

2001

Utah v. Waldron : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH :
Plaintiff/Appellee, : Case No. 20010552-CA
v. :
DEJON RAMON WALDRON : Priority No. 2
Defendant/Appellant. :

BRIEF OF APPELLEE

APPEAL FROM CONVICTIONS FOR THREE COUNTS OF AGGRAVATED ROBBERY, FIRST DEGREE FELONIES, IN VIOLATION OF UTAH CODE ANN. § 76-6-302 (1999), ONE COUNT OF AGGRAVATED ASSAULT, A SECOND DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-5-103 (1999), ONE COUNT OF AGGRAVATED BURGLARY, A FIRST DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-6-203 (1999), AND ONE COUNT OF TAMPERING WITH EVIDENCE, A SECOND DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-8-510 (1999), IN THE SECOND DISTRICT COURT, THE HONORABLE W. BRENT WEST, PRESIDING

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Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH	:	
Plaintiff Appellee,	:	Case No. 20010552-CA
v.	:	
DEJON RAMON WALDRON	:	Priority No. 2
Defendant/Appellant.	:	

BRIEF OF APPELLEE

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from convictions for three counts of aggravated robbery, first degree felonies, in violation of UTAH CODE ANN. § 76-6-302 (1999), one count of aggravated assault, a second degree felony, in violation of UTAH CODE ANN. §76-5-103 (1999), one count of aggravated burglary, a first degree felony, in violation of UTAH CODE ANN. § 76-6-203 (1999), and one count of tampering with evidence, a second degree felony, in violation of UTAH CODE ANN. § 76-8-510 (1999), in the Second District Court, the Honorable W. Brent West, presiding. This Court has jurisdiction pursuant to UTAH CODE ANN. § 78-2a-3(2)(j) (Supp. 2001).

**STATEMENT OF THE ISSUES ON APPEAL AND
STANDARDS OF APPELLATE REVIEW**

1. Should the Court consider defendant's claim that there was insufficient evidence to support the jury's verdict when he failed to marshal the evidence?

Failure to marshal the evidence waives an appellant's right to have his claim of insufficiency considered on appeal. *State v. Coonce*, 2001 UT App 355, ¶6, 36 P 3d 533

2. Did the trial court commit plain error by permitting the prosecutor to truthfully represent the evidence in closing rebuttal argument?

In reviewing a claim of plain error, this Court must determine whether defendant has demonstrated that “(1) an error exists, (2) the error should have been obvious to the trial court, and (3) the error prejudiced him.” *State v. Boyd*, 2001 UT 30, ¶48, 25 P 2d 985 (quoting *State v. Dunn*, 850 P 2d 1201, 1208 (Utah 1993))

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

No constitutional provisions, statutes or rules are determinative of the issues on appeal.

STATEMENT OF THE CASE

Defendant, Dejon Waldron, was charged with four counts of aggravated robbery (Counts I-III, VII), two counts of aggravated assault (Count IV, VIII), one count of aggravated burglary (Count V), one count of aggravated kidnapping (Count VI), and one count of tampering with evidence (Count IX) (R. 1-17).¹ All counts, with the exception of Counts

¹ Counts I through III and VII related to charges for aggravated robbery upon Anthony Jones, William Coleman, Jimmy Valdez, and Linda Dixon, respectively (R. 1, 3, 5, 14) Counts IV and VIII related to charges for aggravated assault upon Jimmy Valdez and Linda Dixon, respectively (R. 7-8, 16) On the prosecution's motion before the trial ended, the trial court dismissed Counts VI through VIII, charging offenses upon Linda Dixon (R. 158-59, 161, 259, 277 49-50, 278 209-10)

VIII and IX, were subject to the firearm enhancement under UTAH CODE ANN. § 76-3-203 (Supp. 2000) (R. 2, 4, 6, 9, 11, 13, 15). Defendant represented himself at trial, with attorney Stephen Laker as standby counsel (R. 121-22). After a three-day trial, the jury found defendant guilty of the six remaining charges, Counts I through V and Count IX, including the firearm enhancements on Counts I through III and Count V (R. 228-237; 279:159-67).

The trial court sentenced defendant to four firearm enhanced six-years-to-life terms for his convictions for aggravated robbery and aggravated burglary, and two one-to-fifteen year terms for his convictions for aggravated assault and tampering with evidence (R. 261-62). The court ordered all of the terms for convictions of the aggravated offenses to be served concurrently and the term for tampering with evidence to be served consecutively (R. 263).

Defendant timely appealed (R. 265). The Utah Supreme Court transferred the case to this Court, pursuant to UTAH CODE ANN. § 78-2-2(4) (Supp. 2001).

STATEMENT OF THE FACTS²

The Assault and Robberies

The victims in this case are William "Binky" Coleman, Jimmy Roy Valdez, and Mark Anthony Jones. The three men were at Coleman's West Ogden home, watching television on the night of September 23, 2000, when, at approximately 10:00 PM, there was a knock

² The facts are recited in the light most favorable to the jury's verdict. *See State v. Wright*, 898 P.2d 113, 115 (Utah App. 1995).

at the door (R. 277 59-60) Coleman asked Jones to answer it (R. 277 60) Jones looked out the window, saw Linda Dixon alone at the door Dixon had grown up down the street from defendant and had been to Coleman's house earlier that day.³

Jones opened the door and let Dixon in (R. 277 131-135) With the door still open, Jones turned his head to look at the television and was blind-sided by a blow to the side of his head by defendant, who entered the house behind Dixon (R. 277 135-136) Defendant pulled a 40 caliber Glock pistol from the dark jacket he was wearing, pointed it at Jones, and demanded that Jones pay him the money Jones owed him (R. 277 62). When Jones stated he didn't have any money, defendant fired the gun at the floor between Jones' legs (R. 277.78).

Coleman tried quell any further violence by pulling a bundle of cash out of his pocket and offering to pay defendant whatever money Jones owed him (R. 277 62). Without waiting for Coleman to count the cash or hand it to him, defendant grabbed the money from Coleman's hands and then pointed the pistol at Valdez's head and demanded his money (R. 277 62-63, 102-103). Valdez refused saying, "I ain't giving up my money You gonna have to shoot me." (R. 277:103). Defendant replied, "You think I'm playing?" A struggle then ensued between Valdez and defendant, during which the pistol was discharged once into the ceiling and once into Valdez's leg (R. 277 78, 103).

Jones knew Dixon as "Linda Gallegos," but identified her from a photograph, State s exhibit #2 (R. 277 132-33)

Shortly after shooting Valdez, defendant and Dixon left Coleman's house, and Valdez was taken by ambulance to a hospital for treatment of the gunshot wound (R. 277:63-4).

The Search and Arrest

Within minutes after shooting Valdez, at approximately 10:30 PM, defendant visited his friend, Demarkee Jimerson, at his Ogden home (R. 277:196-199).⁴ Defendant entered through the back door unannounced. According to Jimerson's fiancée, Antoinette Ewing, defendant stated he had just wrecked a car and was "frantic" about the police looking for him (R. 277:200, 278:8).⁵ Jimerson, who knew defendant both as "L.J." and "Little John," asked defendant to leave because he "didn't want any trouble in [his] house" (R. 277:200). Defendant made a telephone call and was picked up a few minutes later by a white pickup truck (R. 278:10).

After defendant left, the police arrived and asked to search Jimerson's home for "Little John" or "Dejon Waldron" as a suspect in a shooting (R. 277:202, 226, 232; 278:10-

⁴ Officer Lane Olsen of the Ogden City Police Department testified that he was dispatched to Coleman's home on a report of gunfire at 10:19 p.m. and that he arrived within a couple of minutes (R. 277:162-63).

⁵ About the same time defendant arrived at Jimerson's home, Officer Dan Oberg of the Ogden Police Department was dispatched to a single car accident at 3017 Eccles in Ogden, a couple of blocks from Jimerson's home (R. 277:184-85, 196-197). Officer Oberg found Linda Dixon in the passenger seat of a maroon 2000 Pontiac Sunbird that had left the road and struck a tree (R. 277:185, 190; State's Ex. #2). Also, Jimerson testified that at about 7:00 p.m. on the day of the shooting he saw defendant and Dixon driving in the car defendant later wrecked (R. 277:191, 242-43, 246-47; State's Ex. #50).

11, 30).⁶ At trial, Jimerson admitted lying to the police and said he did not know defendant (R. 277:202).

Later that night, defendant called Jimerson on the telephone and asked him to come out to Kathy Colunga's house in Shadow Valley (R. 277:201). Jimerson and Ewing drove out to Colunga's house where they found defendant in the basement (R. 277:203-204). Ewing saw a black pistol on the table, and heard defendant say he needed to go to Salt Lake City (R. 278:13-14). As Ewing helped defendant pack, the police knocked on the front door (R. 278:13-16).⁷ When Colunga answered the door, the police asked her if defendant was in the house (R. 278:55). Colunga replied that defendant was not in the house and refused to consent to a search without a warrant (R. 278:16). Lacking consent or probable cause at this point to search the premises, the police decided to park around the corner (R. 278:56-58).

Jimerson, Ewing, and defendant decided to leave immediately, and Colunga's sister-in-law, Nina, offered to drive them in her white pickup truck (R. 278:17-18). While walking up the stairs from the basement to get in Nina's truck, defendant handed Jimerson

⁶ While cross examining Jimerson, defendant essentially acknowledged that he went by "Little John" (R. 277:227).

⁷ Additional facts explaining law enforcement's rapid focus on defendant as a suspect in the shooting were admitted for that limited purpose and not for their truth. Specifically, the police, while answering a call concerning the wrecked car, received another call from Linda Dixon's husband (R. 278:52-53). He informed police that his wife had been with defendant, that she had been kidnaped, and he provided the information that led them to Colunga's house in Shadow Valley (R. 278:53-55). Dixon, who was living in Pueblo, Colorado at the time of trial, failed to voluntarily appear (R. 178:205).

a gun and asked him to give the gun to Ewing because "they wouldn't search a girl" (R. 277:211-12; 278:19). Jimerson handed the gun to Ewing and Ewing put the gun in her purse (R. 278:19-20).

Jimerson and Ewing sat in the front of the truck with Nina (R. 278:18). Defendant climbed behind the front seat and sat between the front seat and the back of the cab of the truck, covering himself up with some dark articles (R. 278:18-21). Within two minutes after the group left Colunga's house, they passed Officer Troy Arrowsmith and Officer Weise in a marked police vehicle (R. 278:21, 58-59). Suspecting that defendant might be in the truck, the officers activated the emergency lights on their vehicle and pulled the truck over (R. 278:59). At this point, defendant exclaimed, "I'm going to jail" (R. 278:25).

After questioning Jimerson outside the vehicle, the officers found defendant crouched behind the front seat beneath a pile of clothes (R. 278:60-62). The officers ordered Nina and Ewing out of the truck, forcefully removed defendant from the truck, and placed all four individuals in custody (R. 278:60-62). When the officers searched the truck, they discovered Ewing's purse which contained a black .40 caliber Glock pistol with eleven rounds remaining in a thirteen round magazine ("clip") (R. 278:62-65, 96-99, 159).

Kathy Colunga's home was later searched pursuant to a search warrant. The officers who executed the search warrant seized a black coat, a holster, and a full thirteen round clip containing the same caliber and brand of bullets as found in the Glock in Ewing's purse (R. 278:111).

Valdez's Injury

At the hospital, Dr. Billy Allison, an Orthopedic Surgeon, operated on Valdez (R. 279:5). Dr. Allison testified for the State concerning the severity of Valdez's injury. He stated that Valdez had a large gaping wound stretching from the anterior compartment of his left leg to his ankle (R. 279:6). The bullet had severed a major artery, and Valdez had lost a significant amount of blood (R. 279:6). Left untreated, Valdez could have bled to death (R. 279:7). Valdez's leg is disfigured and he has permanent "weakness of lifting the foot and toes and some mild loss of sensation to the skin" (R. 179:8).

