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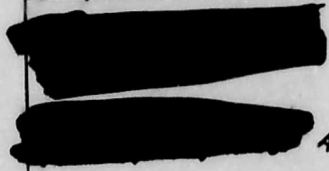
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A-4956-94



SUPERIOR COURT OF N
LAW DIVISION : UNION
(CRIMINAL)
INDICTMENT NO. 94-0
APP. DIV. DKT. NO.

FILED
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REC'D
APPELLATE DIVISION
JUN 28 1996

STATE OF NEW JERSEY

DEC 28 1995
Cant
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Transcript
of
Trial

SAMMY MOORE,
Defendant.

DATE: December 14, 1994
PLACE: Union County Courthouse
Elizabeth, New Jersey

B E F O R E :

THE HONORABLE WILLIAM L'E. WERTHEIMER, J.S.C.

TRANSCRIPT ORDERED BY:

DOLORES D. MANN, DEPUTY PUBLIC DEFENDER II

A P P E A R A N C E S :

SUSAN M. MacMULLAN, ASSISTANT PROSECUTOR
FOR THE STATE

THOMAS M. RUSSO, ESQ.
FOR THE DEFENDANT

EILEEN A. DUNNE, C.S.R.
Official Court Reporter
Union County Courthouse
Elizabeth, New Jersey

I N D E X

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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2					
3	FOR THE STATE:				
4	CHANDA MURPHY	3			
5	KIMBERLY CLARK	10	17		
6	KEITH CARSON	23	40	50	
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8	ELIZABETH WELLMAN	62			
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THE COURT: Bring out the jury, please.

(In the presence of the jury.)

THE COURT: Good morning. I am sorry for the delay. Our first witness, who I writted from Northern State Prison the jail decided to return him without my approval. He is not here. We have to go get him. We were waiting for her witnesses that are now here. We will go forward with as many witnesses as we can until we've run out of witnesses in which case at that time you will go get another cup of coffee and I will do other things.

Okay. Call your first witness.

MISS MacMULLAN: Thank you, Judge.

The State calls Miss Chanda Murphy from Plainfield, New Jersey.

C H A N D A M U R P H Y, State's witness, sworn.

DIRECT EXAMINATION BY MISS MacMULLAN:

Q Good morning, Miss Murphy.

Miss Murphy, how old are you?

A Twenty-five.

Q Where do you live?

A In Plainfield.

Q How long have you lived in Plainfield?

A All my life.

Q Did you once know a man named Marcus Benjamin?

A Yes.

1 Q How did you know Marcus?

2 A We was close friends.

3 Q How long did you know Marcus for?

4 A About fifteen years.

5 Q Excuse me?

6 A About fifteen years.

7 Q Did you and Marcus ever buy a car together?

8 A Yes.

9 Q What car was that?

10 A '86 Honda Accord.

11 Q Do you remember the color?

12 A Blue.

13 Q Why did you and Marcus buy the car together?

14 A Because he didn't have any driver's license and he want the
15 car to go in my name.

16 Q Do you remember when you bought the car?

17 A Like, I think, September.

18 Q September of '93?

19 A Yes.

20 Q And whose name was the car registered under?

21 A My name.

22 Q Whose name was the title of the car?

23 A My name.

24 Q And whose car was the insurance under?

25 A Mine.

1 Q And where were those papers kept, the papers for the
2 car, the title, the registration?

3 A Inside the car.

4 Q Was there also an inspection card for the car also
5 inside the car?

6 A Yes.

7 Q When was the last time you saw Marcus alive?

8 A On Friday, like in the afternoon.

9 Q Is that the Friday before his death?

10 A Yes.

11 Q About what time did you see him?

12 A About four or something, something like that.

13 Q And at that time who was in possession of the car?
14 Him or you?

15 A Marcus.

16 Q And as best you can recall who was in possession of
17 the car Saturday, December 4th, 1993?

18 A Marcus was.

19 Q And who would be in possession of the car December
20 5th, the next day?

21 A Marcus.

22 Q So as best as you can recall the car was in his
23 possession the last time you saw the car?

24 A Yes.

25 Q When were you first made aware of Marcus' death?

1 A That morning, the Sunday morning, like about four.

2 Q Four in the morning?

3 A Yes.

4 Q Who called you?

5 A Kim called me.

6 Q Do you know Kim's full name?

7 A Yes, Kimberly Clark.

8 Q And without repeating what Kim said to you, after you
9 received the phone call and were -- spoke to her, did you
10 eventually go down to the police department and give a sworn
11 statement concerning the circumstances surrounding ownership of
12 that particular car?

13 A Yes, I did.

14 Q And did you give a sworn statement to the police on
15 December 5th, Sunday, at approximately 4:45 a.m.?

16 A Yes.

17 Q And incidentally, Miss Murphy, I wonder if you could
18 please look to the gentleman in the striped shirt. Have you
19 ever seen him before?

20 A No.

21 Q Are you his aunt?

22 A No.

23 Q Did you ever give him permission to be in possession
24 of that blue Honda that you and Marcus bought?

25 A No.

1 Q Would you recognize the title, the registration, the
2 insurance and the inspection card --

3 A Yes.

4 Q -- if you saw it again?

5 I would like to show you some items. I am going to
6 show you exhibits S-13, 14, 15 and 16. Starting first with
7 S-13, do you recognize what that is?

8 A Yes, the car registration.

9 Q Excuse me?

10 A The registration to the car.

11 Q And this would have the correct plate number of the
12 car?

13 A Yes.

14 Q And the correct VIN number of the car?

15 A Yes.

16 Q Incidentally, what was the plate number on the car?

17 A CD8-27U.

18 Q CD8-27U. I would like to show you what has been
19 marked S-14 for identification. Do you recognize what that is?

20 A Yes, that's an insurance card.

21 Q That's the insurance card for the vehicle?

22 A Yes.

23 Q Incidentally, does it say your name, Chanda Murphy, on
24 these documents?

25 A Yes.

1 Q Showing you what has been marked S-15 for
2 identification, do you recognize that?

3 A Yes.

4 Q What's that?

5 A The inspection card.

6 Q For the particular car?

7 A Yeah.

8 Q And it has the plate number on this?

9 A Yes.

10 Q Okay. Showing you the last exhibit, S-16, do you
11 recognize that?

12 A Yes, a bill of sale for the car.

13 Q Is that the Certificate of Title for the vehicle
14 itself?

15 A Yes.

16 Q Is that your name and address on the Certificate of
17 Title?

18 A Yes.

19 Q Is this in substantially the same condition as it was
20 the last time you ever saw it?

21 A Yes.

22 Q And the last time you saw these items they were inside
23 the car?

24 A Yes.

25 Q Okay. I would like to show you some photographs.

1 Would you recognize your car if you saw a picture of it?

2 A Yes.

3 Q Showing you two exhibits, photographs, S-72 and S-73.
4 Showing you S-72, what does that picture show?

5 A The car.

6 Q Excuse me?

7 A The car.

8 Q That's the blue Honda?

9 A Yes.

10 Q And showing you S-73, what does that show?

11 A The back of the car.

12 Q S-72 is the front of the car?

13 A Yes.

14 Q Was there anything in particular about the car that
15 Marcus had recently done to the car?

16 A The bumpers, the black bumpers on the car.

17 Q Tell us about the black bumpers.

18 A The black bumpers was, I think, '90 bumpers. He put '90
19 bumpers on the car on the front and on the back. They was like
20 bigger bumpers. They wasn't like the regular bumpers.

21 Q They were bigger bumpers?

22 A Yes.

23 Q If you saw the bumpers --

24 A You would automatically know that's the car.

25 Q And the last time you saw the car, was there any

1 busted steering column, broken lock, broken trunk at all?

2 A The windshield was cracked.

3 Q Okay. Besides the windshield, though, anything about
4 a busted steering column or broken door or busted lock in the
5 trunk?

6 A No.

7 Q And these photographs, do they substantially and
8 fairly depict what the car looked like the last time you saw
9 it?

10 A Yes.

11 Q When was the last time you saw the car?

12 A That Friday.

13 Q The Friday before Marcus' death?

14 A Yes.

15 MISS MacMULLAN: Thank you. No further questions.

16 MR. RUSSO: No questions.

17 THE COURT: Thank you, Miss Murphy. You may step
18 down. Please watch your step.

19 Your next witness.

20 MISS MacMULLAN: The State's next witness is Kimberly
21 Clark of Plainfield, New Jersey.

22 K I M B E R L Y C L A R K, State's witness, sworn.

23 THE COURT: Miss Clark, have you heard how cold we
24 keep it in this courtroom?

25 THE WITNESS: Oh, no, sorry.

1 THE COURT: You can wear it. Look at the jurors. I
2 was wondering if word got back to Plainfield.

3 DIRECT EXAMINATION BY MISS MacMULLAN:

4 Q Good morning, Miss Clark. How are you?

5 A I'm fine.

6 Q Miss Clark, how old are you?

7 A Twenty-five.

8 Q Where do you live?

9 A Plainfield.

10 Q How long have you lived in Plainfield?

11 A Twenty-five years.

12 Q And where do you work?

13 A Merrill, Lynch in Somerset.

14 Q Did you ever know a man named Marcus Benjamin?

15 A Yes.

16 Q How did you know Marcus?

17 A He's a close friend of mine.

18 Q How long did you know him for?

19 A A long time. About eight years.

20 Q Do you remember the last time you saw Marcus alive?

21 A December 5th.

22 Q Is that the day he died?

23 A Yes.

24 Q Tell the jury when you saw him and what he was doing?

25 A I was riding down the street going towards --

1 Q Excuse me?

2 A I was going towards the bank. I saw him standing next to
3 his car parked on West Third Street and I rolled down the
4 window and I said I'll be right back. I was going to the bank
5 to take out some money. I went to the bank, took out the \$20.
6 My bank receipt said about 12:50. I left the bank. I came
7 back down the street. I talked to my brother for a little
8 while and I went back down the street to talk to Marcus and
9 when I got back, he was dead laying in the street.

10 Q What was happening around where Marcus was dead in the
11 street?

12 A The cops had roped off the area with the little yellow
13 ribbon and they were keeping everybody back. When I saw it
14 they was telling everybody to stay back, don't go behind the
15 line.

16 Q Do you know what time it was about when you returned
17 to where Marcus was lying dead?

18 A It was between 20 minutes to two and quarter of two.

19 Q Do you know what Marcus was doing out there at that
20 corner at that time of the night?

21 A Marcus sold drugs and that's what he was probably outside
22 on the corner doing.

23 Q How long did he sell drugs for?

24 A For a good while. Five or six years.

25 Q Would he usually sell at that area?

1 A No. He had just recently came on that corner say about
2 four months, four to five months at the most.

3 Q Do you know where Marcus, when he would be selling
4 drugs, where would he keep his money, if you know?

5 A I would say in the car.

6 Q And when you saw Marcus before he died, was he near
7 his car?

8 A Yes, he had the door opened and he was standing there
9 talking. I can't remember who he was talking to but there was
10 a lot of people outside.

11 Q Which door did he have open?

12 A He had the driver's side door open.

13 Q And when you say he was standing there talking to a
14 lot of people --

15 A He was screaming something to someone and I interrupted and
16 I said I'll be right back. I don't know exactly who he was
17 talking to.

18 Q Okay. When you came back to the scene and you saw
19 Marcus dead at the scene, how long did you stay at the scene
20 for?

21 A I stood there for about five minutes. I was just talking
22 to someone and I was like are you sure, are you sure it was
23 Marcus, are you sure and they said go over there and look and I
24 said no. I just got in the car. I had to make a u-turn and go
25 back down the street I came up because -- excuse me -- because

1 it was roped off. I couldn't go the other way.

2 Q Were you upset, Kimberly?

3 A Very upset.

4 Q And do you remember what street you took to drive away
5 from the scene?

6 A I drove back down McDowell Street to get to West Fourth.

7 Q Where were you going at that point?

8 A I was going back home to call Chanda and let her know.

9 Q Do you live -- did you live on West Fourth Street at
10 the time?

11 A Yes, I do.

12 Q Once you got on West Fourth Street, what way did you
13 go?

14 A I made a left.

15 Q Okay. When you make a left, would you be driving away
16 from the crime scene?

17 A That's correct.

18 Q Now, when you made that left onto West Fourth Street
19 from McDowell, did you see any car?

20 A I saw a blue Honda.

21 Q Any particular blue Honda?

22 A Marcus' blue Honda.

23 Q How do you know that was Marcus' car?

24 A 'Cause he had just changed the bumpers on the back of the
25 car. I believe they were '93 bumpers. They were black. No

1 other car had them.

2 Q How far behind the car were you when --

3 A I was directly behind the car. I turned right behind.
4 There was no other cars.

5 Q How fast was Marcus' car going at that time?

6 A It was going pretty fast. Probably about 55.

7 Q Was that faster than the speed limit?

8 A Yeah.

9 Q Could you tell how many people were in the car?

10 A It looked to be about three people in the car.

11 Q Did you try and stop the car at that point?

12 A Initially I was going to try to stop the car. I thought it
13 was his friends driving and didn't know that he had gotten shot
14 but the car was going faster and I couldn't drive fast because
15 the car I was in was messed up and if you drove too fast, it
16 would shake really bad. So the car got away.

17 Q And later that day, that Sunday, the day Marcus died,
18 did you go to the police department and give a sworn statement
19 at about six o'clock in the morning?

20 A Yes, I did.

21 Q Okay. In your statement did you tell the police
22 originally that you couldn't see who or how many people were in
23 the car?

24 A Yes, I did.

25 Q Explain this. How come you said on the day of the

1 incident that you couldn't see how many people were in the car
2 but now you say you think --

3 A I was really upset. I wasn't really thinking. But I
4 remember when I talked to Chanda, I said it looked to be about
5 three people in the car and at the time I didn't know that the
6 car was stolen. So I told her I was going to stop and tell
7 them what had happened and I said then when I got back to the
8 scene and they said they took the car, I said, well, I just saw
9 the car on Fourth Street and, I mean, I really wasn't thinking
10 at the time when they asked.

11 Q I would like to show you some photographs. Would you
12 recognize a picture of Marcus' car if you saw it?

13 A Yes, I would.

14 Q Two exhibits. S-72 and 73. First S-72. Do you
15 recognize it?

16 A Yes.

17 Q What is it?

18 A Marcus' blue Honda.

19 Q Is that how the blue Honda looked at that time when
20 you saw it that Sunday morning?

21 A No.

22 Q How did it look different from this picture?

23 A There's a crash on the front. I never saw a crash before
24 on it, the dent in the front.

25 Q The --

1 A The windshield wasn't cracked.

2 Q Okay. At the time you saw it?

3 A Yeah.

4 Q Showing you S-73 for identification, what does that
5 show?

6 A The back of his car.

7 Q Is that how it looked pretty much the last time you
8 saw the car?

9 A Yeah.

4
10 Q Incidentally, Kimberly, has anybody threatened you
11 into giving a statement or --

12 A No.

13 Q Has anybody promised you anything in return for your
14 statement?

15 A No.

16 MISS MacMULLAN: Thank you. No further questions.

17 THE COURT: Any questions?

18 MR. RUSSO: Yes.

19 CROSS-EXAMINATION BY MR. RUSSO:

20 Q You say when you saw the car, the windshield wasn't
21 cracked?

22 A No, it wasn't.

23 Q You're certain about that?

24 A I'm positive.

25 Q Now, you indicated that you went to the bank about

1 12:30; is that right?

2 A Ten minutes to one.

3 Q All right. And you saw Marcus when you were heading
4 towards the bank; is that right?

5 A That's correct. I just came back from dropping Chanda off.

6 Q Was he with anyone when you saw him?

7 A Like I said, there was -- there's boys always on that
8 corner. There was a number of people outside.

9 Q Anyone that you knew?

10 A I know everybody on the corner.

11 Q Who was there that you could identify?

12 A I know my cousin James was there. I'm not quite sure who
13 else was there. He was the closest person I could see. It was
14 raining, not really hard, but it was raining.

15 Q What's your cousin's full name?

16 A His name is James Wise.

17 Q And even though it was raining, there were a number of
18 people on the street?

19 A That's true.

20 Q Now, you went -- did you return to that scene
21 immediately after you left the bank?

22 A Not immediately after I left the bank. I stopped and I
23 spoke to my brother before I came back down.

24 Q And that's when you knew there was a shooting?

25 A That's correct.

1 Q And I believe you indicated by the time you arrived
2 there the street was already roped off?

3 A That's correct.

4 Q There were police cars there?

5 A Yes.

6 Q Do you remember how many?

7 A I think I saw one parked on this side of where the body was
8 at.

9 Q Did you notice how many police officers there were?

10 A No, not really.

11 Q But there was a yellow rope or something across the
12 street?

13 A True, right.

14 Q And you indicated that you stayed there for five
15 minutes?

16 A Five minutes. It could have been longer than five minutes.
17 I know I saw his mother. Well, his mother had already gone.
18 His sister walked up crying with two of her friends. It could
19 have been longer than five minutes.

20 Q So by the time you returned from the bank, there were
21 many more people in the area; is that right?

22 A Yes.

23 Q Can you estimate how many people?

24 A Probably about 50.

25 Q And you stayed there for five minutes or longer?

1 A Right.

2 Q And then you left. You went -- how far did you travel
3 before you saw this car again?

4 A A minute. Not even a minute. All I had to do was make a
5 u-turn in the street and go back the other way. It's a short
6 block. It's not that long.

7 Q So that car was just a couple blocks away?

8 A Not even a couple.

9 Q And when you saw Marcus the first time when you drove
10 by on the way to the bank, was there anyone in the car?

11 A I only saw him. I couldn't see who was in the car.

12 Q You indicated that you've known Marcus for eight years
13 at that point. Did you see him everyday?

14 A Yes.

15 Q And you knew that he was -- that he was selling drugs
16 at that location, right?

17 A Yes.

18 Q You knew that he had been selling drugs for five or
19 six years, right?

20 A Yes.

21 Q Do you know whether he ever carried a gun?

22 A I don't know.

23 Q Did you ever see him with a gun?

24 A No.

25 Q Do you know if he had other people working with him

1 selling drugs?

2 A Yes.

3 Q Who were those people?

4 A I don't know who they were. I know it was two guys. I
5 can't remember their names.

6 Q Do you know whether any of those people had guns?

7 A I don't know.

8 Q Did you ever see any of those people with guns?

9 A No.

10 MR. RUSSO: Okay. Nothing further.

11 MISS MacMULLAN: Excuse me, your Honor. I erroneously
12 forgot to have the witness look at an exhibit. If I could
13 reopen direct?

14 THE COURT: Any objection?

15 MR. RUSSO: No objection.

16 MISS MacMULLAN: Thank you.

17 CONTINUED DIRECT EXAMINATION BY MISS MacMULLAN:

18 Q Miss Clark, I am sorry. Showing you what's been
19 marked S-22 for identification, do you recognize what this is?

20 A Yes.

21 Q What does that show?

22 A It's a map of Plainfield streets.

23 Q Any particular area in Plainfield?

24 A This is --

25 Q Louder, please.

1 A This is the street that he was killed on.

2 Q Which street would that be?

3 A West Third Street.

4 Q Before you testified today did I ask you to find on
5 this exhibit, S-22, the particular location where you saw that
6 car driving?

7 A Did you ask me on here?

8 Q Yes. Did I ask you to draw any marking where you
9 first saw the car when you made that left on West Fourth?

10 A Yes.

11 Q Did you make a marking?

12 A Yes.

13 Q Could you please explain to the jury what marking you
14 made and point out to the jury where it is?

15 A Okay. This is the marking of where I saw the blue Honda
16 after I turned off the side street to go to my house. That's
17 where I saw the car headed away from where the murder happened.

18 Q What marking did you put there?

19 A "Marcus' blue Honda".

20 Q Did you draw a box around it?

21 A Yes, I did.

22 Q There is an arrow in front of that blue box with the
23 words "Marcus' blue Honda" which appear to be smudged at this
24 point. Is that the direction that the car was driving?

25 A Yes, it is.

1 Q Did you put your name, "Kim Clark", underneath there?

2 A Yes.

3 Q And does this accurately and fairly depict where the
4 car was when you first saw it after you knew that Marcus was
5 dead?

6 A Yes.

7 MISS MacMULLAN: Thank you. No further questions.

8 THE COURT: Anything?

9 MR. RUSSO: No questions.

10 THE COURT: Thank you, Miss Clark. You may step down.
11 Please watch your step, ma'am.

12 Miss MacMullan.

13 MISS MacMULLAN: Judge, may I check the back to see?
14 The witnesses were delayed from Plainfield.

15 THE COURT: Okay.

16 (Pause.)

17 MISS MacMULLAN: Judge, we have one witness, a
18 juvenile in custody.

19 THE COURT: Okay. Is he outside?

20 MISS MacMULLAN: Yes. They are bringing him in now,
21 your Honor.

22 THE COURT: Okay. Who is it?

23 MISS MacMULLAN: His name is Keith Carson. He is a
24 juvenile and presently incarcerated in the detention center.

25 K E I T H C A R S O N, State's witness, sworn.

1 DIRECT EXAMINATION BY MISS MacMULLAN:

2 Q Good morning, Mr. Carson. Sir, how old are you?

3 A Seventeen.

4 Q What town do you live in?

5 A Plainfield.

6 Q How long have you lived in Plainfield for?

7 A For my whole life.

8 Q And are you presently over in the juvenile detention
9 center?

10 A Yes.

11 Q When did you get arrested?

12 A Last night around eight, nine o'clock.

13 Q Last night you got arrested?

14 A Uh-huh.

15 Q What charges, without explaining them, what charges
16 are you in on?

17 A I think car theft.

18 Q You think car theft. Okay.

19 Is this the first time you ever got locked up?

20 A Third.

21 Q Third. Okay. Are these the only pending charges
22 against you, these car theft charges?

23 A Uh-huh.

24 Q Okay. Have you and I talked since you got locked up?

25 A Yeah.

1 Q When did we talk, Keith?

2 A I don't remember but I know me and you talked.

3 Q But wait. Since you got locked up on these new
4 charges, have you and I seen each other?

5 A Oh, no.

6 Q Have you and I talked?

7 A No.

8 Q This is the first time you and I've seen each other
9 since you've been arrested?

10 A Uh-huh.

11 Q Have I made you any offer in relation to your
12 testimony today for your new charges?

13 A No.

14 Q Do you expect any offer?

15 A I don't think, no.

16 Q Have I promised you anything, Keith? Yes or no?

17 A No.

18 Q Okay. Now, Keith, I would like to talk about the day
19 that Marcus was shot. All right?

20 Incidentally, have --

21 THE COURT: Hold it. Hold it. Mr. Carson, if you are
22 going to be a returnee to the juvenile criminal justice system,
23 you have to learn the rules in court. We speak verbally here.
24 We don't shake our heads. We say yes and no and we don't
25 grunt. Okay?

1 THE WITNESS: Yes.

2 THE COURT: Okay. Follow those rules.

3 Q Mr. Carson?

4 A Yes.

5 Q Do you remember the day Marcus got shot?

6 A I don't remember the exact day but I know it happened.

7 Q Okay. How did you know Marcus?

8 A From my friend Quan Collier.

9 Q What is Quan's name?

10 A Quan Collier.

11 Q Quan Collier.

12 Where were you the day that Marcus got shot?

13 A Right there sitting on -- standing on Quan front porch.

14 Q Do you know the address of that front porch?

15 A I think 1112 or 1113 West Third, between Third and Morris.

16 Q Is it on the corner of Third and Morris?

17 A Uh-huh.

18 THE COURT: Is that a yes or no?

19 THE WITNESS: Yes.

20 Q Okay. Where was Marcus when you were out on the
21 porch?

22 A He was standing outside the gate.

23 Q Is there a gate in front of the house?

24 A Yes.

25 Q Was he -- did he have a car at that time?

1 A Yes, he did.

2 Q What kind of car did he have?

3 A He had a blue Honda Accord.

4 Q And was that car there?

5 A Yes.

6 Q Do you remember where that car was parked?

7 A Yes, it was sitting parked in front of the house.

8 Q Which way was the car facing?

9 A Pointing towards Halsey Street.

10 Q Okay. Would that be pointing away from Morris Street?

11 A Uh-huh, yes.

12 Q The back was closest to Morris Street?

13 A Yes.

14 Q Okay. Was Marcus selling drugs that day?

15 A Yes.

16 Q Were you helping him sell drugs?

17 A Yes.

18 Q Did you see the people that shot Marcus?

19 A Yes, I saw one person that they called Jimbo.

20 Q Tell the jury what happened right before he was shot?

21 A Well, they --

22 Q Nice and loud, please.

23 A Well, I was standing on the front porch and I looked down
24 the street and I saw a whole bunch of people come from behind
25 the houses and stuff and I thought they was somebody else just

1 playing around and stuff. So I ran in the house and I was
2 like, Quan, somebody outside playing around with guns and
3 stuff. Then we went to the door and when I looked out the
4 door, I saw Marcus facing the house with his hands up and the
5 stick-up kid. So me and Quan ran back in the house and then we
6 ran downstairs in the basement. Then we heard the gunshots.

7 Q Keith, these people that were coming down the street,
8 did any of them have ski masks on?

9 A Yeah, all of them did 'cept for one.

10 Q How many -- approximately how many people could you
11 see coming down the street?

12 A Like I saw easy between six, seven or eight people I saw
13 come from behind the houses.

14 Q Are you sure of the exact number?

15 A It was -- I ain't sure of the exact number. It was either
16 six or seven.

17 Q Did you actually see them have guns in their hands?

18 A Yes.

19 Q How were they holding the guns?

20 A Like, like pointing at him like this (indicating).

21 MISS MacMULLAN: Witness indicating with his right arm
22 extending it with his -- sorry, with his right arm holding it
23 with his other arm in a pointing gesture.

24 Q Did any of them -- you said they came from between the
25 houses. What houses did they come between?

1 A The houses next door to Quan house on the right on my --
2 when I -- the way I standing on the porch, they came from the
3 houses on the right-hand side from behind the houses.

4 Q Okay. That would be the house next door to the house
5 on Third Street?

6 A Yes.

7 Q Have you ever been back there, Mr. Carson?

8 A Yes.

9 Q Is that -- are you able to cut from Morris Street and
10 come from between those houses?

11 A Yes and you could get through the houses from South Second
12 Street, too.

13 Q Okay. So is it easy to walk around there and come out
14 between the houses?

15 A Yes.

16 Q When they were coming down the street, did you see any
17 of them near Marcus? After you told Quan what happened and you
18 came out again, did you see any of them near Marcus?

19 A Yes.

20 Q How close did they get to Marcus?

21 A They up on him where Marcus couldn't even run or anything
22 like that. He can't really do nothing 'cause they was right
23 there up on him.

24 Q How far away were they from him?

25 A Like a good possibility of one foot, two.

1 Q One or two feet?

2 A Yeah.

3 Q How many of them had their guns pointing at Marcus?

4 A Like four of them had they guns pointed at him already and
5 the other just pulled them out.

6 Q And now you said all of them except one had a ski
7 mask. Tell us about that guy?

8 A The one that had the ski mask -- without the ski mask, he
9 was right there up on Marcus.

10 Q Did he have anything covering any part of his face?

11 A No, he just had all black on.

12 Q Did you recognize who that person was?

13 A Yes.

14 Q Who was that person?

15 A Well, out there -- I don't know his real name but we called
16 him Jimbo.

17 Q Jimbo. Okay. Did Jimbo ever hang out in that area?

18 A Yes, he did.

19 Q Did Jimbo ever live near there?

20 A No, he used to just be out there with us.

21 Q When you say, "be out there with us", what does that
22 mean?

23 A Like just come out there and hang out with us and he sold
24 drugs out there, too.

25 Q So he sold drugs out on that same block where Marcus

1 was held up?

2 A Yes.

3 Q How many times -- did you ever see this Jimbo guy
4 before you saw him out there with a gun on Marcus?

5 A I saw him a lot of times. He came around there for a good
6 month, selling drugs around there for a good month. So then
7 all of sudden he stopped coming around there.

8 Q Before the murder?

9 A Yes.

10 Q Would this guy Jimbo know the layout between the
11 houses, if you know?

12 MR. RUSSO: Objection.

13 A Yes.

14 THE COURT: Sustained.

15 Q Have you ever seen Jimbo around the houses there?

16 A Yes, he used to go in the backyard to stash his drugs and
17 stuff back there.

18 Q Back where it was opened?

19 A Uh-huh, where the opening is.

20 Q You ever seen Jimbo come between the houses before the
21 murder?

22 A Yes, a couple times.

23 Q Now, you say when you saw them coming up on Marcus,
24 did Marcus say anything to you when you came out the second
25 time?

1 A Yes, Mook, go back up in the house.

2 Q How did he -- what kind of tone of voice did he use?

3 A Like a sad tone.

4 Q Excuse me?

5 A Like a sad tone. Just, Mook, go back up in the house. He
6 like screamed it out then.

7 Q Is that when his hands were up in the air?

8 A Uh-huh.

9 THE COURT: Is that a yes or no?

10 THE WITNESS: Yes.

11 Q Did you listen to him?

12 A Yes.

13 Q Were you scared at that point, Keith?

14 A Yes.

15 Q What did Quan and you do at that point?

16 A We ran through his house and we ran -- we ran down -- we
17 ran through his house and we ran downstairs to the basement
18 where we hid until we heard a car pull off.

19 Q Do you know that car that pulled off, was that before
20 or after the gunshots?

21 A After the gunshots.

22 Q How many gunshots did you hear?

23 A I heard four or five gunshots.

24 Q After you heard the four or five gunshots, how soon
25 after that did you hear the car pull off?

1 A Right after we heard the gunshots. After they got done
2 firing they guns, that's when the car was like just pulled off
3 and that's when we ran back upstairs and we were and we --
4 well, Anthony -- we woke Anthony up and that's like -- he's
5 like what's going -- what's going on and all three of us went
6 outside and we saw Marcus laying on the ground dead.

7 Q Who is Anthony?

8 A Quan's stepfather.

9 Q Do you know his full name?

10 A Anthony Mack.

11 Q Okay. In the house was you, Quan and Anthony Mack?

12 A Yes.

13 Q Do you know if the police came to the area?

14 A Yes, they came.

15 Q How soon after the gunshots and the car pulling off
16 and you seeing that Marcus is dead did the cops come to the
17 scene?

18 A It took awhile for them to come.

19 Q Took awhile for them to come but they did come to the
20 scene?

21 A Yes.

22 Q Keith, did you have a gun that day?

23 A No.

24 Q Did Quan?

25 A No.

1 Q Marcus?

2 A No.

3 Q Now, you say that Marcus never had a chance, they came
4 right up on him?

5 A Yes.

6 Q Did any of the people in the home there, that house on
7 the corner of Morris and West Third, anybody shoot at these
8 guys?

9 A No.

10 Q Okay. I would like to show you a photo array. On
11 June 2nd, 1994 were you interviewed by Lieutenant Edward
12 Johnson of the Union County Prosecutor's Office?

13 A Yes.

14 Q Okay. At that time did he show you a photo array?

15 A Yes.

16 Q And what did he say to you when he showed you the
17 photo array?

18 A He asked me did I recognize any of these people.

19 Q Okay. Did he hint to you which one to pick out?

20 A No.

21 Q And did you look at the photo array?

22 A Yes.

23 Q Did you recognize anybody?

24 A Yes.

25 Q Who did you recognize?

1 A Jimbo.

2 Q After you recognized Jimbo, did you put your signature
3 and date on the back of the photograph?

4 A Yes.

5 Q Are you positive that's Jimbo?

6 A Yes.

7 Q That was the guy out there with the group of people
8 with ski masks and a gun?

9 A Yes.

10 Q Showing you what has been marked --

11 THE COURT: S-20.

12 Q -- S-20 for identification. Thank you, Judge. Take a
13 look at S-20. Do you recognize it?

14 A Yes.

15 Q Is this the photo array Lieutenant Johnson showed you
16 that day?

17 A Yes.

18 Q Which one is Jimbo?

19 A Photo number six.

20 Q Photo number six, this one right here?

21 A Yes.

22 Q You sure?

23 A Yes.

24 Q Okay. After you picked out photo number six, is that
25 your signature that you put there?

1 A Yes.

2 Q And is that Lieutenant Johnson's initials also next to
3 yours that he put?

4 A Yes.

5 Q And you put the date of September 2, 1994?

6 A Yes.

7 Q And on the other five photographs are these your
8 initials and date, also?

9 A Yes.

10 Q With Lieutenant Johnson?

11 A Yes.

12 Q And is this in pretty much the same condition as it
13 was that day you saw it?

14 A Yes.

15 Q Okay. Let's take a look at some photographs here,
16 okay? And I need you -- if you could explain to the jury where
17 in these photographs you saw these guys coming out from between
18 the house. Okay.

19 I would like to show you S-45 for identification, a
20 color photograph. Do you recognize what that shows?

21 A Yes.

22 Q What does it show? Nice and loud.

23 A It shows around the area where Benji got shot.

24 Q Okay. Does it show part of the house where you guys
25 were in that day?

1 A Yes.

2 Q And where is the house in the photograph?

3 A Right here on the corner, the brown and white house.

4 Q On the extreme right side of the photograph?

5 A Yes.

6 Q Does this photograph show where these people came out
7 from between the homes?

8 A Yes.

9 Q Where?

10 A They came out from between, between this house right here
11 and this tan house right here and they came out from between
12 this house right here and this house right here (indicating).
13 They all came out from behind.

14 Q They came out from there?

15 A Yes.

16 Q And, now, you say you were on a porch?

17 A Yes.

18 Q Okay. I will show you another photograph.

19 Showing you what's been marked S-43 for
20 identification, you recognize what S-43 shows?

21 A Yes.

22 Q What does that show?

23 A Where Benji got --

24 Q Louder, please.

25 A Where Benji got shot at.

1 Q Does that show the house you were in?

2 A Yes.

3 Q Is the porch shown in this photograph where you were
4 standing?

5 A Yes.

6 Q Where is the porch? Show the jury.

7 A This porch right here. I was standing right there
8 (indicating).

9 Q Nice and loud, please.

10 A This porch right here. I was standing where this chair at
11 on the porch (indicating).

12 Q You were standing near the chair on this porch?

13 A Yes.

14 Q Does this fairly and accurately show what the house
15 looked like on the day in question?

16 A Yes.

17 Q You were on the top step on that porch?

18 A Yes.

19 Q And you could see looking down the street?

20 A Yes.

21 Q Do you remember when you were at headquarters that day
22 did you give a sworn statement to the police about what you
23 told the jury today?

24 A Yes.

25 Q And in regards to what Jim Baines -- excuse me, what

1 Jimbo was wearing, did you say that Jimbo had a mask on?

2 MR. RUSSO: Objection. He's already answered that
3 question.

4 THE COURT: Sorry?

5 MR. RUSSO: He's answered that question. I don't
6 understand the purpose, your Honor, the State is trying to --

7 THE COURT: He's testified that he didn't have a mask
8 on.

9 MR. RUSSO: That he did?

10 THE COURT: Did not.

11 MR. RUSSO: Okay.

12 THE COURT: He is the only one that didn't have a
13 mask.

14 MR. RUSSO: Withdraw the objection.

15 Q Have you ever said to the police that Jimbo had a mask
16 on but it was one that only came up to the nose?

17 A Yes, but he ain't have it on.

18 Q Could you explain more about what you could see of his
19 face and what, if anything, he was wearing?

20 A All right. Jimbo, he had all black on. He had a mask, a
21 ski mask on that comes and covers only the bottom part of the
22 face itself.

23 MISS MacMULLAN: Witness indicated the lower part of
24 the face.

25 Q And how was that mask positioned on Jimbo's face that

1 day?

2 A It's pulled down like by his chin.

3 Q Did you have any trouble seeing who it was even though
4 he did have that around his throat?

5 A No.

6 Q Do you have a nickname, Mr. Carson?

7 A Yes.

8 Q What is it?

9 A Mook.

10 Q You have that nickname for awhile?

11 A Yes.

12 MISS MacMULLAN: Thank you, Judge. No further
13 questions.

14 THE COURT: Cross-examine.

15 CROSS-EXAMINATION BY MR. RUSSO:

16 Q Mr. Carson, did Marcus know this guy, Jimbo?

17 A Excuse me?

18 Q Did Marcus know this guy, Jimbo?

19 A Yes.

20 Q He would have been able to identify him, also?

21 A Yes.

22 Q In fact Jimbo had been in that area many times, right?

23 A Yes.

24 Q Was he wearing this -- when you first saw these guys,
25 you said you saw three guys walking down the street; is that

1 right? Three guys coming from down the street?

2 A I ain't see --

3 Q Was that your testimony?

4 A I didn't say three guys was coming down the street.

5 Q When you were standing on the porch, didn't you say
6 you saw some guys coming down the street?

7 A Yes, coming from behind the houses.

8 Q Okay. So you saw -- where were these guys that you
9 saw? Where did they come from?

10 A From behind the houses on Third Street.

11 Q Did you see anybody walking in the street towards you
12 or towards Marcus?

13 A Yes, 'cause the way they came from out behind the houses,
14 they had came from behind the houses. Some was on the
15 sidewalks a little bit, people was in the street and they just
16 ran up on Marcus.

17 Q So because you were on the porch you saw them come
18 from between the houses; is that right?

19 A Yes.

20 Q And you saw, I think you said, six or seven people; is
21 that right?

22 A Yes.

23 Q And did they all come from the same area?

24 A Yes, most of them did.

25 Q When you saw them -- when you first saw them, were

1 they all wearing masks?

2 A Yes, 'cept for Jimbo.

3 Q So Jimbo was never wearing a mask; is that right?

4 A He was wearing one but he ain't have the mask on.

5 Q He didn't have it covering his face?

6 A No.

7 Q Quan Butler, he knew Mr. Benjamin also, didn't he?

8 A Yes.

9 Q Was he involved with you selling drugs?

10 A Yes.

11 Q Did you work for Marcus or he work for you or what?

12 A We was working together.

13 Q What about Mr. Butler?

14 THE COURT: Collier? Quan?

15 MR. RUSSO: Quan.

16 THE COURT: Collier.

17 Q What was his name?

18 A Collier.

19 Q Collier. What about Mr. Collier? Was he working with
20 you?

21 A Yes. All three of us was.

22 Q How often did you sell drugs with Marcus?

23 A We used to go out there almost everyday.

24 Q When you did that, would all three of you be together
25 or be there at different times?

1 A Usually me and Quan, we always be together when we go out
2 there.

3 Q And did you live at that address on the corner?

4 A No.

5 Q Excuse me?

6 A No.

7 Q Who lived there?

8 A Quan.

9 Q And it wasn't unusual for you to be selling drugs
10 right in front of his house; is that right?

11 A Repeat that again.

12 Q Did you sell drugs right in front of his house where
13 he lived?

14 A Yes.

15 Q And Marcus did too, right?

16 A Yes.

17 Q How long had -- how long had Marcus been selling drugs
18 at that location?

19 A For two, three months.

20 Q And before that did he sell drugs at some other
21 location?

22 A Yes, down the street.

23 Q Do you know whether before -- when he sold drugs down
24 the street, were you helping him at that time, too?

25 A No.

1 Q So you didn't start helping him sell drugs until he
2 was working on that corner?

3 A Yes.

4 Q Do you know whether anybody else sold drugs on that
5 corner?

6 A No.

7 Q Excuse me?

8 A No.

9 Q But you indicated that this guy Jimbo, he sold drugs
10 in that area, too, right?

11 A Yes.

12 Q And not only had you seen him selling drugs there but
13 also you had spent time with him in that area, haven't you?

14 A Yes.

15 Q So you had also sold drugs with Jimbo in that area?

16 A Yes.

17 Q How many guns did you see?

18 A When I looked, everybody had a gun.

19 Q Could you describe any of the guns?

20 A One was a .25, .38, something like that.

21 Q What color were they?

22 A Like chrome.

23 Q Chrome colored?

24 A Yes.

25 Q Shiny?

1 A Yes.

2 Q And it was well lit so you could see that the guns
3 were shiny, right?

4 A It wasn't the lights outside, the street lights wasn't
5 bright but the way the light was shining on the guns, yes, I
6 could tell they was guns.

7 Q What time of day did Marcus normally sell the drugs?

8 A Like around -- he had come out like around 10:30.

9 Q Usually late at night?

10 A Yes.

11 Q And did you also sell drugs late at night when you
12 were selling drugs with Marcus?

13 A Yes.

14 Q And did Quan also work late at night or --

15 A Yes.

16 Q And how many shots did you say you heard?

17 A Four or five.

18 Q Now, when you heard those four or five shots, did you
19 then -- did you then -- and you heard a car speed off, right?

20 A Yes.

21 Q And then you left the basement and you came out to see
22 what happened, right?

23 A Yes.

24 Q And you saw your friend Marcus had been shot, right?

25 A Yes.

1 Q Did you arrive there before the police?

2 A Yes.

3 Q It took the police sometime to get there, right?

4 A Yes.

5 Q So you were outside before the police were, right?

6 A Yes.

7 Q And how about your friend Quan? Was he also outside?

8 A Yes.

9 Q Were there any other people outside who had come to
10 see what happened?

11 A Yes, it was a lot of people outside.

12 Q And did you go up to your friend Marcus to see if his
13 condition --

14 A Yes, I walked towards him. I saw that he was dead. So I
15 turned around and put my hoody on and I just left.

16 Q When you were on the porch and you saw these guys
17 approach, was there anyone else out on the street?

18 A No.

19 Q Or in the neighborhood?

20 A No.

21 Q So initially then it was just you on the porch and
22 Marcus standing by his car; is that right?

23 A No, he was standing in front of the house by the gate.

24 Q Marcus was standing by the gate and you were on the
25 porch and that was it?

1 A Yes.

2 Q No one else was in the area?

3 A No.

4 Q Until these guys approached, right?

5 A Uh-huh.

6 Q And what was Marcus doing by the gate? Do you know?

7 A He was selling drugs. Just standing by the gate and I was
8 sitting on the front porch. Quan was in the house cooking.

9 MISS MacMULLAN: Sorry. I didn't hear.

10 THE COURT: He was sitting on the front porch and Quan
11 was in the house cooking.

12 MISS MacMULLAN: Thank you.

13 THE COURT: You're welcome.

14 Q Do you -- can you -- is it possible for you to
15 estimate how long it took for the police to arrive?

16 A I don't remember how long it took but I know it took awhile
17 for them to come.

18 Q Did you call the police?

19 A No.

20 Q Do you know if Quan called the police?

21 A Quan didn't call them. Anthony did.

22 Q So when did Anthony find out about the shooting?

23 A I guess he heard when we ran through the house. Anthony,
24 he was laying on the couch asleep. So I guess when we was in
25 the basement, he must have heard the gunshots and --

1 Q Didn't you wake him up or did he wake up by himself?

2 A I think he woke up by himself.

3 Q Did he follow you outside?

4 A I -- after we came back upstairs, I think he was already
5 outside. I don't really know.

6 Q So you think he may have been outside even before you
7 got outside?

8 A Yes.

9 Q And did he approach Marcus' body?

10 A I think so.

11 Q And so it wasn't until after that that he went in the
12 house and called the police?

13 A Yes.

14 Q And would you agree that it took several minutes for
15 them to arrive?

16 A Yes.

17 Q Now, you indicated, Mr. Carson, that you never had a
18 gun; is that right?

19 A Yes.

20 Q Have you ever seen Quan with a gun?

21 A No.

22 Q And you never saw Marcus with a gun; is that your
23 testimony?

24 A No.

25 MR. RUSSO: One moment, your Honor.

1 THE COURT: Sure.

2 (Pause.)

3 Q When you -- when you saw Marcus surrounded by all
4 these people and with his hands up, did you notice anyone else
5 with their hands up?

6 A No.

7 Q And he told you to go in the house and you went right
8 in the house, right?

9 A Yes.

10 Q And then did you go directly to the basement?

11 A Yes.

12 Q At that point when you went into the house, you still
13 didn't see anyone on the street other than these guys
14 surrounding Marcus and Marcus himself, right?

15 A No, I ain't see nobody else.

16 Q And how much time went by from the time that you were
17 in the basement until you heard the shot?

18 A Soon as I went down in the basement, that's when I heard
19 the gunshots.

20 Q And when you saw Marcus with his hands up, the guns at
21 that point were clearly visible?

22 A Yes, they all was pointing at him.

23 Q They were all pointing at him?

24 A Yes.

25 Q They had him surrounded, right?

1 A Yes.

2 Q Do you know a man named Keith Staple?

3 A No.

4 MR. RUSSO: Nothing further. Thank you.

5 MISS MacMULLAN: Just a few.

6 REDIRECT EXAMINATION BY MISS MacMULLAN:

7 Q Keith, how far away is the basement from the porch
8 that you ran from when you -- when Benji hollered at you to get
9 back inside?

10 A When I -- I don't know how far it was but I know -- 'cause
11 Quan apartment, Quan apartment is small. So it was just like
12 right there when you running. It just like right there.
13 'Cause when you run in the house, it's the living room, then
14 the kitchen, then the basement.

15 Q Do you have to run through the house to get to the
16 basement?

17 A Yes.

18 Q How long do you think it took you to get from the
19 porch to the basement?

20 A Like a minute or two.

21 Q A minute or two.

22 After you heard the gunshots and you heard the car
23 pull away, when you looked outside, did you see Marcus' car
24 still there?

25 A No.

1 Q It was gone?

2 A Yes.

3 MISS MacMULLAN: Thank you. No further questions.

4 MR. RUSSO: No questions.

5 THE COURT: Thank you, Keith. You may step down.
6 Please watch your step.

7 MISS MacMULLAN: The State would request at this time
8 a small break. I would like to see if my witnesses have made
9 it here. Perhaps we can get a few witnesses out of the way.

10 THE COURT: All right. We will take a fifteen-minute
11 recess for the morning recess at this time. If you want to go
12 downstairs and grab some coffee, feel free to do so. Please
13 don't discuss the case.

14 (Recess.)

15 THE COURT: Who is your next witness?

16 MISS MacMULLAN: State's next witness -- just a
17 moment, your Honor.

18 (Pause.)

19 THE COURT: Who is your next witness?

20 MISS MacMULLAN: State's next witness will be Ryland
21 Robinson.

22 THE COURT: All right. Bring out the jury. Please
23 get Ryland Robinson.

24 (In the presence of the jury.)

25 R Y L A N D R O B I N S O N, State's witness, sworn.

1 DIRECT EXAMINATION BY MISS MacMULLAN:

2 Q Good morning, Mr. Robinson. How are you?

3 A Good morning. Okay.

4 Q Sir, how old are you?

5 A Twenty-three.

6 Q Where do you live?

7 A 318 Lee Place, Plainfield.

8 Q How long have you lived in Plainfield for?

9 A Eighteen years.

10 Q And where do you work?

11 A Cosmair.

12 Q Excuse me?

13 A Cosmair.

14 Q What do you do?

15 A Assembly line.

16 Q Did you once know a man named Marcus Benjamin?

17 A Yes, I did.

18 Q How did you know Marcus Benjamin?

19 A We were best friends.

20 Q And on the morning that he died, did you see him prior
21 to his death?

22 A Before?

23 Q Yes.

24 A Yes.

25 Q Where did you see him?

1 A I saw him in front of the house, 1102 West Third.

2 Q West Third Street?

3 A Uh-huh.

4 Q And what would Marcus be doing there at 1102 West
5 Third Street?

6 A Selling drugs.

7 Q How long did Marcus sell drugs there for?

8 A About two or three months.

9 Q And on the day you last saw him alive, was he selling
10 drugs at that time?

11 A Yes.

12 Q Did Marcus drive a car at that time?

13 A Yes.

14 Q Did he have a car with him the last time you saw him
15 alive?

16 A Yeah.

17 Q What kind of car was it?

18 A Blue Honda Accord.

19 Q Was it parked near where he was selling drugs?

20 A Uh-huh. Right in front of him.

21 Q Right in front of 1102?

22 A Yes.

23 Q Was he anywhere near his car the last time you saw him
24 alive?

25 A Yeah.

1 Q And when Marcus would sell drugs, would he sometimes
2 have his car with him?

3 A Sometimes.

4 Q Would he let people into his car when he was selling
5 drugs?

6 A Sometimes.

7 Q And would he keep the drugs in the car?

8 A No.

9 Q Would he keep the proceeds from the drug sales in the
10 car?

11 A If it was a lot of money, he would.

12 Q Where in particular in the car would he keep it?

13 A In the trunk.

14 Q When you last saw him alive, about what time of the
15 day, if you can recall, was it? If you can give an estimate?

16 A It had to be around 12 o'clock in the morning or after
17 'cause I had just did a party and I was coming from a party.

18 Q What do you mean you just did a party?

19 A 'Cause I D. J..

20 Q You D.J.'d that Saturday night?

21 A Uh-huh.

22 Q It was after midnight when you saw him?

23 A Yes.

24 Q That would be Sunday morning?

25 A Yes.

1 Q What did you and he talk about the last time you saw
2 him?

3 A Girls and then I told him me and my friend was going to get
4 something to eat. Did he want something. He said yeah. So he
5 counted his money and after he counted his money, he gave me
6 \$10 and told me what he wanted.

7 Q Do you recall how much money he counted out?

8 A About \$1100.

9 Q Do you know where he kept that \$1100 that day?

10 A In his trunk.

11 Q Did you in fact leave with his \$10 to get something to
12 eat?

13 A Yes.

14 Q Where did you go?

15 A White Castles.

16 Q Did you buy the food there?

17 A Yes.

18 Q Did you bring the food back to the area?

19 A Yes, I did.

20 Q Do you recall what time it was when you got back to
21 the area?

22 A No, I don't.

23 Q What was happening when you got back to the area?

24 A I saw the yellow tape around the area, like around the
25 trees and cop cars and a couple people standing out there but I

1 didn't see his car.

2 Q Where was Marcus?

3 A He was laying on the ground once I got out of the car.

4 Q That night did you see Marcus have a fight with
5 anybody over girls?

6 A Well, I wasn't there. You talking about after twelve
7 o'clock? No.

8 Q Did you see Marcus with any gun that day?

9 A No, I didn't.

10 Q Did you see anybody in the area with a gun that day?

11 A No.

12 Q Has anybody threatened you or offered you anything in
13 exchange for your testimony today?

14 A No.

15 Q I would like to show you some photographs. Would you
16 recognize Marcus' car if you saw it again?

17 A Yes.

18 Q I would like to show you what's marked S-72 for
19 identification. Was this the car you saw outside with Marcus
20 that day?

21 A Yes.

22 Q And S-73?

23 A Yes.

24 Q Do you know a guy named -- in this case named Jimbo?

25 A Yes.

1 Q How do you know Jimbo?

2 A We used to play basketball with him on Fourth and Monroe,
3 the playground.

4 Q Do you know if Marcus and Jimbo knew each other?

5 A Yeah, they knew each other 'cause Marcus used to play
6 basketball sometimes, too.

7 Q Do you know if he, Jimbo, ever lived in the area?

8 A Uh-huh. He lived on Morris Street. I think it's Morris,
9 by Second.

10 Q He lived near the area?

11 A Yes.

12 Q And if you know did he -- was Jim Baines aware -- was
13 Jimbo aware that Marcus sold drugs there?

14 A Yes.

15 MISS MacMULLAN: Thank you. No further questions.

16 THE COURT: Any questions?

17 MR. RUSSO: Yes.

18 CROSS-EXAMINATION BY MR. RUSSO:

19 Q How did Jimbo know that Marcus sold drugs?

20 A 'Cause the area is a drug area. The majority of everybody
21 that stands out there sells drugs.

22 Q Pretty much everybody in the area knew that Marcus
23 sold drugs, right?

24 A Yes.

25 Q You said Marcus was your best friend?

1 A Yes.

2 Q And you knew that sometimes he had his car nearby when
3 he sold drugs?

4 A Uh-huh.

5 Q And you knew that sometimes he kept -- if he had a
6 large sum of money, he kept it in the trunk of his car?

7 A Yes.

8 Q But he didn't keep drugs in his car?

9 A No.

10 Q When you went to the area that night, did you expect
11 to see Marcus there?

12 A Yes.

13 Q 'Cause you knew he would be selling drugs there,
14 right?

15 A Yeah.

16 Q But you weren't involved in selling drugs, were you?

17 A No.

18 Q Never were?

19 A Never were.

20 Q Now, you said you didn't see Marcus with a gun that
21 day; is that right?

22 A Yes.

23 Q Ever see Marcus with a gun?

24 A No, I haven't.

25 Q How long did you know Marcus?

1 A Since eighth grade. So that would be around when I was
2 twelve years old. About 11 years.

3 Q And how long was Marcus selling drugs, do you know?

4 A About two or three months that I know of.

5 Q Where was he selling drugs?

6 A On Morris Street. Well, between Morris and Halsey.

7 Q And was he selling drugs at that location for a couple
8 months you said?

9 A Yes.

10 Q Prior to that do you know if he was selling drugs
11 somewhere else?

12 A No, I don't. It was just back and forth, in and out of
13 jail.

14 Q Do you know whether -- do you know whether Marcus was
15 ever robbed before?

16 A No, he wasn't.

17 Q When Marcus sold drugs, it was usually late at night;
18 is that right?

19 A No, it would be in the daytime, too.

20 Q But on this particular day it was after midnight?

21 A He was out there all day that day 'cause I had saw him
22 earlier that day.

23 Q And you weren't surprised to see him out there late at
24 night, right?

25 A No.

1 Q And when you asked him if he wanted you to get him
2 food, he had to go into his car to get the money; is that
3 right?

4 A No, he didn't. He had the money in his pocket and then he
5 put the money in his car.

6 Q So he had \$1100 in his pocket?

7 A Uh-huh.

8 Q When did he put the money in his car?

9 A After he gave me the \$10.

10 Q How long were you gone?

11 A About -- I'd say about 20 minutes to a half hour.

12 Q When you -- when you saw Marcus the first time, was
13 anybody else with him?

14 A Outside?

15 Q Yes.

16 A Yeah.

17 Q Anybody you knew?

18 A Yeah.

19 Q Who was there?

20 A Can't think of his name. Mook friend. Quan.

21 Q And you know Mook as well?

22 A I've seen him. I don't know him, though.

23 Q Was he there?

24 A Yeah.

25 Q So Mook and Quan and Marcus were outside together?

1 A In front of 1102.

2 Q Was anyone else out there?

3 A Yeah, a couple houses down.

4 Q Was that anyone you knew?

5 A Yeah.

6 Q Who was that?

7 A A guy named Perk and a guy named Monty.

8 Q What about when you came back? By that time the
9 police had arrived?

10 A Uh-huh.

11 Q And were there people out on the street then?

12 A Just one guy that I knew.

13 Q Who was that?

14 A Anthony Mack.

15 Q Were there other people in the area that you didn't
16 know?

17 A It was three different people in the area but I didn't know
18 them.

19 MR. RUSSO: That's all that I have. Thank you.

20 MISS MacMULLAN: Nothing further, your Honor.

21 THE COURT: Thank you, Mr. Robinson. You my step
22 down.

23 THE WITNESS: All right. Thank you.

24 MISS MacMULLAN: The State's next witness is Mrs.
25 Elizabeth Wellman of Orange, New Jersey.

1 E L I Z A B E T H W E L L M A N, State's witness,
2 sworn.

3 DIRECT EXAMINATION BY MISS MacMULLAN:

4 Q Good morning, Mrs. Wellman. How are you?

5 A Fine.

6 Q Mrs. Wellman, where do you live?

7 A 646 Freeman Street, Orange, New Jersey.

8 Q How long have you lived there for?

9 A Five years or better.

10 Q Do you have a daughter?

11 A Yes, I do.

12 Q What is you daughter's name?

13 A Luciana.

14 Q How old is Luciana?

15 A Eighteen.

16 Q Does she live with you when she is not at school?

17 A Yes.

18 Q Is she at school during this period of the year?

19 A Yes, she is.

20 Q I am going to refer your attention, ma'am, back to
21 December 5th, 1993, Sunday night. Were you living at that
22 address that day?

23 A Yes, I was.

24 Q And did you go to the movies that day?

25 A Yes.

1 Q Did you, after the movies, come back to your house?

2 A Yes.

3 Q Do you remember what time you got back to the house
4 about?

5 A About 3:30, four o'clock, I guess.

6 Q Around that time?

7 A Yes.

8 Q Was anyone home when you arrived after the movies?

9 A Yeah, my daughter was home and two of her friends.

10 Q Your daughter, Luciana?

11 A Yes.

12 Q And two of her friends. Is that the first time you
13 met these friends?

14 A Yes.

15 Q What were their names, if you can recall?

16 A Smiley and I can't recall the other young man's name.

17 Q About Smiley, is that the first time you met Smiley
18 that day?

19 A Yes.

20 Q And when you saw them, where were they the first time
21 you saw them?

22 A In my living room watching a football game.

23 Q Were they with your daughter?

24 A Yes.

25 Q And did you have a conversation with Smiley and the

1 other person that was there?

2 A Yeah, we were talking about the football game.

3 Q And what else were you talking about with Smiley, if
4 you can recall?

5 A You know, general conversation. We were really talking
6 about the game basically.

7 Q Did he bring any car to your home that day?

8 A Yes, he did.

9 Q Do you recall where he parked it?

10 A In the back of my house.

11 Q Could you describe for the jury what your house looks
12 like in relation to the street and your backyard and driveway?

13 A Well, you have to drive up in the driveway to see where the
14 car was parked. You can't see the car from the street.

15 Q That back part of your driveway?

16 A Right, you couldn't see.

17 Q If the car is parked there, you can't see it from the
18 street?

19 A No.

20 Q When you were driving home from the movies that day,
21 did you see the car in your backyard before you got into the
22 house?

23 A Yes.

24 Q Do you remember what kind of car it was?

25 A A Honda.

1 Q And did Smiley say anything to you or ask you anything
2 concerning that Honda?

3 A He asked me if he could leave it in my backyard because he
4 had got it from his aunt and he lived in a rough neighborhood
5 he said down in Newark and they steal a lot of cars and he
6 wanted to know if he could leave it there until the next day
7 when he got his papers right on the car.

8 Q Did he show you the papers for the car?

9 A Yes.

10 Q Did you look at the papers?

11 A Yes, and the last name was a woman's name. Can't recall
12 her first name but her last name was Murphy.

13 Q What did you say to him when he asked you if he could
14 leave that car there?

15 A Well, I asked him if it was stolen and he said no.

16 Q Why did you ask him if that car was stolen?

17 A Well, first time coming to my house, he doesn't know me.

18 You know, I just wanted to know if the car was stolen.

19 Q Is that the first time you ever met him?

20 A Yeah.

21 Q Was that the first time you ever heard of Smiley?

22 A No, he called my house frequently.

23 Q And who would he speak to when he called your house
24 frequently?

25 A My daughter.

1 Q And did you ever give him an answer whether or not he
2 could leave the car at your house?

3 A No. I told him no. I didn't know him.

4 Q And what did you do-at that point after you told
5 Smiley he could not leave the Honda at your house?

6 A Well, I went on back in the back of the house in the
7 kitchen and my bedroom and that was it. You know, I thought it
8 was over.

9 Q And is that the last time you saw Smiley that day?

10 A Yes.

11 Q And how long would you say you saw him that day when
12 he was at your house?

13 A Well, he was in my house for approximately an hour but
14 physically seeing him maybe about fifteen, 20 minutes when we
15 were just messing around talking about the game and stuff when
16 I first got home.

17 Q Was it a well-lit area where he was in your house and
18 where you were seeing him?

19 A Yes.

20 Q And did you get a good look at him?

21 A Yes.

22 Q Okay. After you went to the back, is that when you
23 left Luciana with the two people, Smiley and his friend?

24 A Right.

25 Q Since -- eventually do you remember what his friend

1 looked like?

2 A No. They all look alike, you know.

3 Q Do you know if he was white or black?

4 A Well, he's black and they all wear big clothes hanging off.
5 You know, that type of thing. They all have the same
6 appearance.

7 Q After you went in the back and you left Luciana with
8 Smiley and his friend, what happened next that evening, if you
9 can recall?

10 A Well, my daughter told me she was leaving because her ride
11 for church came to pick her up for her to go to church that
12 night.

13 Q What time did your daughter leave for church that
14 night?

15 A It had to be between 6:30, seven o'clock.

16 Q And was Smiley and his friend still there?

17 A No, she said -- I asked her where her friends were. She
18 said they were gone. They caught a cab.

19 Q Excuse me?

20 A She said they were gone. They caught a cab and she went
21 out the door.

22 Q You didn't see them when they left?

23 A No.

24 Q Did they leave the car?

25 A Yes, they did.

1 Q And do you know if they left the papers in the house?

2 A Well, I didn't know until later that they left the papers
3 in the house when I was in my daughter's room and they were on
4 her dresser.

5 Q Were they the same papers that Smiley gave you?

6 A Yes.

7 Q When you had the papers in the house with the car and
8 the car is in the backyard, Smiley and his friend are gone and
9 your daughter's gone, are you left in the home by yourself?

10 A Well, my friend was there.

11 Q Besides your friend were you left in the home by
12 yourself?

13 A Yes.

14 Q What did you do at that point with this strange car
15 parked behind your house?

16 A I called the police and asked them if I gave them a license
17 plate number, if they could tell me if the car was stolen and
18 they did.

19 Q Why did you call the police?

20 A Just a feeling. Just a gut feeling. You know, parental
21 instinct. Something is wrong.

22 Q Something's wrong?

23 A Yes, just a gut feeling.

24 Q Did you learn that the car was in fact stolen?

25 A Yes, I did.

1 Q Did the police come to the house?

2 A Yes, instantly.

3 Q And what did you do with the papers that you found on
4 your daughter's dresser which were the same papers Smiley had
5 given to you earlier?

6 A I gave them to the lady policeman that came.

7 Q During this investigation did you give a sworn
8 statement on December 8th, 1993 to Detective Dean Marcantonio
9 about what you just told the jury?

10 A Yes.

11 Q Incidentally, how did Dean Marcantonio treat you?

12 A Nice.

13 Q Was he respectful?

14 A Yes, very.

15 Q Did he ever pressure you into cooperating or giving a
16 statement?

17 A No, he didn't.

18 Q And after you gave a statement on the 8th, did they
19 show you a photo array the next day?

20 A Well, I don't know if it was the next day but they called
21 me a lot and they did show me pictures. I don't recall which
22 day it was.

23 Q All right. Did they show you a photo array on
24 December 9th, 1993, if you can recall?

25 A If that was the date, yes, they did show it to me.

1 Q Okay. What did they say to you when they showed you
2 the photo array, if you remember?

3 A What did they say? They asked me if I could -- did anybody
4 look familiar, you know.

5 Q Did they hint to you which one to pick out?

6 A No.

7 Q And when you looked at the photo array, did you
8 recognize anybody?

9 A Yes.

10 Q Who did you recognize?

11 A Smiley.

12 Q As the man that asked to leave the car at your home
13 that Sunday night?

14 A Right.

15 Q And after you recognized Smiley's photograph in the
16 photo array, did you write your name and the date?

17 A Yes, I did.

18 Q I would like to show you what's been marked S-17 for
19 identification. Is that the photo array that Marcantonio
20 showed you at this time?

21 A Yes.

22 Q Which picture is Smiley?

23 A Number three.

24 Q I show you the inside and direct your attention to
25 where I am pointing. Do you recognize the signature?

1 A Yes.

2 Q Is that your signature?

3 A Yes.

4 Q What is the date?

5 A 12/9/93.

6 Q Would that refresh your memory that being the date
7 when he showed you this?

8 A Yes.

9 Q Did you then initial -- put your initials and date on
10 the other five photographs that you saw?

11 A Yes.

12 Q Okay. Is this in substantially the same condition as
13 it was when Detective Marcantonio showed it to you?

14 A Yes, right.

15 Q Okay. Mrs. Wellman, when you look around the
16 courtroom, do you recognize anybody in court today?

17 A Yeah.

18 Q How do you recognize?

19 A I don't know his name. That young man.

20 Q Which young man?

21 THE COURT: There is only one young man at that table.

22 MR. RUSSO: Thank you, your Honor.

23 THE COURT: You're welcome, Mr. Russo.

24 Identifies the defendant.

25 Q And who is that? Who do you believe that to be?

1 A Smiley.

2 Q Mrs. Wellman, I would like to show you some
3 photographs. I ask you if you recognize them.

4 MISS MacMULLAN: If I may have a couple additional
5 photographs marked, your Honor?

6 THE COURT: Marked in addition to the ones we have?

7 MISS MacMULLAN: Yes, sir.

8 THE COURT: S-80.

9 MISS MacMULLAN: Three photographs, your Honor.

10 (Three photographs marked S-80, 81 and 82 for
11 identification.)

