

A-6522-9874

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL PART
ESSEX COUNTY, INDICTMENT NO: 2358-5-97
APP. DIV. NO. **6522-9874**

STATE OF NEW JERSEY, :
Complainant, :
vs. :
ROY DOVE, :
Defendant. :

STENOGRAPHIC TRANSCRIPT
OF
TRIAL PROCEEDINGS
MIRANDA HEARING,
OPENING STATEMENTS, AND
TESTIMONY OF N. GURLEY AND
R. BANKS

FILED
APPELLATE DIVISION

Place: Essex County Courts Bldg.
50 West Market Street
Newark, New Jersey 07102

OCT 18 1999

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R. Collins
BEFORE: Clerk

REC'D
APPELLATE DIVISION

THE HON. JULIUS A. FEINBERG, J.S.C., AND A JURY.

OCT 18 1999

TRANSCRIPT ORDERED BY:

DEBORAH C. COLLINS, ESQ., Office of the

APPEARANCES:

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the County of Essex, Attorney for the State

RICHARD M. ROBERTS, ESQ., (Roberts & Fielo, Esqs.)
Attorney for the Defendant.

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Colloquy

1 THE COURT: All right. Now, I understand
2 there's -- we're on the record now. Indictment 2358-5-97,
3 State_v_Roy Dove. There's a Miranda hearing requested.

4 MR. ROBERTS: Yes, your Honor.

5 MS. CHARLES: Yes, your Honor.

6 THE COURT: All right.

7 MS. CHARLES: Just for the purposes of the record,
8 Rosalyn Cary Charles on behalf of the State.

9 Your Honor, before we get started with the Miranda
10 hearing I would like to move to amend the indictment.
11 There's a typo that exists within the indictment with
12 respect to the name of the victim.

13 THE COURT: Yes.

14 MS. CHARLES: The victim's name, as it appears in
15 the indictment, is Keith Barnes. I would submit that that
16 is a typo.

17 As per the Grand Jury transcript that has been
18 educed for the purposes of this trial, the decedent's name
19 is, in fact, Keith Banks, B-a-n-k-s.

20 That typo appears in Count One, Two, and Three of
21 this indictment.

22 THE COURT: Mr. Roberts, do you raise any
23 objection?

24 MR. ROBERTS: No, your Honor.

25 THE COURT: All right. So indicated, Banks

Isetts-Direct

1 instead of Barnes. All right.

2 MS. CHARLES: I'm ready to proceed with the
3 Miranda hearing, your Honor. The State calls at this time
4 Investigator William Isetts.

5 WILLIAM ISETTS, STATE'S WITNESS, SWORN ON MIRANDA HEARING.
6 DIRECT EXAMINATION BY MS. CHARLES:

7 Q. By whom are you employed, Sir?

8 A. The Essex County Prosecutor's Office.

9 Q. And in what capacity?

10 A. The county investigator.

11 Q. And in February of 1997, where were you assigned
12 with respect to your duties?

13 A. That would be the homicide squad.

14 Q. And how long have you been assigned to the
15 homicide squad?

16 A. Since early of 1992.

17 Q. And in conjunction with your duties as
18 investigator assigned to the homicide squad did you have
19 occasion to investigate homicide Number 11-97 in February of
20 1997?

21 A. Yes.

22 Q. And homicide Number 11-97 involved the death of
23 whom, Sir?

24 A. Keith Banks.

25 Q. And that investigation emanated out of where, Sir?

Isetts-Direct

6

- 1 A. That would be the city of Newark.
2 Q. And during the course of your investigation did
3 you have an occasion to develop a suspect in this matter?
4 A. Yes, we did.
5 Q. And who was that suspect?
6 A. That would be the defendant that sits next to counsel
7 right there by the name of Roy Dove.
8 Q. Could you explain to the Court the circumstances
9 under which Mr. Dove was ultimately brought into custody?
10 A. I was notified by dispatch, Sergeant Paul Lorenc, of
11 the Newark homicide squad had contacted me and advised me
12 that a radio car was flagged down in the area of 18th Avenue
13 by a witness who stated that he had witnessed the stabbing
14 death of Keith Banks and had seen the suspect on 18th
15 Avenue, and pointed him out to the officers in the radio
16 car.
17 Q. And do you recall when this was?
18 A. Not without referring to my reports.
19 MS. CHARLES: If I can have this marked S-1.
20 (A Report is marked S-1 for identification.)
21 Q. Taking a look at what has been marked S-1 for
22 identification, could you tell me what that is, Sir?
23 A. This is an investigation report I submitted on
24 February 3, 1997 in relation to this investigation.
25 Q. Okay. And that is how many pages, Sir?

Isetts-Direct

7

- 1 A. Seven, seven pages.
2 Q. Prior to receiving that report, I had asked you a
3 question with regard to the date that you were made aware of
4 the suspect in the city of Newark?
5 A. Yes, that would be February 4, 1997.
6 Q. And you made reference to an individual who had
7 pointed the suspect out on that particular date.
8 Is that correct?
9 A. That's correct.
10 Q. And that individual's name is what, Sir?
11 A. Tony Brooks.
12 Q. After receiving this radio dispatch regarding
13 same, what did you do then?
14 A. Responded to the Newark homicide squad and assisted
15 again in the investigation.
16 Q. And when you responded to the Newark homicide
17 squad, who was there relative to this particular
18 investigation?
19 A. That would be myself, Sergeant Paul Lorenc of the
20 Newark homicide squad, and I believe it was also Detective
21 Keith Sheppard.
22 Q. And what role did each of these individuals play
23 with respect to this investigation; specifically, the
24 apprehension of the suspect?
25 A. I'm sorry. Could you repeat that question?

Isetts-Direct

8

- 1 Q. What role did those three individuals that you
2 named play with respect to the apprehension of the suspect?
3 A. What three individuals, Counsel?
4 Q. Sergeant Lorenc, Detective Sheppard, and I believe
5 you named some other individual, did you not?
6 A. Tony Brooks was transported in along with the suspect.
7 Q. What role did they play with respect to -- what
8 did Tony Brooks do with respect to anything regarding Roy
9 Dove? What did Sergeant Lorenc -- what role did he play, if
10 any, and what role did Keith Sheppard play, if any?
11 A. Well, Detective Sheppard assisted with the interviews
12 and with taking statements. Also, Sergeant Lorenc helped us
13 once we got the information from Tony Brooks, he constructed
14 a photo array for us of the defendant.
15 Q. And Detective Sheppard, how --
16 A. Assisted in doing the interviews and the statements.
17 Q. And who actually brought the suspect into custody?
18 A. That would be the radio car, the officers in the radio
19 car.
20 Q. And who are those officers?
21 A. Agair. I would have to refer to my report.
22 It's not listed in my report, Ma'am.
23 Q. When you arrived at the homicide unit in Newark --
24 A. Yes.
25 Q. -- was Mr. Dove present?

Isetts-Direct

9

- 1 A. He was in the holding area.
2 Q. And were you -- did you have an opportunity to
3 make observations of Mr. Dove?
4 A. Yes, I did.
5 Q. And what observations did you make with respect to
6 his physical condition?
7 A. He was just sitting in the holding area.
8 Q. How did he appear to be? Healthy?
9 A. Oh, yes.
10 Q. Okay. And did he have -- what observations did
11 you make with respect to his ability to perceive what was
12 going on at the time?
13 MR. ROBERTS: Objection, Judge.
14 THE COURT: Well, reframe your question.
15 Q. Did you have an occasion to speak at all with
16 Mr. Dove?
17 A. Yes.
18 Q. And when you spoke with Mr. Dove how would you
19 characterize his ability to understand what you were saying
20 to him?
21 MR. ROBERTS: Object to the form, Judge.
22 THE COURT: Did you have occasion to talk to him?
23 THE WITNESS: Yes, your Honor.
24 THE COURT: Did he respond to you?
25 THE WITNESS: Yes, he did.

Isetts-Direct

10

- 1 THE COURT: Go ahead.
2 Q. And when he responded to you, at least did he
3 appear to be coherent?
4 A. Yes.
5 Q. The holding cell that you say you -- that he was
6 present in, could you describe that holding cell?
7 A. It's located in a section of the homicide squad, and
8 it's a caged-in area with a bench and handcuffs to the
9 bench.
10 Q. Okay. Approximately, what size is that holding
11 cell?
12 A. I would say maybe four feet by six feet or -- yeah, I'd
13 say maybe four feet by six feet. It's not that big.
14 Q. When you were speaking with Mr. Dove, did he
15 remain in the holding cell?
16 A. Yes, he did.
17 Q. And during the course of speaking with him, did
18 you have an occasion to read him his rights?
19 A. Yes.
20 Q. And what rights did you read to him?
21 A. The Miranda rights.
22 Q. And, specifically, for the record, could you
23 indicate what you said to him?
24 A. Well, I read off the Miranda Waiver form, blank Miranda
25 Waiver form.

Isetts-Direct

11

- 1 Q. Are you --
2 MS. CHARLES: S-2 for identification.
3 (A Miranda Form is marked S-2 for identification.)
4 Q. Do you know the Miranda rights from memory?
5 A. Yes, but I wouldn't want to say it word for word unless
6 I refer to a sheet.
7 Q. Taking a look at what has been marked S-2 for
8 identification, what is that, Sir?
9 A. This is a Miranda Waiver form. It's a standard Miranda
10 Waiver form that we use, and this would be the one for
11 Marcus Grady.
12 Q. Would it be safe to say that it was the same
13 Miranda form that you utilized in order to read Mr. Dove his
14 rights?
15 A. Yeah, but I think it was actually on a Newark form, but
16 it's, I believe the wording is exactly the same.
17 Q. If you could read for the purposes of the record
18 the rights that you read to Mr. Dove?
19 A. Yes.
20 Well, Counsel, would you like me to advise what I first
21 told him before I read him the rights?
22 Q. Certainly.
23 A. I advised Mr. Dove that he was identified by several
24 witnesses as being identified as stabbing Keith Banks to
25 death, and at which time I proceeded to read him his rights.

Isetts-Direct

12

1 And I advised him that: Number 1, he has the right to
 2 remain silent.
 3 Number 2, anything he says can be used against him in a
 4 court of law.
 5 Number 3, he has the right to have a lawyer present
 6 while he's being questioned.
 7 Number 4, if he cannot afford to hire a lawyer one will
 8 be appointed to represent him before any questioning if he
 9 wishes one.
 10 And, Number 5, he has the right to stop answering
 11 questions or giving a statement at any time he wishes and
 12 does not have to give any reason. He also has the right to
 13 demand a lawyer during the giving of a statement or
 14 answering questions, and may stop until he arrives.
 15 If he cannot afford a lawyer, that one would be
 16 appointed to represent him.
 17 Q. After you read these rights to Mr. Dove, how did
 18 Mr. Dove respond?
 19 A. Well, when I asked him if he wished to talk to us about
 20 the incident he gave a quote, and if I can refer to my
 21 report I'd like to read it.
 22 Q. Yes, you can.
 23 And what was the quote?
 24 A. After being advised of his rights, he stated, meaning
 25 Mr. Dove, "Fuck you and your witnesses. I'll get some horse

Isetts-Cross

13

1 shit defense attorney to take a plea, so fuck you."
 2 Q. Did he say anything else with respect to -- after
 3 you advised him of his rights?
 4 A. Well, other than that quote, no.
 5 At that point myself, along with Detective -- I believe
 6 it was either Sheppard or Sabur, we ended the interview at
 7 that point and left the holding area at that point to
 8 continue with the investigation.
 9 MS. CHARLES: I have nothing further.
 10 THE COURT: Mr. Roberts.
 11 MR. ROBERTS: Thank you, Judge.
 12 CROSS EXAMINATION BY MR. ROBERTS:
 13 Q. Good morning, Detective.
 14 A. Good morning.
 15 Q. How long was Mr. Dove in the holding cell? Do you
 16 know?
 17 A. Well, I can only say when he was transported in with a
 18 radio car, Sir. I'm not sure exactly when he was escorted
 19 down to the Newark cell block.
 20 Q. What time did you get there?
 21 A. Excuse me. Well, I was notified around 9:30 p.m. about
 22 Roy Dove being picked up along with the witness.
 23 THE COURT: What time did you get there?
 24 THE WITNESS: Probably a little over an hour
 25 later, Sir. I live out of the county.

Isetts-Cross

14

- 1 Q. Is that in your report, or you're taking an
2 educated guess on that?
3 A. An educated guess, yes, Sir.
4 Q. So if you were notified at 9:30, at the time you
5 were notified, was he in custody at that time?
6 A. Yes, Sir.
7 Q. So he was in custody -- excuse me -- for at least
8 an hour, at least an hour by the time you got there?
9 A. Correct.
10 Q. Do you know if he was in that holding cell the
11 whole time?
12 A. Well, I wasn't there. I couldn't make a guess.
13 Q. If you know. I don't want you to guess.
14 A. I don't know.
15 Q. When you got to the holding cell, again,
16 approximate time was that you got there at 10:30. What time
17 did you get to see Mr. Dove in the holding cell?
18 A. Well, the holding cell is located in the Newark
19 homicide squad. That's where I responded to.
20 Q. You responded right to the -- right to Mr. Dove?
21 A. Right to the Newark homicide squad.
22 Q. My question is, you responded about 10:30, and
23 what period of time elapsed before you interviewed, went to
24 interview Mr. Dove?
25 A. Well, before I looked at him, or before I interviewed

Isetts-Cross

15

- 1 him?
2 Q. Before you interviewed him?
3 A. Well, that would be after the statements were taken. I
4 really can't give a time, Sir.
5 Q. Let me leave that.
6 So you don't know exactly how long it took, right?
7 A. I guess if the ending times are in the statements of
8 Rasheedah Banks, and also Derrick Mc White, I could probably
9 make an approximate guess.
10 Q. Okay. So the statements were taken -- the
11 interview with Mr. Dove was done after the statements were
12 taken of these individuals?
13 A. Correct.
14 Q. When you went to see Mr. Dove, tell me again who
15 went with you?
16 A. I believe -- I know it was myself, and I'm not sure
17 whether it was Detective Sheppard or Detective Sabur.
18 Q. One other or just one --
19 A. I believe it was one. It could have been both of them,
20 but I'm almost positive that Detective Sheppard was standing
21 next to me.
22 Q. And you indicated in response to the prosecutor's
23 questions that you spoke to him before the statement you say
24 he made, and you were able to ascertain that he understood
25 what you were saying?

Isetts-Cross

16

- 1 A. Yeah, he appeared to be coherent, understanding what I
2 was saying.
- 3 Q. And he responded to you?
- 4 A. He responded after I read him the Miranda rights.
- 5 Q. I'm talking about before that. When you indicated
6 that during your give and take of Mr. Dove you were able to
7 ascertain that he understood what you were saying and what
8 kind of questions you were asking. My question is this:
9 Prior to that statement, did you speak to him?
- 10 A. The only thing I advised him is that he was
11 witnessed -- several witnesses observed him stabbing the
12 victim, and that I was going to read him his Miranda rights.
- 13 Q. Did he say anything to you before that?
- 14 A. I don't recall whether he said yes, or he shook his
15 head, but I -- it led me to believe that he understood what
16 I was saying.
- 17 Q. Well, you said before that he responded to you on
18 the basis -- excuse me, Judge. That's a witness.
- 19 A PERSON IN COURTROOM: What time will it start?
- 20 MS. CHARLES: Your Honor, if I could interrupt
21 this hearing for a second to advise her properly.
- 22 THE COURT: Go ahead.
- 23 (Short recess.)
- 24 THE COURT: You may continue, Mr. Roberts.
- 25 MR. ROBERTS: Thank you, Judge.

Isetts-Cross

17

- 1 Q. You indicated that he responded to you coherently?
- 2 A. Yes, Sir.
- 3 Q. What questions were asked where he responded
4 coherently to you?
- 5 A. I don't believe whether he responded in a verbal, or
6 whether he shook his head, but he understood what I was
7 saying when I advised him that several witnesses had
8 observed him stabbing the victim to death, and that I was
9 going to read him his Miranda rights.
- 10 Q. So your statement and judgment that he responded
11 coherently was based either on some sort of body language or
12 maybe some words?
- 13 A. Correct.
- 14 Q. And the report indicates only the words that you
15 recited here before about his horse shit attorney, right?
- 16 A. That was the statement he made, yes, Sir.
- 17 Q. When you gave him the Miranda warnings, you had
18 the Miranda Warning itself. You typed the warning in your
19 hand, and you read from that.
- 20 Is that correct?
- 21 A. A blank form, yes, Sir.
- 22 Q. And the blank form contains all the warnings? You
23 read them off, right?
- 24 A. Yes, Sir.
- 25 Q. And then there's a place on the bottom for a

1 signature.
2 Is that correct?
3 A. Yes, Sir.
4 Q. And when you read him that Miranda form he was
5 handcuffed to the bench in the jail in the holding cell?
6 A. That's correct, Sir.
7 Q. After you finished reading the form -- by the way,
8 did you tell him that he should sign the form?
9 A. No, Sir.
10 Q. After you read it, did you indicate to him, here,
11 sign it?
12 A. No, Sir.
13 Q. He was never told or noticed that he should sign
14 that form?
15 A. No, Sir.
16 Q. When he made the statement, allegedly made the
17 statement you're talking about -- I'm sorry -- I think
18 Detective Sheppard was with you?
19 A. I believe so, yes, Sir.
20 Q. Anybody else in that area that you can remember
21 who may have heard what he was talking about, what he said?
22 A. I don't recall, Sir.
23 Q. The holding cell itself is in the homicide squad?
24 A. It's within the homicide squad in a separate room from
25 actually where the squad room is where the detectives sit.

1 Q. When he made the statement, did you take any notes
2 as to what he said?
3 A. Yes, Sir.
4 Q. Do you have those notes?
5 A. No, Sir. They're destroyed after I do my reports.
6 Q. You destroyed the notes?
7 A. Yes.
8 Q. When did you make the notes?
9 A. While talking to him.
10 Q. While talking to him?
11 A. When he gave me the statement, when he gave me this
12 statement I jotted it down.
13 Q. Right then?
14 A. Yes.
15 Q. What did you jot it down on?
16 A. Pad.
17 Q. You had a pad with you?
18 A. Yes, Sir.
19 Q. And immediately after he made that statement you
20 jotted it down on notes?
21 A. Yes, Sir.
22 Q. And the notes were taken where?
23 A. I'm sorry. I didn't get the question, Sir.
24 Q. Where were the notes taken?
25 A. In the holding area.

Isetts-Cross

- 1 Q. No. No. I'm sorry. After you took the notes
 2 what did you do with the notes?
 3 A. Well, after I compiled my report I put them through a
 4 shredder.
 5 Q. When did you compile the report? How long after
 6 this incident?
 7 A. Well, it would have been after the arrest of Keith
 8 Banks. I mean -- I'm sorry -- after the arrest of Roy Dove,
 9 and he was arrested, I believe it was on February 7.
 10 Q. Did you make the report?
 11 A. I'm sorry -- February 4 he was arrested.
 12 Q. He was arrested February 4th?
 13 A. Correct.
 14 Q. And when was the report done?
 15 A. Well, I started typing it on February 3.
 16 Q. Didn't you just say you made your report after he
 17 was arrested?
 18 A. That's correct, Sir. That part of the report was done
 19 after he was arrested.
 20 Q. So you did part of the report before he was
 21 arrested, and part after he was arrested?
 22 A. I started my report on February 3. That's the date
 23 generated in the computer, February 3.
 24 Q. That was before he was arrested, right?
 25 A. Correct.

Isetts-Cross

- 1 Q. You just said before that you wrote the report
 2 after he was arrested; correct? Correct? Yes or no, Sir,
 3 yes or no?
 4 A. No, that's not what I said.
 5 Q. You didn't say that just now?
 6 A. No, Sir.
 7 Q. What did you say?
 8 A. The section of the report of -- dealing with his arrest
 9 was done after he was arrested. There's a date in my report
 10 that reflects that.
 11 Q. You didn't just say before just a little while
 12 ago -- can you answer yes or no -- let me put it this way:
 13 Did you say just a little while ago that you wrote the
 14 report after he was arrested?
 15 A. That part of the report.
 16 Q. Didn't you just say the report, you didn't specify
 17 what part, did you?
 18 A. Well, I apologize, Sir, maybe I should.
 19 Q. You don't have to apologize. I just want to know
 20 what you said.
 21 A. Well, I don't recall then exactly what I said but I
 22 wrote that section of the report after he was arrested.
 23 Q. And after that, the notes were shredded?
 24 A. Correct.
 25 Q. Were there other notes you took as well?

Isetts-Redirect

22

1 MS. CHARLES: Objection, your Honor.
 2 MR. ROBERTS: I'm referring to this statement.
 3 THE COURT: Did you make any other notes
 4 concerning this statement?
 5 THE WITNESS: No, Sir.
 6 Q. Did any other detective, to your knowledge, make
 7 any notes concerning this statement?
 8 A. I wouldn't know, Sir.
 9 MR. ROBERTS: I have nothing further.
 10 MS. CHARLES: Just one question.
 11 THE WITNESS: Sure.
 12 REDIRECT EXAMINATION BY MS. CHARLES:
 13 Q. I believe when you were being questioned by
 14 counsel on cross examination, you indicated that Mr. Dove
 15 was arrested on February 4. I would just ask you to take a
 16 look at what I believe --
 17 MS. CHARLES: This will be S-3 for identification.
 18 (An Arrest Report is marked S-3 for identification.)
 19 Q. Taking a look at what has been marked S-3 for
 20 identification, what is that, Sir?
 21 A. An arrest report of Roy Dove.
 22 Q. And the date that is reflected on that report is
 23 what date, Sir?
 24 A. That would be February 3, '97.
 25 Q. And is that, in fact, the date that Mr. Dove was

Isetts-Recross

23

1 arrested, or was there some other date that he was arrested?
 2 A. I guess that would be the date. I would imagine it was
 3 a typo in my investigative report.
 4 MS. CHARLES: I have nothing further, your Honor.
 5 RECROSS EXAMINATION BY MR. ROBERTS:
 6 Q. I'm sorry, I didn't understand that. What's a
 7 typo in your report?
 8 A. The date. I put down Monday, on Monday, February 4.
 9 It should be Monday, February 3.
 10 Q. Where are you referring to, Sir?
 11 A. Page 4 of my report. Right above it I have, on Sunday,
 12 February 2. Below it I have Monday, February 4. It should
 13 be February 3.
 14 Q. So then -- and you wrote the report on the 3rd?
 15 A. No, I probably wrote the report the following work day.
 16 Q. Well, if you take a look at the first page where
 17 that is, it says, homicide, your name and the date. You see
 18 that?
 19 A. Correct.
 20 Q. What does that date refer to?
 21 A. February 3.
 22 Q. Is that the date you wrote the report or --
 23 A. That's the day I started the report in the computer,
 24 and as I go along with the investigation I save the pieces I
 25 typed and continue with it as the investigation goes along.

Isetts-Recross

24

1 Q. You save the pieces that you've typed?
 2 A. In the computer.
 3 Q. Is that where they're saved, in the computer?
 4 A. I don't know if they're still there. I'm transferred
 5 out. I don't know if my files were deleted.
 6 Q. But at that time whatever you typed was saved in
 7 the computer?
 8 A. On a disk, yes.
 9 Q. On a disk. And that would include the notes of
 10 the statement?
 11 A. Well, it includes -- what you see is what's in the
 12 computer right here.
 13 Q. And you don't know if that data exists -- I'm
 14 sorry -- if that exists now today?
 15 A. I wouldn't know, Sir.
 16 MR. ROBERTS: Judge, can I ask the witness if he
 17 can determine if, in fact, he does have a computer disk?
 18 THE COURT: What happened to the disk? Do you
 19 know?
 20 THE WITNESS: Well, your Honor, I'm transferred
 21 out. I don't know where the disk is. I wouldn't know, Sir.
 22 Q. How hard is it to find out? Can you find out?
 23 A. Well, it would be my disk, and I don't know what I did
 24 with it. I misplaced it after I got transferred.
 25 MR. ROBERTS: Thank you.

Argument-Roberts

25

1 THE WITNESS: Okay.
 2 THE COURT: You may step down.
 3 THE WITNESS: Thank you, your Honor.
 4 (The witness is excused.)
 5 THE COURT: Mr. Roberts.
 6 MR. ROBERTS: Your Honor, the statement that
 7 allegedly was given by Mr. Dove, frankly, the interpretation
 8 of it is kind of ambiguous. F you and your witnesses. I'll
 9 get some horse shit defense attorney to take a plea, so F
 10 you.
 11 Initially, I'd like to talk about the value of
 12 that statement. You would know if there's some piece of
 13 evidence that's so prejudicial that shouldn't be allowed in.
 14 In this case this statement may or may not be interpreted as
 15 sort of a confession. It is so ambiguous that I suggest
 16 that because it's open to different interpretations it
 17 shouldn't be allowed in.
 18 The State has numerous witnesses, eye witnesses,
 19 who will testify that they saw Mr. Dove take a knife and
 20 stab the victim in the chest. They have a witness who will
 21 testify that a -- a relative who will testify that Mr. Dove,
 22 shortly thereafter, came back to his house and told him that
 23 he had just stabbed somebody. To compound that kind of
 24 evidence, which is justifiably prejudicial, with evidence
 25 that I suggest is unjustifiably prejudicial is unfair to the

Argument-Charles

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1 defendant. If in that statement -- I'm not even talking
2 about the circumstances in which it was given, but if in
3 that statement he clearly said, F you, I did it, but I'm
4 going to get some lawyer to get me a plea, I couldn't argue
5 as I'm arguing. But, again, the statement is open to
6 interpretation. On that basis alone I suggest it should be
7 kept out.

8 Further, you have a situation where a man has been
9 kept chained to a bench for at least two hours, probably
10 longer. Detectives come in. They read the Miranda Warning
11 to him. Apparently they -- although the Miranda Warning has
12 a place for a signature, either didn't read that part, or
13 for whatever reason he wasn't advised that he had to sign
14 it, or had a right to sign it, and then uttered this
15 spontaneous statement under the circumstances, I think is
16 unfair as well and shouldn't be allowed in.

17 The man is just told, after being chained to a
18 bench for a period of time, that witnesses say he killed
19 somebody, and then this statement is issued shortly after
20 Miranda Warning is allegedly given, but not signed, I think
21 fails to comport with the law, and I would ask on those two
22 bases to keep this out.

23 THE COURT: Miss Charles.

24 MS. CHARLES: Your Honor, I would submit that the
25 constraints of Miranda have been met in this particular

Argument-Charles

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1 case. You have testimony before you that this individual
2 received his Miranda rights, and as per the investigator who
3 gave him the Miranda rights, he appeared at least to have
4 understood those rights. But I think what is most
5 compelling that this individual not only understood his
6 rights but understood what was being said to him at that
7 time was the manner in which he responded to the detective.
8 The detective indicated that he -- as the detective
9 indicated, that he informed Mr. Dove that some witnesses had
10 made an identification of him with respect to a particular
11 homicide. He responded coherently after hearing his Miranda
12 rights indicating as counsel has stated, F you and your
13 witnesses. I will get some horse shit attorney to take a
14 plea. I would submit that Mr. Dove was very aware, and was
15 able to understand what was going on.

16 He, likewise, was aware and understood his Miranda
17 rights and chose not to give an -- obviously, a written
18 statement but respond in kind with an oral statement and
19 conclude the interview at that point. So I would submit
20 that the statement should be allowed.

21 I would also indicate -- ask your Honor to --
22 strike that, your Honor.

23 I would also submit that counsel's argument with
24 respect to the strength or weakness of the State's case, or
25 how the State should go about proving itself should --

Court Ruling

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1 proving its case should not be for your consideration.
 2 Whether or not the State actually utilizes the statement is,
 3 obviously, up to the State. If your Honor is willing to
 4 allow it in pursuant to Miranda, and what other evidence the
 5 State may have relative to this particular incident is for
 6 the State to use as it sees fit. So I'll submit that that
 7 is not necessarily a part of your decision.

8 THE COURT: I'll allow it as a remark made by the
 9 defendant. It appears that he was in no distress. It
 10 appears that while he may have been in the holding cell for
 11 more than an hour, he did not appear to be under any
 12 inability to understand what was taking place. On that
 13 basis I'll deny the motion. Thank you.

14 I understand the jury is out there. We're ready
 15 to proceed with the selection of a jury.

16 MS. CHARLES: Thank you, your Honor.

17 THE COURT: Have them come in.

18 (The jury is selected and sworn.)

19 (The Court gives its preliminary remarks to the jurors.)

20 THE COURT: Now, we realize we picked a jury much
 21 faster than we had anticipated. Therefore, no witnesses
 22 right now are available. I'm going to send you out to
 23 lunch. I want you back at 1:30. That doesn't mean you have
 24 to eat all that time, but we want you back here at 1:30 so
 25 we can start the case. I'll see you then. Take a good

Colloquy

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1 look at the room number and my face. We'll see you at 1:30.
 2 If any of you want to leave any of your belongings in there,
 3 you can. The door will be locked. That's up to you. I'll
 4 see you at 1:30.

5 (The Court takes the luncheon recess.)

6 THE COURT: All right. Have the jury come out.

7 MR. ROBERTS: Just one second. Could you do me a
 8 favor? One of the jurors approached me to ask a question.
 9 I told her I couldn't talk to her.

10 THE COURT: I'll tell them.

11 MR. ROBERTS: I hope I haven't offended her.

12 THE COURT: All right. Have the jury come out,
 13 please. Thanks.

14 (The jury is brought into the courtroom.)

15 THE COURT: Ladies and gentlemen, before we get
 16 started I want to impress upon you, if at any time any of
 17 you want to take any break for any reason at all raise your
 18 hand. That's the only way I'll know it. We'll be glad to
 19 accommodate you at any time. If you're unable to hear
 20 anything, raise your hand. I'll either ask the witnesses to
 21 talk louder or ask the reporter to read back the answer.
 22 And, again, lawyers are under instructions not to talk to
 23 jurors. So if you find the lawyers walking away from you
 24 it's because they're under a regulation not to speak with
 25 any jurors whatsoever. So don't take any offense, and don't

Opening-Charles

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1 be angry at any lawyer who might walk away from you who says
2 he or she can't talk to you.

3 Miss Charles, you may commence your opening.

4 MS. CHARLES: Good afternoon, ladies and
5 gentlemen. Once again my name is Rosalyn Cary Charles, and
6 I'm the assistant prosecutor here in Essex County.

7 As an assistant prosecutor in the county I too am
8 charged with respect to the indictment that his Honor
9 referred to earlier, I'm charged with the responsibility of
10 presenting the charges contained in that indictment in a
11 manner which will allow you to reach both a fair and
12 intelligent verdict with regard to the incident that brings
13 this matter before you at this time.

14 Now, Roy Dove, the individual seated on the other
15 side of counsel is charged with murder. He's charged with
16 robbery during the commission of a murder. He's charged
17 with the murder itself. He's charged with possession of a
18 weapon, and in this case that weapon is a knife. He's
19 charged with the possession of that weapon for unlawful
20 purpose.

21 What brings all of this to you, why are we here?
22 Not just because of the charges, but because of what
23 actually happened on February 1, 1997, in the city of
24 Newark. What actually happened on February 1, 1997, in the
25 city of Newark on South 19th Street in the city. It's about

Opening-Charles

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1 10:30 in the evening. This case, ladies and gentlemen, this
2 case is about a victim, Keith Banks, who fell as a result of
3 the wounds he received from Roy Dove.

4 This case, ladies and gentlemen, is about the
5 people who sell drugs. This case is about people who buy
6 drugs. This case is about people who direct individuals to
7 buy drugs to people to sell drugs, and this case, ladies and
8 gentlemen, is about individuals, if you will, who rip off
9 people who sell drugs.

10 On February 1, 1997, Roy Dove came to the area
11 that I had described about the time that I indicated, and he
12 was looking, if you will, to rip off a drug dealer, to rob a
13 drug dealer. And in this particular case that drug dealer,
14 that individual who sold drugs was Keith Banks. So he
15 starts inquiring about the neighborhood, where can I get,
16 can I find this individual? He inquires of a young lady,
17 who's standing on the corner -- I say young lady. She's not
18 quite an adult. She's a teenager.

19 And he inquired where can I get some drugs? This
20 young lady, Nicole Gurley, said I don't have anything, but
21 my friend, Keith, he's selling cocaine. So Nicole directs
22 Mr. Dove over to Keith Banks. And, yes, a drug transaction
23 begins to take place, and Mr. Banks starts inquiring about
24 the kind of narcotic and how much narcotic he wants, if he
25 wants a certain amount of cocaine. So Mr. Banks goes into

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1 the hallway, presumably where his stash is, where he keeps
2 his drugs. He leaves the street, goes into a hallway. He
3 comes back with the product. And by the product, ladies and
4 gentlemen, I mean the narcotic.

5 And when he hands it to this individual, well,
6 what would we expect? Obviously, we're not talking about
7 selling lemonade, but when you hand a product, when you're
8 selling something to someone you expect to get paid for that
9 something that you're selling to someone. And, obviously, I
10 would like to be here and tell you -- and be talking to you
11 about instead of narcotics, it would be much easier to sit
12 here and talk to you about fruit or some other kind of wares
13 that one can legally peddle on the streets, on our city
14 streets. But, no, I'm here talking to you about the kind of
15 product Mr. Banks peddled, and that product was cocaine.

16 So he's back with his product to satisfy what he
17 believes to be a customer.

18 Mr. Dove is not forthcoming. In fact, as he's
19 messing, or reaching into his pockets acting as if he's
20 going to hand Mr. Banks some money, he comes out and he
21 lunges, and he hits Mr. Banks in his chest area, in his left
22 chest.

23 By this time, Miss Gurley, the individual who had
24 directed Mr. Dove to Mr. Banks, was around in the vicinity,
25 somewhere around on the porch area outside of -- just

Opening-Charles

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1 outside of this location. She was in the company of
2 Rasheedah Banks, the decedent's sister, and Mykia Wilson,
3 the decedent's girlfriend, and screams are heard, and they
4 notice that Mr. Banks was tussling, if you will, with this
5 individual, Mr. Dove.

6 So the three young ladies come to assist their
7 friend, their brother, their boyfriend. So they're all
8 tussling. Mr. Banks is involved in this tussle. But
9 Mr. Banks begins to slow up, and by slow up I mean he's not
10 as able as he was initially. He starts to get a little
11 short of breath. So he notices that he is stabbed in the
12 left upper part of his chest and is bleeding a lot. So
13 their attention is turned from dealing with this individual
14 to dealing with the decedent, and this individual runs off
15 and is ultimately apprehended a few days later because
16 someone else who witnessed this incident on that particular
17 day pointed him out to the police and said that's the
18 individual that stabbed Keith.

19 Keith goes on to the hospital in the company of
20 his girlfriend, and he later dies as a result of his wounds
21 because he was stabbed in the chest, ladies and gentlemen,
22 directly in the heart. He died that evening.

23 Ladies and gentlemen, the testimony that the State
24 will produce in support of the charge of murder, a knowing
25 purposeful murder, I would submit, ladies and gentlemen,

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1 that the testimony that the State will produce in support of
 2 the charge of felony murder, murder committed in the course
 3 of doing or committing a felony, that felony being robbery,
 4 I would likewise submit that the testimony the State will
 5 produce in support of the charge of robbery, possession of a
 6 knife, and possession of the knife for unlawful purpose will
 7 be quite convincing at the end of this case. But that
 8 testimony will come from this area right here, the witness
 9 stand.

10 Recall what this case is about, and who this case
 11 is about. Remember, there's an old adage, but remember, the
 12 crime begets crime. Ladies and gentlemen, and just as
 13 Mr. Banks may have been involved in a less than -- we'll
 14 just say an illegal activity, he is more likely than not to
 15 be a victim of crime than individuals who, vast majority of
 16 individuals who involve themselves in legal activity only
 17 because of the status as a drug peddler on the streets
 18 vulnerable to people like Mr. Dove to find him easy prey
 19 because they're involved in illegality, who cares? We do,
 20 and the charge supports same.

21 Thank you.

22 THE COURT: Thank you.

23 Mr. Roberts.

24 MR. ROBERTS: Thank you, your Honor.

25 If it please the Court, Ms. Charles, Mr. Dove,

Opening-Roberts

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1 ladies and gentlemen of the jury, what you just heard from
 2 the prosecutor is what the State hopes and intends, as best
 3 they can, to prove their case.

4 The judge will tell you what the prosecutor says
 5 is not evidence. The only evidence in this case is what
 6 comes from the witness stand. That's all you will be
 7 instructed to judge, to decide what the truth is, and what
 8 should happen in this case. Because when you boil all of
 9 this down in any case, any case, it's simply a search for
 10 the truth. This case is a homicide case. Mr. Dove is
 11 charged with a murder. I submit that the search for the
 12 truth must be one that is done with extreme care, that you
 13 should put the testimony of the witnesses under a microscope
 14 and be certain that what they are saying is the truth
 15 because if it's not, because if you determine that these
 16 witnesses are not telling the truth, then you must, as the
 17 Court will tell you, acquit Mr. Dove.

18 His Honor told you there are certain
 19 constitutional guaranties that Mr. Dove has as we stand and
 20 sit here today. I'm going to repeat them, forgive me, but
 21 they're important enough to be repeated because it's these
 22 guaranties that separate us from so many other countries in
 23 this world. Because as we sit here this man is presumed to
 24 be innocent, and that presumption stays with him throughout
 25 the entire trial, and not until and if, ladies and

Colloquy

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1 gentlemen, you go into that jury room and say he's guilty,
 2 does that presumption leave.
 3 Judge, I'm sorry. One of the jurors may be in
 4 distress.
 5 THE COURT: Are you okay? Do you want to take a
 6 break? We'll take a break then. We'll excuse you. Please,
 7 the whole jury, please excuse all of you for a few minutes.
 8 (Jury recess.)
 9 THE SHERIFF'S OFFICER: She just realized the
 10 victim is an old boyfriend of hers.
 11 MR. ROBERTS: I'm sorry. I didn't hear that.
 12 THE SHERIFF'S OFFICER: The victim is an old
 13 boyfriend of hers.
 14 MR. ROBERTS: Oh my God.
 15 THE COURT: All right. We better excuse her
 16 before she has a chance to talk to any member of the jury
 17 then. All right. We have to go without her. Just tell her
 18 to return to Jury Control, and I'll explain to them.
 19 MR. ROBERTS: Is this the first time the name has
 20 been mentioned?
 21 MS. CHARLES: I mentioned it at the opening. I
 22 said Keith Banks.
 23 THE COURT: The name Banks was mentioned before.
 24 MR. ROBERTS: Before your opening?
 25 MS. CHARLES: Yes, Keith Banks.

Colloquy

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1 MR. ROBERTS: I hope she hasn't said anything.
 2 THE SHERIFF'S OFFICER: Is that the one that
 3 approached you?
 4 MR. ROBERTS: That's why she probably approached
 5 me. She is the one that wanted to ask me a question. I
 6 didn't talk to her.
 7 THE COURT: Have her come in. We'll ask if she
 8 talked to anyone.
 9 MS. CHARLES: It was probably confirmed when she
 10 saw --
 11 THE COURT: Bring her out here.
 12 Counsel, we'll have her come up here.
 13 (Ms. Fields is brought out of the jury room and into the
 14 courtroom with the attorneys and defendant present.)
 15 THE COURT: Miss Fields, I've asked you to come up
 16 here, please, with the lawyers. I understand from what's
 17 been told to me that you now find out that you know the
 18 person, who the victim was.
 19 MS. FIELDS: (Shakes head yes.)
 20 THE COURT: Is this what you tried to talk to
 21 Mr. Roberts about before?
 22 MS. FIELDS: Yes.
 23 THE COURT: Have you told any member of the jury
 24 about the fact --
 25 MS. FIELDS: No.

Opening-Roberts

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1 THE COURT: -- that you knew this person?
 2 MS. FIELDS: No.
 3 THE COURT: I'm going to excuse you. I thank you
 4 very much.
 5 THE SHERIFF'S OFFICER: Go back down to Jury
 6 Control. Okay.
 7 (Juror, Ms. Fields, is excused.)
 8 THE COURT: I see no objection why we can't
 9 continue then, Mr. Roberts?
 10 MR. ROBERTS: No, Judge, should be a relatively
 11 short trial.
 12 THE COURT: Ask the jury to come out. I'll
 13 explain to them that she doesn't feel well and has been
 14 excused.
 15 (The jury is brought into the courtroom.)
 16 THE COURT: Members of the jury, Miss Fields has
 17 been taken sick. We have excused her, so we are going ahead
 18 with the rest of the trial without her.
 19 Mr. Roberts, start your opening at any point you
 20 want.
 21 MR. ROBERTS: Thank you, Judge.
 22 I won't start from the beginning. Don't worry.
 23 I was talking about the constitutional grounds
 24 that I suggest are so important and so incredibly important
 25 to this case, the presumption we talked about.

Opening-Roberts

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1 The burden of proof, as his Honor has said, is on
 2 the State. The defense doesn't have to prove a single thing
 3 to you, ladies and gentlemen. As his Honor said, I could
 4 sit there and keep my mouth shut the whole day. It's up to
 5 the State to prove its case. The burden never shifts to
 6 this end of the table, and the case must be proven beyond a
 7 reasonable doubt.
 8 I won't get into the law because at the end of the
 9 case his Honor will charge you. He'll tell you what the law
 10 is and how to apply it, and he'll tell you what a reasonable
 11 doubt is. But each and every element of every count of that
 12 indictment has to be proven beyond a reasonable doubt by the
 13 State, and I ask of you to give this man nothing more than
 14 he's entitled to, and those are those constitutional
 15 guaranties, and I suggest when you put that together to the
 16 kind of testimony that you will hear, you will find that the
 17 State has failed to prove its case beyond a reasonable
 18 doubt.
 19 You will hear, I believe, that on this night some
 20 of the witnesses right before this incident were smoking
 21 blunts, marijuana; that some of these witnesses and the
 22 decedent were selling drugs.
 23 You will find that some of these witnesses have
 24 criminal records, serious criminal records, and his Honor
 25 will tell you when judging the testimony of someone who has

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1 been convicted of a crime, he will tell you some of the
2 special care that you'll be instructed to follow when
3 judging whether or not that testimony is credible.

4 You will hear that it was a dark night; that
5 something occurred on that dark night that these witnesses
6 claim they saw.

7 I suggest you will hear inconsistencies in their
8 testimony. I will suggest that as a result of the kind of
9 testimony you will hear, you will have questions, and I ask
10 you to listen for and think about the logic, what's
11 credible, what really happens out there. For example, when
12 you hear the testimony, consider whether or not it's logical
13 for someone who was going to rip off a drug dealer to take a
14 small amount of drugs that he's been handed when he probably
15 knows where his stash is, and in doing so in full -- in view
16 of many, many witnesses pulls out a knife and stabs him.
17 When you hear that testimony, ask yourselves is that what
18 happens? Is that credible?

19 You're going to hear testimony, I believe, about a
20 knife. There was no knife that was recovered, at least none
21 that can be brought before you. I believe you'll hear
22 testimony about that knife, and when you hear it ask
23 yourselves, is this logical; is this credible; is this
24 something we can believe? You will hear testimony about
25 people who supplied Mr. Banks with drugs that night, and you

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1 will hear testimony, I believe, about certain threats that
2 these people made to Mr. Banks and his sister. They were
3 selling drugs for these people. You will hear, I believe,
4 from the very question the police asked when statements were
5 taken as to whether or not they really knew what happened,
6 they, the police, were they certain themselves as a result
7 of their very questions that they asked.

8 The witnesses will take the stand. I ask you,
9 please view them under a microscope. Ask yourselves when
10 they're finished if what they said adds up to proof beyond a
11 reasonable doubt that Roy Dove did anything, anything. He
12 stands before you presumed to be innocent. I ask you when
13 all the testimony is finished, again, to give him what every
14 citizen in this country is entitled to, all those
15 guaranties, and a careful, precise view, and review of the
16 testimony, and if you do I'm confident you will, I suggest,
17 you will return a verdict of not guilty as to all counts.

18 Thank you.

19 THE COURT: Thank you, Mr. Roberts.

20 You may call your witness.

21 MS. CHARLES: Yes, your Honor. The State calls
22 Nicole Gurley.

23 NICOLE GURLEY, STATE'S WITNESS, SWORN.

24 THE COURT: Miss Gurley, you're going to be asked
25 some questions. If you don't understand the question, don't

Gurley-Direct

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- 1 be afraid to say I don't understand it. It will be
 2 repeated. But when you answer, please try to keep your
 3 answer loud enough so all the jurors can hear you. Okay?
 4 THE WITNESS: Yes.
 5 THE COURT: Go ahead.
 6 DIRECT EXAMINATION BY MS. CHARLES:
 7 Q. Good afternoon, Miss Gurley.
 8 A. Good afternoon.
 9 Q. Could you tell me how old you are?
 10 A. 17.
 11 Q. And back in -- on February 1 of 1997, how old were
 12 you?
 13 A. I was 16.
 14 Q. I'm going to direct your attention to February 1
 15 of 1997, at about 10:25 or so in the evening. Do you recall
 16 where you were?
 17 A. Yes.
 18 Q. Where were you?
 19 A. On 19th Street.
 20 Q. And where on 19th Street?
 21 A. At my girlfriend's house.
 22 Q. Who is your girlfriend?
 23 A. Rasheedah.
 24 Q. And what's Rasheedah's last name, if you know?
 25 A. Banks.

Gurley-Direct

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- 1 Q. And who else -- were you with anyone else?
 2 A. My other girlfriend.
 3 Q. And what's her name?
 4 A. Mykia.
 5 Q. And do you know Mykia's last name?
 6 A. Wilson.
 7 Q. Do you know the -- and where on 19th Street --
 8 strike that.
 9 Where on 19th Street were you and your girlfriends?
 10 A. 503 South 19th Street. 503 South 19th Street.
 11 Q. I'll stand right back here. Project your voice.
 12 A. 503 South 19th.
 13 Q. And 503 South 19th Street is whose address?
 14 A. Rasheedah's.
 15 Q. Rasheedah Banks?
 16 A. Yes.
 17 Q. And could you describe 503 South 19th Street?
 18 A. It's a building, a tri-city building.
 19 Q. It's a what kind of a building?
 20 A. I mean it's like a six-apartment house building.
 21 Q. A six-apartment house?
 22 A. Yes.
 23 Q. And you say you're on 19th Street. Were you
 24 actually in 503 19th Street, or were you outside of 503 19th
 25 Street?

Gurley-Direct

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- 1 A. I probably was outside the building.
 2 Q. And what were you doing outside the building?
 3 A. Smoking a blunt.
 4 MR. ROBERTS: I'm sorry, Judge.
 5 I'm having a hard time hearing you.
 6 A. I was smoking a blunt outside the building.
 7 Q. When you say smoking a blunt, what is that?
 8 A. Weed.
 9 Q. Weed meaning marijuana. Okay.
 10 And were the other -- were your other girlfriends
 11 smoking this also?
 12 A. Yes.
 13 Q. Yes. Okay.
 14 Do you know an individual by the name of Keith Banks?
 15 A. Yes.
 16 Q. Who is Keith Banks?
 17 A. Rasheedah's brother.
 18 Q. And on that particular evening when you were
 19 outside of 503 South 19th Street smoking a blunt, where was
 20 Keith Banks?
 21 A. He was outside the building too.
 22 Q. And what was he doing?
 23 A. Chilling.
 24 Q. Excuse me?
 25 A. He was chilling. He was talking to Mykia.

Gurley-Direct

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- 1 Q. Mykia. When you say chilling, just give us an
 2 idea.
 3 A. Him, Mykia, was outside talking.
 4 Q. Did there come a time when you walked away from
 5 your girlfriends?
 6 A. Yes.
 7 Q. Okay. What did you do when you walked away?
 8 A. I stepped to the corner.
 9 Q. You stepped to the corner. Okay.
 10 Now, and what did you do on the corner?
 11 A. Nothing. I was just standing out there helping Keith.
 12 Q. Helping Keith. What do you mean by helping Keith?
 13 A. Sell something.
 14 Q. You were helping him sell something?
 15 A. Yes.
 16 Q. And what was this something you were helping him
 17 sell?
 18 A. Drugs.
 19 Q. And what kind of drugs were they?
 20 A. Cook-up.
 21 Q. Cook-up?
 22 A. Coke.
 23 Q. And when you say cook-up, what's cook-up?
 24 A. It's coke.
 25 Q. Coke?

Gurley-Direct

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1 A. Cocaine, cook-up.
 2 Q. Why do they call it cook-up?
 3 A. Because it's already cooked up.
 4 Q. As opposed to not cooked up?
 5 A. Yes.
 6 Q. Now, it's about 10:25 or so in the evening,
 7 correct?
 8 A. I don't know. I don't remember what time it was.
 9 Q. Okay. What was the lighting like in the area
 10 where you were standing on the corner?
 11 A. It was a street light on right there, and it was bright
 12 out there. You could see.
 13 Q. It was bright out there?
 14 A. Yes.
 15 Q. And let's just go back to 503. The house that you
 16 walked away from, could you describe the lighting out there?
 17 MR. ROBERTS: May I have a very brief side bar,
 18 quick one?
 19 THE COURT: All right.
 20 (Side bar.)
 21 MR. ROBERTS: Judge, I know she's hard to hear but
 22 the prosecutor is repeating every answer that she gives,
 23 probably because it's difficult to hear. But I would object
 24 to keep repeating answers.
 25 THE COURT: No. If this is her way of trying a

Gurley-Direct

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1 case, I see no reason why she should stop it. She's not
 2 leading at this point.
 3 MR. ROBERTS: But she's, by repeating the answer,
 4 she's emphasizing the answer. Now it's coming from both the
 5 witness and the prosecutor.
 6 THE COURT: That may be. We're having a hearing
 7 situation here now as well. We've closed the windows too.
 8 I'm leaning forward so I can hear what this witness is
 9 saying myself.
 10 MR. ROBERTS: I am too, Judge, but it's unfair for
 11 the prosecutor to have this jury hear the answer twice. Let
 12 the witness speak, and if they can't hear her, the jurors
 13 are instructed to raise their hands. I suggest that's the
 14 way it could proceed.
 15 THE COURT: I can't find any fault with that. I
 16 trust that it won't be necessary unless she thinks it's
 17 absolutely necessary to emphasize what she's hearing,
 18 period.
 19 (Open court.)
 20 THE COURT: Miss Charles, you may continue.
 21 Q. Could you describe -- I believe the last question
 22 I asked was, could you describe the lighting, or lighting
 23 around 503 South 19th Street?
 24 A. Street light, the street light.
 25 Q. Okay. I'm going to stand back here again. And

Gurley-Direct

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1 when you say street lights, how would you describe the
 2 visibility or --
 3 A. It was bright. You could see out there, too.
 4 Q. Now, while you were on the corner of South 19th
 5 Street, and if I may, what corner was this, South 19th
 6 Street and what other?
 7 A. 15th Avenue.
 8 Q. And 15th Avenue. And what's on the corner of
 9 South 19th Street and 15th Avenue?
 10 A. A cleaners.
 11 Q. Excuse me?
 12 A. The side I was on -- I was on the side the cleaners are
 13 on.
 14 Q. And in order to get to the side -- strike that.
 15 Where in relation to the cleaners is 503 South 19th
 16 Street?
 17 A. Maybe about two houses down.
 18 Q. Is it -- which side of the street is it on with
 19 reference --
 20 A. The other side, the cleaners right here, and the house
 21 right here.
 22 Q. Would you be able to, if I asked you, to draw a
 23 little diagram showing the corner and the house of 503 South
 24 19th Street? Would you do that?
 25 THE COURT: All right. There's crayon here.

Gurley-Direct

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1 We'll put the light on in a moment.
 2 Q. Actually, use this, something other than yellow.
 3 THE COURT: Draw it first, and then explain it
 4 later. Okay?
 5 THE WITNESS: Okay.
 6 A. All right. This is the cleaners, and this is the
 7 house.
 8 Q. I'm sorry, Judge --
 9 THE COURT: That's the cleaners?
 10 THE WITNESS: This is the cleaners, and this the
 11 house.
 12 THE COURT: Now, you drew the cleaners.
 13 THE WITNESS: See, the cleaners on the other side
 14 of the street, and the house is in the other side. Do you
 15 understand what I'm saying?
 16 Q. I see that you've drawn a circle here.
 17 A. That represents the cleaners.
 18 Q. Why? Is it round?
 19 A. No, I just put it there like that.
 20 Q. Now, so the circle is on one side of the street?
 21 A. Yeah.
 22 Q. And the houses are on the other side of the
 23 street?
 24 A. Yes.
 25 Q. And this is in between?

Gurley-Direct

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- 1 A. The street.
 2 Q. We can just mark that South 19th Street.
 3 And where is the corner that you say you were standing
 4 on in relation to all of this?
 5 A. Right here.
 6 Q. Could we just draw another street wherever that
 7 corner is?
 8 A. Ain't no -- oh, going across.
 9 Q. However it's situated.
 10 A. This is the bar. The cleaners right here, and across
 11 the street from the front of the cleaners is a bar.
 12 Q. So it's an intersection, actually, doesn't
 13 parallel?
 14 A. Yeah.
 15 Q. Could you put a C where you say the cleaners is,
 16 and put 503 wherever 503 is.
 17 And you said there's a bar around there?
 18 A. This the bar.
 19 Q. Put a bar. Okay. All right.
 20 Now, the X represents what?
 21 A. Myself.
 22 Q. That's where you were?
 23 A. Uh-huh.
 24 Q. And are you able to estimate roughly how far from
 25 503 you were standing when standing in that corner?