The Weapon

Laura Sorensen, a Weber County crime scene investigator, recovered two shell casings, one bullet, and some bullet fragments from Coleman's living room (R. 277:170-71; 278:131-134). Those items were submitted to the Utah State Crime Laboratory with the Glock pistol and the loaded clips seized from the pickup truck and Colunga's home (R. 278:179). David Wakefield, a qualified firearms expert at the Lab, examined both clips and test fired the Glock to determine whether it was the weapon used in the assault and robberies at Coleman's home (R. 278:180-196). He testified that the clips were designed for the Glock (R. 278:181-82, 190). He also testified that the firing mechanism of a Glock pistol marks the spent shell casings in a manner unique to each individual pistol and that it is possible to accurately match a shell casing to the pistol from which it was fired (R. 278:186-187).

Based on his test results, Wakefield concluded that the casings recovered from

Coleman's living room had unquestionably been fired from the Glock pistol seized from Ewing's purse. He also testified that the clip recovered at Colunga's home was designed to operate in a Glock pistol (R. 278:180). Wakefield added that automatic pistols are commonly loaded by inserting a bullet into the chamber before loading the clip (R. 278:193-194). Such a procedure would account for the eleven rounds of ammunition found in the thirteen-round clip of defendant's gun after he fired three times (R. 278:194).

The Testimony of the Victims

At trial, Detective Tony Hansen, the lead investigator, stated that Jones and Coleman were reluctant to testify and both feared for their safety if they testified as to their assailant's identity (R. 278:201-204). However, Jones, Coleman, and Valdez did testify for the State, and Coleman and Valdez gave substantially similar accounts of the assault and robberies and description of their assailant - - a big, tall black man wearing a dark parka and with hair braided in corn rows (R. 277:59-95, 100-129). Jones recited similar facts up to the point that he was struck in the head, but claimed he was too dazed after the blow to accurately remember anything, including the identity of his assailant or whether he gave any material statements to the police. None of the three victims would identify defendant as their assailant (R. 277:70, 122, 136, 148-50). Jones merely testified that he knew defendant when defendant lived above Jones' sister and that at one point Jones had owed defendant money (R. 277:138-140).

However, taking Jones as a hostile witness on redirect examination, the prosecutor

impeached Jones' refusal to acknowledge his detailed statement to police or to identify defendant by reading into the record in open court a signed statement Jones gave to the police on the night of the assault (R. 277:150-53).⁸ In his statement, Jones described the incident and his assailant in terms similar to those given by Coleman and Valdez (R. 277:153-57). Jones also repeatedly referred to his assailant as "Little John," whose real name was "Dejon," and that Little John used to live above his sister (R.277:153-156). At trial, Jones confirmed that "Little John lived above my sister's house in the neighborhood, Dejon." He further stated that he knew of no other "Dejon" besides defendant (R.277:157, 161-62).

SUMMARY OF THE ARGUMENT

POINT I

This Court should decline to consider defendant's insufficiency of evidence claim, based only on the issue of the identity of the perpetrator, because he has almost totally failed to marshal any of the overwhelming evidence identifying him as the victims' assailant. Particularly, defendant has failed to marshal the following evidence: (1) one of the victims identified defendant as the assailant in a properly admitted statement to the police shortly after the attack; (2) defendant attempted to hide a gun which ballistics tests conclusively identified as the weapon fired in one of the victim's residence; (3) the victims identified features of their assailant's person and clothes that matched defendant's description; (4) defendant and a female companion, who undisputedly accompanied defendant to the crime

⁸ Jones entire testimony, central to the issues on appeal, is attached at Addendum A.

scene, were involved in an automobile accident immediately after the offenses were committed; (5) defendant was hiding beneath a pile of clothes behind the rear seat of a pickup truck when he was apprehended. Based on such overwhelming evidence, defendant's insufficiency claim is meritless.

POINT II

Defendant's claim, that the trial court committed plain error by failing to prevent the prosecutor from referring to evidence not in the record during his closing rebuttal, fails because it misrepresents the record.

ARGUMENT

POINT I

THIS COURT SHOULD DECLINE TO CONSIDER DEFENDANT'S INSUFFICIENCY OF EVIDENCE CLAIM BECAUSE DEFENDANT HAS ALMOST TOTALLY FAILED TO MARSHAL THE OVERWHELMING EVIDENCE SHOWING THAT IT WAS HE WHO COMMITTED THE OFFENSES

To reverse a jury verdict, the reviewing court must find that the evidence and inferences based on that evidence are so "inconclusive or [so] inherently improbable that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime." *State v. Dehart*, 2001 UT App 12, ¶18, 17 P.3d 1171 (quoting *State v. Brown*, 948 P.2d 337, 343 (Utah 1997)). In undertaking such review, the appellate court will "view the evidence and all inferences drawn therefrom in a light most favorable to the verdict." *State v. Heaps*, 2000 UT 5, ¶19, 999 P.2d 565 (citation omitted). "[S]o long as some evidence and

reasonable inferences support the jury's findings, [the reviewing court] will not disturb them." *Id.*

To meet his burden in challenging the sufficiency of the evidence, a defendant must marshal all the evidence in support of the verdict and then demonstrate that, even viewed in the light most favorable to the verdict, the evidence is insufficient. *State v. Lopez*, 2001 UT App 123, ¶18, 24 P.3d 993; *State v. Larsen*, 2000 UT App 106, ¶11, 999 P.2d 1252. This Court has marked the weight of the marshaling requirement:

This heavy burden places a responsibility on counsel that is not unlike becoming the devil's advocate. Counsel must extricate himself or herself from the client's shoes and fully assume the adversary's position. In order to properly discharge the duty of marshaling the evidence, the challenger must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists.

State v. Coonce, 2001 UT App 355, ¶6, 36 P.3d 533 (citing *West Valley City v. Majestic Inv. Co.*, 818 P.2d 1311, 1315 (Utah App. 1991)). Failure to so marshal the evidence waives an appellant's right to have his claim of insufficiency considered on appeal. *See id.* (declining to further address inadequately marshaled insufficiency claim); *State v. Mincy*, 648, 652 n.1 (Utah App.), *cert. denied*, 843 P.2d 1042 (Utah 1992) (same) (citing *State v. Moore*, 802 P.2d 732, 738-39 (Utah App. 1990)).

Defendant does not challenge the sufficiency of the evidence with respect to any of

the statutory elements of the crimes for which he was convicted.⁹ Defendant's only claim is that the evidence was insufficient for the jury to find that he was the person who committed the crimes. Aplt. Br. at 19-21. However, defendant has almost totally failed to marshal the overwhelming evidence contradicting his claim.

Defendant correctly notes that at trial none of the victims identified him as the assailant (R. 277:70, 122, 136). *See* Aplt. Br. at 20. However, there was credible evidence, based on their statements to police, that the victims' refusal to identify defendant stemmed from their fear of reprisal by testifying against him (R. 278:201-04). More importantly, in a statement to the police first introduced at trial by the defense, Jones stated that his assailant was "Little John," that he was also known as "Dejon," that Little John used to live above his sister, and that at one time he owed Little John \$100. (R.277:153-157).¹⁰ Jones also acknowledged at trial that defendant used to live above his sister and that at one time he owed defendant money (R. 277:139-140). Indeed, defendant essentially acknowledged that

⁹ By restricting his insufficiency claim to the question of identity, defendant evidently does not challenge his evidence-tampering conviction, since he nowhere denies that he was at Colunga's house, where he asked Jimerson and Ewing to hide the gun (R. 277:211-12; 278:19).

¹⁰ Jones prior statement was admissible not only to impeach his credibility in refusing to identify defendant at trial, but also as substantive evidence that defendant was the victims' assailant. *See* Utah R. Evid. 801(d)(1)(A) ("A statement is not hearsay if [t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is inconsistent with the declarant's testimony . . ."); *State v. Ramsey*, 782 P.2d 480, 483-84 (Utah App. 1989) (evidence admitted under rule 801(d)(1)(a), Utah Rules of Evidence, as a prior inconsistent statement, is admissible as substantive evidence).

he went by "Little John," a name by which both Jones and Jimerson also knew him (R. 277:157, 161-62, 200, 227).

Defendant also claims that the State never established that the gun seized from Ewing's purse was the gun fired in Coleman's home. Aplt. Br. at 20-21. The claim is contrary to the clear evidence in the record. Both Ewing and Jimerson testified that as they were leaving Colunga's house, defendant gave Ewing the Glock handgun that was later discovered in her purse (R. 277:211, 278:19). David Wakefield of the Utah State Crime Lab testified that Glock pistols leave unique markings on the shell casings ejected from their chambers and that the markings on a shell fired from a Glock can be traced to that particular Glock pistol (R. 278:187). He concluded "absolutely" that the casings recovered from Coleman's living room were fired from the Glock seized from Ewing's purse (R. 278:187).

Defendant has also failed to marshal all the other evidence identifying him as the perpetrator of the crimes:

1. Physical identification - Coleman and Valdez described their assailant as a big, tall black man with hair braided in corn rows (R. 277:61-62, 102). Defendant is undisputedly a tall black man who had his hair braided in corn rows when apprehended, a short time after the offenses were committed (R. 277:59-60; 278:9, 69).

2. Clothing identification - According to Coleman and Valdez, their assailant wore a dark parka (R. 277:61, 123). Defendant left a dark coat, along with his holster and shoulder harness at Colunga's home (R. 278:109-11; State's Ex. 57 and 57). Coleman testified the

coat was like the one worn by his assailant (R. 277:93).

3. Defendant's link to the crime scene - Jones positively identified Dixon, whom he knew, as the woman his assailant used to gain entry into Coleman's home (R. 277:132). Jimerson saw defendant driving with Dixon about three hours before the crimes took place (R. 277:191, 242-43, 246-47; State's Ex. #50). He and Ewing testified that when defendant later entered their home, frantic and unannounced, defendant said that he had just wrecked a car (R. 277:199-200; 278:7-8). Minutes after the crimes took place, officers were dispatched to a single car accident within blocks of Jimerson's home, where they found Dixon in the passenger seat of the same car Jimerson had earlier seen defendant and Dixon in (R. 277:184-85, 191, 196-197, 242-43; State's Ex. #50).¹¹ In sum, evidence closely associating defendant with Dixon in an unusual way (the car wreck) at the time of the offenses persuasively links defendant to the scene of the crimes.

4. Defendant's consciousness of guilt - After plainly attempting to elude police, defendant was found hiding beneath a pile of clothes behind the rear seat of a pickup truck

¹¹ Additionally, Officer Arrowsmith related that, while answering a call concerning the wrecked car, he also received a call from Linda Dixon's husband, who informed Officer Arrowsmith that his wife had been with defendant, that she had been kidnapped, and that defendant could probably be found at Colunga's house in Shadow Valley (R. 278:52-55). This information was initially admitted only to explain law enforcement's rapid focus on defendant as a suspect in the shooting rather than to prove its truth (R. 278:52-53). However, defendant opened the door to its substantive use in his closing argument when he referred to the substance of the officer's testimony in trying to distance his association with Dixon's wrecked car (R. 279:130). The prosecutor correctly noted defendant's waiver of the limited purpose for which the evidence had been admitted and used the evidence to connect defendant with Dixon (R. 279:136).

when he was apprehended (R. 278:13-21, 58-62). Just before the police stopped the vehicle he was hiding in, defendant exclaimed, "I'm going to jail" (R. 278:25).

Based on the foregoing evidence, all of which defendant has failed to marshal and which overwhelmingly proves he was the perpetrator of the offenses for which he was convicted, this Court should decline to consider defendant's insufficiency claim.

POINT II

DEFENDANT FAILS TO SHOW THE TRIAL COURT COMMITTED PLAIN ERROR IN ALLOWING THE PROSECUTOR'S REBUTTAL CLOSING ARGUMENT REFERENCING MARK ANTHONY JONES' IDENTIFICATION OF DEFENDANT AS "LITTLE JOHN"

Defendant appears to argue that the trial court committed plain error by allowing the prosecutor to argue in rebuttal closing argument facts allegedly not in evidence about Mark Anthony Jones' identification of defendant as the victims' assailant. Aplt. Br. at 15-19.¹² The argument fails to satisfy any criterion of the plain error standard.

