of striking irregardless of object. The second test
20 has to do with physical contact with the weapon that was
21 used and not the striking itself.

22 Q Well, any object would certainly incorporate
23 an ax, wouldn't it?

24 A In the initial test, yes, because we didn't
25 know what the object was.

1 Q And in fact that is more broad, is it not,
2 any object as opposed to the one you asked on your third
3 question?

4 A It's broad, yes.

5 Q Because you are characterizing a known weapon
6 at that time, are you not?

7 A Yes, by her description.

8 Q And she comes out inconclusive on even the
9 more broad context which could even include her maybe
10 striking the body or throwing something against the body
11 in that first question?

12 A That's the problem with a broad question.
13 It's -- It hasn't the specificity of a question that
14 can be more specific. If it's broad it's more ambiguous
15 and nebulous.

16 Q Could you yourself be capable of
17 polygraphing an alibi witness?

18 A Could I polygraph an alibi witness?

19 Q Uh-huh.

20 A I could but an alibi witness is a very
21 difficult test to run because it is a confirmatory test.

22 Q Why is it confirmatory?

23 MR. VERHOEF: This is beyond the scope of
24 direct, your Honor. I don't know where we are getting
25 at all. It is obviously beyond the scope of direct.

1 THE COURT: Well, you put him on as your
2 expert. I will say it is going to his expertise.

3 MR. VERHOEF: Okay.

4 THE COURT: I think it's foundational or
5 something, is all, whether he can or can't has nothing to
6 do with this case.

7 MR. CHRISTENSEN: So what was your ruling,
8 your Honor?

9 THE COURT: Yes, you may answer.

10 Q (By Mr. Christensen) All right. Why is it
11 difficult to score that?

12 A It has nothing to do with the scoring. It's
13 a very difficult type of examination to run because you
14 are asking for a confirmation of a story or a perception
15 of an act.

16 Q What if a guy says he saw so and so on such
17 and such a time and such and such a day? Why is it so hard
18 to ask?

19 A It isn't if you pin it down to that specific
20 issue. But, however, the broader the issue the less degree
21 of accuracy.

22 Q Isn't it true, Officer Thirsk, that prior to
23 running Carla Sagers on an examination, you became involved
24 in an interrogation of a subject in Phoenix, Arizona who
25 was involved in a homicide here in Pioneer Park in Salt Lake?

1 A. I was involved in interrogation of several
2 subjects in regards to that case.

3 Q With regard to that case, isn't it true that
4 you had formulated opinions where you actually rendered to
5 the County Attorney's Office that based upon your
6 interrogation of this suspect that you knew he was guilty
7 of a homicide charged and later it was found by polygraph
8 examination that he was in fact lying to you about admitting
9 the crime?

10 MR. VERHOEF: Objection, your Honor. That's
11 way beyond the scope.

12 MR. CHRISTENSEN: It's going, again, to his
13 credibility, your Honor, as a witness and to his modus
14 operandi for this interrogation.

15 THE COURT: I am not going to hear about
16 modus operandi. I don't think MO as it is used in the
17 detective books has anything to do with a court of law.

18 MR. CHRISTENSEN: I was not referring to MO
19 in that context.

20 THE COURT: All right.

21 Q (By Mr. Christensen) Did you have an
22 occasion to interrogate a suspect who was later
23 polygraphed and found to be lying to you about admitting
24 the crime, or his knowledge, or involvement about the crime?

25 A Yes, I did.

1 Q Isn't it a fact it's a matter of fact that
2 that case was dismissed because of that in Circuit Court
3 just several weeks ago?

4 MR. VERHOEF: Objection. That's not
5 relevant whether it was dismissed or not.

6 MR. CHRISTENSEN: Certainly goes to probativeness,
7 your Honor, with regard to his --

8 THE COURT: He may answer.

9 MR. CHRISTENSEN: Thank you.

10 THE WITNESS: Yes, it was dismissed in
11 preliminary hearing.

12 MR. CHRISTENSEN: Thank you. No further
13 questions.

14 THE COURT: Mr. Verhoef?

15 MR. VERHOEF: Just a couple, your Honor.

16

17 REDIRECT EXAMINATION

18 BY MR. VERHOEF:

19 Q You indicated that broad questions tend
20 to be less accurate by way of result on the polygraph.

21 A Yes.

22 Q When I say broad question I mean broad
23 relevant. Is that what you mean also?

24 A If the question itself is more inclusive I
25 have outside issues, then it's a broad question and it can

1 go in degree from the most specific to the most ambiguous.
2 You try to use the most specific type question you can.

3 Q And we can say the same thing, can we not,
4 about split issue tests?

5 A Yes.

6 Q And split issues, you mean more than one
7 issue involved that test?

8 A Yes. It splits the specificity of the test
9 if you have two or more specific issues involved in the
10 same test structure.

11 Q Was the test you conducted on Miss Sagers
12 on 12-1 a split issue test?

13 A Yes.

14 Q Did you ever ask in a polygraph examination
15 whether or not Mr. Tillman was with Miss Sagers as one of
16 the relevant questions?

17 A No, I did not.

18 Q Did -- At any time did Miss Sagers express
19 any doubt as to the meaning of the relevant questions?

20 MR. CHRISTENSEN: I will object to the form
21 of that question, your Honor, and also we don't have the
22 recording, so we don't know it would be his interpretation.

23 THE COURT: Which one are you talking about
24 now?

25 MR. VERHOEF: Mr. Christensen raised a couple

1 issues, your Honor, with respect to the meaning of the words
2 in the question.

3 MR. CHRISTENSEN: He is referring to what was
4 said, your Honor, and at that point we don't know what was
5 said. That is the whole issue.

6 THE COURT: His only question had to do with
7 Miss Sagers.

8 MR. VERHOEF: I understand, your Honor, but
9 the issue was raised whether or not Miss Sagers expressed
10 any misunderstanding or had any ambiguity about the meaning
11 of a question.

12 THE COURT: Rephrase your question and I will
13 hear it.

14 Q (By Mr. Verhoef) If I can refer you back to
15 the time that you indicated you met me at Stanyon Street,
16 did I serve you with a subpoena the very next day?

17 A Mr. Yocom did.

18 Q And that subpoena requested that you attend
19 at these proceedings and give information to us, did it
20 not?

21 A That's correct.

22 Q When was the first time that you became
23 aware Mr. Yocom was involved in the Tillman case in any
24 fashion?

25 A As I recall, on January 3rd.

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Q After the test had been run?

A Yes. Let me correct that. During the process of the time of the meeting on that Saturday. I can't pinpoint the exact point in time but it was on that Saturday the 3rd.

Q That didn't influence your decision or conclusions with regard to the polygraph results, did it?

A No.

Q Are you certain to a reasonable degree that Miss Sagers was deceptive on the charts on 1-3 of 1983?

A Within the concept of the polygraph technique and the scoring method, yes.

MR. VERHOEF: Thank you. That's all I have from this witness, your Honor.

RECROSS-EXAMINATION

BY MR. CHRISTENSEN:

Q What were the control questions, Officer Thirsk, that were asked on that third examination?

MR. VERHOEF: That's beyond the scope of redirect, I suppose.

MR. CHRISTENSEN: I will move to reopen my cross, your Honor. I believe they're on the exhibits, but I want to clarify what her --

THE COURT: Well, you have the exhibits

1 available to read.

2 Q (By Mr. Christensen) Are they displayed?
3 Are those control questions displayed on those sheets?

4 THE COURT: I understood him to say they were.

5 THE WITNESS: They're displayed on the test
6 format.

7 Q What are the control questions that were
8 asked?

9 A There are four control questions in the
10 examination, three of which were used in comparison.
11 Question 4, 6 and 8 are control questions which were used
12 for comparison. Bracketing the relevant questions at
13 5 and 7. Questions 4 and 6 are instructed lie control
14 questions.

15 Q What were they?

16 A Question 4: "Did you write the letter?"
17 with an instruction to deny that. That isn't part of the
18 question itself and question 6: "Did you write the number
19 4" with an instruction to lie to that question, and then
20 question 8: "Before age 25 did you ever seriously consider
21 harming another person?"

22 Q Why didn't you bracket the relevant questions
23 with that or questions like that?

24 A Bracketing the questions with control
25 questions is the accepted standard.

1 Q But you chose to use her writing a letter
2 and seeing a letter as opposed to something that may get
3 more reaction like did she ever want to hit somebody, or
4 ever want to hurt somebody, or steel something?

5 A I used both instructed lie question and
6 a probable lie controlled question so I would have both
7 for comparison.

8 Q Did you ever divulge to myself whether
9 Carla Sagers, during these examinations at the time of the
10 third examination you had in this attorney-client
11 relationship with Dave Yocom?

12 A No, I did not.

13 Q Any reason why you did not?

14 A Never crossed my mind.

15 MR. CHRISTENSEN: No further questions.

16 MR. VERHOEF: I have no further questions,
17 your Honor. At this point in time, I would move for the
18 purpose of the proffer for the admission of Exhibits, I
19 believe, 47 through 52, and I would secondarily move
20 that we be permitted to present this testimony to the jury.

21 THE COURT: To the jury?

22 MR. VERHOEF: To the jury.

23 THE COURT: They made their proffer,
24 Mr. Christensen.

25 MR. CHRISTENSEN: Your Honor, with regard to

1 that, the State would have a motion at this time to
2 quash the motion of defense counsel regarding the
3 admission of the polygraph evidence into the trial itself
4 before the jury.

5 I base that on several grounds. If the
6 Court wants to hear those now with regard to the admission
7 of these items here for this limited purpose, I don't
8 have any objection to them for this particular purpose.

9 THE COURT: Based upon all the evidence
10 before me, I think it's highly improper under any
11 circumstance to take away from the jury the decision as to
12 who is telling the truth based upon a machine operated by
13 people, but the machine can't testify and the people who
14 are looking at the machine can't testify except as to how
15 they did it. And it's merely to have somebody sit here
16 who professes to be an expert and I don't use that
17 disparagingly when I say profess. Professes to be an
18 expert and say, "With my machine I can tell you that that
19 witness is lying."

20 I will never, until the Supreme Court tells
21 me different, I will not allow it. Now we are talking
22 about a witness.

23 MR. CHRISTENSEN: And I would so move, your
24 Honor.

25 THE COURT: And the other thing, that is no

1 more than hearing some psychiatrist or a clinical
2 psychologist or a priest or a bishop sitting them in the
3 courtroom when somebody is testifying and they may be
4 able to do it very well, and they may do better than the
5 jury in deciding, but put them on and say, "You heard the
6 last witness. You have had a lot of experience in life.
7 Was he telling the truth or not?"

8 "No, he wasn't."

9 In my opinion that is very basically why. I
10 agree, but I would not, based upon the proffer made --
11 This is a proffer as to Carla Sagers' testimony, isn't it,
12 who is a witness and the difference in the questions that
13 are asked are quite technical differences, and it's not
14 that she flatly denied being there or anything. Even then
15 I doubt if I could let it in because I don't think in the
16 courtroom these machines have the business.

17 I think they have a very good place and use
18 in industry.

19 MR. VERHOEF: We thank the Court. We do
20 appreciate the Court's ruling and thank the Court for its
21 time enabling us to make this extended proffer.

22 THE COURT: I don't hear you.

23 MR. VERHOEF: Thank you for allowing us to
24 make this proffer, your Honor.

25 THE COURT: I heard that but more time for

1 what?

2 MR. VERHOEF: Oh, no, I didn't request any
3 more time, your Honor. I just thanked the Court for its
4 time in allowing us to make this extended proffer.

5 THE COURT: Well, I think we had to get it
6 in the record.

7 MR. VERHOEF: Right.

8 THE COURT: If it's necessary, we have it and
9 I wanted to get it. But I have read your memos on the
10 matter and I can see what it is doing.

11 MR. VERHOEF: We are hoping by virtue of
12 this case, if it comes to that --

13 THE COURT: Do you have anything else you
14 need to do at 2:00, Mr. Christensen?

15 MR. CHRISTENSEN: I might indicate to the
16 Court, and with regard to the instructions, I am going to,
17 based upon your conversation last night, restructure some
18 of the elements in instructions as we talked about on the
19 aggravating circumstances, hoping to clarify some language
20 and maybe make a little more sense.

21 THE COURT: Do you have any requests you
22 want to give?

23 MR. VERHOEF: We do have requested instructions
24 that Mr. Yocom is working on. I will get them over to the
25 Court right after lunch.

1 THE COURT: Let's not give me any more stocks.
2 MR. VERHOEF: Oh, no.
3 MR. CHRISTENSEN: Mine will just be element
4 instructions, your Honor.
5 THE COURT: Yes, I know. You don't have to
6 do that.
7 MR. VERHOEF: Will we reconvene at 9:00
8 Friday?
9 THE COURT: 9:00 a.m. and I hope I have
10 those instructions out for you by 8:00 tomorrow. If you
11 are around -- you know what they are going to be.
12 You know what all the elements are.
13 MR. VERHOEF: All right. Thank you, your
14 Honor.
15 THE COURT: You know the elements and you
16 know what they are going to be. We'll be in recess.
17 (Whereupon, court was in recess.)
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CERTIFICATE OF REPORTER

STATE OF UTAH)
COUNTY OF SALT LAKE) ss.

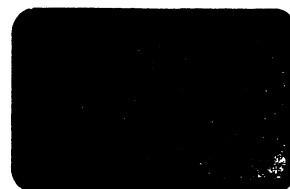
I, ROBERT F. LEWIS, an Official Reporter of the District Court of the State of Utah for the County of Salt Lake, do hereby certify that the foregoing pages, 1 through 122, inclusive, comprise a full, true and correct transcript of the testimony given and the proceedings had upon the hearing of the above-entitled action on January 13, 1983, and that said transcript contains all of the evidence, all of the objections of counsel and rulings of the Court, and all matters to which the same relate.

DATED this 21st day of Nov. 1983.


ROBERT F. LEWIS, CSR

Addendum H

Carla Sagers' Trial Testimony
6-7 January 1983



IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,
PLAINTIFF,
VS.
ELROY TILLMAN,
DEFENDANT.

ORIGINAL

CRIMINAL NO. CR-82-1081

TESTIMONY OF LORI GRONEMAN AND CARLA SAGERS

JANUARY 6, 1983

BEFORE THE HONORABLE ERNEST F. BALDWIN, JR.,
DISTRICT COURT JUDGE

A P P E A R A N C E S:

FOR THE STATE OF UTAH:

MICHAEL CHRISTENSEN
VIRGINIA CHRISTENSEN
DEPUTY COUNTY ATTORNEYS
431 SOUTH 300 EAST
SALT LAKE CITY, UTAH 84111

FOR THE DEFENDANT:

JAMES N. BARBER
MARTIN VERHOEF
DAVID E. YOCOM
ATTORNEYS-AT-LAW
255 EAST 400 SOUTH
SALT LAKE CITY, UTAH 84111

FILED IN CLERK'S OFFICE
Salt Lake County Utah

NOV 22 1983

H. Dixon Highway, Clerk 3rd Dist. Court
By James P. [Signature]
Deputy Clerk

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Clerk, Supreme Court, U.S.

ORIGINAL

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1 MR. CHRISTENSEN: FOR THE RECORD, YOUR HONOR, I
2 WOULD ASK THE COURT TO TAKE NOTICE OF THE APPEARANCE OF
3 MR. EARL XAIZ, MISS SAGERS' ATTORNEY WHO IS PRESENT IN THE
4 COURTROOM AND ANY MOTIONS THAT WE HAVE OR ANYTHING THAT NEEDS
5 TO BE PART OF THE RECORD WE INDICATED WE WOULD TAKE CARE OF LATER.

6 THE COURT: YES. IF HE WANTS ANY MATTERS WITH US,
7 IF YOU WILL JUST ADVISE MR. XAIZ AND COME FORWARD, I WILL
8 RECOGNIZE YOU AND WE WILL HANDLE AS INDICATED.

9 MR. XAIZ: THANK YOU, YOUR HONOR.

10 THE COURT: THANK YOU, SIR.

11 MR. CHRISTENSEN: THANK YOU, YOUR HONOR.

12 CARLA SAGERS,
13 CALLED AS A WITNESS AT THE INSTANCE AND REQUEST
14 OF THE STATE OF UTAH, HAVING FIRST BEEN DULY
15 SWORN, WAS EXAMINED AND TESTIFIED ON HER OATH
16 AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. CHRISTENSEN

19 Q FOR THE RECORD, WILL YOU TELL US YOUR NAME AND
20 ADDRESS, PLEASE.

21 A CARLA SAGERS, 1035 EAST THIRD SOUTH, NO. 8.

22 Q IS THAT IN SALT LAKE CITY HERE, CARLA?

23 A YES.

24 Q DO YOU MIND IF I CALL YOU CARLA?

25 A NO.

1 Q THANK YOU. WOULD YOU GIVE ME YOUR AGE, CARLA,
2 AND BIRTH DATE, PLEASE.

3 A I AM 30. MY BIRTHDAY IS JULY 4, 1952.

4 Q AND WHERE WERE YOU BORN?

5 A IN TOOEELE.

6 Q AND WERE YOU BORN AND RAISED IN TOOEELE?

7 A I WAS BORN IN TOOEELE. I WAS RAIED IN ST. JOHN.

8 Q WHERE IS ST. JOHN LOCATED?

9 A ABOUT 20 MILES SOUTH OF TOOEELE.

10 Q WHAT IS YOUR EDUCATIONAL LEVAL, MA'AM?

11 A I GRADUATED FROM HIGH SCHOOL AND HAD TWO TO THREE
12 AND A HALF YEARS OF COLLEGE.

13 Q ALL RIGHT. HAVE YOU EVER BEEN MARRIED?

14 A NO.

15 Q DO YOU HAVE ANY CHILDREN?

16 A NO.

17 Q AND ARE YOUR PARENTS BOTH LIVING?

18 A YES.

19 Q AND WHERE ARE THEY RESIDING?

20 A ST. JOHN.

21 Q DO YOU HAVE ANY BROTHERS AND SISTERS?

22 A YES.

23 Q HOW MANY BROTHERS AND SISTERS DO YOU HAVE?

24 A I HAVE THREE BROTHERS AND ONE SISTER.

25 Q ARE YOU A LICENSED DRIVER IN THE STATE OF UTAH?

1 A YES.

2 Q AND DO YOU OWN A CAR AT THE PRESENT TIME?

3 A YES.

4 Q WOULD YOU DESCRIBE THAT CAR, PLEASE AND THE LICENSE
5 NUMBER OF THAT CAR, IF YOU CAN?

6 A IT IS A BLACK OLDSMOBILE. IT IS A CUTLASS SUPREME.
7 THE LICENSE NUMBER IS SEC 217.

8 MR. BARBER: MAY I HAVE THAT REPEATED, PLEASE?

9 THE WITNESS: THE LICENSE NUMBER?

10 THE COURT: YES, MA'AM.

11 MR. BARBER: YES.

12 THE WITNESS: SEC 217.

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1 Q (BY MR. CHRISTENSEN) WHAT COLOR IS THAT, WHAT
2 COLORS DOES THAT CAR CONSIST OF, CARLA?

3 A IT IS BLACK WITH A WHITE LANDAU ROOF.

4 Q WHEN YOU SAY "LANDAU," WHAT IS IT MADE OF?

5 A VINYL.

6 Q HOW LONG HAVE YOU OWNED AND OPERATED THAT
7 PARTICULAR CAR?

8 A SINCE 1977.

9 Q AND YOU CURRENTLY HAVE THAT CAR IN YOUR
10 POSSESSION?

11 A YES.

12 Q HAVE YOU OWNED OR OPERATED ANY OTHER CARS DURING
13 THAT PERIOD OF TIME?

14 A YES.

15 Q HAVE YOU PERSONALLY OWNED THEM OR HAVE YOU JUST
16 HAD ACCESS TO THEM THROUGH YOUR EMPLOYMENT?

17 A I HAVE OWNED ANOTHER CAR.

18 Q WHAT KIND OF CAR WAS THAT?

19 A IT IS A FORD CUSTOM.

20 Q WHAT COLOR?

21 A IT WAS OLIVE DRAB.

22 Q OLIVE DRAB? AND ON THE DATE MAY 26, 1982, WERE
23 YOU WORKING FOR THE FEDERAL GOVERNMENT?

24 A YES.

25 Q DO YOU KNOW A PERSON BY THE NAME OF ELROY TILLMAN?

1 A YES.

2 Q IS HE PRESENT IN COURT AT THIS TIME?

3 A YES.

4 Q WOULD YOU POINT HIM OUT, PLEASE.

5 A OVER THERE.

6 MR. CHRISTENSEN: AGAIN, YOUR HONOR, I WOULD ASK
7 THE RECORD TO REFLECT THE IDENTIFICATION OF THE DEFENDANT.

8 THE COURT: IT MAY SO INDICATE. THE WITNESS HAS
9 POINTED OUT THE DEFENDANT.

10 Q (BY MR. CHRISTENSEN) HOW LONG HAVE YOU KNOWN
11 MR. TILLMAN?

12 A OVER TWO YEARS NOW.

13 Q AND DO YOU RECALL THE APPROXIMATE DATE WHEN YOU
14 FIRST MET MR. TILLMAN?

15 A IT WAS AUGUST OF '80.

16 Q AUGUST OF '80? BEFORE I GO FURTHER, CARLA, DO YOU
17 RECOGNIZE -- AND I ASSUME YOU HAVE BEEN ADVISED BY MR. XAIZ,
18 YOUR COUNSEL, THAT THE COUNTY ATTORNEY'S OFFICE HAS GRANTED
19 YOU IMMUNITY WITH THESE CHARGES.

20 A YES.

21 Q AND THE FEDERAL ATTORNEY'S OFFICE, THE UNITED
22 STATES ATTORNEY, MR. BRENT WARD, HAS ALSO MADE A SIMILAR
23 PROMISE OF IMMUNITY TO YOU; IS THAT CORRECT?

24 A YES.

25 Q HAVE YOU EVER BEEN CONVICTED OF A FELONY?

1 A NO.

2 Q HAVE YOU EVER BEEN CONVICTED OF ANY CRIME?

3 A NO.

4 THE COURT: MAY I TELL THE JURY WHAT YOU MEAN BY
5 GRANT OF IMMUNITY? MR. BARBER, DO YOU HAVE ANY OBJECTION?

6 MR. BARBER: PARDON ME, I AM SORRY, YOUR HONOR.

7 THE COURT: MAY I TELL THE JURY --

8 MR. BARBER: CERTAINLY, I HAVE NO OBJECTION TO
9 THAT.

10 THE COURT: LADIES AND GENTLEMEN, AN IMMUNITY
11 GRANT MEANS THAT WHEN A PERSON IS A WITNESS IN A LAWSUIT,
12 OUR CONSTITUTIONAL PROVISIONS, THE STATE OF UTAH PROVIDES
13 THAT NO PERSON CAN BE REQUIRED TO GIVE EVIDENCE AGAINST
14 HIMSELF. THE UNITED STATES CONSTITUTION, IN EFFECT, SAYS NO
15 ONE CAN BE REQUIRED TO TESTIFY OR BE EXAMINED OR ANSWER ANY
16 QUESTIONS THAT MAY TEND TO INCRIMINATE THEM.

17 I AM BEING VERY SIMPLISTIC IN MY EXPLANATION. BY
18 GRANT OF IMMUNITY, IT MEANS A PERSON WHO IS CALLED TO
19 TESTIFY IN A CASE IS GRANTED IMMUNITY PURSUANT TO THE LAWS
20 OF THE STATE OF UTAH, AND BY THAT, NO MATTER WHAT THE
21 STATEMENTS OR WHAT ADMISSIONS OR WHAT EVIDENCE OR WHAT FACTS
22 ARE GIVEN BY THE WITNESS, THAT CANNOT BE USED AGAINST THAT
23 WITNESS IN ANY CRIMINAL PROSECUTION. SO THE WITNESS CANNOT
24 DECLINE TO ANSWER ON THE GROUNDS IT MAY TEND TO INCRIMINATE,
25 AND THAT'S A BROAD PHRASE ALSO, BUT I WILL USE THAT.

1 THERE ARE SEVERAL TYPES OF IMMUNITY, AND I WON'T
2 GET INTO THAT. BUT WHATEVER THEY SAY, THEY CANNOT BE USED
3 AGAINST THEM IN ANY MANNER OR PARTICULAR, AND THEREFORE THE
4 WITNESS CANNOT BE REQUIRED TO ORDINARILY TESTIFY, BUT UNDER
5 THIS BASIS, A GRANT OF IMMUNITY, THEY CAN. IF THERE ARE ANY
6 FEDERAL LAWS THAT MAY BE VIOLATED, THE UNITED STATES ATTORNEY
7 HAS SAID, "I WILL NOT PROSECUTE FOR THE VIOLATION OF ANY
8 FEDERAL LAWS IF ANY WERE VIOLATED BASED UPON ANY MATTER
9 CONNECTED WITH THE TESTIMONY THAT MAY HAVE COME OUT HERE."
10 IT IS A BROAD, SIMPLISTIC IDEA; THAT IS ALL IT MEANS.

11 A PERSON CAN BE REQUIRED TO TESTIFY AND WILL
12 TESTIFY WITH THE KNOWLEDGE THAT ANYTHING THAT IS SAID CANNOT
13 BE USED AGAINST THEM.

14 MR. CHRISTENSEN: YOUR HONOR, WOULD YOU FURTHER
15 ADDEND THAT ADMONISHMENT TO THE JURY THAT I MYSELF CANNOT
16 GRANT THAT IMMUNITY.

17 THE COURT: THE SALT LAKE COUNTY ATTORNEY, UNDER
18 THE LAWS OF THE STATE OF UTAH AS RELATES TO THIS MATTER --
19 ONLY THE SALT LAKE COUNTY ATTORNEY CAN DO SO OR FOR STATE
20 MATTERS, THE ATTORNEY GENERAL. THE STATE PROSECUTING WOULD
21 DO SO. IT IS THE ELECTED OFFICIAL ONLY THAT MAY GRANT THAT
22 IMMUNITY, AND THAT IS WHAT IT MEANS, VERY BROADLY, TO UNDER-
23 STAND THAT THE WITNESS CANNOT HAVE ANY OF THE EVIDENCE OR
24 TESTIMONY THAT COMES FROM THE WITNESS USED TO ANY MANNER TO
25 INCRIMINATE THEM OR THE BASIS OF ANY CRIMINAL ACTION AGAINST

1 THEM.

2 MR. CHRISTENSEN: THANK YOU, YOUR HONOR.

3 THE COURT: THANK YOU.

3-1

4 Q (BY MR. CHRISTENSEN) CARLA, YOU INDICATED IN
5 AUGUST OF '80 YOU FIRST MET ELROY TILLMAN. DURING THE
6 COURSE OF THE NEXT TWO YEARS TERMINATING ON APPROXIMATELY
7 MAY 26 OF 1982, DID YOU CARRY ON BOTH A FRIENDSHIP AND
8 SEXUAL RELATIONSHIP WITH MR. TILLMAN?

9 A YES.

10 Q AND APPROXIMATELY WHEN WOULD YOU CHARACTERIZE THE
11 DATE THAT YOU BECAME INVOLVED WITH HIM EITHER PHYSICALLY OR
12 SEXUALLY IN A BOYFRIEND-GIRLFRIEND RELATIONSHIP?

13 A APPROXIMATELY ONE TO TWO MONTHS AFTER I MET HIM.

14 Q THAT WOULD HAVE BEEN APPROXIMATELY OCTOBER,
15 NOVEMBER OF '80?

16 A YEAH.

17 Q DID YOU EVER TAKE UP RESIDENCY WITH HIM OR LIVE
18 WITH HIM AT ANY TIME?

19 A NO.

20 Q OR DID HE MOVE IN OR RESIDE WITH YOU AT YOUR
21 APARTMENT ON THIRD SOUTH?

22 A NO.

23 Q DID YOU EVER CARRY ANY OF HIS CHILDREN FOR A WHILE?

24 A YES.

25 Q DID YOU EVER BECOME MARRIED TO HIM?

1 A NO.

2 Q DID YOU EVER MEET OR LEARN OF THE NAMES
3 LORI GRONEMAN OR MARK SCHOENFELD?

4 A YES.

5 Q WHEN DID YOU FIRST MEET OR HEAR THE NAME
6 LORI GRONEMAN? WHEN I ASK YOU THE QUESTIONS, IF YOU CAN
7 GIVE ME A DATE OR A PLACE, PLEASE.

8 A I DIDN'T KNOW HER AS LORI GRONEMAN THEN. I KNEW
9 HER AS LORI TILLMAN, AND THAT WAS APPROXIMATELY IN JULY OF
10 '80.

11 Q DID YOU HAVE OCCASION TO BECOME INVOLVED IN
12 PLACING CALLS TO LORI GRONEMAN?

13 A YES.

14 Q HOW DID YOU LEARN FIRST OF ALL THE LOCATION OF HER
15 RESIDENCE FOR THAT PURPOSE?

16 A I DIDN'T KNOW HER RESIDENCE, I JUST HAD THE
17 TELEPHONE NUMBER.

18 Q WHERE DID YOU GET THE NUMBER FROM?

19 A FROM ELROY.

20 Q AND DO YOU KNOW WHERE SHE RESIDED, EITHER BY
21 REFERENCE TO THE TELEPHONE NUMBER ITSELF OR TO WHAT YOU WERE
22 TOLD?

23 A I KNEW SHE LIVED IN BOUNTIFUL.

24 Q HOW MANY TIMES WOULD YOU ESTIMATE YOU PLACED CALLS
25 TO EITHER LORI OR TO THAT NUMBER THAT WAS GIVEN TO YOU BY

1 ELROY?

2 A FOUR, FIVE TIMES.

3 Q DO YOU KNOW THE NUMBER OFFHAND THAT YOU COULD
4 RECALL IT TO THE COURT RIGHT NOW?

5 A NO, I DON'T.

6 Q WHEN YOU WENT TO PLACE A CALL, HOW WOULD YOU GO
7 ABOUT DOING SO?

8 A I HAD IT WRITTEN DOWN ON PAPER.

9 Q ON THE OCCASIONS THAT YOU BEGAN CALLING, DO YOU
10 RECALL APPROXIMATELY WHEN IN TIME THE FIRST CALL WOULD HAVE
11 BEEN PLACED?

12 A IT WAS APPROXIMATELY TWO TO THREE MONTHS BEFORE
13 THIS HAPPENED.

14 Q BEFORE MAY 26TH?

15 A YES.

16 Q THAT WOULD PLACE IT SOMETIME IN MARCH OR APRIL?

17 A YES.

18 Q HOW MANY CALLS WOULD YOU ESTIMATE THAT YOU MADE,
19 IF YOU COULD GIVE ME A SEQUENCE AND TIMES AND DAYS, IF YOU
20 POSSIBLY CAN.

21 A THE FIRST ONE WAS MADE TO HER FATHER.

22 Q OKAY. DO YOU RECALL OR DO YOU KNOW HER FATHER'S
23 NAME?

24 A NO.

25 Q AND APPROXIMATELY WHEN DATEWISE WAS THAT?

1 A OH, AROUND FEBRUARY, MARCH.

2 Q WHAT DID YOU SAY IN YOUR FIRST CONVERSATION TO HIM?

3 A I SAID THAT LORI HAD TRIED TO RUN OVER TWO GIRLS
4 OUT IN BOUNTIFUL.

5 Q DO YOU KNOW THE NAMES OF THOSE TWO GIRLS?

6 A THE LAST NAME OF SWAIN.

7 Q DID YOU EVER SEE LORI RUN OVER ANYBODY OR ATTEMPT
8 TO RUN OVER ANYBODY IN BOUNTIFUL?

9 A NO.

10 Q WHERE DID YOU GET THAT IDEA?

11 A ELROY TOLD ME.

12 Q THE NAME SWAIN, DID IT HAVE ANY SIGNIFICANCE TO
13 YOU YOURSELF?

14 A NO.

15 Q WHEN HAD YOU FIRST HEARD THE NAME SWAIN USED?

16 A ELROY HAD TOLD ME ABOUT IT.

17 Q APPROXIMATELY WHEN DID ELROY TELL YOU THIS?

18 A THE FIRST TIME I CALLED HER FATHER, FEBRUARY,
19 MARCH, SOMEWHERE AROUND THERE.

20 Q DID HE TELL YOU BEFORE OR AFTER THE CALLS?

21 A HE TOLD ME BEFORE.

22 Q THE SECOND CALL, DO YOU RECALL WHO IT WAS PLACED
23 TO AND WHAT WAS SAID?

24 A I CALLED HER AT HOME. I SAID SOMETHING LIKE --

25 MR. BARBER: YOUR HONOR, MAY WE HAVE A LITTLE MORE
FOUNDATION.

1 Q GIVE ME THE DATE IF YOU COULD.

2 MR. BARBER: AND WHILE I AM UP, COULD THE --

3 THE COURT: ALL RIGHT, WHERE, FROM WHERE?

4 MR. CHRISTENSEN: I THINK SHE IS TALKING ABOUT THE --

5 I AGREE ON THE DATE. YOU ARE HAVING A HARD TIME HEARING?

6 MR. BARBER: YES. IF WE COULD ASK HER TO KEEP

7 HER VOICE UP JUST A LITTLE BIT.

8 Q (BY MR. CHRISTENSEN) COULD YOU GIVE ME THE DATE

9 AND THE PLACE YOU PLACED THAT CALL FROM, CARLA, ON THAT

10 SECOND OCCASION?

11 A I WASN'T AT HOME AND IT WAS PROBABLY IN MARCH, THE

12 BEST I CAN RECALL, AND I SAID SOMETHING LIKE, "YOU BETTER

13 TELL YOUR BLACK FRIEND THAT HE BETTER WATCH OUT, THAT WE

14 ARE GOING TO GET HIM."

15 Q WHO DID YOU PLACE THE CALL TO?

16 A LORI'S HOUSE.

17 Q ALL RIGHT. DO YOU KNOW WHO ANSWERED THE PHONE?

18 A I DID AFTER I HAD TALKED.

19 Q ALL RIGHT. WHO DID YOU THINK IT TO BE?

20 A IT WAS LORI'S MOTHER.

21 Q OKAY. DID YOU MAKE ANY REFERENCES TO THE BLACK

22 FRIEND AT ALL?

23 A YES. NOT BY NAME, IT WAS JUST "HER BLACK FRIEND."

24 Q THAT IS ALL THAT WAS SAID ON THAT OCCASION?

25 A YES, ON THAT ONE IT IS.

1 Q WHERE WAS ELROY ON THAT CALL?

2 A HE WAS AT HIS HOUSE.

3 Q ALL RIGHT. DID HE TELL YOU WHY HE WANTED THAT
4 CALL PLACED?

5 MR. BARBER: OBJECTION, THAT IS LEADING.

6 THE COURT: NO, SHE MAY ANSWER. YOU MAY ANSWER
7 YES OR NO.

8 THE WITNESS: YES.

9 Q (BY MR. CHRISTENSEN) OKAY. WHO TOLD YOU WHAT TO
10 SAY ON THAT PARTICULAR OCCASION?

11 A ELROY DID.

12 Q WHERE WERE YOU WHEN THAT TOOK PLACE?

13 A I WAS AT -- I WAS AT HOME.

14 Q HOW WAS THAT IDEA CONVEYED TO YOU? BY WHAT MEANS?

15 A HE TOLD ME OVER THE PHONE.

16 Q DID HE SAY WHY?

17 A YES.

18 Q WOULD YOU TELL ME?

19 A HE SAID THAT -- THAT THIS SWAIN AND LORI WERE
20 ALWAYS HAVING DIFFICULTIES ALL THROUGH HIGH SCHOOL AND IN
21 JUNIOR HIGH AND THAT LORI WOULD CALL THEM UP AND BUG THEM
22 AND SO HE WAS GOING TO TRY THIS WITH LORI TO KEEP LORI FROM
23 HASSLING HIM, MAKING LORI THINK THAT THE SWAINS WERE CALLING
24 HIM,

25 Q AT THAT POINT IN TIME, CARLA, IN MARCH OF 1982 HAD

1 YOU EVER SEEN LORI OR ANY ACTIONS SHE WOULD HAVE TAKEN TOWARDS
2 ELROY PERSONALLY? IN OTHER WORDS, PERSONALLY OBSERVE ANY
3 ACTIONS?
4 A NO.
5 Q WHAT WAS THE DATE OF THE NEXT CALL AND WHERE WAS
6 THAT PLACED?
7 A I CALLED HER A FEW TIMES AT WORK.
8 Q OKAY. AND WHERE DID YOU THINK HER TO WORK?
9 A I AM SORRY?
10 Q WHERE DID YOU THINK SHE WORKED?
11 A AT SPERRY UNIVAC.
12 Q OKAY. DO YOU RECALL THE APPROXIMATE DATE OF THE
13 FIRST CALL TO SPERRY UNIVAC?
14 A MARCH.
15 Q SO THIS IS THE THIRD CALL IN MARCH?
16 A YES, IT COULD HAVE BEEN.
17 Q OF 1982?
18 A YES.
19 Q DID YOU MAKE CONTACT WITH LORI AT WORK?
20 A ONE OF THE CALLS I DID, YES.
21 Q LET'S TALK ABOUT THE THIRD CALL. ON THE THIRD
22 CALL, WHO DID YOU MAKE CONTACT WITH, IF YOU KNOW?
23 A I CALLED TWO OR THREE TIMES THAT SAME DAY.
24 Q WHERE WERE YOU WHEN YOU CALLED?
25 A I WAS AT WORK.

1 Q DID YOU LEAVE ANY MESSAGES?

2 A YES.

3 Q ALL RIGHT. HOW MANY MESSAGES DID YOU LEAVE?

4 A APPROXIMATELY TWO.

5 Q DO YOU RECALL THE CONTEXT OF THOSE MESSAGES OR WHAT

6 YOU SAID IN THOSE MESSAGES?

7 A YES.

8 Q WHAT DID YOU SAY?

9 A I ASKED HER OR LEFT A MESSAGE HOW HER CAR WAS

10 RUNNING.

11 Q YOU ASKED HER HOW HER CAR WAS RUNNING?

12 A YES.

13 Q HOW DID YOU COME TO ARRIVE AT THAT KIND OF A

14 CONVERSATION TO ASK HER THAT AT THAT PARTICULAR POINT IN TIME?

15 A ELROY HAD CALLED ME --

16 Q DO YOU KNOW WHERE HE HAD CALLED FROM?

17 A FROM HIS WORK.

18 Q AND WHERE DID HE WORK AT THE TIME?

19 A BENNETTS.

20 Q BENNETTS WHAT?

21 A PAINT AND GLASS.

22 Q OKAY.

23 A AND HE SAID THAT LORI WAS ACCUSING HIM OF PUTTING

24 SUGAR IN LORI'S GAS TANK.

25 Q OKAY.

1 A THAT IS WHY I ASKED HOW HER CAR WAS RUNNING.

2 Q WHOSE IDEA WAS IT TO ASK HER HOW HER CAR WAS
3 RUNNING?

4 A ELROY'S.

5 Q WHAT DID HE SAY?

6 A JUST TO CALL HER UP AND ASK HER HOW HER CAR WAS
7 RUNNING.

8 Q WAS THAT ALL YOU SAID IN YOUR MESSAGE?

9 A YES.

10 Q ANY OTHER MESSAGES LEFT ON THAT DAY? YOU INDICATED
11 YOU CALLED TWO OR THREE TIMES. ANY OTHER MESSAGES LEFT
12 ON THAT DATE?

13 A THAT WAS ABOUT THE CONTENT OF ALL OF THEM, JUST
14 ABOUT HER CAR.

15 Q DID YOU EVER KNOW WHAT KIND OF A CAR LORI DROVE
16 ON THAT CONVERSATION?

17 A I KNEW IT WAS A LITTLE BROWN ONE BUT THAT IS ALL.

18 Q WHEN DID YOU NEXT PLACE YOUR PHONE CALLS AND WHERE?

19 A I CALLED HER AGAIN AT HOME.

20 Q ABOUT WHEN WAS THAT?

21 A THIS WAS ALL THE END OF MARCH.

22 Q OKAY, THIS WOULD HAVE BEEN THE FOURTH CALL.
23 WHO ANSWERED THE PHONE?

24 A WELL, I THOUGHT IT WAS LORI. I COULDN'T TELL.

25 Q ALL RIGHT, WHERE WERE YOU PLACING THE CALL FROM?

1 A I WAS HOME.

2 Q ALL RIGHT. WHERE WAS ELROY?

3 A HE WAS AT HIS HOUSE.

4 Q ALL RIGHT. WHAT DID YOU SAY TO THE PERSON ON THE
5 LINE AT THAT CONVERSATION?

6 A I TOLD HER THAT SHE BETTER WATCH OUT THAT WE WERE
7 GOING TO GET HER AND "WE KNOW WHERE HER SISTER IS."

8 MR. BARBER: YOUR HONOR, MAY I HAVE THE LAST ANSWER
9 REPEATED?

10 MR. CHRISTENSEN: MAYBE WE CAN HAVE IT READ BACK
11 AND SEE IF BOB IS PICKING IT UP, TOO.

12 THE COURT: ARE YOU HAVING DIFFICULTY HEARING,
13 MR. BARBER?

14 MR. BARBER: YES, I AM.

15 THE COURT: ALL RIGHT, MA'AM, IS THERE ANY WAY YOU
16 CAN TILT THE MICROPHONE UP AND MAYBE MR. SHEWELL COULD ASSIST.

17 FINE, EXCUSE ME. YOU MAY PROCEED, MR. CHRISTENSEN.

18 Q (BY MR. CHRISTENSEN) THANK YOU, YOUR HONOR.

19 THE FOURTH CALL YOU INDICATED YOU CALLED LORI'S
20 HOME AND WE GOT TO ASKING WHERE ELROY WAS AT THE TIME YOU
21 PLACED THE CALL.

22 A HE WAS AT HIS PLACE.

23 Q HAD YOU TALKED TO HIM PRIOR TO PLACING THE CALL?

24 A YES.

25 Q HOW LONG PRIOR?

1 A JUST BEFORE I CALLED.

2 Q ALL RIGHT. WHAT WAS THE CONVERSATION THAT YOU

3 HAD WITH ELROY?

4 A HE TOLD ME WHAT TO SAY.

5 Q AND THE CONVERSATION YOU RELATED TO THE PERSON

6 YOU THOUGHT TO BE LORI WAS WORDS TO THE EFFECT OF WHAT?

7 A THAT SHE BETTER WATCH OUT, THAT WE WERE GOING TO

8 GET HER.

9 Q DID YOU USE THE GENERIC "WE," WE ARE GOING TO GET

10 HER?

11 A YES.

12 Q DID SHE REPLY BACK AT THAT TIME?

13 A NO, I HUNG UP AFTER THAT.

14 Q ALL RIGHT. DID YOU HAVE ANY KNOWLEDGE THAT THOSE

15 CALLS WERE BEING RECORDED AND TRACED?

16 A NO.

17 Q DID ELROY EVER MENTION THAT TO YOU AT ANY TIME?

18 A NO.

19 Q DID ELROY INDICATE WHY HE WANTED YOU TO SAY THAT

20 ON THAT FOURTH CALL? WHAT SIGNIFICANCE THAT HAD AT ALL?

21 A JUST TO GET LORI TO THINK IT WAS THE SWAINS CALLING

22 LORI,

23 Q WHY? DID HE SAY?

24 A LORI WAS HASSLING ALL THE TIME.

25 Q ON THAT FOURTH CALL HAD YOU SEEN ANYTHING TO

1 INDICATE TO YOU THAT LORI WAS HASSLING ELROY EITHER BY
2 DESTROYING HIS PROPERTY OR ANYTHING OF THAT NATURE?

3 A NO.

4 Q YOU INDICATED, I BELIEVE, ONE MORE CONVERSATION
5 THAT YOU HAD ON THE PHONE. DO YOU RECALL THE DATE OF THAT?

6 A IT WOULD HAVE BEEN THE FIRST PART OF APRIL.

7 Q ALL RIGHT. WHERE WAS THE CALL PLACED FROM?

8 A MY PLACE.

9 Q ALL RIGHT. AND WHERE DID YOU PLACE THE CALL TO?

10 A LORI'S HOUSE.

11 Q DO YOU KNOW WHO ANSWERED THE PHONE ON THAT OCCASION?

12 A HER FATHER.

13 Q ALL RIGHT. DID YOU LEAVE A MESSAGE ON THAT
14 OCCASION OR MAKE A STATEMENT ON THAT OCCASION TO HER FATHER?

15 A YES.

16 Q DO YOU RECALL WHAT YOU SAID THEN?

17 A I ASKED HIM IF HE KNEW WHICH BOY FRIEND LORI WAS
18 WITH THAT NIGHT AND THAT WE KNEW WHERE SHE WAS.

19 Q WHICH BOY FRIEND WERE YOU REFERRING TO?

20 A I WASN'T REFERRING TO ANY BOY FRIEND. I IMAGINED
21 IT WAS MARK.

22 Q MARK SCHOENFELD?

23 A YES.

24 Q DID YOU SAY ANYTHING ELSE TO LORI'S FATHER ON THAT
25 OCCASION?

1 A NOT THAT I CAN THINK OF, NO.

2 Q WERE YOU AWARE ON THAT OCCASION THAT PHONE
3 CONVERSATIONS WERE BEING RECORDED BY THE GRONEMANS?

4 A NO.

5 Q WERE YOU EVER TOLD AT THAT TIME BY MR. TILLMAN THAT
6 THAT WAS TAKING PLACE?

7 A NO.

8 Q ANY OTHER CONVERSATIONS YOU WOULD HAVE HAD BY
9 PLACING CALLS TO THE GRONEMANS OR THEIR ASSOCIATES?

10 A THAT IS THE ONLY ONE I CAN THINK OF.

11 Q DID YOU HAVE OCCASION TO PURCHASE 'A FIREARM FOR
12 MR. TILLMAN?

13 A YES.

14 MR. BARBER: OBJECT TO THE FORM OF THAT QUESTION,
15 YOUR HONOR. IT IS LEADING.

16 THE COURT: YES. I WILL SUSTAIN IT. THE JURY WILL
17 DISREGARD THE PART "FOR MR. TILLMAN."

18 MR. CHRISTENSEN: LET ME REPHRASE THE QUESTION, YOUR
19 HONOR.

20 THE COURT: YES, SIR.

21 Q (BY MR. CHRISTENSEN) DID YOU HAVE OCCASION TO
22 PURCHASE ANY FIREARMS?

23 A YES.

24 Q AND APPROXIMATELY WHEN WOULD YOU HAVE PURCHASED
25 YOUR FIRST FIREARM?

1 A IT IS IN FEBRUARY OF 1981.

2 Q ALL RIGHT. ANY REASON WHY YOU PURCHASED A FIREARM
3 IN FEBRUARY OF 1981?

4 A ELROY HAD ASKED ME TO.

5 Q DID HE SAY WHY HE WANTED A FIREARM?

6 A FOR HIS PROTECTION.

7 Q IN FEBRUARY OF 1981 HAD YOU SEEN ANYTHING AS AN
8 EYEWITNESS OR EVIDENTIARY TO INDICATE TO YOU ANYTHING WAS
9 BEING DONE TO MR. TILLMAN?

10 MR. BARBER: OBJECTION, YOUR HONOR. THAT IS
11 LEADING AND ARGUMENTATIVE.

12 THE COURT: I WILL ALLOW IT, YES.

13 Q (BY MR. CHRISTENSEN) THANK YOU, YOUR HONOR.
14 ANYTHING TO SUGGEST TO YOU WHEN YOU WERE REQUESTED TO
15 PURCHASE THAT FIREARM THAT WOULD SUGGEST YOU HAD SEEN
16 SOMETHING HAPPEN TO ELROY?

17 A WHEN I FIRST WENT OUT TO HIS PLACE ONE NIGHT WE
18 LEFT AND DROVE AROUND. HE SAID THAT PEOPLE OR SOMEBODY HAD
19 BEEN SHINING LIGHTS IN HIS WINDOW AND LEAVING GARBAGE IN
20 FRONT OF HIS DOOR. WHEN WE LEFT THAT NIGHT AND CAME BACK
21 THERE WAS GARBAGE IN FRONT OF HIS DOOR.

22

23

24

25

1 Q DID YOU SEE WHO PLACED THAT GARBAGE OR ANYTHING TO
2 INDICATE OR TO SUGGEST TO YOU WHO HAD PLACED THAT GARBAGE?

3 A NO.

4 Q ANY VEHICLES OR ANYTHING OF THAT NATURE THAT YOU
5 COULD SEE?

6 A NO.

7 Q DO YOU KNOW WHERE YOU PURCHASED THAT FIRST FIREARM?

8 A PURCHASED IT AT NATIONAL JEWELRY'S.

9 Q WHERE IS NATIONAL JEWELRY LOCATED?

10 A ON STATE STREET.

11 Q APPROXIMATELY WHAT SOUTH, DO YOU KNOW?

12 A SECOND SOUTH.

13 Q AND THAT'S IN SALT LAKE CITY HERE?

14 A YES.

15 Q WHAT CALIBER OF A WEAPON WAS IT, DO YOU RECALL?

16 A IT IS A .22.

17 Q CAN YOU GIVE ME AN IDEA OF THE SIZE OF THE WEAPON?

18 THE COURT: SIZE OF A .22? WHAT DO YOU MEAN?

19 MR. CHRISTENSEN: SIZEWISE, LENGTHWISE.

20 THE COURT: PHYSICAL CHARACTERISTICS?

21 MR. CHRISTENSEN: THAT'S RIGHT.

22 THE WITNESS: SMALL REVOLVER.

23 Q (BY MR. CHRISTENSEN) WOULD YOU BE ABLE TO
24 IDENTIFY THAT REVOLVER IF YOU SAW IT AGAIN?

25 A SOMETHING LIKE IT.

1 Q I AM GOING TO SHOW YOU A REVOLVER THAT HAS
2 PREVIOUSLY BEEN MARKED AS STATE'S EXHIBIT 23, AND STATE'S
3 EXHIBIT 19 AND ASK IF YOU CAN INSPECT THOSE EXHIBITS, AND IF
4 YOU CAN IDENTIFY THEM, SO INDICATE TO THE COURT.

5 A IT WASN'T IN A HOLSTER LIKE THIS WHEN I GOT IT.

6 Q HOW ABOUT THE GUN ITSELF?

7 A IT KIND OF LOOKS LIKE IT, YES.

8 Q AND THE BOX, THE BLACK BOX?

9 A I DON'T REMEMBER THE BOX.

10 Q HOW DOES IT COMPARE SIZEWISE TO THE ONE YOU
11 PURCHASED?

12 A SIZEWISE IT IS THE SAME.

13 Q DID YOU EVER SEE THAT PARTICULAR GUN AGAIN OR THE
14 ONE YOU PURCHASED FOR MR. TILLMAN?

15 A NO.

16 Q DID YOU EVER HAVE A CONVERSATION WITH MR. TILLMAN
17 WHEREIN HE INDICATED THE DISPOSITION OF THAT GUN?

18 A FIRST HE TOLD ME THAT IT WAS --

19 MR. BARBER: OBJECTION. MAY WE HAVE FOUNDATION?

20 THE COURT: YES. LAY A FOUNDATION, PLEASE.

21 Q (BY MR. CHRISTENSEN) DO YOU RECALL THE DATE YOU
22 HAD THAT CONVERSATION WITH HIM APPROXIMATELY?

23 A NO.

24 Q APPROXIMATE DATE?

25 A APPROXIMATELY THREE MONTHS AFTER I BOUGHT IT FOR

1 HIM.

2 Q SOMETIME IN MAY OR JUNE OF 1981?

3 A YEAH.

4 Q WHERE WERE YOU WHEN YOU HAD THE CONVERSATION?

5 A I DON'T REMEMBER.

6 Q DO YOU RECALL WHO WAS PRESENT WHEN YOU HAD THE
7 CONVERSATION?

8 A JUST ELROY.

9 Q WHAT WAS SAID ABOUT THE DISPOSITION OF THAT GUN?

10 A THAT HE WENT OUT TO TRY IT AND IT JAMMED UP OR
11 SOMETHING, IT WASN'T WORKING RIGHT. THEN LATER ON --

12 Q HOW MUCH LONGER AFTER?

13 A OH, MAYBE A COUPLE OF MONTHS AFTER THAT. HE TOLD
14 ME THAT HIS SON HAD SEEN LORI GO IN HIS HOUSE AND TAKE IT
15 AND THAT IT HAD BEEN SWITCHED WITH ANOTHER GUN.

16 Q DID YOU EVER SEE THAT ACTION TAKE PLACE ON LORI'S
17 BEHALF?

18 A NO.

19 Q DID YOU EVER TALK TO THE SON?

20 A NOT ABOUT THE GUN, NO.

21 Q DID YOU PURCHASE ANY OTHER GUNS?

22 A YES.

23 Q WHEN DID YOU PURCHASE YOUR NEXT GUN?

24 A MAY OF '81.

25 Q AND WHERE DID YOU PURCHASE THAT?

1 A '82.

2 Q EXCUSE ME. WHEN DID YOU PURCHASE THAT GUN?

3 THE COURT: LET'S GET IT CORRECT. '81 OR '82,

4 MA'AM?

5 THE WITNESS: '82.

6 Q (BY MR. CHRISTENSEN) DO YOU RECALL WHERE YOU
7 PURCHASED THAT GUN?

8 A IT WAS THAT NATIONAL JEWELER'S?

9 Q IS THAT ALSO ON STATE STREET, THE SAME PLACE?

10 A YES.

11 Q WHAT CALIBER WAS THAT GUN?

12 A IT WAS A .22.

13 Q AND DO YOU RECALL THE SIZE OF THAT PARTICULAR GUN?

14 A IT WAS A SMALL ONE.

15 Q HAD YOU PURCHASED ANY LARGER CALIBER WEAPONS PRIOR
16 TO THAT?

17 A YES.

18 Q AND DO YOU RECALL THE CALIBER?

19 A NO, I DON'T.

20 Q WAS IT LARGER THAN A .22 OR SMALLER?

21 A IT WAS LARGER. TOOK IT RIGHT BACK, THOUGH.

22 Q WHEN WAS THAT PURCHASED?

23 A THE SAME DAY THE SECOND ONE WAS.

24 Q THE SAME STORE?

25 A YES.

1 Q WHY DID YOU PURCHASE THE LARGER CALIBER GUN?

2 A ELROY HAD GONE WITH ME, AND HE TOLD ME WHICH ONE
3 TO BUY.

4 Q AND APPARENTLY YOU BOUGHT THIS LARGER CALIBER GUN,
5 AND THEN WHAT HAPPENED? WHY DID YOU TAKE IT BACK?

6 A HE HAD TOLD ME IT WAS TOO POWERFUL AND TO GO BACK
7 AND GET ANOTHER ONE.

8 Q AND DID YOU DO THAT?

9 A YES.

10 Q AND YOU INDICATED, I BELIEVE, THAT IT WAS A .22
11 THAT YOU BOUGHT?

12 A YES.

13 Q DO YOU KNOW THE DIFFERENCE BETWEEN AN AUTOMATIC
14 AND A REVOLVER?

15 A YES.

16 Q WAS IT AN AUTOMATIC OR REVOLVER?

17 A IT WAS AN AUTOMATIC.

18 Q WHEN I AM TALKING ABOUT AN AUTOMATIC, I AM TALKING
19 ABOUT SOMETHING WITH A SLIDE ON IT; IS THAT YOUR UNDER-
20 STANDING OF AN AUTOMATIC?

21 A YES.

22 Q THIS FIRST GUN THAT YOU PURCHASED, DO YOU KNOW IF
23 IT WAS AN AUTOMATIC OR REVOLVER?

24 A IT WAS AN AUTOMATIC.

25 Q HAD YOU OWNED ANY FIREARMS UP TO THIS TIME?

1 A NO.

2 Q I AM TALKING ABOUT GUNS OR RIFLES OR SOMETHING
3 BESIDES PISTOLS AS WELL.

4 A NO.

5 THE COURT: LET ME ASK: WHEN YOU SAY LARGE OR
6 SMALL, WERE THEY HANDGUNS AS DIFFERENTIATED FROM A RIFLE?

7 THE WITNESS: NO.

8 THE COURT: THEY WERE NOT HANDGUNS?

9 THE WITNESS: I NEVER OWNED ANY GUNS.

10 THE COURT: NO, WE TALKED ABOUT PURCHASING ONE OF
11 A CERTAIN CALIBER, BUT WAS IT A HANDGUN?

12 THE WITNESS: YES.

13 THE COURT: AND WAS THE .22 YOU PURCHASED THEN A
14 HANDGUN?

15 THE WITNESS: YES.

16 MR. CHRISTENSEN: THANK YOU FOR THAT CLARIFICATION,
17 YOUR HONOR.

18 Q THE LARGER CALIBER GUN YOU PURCHASED, DO YOU KNOW
19 IF THAT WAS AN AUTOMATIC OR REVOLVER?

20 A IF I REMEMBER RIGHT, IT WAS A REVOLVER.

21 Q BUT YOU DON'T KNOW THE SIZE OR THE CALIBER?

22 A NO.

23 Q DID YOU REPORT THAT FACT TO OFFICER CHAPMAN, THE
24 PURCHASES OF THESE THREE WEAPONS?

25 A YES.

1 Q AND WHERE THEY WERE PURCHASED?

2 A YES.

3 Q DID YOU ALSO TURN OVER A WEAPON TO OFFICER CHAPMAN
4 AFTER MAY 26TH OF 1982?

5 A YES.

6 Q AND APPROXIMATELY WHEN DID YOU TURN THAT WEAPON
7 OVER?

8 A IT WAS MAY 28TH.

9 Q AND THAT WAS A SMALL .22 THAT YOU HAD, THE
10 AUTOMATIC?

11 A NO.

12 Q WHAT ONE WAS THAT?

13 A IT WAS A .22 REVOLVER.

14 Q ALL RIGHT. DID YOU PURCHASE MORE THAN THREE
15 FIREARMS?

16 A NO.

17 Q DID YOU AT ANY TIME DURING THE COURSE OF YOUR
18 PURCHASE OF THESE VARIOUS WEAPONS ON THE DATES THAT YOU HAVE
19 INDICATED, EVER SHOOT ANY OF THOSE WEAPONS?

20 A YES.

21 Q WHICH WEAPONS WOULD YOU HAVE SHOT?

22 A I SHOT THE AUTOMATIC.

23 Q THE .22?

24 A YES.

25 Q WHERE DID YOU SHOOT THAT AT?

1 A IT IS OUT BY GRANTSVILLE.

2 Q NEAR YOUR HOME?

3 A NO, IT IS ABOUT 20 MILES FROM MY HOME.

4 Q AND WHO WAS WITH YOU ON THAT OCCASION?

5 A ELROY.

6 Q DO YOU RECALL THE APPROXIMATE DATE THAT THAT TOOK
7 PLACE?

8 A MAYBE THE FIRST PART OF APRIL.

9 Q OF '82?

10 A YES.

11 Q ANY OTHER GUNS BESIDES THAT ONE TAKEN OUT?

12 A NO.

13 Q DID ELROY SHOOT THAT GUN ON THAT OCCASION?

14 A YES.

15 Q COULD YOU ESTIMATE THE NUMBER OF TIMES IT WAS
16 FIRED?

17 A WE SHOT QUITE A FEW TIMES.

18 Q ANY REASONS FOR TAKING THE GUN OUT TO GRANTSVILLE
19 ON THAT PARTICULAR DATE TO SHOOT?

20 MR. BARBER: OBJECTION TO THE FORM OF THAT
21 QUESTION, YOUR HONOR, BY WHOM.

22 THE COURT: YES, YOU MAY REPHRASE THE QUESTION.

23 Q (BY MR. CHRISTENSEN) DID YOU HAVE ANY REASON TO GO
24 OUT AND SHOOT ON THAT OCCASION?

25 A HE WANTED ME TO.

1 Q I AM TALKING ABOUT YOU. DID YOU YOURSELF WANT TO
2 GO SHOOT ON THAT OCCASION?

3 A NO.

4 Q DID ELROY?

5 A YES.

6 MR. BARBER: OBJECTION TO THE FORM OF THAT
7 QUESTION.

8 THE COURT: I WILL SUSTAIN IT. WHY DON'T YOU ASK
9 HER THE CIRCUMSTANCES WHEREBY THEY WENT OUT THERE.

10 MR. CHRISTENSEN: I AM NOT SO SURE THAT CURES THE
11 PROBLEM.

12 THE COURT: I THINK IT DOES. HOW DID YOU HAPPEN TO
13 GO TO GRANTSVILLE ON THAT DATE?

14 THE WITNESS: HE WANTED SOMEWHERE --

15 MR. BARBER: OBJECTION TO WHAT HE WANTED. CAN WE
16 LIMIT IT TO WHAT HE SAID?

17 THE COURT: JUST TELL US WHAT HE SAID, MA'AM, IN
18 ESSENCE OR IN SUBSTANCE.

19 THE WITNESS: HE SAID HE WANTED TO HAVE ME TRY TO
20 SHOOT IT.

21 Q (BY MR. CHRISTENSEN) DID HE GIVE YOU AN
22 EXPLANATION AS TO WHY HE WANTED YOU TO?

23 A SEE IF I COULD.

24 Q DID YOU HAVE ANY TARGETS TO SHOOT AT?

25 A WE STACKED SOME OLD CANS UP TO SHOOT AT.

1 Q DID YOU SHOOT JUST THE WEAPON, DID YOU FIRE THE
2 WEAPON ITSELF?
3 A YES.
4 Q DID YOU MAKE ANY MODIFICATIONS TO THE WEAPON?
5 A NO.
6 Q DID YOU OBSERVE ANY MODIFICATIONS BEING TAKEN OF
7 THE WEAPON?
8 A NO.
9 Q HAVE YOU EVER HEARD THE TERM "SILENCER"?
10 MR. BARBER: OBJECTION.
11 MR. CHRISTENSEN: AS TO WHAT, YOUR HONOR?
12 THE COURT: SHE MAY ANSWER.
13 THE WITNESS: YES.
14 Q (BY MR. CHRISTENSEN) WHEN DID YOU FIRST HEAR THE
15 TERM "SILENCER"?
16 A THE DATE OR FROM WHO?
17 Q THE DATE.
18 A THE DATE? APRIL.
19 Q OF WHICH YEAR?
20 A OR THE FIRST PART OF MAY OF '82.
21 Q WHOM DID YOU HEAR THAT FROM?
22 A FROM ELROY.
23 Q WHERE WERE YOU WHEN THAT CONVERSATION WAS UNDER-
24 TAKEN?
25 A IN MY CAR.