Gurley-Direct

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- 1 A. No, I don't know how many feet it is. It's not that
 2 far.
 3 Q. Are you able to look in this courtroom and find a
 4 distance that would be about the same?
 5 A. Maybe from here to here.
 6 Q. Maybe from across the room right there?
 7 THE COURT: Across the room. That's 30 feet.
 8 Q. Now, you said that you went on the corner?
 9 A. I can sit down now?
 10 Q. Oh, sit down. In fact, I'll go over there.
 11 You indicated that you left your friends at 503, and
 12 you went to the corner.
 13 Is that correct?
 14 A. Yes.
 15 Q. And the reason you went to the corner was for
 16 what?
 17 A. To help sales.
 18 Q. To help?
 19 A. To help run sales.
 20 Q. And where was Keith in relation to --
 21 A. He was on the porch.
 22 C. He was on the porch. The porch where?
 23 A. 503.
 24 Q. And what did you do when you helped Keith with the
 25 sales?

Gurley-Direct

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- 1 A. If somebody asked for something, I send them to him.
 2 Q. Did there come a time that evening when someone
 3 asked for something?
 4 A. Yes.
 5 Q. And what happened? What happened when that
 6 happened, when that someone asked for product?
 7 A. I send him to Keith.
 8 Q. Approximately how many people did you direct to
 9 Keith?
 10 A. Not that many, because I wasn't out there that long;
 11 maybe about two or three.
 12 Q. Two or three. And how long were you on the corner
 13 directing these individuals to Keith?
 14 A. When I went out there at that time, I was only out
 15 there for like ten minutes or something like that. I wasn't
 16 out there that long.
 17 Q. Did there come a time when you directed someone to
 18 Keith -- well, excuse me. Strike that.
 19 Do you recall the conversation you had with the last
 20 person you directed to Keith?
 21 A. Yes.
 22 Q. What was that conversation?
 23 A. He wanted to know how much drugs he could get for a
 24 certain amount of money.
 25 Q. Okay. And do you recall how much money he had, or

Gurley-Direct

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- 1 how much money he said he had?
 2 A. He said he had \$40.
 3 Q. He said he had \$40.
 4 And when you heard this, what did you do?
 5 A. I called Keith, and I asked him, I said, he want to
 6 know how many he could get for 40, and then he said, tell
 7 him to come down the street, and the person went down the
 8 street -- well, across the street.
 9 Q. And when that person went across the street, where
 10 did you -- where were you?
 11 A. Still on the corner.
 12 Q. Still on the corner.
 13 And while you were still on the corner, what did you
 14 observe of Keith and this individual that you directed to
 15 him?
 16 A. I wasn't watching them. But then, like after a few
 17 seconds or something, if it was even -- even if it was like
 18 a minute, I just heard my friends yelling, and I heard his
 19 sister saying, he got cut, and so I ran down the street.
 20 Q. And when you say your friends, you heard your
 21 friends yelling, what friends are you referring to?
 22 A. Rasheedah and Mykia.
 23 Q. And when you say you heard his sister say he got
 24 cut, who are you referring to?
 25 MR. ROBERTS: Objection, the question was, who was

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1 she referring to?
 2 THE COURT: No. What did you hear?
 3 THE WITNESS: What?
 4 MR. ROBERTS: Maybe I misunderstood the question.
 5 Q. The question --
 6 THE COURT: When you heard Rasheedah yelling, what
 7 did she say?
 8 THE WITNESS: She was saying her brother, Keith --
 9 she was saying Keith got cut. That's what she was saying.
 10 Q. After you heard all of this, what did you do?
 11 A. I ran down the street.
 12 Q. In what direction?
 13 A. Across the street to 503.
 14 Q. And when you got to 503, what did you do?
 15 A. I noticed that there was fighting, and so I jumped in.
 16 Q. And when you say jumped in, what do you exactly
 17 mean by that?
 18 A. I helped him fight.
 19 Q. And what role did you play in this fight?
 20 A. I was kicking him.
 21 Q. And where was the man while you were kicking him?
 22 A. He was on the curb.
 23 Q. On the curb?
 24 A. Yeah, he was like he was about to fall.
 25 Q. He was about to fall.

Gurley-Direct

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1 Did you see what -- where was Rasheedah while you were
 2 kicking this man?
 3 A. Rasheedah was there. She was hitting him, too.
 4 Q. And where was Mykia while you were doing what you
 5 were doing?
 6 A. She was doing the same.
 7 Q. And where was Keith while all this was going on?
 8 A. Keith was fighting. He was fighting the man first.
 9 Q. Did there come a time when you stopped fighting
 10 this man?
 11 A. Yeah.
 12 Q. Could you tell me what were the circumstances that
 13 caused you to stop fighting this man?
 14 A. Keith started saying his heart was hurting, so we just
 15 let him go.
 16 Q. You say --
 17 A. Let the man go.
 18 Q. Excuse me?
 19 A. We let the man go and started seeing if Keith was okay.
 20 Q. And when you let the man go, what did you do for
 21 Keith?
 22 A. I didn't do nothing. Mykia took him around the corner.
 23 Q. What did you observe of Keith?
 24 A. He was saying he couldn't breathe. He was shaking a
 25 little bit too.

Gurley-Direct

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Q. Now, after -- strike that, Judge.
 THE COURT: This diagram will be marked S-3 for identification.
 MS. CHARLES: I believe it's S-4, your Honor.
 THE COURT: S-4, the diagram will be marked for identification.
 (A Diagram is marked S-4 for identification.
 A Statement of Miss Gurley is marked S-5 for identification.)
 Q. Miss Gurley, I'm going to show you what's been marked S-5 for identification. You don't have to read it. I'd like you to tell us what that is, if you recognize it?
 A. Eh-eh.
 Q. You don't know what it is?
 A. What?
 Q. What's this piece of paper?
 A. Oh, that's my statement.
 Q. And do you know when you gave that statement?
 A. Uh-huh.
 Q. When did you give it?
 A. The night all this happened, on February 2.
 Q. Do you know -- do you remember who you gave it to?
 A. Mr. -- um -- Isetts, or something like that. It was --
 Q. You said there were what now?
 A. Two men.

Gurley-Direct

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Q. Two men?
 A. Uh-huh.
 Q. But you recall Mr. Isetts. Is that correct?
 A. Yeah.
 Q. And do you recall -- how long is that -- excuse me.
 How long is that statement that's been marked S-5? How many pages?
 A. Three.
 Q. Do you recall how long it took you to give that statement to Mr. Isetts?
 A. It took a little while. I know it was over an hour.
 Q. And do you know where you gave that statement to Mr. Isetts?
 A. Downtown. I think it was on -- I don't know where it's at. I think it was on Green Street.
 Q. What kind of place was it?
 A. He said it was the homicide place. I don't know.
 Q. And when you were -- when you gave that statement, do you recall being asked what the individual who stabbed your friend was wearing?
 A. Uh-huh.
 Q. And do you recall being asked if you could describe that individual?

Gurley-Direct

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- 1 A. Yes.
- 2 Q. Do you recall - had you responded --
- 3 MR. ROBERTS: Judge, I object to what was given in
- 4 the statement. If the question would be, do you recall what
- 5 was he wearing, what's the description, fine. But to refer
- 6 to a statement is improper, I suggest.
- 7 THE COURT: I'll allow it. Go ahead.
- 8 Q. Do you recall what you told the police with regard
- 9 to the description?
- 10 A. No, I can't remember what he had on and stuff.
- 11 Q. I can't hear you.
- 12 A. I can't remember what he had on and stuff.
- 13 Q. Can you recall anything else about what you may
- 14 have said?
- 15 A. Through the statement, or just about --
- 16 Q. What you told the police.
- 17 A. I remember describing him.
- 18 Q. Okay. And how did you describe him?
- 19 A. As short, dark skin, I think like five-four or
- 20 five-three. That's all I remember.
- 21 Q. If you could -- and you said at the end, that's
- 22 all --
- 23 A. That I remember.
- 24 Q. And when you say say dark, what did you mean by dark?
- 25 A. He was dark skinned.

Gurley-Cross

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- 1 Q. Would he be my complexion?
- 2 A. Darker than you.
- 3 Q. Would he be your complexion?
- 4 A. Darker than me; a little darker than me.
- 5 Q. Excuse me?
- 6 A. A little darker than me.
- 7 Q. A little darker than you.
- 8 Do you see the individual who you were fighting with
- 9 that evening, who stabbed Keith, in court today?
- 10 A. Yes.
- 11 Q. Could you point him out and indicate what he's
- 12 wearing now?
- 13 A. He have on a purple suit, purple tie --
- 14 MR. ROBERTS: Indicating the defendant, for the
- 15 record.
- 16 THE COURT: Indicating the defendant.
- 17 THE WITNESS: He have on a purple suit, purple
- 18 tie, and white shirt and black shoes.
- 19 THE COURT: Okay.
- 20 MS. CHARLES: I have nothing further.
- 21 THE COURT: Mr. Roberts.
- 22 CROSS EXAMINATION BY MR. ROBERTS:
- 23 Q. Miss Gurley, did you just indicate, in response to
- 24 the prosecutor's question when she was talking about the
- 25 description, that at this time you couldn't give a

Gurley-Cross

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1 description of the person?
 2 A. At this time I could not.
 3 Q. And when you gave a description -- when you
 4 referred to the description, that was the description that
 5 you gave in that statement.
 6 Is that right?
 7 A. That's what I remember. That's not what I remember
 8 from the statement, though.
 9 Q. Okay. You indicated -- you told us that the
 10 persons who were fighting with the individual that night
 11 were yourself, Rasheedah and --
 12 A. Mykia.
 13 Q. Mykia and Keith?
 14 A. Uh-huh.
 15 Q. Right. And at one point you were all fighting
 16 with him, wrestling with him, kicking him, whatever, right?
 17 A. Yes.
 18 Q. And there came a time when he indicated he was in
 19 pain or something. Then you stopped and concerned
 20 yourselves with Keith?
 21 A. Yes.
 22 Q. Okay. How long were you smoking the blunt,
 23 marijuana, that night?
 24 A. Maybe five minutes.
 25 Q. And was that something that you do every night

Gurley-Cross

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1 when you're out there?
 2 A. No.
 3 Q. No?
 4 A. No.
 5 Q. This night was an exception, was it?
 6 A. I smoke weed, but I don't smoke every day. I used to
 7 smoke it. I used to smoke weed, but I don't -- I didn't
 8 smoke every day.
 9 Q. And the purpose for smoking weed is to get high,
 10 right?
 11 A. Yes.
 12 Q. And who was smoking weed that night?
 13 A. Me, Rasheedah, Mykia.
 14 Q. Keith smoking as well?
 15 A. Yes.
 16 Q. And after smoking for about five minutes or so,
 17 you said you went out to the street?
 18 A. Uh-huh.
 19 Q. And it was your purpose -- and if I'm saying
 20 something wrong, tell me -- it was your purpose to steer
 21 people to Keith so he could sell drugs, right?
 22 A. Yes.
 23 Q. And that's when you went where you indicated the
 24 X, to the corner?
 25 A. Uh-huh.

Gurley-Cross

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- 1 Q. And when people came by, you would direct them to
2 Keith?
3 A. If they asked me for something, yes.
4 Q. Isn't it a fact that on that night, the last
5 person that you steered to Keith, you approached him first.
6 You asked him, what was up --
7 A. No.
8 Q. Isn't that so?
9 A. No.
10 Q. I ask you to refer to your report -- your
11 statement, S-5 for identification. Referring to the second
12 question from the bottom.
13 A. Uh-huh.
14 Q. Okay. Remember being asked this question and
15 giving the following answer:
16 Can you tell me exactly what occurred in relation to
17 this incident, question.
18 ANSWER: I seen a man standing on the corner, and I
19 asked him what was up. He asked me if I was straight.
20 Do you remember giving that answer to the question?
21 A. Yeah, but I didn't say it like this.
22 Q. You didn't say it like that?
23 A. Well, regardless, I didn't ask him what was up first.
24 I didn't ask him what was up first, because I wouldn't do
25 nothing like that, no.

Gurley-Cross

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- 1 Q. So this question and answer is incorrect?
2 A. Yes, it is.
3 Q. You see right next to the last word of your
4 answer --
5 A. And I put my name.
6 Q. That's your initials there, right?
7 A. Uh-huh.
8 Q. Was that for the purposes of making a correction
9 in that statement?
10 A. Yeah, they spelled straight wrong.
11 Q. They spelled straight wrong. So you read the
12 question. You read the answer. You made a correction to
13 the spelling of the word straight, right?
14 A. Yes. I must have didn't read the question. I probably
15 just made the word right, because if I see somebody standing
16 on the corner I won't ask them what's up, because you don't
17 know who that could be.
18 Q. Did you read this whole statement before you
19 signed it?
20 A. Yeah, I should have.
21 Q. Did the policeman who took the statement from you
22 ask you if there were any additions or corrections to it?
23 A. I don't remember. They had to.
24 Q. You don't remember that?
25 A. Eh-eh. That was a year ago, wasn't it? I don't really

Gurley-Cross

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1 remember.
2 Q. Okay. After you -- but you remember reading the
3 statement?
4 A. Yes, I do.
5 Q. And aside from where the initials showing your
6 initials, showing corrections, which occurs 1, 2, 3, 4, 5
7 times, aside from those initials where corrections are made,
8 were there any other corrections that you made?
9 A. I don't remember.
10 Q. Was someone named Foo out there?
11 A. Yes.
12 Q. And Foo was selling drugs as well?
13 A. Uh-huh.
14 Q. Do you know his full name?
15 A. No.
16 Q. Do you recall, when you gave the statement, that
17 you remembered that the person who you were fighting with
18 had a red sweater, red hoody on?
19 A. I said that.
20 Q. Do you remember --
21 A. Uh-huh.
22 Q. If you don't remember --
23 A. I remember telling them that from you bringing it up,
24 but I can't remember off hand.
25 Q. Now, there was another man there, was there not,

Gurley-Cross

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1 with the man who you had gotten into a fight with?
2 A. Uh-huh.
3 Q. When did you first see him?
4 A. I see him afterwards.
5 Q. You saw him afterwards?
6 A. I seen him walking up, because he was looking at what
7 was going on.
8 Q. Had you seen him before that?
9 A. I seen him like a half an hour before that. When I
10 first seen him come around there, I stay -- they had came.
11 This was like the second time they coming around there. The
12 first time they came around, they was talking to the two
13 guys that sell out there, too, and that guy was out there
14 with them.
15 Q. So the first time they came, this was before --
16 A. This happened.
17 Q. This incident we're talking about. The two men
18 had come once before asking for drugs?
19 A. Yeah, but they didn't talk to me.
20 Q. But you saw them?
21 A. I seen them. I didn't pay them no mind.
22 Q. How many people were selling drugs that night?
23 A. A couple people sell drugs out there. I don't remember
24 how many.
25 Q. When they came back a second time, the second man

Gurley-Cross

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1 was with him again?
 2 A. Yeah.
 3 Q. Right. And do you remember giving a description
 4 of the second man?
 5 A. Yes.
 6 Q. Can you remember today what he looked like?
 7 A. No.
 8 Q. Could you read your report and see if that
 9 refreshes your recollection -- I say report -- statement, as
 10 to what the second man looked like. It's in the middle of
 11 the page.
 12 A. Yeah, I remember saying this.
 13 Q. What was his description?
 14 A. A black male, brown skin, big lips. He was wearing a
 15 white jacket, blue jeans, and a white cap.
 16 Q. After the fight, then you noticed the second man
 17 again?
 18 A. Yeah.
 19 Q. And where was he?
 20 A. He was on the corner, I think.
 21 Q. Now, which corner was he on?
 22 A. He was on 19th.
 23 Q. If you could --
 24 A. See, this is where I was at. At first he was on this
 25 side, the other side of the street, though.

Gurley-Cross

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1 Q. Could you just put a --
 2 A. I'll put a --
 3 Q. An M.
 4 A. This is where he was at.
 5 Q. What's that, another X?
 6 A. That's another circle.
 7 THE COURT: Turn your back to me.
 8 Q. How did you mark him? What is that?
 9 A. Another circle.
 10 Q. Little circle. Okay. You can sit back down.
 11 So you ran back to 503 when you saw the fight?
 12 A. Uh-huh.
 13 Q. Right. And after the fight was over, that's when
 14 you noticed the second man on that corner?
 15 A. Yeah, there was -- I seen him coming outside and
 16 looking.
 17 Q. When you spoke to him, was he alone, or was he --
 18 let me withdraw that. I'll repeat it.
 19 Was he alone when you saw him on that corner?
 20 A. After that happened?
 21 Q. Yes.
 22 A. Yeah, he was probably selling.
 23 Q. There wasn't a crowd that he had come out of?
 24 A. I don't -- eh-eh, I don't think so.
 25 Q. Do you remember in that same statement that you

Gurley-Cross

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1 gave, being asked this question and giving these answers,
 2 referring to the second man:
 3 QUESTION: Do you know where this man was at the time
 4 of the incident?
 5 ANSWER: During this fight I did not see him, but after
 6 the fight he popped out and was in the crowd.
 7 Do you remember giving that answer?
 8 A. He was in the crowd. He didn't come out when all the
 9 fighting -- when Keith came out, a crowd form, and that's
 10 when he came out and started coming over into the crowd.
 11 Q. How many people were there?
 12 A. After the fight, I don't know, a couple of people.
 13 People was coming out. When people fight, people be out.
 14 Q. Was there a crowd?
 15 A. Yeah, people was coming from around the corner.
 16 Q. Let me ask the question. Got to do it this way,
 17 or she can't take it down.
 18 What is a crowd to you? How many people make up a
 19 crowd?
 20 A. More than six people make up a crowd.
 21 Q. More than six? Okay.
 22 So when you saw him right after the fight, was he in a
 23 crowd, or was he by himself?
 24 A. After the fight he came over into the crowd where we
 25 was out looking.

Gurley-Cross

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1 Q. He came into the crowd. Did he walk right over to
 2 where the fight took place?
 3 A. No. When we was getting Keith to the corner, that's
 4 when I finally see him.
 5 Q. Okay. Did you see where the man you were fighting
 6 with -- I think you said at one point he left, right?
 7 A. What?
 8 Q. After you were hitting him --
 9 A. Yeah.
 10 Q. You stopped because you were concerned with Keith?
 11 A. And he left, he run.
 12 Q. Did you see where he ran?
 13 A. Ran down 14th Avenue.
 14 Q. Can you show us where that would be on the map?
 15 A. This is 14th Ave. See, this is 15th Ave., and this
 16 would be 14th Ave.
 17 Q. Could you make another street sign, if you could?
 18 A. This is 15th Ave. It was right here. He ran down
 19 towards here, turned towards 14th Ave. Unless he ran
 20 through a lot or something, I don't know. I didn't see if
 21 he ran through a lot, but this is the way he ran, 14th.
 22 Q. When you sell, or help Keith sell drugs, does he
 23 pay you for that, or did he pay you for that?
 24 A. Yeah, he be paying me.
 25 Q. Did he pay you with money or product?

Gurley-Cross

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- 1 A. Money.
2 Q. Just money?
3 A. Yes.
4 Q. Did you use coke at that time?
5 A. Sometimes.
6 Q. Did you use it that night?
7 A. No.
8 Q. How long had you been doing this? How long had
9 you been out there steering people to Keith?
10 A. Are you talking about that day?
11 Q. No, no. How long before that day had you been
12 doing this?
13 A. Only been doing it sometimes, so off and on.
14 Q. You were 16 at this time?
15 A. Yes.
16 Q. How old were you when you first started?
17 A. What?
18 Q. Steering people to Keith.
19 A. 16. Only was doing it for a couple of times. I do it
20 if he asked me, sometimes I do it.
21 Q. And he pays you for it?
22 A. I don't do it every day, or nothing like that.
23 Q. And he pays you for it?
24 A. Yeah, he'll pay me.
25 Q. And I think you said that you don't smoke

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- 1 marijuana every night, but that particular night you were
2 smoking it?
3 A. Yes, I smoked that night.
4 Q. After the fight, I think you said -- correct me if
5 I'm wrong -- that you were taking Keith to the corner?
6 A. Yeah, Mykia, we was walking behind him -- Mykia was
7 walking him to the corner.
8 Q. He was walking himself?
9 A. Yeah, he was trying to.
10 Q. Walking to the corner by the --
11 A. Cleaners. Right here, he was hitting this corner
12 towards 18th Street. We was on 19th Street. He hit the
13 cleaners corner, started right walking here, right here to
14 this house.
15 Q. By down, you're indicating the lower part of the
16 map you're drawing, and that's the way he was going?
17 A. Yeah, around the corner.
18 Q. Excuse me. He was walking, and you were following
19 him, right? What happened then?
20 A. He got Mykia, and somebody, could they -- somebody to
21 take him to the hospital, and Keith got in the car, and I
22 don't see him after that anymore.
23 Q. And did somebody do that?
24 A. Yeah.
25 Q. Did you go back then to 503?

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- 1 A. Yeah, I was in the front of the building.
 2 Q. Who did you go with?
 3 A. Me and Rasheedah.
 4 Q. What did you do when you got to 503?
 5 A. We went upstairs. Yeah, we went upstairs.
 6 Q. Before you went upstairs, did you notice anything
 7 in the street?
 8 A. Yeah, I think, I think Rasheedah found the knife.
 9 Q. Did you see the knife?
 10 A. Yeah, I seen it.
 11 Q. Where did you see it?
 12 A. It was on the curb. I think it was on the curb.
 13 Q. The curb where?
 14 A. In front of the building.
 15 Q. In front of 503?
 16 A. Yeah.
 17 Q. What did the knife look like?
 18 A. It's about like this. It had a brown handle, and it
 19 had something like, you know, like how knives be having
 20 little -- it looked like a switchblade or something, and it
 21 had like little gold things or something like that.
 22 Q. It looked like a switchblade, and it had something
 23 gold on it. Okay.
 24 And when's the last time you saw that knife?
 25 A. Right there, when it was right there. I didn't see it

Gurley-Cross

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- 1 no more.
 2 Q. And after you saw the knife, you and Rasheedah
 3 walked upstairs?
 4 A. No, I said before.
 5 Q. Pardon?
 6 A. I think before we walked upstairs.
 7 Q. That's --
 8 A. We didn't go in the house, but we walked upstairs.
 9 Q. Before you walked upstairs, you saw the knife?
 10 A. No, afterwards.
 11 Q. Forgive me. After the fight, after you walked
 12 Keith around the corner, you went back to 503?
 13 A. Right. Walked upstairs. We didn't go all the way
 14 upstairs. We walked in the hallway, up those stairs to the
 15 hallway, and we was walking. She was asking did I think he
 16 was going to be okay, and we walked back down the stairs,
 17 not, mind you, not upstairs to the house, to the hallway,
 18 and we came back downstairs, and that's when we seen it.
 19 Q. So you walked into the hallway of 503 with
 20 Rasheedah?
 21 A. Yes.
 22 Q. You had a conversation. Then you walked back out
 23 in front of the house -- or let me finish -- the front of
 24 the house, or to the hallway?
 25 A. No, we walked out the hallway.

Gurley-Cross

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- 1 Q. Out of the hallway, and that's when you saw the
2 knife?
3 A. We started walking away from the building, we seen it.
4 Q. And then what did you do?
5 A. We picked it up.
6 Q. Picked it up?
7 A. Rasheedah picked it up, and I don't know what she did
8 with it. I thought the police took it, because the cops
9 came.
10 Q. By the way, you had a chance to review your
11 statement, did you not, before you testified?
12 A. Uh-huh.
13 Q. The prosecutor asked you -- there's nothing wrong
14 with it -- prosecutor asked you to look it over?
15 A. Yeah, to make sure everything was -- I scanned through
16 it.
17 Q. Did you talk about this case with any other
18 witnesses before you testified today?
19 A. No, we didn't know we were going to court today.
20 Q. You didn't know that the trial was going to be
21 sometime this month?
22 A. No, we didn't know -- we did, yes, but we didn't know
23 today.
24 Q. In that statement, do you remember, by the way,
25 you testified you saw Rasheedah pick it up?

Gurley-Cross

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- 1 A. No, I didn't see her pick it up.
2 Q. Did you just say that Rasheedah took the knife?
3 A. Uh-huh.
4 Q. She didn't pick it up?
5 A. I don't think so. I don't think she picked it up.
6 Q. What did she do with it?
7 A. We seen it on the ground, but I don't think she picked
8 it up.
9 Q. Did you not just say that she did?
10 A. Yeah, but I'm not sure.
11 Q. You're not sure?
12 A. Eh-eh.
13 Q. And in your statement that you gave to the police
14 back on February 2, did you say something in there about
15 Rasheedah picking up the knife?
16 A. I don't remember.
17 Q. Can you take a look and tell us if it's in there?
18 Referring to the second page, that's when the discussion of
19 the knife takes place.
20 A. Um, I said I thought the police took it.
21 Q. And does it anywhere say there that Rasheedah --
22 the last time you saw it, it was on the steps, it says, does
23 it not?
24 A. In the curb, I say.
25 Q. Does it not say on the steps?

Gurley-Cross

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1 A. I didn't say on the steps, though.
2 Q. Is that a mistake too?
3 A. I don't remember. It might have been on the steps. If
4 I said it was on the steps, then it was on the steps.
5 Q. You said that the lighting was bright?
6 A. It wasn't bright, but it was good enough to be seen.
7 Q. In response to the prosecutor's questions,
8 right --
9 A. Yeah.
10 Q. Do you consider the lighting in this courtroom
11 bright?
12 A. No, it ain't bright.
13 Q. It's not bright. What is it?
14 A. You could see, but it's, like it's dim.
15 Q. I'm sorry?
16 A. It's dim.
17 Q. I didn't get that last word.
18 A. The lights are dim.
19 Q. I'm sorry.
20 A. Yes, and I didn't say the lights was bright. I said
21 you could see in them. It wasn't real dark, and it wasn't
22 real light, but you could see like it wasn't daytime
23 outside. It was nighttime, but I could see.
24 Q. You did not tell this jury about maybe 15, 20
25 minutes ago in response to the prosecutor's questions twice,

Gurley-Cross

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1 that it was bright out there?
2 A. I might have did. I could see out there.
3 Q. Okay. The lighting in here is dim, though, right?
4 A. Uh-huh.
5 Q. Was the lighting out there at 10:30 at night
6 brighter?
7 A. When I say bright --
8 Q. Can I finish the question, please?
9 A. Go ahead, talk.
10 Q. Was the lighting that night brighter than inside
11 this courtroom?
12 A. Nah, it was street light bright. That's what I mean
13 when I say bright. I don't mean like it was real light
14 outside. The street lights was bright, and it was good
15 enough. I could see. I'm not blind, and if it's dark
16 outside, you can go outside, can't you see?
17 Q. The fact is, Ma'am, at 10:30 at night it's dark,
18 is it not?
19 A. Yeah, but the street lights on.
20 Q. Please. And the area was lighted by a couple of
21 street lights, right?
22 A. Yes.
23 Q. And let me ask you one more time -- well, you just
24 said it again. The answer to the question, when you said it
25 was bright, you meant street light bright?

Gurley-Cross

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1 A. Yeah.
2 Q. You didn't mean bright bright?
3 A. Yeah.
4 Q. And the light in this courtroom is dim?
5 A. Uh-huh.
6 Q. The prosecutor -- let me withdraw that.
7 The detective who took the statement, Detective Isetts,
8 asked you about this man known as Foo, did he not?
9 A. Yeah.
10 Q. And you described Foo to him, did you not?
11 A. I think so.
12 Q. Foo was another person out there selling drugs?
13 A. Yes.
14 Q. And you described him as being short, about
15 five-six or five-seven. Do you remember that?
16 A. Yeah.
17 Q. Is that your recollection of Foo today?
18 A. I don't really know height like that. The way, like
19 when I was there, and I was showed like what size he was,
20 and they'll tell me how many inches, it was like that, but,
21 yeah, I still can remember what he looked like, but, yeah,
22 unless he looked different.
23 Q. When you were telling the police a description of
24 the person who you were fighting with, they were telling you
25 how tall he was in inches and feet?

Gurley-Cross

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1 A. Like, if I do like this, you could tell how many inches
2 that is, right, how many feet, how many inches?
3 Q. The question is, is -- did the police tell you
4 after you gave a description how high, how tall he was with
5 inches and feet?
6 A. Yeah, they'd tell me if I do like this, they'll be
7 like, how about five-two, or something like that.
8 Q. In the statement where you say the black male is
9 short, five-three or five-four, the five-three or five-four
10 came from the police telling you what they --
11 A. They came from me. I knew he was a little bit taller
12 than me.
13 Q. Let me finish the question. I don't mean to be
14 impolite. We have to do it this way.
15 Where you say five-three or five-four, that height came
16 from the police telling you what it was after you showed
17 them with your hands how tall you thought he was? Is that
18 so?
19 A. I said it myself. I know it was like a little taller
20 than me. So that's --
21 Q. So you said it yourself?
22 A. I said I don't know if it's exactly that tall, but
23 that's about how tall.
24 Q. Did the police tell you the height?
25 A. Not for the man, they didn't.

Gurley-Cross

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- 1 Q. I'm sorry?
- 2 A. They didn't tell me the height for the man, I said. I
- 3 said it myself, because it's a -- it was a little bit taller
- 4 than me.
- 5 Q. Didn't you just 30 seconds ago say the police told
- 6 you?
- 7 A. I was talking about Foo, not the man.
- 8 MR. ROBERTS: Can I -- please, she has to have a
- 9 question.
- 10 THE COURT: You wait until he finishes asking his
- 11 question.
- 12 Go ahead.
- 13 Q. Didn't you testify 30 seconds ago, tell this jury
- 14 that the police told you what the height was in inches and
- 15 feet?
- 16 A. I said about Foo. I didn't say about that man. Didn't
- 17 I?
- 18 Q. Pardon me?
- 19 A. Didn't I say about Foo. You said how tall was Foo,
- 20 five-seven. I said the cops told me that about him. I
- 21 didn't say about the man.
- 22 Q. The cops told you how tall Foo was?
- 23 A. When I showed him like this, he said five-seven or so,
- 24 but I did not say that about the man. You ain't going to
- 25 sit and tell me I said that about him, because I didn't.

Gurley-Cross

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- 1 Q. You didn't say that?
- 2 A. Not about him.
- 3 Q. Did the police say it?
- 4 A. No, I said it. You getting me mixed up now.
- 5 THE COURT: Just a moment. Wait.
- 6 Q. That's a simple question, did the police say it?
- 7 A. About Foo, not him.
- 8 Q. Not about him?
- 9 A. I said it myself.
- 10 Q. Do you remember the police asking you in the
- 11 statement, when the statement was taken, whether or not
- 12 Keith had had a fight with a family member earlier that day?
- 13 A. I thought -- no, they asked me did one of his family
- 14 members have a fight that day.
- 15 Q. I'm sorry?
- 16 A. They asked me, did one of his family members have a
- 17 fight that day.
- 18 Q. Well, let me refresh your recollection. The last
- 19 page of your statement --
- 20 A. Let me see this myself.
- 21 Q. Got it?
- 22 A. Wait a minute.
- 23 Q. Last page, where you signed your name at the
- 24 bottom.
- 25 A. Uh-huh.

Gurley-Cross

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1 Q. Do you remember being asked this question: Do you
 2 know if there was a fight between Keith and a family member
 3 of his earlier today? Do you remember just --
 4 A. Yeah, but I didn't mean fighting each other.
 5 Q. Do you remember being asked that question?
 6 A. Yeah, um.
 7 Q. Do you remember what your answer was?
 8 A. No, I'm about to see right now. Oh, yeah.
 9 Q. And what was that?
 10 A. I thought Berta had a fight that day.
 11 Q. And who's Berta?
 12 A. His sister.
 13 Q. And who did you think she had a fight with?
 14 A. She had a fight with Bauldy.
 15 Q. Who's Bauldy?
 16 A. This dude from around the corner.
 17 Q. I'm sorry?
 18 A. This boy from around the corner.
 19 Q. Do you know what that was about?
 20 A. No.
 21 Q. Who is Malik?
 22 MS. CHARLES: Objection, your Honor. This is
 23 totally outside the scope of my direct.
 24 THE COURT: Yes. Go ahead.
 25 MR. ROBERTS: It's contained in the statement,

Gurley-Cross

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1 Judge. It's part of it.
 2 THE COURT: Of course the direct so far -- it's
 3 outside of the course of direct examination.
 4 MR. ROBERTS: Well, then I'll ask for a side bar
 5 rather than blurt it out, if I could.
 6 THE COURT: All right. I'll hear you.
 7 (Side bar.)
 8 MR. ROBERTS: Judge, anything that refers to the
 9 incidents that occurred, the questions were asked and
 10 answers were given in this report, I suggest, is open for
 11 examination. The question I'm asking, she said before they
 12 smoked a blunt Keith had got some packs from Malik. There
 13 will be testimony later on that there were threats from
 14 Malik that occurred to Keith and Rasheedah.
 15 THE COURT: That is not -- why is that not cross
 16 examination?
 17 MS. CHARLES: He's trying to develop another
 18 way -- strike that.
 19 I would submit that he can call her as a witness
 20 to develop this supposed allegation against Kurt and Malik.
 21 THE COURT: So what difference does it make? Go
 22 ahead.
 23 (Open court.)
 24 THE COURT: You may continue, Mr. Roberts.
 25 Q. Who is Malik?

Gurley-Cross

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- 1 A. This man that people used to clock for outside there.
 2 Q. I'm sorry?
 3 A. This man people used to sell drugs for out there.
 4 Q. Say that again, please. I couldn't hear.
 5 A. The guys out there used to sell drugs for him.
 6 Q. The guys out there used to sell drugs for Malik?
 7 A. For him.
 8 Q. And was Keith one of the people who worked for
 9 Malik?
 10 A. Yes.
 11 Q. And did Malik not drop some packs off that night
 12 to sell?
 13 A. Yes.
 14 Q. And did Malik have a partner named Kurt?
 15 A. Uh-huh.
 16 Q. Were they there that night after the pack was
 17 dropped off, to your knowledge?
 18 A. I don't remember.
 19 Q. Are you aware of whether or not there were any
 20 threats by Malik and Kurt against Keith and Rasheedah?
 21 A. I think there was arguments or something, not that day,
 22 but they was having problems or something, I think. I don't
 23 know. That's not my business.
 24 Q. Are you aware that the arguments and the problems
 25 were about drugs that Malik and Kurt thought Keith and

Gurley-Redirect

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- 1 Rasheedah had, in effect, stolen from them?
 2 A. I don't know.
 3 Q. You don't know?
 4 A. That ain't my business.
 5 Q. But are you aware of threats that were made
 6 against them?
 7 A. I think there was. I don't know. Nobody wasn't really
 8 telling me nothing like that anyway.
 9 MR. ROBERTS: Judge, may I just beg your
 10 indulgence for one moment.
 11 Thank you very much, Ma'am. That's all I have.
 12 THE COURT: Miss Charles.
 13 REDIRECT EXAMINATION BY MS. CHARLES:
 14 Q. Just a few questions.
 15 Referring to your statement which has been marked S-5
 16 for identification, do you recall what time that statement
 17 began?
 18 A. It was right after the store closed. The store closed
 19 at 10 o'clock. It was like sometime after, a while after
 20 the store closed.
 21 Q. Did you say a while?
 22 A. Not a long time, but like a good amount of time.
 23 Q. If you could look at the top of that statement to
 24 see if it refreshes your recollection with regard to the
 25 time?

Gurley-Redirect

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1 A. Um --
 2 Q. What time? Does that refresh your recollection?
 3 A. It was late night.
 4 Q. And what time did it start then?
 5 A. That statement started at 3:58.
 6 Q. I'm asking you, does that refresh your
 7 recollection?
 8 A. Oh, yeah. It started a way, but all this happened like
 9 after the store is closing.
 10 Q. Okay.
 11 A. That's what I'm saying.
 12 Q. Is it 3:58 a.m. or p.m.?
 13 A. A.M. I know it was late, because by the time we got
 14 back, it was about to be daytime.
 15 Q. Do you recall what time that statement ended?
 16 A. It was almost daytime. It was like daybreak, a little
 17 bit.
 18 Q. I'm going to direct your attention to the last
 19 page of that statement, at the very bottom.
 20 A. 5:29.
 21 Q. Okay.
 22 Now, you indicated on cross examination, and by cross
 23 examination, I mean the time that Mr. Roberts was asking you
 24 questions, that you couldn't recall, you couldn't recall the
 25 description you gave to the police.

Gurley-Recross

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1 Is that correct?
 2 A. Uh-huh.
 3 Q. Was that -- by that, did you mean you couldn't
 4 recall the entire description, or just parts of it?
 5 A. All I was remembering, like -- I don't remember nothing
 6 he had on right now.
 7 Q. So you're saying you don't remember what he was
 8 wearing at the time.
 9 Is that correct?
 10 A. Yeah.
 11 Q. But just from your own recollection, are you able
 12 to recall what this individual looked like?
 13 A. Yeah.
 14 MS. CHARLES: I have nothing further.
 15 THE COURT: Anything else, Mr. Roberts?
 16 MR. ROBERTS: Just one on recross, and I forgot to
 17 ask one question on my original cross.
 18 RECROSS EXAMINATION BY MR. ROBERTS:
 19 Q. Did you not tell this jury a little while ago, as
 20 you sit there today, you cannot give a description of the
 21 person you were fighting?
 22 A. No, I did not say that.
 23 Q. You didn't say that?
 24 A. Nah.
 25 Q. Do you know who stabbed Keith? You do know who

Gurley-Recross

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1 stabbed Keith?

2 A. That man over there.

3 Q. Referring your attention to the last page of your
4 statement given February 2, 1997, do you remember being
5 asked this question and giving this answer:

6 QUESTION: Do you know who stabbed Keith?

7 ANSWER: No.

8 Do you, or --

9 A. I'll tell --

10 Q. Ma'am, please.

11 A. I'll tell you right now. You ask me the way they were
12 asking me was like, did I know the man, and I said, no, I
13 don't know him. They kept telling me, are you sure you
14 don't know him. I'm not talking about knowing him. Looking
15 at him, I did. They were asking me, knowing him, did I ever
16 hung out with him and stuff like that, and I said, no, I
17 don't know the man.

18 Q. Is there anything in that statement asking you
19 whether you hung out with him?

20 A. It's not in there. But that's what they were asking me
21 when they was asking me questions.

22 Q. They were asking you questions and answers that
23 they didn't put in here?

24 A. Yeah, they kept saying, are you sure you don't know
25 him, you don't know him, and I said, no, I don't know him.

Gurley-Recross

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1 Q. How many questions and answers did they ask that
2 weren't put in here?

3 A. I don't remember, but I remember they kept asking me
4 like I knew him or something, and I said I don't know him.

5 Q. You do remember being asked that question, do you
6 know who stabbed Keith, and giving the answer, no.

7 Is that right?

8 A. Yeah, as far as saying, yeah, I know is like, yeah, I
9 know his face, but I don't know him.

10 THE COURT: That's enough. Anything else?

11 MR. ROBERTS: No, Sir.

12 THE WITNESS: I keep on saying it.

13 THE COURT: Thank you. You're excused.

14 (The witness is excused.)

15 THE COURT: Next witness.

16 MS. CHARLES: Yes, your Honor. Your Honor, the

17 State calls Rasheedah Banks.

18 RASHEDAH BANKS, STATE'S WITNESS, SWORN.

19 THE COURT: Miss Banks, you're going to be asked
20 some questions. If you don't understand them, say you don't
21 understand them. It will be repeated. When you answer you
22 have to answer loud enough so the jury can hear you say
23 that. Okay. Loud.

24 THE WITNESS: Yes.

25 THE COURT: Go ahead.

R. Banks-Direct

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DIRECT EXAMINATION BY MS. CHARLES:

- 1 Q. Good afternoon, Miss Banks. How old are you?
2 A. 17.
3 Q. And back on February 1 of 1997, how old were you?
4 A. 17.
5 Q. In 19 -- February?
6 A. I was 16.
7 Q. Okay. Directing your attention to February 1 of
8 1997, late in the evening, do you recall where you were?
9 A. Outside, like in front of the house.
10 Q. Okay. What house?
11 A. Um, 503 South 19th Street.
12 Q. And what city?
13 A. Newark.
14 Q. And who were you with?
15 A. Mykia, Nicky; just them, and my brother, Keith.
16 Q. You say Nicky, who's Nicky?
17 A. Just Nicky, Nicole.
18 Q. And where were you -- you say you were outside of
19 503, where?
20 A. Like standing in front of the house.
21 Q. Standing in front of the house.
22 And where was your brother, Keith?
23 A. He was like in the hallway, like, you know, standing in
24 front of the doorway.
25

R. Banks-Direct

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- 1 Q. And what was your brother, Keith, doing in the
2 hallway?
3 A. Like talking, talking.
4 Q. And what was his purposes for being out there?
5 A. He was selling drugs.
6 Q. What kind of drugs?
7 A. Cook-up.
8 Q. And what do you mean by cook-up?
9 A. Cocaine, I guess.
10 Q. Did there come a time when Nicole left your
11 company?
12 A. Yes, when she, um, walked off.
13 Q. Do you know where she walked off to?
14 A. To the corner.
15 Q. And what happened when she walked off to the
16 corner?
17 A. She -- she came -- she came back with this guy.
18 Q. And when she came back with this guy, where did
19 she come back to?
20 A. She came back to Keith.
21 Q. And where was Keith?
22 A. Right then he came out, he was in front of the doorway
23 now.
24 Q. And was he -- when you say in front of the
25 doorway, was he inside the building or outside of the

R. Banks-Direct

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1 building?
 2 A. He was outside of the building.
 3 Q. And, so, where was he? Was he in the street or on
 4 the sidewalk?
 5 A. Sidewalk.
 6 Q. How far away from the building did Keith come out?
 7 A. Not that far. He was just like off the steps.
 8 Q. And where were you when you saw him just off the
 9 steps?
 10 A. I was standing like by the curb.
 11 Q. And were you alone when you were standing by the
 12 curb?
 13 A. No, because I was about to walk off when they started
 14 talking. I was starting walking off.
 15 Q. When you say they started talking, who do you mean
 16 by they?
 17 A. The man that she brought back and Mykia, she wasn't
 18 saying nothing, but it was Nicky talking to Keith saying
 19 that how many he wanted.
 20 Q. And what did you overhear of this conversation?
 21 A. I just heard them say he wanted eight for 40.
 22 Q. Eight what for 40 what?
 23 A. Eight nickels. He wanted eight nickels for 40.
 24 Q. For 40?
 25 A. \$40.

R. Banks-Direct

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1 THE COURT: Nickel meaning a bag?
 2 THE WITNESS: A bottle.
 3 THE COURT: Go ahead.
 4 Q. And hearing this conversation, did you -- what
 5 else did you observe while hearing this conversation?
 6 A. I was just looking, and I stepped off.
 7 Q. How long were you looking?
 8 A. Not that long.
 9 Q. You indicated you stepped off. Where did you step
 10 off to?
 11 A. Not that far -- to the corner -- not -- I didn't really
 12 get to the corner. I was just like right there because it
 13 was like a building, then it was another house. So I was
 14 like just like right there.
 15 Q. Okay. So how far did you get away when you say
 16 right there, I mean --
 17 A. I wasn't that far from them.
 18 Q. Is there a point in this courtroom that you can
 19 point to to say how far you were away from --
 20 A. From the desk to right there, going out.
 21 THE COURT: The door going out?
 22 THE WITNESS: No, like right there, to the first
 23 one, the enter right there.
 24 Q. To this desk? From that desk to there?
 25 THE COURT: The wall?

R. Banks-Direct

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1 THE WITNESS: No, right there when you go those
 2 two doors that you --
 3 THE SHERIFF'S OFFICER: These doors right here?
 4 THE WITNESS: Yeah, those doors, yeah.
 5 Q. So from where you're sitting to these doors?
 6 A. Yes.
 7 Q. Right there?
 8 A. From the desk. The desk to the doors.
 9 Q. The desk to those doors. All right.
 10 So you're actually standing here, if you will, and
 11 you're going to the double doors right there.
 12 THE COURT: That's about 10 or 15 feet. Go ahead.
 13 Q. What stopped you from continuing to walk away?
 14 A. When I turned around, and I looked, he was stabbed.
 15 Q. He --
 16 A. He was stabbed.
 17 Q. Who was stabbed?
 18 A. My brother.
 19 Q. And when you saw that he was stabbed, what did you
 20 do?
 21 A. I went yelling because somehow, somehow I don't know,
 22 Mykia, Mykia, she, um, she was like -- she went up in the
 23 hallway, I guess, and then I was like, and somebody help me,
 24 he's stabbed, like that. And then Mykia came out, and she
 25 jumped in it, no, because my brother had called her, and he

R. Banks-Direct

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1 was fighting. Then she jumped in it. Then we all jumped in
 2 it, and then he said -- then that came, it was over with
 3 then.
 4 Q. When you say then that came, and it was over, what
 5 came?
 6 A. Then all he said, he couldn't breathe.
 7 Q. Who said they couldn't breathe?
 8 A. My brother.
 9 Q. Now, you say you jumped in. And what were you
 10 doing?
 11 A. I was just punching him.
 12 Q. And this individual that you were punching, where
 13 were you punching him?
 14 A. Like he was down, so it could have been his face or his
 15 back.
 16 Q. And when you say he was down, where was he down?
 17 A. Like on the ground.
 18 Q. Where in relation to the steps of this building?
 19 A. He wasn't by the building then.
 20 Q. Where was he?
 21 A. He was like by the curb because he ran.
 22 Q. How far away from the building was he?
 23 A. He was where I was standing, like in front of the house
 24 is another house, so he was in -- we were fighting in front
 25 of the house, but the other house is on the corner.

R. Banks-Direct

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1 Q. How long were you fighting and punching this
 2 individual?
 3 A. Not that long.
 4 Q. Not that long?
 5 A. No.
 6 Q. Were you able to see this individual?
 7 A. Yeah.
 8 Q. Were you able to observe this individual's face?
 9 A. Yeah.
 10 Q. Now, you say you just -- you indicated that your
 11 brother said that he was having trouble breathing.
 12 Is that correct?
 13 A. Yeah.
 14 Q. When he said that, what did you do?
 15 A. What did I do?
 16 Q. Yes.
 17 A. He had, um, we stopped and took him to the hospital,
 18 start walking to the hospital.
 19 Q. You stopped what?
 20 A. Because he was like -- he was like down. He couldn't
 21 breathe. So, you know, first -- because first we was all
 22 just like we didn't know, you know, it was that bad until he
 23 said that, and we start, you know -- no. We start going to
 24 walking him to try to get some help, take him to the
 25 hospital.

R. Banks-Direct

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1 Q. The individual that you were fighting, what
 2 happened to him?
 3 A. He ran.
 4 Q. Now, you indicated that your brother indicated he
 5 couldn't breathe. Do you know why he couldn't breathe?
 6 A. I guess because he was stabbed, right?
 7 Q. Did you see what he was stabbed with?
 8 A. A little kitchen knife.
 9 Q. A little kitchen knife. And where did you see
 10 this kitchen knife?
 11 A. I seen that on the ground.
 12 Q. When did you first -- when was the first time you
 13 saw it on the ground?
 14 A. I didn't see it at first.
 15 Q. Okay. But when did you first see it -- when did
 16 you first see this?
 17 A. When did I first see it?
 18 Q. Yes.
 19 A. When I found it.
 20 Q. When did you find it?
 21 A. Like after we came from the hospital.
 22 Q. Okay. And where did you find it?
 23 A. I found it like on the -- it was like on the corner
 24 like.
 25 Q. Where in relation to 503 did you find this knife?

R. Banks-Direct

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- 1 A. On that corner. It was like on that corner. It was
2 like in the middle -- all right. It's a driveway, and
3 that's where it was, like it was like from our house and his
4 driveway over there, like that in there.
- 5 Q. Would you be able to draw a little diagram and
6 diagram the houses and where about on the street you saw
7 this knife?
- 8 A. It was like --
- 9 C. Could you draw a diagram?
- 10 A. Oh, all right. This is the --
- 11 Q. Draw it.
- 12 THE COURT: Would you be able to draw it?
- 13 THE WITNESS: Yeah.
- 14 THE COURT: All right. Turn around. Get a crayon
15 and draw it, and then tell us what you've drawn. Just draw
16 it first. Then explain it later.
- 17 THE WITNESS: Oh, there's a little -- this is a
18 house --
- 19 THE COURT: Turn your back to me and explain what
20 you've been drawing. Turn around so the jury can see what
21 you're doing. That way you're liable to fall off. Get
22 back. Now, go ahead.
- 23 THE WITNESS: This is the house, and this is a
24 parking lot, and this is where the knife is at, and this is
25 garbage for the building, and this is our building right

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- 1 here, and this is where the -- it's a lot where the garbage
2 be at, and this driveway is like right there, and the knife
3 was in the middle of here and there.
- 4 Q. And when you say it was in the middle, was it in
5 the street, or was it --
- 6 A. No, it was backed up.
- 7 Q. When you saw the knife, what did you do?
- 8 A. I picked it up with a piece of paper and put it -- I
9 didn't put it in nothing. I just put it in a piece of
10 paper, brought it upstairs, and told my mother and sister.
- 11 Q. How did you know this was the knife that was used
12 to stab your brother?
- 13 A. 'Cause being that -- 'cause being that they was
14 fighting, whatever, and then he -- they ran that way, and
15 that's why. That was the only one that was out there. He
16 didn't have no knife when he was fighting.
- 17 Q. Now, you described this knife as a kitchen knife.
18 Is that correct?
- 19 A. Yeah.
- 20 Q. Could you describe the coloring of this knife?
- 21 A. It was a brownish, brown.
- 22 Q. The whole knife was brown?
- 23 A. No, it was silver, knife part.
- 24 Q. What part of it was brown?
- 25 A. The handle.

R. Banks-Direct

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- 1 Q. And on the blade of the knife, were you able to
2 observe anything?
3 A. Um, I think it was -- no, I didn't observe anything. I
4 wasn't-- I didn't really look at it. I just happy I found
5 the knife.
6 Q. And you indicate -- after you found the knife, you
7 did what with it?
8 A. I put it upstairs. I puts something on it, and then I
9 ran upstairs and gave it to my mother and my sister and
10 them.
11 MR. ROBERTS: Again, I apologize. I didn't hear
12 the answer.
13 A. I put --
14 THE COURT: Hold on. Please repeat it.
15 (The reporter reads back the last answer.)
16 MS. CHARLES: Your Honor, if you don't mind I'll
17 mark this S-6, and then I'll have these marked S-7 and 8.
18 (A Diagram is marked S-6 for identification.
19 (A Statement of Rasheeda Banks is marked S-7 for
20 identification.
21 (Another statement of Rasheeda Banks is marked S-8 for
22 identification.)
23 Q. I'm going to show you what has been marked S-7 for
24 identification. Do you recognize that?
25 A. Where is it? Where is it at? Which one are you

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- 1 looking at?
2 Q. Do you know what this is?
3 A. Yeah.
4 Q. What is it?
5 A. Statement.
6 Q. Whose statement is it?
7 A. It's mine.
8 Q. Do you remember when you gave that statement?
9 A. Yes.
10 Q. When did you give that statement?
11 A. No, I don't remember. I don't remember the date.
12 Q. Do you remember when?
13 A. On February 1.
14 Q. Okay, When, in relation to the stabbing, did you
15 give the statement?
16 A. The same day.
17 Q. The same day?
18 A. Yup.
19 Q. And where did you give that statement?
20 A. At the, um, police station, or the homicide thing, or
21 whatever, the police station.
22 Q. Do you recall who you gave the statement to?
23 A. Who gave me the statement?
24 Q. Who were you talking to when the statement was
25 produced?

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- 1 A. I know it was the one named Rashid.
 2 Q. That statement is how long, how many pages? You
 3 can count them.
 4 A. Three.
 5 Q. Okay. Do you remember the approximate time that
 6 statement began?
 7 A. I don't remember the time.
 8 Q. If you can take a look at the top of that
 9 statement, does that refresh your recollection?
 10 MR. ROBERTS: Judge, I have no problems
 11 stipulating to the times indicated, if the prosecutor wants
 12 that.
 13 THE COURT: For the record, you might as well read
 14 it. Tell us.
 15 MS. CHARLES: The statement began 4:30 in the
 16 morning, and it ended at 5:05 in the morning.
 17 THE COURT: Thank you, Mr. Roberts.
 18 Go ahead.
 19 Q. Does that comport with your memory?
 20 And do you recall -- strike that.
 21 The individual that stabbed your brother, do you recall
 22 what he looked like?
 23 A. Yeah.
 24 Q. What did he look like?
 25 A. Like dark skinned, short, like kind of short. He had

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- 1 like a black hood on.
 2 Q. Excuse me?
 3 A. Like a black hood on.
 4 Q. A black hood on?
 5 A. Yeah, something like that.
 6 Q. Do you recall telling the police what this
 7 individual looked like?
 8 A. Yeah.
 9 Q. I'm going to show you what's been marked S-8 for
 10 identification. What is that?
 11 A. Where does it say that?
 12 Q. This is S-8.
 13 A. Yeah.
 14 Q. What's that document?
 15 A. Four slash, one slash nine --
 16 Q. No, no. This piece of paper. Is this another
 17 statement?
 18 A. Yeah.
 19 Q. Whose statement is it?
 20 A. Mine.
 21 Q. Okay. Do you remember when you gave the second
 22 statement?
 23 A. Yeah.
 24 Q. When did you give it?
 25 A. On the same day.