¹² The State characterizes defendant's claim as a plain error argument to develop some response to defendant's generally confused styling of his legal argument. The prosecutor's brief, allegedly improper rebuttal (R. 279:135-36) is set out in the following discussion. Defendant repeatedly states that he objected to the prosecutor's rebuttal argument, which would obviate having to argue plain error on appeal. Aplt. Br. at 7, 13, and 14. However, the record only shows that defendant later objected to the prosecutor's reference to a matter completely unrelated to Jones' testimony (R. 279:137-38). Therefore, this Court need not consider defendant's claim unless it is based on plain error. *See State v. Holgate*, 2000 UT 74, ¶ 11, 10 P.3d 346 ("As a general rule, claims not raised before the trial court may not be raised on appeal."). Moreover, defendant cites *State v. Dunn*, 850 P.2d 1201 (Utah 1993), frequently cited for the plain error standard, and finally asserts at the end of his discussion that "the prosecutor's misconduct [was] plain error." Aplt. Br. at 15-16, 18.

“To demonstrate plain error a defendant must establish that “(i) [a]n error exists; (ii) the error should have been obvious to the trial court; and (iii) the error is harmful.”” *Holgate*, 2000 UT 74 at ¶13 (citation omitted).

In his rebuttal closing argument, the prosecutor commented as follows:

And there are a few other problems that I’d like to point out in what [defendant] says. He says that the only evidence that he was at 840 West Ellis is from Demarkee and Antoinette Ewing by this chain of evidence with the gun or the inferences with the gun.

The problem is, Mark Anthony Jones, who he relies on heavily to have told us the truth up here even said at the end of his testimony, as his lies started falling apart, that L.J. is Dejon. L.J. is Dejon.

But when he started, first cross-examination Mr. Waldron said: Have you ever known me as L.J.?

No.

There’s talk in here about Little John, L.J. doing this offense. You ever known me as that?

No, just Dejon or D.J.

He is - - I guess I can’t say damn - - darned by his own companion’s testimony. And there’s more. He invokes the statement from Maurice Dixon, Linda’s husband

(R. 135-36).

The court did not commit plain error in allowing the prosecutor’s remarks because they accurately reflect properly admitted evidence. Indeed, defendant’s repeated assertions that Jones never identified “Little John” as “Dejon,” *see* Aplt. Br. at 7, 13, 15, are bald misrepresentations of the record. After impeaching Jones with his signed statement

incriminating defendant, the prosecutor elicited from Jones the following statement: “I already knew Little John lived above my sister’s house in the neighborhood, Dejon” (R. 277:157).

Further, to the extent that the prosecutor’s remarks may be construed to be a statement that Jones identified defendant as his assailant, defendant’s repeated assertions that the prosecutor misstated the evidence in this regard, *see* Aplt Br. at 14, 15, 18, are also bald misrepresentations of the record. As discussed at Point I of this brief, *see* Aple. Br. at 13, the prosecutor impeached Jones with a signed statement in which Jones repeatedly referred to his assailant as “Little John,” whose real name was “Dejon,” and that Little John used to live above his sister (R.277:153-156). Jones strenuously tried to distance himself from his statement, at most admitting that, “it does look like my signature” (R. 277:153). However, because defendant himself introduced the statement in cross examining Jones and failed to object when the prosecutor had Jones read his statement to the jury (R. 277:148, 154-55), there is no question that the jury was entitled to regard the statement as evidence that Jones had identified defendant as his assailant (R. 277:154-55). *See* Utah R. Evid. 801, *supra* n.10.

Defendant goes further awry by omitting any of the substance of Jones’ statement and by asserting that his signed **written** statement was never admitted into evidence, thereby suggesting that either the jury never heard it or that it has no import because it was not admitted into evidence. Aplt. Br. at 18. In fact, all parties and the court agreed that although the jurors could not see Jones’ written statement, they could rely on their memories in

considering the substance of Jones' statement that was read into the record (R. 279:150-56).

Finally, defendant has failed to engage in any meaningful discussion about how he was prejudiced by the prosecutor's alleged misconduct, *see* Aplt. Br. at 18, an argument that, in any case, would be meritless. *See* Aple. Br. at Point I.


In sum, defendant's plain error argument lacks all merit.

CONCLUSION

Based on the foregoing discussion, the State respectfully requests that defendant's convictions be affirmed.

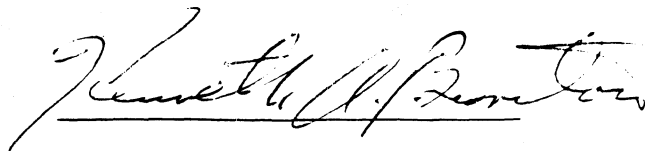
RESPECTFULLY SUBMITTED this ^{*tu*} 18 day of January, 2002.

MARK L. SHURTLEFF
Attorney General


KENNETH A. BRONSTON
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that two true and accurate copies of the foregoing Brief of Appellee were mailed, postage prepaid, to Maurice Richards and Jerold N. Engstrom, Public Defender Association, Inc. of Weber County, attorneys for defendant, 2568 Washington Blvd., Suite 102, Ogden, Utah 84401, this th15 day of January, 2002.

A handwritten signature in cursive script, reading "Kenneth A. Benton", is written over a horizontal line.

ADDENDUM A

THE BAILIFF: ILL PUT ANOTHER SET OF CUFFS ON OR GIVE
 2) HIM A LITTLE MORE EXTENSION
 3) THE COURT: BEST WE'LL DO. WE'LL LOOSEN EM.
 4) MR. WEISKOPF: ALL RIGHT. THANKS.
 5) THE COURT: UNLESS YOU NEED HIM TO WRITE. THANK YOU.
 6) DEPUTY: YOU MAY PROCEED, MR. WEISKOPF.
 7) MR. WEISKOPF: THANK YOU, JUDGE.
 8) MARK ANTHONY JONES,
 9) BEING FIRST DULY SWORN, WAS EXAMINED
 10) AND TESTIFIED AS FOLLOWS:
 11) DIRECT EXAMINATION
 12) BY MR. WEISKOPF:
 13) Q. WOULD YOU STATE YOUR FULL NAME FOR THE COURT?
 14) A. MARK ANTHONY JONES.
 15) Q. AND, MARK, HOW OLD ARE YOU?
 16) A. THIRTY-EIGHT.
 17) Q. AND WHERE ARE YOU FROM, MARK?
 18) A. OGDEN, UTAH.
 19) Q. AND IS THIS WHERE YOU RESIDED ALL YOUR LIFE?
 20) A. YES, SIR.
 21) Q. AND DO YOU REMEMBER WHAT YOU WERE DOING ON SEPTEMBER
 22) 23RD OF THE EVENING APPROXIMATELY TEN O'CLOCK? OF LAST YEAR?
 23) A. I WAS OVER FRIEND'S HOUSE.
 24) Q. AND DO YOU REMEMBER WHAT THAT FRIEND'S NAME IS?
 25) A. YES, I DO.

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1) Q. THANK YOU, SIR. ALL RIGHT. WHO WAS THERE WITH YOU AND
 2) MR. COLEMAN, IF ANYBODY?
 3) A. A FRIEND, ROY. ROY -- ME, ROY, AND BINKY.
 4) Q. DO YOU KNOW WHAT ROY'S FULL NAME IS?
 5) A. I DONT.
 6) MR. WEISKOPF: IF I CAN APPROACH.
 7) THE COURT: YOU MAY.
 8) BY MR. WEISKOPF:
 9) Q. LET ME SHOW YOU A PHOTO MARKED AS STATE'S EXHIBIT 4. DO
 10) YOU RECOGNIZE THE PERSON IN THAT PHOTO?
 11) A. I DO.
 12) Q. WHO IS THAT?
 13) A. THAT'S ROY.
 14) Q. THAT'S ROY? THANK YOU. AND WHEN YOU WERE WATCHING T.V.
 15) WITH ROY AND WITH MR. COLEMAN, DID ANYBODY ELSE COME TO THE
 16) HOUSE?
 17) A. YES.
 18) Q. AND WHO WAS THAT?
 19) A. A FEMALE LIMITED LINDA.
 20) Q. OKAY. DID YOU KNOW THIS INDIVIDUAL NAMED LINDA?
 21) A. I'D SEEN HER EARLIER THAT DAY.
 22) Q. AND WHEN -- DO YOU REMEMBER WHEN THAT DAY?
 23) A. I REMEMBER WHEN?
 24) Q. UH-HUH.
 25) A. NO. JUST HAPPENED TO SEE HER.

1) Q. AND WOULD YOU TELL THE COURT PLEASE, SIR
 2) A. WILLIAM COLEMAN
 3) Q. OKAY. AND IS HE KNOWN BY ANY OTHER NAMES?
 4) A. BINKY.
 5) Q. THANK YOU, SIR. AND WHAT WERE YOU DOING OVER AT YOUR
 6) FRIEND WILLIAM COLEMAN'S HOUSE?
 7) A. I WAS WORKING ON A VEHICLE. BUT AT THE TIME, I WAS --
 8) DURING THE DAY I WAS WORKING ON VEHICLE AND I WAS WATCHING
 9) OLYMPICS.
 10) Q. OKAY. SO DURING THE DAY YOU WERE WORKING ON A VEHICLE.
 11) IS THAT ONE OF MR. COLEMAN'S VEHICLES OR WAS IT ONE OF YOUR
 12) OWN?
 13) A. ONE OF MR. COLEMAN'S.
 14) Q. AND DURING THE NIGHT YOU SAID YOU WERE WATCHING THE
 15) OLYMPICS. WAS THAT ON TELEVISION?
 16) A. YES, IT WAS.
 17) Q. AND WERE YOU WATCHING TELEVISION IN -- WELL, EXCUSE ME.
 18) WHICH ROOM WERE YOU WATCHING TELEVISION IN. DO YOU REMEMBER?
 19) A. FRONT ROOM.
 20) Q. OKAY. AND THAT WOULD BE THE ONE CLOSEST TO THE FRONT
 21) DOOR?
 22) A. YES, SIR.
 23) Q. THANK YOU. I KEEP DOING THAT. CAN YOU JUST SPEAK UP A
 24) LITTLE BIT, MARK. SO THAT EVERYBODY CAN HEAR YOU?
 25) A. YES, SIR.

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1) Q. A LITTLE -- WAS IT MUCH EARLIER IN THE DAY OR A LITTLE
 2) EARLIER?
 3) A. I WAS WORKING ON A CAR, SO IT WAS DURING THE DAY
 4) Q. AND DID YOU KNOW THIS LINDA FROM BEFORE AT ALL?
 5) A. SHE GREW UP DOWN THE STREET FROM ME.
 6) Q. SO YOU WERE FAMILIAR WITH THIS PERSON SOMEWHAT, ANYWAY
 7) A. YES, SIR.
 8) Q. ALL RIGHT. DO YOU KNOW WHAT LINDA'S NAME WAS, LAST
 9) NAME?
 10) A. NO.
 11) Q. DO YOU REMEMBER WHAT IT WAS WHEN YOU WERE GROWING UP
 12) WITH HER?
 13) A. I THINK IT WAS GALLEGOS. I'M NOT FOR SURE.
 14) MR. WEISKOPF: OKAY. IF I CAN APPROACH?
 15) THE COURT: YOU MAY.
 16) BY MR. WEISKOPF:
 17) Q. LET ME SHOW YOU A PHOTO THAT'S MARKED AS STATE'S EXHIBIT
 18) 2. DO YOU RECOGNIZE THE INDIVIDUAL IN THAT PHOTO?
 19) A. YES, I DO.
 20) Q. WHO IS THAT?
 21) A. THAT'S LINDA.
 22) Q. THAT'S LINDA, THE PERSON WHO CAME OVER TO THE HOUSE?
 23) A. YES, IT IS.
 24) Q. I'LL JUST LEAVE THAT THERE FOR A SECOND. AND YOU SAID
 25) SHE WAS THERE ONCE EARLIER IN THE DAY. WAS SHE THERE AFTER

IN THE DAY AT ALL?