12 Q Okay. Let's start first with S-80 for identification.
13 I am showing you what appears to be a three by five color
14 photograph. Do you recognize what that shows?

15 A My house.

16 Q Excuse me?

17 A My house.

18 Q Which part of your house?

19 A Well, the front part with the driveway going and you drive.

20 Q This accurately shows your house in relation to the
21 driveway?

22 A Right.

23 Q The driveway runs along the side of your house?

24 A Yes, it does.

25 Q What is behind the house?

1 A More driveway.

2 Q Is that where cars can be parked?

3 A Right.

4 Q Showing you what has been marked S-81 for
5 identification, a color three by five photograph, do you
6 recognize what that shows?

7 A Back of my house.

8 Q Okay. Do you see in this photograph where that Honda
9 that the defendant brought to your home was parked?

10 A Yes.

11 Q Okay. Could you point in the photograph where it is?

12 A Right here (indicating).

13 Q Where this other blue car is?

14 A Right.

15 Q Could you please put an X on this photograph with your
16 initials to indicate where the car was parked when you came
17 home that Sunday night from the movies?

18 A (Witness complies.)

19 MISS MacMULLAN: Witness has done so for the record.

20 Q Showing you lastly what has been marked S-82 for
21 identification, what does that show?

22 A My living room.

23 Q Okay. Is that where Smiley and his friend were
24 seated?

25 A Yes.

1 Q And the lighting conditions as shown in this
2 photograph, are they the same, substantially the same, as they
3 were on the day in question?

4 A Yes.

5 Q Would you describe it as a well-lit area?

6 A Yes.

7 Q And I would like to show you some documents.

8 Now, you say that Smiley, the defendant, gave you
9 papers to the car?

10 A Yes.

11 Q And that you subsequently gave them to the officer
12 that arrived?

13 A Right.

14 Q Do you remember what that officer looked like?

15 A She was a black police lady in a uniform.

16 Q I would like to show you four exhibits. S-13, 14, 15
17 and 16. I ask if you recognize them. First 13. Do you
18 recognize it?

19 A Yes.

20 Q What is it?

21 A Registration.

22 Q Is that the registration that the defendant gave you
23 on the day in question?

24 A Yes.

25 Q Okay. You said you remembered the ladies last name?

1 A Murphy.

2 Q Is that indicated on S-13?

3 A Yes, it is.

4 Q I would like to show you what's been marked S-14 for
5 identification. What does that show?

6 A Insurance.

7 Q Was that also one of the documents the defendant gave
8 you?

9 A Yes.

10 Q Showing you what has been marked S-15 for
11 identification, is that also another document the defendant
12 gave you?

13 A Right.

14 Q What is that, if you can recall?

15 A It's a pink card. I guess when you buy a new car, it's the
16 kind of card you have.

17 Q Lastly, showing you what's been marked S-16 for
18 identification, do you recognize it?

19 A It's the title.

20 Q Is that the title to the car?

21 A Yes.

22 Q That the defendant gave you?

23 A Yes.

24 MISS MacMULLAN: Thank you. No further questions.

25 THE COURT: Any questions?

1 MR. RUSSO: No questions, your Honor.

2 THE COURT: That you, Mrs. Wellman. You may step
3 down. Please watch your step.

4 THE WITNESS: Okay.

5 THE COURT: Call your next witness, please.

6 MISS MacMULLAN: Yes, Judge. The State calls Anthony
7 Mack have Plainfield, New Jersey.

8 A N T H O N Y M A C K, State's witness, sworn.

9 DIRECT EXAMINATION BY MISS MacMULLAN:

10 Q Good morning, Mr. Mack.

11 A Good morning.

12 Q Sir, how old are you?

13 A Twenty-six.

14 Q What town do you live in?

15 A Plainfield.

16 Q How long have you lived in Plainfield?

17 A Ten years.

18 Q And have you ever lived at 1102 West Third Street in
19 Plainfield?

20 A Yes.

21 Q A little louder, please.

22 A Yes.

23 Q If you could speak into the mike, sir.

24 A All right.

25 Q When did you live at 1102 West Third Street?

1 A August. From August, '93. August, '93 until --

2 Q Until when?

3 A June of '94.

4 Q June, '94?

5 A Yes.

6 Q Referring your attention, sir, to Saturday evening,
7 December 4th, into Sunday morning, December 5th, you lived
8 there at that time?

9 A Yes.

10 Q Who did you live with at that time?

11 A Eva Butler.

12 Q Does she have a son named Quan Collier?

13 A Yes.

14 Q Did you see a man named Marcus Benjamin that day?

15 A Yes.

16 Q How did you know Marcus Benjamin?

17 A From school and friendship.

18 Q How long had you known Marcus Benjamin?

19 A I know Marcus for about four years.

20 Q Four years?

21 A Yeah.

22 Q And did you come home that night?

23 A Yes.

24 Q Saturday night.

25 Do you recall what time you got home that night?

- 1 A Around 12:30.
- 2 Q That would be 12:30 going into Sunday morning?
- 3 A Yes.
- 4 Q Was Marcus there?
- 5 A Yes.
- 6 Q Where was he?
- 7 A He was standing out in front of the house.
- 8 Q What was he doing?
- 9 A He was selling drugs.
- 10 Q And did Marcus have a car at that time?
- 11 A Yes.
- 12 Q Was his car there?
- 13 A Yes.
- 14 Q What kind of car was it?
- 15 A Blue Honda Accord.
- 16 Q Did you speak to Marcus at that time?
- 17 A Yes.
- 18 Q And how long did you stay outside with Marcus?
- 19 A About 10, 15 minutes.
- 20 Q And after spending 10, 15 minutes with Marcus, did you
- 21 go inside the house?
- 22 A Yes.
- 23 Q Where did you go once you left the house?
- 24 A I went in the living room and laid down.
- 25 Q And once you laid down in the living room, did

1 anything happen after during the evening?

2 A Yeah. Quan and Mook ran in the house and said stick-up
3 kids and they ran out the back. They ran in the front and ran
4 out the back door and, you know, I was like getting ready to
5 get up. I was getting ready to get up to close the door but
6 then I heard gunshots. So I laid back on the couch and waited
7 until the gunshots stopped and a car pulled off. I went to the
8 door and I looked out. Marcus car was gone but then, you know,
9 I went to the other door and that's when I seen him laying
10 there.

11 Q Who laying there?

12 A Marcus.

13 Q When you saw Marcus laying there, did you go towards
14 him?

15 A No, I went back in the house and put my boots on and called
16 the police. Then I went outside.

17 Q And when you went outside, did you check Marcus?

18 A Yeah, I pulled his shirt to see if, you know, he's all
19 right but I seen blood around his neck and coming out the back
20 of, you know, behind his head.

21 MISS MacMULLAN: Witness indicating the area around
22 the throat and back of the head --

23 THE WITNESS: Yeah.

24 MISS MacMULLAN: -- with his hands.

25 Q Where did Mook and Quan run to, if you know?

1 A They ran down the basement.

2 Q Down towards the basement?

3 A Yeah.

4 Q And did the police arrive at the area?

5 A Yeah. After I checked on him, I ran back in the house to
6 call the ambulance. By that time the police was there. They
7 had pulled up outside.

8 Q How much time passed after you saw that Marcus was
9 shot to the police arrived?

10 A About three minutes.

11 Q Relatively quickly?

12 A Yes.

13 Q And did you speak to the police when they arrived at
14 the scene?

15 A Yes.

16 Q And did you give a sworn statement to the police that
17 day, December 5th, at approximately 4:25 a.m.?

18 A Yes.

19 Q And was the house -- excuse me.

20 Did the house have any bullet holes in it after you
21 heard the gunshots?

22 A Yes.

23 Q Where were the bullet holes?

24 A One through the window. It came through the window and
25 went on the wall, in the living room wall.

1 Q Did you show the police officers this bullet hole?

2 A Yes.

3 Q And did you give the police permission to search your
4 home for the projectile in your living room?

5 A Yes.

6 Q Did they search your home?

7 A Yes.

8 Q Were they able to find the projectile?

9 A No.

10 Q Are you -- as of the day of the incident, December
11 5th, how long had you been living there about?

12 A About three months.

13 Q And were you familiar --

14 A From August to December.

15 Q August to December?

16 A Yeah.

17 Q As a result of living there for about three months had
18 you ever been on the side of the house?

19 A Yes.

20 Q Have you ever been in the backyard?

21 A Yes.

22 Q Are you familiar with the back area behind those homes
23 on West Third Street?

24 A Yes. I used to live at 1104 before that and I been around
25 there ever since I moved to Plainfield. Been around that area.

1 So I know it real good.

2 Q Okay. I would like to show you some photographs.

3 THE COURT: Haven't we done enough of that? Haven't
4 we seen enough people in the backyards and don't you have
5 enough proof?

6 MISS MacMULLAN: Judge, I agree as to the other homes
7 but no one testified as to the back of this home. It's just a
8 few, Judge.

9 Q Showing you a series of photographs S-58 through S-62.

10 THE COURT: Through S-62?

11 MISS MacMULLAN: S-58 to S-62.

12 Q Showing you first what's been marked S-58, what does
13 that show?

14 A Side of the house.

15 Q Which house?

16 A 1102.

17 Q Is that how the house looked on the day in question?

18 A Yes.

19 Q There was no fence up alongside the house?

20 A No.

21 Q Showing you what has been marked S-59 for
22 identification, what does that show?

23 A The back of the house. Back side.

24 Q And what view does that show?

25 A The back.

1 Q The back of the house?

2 A Yeah, the back, from the back to the side, you know. It's
3 the back. Standing in the backyard but it's the side.

4 Q Looking towards the street?

5 A Yeah, towards Third Street.

6 Q And what does S-60 show?

7 A That's the backyard.

8 Q What does S-61 show?

9 A That's Morris Street and, you know, a hole in the gate in
10 the back.

11 THE COURT: What street?

12 MISS MacMULLAN: Morris Street.

13 THE WITNESS: Morris.

14 Q Is there an opening in the fence on Morris Street into
15 the backyard of 1102 West Third Street?

16 A Yes.

17 Q Is that what that shows?

18 A Yes.

19 Q And the last picture, S-62, what does that show?

20 A That show the back on Morris Street, the whole thing and
21 the hole again.

22 Q You would be on Morris Street looking at the hole in
23 that fence?

24 A Yes.

25 Q And in particular how high is that fence?

1 A About three feet.

2 Q Do all these pictures fairly and accurately show what
3 the house looked like on the day of the shooting?

4 A Yes.

5 Q Mr. Mack, when you arrived at the house at about
6 12:30, did you see any fight going on with Marcus over girls?

7 A No.

8 Q Did you see Marcus with a gun?

9 A No.

10 Q Did you or anybody else have a gun?

11 A No.

12 Q Mook or Quan?

13 A No.

14 Q Mr. Mack, you have prior convictions all regarding
15 drugs; isn't that true?

16 A Yes.

17 Q January, 1989 you were placed on probation for three
18 years for possessing cocaine?

19 A Yes.

20 Q And in March, '92 you have a conviction for possession
21 of cocaine with the intent to distribute?

22 A Yes.

23 Q And you had to serve 364 days in the county jail?

24 A Yes.

25 Q And recently on September 29, 1994 you were sentenced

1 to a disorderly persons offense and placed on probation for a
2 year for possession of drug paraphernalia?

3 A Yes.

4 Q And you were arrested on August 8th, 1994 for that
5 offense?

6 A Yes.

7 Q Okay. During any -- I guess the last one, September,
8 '94 did I ever intervene on your behalf concerning that charge?

9 A No.

10 Q Did anybody from the Prosecutor's Office intervene on
11 your behalf for that charge?

12 A No.

13 Q Have you been offered anything in exchange for your
14 testimony today?

15 A No.

16 Q On the day of the incident did you know somebody by
17 the nickname Jimbo?

18 A Yes.

19 Q Who is Jimbo? What is his name?

20 A Jimbo is James Baines.

21 Q James Baines?

22 A Yes.

23 Q And as of this day do you know if James Baines ever
24 lived in the area?

25 A He live one block away.

1 Q Excuse me?

2 A He live one block away.

3 Q Which street?

4 A On Manson. Manson and Third.

5 Q He lived in the area of Manson and West Third?

6 A Yes.

7 Q And that is one block away?

8 A From Morris, yeah.

9 Q Do you know if James Baines and Marcus knew each
10 other?

11 A Yeah.

12 Q Do you know if he, James Baines, would be aware that
13 Marcus was selling drugs out there?

14 A Yes.

15 Q And have you ever seen James Baines behind the homes
16 on West Third Street?

17 A Yes.

18 Q And that area back there, is that an open area?

19 A Yes.

20 Q And James Baines would have had the opportunity to
21 know that?

22 A Yes.

23 MISS MacMULLAN: Thank you. No further questions.

24 THE COURT: Cross-examine.

25 CROSS-EXAMINATION BY MR. RUSSO:

1 Q Mr. Mack, where did Marcus Benjamin live?

2 A He lived on West Fifth Street.

3 Q And you had known him for four years you said?

4 A Yes.

5 Q And you knew that he was selling drugs in front of the
6 house that you lived at, right?

7 A Yes.

8 Q And you also knew that Quan and Mook helped him sell
9 drugs, didn't you?

10 A No, I didn't know they was helping him.

11 Q Did you know that Quan sold drugs?

12 A No.

13 Q Did you know that Mook sold drugs?

14 A No.

15 Q Did you ever see -- at any time did you ever see Mook
16 with a gun?

17 A No.

18 Q Did you ever see Quan with a gun?

19 A No.

20 Q Did you socialize with Marcus? Go out with him, you
21 know, socially to clubs and stuff like that?

22 A Yes.

23 Q You did? So he was a friend of yours?

24 A Yes.

25 Q Did Marcus own a gun?

1 A Not that I know of.

2 Q How often did Marcus sell drugs at that location? Do
3 you know?

4 A Quite often.

5 Q This is a residential area, right?

6 A Yes.

7 Q There -- the house you lived at is on the corner; is
8 that right?

9 A Yes.

10 Q And if you go down the block, there are other houses
11 on the street, right?

12 A Yes.

13 Q What about across the street?

14 A Yes.

15 Q Are there houses directly across the street from 1102?

16 A It's not directly across but it's facing McDowell.

17 Q When did you see the bullet hole in the window? When
18 did you first see that?

19 A Well, when they came through, I was laying on the couch and
20 when it came through, the glass hit me in my face. That's when
21 I looked, you know, after, you know, everything had happened.

22 Q So you knew immediately that a bullet had come through
23 the window?

24 A Yes.

25 Q And did that wake you up?

1 A No. When Quan and Mook ran through the house, that woke me
2 up.

3 Q And the shot didn't come until afterwards, right?

4 A Yes.

5 Q So is it fair to say by the time you got up and went
6 outside, everybody was gone, right?

7 A Yes.

8 Q You never saw anybody who was involved in the
9 shooting, right?

10 A No.

11 Q You didn't see the blue Honda leave the scene, did
12 you?

13 A No.

14 Q It was already gone by the time you got there?

15 A Yes.

16 Q Did you hear it leave? Did you hear a car speed off?

17 A Yeah, I heard a car leave. That's when I came to the door,
18 after I heard the car leave.

19 Q Did you see anybody else outside?

20 A No, nobody but Marcus.

21 Q You didn't see anybody running up the street, anything
22 like that?

23 A No.

24 Q When you saw Marcus in the street, did you notice any
25 articles of clothing or anything like that in the street?

1 A No.

2 Q What part of the window was struck by the shot?

3 A The top, top, like in the middle.

4 Q Is the house at 1102 West Third Street on the same
5 level as the street or is it on a hill?

6 A It's up a little bit.

7 Q I show you what's been marked S-43. This is a picture
8 of 1102 West Third Street, right?

9 A Yes.

10 Q Would you agree with me that the sidewalk in front of
11 the house is pretty much on the same grade level as the street,
12 right?

13 A Yes.

14 Q Now, in order to get -- there's a little sidewalk,
15 there's a little walkway up to the house, right?

16 A Yes.

17 Q You have to go up two steps to get to that walkway,
18 right?

19 A Yes.

20 Q And then there is a flight of stairs in front of the
21 house, right? A porch?

22 A Yes.

23 Q And do you know how many steps are on that porch?

24 A About five.

25 Q Five steps. And so you have to go up those five steps

1 to go through the door, right?

2 A Yes.

3 Q And including the two steps from the sidewalk, right?

4 A Yes.

5 Q That would be seven steps, right?

6 A Yes.

7 Q So you would agree with me, wouldn't you, that the
8 window is not on the same level as the street, right? It's
9 elevated?

10 A Yes.

11 Q And the -- which side of this house did you live on?

12 A This side (indicating).

13 Q Pointing to the left side of the picture?

14 A Yes.

15 Q Which of the windows was hit by the shot?

16 A The second one.

17 Q Can you point to it?

18 A Right here (indicating).

19 Q You're indicating the second window to the left of the
20 porch; is that right?

21 A Yes.

22 Q It was hit near the top of the window; is that right?

23 A Up here.

24 Q Okay. Let me show you S-40. This is a picture -- is
25 this a close-up of that window?

1 A Yes.

2 Q And does it show the bullet hole in the window?

3 A Yes.

4 Q And someone has placed a red circle in the area of the
5 bullet hole, right? In that picture?

6 A Yes.

7 Q Let me show you S-42. What is this a picture of?

8 A Bullet hole.

9 Q And that's a bullet hole in the wall, right?

10 A Yes.

11 Q Is that wall across from the window?

12 A Directly.

13 Q Directly across?

14 A Yes.

15 Q How far up in the wall from the floor is that bullet
16 hole?

17 A I don't know. About -- about six feet.

18 Q Okay. And when you're inside the room, how tall is
19 the window?

20 A I don't know. It's about the same height.

21 Q Would you have to reach up over your head to reach the
22 top of the window?

23 A Yeah, a little bit.

24 Q Mr. Mack, did you ever sell drugs with Marcus
25 Benjamin?

1 A No.

2 Q Did you ever help him in any way selling drugs?

3 A No.

4 Q Looking out for him or something like that?

5 A No.

6 Q Did he come in -- well, while he was selling drugs at
7 that location, would he come in your house from time to time?

8 A Sometime.

9 Q You ever sell drugs?

10 A I have in the past.

11 Q How long ago?

12 A Like '92, '93.

13 Q But you weren't involved in selling drugs at that
14 time; is that right?

15 A No.

16 MR. RUSSO: Can I have one moment, your Honor?

17 THE COURT: Sure.

18 (Pause.)

19 Q When this shot came through your window, how did you
20 react?

21 A It scared me.

22 Q Did you jump up?

23 A No, I was already getting up and when it came through, I
24 laid back down on the couch.

25 Q How long from the time you heard the shot or saw the

1 shot with the glass coming through until you went to the door?

2 A What happened?

3 Q How long did it take from the time you heard the shot
4 or saw the glass and went to the door to see what happened?

5 A It took until the car pulled off.

6 Q How much -- how long in time was it?

7 A About two minutes, three minutes.

8 Q How many shots did you hear?

9 A I heard about three or four.

10 Q Did the shots -- was the shot that broke the glass the
11 first shot or did you hear shots before that?

12 A I heard one shot before. Then I heard like two or three
13 after.

14 Q One shot before and then a shot that broke the window
15 and two or three after?

16 A No. One shot before. Then I heard -- it was like pow,
17 pow, pow, like that.

18 Q So you heard four shots?

19 A Yeah, I said three or four.

20 Q Which shot broke the window?

21 A About the second.

22 MISS MacMULLAN: Sorry. Which one?

23 THE COURT: About the second.

24 THE WITNESS: About the second.

25 Q And when you went to the door, you didn't see anybody

1 except Marcus; is that right?

2 A Yes.

3 MR. RUSSO: That's all that I have.

4 MISS MacMULLAN: Nothing further, your Honor.

5 THE COURT: Thank you, Mr. Mack. You may step down,
6 sir. Please watch your step.

7 MISS MacMULLAN: The State's next witness is Charles
8 Jackson, Plainfield, New Jersey.

9 C H A R L E S J A C K S O N, State's witness, sworn.

10 DIRECT EXAMINATION BY MISS MacMULLAN:

11 Q Good morning, Mr. Jackson. How are you?

12 A Good morning.

13 Q I wonder if you could please concentrate and speak
14 into the mike so we can all hear you.

15 How old are you, Mr. Jackson?

16 A Sixty.

17 Q Where do you live?

18 A 220 Monroe Avenue, Plainfield.

19 Q Excuse me?

20 A 220 Monroe Avenue, Plainfield.

21 Q And how long have you lived there for?

22 A Oh, I bought the house in '68 from my mother but I be there
23 about eight or nine months but I be in the neighborhood all
24 that time. I am remodeling the house with my mother.

25 Q How many years have you lived in that neighborhood of

1 Monroe Avenue?

2 A Off and on ever since 1968.

3 Q Referring your attention to the morning of December
4 5th, 1993, did you live in that house?

5 A I was living there then, yes.

6 Q Is that house located at the intersection of West
7 Third and Monroe?

8 A It's in between Second and Third but it's more towards
9 Second Street. It's in the middle. In the middle of the
10 block.

11 Q And at approximately 1:30 in the morning were you
12 outside on Monroe that day?

13 A Yes.

14 Q Where were you, sir?

15 A I just had come down Third and my son-in-law and I had -- I
16 had went and got some beer.

17 Q And where were you getting the beer from?

18 A From a bootleg store down the street.

19 Q And where was that located?

20 A Up by Lee and Third Street.

21 Q Lee and Third Street?

22 A Yes.

23 Q Okay. Were you ever at the intersection of Monroe and
24 West Third Street near a phone booth?

25 A Yes.

1 Q Can you tell the jury about that?

2 A Yes. I stopped to use the phone to call my daughter and
3 let her know my son-in-law, her husband, was with me, you know,
4 and don't get at him when he come home.

5 Q That is at the intersection of West Third and Monroe?

6 A Yes.

7 Q Did you hear anything when you were on the phone?

8 A Yes. I heard three shots and I backed -- I backed up from
9 the phone and I heard a boom, boom, boom real loud so --

10 Q Which direction was this three gunshots coming from?

11 A Down by Darrow and Morris.

12 Q Excuse me?

13 A Down by Darrow and Morris.

14 Q Darrow and Morris?

15 A Yes.

16 Q Is that near West Third Street?

17 A Yes, that's it, yes.

18 Q And after you heard the three gunshots, did you see
19 anything after that?

20 A Yes. I saw a fellow run from Darrow towards Morris and I
21 heard him holler out in a holler voice and like leaning. He
22 was like leaning like this running (indicating).

23 THE COURT: Indicating leaning forward.

24 A Yes, running towards Morris and a few minutes later I seen
25 him come cross the street at the intersection by Manson and

1 Third and once he stepped across Third into Manson he fell.

2 Q So he fell on Manson Place?

3 A Manson Place he fell.

4 Q Is that near the intersection of Manson and West
5 Third?

6 A Yes.

7 Q And when you say he came from Darrow, how many blocks
8 away from Manson and West Third did you see him first running?

9 A I guess Morris next and then Darrow. Darrow runs opposite
10 of Morris, I think. Darrow on the left and Morris on the right
11 and he had to run from -- he had to run from Darrow over to
12 Morris. He had to come through the back way.

13 Q Are you saying Darrow or McDowell?

14 A I am sorry. McDowell.

15 Q When you say "Darrow", you meant McDowell?

16 A Yes.

17 Q He was running from McDowell?

18 A Yes, McDowell.

19 Q Towards Morris?

20 A Morris, yes.

21 Q And then you saw him running from Morris down to
22 Manson?

23 A I didn't see him no more until he come down Manson across
24 Third because, see, that's like a back way over there. I don't
25 know. I ain't got through that way but that's the way he had

1 to come and then come down. I'm familiar all back through in
2 there. He had to come through the back way.

3 Q Did you go over to the man when you saw him near the
4 intersection of Manson and West Third?

5 A Did I what now?

6 Q Did you go over to the man?

7 A Not right then. The first thing I did was the girl had
8 come up the street. Khahlia came up the street screaming and
9 hollering and --

10 Q Was she with anyone?

11 A Yes, she with another girl.

12 Q Who is Khahlia?

13 A Khahlia is Fred Bishop's daughter, friend of mine and --

14 Q Where did those girls live at the time, if you knew?

15 A Second Street.

16 Q South Second Street?

17 A Khahlia live South Second Street, yes.

18 Q After you saw Khahlia and the other girl on South
19 Second Street, did you then go towards the man that fell on
20 Manson?

21 A Not then. I grabbed her by the hand 'cause she was
22 screaming and hollering and shaking and I -- somebody had
23 already -- the other girl was on the phone calling the police
24 but somebody had already called them 'cause when I looked
25 around, they was coming down real fast. I got her by the hand

1 and stepped out into the street to wave him down and he
2 stopped. But he said, Pop, I don't have time to stop and talk
3 to you now. Come down. I got a man down on Manson. I got a
4 man down on Morris and that's -- I saw the man down there.
5 That's when I walked towards Manson with her.

6 Q Okay. You did walk over to the man after the police
7 came?

8 A Yes.

9 Q Okay. Did you recognize the man that was down on
10 Manson Place?

11 A Yes, I knew him.

12 Q Okay. Do you know his name?

13 A I don't know his name but he comes to the store in and out
14 all during the week. Many, many times I've seen him but just
15 to know his name but I didn't know him. I knew his face.

16 Q Were medical personnel called to the scene?

17 A Yes.

18 Q Did they take the man away?

19 A Yes.

20 Q Did you give a statement then to the police at 2:30 in
21 the morning that same morning?

22 A Yes.

23 Q And I would like to show you a photograph. You say
24 you were at a phone booth at the intersection of Monroe and
25 West Third Street?

1 A Yes.

2 Q Showing you what's marked S-47 for identification, do
3 you recognize?

4 A Yes, I was on the phone but I stepped back out here
5 (indicating).

6 Q This is the phone booth you were at at that time?

7 A Yes, that's it.

8 Q Okay. And this accurately shows what it looked like
9 on the day in question?

10 A Yes.

11 Q Okay. When you gave your statement at 2:30 in the
12 morning, did anybody threaten you into giving a statement or
13 force you?

14 A No, no.

15 Q Or promise you anything in exchange?

16 A No, no.

17 Q Mr. Jackson, you've had convictions for drugs; is that
18 correct?

19 A Yes, yes.

20 Q You used to use drugs, Mr. Jackson?

21 A Yes. I been off about four years now.

22 Q Excuse me?

23 A I been off drugs four years.

24 Q For about four years?

25 A Four years, yes.

1 Q Referring your attention to April, 1990 do you have
2 four different convictions for possession of cocaine?

3 A Yes, yes, yes.

4 Q And back in June, '92 do you have two more convictions
5 for possession of cocaine?

6 A Yes, yes.

7 Q You were sent to prison for four years?

8 A Yes.

9 Q What time did you get out? Do you remember when you
10 got paroled?

11 A Yes. I come home May the 18th of '93.

12 MISS MacMULLAN: No further questions.

13 THE COURT: Any questions?

14 MR. RUSSO: Yes, I do have a couple.

15 CROSS-EXAMINATION BY MR. RUSSO:

16 Q Mr. Jackson, when you were first questioned by the
17 police, did you deny knowing the girls?

18 A I told them I know her face but I didn't know her name. I
19 couldn't remember 'cause she had a funny name. She be's at my
20 daughter's house all the time.

21 Q But you did know Khahlia's name, right?

22 A I didn't know. Sometime I know her name but I forget it
23 when I don't see her for awhile. I couldn't -- I couldn't
24 think of it.

25 Q She was your friend's daughter, right?

1 A Yeah, Fred Bishop.

2 Q Did you initially tell the police that you didn't
3 remember her name 'cause you were trying to protect her in some
4 way?

5 A Protect her?

6 Q Yes.

7 A No, I wasn't trying to protect her. I showed them where
8 she live.

9 Q Did she tell you --

10 MISS MacMULLAN: Objection to any out-of-court
11 statement, your Honor.

12 Q Did you -- did you know -- was there another girl with
13 her?

14 A Yes, there was.

15 Q Did you know her name?

16 A No, I didn't know her name.

17 Q When you saw this man who had been shot, did you see
18 anybody else in the street?

19 A No, no.

20 Q Did you remember -- do you remember making a statement
21 to the police where you indicated that the man who had been
22 shot was being chased by somebody?

23 A Yeah, but you couldn't tell that far down. I couldn't tell
24 who it was. They asked me did I see who it was. I couldn't
25 tell. I'm on Monroe Avenue and this night and you got the

1 light shining. How could I know who it was?

2 Q How far away was he when you saw him?

3 A You have Manson and Morris. And it's night.

4 Q How far away?

5 A That's a good two blocks. Two blocks. Two.

6 Q Are you saying that you did see somebody else in the
7 street or you didn't?

8 A Well, I couldn't make it out. Like, like on that side like
9 a shadow but I only noticed him hollering going across the
10 street and I saw him a few minutes later when he come back
11 across Third and Manson and fell.

12 Q So the only person you saw was the man who was shot;
13 is that what you're saying?

14 A That's about it.

15 Q Excuse me?

16 A Yes.

17 Q Did you tell the police that you didn't -- that you
18 didn't initially tell them who these girls were because you
19 didn't want to get them in trouble?

20 A Well --

21 Q Isn't that what you said?

22 A He asked me -- he asked me would I help him. I say I know
23 the father and I said my daughter is the God -- is her
24 godmother. I don't want to get her in no trouble but I will
25 tell you, I will tell you where she -- I don't know her name

1 but I will show you where she live and that's what I done.

2 When they got to the house, I took them around where she lived
3 and showed them the house.

4 Q You didn't want her to get involved in this. Is that
5 what happened?

6 A She was already involved. When she come up there to me,
7 she was automatic involved when she run up there to me and I
8 took her to the police. He just couldn't stay there but he say
9 he have two men down. He had to go to Manson where the fellow
10 was at. Come on down there. And that's what I done. She
11 walked away and I stayed and I went and made the statement and
12 I told them -- I said I had the girl there. You let her walk
13 away. He said but don't you know where she live at. I said
14 yeah.

15 Q So you gave --

16 A But I didn't want to get her in no trouble but I know her
17 father but still I would tell them where she stayed at. I
18 couldn't tell them but I could show them. I didn't know the
19 address. I showed them the house. I know where she live at.

20 Q And you had known Miss Hassenbey, Khahlia, that is
21 since --

22 A Yes.

23 Q -- since she was a baby, right?

24 A Yes, I have. I know the father when they was courting and
25 the mother was courting.

1 MR. RUSSO: That's all that I have.

2 MISS MacMULLAN: Nothing.

3 THE COURT: Thank you, Mr. Jackson. You may step
4 down, sir. Please watch your step.

5 MISS MacMULLAN: The State has one more ready witness,
6 your Honor. Mr. Quan Collier.

7 Q U A N C O L L I E R, State's witness, sworn.

8 DIRECT EXAMINATION BY MISS MacMULLAN:

9 Q Good morning, Mr. Collier.

10 Sir, how old are you?

11 A Sixteen.

12 Q Where do you live?

13 A 306 Monroe.

14 Q Is that in Plainfield?

15 A Yes.

16 Q How long have you lived there for?

17 A A couple months now.

18 Q Prior to that where did you live?

19 A 1102 West Third Street.

20 Q Who did you live there with?

21 A My mother and her boyfriend.

22 Q Who is her boyfriend?

23 A Anthony Mack.

24 Q And referring your attention to the early morning
25 hours of December 5th, 1993, were you there at that time?

1 A Yes.

2 Q At that time did you see Marcus Benjamin?

3 A Yes.

4 Q What was Marcus Benjamin doing there that day?

5 A Selling drugs.

6 Q Did you help him sell drugs?

7 A Yes.

8 Q And Mook also helped him sell drugs?

9 A Yes.

10 Q Did you see Marcus get shot?

11 A No.

12 Q Where were you when Marcus was shot?

13 A In the house.

14 Q What were you doing?

15 A Getting more drugs to come back outside.

16 Q And what happened as you were just about to come back
17 outside?

18 A Mook had came in the house. He was telling me that --

19 Q Don't repeat what Mook said. Did Mook talk to you?

20 A Oh, yeah.

21 Q And after Mook talked to you, what did you do?

22 A I told him to go back out and tell Benji to come into the
23 house but he couldn't 'cause he said that --

24 Q Okay. Mook can speak for himself. All right.

25 After Mook came back in, did he talk to you again?

1 A No.

2 Q Where did you and Mook go, if anyplace?

3 A To the basement.

4 Q Why did you go to the basement?

5 A 'Cause we heard shooting and a bullet came into the house,
6 too.

7 Q Excuse me?

8 A A bullet had came into the house, too.

9 Q Did you go to the basement?

10 A Yes.

11 Q And when did you start to hear the gunshot?

12 A Right after Mook went into the hallway and he came back in,
13 when we was running towards the basement.

14 Q Did you stay in the basement?

15 A Yes.

16 Q How long did you stay in the basement for?

17 A For a good five minutes.

18 Q And after five minutes what happened?

19 A We came back upstairs and we had went outside and saw Benji
20 laying on the ground dead.

21 Q And did the police come to the scene?

22 A Yes.

23 Q And how quick did they come to the scene after you saw
24 that Marcus was dead?

25 A It didn't take them long. They came right away.

- 1 Q Prior to Benji getting shot, did you see Benji getting
2 into any argument with anybody outside --
- 3 A No.
- 4 Q -- over girls?
- 5 A No.
- 6 Q Did Marcus have a gun that day?
- 7 A No.
- 8 Q Did you?
- 9 A No.
- 10 Q Did Mook?
- 11 A No.
- 12 Q Keith Carson?
- 13 A No.
- 14 Q How about Anthony Mack?
- 15 A No.
- 16 Q Any of you guys shooting at the guys in the street?
- 17 A No.
- 18 Q Were you surprised that this was happening?
- 19 A Yes.
- 20 Q And when you heard they had guns, were you afraid?
- 21 A Yes.
- 22 Q Mr. Collier, has anybody given you any threats to give
23 statements?
- 24 A No.
- 25 Q Promise of any reward or anything?

1 A No.

2 Q Have you recently been arrested on December 7th, 1994
3 for possession of cocaine with the intent to distribute?

4 A Yes.

5 Q Okay. And is that charge still pending?

6 A Yes.

7 Q Have I promised you anything about that charge?

8 A No.

9 Q Do you expect me to do anything about that charge?

10 A No.

11 MISS MacMULLAN: Thank you. No further questions.

12 THE COURT: Any questions?

13 MR. RUSSO: Just a few, your Honor.

14 CROSS-EXAMINATION BY MR. RUSSO:

15 Q Mr. Collier, are you also known as Quan Butler?

16 A Yes.

17 Q Mr. Collier, you said you were going inside the house
18 to get more drugs; is that right?

19 A Yes.

20 Q Had you been outside selling drugs with Marcus?

21 A Yes.

22 Q How long had you been out there?

23 A For a couple hours. Not that long.

24 Q Did you see -- did you make some drug sales that day,
25 that night?

1 A Yes.

2 Q And did Marcus?

3 A No.

4 Q He didn't?

5 A No.

6 Q Do you know if Marcus had any money?

7 A Yes.

8 Q How do you know?

9 A 'Cause I'm the one that gave it to him.

10 Q Would it be fair to say that you sold the drugs and
11 you gave the money to Marcus?

12 A Could you repeat that?

13 Q Did you sell drugs and give money to Marcus?

14 A Yes.

15 Q Were you working for him?

16 A Yes.

17 Q And do you know how much money he had?

18 A Not to be exact.

19 Q Do you know how much money you gave him?

20 A Like, like 800 something. No. A thousand.

21 Q And where did you get that money from?

22 A Drugs.

23 Q Was that money that you got from selling drugs that
24 day?

25 A Yes.

1 Q And do you know where he put the money?

2 A In his car.

3 Q Did you see him put the money in his car?

4 A Yes.

5 Q When did he put the money in his car?

6 A He put it in right before the incident happened.

7 Q Was there anybody else there outside with you and
8 Marcus?

9 A Keith Carson.

10 Q And Keith Carson, is he a friend of yours?

11 A Yes.

12 Q And was he in the house, also, with you?

13 A No, he was outside.

14 Q He's the same guy that's known as Mook, right?

15 A Yes.

16 Q Now, the drugs that you sold, they were inside the
17 house? The drugs that you were selling were kept inside the
18 house? Is that your testimony?

19 A No, they were kept in my back hallway.

20 Q But you had to go into the house to get more drugs to
21 come back in; is that right? Come back outside?

22 A Yes.

23 Q Were the -- so the drugs were not kept in the
24 apartment itself; is that what you're saying?

25 A Yes.

1 Q Did anyone that you were living with know that those
2 drugs were there other than you?

3 A No.

4 Q Did Mook know where the drugs were?

5 A No.

6 Q When you were outside with Marcus for the two hours
7 before this happened, did you see anyone that you knew?

8 A No.

9 Q Say within ten or 15 minutes before this happened, did
10 you see anyone out with Marcus talking to him?

11 A No.

12 Q But you saw Marcus put money in the car; is that
13 right?

14 A Yes.

15 Q Where did he take it from when he put it there?

16 A From his pocket.

17 Q Was anyone with you when you saw him put the money in
18 the car?

19 A No.

20 Q How many shots did you hear?

21 A Three.

22 Q And you said a bullet came through the window; is that
23 right?

24 A Yes.

25 Q Did you hear a shot before the bullet came through the

1 window or was that the first shot?

2 A I can't really remember that.

3 Q How long had you been selling drugs at that time?

4 A Not long. I had just -- not just started but recently
5 before that.

6 Q And how old were you at the time?

7 A Fifteen.

8 Q When you came in -- after you heard the shots how much
9 time went by before you left the basement?

10 A A good five minutes.

11 Q Did you go outside?

12 A Yes.

13 Q When you got outside, was anybody out there?

14 A Benji.

15 Q Other than Benji, was anybody out there?

16 A The neighbors 'cause they heard the shots.

17 Q How many neighbors were out?

18 A Not too many but they started coming out after awhile.

19 Q Were you outside before the police arrived?

20 A Yeah.

21 Q Was Mook outside?

22 A Yes.

23 Q Was Anthony Mack outside?

24 A Yes.

25 Q Were there neighbors outside before the police

1 arrived?

2 A A couple of them.

3 Q Did you see anybody with guns that evening?

4 A No.

5 Q Do you -- did you see -- withdrawn.

6 MR. RUSSO: That's all that I have. Thank you.

7 THE COURT: Thank you, Quan. You may step down.

8 Please watch your step.

9 MISS MacMULLAN: May I approach off the record about
10 scheduling?

11 THE COURT: Sure.

12 (Discussion held off the record.)

13 THE COURT: Ladies and gentlemen, we will take our
14 luncheon recess at this time. We will continue with the trial
15 at 1:30. Please don't discuss the case. Enjoy your lunch.
16 See you at 1:30.

17 (Luncheon recess.)

18

19 A F T E R N O O N S E S S I O N

20

21 THE COURT: Anything before we bring out the jury?

22 MR. RUSSO: Yes, your Honor.

23 Your Honor, in speaking to Miss MacMullan and
24 discussing the witnesses who were expected to appear this
25 afternoon, I understand or it's my understanding there were

1 items of evidence which will -- which will be presented and
2 discussed by the witnesses, several of which, I believe, are
3 inflammatory and would be unduly prejudicial to the defense.

4 THE COURT: Well, none of these are going to be shown
5 to the jury until they are moved in evidence. They can mark
6 anything they want for evidence. They don't have to show you
7 anything until they move it in evidence.

8 What off the top of your head do you feel is
9 inflammatory?

10 MR. RUSSO: I know that there's the bloody clothing,
11 the shirt and the jacket belonging to the victim as well as
12 photographs, including photographs of the bullet wounds.
13 Frankly, I don't think that would have any particular probative
14 value other than to be inflammatory.

15 THE COURT: Photographs of the wounds shows the manner
16 of death. I mean they still have -- even if you admitted that
17 your client committed this crime, they still have the burden of
18 proving it before the jury. Now, I don't know what other items
19 there --

20 MISS MacMULLAN: Judge, for now until we have the
21 chance to argue it in full at the time I attempt to move it in
22 evidence, I will make sure that none of the photographs are
23 shown to the jurors at all.

24 THE COURT: And the clothing. The officer is not
25 going to hold the clothing above the --

1 MISS MacMULLAN: Absolutely. I will do that, your
2 Honor. I do intend to use the sketch drawn by the medical
3 examiner.

4 MR. RUSSO: I have no objection to that.

5 MISS MacMULLAN: You have no objection to that? Okay.
6 The rest I will make sure it's in the bags and especially the
7 photographs. There are some photographs which do have some
8 amount of blood in some of them.

9 THE COURT: All right. Okay. Bring out the jury.

10 Who is your first witness?

11 MISS MacMULLAN: Mr. William Coleman of Robert Wood
12 Johnson Security.

13 (In the presence of the jury.)

14 THE COURT: Good afternoon.

15 Call your next witness, please.

16 MISS MacMULLAN: Thank you, Judge.

17 State calls William Coleman of Robert Wood Johnson
18 security.

19 W I L L I A M C O L E M A N, State's witness, sworn.

20 DIRECT EXAMINATION BY MISS MacMULLAN:

21 Q Good afternoon, Mr. Coleman.

22 By whom are you presently employed?

23 A By Robert Wood Johnson University Hospital.

24 Q In what capacity, sir?

25 A I'm a security lead officer.

1 Q How long have you had that position, sir?

2 A Five years.

3 Q And could you briefly describe what your duties are
4 there?

5 A We have various duties but most of our duties are
6 pertaining to the collection of personal property on patients
7 that come in, handling of evidence.

8 Q Referring your attention, sir, to December 5th, 1993,
9 was there a patient brought in in the early morning hours from
10 Plainfield, New Jersey?

11 A Yes, there was.

12 Q Do you recall the type of injury that person
13 sustained?

14 A A gunshot.

15 Q At that time was he able to be identified?

16 A No, he wasn't. He was identified as Steve Doe.

17 Q Is that what you usually give the names of patients
18 who cannot initially first be identified?

19 A Yes, we do.

20 Q And when that patient was brought in, do you know what
21 happened to his clothing?

22 A His clothing was collected by myself and another officer.

23 Q Okay. Do you recall if the person was wearing a
24 jacket?

25 A Yes, he was.

1 Q Tell us the circumstances of how you came into
2 possession of this jacket?

3 A When he came into the trauma room, trauma room 1, the
4 clothing was cut off of him, placed to the side of the floor at
5 which time after they were done taking the patient out to go to
6 the O.R., we collected the valuables as well as the clothing.

7 Q Okay. A jacket was cut off him?

8 A Yes.

9 Q Any other item cut off him from his upper body?

10 A T-shirt and sweater.

11 Q Did you collect all three of those items?

12 A Yes, I did.

13 Q When you picked up the jacket, did you find anything?

14 A A bullet fell out. A bullet fell from the jacket as we
15 picked it up.

16 Q Are you positive that bullet fell from that jacket --

17 A Yes, I am.

18 Q -- that the patient was wearing?

19 A Yes, I am.

20 Q What did you do first with that bullet that fell out
21 of the jacket that was cut?

22 A I got a specimen jar and put it into the specimen jar.
23 Then I secured it in a valuable envelope so that we can await
24 for Plainfield police to pick it up.

25 Q And on the specimen jar and on the property envelope,

1 do you put the name Steve Doe?

2 A Yes, we do. We also put a corresponding patient's number
3 to identify which Steve Doe it would be.

4 Q And what did you subsequently do with this bullet that
5 you put in the jar that you put in an envelope? Did you give
6 it to any detective?

7 A First we placed it into a safe until the Plainfield police
8 came. Then it was signed over to Detective Wilson.

9 Q And did you sign the property envelope also when you
10 handed it to Detective Wilson?

11 A Yes, I did.

12 Q Would you recognize your handwriting again?

13 A Yes, I would.

14 Q Showing you what has been marked first S-3 for
15 identification, patient valuables envelope, do you recognize
16 it?

17 A Yes, I do.

18 Q Is that the one from that patient that was brought in
19 from Plainfield that morning?

20 A Yes, it is.

21 Q How do you recognize it?

22 A We have Steve Doe up here, the corresponding patient's
23 number that sits right below it.

24 Q Is that your signature up here, too?

25 A Yes, it is.

1 Q Okay. Is that Detective Wilson's signature when he
2 accepted it?

3 A Yes, it is.

4 Q Okay. I would like to show you inside of S-3, which
5 is a jar that has been marked S-3A. Do you recognize it, sir?

6 A Yes. It looks just like the bullet that fell out that I
7 placed in the same jar.

8 Q Okay. I am now opening up S-3A. Is this about the
9 size of the bullet that --

10 A Yes, it was.

11 Q -- that fell out of that patient's jacket?

12 A Yes, it was.

13 Q Same condition as it was when you saw it?

14 A Yes.

15 Q When you searched that patient's clothing, did you
16 also find what appeared to be vials of white powdery substance?

17 A Yes, I did.

18 Q What did you do with those items?

19 A Those were also secured in a valuable envelope and dropped
20 in our security safe until Plainfield police were able to pick
21 them up.

22 Q With the same markings?

23 A With the same markings, yes.

24 Q You also gave it to Detective Wilson?

25 A Yes.

1 Q Would you recognize it again if you saw it?

2 A Yes, I would.

3 Q Showing you what has been marked S-4 for
4 identification, another envelope. Did you put those ten vials
5 of white substance in this?

6 A Yes.

7 Q And showing you the interior, plastic bag marked S-4A,
8 do you recognize it?

9 A Yes, I do. This is the evidence -- the specimen bag that
10 they were placed into.

11 Q This was taken from the patient's clothing?

12 A Yes, it was.

13 Q And this is in the same condition as when you last saw
14 it?

15 A Yes, it is.

16 Q Substantially the same condition?

17 A Uh-huh.

18 Q Did you also find in this patient's clothing a razor
19 blade and a bullet fragment?

20 A Yes, I did.

21 MISS MacMULLAN: Your Honor, I failed to have this
22 marked.

23 THE COURT: S-83.

24 MISS MacMULLAN: The envelope.

25 THE COURT: 83.

1 MISS MacMULLAN: S-84, the plastic bag.

2 THE COURT: Okay.

3 (Evidence envelope marked S-83 for identification;
4 Plastic bag marked S-84 for identification.)

5 Q Showing you first what has been marked S-83, do you
6 recognize the envelope?

7 A Yes, I do.

8 Q Is that the envelope you put the razor blade and
9 bullet fragment?

10 A Yes, it is.

11 Q Does that have the same corresponding markings and
12 your signature?

13 A Yes.

14 Q And Detective Wilson's signature?

15 A Yes.

16 Q Showing you the contents, which is S-84. Is this the
17 razor blade and bullet fragment that you found in that
18 patient's pocket?

19 A Yes, it is.

20 Q And is this in substantially the same condition when
21 you last saw it?

22 A Yes, it is.

23 Q I would like to show you some items which have been
24 premarked. Starting with S-11A, a jacket. Without taking the
25 property out, I wonder if you could look over to the side, take

1 a look in the bag and tell us if you recognize that jacket?

2 A Yes, I do.

3 Q Is that the jacket from the patient?

4 A Yes, it is.

5 Q That's the jacket that had that projectile?

6 A Yes, it is.

7 Q You said you also picked up a sweater and a T-shirt
8 from this patient?

9 A Yes, I did.

10 Q Showing you what has been marked S-10A, I wonder if
11 you could please rise and take a look inside and I ask if you
12 recognize it?

13 A Yes, that's the sweater that was cut off.

14 Q Sweater that was cut off.

15 And lastly showing you S-9A and ask if you recognize
16 what that looks like?

17 A That's also the T-shirt that was cut off.

18 Q Okay. Are these all in substantially the same
19 condition as they were the day you gave them to Detective
20 Wilson?

21 A Yes.

22 MISS MacMULLAN: Thank you. No further questions,
23 your Honor.

24 THE COURT: Any questions?

25 MR. RUSSO: No questions.

1 THE COURT: Thank you. You may step down, Mr.
2 Coleman. Please watch your step, sir.

3 MISS MacMULLAN: The State's next witness is Sergeant
4 Detective Keith Pagash of the Plainfield Police Department.
5 K E I T H P A G A S H, State's witness, sworn.

6 DIRECT EXAMINATION BY MISS MacMULLAN:

7 Q Good afternoon, sergeant.

8 Are you presently employed by the Plainfield Police
9 Department?

10 A Yes, I am.

11 Q Is that as a detective sergeant?

12 A As a sergeant.

13 Q As a sergeant?

14 A Yes.

15 Q And how long have you been a sergeant?

16 A Approximately seven months.

17 Q And prior to that what was your title?

18 A Detective.

19 Q How long were you a detective for?

20 A Two years.

21 Q And prior to that what was your assignment?

22 A Prior to that I spent two years in narcotics.

23 Q How many years in total have you been a Plainfield
24 police officer?

25 A Approximately seven years.

1 Q Referring your attention, sir, to December 5th, 1993,
2 Sunday morning, at about 2:45 a.m., did you respond to the
3 1100 block of West Third Street in Plainfield?

4 A Yes, I did.

5 Q And once you arrived there, did you see other officers
6 at the scene?

7 A Yes, I did.

8 Q Could you briefly describe what the scene was like
9 when you arrived?

10 A Upon arrival to the scene in the 1100 block of West Third
11 Street I observed a black male deceased, later identified as
12 Marcus Benjamin. He was lying on the space between the
13 sidewalk and the street. His head was facing south. It would
14 have been southeast. Feet facing northwest.

15 Q Was there a crime scene maintained at that point in
16 time?

17 A Yes, there was. There was crime scene tape from in the
18 1100 block of West Third Street going across the street in the
19 area of Morris Street and just west of the house going across
20 the street.

21 Q And did you notice any item in the middle of the
22 street in front of the house there?

23 A Yes, there was a shell casing.

24 Q As part of your duties did you take measurements of
25 where these items were in relation to the house in question,

1 1102 West Third Street?

2 A Yes, I did.

3 Q Could you tell the jury briefly how you took those
4 measurements?

5 A Using a tape measure I measured from the shell casing using
6 fixed points of references, a manhole, corner of the house,
7 piece of a curb, telephone pole.

8 Q Did you draw what's commonly referred to as a crime
9 scene sketch as a result of that?

10 A Yes.

11 Q With the Court's permission I ask you to step down and
12 take a look at what has been premarked S-24 for identification?

13 A Step down?

14 Q Yes. Right now it's on my counsel table facing the
15 jury. I wonder if you could just describe for the jury what
16 markings you made and the distances in relation to each other?

17 A Starting with the shell casing, I measured from the manhole
18 cover would be going west to the shell casing with a
19 measurement of 28 feet, 8 inches. I then measured going to the
20 north from the shell casing to the end of a curb where the
21 driveway begins where the measurement was 24 feet, 2 inches.

22 I then took the center of the manhole cover to the
23 deceased, which would have been his left hand, where I got a
24 measurement of 33 feet, one and a half inches. Also to the
25 deceased from the center of the manhole to the right arm area,

1 area of 36 feet, 7 inches.

2 Then from a telephone pole located on the corner of
3 Morris and West Third Street I had two measurements. One of 43
4 feet to the top would have been to the left hand and 41 feet,
5 nine and a half inches to the deceased's right leg area. That
6 was 41 feet, nine and a half inches. Also, from the left leg
7 to the corner of the house at 1102 West Third Street I got a
8 measurement of 26 feet, 8 inches.

9 Q Okay. As you told us before that your measurements
10 more pertain from the evidence to fixed points than anything
11 else?

12 A Yes.

13 Q But looking at the crime scene diagram and based on
14 your memory of the crime scene, can you give the jury an
15 estimate -- let's start first with the body of Marcus Benjamin.
16 How far was his body from the front steps of the house
17 approximately based on this sketch and your memory?

18 A About 25 feet.

19 Q And how far was that casing found on West Third Street
20 in relation to where Marcus lay?

21 A That would have been about double the distance. Probably
22 be 50 feet from the casing to the house.

23 Q Okay. From the casing to the house, how many feet
24 would that be?

25 A About 50 feet.

1 Q And from the casing to Marcus Benjamin how many feet?

2 A Twenty-five feet.

3 Q And this is the sketch you drew that has been
4 subsequently blown up?

5 A Yes.

6 Q Was it drawn to scale by any chance?

7 A No.

8 Q This is just the measurements and the approximate
9 location where it was?

10 A Yes.

11 Q Thank you very much. You can have a seat.

12 Sergeant, while you were at the scene did you inspect
13 the house at 1102 to see if there was any bullet holes in the
14 house?

15 A Yes, I did. I was approached by Officer Steven Huff, who
16 advised me that they located a bullet hole within the premise
17 of 1102 West Third Street.

18 Q Was there any resident of that house, 1102 West Third
19 Street, there assisting the officers at the crime scene?

20 A Yes.

21 Q Do you recall the gentleman's name?

22 A It would have been Anthony Mack.

23 Q And do you remember seeing Anthony Mack there?

24 A Yes, he was.

25 Q Did he also show you where the bullet hole was?

1 A Yes.

2 Q And did he give you permission to search his home to
3 find the projectile inside his home?

4 A Yes, he did.

5 Q I wonder if you could tell the jury what efforts you
6 made to see if you could retrieve the projectile?

7 A The bullet had gone into -- it appeared to be a living room
8 wall. There was no way to retrieve the bullet. It had gone
9 inside the wall and probably dropped down below the floor
10 molding.

11 Q And to the best of your knowledge was that particular
12 projectile, the one that entered the home of Anthony Mack, was
13 that ever retrieved to your knowledge?

14 A No, no.

15 Q As part of your assistance in this investigation did
16 you take a sworn statement from the registered owner of the
17 vehicle that was involved in this case by the name of Chanda
18 Murphy?

19 A Yes, I did.

20 Q Was she the registered owner of that vehicle?

21 A Yes, she was.

22 Q And after you took her sworn statement, were you able
23 to determine what the license plate was of the car that was
24 stolen?

25 A Yes.

1 Q And off the top of your head do you recall what the
2 license plate was?

3 A No, I have to look at my report.

4 Q Did you write a report in this case after the
5 investigation?

6 A Yes, I did.

7 Q Did you accurately put the plate number in your
8 report?

9 A Yes, I did.

10 Q Would your report refresh your recollection?

11 A Yes, it would.

12 MISS MacMULLAN: With the Court's permission the
13 officer be permitted --

14 THE COURT: S 85.

15 MISS MacMULLAN: Thank you, Judge.

16 (Report marked S-85 for identification.)

17 Q Do you have your report there?

18 A Yes, I do.

19 Q Referring your attention to a two-page document, S-85,
20 is this your report?

21 A Yes, it is.

22 Q Is that your signature on the bottom of both pages?

23 A Yes, it is.

24 Q Referring your attention to page two, paragraph two,
25 does that make reference to the license plate of the car taken?

1 A Yes, it does.

2 Q Does that refresh your recollection?

3 A Yes, it does.

4 Q What is the license plate?

5 A CD8-27U.

6 Q After learning the license plate of the vehicle, was a
7 stolen motor vehicle report placed in NCIC?

8 A Yes, it is.

9 Q Could you explain to the jury what NCIC?

10 A It's National Crime Information Center. What they do is
11 they take stolen serial numbers or plates and they put them
12 into a nationwide computer. If the car comes up stolen,
13 another agency knows in fact that it's stolen.

14 Q Incidentally, at any time during this investigation
15 did you or any other officer have information about one of the
16 shooters, the shooters being hit by a motor vehicle?

17 A No, no.

18 MISS MacMULLAN: Thank you. No further questions.

19 THE COURT: Any questions?

20 MR. RUSSO: Just a couple questions.

21 CROSS-EXAMINATION BY MR. RUSSO:

22 Q Detective?

23 A Yes.

24 Q Would it be fair to say that since the projectile was
25 never retrieved from the wall of the house, it would not be

1 possible to determine the size or caliber of the projectile;
2 isn't that right?

3 A That's correct.

4 Q What was the size of the shell casing that you found?

5 A I don't recall, sir.

6 MR. RUSSO: That's all. Thank you.

7 MISS MacMULLAN: Thank you very much.

8 THE COURT: You may step down, sergeant. Please watch
9 your step.

10 THE WITNESS: Thank you.

11 THE COURT: Call your next witness.

12 MISS MacMULLAN: The next witness is Keith Staple of
13 Northern State Prison.

14 K E I T H S T A P L E, State's witness, sworn.

15 DIRECT EXAMINATION BY MISS MacMULLAN:

16 Q Good afternoon, Mr. Staple. How are you?

17 A I'm all right.

18 Q Mr. Staple, how old are you?

19 A Thirty-seven.

20 Q What town do you live in?

21 A South Plainfield.

22 Q How long have you lived there for?

23 A About 20 years.

24 Q Excuse me?

25 A About 20 years.

1 Q Have you ever lived in Plainfield itself?

2 A Yeah.

3 Q And referring your attention, sir, to the early
4 morning hours of December 5th, 1993, Sunday, last year, were
5 you anywhere in the City of Plainfield at that time?

6 A Yeah.

7 Q Were you walking or in a car?

8 A Walking.

9 Q Where were you walking?

10 A On Third Street.

11 Q Any particular street near Third Street?

12 A Near what?

13 Q Any particular street near Third Street?

14 A I was on McDowell Street crossing over to Third Street.

15 Q And when you were on McDowell Street crossing over to
16 Third Street, where did you go?

17 A I went directly to Third Street in front of a house.

18 Q And did you see anybody in front of a house?

19 A Yeah, I saw one individual.

20 Q Do you know the name of the individual?

21 A No.

22 Q Do you know what he looks like?

23 A If I saw a picture, I probably know what he looked like.

24 Q Is that the first time you ever met the man?

25 A No, I've saw him before.

1 Q Where did you see him before? There?

2 A I saw him on Third Street somewhere before.

3 Q And when you saw him, did you say anything to him?

4 A Yeah. I asked him for a match.

5 Q You asked him for a match.

6 While you were asking him for a match, where were you
7 standing?

8 A Where was I standing?

9 Q Where were you standing?

10 A I was standing on the sidewalk in front of the white house.

11 Q Is that on the corner of Morris and West Third?

12 A Yeah.

13 Q Where was he standing?

14 A About, I guess, three, four inches or feet away from him.

15 Q What happened next?

16 A Well, just the spirit of the moment I asked him and I heard
17 shuffling of the feets.

18 Q Where did you hear the shuffling of the feet?

19 A In back of him.

20 Q Once you heard that, what did you do?

21 A I turned.

22 Q Turned to your left?

23 A Yeah.

24 Q Would that be towards the house?

25 A No, I was already standing in front of the house. I turned

1 to the left that way.

2 Q Turn to the left?

3 A Towards Clinton Avenue.

4 Q That would be to the side of the house?

5 A Yeah, on the left side.

6 Q When you looked to the house, to the left of the
7 house, what did you see?

8 A I saw three individuals were approaching with guns.

9 Q Any of them have ski masks?

10 A Yeah, two.

11 MR. RUSSO: Objection. Leading, your Honor.

12 MISS MacMULLAN: Withdrawn.

13 Q Did any of them have anything on their faces?

14 A Well, two of them had masks on.

15 Q What about the third person?

16 A He had a gun in front of his face like a shield.

17 Q Indicate to the jury the way he held the gun?

18 A Like that (indicating).

19 Q Was that blocking his face?

20 A Yes.

21 THE COURT: Indicating pointing the gun at face level.

22 Q Did you see the gun he was holding?

23 A Yeah, it was a pretty big gun.

24 Q Do you know what kind of gun it was?

25 A I say it might have been, I could be wrong, but I know it

1 was a long-nose pistol.

2 Q Long-nose pistol?

3 A Yeah.

4 Q What did you do when you saw these three guys coming
5 at you?

6 A Well, for that moment I froze 'cause I didn't know what to
7 do. I figured they was coming, you know, to rob people.

8 Q And when you figured they were coming to rob you, what
9 did you say?

10 A I told them I don't have a motherfucking thing.

11 Q And when you said that to the guys with the guns, what
12 happened next?

13 A Well, by the time I said that the pistol was already in my
14 left ear.

15 Q Where was Marcus by this time?

16 A About where the judge is at.

17 Q About where the judge is at in relation to where you
18 are?

19 A Yeah.

20 Q Marcus was to your left?

21 A That's not my left. That's my right.

22 Q Sorry. Confusing everybody here. To your right?

23 A Right.

24 Q Were you facing the house at that point?

25 A Just like I'm facing you.

1 Q All right. Could you see what was going on with
2 Marcus at that time?

3 A Well, like the judge is right there, I can glance and see
4 that he's doing something over there, yeah.

5 Q What were they doing to Marcus?

6 A They were shaking him down.

7 Q What does that mean?

8 A Going in his pockets.

9 Q Were they saying anything amongst themselves at this
10 point?

11 A No.

12 Q They didn't say a word?

13 A I never heard them say anything.

14 Q And how long did that take for them to go through
15 Marcus Benjamin's pockets?

16 A Maybe five minutes.

17 Q What were you doing during that time?

18 A I was praying to God that they didn't shoot me in the head.

19 Q You thought he was going to shoot you in the head?

20 A Yeah, that's the way I felt.

21 Q What happened next?

22 A Well, at that time while I was praying I guess the Lord
23 answered my prayer. He moved the gun and put it to my right
24 side.

25 Q He put it to your right side. To your front or back?

- 1 A Right here (indicating).
- 2 Q Witness indicating his front or the side?
- 3 A No, right here. In the back right here to the side.
- 4 Q To the side of you?
- 5 A Yeah.
- 6 Q Just above your waist?
- 7 A Yeah.
- 8 Q What happened next?
- 9 A Then I heard a car started.
- 10 Q Do you know which direction that sound was coming
- 11 from?
- 12 A Right where the judge is at.
- 13 Q Was there a car there?
- 14 A Yeah.
- 15 Q Could you tell what kind of car it was?
- 16 A I'm not quite sure of the color but it was a car there.
- 17 Q And once you heard that car start up after they went
- 18 through the pockets of Marcus Benjamin, what happened next?
- 19 A Well, I figured they got whatever they wanted and they was
- 20 fixing to leave. The car started up.
- 21 Q What happened next?
- 22 A Then he pushed me off with the pistol and I guess he took a
- 23 few steps backwards and I turned around. Well, I just thought
- 24 to myself -- I thought maybe I better turn around just in case
- 25 he want to shoot me and kill me in the back or something.

1 Q You turned to see at that point?

2 A Yeah. Just as I turned I saw him bringing the gun up and
3 started firing.

4 Q He was firing at you or Marcus?

5 A At me.

6 Q Did he hit you?

7 A Yeah, hit me in the right chest.

8 Q Indicate for the jury where he hit you.

9 A Right here (indicating).

10 MISS MacMULLAN: Witness indicating his upper right
11 chest below the armpit area.

12 Q How far away was he when he shot you?

13 A I guess about by that table. Not that far.

14 Q Which table? The table the stenographer's at or my
15 table?

16 A About -- yeah, be right there.

17 Q You're where you were standing when you got shot and
18 I'm the shooter?

19 A Yeah.

20 Q This is the distance?

21 A Yeah.

22 THE COURT: Approximately eight feet for the record.

23 MR. RUSSO: Eight feet.

24 Q Did you get a look at the guy's face when he was
25 shooting you at that point?

1 A No, not directly. I knew that he was light skinned,
2 though, but I couldn't actually saw his face like point blank.

3 Q You didn't see his face?

4 A No, not point blank.

5 Q You don't know what the guy looks like?

6 A No.

7 Q When you say, "light skinned", is he light or darker
8 than you?

9 A Lighter than me.

10 Q After he shot you, what happened next?

11 A I just -- I said, oh, God and grabbed my chest and --

12 Q You grabbed your what?

13 A My chest.

14 Q Then what happened?

15 A And I rocked like back and forth and I guess -- I never
16 been shot before. So I didn't know what to do. So I just was
17 panicking and something and I started to turn around and then
18 he shot again.