1 Q DO YOU KNOW WHERE YOUR CAR WAS PARKED OR SITUATED?

2 A IT SEEMED LIKE IT WAS OUTSIDE MY PLACE.

3 Q YOUR APARTMENT?

4 A YES.

5 Q WHO ELSE WAS PRESENT?

6 A ELROY.

7 Q WOULD YOU DESCRIBE FOR ME THE CONVERSATION ABOUT
8 THE SILENCER. WHO SAID WHAT?

9 A HE JUST SAID HE WAS GOING TO MAKE ONE.

10 Q DID HE GIVE YOU AN INDICATION AS TO WHY OR WHAT HE
11 WAS GOING TO MAKE IT OUT OF?

12 A HE WAS GOING TO MAKE IT TO PUT ON A GUN.

13 Q DID HE SAY WHY?

14 A TO SHOOT MARK.

15 Q MARK WHOM?

16 A SCHOENFELD.

17 THE COURT: MR. CHRISTENSEN, AT MR. VERHOEF'S AND
18 MR. BARBER'S REQUEST WE WILL TAKE OUR RECESS NOW FOR MATTERS
19 THEY HAVE.

20 MR. CHRISTENSEN: THIS IS A CONVENIENT TIME.

21 THE COURT: YOU CAN CARRY ON --

22 MR. CHRISTENSEN: NO, THAT'S FINE.

23 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE
24 JURY, WE WILL TAKE THE NOON RECESS WITH MY ADMONITION TO
25 SPEAK TO NO ONE. YOU DON'T DISCUSS THE CASE OR MAKE UP YOUR

1 MINDS. THIS CASE WILL BE RECESSED UNTIL 2. WE WILL BE IN
2 RECESS UNTIL 1:45 FOR OTHER MATTERS.

3 (NOON RECESS TAKEN.)
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1 THE COURT: THE RECORD MAY SHOW ALL THE JURORS ARE
2 PRESENT, DEFENDANT IS PRESENT WITH COUNSEL. THE STATE IS
3 REPRESENTED. THE WITNESS MAY RETAKE THE STAND.

4 Q (BY MR. CHRISTENSEN) CARLA, I WILL REMIND YOU YOU
5 ARE STILL UNDER OATH.

6 BEFORE THE NOON RECESS WE WERE TALKING WITH REGARD
7 TO THIS THIRD FIREARM THAT YOU PURCHASED. I BELIEVE YOU
8 CHARACTERIZED IT AS A REVOLVER. AND THE QUESTION OF A SILENCER
9 CAME UP WITH REGARD TO THAT. WOULD YOU DESCRIBE AS BEST
10 YOU CAN WHAT YOU OBSERVED ABOUT THAT THIRD GUN AND/OR ITS
11 RELATIONSHIP TO A SILENCER?

12 A IT WAS -- THE THING ON THE END OF THE BARREL THAT
13 YOU AIM THROUGH HAD BEEN FILED OFF.

14 Q DID YOU EVER SEE WHAT WAS CHARACTERIZED OR LOOKED
15 LIKE A SILENCER IN YOUR ASSOCIATION?

16 A YES, I SAW IT.

17 Q WHEN APPROXIMATELY DID YOU SEE WHAT YOU WOULD
18 CALL A SILENCER?

19 A MAYBE THE LAST PART OF APRIL, FIRST PART OF MAY.

20 Q OF WHICH YEAR?

21 A 1982.

22 Q WHAT DID IT LOOK LIKE?

23 A IT WAS SOME PIPE WITH TAPE WRAPPED AROUND IT.

24 Q HOW BIG, COULD YOU INDICATE FOR THE JURY?

25 A IT WAS ABOUT LIKE THIS. (INDICATING.)

1 MR. CHRISTENSEN: AND COULD THE COURT TAKE NOTICE
2 OF APPROXIMATELY A FOOT, 12 INCHES?

3 THE WITNESS: YES.

4 Q (BY MR. CHRISTENSEN) WHERE DID YOU SEE THAT ITEM?

5 A IN THE CAR.

6 Q WHOSE CAR?

7 A MINE.

8 Q ALL RIGHT. WHERE WERE YOU AND WHO WERE YOU WITH
9 WHEN YOU SAW THAT?

10 A I WAS WITH ELROY AND WAS PARKED OUT IN FRONT OF
11 MY PLACE.

12 Q ALL RIGHT. DID ELROY TALK ABOUT IT AT ALL, THAT
13 PARTICULAR ITEM THAT YOU SAW?

14 A HE TOLD ME HE WAS GOING TO MAKE ONE.

15 Q DID HE SAY ANYTHING ABOUT IT AT ALL IN TERMS OF
16 HOW HE WAS GOING TO MAKE IT OR WHERE HE WAS GOING TO PROCURE
17 THE MATERIALS TO MAKE IT?

18 A NO.

19 Q IF YOU SAW THAT GUN AGAIN THAT YOU INDICATED YOU
20 HAD SEEN, HAD SOMETHING CHANGED ON THE FRONT PART OF THE
21 BARREL, WOULD YOU BE ABLE TO IDENTIFY IT AGAIN?

22 A YES, I THINK SO.

23 Q I AM GOING TO SHOW YOU WHAT I HAVE ASKED TO BE
24 MARKED AS STATE'S EXHIBIT 27 AND WITH THE COURT'S INDULGENCE,
25 YOUR HONOR, I WOULD ASK THE RECORD TO REFLECT THAT IT IS IN

PENCAD CO DAYTON OH 45402

1 AN EVIDENCE BAG AND WE'LL ASK HER TO RETRIEVE THAT GUN FROM
2 THE BAG IF SHE WOULD. IF YOU WANT TO LOOK AT IT FIRST --

3 THE COURT: WHAT NUMBER IS IT?

4 MR. CHRISTENSEN: IT IS MARKED NO. 27. IF THE
5 COURT WOULD LIKE TO RETRIEVE IT, I WOULD BE MOST SATISFIED
6 IF HE WOULD.

7 THE COURT: PROPOSED EXHIBIT NO. 27 IS CONTAINED
8 IN A PLASTIC BAG. YOU MAY PROCEED, SIR.

9 Q (BY MR. CHRISTENSEN) THANK YOU, YOUR HONOR.

10 I WILL SHOW YOU STATE'S EXHIBIT 27, CARLA, AND ASK
11 YOU TO INSPECT THAT PARTICULAR FIREARM. TAKE AS MUCH TIME
12 AS YOU NEED.

13 A YES, I THINK THIS IS IT.

14 Q ALL RIGHT. DOES IT APPROXIMATE THE SIZE OF THE
15 WEAPON THAT YOU PURCHASED?

16 A YES.

17 Q AND IN TERMS OF THE NUMBER, THE NUMERICAL SEQUENCE
18 OF GUNS THAT YOU PURCHASED, WHICH NUMBER OF GUN WOULD THIS
19 HAVE BEEN?

20 A THIS WOULD BE THE THIRD ONE.

21 Q AND THE PURCHASE DATE ON THAT WAS APPROXIMATELY
22 WHEN?

23 A THE END OF MAY OF 1982.

24 Q ALL RIGHT. BEFORE THE 26TH?

25 A YES.

1 Q ON THE BARREL OF THE GUN THERE ARE SOME DIFFERENT
2 COLORATIONS OF METAL ON THAT GUN. WERE THOSE COLORATIONS
3 AND THE THREADS ON THE END OF THAT GUN THERE WHEN YOU
4 PURCHASED THE GUN INITIALLY?

5 A NO.

6 Q WAS THE GUN NEW, TO YOUR KNOWLEDGE?

7 A YES, I THINK IT WAS.

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1 Q DID YOU FILL OUT A TRANSACTION SHEET WHEN YOU
2 PURCHASED THAT GUN?

3 A YES.

4 Q AND THAT WAS PURCHASED WHERE? DO YOU RECALL THE
5 NAME OF THE STORE?

6 A GALLENSON'S OR SOMETHING LIKE THAT.

7 Q DO YOU KNOW WHERE IT IS LOCATED?

8 A IT WAS JUST TWO OR THREE DOORS DOWN FROM NATIONAL
9 JEWELER'S.

10 Q DID YOU EVER HAVE OCCASION TO GO TO THE ADDRESS
11 KNOWN AS EITHER 1279 BRIAN OR 1560 SOUTH 13TH EAST IN
12 SALT LAKE COUNTY?

13 A YES.

14 Q WHEN WOULD HAVE BEEN THE FIRST TIME YOU WOULD HAVE
15 GONE THERE?

16 A MARCH, I THINK IT WOULD BE.

17 Q OF WHICH YEAR?

18 A OF '82.

19 Q WAS ANYONE WITH YOU?

20 A YES.

21 Q WHO WAS WITH YOU?

22 A ELROY.

23 Q WHAT VEHICLE DID YOU DRIVE AT THAT TIME?

24 A MINE.

25 Q IS THAT THE BLACK AND WHITE OLDS'?

1 A YES.

2 Q WHEN YOU WENT TO THE ADDRESS THAT WAS INDICATED,
3 DID YOU SEE ANY PERSONS THERE?

4 A NOT THE FIRST TIME.

5 Q HOW MANY TIMES WOULD YOU ESTIMATE THAT YOU WENT TO
6 THAT ADDRESS?

7 A WE WENT THERE A LOT.

8 Q AND DID YOU LEARN WHO THAT RESIDENCE WAS OCCUPIED
9 BY?

10 A YES.

11 Q AND WHEN IN TIME DID YOU LEARN WHO OCCUPIED THE
12 RESIDENCE?

13 A IT WAS IN MARCH.

14 Q WERE NAMES EVER DISCUSSED WITH YOU?

15 A OF WHO LIVED THERE?

16 Q YES.

17 A YES.

18 Q DID THOSE DISCUSSIONS -- WHO DID THOSE DISCUSSIONS
19 TAKE PLACE WITH?

20 A ELROY.

21 Q ANYONE ELSE INVOLVED?

22 A NO.

23 Q WHERE PRIMARILY DID THOSE DISCUSSIONS TAKE PLACE?

24 A EITHER AT MY PLACE OR WHILE WE WAS DRIVING AROUND.

25 Q DID YOU EVER HAVE OCCASION TO GO TO THE VICINITY

1 OF SPERRY UNIVAC?

2 A YES.

3 Q HOW MANY TIMES WOULD YOU ESTIMATE THAT YOU WENT TO
4 SPERRY UNIVAC?

5 A ONCE OR TWICE.

6 Q AND WHERE WOULD YOU ESTIMATE THE LOCATION OF
7 SPERRY UNIVAC TO BE?

8 A I DON'T KNOW THE ADDRESS, BUT IT IS ON THE OLD
9 AIRPORT ROAD.

10 Q IN WHICH CITY?

11 A IN SALT LAKE.

12 Q DO YOU KNOW APPROXIMATELY WHAT SOUTH OR WHAT WEST
13 OR EAST?

14 A NO, I DON'T.

15 Q DID YOU HAVE OCCASION TO OBSERVE VEHICLES AT THE
16 MARK SCHOENFELD RESIDENCE?

17 A YES.

18 Q AND DO YOU RECALL WHAT THOSE VEHICLES WERE THAT
19 YOU SAW?

20 A YES.

21 Q CAN YOU DESCRIBE THEM, PLEASE.

22 A WE SAW A SILVER CAR, I DON'T KNOW THE MAKE OF IT.

23 Q DO YOU KNOW THE SIZE?

24 A A COMPACT.

25 Q ALL RIGHT.

1 A AND WE SAW A VAN THERE QUITE A FEW TIMES.

2 Q ANY OTHER CARS?

3 A SEEMED LIKE THERE WAS A LITTLE RED ONE THERE, TOO.

4 Q WHEN YOU SAY "LITTLE," HOW LITTLE ARE YOU TALKING
5 ABOUT?

6 A A COMPACT.

7 Q DID YOU EVER HAVE OCCASION TO FOLLOW UP ON OR
8 ATTEMPT TO LOCATE THE SILVER CAR THAT YOU SAW IN FRONT OF
9 SCHOENFELD'S OR NEAR SCHOENFELD'S RESIDENCE?

10 A YES.

11 Q WHEN APPROXIMATELY DID YOU DO THAT?

12 A MARCH.

13 Q OF '82?

14 A YES.

15 Q AND WHO WAS WITH YOU WHEN YOU DID THAT?

16 A ELROY.

17 Q AND WHICH CAR DID YOU HAVE ON THAT OCCASION?

18 A MY CAR.

19 Q WOULD YOU DESCRIBE WHAT YOU DID IN THE COURSE OF
20 FOLLOWING UP ON THAT VEHICLE?

21 A HE PICKED ME UP FROM WORK.

22 Q WHEN YOU SAY "HE," WOULD YOU GIVE US NAMES.

23 A ELROY PICKED ME UP FROM WORK AND WE DROVE DOWN TO
24 SPERRY UNIVAC. HE WAS DRIVING THROUGH THE PARKING LOT, AND
25 HE STOPPED BY THIS CAR, THIS SILVER CAR, AND HE SAID HE HAD

1 SEEN THAT CAR BEFORE, THAT HE HAD SEEN IT DRIVING PAST HIS
2 PLACE.

3 Q OKAY. HAD YOU EVER SEEN THAT CAR DRIVE PAST HIS
4 PLACE?

5 A NO.

6 Q OR PAST YOUR PLACE?

7 A NO.

8 Q OR PASS YOU AT ANY TIME?

9 A NO.

10 Q DID YOU DO ANYTHING WHEN YOU STOPPED NEAR THAT CAR?

11 A YES. THERE WAS A STICKER IN IT.

12 Q WHAT KIND OF A STICKER?

13 A A NEW STICKER THAT THEY PUT ON NEW CARS.

14 Q WHERE WAS IT LOCATED, DO YOU RECALL?

15 A IN THE BACK WINDOW.

16 Q DID YOU DO ANYTHING WITH RESPECT TO THAT STICKER?

17 A I GOT THE NAME AND ADDRESS OF WHO OWNED IT.

18 Q WHY DID YOU GET THE ADDRESS?

19 A ELROY ASKED ME TO.

20 Q WHO WAS DRIVING THE CAR?

21 A ELROY.

22 Q DO YOU RECALL THE NAME ON THAT STICKER THAT YOU
23 OBSERVED?

24 A YES.

25 Q AND WHAT WAS IT?

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1 A MARK SCHOENFELD.

2 Q DID IT ALSO HAVE AN ADDRESS?

3 A YES.

4 Q DO YOU REMEMBER THAT ADDRESS OR DID YOU EVER GO TO
5 THAT ADDRESS?

6 A YES.

7 Q AND DO YOU KNOW WHERE THAT WAS LOCATED?

8 A ON 13TH EAST AND 15TH SOUTH.

9 Q THE SAME ONE WHERE THE INCIDENT TOOK PLACE?

10 A YES.

11 Q YOU INDICATED THAT YOU WENT APPROXIMATELY TWICE
12 PAST SPERRY UNIVAC. ON THE OTHER OCCASION DO YOU REMEMBER
13 WHEN THAT WAS?

14 A SEEMED LIKE IT WAS BEFORE THE SECOND TIME.

15 Q CAN YOU GIVE ME AN ESTIMATION OF THE DATE?

16 A OH, MAYBE TWO OR THREE WEEKS BEFORE.

17 Q STILL IN '82?

18 A YES.

19 Q DID YOU DO ANYTHING OF SIGNIFICANCE OR IN
20 PARTICULAR ON THAT OCCASION WHEN YOU WENT BY SPERRY?

21 A HE WAS LOOKING FOR LORI, LORI'S CAR.

22 Q DID HE SAY ANYTHING ABOUT THAT? WHEN YOU SAY, "HE,"
23 WHO ARE YOU REFERRING TO?

24 A ELROY.

25 Q WHO WAS DRIVING ON THAT OCCASION?

1 A ELROY WAS.

2 Q DID HE SAY WHY HE WAS LOOKING FOR LORI'S CAR?

3 A NO.

4 Q DID HE EVER FIND LORI'S CAR?

5 A WE PARKED IN BOUNTIFUL, AND WE SAW IT GO BY, YES.

6 Q CAN YOU REMEMBER WHAT THAT CAR LOOKED LIKE?

7 A IT WAS A LITTLE BROWN CAR, I DON'T KNOW THE MAKE.

8 Q WHEN YOU SAY YOU PARKED IN BOUNTIFUL, WHAT DO YOU
9 MEAN BY THAT?

10 A WE PARKED SO WE COULD SEE THE ROAD WHERE SHE WOULD
11 BE DRIVING UP.

12 Q AND DID YOU SEE HER GO BY OR A CAR LIKE HERS GO BY?

13 A YES.

14 Q WAS ANYONE ELSE IN THAT CAR AT THAT TIME?

15 A I DON'T KNOW.

16 Q THIS PARTICULAR EXHIBIT, STATE'S EXHIBIT 25, I
17 BELIEVE THE NUMBER IS -- 27, EXCUSE ME. DID YOU TURN THAT
18 EXHIBIT OVER TO THE POLICE?

19 A YES.

20 Q AND APPROXIMATELY WHEN DID YOU DO THAT?

21 A 28TH OF MAY OF '82.

22 Q DID YOU MAKE ANY ALTERATIONS ON THAT GUN AT ALL,
23 CARLA?

24 A NO.

25 Q DID YOU EVER SEE WHAT HAPPENED TO THIS PIPE OR

1 THIS SILENCER THAT YOU TALKED ABOUT?

2 A NO.

3 Q WHEN WOULD HAVE BEEN THE LAST TIME YOU SAW THAT?

4 A ABOUT THE FIRST PART OF MAY.

5 Q AND WHERE WOULD YOU HAVE LAST SEEN THAT? WHERE
6 WERE YOU WHEN YOU LAST SAW IT?

7 A IN THE CAR.

8 Q OUT IN FRONT OF YOUR APARTMENT?

9 A YEAH.

10 Q DID YOU EVER HAVE ANY OR WERE YOU EVER PRESENT
11 WHEN ANY CONVERSATIONS WERE USED TO DISCUSS EXPLOSIVES?

12 A YES.

13 Q WHO WAS PRESENT ON THOSE OCCASIONS?

14 A ELROY AND MYSELF.

15 Q ANYONE ELSE?

16 A NO.

17 Q WHEN DID THOSE DISCUSSIONS BEGIN?

18 A LAST PART OF APRIL, MAYBE THE FIRST PART OF MAY.

19 Q WHERE DID THEY INITIATE OR BEGIN FROM?

20 A ELROY.

21 Q WHERE WERE YOU LOCATED WHEN THEY HAPPENED?

22 A EITHER MY PLACE OR OVER THE PHONE.

23 Q WHAT WAS DISCUSSED REGARDING EXPLOSIVES?

24 A HE WAS GOING TO --

25 MR. BARBER: OBJECTION TO THE FORM OF THAT ANSWER.

1 "HE WAS GOING TO" IS PROBABLY NOT RESPONSIVE.

2 THE COURT: THAT WAS HER ANSWER. DO YOU MOVE TO
3 STRIKE IT?

4 MR. BARBER: I MOVE TO STRIKE IT.

5 THE COURT: ALL RIGHT, THE ANSWER MAY BE STRICKEN.

6 Q (BY MR. CHRISTENSEN) JUST TELL US THE WORDS,
7 CARLA.

8 A PUT THEM ON MARK'S CAR.

9 Q PUT WHAT ON MARK'S CAR?

10 A THE EXPLOSIVES.

11 Q DID YOU EVER SEE ANY EXPLOSIVES?

12 A YES.

13 Q APPROXIMATELY WHEN WOULD YOU HAVE FIRST SEEN
14 EXPLOSIVES?

15 A IN MAY.

16 Q OF '82?

17 A YES.

18 Q WHERE WERE YOU WHEN YOU FIRST SAW THEM?

19 A IT WAS IN MY CAR.

20 Q WHERE WERE YOU LOCATED?

21 A ELROY CAME AND PICKED ME UP FROM MY APARTMENT.

22 Q DID YOU DRIVE ANYWHERE?

23 A YES.

24 Q WHERE DID YOU DRIVE TO?

25 A WE WENT DOWN REDWOOD ROAD TO SOME TRUCKING COMPANY..

1 Q DO YOU KNOW THE NAME OF THE TRUCKING COMPANY?

2 A NO.

3 Q WHAT DID YOU DO WHEN YOU GOT THERE?

4 A WE DROVE IN THE PARKING LOT. ELROY PUT -- WE
5 DROVE UP NEXT TO AN OLD TRUCK, AND ELROY PUT THE BOMB UNDER-
6 NEATH THE TRUCK.

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1 Q CAN YOU DESCRIBE WHERE IT WAS PLACED?
2 A UNDERNEATH BY THE BACK WHEELS.
3 Q WAS ANYONE IN THE TRUCK AT THE TIME?
4 A NO.
5 Q ALL RIGHT. WHAT DID THIS BOMB OR WHAT WAS
6 CHARACTERIZED AS A BOMB LOOK LIKE?
7 A LOOKED LIKE A SMALL CONTAINER ALL WRAPPED IN BLACK
8 TAPE.
9 Q CAN YOU TELL WHAT KIND OF A CONTAINER IT WAS?
10 A NO.
11 Q YOU SAY IT WAS WRAPPED IN BLACK TAPE?
12 A YES, COMPLETELY WRAPPED UP.
13 Q DID IT HAVE ANY WAY OF IGNITING IT THAT YOU
14 OBSERVED OR DETONATING IT?
15 A THERE WAS A LONG FUSE ON IT.
16 Q HOW LONG?
17 A MAYBE THREE FEET LONG.
18 Q ALL RIGHT. WOULD YOU DESCRIBE WHAT YOU DID OR WHAT
19 YOU OBSERVED WITH RESPECT TO THAT DEVICE WHEN YOU SAW IT OR
20 WHEN IT WAS PLACED UNDER THE TRUCK?
21 A HE PUT IT UNDER THE TRUCK AND HE HANDED THE FUSE
22 TO ME THROUGH A WINDOW IN THE CAR.
23 Q WAS HE DRIVING THEN?
24 A YES.
25 Q ALL RIGHT. WHAT DID YOU DO WITH IT?

1 A HE GOT BACK IN THE CAR, GAVE ME HIS CIGARETTE
2 LIGHTER TO LIGHT THE FUSE.

3 Q DID YOU DO SO?

4 A YES.

5 Q WHAT HAPPENED?

6 A WHEN I LIT IT I THREW IT OUT AND WE DROVE OFF.

7 Q OKAY. DID ANYTHING HAPPEN, THAT YOU OBSERVED?

8 A NO.

9 Q DID YOU EVER RETURN TO THE SCENE?

10 A YES.

11 Q HOW LONG AFTER?

12 A FIVE MINUTES.

13 Q WHAT DID YOU DO WHEN YOU GOT BACK?

14 A HE WENT BACK UP TO THE SAME TRUCK AND IT HADN'T
15 GONE OFF. WHEN IT HIT THE GROUND OR THE WIND BLEW IT OUT
16 OR SOMETHING, BUT IT HADN'T GONE OFF.

17 Q DID YOU RETRIEVE THE BOMB?

18 A YES.

19 Q DID YOU BRING IT BACK INTO THE CAR?

20 A YES,

21 Q DID YOU DO ANYTHING LATER ON THAT EVENING WITH
22 REGARD TO THAT DEVICE?

23 A YES.

24 Q ALL RIGHT. WHERE DID YOU GO FROM THERE?

25 A WE WENT ON THIS LITTLE CUTOFF ROAD BETWEEN REDWOOD

1 ROAD AND THE SPERRY UNIVAC ROAD AND THEN IT WAS A CEMENT
2 BLOCK ALONGSIDE OF THE ROAD.

3 Q HOW FAR FROM SPERRY UNIVAC WOULD YOU ESTIMATE YOU
4 WERE WHEN YOU DID THIS?

5 A A COUPLE MILES.

6 Q AND YOU WERE NEAR A CEMENT BLOCK OF SOME KIND?

7 A YES.

8 Q DID YOU DO ANYTHING WHEN YOU GOT NEAR THE CEMENT
9 BLOCK WITH THE DEVICE?

10 A YES.

11 Q WOULD YOU DESCRIBE FOR ME WHAT YOU DID OR OBSERVED?

12 A ELROY PUT THE BOMB IN THE CEMENT BLOCK. HE GOT
13 BACK IN THE CAR AND I LIT THE FUSE.

14 Q OKAY. WHAT HAPPENED?

15 A I GOT BACK IN THE CAR AND WE DROVE DOWN THE ROAD
16 A LITTLE WAYS.

17 Q OKAY.

18 A AND THE BOMB WENT OFF.

19 Q OKAY. COULD YOU SEE ANYTHING THAT COULD BE
20 DESCRIPTIVE OF EITHER THE SOUND OF OR THE SIGHT OF THIS BOMB
21 GOING OFF?

22 A WE HEARD IT GO OFF.

23 Q DID YOU EVER RETURN TO THAT CONCRETE BLOCK AFTER
24 IT WENT OFF?

25 A YES.

1 Q WHAT DID YOU DO THEN?

2 A WE WENT BACK AND IT HADN'T DONE ANYTHING TO THE
3 CEMENT BLOCK.

4 Q OKAY. DID YOU HAVE ANY CONVERSATION WITH ELROY
5 REGARDING THAT?

6 A I ASKED HIM WHY IT DIDN'T BLOW THE BLOCK UP AND HE
7 SAID THERE WASN'T ENOUGH DYNAMITE IN IT.

8 Q HE REFERRED TO IT AS DYNAMITE?

9 A YES.

10 Q HAD YOU EVER SEEN DYNAMITE BEFORE?

11 A NO.

12 Q DO YOU HAVE ANY SOURCE OF OR ABILITY TO OBTAIN ANY
13 KIND OF EXPLOSIVES?

14 A NO.

15 Q DID YOU HAVE ANY IN YOUR POSSESSION?

16 A NO.

17 Q DID YOU AT ANY TIME ATTEMPT TO IMPROVISE OR
18 CONCOCT THIS DEVICE THAT EXPLODED?

19 A NO.

20 Q WERE THERE EVER ANY CONVERSATIONS ABOUT SOURCES OF
21 DYNAMITE IN YOUR DISCUSSIONS WITH ELROY?

22 A YES.

23 Q WHEN WOULD THAT HAVE TAKEN PLACE?

24 A A COUPLE OF WEEKS BEFORE WE DID THIS.

25 Q WHERE WERE YOU WHEN THAT CONVERSATION WAS HAD?

1 A HE CALLED ME UP AND TOLD ME.
2 Q WHAT DID HE SAY?
3 A HE SAID HE THOUGHT HE KNEW OF A WAY OF GETTING SOME
4 DYNAMITE.
5 Q DID YOU REPLY OR MAKE ANY COMMENT TO THE
6 CONVERSATION?
7 A I ASKED HIM FROM WHO.
8 Q DID HE REPLY?
9 A YES.
10 Q WHAT DID HE SAY?
11 A HE SAID, "FROM BETTY'S HUSBAND."
12 Q "FROM BETTY'S HUSBAND"?
13 A YES.
14 Q DO YOU KNOW WHO HE WAS REFERRING TO?
15 A HE TALKED ABOUT BETTY BEFORE BUT I HAVE NEVER MET
16 HER.
17 Q ALL RIGHT. DO YOU KNOW HER LAST NAME?
18 A NO.
19 Q OR HER HUSBAND'S FIRST OR LAST NAME?
20 A NO.
21 Q DID YOU EVER MEET A BETTY?
22 A WE WAS DRIVING DOWN THE ROAD ONE DAY AND SHE PASSED.
23 THAT IS ALL I SAW OF HER, I WOULDN'T RECOGNIZE HER.
24 Q HOW DO YOU KNOW SHE PASSED?
25 A SHE WAVED AND ELROY TOLD ME, "THAT IS -- THAT WAS

1 BETTY."

2 Q DO YOU REMEMBER ANYTHING ABOUT THE VEHICLE SHE WAS
3 IN OR HER DESCRIPTION?

4 A NO.

5 Q DO YOU KNOW APPROXIMATELY WHEN SHE WOULD HAVE
6 PASSED?

7 A NO.

8 Q DID YOU EVER HAVE DISCUSSIONS OR WERE YOU PRESENT,
9 OR DID YOU PARTICIPATE IN ANY DISCUSSIONS REGARDING POISON?

10 A YES.

11 Q WHEN WOULD THAT HAVE TAKEN PLACE?

12 A ABOUT MARCH OF 1982.

13 Q WHERE WERE YOU WHEN THAT TOOK PLACE?

14 A IT WAS IN MY CAR.

15 Q WHERE WAS THE CAR LOCATED?

16 A HE WAS TAKING ME TO WORK.

17 Q WHAT WAS SAID?

18 A HE ASKED ME IF I WOULD BUY SOME RAT POISON.

19 Q WHEN YOU ARE REFERRING TO "HE," WHO ARE YOU TALKING
20 ABOUT?

21 A ELROY.

22 Q ANYONE ELSE IN THE CAR AT THAT TIME?

23 A NO.

24 Q DID HE EVER INDICATE TO YOU WHERE YOU WERE TO
25 PROCURE RAT POISON?

1 A NO. I TOLD HIM WHERE HE COULD -- WHERE WE COULD
2 BUY SOME.
3 Q ALL RIGHT. WHAT DID YOU SAY TO HIM?
4 A I SAID WE COULD PROBABLY GET SOME AT CALLISTER'S.
5 Q WHERE IS CALLISTER'S LOCATED?
6 A ON REDWOOD ROAD.
7 Q AND WHAT SOUTH OR NORTH?
8 A IT IS SOUTH. I DON'T KNOW WHAT SOUTH IT WOULD BE.
9 Q ALL RIGHT. DID YOU IN FACT GO TO CALLISTER'S?
10 A YES.
11 Q WHO WAS WITH YOU WHEN YOU WENT TO CALLISTER'S?
12 A ELROY.
13 Q AND WHEN DID YOU GO TO CALLISTER'S?
14 A IT SEEMED LIKE IT WAS IN MARCH.
15 Q OF 1982?
16 A YES.
17 Q DID YOU BUY ANYTHING IN CALLISTER'S?
18 A YES.
19 Q WHAT DID YOU BUY?
20 A I BOUGHT SOME RAT POISON.
21 A ANYTHING ELSE?
22 A NO.
23 Q WHAT WAS DONE WITH THE RAT POISON?
24 A I DIDN'T SEE IT AFTER I GAVE IT TO ELROY.
25 Q DID YOU BUY ANY OTHER KINDS OF POISONS?

1 A NO, I DIDN'T.

2 Q DID YOU OBSERVE ANYONE ELSE BUY ANY POISONS IN YOUR
3 PRESENCE?

4 A NO.

5 Q WERE THERE ANY DISCUSSIONS HAD ABOUT OTHER POISONS?

6 A YES.

7 Q WHO WERE THEY WITH?

8 A WITH ELROY.

9 Q AND APPROXIMATELY WHEN IN TIME?

10 A IN MARCH OF 1982.

11 Q ALL RIGHT. WHERE WERE YOU WHEN THAT WAS HAD?

12 A WE TALKED ABOUT IT IN MY CAR.

13 Q ALL RIGHT. WHERE WAS YOUR CAR LOCATED?

14 A WE WAS AT GRAND CENTRAL.

15 Q WHICH GRAND CENTRAL, DO YOU RECALL?

16 A THE ONE ON NINTH SOUTH.

17 Q WHAT EAST OR WEST?

18 A I THINK IT IS STATE STREET.

19 Q DID YOU BUY ANY POISONS AT THAT TIME OR OBSERVE
20 ANY BEING BOUGHT AT THAT TIME?

21 A NO. I WENT IN -- HE WANTED ME TO LOOK FOR SOME
22 KIND OF, YOU KNOW, BUG OR RAT POISON, BUT ALL I COULD SEE
23 ON THE SHELVES WAS WEED POISONS.

24 Q DID YOU BUY ANY OF THAT?

25 A NO.

1 Q DID YOU OBSERVE ELROY BUY ANY OF THAT?

2 A NO.

3 Q DID YOU BUY ANYTHING THAT EVENING OR THAT AFTERNOON?

4 A NO.

5 Q ANY OTHER CONVERSATIONS OR CONDUCT OF AND THE
6 PURCHASE OF POISONS OF ANY KIND?

7 A HE HAD BOUGHT SOME AND PUT IN --

8 Q WHEN YOU SAY "HE," WHO ARE YOU --

9 A ELROY BOUGHT SOME.

10 Q HOW DO YOU KNOW THAT?

11 A THEY ENDED UP AT MY APARTMENT.

12 Q OKAY. WHO BROUGHT THEM THERE?

13 A ELROY DID.

14 Q APPROXIMATELY WHEN?

15 A MARCH OF 1982.

16 Q AND DID THEY REMAIN THERE?

17 A FOR A COUPLE OF DAYS.

18 Q ALL RIGHT. THEN WHAT HAPPENED TO THEM?

19 A I THREW THEM OUT.

20 Q WAS THERE ANY DISCUSSIONS HAD ABOUT WHAT YOU WERE
21 TO DO WITH THE POISONS THAT WERE PURCHASED?

22 A YES.

23 Q WHEN WOULD THE FIRST ONE HAVE BEEN HAD REGARDING
24 WHAT YOU WOULD DO WITH THE POISONS?

25 A IN MARCH.

1 Q ALL RIGHT. DO YOU RECALL YOUR WHEREABOUTS WHEN
2 THESE CONVERSATIONS WERE HAD?

3 A EITHER AT MY PLACE OR IN THE CAR.

4 Q WAS ELROY PRESENT AT ALL THOSE?

5 A YES.

6 Q WOULD YOU RECOUNT, IF YOU CAN, THE CONVERSATION
7 THAT TOOK PLACE REGARDING WHAT WAS TO BE DONE WITH THE
8 POISONS?

9 A HETOLD ME -- ELROY TOLD ME THAT LORI CARRIED
10 DRUGS AROUND IN HER PURSE.

11
12
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14
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1 Q OKAY.

2 A AND THAT IN SOME WAY HE WAS GOING TO TRY AND PUT
3 SOME POISON IN THE DRUGS.

4 Q DID YOU EVER FORMULATE OR PLAN AS TO HOW THAT
5 WOULD BE DONE?

6 A NO.

7 Q WHAT ABOUT THE BOMBS? WERE THERE ANY DISCUSSIONS
8 HAD ABOUT THE EXPLOSIVES OR THE BOMB, WHAT WOULD BE DONE
9 WITH THEM?

10 A THEY WERE GOING TO BE PUT ON THE CARS.

11 Q WHOSE CARS?

12 A LORI'S AND MARK'S.

13 Q WHERE WAS THE DISCUSSION HAD ABOUT THAT PLAN?

14 A IT WAS IN MY APARTMENT, IN THE CAR.

15 Q APPROXIMATE DATE?

16 A ABOUT THE FIRST PART OF MAY.

17 Q OF WHICH YEAR?

18 A OF '82.

19 Q WAS THERE ANY PLAN FORMULATED AS TO HOW THAT WAS
20 TO BE DONE OR WHEN THAT WOULD BE DONE?

21 A ELROY WOULD PUT THE BOMBS ON THE CAR, AND HE WANTED
22 ME TO LIGHT THEM.

23 Q DID HE SAY HOW OR WHAT PERIOD OF TIME THAT WOULD BE
24 DONE?

25 A NOT WHAT PERIOD OF TIME.

1 Q WAS IT JUST TO BE PLACED ON THE CARS, OR WERE
2 THERE TO BE OCCUPANTS IN THE CARS?

3 MR. BARBER: OBJECTION, YOUR HONOR, HE IS LEADING
4 HIS WITNESS.

5 THE COURT: YES, YOU ARE, MR. CHRISTENSEN.

6 Q (BY MR. CHRISTENSEN) WHAT WAS YOUR PLAN WITH
7 REGARD TO PLACEMENT OF THE BOMB ON THE CARS?

8 MR. BARBER: OBJECTION.

9 THE COURT: YOU MAY REPHRASE IT, SIR. WHAT WAS
10 SAID BETWEEN YOU AND ANYBODY ELSE?

11 Q (BY MR. CHRISTENSEN) WITH REGARD TO THOSE PLANS?

12 A ELROY WOULD PUT THE BOMB ON THE CAR, AND WHEN MARK
13 GOT IN THE CAR, I WAS TO WALK UP AND LIGHT THE FUSE.

14 Q WOULD THERE BE ANY PLANS OR WERE THERE ANY
15 DISCUSSIONS HAD ABOUT MARK'S DRUTHERS REGARDING THAT?

16 MR. BARBER: THAT IS LEADING AGAIN, YOUR HONOR.

17 THE COURT: IT IS.

18 MR. CHRISTENSEN: LET ME REPHRASE IT, YOUR HONOR.

19 Q DID YOU DEVELOP ANY CONTINGENCY PLANS IF THAT
20 DIDN'T WORK?

21 A NO.

22 Q WERE THERE ANY PLANS DRAWN UP AS TO WHERE THESE
23 VEHICLES WOULD BE?

24 MR. BARBER: HE IS LEADING HIS WITNESS, AGAIN,
25 YOUR HONOR.

1 MR. CHRISTENSEN: I AM NOT SO SURE I AM REGARDING
2 THAT, YOUR HONOR.

3 THE COURT: SHE MAY ANSWER THIS.

4 THE WITNESS: WHAT WAS THE QUESTION?

5 Q (BY MR. CHRISTENSEN) ANY IDEA AS TO LOCATION OF
6 THOSE VEHICLES OR WHEN YOU WOULD DO IT?

7 THE COURT: ANY CONVERSATION RELATING TO WHEN AND
8 WHERE?

9 THE WITNESS: WHEN MARK WOULD BE GOING TO WORK IN
10 THE MORNING.

11 Q (BY MR. CHRISTENSEN) DID YOU KNOW WHAT TIME HE
12 WENT TO WORK?

13 A YES.

14 Q DID YOU EVER FOLLOW HIM TO WORK?

15 A NO.

16 Q DID YOU EVER FOLLOW HIM FROM WORK?

17 A WE TRIED TO, BUT HE HAD ALREADY LEFT.

18 THE COURT: MAY I ASK YOU WHOM DO YOU MEAN?

19 Q (BY MR. CHRISTENSEN) WHO WAS WITH YOU WHEN YOU
20 TRIED -- IF YOU WOULD, YOU WOULD MAKE IT SIMPLER WHEN YOU
21 SAID "WE" OR "US," IF YOU WOULD INDICATE THE NAMES OF THOSE
22 PEOPLE, OKAY?

23 A ELROY AND I. THAT SAME DAY THAT ELROY HAD ME GET
24 THE ADDRESS OFF THE CAR.

25 Q YOU SAY YOU TRIED TO FOLLOW HIM? WHAT DO YOU MEAN

1 BY THAT?

2 A ELROY HAD ME STAND OUTSIDE A LITTLE WAYS DOWN FROM
3 THAT CAR AND SEE WHO GOT INSIDE OF IT.

4 Q WERE YOU TO DO ANYTHING IF YOU SAW ANYBODY GET
5 INSIDE?

6 A I WAS JUST SUPPOSED TO TELL HIM WHO GOT IN.

7 Q DID YOU SEE ANYBODY GET IN THAT CAR?

8 A YES.

9 Q WHO DID YOU SEE GET IN?

10 A A MAN AND A WOMAN.

11 Q COULD YOU GIVE ME A DESCRIPTION OF WHAT THE WOMAN
12 LOOKED LIKE?

13 A WELL, I KNOW NOW WHO IT WAS.

14 Q WHO WAS IT?

15 A IT WAS LORI.

16 Q DID YOU TELL THAT TO ELROY?

17 A YES.

18 Q AND WHAT DID YOU DO OR OBSERVE TAKE PLACE AFTER
19 THAT CONVERSATION?

20 A WE TRIED TO FIND HIM.

21 Q AND WHICH VEHICLE WERE YOU DRIVING ON THAT
22 OCCASION?

23 A WE WAS IN MY CAR.

24 Q YOUR CUTLASS?

25 A YES.

1 Q WHAT CAR WERE THEY IN?
2 A IN MARK'S.
3 Q WHICH COLOR OF CAR WAS THAT?
4 A THE SILVER ONE.
5 Q WHERE DID THEY GO AND WHERE DID YOU FOLLOW THEM?
6 A WE DON'T KNOW WHERE THEY WENT. WE COULDN'T FIND
7 THEM.
8 Q DID YOU EVER ON ANY OF THESE OCCASIONS GO TO
9 SPERRY UNIVAC BY YOURSELF?
10 A NO.
11 Q DID YOU EVER ON ANY OF THESE OCCASIONS GO BY YOUR-
12 SELF PAST MR. SCHOENFELD'S RESIDENCE ON 13TH EAST?
13 A NO.
14 Q DID YOU EVER GO TO THE RESIDENCE OF
15 MR. SCHOENFELD WHILE HE WASN'T THERE TO INQUIRE?
16 A YES.
17 Q DO YOU RECALL APPROXIMATELY WHEN THAT WAS?
18 A ABOUT APRIL.
19 Q OF '82?
20 A YES.
21 Q WHO WAS WITH YOU ON THAT OCCASION?
22 A ELROY WAS.
23 Q ANYONE ELSE?
24 A NO.
25 Q WILL YOU DESCRIBE FOR ME WHAT YOU DID WHEN YOU GOT

1 TO THE VICINITY OF MR. SCHOENFELD'S RESIDENCE?

2 A ELROY HAD ME GO DOWN AND LOOK IN THE WINDOWS, SEE
3 WHAT KIND OF WINDOWS THEY WERE.

4 Q WHICH WINDOWS DID YOU LOOK IN?

5 A THE WINDOWS OF THE HOUSE THAT MARK LIVED IN.

6 Q COULD YOU SEE INSIDE?

7 A YES.

8 Q DID YOU GAIN INFORMATION FROM YOUR OBSERVATIONS OF
9 THAT OBSERVATION INSIDE THE HOUSE?

10 A I TOLD ELROY WHAT I SAW.

11 Q DID YOU CHECK ANY LOCKS OR DOORS OR ANYTHING OF
12 THAT NATURE?

13 A NO.

14 Q DID YOU EVER INQUIRE OF THE DOWNSTAIRS AREA, THE
15 PEOPLE THAT LIVED DOWNSTAIRS IN THAT HOUSE?

16 A YES.

17 Q AND WHEN WOULD THAT HAVE BEEN?

18 A THAT SAME DAY.

19 Q DESCRIBE FOR ME WHAT YOU DID IF YOU WOULD.

20 MR. BARBER: EXCUSE ME. WHAT SAME DAY?

21 THE WITNESS: THE SAME DAY THAT I LOOKED AT THE
22 WINDOWS.

23 MR. BARBER: CAN WE GET A LITTLE MORE FOUNDATION ON
24 THAT, PLEASE.

25 Q (BY MR. CHRISTENSEN) CAN YOU GIVE ME THE DATE

1 AGAIN?

2 A APRIL '82.

3 Q WHAT DID YOU DO WITH THE DOWNSTAIRS OCCUPANTS OF
4 THAT HOUSE?

5 A I ASKED THE LADY IF SHE KNEW WHO LIVED UPSTAIRS
6 AND HOW MANY.

7 Q DID YOU EVER GET THAT LADY'S NAME OR KNOW WHO SHE
8 WAS?

9 A NO.

10 Q WHAT DID SHE LOOK LIKE, DO YOU RECALL?

11 A NO.

12 Q DO YOU RECALL ANYTHING ABOUT THE COLOR OF HER HAIR
13 OR HER RACE OR ANYTHING OF THAT NATURE?

14 A NO, I DON'T.

15 Q DID YOU ASK ANY OTHER DETAILS OTHER THAN THAT?

16 A NO.

17 Q DID YOU GET INFORMATION OF WHO LIVED UPSTAIRS?

18 A NO.

19 Q DID YOU MAKE ANY OTHER ATTEMPTS TO INQUIRE OF WHO
20 LIVED UPSTAIRS AND HOW MANY LIVED UPSTAIRS?

21 A YES.

22 Q WHO DID YOU CONTACT?

23 A I CALLED MARK'S HOUSE.

24 Q AND DID ANYONE ANSWER?

25 A YES.

1 Q HOW DID YOU GET THE NUMBER TO MARK'S HOUSE?

2 A IN THE PHONE BOOK.

3 Q AND WHO WAS PRESENT WITH YOU ON THAT OCCASION?

4 A NO ONE.

5 Q WHERE DID YOU MAKE THE CALL FROM?

6 A MY HOUSE.

7 Q WHY DID YOU DO THAT?

8 A ELROY HAD ASKED ME TO SEE IF I COULD FIND OUT IF
9 ANYBODY ELSE LIVED THERE.

10 Q AND IN PLACING THE CALL, DID YOU HAVE A CONVERSA-
11 TION WITH ANYONE AT THAT NUMBER?

12 A YES.

13 Q MALE OR FEMALE?

14 A MALE.

15 Q DID THE PERSON IDENTIFY THEMSELVES?

16 A NO.

17 Q WHAT DID YOU ASK OF THAT PERSON?

18 A I SAID I WAS CALLING AROUND THE NEIGHBORHOOD
19 ASKING FOR DONATIONS FOR THE CANCER SOCIETY OR SOMETHING, I
20 DON'T REMEMBER WHICH ONE I SAID, AND ASKED IF HE WANTED TO
21 DONATE AND IF ANYONE ELSE IN THE APARTMENT OR ROOMMATES
22 WANTED TO.

23 Q AS A RESULT OF THAT CONVERSATION DID YOU DEVELOP
24 FURTHER INFORMATION?

25 A YES.

1 Q FROM THE PERSON WHO ANSWERED THOSE QUESTIONS?
2 A YES.
3 Q AND DID YOU TELL THAT TO ELROY?
4 A YES.
5 Q WHAT DID YOU TELL ELROY?
6 A I TOLD ELROY THAT HE LIVED BY HIMSELF.
7 Q WHY WERE YOU DOING THESE THINGS, CARLA? WHY WERE
8 YOU YOURSELF DOING THESE THINGS?
9 A ELROY ASKED ME TO.
10 Q DID YOU LOVE ELROY?
11 A YES, AT ONE TIME.
12 Q DID YOU EVER HAVE ANY PLANS OR DISCUSSIONS TO
13 MARRY ELROY?
14 A I HADN'T, ELROY HAD. ELROY BROUGHT IT UP.
15 Q WHEN DID HE FIRST TALK TO YOU ABOUT MARRIAGE?
16 A IT WOULD HAVE BEEN ABOUT THE END OF '81.
17 Q DID YOU FORMULATE IN YOUR OWN MIND ANY PLANS TO
18 MARRY ELROY?
19 A NO.
20 Q DO YOU KNOW WHETHER OR NOT ELROY TOOK ANY STEPS TO
21 MARRY YOU?
22 A NO.
23 Q DID YOU EVER BUY ANY LICENSES OR ANYTHING OF THAT
24 NATURE?
25 A NO.

1 Q DID YOU EVER GIVE GIFTS TO ELROY?

2 A YES.

3 Q COULD YOU DESCRIBE FOR ME THE GIFTS THAT YOU GAVE
4 TO ELROY BESIDES THE THREE GUNS THAT WE ARE TALKING ABOUT.

5 A I GAVE HIM A HAT; I GAVE HIM SOME WEIGHTS --

6 Q WHEN YOU SAY "WEIGHTS," LIFTING WEIGHTS?

7 A YES. I GAVE HIM SOME BOOTS, A SHIRT, A JACKET.
8 THAT'S ALL I CAN THINK OF RIGHT NOW.

9 Q DID YOU EVER LEND HIM ANY MONEY?

10 A YES.

11 Q WHEN WOULD HAVE BEEN THE FIRST OCCASION THAT YOU
12 LENT HIM MONEY?

13 A IT WAS ABOUT MARCH OF '81.

14 Q AND DO YOU RECALL HOW MUCH YOU LENT HIM?

15 A A THOUSAND DOLLARS.

16 Q DID HE EVER TELL YOU WHAT IT WAS FOR?

17 A YES.

18 Q WHEN YOU SAY "HE," ARE YOU REFERRING TO ELROY?

19 A YES.

20 Q WHAT DID HE SAY IT WAS FOR?

21 A HE SAID IT WAS FOR SOME PEOPLE IN CALIFORNIA THAT
22 LORI SHOULD HAVE PAID OFF.

23 Q OKAY. DID YOU EVER LOAN HIM ANY OTHER MONIES OR
24 ANY SUMS OF MONEY?

25 A YES.

1 Q AND WHEN WOULD THAT HAVE TAKEN PLACE?
2 A IT WAS ABOUT MARCH OF '82.
3 Q HOW MUCH DID YOU LEND ON THAT OCCASION?
4 A \$2,000.
5 Q AND DID HE EVER INDICATE TO YOU WHAT THAT WAS FOR?
6 A PAY BACK HIS TAXES.
7 Q DID YOU EVER ACTUALLY SEE HIM SEND THAT MONEY OFF
8 FOR TAXES?
9 A NO.
10 Q OR SEE WHERE THE FIRST THOUSAND DOLLARS ACTUALLY
11 WENT TO?
12 A NO.
13 Q HOW DID YOU GO ABOUT PROCURING THE MONIES TO GIVE
14 TO MR. TILLMAN OR TO LEND TO MR. TILLMAN?
15 A I TOOK OUT A LOAN.
16 Q DO YOU KNOW WHO THE LOAN WAS WITH?
17 A YES.
18 Q AND WHO WAS THAT WITH?
19 A WITH THE CREDIT UNION.
20 Q AND YOU HAVE THE PAPERWORK TO SUBSTANTIATE THAT,
21 DO YOU NOT?
22 A YES.
23 Q DID YOU TAKE OUT BOTH OF YOUR LOANS WITH THE CREDIT
24 UNION?
25 A YES.

1 Q ARE YOU STILL PAYING BACK THOSE LOANS?

2 A THE SECOND ONE I AM.

3 Q WHAT ABOUT THE CAR, THIS BLACK AND WHITE OLDS'
4 CUTLASS? DID YOU EVER LET HIM USE THAT CAR?

5 A YES.

6 Q WHEN YOU WEREN'T PRESENT?

7 A YES.

8 Q BEGINNING IN AUGUST WHEN YOU FIRST MET MR. TILLMAN
9 IN 1980, TO SAY MAY 26 OF '82, HOW MANY TIMES WOULD YOU
10 ESTIMATE THAT YOU ALLOWED MR. TILLMAN TO OPERATE YOUR
11 VEHICLE?

12 A HE HAD IT MOST OF THE TIME.

13 Q HOW WOULD YOU GET TO AND FROM WORK?

14 A HE WOULD COME AND PICK ME UP.

15

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1 Q DID YOU HAVE ANY OTHER MEANS OF DRIVING AROUND?

2 A NO.

3 Q DID YOU EVER SEE ANY CARS THAT HE WOULD HAVE HAD
4 THAT HE COULD HAVE DRIVEN HIMSELF?

5 A YES.

6 Q WHAT KIND OF A CAR OR CARS DID YOU SEE THAT HE
7 COULD HAVE DRIVEN?

8 A HE HAD A BLUE ONE, I DON'T KNOW THE MAKE.

9 Q DO YOU KNOW THE SIZE?

10 A MID-SIZE.

11 Q WAS IT OPERABLE?

12 A IT WAS AT FIRST.

13 Q WHEN DID IT BECOME INOPERATIVE?

14 A MAYBE THE LAST PART OF 1980.

15 Q DID YOU EVER GO TO MARK SCHOENFELD'S RESIDENCE FOR
16 THE PURPOSE OF KILLING HIM?

17 A YES.

18 Q HOW MANY TIMES?

19 A ONCE.

20 Q DID YOU EVER USE A FIREARM OR HAVE THE INTENT TO
21 USE A FIREARM OF THE OCCASION TO GO KILL HIM?

22 A I HAD ONE WITH ME.

23 Q ALL RIGHT. WERE YOU EVER PRESENT WHEN MR. TILLMAN
24 WENT TO MR. SCHOENFELD'S RESIDENCE FOR THE PURPOSE OF KILLING
25 HIM WITH A FIREARM?

1 A YES.

2 Q WHEN WOULD THAT OCCASION HAVE BEEN?

3 A LAST PART OF MARCH, FIRST PART OF APRIL, SOMEWHERE
4 AROUND IN THERE.

5 Q OF 1982?

6 A YES.

7 Q WHEN IN TIME DID YOU DO THAT? DAY OR NIGHT?

8 A IT WAS NIGHT,

9 Q WHO WAS PRESENT?

10 A ELROY.

11 Q AND YOURSELF?

12 A YES.

13 Q OKAY. WHICH GUN, DO YOU RECALL?

14 A IT WAS THE AUTOMATIC .22.

15 Q WHICH CAR?

16 A MY CAR.

17 Q DID YOU ACTUALLY DRIVE DOWN TO MR. SCHOENFELD'S
18 RESIDENCE?

19 A YES.

20 Q AND WHEN YOU GOT THERE WHAT DID YOU DO OR WHAT
21 DID YOU OBSERVE TAKE PLACE?

22 A WE SAW MARK AND LORI ON THE PATIO BARBEQUING.

23 Q WHERE DID YOU PARK THE CAR?

24 A IT WAS ONE STREET OVER.

25 Q COULD YOU TELL WHETHER OR NOT THEY SAW YOU?

1 A NO, THEY DIDN'T SEE US.

2 Q DID YOU HAVE ANY CONVERSATIONS ONCE YOU GOT THE
3 CAR STOPPED OR DURING THE TIME IT TOOK YOU TO DRIVE FROM
4 MR. SCHOENFELD'S RESIDENCE TO PARK?

5 A YES.

6 Q WHAT WAS SAID AND BY WHOM?

7 A ELROY SAID HE WAS GOING TO DO IT.

8 MR. BARBER: SAID WHAT?

9 THE WITNESS: HE SAID HE WAS GOING TO GO DO IT.

10 Q (BY MR. CHRISTENSEN) HE HAD THE GUN?

11 A YES.

12 Q DID YOU SAY ANYTHING IN REPLY?

13 A I TRIED TO TALK HIM OUT OF IT AND HE SAID, "WELL,
14 YOU GO DO IT THEN" AND I TOLD HIM I COULDN'T DO IT. SO HE
15 SAID, "WELL, I WILL GO DO IT MYSELF." AND THAT IS WHEN I TOOK
16 THE GUN FROM HIM AND I GOT OUT OF THE CAR AND I TOLD HIM TO
17 GO HOME.

18 Q DID YOU SAY WHAT YOU WOULD DO?

19 A I TOLD HIM I WOULD DO IT.

20 Q ALL RIGHT. WHAT DID YOU DO FROM THAT POINT?

21 A I STAYED OUT THE REST OF THE NIGHT WALKING AROUND.

22 Q DID YOU HAVE ANY MEANS OF TRANSPORTATION?

23 A NO.

24 Q DID YOU EVER GO OVER TO THE SCHOENFELD'S?

25 A I WALKED BY THE HOUSE.

1 Q ALL RIGHT. DID YOU EVER EITHER BRANDISH THE
2 FIREARM OR TAKE ANY SHOTS AT ANYBODY?

3 A NO.

4 Q WHAT WAS GOING THROUGH YOUR MIND AT THAT POINT IN
5 TIME? DID YOU INTEND TO KILL HIM?

6 A NO.

7 Q DID YOU SEE ELROY AROUND THAT AREA WHEN YOU WALKED
8 BY THE SCHOENFELD'S?

9 A NO.

10 Q DID YOU FINALLY GO HOME?

11 A YES.

12 Q ALL RIGHT. WHEN YOU GOT HOME WHAT DID YOU DO?

13 A I GOT READY FOR BED.

14 Q DID YOU HAVE ANY CONVERSATIONS THAT EVENING WITH
15 MR. TILLMAN OR THAT MORNING?

16 A ELROY CALLED ME.

17 Q DID HE SAY WHERE HE WAS CALLING FROM?

18 A NO. I IMAGINE HE WAS AT HIS PLACE.

19 MR. BARBER: OBJECTION TO WHAT SHE IMAGINED.

20 THE COURT: SHE MAY ANSWER.

21 MR. CHRISTENSEN: THANK YOU, YOUR HONOR.

22 Q DID HE SAY ANYTHING TO YOU?

23 A HE SAID HE WAS -- I TOLD HIM I DIDN'T DO IT AND
24 HE SAID HE WAS GOING TO COME OVER.

25 Q DID HE COME OVER?

1 A YES.

2 Q HOW LONG AFTER THE CALL DID HE COME OVER?

3 A HALF HOUR.

4 Q WHAT TIME OF THE DAY OR EVENING WAS THIS?

5 A IT WAS ABOUT 5:30 IN THE MORNING.

6 Q WAS THIS ON A WORKDAY OR A WEEKEND?

7 A IT WAS A WEEKEND.

8 Q DO YOU KNOW THE DAY OF THE WEEK?

9 A I THINK IT WAS A SUNDAY.

10 Q AND WHEN HE ARRIVED THERE DID ANYONE COME WITH HIM?

11 A NO.

12 Q WHAT CONVERSATIONS DID YOU HAVE AT THAT POINT?

13 A HE TOLD ME IT WAS ALL RIGHT THAT I DIDN'T DO IT AND

14 TO GIVE HIM THE GUN.

15 Q OKAY. DID YOU SAY ANYTHING BACK?

16 A I TOLD HIM I HAD HID IT AND WASN'T GOING TO GIVE

17 IT TO HIM.

18 Q DID HE SAY ANYTHING BACK?

19 A HE GOT REAL UPSET WITH ME.

20 MR. BARBER: OBJECTION, THAT IS A CONCLUSION.

21 THE COURT: THE ANSWER WILL BE STRICKEN. YOU MAY

22 ASK ANOTHER QUESTION, SIR.

23 Q (BY MR. CHRISTENSEN) WHAT DID HE SAY TO YOU?

24 A HE SAID GIVE HIM THE GUN BACK.

25 Q DID YOU SAY ANYTHING AT THAT?

1 A TOLD HIM I WOULDN'T.
2 Q WHAT ELSE WAS SAID?
3 A HE SAID HE WAS GOING TO GO DO IT.
4 Q ANYTHING ELSE?
5 A HE SAID HE DIDN'T EVER WANT TO SEE ME AGAIN.
6 Q ANYTHING ELSE?
7 A HE SAID HE WOULD GET MY CAR BACK TO ME.
8 Q DID HE LEAVE?
9 A YES.
10 Q DID HE EVER GET THE GUN?
11 A YES, I FINALLY GAVE IT TO HIM.
12 Q THAT SAME NIGHT OR MORNING?
13 A YES.
14 Q DID HE TAKE ANYTHING ELSE WITH HIM?
15 A I HAD TAKEN THE BULLETS OUT AND I GAVE HIM THOSE.
16 Q DID HE EVER RELOAD THE FIREARM IN YOUR PRESENCE?
17 A I DON'T REMEMBER.
18 Q ANY OTHER CONVERSATIONS THAT NIGHT OR THAT MORNING
19 REGARDING THE INCIDENT AT SCHOENFELD'S?
20 A NO.
21 Q WHEN DID YOU NEXT SEE MR. TILLMAN AGAIN?
22 A THAT NIGHT.
23 Q OKAY, AND WHERE WERE YOU WHEN YOU SAW HIM?
24 A HE CAME BACK TO MY PLACE.
25 Q DID YOU HAVE A CONVERSATION THEN?

1 A YES.

2 Q WHAT WAS SAID?

3 A THAT IS WHEN HE BROUGHT UP THE IDEA OF DYNAMITE.

4 Q ANYTHING ELSE SAID?

5 A HE ASKED ME IF I THOUGHT I COULD DO IT.

6 Q WHAT DID YOU SAY?

7 A I TOLD HIM I DIDN'T KNOW IF I COULD OR NOT.

8 Q DID HE SAY ANYTHING IN REPLY?

9 A I DON'T REMEMBER.

10 Q AT THAT POINT IN TIME, CARLA, DID YOU WANT EITHER
11 LORI OR MARK DEAD OR HURT?

12 A NO.

13 Q HAD YOU SEEN EITHER MARK OR LORI OTHER THAN GOING
14 TO WORK OR COMING FROM WORK OR IN VARIOUS SITUATIONS SUCH AS
15 A BARBEQUE?

16 A NO.

17 Q HAD THEY EVER DONE ANYTHING TO YOU?

18 A NO.

19 Q HAD YOU EVER SEEN EITHER OF THEM DO ANYTHING TO
20 ELROY?

21 A NO.

22 Q DID YOU EVER HAVE ANY CONVERSATIONS WITH ELROY
23 REGARDING THEM DOING ANYTHING TO HIM?

24 A YES.

25 Q WHEN DID THOSE TAKE PLACE?

1 A IT WAS IN MARCH OF 1982.

2 Q WHERE WERE YOU WHEN THAT TOOK PLACE?

3 A EITHER HE WOULD CALL AND TELL ME OR HE WOULD BE
4 OVER AT MY PLACE.

5 Q WHAT SORTS OF THINGS DID HE CALL AND TELL YOU WERE
6 HAPPENING TO HIM?

7 A HE TOLD ME HIS STORAGE SHED HAD BEEN BROKEN INTO
8 AND HIS PROPERTY WAS STOLEN.

9 Q DID YOU EVER SEE THAT STORAGE SHED?

10 A NO.

11 Q DID YOU EVER SEE ANY OF THE PROPERTY THAT HE
12 ALLEGED WAS STOLEN?

13 A THAT NIGHT THAT THIS HAPPENED, HE SHOWED ME SOME
14 THINGS THAT HE SAID WAS HIS.

15 Q AND THE NIGHT THAT YOU ARE REFERRING TO IS THE
16 NIGHT OF THE HOMICIDE?

17 A YES.

18 Q WE WILL ADDRESS THOSE ISSUES WHEN WE GET TO THAT
19 AREA. DID YOU EVER SEE ANY PROPERTIES REMOVED FROM THE
20 RESIDENCE OF MR. TILLMAN AT ANY TIME?

21 A NO.

22 Q DID YOU EVER HAVE ANY DAMAGE DONE TO YOUR CAR,
23 OBSERVE ANY DAMAGE DONE TO YOUR CAR DURING THE TIME THAT YOU
24 HAD IT LENT OUT TO ELROY?