- 2) A. SHE WAS THERE EARLIER IN THE DAY, THEN SHE CAME BACK BY
3) LATER THAT DAY
4) Q. I COULDN'T HEAR YOU. BY WHEN?
5) A. SHE WAS THERE EARLIER THAT DAY, THEN SHE CAME BY LATER
6) THAT DAY.
7) Q. OKAY. WHAT TIME?
8) A. I DON'T RECOGNIZE - REMEMBER WHAT TIME IT WAS.
9) Q. WAS IT LIGHT OR DARK OUT?
10) A. IT WAS DARK OUT.
11) Q. OKAY. AND DO YOU KNOW WHO SHE WAS COMING TO SEE? WAS
12) SHE COMING TO SEE YOU?
13) A. NO.
14) Q. DID YOU HAVE PLANS TO MEET HER?
15) A. NO.
16) Q. OKAY. WERE YOU THERE WHEN SHE CAME TO THE HOUSE IN THE
17) EVENING?
18) A. YES, I WAS.
19) Q. ALL RIGHT. TELL ME WHAT HAPPENED WHEN SHE CAME TO THE
20) HOUSE, WHAT YOU FIRST NOTICED.
21) A. WELL, THERE WAS KNOCK AT THE DOOR. BINKY ASKED ME TO
22) SEE WHO IT WAS. PEAKED OUT THE WINDOW AND I SEEN HER
23) STANDING ON HIS FRONT PORCH.
24) Q. WAS SHE STANDING THERE ALONE OR WITH SOMEBODY ELSE?
25) A. SHE WAS ALONE.

Q. ALONE?

- 2) A. SHE WAS ALONE.
3) Q. OKAY. AND WHAT DID YOU DO?
4) A. I TOLD WHO HIM WHO IT WAS. HE SAID, LET HER IN.
5) Q. OKAY. AND YOU WENT TO THE DOOR THEN?
6) A. YES.
7) Q. AND YOU OPENED THE DOOR?
8) A. I OPENED THE DOOR.
9) Q. AND WHEN YOU OPENED THE DOOR, WHO WAS THERE?
10) A. SHE WAS THERE.
11) Q. ALONE OR WITH SOMEONE ELSE?
12) A. WELL, AFTER I TURNED MY HEAD TO LET HER IN, BECAUSE
13) LOOKING AT T.V., I DON'T KNOW, SOMEBODY CAME IN BEHIND HER.
14) I DON'T KNOW WHO IT WAS.
15) Q. OKAY. AND THAT - WHAT IF ANYTHING DID LINDA SAY?
16) A. WELL, I DON'T KNOW. WHEN I OPENED THE DOOR AND I TURNED
17) MY HEAD TO LOOK AT THE T.V., I GOT HIT.
18) Q. YOU GOT HIT BY SOMEBODY.
19) A. I GOT HIT BY SOMETHING.
20) Q. DO YOU KNOW WHO HIT YOU?
21) A. RIGHT NOW, IT'S TOO FOGGY. I CAN'T REMEMBER WHO HIT ME.
22) Q. OKAY. WAS IT LINDA?
23) A. WELL, LIKE I SAID, WHEN I OPENED THE DOOR, I TURNED TO
24) LOOK TO THE T.V. BECAUSE SHE'D BEEN THERE EARLIER AND, YOU
25) KNOW, I JUST OPENED THE DOOR, TURNED TO LOOK AT THE T.V.

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- 1) BECAUSE IT WAS SOMETHING I WAS WAITING ON, IT WAS A SPRINTING
2) RACE, AND WHEN I TURNED TO LOOK, I DON'T KNOW IF IT WAS HER,
3) IT WAS LIKE - I DON'T KNOW. ALL I KNOW IS I WAS HIT WITH
4) SOMETHING, AND I WENT DOWN.
5) Q. OKAY. YOU WENT DOWN? WHERE WERE YOU HIT?
6) A. IN THE HEAD.
7) Q. CAN YOU SHOW - POINT TO WHERE YOU WERE HIT?
8) A. LET'S SEE, LIKE ON THE SIDE OF THE HEAD HERE SOMEWHERE.
9) Q. OKAY. WAS IT HARD ENOUGH TO KNOCK YOU DOWN OR DID YOU
10) JUST GO DOWN OUT OF SHOCK OR FRIGHT?
11) A. IT WAS HARD ENOUGH TO KNOCK ME DOWN.
12) Q. OKAY. DID YOU LOSE CONSCIOUSNESS?
13) A. WELL, IT WAS - I WAS - I WAS DAZED PRETTY BAD -
14) Q. OKAY.
15) A. - I, YOU KNOW, A LOT WAS GOING ON. I JUST -
16) Q. WHEN YOU LOOKED, WHEN YOU FIRST WERE ABLE TO LOOK UP,
17) WHO IF ANYBODY WAS THERE?
18) A. STARS.
19) Q. OKAY. ANY PEOPLE YOU WERE ABLE TO MAKE OUT?
20) A. WELL, I KNOW BINKY WAS THERE AND I HEARD HIS VOICE AND
21) I, YOU KNOW, I RECOGNIZED ROY. BUT, YOU KNOW, THE PERSON
22) THAT CAME IN, I - I DON'T KNOW WHO IT WAS.
23) Q. OKAY.
24) A. SOMEONE ELSE CAME IN WITH LINDA.
25) Q. AND WHAT'D THAT PERSON SAY TO YOU, DO YOU KNOW?

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- 1) A. WELL, LIKE I SAID, I WAS HIT.
2) Q. UH-HUH.
3) A. AND I WAS HIT A COUPLE TIMES. SO TRYING TO RECOLLECT
4) WHAT HAPPENED, WHAT WAS ACTUALLY SAID, IS HARD TO SAY. IT'S
5) FOGGY AND I'M UNCLEAR, I'M UNSURE.
6) Q. OKAY. DO YOU REMEMBER ANYTHING HE SAID TO YOU?
7) A. WELL, AFTER - THERE WAS - I HEARD SOME BANGING, SOME
8) LOUD NOISES IN MY, YOU KNOW, IT WAS JUST - AFTER EVERYTHING
9) WAS OVER WITH, ALL I KNOW IS WE WENT RUNNING AROUND LOOKING
10) FOR - SOMEONE WAS, YOU KNOW, APPARENTLY SHOT, AND I WAS
11) RUNNING AROUND LOOKING FOR THE PERSON.
12) Q. OKAY. SO IS THE BANGING YOU HEARD CONSISTENT WITH
13) SHOTS?
14) A. WELL, BANGING WITH MY HEAD, YOU KNOW, IT'S HARD TO SAY
15) Q. OKAY. SO YOU REMEMBER WHAT THIS OTHER PERSON LOOKED
16) LIKE WHO CAME IN WITH LINDA AT ALL?
17) A. I DIDN'T SEE THE PERSON.
18) Q. AND LET ME ASK YOU, WHEN YOU WERE RUNNING AROUND LOOKING
19) FOR THE PERSON THAT WAS SHOT, DID YOU SEE IF ANY CAR LEFT?
20) A. IT WAS ABOUT - IT WAS ABOUT - WE RAN THROUGH THE HOUSE
21) FIRST, IT WAS ABOUT FIVE MINUTES BEFORE WE EVEN GOT OUTSIDE.
22) BEFORE WE GOT OUTSIDE.
23) Q. AND WHO'S - WHO IS WE THAT WENT RUNNING THROUGHOUT?
24) A. ME AND BINKY.
25) Q. OKAY. AND WHEN YOU DID GET OUTSIDE, WHAT DID YOU FIND?

1) A. WELL, AFTER WE WENT THROUGH THE HOUSE, ALL THROUGH THE
2) BACK OF THE HOUSE AND INSIDE OF THE HOUSE, I WENT OUTSIDE
3) ONCE AND COULDN'T SEE ANYTHING. CAME BACK IN, TOLD 'EM I
4) COULDN'T SEE ANYTHING. I WENT BACK OUT AGAIN AND I SEEN HIS
5) CAR. I WENT TO HIS CAR, AND ROY WAS IN HIS CAR, UNCONSCIOUS.
6) Q. OKAY. COULD YOU TELL WHAT IF ANYTHING WAS WRONG WITH
7) HIM?
8) A. DOORS WERE LOCKED. COULDN'T TELL.
9) Q. OKAY. WERE YOU THERE WHEN THE DOORS WERE OPENED?
10) A. I WAS INSIDE THE HOUSE WITH OFFICERS.
11) Q. OKAY. SO LET ME ASK, YOU SAID YOU DIDN'T SEE THAT GUY.
12) ARE YOU FAMILIAR WITH THIS GENTLEMAN THAT'S HERE SITTING AT
13) THE TABLE?
14) A. I KNOW THE -- HE DOESN'T LOOK LIKE I KNOW HIM WHEN I
15) KNEW HIM, BUT FROM WHAT I KNOW HIM BY, WHAT HIS NAME IS, BUT
16) HE DOESN'T LOOK THE SAME AS HE DOES WHEN I KNOW HIM WHEN HE
17) LIVED BY MY SISTER.
18) Q. OKAY. HOW LONG AGO DID YOU KNOW HIM?
19) A. LAST SUMMER.
20) Q. AND HOW'D HE LOOK LAST SUMMER?
21) A. JUST SHORT HAIR. JUST DOESN'T LOOK THE SAME.
22) Q. WHAT WAS THAT?
23) A. HE JUST DOESN'T LOOK LIKE THE SAME PERSON THAT -- I
24) HAVEN'T SEEN HIM IN A WHILE, SO --
25) Q. AND HOW DID YOU -- WHAT'S HIS NAME, DO YOU KNOW THAT?

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1) AND I -- IT WAS PAID BACK IN ANOTHER WAY THAT I HANDLED SOME
2) BUSINESS FOR HIM. WORKED ON ONE OF THEM'S CAR AND IT WAS --
3) IT WAS TAKEN CARE OF.
4) Q. OKAY.
5) A. BUT I GUESS HE WAS --
6) Q. WHAT WAS THAT? I'M SORRY.
7) A. I TOOK CARE OF ONE OF THEIR CARS FOR 'EM AND --
8) Q. OKAY. SO THERE WAS SOME MONEY THAT YOU HAD OWED AT SOME
9) POINT WHICH YOU TOOK CARE OF -- YOU TOOK CARE OF IT IN KIND.
10) YOU TOOK -- YOU DID SOME SERVICE ON THE CAR TO TAKE CARE OF
11) IT?
12) A. YES, SIR.
13) Q. DID HE EVER ACKNOWLEDGE THAT TO YOU THAT, THANKS, THAT
14) TAKES CARE OF IF?
15) A. IT WASN'T DONE THROUGH HIM.
16) Q. OKAY. AND WHEN DID YOU DO THAT, DO YOU REMEMBER, THAT
17) CAR WORK?
18) A. I CAN'T RECALL.
19) Q. WAS IT LAST SUMMER?
20) A. IT WAS LAST SUMMER.
21) Q. HOW LONG DID YOU KNOW MR. WALDRON BEFORE SEPTEMBER, SAY,
22) IF YOU SAID LAST SUMMER, DID YOU KNOW HIM BEFORE LAST SUMMER?
23) A. NO, SIR.
24) Q. DID YOU SEE HIM BEFORE LAST SUMMER AT ALL?
25) A. NO, SIR.