19 Q Where did he hit you the second time?

20 A In the arm.

21 Q Which arm?

22 A This arm.

23 Q The right arm?

24 A Yeah.

25 Q Where in your right arm?

1 A Right here (indicating).

2 MISS MacMULLAN: Witness indicating the inside of his
3 right bicep.

4 Q Which way did you run when you were running that
5 second time?

6 A Towards Grant Avenue.

7 Q Grant Avenue. Would that be towards Manson Place?

8 A Yeah.

9 Q Okay. Was there anymore gunshots after that?

10 A I didn't hear because all I heard was ringing in my ear
11 from when I got shot.

12 Q You couldn't hear anything after that?

13 A No, 'cause I was -- it was like an explosion in my head
14 already. So I wouldn't, you know, I wouldn't be able to tell.

15 Q Did you see what happened to the other man that they
16 were going through the pockets of?

17 A No. He wasn't laying there when I ran, though.

18 Q He wasn't shot at that point when you were running?

19 A No.

20 Q No?

21 A No, 'cause if he was, I would have ranned over him.

22 Q Okay. How far did you get down West Third Street?

23 A Just a block.

24 Q Where did you stop?

25 A Manson Place.

1 Q When you stopped on Manson Place, what do you remember
2 happening next?

3 A I was looking towards where, where the car was at and they
4 was getting in the car and pulling away.

5 Q Which car?

6 A The car that was in front of the white house.

7 Q Who was getting into the car?

8 A The three individuals that was out there.

9 Q Which way did they go?

10 A Towards Clinton Avenue.

11 Q That would be driving away from you?

12 A Yeah.

13 Q What happened next?

14 A I just -- I was there rocking back and forth saying, oh,
15 God, please don't let me die.

16 Q Do you remember anybody coming to help you?

17 A No. All I remember was hearing sirens and ambulance and
18 they telling me to lay down and I wouldn't lay down. I don't
19 remember nothing else after that.

20 Q Okay. What's your next memory of the incident?

21 A Huh?

22 Q What's your next memory of the incident?

23 A When I woke up.

24 Q Where do you remember being next?

25 A I woke up in the hospital.

1 Q You woke up in the hospital.

2 Do you remember if the police officers came to see you
3 the next day, Monday?

4 A I think they did. I was under the influence of the drugs,
5 whatever they gave me. I don't know.

6 Q Were you on a respirator at that time?

7 A Yeah.

8 Q Do you recall the detectives coming to see you a few
9 days after that on December 9th?

10 A Yeah.

11 Q Do you remember talking to them?

12 A Yeah, I talked to them but I was still on the heavy
13 medication. I couldn't really talk to them. I say nothing. I
14 had tubes all in me, in my mouth and everywhere.

15 Q Okay. Now, after you got out of the hospital, did you
16 have to spend time in prison? Did you go to a prison after you
17 were discharged from the hospital?

18 A Not right away, no.

19 Q No. Have you since been locked up since this
20 incident?

21 A Say what?

22 Q Have you since been locked up since the night you were
23 shot?

24 A Yeah.

25 Q Okay. Are you presently serving a sentence?

1 A Yeah.

2 Q That sentence is for -- if I may have a second.

3 (Pause.)

4 Q For possession of cocaine with the intent to
5 distribute?

6 A Yeah.

7 Q You were sentenced to five years in jail with a
8 two-year period of parole ineligibility and that sentence was
9 March 31st, 1994?

10 A Right.

11 Q Incidentally, did myself or anybody from my office
12 intervene on your behalf and come to the sentence?

13 A No.

14 Q After you were locked up do you remember writing a
15 letter to Judge Anzaldi?

16 A Yeah.

17 Q After you wrote that letter to Judge Anzaldi, did you
18 then give a statement to detectives in this case on April 4th,
19 1994?

20 A Yeah.

21 Q Okay. Did you tell them about the incident, the
22 circumstances surrounding your being shot?

23 A Yes.

24 Q Okay. At that time did they try and show you photo
25 arrays?

1 A Yes.

2 Q Did they show you photo array number one or had the
3 number one on it?

4 A I think so.

5 Q Were you able to pick out anybody in the first photo
6 array?

7 A No.

8 Q Did they show you a second photo array with the number
9 three on it?

10 A Yeah.

11 Q Okay. When you looked at it, did you recognize
12 anybody?

13 A No.

14 Q Well, did you say you recognized anybody at that time?

15 A Yeah, I did.

16 Q Did you write your name on the back of the photograph?

17 A Yeah.

18 Q Showing you what has been marked S-18 for
19 identification, photo array with the number three on it, let me
20 direct your attention to the back of photograph number four and
21 ask you is that your signature there, Mr. Staple?

22 A Yes.

23 Q Is that the date, "4/4/94"?

24 A Yes.

25 Q Okay. Why did you pick this man's picture out?

1 A 'Cause he looked familiar.

2 Q Was that the guy that -- was that the guy you thought
3 shot you?

4 A Yeah.

5 Q Why did you pick him out?

6 A He -- he just looked familiar. Just, you know, it took
7 awhile. I just -- he just looked familiar. He just looked
8 like the individual.

9 Q Have you thought -- since you picked that individual's
10 picture out, have you thought about it since?

11 A Have I did what?

12 Q Have you thought about the incident since you picked
13 out that person's photograph?

14 A I've been trying to think about it.

15 Q Are you sure that that's the man that shot you?

16 A No, I'm not positively sure.

17 Q No? Did you ever get a look at the guy's face that
18 shot you?

19 A Actually, no, not point blank.

20 Q I would like to ask you if you just recognize a piece
21 of clothing. Showing you what has been marked S-11 for
22 identification, do you recognize that?

23 A Yeah, that's mine.

24 Q Is that the jacket you were wearing on the night of
25 the incident?

1 A Yeah.

2 Q And just one last item. I would like to show you a
3 photograph, S-38 for identification. You say they came from
4 between the houses where you were. Take a look at S-38. Tell
5 me does this photograph show the area where they came from
6 between the houses?

7 A On the side of that car.

8 Q Does it show the area?

9 A It's right there.

10 Q Okay. Could you please point on the photograph where
11 you remember these guys coming out on the night in question?

12 A (Witness complies.)

13 Q Near this wooden fence?

14 A No, no, right here (indicating).

15 Q Before the wooden fence?

16 A Right here at the beginning of this fence right here
17 (indicating).

18 Q Let me get a pen. I want you to mark that, okay?
19 Just put an X where you first laid eyes on the guys that came
20 out with the ski masks. Some with ski masks, some without.

21 A Right there (indicating).

22 Q Okay. I wonder if you can put a little better mark.
23 An X, Mr. Staple. I wonder if you could put your initials,
24 "K.S."

25 A (Witness complies.)

1 MISS MacMULLAN: Okay. That witness has put an X and
2 "K.S."

3 Q That's where you first saw these guys, right?

4 A Right.

5 MISS MacMULLAN: Thank you. No further questions.

6 THE COURT: Cross-examine.

7 MR. RUSSO: Thank you, your Honor.

8 CROSS-EXAMINATION BY MR. RUSSO:

9 Q Now, Mr. Staple, you were questioned by the police in
10 April, 1994; is that right?

11 A April 14? I don't quite remember the dates.

12 Q Sometime in April?

13 A Yeah.

14 Q And at that time they showed you that photo display,
15 right?

16 A Yeah.

17 Q And they had you sign and date the back of the
18 photograph indicating that you positively identified that
19 person, didn't they?

20 A Pardon me?

21 Q Didn't they have you sign and date the back of the
22 photograph indicating that you identified that person?

23 A Yeah.

24 Q But in fact you didn't really identify that person?

25 A I wasn't sure.

1 Q Did you later speak to a detective -- just a couple
2 months ago were you interviewed by a detective at the prison?

3 A What prison?

4 Q At North Jersey State Prison in Newark were you
5 interviewed by an investigator and assistant prosecutor?

6 A Yes.

7 Q And at that time did you indicate that you did not
8 make a positive identification; is that right?

9 A That's right.

10 Q And in fact you indicated at that point that the
11 officer who initially showed you the pictures flipped down the
12 photographs and while you were looking at them he suggested to
13 you who the person was; is that right?

14 A I don't hear that. Say it again.

15 Q While you were looking at the photographs the first
16 time in April, one of the police officers saw you looking at
17 them and suggested to you which person?

18 A Did he tell me that was the person?

19 Q What's that?

20 A You saying he told me that was the individual?

21 Q No, I am asking you.

22 A No, he never told me that.

23 Q In fact that was a mistake. You never really
24 identified somebody. Is that what you're saying?

25 A I did but I was not positive.

1 Q Now, you never met Marcus Benjamin before?

2 A No.

3 Q Where were you coming from on the evening that you
4 were shot?

5 A I was going to a girlfriend house.

6 Q Where were you coming from?

7 A McDowell off of West Fourth Street.

8 Q And you were going to a girlfriend's house?

9 A Yes.

10 Q Was that in the vicinity, too?

11 A That was on Grant Avenue.

12 Q You didn't know Mr. Benjamin? You never met him
13 before?

14 A No, I never personally met him like, no.

15 Q But you had seen him?

16 A Yeah, I've seen him around.

17 Q Did you know that he was selling drugs?

18 A No.

19 Q You didn't go there to buy drugs from him?

20 A No.

21 Q Wasn't there somebody else with you when you were in
22 the vicinity in that neighborhood?

23 A The vicinity of where?

24 Q Didn't you tell the police that you were walking with
25 a friend?

1 A Yeah, I was walking with a friend.

2 Q And when did you -- when did you leave that friend?

3 A 'Cause I was on my way. I was trying to get where I was
4 going and he was, you know, bullshitting around and I wanted to
5 get where I was going 'cause it was getting late.

6 Q Did that friend go with you onto West Third Street?

7 A No.

8 Q Where did you leave him? Do you know?

9 A About close to Fourth and McDowell.

10 Q He never got to the point where he saw Mr. Benjamin?

11 A No.

12 Q And do you know -- do you remember who that guy was?

13 A No.

14 Q He was a friend of yours, though?

15 A Yeah.

16 Q You don't know him by name?

17 A Well, not really, no. You know, you know certain peoples,
18 you know. You know his name is Mike and that's it.

19 Q But you had -- you just happened -- he just happened
20 to be walking in the same direction. You didn't have any
21 business with him or anything like that?

22 A With who?

23 Q This friend of yours, whatever his name was you didn't
24 know?

25 A He --

1 Q He just happened to be walking along?

2 A Yeah, we was walking together. He said he was going the
3 same way I was going but he wanted to stop somewhere else and
4 talk to somebody. I didn't have time. I was trying to get
5 where I was going. It was getting late.

6 Q You weren't with him earlier, though? You just ran
7 into him on the street?

8 A Right.

9 Q Now, you indicated that when you were -- when you
10 walked up to Mr. Benjamin, you heard this rustling noise and
11 then you turned, right?

12 A Yeah.

13 Q And then you saw these three guys and they all had
14 guns?

15 A Yeah, they all had guns.

16 Q And what direction did they come from?

17 A From the left.

18 Q Did you see where they came from?

19 A From the side of the house.

20 Q Okay. And other than the guy who pointed the gun at
21 you did you see -- were you able to identify any of the other
22 guns?

23 A Identify any of the other guns?

24 Q Did you recognize what kind of guns the other guys
25 were carrying?

1 A No. I wasn't able to identify exactly what kind of guns
2 they were.

3 Q What was the guy who pointed the gun at you wearing?

4 A He wasn't wearing nothing.

5 Q He didn't have any clothes on?

6 A No, he had clothes on.

7 Q How was he dressed?

8 A Like dark clothes.

9 Q Did you -- were you able to identify whether the gun
10 pointed at you -- was it was a handgun, right?

11 A Yeah.

12 Q Okay. Was it -- were you able to tell if it was a
13 revolver or some other sort of gun?

14 A Yeah, it looked like a revolver.

15 Q Was anything taken from you --

16 A No.

17 Q -- during this robbery?

18 A No.

19 Q In fact nobody even went through your pockets, right?

20 A No.

21 Q Nobody tried to take anything from you; is that right?

22 A No.

23 Q And other than you telling them that you didn't have
24 anything on your person, they didn't actually go into your
25 pockets, right?

1 A No.

2 Q Now, you indicated you actually saw somebody go
3 through Marcus Benjamin's pockets?

4 A Yeah, I glanced like I'm glancing at the judge moving the
5 papers around.

6 Q What did you see?

7 A Going through his pockets.

8 Q How many people went through his pockets? Do you
9 know?

10 A Two.

11 Q There was one person pointing the gun at you and the
12 other two were on Mr. Benjamin; is that right?

13 A Yeah.

14 Q Were they right up next to him?

15 A Was around him.

16 Q Were they in front of him or behind him?

17 A They was around him.

18 Q When you spoke to the investigator and the assistant
19 prosecutor in October, didn't you tell them that you hadn't
20 actually seen Mr. Benjamin searched but that was something that
21 you assumed?

22 A I actually say what?

23 Q Didn't you just assume that he was searched because
24 you thought it was a robbery but you didn't actually see
25 somebody in his pockets?

1 A No, I didn't assume that. It was a robbery point blank.

2 Q You didn't -- so you did actually see somebody in his
3 pockets; is that right?

4 A I glanced over like I'm glancing at the judge going through
5 his pockets same way.

6 Q And you never told anybody that you didn't see -- that
7 you didn't actually see them go through his pockets; is that
8 what you're saying?

9 A Say what?

10 Q Did you ever tell anyone that you didn't really see
11 them go through his pockets?

12 A I don't remember saying that.

13 Q And you and -- you and Mr. Benjamin didn't have any
14 business together? You just stopped to talk to him for a
15 minute; is that right?

16 A That's right.

17 Q You didn't actually see anything taken from him, did
18 you?

19 A No, I wasn't moving around. Not with a gun in my side.

20 Q When you were on the streets that night, did you have
21 vials in your pocket?

22 A I might have.

23 Q Do you know what those vials contained?

24 A No.

25 Q Were you selling drugs that evening?

1 A No.

2 Q But you have sold drugs before?

3 A Yeah.

4 Q When you saw these guys with the guns, was there
5 anyone else on the street?

6 A I didn't notice.

7 Q As you approached Mr. Benjamin, did you see anybody on
8 the porch in front of the house or on the sidewalk other than
9 him?

10 A No.

11 Q How many shots were there?

12 A How many shots were what?

13 Q How many shots did you hear?

14 A I heard two shots that I felt.

15 Q And after that you ran and you don't know what
16 happened after that; is that right?

17 A That's right.

18 Q And you didn't see Mr. Benjamin shot; is that right?

19 A That's right.

20 Q You yourself didn't have a gun that evening, did you?

21 A No, I had no gun. I had nothing.

22 MR. RUSSO: That's all that I have. Thank you.

23 MISS MacMULLAN: Nothing.

24 THE COURT: Thank you, Mr. Staple. You may step down,
25 sir. Please watch your step.

1 MISS MacMULLAN: The State's next witness is the
2 medical examiner, Dr. Joan Obe. Should be a relatively quick
3 witness.

4 THE COURT: Okay.

5 MISS MacMULLAN: Then, your Honor, I would like a
6 break. I have one last witness for the day but I haven't
7 gotten a chance to talk to her yet.

8 THE COURT: Okay.

9 J O A N O B E, State's witness, sworn.

10 DIRECT EXAMINATION BY MISS MacMULLAN:

11 Q Good afternoon, doctor. How are you?

12 A Fine.

13 Q Where do you presently work?

14 A I presently work for the State Medical Examiner's Office in
15 Newark.

16 Q What are your duties there?

17 A I am an assistant state medical examiner and I perform
18 autopsies on suspicious and unnatural deaths, testify in court,
19 visit scenes of crime and investigate deaths.

20 Q Before we get into your opinion on the cause of death
21 in this case, I wonder if we could start first with your
22 educational background. Do you have an undergraduate degree in
23 microbiology?

24 A Yes.

25 Q And did you then perform an internship?

1 A I have an undergraduate degree in microbiology from the
2 University of Florida in Gainesville. Then I went, after a
3 period of years, to Nigeria where I obtained a medical degree
4 and a rotating internship after the medical degree and the
5 rotating internship included general medicine, surgery,
6 including neurosurgery and orthopedics and pediatrics and
7 obstetrics and gynecology.

8 Then I came to the United States where I did a
9 residency in general pathology and clinical pathology for four
10 years at the Montefiore Medical Center in the Bronx.

11 Then I got my forensic training from the City of New
12 York Medical Examiner's Office for two years in Manhattan.
13 After leaving Manhattan I was the Passaic County Medical
14 Examiner for six and one-half years from 1984 to 1990, at which
15 time I was a part-time medical examiner for Morris County and a
16 part-time medical examiner for Union County. Actually, an
17 assistant medical examiner and then in September of this year I
18 became an assistant state medical examiner.

19 Q And approximately as of December 5th, 1993 how many
20 autopsies have you done?

21 A Approximately 5,000.

22 Q How many times have you been qualified to testify as
23 an expert in forensic pathology?

24 A Approximately 300 to 400 times.

25 MISS MacMULLAN: At this time I offer the doctor as an

1 expert in pathology.

2 THE COURT: Any questions?

3 MR. RUSSO: No, your Honor.

4 THE COURT: Any objection?

5 MR. RUSSO: None.

6 THE COURT: I find the doctor qualified to give
7 opinion evidence in the field of forensic medicine and
8 pathology.

9 Ladies and gentlemen, what that basically means is
10 this: Generally when a witness testifies in a court of law, a
11 witness can only testify as to facts as they believe they
12 perceived them through one of their senses. What they saw,
13 what they heard, what they felt, tasted, what they smelled. So
14 generally witnesses are not allowed to give opinion evidence to
15 the judges of the facts because the only opinion that matters
16 in a court of law is the judges of fact opinion as to what the
17 facts may be.

18 However, when somebody possesses some special skill,
19 knowledge, training, education or experience and that person
20 might assist the jury in their fact-finding process, there is
21 an exception to that rule and that person is allowed to give
22 opinion evidence. I have so found that Dr. Obe has that
23 special knowledge, skill and training that would aid you in
24 your job.

25 You are not bound by her testimony, however. You can

1 weigh her testimony the same way you would any other witness.
2 You have the ability to believe all of it, none of it or a
3 portion of it. Of course, you must remember that the opinions
4 voiced by Dr. Obe are no stronger than the facts upon which
5 they are based. It is up to you to determine whether facts
6 exist or not.

7 MISS MacMULLAN: Thank you, your Honor.

8 Q Doctor Obe, did you perform a postmortem examination
9 autopsy on a young man named Marcus Benjamin?

10 A Yes.

11 Q And during that autopsy were there x-rays taken of the
12 body?

13 A Yes.

14 Q Did you notice during your external examination any
15 bullet wound to the body?

16 A Yes.

17 Q Where did you notice the bullet wound?

18 A The bullet entrance wound was located on the left side of
19 the back, the upper chest area.

20 Q That would be about right here where I am indicating?

21 A That's correct.

22 Q And did you say that's an entrance wound?

23 A Yes.

24 Q And how do you know it's an entrance wound?

25 A Entrance wounds have particular characteristics. They're

1 round, they have an abrasion collar and they are smooth edged.
2 This wound had those characteristics.

3 Q Approximately how big was that entrance wound?

4 A I'll be referring to my medical examiner's case report.

5 Q Okay.

6 THE COURT: Mark it for identification.

7 MISS MacMULLAN: Yes, your Honor.

8 A This is actually a FAX copy of the report, not an official
9 copy.

10 Q We will mark this.

11 A Okay.

12 (Autopsy report marked S-86 for identification.)

13 Q Doctor, a word about your report. Did you write this
14 report soon after conducting your examination of Marcus
15 Benjamin?

16 A Actually the practice is to dictate it onto an audio tape.
17 The tape is then taken by one of the secretaries in the Union
18 County Medical Examiner's Office and typed into a rough draft
19 form. The rough draft is then corrected for typographical
20 errors and that type of thing and resubmitted to the secretary
21 who types up the final draft. This is the final draft.

22 Q Okay. Did you review that report for accuracy?

23 A Yes.

24 Q Okay. And that report was done relatively soon after
25 the examination?

1 A I'll tell you exactly. I dictated the report on December
2 5th. Submitted it to the office. There may have been a slight
3 delay because the autopsies are done in Newark and the office
4 is in Elizabeth. But the final report was signed on December
5 20th, 1993.

6 Q Okay. And the contents of the report is based on
7 personal knowledge of yours of the examination?

8 A Yes.

9 Q Okay. Would the report refresh your recollection if
10 you were permitted to review it?

11 A Yes.

12 MISS MacMULLAN: May the witness be permitted, your
13 Honor?

14 THE COURT: Certainly.

15 Q Please review it.

16 A I reviewed it just before I came in. I wanted to refer to
17 it occasionally, if there's some details that I didn't
18 memorize.

19 Q All right. Let's get back to that last question. Can
20 you tell the jury how big that bullet hole was in Marcus' back?

21 A Okay. The bullet perforation, which was located 55 inches
22 above the heel and four inches to the left of the midline in
23 the back, was three eights of an inch in width, in diameter.

24 Q And what was the tract of the bullet? What was the
25 path of the bullet?

1 A The path of the bullet was forward to the right and upward.
2 It passed first into the left chest cavity where it passed
3 through the left upper lobe of the lung, then passing further
4 upward and forward and to the right, struck up against the
5 first thoracic vertebra. Because it was a thick bone, the
6 bullet got defaced at that point and was ricocheted off of the
7 backbone and changed its course slightly to go further upward
8 and back to the left.

9 Then the bullet exited the body after passing through
10 the left carotid artery and the left subclavian artery and vein
11 and this caused a lot of bleeding into the left chest cavity
12 causing approximately a thousand cc's of blood.

13 From this point the bullet exited the body at
14 approximately just above -- just at the lower part of the neck
15 on the left --

16 MISS MacMULLAN: Witness so indicating with her index
17 finger.

18 A Yeah, just one inch to the left of the midline. If you
19 draw an arbitrary line down the center of the body through the
20 nose and center of the mouth, it's approximately one inch to
21 the left of that line. Where it exited the chest, upper chest,
22 lower neck. It immediately went into the chin on the left.
23 Just below the chin inside the skin was where the bullet was
24 found.

25 Q Did you retrieve the bullet yourself?

1 A Yes.

2 Q Did you place any markings on the bullet yourself?

3 A Yes, I placed a marking of "M.B./J.O." on the base of the
4 bullet.

5 Q Did you then put the bullet itself in a small
6 envelope?

7 A Yes, I put it in a small envelope.

8 Q Did you place your markings on that envelope?

9 A Yes.

10 Q I would like to show you what has been marked -- if I
11 may have one second, your Honor.

12 THE COURT: S-2, 2A and 2B.

13 MISS MacMULLAN: This would be S-2A, small envelope.

14 Q Showing you what has been marked S-2A, a small
15 envelope, do you recognize it?

16 A Yes. This is the envelope with a label of Marcus Benjamin,
17 the case number, medical examiner's case number, the date, the
18 time, my initials and the initials of my assistant and a
19 specimen labeled as bullet marked "M.B./J.O.", one large copper
20 jacketed and one small fragment.

21 Q Was this the envelope you put that projectile that you
22 took out of the body of Marcus?

23 A Yes.

24 Q Please inspect the contents of the envelope. I ask
25 you is that the bullet in question?

1 A Yes, this is the bullet and the small fragment.

2 Q How can you tell that's the bullet in question?

3 A Because it has my marking at the base.

4 Q And that would be the "M.B./J.O."?

5 A "M.B./J.O.", yes.

6 Q Thank you.

7 Is this in substantially the same condition as it was
8 that day?

9 A Yes.

10 Q Thank you.

11 As a result of your examination did you make a sketch,
12 a rough sketch, of the location of the entrance wound, the path
13 of the bullet?

14 A Yes.

15 Q Okay. And I would like to show you what has been
16 marked S-25 for identification. And ask you if this is an
17 enlargement of your sketch?

18 A Yes.

19 Q How do you recognize it, doctor?

20 A It looks exactly like a sketch I have here in my report.

21 Q This is the sketch?

22 A It looks exactly like this sketch.

23 Q This is the sketch concerning that autopsy?

24 A Yes.

25 Q Could you please explain --

1 A 'Cause the label is at the top with the decedent's name
2 which actually mis -- anyway, it has the medical examiner's
3 case number at the top.

4 Q Okay. I wonder if you could briefly explain what
5 notations you've made here concerning the autopsy examination?

6 A All right. I have made an indication on the chin here,
7 which is where the reentrance wound is. This lower one is the
8 exit wound in the neck. The little dotted arrow is because
9 it's behind rather than in front. This is where the arrow is
10 dotted. But the bullet is coming from approximately this
11 position on the back, which is here (indicating). If you turn
12 the body around, this is the entrance wound. It traveled this
13 way, that's to the right, upward. Then it bounced off of the
14 vertebra in the midline and changed its course slightly to go
15 back left and upward and then it came out here.

16 Q How big was it?

17 A You can see it in three dimensions. Okay.

18 Q Can you describe what the entrance wound was like?

19 A The entrance wound is --

20 Q Sorry, the exit wound?

21 A The exit wound is a one-half inch perforation. It has
22 ragged edges, which delineates it as an exit wound. Exit
23 wounds have ragged edges. Entrance wounds have round and
24 smooth edges. This was a little elliptical and the exit wounds
25 are usually larger than the entrances.

1 Q And is this sketch in substantially the same condition
2 as it was when you made it, doctor?

3 A Yes.

4 Q During the autopsy were photographs taken of Marcus --
5 of the deceased?

6 A Yes.

7 Q I would like to show you photographs which have been
8 marked S-27 through S-34. Doctor, at this point in time I'll
9 be showing them to you facing the photographs towards you.

10 Showing you what has been marked S-27 for
11 identification, what does that show?

12 A This shows a position of the posterior, the back, of the
13 individual with the entrance wound.

14 Q Showing you what has been marked S-28 identification,
15 what does that show?

16 A This is a close-up of the same entrance wound.

17 Q Showing you what has been marked S-29 for
18 identification, what does that show?

19 A This shows the exit wound and the reentrance wound.

20 Q And which one would be the exit wound?

21 A The lower one or the one to the left in the picture would
22 be the exit wound and the one to the right is the entrance
23 wound, reentrance.

24 Q And that's where you retrieved the projectile in
25 question?

1 A Yes, it was just under the skin at that point.

2 Q Showing you what has been marked S-30 for
3 identification, what does that show?

4 A That shows the bullet itself in the exit wound before it
5 was removed. Actually in the reentrance wound. The reentrance
6 wound.

7 Q At that point in time the body is still clothed?

8 A Yes.

9 Q Showing you what has been marked S-31 for
10 identification, do you recognize what that shows?

11 A This shows the back of the jacket that the deceased was
12 wearing.

13 Q You recognize this as being the jacket that was worn
14 by the deceased?

15 A Yes.

16 Q Did you inspect a line of hole that appears to be in
17 this jacket with the perforation on the body?

18 A Yes and it's at the same spot as the entrance wound.

19 Q Showing you what has been marked S-32 for
20 identification, what does that show?

21 A This shows the inside of the same jacket, which also shows
22 the same wound.

23 Q Okay. And this darkening of the clothing inside here,
24 what did that appear to you to be?

25 A That was blood.

1 Q Did the victim lose a lot of blood in this case as a
2 result of that one gunshot?

3 A Yes. In addition to the approximately thousand cc's in his
4 left chest, there was probably a large amount of blood at the
5 scene.

6 Q How many is a cc?

7 A Cc is -- let me see. A cup or a pint is 500 cc's. So it
8 would be two pints.

9 Q Showing you what has been marked S-33 for
10 identification, what does that show?

11 A This also shows a red shirt that he was wearing as well and
12 which has also perforation at the same spot.

13 Q And lastly what does S-34 show, doctor?

14 A This also shows the perforation of this red shirt.

15 Q Is that a close-up of the red shirt?

16 A Yes.

17 Q Do all these photographs substantially, fairly and
18 accurately depict what the items looked like on the day of the
19 autopsy?

20 A Yes.

21 Q Okay. I just have a few more items to show you,
22 doctor.

23 Doctor, can you lean over, if you don't mind and I am
24 going to show you an item now inside the bag. Can you -- do
25 you recognize this shirt?

1 A Yes, I just examined it just prior to coming in. That is
2 the shirt.

3 Q Worn by the victim?

4 A Yes.

5 THE COURT: What is the item?

6 MISS MacMULLAN: Sorry, your Honor.

7 THE WITNESS: A red shirt.

8 THE COURT: S-6A.

9 Q Lastly, showing you what's marked S-7A, again, it's
10 out of the presence of the jury, shown on the other side of the
11 witness stand. Do you recognize what this is?

12 A Yes, this is the jacket worn by the decedent.

13 Q Again, you examined that right before you testified?

14 A Yes.

15 Q Are they in substantially the same condition as they
16 were when you examined them?

17 A Except they're dry.

18 Q Except they're dry?

19 A The blood is dried.

20 Q Could you tell the ladies and gentlemen of the jury
21 how big was Marcus Benjamin? How much did he weigh?

22 A He was a very large person. He was, I believe, 68 inches
23 in height, which is five feet eight inches, and he weighed 275
24 pounds.

25 Q You would say he's a large man?

1 A Large man.

2 Q What was the cause of death in this case?

3 A The cause of death was the bullet perforation through his
4 lungs causing the internal hemorrhage and the arteries.

5 MISS MacMULLAN: Thank you. No further questions.

6 THE COURT: Any questions?

7 MR. RUSSO: No questions.

8 THE COURT: Thank you, doctor. You may step down.

9 Please watch your step.

10 Miss MacMullan said she had one more witness for
11 today. We will take a fifteen-minute break and go on with that
12 witness. Please don't discuss the case. If you want to go
13 downstairs and grab another cup of coffee, feel free to do so.
14 See you in 15 minutes.

15 (Recess.)

16 THE COURT: Anything before we bring out the jury?

17 MISS MacMULLAN: Yes, Judge. While I was examining
18 the last witness, Lieutenant Johnson said Luciana had given him
19 additional information that was not in her statement and stated
20 the following: That the second man, Tariq, that was at the
21 house with the defendant had asked for some Glass Plus and was
22 wiping the car down before her mother got there. And I'd like
23 to elicit that and I'm sure it was a complete surprise to the
24 defense. It was to me, also.

25 THE COURT: Any objection? Any objection?

1 MR. RUSSO: I'm not sure what the request is, your
2 Honor.

3 THE COURT: They got some information that was not
4 passed on to you in a statement by this witness that Tariq was
5 wiping down the car with Glass Plus before her mother got there
6 and the State just learned about that day. They are telling
7 you about it and want to elicit that information.

8 MR. RUSSO: I don't have any objection, your Honor.

9 THE COURT: Okay.

10 MISS MacMULLAN: The State's last witness for today is
11 Luciana Wellman.

12 THE COURT: After that you two meet and go over the
13 evidence today to see what you can agree on.

14 MISS MacMULLAN: Okay.

15 MR. RUSSO: Okay.

16 THE COURT: Bring out the jury.

17 (In the presence of the jury.)

18 THE COURT: Your next witness, please.

19 MISS MacMULLAN: Last witness of the day, Luciana
20 Wellman of Orange, New Jersey.

21 L U C I A N A W E L L M A N, State's witness, sworn.

22 DIRECT EXAMINATION BY MISS MacMULLAN:

23 Q Good afternoon. How are you?

24 A Fine.

25 Q How old are you?

1 A Eighteen.

2 Q Miss Wellman, where do you live?

3 A 646 Freeman Street, Orange, New Jersey.

4 Q Who do you live with there?

5 A My mother.

6 Q Do you presently go to school?

7 A Uh-huh.

8 Q Where do you go to school?

9 A Virginia Fair Beauty School, Detroit, Michigan.

10 Q Referring your attention to December 5th, 1993 were
11 you at your home that day?

12 A Yes.

13 Q And did you receive a phone call that day?

14 A Yes.

15 Q Who did you get a phone call from?

16 A Smiley. Should I say Sammy Moore or Smiley?

17 Q You should say whatever the truth is.

18 A Okay. Well, Smiley.

19 Q Smiley. A man that called you know as Smiley?

20 A Uh-huh.

21 Q And do you know his real name?

22 A Now I do. Sammy Moore.

23 Q Back then did you know his real name?

24 A No.

25 Q Okay. How long did you know Smiley as of December

1 5th, 1993?

2 A Well, I met him in the summertime. I don't know the exact
3 date but I know it was the summer.

4 Q Where did you meet him in the summertime?

5 A At my friend Natasha's house.

6 Q Natasha who?

7 A Natasha Levant.

8 Q Where does she live?

9 A I'm not sure if it's 195 First Street or 175 First Street.

10 Q Is there a nickname for the apartment complexes where
11 she lives?

12 A I don't even remember. I haven't been here in so long. I
13 don't remember.

14 Q After first meeting Smiley back in the summer at
15 Natasha Levant's house, would Smiley ever call you on the
16 phone?

17 A Sometimes. Occasionally.

18 Q Occasionally.

19 When he called on December 5th, 1993, you had
20 previously spoken to him on the phone?

21 A Yes.

22 Q Did you recognize his voice as being Smiley when he
23 called at that time?

24 A Yes.

25 Q About what time of the day did he call?

1 A About 1:30. 1:45. In between 1:30 and two o'clock.

2 Q Incidentally, when you look around the courtroom
3 today, Luciana, do you see Smiley in the courtroom?

4 A Yes.

5 Q Where is he seated?

6 A Right there (indicating).

7 THE COURT: Identifies the defendant for the record.

8 Q Once the defendant called you, what did he say to you?

9 A Hi, how you doing, what you doing, you know, regular
10 conversation. Then he said can I come over.

11 Q And what did you say?

12 A Yeah.

13 Q Did he come over?

14 A Uh-huh.

15 Q And again --

16 THE COURT: Hold it. You have to say yes or no.

17 THE WITNESS: Oh, yes.

18 Q And what time was this telephone conversation?

19 A About 1:45. In between 1:30 and two o'clock.

20 THE COURT: A.m. or p.m.?

21 THE WITNESS: P.m.

22 Q And after you told him he could come over, did he come
23 over your house?

24 A Yes.

25 Q About what time did he get to your house?

1 A About 3:30. In between 3:30 and four o'clock p.m.

2 Q And when he came to your house, was he by himself?

3 A No.

4 Q Who was he when?

5 A His friend Tariq.

6 Q Was that the first time you met his friend Tariq?

7 A Yes.

8 Q And did he have a car with him when he came to your
9 house that Sunday afternoon?

10 A Yes.

11 Q Do you remember what kind of car it was?

12 A A blue Honda Accord.

13 Q Where did he park the car?

14 A In my backyard.

15 Q After he parked the car in your backyard, did you have
16 a conversation with him?

17 A Yes.

18 Q Was that inside the house?

19 A Yes.

20 Q And what did he tell you about the car?

21 A Okay. Well, first he said that he bought the car from
22 somebody in Plainfield. That's what he said first. Then after
23 awhile we was talking, you know, about 45 minutes after. Then
24 he had gave me a title. I think it was a title, whatever type
25 of papers that you have on the car and he told me to hold them

1 and I put them in my drawer and I looked at it and saw a lady's
2 name on it, Chanda Murray or something like that. I said who
3 is this? And he said that's my aunt and then I said, oh, and
4 then he say -- then he say that's my aunt car. Then I said,
5 oh. Then he said I'm about to take it to Asbury Park something
6 or Asbury something like that so he can get some -- I think
7 it's insurance papers or something like that. And then he said
8 he was going to sell it.

9 Q First he said he got it from a guy in Plainfield?

10 A Uh-huh.

11 Q Did he say who that guy was that he got that car from
12 in Plainfield?

13 A No.

14 Q And after he said he got it from a guy in Plainfield,
15 is it then that you saw the papers for the car?

16 A Yeah, about 25 to 30 minutes afterwards.

17 Q Okay. And when you saw that a lady's name was on the
18 papers, then he said it was his aunt's car?

19 A Yes.

20 Q Did he say why he bought the car to your house?

21 A Yeah. He said -- he asked -- well, he asked me if he could
22 leave it in my backyard because he said that -- well, he was
23 like, you know where I live, it's -- he said the car didn't
24 have no type of alarm system or nothing on it. They didn't
25 have no club or nothing. So he didn't want nobody to steal it.

1 Q Okay. And at any time he was in your home, did your
2 mother come home?

3 A Yes. She came home about 5:30. She came home about in
4 between 5:30, 5:45.

5 Q How long was he in your home before your mother got
6 there?

7 A Maybe about an hour and a half.

8 Q Okay. And in that hour and a half that's when he
9 asked you if he could leave the car there?

10 A Yeah.

11 Q And what did you tell him?

12 A I say yes.

13 Q And before your mother got home did Tariq do anything
14 with the car?

15 A Well, he asked me if I had some type of cleaning solution
16 and the only thing I had was Glass Plus. So I gave him the
17 Glass Plus and some paper towel and he went outside and I kind
18 of like was looking out the door and he was like wiping out the
19 inside part of the door of the car, the steering wheel and like
20 the dashboard and then I went inside. He was still outside.
21 So I didn't see the rest that he was wiping off but I saw that
22 part.

23 Q And once your mother got home, did your mother and
24 Smiley talk about him leaving the car there?

25 A Yeah. I believe -- yeah. She -- he -- no, first she asked

1 him like whose car was it 'cause usually when people bring they
2 cars over or something like that, she always asks whose car it
3 is. I said that's theirs and she said, oh. Then she's like,
4 well, where you get the car from or something like that. I
5 don't know. He said it's mine or whatever. Something like
6 that. I don't know exact conversation they had 'cause it
7 wasn't like I was standing right there but I don't even think
8 she -- I don't think it was asked to her if the car could be
9 left there. I just made up my own decision and say yes. I
10 didn't even ask her. I just say yeah.

11 Q How long did Smiley and Tariq stay in your house once
12 they got there?

13 A Maybe about an hour after, after my -- you mean when my
14 mother came home?

15 Q No. Once the two men came to your house, how long did
16 they stay in the house for?

17 A From about 3:30 until about 6:30. So about three hours
18 maybe.

19 Q Did they stay inside the house the whole time?

20 A No. They went to the store on the corner.

21 Q And did you go to the store after them?

22 A Yeah, I had took a shower and then I went to the store and
23 I met them at the store and then we walked back to my house
24 together.

25 Q And while they were in your house what were they

1 doing?

2 A Nothing really. We was just talking in the kitchen.

3 Q And did there come a time when they left?

4 A Yeah.

5 Q Did they leave the car there?

6 A Yes.

7 Q How about the keys to the car? Who had the keys to
8 the car?

9 A Smiley had the keys but I had the papers.

10 Q And where did you put the papers?

11 A In my drawer.

12 Q And do you know how they left?

13 A In a cab.

14 Q After they left what did you do?

15 A I went to church.

16 Q What time did you leave for church?

17 A Oh, about seven o'clock.

18 Q And when you left for church, did you come back to
19 your house after church?

20 A Yes.

21 Q About what time, if you can remember, did you come
22 back to your house after church?

23 A About 9:30, ten o'clock.

24 Q Was the car there?

25 A No.

1 Q The car was gone?

2 A Yes.

3 Q Was your mother home?

4 A Yes.

5 Q Did you have a conversation with your mother about the
6 car?

7 A Yes.

8 Q Without repeating what your mother said to you, did
9 you later call your friend Natasha that night?

10 A Yes.

11 Q And what did you tell Natasha that night?

12 A I told Natasha what my mother had told me.

13 Q Without repeating any of this, but you did call your
14 friend Natasha that Sunday night?

15 A Yes.

16 Q Okay. The next day, December 8th, 1983, did you give
17 a sworn statement to Detective Dean Marcantonio at the Union
18 County Prosecutor's about what you told the jury today?

19 A Yes.

20 Q Incidentally, Luciana, that part about Tariq asking
21 for the cleaning fluid and wiping down the car, is that in the
22 statement?

23 A No.

24 Q How come you didn't talk about the then?

25 A 'Cause I didn't think about it. When it was -- it didn't

1 cross my mind until after the fact.

2 Q And who was the first person that you told that part
3 to?

4 A That man that --

5 Q Do you see that man in the courtroom today?

6 A Yeah. I don't know his name.

7 Q The man standing? The gentleman with the glasses?

8 THE COURT: Identify for the record, please, who that
9 is.

10 MISS MacMULLAN: Lieutenant Johnson of the Union
11 County Prosecutor's Office.

12 THE COURT: Okay.

13 Q The first time you told him that was today?

14 A Yes.

15 Q Okay. The next day, Luciana, did Detective Dean
16 Marcantonio show you a photo array?

17 A Yes.

18 Q And at the time he showed you the photo array did you
19 recognize anybody's picture?

20 A Yes. On the first one he showed me it had a whole bunch of
21 pictures on it and Smiley's picture was in that one.

22 Q Did you write your name on the back of --

23 A Yes.

24 Q Okay. And date it?

25 A Uh-huh. Yes.

1 Q Okay. Showing you what has been marked S-17 for
2 identification, is that the photo array he showed you on
3 December 9th?

4 A Yes.

5 Q 1993?

6 A Yes.

7 Q And which one is the defendant's picture?

8 A Number three.

9 Q And showing you the back, is that your handwriting
10 "Luciana Wellman"?

11 A Yes.

12 Q And who is Shauna Wellman?

13 A Me. At first I had wrote just like a nickname and then I
14 forgot I had to write my whole name. I rewrote it.

15 Q Is that the date you did this, December 9th, 1993?

16 A Yes.

17 Q Then did you initial and date the other five
18 photographs?

19 A Yes.

20 Q And is this in substantially the same condition as it
21 was on the day the detectives showed it to you?

22 A Yes.

23 Q Incidentally, how did the detectives act towards you?

24 A They were okay.

25 Q Were they respectful towards you?

1 A Yes.

2 Q Were they ever rude to you?

3 A No.

4 Q Did they threaten you in any manner?

5 A No.

6 Q Did they coerce you into giving a statement in this
7 case?

8 A No.

9 Q Later on in this investigation did the detectives show
10 you another photo array on December 22, 1993 at your home?

11 A Yes.

12 Q And at that time did you recognize anybody in that
13 photo array?

14 A Yes, that young man, Tariq.

15 Q And did you then sign the back of that photograph and
16 initial it?

17 A Yes.

18 Q Showing you what has been marked S-18 for
19 identification, I ask if you recognize that?

20 A Yes.

21 Q Is that the photo array they showed you?

22 A Yes.

23 Q Which one did you believe to be Tariq?

24 A Number four.

25 Q This person here?

1 A Yes.

2 Q Showing you the back of the photograph, is that your
3 handwriting there, "Luciana Wellman"?

4 A Yes.

5 Q "December 22" --

6 A Yes.

7 Q "1993"?

8 A Yes.

9 Q Is that your initials on the other five photographs
10 with the date?

11 A Yes.

12 Q Luciana, did the Union County Prosecutor's Office fly
13 you in actually today to testify in this trial?

14 A Yes.

15 Q From Detroit. We paid for your plane ticket?

16 A Yes.

17 Q And that's a round trip ticket?

18 A Yes.

19 Q But besides this have you been given anything in
20 exchange for your testimony?

21 A No.

22 MISS MacMULLAN: Thank you. Nothing further.

23 THE COURT: Cross-examine.

24 CROSS-EXAMINATION BY MR. RUSSO:

25 Q You said that Smiley told you that he bought the car

1 from somebody in Plainfield initially; is that right?

2 A Yes.

3 Q Now, were those his exact words that he bought the car
4 from somebody in Plainfield or did he say a person's name?

5 A He didn't say no name.

6 Q And in fact he didn't indicate to you whether it was a
7 man or woman that he bought the car from, did he?

8 A A guy. A man.

9 Q Wasn't it your testimony a few minutes ago that he
10 said somebody from Plainfield?

11 A I don't remember. I guess so. I don't know.

12 Q But now you remember that it was a guy?

13 A Yeah.

14 Q You sure about that?

15 A Yes.

16 Q Now, you indicated today that Tariq -- that you gave
17 Tariq some cleaning stuff and he cleaned the car, right?

18 A Yes.

19 Q You had a couple of opportunities to speak to the
20 police around the time this happened, right?

21 A No, not really.

22 Q Didn't you give them a statement?

23 A Yes.

24 Q But it didn't occur to you that Tariq had cleaned the
25 car?

1 A No.

2 Q That just came to mind now a year later; is that
3 right?

4 A Yes. I was thinking about it, thinking about the whole
5 thing when I was in the room and then I believe the detective
6 asked me did I remember -- what did I remember and I was
7 telling him and then that just came out. I didn't remember it
8 at the time that they took the statement. That was like the
9 next day, two days later.

10 Q When Smiley called you on the phone, didn't he tell
11 you about the car right away and ask if he could bring the car
12 to your house?

13 A No.

14 Q So you didn't know anything about the car until he got
15 to your house, is that your testimony?

16 A I don't know. I don't remember.

17 Q It's possible that he told you about it when he called
18 you?

19 A Possibly.

20 Q And after you got back from church and called your
21 friend Natasha; is that right?

22 A After my mother had already called the police and got the
23 car checked out or whatever, then she told me what the
24 situation was, what the police had told her. Then I called my
25 friend.

1 Q And you told your friend Natasha the information that
2 you learned from your mother?

3 A Yes.

4 Q Which is information she had gotten from the police?

5 A Yes.

6 MR. RUSSO: No further questions.

7 MISS MacMULLAN: Nothing.

8 THE COURT: Thank you, Miss Wellman. You may step
9 down. Please watch your step.

10 All right. That's the witnesses for today. Very good
11 pace here. About 13 witnesses today, nine witnesses yesterday.
12 The testimony in this case will be concluded tomorrow. I hope
13 we can hear at least the attorney's summations tomorrow and, if
14 not, my instructions as to the law tomorrow that would be the
15 first thing on Friday morning. That's the pace we are at.

16 Again, let's see, 42 minutes yesterday, 25 minutes
17 today. You owe me an hour and seven minutes so far.

18 THE JUROR: Merry Christmas.

19 THE COURT: Travel home safely. Enjoy the evening.
20 Do not discuss the case. See you tomorrow morning ready to
21 work at nine o'clock.

22 (Jury excused.)

23 THE COURT: Before you leave, counsel, come in and see
24 me.

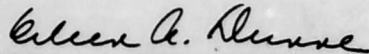
25 MISS MacMULLAN: Yes, Judge.

1 MR. RUSSO: Yes, your Honor.

2 (Court adjourned.)

3
4
5
6 CERTIFICATION

7
8
9
10 I, EILEEN A. DUNNE, C.S.R., License Number XI01022,
11 an Official Court Reporter in and for the State of New Jersey,
12 do hereby certify the foregoing to be prepared in full
13 compliance with the current Transcript Format for Judicial
14 Proceedings and is a true and accurate transcript of my
15 stenographic notes taken in the above matter to the best of my
16 knowledge and ability.

17
18 

19 EILEEN A. DUNNE, C.S.R.
20 Official Court Reporter
21 Union County Courthouse
22 Elizabeth, New Jersey

23
24
25
DATE: December 19, 1994

KA-4956-9474

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : UNION COUNTY
(CRIMINAL)
INDICTMENT NO. 94-06-00636
APP.DIV.DKT.NO.

STATE OF NEW JERSEY :
v. :
SAMMY MOORE, :
Defendant. :
_____ X

Transcript
of
Trial

REC'D
APPELLATE DIVISION

JUL 17 1996

R. Mullan
Clerk

DATE: December 15, 1994
PLACE: Union County Courthouse
Elizabeth, New Jersey

FILED
APPELLATE DIVISION

JUL 17 1996

R. Mullan
Clerk

B E F O R E:

THE HONORABLE WILLIAM L'E. WERTHEIMER, J.S.C.

TRANSCRIPT ORDERED BY:

DOLORES D. MANN, DEPUTY PUBLIC DEFENDER II

A P P E A R A N C E S:

SUSAN M. MacMULLAN, ASSISTANT PROSECUTOR
FOR THE STATE

THOMAS M. RUSSO, ESQ.
FOR THE DEFENDANT

EILEEN A. DUNNE, C.S.R.
Official Court Reporter
Union County Courthouse
Elizabeth, New Jersey

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
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FOR THE STATE:

DR. JOHN SUTYAK	3	10		
SHAYE WALKER	11	19	29	
NATASHA LEVANT	30	40		
DEAN MARCANTONIO	44	106	118	121

FOR THE DEFENSE:

SAMMY MOORE	127	146	205	
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
D-4	Walker statement	21	
S-75A	Miranda waiver		
S-76A	Miranda waiver		
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1 THE COURT: Anything before I bring out the jury?

2 MISS MacMULLAN: No, your Honor.

3 MR. RUSSO: No, your Honor.

4 THE COURT: Bring out the jury, please.

5 (In the presence of the jury.)

6 THE COURT: Good morning. Sorry for the delay. We
7 were doing stuff to streamline the trial so in the long run it
8 will be quicker than if we started at nine o'clock.

9 Call your first witness, please.

10 MISS MacMULLAN: Thank you, Judge.

11 The State calls Dr. John Sutyak of Robert Wood Johnson
12 Hospital.

13 J O H N S U T Y A K, State's witness, sworn.

14 DIRECT EXAMINATION BY MISS MacMULLAN:

15 Q Good morning, doctor.

16 Sir, are you presently employed at the Robert Wood
17 Johnson Hospital in New Brunswick, New Jersey?

18 A Yes, I am on the attending staff there.

19 Q And what are your duties there?

20 A I am one of the attending general surgeons, trauma surgeons
21 and surgical critical care specialist.

22 Q Briefly, I wonder if you could just explain to the
23 jury your education and training concerning the field of trauma
24 surgery, starting first with your undergraduate degree?

25 A Following graduation from high school I was enrolled in the

1 five-year Bachelor of Science and M.D. program between the
2 Pennsylvania State University at state college, Pennsylvania
3 and the Jefferson Medical College in Philadelphia,
4 Pennsylvania.

5 Q So you have a medical degree, doctor?

6 A Yes, I do.

7 Q And your internship? Where was that?

8 A I interned at the University of Cincinnati in the field of
9 general surgery and I completed my residency at the University
10 of Cincinnati in the field of general surgery. I am board
11 certified in general surgery and I have a subspecialty board in
12 the field of surgical critical care.

13 Q Prior to December 5th, '93 approximately how many
14 times have you treated somebody for gunshot wounds?

15 A I would estimate somewhere between 50 to 100. I don't have
16 an accurate account.

17 Q Referring your attention to that date, December 5th,
18 Sunday, in the early morning hours, did you perform surgery on
19 a man later identified as Keith Staple?

20 A Yes, I did.

21 Q Did you observe his injuries at that time?

22 A Yes, I did.

23 Q First let's start with his skin wounds. What kind of
24 wounds did he have?

25 A He had a total of four wounds. Two in the right arm, one

1 in the front of the upper right arm, one in the back and two in
2 his torso area. One in the front of the lower chest, upper
3 abdomen area and one in the back.

4 MISS MacMULLAN: Witness indicating both areas on the
5 body.

6 Q At that point in time were you able to observe his
7 demeanor when he was brought into the emergency room?

8 A Yes. He was disoriented, which means that he was not
9 really responding to questions and unable to answer as to what
10 his name was, things of that nature and he appeared at that
11 time possibly to be intoxicated.

12 Q Why did you say he appeared to be intoxicated?

13 A We were able to smell alcohol on his breath.

14 Q Did you put that in your report?

15 A Yes, we did.

16 Q And prior to the emergency room surgery that was
17 performed, were any measures taken in the emergency room?

18 A Yes. When somebody arrives with an injury to the lower
19 chest, upper abdomen, we have to assume that they may have
20 difficulty breathing and also when they're disoriented that
21 also adds to that. So we placed a breathing tube, which goes
22 in through the mouth into the windpipe and also we placed a
23 tube into the right chest, a large tube in order to drain out
24 any blood in an attempt to reexpand the lung in case this is
25 collapsed.

1 Q Prior to surgery how much blood, if you can recall,
2 was drained out of his chest cavity at that point?

3 A I believe it was approximately one liter.

4 Q One liter of blood?

5 A Yes.

6 Q Could you indicate with your fingers approximately how
7 much that is, if you could? Maybe gesture.

8 A Just like a liter jug of cola. I mean --

9 MISS MacMULLAN: Witness indicating approximately --

10 THE WITNESS: I don't know.

11 MISS MacMULLAN: -- twelve inches.

12 Q And at that point in time was he then taken to the
13 operating room at that time?

14 A Yes, he was taken to the operating room emergently. Any
15 time there is a gunshot wound to that area of the body, very
16 high likelihood of a life threatening injury in the chest or
17 the abdomen and we do not get any other diagnostic tests or
18 anything of that nature.

19 Q Was this a life threatening injury?

20 A Yes, it was.

21 Q Why do you say that?

22 A One, because he lost a liter of blood in the right chest
23 and also from our findings in operation.

24 Q Let's talk about that. Did you perform surgery you on
25 him?

1 A Yes.

2 Q What kind of surgery did you perform?

3 A We performed an exploratory laparotomy which means that we
4 make a large cut in the belly approximately from just above the
5 rib cage to just above the pubic bone. We take a look to see
6 what injuries happened to be present in the abdominal cavity.

7 Q How long is that incision that you make in his chest
8 for this exploratory laparotomy?

9 A It's in the abdomen, just from under the ribs to above the
10 pubic bone. Obviously depends upon if it's a large patient or
11 small patient the actual inches.

12 Q What did you find once you made the incision?

13 A He had several injuries. He had approximately four
14 centimeter or one and a half inch tear in the diaphragm muscle,
15 which is the muscle between the chest cavity and the abdominal
16 cavity. This is the muscle that is primarily responsible for
17 ability to breathe and expand your lungs. The edges of this
18 bleed because it is a muscle and there is a large blood supply
19 there. We found, also, a laceration or a cutting through the
20 liver itself. The liver also is a very vascular organ and this
21 was bleeding. We found approximate a liter and a half of blood
22 within his abdomen at the time that we operated.

23 Q When you say the liver is a --

24 A Vascular. Lots of blood vessels. Big blood vessels.

25 Q So in addition to the approximate liter taken out of

1 his chest before the operation, you found an additional liter
2 and a half of blood in his cavity at that point?

3 A Yes.

4 Q Did you have to take out that free-flowing blood at
5 that point?

6 A Yeah, we take the blood out of the abdomen primarily to
7 take a look to see, you know, if there's any other injury and
8 then in his case we would repair the injuries.

9 Q How about his right lung? You said the wound was to
10 the right side of his body. What was the condition of his
11 right lung at that point?

12 A You can't see it real well through just an inch and a half
13 hole in the diaphragm but we could tell that there was blood,
14 still some residual blood in the left -- in the right chest and
15 also the lung appeared to be contused or bruised, which is a
16 very common injury with something like this.

17 Q Approximately how much blood lost in total in
18 comparison to his entire blood in his body, how much did he
19 loses?

20 A I would estimate that he lost anywhere from 40 to 60
21 percent of the total circulating blood that he had.

22 Q And that fact alone would you consider that a life
23 threatening injury?

24 A That is a life threatening injury, yes.

25 Q And after the operation was concluded was he then

1 placed on a respirator?

2 A He remained, yes, on a breathing machine, I believe, for a
3 couple of days as his lung healed and he was able to get enough
4 strength in order to breathe.

5 Q Were any -- did any complications develop after the
6 surgery was completed?

7 A The only complication that he had was anemia related to the
8 blood loss from the surgery. We try not to transfuse blood if
9 we can save somebody from that and if they're able to tolerate
10 it.

11 Q When you say, "anemia", can you explain to the jury
12 what that means?

13 A That means the blood count is low of the red blood cells,
14 which are the blood cells that carry oxygen.

15 Q During Keith Staple's stay at Robert Wood Johnson
16 Hospital were there any tests done on his blood to determine
17 whether or not he was under the influence of alcohol that day?

18 A Yes, we did have an alcohol level sent.

19 Q What time was his blood taken for that test?

20 A I recall and from the hospital record that it was
21 approximately 3:30 a.m. on December the 5th.

22 Q Okay. That would be about two hours after 1:30 a.m..
23 Does alcohol dissipate in the blood over time?

24 A Yes, it does.

25 Q What does that mean?

1 A That means that the body will metabolize the alcohol over
2 time, which is one of the jobs actually of the liver.

3 Q Can you tell the jury the level of alcohol in his
4 blood when you tested it two hours after 1:30?

5 A His level was 40 and we use a scale of 100 would be the
6 level which you would consider somebody as driving while
7 intoxicated conditions for alcohol level.

8 Q And in your experience does alcohol affect one's
9 ability to perceive events?

10 A Yes, it will.

11 Q Was he discharged from the hospital on December 17th,
12 1993?

13 A Yes.

14 MISS MacMULLAN: Thank you. No further questions.

15 THE COURT: Any questions of the witness?

16 MR. RUSSO: Just one.

17 CROSS-EXAMINATION BY MR. RUSSO:

18 Q Would that blood alcohol level be in your experience a
19 level that would ordinarily impair someone from perceiving what
20 was going on around him?

21 A Well, any alcohol level could be considered able to impair
22 somebody and if you consider the fact that this was drawn two
23 hours later during his operation and the fact that not only
24 does the alcohol level metabolize but also it's diluted
25 significantly from all the fluid that we give to resuscitate or

1 treat somebody who has lost a large amount of blood, yes, I
2 could say that, you know, possibly at the time when he came in
3 it would be enough to definitely impair somebody.

4 MR. RUSSO: No further questions.

5 THE COURT: Thank you, doctor. You may step down.
6 Please watch your step.

7 MISS MacMULLAN: The State's next witness is Shaye
8 Walker of Newark, New Jersey.

9 S H A Y E W A L K E R, State's witness, sworn.

10 DIRECT EXAMINATION BY MISS MacMULLAN:

11 Q Good morning, Miss Walker. How you doing?

12 A All right.

13 Q Miss Walker, how old are you?

14 A Twenty-three.

15 Q Where do you live?

16 A 175 First Street.

17 Q Which apartment?

18 A 20D.

19 Q Miss Walker, have you ever testified in court before?

20 A No.

21 Q Is this your first time? Are you nervous?

22 A In a way.

23 Q Okay. Do you know a man named Sammy Moore?

24 A Yes.

25 Q How do you know Sammy Moore?

1 A A friend.

2 Q How long have you been friends for?

3 A A year.

4 Q You still consider him your friend?

5 A In a way.

6 Q In a way. Do you see him in the courtroom today?

7 A Yes.

8 Q Would you please point and indicate to the Court and
9 jury where he's seated?

10 A Right there (indicating).

11 THE COURT: Identifies the defendant for the record.

12 Q Miss Walker, have you ever seen the defendant with a
13 gun?

14 A Yes.

15 Q How many times?

16 A A lot of time.

17 Q How big is the gun?

18 A Huh?

19 Q How bug is the gun?

20 A About an average gun really.

21 Q Could you indicate with your fingers how big the gun
22 is that you saw the defendant with?

23 A About this big (indicating).

24 MISS MacMULLAN: Witness indicating with her two index
25 fingers about ten to twelve inches.

1 Q And do you know the difference between a handgun and a
2 rifle?

3 A Yeah.

4 Q Was it a handgun or a rifle?

5 A A handgun.

6 Q It was a handgun. All right.

7 Since the defendant has been arrested, has he ever
8 called you?

9 A Yes.

10 Q And would he call you collect?

11 A Yes.

12 Q And About how many times has he called you,
13 approximately?

14 A Maybe more than 50.

15 Q Excuse me?

16 A Maybe more than 50.

17 Q Fifty times?

18 A Uh-huh.

19 Q When he would call you collect, would he ever ask you
20 to set up what's referred to as three-way conversations?

21 A Yes.

22 Q Could you explain to the jury what a three-way
23 conversation is like?

24 A Like if I'm on the phone with him, you click over and dial
25 another number and click back over and all three of us are on

1 the phone.

2 Q You could hear his conversation with somebody that he
3 asked you to click on?

4 A Yes.

5 Q Did he ever ask you to click on a three-way with a man
6 named Tanton Venerable?

7 A Yes.

8 Q What is Tanton's nickname?

9 A Shorty.

10 Q Is he related to Danni Venerable?

11 A Yes.

12 Q How?

13 A Brother.

14 Q Danni Venerable, what is the relationship with the
15 defendant?

16 A Boyfriend/girlfriend.

17 Q So the defendant would ask you to do a three-way with
18 his girlfriend's brother?

19 A Uh-huh.

20 Q Okay. On one of those times that he asked you to
21 click on Tanton, did you ever hear him say to Shorty, "What did
22 you do with that"?

23 A Yes.

24 Q And what did Shorty say?

25 A "I took care of it".

1 Q Did you know what they were talking about?

2 A Not really but I mean obviously it could have been a gun.

3 MR. RUSSO: Objection.

4 THE COURT: Sustained.

5 A Yes, a gun.

6 Q Okay. Why did you think they were talking about a
7 gun?

8 A Well, the prior conversations, you know, he talked about,
9 you know, the incident about what happened in Plainfield.

10 Q Well, did he ever say to you that if the police don't
11 recover the gun, they can't prove he did it?

12 MR. RUSSO: Objection.

13 THE COURT: You are kind of suggesting answers to the
14 questions, aren't you?

15 MISS MacMULLAN: Okay.

16 Q What would he say about a gun, if anything?

17 A That if they couldn't -- if they couldn't find a gun, then
18 they don't have no proof.

19 Q Okay. Let's refer you back to before the defendant
20 got arrested, okay? On the morning of December 5th, Sunday
21 morning, did you see the defendant?

22 A Yes.

23 Q Did he show you any papers?

24 A It wasn't in the morning, though. I think it was like in
25 the early afternoon.

1 Q Do you know about what time it was?

2 A No.

3 Q It was after the morning. Okay. Was it before or
4 after lunch?

5 A I don't know. I can't really say the time. But it was
6 early in the day.

7 Q Did he show you anything?

8 A Yeah, papers to a car.

9 Q Okay. Did he talk about that car?

10 A Yeah.

11 Q What did he say?

12 A He said that -- God. Oh, he said that they had went to
13 Plainfield and that they shot somebody and took they car.

14 Q Now, do you know if he said he shot somebody or --

15 A No, he ain't say he did but he said, you know, they went --
16 that they went out there and shot a guy and took the car.

17 Q Did he say what he was going to do with that car that
18 he got from Plainfield after he and some friends or group of
19 people shot somebody for it?

20 A Sell it.

21 Q He said he was going to sell it?

22 A Yes.

23 Q Miss Walker, on March 28th, 1994 did you give a sworn
24 statement about what you just told this jury to Detective Dean
25 Marcantonio?

1 A Yes.

2 Q Was that at the Plainfield Police Department?

3 A Yes.

4 Q Tell the jury how did Detective Marcantonio treat you?

5 A Well.

6 Q Did he ever threaten you?

7 A No.

8 Q Was he polite?

9 A Yes.

10 Q Did he ever threaten to lock up your kids and put them
11 in foster care if you didn't cooperate?

12 A No.

13 Q None of that?

14 A No.

15 Q At that time did they show you a photo array?

16 A Yes.

17 Q Did you recognize anybody in the photo array?

18 A Besides Smiley another guy that lived around my way but I
19 don't know him.

20 Q What other guy did you recognize?

21 A I don't know his name. I just know his face.

22 Q You just know his face. Well, I will show you first
23 you said you recognized Smiley's photo?

24 A Yes.

25 Q I would like to show you S-17 for identification. Is

1 that the photo -- they showed you one of them?