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- 1 Q. Was it the same, the very same day?
 2 A. No, I did give another one. I gave another statement.
 3 Q. Okay. Do you recall when you gave that statement?
 4 A. Um, the next day.
 5 Q. The next day, very next day, or if you could just
 6 take a look at the statement at the top.
 7 MR. ROBERTS: Judge, again, in the interests of
 8 time I'll submit that it was given on February 4.
 9 A. February 4.
 10 THE COURT: February 4.
 11 MS. CHARLES: Thank you, Mr. Roberts.
 12 Q. And do you know where you gave this statement?
 13 A. I gave that at the same place.
 14 Q. At the same place. And when you gave that second
 15 statement, do you know why you gave that statement?
 16 MR. ROBERTS: Objection, Judge.
 17 A. Eh-eh.
 18 THE COURT: She says eh-eh anyway. Go ahead.
 19 Q. Well, then I'll withdraw the question.
 20 MS. CHARLES: S-9 for identification.
 21 (A Photo Array is marked S-9 for identification.)
 22 Q. I'm going to show you what has been marked S-9 for
 23 identification. Do you recognize that?
 24 A. No.
 25 Q. Never seen it before?

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- 1 A. Nah -- yeah, I seen it, one of those papers before.
 2 Q. You seen it?
 3 A. Yeah.
 4 Q. Okay. And when did you see it before?
 5 A. I seen it when they showed me the pictures at the
 6 place -- no, he brought that to my house.
 7 Q. He brought that to your house?
 8 A. Yeah.
 9 Q. And who is he?
 10 A. The cops.
 11 Q. Okay. Do you remember which cops?
 12 A. Nah, I don't remember which one it was.
 13 Q. And when they showed you those pictures, what did
 14 you do with relation -- what did you do with relation to
 15 those pictures?
 16 A. I picked one.
 17 Q. Okay. Do you recall which one you picked?
 18 A. Yeah.
 19 Q. Which one did you pick?
 20 A. That one.
 21 MR. ROBERTS: May I just have the number of the
 22 one photo?
 23 THE COURT: Which one is it?
 24 THE WITNESS: One.
 25 Q. One. And after you picked that, what did you do

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- 1 with relation to it?
 2 A. I didn't do nothing. I just picked it.
 3 Q. Okay. Could you open this up. What appears on the
 4 back of each one of those pictures?
 5 MR. ROBERTS: Judge, may I just look at that
 6 before the question is answered.
 7 THE COURT: Surely. Go ahead.
 8 MR. ROBERTS: Okay.
 9 A. Oh, it's this one.
 10 THE COURT: All right. Go ahead.
 11 Q. Looking at the back of all of those pictures,
 12 Miss Banks --
 13 A. Yeah, I see it.
 14 Q. -- do your initials appear on the backs of any of
 15 those pictures?
 16 A. Yeah, yes.
 17 Q. Which pictures do your initials appear on the back
 18 of?
 19 A. Five.
 20 Q. Just your initials. Do you know what initials --
 21 your initials, not your signature, your initials.
 22 A. Oh, on this one they're on the back of all of them.
 23 Q. Now, does your signature appear on the back of any
 24 of those pictures?
 25 A. Yeah.

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- 1 Q. And which picture does your signature appear on
 2 the back of?
 3 A. This one.
 4 Q. All right.
 5 And that would be on the back of which picture?
 6 A. Number 5.
 7 Q. Number 5. Now back -- in addition to your
 8 signature, there's also a date that appears, is it not?
 9 A. Yeah.
 10 Q. And what date is that?
 11 A. That was on the 4th.
 12 Q. Of what month?
 13 A. February.
 14 Q. Okay. And did you place that date there?
 15 A. Yes.
 16 Q. Now, when you placed your signature on the back of
 17 that picture, and you dated the back of that picture, why
 18 did you sign and date that particular picture?
 19 A. Because that's where they told me to sign. Because
 20 that's the one I picked.
 21 MR. ROBERTS: Excuse me?
 22 A. That's the one I picked.
 23 A JUROR: I couldn't hear.
 24 THE COURT: The answer was: That's the one I
 25 picked.

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- 1 Q. And why did you pick that particular picture?
 2 A. Because when they showed me of them, I picked.
 3 THE COURT: Why did you pick that picture out?
 4 THE WITNESS: Because it was him.
 5 THE COURT: It was who?
 6 THE WITNESS: It was him.
 7 Q. Him meaning who?
 8 A. Roy Dove.
 9 Q. Okay. But who -- what did that individual mean to
 10 you?
 11 THE COURT: When you say it was him --
 12 A. What did he mean to me?
 13 Q. I'll withdraw that question. You picked it -- you
 14 said you picked it out because it was him.
 15 Is that correct?
 16 A. Yeah.
 17 Q. That individual you picked out was -- who was he?
 18 Not his name, just what did he represent to you?
 19 A. That he killed my brother.
 20 Q. That he what?
 21 A. Killed my brother.
 22 Q. I didn't hear the middle word.
 23 A. That he killed my brother.
 24 Q. Killed your brother.
 25 MS. CHARLES: I have nothing further of this

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- 1 witness.
 2 THE COURT: Mr. Roberts.
 3 CROSS EXAMINATION BY MR. ROBERTS:
 4 Q. Rasheedah, in response -- if you don't hear me,
 5 just let me know, and I'll repeat the question, okay, or if
 6 you don't understand it.
 7 In response to the prosecutor's question concerning
 8 those pictures, before you said that's the one I picked,
 9 just a minute or so, did you not say that's the one he told
 10 me to sign?
 11 A. Yeah.
 12 Q. Okay. Who told you to sign it?
 13 A. No, that's -- no, that's the one I signed.
 14 Q. No one told you to sign it?
 15 A. No.
 16 Q. Do you see -- may I just borrow that a second.
 17 A. Told me to sign it because that's the one I picked.
 18 Q. Did you see -- did you see the backs of these
 19 pictures?
 20 A. Yeah.
 21 Q. You did. And did you see them before you looked
 22 at the front?
 23 A. No, I seen the front first.
 24 Q. And when did you see the backs?
 25 A. After I picked it.

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- 1 Q. You said today just a couple of minutes ago that
2 you picked -- you thought -- well, you said you picked
3 Number 1.
4 Is that right?
5 A. Yeah.
6 Q. And it wasn't until the prosecutor showed you your
7 signature on the back that you remembered it was Number 5
8 you picked, right?
9 A. But at the place I know that I picked 1 and 5.
10 Q. You picked 1 and 5?
11 A. Yeah, I picked two.
12 Q. And --
13 A. And --
14 Q. I'm sorry.
15 A. I said I picked two and --
16 Q. Let me finish. You picked Number 1 and Number 5,
17 and Number 1 is the one today you said you had picked.
18 Is that right?
19 A. Yeah.
20 Q. And then after you picked them, one of the
21 policemen told you to sign the back.
22 Is that right?
23 A. Yeah.
24 Q. Okay. But is it so that you only signed the back
25 of Number 5?

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- 1 A. Yeah.
2 Q. Because that's the one he told you to sign?
3 A. Yeah -- no, he did not tell me to sign the back of
4 Number 5. I told him.
5 Q. What --
6 A. I messed up. Let me finish. I messed up. I was like
7 I picked Number 1, and then I was just -- as I looked at it,
8 as I looked at it, kept looking at it, no, not Number 1,
9 Number 5, and that's why I say he said sign which one you
10 think, and I signed Number 5.
11 Q. And the one that you took a real long look at,
12 Number 1, that's the one when you looked at these pictures
13 again today you thought that was the one you picked, right?
14 A. Yeah.
15 Q. Okay. There is a resemblance between Number 1 and
16 Number 5, is there not?
17 A. Yes.
18 Q. Yes. I think you said in response to the
19 prosecutor's question -- well, let me ask it again because
20 I'm not sure what you said.
21 You were out there in front of 503 that night, were
22 you?
23 A. Yeah.
24 Q. Had you been in the hallway smoking blunts earlier
25 that evening?

- 1 A. No.
 2 Q. Were you in the hallway at all that evening?
 3 A. No.
 4 Q. Did there come a time that you saw your brother
 5 outside selling drugs?
 6 A. Yeah.
 7 Q. Were you helping him?
 8 A. No.
 9 Q. How many -- how long was he out there selling
 10 drugs?
 11 A. How long? All day.
 12 Q. All day. This was about 10:30 at night when this
 13 incident happened?
 14 A. Yeah, it was.
 15 Q. And he was out there all day selling?
 16 A. Yeah, because he didn't come upstairs.
 17 Q. And was Mykia helping him that day?
 18 A. I don't think so, no.
 19 Q. Was she helping him that night?
 20 A. Yeah, she probably was -- no.
 21 Q. I don't want you to guess. Don't say probably.
 22 A. I don't think so; not that I know of.
 23 Q. Okay.
 24 A. I don't know, no.
 25 Q. Mykia did what for your brother as far as selling

- 1 drugs? What was her part? What did she do? Did she steer
 2 people to him?
 3 A. Did she what?
 4 Q. Did she tell people to go to him to buy?
 5 A. No.
 6 Q. She didn't do that?
 7 A. No.
 8 Q. You indicated that Nicky -- Nicky is Mykia?
 9 A. Nah.
 10 Q. Who is Nicky?
 11 A. Nicky is -- she's a friend.
 12 Q. Pardon me?
 13 A. She's a friend.
 14 Q. What's her last name?
 15 A. Banks.
 16 Q. Was Mykia steering people to your brother?
 17 A. No.
 18 Q. Did there come a time that Nicky came back with
 19 the person you eventually were fighting with?
 20 A. Yeah.
 21 Q. And that was to buy drugs, right?
 22 A. Yeah, but --
 23 Q. And you indicated he wanted eight nickels for \$40?
 24 A. Look, you say -- you thought Nicky was Mykia. You got
 25 it mixed up.

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- 1 Q. So Nicky was the one who brought him back?
2 A. Nicky brought him back.
3 Q. And he asked for eight nickels for \$40?
4 A. Yeah.
5 Q. And then you walked back in the hall, did you?
6 A. No.
7 Q. What did you do?
8 A. I walked down to the house.
9 Q. You walked down to which house?
10 A. To the house next door from us.
11 Q. Which would be on that diagram before, in back of
12 you.
13 A. Right there.
14 Q. Looking at it to the left, the house in the middle
15 there?
16 A. No, that's not a house. That's a lot right there.
17 Q. Oh, okay. In between the two squares and the
18 outside, there's another square. That's a lot?
19 A. Yeah.
20 Q. By the way, in response to the prosecutor's
21 question as to where the knife was, I think you said, you
22 used a term, it was backed up. She asked if it was in the
23 street, and you said backed up. What do you mean by that?
24 A. Like where the garbage be at, the garbage don't be out
25 on the street, the garbage be back.

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- 1 Q. Back somewhere by the lot?
2 A. Yeah.
3 Q. So you walked to the other house, and I think you
4 said you turned around and looked, and your brother was
5 stabbed?
6 A. Yeah.
7 Q. And then you went over to the person who you saw
8 your brother fighting with?
9 A. Yeah.
10 Q. Right. And who went over there with you, if
11 anyone?
12 A. Nobody go over there with me.
13 Q. Who was fighting with the person that --
14 A. It was me --
15 Q. -- that was with your brother?
16 A. Me, Mykia, Nicky.
17 Q. And Keith was, as well, right? And you were all
18 hitting him?
19 A. Keith was too.
20 Q. You were hitting him, kicking him, and stuff like
21 that?
22 A. Yeah.
23 Q. What happened? How did that stop?
24 A. How does that stop? When he say he couldn't breathe.
25 Q. And you let the person go then?

- 1 A. Yeah.
2 Q. Do you know where he went? Did you see the
3 direction he was going?
4 A. Towards South Orange Avenue.
5 Q. Did you know if he was with anyone else?
6 A. He was with a friend.
7 Q. I'm sorry?
8 A. He was with a friend, but he wasn't over there by him.
9 He was on the corner.
10 Q. All right. The friend was on the corner?
11 A. Yes.
12 Q. How do you know he was with that person?
13 A. Because the guy start talking. They said they seen
14 him, and after like when Keith -- like whenever we were
15 fighting, the guy said they seen it was him and another guy,
16 and they said they seen him. They didn't want to deal with
17 him because they knew what he was about.
18 Q. They knew what this other person was about?
19 A. Yeah.
20 Q. The other person who he was with was on the corner
21 when you saw him?
22 A. Yes, that's when he was -- yeah.
23 Q. When you say you know what he was about, was he
24 somebody that was violent, or something like that?
25 A. Yes.

- 1 Q. And you guys -- well, I say you guys. You knew
2 that he was a violent person?
3 A. No, I didn't.
4 Q. Some of the other people did?
5 A. Yes.
6 Q. That you were with.
7 You said that he was stabbed with a -- let me withdraw
8 that.
9 You found the knife somewhere in that lot by the
10 garbage. You said it was like a kitchen knife?
11 A. Yeah.
12 Q. Was it a -- do you remember if you ever said it
13 was a folding knife?
14 A. No, it was no folding knife.
15 Q. It wasn't a folding knife?
16 A. Nah.
17 Q. Was it big or small?
18 A. Small.
19 Q. Do you remember being asked this question and
20 giving this answer: On February 2, 1997 -- on the second
21 page, I'm sorry. You don't have a copy. If you can take a
22 look at -- is that marked for identification?
23 MS. CHARLES: Use this one, Counsel. Used the
24 marked extra copy.
25 THE COURT: I think her statement is marked 7 and

- 1 8.
 2 Q. This has been marked S-7 for identification. I
 3 direct your attention to the second page, and ask you if you
 4 remember being asked this question and giving this answer:
 5 QUESTION: Would you describe this knife to me?
 6 ANSWER: It's a folding knife with a brown handle.
 7 Do you remember being asked that question and giving
 8 that answer?
 9 A. No.
 10 Q. You don't remember that. Is that an incorrect
 11 answer?
 12 A. Yeah.
 13 Q. It was a kitchen knife, are you telling us now,
 14 right?
 15 A. Yeah.
 16 Q. And the kitchen knife doesn't fold, right?
 17 A. No.
 18 Q. Did you read the statement before you signed it?
 19 A. I looked -- I -- yeah, I scanned through it.
 20 Q. I'm sorry?
 21 A. I scanned through it.
 22 Q. Skimmed through it?
 23 A. Yeah.
 24 Q. Didn't look at it closely?
 25 A. Nah.

- 1 Q. Do you remember being asked these questions and
 2 giving these answers at the very end of the statement, the
 3 last page?
 4 Can you read, write, and understand the English
 5 language?
 6 ANSWER: Yes.
 7 QUESTION: Do you swear or affirm that this statement
 8 is the truth?
 9 ANSWER: Yes.
 10 Do you remember giving those answers?
 11 A. Yeah.
 12 Q. When you found the knife -- by the way, I think
 13 you said you found it after you had come back from the
 14 hospital, right?
 15 A. Yeah.
 16 Q. And you were with Rasheeda at the time -- who were
 17 you with at the time?
 18 A. I wasn't with -- when I came back from the hospital?
 19 Q. I'm sorry.
 20 A. We was all together when we came back from the
 21 hospital.
 22 Q. Who was with you, if anyone, when the knife was
 23 found?
 24 A. Really, nobody because they was like going up, and I
 25 decided to look for it, and people was on the corner.

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- 1 Q. Excuse me. You said they were going up, going up
2 where?
3 A. Like they was going by the hallway, and I was like
4 still like down. I was still right here where they let us
5 out the car and --
6 Q. So you went into that lot area by yourself looking
7 for the knife. Is that what you're telling us?
8 A. Yeah, it ain't a lot.
9 Q. I'm sorry?
10 A. It wasn't a lot. It was li^v a little part with
11 garbage on it.
12 Q. When you found the knife, what did you do with it?
13 A. I picked it up with something, and I brought it
14 upstairs.
15 Q. What did you pick it up with?
16 A. A piece of paper.
17 Q. By the way, the statement that you were shown, S-7
18 for identification, that was given on February 2, 1997,
19 right?
20 A. Yeah.
21 Q. And had you had a conversation with the officer,
22 Rashid Sabur, right before giving this statement?
23 A. No, I only had a conversation with him when he was
24 giving me this.
25 Q. I'm sorry?

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- 1 A. Only when we did this.
2 Q. Did you have any conversation with him at all
3 before he asked you these questions, and you gave these
4 answers on the statement?
5 A. No, I don't remember having no conversation with him.
6 Q. Did he ask you any questions concerning the
7 incident before he asked you the questions?
8 A. Yeah, he was asking me, you know, stuff like.
9 Q. Hang on one second. I'm talking about before the
10 statement was given, had he asked you questions about the
11 incident?
12 A. Nah.
13 Q. So the first time he asked you questions was when
14 he was typing up the statement?
15 A. When we sat down.
16 Q. And you were giving the answers?
17 A. When he sat down, typing.
18 Q. By the way, where was -- do you know where your
19 sister, Roberta, was at that time?
20 A. She wasn't out there.
21 Q. Did you not tell Officer Sabur, Rashid Sabur,
22 before the statement was taken that it was Roberta who
23 brought the guy to buy the drugs to your brother and not --
24 A. No, Nicky, no.
25 Q. Referring your attention to the second page of

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1 that statement, do you remember being asked this question
2 and giving this answer:

3 QUESTION: During an interview with you --

4 QUESTION: During an interview with you, you told me
5 that your sister, Roberta, brought this guy to your brother.
6 Is that correct?

7 ANSWER: I wasn't thinking. I meant to say Nicky.
8 Do you remember that? Do you remember being asked that
9 question and giving that answer?

10 A. No, it didn't go down like that.

11 Q. But you don't remember that question being asked
12 like that?

13 A. I remember that incident, but it didn't happen like
14 that.

15 Q. The question is, do you remember him asking you
16 that question and you giving that answer?

17 A. No, I didn't give that answer like that.

18 Q. So if it says that on this page, I wasn't
19 thinking. I meant to say Nicky. That's not what you said?

20 A. No.

21 Q. Directing your attention to the next, very next
22 question, and you also told me during an interview that
23 after the guy left the area, you found the knife that he
24 stabbed your brother with. You said that you put on a pair
25 of gloves, picked up the knife from the sidewalk in front of

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1 the building, put it in a plastic bag, and took it to your
2 apartment.

3 Is that correct?

4 ANSWER: Yes.

5 Do you remember that question and that answer?

6 A. Yeah, I remember that question.

7 Q. Did you pick up the knife you found with a pair of
8 gloves?

9 A. No, I picked it up with piece of papers.

10 Q. I'm sorry?

11 A. I picked it up with a piece of papers.

12 Q. So that answer --

13 A. I told him I put it on my hands like a pair of gloves
14 and picked it up. I didn't tell him it was a pair of
15 gloves, though.

16 Q. You said you put paper on your hands like gloves?

17 A. You can put a paper bag on your hands. He asked me how
18 did I have the paper, and I said I had it just like you put
19 on a pair of gloves.

20 Q. So that when it says you put on a pair of gloves,
21 that's wrong. You didn't do that. You had paper that you
22 put on like a pair of gloves?

23 A. I had -- yeah.

24 Q. Do you remember being asked this question and
25 giving this answer that same day on the last page:

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1 QUESTION: Where did you get the gloves and the plastic
2 bag from to handle the knife after you found it?

3 ANSWER: I found the gloves in my hallway, and I got
4 the bag from outside on the ground.

5 Do you remember being asked that question and giving
6 that answer?

7 A. I didn't hear you.

8 Q. Where did you get the gloves and the plastic bag
9 from to handle the knife after you found it?

10 ANSWER: I found the gloves in my hallway, and I got
11 the bag from outside on the ground.

12 Do you remember being asked that question and giving
13 that answer?

14 A. No.

15 Q. Is that answer correct then, on this form?

16 A. Yeah.

17 Q. What did you do with the knife after you picked it
18 up?

19 A. What did I do with it?

20 Q. Yes.

21 A. First I picked it up, and it was some people outside,
22 and I had showed it to them.

23 Q. Who did you show it to?

24 A. These two guys out there. I says, look, I found the
25 knife. It was these guys named Kurt and Malik.

R. Banks-Cross

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1 Q. Now, Kurt and Malik are persons who supply drugs
2 to your brother to sell.

3 Is that right?

4 A. Yes.

5 Q. And Kurt and Malik, to your knowledge, had made
6 threats against Keith and your sister, Roberta.

7 Is that not so?

8 A. Yeah, Berta.

9 Q. Berta?

10 A. Yeah.

11 Q. Who's Berta?

12 A. That's my other sister.

13 Q. You have a sister Roberta and another one Berta?

14 A. No, Roberta, I call her Berta.

15 Q. So these people, Keith and Kurt had made threats
16 against -- I'm sorry. Malik and Kurt had made threats
17 against your brother Keith and your sister Roberta?

18 A. Yeah, that's what I heard.

19 Q. And these are the people -- they were there that
20 night, at some point anyway, right?

21 A. Who was there that night?

22 Q. Malik and Kurt.

23 A. They was around the corner where they always be.

24 Q. When you found the knife did you go around the
25 corner to them?

1 A. No.
2 Q. Where were they when you showed them the knife?
3 A. When I showed them the knife they was on the corner.
4 Q. And had you taken it upstairs yet, or did you go
5 show it to them first?
6 A. They was on the corner, and they was wondering what I
7 was looking for, but I never said anything, and I was just
8 looking, looking, and then when I found it, they was looking
9 like, and I was, like, it's the knife, because I didn't want
10 them to think I was out there looking for something.
11 Q. Where were they when you found the knife?
12 A. They wasn't around no corner. Then they came out.
13 Q. Where were they?
14 A. Like on the corner like, they was like on the corner,
15 like, because the house is on the corner.
16 Q. Why don't you make a mark where they were when you
17 found the knife.
18 A. Like right here. It's like on the curb. It was like
19 right here.
20 Q. And how far was that from where you were when you
21 found the knife?
22 A. Like right here in the lot, right there.
23 Q. Well, if you can, again, from the end of the
24 courtroom to where you are, closer, further, how far -- let
25 me do it this way. Stop me when I'm the distance that they

1 were from you.
2 A. They wasn't all the way back that far.
3 Q. Tell me when to stop.
4 A. They was like right there.
5 Q. Right here?
6 THE COURT: 15 feet.
7 Q. 15 feet.
8 These threats that were made by these two persons, Kurt
9 and Malik, in fact, what the threats were, they were going
10 to kill Keith and Roberta.
11 Is that not so?
12 A. Yeah.
13 Q. And is the reason, as you understand it, for that
14 threat was because they thought that your brother and
15 Roberta had taken some of their drugs and a gun?
16 A. No, they thought that Berta took some drugs.
17 Q. That Berta did?
18 A. Yeah, and a gun.
19 Q. And didn't -- what happened? Didn't the police
20 come to try and arrest your brother, and he ran away, and
21 the police got the drugs. Is that what happened?
22 THE COURT: Do you know anything about that?
23 THE WITNESS: No, I don't know nothing about that.
24 Q. Are you telling us that as far as you know Kurt
25 and Malik were only threatening to kill Roberta?

1 A. Yes.
 2 Q. Because Roberta took something from them?
 3 Referring your attention to the second page of your
 4 statement of February 2. Do you remember giving this
 5 question -- asked this question and giving this answer?
 6 QUESTION: What did you tell me about the threats that
 7 were made against your brother and your sister, Roberta, by
 8 two individuals, one named Kurt and the other Malik?
 9 ANSWER: I heard they said that they were going to kill
 10 Roberta and Keith because they thought that they took
 11 something from them.
 12 Remember being asked that question and giving that
 13 answer?
 14 A. Yeah.
 15 Q. Is that accurate?
 16 A. Yeah, I said that.
 17 Q. Is that true?
 18 A. No, it's not -- they said they had -- I didn't know
 19 Keith was, um, involved like with -- had -- was not involved
 20 with them saying that they was going to -- that he took
 21 something from them, but that's what I was hearing about
 22 Keith, but I knew about Berta.
 23 Q. And you heard that. You knew -- you heard that
 24 they were going to kill, or wanted to kill Roberta and
 25 Keith, right, or is that answer wrong?

1 A. Yeah, I heard that.
 2 Q. Okay. In spite of that, and you knew that at that
 3 time, right?
 4 A. It's -- no, that wasn't.
 5 Q. You didn't know at that time that they had
 6 threatened to kill Roberta and Keith?
 7 A. Yeah, I knew.
 8 Q. Okay. And in spite of that you walked up to them
 9 and showed them --
 10 A. I didn't walk up to them.
 11 Q. Did you walk up to them and show them the knife
 12 after you found it?
 13 A. No.
 14 Q. What did you do?
 15 A. The only reason how they got to see it because they was
 16 out there, and I didn't want them to think that I was
 17 looking for something that they had out there, and thought I
 18 was doing something because they be having stuff out there,
 19 and when I said, oh, they all looked, and I said it's only
 20 was the knife, and they came over there, and they looked at
 21 it, and I went upstairs. It wasn't me saying here's a
 22 knife, you all.
 23 Q. Were you afraid of Kurt and Malik?
 24 A. I didn't want them to think I was looking for their
 25 stuff.

R. Banks-Cross

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- 1 Q. And you showed them the knife, right?
 2 A. I says it's only the knife.
 3 Q. Pardon me?
 4 A. I said it's only the knife.
 5 Q. And they replied, that's enough to kill him, and
 6 walked away?
 7 A. No, I don't know where that came from.
 8 Q. How about looking at the second page of your
 9 statement. Do you remember giving -- being asked this
 10 question and giving this answer?
 11 QUESTION: What can you tell me about the threats that
 12 were made against your brother and your sister, Roberta, by
 13 two individuals; one named Kurt, the other Malik?
 14 ANSWER: I heard that they said they were going to kill
 15 Roberta and Keith because they thought they took something
 16 from them. I even showed them the knife. They looked at
 17 the knife and said, yeah, that's enough to kill him, and
 18 they walked off.
 19 Do you remember that?
 20 A. Yeah, I remember that.
 21 Q. Now, after you found the knife and showed it to
 22 Kurt and Malik, what did you do with it?
 23 A. Brought it upstairs. I went upstairs.
 24 Q. I'm sorry. And what did you do with it when you
 25 gave it upstairs?

R. Banks-Cross

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- 1 A. Gave it to my mother and my sister.
 2 Q. I'm sorry?
 3 A. Gave it to my mother and my sister.
 4 Q. Was it your mother and sister, or your mother and
 5 your brother? Do you remember?
 6 A. My brother -- my mother and my sister.
 7 Q. By the way, when you went upstairs with the knife,
 8 who was there upstairs?
 9 A. My mother and my sister.
 10 Q. Do you have a brother, Kevin?
 11 A. Yeah, my brother Kevin. No, he wasn't there from --
 12 yeah, he was there.
 13 Q. Your brother Kevin was there?
 14 A. Yeah.
 15 Q. Does it refresh your recollection, then, that you
 16 told your brother, Kevin, and your mother about the knife?
 17 A. No.
 18 Q. Isn't it a fact -- well, let me withdraw that.
 19 Did there come a time that you told the police that you
 20 had taken the knife to your house?
 21 A. Yeah.
 22 Q. When you took it to the house what -- to your
 23 apartment, what did you do with it?
 24 A. I told you, I gave it to my mother and my sister.
 25 Q. You gave it to them?

- 1 A. Yes.
2 Q. And there came a time shortly thereafter that you
3 told the police that you had the knife that you thought was
4 used to kill your brother, right?
5 A. Yeah, I didn't say I thought was used. I said I had
6 the knife.
7 Q. You had the knife, and the police came to your
8 house, did they not?
9 A. Yeah, they came.
10 J. And they came to get the knife, didn't they?
11 A. Yeah.
12 Q. But they didn't get the knife, did they?
13 A. They didn't get it after -- they got it the next day.
14 Q. They got the knife the next day. They got it in
15 your presence?
16 A. No, not in my presence, my sister's presence.
17 Q. Which sister?
18 A. Julia.
19 Q. Who?
20 A. Julia.
21 Q. Julia?
22 A. Yes.
23 Q. Do you know which police officers got the knife
24 from Julia?
25 A. Nah.

- 1 Q. Were you there?
2 A. No.
3 Q. How do you know they got it from Julia?
4 A. Because I know. She told me that she was going to go
5 down there and give them the knife.
6 Q. Julia did?
7 A. Yeah.
8 Q. When you went up to look for it, did you know
9 Julia had it?
10 A. No, Julia found it. She --
11 Q. I'm sorry?
12 A. After a while she found the knife. I didn't have
13 nothing else to do with that thing.
14 Q. Well, you said, I think, that you gave the knife
15 to your mother and your sister?
16 A. No.
17 Q. What?
18 A. I didn't think. I said I gave it to them.
19 Q. Did you give it to them or not?
20 A. Yeah, and then --
21 Q. Let's see if we can get this straight. You went
22 upstairs, and you gave the knife to your mother and your
23 sister?
24 A. Yes.
25 Q. Okay. Do you know what they did with it?

1 A. No.
 2 Q. How long after that did the police come to look
 3 for the knife?
 4 A. They came that same -- no. They came -- they asked
 5 that night about the knife. We said we couldn't find it.
 6 Then when we called and told them we found the knife, they
 7 came. Yeah, they came that same night, and the same day --
 8 no -- yesterday, they came, yeah.
 9 Q. All right. Let me -- because I'm confused -- let
 10 me see if I can understand.
 11 A. I'm not confused.
 12 Q. No, I am.
 13 You gave the knife to your mother and your sister, and
 14 they put it somewhere, right?
 15 A. Yeah, they put it somewhere.
 16 Q. Do you know where they put it?
 17 A. No.
 18 Q. You gave the police a statement that night, and
 19 you told them that you had brought the knife upstairs,
 20 right, to your house?
 21 A. No, see, because that's -- that happened two days ago.
 22 Q. When you say two days ago --
 23 A. When I did another statement about the knife, when he
 24 said something about that knife, that happened like on the
 25 4th.

1 Q. On the 4th?
 2 A. Right.
 3 THE COURT: Were you there when the police came
 4 back looking for the knife?
 5 THE WITNESS: No.
 6 THE COURT: All right. Next.
 7 Q. Isn't it a fact that you were there?
 8 A. No, I wasn't.
 9 Q. Isn't it a fact that when they came back you
 10 assisted them and looked all over the house for the knife?
 11 A. I was what?
 12 Q. You were helping them, and you looked all over the
 13 house for the knife?
 14 A. No.
 15 Q. Isn't it a fact that when the police got there
 16 they were told by your brother -- mother and brother that
 17 you never brought the knife up?
 18 A. No, it wasn't.
 19 THE COURT: Anything else, Counselor?
 20 MR. ROBERTS: Yes, Judge, if I could just have a
 21 minute.
 22 Q. I think you said that when, again, in response to
 23 the prosecutor's question about the knife, that you didn't
 24 see a knife when they were fighting, right?
 25 A. No.

R. Banks-Cross

- 1 Q. You didn't say that?
 2 A. I didn't say -- I didn't.
 3 Q. Pardon me?
 4 A. I knew he was stabbed.
 5 Q. Yes, but in response to the prosecutor's question,
 6 you said, did you not -- and if you didn't, tell me -- that
 7 you didn't see the knife when they were fighting?
 8 A. No.
 9 Q. You didn't just say that a little while ago?
 10 A. No, I didn't see the knife when they were fighting.
 11 THE COURT: She said she didn't see the knife.
 12 Q. You didn't see the knife. Okay.
 13 And I just want to be sure. You're saying that maybe a
 14 day or so after the police looked for the knife in your
 15 house, your sister Julia called them and told them that she
 16 had the knife?
 17 A. Yeah.
 18 Q. Do you know who she spoke to?
 19 A. I don't know who she spoke to.
 20 Q. Do you know if she ever gave the knife to the
 21 police?
 22 A. I don't know. I don't know.
 23 Q. Did you ever discuss this case with your sisters
 24 and brothers after this happened?
 25 A. No.

R. Banks-Cross

- 1 Q. You never talked to them at all? Your brother was
 2 killed that night, was he not?
 3 A. Yeah.
 4 Q. And that's a pretty awful thing, isn't it?
 5 A. Yeah.
 6 Q. And you never spoke to your brothers and
 7 sisters -- let me finish, please, Ma'am. You never spoke to
 8 your brothers or sisters about that incident after it
 9 happened?
 10 A. Yeah, they asked me. They was asking. It was nothing
 11 like, you know, they ain't really want -- they didn't really
 12 want to hear about it no more after they -- my mother was
 13 there while we were taking the statement things, and they
 14 didn't want to hear about it no more.
 15 THE COURT: Anything else?
 16 MR. ROBERTS: No, Sir. Nothing at all.
 17 MS. CHARLES: No, your Honor.
 18 THE COURT: All right. You're excused. Thank
 19 you.
 20 (The witness is excused.)
 21 THE COURT: Members of the jury, I think it would
 22 be enough for tonight. From this point on don't discuss
 23 this case among yourselves. We want you to wait until you
 24 heard all that there is, and as of now you belong to me.
 25 You don't report to Jury Control at all. You come here

Colloquy

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directly at 9 o'clock. I'll see you then. Now, we may have interruptions. I'll tell you about them tomorrow if we have any. In any event, tomorrow morning, 9 o'clock. Thank you.

(The jury is excused.)

(Brief off record discussion.)

MS. CHARLES: Mykia Wilson.

THE COURT: Okay. Mykia, the jury has gone home for the day, but we need you here tomorrow morning 9 o'clock. Do you understand?

MS. WILSON: Yeah.

THE COURT: We'll see you tomorrow. All right. Good night.

(Whereupon the proceedings are concluded for the day and will be continued on Thursday, April 2, 1998 at 9 a.m.)

C E R T I F I C A T E

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I, FRANCES L. FORBES, C.S.R., License Number XI-01085, 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 Proceedings, and is a true and accurate compressed transcript of my stenographic notes to the best of my knowledge and ability.

Frances L. Forbes
Official Court Reporter
Essex County Courthouse

Sept. 16, 1999
Date

1 **A-6522-98 TV**

2 SUPERIOR COURT OF NEW JERSEY
3 LAW DIVISION - CRIMINAL PART
4 ESSEX COUNTY, INDICTMENT NO: 2358-5-97
5 APP. DIV. NO. **6522-98 TV** *Zr*

6 STATE OF NEW JERSEY, :
7 Complainant, : STENOGRAPHIC TRANSCRIPT
8 vs. : OF
9 : TRIAL PROCEEDINGS
10 ROY DOVE, :
11 Defendant. : TESTIMONY OF
12 : STATE'S WITNESSES

13 ----- Place: Essex County Courthouse
14 50 West Market Street
15 Newark, New Jersey 07101

16 **FILED**
17 APPELLATE DIVISION Date:

18 Thursday, April 2, 1998
19 Volume I of I
20 Pages 1 - 143

21 **OCT 18 1999**

22 B E F O R E *R. Collins*
23 THE HON. JULIUS A. FEINBERG, J.S.C., AND A JURY.

REC'D
APPELLATE DIVISION

OCT 18 1999

24 TRANSCRIPT ORDERED BY:

25 DEBORAH C. COLLINS, ESQ., Office of the *Defendant*

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

ROSYLYN CARY CHARLES, ESQ., Assistant Prosecutor for the
County of Essex, Attorney for the State

RICHARD M. ROBERTS, ESQ., (Roberts & Fielo, Esqs.)
Attorney for the Defendant.

FRANCES L. FORBES, C.S.R.
Official Court Reporter
50 West Market Street
Room 165, Essex County Courthouse
Newark, New Jersey 07102

I N D E X

	WITNESS	DIRECT	CROSS
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2			
3	FOR THE STATE		
4	INV. WILLIAM ISETTS	4	27
5	MYKIA JABON WILSON	51	65
6	TONY BROOKS	81	92
7	DR. JUNAID SHAIKH	114	129
8			
9			

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Isetts-Direct

4

1 THE COURT: Is your witness available?
 2 MS. CHARLES: The young lady is not here. I'm
 3 going to put Investigator Isetts on.
 4 THE COURT: All right.
 5 MS. CHARLES: She probably thought you said 9:30.
 6 THE COURT: Have the jury come out.
 7 (The jury is brought into the courtroom.)
 8 THE COURT: Good morning. Let the record reflect
 9 all the jurors are present. Good morning, ladies and
 10 gentlemen.
 11 THE JURORS: Good morning.
 12 THE COURT: Thank you for your patience.
 13 You may call your witness.
 14 MS. CHARLES: Your Honor, the State calls
 15 Investigator William Isetts.
 16 INV. WILLIAM ISETTS, STATE'S WITNESS, SWORN.
 17 DIRECT EXAMINATION BY MS. CHARLES:
 18 Q. Good morning, Sir.
 19 A. Good morning.
 20 Q. By whom are you employed?
 21 A. The Essex County Prosecutor's Office.
 22 Q. And in what capacity?
 23 A. As a county investigator.
 24 Q. And how long have you been so employed as a county
 25 investigator?

Isetts-Direct

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1 A. Since November of '83.
 2 Q. Okay. And prior to that were you involved in law
 3 enforcement?
 4 A. Yes.
 5 Q. And in general how long have you been involved in
 6 law enforcement?
 7 A. Approximately 20 years.
 8 Q. I'm going to direct your attention to February 1
 9 of 1997, you were assigned to what unit in February of 1997?
 10 A. The homicide squad.
 11 Q. And as of that time how long had you been assigned
 12 to the homicide squad?
 13 A. Since March of '92.
 14 Q. And as an investigator in the homicide squad what
 15 are your duties?
 16 A. Our duties in the homicide squad were to respond to any
 17 homicide, suspicious death, or police related shooting
 18 within the county of Essex.
 19 Q. And in February of 1997, did you have occasion to
 20 b3 assigned homicide Number 11 of the '97 term?
 21 A. Yes.
 22 Q. Okay. And that homicide involved the death of
 23 whom, Sir?
 24 A. Keith Banks.
 25 Q. And did you investigate this homicide alone or

Isetts-Direct

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- 1 with the assistance of someone else?
 2 A. With the assistance of the Newark Police Department
 3 homicide squad.
 4 Q. And what role did the Newark Police homicide squad
 5 play in this -- play in conjunction with your role as an
 6 investigator?
 7 A. Well, we assist each other in the investigation.
 8 Q. During the course of the investigation did you
 9 have an occasion to respond to the scene?
 10 A. Yes.
 11 Q. And where was the scene, Sir?
 12 A. The scene was in the area of 503 South 19th Street.
 13 Q. And could you describe the scene?
 14 A. Residential area, um, city, you know. It's in the
 15 middle of the city, vehicle traffic, pedestrian traffic.
 16 You know, it's typical street in the city.
 17 MS. CHARLES: Photos marked for identification.
 18 (Photographs are marked S-10, S-10A, S-10B, S-10C and
 19 S-10D for identification.)
 20 Q. I'm going to show you what has been marked S-10C
 21 for identification. What is that, Sir?
 22 A. This is the address of 503 South 19th Street.
 23 Q. And in the photograph what does it depict?
 24 A. Front entranceway, the door open, and the number 503
 25 above the doorway.

Isetts-Direct

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- 1 Q. I'd also have you take a look at what has been
 2 marked S-10D for identification.
 3 A. This is a shot of the front of the house of 503 South
 4 19th Street where the Newark radio car parked in front.
 5 Q. How would you describe 503 South 19th Street?
 6 A. Multi-dwelling residential house.
 7 Q. And does this depict the scene the way you
 8 observed it when you responded to it?
 9 A. Yes.
 10 Q. Do you recall exactly when you responded to the
 11 scene?
 12 A. Well, my first response was to the hospital to meet
 13 with Detective Sabur of the homicide squad, and subsequently
 14 after that we responded up to the scene.
 15 Q. Was it when in relation to the incident did you
 16 respond to the scene?
 17 A. Well, it was after the incident. It was after -- the
 18 photographs were taken prior to my arrival.
 19 Q. Now, you indicated that you initially responded to
 20 the hospital. What was your purpose in responding to the
 21 hospital?
 22 A. To meet with Detective Sabur who was at the hospital,
 23 to get the details of the incident.
 24 Q. Okay. And did you, in fact, do that?
 25 A. Yes.

Isetts-Direct

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- 1 Q. Also at the hospital did you do anything else?
 2 A. Well, we responded -- after that we responded back to
 3 Newark homicide to interview witnesses.
 4 Q. Okay. And where were those witnesses initially
 5 gathered from?
 6 A. The area of 503 South 19th Street.
 7 Q. Now, you indicated that you responded -- after you
 8 went to the hospital you responded back to the scene.
 9 Is that correct?
 10 A. I'm not sure if we went right to the scene from the
 11 hospital, or we did the investigation, continued at Newark
 12 hospital, and then went back from the scene from there. I'm
 13 not sure exactly what we did.
 14 Q. The witnesses that you -- that were gathered from
 15 the scene at 503 South 19th Street, who were those
 16 witnesses?
 17 A. I would have to refer to my report, Counselor.
 18 Q. I'm going to show you what has been previously
 19 marked S-1 for identification. Could you tell us what that
 20 is?
 21 A. This is my continuation report of the investigation
 22 report of this incident.
 23 Q. And that investigation -- that continuation report
 24 was began when, what date?
 25 A. Well, I started typing the report on February 3, 1997.

Isetts-Direct

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- 1 Q. And it was completed roughly when?
 2 A. After the arrest of the defendant.
 3 Q. Which would be approximately what date?
 4 A. February 4, somewhere in that area.
 5 Q. If you could refer to your report, if it refreshes
 6 your recollection.
 7 A. The witnesses that were transported to the homicide
 8 squad were Stephen Williams of 84 Ball Street in Irvington,
 9 Roberta Banks, 503 South 19th Street, Newark, Mary Rasheedah
 10 Banks, 503 South 19th Street, Newark, Mykia Wilson of 27
 11 Columbia Avenue, Newark, and Nicole Gurley of 17 Montgomery
 12 Street of Newark.
 13 Q. And responding to the homicide squad unit with
 14 those witnesses, what took place with those witnesses?
 15 A. We interviewed them, and statements were obtained.
 16 Q. I'm going to show you what has been previously
 17 marked S-7 for identification.
 18 Do you recognize that, Sir?
 19 A. Yes.
 20 Q. And what is that?
 21 A. This is the statement that was taken on the morning of
 22 the incident of Mary Rasheedah Banks. That was taken by
 23 Detective Rashid Sabur of the Newark homicide squad.
 24 Q. Did you have an occasion during the course of your
 25 investigation to review that statement?

Isetts-Direct

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- 1 A. Yes.
- 2 Q. And it was taken when, Sir?
- 3 A. It was taken on February 2, 1997.
- 4 Q. I'm going to show you what has been previously
- 5 marked S-5 for identification.
- 6 A. Yes.
- 7 Q. And what is that, Sir?
- 8 A. This is a statement taken by myself from a Nicole
- 9 Gurley dated February 2, 1997.
- 10 Q. And did you have an occasion, obviously, to review
- 11 that statement during the course of your investigation?
- 12 A. Yes.
- 13 Q. I show you what has been previously marked S-8 for
- 14 identification. Do you recognize that, Sir?
- 15 A. Yes, I do.
- 16 Q. And what is that?
- 17 A. This is a statement, again, taken by myself of
- 18 Rasheedah Banks, dated February 4, 1997.
- 19 Q. And the purpose of that statement was -- why was a
- 20 second statement taken of Mary Rasheedah Banks?
- 21 A. In order to memorialize a photographic identification
- 22 that she made.
- 23 Q. Could you tell us the circumstances under which
- 24 the photographic identification was made?
- 25 A. How we developed a suspect, or exactly --

Isetts-Direct

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- 1 Q. How you showed it to Miss Banks.
- 2 A. Myself and Detective Keith Sheppard of the Newark
- 3 homicide squad responded to her residence with a photo
- 4 array, a folder containing six photos, and asked her if she
- 5 recognized anyone in the photo array, and at that time she
- 6 did.
- 7 Q. Okay. Showing you what has been previously marked
- 8 S-9 for identification, would you indicate what that is?
- 9 A. Yes. This is the photo array that was shown to the
- 10 witnesses, one of them, Mary Rasheedah Banks.
- 11 Q. And when you showed that photo array to Mary
- 12 Rasheedah Banks, what did she do with reference to same?
- 13 A. She signed and dated the rear of the photo that she
- 14 picked out, and initialed and dated the remaining five
- 15 photos.
- 16 Q. Now, which photo did she pick out?
- 17 A. Number 5.
- 18 Q. And Number 5 depicts a photograph of whom?
- 19 A. The defendant, Roy Dove.
- 20 Q. Did you have an occasion to cause that
- 21 photographic array to be shown to anyone else?
- 22 A. Yes.
- 23 Q. I'm going to --
- 24 THE COURT: S-11 and 12.
- 25 (A Statement of Tony Brooks is marked S-11 for

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12

1 identification.

2 (A Statement of Derrick Mc White is marked S-12 for
3 identification.)

4 Q. I'm going to show you what's been marked S-11 for
5 identification. Do you recognize that, Sir?

6 A. Yes, I do.

7 Q. And what is that?

8 A. This is a statement, three-page statement taken by
9 myself of Tony Brooks, dated February 3, 1997.

10 Q. And what were the circumstances under which you
11 developed Mr. Tony Brooks as a witness?

12 A. I received a telephone call from the Newark Police
13 dispatch at my residence to contact Sergeant Paul Lorenc of
14 the Newark homicide squad. When I did, he advised me that
15 a --

16 MR. ROBERTS: Objection.

17 THE COURT: You can't tell us what he told you.
18 What did you do as a result of speaking with him?

19 THE WITNESS: Based on information I received from
20 Sergeant Lorenc I responded to the Newark homicide squad
21 where the defendant, Roy Dove, was in a holding cell, and
22 Mr. Tony Brooks was located in a squad room of the homicide
23 squad waiting to be interviewed.

24 Q. And how long is that statement, Sir?

25 A. Three pages.

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1 Q. And that statement began when?

2 A. Well, the date, again, February 3, 1997, at
3 approximately 10:43 p.m.

4 Q. And it concluded when?

5 A. Approximately 11:53 p.m.

6 Q. And during the course of that statement was

7 Mr. Brooks shown anything?

8 A. Yes, he was.

9 Q. And what was he shown?

10 A. He was shown a photo array right here.

11 Q. And after being shown that particular photo array,
12 what, if anything, did he do with reference to that photo
13 array?

14 A. He signed -- well, he identified the defendant, Roy
15 Dove, photo Number 5. He signed and dated the rear photo
16 Number 5, and initialed and dated the remaining five photos.

17 Q. Prior to showing Mr. Brooks the photo array, which
18 contained the photo of the defendant, did you have an
19 occasion to elicit from Mr. Brooks a description of the
20 individual?

21 A. Yes.

22 Q. And what description did he give you?

23 MR. ROBERTS: Judge, I object. I think that's
24 more properly coming from Mr. Brooks, and not from the
25 detective as to what was told to him.

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1 THE COURT: I'm inclined to agree with him.
 2 MS. CHARLES: I would submit this is an exception
 3 to the hearsay rule with regard to identification.

4 THE COURT: I'll hear you at side bar.

5 (Side bar.)

6 MS. CHARLES: Your Honor, it's my understanding
 7 that testimony regarding prior identification is an
 8 exception to the hearsay rule. All I'm eliciting from this
 9 witness is what description was given to him of this
 10 particular defendant. Mr. Brooks is going to testify in
 11 this matter, not that that is even a requirement for --

12 THE COURT: I think then I have to -- I'll allow
 13 it as long as Brooks is going to be here to testify as well.
 14 I'll allow it on that -- on the exception.

15 MR. ROBERTS: I would suggest, Judge, that --
 16 excuse me -- the exception doesn't apply to police
 17 statements that are taken from witnesses. I think the
 18 exceptions are -- that exception is geared for out of court,
 19 out of police identifications; not when someone's in custody
 20 giving a statement.

21 THE COURT: Considering --

22 MR. ROBERTS: Not that it's not that critical --

23 THE COURT: I think the point is well taken. I'll
 24 allow it.

25 MS. CHARLES: Thank you, your Honor.

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(Open court.)

1 Q. Investigator Isetts, what description did

2 Mr. Brooks give you with regard to the suspect?

3 A. His answer -- again, if I can refer to the statement,
 4 Counsel?

5 Q. Certainly.

6 A. That would be page 2, approximately five questions
 7 down. The question was asked: Can you describe the guy you
 8 saw fighting with Black -- who was the street name for the
 9 victim. His answer was: Black male, short, five-five, dark
 10 skin, about 150 pounds, black Antarctic jacket.

11 Q. You also indicated that at the station where you
 12 took that statement from Mr. Brooks was Roy Dove. Roy Dove
 13 was also at the station.

14 Is that correct?

15 A. In the homicide squad holding cell, yes.

16 Q. I'm going to show you what's been previously
 17 marked S-3 for identification. What is that, Sir?

18 A. A Newark Police arrest report typed out by Detective
 19 Sabur.

20 Q. And when was that arrest report executed?

21 A. February 3, 1997, approximately 2300 hours.

22 Q. And whose arrest report is it?

23 A. The arrest report of Roy Dove.

24 Q. And contained therein are certain identifiers, are
 25

1 there not?

2 A. Yes, there is.

3 Q. And what identifiers with regard to description --
4 THE COURT: Don't be intimidated because he stood

5 up.

6 Q. What identifiers with regard to a description
7 appear on that arrest report, Sir?

8 MR. ROBERTS: My objection, this is not this
9 detective's report, and I object to him reading.

10 THE COURT: I'll sustain the objection.

11 Q. Did you have an opportunity, while you were at the
12 Newark Police homicide unit, to view Mr. Dove?

13 A. Yes.

14 Q. And in viewing Mr. Dove were you able, based on
15 your ability to make a description of Mr. Dove, were you
16 able to discern his height?

17 A. Yes.

18 Q. And what was his height, Sir?

19 A. Approximately five-five.

20 Q. All right. And based on what you were able to
21 observe of Mr. Dove on that date, were you able to make an
22 approximate estimation with regard to weight?

23 A. Well, I would say somewhere in the area of 150. He's
24 pretty slender.

25 Q. Do you see the individual that was at Newark

1 homicide on that date in court today?

2 A. Yes, I do.

3 Q. Could you point him out and indicate what he's
4 wearing?

5 A. Counsel table next to counsel, wearing a purple suit
6 and tie, white shirt.

7 MR. ROBERTS: Indicating the defendant, your
8 Honor.

9 THE COURT: Thank you.

10 Q. And does he, based on your memory, look
11 substantially the same as he did back in February of 1997?

12 A. Well, he's wearing a suit and tie. His hair is a
13 little different.

14 Q. When Mr. Dove was at the homicide unit, did you
15 have an occasion to speak with him?

16 A. Yes.

17 Q. And what were the circumstances under which you
18 had an occasion to speak with him?

19 A. We obtained -- based on information from Tony Brooks,
20 we obtained more identifications, and we went in to --
21 myself, Detective Sheppard, went in to talk to Mr. Dove, and
22 I myself advised him that he was witnessed by several
23 witnesses stabbing Keith Banks to death, and I -- when I
24 advised him of his rights, he gave a statement, he gave a
25 quote.

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- 1 Q. Now, you indicated that you advised him of his
2 rights. What rights did you advise him of?
3 A. His Miranda rights.
4 Q. And do you recall what exactly you said to him
5 with respect to his Miranda rights?
6 A. I read off a blank preamble sheet the basic rights on
7 the preamble sheet. I read them verbally to him.
8 Q. Are you able to recite those Miranda rights that
9 you recited to Mr. Dove at that time?
10 A. Probably not word for word. I would have to refer to
11 the sheet.
12 Q. I show you what's been previously marked S-2 for
13 identification. Is that a -- does that depict the Miranda
14 rights as you read them to Mr. Dove on that particular
15 evening?
16 A. This is an Essex County Prosecutor's Preamble Miranda
17 Warning, and it's basically the same sheet that I read to
18 him.
19 Q. Could you indicate -- could you recite the rights
20 that you read to Mr. Dove?
21 A. Number 1, you have the right to remain silent.
22 Number 2, anything you say can be used against you in a
23 court of law.
24 Number 3, you have the right to talk to a lawyer, and
25 to have him present while you are being questioned.