1) A. I KNEW HIM AS D.J.
2) Q. D.J. DID YOU KNOW HIM AS ANY OTHER NAMES?
3) A. D.J. DEJON, THAT'S IT.
4) Q. HAVE YOU EVER HEARD OF HIM CALLED LITTLE JOHN?
5) A. I'VE HEARD THE NAME THROUGH THE NEIGHBORHOOD, BUT --
6) Q. OKAY. SO THOSE ARE NAMES YOU KNEW HIM BY?
7) A. I COULDN'T SAY THAT THE LITTLE JOHN WAS PART OF HIM.
8) Q. OKAY. AND WHAT WAS YOUR RELATIONSHIP WITH DEJON OR
9) D.J.?
10) A. HIM AND HIS COUSIN LIVED ABOVE MY SISTER.
11) Q. OKAY. SO YOU'D SEE HIM AROUND?
12) A. I'D SEE HIM OCCASIONALLY.
13) Q. DID YOU HAVE ANY OTHER BUSINESS WITH HIM?
14) A. I'D SEE HIM OCCASIONALLY. HE'D COME DOWN. WE'D HAVE
15) DINNER. WE'D COOK DINNER. THEY'D COME DOWN TO EAT. JUST
16) CASUAL THINGS.
17) Q. OKAY. SO YOU WERE FAIRLY FRIENDLY WITH HIM AND --
18) A. YES, I WAS.
19) Q. NOT CLOSE FRIENDS.
20) A. JUST -- HE LIVED ABOVE MY SISTER, HIM AND HIS COUSIN. I
21) WOULD COME BY AND I'D SEE 'EM. WE'D VISIT. NOTHING REALLY
22) STRICT.
23) Q. DID YOU HAVE ANY BUSINESS WITH HIM WHICH YOU MIGHT OWE
24) HIM MONEY?
25) A. NO. IT WAS -- IT WAS A DEBT. THEY LOANED ME SOME MONEY

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1) Q. HAD HE LIVED IN THE NEIGHBORHOOD BEFORE LAST SUMMER?
2) A. NO, SIR.
3) Q. WHEN YOU TALKED TO HIM, TIMES THAT YOU VISITED WITH HIM,
4) DID HE SAY WHERE HE CAME FROM?
5) A. NO, SIR. IT WAS NEVER REALLY THAT IMPORTANT TO ME.
6) Q. OKAY. DID YOU TALK ABOUT WHETHER HE GREW UP IN THE
7) OGDEN AREA AT ALL?
8) A. WELL, ME BEING FROM OGDEN, NO, HE DIDN'T GROW UP AROUND
9) OGDEN.
10) Q. OKAY. SO HE CAME FROM SOMEWHERE ELSE, BUT YOU DIDN'T
11) KNOW WHERE?
12) A. EXACTLY.
13) Q. HE DIDN'T REALLY HAPPEN TO WANNA TALK ABOUT IT. NOW,
14) AFTER THIS INCIDENT OCCURRED AND YOU FOUND ROY IN THE CAR
15) UNCONSCIOUS, HOW LONG BEFORE THE POLICE ARRIVED?
16) A. SURPRISINGLY, IT TOOK 'EM A WHILE. FOR THAT
17) NEIGHBORHOOD, IT WAS -- IT WAS A LONG TIME. NORMALLY -- WEST
18) OGDEN IS -- NORMALLY THEY'RE THERE AT --
19) Q. SO DO YOU KNOW HOW LONG, DID YOU LOOK AT YOUR WATCH OR
20) ANYTHING?
21) A. NO. WASN'T THINKING ABOUT WATCHES.
22) Q. OKAY.
23) A. WASN'T THINKING ABOUT TIME.
24) Q. SO -- AND YOU WERE WOOZY YOURSELF STILL, YOU SAY?
25) A. WELL, THE OFFICERS THOUGHT I WAS, SO --

Q. OKAY. WHEN THE OFFICERS CAME, DO YOU REMEMBER SPEAKING
 2) TO AN OFFICER?
 3) A. I REMEMBER SPEAKING TO -- THERE WERE FIVE, SIX, SEVEN OF
 4) EM, ALL OF 'EM.
 5) Q. OKAY. SO YOU SPOKE TO A BUNCH OF 'EM?
 6) A. YES, I DID.
 7) Q. DO YOU REMEMBER SPEAKING TO THIS OFFICER HERE?
 8) A. I DO REMEMBER HIM.
 9) Q. DO YOU REMEMBER WHAT YOU TOLD HIM?
 10) A. I CAN'T RECOLLECT EVERYTHING I SAID TO HIM, NO.
 11) MR. WALDRON: DID HE SAY HE DOES OR DIDN'T? I'M JUST
 12) WONDERING. I DIDN'T CATCH THAT.
 13) BY MR. WEISKOPF:
 14) Q. YOU SAID YOU DON'T -- YOU DON'T REMEMBER EVERYTHING YOU
 15) TOLD HIM, CORRECT?
 16) MR. WALDRON: NO, SAID THE OFFICER, JUST --
 17) BY MR. WEISKOPF:
 18) Q. OH, DID YOU -- SO YOU DO REMEMBER SEEING THIS OFFICER.
 19) A. I REMEMBER SPEAKING TO HIM.
 20) MR. WALDRON: OKAY.
 21) BY MR. WEISKOPF:
 22) Q. AND AFTER YOU SPOKE WITH THE OFFICERS AT THE SCENE, DID
 23) YOU GO TO THE STATION HOUSE?
 24) A. YES, I DID.
 25) Q. DO YOU REMEMBER IF YOU MADE A STATEMENT AT THE STATION

HOUSE?
 2) A. I REMEMBER, YES, ANSWERING SOME QUESTIONS FOR EM.
 3) Q. OKAY. DID YOU SIGN A WRITTEN STATEMENT?
 4) A. NO, I DIDN'T SIGN ANYTHING.
 5) Q. CAN I ASK YOU WHY YOU DIDN'T GIVE A WRITTEN STATEMENT?
 6) A. BECAUSE I WAS UNSURE OF EVERYTHING.
 7) Q. OKAY. NOW, YOU'RE UNSURE TODAY ABOUT WHAT HAPPENED?
 8) A. WELL, A LOT OF THINGS THAT HAVE -- THAT HAVE -- WAS, YOU
 9) KNOW, WE -- WAS TALKED ABOUT WHILE -- AFTER STUFF WENT DOWN.
 10) YOU KNOW, -- YOU KNOW, LOT OF THINGS ARE TOLD TO ME AND, YOU
 11) KNOW, THAT, YOU KNOW, SO THAT'S BASICALLY WHAT WAS TOLD TO
 12) ME. I WAS UNSURE OF EVERYTHING, THE WAY THINGS WENT DOWN.
 13) YOU KNOW, I WAS KIND OF CONSCIOUS, UNCONSCIOUS, BUT THINGS
 14) THAT HAPPENED, I GUESS IT HAPPENED SO FAST AND -- AND, YOU
 15) KNOW, SO BASICALLY, YOU KNOW, LOT OF THINGS ARE TOLD TO ME,
 16) YOU KNOW, WAS BROUGHT TO MY ATTENTION TO HELP ME.
 17) Q. BUT THE ONE THING YOU'RE SURE OF IS LINDA GALLEGOS,
 18) WOMAN IN EXHIBIT 2, WAS WITH --
 19) A. SHE'S THE ONE I OPENED THE DOOR FOR.
 20) MR. WEISKOPF: OKAY. THANK YOU. LET ME APPROACH AGAIN.
 21) IF I MAY.
 22) THE COURT: OKAY. YOU MAY DO SO.
 23) MR. WEISKOPF: THANK YOU, JUDGE.
 24) Q. DO YOU RECOGNIZE WHAT THIS STATE'S EXHIBIT 1 IS A PHOTO
 25) OF?

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1) A. YES, I DO.
 2) Q. AND WHAT IS THAT, MARK?
 3) A. THAT'S THE CAR THAT I FOUND ROY IN.
 4) Q. OKAY. AND CAN YOU TELL WHERE THAT'S PARKED?
 5) A. IT'S PARKED ON THE SIDE OF HIS HOUSE. THAT'S HIS DOG IN
 6) THE BACK OF THE CAR.
 7) Q. OKAY. DO YOU KNOW WHOSE HOUSE THAT THAT IS? DO YOU
 8) RECOGNIZE WHOSE HOUSE THAT IS IN THE PICTURE?
 9) A. THAT'S BINKY'S HOUSE.
 10) Q. OKAY. I'M GONNA SHOW YOU WHAT'S MARKED AS STATE'S
 11) EXHIBIT 3. DO YOU RECOGNIZE THAT?
 12) A. IT'S HIS FRONT ROOM.
 13) Q. IS THAT WHERE YOU WERE THAT EVENING?
 14) A. YES, IT WAS.
 15) Q. CAN YOU TELL ME WHERE IN THAT PICTURE ROY WAS?
 16) YOU'RE POINTING HERE TO THE COUCH?
 17) A. YES.
 18) Q. AND WHERE WERE YOU?
 19) A. HERE.
 20) Q. OKAY. WHEN THE INDIVIDUAL CAME IN, YOU WERE AT THE
 21) DOOR, IS THAT RIGHT?
 22) A. I ANSWERED THE DOOR.
 23) Q. AND WHEN HE HIT YOU, WHERE DID YOU GO?
 24) A. TO THAT COUCH.
 25) Q. YOU FELL ON THE COUCH?

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1) A. YES, SIR.
 2) Q. IS THAT WHERE YOU STAYED DURING THE REST OF THE INCIDENT
 3) OR DID YOU GET UP?
 4) A. I STAYED THERE.
 5) Q. AND YOU DON'T REMEMBER ALL THAT WAS TALKED ABOUT AFTER
 6) THAT?
 7) A. WHAT YOU MEAN?
 8) Q. WHILE YOU WERE IN THE ROOM, WHAT CONVERSATION WENT ON
 9) AFTER YOU WERE HIT, DO YOU REMEMBER ANY OF IT?
 10) A. I -- IT'S ALL CLOUDY. IT'S -- IT'S NOT -- IT'S UNCLEAR
 11) TO ME. I MEAN WHAT WAS TOLD TO ME, WHAT WAS SAID, IS
 12) BASICALLY --
 13) MR. WEISKOPF: ALL RIGHT. I MOVE TO ADMIT STATE'S
 14) EXHIBIT 2 IF I DIDN'T DO SO, YOUR HONOR.
 15) THE COURT: ANY OBJECTIONS TO 2?
 16) MR. LAKER: NO.
 17) MR. WALDRON: NO.
 18) THE COURT: OKAY. EXHIBIT NUMBER 2 WILL BE RECEIVED AND
 19) CAN BE SHOWN TO THE JURY.
 20) MR. WEISKOPF: PHOTO OF LINDA GALLEGOS.
 21) MR. LAKER: HAVE THOSE OTHERS ONES, HAVE THEY BEEN
 22) ADMITTED ALREADY?
 23) THE COURT: THE OTHER TWO HAVE, YES.
 24) BY MR. WEISKOPF:
 25) Q. AND YOU SAID YOU HEARD LOUD NOISES. DID YOU SEE A GUN

THAT YOU RECALL

- 2) A. I CAN'T RECALL.
- 3) Q. OKAY. NOW, DO YOU REMEMBER SPEAKING WITH MYSELF AND
- 4) THIS OFFICER DOWN IN SALT LAKE?
- 5) A. YES, I DO.
- 6) Q. OKAY. DO YOU REMEMBER THEN WHETHER YOU INDICATED YOU
- 7) RECALLED WHAT HAPPENED THAT NIGHT OR NOT?
- 8) A. I REMEMBER TELLING YOU THAT WHAT HAPPENED THAT NIGHT
- 9) WAS -- WAS REALLY MESSED UP SITUATION. IT WAS SOMETHING THAT
- 10) NEVER SHOULDA HAPPENED. AND THAT -- I CAN'T REMEMBER WHAT I
- 11) REALLY SAID.
- 12) Q. OKAY. DO YOU REMEMBER SAYING THAT IF YOU TESTIFIED, YOU
- 13) COULDN'T LIVE IN OGDEN?
- 14) A. I COULDN'T LIVE IN OGDEN?
- 15) Q. UH-HUH.
- 16) A. NO. I DON'T THINK I SAID IT THAT -- ANYTHING LIKE THAT.
- 17) MR. WEISKOPF: OKAY. I HAVE NO FURTHER QUESTIONS.
- 18) THE COURT: OKAY. MR. WALDRON.
- 19) CROSS-EXAMINATION
- 20) BY MR. WALDRON:
- 21) Q. MARK, YOU TOLD THE GENTLEMAN THAT ME AND MY COUSIN USED
- 22) TO LIVE ABOVE YOU AND THAT WE USED TO COME DOWN AND HAVE
- 23) DINNER WITH YOU.
- 24) A. YES.
- 25) Q. LUNCH AND DINNER, WHATEVER.