25 A YES.

1 Q COULD YOU DESCRIBE FOR ME HOW THAT DAMAGE WOULD
2 HAVE GOT ON THE CAR?

3 A I DID ONE OF THEM MYSELF.

4 Q WHERE WAS THAT LOCATED?

5 A IT WAS THE CHROME AROUND THE WHEEL.

6 Q OKAY. WHAT ABOUT THE OTHERS?

7 A I DON'T KNOW HOW THEY GOT THERE.

8 Q DID YOU EVER SEE ANYTHING OR ANY ACTIONS TAKEN
9 TOWARDS YOUR CAR THAT WOULD SUGGEST IT HAD BEEN VANDALIZED?

10 MR. BARBER: OBJECTION, YOUR HONOR. THAT IS
11 LEADING AND CONCLUSIONARY.

12 THE COURT: I WILL SUSTAIN THE OBJECTION.

13 Q (BY MR. CHRISTENSEN) DID YOU SEE ANY OTHER DAMAGE
14 TO YOUR CAR?

15 A YES.

16 Q DESCRIBE IT FOR ME IF YOU WOULD.

17 A ON THE RIGHT SIDE JUST BEHIND THE FRONT WHEEL IT
18 HAD BEEN DENTED IN.

19 Q ALL RIGHT. COULD YOU TELL BY WHAT MEANS?

20 A NO.

21 Q ANYTHING ON TOP OF THE CAR?

22 A NO.

23 Q WHAT ELSE?

24 A ON THE LEFT SIDE ON THE VERY BACK SOMETHING HAD
25 HIT IT HARD ENOUGH TO CUT INTO IT.

1 Q AND WHERE WAS THAT LOCATED?

2 A ON THE LEFT SIDE IN THE BACK.

3 Q WHERE ON THE BACK?

4 A TOWARDS THE TOP JUST BEFORE IT GOES ONTO THE TRUNK.

5 Q COULD YOU TELL BY WHAT MEANS THAT HAD BEEN DONE?

6 A NO.

7 Q DID YOU EVER HAVE ANY REPORTS OF ACCIDENTS GIVEN
8 TO YOU BY ELROY?

9 A HE TOLD ME THE ONE THAT HAD BEEN CUT COULD HAVE
10 BEEN DONE AT -- WHERE HE PARKED IT AT WORK.

11 Q DID HE SAY ANYTHING ABOUT THAT?

12 A HE WAS GOING TO TRY TO GET BENNETTS TO FIX THAT.

13 Q BENNETTS GLASS?

14 A YES.

15 Q DID HE EVER INDICATE TO YOU OR REPORT TO YOU THAT
16 SOMEONE MAY HAVE INTENTIONALLY HAVE DONE THOSE THINGS?

17 A NO.

18 THE COURT: YOU ARE LEADING, MR. CHRISTENSEN.

19 Q (BY MR. CHRISTENSEN) AT BENNETTS GLASS, HOW LONG
20 WOULD YOU ESTIMATE THAT MR. TILLMAN WORKED THERE?

21 MR. BARBER: WELL, OBJECTION WITHOUT FOUNDATION,
22 YOUR HONOR.

23 THE COURT: SHE CAN ANSWER. THEN HE CAN LAY THE
24 FOUNDATION. THIS MIGHT BE A GOOD TIME FOR OUR 3:00 RECESS.

25 MR. CHRISTENSEN: THANK YOU, YOUR HONOR.

1 THE COURT: I AM GOING TO RECESS FOR TEN MINUTES.
2 I WANT TO SEE COUNSEL AFTER THE JURY IS OUT. AGAIN, I WILL
3 ADMONISH THE JURY TO SPEAK TO NO ONE, LET NO ONE SPEAK TO
4 YOU ABOUT ANY MATTER IN CONNECTION WITH THIS CASE. WE WILL
5 BE IN RECESS FOR TEN MINUTES.

6 (SHORT RECESS.)
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1 THE COURT: THE RECORD MAY SHOW ALL JURORS ARE
2 PRESENT. DEFENDANT IS PRESENT WITH COUNSEL. THE WITNESS IS
3 ON THE STAND. YOU MAY PROCEED, MR. CHRISTENSEN.

4 MR. CHRISTENSEN: THANK YOU.

5 Q CARLA, DID YOU EVER DRIVE TO THE UNIVERSITY OF UTAH?

6 A YES.

7 Q AND WHEN DID YOU DO THAT?

8 A MAYBE ABOUT FEBRUARY OF '82.

9 Q AND WHO WAS WITH YOU WHEN YOU WENT TO THE
10 UNIVERSITY OF UTAH?

11 A ELROY.

12 Q WERE YOU GOING THERE FOR ANY PARTICULAR PURPOSE?

13 A WE WERE LOOKING FOR A YELLOW DATSUN TRUCK, I THINK
14 IT WAS.

15 Q DID YOU EVER KNOW WHO THAT TRUCK BELONGED TO?

16 A NO.

17 Q DID YOU EVER FIND A YELLOW PICKUP TRUCK?

18 A NO.

19 Q DID THE TERM "KKK" EVER COME UP TO YOU OR
20 KLU-KLUX-KLAN?

21 A YES.

22 Q WHEN IN TIME DID THAT TERM COME UP?

23 A AROUND FEBRUARY OF '82.

24 Q AND HOW DID IT COME UP?

25 A ELROY HAD TOLD ME HE HAD BEEN GETTING NOTES THAT

1 WERE SIGNED BY THE KKK.

2 Q DID YOU EVER SEE ANY OF THOSE NOTES?

3 A NO.

4 Q WERE YOU EVER INSTRUCTED TO DO ANYTHING WITH

5 REGARD TO THOSE NOTES?

6 A HE READ ONE TO ME OVER THE PHONE. I WROTE IT DOWN,

7 AND I TYPED IT UP AND MADE SOME COPIES.

8 Q WHY DID YOU TYPE IT UP AND MAKE COPIES?

9 A ELROY TOLD ME THAT SOME OF THE GUYS THAT HE WORKED

10 WITH TOLD HIM TO DO THIS.

11 Q DID HE SAY WHY?

12 A TO SEE IF -- TO PUT THEM ON ALL THE OTHER PEOPLES'

13 DOORS OUT THERE.

14 Q DID HE EXPLAIN WHAT GOOD THAT WOULD DO OR WHY HE

15 WAS DOING THAT OR WANTED THAT DONE?

16 A I GUESS SO ALL THE OTHERS WOULD KNOW WHAT WAS

17 GOING ON.

18 Q DID YOU TYPE UP AND MAKE COPIES OF A NOTE?

19 A YES.

20 Q WHAT DID YOU DO WITH THOSE?

21 A I GAVE THEM TO ELROY.

22 Q DID YOU EVER SEE THEM AGAIN?

23 A NO.

24 Q DID YOU EVER MEET ELROY'S BOY?

25 A YES.

1 Q WHEN DID YOU MEET HIS BOY?

2 A DURING THE SUMMER OF '81.

3 Q WAS THERE A CONVERSATION HAD REGARDING
4 LORI GRONEMAN AND THAT BOY WITH YOURSELF AND ELROY?

5 A ELROY HAD TOLD ME THAT LORI HAD BEEN HASSLING HIM,
6 ASKING HIM QUESTIONS.

7 Q HASSLING WHOM?

8 A ELROY'S SON.

9 Q HOW OLD IS HIS SON?

10 A I THINK HE WAS ABOUT TEN.

11 Q DID YOU EVER HAVE ANY CONVERSATIONS WITH THE BOY?

12 A YES.

13 Q DID YOU EVER ASK THE BOY ABOUT THOSE CONVERSATIONS?

14 A NO.

15 Q DID YOU EVER HEAR THE NAME KIMMY, K-I-M-M-Y OR I-E?

16 A YES.

17 Q AND WHEN DID YOU FIRST HEAR THAT NAME?

18 A IT WAS AROUND THE LAST PART OF FEBRUARY, FIRST
19 PART OF MARCH.

20 Q '82?

21 A YES.

22 Q WHERE WERE YOU WHEN THAT CONVERSATION WAS HAD?

23 A IT WAS OVER THE TELEPHONE.

24 Q WITH WHOM?

25 A WITH ELROY.

1 Q WHAT WAS SAID ABOUT KIMMY?

2 A HE SAID KIMMY'S CAR WINDOWS HAD BEEN BASHED IN.

3 Q HAD YOU EVER MET KIMMY BEFORE?

4 A NO.

5 Q DID YOU EVER SEE THOSE WINDOWS BEING MASHED IN?

6 A NO.

7 Q DID YOU EVER HAVE YOUR WINDOWS MASHED IN?

8 A NO.

9 Q WERE YOU EVER PRESENT WITH OR OBSERVE ELROY
10 REPORTING THESE THINGS TO THE POLICE?

11 A HE TOLD ME THE POLICE HAD BEEN OUT THERE TO LOOK
12 AT THE CAR.

13 Q DID HE SAY WHICH AGENCY, WHICH POLICE AGENCY HAD
14 BEEN THERE?

15 A NO.

16 Q WAS THAT THE ONLY TIME YOU OBSERVED OR HAD ANY
17 CONVERSATION REGARDING HIS REPORTING THESE INSTANCES TO THE
18 POLICE?

19 A HE TOLD ME HE HAD REPORTED HIS THINGS BEING STOLEN.

20 Q DID YOU EVER SEE HIM DO THAT?

21 A NO.

22 Q DID YOU EVER SEE ANY POLICE REPORTS OR INCIDENT
23 REPORTS?

24 A NO.

25 MR. BARBER: OBJECTION, YOUR HONOR. I BELIEVE HE

1 IS LEADING AND ARGUMENTATIVE IN THIS WHOLE SERIES. MAY IT
2 BE STRICKEN?

3 THE COURT: SUSTAINED.

4 Q (BY MR. CHRISTENSEN) WITH REGARD TO THE INCIDENT
5 OF THE BOMB, WHEN YOU DROVE AROUND AND WENT TO THE TRUCK
6 AREA, DID YOU OBSERVE OR DID YOU YOURSELF EVER HAVE ANYTHING
7 TO DRINK OF AN ALCOHOLIC NATURE?

8 A NO.

9 Q DID YOU EVER OBSERVE MR. TILLMAN DRINK ANYTHING OF
10 AN ALCOHOLIC NATURE DURING THAT BOMB INCIDENT?

11 A NO.

12 Q ANYTHING THAT WOULD INTOXICATE HIM?

13 A NO.

14 Q OR YOURSELF?

15 A NO.

16 Q WHAT ABOUT WITH THE GUN ON THE FIRST TIME THAT YOU
17 WERE TO GO TO THE HOUSE AND SHOOT LORI AND MARK? DID EITHER
18 OF YOU HAVE ANYTHING TO DRINK?

19 A NO.

20 Q OR WERE YOU INTOXICATED IN ANY FASHION IN THOSE
21 DAYS?

22 A NO.

23 Q WHAT ABOUT WITH THE RAT POISON AND THE WEED POISON?

24 A NO.

25 Q ANY DRINKING ON THOSE OCCASIONS?

1 A NO.

2 Q ANY DRINKING ON THE OCCASIONS WHEN YOU WERE
3 PLANNING OR DISCUSSING THESE EVENTS, EITHER YOURSELF OR
4 MR. TILLMAN?

5 A NO.

6 Q DIRECTING YOUR ATTENTION TO THE DATE IN QUESTION,
7 MAY 25TH OF 1982, I BELIEVE IT WAS A TUESDAY. DID YOU GO TO
8 WORK ON THAT DAY?

9 A YES.

10 Q HAD YOU HAD ANY PLANS AS TO WHAT YOU WOULD DO OR
11 WHERE YOU WOULD GO THAT EVENING, MAY 25TH?

12 A NOT AT THE FIRST.

13 Q WERE YOU PLANNING ANY KIND OF TRIPS OUT OF TOWN?

14 A YES.

15 Q AND WHERE WERE YOU PLANNING TO GO TO?

16 A I WAS GOING TO SAN FRANCISCO.

17 Q AND HOW LONG WERE YOU TO BE GONE?

18 A THREE DAYS.

19 Q WHEN WERE YOU TO LEAVE?

20 A MORNING OF THE 26TH.

21 Q DID YOU HAVE ARRANGEMENTS TO TRAVEL DOWN THERE?

22 A YES.

23 Q AND HOW WERE YOU TO TRAVEL?

24 A ON THE AIRPLANE.

25 Q WHAT TIME DID YOU GET OFF WORK ON THE 25TH?

1 A 4.

2 Q WAS ELROY THERE WITH YOU?

3 A NO.

4 Q WHAT DID YOU DO WHEN YOU GOT OFF WORK?

5 A I TOOK THE BUS HOME.

6 Q AND WHEN YOU GOT HOME, WHAT HAPPENED?

7 A I STARTED PACKING.

8 Q AND DURING THE COURSE OF THE EVENING OR THE AFTER-
9 NOON, DID YOU MEET MR. TILLMAN?

10 A YES.

11 Q AND WHERE DID YOU MEET HIM?

12 A HE HAD COME UP TO MY PLACE.

13 Q DID HE HAVE A VEHICLE?

14 A YES.

15 Q WHAT TYPE OF VEHICLE WAS IT?

16 A HE HAD MY CAR.

17 Q THE BLACK OLDS'?

18 A YES.

19 Q FROM THERE WHERE DID YOU GO?

20 A I ASKED HIM IF HE WOULD TAKE ME DOWN WHERE I
21 WORKED TO PICK UP A GOVERNMENT CAR.

22 Q AND DID YOU DO SO?

23 A YES.

24 Q APPROXIMATELY WHAT TIME WOULD YOU ESTIMATE YOU
25 ARRIVED BACK AT WORK?

1 A 4:30, QUARTER TO 5.

2 Q AND WHEN YOU GOT THERE, DID YOU IN FACT PICK UP A
3 GOVERNMENT CAR?

4 A YES.

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RECEIVED U.S. DEPARTMENT OF JUSTICE

1 Q DO YOU KNOW WHAT KIND OF A CAR OR WHAT COLOR IT
2 WAS?
3 A A LIGHT GREEN. IT WAS A FAIRMONT.
4 Q AND DID THAT HAVE GOVERNMENT MARKINGS ON IT?
5 A YES.
6 Q WHO PICKED UP WHICH CAR?
7 A ELROY TOOK THE GOVERNMENT CAR AND I DROVE MINE
8 BACK HOME.
9 Q DID YOU GO BACK TO YOUR PLACE?
10 A YES.
11 Q AND FROM THERE WHERE DID YOU GO?
12 A AFTER I FINISHED PACKING I WENT OUT TO ELROY'S
13 PLACE.
14 Q ALL RIGHT. AND WHICH CAR DID YOU USE?
15 A I WAS IN MY CAR.
16 Q WHERE WAS THE GOVERNMENT CAR?
17 A ELROY HAD TAKEN IT OUT TO HIS PLACE.
18 Q WHEN YOU GOT OUT TO HIS PLACE, WHERE IS THAT LOCATED?
19 A IN BOUNTIFUL
20 Q DO YOU KNOW THE NAME OR THE ADDRESS?
21 A I THINK IT WAS CALLED THE GARDEN APARTMENTS.
22 Q HAD YOU BEEN THERE BEFORE?
23 A YES.
24 Q DID MR. TILLMAN HAVE ANY ROOMMATES?
25 A YES.

1 Q DO YOU KNOW THEIR NAMES?
2 A MARK.
3 Q DO YOU KNOW HIS LAST NAME?
4 A I DIDN'T KNOW IT THEN. I KNOW IT NOW.
5 Q ALL RIGHT. WHAT IS THAT?
6 A WELCH.
7 Q ANYONE ELSE AT THE APARTMENT WHEN YOU ARRIVED ON
8 THE 25TH?
9 A NOT AT THAT TIME.
10 Q WHAT DID YOU DO WHEN YOU WENT IN THE APARTMENT?
11 A I TOOK MY THINGS IN.
12 Q OKAY. HAD YOU PLANNED TO STAY OUT THERE THAT NIGHT?
13 A YES.
14 Q AND THEN WHAT TIME WERE YOU SUPPOSED TO BE AT THE
15 AIRPORT?
16 A IT WAS AROUND 11:00.
17 Q THE FOLLOWING MORNING?
18 A YES.
19 Q WHEN YOU GOT OUT THERE DO YOU RECALL WHAT TIME IT
20 WAS?
21 A IT WAS AROUND 6:30, 7:00.
22 Q WAS IT STILL LIGHT?
23 A YES.
24 Q AND BESIDES YOURSELF, WHO ELSE WAS AT THE APARTMENT?
25 A ELROY, MARK AND ANOTHER GUY CAME.

1 Q DID YOU HAVE A CONVERSATION WITH THEM?

2 A JUST SAID, "HI, HOW ARE YOU," THINGS LIKE THAT.

3 Q HOW LONG DID YOU STAY AT THE APARTMENT?

4 A JUST A FEW MINUTES. I NEEDED TO GET SOME THINGS
5 AT THE STORE.

6 Q AND DID YOU LEAVE TO DO THAT?

7 A YES.

8 Q DID ANYONE GO WITH YOU?

9 A ELROY.

10 Q WHICH CAR DID YOU TAKE AT THAT TIME?

11 A TOOK MY CAR.

12 Q WHICH STORE DID YOU GO TO?

13 A I WENT TO KMART.

14 Q AND DID YOU RETURN FROM KMART AFTER PROCURING
15 THOSE ITEMS?

16 A YES.

17 Q HOW LONG WOULD YOU ESTIMATE YOU WERE AT THE STORE?

18 A TWENTY MINUTES.

19 Q AND WHERE DID YOU RETURN TO?

20 A WE WENT BACK TO ELROY'S.

21 Q WHAT DID YOU DO WHILE YOU WERE AT ELROY'S?

22 A MARK HAD FIXED DINNER SO WE ATE.

23 Q AND HOW LONG DID THAT TAKE?

24 A TEN MINUTES. WE COULDN'T EAT.

25 Q ANY REASON WHY YOU COULDN'T EAT?

1 A JUST ALL THAT HAD BEEN GOING ON.
2 Q OKAY. AFTER YOU FINISHED EATING WHAT DID YOU DO?
3 A WE SAT AND TALKED FOR A WHILE.
4 Q COULD YOU GIVE ME AN ESTIMATE OF HOW LONG?
5 A HALF HOUR, 45 MINUTES.
6 Q AND THEN WHAT DID YOU DO?
7 A THEN ELROY ASKED ME IF I WANTED TO GO FOR A RIDE.
8 Q DID HE EXPLAIN OR ELABORATE ON WHAT HE MEANT BY
9 THAT?
10 A NO.
11 Q DID YOU GO FOR A RIDE?
12 A YES.
13 Q WHICH CAR DID YOU TAKE AT THAT TIME?
14 A THE GOVERNMENT CAR.
15 Q HAD YOU RECEIVED THE KEYS BACK FROM THE GOVERNMENT
16 CAR BEFORE THAT?
17 A NO.
18 Q AND WHAT HAPPENED WITH THE OTHER CAR? WHERE WAS
19 THAT?
20 A IT STAYED AT ELROY'S PLACE.
21 Q OKAY. AND DID ANYONE GO WITH YOU ON THE RIDE?
22 A NO.
23 Q WHEN YOU GOT IN THE CAR DID YOU BRING ANYTHING OR
24 SEE ANYTHING BE BROUGHT WITH YOU?
25 A I HAD MY PURSE WITH ME.

1 Q DID YOU HAVE ANY WEAPONS?
2 A YES.
3 Q WHAT DID YOU HAVE?
4 A I HAD A GUN.
5 Q WHICH GUN?
6 A THE THIRD GUN.
7 Q THE ONE THAT IS NOW ON THE TABLE THERE?
8 A YES.
9 Q ANYTHING ELSE?
10 A NO.
11 Q WHERE WAS THE GUN?
12 A IT WAS IN MY PURSE.
13 Q WHY DID YOU HAVE THE GUN?
14 A ELROY HAD GIVEN IT TO ME.
15 Q WHERE WERE YOU WHEN THAT TOOK PLACE?
16 A IN HIS BEDROOM.
17 Q AT HIS RESIDENCE?
18 A YES.
19 Q DID HE SAY ANYTHING ABOUT HANDING YOU THE GUN WHEN
20 YOU WERE THERE?
21 A HE TOLD ME TO TAKE IT BACK TO MY APARTMENT AND
22 HIDE IT.
23 Q OKAY, DO YOU KNOW IF THE GUN WAS LOADED AT THAT
24 TIME?
25 A I DON'T THINK IT WAS.

1 Q DID YOU EVER HAVE TO UNLOAD THAT GUN?

2 A NO.

3 Q PRIOR TO TURNING IT OVER TO THE POLICE?

4 A NO.

5 Q ANYTHING ELSE THAT YOU OBSERVED BY MEANS OF A
6 WEAPON THAT YOU BROUGHT WITH YOU?

7 A NO.

8 Q WHEN YOU GOT IN THE CAR DID YOU SAY ANYTHING TO THE
9 ROOMMATE OR THE OTHER FELLOW THAT WAS THERE AS TO WHERE YOU
10 WERE GOING?

11 A I DON'T THINK SO.

12 Q AND WHEN YOU GOT IN THE CAR DID ELROY OR YOU MAKE
13 ANY COMMENTS AS TO WHERE YOU WERE GOING?

14 A NO.

15 Q WHERE DID YOU HEAD TO?

16 A WE HEADED FOR MARK'S PLACE.

17 Q MARK SCHOENFELD?

18 A YES.

19 Q AND WHEN DID YOU DISCOVER THAT THAT IS WHERE YOU
20 WERE GOING?

21 A WHILE WE WERE HEADED FOR THAT DIRECTION, I KNEW
22 WHERE WE WERE GOING THEN.

23 Q DID YOU SAY ANYTHING ABOUT THAT?

24 A NO.

25 Q DID ELROY SAY ANYTHING ABOUT THAT?

1 A NO.

2 Q WHEN DID YOU HAVE YOUR FIRST CONVERSATION REGARDING
3 WHERE YOU WERE GOING?

4 A WHEN WE WERE TALKING AT HIS PLACE.

5 Q ALL RIGHT. WHO WAS PRESENT AT THAT TIME?

6 A JUST ELROY AND I.

7 Q WHERE WERE YOU LOCATED IN THE HOUSE OR THE
8 APARTMENT?

9 A IN THE LIVING ROOM.

10 Q WHAT DID YOU SAY OR WHAT DID HE SAY?

11 A HE TOLD ME, "TONIGHT HAD TO BE THE NIGHT."

12 Q DID HE EXPLAIN THAT OR MAKE ANY FURTHER COMMENTS
13 ABOUT THAT?

14 A NO.

15 Q DID YOU SAY ANYTHING BACK?

16 A I TRIED TO TALK HIM OUT OF IT.

17 Q WHAT DID YOU SAY?

18 A I DON'T KNOW THE EXACT WORDS BUT I JUST TRIED TO
19 TALK HIM OUT OF DOING IT.

20 Q OKAY. BUT YOU STILL LEFT ANYWAY?

21 A WELL, THEN HE SAID, "LET'S GO FOR A RIDE." I
22 DIDN'T KNOW WE WAS GOING THERE UNTIL WE STARTED HEADING
23 THAT DIRECTION.

24 Q AT THAT POINT IN TIME HOW DID YOU YOURSELF FEEL
25 ABOUT LORI GRONEMAN AND MARK SCHOENFELD?

1 A I DIDN'T FEEL ANYTHING TOWARDS THEM.

2 Q DID YOU HAVE ANY HATRED TOWARDS THEM?

3 A NO.

4 Q ANIMOSITY?

5 A I DIDN'T LIKE LORI HASSLING ELROY ALL THE TIME.

6 Q DID YOU WANT HER HURT?

7 A NO.

8 MR. BARBER: YOUR HONOR, HE IS LEADING.

9 THE COURT: YOU ARE, SIR.

10 Q (BY MR. CHRISTENSEN) AT THAT POINT IN TIME, CARLA,

11 HAD YOU SEEN PERSONALLY LORI HASSLE ELROY TILLMAN?

12 A NO.

13 Q OR MARK SCHOENFELD?

14 MR. BARBER: OBJECTION, YOUR HONOR, THIS

15 IS ARGUMENTATIVE.

16 MR. CHRISTENSEN: IT IS NOT ARGUMENTATIVE, YOUR

17 HONOR. IT IS VERY RELEVANT AND PROBATIVE TO THIS ISSUE.

18 THE COURT: PROCEED.

19 MR. CHRISTENSEN: THANK YOU.

20 THE WITNESS: WHAT WAS THE QUESTION AGAIN?

21 Q (BY MR. CHRISTENSEN) DID YOU AT THAT POINT IN TIME,

22 AS YOU WERE GETTING READY TO LEAVE TO GO TO MARK SCHOENFELD'S,

23 HAD YOU SEEN MARK SCHOENFELD DO ANYTHING TO ELROY IN ANY

24 FASHION?

25 A NO.

1 Q DID YOU KNOW WHEN YOU LEFT THAT YOU MAY BE INVOLVED
2 IN AN INCIDENT?

3 A I DID WHEN I KNEW WHAT DIRECTION WE WERE GOING IN.

4 Q HOW LONG DID IT TAKE YOU TO GET TO THE SCHOENFELD
5 RESIDENCE?

6 A ABOUT A HALF HOUR.

7 Q AND WHEN YOU GOT THERE WHERE DID YOU PARK?

8 A WE PARKED DOWN THE STREET.

9 Q ON WHICH STREET?

10 A 15TH SOUTH.

11 Q HOW FAR AWAY WOULD THAT HAVE BEEN FROM THE
12 SCHOENFELD RESIDENCE?

13 A IT WASN'T TOO FAR FROM IT.

14 Q WHAT DID YOU DO WHEN YOU GOT THERE?

15 A WE SAT AND WAITED.

16 Q WHAT TIME WOULD YOU ESTIMATE YOU GOT THERE?

17 A AROUND 8:00, 8:30.

18 Q WAS IT STILL LIGHT?

19 A YES.

20 Q DID YOU SEE ANYBODY AT THE SCHOENFELD RESIDENCE?

21 A NO.

22 Q DID YOU SEE ANY CARS THAT WERE FAMILIAR TO YOU AT
23 THE SCHOENFELD RESIDENCE?

24 A A SILVER CAR WAS THERE,

25 Q THE ONE YOU HAD LOOKED AT AT SPERRY UNIVAC?

1 A YES.

2 Q COULD YOU SEE ANY ACTIVITY INSIDE OR COULD YOU TELL
3 IF ANY ACTIVITY WAS GOING ON INSIDE MR. SCHOENFELD'S
4 RESIDENCE?

5 A NO.

6 Q ANY LIGHTS ON?

7 A YES.

8 Q DO YOU KNOW WHERE THEY WOULD HAVE BEEN LOCATED,
9 THE LIGHTS?

10 A THE LIVING ROOM.

11 Q YOU SAY YOU WAITED. HOW LONG DID YOU WAIT?

12 A MAYBE AN HOUR,

13 THE COURT: I NEED TO FIND SOMETHING OUT. WHERE
14 DID YOU PARK? WHERE WAS THE STREET WHERE YOU WERE PARKED
15 IN RELATION TO MR. SCHOENFELD'S HOME?

16 THE WITNESS: WE WERE ON THE SOUTH SIDE OF 15TH
17 SOUTH.

18 THE COURT: WELL, MA'AM, IS THERE -- LET'S --
19 THERE IS NO SUCH THING AS A 15TH SOUTH STREET STREET IN THAT
20 AREA. I WILL TAKE JUDICIAL KNOWLEDGE OF THAT. THE STREETS
21 ARE ALL NAMED.

22 Q (BY MR. CHRISTENSEN) DO YOU KNOW THE NAME OF THE
23 STREET?

24 A I DON'T KNOW THE NAME OF THE STREET.

25 THE COURT: ALL RIGHT, BUT WAS IT THE STREET

1 MR. SCHOENFELD'S HOUSE WAS ON? WAS IT NORTH OF HIS HOUSE OR
2 SOUTH OF HIS HOUSE OR WAS IT THE STREET THAT HIS HOUSE IS ON?
3 THE WITNESS: THE STREET HIS HOUSE WAS ON.
4 THE COURT: ALL RIGHT.
5 MR. CHRISTENSEN: AND MAYBE TO CLARIFY THAT, WAS
6 IT NORTH, SOUTH, EAST OR WEST OF THAT HOUSE?
7 THE WITNESS: WE WAS WEST OF IT.
8 Q (BY MR. CHRISTENSEN) ALL RIGHT. AFTER THE HOUR
9 HAD LAPSED, WHAT DID YOU DO?
10 A WE DROVE AROUND SOME MORE AND PARKED JUST ABOUT
11 ACROSS THE STREET ON THE OTHER SIDE OVER WHERE WE WERE BEFORE.
12 Q DO YOU KNOW WHICH ROAD THAT WOULD HAVE BEEN?
13 A THE SAME ONE.
14 Q OKAY. WERE YOU ANY CLOSER OR FURTHER FROM THE
15 RESIDENCE AT THAT POINT IN TIME?
16 A IT WAS ABOUT THE SAME DISTANCE.
17 Q DID YOU SEE ANY ACTIVITY DURING THAT PERIOD OF TIME
18 IN THE SCHOENFELD RESIDENCE?
19 A NO.
20 Q ANY CONVERSATIONS AT THAT POINT IN TIME?
21 A ELROY HAD SAID HE WAS GOING TO KNOCK MARK OUT WHEN
22 HE COME IN THE HOUSE.
23 Q DID HE SAY HOW HE WAS GOING TO ACCOMPLISH THAT?
24 A HE WAS GOING TO TRY TO GET INSIDE.
25 Q ANY OTHER CONVERSATIONS?

1 THE COURT: DID YOU HEAR, MR. BARBER?

2 MR. BARBER: NO, I DIDN'T, YOUR HONOR.

3 THE COURT: WOULD YOU READ THE ANSWER BACK,
4 MR. LEWIS? I COULDN'T HEAR IT EITHER.

5 (WHEREUPON, THE PENDING ANSWER WAS READ BY THE
6 COURT REPORTER.)

7 Q (BY MR. CHRISTENSEN) UP TO THAT TIME HAD HE TRIED
8 AT ALL TO GET INSIDE OR DID YOU?

9 A NO.

10 Q DID HE DO ANYTHING TO FOLLOW UP ON THAT CONVERSATION?

11 A HE HAD GOTTEN OUT OF THE CAR A COUPLE OF TIMES.

12 Q HAD YOU SEEN ANY ACTIVITY OR MOVEMENT OR DRIVING
13 AWAY OF VEHICLES AT THE SCHOENFELD RESIDENCE?

14 A NOT AT THAT TIME.

15 Q DID YOU SEE WHERE ELROY WENT WHEN HE GOT OUT OF THE
16 VEHICLE?

17 A NO.

18 Q DID YOU EVER GET OUT OF THE VEHICLE?

19 A NOT AT THAT TIME.

20 Q HOW LONG OF A TIME TRANSPIRED UNTIL YOU SAW
21 ACTIVITY AT THE SCHOENFELD RESIDENCE?

22 A AFTER WE GOT BACK FROM MY PLACE.

23 Q DID YOU AT SOME POINT IN TIME LEAVE TO GO TO YOUR
24 HOUSE?

25 A YES.

Q APPROXIMATELY WHAT TIME WOULD THAT HAVE BEEN?

A IT WAS AROUND 10:00 OR 10:30.

Q DID YOU AT ANY TIME BETWEEN 8:00 THAT NIGHT AND
12:00 THAT NIGHT IN THE MORNING, EVER RETURN BACK TO THE
GARDEN APARTMENTS?

A NO.

Q OR SEE MARK WELCH?

1 Q WHEN YOU WERE AT YOUR APARTMENT, WHAT DID YOU DO?
2 A I USED THE BATHROOM, AND I CALLED MY MOM.
3 Q WHAT DID YOU SAY TO YOUR MOM?
4 A I TOLD HER THAT SHE DIDN'T NEED TO COME IN AND GET
5 MY CAR.
6 Q ANYTHING ELSE?
7 A NO.
8 Q HOW LONG WERE YOU THERE?
9 A 15, 20 MINUTES.
10 Q WHILE YOU WERE THERE, DID YOU TURN ON ANY NEWS
11 STATIONS OR TELEVISION STATIONS OR LOOK AT THE CLOCK?
12 A NO.
13 Q DID YOU HAVE A WATCH ON?
14 A NO.
15 Q AFTER THAT 20 MINUTES OR SO HAD LAPSED, WHERE DID
16 YOU GO?
17 A WE WENT BACK UP TO MARK'S HOUSE.
18 Q AND WHERE DID YOU PARK THEN?
19 A WE DROVE PAST. WE SAW SOMEBODY GETTING INTO THE
20 CAR. WE WENT UP THE STREET AND PARKED.
21 Q DID YOU STILL HAVE THE GOVERNMENT CAR?
22 A YES.
23 Q WHICH CAR DID YOU SEE SOMEONE GET INTO?
24 A IT WAS THE SILVER CAR.
25 Q COULD YOU TELL WHO IT WAS?

1 A NO.

2 Q OR HOW MANY?

3 A IT LOOKED LIKE THERE WAS TWO.

4 Q COULD YOU TELL THEIR SEX?

5 A NO.

6 Q AT THAT TIME DID YOU HAVE A CHANCE TO LOOK AT THE
7 SCHOENFELD HOUSE UPSTAIRS TO SEE IF ANY LIGHTS WERE ON?

8 A AS WE DROVE BY THERE WAS A SMALL LIGHT ON.

9 Q COULD YOU TELL WHERE IN THE HOUSE IT WAS LOCATED?

10 A THE DINING ROOM AREA.

11 Q YOU INDICATED YOU DROVE BY. DID YOU PARK YOUR
12 VEHICLE?

13 A YES.

14 Q WHERE DID YOU PARK?

15 A EAST OF MARK'S HOUSE.

16 Q ON WHICH STREET?

17 A I DON'T KNOW THE NAME OF IT.

18 Q SAME STREET ONLY JUST EAST OF THERE?

19 A YES.

20 THE COURT: THE EAST-WEST STREET OR THE NORTH-SOUTH
21 STREET, MA'AM?

22 THE WITNESS: THE EAST-WEST STREET.

23 Q (BY MR. CHRISTENSEN) WHO WAS DRIVING AT THAT TIME?

24 A ELROY.

25 Q DID YOU STILL HAVE THE GUN?

1 THE COURT: LET'S GET HER PARKED. FIND OUT WHERE,
2 MR. CHRISTENSEN, THEY ARE STOPPED.

3 MR. CHRISTENSEN: WELL, I THINK SHE INDICATED THAT,
4 YOUR HONOR. DO YOU HAVE AN ADDRESS OF THAT?

5 THE COURT: LET'S FIND OUT WHERE SHE STOPPED,
6 PARKED.

7 Q (BY MR. CHRISTENSEN) DO YOU KNOW WHERE YOU
8 STOPPED, CARLA?

9 A IT WAS ON THE EAST STREET.

10 Q HOW FAR AWAY FROM SCHOENFELD'S PLACE?

11 A HALF A BLOCK.

12 Q DID YOU DO ANYTHING ONCE YOU GOT THE CAR STOPPED?

13 A WE GOT OUT.

14 Q WHERE DID YOU GO?

15 A WE WENT DOWN TO MARK'S HOUSE.

16 Q AND WHEN YOU GOT TO HIS HOUSE, WHERE DID YOU GO IN
17 RELATIONSHIP TO THE HOUSE?

18 A WE WENT TO THE BACK.

19 Q DO YOU RECALL WHAT THE BACK LOOKED LIKE?

20 A YES.

21 Q DESCRIBE IT FOR ME, PLEASE.

22 A THERE IS A GARAGE WITH A PATIO ON TOP OF IT.

23 Q AND WHAT ABOUT THE TERRAIN AROUND THE PATIO ITSELF,
24 DID YOU SEE ANY BUSHES OR TREES?

25 A THERE WAS BUSHES AROUND.

1 Q HOW HIGH OFF THE GROUND WAS THIS PATIO PORCH-TYPE
2 THING?

3 A OH, MAYBE FIVE AND A HALF, 6 FEET.

4 Q AND WHILE YOU WERE BACK THERE, DID YOU ACTUALLY GO
5 INTO THE YARD?

6 THE COURT: WHY DON'T YOU SHOW THE JURY THE
7 PICTURES YOU HAVE IN EVIDENCE AND LET THEM FIGURE IT OUT FOR
8 THEMSELVES, SEE FOR THEMSELVES. WE ARE WASTING A LOT OF
9 TIME HERE GETTING DESCRIPTIONS WHEN WE HAVE 14 JURORS THERE
10 THAT CAN SEE FOR THEMSELVES WHAT IS IN EVIDENCE.

11 Q (BY MR. CHRISTENSEN) CARLA, I SHOW YOU WHAT HAS
12 BEEN INTRODUCED AS STATE'S EXHIBIT 4 AND ASK IF YOU CAN
13 IDENTIFY THAT AREA.

14 A YES.

15 Q AND WHAT DOES THAT REPRESENT IN YOUR MIND'S EYE?

16 A THIS IS MARK'S HOUSE.

17 MR. CHRISTENSEN: ASK PERMISSION TO DISPLAY THAT
18 TO THE JURY, YOUR HONOR.

19 THE COURT: THEY HAVE BEEN RECEIVED IN EVIDENCE
20 WITH AN EXPLANATION AND AGREEMENT AS TO WHAT THEY SHOW.

21 Q (BY MR. CHRISTENSEN) CAN YOU HOLD THAT PICTURE UP
22 TO THE JURY, CARLA, AND SHOW THEM WHERE YOU WENT.

23 A WE WENT TO THE BACK RIGHT IN THIS AREA RIGHT HERE.

24 Q HOW LONG DID YOU STAY THERE?

25 A I STAYED THERE FOR QUITE A WHILE.

1 Q HOW LONG IS "QUITE A WHILE"?

2 A HOUR TO HOUR AND A HALF.

3 Q WHERE DID ELROY GO?

4 A HE HAD CLIMBED UP ONTO THE PATIO.

5 Q SHOW THE JURY, IF YOU WOULD, PLEASE.

6 A HE CLIMBED UP THE CORNER OF THE PATIO RIGHT HERE

7 AND WENT THROUGH THE BACK DOOR.

8 Q DID HE HAVE TO PRY THE DOOR?

9 A NO.

10 Q DID YOU SEE HIM GO INSIDE?

11 A YES.

12 Q COULD YOU SEE FROM THAT POINT ON WHAT HE DID WHEN

13 HE GOT INSIDE?

14 A NO.

15 Q HOW WAS HE DRESSED?

16 A HE WAS WEARING A LIGHT-BROWN JACKET, JEANS, I DON'T

17 KNOW, I DON'T REMEMBER WHAT SHOES HE WAS WEARING.

18 Q WHAT WERE YOU WEARING?

19 A I WAS WEARING A WHITE SWEATER, JEANS AND SOME BLUE

20 TENNIS SHOES.

21 Q HOW LONG DID YOU HAVE TO WAIT UNTIL YOU NEXT SAW

22 ELROY?

23 A HOUR TO AN HOUR AND A HALF.

24 Q DID YOU STAY IN THE BACKYARD?

25 A NO.

1 Q WHERE DID YOU GO?

2 A I WALKED AROUND, AND I WENT TO THIS GAS STATION
3 DOWN THE STREET, AND I TRIED CALLING, BUT I COULDN'T.

4 Q WHO DID YOU TRY TO CALL?

5 A MARK, MARK'S HOUSE.

6 Q SCHOENFELD?

7 A YES.

8 Q WHY DID YOU TRY TO CALL THERE?

9 A BECAUSE I DIDN'T KNOW WHAT HAD HAPPENED, IT WAS
10 TAKING SO LONG.

11 Q AT ANY TIME DURING THAT HOUR, HOUR AND A HALF OR
12 SO THAT YOU WERE WAITING AND WALKING AROUND, DID YOU EVER
13 SEE ANY VEHICLES RETURN TO THE RESIDENCE?

14 A I DIDN'T SEE ANY.

15 Q DO YOU KNOW IF ANY RETURNED?

16 A YES.

17 Q HOW DO YOU KNOW THAT?

18 A I WAS STANDING IN BACK, AND I HEARD ONE DRIVE UP.

19 Q WHAT ELSE DID YOU OBSERVE ABOUT THAT?

20 A I HEARD SOMEBODY GET OUT OF THE CAR.

21 Q COULD YOU TELL HOW MANY PEOPLE GOT OUT OF THE CAR?

22 A NO.

23 Q DID YOU HEAR ANYTHING ELSE?

24 A NO.

25 Q DID YOU REMAIN BACK THERE?

1 A YES.

2 Q DID YOU EVER PEEK OUT TO SEE WHO HAD COME?

3 A NO.

-1 4 Q DID YOU HEAR ANYTHING INSIDE DURING THAT TIME,
5 INSIDE THE SCHOENFELD HOUSE?

6 A NO.

7 Q DID YOU SEE ANYTHING INSIDE THE SCHOENFELD HOUSE?

8 A NO.

9 Q APPROXIMATELY HOW LONG DID IT TAKE AFTER YOU HEARD
10 THIS CAR DRIVE UP, THIS PERSON OR PERSONS GET OUT, UNTIL YOU
11 SAW ELROY?

12 A IT WAS ABOUT AN HOUR TO AN HOUR AND A HALF.

13 Q AFTER THE CAR DROVE UP?

14 A YES.

15 Q WHEN IN TIME DID YOU GO DOWN TO THE STORE OR THE
16 GAS STATION, BEFORE OR AFTER THE CAR DROVE UP?

17 A AFTER.

18 Q DID YOU EVER PLACE THAT CALL?

19 A NO.

20 Q ANY REASON WHY?

21 A I COULDN'T FIND HIS NAME IN THE PHONE BOOK.

22 Q DO YOU KNOW HOW TO SPELL HIS LAST NAME?

23 A I DID.

24 Q DID YOU GO BACK TO SCHOENFELD'S HOUSE?

25 A YES.

1 Q AND WHEN YOU GOT BACK, HOW LONG A TIME DID YOU
2 HAVE TO WAIT UNTIL YOU NEXT SAW ELROY?

3 A MAYBE ANOTHER HALF HOUR.

4 Q WHEN YOU SAW HIM, WHERE WERE YOU STANDING OR
5 POSITIONED?

6 A I WAS STILL IN THE BACK.

7 Q AND COULD YOU TELL FROM WHICH DIRECTION ELROY
8 CAME?

9 A HE CAME FROM AROUND THE FRONT.

10 Q DID YOU EVER SEE HIM COME BACK OUT THE BACK DOOR
11 AND WORK HIS WAY AROUND TO THE FRONT?

12 A NO.

13 Q WHEN HE CAME BACK, DID YOU HAVE A CONVERSATION?

14 A YES.

15 Q WHAT DID HE SAY OR WHAT DID YOU SAY?

16 A I ASKED HIM WHAT HAD TAKEN SO LONG.

17 Q DID HE GIVE YOU A REPLY?

18 A YES.

19 Q WHAT DID HE SAY?

20 A ELROY HAD SAID THAT HE DIDN'T GET A CHANCE TO DO
21 IT AT THE DOOR WHEN MARK CAME IN, AND THAT HE HAD GONE INTO
22 THE BEDROOM.

23 Q WHO HAD GONE INTO THE BEDROOM?

24 A MARK HAD GONE INTO THE BEDROOM AND WAS DOING SOME-
25 THING IN THE BEDROOM.

1 Q WHEN MR. TILLMAN CLIMBED UP ON THE PATIO, DID HE
2 HAVE OR DID YOU HAVE ANY WEAPONS AT THAT POINT IN TIME?

3 A YES.

4 Q WHAT DID YOU HAVE?

5 A I HAD MY PURSE WITH ME WHICH HAD THE GUN IN IT.

6 Q DID YOU SEE ANY OTHER WEAPONS OR POTENTIAL
7 WEAPONS?

8 A YES.

9 Q WHAT DID YOU SEE?

10 A I SAW AN AX.

11 Q WHO HAD THE AX?

12 A ELROY HAD IT.

13 Q HAD YOU SEEN THAT AX BEFORE?

14 A NO.

15 Q COULD YOU DESCRIBE IT FOR THE COURT NOW?

16 A IT WAS A SHORT-HANDLED ONE, HAD A WOODEN HANDLE
17 WITH TAPE WRAPPED AROUND THE END OF IT.

18 Q WHEN YOU SAY IT WAS A SHORT ONE, CAN YOU GIVE ME AN
19 IDEA BY HOLDING UP YOUR HANDS THE LENGTH THAT YOU ARE
20 TALKING ABOUT.

21 A IT WAS ABOUT LIKE THIS.

22 Q I ASK THE RECORD TO REFLECT BETWEEN 13 AND 15
23 INCHES, YOUR HONOR.

24 THE COURT: APPROXIMATELY, WOULD YOU AGREE TO THAT,
25 MR. BARBER?

1 MR. BARBER: THAT'S ALL RIGHT, YES.

2 Q (BY MR. CHRISTENSEN) HOW BIG WAS THE HEAD ON THE
3 AX, CARLA? YOU CAN HOLD YOUR HANDS UP FOR THAT IF YOU WANT
4 TO.

5 A A LITTLE BIGGER THAN A HATCHET HEAD.

6 Q DID YOU HANDLE THAT HATCHET OR AX AT ANY TIME THAT
7 EVENING?

8 A YES.

9 Q PRIOR TO ITS GOING INTO THE HOUSE?

10 A NO.

11 Q WHEN HE CLIMBED UP ON THE BALCONY, DID HE HAVE
12 THAT IN HIS HAND?

13 A NO.

14 Q DESCRIBE WHAT HAPPENED WITH THE AX AT THAT POINT
15 IN TIME.

16 A I WAS HOLDING IT AS HE CLIMBED UP, AND THEN I
17 HANDED IT TO HIM.

18 Q WHEN HE CAME BACK AND SAID THAT HE COULD NOT KNOCK
19 HIM OUT AT THE DOOR, DID HE HAVE THE AX WITH HIM AT THAT
20 POINT IN TIME?

21 A YES.

22 Q ANYTHING ELSE IN HIS HANDS?

23 A NO.

24 Q WHEN YOU HAD YOUR CONVERSATION WITH HIM AGAIN,
25 WHAT HAPPENED? HOW LONG DID YOU WAIT?

1 A WE HAD GONE BACK UP TO THE CAR AND SAT IN THE CAR.
2 Q FOR HOW LONG?
3 A FOR ABOUT A HALF HOUR.
4 Q DID YOU SAY ANYTHING THEN OR DID ELROY?
5 A ELROY SAID WE WAS GOING TO WAIT UNTIL MARK HAD
6 GONE TO SLEEP.
7 Q WERE THERE ANY LIGHTS ON IN THE HOUSE AT THAT TIME?
8 A NO.
9 Q DID YOU SEE ANY PERSONS COME UP OR DRIVE UP TO THE
10 HOUSE AT THAT POINT IN TIME?
11 A NO.
12 Q CAN YOU GIVE ME AN ESTIMATION AS TO WHAT TIME IT
13 WOULD HAVE BEEN THAT YOU WERE WAITING IN THE CAR?
14 A PROBABLY AROUND 1 TO 1:30.
15 Q DID YOU EVER RETURN BACK TO THE GARDEN APARTMENTS
16 OR BACK TO BOUNTIFUL DURING THAT TIME?
17 A NO.
18 Q OR TO YOUR APARTMENT?
19 A NO.
20 Q OR MOVE ANYWHERE?
21 A NO.
22 Q WHEN THAT TIME HAD LAPSED, WHAT DID YOU DO NEXT?
23 A WE WENT BACK DOWN TO THE HOUSE.
24 Q WHERE WAS YOUR PURSE, AND WHERE WAS THE AX?
25 A I LEFT MY PURSE IN THE CAR. ELROY HAD THE AX WITH

1 HIM.

2 Q DID YOU HAVE ANY FIREARMS OR OTHER WEAPONS WITH
3 YOU?

4 A NOT WITH ME.

5 Q WHERE WAS THE FIREARM?

6 A IT WAS IN MY PURSE.

7 Q WHEN YOU GOT DOWN TO THE SCHOENFELD RESIDENCE,
8 WHERE DID YOU GO?

9 A WE WENT IN THE FRONT DOOR.

10 Q I HAVE GOT A PICTURE THAT HAS BEEN INTRODUCED AS
11 STATE'S EXHIBIT 5. WOULD YOU TELL THE JURY, PLEASE, HOW YOU
12 WENT IN AND WHERE YOU WENT IN?

13 A WE WENT IN RIGHT HERE.

14 Q DID YOU HAVE TO PRY THE DOOR OR USE ANY KIND OF
15 DEVICE TO GET INSIDE THE DOOR?

16 A NO.

17 Q DESCRIBE FOR ME THE DOOR IN TERMS OF ITS OPENING
18 AND CLOSING.

19 A IT OPENED REAL EASY.

20 Q DID YOU HAVE TO INSERT ANY KEYS OR ANYTHING INTO
21 THE DOOR?

22 A NO.

23 Q TO YOUR KNOWLEDGE DID YOU HAVE ANY KEYS?

24 A NO.

25 Q WERE THERE ANY LIGHTS THAT YOU COULD SEE ON IN THE

1 RESIDENCE AT THAT TIME?

2 A NO.

3 Q WHAT DID YOU DO WHEN YOU GOT INSIDE?

4 A WE WAITED BY THE FRONT DOOR.

5 Q WHEN YOU SAY "WAITED," DESCRIBE THAT FOR ME.

6 A WE SAT ON THE FLOOR.

7 Q COULD YOU HEAR ANY NOISES INSIDE THE HOUSE?

8 A NO.

9 Q ANY IN THE BASEMENT?

10 A NO.

11 Q DID YOU CLOSE THE DOOR?

12 A YES.

13 Q ALL THE WAY?

14 A I REMEMBER IT COMING BACK OPEN, AND I TRIED
15 SHUTTING IT AGAIN.

16 Q DID YOU HAVE ANY DIFFICULTY CLOSING THE DOOR?

17 A YES.

18 Q DID YOU GET IT ALL THE WAY CLOSED?

19 A I DON'T KNOW.

20 Q HOW LONG DID YOU WAIT NEAR THE DOOR?

21 A IT SEEMS LIKE ABOUT AN HOUR.

22 Q AND THEN WHAT HAPPENED?

23 A THEN WE WENT TOWARDS THE BEDROOM DOOR.

24 Q WHEN YOU SAY "WE," BOTH OF YOU?

25 A YES.

1 Q DID YOU HAVE THE AX?

2 A YES.

3 Q WHO WAS HOLDING THE AX?

4 A ELROY WAS.

5 Q WERE YOU HOLDING ANYTHING AT ALL?

6 A NO.

7 Q WHEN YOU GOT TOWARDS THE BEDROOM DOOR, DID YOU
8 NOTICE WHETHER OR NOT IT WAS OPENED OR CLOSED?

9 A IT WAS CLOSED.

10 Q ALL THE WAY?

11 A YES.

12 Q WHAT DID YOU DO WHEN YOU GOT TO THE DOOR?

13 A WE TRIED TO OPEN IT.

14 Q YOU SAID ELROY TRIED TO OPEN IT?

15 MR. BARBER: OBJECTION. THAT IS MISSTATING THE
16 EVIDENCE WHICH MAKES IT MISLEADING FOR THE RECORD.

17 THE COURT: WHEN YOU GOT TO THE DOOR, WHAT DID YOU
18 DO?

19 Q (BY MR. CHRISTENSEN) WHAT DID YOU OBSERVE AT THE
20 DOOR, CARLA?

21 A ELROY TRYING TO OPEN IT.

22 Q AND WHEN HE TRIED, CAN YOU DESCRIBE FOR ME WHAT HE
23 DID TO TRY AND OPEN THE DOOR?

24 A THE DOOR WAS KIND OF STUCK.

25 Q SO WHAT HAPPENED?

1 A WHEN HE WENT TO OPEN IT, IT WOULD MAKE SOME NOISE,
2 SO HE JUST OPENED IT UP A LITTLE BIT AT A TIME.

3 Q HOW LONG WOULD YOU ESTIMATE IT TOOK YOU TO DO THAT?

4 A MAYBE TEN MINUTES.

5 Q DID YOU HAVE ANYTHING ON YOUR HANDS AT THAT TIME?

6 A NO.

7 Q DID ELROY?

8 A YES.

9 Q WHAT DID HE HAVE ON HIS HANDS?

10 A HE HAD GLOVES ON.

11 Q DID YOU HAVE ANY GLOVES ON?

12 A NO.

13 Q DID YOU TOUCH ANYTHING THAT WOULD LEAVE PRINTS?

14 A NO.

15 Q HOW DID YOU ACCOMPLISH THAT?

16 A I PUT MY HAND UP INSIDE MY SWEATER.

17 Q WHOSE IDEA WAS THAT?

18 A ELROY'S.

19

20

21

22

23

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25

1 Q WHAT DID HE SAY ABOUT THAT?

2 A HE TOLD ME IF I WAS TO TOUCH ANYTHING TO PUT MY
3 HAND UP INSIDE MY SWEATER.

4 Q DID YOU DO THAT ON ANYTHING YOU TOUCHED INSIDE THE
5 HOUSE?

6 A YES.

7 Q COULD YOU DESCRIBE FOR ME THE GLOVES THAT ELROY
8 WAS WEARING?

9 A THEY WERE DARK BROWN CLOTH.

10 Q DO YOU KNOW WHERE THOSE GLOVES HAD BEEN OBTAINED
11 FROM?

12 A NO.

13 Q ALL RIGHT. YOU GOT THE DOOR OPENED I ASSUME?

14 A YES.

15 Q AND WHAT DID YOU DO ONCE IT WAS ACTUALLY OPEN?

16 A IT WAS DARK IN THERE AND WE COULDN'T SEE ANYTHING
17 SO ELROY WENT OVER TO THE KITCHEN AND WE SWITCHED THE LIGHT
18 ON AND OFF.

19 Q WHAT ELSE?

20 A THEN HE CAME BACK TO THE BEDROOM DOOR, HE GOT ON
21 HIS HANDS AND KNEES,

22 Q WHAT DID YOU DO?

23 A I WAS STILL STANDING JUST OUTSIDE THE DOOR.

24 Q ALL RIGHT. WHAT DID YOU OBSERVE HIM DO?

25 A I SAW HIM CRAWL INSIDE.

1 Q ALL RIGHT. COULD YOU SEE INTO THE ROOM?
2 A YOU COULD SEE IN THERE BUT COULDN'T SEE ANYTHING.
3 Q COULD YOU TELL WHERE THE FURNITURE WAS LOCATED IN
4 THE ROOM?
5 A NO.
6 Q SO WHAT DID YOU OBSERVE ELROY DOING WHILE HE WAS
7 CRAWLING?
8 A HE WENT INSIDE AND THEN I HEARD HIM WHISPER MY
9 NAME. SO I GOT DOWN ON MY HANDS AND KNEES AND I JUST CRAWLED
10 IN FAR ENOUGH TO GET MY HEAD AROUND THE DOOR.
11 Q ALL RIGHT. DID YOU SAY ANYTHING BACK?
12 A I SAID, "I CAN'T SEE YOU," AND HE TOLD ME TO GO
13 TURN THE KITCHEN LIGHT ON.
14 Q WHAT DID YOU DO?
15 A I CRAWLED BACK OUT, STOOD UP AND I WENT AND TURNED
16 THE KITCHEN LIGHT ON.
17 Q AND WHEN YOU DID THAT WHAT DID YOU OBSERVE?
18 A I DIDN'T SEE ANYTHING.
19 Q DID YOU HEAR ANYTHING?
20 A YES.
21 Q WHAT DID YOU HEAR?
22 A I HEARD HIM HIT MARK.
23 Q COULD YOU TELL HOW MANY TIMES?
24 A ONCE.
25 Q HOW FAR AWAY WERE YOU, WOULD YOU ESTIMATE YOU WERE,

1 WHEN YOU HEARD THAT NOISE?

2 A JUST A FEW FEET AWAY FROM THE BEDROOM DOOR.

3 Q WHAT DID YOU DO AFTER YOU HEARD THAT NOISE?

4 A I STAYED IN THE KITCHEN FOR A FEW MINUTES.

5 Q WHAT DID YOU DO NEXT?

6 A I TURNED THE LIGHT BACK OFF.

7 Q WHAT NEXT?

8 A I WENT OVER JUST OUTSIDE THE BEDROOM DOOR.

9 Q DID YOU SEE ANYTHING AT THAT POINT?

10 A YES.

11 Q ALL RIGHT. HOW COULD YOU SEE AT THAT POINT?

12 A THE LIGHT IN THE BEDROOM HAD BEEN TURNED ON.

13 Q WHO TURNED THE LIGHT ON?

14 A I DIDN'T SEE ELROY DO IT BUT I AM SURE HE DID IT.

15 Q WHEN YOU LOOKED INSIDE WHAT DID YOU OBSERVE?

16 A I SAW ELROY WIPING THE WALL OFF WITH A TOWEL.

17 Q WHERE WAS THE WALL LOCATED?

18 A THE WALL BEHIND THE BED,

19 MR, CHRISTENSEN: DO YOU HAVE THE PICTURES?

20 THE COURT: YOU HAVE THE DIAGRAM IN EVIDENCE OF THE
21 ROOM AND THE WHOLE FLOOR. THEY ARE NOT IN EVIDENCE.

22 Q (BY MR. CHRISTENSEN) I RECOGNIZE THAT. I SHOW
23 YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBIT 8, CARLA, AND
24 ASK YOU IF PORTRAYED IN THAT PICTURE IS THE WALL YOU ARE
25 REFERRING TO THAT WAS WIPED OFF.

1 A YES.

2 Q COULD YOU SEE ANY OTHER PERSONS INSIDE THAT ROOM?

3 A YES.

4 Q AND WHO DID YOU SEE INSIDE THAT ROOM?

5 A MARK WAS LAYING ON THE BED.

6 Q ALL RIGHT, DESCRIBE FOR ME HOW HE WAS LAYING.

7 A HE WAS LAYING DIAGONALLY ACROSS IT.

8 Q WAS HE CLOTHED?

9 A NO.

10 Q WERE THERE ANY SHEETS OR ANY OTHER TYPES OF
11 COVERINGS OVER HIS BODY?

12 A NO.

13 Q DID YOU HAVE A CHANCE TO OBSERVE OR LISTEN TO THE
14 BODY OF MR. SCHOENFELD AT THAT TIME?

15 A YES.

16 Q COULD YOU TELL WHETHER OR NOT HE WAS STILL ALIVE?

17 A YES.

18 Q HOW COULD YOU TELL?

19 A YOU COULD HEAR HIM BREATHING.

20 Q ALL RIGHT. WAS HIS BODY MOVING AROUND AT ALL?

21 A HE MOVED A LITTLE BIT,

22 Q ALL RIGHT. DID ELROY DO ANYTHING AFTER HE WIPED
23 THE WALL?

24 A HE ASKED ME TO HAND HIM SOMETHING,

25 Q DO YOU RECALL WHAT THAT WAS?

1 A IT WAS SOMETHING LAYING ON THE FLOOR, A PIECE OF
2 CLOTHING.

3 Q ALL RIGHT. DID YOU SEE WHAT HE DID WITH THAT PIECE
4 OF CLOTHING?

5 A HE LAID IT OVER MARK'S HEAD.

6 Q DID HE SAY WHY?

7 A NO.

8 Q WHAT DID YOU OBSERVE TAKE PLACE NEXT?

9 A I HAD A FEELING HE WAS GOING TO HIT HIM AGAIN SO
10 I TURNED AROUND AND WALKED OUT.

11 Q ALL RIGHT. WHEN YOU SAY YOU HAD A FEELING, WHAT
12 DO YOU MEAN BY THAT? DID YOU SEE ANYTHING OR DID HE SAY ANYTHING?

13 A NO.

14 Q DID YOU WALK OUT?

15 A YES.

16 Q AND DID YOU OBSERVE ANYTHING ELSE TAKE PLACE UPON
17 DOING THAT?

18 A I DIDN'T SEE ANYTHING.

19 Q DID YOU HEAR ANYTHING?

20 A YES.

21 Q WHAT DID YOU HEAR?

22 A I HEARD HIM HIT HIM AGAIN.

23 Q ALL RIGHT. DO YOU KNOW HOW MANY TIMES?

24 A ONCE.

25 Q ALL RIGHT. WHAT DID YOU DO AFTER THAT?

1 A I WENT BACK INTO THE BEDROOM.
2 Q WAS THE LIGHT STILL ON?
3 A YES.
4 Q WHAT DID YOU OBSERVE AT THAT POINT IN TIME?
5 A ELROY HAD HANDED ME THE TOWEL AND THAT OTHER THING,
6 THE AX TO HOLD.
7 Q ALL RIGHT. AND DID YOU TAKE THOSE THINGS IN YOUR
8 HANDS?
9 A YES.
10 Q ALL RIGHT. WHAT DID YOU OBSERVE ELROY DO?
11 A THEN HE STARTED THE BED ON FIRE.
12 Q DO YOU KNOW WHAT MEANS HE USED TO DO THAT?
13 A WITH A CIGARETTE LIGHTER.
14 Q HAD YOU EVER SEEN THAT LIGHTER BEFORE?
15 A NO.
16 Q COULD YOU SEE OR OBSERVE WHERE HE STARTED THE
17 BED ON FIRE?
18 A IT WAS TOWARDS THE BOTTOM OF THE BED.
19 Q CAN YOU TELL ON WHICH SIDE OF THE BED?
20 A IT WOULD HAVE BEEN TOWARDS MY LEFT.
21 Q AS YOU ARE LOOKING INSIDE THE ROOM, CAN YOU GIVE
22 ME -- WELL, LET'S REFER TO THE DIAGRAM. IF YOU WOULD, CARLA,
23 I WILL ASK YOU TO APPROACH THE STAND AND APPROACH WHAT HAS
24 BEEN PREVIOUSLY MARKED AND INTRODUCED AS STATE'S EXHIBIT 20.
25 IF YOU WOULD, CARLA, I WILL ASK YOU TO MARK WITH A RED MARKER,

1 INDICATE FOR ME WHERE YOU WERE STANDING AND WHERE YOU OBSERVED
2 HIM TO IGNITE THE BED ON FIRE. IF YOU WANT TO DRAW A STICK
3 FIGURE OF YOURSELF WHERE APPROXIMATELY YOU WERE STANDING.

4 MR. BARBER: MAY I HAVE LEAVE, YOUR HONOR?

5 THE COURT: PARDON?

6 MR. BARBER: CAN I HAVE LEAVE TO COME OVER HERE
7 AND LOOK AT THIS?

8 THE COURT: YOU MAY, SIR.

9 THE WITNESS: I WAS STANDING APPROXIMATELY THERE.
10 (INDICATING.)

11 Q (BY MR. CHRISTENSEN) ALL RIGHT. WOULD YOU INDICATE
12 WITH AN "X" THE AREA THAT YOU OBSERVED THE FIRE FIRST STARTED?