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- 1 Number 4, if you cannot afford to hire a lawyer, one
2 will be appointed to represent you before any questions, if
3 you wish one.
4 Number 5, you have the right to stop answering
5 questions or giving a statement anytime you wish, and do not
6 have to give a reason. You also have the right to demand a
7 lawyer during the giving of a statement or the answering of
8 questions and may stop until he arrives. If you cannot
9 afford a lawyer, one will be appointed to represent you.
10 Q. And after you read those rights to Mr. Dove, what,
11 if anything, did Mr. Dove do?
12 A. Well, he elicited a verbal statement which I depicted
13 in my report, my investigation report.
14 Q. And what did he say?
15 A. Again, if I refer to my report?
16 Q. Certainly.
17 A. After being advised of his rights, he, the defendant,
18 stated: "Fuck you and your witnesses. I'll get some horse
19 shit defense attorney to take a plea, so fuck you."
20 Q. Beyond that were any additional statements or even
21 a formal written statement taken of this individual?
22 A. No, at that point myself, Detective Sheppard, we
23 terminated our attempted interview, and at that point he was
24 slated for the murder of Roy Dove (sic).
25 Q. When --

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1 A. Correction, of Keith Banks.
2 Q. Okay. When -- when you read this individual his
3 rights, how did he appear as he was listening to these
4 rights?
5 MR. ROBERTS: Objection.
6 THE COURT: I think you ought to narrow it down.
7 I think that's what counsel is objecting to.
8 MR. ROBERTS: You're referring to physical
9 appearance?
10 MS. CHARLES: Not exactly.
11 MR. ROBERTS: Okay.
12 Q. When you read this individual -- well, even before
13 you read this individual his rights, were you able to
14 discern -- strike that.
15 In viewing Mr. Dove, were you able to develop an
16 opinion with respect to his ability to understand?
17 A. He appeared to be coherent.
18 Q. And why is it that you say that?
19 A. When myself and Detective Sheppard went into the room
20 there, where the holding cell is located, when I advised him
21 that he was witnessed by several witnesses stabbing Keith
22 Banks to death, I wanted to advise him of his Miranda
23 rights. I'm not sure at this time he said, yes, or whether
24 he shook his head, but he appeared to understand what I was
25 saying.

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1 Q. At the point in which you initially saw Mr. Dove
2 at the homicide unit in Newark, were you aware of how long
3 Mr. Dove was present at the homicide?
4 A. Well, I got the call from dispatch, Newark Police
5 dispatch somewhere in the area of around 9:30 p.m. So I
6 would imagine sometime fairly close to that time he was
7 probably picked up.
8 Q. And when did you, in fact, respond to the homicide
9 unit?
10 A. Well, shortly after that, but I live out of the area.
11 It took me probably close to an hour to get to the homicide
12 squad.
13 Q. And when you arrived at the homicide squad, where
14 did you see Mr. Dove?
15 A. He was in the holding cell.
16 Q. And could you describe that holding cell?
17 A. It's in a separate room away from the squad room of the
18 Newark homicide squad where files are located and also
19 bathrooms are located off the room.
20 Q. And when you observed Mr. Dove in the holding
21 cell, how was he positioned?
22 A. I'm not sure whether -- when I first looked at him, I'm
23 not sure whether he was seated or standing.
24 Q. Was he -- was he able to move about the cell
25 freely?

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1 A. I believed he was handcuffed to the bench. You could
2 still stand. It might be a little difficult, but you could
3 still stand. I'm not sure whether he was handcuffed to the
4 bench or not.

5 Q. Now, in addition to the witness, Tony Brooks, who
6 was developed, there was some other witnesses developed.

7 Is that correct?

8 A. Correct.

9 Q. And who were they, Sir?

10 A. Marcus Grady is also one of them, and also a Derrick
11 Mc White.

12 Q. I'm going to show you what has been marked S-12
13 for identification. Do you recognize that, Sir?

14 A. Yes.

15 Q. And what is that?

16 A. A statement obtained by Detective Keith Sheppard of the
17 Newark homicide squad of a Derrick Mc White.

18 Q. And when was that statement taken?

19 A. That statement was taken February 4 at approximately
20 1 a.m.

21 Q. Now, that statement was not taken by you or
22 Detective Sabur.

23 Is that correct?

24 A. Detective Sheppard.

25 Q. What role, if any, did Detective Sheppard play in

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1 this investigation?

2 A. Assisted myself and Detective Sabur with this
3 investigation.

4 Q. Would you consider him a primary detective in this
5 particular investigation?

6 A. Detective -- it was actually Detective Sabur's case,
7 and Detective Sheppard is like his working partner.

8 MS. CHARLES: S-13?

9 THE COURT: S-13.

10 (A Statement of Marcus Grady is marked S-13 for
11 identification.)

12 Q. I'm going to show you what's been marked S-13 for
13 identification. What is that, Sir?

14 A. A statement taken by myself of Marcus Grady.

15 Q. And when was that statement taken?

16 A. February 7, 1997.

17 Q. Do you recall the circumstances under which
18 Mr. Grady was developed as a witness?

19 A. He was identified as being with the defendant at the
20 time of the incident.

21 MR. ROBERTS: I'm sorry. Can I have the number of
22 that?

23 THE COURT: S-13.

24 MS. CHARLES: 13.

25 Q. Now, moving back to the scene. Did you have an

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- 1 occasion to find any physical evidence at the scene?
 2 A. Not myself, no.
 3 Q. Okay. Did anyone find any physical evidence at
 4 the scene?
 5 A. Newark police found a black cap at the scene and
 6 photographed it.
 7 Q. I'm going to show you what's been marked S-10A for
 8 identification.
 9 A. Photograph of a black ski hat, I guess you'd call it.
 10 Q. And what, if any, significance was placed upon
 11 that particular black ski hat?
 12 A. I was told by Detective Sabur, according to --
 13 MR. ROBERTS: Objection, Judge.
 14 THE COURT: I'll sustain the objection.
 15 Q. What significance does that ski cap play in this
 16 investigation?
 17 A. Based on information that we received, possibly
 18 belonged to the defendant.
 19 Q. And where was that ski cap found?
 20 A. In the area of 503 South 19th Street.
 21 Q. Exactly where, though?
 22 A. I'm not sure exactly where it was found.
 23 Q. Okay. This is the way that photograph depicts it
 24 on a certain -- depicts it on some kind of -- strike that.
 25 How is that -- could you describe that photograph?

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- 1 A. Eight by ten. It might be possibly in a street. I'm
 2 not sure whether it looks like blacktop or not in the photo.
 3 MS. CHARLES: If I could just have a moment,
 4 Judge.
 5 THE COURT: While we're waiting, I'll give you an
 6 idea of how our bookkeeping is. You heard, for instance,
 7 anything that can't be put down on the machine like a
 8 diagram, a piece of paper, they're marked for
 9 identification. Only when it's marked in evidence, then it
 10 will go into the jury room for you to see. If it is not
 11 sent into the jury room, all you do is hear about it, but
 12 you'll not see it. So at the end of the State's case there
 13 will be marked in evidence certain exhibits. Those are the
 14 exhibits that will go in.
 15 Q. Now, you stated that the only physical evidence
 16 that you were aware of dealt with a black cap.
 17 Is that correct?
 18 A. Well, that's the only evidence that was located. We
 19 were attempting to locate a knife, but we were unable to do
 20 so.
 21 Q. Could you explain to the -- explain the
 22 circumstances under which you attempted to locate the knife.
 23 A. The evening of the incident we received information
 24 that the knife might be at 503 South 19th Street; that one
 25 of the witnesses, I believe it was a relative of the

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1 victim's, picked it up and brought it into their house, and
 2 I believe she said she placed it on a table. When we
 3 responded to the location we, we couldn't find the knife.
 4 We searched the apartment the best we could for it, and
 5 could not produce it, and no one in the apartment knew what
 6 happened to the knife.

7 Q. Could you describe that apartment?

8 A. Very dark, cluttered. I know there was a lot of small
 9 children running around. I'm not really sure of how many
 10 rooms there were in there. I know there was a kitchen with
 11 several bedrooms.

12 Q. Where did you look for this knife?

13 A. Mattress, under a mattress. Of course, we searched the
 14 table, the kitchen table where it was supposed to be, some
 15 closets. We gave it the best search we could at that point.

16 Q. And when you say, we, who were you with?

17 A. Detective Sabur.

18 Q. And who was at the apartment while you and
 19 Detective Sabur were searching?

20 A. I know it was relatives of the victim. I just can't
 21 recall who it was exactly.

22 Q. Could you give us an approximation as to how many
 23 people were in this apartment when you were searching it?

24 A. Several. I couldn't give you a number.

25 MS. CHARLES: I have nothing further of this

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1 witness.

2 THE COURT: Mr. Roberts.

3 CROSS EXAMINATION BY MR. ROBERTS:

4 Q. Detective -- first of all, good morning.

5 A. Good morning.

6 Q. You indicated that when you went to 503 to look
 7 for the knife, that no one seemed to know anything about it.
 8 Is that correct?

9 A. Well, the witness, which is one of the relatives of the
 10 victim claims that -- I don't recall whether she put it on
 11 the kitchen table or one of the other witnesses put it on
 12 the kitchen table of 503 South 19th Street.

13 Q. Isn't it a fact that when you got there, the
 14 brother of Rasheedah said that Rasheedah never did bring the
 15 knife up there?

16 A. That probably was it. Again, I would have to refer to
 17 my report, Sir.

18 Q. Could you do that?

19 A. Yes, Sir.

20 Q. Do you remember it without referring to it?

21 A. I remember us talking to a lot of people up there that
 22 night, Sir.

23 Q. Okay. Go ahead.

24 A. Again, if I could advise as to what Rasheedah Banks, in
 25 my report, exactly what she said --

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1 Q. No, no.
 2 A. -- about the night --
 3 Q. No. My question was, you had indicated that the
 4 people up in the house didn't know anything about the knife.
 5 My question was, isn't it a fact that her brother
 6 stated that Rasheedah never did bring the knife up there?
 7 A. That's right. His name was Kevin Banks, Rasheedah's
 8 brother.
 9 Q. Okay.
 10 A. Who stated that he was home all evening and denied
 11 seeing the knife.
 12 Q. And said, in fact, that Rasheedah didn't know what
 13 she was talking about.
 14 MS. CHARLES: Objection, your Honor.
 15 THE COURT: I don't know. I'll allow the
 16 question.
 17 A. I can only go on what my report says, Sir.
 18 Q. It doesn't contain that?
 19 A. What it does say is --
 20 Q. I'm going to ask you, does it contain what I
 21 asked?
 22 A. No, Sir.
 23 Q. You said that when you went to the jail cell where
 24 Mr. Dove was handcuffed to the -- someplace in there -- you
 25 advised him that he had been identified as someone who

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1 killed somebody, right?
 2 A. First of all, I wasn't sure whether he was handcuffed
 3 to the bench or not.
 4 Q. Okay. You advised him that people had identified
 5 him as having killed somebody, right?
 6 A. That was after some statements were obtained, yes.
 7 Q. And his response was, I'm going to get a lawyer
 8 and cop a plea, basically?
 9 A. No, Sir.
 10 Q. Do I have to read the exact words because I don't
 11 know if I'm the horse shit lawyer or not.
 12 A. No, Sir, no.
 13 Q. But --
 14 A. His first --
 15 Q. Let me ask you a question, please:
 16 Didn't he say, and you said that he said, generally,
 17 without going word for word, that: F you and your
 18 witnesses. I'm going to get a horse shit lawyer and cop a
 19 plea, generally speaking?
 20 A. Yes, Sir.
 21 Q. That's after you advised him he had been
 22 identified as a murderer, so he's pleading to a murder,
 23 right, according to that statement?
 24 A. And advised him of his rights, yes, Sir.
 25 Q. When you took the statement -- I show you a copy

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- 1 of S-5. You might have it up there. Do you have S-5 up
2 there?
3 A. Which one is that?
4 Q. Nicole Gurley.
5 A. No, I don't think I have that.
6 Q. Now, you took that statement.
7 Is that correct?
8 A. That's correct.
9 Q. Now, in that statement, is it not so that there
10 are initials, the initials of the person who gave the
11 statement are placed in certain areas.
12 Is that correct?
13 A. That's correct.
14 Q. And there were areas where corrections were made?
15 A. Typos. It looks like typos, and also a name was
16 crossed out.
17 Q. Okay. When you finish -- let's speak generally.
18 First, when you finish with a statement, typing a statement,
19 and give it to a witness who made that statement, you give
20 it for the purpose of having the witness look over that
21 statement, correct?
22 A. Yes, correct.
23 Q. And if there are any additions, corrections, or
24 mistakes, that witness will tell you and make them.
25 Is that so?

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- 1 A. Correct.
2 Q. In this particular case there were certain typos,
3 and I guess misspellings, or whatever, that the witness
4 crossed out and made corrections?
5 A. Correct.
6 Q. And that was at her direction, right?
7 A. Correct.
8 Q. And is not the purpose of that -- well, let me ask
9 you -- let me rephrase that. Sometimes in your
10 experience -- how long have you been a police officer in the
11 Prosecutor's Office and everything together?
12 A. About 20 years.
13 Q. And sometimes people who make statements come back
14 and they change their minds and they renege on the
15 statements, right?
16 A. On statements?
17 Q. Yeah. Sometimes people say I didn't -- the cops
18 made me do it. They forced me; things of that nature.
19 MS. CHARLES: Objection, your Honor.
20 THE COURT: I'll sustain the objection as to
21 occasions there have been. You're asking him --
22 MR. ROBERTS: It's for a purpose. There was
23 testimony as to this witness, as to the accuracy of that
24 report.
25 Q. Is it not so that part of the technique you use,

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1 and is, in fact, taught in the police academy, to assure
 2 that witnesses identify properly the statement is to have
 3 them read it, make corrections so if their initials appear
 4 on them --
 5 A. No. They read it for the accuracy of their statement.
 6 If they see something, possibly a misspelled word -- I'm not
 7 the greatest speller -- or if they see something that they
 8 said that maybe was added in or not added in, maybe they
 9 forgot to say something, or maybe they forgot, they'll write
 10 it in themselves. This is their statement. It's not mine.
 11 Q. Did you go to the police academy?
 12 A. Yes, I did.
 13 Q. And it's your testimony that that's not taught
 14 there to have them initial to show that they've, in fact,
 15 read the statements?
 16 MS. CHARLES: Objection, your Honor.
 17 THE COURT: I'll allow it.
 18 A. Well --
 19 Q. Do you understand the question?
 20 A. No, I don't.
 21 Q. Is it not so that at the academy they teach
 22 persons -- there's nothing wrong with it -- they teach
 23 persons who take statements to purposely make mistakes so
 24 the person when reading it will cross out the mistake, put
 25 their initials in to show that they, in fact, did read it?

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1 A. No, Sir. Their signature --
 2 Q. The question is do they teach that at the academy?
 3 A. No, Sir. No, Sir.
 4 Q. Did that witness read that report before -- that
 5 statement before it was signed?
 6 May I have it again, please.
 7 A. Yes, she did.
 8 Q. And the only corrections or mistakes were
 9 initialed by her.
 10 Is that right?
 11 A. That's correct.
 12 Q. By the way, when you're typing a report, a
 13 statement, you ask the questions, and you type it as you
 14 ask?
 15 A. Yes.
 16 Q. And when an answer is given, you type the answer?
 17 A. Yes.
 18 Q. And that report, or any report -- and let's refer,
 19 stick to that one, S-5. Are there questions and answers
 20 that are given aside from the ones that are written in the
 21 reports while the report is being taken -- the statement?
 22 Do you understand -- I phrased that poorly. Let me rephrase
 23 it.
 24 When you're typing the statement, the questions and
 25 answers, are there questions and answers that are asked and

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1 answered that are not placed in the statement, the typed
 2 statement?
 3 A. If I ask a question, and she doesn't understand it, I
 4 might rephrase the question.
 5 Q. Okay.
 6 A. And type the rephrased question in.
 7 Q. That would be the same question?
 8 A. Yeah. I mean, if she didn't understand what I'm
 9 asking, if, for instance, Nicole, there, if she didn't
 10 understand what I was asking her, I would rephrase the
 11 question, and once she understood it and answered it, I
 12 would type it in.
 13 Q. Aside from that, would you leave out purposely
 14 other questions and answers when she understood the
 15 question, gave an answer, it would be put in here, right?
 16 A. Yeah.
 17 Q. Would anything be left out, questions and answer
 18 wise other than what you just said when you repeated a
 19 question?
 20 A. Nothing that was pertinent to the investigation, Sir.
 21 Q. Do you have the pictures?
 22 I'm going to show you a photo that was not shown
 23 before, S-10 for identification.
 24 THE COURT: That wasn't shown?
 25 MR. ROBERTS: No.

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1 Q. S-10. It just says S-10 for identification,
 2 Judge.
 3 THE COURT: All right. Okay. I thought they were
 4 all marked A, B, C and D.
 5 MS. CHARLES: It's S-10, and the rest are 10A, B,
 6 C and D.
 7 THE COURT: I see. All right.
 8 Q. Can you tell us what that depicts?
 9 A. Well, it appears to depict the photograph and angled
 10 shot of the, I guess it would be, the right side of 503
 11 South 19th Street.
 12 Q. And you have experience viewing these kind of
 13 photographs, have you not, generally speaking?
 14 A. Somewhat, yes.
 15 Q. And the -- let me -- let's keep this aside for a
 16 second, and I show you S-10D for identification, that you
 17 identified before as the front of 503?
 18 A. That's correct.
 19 Q. All right. And, again, these photographs were
 20 taken sometime after the incident after 10:30 and before you
 21 got there, which was about what time?
 22 A. No, Sir. The photographs were taken prior to my
 23 arrival.
 24 Q. Yes.
 25 A. And sometime after the incident. I'm not exactly sure

1 when Unit 50 --
 2 Q. I thought that's what I just said. The incident
 3 took place around 10:30. You arrived sometime after that,
 4 and these pictures were taken in between that time, right?
 5 A. I'm not sure what time the incident actually occurred,
 6 but, yes, sometime after the incident.
 7 Q. S-10 for identification, that shows a Newark
 8 police car in the front of the house that is lighted, is it
 9 not, by the flash bulbs showing the white, I think it is --
 10 of the house, and the white of the police car?
 11 A. This is S-10D. I can't really say what was lighting
 12 it. It appears to be a flash, but I can't say what is
 13 actually lighting the area.
 14 Q. Okay. And S-10 for identification, does that
 15 accurately depict, as best of your recollection, the
 16 lighting at the time?
 17 A. I wouldn't know, Sir. I wasn't there when this photo
 18 was taken.
 19 Q. You came there later, did you not?
 20 A. Yes, later that evening.
 21 Q. When you came there later, was it similar, the
 22 lighting similar to that photograph different? How was it?
 23 A. I can't recall, Sir.
 24 Q. Okay. Can't recall. You can't recall.
 25 Now, S-10A for identification, it appears to be, as you

1 described it, a ski hat?
 2 A. It appears to be a black ski hat, yes.
 3 Q. And is that -- there's something red next to it.
 4 Is that blood? Do you know what that is?
 5 A. No, I don't, Sir.
 6 Q. Do you know if any investigation was done
 7 concerning what that red stain was?
 8 A. Again, if I refer to my report, Sir.
 9 Q. Sure.
 10 A. What I have in my report is what Detective Sabur
 11 advised me at the hospital. He advised --
 12 Q. Where are you referring?
 13 A. Page 2 of my continuation report.
 14 Q. I don't want you to read any hearsay.
 15 Canvass was conducted, failed to produce any further
 16 information. However, a black skull cap believed to be worn
 17 by the suspect was recovered from the scene and submitted
 18 into evidence.
 19 Q. Now, you had some testimony from statements that
 20 whoever was involved in the fight, and perhaps whoever
 21 stabbed the victim, had on a skull cap, right?
 22 A. I would have to read each statement.
 23 Q. Would you take my representation at least some of
 24 them said that?
 25 A. Yes, Sir.

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- 1 Q. Okay. Was any scientific investigation done to
2 your knowledge to determine whether or not there were any
3 hair follicles in this hat?
4 A. I don't believe so, Sir.
5 Q. You understand I know this wasn't your case, but
6 you understand, do you not, that the matching or -- let me
7 withdraw that. That if the scientific evidence of hair
8 follicles in a hat like this matched with that of the
9 alleged assailant would be important to your investigation?
10 MS. CHARLES: Objection, your Honor.
11 THE COURT: What's the objection?
12 MS. CHARLES: I think that this -- the witness has
13 indicated that the -- that kind of examination was not done.
14 I think any inquiry further than that would just serve --
15 THE COURT: He was asked wouldn't that have been
16 essential.
17 A. I'm sorry, Sir. Could you repeat that?
18 Q. Sure.
19 As the investigating officer, at least one of them, you
20 had information that the assailant wore a black skull cap?
21 A. Correct.
22 Q. A black skull cap was found at the scene, right?
23 A. Correct.
24 Q. No investigation, scientific-wise as far as you
25 know was done concerning a skull cap, right?

Isetts-Cross

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- 1 A. Correct.
2 Q. Would it not have been important to your
3 investigation to determine whether or not there were hair
4 follicles in this hat, and then match it with that of the
5 accused?
6 A. Would it have been important?
7 Q. Yes.
8 A. Yes, Sir. I would imagine so.
9 Q. In fact, it could have ruled him in or out,
10 couldn't it, as the person who wore this hat?
11 A. Well, that would have been one of the factors. We had
12 others.
13 Q. You spoke about the knife -- forgive me, Sir. I'm
14 losing my voice.
15 You spoke about the knife and what happened when you
16 went to search for it. To your knowledge, did you or
17 anybody from the Prosecutor's Office, the police, receive
18 information after that search that, in fact, a knife was
19 found at that location?
20 A. No, Sir. I know there was a report.
21 Q. Well, I'm sorry -- yes.
22 A. There was a report submitted that a radio car was sent
23 up to the area; that there was report of the knife being
24 found. However, the radio car also could not find the
25 knife.

Isetts-Cross

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1 Q. Do you know if anybody by the name of Julia ever
2 called anybody from the Prosecutor's Office or Police
3 Department and told them I have the knife?

4 A. No, Sir.

5 Q. In fact, there was no reports from anybody, Newark
6 radio car, or anybody else, concerning anybody named Julia
7 giving any information, right?

8 A. I'm not sure if the name Julia appears in the Newark
9 report, but, no, not that I was made aware of, no, Sir.

10 Q. During the course of your investigation -- by the
11 way, the report, S-1, that you compiled, does that contain,
12 basically, everything that you did, also include some
13 others, but, basically, what you did in this investigation?

14 A. Up until the time of his -- of Roy Dove's arrest; yes,
15 Sir.

16 Q. Did you do anything after that concerning the
17 investigation?

18 A. A couple of statements; I believe one or two
19 statements. I believe that's about it, Sir.

20 Q. Okay. Aside from the statements, Sir, that was
21 all that your part was?

22 A. Yes; yes, Sir.

23 Q. Do you know whether or not Detective Sabur or
24 anybody else from the Newark Police Department did any
25 further investigation after the arrest of Mr. Dove?

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1 A. If it was anything pertinent, they would have advised
2 me.

3 Q. So as far as you know nothing pertinent was done
4 after that?

5 A. I wouldn't know, Sir.

6 Q. You heard, did you not, or learned from
7 statements, that two drug dealers, Kurt and Malik had
8 supplied drugs to the victim even that night to sell?

9 A. Yes, Sir.

10 Q. And you learned, did you not, that Kurt and Malik
11 had threatened to kill the victim and his sister, Roberta?

12 A. Yes, Sir.

13 Q. What investigation was done concerning Kurt and
14 Malik?

15 A. We attempted to identify who they were. We were unable
16 to identify from the street names who they were.

17 Q. That's all you did?

18 A. Yes.

19 Q. Didn't one of the statements give the address
20 where stash was, and where they stayed right around the
21 corner?

22 A. Yes, Sir.

23 Q. Did you go up there?

24 A. Not myself. I'm not sure if one of the other
25 detectives went up there.

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- 1 Q. Is there any report -- you've had a chance to
2 review all the reports, haven't you?
3 A. Not all of them, Sir.
4 Q. Is there any report, to your knowledge, that says
5 anything about detectives doing anything to try and locate,
6 go up to the house of Kurt and Malik?
7 A. Not that I believe, Sir.
8 Q. In one of the -- by the way, were there any
9 inter-office memos that you're aware of notifying the
10 narcotics squad that these guys, Kurt and Malik, are out
11 there supplying drugs to sellers and threatening people?
12 A. Not that I'm aware of, Sir. There's drugs all over the
13 city.
14 Q. During the course of your investigation, did you
15 learn, or did you obtain information somehow, that the
16 victim had a fight the day before with somebody?
17 A. Yes, Sir.
18 Q. From an unknown person?
19 A. Yes, Sir.
20 Q. And who was that fight supposed to be with?
21 A. Again, I would have to refer to my report, Sir.
22 Q. Okay.
23 A. The only thing I see in my report, Sir, is the
24 reference to Kurt and Malik had previously threatened them
25 over missing drugs.

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- 1 Q. I'm sorry.
2 A. The only thing I have in my report is from Roberta
3 Banks, the victim's sister, that her brother had been
4 previously threatened by Kurt and Malik over missing drugs.
5 Q. But you, in answer to my question, you recall that
6 somehow you developed information that the victim had been
7 in a fight with somebody the night before?
8 A. I would have to refer to each statement, Sir. I'm not
9 really -- I can't recall exactly what each statement says.
10 Q. I know. But do you remember -- I think you
11 answered you did remember having developed that information?
12 A. Well, I remember that he had a problem with people in
13 the area. I'm not sure exactly who it was.
14 Q. You mean people besides Kurt and Malik?
15 A. Well, Kurt and Malik is the only ones that come to
16 mind, Sir.
17 Q. When Rasheedah Banks picked out that photo array,
18 you indicated she picked out Number 5?
19 A. That's correct, Sir.
20 Q. Did she pick out any other numbers?
21 A. No, she didn't.
22 Q. Did she go right to Number 5 without hesitation
23 and say that's the man?
24 A. Yes, Sir.
25 Q. When you went to see Mr. Dove in the holding cell,

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1 and he allegedly gave that statement that you testified to,
2 another question was asked I'm not sure if you were able to
3 answer it. How long had he been there?

4 A. That question wasn't asked, Sir.

5 Q. Do you know how long he was there?

6 A. Well, the only thing I can say, it was probably just
7 prior to approximately -- I believe it was 9:30 is when I
8 got the call, around 9:30 p.m.

9 Q. Well, was it a couple of hours? Do you know,
10 approximately? I don't want you to guess. If you don't
11 know, just tell us.

12 A. I couldn't say, Sir. Like I said, the only time that I
13 can make reference to when he was first picked up was
14 somewhere in the area of 9:30 p.m.

15 Q. What time did you get there?

16 A. Maybe an hour, just short of an hour after that.

17 Q. And you took a bunch of statements before that,
18 before you saw him, once you got there?

19 A. We took -- I can count how many statements we took,
20 Sir.

21 Q. If the times on the statement would help you as to
22 how long.

23 A. Do you want an answer to the question?

24 Q. No. If they help you, the times, as to how long
25 you were there, you can refer to the times.

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1 A. Well, I'll answer your first question first. There was
2 one statement of Tony Brooks, and there was the I.D.
3 statement of Rasheedah Banks.

4 Subsequent, there was also a statement of Derrick
5 Mc White.

6 Q. And what time was the last statement taken --
7 finished?

8 A. The last statement in the investigation, or that night?

9 Q. That night.

10 A. From what I see here, Sir, the last statement taken was
11 of Derrick Mc White, and that statement ended at
12 approximately 2:05 a.m.

13 Q. So somewhere, what, more than four hours after he
14 was brought in was when you spoke to him, Mr. Dove?

15 A. Yes, Sir.

16 Q. Had he been in that holding cell for all that four
17 hours? Do you know?

18 A. Well, I'm not sure if he went to the bathroom. That
19 wouldn't be my responsibility. It would be the
20 responsibility that the guys in the Newark homicide squad
21 have.

22 Q. How big is that cell?

23 A. It's a caged area. Approximately, maybe four by six.
24 It's a small, small holding cell area.

25 Q. Do you know if Mr. Dove was given the opportunity

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- 1 to make a phone call while he was in there?
 2 A. I wouldn't be able to answer that, Sir.
 3 Q. When you went in there -- by the way, to your
 4 knowledge, no officers beat him up or anything, did they?
 5 A. No, Sir.
 6 Q. Nobody slapped him around or anything?
 7 A. No, Sir.
 8 Q. Matter of fact, if somebody comes in, a defendant
 9 comes in custody, if that person does have some bruises,
 10 black eyes, whatever, you usually take a picture to assure
 11 that's the way he came in, and the police didn't do it,
 12 right?
 13 A. Well, that's not a standard procedure. Once they get
 14 arrested they're brought down to the slate -- to be slated
 15 at the cell block. They're photographed down there.
 16 Q. Okay. But it's a good idea, isn't it -- don't you
 17 guys do that to protect yourselves?
 18 A. Well, I guess it's up to an individual's preference,
 19 and, again, if there's film available.
 20 Q. But you didn't see any bruises or any evidence
 21 that he was slapped around or knocked around or anything,
 22 right?
 23 A. No, Sir.
 24 Q. Okay. When he made that statement -- do you have
 25 any notes on the statement, aside from your report?

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- 1 A. No, Sir. Once I compile the report, my notes are
 2 destroyed.
 3 Q. Did you take notes when he made that statement?
 4 A. I jotted it down in my notebook; yes, Sir.
 5 Q. It's a notebook you carry with you all the time?
 6 A. For that investigation; yes, Sir.
 7 Q. You mean you had all the information on that
 8 investigation was in that notebook?
 9 A. Yes, Sir.
 10 Q. And that notebook was then transcribed into your
 11 report?
 12 A. Correct.
 13 Q. Was that done on computer? How is that done?
 14 A. By myself on a computer.
 15 Q. And your testimony is that after you had -- by the
 16 way, again, forgive me for asking you again. How long have
 17 you been in law enforcement?
 18 A. Approximately 20 years.
 19 Q. And you understand, do you not, that detectives'
 20 notes are evidence and should be turned over to defense if
 21 they exist?
 22 MS. CHARLES: Objection, your Honor.
 23 THE COURT: I'll sustain the objection.
 24 MR. ROBERTS: I'd like to hear the basis, Judge.
 25 (Side bar.)

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1 THE COURT: Not if they're accomplished by
2 transposing them into a written report. The original notes
3 are not required to be kept.

4 MR. ROBERTS: I didn't ask if they were required.
5 I said, don't you know if they exist they have to be turned
6 over to the defense.

7 THE COURT: I don't recall you asking that
8 question in that form.

9 MR. ROBERTS: I definitely didn't ask --

10 THE COURT: If that's it, then I'll allow it, if
11 they exist. All right.

(Open court.)

12 THE COURT: Mr. Roberts, you may continue.

13 MR. ROBERTS: Thank you, Judge.

14 Q. Do you understand, based on your 20 years of
15 experience in law enforcement, that if, in fact, your notes
16 of an investigation exist, they have to be turned over to
17 the defense?

18 A. No, Sir.

19 Q. You don't know that?

20 A. That's not my understanding; no, Sir.

21 Q. You were never taught that anywhere, Sir?

22 A. No, Sir.

23 Q. Is it your opinion since you were never taught
24 that and don't know that, that notes are evidence --
25

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1 MS. CHARLES: Objection, your Honor.

2 THE COURT: If they exist.

3 Q. If they exist?

4 A. No, Sir.

5 Q. They're not evidence?

6 A. No, Sir.

7 Q. How did you destroy them?

8 A. I'm sorry?

9 Q. How did you destroy the notes?

10 A. Shredder.

11 Q. Shredder?

12 A. Yes, Sir.

13 Q. Where is there a shredder?

14 A. In the Prosecutor's Office.

15 Q. What do you guys need a shredder for?

16 MS. CHARLES: Objection, your Honor.

17 THE COURT: I'll sustain the objection.

18 Q. Besides destroying evidence.

19 MR. ROBERTS: Withdrawn.

20 THE COURT: There's no question for you.
21 Go ahead.

22 Q. How about the computer disk, where is that, Sir?

23 A. The computer is -- my own personal disk, I misplaced it
24 when I got transferred, Sir.

25 Q. So the notes that were taken at the time the

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1 statement was allegedly given were shredded, right?
 2 A. The statement, the comment that Roy Dove made?
 3 Q. Yes.
 4 A. Yes, Sir.
 5 Q. And the disk that this report was typed on is
 6 missing?
 7 A. It's misplaced, Sir.
 8 Q. Is that the same as missing?
 9 A. I guess it's an interpretation.
 10 Q. Can you find it?
 11 A. I've tried. I'm unable to locate it.
 12 MR. ROBERTS: Nothing further.
 13 THE COURT: Redirect. Anything else?
 14 MS. CHARLES: No, your Honor.
 15 THE COURT: You're excused.
 16 THE WITNESS: Thank you, your Honor.
 17 (The witness is excused.)
 18 THE COURT: May I see counsel for a moment off the
 19 record.
 20 (Off record discussion takes place.)
 21 (Open court.)
 22 THE COURT: We just had a discussion as to the
 23 witnesses who are available. I think it's time for us to
 24 give you what we call a morning break. Take about 20
 25 minutes or 25 minutes. If any of you want to go down for

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1 coffee, feel free to do so. However, I'm not in the
 2 business of selling coffee. You don't have to go down if
 3 you don't want to. Otherwise, you'll remain in the jury
 4 room. Again, from this point on do not discuss this case
 5 among yourselves, and if anyone attempts to discuss it with
 6 you, you let me know that in a hurry. See you back here at,
 7 say, about ten minutes after 11.
 8 (Recess.)
 9 THE COURT: All right. Ready?
 10 MS. CHARLES: Yes, your Honor.
 11 (The jury is brought into the courtroom.)
 12 THE COURT: Your next witness is?
 13 MS. CHARLES: Your Honor, the State calls Mykia
 14 Wilson.
 15 THE COURT: All right.
 16 JUROR NUMBER 5: Judge, could you close the window
 17 a little bit.
 18 ANOTHER JUROR: No, it's nice.
 19 ANOTHER JUROR: May I go get my coat?
 20 THE COURT: Yes. Sure.
 21 (Juror gets coat and returns to courtroom.)
 22 MYKIA JABON WILSON, STATE'S WITNESS, SWORN.
 23 DIRECT EXAMINATION BY MS. CHARLES:
 24 Q. Miss Wilson, I'm going to ask you to keep your
 25 voice up so that I can hear you, and all these people

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1 sitting inside the jury box can hear you. Okay.
 2 Miss Wilson, I'm going to direct your attention to
 3 February 1 of 1997, sometime after 10 in the evening. Do
 4 you recall where you were?
 5 A. Yeah, yeah.
 6 Q. Where were you?
 7 A. On South 19th Street and 15th Avenue.
 8 Q. Okay. And who were you with?
 9 A. I was with Rasheedah, Nicky.
 10 THE COURT: You have to talk a little louder.
 11 A. I was with Rasheedah, Nicky, and Keith.
 12 Q. Okay. And who's Keith?
 13 A. He was my boyfriend.
 14 Q. How old are you, Mykia?
 15 A. I'm 17.
 16 Q. And your boyfriend, Keith, how old was he?
 17 A. He was 23.
 18 Q. All right. Now, when you say you were with these
 19 individuals, what were you doing with these individuals?
 20 A. We was just sitting outside.
 21 Q. Okay. Now, you say you were just sitting outside.
 22 Where was Keith?
 23 A. He was just outside.
 24 Q. Now, you say you were with an individual by the
 25 name of Nicole.

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1 Is that correct?
 2 A. Yes.
 3 Q. Did there come a time when Nicole left you all?
 4 A. Yeah.
 5 Q. Okay. Did there come a time when she came back to
 6 you?
 7 A. Yeah.
 8 Q. Okay. What happened when she came back to you?
 9 A. She brought a man with her, and she told Keith that the
 10 man wanted to buy something.
 11 MR. ROBERTS: I object to hearsay.
 12 THE COURT: I'll allow it up to this point. You
 13 haven't gotten -- she brought a man with her. Go ahead.
 14 A. And she said that the man --
 15 THE COURT: You can't tell us what she said. Go
 16 ahead.
 17 Q. And what did the man -- did you see this man?
 18 A. Yeah.
 19 Q. Okay. What did the man look like?
 20 A. Him.
 21 Q. When you say, him, who are you talking about?
 22 A. The one in the burgundy suit.
 23 MR. ROBERTS: For the record, the defendant, your
 24 Honor.
 25 Q. When you saw him on that day, what did he look

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1 like besides just him?
 2 A. He looked a little badder because he was getting high.
 3 He looked, you could tell it's him, but he looked a little
 4 different.
 5 THE COURT: We can't hear you.
 6 A. I know who it is. He looked the same. He looked like
 7 that.
 8 THE COURT: No point in your talking. Nobody can
 9 understand you. You have to talk a little louder and
 10 slower.
 11 A. I have to speak --
 12 THE COURT: Listen to me. When you answer, try to
 13 keep your voice up, please. Pretend you're with your
 14 friends because I'm sure you don't talk that way with them.
 15 THE WITNESS: Yes, I do.
 16 THE COURT: Go ahead.
 17 Q. When you saw the man that walked back with Nicole,
 18 how was -- what was he wearing, if you recall?
 19 A. He was wearing some brown pants. Let me think, like
 20 either white sneakers, brown pants, like a blue little
 21 jacket. He was about five-six to five-seven.
 22 Q. Okay.
 23 A. He was dark skinned.
 24 Q. And you went on to say how he appeared to you.
 25 How did he appear to you?

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1 A. How did he appear?
 2 Q. Yes.
 3 A. Like a fiend.
 4 Q. Like a what?
 5 A. Like a drug addict.
 6 Q. You can say the first -- what did you say the
 7 first time?
 8 A. A fiend.
 9 Q. What is a fiend?
 10 A. A fiend is somebody that be getting high a lot, and
 11 they bees just do anything for it.
 12 Q. Now, what did you observe this man that walked
 13 back with Mykia do?
 14 A. You mean with Nicole.
 15 Q. Excuse me. Nicole, I'm sorry.
 16 A. Repeat that again?
 17 Q. What did you observe the man that walked back with
 18 Nicole do? What did you observe him do?
 19 THE COURT: What did you see him do?
 20 A. All right. It went -- when he first walked up?
 21 Q. When he first walked up, yes.
 22 A. He just stood there, and Nicky said what she said.
 23 Then Keith asked the man, and he said, how much can I get
 24 for 40, and he said eight.
 25 Q. Now, when you say he said eight, who said eight?

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- 1 A. Him. He said eight, so --
 2 Q. Eight, eight what, what does that mean to you?
 3 A. Eight bottles of cocaine. So Keith went in the
 4 hallway. Then Rasheedah came out the hallway, sit on the
 5 porch, and he started to talk to Rasheedah. He started
 6 talking to Rasheedah.
 7 Q. He started talking to Rasheedah. Who's he?
 8 A. This one over here.
 9 Q. Okay.
 10 A. Then Keith came out, and he was -- he gave it to him,
 11 and then he asked me where the money was at. Keith asked me
 12 where the money was at. I said he didn't give it to me. So
 13 he turn to the man, and the man was -- like he started
 14 digging in his pocket like he was about to pull the money
 15 out, and when he pulled out he just hit him, and Keith hit,
 16 and they started fighting. Then a knife had fell, and
 17 Rasheedah started screaming, like Rasheedah was like, Keith,
 18 you stabbed, you stabbed, you stabbed my brother, you
 19 stabbed my brother. Then she was like Mykia, do something.
 20 So we all just started jumping in and started beating him
 21 up.
 22 Q. Now, let's back up to the point where you said
 23 that the man that walked up with Nicole hit your brother --
 24 I mean, hit Keith.
 25 A. Yeah.

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- 1 Q. Where did he hit Keith?
 2 A. Right here.
 3 Q. Indicating for the record that the witness is
 4 pointing, pointed to her chest area.
 5 A. Left side.
 6 Q. Left side.
 7 Now, you indicated that --
 8 A. And from where I was sitting, looks like he hit him,
 9 but he stabbed him. He hit -- he went like this.
 10 MR. ROBERTS: Objection to conjecture.
 11 THE COURT: Yes. The jury will ignore it.
 12 Q. Now, you indicated that you started hitting this
 13 man.
 14 Is that correct?
 15 A. Yeah.
 16 Q. Do you recall how you hit him?
 17 A. I punched him, kicked him, all --
 18 Q. When you punched him and kicked him, what
 19 happened?
 20 A. He was falling. Keith was hitting him too, and
 21 Rasheedah and Nicky started kicking him and punching him.
 22 We were just tearing him up.
 23 Q. Excuse me?
 24 A. We were just beating him up.
 25 Q. You don't have to change what you say when I say

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1 say it again. Just say what you said before. That doesn't
 2 mean I didn't understand you. That means I can't hear you.
 3 Now, after this took place did there come a time when
 4 you stopped beating this man?
 5 A. Yeah.
 6 Q. Why did you stop beating the man?
 7 A. Because Keith started slowing up.
 8 Q. And when you said start slowing up, what do you
 9 mean?
 10 A. He just started moving slow in his fighting reactions.
 11 He started moving slow.
 12 Q. And when he started to move slow, what did you do?
 13 A. I stopped, and I walked over to him and asked him was
 14 he all right. He said his chest hurt.
 15 Q. Did there come a time when you left the area of
 16 503 17th Street -- 19th Street, excuse me.
 17 A. Yeah.
 18 Q. How did you leave that area?
 19 A. In a car, a friend car around the corner.
 20 Q. How did you get to your friend's car around the
 21 corner?
 22 A. We helped him walk.
 23 Q. Now, who's we that helped him walk?
 24 A. Me and Rasheedah and I.
 25 Q. Now, who was the friend's car that was around the

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1 corner?
 2 A. Fats.
 3 Q. Do you know Fats' real name?
 4 A. I can't remember it, but it was said a while ago.
 5 Fats, that's what we call him, we knew him by.
 6 Q. I didn't hear what you said.
 7 A. We knew him by that name, Fats.
 8 Q. And where did -- who got into Fats' car?
 9 A. Me and Keith.
 10 Q. And where did you go?
 11 A. To the hospital.
 12 Q. And what hospital?
 13 A. UMDNJ.
 14 Q. How far, about how far is that from where you got
 15 in the car?
 16 A. About two minutes, about two, three minutes.
 17 Q. And when you got to the hospital, what did you do?
 18 A. Keith asked me to help him out the car.
 19 Q. And did you help Keith out of the car?
 20 A. Yeah.
 21 Q. And what happened after that?
 22 A. We walked in emergency part. The girls told us to keep
 23 going straight. We got to the trauma section, and then he
 24 was handing me the hat, and he just fell.
 25 Q. He just what?

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1 A. He just fell, and then the doctors put him on the bed.
 2 MR. ROBERTS: Judge, I'm going to object unless
 3 there's some relevancy that can be produced to this line of
 4 questioning.

5 THE COURT: Wait a while.

6 MS. CHARLES: Is there an objection that exists?

7 MR. ROBERTS: I think the judge said wait a while.

8 THE COURT: Yes. I wanted her to compose herself.

9 Then you can continue.

10 Q. And then what did you observe?

11 MR. ROBERTS: Again, Judge, frankly I really don't
 12 see the relevancy of what happened at the hospital. If
 13 there's something that's going to be developed, I'd like a
 14 proffer, if that's so.

15 THE COURT: It's up to Ms. Charles as to what she
 16 wants to develop. I don't know.

17 MS. CHARLES: I submit that it is relevant, what
 18 she observed with regard to the decedent's condition.

19 MR. ROBERTS: Judge, we'll stipulate that he died.

20 I mean, I don't understand. There's no question about it.

21 MS. CHARLES: Well, then I'll move on then.

22 THE COURT: All right. Go ahead.

23 Q. While you were at the hospital, did you have an
 24 occasion to come in contact with any law enforcement?

25 A. Yeah.

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1 Q. And do you recall -- and after you had contact
 2 with the law enforcement, what was asked of you at that
 3 point?

4 A. Well, I knew the cop that I was talking to so --

5 Q. And who was that?

6 A. I don't know his full name or whatever, but I had been,
 7 had in contact with him a couple of times, and we was -- I
 8 was, like, you know, playing around and stuff, so he was
 9 like, he's there, Mykia, why don't you answer the question.

10 MR. ROBERTS: Objection to the whole -- I missed
 11 the whole first part of that.

12 A. He said, Mykia, I wanted you to answer the questions,
 13 and I just want you to tell me everything. I want you to be
 14 serious and tell me what you said because -- to tell me the
 15 truth.

16 MR. ROBERTS: Objection, Judge, to continued
 17 hearsay.

18 THE COURT: Again, this is hearsay.

19 THE WITNESS: To tell you the truth.

20 THE COURT: No, no. Don't say anything else.

21 Q. We don't want you to say what he said to you, just
 22 what you did. Okay.

23 You indicated you were playing around. Why were you
 24 playing around?

25 MR. ROBERTS: Objection, Judge, to the relevancy

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1 of that question.
2 THE COURT: Yes.
3 A. I lied about my age to him, and he told me to be
4 serious.
5 THE COURT: How is this relevant, please?
6 THE WITNESS: Well, the cop know how old I was --
7 MS. CHARLES: Your Honor, I was just clearing up
8 the fact she had indicated --
9 THE COURT: I know, but this is --
10 MS. CHARLES: I just wanted to explain she's
11 playing around after the death. I was wondering why.
12 THE WITNESS: Not like playing, like having fun
13 and all that, I just lied about my age.
14 THE COURT: That's exactly it. This is not
15 material. Next question, please.
16 Q. Did there come a time when you went to the
17 homicide squad?
18 A. Yeah.
19 Q. Okay. When did you go down to the homicide squad?
20 A. After the cop told me that he was there, and we sat in
21 the, like, inside the hospital is a little section. We sat
22 in there.
23 Q. Excuse me. I didn't hear what you said.
24 A. We sat in the little section for a minute until his
25 mother came, and then after a few more minutes we -- they

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1 walked us outside. We got in a cop car, and went down to
2 the homicide thing.
3 Q. And where were you before you got into the police
4 car?
5 A. Inside the hospital, inside the little section.
6 MS. CHARLES: S-14 for identification.
7 (A Statement of Mykia Wilson is marked S-14 for
8 identification.)
9 Q. I'm going to show you what's been marked S-14 for
10 identification. Could you take a look at that.
11 Do you recognize that?
12 A. Yeah.
13 Q. Without reading it, do you know what it is?
14 A. This part right here?
15 Q. No. The entire -- this document, this.
16 A. Oh.
17 Q. Do you know what this is?
18 A. This is the page of my police report.
19 Q. Your police report. Is that what you said?
20 A. Yeah.
21 Q. Okay. And is that a statement?
22 A. I guess, whatever they call it, yeah.
23 Q. And when did you give that statement?
24 A. February 2, about like 4 o'clock in the morning.
25 Q. And how long did it take you to give that

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- 1 statement, if you remember?
 2 A. About like five hours because I was --
 3 Q. Okay. And do you remember to whom that statement
 4 was given?
 5 A. I don't remember the man name.
 6 Q. Do you know what he looked like?
 7 A. The cop?
 8 Q. Yes.
 9 A. No -- yeah.
 10 Q. What did he look like?
 11 A. He was white.
 12 Q. On that particular evening did you see the knife?
 13 A. Yeah.
 14 Q. Could you describe the knife?
 15 A. It's silver and like goldish.
 16 Q. Silver and what, Ma'am?
 17 A. Like silver and gold and brown.
 18 Q. The blade was what color?
 19 A. Silver.
 20 Q. Where was the gold part?
 21 A. The handle.
 22 Q. The whole handle was gold?
 23 A. No, it was like sort of like little things on it.
 24 Q. It had what, and little things on it?
 25 A. Silver, little dots.

Wilson-Cross

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- 1 Q. So what color was the entire handle? The entire
 2 handle, was it more than one color?
 3 A. It was just two colors.
 4 Q. What color was the handle, if you remember?
 5 A. Silver and gold.
 6 Q. Silver and gold was the handle?
 7 A. It was like woodish looking, but it was like that
 8 color, goldish, tannish like.
 9 Q. And do you recall approximately how long the blade
 10 on that knife was?
 11 A. About like that.
 12 Q. If you could, just hold your hand up so we can --
 13 A. About three inches.
 14 Q. Now, when did you first see this knife?
 15 A. When we was -- like after he had slowed down, we was
 16 walking, like walking to around the corner, and it was on
 17 the sidewalk.
 18 MS. CHARLES: I have nothing further of this
 19 witness.
 20 THE COURT: Mr. Roberts.
 21 CROSS EXAMINATION BY MR. ROBERTS:
 22 Q. Miss Wilson, I'm going to ask you to do me a
 23 favor. Try to keep your voice up so we can all hear you,
 24 the jurors and everybody in the courtroom. Okay.
 25 You just said that the first time you saw the knife

Wilson-Cross

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1 that you described was when it was lying on the sidewalk
2 after Keith had slowed down. Okay. Is that right? You
3 have to answer so she can take it down.
4 A. Yeah.
5 Q. When you gave the statement, the statement was
6 given really the morning of this incident. Is that not so?
7 A. It was -- it happened like after 10 o'clock, February
8 1. By the time we got to the house, I think it was about
9 February 2, early in the morning.
10 Q. Was your memory better then about what happened,
11 or is it better today?
12 A. Well, it's basically -- I basically says the same
13 because back then I was kind of upset, and you can remember
14 something like that, and now it's kind of clearer.
15 Q. Kind of clearer?
16 A. Yeah.
17 Q. Did you --
18 A. It was really -- it's been a while but --
19 Q. By the way, you said you were sitting out on the
20 porch before this all started. Keith was selling drugs, was
21 he?
22 A. Yes.
23 Q. Who was helping him?
24 A. Me.
25 Q. You?

Wilson-Cross

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1 A. Yes.
2 Q. Who else?
3 A. Couple of boys that was out there and other girls.
4 Q. Couple of boys were helping him as well?
5 A. Yeah, not helping him, but they were selling drugs too.
6 Q. Who was out there selling drugs besides Keith?
7 A. D, Cuda (phonetic).
8 Q. D was selling drugs. Who else?
9 A. Cuda.
10 Q. Cuda. And who else?
11 A. On that corner, that was it.
12 Q. All right. Do you know D's real name?
13 A. Nah.
14 Q. Do you know Cuda's real name?
15 A. No.
16 Q. And you were helping Keith. How were you helping
17 him?
18 A. I was holding it, or sometimes I make sales.
19 Q. When you say, you were holding it, you mean the
20 drugs?
21 A. Yeah.
22 Q. What kind of drugs?
23 A. Cocaine.
24 Q. And you would actually make sales yourself on
25 occasion?

Wilson-Cross

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- 1 A. Yeah.
 2 Q. And how long that day had you been doing that?
 3 A. How long we be out there selling?
 4 Q. Yes.
 5 A. Since that morning.
 6 Q. I'm sorry.
 7 A. Since that morning.
 8 Q. You were out there all day selling drugs?
 9 A. We take stops to go eat and relax, but you be out there
 10 basically all day.
 11 Q. And how long had you been doing that with Keith,
 12 weeks, months, years; how long?
 13 A. Well, some months since he -- right after he came home.
 14 Q. Pardon?
 15 A. Since he be home.
 16 Q. How long was that?
 17 A. About, I think about, about six months.
 18 Q. About six weeks?
 19 A. Six months.
 20 Q. Six months. I'm sorry.
 21 So you had been out there helping him sell for about
 22 six months. And he had come home from where, do you know?
 23 A. From jail.
 24 MS. CHARLES: Objection, your Honor. This is
 25 irrelevant.

Wilson-Cross

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- 1 THE COURT: If she knows. All right.
 2 Q. Where did he come home from?
 3 A. I guess, I think he was locked up. I'm not sure.
 4 Q. Did you, just before this incident happened, were
 5 you smoking blunts with anybody?
 6 A. Right before the incident?
 7 Q. Sometime before the incident.
 8 A. Like a half hour to an hour before, yes.
 9 Q. Who were you smoking blunts with?
 10 A. Nicky, Rasheedah, and Keith.
 11 Q. And where did this take place?
 12 A. In the hallway.
 13 Q. And how long were you smoking the blunt?
 14 A. About five minutes, I guess.
 15 Q. And blunt is weed?
 16 A. Huh, yeah.
 17 Q. Anything else in there besides marijuana?
 18 A. Cocaine.
 19 Q. Cocaine in it as well?
 20 A. Coke cooked up, yeah.
 21 Q. And anything besides cocaine and marijuana?
 22 A. Well, we didn't use marijuana. We used cigarettes.
 23 Q. Pardon me?
 24 A. We used cigarettes. We didn't use marijuana.
 25 Q. So it was cocaine in that you were smoking?

Wilson-Cross

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- 1 A. Yeah, we was smoking. You really call it wooz.
 2 Q. You call it what?
 3 A. Wooz.
 4 Q. Wooz?
 5 A. That's a laced blunt.
 6 Q. And how long had you been smoking that?
 7 A. Around five minutes. You asked me that already.
 8 Q. Did I ask you that already? I'm sorry.
 9 When -- by the way, before I ask the question I was
 10 going to ask, did you see someone else with the person that
 11 you described as the defendant?
 12 A. Uh-huh.
 13 Q. And where did you see him?
 14 A. Standing by the corner.
 15 Q. And when did you first see him?
 16 A. Right after -- no -- yeah.
 17 Q. Again, please?
 18 A. He bumped shoulders with the man.
 19 Q. He what?
 20 A. Like bumped shoulders.
 21 Q. When did that happen?
 22 A. It was before 'cause when he ran leaving, he didn't --
 23 it was before.
 24 Q. Again, we're having trouble hearing you back here.
 25 Let me ask you again.