2 A Which one?

3 Q Do you recognize anybody in that photo array?

4 A Yeah, number four.

5 Q Who is number four?

6 A I don't know his name.

7 Q Is that the guy you say you recognize?

8 A No, it was another one, a younger one.

9 Q Anybody else's photograph in there you recognize?

10 A No.

11 Q I would like to show you the back of photograph number
12 three. Is that your handwriting?

13 A Yes.

14 Q What does that say?

15 A "Shaye Walker".

16 Q What is the date?

17 A "3/28/94".

18 Q Do you recognize photo number three?

19 A Yes.

20 Q Who is that?

21 A Smiley.

22 Q And why did you say before you didn't recognize
23 anybody?

24 A No, I am talking about besides Smiley, yeah, number four.

25 Q Any doubt in your mind that number three is Smiley?

1 A Yes.

2 Q And did they have you put your initials on the other
3 five photographs?

4 A Yes.

5 Q Okay. Miss Walker, has anybody threatened you into
6 coming into testify today?

7 A No.

8 Q Were you subpoenaed to come in?

9 A Yes.

10 Q Were you looking forward to coming in?

11 A Yes.

12 Q Did we promise you anything in exchange for your
13 testimony today?

14 A Say that again.

15 Q Did we promise you anything in exchange for your
16 testimony today?

17 A No.

18 MISS MacMULLAN: Thank you. No further questions.

19 THE COURT: Cross examine.

20 CROSS-EXAMINATION BY MR. RUSSO:

21 Q Miss Walker, no promises were made to you today to
22 come and testify?

23 A Meaning what?

24 Q Well, the State can't promise you anything; is that
25 what you're saying?

1 A No, they didn't promise me nothing.

2 Q And did you indicate that you were looking forward to
3 coming to court?

4 A No, but I'm saying if they asked me, I have to come.

5 Q You said you talked to Mr. Moore dozens of times on
6 the phone; is that right?

7 A Uh-huh.

8 Q By the way, are you the same Shaye Walker who called
9 me at my office?

10 A What's your name?

11 Q Tom Russo.

12 A Yes.

13 Q And you called me on numerous occasions to give me
14 messages from Mr. Moore; is that right?

15 A Yes.

16 Q And did you indicate on those occasions that you were
17 a friend of his and you wanted to help him?

18 A Yes.

19 Q Has anything changed between the time that we talked
20 and today?

21 A No.

22 Q Miss Walker, do you remember giving a statement on
23 March 28th, 1994 to Detective Marcantonio, right?

24 A Yes.

25 Q You just said that.

1 MR. RUSSO: Can I have this marked?

2 THE COURT: D-4.

3 (Shaye Walker's statement marked D-4 for
4 identification.)

5 Q Now, Miss Walker, it's your testimony that you heard
6 Smiley, Sammy Moore, say that they went to Plainfield, shot
7 somebody and took his car?

8 A Yes.

9 Q And that he was going to sell it?

10 A Yes.

11 Q You sure about that?

12 A Yes.

13 Q You were on the phone when you heard that; is that
14 right?

15 A No, I wasn't on the phone. This is before he got locked
16 up.

17 Q Let me show you what's been identified as D-4. Do you
18 see where it says on the top, "28 March 1994"?

19 A Yes.

20 Q Can you identify this document?

21 A That's the document that he typed, Dean Marcantonio.

22 Q This is your voluntary statement to the police?

23 A Yes, I signed it.

24 Q Did you sign each page?

25 A Yes.

1 Q And did you put your initials?

2 A Yes.

3 Q On the bottom of page four where it says, "Have you
4 made any additions or corrections to this statement?"

5 A Yes, I did.

6 Q You did make corrections to it, right?

7 A Uh-huh.

8 Q So you had an opportunity to read the statement
9 over --

10 A Uh-huh.

11 Q -- to determine if it was correct and then make any
12 changes, right?

13 A Uh-huh.

14 Q Do you remember indicating in that statement whether
15 you saw Smiley on the evening of December 4th, Saturday?

16 A Yes.

17 Q And do you remember what you told the police?

18 A Yes.

19 Q You told them that you did see him, right?

20 A Uh-huh.

21 THE COURT: Excuse me. Excuse me. It would be
22 helpful if both of you when the witness gives you an uh-huh,
23 tell them they have to answer yes or no rather than me
24 repeating it each time.

25 THE WITNESS: Sorry.

1 THE COURT: I am telling counsel. It's not your
2 fault. It is easier for you to do it but I have to do it.

3 No uh-huh's, okay, Miss Walker?

4 THE WITNESS: Uh-huh. I couldn't help it.

5 THE COURT: That is the last one. Okay.

6 Q In fact, Miss Walker, what you told the police is that
7 you saw Smiley on December 4th, that he came to your apartment
8 and he left around 11 o'clock; is that right?

9 A I wasn't really sure of the time but it had to be about
10 maybe about that time. I also said that in the statement.

11 Q It was close to 11 o'clock, right?

12 A Yeah, probably, yeah.

13 Q You don't know if it was 11:05?

14 A I can't say. I'm not sure but it had to be about that
15 time.

16 Q Now, you remember being asked the question, "Did he
17 ever have any conversations with you about this incident prior
18 to him getting arrested?"

19 MISS MacMULLAN: Page, counsel.

20 MR. RUSSO: Page three.

21 A Yes.

22 Q And do you remember typed up as part of that it says,
23 "Yes, he came over to my house the next morning after this
24 happened and he had the papers to the car and he told me that
25 he and some guys went to Plainfield and he shot some guy who

1 refused to give up a car." Is that what it says?

2 A Uh-huh. Yes.

3 Q Okay.

4 A But that's when I made the statement at the bottom that I
5 didn't say that he shot. I can't say that he shot him. He
6 said they went to Plainfield and shot somebody. He didn't say
7 he did. That was the statement that I corrected.

8 Q So you corrected it?

9 A Yes.

10 Q Because in fact your testimony was that he didn't say
11 that he shot somebody, right?

12 A Uh-huh.

13 THE COURT: What?

14 THE WITNESS: Yes.

15 Q Now, when you had this conversation on the phone or
16 when you overheard this conversation between Smiley and Shorty,
17 you were on the phone the whole time?

18 A Yes.

19 Q And you heard him say, "What did you do with that",
20 right?

21 A Yes.

22 Q Now, you're saying in court today that you assumed
23 that he was talking about a gun?

24 A Yes.

25 Q You knew that -- you were a friend of his for

1 sometime, weren't you?

2 A Uh-huh.

3 Q And you knew from time to time he had drugs in his
4 possession, didn't you?

5 A No, I can't say that.

6 Q You didn't know that?

7 A No.

8 Q Isn't it a fact that when you overheard this
9 conversation, what you really believe was that he was asking
10 Shorty if he got rid of some drugs?

11 A No, I don't know. To be honest with you when they asked
12 me, I didn't know but he asked me, you know, do you think he
13 could have been talking about a gun and I said, you know, he
14 could have been.

15 Q Okay.

16 A And that was the statement.

17 Q In other words, Shorty asked you that?

18 A No, that's what Dean asked me.

19 Q Okay. So the detective suggested that to you; is that
20 what you're saying?

21 A Uh-huh.

22 THE COURT: Yes or no?

23 THE WITNESS: Yes.

24 Q And before the detective suggested that to you, you
25 weren't sure what he was talking about; is that right?

1 A No.

2 Q You ever have any disagreements with Mr. Moore?

3 A No.

4 Q How long have you known him?

5 A A year.

6 Q A year. You mean a year before this incident?

7 A I guess now it would be two years.

8 Q And in that time you never had any disagreements?

9 A We had arguments but, you know.

10 Q What was your relationship with Mr. Moore?

11 A Friends.

12 Q Were you ever more than friends?

13 A No.

14 Q You ever have any sort of romantic involvement with
15 Mr. Moore?

16 A No.

17 Q Didn't you in fact argue with Mr. Moore because you
18 wanted him to leave his girlfriend?

19 A No.

20 Q Didn't you in fact assault Mr. Moore?

21 MISS MacMULLAN: Timeframe, counsel?

22 A Assault him?

23 THE COURT: Hold on. When?

24 Q Just prior -- let's go back to November, 1993. Didn't
25 you have a fight with Mr. Moore and attack him?

1 A Yes, but it wasn't about -- it wasn't over Danni.

2 Q What was it about?

3 A A VCR.

4 Q What did you do to him?

5 A Nothing. He tried to -- he tried to take it and when I
6 called my mother, he tried to run out the door and I caught
7 him.

8 Q And what was it about? Was it an argument or what?

9 A Yeah, it was kind of like an argument because he gave me a
10 VCR and he tried to take it back.

11 Q He gave you the VCR?

12 A Yes.

13 Q And it was an argument as to whether -- and you
14 considered that a gift; is that right?

15 A Yes.

16 Q But Mr. Moore didn't consider it a gift, right?

17 A Yes, he did.

18 Q The two of you were just friends, right?

19 A Yes.

20 Q And had you received expensive gifts from Mr. Moore
21 before?

22 A No.

23 Q This is the first time?

24 A Yes.

25 Q He didn't just give it to you and ask you to hold it

1 for him?

2 A He gave it to me 'cause I needed one.

3 Q And how long did you have it?

4 A I still got it.

5 Q Up to that point how long had you had it?

6 A You said November, right?

7 Q Right. I am asking you if you remember?

8 A The exact month?

9 Q No. He gave it to you when?

10 A I don't know. You said this incident happened in November?

11 Q I am not asking --

12 A I don't remember.

13 Q Okay. But you had an argument over this VCR and you
14 hit him, didn't you?

15 A No. He hit his head on the door, on the exit door.

16 Q You didn't hit him on the head and he had stitches?

17 A No. When I tried to pull him, he hit his head. I didn't
18 push him into the door or nothing like that.

19 Q You didn't want him to take the VCR away?

20 A He didn't have a VCR. He was trying to run and I was
21 trying to catch him 'cause my mother was looking out the door.

22 Q At that point he didn't even have the VCR?

23 A No, he never had it.

24 Q You were pursuing him or chasing him?

25 A Yeah.

1 Q And why was that?

2 A Because I didn't want him -- he was trying to run, you
3 know, trying to get away before my mother could open the door.
4 My mother live down the hall from me and I was trying to catch
5 him and he tried to run so she wouldn't see him.

6 Q And during this incident you hit Mr. Moore, didn't
7 you?

8 A No, I don't recall hitting him.

9 MR. RUSSO: I don't have anything further.

10 MISS MacMULLAN: Just a couple.

11 REDIRECT EXAMINATION BY MISS MacMULLAN:

12 Q Now --

13 A I don't understand what that got to do with, you know.

14 Q That's okay. Let us ask questions.

15 Miss Walker, during the defense counsel's
16 cross-examination he asked you about times that you actually
17 called his office, Mr. Russo's office?

18 A Yeah, his lawyer.

19 Q Who asked you to do that?

20 A Bailey.

21 Q Okay. And because he was your friend did you do that
22 as a favor to him?

23 A Uh-huh. Yes.

24 Q How many times did the defendant ask you to call his
25 attorney?

1 A A lot of times.

2 Q How many times do you think he asked you?

3 A Maybe like five times.

4 Q And in an effort to help the defendant you did call
5 his attorney?

6 A Yeah, but everytime that I called, you know, he never
7 really would respond.

8 Q Who?

9 A His lawyer.

10 Q He never called you back and so you had to keep
11 calling?

12 A Yeah.

13 MISS MacMULLAN: Thank you. No further questions.

14 MR. RUSSO: No questions.

15 THE COURT: Thank you, Miss Walker. You may step
16 down. Please watch your step.

17 THE WITNESS: Thank you.

18 MISS MacMULLAN: The State's next witness is Natasha
19 Levant of Newark, New Jersey.

20 N A S H A L E V A N T, State's witness, sworn.

21 DIRECT EXAMINATION BY MISS MacMULLAN:

22 Q Good morning, Miss Levant. How you doing?

23 A Fine.

24 Q Have you ever testified in court before?

25 A No.

1 Q Are you nervous?

2 A A little.

3 Q Okay. If you could just make an effort to speak into
4 the mike so everybody on the jury can hear you.

5 Miss Levant, where do you live?

6 A 195 First Street Newark, New Jersey.

7 Q What apartment?

8 A 10C.

9 Q How long have you lived there for?

10 A Twenty years.

11 Q In that 20 years that you lived at that apartment did
12 you come to know a man named Sammy Moore?

13 A Other than known as Smiley, yes.

14 Q Sorry. How do you know this person?

15 A As Smiley.

16 Q As Smiley. Okay.

17 And did you come to know this Smiley while you lived
18 there?

19 A Yes.

20 Q And how long have you known Smiley?

21 A About a year.

22 Q How often would you see him around?

23 A Every other day, maybe everyday. Maybe everyday or every
24 other day.

25 Q How would you describe your relationship with him?

1 A It was on a hi and bye situation.

2 Q Hi and bye. If you would see him in the hallway say
3 hi and bye?

4 A Yeah.

5 Q When you look around the courtroom today, do you see
6 him in court?

7 A Yes.

8 Q Could you please point to where he is seated for the
9 Court and jury?

10 A (Witness indicates.)

11 MISS MacMULLAN: Witness indicating the defendant.

12 THE COURT: Okay.

13 Q In the time that you knew Smiley, do you know the name
14 of his girlfriend?

15 A Yes.

16 Q What is his girlfriend's name?

17 A I know her first name, which is Danni.

18 Q Does she also live in the area?

19 A Yes.

20 Q Does the defendant also have a friend named Brenda

21 ~~Jessica?~~

22 A Yes.

23 Q And do you have a friend named Luciana Wellman?

24 A Yes, she is my cousin.

25 Q She is your cousin?

1 A Yes.

2 Q There is a blood line there or you're good friends?

3 A We're good friends. We were raised together.

4 Q You were raised together. You are very close to her?

5 A Yes.

6 Q While -- and would Luciana ever come to visit you at
7 195?

8 A Yes.

9 Q While Luciana was visiting you at 195, did she ever
10 come to meet Smiley?

11 A She saw him one day but she met him at my house later on.

12 Q Do you remember what time of the year that was when
13 Luciana first met Smiley?

14 A It was kind of cool. I would say maybe close -- about the
15 end of August, September maybe.

16 Q The end of the summer?

17 A Yes.

18 Q Referring your attention, Natasha, last year to
19 December 5th, a Sunday night, did you get a phone call from
20 your cousin Luciana?

21 A Yes.

22 Q And without repeating what Luciana said to you, how
23 long did you have that telephone conversation for?

24 A It was a good maybe five minutes.

25 Q Five minutes. And after you had that conversation

1 with Luciana, what did you do next?

2 A Went to bed.

3 Q You went to bed. Okay.

4 Did you try and go out that night?

5 A Yes.

6 Q Tell us about why you tried to go out that night?

7 A My cousin called me. It was approximately maybe 12 o'clock
8 and she had --

9 Q Okay. Try not to repeat what was said.

10 How about this? Where were you intending to go when
11 you finished talking with your cousin?

12 A To find Smiley.

13 Q After you spoke to Luciana?

14 A Yes.

15 Q Was your mother there that night Sunday night?

16 A Yes, she was.

17 Q Did your mother let you go?

18 A No, she told me do not get involved.

19 Q You went to bed that night?

20 A Yes.

21 Q The next morning, Monday, December 6th, that next
22 morning, Monday morning, did you leave your house?

23 A Yes.

24 Q Did you leave your house in the morning?

25 A Yes.

1 Q Where were you going?

2 A To take my kids to school.

3 Q And when you went to take your kids to school, did you
4 see anybody along the way?

5 A Yes, I made a stop.

6 Q Where did you make a stop?

7 A To Smiley's girlfriend house.

8 Q Is that Danni, the person you talked about before?

9 A Yes.

10 Q Do you remember what apartment that was?

11 A 7E.

12 Q When you went to 7E, what did you do?

13 A Knocked on the door.

14 Q Did someone answer the door?

15 A Yes.

16 Q Who answered the door?

17 A Smiley.

18 Q When Smiley answered the door, what did you say to
19 him?

20 A "What the fuck is wrong with you?"

21 And were you upset with him at that point?

22 A Yes.

23 Q And what did he say to you?

24 A He said, "Why, what happened?"

25 Q He was nonchalant about it, would you say?

1 A Yeah, like he didn't know what was going on.

2 Q And what did you say to him?

3 A I told him they found a Honda Accord at my cousin's house.

4 Q What did he say? What was his response?

5 A "You bullshitting".

6 Q He thought you were kidding?

7 A Yeah.

8 Q And when he told you -- when he said he thought you
9 were kidding, what did you say to him?

10 A "Would I be at your house at eight o'clock in the morning
11 if it was a joke?"

12 Q What did he say?

13 A "Damn, I got that girl in trouble."

14 Q After he said, "Damn, I got that girl in trouble",
15 what else did he say?

16 A We couldn't get in trouble over it. So just act like we
17 don't know nothing or we don't know him 'cause they couldn't do
18 nothing to us.

19 Q He wanted you to pretend that you didn't know him?

20 A Yes.

21 Q Did he say anything else about that car?

22 A There was a body attached to it.

23 Q He said there was a body attached to it?

24 A Yes.

25 Q And did you ask him what he meant by that phrase..

1 "there's a body attached to it"?

2 A Meaning he shot somebody or we shot somebody.

3 Q Well, let me ask you. Did you ask him what that term,
4 "there's a body attached to it" meant? Did you ask him?

5 A I asked him meaning what do you mean. And he responded as
6 saying first he shot somebody. Then after that we shot
7 somebody.

8 Q And how else was he acting after he told you there was
9 a body attached to it and that he shot somebody or we shot
10 somebody over that car? How was he acting?

11 A He was nervous, scared like.

12 Q What was he doing?

13 A He was pacing back and forth.

14 Q Was he saying anything else as he was pacing back and
15 forth?

16 A He was mumbling but I couldn't understand what he was
17 saying.

18 Q What did he do after you two finished that
19 conversation?

8
20 A He walked down the hall and said he would meet me
21 on stairs.

22 Q What did you do?

23 A I went and took my kids -- I made a stop at my girlfriend
24 house and took my kids to school and never saw him no more.

25 Q You just went on your way to take your kids to school?

1 A Yes.

2 Q On December 8th, 1993 approximately 3:43 p.m. did you
3 give a sworn statement to Detective Dean Marcantonio at the
4 Union County Prosecutor's Office?

5 A Yes.

6 Q And at that time did Detective Dean Marcantonio show
7 you a photo array?

8 A Yes.

9 Q And did you recognize anybody in that photo array?

10 A Yes.

11 Q Who did you recognize?

12 A Smiley.

13 Q I would like to show you what's marked S-17 for
14 identification. Is that the photo array Detective Marcantonio
15 showed you?

16 A Yes.

17 Q Okay. Could you tell us which photograph is Smiley,
18 if you can recall?

19 A Number three.

20 Q And is that your signature, the first one there?

21

22 Q And that's dated December 8, 1993?

23 A Yes.

24 Q And did you initial and date the other five
25 photographs?

1 A Yes.

2 Q Could you tell the jury how Detective Marcantonio
3 treated you?

4 A Fine. He was nice.

5 Q He was nice. Did he ever threaten you in any way?

6 A No.

7 Q Did he ever threaten to lock you up and put your kids
8 in foster care if you didn't cooperate?

9 A No.

10 Q Prior to this date, December 8th, 1993, how did you
11 get along with Smiley?

12 A He was -- we were -- I had no problem with him.

13 Q Okay. So you never got into a fight with him at all?

14 A No.

15 Q Natasha, did anybody threaten you or force you to come
16 today?

17 A No.

18 Q Did I or did myself and other detectives come to your
19 house and give you a subpoena to testify?

20 A Yes.

21 Q And did we promise you anything in exchange for your
22 testimony?

23 A No.

24 Q But did you ask me to call your boss today?

25 A Yes.

1 Q To tell him you were going to be a little late?

2 A Yes.

3 Q You are starting a new job at UPS in Secaucus?

4 A Yes.

5 Q Did I tell you that I did call your boss last night?

6 A Yes, you did.

7 Q Besides that have we offered you anything else or
8 promised you anything else in exchange for your testimony?

9 A No, nothing but a ride to work.

10 Q Yeah. We will give you a ride to work but is that all
11 that we promised you?

12 A Yes.

13 MISS MacMULLAN: Thank you. No further questions.

14 THE COURT: Cross-examine.

15 MR. RUSSO: Thank you, your Honor.

16 CROSS-EXAMINATION BY MR. RUSSO:

17 Q Miss Levant, Luciana Wellman is your cousin, right?

18 A Yes.

19 Q And you got a phone call from her?

20 A Yes.

21 Q And in that phone call she gave you certain
22 information, right?

23 A Yes, she did.

24 Q And she told you -- strike that.

25 Had that information related to the car, correct?

1 A Yes.

2 Q And did you know where that information came from?

3 A Could you explain, sir?

4 Q Did you know where she got the information?

5 A Yes.

6 Q So far as you know that information came from the
7 police, right?

8 A Yes.

9 Q And you went to -- with this information you went to
10 see Smiley, right?

11 A The next morning.

12 Q And when you got there, you already knew that there
13 was, as you said, a body attached to the car, didn't you?

14 A In so many words, yes.

15 Q And in fact you're the one who told Smiley that there
16 was a body attached to the car?

17 A No, no, I did not.

18 Q When you went there, you were angry, weren't you?

19 A Yes.

20 Q You were concerned because your cousin might be in
21 there, right?

22 A Yes.

23 Q And your anger was directed towards Smiley, right?

24 A Yes, it was.

25 Q And even though your cousin didn't get into any

1 trouble, you still have some bad feelings towards him, don't
2 you?

3 A Right now, yes.

4 Q Is it your testimony that you never spoke to him after
5 that?

6 A No, I don't believe. No, I don't recall speaking to him
7 after that.

8 Q Well, let me ask you if you recall this. Do you
9 recall a couple days later having a conversation with him?

10 A What did the conversation consist of?

11 Q Well, did you speak to him after you spoke to the
12 police?

13 MISS MacMULLAN: Which date, counsel?

14 Q On December 8th you gave a statement to the police and
15 you spoke to Smiley after you gave that statement, didn't you?

16 A Did I? I don't remember.

17 Q Didn't you have a conversation with him after you gave
18 that statement and before he was arrested?

19 A I could have.

20 Q Didn't you have a conversation which you told him
21 about other information that you had learned from the police?

22 A Meaning what?

23 Q Did you have a conversation is my question?

24 A I don't remember.

25 Q After you spoke -- after you gave the statement to the

9

1 police, you went back to Newark, you set up a meeting with
2 Smiley and you talked to him about what the police told you,
3 didn't you?

4 A No.

5 Q Did you -- you said before this happened you had no
6 animosity towards him, you weren't angry with him in --

7 A No. Wouldn't you have animosity if your cousin was pulled
8 into something that she had no business being pulled into?

9 Q I am talking before that.

10 A No, there was -- we were cool. I had no problems with him.
11 If I had a problem with him, I would never have tried to hook
12 him up with my cousin, if it was some animosity against him.

13 Q Did you have any problem with any friends of his?

14 A Yes.

15 Q Who is that?

16 A Brenda Johnson.

17 Q And what kind of problem did you have with Brenda
18 Johnson?

19 MISS MacMULLAN: Judge, I object as far as any --

20 THE COURT: Sustained.

21 Q Didn't the problem that you had with Brenda Johnson
22 spill over and affect your relationship with him?

23 A No.

24 MR. RUSSO: I have nothing further.

25 MISS MacMULLAN: Nothing.

1 THE COURT: Thank you, Miss Levant. You may step
2 down. Please watch your step.

3 MISS MacMULLAN: The State's last witness in the case
4 is Detective Dean Marcantonio.

5 Your Honor, while we are waiting I had previously
6 marked certain exhibits, copies of. I now have the originals.
7 I would like to have those marked now, your Honor.

8 THE COURT: Sure.

9 MISS MacMULLAN: Thank you.

10 THE COURT: Do you need them during his testimony?

11 MISS MacMULLAN: Yes.

12 THE COURT: Have they been marked already and
13 identified on the record or not? Previous hearing.

14 MISS MacMULLAN: Yes, your Honor. I have the
15 originals now.

16 THE COURT: Okay.

17 D E A N M A R C A N T O N I O, State's witness, sworn.

18 DIRECT EXAMINATION BY MISS MacMULLAN:

19 Q Good morning, Detective. I have to mark some original
20 documents. I'll be with you in a second.

21 A Sure.

22 THE COURT: Are they going to be marked separately
23 or --

24 MISS MacMULLAN: I --

25 THE COURT: S-75A, 76A, 77A, 78A.

1 (S-75A, Miranda waiver; S-76A, Miranda waiver; S-77A,
2 Statement of S. Moore and S-78A, sketch, marked for
3 identification.)

4 Q Good morning. How are you today?

5 A Fine, thank you.

6 Q Detective, are you the investigator that led into the
7 investigation of the homicide of Marcus Benjamin and shooting
8 of a Keith Staple?

9 A Yes.

10 Q And referring your attention to the morning of the
11 shooting, December 5th, 1993, were you contacted at home by the
12 Plainfield police at approximately 1:40 a.m.?

13 A Yes.

14 Q And after receiving that notice from headquarters, did
15 you respond to the scene at approximately 3 a.m.?

16 A Yes.

17 Q Briefly, what information did you have about the
18 homicide when you arrived and inspected the crime scene?

19 A Well, there were two victims. One deceased, one at Robert
20 Wood Johnson critically injured. That there was a blue Honda
21 Accord missing from the scene belonging to the deceased victim.
22 That there was a .380 caliber shell casing in the middle of the
23 road in front of 1102 West Third Street where this incident
24 occurred.

25 Q Okay. And after you gathered your information from

1 the crime scene, did you take numerous statements from
2 witnesses that morning of the shooting, December 5th?

3 A Yes.

4 Q And were two of those witnesses Kyewaghana Cook and
5 Khahlia Hassenbey?

6 A Yes.

7 Q After doing your initial investigation by taking all
8 these statements, approximately how many suspects were you
9 looking for at this point?

10 A Four.

11 Q And did you have any possible nicknames of the
12 suspects at this point?

13 A Yes. We were given two in the beginning. Smiley and Rock.

14 Q And that night after you finished your initial part of
15 the investigation did you go home that night?

16 A Yes.

17 Q Okay. And while you were home were you contacted at
18 home?

19 A Yes, I was.

20 Q At approximately 8:30 p.m?

21 A Yes.

22 Q Without repeating what was said to you, what did you
23 do after you got that phone call?

24 A I made arrangements through the Plainfield Police Division
25 to have the blue Honda Accord, which was recovered in Orange,

1 New Jersey, towed back to the Union County crime lab in
2 Westfield for further processing.

3 Q And did you subsequently get copies of the Orange
4 police reports concerning the recovery of that vehicle?

5 A Yes.

6 Q Did you learn the name of the person that actually
7 called the police about this vehicle?

8 A Yes.

9 Q And what was that person's name?

10 A Liz Wellman.

11 Q Did you interview Liz Wellman the next day, Monday?

12 A Yes.

13 Q Did she give you any name or nickname of a possible
14 suspect?

15 A Yes, it was Smiley.

16 Q And so far that's all you had at that point when you
17 spoke to Mrs. Wellman?

18 A Yes.

19 Q Was your intention at that time to try and find out
20 what the full identity of Smiley was?

21 A Yes.

22 Q And on December 8, 1993 did you sit down with Luciana
23 Wellman and Mrs. Wellman and take sworn statements from them?

24 A Yes.

25 Q And after sitting down and interviewing them at that

10

[]

1 point, did you learn the name of another potential witness who
2 might help you find out who this Smiley person was?

3 A Yes.

4 Q Whose name did you give?

5 A Natasha Levant.

6 Q And did you also learn from Luciana pedigree
7 information about the mother of the defendant?

8 A Yes.

9 Q What did you learn about the mother of the defendant?

10 A That she was a bus driver for the New Hope Baptist Church
11 in Newark in which the Wellmans attended on Sundays.

12 Q And did you investigate that after trying to find out
13 the mother's name and where she lived?

14 A Yes.

15 Q Did you learn the mother's name?

16 A Yes, I did.

17 Q What was her name?

18 A Deralyn Chambers.

19 Q Once you learned the name of the mother, were you then
20 able to find out the name of one of her sons?

21 A Yes.

22 Q What name did you find out?

23 A Sammy Moore.

24 Q After you got the name Sammy Moore, did you then
25 develop a photo array?

1 A Yes, I did.

2 Q Could you explain to the jury -- when you say photo
3 array, you try and get a recent photograph of Sammy Moore?

4 A Sure.

5 Q And after you got that photo array together, that same
6 day, December 8th, 1993, did you take a sworn statement from
7 that witness, Natasha Levant?

8 A Yes.

9 Q After you took a statement from her, did you show her
10 the photo array?

11 A Yes.

12 Q Did she positively pick out the defendant's photo?

13 A Yes, she did.

14 Q Did she have any hesitation at all?

15 A No.

16 Q Incidentally, how did you find her to be as far as her
17 level of cooperation?

18 A Very well. Very well.

19 Q Did she hesitate or --

20 A No, not at all.

21 Q The next day, December 9th, 1993, Thursday, at
22 approximately 5:15 p.m. did you show that same -- after that
23 time did you show that same photo array to Kyewaghana Cook?

24 A Yes.

25 Q Was she in headquarters pursuant to her mother

1 bringing her into headquarters?

2 A Yes.

3 Q And did you show the array to Kyewaghana?

4 A Yes, I did.

5 Q Did Kyewaghana pick out anyone?

6 A Yes.

7 Q Who did she pick out?

8 A Sammy Moore.

9 Q When you took the sworn statement from Kyewaghana on
10 the 5th and again when you met her on the 9th, were you aware
11 that she had an old CDS charge from 1992?

12 A No.

13 Q So you didn't know anything about that?

14 A No.

15 Q That wasn't discussed at that time?

16 A No.

17 Q And also at that time was a Khahlia Hassenbey there at
18 headquarters on December 9th?

19 A Yes.

20 Q Okay. Did Khahlia want to get involved?

21 A No, she didn't.

22 Q So was she shown the photo array?

23 A No.

24 Q Later that night did the Wellmans come to Plainfield
25 headquarters?

1 A Yes, they did.

2 Q And did you show them the photo array?

3 A Yes.

4 Q Did they positively identify the defendant's photo?

5 A Yes.

6 Q Incidentally, do you see Sammy Moore in court today?

7 A Yes, I do.

8 Q Please indicate him for the Court and jury.

9 A Sitting at the defense table in the multi-colored striped
10 shirt.

11 THE COURT: Indicates the defendant for the record.

12 MISS MacMULLAN: Thank you.

13 Q And the Wellmans positively identified the defendant?

14 A Yes.

15 Q After all these identifications and all these
16 additional statements were taken, did you obtain an arrest
17 warrant for Sammy Moore on December 10th, 1993?

18 A Yes.

19 Q For the shooting involving the murder of Marcus and
20 the shooting of Keith?

21 A Yes.

22 Q And on December 13th, 1993, Monday, did you respond to
23 a particular location?

24 A Yes.

25 Q Where did you go?

1 A 175 First Street in Newark, Garden Spires apartments.

2 Q And once you arrived there, what did you do?

3 A We met with the superintendent where we set up surveillance
4 and for intelligence reasons or to arrest Mr. Moore if he was
5 seen coming out of the building.

6 Q So you weren't sure if he in fact was there or not?

7 A No. We had information that he was living in that
8 building, though.

9 Q Okay. Incidentally, the arrest warrant, what address
10 is on the arrest warrant for Sammy Moore?

11 A 195 First Street, Newark, apartment 7E.

12 Q Do you know actually who is the resident of 7E?

13 A That is Danni Venerable.

14 Q Would that be his girlfriend?

15 A Yes.

16 Q And at that time on December 13th, Monday, after you
17 got the arrest warrant, did you see him at approximately 2:05
18 p.m?

19 A Yes.

20 Q Tell the jury where he was coming out of?

21 A He was coming out of the front entrance of 195 First
22 Street.

23 Q And who was with you to assist in the arrest at this
24 time?

25 A It was myself, Detective Gallagher, Detective Gillian and

1 Detective James Russo.

2 Q And what happened after you saw the defendant exit the
3 premises?

4 A He was arrested on this murder warrant.

5 Q When he was arrested, did he have any narcotics on
6 him?

7 A No.

8 Q Was he arrested because of the narcotics charge?

9 A No.

10 Q He was arrested because of the warrants?

11 A Yes.

12 Q And what happened next after you arrested him?

13 A He was placed into our unmarked police vehicle and taken
14 directly back to the North District of the Newark Police
15 Department.

16 Q How far away is the North District from where you
17 arrested him at 195 First Street?

18 A About a five to ten-minute ride.

19 Q And who actually transported him, if you can recall?

20 A It was myself, Detective Gallagher, Detective Russo and
21 Detective Gilliam.

22 Q Did you arrive at the Newark Police Department North
23 District?

24 A Yes.

25 Q And why, incidentally, did you go there?

1 A To be processed on this murder warrant. That would be
2 Newark's protocol, to take a person to their headquarters prior
3 to bringing him back to Plainfield.

4 Q Well, prior to even arresting the defendant, did you
5 go to the North District and let them know what you were doing?

6 A Yes.

7 Q In that an out of county police department was in
8 Essex County?

9 A Yes.

10 Q And was he in fact booked on the warrant in Newark?

11 A Yes, he was.

12 Q Okay. And at approximately three p.m. was he then
13 driven to Plainfield headquarters?

14 A Yes.

15 Q And do you recall what time you arrived at
16 headquarters?

17 A Yes, 3:40 p.m.

18 Q And once you arrived at headquarters in Plainfield at
19 3:40 p.m., what happened next?

20 A Mr. Moore was placed into the booking area of the service
21 bureau, in the police department.

22 Q And what happened there?

23 A He was processed on the murder warrant.

24 Q What does that mean that he was "processed on the
25 murder warrant"?

1 A He was fingerprinted, photographed, pedigree information
2 was put into the computer.

3 Q How long does that take about?

4 A Approximately 30 to 45 minutes, depending on how busy the
5 police department is on that day.

6 Q And after the process was completed, where was he
7 placed, if you can recall?

8 A He was placed into jail cell number four.

9 Q And after he was placed in jail cell number four, was
10 he ever removed from that cell?

11 A Yes, he was.

12 Q Approximately what time was that?

13 A Approximately, I would say, around 1640 or 1650, which is
14 about 4:50 p.m.

15 Q And who escorted him out of the cell?

16 A Detective Gallagher.

17 Q Where was he taken?

18 A He was taken to the Criminal Investigation Bureau interview
19 room on the second floor.

20 Q So you just took him up one flight of stairs?

21 A Yes.

22 Q Where was he placed at that time once he was in the
23 bureau?

24 A Into an interview room.

25 Q When he was placed in the interview room, who was in

1 there with him?

2 A Myself and Detective Gallagher.

3 Q And how could you describe for the jury what the
4 interview room looks like?

5 A It's approximately an eight foot by eight foot square room,
6 four walls, a door, a table and three chairs inside.

7 Q And did you all three sit inside the room at that
8 time?

9 A Yes.

10 Q Was he handcuffed at that time when you were all in
11 the interview room?

12 A No, the handcuffs were removed.

13 Q Do you normally carry a police issued weapon with you?

14 A Yes.

15 Q Did you bring the weapon, the gun, in with you at that
16 time?

17 A No.

18 Q And how about your badges? Do you also wear your
19 badges at that time?

20 A No.

21 Q At approximately 4:50 p.m. was he read what is
22 commonly referred to as his Miranda rights?

23 A Yes.

24 Q And did you use a form to assist you in reading him
25 his Miranda rights?

1 A Yes.

2 Q I would like to show you what has just been marked
3 S-75A for identification and ask you do you recognize what this
4 document is?

5 A Yes, I do.

6 Q How do you recognize it, sir?

7 A My handwriting and signature on the bottom as the advising
8 officer.

9 Q And what is S-75A?

10 A It's a Miranda rights waiver form.

11 Q Is this the form that you used at that time?

12 A Yes, it is.

13 Q Could you please tell the jury the manner in which
14 that form was used at that time?

15 A Mr. Moore was asked to read aloud his rights one through
16 five and after each right was read outloud, I asked him if he
17 understood each right, at which time he indicated, yes, that he
18 did and which he wrote "yes" on the line and put his initials
19 and at the bottom where the waiver of rights portion is he also
20 read that aloud and after completing that, he was asked again
21 if he understood this and at which point he indicated yes and
22 signed the form waiving his rights.

23 Q And is that your signature there to the left, sir,
24 under advising officer?

25 A Yes.

12

[]

1 Q And is that Sammy Moore's signature next to the word
2 "signed"?

3 A Yes.

4 Q And as far as a witness is that Detective Gallaghers's
5 signature?

6 A Yes, it is.

7 Q And was the process of reading him his Miranda rights
8 completed at 4:50 p.m.?

9 A Yes.

10 Q It took about five minutes to read this form to him?

11 A Yes.

12 Q Incidentally, did he appear to understand what you
13 were telling him and what was being read to him at that point?

14 A Yes, he did.

15 Q And would he respond at the appropriate times when you
16 conclude your questioning?

17 A Yes.

18 Q And reading him his rights if he understood?

19 A Yes.

20 Q Have you ever been in the presence of someone based on
21 your duties as an officer who is under the influence of alcohol
22 or narcotics?

23 A Yes.

24 Q Did he appear to be under the influence of any drug or
25 alcohol?

1 A No.

2 Q And was his speech coherent when you spoke to him?

3 A Yes, he was.

4 Q And based on what you saw did he appear to understand
5 what was happening to him at that point?

6 A Yes.

7 Q And after you read to him what is commonly referred to
8 as his Miranda rights, did he agree to speak to you about this
9 incident?

10 A Yes.

11 Q And in speaking to you about this incident did you ask
12 him about the car that was recovered in Orange?

13 A Yes.

14 Q What did you say to him at that point?

15 A About the car being recovered in Orange?

16 Q Yes.

17 A That he was identified as bringing this particular car used
18 in this murder to this girl's house in Orange.

19 Q What else did you say to him concerning the shooting
20 in Plainfield?

21 A That he has been identified as being there in Plainfield
22 the night of this incident.

23 Q And did you also show him or give him a copy of the
24 arrest warrant?

25 A Yes.

1 Q So he was aware of what he was being charged with at
2 that time?

3 A Yes.

4 Q And did you give him an opportunity to speak about
5 what you were asking him about?

6 A Yes.

7 Q And did he give you an oral statement at that time in
8 response to your questions?

9 A Yes.

10 Q And in your report that you've submitted in this case
11 did you put down that oral statement in your report?

12 A Yes, I did.

13 Q And without being able to look at the report, would
14 you be able to repeat verbatim what he told you or do you need
15 to look at the report?

16 A No, I need to look at the report.

17 Q Okay. This report was prepared by yourself, sir?

18 A Yes.

19 Q And it was a time when it was fresh in your memory,
20 his oral statement to you?

21 A Yes.

22 Q And the report was prepared by yourself?

23 A Yes.

24 Q Based on your own personal knowledge?

25 A Yes.

1 MISS MacMULLAN: Based on recorded recollection the
2 State requests that he be permitted to read from his report the
3 oral statement.

4 THE COURT: Any objection?

5 MR. RUSSO: No objection.

6 Q Do you have a copy of your report up there, detective?

7 A Yeah, I have it up here.

8 THE COURT: S-74A.

9 MISS MacMULLAN: Your Honor, a portion of it is marked
10 S-74 and I can turn to that page. Here we go.

11 Q Turning to page sixteen of S-74 -- showing you page
12 sixteen of your --

13 A This is it.

14 Q Okay. Showing you what has been marked S-74, page
15 sixteen, do you see in this report where you write down what
16 Sammy Moore told you about after you told him that he was
17 positively identified concerning the murder and concerning that
18 car?

19 A Yes.

20 Q What did he say?

21 A Would you like me to read this portion now?

22 Q Yes. That portion of his oral statement.

23 A "Myself and Detective Richard Gallagher questioned Sammy
24 Moore who stated that he and his friend, Tariq, bought the
25 Honda on Sunday morning from a guy named Snoop at 195 First

1 Street in Newark for \$1,000 cash. He also stated that he was
2 never in Plainfield at all and in fact on the evening of
3 Saturday night, December 4th, and into the early morning hours
4 of December 5th he was with a girl named Traci who lives at
5 Third and Dickerson in Newark and they were with a Brenda
6 Johnson in her apartment at 195 First Street in Newark,
7 apartment 20N, all night Saturday night into the morning of
8 Sunday, December 5th.

9 "He provided us with Traci's phone number, which is
10 area code 201-483-6946. Sammy Moore also provided us with his
11 mother's name and address, that being Deralyn Troutman of 555
12 South 17th Street and 16th Avenue, apartment 35 in Newark, New
13 Jersey. He also reports that he always carries a .380 caliber
14 automatic handgun when he sells drugs in front of the apartment
15 building at 195 First Street in Newark."

16 Q Detective, after you gave him an opportunity to give
17 an explanation in response to your questions concerning this
18 murder charge, did you complete the oral interview at 7:24
19 p.m.?

20 A Yes.

21 Q And where was he placed at that time?

22 A Back into his place of incarceration, cell number four.

23 Q Now, what did you do after he gave you all these
24 leads, Traci Thomas' name and Brenda Johnson's apartment?

25 A We immediately began to check his alibi.

1 Q That night, December 13th, 1993, Monday night, did you
2 reach out for the residence of Traci Thomas?

3 A Yes.

4 Q And did you speak to Traci Thomas' mother at that
5 time?

6 A Yes.

7 Q Without repeating what was said, were any arrangements
8 made to meet Traci the next day?

9 A Yes.

10 Q And December 14th, 1993, that following morning, did
11 you in fact go to Traci Thomas' house?

12 A Yes.

13 Q And was -- did the defendant -- was he able to give
14 you the exact address?

15 A No.

16 Q And prior to this date had you ever heard of Traci
17 Thomas?

18 A No.

19 Q You've never met this woman before?

20 A No.

21 Q Anywhere in your investigation is there anything about
22 a Traci Thomas prior to him telling you her name?

23 A No.

24 Q But for the fact that he gave you her phone number,
25 would you have been able to find out what her address was?

1 A No.

2 Q So he gave you her phone number?

3 A Yes.

4 Q And once you arrived at Traci Thomas' residence, did
5 you speak to her about what Sammy Moore had told you?

6 A Yes.

7 Q And without repeating what Traci said to you, did she
8 confirm or dispute the fact that she was his alibi witness?

9 A She disputed that.

10 Q And how did you find her demeanor to be at that time?

11 A Very pleasant girl.

12 Q Were any threats made to Miss Thomas --

13 A No.

14 Q -- that you are going to lock her up if she didn't
15 cooperate with you or anything like that?

16 A No.

17 Q Mr. Moore also gave you the address of Brenda Johnson.
18 Was Brenda Johnson supposedly all night long with him?

19 A Yes.

20 Q And did you in fact go to the residence of Brenda
21 Johnson at 195 First Street, apartment 20N?

22 A Yes.

23 Q Was Miss Johnson there?

24 A No, she wasn't.

25 Q Was anybody there?

1 A Yes.

2 Q Who?

3 A Ebony and Hassana Bennett.

4 Q Do you know the relationship between Hassana Bennett
5 and Brenda Johnson?

6 A I believe they're just friends. They were living together.

7 Q Do you know whether or not Hassana dates Brenda's
8 brother?

9 A Yes, I believe that was brought out.

10 Q That is the relationship there?

11 A Yes.

12 Q And did you in fact speak to Hassana and Ebony about
13 the whereabouts of Brenda?

14 A Yes.

15 Q Without repeating what they told you, did you then
16 respond back to Plainfield headquarters and speak with the
17 defendant once again?

18 A Yes.

19 Q And was that at approximately 2:10 p.m?

20 A Yes.

21 Q And at that time was the defendant removed from his
22 cell?

23 A Yes.

24 Q And by whom was he removed?

25 A By myself.

1 Q You did. Okay. Where did you take him?

2 A Back upstairs to the Criminal Investigation Bureau
3 interview room.

4 Q And at that point in time would that be the same
5 surroundings, the chairs and --

6 A Yes.

7 Q And who else was there?

8 A Detective Gallagher again.

9 Q Same situation?

10 A Yes.

11 Q No handcuffs, no guns, no badges?

12 A No.

13 Q At that time did you again readvise him of his Miranda
14 rights?

15 A Yes.

16 Q Showing you what is marked S-76A, is this the form
17 and, incidentally, I put the wrong markings. I switched the
18 markings. I will mark it back. This should be S-76A. Is this
19 the form that you used at that time on December 14th, 1993?

20 A Yes.

21 Q And what time did you begin to read him his Miranda
22 rights at that time?

23 A At 1420 hours.

24 Q Did you go through the same process?

25 A Yes.

1 Q Which was?

2 A Once again I had Mr. Moore read outloud his rights numbers
3 one through five and after each right I would ask him if he
4 understood each right, at which point he indicated he did. He
5 wrote "yes" and his initials after each line and also read the
6 waiver of rights portion and after reading that portion I again
7 asked him if he understood this and he indicated he did, signed
8 the form again and wished to waive his rights.

9 Q Did he agree to speak to you again at that time?

10 A Yes.

11 Q What did you tell him at that point after the Miranda
12 rights were concluded?

13 A That his alibi did not check out and that Miss Thomas did
14 not agree with anything he said.

15 Q Did you tell him anything in reference to Brenda
16 Johnson?

17 A Yes. Also that she wasn't even there that night.

18 Q And at that point in time when you were telling him
19 that his alibi didn't pan out, what did he say to you again?

20 A Well, then that's at the point where he began to admit that
21 he was involved in the shooting.

22 Q So he did admit that he did -- that he is responsible
23 for the shooting to you?

24 A Yes, he did.

25 Q And once he admitted that he in fact was responsible

1 for the shooting, did you take a typewritten statement from
2 him?

3 A Yes.

4 Q And were you present during the taking of that
5 statement?

6 A Yes.

7 Q Were you doing the typing or Detective Gallagher?

8 A I did the typing.

9 Q Who was asking the questions?

10 A Both of us.

11 Q Showing you what has been marked S-77A for
12 identification, is this the eight-page typed confession
13 statement of Sammy Moore from that day?

14 A Yes, it is.

15 Q Detective, this morning did you give me the original
16 copy of that statement?

17 A Yes.

18 Q Do you have a copy of the statement then with you?

19 A Yes.

20 Q Okay. I wonder if you could read for the jury the
21 statement that Mr. Moore gave you after he orally told you that
22 he in fact was responsible for that shooting in Plainfield?

23 A Would you like me to start with page one, the pedigree
24 information as well?

25 Q Yes. Everything that's on the paper.

1 A "QUESTION: What is your full name, age and date of
2 birth?

3 "ANSWER: Sammy Watton Moore, 19, 17 August '74.

4 "QUESTION: Where do you reside, with who and for how
5 long?

6 "ANSWER: 195 First Street, apartment 7E, Newark, New
7 Jersey, Danni Venerable, girlfriend, about seven months.

8 "QUESTION: Where did you reside prior to that
9 address?

10 "ANSWER: 440 Jellif Avenue, apartment 3B, Newark, New
11 Jersey.

12 "QUESTION: What is your telephone number?

13 "ANSWER: No phone.

14 "QUESTION: Where and in what capacity are you
15 employed? For how long?

16 "ANSWER: Unemployed. I was going to night school.

17 "QUESTION: What is your business telephone number?

18 "ANSWER: Not applicable.

19 "QUESTION: What is your social security number?

20 "ANSWER: 136-66-6159.

21 "QUESTION: What is the extent of your formal
22 education and where did you receive it?

23 "ANSWER: Twelfth grade.

24 "QUESTION: Are you able to understand, read and write
25 the English language?

1 "ANSWER: Yes.

2 "QUESTION: What is your driver's license number?

3 "ANSWER: I don't have one.

4 "QUESTION: How have you been treated since you've
5 been with the Plainfield Police Division?

6 "ANSWER: All right.

7 "QUESTION: Have you been advised of your
8 constitutional rights prior to being interviewed?

9 "ANSWER: Yes.

10 "QUESTION: Did you fully understand those
11 constitutional rights?

12 "ANSWER: Yes.

13 "QUESTION: Have I or anyone else made any threats or
14 promises to you prior to giving this statement?

15 "ANSWER: No.

16 "QUESTION: Do you give this statement of your own
17 free will having your constitutional rights in mind?

18 "ANSWER: Yes.

19 "QUESTION: My name is Detective Marcantonio and this
20 is Detective Gallagher. We are both from the Plainfield Police
21 Division and would like to ask you questions concerning the
22 murder of Marcus Benjamin which occurred in the 1100 block of
23 West Third Street, Plainfield, New Jersey, December the 5th,
24 1993 at approximately 1:30 a.m.. Will you now please answer
25 our questions truthfully in this regard?

1 "ANSWER: Yes

2 "QUESTION: Sammy, do you have any nicknames?

3 "ANSWER: Yes, smiley.

4 "QUESTION: At what time did you leave Newark, New
5 Jersey on December 4th, 1993, Saturday, with who and what type
6 of car?

7 "ANSWER: We left Newark at about 11 o'clock p.m. in a
8 two-door white car with gray interior, stick shift, five star
9 rims. I was with Tariq, Rock and the driver in which I do not
10 know at all. He is Rock's friend.

11 "QUESTION: Please describe Tariq to us.

12 "ANSWER: Light skinned black male, five foot nine
13 inches tall, 135 pounds, thin build, 18 years old, clean shaven
14 and on the night of this incident I think he was wearing black
15 windbreaker pants and a black army jacket, white Reeboks and
16 brown skully hat.

17 "QUESTION: We will now show you a six-person
18 photographic lineup containing all black males. Is the friend
19 you know as Tariq in this lineup?

20 "ANSWER: Yes, number four, Tariq Diggs.

21 "QUESTION: Did we have you sign and date the back of
22 photo number four as positive identification of Tariq and have
23 you initialed and dated the backs of the other five photos?

24 "ANSWER: Yes."

25 Q Excuse me, detective, if I can interrupt you, you

1 showed him a photo array and he positively identified Tariq?

2 A Yes.

3 Q Do you know the full name of Tariq?

4 A Yes, Tariq Diggs.

5 Q Showing you S-18 for identification, is that what you
6 showed the defendant at that time?

7 A Yes, it is.

8 Q And he picked number four?

9 A Yes, he did.

10 Q And is this his signature, "Sammy Moore" dated
11 December 14th, 1993?

12 A Yes.

13 Q Please continue.

14 A "QUESTION: Please describe Rock to us.

15 "ANSWER: Brown skinned black male, low cut afro, five
16 foot nine inches tall, 140 pounds, slim billed, 18 to 19 years
17 old, clean shaven. I think Rock was wearing a black army coat
18 as well, black skully hat and blue jeans, black low cut
19 Timberland boots.

20 "QUESTION: Please describe the driver of the white
21 car on the night of this incident.

22 "ANSWER: Dark skinned black male, six foot tall, thin
23 build, mustache and small beard on his chin, about 19 to 20
24 years old. He was wearing a blue Columbia rain suit, two
25 piece.

1 "QUESTION: Can you tell us where Tariq and Rock live?

2 "ANSWER: I don't know where they live. They just
3 hang out around my apartment building.

4 "QUESTION: What were you wearing on the night of
5 December four, 1993 and December 5th, 1993 when you went to
6 Plainfield?

7 "ANSWER: Dark blue jeans, a black leather jacket,
8 black and blue skully hat with a rim, blue and green shirt with
9 X and "TH" (Tommy Hillfiger), brown Timberland boots.

10 "QUESTION: When all four of you got into the white
11 car at about 11 o'clock p.m, where did you decide to go to?

12 "ANSWER: First we drove around Newark and then I said
13 let's go out of town and the driver suggested we go to
14 Plainfield.

15 "QUESTION: When you first left Newark in the white
16 car, did anybody take a gun with them?

17 "ANSWER: Yes. Just me.

18 "QUESTION: Please describe the gun you took to
19 Plainfield with you on Saturday, December 4th, 1993 into
20 December 5th, 1993.

21 "ANSWER: A .44 long, black with a brown handle, six
22 shot revolver.

23 "QUESTION: Was this gun loaded and, if so, with what
24 type of bullets?

25 "ANSWER: It was loaded with six rounds of .44.

1 "QUESTION: Do you normally carry this same gun?

2 "ANSWER: Yes.

3 "QUESTION: Where did you get this particular gun from
4 and when?

5 "ANSWER: I traded my brand new .380 auto still in the
6 box to this kid on the street for the .44 about two months ago.

7 "QUESTION: Are you sure that nobody else in your car
8 also had a gun?

9 "ANSWER: Yes.

10 "QUESTION: What happened when you first came into
11 Plainfield?

12 "ANSWER: We drove around and found some girls walking
13 on South Second Street near a bridge and we stopped to talk to
14 them and they looked small. So we asked them if they had
15 anybody else that was older for us and they said, yes, we have
16 sisters. Why don't you follow us to our house because there
17 are more girls in the house.

18 "QUESTION: Can you please describe the girls that you
19 first stopped and spoke with?

20 "ANSWER: There were three. The first two looked
21 young, maybe fifteen or sixteen years old, brown skinned black
22 females and the third girl that kept walking and didn't want to
23 talk with us, she was very light skinned and looked Puerto
24 Rican.

25 "QUESTION: Did they tell you their names?

1 "ANSWER: Yes, but I can't remember them.

2 "QUESTION: Did you tell them your names?

3 "ANSWER: Yes, we said Tariq, Smiley and Rock from
4 Newark."

5 Q Excuse me, detective.

6 In that statement when the defendant is telling you
7 that he met, I believe, some girls, two younger girls and then
8 a light complected girl; is that correct?

9 A Yes.

10 Q And I think also, if I can just ask, he says we drove
11 around and found some girls walking on South Second Street near
12 a bridge; is that correct?

13 A Yes.

14 Q And he describes -- he says there were three of the
15 girls there and that the first two looked young and the third
16 girl that wouldn't talk was very light skinned and looked
17 Puerto Rican.

18 Kyewaghana Cook, would you describe her as light
19 skinned possibly looking Puerto Rican?

20 A Yes.

21 Q And did Kyewaghana Cook tell you she was with her two
22 younger cousins when she walked back from the Chinese food
23 restaurant?

24 A Yes.

25 Q And did you meet those two cousins, Jada Williams and

1 Madina Williams?

2 A Yes.

3 Q Did they look young to you?

4 A Yes.

5 Q And he met them by a bridge on South Second Street. I
6 would like to show you S-49 for identification. Are you
7 familiar with the intersection of Clinton Avenue and South
8 Second Street in Plainfield?

9 A Yes.

10 Q Is that what this photograph shows?

11 A Yes.

12 Q And is there a bridge where South Second Street,
13 intersects with Clinton Avenue?

14 A Yes.

15 Q And would this be the route that one would take to the
16 Chinese restaurant on Front Street?

17 A Yes, it would.

18 Q Please continue with your statement.

19 A "QUESTION: After speaking with these girls, did you
20 pull over and get out of your car to continue talking with
21 them?

22 "ANSWER: Yes, just me, Rock and Tariq got out and the
23 driver stayed in the car.

24 "QUESTION: At this point who did you talk with and
25 did anybody else come out of the house to talk with or meet

1 you?

2 "ANSWER: The light skinned girl that first didn't
3 want to talk with us went into the house and came back out with
4 another brown skinned girl and all four of them asked us to
5 come inside the house and we decided that we didn't want to go
6 in and they told us to come back in about a half an hour so we
7 agreed and then drove off.

8 "QUESTION: Where did you go after leaving these four
9 girls on South Second Street?

10 "ANSWER: We drove around looking for some sess on
11 Fifth Street but couldn't find any. So we just stopped at a
12 store and bought some blunts, gum and a lighter."

13 Q Excuse me, detective. Did he ever explain what sess
14 means?

15 A Yes.

16 Q What is sess?

17 A It's marijuana.

18 Q Please continue.

19 A "QUESTION: After driving around and going to the
20 store, did you go back to the girls' house on South Second
21 Street like you arranged?

22 "ANSWER: Yes. But they kept asking us to come inside
23 and we didn't want to. So we drove off.

24 "QUESTION: Where did you drive to after leaving South
25 Second Street?

1 "ANSWER: We were going to find the Jamaican club but
2 we ended up on Halsey Street and Third Street and spotted some
3 other girls outside. So we stopped the car and the three of us
4 got out, me, Tariq and Rock and I walked up the street a little
5 bit and started calling the girls and I saw some kids with
6 masks on, and one said, 'What the fuck are you calling our
7 girls for?' And I said, 'How am I supposed to know that
8 they're your girls?' So then one of them pulled out a gun. So
9 I started walking back to our car and I got in with Tariq and
10 Rock and I told them that these guys were trying to play me out
11 over some girls. So we then pulled off in the car and drove
12 past them and one guy was still holding a gun and said
13 something. Then we continued driving around and ended up back
14 on that South Second Street.

15 "QUESTION: When you ended up back on South Second
16 Street after having the argument with the boys on Third Street,
17 what did you decide to do?

18 "ANSWER: I said that I should get those guys and
19 scare them and the driver said all I would have to do is cut
20 through the backyards and you'd end up on the side of their
21 house. So the driver pulls the car over next to a boarded up
22 garage building and I got out of the car by myself and went
23 across the street and started cutting through the yards and
24 ended up on the side of the house and I came out with my gun
25 out and I came down the driveway. I saw the fat guy get out of

1 the blue Honda Accord parked in front of the house and I said,
2 'What is all this stuff you're talking about?' And one guy
3 that was on the porch ran into the house and one guy from
4 across the street came towards me and I grabbed him. And I was
5 holding him and talking to the fat guy and said, 'Why were you
6 all talking to me like that before?' And then a guy came out
7 of the house on the porch and had a gun in his hand and I was
8 telling the fat guy to tell this boy to put the gun down and I
9 was asking him about what he put in his trunk and he told me
10 that it wasn't his car. His boy on the porch then raised his
11 gun and the fat guy turned to the guy on the porch and said
12 something to him and the guy on the porch shot one round at me
13 and as soon as he shot, I shot the fat kid in the back and the
14 other guy on the porch shot again and then the one guy that I
15 was holding tried to break free and run away and I pulled him
16 in front of me and then another guy started running across the
17 street shooting at me and got hit by a car and rolled to the
18 ground and then I shot the guy that I was holding and he kept
19 running."

20 Q Excuse me, detective.

21 In this statement the defendant is saying that someone
22 from the porch is shooting at him but he shoots at the fat guy?

23 A Yes.

24 Q And then he says there's a guy running across the
25 street, another shooter got hit by a car shooting at him but he

1 shoots the guy he's holding; is that what he was trying to say?

2 A Yes, that's what he's saying.

3 Q Please continue.

4 A "And I then saw the kid on the porch and it looked
5 like his gun jammed. So he ran into the house and I shot at
6 his door just in case he was standing behind the door. And
7 then I picked up the keys from the fat dude because they were
8 on the ground in front of him and I went over to the driver's
9 side of the blue Honda and I got in and the doors were open.
10 And I started the car and drove off down to the corner. That's
11 when the white car was driving towards me with Tariq and Rock
12 in it and I flashed the lights on them and they stopped and I
13 told them that I need someone drive the car back to Newark and
14 Tariq got out, came into the Honda and drove the car to Route
15 22 to get home with the white car following us."

16 "ANSWER: How many shots in total did you fire from
17 your .44 handgun?

18 "ANSWER: Three.

19 "QUESTION: How many shots do you think were fired by
20 the other guys out there?

21 "ANSWER: About five shots.

22 "QUESTION: How far away from the fat guy were you
23 when you shot him?

24 "ANSWER: I guess he was about two steps away from me.

25 "QUESTION: How far was the second guy you shot?

1 "ANSWER: I was holding him, so he was right next to
2 me.

3 "QUESTION: Can you identify any of the people on the
4 street that were shooting off guns at you?

5 "ANSWER: No. They were all wearing masks but I think
6 I could identify the second guy I shot. He didn't have a mask
7 on.

8 "QUESTION: What were the lighting conditions like on
9 the street when the shooting occurred?

10 "ANSWER: It was pretty dark out except for some porch
11 lights and the car headlights passing by.

12 "QUESTION: How many people ran into the house that
13 the guy was shooting from?

14 "ANSWER: Only one.

15 "QUESTION: After you left Plainfield in the blue
16 Honda with Tariq, where did you drive to?

17 "ANSWER: We went down Route 22 towards Newark and got
18 off at the Hillside Bloy Street exit and drove down from Newark
19 and drove straight back to the Garden Spires apartment at 195
20 First Street.

21 "QUESTION: What happened to Rock and the other guy in
22 the white car?

23 "ANSWER: They drove another way and we didn't see
24 them for the rest of the night.

25 "QUESTION: What did you do with the gun you used in

1 the shooting?

2 "ANSWER: I tossed it out the car window after we got
3 off the Bloy Street exits into some bushes.

4 "QUESTION: Are you willing to take us to the exact
5 area where you threw the gun and assist us in the recovery of
6 this gun?

7 "ANSWER: Yes.

8 "QUESTION: When you went back to the Garden Spires
9 building, what did you do with the blue Honda Accord and what
10 apartment did you go back to?

11 "ANSWER: We parked the car behind the Spires building
12 and I told Tariq to meet me in the morning so we can get rid of
13 the car. Then Tariq left and I went upstairs to apartment 20N
14 to see Traci was still at Brenda's. And she asked me where I
15 was at and I just told her that I was chilling with the boys
16 and I then left back out of the apartment and went outside to
17 the Honda Accord and drove it to Second Street in Newark and
18 parked it there for the night. Then I went back to Brenda's
19 apartment and stayed with Traci for the rest of the night.

20 "QUESTION: Who is Traci?

21 "ANSWER: A girl I know. She lives at Third and
22 Dickerson in Newark and her telephone number is area code
23 201-483-6946.

24 "QUESTION: When you went back into the apartment 20N
25 to see Traci, did you go into that apartment with anybody else?

1 "ANSWER: No.

2 "QUESTION: Did you tell anybody that night what
3 happened in Plainfield?

4 "ANSWER: Yes. Just Shorty.

5 "QUESTION: Who is Shorty?

6 "ANSWER: Tanton Venerable. He is my girlfriend
7 Danni's little brother. He lives in apartment 5D.

8 "QUESTION: What exactly did you tell Shorty that
9 happened?

10 "ANSWER: I told him that we went to Plainfield and
11 got into a shoot-out and I hit two of them and took the guy's
12 car.

13 "QUESTION: Was anybody else in apartment 20N when you
14 went in for the night?

15 "ANSWER: Yes. Ebony, Brenda and Hassana and the
16 kids.

17 "QUESTION: Did you tell any of them what happened?

18 "ANSWER: No.

19 "QUESTION: When you got up the next morning, that
20 still being Sunday, December 5th, 1993, what did you do with
21 the blue Honda?

22 "ANSWER: I got up at about 11 a.m. and called Shana
23 and asked her if I could park my car in her backyard and she
24 asked me if it was stolen and I told her no. She said I could
25 bring the car over. So I saw Tariq outside and we took the car

1 over to Shana's house and he drove the car.

2 "QUESTION: Who is Shana?

3 "ANSWER: She is a girl I met through a girl named
4 Tasha and she lives on Freeway Street in Orange and her number
5 is area code 201-325-9181.

6 "QUESTION: When you brought the car over to her
7 house, did you park it in her driveway?

8 "ANSWER: Yes.

9 "QUESTION: Did you and Tariq go inside her house and
10 talk with her?

11 "ANSWER: Yes.

12 "QUESTION: How long did you stay there?

13 "QUESTION: About two hours we were talking.

14 "QUESTION: Was anybody else in Shana's house?