13 A RIGHT HERE.

14 Q AND IS THAT THE ONLY LOCATION?

15 A YES.

16 Q DID YOU ATTEMPT TO SET FIRE TO THE BED AT ALL?

17 A NO.

18 Q DID YOU DO ANYTHING TO ASSIST IN IGNITING THE BED
19 ON FIRE?

20 A NO,

21 Q DID YOU AT ANY TIME HIT MARK WHILE YOU WERE IN THE
22 BEDROOM?

23 A NO.

24 Q OR TAKE ANY OTHER ACTIONS TOWARDS HIM WHILE YOU
25 WERE IN THE BEDROOM?

1 A NO.

2 THE COURT: ARE YOU GOING TO HAVE HER MARK ANY MORE?

3 MR. CHRISTENSEN: YES, I AM, YOUR HONOR. I AM GOING

4 TO ASK, IF YOU WOULD, TO INDICATE WHERE MR. TILLMAN WAS

5 STANDING WHEN HE PLACED THE ITEM OVER MR. SCHOENFELD'S HEAD.

6 THE WITNESS: HE WAS STANDING RIGHT HERE.

7 (INDICATING.)

8 Q (BY MR. CHRISTENSEN) WOULD YOU PUT AN "ET" THERE?

9 A (WITNESS COMPLIES.)

10 Q DID YOU SEE WHILE YOU WERE IN THE ROOM ANY OTHER

11 SIGNS OF FIRE THAT HAD TAKEN PLACE IN THAT ROOM, ANYWHERE IN

12 CONTEXT OF THIS BEDROOM AT ALL? ANY SIGNS OF ANY OTHER FIRES

13 THAT HAD BEEN THERE BEFORE THE BED WAS SET ON FIRE?

14 A NO.

15 Q HAD YOU BROUGHT ANYTHING WITH YOU TO START A FIRE

16 IN THAT BEDROOM?

17 A HE HAD BROUGHT A GAS CAN DOWN TO THE HOUSE WITH HIM

18 BUT HE LEFT IT OUTSIDE.

19 Q ALL RIGHT. INDICATE IF YOU CAN ON THAT DIAGRAM

20 WHERE THAT GAS CAN WAS LEFT.

21 THE COURT: I AM HAVING A VERY -- DID SHE SAY

22 INSIDE OR OUTSIDE?

23 MR. CHRISTENSEN: OUTSIDE, YOUR HONOR.

24 THE COURT: ALL RIGHT. WELL, THE DIAGRAM ONLY

25 SHOWS THE INSIDE, DOESN'T IT?

1 MR. CHRISTENSEN: IT HAS PORTIONS OF THE OUTSIDE
2 AS WELL.

3 THE COURT: ALL RIGHT.

4 Q (BY MR. CHRISTENSEN) IF YOU HAVE TO WRITE A
5 DIRECTION ON THAT, WRITE A DIRECTION WHERE THE CAN WAS AT.

6 A IT WAS ABOUT RIGHT HERE.

7 Q WOULD YOU PUT A "GC" THERE?

8 A (WITNESS COMPLIES.)

9 MR. CHRISTENSEN: YOU CAN RESUME THE STAND IF YOU
10 WOULD, CARLA.

11 YOUR HONOR, I PROMISED THE COURT I WOULD TRY TO
12 CONCLUDE BY 4:00 OR PROMISED TO THE JURY. THIS IS A CONVENIENT
13 TIME.

14 THE COURT: I TOLD YOU YOU MAY HAVE WHATEVER TIME
15 YOU NEEDED.

16 MR. CHRISTENSEN: I ANTICIPATE I AM GOING TO HAVE
17 A LITTLE LONGER THAN I ESTIMATED.

18 THE COURT: HOW LONG DO YOU ESTIMATE?

19 MR. CHRISTENSEN: ABOUT ANOTHER 20 MINUTES, PERHAPS.

20 THE COURT: I BELIEVE LET'S PROCEED AND LET YOU
21 FINISH WITH THIS WITNESS TODAY AND THEN WE WILL NOT -- I
22 PREFER YOU FINISH THEN WE CAN START CROSS-EXAMINATION TOMORROW.

23 MR. BARBER: YOUR HONOR, WOULD THE COURT CONSIDER
24 MAYBE JUST A FIVE MINUTE RECESS AT THIS POINT?

25 THE COURT: YES, I UNDERSTAND. I WILL JUST TAKE A

)

1 BREAK UNTIL ABOUT TEN MINUTES AFTER 4:00 AND, LADIES AND
2 GENTLEMEN, I ADMONISH YOU TO SPEAK TO NO ONE, LET NO ONE
3 SPEAK TO YOU AND WE WILL TAKE A RECESS UNTIL ABOUT TEN AFTER
4 4:00.

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1 THE COURT: THE RECORD MAY SHOW ALL THE JURORS ARE
2 PRESENT, THE DEFENDANT, WITNESS IS BACK. YOU MAY PROCEED,
3 MR. CHRISTENSEN.

4 MR. CHRISTENSEN: THANK YOU, YOUR HONOR.

5 Q CARLA, WHILE YOU WERE POSITIONED AT THE BEDROOM OF
6 MR. SCHOENFELD, DID YOU EVER SEE ANY CIGARETTES?

7 A YES.

8 Q AND WHERE DID YOU FIRST OBSERVE CIGARETTES?

9 A WHEN ELROY PUT THEM ON THE BED.

10 Q DID YOU SEE WHERE THOSE CAME FROM?

11 A THEY WERE ON A TABLE NEXT TO THE BED.

12 Q COULD YOU GIVE ME AN ESTIMATION OF HOW MANY WERE
13 PLACED ON THE BED?

14 A THREE OR FOUR.

15 Q DID HE DO ANYTHING TO THE CIGARETTES BEFORE
16 PUTTING THEM ON THE BED?

17 A NO.

18 Q DID YOU DO ANYTHING WITH REGARD TO CIGARETTES?

19 A NO.

20 Q DID YOU DO ANYTHING WITH REGARD TO ANY OF THE
21 OTHER CONTENTS OF MR. SCHOENFELD'S ROOM?

22 A NO.

23 Q HOW LONG WOULD YOU ESTIMATE IT TOOK FOR HIM TO
24 PLACE THE CIGARETTES ON THE BED?

25 A JUST LONG ENOUGH TO WALK AROUND TO THE OTHER SIDE

1 AND BACK.

2 Q WAS THE FIRE GOING AT THAT POINT IN TIME?

3 A IT SEEMED LIKE IT WAS SMOLDERING A LITTLE BIT.

4 Q DID YOU DO ANYTHING TO ENCOURAGE OR HASTEN THE
5 FIRE, EITHER YOURSELF OR DID YOU OBSERVE ANYTHING?

6 A NO.

7 Q ONCE THE CIGARETTES WERE POSITIONED, WHAT DID YOU
8 DO?

9 A THEN WE LEFT THE BEDROOM.

10 Q AND WHEN YOU LEFT, DID YOU DO ANYTHING WITH REGARD
11 TO THE LIGHTS OR THE DOOR?

12 A TURNED OFF THE LIGHT, SHUT THE DOOR.

13 Q WHEN YOU CLOSED THE DOOR OR PRIOR TO CLOSING THE
14 DOOR, DID YOU MAKE ANY OBSERVATIONS OF MR. SCHOENFELD OR HIS
15 BODY AT THAT POINT IN TIME?

16 A YES.

17 Q WHAT DID YOU OBSERVE?

18 A THERE WAS BLOOD ON HIS HEAD.

19 Q COULD YOU TELL WHETHER OR NOT HE WAS STILL ALIVE?

20 A YES, HE WAS.

21 Q HOW DO YOU KNOW?

22 A YOU COULD SEE HIM AND HEAR HIM BREATHING.

23 Q DID YOU MAKE ANY COMMENTS TO ELROY ABOUT THAT FACT
24 OR HE TO YOU?

25 A AS WE WAS LEAVING, ELROY ASKED ME IF HE SHOULD HIT

1 HIM AGAIN.

2 Q WHAT DID YOU SAY?

3 A I SAYS, "NO."

4 Q ANYTHING ELSE?

5 A ELROY SAID HE WANTED HIM DEAD.

6 Q DID YOU SAY ANYTHING BACK?

7 A AND I SAID THE FIRE WOULD PROBABLY DO IT.

8 Q FROM THERE WHERE DID YOU GO, WHICH WAY DID YOU
9 EXIT THE HOUSE?

10 A WE LEFT THROUGH THE FRONT DOOR.

11 Q PRIOR TO DOING SO DID YOU TAKE ANY PROPERTY WITH
12 YOU?

13 A NO.

14 Q WHEN YOU LEFT THE FRONT DOOR OR EXITED THE FRONT
15 DOOR, DID YOU OBSERVE WHETHER OR NOT IT WAS CLOSED?

16 A THE FRONT DOOR?

17 Q YES.

18 A I THINK IT WAS CLOSED.

19 Q AND WHO WAS THE LAST OUT?

20 A ELROY WAS.

21 Q DID YOU HAVE THE AX IN YOUR HAND AT THAT TIME?

22 A YES.

23 Q AND WHAT ELSE?

24 A THE TOWEL AND THAT OTHER PIECE OF CLOTHING.

25 Q DO YOU KNOW WHAT THAT OTHER PIECE OF CLOTHING WAS?

1 A NO.

2 Q WHERE DID YOU GO FROM THERE?

3 A WE WENT BACK UP TO THE CAR.

4 Q CAN YOU GIVE ME AN IDEA AT THAT POINT IN TIME WHAT
5 TIME IT WAS?

6 A IT COULD HAVE BEEN ABOUT 3 OR 3:30.

7 Q IN THE MORNING?

8 A YES.

9 Q WHEN YOU GOT TO THE CAR, WHERE DID YOU DRIVE TO
10 FROM THERE?

11 A WE GOT ON THE FREEWAY AND DROVE DOWN TO THE OLD
12 AIRPORT ROAD.

13 Q AND THEN WHAT DID YOU DO?

14 A WE TOOK A LITTLE CUTOFF ROAD, AND HE STOPPED, AND
15 HE BURNED THE TOWEL AND THAT OTHER THING.

16 Q WHERE WERE THE GAS CAN AND THE AX AT THAT POINT IN
17 TIME?

18 A I STILL HAD THE AX. I DON'T REMEMBER WHERE THE
19 GAS CAN WAS.

20 Q WHO DROVE?

21 A ELROY.

22 Q WHEN YOU LEFT THE BEDROOM DOOR OR LEFT THE AREA OF
23 THE BEDROOM DOOR, COULD YOU DESCRIBE FOR ME HOW MUCH OF ANY
24 SMOKE THERE WAS COMING FROM THE ROOM?

25 A THERE WAS FLAMES GOING THERE, THERE WAS SOME SMOKE

1 FILLING THE ROOM.

2 Q HAD IT PENETRATED OUT TO THE OTHER AREAS OF THE
3 HOUSE?

4 A NO.

5 Q WHEN YOU EXITED THE FRONT DOOR, COULD YOU OBSERVE
6 OR SMELL ANY SMOKE COMING OUT OF THE FRONT DOOR?

7 A NO.

8 Q WHERE IN PROXIMITY IS THE AREA WHERE THE ITEMS
9 WERE BURNED IN RELATIONSHIP TO WHERE YOU TESTED THIS BOMB
10 BACK IN MARCH OR APRIL?

11 A IT WAS THE SAME ROAD.

12 Q AND THAT'S THE ONE NEAR SPERRY?

13 A YES.

14 Q DID YOU LATER DIRECT OFFICER CHAPMAN TO THAT
15 LOCATION?

16 A YES.

17 Q AND WERE ITEMS OF PROPERTY SEIZED AND PLACED INTO
18 EVIDENCE FROM THERE?

19 A YES.

20 Q INCLUDING THE AREA OF THE BOMB?

21 A YES.

22 Q WHAT WAS DONE WITH THE AX?

23 A AFTER WE RETURNED FROM BURNING THOSE TWO THINGS,
24 DROVE UP TO --

25 MR. BARBER: YOUR HONOR, I COULDN'T UNDERSTAND THAT.

1 THE COURT: I DIDN'T HEAR IT EITHER.

2 (RECORD READ.)

3 Q (BY MR. CHRISTENSEN) WHERE DID YOU DRIVE TO WITH
4 THE AX, CARLA?

5 A WE DROVE UP TO REDWOOD ROAD WHERE THE RIVER RUNS
6 UNDER IT.

7 Q WHAT DID YOU OBSERVE TAKE PLACE THERE?

8 A WE STOPPED, AND ELROY GOT OUT AND THREW THE AX IN
9 THE RIVER.

10 Q DO YOU REMEMBER ANYTHING ABOUT THAT AREA THAT WOULD
11 SUGGEST TO YOU THE APPROXIMATE LOCATION IN THE RIVER OR NEAR
12 THE RIVER THAT THAT WAS THROWN?

13 A WE STOPPED RIGHT IN THE MIDDLE OF THE BRIDGE.

14 Q DID YOU SEE ANY PEOPLE AROUND THAT AREA AT THAT
15 TIME OF THE MORNING?

16 A THERE WAS A CAR COMING.

17 Q DID YOU THROW IT BEFORE OR AFTER?

18 A BEFORE THE CAR CAME, YES.

19 Q COULD YOU TELL WHERE IT STRUCK WHEN IT FINALLY
20 LANDED?

21 A I HEARD IT HIT SOME METAL. I DIDN'T SEE WHERE IT
22 WENT.

23 Q COULD YOU HEAR ANY SPLASHING OR ANYTHING?

24 A NO, I DIDN'T HEAR ANYTHING.

25 Q WHO THREW IT?

1 A ELROY.

2 Q DID YOU DISCARD ANYTHING ELSE THERE?

3 A NOT AT THAT TIME.

4 Q DID HE GET BACK IN THE CAR?

5 A YES.

6 Q WHERE DID YOU GO FROM THERE?

7 A WE STARTED TOWARDS BOUNTIFUL.

8 Q DID YOU DO ANYTHING WHILE YOU WERE DRIVING ALONG
9 THE WAY TO BOUNTIFUL?

10 A YES.

11 Q WHAT DID YOU DO?

12 A I THREW HIS GLOVES OUT THE WINDOW.

13 Q WHICH SIDE DID YOU THROW THEM OUT?

14 A ON THE PASSENGER SIDE.

15 Q DID YOU ALSO SHOW OFFICER CHAPMAN WHERE YOU THREW
16 THOSE GLOVES?

17 A YES.

18 Q AND WERE THOSE GLOVES RETRIEVED TO YOUR KNOWLEDGE?

19 A YES, I THINK THEY WERE.

20 Q WERE THOSE THE BROWN GLOVES YOU REFERRED TO?

21 A YES.

22 Q DID YOU EVER HAVE A PAIR OF GLOVES YOURSELF?

23 A NO.

24 Q ANYTHING ELSE THROWN OUT BY YOURSELF?

25 A NO.

1 Q FROM THERE WHERE DID YOU GO?

2 A WE WENT TO ELROY'S PLACE.

3 Q AND WHEN YOU GOT THERE, DO YOU RECALL WHICH DOOR

4 YOU CAME IN?

5 A WE WENT IN THE BACK DOOR.

6 Q WHEN YOU GOT INSIDE, DID YOU SEE OR HEAR ANYONE

7 INSIDE?

8 A NO.

9 Q COULD YOU DESCRIBE FOR ME HOW YOU ENTERED THE BACK
10 DOOR.

11 A ELROY HAD UNLOCKED IT, AND I WALKED IN FIRST.

12 Q CAN YOU DESCRIBE FOR ME THE NOISE THAT YOU CREATED
13 BY DOING SO, AT LEAST THE INTENSITY OF THE NOISE?

14 A I DON'T THINK WE HAD MADE ANY JUST WALKING IN.

15 Q DID ANYBODY CALL OUT TO YOU OR TALK TO YOU?

16 A NO.

17 Q WHERE DID YOU GO FROM THERE?

18 A WE WENT INTO HIS BEDROOM.

19 Q AND DID YOU REMAIN THERE THE REST OF THE NIGHT?

20 A YES.

21 Q WHAT TIME IN THE MORNING DID YOU GET UP?

22 A IT WAS ABOUT 7.

23 Q WHEN YOU GOT UP, DID YOU SEE ANYBODY THERE?

24 A NO.

25 Q DID YOU TALK TO ANYBODY THERE?

A NO.

1 Q DID YOU HAVE ANY OF YOUR LUGGAGE THERE?

2 A YES.

3 Q WHAT KIND OF LUGGAGE DID YOU HAVE THERE?

4 A I HAD ONE LARGE SUITCASE AND A SMALL BAG.

5 Q WHAT DID THEY LOOK LIKE?

6 A THE LARGE SUITCASE IS A SAMSONITE.

7 Q AND THE SMALL ONE?

8 A IT IS A SMALL CARRY-ON BAG.

9 Q WHAT TIME WOULD YOU ESTIMATE YOU LEFT HIS

10 APARTMENT?

11 A ABOUT A HALF HOUR LATER.

12 Q AND DID YOU LEAVE WITH ANYONE?

13 A NO.

14 Q DID YOU DRIVE A CAR AWAY FROM THERE?

15 A YES.

16 Q WHICH CAR DID YOU DRIVE?

17 A THE GOVERNMENT CAR.

18 Q WAS YOUR CAR STILL OUT THERE?

19 A YES.

20 Q AND WHERE DID YOU GO FROM THERE?

21 A I WENT DOWN TO MY APARTMENT.

22 Q AND FROM THERE WHERE DID YOU GO?

23 A FROM MY APARTMENT I WENT TO THE AIRPORT.

24 Q DID ELROY COME TO YOUR APARTMENT OR GO WITH YOU

25 TO THE AIRPORT?

1 A HE HAD COME UP TO MY APARTMENT.

2 Q AND DID HE STAY THERE OR DID HE GO WITH YOU?

3 A HE WENT -- HE WENT BACK TO HIS APARTMENT. I LEFT
4 MY SUNGLASSES THERE. HE WAS GOING TO GO GET THEM AND MEET
5 ME AT THE AIRPORT.

6 Q DID YOU GO TO THE AIRPORT?

7 A YES.

8 Q AND WHEN YOU GOT THERE WAS THERE ANYONE THERE
9 TO MEET YOU?

10 A NOT THEN.

11 Q ALL RIGHT. DID ANYONE COME THERE EVENTUALLY?

12 A YES.

13 Q WHO CAME?

14 A ELROY HAD COME AND MY PARENTS WERE THERE.

15 Q AND DID YOU INTRODUCE THEM TO ELROY?

16 A NO.

17 Q DID THEY SEE ELROY?

18 A YES.

19 Q AND DID YOU IN FACT GET ON THE PLANE?

20 A YES.

21 Q AND DID YOU ARRIVE AT YOUR DESTINATION IN
22 CALIFORNIA?

23 A YES.

24 Q DID ELROY ACCOMPANY YOU ON THAT TRIP AT ALL?

25 A I AM SORRY?

1 Q DID ELROY ACCOMPANY YOU ON THAT TRIP AT ALL?

2 A NO.

3 Q DID YOUR PARENTS?

4 A NO.

5 Q AND YOU INDICATED, I BELIEVE, YOU WERE DOWN THERE
6 ABOUT THREE DAYS?

7 A YES.

8 Q AND WHEN YOU CAME BACK DID YOU MAKE CONTACT WITH
9 THE POLICE?

10 A YES.

11 Q OR THEY WITH YOU?

12 A YES.

13 Q WHO MADE CONTACT WITH WHOM?

14 A THEY WERE WAITING FOR ME AT THE AIRPORT.

15 Q AND WHEN YOU SAY "THEY," DO YOU KNOW THE NAMES OF
16 THE OFFICERS?

17 A DET. CHAPMAN. I DON'T KNOW THE OTHER ONE'S NAME.

18 Q AND AS A RESULT OF QUESTIONING BY THEM, DID YOU
19 RELATE THE STORY THAT YOU HAVE TOLD TO THE COURT TODAY?

20 A NOT AT FIRST I DIDN'T.

21 Q DID YOU DISCUSS OR HAVE ANY PLANS WITH MR. TILLMAN
22 REGARDING THE EVENT OF THE POLICE COMING OR GETTING WIND OF
23 WHAT WAS GOING ON?

24 A ELROY HAD TOLD ME --

25 MR. BARBER: MAY WE HAVE FOUNDATION?

1 Q (BY MR. CHRISTENSEN) GIVE ME A DATE, IF YOU CAN,
2 OR THE TIME THIS CONVERSATION HAPPENED. WHEN DID THIS
3 CONVERSATION HAPPEN?

4 A WHEN HE HAD COME BACK TO MY APARTMENT.

5 Q OKAY. ON THE MORNING OF THE 26TH?

6 A YES.

7 Q WHAT WAS SAID?

8 A HE TOLD ME WHAT TO TELL THE POLICE.

9 Q WHAT DID HE SAY?

10 A ELROY TOLD ME TO SAY THAT WE WERE DRIVING UP AROUND --
11 IT IS CALLED PINEVIEW UP IN OGDEN CANYON AND THEN WE HAD
12 STARTED TOWARDS LOGAN. WE GOT PARTWAY THERE AND IT WAS
13 GETTING TOO LATE SO WE DECIDED TO TURN AROUND AND COME BACK.

14 Q ANYTHING ELSE YOU WERE INSTRUCTED TO DO?

15 A NO.

16 Q DID YOU EVER GO TO PINEVIEW ON THE EVENING OF THE
17 25TH OR THE MORNING OF THE 26TH OF MAY 1982?

18 A NO.

19 Q DID YOU EVER GO TO LOGAN?

20 A NO,

21 Q DID YOU EVER DRIVE IN THAT DIRECTION?

22 A NO.

23 Q WHEN YOU TOLD THE POLICE THAT, WAS IT A LIE?

24 A YES.

25 Q WHEN DID YOU TELL THEM THE TRUTH?

5
1 A THAT NIGHT THEY PICKED ME UP.
2 Q HOW LONG AFTER YOU TOLD THE LIE?
3 A MAYBE 45 MINUTES TO AN HOUR.
4 Q AND OFFICER CHAPMAN WAS ONE OF THE PEOPLE THAT YOU
5 TOLD THE LIE TO AND THE STATEMENT AS WELL?
6 A YES.
7 Q I AM GOING TO SHOW YOU WHAT HAS BEEN PREVIOUSLY
8 MARKED AS STATE'S EXHIBIT 14 AND ASK YOU TO MERELY LOOK
9 INSIDE THE SACK THAT IS THERE AND IF YOU COULD IDENTIFY THOSE
10 ITEMS OR CONTENTS INSIDE THE SACK, WOULD YOU SO INDICATE?
11 CAN YOU IDENTIFY EXHIBIT 14?
12 A IT COULD HAVE BEEN THE TOWEL, I DON'T KNOW.
13 Q THE TOWEL THAT YOU BURNED?
14 A YES.
15 Q AND STATE'S EXHIBIT 15, IF YOU WOULD LOOK INSIDE
16 THAT SACK, PLEASE, AND IDENTIFY THE CONTENTS OF THAT SACK.
17 A THOSE WERE THE KIND OF GLOVES HE WAS WEARING.
18 Q AND STATE'S EXHIBIT 12?
19 A I CAN'T IDENTIFY THIS ONE.
20 Q ALL RIGHT. STATE'S EXHIBIT 13?
21 A THAT WAS THE KIND OF GLOVE HE WAS WEARING.
22 Q DO THOSE APPEAR TO BE SIMILAR TO THE ONES YOU
23 DIRECTED OFFICER CHAPMAN TO?
24 A YES.
25 Q WHEN DID YOU GO BACK TO THE AREA OF THE SPERRY ROAD

1 AND THE AREA OF THE BOMB DEAL TO DO THAT?

2 A THAT SAME NIGHT THEY PICKED ME UP.

3 Q ALL RIGHT. AND TO THE AREA WHERE YOU THREW THE
4 GLOVES OUT, WHEN DID YOU DO THAT?

5 A THAT SAME NIGHT.

6 Q AND WERE THOSE ITEMS RETRIEVED ON THAT SAME NIGHT?

7 A I DON'T KNOW.

8 Q AND THAT WAS HOW MANY DAYS AFTER THE KILLING OF
9 MR. SCHOENFELD?

10 A THIS WOULD HAVE BEEN THE 28TH OF MAY.

11 Q DID YOU EVER SEE WHAT HAPPENED TO THE GAS CAN?

12 A NO.

13 Q ON THE DIAGRAM THAT HAS BEEN INTRODUCED AS STATE'S
14 EXHIBIT 20, THERE IS A CHARACTER OF WHAT PURPORTS TO BE THE
15 VICTIM AND THE POSITION OF THE VICTIM. I ASK YOU TO LOOK
16 AT THAT AND IF IT IS NOT AN ACCURATE AREA THAT YOU OBSERVED
17 THE VICTIM IN AT THE TIME WOULD YOU SO INDICATE TO THE COURT
18 THE POSITION YOU OBSERVED HIM IN?

19 A THAT IS ABOUT THE WAY HE WAS LAYING.

20 Q DID YOU EVER SEE ANY COVERS ON HIM?

21 A NO.

22 Q OR ANY BED CLOTHES?

23 A NO.

24 Q WHEN YOU WERE INSIDE THE HOUSE, CARLA, DID YOU
25 EVER HEAR ANYBODY FROM DOWNSTAIRS?

1 A NO.

2 Q STATE'S EXHIBIT 3, WHICH HAS BEEN INTRODUCED,
3 PURPORTS TO BE A SIDE VIEWING OF MR. SCHOENFELD'S HOUSE.
4 WOULD YOU SHOW THE JURY THE DOOR THAT YOU KNOCKED ON TO
5 CONTACT THE BASEMENT NEIGHBOR?

6 A YOU WALK DOWN TWO OR THREE STEPS RIGHT HERE AND
7 IT IS RIGHT TO THE LEFT.

8 Q CARLA, WHY DID YOU ALLOW THIS TO HAPPEN?

9 A MY FEELINGS FOR ELROY, AND AT ONE TIME HE TOLD ME
10 HE WAS A REVENGEFUL PERSON.

11 Q WHEN DID HE SAY THAT?

12 A OH, MAYBE A MONTH OR SO BEFORE THIS HAPPENED.

13 Q WHERE WERE YOU WHEN THAT CONVERSATION HAPPENED?

14 A WE WERE AT MY APARTMENT.

15 Q WHO ELSE WAS PRESENT?

16 A NO ONE.

17 Q WHAT WAS SAID?

18 A ELROY JUST SAID THAT HE WAS A REVENGEFUL PERSON.

19 Q ANY OTHER REASONS YOU CAN GIVE OR WANT TO GIVE?

20 A I THOUGHT THAT IF I DID TELL THAT HE MIGHT DO
21 SOMETHING TO ME.

22 Q HAD YOU HAD SEXUAL INTERCOURSE WITH ANY OTHER --
23 MR. BARBER: EXCUSE ME, YOUR HONOR. MAY WE HAVE
24 FOUNDATION ON THAT COMMENT?

25 MR. CHRISTENSEN: WHICH COMMENT? HERS OR MINE?

1 MR. BARBER: THE ONE SHE JUST MADE.

2 THE COURT: WHAT IS THE QUESTION, MR. CHRISTENSEN?

3 Q (BY MR. CHRISTENSEN) I BELIEVE IT IS HER LAST
4 ANSWER, YOUR HONOR, HE IS REFERRING TO.

5 YOU INDICATED HE WOULD GET EVEN WITH YOU OR
6 SOMETHING TO THAT EFFECT. DID YOU PICK THAT UP, BOB?
7 I DIDN'T GET THE ANSWER.

8 A HE TOLD ME HE WAS A REVENGEFUL PERSON.

9 Q AND THAT WAS THE TIME YOU HAVE INDICATED ALREADY?

10 A YES.

11 Q ALL RIGHT. DID YOU HAVE SEXUAL INTERCOURSE WITH
12 ANY OTHER MAN PRIOR TO ELROY?

13 A NO.

14 Q HAD YOU EVER BEEN MARRIED TO ANYONE ELSE?

15 A NO.

16 Q OR FOR THAT MATTER STEADILY HAD ANY KIND OF A
17 RELATIONSHIP WITH ANYONE ELSE?

18 A NOT FOR THAT LENGTH OF TIME.

19
20 MR. CHRISTENSEN: NO FURTHER QUESTIONS, YOUR HONOR.

21 THE COURT: LADIES AND GENTLEMEN OF THE JURY, I AM
22 GOING TO RECESS FOR THE EVENING. ANY REASON WHY WE SHOULDN'T
23 START AT 9:00 IN THE MORNING?

24 MR. CHRISTENSEN: I HAVE NONE, YOUR HONOR.

25 THE COURT: MR. BARBER?

1 MR. BARBER: I RECKON NOT, YOUR HONOR. THAT WILL
2 BE FINE.

3 THE COURT: I DO HAVE A VERY BRIEF HEARING
4 TOMORROW MORNING SET FOR 9:00. I HOPE THEY WILL BE IN HERE
5 BEFORE 9:00 BUT IF THEY COME AT 9:00 IT WOULDN'T TAKE MORE
6 THAN TEN MINUTES. SO THE JURORS WILL BE HERE AT APPROXIMATELY
7 9:00 READY TO GO AND IF MY OTHER MATTER IS -- WE'LL BE
8 VERY BRIEF AND IT IS SET AT 9:00 AND I WILL DO IT IN CHAMBERS.
9 SO I WILL HAVE THE JURY RETURN AT 9:00 AND IF I AM TEN MINUTES
10 LATE IT IS BECAUSE I DIDN'T GET THROUGH THE OTHER MATTER.
11 I CAN FINISH IT BY APPROXIMATELY TEN AFTER.

12 SO WE WILL RECESS THIS CASE UNTIL 9:00 A.M.
13 SUBJECT TO MY BEING LATER.

14 AGAIN, I WILL ADMONISH THE JURY TO SPEAK TO NO
15 ONE, LET NO ONE SPEAK TO YOU, DON'T DISCUSS THE CASE WITH
16 YOUR FAMILY OR WITH ANYBODY ELSE AND DON'T READ THE NEWS MEDIA
17 OR WATCH THE TV CONCERNING THE SAME. DON'T LOOK AT THE TV
18 OR READ THE NEWSPAPER ACCOUNTS OF WHAT WENT ON. YOU HAVE
19 HEARD AND YOU KNOW MORE THAN THEY DO, REALLY, BECAUSE YOU
20 HAVE HEARD THE WHOLE THING IN SEQUENCE.

21 WE WILL BE IN RECESS UNTIL 9:00 A.M. TOMORROW
22 MORNING.

23 (WHEREUPON, COURT WAS IN RECESS FOR THE EVENING.)

24 * * * *
25

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,

PLAINTIFF,

VS.

ELROY TILLMAN,

DEFENDANT.

ORIGINAL

CRIMINAL NO. CR-82-1081

TESTIMONY OF CARLA SAGERS (RESUMED)

JANUARY 7, 1983

BEFORE THE HONORABLE ERNEST F. BALDWIN, JR.,
DISTRICT COURT JUDGE

A P P E A R A N C E S:

FOR THE STATE OF UTAH:

MICHAEL CHRISTENSEN
VIRGINIA CHRISTENSEN
DEPUTY COUNTY ATTORNEYS
431 SOUTH 300 EAST
SALT LAKE CITY, UTAH 84111

FOR THE DEFENDANT:

JAMES N. BARBER
MARTIN VERHOEF
DAVID E. YOCOM
ATTORNEYS-AT-LAW
255 EAST 400 SOUTH
SALT LAKE CITY, UTAH 84111

FILED IN CLERK'S OFFICE
Salt Lake County Utah
NOV 22 1983

M. Dixon Hensley, Clerk 3rd Dist. Court
By *[Signature]* Deputy Clerk

FILED

SEP 14 1990

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Clerk, Supreme Court, Utah

ORIGINAL

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[Signature]
Clerk, Supreme Court, Utah
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PERCIVAL CO., SALT LAKE, U.T. 84103

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WITNESS

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CARLA SAGERS

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EXHIBITS

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>RECEIVED</u>
27	GUN	437	437
28	DRAWING OF WEAPON--GUN		375
29	DRAWING OF AX HEAD	441	441

1 SALT LAKE CITY, UTAH; FRIDAY, JANUARY 7, 1983

2 --00000--

3
4 THE COURT: THE RECORD MAY SHOW ALL THE JURORS ARE
5 PRESENT. DEFENDANT IS PRESENT WITH COUNSEL. THE STATE IS
6 PRESENT. WE HAD A WITNESS THAT HAD BEEN TURNED OVER TO THE
7 DEFENDANT FOR CROSS-EXAMINATION.

8 MR. BARBER: THANK YOU, YOUR HONOR.

9 THE COURT: YOU MAY PROCEED.

10
11 CROSS-EXAMINATION

12 BY MR. BARBER:

13 Q CARLA, YESTERDAY DURING YOUR DIRECT EXAMINATION,
14 CONVERSATION WAS HAD ABOUT YOUR CONTACT WITH
15 DETECTIVE CHAPMAN, WITH OTHER MEMBERS OF THE POLICE FORCE AND
16 WITH MR. CHRISTENSEN AND THE FACT THAT YOU HAVE BEEN GIVEN A
17 GRANT OF IMMUNITY FROM ANY PROSECUTION BASED UPON YOUR
18 ASSOCIATION WITH THE EVENT YOU HAVE BEEN TESTIFYING ABOUT; IS
19 THAT CORRECT?

20 A YES.

21 Q AND PRIOR TO STARTING THE QUESTION, I WOULD ASK YOU
22 IF YOU UNDERSTAND THE FOLLOWING, AND THAT IS, THAT IN ORDER
23 TO FOCUS YOUR ANSWERS AND DIRECT YOUR ATTENTION TO MATTERS
24 ABOUT WHICH I INTEND TO QUESTION YOU, I WILL PROBABLY HAVE TO
25 STATE A RECITATION OF WHAT I THINK YOU SAID IN YOUR DIRECT

1 TESTIMONY, YOU SEE, TO FOCUS THE INQUIRY. AND I WANT YOU TO
2 UNDERSTAND THAT WHEN I DO THAT, I AM NOT ATTEMPTING TO
3 CHANGE OR ALTER YOUR ANSWERS OR MISSTATE WHAT YOU SAID, AND
4 IF I DO THAT, I WOULD LIKE YOU TO CALL MY ATTENTION TO IT SO
5 I CAN CORRECT MYSELF OR YOU CAN CORRECT ME SO THAT WE HAVE
6 FOR THE JURY A CORRECT RECITATION OF WHAT YOUR UNDERSTANDING
7 OF THE FACTS ARE. ARE YOU WILLING TO DO THAT AND BE
8 CONSCIOUS THAT I AM NOT TRYING TO MISLEAD YOU?

9 A YES.

10 THE COURT: I WILL TELL THE JURY AND ADMONISH THE
11 JURY THAT ANY STATEMENT MADE BY COUNSEL IN THIS TRIAL UNLESS
12 MADE AS A STIPULATION IS NOT EVIDENCE, AND WHATEVER THEY SAY
13 SOMEBODY SAID IS NOT THE EVIDENCE. IT IS WHAT YOU, LADIES
14 AND GENTLEMEN, HEAR, WHAT YOU UNDERSTAND.

15 Q (BY MR. BARBER) THANK YOU, YOUR HONOR. NOW, IN
16 CONNECTION WITH THIS GRANT OF IMMUNITY, DID YOU NEGOTIATE OR
17 DISCUSS A NEED FOR IMMUNITY WITH MR. CHRISTENSEN BY YOURSELF
18 OR DID YOU HAVE ADVICE AND AID WITH RESPECT TO THAT?

19 A I DID IT BY MYSELF.

20 Q ALL RIGHT. DO YOU NOW HAVE COUNSEL THAT IS
21 ADVISING YOU?

22 A YES, I DO.

23 Q DID YOU HAVE HIM WHEN IT WAS AGREED THAT YOU WOULD
24 NOT BE PROSECUTED FOR ANYTHING YOU DID IN RESPECT WITH THIS
25 HOMICIDE?

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1 A NO.

2 Q ALL RIGHT. AT THE TIME YOU BEGAN TO ANSWER
3 QUESTIONS TRUTHFULLY AS THEY WERE PUT BY MR. CHRISTENSEN OR
4 DETECTIVE CHAPMAN, DID YOU FEEL THAT THERE WAS A BASIS UPON
5 WHICH YOU COULD BE PROSECUTED?

6 A YES.

7 Q AND THEREFORE I TAKE IT THAT YOU WERE UNWILLING TO
8 PROCEED CANDIDLY WITH THEM UNLESS YOU RECEIVED A GRANT OF
9 IMMUNITY OR SOME ASSURANCE YOU WOULDN'T BE INCRIMINATING
10 YOURSELF; IS THAT CORRECT?

11 A NO.

12 Q DID THE GRANT OF IMMUNITY COME AFTER YOU BEGAN TO
13 ANSWER CANDIDLY?

14 A YES.

15 Q BUT NEVERTHELESS, YOU DID LIE TO THE OFFICERS FOR
16 A PERIOD OF TIME ABOUT WHAT HAPPENED; IS THAT CORRECT?

17 A YES, I DID.

18 Q ALL RIGHT. CARLA, WHEN WAS THE FIRST CONTACT,
19 DIRECT OR INDIRECT, THAT YOU HAD WITH THE POLICE AFTER THE
20 MORNING OF MAY 26?

21 A THEY CALLED ME WHILE I WAS DOWN IN SAN FRANCISCO.
22 THAT IS THE FIRST TIME.

23

24

25

1 Q AND YOU HAD GONE DOWN THERE ON SOME KIND OF
2 CONVENTION IN CONNECTION WITH YOUR WORK, HAD YOU?

3 A YES.

4 Q AND WHAT HOTEL WERE YOU STAYING AT IN SAN FRANCISCO?

5 A IT WAS A TRAVELODGE SAN CARLOS IN BURLINGAME.

6 Q A TRAVELODGE IN BURLINGAME?

7 A IT WAS CALLED THE TRAVELODGE SAN CARLOS, BUT IT
8 WAS LOCATED IN BURLINGAME.

9 Q AND WHAT TIME OF DAY WAS IT THAT -- DID YOU TALK
10 TO THE OFFICER WHO CALLED?

11 A THEY CALLED BEFORE I EVEN GOT THERE. I TALKED TO
12 THEM THE NEXT DAY. THEY CALLED BACK.

13 Q WHAT TIME OF DAY WAS IT WHEN YOU BECAME AWARE THAT
14 YOU HAD BEEN -- THAT AN ATTEMPT HAD BEEN MADE BY THE POLICE
15 TO CONTACT YOU?

16 A I WAS TOLD THE DAY BEFORE THAT I TALKED TO THEM
17 THAT SOMEONE HAD TRIED TO CALL ME. I DIDN'T KNOW WHO IT WAS.

18 Q HOTEL PERSONNEL TOLD YOU THAT?

19 A THE PEOPLE WHERE I -- AT THE CONVENTION WHERE THEY
20 WAS HOLDING THE CONVENTION.

21 Q DO YOU KNOW WHAT TIME OF DAY THE FIRST INQUIRY FROM
22 THE POLICE CAME TO YOU?

23 A THAT I TALKED TO THEM?

24 Q NO, THAT THEY FIRST CALLED.

25 A NO, I DON'T.

1 Q NOW, WHEN YOU BECAME AWARE THAT THAT CALL HAD BEEN
2 MADE YOU KNEW, DID YOU NOT, YOU HAD NOTHING TO DO WITH
3 MARK SCHOENFELD, DID YOU? I MEAN, YOU DIDN'T KNOW HIM
4 SOCIALLY OR YOU HADN'T BEEN SOMEBODY THAT PEOPLE WERE AWARE
5 YOU HAD CONTACT WITH AT ALL?

6 A NO.

7 Q DID IT SURPRISE YOU THAT THE POLICE WERE CALLING
8 YOU?

9 A THAT SOON IT DID.

10 Q ALL RIGHT. WHEN YOU WENT TO MARK SCHOENFELD'S
11 HOUSE, ACCORDING TO YOUR TESTIMONY WITH MR. TILLMAN WITH THE
12 INTENTION OF KILLING HIM, DID YOU FEEL THAT UPON THE
13 DISCOVERY OF THAT ACT YOU WOULD PERSONALLY BE SUBJECTED TO
14 INQUIRY BY THE POLICE?

15 A YES.

16 Q AND BEFORE YOU WENT INTO THE PREMISES OF
17 MR. SCHOENFELD TO DO THAT ACT, DID YOU HAVE DISCUSSION WITH
18 ELROY ABOUT HOW YOU WERE GOING TO HANDLE IT?

19 A YES, THERE WAS SOME.

20 Q ALL RIGHT. AND OF COURSE YOU HAVE TESTIFIED THAT
21 THERE WAS A DISCUSSION AFTER, CORRECT, ABOUT HOW YOU WERE
22 GOING TO HANDLE IT AFTER THE HOMICIDE WAS COMMITTED?

23 A WHAT WE WAS GOING TO SAY, YES.

24 Q BUT DID YOU HAVE ANY DETAILED CONVERSATION WITH
25 MR. TILLMAN BEFORE THE HOMICIDE WAS COMMITTED IN TERMS OF

1 DIVERTING SUSPICION FROM YOU AND HIM?

2 A YES.

3 Q WHEN AND WHERE DID THAT OCCUR?

4 A AFTER IT HAPPENED, THE NEXT DAY.

5 Q ALL RIGHT. NOW, LET ME GET BACK AND IF YOU WILL
6 LISTEN TO MY QUESTION CAREFULLY, DID YOU HAVE ANY CONVERSATION
7 LIKE THAT BEFORE THE MURDER WAS COMMITTED?

8 A NO.

9 Q WAS THAT OF CONCERN TO YOU AS YOU ENTERED THE HOUSE?

10 A I HADN'T THOUGHT ABOUT IT THEN.

11 Q YOU HAD NOT THOUGHT ABOUT IT? WHEN YOU WENT INTO
12 THAT HOUSE, WERE YOU CONCERNED THAT YOU WERE GOING TO GET
13 CAUGHT FOR HAVING BEEN THERE?

14 A YES.

15 Q HAD YOU IN YOUR OWN MIND FORMULATED A PLAN BY WHICH
16 YOU WERE GOING TO DIVERT SUSPICION FROM YOURSELF?

17 A NO.

18 Q SO YOU WENT IN THERE CONCERNED BUT INSUFFICIENTLY
19 CONCERNED TO TAKE MEASURES AHEAD OF TIME TO PROTECT YOURSELF,
20 IS THAT CORRECT?

21 A YES.

22 Q ALL RIGHT. NOW, ACCORDING TO YOUR TESTIMONY, I
23 BELIEVE YOU MADE NO MORE THAN FOUR OR FIVE TOTAL PHONE CALLS
24 TO LORI GRONEMAN, HER WORK, OR MEMBERS OF HER FAMILY, IS
25 THAT CORRECT?

1 A THAT'S ALL I RECALL.

2 Q WELL, DO THE BEST YOU CAN TO THINK AND SEE IF YOUR
3 MEMORY ABOUT THAT IS ACCURATE, IF YOU CAN, REVIEW THOSE
4 THINGS, THOSE EVENTS IN YOUR MIND'S EYE AND GIVE ME YOUR
5 BEST ESTIMATE, EXPANSIVELY AS YOU CAN, ABOUT HOW MANY TIMES
6 YOU CALLED UP LORI OR HER FAMILY.

7 A FIVE OR SIX IS ALL I CAN REMEMBER.

8 Q YOU ARE FAIRLY CERTAIN ABOUT THAT?

9 A YEAH.

10 Q ALL RIGHT. CAN YOU RECALL THE DATE SPECIFICALLY
11 OF THE FIRST CALL?

12 A NOT SPECIFICALLY I CAN'T.

13 Q ALL RIGHT. DID YOU MAKE ANY OF THE CALLS THAT YOU
14 MADE TO LORI OR HER WORK OR HER FAMILY FROM ANY PLACE BESIDES
15 YOUR OWN APARTMENT?

16 A YES, I MADE SOME FROM WORK.

17 Q AND YOU TALKED ABOUT THOSE. WHAT THAT THE CALLS
18 YOU MADE TO HER WORK ON THE DAY THAT YOU WERE UNABLE TO REACH
19 HER?

20 A I DID TALK TO HER ONCE I THINK.

21 Q AND THEN THERE WERE A COUPLE OF CALLS BEFORE THAT
22 IN WHICH YOU --

23 A I LEFT THE MESSAGES, YES.

24 Q IN TERMS OF THE FIVE OR SIX CALLS THAT YOU MADE
25 THAT YOU JUST TALKED ABOUT, DID THEY INCLUDE THE TWO OR THREE

1 TIMES THAT YOU CALLED BUT FAILED TO GET AHOLD OF HER, OR
2 WERE THOSE TIMES THAT YOU ACTUALLY TALKED TO PEOPLE?

3 A WELL, FIVE OR SIX TIMES IS THE TIMES I ACTUALLY
4 GOT AHOLD OF SOMEONE.

5 Q ALL RIGHT. OTHER THAN THE CALLS THAT YOU JUST
6 EXPLAINED THAT YOU MADE FROM YOUR OWN WORK, DID YOU MAKE
7 ANY CALLS FROM ANY PLACE BESIDES YOUR OWN APARTMENT?

8 A I MADE ONE OF THEM FROM A PHONE BOOTH OUTSIDE MY
9 WORK.

10 Q OKAY, AND DID YOU REACH SOMEBODY ON THAT CALL?

11 A YES, I REACHED LORI.

12 Q AND WAS THAT WHEN SHE WAS AT HER WORK?

13 A YES.

14 Q AND WAS THE SUBSTANCE OF THAT CALL ONE OF THE
15 CONVERSATIONS THAT YOU'VE ALREADY REPORTED TO US?

16 A YES.

17 Q OTHER THAN THE ONE AT THE PHONE BOOTH OUTSIDE YOUR
18 WORK AND THE COUPLE THAT YOU MADE FROM INSIDE YOUR WORK, DID
19 YOU MAKE ANY CALLS FROM ANY PLACE OTHER THAN YOUR APARTMENT?

20 A NO.

21 Q WAS THE FIRST PHONE CALL THAT YOU MADE TO LORI OR
22 TO HER FAMILY IN MARCH, TO THE BEST OF YOUR RECOLLECTION?

23 A YES, AROUND THAT TIME.

24 Q AND WOULD YOU SAY, ACCORDING TO THE BEST OF YOUR
25 MEMORY, AND I UNDERSTAND THIS IS DIFFICULT, THAT IT WAS EARLY

1 IN MARCH?

2 A YES.

3 Q WAS THE CALL YOU MADE FROM THE PHONE BOOTH OUTSIDE
4 YOUR WORK ONE OF THE EARLIER CALLS OR ONE OF THE LATER ONES?

5 A IT WAS THE LAST ONE.

6 Q OKAY. WHEN DID YOU MAKE THE LAST CALL TO LORI OR
7 HER FAMILY?

8 A MAYBE THREE OR FOUR WEEKS BEFORE THE INCIDENT.

9 Q SO NOW WE ARE TALKING PROBABLY SOMEPLACE AFTER
10 THE 15TH OF APRIL AND PERHAPS AS LATE AS THE 1ST OF MAY?

11 A YES.

12 Q SO THOSE CALLS COVERED A PERIOD, MAY I ASSUME FROM
13 YOUR TESTIMONY, FROM BETWEEN SIX AND EIGHT WEEKS?

14 A YES.

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1 Q AND DURING THAT PERIOD THERE WERE ONLY FOUR OR
2 FIVE OCCASIONS ON WHICH YOU REACHED ANYBODY; IS THAT ALSO
3 CORRECT?

4 A YES.

5 Q ALL RIGHT. DID YOU VIEW THAT FOUR OR FIVE CALLS
6 OVER A PERIOD OF SIX OR EIGHT WEEKS AS HARASSMENT OF LORI,
7 REALLY?

8 A YES, THEY WERE HARASSMENT.

9 Q ALL RIGHT. DID YOU FEEL THAT HER CONCERN ABOUT
10 THE CALLS WHEN YOU TALKED TO HER WAS GETTING MORE SEVERE?

11 A WHAT I WAS SAYING?

12 Q NO. WHEN SHE RESPONDED -- YOU WOULD CALL HER UP
13 AND SAY WHATEVER YOU WERE GOING TO SAY. WHEN SHE WOULD
14 RESPOND, DID YOU FEEL SHE WAS BECOMING MORE CONCERNED AS
15 TIME PASSED?

16 MR. CHRISTENSEN: YOUR HONOR, I WILL OBJECT TO THE
17 FORM OF THE QUESTION REGARDING THAT. IT IS REQUESTING FOR
18 AN OPINION OF MISS SAGERS.

19 MR. BARBER: IT DOES.

20 THE COURT: I WILL SUSTAIN THE OBJECTION.

21 Q (BY MR. BARBER) ALL RIGHT. DID LORI SAY ANYTHING
22 TO YOU TO INDICATE WHETHER HER CONCERN WAS INCREASING AS THE
23 CALLS PROCEEDED?

24 A THE LAST CALL THAT I MADE I DIDN'T SAY ANYTHING.
25 SHE JUST CAME ON THE PHONE AND SAID THAT, "WHOEVER YOU ARE

1 AND WHOEVER YOU ARE MAKING THESE PHONE CALLS FOR, YOU ARE
2 JUST BEING USED, SO YOU BETTER QUIT DOING IT."

3 Q ALL RIGHT. "YOU ARE BEING USED"?

4 A THAT IS WHAT SHE SAID.

5 Q DID SHE TELL YOU BY WHOM?

6 A NO.

7 Q IN HINDSIGHT DO YOU BELIEVE THAT THAT PHRASE AS
8 USED BY HER COULD HAVE RELATED TO THE FACT SHE WAS
9 ATTRIBUTING THE CALLS TO ELROY?

10 A YES.

11 Q OKAY. HAD YOU GIVEN HER ANY REASON WHATSOEVER IN
12 ANY OF THE CALLS TO BELIEVE THAT ELROY WAS BEHIND THEM?

13 A NO.

14 Q IN FACT, IT IS TRUE, ACCORDING TO YOUR PRIOR
15 TESTIMONY, ISN'T IT, THAT YOU DELIBERATELY PHRASED YOUR
16 LANGUAGE IN THE CALLS AS IF TO INDICATE THAT THE CALLS WERE
17 AGAINST OR OPPOSED TO BOTH SHE AND ELROY?

18 A YES.

19 Q ALL RIGHT. NOW, WHEN IN RESPECT TO THE FIRST WEEK
20 OF MARCH OR SO DID THE FIRST CALL HAPPEN -- DID YOU HAVE
21 YOUR FIRST CONVERSATION WITH ELROY IN WHICH HE SUGGESTED THE
22 DEVICE OF MAKING ANONYMOUS PHONE CALLS FOR LORI?

23 A YES.

24 Q WHEN DID THAT OCCUR?

25 A OH, LAST PART OF FEBRUARY, FIRST OF MARCH,

1 SOMEWHERE AROUND THAT TIME.

2 Q WAS IT WITHIN A DAY OR TWO OF THE DATE THAT THE
3 FIRST CALL WAS MADE?

4 A YES.

5 Q OKAY. OR WAS IT THE SAME DAY?

6 A I DON'T REMEMBER.

7 Q OKAY. HARKING YOUR MEMORY BACK TO THAT
8 CONVERSATION IN WHICH PHONE CALLS WERE FIRST SUGGESTED, I
9 WOULD LIKE YOU TO TELL ME AS BEST YOU CAN RECALL EXACTLY
10 WHAT ELROY SAID AND WHAT YOU SAID.

11 A HE TOLD ME THAT LORI HAD DONE THIS TO THE SWAINS
12 BEFORE.

13 Q DONE WHAT?

14 A CALLED THEM AND HASSLE THEM.

15 Q OKAY.

16 A SO HE WAS GOING TO TRY THE SAME THING TO SEE IF HE
17 COULD LORI THINKING IT WAS THE SWAINS HASSLING HER TO GET
18 LORI OFF ELROY'S BACK.

19 Q ALL RIGHT. AND WHAT DID YOU SAY TO HIM IN RESPONSE
20 TO THAT?

21 A WELL, WHEN HE ASKED ME TO MAKE THE FIRST CALL, I
22 TOLD HIM I DIDN'T WANT TO.

23 Q ALL RIGHT. BUT GOING BACK AND REMEMBERING THE
24 CONVERSATION NOW, WHAT DID YOU SAY AFTER HE SAYS, "LISTEN, I
25 WANT YOU TO CALL LORI AND MAKE HER THINK THAT THE SWAINS ARE

1 HASSLING HER AND ME"? WHAT WAS YOUR LANGUAGE IN RESPONSE TO
2 HIM AS BEST YOU CAN RECALL?

3 A I DON'T REMEMBER WHAT I SAID.

4 Q OKAY. WAS IT SIMILAR TO WHAT YOU HAVE INDICATED
5 JUST RECENTLY, "WELL, I DON'T WANT TO DO IT"?

6 A WHEN HE ASKED ME TO MAKE THE FIRST CALL, YES.

7 Q ALL RIGHT. AND WHEN YOU SAID, "I DON'T WANT TO DO
8 IT," WHAT DID HE SAY IN RESPONSE TO THAT?

9 A HE SAID SOMETHING LIKE, "WELL, DO YOU WANT TO HELP
10 ME, DON'T YOU?"

11 Q OKAY. AND YOU SAID?

12 A I SAID, "YES."

13 Q AND THEN HE SAID?

14 A HE SAYS, "THEN DO THIS FOR ME."

15 Q AND YOU SAID?

16 A SO I DID.

17 Q OKAY. YOU SAID, "OKAY"?

18 A YES.

19 Q WAS THERE ANYTHING ELSE SAID IN THAT CONVERSATION?

20 A I DON'T REMEMBER ANYTHING ELSE.

21 Q OKAY. NOW, WHEN ELROY SAID WHAT HE SAID ABOUT WHY
22 HE WAS GOING TO DO THAT, GOING TO HAVE YOU CALL UP AND MAKE
23 LORI THINK THE SWAINS ARE BEING HASSLED BY SOMEBODY ELSE TO
24 GET LORI OFF MY BACK; IS THAT THE GIST OF WHAT HE WAS TELLING
25 YOU?

1 A YES.

2 Q DID YOU THINK THAT WAS STUPID?

3 A NOT THEN I DIDN'T.

4 Q DID ELROY AT ANY TIME TELL YOU HOW HE FIGURED THAT
5 CALLS WITH THE SUBSTANCE, LISTEN, WE ARE GOING TO GET YOU,
6 YOU AND YOUR BLACK BOYFRIEND, HOW THOSE CALLS HAD ANY LIKELI-
7 HOOD IN THE WORLD OF GETTING LORI TO STOP HASSLING HIM?

8 A WELL, SHE PUT HER MIND ON THE SWAINS TRYING TO GET
9 THEM OFF HER BACK AND QUIT HASSLING LORI.

10 Q DID YOU THINK THAT LORI WAS GOING TO QUIT HASSLING
11 ELROY AND COMMENCE HASSLING THE SWAINS BECAUSE YOU DID THAT?

12 A I DIDN'T KNOW WHAT SHE WOULD DO.

13 Q DIDN'T YOU ASK HIM THAT? SAY, "ELROY, WHAT GOOD IS
14 THIS GOING TO DO?" DID YOU EVER SAY ANYTHING LIKE THAT TO
15 HIM?

16 A I COULD HAVE. I DON'T REMEMBER.

17 Q YOU DON'T REMEMBER SAYING THAT. NOW, I WILL GO
18 BACK TO MY FIRST QUESTION ABOUT THAT SERIES. DID YOU THINK
19 WHAT YOU WERE DOING WAS REALLY STUPID?

20 A NO.

21 Q YOU THOUGHT IT MIGHT WORK?

22 A YES, I COULD HAVE.

23 Q OKAY. SO YOU MADE THE CALL THE BEGINNING OF MARCH,
24 CORRECT, THE FIRST ONE, PROBABLY?

25 A YES.

1 Q AND WHEN DID YOU MAKE THE SECOND ONE?

2 A MAYBE A WEEK LATER.

-1 3 Q OKAY. DID YOU MAKE THAT CALL IN RESPONSE TO
4 ANOTHER DIRECT REQUEST FROM ELROY?

5 A YES.

6 Q OKAY. AND DID YOU HAVE ANY CONVERSATION WITH
7 ELROY ABOUT WHETHER HASSLING OF HIM HAD CONTINUED DURING THE
8 WEEK BETWEEN THE FIRST AND SECOND CALL?

9 A FROM LORI, YOU MEAN?

10 A EXCUSE ME, WHAT DID I SAY? NEVER MIND, THAT
11 DOESN'T MATTER. I WILL REASK THE QUESTION. DID YOU HAVE
12 ANY CONVERSATION WITH ELROY IMMEDIATELY PRECEDING THE SECOND
13 CALL ABOUT WHETHER THE HARASSMENT FROM LORI HAD CONTINUED
14 BETWEEN THE FIRST AND SECOND CALL?

15 A NO, I DON'T THINK SO.

16 Q WHAT DID HE SAY IN THE CONVERSATION IN WHICH HE
17 REQUESTED YOU TO MAKE THE SECOND CALL?

18 A IF I REMEMBER RIGHT, THE SECOND ONE WAS ABOUT,
19 BETTER TELL YOUR BLACK FRIEND HE BETTER WATCH OUT, WE ARE
20 GOING TO GET HIM, SOMETHING TO THAT EFFECT.

21 Q OKAY. AND WHEN HE TOLD YOU THAT, YOU OUGHT TO RING
22 UP LORI AND TELL HER THAT, WHAT DID YOU SAY IN RESPONSE?

23 A WELL, I NEVER DID WANT TO MAKE THESE CALLS, BUT I
24 WENT AHEAD AND DID THEM.

25 Q PLEASE, CARLA, THAT ISN'T WHAT I ASKED YOU. I

1 ASKED YOU, WHAT DID YOU SAY IN RESPONSE WHEN HE TOLD YOU TO
2 DO THAT?

3 A I SAYS, "I DON'T WANT TO DO THAT."

4 Q OKAY. AND THEN WHAT DID HE SAY?

5 A JUST THE SAME THING. HE SAYS, "YOU WANT TO HELP
6 ME, DON'T YOU?"

7 Q SAME OLD CON? HE KIND OF CONNED YOU INTO DOING IT?

8 A YES.

9 Q ALL RIGHT. AND THEN WHAT DID YOU SAY?

10 A I SAYS, "I WOULD DO IT."

11 Q NOW, DURING THAT CONVERSATION DID YOU THINK TO ASK
12 ELROY, "BY THE WAY, ELROY, HAVE YOU BEEN HASSLED SINCE WE
13 MADE THE FIRST CALL, BY LORI?" DID YOU ASK HIM ABOUT THAT?

14 A I DIDN'T ASK HIM. HE TOLD ME THAT SHE WAS ALWAYS
15 CALLING HIS WORK.

16 Q OKAY. DID HE SAY THAT IN THE SAME CONVERSATION
17 YOU WERE JUST TALKING TO ME ABOUT OR WAS THAT SOME OTHER
18 TIME?

19 A IT WAS SOME OTHER TIME.

20 Q WAS IT BETWEEN THE FIRST AND SECOND CALL?

21 A I DON'T REMEMBER.

22 Q OKAY. BUT YOU DON'T REMEMBER ANY SPECIFIC INQUIRY
23 YOU MADE ABOUT WHETHER OR NOT THE FIRST CALL HAD DONE ANY
24 GOOD; IS THAT RIGHT?

25 A YES.

1 Q OKAY. WHEN HE SAYS, LISTEN, CALL UP AND SAY WHAT-
2 EVER YOU SAID IN THAT CALL, DID YOU THINK THAT WAS KIND OF A
3 DUMB THING TO SAY TO DISCOURAGE THAT HARASSMENT?

4 A NO, I DIDN'T THINK IT WAS DUMB.

5 Q YOU THOUGHT THAT MIGHT WORK ALL RIGHT?

6 A YES.

7 Q OKAY. NOW, HOW LONG WAS IT BEFORE YOU MADE THE
8 THIRD CALL?

9 A MAYBE FOUR TO FIVE DAYS AFTER.

10 Q OKAY. DID YOU HAVE ANY CONVERSATION WITH ELROY
11 BETWEEN THE SECOND AND THIRD CALL IN WHICH HE REPORTED THE
12 STATUS OF THE HARASSMENT FROM LORI?

13 A HE COULD. I WAS ALWAYS TALKING, YOU KNOW, I WOULD
14 TALK TO HIM EVERY DAY.

15 Q MOST EVERY DAY WAS HE COMPLAINING ABOUT LORI
16 BOTHERING HIM?

17 A YES.

18 Q OKAY. AND WHEN HE TOLD YOU TO MAKE THE THIRD CALL,
19 WHAT DID HE TELL YOU, AND THEN WHAT DID YOU SAY IN RESPONSE?

20 A SEEMED LIKE THE THIRD CALL WAS ABOUT HER CAR.
21 ELROY TOLD ME THAT SHE CALLED HIM UP AND ACCUSED HIM OF
22 PUTTING SUGAR IN HER GAS TANK.

23 Q OKAY. AND YOU WERE TO CALL AND ASK HER HOW HER CAR
24 WAS RUNNING?

25 A YES.

1 Q OKAY. DID YOU SUGGEST TO ELROY THAT YOU THOUGHT
2 THAT WAS KIND OF A DUMB THING TO SAY TO TRY TO GET LORI TO
3 QUIT HARASSING HIM?