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- 1 You say the man who was with the defendant, they
 2 bumped?
 3 A. Yeah.
 4 Q. All right. And when did that happen?
 5 A. Before.
 6 Q. Before what?
 7 A. Before the incident they was walking down the street.
 8 Q. Before the incident?
 9 A. Before he came up they bumped shoulders.
 10 Q. Did you -- go ahead, if you're thinking about it.
 11 A. Yeah. Let me think for a moment.
 12 Q. Would it help you to refer to your statement to
 13 refresh your recollection?
 14 A. I know what I said in there.
 15 Q. Did you have a chance to read over your statement
 16 before you testified?
 17 A. Yeah.
 18 Q. Pardon me?
 19 A. No, I looked at it, but I didn't pay attention to it
 20 because I went to sleep.
 21 Q. Because why?
 22 A. I fell asleep.
 23 Q. You want it now to look at it again?
 24 A. No, it was after. I know that he bumped shoulders with
 25 a man that's light skinned with blue jeans and a white

Wilson-Cross

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1 sweater. I remember that. I don't know when it actually
2 is, but I --

3 Q. If I told you that in your statement you said that
4 that bumping took place after the stabbing, would that
5 refresh your recollection?

6 A. Yeah.

7 Q. It does. Okay.

8 So it took place when they bumped afterward?

9 A. Yeah, when he ran down the street.

10 Q. Okay. And after the fighting, he ran down the
11 street?

12 A. I wasn't worried about where he was going. I was
13 worried about Keith, basically.

14 Q. He ran down the street, did he not?

15 A. Yes.

16 Q. And he bumped shoulders with this other man,
17 right?

18 A. Yes.

19 Q. By the way, you said that you, your two
20 girlfriends and Keith were beating this guy up, right? You
21 have to speak so she can put down what you say.

22 A. Yeah.

23 Q. And you were punching him, all of you were, all of
24 you punching him?

25 A. Yeah.

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1 Q. And all of you kicking him?

2 A. Yes.

3 Q. And Keith hit him pretty good, did he not? You
4 were angry with him, weren't you? You wanted to hurt him
5 bad, didn't you?

6 A. Yes.

7 Q. And you were hitting him, kicking him as hard as
8 you could in the face?

9 A. Yeah.

10 Q. Stomach, anywhere you could, right?

11 A. Yeah.

12 Q. Did you see him bleeding?

13 A. I don't know. I didn't really -- didn't care at the
14 time. I don't care now.

15 Q. Do you remember seeing Malik that night?

16 A. Malik?

17 Q. Malik.

18 A. No.

19 Q. You don't remember seeing him that night?

20 A. Yeah, I seen him ahead of time.

21 Q. Well, ahead of time. You mean before the
22 incident?

23 A. Yeah.

24 Q. And do you remember that Malik dropped off Keith's
25 pay?

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1 A. Yeah.
 2 Q. And also two packs of coke?
 3 A. Yeah.
 4 Q. What are two packs? What's a pack?
 5 A. It's a hundred bottles.
 6 Q. A hundred bottles in a pack?
 7 A. Yeah.
 8 Q. Do you remember in your statement telling the
 9 police where Malik and Kurtis keep their stash, kept their
 10 stash at that time?
 11 A. Do I remember saying it?
 12 Q. Yeah.
 13 A. Yeah.
 14 Q. Okay. And you remember telling them, the police,
 15 when you gave the statement, that Malik and Kurt's
 16 girlfriend and grandmother live at a certain address, and
 17 that's where they keep the stash. Do you remember telling
 18 them that?
 19 A. Yeah, I remember saying that they -- where the people
 20 live at. I don't know about saying if they keep it inside
 21 there.
 22 Q. Do you remember being asked this question and
 23 giving this answer, on the second page:
 24 QUESTION: Who is Malik?
 25 ANSWER: That is his first name. Keith works for

Wilson-Cross

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1 Malik, and his brother Kurt. His first name is Kurtis.
 2 QUESTION: Do you know where they live?
 3 ANSWER: Their girlfriend or their grandmother lives on
 4 15th Avenue, the first house after the lot down from the
 5 Spanish store. They keep a lot of coke on the 2nd floor.
 6 Remember being asked that question and giving that
 7 answer?
 8 A. Yes, yeah.
 9 Q. Okay. Now, you say that the handle of the blade
 10 was how long -- withdrawn.
 11 The blade was how long, of the knife?
 12 A. About three inches.
 13 Q. Do you remember -- would it refresh your
 14 recollection if you told the police --
 15 A. Well, I said three inches. Now, she asked me how long?
 16 I just put approximately a number.
 17 Q. Would it refresh your recollection if I told you
 18 you said about seven or eight inches at the time?
 19 A. Yeah, that's because the cop asked me the whole thing,
 20 how long was the knife.
 21 Q. Okay. The whole thing was about seven or eight
 22 inches?
 23 A. Yeah.
 24 Q. Was it a folding knife, or was it a straight --
 25 A. Yeah. I don't know. I didn't have any involvement

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1 with the knife. I didn't have any involvement with the
2 knife.
3 Q. Do you know what happened --
4 A. I just seen it on the ground, kept on walking.
5 Q. Do you know what happened after you saw it on the
6 ground? Do you know what happened to the knife?
7 A. Well, from what I hear --
8 Q. You, of your own knowledge, do you know what
9 happened?
10 A. No.
11 Q. Did you have a chance to talk to your friends
12 about the incident?
13 A. No.
14 Q. After this -- this was your boyfriend?
15 A. Yeah.
16 Q. After the incident, after your boyfriend was
17 killed, did you talk to any of your girlfriends who were
18 there that night about what happened?
19 A. Like when we was -- we finally came home, we's like
20 just talking in family, yeah.
21 Q. And you talked about what you saw, all of you, did
22 you?
23 A. What you mean?
24 Q. I mean, did you talk about what happened, what you
25 saw happen that night among each other?

Wilson-Cross

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1 A. To let his family know what happened, of course.
2 Q. And Rasheedah, she was there. You spoke to her
3 about what happened?
4 A. That night, she already knew. Why I have to tell her?
5 Q. After that night, did you talk about this incident
6 again?
7 A. No, I did not.
8 Q. Never spoke about it again?
9 A. No.
10 Q. When you learned you were going to testify in
11 court, did you talk to your friends about what happened?
12 A. No, because I didn't know I would -- what day it was
13 going to be or anything.
14 Q. But you knew you had to testify?
15 A. Yeah.
16 Q. And you never spoke to your friends about what had
17 happened?
18 A. Yeah -- no, because it's been like a year and two
19 months already.
20 Q. Do you remember that when you gave the
21 statement -- well, let me go through it again. You said
22 that the drugs were given to the man by Keith, right?
23 A. Uh-huh.
24 Q. Okay. And Keith asked -- they were within arms'
25 distance then. Is that correct?

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- 1 A. They was right in front of each other, face to face,
2 yeah.
- 3 Q. And then Keith asked, where's the money?
4 A. He asked me where was the money.
5 Q. But the man was right in front of him?
6 A. Yeah, because usually when I help somebody, I help him.
7 I'll get the money or pick it up, and he never gave me
8 anything.
- 9 Q. And still you told Keith to get the drugs?
10 A. Keith? All right. All right. He came to the porch.
11 He said you could get eight. He said the man was like, all
12 right. Keith went and got it. When he came back out,
13 before he handed him anything, he said where is the money,
14 as asking me that he was giving it to me. He didn't give me
15 the money, so he asked for the money.
- 16 Q. So Keith handed -- didn't hand him the drugs until
17 he asked for the money?
18 A. No.
19 Q. Did Keith hand him the drugs before?
20 A. Before?
21 Q. Before he got the money?
22 A. Yeah.
23 Q. Okay. And is it your testimony at that time that
24 the man reached into his pocket?
25 A. Yeah, he asked --

Wilson-Cross

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- 1 Q. Let me finish the question, please. Took his
2 hands out and hit Keith, right?
3 A. Yeah.
4 Q. And at that time when he hit Keith, you didn't see
5 him take a knife out of his pocket, did you?
6 A. I seen him hit him.
7 Q. The question is, you did not see him taking a
8 knife out of his pocket, did you?
9 A. No, but I seen a knife fall.
10 Q. You did?
11 A. Well, where else did it come from?
12 Q. I don't know.
13 A. All right. Listen, let me --
14 Q. Let me. Let me ask the questions. The prosecutor
15 can ask you questions.
16 Didn't you say that the first time you saw the knife --
17 Was on the ground, yeah.
18 Q. After the incident?
19 A. Yeah.
20 Q. Okay. And when the man took his hands out of his
21 pocket and hit Keith, he didn't have a knife in his hand
22 that you saw?
23 A. But Rasheedah --
24 Q. Please. Can you answer the question. I'm not
25 talking about what anybody may have told you.

Wilson-Cross

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1 A. No.
 2 Q. Did you see a knife?
 3 And how far were you from them?
 4 A. I was like, say I'm sitting on this. This is the
 5 porch. I'm sitting here. Keith standing right here, and
 6 the man is right there.
 7 Q. So you're right next to him?
 8 A. Next to him, but he's a little bit up.
 9 Q. Was it Rasheedah that told you he had a knife
 10 then?
 11 A. Well, when he hit him, they start --
 12 Q. Please, please.
 13 A. Yeah, she screamed and say he stabbed him, yes.
 14 Q. And when you gave the statement back in February
 15 of 1997, February 2, you didn't say that he was hit in the
 16 chest, did you?
 17 A. Yes, I did.
 18 Q. All right.
 19 Referring to the first page of your statement, do you
 20 remember being asked this question, general questioning, and
 21 giving this answer:
 22 QUESTION: Can you tell me in your own words what
 23 occurred?
 24 ANSWER: I was sitting on the porch at 503 South 19th
 25 Street. This guy walked up and started talking to

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1 Rasheedah. He was asking for raw cocaine. She said, wait a
 2 minute. Then Keith came out of the hallway and onto the
 3 porch. He handed the man his stuff, and Keith said where's
 4 the money at. The man then reached into his pocket, removed
 5 his hand from his pocket, and hit Keith with the same hand.
 6 Then Keith swung back, and they started fighting.
 7 You remember that?
 8 A. Uh-huh.
 9 Q. Is that accurate?
 10 A. Uh-huh.
 11 Q. And it's your testimony that since this incident
 12 you haven't spoken to any other persons, your friends, who
 13 were testifying here today?
 14 MR. ROBERTS: Nothing further. Thank you, Ma'am.
 15 MS. CHARLES: I have nothing further.
 16 THE COURT: Thank you. You're excused.
 17 (The witness is excused.)
 18 THE COURT: Okay. Who's your next witness?
 19 MS. CHARLES: Tony Brooks, your Honor.
 20 THE COURT: All right.
 21 TONY BROOKS, STATE'S WITNESS, SWORN.
 22 DIRECT EXAMINATION BY MS. CHARLES:
 23 Q. Good afternoon, Sir.
 24 You're presently incarcerated, are you not?
 25 A. Yes.

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- 1 Q. Why are you incarcerated?
 2 A. Violation of probation, CDS charge.
 3 Q. And a CDS charge?
 4 A. Yes.
 5 Q. I'm going to -- and you have how many convictions,
 6 Sir?
 7 A. Two.
 8 Q. Excuse me?
 9 A. Two.
 10 Q. What are those convictions for?
 11 A. CDS.
 12 Q. And are they for distributing CDS?
 13 A. Yes.
 14 Q. And what kind of sentence are you serving at this
 15 time?
 16 A. Four year sentence.
 17 Q. Do you recall when you were sentenced?
 18 A. April 28, '97.
 19 THE COURT: That was on what charge, though?
 20 THE WITNESS: Violation. It was ran concurrent.
 21 Q. With what?
 22 A. CDS charge.
 23 Q. Another CDS charge?
 24 A. Yes.
 25 Q. And for both of those charges you received four

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- 1 years. Is that what your testimony is?
 2 A. Yes.
 3 Q. Now, I'm going to direct your attention to
 4 February of 1997, specifically, February 1 of 1997, late in
 5 the evening. Do you recall where you were?
 6 A. Yes.
 7 Q. Where were you?
 8 A. 15th Avenue and 19th Street.
 9 Q. And what were you doing on 15th Avenue and 19th
 10 Street?
 11 A. Selling drugs.
 12 Q. Okay. And when you were out there selling drugs,
 13 who were you with?
 14 A. Derrick Mc White.
 15 Q. And did Derrick go by any other name that you're
 16 aware of?
 17 A. D.
 18 Q. And who else was out there?
 19 A. Mykia, Nicky, Rasheedah, and I think that's about it --
 20 and, so, Derrick was out there too.
 21 Q. What were they doing while they were out there?
 22 A. Roaming around.
 23 Q. Excuse me?
 24 A. Roaming around.
 25 Q. Do you know an individual by the name of Keith?

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1 A. Keith who?
 2 Q. Banks.
 3 A. Yes.
 4 Q. Okay. Was he out there?
 5 A. Yes.
 6 Q. What was he doing while he was out there?
 7 A. He was in front of his porch.
 8 Q. Okay.
 9 A. With Mykia.
 10 Q. And was he selling drugs also?
 11 A. At that time, no.
 12 Q. Was he at any time while you were out there
 13 selling drugs?
 14 A. Yes.
 15 Q. Now, specifically, did there come a time when you
 16 had contact with a potential customer inquiring about raw
 17 cocaine?
 18 A. Yes.
 19 Q. Could you tell us what happened?
 20 A. All right. Me, Derrick, and, um, Keith, we call him
 21 Black, we had just got finished playing football, so, um, we
 22 had stopped, so I don't know what to say, the defendant, or
 23 his name -- the defendant came to us, came to me and Derrick
 24 and asked us where could he get some raw at. I mentioned to
 25 him we don't sell raw around here. We sell cook-up. So he

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1 asked me what could we give him for \$80. So I said, for
 2 \$80, we can only give you 16 bottles. You know what I mean.
 3 And he said, well, that's not a play. I said, well, that's
 4 all we can give you.
 5 Q. When you say that's not a play, what did you
 6 understand that to mean?
 7 A. He wanted more for what his money was, you know, being
 8 paid for. All right. So he had said he wanted to see the
 9 material. So I mentioned to D to go over to, you know,
 10 where he had it at, and go get it, and as D was going to the
 11 building, it was an abandoned building, he was going to the
 12 abandoned building, I told the defendant to stay across the
 13 street with me. So as D was going over, the defendant
 14 started going behind D. So I mentioned to him, I said, yo,
 15 bro, stay over here with me. He didn't hear me. He heard
 16 me but he didn't want to hear me.
 17 MR. ROBERTS: Objection, Judge, conjecture.
 18 THE COURT: The jury -- the objection is valid.
 19 Go ahead.
 20 A. So I told him, again a second time, I said, yo,
 21 brother, don't go across the street. So he kept proceeding
 22 over to where D was going to. So then I hollered again, I
 23 said, um, yo, MF, did you hear what I said. Don't go across
 24 the street. So he turned back, and at that time D was on
 25 the porch going upstairs to get the material. So D heard

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1 that and came back towards where we was at across the
 2 street. So the defendant started getting a little weird,
 3 saying he just wanted to get out the area. It was a hot
 4 area. I mentioned it can't be that hot. We out here doing
 5 our thing too. So the defendant, you know, he start saying
 6 where's it at, you know. So I asked him, where was the
 7 money at. He opened up his wallet, like this, and there
 8 wasn't no money in there. So I told him, I said, man, you
 9 about games. We ain't going to mess with you.

10 Q. You're about what?

11 A. Bull jiving me because he didn't have any money.

12 Q. What exactly do you mean by that, bull, what did
 13 you say?

14 A. Bull.

15 Q. Okay.

16 A. Do you want me to say it?

17 Q. You don't have to say it.

18 What exactly were you trying to do when you said that
 19 to him? What exactly did you mean by that?

20 A. What I meant by that, his, all his intentions was to
 21 come and try to rob, or do whatever he had to do to get it
 22 because he didn't have no money.

23 Q. Now, this incident that took place with you and
 24 that individual, if you recall, about what time was it?

25 A. I can't recall it.

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1 Q. Did there come a time when you saw this individual
 2 another time?

3 A. Yeah, this was like a couple of days later.

4 Q. Well, this is on February 1 when you saw him the
 5 first time?

6 A. Oh, the first time, yes.

7 Q. You had a conversation with him as you just
 8 explained.

9 Is that correct?

10 A. Uh-huh, yes.

11 Q. Did you see him after that conversation?

12 A. A couple of days later.

13 Q. Okay. Did you see him have any interaction with
 14 anyone else on the street besides yourself?

15 A. With Keith.

16 Q. Okay. What did you observe with that interaction?

17 A. After we had told him, me and D, had told him we wasn't
 18 going to deal with him, he had mentioned to us that he'll be
 19 back. He came back with the guy, said he was his cousin.
 20 He came back with his cousin. So his cousin proceeded to go
 21 to the store on 15th Avenue, 18th Street, and Nicky called
 22 the defendant over to Keith, I guess to purchase something.

23 Q. And when Nicky called the defendant over to Keith,
 24 did you say anything?

25 A. Yeah, I told Nicky don't bother, don't mess with him

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- 1 because he was about bullshit.
 2 Q. And what took place after that?
 3 A. All right. After that, me and D was -- we had
 4 proceeded to go to the store. We had turned our back, and
 5 then maybe about ten steps D mentioned to me, he said, let's
 6 turn around and make sure Black are all right, so as soon as
 7 we turned around to go back where Keith was at, we heard
 8 Keith say, he stabbed me, and so in that process we started
 9 running towards them, when we seen the defendant and Keith
 10 on the car tussling, you know, and I think Rasheedah was
 11 there at the time too. They was tussling with him. So
 12 after that they got off the car, Keith tripped the
 13 defendant, and he fell down. By the time he got up and
 14 started running, we had got there but he was -- he had
 15 already had ran.
 16 Q. Did there come a time when you saw this individual
 17 who you had spoken with on February 1 on some other day?
 18 A. Yeah, a couple of days later.
 19 Q. And what -- where did you see him?
 20 A. I seen him on 18th Avenue and 20th Street.
 21 Q. And what was he doing?
 22 A. I don't know what he was doing, but that's a known drug
 23 area.
 24 Q. And when you made this observation what did you
 25 do?

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- 1 A. Well, I was on my way back to 16th Avenue. I was going
 2 to play my mother's Pick-Its and when I spotted him he was
 3 on his way into Irvington, going down 21st Street. So me
 4 and this other guy was together, and I mentioned to him, I
 5 said that's the guy that killed Keith.
 6 Q. The other guy that you were with, that you
 7 mentioned it to, what was his name?
 8 A. His name was Cal Wilson Sleet. I mentioned to him. I
 9 said, um, why can't they be no police around when you really
 10 need them.
 11 MR. ROBERTS: Objection, Judge, to relevancy.
 12 THE COURT: You can't tell us what you said. Tell
 13 us what happened.
 14 A. Okay. So I walked up on 18th Street and 18th Avenue.
 15 I spotted a police car, Newark police car that was parked on
 16 the corner. So I went to the police car, and I told the
 17 officer, you know, what happened, and the defendant is down
 18 walking down there towards Irvington. So the police said,
 19 well --
 20 MR. ROBERTS: Objection.
 21 THE COURT: What did they do after you told them
 22 that?
 23 THE WITNESS: He said, well, being they --
 24 MR. ROBERTS: Objection, Judge.
 25 THE COURT: You can't tell us what he said. What

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- 1 did they do?
2 THE WITNESS: They put me in the car, and they
3 went towards the defendant. The defendant was on the phone
4 at the time on 18th Avenue and 21st Street. So they
5 catty-cornered him. Once he got off the phone, they
6 catty-cornered him, and told him to put his hands up, and
7 that's when they arrested him. They put me and him in the
8 car together.
9 Q. And where did the two of you go?
10 A. Homicide department.
11 Q. I'm going to show you what's previously been
12 marked S-11 for identification.
13 Do you recognize that, Sir?
14 A. Yes.
15 Q. And how is it that you recognize it?
16 A. This is a statement I gave down to the homicide squad.
17 Q. Okay. I show you what's been previously marked
18 S-9 for identification. Do you recognize that, Sir?
19 A. Yes.
20 Q. And how is it that -- what do you recognize that
21 to be?
22 A. It's mug shots.
23 Q. Okay. And when did you see that for the first
24 time?
25 A. When did I see this?

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- 1 Q. Yeah.
2 A. Down at the homicide squad.
3 Q. And when you saw that, who showed it to you?
4 A. One of the detectives. I can't -- I don't know his
5 name.
6 Q. And when the detective showed it to you, what did
7 you do?
8 A. Pointed out Number 5.
9 Q. Okay. And Number 5 is who to you?
10 A. The defendant.
11 Q. Okay. The individual that did what?
12 A. Stabbed Keith.
13 Q. Okay. And when you pointed this out to the
14 detective, did you do anything with regard to that
15 photograph?
16 A. Did I do anything with regard to the photograph?
17 Q. Yes.
18 A. No.
19 Q. I'm going to open it up for you. Does anything
20 appear on the back of that photograph?
21 A. My signature, yes.
22 Q. And besides your signature, is there a date there?
23 A. 2/3/97.
24 Q. Did you -- you put your signature there?
25 A. Yes, that's my handwriting.

Brooks-Cross

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MS. CHARLES: I have nothing further of this witness.

THE COURT: Mr. Roberts.

MR. ROBERTS: Thank you, Judge.

CROSS EXAMINATION BY MR. ROBERTS:

Q. Mr. Brooks, as I understand it, on April 28, 1997, you were arrested and charged with possession and possession with intent to distribute of CDS.

Is that correct?

A. True.

Q. And that was 27 days or so after this incident. Is that right?

A. Yes.

Q. And where were you arrested?

A. Where?

Q. Yes.

A. 19th Street, 15th Avenue.

Q. On that case you pleaded guilty to possession of CDS with intent to distribute.

Is that correct?

A. Yes.

Q. By the way, was the sentence 364 days in jail to run concurrent with the other one, meaning you got the same time?

A. Yes.

Brooks-Cross

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Q. The other case you were arrested August 12, 1991. Is that correct?

A. What's that date again?

Q. August 12, 1991.

A. Yes.

Q. And you pleaded guilty to possession with intent to distribute and distribution of CDS.

Is that correct?

A. Yes.

Q. And for that you received a term of four years in jail with one year parole disqualifier; right?

A. Yes.

Q. Meaning you couldn't get out of jail until at least that one year was up?

A. Yes.

Q. Did you violate your probation on that? Is that what happened?

A. Yes.

Q. Why did you violate?

A. Never went.

Q. Never went at all?

A. Exactly.

Q. So the first arrest was August '91. The last one was April '97. Between those two dates were you continuing to sell drugs?

Brooks-Cross

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- 1 A. Yes.
 2 Q. Was D your partner during that time?
 3 A. No.
 4 Q. The last day when you were at the -- at the time
 5 of the incident when the fighting and everything took place,
 6 was he your partner then?
 7 A. Yes, he was.
 8 Q. Do you know persons by the name of Malik and Kurt?
 9 A. Yes.
 10 Q. Were they your suppliers of drugs?
 11 A. Yes, I guess you could say so.
 12 Q. And did they supply you drugs that day?
 13 A. Yes.
 14 Q. And, obviously, then they were in the area that
 15 day?
 16 A. No, they wasn't.
 17 Q. Pardon me?
 18 A. They wasn't.
 19 Q. Where did you get the drugs from them then?
 20 A. I got it from them but during the incident they was not
 21 there.
 22 Q. In that general area that day at some time they
 23 were there?
 24 A. Yes.
 25 Q. So they are your bosses, so to speak?

Brooks-Cross

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- 1 A. Yes, somewhat.
 2 Q. Were you aware of the fact that your bosses had
 3 threatened Keith?
 4 A. No.
 5 Q. Didn't know that?
 6 A. No, it's not true.
 7 Q. That's not my question. Were you aware of the
 8 fact that some drugs were missing that Keith had in his
 9 possession at one time?
 10 A. No.
 11 Q. Don't know that?
 12 A. No.
 13 Q. Did Keith -- withdrawn.
 14 Did Kurt or Malik ever indicate to you or anybody else
 15 that works for him, them, that they were going to get Keith?
 16 A. No.
 17 MS. CHARLES: Objection, your Honor. Asked and
 18 answered, your Honor.
 19 THE COURT: I believe he's -- if he wants to ask
 20 it again, go ahead, Mr. Roberts.
 21 MR. ROBERTS: He answered no, Judge.
 22 Q. When you testified -- by the way, do you know
 23 Marcus Grady?
 24 A. I don't know him by that name.
 25 Q. Pardon me?

Brooks-Cross

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- 1 A. I probably don't know him by that name.
 2 Q. When you testified just a little while ago about
 3 the defendant following D to where the stash was, and that
 4 you told him to back off, and D finally came back and didn't
 5 go where the stash was because you thought he was going to
 6 rip somebody off, right, remember testifying to that?
 7 A. Uh-huh.
 8 Q. You didn't say anything about that at all in your
 9 statement of February 3, 1997, did you?
 10 A. Yes, I did.
 11 Q. Let's take a look at it.
 12 I show you S-11 for identification, ask you where you
 13 see where you told the police what you told the jury here
 14 today about Keith (sic) following D, about him going to rip
 15 people off. You telling him to back off.
 16 A. Keith following D?
 17 Q. I'm sorry. The defendant following D.
 18 A. Yes. No, I don't see it here.
 19 Q. Sorry?
 20 A. No, I don't see it here.
 21 Q. As I understand it, correct me if I'm wrong -- by
 22 the way, are you able to draw a map of the area? There's a
 23 sheet of paper behind you, and -- you can't do it at all?
 24 A. No.
 25 Q. Can't help us at all with that?

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- 1 A. No.
 2 Q. You said that you and D at one point turned and
 3 went into a store?
 4 A. Yeah, we was on our way to the store.
 5 Q. What store was that?
 6 A. This was on 16th Avenue and 19th Street.
 7 Q. And you and D started walking to that store, did
 8 you?
 9 A. Towards that way, yes.
 10 Q. And then at one point -- let me skip ahead, if I
 11 could.
 12 It was at one point where you saw Keith tussling and
 13 fighting with the defendant, as you said, right?
 14 A. Yes.
 15 Q. And at that point the girls and Keith were hitting
 16 him, and they were all fighting.
 17 Is that right?
 18 A. Yes.
 19 Q. And you and D started running towards them, did
 20 you?
 21 A. Yes.
 22 Q. But it's your testimony that he got up and started
 23 running, and he was too far ahead of you to catch, right?
 24 A. Yeah. When Keith tripped him, that's when he turned
 25 around. We was on our way towards him. When we got there

1 he was already gone.
2 Q. So when Keith tripped him, you started running
3 towards him?
4 A. Yes.
5 Q. And by the time you got there he was already gone,
6 right?
7 A. Yes.
8 Q. Did you chase him down the street at all?
9 A. Yeah, we chased him a few steps because he was too far,
10 he was too far ahead of us. We knew we couldn't get him.
11 Q. And did the girls chase him as well with you, or
12 did they stay put?
13 A. I think they stayed put, yeah.
14 Q. Well, rather than go through the report and
15 everything, would it refresh your recollection if I told you
16 that in your report you said you and D and the girls chased
17 him but he was too far ahead?
18 A. Yeah, that could have been true.
19 Q. So it's your testimony you recall that, that the
20 girls and you all chased him?
21 A. I was just mainly, you know, in concentrating on me and
22 D, but they could have been chasing him.
23 Q. But you said they did?
24 A. Yeah.
25 Q. Is your memory better then at that time or now?

1 A. Yeah, it was back then.
2 Q. Okay. You talked about the other man that was --
3 that appeared to be with the defendant, remember, and, in
4 fact, you gave your description of him in your statement,
5 did you not?
6 A. Yes.
7 Q. And they asked you throughout the statement
8 questions about him. Is that correct? Where he was? What
9 he was doing? What his description was, et cetera?
10 A. Uh-huh.
11 Q. Did you talk to anybody about this case before
12 today?
13 A. No.
14 Q. Did you read any other reports before today?
15 A. No.
16 Q. You testified that the man that was with him was
17 his cousin.
18 Is that right?
19 A. Yes.
20 Q. There's nothing in your statement about him being
21 his cousin, is there?
22 A. I don't know.
23 Q. Well, take a look.
24 A. I don't see it.
25 Q. There's nothing in there at all, is it?

1 A. No.
 2 Q. And the officer who was asking you these
 3 questions, Detective Isetts, asked you description, what you
 4 know about him, et cetera.
 5 Is that correct?
 6 A. The officer?
 7 Q. The one who took the statement.
 8 A. Yes, yes.
 9 Q. Did it not appear that he wanted to have that man
 10 identified, right; yes or no?
 11 A. Yes, I guess, yeah.
 12 C. And there's nothing in this statement about his
 13 being his cousin, right?
 14 A. Yes.
 15 Q. And you didn't speak to anybody about this case?
 16 A. No.
 17 Q. Or read any documents.
 18 Now, when --
 19 THE COURT: He's already said that before. That's
 20 two questions.
 21 Q. Now, when you started walking towards the store,
 22 that was you and D, right, and you were far enough away,
 23 were you not, from Keith so that when you did see that Keith
 24 was tripped -- when Keith tripped the defendant, you were
 25 far enough away so by the time you got there he was already

1 up and running and too far for you to catch?
 2 A. Exactly.
 3 Q. And I think you said that you and Keith -- you and
 4 D were together?
 5 A. Uh-huh.
 6 Q. And walking away from the area towards the store?
 7 A. Yes.
 8 Q. And you heard screaming?
 9 A. Yes.
 10 Q. And you heard he's been stabbed?
 11 A. Yes.
 12 Q. And you and D were together at that time?
 13 A. Yes.
 14 Q. And at that time the both of you turned around to
 15 see what was happening?
 16 A. Yes.
 17 Q. And you saw the fighting?
 18 A. Yes.
 19 Q. And you saw Keith trip the person that he was
 20 fighting with?
 21 A. Yes.
 22 Q. And you saw him run away?
 23 A. Yes.
 24 MR. ROBERTS: Nothing further. Thank you, Sir.
 25 MS. CHARLES: I have nothing further, your Honor.

Colloquy

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1 THE COURT: Thank you, Mr. Brooks.
 2 THE WITNESS: You're welcome.
 3 THE COURT: Now, members of the jury, the only
 4 reason a person may be asked if he has been convicted of a
 5 crime, if in your opinion that may affect his credibility,
 6 and that's the only reason that question is allowed to be
 7 asked and answered.
 8 I suggest you go out to lunch. Be back here at a
 9 quarter of because we have another matter here not related
 10 to this case. See you a quarter to 2. Don't discuss this
 11 matter. I'll see you then.
 12 (The jury is excused.)
 13 (The witness is excused.)
 14 THE COURT: Counsel, the sheriff's officer has
 15 informed me that Juror Number 6 approached him and mentioned
 16 the fact that while he does not know the defendant by name,
 17 he looks familiar to him. He feels that he may -- Mr. Dove
 18 may at one time purchased either CDS or --
 19 THE SHERIFF'S OFFICER: Videos.
 20 THE COURT: What?
 21 THE SHERIFF'S OFFICER: Video, rented videos from
 22 the store.
 23 MR. ROBERTS: I thought you were going to say a
 24 nickel bag, Judge.
 25 THE COURT: And he has informed the other jurors.

Colloquy

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1 So I think it's important that we have Mr. Sobrado come out
 2 and interrogate him and perhaps find out from the other
 3 jurors whether anything has happened.
 4 Go ahead.
 5 (Juror No. 6, Mr. Sobrado, is brought into the courtroom.)
 6 THE COURT: Mr. Sobrado, we understand that you've
 7 mentioned to the sheriff's officer that you think you may
 8 have seen Mr. Dove.
 9 MR. SOBRADO: Yeah, I used to own --
 10 THE COURT: Go ahead. Tell us.
 11 MR. SOBRADO: I used to own a video store, and I
 12 have so many customers, and the defendant seems so familiar
 13 to me, but I also told the officer that it wasn't bothering
 14 me in the sense of my --
 15 THE COURT: It wouldn't affect you in any way?
 16 MR. SOBRADO: No, I told the officer that too.
 17 THE COURT: All right. Now, you've also told the
 18 other members of the jury that you think you may have
 19 recognized him.
 20 MR. SOBRADO: Yes, I did, and they -- they in turn
 21 told me to tell you.
 22 THE COURT: All right. Thank you very much.
 23 Don't say anything about our conversations now.
 24 MR. ROBERTS: Judge, may we just ask a couple of
 25 further questions. Could we ask where the video store is

Colloquy

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1 located.
 2 THE COURT: Where was your store located?
 3 MR. SOBRADO: In Irvington, upper Irvington by
 4 40th Street.
 5 MR. DOVE: No.
 6 THE COURT: Mr. Dove is indicating that he has
 7 never -- you have never frequented that store?
 8 MR. DOVE: No.
 9 MR. SOBRADO: Okay.
 10 THE COURT: Thank you. Okay. Thank you.
 11 (Mr. Sobrado returns to the jury room.)
 12 THE COURT: Ask Juror Number 1, Mr. Buchanan to
 13 come out.
 14 (Juror No. 1, Mr. Buchanan enters the courtroom.)
 15 THE COURT: Mr. Buchanan, we called you out
 16 because Mr. Sobrado has indicated to you and the other
 17 jurors that he doesn't know -- that he thinks he may know or
 18 may have seen Mr. Dove in his place of business at sometime
 19 or other. Did he say anything to you about that?
 20 MR. BUCHANAN: Yes.
 21 THE COURT: Apparently, Mr. Dove says he's never
 22 been in his particular store. Would that fact in any way
 23 prevent you from being fair and impartial as a juror in this
 24 case?
 25 MR. BUCHANAN: No.

Colloquy

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1 THE COURT: Thank you very much.
 2 MR. ROBERTS: Judge, I'm sorry.
 3 THE COURT: Hold it. Wait.
 4 MR. ROBERTS: Just inquire what exactly was said.
 5 THE COURT: What exactly did he say to you?
 6 MR. BUCHANAN: He said he looked like -- that he
 7 may have stopped in the store and purchased a CD or
 8 something.
 9 THE COURT: Did he say anything whether that would
 10 affect him in any way?
 11 MR. BUCHANAN: No, he didn't say anything. That's
 12 all he said. He said he thinks he may have stopped in.
 13 THE COURT: Thank you very much.
 14 (Mr. Buchanan returns to the jury room.)
 15 THE COURT: Ask Mr. Roth to come out.
 16 (Mr. Roth enters the courtroom.)
 17 THE COURT: Mr. Roth, did Mr. Sobrado, Juror
 18 Number 6, ever say anything to you or any other jurors about
 19 thinking that he knows the defendant?
 20 MR. ROTH: He mentioned that he thinks he knows
 21 him, yeah.
 22 THE COURT: Did he say anything whether that would
 23 affect him as a juror in this case?
 24 MR. ROTH: No, we didn't talk about it. That's
 25 all he mentioned.

Colloquy

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1 THE COURT: Would the fact that he mentioned that
 2 to you, would that affect you as a juror in this case?
 3 MR. ROTH: No.
 4 THE COURT: Thank you very much.
 5 (Mr. Roth returns to the jury room.)
 6 THE COURT: Ask Miss Fields to come out.
 7 THE SHERIFF'S OFFICER: She was excused, Judge.
 8 THE COURT: That's right. Fields excused.
 9 Mr. Penn.
 10 (Mr. Penn enters the courtroom.)
 11 THE COURT: Mr. Penn --
 12 MR. PENN: Yes, your Honor.
 13 THE COURT: Mr. Sobrado said that he has told some
 14 of the jurors that he thinks that he may have seen Mr. Dove.
 15 MR. PENN: Right.
 16 THE COURT: Did he say that to you?
 17 MR. PENN: Yes.
 18 THE COURT: Did he say anything else to you about
 19 that?
 20 MR. PENN: No, not really.
 21 THE COURT: Would the fact that he mentioned that
 22 to you affect you in any way as a juror in this particular
 23 case?
 24 MR. PENN: No.
 25 THE COURT: Any questions, Mr. Roberts?

Colloquy

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1 MR. ROBERTS: No, your Honor.
 2 THE COURT: Thank you very much.
 3 (Mr. Penn returns to the jury room.)
 4 THE COURT: Ask Ms. Skeffington to come out.
 5 (Ms. Skeffington enters the courtroom.)
 6 THE COURT: Ms. Skeffington, we understand
 7 Mr. Sobrado may have told some of the jurors that he thinks
 8 he may have seen this defendant, Mr. Dove, at some time.
 9 What else did he say to you about that?
 10 MS. SKEFFINGTON: He said he's not sure. He saw
 11 the defendant looking at him, and he thought he looked
 12 familiar, and he was trying to place where he might, or how
 13 he might have known him.
 14 THE COURT: Did he say whether that will affect
 15 him in any way as a juror in this case?
 16 MS. SKEFFINGTON: No, he said -- I said, do you
 17 mean -- do you think you'll have to excuse yourself, and he
 18 said it's not going to bother me. It was only -- it was
 19 only when we worked at a video store.
 20 THE COURT: Does it bother you?
 21 MS. SKEFFINGTON: No.
 22 THE COURT: Would it affect you in any as a juror
 23 in this case?
 24 MS. SKEFFINGTON: No.
 25 THE COURT: Thank you very much.

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1 (Ms. Skeffington returns to the jury room.)
 2 THE COURT: Ask Mr. Curreri to come out.
 3 (Mr. Curreri enters the courtroom.)
 4 THE COURT: Mr. Curreri, Mr. Sobrado has indicated
 5 that he has mentioned to some of the jurors that he thinks
 6 he might have seen Mr. Dove at some time. Did he say that
 7 to you?
 8 MR. CURRERI: Yes, he did.
 9 THE COURT: Did he say anything else to you
 10 concerning that?
 11 MR. CURRERI: No, he just said that he was
 12 concerned about it, and I said to him, then tell the judge.
 13 THE COURT: All right. Would the fact that he
 14 might have seen him, or may have at any time, would that in
 15 any way affect your ability to be fair and impartial as a
 16 juror?
 17 MR. CURRERI: Absolutely not.
 18 THE COURT: I thank you.
 19 (Mr. Curreri returns to the jury room.)
 20 THE COURT: Ask Mr. Patel to come out.
 21 (Mr. Patel enters the courtroom.)
 22 THE COURT: Mr. Patel, did Mr. Sobrado mention to
 23 you that he does not know whether he knows or has seen
 24 Mr. Dove before?
 25 MR. PATEL: He did mention that he has seen --

Colloquy

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1 THE COURT: What did he say to you particularly?
 2 MR. PATEL: He said he may have seen him before.
 3 THE COURT: Did he indicate whether that would
 4 affect him as a juror in this case?
 5 MR. PATEL: I don't recall. I don't believe he
 6 did.
 7 THE COURT: Would it affect you in any way?
 8 MR. PATEL: No.
 9 THE COURT: Thank you very much.
 10 MR. PATEL: Thank you.
 11 (Mr. Patel returns to the jury room.)
 12 THE COURT: Ask Ms. Scott to come out, please.
 13 (Ms. Scott enters the courtroom.)
 14 THE COURT: Ms. Scott, did Mr. Sobrado mention to
 15 you, or in your presence, the fact he thinks he may have
 16 seen this defendant at some time?
 17 MS. SCOTT: Yes.
 18 THE COURT: What did he say?
 19 MS. SCOTT: He just say it seemed as if he was a
 20 person that may have came into his store.
 21 THE COURT: Did he say whether or not it would
 22 affect him as a juror in this case?
 23 MS. SCOTT: He did say it would not affect him.
 24 THE COURT: Would it affect you?
 25 MS. SCOTT: No, it will not.

Colloquy

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1 THE COURT: Then thank you very much.
 2 (Ms. Scott returns to the jury room.)
 3 THE COURT: Ask Mr. Amadi to come out.
 4 (Mr. Amadi enters the courtroom.)
 5 THE COURT: Did Mr. Sobrado mention to you or in
 6 your presence the fact that he does not know whether he has
 7 seen or met Mr. Dove before?
 8 MR. AMADI: No.
 9 THE COURT: If, in fact, if he may have seen him,
 10 would that in any way affect you as a juror in this case?
 11 MR. AMADI: No.
 12 THE COURT: Then thank you.
 13 (Mr. Amadi returns to the jury room.)
 14 THE COURT: Ms. Frederick.
 15 (Ms. Frederick enters the courtroom.)
 16 THE COURT: Ms. Frederick, did Mr. Amadi -- or,
 17 rather, Juror Number 6, say anything about a possibility
 18 that he may have seen Mr. Dove at some time?
 19 MS. FREDERICK: Just when he was -- yes, he did.
 20 THE COURT: What did he say specifically to you,
 21 if you remember?
 22 MS. FREDERICK: Well, he was just, you know,
 23 telling everybody that he think he, you know, saw him once
 24 at a video store.
 25 THE COURT: Did he say whether or not that would

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1 affect him as a juror?
 2 MS. FREDERICK: No, he said it wouldn't.
 3 THE COURT: Would it affect you as a juror?
 4 MS. FREDERICK: No.
 5 THE COURT: Then thank you.
 6 MS. FREDERICK: Okay.
 7 (Ms. Frederick returns to the jury room.)
 8 THE COURT: Ms. Berman.
 9 (Ms. Berman enters the courtroom.)
 10 THE COURT: Right there. Mrs. Berman, do you
 11 recall if Mr. Sobrado, or Juror Number 6, said anything
 12 about possibly having seen this defendant at some time?
 13 MS. BERMAN: Yes.
 14 THE COURT: Will you tell us exactly what he might
 15 have said to you to the best of your memory?
 16 MS. BERMAN: I think I know him, I'm not sure.
 17 THE COURT: Did he say whether that would affect
 18 him as a juror in this case?
 19 MS. BERMAN: No, he never did.
 20 THE COURT: Would it affect you as a juror?
 21 MS. BERMAN: No.
 22 THE COURT: Then thank you.
 23 (Ms. Berman returns to the jury room.)
 24 THE COURT: Mr. Chimento.
 25 (Mr. Chimento enters the courtroom.)

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1 THE COURT: Mr. Chimento, did Mr. Sobrado, Juror
 2 Number 6, say anything to you about possibly having seen or
 3 met Mr. Dove?
 4 MR. CHIMENTO: Yeah, he spoke of it.
 5 THE COURT: What did he specifically say to you to
 6 the best of your memory?
 7 MR. CHIMENTO: He said that he may have seen him,
 8 him, by the store he was at.
 9 THE COURT: Did he say whether or not that might
 10 affect him as a juror in this case?
 11 MR. CHIMENTO: He said it wouldn't bother him.
 12 THE COURT: Would it bother you?
 13 MR. CHIMENTO: No.
 14 THE COURT: Then thank you.
 15 MR. CHIMENTO: Okay.
 16 (Mr. Chimento returns to the jury room.)
 17 THE COURT: Ms. Mc Neil.
 18 (Ms. Mc Neil enters the courtroom.)
 19 THE COURT: You can take a seat right there.
 20 Ms. Mc Neil, did Mr. Sobrado indicate to you that he may
 21 have seen this defendant at some time?
 22 MS. MC NEIL: Yes.
 23 THE COURT: What specifically, to the best of your
 24 memory, did he say?
 25 MS. MC NEIL: He said he think that he was a

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1 customer at a video store.
 2 THE COURT: Did he say whether or not that would
 3 affect him as a juror?
 4 MS. MC NEIL: No.
 5 THE COURT: Would it affect you as a juror?
 6 MS. MC NEIL: No.
 7 THE COURT: Then thank you very much.
 8 MS. MC NEIL: You're welcome.
 9 (Ms. Mc Neil returns to the jury room.)
 10 THE COURT: Counsel, from what I've heard, I've
 11 heard nothing that would indicate in any way that it has
 12 interfered with the ability of the jurors at this time to be
 13 fair and impartial. I'll hear counsel, if there's any
 14 objections.
 15 MR. ROBERTS: No objections.
 16 MS. CHARLES: No, your Honor.
 17 THE COURT: All right. Are we ready for the next
 18 witness?
 19 MS. CHARLES: Yes, we are, your Honor.
 20 THE COURT: Bring in the jury.
 21 (The jury is brought into the courtroom.)
 22 THE COURT: Madam Prosecutor, you may call your
 23 witness.
 24 MS. CHARLES: The State calls Dr. Junaid Shaikh.
 25 JUNAID R. SHAIKH, STATE'S WITNESS, SWORN.

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1 DIRECT EXAMINATION BY MS. CHARLES:

2 Q. Good afternoon, Sir. By whom are you employed?

3 A. I work for the Regional Medical Examiner's Office in
4 Newark, New Jersey.

5 Q. And in what capacity?

6 A. I am an associate regional medical examiner.

7 Q. And what kind of -- how long -- excuse me. How
8 long have you been so employed?

9 A. I've been at that office since 1993 in different
10 capacities, but working as medical examiner.

11 Q. Okay. What is a medical examiner?

12 A. It's synonymous to a coroner. In all counties in the
13 states, in the United States, there is a medical examiner
14 system, or a coroner system. These are physicians
15 invariably appointed by the county, state, who function as
16 physicians in cases where there are deaths, or there are
17 deaths where there's investigation involved in terms of
18 cause and manner of death. They usually deal with cases
19 such as where there is violent, violent deaths, deaths where
20 the cause and manner is in question. So, in effect, most
21 homicides -- in fact, all homicides are certified by medical
22 examiners. So this is part of their function.

23 Q. Okay. And what kind of training does one need to
24 be a medical examiner?

25 A. You have to be a licensed physician to practice in that

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1 field, first of all. Most of the places require that you
2 have training in pathology and forensic pathology, which I
3 have, and also an additional requirement, quite often, is
4 Board certification should also be there, but the most
5 important thing is being a licensed physician with a valid
6 license, and to have had training in forensic pathology from
7 an accredited institution.

8 Q. And do you, in fact, have that training?

9 A. Yes.

10 Q. From what institution did you receive your
11 training in forensic pathology?

12 A. My pathology residency training in Cleveland, Ohio, at
13 Mt. Sinai Medical Center. I rotated during my residency
14 through the county coroner's office in Cleveland, Ohio, and
15 then subsequent to that I was a Fellow and associate
16 pathologist at the office of the chief medical examiner in
17 Baltimore, Maryland. So I was there for a little over close
18 to two years as a forensic pathologist.

19 Q. While you've been a forensic pathologist at the
20 Medical Examiner's Office that you're presently employed
21 with, approximately how many autopsies have you performed?

22 A. About a thousand autopsies in all.

23 Q. And what is an autopsy?

24 A. Autopsy is part of a complete death investigation. The
25 autopsy itself entails, in the forensic setting, looking at

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1 the body as it presents to the office, if you have to go to
2 the scene, if the person was dead at the scene, then you
3 evaluate the body at the scene.

4 It is brought to the office, the Medical Examiner's
5 Office, and then in the autopsy room the body is examined,
6 the external examination of the body is done. Evidence that
7 may be on the body is collected. Documentation is made of
8 the clothing, injuries, wounds that the person might have.

9 The clothing is removed, and then the body is examined.
10 An external examination is done again to further evaluate
11 any injuries that the person may have sustained. All along
12 we take photographs and documentation is made, and then an
13 internal examination is made by making a Y shaped incision
14 on the chest and extending it up to the lower part of the
15 abdomen, and an internal examination is performed, and all
16 the organs are looked into, and a report is prepared.

17 If there is any evidence lodged within the body for
18 example, there is a bullet in there, or any other foreign
19 material, that is recovered and submitted to the appropriate
20 authorities, and the skull is also opened, and the brain is
21 examined. This is a complete autopsy.

22 Q. Of the 1000 or so autopsies that you have
23 performed while you were a medical examiner in your present
24 employ, approximately how many involved stab wounds?

25 A. Well, I don't have an exact number for you, but quite a

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1 few of the forensic cases are deaths by violent means, are
2 by sharp force injury, meaning stab wounds. I don't have a
3 number for you.

4 Q. Have you ever testified as an expert in the field
5 of forensic pathology in court before?

6 A. Yes.

7 Q. And in Superior Court?

8 A. Correct.

9 Q. And approximately how many times have you
10 testified in Superior Court, have you been qualified?

11 A. At least a hundred times.

12 THE COURT: Mr. Roberts, care to examine the
13 witness as to his qualifications?

14 MR. ROBERTS: I do not, your Honor. I will
15 stipulate that he's an expert in the field.

16 THE COURT: The witness will be permitted to
17 testify as an expert in the field in which he's being
18 offered.

19 MS. CHARLES: S-15.

20 (An Autopsy Report is marked S-15 for identification.)

21 Q. Doctor, I'm going to show you what's been marked
22 S-15 for identification. Do you recognize that, Sir?

23 A. Yes, this is the autopsy protocol of the autopsy report
24 that was prepared after performing the autopsy on Keith
25 Banks, and has the proper autopsy case number, which is

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1 07970229.

2 Q. And whose report is it?

3 A. I'm sorry?

4 Q. Who prepared that report?

5 A. Yes, I prepared that.

6 Q. I didn't hear you say that. I'm sorry.

7 And when was that autopsy performed?

8 A. That autopsy was performed on February 2, 1997, between
9 1340 hours and 1630 hours.10 Q. Now, that autopsy report is broken down into
11 various sections, is it not?

12 A. That's correct.

13 Q. And what sections -- could you explain the various
14 sections?15 A. You try to follow a format. There is no fixed format
16 with which one follows, but you try and be systematic in how
17 you describe or present your findings. So it usually
18 includes an external examination which also includes the
19 clothing that the person has, if it is significant in that
20 particular case. Then the external body is described in the
21 external examination.22 If there is any evidence of therapy that the person may
23 have received or marks of treatment that the person may
24 have -- for example, he has a vascular catheter or
25 intravenous line that is there, these are all described

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1 because when they're removed they might appear as injuries,
2 so they have to be described in the report itself.3 Then usually I personally have a section where the
4 evidence of injury is listed. So I describe the injury that
5 I have found on the body and document that. And then after
6 that is done, an internal examination is performed, and we
7 go through the body cavities and the organ systems. For
8 instance, the cerebral, vascular system, or the head, the
9 neck is examined, and the description of that is given.10 The cardiovascular system, the respiratory system, the
11 alimentary system, meaning the digestive system and so on
12 and so forth. So that whole thing is delineated in the
13 report.14 Subsequent to that, other ancillary investigations are
15 done. For instance, tissue is sent down for microscope to
16 look under a microscope and see if there is any evidence of
17 microscopic evidence of injury, or some ongoing medical
18 process. That is listed.19 I also mention where I send out for toxicology. That
20 was also listed.21 If any other tests are done; for instance, X-rays,
22 photography, those are all listed in the report.23 Then, finally, after all this is done, I try to
24 summarize the findings in a heading usually known as the
25 pathologic diagnosis, and I summarize the findings or the

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1 results of the autopsy. And then, finally, the cause and
2 manner of death is given.

3 Q. How did you receive -- strike that.

4 In what condition was the body received?

5 A. I think the body was received from the hospital, and it
6 was intact with the clothing on the body.

7 Q. Okay. And what evidence of therapy did you note
8 in your report?

9 A. I'll have to refer to my report that you just gave to
10 me.

11 Q. Certainly.

12 A. There was an endotracheal tube, which is a tube that is
13 put in the mouth to assist respiration, that is put through
14 the mouth and through the larynx, and it's attached to an
15 ambubag, or respirator, where air is forced into the lung
16 when the person is unable to breathe on his own.

17 There was evidence of bilateral thoracotomy, which is
18 an incision that is made across the chest to enter into the
19 chest cavity on an emergency basis to, to invariably to
20 resuscitate the heart, or if there is hemorrhage within the
21 chest cavity, to control that, and to revive the heart, if
22 you can. There was evidence of that.

23 There was also evidence of treatment to the heart
24 itself.

25 There was a wound there that had been sutured by the

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1 emergency room physicians. There were vascular catheters,
2 or intravenous lines in the left arm. There was a catheter
3 in the right groin, in the right groin region, and there was
4 an identification tag around the -- tied to the great toe,
5 the right great toe giving the hospital emergency room
6 number.

7 These are the basic marks of treatment.

8 Q. And during the course of the examination what
9 evidence of injury did you note with respect to the body?

10 A. The evidence of injury was a single stab wound to the
11 left side of the front of the chest.

12 Q. And did you have an occasion to make an internal
13 examination which brought some significance to that injury?

14 A. Yes.

15 Q. And what were the results of that?

16 A. Well, the wound itself externally was examined and
17 appropriately photographed and documented.

18 The wound tract then was followed inside the chest
19 cavity showing as to where the wound went through. It went
20 through the fourth intercostal muscle just next to the
21 breastbone on the left. The wound tract went inside, and
22 the right ventricle, or the right side of the lower part of
23 the heart was perforated and was in the direct line of the
24 wound tract.

25 Q. And approximately what length was the wound tract?

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1 A. It's very difficult to estimate the depth of the wound
2 in stab wounds because the body is not like a rigid object.
3 So it depends how much force is used, how much the blade or
4 the sharp object has been penetrated. So it's only an
5 estimation can be made. According to my estimation it was
6 about four inches deep.

7 Q. Four inches deep?

8 A. From the surface to the wound itself.

9 MS. CHARLES: S-16A through F and S-17.

10 (Photographs are marked S-16A, S-16B, S-16C, S-16D,
11 S-16E and S-16F for identification.)

12 (A Diagram is marked S-17 for identification.)

13 Q. I'm going to show you what's been marked S-17 for
14 identification, and it's on the board behind you. Taking a
15 look at S-17, are you able to make an approximate marking as
16 to where exactly this wound was observed by you?

17 A. I can make an approximate marking, yes.

18 Q. If you could do that then, Sir.

19 THE COURT: Doctor, may I suggest you put your
20 back to me. That way the jury can see what you're doing.

21 THE WITNESS: Sure, Sir.

22 This is a body diagram, an enlarged body diagram
23 that is similar to what we use in an autopsy room. So this
24 is actually an enlargement of a front part of the body.