15 "ANSWER: Her mother came home after about one hour.

16 "QUESTION: Did her mother ask you about the car?

17 "ANSWER: Yes. I told her it was my car but the
18 papers weren't good yet and I didn't want to leave it by my
19 building because somebody might steal it.

20 "QUESTION: Did you show her mother any papers for the
21 car?

22 "ANSWER: I left the papers with her.

23 "QUESTION: After you left Shana's house, when did you
24 find out that the police took the car?

25 "ANSWER: The next morning, Monday, at about 7:30 a.m.

1 Tasha came to my door and told me that Shana called her and
2 said that the Orange police took the car because it was stolen
3 and somebody got shot over it.

4 "QUESTION: What did you do with the car keys to the
5 Honda Accord?

6 "ANSWER: After Tasha told me about the car, I threw
7 the keys in the pond at Branchburg Park, which is behind the
8 Spires building.

9 "QUESTION: When did you find out that somebody died
10 as a result of this shooting?

11 "ANSWER: When Tasha told me about the car on Monday
12 morning.

13 "QUESTION: Sammy, have you been provided with
14 cigarettes, food and drinks as well as breaks and personal
15 reliefs this entire statement?

16 "ANSWER: Yes.

17 "QUESTION: How have you been treated during this
18 statement?

19 "ANSWER: Good, fair.

20 "QUESTION: Did you give this statement keeping your
21 constitutional rights in mind at all times?

22 "ANSWER: Yes.

23 "QUESTION: Have you also provided us with a
24 handwritten sketch depicting the shooting scene in which you
25 signed and we have attached hereto?

1 "ANSWER: Yes.

2 "QUESTION: Did Rock, Tariq or the unknown driver have
3 any involvement in the actual shooting?

4 "ANSWER: No. They never got out of their car.

5 "QUESTION: Did anybody know that you had a gun on
6 you?

7 "ANSWER: No.

8 "QUESTION: Is there anything else that you would like
9 to add to this statement?

10 "ANSWER: I didn't mean for this to happen and I'm
11 really sorry that somebody died over this.

12 "QUESTION: After reading the statement and finding it
13 to be the truth as you have told it, will you swear to and sign
14 it?

15 "ANSWER: Yes.

16 "QUESTION: Have you made any additions or corrections
17 to this statement?

18 "ANSWER:" Handwritten by Mr. Moore was, "Yes, one"
19 and his initials.

20 Q Did that conclude his statement, detective?

21 A Yes, at 1822 hours.

22 Q 1822 hours. That would be --

23 A 6:22 p.m..

24 Q And, incidentally, when did you start to take this
25 statement?

1 A It began at 3:25 p.m.

2 Q And after it was typed up did you permit the defendant
3 to read over the statement for accuracy?

4 A Yes.

5 Q Did he in fact read over the statement?

6 A Yes, he did.

7 Q And I think it was you who made -- he made one
8 correction?

9 A Yes, he did.

10 Q Which page did he make the correction on?

11 A Let me look through the statement here and find it for you.
12 It was on page number four.

13 Q And what correction did he make?

14 A Looks like it was a typo. I can't see the letter
15 underneath it but the word is find. He changed the first
16 letter to the F and initialed it.

17 Q Did you then, after he read each page for accuracy,
18 did you then ask him to sign it at that time?

19 A Yes, I did.

20 Q And did yourself and Detective Gallagher also initial
21 and date it at that time, too?

22 A Yes.

23 Q And you all did that together?

24 A Yes.

25 Q And is that Mr. Moore's signature and your initials

1 and date on each and every one of these pages that I am turning
2 in front of you?

3 A Yes.

4 THE COURT: Would this be an appropriate time to
5 break?

6 MISS MacMULLAN: Yes, your Honor.

7 THE COURT: Ladies and gentlemen, we will take our
8 midmorning recess at this time. Take 15 minutes. If you want
9 to go downstairs, feel free to do so. Please don't discuss the
10 case. See you then.

11 (Recess.)

12 THE COURT: Mr. Moore, it's possible we might get to
13 that part of the trial today where your testimony could be
14 offered. If you choose to do so, I want you to understand your
15 rights with regard to that.

16 Of course, you still have the right to remain silent
17 in this courtroom and if you choose not to testify, the State
18 can't comment on your failure to testify. If you do choose to
19 testify, however, you will be waiving your right to silence and
20 the State's attorney will be able to ask you questions and
21 cross-examination of any matters relevant to your testimony.
22 So it's just not that you get to say what you want to say. The
23 State gets to ask you what they want to ask as governed by the
24 Rules of Evidence.

25 If you choose not to testify, you have a right to a

1 charge to the jury that it is your constitutional right not to
2 testify and the jury is advised that they cannot consider in
3 any manner in arriving at their verdict or for any purpose the
4 fact that you did not testify as a witness because you are
5 entitled to remain silent in the case and you are entitled to
6 the presumption of innocence even if he do not testify and they
7 are not to draw any adverse conclusions or any inferences of
8 guilt by the fact you did not testify in the case.

9 That is an optional charge. You don't need to have it
10 if you choose not to testify. It is something that you can
11 have if you so desire. Whether you testify or not under these
12 circumstances is up to you and your attorney but have you
13 understood everything I said so far here this morning?

14 THE DEFENDANT: Yes.

15 THE COURT: Okay. Let's continue with the testimony
16 of Detective Marcantonio. Bring the jury out.

17 (In the presence of the jury.)

18 CONTINUED DIRECT EXAMINATION BY MISS MacMULLAN:

19 Q Detective, let's pick up after the statement was
20 completed from the defendant.

21 Detective, even during the first time that you met the
22 defendant and spoke to him on the 13th, he orally admitted to
23 you that he does possess a .380? At one time he did?

24 A Yes.

25 Q And even in the written statement he said on the night

1 in that he had a .380 still in the box that he traded for the
2 .44?

3 A Yes.

4 Q And even though he says in the statement that he was
5 the only shooter, the casing found at the crime scene, that was
6 a .380?

7 A Yes.

8 Q And the projectile taken from Marcus and the
9 projectile that was found in the jacket of the other victim,
10 Keith Staple, were they sent to the FBI?

11 A Yes, they were.

12 Q Are you familiar with the results of the examination
13 of those two projectiles, the one from Marcus and the one from
14 Keith?

15 A Yes.

16 Q And what did the FBI find them to be, those two
17 projectiles?

18 A .44 caliber.

19 Q .44 caliber. Do you know, sir, whether or not a .44
20 projectile can fit in a .380 casing?

21 A It cannot.

22 Q Okay. With that in mind based on your investigation
23 it was your understanding there was more than one shooter at
24 the scene?

25 A Yes.

1 Q And he admits in the statement that he used a .44 when
2 he shot at these two men?

3 A Yes.

4 Q While he was telling you how he shot these men, did he
5 demonstrate for you the way he did it? Did he make any body
6 gestures?

7 A Yes, he did.

8 Q Tell the jury what he was like when he was telling you
9 about how he shot these men that night?

10 A Mr. Moore stood up and demonstrated actually how this
11 progressed into the shooting, making motions with his arms like
12 he was holding somebody and with the other arm pointing as he
13 was shooting the second person, Mr. Benjamin. Then as the
14 other person broke free, he says he shot that person and this
15 is while he's standing up making these gestures demonstrating.

16 Q So he didn't have any hesitancy when he was telling
17 you about it --

18 A No.

19 Q -- in detail?

20 After -- excuse me. During the written statement and
21 during his time with you on December 14th, the afternoon of the
22 14, did he also draw a sketch to explain how they approached
23 the victims in this case?

24 A Yes.

25 Q And were you present when he made that sketch?

1 A Yes.

2 Q I would like to show you what has been marked S-78A
3 for identification. Is this the original sketch drawn by the
4 defendant that afternoon on the 14th?

5 A Yes, it is.

6 Q And how do you recognize it, sir?

7 A My initials are on this as well as Detective Gallagher's.

8 Q Okay. And I would like you to look at an enlargement
9 that has been previously marked S-26 for identification. And
10 with the Court's permission what we will do is put this in
11 front of the jury and I realize some jurors it's not as easy to
12 see than others.

13 With the Court's permission, if you could come down
14 here and stand to the other side of this diagram and explain
15 for the jury the sketch that the defendant drew explaining how
16 it was when he approached these two victims that night.

17 THE COURT: Let me make a suggestion. Mr. Gorda is
18 the individual that has the most difficulty. Bring it down
19 here to this side and let the other jurors use their otherwise
20 perfect eyesight to look down this way.

21 MISS MacMULLAN: Okay. Good idea. Thank you, Judge.

22 Okay. We are behind the stenographer. Hopefully she
23 can hear us.

24 Okay. Can everybody see here? Yes, the jurors are
25 all shaking their head yes.

1 Q Okay. Now, we are to the left side of the jury.
2 Hopefully, juror number eight can see.

3 Detective, would you please explain to the jury what
4 these markings are and how the statement was taken?

5 A If you go according to Mr. Moore's legend, alphabetically
6 according to Mr. Moore's legend alphabetically A, which is this
7 car here facing westbound towards Clinton Avenue on South
8 Second Street, was the white car that he was in. The line that
9 he drew here is him exiting the vehicle, crossing South Second
10 Street, going past number B, which he labeled "band building",
11 which is an abandoned building which he gave in his statement
12 as a boarded-up building.

13 Q Detective, on the intersection of South Second Street
14 and Morris Street, is there an abandoned building?

15 A Yes, there is.

16 Q Right where he drew it at that spot is that where it
17 is located?

18 A Yes.

19 Q And he put the word "band building"?

20 A Yes.

21 Q And this is his own words and drawing?

22 A Yes.

23 Q What's next?

24 A His path as he described. He followed not quite to
25 mid-block on Morris Street here where it says "Morris". He

1 says he cut through backyards, through bushes, round fences to
2 end up on the side of number C, the house where the kids were
3 at. This is 1102 West Third Street.

4 Q Okay. Did he describe it to you where this house was
5 located?

6 A He says it was on Third Street on the corner.

7 Q The house on the corner. And for the record that's
8 the house on the corner that has the bullet shots where Anthony
9 Mack and Quan and Mook were in that night?

10 A Yes.

11 Q What else does he say?

12 A Okay. Some of these are hard for me to see as well.

13 Q Go on the legend.

14 A D, he crossed out "Honda". The word "Honda" is here. It's
15 the car which is parked here in front of 1102 West Third
16 Street, which is also facing westbound towards Clinton Avenue.

17 Q The way he drew the Honda and scratched it out and put
18 "the car", did he indicate which way the car was facing?

19 A Yeah, by the pointy end of it would be the front of the
20 car.

21 Q And that would be facing?

22 A Just like the other cars facing Clinton Avenue.

23 Q Okay. What's next?

24 A E is "where I was standing", meaning Sammy Moore, which is
25 right here in front of the blue Honda Accord. F, "where the

1 fat boy was standing". Now, F is kind of hard for me to see as
2 well on here. I believe it was right here. F -- this should
3 be F here.

4 Q Okay. It is a little --

5 MR. RUSSO: I am having trouble hearing.

6 THE COURT: Try to keep your voice up, Detective
7 Marcantonio.

8 THE WITNESS: Okay.

9 Q Is that anywhere near the car D?

10 A Yes.

11 Q I wonder could you please -- at this point in time why
12 don't we at this point in time put the pointer on where he says
13 the fat guy and, incidentally, that would be Marcus Benjamin,
14 the victim?

15 A Yes.

16 Q Let's make sure the jurors all see that here. Walk
17 down here so the other jurors can see it. Indicating here
18 where does it actually look like a P here, detective?

19 A Yeah, it looks like a P.

20 Q I want to be sure everybody can see that?

21 A There is no P on the legend.

22 Q All right. Just so we can see.

23 Now, this is where he says the fat guy and I imagine
24 that's supposed to be Marcus Benjamin?

25 A Yes.

1 Q All right. Take it back closer to the other side.

2 Okay. Now, what do we have next on the legend?

3 A "G is the kid I was holding". G would be this one here
4 next to E, which is him. So this is G.

5 Q Make sure everybody can see that. G, for the record,
6 would be in front of E and in front of the car?

7 A Yes.

8 Q Okay. What's next?

9 A "H was the kid on the porch shooting". H up here on the --
10 supposedly on the porch of the house.

11 Q Did he use the words kid or did you suggest the word
12 kid?

13 A Just as he wrote it here. "The kid".

14 Q And during this investigation did you learn that Mook,
15 Keith Carson, that he admitted that he was out on that porch at
16 one time?

17 A Yes.

18 Q How old is Keith Carson, if you know?

19 A I believe he is 17, maybe.

20 Q He's a juvenile?

21 A Yes.

22 Q What else do you have on the legend?

23 A "I is the kid that got hit by the car while shooting".
24 Right here is I and he's got a car pointed here facing also
25 Clinton Avenue showing "I, the person that got hit by the car".

1 Q Detective, at this point in the investigation prior to
2 Sammy Moore telling you that one of the shooters got hit by a
3 car, did you have any information whatsoever that there was
4 somebody that got hit by a car that was involved in the
5 shooting?

6 A No.

7 Q And during this investigation did you take a sworn
8 statement from Alexander Walker on March 30th, 1994?

9 A Yes.

10 Q And at that time did Alexander Walker tell you
11 anything about what Rock's leg was like after they left that
12 Saturday night and he saw him again that Sunday morning?

13 A Yes.

14 Q What did he say Rock's leg looked like at that time?

15 MR. RUSSO: Objection. Hearsay.

16 MISS MacMULLAN: It's all been testified to at this
17 point. It goes to the detective's state of mind and the
18 circumstances taking this statement.

19 THE COURT: It's hearsay. Objection sustained.

20 Q Okay. We'll continue now.

21 At this point in time he tells you that one of the
22 shooters was hit by a car; is that correct?

23 A That's correct.

24 Q Now, what else do we have here on the legend?

25 A We have "J, the car that hit the kid that was shooting",

1 which is simply the car just pointed out to, the J above it.

2 Q Okay. Why don't you just tell the jurors how this was
3 set up, if you could? What was drawn first?

4 A Okay. In order to -- in order to help Mr. Moore understand
5 where he was at because he is from out of town, I drew the
6 streets and I wrote in the street names. Third, Clinton,
7 Second, Morris and the bridge. So he would know and understand
8 from his statement what he said he came -- he was by a bridge
9 on South Second Street. I laid out this area for him.

10 Q Okay. Besides that is the rest his handwriting?

11 A Everything is his handwriting.

12 Q And when the car that he puts E, first put Honda and
13 then the car D here --

14 A Yes.

15 Q He puts it that it drove down West Third Street?

16 A Yes.

17 Q In this investigation did you learn the address of
18 Kenneth Brooks?

19 A Yes.

20 Q What is the address of Kenneth Brooks?

21 A 1311 --

22 MR. RUSSO: Objection.

23 THE COURT: Why?

24 MR. RUSSO: There's been no testimony as to who
25 Kenneth Brooks is or why that would be relevant.

1 MISS MacMULLAN: Judge, I will tie this up.

2 THE COURT: Okay.

3 MISS MacMULLAN: There's been a previous
4 identification by Alexander Walker.

5 THE COURT: Okay.

6 Q Now, Kenneth Brooks, what was Kenneth Brooks' address
7 at this time?

8 A 1311 West Third Street.

9 Q And the direction that the car was going in, where was
10 that in relation to Kenneth Brooks' home?

11 A Directly towards his home. He lives on the other side of
12 Clinton Avenue here.

13 Q If this car turned down West Third Street, it would go
14 towards Kenneth Brooks' home?

15 A Yes.

16 Q And after the sketch was done by the defendant, was it
17 then notarized?

18 A Yes.

19 Q And was it signed by Mr. Moore himself?

20 A Yes.

21 Q Was he given the opportunity to review it for accuracy
22 or make any changes, if he wanted?

23 A Yes.

24 Q Is that his signature up there?

25 A Yes.

1 Q And is that Detective Gallagher's initials right
2 there?

3 A Yes.

4 Q And your initials, also, sir?

5 A Yes.

6 Q And the date you did that?

7 A Yes.

8 Q Thank you.

9 And is this in -- the original which I showed you
10 before, was that in substantially -- is that in substantially
11 the same condition as it was on the afternoon that he drew it
12 for you?

13 A Yes.

14 Q Now, during this investigation at this point did you
15 have the photo arrays of the other co-defendants when you were
16 speaking with Mr. Moore?

17 A No.

18 Q Did you have Sammy Moore's photo array?

19 A Yes.

20 Q Did you have Tariq Diggs' photo array?

21 A Yes.

22 Q Now, after you spoke to Mr. -- the defendant in this
23 case, did you subsequently get the photograph of a Kenneth
24 Brooks?

25 A Yes.

1 Q Did you put his photograph in an array numbered number
2 four?

3 A Yes.

4 Q I would like to show you what has been marked S-19 for
5 identification. Is this the photo array containing Kenneth
6 Brooks, the man that lives at 1311 West Third Street, whose
7 house the car was driving towards in this photo array?

8 A Yes.

9 Q Which photo is Kenneth Brooks?

10 A Number two.

11 Q Thank you.

12 Did you also in this investigation get a photograph of
13 James Baines?

14 A Yes.

15 Q And did you put James Baines' photograph in a photo
16 array with the number five?

17 A Yes.

18 Q I show you what has been marked S-20 for
19 identification. Is this the photo array containing James
20 Baines' photograph?

21 A Yes.

22 Q Which photo is James Baines?

23 A Number six.

24 Q Number six. Does he have a nickname?

25 A Yes.

1 Q What is it?

2 A Jimbo.

3 Q Did he ever live on West Third Street based on your
4 investigation?

5 A Yes.

6 Q Which block did he live at, if you know?

7 A He lived in, I believe, the 1000 or 1100 block of West
8 Third Street.

9 Q Just down the street from the shooting?

10 A Yes.

11 Q And, lastly, did you subsequently get a photograph of
12 David Diggs?

13 A Yes.

14 Q And did you put his photograph in a photo array
15 labeled number six?

16 A Yes.

17 Q Showing you what has been marked S-21 for
18 identification, is that the photo array?

19 A Yes.

20 Q Which picture is David Diggs?

21 A Number five.

22 Q Here?

23 A Yes.

24 Q What is his nickname?

25 A Rock.

1 Q After he gave the statement and he drew the sketch for
2 you, what happened next with Mr. Moore?

3 A After it was completed, he was provided with a shower by
4 Detective Gallagher.

5 Q And was he placed back in his cell?

6 A Yes.

7 Q Now, in his statement he agreed to help you look for
8 the gun?

9 A Yes.

10 Q Did you promise him anything in exchange for him
11 helping you find the gun?

12 A No.

13 Q Did you ever promise him that you would speak to the
14 prosecutor handling the case to get a deal for him?

15 A No.

16 Q At the time how old was the defendant?

17 A I --

18 Q Did he tell you?

19 A He was an adult.

20 Q Did he tell you his date of birth was August 17, 1974?

21 A Yes.

22 Q It would make him approximately 19 years old at the
23 time?

24 A Yes.

25 Q Did you ever threaten him or you or Detective

1 Gallagher threaten him that if he didn't give this statement,
2 that you would seek the death penalty for him?

3 A No.

4 Q And did you ever tell him that if he didn't give this
5 statement, that you were going to lock up all his girlfriends
6 and put their kids in foster care?

7 A No.

8 Q The next day based on the fact that Mr. Moore told you
9 he would show you where he threw the gun out the window, did
10 you then take him out of his cell on Wednesday, December 15th?

11 A Yes.

12 Q And was he provided anything, any food before?

13 A Yes, he was given breakfast.

14 Q And was he given anything else at his request?

15 A Maybe some cigarettes, coffee.

16 Q Where then did you transport the defendant?

17 A He was transported at his request, at his direction down
18 Route 22 towards Hillside and Newark where he previously told
19 us he threw the gun.

20 Q Did you leave at approximately 9:45 a.m.?

21 A Yes.

22 Q And what location did he lead you to?

23 A To Weequahic Park.

24 Q Now, this was at his direction?

25 A Yes.

1 Q And did you arrive at the location at approximately
2 10:15 a.m.?

3 A Yes.

4 Q Incidentally, who was with you when you went to look
5 for the gun that he says he threw out the window?

6 A Detective Gallagher and Detective James Russo.

7 Q And once you arrived at that location, what happened
8 next?

9 A I stayed in the vehicle with Mr. Moore and Detective Russo
10 and Detective Gallagher searched for this .44 caliber handgun
11 but were unable to locate it.

12 Q And how long did you look for it about?

13 A I don't quite recall how long we looked.

14 Q After you looked for the gun and you couldn't find it,
15 did you then return him to his cell?

16 A Yes.

17 Q Later that day on December 15th, Wednesday, did you
18 take a sworn statement from Traci Thomas at approximately 12:45
19 p.m?

20 A Yes.

21 Q And were there any other efforts made to again look
22 for that gun that the defendant had led -- in the area that the
23 defendant had led you to?

24 A Yes.

25 Q What efforts were made?

1 A Other detectives were sent back to the area in Weequahic
2 Park with metal detectors to again look for this gun with
3 negative results.

4 Q Were you ever able to find the gun?

5 A No.

6 Q Detective, did you ever promise the defendant anything
7 in exchange for his statement?

8 A No.

9 Q And at the time he gave the statement you had already
10 disproved his alibi witnesses?

11 A Yes.

12 Q And you already had people at the scene identify him?

13 A Yes.

14 MISS MacMULLAN: Thank you. No further questions.

15 THE COURT: Cross-examine.

16 CROSS-EXAMINATION BY MR. RUSSO:

17 Q Detective, you indicated that in his statement Mr.
18 Moore told you he threw the gun in some bushes near Bloy
19 Street; isn't that right?

20 A Yes.

21 Q That's nowhere near Weequahic Park, is it?

22 A That's correct.

23 Q When did Mr. Moore draw this diagram?

24 A It was drawn after he provided the statement, the
25 typewritten statement.

1 Q How was that statement taken? Was it taken down on
2 top or something?

3 A No, it was typed.

4 Q So it was typed? Each question and answer was typed
5 as he was giving it?

6 A Yes.

7 Q And the statement itself was complete before he
8 prepared the drawing?

9 A Yes.

10 Q And you indicated that on the diagram, which is --
11 THE COURT: It's right over there.

12 Q The actual street locations were drawn in by you; is
13 that right?

14 A That's correct.

15 Q And the street names were also placed on there by you?

16 A Yes.

17 Q And the reason for that being that Mr. Moore wasn't
18 familiar with that information?

19 A That's correct.

20 Q In fact in this statement, which you say Mr. Moore
21 gave you, he referred to these Plainfield streets by name,
22 didn't he?

23 A Yes, he did.

24 Q He said he stopped and talked to some girls on South
25 Second Street near a bridge. He said when they went to look

1 for the Jamaican club they ended up on Halsey and Third Street.
2 He said they drove around looking for some sess on Fifth
3 Street. All of that was in the statement that he had already
4 given you?

5 A Yes.

6 Q Yet you believed that he wasn't familiar with the
7 names of the streets?

8 A Not that he wasn't familiar with the names of the streets.
9 As I drew the diagram, he would not have known the streets by
10 the diagram alone.

11 Q Didn't you suggest to him the names of the streets
12 during his statement?

13 A No, sir.

14 Q When he was giving this statement, was everything he
15 said taken down?

16 A Yes.

17 Q You sure about that?

18 A Yes.

19 Q Where in the statement did he explain to you what he
20 meant by the word sess?

21 A Where in his statement?

22 Q Yes.

23 A He said he smoked sess in his statement.

24 Q Well, you indicated in your testimony earlier that he
25 explained to you that by that he meant marijuana?

1 A Yeah, that's correct.

2 Q It doesn't say anywhere in his statement that he
3 explained that to you, does it?

4 A No, that was understood between us.

5 Q He didn't actually explain it to you?

6 A No, he didn't have to.

7 Q So when you said that he explained that to you, you
8 were misspoken; is that right?

9 A I don't believe he explained it to me. I understood it as
10 being marijuana being familiar with the term.

11 Q Do you know what Mr. Moore meant when he referred to a
12 skully?

13 A Yes.

14 Q What is that?

15 A It's a knit cap worn on the head.

16 Q Is that the same thing as a ski mask?

17 A It could be depending on the hat. You don't know until you
18 flip it up to see if there's a ski mask underneath.

19 Q But you say that he also told you he saw some other
20 kids with masks on, right?

21 A Yes.

22 Q And even though you knew that there was -- you knew
23 there was another shooter because there was a shell casing
24 found at the scene, right?

25 A Yes.

1 Q Even though you knew that, Mr. Moore you say, told you
2 he was the only shooter?

3 A That's correct.

4 Q He told you he was the only one that got out of the
5 car?

6 A Yes.

7 Q He told you he shot both these guys?

8 A Yep.

9 Q Mr. Moore was questioned on December 14th; is that
10 right?

11 A Yes.

12 Q And he was arrested the day before that?

13 A Yes, December 13th.

14 Q And would it be fair to say that's eight days after
15 the incident?

16 A Yes.

17 Q And when you went to arrest him, you found him in the
18 vicinity of where he lived, right?

19 A Yes.

20 Q Referring to this diagram, you say Mr. Moore told you
21 that he was holding the kid here at G; is that right?

22 A Yes.

23 Q And that the fat guy, the fat boy was standing here at
24 F; is that right?

25 A Yes.

1 Q And did he draw in these cars?

2 A Yes, he did.

3 Q Was he indicating to you that there was -- that the --
4 that this car in front of the house was between where he was
5 standing and where the fat boy was?

6 A Yes.

7 Q And in his statement he told you he was the only one
8 who got out of the car; is that right?

9 A Yes.

10 Q He didn't -- he didn't indicate to you that he had
11 gone to Plainfield to rob anybody, did he?

12 A In his statement, no.

13 Q And he -- did he tell you that he had conversations
14 with several girls in the evening, right?

15 A Yes.

16 Q You indicated that you read the Miranda form to him;
17 is that right?

18 A No, he read them outloud.

19 Q You gave him the form and he read the questions?

20 A That's correct.

21 Q And there are a total of five questions on the form;
22 is that right?

23 A Yes.

24 Q It didn't really take him a full five minutes to read
25 that form, did it?

1 A I don't recall if it took him the whole five minutes to
2 read it.

3 Q But wasn't your testimony that it took about five
4 minutes?

5 A Yes.

6 Q Now, by December 14th when he gave this statement, you
7 had already interviewed quite a few witnesses, hadn't you?

8 A Yes.

9 Q Do you recall how many?

10 A Not offhand, no, sir.

11 Q Would it be fair to say that you already had a theory
12 as to how this incident took place?

13 A A possible theory, yes.

14 Q Didn't you in fact suggest this information to Mr.
15 Moore?

16 A No, sir.

17 Q But it's your testimony that he knew the names of the
18 streets and he told you the names of the streets?

19 A Yes, he did.

20 Q And it's your testimony that he gave you detailed
21 descriptions not only of the other persons but of the clothes
22 they were wearing eight days before; is that right?

23 A I don't quite understand your question. The detailed
24 clothing of his friends or --

25 Q Right, his friends.

1 A Yes.

2 Q He told you in detail right down to the kind of boots
3 they were wearing?

4 A Yes.

5 Q Over a week before; is that right?

6 A Yes.

7 Q You didn't suggest that information to him?

8 A I had no knowledge what they were wearing. I couldn't.

9 Q Well, hadn't you interviewed other witnesses who had
10 described their clothing?

11 A I had interviewed other witnesses, yes, but could they
12 describe their clothing? I don't believe they could.

13 Q Now, you spoke to him initially on the 13th; is that
14 right?

15 A Yes.

16 Q And on that day he told you that he had bought the car
17 from a guy named Snoop; is that right?

18 A Yes.

19 Q And he also told you that he had never been in
20 Plainfield at all, that he had been with some girls, right?

21 A Yes.

22 Q And that was again more than a week after this
23 incident that he told you this, right?

24 A Yes.

25 Q Now, you went to Plainfield and -- excuse me.

1 You went to Newark, you talked to some people and then
2 you came back and talked to him the next day, right?

3 A Yes.

4 Q And you told him that what he had told you wasn't
5 true; is that right?

6 A Yes.

7 Q And then right away he said, yeah, you're right, okay,
8 I did it. Is that basically it?

9 A Well, not quite that quick but that's most of it, yes.

10 Q Well, how long did that take?

11 A Approximately an hour.

12 Q So you talked to him for an hour before he --

13 A Yes.

14 Q -- admitted this to you?

15 A Yes.

16 Q And during that hour what did you say to him?

17 A Basically told him again that his alibi was discredited by
18 the witnesses he provided with us -- to us. Not only was his
19 alibi broken but he was identified as being in Plainfield on
20 that night. He's been identified by people he left the car
21 with the next morning that was the stolen car in this murder.

22 Q When he was in custody, you didn't give him an
23 opportunity to call any of these people, did you?

24 MISS MacMULLAN: Excuse me, counsel, timeframe for the
25 time in custody.

1 MR. RUSSO: Time in custody.

2 Q From the time of his arrest up until the time you
3 questioned him, you didn't give him an opportunity to call any
4 of these people from Newark, did you?

5 A No, I didn't allow him to make the phone calls from
6 upstairs.

7 Q So when you told him that his alibi was discredited
8 and that he had been identified, he believed you. He trusted
9 that that was accurate; is that what you're saying?

10 A Well, I imagine that --

11 MISS MacMULLAN: Objection to what another person may
12 believe or speculate.

13 THE COURT: Sustained.

14 Q After you gave him that information -- it took you an
15 hour to give him that information or --

16 A Yes, approximately.

17 Q And after that point he told you that he did it; is
18 that right?

19 A Yes.

20 Q And he gave you this detailed statement?

21 A Yes, he did.

22 Q Didn't you make promises to Mr. Moore in order to get
23 him to give you this statement?

24 A No.

25 Q Didn't you in fact tell him that these girls that he

1 knew from Newark could get into trouble because they knew that
2 they had information and that you would get them into trouble
3 unless he cooperated?

4 A No.

5 Q Didn't you tell him that if he didn't cooperate, you
6 would use your influence to try to get the State to seek the
7 death penalty in this case?

8 A No.

9 Q When you were taking this statement, there was another
10 officer with you, correct?

11 A Yes, sir.

12 Q Did that officer threaten Mr. Moore in either those
13 ways?

14 A No, sir.

15 Q Were you with him the whole time?

16 A Yes.

17 Q You're certain of that?

18 A Yes.

19 MR. RUSSO: I need one moment, your Honor.

20 (Pause.)

21 Q Did there come a time that you took a statement from
22 Keith Staple?

23 A Yes.

24 Q And did you show him some photographs?

25 A Yes.

1 Q The person that he identified was not Sammy Moore, was
2 it?

3 A That's correct.

4 Q When he gave you the statement on December 13th about
5 buying the car from this guy Snoop, you didn't put that
6 statement in writing, did you?

7 A No, sir.

8 Q So when he agreed to take the -- to give you a
9 statement on the 14th, each question and answer was typed up,
10 right?

11 A Yes.

12 Q But the day before the questions and answers were not
13 typed; is that right?

14 A That's correct.

15 Q On the 14th when he gave the detailed statement, did
16 you speak to him about his version of the incident before you
17 asked these questions and took down the statement?

18 A Yes, that was basically part of that one hour timeframe
19 before it was put to paper.

20 Q So you didn't put that statement on paper until you
21 had an idea of what Mr. Moore was going to say; is that right?

22 A Can you repeat that question, please?

23 Q Yes. You didn't have him give a written statement in
24 which each question and answer was typed up until after you had
25 an idea as to what he would say in that statement; is that

1 right?

2 A Not that if he had -- not to get an idea about how it was.
3 But he wanted to tell us. So we were willing to listen to that
4 before we put -- made the formal typewritten statement.

5 Q He told you some other things the day before when he
6 told you about buying the car from a guy named Snoop and
7 telling you where he had been but you didn't take that down?

8 A No, sir.

9 Q Isn't that because that's not what you wanted to hear?

10 A That's not correct, no. They were leads, investigative
11 leads that we acted upon.

12 Q Did you in fact take down part of that December 13th
13 conversation and then tear up that statement?

14 A No, sir.

15 MR. RUSSO: I have nothing further.

16 MISS MacMULLAN: Few questions, your Honor.

17 REDIRECT EXAMINATION BY MISS MacMULLAN:

18 Q During counsel's cross he makes reference to the fact
19 that the statement given on the 13th by the defendant was an
20 oral statement and it was not reduced to paper?

21 A Yes.

22 Q But, however, in your report on page sixteen, isn't it
23 true that you actually wrote in your report what he told you at
24 that time?

25 A Yes.

1 Q You didn't hide the fact that the defendant gave you a
2 different version of what happened the day before?

3 A No.

4 Q And, incidentally, in this particular portion of your
5 report where you repeat what the defendant told you concerning
6 a guy named Snoop, did he give you anymore information about
7 this guy named Snoop besides the fact he got it from a guy
8 named Snoop at 195 First Street in Newark for a thousand in
9 cash?

10 A No.

11 Q Incidentally, 195 First Street, did he say that's
12 Snoop's address or that's where he got the car?

13 A That's where he got the car, bought the car from.

14 Q And 195 First Street, can you give an approximation
15 how many apartment buildings are at that location?

16 A Well, there are two apartment buildings and they're 20
17 story apartment buildings and I gather there's approximately
18 300 apartments to each building.

19 Q He couldn't pin it down closer besides just a general
20 location of 195 First Street?

21 A No.

22 Q When you showed the photo array to Keith Staple, whose
23 photograph did he pick out?

24 A Tariq Diggs.

25 Q Was that on April 4th, 1994, this year?

1 A Yes.

2 Q And what did he say when he saw that particular photo
3 array? Can you describe what his reaction was when you showed
4 him that photo array?

5 A He said, "Oh, shit".

6 Q He didn't say that's the guy. He said that?

7 A Yes.

8 Q Okay. And at that point in time did he tell you that
9 he thought that was the guy?

10 A Yes.

11 Q Counsel makes reference during his cross-examination
12 to alleged promises that you made the defendant concerning the
13 statement. Is it your decision, the Plainfield Police
14 Department, to seek the death penalty or is it the Office of
15 the Union County Prosecutor's Office to make that decision?

16 A It's the Union County Prosecutor's Office to make that
17 decision.

18 Q You have no control over which cases are considered
19 death penalty and which are not?

20 A No.

21 Q You couldn't even make that offer if you wanted to?

22 A No.

23 Q Incidentally, about allegedly making promises to the
24 defendant in exchange for a statement, he was already charged
25 at the time; is that correct?

1 A Yes.

2 Q You didn't need a statement to charge him?

3 A No.

4 Q And as far as his -- those being his words in the
5 statement, now, in this statement does he make it sound as if
6 it's just him, the only shooter, out there?

7 A Yes.

8 Q Did you believe otherwise?

9 A Yes.

10 Q Even though you believed otherwise did you put his
11 words in that statement?

12 A Yes, I did.

13 MISS MacMULLAN: Thank you. No further questions.

14 MR. RUSSO: Just one.

15 RE-CROSS-EXAMINATION BY MR. RUSSO:

16 Q In the statement you indicated that Mr. Moore claimed
17 that someone who was shooting was hit by a car?

18 A Yes.

19 Q In his statement he indicated that was someone else
20 who had been shooting at him. Wasn't that his statement?

21 A I believe that's what it says in his statement, yes.

22 Q Didn't say anything about someone he was with being
23 hit by a car?

24 A I don't think so, no.

25 THE COURT: Thank you, Detective Marcantonio. Please

1 step down. Please watch your step.

2 THE COURT: Miss MacMullan.

3 MISS MacMULLAN: At this time with the exception of
4 moving certain pieces of evidence, the State would rest.

5 THE COURT: Isn't there a stipulation?

6 MISS MacMULLAN: Yes, Judge. We have to work it out,
7 if we could, at a break.

8 THE COURT: We can do that now and continue at 1:30.
9 How is that? Work out the verbiage of the stipulation.

10 The parties are entering into a stipulation. I am not
11 sure what it's about. What a stipulation is is an agreement
12 that if the parties came here to testify, they would testify in
13 that way and that avoids the necessity of bringing in that
14 witness and taking more time and it speeds things up.

15 We will break for lunch now and continue with the
16 trial at 1:30. I ask you not to discuss the case over your
17 lunch hour. Enjoy your lunch. See you at 1:30.

18 Everybody must remain seated until the jury leaves the
19 courtroom.

20 (Jury excused.)

21 SHERIFF'S OFFICER: The jury is clear, your Honor.

22 THE COURT: Yesterday ya'll went over the evidence and
23 there was an agreement reached basically. We informally
24 discussed some issues and as a result certain items have been
25 marked in evidence. For the record can we have the exhibits

1 that are received in evidence?

2 MISS MacMULLAN: The items which we agreed upon, your
3 Honor?

4 THE COURT: Yes.

5 MISS MacMULLAN: Starting with S-1, 2, 2A, 2B, S-3,
6 S-3A, S-4, S-4A, S-5, S-6, S-6A, S-7, 7A, S-8, S-8A, S-9, S-9A,
7 S-10, S-10A, S-11, S-11A.

8 THE COURT: Slow down.

9 MISS MacMULLAN: Sorry.

10 MISS MacMULLAN: Skipping to S-13, S-14, 15, 16, 17,
11 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33,
12 34, 35, skipping to S-38, 39, 40, 41, 41 all the way down to
13 59, that whole page.

14 THE CLERK: Skip to 59?

15 MISS MacMULLAN: Just that whole page. S-42 to S-59.
16 You have the page. S-60 all the way down to 73.

17 THE CLERK: 73.

18 MISS MacMULLAN: Yes. Skipping S-74, skipping S-75.

19 THE COURT: Skipping 74? 74 is not in evidence?

20 MISS MacMULLAN: Not.

21 THE COURT: I want to know what's in evidence.

22 MISS MacMULLAN: S-75A, the original. S-76A, the
23 original. S-77A, S-78, S-81, 82, 83 and S-84 Sorry. S-80,
24 81, 82, 83 and 84. That would be all, your Honor.

25 THE COURT: Okay. Those are all without objection?

1 MR. RUSSO: Yes.

2 THE COURT: There is nothing left in dispute?

3 MISS MacMULLAN: No.

4 THE COURT: Okay.

5 MISS MacMULLAN: I am working on the stipulation.

6 THE COURT: All right. Work on the stipulation and we
7 will read it to the jury at 1:30. Then we will begin with the
8 defense case, if the defendant wishes to take the stand.

9 Court is in recess until 1:30.

10 (Luncheon recess.)

11

12 A F T E R N O O N S E S S I O N

13

14 THE COURT: Do you have the stipulations? Do you want
15 me to read them?

16 MISS MacMULLAN: Yes, Judge. If I may approach,
17 Judge? If you can read my writing. This would be chain of
18 custody.

19 THE COURT: Well, give me chain of custody, FBI and if
20 you are stipulating to the chain of custody, we don't have to
21 tell the jury what the chain of custody is. This is
22 mumbojumbo.

23 MR. RUSSO: I agree.

24 MISS MacMULLAN: Just one part that doesn't deal with
25 the FBI. Chain of custody from the insurance papers.

1 THE COURT: All chain of custody is the same. He
2 stipulated to the chain of custody. For me to tell the jury
3 that, you watch their eyes just glaze over. What I am saying
4 doesn't mean anything to them.

5 MISS MacMULLAN: This woman handed it to the police.
6 I thought that might be pertinent. The car was towed.

7 THE COURT: She said she gave it to them. That's all
8 right.

9 MISS MacMULLAN: All right. One thing, the FBI
10 results. I just substituted --

11 THE COURT: S-3A, a copper projectile from Keith
12 Staple and S-2A, a copper projectile from Marcus Benjamin, are
13 .44 Remington magnum caliber jacketed lead bullets consistent
14 in observable physical characteristics with bullets loaded into
15 cartridges manufactured by Federal Cartridge Company. Both
16 projectiles were identified as having been fired from one and
17 the same firearm, which has a barrel rifle with six grooves,
18 right twist. S-3A, copper projectile from Keith Staple, bears
19 limited individual microscopic marks of value for comparison
20 purposes and S-2A, copper projectile from Marcus Benjamin,
21 bears some individual microscopic marks of value for comparison
22 purposes. Firearms which produce rifling impressions like
23 those present in these projectiles include, but are not limited
24 to, a .44 caliber Remington magnum, .44 caliber Ruger and
25 Hauser (phonetic) and Sigsauer revolvers. Specimen S-1, .380

1 caliber casing, was a .380 auto caliber cartridge case
2 manufactured by Federal Cartridge Company and the two, S-2A and
3 S-3A, could not have been loaded into the S-1 cartridge case.

4 That's the stipulation.

5 MR. RUSSO: May we approach?

6 THE COURT: Yes.

7 (Discussion held off the record.)

8 THE COURT: Okay, Mr. Russo?

9 MR. RUSSO: Yes, your Honor.

10 THE COURT: Is your client going to testify?

11 MR. RUSSO: Yes.

12 THE COURT: All right. Bring out the jury.

13 (In the presence of the jury.)

14 THE COURT: A stipulation has been entered into
15 between the parties that if a special agent from the Federal
16 Bureau of Investigation were called to testify as a witness he
17 would say that S-3A, a copper projectile from Keith Staple and
18 S-2A, a copper projectile from Marcus Benjamin, are .44
19 Remington magnum caliber jacketed lead bullets consistent in
20 observable physical characteristics with bullets loaded into
21 cartridges manufactured by Federal Cartridge Company. Both
22 projectiles were identified as having been fired from one and
23 the same firearm, which has a barrel rifle with six grooves,
24 right twist. S-3A, copper projectile from Keith Staple bears
25 limited individual microscopic marks of value for comparison

1 purposes and S-2A, copper projectile from Marcus Benjamin,
2 bears some individual microscopic marks of value for comparison
3 purposes. Firearms which produce rifling impressions like
4 those present in these projectiles include, but are not limited
5 to, a .44 caliber Remington magnum, .44 caliber Ruger and
6 Hauser and Sigsauer revolvers. Specimen S-1, .380 caliber
7 casing, was a .380 auto caliber cartridge case manufactured by
8 Federal Cartridge Company and the two, S-2A and S-3A, could not
9 have been loaded into the S-1 cartridge case.

10 With that the State has rested its case?

11 MISS MacMULLAN: Yes, your Honor.

12 THE COURT: Okay. Mr. Russo.

13 MR. RUSSO: Your Honor, the defense calls Sammy Moore.

14 THE COURT: Okay.

15 S A M M Y M O O R E, Defense witness, sworn.

16 DIRECT EXAMINATION BY MR. RUSSO:

17 Q Sammy, do you have a nickname?

18 A Yeah, Smiley.

19 Q I ask you to think back to December of last year. Do
20 you remember being arrested?

21 A Yes, I do.

22 Q That was on December 13th?

23 A No, it was December 12th.

24 Q Do you remember about a week before that?

25 A Yes.

1 Q Where were you on December 4th, 1993?

2 A I was with Traci Thomas, Brenda Johnson and Ebony up Brenda
3 house at 195 Newark.

4 Q Where do you live?

5 A I live 195 Spires in Newark.

6 Q Is that on First Street?

7 A Yes.

8 Q And do they live in the same building?

9 A Yes.

10 Q And had you been -- what's the particular apartment
11 number that you were in?

12 A 20N.

13 Q Who lives there?

14 A Brenda Johnson.

15 Q And who does Brenda -- does Brenda live there were
16 anyone?

17 A Ebony and Hassana and the kids.

18 Q Do you know their last names?

19 A No, I don't know their last names.

20 Q Are Brenda and these other two people related?

21 A No, they're not. They just friends.

22 Q What time of the day did you go there?

23 A I was up there really all day.

24 Q Well, the night before did you sleep in your own
25 place?

1 A No.

2 Q Did you sleep at their apartment?

3 A Yes, I slept at Brenda's house.

4 Q So you didn't go back home?

5 A No, I didn't.

6 Q What did you do during the day?

7 A Really watched T. V. and smoked weed.

8 Q When you got -- were you there also in the evening?

9 A Yes.

10 Q Did you eat dinner there?

11 A Yes.

12 Q Were there other people there with you when you had
13 dinner?

14 A Traci, Brenda and Ebony and her kids.

15 Q Is Traci Traci Thomas?

16 A Yes.

17 Q She the person who testified in your trial this week?

18 A Yes.

19 Q Did you leave the apartment at any time?

20 A Yeah, I left a couple times to go downstairs and buy weed
21 and come back up or go to the store and come back and go get
22 blunts or whatever and come back.

23 Q That was -- did you leave at various times during the
24 day?

25 A Yeah. Not really, no, like two, three times.

1 Q And when you left, how long were you gone?

2 A Like a good five, ten minutes.

3 Q After dinner what did you do?

4 A Just stay in the house with Traci. Me and her was in there
5 talking.

6 Q And did there come a time that any of these people
7 left the apartment?

8 A No, not really. Not that I recall. Brenda went to the
9 club that night but that was real late, late that night.

10 Q Do you recall what time it was that she left?

11 A Well, the club, People's Choice, don't open till twelve.
12 They don't really start till twelve. So she left like after
13 twelve.

14 Q And were you there when she left?

15 A Yeah.

16 Q Did anyone else come to the apartment while you were
17 there?

18 A Tariq and Alexander, Pop. Alexander.

19 Q Alexander Walker?

20 A No. I don't even know Pop real name is. I just know
21 because ya'll said his name was Alexander. But Pop and Tariq.
22 He came to see Ebony.

23 Q Is Alexander the young man who testified a day or so
24 ago?

25 A Yes, yes.

1 Q He's about fifteen years old?

2 A Yes.

3 Q Do you remember what time they came?

4 A No, I don't know what time they came but I know it was -- I
5 know it was after eight. I know it was after eight when they
6 came.

7 Q Did you -- did you go anywhere with them?

8 A No.

9 Q When did you leave the apartment?

10 A I really ain't go. All I did was go downstairs, get a bag
11 of weed and come back up. I really didn't go nowhere.

12 Q You were just hanging around --

13 A Around there.

14 Q -- the neighborhood the whole day?

15 A Yeah, because the only reason I was at Brenda house because
16 me and my girl had a little argument. So instead of staying
17 there, I went to Brenda house.

18 Q What about after Brenda left you said around midnight?
19 What did you do then?

20 A The same thing I was doing earlier. Just sitting around
21 the house smoking weed, messing around with Ebony and Traci.

22 Q Did you ever go to Plainfield that night?

23 A No.

24 Q Prior to your being arrested had you ever been in
25 Plainfield?

1 A I been to a club out there before.

2 Q Were you familiar with how to get around in
3 Plainfield?

4 A No.

5 Q Would you know how to get to that club?

6 A No, somebody had took me.

7 Q How many times had you been there?

8 A One time.

9 Q Do you remember -- did you at any time tell Traci that
10 you had shot somebody in Plainfield?

11 A No, I didn't.

12 Q Did you tell anyone that you had done that?

13 A No.

14 Q Do you know somebody named Jimbo from Plainfield?

15 A No, I ain't -- I ain't meet him until pretrial in here.

16 Q So you never met him until you saw him in court?

17 A Yes.

18 Q Do you know Kenneth Brooks from Plainfield?

19 A I met him through Tariq 'cause he used to come down there
20 and pick Tariq up at the Spires, at the Spires.

21 Q And did you know he was a friend of Tariq's, right?

22 A Yes.

23 Q How long had you known Tariq?

24 A Not long. I had just met him through his cousin,
25 Shannelle.

1 Q When you were arrested you said on December 12th, did
2 you know what that was about?

3 A When I got locked up, no, I didn't. I thought I was
4 getting locked up for CDS.

5 Q What do you mean when you say "CDS"?

6 A Possession of drugs.

7 Q How did you find out what the charges were about?

8 A When I got -- when the police took me to Plainfield.

9 Q And what was your reaction to that?

10 A I ain't know what was going on. I kept asking. They
11 wouldn't say nothing while we was in the car and then when we
12 got there, that's when they start talking. So I ain't know
13 what was going on.

14 Q Did there come a time when they asked you about a blue
15 Honda?

16 A Yes.

17 Q Do you remember something about a blue Honda?

18 A Yes.

19 Q What was your involvement with that car?

20 A That's the car I had bought for \$1,000 that Sunday.

21 Q And who did you buy the car from?

22 A This guy named Snoop.

23 Q How did you know this guy Snoop?

24 A Tariq and Snoop be together sometimes. Snoop would come
25 around and with cars or whatever, selling cars for cheap

1 prices. So he came with that car and I liked it. So I bought
2 it.

3 Q Did he tell you anything about the car?

4 A No.

5 Q You paid only a thousand dollars for this car?

6 A Yeah.

7 Q Did you think it was worth \$1,000?

8 A Yeah, I thought it was tagged up.

9 Q What does that mean?

10 A A tagged up car is like a car that they just fix up and
11 sold it for a cheap price.

12 Q Did you know Snoop to sell cars like that before?

13 A Yeah, he sell tagged up cars.

14 Q Did you ever buy a car from him before?

15 A No, just this one time.

16 Q And what were you going to do with the car?

17 A Hook it up. I was going to keep the car. I was going to
18 hook it up.

19 Q What do you mean by, "hook it up"?

20 A Like fix it up. Put rims and a system and stuff in it.

21 Q You mean like a sound system?

22 A Yeah.

23 Q Did you take that car somewhere?

24 A Yeah, I took it to Shana's house.

25 Q Shana Wellman?

1 A Yes.

2 Q You took it to her house in Orange?

3 A Uh-huh.

4 Q Did you know that that car was stolen when you bought
5 it?

6 A No, I did not.

7 Q Did you know that it was a stolen car when you took it
8 to Shana's house?

9 A No, I did not.

10 Q Did you -- did this guy Snoop give you the title and
11 papers to the car?

12 A Yeah and I asked him don't you got to sign the back and he
13 was like, uhm, you got to go to Motor Vehicles and get all that
14 filled out.

15 Q Had you bought a car, any cars before?

16 A No.

17 Q Did you know how to fill that out?

18 A No.

19 Q So when he told you that, you believed him?

20 A Yes.

21 Q Now, why did you take the car to Shana's?

22 A Because where I be at it's a lot of car thieves around
23 there and I didn't want to just pay for the car and somebody
24 steal it. So I called Shana and asked her could I put the car
25 in her backyard so nobody will steal the car and she said come

1 on up.

2 Q So you told her that on the phone?

3 A Yes.

4 Q Before you went to her house?

5 A Yes.

6 Q And that was okay with her?

7 A Uh-huh.

8 Q You have to say yes or no.

9 A Oh, yes.

10 Q Who did you go with to Shana's house?

11 A Tariq.

12 Q And it's Tariq whose friend sold you the car?

13 A Yes.

14 Q Did you ever see Tariq do anything to the car?

15 A No, not -- no, not that I saw 'cause I was always in the
16 house with Shana.

17 Q You remember you heard Shana say --

18 A Say --

19 Q -- that he cleaned the car?

20 A Clean the car. I ain't know about that 'cause I was in the
21 house with her.

22 Q Did you see her give him anything to clean the car
23 with?

24 A No, that must have been when I was in her room.

25 Q After you were arrested -- you were arrested right at

1 the building on First Street, right?

2 A Yes.

3 Q Where were you taken?

4 A The North District Police Station.

5 Q Is that in Newark?

6 A Yes.

7 Q And what happened to you there?

8 A They just told them that I had a juvenile warrant and they
9 said that ya'll can take him and I asked them where was they
10 taking me and nobody was saying nothing. So then from there
11 they took me to Plainfield.

12 Q And did there come a time where some detectives wanted
13 to talk to you?

14 A Yeah, later on that night.

15 Q How long had you been there -- how long after your
16 arrest was this?

17 A A couple hours 'cause they had me sitting in this cell for
18 awhile.

19 Q Did they ask you -- did you have any conversation with
20 these detectives?

21 A Only when they was interrogating me.

22 Q Was Detective Marcantonio, who testified earlier
23 today, one of those detectives?

24 A Yes, him and Officer Gallagher.

25 Q What did they ask you?

1 A They asked how did I get the car. They was asking me have
2 I ever been in Plainfield. They was asking me did I know any
3 girls from Plainfield. They asked me have I ever been hit by a
4 car and they told me pull my pants down to check my leg and my
5 hips to see if I had any scars.

6 Q What did you tell them about the car?

7 A That I bought the car.

8 Q What did you tell them about girls that you knew from
9 Plainfield?

10 A I told them I don't know no girls from Plainfield.

11 Q Did you tell them anything else?

12 A All I told them was where I bought the car and where the
13 guy Snoop hang out sometimes and they said, oh, and I told them
14 that I was with Traci that night. They kept saying that I
15 supposedly had killed this guy and they went and talked to
16 Traci and the next day they came back and told me Traci did
17 tell them that I was with her and somewhere -- some other
18 stuff. Some crazy stuff. I can't really remember everything.

19 Q When you were talking to them -- let me ask you this.
20 Before you talked to them did they tell you that you had
21 certain rights?

22 A Yeah, they told me about Miranda rights.

23 Q Did they have you read and sign a form?

24 A Yes.

25 Q Did you read it?

1 A Yes.

2 Q And you were willing to talk to them, right?

3 A Yes.

4 Q Was what you said to them that first time taken down?

5 A They typed it but then after that, they said they ain't
6 want that. They didn't want to hear that. They tore that one
7 up and threw it away.

8 Q And --

9 A And that's the only reason why I signed those Miranda
10 rights 'cause it was for the statement that they ripped up.

11 Q What happened after that?

12 A They put me back in the cell.

13 Q For how long?

14 A For the rest of that day.

15 Q Did they come to question you after that?

16 A The next day they came and got me again.

17 Q What time of day was it?

18 A Like it was five in the evening. Around five in the
19 evening.

20 Q Now, at that point you had been locked up for over a
21 day?

22 A Yes.

23 Q And you didn't see them and they didn't question you
24 between the time of that first statement and five o'clock the
25 next day?

1 A No.

2 Q Were you concerned about that?

3 A Yeah, 'cause I kept asking one of the C.O.'s could you ask
4 them what's going on or can I use the phone and talk to
5 somebody. They kept saying the detective don't want to talk to
6 you yet until you're ready to cooperate and you can't use the
7 phone.

8 Q Were you threatened by anyone?

9 A Officer Gallagher.

10 Q And when was that?

11 A The second day when I kept saying that I bought the car.

12 Q Was that when they came to talk to you?

13 A Yes.

14 Q What did he say to you?

15 A First he kept saying that he had talked to the prosecutor
16 and that they said if I don't cooperate, that he will make sure
17 I get the death penalty. They was like if I don't say I did
18 it, they gonna have Brenda, my girl and -- Brenda, my girl,
19 Shorty, Pop locked up and they kids put in jail. I believed
20 them because at first I never told them about and then they
21 start coming and saying all these names. I was wondering how
22 they found out, how they know those names. That's what made me
23 start believing them.

24 Q And when they said those things to you, did you know
25 who would make the decision as to whether your case was a

1 capital case or not?

2 A No, I ain't know that because a lady named Joan, I can't
3 think of her whole name, I know she is a Spanish lady. She
4 came to me and talked to me about the death penalty and matter
5 of fact, this was soon as I came to the county.

6 Q Do you remember giving that detailed statement that
7 was read by the detective?

8 A Yes, I do. That statement is everything that they told me.

9 MISS MacMULLAN: Objection, your Honor. No question
10 posed.

11 THE COURT: That is not your objection.

12 Q Why did you give that statement?

13 A They forced me to say it. I ain't really tell them that.
14 They was just telling me things that they had heard or whatever
15 and told me to go by that. He told me to say it was in
16 self-defense.

17 Q Did you -- did you explain to the detectives who was
18 with you?

19 A I told them -- I told them the same people that they told
20 me that they said I was with. So that's the same people I said
21 to them.

22 Q In other words, they told you what to say?

23 A Exactly. They told me -- they kept saying you was with
24 Tariq and Rock, right? Where is Tariq and Rock? I wasn't with
25 them that night. They was like you were with them that night.

1 Then I said, all right, then I was with them.

2 Q Where did the police get this information about what
3 these guys were wearing and their descriptions?

4 A I don't know. They said some people said that they saw me
5 and they knew me, Tariq and Rock and they told them what we had
6 on and where we was from.

7 Q So you went along with what they told you?

8 A After awhile, yeah, I had to.

9 Q Why is that?

10 A 'Cause I didn't want to get nobody else locked up and they
11 kept threatening me. So I went along with everything they
12 said.

13 Q Did you talk to them about the area where this
14 incident happened and the names of the streets?

15 A No, 'cause I didn't know the area it happened or the names
16 of the streets 'cause I don't know nothing about Plainfield.

17 Q You saw the diagram the detective testified about,
18 didn't you?

19 A Yes.

20 Q Did you draw this diagram?

21 A I copied it from the one that they drew.

22 Q And did you prepare -- is this your handwriting?

23 A Yes, that's my handwriting.

24 Q All these notes, A, B, C, D, E, F, G, all that?

25 A Well, all like the A, B, C stuff like that it was already

1 written, drawn down. They just told me to copy it. And they
2 was like, well, all these places, they just set it up and told
3 me this is how we know what parts you was at and everything
4 like that. So I was just going by listening to what they was
5 saying. So then they told me to copy it down. Then I drew the
6 same thing.

7 Q Do you know anything about the shooting that took
8 place in Plainfield?

9 A No, I didn't until Tasha came and told me, her and Shana.

10 Q Who do you mean when you say "Tasha"?

11 A The one that testified today.

12 Q Is that Natasha Levant?

13 A Yes.

14 Q And what did she tell you about -- when did you speak
15 to her?

16 A That Monday morning I was getting dressed to get ready to
17 go get the car.

18 Q Was that early in the morning?

19 A It was seven o'clock in the morning when I was getting
20 dressed 'cause I was going to take it to Motor Vehicle.

21 Q You heard her testimony earlier today?

22 A Yes.

23 Q She came to see you real early in the morning?

24 A Yes.

25 Q And do you recall her testimony that you told her that

1 there was a body attached to the car?

2 A Yes.

3 Q Did you do that?

4 A No. I found out because she told me.

5 Q She told you that the car had something to do with a
6 body?

7 A She asked me where did I get the car from. I told you I
8 bought the car. Then she say, oh, you know, the police came
9 last night and took the car and Shana mother called me last
10 night saying that the police told us that Smiley had killed
11 somebody for this car.

12 Q Sammy, at the time that this happened did you own a
13 gun?

14 A Yes, I did own a gun.

15 Q What kind of gun was it?

16 A I owned a .380.

17 Q You ever take it to Plainfield?

18 A No.

19 Q Other than what Tasha told you, do you know anything
20 about this incident in Plainfield?

21 A No, I don't.

22 Q Did you at any time prior to your arrest did you talk
23 to Traci Thomas about what happened in Plainfield?

24 A No.

25 Q Did you ask her to help you or to tell a story about

1 who you were with?

2 A No, I never got a chance to talk to her. All I did was
3 tell them that I was with her and they said they went and
4 talked to her.

5 Q So you told -- when you were arrested by the police,
6 you told them --

7 A Yeah, that I was --

8 Q -- that you were with her, right?

9 A Yeah, in Brenda Johnson apartment. They said okay. Then
10 the next day they came back and said Traci said you was with
11 them.

12 Q There was several days between the alleged -- the
13 incident that happened in Plainfield and the day you were
14 arrested, right?

15 A Yes.

16 Q Did you have any discussions with anybody during that
17 time where you asked them to help you with your -- make up a
18 story about where you were?

19 A No. I didn't need nobody to make up no story 'cause if it
20 was true, it was true.

21 MISS MacMULLAN: Objection, your Honor. No question
22 posed.

23 THE COURT: However, that is not your objection.

24 Q Where -- on the night that you were at Brenda's house
25 with these other people, did you sleep there?

1 A Yeah, me and Traci spent the night together.

2 Q At any time during that evening did you tell Traci
3 that you had shot somebody?

4 A No.

5 Q Did Alexander, Pop or Tariq ever mention that night
6 anything about a shooting?

7 MISS MacMULLAN: Objection, your Honor. Calls for
8 hearsay.

9 THE COURT: Sustained.

10 MR. RUSSO: I don't have any further questions.

11 THE COURT: Cross-examine.

12 MISS MacMULLAN: Thank you.

13 CROSS-EXAMINATION BY MISS MacMULLAN:

14 Q You're approximately 20 years old?

15 A Yes, I just turned 20.

16 Q And your highest grade education is 12th grade in high
17 school?

18 A No, 11th grade.

19 Q Eleventh grade.

20 And at the time of your arrest where did you live, Mr.
21 Moore?

22 A 195 First Street with my girlfriend.

23 Q And which girlfriend would that be?

24 A Danni Venerable.

25 Q Excuse me?

1 A Danni Venerable. My only girl.

2 Q Your only girl?

3 A My girlfriend. That's just my girlfriend.

4 Q You call her your only girl?

5 A That's my girl. Everybody else was like somebody I was
6 messing around with or something like that.

7 Q You're just messing around with the other girls then;
8 is that your testimony?

9 A Yes.

10 Q How long had you lived with Danni Venerable at 195
11 First street?

12 A Around like seven months.

13 Q And in that seven months did you come to know or did
14 you know before that Tariq Diggs?

15 A No, I had met Tariq Diggs through his cousin, Shannelle,
16 around -- around that time because Shannelle and Danni's best
17 friends.

18 Q Okay. So you knew -- at that time of your arrest
19 you've known Tariq Diggs for a few months?

20 A Yeah, you could say a couple months.

21 Q And in your getting to know Tariq Diggs did you ever
22 come to know his cousin, David Diggs, who has a nickname Rock?

23 A I knew Rock 'cause we went to Central High School together.

24 Q Were you friends with Rock?

25 A No, I just seen him to speak. He go his way. I go mine.

1 Q But you knew of each other at that time?

2 A Yes, we did.

3 Q How about Brenda Johnson? What is your relationship
4 with her at the time of your arrest?

5 A We call each other sisters and brothers. Just good
6 friends.

7 Q She is like family to you?

8 A You could say that.

9 Q She is close to you?

10 A Yes.

11 Q Someone that you can depend on?

12 A Not like you trying to put it.

13 Q I am not trying to put anything, Mr. Moore. You're
14 the one that said she is family. I am just asking you --

15 A Yes, we just close friends.

16 Q Someone that you normally can depend on. Yes or no?

17 A Yes.

18 Q And in that time did you ever meet a Shakil Brooks?

19 A Who?

20 Q Shakil Brooks. Let me show you a photo array and see
21 if you know this guy. Here it is. It's in your photo array.
22 Look at number four. Number three is you, right?

23 A Yes, it is.

24 Q And that's a recent photograph of you, would you say?

25 A It might. I don't even know.

12

1 Q You don't know. Okay. Would you agree that fairly
2 shows what you look like?

3 A That is me.

4 Q Four. Do you know who four is?

5 A Oh, yeah, I know Shakil.

6 Q What is his full name, if you know?

7 A I don't know him like that. All I know everybody call him
8 Shakil.

9 Q Is his cousin Kenny Brooks?

10 A I don't know that.

11 Q Okay. All right. Okay.

12 Now, the driver -- let me make sure we have the right
13 person what we're talking about. You say Tariq was friends
14 with the driver from Plainfield; is that right?

15 A Uh-huh.

16 Q Did I hear you right?

17 A Yes.

18 Q Okay. I show you photo array number four. Do you
19 recognize anybody there?

20 A Two.

21 Q Who is 2?

22 A The guy that be with Tariq.

23 Q Okay. The driver?

24 A Yeah, I guess you could say the driver.

25 Q Does he have a white Hyundai Elantra?

1 A Yes, he does.

2 THE COURT: What photo array is that?

3 MISS MacMULLAN: Sorry, your Honor. S-19.

4 THE COURT: Thank you.

5 Q You knew -- before the day of the murder you knew
6 Tariq, you knew David Diggs and you knew the driver, Kenneth
7 Brooks, right?