4 A NO.

5 Q DID YOU THINK IT WAS A DUMB THING TO SAY?

6 A NO.

7 Q ALL RIGHT. BUT BY THE THIRD CALL YOU ALREADY KNEW
8 THAT THE FIRST TWO WERE FAILURES OR THOUGHT THAT, DIDN'T YOU?

9 A I DIDN'T THINK THAT.

10 Q WELL, HE WAS STILL COMPLAINING SHE HADN'T QUIT
11 HARASSING HIM, WASN'T HE?

12 A YES. APPARENTLY THEY DIDN'T WORK.

13 Q SO THEY WEREN'T TOO GOOD OF SUCCESSES, CORRECT?

14 A YES.

15 Q DID YOU ASK HIM ABOUT THAT AT ALL?

16 A I WOULD ASK HIM WHO HE THOUGHT HAD PUT THE SUGAR
17 IN THE GAS TANK.

18 Q WHAT DID HE SAY IN RESPONSE TO THAT?

19 A HE TOLD ME IT COULD HAVE BEEN THE SWAINS.

20 Q ALL RIGHT. DO YOU KNOW WHO DID IT?

21 A NO.

22 Q DID YOU EVER HAVE ANY EVIDENCE AT ALL TO THE EFFECT
23 THAT ELROY HAD DONE IT?

24 A NO.

25 Q ALL RIGHT. YOU DIDN'T DO IT, DID YOU?

1 A NO.

2 Q OKAY. HOW MUCH LATER WAS IT WHEN YOU MADE THE
3 FOURTH CALL? BY NOW I TAKE IT FROM YOUR NARRATIVE WE ARE
4 NEAR THE FIRST OF APRIL; IS THAT CORRECT?

5 A COULD BE, I DON'T REMEMBER.
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1 Q IS THAT YOUR BEST RECOLLECTION OF IT?

2 A YEAH.

3 Q OKAY. HOW LONG DID IT TAKE TO GET AROUND TO
4 MAKING THAT FOURTH ONE?

5 A I CALLED HER WORK BACK THE SAME DAY AND LEFT A
6 MESSAGE.

7 Q DID YOU TALK TO HER AGAIN THAT DAY?

8 A I DON'T THINK SO.

9 Q DID ELROY EVER SPECIFICALLY ASK YOU TO CALL BACK
10 THE SAME DAY AND CATCH HER AT WORK?

11 A YES.

12 Q WHAT DID HE SAY WHEN HE TOLD YOU TO DO THAT?

13 A HE SAID, "JUST KEEP TRYING TO GET HER, AHOLD OF
14 HER."

15 Q BUT YOU ALREADY TOLD HER, HADN'T YOU, ABOUT --
16 YOU ALREADY ASKED HER ABOUT HOW HER CAR WAS RUNNING?

17 A YES.

18 Q DID HE TELL YOU WHAT TO SAY WHEN HE CALLED BACK?

19 A THE SAME THING ABOUT HER CAR.

20 Q JUST KEEP BUGGING HER ABOUT THE CAR?

21 A YEAH.

22 Q YOU DIDN'T REACH HER ON THAT DAY, THOUGH?

23 A NO.

24 Q NOW LONG WAS IT BEFORE YOU TALKED TO SHE OR A
25 MEMBER OF HER FAMILY? I GUESS IT IS HER, TALKED TO HER OR A

1 MEMBER OF HER FAMILY AGAIN?

2 A OH, MAYBE ANOTHER WEEK LATER, TALKED TO HER FATHER.

3 Q AND THAT'S THE ONE WHERE YOU ASKED WHICH BOY
4 FRIEND HIS DAUGHTER WAS OUT WITH?

5 A YES.

6 Q NOW, IN RESPECT TO THAT CONVERSATION, HAD ELROY
7 SPECIFICALLY TOLD YOU WHAT TO SAY IN THAT CALL?

8 A YES. HE WAS AT THE APARTMENT WITH ME AT THAT CALL.

9 Q HE WAS THERE?

10 A YES.

11 Q AND WHAT DID YOU UNDERSTAND THE PURPOSE OF SAYING
12 THAT WAS IN RESPECT TO GETTING LORI TO LEAVE HIM ALONE?

13 A WELL, THAT ONE DIDN'T MAKE SENSE TO ME, THAT CALL.

14 Q DID YOU TELL ELROY THAT?

15 A NO.

16 Q WHY NOT?

17 A I DON'T KNOW, I DIDN'T.

18 Q NOW, ON YOUR DIRECT TESTIMONY, YOU SAID, DIDN'T
19 YOU, THAT YOU ASSUMED WHEN YOU UTTERED THE WORDS, "WHICH
20 BOY FRIEND IS LORI OUT WITH TONIGHT," OR SOMETHING TO THAT
21 EFFECT, THAT YOU WERE TALKING ABOUT MARK SCHOENFELD?

22 A YES.

23 Q WHY DID YOU ASSUME THAT?

24 A BECAUSE WE KNEW SHE WAS GOING WITH HIM, DATING
25 HIM.

1 Q SO WOULD IT BE FAIR TO SAY THAT THAT WAS SOMETIME
2 PROBABLY DURING MID-APRIL?

3 A YES.

4 Q AFTER YOU HAD ALREADY FOLLOWED HIM AROUND A FEW
5 TIMES AND GONE OUT AND CHECKED ON HIS CAR AND SO FORTH?

6 A YES.

7 Q ALL RIGHT. AND THEN WAS THERE ANY MORE CALLS
8 AFTER THAT?

9 A THAT LAST ONE WHERE I DIDN'T SAY ANYTHING, SHE JUST
10 SAID, "QUIT DOING IT TO WHOEVER IS USING YOU, SOMEBODY IS
11 USING YOU."

12 Q THAT WAS THE WHOLE SUM AND SUBSTANCE OF THIS
13 MASSIVE TELEPHONE BUSINESS, IS THAT CORRECT?

14 A YES.

15 Q WAS ELROY THERE WITH YOU ON ANY CALLS EXCEPT THE
16 ONE YOU JUST TOLD ME ABOUT?

17 A NO.

18 Q DID IT CONCERN YOU DURING THAT PERIOD THAT ELROY
19 SORT OF HAD THAT NAGGING AGGRAVATION WITH LORI?

20 A YES.

21 Q WHAT DID YOU BELIEVE ELROY'S RELATIONSHIP TO LORI
22 WAS DURING THAT PERIOD OF TIME?

23 A I BELIEVED THAT THEY HAD BROKEN UP. I ASKED HIM
24 WHY LORI WAS ALWAYS CALLING HIM AND WOULDN'T LEAVE HIM ALONE.
25 ELROY TOLD ME THAT SHE WANTED TO GET MARRIED AND HE DIDN'T.

1 LORI CALLED HIM UP AND SAID THAT SHE WAS NEVER GOING TO GIVE
2 HIM ANOTHER MOMENT'S PEACE OR SOMETHING LIKE THAT.

3 Q SHE SAID TO HIM -- HE REPORTED TO YOU --

4 A YES.

5 Q -- THAT SHE HAD CALLED AND SAID, "ELROY, I AM NEVER
6 GOING TO GIVE YOU A MOMENT'S PEACE"?

7 A YES.

8 Q WHEN DID HE TELL YOU THAT?

9 A I DON'T REMEMBER, IT IS JUST WHEN ALL THIS WAS
10 HAPPENING.

11 Q IT WAS DURING THAT SAME PERIOD?

12 A YES.

13 Q DO YOU KNOW THE MEANING OF THE TERM "LOVE/HATE"
14 RELATIONSHIP?

15 A I THINK SO.

16 Q DID YOU GET ANY FLAVOR OF THAT OUT OF ELROY'S
17 CONTINUING SAGA WITH LORI?

18 A YES.

19 Q DID YOU BELIEVE IN THE SPRING OF 1982 THAT ELROY
20 STILL HAD ROMANTIC INCLINATIONS TOWARD LORI?

21 A NO.

22 Q DID IT CROSS YOUR MIND THAT IF THERE WERE A LOVE/
23 HATE RELATIONSHIP THAT THERE WAS ANY POTENTIAL LIKELIHOOD
24 THAT HIS ROMANTIC INTEREST IN LORI MIGHT INCREASE AT SOME
25 POINT IN TIME IN THE FUTURE?

1 A I DON'T KNOW WHAT YOU MEAN.

2 THE COURT: I WAS GOING TO ASK MYSELF. I DON'T
3 UNDERSTAND THE QUESTION EITHER.

4 Q (BY MR. BARBER) DID YOU VIEW LORI AS A FUTURE
5 ROMANTIC THREAT?

6 A NO.

7 Q AT THAT TIME, MARCH AND APRIL OF 1982, WERE YOU
8 STILL IN LOVE WITH ELROY?

9 A I DON'T THINK SO.

10 Q OKAY. WHEN IN YOUR OWN MIND NOW DID YOU COMMENCE
11 TO FALL OUT OF LOVE WITH ELROY?

12 A WHEN HE STARTED TALKING ABOUT ALL THIS KILLING.

13 Q AND WHEN WAS THAT, THE FIRST TIME YOU REMEMBER
14 THAT?

15 A MARCH, SOMETIME IN MARCH.

16 Q EARLY, MIDDLE OR LATE, TO THE BEST OF YOUR
17 RECOLLECTION?

18 A THE MIDDLE OF MARCH MAYBE.

19 Q AND DID YOU: SUDDENLY FALL OUT OF LOVE WITH HIM OR
20 DID YOU JUST KIND OF TAPER DOWN IN TERMS OF YOUR EMOTIONAL
21 RELATIONSHIP OR TIE TO HIM?

22 A IT WOULD JUST TAPER DOWN.

23 Q HOW LONG DID IT TAPER RIGHT AWAY?

24 A DO WHAT? SAY THAT AGAIN.

25 Q WELL, I WILL ASK YOU ANOTHER QUESTION. DID YOU EVER

1 FALL COMPLETELY OUT OF LOVE WITH HIM?

2 A I DIDN'T LOVE HIM, BUT I STILL LIKED HIM. I JUST
3 COULDN'T TURN IT OFF LIKE A FAUCETT.

4 Q SURE. AND DOES THAT PERSIST EVEN TO TODAY?

5 A NO.

6 Q WHEN DID IT STOP?

7 A IT IS HARD TO SAY. AFTER ALL THIS HAPPENED.

8 Q DID IT STOP WHEN YOU STARTED TALKING TO
9 DET. CHAPMAN AND HE STARTED KIND OF OBJECTIVELY LAYING OUT
10 THE SITUATION WITH YOU?

11 A THERE IS STILL A LITTLE BIT THERE, YES.

12 Q BUT DID DET. CHAPMAN'S CONVERSATIONS WITH YOU HAVE
13 AN IMPACT ON YOUR OPINION OF ELROY AND YOUR RELATIONSHIP
14 WITH HIM?

15 A IT DIDN'T HAVE ANYTHING TO DO WITH HOW I FELT ABOUT
16 IT.

17 Q BUT HE DID TELL YOU, DIDN'T HE, "LISTEN, ELROY IS
18 A WASTE OF TIME, HE IS NOTHING BUT TROUBLE -- "

19 MR. CHRISTENSEN: I AM GOING TO OBJECT TO THE
20 QUESTION, YOUR HONOR.

21 THE COURT: IT WILL BE SUSTAINED.

22 Q (BY MR. BARBER) DID THE ACTUAL FACT THAT,
23 ACCORDING TO YOUR TESTIMONY, ELROY TILLMAN HAD COMMITTED A
24 MURDER VIRTUALLY IN YOUR PRESENCE DO ANYTHING TO YOUR VIEW
25 OF HIM AS A MAN AND YOUR POTENTIAL RELATIONSHIP WITH HIM IN

1 THE FUTURE?

2 A YES.

3 Q ALL RIGHT. DID THAT DO RELATIVELY MORE OR LESS TO
4 YOUR VIEW OF HIM THAN THE FACT THAT HE WAS TALKING ABOUT
5 COMMITTING A MURDER?

6 A HOW I FELT ABOUT HIM?

7 Q YES.

8 A YES.

9 Q YOU SAY YOU STARTED TO FALL OUT OF LOVE WITH HIM
10 WHEN HE STARTED TALKING ABOUT MURDER. WERE YOU SURPRISED
11 WHEN HE DID THAT?

12 A YES.

13 Q YOU NEVER HAD ANY OTHER BOY FRIENDS THAT WENT
14 AROUND TALKING ABOUT HOMICIDES ALL THE TIME, HAD YOU?

15 A NO.

16 Q WHAT DID YOU SAY TO ELROY -- LET ME BACK UP. I
17 BELIEVE IN YOUR DIRECT TESTIMONY YESTERDAY YOU SAID THAT WHEN
18 HE WAS TALKING ABOUT BUILDING THIS SILENCER HE SAID THAT
19 THE PURPOSE OF HIS MAKING IT WAS TO KILL MARK SCHOENFELD,
20 IS THAT CORRECT?

21 A YES.

22 Q AND DO YOU REAFFIRM THAT TODAY?

23 A YES.

24 Q DID HE TALK ABOUT KILLING ANYBODY BEFORE HE SAID
25 THAT IN RESPECT TO THE SILENCER?

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1 A YES.

2 Q ALL RIGHT. WHEN WAS THE FIRST TIME HE TALKED
3 ABOUT KILLING ANYBODY?

4 A IN MARCH, MAYBE THE LAST PART OF MARCH.

5 Q AFTER THE PHONE CALLS HAD STARTED?

6 A YES, IT SEEMED LIKE IT.

7 Q NOW, IF YOU WILL HARK YOUR MIND BACK TO THE FIRST
8 CONVERSATION YOU HAD WITH ELROY IN WHICH HE MENTIONED
9 KILLING SOMEBODY, THAT CONVERSATION HAD A SERIOUS IMPACT ON
10 YOU, DIDN'T IT?

11 A I DIDN'T TAKE HIM SERIOUSLY AT FIRST.

12 Q ALL RIGHT. WELL, THEN, LET'S GO BACK TO THE ONE
13 THAT DIDN'T BOTHER YOU QUITE SO MUCH BUT NEVERTHELESS THE
14 FIRST ONE. WHERE WERE YOU WHEN HE FIRST SUGGESTED THAT HE
15 WAS INTERESTED IN KILLING SOMEBODY?

16 A WHERE WAS I?

17 Q YES.

18 A IT WAS EITHER IN MY APARTMENT OR DRIVING DOWN TO
19 WORK.

20 Q ALL RIGHT. DURING THAT CONVERSATION, AND TAKING
21 IT FROM THE BEGINNING, IN TERMS OF THE MOTIVE AND THE KILLING
22 AND SO FORTH, WHAT DID HE SAY AND WHAT DID YOU SAY?

23 A HE STARTED TALKING ABOUT KILLING LORI FIRST.

24 Q ALL RIGHT. WHAT DID HE SAY?

25 A HE SAYS THE ONLY WAY TO SOLVE THE PROBLEM IS TO

1 GET RID OF THE PROBLEM.

2 Q BEFORE HE SAID THAT SPECIFIC PHRASE, HAD HE
3 MENTIONED LORI?

4 A YES.

5 Q AND WHAT DID HE SAY ABOUT LORI BEFORE HE MENTIONED
6 THE WAY TO SOLVE THE PROBLEM IS TO GET RID OF IT?

7 A I DON'T REMEMBER WHAT HE SAID.

8 Q ALL RIGHT. AND THEN WHAT DID YOU SAY WHEN HE SAID --
9 WELL, APPARENTLY THE GIST OF THE THINGS WAS, "I HAVE GOT A
10 PROBLEM WITH LORI AND THE WAY TO SOLVE IT IS TO GET RID OF
11 IT," IS THAT CORRECT?

12 A YES.

13 Q WHAT DID YOU SAY IN RESPONSE TO THAT?

14 A I SUGGESTED HE LEAVE.
15
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1 Q OKAY. AND WHAT DID HE SAY?
2 A HE SAID HE COULDN'T AFFORD TO MOVE.
3 Q OKAY. AND THEN WHAT DID YOU SAY?
4 A I TOLD HIM I WOULD HELP HIM IF HE WANTED ME TO.
5 Q WITH MONEY?
6 A YES.
7 Q OKAY. AND THEN WHAT DID HE SAY?
8 A HE SAID HE JUST COULDN'T DO IT.
9 Q OKAY. AND THEN WHAT DID YOU SAY?
10 A I DON'T REMEMBER WHAT THE WHOLE CONVERSATION WAS.
11 Q WELL, DO THE BEST YOU CAN BECAUSE AS I UNDERSTAND
12 YOUR TESTIMONY THAT YOU JUST GAVE HE HASN'T YET REALLY
13 SPECIFICALLY SAID HE WANTS TO KILL HER. DID HE EVER SAY THAT
14 DIRECTLY DURING THE COURSE OF THAT CONVERSATION?
15 A YES, HE WAS TALKING ABOUT IT.
16 Q OKAY. WHAT DID HE SAY ABOUT IT?
17 A THAT IS WHEN HE WAS TRYING TO THINK OF WAYS TO DO
18 IT.
19 Q AND WHAT DID HE SAY ABOUT THAT?
20 A HE TALKED ABOUT THE WEED POISON.
21 Q UH-HUH.
22 A AND HE PUT SOME OF THAT IN SOME PEPSI OR COKE.
23 Q UH-HUH.
24 A AND IT TURNED IT A DIFFERENT COLOR SO HE WASN'T
25 GOING TO TRY THAT.

1 Q OKAY. WHEN DID HE SAY THAT HE HAD DONE THAT?

2 A WELL, HE SHOWED IT TO ME.

3 Q OKAY. NOW, YOU ARE SAYING NOW THAT THIS WAS IN
4 MID-MARCH OR LATE MARCH?

5 A YES.

6 Q OKAY.

7 A THEN HE STARTED TALKING ABOUT THE RAT POISON.

8 Q YES.

9 A AND THEN THAT IDEA -- HE DIDN'T TALK ABOUT THAT
10 IDEA ANYMORE.

11 Q THAT IS AFTER YOU WENT OUT TO REDWOOD ROAD AND
12 BOUGHT SOME RAT POISON, WAS IT?

13 A YES.

14 Q SO THIS OCCURS DURING WHAT PERIOD OF TIME? THE
15 FIRST DISCUSSION ABOUT KILLING, THEN THE GOING AND PURCHASING
16 OF THE RAT POISON AND GOING UP TO GRAND CENTRAL ON NINTH
17 SOUTH AND BUYING SOME WHATEVER IT IS.

18 A I DIDN'T BUY ANYTHING THERE.

19 Q OR ANYTHING ABOUT BUYING IT, THAT TERRIFIC WEED
20 KILLER, I FORGOT IT. ANYWAY, WHAT PERIOD OF TIME WAS THAT?

21 A THIS WAS STILL THE SAME PERIOD OF TIME, LAST MARCH,
22 MAYBE THE FIRST PART OF APRIL.

23 Q OKAY. NOW, WHEN HE FIRST SAID SOMETHING TO THE
24 EFFECT OF, BY JOVE, I BELIEVE I WILL POISON HER, WHAT WAS
25 YOUR RESPONSE TO THAT? WHAT DID YOU SAY TO HIM?

1 A I ASKED HIM HOW HE WAS GOING TO DO IT.

2 Q IS THAT THE FIRST THING YOU ASKED HIM AFTER HE

3 HINTED THAT HE WAS WILLING TO KILL LORI?

4 A I DON'T REMEMBER IF IT WAS THE FIRST THING.

5 Q ALL RIGHT. WHAT ELSE DID YOU SAY IN RESPONSE TO

6 THAT NOTION OF ELROY'S?

7 A WELL, HE HAD ASKED ME IF I COULD THINK OF SOME

8 WAYS TO DO IT.

9 Q DID YOU?

10 A NO, I COULDN'T THINK OF ANY.

11 Q COULDN'T OR WOULDN'T?

12 A I COULDN'T.

13 Q OKAY. WHAT ELSE DID YOU SAY TO ELROY IN RESPONSE

14 TO HIS NOTION TO KILL LORI?

15 A I DON'T REMEMBER. I WASN'T REALLY TAKING HIM

16 SERIOUS AT THIS TIME.

17 Q WELL, THEN LET'S GO TO THE NEXT CONVERSATION ABOUT

18 THAT AND LET'S TALK ABOUT THE ONE WHERE YOU KNEW HE WAS

19 SERIOUS. DID THERE COME SUCH A TIME?

20 A YES.

21 Q NOW, DID YOU HAVE CONVERSATIONS THAT LED UP TO

22 YOUR COMING TO AN UNDERSTANDING THAT ELROY WAS SERIOUS ABOUT

23 THIS? WAS THERE MORE THAN ONE CONVERSATION ABOUT THE

24 KILLING BEFORE IT DAWNED ON YOU THAT HE WAS REALLY THINKING

25 ABOUT DOING IT?

1 A WHEN HE WANTED ME TO DO IT.

2 Q IS THAT WHEN YOU FINALLY FIGURED HE WAS SERIOUS?

3 A YES.

4 Q IS THAT THE EVENING THAT YOU HAVE TALKED ABOUT
5 WHERE YOU WENT UP TO MARK'S PLACE, AND HE LET YOU OUT OF THE
6 CAR AFTER YOU SAID, "NEVER MIND, I WILL DO IT"; THAT IS WHEN
7 YOU GOT SERIOUS ABOUT IT?

8 A NO. IT WAS BEFORE THAT.

9 Q OKAY. TELL ME WHEN THAT WAS THAT IT DAWNED ON YOU
10 THAT SOMETHING BAD WAS GOING TO HAPPEN HERE.

11 A HE HAD STARTED ASKING ME IF I COULD SHOOT SOMEBODY.

12 Q WHEN WAS THAT?

13 A APRIL.

14 Q EARLY OR MID?

15 A YES.

16 Q OKAY. WHERE WERE YOU WHEN HE ASKED YOU THAT
17 QUESTION?

18 A WE WAS JUST DRIVING DOWN THE FREEWAY. WE WAS GOING
19 SOMEWHERE. I DON'T REMEMBER WHERE.

20 Q OKAY. NOW, WERE YOU SURPRISED WHEN HE SAID WHAT-
21 EVER IT WAS THAT LED YOU TO CONCLUDE THAT HE WAS SERIOUS,
22 WERE YOU SHOCKED OR SURPRISED?

23 A YES.

24 Q ALL RIGHT. AND DOES IT STICK IN YOUR MIND HOW YOUR
25 STOMACH FELT WHEN THAT CONCLUSION REACHED YOU THAT HE WAS

1 SERIOUS ABOUT THAT?

2 A YES.

3 Q ALL RIGHT. NOW, WHAT DID HE SAY THAT CAUSED YOUR
4 STOMACH TO SINK?

5 A HE WANTED ME TO TAKE THE GUN --

6 Q WHAT DID HE SAY?

7 A HE SAID TO TAKE THE GUN AND WALK UP TO THE FRONT
8 DOOR. WHEN MARK ANSWERED THE DOOR TO SHOOT HIM.

9 Q ALL RIGHT. AS YOU RECITED TO ME A MOMENT AGO, THE
10 CONVERSATIONS ABOUT POISONING PEOPLE AND SO ON RELATED TO
11 LORI, DIDN'T THEY?

12 A YES.

13 Q WHAT TO YOUR RECOLLECTION DID YOU SAY OR DID HE
14 SAY BETWEEN THAT CONVERSATION AND THE ONE WHERE HE SAID HE
15 WANTED YOU TO WALK UP AND SHOOT MARK SCHOENFELD WHEN HE OPENS
16 THE DOOR, WHAT CAUSED THAT SHIFT IN THE IMPULSE OF THIS EVIL
17 DESIGN TOWARD MARK SCHOENFELD?

18 A IT WAS AFTER -- IT WAS AFTER -- WHEN HE TOLD ME
19 THAT MARK AND LORI HAD STOLEN HIS THINGS FROM THE STORAGE
20 THAT HE STARTED TALKING ABOUT MARK.

21 Q ALL RIGHT. NOW, WHERE WAS THE STORAGE BIN, DO YOU
22 KNOW?

23 A SOMEWHERE IN BOUNTIFUL.

24 Q ALL RIGHT. AND DO YOU KNOW AN INVENTORY OF WHAT
25 WAS SUPPOSED TO BE IN THE STORAGE BIN?

1 A NO.

2 Q NEVER TOLD YOU THAT?

3 A NO.

4 Q WERE YOU EVER THERE PRESENT AT THE PLACE?

5 A NO.

6 MR. BARBER: YOUR HONOR, THIS WOULD BE AN
7 APPROPRIATE SPOT IF THE COURT WISHES TO TAKE THE 10:00
8 RECESS.

9 THE COURT: OR IF COUNSEL WISHES A RECESS AT THIS
10 TIME.

11 MR. BARBER: WELL, I WAS TRYING TO LAY IT OFF ON
12 YOU, BUT --

13 THE COURT: WE WILL RECESS FOR TEN MINUTES.

14 MR. BARBER: THANK YOU.

15 THE COURT: AGAIN, WITH MY ADMONITION TO THE JURY
16 TO SPEAK TO NO ONE, LET NO ONE SPEAK TO YOU, AND DON'T
17 DISCUSS THE CASE IN ANY WAY. WILL THE AUDIENCE REMAIN
18 SEATED UNTIL THE BAILIFF ALLOWS US TO GO INTO RECESS. WE
19 WILL BE IN RECESS.

20 (SHORT RECESS.)

21

22

23

24

25

1 THE COURT: THE RECORD MAY SHOW ALL THE JURORS ARE
2 PRESENT IN THE BOX, THE DEFENDANT IS PRESENT WITH COUNSEL.
3 THE WITNESS IS ON THE STAND. THE STATE IS PRESENT.

4 YOU MAY CONTINUE, MR. BARBER.

5 MR. BARBER: THANK YOU, YOUR HONOR.

6 Q CARLA, ONE OTHER THING ABOUT THOSE PHONE CALLS.
7 DID ELROY EVER TELL YOU THAT HE WAS AWARE DURING THE COURSE
8 THAT YOU WERE MAKING THESE PHONE CALLS THAT LORI WAS TAPE
9 RECORDING --

10 A NO.

11 Q -- THE CONVERSATIONS?

12 A NO.

13 Q DID HE EVER TELL YOU THAT? DO YOU KNOW WHAT A PEN
14 REGISTER IS?

15 A NO.

16 Q ARE YOU AWARE THAT THERE IS A DEVICE THAT CAN BE
17 USED TO PUT ON A TELEPHONE CALL AND RECORD THE NUMBERS THAT
18 CALL THE PHONE ON WHICH THAT DEVICE IS?

19 A YES.

20 Q DID YOU KNOW THAT DURING THE SPRING OF 1982?

21 A NO.

22 Q WHEN DID YOU FIND OUT ABOUT THAT?

23 A THAT NIGHT THAT DET. CHAPMAN WAS QUESTIONING ME.

24 Q BUT ELROY NEVER DID TELL YOU THAT THERE WAS A
25 PEN REGISTER ON THE PHONE EITHER, IS THAT CORRECT?

1 A NO.

2 Q WOULD IT SURPRISE YOU NOW TO KNOW THAT ELROY DID
3 KNOW THOSE THINGS DURING THE VERY PERIOD THAT YOU WERE MAKING
4 THE PHONE CALLS?

5 A I KNOW NOW THAT HE KNEW.

6 Q WHAT IS YOUR REACTION TO THAT?

7 THE COURT: YOU MEAN WHAT WAS IT OR WHAT IS IT
8 TODAY?

9 MR. BARBER: WHAT WAS IT WHEN YOU FOUND OUT?

10 THE COURT: WHEN DID YOU FIND IT OUT, MA'AM?

11 THE WITNESS: THE NIGHT I WAS QUESTIONED.

12 THE COURT: AFTER ALL OF THIS INCIDENT?

13 THE WITNESS: YES.

14 THE COURT: I THINK WE CAN GO ON TO SOMETHING ELSE,
15 MR. BARBER.

16 MR. BARBER: OKAY, YOUR HONOR.

17 THE COURT: NOT SOMETHING ELSE BUT OFF THAT
18 QUESTION.

19 MR. BARBER: INDEED.

20 Q GOING BACK TO THE SUBJECT MATTER WE LEFT JUST
21 BEFORE THE BREAK, I BELIEVE YOU INDICATED THAT YOU KNEW
22 HE WAS SERIOUS WHEN HE ASKED YOU TO SHOOT MARK, AND WE WERE
23 TALKING ABOUT WHY THE EMPHASIS HAD SHIFTED FROM LORI TO MARK.
24 YOU SAID THAT YOU BELIEVE IT WAS BECAUSE ELROY THOUGHT IT WAS
25 BECAUSE THE BOTH OF THEM HAD BROKEN INTO THE WAREHOUSE AND

1 STOLEN SOME OF HIS PROPERTY, IS THAT RIGHT?

2 A YES.

3 Q DID HE EVER TELL YOU WHAT PROPERTY HAD BEEN
4 STOLEN FROM THE WAREHOUSE?

5 A NOT ANYTHING SPECIFIC.

6 Q AT ANY TIME AT ALL, DID HE MENTION ANY PARTICULAR
7 PROPERTY THAT EITHER LORI HAD OR MARK HAD OF HIS THAT HE
8 WANTED BACK?

9 A YES.

10 Q WHEN?

11 A ONE OF THEM WAS THE NIGHT WE WAS IN THE HOUSE.

12 Q DID HE DO THAT AT ANY TIME PRIOR TO THAT?

13 A HE HAD TOLD ME THAT LORI HAD HIS RECORDS.

14 Q THAT LORI HAD HIS RECORDS?

15 A YES.

16 Q DID HE EVER TELL YOU THAT MARK HAD HIS RECORDS?

17 A NO.

18 Q DID HE EVER TELL YOU AT ALL THAT MARK HAD ANY OF
19 HIS PROPERTY UNTIL THE NIGHT OF THE MURDER?

20 A AFTER THIS WAS STOLEN, LORI HAD CALLED ELROY AND
21 TOLD HIM THAT SOME OF HIS THINGS WERE AT A FRIEND'S HOUSE.

22 Q ELROY TOLD YOU THAT?

23 A YES.

24 Q DO YOU RECALL WHEN HE TOLD YOU THAT?

25 A COULD HAVE BEEN THE LAST PART OF MARCH, FIRST PART

1 OF APRIL.

2 Q OKAY. DID HE EVER MENTION SPECIFICALLY HIS STEREO
3 OR STEREO SPEAKERS BEFORE THE NIGHT OF MAY 25TH?

4 A NO.

5 Q ON THE NIGHT OF MAY 25TH, DID YOU BELIEVE THAT ONE
6 OF THE PURPOSES OF GOING INTO MARK'S HOUSE AND KILLING HIM
7 OR DOING ANYTHING ELSE IN THERE WAS TO RECOVER PROPERTY THAT
8 ELROY THOUGHT MARK HAD?

9 A NO, BUT HE DID ASK ME IF HE SHOULD TAKE SOMETHING.

10 Q ALL RIGHT. SO TO THE BEST OF YOUR RECOLLECTION,
11 THE FIRST INDICATION THAT MARK HAD ANY PROPERTY OF HIS WAS
12 AT THE POINT YOU WERE THERE COMMITTING THE HOMICIDE, RIGHT?

13 A HE DID TELL ME A COUPLE OF THINGS THAT HE SAW IN
14 THERE THAT WAS HIS.

15 Q YES, BUT THERE WAS NO MENTION OF SPECIFIC PROPERTY
16 AT ALL BEFORE THAT?

17 A NO.

18 Q AND THE IDEA OF KILLING MARK WAS TO PUNISH HIM,
19 WAS IT, FOR HAVING ACCOMPANIED LORI IN BREAKING INTO THE
20 WAREHOUSE?

21 A I DON'T KNOW WHAT HIS IDEA WAS.

22 Q BUT IT WAS BECAUSE MARK HAD DONE THAT, IS THAT
23 CORRECT?

24 A YES.

25 Q TO YOUR KNOWLEDGE, WAS THERE ANY OTHER MOTIVE IN

1 THE WORLD, OTHER THAN MARK'S PARTICIPATION IN RIPPING OFF
2 THAT WAREHOUSE?

3 A NO.

4 Q ON BEHALF OF ELROY TO KILL HIM?

5 A NO.

6 Q LET ME TALK TO YOU A BIT NOW OF THE PURPOSE OF
7 WEAPONS. AS I UNDERSTAND YOUR DIRECT TESTIMONY YESTERDAY,
8 THE FIRST TIME YOU BOUGHT A GUN AT ELROY'S REQUEST WAS IN
9 FEBRUARY OF 1981, IS THAT RIGHT?

10 A YES.

11 Q AND YOU BOUGHT THAT GUN AT NATIONAL JEWELRY?

12 A YES.

13 Q AND IT WAS A SHORT SNUB-NOSED .22 REVOLVER LIKE
14 EXHIBIT 24 IN EVIDENCE, RIGHT?

15 A YES.

16 Q THEREAFTER, DID YOU BECOME AWARE THAT ELROY WAS
17 NO LONGER IN POSSESSION OF THAT GUN?

18 A A LITTLE WHILE LATER, MAYBE TWO OR THREE MONTHS
19 LATER.

20 Q OKAY. DID YOU BUY ANY WEAPONS AT ELROY'S REQUEST
21 IN APRIL?

22 A OF WHICH YEAR?

23 Q I AM SORRY, OF '82.

24 A YES.

25 Q WOULD THAT HAVE BEEN MID-APRIL, PERHAPS THE 17TH?

1 A IT COULD HAVE BEEN, YES.

2 Q NOW, AS I UNDERSTOOD YOUR DIRECT TESTIMONY, THE
3 SECOND GUN YOU BOUGHT FOR HIM WAS A LARGER CALIBER AUTOMATIC
4 WEAPON, IS THAT RIGHT?

5 A YES.

6 Q DID I UNDERSTAND YOU CORRECTLY THAT THE LARGE
7 CALIBER AUTOMATIC WEAPON WAS THE ONE HE HAD ON THE EVENING
8 WHEN HE WENT OVER TO MARK'S AND SAID HE WANTED TO KILL HIM
9 AND THAT YOU TOOK IT FROM HIM AND SAID YOU WOULD DO IT?

10 A NO.

11 Q THAT WAS NOT THE LARGER CALIBER WEAPON?

12 A NO, THAT ONE WAS TAKEN RIGHT BACK IN AND EXCHANGED
13 FOR THE .22.

14 Q OKAY. SO ON THE SAME DAY YOU BOUGHT THE BIG ONE,
15 YOU TOOK IT BACK AND BOUGHT A LITTLE .22 CALIBER AUTOMATIC,
16 IS THAT RIGHT?

17 A YES.

18 Q AND THAT'S ONE WHERE YOU SLIDE THE TOP BACK AND
19 FORTH?

20 A YES.

21 Q TO GET THE SHELL INTO THE CHAMBER?

22 A YES.

23 Q AND SO IS IT YOUR TESTIMONY THAT THAT'S THE ONE
24 YOU TOOK AWAY FROM HIM THE NIGHT HE WAS GOING TO KILL MARK
25 FIRST?

1 A YES.

2 Q WAS THAT GUN PURCHASED BEFORE OR AFTER ELROY TOLD
3 YOU THAT HE WANTED YOU TO GO UP TO MARK'S DOOR AND SHOOT HIM
4 WHEN HE OPENED THE DOOR?

5 A IT SEEMED LIKE HE HAD TALKED ABOUT THAT BEFORE I
6 PURCHASED IT.

7 Q SO AS FAR AS YOU KNEW, WHEN HE SAID, "I WANT YOU
8 TO GO UP TO MARK'S PLACE, RING THE DOORBELL AND WHEN HE
9 COMES I WANT YOU TO SHOOT HIM," NEITHER OF YOU HAD A GUN?

10 A WE STARTED -- HE ASKED ME IF I COULD SHOOT SOMEBODY
11 BEFORE I BOUGHT THE GUN AND THEN IT SEEMED LIKE WHEN HE
12 STARTED ASKING ME TO ACTUALLY DO IT, WE HAD THE GUN.

13 Q SO THOSE CONVERSATIONS OCCURRED OVER THE PERIOD
14 OF WHAT, A WEEK OR TWO?

15 A YES, COULD HAVE BEEN.

16 Q NOW, REITERATING AGAIN, YOU BOUGHT THE .22
17 AUTOMATIC AT ABOUT APRIL 17, IS THAT RIGHT?

18 A YES.

19 Q TO THE BEST OF YOUR RECOLLECTION, WHEN DID YOU
20 HAVE THE FIRST CONVERSATION WITH ELROY ABOUT A SILENCER?

21 A THE LAST PART OF APRIL, FIRST PART OF MAY,

22 Q WAS THAT AFTER YOU HAD BOUGHT THE AUTOMATIC .22?

23 A YES.

24 Q NOW, IN RESPECT OF THESE AUTOMATIC WEAPONS, WE HAVE
25 GOT EXHIBIT -- DAVE, MAY I ASK YOU TO MAKE ANOTHER DEFENSE

1 TAG?

2 (DEFENDANT'S EXHIBIT 28
3 MARKED FOR
4 IDENTIFICATION.)

5 Q (BY MR. BARBER) I AM TAKING A PLAIN SHEET OF PAPER
6 OVER HERE ON THE BOARD AND TAGGING IT AS DEFENDANT'S PROPOSED
7 EXHIBIT NO. 28. I AM GOING TO MAKE A SKETCH UP HERE. THE
8 ONE THAT I HAVE MARKED NO. 1 APPEARS TO BE, I HOPE, A
9 STRAIGHT SORT OF A PIECE OF PIPE WITH WHAT APPEARS TO BE A
HOLE IN THE MIDDLE, IS THAT CORRECT?

10 A YES.

11 Q AND NOW RELATING THAT SHAPE TO A REVOLVER AND I AM
12 DRAWING A LITTLE SKETCH ON THE TOP OF IT, IS THAT THE WAY THE
13 BARREL OF A REVOLVER LOOKS TO YOU GENERALLY?

14 A YES.

15 Q NOW, LET ME MAKE ANOTHER LITTLE DRAWING AND ASK
16 YOU -- LABELING THAT NO. 2 -- IF THAT DOESN'T LOOK KIND OF
17 LIKE THE FRONT OF THE BARREL OF THE AUTOMATIC?

18 A YES.

19 Q ALL RIGHT. NOW, NOT ANYWHERE NEAR PROPORTION, IS
20 THAT GENERALLY HOW THE BARREL OF THE FRONT OF THE AUTOMATIC
21 LOOKED?

22 A YES.

23 Q IT IS KIND OF AN OBLONG BARREL WITH A TAPER THAT
24 STICKS OUT OF IT A LITTLE WAYS, RIGHT? DOES THAT KIND OF
25 LOOK LIKE THE KIND OF GUN YOU HAD, OR DID IT HAVE A FLAT

1 CUT OFF BARREL?

2 A ON THE END DO YOU MEAN?

3 Q YES, ON THE PART WHERE THE BULLET FLIES OUT.

4 A I DON'T REMEMBER WHAT IT LOOKED LIKE.

5 Q WELL, ON THE SIDE OF THE AUTOMATIC, DID IT LOOK
6 LIKE THIS, JUST A BLUNT FRONT, OR IS IT TRUE YOU CAN REMEMBER
7 SEEING A LITTLE THING STICKING OUT THERE REPRESENTING A
8 HOLE? DO YOU REMEMBER WHICH KIND THIS WAS?

9 A NO.

10 THE COURT: ARE YOU TESTIFYING, MR. BARBER?

11 MR. BARBER: PRETTY MUCH, YES, AND I WILL QUIT.

12 THE COURT: ALL RIGHT. THE JURY WILL DISREGARD
13 WHAT YOU STATE AS FACT.

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1 Q BUT DID THE AUTOMATIC THAT YOU PURCHASED HAVE AN
2 OBLONG FRONT ON IT UP AND DOWN?

3 A YES, IT SEEMED LIKE IT DID.

4 Q ALL RIGHT. NOW, YOU SAY THAT THE FIRST
5 CONVERSATION YOU HAD WITH ELROY ABOUT A SILENCER WAS AFTER
6 YOU BOUGHT THE AUTOMATIC, CORRECT?

7 A YES.

8 Q AND AS I RECALL YOUR TESTIMONY, IT IS TRUE, ISN'T
9 IT, THAT THE SILENCER THAT HE TALKED ABOUT AND THAT YOU
10 ULTIMATELY SAW IN THE FRONT OF YOUR CAR WAS ROUND?

11 A YES.

12 Q COMPARING THE SHAPE OF THAT AUTOMATIC AND THE
13 SHAPE OF THE SILENCER, DO YOU BELIEVE THERE IS ANY WAY IN
14 THE WORLD YOU COULD HAVE USED THE SILENCER THAT YOU SAY HE
15 MADE ON AN AUTOMATIC WEAPON?

16 A NO.

17 Q ALL RIGHT. AND TO YOUR KNOWLEDGE IT IS TRUE, IS
18 IT NOT, THAT THE ONLY WEAPON THAT HE HAD WHEN HE MADE THE
19 SILENCER OR THAT YOU HAD WAS AN AUTOMATIC?

20 A YES.

21 Q ALL RIGHT. NOW, WE HAVE ANOTHER GUN IN EVIDENCE,
22 DO WE NOT, EXHIBIT NO. 27.

23 THE COURT: IS THAT A REVOLVER?

24 MR. BARBER: IT IS A REVOLVER.

25 THE COURT: FLIP THAT OUT. LEAVE IT THERE.

1 Q (BY MR. BARBER) THIS ONE HAS A BARE PORTION AT
2 THE END AND SOME THREADS ON IT; IS THAT RIGHT?

3 A YES.

4 Q HOW MUCH BEFORE THIS HOMICIDE WAS COMMITTED WAS
5 THIS GUN PURCHASED?

6 THE COURT: WHAT EXHIBIT NUMBER IS THAT,
7 MR. BARBER?

8 MR. BARBER: THAT IS EXHIBIT NO. 27.

9 THE WITNESS: IT WAS THE END OF MAY SOMETIME. I
10 DON'T REMEMBER THE EXACT DATE.

11 Q (BY MR. BARBER) WELL, THE FACT IS TO YOUR
12 RECOLLECTION, ISN'T IT, THAT THIS GUN WAS PURCHASED ON THE
13 24TH DAY OF MAY, THE DAY BEFORE THE HOMICIDE?

14 A THE DAY BEFORE?

15 Q YES.

16 A I DON'T REMEMBER THE DAY, BUT I KNOW IT WAS CLOSE
17 TO IT.

18 Q ALL RIGHT. WITHIN A DAY OR TWO?

19 A YES.

20 Q NOW, ON THE DATE THAT YOU PURCHASED THIS REVOLVER,
21 EXHIBIT NO. 27, WHAT TIME OF DAY WAS IT THAT YOU WENT DOWN
22 AND BOUGHT IT?

23 A I DON'T REMEMBER. IT COULD HAVE BEEN AFTER WORK.

24 Q OKAY. IS THAT THE BEST OF YOUR RECOLLECTION?

25 A YES.

1 Q YOU ARE TALKING ABOUT 4:30 OR SO IN THE AFTERNOON,
2 4:00?

3 A YES.

4 Q AND IF THAT WERE ON THE 24TH, DO YOU RECALL
5 WHETHER YOU SAW ELROY ON THE VERY EVENING THAT YOU PURCHASED
6 THE REVOLVER, EXHIBIT 27?

7 A YES, HE WAS WITH ME.

8 Q HE WAS WITH YOU WHEN YOU BOUGHT IT?

9 A YES.

10 Q AND WERE YOU DRIVING YOUR AUTOMOBILE OR A
11 GOVERNMENT CAR?

12 A MINE.

13 Q OKAY. WHEN YOU GOT IN THE CAR, DID YOU GIVE HIM
14 THE REVOLVER?

15 A YES.

16 Q OR DID YOU KEEP IT AND GIVE IT TO HIM AT SOME
17 SUBSEQUENT TIME?

18 A SEEMED LIKE HE KEPT IT.

19 Q OKAY. NOW, LOOKING AT THE DIMENSIONS OF THIS
20 BARREL --

21 THE COURT: I THINK, MR. BARBER, YOU HAVE YOUR
22 BACK TO A GOOD PORTION OF THE JURY.

23 MR. BARBER: I AM SORRY, YOUR HONOR.

24 THE COURT: I JUST CALL YOUR ATTENTION TO IT.

25 MR. BARBER: YES, I APPRECIATE THAT. MAY I HAVE

1 THE LITTLE RULER?

2 THE COURT: LITTLE ONE OR A ONE-FOOTER?

3 Q (BY MR. BARBER) WELL, THIS ONE WILL BE FINE.

4 THANK HEAVENS IT IS A SMALL WEAPON. I WOULD LIKE YOU, IF
5 YOU WILL, TO HOLD THAT REVOLVER AND IF YOU CAN JUST DO IT UP
6 AND MEASURE FOR ME THE TOP OF THAT BARREL.

7 THE COURT: SHE DOESN'T HAVE TO DO THAT.

8 MR. CHRISTENSEN: WHY DON'T YOU DO IT, MR. BARBER.

9 MR. BARBER: MAY I DO IT THEN?

10 THE COURT: YOU MAY DO IT, YES, SIR.

11 MR. BARBER: I MEASURE IT AS ONE-HALF INCH.

12 MR. CHRISTENSEN: I WILL STIPULATE TO THAT, YOUR
13 HONOR.

14 MR. BARBER: ALL RIGHT. NOW, I CAN GET RID OF
15 THIS DARN THING.

16 THE COURT: DIAMETER OR RADIUS?

17 Q (BY MR. BARBER) DIAMETER. NOW, HOLD UP YOUR
18 FINGERS, IF YOU WILL, AND SHOW ME THE CIRCULAR DIMENSION OF
19 THE SILENCER YOU SAW?

20 A MAYBE LIKE THIS.

21 Q MAYBE WHAT, THREE QUARTERS OF AN INCH TO AN INCH
22 OF OUTSIDE DIAMETER?

23 A YES.

24 Q ALL RIGHT. DID YOU SEE THE HOLE THAT WAS DRILLED
25 IN IT, IF ANY THERE WAS, IN THAT PIPE?

1 A SEEMED LIKE THERE WAS A HOLE.

2 Q DO YOU KNOW WHETHER THAT SILENCER WOULD HAVE FIT
3 THAT LITTLE REVOLVER?

4 A NO.

5 Q DID YOU EVER SEE THE SILENCER AT ANY TIME AFTER
6 REVOLVER EXHIBIT NO. 27 WAS PURCHASED?

7 A NO.

8 Q ALL RIGHT. IT IS TRUE, IS IT NOT, THAT ACCORDING
9 TO YOUR PRIOR TESTIMONY YOU SAY THAT ELROY MADE THE SILENCER
10 SPECIFICALLY TO KILL MARK SCHOENFELD; IS THAT WHAT YOU SAID
11 YESTERDAY?

12 A YES.

13 Q AND YOU STAND BY THAT TODAY?

14 A YES.

15 Q WAS THERE ANY DISCUSSION AS ELROY DIRECTED YOU TO
16 PURCHASE THE REVOLVER, EXHIBIT 27, ABOUT THE SILENCER?

17 A HE HAD ME PURCHASE THAT SO HE COULD FIT THE
18 SILENCER ON IT.

19 Q OKAY. IS THAT WHAT HE TOLD YOU?

20 A YES.

21 Q WHEN DID HE TELL YOU THAT?

22 A MAYBE TWO OR THREE DAYS BEFORE THAT.

23 Q OKAY. SO WE ARE TALKING ABOUT MAYBE THE 18TH,
24 19TH, 20TH OF MAY, SOMETHING LIKE THAT?

25 A YES.

1 Q ALL RIGHT. DID YOU EVER SEE THE SILENCER AFTER
2 ELROY MADE THAT COMMENT?

3 A NO.

4 Q ALL RIGHT. WHEN ELROY TALKED ABOUT PURCHASING A
5 GUN TO WHICH YOU FIT THE SILENCER, DID HE TELL YOU WHO WAS
6 GOING TO USE THE GUN TO KILL MARK SCHOENFELD?

7 A NO.

8 Q WHEN HE SAID, I WANT TO BUY A GUN TO FIT THE
9 SILENCER ON IT, DID YOU BELIEVE THAT THE MANNER OF USE HE
10 INTENDED FOR THAT WAS THE ONE HE HAD TALKED ABOUT PREVIOUSLY
11 INVOLVING YOU RINGING THE DOORBELL AND SHOOTING MARK WHEN HE
12 CAME TO THE DOOR?

13 A COULD YOU REPEAT THAT AGAIN?

14 Q YES. WHEN HE BOUGHT THAT GUN OR HAD YOU BUY IT,
15 DID YOU BELIEVE HIS INTENTION WAS FOR YOU TO USE IT TO GO UP
16 AND RING MARK'S DOORBELL AND SHOOT HIM?

17 A NO.

18 Q WHY?

19 A BECAUSE I TOLD HIM I WOULDN'T DO IT.

20 Q OKAY. AND WHEN DID YOU MAKE PLAIN YOUR REFUSAL TO
21 INVOLVE YOURSELF IN SHOOTING MARK SCHOENFELD?

22 A ALL THE TIME HE WAS TALKING ABOUT HAVING ME DO IT.

23 Q THAT MARKS YOU BACK TO MID-MARCH TO THE EARLY PART
24 OF APRIL?

25 A YES.

1 Q OKAY. THE DAY THAT YOU WENT DOWN TO SPERRY UNIVAC
2 AND IDENTIFIED THE AUTOMOBILE BELONGING TO MARK SCHOENFELD,
3 DO YOU RECALL THAT DAY?

4 A YES.

5 Q AND I BELIEVE YOU SAID YOU WERE GOING DOWN THERE
6 CRUISING THROUGH THE PARKING LOT, AND ELROY SAID, "GEE,
7 THERE IS A CAR I HAVE SEEN DRIVE BY MY HOUSE."

8 A YES.

9 Q AND HE ASKED YOU TO GET THE NUMBER OFF OF IT AND
10 SO FORTH?

11 A YES.

12 Q AND THEN HE ASKED YOU TO SEE WHO GOT IN IT; IS
13 THAT CORRECT?

14 A YES.

15 Q AND YOU DID ALL THOSE THINGS?

16 A YES.

17 Q WAS THAT BEFORE OR AFTER ELROY HAD REPORTED TO YOU
18 THAT HIS BELONGINGS HAD BEEN TAKEN OUT OF THE STORAGE
19 WAREHOUSE?

20 A I THINK IT WAS AFTER.

21 Q ALL RIGHT. AND ON THAT DATE YOU SAW IN THE COMPANY
22 OF MR. SCHOENFELD A WOMAN WHOM YOU NOW KNOW TO BE
23 LORI GRONEMAN; IS THAT CORRECT?

24 A YES.

25 Q HAD YOU EVER SEEN HER BEFORE THAT?

1 A YES.

2 Q ONE TIME A LONG TIME BEFORE, A COUPLE YEARS,
3 RIGHT?

4 A YES.

5 Q HAD YOU SEEN HER PRIOR TO THAT DATE IN 1982?

6 A NO.

7 Q DID YOU SEE HER IN 1981?

8 A NO.

9 Q ALL RIGHT. WHEN YOU SAW LORI WITH MARK ON THAT
10 DATE IN THE SPERRY PARKING LOT, WERE YOU STILL IN LOVE WITH
11 ELROY?

12 A I CAN'T SAY FOR SURE, BUT IT SEEMED LIKE IT WAS
13 STARTING TO TAPER DOWN THEN.

14 Q STARTED TAPERING DOWN AT THAT TIME?

15 A CORRECT.

16 Q BUT YOU WERE AWARE AT THAT TIME WHEN LORI CAME
17 INTO YOUR VIEW THAT ELROY HAD SOME KIND OF A PREOCCUPATION
18 WITH HER, WEREN'T YOU?

19 A I AM SORRY?

20 Q ELROY HAD A CONTINUING PREOCCUPATION WITH LORI?

21 A YES.

22 Q WHAT WAS YOUR RESPONSE TO SEEING HER PHYSICALLY?

23 A I DIDN'T RECOGNIZE HER THEN.

24 Q IS THAT RIGHT. DID YOU KNOW WHO SHE WAS AT ANY
25 TIME SHE GOT IN THE CAR AND SO FORTH?

1 A NO.

2 Q WAS THE DATE IN THE PARKING LOT WHERE YOU
3 IDENTIFIED MR. SCHOENFELD'S CAR, WAS THAT BEFORE OR AFTER
4 THE AUTOMATIC .22 HAD BEEN PURCHASED?

5 A SEEMS LIKE IT WAS BEFORE.

6 Q ALL RIGHT. AND SOMETIME LATER WHEN YOU WENT DOWN
7 AND BOUGHT THE AUTOMATIC .22, DID YOU RELATE THAT TO YOUR
8 ACTION IN IDENTIFYING THE NAME AND ADDRESS OF
9 MARK SCHOENFELD?

10 A NO.

11 Q ALL RIGHT. YOU THOUGHT THEY WERE COMPLETELY
12 UNRELATED?

13 A YES.

14 Q DID YOU INDICATE IN YOUR DIRECT TESTIMONY THAT
15 WHEN YOU LOOKED IN MARK'S CAR YOU SAW CIGARETTES IN THE CAR?

16 A YES.

17 Q OKAY. DO YOU SMOKE CIGARETTES?

18 A NO.

19 Q AND AS I BELIEVE YOU INDICATED ELROY DOES?

20 A YES.

21 Q WAS HE A CHRONIC SMOKER?

22 A NO.

23 Q OFF AND ON TYPE SMOKER?

24 A WELL, WHEN I FIRST KNEW HIM, HE DIDN'T.

25 Q OKAY. WHEN DID HE START UP AGAIN, DO YOU RECALL?

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1 I AM NOT EVEN SURE IT WAS AGAIN. WHEN DID HE START UP?

2 A WHEN ALL THIS STARTED HAPPENING. IT WAS MAKING
3 HIM REAL NERVOUS, I GUESS, SO HE STARTED -- STARTED UP.

4 Q WHEN THIS ALL STARTED HAPPENING?

5 A WHEN LORI STARTED HASSLING HIM, AND HE WAS TRYING
6 TO GET HIS THINGS BACK.

7 Q FEBRUARY AND MARCH OR LATER THAN THAT?

8 A WELL, THAT IS WHEN HE REALLY STARTED SMOKING THEM
9 A LOT.

10 Q OKAY.

11 A HE SMOKED ONCE IN A WHILE BEFORE THEN.

12 Q DID HE CARRY CIGARETTES HABITUALLY BEFORE, SAY,
13 THE BEGINNING OF MAY?

14 A YES, HE CARRIED THEM WITH HIM.

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1 Q WHEN DID YOU FIRST BECOME AWARE, IF YOU EVER DID,
2 THAT HE USED A CIGARETTE LIGHTER?

3 A A CIGARETTE LIGHTER?

4 Q YES.

5 A I DON'T KNOW.

6 Q DID HE EVER USE A LIGHTER TO LIGHT CIGARETTES WITH?

7 A YES, I WOULD SEE ONE.

8 Q DID HE HAVE IT WITH HIM MOST OF THE TIME OR WOULD
9 HE SOMETIMES USE MATCHES?

10 A HE WOULD USE MATCHES, TOO.

11 Q DIDN'T ALWAYS CARRY A LIGHTER?

12 A NO.

13 Q LET'S TALK ABOUT DYNAMITE NOW FOR A BIT. WHEN DID
14 THE FIRST DISCUSSION IN RESPECT TO DYNAMITE COME UP?

15 A MAYBE IN APRIL.

16 Q MID OR LATE, TO THE BEST OF YOUR RECOLLECTION, OR
17 EARLY?

18 A LATE.

19 Q AS I RECALL YOUR TESTIMONY YESTERDAY, THAT WAS IN
20 FACT THE NIGHT AFTER YOU HAD TAKEN THE GUN AWAY FROM ELROY
21 AND PREVENTED THE MURDER OF MARK SCHOENFELD, IS THAT CORRECT?

22 A I DON'T THINK IT WAS THE NIGHT AFTER.

23 Q OH, WASN'T IT?

24 A WELL, HE DID MENTION IT, THAT'S ALL.

25 Q WHEN DID HE GET DEAD EARNEST ABOUT DYNAMITE? WAS

1 IT AFTER THAT?

2 A YES. HE TALKED ABOUT GETTING SOME AND THEN HE
3 LEFT AND WENT TO CALIFORNIA FOR ABOUT TEN DAYS.

4 Q DO YOU KNOW WHEN HE MADE THAT TRIP?

5 A LATE APRIL.

6 Q GOT BACK AROUND MAY 2ND, DID HE?

7 A YES,

8 Q WAS THE SERIOUS CONVERSATION ABOUT DYNAMITE AFTER
9 HE GOT BACK FROM CALIFORNIA OR BEFORE?

10 A WELL, HE TOLD ME HE WAS TRYING TO GET SOME BEFORE
11 HE LEFT BUT HE HAD NOT GOT ANY YET. HE WAS IN THE PROCESS
12 OF TRYING TO GET SOME.

13 Q WAS THE EXPLOSION THAT ACTUALLY OCCURRED USING
14 A DEVICE YOU SAY THAT ELROY HAD MADE, THAT PRESUMABLY WAS
15 SOMETIME AFTER HE GOT BACK FROM CALIFORNIA?

16 A YES.

17 Q HOW LONG, DO YOU RECALL?

18 A MAYBE A COUPLE OF WEEKS,

19 Q SO YOU ARE PROBABLY TALKING AROUND THE 15TH OF MAY,
20 WOULD THAT BE FAIR?

21 A YES.

22 Q 10TH TO 18TH OR SO?

23 A YES.

24 Q WAS THAT AFTER HE HAD GIVEN UP ON THE POISONING
25 ESCAPADE HE HAD THOUGHT ABOUT BEFORE?

1 A PARDON?

2 Q WAS HE STILL TALKING ABOUT POISONING THEM OR DID
3 HE JUST KIND OF GIVE UP ON THAT?

4 A HE HAD GIVEN UP ON THAT.

5 Q WAS HE STILL TALKING ABOUT SHOOTING THEM?

6 A NOT WHILE HE WAS TRYING TO GET THIS DYNAMITE.

7 Q HAD HE QUIT TALKING ABOUT SHOOTING THEM BEFORE
8 HE WENT TO CALIFORNIA?

9 A YES, IT SEEMED LIKE HE HAD.

10 Q AND I KEEP USING THE WORD "THEM" IN TALKING ABOUT
11 THIS. WHEN HE WAS DOING THE ESCAPE WITH THE DYNAMITE --

12 MR. CHRISTENSEN: I AM GOING TO OBJECT TO THE FORM
13 OF THE QUESTION AS TO "ESCAPE," YOUR HONOR.

14 THE COURT: ALL RIGHT.

15 MR. BARBER: I WILL AVOID THE COLORED LANGUAGE.

16 Q WHEN THE CONVERSATIONS ABOUT DYNAMITE WERE
17 OCCURRING --

18 THE COURT: MR. BARBER, DON'T STAND IN FRONT OF
19 THE COUNTY ATTORNEY.

20 MR. BARBER: I AM SORRY. I DO APOLOGIZE.

21 MR. CHRISTENSEN: THANK YOU, YOUR HONOR.

22 Q (BY MR. BARBER) HAD HE INDICATED WHETHER HE
23 INTENDED TO BLOW UP LORI GRONEMAN?

24 A YES.

25 Q AND I THINK IN YOUR DIRECT TESTIMONY YOU SAID HE

1 ALSO INDICATED HE WAS GOING TO BLOW UP MARK, MAYBE?

2 A YES.

3 Q DID HE TALK ABOUT HIS MOTIVE FOR DOING THAT
4 SPECIFICALLY IN CONNECTION WITH HIS EXPERIMENTS WITH DYNAMITE?

5 A NO.

6 Q DID HE TALK ABOUT THERE BEING ANY ATTEMPT TO GET
7 THEM AT THE SAME PLACE AT THE SAME TIME AND DISPOSE OF THEM?

8 A NOT WITH THE DYNAMITE.

9 Q -OKAY, DID HE TALK ABOUT THE ORDER IN WHICH HE
10 WANTED TO DO THAT; ONE FIRST AND THEN THE OTHER OR --

11 A NO, HE DIDN'T SAY WHICH ORDER.

12 Q DURING THAT PERIOD OF TIME, WHO DO YOU BELIEVE HE
13 WAS MOST ANGRY WITH?

14 MR. CHRISTENSEN: I AM GOING TO OBJECT TO THE
15 FORM OF THAT QUESTION, YOUR HONOR. IF WE HAVE GOT SOME
16 SPECIFIC STATEMENTS BY THE DEFENDANT, THAT IS FINE.

17 THE COURT: I WILL SUSTAIN THE OBJECTION. YOU MAY
18 REPHRASE, MR. BARBER.

19 Q FROM WHAT HE SAID DURING THAT PERIOD, DO YOU DRAW
20 A CONCLUSION?

21 MR. CHRISTENSEN: SAME OBJECTION, YOUR HONOR.
22 WHAT HE SAID IS FINE.

23 Q (BY MR. BARBER) DID HE SAY ANYTHING ABOUT WHICH
24 OF THE TWO HE WAS MOST ANGRY WITH DURING THAT PERIOD?

25 A NO.

1 Q DID HE SAY ANYTHING TO INDICATE TO YOU THAT IF HE
2 WAS SUCCESSFUL IN KILLING ONE OF THEM HE WOULD PROCEED TO
3 KILL THE OTHER?

4 A HE DIDN'T SAY ANYTHING ABOUT BEING SUCCESSFUL,
5 BUT HE HAD TALKED ABOUT PUTTING A BOMB ON BOTH OF THEIR CARS.

6 Q YOU DON'T KNOW WHERE HE GOT THE DYNAMITE, IS THAT
7 CORRECT?

8 A HE TOLD ME HE GOT IT FROM BETTY'S HUSBAND.

9 Q OKAY. YOU WERE RAISED IN KIND OF A FARM RURAL
10 AREA, WERE YOU, DOWN IN ST. JOHNS?

11 A YES.

12 Q HAD YOU HAD ANY EXPERIENCE AT ALL WITH DYNAMITE
13 IN TERMS OF DIGGING POST HOLES AND THAT SORT OF THING ON THE
14 FARM?

15 A NO.

16 Q YOUR FATHER HAD NEVER USED IT IN CONNECTION WITH
17 FARMING?

18 A NO.

19 Q DID YOU HAVE ANY CONVERSATIONS WITH ELROY IN
20 WHICH HE SAID THAT HE HAD ANY EXPERIENCE WITH DYNAMITE?

21 A NO.

22 Q WHERE WAS HE FROM?

23 A HE WAS FROM LOS ANGELES.

24 Q A RURAL AREA?

25 A NO.

1 Q CITY?

2 A YES.

3 Q WAS THERE ANY DISCUSSION ABOUT WHY HE WOULD ELECT
4 DYNAMITE AS A MANNER OF INFLECTING DEATH?

5 A HE JUST THOUGHT OF THAT IDEA, I GUESS.

6 Q ALL RIGHT. DID HE INDICATE WHETHER HE KNEW
7 ANYTHING ABOUT DYNAMITE?

8 A NO.

9 Q DID HE SAY ANYTHING ABOUT BLASTING CAPS OR KINDS
10 OF FUSES OR ANYTHING LIKE THAT?

11 A YES.

12 Q WHAT DID HE SAY ABOUT THAT AND WHEN DID HE SAY IT?

13 A HE TOLD ME THERE WAS DIFFERENT KINDS.

14 Q OF WHAT?

15 A OF CAPS AND FUSES.

16 Q OKAY. WHAT DID HE SAY FURTHER ABOUT THAT, IF
17 ANYTHING?

18 A HE SAID THE KIND HE GOT HAD TO HAVE A FUSE ON AND
19 TO PUT A TIMER ON ONE, HE COULDN'T GET ANY OF THOSE KIND
20 OF CAPS OR FUSES.