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- 1) YOU AS -- AS LIKE THOSE TWO NAMES, TOO. I KNOW A LOT OF
- 2) D.J.'S, THOUGH.
- 3) Q. HAVE YOU EVER -- OR YOU'VE ALREADY SAID YOU HAVEN'T.
- 4) OKAY. NOW, I MUST ASK, NOW, YOU SAID THAT YOU NEVER GAVE
- 5) THIS GENTLEMAN OR ANYONE ANY SIGNED STATEMENT?
- 6) A. NO, SIR, I HAVEN'T.
- 7) MR. WALDRON: SO COULD I -- HAVE YOU GOT A BLANK COPY?
- 8) I GOT A BLANK COPY. WOULD I BE ALLOWED TO APPROACH HIM WITH
- 9) THIS STATEMENT?
- 10) THE COURT: YOU MAY.
- 11) BY MR. WALDRON:
- 12) Q. SO THAT IS YOUR SIGNATURE OR NOT?
- 13) A. THAT LOOKS LIKE MY SIGNATURE.
- 14) Q. BUT CAN YOU REMEMBER WRITING THIS SIGNATURE ON THIS
- 15) PAPER?
- 16) A. I CAN'T REMEMBER WRITING THAT SIGNATURE, NO, I CAN'T.
- 17) Q. CAN YOU REMEMBER GIVING -- READ THAT OVER AND CAN YOU --
- 18) YOU DON'T RECALL GIVING THAT STATEMENT TO MR. HANSEN?
- 19) A. WHO'S HANSEN?
- 20) Q. SO THIS -- YOU WOULD SAY THIS IS NOT YOUR STATEMENT?
- 21) A. FIRST OF ALL, I'D LIKE TO SAY ONE THING IS, I'M STILL
- 22) UNSURE WHAT I SAID THAT DAY OR WHAT I SAID THAT NIGHT, SO
- 23) READING THIS IS PROBABLY STILL GONNA MAKE ME STILL UNCLEAR OF
- 24) WHAT I SAID THAT NIGHT.
- 25) THE COURT: READ THE STATEMENT.

- 1) A. YES, SIR.
- 2) Q. YOU SAID AT SOME POINT IN TIME, YOU OWE ME OR MY COUSIN
- 3) SOME MONEY, OWE DEBT, AND IT WAS FIXED NOT THROUGH ME.
- 4) THROUGH I GUESS WHOEVER ELSE DID THAT DEBT GET PAID -- SO I'M
- 5) GONNA ASK, WAS THAT DEBT OWED TO ME?
- 6) A. WELL, IT WAS --
- 7) Q. THE DEFENDANT?
- 8) A. IT WAS -- ITS -- ITS KINDA HARD TO SAY BECAUSE THE
- 9) FRIEND THAT I FIXED FOR YOU -- CAR FOR YOU, IT WAS KIND OF --
- 10) IT WAS LIKE -- HE WAS LIKE YOUR -- YOUR OLDER BROTHER OR
- 11) SOMETHING, AND HE SAID AS LONG AS IT WAS TAKEN CARE OF
- 12) THROUGH HIM, HE WOULD HANDLE IT WITH YOU.
- 13) Q. OKAY. NOW, I MUST ASK, HE ASKED YOU ALSO, HAVE I EVER
- 14) BEEN REFERRED TO AS LITTLE JOHN. AND YOU SAID, NO, YOU'VE
- 15) NEVER HEARD ME REFERRED TO BY THAT NAME.
- 16) A. I'VE SAID -- WHAT I'VE SAID IS, I'VE HEARD THAT NAME
- 17) AROUND THE HOOD, BUT I CAN'T RECALL IT BEING DIRECTED TOWARDS
- 18) YOU.
- 19) Q. NOW D.J., THAT HAS BEEN DIRECTED TOWARDS ME.
- 20) A. YES, SIR.
- 21) Q. DEJON HAS BEEN DIRECTED TOWARDS ME.
- 22) A. YES, SIR.
- 23) Q. D.J. AND -- D.J. AND DEJON IS ONE AND THE SAME PERSONS.
- 24) TO YOUR KNOWLEDGE?
- 25) A. THERE'S A LOT OF D.J.'S I KNOW AROUND TOWN, BUT I KNOW

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- 1) THE WITNESS: DO I READ IT OUT LOUD OR READ IT TO
- 2) MYSELF?
- 3) THE COURT: NO, JUST READ IT TO YOURSELF PLEASE.
- 4) THE WITNESS: NOW, WHAT WAS THE QUESTION?
- 5) BY MR. WALDRON:
- 6) Q. DID YOU GIVE THIS STATEMENT?
- 7) A. I CAN -- I CAN'T RECALL HALF THE STUFF THAT'S SAID IN
- 8) THERE --
- 9) Q. SO --
- 10) A. -- TO THIS DAY RIGHT NOW, AS FAR AS THE LITTLE JOHN
- 11) STUFF, I CAN'T -- I CAN'T RECALL ALL THAT.
- 12) Q. SO YOU DON'T REMEMBER SAYING ANY OF THIS --
- 13) A. I DON'T.
- 14) Q. -- THE MAJORITY OF IT, WE'LL SAY, TO THIS OFFICER RIGHT
- 15) HERE.
- 16) A. I DON'T REMEMBER.
- 17) Q. OKAY. I ALSO ASK THAT IN THE PERIOD OF TIME THAT YOU --
- 18) THAT YOU OWE ME MONEY OR MY COUSIN MONEY, DID I, THE
- 19) DEFENDANT, EVER AT ANY POINT IN TIME THREATEN, ABUSE, OR
- 20) ATTEMPT TO FORCE YOU TO COME FORTH WITH THE MONEY?
- 21) A. NO, SIR.
- 22) Q. SO AT NO POINT IN YOUR -- NO POINT EVER HAVE I -- HOW
- 23) SHOULD I PUT IT -- DEMANDING MONEY, BRANDISH A GUN --
- 24) A. NO, SIR.
- 25) Q. -- MARK, PAY ME MY MONEY?

A. NO, SIR.

2) Q. DID YOU FEEL AT ANY POINT IN TIME WHILE YOU WERE IN DEBT

3) TO ME OR MY RELATIVE, THAT YOU WERE INCLINED TO PAY FORTH

4) MONEY?

5) A. NO, SIR. I FELT WE WERE FAMILY. I FELT WE HAD A TRUE

6) UNDERSTANDING ALL THE WAY AROUND.

7) Q. AND DID ANY TIME I GIVE YOU ANY REASON TO BELIEVE ANY

8) DIFFERENT?

9) A. NO, SIR.

10) Q. ABOUT WHAT TIME DID YOU -- OH, YOU SAID THE SUMMERTIME.

11) IS THAT CORRECT, THAT YOU MADE AMENDS FOR THE DEBT, THAT WAS

12) DURING THE SUMMERTIME?

13) A. YES, SIR, I BELIEVE SO.

14) MR. WALDRON: NO FURTHER QUESTIONS, YOUR HONOR.

15) THE COURT: OKAY. REDIRECT?

16) MR. WEISKOPF: GET A COPY OF THIS?

17) REDIRECT EXAMINATION

18) BY MR. WEISKOPF:

19) Q. SIR, THAT STATEMENT THAT YOU WERE SHOWN, YOU DID

20) RECOGNIZE YOUR SIGNATURE ON THE STATEMENT, CORRECT?

21) A. IT DOES LOOK LIKE MY SIGNATURE, YES.

22) Q. OKAY. JUST GIVE ME A SECOND, THEN. DO YOU REMEMBER --

23) WHILE WE'RE WAITING, DO YOU REMEMBER AT THE SCENE, YOU SAID,

24) YOU SPOKE WITH A NUMBER OF OFFICERS. DO YOU REMEMBER

25) SPEAKING WITH THIS OFFICER?

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1) A. DROPPING OF CASES. THEY WOULD DROP THE STATE CASE, DROP

2) A SPEEDING TICKET WHICH I WAS -- I FOUND OUT A WARRANT WAS

3) OUT FOR MY ARREST.

4) Q. AND THOSE WERE ALL RELATE -- THE STATE CASES WERE

5) RELATED TO THE SAME THING FOR WHICH YOU'RE BEING HELD,

6) CORRECT? IS THAT RIGHT, IT WAS THE SAME INCIDENT --

7) A. I HAD BAILED OUT ON THE STATE'S CASES.

8) Q. YEAH -- NO, BUT I'M SAYING IT INVOLVES THE SAME INCIDENT

9) FOR WHICH THE OFFER FOR THE REDUCTION WAS, IS THAT CORRECT?

10) A. I BELIEVE SO, YES.

11) Q. OKAY. BUT THERE WAS ALSO THEN AN AGREEMENT ABOUT THE

12) RELATED STATE CHARGES? THAT'S WHAT YOU SAID? THAT'S

13) CORRECT?

14) A. THAT -- SAY THAT AGAIN, SIR?

15) Q. THERE WAS ALSO AN OFFER TO DROP THE RELATED STATE

16) CHARGES, CORRECT?

17) A. YES.

18) Q. ALL RIGHT. JUST WANNA MAKE SURE I'M GETTING IT CLEAR.

19) AND THE CHARGES, YOU WERE FACING FEDERAL CHARGES, JUST TO

20) AVOID CONFUSION, IS THAT RIGHT?

21) A. TO HAVE THEM WHAT?

22) Q. ARE FEDERAL CHARGES, CORRECT?

23) A. WHAT ABOUT THE FEDERAL CHARGES?

24) Q. YOU WERE ALSO FACING FEDERAL CHARGES, AND THAT WAS --

25) A. I AM FACING FEDERAL CHARGES.

A. WELL, ACTUALLY, I DIDN'T ACTUALLY RECOGNIZE HIM.

2) Q. OKAY.

3) A. YOU GUYS COME DOWN TO THE FEDERAL BUILDING.

4) Q. SO YOU'RE NOT SURE WHO YOU SPOKE TO?

5) A. ALL I KNOW IS I SPOKE TO SEVERAL OFFICERS.

6) Q. OKAY.

7) A. LOT OF OFFICERS ASKED ME LOT OF QUESTIONS.

8) Q. AND WHILE WE'RE WAITING AGAIN, LET ME -- THERE WAS A --

9) WHEN YOU DID SPEAK WITH DEPUTY AT THE FEDERAL BUILDING AND

10) SUBSEQUENT CONVERSATIONS -- DID I SAY DEPUTY? THE DETECTIVE.

11) SUBSEQUENT CONVERSATIONS, THERE WAS ACKNOWLEDGEMENT OF YOUR

12) CURRENT LEGAL TROUBLES, CORRECT?

13) A. YES, SIR, I --

14) Q. AND THERE WAS A STATEMENT MADE, AN OFFER MADE TO YOU TO

15) TRY AND HELP YOU WITH THOSE LEGAL PROBLEMS IF YOU TESTIFIED

16) HERE TRUTHFULLY, IS THAT CORRECT?

17) A. YES, THERE WAS.

18) Q. OKAY. AND THAT HELP WOULD BE IN THE MANNER OF A

19) SENTENCING REDUCTION ON YOUR CURRENT CHARGES IF YOU WERE TO

20) COOPERATE, IS THAT CORRECT?

21) A. YES, SIR.

22) Q. OKAY. WERE THERE ANY OTHER PROMISES OR ASSURANCES MADE

23) TO YOU THAT YOU CAN RECALL?

24) A. YES, SIR.

25) Q. AND WHAT WERE THOSE?

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1) Q. THAT FOR WHICH YOU WERE OFFERED A SENTENCING REDUCTION.

2) CORRECT?

3) A. THAT'S WHAT YOU GUYS WERE OFFERING.

4) MR. WEISKOPF: OKAY. IF I CAN APPROACH?

5) THE COURT: YOU MAY.

6) BY MR. WEISKOPF:

7) Q. THIS IS THE SAME ITEM THAT MR. WALDRON SHOWED YOU?

8) A. UH-HUH.

9) Q. AND TO WHICH YOU ACKNOWLEDGE YOUR SIGNATURE, CORRECT?

10) A. UH-HUH.

11) Q. THAT'S YES?

12) A. I ACKNOWLEDGE THAT YES, IT DOES LOOK LIKE MY SIGNATURE.

13) YES.

14) Q. OKAY. AND THAT'S DATED SEPTEMBER 24TH, SHORTLY AFTER

15) MIDNIGHT, IS THAT CORRECT?

16) A. 24, WHAT'S THAT?

17) Q. 9/24.

18) A. 2000.