25 As I had mentioned, there was a stab wound to the

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1 left side of the chest, so the left and right is
2 corresponding to subject or the decedent. So the left would
3 be on this side of the chest, and approximately this area,
4 which would be the fourth intercostal space. The nipple is
5 marked fifth intercostal space. There was a stab wound in
6 this fashion on the chest.

7 Q. And where is that wound in relation to the heart?

8 A. The heart is in that general vicinity underneath the
9 chest cage.

10 Q. Now, the wound itself, you indicated that you were
11 able to approximate it being roughly four inches deep.

12 Is that correct?

13 A. Correct.

14 Q. Were you able -- did you make a measurement with
15 regard to how large the wound appeared from the outside?

16 A. Yes.

17 Q. And how large was that?

18 A. I'll have to look at the report here.

19 Q. Why don't you have a seat.

20 A. The wound itself measures nine-sixteenths inch, and
21 apart from just saying that there's a wound there, there're
22 characteristics of the wound if one can determine. They're
23 also mentioned. So this wound had a blunt and a sharp end.
24 The upper end was blunt and the lower end was sharp, and it
25 had smooth margins, indicating to me that the object that

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1 was used had a single sharp edge to it.

2 Q. And based on your training and experience in the
3 area of forensic pathology, were you able to render an
4 opinion as to what may have caused such a wound?

5 A. Yes.

6 Q. And what would that be, Sir?

7 A. It is a sharp object that has a blunt end and a sharp
8 end.

9 Q. Would a knife be consistent with what you
10 described as a sharp object with a blunt end and a sharp
11 end?

12 A. Yes.

13 Q. Taking a look at what has been previously marked
14 S-16F for identification, what is that, Sir?

15 A. This is a photograph of the decedent taken at autopsy
16 on the autopsy table after the clothing was removed and the
17 body was cleaned up.

18 Q. Okay. And depicted on that photograph, do you see
19 any evidence of injury?

20 A. Yes, there is evidence of the treatment and the injury
21 itself. The thoracotomy incision is there which has been
22 sutured by the emergency room physician, and the stab wound
23 to the left side of the chest was also there.

24 Q. Taking a look at what has been marked S-16B for
25 identification, could you explain what that photograph

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1 depicts?

2 A. Yes, that is an enlarged close-up photograph of the
3 decedent taken at autopsy. It bears the appropriate case
4 number, which is 07970229, and it shows the stab wound taken
5 at a close-up, and again shows the blunt and sharp ends of
6 the wound.

7 Q. And where is the blunt end, and where is the
8 sharp?

9 A. The blunt end is on the superior aspect, and the sharp
10 end in the lower aspect, or the inferior aspect.

11 Q. Taking a look at what has been marked S-16A for
12 identification, could you explain what that photograph
13 depicts?

14 A. Yes, that photograph depicts the heart after it was
15 removed from the body, washed and cleaned, and then
16 subsequently photographed on a photographic board with
17 appropriate illumination to show the injury. It bears the
18 appropriate case number, and shows the stab wound to the
19 right side of the heart.

20 Q. Okay. And you referred to it as the right side of
21 the heart. Does it have a specific name?

22 A. Right ventricle.

23 Q. The right ventricle. Okay.

24 Now, you also made mention of some evidence of therapy
25 that appeared on the heart. Is that present within that

1 photograph?
2 A. Yes.
3 Q. And where is that located?
4 A. This is also on the right side, or the right side of
5 the ventricle of the heart. These are sharp linear cuts
6 which could be consistent with the emergency personnel when
7 they were doing an emergency thoracotomy.
8 Q. Now, you mentioned that the ex -- from an external
9 examination the wound was, I believe, nine-sixteenth of an
10 inch long, wide.
11 Is that correct?
12 A. That's correct.
13 Q. Were you able also to give a measurement with
14 respect to the wound as it appeared on the heart from an
15 internal examination?
16 A. Yes, it was seven-sixteenth inches wide.
17 Q. And were you able to estimate within the heart how
18 far it went -- how far the wound went into the heart?
19 A. No, because it had only gone through the right
20 ventricle or wall, and hadn't penetrated further into the
21 ventricle or septum, or any other part of the heart. Since
22 the right ventricle is a cavity, so all I was able to
23 determine is that it went through the wall of the right
24 ventricular, the right ventricle, and as to how deep it went
25 in there is hard to determine.

1 Q. When you made your examination, and ultimately
2 retrieved the heart from the body of the decedent, were you
3 able to locate or discern what kind of damage the blunt, the
4 sharp object made to the heart, and what resulted therefrom?
5 A. Yes. As you know the heart is a very vascular organ.
6 It is a pump for the body. It pumps the blood throughout
7 the body. So it is perfused with blood, and it also
8 contains blood in its chambers.
9 So what I was able to determine is that the wall of the
10 right ventricle was perforated. There was hemorrhage
11 outside and into the chest cavity.
12 Q. I'm going to show you what has been marked S-16C,
13 D, and E. Taking a look first at S-16C, what does that
14 depict, Sir?
15 A. That is one of the clothing the decedent was wearing at
16 autopsy after the clothing was removed. The sharp cut to
17 the left chest region consistent with the wound to the chest
18 was photographed with an arrow indicating that cut in the
19 fabric.
20 Q. And what kind of -- how would you describe that
21 clothing?
22 A. This is a jacket of a sweat suit with a parka, with a
23 hood.
24 Q. And was there any blood or anything present on
25 that clothing?

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- 1 A. Yes.
2 Q. Taking a look at S-16D, could you explain or
3 describe what that photograph depicts?
4 A. This is photograph also is of clothing removed from the
5 decedent and subsequently photographed with a mark of an
6 arrow showing the sharp cut in the fabric in the left chest
7 region consistent with the previous photograph and the
8 injury to the body. It also shows the presence of blood.
9 Q. And lastly taking a look at S-16E for
10 identification?
11 A. This is a short sleeve T-shirt the decedent was wearing
12 which also shows the cut in the fabric in the general area
13 that I've described earlier.
14 Q. The injuries that you describe, were they also
15 described in the -- in your report noting the cardiovascular
16 system?
17 A. Yes.
18 Q. And ultimately you made a pathological diagnosis.
19 Is that correct?
20 A. That's correct.
21 Q. And with respect to same what was that diagnosis?
22 A. It was -- the pathologic diagnosis was stab wound to
23 the chest, and then I describe as to what it was.
24 Q. And you also indicated there was both a cause of
25 death and a manner of death that you, as a medical examiner

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- 1 make with respect to your findings.
2 Is that correct?
3 A. That's correct.
4 Q. And those were what, Sir?
5 A. Cause of death was stab wound to left side of chest and
6 heart and the manner of death was homicide.
7 MS. CHARLES: I have nothing further.
8 THE COURT: Mr. Roberts.
9 CROSS EXAMINATION BY MR. ROBERTS:
10 Q. Doctor, just a couple of questions.
11 From what you indicate this is something you do every
12 day, the heart was more in the middle of the chest
13 underneath, of course, correct?
14 A. Toward the middle, toward the middle.
15 Q. The common feeling is it's on the left side, but
16 it's more left center.
17 Is that so?
18 A. Right.
19 Q. You said that as part of the autopsy you did a
20 toxicology. A toxicology was done. What is that?
21 A. A toxicology -- now, in the present day and age all
22 autopsy reports invariably include a toxicology report.
23 This is the -- the extent of which the toxicology is done
24 is, varies in different offices.
25 Q. Well, limiting yourself to what your office did.

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- 1 A. I was coming to that.
 2 So in our office we do a detailed toxicological
 3 evaluation, looking for both therapeutic drugs and
 4 toxicological drugs or narcotics and contraband drugs or
 5 illicit drugs, and that was also performed.
 6 MR. ROBERTS: May I have this marked for
 7 identification.
 8 THE COURT: D-1 for identification.
 9 MS. CHARLES: I believe that's part of this.
 10 Q. Do you have the toxicology report attached to
 11 yours?
 12 A. Yes, that's part of the autopsy report, yeah.
 13 Q. Okay. Apparently, correct me if I'm wrong, there
 14 were three different areas that were examined by the
 15 toxicologist.
 16 Is that so?
 17 A. Correct.
 18 Q. That would be the blood, urine and bile?
 19 A. That's correct.
 20 Q. Can you tell us what the results of the blood
 21 test, blood report was?
 22 A. The blood, the blood, he found cocaine, ecgonine --
 23 Q. Stop at cocaine. It says 0.02 -- is that
 24 milligrams per liter?
 25 A. That's correct.

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- 1 Q. What does that mean?
 2 A. Just gives you a quantity of how much cocaine was found
 3 in the blood.
 4 Q. Are you able to tell us if the blood shows how
 5 much cocaine this person had ingested?
 6 A. No, you have to ask the toxicologist.
 7 Q. Okay. What is that next -- I can't say that next
 8 one.
 9 A. That's ecgonine methyl ester.
 10 Q. What is that?
 11 A. That is one of the direct breakdown products of
 12 cocaine.
 13 Q. What's the next one?
 14 A. Benzoyl ecgonine. That's also a metabolite of cocaine.
 15 Q. And the fourth indication of a positive is
 16 morphine, and it says free?
 17 A. That's correct.
 18 Q. And what is that?
 19 A. That's the breakdown product of one of the opiates, or
 20 including, it could include heroin and morphine and codeine,
 21 all those drugs.
 22 Q. Okay. And that indicates 0.09 milligrams per
 23 liter.
 24 Is that so?
 25 A. That's correct.

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- 1 Q. Does the fact that these controlled dangerous
2 substances, cocaine and morphine, appear in the blood mean
3 anything as opposed to if it would appear in the urine or
4 the bile?
5 A. Yes.
6 Q. What does that mean?
7 A. Cocaine itself metabolizes very fast, within 60 seconds
8 it goes into the system, and you find it in the urine -- I'm
9 sorry, 60 minutes; within an hour, actually.
10 When you see it in the blood that means that it was
11 very recent use of cocaine.
12 Q. Okay.
13 A. Shortly prior to death.
14 Q. Shortly prior to death?
15 A. Correct.
16 Q. What about the morphine? Is that the same type of
17 situation there?
18 A. No. Morphine takes much longer for it to metabolize,
19 and be distributed into the blood.
20 Q. So are you able, from just this report, as a
21 result of the blood test to be able to tell if the morphine
22 was taken shortly before death, or there's no way of
23 telling?
24 A. The toxicologist may be able to tell you, but I am not
25 competent enough to say.

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- 1 Q. They examined the urine as well. Is that not so?
2 A. Yes.
3 Q. And they indicated morphine free, and then it says
4 1.91 milligrams per liter?
5 A. Correct.
6 Q. The fact that morphine was found in the urine,
7 what does that indicate to you?
8 A. Indicates that the morphine may have been taken
9 earlier, a little more prior to when the cocaine was, and
10 that it has metabolized and it's present in the urine now.
11 Q. The next -- by the way, does the 1.91 milligrams
12 per liter mean anything to you, or would you have to ask a
13 toxicologist?
14 A. You have to ask a toxicologist.
15 Q. I don't mean to degrade you. I know it's a tough
16 field.
17 The next one is 6-mono-acetyl-morphine. What is that?
18 A. That is the direct metabolize of heroin. When heroin
19 is taken, it breaks down like cocaine into -- it metabolizes
20 or breakdown products. Whenever you see this in the system,
21 that means you -- that heroin was taken because this doesn't
22 come from anywhere else but heroin.
23 Q. And, again, for the record, that showed 0.12
24 milligrams per liter.
25 The next entry shows cocaine 2.13 milligrams per liter.

1 What does that mean, anything in the fact that cocaine was
2 found in the urine?
3 A. Yes, it's a value. It's quantitative as to how much
4 cocaine was there.
5 Q. I'm sorry?
6 A. It's quantitative. It tells you how much cocaine was
7 there, 2.13.
8 Q. Does that amount mean anything to you? Are you
9 able to tell from the amount of drug found in the urine how
10 much cocaine this person had ingested?
11 A. No.
12 Q. I said blood, I meant urine.
13 A. Urine.
14 Q. The next entry, the next two entries are similar
15 to the ones above, the breakdown of the cocaine.
16 Is that so?
17 A. Correct.
18 Q. And then there was an examination of the bile.
19 And what is bile?
20 A. Bile is the fluid found in the gallbladder. This is
21 the organ, or a sac that is attached to the liver, and its
22 secretions of the liver are collected into the gallbladder,
23 and then when you eat and when digestion takes place, this
24 is secreted into the small bowel, and helps in digestion.
25 So this is a fluid that the body secretes.

1 Q. And that the bile, according to the test, it
2 showed 7.39 milligrams per liter.
3 Is that correct?
4 A. Yes.
5 Q. Does that amount mean anything to you?
6 A. Yes.
7 Q. What does it mean to you?
8 A. Presence of morphine in the bile indicates that there
9 has been an ongoing use of opiates because it does not
10 directly go into the bile. It has to be secreted. It's
11 secreted. So it has been in the circulation for a period of
12 time.
13 Q. Okay. If -- by the way, when someone ingests
14 cocaine, if I'm out of your field tell me, but if you
15 understand it, please advise me.
16 If someone ingests cocaine, that's something that
17 actually speeds up the metabolism, does it not? It's an
18 upper?
19 A. Yes, it's a stimulant, correct.
20 Q. If somebody had, assume for a second all the
21 things you've been told by the prosecutor about the
22 stabbing, if someone had been ingesting cocaine which would
23 speed up the metabolism, would that ingestion have
24 contributed to his death?
25 A. Contributed how?

Shaikh-Cross

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1 Q. Well, as I understand it he was stabbed in the
 2 heart area. I assume there was bleeding, right?
 3 A. Correct.
 4 Q. Would the speed-up of the metabolism, the high,
 5 contribute to faster beating of the heart, faster beating?
 6 A. You see, you are asking me of an area that is not my
 7 forte, but I can comment about it, and I don't feel very
 8 comfortable doing that, but I can comment about it. See,
 9 there is not only cocaine, there is heroin in the system
 10 too. The cocaine itself is a stimulant, and the heroin, or
 11 the morphine, is breakdown product or the 6-MAM, these are
 12 depressants, and that's why this is known as -- usually,
 13 it's known on the street as a speedballing because what you
 14 do, you're using an upper and a downer, so actually you're
 15 negating each other's effect and just getting a high.
 16 Q. Well, let me ask you this: It's not actually
 17 negating each other's effect, is it, because the body is
 18 kind of working against itself, is it not, if you take an
 19 upper and a downer, a stimulant and a depressant?
 20 A. Working against itself, meaning?
 21 Q. Meaning that you're taking something that gets you
 22 high, that gets you up, that gets you going, your heart
 23 beating, and something else that's counteracting that at the
 24 same time bringing you down.
 25 A. Right.

Shaikh-Cross

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1 Q. So it's kind of working against yourself.
 2 A. Right, sort of.
 3 Q. Doesn't that cause, generally speaking, doesn't
 4 that cause a strain on the heart, on the person?
 5 A. Yes, it can.
 6 Q. And if, in fact, it did create that strain, would
 7 it not be fair to say that that contributed in some respect
 8 to the death of this individual?
 9 A. Yes.
 10 MR. ROBERTS: Thank you, Sir.
 11 THE COURT: Anything?
 12 MS. CHARLES: No, your Honor.
 13 THE COURT: But, Doctor, you say that the ultimate
 14 cause of death was the stab wound itself?
 15 THE WITNESS: That's correct, Sir.
 16 THE COURT: Thank you very much.
 17 (The witness is excused.)
 18 MS. CHARLES: Your Honor, at this point subject to
 19 moving various items into evidence the State would rest.
 20 THE COURT: All right. What items are you seeking
 21 to move into evidence?
 22 MS. CHARLES: If I could just have just a few
 23 minutes.
 24 THE COURT: Sure. Take your time.
 25 I think we'll excuse the jury.

Colloquy

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1 You've heard the State has finished its case, and
 2 we're now going to go through these matters that were marked
 3 for identification to determine what, if anything, goes into
 4 the jury room. So we'll excuse you. Again, don't talk
 5 about it yet.

(Jury recess.)

6 THE COURT: S-1 was a report. Apparently, it's
 7 not going in.

8 MR. ROBERTS: Excuse me, Judge. My client wants
 9 to use the bathroom.

10 THE COURT: For the purposes of taking the
 11 evidence, you'll waive his appearance?

12 MR. ROBERTS: I will, Judge. I spoke to him, and
 13 he indicated he would be willing to waive his appearance.
 14 (Defendant is taken into cell to use bathroom.)

15 THE COURT: S-2 is the waiver of -- Miranda
 16 Waiver.

17 MS. CHARLES: The State would seek to put in a
 18 redacted version of that.

19 THE COURT: Such as -- do you want to communicate
 20 that with Mr. Roberts?

21 Any objection?

22 MR. ROBERTS: We're going to try to get a blank
 23 one, Judge, so that will be fine.

24 THE COURT: Well, we'll substitute that as S-2.
 25

Colloquy

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1 S-3.
 2 MS. CHARLES: That's an arrest report. We're not
 3 seeking to move that.

4 THE COURT: That's out.

5 S-4 is a diagram.

6 MS. CHARLES: Yes, your Honor.

7 THE COURT: Any objection, diagram by Nicole.

8 MR. ROBERTS: No objection.

9 THE COURT: Very artistic one.

10 MS. CHARLES: S-5 is a statement, I believe, your
 11 Honor, and I'm not seeking to move that in.

12 THE COURT: S-5 is a statement.

13 MS. CHARLES: S-6 is another diagram.

14 THE COURT: You want that?

15 MS. CHARLES: Yes, your Honor.

16 MR. ROBERTS: No objection.

17 MS. CHARLES: I'll skip then to S-9, which is the
 18 photo array.

19 THE COURT: All right.

20 MR. ROBERTS: My objection to that is the normal
 21 objection. If there's some way we can protect the integrity
 22 of how these pictures were taken. Actually, they were
 23 Polaroids. They're not -- apparently, there's no evidence
 24 of them being mug shots, even on the back. I have no
 25 objection so long as I think it should be explained that

Colloquy

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1 where it says Newark Police Department --
 2 THE COURT: I shall explain to the jury the mere
 3 fact that the Police Department may have photographs does
 4 not in any -- is not an indication of any criminal activity
 5 on the part of the person whose pictures were taken.
 6 MR. ROBERTS: Thank you, Judge.
 7 THE COURT: That's S-9. We then have --
 8 MS. CHARLES: Then I'll be seeking to move in all
 9 of the items under S-10 and the following letters.
 10 THE COURT: Show it to Mr. Roberts.
 11 MR. ROBERTS: No objection.
 12 THE COURT: Then S-10, that's S-10, S-10A, B, C,
 13 D -- A, B, C and D, right?
 14 MS. CHARLES: Correct.
 15 Lastly I seek to move in -- not lastly -- S-16A
 16 through F.
 17 THE COURT: Counsel, have you looked at them?
 18 MR. ROBERTS: Judge, the only objection I have is
 19 to S-16F, which is a full body photograph of the decedent.
 20 That speaks for itself, obviously. I'll show it --
 21 THE COURT: May I see it?
 22 I can understand. I'll sustain the objection.
 23 MR. ROBERTS: Thank you, Judge.
 24 THE COURT: Hold it, 16A, B, C, D and E.
 25 MS. CHARLES: Finally, S-17.

Colloquy

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1 MR. ROBERTS: No objection.
 2 THE COURT: All right. S-17. All right. That's
 3 done. I'll await the arrival of Mr. Dove.
 4 (The following items are marked into evidence
 5 having previously been marked for identification: S-4, a
 6 Diagram of Nicole Gurley; S-6, a Diagram of Rasheedah Banks;
 7 S-9, Photo Array; S-10, S-10A, B, C and D, Photographs;
 8 S-16A, B, C, D and E, Photographs; and S-17, Diagram.)
 9 (The defendant returns to the courtroom.)
 10 MR. ROBERTS: Your Honor, when the jury comes out,
 11 there was one other matter. I went down to the cafeteria in
 12 the basement at lunchtime, and I observed Juror Number 1
 13 speaking to, and, in fact, embracing a sheriff's detective.
 14 He was in the company of one of the workers, one of the
 15 secretaries from the building. I checked my notes. I may
 16 be wrong. I didn't have any indication that he indicated he
 17 knew or was friends with anybody in law enforcement. I may
 18 have missed it because there are a lot of cross-outs on
 19 that. I just want to put that on the record just in case we
 20 have to search and see if that, in fact --
 21 THE COURT: Do you want me to interrogate him?
 22 MR. ROBERTS: I don't want you to interrogate him.
 23 Maybe we can -- maybe we can check the record, I guess, if
 24 that could be done. I'd rather it be done that way. He saw
 25 me see him, and I -- I think he did.

Colloquy

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1 THE COURT: Well, I'll -- all right. We'll
2 explore it.

3 Have the jury come out, and I'll indicate in the
4 presence of the jury what has been marked into evidence and
5 advise them of tomorrow morning.

6 (The jury is brought into the courtroom.)

7 THE COURT: Ladies and gentlemen, in your absence
8 there have been offered and accepted into evidence the
9 following numbers: What they are, you will see when they're
10 taken into the jury room later.

11 S-2, 4, 6, 9, 10 -- they're photographs -- 16 --
12 they're photographs -- 17 was the mark-up of the body, and
13 the State, as you have seen, has rested.

14 I'm informed that the defense is a little bit
15 surprised about the suddenness of the State's resting, so,
16 therefore, the witnesses they have called, which are a few
17 in number, will not be available until tomorrow morning. So
18 that you'll hear them tomorrow morning.

19 In addition, this Court has something else to take
20 care of besides this case. In other words, I won't start
21 before 10 o'clock. I suggest to those of you to come in at
22 the usual time, if possible, for parking purposes only, but
23 you're not needed in this court until 10 o'clock. We'll see
24 you then.

25 (The jury is excused.)

Colloquy

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1 THE COURT: I suggest counsel confer with me
2 concerning the possible requests to charge. We'll have a
3 conference also on the arranging of the lesser included
4 offenses as to murder. So I'll hear from you later. All
5 right. See you in the morning.

6 MR. ROBERTS: Thank you, your Honor.

7 (A Blank Miranda Waiver Form is marked S-2 in
8 evidence.)
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12 (Whereupon the matter is adjourned and will
13 continue on Friday, April 3, 1998 at 10 a.m.)
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C E R T I F I C A T E

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I, FRANCES L. FORBES, C.S.R., License Number
XI-01085, an Official Court Reporter in and for the State of
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Frances Forbes
Official Court Reporter C.S.R.
Essex County Courthouse

9-17-99
Date

AL-6522-5872

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL PART
ESSEX COUNTY, INDICTMENT NO: 2358-5-97
APP. DIV. NO. **6522-98TH Jkr**

STATE OF NEW JERSEY, :
Complainant, : STENOGRAPHIC TRANSCRIPT
: OF
vs. : TRIAL PROCEEDINGS
: :
ROY DOVE, : TESTIMONY OF STATE'S WITNESSES
Defendant. :

Place:
FILED
APPELLATE DIVISION

Essex County Courts Bldg.
50 West Market Street
Newark, New Jersey 07102

OCT 18 1998

Friday, April 3, 1998
Volume 1 of
Pages 1 - 68

R. Collins
Clerk

REC'D
APPELLATE DIVISION
OCT 18 1998
JURY.

B E F O R E:
THE HON. JULIUS A. FEINBERG, J.S.C.,

TRANSCRIPT ORDERED BY:
DEBORAH C. COLLINS, ESQ., Office of the Public Defender

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

ROSALYN CARY CHARLES, ESQ., Assistant Prosecutor for the
County of Essex, Attorney for the State

RICHARD M. ROBERTS, ESQ., (Roberts & Fielo, Esqs.)
Attorney for the Defendant.

FRANCES L. FORBES, C.S.R.
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50 West Market Street
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Newark, New Jersey 07102

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I N D E X

	WITNESS	DIRECT	CROSS	REDIRECT
1				
2				
3	FOR THE STATE			
4	JULIA BANKS	8	15	
5	DET. RASHID SABUR	24	35	
6	INV. TYRONE HOWARD	54	62	
7				
8				
9	FOR THE DEFENSE			
10	DET. RASHID SABUR	44	50	51
11				
12				
13				
14				

E X H I B I T S

	EXHIBIT	IDENT.
15		
16	S-18 2-Page Statement of J. Banks	13
17	S-19 5-Page Continuation Report	26
18	S-20 3-Page Continuation Report	27
19	S-21 5-Page Property Sheet	29
20	S-22 Request for Investigation	56
21	S-23 2-Page Request for Investigation	56
22		
23		
24		
25		

Colloquy

1 THE COURT: All right. Mr. Roberts, are we ready
 2 to proceed?
 3 MR. ROBERTS: Judge, I think we're going to need a
 4 conference based on new information that was supplied to
 5 both the prosecutor and I this morning concerning this case.
 6 THE COURT: All right.
 7 MR. ROBERTS: There's been additional evidence
 8 found.
 9 THE COURT: Evidence found?
 10 MR. ROBERTS: Yes, found, and then maybe lost
 11 again. There's indications that someone by the name of
 12 Julia did, in fact, call the Police Department, turned in a
 13 knife that she says was the one used in this case, and it
 14 was logged into the property room in Newark.
 15 Apparently, the Prosecutor's Office did some
 16 checking today, and although it's been logged in, it's not
 17 there. It's missing again. However, there may have been
 18 photographs taken of it, and we're trying to ascertain
 19 whether, in fact, that happened.
 20 Further, there's -- there was a statement from
 21 Julia. Obviously, neither I nor the prosecutor had a chance
 22 to interview her, and there's some more pages of additional
 23 discovery concerning the follow-ups, et cetera. So --
 24 THE COURT: Miss Charles, let me hear from you.
 25 MS. CHARLES: Your Honor, things are pretty much

Colloquy

4

1 as Mr. Roberts has indicated; that some information was
2 discovered.

3 THE COURT: Then how can that be allowed now?

4 MS. CHARLES: Well, that's why we're going to
5 conference it because I have a certain position with respect
6 to same, because I would argue I should be allowed to
7 re-open my case, but Mr. Roberts --

8 THE COURT: If I allowed you to re-open your case
9 he certainly would have a right to ask for time to interview
10 witnesses, ask for time to produce, perhaps, even the
11 photograph of a knife, if it were to be allowed, to have an
12 expert determine whether or not -- I can't see how I can
13 allow it.

14 MS. CHARLES: Well, I think as Mr. Roberts
15 suggested, it might be fruitful if we had a short conference
16 on the matter.

17 THE COURT: All right. Okay. We'll have that
18 short conference in chambers. I'll see counsel immediately.
19 Mr. Dove, we'll see you shortly.

20 (In chambers conference off record.)

21 (Open court.)

22 THE COURT: Counsel have met with the Court in
23 chambers, and I believe it necessary to place on the record
24 the gist of the conversations that were held.

25 A police report apparently has been, or a property

Colloquy

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1 report has been found indicating that a knife was received
2 by the police, and probably from a person known as Julia,
3 who reference was made during the trial.

4 The knife itself has not been found. Apparently,
5 photographs may have been taken, and if taken we don't know
6 whether or not they're available at this point. Counsel for
7 the defendant has asked the Court to speak to the witness --
8 what is the last name, Julia --

9 MS. CHARLES: Banks.

10 THE COURT: And of course that permission is
11 granted, after which I'll hear any objections, if any, that
12 will be made by defense counsel. I understand she's
13 available.

14 MS. CHARLES: She was sitting in the courtroom a
15 few minutes ago. I would assume she's just out in the hall.

16 THE COURT: Subject to the interview by
17 Mr. Roberts of that witness, I'll hear counsel thereafter.

18 I'm going to call the jury out, take their
19 attendance, and advise them we have problems and appreciate
20 their patience, period.

21 Ask the jury to come out.

22 MR. ROBERTS: Can I ask you -- your last words
23 were, I was supposed to proceed with my case. Can you
24 assure them it's not my fault.

25 THE COURT: I won't say it's anyone's fault. At

Colloquy

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1 this point that problems have arisen without --

2 MR. ROBERTS: Yes.

3 THE COURT: Not the fault of either counsel at
4 this point.

5 MS. CHARLES: Thank you, your Honor.

6 (The jury is brought into the courtroom.)

7 THE COURT: Let the record indicate that all
8 jurors are present.

9 Good morning, ladies and gentlemen. Again, thank
10 you very much for your patience. Several matters have
11 arisen, several problems have arisen in the course of this
12 case without the fault of either counsel, and that's why
13 we've had to take this time to discuss these matters before
14 you even hear anything, and it will take a few more minutes
15 to make sure that we can proceed at this point.

16 I suggest that you be patient and wait another 15
17 minutes, and then I'll be in a position to tell you how soon
18 we can proceed. So, again, hold on to your patience, and
19 thank you. You can go back into the jury room.

20 (The jury returns to the jury room.)

21 THE COURT: Mr. Roberts, you'll advise me as soon
22 as you're ready.

23 MR. ROBERTS: Yes, your Honor.

24 THE COURT: Thank you.

25 (Short recess.)

Colloquy

7

1 THE COURT: All right. Bring Mr. Dove back out,
2 and we'll ask the jury to take their seats.

3 Please ask the jury to come out again.

4 (The jury is brought into the courtroom.)

5 THE COURT: Well, at least you can say I'm giving
6 you some exercise. We are still having legal problems, and
7 I can't tell you what they are; maybe at the end of the case
8 I can. I cannot tell you, but we are having problems, and
9 don't blame any of the attorneys. You can blame me, if you
10 have to, but not the attorneys yet. I'm going to excuse you
11 for lunch. Be back here at 1:30. Hopefully we may have
12 some resolution at that point. Thank you.

13 (The jury is excused.)

14 THE COURT: All right. Miss Charles, you'll let
15 me know as much as you can at 1:30, and I'll see counsel
16 then.

17 (The Court takes the luncheon recess.)

18 THE COURT: Is he available?

19 MS. CHARLES: Both of them are outside.

20 THE COURT: Have the jury come out.

21 (The jury is brought into the courtroom.)

22 THE COURT: Nice to see you back again.

23 MS. CHARLES: Your Honor, at this time I would
24 make a request that the State be allowed to re-open its case
25 with regard to certain evidence.

J. Banks-Direct

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THE COURT: Mr. Roberts, any objection at this
 MR. ROBERTS: I have no objection.
 THE COURT: You may proceed.
 MS. CHARLES: Your Honor, the State calls Julia
 Banks.
 JULIA BANKS, STATE'S WITNESS, AFFIRMS.
 DIRECT EXAMINATION BY MS. CHARLES:
 Q. Good afternoon, Ma'am.
 I'm going to direct your attention to February of 1997.
 Where did you live at that time?
 A. 503 South 19th Street in Newark, New Jersey.
 Q. Do you know an individual by the name of Keith
 Banks?
 A. Yes.
 Q. What is your relationship to that individual?
 A. Sister.
 Q. And at -- who did you reside with at 503 South
 19th Street?
 A. It was me, my mother, my sisters and brothers and my
 two children.
 Q. And approximately how many people lived in the
 household?
 A. About seven.
 Q. About seven?

J. Banks-Direct

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A. No -- yeah, about. Okay.
 Q. Did there come a time when you became aware of an
 incident that took place right outside of your apartment on
 February 1 of 1997?
 A. Yes.
 Q. Okay. And that incident involved the death of
 your brother.
 Is that correct?
 A. Yes.
 Q. Did there ever come a time when you had an
 occasion to find an item in your household?
 A. Yes.
 Q. With respect to that incident?
 A. Yes.
 Q. Could you explain to the jurors the circumstances
 under which that item was found and also explain --
 THE COURT: Please close the window.
 I'm sorry. Thank you.
 Q. And also explain what that item was.
 A. What is that you want me to tell you? I don't
 understand.
 Q. How did you find this item?
 A. Oh, okay. It was in my room. My sister had, um, hid
 it in my room, and I was in the room, and I found it in the
 room.

J. Banks-Direct

10

- 1 Q. What is that item?
2 A. It was a knife, the knife that --
3 Q. Where in the room did you find this knife?
4 A. Under the bed.
5 Q. And when did you find this item?
6 A. I can't -- I don't exactly remember the day, but it was
7 maybe a day or two after the, um, the, um, incident. It
8 might have been later on that day or the next day. I don't
9 remember exactly, you know, precisely.
10 Q. All right. And when you found the knife, you said
11 under your bed?
12 A. Yes.
13 Q. What -- how -- what condition was that knife in?
14 A. It was inside a plastic bag -- well, like a little
15 plastic bag, not a, um, a shopping bag, like a little bag,
16 maybe a sandwich bag or something like that. It was inside
17 that wrapped up inside another Ziploc bag. It was like --
18 it was in two bags. It was inside a little bag, and it was
19 also -- then inside another bag, in a Ziploc bag.
20 Q. Excuse me. Were you able to -- could you describe
21 those Ziploc bags? Were they translucent? Could you see
22 through them?
23 A. Yeah, you could see through them.
24 Q. And when you were in viewing the knife, how did it
25 appear to you?

J. Banks-Direct

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- 1 A. Um, I can't, um -- when you say, how did it appear,
2 what do you mean?
3 Q. Describe everything you saw on that knife.
4 A. Oh, I can't. Right now I can't really remember because
5 it's been so long, and then like I said, when I look at the
6 knife I didn't stare at it and try to, you know -- I
7 automatically, I just begin to call the cops. From what I
8 remember I believe it was like gold, silver and gold, gold,
9 like, and silver, you know.
10 Q. And when you -- when you discovered the knife,
11 what did you do with the knife?
12 A. Oh, we called the police to let them know that we had
13 it.
14 Q. And in calling the police, what happened?
15 A. Um, they sent a car out, um, some people came out to
16 the house, and I went with them downtown to Green Street.
17 Q. Do you remember the names of the police that came
18 to -- came to retrieve this?
19 A. No, I don't. I can't remember.
20 Q. Could you describe those individuals?
21 A. Not really. I know they -- I don't really remember. I
22 know there was two men, but I can't, I can't say, and I
23 don't want just to throw out there because I don't really
24 remember. I know when I got down there, I talked to a
25 woman. A woman was the one that interviewed me, but I don't

J. Banks-Direct

12

1 believe she was the same one that came and got me.
 2 Q. All right. So you actually went down to police
 3 headquarters.
 4 Is that correct?
 5 A. Yes.
 6 Q. In a police car?
 7 A. Yes.
 8 Q. Okay.
 9 A. Not a, you know, like a, um, not a regular police car,
 10 like a, you know, unmarked car, like, or marked car. I
 11 don't know how they call it.
 12 Q. And when you got to police headquarters -- let's
 13 back up to the apartment. When you called the police and
 14 they responded to your apartment, what did you do with the
 15 knife?
 16 A. Then?
 17 Q. Yes.
 18 A. I, um, I think I handed it over to the -- wait a
 19 minute. I believe I handed it over to the police officer
 20 that came to the house, and these are not police officers in
 21 uniform. They, you know, detectives from homicide. I
 22 believe I handed over to one of them, and then we went, you
 23 know, then they took me downtown.
 24 Q. So when you traveled to police headquarters, you
 25 did not have the knife?

J. Banks-Direct

13

1 A. I don't remember holding it. No, still having it, nah.
 2 Q. When you got to the police headquarters, what did
 3 you do?
 4 A. I, um, they, um, I waited a while. Then they -- they
 5 took me to the back. I talked to the woman in back, but
 6 then they interviewed me and begin talk to me.
 7 Q. And when she was interviewing you, what was taking
 8 place?
 9 A. Well, I'm sitting in the chair talking to her.
 10 Q. Yes.
 11 A. She's asking me questions, telling me, you know, she's
 12 sorry about what happened with my brother and stuff, and we
 13 just discussing the case and, you know, talking about -- she
 14 asked me questions, and I was answering the questions.
 15 MS. CHARLES: Can I have this item marked S-18.
 16 (A Statement of Julia Banks is marked S-18 for
 17 identification.)
 18 Q. Taking a look at what has now been marked S-18 for
 19 identification, do you recognize that?
 20 A. Yes.
 21 Q. What is that?
 22 A. This is my statement.
 23 Q. And when was that statement executed?
 24 A. The date?
 25 Q. Yes, when?

J. Banks-Direct

14

- 1 A. From -- on this it say February 7.
 2 Q. Do you recall that as being the date when the
 3 statement was done?
 4 A. I don't remember.
 5 Q. You don't remember?
 6 A. No.
 7 Q. And to whom was that statement given?
 8 A. To a woman.
 9 Q. Okay. And does that appear on the statement?
 10 A. Yes, it says Detective, Britt Headen.
 11 Q. And how long is that statement?
 12 A. 17 questions.
 13 Is that what you mean?
 14 Q. How many pages?
 15 A. Two pages.
 16 Q. Now, Ms. Banks, you've been in trouble before.
 17 Is that correct?
 18 A. Yes.
 19 Q. Okay. Could you explain to us the nature of this
 20 trouble you've been in?
 21 A. Um, I was locked up for CDS about ten years ago.
 22 Q. And since then have you been in trouble?
 23 A. No.
 24 Q. Okay.
 25 A. That was the first time, and that was the last time.

J. Banks-Cross

15

- 1 Q. And when you say CDS, was it -- was it for
 2 possession or possession with intent?
 3 A. Possession with intent.
 4 Q. And did you receive a sentence?
 5 A. On probation.
 6 Q. Did you plead guilty, or was it a trial?
 7 A. No, I pleaded guilty. There wasn't no trial.
 8 Q. And for how long were you placed on probation?
 9 A. For about three years.
 10 MS. CHARLES: I have nothing further of this
 11 witness.
 12 THE COURT: Mr. Roberts.
 13 CROSS EXAMINATION BY MR. ROBERTS:
 14 MR. ROBERTS: Thank you, Judge.
 15 Q. Ms. Banks, when did you first find out that your
 16 brother had been murdered, had been stabbed?
 17 A. When I got home from church that night.
 18 Q. Was that the same night that it happened?
 19 A. The same night, uh-huh.
 20 Q. Would that be February 1?
 21 A. Yes.
 22 Q. And do you remember about what time you got home?
 23 A. No, not exactly. It might have been about 11 o'clock,
 24 somewhere between 10 and 11, somewhere like that.
 25 Q. Who was home when you arrived?

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- 1 A. I think it was my brother. You know, it's been so long
2 ago, and I'm trying to --
3 Q. I understand. Just do your best.
4 A. -- remember everything that --
5 Q. You think it was your mother?
6 A. No, me and my mother was together. Me and my mother
7 and children was together. When I got home I believe it was
8 my brother that was there.
9 Q. Is that your brother Kevin?
10 A. Yes.
11 Q. And did your sister, Rasheedah, come up while you
12 were there?
13 A. While we was at home?
14 Q. Yes.
15 A. I don't -- um -- I don't believe so; not at that
16 moment. I think it was the other sister that came home.
17 Q. Roberta?
18 A. One of them came in to tell us that he was stabbed, and
19 we had to go to the hospital.
20 Q. And when you were told, did you go to the
21 hospital?
22 A. My mother went first, and we were still there because
23 we didn't know that it was as bad as it was. We didn't know
24 exactly what had happened.
25 Q. So you stayed home?

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- 1 A. I stayed home.
2 Q. Did you stay home all night?
3 A. No, I didn't stay home all night.
4 Q. What time did you leave?
5 A. I can't remember exactly what time I left. As soon as
6 they told me he was murdered, and we got up, and he died.
7 Q. Was it in the morning? Do you remember?
8 A. Was it morning?
9 Q. Yes. Was the sun out, or was it before that?
10 A. It was before then. He was killed at night, and so we
11 left that night.
12 Q. Just try and answer. When you -- by the way,
13 while you were there that day did the police come up to the
14 apartment that evening?
15 A. That night?
16 Q. February 1.
17 A. Did the police come to the house while I was there
18 before I went to the hospital?
19 Q. Right.
20 A. No, not before I went to the hospital.
21 Q. Do you know of your own knowledge if they came
22 that night at all?
23 A. Um, well, that night, oh, that night we were at the
24 police station for hours, so, no.
25 Q. You say that -- well, let me ask you how many days

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- 1 after the 1st do you remember you found the knife?
 2 A. No, I don't remember. That's what, you know, I don't
 3 remember.
 4 Q. Could it have been a couple of days on February
 5 the 3rd?
 6 A. 2nd, 3rd, it could have been, because when the incident
 7 happened it was like almost going on.
 8 Q. Ma'am, you have to answer my questions. The
 9 prosecutor can ask you other questions if she wants to. You
 10 have to economize here.
 11 A. I'm trying to answer the best I know how. That's why I
 12 told you when you asked me, I don't remember.
 13 Q. I don't want you to guess.
 14 A. Then I can't answer it.
 15 Q. Just answer to the best of your ability.
 16 A. I don't want to just throw anything out to you.
 17 Q. You say that your sister hid the knife under the
 18 bed, didn't you?
 19 A. No, I said that, um, well, that's where she put it.
 20 She put it under the bed.
 21 Q. Didn't you use the word hid?
 22 A. I didn't say hid.
 23 Q. You didn't say hid. Okay.
 24 How do you know she put it under the bed?
 25 A. Because that's where I found it from under the bed.

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- 1 Q. How do you know your sister put it there, your
 2 sister Rasheedah?
 3 A. Because she the one that found it.
 4 Q. How do you know she put it there? Are you
 5 guessing?
 6 A. Because she the one that found it. There's not too
 7 many people that be in my house.
 8 I don't remember answering the questions, so I want to
 9 answer --
 10 THE COURT: Let him ask you a question, and you
 11 answer it. Wait. Just answer whatever he asks for.
 12 Go ahead.
 13 Q. Did you see anybody put the knife under the bed?
 14 A. No.
 15 Q. Did anybody tell you they put the knife under the
 16 bed?
 17 A. Well, Rasheedah.
 18 Q. She told you that?
 19 A. Well, she didn't say, I put the knife under the bed.
 20 She said I brought the knife in the house, and I put the
 21 knife up.
 22 Q. Did anybody tell you, anybody, that anybody put
 23 the knife under the bed?
 24 A. No.
 25 Q. When did Rasheedah tell you she put the knife up?

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- 1 A. It might have been that night after we came from the
2 hospital, while we was -- no. While we was at the precinct
3 on the way coming home -- I can't remember. I don't
4 remember. I don't know. I'm answering that.
5 Q. Do you know if the knife was misplaced?
6 A. No, it wasn't misplaced.
7 Q. Was it -- do you know in whose possession it was
8 in from the time it came into the house until the time you
9 found it?
10 A. No. Do I know whose possession it was in? No.
11 Q. Let me -- unfortunately, we only have one copy of
12 this. Let me refer to S-18 for identification. This is the
13 statement dated February 7, 1997. This is -- take a look at
14 this. This is your statement, is it not, that you gave?
15 A. Yes.
16 Q. Do you recall being asked this question and giving
17 this answer: It's Number 13.
18 Mrs. Banks, this morning I responded to your home where
19 you turned over a knife to me. Can you tell me where this
20 knife came from?
21 ANSWER: The night my brother was stabbed, my sister,
22 Rasheedah, found the knife. She brought it into the house,
23 but it was misplaced.
24 A. No, those were not --
25 Q. Listen to my question. Do you remember being

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- 1 asked that question and giving that answer?
2 A. No, it wasn't worded the way she wrote it down. When
3 you go to the interview, they ask you a question. You
4 answer the question. They use their words, and they, um,
5 when you talking to them, they type in, you know, using
6 their words. I didn't use the word misplaced.
7 Q. You didn't say misplaced?
8 A. No, I did not use the word misplaced.
9 Q. It's on there and says that, does it not?
10 A. Yes, it's on there, and I signed it, and it says that,
11 but that's not -- when you go -- like I said, when you go to
12 the interview, and they ask you these questions, they word
13 it the best way they feel like. They put it in their own
14 words, or however. She didn't word it word for word on
15 there, like I said, I did not use the word misplaced.
16 Q. So she kind of put words in your mouth, then,
17 didn't she?
18 A. I wouldn't say that. The reason why -- you didn't ask
19 me that question. I'll not give you the answer.
20 Q. Did you sign the statement?
21 A. Yes, I signed the statement.
22 Q. Did you take a look at it before you signed it?
23 A. Yes.
24 Q. Did you make any changes or corrections to it?
25 A. No, I didn't. And when she asked me that, I didn't

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- 1 think there was going to be a trial or nothing. I didn't
2 know what was going on. She asked me the question, and so I
3 just went down there, and took down there what I had. I
4 wasn't there when it happened, so, you know, I just took
5 them what I had.
- 6 Q. Let me show you the 1, 2, 3, 4th line -- I'm
7 sorry -- 1 -- 4th line down. Do you see a cross-out?
- 8 A. Yeah.
- 9 Q. And you see a name written in, Julia?
- 10 A. Yes.
- 11 Q. And do you see your initials?
- 12 A. Yes.
- 13 Q. Do you remember crossing it out and having your
14 initials signed because it was a mistake?
- 15 A. Yeah.
- 16 Q. And that's the only place on the paper you did
17 that, is it not?
- 18 A. Right.
- 19 Q. You indicated in answering the prosecutor's
20 questions a few minutes ago that as soon as you found the
21 knife you called the police.
- 22 Is that right?
- 23 A. Yes.
- 24 Q. And who was with you when you did that?
- 25 A. I probably was by myself. I don't even remember.

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- 1 Q. By the way, did you tell Rasheedah you found the
2 knife?
- 3 A. Everyone in the house knew I had the knife, yes.
- 4 Q. You told Kevin?
- 5 A. Everyone in the house knew. Everyone in the house knew
6 I had the knife.
- 7 Q. When you found it?
- 8 A. Yes.
- 9 Q. And that includes Rasheedah?
- 10 A. Everyone in the house.
- 11 Q. Please listen. That includes Kevin, your brother
12 Kevin?
- 13 A. Yes.
- 14 Q. And who else? Roberta --
- 15 A. One at a time, please.
- 16 Q. Roberta?
- 17 A. Everyone, yes, everyone knew.
- 18 Q. So when you found the knife you told everybody in
19 the house, right, yes or no, Ma'am?
- 20 A. Yes.
- 21 Q. Okay. Isn't it a fact that you didn't call the
22 police to tell them about the knife until February 7?
- 23 A. No, that is not true.
- 24 Q. That's not true?
- 25 A. No, it's not. As soon as I found the knife is when I

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- 1 called them.
- 2 Q. Because you thought that knife was the knife that
- 3 had stabbed your brother, right?
- 4 A. Because it was the knife.
- 5 Q. It was the knife. So it was important to you?
- 6 A. That's right.
- 7 Q. And important to your family?
- 8 A. That's right.
- 9 Q. And you called right away?
- 10 A. That's right.
- 11 Q. And it's untrue if anybody said that you called on
- 12 the 7th?
- 13 A. Yes, because as soon as I found it I called them.
- 14 MR. ROBERTS: Nothing further.
- 15 MS. CHARLES: I have nothing further.
- 16 THE COURT: Thank you very much.
- 17 (The witness is excused.)
- 18 THE COURT: Anything else?
- 19 MS. CHARLES: The State calls Detective Rashid
- 20 Sabur.
- 21 RASHID SABUR, STATE'S WITNESS, AFFIRMED.
- 22 DIRECT EXAMINATION BY MS. CHARLES:
- 23 Q. Good afternoon, Sir.
- 24 A. Good afternoon.
- 25 Q. By whom are you employed?

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- 1 A. I'm employed by the Newark Police Department.
- 2 Q. In what capacity?
- 3 A. I'm currently assigned to the homicide unit.
- 4 Q. And what is your title there?
- 5 A. I'm a detective in the homicide unit.
- 6 Q. And how long have you been a detective in the
- 7 homicide unit?
- 8 A. Four and a half years now.
- 9 Q. Prior to then how long have you been involved in
- 10 law enforcement?
- 11 A. Ten years.
- 12 Q. And has all that time been with the Newark Police
- 13 Department?
- 14 A. That's correct.
- 15 Q. So it would be safe to say for a total of 14 years
- 16 you've been involved in --
- 17 A. Ten years.
- 18 Q. -- law enforcement?
- 19 A total of ten?
- 20 A. That's correct.
- 21 Q. In February of 1997, specifically, February 1st of
- 22 1997, you had an occasion to respond to an incident that
- 23 took place at 503 South 19th Street, did you not?
- 24 A. That's correct.
- 25 Q. And that incident involved the death of Keith

1 Banks, did it not?

2 A. That's correct.

3 Q. What were your responsibilities with regard to
4 that particular investigation?

5 A. My responsibility was actually to conduct the
6 investigation surrounding the death of Mr. Banks, to gather
7 up any witnesses or evidence that I could as far as the
8 scene and the hospital was concerned.

9 Q. Did you work with anyone within this particular
10 investigation?

11 A. Yes, I did. I worked with Investigator William Isetts
12 of the Essex County Prosecutor's Office.

13 Q. And were any other municipal detectives involved
14 in this investigation?

15 A. Yes, Ma'am, there were.

16 Q. And who were they, if you recall?

17 A. Detective Keith Sheppard. He became involved in the
18 investigation at some point in time. Detective Jack Eutsey,
19 who became involved with the investigation at some point in
20 time, and Detective Headen, who also became involved with
21 the investigation.

22 MS. CHARLES: S-19 for identification. I'd like
23 this item marked S-19 for identification.

24 (A Continuation Report is marked S-19 for identification.)

25 Q. I'm going to show you what has been now marked

1 S-19 for identification. What is that, Sir?

2 A. This is a continuation report, an investigator's report
3 that was prepared by me pertaining to this incident.

4 Q. And how many pages is it?

5 A. You have five pages here.

6 Q. Does that represent your complete continuation
7 report?

8 A. If I can just read it.

9 No, it doesn't.

10 Q. And at what point does that particular
11 continuation report -- those first five pages, at what point
12 does it conclude?

13 A. To the point of the investigation wherein we spoke with
14 the initial witnesses, crime scene processing, and the
15 photographing of the crime scene.

16 Q. Okay. How does the last page of that appear? How
17 many lines appear on that last of five pages?

18 A. Five lines.

19 Q. Five lines.

20 MS. CHARLES: S-20.

21 (A Continuation Report is marked S-20 for identification.)

22 Q. I'm going to show you what has been marked S-20
23 for identification. What is that, Sir?

24 A. This is a continuation of the investigation. This is
25 additional information that was added to my initial

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1 investigative report.

2 Q. And how many pages is that, Sir?

3 A. This is a three-page report.

4 Q. For a total of how many pages on your continuation

5 report?

6 A. Eight pages.

7 Q. And at the point in which the last three pages of

8 your continuation report concludes, what aspect of the

9 investigation does it resolve, if any?

10 A. It involves identification of the individual

11 responsible for the death of the victim, his arrest -- it

12 also involves an additional statement that was taken from an

13 additional witness, and the close-out of it, the close-out

14 of the investigation.

15 Q. And what additional witnesses were documented in

16 that three pages as marked as S-20, I believe?

17 A. Julia Banks, being one of the witnesses, Anthony

18 Brooks.

19 Q. Typically, when you work in tandem with an Essex

20 County investigator, what kind of information is exchanged

21 between the two of you?

22 A. I'm sorry. I didn't hear the question.

23 Q. Typically, when you work with a county

24 investigator on an investigation, and obviously here it's --

25 it's a homicide investigation, what kind of information is

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1 exchanged between the two of you?

2 A. Any information that's relative to the investigation

3 that we're working on, we exchange between us.

4 Q. And in this particular case do you know whether or

5 not all the information pertinent to this investigation was

6 exchanged with the county investigator?

7 A. No, it wasn't.

8 Q. Okay. What information, to your knowledge, was

9 not exchanged?

10 A. The information as far as the additional report is

11 concerned and the additional information that was brought to

12 our attention by Ms. Julia Banks.

13 Q. So you have that within your file.

14 Is that correct?

15 A. That's correct.

16 Q. But it was not relayed to Investigator Isetts.

17 Is that your understanding?

18 A. That's correct.

19 MS. CHARLES: S-21.

20 (A 5-Page Property Sheet is marked S-21 for identification.)

21 Q. I'm going to show you what has been marked S-21

22 for identification. Do you recognize that, Sir?

23 A. Yes, I do.

24 MR. ROBERTS: What is that, Counsel?

25 MS. CHARLES: That's the property report.

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- 1 Q. And what is that, Sir?
 2 A. These are evidence property sheets.
 3 Q. And how many pages is that, Sir?
 4 A. There are five pages there.
 5 Q. And what evidence does it make reference to?
 6 A. Evidence that was collected from the victim from the
 7 scene.
 8 Q. Specifically, what evidence does it --
 9 A. And evidence that was collected from Ms. Julia Banks
 10 also.
 11 Q. Specifically, what items are listed on that --
 12 those five pages?
 13 A. You have blue jeans. This sheet is not legible. I'll
 14 try to read it.
 15 Q. Do you have a more legible sheet within your file?
 16 A. Yes, I do.
 17 Q. If I can just show that to counsel before we get
 18 started.
 19 Specifically, once again, what property is listed on
 20 that property invoice?
 21 A. This is personal property of the victim. Items that
 22 were recovered from the victim. Item Number 1 is listed as
 23 blue jeans with brown belt. Item 2 is listed as a brown
 24 sweatshirt with hood. Item 3 is listed as a blue Nautica
 25 sweatshirt, bloodstained. Item 4 is a green DKNY T-shirt,

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- 1 bloodstain. Item 5, white bloodstained T-shirt. Item 6 is
 2 a white bloodstained underpants. Item 7 is a red and white
 3 boxer shorts. Item 8 is a pair of gray sweat socks. Item
 4 9, a pair of black boots. Item 10 is white and blue Viper
 5 baseball cap, bloodstained. Item 11 is black and white and
 6 yellow South Pole jacket. That's bloodstained. Item 12 is
 7 a black skull cap and --
 8 Q. Before we get to the skull cap, the items that you
 9 listed just before the skull cap you characterize as
 10 personal items.
 11 Is that correct?
 12 A. That's correct.
 13 Q. Personal items of the victim?
 14 A. That was collected from the victim.
 15 Q. When were they collected from the victim?
 16 A. These items were collected from him at the time -- at
 17 the hospital medical examiner's office.
 18 Q. At the medical examiner's office?
 19 A. That's correct.
 20 Q. And as per the report, does it note when those
 21 items were picked up and memorialized?
 22 A. Yes, it does; February 3, 1997.
 23 Q. Now, you were just about to list another item, the
 24 skull cap.
 25 Is that correct?