21 Q OKAY. THAT IS WHY YOU ALWAYS HAD TO BE LIGHTING
22 THE FUSE, IS THAT CORRECT?

23 A HE WANTED TO LIGHT THE FUSE.

24 Q YES. DID YOU KNOW WHETHER HE HAD ANY BOOKS OR
25 INSTRUCTIONS ON HOW TO MAKE INCINERARY DEVICES USING DYNAMITE?

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1 A I DON'T KNOW IF HE HAD ANY BOOKS. HE TALKED TO
2 THIS BETTY'S HUSBAND.

3 Q IS THAT WHAT HE SAID TO YOU?

4 A HE SAID ONE DAY HE HAD GONE OUT TO WHERE HE WORKED
5 WITH HIM.

6 Q AND DISCUSSED HOW TO MAKE BOMBS?

7 A WELL, I GUESS HOW TO DO IT.

8 Q WHEN HE WAS HANDLING THE DEVICE THAT YOU HAVE
9 DESCRIBED IN EVIDENCE, THIS BLACK TAPE WRAPPED BUSINESS, DID
10 HE HANDLE IT IN A MANNER THAT LED YOU TO CONCLUDE THAT HE
11 WAS AFRAID OF THE THING?

12 A YES.

13 Q HOW DID HE HANDLE IT?

14 A VERY CAREFULLY. HE TOLD ME NOT TO DROP IT OR
15 JIGGLE IT OR ANYTHING.

16 Q INDEED. DID HE INSERT A CAP INTO THE DYNAMITE
17 IN YOUR PRESENCE?

18 A IS THE CAP THE SAME AS THE FUSE? I DON'T KNOW.
19 THE FUSE WAS ALREADY ON. I DON'T KNOW ABOUT CAPS.

20 Q SO THE FUSE WAS ALREADY AFFIXED WHEN YOU FIRST SAW
21 THE DEVICE, IS THAT CORRECT?

22 A YEAH.

23 Q NOW, JUMPING TO THE POINT WHERE YOU WENT DOWN TO
24 THE OLD AIRPORT ROAD, IS THAT WHERE IT WAS, AND FOUND A
25 CEMENT BLOCK IN WHICH THIS THING WAS PUT AND EXPLODED?

1 A YES.

2 Q CAN YOU GIVE ME AS CLOSE AS YOU CAN THE DATE ON
3 WHICH THAT OCCURRED?

4 A MAYBE IN MAY, PART OF MAY.

5 Q IT WAS AFTER HE GOT BACK FROM CALIFORNIA, CORRECT?

6 A YES.

7 Q WOULD YOU SAY IT WAS AFTER THE 15TH?

8 A CAN'T SAY FOR SURE, COULD HAVE BEEN.

9 Q IN THAT AREA?

10 A YES.

11 Q AND OF COURSE YOU ALREADY HAD A FAILURE EXPLODING
12 IT NEAR SOME TRUCK, IS THAT RIGHT?

13 A YES.

14 Q WHAT TIME OF DAY WAS IT WHEN YOU WERE OUT RUNNING
15 AROUND WITH THIS BOMB?

16 A IT WAS AT NIGHT.

17 Q CAN YOU DO BETTER THAN THAT IN TERMS OF SPECIFICS?

18 A MAYBE 10:00 OR 11:00.

19 Q AND WHEN YOU GOT OUT BY THE FIELD DRIVING OUT BY
20 THE OLD AIRPORT ROAD THERE, IS THAT WHERE IT WAS?

21 A IT WAS ON KIND OF A CUTOFF ROAD.

22 Q WHERE WAS IT?

23 A IT WAS A ROAD BETWEEN THE OLD AIRPORT ROAD AND
24 REDWOOD ROAD, I THINK IT WAS.

25 Q DURING THE COURSE, AS YOU RECALL IT, GOING DOWN

1 THAT ROAD TO BLOW UP THE BOMB, WHAT WAS ELROY SAYING AND
2 WHAT WERE YOU SAYING? TELL ME WHAT CONVERSATION WAS GOING
3 ON.

4 A WELL, HE DIDN'T LIKE IT BECAUSE I MESSED UP THE
5 FIRST TIME.

6 Q DID HE SAY THAT?

7 A SOMETHING TO THAT EFFECT.

8 Q TELL ME WHAT HE SAID IF YOU CAN RECALL.

9 A I DON'T REMEMBER.

10 Q WELL, THEN, ALL RIGHT. DO THE BEST YOU CAN.
11 DID HE TALK ABOUT MAKING THE SECOND ATTEMPT? WHAT I AM
12 TRYING TO GET AT REALLY, AND MAYBE WE CAN TRUNCATE THIS,
13 HOW IS IT THAT YOU STOPPED AND PUT THE THING IN A CEMENT
14 BLOCK AND TRIED TO BLOW IT UP AGAIN?

15 A HE WANTED TO SEE IF IT WOULD WORK AND TO HAVE ME
16 LIGHT IT.

17 Q ALL RIGHT. WHEN HE PULLED OVER, DID YOU BOTH
18 GET OUT OF THE CAR?

19 A AT THE CEMENT BLOCK?

20 Q YES.

21 A YES.

22 Q HOW BIG WAS THE BLOCK YOU PUT IT IN?

23 A OH, MAYBE A FOOT HIGH, A FOOT WIDE.

24 Q AND YOU STATED THERE WAS A HOLE IN IT.

25 A YES.

1 Q DID THE HOLE GO ALL THE WAY THROUGH THE BLOCK?
2 A YES, I THINK SO.
3 Q AND CAN YOU GIVE ME AN IDEA WITH YOUR HANDS ABOUT
4 THE DIAMETER OF THAT HOLE? WAS IT ROUND?
5 A IT WASN'T ACTUALLY ROUND. IT WAS MORE KIND OF
6 SQUARE WITH THE CORNERS ROUNDED OFF.
7 Q OKAY. WAS IT LIKE A CEMENT BUILDING BLOCK, IS
8 THAT WHAT IT WAS?
9 A I DON'T KNOW WHAT IT WAS.
10 Q WAS THE HOLE NEARLY AS BIG AS THE BLOCK ITSELF?
11 A YES.
12 Q HOW THICK WAS THE CONCRETE THAT SURROUNDED THE
13 HOLE?
14 A OH, MAYBE ABOUT LIKE THIS. (INDICATING.)
15 Q FOUR OR FIVE INCHES?
16 MR. CHRISTENSEN: I CAN'T SEE, MR. BARBER.
17 MR. BARBER: I AM SORRY.
18 THE WITNESS: I CAN'T SAY FOR SURE. IT WAS DARK.
19 Q (BY MR. BARBER) I UNDERSTAND. BUT IT WASN'T
20 PARTICULARLY SOLID LOOKING?
21 A IT LOOKED SOLID TO ME.
22 Q OKAY. DID YOU HAVE THE OCCASION AFTER THE BOMB
23 EXPLODED TO GO BACK AND EXAMINE THE BLOCK?
24 A YES.
25 Q TO SEE WHAT KIND OF DAMAGE HAD BEEN DONE?

1 A YES.

2 Q DESCRIBE WHAT THE BLOCK LOOKED LIKE AFTER.

3 A IT LOOKED THE SAME.

4 Q WAS IT DISCOLORED ON THE INSIDE?

5 A I DIDN'T LOOK INSIDE.

6 Q BUT THERE WAS NO SPLITTING OR SPLINTERING OR
7 ANYTHING LIKE THAT?

8 A I COULDN'T SEE ANY.

9 Q COULD YOU SEE ANY RESIDUE OF POWDERED CEMENT OR
10 ANYTHING AROUND IT?

11 THE COURT: TELL US WHAT YOU DID SEE, IF ANYTHING,
12 EVERYTHING YOU SAW ABOUT THE BLOCK.

13 MR. BARBER: THANK YOU, YOUR HONOR.

14 THE WITNESS: THERE WAS A PIECE OF THE FUSE AND
15 LITTLE PIECES OF BLACK TAPE, IT SEEMED LIKE.

16 Q (BY MR. BARBER) DID YOU EVER HAVE AN OCCASION
17 AFTER THAT TO GO BACK AND LOOK AT THE BLOCK AGAIN?

18 A I TOOK DET. CHAPMAN BACK THERE.

19 Q DID YOU SEE THE BLOCK WHEN YOU WENT BACK WITH
20 DET. CHAPMAN?

21 A YES.

22 Q DID YOU HAVE AN OCCASION TO LOOK INSIDE THE BLOCK
23 AT THAT TIME?

24 A YES.

25 Q WHAT COLOR WAS IT?

1 A IT SEEMED LIKE IT WAS KIND OF BLACK INSIDE OF IT.

2 Q OKAY. WAS THE EVIDENCE OF THE FUSE AND THE TAPE
3 AND SO FORTH STILL PRESENT AT THE SCENE?

4 A THERE WAS STILL SOMETHING INSIDE THE BLOCK. I
5 COULDN'T SEE ANY FUSE AROUND.

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1 Q CARLA, THERE WAS SOME QUESTIONS ASKED OF YOU
2 YESTERDAY ABOUT WHY IT WAS THAT YOU GOT INVOLVED AS YOU DID
3 IN THE EVENTS LEADING TO MR. SCHOENFELD'S DEATH. YOU SAID
4 TODAY, I BELIEVE, THAT YOUR FEELING OF LOVE OR RESPECT OR
5 WHATEVER FOR ELROY HAD DIMINISHED BETWEEN, OH, THE FIRST OF
6 APRIL AND THE TIME OF THIS HOMICIDE; IS THAT CORRECT?

7 A YES.

8 Q AND THAT AT SOME POINT IN TIME YOU JUST QUIT HAVING
9 ANY AFFIRMATIVE FEELINGS FOR HIM AT ALL; IS THAT RIGHT?

10 A AFTER THIS HAPPENED?

11 Q YES. DID YOU AT ANY TIME DURING THAT PERIOD
12 CONSIDER SIMPLY WITHDRAWING FROM ELROY AND HAVING NOTHING
13 WHATSOEVER FURTHER TO DO WITH HIM?

14 A YES.

15 Q HOW MANY TIMES?

16 A QUITE A FEW.

17 Q WHY DIDN'T YOU DO IT?

18 A THERE WAS STILL SOME FEELINGS FOR HIM. HE HAD
19 TOLD ME HE WAS A REVENGEFUL PERSON --

20 Q WHEN DID YOU FIRST SAY THAT TO ANYBODY IN
21 DESCRIBING ELROY?

22 MR. CHRISTENSEN: WELL, YOUR HONOR, I AM GOING TO
23 OBJECT TO THAT QUESTION. I WOULD AT LEAST LIKE TO HAVE THE
24 WITNESS FINISH THE LAST QUESTION.

25 THE COURT: LET HER FINISH THE LAST QUESTION, AND

1 DON'T INTERRUPT, PLEASE.

2 MR. BARBER: OKAY.

3 THE WITNESS: HE TOLD ME HE WAS A REVENGEFUL
4 PERSON, HE HAD A KEY TO MY APARTMENT. I WAS AFRAID OF
5 LOSING MY JOB, AND THAT NIGHT THAT IT HAPPENED, I WAS
6 RESPONSIBLE FOR THE GOVERNMENT CAR.

7 THE COURT: WELL, YOU MAY ASK ANOTHER QUESTION.
8 I THINK SHE HAS FINISHED. SHE IS GOING ON FURTHER THAN YOUR
9 QUESTION.

10 Q (BY MR. BARBER) THANK YOU, YOUR HONOR. ACCORDING
11 TO YOUR TESTIMONY YESTERDAY, I BELIEVE, THOUGH, HE
12 SPECIFICALLY ASKED YOU TO KILL MARK SCHOENFELD IN MID-APRIL
13 OF 1982, AND YOU HAD NOT DONE IT; ISN'T THAT RIGHT?

14 A YES.

15 Q AND YOU SPENT THE NIGHT WONDERING HOW YOU WERE
16 GOING TO HANDLE THAT WALKING AROUND THE STREETS AND SO FORTH;
17 IS THAT WHAT YOU DID?

18 A YES.

19 Q OKAY. AND YOU WENT BACK, AND ELROY CALLED YOU,
20 DIDN'T HE?

21 A YES.

22 Q AND YOU SAID, "I DIDN'T DO IT."

23 A YES.

24 Q WHAT WAS HIS RESPONSE TO THAT AGAIN?

25 A HE SAID THAT WAS ALL RIGHT.

1 Q ALL RIGHT. AND THEN DIDN'T HE SAY, "NOW, I KNOW
2 WHAT KIND OF A PERSON YOU ARE, I REALLY DON'T WANT ANYTHING
3 MORE TO DO WITH YOU. I WILL BRING YOUR CAR BACK IN THE
4 MORNING. LET'S JUST FORGET IT"?

5 A HE DIDN'T SAY THAT UNTIL AFTER HE HAD COME BACK.

6 Q OKAY. BUT THAT WAS WITHIN A DAY OR TWO OF THAT,
7 WASN'T IT?

8 A NO. HE CAME BACK -- HE SAID -- WHEN HE CALLED, HE
9 SAID HE WAS GOING TO COME RIGHT OVER.

10 Q OKAY. AND WHAT DID HE SAY WHEN HE CAME OVER?

11 A I TOLD HIM I COULDN'T DO IT.

12 Q YES.

13 A AND HE ASKED FOR THE GUN BACK, AND I HAD HIDDEN IT
14 AND WOULDN'T GIVE IT BACK TO HIM.

15 Q YES. AND THEN YOU GAVE HIM THE GUN, DIDN'T YOU?

16 A WELL, WE HAD AN ARGUMENT.

17 Q YES.

18 A AND I FINALLY GAVE THE GUN BACK TO HIM, AND HE
19 SAID HE WAS GOING TO GO DO IT THAT DAY, AND I TRIED TO TALK
20 HIM OUT OF IT, AND THAT IS WHEN HE SAID HE NEVER WANTED TO
21 SEE ME AGAIN AND HE WOULD GET MY CAR BACK TO ME.

22 Q THAT WAS THE NEXT DAY AFTER YOU FAILED TO DO WHAT
23 HE ASKED YOU; IS THAT RIGHT?

24 A YES, THE NEXT MORNING.

25 Q OKAY. HE WAS MADDER AT YOU BECAUSE YOU WOULDN'T

1 GIVE THE GUN BACK THAN BECAUSE YOU HADN'T KILLED
2 MARK SCHOENFELD, WASN'T HE?

3 A WELL, THAT IS WHEN HE STARTED TO GET MAD IS WHEN
4 I WOULDN'T GIVE IT BACK.

5 Q UH-HUH. DID HE THREATEN TO DO ANYTHING TO YOU
6 BECAUSE YOU HAD FAILED TO KILL MARK SCHOENFELD?

7 A NO.

8 Q DID HE STRIKE YOU, ABUSE YOU PHYSICALLY AT ALL?

9 A NO.

10 Q AND SOMETIME LATER DIDN'T HE RESUME HIS
11 RELATIONSHIP WITH YOU, HIS ACQUAINTANCE WITH YOU?

12 A YES. HE CALLED ME BACK A COUPLE OF TIMES, AND HE
13 CAME BACK THAT SAME NIGHT.

14 Q SURE. DID HE OFFER TO GIVE YOUR CAR BACK TO YOU?

15 A WELL, WHEN HE CALLED ME, HE SAID HE WAS HAVING
16 SOMEONE BRING IT BACK.

17 Q OKAY. AND DID YOU ASK HIM TO DO THAT?

18 A SEEMED LIKE I ASKED HIM IF HE WANTED A RIDE HOME,
19 AND HE SAYS, "NO, I WILL GET IT BACK TO YOU. I WILL HAVE
20 SOMEBODY DROP IT OFF."

21 Q OKAY. IN LIGHT OF THAT, ALL THOSE CIRCUMSTANCES,
22 THOUGH, CARLA, YOU DIDN'T REALLY BELIEVE YOU WERE IN
23 PHYSICAL DANGER BECAUSE YOU HAD FAILED TO KILL
24 MARK SCHOENFELD, DID YOU?

25 A NOT THEN.

1 Q ALL RIGHT. AND DID YOU BELIEVE AFTER HE SAID,
2 "LISTEN, CARLA, I DON'T WANT TO HAVE ANYTHING MORE TO DO
3 WITH YOU, I WILL BRING YOUR CAR BACK," THAT IF YOU SAID,
4 "OKAY, ELROY, I DON'T WANT TO HAVE ANYTHING FURTHER TO DO
5 WITH YOU EITHER, YOU BRING MY CAR BACK, AND WE WILL JUST
6 CALL IT QUITS," YOU DIDN'T FEEL LIKE THERE WOULD BE ANY
7 THREATS AGAINST YOU PHYSICALLY IF YOU DID THAT EITHER, DID
8 YOU?

9 A I DIDN'T FEEL THAT HE WOULD DO ANYTHING PHYSICALLY
10 TO ME.

11 Q IN FACT, HE SAID THAT IS WHAT HE WANTED YOU TO DO,
12 DIDN'T HE, REALLY? SO LET'S JUST CUT IT OFF?

13 A YES. HE SAID HE NEVER WANTED TO SEE ME AGAIN.

14 Q YES. NOW, CAN I IMPLY FROM WHAT WE TALKED ABOUT
15 JUST A FEW MINUTES AGO THAT HE SAID THAT AGAIN AFTER THAT?

16 A AFTER WHAT?

17 Q AFTER THE TIME THAT -- YOU KNOW, IMMEDIATELY AFTER
18 MARK'S -- THE KILLING FAILED, DID HE TELL YOU THAT SAME
19 THING, "I DON'T WANT TO SEE YOU ANYMORE" AGAIN AFTER HE GOT
20 BACK FROM CALIFORNIA?

21 A NO.

22 Q HE NEVER DID SAY THAT AGAIN?

23 A WELL, HE SAID IT ONCE BEFORE, AND IT WASN'T THEN.

24 Q ALL RIGHT. YOU ARE SAYING HE NEVER SAID ANYTHING
25 LIKE THAT AFTER THE BEGINNING OF MAY?

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1 A NO.

2 THE COURT: LET'S TAKE OUR 11:00 RECESS, MR. BARBER,
3 AND GIVE YOU AND THE WITNESS AND THE JURY A BREAK. WE WILL
4 BE IN RECESS FOR TEN MINUTES, AGAIN, WITH MY ADMONITION,
5 SPEAK TO NO ONE, AND LET NO ONE SPEAK TO YOU, AND DO NOT
6 DISCUSS THE CASE AMONG YOURSELVES. WE WILL RECESS FOR TEN
7 MINUTES.

8 (SHORT RECESS.)

9 THE COURT: THE RECORD MAY SHOW ALL THE JURORS ARE
10 IN THE BOX. THE DEFENDANT IS PRESENT WITH COUNSEL. THE
11 STATE IS PRESENT. THE WITNESS IS ON THE STAND. YOU MAY
12 PROCEED, MR. BARBER.

13 Q (BY MR. BARBER) THANK YOU. CARLA, WHEN ELROY
14 SAID, "I DON'T WANT ANYTHING FURTHER TO DO WITH YOU," DID
15 YOU BELIEVE THAT THE REASON HE SAID THAT WAS BECAUSE YOU HAD
16 FAILED TO KILL MARK SCHOENFELD?

17 A WHEN I TALKED TO HIM ON THE PHONE, HE TOLD ME IT
18 WAS ALL RIGHT THAT I HADN'T, BUT THEN WHEN I WOULDN'T GIVE
19 HIM THE GUN, HE WAS -- I JUST THOUGHT IT WAS BECAUSE I
20 WOULDN'T GIVE HIM THE GUN BACK.

21 Q OKAY. AS THE WEEKS AFTER THAT EVENT PROGRESSED,
22 DID YOU COME TO FEEL THAT YOU WOULD HAVE A BETTER CHANCE OF
23 MAKING ELROY CONTINUE TO LOVE YOU AND INCREASING THE CHANCE
24 OF A RELATIONSHIP BETWEEN YOU IF YOU CONTINUED TO TOLERATE
25 HIS DESIRE TO KILL LORI OR MARK?

1 IF IT WAS THAT TIME OR NOT.

2 Q DID YOU EVER EXPRESS YOUR DESIRE TO END THE
3 RELATIONSHIP TO ELROY?

4 A NO.

5 Q ALL RIGHT. AND YOU CONTINUED TO INVOLVE YOURSELF
6 IN GETTING DYNAMITE AND LIGHTING THE FUSES AND GOING ALONG
7 WITH THAT AND GOING ALONG WITH GETTING THE GUN, AND DID YOU
8 DO THAT BECAUSE YOU BELIEVE THAT TO DO SO WOULD INCREASE THE
9 CHANCE THAT THE RELATIONSHIP WOULD CONTINUE?

10 A NO, I DIDN'T DO IT BECAUSE OF THAT.

11 Q WHY DID YOU DO IT?

12 A BECAUSE IF I DIDN'T, I WAS AFRAID OF LOSING MY JOB.

13 Q OKAY. DID HE TELL YOU THAT AT ANY TIME THAT IF
14 YOU DIDN'T GO ALONG WITH LIGHTING DYNAMITE FUSES AND BUYING
15 GUNS, HE WAS GOING TO COST YOU YOUR JOB SOMEHOW?

16 A NO. BUT AT ONE TIME HE DID TELL ME HE WOULD GET
17 BACK AT ME.

18 Q OKAY. HE WOULD GET BACK AT YOU. IS THAT WHAT HE
19 SAID?

20 A YES.

21 Q THAT IS THE WAY YOU THOUGHT HE WOULD GO ABOUT DOING
22 THAT?

23 A THAT IS ONE WAY I SAW OF IT.

24 Q OKAY. ON THE AFTERNOON OF MAY 25 OF -- IN ANY
25 PERIOD OF TIME IMMEDIATELY PRIOR TO THAT, DID YOU INVITE

1 ELROY TO GO WITH YOU TO SAN FRANCISCO?

2 A I DIDN'T ACTUALLY INVITE HIM. I SAYS, "I WISH YOU
3 WAS GOING, WISH YOU COULD GO," OR SOMETHING LIKE THAT.

4 Q WHAT WAS HIS RESPONSE TO THAT?

5 A WELL, I KNEW HE COULDN'T GO. I DON'T REMEMBER
6 WHAT HE SAID. HE SAID, "I WOULD LIKE TO GO, TOO," I GUESS.

7 Q DID YOU OFFER TO BUY HIS TICKET IF HE WOULD GO?

8 A NO.

9 Q YOU NEVER DID THAT?

10 A I DON'T REMEMBER DOING IT.

11 Q YOU WHAT?

12 A I DON'T REMEMBER SAYING THAT.

13 Q OKAY. HOW MUCH PRIOR TO MAY 25 DID YOU HAVE THE
14 CONVERSATION IN WHICH YOU SAID YOU WISH YOU COULD GO TO
15 SAN FRANCISCO WITH ME?

16 A I DON'T REMEMBER. WHEN I FOUND OUT WHEN I WAS
17 GOING, WE HAD TALKED ABOUT IT ALL ALONG.

18 Q HOW MUCH PRIOR TO THE 25TH OF MAY DID YOU FIND OUT
19 YOU WERE GOING DOWN THERE?

20 A MAYBE ABOUT A MONTH BEFORE.

21 Q OKAY. NOW, DURING THE PERIOD OF 1980, WERE YOU
22 SLEEPING WITH ELROY REGULARLY?

23 A BEFORE 1980?

24 Q NO. EXCUSE ME. DURING 1982.

25 A I DON'T KNOW WHAT YOU CALL REGULARLY.

2025 RELEASE UNDER E.O. 14176

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1 Q WELL, YOU TELL ME WHAT THAT PATTERN WAS IF YOU
2 WILL.

3 A HE WOULD COME OVER QUITE A BIT AND STAY.

4 Q OKAY. DID THE FREQUENCY OF YOUR SLEEPING WITH HIM
5 INCREASE OR DECREASE DURING MARCH, APRIL AND MAY OF 1982?

6 A IT DECREASED.

7 Q WHEN DID IT BEGIN TO DECREASE?

8 A SEEMED LIKE IT WAS AROUND MARCH.

9 Q OKAY. ABOUT THE TIME THAT HE STARTED WITH THIS
10 TALK ABOUT HOMICIDE?

11 A YES.

12 Q OKAY. AND DID -- WERE THERE ANY PERIODS OF TIME
13 THAT YOUR SEXUAL RELATIONSHIP GOT BETTER WITH HIM BETWEEN
14 MARCH, APRIL AND MAY?

15 A NO.

16 Q DID IT CONTINUE TO DECREASE IN FREQUENCY?

17 A YES.

18 Q THROUGH THAT PERIOD?

19 A YES.

20 Q WAS THAT OF ANY CONCERN TO YOU?

21 A NO.

22 Q OKAY. WHAT WAS THE LAST TIME THAT YOU SLEPT WITH
23 HIM PRIOR TO MAY 25?

24 A I DON'T REMEMBER.

25 Q MORE THAN A COUPLE OF WEEKS?

1 A COULD HAVE BEEN LONGER THAN THAT.

2 Q DO YOU BELIEVE IT WAS MORE THAN A MONTH TO THE
3 BEST OF YOUR RECOLLECTION?

4 A ARE YOU -- CAN I ASK YOU A QUESTION? ARE YOU
5 TALKING ABOUT JUST SLEEPING WITH HIM?

6 Q NO, I AM TALKING ABOUT HAVING SEXUAL INTERCOURSE,
7 AND I AVOIDED THAT PHRASE, BUT WHEN I TALK ABOUT SLEEPING
8 WITH HIM, THAT IS WHAT I AM GOING TO REFER TO.

9 THE COURT: I TAKE IT, YOU DO NOT MEAN SPEND THE
10 NIGHT.

11 MR. BARBER: NO. I AM TALKING ABOUT HAVING SEXUAL
12 INTERCOURSE.

13 THE WITNESS: MAYBE THREE OR FOUR WEEKS, I DON'T
14 KNOW.

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1 Q WAS THAT LAST TIME THAT YOU HAD ANY SEXUAL EXPERIENCE
2 WITH ELROY BEFORE OR AFTER YOU ASKED HIM OR SUGGESTED THAT
3 IT WOULD BE NICE IF HE COULD GO TO SAN FRANCISCO?

4 A IT WAS BEFORE, I GUESS.

5 Q ALL RIGHT. SO AFTER YOUR LAST SEXUAL EXPERIENCE
6 WITH ELROY, YOU WERE STILL WILLING TO GO ON A TRIP WITH HIM
7 IF HE COULD HAVE GONE, IS THAT CORRECT?

8 A YEAH.

9 Q AND I PRESUME THAT HAD HE GONE, YOU WOULD HAVE
10 EXPECTED THAT THE TRIP WOULD HAVE INCLUDED SOME SEXUAL
11 ACTIVITY WITH HIM, IS THAT CORRECT?

12 A WELL, I KNEW HE COULDN'T GO SO I DIDN'T EVEN THINK
13 ABOUT THAT.

14 Q OKAY. IF ON THE MORNING OF THE 26TH AT 11:00 HE
15 WOULD SAY, "GEE, I CAN GO," AND HAD GONE ON THE PLANE WITH
16 YOU, WOULD YOU HAVE GONE WITH HIM?

17 A I CAN'T ANSWER THAT BECAUSE I KNOW HE COULDN'T
18 GO DOWN THERE.

19 Q BUT I AM TRYING TO EXPLORE YOUR ATTITUDE ABOUT IT.

20 A YEAH, MAYBE I WOULD HAVE.

21 Q NOW, LET'S GO TO THE EVENING OF THE 25TH OF MAY.
22 YOU INDICATED, I BELIEVE IN YOUR DIRECT TESTIMONY, THAT YOU
23 AND ELROY ONLY TOOK ABOUT TEN MINUTES TO EAT BECAUSE OF
24 WHAT WAS GOING ON. IS THAT KIND OF WHAT YOU SAID?

25 A YEAH.

1 Q WHAT DID YOU MEAN WHEN YOU SAID, "BECAUSE OF WHAT
2 WAS GOING ON"?

3 A ALL THIS TALK ABOUT LORI HASSLING HIM AND KILLING.
4 JUST KIND OF PUT A KNOT IN YOUR STOMACH AND YOU CAN'T EAT
5 WHEN THAT'S IN THERE.

6 Q SURE. NOW, ON THE EVENING OF THE 25TH OF MAY,
7 BEFORE DINNER, HAD ELROY SAID ONE THING TO YOU ABOUT KILLING
8 ANYONE?

9 A YOU MEAN THAT NIGHT?

10 Q YES.

11 A NO.

12 Q WHEN WAS THE LAST TIME BEFORE MAY THE 25TH THAT
13 ELROY HAD SAID ANYTHING ABOUT KILLING ANYONE?

14 A MAYBE A COUPLE OF DAYS BEFORE THAT HE HAD TOLD ME
15 THAT WHEN I GET BACK FROM SAN FRANCISCO EVERYTHING WOULD BE
16 ALL RIGHT.

17 Q AND WHAT DID YOU BELIEVE HE MEANT BY THAT?

18 A THAT HE WAS GOING TO GO KILL MARK.

19 Q WAS THAT BEFORE OR AFTER YOU BOUGHT THE REVOLVER,
20 EXHIBIT 27?

21 A I DON'T REMEMBER IF IT WAS BEFORE OR AFTER.

22 Q THE FIRST MENTION OF KILLING ANYBODY THAT OCCURRED
23 ON THE EVENING OF THE 25TH, AS I TAKE IT, WAS AFTER DINNER.
24 DID THAT OCCUR IN THE LIVING ROOM OR THE BEDROOM OF MARK'S
25 APARTMENT? I AM TALKING NOW ABOUT MARK WELCH AND ELROY'S

1 APARTMENT.

2 A IT WAS IN THE LIVING ROOM.

3 Q IS THAT WHERE HE SAID -- WELL, WHAT DID HE SAY?

4 A HE SAID, "TONIGHT HAS GOT TO BE THE NIGHT."

5 Q HE SAID, "IT HAS GOT TO BE TONIGHT"?

6 A "IT'S GOING TO BE OR -- " I DON'T REMEMBER THE
7 EXACT WORDS. I REMEMBER "GOT TO BE."

8 Q WHEN HE SAID, "IT HAS GOT TO BE TONIGHT," DID YOU
9 KNOW WHY HE FELT THAT WAS THE CASE?

10 A NOT THEN I DIDN'T.

11 Q OKAY. AND AT THAT POINT IN TIME, TO YOUR KNOWLEDGE
12 WAS THERE ANY REASON IN ELROY'S WORLD THAT THAT HAD TO BE
13 THE NIGHT ON WHICH THE KILLING WAS TO OCCUR?

14 A NO, I DIDN'T KNOW WHY HE HAD SAID THAT IT HAD TO
15 BE THE NIGHT.

16 Q DO YOU KNOW THAT TODAY?

17 A YES, I THINK SO.

18 Q WHY?

19 A HE COULD USE THE GOVERNMENT CAR TO GO DOWN THERE.

20 Q OF COURSE HE COULD HAVE GOTTEN A GOVERNMENT CAR
21 SOME OTHER TIME, COULDN'T HE HAVE?

22 A NO.

23 Q WHEN DID HE KNOW YOU WERE GOING TO USE THE GOVERNMENT
24 CAR?

25 A WHEN I ASKED HIM TO TAKE ME DOWN TO PICK IT UP.

1 Q HAD HE USED A GOVERNMENT CAR THE TIME THAT HE TOOK
2 YOU UP THERE AND SAID, "I AM GOING TO GO IN AND KILL THEM
3 NOW"? WAS THAT IN A GOVERNMENT CAR?

4 A NO,

5 Q AND DID YOU HAVE A GOVERNMENT CAR YOURSELF THAT
6 EVENING TO USE AS A COVER VEHICLE?

7 A NO.

8 Q TO AVOID YOUR IDENTIFICATION AS THE SLAYER?

9 A NO.

10 Q AND DID HE TALK ABOUT YOU USING A GOVERNMENT CAR
11 TO GO OVER THERE AND RING THE DOORBELL AND SHOOT MARK?

12 A NO.

13 Q DID HE TALK ABOUT USING A GOVERNMENT CAR WHEN YOU
14 WERE GOING TO GO AND HE WAS GOING TO STICK THE BOMB IN MARK'S
15 CAR AND THEN YOU WERE GOING TO WAIT UNTIL MARK GOT IN AND
16 YOU WERE GOING TO GO AND LIGHT THE FUSE?

17 A NO.

18 Q NO DISCUSSION OF THE GOVERNMENT CAR THERE EITHER?

19 A NO.

20 Q ANY OTHER REASON THAT IT HAD TO BE THAT NIGHT?

21 A THAT'S THE ONLY REASON I CAN SEE.

22 Q BOTH YOU AND ELROY HAD THE OPPORTUNITY TO DRIVE
23 THE GOVERNMENT CAR THAT EVENING, DIDN'T YOU?

24 A I DIDN'T DRIVE IT THAT EVENING.

25 Q THAT'S NOT WHAT I ASKED, PLEASE.

1 A I HAD THE OPPORTUNITY, YES.

2 Q AND HAD YOU WANTED TO GO HOME FROM ELROY'S HOUSE
3 AND NOT SPEND THE NIGHT THERE, YOU COULD EASILY HAVE TAKEN
4 THE GOVERNMENT CAR, COULDN'T YOU?

5 A HE HAD THE KEYS.

6 Q DO YOU SUPPOSE HE WOULDN'T HAVE GIVEN THEM TO YOU
7 HAD YOU ASKED FOR THEM?

8 A I DON'T KNOW.

9 Q NOW, SOMETIME FAIRLY QUICKLY AFTER ELROY SAID,
10 "TONIGHT HAS GOT TO BE THE NIGHT," I BELIEVE YOU TESTIFIED
11 THAT YOU WENT INTO THE BEDROOM WITH HIM AND HE GAVE YOU THE
12 REVOLVER, EXHIBIT 27, IS THAT CORRECT?

13 A YES.

14 Q AND YOU SAID, I BELIEVE, THAT IT WAS UNLOADED.

15 A I THINK IT WAS, I DIDN'T LOOK.

16 Q BUT WHEN YOU GAVE IT TO DET. CHAPMAN, IT WAS
17 UNLOADED, WASN'T IT?

18 A YES.

19 Q WEREN'T ANY SHELLS IN IT?

20 A NOT THAT I KNOW OF.

21 Q DID YOU HAVE ANY .22 SHELLS?

22 A NOT WITH ME.

23 Q DID YOU HAVE SOME AT HOME?

24 A NO.

25 Q DO YOU KNOW WHETHER ELROY HAD ANY .22 SHELLS?

1 A YES.

2 Q WHERE WERE THOSE LOCATED?

3 A I DON'T KNOW WHERE THEY WERE.

4 Q BUT HOW DO YOU KNOW THAT HE HAD THEM?

5 A BECAUSE I BOUGHT HIM SOME.

6 Q WHEN DID YOU DO THAT?

7 A I THINK I BOUGHT SOME WHEN I BOUGHT THE SECOND

8 GUN.

9 Q THE AUTOMATIC BACK AROUND APRIL 17TH?

10 A YES.

11 Q BUT NOT SINCE THEN, IS THAT RIGHT?

12 A I DON'T THINK I DID, NO.

13 Q THAT WAS BEFORE YOU WENT OUT AND FIRED THE

14 AUTOMATIC OUT AT GRANTSVILLE, WASN'T IT?

15 A YES.

16 Q WHAT DID HE TELL YOU TO DO WITH THAT GUN?

17 A HE ASKED ME TO TAKE IT BACK TO MY APARTMENT AND

18 HIDE IT.

19 Q DID HE GIVE YOU THE SILENCER TO TAKE BACK WITH YOU?

20 A NO.

21 Q THIS GUN HAS BEEN RATHER OBVIOUSLY ALTERED, HASN'T

22 IT?

23 A YES.

24 Q DID HE EVER EXPRESS ANY CONCERN ABOUT THAT?

25 A THAT IT HAD BEEN ALTERED?

1 Q YES.

2 A NO.

3 Q WHEN YOU BOUGHT THAT REVOLVER, EXHIBIT NO. 27,
4 AS I UNDERSTAND YOUR TESTIMONY YOU THOUGHT HE BOUGHT IT TO
5 KILL MARK SCHOENFELD OR LORI GRONEMAN, CORRECT?

6 A YES.

7 Q IN LIGHT OF THAT DO YOU KNOW WHY -- AND AT THAT
8 POINT IN TIME, THE EVENING OF MAY 25TH, YOU ALREADY HAD
9 TOLD ELROY THAT YOU WEREN'T GOING TO KILL THEM, DIDN'T YOU?

10 A YES.

11 Q DO YOU BELIEVE HE HAD ANY DOUBT OF THAT IN HIS
12 MIND THAT YOU WERE NOT GOING TO COMMIT THAT OFFENSE THAT HE
13 HAD ASKED YOU TO COMMIT?

14 A I DON'T THINK HE DID.

15 Q YOU DON'T THINK HE THOUGHT YOU WOULD DO IT?

16 A I TOLD HIM I WOULDN'T DO IT AND HE NEVER ASKED ME
17 FROM THAT TIME ON.

18 Q ALL RIGHT. AND JUST BEFORE THAT HE HAD TOLD YOU,
19 "TONIGHT HAS GOT TO BE THE NIGHT," CORRECT?

20 A YES.

21 Q AND HE HAD A SILENCER AND A GUN, RIGHT?

22 A YES.

23 Q WHY DID HE GIVE THE GUN TO YOU?

24 A HE HAD TOLD ME HE TRIED THE SILENCER AND IT DIDN'T
25 WORK.

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1 Q ALL RIGHT.

2 A AND HE TOLD ME TO JUST TAKE IT BACK TO MY
3 APARTMENT AND HIDE IT.

4 Q ALL RIGHT. NOW, AS I UNDERSTAND IT, AFTER THE
5 DINNER AND SO FORTH, YOU WENT DOWN TO KMART AND THEN YOU HAD
6 THESE CONVERSATIONS HERE, YOU GOT IN THE CAR AND TOOK OFF
7 TOWARDS SALT LAKE CITY AND AT THAT POINT IN TIME YOU KNEW
8 IN YOUR OWN HEART THAT THE PURPOSE OF THAT DRIVE IN THAT
9 DIRECTION WAS TO COMMIT MURDER, IS THAT CORRECT?

10 A YES.

11 Q YOU HAD THE GUN IN YOUR PURSE AT THAT POINT IN TIME,
12 IS THAT CORRECT?

13 A YES.

14 Q WHAT DID YOU BELIEVE ELROY WAS GOING TO USE TO
15 COMMIT THE HOMICIDE?

16 A I DIDN'T KNOW THEN.

17 Q WELL, DID IT SURPRISE YOU THAT HE HAD GIVEN YOU
18 THE GUN AND THAT, TO YOUR KNOWLEDGE, WAS THE ONLY WEAPON
19 THAT EITHER OF YOU WERE IN POSSESSION OF AT THAT TIME? TOLD
20 YOU TO GO HIDE IT, NOT ASK FOR IT BACK, AND YET YOU WERE
21 GOING TO GO AND COMMIT MURDER NOT KNOWING WHAT THE WEAPON
22 WAS?

23 A I WAS NEVER GOING TO USE IT. I WOULDN'T HAVE DONE
24 IT IF HE HAD ASKED ME THAT NIGHT.

25 Q HOW DID YOU THINK HE WAS GOING TO COMMIT THE

1 MURDER WHEN YOU TOGETHER TOOK OFF TO GO COMMIT IT?

2 A I DIDN'T KNOW.

3 Q DID YOU ASK HIM?

4 A LATER ON WHEN WE WERE PARKED HE HAD TOLD ME.

5 Q DID YOU ASK HIM TO GET HIM TO TELL YOU OR DID HE
6 JUST VOLUNTEER THAT?

7 A I DON'T REMEMBER ASKING HIM.

8 Q OKAY. WHAT DID HE SAY -- IS THAT WHEN HE SAID,
9 "I AM GOING TO GO IN THERE AND HIT HIM ON THE HEAD WITH A
10 HATCHET WHEN HE COMES IN"? IS THAT WHAT HE SAID TO INDICATE
11 THAT TO YOU?

12 A WHILE WE WERE PARKED?

13 Q YES.

14 A SOMETHING LIKE THAT, YES.

15 Q DID HE TELL YOU ANYTHING ELSE TO INDICATE HOW HE
16 INTENDED TO COMMIT THE HOMICIDE?

17 A NO, NOT THEN.

18 Q WHEN WAS THE FIRST TIME THAT YOU FOUND OUT EXACTLY
19 HOW HE INTENDED TO DO IT?

20 A WHEN WE WERE PARKED THE FIRST TIME, HE TOLD ME
21 HE WAS JUST GOING TO WAIT UNTIL MARK GOT IN, CAME IN THE HOUSE,
22 AND THEN HIT HIM OVER THE HEAD, THE NEXT TIME WE TALKED
23 ABOUT IT WAS SITTING IN THE LIVING ROOM BY THE FRONT DOOR.

24 Q ALL RIGHT. NOW, LET ME STOP YOU THERE. WAS THE
25 INFERENCE YOU DREW FROM HIS STATEMENT TO YOU, "I AM GOING TO

1 GO IN AND WHEN HE COMES IN I AM GOING TO HIT HIM IN THE HEAD,"
2 WAS IT YOUR IMPRESSION FROM ELROY THAT HE INTENDED TO HIT
3 HIM ON THE HEAD AND KILL HIM ON THE SPOT?

4 A YES, THAT HE WAS GOING TO TRY AND DO THAT.
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1 Q THERE WAS NO DISCUSSION AT THAT POINT IN TIME OF
2 FIRE OR ARSON OR ANYTHING LIKE THAT?

3 A I DON'T REMEMBER AT THAT TIME, NO.

4 Q SO THE FIRST STATEMENT HE MADE WAS THAT HE WAS
5 GOING TO USE THE HATCHET AND SOLELY THE HATCHET TO EFFECT
6 THE DEATH OF MARK SCHOENFELD; IS THAT RIGHT?

7 A YES.

8 Q ALL RIGHT. NOW, WHAT HAPPENS IS -- AND I REMEMBER
9 ALL THE THINGS ABOUT GOING AROUND THE YARD AND SO FORTH.
10 AND I RECALL -- AND CORRECT ME IF I AM WRONG, BUT YOU WERE
11 TALKING ABOUT SITTING IN THE CAR FOR AN HOUR, HOUR AND A
12 HALF, AND THEN YOU GOT OUT OF THE CAR, AND HE WENT IN THE
13 APARTMENT, AND YOU WERE OUT THERE FOR AN HOUR, HOUR AND A
14 HALF; IS THAT RIGHT?

15 A WELL, WE TOOK OFF BACK TO MY APARTMENT.

16 Q THERE WAS AN INTERIM TRIP TO YOUR APARTMENT THAT
17 TOOK MAYBE A HALF HOUR?

18 A YES.

19 Q OKAY. SO NOW WE ARE INTO THE DEAL ABOUT THREE AND
20 A HALF HOURS, RIGHT?

21 A YES.

22 Q AND THEN YOU GO INSIDE AND YOU SIT DOWN BY THE
23 FRONT DOOR FOR AN HOUR, HOUR AND A HALF?

24 A YES.

25 Q SO NOW YOU ARE IN THE EXPERIENCE NEARLY FIVE HOURS

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1 BEFORE THE THING IS OVER WITH, AND YOU ARE ON YOUR WAY AWAY
2 FROM YOUR SCENE?

3 A THAT COULD HAVE BEEN.

4 Q ALL RIGHT. WERE YOU CONCERNED THAT THAT LONG
5 DURATION EXPOSED THE RISK OF DISCOVERY?

6 A I WASN'T CONCERNED ABOUT THAT.

7 Q WHAT WERE YOU CONCERNED ABOUT?

8 A WHEN I WAS WALKING AROUND, I WAS CONCERNED ABOUT
9 WHAT HAD HAPPENED INSIDE BECAUSE IT WAS TAKING SO LONG.

10 Q BUT YOU KNOW YOU HAVE GOT A CAR PARKED OUT THERE,
11 A U.S. GOVERNMENT VEHICLE THAT IS PARKED WITHIN A HALF BLOCK,
12 ACCORDING TO YOUR TESTIMONY, OF THE SCENE OF A HOMICIDE FOR
13 THREE AND A HALF, FOUR AND A HALF HOURS. DIDN'T IT OCCUR TO
14 YOU AT ALL THAT SOMEBODY MIGHT SEE THAT GOVERNMENT VEHICLE
15 THERE OVER THAT LONG PERIOD OF TIME WITH PEOPLE GETTING IN
16 AND OUT OF IT AND THE LIGHT GOING OFF AND ON AND SO FORTH
17 AND WOULD REMEMBER THAT AFTER THE NEXT DAY WHEN THE HOMICIDE
18 WAS DISCOVERED?

19 A NO, I DIDN'T THINK ABOUT THAT.

20 Q DID ELROY EXPRESS ANY CONCERN ABOUT THAT?

21 A NO.

22 Q HOW MANY TIMES DID YOU FOLKS GET IN AND OUT OF THE
23 CAR WHILE IT WAS PARKED UP THERE RIGHT IN FRONT OF SOMEBODY'S
24 HOUSE ON BRIAN AVENUE?

25 A AFTER HE CAME OUT OF THE HOUSE?

1 Q NO. FROM THE TIME YOU GOT THERE UNTIL THE TIME
2 YOU WENT HOME. HOW MANY TIMES DID YOU GET IN AND OUT?

3 THE COURT: LET'S FIND OUT WHERE IT WAS PARKED.

4 THE WITNESS: IT WAS PARKED IN THREE DIFFERENT
5 PLACES.

6 Q (BY MR. BARBER) ALL RIGHT. IN PLACE ONE, HOW
7 MANY TIMES DID YOU GET IN AND OUT -- WELL, LET ME GO BACK,
8 AND I WILL TRY TO FIX IT.

9 THE COURT: PLEASE.

10 Q (BY MR. BARBER) ONCE AGAIN, WHERE WAS THE FIRST
11 TIME YOU PARKED, AND INSTEAD OF WORRYING ABOUT 1560 SOUTH
12 AND SO FORTH, LET'S CALL IT, FOR PURPOSES OF THE RECORD,
13 BRIAN AVENUE WHICH INTERSECTS GOING EAST AND WEST WITH 13TH
14 EAST, IS THAT RIGHT?

15 A IT WAS WEST.

16 Q OKAY. SO THE FIRST TIME YOU PARKED WEST OF 13TH
17 ON BRIAN, IS THAT RIGHT?

18 A YES.

19 Q FACING?

20 A FACING EAST.

21 Q FACING EAST. SO YOU WERE ON THE RIGHT-HAND SIDE OF
22 THE ROAD?

23 A YES.

24 Q ALL RIGHT. AND WAS THERE A HOUSE NEXT TO WHERE YOU
25 PARKED?

1 A YES.

2 Q AND HOUSES ON BOTH SIDES OF THAT ONE?

3 A YES.

4 Q AND HOUSES ACROSS THE ROAD?

5 A YES.

6 Q HOW MANY TIMES DID YOU GET IN AND OUT OF THAT CAR
7 WHEN THE CAR WAS PARKED OUT THERE?

8 A I DON'T THINK WE GOT OUT.

9 Q OKAY. THEN YOU TOOK OFF, WENT SOMEPLACE AND CAME
10 BACK. WHERE DID YOU PARK THE SECOND TIME?

11 A IT WAS ON THE STREET, THE SAME STREET ON THE OTHER
12 SIDE.

13 Q EAST OF 13TH EAST?

14 A NO, JUST ACROSS THE STREET ON THE OTHER SIDE OF
15 THE ROAD FROM WHERE WE WERE BEFORE EXCEPT FACING WEST.

16 Q OKAY. WERE THERE HOUSES IN THAT VICINITY?

17 A YES.

18 Q AND HOW LONG WAS THE CAR PARKED THERE?

19 A HALF HOUR TO 45 MINUTES.

20 Q OKAY. AND HOW MANY TIMES DID YOU GET IN AND OUT
21 OF THE CAR DURING THAT PERIOD?

22 A I DIDN'T GET ANY. ELROY GOT OUT A COUPLE OF TIMES.

23 Q OKAY. SO HE WAS IN AND OUT A COUPLE OF TIMES, AND
24 YOU JUST SAY THERE?

25 A YES.

1 Q HOUSES ALL AROUND?

2 A YES.

3 Q THE LIGHT GO ON WHEN YOU OPEN THE DOOR?

4 A HE CRAWLED OUT THE WINDOW.

5 Q ALL RIGHT. NOW, THE THIRD TIME YOU PARKED THE CAR,
6 WHERE WAS IT?

7 A IT WAS EAST OF 13TH.

8 Q ON BRIAN?

9 A YES.

10 Q FACING WEST?

11 A YES.

12 Q HEAVILY POPULATED RESIDENTIAL AREA?

13 A YES.

14 Q ALL RIGHT. HOW MANY TIMES DID YOU GET IN AND OUT
15 OF THE CAR WHILE IT WAS PARKED THERE?

16 A WE GOT OUT AND WENT DOWN TO THE HOUSE. WHEN WE
17 CAME BACK OUT OF THE HOUSE, WE WENT BACK UP AND SAT IN IT
18 FOR ABOUT A HALF HOUR, AND THEN WE GOT OUT AGAIN AND WENT
19 BACK DOWN TO THE HOUSE, AND THEN WE LEFT.

20 Q OKAY. SO IN AND OUT THREE OR FOUR TIMES?

21 A YES.

22 Q DID YOU CRAWL OUT THE WINDOWS?

23 A NOT THEN.

24 Q OKAY. SO THE LIGHT WENT ON?

25 A YES.

1 Q ALL RIGHT. BUT THAT WAS NOT OF CONCERN TO YOU; IS
2 THAT CORRECT?

3 A YES.

4 Q ALL RIGHT. WHEN YOU WENT THE LAST TIME TO THE
5 HOUSE AND GOT IN THE FRONT DOOR WHICH WAS LEFT, APPARENTLY,
6 AJAR OR UNLOCKED, AND SAT DOWN BY THE DOOR, DURING THAT,
7 WHAT YOU SAID WAS AN HOUR, HOUR AND A HALF THAT YOU SAT; IS
8 THAT CORRECT?

9 A YES.

10 Q WAS THERE ANY SOUND OR MOTION INDICATING THAT AT
11 ANY TIME DURING THAT PERIOD MR. SCHOENFELD WAS AWAKE?

12 A NO, WE DIDN'T HEAR ANYTHING.

13 Q WHY THEN DID YOU WAIT SO LONG TO STRIKE?

14 A TO MAKE SURE HE WAS ASLEEP.

15 Q ALL RIGHT. DID ANYTHING HAPPEN AT THE END OF THAT
16 PERIOD AND JUST BEFORE YOU WENT TOWARD THE BEDROOM TO CONFIRM
17 THAT HE WAS ASLEEP?

18 A NO.

19 Q ALL RIGHT. YOU WERE JUST SATISFIED IN YOUR OWN
20 MINDS THAT ENOUGH TIME HAD PASSED; IS THAT CORRECT?

21 A YES.

22 Q OKAY. CARLA, HAD YOU EVER BEEN IN THAT HOUSE
23 BEFORE?

24 A NOT INSIDE.

25 Q ALL RIGHT. YOU HAD LOOKED IN THE WINDOWS?

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1 A YES.

2 Q HAD YOU BEEN ABLE IN LOOKING IN THE WINDOWS TO SEE
3 THE RELATIVE POSITIONS OF THE ROOMS?

4 A YES, SOME OF THEM.

5 Q OKAY. WHICH ONES COULD YOU SEE IN LOOKING IN THE
6 WINDOW? AND PERHAPS WE CAN USE THE DIAGRAM. WOULD YOU STEP
7 DOWN. IF YOU CAN STAND RIGHT OVER HERE, THAT WILL BE MOST
8 HELPFUL. SPEAK RIGHT INTO THE MICROPHONE, AND IF YOU WILL,
9 FOR PURPOSES OF THIS EXAMINATION, USE THIS GREEN MAGIC
10 MARKER.

11 DO YOU RECOGNIZE THAT DIAGRAM AS GENERALLY
12 REPRESENTING THE CONFIGURATION OF THAT HOUSE? AND PERHAPS
13 I CAN HELP YOU. THIS IS THE FRONT DOOR. THIS IS THE BACK
14 DOOR. THE BEDROOM, THE DINING AREA AND THE KITCHEN AND THE
15 FRONT ROOM HERE WITH THE KITCHEN TABLE BACK HERE. BATHROOM.

16 A DOESN'T LOOK RIGHT TO ME. THIS IS THE KITCHEN
17 RIGHT HERE.

18 Q OKAY. PUT A "K" IN THE KITCHEN.

19 A (WITNESS COMPLIES.)

20 Q OKAY.

21 A THIS WAS THE DINING AREA, THAT WAS THE LIVING ROOM,
22 AND THIS WAS JUST ANOTHER ROOM.

23 Q OKAY. COULD WE FAIRLY DESCRIBE THAT AS A STORAGE
24 ROOM?

25 A YES.

1 Q AN EXTRA BEDROOM NOT USED FOR THAT PURPOSE, IS
2 THAT WHAT IT WAS?

3 A YES.

4 Q WHY DON'T YOU PUT AN "S" IN THERE.

5 A (WITNESS COMPLIES.)

6 Q OKAY. NOW, DOES THE DIAGRAM MAKE SENSE?

7 A YES.

8 Q ALL RIGHT. WHICH WINDOW WAS IT THAT YOU LOOKED
9 THROUGH WHEN YOU FIRST EXAMINED THE INSIDE OF THAT APARTMENT?

10 A I FIRST LOOKED IN THIS WINDOW OVER HERE.

11 Q OKAY. PUT A "1" OVER THERE, WOULD YOU?

12 A (WITNESS COMPLIES.)

13 Q AND THAT IS A WINDOW IN THE STORAGE ROOM; IS THAT
14 RIGHT?

15 A YES.

16 Q AND WHAT COULD YOU SEE ABOUT THE CONFIGURATION OF
17 THE HOUSE AND CONCLUDE ABOUT IT FROM LOOKING IN THAT WINDOW?

18 A I COULDN'T. I JUST SAW THAT ROOM.

19 Q OKAY. DID YOU THEREAFTER GO TO ANOTHER WINDOW AND
20 LOOK IN?

21 A I LOOKED IN THE FRONT DOOR WINDOW.

22 Q OKAY. AND PUT A "2" OVER THERE.

23 A (WITNESS COMPLIES.)

24 Q AND WHAT DID YOU SEE ABOUT THE CONFIGURATION OF THE
25 HOUSE FROM THAT VANTAGE POINT?

RECEIVED BY AIRMAIL 11/1/68

1 A I SAW THE LIVING ROOM AND THE DINING ROOM AREA.

2 Q OKAY. AND -- EXCUSE ME, GO AHEAD.

3 A AND I THINK THE KITCHEN.

4 Q YOU COULD TELL WHERE THE KITCHEN WAS AT ANY RATE?

5 A YES.

6 Q COULD YOU TELL WHERE THE BEDROOMS WERE FROM THAT
7 POINT OF VIEW?

8 A NO.

9 Q ALL RIGHT. DID YOU EVER LOOK IN THE HOUSE FROM
10 ANY OTHER VANTAGE POINT?

11 A WELL, FROM THIS WINDOW RIGHT HERE YOU COULD SEE IN
12 JUST FROM THE STREET.

13 Q OKAY. HAD YOU TAKEN THE OCCASION TO LOOK IN THERE,
14 TOO?

15 A WELL, IT IS UP HIGH. YOU CAN'T ACTUALLY GO LOOK
16 IN IT, BUT YOU CAN SEE THROUGH IT.

17 Q OKAY. BEFORE THE TIME YOU ENTERED IN THERE WITH
18 ELROY TO KILL MARK, DID YOU KNOW ANYTHING MORE ABOUT THE
19 INSIDE OF THAT APARTMENT THAN YOU HAVE TOLD US?

20 A NO.

21 Q YOU MAY RESUME THE STAND. OH, ONE OTHER THING.
22 WHEN YOU WENT IN, AS I UNDERSTAND IT, YOU SAT DOWN BY THE
23 FRONT DOOR SOMEPLACE?

24 A YES.

25 Q PUT TWO "X'S" IF YOU WILL IN THE GENERAL AREA WHERE

1 YOU SAT DOWN.

2 A (WITNESS COMPLIES.)

3 Q OKAY. RESUME THE STAND IF YOU WOULD, PLEASE.

4 NOW, WHEN ELROY HAD GONE INTO THE HOUSE THROUGH
5 THE BACK DOOR, YOU THOUGHT HE WAS GOING TO GO IN THERE AND
6 KILL MARK ON THE SPOT WHEN HE CAME THROUGH WITH THE HATCHET,
7 CORRECT?

8 A YES.

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1 Q ALL RIGHT. AND AT THAT POINT IN TIME AND DURING
2 THE PERIOD THAT HE WAS IN THERE, ACCORDING TO YOUR TESTIMONY,
3 I BELIEVE YOU SAID THAT YOU WENT TO AN ADJACENT AREA A
4 BLOCK OR SO AWAY IN AN ATTEMPT TO USE THE PHONE IN AN ATTEMPT
5 TO CALL INTO THE HOUSE TO SEE WHAT WAS HAPPENING.

6 A YES.

7 Q AT THAT POINT IN TIME YOU HAD A PERFECT OPPORTUNITY,
8 DID YOU NOT, TO CALL THE POLICE AND TELL THEM THAT THERE WAS
9 A HOMICIDE GOING ON AND THEY OUGHT TO GET OVER THERE AND
10 STOP IT?

11 A YES.

12 Q WHY DIDN'T YOU?

13 A BECAUSE OF ALL THOSE OTHER REASONS I TOLD YOU BEFORE.

14 Q SAME STUFF AGAIN, CORRECT?

15 A YES.

16 Q YOU WERE AFRAID YOU WERE GOING TO LOSE YOUR JOB?

17 A YES.

18 Q AND THAT THERE WAS SOME UNDERLYING FEAR THAT ELROY
19 MIGHT DO SOMETHING TO YOU, IS THAT RIGHT?

20 A YES.

21 Q THAT HE NEVER EXPRESSED?

22 A JUST THAT HE TOLD ME HE WAS A REVENGEFUL PERSON.

23 Q A REVENGEFUL PERSON. ALL RIGHT. NOW, HE CAME OUT
24 AND YOU WENT BACK TO THE CAR AND SAT THERE A BIT, AND THEN
25 YOU BOTH WENT DOWN TO THE HOUSE, CORRECT?

1 A YES.

2 Q NOW, WHAT WAS SAID THAT LED TO YOUR BOTH LEAVING
3 THE GOVERNMENT VEHICLE OUT THERE ON THE STREET AND GOING
4 INTO MARK'S HOUSE TO COMMIT A MURDER?

5 A WHAT WAS SAID?

6 Q YES. YOU DIDN'T GO IN WITH HIM THE FIRST TIME.
7 WHY DID YOU GO THE SECOND TIME?

8 A HE HAD TOLD ME THAT HE DIDN'T GET A CHANCE TO DO
9 IT AT THE DOOR WHEN MARK CAME IN. HE HAD GONE INTO HIS
10 BEDROOM AND WAS DOING SOMETHING IN THERE.

11 Q THAT WHO HAD?

12 A MARK.

13 Q THAT MARK HAD GONE INTO THE BEDROOM AND WAS DOING
14 SOMETHING?

15 A YES.

16 Q OKAY.

17 A SO HE CAME BACK OUT. WE WENT UP TO THE CAR AND HE
18 SAID, "WE ARE GOING TO WAIT UNTIL HE GOES TO SLEEP." WE
19 WAITED THERE ABOUT A HALF HOUR. WE WENT BACK DOWN TO THE
20 HOUSE AND HE SAID, "LET'S WAIT A LITTLE LONGER," WHILE WE
21 WERE SITTING THERE.

22 Q SITTING WHERE?

23 A BY THE FRONT DOOR.

24 Q INSIDE?

25 A YES.

1 Q NOW, MY QUESTION IS: HOW DID THE THING GET FROM
2 "I," MEANING ELROY, TO "WE," MEANING ELROY AND CARLA? YOU
3 DIDN'T GO IN THE FIRST TIME HE WENT IN TO KILL HIM, DID YOU?

4 A NO.

5 Q WHY DID YOU GO THE SECOND TIME?

6 A WHEN WE WAS SITTING IN THE CAR HE SAID, "COME ON,
7 LET'S GO." SO I WENT DOWN WITH HIM.

8 Q WHY?

9 A BECAUSE I JUST THOUGHT I WAS GOING TO BE STANDING
10 OUTSIDE AGAIN.

11 Q WHY NOT JUST SIT IN THE CAR?

12 A I DON'T KNOW. NOTHING WAS SAID ABOUT THAT.

13 Q HE JUST SAID, "WELL, LET'S GO AND COMMIT A MURDER,"
14 AND YOU JUST GOT UP AND WENT WITH HIM," IS THAT WHAT
15 HAPPENED?