8 A I didn't know Kenneth Brooks. I seen him with them. I
9 speak to them. They speak to me as I am walking along.

10 Q You knew of the identity of --

11 A Yes, I knew how he looked.

12 Q And you knew so much about him that you knew he drives
13 a white Hyundai Elantra?

14 A Yeah.

15 Q Now, you were arrested -- are you sure it was the
16 12th?

17 A Yes, 'cause I was in there for three days and on my
18 indictments it says I was arrested on the 12th.

19 Q All your indictments say you were arrested on the
20 12th?

21 A Yes, it got in ink the mark. It says the 12th.

22 Q All your indictments say you were arrested on the
23 12th?

24 A Yes.

25 Q I would like to show you a copy of the indictment.

1 MISS MacMULLAN: I will have it marked S-87.

2 A No, not that.

3 MISS MacMULLAN: I have to have it marked. We are
4 talking about an item.

5 (Indictment marked S-87 for identification.)

6 Q I would like to show you a copy of your indictment.
7 Just take a look at all the pages. Take your time.

8 A I'm familiar with it 'cause I have it myself.

9 Q All right. You will agree with me that the body of
10 the indictment indicates that you committed the murder on
11 December 5th? You'll agree with me that's what it says here?

12 A Yes.

13 Q Does it say December 5th, 1993?

14 A Yes.

15 Q And nothing in this indictment about you getting
16 arrested on December 12th, you will agree with me, correct?

17 A Well, I was locked up on December 12th.

18 Q But my specific question --

19 A Yes.

20 Q -- to you is this.

21 A But it's nothing that says I was locked up on December
22 12th.

23 Q Okay. We have to take turns speaking. She has to get
24 it all down. All right?

25 A Okay.

1 Q So your statement that your indictment says you were
2 locked up on the 12th, that's not true, is it?

3 A It is true. So that doesn't say I was locked up on the
4 12th.

5 Q When were you --

6 A But --

7 Q But your statement that your indictment says you were
8 locked up on the 12th, that is not true?

9 A Run it by me again. It flew over me.

10 Q That's okay. I will move on to the next point.

11 You were arrested around December 13th. Will you
12 agree with me there?

13 A Yes.

14 Q Okay. We agree on that much.

15 Now, is it your testimony that you thought you were
16 being locked up for narcotics?

17 A Yes, 'cause that's what the cops grabbed me for.

18 Q That's what the cops grabbed you for when they
19 arrested you in front of 195 First Street?

20 A In front of 195.

21 Q Did you hear Detective Marcantonio testify that that's
22 not why you were being locked up?

23 A That's the only reason why I thought I was being locked up
24 'cause I was standing in front of the building, one of the
25 black officers came up dressed in regular beat clothes like I

1 thought it was a --

2 Q Excuse me, Mr. Moore.

3 Mr. Moore, is it your testimony that you got locked up
4 for narcotics and the officers just happened to have an arrest
5 warrant for murder in their back pocket? Is that your
6 testimony?

7 A Yes, I am saying that.

8 Q So they coincidentally had a warrant in their pocket
9 for you when they were just merely investigating narcotics at
10 the Spires, is that it?

11 A That they never told me, no.

12 Q Is that it, sir? Yes or no?

13 A Can I answer it the way I can, you know, explain it?
14 Express it.

15 Q No. On cross-examination I get to ask the questions,
16 okay? Your attorney, if he feels there is a need, will ask you
17 for further explanation.

18 A Okay.

19 MR. RUSSO: Objection. Your Honor, how can he
20 possibly know what was in the officer's pocket? He didn't
21 testify that --

22 THE COURT: That is a fair question. She is saying it
23 was coincidental.

24 Q Is it coincidental they just had this murder warrant
25 in their the back pocket when they arrested you for narcotics

1 at the Spires? Is that your testimony? Yes or no?

2 A I can't answer that question 'cause --

3 Q Okay. Then don't.

4 A I'm lost.

5 Q You're lost. Okay.

6 Now, isn't it true, Mr. Moore, that when they
7 questioned you, they did use the Miranda forms?

8 A Yes, they did.

9 Q Okay. Let's go through the Miranda forms, shall we?

10 A Yes.

11 Q Starting first with S-75A. Now, isn't it true before
12 they sat and spoke to you --

13 A That day?

14 Q -- they went over the Miranda form?

15 A Yes, they asked me to read them. Yes, I did.

16 Q Before they even tried to talk to you about what
17 happened they did use this form, correct?

18 A Yes, they did but the form I --

19 Q That's okay, Mr. Moore. You don't have to keep
20 adding. Just yes or no questions.

21 A Oh, all right.

22 Q Now, after they Mirandized you, isn't it true at that
23 time that they told you that you were being charged for the
24 murder of Marcus Benjamin and the attempted murder of Keith --

25 A No, they didn't say --

1 Q Excuse me Mr. Moore. Just let me finish, okay? We
2 will take turns talking, all right?

3 Now, isn't it true that they told you that the reason
4 why they had you in Plainfield was for the murder of Marcus and
5 for the shooting of Keith? Isn't that true?

6 MR. RUSSO: I object to that, your Honor.

7 A No.

8 MR. RUSSO: I am not sure that Mr. Moore understands
9 the question.

10 MISS MacMULLAN: Objection.

11 MR. RUSSO: In that at least the first part of the
12 question, if I remember back that far, something about being
13 Mirandized.

14 MISS MacMULLAN: Judge, that's not what I am asking.

15 THE COURT: Completely off that question. He admitted
16 he got his Miranda rights. Isn't it true that the police told
17 him he was being arrested for the murder of Marcus Benjamin and
18 the shooting of Keith Staple.

19 MR. RUSSO: At what point?

20 MISS MacMULLAN: I told him after we've established
21 they have Mirandized him and I am asking after he's Mirandized.

22 THE COURT: Objection overruled.

23 Q Okay. Now --

24 A No, they didn't say I was arrested. They said they was
25 questioning me about the car.

1 Q So they never showed you the arrest warrant they had
2 for you?

3 A No, I didn't see it.

4 Q Okay. Let's see if I can show you a document and you
5 tell me if you've ever seen it before. Here it is.

6 MISS MacMULLAN: I would like another item marked.

7 THE COURT: S-88.

8 (Arrest warrant marked S-88 for identification.)

9 Q I would like to show you what's been marked S-88 for
10 identification. And let's start first and see -- why don't you
11 read the top part where I am pointing? Whose name is up there?

12 A Sammy Moore, mine.

13 Q Is the address correct?

14 A Yes, it is.

15 Q That's 195 First Street, 7E?

16 A Yes, it is.

17 Q Does it say down here, "knowing and purposely caused
18 the death of Marcus Benjamin"?

19 A Yes, it does.

20 Q And "purposely attempt to cause the death of Keith
21 O'Sullivan Staple"?

22 A Yes, it does.

23 Q And then it has a portion further about probable
24 cause?

25 A Yes, it does.

1 Q Are you saying, sir, this is the very first time
2 you've ever seen this?

3 A Yes, it is.

4 Q Very first time?

5 A Yes, it is.

6 Q Okay. Now, allegedly the officers never told you that
7 you were under arrest but at that point in time didn't they ask
8 you your whereabouts on the morning of December 5th, 1993?

9 A Yes, they did.

10 Q Okay. And isn't it true that you told them at that
11 point that you were with Traci Thomas, correct?

12 A Yes, I did.

13 Q All right. Then at that time you gave them some
14 background information about Traci, right, about the area where
15 she lived?

16 A I didn't know -- I knew how to get to her house but I
17 didn't know where she lived. I couldn't told them the address
18 or nothing.

19 Q Okay. Did you tell them she lived near Third and
20 Dickerson?

21 A I didn't know the street. All I said is you can find out
22 through Ebony, her friend Ebony.

23 Q Sir, didn't you tell them that Traci lived near Third
24 and Dickerson?

25 A No, I didn't. The same way they found out who Pop and --

1 Q Excuse me. There is no question posed, Mr. Moore.
2 You don't have to add when there is no question posed.

3 Well, Mr. Moore, isn't it true, though, that you gave
4 them the name Traci Thomas?

5 A Yes, it is.

6 Q Have you reviewed the discovery with your attorney in
7 this case?

8 A Yes.

9 Q All the police reports and so forth?

10 A Yes.

11 Q Than you'll agree with me that prior to the date of
12 your arrest there's nothing in the reports about Traci Thomas?
13 You'll agree with me, correct?

14 A Yes.

15 Q And the first time the name Traci Thomas appears is
16 after you get arrested on the 13th, correct?

17 A When I told them who I was with. So it had to go in there.

18 Q Now, at that point in time when the police were
19 talking to you on December 13th, now, okay? After you are
20 arrested the first time they talked to you after they
21 Mirandized you, is it your testimony that they told you that
22 they already talked to Traci?

23 A Yes.

24 Q So even before they talked to you they've already
25 interviewed Traci Thomas?

1 A No. The first --

2 Q Is that your testimony, sir? Yes or no?

3 A No, it's not.

4 Q So before they talked to you --

5 A I --

6 Q Excuse me. They arrest you on the 13th. They
7 Mirandized you, they ask your whereabouts on December 4th. Is
8 that what happened?

9 A Yes.

10 Q On the morning of December 5th --

11 A Yes.

12 Q -- you told them you were with Traci, correct?

13 A Yes.

14 Q And at that point in time after you gave them Traci's
15 name --

16 A Yes.

17 Q -- isn't it true that they brought you back to the
18 cell that day?

19 A Yes.

20 Q And isn't it true that they came back the next day,
21 the 14th?

22 A Yes.

23 Q And isn't it true that they told you that Traci said
24 she was never with you all night?

25 A No, that's not true.

1 Q Okay. Now, you say that's not what they told you.
2 Were you present in court when Traci Thomas came in --

3 A Yes, I was.

4 Q -- and testified to the very fact that she wasn't with
5 you?

6 A She didn't say she wasn't with me. She said she was with
7 me.

8 Q Excuse me, Mr. Moore. Were you here when Traci Thomas
9 said that you left at one point on Saturday night and came back
10 a couple hours later and told her about shooting two people and
11 having a car and money?

12 A Yes.

13 Q Were you here for that testimony?

14 A Yes, I was. But what that got to do with -- I'm saying --

15 Q Excuse me, Mr. Moore. There is no question posed.

16 So you'll agree with me that based on Traci Thomas'
17 testimony she doesn't say that she was with you all night on
18 December 4th, does she?

19 A No, she doesn't.

20 Q And, incidentally, today in court, today you say that
21 Brenda --

22 A Johnson.

23 Q -- Johnson went out late on Saturday night?

24 A Yes.

25 Q Well, didn't you tell the police that along with being

1 with Traci all night at Brenda Johnson's house that Brenda was
2 there all night, also? Do you remember telling them that?

3 A But she still went out either way.

4 Q No, sir. Do you remember saying you were with Brenda
5 Johnson all night, too, that Saturday night into Sunday? Do
6 you remember telling them that?

7 A Yeah.

8 Q So you did tell the police that?

9 A I said I was at her house all night.

10 Q Now, at that time on the 13th, December 13th, you also
11 told them that you bought the car from Snoop?

12 A Yes.

13 Q Let's talk about Snoop, okay? Now, you bought the car
14 from Snoop at 195 First Street?

15 A Yes.

16 Q Now, you'll agree with me that at 195 First Street
17 it's a 20-story building?

18 A Yes.

19 Q And on the other side, 175 First Street, that's
20 another 20-story building?

21 A Yes.

22 Q How do the apartments run on each floor? Is it A
23 through --

24 A A through K.

25 Q A through K?

1 A No, no. A through N, N.

2 Q Okay. A through N. Seeing how my math is real slow,
3 we'll just say that's about fifteen apartments, fifteen
4 apartments?

5 A Yeah, something.

6 Q And that's times 20, times 20, right?

7 A Yeah.

8 Q You'll agree with me that that's hundreds of
9 apartments, right?

10 A Uh-huh.

11 Q Can you tell us how we can find Snoop?

12 A I told you Snoop be down Prince Street sometimes. He's not
13 a person that you can go find. He's a person that if he got
14 something, he comes see you. You know what I am saying? He's
15 a traveler.

16 Q So we have to depend on Snoop wanting to see us before
17 we are able to find him, is that it?

18 A Unless, unless you can --

19 Q Can you give us any further information of how we can
20 get ahold of Snoop?

21 A No.

22 Q No?

23 A I told you. All I know is him from being around the
24 projects sometimes.

25 Q Okay. Here is a man that, you will agree with me,

1 that could help you?

2 A Yes, he can.

3 Q A great deal?

4 A Yes, he can.

5 Q And somehow you just can't give us any other
6 information besides the fact that he hangs out at an apartment
7 complex with hundreds of apartments and that he sometimes hangs
8 out on Prince Street? Is that as definite as you can get for
9 us?

10 A If you don't really know a person well --

11 Q Excuse me, Mr. Moore. Is that as definite as you can
12 get?

13 A Yes, it is.

14 Q Okay. Would you agree with me it's hard to find a
15 person that doesn't exist? Would you agree with me?

16 A It is but this person exists. So it's not hard to find him
17 if ya'll really looking for him.

18 Q Now, also you said that Snoop sold it to you for
19 \$1,000 on Sunday?

20 A Yes, he did.

21 Q And is it your sworn testimony that you thought that
22 there was nothing wrong with the car?

23 A Yeah.

24 Q You said that you thought it was a tagged up car?

25 A Yes.

1 Q Is that another phrase for getting different plates
2 for a stolen car?

3 A No, it's not.

4 Q When you steal a car, you get different plates for it,
5 maybe change the public VIN number. Is that what tagged up
6 means?

7 A No.

8 Q This way you can sell a stolen car easy on the street?

9 A No.

10 Q That wouldn't be what tagged up means, does it?

11 A No. Tagged up mean -- tagged up cars mean it's like
12 somebody got a car and it was messed up at one time and they
13 fixed it up and they sold it for a cheap price where they went
14 to the junk yard and bought the pieces and fixed the car up.
15 So that's what he told me. So that's how I bought the car for
16 a thousand dollars.

17 Q Okay. Thank you.

18 Let's talk about Traci, okay? At the time of your
19 arrest how were you and Traci getting along?

20 A All right so far.

21 Q All right. Yeah?

22 A Yeah.

23 Q All right. As of the 13th, December 13th and December
24 14th, had you and Traci had any angry words that you can think
25 of?

1 A The only thing I can think about is she was mad because she
2 offered me the keys to her apartment where she is living with
3 her mother but I didn't want to take them because I was with my
4 girl, still with my girl 'cause she was pregnant at the time.

5 Q Okay. When did you have this conversation with Traci?
6 When you were allegedly with her all night on the 4th?

7 A No. This is -- I can't remember exactly what day or what
8 date it was but we did have this conversation and she more her
9 friend more to come talk to me to ask her why I am bugging or
10 whatever.

11 Q Let me ask you, Mr. Moore, when you gave Traci's name
12 to the police --

13 A Uh-huh.

14 Q -- did you tell them that Traci might be upset with
15 you? Did you tell them that?

16 A No.

17 Q Okay. So although Traci was allegedly upset with you,
18 you just forgot that part when you were telling them that you
19 were with Traci all night?

20 A By her being upset with me I ain't think she would say
21 something like that 'cause I never told her anything like that.

22 Q But as far as getting along with her, you didn't have
23 angry words around the time of your arrest, did you?

24 A No.

25 Q Okay. You didn't have a fistfight with her around the

1 time of your arrest, did you?

2 A I don't hit girls. So I walk away.

3 Q You just shoot people in the back?

4 A See, that's dirty. No, I don't shoot people.

5 Q That's dirty, huh?

6 Traci Thomas is a nice girl, isn't she?

7 A When she want to be.

8 Q Isn't she a nice girl, though?

9 A When she want to be.

10 Q Is that why you wanted to be with her?

11 A No. If I wanted to be with her, I'd have moved in with
12 her. Everybody knew who my choice was.

13 Q Traci no longer lives in the area, does she?

14 A No.

15 Q She moved down to --

16 A Montgomery, Alabama.

17 Q Right. She moved down with her family and that's
18 because -- you know that because you tried to call her from --

19 A No.

20 Q Before the trial?

21 A No. She wrote me from Montgomery and gave me her address
22 and told me when I come home, I can come visit her.

23 Q To this day you and Traci still get along?

24 A No, we still -- not really. I don't speak to her anymore
25 because she don't know where I'm at now 'cause I don't write

1 her back.

2 Q And before you got locked up on the 13th, you would
3 call Traci on the phone, right?

4 A Like if she beep me, I'll call her back.

5 Q Okay. So you would -- before you got locked up you
6 would call her home; is that correct?

7 A Yes.

8 Q And that's because you knew her phone number, correct?

9 A Not offhand. If I look at it on my beeper, I will call the
10 number on the beeper.

11 Q But before your arrest you had her phone number,
12 correct?

13 A She didn't give it to me. It's on the beeper. So I had --
14 yes, all right, I did have the number.

15 Q You had knowledge of her --

16 A Of her phone number, yes.

17 Q Before her arrest -- your arrest?

18 A Yes, but I wouldn't be able to sit and remember it.

19 Q Now, you say the first typewritten statement that you
20 allegedly gave to the police was ripped up?

21 A Yes, it was.

22 Q Did you read over Detective Marcantonio's report
23 before we came to trial? Did you review it?

24 A The one that they have now?

25 Q Yes.

1 A Yes, I did.

2 Q You will agree with me on page sixteen Detective
3 Marcantonio puts in all the information about you saying you
4 were with Traci, that you were with Brenda, that you bought the
5 car from Snoop and that you were with Brenda and Traci all
6 night long on the night of the 4th into the morning of the 5th?

7 A All they got bits and pieces and parts that they wanted to
8 put in.

9 Q Excuse me.

10 A And just jammed it together so, yes, it would be.

11 Q So it is in his report, correct?

12 A Yes, it is.

13 Q So Detective Dean Marcantonio didn't hide the fact
14 that that is what you first told him, correct?

15 A In --

16 Q You will agree he didn't try that's try to hide that's
17 what you said?

18 A He's hiding half of it. He didn't put what was really
19 said. If he had put it, then ya'll would have it. Yes, he is
20 hiding something.

21 Q But it is in his report?

22 A It's parts of it and parts that they accepted is in his
23 report.

24 Q Parts of it is in his report, correct?

25 A Yes, it is.

1 Q Now, you say on your direct testimony that the reason
2 why you signed the first Miranda form is because they typed out
3 your statement?

4 A Yes, it was.

5 Q But, sir, you'll even -- you said today in court that
6 first they went over your Miranda rights and then they talked
7 to you, correct? Yes or no?

8 A Yes, I -- they signed --

9 Q Excuse me. Excuse me. So the Miranda form was signed
10 before they talked to you, correct?

11 A Yes, it was.

12 Q So the statement did not exist before the Miranda,
13 correct?

14 A Yes, but it wasn't 'cause I was gonna tell them I did that.

15 Q Excuse me. There is no question posed, Mr. Moore.

16 Now, you say the detectives threatened you with the
17 death penalty?

18 A Yes.

19 Q And that's why you gave the second statement; is that
20 correct?

21 A Part -- that's partially why I gave the second statement.

22 Q Partially?

23 A But I didn't give it. They gave me information to go by.

24 Q So the detectives tell you they are going to go after
25 the death penalty against you in this case?

1 A Yes.

2 Q And then you confess to murder. Is that the
3 progression of events?

4 A Half and half. They say they did --

5 Q Excuse me, Mr. Moore. Did they threaten you with the
6 death penalty?

7 A Yes, they did.

8 Q After they threatened you with the death penalty then
9 you confessed to murder, is that it?

10 A Not just like that.

11 Q Did you confess to murder after they threatened you
12 with the death penalty? Yes or no?

13 A I went along with the statement that they had. Yes, I did.

14 Q You confessed to murder after they threatened you with
15 the death penalty?

16 A I went along with the statement that they had, yes, I did.

17 Q So, yes, you did, correct?

18 A Yes, but I ain't confess as I actually killed the man.

19 Q Excuse me, Mr. Moore. You don't have to keep adding,
20 if you don't mind.

21 Now, you say that they also threatened to lock up your
22 friends --

23 A Yes.

24 Q -- if you didn't confess, is that correct?

25 A Yes.

1 Q Now, I wonder if you can repeat for me one more time
2 what did these alleged threats have to deal with? Who were
3 they threatening to lock up now?

4 A Pop, Danni, Brenda, a couple other people. They named a
5 lot of people, names that I never told them. So that's why I
6 believed them 'cause I was trying to figure out how would they
7 know these people.

8 Q I thought on your direct you said Tanton, too?

9 A Yes, Shorty.

10 Q Pop, who is a man, Brenda who is a woman?

11 A A female.

12 Q Female. Thank you. And Tanton, another man; is that
13 correct?

14 A Yes.

15 Q That's what you say now today in court, correct?

16 A Yes.

17 Q That they were going to lock up pretty much everybody
18 you knew, right?

19 A Not everybody I knew but --

20 Q A lot of people you know, right?

21 A That I associated with.

22 Q And because you had such concern for your friends that
23 you again confessed to murder so you could save your friends
24 from being locked up, is that it?

25 A Yes.

1 Q Okay.

2 A I told them I ain't really want to pull them into nothing.

3 Q Excuse me, Mr. Moore. There is no question posed.
4 You don't have to keep adding, okay?

5 Do you remember testifying on December 12th, 1994 just
6 a couple days ago at a pretrial motion?

7 A December 12th?

8 Q Yes. Monday. This Monday?

9 A Pretrial. Pretrial. December 12th pretrial? No, I didn't
10 have a pretrial on December 12th. December 12th is the day I
11 got locked up.

12 Q Okay. Do you remember testifying this Monday at a
13 pretrial motion?

14 A This Monday? See, I ain't know whether you are talking
15 about '94 or '93.

16 Q Do you remember sitting in that seat testifying?

17 A Yes, I do.

18 Q With this judge?

19 A Yes.

20 Q And do you remember that before you testified you had
21 to put your hand on the Bible?

22 A Yes, I did.

23 Q And swear to tell the truth?

24 A Yes, I did.

25 Q Actually, the same exact thing you are doing here.

1 You put your hand on the Bible and you swear to tell the truth?

2 A Uh-huh.

3 Q Do you remember saying the following: That if you
4 didn't sign this statement, they said we are gonna make sure
5 you get the death penalty?

6 A Exactly.

7 Q "That we are gonna make the paper make you look worse
8 than John Dillenger"?

9 A Yes.

10 Q "And that all the girls that say that you was with,
11 them kids be locked up. I mean, they get locked up and their
12 kids put in foster homes."

13 A Yes, that's true.

14 Q Do you remember making that statement?

15 A Yeah, that is true.

16 Q Here when you gave that version of the threat, you
17 said the girls that --

18 A Either way it's still the same people I know.

19 Q Excuse me. Actually, Mr. Moore it's not the same
20 thing, you will agree with me. First you say on Monday that
21 they are going to lock up all the girls and put their kids in
22 foster homes. Do you remember that version?

23 A Yes, I do.

24 Q And then after Shaye Walker testifies and says that
25 Marcantonio was nice and after Luciana testified that --

1 A Yes.

2 Q Excuse me. That Detective Marcantonio was nice and
3 Traci Thomas testifies that Dean Marcantonio treated her well
4 and that they never made any threats to them, now as you're
5 testifying in front of the jury --

6 A I didn't say they made threats to them. They made threats
7 to me.

8 Q Now, in front of the jury all of a sudden that threat
9 becomes they were going to threaten everybody?

10 A They didn't know about Shaye Walker at that time.

11 Q Excuse me, Mr. Moore. Will you agree that you have
12 changed your testimony from as recently from Monday to today?

13 A Not really. I just gave names instead of saying girl, boy,
14 you know what I am saying?

15 Q Is it possible, Mr. Moore, that you had to change
16 your strategy on this case because by the time everybody got
17 off the stand, they were pointing fingers at you and saying
18 that Detective Marcantonio had treated them well? Is that
19 possible why you're now changing that portion of your
20 testimony?

21 A I didn't change no strategy. I just told you in a
22 different version. Instead of saying girl, boy, I just told
23 you like that. You accept it the way you want to accept it.
24 You gonna see it the way you want to see it.

25 Q Now, Mr. Moore, let's talk about your statement, shall

1 we?

2 A Yes.

3 Q S-77A?

4 A Yes.

5 Q This is the sworn statement that you gave?

6 A Yes, it is.

7 Q The day is December 14th, correct?

8 A Yes.

9 Q Is this your testimony that you left Newark at --

10 A About 11 p.m., uh-huh.

11 Q Whose words are those?

12 A Mines. "In a two-door white car with gray interior, stick
13 shift, five star rims. I was with Tariq, Rock, driver which I
14 do not know at all and he's Rock's friend."

15 Q Okay. Did the detectives add in that extra part about
16 the stick shift, five star rims?

17 A No, they didn't.

18 Q Those were your words?

19 A Exactly.

20 Q So you said you were in this particular car with very
21 detail about even down to the rims?

22 A Yes.

23 Q So those weren't the detectives words, were they?

24 A No, they wasn't but --

25 Q Excuse me, Mr. Moore.

1 Now, it says here, "Please describe Tariq." You've
2 already I.D.'d Tariq in the photo array?

3 A Yes, 'cause I know him.

4 Q Because he is a friend of yours?

5 A No, he's an associate of mine.

6 Q Someone that you can depend on, Tariq?

7 A No, someone that I speak to. If I see him, I say hello.

8 Q Okay. Then they ask you to describe Rock, correct?

9 A Yes.

10 Q And you've already told us which one is Rock in the
11 photo array, correct?

12 A No, I didn't.

13 Q Didn't you just point out David Diggs' photograph for
14 us?

15 A No, I didn't. I point out Keith Brooks and Shakil.

16 Q Okay. I show you what is marked S-21 for
17 identification, which is photo array number six. Do you
18 recognize anybody?

19 A Yes, number five. That's --

20 Q Is that Rock?

21 A Yes. Now, that's the first time showing me.

22 Q Thank you. I am sorry. I got confused. Sorry.

23 And then they ask you to describe the driver of the
24 white car and then you give a description, correct?

25 A Yes, I did.

1 Q Okay. You've just I.D.'d the driver of the car,
2 correct?

3 A No, I just I.D.'d Rock.

4 Q No, today in court?

5 A Oh, yes.

6 Q You've identified the driver?

7 A Yes.

8 Q Okay. And then they ask you, "What were you wearing
9 the night of December 4th and December 5th when you went to
10 Plainfield?" What was your answer?

11 A "Dark blue jeans, blue leather" -- I mean "black leather
12 jacket, block and blue skully with a rim, blue and green shirt
13 with X designs and brown Timberland boots." Tommy Hillfiger, I
14 didn't think that matters.

15 Q What do you mean?

16 A That is just the name of the shirt.

17 Q Was that the shirt you were wearing?

18 A Yes, it is.

19 Q And Tommy Hillfiger, was that the detail the
20 detectives gave you to throw in that name brand or was that the
21 shirt you were wearing that night?

22 A That was the shirt I was wearing.

23 Q Okay. When you committed the murder?

24 A No, I never did commit murder.

25 Q Okay. I wonder if you could read the answer to, "When

1 all four of you got into the white car at about 11:00 p.m.
2 where did you decide to go?" What answer is that?

3 A "First we drove around Newark in the white car and then
4 anybody take a gun with them." Oh, no. "First we drove around
5 Newark and then I said let's go out of town and the driver
6 suggested that we go to Plainfield."

7 Q And the driver was from Plainfield, correct?

8 A I guess he is now that I know, yes, he is.

9 Q Okay. He's the owner, the driver of the white Hyundai
10 Elantra; is that correct?

11 A Yes.

12 Q Could you read the next answer to the question,
13 "Please describe the gun you took to Plainfield with you on
14 Saturday, December 4th and December 5th, 1993." What is your
15 answer?

16 A "A .44 long, black with a brown handle, six shot revolver".

17 Q Did you hear Shaye Walker testify today?

18 A Yes, I did.

19 Q How would you describe your relationship with Shaye
20 Walker?

21 A We were sex partners.

22 Q Sex partners. Okay. Has she at your request given
23 information to your attorney?

24 A Yes.

25 Q Okay. So she's someone that you would consider a

1 friend still?

2 A Yes.

3 Q Okay. Did you hear Miss Walker say that she has seen
4 you with a big gun many times? Did you hear that testimony?

5 A Yes, I did.

6 Q Okay. So you have -- before the murder you did
7 possess a long big gun, correct?

8 A No, I possessed a .380, a black .380.

9 Q Have you ever possessed maybe more than the .380
10 another gun?

11 A No.

12 Q No. You sure? You want to think about that?

13 A I'm positive. I'm positive.

14 Q Okay. You heard there was a .380 casing at the scene,
15 correct?

16 A Exactly.

17 Q And then to the answer here to this question, "Was
18 this gun loaded and, if so, what type of bullets?" And what
19 was your answer?

20 A "It was six rounds of .44. It was a loaded with six rounds
21 of .44." It had to have .44 shots.

22 Q Well, as far as the number of rounds, was that the
23 detective's idea to put in that specific detail about the six
24 rounds or was that your idea?

25 A Just going by what they say. If they said it was loaded,

1 then it was loaded. They --

2 Q Excuse me, Mr. Moore.

3 Who put in that there were specifically six rounds?

4 Was it your idea?

5 A If they said it's loaded, it means it's fully loaded.

6 Q Whose idea was it?

7 A The police. If they say it's fully loaded, then I said it
8 was fully loaded.

9 Q Now, it's the police getting this specific as to how
10 many rounds?

11 A I said six because that's how many shots in a .44.

12 Q Excuse me?

13 A I said six because that's how many shots a .44 take.

14 Q How do you know that?

15 A 'Cause all revolvers take six shots.

16 Q All revolvers take six shots?

17 A I know of.

18 Q Have you handled a .44 before?

19 A No, I have not.

20 Q But you happen to know that .44 take six rounds?

21 A Yes, I do.

22 Q You have prior knowledge of what a .44 looks like?

23 A Yes, I do.

24 Q And you've seen a .44 before, right?

25 A Yes, I've seen a .44 before.

1 Q Have you shot a .44 before?

2 A No, I haven't.

3 Q And to this question here, "Where did you get this
4 particular gun from and when?" What was your answer?

5 A I said, "I traded my brand new .380 still in the box from a
6 kid on the streets for a .44 about two months ago."

7 Q Does it say .380 auto?

8 A .380 is an auto. All right. ".380 auto still in the box".

9 Q Okay. And where you lived at 195 First Street, you
10 would agree with me that is a pretty violent area, correct?

11 A Not if you make it -- if you think it's violent, then it
12 would be violent. It's different from the suburbs, yes, it is.

13 Q You will agree with me that drugs are bought and sold
14 at 195 First Street?

15 A Drugs is bought and sold everywhere but, yes, it is. Sold
16 at First Street.

17 Q You will agree with me that some drug dealers
18 sometimes also deal in weapons, too?

19 A Well, all drug dealers carry weapons because they protect.
20 That's how they protect themselves on the street.

21 Q That's why you had to resort to guns also because you
22 had to protect yourselves?

23 A Yes, around there I had a .380.

24 Q You will agree with me that with all the drugs being
25 passed around at 195 First Street, there is also a lot of

1 weapons being passed around, also?

2 A Not that I know of. Guns is sold everywhere. Not just on
3 First Street or just in Newark. You can go anywhere.

4 Q Okay. How about the next answer? Talk about that.

5 "QUESTION: Are you sure that nobody else in your car also had
6 a gun?" What was your answer?

7 A "Yes".

8 Q So you're telling the police in this statement that
9 you're the only shooter?

10 A I'm telling the police what they told me that there was
11 only known one shooter at that time.

12 Q Okay. But here this answer was?

13 A Yes.

14 Q You will agree with me you try and make it seem as if
15 you're the only one in the car with a gun?

16 A Because at that time that's what they told me. They only
17 knew of one person with a gun and that person they named was
18 me.

19 Q Are you saying that's what the police told you?

20 A Yes, it is.

21 Q That they understood?

22 A Yes, I am.

23 Q Did you hear Detective Marcantonio say that they knew
24 that the projectiles from the victims were .44 and the casing
25 was a .380? Did you hear his testimony?

1 A Yes.

2 Q Did you hear that .44 projectiles don't fit in .380
3 casings?

4 A Yes. So that's how you know I didn't have a .44.

5 Q But you will agree with me that would indicate there's
6 more than one shooter at the scene?

7 A Yes, it is.

8 Q Although you say the police told you what to say, your
9 answer to the question are you sure that you're the -- there
10 was nobody else in your car with a gun, your answer was "yes"?

11 A So that means --

12 Q Excuse me. Was your answer "yes"?

13 A Yes, it was.

14 Q Okay. Pay attention to the next answer. Okay?

15 "QUESTION: What happened when you first came into
16 Plainfield?" What was your answer?

17 A "We drove around and found some" --

18 Q Louder.

19 A "We drove around and found some girls on Second Street near
20 a bridge and we stopped to talk to them and they looked small.
21 So we asked them if they had anybody that was older for us and
22 they said yes, we have sisters. Why don't you follow us to our
23 how is because there are more girls in the house."

24 Q Okay. Did you follow them to the house?

25 A No, not I 'cause I wasn't with them. 'Cause I wasn't

1 there.

2 Q Okay. You say you weren't there. Okay. Let's read
3 the next answer, please, to the question, "Can you please
4 describe the girls that you first stopped and spoke with?"

5 A "There were three. The first two looked young, maybe
6 fifteen, sixteen years old, brown skinned black females and the
7 third girl that kept walking and didn't talk with us, she was
8 very light skinned and looked Puerto Rican."

9 Q "Looked Puerto Rican." Did you see the young lady
10 that didn't want to come out of the back and testify the other
11 day?

12 A Yes.

13 Q Did you see her?

14 A Yes.

15 Q How would you describe her, that young lady that
16 testified?

17 A Light skinned with Indian-type hair.

18 Q Okay. Would you agree that she could pass for Puerto
19 Rican, though?

20 A Could be. Could be.

21 Q So the description that she was very light skinned and
22 looked Puerto Rican, that's a pretty good description of her,
23 would you agree?

24 A No, 'cause how can I describe her? I didn't see her.

25 Q Yes. You allegedly didn't see her. And in your

1 answer here that the police allegedly told you, you say that
2 the two others looked young, correct?

3 A Yes.

4 Q And you heard her younger friend, Jada Williams,
5 testify that she also was with Kyewaghana and her other young
6 cousin? You heard her testify, correct? Jada?

7 A Yes, I did.

8 Q And, incidentally, is it your testimony that you've
9 never seen Kyewaghana Cook before?

10 A Yes, it is 'cause I never have seen her.

11 Q Okay. Will you agree that she was very frightened the
12 day that she testified?

13 A If I -- if I had to come to court and testify against
14 somebody, I would be afraid, also.

15 Q Excuse me, Mr. Moore.

16 Would you agree that the day she testified with her
17 tears and with her not wanting to come out of that back room --

18 MR. RUSSO: Objection.

19 A Yes, she was.

20 MR. RUSSO: Objection.

21 Q You will agree that she looked --

22 THE COURT: Objection to what?

23 MR. RUSSO: How does he know what her state of mind
24 was?

25 THE COURT: Looked frightened.

1 A Yes, she did look frightened.

2 Q Is it your testimony, sir, you've never seen her
3 before?

4 A Yes, it is.

5 Q And to the answer here -- the question, "Did you tell
6 them your names?" What was your answer?

7 A "Yes. We said Tariq, Smiley, Rock from Newark." Because
8 that's who the police said the girls said they knew.

9 Q Right. Right.

10 Did you hear Jada testify that she remembered their
11 names were Smiley, Rock and Tariq? Do you remember that part
12 of Jada's testimony?

13 A Yes.

14 Q Do you remember that part of their testimony when they
15 said when they first saw you in that car that you had -- I
16 think she said pulled a u-ey or did a u-turn when they were
17 coming off Clinton Avenue, correct?

18 A Yes.

19 Q Okay. You will agree with me that S-49, a
20 photograph --

21 A Uh-huh.

22 Q -- which is where one would turn around to do the
23 u-turn, you will agree with me there is a bridge there,
24 correct?

25 A Yes, it is.

1 Q And your answer to the next question, "After speaking
2 with these girls, did you pull over and get out of your car to
3 continue talking with them?" What is your answer?

4 A "Yes, just me, Rock and Tariq got out of the car and the
5 driver stayed in the car."

6 Q Just three of you got out of the car?

7 A Yes, not me and the three. That's what they was told and
8 that's what was typed.

9 Q Okay. And to the next question, "At this point who
10 did you talk with and did anybody else come out of their house
11 to talk with or meet with you?" What is your answer?

12 A "The light skinned girl that first didn't talk with us went
13 into the house and came back out with another brown skinned
14 girl and all four of them asked us to come inside the house and
15 we decided that we didn't want to go in and they told us to
16 come back in about a half an hour. So we agreed and then we
17 drove off."

18 Q Now, they talk about here another brown skinned girl
19 come out of the house. Were you here when --

20 A Yes.

21 Q -- Khahlia Hassenbey testified?

22 A Yes.

23 Q And were you here when she said that after her cousins
24 came in to tell her about the boys in the car, she came
25 outside?

1 A Yes.

2 Q Is that your testimony that that woman -- that you've
3 never seen that woman before?

4 A Yes, it is.

5 Q I guess you can't give us any -- I guess it's a total
6 surprise to you when she came in her and identified you?

7 A Yes, it is. How would she know me?

8 Q Right. Right. Unless, of course --

9 A Somebody --

10 Q -- you were there that night?

11 A Showed her my picture and told her to go by that.

12 Q I guess the other explanation was that you were there
13 that night and that's why you were picked out?

14 A No.

15 Q Is that a possible explanation?

16 A No. Ya'll showed her my picture and after she sees the
17 picture, she will say, yes, that's him.

18 THE COURT: Miss MacMullan, are you going to be much
19 longer?

20 MISS MacMULLAN: Judge, I should be wrapping it up.

21 THE COURT: Okay. I was wondering if we could take a
22 break.

23 MISS MacMULLAN: No, Judge. I don't want to lie and
24 say I will finish if --

25 THE COURT: All right. We will take ten minutes this

1 time. It was my intention to get into summations. It is still
2 my intentions. That will keep us after four o'clock. If
3 anybody has any problem with that, when you come back out, let
4 me know. Let Miss Coleman know and she will tell me if you can
5 stay late.

6 I want to get the summations done because I have a
7 sentencing day tomorrow. I will spend the first hour of the
8 sentencing day talking to you but then I have a full calendar.
9 I would like it done tonight if at all possible and get the
10 case to you early tomorrow morning.

11 Don't discuss the case itself but discuss your ability
12 to stay late. I know you have a problem. If you can't work
13 around it, I understand. Okay.

14 (Recess.)

15 MR. RUSSO: Your Honor, I want to briefly put
16 something on the record. As I indicated to Assistant
17 Prosecutor MacMullan, I had subpoenaed two witnesses who I
18 asked to appear today. I was informed by Investigator Matos of
19 the Public Defender's Office that he had served those
20 subpoenas. Those persons did not appear. Investigator Matos
21 went out to Newark to locate them all at the address of which
22 he served those subpoenas. He learned that one party, Ebony
23 Bennett, a juvenile had been arrested last night and that that
24 was the reason she did not answer the subpoena.

25 Subsequently I learned that the other individual,

1 Brenda Johnson, with whom she lives, was most likely at the --
2 somewhere in the Essex County Courthouse to secure Miss
3 Bennett's release from detention.

4 I have not been able to get any additional information
5 with respect to where these potential witnesses are. However,
6 for the record on behalf of Mr. Moore I would request
7 additional time to locate them.

8 THE COURT: What would you say they're testifying to?

9 MR. RUSSO: Miss Bennett had given a statement to the
10 police in which she indicated that Mr. Moore was in the
11 apartment up until approximately, I believe, 11 o'clock at
12 which time she went to bed and that he was in the apartment
13 when she woke the next morning.

14 Miss Thomas indicated that she was with Mr. Moore and
15 he was in the apartment up until midnight when she left to go
16 to a club. I feel that that testimony is significant since the
17 State's witnesses have indicated that Mr. Moore was seen in
18 Plainfield as early as nine o'clock on the evening in question.

19 THE COURT: I don't find the testimony at all
20 significant in view of the fact that the alleged murder took
21 place at a period of time where even if he was there until
22 midnight, he had plenty of time to drive to Plainfield and
23 commit the murder. The testimony is not dispositive. I will
24 not grant your request to adjourn this case. This case was put
25 on the calendar for a long time. Do you have proof of service

1 here today?

2 MR. RUSSO: I don't.

3 THE COURT: If you don't have proof of service, your
4 motion is definitely not being granted.

5 However, because we may be going right in to your
6 summation, I want to have a quick charge conference. I intend
7 to charge lesser included of aggravated assault on Keith
8 Staple. Do you want a mug shot charge?

9 MISS MacMULLAN: Judge --

10 THE COURT: One second. Do you want a mug shot
11 charge?

12 MR. RUSSO: No, your Honor.

13 THE COURT: I will charge the jury about prior
14 convictions of the people who testified. I will charge flight.
15 I will charge the statement by the defendant. Any other
16 charges anybody requests?

17 MISS MacMULLAN: Judge, as far as the Keith Staple
18 robbery count, the State would respectfully request that that
19 be an attempted robbery.

20 THE COURT: A robbery is effected if somebody attempts
21 to commit a theft. So it's covered by the charge.

22 MISS MacMULLAN: We will keep the robbery count on
23 Keith Staple?

24 THE COURT: Yes.

25 MISS MacMULLAN: One lesser included on the murder --

1 attempted murder to aggravated assault?

2 THE COURT: Yes.

3 MR. RUSSO: I have two points, your Honor. First, I
4 think based on what I've heard based on the statement made by
5 Mr. Moore it's entirely possible that the jury could accept
6 that version of the incident. If that were the case and
7 this -- and based on that statement there was no robbery
8 attempt but that this had to do with a dispute regarding girls,
9 then --

10 THE COURT: What statement by Mr. Moore?

11 MR. RUSSO: The confession which has been --

12 THE COURT: The one that you say never occurred?

13 MR. RUSSO: I am talking about the confession, the
14 statement which the State is offering in evidence.

15 THE COURT: All right.

16 MR. RUSSO: Indicates that he said that this had to do
17 with an argument over girls. If that's the case and, indeed,
18 there was no robbery, then the taking of the motor vehicle
19 after Mr. Benjamin's death I would suggest is a theft rather
20 than part of a robbery and there should be a charge to that
21 effect.

22 THE COURT: He is not charged with the theft of that
23 vehicle. Do you want me throw it in the indictment? It is not
24 a lesser included offense of robbery. It is part of robbery.
25 There has to be a theft in order to have a robbery. He is

1 being charged with theft and receiving stolen property.

2 MR. RUSSO: We talked about also, your Honor, in the
3 context of that statement which the State has offered in
4 evidence the confession. Mr. Moore indicates that this
5 incident was involving a shoot-out in which he was shot at and
6 I believe and according to the statement, then shot the person
7 that he was near and also returned fire and also those
8 circumstances, your Honor, I believe that there is a
9 possibility that the jury and the jury should consider a charge
10 of aggravated manslaughter.

11 THE COURT: For aggravated manslaughter.

12 MR. RUSSO: That he was provoked by being shot at.

13 THE COURT: There is no evidence in this case nor
14 testimony in this case that neither Marcus Benjamin or Keith
15 Staple did anything but stand there. Even in his statement
16 that you repudiate that there was any firing from there. The
17 only firing that allegedly occurred, according to the statement
18 and that's all you're ever going to get in this case, is a
19 firing from the porch and it's uncontroverted that Marcus
20 Benjamin was on the street and in front of him. There is no
21 evidence that he had a weapon. No evidence that he fired a
22 weapon and the shooting of Marcus Benjamin in no way can be
23 interpreted as aggravated manslaughter.

24 MR. RUSSO: Your Honor, there is a suggestion in that
25 statement that Mr. Benjamin spoke to the person on the steps

1 who had the gun and I think that that -- that it may be
2 inferred that there was some direction to that person to fire
3 on the gunman who was holding him and under those circumstances
4 I think that that would be appropriate. I am referring to the
5 point in the report -- in the alleged confession, the statement
6 indicates that "his boy on the porch then raised his gun and
7 the fat guy turned to the guy on the porch and said something
8 to him and the guy on the porch shot one round at me."

9 I think it can be inferred that the person on the
10 street, Mr. Benjamin, directed the person on the porch to fire
11 that shot and that that would be enough for the jury to
12 consider that the shooter's reaction was a reaction to that
13 provocation.

14 THE COURT: What's the State's position?

15 MISS MacMULLAN: Judge, in this case if Mr. Russo
16 requests a lesser included charge by switching strategies to
17 say that if the jury should decide that this is a believable
18 statement, that they should consider the statement as true and
19 consider that, then by all means the State has no objection to
20 that being done.

21 THE COURT: Okay. Aggravated manslaughter without
22 objection. All right.

23 Mr. Moore, I intend to finish this today here as much
24 as possible. Please be responsive to her questions because the
25 more you argue with her and are not responsive, the less chance

1 you have of getting back to jail for dinner tonight. Do you
2 understand?

3 THE WITNESS: Yes.

4 THE COURT: Take the stand. Bring out the jury. On
5 both charges?

6 MR. RUSSO: No.

7 THE COURT: Just Benjamin.

8 (In the presence of the jury.)

9 THE COURT: Miss Coleman.

10 THE JUROR: Everybody will stay.

11 THE COURT: Fine. Good. I appreciate it.
12 Continue your cross-examination.

13 MISS MacMULLAN: Thank you, Judge.

14 CONTINUED DIRECT EXAMINATION BY MISS MacMULLAN:

15 Q Okay. Mr. Moore, I will try and speed this up a
16 little.

17 I direct your attention to page four of S-77A. In
18 response to the question, "When you ended up back on South
19 Second Street after having the argument with the boys on Third,
20 what did you decide to do?"

21 Now, in this statement do you give a description, "The
22 driver pulls the car over next to a boarded-up garage building
23 and I got out of the car by myself, went across the street and
24 started cutting through the yards and ended up on the side of
25 the house and I came out with my gun out and came down the

1 driveway." Now, that's also in your statement; is that
2 correct?

3 A Yes, it is.

4 Q Okay. Did you get a chance to see the photographs of
5 that abandoned building on the corner of Morris Street and
6 South Second Street?

7 A No, I didn't.

8 Q And then it says here, "I saw the fat guy get out of
9 the blue Honda Accord." So here he's described as a fat guy?

10 A Yes.

11 Q Okay. You say you were never there but you described
12 the victim as a fat guy, is that correct, in this statement?

13 A Yes because that's how they explained to me.

14 Q Okay. So the detectives had the need to give a
15 physical description how much the victim weighed, is that it?

16 A No, they just said he was a heavy guy.

17 Q Okay. The detective said it was a heavy guy?

18 A Yes.

19 Q It wasn't that you looked and saw that he was in fact
20 a large man? That wouldn't be --

21 A No, the detective said it.

22 Q And then at this part in your statement, if you don't
23 mind I am going to skip down. I am not leaving out anything on
24 purpose. I am trying to speed up. "I was telling the fat guy
25 to tell his boy to put the gun down and I was asking about what

1 he had put in his trunk and he told me that it wasn't his car."

2 A Uh-huh.

3 Q Is that correct?

4 A Yes, that is right there.

5 Q Did you hear Ryland Robinson testify that that's where
6 Mr. Benjamin put his drug money, in the trunk?

7 A Uh-huh.

8 Q And the detectives allegedly told you to say that in
9 the statement here?

10 A No, they asked me --

11 Q Excuse me. Did the detectives tell you to put that in
12 the statement? Yes or no?

13 A Yes, they mentioned the trunk to me.

14 Q Did they tell you to put those words "and I was asking
15 about what he put in the trunk" in this statement? Those are
16 your words or their words?

17 A In not so many words, yes, it was partial their words.

18 Q Excuse me. Did the detectives tell you to put that in
19 the statement? Yes or no?

20 A Yes and no.

21 Q Yes and no?

22 A Yes.

23 Q So some of these are actually your words?

24 A I put them in my own words but that's from what I gathered
25 from them. You know what I am saying?

1 Q These are some of your words?

2 A Yes.

3 Q How about this part here? "The fat guy turned to the
4 guy on the porch and said something to him." Do you recall
5 when Keith Carson, the juvenile that was locked up, testified
6 that right before the shots Marcus said in a sad voice, Mook,
7 get back? Did you hear that part of Keith Carson's testimony?

8 A Yes, I did.

9 Q Is that what you mean by when you said "turned to the
10 guy on the porch and said something to him"?

11 A Truthfully, I don't know what it meant. I told you. They
12 already had the stuff that they had to say. Whatever they was
13 going by and they tried to make me go with it.

14 Q Uh-huh. And did you hear Keith Carson say the first
15 time he gave a statement was September, 1994?

16 A Yes.

17 Q So the detectives didn't even have Mr. Carson's
18 statement at the time of this statement?

19 A They had to have it if they told me.

20 Q They had to have it if they told you?

21 Well, let's take a look at the date of Mr. Keith
22 Carson's statement?

23 A I understand what's there but --

24 MR. RUSSO: Your Honor, Mr. Moore already testified
25 that he understood and recalled the testimony.

1 THE COURT: Unless you're clairvoyant I don't have a
2 clue what Miss MacMullan is going to be doing next.

3 MISS MacMULLAN: Keith Carson's statement marked, your
4 Honor.

5 THE COURT: Why?

6 MISS MacMULLAN: To show him the date on the statement
7 of September 2, 1994.

8 MR. RUSSO: He's already testified that --

9 THE COURT: See if he agrees orally that's when the
10 statement was made. Just orally. If I told you that --

11 Q If I told you that his statement says September 2,
12 1994, would you agree with me that that's the date on Mr.
13 Carson's statement?

14 A But he did also say that he made a statement that night to
15 the police when they came on the scene.

16 Q That might be your recollection. My recollection is
17 Mook put on his hoody and walked off?

18 A And he did say he said something, also.

19 Q My recollection is that Mook walked away.

20 But, anyway, you'll agree with me that's what Mr.
21 Carson's statement says, the date?

22 A Well, I don't see it but I guess if that's what you say it
23 is.

24 Q Would you agree that's the date of the statement?

25 A Yes, it is.

1 Q Now, further on in your statement here to the
2 question, "After you left Plainfield in the blue Honda with
3 Tariq, where did you drive to?" Your answer was, "We went down
4 Route 22 towards Newark and got off at the Hillside Bloy Street
5 exit. Then drove down through Newark and drove straight back
6 to the Garden Spires apartment at 195 First Street."

7 Now, it's at that address, the Bloy Street exit, that
8 you say in your statement that's where you threw the gun out;
9 isn't that correct?

10 A Yes, it is.

11 Q Okay. Now, isn't it true that you asked -- the
12 detectives asked you to show you where you threw that gun,
13 correct?

14 A That -- all right. They asked about the gun.

15 Q Excuse me, Mr. Moore. Okay? I just want to finish
16 this as soon as we can.

17 Isn't it true that in your statement you say that you
18 threw --

19 A Yes, that was the second time.

20 Q Excuse me, Mr. Moore.

21 Isn't it true in the statement you say you threw the
22 gun out the car towards the bushes at the Bloy Street exit?

23 A Yes.

24 Q Isn't it true the next day the police, that would be
25 Wednesday, the 15th, isn't it true that the police took you out

1 of the cell and drove around looking for the gun?

2 A Yes, they did.

3 Q And that's because you said that you threw the gun out
4 the window, correct?

5 A Yes.

6 Q And isn't it true that that day, December 15th, they
7 actually were walking around the park, Weequahic Park in
8 Newark, looking for the gun?

9 A Yes.

10 Q And did you hear the officers -- detective's
11 testimony, Detective Dean Marcantonio, when they said even
12 later on that night they went back a second time with a metal
13 detector?

14 A Yes.

15 Q Now, whose words were they when you said, "I threw the
16 gun out the window"? Theirs or yours?

17 A When I made -- when I said that I was still scared 'cause
18 they was threatening me. They said, well, what did you do with
19 the weapon? I said I tossed it.

20 Q Are those your words when you say you tossed it out or
21 the police officer's words?

22 A Mines. They said, well, what would you have done with the
23 weapon? I said I tossed it.

24 Q Okay. And whose idea was it to go look for the gun in
25 Weequahic Park? The officer's idea or your idea?

1 A It was they idea.

2 Q But whose suggestion was it to go to Weequahic Park?

3 A I didn't tell I told them I threw it on Bloy Street in some
4 bushes. Then drove down until they found an apartment and they
5 went in there. From there they went -- start checking in
6 there.

7 Q Whose idea was it to go to Weequahic Park?

8 A The detective's idea. I said Bloy Street.

9 Q Even though you say you threw the gun out the car, the
10 detectives took it on there own to start searching in Weequahic
11 Park?

12 A Yes, I told --

13 Q Excuse me. Is that your testimony, Mr. Moore?

14 A Yes, it is.

15 Q So the detectives took it on their own to take a good
16 guess and think that's where the gun was, is that it?

17 A Can you ask the question --

18 Q Is that where the detectives were guessing that's
19 where you threw the gun?

20 A Yes, they were guessing there.

21 Q They were wasting their time on a guess?

22 A I guess they did it.

23 Q Mr. Moore, I guess we don't have to go through the
24 rest of the statement. You're going to deny they're your words
25 anyway, correct?

1 A Yes.

2 Q Okay. I won't waste our time here. Just like to
3 review some of the witnesses, if we could.

4 Kyewaghana Cook, is it your testimony that you've
5 never seen that woman before?

6 A Yes, it is.

7 Q So she was lying when she pointed to you and said you
8 were the man on the night in question?

9 A Yes, she was lying.

10 Q Okay. And Khahlia Hassenbey, are you saying you've
11 never seen that woman before?

12 A Yes, I never saw her, also.

13 Q And when she picked you out in court, are you saying
14 that she also was lying, a total stranger?

15 A Yes, she was.

16 Q And Luciana Wellman, Luciana said that you told her
17 first you got the car from a guy in Plainfield?

18 A I never mentioned nothing about her to Plainfield.

19 Q Okay. Okay. You deny you ever said that to Luciana?

20 A Yes. Only reason why she mentioned Plainfield --

21 Q Excuse me, Mr. Moore. Just answer the question that's
22 asked, okay?

23 Luciana Wellman, I guess she was lying when she said
24 you first told her you got the car from Plainfield; is that
25 correct?

1 A Yes, she was lying.

2 Q She is lying.

3 And Natasha Levant, was she lying, too, when she said
4 that you told her there was a body attached to the car?

5 A Yes.

6 Q Was she lying, too?

7 A Yes, yes, she told me. That's how I found out.

8 Q And was Jada Williams lying when she said that the
9 three guys out of the car were Tariq, Rock and Smiley?

10 A Yes.

11 Q She was lying, too.

12 And Traci Thomas, the girl that came all the way up
13 from Montgomery, Alabama with her parents, when she said you
14 told her that you shot two people, had a car and had money, she
15 was lying, also?

16 A Yes, she was. If I told her, why didn't anybody else hear
17 that?

18 Q Okay. I just want to make sure that we understand
19 they're all lying so far.

20 And in fact when Traci said she in fact wasn't with
21 you on that Saturday night the whole night when you left, she
22 was also lying then?

23 A Yeah.

24 Q Okay. And Shaye Walker, when she came in here and
25 said that she's seen you with a big gun many times, was she

1 lying then, too?

2 A If she saw -- she had saw me with a gun before. So she
3 wasn't lying about seeing me with a gun.

4 Q And was she lying about that you mentioned to her that
5 Sunday morning -- that Sunday early afternoon, I think she said
6 that you had the papers for the car and said that the car you
7 got from Plainfield and that you shot somebody or the group you
8 were with shot somebody, was she lying then, too?

9 A Yes, 'cause she didn't know about nothing like that until I
10 got locked up.

11 Q Okay.

12 A So --

13 Q Okay. Just so we're clear then she was lying, too?

14 A Exactly.

15 Q And Detective Dean Marcantonio when he testified that
16 these were your words and that was your sketch, he was lying,
17 too?

18 A Yes, he was.

19 Q So it's just a huge conspiracy to get you?

20 A That's how ya'll making it.

21 Q Or is it maybe possible, Mr. Moore, that you shot that
22 man that night in Plainfield?

23 A No, it's not possible.

24 Q And you had the car and you didn't have to shoot him
25 after you got the car. Is that possible?

1 A No, it's not.

2 MISS MacMULLAN: Thank you. No further questions.

3 THE COURT: Anything further?

4 MR. RUSSO: Just a couple questions.

5 REDIRECT EXAMINATION BY MR. RUSSO:

6 Q Sammy, when you described the car, a white car with
7 five star rims, whose car were you describing?

8 A Keith Brooks' car.

9 Q Why did you describe that particular car?

10 A 'Cause the police said that we know you came in a white
11 car. Ya'll came in town in a white car.

12 Q Why did you say in this statement that you were the
13 only shooter?

14 A Because at that time that's all they knew. So they said I
15 was the only shooter. So I went by what they told me.

16 Q Now, let me ask you this. Sam, why did you give this
17 statement?

18 A Because I was scared and they kept threatening about we was
19 gonna lock up friends of mine and stuff like that. All I did
20 was cooperate with them, thinking that eventually they'll find
21 out the truth if they really went after Snoop and investigated,
22 but I guess they didn't.

23 MR. RUSSO: No further questions.

24 MISS MacMULLAN: Nothing further, your Honor.

25 THE COURT: You may step down, Mr. Moore. Please

1 watch your step, sir.

2 Anything further, Mr. Russo?

3 MR. RUSSO: No, your Honor.

4 THE COURT: Miss MacMullan.

5 MISS MacMULLAN: No rebuttal, your Honor.

6 (The testimony concluded.)

7
8
9 CERTIFICATION

10
11
12
13 I, EILEEN A. DUNNE, C.S.R., License Number XI01022,
14 an Official Court Reporter in and for the State of New Jersey,
15 do hereby certify the foregoing to be prepared in full
16 compliance with the current Transcript Format for Judicial
17 Proceedings and is a true and accurate transcript of my
18 stenographic notes taken in the above matter to the best of my
19 knowledge and ability.

20
21 Eileen A. Dunne
22 EILEEN A. DUNNE, C.S.R.
23 Official Court Reporter
24 Union County Courthouse
25 Elizabeth, New Jersey

DATE: December 21, 1994

A-4956-9474

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CRIMINAL PART
UNION COUNTY
INDICTMENT NO. 94-06-00636
APP.DIV.DKT.NO.

STATE OF NEW JERSEY)
)
 v.)
)
 SAMMY MOORE,)
)
 Defendant.)

REC'D
APPELLATE DIVISION
Transcript
of
Summations
OCT 15 1996
R. Smith
Clerk

Place: Union County Courthouse
Two Broad Street
Elizabeth, New Jersey

Date: December 15, 1994

B E F O R E :

THE HONCRABLE WILLIAM L'E. WERTHEIMER, J.S.C.
OCT 15 1996

TRANSCRIPT ORDERED BY:

THERESA YVETTE KYLES, ASSISTANT DEPUTY PUBLIC DEFENDER

FILED
APPELLATE DIVISION
R. Smith
Clerk

A P P E A R A N C E S :

SUSAN M. MacMULLAN, ASSISTANT PROSECUTOR
FOR THE STATE

THOMAS M. RUSSO, ESQ.
FOR THE DEFENDANT

EILEEN A. DUNNE, C.S.R.
Official Court Reporter
Union County Courthouse
Elizabeth, New Jersey

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I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
S-89	Affidavit		16

1 (Testimony previously transcribed.)

2 THE COURT: All right.

3 Ladies and gentlemen, we have come to the part of the
4 trial where we will be hearing the closing statements from the
5 attorneys. Each attorney's closing statement is his or her
6 analysis of the facts in the case. You may or may not agree
7 with it. But the important thing for you to remember is that
8 no more evidence can be admitted here. You've heard all the
9 evidence in the case. The attorneys will be giving you their
10 version of the significance of the evidence in hopes that it
11 helps you decide the issues in the case. It may or may not
12 help you.

13 Mr. Russo.

14 MR. RUSSO: Thank you, your Honor.

15 Assistant Prosecutor MacMullan, ladies and gentlemen,
16 there was a shooting in Plainfield on December 5th in the early
17 morning hours of 1993. No dispute about that. Sammy Moore was
18 arrested in Newark at 195 First Street where he lives, on
19 December -- on or about December 13th, 1993. So we know that
20 there's eight days that elapsed between the time of the
21 incident in Plainfield and between the time of his arrest.

22 When the police went to arrest Mr. Moore, he was right
23 where they expected to find him, where he lived at 195 First
24 Street. Had he committed this crime, he had eight days in
25 which to flee. Had he committed this crime, he had eight days

1 in which to discuss this with his friends and set up a
2 potential alibi. He didn't flee. He didn't ask his friends to
3 make up a story to say where he had been.

4 Now, ladies and gentlemen, I know you're asking
5 yourselves, as would anybody, why would this man make a
6 statement to the police and sign it which clearly is in the
7 nature of a confession if he didn't do it. He's told you the
8 reason or part of the reason.

9 He was taken from Newark by the police, he was taken
10 to a strange town. He was held for many hours. He was scared.
11 He was threatened not only that the police would see to the
12 that the death penalty was sought against him but also that his
13 friends, people he cared about, would be hurt and that they
14 would be arrested, possibly their children taken away from
15 them, things of that nature. And as he's testified, he wanted
16 to make sure that his friends didn't get in trouble and he in
17 his own mind, believing that he didn't do anything, thought
18 that eventually the truth would come out. He told the police
19 what they wanted to hear.

20 You heard the detective himself testify that he
21 formulated the basic part of the diagram because Sammy Moore
22 wasn't familiar with the names of those streets. Yet, you're
23 expected to believe that earlier before the diagram was even
24 made he had specifically named all of those streets as if he
25 was intimately familiar with them. That's just part of the

1 explanation of why he would give such a statement.

2 Another part is this: The world in which Sammy Moore
3 lives, the world in which many of the witnesses who testified
4 before you in the last few days live, is something which most
5 of you are probably not familiar. It's a world in which, as
6 you heard, 12 and 13 year-old girls are out on the street at
7 one o'clock in the morning without supervision, 15 year-old
8 boys, who have fathered two children, have no concern about
9 receiving stolen property and when they are bored and
10 supposedly have nothing to do, get together with their friends
11 and suggest not let's go shoot some hoops but let's talk about
12 sticking people up. This is not a world in which you are
13 familiar or which I am familiar.

14 Remember I talked to you at the beginning of the case
15 about judging not the quantity of the evidence but the quality
16 of the evidence. One would find it difficult to think of a
17 case in which that premise would be more significant than a
18 case in which virtually every witness other than the police
19 officers who came into testify before you from Plainfield was a
20 drug dealer or had or admitted to you that he had drug charges.
21 It's up to you to determine their credibility.

22 Think of the men who came in here from Plainfield, the
23 young men. Keith Mook Carson, Quan Collier together in 1102
24 West Third Street. Anthony Mack, who also lived there at 1102
25 West Third Street. Building in front of which Marcus Benjamin

1 sold drugs. Collier and Carson admitted that they were also
2 drug dealers, selling drugs with and for Mr. Benjamin.

3 One of the young men told you that he was on his way
4 back into the house to get more drugs. That is, that the drugs
5 were kept in the house or he had to go through the house to get
6 to them.

7 The other young man neglected to point out that fact
8 and Mr. Mack, supposedly he didn't know about that. He lived
9 there, he had known Mr. Benjamin for years. Mr. Benjamin sold
10 drugs in front of his very house. The two boys who were in the
11 house with him were associates of Mr. Benjamin. He himself
12 admitted to being a former drug dealer but he wasn't involved
13 at that point he would like you to believe.

14 Neither Carson or Collier mentioned in their testimony
15 that they had seen this Mr. Robinson who came to take the order
16 for White Castle. But they said they were there, they did look
17 out the door, this did see Mr. Benjamin there.