19) Q. 0024, IS THAT CORRECT? IS 'WHAT'S ON THE TIME ON THERE'

20) A. 24, I DON'T KNOW WHAT THAT MEANS.

21) Q. 24 MINUTES AFTER MIDNIGHT?

22) A. THAT'S WHAT IT SAYS.

23) Q. SO WOULD YOU LOOK AT THAT STATEMENT? AND WOULD YOU READ

24) TO THE COURT WHAT YOU SAID AFTER YOU'D ALREADY OPENED THE

25) SCREEN DOOR AND LET LINDA IN?

A. OPENED THE SCREEN DOOR AND LET HER IN.

2) Q. UH-HUH.

3) A. LITTLE JOHN BUDGED HIS WAY IN BEHIND HER. HE CAME IN.

4) HE ASKED ME WHERE WAS HIS MONEY. HE ASKED ME, ARE YOU TRYING

5) TO HIDE. I SAID, NO, I CHOOSE TO LEAVE.

6) HOW FAR DO YOU WANT ME TO GO?

7) Q. KEEP GOING.

8) A. I CHOOSE TO LEAVE YOU GUYS ALONE, AND HE HIT ME IN THE

9) MOUTH. HE WALKING -- HE WALKING AROUND PACING AND HE COMES

10) BACK AND STAND OVER ME. I ASK ROY IF HE HAD A HUNDRED BUCKS.

11) HE SAID THAT HE DID NOT HAVE IT. BINKY SAID, IF YOU GIVE --

12) BINKY SAID, IF I GIVE YOU THE HUNDRED DOLLARS, WILL YOU TAKE

13) CARE OF IT. LITTLE JOHN SAID, NO, I WANT THE \$140. HE SAID

14) EVERYBODY UPTURN YOUR POCKETS INSIDE OUT AND GIVE ME ALL YOUR

15) MONEY. BINKY PULLED HIS MONEY OUT OF HIS POCKET AND SAID, I

16) DON'T HAVE A HUNDRED BUCK -- HUNDRED DOLLARS. HE SAID, NO

17) NEED AND COME -- IN COUNTING IT, AND SNATCHED -- SNATCHED OUT

18) OF HIS HANDS. ROY SAYS SOMETHING FROM THE COUCH, AND LITTLE

19) JOHN HIT HIM IN THE HEAD. AND SAYS, STAY OUT MY BUSINESS.

20) ROY STOOD UP AND LITTLE JOHN SAID, I'LL SHOOT YOU. SO ROY

21) SAID, GO AHEAD, AND HE SHOT HIM IN THE FOOT. HE SHOT HIM

22) WHEREVER HE SHOT HIM. THEY WERE WRESTLING OR SOMETHING

23) OVER -- OVER THERE WHERE -- WHERE I WAS. ROY SAID, I WAS

24) LEAVING, I'M WALKING OUT OF HERE, SOMETHING LIKE THAT. AND

25) THAT'S WHEN I HEARD THE SECOND SHOT. ROY WENT OUT THE DOOR

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1) COAT WAS HE WEARING THAT NIGHT.

2) A. DOESN'T SAY THAT THERE.

3) Q. DO YOU REMEMBER?

4) A. DO I REMEMBER THE COAT HE WAS WEARING?

5) Q. (MR. WEISKOPF NODS.)

6) A. NO, I DON'T.

7) Q. WHAT DID YOU THINK -- YOU WERE ASKED THAT NIGHT, WHAT

8) DID YOU THINK LITTLE JOHN WAS GOING TO DO? AND WHAT DID YOU

9) SAY?

10) A. HE SAID, HOW WOULD YOU LIKE IT IF -- IF I SHOT YOUR LEG

11) OFF.

12) Q. NOW, WOULD YOU AGREE WITH ME THAT THAT'S A LOT OF DETAIL

13) GIVEN THAT NIGHT?

14) A. LIKE I SAID, WHAT I -- WHATEVER WAS SAID THAT NIGHT WAS

15) BASICALLY TOLD ME WHEN I CAME TO BEFORE EVERYBODY GOT THERE.

16) OFFICERS GOT THERE. SO TALKING -- THIS LITTLE -- KEEP SAYING

17) THIS LITTLE JOHN, LITTLE JOHN, THE FIRST QUESTION HE ASKED ME

18) IS WHAT IS HIS NAME. I KNOW HIM BY DEJON.

19) Q. ALL RIGHT. MARK, LET ME ASK YOU, WHO TOLD YOU THAT

20) NIGHT THAT LISA GREW UP WITH YOU?

21) A. LISA GREW UP DOWN THE STREET FROM ME.

22) Q. WHO TOLD YOU THAT NIGHT BEFORE THE POLICE GOT THERE THAT

23) THAT WAS THE CASE?

24) A. LISA GREW UP DOWN THE STREET FROM ME.

25) Q. YOU KNEW THAT THEN, RIGHT?

AND LITTLE JOHN WAS BEHIND HIM AND LITTLE JOHN SAID --

2) LISA, LET'S GO. SHE WENT OUT THE DOOR WITH HIM.

3) Q. ALL RIGHT. AND THEN YOU WERE ASKED SOME SPECIFIC

4) QUESTIONS, WERE YOU NOT? AND YOU WERE ASKED, WHAT IS LITTLE

5) JOHN'S REAL NAME.

6) AND WHAT DID YOU SAY?

7) A. SAYS DEJON. I DON'T KNOW HIS LAST NAME.

8) Q. AND YOU WERE ASKED, HOW DO YOU KNOW LITTLE JOHN. AND

9) WHAT WAS THE ANSWER?

10) A. HE USED TO LIVE ABOVE MY SISTER ON 25TH STREET.

11) Q. AND YOU WERE ASKED, HOW DO YOU KNOW LISA. AND WHAT DID

12) YOU SAY?

13) A. I GREW UP WITH HER. SHE GREW UP DOWN THE STREET FROM

14) ME.

15) Q. GREW UP. OKAY. YOU WERE ASKED, WHAT IS HER LAST NAME.

16) AND WHAT'D YOU SAY THEN?

17) A. I DON'T KNOW.

18) Q. LET'S JUMP AHEAD. YOU WERE ASKED, CAN YOU DESCRIBE THE

19) PISTOL. WHAT DID YOU SAY?

20) A. BIG BLACK GUN. I DON'T KNOW GUNS.

21) Q. YOU WERE ASKED, WHEN DID YOU FIRST NOTICE THAT LITTLE

22) JOHN HAD A GUN. AND WHAT DID YOU SAY?

23) A. WHEN HE FIRST CAME IN. AFTER HE HIT ME, HE PULLED THE

24) GUN OUT OF HIS COAT AND HE RACKED THE GUN.

25) Q. WHAT KIND OF COAT WAS HE WEARING? MARK, WHAT KIND OF

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1) A. BUT I NEVER DID KNOW HER LAST NAME.

2) Q. WHO TOLD YOU THAT NIGHT THAT LITTLE JOHN LIVED ABOVE

3) YOUR SISTER'S PLACE IN THE NEIGHBORHOOD?

4) A. I ALREADY KNEW LITTLE JOHN LIVED ABOVE MY SISTER'S HOUSE

5) IN THE NEIGHBORHOOD, DEJON.

6) Q. SO THERE'S A LOT OF STUFF IN THAT STATEMENT THAT YOU

7) KNEW AND THAT NO ONE ELSE TOLD YOU, ISN'T THAT RIGHT?

8) A. WHAT DO YOU MEAN?

9) Q. YOU SAID THAT YOU TOLD STUFF YOU HEARD.

10) A. UH-HUH.

11) Q. WELL, YOU DIDN'T HEAR THAT LITTLE JOHN GREW -- LIVED IN

12) YOUR NEIGHBORHOOD ABOVE YOUR SISTER'S. YOU KNEW THAT, RIGHT?

13) A. I KNEW THAT.

14) Q. YOU DIDN'T HEAR THAT LISA OR LINDA GREW UP WITH YOU

15) YOU KNEW THAT, RIGHT?

16) A. I KNEW LISA WHEN I ANSWER -- WHEN I ANSWERED THE DOOR, I

17) KNEW WHO SHE WAS.

18) Q. OKAY. AND WHEN YOU WERE ASKED -- LET'S GO TO ANOTHER

19) QUESTION. WHEN YOU WERE ASKED, WHY DO YOU OWE LITTLE JOHN A

20) HUNDRED DOLLARS, WHAT DID YOU ANSWER?

21) A. I BORROWED A HUNDRED DOLLARS WHEN I GOT OUT OF THE

22) HOSPITAL A WHILE BACK.

23) Q. OKAY. NO ONE TOLD YOU THAT, DID THEY, THAT NIGHT?

24) A. THEY ASKED WHY IT WAS A HUNDRED DOL -- I MEAN, WHY WAS

25) THE HUNDRED DOLLARS. I MEAN WHY WAS HE ASKING MONEY

1) Q. IS THAT WHY YOU LOVED HIM MONEY?

2) A. I BORROWED SOME MONEY. I ALREADY SAID THAT.

3) MR. WEISKOPF: THANK YOU. I HAVE NO FURTHER QUESTIONS.

4) THE COURT: RECROSS.

5) RECROSS-EXAMINATION

6) BY MR. WALDRON:

7) Q. YOU SAID YOU DON'T RECALL EVERYTHING YOU SAID THAT

8) NIGHT.

9) A. I DON'T.

10) Q. AND I WANNA KNOW, DID -- AND YOU SAID A LOT OF PEOPLE

11) TOLD YOU WHAT HAPPENED THAT NIGHT. SO DID THE POLICE OR

12) ANYONE ELSE SUGGEST TO YOU WHAT HAPPENED THAT NIGHT?

13) A. WELL, THE -- ONE OF THE BIG, BIG OFFICERS, I CAN RECALL

14) HIM SAYING -- BECAUSE I WASN'T SURE OF NOTHING HARDLY, AND HE

15) WAS JUST TELLING ME, YOU AIN'T NO DUMMY, YOU'VE BEEN HERE,

16) YOU DONE THIS. I MEAN YOU KNOW WHAT HAPPENED HERE, AND IT'S

17) JUST, I DON'T KNOW. I'M UNSURE OF WHAT HAPPENED. I WAS

18) UNSURE. I KNOW LISA BECAUSE SHE GREW UP DOWN THE STREET FROM

19) ME. THAT'S ALL I CAN SAY. I KNOW YOU AS BEING DEJON BECAUSE

20) YOU'VE LIVED -- YOU AND YOUR COUSIN LIVED ABOVE MY SISTER.

21) I'VE SEEN YOU THERE. WE'VE HAD DINNER TOGETHER. AS FAR AS

22) ANYTHING ELSE IS -- I MEAN I DON'T UNDERSTAND WHY I -- I'M

23) BEING QUIZZED LIKE THIS WHEN LITTLE JOHN IS DEJON AS FAR AS I

24) KNOW. HE LIVED ABOVE MY SISTER ON 25TH STREET. THAT IS

25) COMMON SENSE. I GOT THAT, I KNOW THAT. SO WHY ASK ME DOWN

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1) GUY COME FROM ACROSS THE STREET. THAT WAS ALSO IN THE HOUSE.

2) Q. OKAY. NOW, THIS IS A QUESTION I'M CONCERNED ABOUT: HOW

3) DID -- EXPLAIN TO ME AND THE JURORS HOW DID DEJON COME UP IN

4) ALL THIS, TO YOUR KNOWLEDGE?

5) A. I DON'T KNOW. UNCLEAR OF -- AS PEOPLE SAYING LITTLE

6) JOHN OR WHAT HAPPENED, WHO WAS THIS GUY THAT COME IN THE

7) HOUSE, WHO WAS IT, WHAT WAS HE, WHO -- ALL I KNOW IS HEARING

8) LITTLE JOHN, LITTLE JOHN, D.J., THEY KIND OF -- THE OFFICERS

9) WERE SAYING, TO MY KNOWLEDGE, THE BEST OF MY ABILITY TO

10) RECOLLECT THAT, THEY WERE SAYING -- I CAN'T EVEN -- I CAN'T

11) EVEN RECALL HOW IT COME UP, TELL YOU THE TRUTH, I CAN'T

12) EVEN --

13) Q. SO YOU NEVER ON YOUR OWN SUGGESTED THAT DEJON WAS LITTLE

14) JOHN?