16 A YES.

17 Q WEREN'T YOU AFRAID OF YOU LOSING YOUR JOB? I
18 WILL WITHDRAW THE QUESTION.

19 THE COURT: AND THE JURY WILL DISREGARD IT.

20 MR. CHRISTENSEN: THANK YOU, YOUR HONOR.

21 Q (BY MR. BARBER) WAS THERE ANYTHING ELSE SAID THAT
22 CAUSED YOU TO DO THAT, TO GO WITH HIM?

23 A WHEN WE GOT TO THE FRONT DOOR AND HE STARTED TO
24 GO IN, I TOLD HIM I DIDN'T WANT TO GO IN.

25 Q AND HE SAID --

1 A AND HE SAID, "QUIT BEING SO NERVOUS AND SCARED AND
2 GET IN HERE."

3 Q OKAY. WAS THAT KIND OF THE TONE OF VOICE HE
4 USED?

5 A MAYBE A LITTLE GRUFFER.

6 Q A LITTLE IMPATIENT, WAS HE?

7 A YES.

8 Q FOR HANGING BACK?

9 A YES.

10 Q ANYTHING FURTHER SAID ABOUT ENCOURAGING YOU TO
11 GET IN THERE?

12 A NO.

13 Q ALL RIGHT. NOW, WHEN YOU WENT DOWN TO THE CAR,
14 YOU DID NOT TAKE THE PISTOL, IS THAT CORRECT?

15 A YES.

16 Q WHAT WAS ELROY CARRYING IN HIS HANDS WHEN YOU WENT
17 DOWN THERE?

18 A HE HAD AN AX.

19 Q AN AX?

20 A YES.

21 Q WHAT ELSE, IF ANYTHING?

22 A HE WAS CARRYING A GAS CAN,

23 Q ALL RIGHT, NOW, LET US DISCUSS THE GAS CAN. WHEN
24 YOU WERE SITTING IN THE CAR IN THE STREET THOSE HOURS THAT
25 YOU DID SIT THERE, WERE YOU AWARE OF THE FUMES OF GASOLINE IN

1 THE PASSENGER COMPARTMENT OF THE CAR?

2 A NO.

3 Q AT THE TIME YOU GOT INTO THE VEHICLE WITH ELROY
4 BACK AT HIS HOUSE, DID HE PLACE A GAS CAN INTO THE CAR?

5 A I DIDN'T SEE ONE.

6 Q ALL RIGHT. CONCLUDING FROM ALL THE FACTS TOGETHER,
7 WHERE DO YOU THINK THE GAS CAN WAS WHEN HE LEFT HIS HOUSE
8 AND WENT UP TO MARK'S?

9 A I THINK IT WAS IN THE TRUNK.

10 Q OKAY. AND WHEN YOU GOT OUT OF THE CAR TO GO DOWN
11 AND KILL MARK, DID ELROY GET IN THE TRUNK AND FETCH OUT THE
12 GAS CAN?

13 A YES, I THINK SO.

14 Q OKAY. NOW, WAS THE HATCHET -- WHEN YOU FIRST SAW
15 ELROY WITH THE HATCHET IN HIS HANDS, WAS THAT HATCHET IN
16 THE PASSENGER COMPARTMENT OR IN THE TRUNK?

17 A I DON'T REMEMBER WHERE IT WAS.

18 Q WHEN HE GOT OUT OF THE CAR THE FIRST TIME, HE
19 WENT UP THERE AND SAID HE WAS GOING TO GO IN AND HIT MARK ON
20 THE HEAD AND KILL HIM AS HE CAME IN THE HOUSE. DID HE HAVE
21 A HATCHET IN HIS HANDS WHEN HE SAID THAT TO YOU?

22 A I DON'T THINK SO.

23 Q DID HE GET OUT OF THE CAR AND GET IN THE TRUNK
24 BETWEEN THE TIME HE TOLD YOU THAT IS WHAT HE WAS GOING TO
25 DO AND THE TIME THAT HE TOOK OFF TO DO IT?

1 A I AM NOT SURE, BUT IT SEEMED LIKE HE WENT BACK TO
2 THE TRUNK.

3 Q SO IT IS YOUR BEST BELIEF AT THIS TIME, FROM ALL
4 THE CIRCUMSTANCES, THAT HE GOT THE HATCHET OUT OF THE TRUNK
5 INSTEAD OF THE PASSENGER COMPARTMENT THE FIRST TIME HE USED
6 IT?

7 A YES.

8 Q OKAY.

9 A I THINK SO.

10 Q WHEN HE CAME BACK AFTER NOT HAVING A CHANCE TO
11 DO WHAT HE WAS GOING TO DO, DID HE PUT THE HATCHET BACK IN
12 THE TRUNK OR DID HE BRING IT BACK INTO THE CAR WITH HIM, OR
13 DO YOU KNOW?

14 A I DON'T REMEMBER HIM GOING BACK TO THE TRUNK.

15 Q OKAY.

16 THE COURT: WHENEVER IT IS CONVENIENT FOR YOU,
17 MR. BARBER.

18 MR. BARBER: PARDON?

19 THE COURT: LET ME KNOW WHEN IT IS CONVENIENT FOR
20 YOU.

21 MR. BARBER: THIS IS FINE, YOUR HONOR.

22 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE
23 WILL TAKE THE NOON RECESS. AGAIN, I WILL ADMONISH YOU TO
24 SPEAK TO NO ONE, LET NO ONE SPEAK TO YOU. DO NOT DISCUSS
25 THE CASE AMONG YOURSELVES. DO NOT MAKE UP YOUR MINDS UNTIL

1 YOU HAVE HEARD ALL THE EVIDENCE.

2 WE WILL BE IN RECESS UNTIL 2:00.

3 MR. CHRISTENSEN: YOUR HONOR, SO I MIGHT KNOW,

4 ARE WE GOING TO GO UNTIL 5:00 TODAY OR UNTIL 4:00?

5 THE COURT: I WILL LET YOU KNOW AT 4:00.

6 MR. CHRISTENSEN: ALL RIGHT. THANK YOU.

7 (NOON RECESS TAKEN.)

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1 THE COURT: THE RECORD MAY SHOW ALL JURORS ARE
2 PRESENT. DEFENDANT IS PRESENT. HAS THAT BEEN RECEIVED IN
3 EVIDENCE?
4 MR. CHRISTENSEN: WHICH, YOUR HONOR?
5 MR. BARBER: I SURE THOUGHT IT HAD BEEN.
6 THE CLERK: IT HAS NOT BEEN OFFERED.
7 THE COURT: NOT BEEN OFFERED? WE HAVE BEEN LOOKING
8 AT IT AND SHOWING IT AND TALKING ABOUT IT.
9 MR. BARBER: YES, YOUR HONOR, I THOUGHT IT WAS IN.
10 THE COURT: I DID, TOO.
11 MR. CHRISTENSEN: ARE YOU TALKING ABOUT THE GUN,
12 YOUR HONOR?
13 THE COURT: YES.
14 MR. CHRISTENSEN: I DON'T -- IT WASN'T MY UNDER-
15 STANDING IT HAD BEEN IN, AND THE REASON WE HAVEN'T OFFERED IT
16 YET IS WE WANTED TO ESTABLISH THE FOUNDATION WITH
17 DETECTIVE CHAPMAN.
18 MR. BARBER: I WILL WAIVE THE FOUNDATION.
19 MR. CHRISTENSEN: WE WOULD OFFER BOTH GUNS, THEN.
20 THE COURT: WHAT NUMBER IS THAT?
21 MR. BARBER: 27.
22 THE COURT: 27-B, AND THE SAME IS HEREBY RECEIVED.
23 LET THE JURY LOOK AT IT. WE KEEP TALKING ABOUT IT.
24 MR. BARBER: YES.
25 THE COURT: SO LET THEM NOW SEE WHAT WE ARE

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1 TALKING ABOUT.

2 MR. BARBER: WE MIGHT AS WELL DO 19 AND 24 AT THE
3 SAME TIME. THAT IS THE OTHER GUN AND THE BOX.

4 THE COURT: THAT IS THE OTHER ONE. WELL, THERE IS
5 NOTHING TO SHOW ON THOSE.

6 MR. BARBER: I WILL WAIVE FURTHER FOUNDATION ON
7 THOSE.

8 THE COURT: ALL RIGHT. 19 -- NO, THAT IS 23 IS
9 THE BOX --

10 THE CLERK: BOTH 19 AND 23 ARE RECEIVED.

11 MR. BARBER: THEY ARE IN.

12 THE COURT: ALL RIGHT, THEY ARE RECEIVED. LET THE
13 JURY SEE THAT OTHER ONE. THERE WERE REMARKS ABOUT IT. JUST
14 LOOK AT IT BRIEFLY, AND PASS IT ALONG, LADIES AND GENTLEMEN.
15 WE HAD SOME STATEMENTS AND QUESTIONS ABOUT THE SAME, AND
16 THEY CAN SEE WHAT WE ARE TALKING ABOUT. I MADE SURE THERE
17 WAS NOTHING ENTERED OR NO CHANCE OF ACCIDENTALLY GETTING ANY-
18 THING IN IT.

19 THE WITNESS, PLEASE. THE RECORD MAY SHOW THE
20 WITNESS HAS TAKEN THE STAND. YOU MAY PROCEED, MR. BARBER.

21 Q (BY MR. BARBER) THANK YOU. NOW, CARLA, BEFORE WE
22 RECESSED, I BELIEVE THAT WE WERE TALKING ABOUT OR HAD BEEN
23 TALKING ABOUT THIS GASOLINE CAN, AND YOU INDICATED THAT THE
24 FIRST TIME YOU SAW IT WAS WHEN ELROY TOOK IT OUT OF THE
25 TRUNK OF THE CAR WHEN YOU BOTH WENT DOWN TO THE HOUSE

1 IMMEDIATELY PRIOR TO THE ACTUAL HOMICIDE; IS THAT RIGHT?

2 THE COURT: MAY I ASK A QUESTION? THE CAR, WHAT
3 CAR?

4 Q (BY MR. BARBER) THE GREEN GOVERNMENT CAR PARKED
5 EAST ON BRIAN AVENUE ABOUT ONE-HALF BLOCK; IS THAT CORRECT?

6 A YES.

7 Q ALL RIGHT. WHEN YOU CROSSED THE THRESHOLD INTO
8 MARK'S HOUSE THROUGH THE UNLOCKED DOOR, WHAT WERE YOU
9 CARRYING IN YOUR HANDS, IF ANYTHING?

10 A I WASN'T CARRYING ANYTHING.

11 Q AND WHAT, IF ANYTHING, WAS ELROY CARRYING IN HIS
12 HANDS?

13 A THE AX.

14 Q WAS THAT AX OR HATCHET -- BY THE WAY, IN MOST OF
15 YOUR PRIOR STATEMENTS TO THE POLICE AND SO FORTH YOU REFER TO
16 THAT AS A HATCHET, HAVE YOU NOT?

17 MR. CHRISTENSEN: I AM GOING TO OBJECT TO THE FORM
18 OF THAT QUESTION, YOUR HONOR.

19 THE COURT: I WILL SUSTAIN THE OBJECTION TO THE
20 FORM.

21 MR. CHRISTENSEN: THANK YOU.

22 Q (BY MR. BARBER) WAS IT A HATCHET OR AN AX?

23 A IT WAS AN AX.

24 Q HAVE YOU EVER REFERRED TO IT BEFORE AS A HATCHET?

25 A YES.

1 Q WHEN?

2 A IN MY FIRST STATEMENTS.

3 Q HOW MANY OF THOSE DID YOU REFER TO IT IN THAT WAY?
4 THE FIRST ONE WITH DETECTIVE CHAPMAN AND MAY 28, WHAT DID
5 YOU CALL IT?

6 A I THINK I CALLED IT A HATCHET.

7 Q AND THE ONE ON JULY 21 OF 1982 WITH
8 MR. CHRISTENSEN AND DETECTIVE CHAPMAN, WHAT DID YOU CALL IT
9 IN THAT STATEMENT?

10 A I DON'T REMEMBER WHAT I CALLED IT.

11 Q AND WHAT ABOUT AT THE PRELIMINARY HEARING OF THIS
12 MATTER IN AUGUST?

13 A I THINK I CALLED IT AN AX.

14 Q YOU THINK YOU CALLED IT AN AX AT THAT POINT?

15 A YES.

16 Q ALL RIGHT. NOW, MR. SHEWEL HAS MARKED A PIECE OF
17 PAPER HERE AS DEFENDANT'S PROPOSED EXHIBIT NO. 29, AND IT IS
18 JUST A BLANK SHEET. WOULD THAT BE FAIR? AND I WOULD GIVE
19 YOU A PEN, AND I WOULD LIKE YOU TO DRAW THE HEAD OF THAT AX
20 TO SCALE AND SIZE IF YOU CAN, AS BEST YOU CAN REMEMBER.

21 THE COURT: TO THE BEST OF YOUR ABILITY.

22 MR. BARBER: INDEED.

23 THE COURT: IS ALL HE IS ASKING.

24 THE WITNESS: I CAN'T DRAW THESE THINGS. JUST THE
25 HEAD YOU WANT?

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1 Q (BY MR. BARBER) JUST THE HEAD. THAT IS PRETTY
2 CLOSE, IS IT?

3 A TO THE HEAD I WOULD SAY. BUT I DIDN'T MAKE IT
4 QUITE BIG ENOUGH.

5 MR. BARBER: ALL RIGHT. I MOVE FOR THE ADMISSION
6 OF DEFENDANT'S EXHIBIT 29 FOR ILLUSTRATIVE PURPOSES ONLY.

7 THE COURT: ONLY TO ILLUSTRATE HER TESTIMONY.
8 THAT IS ALL IT IS OFFERED FOR.

9 MR. CHRISTENSEN: I HAVE NO OBJECTION.

10 THE COURT: ALL RIGHT, IT MAY BE RECEIVED FOR THAT
11 PURPOSE.

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1 MR. BARBER: MAY THAT BE PASSED TO THE JURY, YOUR
2 HONOR?

3 THE COURT: IT MAY BE.

4 Q (BY MR. BARBER) NOW, CARLA, THIS THING HAD A
5 HANDLE ON IT AS WELL, DID IT NOT?

6 A YES.

7 Q AND I THINK YOU SAID MAYBE 15 TO 18 INCHES LONG?

8 A YES.

9 Q DID YOU NOTICE AT THE END OF THE HANDLE OPPOSITE THE
10 HEAD TO DETERMINE WHETHER THERE WAS ANYTHING UNUSUAL ABOUT
11 IT?

12 A YES.

13 Q AND IN DESCRIBING THAT HANDLE, WAS THE HANDLE END
14 OF THE AX OR HATCHET TAPERED OR WAS IT SQUARED OFF?

15 A ARE YOU TALKING ABOUT THE VERY END?

16 Q YES.

17 A I COULDN'T TELL. THERE WAS TAPE WRAPPED AROUND IT.

18 Q DESCRIBE HOW THAT TAPE WAS WRAPPED AROUND THE END
19 OF THE HANDLE, IF YOU WOULD.

20 Q TO ME IT LOOKED LIKE IT HAD BEEN WRAPPED KIND OF
21 IN A BALL.

22 Q NUMEROUS TIMES?

23 A YES.

24 Q AND TAKING THE PROPOSITION, JUST AGAIN FOR
25 ILLUSTRATIVE PURPOSES, THAT THIS FABER-CASTELL CRAYON I HAVE

1 HERE IS THE HANDLE, HOW MUCH BIGGER THAN THAT HANDLE WAS THE
2 BALL OF TAPE ON THE END?

3 A IT WAS ABOUT LIKE THIS, (INDICATING.)

4 Q SO WOULD YOU SAY THAT IT WAS AT LEAST, SAY,
5 THREE-QUARTERS OF AN INCH ON EACH SIDE BIGGER THAN THE HANDLE
6 ITSELF?

7 MR. CHRISTENSEN: WHY DON'T WE MEASURE IT, YOUR
8 HONOR?

9 Q (BY MR. BARBER) DO YOU WANT TO DO THAT AGAIN
10 AND I WILL MEASURE. MEASURING TO THE INSIDE OF HER FINGERS,
11 I SEE THAT THE TOTAL DIAMETER AT THE SMALLEST POINT IS ABOUT
12 TWO INCHES, IS THAT FAIR TO SAY, CARLA?

13 A YES.

14 Q WAS IT SOMEWHAT LARGER THAN THE SHAFT OF THE HANDLE
15 ITSELF?

16 A YEAH.

17 Q DID THE TAPE EXTEND DOWN THE HANDLE?

18 A NOT VERY FAR.

19 Q HOW FAR? YOU CAN SHOW US THAT WITH YOUR HANDS.

20 A I COULD SEE THE END OF IT EXCEPT THE BALL, I WOULD
21 SAY, MAYBE A COUPLE OF INCHES.

22 Q OKAY, SO THAT THE DISTANCE OF THE HANDLE FOR,
23 SAY, 11 OR 14 OR 15 INCHES HAD NO TAPE ON IT WHATSOEVER, IS
24 THAT CORRECT?

25 A I DON'T REMEMBER SEEING ANY.

1 Q OKAY. THAT BALL, AS YOU DESCRIBE IT WAS ABOUT WHAT,
2 HALF BETWEEN A GOLF BALL AND A TENNIS BALL, OR WAS IT THAT
3 BIG?

4 A MAYBE THE SIZE OF A TENNIS BALL.

5 Q MAYBE THE SIZE OF A TENNIS BALL? THAT WAS THE
6 QUESTION DESPITE THE TONE.

7 NOW, WHEN ELROY CARRIED THAT AX IN THE HOUSE AND
8 WHEN HE CARRIED IT FROM THE AUTOMOBILE UP ON BRYAN AVENUE
9 ABOUT A HALF A BLOCK AWAY DOWN TO THE HOUSE, DID HE DO
10 ANYTHING TO HIDE IT OR DISGUISE IT?

11 A I DON'T REMEMBER SEEING ANYTHING.

12 Q OR JUST HOLD IT IN HIS HAND AND WALK ALONG THE
13 ROAD WITH IT?

14 A I DON'T REMEMBER -- I WASN'T WATCHING.

15 Q OKAY. NOW, AT THAT POINT IN TIME WAS HE CARRYING
16 THE GAS CAN IN HIS OTHER HAND?

17 A YES.

18 Q WHEN HE GOT TO THE HOUSE -- DID YOU PUSH THE
19 DOOR OPEN OR DID ELROY?

20 A HE PUSHED IT OPEN.

21 Q DID HE HAVE BOTH THE GAS CAN AND THE AX OR HATCHET,
22 WHATEVER, IN HIS HAND WHEN HE PUSHED THE DOOR OPEN?

23 A NO.

24 Q WHICH OF THOSE TWO ITEMS WAS NOT ANY LONGER IN HIS
25 HAND?

4

1 A THE GAS CAN.

2 Q AND WHAT HAPPENED TO THE GAS CAN?

3 A HE SET IT DOWN.

4 Q WHERE?

5 A BY THE FRONT DOOR.

6 Q AND THAT'S WHERE YOU MADE THE MARK HERE INDICATING
7 "GC" ON THE DIAGRAM THE OTHER DAY?

8 A YES.

9 Q AT ANY TIME BETWEEN YOUR FIRST ENTRY INTO
10 MR. SCHOENFELD'S HOUSE AND THE TIME YOU LEFT THERE FOR GOOD,
11 DID THAT GAS CAN GET INSIDE OF HIS HOUSE?

12 A NO.

13 Q WAS THE CONTENTS OF THAT CAN USED FOR ANY PURPOSE
14 WHATEVER IN CONNECTION WITH WHAT WAS DONE AT MARK'S HOUSE?

15 A NO,

16 Q ALL RIGHT. NOW, AS ELROY CARRIED THAT CAN, COULD
17 YOU HEAR WHETHER THERE WAS ANYTHING INSIDE IT?

18 A I WASN'T LISTENING FOR ANYTHING, BUT I DIDN'T HEAR
19 ANYTHING.

20 Q DID THE WAY IN WHICH HE HANDLED THE CAN INDICATE
21 TO YOU WHETHER IT WAS FULL OR EMPTY?

22 A NO, IT DIDN'T INDICATE ANYTHING.

23 Q NOW, AFTER YOU GOT OUT OF THE HOUSE, AFTER THE
24 WHOLE THING WAS FINISHED AND YOU WENT TOWARD THE CAR AGAIN
25 TO MAKE YOUR ESCAPE, DO YOU RECALL SEEING THE GASOLINE CAN

1 AGAIN?

2 A YES.

3 Q AFTER YOU GOT OUT OF THE CAR, WHAT IS THE NEXT
4 RECOLLECTION YOU HAVE OF THE GASOLINE CAN?

5 A ELROY PICKED IT UP AND CARRIED IT BACK.

6 Q NOW, AT THAT POINT IN TIME WHO WAS CARRYING THE
7 HATCHET?

8 A THE AX?

9 Q EXCUSE ME, THE AX. I WILL QUIT DOING THAT.

10 A I WAS,

11 Q AND YOU HAD SOME OTHER ITEMS IN YOUR HAND, TOO,
12 DIDN'T YOU?

13 A YES.

14 Q A TOWEL AND SOME FORM OF SHIRT?

15 A YES. I DON'T KNOW WHAT IT WAS. IT WAS CLOTHING
16 THOUGH.

17 Q ANYTHING ELSE BESIDES THOSE THREE THINGS THAT YOU
18 WERE CARRYING?

19 A NO.

20 Q AND YOU SAY ELROY PICKED UP THE GAS CAN, IS THAT
21 RIGHT?

22 A YES,

23 Q AND WHAT DID HE DO WITH IT AFTER THAT?

24 A I THINK HE PUT IT IN THE TRUNK.

25 Q SO HE CARRIED IT UP TO THE CAR, AND DID YOU GO AHEAD

1 AND GET IN THE PASSENGER SIDE?

2 A YES.

3 Q AND THE PASSENGER SIDE WAS ADJACENT TO THE CURB
4 THE WAY THE CAR WAS PARKED, WAS IT NOT?

5 A YES.

6 Q AND DO YOU RECALL SEEING ELROY GO AROUND TO GET
7 INTO THE DRIVER'S SIDE?

8 A YES, HE GOT IN.

9 Q OKAY. WELL, WE KNOW THAT FROM THE FACT THAT HE
10 DROVE AWAY, DON'T WE, BUT DO YOU RECALL HIM ACTUALLY GETTING
11 INTO THE TRUNK AND PUTTING THE GAS CAN THERE?

12 A ALL I CAN SAY, IT SEEMS LIKE HE DID.

13 Q OKAY. FROM THERE YOU PROCEED, AS I UNDERSTAND IT,
14 OUT TO THE AREA OF REDWOOD ROAD AND THEN OUT TOWARD THE OLD
15 AIRPORT ROAD AND DID SOME THINGS OUT THERE.

16 DURING THE TIME YOU WERE OUT THERE BURNING THE
17 CLOTHING, ITEMS THAT YOU HAD REMOVED FROM THE SCENE AND
18 DISPOSING OF THE HATCET AND DISPOSING OF THE GLOVES, HOW
19 MANY TIMES WAS THE CAR STOPPED?

20 A WE STOPPED ONCE TO BURN THE THINGS, AND ONCE TO
21 THROW THE AX IN THE RIVER.

22 Q OKAY. ON EITHER OF THOSE OCCASIONS, DID ELROY GET
23 INTO THE TRUNK?

24 A IT SEEMS LIKE HE DID THE FIRST TIME WE STOPPED.

25 Q ALL RIGHT. WERE YOU AWARE OF HIS POSSESSION OF

1 THE GAS CAN?

2 A NO.

3 Q WOULD IT BE FAIR FOR YOU -- WELL, DID ELROY DO
4 ANYTHING TO DISPOSE OF THE GAS CAN WHEN HE STOPPED AND BURNED
5 THE STUFF?

6 A I DON'T KNOW, I NEVER SAW IT.

7 Q OKAY. YOU WERE WITH HIM THE WHOLE TIME?

8 A I DIDN'T TURN AROUND TO LOOK.

9 Q I UNDERSTAND THAT BUT YOU WERE WITH HIM, IS THAT
10 CORRECT?

11 A YES. NO, I STAYED IN THE CAR.

12 Q OKAY.

13 A WHILE HE WENT TO BURN THEM.

14 Q HOW FAR AWAY FROM THE CAR DID HE GO WHEN HE MADE
15 THAT BURN?

16 A IT WAS A LITTLE WAYS OFF THE ROAD.

17 Q FURTHER THAN FROM ME TO YOU HERE?

18 A YES.

19 Q THAT'S ABOUT WHAT, 15, 20 FEET? ALL RIGHT. NOW,
20 DID HE DO ANYTHING WITH RESPECT TO THE GAS CAN WHEN HE
21 GOT OUT TO DISPOSE OF THE HATCHET?

22 A NO, I DIDN'T SEE THE GAS CAN.

23 Q OKAY. NOW, WHEN HE GOT BACK TO THE CAR AND YOU
24 HAD THE HATCHET WITH YOU, WHEN YOU GOT BACK TO THE CAR FROM
25 MARK'S PLACE, DID YOU CARRY THE HATCHET WITH YOU INSIDE THE

1 PASSENGER COMPARTMENT OF THE CAR?

2 A WHILE WE WERE DRIVING?

3 Q YES.

4 A YES.

5 Q NOW, WHEN YOU GOT HOME TO ELROY'S HOUSE AND GOT OUT
6 OF THE CAR, DID ELROY DISPOSE OF THE GAS CAN THERE?

7 A NO, I DIDN'T SEE IT.

8 Q AND DID ELROY GO OUTSIDE TO THE CAR IN THE MORNING
9 WITHOUT YOU AT ANY TIME, TO YOUR KNOWLEDGE?

10 A THE NEXT MORNING?

11 Q YES.

12 A NOT TO MY KNOWLEDGE.

13 Q SO YOU WERE THE FIRST ONE OUT TO THE CAR, ISN'T
14 THAT CORRECT?

15 A YES.

16 Q DID YOU CHECK IN THE TRUNK TO DETERMINE WHETHER THE
17 GAS CAN WAS STILL THERE?

18 A NO.

19 Q DID YOU DISPOSE OF THE GAS CAN AFTER YOU LEFT
20 ELROY'S OR AT HIS PLACE?

21 A NO.

22 Q ALL RIGHT. SO AS FAR AS YOU KNOW, THE GAS CAN
23 WOULD STILL HAVE BEEN IN THE CAR WHEN IT WAS PARKED AT THE
24 SALT LAKE AIRPORT, IS THAT CORRECT?

25 A IT COULD HAVE BEEN.

3

1 Q OKAY. NOW, GOING BACK TO THE SCENE OF THE HOMICIDE
2 AT MARK'S PLACE, CARLA, YOU INDICATED THAT WHEN YOU GOT IN
3 THERE IT WAS DARK AND THAT ELROY INDICATED THAT ELROY WENT
4 DOWN AND TURNED THE KITCHEN LIGHT OFF AND ON, IS THAT CORRECT?

5 A YES.

6 Q WAS THERE ANY CONVERSATION WITH HIM ABOUT WHY HE
7 DID THAT?

8 A NO.

9 Q FROM HIS CONDUCT OR OTHER FACTORS THEN PRESENT,
10 DID YOU DRAW AN ASSUMPTION OR OPINION OF WHY HE DID THAT?

11 A YES.

12 Q WHAT DID YOU CONCLUDE HE WAS DOING THAT FOR?

13 A SEE IF HE COULD SEE INTO THE BEDROOM.

14 Q ALL RIGHT. WHERE WERE YOU STANDING WHEN HE FLIPPED
15 THAT LIGHT ON?

16 A I WAS STANDING JUST OUTSIDE THE BEDROOM.

17 Q THAT'S THE BEDROOM IN WHICH MR. SCHOENFELD WAS
18 SLEEPING IN THIS AREA, CORRECT?

19 A YES.

20 Q NOW, WHERE WAS THE SWITCH TO THE KITCHEN LIGHT
21 LOCATED?

22 A JUST INSIDE THE DOOR.

23 Q OKAY. AND MAYBE YOU OUGHT TO STEP DOWN HERE,
24 WOULD YOU PLEASE? I THINK WE ARE USING GREEN ONES TO INDICATE
25 THE MARKS YOU ARE MAKING DURING THE COURSE OF THIS EXAMINATION.

J

1 WOULD YOU DO ME THE KINDNESS OF PLACING AN "X" OR SOME OTHER
2 FORM OF MARK IN THE KITCHEN WHERE THAT SWITCH WAS LOCATED?

3 A IT WAS RIGHT AROUND IN THIS AREA. (INDICATING.)
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1 Q THAT IS TO THE RIGHT-HAND SIDE OF THE KITCHEN DOOR
2 AS YOU ENTERED; IS THAT CORRECT?

3 A YES.

4 Q PUT A "C" WHERE YOU WERE STANDING AT THAT TIME
5 WHEN HE SWITCHED THE LIGHT ON.

6 A I WAS OVER IN THIS AREA SOMEWHERE.

7 Q OKAY. CAN YOU RESUME THE STAND.

8 AT THE TIME HE TURNED THAT LIGHT ON THE BEDROOM
9 DOOR HAD ALREADY BEEN OPENED, HAD IT NOT?

10 A YES, A LITTLE WAY.

11 Q AND AS I SEE THE DRAWING THERE, THAT DOOR SWINGS
12 OUTWARD INTO THE EATING AREA RATHER THAN GOING IN TOWARD THE
13 BEDROOM, IS THAT A CORRECT DEPICTION OF HOW THAT DOOR WORKED?

14 A NO.

15 Q IN FACT, IT SWUNG ANOTHER WAY, DIDN'T IT?

16 A YES.

17 Q OPENED IN TOWARD THE BEDROOM; IS THAT RIGHT?

18 A YES.

19 Q DID IT SWING FROM THE RIGHT-HAND SIDE OF THE FRAME
20 AS YOU LOOK INTO THE ROOM OR FROM THE LEFT?

21 A FROM THE LEFT.

22 Q ALL RIGHT. SO IF I GO DOWN HERE AND MAKE A MARK
23 THIS WAY, IS THAT GOING TO SHOW US HOW THE DOOR ACTUALLY
24 WENT? DO YOU SEE WHERE I AM DESIGNATING IT?

25 A YES.

1 Q THIS WAY HERE?

2 A YES.

3 Q AND IF I CROSS OUT THAT ONE, THAT WILL BE FAIR,
4 WOULDN'T IT, BECAUSE THAT IS WRONG?

5 A YES.

6 Q ALL RIGHT. AND I AM DOING THAT, AND LET THE RECORD
7 REFLECT THAT.

8 NOW, YOU WILL SEE THAT I HAVE THAT DOOR MARKED
9 OPENED PERHAPS 40 PERCENT OF A 45-DEGREE ANGLE, CORRECT?

10 A YES.

11 Q OR ABOUT HALFWAY?

12 A YES.

13 Q IS THAT KIND OF THE WAY IT WAS WHEN THE LIGHT WENT
14 ON IN THE KITCHEN BECAUSE ELROY TURNED IT ON? WAS IT FURTHER
15 THAN THAT OR LESS THAN THAT?

16 A IT COULD HAVE BEEN LESS THAN THAT.

17 Q ALL RIGHT. WHEN THAT LIGHT WENT ON, COULD YOU SEE
18 MR. SCHOENFELD ON THE BED?

19 A I DON'T THINK I LOOKED IN THERE TO SEE.

20 Q WHERE WERE YOU LOOKING WHEN THE LIGHT WENT ON?

21 A I WAS WATCHING ELROY.

22 Q OKAY. DID YOU SEE HIM AT THE INSTANT THE LIGHT
23 WENT ON?

24 A ELROY?

25 Q UH-HUH.

1 A YES.

2 Q SO I TAKE IT FROM THAT THAT HE HAD REACHED AROUND
3 TO TURN ON THE LIGHT; IS THAT RIGHT? WELL, I WILL ASK YOU A
4 DIRECT QUESTION. HOW DID YOU TURN ON THE LIGHT?

5 A HE JUST SWITCHED IT ON.

6 Q WHERE WAS HE STANDING WHEN HE DID THAT IN THE
7 KITCHEN OR DINING ROOM?

8 A I THINK HE WAS IN THE KITCHEN.

9 Q COULD YOU SEE HIM?

10 A YES.

11 Q WAS HE FACING YOU OR FACING SOME OTHER DIRECTION?

12 A I THINK HE WAS FACING ME.

13 Q ALL RIGHT. DID YOU SEE WHICH HAND HE USED TO TURN
14 THE SWITCH ON?

15 A NO.

16 Q ALL RIGHT. NOW, AS I UNDERSTAND IT AFTER HE HAD
17 SWITCHED THAT LIGHT ON, HE CAME BACK AND CRAWLED INTO THE
18 BEDROOM; IS THAT RIGHT?

19 A YES.

20 Q AND DID YOU STAY IN THE DINING AREA OR DID YOU
21 CRAWL IN THERE, TOO?

22 A I STAYED OUT FOR A MINUTE.

23 Q ALL RIGHT. AND HE CRAWLED IN HERE, AND DID YOU SEE
24 WHERE HE WENT?

25 A NO.

1 Q ALL RIGHT. YOU HEARD HIS VOICE, THOUGH, AFTER A
2 SHORT PERIOD OF TIME, THOUGH, DIDN'T YOU?

3 A YES.

4 Q AND HE WHISPERED YOU TO COME TO THIS, THERE?

5 A YES.

6 Q AND YOU DID THAT?

7 A YES.

8 Q WHEN YOU GET IN THERE, WHERE WAS ELROY?

9 A I COULDN'T SEE HIM.

10 Q ALL RIGHT.

11 A I SAID, "I CAN'T SEE YOU, WHERE ARE YOU?"

12 Q BY SOUND OR OTHERWISE DO YOU HAVE A NOTION AS TO
13 WHERE HE WAS LOCATED WHEN HE WAS WHISPERING TO YOU?

14 A WELL, BY THAT TIME THE DOOR WAS A LITTLE FARTHER
15 OPEN.

16 Q UH-HUH. BACK AGAINST THIS DRESSER SORT OF?

17 A YES.

18 Q OKAY.

19 A SO I JUST CRAWLED IN JUST TO GET MY HEAD AROUND THE
20 DOOR, AND I THINK HE WOULD HAVE BEEN IN THAT AREA BEHIND THE
21 DOOR.

22 Q SOMEPLACE OVER IN HERE?

23 A YES.

24 Q OKAY. AND MAY THE RECORD SHOW I HAVE INDICATED THE
25 AREA RIGHT NEAR IN FRONT OF THE DRESSER; IS THAT CORRECT?

1 A YES.

2 Q AND HE TOLD YOU TO GO TURN ON THE KITCHEN LIGHT?

3 A YES.

4 Q AND DID YOU DO THAT?

5 A YES.

6 Q AND WHEN YOU GOT TO THIS DOORWAY, TO THE KITCHEN,
7 DID YOU WALK OR CRAWL OVER THERE?

8 A I WALKED.

9 Q OKAY. AND AS YOU GOT THERE DID YOU TURN ON THE
10 LIGHT?

11 A YES.

12 Q WHEN YOU HIT THAT SWITCH WITH YOUR HAND, WERE YOU
13 OUTSIDE THE DOORWAY OR WERE YOU INSIDE THE KITCHEN OR WHERE?

14 A I WAS INSIDE THE KITCHEN.

15 Q INSIDE THE KITCHEN. WERE YOU FACING TOWARD THE
16 DINING AREA OR SOMEWHERE ELSE?

17 A I WAS FACING THE DINING AREA.

18 Q SO YOU HAD GONE INTO THE KITCHEN AND THEN TURNED
19 AROUND, HAD YOU?

20 A YES.

21 Q ALL RIGHT. NOW, BY THAT TIME HAD ELROY TOLD YOU
22 TO PUT YOUR HANDS UP IN YOUR SWEATER TO AVOID LEAVING
23 FINGERPRINTS?

24 A YES.

25 Q AND DID YOU DO THAT WHEN YOU TURNED ON THE LIGHT?

1 A YES.

2 Q DID YOU PULL THEM UP IN THE SLEEVES OR DID YOU PUT
3 THEM UP IN THE TORSO PORTION OF THE SWEATER?

4 A IN MY SLEEVES.

5 Q ALL RIGHT. SO YOU JUST PULLED THE SLEEVE DOWN
6 OVER YOUR HAND, IS THAT WHAT YOU DID?

7 A YES.

8 Q ALL RIGHT. AND WHICH HAND DID YOU USE TO PUT ON
9 THE SWITCH?

10 A I DON'T REMEMBER WHICH HAND IT WAS.

11 Q HOW LONG DID IT TAKE YOU TO FIND IT?

12 A I WENT RIGHT TO IT.

13 Q HOW DID YOU DO THAT?

14 A BECAUSE I HAD SEEN WHERE ELROY WAS.

15 Q ALL RIGHT. WHEN YOU GOT BACK, BEFORE YOU GOT BACK
16 YOUR TESTIMONY WAS, I BELIEVE, THAT ELROY HAD ALREADY STRUCK
17 MR. SCHOENFELD WITH THE HATCHET?

18 A YES.

19 Q ALL RIGHT. DID YOU SEE ELROY TILLMAN STRIKE THE
20 FIRST BLOW TO MR. SCHOENFELD?

21 A NO.

22 Q ALL RIGHT. NOW, AFTER THAT, BY THAT TIME I PRESUME
23 YOU HAD GOT NEAR TO THE BEDROOM AGAIN; IS THAT CORRECT?

24 A I WENT IN THE KITCHEN FOR A FEW MINUTES.

25 Q OKAY. AND THEN SOMETIME LATER YOU WALKED TOWARD

1 THE BEDROOM?

2 A YES.

3 Q AND IS IT TRUE THAT AT THAT TIME THE BEDROOM LIGHT
4 WAS ON?

5 A YES.

6 Q HAVE YOU MADE REPORTS PREVIOUS TO THIS TIME THAT
7 SOME OTHER LIGHT MAY HAVE BEEN ON AS WELL?

8 A THE BATHROOM LIGHT.

9 Q ALL RIGHT. AND WHEN DID YOU SAY THAT?

10 MR. CHRISTENSEN: I WILL OBJECT TO THE FORM OF
11 THAT QUESTION, YOUR HONOR, WITHOUT FURTHER FOUNDATION
12 REGARDING THAT.

13 THE COURT: WELL, YOU CAN LAY THE FOUNDATION FOR IT.

14 MR. BARBER: THAT IS WHAT I WAS GETTING AT.

15 Q TO WHOM DID YOU MAKE SUCH A STATEMENT?

16 THE COURT: DID YOU MAKE SUCH A STATEMENT?

17 THE WITNESS: YES.

18 Q (BY MR. BARBER) TO WHOM DID YOU MAKE THAT
19 STATEMENT?

20 A I DON'T REMEMBER IF IT WAS MR. CHRISTENSEN OR
21 DETECTIVE CHAPMAN.

22 Q OKAY. DID YOU MAKE SUCH A STATEMENT AT A PRIOR
23 HEARING IN THIS MATTER?

24 A YES, I THINK SO.

25 Q ISN'T IT A FACT, MISS SAGERS, THAT THIS TRIAL IS

1 THE FIRST TIME YOU HAVE EVER SAID THAT THE BEDROOM LIGHT WAS
2 ON?

3 A NO, I HAVE SAID BEFORE THE BEDROOM LIGHT WAS ON.

4 Q OKAY. DO YOU HAVE AN EXPLANATION FOR YOUR HAVING
5 MADE THE ERROR WHEN YOU REPORTED THAT IT WAS THE BATHROOM
6 LIGHT?

7 MR. CHRISTENSEN: YOUR HONOR, OBJECT TO THE FORM
8 OF THAT QUESTION.

9 MR. BARBER: OKAY, I WILL WITHDRAW THE QUESTION.
10 I APOLOGIZE.

11 THE COURT: THAT QUESTION WILL BE STRICKEN AND THE
12 CONTENTS THEREOF WILL BE DISREGARDED.

13 MR. CHRISTENSEN: THANK YOU, YOUR HONOR.

14 THE COURT: YOU MAY ASK QUESTIONS AND NOT MAKE
15 STATEMENTS.

16 Q (BY MR. BARBER) INDEED. WERE BOTH LIGHTS ON AT
17 ANY TIME?

18 A YES.

19 Q AND WHEN TO YOUR KNOWLEDGE, IF IT HAPPENED, DID THE
20 BATHROOM LIGHT GET TURNED ON?

21 A I DON'T KNOW WHEN IT WAS TURNED ON.

22 Q WHEN YOU GOT BACK AND FIRST OBSERVED
23 MR. SCHOENFELD IN HIS BED AFTER HE HAD BEEN STRUCK, WHICH
24 LIGHTS WERE ON IN THE BEDROOM OR THE BATHROOM?

25 A THE BATHROOM -- THE BEDROOM LIGHT WAS ON. I DIDN'T

1 KNOW THE BATHROOM LIGHT WAS ON THEN.

2 Q ALL RIGHT. AND, OF COURSE, AT THAT TIME YOU SAW
3 MR. SCHOENFELD ON THE BED, AND DID YOU NOTICE A HEAD WOUND
4 AT THAT TIME?

5 A YES.

6 Q AND, IN FACT, AT THAT TIME YOU SAID THAT ELROY WAS
7 WIPING SOME BLOOD OFF THE WALL WITH A TOWEL; IS THAT RIGHT?

8 A YES.

9 Q WAS THERE ANY CONVERSATION AT ANY TIME BETWEEN YOU
10 AND MR. TILLMAN ABOUT WHY HE HAD BEEN WIPING BLOOD OFF THE
11 WALL OF THE BEDROOM WITH A TOWEL?

12 A NO.

13 Q DID YOU THINK TO ASK HIM ABOUT THAT?

14 A NO.

15 Q DID YOU THINK IT UNIQUE OR UNUSUAL THAT HE WOULD
16 DO THAT?

17 A NO.

18 Q ALL RIGHT. NOW, AFTER HE HAD FINISHED DOING THAT
19 WHAT DID YOU DO WITH THE TOWEL?

20 A I DON'T KNOW.

21 Q ALL RIGHT. DURING THAT PERIOD OF TIME OR THE ONE
22 IMMEDIATELY AFTER THAT, IS THAT WHEN HE ASKED YOU TO PICK UP
23 SOME ARTICLE OF CLOTHING FROM THE FLOOR?

24 A YES.

25 Q ALL RIGHT. NOW, PRIOR TO THAT MOMENT DID YOU

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1 OBSERVE WHETHER THERE WAS ANY ARTICLE OF CLOTHING AT ALL ON
2 THE BED WITH MR. SCHOENFELD?

3 A I DON'T REMEMBER SEEING ANY.

4 Q ALL RIGHT. AND IF YOU CAN GIVE US THE BEST
5 DESCRIPTION YOU CAN OF THE ARTICLE THAT YOU PICKED UP OFF
6 THE FLOOR.

7 A IT WAS SOMETHING WHITE.

8 Q ALL RIGHT.

9 A IT WAS KIND OF LIKE A COTTON MATERIAL.

10 Q YES.

11 A THAT IS ALL I REMEMBER.

12 Q ALL RIGHT. AS YOU PICKED IT UP HOW FAR DID IT
13 HANG DOWN FROM YOUR HAND? WAS IT A BIG ITEM?

14 A NOT REAL BIG.

15 Q WAS IT GENERALLY CONSISTENT WITH THE SIZE OF A
16 SHIRT?

17 A IT COULD HAVE BEEN. I AM NOT SURE.

18 Q ALL RIGHT. AND I UNDERSTAND THAT. IS THERE ANY
19 OTHER ITEM YOU BELIEVE IT MORE LIKELY TO HAVE BEEN THAN A
20 SHIRT?

21 A NO.

22 Q WERE YOU CONSCIOUS OF THERE BEING ANY BUTTONS ON
23 THE ITEM OR ANY SHARP OBJECTS NOT FABRIC?

24 A I DIDN'T SEE ANY.

25 Q ALL RIGHT. AND YOU DIDN'T FEEL ANY EITHER?

1 A NO.

2 Q ALL RIGHT. AND, OF COURSE, AS I UNDERSTAND YOUR
3 TESTIMONY, THEREAFTER MR. TILLMAN PLACED THAT ON THE HEAD OF
4 MR. SCHOENFELD, YOU LEFT THE ROOM, AND YOU WERE AWARE THAT
5 MR. SCHOENFELD WAS STRUCK AGAIN; IS THAT CORRECT?

6 A YES.

7 Q ALL RIGHT. NOW, DID YOU SEE MR. TILLMAN
8 ADMINISTER THE SECOND BLOW TO MR. SCHOENFELD?

9 A NO.

10 Q DURING THE ENTIRE PERIOD OF TIME YOU WERE IN THE
11 BEDROOM OR IN THE HOUSE AT ALL, WERE YOU CONSCIOUS OF THERE
12 BEING ANY FURTHER BLOWS STRUCK TO MR. SCHOENFELD WHATEVER?

13 A I DON'T REMEMBER ANYMORE.

14 Q TO THE BEST OF YOUR UNDERSTANDING OF THE FACTS HOW
15 MANY TOTAL BLOWS WERE STRUCK TO THE HEAD OF MR. SCHOENFELD?

16 A TWO.

17 Q TWO. ALL RIGHT. NOW, AT SOME POINT IN TIME THE
18 ARTICLE OF WHITE CLOTHING OVER MR. SCHOENFELD'S HEAD WAS
19 REMOVED, WAS IT NOT?

20 A YES.

21 Q WHO DID THAT?

22 A ELROY DID.

23 Q AND WHERE WERE YOU STANDING WHEN THAT HAPPENED?

24 A I DIDN'T SEE HIM DO IT SO I WAS STILL OUT IN THE
25 DINING ROOM AREA.

1 Q OKAY. AND THAT WAS WHEN YOU WERE OUT IN THE
2 DINING ROOM BECAUSE YOU HAD BEEN CONSCIOUS OF THE SECOND
3 BLOW BEING STRUCK?

4 A YES.

5 Q ALL RIGHT. AND A MOMENT LATER YOU WENT IN?

6 A YES, A FEW MINUTES.

7 Q AT THAT TIME DID TILLMAN HAVE THE WHITE ARTICLE OF
8 CLOTHING IN HIS HANDS AGAIN?

9 A YES, HE HANDED THAT AND THE TOWEL -- HE WRAPPED
10 THAT UP INSIDE THE TOWEL, AND HE HANDED THAT TO ME, AND HE
11 HANDED THE AX TO ME.

12 Q ALL RIGHT. NOW, WAS THE -- YOU SAY THE TOWEL WAS
13 WRAPPED AROUND THE SHIRT?

14 A YES.

15 Q WHAT COLOR WAS THE TOWEL BY THE WAY?

16 A I REMEMBER IT AS BEING BLUE.

17 Q OKAY. WERE YOU CONSCIOUS OF THERE BEING ANY BLOOD
18 ON EITHER THE WHITE ITEM OR THE BLUE TOWEL?

19 A I DIDN'T SEE THE WHITE ITEM. BUT I DIDN'T SEE ANY
20 BLOOD ON THE TOWEL.

21

22

23

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25

1 Q WELL, DID YOU OBSERVE ELROY WRAP THE WHITE ITEM
2 IN THE TOWEL OR WAS THAT ALREADY DONE WHEN YOU GOT THERE?

3 A I DIDN'T SEE HIM DO IT.

4 Q OKAY. DID YOU RECOIL FROM HIS EFFORT TO HAND YOU
5 THOSE ITEMS?

6 A DID I WHAT?

7 Q DID YOU SHRINK FROM TAKING THEM, TRY TO AVOID
8 TAKING THOSE THINGS INTO YOUR HANDS?

9 A NO, I JUST TOOK THEM.

10 Q YOU JUST TOOK THEM? AND AT THAT POINT IN TIME
11 WAS THE AX WRAPPED IN EITHER OF THOSE ITEMS?

12 A NO.

13 Q DID HE HAND YOU THE AX INDEPENDENTLY OF GIVING YOU
14 THE TWO CLOTHES ITEMS?

15 A YES.

16 Q JUST TOOK IT --

17 A YES.

18 Q -- IN THE ORDINARY COURSE OF BUSINESS? AT ANY
19 TIME AFTER MR. TILLMAN HANDED YOU THOSE TWO ITEMS, DID YOU
20 HAVE ANY CONVERSATION WITH HIM ABOUT WHY HE HAD REMOVED TWO
21 CLOTH ITEMS PRESUMABLY BEARING BLOOD STAINS FROM THE SCENE
22 OF THAT CRIME?

23 A NO.

24 Q WHEN HE HANDED THEM TO YOU, DID IT CONCERN YOU TO
25 BE IN POSSESSION OF THOSE TWO ITEMS?

1 A YES.

2 Q WHY?

3 A BECAUSE I DIDN'T WANT TO BE CARRYING SOMETHING THAT
4 HAD BLOOD ON IT.

5 Q DIDN'T WANT TO BE CAUGHT WITH THEM?

6 A I HAD NOT THOUGHT ABOUT BEING CAUGHT YET AT THAT
7 TIME.

8 Q BUT YOU DIDN'T WANT TO BE IN POSSESSION OF BLOOD-
9 STAINED ITEMS, IS THAT WHY YOU WERE CONCERNED?

10 A YES.

11 Q AT THAT MOMENT OR AT ANY TIME THEREAFTER, DID YOU
12 EXPRESS THAT CONCERN TO MR. TILLMAN?

13 A NO.

14 Q WHEN YOU GOT IN THE CAR AND PROCEEDED AWAY FROM THE
15 SCENE OF THIS HOMICIDE, WAS THERE A CONVERSATION BETWEEN YOU
16 AND E-ROY ABOUT WHAT YOU WERE GOING TO DO FROM THAT POINT
17 FORWARD?

18 A NO.

19 Q WHEN YOU GOT IN THE CAR AND TOOK OFF, AS I UNDERSTAND
20 IT, YOU WENT TOWARD THE FREEWAY.

21 A YES.

22 Q WHICH WAS SOUTH ON 13TH EAST?

23 A YES,

24 Q TO INTERSTATE 80, IS THAT CORRECT?

25 A YES.

1 Q AS YOU WERE GOING THAT ROUTE, WHAT DID YOU THINK
2 YOU WERE GOING TO DO FROM THAT POINT FORWARD?

3 A WITH THE ITEMS I HAD?

4 Q AT ALL. WHAT DID YOU THINK YOUR NEXT CONDUCT WAS
5 GOING TO BE?

6 A I DIDN'T KNOW.

7 Q HOW DID ELROY DRIVE?

8 A JUST REGULARLY.

9 Q DID HE SPEED?

10 A NO.

11 Q DID HE SHOW PARTICULAR CAUTION TO AVOID BEING
12 PULLED OVER BY THE POLICE?

13 A I DON'T KNOW IF HE WAS OR NOT.

14 Q DID YOU NOTICE ANYTHING DIFFERENT OR STRANGE ABOUT
15 HIS DRIVING HABITS OVER THOSE YOU HAD OBSERVED ON OTHER
16 OCCASIONS?

17 A NO.

18 Q NOW, WHEN YOU GOT DOWN TO I-15 AND YOU PROCEEDED
19 NORTHBOUND AS I UNDERSTAND IT, IS THAT CORRECT? WENT THROUGH
20 THE INTERCHANGE THERE?

21 A WE WENT DOWN TO THE SPERRY UNIVAC ROAD, THE OLD
22 AIRPORT ROAD.

23 Q DID YOU GO STRAIGHT WEST ON I-80 TO THAT?

24 A YES.

25 Q WERE YOU SURPRISED -- WELL, STRIKE THAT.

1 THE MOST DIRECT WAY TO GET OUT TO BOUNTIFUL TO THE
2 GARDEN APARTMENTS, OR WHEREVER, WOULD HAVE BEEN TO PROCEED
3 OUT I-15, WOULDN'T THAT BE NORMALLY THE WAY YOU WOULD GO
4 THERE?

5 A YES.

6 Q WERE YOU SURPRISED AT ALL THAT ELROY PROCEEDED
7 PAST I-15 OUT TO THE OLD AIRPORT ROAD?

8 A I WASN'T REALLY SURPRISED.

9 Q WHY?

10 A BECAUSE I DIDN'T KNOW WHERE HE WAS GOING.

11 Q DID YOU ASK HIM?

12 A NO.

13 Q DID HE VOLUNTEER TO TELL YOU?

14 A NO.

15 Q YOU PROCEEDED DOWN THERE TO THE OLD AIRPORT ROAD
16 AND PULLED OVER, AND HE GOT OUT AND BURNED THESE INCRIMINATING
17 ITEMS OF EVIDENCE, IS THAT CORRECT?

18 A YES.

19 Q MISS SAGERS, DID HE SAY ONE WORD TO YOU BETWEEN THE
20 TIME YOU LEFT THE FRONT DOOR OF MARK SCHOENFELD'S HOUSE AND
21 THE TIME HE STOPPED THE CAR TO BURN THE INCRIMINATING
22 EVIDENCE?

23 A I DON'T REMEMBER ANYTHING BEING SAID.

24 Q DID YOU SAY ONE WORD TO HIM?

25 A NOT UNLESS I SAID, "I FEEL SICK TO MY STOMACH."

1 Q DO YOU BELIEVE YOU SAID THAT?

2 A YES.

3 Q DID HE RESPOND?

4 A I DON'T THINK SO.

5 Q THEN HE STOPPED AND YOU HAD THIS BURNING OCCUR
6 THERE. YOU STAYED IN THE CAR, DID YOU?

7 A YES.

8 Q AND HE BURNED THE STUFF AND THEN GOT BACK IN AND
9 YOU TOOK OFF AGAIN, IS THAT RIGHT?

10 A YES.

11 Q AND THE NEXT TIME YOU STOPPED THE CAR WAS NEAR
12 THE BRIDGE OVER REDWOOD ROAD, IS THAT RIGHT?

13 A YES.

14 Q AND HE PITCHED THE AX?

15 A YES.

16 Q BETWEEN THE TIME HE GOT INTO THE CAR AFTER THE
17 BURNING OF THE EVIDENCE AND THE TIME HE GOT OUT TO DISPOSE
18 OF THE AX, DID HE SAY ONE WORD TO YOU?

19 A I DON'T REMEMBER ANYTHING BEING SAID.

20 Q DID YOU SAY ONE WORD TO HIM?

21 A I DON'T THINK SO.

22 Q AND THEN YOU PROCEEDED DOWN THAT ROAD IN THAT
23 VICINITY THERE AND PITCHED OUT THE GLOVES, CORRECT?

24 A WELL, WE WAS SITTING ON THE BRIDGE THERE. I DID
25 SAY --

1 THE COURT: LET ME ASK A QUESTION. EVERYBODY TALKS
2 ABOUT THE OLD AIRPORT ROAD. WHO, HOW, WHAT AND WHERE IS THAT?
3 THE WITNESS KNOWS AND YOU KNOW, SIR, BUT I HAVE NO IDEA WHAT
4 YOU ARE TALKING ABOUT.

5 MR. BARBER: I DON'T EITHER.

6 Q WHY DON'T YOU TELL US, CARLA. WHERE IS THE OLD
7 AIRPORT ROAD?

8 THE COURT: TO ME NORTH TEMPLE IS THE OLD AIRPORT
9 ROAD UNTIL YOU GET OUT TO THE NEW INTERSECTION.

10 MR. BARBER: I THOUGHT THAT UNTIL LAST WEEK.

11 Q WHERE IS THE OLD AIRPORT ROAD?

12 A IT IS THE ONE THAT GOES DOWN PAST SPERRY UNIVAC
13 AND THE NATIONAL GUARD PLACE.

14 Q DOES IT GO EAST AND WEST OR NORTH AND SOUTH?

15 A NORTH AND SOUTH.

16 Q OKAY. AND IS IT THE ONE WHERE YOU USED TO TURN OFF
17 TO GET TO THE MAIN TERMINAL OF THE AIRPORT OR SOME OTHER ONE?

18 A SOME OTHER ONE WHERE ALL THE SMALLER AIRCRAFTS ARE.

19 Q DOES IT GO PAST WHAT IS KNOWN NOW AS THE EXECUTIVE
20 TERMINAL?

21 A YES.

22 Q IS THAT THE ONE?

23 A YES, I THINK SO.

24 Q AND IT PROCEEDS NORTH OUT TOWARD DAVIS COUNTY?

25 A YES.

1 THE COURT: ALL RIGHT. THE ENTRANCE ROAD TO THE
2 NEW AIRPORT USED BY PRIVATE PLANES, IS THAT WHAT WE ARE
3 TALKING ABOUT?

4 MR. BARBER: I SINCERELY HOPE SO, YOUR HONOR.

5 THE COURT: I HOPE SO ALSO. IS THAT THE ONE THAT
6 GOES OUT PAST AMELIA'S, DO YOU KNOW WHERE THAT IS?

7 THE WITNESS: WHERE WHAT IS?

8 THE COURT: THE RESTAURANT IN THE TERMINAL.

9 THE WITNESS: I THINK SO. I HAVE NEVER BEEN THERE
10 THOUGH.

11 THE COURT: THE ROAD TO THE EAST TERMINAL BUILDING.

12 Q (BY MR. BARBER) RIGHT. DOES THAT ROAD GO DIRECTLY
13 OUT AND INTERSECT WITH SOME ROAD BY WHICH YOU CAN GET BACK
14 OUT TO ELROY'S PLACE?

15 A IF YOU KEEP GOING STRAIGHT IT DOES,

16 Q STRAIGHT NORTH?

17 A YES.

18 Q AND IS THAT IN FACT HOW YOU GOT OUT TO ELROY'S
19 HOUSE ON THIS EVENING?

20 A NO.

21 Q DID YOU GO DOWN THAT ROAD PAST THE OLD EXECUTIVE
22 TERMINAL OF THE AIRPORT BEFORE YOU THREW OUT THE GLOVES?

23 A NO, WE THREW THEM OUT ON REDWOOD ROAD.

24 Q OH, I SEE. ALL RIGHT. NORTH OR SOUTH OF NORTH
25 TEMPLE?

1 A NORTH.

2 Q OKAY. DID YOU PROCEED TO ELROY'S HOUSE ON REDWOOD
3 ROAD?

4 A YES.

5 Q SO IN OTHER WORDS, YOU THREW THE GLOVES OUT ON THE
6 WAY HOME?

7 A YES.

8 Q ALL RIGHT. BETWEEN THE TIME HE GOT DONE THROWING
9 AWAY THE AX AND THE TIME THAT YOU THREW OUT THE GLOVES,
10 DID HE SAY ANYTHING TO YOU?

11 A HE TOLD ME TO THROW OUT THE GLOVES,

12 Q THAT WAS THE FIRST THING HE SAID?

13 A LIKE I WAS GOING TO SAY BEFORE, BACK ON THE BRIDGE,
14 I DID SAY WHEN HE WAS THROWING THE AX, I DID SAY THERE WAS A
15 CAR COMING.

16 THE COURT: CAN YOU FIND OUT WHAT BRIDGE WE ARE
17 TALKING ABOUT IF IT IS KNOWN? WE HAVE SEVERAL CANALS AND
18 RIVERS AND SUCH OUT IN THAT AREA.

19 MR. BARBER: THANK HEAVENS IT IS CROSS, YOUR HONOR,
20 BECAUSE THIS ONE I THINK WE CAN.

21 Q IS THE BRIDGE THAT YOU THREW THAT OVER A BRIDGE
22 ON REDWOOD ROAD LESS THAN A MILE SOUTH OF NORTH TEMPLE WHERE
23 THE JORDAN RIVER PASSES UNDER?

24 A IT COULD BE ABOUT A MILE, YES.

25 Q DID YOU SAY ANYTHING ELSE TO HIM DURING THAT ENTIRE

1 PERIOD OF TIME?

2 A I COULD HAVE BUT I DON'T REMEMBER ANYTHING.

3 Q AND AFTER YOU THREW THE GLOVES OUT AND BEFORE YOU
4 GOT HOME, DID YOU SAY ANYTHING TO HIM?

5 A I DON'T REMEMBER.

6 Q DID HE SAY ANYTHING TO YOU?

7 A I DON'T THINK SO.

8 Q NOW, WHEN YOU GOT HOME, YOU WENT INTO THE HOUSE.
9 I BELIEVE IN YOUR DIRECT TESTIMONY YOU SAID YOU WENT DIRECTLY
10 INTO THE BEDROOM, IS THAT CORRECT?

11 A YES.

12 Q ISN'T IT A FACT THAT BEFORE YOU GOT THERE, OR
13 SOMETIME IN THAT GENERAL TIME FRAME, YOU WENT INTO THE BATHROOM?

14 A YES.

15 Q ALL RIGHT. WAS THERE A REASON YOU OMITTED TO
16 MENTION THAT IN YOUR DIRECT TESTIMONY?

17 A NO REASON.

18

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25

1 Q DID YOU GO IN THERE ALONE OR DID YOU GO IN THERE
2 WITH ELROY?

3 A BOTH.

4 Q OKAY. WHILE IN THE BATHROOM DID YOU HAVE ANY
5 CONVERSATION WITH ELROY?

6 A YES.

7 Q WHAT DID HE SAY, AND WHAT DID YOU SAY?

8 A HE SAID TO SEE IF I COULD SEE ANY BLOOD ON OUR
9 CLOTHES.

10 Q DID YOU TAKE A LOOK TO DETERMINE THAT?

11 A YES.

12 Q DID YOU -- EXCUSE ME.

13 A AND HE WAS ALSO LOOKING FOR SOME ON HIM.

14 Q OKAY. IN YOUR EXAMINATION OF YOUR CLOTHING, DID
15 YOU FIND ANY EVIDENCE OF BLOOD SPOTS OR ANY BLOOD?

16 A NO, I DIDN'T FIND ANY.

17 Q ALL RIGHT.

18 A NOT ON MINE.

19 Q AT SOME POINT IN TIME DID DETECTIVE CHAPMAN ASK
20 YOU TO PRODUCE THOSE CLOTHES FOR HIM?

21 A YES.

22 Q WHEN WAS THAT?

23 A ABOUT A COUPLE WEEKS AGO.

24 Q NOT BACK IN MAY OR JUNE, JULY OR ANY OF THAT, JUST
25 A FEW WEEKS BEFORE THIS TRIAL?

1 A YES.

2 Q WHAT CLOTHES DID YOU GIVE HIM?

3 A I GAVE HIM THE SWEATER I WAS WEARING.

4 Q AND ITS COLOR?

5 A WHITE.

6 Q OKAY.

7 A I GAVE HIM MY TENNIS SHOES, A PAIR OF JEANS AND A

8 SHIRT.

9 Q DESCRIBE THE SHIRT TO ME IN AS MUCH DETAIL AS YOU

10 CAN:

11 A IT WAS WHITE WITH BLUE TRIM WITH A V NECK, BUT I

12 DON'T KNOW IF I WAS WEARING IT THAT NIGHT, THOUGH, OR NOT,

13 BUT THAT IS THE ONE I THINK I WAS.

14 Q DID ANYBODY ASK YOU WITHIN A MONTH OF THIS HOMICIDE

15 WHAT YOU HAD BEEN WEARING ON THAT EVENING?

16 A YES, THEY ASKED ME.

17 Q AND DO YOU RECALL WHETHER YOU ANSWERED THE QUESTION

18 AT THAT TIME?

19 A YES, I COULDN'T REMEMBER THE SHIRT I WAS WEARING.

20 Q DID ANYBODY SPECIFICALLY ASK YOU TO DESCRIBE THE

21 SHIRT?

22 A NO, I DON'T THINK SO.

23 Q OKAY. BUT YOU ARE NOT SURE THE ONE OFFICER CHAPMAN

24 HAS IS THE ONE YOU WERE ACTUALLY WEARING; IS THAT CORRECT?

25 A YES.

1 Q AS YOU SIT THERE ON THE STAND TODAY, MISS SAGERS,
2 DO YOU BELIEVE THAT IS THE SHIRT YOU WERE WEARING OR DON'T
3 YOU?