18 In fact didn't one of them, use your own recollection,
19 but one of them testified that he saw Mr. Benjamin put the
20 money in the car. Mr. Robinson testified that the money --
21 that Mr. Benjamin took the money out of his pocket, gave him a
22 \$10 bill for White Castles and put the money in the car. How
23 could that young man have seen the money go into the car but
24 not have seen Mr. Robinson who says he was right there?

25 All these young men knew Mr. Benjamin for years.

1 Keith Staple said, no, I just happened to be walking in the
2 area. I didn't know Mr. Benjamin except to see him in the
3 neighborhood. I didn't know -- I didn't know he was selling
4 drugs. I just went up to him to ask for a light. I was on my
5 way somewhere else. But we know from his own testimony that he
6 had ten vials in his pocket but on cross-examination he said,
7 no, I'm not a drug dealer. I just happened to be passing by.

8 And, of course, although the Assistant Prosecutor was
9 quick to question Mr. Moore and ask him wasn't it so that drug
10 dealers often have weapons to protect their money and drugs,
11 and Mr. Moore honestly said, yes, of course, that's true, none
12 of these people from Plainfield ever had any guns. Quan
13 Collier, Keith Carson, Anthony Mack, Keith Staple, Marcus
14 Benjamin, none of these people ever had any guns, none of these
15 people ever saw Marcus Benjamin with a gun. All of these drug
16 dealers from that block of West Third Street for some reason
17 you are expected to believe did not need guns to protect their
18 property.

19 I suggest to you the following: All these young men
20 from Plainfield are admitted drug dealers. They're all friends
21 or confederates, associates of Marcus Benjamin. The police
22 have charged Mr. Moore with their friend's murder. And they
23 have come to court to say whatever needs to be said to see to
24 it that the man that the police have accused is convicted. But
25 that doesn't make their testimony believable.

1 They say, the various witnesses from Plainfield,
2 especially Mr. Staple, that this was a robbery. They saw --
3 that he saw somebody go through Mr. Benjamin's pockets.
4 Remember when I cross-examined him I questioned him about the
5 fact that he had made an earlier statement in which he said
6 that he assumed that they had gone through his pockets but he
7 hadn't actually seen that.

8 Isn't it also possible that if somebody went through
9 this young man's pockets knowing him to be a drug dealer, that
10 they might be doing so concerned that he himself might have a
11 weapon rather than an attempt -- in an attempt to take anything
12 from him?

13 If this was an actual robbery, why would the
14 perpetrators not even search Mr. Staple to find out if he had
15 valuables? If this with a robbery, why would Jimbo, who
16 supposedly is the only young man in this group from the area,
17 be the only one without a mask? You heard the testimony. He
18 lived around the corner. How could he be involved in a robbery
19 and then ever expect to go home without some retribution being
20 dealt out on him? Does it make sense that the only person who
21 would be well known in the area would not wear a mask?

22 You remember that more than one of the police officers
23 and detectives indicated that there was a shell casing found, a
24 shell casing for a .380, I believe, they indicated. Know that
25 the people who were shot were not shot with a .380. They were

1 shot with a .44. Doesn't that indicate that there was another
2 gun in the area? Of course, it does.

3 Remember the testimony of the people who said they
4 witnessed the shooting, especially Mr. Staple, that the robbers
5 were right up on them. They weren't shot from across the
6 street. That one guy was holding him and another guy was right
7 up next to Mr. Benjamin. How does that then explain that a
8 shell casing is found located 25 feet, according to the
9 detective, from Mr. Benjamin's body, which is the vicinity of
10 where the alleged robbery took place?

11 And doesn't that indicate to you that there was
12 another person with a gun out there that night or at least one
13 other person, someone who had a .380 and someone who was not
14 right up on these people during the commission of a robbery.

15 You will have with you when you deliberate the State's
16 exhibits. S-41, S-42, S-43. S-43 shows you what the house
17 looks like at 1102 West Third Street. You remember I pointed
18 out the testimony of several people that it's clear from this
19 photograph that it's two steps up to the sidewalk and five
20 steps up to the door of that building. Windows are not on the
21 street level. That first level, that first floor of that house
22 starts seven steps up from the street. And the police officers
23 were clear that a bullet broke the window of that house right
24 up near the top of the storm window. Didn't strike anything
25 else but broke that window. Went through the window and lodged

1 in the wall directly across from it.

2 Now, that bullet was never removed from the wall
3 because the wall would have to be taken apart. So we have no
4 way of knowing the size of that projectile or what kind of gun
5 it came from. But we do know this by the testimony of the
6 police officers themselves and from Mr. Mack as well from the
7 point where the bullet entered the window to the point where it
8 entered the wall was about on the same level, he said.

9 I ask you to consider whether from your -- based on
10 your own common sense it is possible that a bullet fired from
11 the street could have broken that window and then without being
12 impeded by anything other than the glass have changed its
13 trajectory, leveled out and go into the wall. Isn't it more
14 likely that bullet was fired from someplace else? That there
15 were other people out there on the street with guns? That what
16 happened that night was not a robbery but was some sort of a
17 shoot-out?

18 Remember the testimony that Mr. Benjamin had only
19 recently started to sell drugs on that corner. Remember also
20 that the police officers indicated that when the first police
21 officer, Officer Richard, indicated when he first got the call,
22 it only took him 30 seconds to get to the scene but from the
23 time the shots were fired people from the house, Mr. Butler,
24 Mr. Mack, took time to go -- they heard the car drive off, the
25 young men who said they were in the basement came out, went

1 outside.

2 Remember the testimony that they went to see Mr.
3 Benjamin's condition. Then they went back in and called the
4 police. All of that obviously took time. The police weren't
5 the first persons on the scene. Wasn't there plenty of time
6 for associates of Mr. Benjamin or even any other person in the
7 area to remove anything that might be incriminating from the
8 scene such as other weapons or to remove themselves from the
9 scene?

10 The several young girls came in here from Plainfield
11 and told you that they had scene a car full of people earlier
12 in the day, people who said -- young men who said they were
13 from Newark and gave them their names. Does it make sense to
14 you that a carload of young men, intent on committing a
15 robbery, would make sure to broadcast to everyone in the
16 neighborhood what their identities were and where they were
17 from? And to make sure that they were scene before they
18 committed this robbery?

19 Does it make sense to you that there is testimony that
20 some five or perhaps as much as ten minutes after the actual
21 shooting, because remember one of the girls indicating that she
22 went back to the scene and she stayed there for five minutes
23 and then as she was going back to make a phone call to let
24 somebody else know what had happened she saw that car, it was
25 still in the area ten minutes after the shooting. It was just

1 around the block. Is that logical?

2 And do you remember the testimony of the witnesses who
3 indicated how many shots were fired? And isn't it -- and I ask
4 you to recall the testimony of those various people because the
5 people who were at this scene, Mr. Benjamin's friends, the
6 people who were in that area working with and for him, heard
7 only a few shots.

8 But the people who -- the girls who came from out of
9 the area, the other witnesses said they heard up to six or more
10 shots and that is consistent with the fact that there was some
11 sort of a shoot-out going on but that the people who were
12 involved in that wanted it to seem to be something different.
13 That there were only one or two people with guns, shooters.

14 The State's own witness, Shay Walker, came in and
15 testified that she had seen Mr. Moore and in fact been with him
16 up to about 11 o'clock that night but that's totally
17 inconsistent with the testimony of the girls from Plainfield
18 who said that they saw this guy Smiley much earlier that
19 evening, at nine or ten o'clock and then later a half hour
20 after that.

21 The State brought in another witness, Natasha Levant.
22 She says that Sammy Moore told her there was a body attached to
23 this car but you know from hearing the previous testimony of
24 other witnesses that Mrs. Wellman spoke to the police, she got
25 information from the police, she gave that information to her

1 daughter. Her daughter spoke to Natasha Levant. Natasha
2 Levant had that information already and it was she who gave
3 that information to Mr. Moore. That makes sense.

4 Why does it make sense? Because even if Mr. Moore had
5 been in Plainfield, even if he had been at the scene, he could
6 not possibly know that there was a body attached to the car.
7 No one stayed around long enough to find out whether Mr.
8 Benjamin would survive his injuries. That information came
9 from the source that I've just described.

10 Mr. Staple, when he was questioned by the police, gave
11 a statement and he was questioned on that statement and in his
12 initial statement, if you -- as he answered questions about
13 that initial statement, he admitted that in this initial
14 statement it said that he made a positive identification. He
15 later backed off on that positive identification because he
16 really wasn't sure but if you went by the previous version,
17 which the police -- the statement that the police had prepared
18 and have signed, that indicated that he did make a positive
19 identification.

20 And I suggest to you, ladies and gentlemen, that it's
21 likely that to some extent he was pressured to make that
22 identification by the police as were other witnesses in the
23 case.

24 Even Traci Thomas, who came to court and testified for
25 the State, indicated in her testimony that she first was with

1 Mr. Moore up until nine o'clock at least, that she claimed that
2 she saw him leave with Tariq and Alex Walker around 11 o'clock.
3 And that is also inconsistent with the statements given by the
4 girls from Plainfield. And she claims that he said that he
5 told her in front of a room full of people that he shot two
6 guys in Plainfield. But her actions obviously belie that. She
7 would have you believe that after this man admitted to shooting
8 two people, she spent the rest of the evening with and then the
9 night with him. Does that make sense to you?

10 I ask you to consider all the facts, all of the
11 evidence that you have heard from the mouths of the witnesses,
12 from the photographs and other exhibits. Weigh that evidence,
13 what part of that evidence you consider to be believable or
14 credible. Discuss it among yourselves, determine whether or
15 not the State has proven that this incident occurred the way
16 they say it occurred. Determine whether or not the State has
17 met its burden of proof to prove each and every element of each
18 crime charged beyond a reasonable doubt.

19 The judge will instruct you about what reasonable
20 doubt is and there is no magic formula as to what that is.
21 It's just what it sounds like. Any doubt that is based on
22 reason.

23 But it is the State's burden to go beyond that. It's
24 the State's burden to remove from your minds any reasonable
25 doubt and I suggest to you after you have considered all this

1 evidence that you must find that not only was Sammy Moore not
2 involved, but whoever was involved could not have done or been
3 involved in this incident in the way that the State indicates
4 that they have been involved. That it happened some other way.
5 That this was a dispute, whether over girls or drugs or
6 something else, but the evidence shows that there were many
7 more people out there with guns than the State's theory of this
8 case would have you believe.

9 Thank you for your attention.

10 THE COURT: Let's take five minutes in case anybody
11 wants to use the lavatory and we will hear the State's
12 arguments. Don't discuss the case in there. Five minutes.
13 Get everybody moving.

14 (S-89, affidavit, marked in evidence.)

15 (Recess.)

16 THE COURT: The murder, aggravated manslaughter takes
17 it down to recklessness. Do you see that as a possibility?

18 MISS MacMULLAN: Reckless manslaughter, Judge? No.

19 THE COURT: I don't see it either. You didn't request
20 it. That's why I am asking.

21 MR. RUSSO: You lost me, Judge.

22 THE COURT: The standard murder and aggravated
23 manslaughter charge when taking it down on a lesser included
24 has included in it reckless manslaughter. This doesn't seem
25 like it's an act of recklessness in the sense the weapon is

1 involved. I don't know. I really don't know. I mean, if the
2 jury finds that his actions did not involve a probability as
3 opposed to mere possibility of death, they could find reckless
4 manslaughter. I think I can charge it all the way down. I
5 think I have to do it. Okay.

6 MISS MacMULLAN: Are you going to charge reckless
7 also, your Honor?

8 THE COURT: Yes. Okay. Bring out the jury, please.

9 MISS MacMULLAN: Is it possible to move the easel up?

10 THE COURT: Sure. Let them get out first.

11 (In the presence of the jury.)

12 THE COURT: All right. Francis, bring the board out,
13 please.

14 (Easel moved.)

15 THE COURT: All right.

16 Miss MacMullan.

17 MISS MacMULLAN: Thank you, very much, Judge.

18 May it please the Court, Mr. Russo, ladies and
19 gentlemen of the jury, good afternoon. It's 4:30 on a very
20 long day. I am going to try to be as brief as I possibly can
21 with you and at this point I would just like to thank you very
22 much for your attention and if you could just bear with us a
23 little while longer, I will try and do this as briefly as I
24 can.

25 In answer to the defense attorney's rhetorical

1 question does it make sense, none of this makes sense. None of
2 it. Why do people drive around in cars and flirt with girls
3 when they know they're there to rob drug dealers? Why do
4 people sell drugs in front of their homes? Why are little boys
5 in the back cooking up drugs and getting more? I don't no.
6 None of this makes sense. But what is clear from this case is
7 that a murder was committed for absolutely no reason at all.
8 None. Another man was shot again for no reason at all. Does
9 it make sense? No, not at all.

10 Okay. Let's start first with -- I am just going to go
11 through the chain of events. That might be easier to follow.

12 Okay. It begins Saturday night. Now, it begins in
13 the Spires, 195 First Street, 175 First Street, huge apartment
14 complex. Alexander Walker, Pop, testified that earlier in the
15 day he and Tariq had a conversation to go sticking.

16 Ladies and gentlemen, I don't know if you've ever
17 heard the phrase you take your witnesses where you find them,
18 we certainly don't vouch for that type of lifestyle when we put
19 witnesses up there and you don't go to central casting to get
20 your witnesses. You take them as you get them. Is Alexander
21 Walker somebody you would invite to dinner? Probably not. Is
22 he a witness in this case? Yes. Did we hide him? No.

23 Alexander Walker told the police that on Saturday he
24 and Tariq talked about going sticking. Who is Tariq? - Tariq is
25 number two, S-18. He's number four. The person that they call

1 Tariq. And that day he and Tariq were supposed to go sticking.

2 Later that day he walks outside and who does he see?
3 He sees the defendant, Smiley. No question of identity in this
4 case. He knows him. He sees Smiley outside with Tariq and he
5 sees him outside with Rock and he sees him outside with, as he
6 called him, the driver. The driver even identified by the
7 defendant is S-19, number two. That's Kenny Brooks.

8 Now, as the defendant admitted, Kenny Brooks has
9 Friends in the Spires. He comes and hangs out with Tariq.
10 Kenny Brooks lives in Plainfield. Any doubt why they went to
11 Plainfield that night? Did Kenny Brooks say, hey, I know where
12 the dealers are. Conspiracy. Is that how it worked?

13 Next we have Rock. Rock is David Diggs. He is the
14 cousin of Tariq Diggs. He also hangs out at the Spires. He is
15 number five in S-19.

16 Now, you've got the four of them there outside. What
17 do you think they were waiting to do? Where do you think Tariq
18 was going with those men? They were going sticking. Was
19 Alexander supposed to go with them? Absolutely. Luckily for
20 Alexander he has a girlfriend, a few girlfriends, but Shannelle
21 Diggs testified that she didn't want him to go out that
22 Saturday night when Tariq came for him. She didn't want him to
23 leave and she testified that she told him not to go and he
24 stayed with her.

25 Don't forget Shannelle Diggs is related to one of the

1 co-defendants in this case. If she had a motive to lie, ladies
2 and gentlemen, she would. But when she took the oath in this
3 case, she took it serious, unlike Mr. Moore, which I will get
4 into, when she told you that Tariq came to the door.

5 Where do we see them next? This is where we see them
6 next, ladies and gentlemen. I am pointing to S-22, my
7 apologies for those that can't see that far. Where they pick
8 up next is South Second Street.

9 Now, at that point in time it's Saturday evening. On
10 Saturday evening Kyewaghana Cook, the light-skinned girl, the
11 one that the defendant so accurately described as looking like
12 a Puerto Rican girl, was with her two cousins and they were
13 going to the Chinese restaurant on Front Street. To get there
14 Kyewaghana Cook told you that you have to come down South
15 Second Street, go over Clinton Avenue and up on Front Street.

16 When they were on their way back, when they just got
17 down to South Second Street, that's when the boys in the white
18 car came. Kyewaghana said and Jada also said they did a
19 u-turn.

20 What does the defendant say in the statement? He saw
21 a light-skinned Puerto Rican older girl near the bridge. She
22 was with two brown-skinned younger cousins. The other two
23 looked young, he said in his statement. That's exactly what
24 this place looks like near the intersection of Clinton and
25 South Second Street. They have contact with the girls. In his

1 statement the defendant says the girls asked them to come to
2 the house. That's probably more really what happened.

3 If you think about it, how did the boys know which
4 house was theirs? Did the girls want to admit that? Probably
5 not now that they know these guys are for murder. Even the
6 defendant says that the girls asked them to go their house,
7 which is exactly where they got out of the car on South Second
8 Street.

9 Kyewaghana says she went inside and put her food on
10 the bed and came out. At that point in time Kyewaghana said
11 there were three of them out of the car. She remembers the
12 name Smiley and she remembers the name Rock.

13 Do you remember when Kyewaghana testified? Do you
14 remember how we actually had to wait for her to come out of the
15 back room? She is sixteen years old. She lives in one of the
16 worst sections of Plainfield that you can imagine and she knew
17 that guy. She knew on that night she knew the face of that
18 killer and if anything should show you how certain she is of
19 her identity, she couldn't come out here and do it.

20 She, ladies and gentlemen, is petrified and can you
21 blame that 16 year-old girl? You know she had contact with
22 him. She was talking to them. Jada said it, Khahlia said it
23 and even the defendant in his statement admits that. So if
24 anything should prove to you the accuracy of the identity of
25 the case it's not so much what Kyewaghana said, it's how she

1 acted. She didn't want to face that killer again.

2 The other witness to testify is Khahlia Hassenbey.
3 Khahlia Hassenbey is, I submit to you, a very bright girl.
4 Khahlia Hassenbey told you that she didn't want to be involved
5 in this case. That's why the day after the murder on December
6 6th, I think it was, she refused to even look at the photo
7 array. She didn't want to get involved.

8 In her original statement, though, on December 5th
9 Khahlia Hassenbey says I saw their faces. I can pick out two
10 of them. She said that on the 5th. When Khahlia came here she
11 positively identified the defendant.

12 Are they lying, ladies and gentlemen? Is this a grand
13 conspiracy or are they absolutely correct that that was the
14 murderer that night?

15 The girls say -- Khahlia, Kyewaghana and Jada say that
16 the car pulled off with Tariq, Rock and the driver who never
17 came out. You know who the driver was? Kenneth Brooks. Why
18 didn't Kenneth Brooks want to come out and talk to girls.
19 Pretty much what they all want to do. Want to meet young
20 girls. Why did Mr. Brooks not want to come out of the car? I
21 submit to you Mr. Brooks was afraid. He was afraid they would
22 recognize him. He only lives right around the block from that
23 section of South Second Street. Kyewaghana and Khahlia lived
24 at 1143 South Second Street. I lives at 1311 West Third
25 Street, right around the corner. Why didn't Mr. Brooks come

1 out?

2 At that point in time there's one driver and three of
3 them get out of the car. They leave and drive around. At that
4 point in time the girl said the car came back, they honked and
5 nobody came out. The defendant in his statement even
6 corroborates that, that they went back to the house. His
7 version is the girls kept asking them to come in. He says in
8 his statement he didn't want to go inside. They then leave.

9 Why do they then leave? I submit to you they picked
10 up Jimbo. They picked up Jim Baines. After they picked up Jim
11 Baines, they were driving around. What were they driving
12 around for? Who did they see on that corner that all the other
13 witnesses testified that he had been out there all night? When
14 the defendant and his co-conspirators were driving around, did
15 they see Marcus out there selling drugs for a long time? Did
16 they see him go to his trunk where he put the money? Did they
17 see him by himself and, more importantly, as even the defendant
18 in the sketch puts it, are the only people with the defendant,
19 as he puts it, the house the kids were at. The house the kids
20 were at.

21 Is that much of a threat? You have Quan and Mook, who
22 are about 15, 16 years old and you got Marcus out on the
23 street. Not much a threat. Pretty easy target. But as the
24 defendant puts it, that's the house where the kids were, the
25 house that got shot up.

1 As Khahlia and Kyewaghana left their home at
2 approximately 1:30 a.m. as they walked down towards the
3 intersection of Morris Street, the car pulls over. The car
4 pulled over and the last they see them is they're headed on
5 Morris Street. What does the defendant say in his diagram?
6 That's exactly the way he went. Exactly the way the girls
7 said.

8 The defense asks there were five or six gunshots
9 heard. Well, it couldn't happen the way the State's case
10 happened. Khahlia said she saw four guys get out. Kyewaghana
11 says she thinks there was three. That's plenty of guns, ladies
12 and gentlemen, for those gunshots to be heard.

13 What happens next? The defendant, I submit not by
14 himself, but the defendant then cuts through the backyards of
15 Morris Street and comes out between the two houses. Question:
16 Why does the defendant say just he got out of the car? Answer:
17 They got you dead to rights. They got you with the car. Your
18 friends aren't backing you up. Your alibi is blown. What do
19 you do? Last straw, self-defense. I was by myself.

20 We know that's not true. I came up just to scare
21 them. We know that's not true. They came there to rip off
22 Marcus. I had no choice and had to shoot because they were
23 shooting off the porch.

24 The defense makes much about the fact that because
25 there were drugs here, that automatically Mook, Quan and

1 Anthony Mack had guns. That's a very interesting argument.
2 The only problem is for you when you deliberate you are to base
3 your verdict on what was heard.

4 Mook told you he was helping him sell drugs. Mook's
5 job and Quan's job was to run in and out of the house. Quan
6 told you the same thing. He was running in the back of the
7 house to get more drugs.

8 Again, we don't vouch for our witness's lifestyle.
9 You take your witnesses where you find them. But certain
10 things that just can't make it on the record which I hope you
11 didn't miss is the way they testified and the way they looked.

12 Quan said to you that when they heard the gunshots
13 they ran in the basement. For as rough a liftstyle as these
14 people live and as rough a neighborhood as this is, never
15 forget that their reaction was that of exactly how old they
16 are, 15, 16 year-old. How else would you expect them to react?
17 They ran to the basement.

18 Mook said when he was out here on the porch, when he
19 saw them coming from behind the homes and he saw a lot of them,
20 he said he ran into the house to tell his friend Quan.

21 Now, does that sound like some sophisticated shooter?
22 He is going to tell his friend there is people with guns
23 outside? Mook said that they were surprised. When Mook came
24 out again, that's when he saw them surrounding Marcus and Mook
25 said something very, very important. Don't forget, Mook didn't

1 give a statement until September, 1994, just about a month ago,
2 a couple months ago.

3 Mook said that when Marcus was out there with his
4 hands up and he's surrounded by these guys, Marcus turned and
5 said, "Mook, get in the house." He said it in a sad voice, he
6 said.

7 What does the defendant say in the statement? How
8 does he turn that around? This man, who always seems to want
9 to add more, who can never answer a question direct, whose
10 always got to put his spin on it whenever he speaks, his spin
11 in this case is the following:

12 The guy on the porch ran into the house. That's when
13 Mook ran into tell Quan. One guy from across the street came
14 towards me. You know who that is? That's the hapless Keith
15 Staple and I will talk about him. Keith Staple walking up
16 McDowell Street, walks towards Marcus Benjamin at that point in
17 time. That's exactly who he is talking about in this
18 statement. I grabbed him. I was holding him.

19 What does Keith tell you? He had the gun in his ear
20 and then his side. The guy came out of the porch and had a gun
21 in his hand. That's when Mook came out the second time after
22 telling Quan, when Quan said tell him to get inside.

23 "I was telling the fat guy." How did he know what the
24 victim looked like when he was giving his statement? --Do you
25 really think Dean Marcantonio described the deceased as a fat

1 guy? Was it more he was there and he saw the size of Marcus
2 Benjamin? You heard from the medical examiner he was a large
3 man. 275 pounds. Five foot ten. Very large man.

4 He was, as he puts it in his words, "the fat guy". As
5 he put it here on the diagram -- just may have a second. F
6 here. F. "Where the fat boy was standing." Do you really
7 think that's Dean Marcantonio's words or is that a description
8 that the murderer gives the deceased?

9 "I was telling the fat guy to tell his boy to put the
10 gun down. I was asking about what he put in the trunk."
11 That's interesting. You know what that is. That is probably
12 them seeing Marcus going to the trunk, putting his money there
13 when he was riding around. "He told me it wasn't his car."
14 That's probably why Marcus got shot. He probably said to
15 Marcus is that your car and Marcus probably said, no, it's not
16 my car. Probably angered this sociopath with the gun.

17 "His boy on the porch then raised his gun and the fat
18 guy turned to the guy on the porch and said something to him."
19 "Mook, get back inside." That's Marcus' last words. "Mook,
20 get back inside." At that point in time Mook runs in the house
21 and they hear the gunshots.

22 Now, some witnesses say they heard three. Mr.
23 Jackson, the older gentleman down the street on the phone,
24 heard three. The girls heard five or six. I submit to you the
25 gunshots were Keith Staple has two bullet wounds. One in his

1 back through and through. One in his arm through and there.
2 Two shots there. Marcus Benjamin, a shot in his back. Third
3 shot there. Shot in the window. Shot four. Shot in the back
4 of the house. I believe the officer said there was a second
5 bullet shot. Shot five. That seems to me that's plenty for
6 what happened out there. There is no need for, as counsel
7 would have you speculate, that there was a shoot-out.

8 Keith Staple tells you that when he was walking up, he
9 said all of a sudden they were on me. Keith Staple -- I said
10 in the opening and say it now, regardless of the man's
11 background, regardless and he is serving a prison sentence for
12 drugs, he was in the wrong place at the wrong time. He was
13 also, as we know, intoxicated. He also by the time two hours
14 after the shooting he had alcohol in his level. Don't forget
15 alcohol dissipates to a certain extent. When he was in the
16 emergency room they smelled the alcohol. Is it any wonder that
17 Mr. Staple can't I.D. the man that shot him?

18 Counsel said that when -- that when Keith Staple
19 picked out number four, and you'll see number four is Tariq, he
20 picked out Tariq. Don't forget what Mr. Staple said when he
21 say this. He said, oh, and that was his way of doing a
22 positive identification. Who knows why Mr. Staple picked this
23 out. But one thing is for sure. That no police officer forced
24 him to pick this picture out.

25 Think of it, ladies and gentlemen. Here is the logic.

1 By the time Mr. Staple has been talked to, now it's April 4th,
2 1994, they have already arrested Mr. Moore for being the
3 shooter in this case. Why would Detective Dean Marcantonio
4 force him to pick out Tariq as being the shooter?

5 As Keith Staple told you, he's not sure. The man that
6 had that gun had the gun to his face before he saw him and it
7 was a huge gun, from what the witnesses said, and we also know
8 from the projectile. Wait until you see those two projectiles.
9 Wait until you pick them up and see the weight and see the
10 destruction and how wide they mushroom once it hits flesh and
11 blood and bone once inside the body.

12 The medical examiner said the bullet entered on
13 Marcus' back, it hit his vertebrae, changed direction -- excuse
14 me. Hit his vertebrae, changed directions, came out the side
15 here and then reentered into the chin. Is it any doubt that
16 they heard those gunshots? It must have been ferocious, the
17 sound.

18 We know from Mr. Staple the gunshots went right
19 through his body into his back, out his chest, through his arm.
20 Again, it's a miracle that Mr. Staple is alive. You can
21 consider the defendant's intent, whether he intended to kill
22 him based on the weapon used. A .44 gun was used to shoot
23 these men.

24 Now, were there other shooters at the scene? Sure
25 there were. The .380 casing found in the middle of the street.

1 Counsel wants you to think that somehow it was a shoot-out
2 coming from all directions. Only problem with that is, as Mr.
3 Staple told you, he remembers facing the house that came from
4 his left. He remembers Marcus there and he said they were
5 surrounding him. They were going towards Marcus. Mook said
6 they were surrounding him, surrounding him in the street, I
7 submit to you, in front of the house. That's how that .380
8 casing got in front of the house.

9 What do we know about that casing in comparison to the
10 two projectiles? We know there is two shooters. For the
11 defendant to say these are the police officer's words and that
12 they forced him to say this makes no sense. Why would they ask
13 him, "Are you sure no one else in the car had a gun? Answer:
14 Yes." If Mr. Moore admitted that others were with him to do
15 the shooting, he certainly couldn't argue self-defense, could
16 he?

17 What do the other witnesses that were there with
18 Marcus prior to the shooting tell us? Ryland Robinson told you
19 he was working as a D.J. that night, got off, came to see his
20 best friend. Asked him if he was hungry, took off for White
21 Castle a little before one. When he came back, his best friend
22 was dead. He told you that Marcus was a drug dealer and he
23 told you when Marcus has enough money, he puts it in his trunk.

24 Anthony Mack told you he came in at 12:30 and Marcus
25 was outside. He says he didn't know about dealing drugs. We

1 don't know certainly Mr. Mack did know that. He didn't want to
2 admit that. Mr. Mack tells you he was on the couch and that
3 the next thing he knows is glass is on him and kids are running
4 through the house.

5 The defense counsel -- Sammy Moore would have you
6 believe that Anthony Mack ran up to the body, took the gun and
7 ran inside. The only problem is Anthony Mack told you he ran
8 outside, checked Marcus, ran back inside, called the police.
9 He let the police search his home that night for the
10 projectile. Anthony Mack gave a statement that same morning.
11 Is this a man who has something to hide? Absolutely not. Is
12 this a man whose friend died in front of him? Sure.

13 What did Chonda Murphy tell you? She is the
14 registered owner. She had to be produced because we have to
15 prove that the defendant did not have permission to have that
16 car. Chonda Murphy told you she is not the defendant's aunt,
17 as the defendant would have Luciana Wellman believe, and Chonda
18 Murphy also told you that she and Marcus bought that car. That
19 the car was in her name. That's why Chonda's name is on the
20 registration for the car.

21 What did Kimberly Clark tell you? She told you that
22 she saw Marcus in front of the house, she went to the bank and
23 came back. By the time she got back the police were there and
24 Marcus was dead. She said then -- don't forget, at that point
25 in time the police are there and the tape is up and time has

10

1 passed. Sometime has passed since the shooting. She says she
2 made the left down McDowell and then made the left down Fourth
3 Street. That's when she saw the car which she believes three
4 people in it.

5 What happened with that car? As the defendant would
6 tell you on his sketch, they drove towards Clinton Avenue.
7 What's on the other side of Clinton Avenue which,
8 unfortunately, is not on this exhibit? Kenny Brooks' home.
9 What did they do? I submit to you that's when they regrouped,
10 talk about the game plan. Talked about them. They had the
11 blue Honda Accord. Let's go back to the Spires and at that
12 point in time that I submit to you is when Kimberly Clark saw
13 that car going down Fourth Street. Going away from the scene.

14 They pick up Kenny, they pick up -- they go to Kenny's
15 house and come back down here and go out towards -- back to
16 Newark.

17 Who do we see back at Newark? This is the really
18 interesting part about this case. At the time of the incident,
19 at the time of Mr. Moore's arrest, there was absolutely nothing
20 about another shooter being hit by a car. We know that because
21 Dean Marcantonio told you he knew nothing about another shooter
22 being hit by a car in this case. None of the officers, the
23 responding officers involved with the initial part of the
24 investigation said they had no idea, no report one of the
25 shooters being hit by the car.

1 Anthony Mack tells you -- Alexander Walker tells you
2 that the next time he sees Tariq he's with David Diggs. That's
3 Rock. What was wrong with Rock? Rock's leg was hurt. Why was
4 Rock's leg hurt? Was he the shooter, as the defendant would
5 have you believe, that was hit by the car?

6 The defendant put his spin on his confession. He
7 doesn't want to admit that the guy out there was one of his
8 co-conspirators but you know from the girl saying that Rock was
9 there, you know from Kyewaghana Cook and Jada Williams that
10 there was a Rock in that car. You know Rock, David Diggs,
11 hangs out at the Spires and we also know that before Rock left,
12 there was nothing wrong with his leg.

13 The next time Alex Walker sees him after they're back
14 from the sticking, as they intended to go, Tariq gives him a
15 gold chain, some type of object and at that point in time
16 Rock's leg is hurt.

17 Where does Alex Walker go next? He goes next and sees
18 Brenda Johnson's apartment where he sees the defendant with
19 Traci Thomas. What is he doing? Alexander Walker said that
20 the defendant had his head on her lap and was talking to her.

21 What does Traci Thomas tell us? Traci Thomas tell us
22 the same thing. When Smiley came in, he had his head on her
23 lap and he was talking to her. Traci Thomas told you that he
24 said he shot two people, had the car and had money. -Traci
25 Thomas didn't believe him. Traci Thomas tells you that he said

1 it but she didn't believe him.

2 Traci Thomas also is the person the defendant wanted
3 the police to go to. You may ask yourself why did the
4 defendant give them Traci Thomas' name? As I said in my
5 opening, this man is a gambler. He is someone that takes huge
6 risks.

7 I submit to you the reason why the defendant gave them
8 Traci tomorrow says name is because he thought this: Whenever
9 the police would walk up to a witness and say the following,
10 were you with Sammy Moore on the evening of December 4th going
11 into the morning of December 5th, what are your choices of
12 responses? Yes, I was with him. No, I wasn't. That I submit
13 to you is what the defendant was hoping Traci would figure out
14 to cover his back. That is the gamble that he took and thank
15 God for this prosecution that Traci Thomas told the truth.

16 The other witness to testify in this case is Luciana
17 Wellman. Luciana Wellman, what did you think of her? Luciana
18 Wellman is a girl who goes to school. Luciana Wellman is a
19 girl that lives with her family. Luciana Wellman was flown in
20 by the State for this prosecution.

21 She told you that on Sunday at about 1:30, now this is
22 the Sunday of the shooting, the defendant called her up and
23 said can he come over? He came over with someone that she
24 identified as Tariq. They came over about 3:30 and at that
25 time he asked if he could leave the car at her house. She asks

1 him why, what's wrong with the car? He says I bought it from a
2 guy in Plainfield.

3 Did you think Luciana Wellman is lying about that?
4 She then looks at the papers and sees that it's Chonda Murphy,
5 a woman's name and asks him about that. He switches real fast.
6 It's my aunt. I bought the car from my aunt. Is he a good
7 talker? Absolutely.

8 Mrs. Wellman when she comes home 15 minutes later
9 after and she sees her daughter with the two defendants there
10 also has a conversation with the defendant. Also identifies
11 the defendant and Mrs. Wellman is the woman that we can thank
12 for calling the police and alerting them to the stolen motor
13 vehicle.

14 The next witness to testify, ladies and gentlemen,
15 would be Natasha Levant. She told you that when Luciana came
16 home and found out that her mother had called the cops and that
17 the car was stolen out of a murder from Plainfield, she called
18 Natasha to tell her. Natasha was furious because that's
19 Natasha's good friend and she knows that the defendant met
20 Natasha at her home.

21 Natasha bangs on the door Monday morning, can you just
22 picture her, and confronts him. He says to her what's up? At
23 this point in time this man has just killed a victim, just shot
24 another man, stole a car and when somebody comes, banging on his
25 door, his only response is what's up? As calm as he can be.

1 She then confronts him. He is surprised at that point in time.
2 It only took a night for the police to get the car.

3 The defense counsel says he's here eight days, eight
4 days. If he wanted to run, he could. You know what, ladies
5 and gentlemen? We don't catch all the criminals. We only
6 catch the ones that make mistakes.

7 Should he have run? Sure. Did he make a mistake? He
8 made many mistakes in this case.

9 Natasha Levant talks to him and he tells her there's a
10 body attached to it. He's nervous. Pacing down the hallway.
11 Is this an act he's putting on or is he realizing now he has to
12 cover his bases. He tells her he shot two people. He shot the
13 owner of the car. He shot the person associated with that car.

14 What does Shay Walker tell you? What did you think of
15 Shay Walker's testimony? If ever there was a straightforward
16 person, it's Shay Walker.

17 Shay tells you that she had no problem with the
18 defendant and, incidentally, it's amazing the coincidence that
19 all the women that are friends with the defendant that didn't
20 help him, they're all scorned women. They all have an axe to
21 grind against the defendant. It is amazing the coincidence
22 that just those witnesses, such as Shay Walker and Traci
23 Thomas, that when they gave damaging testimony against him, the
24 reason why they did that is because they're scorned, not
25 because they're telling the truth but because they are out to

1 get the defendant. That this is a grand conspiracy against
2 him.

3 Shay Walker tells you that she has seen the defendant
4 with a big gun many, many times. She is a friend of the
5 defendant and even helped him with his attorney, as you know
6 from the questioning of the attorney. She also says that she
7 heard him say that he shot two people concerning that car.

8 Ladies and gentlemen, the evidence in this case is
9 overwhelming in this case and even in the face of a mountain of
10 evidence against him he takes the stand and says that these
11 words are the words of the police. That they made him say it.

12 I submit to you, ladies and gentlemen, really when you
13 get to this point in the trial, what did you expect him to say
14 about it? The only other option is to say I did it. I'm
15 guilty. And he certainly isn't about to do that, this talker,
16 this man that always has to add another word and can never
17 answer a question directly.

18 The Court is going to read to you a list -- just a
19 second.

20 (Pause.)

21 THE COURT: You want a copy of the verdict sheet?

22 MISS MacMULLAN: No, I am looking for the indictment
23 right now.

24 THE COURT: Here. Here it is. Here is the one from
25 the file.

1 MISS MacMULLAN: Thank you, Judge.

2 The judge will instruct you on the law. I submit that
3 we have proved these counts.

4 One, murder. That he did purposely and/or knowingly
5 cause the death of Marcus Benjamin and/or did purposely or
6 knowingly cause serious bodily injury to Marcus Benjamin
7 resulting in his death. There is four different ways that a
8 person under the law is charged. Purposely causing death,
9 knowingly causing death, purposely causing serious bodily
10 injury resulting in death or knowingly causing serious bodily
11 injury resulting in death.

12 In other words, was it his intent to kill Marcus when
13 he shot him? The State submits absolutely. You don't shoot
14 somebody with a gun like this and expect him to live. Or the
15 option knowingly or purposely causing serious bodily injury
16 resulting in death. So if you shoot someone with the intent to
17 just harm them, serious bodily injury and they die, that person
18 is still charged with murder. I submit there is no doubt he
19 shot Marcus.

20 Incidentally, on these counts you may hear the lesser
21 included charges of aggravated manslaughter and reckless
22 manslaughter. I submit to you that's for your consideration if
23 you believe what's in this statement when he says he was
24 shooting people because they were shooting at him. Don't
25 forget he denies everything in this statement. But for trial

1 we give you lesser included offenses for your consideration if
2 there's some evidence in the trial.

3 But don't forget, ladies and gentlemen, this isn't a
4 Chinese restaurant menu defense. The defendant in this case
5 denies that he was guilty of this. He denies this statement.
6 In the body of the statement on the day he gave the statement
7 he tried to tell the police it's self-defense. I submit to you
8 it is not self-defense. That there was no one shooting at him
9 except the only people shooting were his friends. We know that
10 from the house being shot up. We know that from Marcus and
11 Keith being shot.

12 The next count did purposely attempt to cause the
13 death of Keith Staple. Again, you can infer someone's intent
14 from the weapon they used. I submit to you that his same
15 intent when he pointed the gun at Marcus is the same intent he
16 had when he pointed at Keith and that's to kill him. What an
17 audience he had, don't you think, Sammy Moore in front of his
18 friends, blowing away these two guys. What a hero he must have
19 been back at the Spires to talk about it.

20 Count three deals with the robbery of Marcus Benjamin.
21 I submit to you that this murder occurred during the committing
22 of a theft. That they killed Marcus and then stole his car.
23 There's also testimony that there was money in Marcus' car.
24 Again, that would go to the theft, which is the basis of
25 robbery in this case.

1 Next, that they did attempt to rob Keith Staple.

2 Keith Staple said they came out at him and they were already on
3 him. Keith Staple said it looked like they were trying to rob
4 him and he said I don't have a M.F. thing.

5 I submit to you, ladies and gentlemen, that defense
6 counsel says they didn't go through Keith Staple's pocket.
7 Keith Staple didn't move a muscle and I submit to you when
8 Keith Staple walked in on that, I don't think that was in their
9 game plan at first. I think when they saw Marcus on the street
10 and drove around to cut in behind the homes, they didn't expect
11 to see Keith there. But I submit to you that when Keith turned
12 to them and said I don't have a M.F. thing, they just wanted to
13 get the car as fast as possible.

14 Next we have what's called felony murder and there's
15 no question, ladies and gentlemen, that they are all, every
16 single one of them out there, Sammy Moore, David Diggs, Tariq
17 Diggs, James Baines, Kenneth Brooks, all guilty of felony
18 murder. Did acting alone or with one or more persons cause the
19 death of Marcus Benjamin during the commission of or attempted
20 commission of or flight after commission of the crime of
21 robbery. That is felony murder. You rob someone and during
22 that robbery someone is killed because of your actions, that's
23 felony murder.

24 Next we have the conspiracy count that they did plan,
25 solicit, aid and abet one another in the crimes of conspiracy,

1 of robbery and also possessing a firearm with an unlawful
2 purpose.

3 One other document, ladies and gentlemen, you will
4 have in the juryroom, it's a technical point but it's one that
5 we still have the burden of proving, we have to prove that the
6 defendant did not have a permit to carry a gun. When you look
7 at S-89, it's the firearms I.D. check with the New Jersey State
8 Police. We did a check and found out certainly Sammy Moore
9 certainly doesn't have a permit to carry a gun.

10 Next count is seven, that the defendant did possess a
11 firearm with the purpose to use it unlawfully against the
12 person of another. That goes without question. When you turn
13 the gun on someone during a robbery, it is an unlawful purpose.

14 Next, that he did knowingly possess a handgun without
15 first having obtained a permit to carry same. You possess the
16 handgun without the permit as we've said.

17 Lastly, did commit theft by receiving or bringing into
18 the state movable property of another. This is the receiving
19 stolen property count. He still had that car hours after the
20 theft when he left it at Luciana Wellman's house. That's what
21 that count pertains to.

22 Ladies and gentlemen, you will have the lesser
23 included charges of aggravated manslaughter and reckless
24 manslaughter but that's only if you buy into his spin. We give
25 you that for your consideration but by no means, ladies and

1 gentlemen, I submit to you is this an attempt -- is this a
2 shoot-out where he had no choice but to shoot. Don't forget,
3 he denies he was ever there.

4 I thank you for your attention. It is five o'clock
5 and it's time to go. Thank you very much.

6 THE COURT: All right.

7 Ladies and gentlemen, I will let you go for the night.
8 These two officers will escort you over to your cars and I ask
9 you to get together and go with them. No real need for them to
10 do that but I've signed out for you this week and I want to be
11 sure I hand you back to the streets of Union County credit at
12 the end of this trial. No problem. Just an ounce of
13 precaution.

14 You may be tempted to discuss this case now having
15 heard the arguments by the attorneys and when you get here
16 tomorrow you might start saying what do you think about this or
17 what do you think about that. Avoid that temptation. Don't
18 reach out for that apple. Don't discuss this case until you
19 get my instructions at the conclusion of the trial tomorrow.

20 I do want to begin my instructions at nine o'clock. I
21 ask you all to be here at that time. I appreciate you staying
22 here late tonight. You still owe me a few minutes. But I
23 don't think I will call for it.

24 Travel home safely. Have a pleasant evening. Thank
25 you very much.

(Court adjourned.)

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CERTIFICATION

I, EILEEN A. DUNNE, C.S.R., License Number XI01022,
an Official Court Reporter in and for the State of New Jersey,
do hereby certify the foregoing to be prepared in full
compliance with the current Transcript Format for Judicial
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Eileen A. Dunne

Official Court Reporter
Union County Courthouse



A-4956-9474

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : UNION COUNTY
(CRIMINAL)
INDICTMENT NO. 94-06-00636
APP.DIV.DKT.NO.

A-4956-9474

STATE OF NEW JERSEY :
v. :
SAMMY MOORE, :
X

Transcript
of
Trial

FILED
APPELLATE DIVISION

SEP 13 1995

DATE: December 16, 1994
PLACE: Union County Courthouse
Elizabeth, New Jersey

R. M. Miller Clerk

B E F O R E :

THE HONORABLE WILLIAM L'E. WERTHEIMER, J.S.C.

REC'D

APPELLATE DIVISION

SEP 13 1995

TRANSCRIPT ORDERED BY:

LISA A. LYNCH, OFFICE OF THE PUBLIC DEFENDER

R. M. Miller Clerk

A P P E A R A N C E S :

SUSAN M. MacMULLAN, ASSISTANT PROSECUTOR
FOR THE STATE

THOMAS RUSSO, ESQ.
FOR THE DEFENDANT

EILEEN A. DUNNE, C.S.R.
Official Court Reporter
Union County Courthouse
Elizabeth, New Jersey

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I N D E X

CHARGE OF THE COURT

PAGE 3

1 THE COURT: I am going to charge the jury and once I
2 begin this charge, nobody will be permitted in or outside of
3 the courtroom. If you want to leave now, you better leave.

4 Bring out the jury, please.

5 (In the presence of the jury.)

6 THE COURT: Good morning.

7 Yesterday we completed the taking of the testimony and
8 the presentation of the evidence and from the summations of the
9 attorneys you have heard the arguments and conclusions that
10 each side will have you draw from the evidence admitted.

11 It is now my duty to instruct you as to the law which
12 governs in this case. You shall take these instructions as a
13 whole and not pick out any particular instruction and place any
14 undue emphasis upon it. You must accept and apply the law as
15 it is given to you in this charge. Any ideas that you might
16 have of what the law is or should be or any statements that
17 counsel may have made as to what the law is or may be should be
18 disregarded by you if they are in conflict with my charge.

19 During the course of this trial I was required to make
20 certain rulings on the admissibility of evidence either in or
21 outside of your presence. Those rulings involve questions of
22 law. Comments of counsel on those matters are not evidence.
23 In ruling I decided questions of law and whatever my ruling
24 might have been in a particular instance, you should understand
25 that it was not an expression or an opinion by me on the merits

1 of the case. Neither should my other rulings during the course
2 of the trial be taken as favoring the State or the defendant
3 because each motion was decided purely on its on legal merit.

4 Now, the evidence in this case is the testimony you've
5 heard from the witness stand, the exhibits that have been
6 received in evidence and the stipulations entered into between
7 the parties. Testimony that I had occasion to strike is not
8 evidence and shall not be considered as such by you. This
9 means that even though you may remember the testimony, you are
10 not to use it in your discussions or deliberations.

11 Further, limiting instructions that I have given or
12 will give during the course of this charge must be considered
13 by you within the purpose of those instructions.

14 As jurors it is your duty to weigh the evidence calmly
15 without passion, prejudice or sympathy. Any undue influence
16 caused by such emotions has the capacity to deprive both the
17 State and the defendant that which you promised them. A fair
18 and impartial trial by fair and impartial jurors. Also,
19 speculation, conjecture and other forms of guessing play no
20 role in the performance of your duty.

21 You and you alone are the sole and exclusive judges of
22 the evidence, of the credibility of the witnesses as well as
23 the weight to be accorded to the testimony of each. Regardless
24 of what counsel has said or I may say recalling the facts of
25 the case, it is your recollection that should guide you as the

1 judges of the facts.

2 Arguments, statements, remarks and summations of
3 counsel are not evidence and cannot be treated as such by you.
4 Although such may point out what counsel deem important in the
5 case, you must rely solely upon your understanding and
6 recollection of the evidence admitted during the trial. It is
7 your sworn duty to arrive at a just conclusion after
8 considering all of the evidence which was presented during the
9 course of this trial.

10 Now, the function of the Court is separate and
11 distinct from the function of the jury. It is my
12 responsibility to determine all questions of law arising during
13 the trial and to instruct you as to the law which applies to
14 this case. I have sustained objections to some questions asked
15 by counsel which may have contained statements of certain
16 facts. The mere fact that an attorney asks a question and
17 asserts facts or comments or opinions in that question in no
18 way proves the existence of those facts. You will only
19 consider such facts which in your judgment have been proven by
20 the testimony of witnesses or from exhibits admitted in
21 evidence by the Court or from the stipulation between the
22 parties.

23 Now, evidence may be either direct or circumstantial.
24 Direct evidence means evidence that directly proves a fact and
25 which in itself, if true, conclusively establishes that fact.

1 On the other hand, circumstantial evidence means evidence that
2 proves a fact from which an inference of the existence of
3 another fact or group of facts may be drawn.

4 Let me give you a seasonal example of the difference
5 between direct and circumstantial evidence. I hope it's not an
6 accurate one but it is a seasonal one.

7 If during the course of the winter you look out your
8 window and see it snowing and later in that night you look out
9 the window and you see it has stopped and while you are looking
10 out your window you see somebody walking across the field of
11 snow in your front yard, that is direct evidence that it was
12 snowing, the snow stopped and somebody walked across the field
13 of snow.

14 If, on the other hand, before you go to bed you don't
15 look outside and you had no clue it was snowing but you wake up
16 in the morning and look out your front lawn and see a field of
17 snow and footprints across the field of snow, that is
18 circumstantial evidence from which you quite properly could
19 infer that it had snowed and it stopped snowing and after it
20 stopped snowing somebody walked across the field of snow in
21 your front yard.

22 An inference is a deduction of fact that may logically
23 and reasonably be drawn from another fact or group of facts
24 established by the evidence. Whether or not inferences should
25 be drawn is for you to decide using your own common sense, your

1 knowledge and everyday experience. Ask yourself is it
2 reasonable? Is it logical? Is it probable?

3 It is not necessary that all facts be proved by direct
4 evidence. They may be proved by direct or circumstantial
5 evidence. Both direct and circumstantial evidence are
6 acceptable means of proof. Indeed, in many cases
7 circumstantial evidence may be more certain, satisfying and
8 persuasive than direct evidence. A verdict of guilty may be
9 based upon circumstantial evidence alone provided, of course,
10 it convinces you of a defendant's guilt beyond a reasonable
11 doubt. Conversely, a defendant may be found not guilty by
12 circumstantial evidence if that evidence raises in your mind a
13 reasonable doubt as to the defendant's guilt.

14 Now, Mr. Moore stands before you as a result of a nine
15 count indictment which charges him with committing the crimes
16 of murder, attempted murder, robbery, felony murder, conspiracy
17 to commit certain crimes, possession of a firearm for unlawful
18 purpose, unlawful possession of a handgun and receiving stolen
19 property.

20 I will read each of these counts to you as I go
21 through the charge. However, I want you to remember that this
22 indictment is not evidence of Mr. Moore's guilt. It's merely a
23 formal pleading, an informative charge. It's what we use to
24 bring every criminal matter into court for final resolution as
25 to the guilt or innocence of a defendant by a jury such as

1 yourselves.

2 You know Mr. Moore denies his guilt and as are all
3 defendants in every criminal case he sits in this courtroom
4 assumed innocent unless and until you find the State has proven
5 at least one of these crimes and all their elements beyond a
6 reasonable doubt.

7 The burden of proof is on the State and it never
8 shifts. There is no burden with respect to proof imposed upon
9 the defendant. He is not obliged to prove his innocence. He
10 is assumed to be innocent. Unless the State proves his guilt
11 beyond a reasonable doubt, he is entitled to a verdict of not
12 guilty, a judgment of acquittal.

13 Now, a reasonable doubt is not a mere possible or
14 imaginary doubt. As you well can surmise, everything relating
15 to human affairs or depending upon oral evidence is open to
16 some possible or imaginary doubt. A reasonable doubt is an
17 honest and reasonable uncertainty as to the guilt of the
18 defendant which exists in your minds after you've given full
19 and impartial consideration to all of the evidence. It might
20 arise from the evidence itself or from a lack of evidence.

21 If the evidence bearing upon the guilt or innocence of
22 the defendant is reasonably susceptible to two conclusions, one
23 of guilt and one of the defendant's innocence, the latter, of
24 course, should be adopted.

25 As the judges of the facts you are to determine the

1 credibility, the believability, of each witness and in going
2 about that task, you may want to consider such things as the
3 appearance and demeanor of the witness; the manner in which he
4 or she may have testified; their interest in the outcome of the
5 trial, in any; their means of obtaining knowledge of the facts;
6 their power of judgment, discernment or understanding; their
7 ability to reason and observe; the possible bias, if any, in
8 favor of the side for whom the witness has testified; the
9 extent to which, if at all, the witness is either supported or
10 contradicted by other evidence; whether the witness testified
11 with an intent to deceive you; the reasonableness or
12 unreasonableness of the story the witness has related and any
13 and all other matters in evidence which serve to highlight
14 their testimony to you.

15 Through that process you, as the judges of the facts,
16 weigh the testimony of each witness and then you determine the
17 weight to be accorded to it. By that process you may accept
18 all of the testimony of a given witness, a portion of it or
19 none of it.

20 During the course of this trial you heard evidence
21 that some of the witnesses who testified had previously been
22 convicted of a crime. This evidence may only be used to
23 determine the credibility or the believability of the witness's
24 testimony.

25 A jury has a right to consider whether a person who

1 has previously failed to comply with society's rules as
2 demonstrated through a criminal conviction would be more likely
3 to ignore the oath requiring truthfulness on the stand of
4 law-abiding citizens. You may consider and determine this
5 issue, the nature and degree of the prior conviction and when
6 it occurred. You are not, however, obligated to change your
7 opinion as to the credibility of these witnesses simply because
8 of the prior conviction. It is evidence, however, that you may
9 customer along with all the other factors as previously
10 discussed in determining credibility of the witness.

11 Count one of this indictment charges that the
12 defendant, Sammy Moore, on or about December 5th, 1993 in the
13 City of Plainfield did purposely and/or knowingly cause the
14 death of Marcus Benjamin and/or did purposely and/or knowingly
15 cause serious bodily injury to Marcus Benjamin resulting in his
16 death contrary to the provisions of the applicable statute.

17 The statute in question states that a person is guilty
18 of murder if he purposely causes death or serious bodily injury
19 resulting in death or knowingly causes death or serious bodily
20 injury resulting in death.

21 In order for you to find the defendant guilty of
22 murder, the State is required to prove each of the following
23 elements beyond a reasonable doubt: One, that the defendant
24 caused Marcus Benjamin's death or serious bodily injury which
25 resulted in his death and that the defendant did so purposely

1 or knowingly.

2 One of the elements the State must prove beyond a
3 reasonable doubt is the defendant acted purposely or knowingly.
4 A person who causes another person's death does so purposely
5 when it is the person's conscious object to cause death or
6 serious bodily injury resulting in death. A person who causes
7 another's death does so knowingly when the person is aware that
8 it is practically certain that his conduct will cause death or
9 serious bodily injury resulting in death.

10 The nature of the purpose or knowledge with which the
11 defendant acted towards Marcus Benjamin is a question of fact
12 for you to decide. Purpose and knowledge are conditions of the
13 mind which cannot be seen and can only be determined by
14 inferences from conduct, words or acts. It is not necessary
15 for the State to produce a witness or witnesses who could
16 testify the defendant stated, for example, that his purpose was
17 to cause death or serious bodily injury resulting in death. Or
18 that he knew that his conduct would cause death or serious
19 bodily injury resulting in death.

20 It is within your power to find that proof of purpose
21 or knowledge has been furnished beyond a reasonable doubt by
22 inferences which may arise from the nature of the acts and the
23 surrounding circumstances. Such things as the place where the
24 acts occurred, the weapon used, location and number and nature
25 of wounds inflicted and all that was done or said by the

1 defendant preceding with, connected with and immediately
2 succeeding the events leading to the death of Marcus Benjamin
3 are circumstances to be considered.

4 Although the State must prove that the defendant acted
5 either purposely or knowingly, the State is not required to
6 prove a motive. If the State has proved the essential elements
7 of the offense beyond a reasonable doubt, the defendant must be
8 found guilty of that offense regardless of the defendant's
9 motive or lack of motive.

10 If the State, however, has proved a motive, you may
11 consider that insofar as it gives meaning to other
12 circumstances. On the other hand, you may consider the absence
13 of motive in weighing whether or not the defendant is guilty of
14 the crime charged.

15 A homicide or a killing with a deadly weapon such as a
16 .44 caliber handgun in itself would permit you to draw an
17 inference that the defendant's purpose was to take life or
18 cause serious bodily injury resulting in death.

19 A deadly weapon is any firearm or other weapon,
20 device, instrument, material or substance which in the manner
21 it is used or intended to be used is known to be capable of
22 producing death or serious bodily injury.

23 In your deliberations you may consider the weapon used
24 and the manner and circumstances of the killing and if you are
25 satisfied beyond a reasonable doubt that the defendant shot and

1 killed Marcus Benjamin with a gun, you may draw an inference
2 from the weapon used; that is, the gun, and from the manner and
3 circumstances of the killing as to the defendant's knowledge or
4 purpose.

5 The other element the State must prove beyond a
6 reasonable doubt is that the defendant caused death or serious
7 bodily injury which resulted in death.

8 Serious bodily injury means bodily injury which
9 creates a substantial risk of death or causes serious,
10 permanent disfigurement or protracted loss or impairment of the
11 function of any bodily member or organ. When the killing is
12 committed purposely or knowingly causing death or serious
13 bodily injury resulting in death must be within the design or
14 contemplation of the defendant.

15 Now, if you determine the State has proven beyond a
16 reasonable doubt that the defendant acted purposely or
17 knowingly and caused the death or serious bodily injury
18 resulting in the death of Marcus Benjamin, you must find the
19 defendant guilty of murder.

20 If, on the other hand, you determine the State has not
21 proven beyond a reasonable doubt that the defendant purposely
22 or knowingly caused death or serious bodily injury resulting in
23 death, then you must find him not guilty of murder and go on to
24 consider whether the defendant should be convicted of lesser
25 included offenses of aggravated or reckless manslaughter.

1 A person is guilty of aggravated manslaughter if he
2 recklessly causes the death of another person under
3 circumstances manifesting extreme indifference to human life.

4 In order for you to find the defendant guilty of
5 aggravated manslaughter, the State is required to prove, one,
6 that the defendant caused the death of Marcus Benjamin; two,
7 that he did so recklessly and, three, that he did so under
8 circumstances manifesting extreme indifference to human life.

9 One element that the State must prove beyond a
10 reasonable doubt is that the defendant acted recklessly. A
11 person who causes another's death does so recklessly when he is
12 aware of and consciously disregards a substantial and
13 unjustifiable risk that death will result from his conduct.

14 The risk must be of such a nature and degree that
15 considering the nature and purpose of the defendant's conduct
16 and the circumstances known to the defendant, his disregard of
17 that risk is a gross deviation from the standard of conduct
18 that a reasonable person would follow in the same situation.
19 In other words, you must find the defendant was aware of and
20 consciously disregarded the risk of causing death.

21 If you find the defendant was aware of and disregarded
22 the risk of causing death, you must determine whether the risk
23 that he disregarded was substantial and unjustifiable. In
24 doing so you must consider the nature and purpose of the
25 defendant's conduct and the circumstances known to the

1 defendant. And you must determine whether in light of those
2 circumstances the defendant's disregard of that risk was a
3 gross deviation from the conduct a reasonable person would have
4 observed in the defendant's situation.

5 Another element the State must prove beyond a
6 reasonable doubt, if you consider the crime of aggravated
7 manslaughter, is that the defendant acted under circumstances
8 manifesting extreme indifference to human life. This phrase
9 does not focus on the defendant's state of mind but rather on
10 the circumstances which you find he acted under.

11 If in light of all the evidence you find that the
12 defendant's conduct resulted in a probability as opposed to a
13 mere possibility of death, then you may find that he acted
14 under circumstances manifesting extreme indifference to human
15 life. On the other hand, if you find that his conduct resulted
16 in only a possibility of death, then you must acquit him of
17 aggravated manslaughter and consider the offense of reckless
18 manslaughter, which I will explain to you shortly.

19 The final element the State must prove beyond a
20 reasonable doubt is the defendant caused Marcus Benjamin's
21 death. You must find that Marcus Benjamin would not have died
22 but for the defendant's conduct.

23 If after consideration of all of the evidence you are
24 not convinced beyond a reasonable doubt that the defendant
25 recklessly caused the death of Marcus Benjamin under

1 circumstances manifesting extreme indifference to the value of
2 human life, you must find him not guilty of aggravated
3 manslaughter. If you find -- and then consider the crime of
4 reckless manslaughter. If you find, however, the State has
5 proven beyond a reasonable doubt the elements of the crime of
6 aggravated manslaughter, you must convict him of that charge.

7 A person is guilty of reckless manslaughter if he
8 recklessly causes the death of another person.

9 In order for you to find the defendant guilty of
10 reckless manslaughter, the State is required to prove each of
11 the following elements beyond a reasonable doubt. One, that
12 the defendant caused the death of Marcus Benjamin and that he
13 did so recklessly.

14 A person who causes another person's death does so
15 recklessly when he is aware of and consciously disregards a
16 substantial and unjustifiable risk that death will result from
17 his conduct. The risk must be of such a nature and degree that
18 considering the nature and purpose of the defendant's conduct
19 and the circumstances known to him his disregard of that risk
20 is a gross deviation from the standard of conduct that a
21 reasonable person will follow in the same circumstances.

22 In other words, you must find that the defendant was
23 aware of and consciously disregarded the risk of causing death
24 if you consider the crime of reckless manslaughter. If you
25 find that the defendant was aware of and disregarded the risk

1 of causing death, you must determine whether that risk that he
2 disregarded was substantial and unjustifiable. In doing so you
3 must consider the nature and purpose of his conduct and the
4 circumstances known to him and you must determine whether in
5 light of those factors his disregard of that risk is a gross
6 deviation from the conduct a reasonable person would have
7 observed in the defendant's situation.

8 The other element, of course, is the State must prove
9 beyond a reasonable doubt that the defendant caused the death
10 of Marcus Benjamin.

11 If after consideration of all of the evidence you
12 are -- you consider the crime of reckless manslaughter and you
13 are convinced beyond a reasonable doubt that the defendant
14 recklessly caused the death of Marcus Benjamin, then your
15 verdict must be guilty of reckless manslaughter. If, however,
16 you are not convinced beyond a reasonable doubt, your verdict
17 should be not guilty of reckless manslaughter.

18 I have just instructed you what the law calls two
19 lesser included offenses. While there are nine counts of the
20 document, there are twelve separate crimes that you may have to
21 consider depending upon what you do and I will send in a
22 verdict sheet with you. This verdict sheet explains all this
23 in fairly simple terms and is not evidence in the case but it
24 does kind of channel your thought process, if you will. You
25 don't have to use this verdict sheet as long as you consider

1 all of the crimes mentioned thereunder. You can deliberate in
2 any manner in arriving at your verdict that you feel
3 comfortable with.

4 Let me explain something. Count one is murder of
5 Marcus Benjamin. Guilty or not guilty. If you find him guilty
6 of count one, then you don't consider aggravated manslaughter
7 and reckless manslaughter obviously because those are lesser
8 included offenses. Then you go right to the attempted murder
9 charge on number four. If you find him not guilty of murder,
10 then you have to consider the lesser included offenses. If you
11 find him not guilty of murder and guilty of aggravated
12 manslaughter, then you don't consider reckless manslaughter.
13 If you find him not guilty of murder and aggravated
14 manslaughter, then you have to consider the crime of reckless
15 manslaughter and then, of course, you go down to the next count
16 of the indictment, which is the attempted murder of Keith
17 Staple.

18 Count two of the indictment reads that Sammy Moore on
19 or about December 5th, 1993 in the City of Plainfield did
20 purposely attempt to cause the death of Keith O. Staple
21 contrary to the provisions of the applicable statute.

22 I have already charged you what the crime of murder
23 entails. In this case the State charges that the defendant
24 attempted to commit the crime of murder insofar as Keith Staple
25 is concerned.

1 Now, the law provides that a person is guilty of an
2 attempt to commit a crime if he acts with the same kind of
3 culpability required in the commission of the crime itself and
4 he purposely engages in conduct which would constitute the
5 crime of murder if the attendant circumstances were as a
6 reasonable person believed them to be or he purposely does or
7 omits to do something which under the circumstances a
8 reasonable person would believe them to be is an act or
9 omission constituting a substantial step in a course of conduct
10 planned to culminate in his commission of the crime.