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- 1 A. Right. That's Item 12 is a black skull cap.
 2 Q. Okay. Where was that item retrieved from?
 3 A. This item was retrieved from, from the outside of 503
 4 South 19th Street.
 5 Q. And when was that item retrieved?
 6 A. It was retrieved on February 2, 1997.
 7 Q. Are there additional items listed on -- contained
 8 therein?
 9 A. Yes, there's one more item here.
 10 Q. I believe that's Item Number 14.
 11 Is that correct?
 12 A. That's correct.
 13 Q. And what is that?
 14 A. Item 14 is a folding knife.
 15 Q. And who retrieved that, what officer retrieved
 16 that item?
 17 A. Detective Headen.
 18 Q. And when was it retrieved?
 19 A. It was retrieved on February 7 of 1997.
 20 Q. And were you made aware of the circumstances under
 21 which that item was retrieved?
 22 A. Subsequently, I was.
 23 Q. Okay. And when you say -- were you present when
 24 the item was retrieved?
 25 A. No, I wasn't.

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- 1 Q. Were you at the station or available at that
 2 particular time?
 3 A. If I'm not mistaken, I may have been off on that day.
 4 Q. Excuse me?
 5 A. I may have been off on that day.
 6 JUROR NUMBER 7: Judge, could you close that
 7 window over there. I'm having a hard time hearing from the
 8 outside.
 9 Thank you.
 10 Q. Now, when items such as the personal property of a
 11 victim are retrieved, what is done with it after it is
 12 memorialized on a property report?
 13 A. Well, we -- we use it for evidence. His -- these items
 14 in particular were sent to the Newark Police Department.
 15 Q. If I could -- if I could just stop you right at
 16 that point. You indicate you use them for evidence. Are
 17 they tagged in some way or identified in some way?
 18 A. They're bagged and tagged.
 19 Q. When they're bagged and tagged, typically they
 20 then are put in a particular place.
 21 Is that correct?
 22 A. That's correct.
 23 Q. And typically where is that place that they're
 24 put?
 25 A. It's sent to our property room.

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1 Q. Likewise, with regard to the skull cap, would the
2 same procedure be utilized in that particular case?

3 A. That's correct.

4 Q. And, finally, with regard to the knife, as it was
5 retrieved, would the same procedure be utilized in that
6 particular case?

7 A. That's correct.

8 Q. Are you aware if these items exist at this point,
9 or are available at this point?

10 A. Well, at this point I'm not exactly sure if the items
11 are available. There's one item in particular that I know
12 for sure is not available because I checked it, and that's
13 Item 14, which is the folding knife.

14 Q. Do you yourself have any explanation as to why
15 that particular item is not available?

16 A. No, I don't.

17 Q. Okay. Where would this item be retrieved from, if
18 it were available?

19 A. Newark Police Department property room.

20 Q. Just a few seconds ago we spoke about the items
21 being tagged in a certain way?

22 A. That's correct.

23 Q. How are they tagged?

24 A. What it is is that each individual items are placed
25 into bags. The bags are actually numbered and stapled.

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1 Q. And what number system is utilized?

2 A. The sequence that's on the property sheet.

3 Q. The sequence that's on the property sheet?

4 A. That's correct. Like Items 1 through 9 would be the
5 items I mentioned to you, and the Items 10 to 11 would be
6 those items. Items 14 would, of course, be the folding
7 knife.

8 Q. Is there one overall tag number that is utilized
9 for every --

10 A. That is correct. We use a Central Complaint number to
11 identify the incident and the items.

12 Q. And what is a Central Complaint number in this
13 case?

14 A. The Central Complaint number in this case is 11008 of
15 '97.

16 Q. And the Central Complaint number is utilized for
17 what purpose besides just tagging evidence?

18 A. Report writing.

19 MS. CHARLES: I have nothing further of this
20 witness.

21 THE COURT: Mr. Roberts.

22 MR. ROBERTS: Thank you, Sir.

23 CROSS EXAMINATION BY MR. ROBERTS:

24 Q. Detective, you're aware, are you not, that until
25 this morning I had not received from you the second part of

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- 1 your continuation report starting on page six, the statement
2 of Julia and the property report?
3 A. That's correct.
4 Q. And as a matter of fact, is it fair to say the
5 prosecutor hadn't seen that until this morning either?
6 A. That's correct.
7 Q. Is it not so that -- by the way, I'm sure you
8 understand -- how long have you been a police officer, Sir?
9 A. Ten years, Sir.
10 Q. I'm sure you understand that all of this stuff,
11 statements, reports, property sheets, they all must be
12 turned over to the defense for the purposes of preparing
13 their case.
14 Is that so?
15 A. Yes, Sir.
16 Q. And to the prosecutor as well?
17 A. That's correct.
18 Q. Is it not so that the Prosecutor's Office, every
19 trial team has detectives or investigators who work up their
20 cases?
21 A. That's correct.
22 Q. Is it not the responsibility of that trial team,
23 the investigators to compile all of the reports and all of
24 the evidence and present it to the prosecutor for trial?
25 A. I'm not in a position to tell you what the procedures

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- 1 are with the Prosecutor's Office. As far as collecting
2 reports from us, I couldn't answer that question for you.
3 Q. Do you know why the Prosecutor's Office never
4 received that material, and I never received that material
5 until this morning?
6 A. No, Sir, I don't.
7 Q. I'm a little confused. Detective Isetts from the
8 Prosecutor's Office, he and you were kind of co-leaders of
9 the investigation?
10 A. That's correct.
11 Q. And after -- is it your testimony -- you testified
12 as to what was told to Detective Isetts about the
13 investigation a little while ago. Do you remember?
14 A. I beg your pardon?
15 Q. I think you testified as to what you told, or
16 didn't tell Detective Isetts about the continuing
17 investigation?
18 A. That's correct, if you're speaking about the reports,
19 that's correct.
20 Q. Yes. Didn't he and you have a chance and, in
21 fact, you're supposed to look at each other's reports and
22 check out and see what's happening?
23 A. Yes, we do.
24 Q. Do you know for a fact that Isetts never saw your
25 reports?

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- 1 A. Well, on a normal basis, and this is from working with
 2 Investigator Isetts, from experience he normally does check
 3 the folders. Now, whether or not he did it in this case, I
 4 really can't tell you.
 5 Q. Do you remember having any conversations with him
 6 about the recovery of the knife?
 7 A. It's been so long ago, I don't remember any personal
 8 conversations with him as far as a knife is concerned.
 9 Q. Are you saying by that that it's possible, you
 10 just don't remember if it was or not?
 11 A. I can't recall. I can't say if I did or didn't.
 12 Q. Certainly the recovery of a knife that may be the
 13 murder weapon would be very important to you, would it not?
 14 A. Yes, it would.
 15 Q. When you -- when the knife was recovered and
 16 turned over to you, as I understand it you had it shipped to
 17 the property room?
 18 A. That's correct.
 19 Q. And that's normal procedure?
 20 A. That is correct.
 21 Q. Do you know where it's been since the time it was
 22 taken to the property room?
 23 A. Well, it would be, to my understanding, that it would
 24 have been at the property room from that time.
 25 Q. So when you checked something in, some procedure

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- 1 of writing it in or something with the complaint number?
 2 A. That's correct.
 3 Q. And that was done -- was that done by you
 4 yourself?
 5 A. That was done by Detective Headen.
 6 Q. I'm sorry. Detective who?
 7 A. Detective Headen.
 8 Q. Headen?
 9 A. That's correct.
 10 Q. So as far as you know that knife had remained in
 11 the property room since February '97 until today?
 12 A. That's correct.
 13 Q. Now, so, then, am I correct in saying that nobody
 14 ever removed that knife and shipped it down to a lab
 15 somewhere to check for fingerprints?
 16 A. That's correct.
 17 Q. And as of right now the knife is missing?
 18 A. Well, right, we can't find it.
 19 Q. As a matter of fact, didn't there come a time this
 20 morning, if you know -- you may not -- that somebody from
 21 down the property room said they did find it?
 22 A. I'm -- I really don't know. I don't have any knowledge
 23 to that.
 24 Q. Okay. I understand.
 25 Now, concerning Julia Banks, at some point she

Sabur--Cross

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- 1 indicated that she had found the knife, right?
2 A. That's correct.
3 Q. And that would have been what date?
4 A. That knife was recovered on February 7.
5 Q. And do you remember when she found the knife?
6 A. Do I recall when she found it?
7 Q. Yes.
8 A. I can only go by what she said in her statement.
9 Q. Why don't you check your report. Page six, third
10 paragraph, I think last sentence in the third paragraph.
11 A. According to Ms. Banks she found the knife on February
12 the 4th, I believe.
13 Q. Is that what it says in your report?
14 A. That's correct.
15 Q. And it indicates she held on to it until the day
16 her statement was obtained, correct?
17 A. That's correct.
18 Q. And that was February 7?
19 A. That's correct.
20 Q. Did anybody else -- by the way, the report, all
21 your reports are pretty well spelled out. Things are
22 written concisely. You try to put in most of the important
23 things in it.
24 Is that correct?
25 A. That's correct.

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- 1 Q. Did anybody in her family between the 4th and the
2 7th ever call you, or anybody else in the Police Department
3 to tell you that they found the murder weapon?
4 A. I never received a phone call from anyone in between
5 that time.
6 Q. After you received -- let me withdraw that.
7 At some point right after the incident you or someone
8 from your command received information that there was a
9 knife at 503 South 19th Street.
10 Is that correct?
11 A. During the incident?
12 Q. Right after it.
13 A. Yes, the same night of the incident, that's correct.
14 Q. And that information was that Rasheedah had the
15 knife in the house.
16 Is that correct?
17 A. That's correct.
18 Q. And was a detail sent up there to find that knife?
19 A. Yes. In fact, Investigator Isetts and myself, we went
20 there personally to retrieve the knife.
21 Q. When you got there, who was there?
22 A. I believe the victim's mother was there. Her other son
23 was there.
24 Q. Is that Kevin?
25 A. I believe so. Rasheedah, of course she was there with

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1 us, and there could have been some other family members
2 there. I'm not sure.
3 Q. Did you make an attempt to -- by the way, when you
4 got there was Rasheedah already there?
5 A. No, she responded to the location with us.
6 Q. Okay. Did you make an attempt to find the knife?
7 A. Yes, we did.
8 Q. Did Rasheedah tell you she had told her mother and
9 her brother about it?
10 A. Yes, she did.
11 Q. Is it not so that her brother said she never, in
12 fact, did bring a knife up?
13 A. That's correct.
14 Q. And said that, in fact, she doesn't know what
15 she's talking about.
16 A. That's correct.
17 Q. Did you conduct a search of the apartment?
18 A. Yes, we did.
19 Q. Can you tell us what you searched, and where you
20 searched?
21 A. We searched the kitchen area where she said she first
22 placed the knife on the kitchen table. It wasn't there. We
23 searched the bedrooms, under the mattresses, under the bed,
24 under piles of clothing in the closets. We searched the
25 hallways and the stairwell leading to the roof of the

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1 hallway where there was some cubby-holes there.
2 Q. Some cubby-holes?
3 A. Yeah, little holes in the hall, so to speak.
4 Q. Do you know what purpose that would be?
5 A. No, I don't. I guess maybe some children walked in
6 there and vandalized the place. I couldn't tell you why the
7 holes were there.
8 Q. What about the stashed drugs?
9 A. I beg your pardon?
10 Q. What about the stashed drugs?
11 A. That's possible.
12 Q. So you assisted in that search yourself?
13 A. Yes, we did.
14 Q. And as I understand it -- well, judging from your
15 reports, you searched every place that you could to see if
16 that knife could be located?
17 A. That's correct.
18 Q. Did you leave anything out in the apartment, some
19 place where you didn't look?
20 A. Not that I can recall.
21 MR. ROBERTS: Your Honor, I have nothing further
22 at this time.
23 If I could advise the Court, I don't know if the
24 prosecutor has any more witnesses in this area, was to call
25 Detective Sabur as my witness. Whatever, however you want

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1 to handle it. Again, I don't know if there are other
2 witnesses in this case.

3 THE COURT: Do you want to make him your witness
4 now?

5 MR. ROBERTS: If it's okay.

6 MS. CHARLES: I have no objection.

7 THE COURT: Go right ahead.

8 RASHID SABUR, DEFENSE WITNESS, PREVIOUSLY AFFIRMED.

9 DIRECT EXAMINATION BY MR. ROBERTS:

10 Q. Well, Detective, in the course of your
11 investigation you took a statement from Rasheedah Banks, did
12 you not?

13 A. That's correct.

14 Q. Do you need a copy of that to refresh your
15 recollection? I'm going to ask you some questions about it.

16 A. Yes.

17 Q. I show you what has been marked S-7 for
18 identification. Can you tell us what that is?

19 A. This is a sworn statement that was taken from Rasheedah
20 Banks.

21 Q. And what's the date of that statement?

22 A. February 2, 1997.

23 Q. And you took that statement yourself, did you not?

24 A. That's correct.

25 Q. Is it not so that before taking the statement you

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1 had a conversation with Miss Banks about the statement?

2 A. That's correct.

3 Q. And is it not so that during that prior
4 conversation that Rasheedah Banks told you that it was
5 Roberta who brought the person they say was the defendant in
6 this case to Keith to buy drugs?

7 A. Right. I believe she identified Roberta as being
8 Nicky, or something of that order.

9 Q. Take a look, if you could, and refresh your
10 recollection. Second page at the very top, second question.

11 A. Yes, that's what it says.

12 Q. Before we get into that, when was the interview
13 taken?

14 A. The first interview was taken prior to us responding
15 back to 503 South 19th Street to locate the knife.

16 Q. So about how long before this statement was taken?

17 A. This statement started at 4:30 in the morning, so I
18 don't know. I guess we may have left my office a little
19 after 3, maybe.

20 Q. Was it your first interview taken at the scene?

21 A. We briefly spoke with her at the hospital. She was
22 somewhat hysterical at the hospital. We spoke with her
23 again at the homicide unit.

24 Q. At the hospital she told you that it was Roberta
25 who brought the guy to her brother to buy drugs?

Sabur-Direct

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- 1 A. If I'm not mistaken she may have mentioned that to us
 2 in my office.
 3 Q. So in your office?
 4 A. She may have mentioned it to us. I'm not sure if it is
 5 in my office. I would have to refer to the reports.
 6 Q. Well, then let me ask you if you remember your
 7 question: During an interview with you, you told me that
 8 your sister, Roberta, brought this guy to your brother. Is
 9 that correct? Maybe I didn't show you that page.
 10 A. That's correct.
 11 Q. Did I -- okay.
 12 So she did, in fact, say at one point Roberta brought
 13 the guy?
 14 A. That's correct.
 15 Q. And then she said during this statement that she
 16 wasn't thinking. She meant to say Nicky?
 17 A. That's correct.
 18 Q. You indicated in your report that she had told you
 19 that she put on a pair of gloves?
 20 A. That's correct.
 21 Q. And picked up the knife, and put it in a plastic
 22 bag?
 23 A. That's correct.
 24 Q. That's her words in the report, is it not, in the
 25 statement?

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- 1 A. Yes, that's correct.
 2 Q. I keep on saying report. I mean the statement.
 3 Did she ever tell you anything different other than
 4 what I just said, that she put on a pair of gloves, put the
 5 knife in a plastic bag?
 6 A. No, she didn't.
 7 Q. Did she ever say she used paper, something to put
 8 around her hands, like a glove?
 9 A. I don't remember.
 10 Q. If she had, you certainly would have put it in
 11 here, wouldn't you?
 12 A. That's correct.
 13 Q. During -- if you know, during the course of that
 14 evening from the time of the incident until the morning,
 15 police were coming and going in the area taking pictures and
 16 making canvasses.
 17 Is that so?
 18 A. That's correct.
 19 Q. Did they rope it off, do you know, the crime
 20 scene?
 21 A. It wasn't roped off during the time that I arrived
 22 there.
 23 Q. Okay. But is it fair to say that throughout the
 24 entire evening, police were coming and going and searching
 25 and going upstairs and looking for things?

Sabur-Direct

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- 1 A. I would -- it would be fair to say that they searched
2 the outside perimeter of the building, but not the inside, I
3 believe.
4 Q. But that's what you did?
5 A. That's correct.
6 Q. Was that that same -- I'm sorry -- was that the
7 same evening or same morning?
8 A. That's correct.
9 Q. You asked Miss Banks, Rasheedah Banks, did you
10 not, when she found the knife, why didn't she tell the
11 police, and her response was, I didn't see them.
12 Is that so?
13 A. That's correct.
14 Q. Do you remember that you spoke to Miss Rasheedah
15 Banks about Kurt and Malik?
16 A. Yes.
17 Q. And did she not tell you that the information she
18 had was that Keith and Roberta were going to be killed by
19 Kurt and Malik?
20 A. That's correct.
21 Q. And, in fact, after she found the knife, she
22 showed the knife to Kurt and Malik?
23 A. If I recall correctly, yeah.
24 Q. And she showed it to them on the corner of 15th
25 Avenue and 19th Street?

Sabur-Direct

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- 1 A. That's correct.
2 Q. And the reason that she gave you, is it not so,
3 was that she said she thought it would cause concern,
4 thought that they would be concerned, but they didn't show
5 concern?
6 A. That's correct.
7 Q. Did she not also tell you in that statement of
8 February 2 that she found the gloves in a hallway and the
9 bag outside on the ground?
10 A. That is correct.
11 Q. Now, I think you indicated in your report that the
12 area observed not to be well lit, but light provided by
13 utility poles were found bright enough to allow individuals
14 to see his or her surroundings?
15 A. That's correct.
16 Q. And is it not so that the pole, utility pole with
17 the light was not in front of 503 South 19th Street?
18 A. If I recall correctly, the light, utility pole was not
19 in front of 503 South 19th Street.
20 Q. And just, again, jumping back for one second.
21 Make sure I understand you. Until this morning neither
22 myself or the prosecutor knew of the existence, or I guess
23 non-existence of this knife?
24 A. That's correct.
25 THE COURT: Anything else?

Sabur-Cross

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MR. ROBERTS: No, Sir.

MS. CHARLES: Just briefly, your Honor.

CROSS EXAMINATION BY MS. CHARLES:

Q. Detective Sabur, with respect to Kurt and Malik, efforts were made to either include or exclude Kurt and Malik as suspects in this matter.

Is that correct?

A. That's correct.

Q. And what efforts were made?

A. We tried to identify those individuals. We only knew them by those -- the names that were given to us by Miss Banks. We canvassed the area, tried to identify them. We spoke with individuals in the area that, based on the information that we developed, it was a joint decision that these two individuals were not involved with this particular incident.

Q. And what factors went into your decision that these individuals were not involved in the incident?

A. Based on the information that we obtained regarding Mr. Dove.

Q. Were you able then -- are you then saying that you found no connection between Mr. Dove and Kurt and Malik?

A. That's correct.

Q. Those efforts, in order to -- that were -- that were made in order to dispel or include Kurt and Malik as

Sabur-Rerirect

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possible suspects in this matter were done before or after Mr. Dove's arrest?

A. Before.

MS. CHARLES: I have nothing further.

REDIRECT EXAMINATION BY MR. ROBERTS:

Q. As I understand it, Sir, the efforts to find Kurt and Malik included looking for them in the area?

A. That's correct.

Q. And not being able to find them?

A. That's correct.

Q. And that was it?

A. That's correct.

Q. As the investigation officer, the chief investigation officer, you had the privilege, if I can use that word, of reviewing all the statements, right?

A. That's correct.

Q. Did you go up to 15th Avenue, first house after the lot down from the Spanish store where they keep a lot of coke on the 2nd floor? Did you go there?

A. We didn't go in the building, per se, but we did canvass that general area. In fact, there's a bar directly across the street from the building that this young lady spoke about where a lot of individuals hang there, and they frequent the area for the sole purpose of selling drugs.

Q. By the way, are there any reports on that

Sabur-Redirect

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1 canvassing and looking?
 2 A. No, Sir, there isn't.
 3 Q. Please don't tell me you have a shredder in the
 4 office?
 5 A. I beg your pardon?
 6 Q. Please don't tell me you have a shredder in the
 7 office?
 8 THE COURT: I'll sustain the objection.
 9 Q. There's no reports on that canvass at all?
 10 A. No, there isn't.
 11 Q. You say information that -- by the way, you said
 12 you stopped it because of other information that was
 13 developed, right?
 14 A. That's correct.
 15 Q. And that was from the witnesses that you
 16 interviewed.
 17 Is that so?
 18 A. That's correct, and other individuals we spoke with in
 19 the area.
 20 Q. And just so I -- I don't mean to repeat myself,
 21 and forgive me. I don't mean to be flippant either. The
 22 only thing that you did was look through the area to see if
 23 you could identify them -- I'm sorry. Answer that first.
 24 A. I beg your pardon?
 25 Q. I'm sorry. Go ahead. Answer that.

Sabur-Redirect

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1 A. I, again, you know, we do do these reports but --
 2 Q. No, please. If you can answer the question the
 3 prosecutor can ask you some more questions.
 4 A. I can answer that question. I can't answer it with one
 5 simple answer. I can't answer it with a yes or no answer.
 6 Q. I've already forgotten my questions.
 7 A. Some questions require an explanation as opposed to a
 8 yes or no question.
 9 Q. Tell me what the question was, and go ahead and
 10 answer it.
 11 A. You asked me if that was the only thing that we did in
 12 the area was go to the house that Miss Banks told us about.
 13 Q. No. No. I'm sorry if I misled you. It was
 14 canvass. I didn't say the house at all. Was canvass the
 15 area to try and locate and identify Kurt and Malik?
 16 A. That's correct, we did.
 17 Q. That's what I mean.
 18 Did you, as you sit there now -- by the way, one of the
 19 people that you interviewed was Tony Brooks, right?
 20 A. That's correct.
 21 Q. As you sit there now, do you know whether or not
 22 Tony Brooks ever worked for Kurt and Malik?
 23 A. No, I don't. I couldn't tell you that.
 24 MR. ROBERTS: Nothing further.
 25 MS. CHARLES: I have nothing further.

Howard-Direct

THE COURT: Thank you.

(The witness is excused.)

THE COURT: Anything else?

MS. CHARLES: Yes. The State calls Investigator Tyrone Howard.

TYRONE HOWARD, STATE'S WITNESS, SWORN.

DIRECT EXAMINATION BY MS. CHARLES:

Q. Good afternoon, Sir. By whom are you employed?

A. The Essex County Prosecutor's Office, Ma'am.

Q. And in what capacity?

A. As an investigator.

Q. And where are you assigned at this point?

A. Right now I'm assigned to the court squads. I'm currently working on a homicide case.

Q. And in addition to working on a homicide case, which I will assume you'll say is the homicide case that's in this court at this time?

A. Yes.

Q. What, in general, do your duties include?

A. My duties include gathering all the information for any case that the prosecutor requests, going out and getting the information, contacting the victims and the witnesses, and putting all that -- all of the evidence together and handing it back to the prosecutor.

Q. And this is something that you do specifically for

Howard-Direct

1 a specific prosecutor or for a specific court?

2 A. Specific prosecutor that I'm assigned to.

3 Q. And those prosecutors, are they assigned any
4 particular case, in any particular place, excuse me.

5 A. Yes, they're assigned to certain courts.

6 Q. And what court are you assigned to?

7 A. I'm assigned to this court here, Judge Feinberg's
8 court.9 Q. Typically, do you work with this prosecutor,
10 meaning me, all the time?

11 A. No, this is my first case I've been assigned to you.

12 Q. When did you receive your assignment with respect
13 to, or approximately when did you receive your assignment
14 with respect to the gathering of the items that you
15 described with respect to this case?16 A. I would have to refer to the investigative request
17 sheet. I believe it's been a couple of months maybe.

18 Q. Couple of months or so?

19 A. Yes.

20 Q. And contained things that you were asked to
21 retrieve with respect to this case were what, if you recall?22 A. The witnesses, the Medical Examiner is one of them,
23 clothing from the property report --

24 THE COURT: And evidence?

25 THE WITNESS: Yes.

Howard-Direct

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- 1 MS. CHARLES: S-22 and S-23.
2 (A Request for Investigation is marked S-22 for
3 identification.
4 (A Request for Investigation is marked S-23 for
5 identification.)
6 Q. I'm going to show you first what's been marked
7 S-23 for identification. Do you recognize that, Sir?
8 A. Yes, Ma'am.
9 Q. What is that?
10 A. This is the request for investigation.
11 Q. Okay. And when is that particular request dated?
12 A. This is dated back to August 29 of 1997.
13 Q. And what investigator was assigned to that case?
14 A. Investigator William Isetts.
15 Q. What investigator was assigned to investigate that
16 case?
17 A. Contreras.
18 Q. When, in fact, did you receive that investigation
19 from Investigator Contreras?
20 A. I received this, I guess, a couple of months ago. I
21 can't be sure of the exact date. Okay.
22 Q. Contained therein are requests for various items.
23 Is that correct?
24 A. Yes, Ma'am.
25 Q. In addition to numerous witnesses, there is a

Howard-Direct

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- 1 request for property reports, are there not?
2 A. Yes, Ma'am.
3 Q. And this is back in August of 1997?
4 A. Yes, Ma'am.
5 Q. I'm going to show you what's been marked S-22 for
6 identification. Do you recognize that, Sir?
7 A. Yes, Ma'am.
8 Q. And that is -- that is what?
9 A. This is the same thing, another request for
10 investigation.
11 Q. Okay. And how many pages is that request?
12 A. This is two pages long.
13 Q. And when did -- was this your particular request?
14 A. This one is mine.
15 Q. When did you receive that request?
16 A. February 2, 1998.
17 Q. Does that refresh your recollection as to when you
18 received the investigation?
19 A. Yes, Ma'am.
20 Q. And contained therein there is a lot of requests
21 for witnesses and things of that nature.
22 Is that correct?
23 A. Yes, Ma'am.
24 Q. And in addition to which there are also requests
25 for reports, are there not?

Howard-Direct

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- 1 A. Yes, Ma'am.
- 2 Q. What reports are there a request for?
- 3 A. The property reports.
- 4 Q. Did you have an occasion to retrieve the property
- 5 report?
- 6 A. Yes, Ma'am. I went to the property room in Newark and
- 7 gave the CC number to the -- the Central Complaint number to
- 8 the detective.
- 9 Q. And what CC number did you give to the detective?
- 10 A. I gave them 97-111.
- 11 MR. ROBERTS: Excuse me. Can we have a date when
- 12 that occurred?
- 13 Q. When did you do that, Sir?
- 14 A. I did it on two occasions. I don't have the dates that
- 15 I went down there.
- 16 Q. Was it recently or --
- 17 A. It was recently, as far as this week, but prior to that
- 18 it was few weeks ago.
- 19 Q. Okay. What property number did you give them?
- 20 A. I gave them 97-11108.
- 21 Q. And was that, in fact, the -- and what happened as
- 22 you sought to retrieve property under that particular
- 23 number?
- 24 A. As I sought to retrieve the property, he said he didn't
- 25 have a listing under that number, but he would continue

Howard-Direct

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- 1 trying.
- 2 Q. Now, he is who?
- 3 A. The detective Graves.
- 4 Q. And where is this?
- 5 A. That's at the Newark property room on Arlington Street.
- 6 Q. Did there come a time when you -- strike that.
- 7 Did it become known to you at some point why you were
- 8 not able to retrieve any property?
- 9 A. No.
- 10 Q. Did it become known to you that property did, in
- 11 fact, exist in --
- 12 A. Yes.
- 13 Q. And what were the circumstances under which you
- 14 found the property existed?
- 15 A. I'm trying to remember. I believe, I think I spoke to
- 16 Detective Sabur who told me that there was property.
- 17 Q. And were you able to access any of that property?
- 18 A. Yes. I spoke to Detective Graves when I found out
- 19 there was property, and he said that, he asked me for the
- 20 defendant's name. When I gave him the name he locked under
- 21 the name, and he told me that I had the wrong Central
- 22 Complaint number. Then he gave me --
- 23 Q. What was the difference in the numbers?
- 24 A. There were two zeros instead of three ones.
- 25 Q. And did you, in fact, retrieve any property?

Howard-Direct

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- 1 A. Yes, Ma'am, I did.
 2 Q. What kind of property did you retrieve?
 3 A. I retrieved all of the clothing worn by the victim.
 4 Q. We'll stop at that point. When did this take
 5 place?
 6 A. This morning.
 7 Q. But prior to that, your efforts were made when?
 8 A. For the past month.
 9 Q. And prior to -- and when did you talk with
 10 Detective Sabur?
 11 A. This morning.
 12 Q. Were you able to retrieve the knife in this case?
 13 A. No, Ma'am.
 14 Q. Could you tell us the circumstances under which --
 15 under -- strike that.
 16 Could you tell us the circumstances and efforts made to
 17 retrieve this knife?
 18 A. Continuous circumstances. When I went down the first
 19 time --
 20 Q. Let's give an approximate -- approximately, when
 21 did you go down the first time?
 22 A. The first time was -- it was either earlier this month
 23 or late -- late February, and when they didn't have anything
 24 listed at all for the property under that Central Complaint
 25 number, I just figured maybe it got lost somewhere in the

Howard-Direct

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- 1 property room. When I went back this morning, I assume
 2 there was a knife there since they told me they had the
 3 property.
 4 Q. The property, meaning the clothing?
 5 A. The clothing, and when I went there, they told me that
 6 it was never logged in with the property.
 7 Q. It was not logged in with the property.
 8 Did you go to a second location looking for this knife?
 9 A. The second place I went to was the Newark forensic lab
 10 where they usually test the murder weapons and the blood for
 11 analysis, and there was nothing there.
 12 Q. Excuse me?
 13 A. There was nothing there.
 14 Q. Were you directed to the -- how did you get from
 15 the property room to the lab? Why did you go there?
 16 A. The sergeant at the Newark property room told me that
 17 that's where everything was. It was marked on the property
 18 reports, that everything went to the Newark lab.
 19 Q. And when you got to the lab --
 20 A. They said there was no knife.
 21 MS. CHARLES: I have nothing further.
 22 THE COURT: Mr. Roberts.
 23 CROSS EXAMINATION BY MR. ROBERTS:
 24 Q. Thank you.
 25 Just a couple of questions, Detective.

Howard-Cross

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1 Have you been looking for this stuff for a while then?
2 A. Yes, Sir.
3 Q. The last thing you said was, I think what they
4 told you, I guess this morning, that the knife was not
5 logged in with the property?
6 A. Yes, Sir.
7 Q. But all the other stuff was there, the clothing,
8 the skull cap, all that stuff, but not the knife?
9 A. Yes, Sir.
10 Q. When did you start looking for the knife?
11 A. When I first had the request to get the property.
12 Q. Uh-huh.
13 A. And I went down there to the Newark property room. I
14 can't give you a specific date.
15 Q. Okay.
16 A. But --
17 Q. That's the time that you thought maybe they
18 misplaced everything?
19 A. Yes.
20 Q. Did you ever ask for the assistance of any of the
21 detectives who were on the job, Isetts or Sabur or anybody
22 else?
23 A. Isetts doesn't work in the office. He's on loan right
24 now. So I don't have access to Isetts, as I would someone
25 else, another investigator in the office. Detective Sabur

Howard-Cross

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1 just started working with us recently, so, no.
2 Q. All right. So the burden was on you then?
3 A. Yes, Sir.
4 Q. Did -- is it then fair to say that for the first
5 time this morning -- well, let me ask you: Did this
6 morning -- this morning is the first time that you found out
7 there was, in fact, a knife that was turned in, you thought
8 was turned in?
9 A. This morning, no. I heard that there was a knife
10 before, but I never knew that it wasn't logged in to the
11 property. I knew a knife did exist.
12 Q. When did you know that?
13 A. When I spoke to, I think one of the sisters told me
14 that she had turned in a knife to the police.
15 Q. Was that Rasheedah?
16 A. Julia.
17 Q. Julia?
18 A. Yeah.
19 Q. When did Julia tell you that she knew that there
20 was a knife?
21 A. I just met Julia a couple of days ago when I think --
22 maybe Tuesday she told me.
23 Q. Of this week?
24 A. Yes.
25 Q. So Tuesday of this week was the first time that

1 you yourself --
 2 A. Knew that the knife was --
 3 Q. -- knew there was a knife?
 4 A. Yeah.
 5 Q. And as part of one of the many things that you do
 6 is to review the reports and --
 7 A. Yes.
 8 Q. -- and help the prosecutor prepare the case?
 9 A. Yes.
 10 Q. And as I understand it -- well, maybe I'm wrong.
 11 This morning they first said they couldn't find it. Then
 12 they said they could?
 13 A. Well, I think it was a mis-communication.
 14 Q. They meant all the other clothing and stuff?
 15 A. Yes.
 16 Q. Are we now sure to the best of your knowledge that
 17 the knife is nowhere to be found?
 18 A. Yes.
 19 MR. ROBERTS: Thank you, Sir.
 20 THE COURT: Thank you very much.
 21 THE WITNESS: Thank you, Sir.
 22 THE COURT: Finished?
 23 MS. CHARLES: Yes, your Honor.
 24 (The witness is excused.)
 25 THE COURT: Mr. Roberts?

1 MR. ROBERTS: Judge, we just have a stipulation,
 2 if I can confer a moment with the prosecutor.
 3 THE COURT: Go right ahead.
 4 When you talk of a stipulation, this is an
 5 agreement between counsel to avoid the necessity of bringing
 6 persons in to set forth whatever is about to be set forth.
 7 MR. ROBERTS: May I, Judge?
 8 THE COURT: Go ahead.
 9 MR. ROBERTS: The stipulation is as follows:
 10 Police officers' notes, if they exist, are discoverable
 11 under New Jersey Court Rules, and must be turned over to
 12 defense counsel.
 13 That's a stipulation between the prosecutor and
 14 myself.
 15 With that we rest, Judge.
 16 MS. CHARLES: I rest.
 17 THE COURT: Both sides rest. All right.
 18 The case is finished. However, we have to have a
 19 discussion as to what the charges are to be given to you as
 20 to the law. It would be silly to keep you while we discuss
 21 this. You have my word, it's finished Monday, period.
 22 I'll see you Monday morning at 9 o'clock. Thank you.
 23 (The jury is excused.)
 24 THE COURT: I'll hear you as to requests to
 25 charge.

Colloquy

66

1 MR. ROBERTS: If you just bear with me a second.
2 THE COURT: Certainly. To give you an idea, I
3 certainly intend to charge as to the counts involved, but as
4 the first count, lesser included offenses such as aggravated
5 manslaughter, reckless manslaughter. Any objections?
6 MS. CHARLES: No, your Honor.
7 THE COURT: I find no basis to charge passion
8 provocation unless counsel exhibits some reason therefore.
9 MR. ROBERTS: Well, I started looking at some
10 cases this morning when all this occurred. I didn't really
11 have a chance to follow up on it. There was an issue where,
12 according to at least some of the testimony, the defendant
13 was struck first before anything happened.
14 THE COURT: I intend to charge self-defense.
15 MR. ROBERTS: That I understand. But I don't
16 recall the fact of the four-prong test.
17 THE COURT: We'll give you to Monday morning to
18 elaborate on that further before you commence your
19 openings -- your summations, rather.
20 MR. ROBERTS: Thank you, Judge.
21 THE COURT: I intend to charge flight, if
22 requested by the prosecution.
23 MS. CHARLES: The State will request it.
24 THE COURT: I'll charge, of course, expert
25 testimony, also, testimony contradictory statements, also

Colloquy

67

1 the question of the convictions as to affecting credibility.
2 MR. ROBERTS: Judge, is that the revised charge of
3 April 25, '94?
4 THE COURT: I'll show it to you. I can charge
5 that. That's in accordance with the revised. I have no
6 problem with that.
7 MR. ROBERTS: Thank you.
8 MS. CHARLES: There's a first degree robbery
9 count. I don't know if counsel wants the second degree
10 robbery count as a lesser included.
11 MR. ROBERTS: I'm not going to ask for that,
12 Judge.
13 THE COURT: Do you want me to charge lesser
14 included on that?
15 MS. CHARLES: I would ask, your Honor, yes.
16 THE COURT: All right. That's it. If there's
17 anything else I'll hear counsel before we have summations
18 the first thing Monday morning.
19 MS. CHARLES: Just one other thing with respect to
20 his client. His client is obviously not testifying. I was
21 wondering does he want a charge.
22 THE COURT: That's up to him to decide. I'll ask
23 Mr. Roberts to discuss it with his client, whether he wants
24 me to tell the jury that his client has the constitutional
25 right to refuse to testify, and the failure to do so shall

Colloquy

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not be in any way inferred by the jury or considered as an indication of guilt. So whenever you intend to do that, you let me know, again, before you commence your summations.

MR. ROBERTS: Yes, Judge.

THE COURT: See you promptly at 9 o'clock then on Monday.

MS. CHARLES: Thank you, your Honor.
THE COURT: All right.

(Whereupon the proceedings are adjourned and will continue on Monday, April 6, 1998 at 9 a.m.)

C E R T I F I C A T E

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I, FRANCES L. FORBES, C.S.R., License Number XI-01085, 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 Proceedings, and is a true and accurate compressed transcript of my stenographic notes to the best of my knowledge and ability.

Frances L. Forbes, C.S.R.
Official Court Reporter

Sept 17, 1999
Date

Essex County Courthouse

A-6522-9877

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL PART
ESSEX COUNTY, INDICTMENT NO: 2358-5-97
APP. DIV. NO. **6522-9877 Jg**

STATE OF NEW JERSEY, :
Complainant, : STENOGRAPHIC TRANSCRIPT
: OF
: TRIAL PROCEEDINGS
vs. :
: SUMMATIONS & COURT CHARGE
ROY DOVE, :
Defendant. :

FILED Place: Essex County Courts Bldg.
APPELLATE DIVISION 50 West Market Street
Newark, New Jersey 07102

OCT 18 1999

Date:

Monday, April 6, 1998

Volume I of I
Pages 1 - 103

REC'D
APPELLATE DIVISION

OCT 18 1999

R. Miller
Clerk
B E F O R E:

THE HON. JULIUS A. FEINBERG, J.S.C., AND A *Jg*.

TRANSCRIPT ORDERED BY:

DEBORAH C. COLLINS, ESQ., Office of the Public Defender

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

ROSALYN CARY CHARLES, ESQ., Assistant Prosecutor for the
County of Essex, Attorney for the State

RICHARD M. ROBERTS, ESQ., (Roberts & Fielo, Esqs.)
Attorney for the Defendant.

FRANCES L. FORBES, C.S.R.
Official Court Reporter
50 West Market Street
165 Essex County Courts Bldg.
Newark, New Jersey 07102

R

I_N_D_E_X

SUMMATIONS

BY: MR. ROBERTS PAGE 4

BY: MS. CHARLES PAGE 46

COURT CHARGE PAGE 63

JURY DELIBERATIONS COMMENCE: 2:30 p.m.

E_X_H_I_B_I_T_S

EXHIBIT	EVID.
C-1 Jury Note 3:25 p.m.	100

Colloquy

THE COURT: All right. Good morning, Mr. Roberts. Good morning, Mr. Dove. Speak with your client to find out whether or not he wants the Court to charge his failure to testify is his constitutional right, and the jury is not to discuss it in any way.

MR. ROBERTS: I have spoken with him, Judge, and he does want that charge.

THE COURT: He does?

MR. ROBERTS: He does.

THE COURT: I shall so do. All right.

And with reference -- you requested a charge previously on failure of the State to produce certain evidence.

MR. ROBERTS: Yes, Judge.

Judge, that charge resulted out of a case of State v. Peterkin at 226 N.J. Super., 25. Basically, what it said was that if the State loses evidence there can be an inference drawn that that evidence may have been favorable for the defense. I would ask that that charge be given in th's matter.

THE COURT: I shall examine it. If I don't charge, I shall advise you. You have the right to comment on it if I don't do so. As a matter of fact, I will do that right now so I can determine whether or not I shall charge it.

Summation-Roberts

4

1 Anything else?
 2 MR. ROBERTS: I have nothing, Judge.
 3 THE COURT: I'll give you five minutes.
 4 Bill, leave the defendant here. We'll be back
 5 right away.

(Short recess.)

6
 7 THE COURT: Mr. Roberts, I've examined State v.
 8 Peterkin, the citation that you furnished to me. That case
 9 relied on the question of photographic identification that
 10 was missing. I don't think it has any relevance to this
 11 particular case. I shall not charge that.

12 You may comment on it, if you see fit, but it will
 13 not result in a charge from the Court on that basis.

14 All right. Ask the jury to come out.
 15 (The jury is brought into the courtroom.)

16 THE COURT: Good morning, ladies and gentlemen.

17 Mr. Roberts, you may commence your summation.

18 MR. ROBERTS: Thank you, your Honor.

19 If it please the Court, Madam Prosecutor,
 20 Mr. Dove, ladies and gentlemen of the jury, I had intended
 21 this morning to start my summation by going over the
 22 constitutional guaranties that we all heard from the judge
 23 and from myself when the trial first started, about burden
 24 of proof, that kind of stuff. Then I was going to go into
 25 the facts in the case. But I'm not afraid to admit to you

Summation-Roberts

5

1 that I didn't have much sleep over the weekend. I didn't
 2 enjoy it very much because there were things that happened
 3 in this trial, testimony that was given that was very, very
 4 disturbing; testimony, frankly, that goes beyond this trial.
 5 Something that Detective Isetts said was what got me started
 6 on this, and I want to tell you what he said, and I hope
 7 that you'll be as disturbed about it as I am.

8 I asked him a question, after Detective Isetts
 9 knew the identity of two drug suppliers, knew where the
 10 stash pad was, knew that these two people had threatened the
 11 lives of two other people; did you call the narcotics squad?
 12 Did you send any memos? Did you tell them anything about
 13 the case, anything about these two people Kurt and Malik?
 14 And I hope you remember the answer, as I do, because his
 15 answer was, well, there's so much drugs in Newark.

16 That was his reason for not giving this
 17 information to narcotics, not telling them what's happened.
 18 There's so much drugs in Newark.

19 In other words, why should I bother? Why should I
 20 bother? There's so much drugs all over the place.

21 Well, maybe that kind of attitude by those kind of
 22 police officers contributes to the fact that there's so many
 23 drugs in Newark. And maybe that kind of attitude by that
 24 kind of officer contributed to the mess that we all were
 25 confronted with on Friday morning. Because the State had

Summation-Roberts

6

1 rested on Thursday, if you remember. Their case was over.
2 It was my turn Friday morning. But what happened?

3 Somebody -- I'm still not sure who -- found
4 additional reports, found an additional statement, found a
5 property evidence sheet that said a knife, the alleged
6 murder weapon was, in fact, turned in to the police, and
7 was, in fact, given to the evidence police.

8 Detective Isetts testified. Remember that. He
9 said the knife was never found.

10 Now, I don't know even after listening to the
11 testimony as to what happened, how come those reports were
12 never given to me nor to the prosecutor. How come we never
13 knew about the knife that was turned in? And why, after it
14 was turned in, is it now missing? We will never know the
15 answer to that. It's missing.

16 The State has the burden, ladies and gentlemen, of
17 proving its case beyond a reasonable doubt. They have to
18 put all the pieces together.

19 The knife was turned in, we think. We know it's
20 missing. Maybe it's that same kind of attitude that Isetts
21 has about the drugs that permeated this whole case. Maybe
22 some people don't care, didn't care enough to get some
23 scientific evidence; didn't care enough to check on the
24 knife because, well, it's just another murder in Newark, and
25 he's just another defendant in Newark. So I don't have to

Summation-Roberts

7

1 get the hat analyzed. I don't have to check on the knife to
2 see if there are fingerprints, to see if it's even there.

3 That's why I had a hard time this weekend because
4 I suggest to you that's what happened here. The police
5 didn't care enough to walk the extra yard on a murder case.
6 He deserves better than that. The families do. And, ladies
7 and gentlemen, you certainly deserve better than that
8 because you have to sift through this evidence and determine
9 guilt or innocence. And if there was a hat examined, if it
10 was worn by the person who killed Mr. Banks, and there was
11 hair in that hat that matched his; on the other hand, if the
12 hair didn't match, then maybe you'd think otherwise.

13 The same thing with the knife. If there were
14 fingerprints that matched Mr. Dove's, it's over. But if it
15 didn't match, it would help him. But nobody's going to know
16 because nobody cared if the knife is missing; the hat was
17 never analyzed.

18 I'm going to talk about some of the evidence. I'm
19 going to talk about the inconsistencies that you heard
20 between the witnesses. And, ladies and gentlemen, let me
21 tell you something. I'm no great lawyer. The
22 inconsistencies that you heard, and that I'm going to tell
23 you about, and read some of it, any first year law student
24 could have found out, could have told you about, because it
25 was so obvious. And these inconsistencies that I'm going to

Summation-Roberts

1 talk about, most of them are not minor ones because when
2 people view things, you all know they don't always exactly
3 see the same thing. But some of these things leap out at
4 you, leap out at you. They're not just mistakes.

5 These witnesses, who testified, the lay witnesses,
6 they told some truths. They told some lies. They told some
7 half-truth. And you're going to have to figure out what's
8 what.

9 And his Honor will tell you at the end of the
10 trial, when he reads the law to you, that if there is some
11 falsehood in what a witness says, you can disregard the
12 entire testimony. You can disregard just those parts that
13 are false. You can accept it. But you can also disregard
14 the entire testimony.

15 I want to talk a little bit about the knife. I
16 have two transcripts from Rasheedah Banks and Nicole Gurley.
17 I don't want to misquote what they said.

18 Concerning the knife, the transcript of Wednesday,
19 April 1, page 31, line 20: Rasheedah Banks says on cross
20 examination:

21 "QUESTION: Who was with you, if anyone, when the
22 knife was found?

23 "ANSWER: Really, nobody because they was like
24 going up, and I decided to look for it, and people was on
25 the corner."

Summation-Roberts

1 So Banks says she found the knife alone.

2 And remember her testimony, it was found by a
3 garbage can somewhere in the lot. She found it alone.

4 Nicole Gurley says, April 1 testimony, page 30,

5 line 1:

6 "QUESTION: Did you go back then to 503?"

7 This was after she says they went to the hospital.

8 "Yeah, I was in the front of the building.

9 "QUESTION: Who did you go with?

10 "ANSWER: Me and Rasheedah.

11 "QUESTION: What did you do when you got to 503?

12 "ANSWER: We went upstairs. Yeah, we went

13 upstairs.

14 "QUESTION: Before you went upstairs, did you
15 notice anything in the street?

16 "ANSWER: Yeah, I think, I think Rasheedah found
17 the knife.

18 "QUESTION: Did you see the knife?

19 "ANSWER: Yeah, I seen it.

20 "QUESTION: Where did you see it?

21 "ANSWER: It was on the curb. I think it was on
22 the curb."

23 So Gurley said; number one, the knife was on the
24 curb, not by the garbage in the lot, and she was with
25 Rasheedah.

Summation-Roberts

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1 She further goes on to say -- and, by the way,
 2 when you hear this, I think it tells you a lot about the
 3 testimony and how they swayed and changed things right
 4 before your eyes.
 5 "ANSWER: We started walking away from the
 6 building, we seen it.
 7 "QUESTION: And then what did you do?
 8 "ANSWER: We picked it up.
 9 "QUESTION: Picked it up?
 10 "ANSWER: Rasheedah picked it up, and I don't know
 11 what she did with it. I thought the police took it, because
 12 the cops came."
 13 And then I talked about the statement.
 14 "QUESTION: By the way, you had a chance to review
 15 your statement, did you not, before you testified?"
 16 Then further on line 19: "In that statement, do
 17 you remember, by the way, you testified you saw Rasheedah
 18 pick it up?
 19 "ANSWER: No, I didn't see her pick it up.
 20 "QUESTION: Did you just say that Rasheedah took
 21 the knife?
 22 "ANSWER: Uh-huh.
 23 "QUESTION: She didn't pick it up?
 24 "ANSWER: I don't think so. I don't think she
 25 picked it up."

Summation-Roberts

11

1 So from line 1 through line 25 she changes her
 2 testimony. Picked it up. She didn't pick it up. This took
 3 about a minute or less in her testimony, and the testimony
 4 is replete, continues with that knife switching and
 5 changing.
 6 Now, I would suggest to you that when somebody
 7 finds what's supposed to be a murder weapon, they're going
 8 to have a recollection as to how it was found, where it was
 9 found, and who was with them.
 10 In this case the testimony is opposite.
 11 Gurley goes on to say at page 30, and then --
 12 please bear with me on this. Line 1 -- I'm sorry -- Banks,
 13 page 9, line 25. This is on direct examination.
 14 "QUESTION: Did you see what he was stabbed with?
 15 "ANSWER: A little kitchen knife.
 16 "QUESTION: A little kitchen knife. And where did
 17 you see this kitchen knife?
 18 "ANSWER: I seen that on the ground.
 19 "QUESTION: When did you first -- when was the
 20 first time you saw it on the ground?
 21 "ANSWER: I didn't see it at first.
 22 "QUESTION: Okay. But when did you first see it?
 23 When did you first see this?
 24 "ANSWER: When did I first see it?
 25 "QUESTION: Yes.

Summation-Roberts

12

1 "ANSWER: When I found it.
 2 "QUESTION: When did you find it?
 3 "ANSWER: Like after we came from the hospital.
 4 "QUESTION: Okay. And where did you find it?
 5 "ANSWER: I found it like on the -- it was like on
 6 the corner like."
 7 These next few conversations are all Rasheedah
 8 Banks. Page 29, line 14. This is on cross.
 9 "QUESTION: You found the knife somewhere in that
 10 lot by the garbage. You said it was like a kitchen knife?
 11 "ANSWER: Yeah.
 12 "QUESTION: Was it a -- do you remember if you
 13 ever said it was a folding knife?
 14 "ANSWER: No, it was no folding knife.
 15 "QUESTION: It wasn't a folding knife?
 16 "ANSWER: Nah."
 17 Folding knife, no.
 18 "QUESTION: Was it big or small?
 19 "ANSWER: Small.
 20 "QUESTION: Do you remember being asked this
 21 question and giving this answer: On February 2, 1997" --
 22 don't forget, that's the morning after the incident. "On
 23 the second page -- would you describe this knife to me?
 24 "ANSWER: It's a folding knife with a brown
 25 handle.

Summation-Roberts

13

1 "QUESTION: Do you remember being asked that
 2 question and giving that answer?
 3 "ANSWER: No.
 4 "QUESTION: You don't remember that. Is that an
 5 incorrect answer?
 6 "ANSWER: Yeah.
 7 "QUESTION: It was a kitchen knife, are you
 8 telling us now, right?
 9 "ANSWER: Yeah.
 10 "QUESTION: And the kitchen knife doesn't fold,
 11 right?
 12 "ANSWER: No."
 13 Her identification of an explanation of what she
 14 said in the statement, I think, should ring a bell with you
 15 as well because if you recall when the witnesses, Gurlay and
 16 Banks, discussed questions and answers in their statement
 17 that differed from their testimony, they kept on saying it's
 18 wrong, the transcript is wrong. The answer and question
 19 either were never asked or was incorrectly put down, or it's
 20 wrong.
 21 Now, you saw Detective Sabur. I suggest if there
 22 was one man that was honest and straightforward and a darn
 23 good cop -- although I fault him for a couple of things --
 24 is Sabur. Who are you going to believe, when Sabur says I
 25 asked this, this, and these answers were given? Detective

Summation-Roberts

14

1 Sabur or Miss Banks? I think the answer is very, very
2 obvious.

3 So she identifies the knife here as a kitchen
4 knife. On the 2nd, when she gives a statement, as a folding
5 knife, and she says that question was wrong.

6 At page 32, line 9 -- and I'm sure you remember
7 this part.

8 "QUESTION: When you found the knife, what did you
9 do with it?

10 "ANSWER: I picked it up with something, and I
11 brought it upstairs.

12 "QUESTION: What did you pick it up with?

13 "ANSWER: A piece of paper."

14 On page 34, line 13 -- this is all cross.

15 "Directing your attention to the next, very next question,
16 and you also told me during an interview that after the guy
17 left the area, you found the knife that he stabbed your
18 brother with. You said that you put on a pair of gloves,
19 picked up the knife from the sidewalk in front of the
20 building, put it in a plastic bag, and took it to your
21 apartment. Is that correct?

22 ANSWER: Yes.

23 Do you remember that question and that answer?

24 "ANSWER: Yeah, I remember that question.

25 "QUESTION: Did you pick up the knife you found

Summation-Roberts

15

1 with a pair of gloves?