4 A I DON'T KNOW.

5 Q ALL RIGHT. DID YOU TELL HIM THAT WHEN YOU GAVE IT
6 TO HIM?

7 A YES.

8 Q OKAY. LET'S TALK A BIT ABOUT THE GLOVES. YOU
9 KNEW, DID YOU NOT, PRIOR TO MAY 25 OF 1982 THAT ELROY TILLMAN
10 WORKED AT BENNETT PAINT?

11 A YES.

12 Q DO YOU KNOW WHAT HE DID DOWN THERE?

13 A HE WORKED WITH GLASS.

14 Q GLASS WINDOWS AND SO FORTH?

15 A YES.

16 Q WHAT DID HE DO, CUT OR INSTALL IT OR SOMETHING
17 LIKE THAT?

18 A I DON'T KNOW. HE COULD HAVE CUT IT. I AM NOT
19 SURE WHAT HE DID.

20 Q ALL RIGHT. IT IS A FACT, ISN'T IT -- AND ONE THAT
21 WAS WELL KNOWN TO YOU SUBSTANTIALLY PRIOR TO MAY 25, THAT
22 ELROY COMMONLY AND CONSISTENTLY WORE BROWN, CLOTH GLOVES IN
23 CONNECTION WITH HIS WORK?

24 A YES.

25 Q ALL RIGHT. AND HE HAD NUMEROUS PAIRS OF THOSE

1 Kinds of gloves, didn't he?

2 A YES.

3 Q AND, IN FACT, AS PART OF HIS DUTIES ON THE JOB HE
4 WAS RESPONSIBLE TO KEEP THOSE GLOVES CLEAN, WASN'T HE?

5 A YES, I WASHED SOME.

6 Q YES, YOU WASHED THEM. AND DO YOU HAVE EVEN PAIRS
7 OF THOSE GLOVES AT YOUR HOUSE TODAY?

8 A YES, I THINK I DO.

9 Q OKAY. AND THE GLOVES THAT YOU SAY HE WORE ON THE
10 EVENING THAT HE MURDERED MARK SCHOENFELD WORE GLOVES
11 IDENTICAL TO THOSE THAT HE USED AT BENNETT'S; ISN'T THAT
12 CORRECT?

13 A YES.

14 Q NOW, WHEN HE WOULD BRING GLOVES HOME FROM WORK,
15 DID HE DO THAT TO UTILIZE THEM AT HIS HOUSE FOR ANY PURPOSE?

16 A I DON'T KNOW.

17 Q ALL RIGHT. BUT IT IS TRUE, ISN'T IT, THAT ON
18 MAY 25 OF 1982 YOU HAD SEVERAL PAIRS OF THOSE GLOVES IN YOUR
19 APARTMENT PRIOR TO MIDNIGHT ON THAT DAY; ISN'T THAT CORRECT?

20 A I DON'T HAVE SEVERAL. MAYBE TWO.

21 Q OKAY. I BELIEVE YOU INDICATED IN YOUR DIRECT
22 TESTIMONY THAT YOU WERE NOT WEARING A WATCH ON THAT EVENING;
23 IS THAT CORRECT?

24 A NO, I DON'T THINK I WAS.

25 Q DID ELROY COMMONLY WEAR A WATCH?

1 A YES, I THINK SO.

2 Q DO YOU KNOW WHETHER HE WAS WEARING IT ON THAT

3 EVENING?

4 A I THINK HE WAS.

5 Q OKAY. DID YOU HAVE AN OCCASION TO LOOK AT IT TO

6 VERIFY ANY OF THE TIMES THAT WE HAVE DISCUSSED DURING THE

7 COURSE OF THIS TRIAL?

8 A I THINK I LOOKED AT IT ONCE.

9 Q WHEN WAS THAT?

10 A WHILE WE WERE SITTING ON THE FLOOR.

11 Q WHAT TIME DID IT SAY?

12 A SEEMED LIKE IT WAS AROUND 2:30.

13 Q THANK YOU. YOU SAY, CARLA, THAT WHEN ELROY --

14 AFTER HE HAD COMPLETED HIS ATTACK UPON MR. SCHOENFELD, THAT

15 HE LIT FIRE TO THE BED. AND I BELIEVE YOU INDICATED THAT HE

16 USED A BIC-TYPE LIGHTER; IS THAT CORRECT? OR DID YOU SAY

17 THAT?

18 A I DIDN'T SAY IT WAS A BIC, BUT IT WAS A LIGHTER.

19 Q CAN YOU DESCRIBE THE LIGHTER?

20 A NO.

21 Q WAS IT A BIC TO THE BEST OF YOUR RECOLLECTION?

22 A COULD HAVE BEEN.

23 THE COURT: I THINK THE QUESTION WAS WAS IT A BIC

24 TYPE. THOSE WERE YOUR WORDS.

25 Q (BY MR. BARBER) YES, A BIC TYPE. IN OTHER WORDS,

1 ONE OF THOSE 79-CENT CHEAPIES, THE PLASTIC CYLINDER, WAS
2 THAT THE KIND IT WAS OR DO YOU KNOW?

3 A I DON'T KNOW HOW CHEAP IT WAS. IT WAS THAT TYPE,
4 THOUGH.

5 Q ALL RIGHT. AND I BELIEVE YOU SAID YOU HAD NEVER
6 SEEN IT BEFORE?

7 A I DON'T THINK SO.

8 Q OKAY. WHEN YOU HAD LAST SEEN ELROY USE A LIGHTER
9 PRIOR TO THAT HAD THE ONE HE HAD BEEN USING BEEN OF SIMILAR
10 TYPE AND SORT OR NOT?

11 A IT WAS THE SAME TYPE.

12 Q DIFFERENT COLOR?

13 A I DON'T REMEMBER THE COLORS.

14 Q DID YOU SEE ELROY THE NEXT DAY AFTER THE HOMICIDE?

15 A YES.

16 Q DID YOU SEE HIM LIGHT CIGARETTES ON THAT DAY?

17 A NO.

18 Q ALL RIGHT. DID YOU SEE THAT LIGHTER EVER AGAIN?

19 A NO.

20 Q ALL RIGHT. NOW, AS I UNDERSTAND IT YOU GOT A
21 MESSAGE TO THE EFFECT THAT DETECTIVE CHAPMAN HAD CALLED YOU
22 IN SAN FRANCISCO ON THE 26TH. I TAKE IT YOU WERE THERE FOR
23 A COUPLE MORE DAYS THEN CAME BACK ON THE 28TH, AND LO AND
24 BEHOLD, DETECTIVE CHAPMAN AND SOMEBODY ELSE WERE WAITING FOR
25 YOU AT THE AIRPORT; IS THAT RIGHT?

1 A IT WASN'T DETECTIVE CHAPMAN THAT I TALKED TO DOWN
2 THERE.
3 Q OH, WHO WAS IT YOU TALKED TO IN CALIFORNIA?
4 A I DON'T REMEMBER HIS NAME.
5 Q WAS HE A MEMBER OF THE SALT LAKE CITY POLICE
6 DEPARTMENT?
7 A YES, I THINK SO.
8 Q AND DID YOU TALK TO HIM BY PHONE?
9 A YES.
10 Q WAS THERE -- DID YOU CALL HIM OR DID HE CALL YOU?
11 A ARE YOU TALKING ABOUT THE POLICE OFFICER?
12 Q PARDON?
13 A ARE YOU TALKING ABOUT THE POLICE OFFICER?
14 Q YES. THE ONE YOU TALKED TO ON THE PHONE.
15 A YES, HE CALLED ME.
16 Q WERE YOU IN YOUR ROOM AT THAT TIME?
17 A NO.
18 Q WHERE WERE YOU?
19 A I WAS IN THIS CONFERENCE.
20 Q YOU WERE CALLED OUT OF THERE TO TAKE HIS CALL; IS
21 THAT WHAT HAPPENED?
22 A YES.
23 Q ALL RIGHT. YOU DON'T REMEMBER HIS NAME?
24 A NO.
25 Q WHAT DID HE SAY, AND WHAT DID YOU SAY?

1 A HE ASKED ME IF I KNEW ELROY TILLMAN, AND I SAYS,
2 "YES." HE ASKED ME IF I REMEMBER BEING WITH HIM ON THE 25TH,
3 AND I SAYS, "YES." AND HE ASKED ME WHERE WE HAD BEEN SO I
4 TOLD HIM.

5 Q WHAT DID YOU SAY? YOU DIDN'T TELL HIM YOU HAD
6 BEEN DOING A MURDER?

7 A NO.

8 THE COURT: LET HER ANSWER, MR. BARBER. STRIKE
9 THAT. LET HER ANSWER THE LAST QUESTION.

10 MR. BARBER: ALL RIGHT.

11 MR. CHRISTENSEN: THANK YOU, YOUR HONOR.

12 Q (BY MR. BARBER) WHAT DID YOU TELL HIM?

13 A I TOLD HIM THAT WE HAD BEEN DRIVING AROUND
14 PINEVIEW RESERVOIR AND THAT WE HEADED UP TOWARDS LOGAN, AND
15 IT WAS GETTING LATE SO WE TURNED AROUND AND CAME BACK.

16 Q AND THEN HE SAID?

17 A I DON'T REMEMBER ANY OTHER QUESTIONS.

18 Q OKAY. DID HE INFORM YOU THAT THEY WERE GOING TO
19 MEET WITH YOU AND TALK WITH YOU FURTHER WHEN YOU GOT HOME?

20 A NO.

21 Q ALL RIGHT. WHO WAS THERE THE SECOND TIME YOU HAD
22 DISCUSSIONS WITH THE POLICE?

23 A DETECTIVE CHAPMAN AND SOMEONE ELSE?

24 Q ALL RIGHT. AND WHAT TIME OF DAY WAS IT WHEN YOU
25 RETURNED TO THE SALT LAKE CITY AIRPORT AND FIRST MET

1 DETECTIVE STEVE CHAPMAN?

2 A IT SEEMED LIKE AROUND 3:00.

3 Q OKAY. NOW, THAT WAS NEARLY TWO FULL DAYS AFTER
4 YOU HAD TALKED TO THE FIRST OFFICER; IS THAT CORRECT?

5 THE COURT: 3:00 IN THE MORNING OR AFTERNOON,
6 MA'AM?

7 THE WITNESS: IN THE AFTERNOON. THE FIRST DAY I
8 GOT THERE I DIDN'T TALK TO HIM AT ALL UNTIL THE NEXT DAY.

9 Q (BY MR. BARBER) SO IT WAS ONE DAY AFTER?

10 A YES.

11

12

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25

1 Q BUT YOU RECEIVED AN INDICATION THAT THE POLICE
2 WERE WANTING TO TALK TO YOU THE FIRST DAY, CORRECT, BEFORE
3 YOU EVEN GOT THERE?

4 A NO, I DIDN'T KNOW WHO IT WAS.

5 Q OH, OKAY. NOW, AFTER YOU TALKED TO THE FIRST
6 POLICEMAN THE DAY AFTER YOU GOT TO SAN FRANCISCO, DID YOU
7 MAKE ANY ATTEMPT TO CONTACT ELROY TILLMAN?

8 A NO.

9 Q DID YOU KNOW WHERE HE WAS OR WAS GOING TO BE DURING
10 THE AFTERNOON AND EVENING OF THE 27TH AND THE MORNING AND
11 EARLY AFTERNOON OF THE 28TH?

12 A NO. HE DID TELL ME HE WAS GOING TO GO BACK TO WORK.

13 Q HE DID TELL YOU THAT?

14 A YES. I DON'T KNOW WHAT DAY IT WAS BUT --

15 Q SURE. HAD YOU WISHED TO GET AHOLD OF MR. TILLMAN
16 ON THE 27TH OR 28TH, DO YOU BELIEVE YOU COULD HAVE
17 SUCCESSFULLY HAVE DONE SO?

18 A I COULD HAVE, YES.

19 Q WHY DIDN'T YOU?

20 A I DON'T KNOW WHY I DIDN'T.

21 Q WELL, YOU KNEW THAT YOU HAD BEEN PRESENT WHEN HE
22 COMMITTED A MURDER, DIDN'T YOU?

23 A YES.

24 Q AND YOU KNEW THAT THE POLICE HAD RAISED HIS NAME
25 IN CONNECTION WITH IT, DIDN'T YOU?

1 A NO, I DIDN'T KNOW ANYTHING.

2 Q YOU DIDN'T KNOW ABOUT THAT AFTER THE FIRST
3 OFFICER -- DIDN'T HE MENTION THE HOMICIDE?

4 A NO.

5 Q YOU KNEW THAT AN OFFICER HAD CALLED AND ASKED
6 ABOUT HIM?

7 A YES.

8 Q AND YOU KNEW THAT HE HAD CONNECTED YOU TO ELROY?

9 A YES.

10 Q AND IN FACT, YOU HAD LIED TO THAT POLICEMAN TO
11 PROTECT ELROY, IS THAT CORRECT?

12 A YES.

13 Q DIDN'T YOU THINK ANY OF THAT RAISED SOME KIND OF
14 A REASON TO DISCUSS THE MATTER WITH ELROY?

15 A I THOUGHT ABOUT CALLING HIM, BUT I DIDN'T THINK
16 I SHOULD.

17 Q WHY?

18 A BECAUSE HE DIDN'T LIKE ME CALLING HIM.

19 Q NOW, IN TERMS OF THE CONTACT THAT YOU HAD WITH
20 DET, CHAPMAN, YOU SAY THAT WAS ABOUT 3:00 ON THE 28TH.

21 A SOMEWHERE AROUND THAT TIME, YES.

22 Q HOW LONG WAS IT AFTER THAT -- DID HE TAKE YOU UP
23 TO THE POLICE STATION?

24 A YES.

25 Q DID HE QUESTION YOU ENROUTE?

3

1 A NO.

2 Q SO THE ACTUAL INTERROGATION THAT YOU HAD THERE

3 DID NOT BEGIN UNTIL ABOUT WHAT TIME APPROXIMATELY?

4 A HALF HOUR LATER.

5 Q 3:30?

6 A YES.

7 Q HOW LONG DID IT TAKE YOU TO TELL DET. CHAPMAN

8 THAT THE PINEVIEW STORY WAS NOT TRUE AND THAT ELROY TILLMAN

9 HAD COMMITTED THIS HOMICIDE?

10 A MAYBE 45 MINUTES TO AN HOUR.

11 Q BY 4:30, IS THAT CORRECT, TO THE BEST OF YOUR

12 RECOLLECTION?

13 A I WASN'T KEEPING TRACK OF TIME.

14 Q WHAT WAS IT ABOUT HIS QUESTIONING OF YOU, MISS SAGERS,

15 THAT LED YOU ON TO ABANDON THE LIE AND TELL THE TRUTH?

16 A BECAUSE HE CAUGHT ME IN A LIE.

17 Q WHAT ONE WAS IT?

18 A HE ASKED ME IF I MADE ANY PHONE CALLS TO LORI AND

19 I SAID NO.

20 Q HAD ELROY TOLD YOU TO SAY "NO" TO THAT?

21 A NO, I JUST SAID THAT. HE SAYS, "WE HAVE TAPES

22 WITH YOUR VOICE ON THEM AND WE HAVE TRACED YOUR NUMBER."

23 Q NOW, WHEN HE CAUGHT YOU IN THAT LIE, HAD HE TOLD

24 YOU THAT YOU WERE ENTITLED TO BE REPRESENTED BY COUNSEL?

25 A YES.

1 Q AND THAT YOU NEEDN'T ANSWER ANY MORE QUESTIONS
2 UNLESS YOU WANTED TO?

3 A YES.

4 Q AND THAT YOU COULD STOP THE QUESTIONING AT ANY
5 TIME YOU WANTED AND GO AND GET COUNSEL IF YOU FELT YOU WERE
6 GETTING INTO A JACKPOT?

7 A YES.

8 Q DID YOU TAKE THE OCCASION OF BEING CAUGHT IN THAT
9 LIE TO EXERCISE ANY OF THOSE RIGHTS AND AVOID FURTHER
10 QUESTIONING?

11 A NO.

12 Q I TAKE IT THEN THAT INSTEAD OF THAT YOU PROMPTLY
13 TURNED AROUND AND TOLD HIM THAT ELROY TILLMAN HAD COMMITTED
14 THE HOMICIDE?

15 A YES.

16 MR. BARBER: YOUR HONOR, THIS MIGHT BE AN
17 APPROPRIATE TIME. I AM HEARLY FINISHED AND WOULD LIKE AN
18 OPPORTUNITY TO REVIEW MY NOTES.

19 THE COURT: ALL RIGHT. YOU MAY DO SO. WE WILL
20 TAKE A RECESS FOR TEN MINUTES. REMEMBER MY ADMONITION, I
21 REPEAT IT EVERY TIME. LET NO ONE SPEAK TO YOU, DON'T SPEAK
22 WITH EACH OTHER, DON'T TALK ABOUT THE CASE, DON'T MAKE UP
23 YOUR MIND. WE WILL BE IN RECESS FOR TEN MINUTES.

24 (RECESS TAKEN.)

25 THE COURT: THE RECORD MAY SHOW THE COUNTY ATTORNEY

1 IS PRESENT, THE JURY ARE ALL HERE. THE DEFENDANT IS PRESENT
2 WITH COUNSEL AND THE WITNESS IS HERE. YOU MAY PROCEED,
3 MR. BARBER.

4 MR. BARBER: THANK YOU, YOUR HONOR.

5 Q CARLA, WHEN YOU WOKE UP AT ELROY'S HOUSE ON THE
6 MORNING OF MAY 26TH, WAS HE ASLEEP?

7 A WE GOT UP AT THE SAME TIME.

8 Q ALL RIGHT. WHAT WERE YOU WEARING WHEN YOU GOT UP
9 THAT MORNING?

10 A I WASN'T WEARING ANYTHING.

11 Q COMPLETELY UNCLOTHED?

12 A YES.

13 Q AND AFTER YOU HAD GOTTEN UP, DID YOU PUT ON SOME
14 ARTICLES OF CLOTHING?

15 A YES.

16 Q AND WHAT ARTICLES DID YOU PUT ON?

17 A SEEMED LIKE I PUT THE SAME CLOTHES BACK ON.

18 Q YOU PUT ON YOUR WHITE TENNIS SHOES?

19 A BLUE.

20 Q BLUE, I AM SORRY. AND YOUR BLUE JEANS?

21 A YES.

22 Q WERE YOU WEARING UNDERCLOTHING?

23 A YES.

24 Q COMPRISED OF WHAT? PANTIES AND A BRA?

25 A YES.

1 Q DID YOU PUT BOTH THOSE ITEMS ON?

2 A I COULD HAVE PUT CLEAN UNDERPANTS ON, I DON'T
3 REMEMBER.

4 Q DID YOU PUT ON THE WHITE SWEATER THAT YOU HAD WORN
5 OVER YOUR OTHER SHIRT?

6 A I DON'T REMEMBER IF I DID OR NOT.

7 Q AND DID YOU PUT ON A SHIRT OF SOME SORT?

8 A YES.

9 Q DID YOU OPEN YOUR SUIT CASE BEFORE YOU PUT ON YOUR
10 BLOUSE OR SHIRT?

11 A YES, I COULD HAVE.

12 Q DOES THAT HELP YOU TO REMEMBER WHETHER YOU PUT
13 ON THE SAME ONE THAT YOU HAD ON THE NIGHT BEFORE OR NOT?

14 A NO.

15 Q ALL RIGHT. WHEN YOU SAW MR. SCHOENFELD LYING IN
16 HIS BED THE LAST TIME, WHAT SIDE OF HIS HEAD WHERE THE WOUNDS
17 ON?

18 A THE RIGHT SIDE.

19 Q DURING THE COURSE OF YOURS AND MR. TILLMAN'S
20 CONDUCT INSIDE OF MARK SCHOENFELD'S HOUSE ON THE MORNING OF
21 MAY 26TH, DID YOU MAKE ANY SUGGESTIONS OR ANSWER ANY
22 QUESTIONS PUT TO YOU BY MR. TILLMAN ABOUT WHAT YOU OUGHT TO
23 DO OR WHAT HE OUGHT TO DO?

24 A ARE YOU TALKING ABOUT AFTER?

25 Q ANY TIME THAT YOU WERE IN THE HOUSE.

1 Q AND YOUR ANSWER WAS?

2 A NO.

3 Q AND DID YOU TELL HIM WHY YOU DIDN'T THINK THAT WAS
4 NECESSARY?

5 A I SAID THE FIRE WOULD PROBABLY DO IT.

6 Q ALL RIGHT. DID ELROY ASK YOU ANY QUESTIONS OR DID
7 YOU MAKE ANY SUGGESTIONS ABOUT WHETHER THE LIGHTS SHOULD BE
8 TURNED ON OR OFF?

9 A WHEN I WAS CLOSING THE DOOR TO THE BEDROOM.

10 Q OKAY.

11 A THE BATHROOM LIGHT -- I COULD SEE THE BATHROOM
12 LIGHT WAS ON. I TOLD HIM THAT THE BATHROOM LIGHT WAS ON.
13 SO HE WENT IN AND TURNED IT OFF.

14 Q OKAY. WHAT ABOUT LEAVING THE DOORS OPEN OR CLOSED?
15 DID YOU MAKE ANY SUGGESTIONS ABOUT THAT KIND OF THING?

16 A I DON'T THINK SO.

17 Q OKAY. SO DURING THE COURSE OF THIS HOMICIDE YOU
18 CALLED HIS ATTENTION TO THE LIGHT ON. DID YOU DO THAT
19 BECAUSE YOU FELT IT WOULD BE BETTER THAT HE TURNED IT OFF?

20 A YES.

21 Q WHY?

22 A BECAUSE IT WAS PROBABLY OFF WHEN WE GOT THERE.

23 Q AND WHAT DIFFERENCE DID THAT MAKE TO YOU?

24 A JUST SO THAT NOBODY WOULD THINK ANYBODY HAD BEEN
25 THERE WITH THE LIGHT LEFT ON.

1 Q DID ELROY EVER TELL YOU WHY HE LIT THE FIRE? I
2 MEAN EXPLAIN THAT TO YOU?

3 A NOT THEN.

4 Q PARDON?

5 A NOT THEN WHILE HE WAS DOING IT.

6 Q DID HE DO IT BEFORE? DID HE EXPLAIN THAT TO YOU?

7 A IT CAME UP WHEN WE WAS SITTING ON THE FLOOR.

8 Q ALL RIGHT. WHAT DID HE SAY ABOUT THE FIRE, AND
9 WHAT DID YOU SAY ABOUT THE FIRE WHEN YOU WERE SITTING ON THE
10 FLOOR?

11 A I DON'T REMEMBER WHICH ONE OF US BROUGHT IT UP,
12 BUT WE TALKED ABOUT PUTTING CIGARETTES ON IT AND MAKING IT
13 LOOK LIKE HE WAS SMOKING IN BED.

14 Q DID YOU THINK THAT WAS A GOOD IDEA?

15 A IT IS ONE WAY TO TRY TO COVER IT UP, YES.

16 Q YES. NEVERTHELESS, ELROY, THE FIRST TIME HE WENT
17 INTO THE HOUSE TO KILL MARK SCHOENFELD, WENT IN THERE ONLY
18 WITH THE HATCHET; IS THAT CORRECT?

19 A YES.

20 Q AND APPEARED WILLING TO JUST KNOCK HIM OUT AND
21 KILL HIM ON THE SPOT AND COME OUT AND TALK TO YOU SOME MORE,
22 RIGHT?

23 A YES.

24 Q THERE WAS NO DISCUSSION OF LIGHTING ANY FIRES
25 BEFORE ELROY WENT IN TO KILL HIM THE FIRST TIME; IS THAT

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1 RIGHT?

2 A I DON'T REMEMBER OF ANY.

3 Q WAS IT YOUR IDEA TO BURN THE PLACE DOWN OR WAS IT
4 HIS?

5 A WHEN HIS THINGS WERE STOLEN --

6 THE COURT: MA'AM, THE QUESTION WAS, WHOSE IDEA
7 WAS IT?

8 THE WITNESS: THIS IS PART OF THE ANSWER.

9 MR. BARBER: MAY WE HAVE THE QUESTION REPEATED,
10 YOUR HONOR?

11 THE COURT: WOULD YOU PLEASE, MR. LEWIS.

12 (WHEREUPON, THE PENDING
13 QUESTION WAS READ BY THE COURT
REPORTER.)

14 THE WITNESS: I DON'T REMEMBER THAT NIGHT, BUT WE
15 TALKED ABOUT CIGARETTES BEFORE.

16 Q (BY MR. BARBER) WHOSE IDEA WAS THE CIGARETTE
17 BUSINESS AT ALL?

18 A I THINK I BROUGHT THAT UP.

19 Q ALL RIGHT. AND AS YOU HAVE INDICATED YOU WERE THE
20 ONE THAT WANTED TO SHUT THE BATHROOM LIGHT OFF BECAUSE IT
21 WOULD BE INCONSISTENT WITH AN ACCIDENTAL FIRE TO HAVE THAT
22 LIGHT LEFT ON; ISN'T THAT CORRECT?

23 A YES.

24 Q DURING THE TIME YOU WERE IN THAT HOUSE DID
25 ELROY TILLMAN SUGGEST -- OR PRIOR TO GOING IN THERE HAD HE

1 MANIFEST AN INTENTION TO REMOVE ANY PROPERTY FROM THE HOME?

2 A WHILE WE WERE SITTING ON THE FLOOR, YES, IF HE
3 SHOULD TAKE ANYTHING.

4 THE COURT: LET'S GO BACK AND ANSWER THE QUESTION.
5 READ THE QUESTION BACK, MR. LEWIS, AND PLEASE LISTEN, MA'AM,
6 AND ANSWER THE QUESTION AS ASKED.

7 (WHEREPUON, THE PENDING
8 QUESTION WAS READ BY THE COURT
REPORTER.)

9 MR. CHRISTENSEN: I AM GOING TO OBJECT TO THE FORM
10 OF THE QUESTION, YOUR HONOR.

11 THE COURT: LET ME FINISH. YOU DIDN'T OBJECT
12 BEFORE SO I HAVE TO DO IT, MR. CHRISTENSEN. BREAK IT DOWN
13 INTO TWO QUESTIONS, MR. BARBER.

14 MR. BARBER: THANK YOU, YOUR HONOR.

15 Q PRIOR TO EVEN ENTERING INTO MARK SCHOENFELD'S
16 HOME, DID ELROY TELL YOU HE INTENDED TO TAKE PROPERTY FROM
17 THAT HOME?

18 A NO.

19 Q AND WHILE SITTING ON THE FLOOR IN THE HOME WAITING
20 TO COMMIT MURDER, DID HE TELL YOU THAT IT WAS HIS INTENTION
21 TO REMOVE PROPERTY FROM THE HOME?

22 A NO, HE HAD ASKED ME.

23 Q ALL RIGHT. NOW, YOU TELL ME WHAT HE SAID AND WHAT
24 YOU SAID.

25 A HE SAID, "SHOULD I TAKE SOMETHING?" I SAYS, "NO."

1 Q ALL RIGHT. CARLA, WHO LIT THE BED ON FIRE? ELROY
2 OR YOU?

3 A ELROY.

4 Q AND IT IS YOUR TESTIMONY, IS IT, THAT HE LIT THE
5 BED ON FIRE ON THE SIDE NEAREST THE WALL?

6 A YES.

7 MR. BARBER: THAT IS ALL.

8 THE COURT: NEAREST WHICH WALL?

9 Q (BY MR. BARBER) EXCUSE ME. NEAREST THE WEST WALL,
10 IS THAT CORRECT?

11 A YES.

12 MR. BARBER: THANK YOU. NOTHING FURTHER.

13 THE COURT: I PRESUME THERE ARE FOUR WALLS IN THE
14 BEDROOM.

15

16 REDIRECT EXAMINATION

17 BY MR. CHRISTENSEN:

18 Q PRIOR TO MAY 25, 1982, CARLA, DID YOU HAVE ANY
19 DISCUSSIONS ABOUT THE USE OF FIRE INVOLVING MARK SCHOENFELD?

20 A YES.

21 Q WHEN WOULD THAT HAVE TAKEN PLACE?

22 A AFTER HIS PROPERTY HAD BEEN STOLEN.

23 Q DID YOU EVER SEE PERSONALLY OR WERE YOU PRESENT
24 WHEN HIS PROPERTY WAS EVER TAKEN?

25 A NO.

-1

1 Q WHERE DID THIS CONVERSATION TAKE PLACE?

2 A IT COULD HAVE BEEN IN MY APARTMENT.

3 Q AND APPROXIMATELY WHEN IN TIME, DATEWISE?

4 A MAYBE THE LAST PART OF MARCH, FIRST PART OF APRIL.

5 Q ANYONE ELSE PRESENT?

6 A NO.

7 Q WHAT WAS SAID AND BY WHOM?

8 A ELROY WANTED -- HAD SAID THAT HE COULD BURN THE
9 HOUSE DOWN.

10 Q WHOSE HOUSE?

11 A MARK'S HOUSE. AND I SAYS, "WHAT GOOD WOULD THAT
12 DO? THAT WOULD BURN YOUR THINGS UP, TOO."

13 Q DID HE REPLY TO THAT?

14 A HE SAID HE DIDN'T CARE.

15 Q YOU INDICATED ON MR. BARBER'S EXAMINATION THAT
16 WHILE YOU WERE INSIDE ELROY HAD POINTED OUT SOME THINGS
17 INSIDE. DO YOU RECALL WHAT THOSE ITEMS WERE?

18 A YES.

19 Q WOULD YOU TELL ME, PLEASE.

20 A ONE WAS A ROCKING CHAIR, AND THE OTHERS WERE SOME
21 SPEAKERS.

22 Q DID YOU AT ANY TIME SEE MR. TILLMAN OR DID YOU
23 YOURSELF PARTICIPATE IN ATTEMPTING TO REMOVE THOSE ITEMS
24 WHILE MARK AND LORI WERE GONE FROM THE HOUSE?

25 A NO.

1 Q YOU INDICATED ON CROSS-EXAMINATION ALSO THAT
2 ELROY DIDN'T LIKE YOU CALLING HIM. WHAT DID YOU OBSERVE HIM
3 STATING TO YOU OR DOING THAT WOULD INDICATE OR GIVE YOU THAT
4 IMPRESSION?

5 A HE NEVER DID LIKE ME CALLING OUT TO HIS PLACE.

6 Q WHY, DID HE SAY?

7 A NO.

8 Q DID YOU EVER HAVE AN OCCASION WHEN YOU DID CALL
9 OUT?

10 A YES.

11 Q WHEN APPROXIMATELY WOULD THAT HAVE BEEN?

12 A I CALLED OUT A FEW DAYS BEFORE CHRISTMAS.

13 Q OF WHICH YEAR?

14 A 1981.

15 Q ALL RIGHT. DID YOU PLACE THE CALL TO HIS GARDEN
16 APARTMENT?

17 A YES.

18 Q AND DID YOU GET A RESPONSE ON THE OTHER END OF THE
19 LINE?

20 A YES.

21 Q AND COULD YOU IDENTIFY THE VOICE?

22 A IT WAS A WOMAN'S VOICE.

23 Q DID YOU GET ELROY TO THE PHONE?

24 A NO.

25 Q WHAT DID YOU SAY ON THAT CONVERSATION?

1 A I ASKED IF ELROY WAS THERE.

2 Q DID YOU GET A RESPONSE?

3 A SHE SAYS, NO, THAT HE HAD GONE OUT TO PICK UP HIS
4 SON.

5 Q WHY DID YOU PLACE THE CALL ON THAT DATE?

6 A BECAUSE I WAS GOING OUT TO MY PARENTS' HOME, AND I
7 WAS -- I NEEDED MY CAR. HE SAID HE WAS GOING TO BRING IT
8 OUT, BUT HE WAS LATE SO I TRIED TO CALL HIM.

9 Q DID YOU RECEIVE A CALL AND/OR SEE ELROY AFTER THAT
10 PHONE CONVERSATION?

11 A YES, HE CALLED ME BACK.

12 Q HOW LONG AFTER?

13 A MAYBE 15, 20 MINUTES.

14 Q WHAT WAS THE CONVERSATION THEN?

15 A HE WANTED TO KNOW WHY I HAD CALLED, AND HE SAID HE
16 DIDN'T EVER WANT TO SEE ME AGAIN.

17 Q DID HE SAY WHY?

18 A BECAUSE I CALLED OUT THERE.

19 Q ANYTHING ELSE SAID?

20 A HE WAS GOING TO BRING MY CAR DOWN TO ME.

21 Q DID HE BRING THE CAR TO YOU?

22 A YES.

23 Q AND WHAT HAPPENED WHEN HE BROUGHT THE CAR TO YOU?
24 WHAT WAS SAID?

25 A I HAD TO LEAVE FOR A FEW MINUTES SO I LEFT A NOTE

1 ON MY DOOR FOR HIM NOT TO LEAVE. SO HE WAS WAITING OUTSIDE
2 IN THE CAR.

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PENSACOLA CO., GASTON, N.J., 07043 FROM 2000

1 Q ANYONE WITH HIM?

2 A HIS SON WAS WITH HIM.

3 Q WHAT CONVERSATION DID YOU HAVE?

4 A I SAYS, "WOULD YOU AT LEAST COME IN AND GET YOUR
5 CHRISTMAS PRESENTS?"

6 Q COULD YOU TELL WHETHER OR NOT HE WAS STILL MAD AT
7 YOU AT THAT POINT IN TIME?

8 A HE DIDN'T SAY TOO MUCH, BUT I COULD TELL HE WAS
9 UPSET WITH ME.

10 Q AND I ASSUME THAT AT SOME POINT IN TIME YOU MADE
11 UP WITH HIM AGAIN?

12 A YES.

13 Q FROM THE TIME YOU GOT OFF THE PLANE COMING BACK
14 FROM SAN FRANCISCO, OR THE CALIFORNIA AREA, UNTIL YOU SHOWED
15 OFFICERS WHERE THE FIRE BURNING THE EVIDENCE AND THE GLOVES
16 AND THOSE ITEMS HAD BEEN POSITIONED, WERE YOU EVER ALONE?

17 A NO.

18 Q WHO WOULD HAVE BEEN WITH YOU?

19 A DETECTIVE CHAPMAN.

20 Q YOU INDICATED ON CROSS-EXAMINATION THAT YOU
21 OBSERVED SOMETHING BEING PLACED OVER MARK SCHOENFELD'S HEAD.
22 WAS THERE EVER ANY DISCUSSION HAD BETWEEN YOURSELF OR
23 MR. TILLMAN AS TO WHY THAT WOULD BE DONE?

24 A NO.

25 Q DURING THE HOUR AND A HALF'S PERIOD OF TIME THAT

REPRODUCED CO. BY THE U.S. GOVT. FROM 2003

1 YOU INDICATED YOU WAITED OUTSIDE AND WALKED UP AND DOWN THE
2 STREET AND ATTEMPTED TO CALL, DID YOU HAVE ANY IDEA EITHER
3 FROM YOUR OBSERVATIONS OF SIGHT OR HEARING OF WHAT WAS
4 TAKING PLACE INSIDE THE HOUSE?

5 A NO.

6 Q WHEN YOU CAME INSIDE AND APPROACHED MARK SCHOENFELD'S
7 ROOM, AND UPON YOUR FIRST OBSERVATION OF MARK SCHOENFELD,
8 COULD YOU TELL OR DID YOU OBSERVE WHETHER OR NOT HE HAD
9 ALREADY BEEN HIT?

10 A PRIOR TO THE FIRST?

11 Q PRIOR TO YOUR FIRST OBSERVATION OF THE BEDROOM.

12 A NO.

13 Q AND I BELIEVE YOU INDICATED THAT YOU SAT IN THE
14 FRONT ROOM FOR APPROXIMATELY AN HOUR TO AN HOUR AND A HALF.

15 A YES.

16 Q WAS THE BEDROOM DOOR TO MARK SCHOENFELD'S BEDROOM
17 OPEN OR CLOSED?

18 A IT WAS CLOSED.

19 Q COULD YOU EVEN HEAR BREATHING GOING ON INSIDE?

20 A NO.

21 Q WHEN YOU CAME IN THE ROOM AFTER YOU DISCOVERED OR
22 DURING THE COURSE OF THE TIME THAT YOU DISCOVERED THAT BLOWS
23 HAD ACTUALLY BEEN STRUCK, OR A BLOW HAD ACTUALLY BEEN STRUCK,
24 WERE YOU ABLE TO FOCUS ON MARK SCHOENFELD'S HEAD OR ANY
25 INJURIES OR POTENTIAL INJURIES THAT HE WOULD HAVE SUSTAINED

1 AT THAT FIRST BLOW?

2 A WHAT DO YOU MEAN?

3 Q COULD YOU SEE HIS HEAD?

4 A YES.

5 Q COULD YOU TELL HOW MANY TIMES HE HAD BEEN STRUCK
6 ON THAT FIRST OBSERVATION OF HIS HEAD?

7 A NO.

8 Q COULD YOU TELL THAT HE HAD BEEN STRUCK?

9 A YES.

10 Q AT ANY TIME WHILE YOU WERE OUTSIDE THE DOOR OR
11 CRAWLING IN THE DOOR OR OPENING THE DOOR TO MARK SCHOENFELD'S
12 BEDROOM, DID MARK SCHOENFELD MOVE OR SIGH OR DO ANYTHING TO
13 INDICATE TO YOU THAT HE WAS AWAKE?

14 A NO. IT SEEMED LIKE I COULD HEAR HIM BREATHING.

15 Q DID YOU EVER HEAR OR SEE HIM MOVE?

16 A AFTER THE LIGHT HAD BEEN TURNED ON.

17 Q WOULD YOU DESCRIBE FOR ME WHAT THE GAS CAN LOOKED
18 LIKE?

19 A IT WAS ABOUT A GALLON SIZE, IT WAS RED AND SILVER
20 IT SEEMED LIKE.

21 Q DID IT HAVE A HANDLE?

22 A YES.

23 Q DID YOU EVER SEE THAT GAS CAN AFTER THE GLOVES
24 WERE THROWN OUT OF THE WINDOW ON NORTH TEMPLE OR ON REDWOOD
25 ROAD?

1 A NO.

2 Q DID YOU EVER SEE, HANDLE OR OBSERVE ELROY HANDLE
3 ANY BEDDING MATERIAL? WHEN I AM REFERRING TO "BEDDING
4 MATERIAL," I AM REFERRING TO SHEETS, BLANKETS OR ANYTHING OF
5 THAT NATURE.

6 A YES.

7 Q WOULD YOU DESCRIBE WHAT YOU OBSERVED.

8 A WHEN HE WAS LIGHTING THE FIRE, HE PICKED UP AN
9 AFGHAN OR SOMETHING RIGHT NEXT TO THE BED AND --

10 Q WHAT DID THAT LOOK LIKE?

11 A IT COULD HAVE BEEN GREEN OR BLUE, I AM NOT SURE.

12 Q WHAT DID HE DO WITH THAT?

13 A HE PUT IT UP THERE TO BURN, TO HELP START IT ON
14 FIRE.

15 Q WHAT DID YOU OBSERVE REGARDING THAT AFGHAN OR THAT
16 MATERIAL WHEN HE DID THAT?

17 A IT SMOTHERED THE FIRE OUT.

18 Q SO WHAT HAPPENED NEXT?

19 A HE HAD TO LIGHT IT AGAIN.

20 Q AND DO YOU KNOW WHERE HE POSITIONED THE LIGHTER TO
21 DO THAT?

22 A IT WAS THE SAME AREA.

23 Q DID IT BEGIN TO BURN?

24 A YES.

25 Q ANYMORE DIFFICULT WITH THAT MATERIAL?

1 A NO.

2 Q WHEN YOU HAD YOUR CLOTHING ON OR TAKING YOUR
3 CLOTHES OFF AT ELROY'S HOUSE, DID YOU SEE ANY BLOOD OR ANY-
4 THING THAT WOULD LOOK LIKE BLOOD ON ANY OF YOUR CLOTHES?

5 A NOT ON MINE.

6 Q DID YOU SEE ANY ON ELROY'S?

7 A YES.

8 Q WHAT DID YOU SEE?

9 A THERE WAS A LITTLE SPECKS.

10 Q WHERE?

11 A ON HIS JACKET.

12 Q WHERE WOULD THEY HAVE BEEN LOCATED ON HIS JACKET?

13 A TOWARD THE FRONT OF HIS JACKET.

14 Q DID YOU ATTEMPT TO DO ANYTHING OR ELROY ATTEMPT TO
15 DO ANYTHING WITH THOSE SPECKS?

16 A ELROY WAS WIPING THEM OFF.

17 Q WHERE WAS HE DOING THAT?

18 A IN THE BATHROOM.

19 Q HOW LONG WOULD YOU ESTIMATE IT TOOK HIM TO DO
20 THAT?

21 A TEN MINUTES.

22 Q HOW MANY DOORS DID THE GOVERNMENT CAR HAVE ON IT?

23 A I THINK IT IS A FOUR-DOOR. NO -- YEAH, FOUR-DOOR.

24 Q DID YOU HAVE OR FORMULATE BETWEEN YOURSELF AND
25 MR. TILLMAN ANY CONTINGENCY PLANS REGARDING WHAT WOULD

1 HAPPEN IF MARK SCHOENFELD WOKE UP?

2 A WHILE WE WERE STANDING AT THE BEDROOM DOOR TRYING
3 TO GET IT OPEN, HE TOLD ME IF MARK WOKE UP THAT I SHOULD
4 YELL "FIRE."

5 Q ANYTHING ELSE SAID REGARDING THAT?

6 A NO.

7 Q WHEN YOU WENT TO THE ROOM TO LOOK INSIDE, DID YOU
8 HAVE ANY KNOWLEDGE OF OR EXPECT TO FIND LORI GRONEMAN THERE
9 ALSO?

10 A IN THE BEDROOM?

11 Q YES.

12 A NO.

13 Q WAS THERE ANY DISCUSSION HAD ABOUT HER?

14 A NO.

15 Q WHEN YOU HAD THE AX IN YOUR HAND IN THE BEDROOM,
16 I BELIEVE OUT IN BACK YOU INDICATED THAT NEAR THE PORCH AND
17 ON THE WAY BACK TO THE CAR AND WHILE IN THE CAR, DID YOU
18 HAVE A CHANCE TO FEEL THE HANDLE OF THIS AX?

19 A YES, I FELT IT.

20 Q DID YOU GET A CHANCE TO FEEL THE TENNIS BALL OR
21 THE GOLF BALL ITEM ON THE END OF THE AX ITSELF?

22 A NO.

23 Q COULD YOU TELL HOW HEAVY THE AX WAS? DID THE PART
24 THAT WAS ROUNDED ON THE END CONTRIBUTE AT ALL TO THE WEIGHT?

25 A I DON'T THINK IT WOULD MAKE TOO MUCH DIFFERENCE.

1 Q WAS THERE ANY DISCUSSION HAD WHILE THE FIRE WAS
2 BURNING AND WHILE YOU WERE ON YOUR WAY OUT OF THE BEDROOM
3 AND CLOSED THE DOOR ABOUT --

4 MR. BARBER: YOUR HONOR, AT THIS POINT I THINK WE
5 ARE LEADING.

6 MR. CHRISTENSEN: I AM TRYING TO NARROW IT DOWN,
7 YOUR HONOR, AS BEST I CAN. WE WILL BE ANOTHER HALF HOUR OR
8 SO IF WE DON'T.

9 THE COURT: I WON'T WORRY ABOUT THE TIME, SIR.
10 YOU ASK QUESTIONS IN THE PROPER FORM AS I HAVE DIRECTED.

11 Q (BY MR. CHRISTENSEN) WHEN YOU EXITED THE BEDROOM
12 OF MARK SCHOENFELD, WAS THERE ANY DISCUSSION HAD REGARDING
13 THE PROPERTY THAT WAS POINTED OUT TO YOU THAT ELROY
14 PURPORTEDLY OWNED?

15 A NO.

16 Q ANY ATTEMPT TO REMOVE IT?

17 A NO.

18 Q WHEN YOU HAD AN HOUR AND A HALF'S TIME AND WERE
19 WAITING FOR ELROY ON THE FIRST ENTRY INTO THE HOUSE, DID YOU
20 HAVE THE KEYS TO THE GOVERNMENT CAR?

21 A NO.

22 Q WITH REGARD TO THE GOVERNMENT CAR, CARLA, WAS
23 THERE ANY DISCUSSION HAD REGARDING ITS USE ON THAT PARTICULAR
24 EVENING IN QUESTION, MAY 25TH?

25 A YES.

1 Q WOULD YOU DESCRIBE FOR ME WHERE THAT CONVERSATION
2 TOOK PLACE AND WHAT THE CONVERSATION WAS ABOUT REGARDING THE
3 GOVERNMENT CAR.

4 A IT WAS ON THE WAY BACK TO MY APARTMENT, AND I WAS
5 TRYING TO TALK HIM OUT OF DOING THIS.

6 Q WHAT DID YOU SAY?

7 A HE SAID HE NEVER WOULD GET ANOTHER CHANCE AT
8 ANOTHER CAR, AND I SAID THAT I NEEDED TO TAKE MINE IN, TO
9 GET IT INTO THE SHOP TO GET IT FIXED, THAT WE MIGHT BE ABLE
10 TO GET ANOTHER CAR THEN.

11 Q WHAT DID HE SAY WITH REGARD TO THAT?

12 A HE WOULDN'T DO IT.

13 Q IN THESE CONVERSATIONS YOU HAD REGARDING THE
14 EXPLOSIVES AND THE NAME BETTY THAT YOU INDICATED, WAS THERE
15 EVER ANY INDICATION OF WHERE THE EXPLOSIVES OR THIS DEVICE
16 WOULD HAVE COME FROM OR ANYTHING OF THAT NATURE?

17 A FROM BETTY'S HUSBAND.

18 Q DO YOU KNOW BETTY'S HUSBAND'S NAME?

19 A NO.

20 Q WAS THERE ANY DISCUSSION WITH MR. TILLMAN REGARDING
21 HOW HE WOULD KNOW, IF BETTY'S HUSBAND WOULD KNOW ANYTHING?

22 A I AM SORRY?

23 Q WAS THERE ANY DISCUSSION HAD WITH MR. TILLMAN
24 REGARDING WHY BETTY'S HUSBAND WOULD KNOW ANYTHING ABOUT
25 EXPLOSIVES OR DEVICES?

1

1 A ELROY TOLD ME THAT HE WORKED AT A ROCK QUARRY.

2 Q CAN YOU TELL ME WHEN THAT CONVERSATION TOOK PLACE?

3 A THIS WAS WHEN HE WAS TRYING TO FIND SOME DYNAMITE.

4 Q DID HE SAY WHICH ROCK QUARRY OR WHERE IT WOULD
5 HAVE BEEN LOCATED?

6 A HE TOLD IT WAS OUT BY WENDOVER SOMEWHERE.

7 Q ANY OTHER KNOWLEDGE THAT HE WOULD HAVE DISPLAYED
8 OR INDICATED HE HAD ACCESS TO DURING THIS CONVERSATION ABOUT
9 THE BOMBS? WHEN I SAY "HE," I MEAN MR. TILLMAN.

10 A NO, JUST BETTY'S HUSBAND.

11 Q DURING THE COURSE OF TIME THAT YOU WERE ANSWERING
12 QUESTIONS FOR MR. BARBER, THERE WAS THE TERM "HASSLING" USED
13 BY MR. BARBER. IN YOUR ESTIMATION WHAT DOES "HASSLING" MEAN?

14 A CONSTANTLY BOTHERING.

15 Q DID YOU, BY YOUR OWN OBSERVATIONS AND SIGHT, SMELL,
16 TASTE OR OTHERWISE, FROM THE TIME YOU FIRST MET MR. TILLMAN
17 UNTIL THE DATE OF THE INCIDENT, MAY 26, EVER SEE -- THAT IS
18 TWO YEARS PLUS, HOWEVER LONG YOU WERE THERE --

19 MR. BARBER: YOUR HONOR, THIS IS NOT A QUESTION.
20 I OBJECT. IT IS LEADING.

21 THE COURT: YOU MAY REPHRASE, SIR.

22 Q (BY MR. CHRISTENSEN) DURING THAT PERIOD OF TIME
23 WHEN YOU FIRST MET UNTIL MAY 26, 1982, DID YOU EVER OBSERVE
24 LORI HASSLE, IN YOUR OWN DEFINITION OF HASSLE, ELROY TILLMAN?

25 A NO.

1 Q DID YOU EVER, DURING THAT PERIOD OF TIME, SEE
2 MARK SCHOENFELD HASSLE, IN YOUR OWN DEFINITION, ELROY TILLMAN?

3 A NO.

4 Q OR TAKE OR BECOME INVOLVED OR EVEN BE PRESENT WHEN
5 ELROY TILLMAN WAS THERE?

6 A NO.

7 Q WE HAVE GOT A DISPOSITION ON THE FIRST GUN AND THE
8 THIRD GUN THAT YOU PURCHASED. WHERE IS THE SECOND GUN, THE
9 AUTOMATIC .22 THAT YOU ARE TALKING ABOUT?

10 A THAT DAY I BOUGHT THE THIRD GUN HE HAD GONE TO THE
11 PHONE BOOTH OUTSIDE THE STORE --

12 MR. BARBER: OBJECTION, YOUR HONOR, THIS IS NOT
13 RESPONSIVE.

14 MR. CHRISTENSEN: WELL, I AM NOT SURE IT IS, YOUR
15 HONOR --

16 THE COURT: WOULD YOU REASK THE QUESTION, PLEASE.

17 Q (BY MR. CHRISTENSEN) AGAIN, WHAT DID YOU OBSERVE
18 IN THE DISPOSITION OF THAT SECOND GUN, THE AUTOMATIC THAT
19 YOU TALKED ABOUT?

20 THE COURT: THE TWO GUNS THAT ARE NOT HERE OR THE
21 ONE THAT IS NOT HERE? WHAT HAPPENED TO THE OTHER ONE?

22 THE WITNESS: ELROY WAS TO SELL IT TO BETTY.

23 Q (BY MR. CHRISTENSEN) WHEN DID THIS CONVERSATION
24 COME UP?

25 A THAT SAME DAY I BOUGHT THE THIRD GUN.

1 Q DID HE SAY WHY HE WAS GOING TO SELL IT TO BETTY?

2 A TO GET THE MONEY FOR ME BUYING THE THIRD GUN TO
3 GIVE BACK TO ME.

4 Q WHO PROVIDED THE MONEY FOR EACH OF THE THREE GUNS?

5 A SEEMED LIKE I BOUGHT THE FIRST ONE. HE GAVE ME
6 THE MONEY FOR THE SECOND ONE, AND I BOUGHT THE THIRD ONE.

7 Q IN THE MORNING AS YOU WERE GETTING DRESSED AND
8 GETTING READY TO GO TO THE AIRPORT, TO YOUR HOUSE, DID YOU
9 EVER SEE ANY OF MR. TILLMAN'S ROOMMATES?

10 A NO.

11 Q OR TALK TO ANYONE THROUGH ANY DOORS OR HEAR ANYONE
12 THROUGH ANY DOORS?

13 A NO.

14 MR. CHRISTENSEN: I BELIEVE THAT IS ALL THE
15 QUESTIONS I HAVE, YOUR HONOR.

16 THE COURT: THANK YOU, SIR.

17 MR. BARBER, DO YOU HAVE ANY FURTHER RECROSS?

18 MR. BARBER: YES, YOUR HONOR.

19
20 RECROSS-EXAMINATION

21 BY MR. BARBER:

22 Q YOU INDICATED, I BELIEVE, CARLA, THAT AT ONE POINT
23 IN TIME YOU CALLED ELROY'S HOUSE AND A WOMAN ANSWERED?

24 A YES.

25 Q DO YOU KNOW WHO SHE WAS?

REPRODUCED BY THE U.S. GOVERNMENT

1 A NO.

2 Q WHEN DID THAT HAPPEN?

3 A IT WAS A COUPLE OF DAYS BEFORE CHRISTMAS.

4 THE COURT: I ASSUME YOU ARE ASKING TO REOPEN ON
5 CROSS-EXAMINATION, MR. BARBER.

6 MR. BARBER: NO, YOUR HONOR, THAT IS DIRECTLY
7 RELATED TO THE QUESTIONS MR. CHRISTENSEN ASKED IN HIS FIRST
8 SERIES.

9 MR. CHRISTENSEN: I WOULD INDICATE THAT IS, YOUR
10 HONOR.

11 THE COURT: I WAS GOING TO LET YOU REOPEN IF IT IS.

12 MR. BARBER: I APPRECIATE THAT, YOUR HONOR. I
13 THINK THIS IS DIRECTLY RELATED.

14 THE COURT: ALL RIGHT.

15 Q (BY MR. BARBER) CHRISTMAS OF WHAT YEAR?

16 A OF 1981.

17 Q SOME SIX MONTHS PRIOR TO THE KILLING?

18 A YES.

19 Q AND THEN YOU INDICATED, I THINK, IN YOUR REDIRECT
20 EXAMINATION BY MR. CHRISTENSEN THAT WHEN YOU WERE IN THE
21 BATHROOM CHECKING YOURSELF OUT FOR BLOOD THAT ELROY LOOKED
22 AT SOME PORTION OF HIS OWN ATTIRE AND THAT YOU COULD SEE
23 SMALL SPOTS THERE; IS THAT CORRECT?

24 A YES.

25 Q DESCRIBE FOR ME THE GARMENT WHICH BORE THOSE SPOTS.

1 THE COURT: WHICH PORTION OF HIS CLOTHES?

2 Q (BY MR. BARBER) YES, WHERE WERE THE SPOTS?

3 A ON THE JACKET HE WAS WEARING.

4 Q AND WHICH PORTION OF THE JACKET WERE THE SPOTS ON?

5 A THE FRONT OF HIS JACKET.

6 Q AND THE FRONT OF THE TORSO PORTION OR THE SLEEVES?

7 A THE TORSO.

8 Q OKAY. AND IF YOU WILL STAND, PERHAPS YOU CAN GIVE
9 US AN IDEA BETTER WHERE THOSE SPOTS WERE ON THE JACKET.

10 WOULD YOU DO THAT FOR US? HOW FAR DID THE JACKET GO DOWN?

11 THE COURT: LET HER ANSWER THE FIRST QUESTION.

12 MR. BARBER: I AM SORRY.

13 THE COURT: YOU MAY INDICATE THE PORTIONS WHERE
14 THEY WERE.

15 THE WITNESS: IT WAS THIS AREA RIGHT IN HERE.

16 Q (BY MR. BARBER) AT OR BELOW THE WAIST AREA?

17 A THE JACKET JUST WENT TO THE WAIST.

18 Q OKAY. AND WERE THE SPOTS AT OR ABOUT THE WAIST?

19 A WELL, THEY WERE UP IN THIS AREA UP HERE.

20 Q LOTS OF THEM?

21 A NO.

22 Q COULD YOU SEE THEM VISIBLY IN THE LIGHT OF THAT
23 BATHROOM?

24 A YES.

25 THE COURT: FOR THE RECORD, SHE INDICATED THE

1 ABDOMEN AREA AND DOWN TO THE WAIST.

2 Q (BY MR. BARBER) COULD YOU SEE THEM WITH THE LIGHT
3 AVAILABLE IN THE BATHROOM PRETTY PLAINLY?

4 A THEY WERE REAL SMALL, BUT YOU COULD SEE THEM.

5 Q ALL RIGHT. WHEN YOU TALKED TO DETECTIVE CHAPMAN
6 AND COMMENCED TELLING HIM THE TRUTH ABOUT THIS MATTER, DID
7 YOU TELL HIM ABOUT THE BLOOD SPOT ON ELROY'S JACKET?

8 A I DON'T THINK I REMEMBER THAT, NO, AT THAT FIRST
9 STATEMENT.

10 Q WELL, HOW ABOUT THE SECOND ONE? DID YOU TELL HIM
11 ABOUT THEM AT THE SECOND ONE?

12 A I DON'T REMEMBER WHICH ONE. IF I REMEMBERED
13 THINGS, I WOULD CALL HIM UP AND TELL HIM.

14 Q YES. DID YOU TELL MR. CHRISTENSEN ABOUT THOSE
15 BLOOD SPOTS WHEN YOU TOOK A SWORN STATEMENT IN FRONT OF HIM?

16 A I DON'T THINK I DID.

17 Q DID YOU TELL ANYBODY ABOUT THOSE BLOOD SPOTS AT
18 THE PRELIMINARY HEARING IN MID-AUGUST 1982?

19 A I DON'T KNOW IF I WAS ASKED THAT QUESTION OR NOT.

20 Q THAT ISN'T WHAT I ASKED YOU. DID YOU TELL ANYBODY
21 AT THE PRELIMINARY HEARING ABOUT THOSE BLOOD SPOTS?

22 THE COURT: I THINK SHE ANSWERED, MR. BARBER.

23 Q (BY MR. BARBER) ALL RIGHT. DID YOU RING UP
24 MIKE CHRISTENSEN AND TELL HIM ABOUT THE BLOOD SPOTS?

25 A NO.

1 Q ALL RIGHT. CARLA, AT ANY TIME IN ANY OF YOUR
2 DISCUSSIONS WITH MR. CHRISTENSEN OR THE POLICE, DID YOU
3 POINT OUT TO THEM OR GIVE THEM THE LOCATION OF A SINGLE
4 PIECE OF PHYSICAL EVIDENCE THAT WOULD INDICATE THAT
5 ELROY TILLMAN WAS PRESENT WHEN MARK SCHOENFELD WAS KILLED?

6 MR. CHRISTENSEN: I AM GOING TO OBJECT TO THAT,
7 YOUR HONOR.

8 THE COURT: I WILL SUSTAIN THE OBJECTION. YOU CAN
9 ASK SOME QUESTIONS, BUT AS WORDED, I DON'T KNOW THAT THE
10 WITNESS IS ABLE TO KNOW WHAT YOU ARE TALKING ABOUT.

11 MR. BARBER: I THINK I WILL WITHDRAW THE QUESTION.
12 I HAVE NO MORE, YOUR HONOR.

13 THE COURT: ALL RIGHT. YOU CAN FINISH UP WITH THE
14 QUESTIONS, BUT AS WORDED --

15 MR. BARBER: THAT IS FINE, YOUR HONOR.

16 THE COURT: ALL RIGHT.

17
18 FURTHER REDIRECT EXAMINATION

19 BY MR. CHRISTENSEN:

20 Q WERE YOU EVER ASKED ABOUT BLOOD SPOTS BY EITHER
21 MYSELF OR MR. CHAPMAN DURING THOSE FIRST INTERVIEWS?

22 A NO.

23 MR. CHRISTENSEN: NO FURTHER QUESTIONS.

24 MR. BARBER: I HAVE NOTHING FURTHER.

25 THE COURT: THANK YOU. YOU MAY STEP DOWN, MA'AM.

1 MR. BARBER: OH, YOUR HONOR, I WOULD LIKE THE
2 RIGHT TO RECALL HER IN OUR CASE IF IT MAY BE NECESSARY.

3 THE COURT: YOU MAY DO SO. YES, SHE WILL BE
4 AVAILABLE, AND WE WILL KNOW WHERE SHE WILL BE IF REQUIRED OR
5 AS NEEDED FOR FURTHER RECALL.

6 I HAVE A 4:00 MATTER, GENTLEMEN, IN ANOTHER CASE,
7 SO I AM GOING TO EXCUSE THE JURY AND THE PARTIES IN THIS
8 CASE. I GUESS NOT A LONG WEEKEND, JUST A REGULAR WEEKEND.
9 BUT I WILL EXCUSE THE JURY OVER THE WEEKEND, AGAIN WITH MY
10 ADMONITION NOT TO TALK TO ANYONE, LET NO ONE TALK TO YOU,
11 AND DON'T READ THE NEWSPAPERS OR THE RADIO. YOU MAY BE
12 EXCUSED. 9:00 MONDAY MORNING ALL RIGHT, GENTLEMEN?

13 MR. CHRISTENSEN: THAT IS FINE WITH THE STATE,
14 YOUR HONOR.

15 MR. BARBER: FINE, YOUR HONOR.

16 THE COURT: THEN WE WILL RECESS UNTIL 9:00 A.M.
17 MONDAY MORNING. THE JURY MAY BE EXCUSED.

18 (WHEREUPON, COURT WAS IN
19 RECESS FOR THE EVENING UNTIL
20 MONDAY MORNING.)

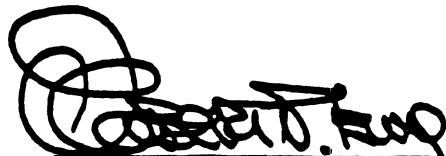
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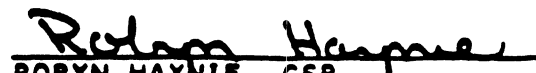
REPORTER'S CERTIFICATE

STATE OF UTAH)
) SS.
COUNTY OF SALT LAKE)

WE, ROBERT E. LEWIS, AN OFFICIAL REPORTER OF THE
DISTRICT COURT OF THE STATE OF UTAH, FOR THE COUNTY OF
SALT LAKE, AND ROBYN HAYNIE, A CERTIFIED SHORTHAND REPORTER
FOR THE STATE OF UTAH, DO HEREBY CERTIFY THAT THE FOREGOING
PAGES 1 TO 513, INCLUSIVE, COMPRISE A TRUE AND CORRECT
PARTIAL TRANSCRIPT OF THE TESTIMONY GIVEN AND THE PROCEEDINGS
HAD UPON THE HEARING OF THE ABOVE-ENTITLED ACTION ON
JANUARY 5, 1983, JANUARY 6, 1983, AND JANUARY 7, 1983, AND
THAT SAID TRANSCRIPT CONTAINS ALL OF THE EVIDENCE, ALL OF
THE OBJECTIONS OF COUNSEL AND RULINGS OF THE COURT, AND ALL
MATTERS TO WHICH THE SAME RELATE.

DATED THIS 7th DAY OF January, 1983.


ROBERT E. LEWIS, CSR
LICENSE NO. 92


ROBYN HAYNIE, CSR
LICENSE NO. 100