11 Thus, in order for you to find the defendant guilty of
12 criminal attempt, the State must prove the following elements
13 beyond a reasonable doubt: First, the State must prove that
14 the defendant acted with the same type of criminal
15 blameworthiness as is required for the commission of the actual
16 crime of murder as I have just instructed that to you.

17 This means that to be guilty of an attempt to commit a
18 crime, the defendant must have the same state of mind that is
19 necessary for him to find him guilty of the crime itself. Here
20 the defendant is charged with the attempted murder of Keith
21 Staple and the State must prove either that the defendant
22 purposely engaged in conduct which would constitute the crime
23 if the attendant circumstances were as a reasonable person
24 would believe them to be.

25 If the conduct of the accused would constitute the

1 crime of murder had the facts been as a reasonable person would
2 believe them to be, you should consider that conduct as
3 evidence of guilt of an attempt to commit murder. Does not
4 matter that the defendant was frustrated in accomplishing his
5 objective because the facts were not as a reasonable person
6 would believe them to be.

7 It is no defense that the defendant could not
8 succeeded in reaching his goal because of circumstances unknown
9 to him. However, there cannot be a conviction for an attempt
10 to commit a crime unless the attempt, if completed, would have
11 constituted a crime. Or you may consider whether the defendant
12 purposely did or omitted to do something which under the
13 circumstances a reasonable person would believe them to be was
14 an act or omission constituting a substantial step in the
15 course of conduct planned to culminate in his commission of the
16 crime of murder.

17 However, the step taken must be one in which is
18 strongly corroborative of the defendant's criminal purpose.
19 The accused must be shown to have the firmness of criminal
20 purpose in light of the steps the accused has already taken.
21 However, these preparatory steps must be substantial and not
22 remote. No person may be convicted of an attempt to commit
23 murder unless each element is proved beyond a reasonable doubt.

24 If you are satisfied the State has proven those
25 elements beyond a reasonable doubt, you should return a verdict

1 of guilty. If you're not satisfied, you return a verdict of
2 not guilty.

3 Under the law there is a lesser included offense of
4 attempted murder and that is the crime of aggravated assault.
5 If you find the defendant not guilty of attempted murder of
6 Keith Staple, you must consider whether he committed an
7 aggravated assault against Keith Staple. If you find the
8 defendant guilty of attempted murder against Keith Staple, you
9 don't have to consider the lesser included offense.

10 Aggravated assault is committed as follows: A person
11 is guilty of an aggravated assault if he purposely or knowingly
12 causes bodily injury to another with a deadly weapon or a
13 person is guilty of aggravated assault if he recklessly causes
14 bodily injury to another with a deadly weapon.

15 In order for you to find the defendant guilty of this
16 offense, if you consider it, the State must prove beyond a
17 reasonable doubt these elements: One, that the defendant did
18 in fact cause bodily injury to Keith Staple and that the
19 defendant caused bodily injury by the use of a deadly weapon
20 and that the defendant acted purposely, knowingly or recklessly
21 in so doing.

22 Bodily injury is defined as physical pain, illness or
23 any impairment of physical condition of another.

24 I already told you what a deadly weapon is. I won't
25 insult your intelligence and tell you again.

1 A person acts purposely when he wants to have
2 something happen. It's his conscious object to cause it. It's
3 his purpose to bring something about.

4 A person acts knowingly when he is aware what will
5 happen if he acts in a certain way. Doesn't necessarily mean
6 that he intends for something to happen but rather knows it is
7 almost certain to happen if he does a particular thing.

8 A person acts recklessly with respect to a material
9 element of an offense, herein serious bodily injury, when a
10 person -- bodily injury, rather, when a person consciously
11 disregards a substantial and unjustifiable risk that a material
12 element exists or will result from a person's conduct. The
13 risk must be of such a nature and degree that considering the
14 nature and purpose of the actor's conduct and the circumstances
15 known to him his disregard involves a gross deviation from the
16 standard of conduct that a reasonable person would observe in
17 the actor's situation.

18 One is said to act recklessly if one acts with
19 recklessness, with scorn for the consequences, heedlessly or
20 foolhardily.

21 If you are satisfied beyond a reasonable doubt that
22 the State has proven all the elements of that offense, then you
23 must return a verdict of guilty. If not, return a verdict of
24 not guilty.

25 Count six and seven -- counts three and four of the

1 indictment charge that the defendant committed the crime of
2 robbery against Marcus Benjamin and in count three -- and Keith
3 Staple in count four.

4 Count three charges that the defendant, Sammy Moore,
5 together with David Diggs, James Baines, Tariq Diggs and
6 Kenneth Brooks on or about December 5th, 1993 did, while in the
7 course of committing a theft, purposely put Marcus Benjamin in
8 fear of immediate bodily injury and/or did commit a crime of
9 the first degree; to wit: murder, in violation of the New
10 Jersey Statutes and/or did purposely inflict serious bodily
11 injury upon Marcus Benjamin and/or was armed with and/or used
12 and/or threatened the immediate use of a deadly weapon contrary
13 to the provisions of the applicable statute.

14 Count four charges the same thing as to Keith Staple.

15 Incidentally, just because David Diggs, James Baines,
16 Tariq Diggs and Kenneth Brooks are not defendants in this trial
17 is of no moment to you. This is the trial of Sammy Moore. He
18 is being tried separately for legal reasons. You should not
19 speculate about those legal reasons. You should not discuss
20 the culpability of the others in the juryroom because your only
21 determination in this case is to decide the guilt or innocence
22 of Sammy Moore.

23 A person is guilty of the crime of robbery if in the
24 course of committing a theft he knowingly inflicts bodily
25 injury or uses force upon another or threatens another with or

1 purposely puts him in fear of immediate bodily injury or
2 commits or threatens to commit any crime of the first or second
3 degree.

4 In order for you to find the defendant guilty of
5 robbery, the State is required to prove that he was in the
6 course of committing a theft and that while in the course of
7 committing a theft he either knowingly inflicted bodily injury,
8 used force upon, count three Marcus Benjamin, count four Keith
9 Staple; threatened with or purposely put, count three Marcus
10 Benjamin, count four Keith Staple, in fear of immediate bodily
11 injury or committed or threatened immediately to commit the
12 crime of murder with Marcus Benjamin or aggravated assault or
13 attempted murder of Keith Staple.

14 Now, as I have said, the State must prove beyond a
15 reasonable doubt the defendant was in the course of committing
16 a theft. In this connection you are advised that an act is
17 considered to be in the course of committing a theft if it
18 occurs in an attempt to commit the theft, during the commission
19 of the theft itself or in immediate flight after the attempt or
20 commission.

21 Theft is defined as the unlawful taking or exercise of
22 unlawful control of property of another with the purpose to
23 deprive him thereof.

24 In order -- in addition to proving beyond a reasonable
25 doubt that the defendant was in the course of committing a

1 theft, the State must also prove beyond a reasonable doubt that
2 while in the course of committing a theft the defendant
3 knowingly inflicted bodily injury or used force upon the victim
4 whose count you are considering.

5 I have already told you what knowing behavior is. I
6 will not insult your intelligence and repeat that again.

7 I have told you what bodily injury is. I will not
8 repeat that and insult your intelligence.

9 Force means any amount of physical force or strength
10 used against the victim and not simply against the victim's
11 property. The force need not entail pain or bodily harm. It
12 need not leave any mark. Nevertheless, the force must be
13 greater than that merely to snatch the object from the victim's
14 grasp.

15 The State must prove the defendant threatened another
16 with or put him in fear of immediate bodily injury or the
17 defendant committed or threatened immediately to commit a crime
18 of the first or second degree while in the course of committing
19 the theft.

20 Murder is a crime of the first degree. Attempted
21 murder is a crime of the first degree. Aggravated assault is a
22 crime of the second degree. Those are the crimes that the
23 State claimed occurred. It is an alternative charge,
24 obviously.

25 In this case it is alleged the defendant was armed

1 with a deadly weapon. I remind you what a deadly weapon is as
2 I previously instructed that to you. If you find the State has
3 proven all those elements beyond a reasonable doubt, you should
4 return a verdict of guilty. If you find the defendant is --
5 the State didn't prove the elements beyond a reasonable doubt,
6 you should return a verdict of not guilty.

7 Murder is also a crime of the first degree if somebody
8 attempts to kill somebody during the course of that or
9 purposely inflicts or attempts to inflict serious bodily
10 injury.

11 In this case it is alleged with regard to Keith Staple
12 that the defendant attempted to kill him while in the course of
13 committing a theft and that the defendant purposely inflicted
14 or attempted to inflict serious bodily injury upon him while in
15 the course of committing a theft consistent with my prior
16 definitions of serious bodily injury.

17 If you find the State has proven those elements beyond
18 a reasonable doubt insofar as Keith Staple is concerned, you
19 should return a verdict of guilty. If not, return a verdict of
20 not guilty.

21 The fifth count of the indictment charges that the
22 defendant and others on or about December 5th, 1993 in the City
23 of Plainfield did, acting alone or with other persons, cause
24 the death of Marcus Benjamin during the commission of or
25 attempted commission of or flight after the commission of the

1 crime of robbery contrary to the provisions of the applicable
2 statute.

3 This is the crime none as felony murder. The State
4 contends that on December 5th 1993, while the defendant was
5 engaged in the commission of or attempt to commit or flight
6 after attempting to commit the crime of robbery he shot and
7 killed Marcus Benjamin.

8 The section of the statute applicable to this case
9 reads in pertinent part that criminal homicide constitutes
10 murder when it is commit -- strike that. Yes. When it is
11 committed when the actor is engaged in the commission of or
12 attempt to commit or flight after committing or attempting to
13 commit robbery and in the course of such crime or immediate
14 flight therefrom causes the death of a person other than one of
15 the participants.

16 Generally, it does not matter that this act which
17 caused the death was committed recklessly or unintentionally or
18 accidentally. The perpetrator is guilty of felony murder as he
19 he would be if he had purposely or knowingly committed the act
20 which caused the death.

21 In order for you to find the defendant guilty of
22 felony murder, the State is required to prove beyond a
23 reasonable doubt all of the essential elements of the crime.
24 One, that on or about December 5th, 1993 the defendant was
25 engaged in the commission of or attempt to commit or flight

1 after committing or attempting to commit the crime of robbery.
2 Two, that the death of Marcus Benjamin was caused by the
3 defendant. Three, that the death of Marcus Benjamin was caused
4 at sometime within the course of the commission of that crime
5 including its aftermath of flight and/or concealment efforts.

6 The first element requires the State to prove beyond a
7 reasonable doubt that the defendant was engaged in the
8 commission of or attempt to commit or flight after the
9 commission of the crime of robbery, which I have already
10 instructed you about.

11 The second and third elements require the State to
12 establish that the victim's death was caused by the defendant
13 and was caused during the commission or attempt to commit or
14 flight after committing or attempting to commit the crime of
15 robbery.

16 In order to meet its burden of proof as to the second
17 and third elements, the State must prove beyond a reasonable
18 doubt the following: One, that but for the defendant's conduct
19 and the commission of or the attempt to commit or the flight
20 after committing or attempting to commit the robbery the victim
21 would not have died. In other words, that the victim's death
22 would not have occurred without the commission of the robbery.
23 Two, that the victim's death was a probable consequence of the
24 commission or attempt to commit or flight after committing or
25 attempting to commit robbery.

1 In order for the death to be a probable consequence of
2 the death of Marcus Benjamin, the death must not have been too
3 remote or too accidental in its occurrence or too dependent on
4 another's volitional acts to have just bearing on the
5 defendant's liability or the gravity of the offense.

6 In other words, you must decide if the State has
7 proven beyond a reasonable doubt that under all the
8 circumstances the death did not occur in such an unexpected or
9 unusual manner. That would be unjust to find the defendant
10 responsible for death.

11 If after a consideration of all of the evidence you
12 have found the State has proven beyond a reasonable doubt to
13 your satisfaction those elements, you should find the defendant
14 guilty. If not, return a verdict of not guilty of the crime of
15 felony murder.

16 The sixth count of the indictment charges the crime of
17 conspiracy and reads in pertinent part that Sammy Moore and
18 others, on or about December 5th, 1993 in the City of
19 Plainfield, with the purpose of promoting or facilitating the
20 commission of the crimes of robbery and/or possession of a
21 weapon for unlawful purpose, agreed that one or more of them
22 knowingly would engage in conduct which would constitute
23 aforesaid crimes in the planning, solicitation or commission of
24 the crimes.

25 That is, one, that he did in the course of committing

1 a theft purposely put Marcus Benjamin in fear of immediate
2 bodily injury and/or did commit a crime of the first degree; to
3 wit: murder, and/or did purposely inflict serious bodily
4 injury upon Marcus Benjamin and/or was armed with and/or used
5 or threatened the immediate use of a deadly weapon contrary to
6 the provisions of the applicable statute.

7 Two, they did in the course of committing a theft
8 purposely put Keith Staple in fear of immediate bodily injury
9 and/or did purposely inflict serious bodily injury upon Keith
10 Staple and/or was armed with and/or used or threatened the
11 immediate use of a deadly weapon contrary to the provisions of
12 that statute.

13 And, three, did possess a firearm with the purpose to
14 use it unlawfully against the person of another contrary to the
15 provisions of the applicable statute.

16 Under the sixth count of the indictment the defendant
17 is charged with the crime of conspiracy with others who are not
18 before you for this trial, to commit the crimes of robbery
19 and/or possession of the weapon for an unlawful purpose. The
20 fact that there are no other defendants on trial does not
21 matter if you find the defendant guilty of the crime of
22 conspiracy beyond a reasonable doubt.

23 The applicable statute reads in pertinent part that a
24 person is guilty of conspiracy with another person or persons
25 to commit a crime if, with the purpose of promoting or

1 facilitating its commission, he agrees with such other person
2 or persons that they or one or more of them will engage in
3 conduct which constitutes such crime or an attempt or
4 solicitation to commit such crime or agrees to aid such other
5 person or persons in the planning and commission of such crime
6 or of an attempt or solicitation to commit such a crime.

7 A conspiracy to commit a crime is a separate and
8 distinct crime from the actual commission of the substantive
9 offense. In other words, the defendant may be found guilty of
10 the crime of conspiracy regardless of any guilt or innocence as
11 to the substantive crime.

12 In order for you to find the defendant guilty of the
13 crime of conspiracy, the State need not prove the defendant
14 actually committed the crimes of robbery or possession of a
15 weapon for an unlawful purpose. Rather, the State must prove
16 beyond a reasonable doubt that the defendant, with the purpose
17 of promoting or facilitating the commission of those crimes,
18 either agreed with at least one other person referred to in the
19 indictment that one of them would commit the crime or agreed
20 that at least one other person referred to in the indictment to
21 aid him or them in committing or planning to commit the crime.

22 The State does not have to prove any element of those
23 crimes in order for you to find the defendant guilty of
24 conspiracy. However, it is necessary for you to understand the
25 elements of those crimes. So I will remind you of my

1 instructions as to robbery and I will subsequently charge you
2 as to the elements of the crime of possession of a weapon for
3 unlawful purpose.

4 For you to convict the defendant you must find beyond
5 a reasonable doubt the defendant agreed with at least one
6 person referred to in the indictment that one or more of them
7 would commit or attempt to commit the crimes; or that he agreed
8 with at least one other person to help him or them to plan or
9 commit the crimes.

10 That a person so agreed may be proved by direct
11 evidence or may be proved by evidence of circumstances which
12 you may infer that he agreed. The State is not required to
13 prove an actual meeting which he verbally agreed. If you find
14 that he did so agree, you must also determine what the
15 defendant had in mind as his purpose. For him to be found
16 guilty of conspiracy, the State must prove beyond a reasonable
17 doubt that when he agreed, he had the conscious object in mind
18 either to promote or to make it easier to commit or attempt or
19 solicit someone to commit the crimes of robbery and unlawful
20 possession of a weapon for unlawful purpose.

21 To determine whether the defendant agreed to commit
22 those crimes and, if so, his purpose in agreeing, you may
23 consider direct evidence and circumstantial evidence or a
24 combination of both. If you find that the defendant did agree
25 with someone in the manner I described and, if so, for the

1 purpose of promoting or facilitating the commission of those
2 crimes, it makes no difference whether the crimes were actually
3 committed. It also makes no difference what the person or
4 people with whom the defendant agreed actually had in mind so
5 long as the defendant believed that by agreeing he was
6 furthering the commission of those crimes.

7 Now, insofar as the crime -- strike that.

8 The next elements -- the next count of the indictment,
9 and we only have three more charges, is that the defendant
10 Sammy Moore with the other gentlemen, on or about December 5th,
11 1993 in the City of Elizabeth -- Plainfield, rather, did
12 possess a firearm with the purpose to use it unlawfully against
13 the person of another contrary to the provisions of the
14 applicable statute.

15 The law State's that any person who has in his
16 possession any firearm with the purpose to use it unlawfully
17 against the person or property of another is guilty of a crime.

18 The elements of this offense are, one, you must find
19 the State has established beyond a reasonable doubt in order to
20 convict the defendant, one, that there was a firearm; two, that
21 the defendant possessed the firearm; the defendant possessed
22 the firearm with the purpose to use it against the person or
23 property of another and that the defendant's purpose was to use
24 the firearm unlawfully.

25 A handgun is a firearm as is a rifle, shotgun, machine

1 gun, automatic, semi-automatic rifle or any gun, device or
2 instrument within the nature of which it is may be fired or may
3 eject any solid projectile, ball, slug, pellet, missile or
4 bullet.

5 Now, a person possesses something when he is aware
6 that he has a certain item in his possession and he knows what
7 it is. To possess within the meaning of the law the defendant
8 must knowingly procure or receive the item possessed and be
9 aware what it is. He has to be aware it was a gun.

10 Now, there are two types of possession. A person is
11 in actual possession of a particular article when he knows what
12 it is and he knows its character and has it on his person at a
13 given time. A person may possess something, although not on
14 one's person, if he has direct physical control over it and at
15 a given time has an intent to possess it.

16 The law recognizes that possession may be sole or
17 joint. If one person alone has actual or constructive
18 possession of a thing, possession is sole. If two or more
19 persons share actual or constructive possession of a thing,
20 that is joint. They knowingly share control over the article.

21 The third element of the offense is that the State
22 must prove the defendant beyond a reasonable doubt the purpose
23 in possessing the firearm was to use it against another person.
24 And, fourth, that the defendant had a purpose to use the
25 firearm in a manner that's prohibited by law.

1 I have already defined purpose to you. Element of
2 purpose to use a firearm unlawfully -- to use a firearm
3 unlawfully requires that you find the defendant possessed the
4 firearm with a conscious objective, with the intent, the design
5 to use it against the person of another charged in the
6 indictment.

7 In this case the State intends -- contends that the
8 defendant's unlawful purpose was for robbery and/or murder.
9 You must not consider your own notions of the unlawfulness of
10 the defendant's purpose but you must consider whether the State
11 has proven the specific unlawful purpose as they contend here.

12 Next to last count of the indictment charges that the
13 defendant Sammy Moore, with David Diggs and James Baines, did
14 knowingly possess a handgun without first having obtained a
15 permit to carry same.

16 You have to find, one, that he had a handgun,
17 consistent with my prior definition of a handgun. Two, that he
18 knowingly possessed a handgun consistent with my prior
19 definitions and, three, that he didn't have a permit to carry
20 the weapon.

21 The added starter here of the third element the State
22 must prove that the defendant did not have a permit to possess
23 a weapon. If you find the defendant knowingly possessed the
24 weapon and that there is no evidence that the defendant had a
25 valid permit to carry such a weapon, you may infer, if you

1 think it appropriate to do so based upon the facts presented,
2 that the defendant had no such permit. Note, however, that as
3 with all other elements the State bears the burden of showing
4 beyond a reasonable doubt the lack of a valid permit. You may
5 apply the inference only if you feel it appropriate to do so
6 under all the circumstances.

7 If you are satisfied the State has proven all those
8 elements beyond a reasonable doubt, you should return a verdict
9 of guilty. If you are not satisfied beyond a reasonable doubt
10 the State has proven those elements beyond a reasonable doubt,
11 you return a verdict of not guilty.

12 The final count of the indictment is that of receiving
13 stolen property which charges the defendant, along with others,
14 on January 5th, 1993 in the City of Plainfield had openly
15 committed theft by receiving or bringing into the state movable
16 property of Chanda Murphy; that is, a 1986 Honda Accord New
17 Jersey registration CDB-27U; vehicle identification number
18 JHNBA7430GC011414, knowing the same to be stolen or believing
19 it had probably been stolen, contrary to the provisions of the
20 applicable statute.

21 A person is guilty of theft if he knowingly receives
22 or brings into this state movable property of another knowing
23 it has been stolen or believing it has probably been stolen.
24 Merely receiving property that has been stolen is not an
25 offense. It becomes a criminal act when one receives that

1 stolen property knowing it has been stolen and believing it had
2 been stolen.

3 Under the statute, therefore, a person is guilty of
4 theft although he did not steal the property himself, when with
5 either knowledge that the property had been stolen or belief
6 that it probably had been stolen, obtains possession of it with
7 the awareness and knowledge of what he is doing. The identity
8 of the original thief, the identity of the owner or identity of
9 the person from whom he receives the property is immaterial.

10 Thus, the elements the State must prove beyond a
11 reasonable doubt are that the property in question was stolen;
12 that is, taken from another without permission. Two, that the
13 defendant knowingly received or acquired possession of it
14 consistent with my prior definition of knowing.

15 Receiving means acquiring possession, control, title
16 or lending security of the property. I have already told you
17 what possession is.

18 Three, at the time he acquired possession of it, he
19 knew it had been stolen or believed it had probably been
20 stolen.

21 If you find the State has proven all those elements
22 beyond a reasonable doubt, you should return a verdict of
23 guilty. If not, return a verdict of not guilty.

24 A written statement of the defendant has been
25 submitted for your consideration in this case. It is up to you

1 to decide whether that which is contained in the defendant's
2 statement is true or not. If you find that all or part of the
3 statement is not true, you must disregard the part or parts you
4 find untrue when considering the issue of the defendant's guilt
5 or innocence. If you find the statement is true, you may
6 consider it with all other evidence in the case bearing upon
7 the defendant's guilt on you innocence.

8 There is some testimony in this case from which you
9 might infer the defendant fled shortly after the commission of
10 these crimes. The defendant denies any flight. In fact he
11 denies he was even there. The question whether the defendant
12 fled after the commission of the crime is another question of
13 fact for your determination.

14 If you find that the defendant, fearing that an
15 accusation or arrest would be made against him on the charge
16 involved in the indictment, took refuge in flight for the
17 purpose of evading the accusation or arrest on that charge, you
18 may consider such flight in connection with all the other
19 evidence in this case as an indication or proof of
20 consciousness of guilt. Flight may only be considered as
21 evidence of the consciousness of guilt if you should determine
22 the defendant's purpose in leaving was to evade accusation or
23 arrest with the crime charged in the indictment.

24 Now, this is a criminal case. Therefore, your
25 verdict, whatever it will be, must be unanimous. All twelve of

1 you who are selected must agree upon the verdict as to each one
2 of the questions. Both the State and the defendant are
3 entitled for you to consider his guilt or innocence separately
4 as to each one of these counts of the indictment. Your verdict
5 as to any one count should not necessarily be indicative of
6 your verdict as to any other count. You should consider the
7 elements of each offense separately from the other offenses.

8 Very shortly you are going to go into the juryroom to
9 deliberate and apply the law that I have instructed to the
10 facts as you determine them to be for the purpose of arriving
11 at a fair and correct verdict. Now, this verdict must respect
12 the considered judgment of each of you and it must be
13 unanimous. That means all twelve of you must agree on the
14 verdict.

15 Now, each of you must decide the case for yourselves
16 but do so only after impartial consideration of the evidence
17 with your fellow jurors. In the course of your deliberations
18 do not hesitate to reexamine your own views or change your
19 opinions if you are convinced they are erroneous. But do not
20 surrender your honest opinion or conviction as to the weight or
21 effect of the evidence solely because of the opinion of your
22 fellow jurors or for the mere purpose of returning a verdict.

23 You are not partisans. You are judges. You are
24 judges of the facts. Your sole interest is to ascertain the
25 truth from the evidence that has been admitted.

1 If during your deliberations you have an inquiry, and
2 I am not suggesting you should have a question but if you have
3 one, you have to know what to do with it, write it on a piece
4 of paper, hand it to the deputy outside and I will attempt to
5 answer your question. But please note you are not to reveal to
6 me how you stand numerically or otherwise until you have
7 reached a unanimous verdict.

8 Once you have done so, please draw the attendant's
9 attention in the same manner and we will assemble to receive
10 your verdict.

11 Counsel I have come to the end of my charge. Anyone
12 wish to be heard?

13 MISS MacMULLAN: No, your Honor.

14 MR. RUSSO: No, your Honor.

15 THE COURT: One question you might have. During the
16 course of the trial we mark everything we refer to for
17 identification. That is for reasons of the record so if there
18 is ever an appeal in the case, the appellate court knows what
19 we are referring to. Everything marked for identification is
20 not necessarily admissible in evidence. If you recall that
21 something was marked for identification and you don't have it
22 in there, don't ask for it. You can't have it. It's not in
23 evidence. Okay? That is one question that's commonly asked.
24 I will put that question aside right now.

25 Okay. We are going to reduce the jury to twelve.

1 THE CLERK: Juror 316, Roland Hill, Jr.

2 THE COURT: Who? Mr. Hill. Mr. Hill, take a seat in
3 the second row. I will explain what this means to you.

4 THE CLERK: Juror 802, Cheryl Pacos.

5 THE COURT: Same thing with you, ma'am.

6 Miss Coleman, you are juror number one. Historically
7 in our system of jurisprudence number one is nominated as the
8 foreperson of the jury, the person who guides the jury in the
9 juryroom and reads the verdict in open court. If you don't
10 want to accept this responsibility, I pass it numerically down
11 the line. You don't have to accept it. Somebody has to guide
12 the jury. I don't want twelve unguided missiles bouncing off
13 my juryroom walls. Will you assume that responsibility for me?

14 THE JUROR: Yes.

15 THE COURT: Okay. Just remember that your vote is
16 entitled to no greater weight than that of any other juror.

17 Swear the sheriff's deputies, please.

18 (Sheriff officers sworn.)

19 THE COURT: Ladies and gentlemen, serving as a juror
20 in a case such as this is one of the most solemn duties a
21 community can entrust to its citizens. The responsibility that
22 rests upon you is a weighty one. In the sworn exercise of your
23 duty to be fair and impartial jurors, please remember the
24 mutuality of your obligations to the people of the State of New
25 Jersey and to Sammy Moore. Thank you. You may retire to the

1 juryroom to deliberate. We will bring in the evidence shortly.
2 I have to go over it with the attorneys on the record.

3 (Jury commences deliberations at 10:08.)

4 THE COURT: Counsel, please review the evidence and
5 advise on the record it is satisfactory.

6 Miss Pacos and Mr. Hill, you are still my insurance
7 policies. I won't cash you in yet. We don't know what is
8 going to happen here. If something befell one of the jurors,
9 you have to jump into the breach. What we are going to do --
10 what are we doing?

11 SHERIFF'S OFFICER: Trial room.

12 THE COURT: I was going to put you in my other
13 juryroom but we will have prisoners coming in and out this
14 morning because of sentencing. We will put you in the trial
15 room outside. If the jury comes back with a verdict or if they
16 want to take a break, whatever, you will always be called back
17 in. Because you still may have to jump into the breach, you
18 can't discuss the case between yourselves. Okay? Talk about
19 anything else but not the case.

20 If you want to go downstairs and grab some more
21 coffee, feel free to do so. Corporal Treadwell will show you
22 where the trial room is so you can go back there when you come
23 back. Okay. Thank you very much.

24 (Alternates excused.)

25 MISS MacMULLAN: Your Honor, may we approach off the

1 record?

2 THE COURT: Sure.

3 (Discussion held off the record.)

4 THE COURT: Line up the jury across the back.

5 (In the presence of the jury.)

6 THE COURT: These photo arrays are going in there. I
7 am going to Staple them closed because there is stuff back here
8 you should not see. I don't want anybody opening up the
9 staples to look back there. Do you understand me? Okay?

10 Miss Coleman, if anybody does that, you slap their
11 hands.

12 THE FORELADY: Okay. My people want some coffee.

13 THE COURT: Go inside. Inside.

14 (Jury resumes deliberations at 10:12.)

15 THE COURT: Consent on the record when everything is
16 satisfactory, counsel.

17 MISS MacMULLAN: Yes, your Honor.

18 (Recess.)

19 MISS MacMULLAN: The evidence is satisfactory.

20 MR. RUSSO: The evidence is satisfactory.

21 (Evidence brought into the juryroom at 10:18.)

22 (Recess.)

23 (Jury knocks with a question at 11 o'clock.)

24 THE COURT: All right. Bring out the jury, please.

25 (In the presence of the jury.)

1 THE COURT: For the benefit of the alternate jurors, I
2 will read your note into the record. "One, a copy of the
3 indictment. Two, a written explanation of the difference
4 between murder and aggravated manslaughter."

5 You can't have either one. The rules don't provide it
6 but I will read to you again the charges slowly of the
7 difference between murder and aggravated manslaughter.

8 A person is guilty of murder he if he purposely causes
9 death or serious bodily injury resulting in death or knowingly
10 causes death or serious bodily injury resulting in death.

11 In order for you to find the defendant guilty of
12 murder, the State is required to prove the following elements
13 beyond a reasonable doubt: That the defendant caused the death
14 of Marcus Benjamin or serious bodily injury resulting in the
15 death of Marcus Benjamin. Two, that the defendant did so
16 purposely or knowingly.

17 One of the elements that the State must prove beyond a
18 reasonable doubt is that the defendant acted purposely or
19 knowingly. A person who causes another's death does so
20 purposely when it is the person's conscious object to cause
21 death or serious bodily injury resulting in death.

22 A person who causes another's death does so knowingly
23 when the person is aware that it is practically certain that
24 his conduct will cause death or serious bodily injury resulting
25 in death.

1 The nature of the purpose or knowledge with which the
2 defendant acted towards Marcus Benjamin is a question of fact
3 for you to decide. Purpose and knowledge are conditions of the
4 mind which cannot be seen and can only be determined by
5 inferences from conduct, words or acts. It is not necessary
6 for the State to produce a witness or witnesses who can testify
7 that the defendant stated, for example, that his purpose was to
8 cause death or serious bodily injury resulting in death or that
9 he knew that his conduct would cause death or serious bodily
10 injury resulting in death.

11 It is within your power to find the proof of purpose
12 or knowledge has been furnished beyond a reasonable doubt by
13 inferences from which may arise from the nature of the acts and
14 surrounding circumstances. Such things as the place where the
15 acts occurred, the weapon used, the location, number and nature
16 of wounds inflicted and all that was done or said by the
17 defendant preceding, connected with and immediately succeeding
18 the events leading to the death of Marcus Benjamin are among
19 the circumstances to be considered.

20 Although the State must prove that the defendant acted
21 either purposely or knowingly, the State is not required to
22 prove a motive. If the State has proved the essential elements
23 of the offense beyond a reasonable doubt, the defendant must be
24 found guilty of that offense regardless of the defendant's
25 motive or lack of a motive. If the State has proved a motive,

1 you may consider that insofar as it gives meaning to other
2 circumstances. On the other hand, you may consider the absence
3 of motive in weighing whether or not the defendant is guilty of
4 the crime charged.

5 A homicide or killing with a deadly weapon such as a
6 .44 caliber handgun in itself would permit you to draw an
7 inference that the defendant's purpose was to take life or
8 cause serious bodily injury resulting in death.

9 A deadly weapon is any firearm, weapon, device,
10 instrument, material or substance which in the manner it is
11 used or is intended to be used is known to be capable of
12 producing death or serious bodily injury resulting in death.
13 In your deliberations you may consider the weapon used and the
14 manner and circumstances of the killing and if you are
15 satisfied beyond a reasonable doubt that the defendant shot and
16 killed Marcus Benjamin with a gun, you may draw an inference
17 from the weapon used; that is, the gun, and from the manner and
18 circumstances of the killing as to the defendant's purpose or
19 knowledge.

20 The other element the State must prove beyond a
21 reasonable doubt is that the defendant caused Marcus Benjamin's
22 death or serious bodily injury resulting in death.

23 Serious bodily injury means bodily injury which
24 creates a substantial risk of death or which causes serious
25 permanent disfigurement or protracted loss or impairment of the

1 function of any bodily member or organ. Whether the killing is
2 committed purposely or knowingly causing death or serious
3 bodily injury resulting in death must be within the design and
4 contemplation of the defendant.

5 If you determine the State has proven beyond a
6 reasonable doubt that the defendant purposely or knowingly
7 caused death or serious bodily injury resulting in death, you
8 must find the defendant guilty of murder. If, on the other
9 hand, you determine the State has not proven beyond a
10 reasonable doubt that the defendant purposely or knowingly
11 caused death or serious bodily injury resulting in death, you
12 must find him not guilty of murder and go onto consider the
13 crime of aggravated manslaughter.

14 A person is guilty of aggravated manslaughter if he
15 recklessly causes the death of another person under
16 circumstances manifesting extreme indifference to human life.

17 In order for you to find the defendant guilty of
18 aggravated manslaughter, the State is required to prove each of
19 the following elements beyond a reasonable doubt: One, that
20 the defendant caused the death of Marcus Benjamin. Two, that
21 he did so recklessly and, three, that the defendant did so
22 under circumstances manifesting extreme indifference to human
23 life.

24 Reckless behavior. A person who causes another's
25 death does so recklessly when he is aware of and consciously

1 disregards a substantial and unjustifiable risk that death will
2 result from his conduct. The risk must be of such a nature and
3 degree that considering the nature and purpose of the
4 defendant's conduct and the circumstances known to the
5 defendant, his disregard of that risk is a gross deviation from
6 the standard of conduct that a reasonable person would follow
7 in the same situation.

8 In other words, you must find the defendant was aware
9 of and consciously disregarded the risk of causing death. If
10 you find the defendant was aware of and disregarded the risk of
11 causing death, you must determine the risk that he disregarded
12 was substantial and unjustifiable. In doing so you may
13 consider the nature and purpose of the defendant's conduct and
14 the circumstances known to the defendant. You must determine
15 whether in light of those factors the defendant's disregard of
16 that risk was a gross deviation from the conduct a reasonable
17 person would observe in the defendant's situation.

18 Another element the State must prove beyond a
19 reasonable doubt is that the defendant acted under
20 circumstances manifesting extreme indifference to human life.
21 This phrase does not focus on the defendant's state of mind but
22 rather on the circumstances under which he acted. If in light
23 of all the evidence you find the defendant's conduct resulted
24 in a probability as opposed to a mere possibility of death, you
25 may find that he acted under circumstances manifesting extreme

1 indifference to human life. On the other hand, if you find his
2 conduct resulted in only a possibility of death, then you must
3 acquit him of aggravated manslaughter.

4 The final element the State must prove beyond a
5 reasonable doubt is that the defendant caused the death of
6 Marcus Benjamin. You must find that Marcus Benjamin would not
7 have died but for the defendant's conduct.

8 Those are the elements of those two offenses that you
9 requested. I ask you to continue with your deliberations.

10 (Jury resumes deliberations at 11:20.)

11 (Alternates excused from the Courtroom.)

12 THE COURT: Any objections, counsel?

13 MISS MacMULLAN: No objection.

14 MR. RUSSO: No objection.

15 THE COURT: Please don't leave the area, Miss
16 MacMullan.

17 MISS MacMULLAN: Sorry. I was setting up a return
18 flight for the Alabama people.

19 (Recess.)

20 (Jury knocks with a question at 12 o'clock.)

21 THE COURT: All right. Bring in the alternates and
22 the jury.

23 (In the presence of the jury.)

24 THE COURT: Let me read your note into the record for
25 the alternates. "Your Honor, if Sam Moore had a .44 and shot

1 Marcus Benjamin, can it be considered aggravated manslaughter
2 or does the law state that because a gun was used regardless of
3 intent it was murder?"

4 I think I know where you're coming from with that
5 question. In my charge I indicated to you that a homicide or
6 killing with a deadly weapon such as a .44 caliber handgun in
7 itself would permit you to draw an inference that the
8 defendant's purpose was to take life or cause serious bodily
9 injury resulting in death. It is a permissible inference.
10 It's not a mandatory inference. It would permit you to do
11 that. You don't have to do that. So you have to consider the
12 elements of the separate crimes as I charge them to you.

13 I think that's where you are coming from. It is not
14 mandatory. It is permissible. It is evidence that you can use
15 if you wish to draw an inference, but you don't have to.

16 With regard to the robbery of -- the second note is,
17 "Your Honor, please define the charges against S. Moore
18 regarding robbery of Keith Staple."

19 Okay. The charge itself reads that on or about
20 December 5th, 1993 in the City of Plainfield, while in the
21 course of committing a theft, the defendant purposely put Keith
22 O. Staple in fear of immediate bodily injury and/or did
23 purposely inflict serious bodily injury upon Keith O. Staple
24 and/or was armed with and/or used or threatened the immediate
25 use of a deadly weapon contrary to the provisions of the

1 applicable statute.

2 Now, this statute reads that a person is guilty of
3 robbery if, in the course of committing a theft, he knowingly
4 inflicts bodily injury or uses force upon another or threatens
5 another with or purposely puts him in fear of bodily injury or
6 commits or threatens immediately to commit any crime of the
7 first degree.

8 In this connection you are advised that an act is
9 considered to be in the course of committing a theft if it
10 occurs in an attempt to commit a theft, during the commission
11 of the theft itself or an immediate flight after the commission
12 or the attempt.

13 The elements the State must prove to you beyond a
14 reasonable doubt is that the defendant was in the course of
15 committing a theft, that while in the course of committing that
16 theft he knowingly inflicted bodily injury or used force upon
17 Keith Staple, threatened him with or purposely put him in fear
18 of immediate bodily injury or committed or threatened
19 immediately to commit the crime of attempted murder or
20 aggravated assault against Keith Staple. Those are the three
21 ways. Not together. Alternatively. Any one of those.

22 As I have said, the State must prove beyond a
23 reasonable doubt the defendant was in the course of committing
24 a theft. In this connection you are advised that an act is
25 considered to be in the course of committing a theft if it

1 occurs in an attempt to commit a theft, during the commission
2 of theft itself or in the immediate flight after the commission
3 or attempt.

4 Theft is defined as the unlawful taking or exercise of
5 unlawful control over property of another with a purpose to
6 deprive him thereof.

7 In addition to proving beyond a reasonable doubt that
8 the defendant was in the course of committing a theft, the
9 State must also prove beyond a reasonable doubt that while in
10 the course of committing a theft, the defendant either
11 knowingly inflicted bodily injury or used force upon another.

12 A person acts knowingly, as I indicated to you before,
13 when he is aware what will happen if he acts in a certain way.
14 It doesn't necessarily means that he intends for it to happen
15 but knows something is almost certain to happen if he does a
16 particular act.

17 The phrase bodily injury means physical pain, illness
18 or impairment of physical condition.

19 Force means an amount of physical power or restraint
20 used against the victim and not simply against the victim's
21 property or the State can prove the defendant threatened
22 another or purposely put him in fear of immediate bodily injury
23 and although no bodily injury need have resulted, the
24 prosecution must prove the defendant either threatened the
25 victim with or purposely put in fear of such bodily injury or

1 the State -- you can consider whether the defendant committed
2 or threatened immediately to commit the crime of the first or
3 second degree; herein, attempted murder or aggravated assault
4 while in the course of committing a theft. Those are the
5 elements of that particular charge.

6 I ask you to -- no, I won't ask you to continue with
7 your deliberations. Tell you what we will do. I will take you
8 down to lunch now and get you down to the coffee shop before
9 everybody else gets down there. As a deliberating jury we have
10 to keep you together. We will do that. Bring you down to the
11 coffee shop and order your lunch.

12 This is not the movies. We don't buy you lunch. But
13 we will buy you dinner if you stay here long enough tonight.
14 That's the good news. The bad news we only get it from
15 McDonald's.

16 Mr. Hill and Miss Pacos, you are not required to eat
17 in the coffee shop. You can go anywhere you want. I want you
18 back at 1:30. All of us are going to lunch. We wouldn't be
19 back until 1:30.

20 When you get your lunch, don't feel you have to speak
21 with your mouth full. You can sit and digest your food and
22 begin your deliberations as you see fit. While you are all out
23 of the courtroom and juryroom, please don't discuss the case.
24 If any of you get back to the juryroom before others, please do
25 not discuss the case until all twelve of you are there. When

1 you come back from lunch, continue your deliberations and we
2 will will be available for you this afternoon.

3 You can go. See you at 1:30. Follow your sheriff's
4 officers. They will take you downstairs.

5 (Jury excused for lunch at 12:20.)

6 THE COURT: Okay. Any objection?

7 MISS MacMULLAN: No objection.

8 MR. RUSSO: No, your Honor.

9 THE COURT: See you this afternoon.

10 (Luncheon recess.)

11 (Jury knocks with a verdict at 1:23.)

12 THE COURT: Mr. Lee, when you call the juror's names
13 this afternoon, try to pronounce it correctly.

14 THE CLERK: Yes, your Honor.

15 THE COURT: All right. Bring out the jury.

16 (In the presence of the jury.)

17 THE COURT: Take the attendance, please, Mr. Lee.

18 Ladies and gentlemen, as your name is called, please
19 answer here.

20 (Jury attendance taken.)

21 THE CLERK: Madam forelady, would you please rise?

22 Have the members of the jury reached verdicts?

23 THE FORELADY: Yes, we have.

24 THE CLERK: Were they all unanimous?

25 THE FORELADY: Yes.

1 THE CLERK: On the charge of murder of Marcus
2 Benjamin, how do you find the defendant? Guilty or not guilty?

3 THE FORELADY: Guilty.

4 THE CLERK: On the charge of attempted murder of Keith
5 Staple, how do you find the defendant? Guilty or not guilty?

6 THE FORELADY: Guilty.

7 THE CLERK: On the charge of robbery of Marcus
8 Benjamin, how do you find the defendant? Guilty or not guilty?

9 THE FORELADY: Guilty.

10 THE CLERK: On the charge of robbery of Keith Staple,
11 how do you find the defendant? Guilty or not guilty?

12 THE FORELADY: Guilty.

13 THE CLERK: On the charge of felony murder, how do you
14 find the defendant? Guilty or not guilty?

15 THE FORELADY: Guilty.

16 THE CLERK: On the charge of conspiracy, how do you
17 find the defendant? Guilty or not guilty?

18 THE FORELADY: Guilty.

19 THE CLERK: On the charge of possession of a firearm
20 for an unlawful purpose, how do you find the defendant? Guilty
21 or not guilty?

22 THE FORELADY: Guilty.

23 THE CLERK: On the charge of unlawful possession of a
24 handgun, how do you find the defendant? Guilty or not guilty?

25 THE FORELADY: Guilty.

1 THE CLERK: On the charge of receiving stolen
2 property, how do you find the defendant? Guilty or not guilty?

3 THE FORELADY: Guilty.

4 THE COURT: Thank you, Miss Coleman. You may be
5 seated.

6 Ladies and gentlemen, as the clerk of the court reads
7 your name with respect to the verdict on the first count of
8 guilty of murder, if you believe your foreperson has properly
9 rendered your verdict, please say "I agree". If you believe
10 she made a mistake, "I disagree".

11 (Jury polled; unanimous verdict.)

12 THE COURT: With regard to count two of the indictment
13 your verdict of attempted murder of Keith Staple, if you
14 believe your foreperson has properly rendered your verdict as
15 you voted for it, please say "I agree". If you believe a
16 mistake was made, "I disagree".

17 (Jury polled; unanimous verdict.)

18 THE COURT: Same with regard to count three, robbery
19 of Marcus Benjamin.

20 (Jury polled; unanimous verdict.)

21 THE COURT: Same with regard to count four, robbery of
22 Keith Staple.

23 (Jury polled; unanimous verdict.)

24 THE COURT: Same with regard to felony murder, count
25 five.

1 (Jury polled; unanimous verdict.)

2 THE COURT: Same with regard to conspiracy, count six.

3 (Jury polled; unanimous verdict.)

4 THE COURT: Same with regard to count seven,
5 possession of a weapon for an unlawful purpose.

6 (Jury polled; unanimous verdict.)

7 THE COURT: Same with regard to count eight, unlawful
8 possession of a weapon.

9 (Jury polled; unanimous verdict.)

10 THE COURT: Same with regard to the final count of the
11 indictment, count nine, receiving stolen property.

12 (Jury polled; unanimous verdict.)

13 THE COURT: Ladies and gentlemen, Miss Pacos and Mr.
14 Hill, I thank you for your jury service in this case. It was
15 obvious to me that you all paid careful attention to the
16 evidence as it was being admitted. This is not the
17 run-of-the-mill case. It required a full week of jury service
18 and I appreciate your willingness to take time away from your
19 jobs and family and even the holiday season to serve as jurors
20 in a case such as this.

21 We don't have a perfect system of justice in this
22 country but clearly we have the best designed by man thus far
23 and it is the willingness of people such as yourselves who
24 serve as jurors that makes this system work. We take people
25 from all corners of our society, from all different backgrounds

1 and experiences to serve as the conscience of the community to
2 sit in judgment and our system of justice only works when
3 people such as yourselves take the job seriously.

4 On behalf of your fellow citizens and myself I thank
5 you for your jury service in this case.

6 If you have any questions about the process, I would
7 be glad to answer them, if you want to wait after you're
8 excused. I first have to remand Mr. Moore into custody. He
9 will be sentenced on March 3rd after I receive a Presentence
10 Investigation Report at that time and his attorney will be
11 representing him. The State and the attorney will have an
12 opportunity to speak at sentencing at that time.

13 If you do have any questions, I'll be glad to answer
14 them in a little while but I ask you now to at least go back to
15 the juryroom. I will excuse you from jury service at this
16 time. I ask you to leave us your blue badges, too.

17 Enjoy the rest of the day. Travel home safely. Thank
18 you very much.

19 (Jury excused.)

20 THE COURT: Have the State consent on the record all
21 the evidence is returned in satisfactory condition after it had
22 an opportunity to review it.

23 Mr. Moore is remanded back to Somerset County. Right
24 to bail is revoked.

25 (Recess.)

1 MISS MacMULLAN: The State acknowledges receipt of all
2 the evidence.

3 (Court adjourned.)
4
5
6

7 CERTIFICATION
8
9
10

11 I, EILEEN A. DUNNE, C.S.R., License Number XI01022,
12 an Official Court Reporter in and for the State of New Jersey,
13 do hereby certify the foregoing to be prepared in full
14 compliance with the current Transcript Format for Judicial
15 Proceedings and is a true and accurate transcript of my
16 stenographic notes taken in the above matter to the best of my
17 knowledge and ability.
18
19

20 *Eileen A. Dunne*
21 _____
22 EILEEN A. DUNNE, C.S.R.
 Official Court Reporter
 Union County Courthouse
 Elizabeth, New Jersey

23 DATE: August 14, 1995
24
25

A-4956-9474

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION UNION COUNTY
INDICTMENT #94 06 00636
A.D. #A-004956-94T4

STATE OF NEW JERSEY :
v. :
SAMMY MOORE, :
Defendant. :
-----x

TRANSCRIPT OF
SENTENCE
FILED
APPELLATE DIVISION

SEP 13 1995

Place: Union County Courthouse
Elizabeth, New Jersey
Clerk

Date: March 3, 1995

REC'D
APPELLATE DIVISION
SEP 13 1995

B E F O R E:

HONORABLE WILLIAM L'E. WERTHEIMER, J.

William L'E. Wertheimer
Clerk

TRANSCRIPT ORDERED BY: LISA A. LYNCH, ASSISTANT DEPUTY PUBLIC DEFENDER

A P P E A R A N C E S:
SUSAN MacMULLAN, ASSISTANT PROSECUTOR

THOMAS RUSSO, ESQ.
Attorney for Defendant

Gloria Speaks, C.S.R.
Official Court Reporter
Union County Courthouse
Elizabeth, New Jersey

Idm

1 THE CLERK: Your Honor, this is a sentence on State of
2 New Jersey vs. Sammy Moore on Indictment 94 06 636.
3 Appearances for the record, counsel.

4 MR. RUSSO: Thomas M. Russo, your Honor, for defendant
5 Sammy Moore.

6 MISS MACMULLAN: Sue MacMullan for the State.

7 THE COURT: You had an opportunity to review
8 presentence investigation report with your client, Mr. Russo?

9 MR. RUSSO: I have, your Honor.

10 THE COURT: Are there any additions or corrections?

11 MR. RUSSO: Mr. Moore indicates to me on the pages
12 relating to his prior record, that he doesn't recall appearing
13 in Passaic County court or being arraigned on the burglary
14 indictment which is listed there. That's the only information
15 that I have with respect to that, your Honor. I don't know
16 what the status of that matter is.

17 THE COURT: Well, it's open. I mean it's not a
18 conviction.

19 MR. RUSSO: Right.

20 THE COURT: I wouldn't consider it. It's not a
21 conviction, it's an open charge.

22 MR. RUSSO: That's all I have.

23 THE COURT: Okay. I'll hear you on mitigation of
24 sentence.

25 MR. RUSSO: Your Honor, I know you're aware of the

1 facts of the case having listened to the testimony. Although
2 Mr. Moore continues to insist that he did not commit these
3 acts, obviously I have to address the charges for which he's
4 been convicted. Those are that, your Honor, on December 5,
5 1993 in a momentary senseless act, this young man was then just
6 19 years old, effectively ended two lives, cost the victim
7 everything that he was and could be, and he also cost himself
8 much of the same, although obviously he'll continue to live and
9 breathe. There's little else that he'll be doing as he sits in
10 state prison serving, in the court's discretion, at least 30
11 years. He's, therefore, lost the entire decades of his
12 twenties, his thirties, and his forties, a time when other
13 people his age might marry, have children, watch them learn to
14 walk, to talk, raise them, even look forward to grandchildren;
15 obviously the most productive years of his life.

16 Naturally Mr. Moore did not contemplate this at the
17 time of this idiotic act, but he didn't know it at the time of
18 trial and he knows it today.

19 There are a number of sentences, number of charges for
20 which he's being sentenced today, and the court could impose
21 consecutive sentences, and in effect Mr. Moore would likely
22 spend the entire rest of his life in state prison, and it
23 wouldn't surprise me if the State asked for that; wouldn't
24 surprise me if the State said that the court should show Mr.
25 Moore the same consideration that he showed these victims which

1 in effect is none. But your Honor, is that the law? Would
2 that do justice? Is that what court should do? I submit that
3 it should not. The State of New Jersey through the courts must
4 be more considerate, show more humanity and more intelligence
5 than the crazed act of this young man because if the State
6 can't do any better than that, then few of us would want to
7 live.

8 This was a destructive, useless, senseless act of a
9 very foolish young man. But I ask the court to recognize that
10 in each life, and yes, even in Mr. Moore's life there is a
11 potential for some good. I ask the court to hold out for this
12 defendant the hope that some day in the future when you and I
13 are retired or possibly even dead Sammy Moore may some day
14 become eligible for parole and be given a chance to have some
15 productive years as a member of society.

16 To that end I can only ask that the sentences today be
17 run concurrent.

18 THE COURT: Thank you, Mr. Russo. Mr. Moore, is there
19 anything you wish to say before I impose sentence?

20 A Yes. First I'd like to apologize to the family, although
21 I'm not guilty of this crime when they found me guilty. I just
22 apologize to yall for the loss yall took.

23 THE COURT: Ms. MacMullan.

24 MISS MACMULLAN: Thank up your Honor. Briefly, the
25 State would respectfully request that at the very least that

1 the attempted murder on Keith Staple and of course the
2 senseless murder of the victim, Marcus Benjamin in this case be
3 run consecutive.

4 The court will recall from the testimony that this
5 awful morning began the night before, that Saturday night in
6 Newark when Mr. Moore was sitting around with his confederate
7 Tariq Diggs, David Diggs, and Kenneth Brooks from Plainfield
8 calmly talking among themselves as would other young men their
9 age be discussing, which movie to go out or which restaurant to
10 go to, they calmly discussed holding up people. I believe
11 their term was sticky; that they were tired of robbing the
12 people in Newark and as a result of that they decided to go to
13 the town where the confederate Kenneth Brooks resided. And as
14 the court will recall, this murder, this senseless indefensible
15 murder occurred actually on the street of where Kenneth Brooks
16 resided, West Third Street in Plainfield.

17 And after they have calmly discussed among themselves
18 that they would go sticky, they then got into Mr. Brooks' car,
19 and I recall from reviewing the statements of co-defendant that
20 it was important that Mr. Moore go because Mr. Moore was the
21 crazy one, and Mr. Moore was the one that always seemed to have
22 a gun in his possession, and that he could clearly be relied
23 upon to lead the charge.

24 I also recall from reviewing the statements of the
25 co-defendants that there was discussion in the car on the way

1 over that if somebody moves i.e. the victims moved, whoever
2 these poor victims would be, that he, he has to be prepared to
3 be shot, you have to be prepared to shoot, and as I'm sure the
4 court has read the statements of the family of the victim in
5 this case, in particular Mrs. Benjamin who's in court today,
6 she tells us, Judge, as only the common sense and the wisdom of
7 a mother can, that when you put a gun in your hands they mean
8 to kill. And as clearly the case showed that Mr. Moore, one
9 thing that is so clear from the testimony, he couldn't wait to
10 pull that trigger.

11 Mr. Moore got into that car with a loaded .44. We
12 also know from the testimony that the confederate David Diggs
13 also got into the car with a loaded .38. Once they get into
14 Plainfield that Saturday night they pick up the fifth
15 defendant, Mr. Banes. They then drove for hours. We know that
16 from the girl's testimony because they were seen several
17 different areas in Plainfield that night over the course of the
18 evening.

19 It is at that point, your Honor, I submit that they
20 have the opportunity, opportunity to see their victim, Marcus.
21 Marcus, who was by himself; Marcus who was on the corner for
22 hours as we know from testimony of his friends; Marcus who was
23 the perfect victim. Anyone could see, anyone that knew Marcus
24 would know that he was unarmed, and unfortunately for Marcus he
25 had the cash and the car that the victims so want. And as we

1 look to the nature and circumstances of the offense itself at
2 this point in time, your Honor, it should be considered as an
3 aggravating factor in and of itself.

4 When they came out and surprised Marcus, Marcus never
5 had a chance at that point in time. As Mookie Carson tells us
6 when he appeared out from the door they surrounded Marcus.
7 What did the victim do? He stood there with his hands up in
8 the air. There was really nothing more for Marcus to do. And
9 as telling of the kind of person that Marcus is, when Marcus,
10 who at that point must have been filled with terror, Marcus at
11 that point in time had to know that he was about to be
12 slaughtered; that his last act on this earth was to turn to his
13 young friend Mookie and say git in. He could have said help,
14 he could have said come out and rush them, he could have done
15 anything to try to save his own skin, Marcus' skin, but the
16 last thing that Marcus did on this planet was to protect a
17 juvenile and told him to get inside, never having a concern for
18 himself, and that is how we'll remember Marcus Benjamin; that
19 this act clearly could have included other murder victims; this
20 act clearly could have had multiple deaths, but because Marcus
21 said to the people inside stay inside, at that point in time
22 Marcus even knew that his death sentence was about to be
23 handed, and at that point in time we know the second victim
24 came by, poor Mr. Staples.

25 Mr. Staples didn't know what hit him. We know from

1 the testimony that he probably had been drinking. We know from
2 medical testimony he had alcohol in his system, and the poor,
3 helpless victim, he walked by and at that point in time he
4 picked the wrong place at the wrong time. That's when the
5 defendant grabbed the unarmed Mr. Staples and used him as a
6 human shield.

7 We know at this point in time that they, Mr. Moore
8 through the help of his friends had the keys to the car. Mr.
9 Benjamin never resisted whatsoever. We knew that he had the
10 car itself. We also knew that he had the money in the trunk.
11 We know that's where the victim kept his money when he was out
12 on that corner. So one thing that in my mind that I could
13 never understand, if there is anyway to understand this crime,
14 is why did you have to shoot Marcus. At that point in time he
15 had everything, and with their ski masks and the fact they were
16 from Newark, who would have ever been able to solve this crime?
17 It would have probably been one of the many unsolved street
18 robberies that occur, unfortunately, in a violent urban setting
19 such as this.

20 But at that point in time, your Honor, Mr. Marcus
21 then -- Mr. Moore then pushed Keith Staples away. We know from
22 Keith Staples that he was praying to God as he was running down
23 the street. At that point Mr. Staples, who was unarmed, was
24 fired upon by the defendant. We know that from the ballistics
25 examination that the bullet retrieved from the clothing of Mr.

1 Staples was in fact a .44, and the only reason why Mr. Staples,
2 a complete stranger to the defendant, was shot as the testimony
3 would show, was basically Mr. Moore shot him for the sheer
4 pleasure of it. Mr. Moore shot him because he also had an
5 audience. Who's next? Marcus Benjamin.

6 Marcus Benjamin we know was running for his life, as
7 futile as it may be. At that point in time Mr. Moore then shot
8 the second complete stranger, shot him in the back. Again,
9 your Honor, the only conclusion we can draw as to why these two
10 men had to be shot is because of the sheer pleasure of it.
11 They have caused pain for the sake of doing it himself, and I
12 submit that that itself should be considered as an aggravating
13 factor.

14 What do we know about Mr. Moore and the aftermath.
15 Mr. Moore could not wait to tell people back in Newark what he
16 had done. The testimony in this case was overwhelming. It was
17 one woman after the next had to come in and repeat that yes, he
18 said he shot two people; yes, he said he had the gun; and yes,
19 he was able to get the car. So the only reason why these poor
20 people had to be shot is so Mr. Moore could brag about it hours
21 after.

22 I submit, your Honor, there is a definite risk Mr.
23 Moore will commit another offense. He has shown absolutely no
24 remorse in this case. He first admitted it to the police
25 saying with some ridiculous fact pattern that it was

1 self-defense and that's why he shot. And then when he got on
2 the stand he denied he even gave that statement itself. So the
3 fact that he himself has shown absolutely no remorse I submit
4 is an indication that there is a definite risk he would commit
5 another offense.

6 His record. He has the adjudication back in '92 for
7 very serious offense, possession with intent, and he clearly
8 has been arrested since then. I submit that if anything the
9 factor of a need to deter this defendant as others should be
10 weighed heavily.

11 What is disturbing about this case was from a review
12 of the co-defendants' statements it's just how with complete
13 lack of concern or empathy for anyone the, the way they talked
14 about going sticking as if it was something they were entitled
15 to do, something they never gave a second thought about.

16 I submit that the reason why Keith Staples' attempted
17 murder count should run consecutive because clearly this was a
18 second victim at the scene. This victim that had nothing to do
19 with Marcus Benjamin, he just happened to be walking by. So I
20 would respectfully request that he be sentenced to the maximum
21 on the murder count, life to 30, and that at the very least the
22 attempted murder be run consecutive. Thank you, your Honor.

23 THE COURT: This 20 year old defendant was convicted
24 by a jury on December 16th, 11994 of murder, attempted murder,
25 two counts of robbery, felony murder, conspiracy, unlawful

1 possession of a handgun, possession of a firearm for an
2 unlawful purpose and receiving stolen property. Count five,
3 felony murder, merges into count one, murder. Count six,
4 conspiracy, merges into counts 3 and four, robbery and count 7,
5 possession of a firearm for an unlawful purpose. Even with
6 that, plaintiff faces a potential life term with a maximum 70
7 year period of parole ineligibility.

8 Defendant, a mere 18 years old at the time of this
9 offense, conspired with 4 other confederates to drive from
10 Newark to Plainfield "to do sticky," that is holdup a drug
11 dealer.

12 Defendant was directed to an area where drug dealers
13 commonly did their bidding, and in the course of committing the
14 planned robbery, shot and instantly killed Marcus Benjamin, an
15 alleged drug dealer, and shot and seriously wounded a passerby,
16 Keith Staples. This defendant represents an alarmingly
17 increasing number of young people who live each day without
18 concern, conscience or fear of the consequences for their
19 actions.

20 Too many young people appear before our courts devoid
21 of scruples or a sense of social or civic responsibility. They
22 live their lives without concern for themselves or others.
23 They are nothing more than unguided malevolent missiles of
24 mayhem and destruction, and if society does not address this
25 phenomenon soon, the carnage that will be visited upon our

1 sidewalks and streets will know no bounds. Defendant is a
2 preeminent example of this threat. He took the life of Marcus
3 Benjamin and would have taken that of Keith Staples, had he
4 been a better marksman, as easily as one turns a television
5 channel. Clearly he is too dangerous an individual to be
6 permitted to walk among the law abiding. A stiff sentence will
7 solve society's difficulties with him, but the larger problem
8 that creates this type of soulless person remains to be
9 addressed.

10 Marcus Benjamin's family wrote to this court to
11 attempt to quantify their loss and grief, but no parent can
12 adequately put into words the profound nature of the loss of a
13 child. No parent should have to outlive a child. No sister
14 should lose a brother in this manner.

15 Unfortunately there is a danger inherent in the
16 activity attributed to Marcus Benjamin. If his death is to
17 have any meaning, perhaps it can serve as a warning to those
18 with his alleged proclivities that the risks of same are too
19 great. As for those with such proclivities, let them know that
20 their punishment will be swift, severe and substantial. Even
21 wayward souls as Marcus Benjamin should have the potential to
22 be saved rather than slaughtered by a predator like Sammy
23 Moore.

24 As defendant chose separate victims through separate
25 acts for separate reasons, his punishment for the murder,

1 attempted murder should be consecutive. Arguably more counts
2 could be consecutively punished, but this sentence as designed
3 will hold defendant in custody with certainty until he is too
4 old to be wild and still give the Parole Board the discretion
5 to keep him incarcerated forever. Aggravating factors 1, 2, 3
6 and 9 clearly, convincingly and substantially outweigh the
7 nonexistent mitigating factor.

8 On count one of indictment 94 zero six six 36, Mr.
9 Moore, it's the sentence of this court that you be remanded to
10 the custody of the Commissioner of the Department of
11 Corrections for the remainder of your life; but you must first
12 serve at least 30 years without being eligible for parole.

13 On count two it's the sentence of this court that you
14 be remanded to the custody of the Commissioner of the
15 Department of Corrections for 20 years, 10 years of which you
16 will be ineligible for parole, consecutive to count one, until
17 released in accordance with law.

18 On count 3 and 4 it's the sentence of this court you
19 be remanded to the custody of the Commissioner of the
20 Department of Corrections 20 years, 10 years of which you will
21 be ineligible for parole concurrent to all other counts.

22 On count seven it's the sentence of this court that
23 you be remanded to the custody of the Commissioner of the
24 Department of Corrections for 10 years, 5 years of which you
25 will be ineligible for parole, concurrent to all other counts

1 until released in accordance with law.

2 On counts eight and nine it is the sentence of this
3 court you be remanded to the custody of the Commissioner of the
4 Department of Corrections for 5 years, two and a half years of
5 which you will be ineligible for parole, concurrent to all
6 operator counts until released in accordance with law.

7 There's a \$50 Violent Crimes Compensation Board
8 assessment as to each count for a total of \$350, \$75 assessment
9 for the Safe Neighborhoods Service Fund as to each count for
10 total of \$525. All those sums are to be collected through
11 Department of Corrections; and there's 446 days in custody from
12 December 13th, 1993 till today.

13 Mr. Moore, you have 45 days to appeal this sentence,
14 sir. If you're indigent, you have a right to appeal as an
15 indigent pursuant to the applicable court rule. You have a
16 right to be represented by an attorney. If you can't afford
17 one, one will be appointed for you upon your proper
18 application. Do you understand your rights?

19 A Yes.

20 THE COURT: Good luck, Mr. Moore.

21 MR. RUSSO: Thank you, your Honor.

22 (Concluded.)

23

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25

**NEW
FOLDER
BEGINS**