15) A. NO, SIR.

16) Q. SO OFFICERS IN FACT SUGGESTED THAT DEJON WAS LITTLE

17) JOHN?

18) A. I CAN'T RECALL.

19) Q. YOU CAN'T RECALL, BUT YOU NEVER SUGGESTED THAT DEJON WAS

20) LITTLE JOHN.

21) A. NO, SIR. TO MY KNOWLEDGE, NO, SIR.

22) Q. AND YOU CAN'T RECALL HALF THE STUFF IN THAT STATEMENT.

23) A. I CAN'T. AND IT'S EVEN GETTING MORE -- I MEAN IT'S BEEN

24) SUCH A LONG TIME AND, YOU KNOW, LIKE I SAID, I TOOK A HIT. I

25) TOOK A BLOW, YOU KNOW --

1) AT THE STATION, IT'S -- NO ONE HAD TO TELL ME THAT -- KNEW --

2) THAT. SO I DON'T KNOW WHY I'M BEING --

3) Q. SO YOU KNEW THAT, BUT YOU ALSO KNOW THAT YOU NEVER HEARD

4) ME REFERRED TO AS LITTLE JOHN.

5) A. THAT'S WHAT I SAID.

6) Q. SO D.J. AND DEJON IS ONE AND THE SAME PERSON.

7) A. I KNOW YOU AS D.J. AND DEJON.

8) Q. LITTLE JOHN THAT YOU KNEW WHEN YOU GOT DOWN TO THE

9) POLICE STATION, AM I AND LITTLE JOHN ONE AND THE SAME PERSON?

10) A. THAT WAS THE NAME THAT WAS MENTIONED AFTER THE INCIDENT

11) HAPPENED.

12) Q. HOW WAS THAT NAME MENTIONED?

13) A. PEOPLE JUST SAYING THINGS. I DON'T -- I DON'T KNOW. IT

14) JUST -- JUST THE COMMENTS THAT WERE MADE IN THE HOUSE, AND --

15) AND WHEN I TOLD THE OFFICER, YOU KNOW, WHEN THEY ASKED ME, I

16) SAID, DEJON IS ALL KNOWN D.J. AND I GUESS LITTLE JOHN IS THE

17) NAME THAT IT WAS -- ONE OF THEM HAD SAID, PLUS PEOPLE IN THE

18) HOUSE HAD SAID ALSO. I DON'T KNOW --

19) Q. THAT LITTLE JOHN, PEOPLE IN THE HOUSE AS BINKY, ROY --

20) A. ROY WASN'T THERE --

21) Q. HE WASN'T --

22) A. -- AFTER. ROY WAS OUT OF THE HOUSE.

23) Q. SO WHO WAS THE PEOPLE IN THE HOUSE THAT SAID THIS PERSON

24) LITTLE JOHN?

25) A. BINKY AND ALL THE OFFICERS THAT COME IN THE HOUSE. A

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1) Q. AND YOU NEVER SAW THE PERSON -- YOU GOT HIT FROM BEHIND

2) AND YOU WAS -- YOU SAID YOU WERE BASICALLY DIZZY FROM THAT

3) POINT ON, YOU SAW STARS?

4) A. YES, SIR.

5) Q. AND THAT SIGNATURE ON THAT PAPER, YOU SAY IT LOOKS LIKE

6) YOUR SIGNATURE. NOW, WE OFTEN SIGN OUR SIGNATURES A LOT,

7) THAT LOOKS LIKE YOUR SIGNATURE, BUT YOU'RE NOT POSITIVE THAT

8) THAT IS YOUR SIGNATURE.

9) A. I SAID IT LOOKS LIKE MY SIGNATURE, AND THAT'S, YOU KNOW,

10) I REMEMBER BEING AT THE POLICE STATION AND -- BUT I CAN'T

11) REMEMBER SAYING ALL THE -- ALL THE STUFF THAT'S IN THERE. I

12) CAN'T REMEMBER.

13) Q. HOW MUCH OF IT CAN YOU SAY IS FLIMSY OUT THERE IN THE

14) WATER THAT YOU CAN'T REMEMBER?

15) A. THERE'S A LOT OF IT.

16) MR. WALDRON: A LOT OF IT. NO FURTHER QUESTIONS, YOUR

17) HONOR.

18) THE COURT: REDIRECT?

19) REDIRECT EXAMINATION

20) BY MR. WEISKOPF:

21) Q. JUST A COUPLE QUESTIONS FOR YOU. HOW MANY DEJONS DO YOU

22) KNOW?

23) A. DEJONS?

24) Q. UH-HUH?

25) A. ONE.

2) THIS DEJON?

3) A. THAT'S ONLY DEJON I KNOW

4) MR. WEISKOPF: THAT'S ALL I HAVE.

5) THE COURT: ANYTHING ELSE, MR. WALDRON?

6) MR. WALDRON: NO, NO FURTHER QUESTIONS.

7) THE COURT: YOU MAY STAND DOWN, SIR. THANK YOU. READY FOR THE NEXT WITNESS?

8) MR. WEISKOPF: WE ARE, YOUR HONOR.

9) THE COURT: ALL RIGHT. OFFICER, IF YOU'LL RAISE YOUR RIGHT HAND AND BE SWORN PLEASE.

10) HAVE A SEAT UP HERE PLEASE. GO AHEAD, MR. WEISKOPF.

11) MR. WEISKOPF: THANK YOU VERY MUCH.

12) LANE OLSEN,

13) BEING FIRST DULY SWORN, WAS EXAMINED

14) AND TESTIFIED AS FOLLOWS:

15) DIRECT EXAMINATION

16) BY MR. WEISKOPF:

17) Q. WOULD YOU STATE YOUR FULL NAME FOR THE COURT?

18) A. LANE OLSEN.

19) Q. AND, MR. OLSEN, WHAT'S YOUR OCCUPATION?

20) A. POLICE OFFICER FOR OGDEN CITY.

21) Q. HOW LONG YOU BEEN SO EMPLOYED?

22) A. FOUR YEARS.

23) Q. AND WERE ON YOU ACTIVE DUTY THE EVENING OF SEPTEMBER 23RD, THE YEAR 2000?

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1) Q. OKAY. AND WHAT'D YOU DO THEN?

2) A. CALLED FOR MEDICAL ASSISTANCE FOR HIM. TRIED TO TALK TO

3) HIM. BUT HE WAS -- LOOKED LIKE HE'D LOST A LOT OF BLOOD. WAS

4) PRETTY INCOHERENT AND COULDN'T SAY WHAT HAD HAPPENED. SO I

5) THEN TALKED TO WILLIAM CHARLES COLEMAN WHO WAS THE OWNER OF

6) THE HOUSE AT 940 WEST ELLIS.

7) Q. AT 840? AND WHERE -- DID YOU --

8) A. OR 840.

9) Q. -- WHERE WAS MR. COLEMAN, WAS HE INSIDE THE HOUSE OR

10) OUTSIDE?

11) A. HE WAS OUTSIDE.

12) Q. OKAY. AND WHAT DID -- HOW DID MR. COLEMAN APPEAR TO

13) YOU?

14) A. HE APPEARED OKAY. HE APPEARED A LITTLE -- LITTLE SHAKEN

15) AND SO ON DUE TO THE CIRCUMSTANCES.

16) Q. OKAY. SO WOULD YOU SAY YOU -- HE WAS STILL AGITATED

17) FROM WHAT HAD HAPPENED OR NOT AGITATED?

18) A. HE -- IN BETWEEN. I MEAN HE WAS A LITTLE EXCITED FROM

19) WHAT HAD TOOK PLACE.

20) Q. AND DID YOU ASK HIM WHAT HAPPENED?

21) A. YES.

22) Q. AND WHAT'D HE TELL YOU?

23) A. HE TOLD ME THAT HIM, JIMMY ROY, WHO WAS SHOT, AND

24) ANOTHER BLACK MALE NAMED MARK, WERE SITTING INSIDE HIS HOUSE

25) AT 340 WEST ELLIS WHEN A BLACK MALE THAT HE -- HE DID NOT

3) A. YES, I WAS.

4) Q. AND LET ME ASK YOU, SHORTLY AFTER TEN O'CLOCK, WERE YOU

5) DISPATCHED TO THE AREA OF 340 WEST ELLIS?

6) A. YES.

7) Q. AND WHAT WAS THE PURPOSE OF YOUR BEING DISPATCHED?

8) A. A SHOTS FIRED CALL. SOMEBODY REPORTED HEARING SOMEONE

9) FIRE A GUN.

10) Q. DO YOU REMEMBER WHAT TIME YOU WERE NOTIFIED?

11) A. 2219 HOURS.

12) Q. AND WHAT TIME DID YOU GET THERE, DO YOU REMEMBER?

13) A. LET'S SEE, WOULD HAVE BEEN WITHIN A COUPLE OF MINUTES.

14) Q. OKAY. YOU WERE NEARBY? DO YOU REMEMBER WHERE YOU WERE?

15) A. I DON'T REMEMBER EXACTLY WHERE I WAS.

16) Q. OKAY.

17) A. JUST THAT IT DIDN'T TAKE ME LONG TO GET THERE.

18) Q. OKAY. WHEN YOU GOT THERE TO 340 WEST ELLIS, WHAT WAS

19) THE SCENE LIKE WHEN YOU ARRIVED?

20) A. I ARRIVED AND WAS LOOKING IN THE AREA AND RECEIVED A

21) SECOND CALL, DISPATCH RECEIVED ANOTHER CALL FROM A PERSON

22) STATING THAT SOMEONE HAD BEEN SHOT AND THEY WERE OUTSIDE 340

23) WEST ELLIS IN A VEHICLE. I THEN WENT TO 840 WEST ELLIS, AND

24) LOCATED A JIMMY RAY VALDEZ -- OR JIMMY ROY VALDEZ SITTING IN

25) THE DRIVER'S SEAT OF A CAR PARKED IN THE DRIVEWAY WITH THE

DOOR OPEN, AND HE HAD A GUNSHOT -- GUNSHOT WOUND IN HIS LEFT,

LEFT LOWER LEG.

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1) KNOW AND A HISPANIC FEMALE KNOCKED AT THE DOOR AND CAME

2) INSIDE. HE TOLD ME THE BLACK MALE HAD A -- HAD A BLACK

3) HANDGUN AND BEGAN TELLING MARK THAT HE OWED HIM \$140, AND HE

4) WANTED HIS MONEY. HE SAID MARK ASKED JIMMY IF HE COULD

5) BORROW SOME MONEY. JIMMY TOLD HIM HE DIDN'T HAVE ANY MONEY

6) HE THEN -- WILLIAM SAID HE -- HE OFFERED TO -- TO PAY THE

7) 140. SAID HE HAD A HUNDRED DOLLARS. HE TOOK THE MONEY OUT

8) AND OFFERED TO PAY THAT, AND HE SAID THIS BLACK MALE THAT HE

9) DID NOT KNOW GRABBED THE MONEY FROM HIM. AND AT THAT TIME,

10) HE SAID JIMMY ROY JUMPED UP AND GOT INTO A STRUGGLE WITH THE

11) BLACK MALE WITH THE GUN. AND ENDED UP GETTING SHOT IN THE

12) LOWER LEG. HE SAID THE HISPANIC FEMALE AND THE BLACK MALE

13) THEN LEFT IN A -- THINK IT WAS DARK FOUR-DOOR VEHICLE EAST ON

14) EAST ELLIS.

15) Q. OKAY.

16) MR. LAKER: YOUR HONOR, MAY I INTERRUPT? MAY WE

17) APPROACH?

18) THE COURT: YOU MAY.

19) (A CONFERENCE WAS HELD AT THE BENCH.)

20) BY MR. WEISKOPF:

21) Q. ALL RIGHT. AFTER YOU SPOKE WITH MR. COLEMAN, WHAT DID

22) YOU DO?

23) A. I TOOK MR. COLEMAN DOWN TO THE OGDEN POLICE DEPARTMENT

24) AND OBTAINED A TYPED STATEMENT FROM HIM.

25) Q. OKAY. BETWEEN THE TIME YOU TOOK HIM TO THE POLICE