2 "ANSWER: No, I picked it up with piece of papers.

3 I told him I put it on my hands like a pair of
4 gloves and picked it up. I didn't tell him it was a pair of
5 gloves, though."

6 I read further on from the statement: "Where did
7 you get the gloves and the plastic bag from to handle the
8 knife after you found it? I found the gloves in my hallway,
9 and I got the bag from outside on the ground.

10 Do you remember being asked that question and
11 giving that answer?

12 "ANSWER: No.

13 "QUESTION: Is that answer incorrect then, on this
14 form?

15 "ANSWER: Yeah."

16 So now she says -- and please, using your common
17 sense, because the judge will tell you to do that, if
18 someone finds a pair of gloves in a hallway, finds a bag
19 outside, puts an alleged murder knife in there, is that
20 something you're going to remember? Is that something said
21 because the person was tired? You don't make something up
22 like that, then come in here and say almost a year later I
23 put it in with pieces of paper. The difference is vast.
24 The difference is astounding.

25 Part of what we're facing here is part of what I

Summation-Roberts

16

1 said from the beginning. You have witnesses who are taking
2 the stand, who are babies, babies. They were 16 years old
3 when this happened. But these babies were caught, and are
4 caught in a drug culture. Kids who are smoking coke at the
5 age of 16, seeing the kind of things that they see every day
6 and faced with the indifference of certain police officers.
7 But we have to decipher and decide from their testimony
8 what's true and not true. And the whole thing is tragic.
9 But it's there, and it's our tragedy.

10 Don't make it his tragedy. Because the State
11 hasn't proved its case, and we didn't do it. But we have to
12 try and find out what's the truth, and what it isn't.

13 Going to the knife a little bit more because the
14 knife really almost talks about the whole case.

15 Rasheedah's sister. Remember. She testified
16 after the State's case was over.

17 The case was re-opened, and she got on the stand
18 and said to you, I found the knife that Rasheedah hid under
19 my bed. She didn't recall exactly when she found it. She
20 thought it was the next day. Maybe the next day. Maybe the
21 day after. But she found the knife that she said Rasheedah
22 hid under the bed.

23 Detective Sabur testified, if you remember, that
24 the same night, or early that next morning after this
25 incident he went up to that apartment at 503, and he turned

Summation-Roberts

17

1 that place upside down. He looked under the beds, on the
2 beds, under the mattresses, in every cubbard, in every hole,
3 in the hole. He looked everywhere because he was looking
4 for a murder weapon.

5 And I suggest after looking and listening to
6 Detective Sabur you know he did what he said he did, and he
7 found nothing. And he said that.

8 The Banks brother, Kevin, I think his name was,
9 said that Rasheedah didn't know what she was talking about.
10 Her mother said she never brought a knife over. But they
11 looked for it with Rasheedah all over the house.

12 Why would Rasheedah, if they're looking for a
13 knife, then hide it under her bed? If that knife was found
14 under a bed, it was put there after Detective Sabur searched
15 the house.

16 And why was it put there? Why was it hidden if
17 this was a knife that Rasheedah wanted to turn in to the
18 police? Why would she hide it and just by coincidence her
19 sister finds it under the bed, and she said -- remember,
20 that's the murder knife. That's the knife. No
21 equivocation. I called the police right away when I found
22 it because my brother was murdered, and I want to give the
23 police that knife, and I called them right away.

24 Detective Sabur said they searched for the knife
25 on the 4th, and it was called in to the police on the 7th.

Summation-Roberts

18

1 So if you're going to believe that testimony, Banks sat on
2 that knife for three days before turning it in. I would
3 suggest to you that this whole business about the knife that
4 was turned in to the police now is missing. We didn't know
5 about it until basically after the trial was over, the
6 State's case, anyway -- may really be, unfortunately,
7 meaningless anyway because if a knife was found, how do we
8 know if that was the knife that was used? We'll never know.
9 No one ever examined it. We'll never know.

10 Similar to the hat. You will never know what
11 scientific examination of that hat would have turned up. It
12 could have condemned him. It may have excluded him.

13 After listening to all of the testimony, I suggest
14 that you cannot tell. There has not been any proof. There
15 hasn't been proof, certainly beyond a reasonable doubt, that
16 this man was even there at the scene.

17 There hasn't been proof given to you that the man
18 who was involved in a fight with all of those kids was the
19 man who stabbed Mr. Banks. And just to be sure let me read
20 a couple of things to you.

21 Nicole Gurley, at page 12, line 13 said in answer
22 to this question: "And while you were still on the
23 corner" -- remember she walked to the corner -- "what did
24 you observe of Keith and this individual that you directed
25 to him?"

Summation-Roberts

19

1 "ANSWER: I wasn't watching them. But then, like
2 after a few seconds or something, if it was even -- even if
3 it was like a minute, I just heard my friends yelling, and I
4 heard his sister saying, he got cut, and so I ran down the
5 street period."

6 But I wasn't watching them. Gurley didn't see
7 anybody being stabbed.

8 Banks at page 6, line 1, after she says there was
9 a conversation going on between Keith and the assailant.
10 "And hearing this conversation did you" -- this is on
11 direct -- "what else did you observe while hearing this
12 conversation?"

13 "ANSWER: I was just looking, and I stepped off.

14 "QUESTION: How long were you looking?"

15 "ANSWER: Not that long."

16 Goes on to page 7, line 10. "What stopped you
17 from continuing to walk away?"

18 "When I turned around, and I looked, he was
19 stabbed." And she repeats that later on. He was stabbed.
20 He was stabbed already; not that I saw somebody stab him.
21 When I turned around, he was stabbed. So Banks didn't see
22 it.

23 Mykia Wilson, her testimony differed -- well, it
24 didn't really differ. What she said was I was right there.
25 Mykia was. I saw Mr. Dove put his hands in his pocket, pull

Summation-Roberts

20

1 it out, and hit Keith; not stab him. I saw him hit him.
 2 Now, remember she tried to say at one point it was
 3 the knife. Remember. And when I started to ask her about
 4 it, she said, I mean, where did you hear it was the knife?
 5 She said Rasheedah told me. Remember? Rasheedah told me.
 6 So why did Mykia say what did she see? I don't
 7 know. You have to question -- I'm going to read something
 8 interesting to you. You have to question whether Mykia was
 9 even there to see anything because Miss Banks at page 7,
 10 line 16 -- please listen carefully to this.
 11 "ANSWER: He was stabbed.
 12 "QUESTION: Who was stabbed?
 13 "ANSWER: My brother.
 14 "QUESTION: And when you saw that he was stabbed,
 15 what did you do?"
 16 This is on direct.
 17 "ANSWER: I went yelling because somehow, somehow
 18 I don't know, Mykia, Mykia, she, um, she was like -- she
 19 went up in the hallway, I guess, and then I was like, and
 20 somebody help me, he's stabbed, like that. And then Mykia
 21 came out, and she jumped in it, no, because my brother had
 22 called her, and he was fighting. Then she jumped in it.
 23 Then we all jumped in."
 24 Mykia, she went up in the hallway, I guess, and
 25 then I was like, and somebody help me, he's stabbed like

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1 that. And then Mykia came out.
 2 So if that's accurate, then Mykia was in the
 3 hallway when this happened. Was she looking through the
 4 window? And I show you S-10C in evidence, that tiny window.
 5 Was she looking through that?
 6 I think we have to question whether or not
 7 Rasheedah, who told Mykia that it was a knife, really saw
 8 anything.
 9 Tony Brooks said that he was walking away with
 10 this guy D. They had their backs turned to the scene, and
 11 they heard somebody yelling words to the effect, he's
 12 stabbed. They turned around and started running to the
 13 scene. Obviously, he didn't see any stabbing either, and he
 14 was so far away when this happened that by the time he got
 15 there, when he ran after these people were tussling, the
 16 assailant had already gotten up and ran away, and he was too
 17 far away to chase. So none of the witnesses that were
 18 presented to you actually saw the stabbing.
 19 Now, the prosecutor will argue, I believe, that
 20 circumstantially you have to assume that, in fact, the
 21 assailant did stab him because he certainly was stabbed, and
 22 these witnesses say they were running and falling around on
 23 the ground and fighting. And circumstantial evidence can
 24 prove decisive. But the fact remains, nobody saw the
 25 stabbing. It was a dark night.

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1 And if there's any question -- by the way, I'll
 2 talk about the lighting a little bit -- S-10 in evidence,
 3 when you look at S-10, you see what's being illuminated by
 4 the flash, and you can get an idea just how dark it really
 5 was that evening. It was dark.
 6 Something else that I think is real interesting.
 7 Banks testimony, page 15, line 14. You remember, I think,
 8 some of the other testimony about what the assailant was
 9 wearing.
 10 I'll read Gurley's first. Page 23, line 3.
 11 "QUESTION: Do you recall" -- well, I got it
 12 backwards. Let me read Banks first.
 13 "QUESTION: What did he look like?
 14 "ANSWER: Like dark skinned, short, like kind of
 15 short. He had like a black hood on."
 16 And you remember testimony -- I don't recall
 17 from -- it was all the other witnesses, but they said he was
 18 wearing a black coat of some kind; one of them said he was
 19 wearing a black hat as well.
 20 Gurley says this:
 21 "Do you recall when you gave the statement" --
 22 referring to her statement to the police that morning of the
 23 incident -- "that you remembered that the person who you
 24 were fighting with had a red sweater, red hoody on?
 25 "ANSWER: I said that."

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1 Now, I don't know if there were two people out
 2 there. I don't know if these kids were looking at this
 3 scene in the darkness high on cocaine. But Gurley says the
 4 person was wearing red, and a red hoody. Banks said a dark
 5 hat. I don't know. Maybe there were two people there.
 6 Maybe Gurley wasn't there. Maybe she's just trying to help
 7 Rasheedah. Maybe these kids really believed that he did it
 8 and are trying to help convict him any way they can because
 9 they do believe it.
 10 But the evidence doesn't show that. It's not
 11 there.
 12 Talk about credibility. Rasheedah Banks --
 13 forgive me. I think it's so important to read it. Remember
 14 her sister, Roberta. Remember in the statement Detective
 15 Sabur said that there was a conversation he had with
 16 Rasheedah before the statement was taken, and Rasheedah said
 17 that Roberta was the one who steered the assailant to her
 18 brother.
 19 "QUESTION: By the way, where was -- do you know
 20 where your sister, Roberta, was at that time?
 21 "ANSWER: She wasn't out there.
 22 "QUESTION: Did you not tell Officer Sabur, Rashid
 23 Sabur, before the statement was taken that it was Roberta
 24 who brought the guy to buy the drugs to your brother and
 25 not --

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1 "ANSWER: No, Nicky, no.
 2 "QUESTION: Referring your attention to the second
 3 page of that statement, do you remember being asked this
 4 question and giving this answer: During an interview with
 5 you" -- this is now quoting the statement -- "you told me
 6 that your sister, Roberta, brought this guy to your brother.
 7 Is that correct?
 8 "ANSWER: I wasn't thinking. I meant to say
 9 Nicky.
 10 "Do you remember that? Do you remember being
 11 asked that question and giving that answer?
 12 "ANSWER: No, it didn't go down like that.
 13 "QUESTION: But you don't remember that question
 14 being asked like that?
 15 "ANSWER: I remember that incident but it didn't
 16 happen like that.
 17 "QUESTION: The question is do you remember
 18 him" -- meaning Detective Sabur -- "asking you that question
 19 and you giving that answer?
 20 "ANSWER: No, I didn't give that answer like that.
 21 "QUESTION: So if it says that on this page, I
 22 wasn't thinking. I meant to say Nicky. That's not what you
 23 said?
 24 "ANSWER: No."
 25 I suggest that you take Detective Sabur's

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1 testimony and put it in your pocket because it's correct,
 2 because it's true, because for whatever reason the morning
 3 of the incident Rasheedah says Roberta was involved, Roberta
 4 was involved, and she denies ever saying that to Sabur.
 5 Why?
 6 You're never going to know the answer to that.
 7 You're going to have more possibilities in your minds in
 8 there than I probably will, but you're never going to know
 9 the answer to that. She denies ever saying it at all.
 10 I have to read you this stuff about the gloves at
 11 page 35, line 3. "I told him I put it on my hands" --
 12 talking about Sabur -- "like a pair of gloves and picked it
 13 up. I didn't tell him it was a pair of gloves, though."
 14 Later on, couple of minutes later:
 15 "QUESTION: Where did you get the gloves and the
 16 plastic bag from to handle the knife after you found it?"
 17 This was quoting from her statement. "I found the
 18 gloves in my hallway, and I got the bag from outside on the
 19 ground.
 20 "QUESTION: Do you remember being asked that
 21 question and giving that answer?
 22 "ANSWER: No.
 23 "QUESTION: Is that answer incorrect then, on this
 24 form?
 25 "ANSWER: Yeah."

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1 Every time there's a difference between Sabur's
2 statements and hers and Nicole's, it's the statement is
3 wrong. The question is wrong. The answer is wrong. I
4 never said it.

5 What Sabur told you is the truth, and Rasheedah
6 and Nicole and Mykia are dancing around getting confused
7 with their own statements.

8 Could it be they're getting confused with each
9 other because what they're trying to tell you is not so
10 because nobody saw him stab anybody, and nobody saw him
11 really even out there on that dark night under the influence
12 of cocaine.

13 Emotionally upset, of course, because of what
14 happened. Who wouldn't be? But you have to determine
15 whether you believe those statements of those kids under
16 those conditions, whether or not the State has convinced you
17 and proven to you that he's guilty of the crimes charged.

18 Nicole Gurley, at page 6, line 22 on direct.

19 "Now, it's about 10:25 or so in the evening, correct?"

20 "ANSWER: I don't know. I don't remember what
21 time it was.

22 "QUESTION: Okay. What was the lighting like in
23 the area where you were standing on the corner?"

24 Remember bright.

25 "ANSWER: It was a street light on right there,

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1 and it was bright out there. You could see.

2 "QUESTION: It was bright out there?"

3 "ANSWER: Yes."

4 Later on talking about 503: "Could you
5 describe -- I believe the last question I asked was, could
6 you describe the lighting, or lighting around 503 South 19th
7 Street?"

8 "ANSWER: Street light, the street light.

9 "QUESTION: Okay. I'm going to stand back here
10 again. And when you say street lights, how would you
11 describe the visibility or --

12 "ANSWER: It was bright. You could see out there,
13 too."

14 It was bright, and you can see there too. The
15 street light. Detective Sabur said there was no street
16 light in front of 503. No street light. And although you
17 could be aware of your surroundings, said Sabur, the
18 lighting was not good. That's not exactly an endorsement as
19 to how bright things were. It's another occasion, I think,
20 of these kids trying to persuade you that what they're
21 telling you they saw they actually did.

22 Nicole Gurley on page 20, line 20. And you may
23 not think this is important, but I suggest that it is. And,
24 by the way, on that same page I asked Nicole Gurley:

25 "QUESTION: And the purpose for smoking weed is to

1 get high, right?

2 "ANSWER: Yes.

3 "QUESTION: And who was smoking weed that night?

4 "ANSWER: Me, Rasheedah, Mykia.

5 "QUESTION: Keith smoking as well?

6 "ANSWER: Yes."

7 They were trying to get high. That's why you do
8 it. I suggest they were high, and if there's any doubt and
9 there's conflict later about what they were smoking or
10 whether they were smoking, if there's any doubt what they
11 were doing, remember the toxicology report of Keith Banks,
12 toxicology report said he had recently ingested into his
13 system cocaine. So the testimony of Mykia then that before
14 this happened they were in the hallway smoking a blunt with
15 cocaine, I suggest, is accurate testimony.

16 "QUESTION: Isn't it a fact that on that night,
17 the last person that you steered to Keith, you approached
18 him first. You asked him, what was up --

19 "ANSWER: No.

20 "QUESTION: Isn't that so?

21 "ANSWER: No.

22 "QUESTION: I ask you to refer to your report --
23 your statement, S-5 for identification. Referring to the
24 second question from the bottom.

25 "ANSWER: Uh-huh.

1 "QUESTION: Okay. Remember being asked this
2 question and giving the following answer: Can you tell me
3 exactly what occurred in relation to this incident?

4 "ANSWER: I seen a man standing on the corner, and
5 I asked him what was up. He asked me if I was straight.
6 Do you remember giving that answer to the

7 question?

8 "ANSWER: Yeah, but I didn't say it like this.

9 "QUESTION: You didn't say it like that?

10 "ANSWER: Well, regardless, I didn't ask him what
11 was up first. I didn't ask him what was up first because I
12 wouldn't do nothing like that, no.

13 "QUESTION: So this question and answer is
14 incorrect?

15 "ANSWER: Yes, it is."

16 Again, what she said then is wrong. Because now
17 she tells you the man approached her. And the night of the
18 incident, that morning she says she was the one who
19 initiated the contact, which is different from what
20 everybody else said.

21 The next part I think I'll leave out. I don't
22 know how important it is.

23 I know, ladies and gentlemen, when you go in that
24 jury room and you start devising and remembering the
25 testimony, you're going to be as confused about this as

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1 everybody else. But there's so much here, and you heard so
 2 much that was different from each other and from themselves.
 3 The testimony given on that night differing from the
 4 testimony given the other day. Mykia Wilson testified --
 5 and, again, if you take that statement from Miss Banks,
 6 Rasheedah Banks, we're not sure if Mykia was even there.
 7 But she says they were together when they found the knife.

8 She says Rasheedah told her, told her that there
 9 was a knife involved. She says that they were smoking
 10 cocaine that night, which I suggest at least there's some
 11 corroboration from the toxicology report that's what they
 12 were doing.

13 She says when they got to the hospital someone
 14 told her to quit fooling around. The prosecutor tried to
 15 rehabilitate her as she does very well. I'll read you
 16 something in a little while.

17 She was obviously disturbed, I believe. I don't
 18 know if she was fooling around in the hospital or not. But
 19 the issue here is whether her testimony, along with the
 20 others, is believable to the point where you go in there and
 21 say that testimony has convinced me beyond a reasonable
 22 doubt that Roy Dove, number one, was there. Number two,
 23 stabbed the victim, and is guilty.

24 I was going to read you the thing about the
 25 smoking, but you remember. Let me read you one thing.

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1 Banks at 24, line 9. Just so we don't take my
 2 word for it.

3 "QUESTION: Had you been in the hallway smoking
 4 blunts earlier that evening?

5 "ANSWER: No.

6 "QUESTION: Were you in the hallway at all that
 7 evening?

8 "ANSWER: No."

9 So on the issue of what was being smoked alone,
 10 Gurley says, yeah, they were all there smoking, but it was
 11 marijuana. Banks says at least she wasn't smoking at all,
 12 and the other one says, Mykia Wilson, it was cocaine that
 13 they were smoking.

14 You can't go in there and pick and choose what you
 15 want to believe and what you think is right or wrong in the
 16 sense of trying to determine whether or not this man is
 17 guilty. How can you do that? If there's corroboration, you
 18 know, they were smoking coke, probably because of the
 19 toxicology report, but you have so many things that differ
 20 from each other.

21 Are you satisfied with the kind of stuff that
 22 you're hearing, with the inconsistencies, to say the State's
 23 proving their case? You have to be satisfied beyond a
 24 reasonable doubt.

25 There's more. I ask you to bear with me because

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1 these things are so important. Let's talk about Tony
2 Brooks.
3 Tony Brooks, who told you he's been selling drugs
4 from 1991 to 1997. That man has been dispensing drugs from
5 '91 to '97 to kids like you saw on the stand with no
6 remorse, no conscience. He's been caught twice. Once in
7 '91. Once in '97, and pleaded guilty to distribution and
8 possession with intent. But he's been out there for all
9 that time, probably, I suggest you can infer hiding from the
10 cops. No friend of the police. Did time in jail. He's in
11 jail now. And suddenly, a couple of days after this
12 happens, he becomes a good Samaritan.
13 He waves down the cops, and says, hey, I just saw
14 the man who stabbed Mr. Brooks -- Mr. Banks. Suddenly, this
15 drug dealer is a good Samaritan. This drug dealer, who
16 happens to work, we found out, didn't we, for Kurt and
17 Malik, the two people who had already threatened Keith, says
18 he saw him, I think it was a couple of days after the
19 incident, a couple of blocks from where it happened.
20 Using your common sense, if you had killed
21 somebody with a knife, and you don't have the knife anymore,
22 are you going to hang around that area, walk around that
23 area, put yourself in a position to be identified in the
24 same area a couple of days after it happened? Common sense
25 says no way.

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1 Think about it. If you killed somebody, you know,
2 are you going to hang around, or are you going to make
3 yourself as scarce as can be? Even if you didn't know for
4 sure if the person was killed, you're going to get your tail
5 out of there.
6 Mr. Brooks becomes a good Samaritan. He told you
7 a couple of things that he never put in his statement that
8 he gave.
9 He gave you a whole story about Mr. Dove coming up
10 to them, and they were with him and D, and they felt he
11 might be trying to rip them off. And D started to go to the
12 stash, and Dove started following. Remember a whole lot of
13 questions and answers about that. And they looked at him.
14 They thought he might be ripping them off. He told D to
15 stay back. He told him to go away; not one word of which,
16 not one word, not one single syllable of which was put in
17 the statement he gave the police a couple of days after the
18 incident, a complete, concise statement that the police
19 asked him what happened. Not a word about that.
20 The judge will charge you at the end of the case
21 that a person who has a criminal record, that you have to
22 look very carefully and closely at that testimony because if
23 somebody disregards the rules of law, can be assumed not to
24 take his oath as seriously and as conscientiously as others.
25 And I suggest that Mr. Tony Brooks, who sat there and

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1 laughed when I asked him, you work for Kurt and Malik,
2 cannot be believed, should not be believed, and testimony of
3 drug dealers should be placed where it belongs, where they
4 belong, in the garbage.

5 I'm going to talk a little bit about the man who
6 got me upset over the weekend, Detective Isetts.

7 Isetts says that he went into the cell where
8 Mr. Dove was sitting, was chained, had been chained there
9 for a few hours, read him his Miranda warnings. And the
10 prosecutor will show you -- you'll have a copy in the jury
11 room, and although there's a place for him to sign his name
12 indicating he understands, he never signed it, and he says,
13 according to Isetts, F you. I'm going to get myself some
14 horse shit lawyer and enter a plea. F you and your
15 witnesses.

16 Well, I guess I'm that horse shit lawyer but he's
17 not entering a plea, and I suggest that he never said that.
18 And before I get into why, I say that even if he did, what
19 does that mean? Somebody was just told he's going to be
20 charged with murder; that there are witnesses that said he
21 did it. He's going to cop a plea to what? We can't talk
22 about penalties, but common sense, he's going to plead --
23 cop out to what? Maybe something that was said was
24 misunderstood. But, you know, we'll never know exactly
25 because Detective Isetts said he had a pad and he wrote down

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1 pretty much verbatim what was said, took that little pad
2 back to police headquarters, typed what that pad said on the
3 computer and resulted in that report.

4 He said he then destroyed that little pad. So
5 we'll never know exactly what was said. He says he
6 misplaced and can't find that computer disk. So we'll never
7 know if he typed accurately from the pad to the computer
8 disk.

9 Here's a man who said he was a police officer for
10 about 20 years, and didn't know -- he said he didn't know
11 that those notes are discoverable, meaning the other side
12 has to see them, and they have to be turned over to the
13 defense.

14 Do you really, for one minute, believe that he
15 didn't know what those requirements were, this officer for
16 20 years? I don't know if notes ever existed or not. I
17 kind of suggest, no.

18 But I suggest to you one thing strongly, there's
19 no way that veteran officer didn't know what the
20 requirements were and are.

21 I can't tell you -- I can offer you no explanation
22 whatsoever why he testified the knife was never found. He
23 belonged to the Prosecutor's Office, the same office that
24 the prosecutor works for. They're responsible for preparing
25 this case. Isetts says, in answering questions, I think it

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1 was on direct -- it was on direct -- do you know where the
2 knife is? Knife was never found. He's in charge of this
3 investigation along with Sabur.

4 Ladies and gentlemen, I just don't know. Nobody
5 knows. But he doesn't know the knife was found. He heard
6 that Kurt and Malik supplied all these kids and they're
7 babies with drugs, and threatened not only Keith, who's
8 already dead, but a living person named Roberta, who I would
9 suggest could be in jeopardy, and he didn't do anything
10 about it.

11 He didn't even know, apparently, that Detective
12 Sabur did a canvass on the area. And this is where I differ
13 with Sabur. I fault him. It should have been more than a
14 canvass. It should have been going around asking where's
15 Kurt and Malik, and who are they. But he didn't even know
16 that.

17 You kind of wonder what exactly did he do in this
18 investigation, this prosecutor's detective, who was supposed
19 to be co-in-charge. But he did nothing. Never notified
20 narcotics.

21 The question was asked of one of the witnesses,
22 did Keith have a fight with a family member, a family
23 member. What? Did he follow up on that? Nothing.
24 Nothing. But they had information somewhere that a family
25 member was involved. Did nothing to follow up on that.

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1 I ask you to consider -- I just saw something in
2 my notes. We talked about the ski cap that this prosecutor,
3 detective, never thought or cared enough to convince anybody
4 about guilt or innocence. They didn't have that ski cap
5 examined. But I ask you to consider this. Remember the
6 testimony of the three girls and the testimony of Brooks
7 that they got an assailant down on the ground. He was
8 tripped by Keith. He was first hit by Keith. She started
9 hitting him, punching him, kicking him as hard as they could
10 in the face, in the back, anywhere and everywhere they
11 could, and he was down, and they were whaling on him. And a
12 couple of days later when Isetts goes into the cell, not a
13 mark on that man there, Dove. Not a bruise, not a scratch,
14 not a trace of blood, nothing at all. Do you think that
15 after the beating that they described there'd be no sign at
16 all of it? There'd be something, even a scratch, something.
17 Isetts said, no, nothing.

18 By the way, do you remember I asked him, I asked
19 Isetts -- I'll be honest with you. I asked because I was
20 nervous about his testimony. I said isn't it a fact that
21 police take pictures of people when they have bruises and
22 stuff to protect themselves, to protect the police. He says
23 sometimes.

24 And isn't it a fact that you got to protect
25 yourself? Well, some do it. I don't do it. But it's done

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1 sometimes. And when you walked in there, had he had any
 2 bruises on him? Not a thing. Because I was afraid had I
 3 asked that question straight out he might have started to
 4 think maybe I better say there was a bruise because it
 5 doesn't take a rocket scientist to know that if somebody is
 6 going to smash somebody and scratch him and kick him, four
 7 people, four people were knocking this guy around and
 8 nothing on him. That man was not even there.

9 I want to read something else that I suggest you
 10 should consider to be very important.

11 What I'm going to read to you -- and I say this
 12 with legitimate admiration of the prosecutor -- because if I
 13 were the prosecutor and my witness picked out the wrong
 14 picture I probably would turn red, white and blue. And I
 15 don't know what else, and stutter and stammer, and when
 16 Rasheedah Banks picked out the wrong picture, the prosecutor
 17 handled it beautifully, was cool as could be.

18 What I'm going to read now -- and, again, I'm not
 19 being sarcastic or facetious. I'm saying with genuine
 20 admiration was something that's textbook rehabilitation of a
 21 witness.

22 Page 18, line 2.

23 "QUESTION: And when they showed you those
 24 pictures, what did you do with relation -- what did you do
 25 with relation to those pictures?

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1 "ANSWER: I picked one.

2 "QUESTION: Okay. Do you recall which one you
 3 picked?

4 "ANSWER: Yeah.

5 "QUESTION: Which one did you pick?

6 "ANSWER: That one."

7 She's pointing to a picture. I, obviously, can't
 8 see what she was pointing to.

9 "MR. ROBERTS: May I just have the number of the
 10 one photo?

11 "THE COURT: Which one is it?

12 "ANSWER: One."

13 Remember, Mr. Dove's picture is Number 5.

14 "QUESTION: One. And after you picked that, what
 15 did you do with relation to it?

16 "ANSWER: I didn't do nothing. I just picked it."

17 Okay. So right now the prosecutor is faced with a
 18 key witness who's picking out the wrong photograph. She
 19 then says: "Okay. Could you open this up" -- meaning the
 20 photo array, S-9 in evidence.

21 Little colloquy with the Court.

22 "THE COURT: Go ahead.

23 "QUESTION: Looking at the back of all of those
 24 pictures, Miss Banks" --
 25 Then she blurts out, "Yeah, I see it."

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1 "Do your initials appear on the backs of any of
2 those pictures?
3 "ANSWER: Yeah, yes.
4 "QUESTION: Which pictures do your initials appear
5 on the back of?
6 "ANSWER: Five.
7 "QUESTION: Just your initials? Do you know what
8 initials -- your initials, not your signature, your
9 initials.
10 "ANSWER: Oh, on this one they're on the back of
11 all of them.
12 "QUESTION: Now, does your signature appear on the
13 back of any of those pictures?
14 "ANSWER: Yeah.
15 "QUESTION: And which picture does your signature
16 appear on the back of?
17 "ANSWER: This one.
18 "QUESTION: All right. And that would be on the
19 back of which picture?
20 "ANSWER: Number 5.
21 "QUESTION: Number 5. Now back -- in addition to
22 your signature, there's also a date that appears, is it not?
23 "ANSWER: Yeah."
24 So Rasheedah Banks is here. She's what, 10, 15
25 feet from the defendant. She's looking at photographs,

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1 including one of the defendant. Everybody knows --
2 everybody knows that the defendant sits at counsel table
3 next to his lawyer. She's asked what picture she picked
4 out. She says Number 1. My God, he's right there. He's
5 right there. He never moved from there. She sees him
6 there.
7 She sees his picture here, and she picks out the
8 wrong picture. And not until the prosecutor has her turn
9 over these Polaroid pictures where it has her signature,
10 does she recognize that that's got to be the one because she
11 knows she signed her name to it.
12 So this key witness who identifies Roy Dove as the
13 person who was out there that night, not only can't really
14 identify him today because when she testified -- because she
15 can't pick out his picture, but picks out somebody else.
16 You'll have this in the jury room, and there is a
17 resemblance between 1 and 5. There is a resemblance. But
18 that's the kind of testimony that you're going to have to go
19 in there and say, well, in spite of the facts she couldn't
20 identify him. In spite of the fact she picked out the wrong
21 picture even before us. In spite of all those other things
22 I said that we talked about, that these witnesses positively
23 know that Roy Dove was the guy who was there. He wasn't. I
24 think their own testimony shows that.
25 Detective Sabur, I suggest to you, was the most

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1 credible witness of all. He sat there like a man and took
2 the weight for the missing reports, for the missing knife,
3 for the missing statement.

4 I suggest whoever's fault it was wasn't his, but
5 he took the weight for it. He told you the area wasn't well
6 lit. He told you there was no street light in front of 503.
7 He went with Miss Banks and searched the entire house from
8 top to bottom and found no knife.

9 I have a problem with what he did concerning Kurt
10 and Malik. He canvassed the area, meaning around. He asked
11 questions, meaning who are they? He should have done more.

12 I suggest you may agree with me, he should have
13 done more. He said he was satisfied with the statements.

14 I ask you this: I asked Detective Sabur, as he
15 sat there that day, did he know that one of his witnesses
16 worked for Kurt and Malik? He didn't know. Perhaps until I
17 asked that question, nobody knew, but he didn't know. Do
18 you believe for one second if Detective Sabur, when
19 investigating this case, where he knew of the threats of
20 Kurt and Malik, knew that Tony Brooks worked for Kurt and
21 Malik, do you think for one second he would not have pursued
22 that avenue, he would not have asked a million other
23 questions; he wouldn't have gone after Kurt and Malik with
24 all the powers he had. I suggest he would.

25 You saw the kind of detective he is. But he

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1 didn't know. And his check of Kurt and Malik, I suggest the
2 one area I disagree with him was in the knife. I said one
3 area. I'm astounded -- strike that. Whatever I am is not
4 evidence. It doesn't matter to you.

5 You should be astounded that there was no check on
6 the hat; that there was no check for the fingerprints. You
7 should be astounded. You should be angry.

8 This is a search for the truth. This is a search
9 for justice. Justice isn't a guilty verdict for the
10 prosecutor. Justice is when you find the truth. Whatever
11 it is. Guilty or not guilty. That's justice.

12 And when they may -- the State may have had the
13 tools to really do your job for you, it wasn't done, and
14 it's their obligation, not ours, not ours.

15 I know I'm turning these pages. I know I skipped
16 a lot of things. The prosecutor -- and I don't mean to
17 speak for her -- but she's going to tell you somebody was
18 killed. Keith Banks was murdered. Yes, he was. And just
19 because he's a drug dealer doesn't mean that people should
20 go around killing him. And that's tragic.

21 She may tell you that these witnesses, these
22 youngsters, these babies who are out there smoking coke at
23 the age of 15 may have been a little confused; maybe they
24 got some of their words mixed up. Maybe they got some of
25 their statements mixed up, but they're basically telling the

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1 truth. It was early in the morning when they're giving that
 2 statement, and you should believe them when they say that he
 3 did it. She will tell you, probably, about the
 4 circumstantial evidence; the differences aren't critical,
 5 aren't material.

6 Ladies and gentlemen, those differences are
 7 critical. Those differences are material. Those
 8 differences separate guilt beyond a reasonable doubt from
 9 not guilty. You cannot, please, ignore those
 10 inconsistencies. You cannot, please, ignore the fact that
 11 this hat was never analyzed.

12 You cannot ignore the fact that the alleged murder
 13 weapon was somewhere, somehow lost; not by us, but by the
 14 State.

15 I've already been talking too long. But, again,
 16 I'm not afraid to tell you that I don't want to sit down
 17 because I'm afraid I missed something, and if I did you may
 18 not remember or pick it up, which will hurt this man. Roy
 19 Dove wasn't there. Roy Dove didn't kill somebody, whoever
 20 was out there; whether it was one person in a black hat or
 21 two with a red sweater and a red hat. Maybe they did.
 22 Maybe somebody jumped out of the shadows and -- look at this
 23 picture. You'll see how easy it could be. Kurt, Malik,
 24 remember Kurt, I think it was Kurt, Malik's description was
 25 the same as Dove's, short, very, very dark skinned. There

Summation-Roberts

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1 is nothing that you will ever do in your lives other than
 2 things that are personal to yourselves that will be as
 3 important as what you may do when you go in that jury room.
 4 You're going to decide the fate of a young man charged with
 5 murder.

6 You're going to hear his Honor tell you about a
 7 lot of lesser included offenses, about felony murder, about
 8 robberies, about possession of weapons.

9 I ask you, as the judge will tell you, if you're
 10 convinced that the State has not proven its case beyond a
 11 reasonable doubt stand by your convictions. Stand by them.
 12 Don't hesitate to listen to argument from the other side, if
 13 somebody believes otherwise. But stand by those
 14 convictions. Don't let this young man be a victim of a lost
 15 knife, of a failure to examine evidence, of police
 16 indifference. Don't let this man be a victim of testimony
 17 given from unfortunate young kids who are drug dealers
 18 smoking coke.

19 Don't let that man be a victim to that kind of
 20 testimony and all the inconsistencies you heard, ladies and
 21 gentlemen.

22 I don't have to tell you we picked you because we
 23 thought you could really check and search. Look at this
 24 case through a microscope. Roy Dove is not guilty. He
 25 wasn't even there.

Summation-Charles

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1 THE COURT: Go ahead.
2 All right, Miss Charles, you may proceed.
3 MS. CHARLES: Thank you, your Honor.
4 May it please the Court, Counsel, ladies and
5 gentlemen of the jury, of course I beg to differ with much
6 of what counsel has had to say during the course of his
7 argument. But most specifically I beg to differ that he's
8 not a great lawyer, because he is. However, I told you at
9 the beginning of this case what it was about. This case is
10 not about a great lawyer. It's not about this State's
11 attorney. It's not about the mishandling or the
12 mis-communication that may have taken place between a
13 municipal detective and an Essex County Prosecutor's Office
14 detective. Nor is it really even about a lost knife.
15 What it's about is about individuals that sell
16 drugs, individuals that buy drugs, and individuals that rip
17 drug dealers off. And in the course of same stab and
18 ultimately kill that individual.
19 What kind of individual rips off a drug dealer?
20 Specifically, in the manner that was described by the
21 witnesses that came before you throughout the course of this
22 trial?
23 Well, Mykia described him. She sat up there, and
24 during the course of her testimony, as she described what
25 had happened to her boyfriend, Keith Banks, and she

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1 described who did it to her boyfriend. Roy Dove. She said
2 he was a fiend. And I asked her, what's a fiend? She said,
3 you know, a junkie. Somebody trying to get drugs.
4 That's what this case is about, ladies and
5 gentlemen, an individual who ripped off a drug dealer.
6 It is your recollection of the testimony that
7 controls in this matter, and it is your recollection of the
8 testimony and the context under which that testimony was
9 given that controls in this case, the context under which
10 the testimony was given.
11 Rasheedah Banks explained to you -- well, let's
12 start -- let's not even start with Rasheedah. Let's start
13 with Tony, the last witness, Tony Brooks.
14 Tony said he had an encounter with an -- this
15 individual sometime prior to the incident. This individual
16 came up looking for, for drugs, and he wanted to know what
17 he could get with 80 bucks. And he showed Tony his wallet.
18 He opened it up, and there was no money in his
19 wallet. And Tony used his own vernacular. He told you what
20 the man was about. He said he was about bullshit, using his
21 vernacular.
22 He tried to go after his partner, Derrick, and
23 Tony said, yo, man, come back from over there. And when
24 pressed, he called him an MF. But, essentially, what Tony
25 was saying is that I have this individual's number, this

Summation-Charles

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1 individual's number. He's not -- he's not, in my words, a
2 straight-up customer. He's going to try and rip me off.
3 Don't deal with him.

4 A little while later the same individual came back
5 to that area of South 19th Street. Tony saw him, and Tony
6 yells over to Nicole, Nicole, don't use him. You know, he's
7 just not about the right thing. Don't deal with him.

8 Nicole dealt with him anyway, maybe because in her
9 youth she's just not as astute as someone as experienced on
10 the street, I would suggest, as Tony Brooks. She used him
11 anyway.

12 You had an opportunity to examine and to view and
13 to absorb the demeanor of each one of these witnesses, Tony,
14 Nicole, Rasheedah, and Mykia. And you know what came
15 across, or what I would suggest came across? What I would
16 suggest came across when it came to the three girls, I even
17 hesitate to say this because it's not quite accurate, but
18 despite the mature activity that these young ladies chose to
19 involve themselves in, despite the "adult criminal
20 activity," that these young ladies chose to involve
21 themselves with, for the most part they came across as
22 children. You saw their youth.

23 Nicole, defiant. I guess she decides she's not
24 going to heed to the words of Tony Brooks. She used, or she
25 engaged Mr. Dove anyway.

Summation-Charles

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1 And when was the first time she explained that she
2 had observed Mr. Dove? When she was standing on the corner
3 under the street light. And that street light is not too
4 far from 503 South 19th Street, South 19th Street, the
5 location of the incident. And they had their conversation
6 about the product and about the kinds of monies that needed
7 to be exchanged for the product, and she yelled over, hey,
8 Keith. But I think she called him Black because I guess
9 that was his nickname. And then he was directing
10 Mr. Dove -- this young man was directed over to Mr. Black.
11 Then Rasheedah begins to play, and she tells you about how
12 she viewed things.

13 And Mykia explained to you how she observed, and
14 how she viewed things. You know what's interesting, and you
15 know what you need to decide, and you know what you need to
16 remember? You need to recall your common sense in this
17 particular scenario or any of life's scenarios; 2, 3, 4,
18 many people observe the same events, and you get a little
19 bit of a difference here, and a little bit of difference
20 there, and a little bit of difference here. But, you know,
21 the big things start to stand out. And one of the big
22 things that were consistent in this case, and one of the big
23 things that stand out in this particular case, their
24 description of the individual that, yes, albeit through
25 circumstantial evidence, but I submit to you that

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1 circumstantial evidence is more compelling. Their
2 description of the individual that stabbed their brother,
3 their boyfriend and their friend, Keith Banks.

4 What did he look like? He was short. Yeah,
5 five-three, five-six. What did he look like? He was short,
6 five-six, five-seven. Well, what did he look like? He was
7 short, around five-five. What did he look like? Dark
8 skinned. What do you mean by dark skinned? Well, darker
9 than me. Dark skinned.

10 What did he look like? He had some kind of hoody.
11 What did he look like? He had a navy coat. What did he
12 look like? He had on a black coat. What did he look like?
13 He had on dark clothing.

14 Did you see the knife? Well, I didn't see it when
15 it hit him but I saw some of it -- I saw it when it fell.
16 Did you see the knife? Well, I saw it on the ground. Did
17 you see the knife? Well, I think I saw it on the curb. Did
18 you see the knife? It was a silver blade, and had a brown
19 and gold handle.

20 The big things stand out. And I submit to you the
21 most important things are consistent. So we can talk about
22 this inconsistency and that inconsistency, but you must make
23 a determination whether or not they are significant and
24 important inconsistencies or not. I submit to you that they
25 are not.

Summation-Charles

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1 The big things stand out. What it looked like?
2 What he did. Who he did it to. The statements were taken,
3 and in many instances these individuals had to eat some of
4 their words. They had to no, I didn't say that. I don't --
5 I didn't mean to say that.

6 Well, for the same reason we take statements. The
7 same reason we -- that the photo arrays and identifications
8 are made to preserve what happened in the past so that when
9 it's time to bring it forth in the future at least we have
10 some basis, some record.

11 You'll have an opportunity to review this in the
12 jury room. And as counsel said, there is a little
13 resemblance here between Number 1 and Number 5. You'll have
14 that opportunity. You'll have an opportunity.

15 So let's get back to Rasheedah. Rasheedah said
16 she was out there with her brother, Keith. This individual
17 walked up. She thinks they're engaged in some kind of
18 narcotic transaction because that's what they were all out
19 there doing, selling drugs. And the next thing she
20 realizes, or is able to perceive is that her brother is
21 stabbed, and this individual standing close by, so he
22 stabbed him.

23 Mykia. I was out there. They're engaged in some
24 kind of discussion about narcotics, and when Keith came back
25 from wherever he went, and she stayed into the hallway, and

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1 asked him where the money was, he reached in his pocket, and
 2 I submit to you as if to get some money, and when he came up
 3 he hit him with a fist.

4 Now, if Mykia wanted to lie, she could have said,
 5 I saw him take a knife out of his pocket and he stabbed him
 6 in the chest. She said he just hit him with a fist, and she
 7 saw some object, and she believed it to be a knife fall, hit
 8 him in the chest. Where? In his left chest, right about
 9 here just as the medical examiner said, right here, right
 10 here.

11 And then they all kind of start beating him up,
 12 but they stopped when they realized that Keith, the brother,
 13 the boyfriend, his motions were coming a little less
 14 deliberate. He was slowing up, if you will. That's when
 15 they stopped, and then their concentration, their attitude,
 16 their concerns were directed to Keith and the guy got away.

17 Counsel has suggested that because their
 18 statements are so inconsistent, as his Honor will ultimately
 19 charge you, that you really can't believe anything of what
 20 they say, anything about their testimony. And his Honor
 21 will charge you about inconsistent statements. And his
 22 Honor will tell you that you must discern whether
 23 significant inconsistencies, whether or not you believe
 24 these inconsistencies to be the result of fabrication or a
 25 lie or just human frailties of something that took place

Summation-Charles

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1 over a year ago.

2 So surely after this incident, everyone goes to
 3 the hospital. Next thing you know Keith's girlfriend,
 4 Keith's sister, Keith's friend, they know Keith is dead.
 5 Now, they're all in the homicide squad giving statements
 6 through the wee hours in the morning.

7 Where's the knife? Julia Banks testified that
 8 over seven or eight people lived in that particular
 9 apartment. The family's just hearing about the loss of
 10 their brother, their son, their friend. I wonder what that
 11 apartment was like. I wonder what the emotions were that
 12 were going on in that apartment.

13 The knife was found, ultimately, by Julia, and she
 14 did what she was supposed to do, two, three days after her
 15 brother was killed, it was delivered to the Police
 16 Department. She may have testified as soon as I got it I
 17 called the police. But there was a funeral, if you will.
 18 All I know, and all we know is that the knife was delivered
 19 shortly after the incident.

20 There are a lot of things counsel had to discuss
 21 with you during the course of his summation, much of which
 22 is provided as a result of certain mishandlings by the
 23 State. I'll admit that.

24 He characterized -- he chose to characterize
 25 Investigator Isetts a certain way. He chose to characterize

Summation-Charles

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1 Detective Sabur a certain way. And I'll say to his credit
2 he chose to compliment me. But the buck does stop here,
3 ladies and gentlemen.

4 Whatever you might say about that, it stops here
5 with me. This case is not about me. It's about what
6 happened on those streets on February 1, 1997 at 10:30 in
7 the evening. And I submit to you what happened was that Roy
8 Dove, in his fiend state, if you will, sought to get drugs,
9 and sought to get them the only way he was able to do on
10 that particular day because he didn't have any money, and he
11 approached Keith Banks, and he obtained those drugs, and he
12 got away without paying. That's what happened.

13 Now, we're asked to talk about Kurt and Malik, and
14 the efforts that were made to find Kurt and Malik. But what
15 efforts need to be made to find individuals that three or
16 more other individuals said had nothing to do with it.
17 Yeah, they looked familiar, and maybe they should have
18 looked a little bit harder for Kurt, and a little bit harder
19 for Malik. But they weren't the target of the
20 investigation. And as it came to pass a few days after the
21 incident, after Mr. Brooks saw the guy on the street, he
22 clearly was not the target of the investigation.

23 Mr. Brooks, there's the guy that stabbed Keith
24 Banks. Where's a cop when you need him. Is he a good
25 Samaritan? Is he a good Samaritan? I won't even

Summation-Charles

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1 characterize him as that. I'll just say Tony Brooks didn't
2 want what happened to Keith Banks to happen to him by
3 somebody like this individual, Roy Dove. That's about as
4 far as I'll take it.

5 Is he a good citizen? I don't know. We know what
6 he's about. He sold drugs, and he admits to selling drugs.
7 Does that make him a less than credible person? It may not
8 make him the kind of individual that you might want to
9 associate with. It does not mean he's not telling the
10 truth.

11 Kurt and Malik. The implication is that it wasn't
12 this individual that did it. It was either Kurt or Malik.
13 So what counsel would have you believe is that Tony Brooks
14 is trying to protect Kurt and Malik. And maybe that's
15 somewhat plausible. Maybe. Because he works for them. But
16 that Keith's sister wants to protect Kurt and Malik; that
17 Keith's girlfriend wants to protect Kurt and Malik, and
18 Keith's friend, Nicole, wants to protect Kurt and Malik, I
19 suggest to you that is not the case. It's not the case.

20 His Honor is going to charge you with respect to
21 the law, and he's going to charge you with respect to murder
22 and the various lesser includeds, and the various lesser
23 includeds that he's going to charge you with respect to are
24 manslaughter being the least of which; aggravated
25 manslaughter, and then murder.

Summation-Charles

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1 Let's talk about manslaughter. There are two
2 kinds of manslaughter. There's reckless manslaughter, and
3 there's passion provocation manslaughter.

4 Reckless manslaughter, essentially, means causing
5 the death of someone recklessly. And case law has gone on
6 to construe that kind of manslaughter as the possibility
7 that death may occur. And I'll ask you -- ask this question
8 of yourselves. When someone lunges at an individual with a
9 knife, I submit, aims for his chest, hits him almost dead
10 center in the chest, where common sense will dictate that
11 the heart exists, what is on that individual's mind? Is
12 that a possibility that death may occur?

13 The medical examiner told you that the wound was
14 at least four inches deep.

15 Then's there's passion provocation manslaughter.
16 Passion provocation manslaughter is -- has been defined as
17 what is normally a murder, a purposeful and knowing murder
18 except in this particular case we'll call it passion
19 provocation manslaughter because according to the law you
20 are sufficiently inflamed as the law will excuse you from a
21 purposeful and knowing murder and allow you to be culpable
22 only for a passion provocation manslaughter.

23 What sufficiently inflamed this individual --
24 sufficiently meaning reasonably and sufficiently inflamed.
25 He approached a peddler, if you will, for the purpose of

Summation-Charles

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1 obtaining a certain product, and he didn't have any money,
2 so he got mad at the peddler for asking for his money.

3 I submit to you this case is not about passion
4 provocation manslaughter either.

5 His Honor will charge you with respect to
6 aggravated manslaughter, and aggravated manslaughter is
7 essentially -- essentially says that an individual causes
8 death recklessly under circumstances manifesting extreme
9 indifference to the value of human life.

10 Case law has gone on to construe aggravated
11 manslaughter as the probability of death; that whatever your
12 actions are, it's probably certain that death will result
13 from those actions.

14 I would submit to you that this case is somewhat
15 like aggravated manslaughter, but it's more than that. You
16 are to take a knife, plunge it into someone's chest, and
17 everyone is well aware that right under that chest is the
18 heart, and you wound that area, or you injure that area,
19 well, there's a good probability that death will result from
20 your actions. But I submit to you it's more than that,
21 ladies and gentlemen.

22 His Honor will also charge you with respect to
23 murder. And murder is done either purposely -- purposeful
24 or knowing. You purposely cause the death of someone, or
25 you knowingly cause serious bodily injury which will result

Summation-Charles

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1 in death.

2 So an individual takes a knife, plunges it into
3 the left chest, and I submit the heart, I submit his actions
4 are the actions of an individual who means to kill. That's
5 what this case is about; murder. Not aggravated
6 manslaughter, not reckless manslaughter, not passion
7 provocation manslaughter.

8 There's also a charge of felony murder in this
9 case, ladies and gentlemen, which essentially indicates that
10 in the course of committing a felony, and in this instance
11 the felony is robbery, the death of an individual results,
12 and that death can be reasonably connected to the actions of
13 the individual or individuals involved in the felony.

14 So was there a robbery here? Yes. There was a
15 robbery.

16 Well, you say, well, it wasn't really a clean
17 robbery. We're not even sure if he got the drugs. Somebody
18 said he got the drugs. Somebody said he didn't get the
19 drugs. Somebody said he ran off with the drugs. All he
20 did, really, was kind of like a shoplifter, maybe, if you
21 will. He ran off with the product without paying. But it's
22 a little bit more than that because his Honor is going to
23 charge you with respect to the law on robbery, and robbery
24 is a forcible taking with a deadly weapon. And that's what
25 happened here.

Summation-Charles

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1 Robbery is the forceful taking with a deadly
2 weapon.

3 He will likewise charge you with respect to, in
4 the course of committing a theft. What is in the course of
5 committing a theft? Anything that happens in the course of
6 trying to complete this robbery. So it's not always
7 necessary that all the lay persons' interpretation of what a
8 robbery is; stick em up, give me your money, thank you very
9 much, take off. It doesn't have to happen that way, not
10 according to the law.

11 Then, obviously, there's possession of a weapon,
12 and possession of a weapon for unlawful purpose; the knife
13 being the weapon, and the unlawful purpose, obviously, being
14 the use of that knife in the stabbing of Keith Banks.

15 This case is about people that sell drugs, people
16 that buy drugs, and people that rip drug dealers off. This
17 case is about the witnesses that took the stand and their
18 opportunity to view and observe this individual on the
19 evening of the incident. That's what identification is all
20 about, not just your recall of -- of your ability or
21 recollection of that individual's face. It's also about
22 your opportunity to view and ultimately be able to recall
23 and recollect the features that comprise that individual's
24 face. And what opportunity did these individuals have.
25 Nicole spent time with him on the street corner, and

Summation-Charles

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1 ultimately not too far away back in front of 503 South 19th
2 Street when they participated in kicking and punching this
3 guy.

4 Rasheedah observed him from 503 South 19th Street.
5 And then what opportunity did she have when she was kicking
6 and punching this guy?

7 Mykia had the same vantage point. That's what
8 this case is about, their identification of Roy Dove on
9 February 1, 1997, about 10:30, and any subsequent
10 identification they were able to make a few days afterwards.
11 And a few days afterwards Mr. Dove was arrested.

12 He was arrested with the assistance of Tony
13 Brooks. And while in the cell block he made a statement,
14 after his Miranda rights were read to him, and he said, and
15 I quote -- after being informed by Investigator Isetts -- no
16 matter what you may think of him -- but after being informed
17 by Investigator Isetts, listen, we got a few people that
18 have identified you as being involved in this incident on
19 503 -- at 503 South 19th Street; fuck you and your
20 witnesses. I'll get some horse shit defense attorney to cop
21 a plea. Said, I don't care about this system. I'll just
22 take a plea and get it over with. That's what, I submit, it
23 means. Yeah, yeah, I know I was there, uh-huh, so what.
24 That's what, I submit, that statement means.

25 Detective Isetts, he said some things that I had

Summation-Charles

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1 problems with. He said, well, I didn't know that -- no, if
2 your notes are -- if your notes exist they're not
3 discoverable. That's the key thing here. If they exist.
4 There's no rule that says you have to keep them, but if they
5 exist, I would submit, you have to turn them over to
6 counsel. He doesn't know that.

7 Well, he didn't know a lot of things. He didn't
8 know the knife was recovered. He didn't know anything about
9 Julia Banks. But his involvement, for what it was worth, I
10 submit, was not dishonest; maybe not as thorough as we would
11 have liked to have seen, but dishonest, I don't think so.

12 You had an opportunity to view him, and you may
13 have formulated certain opinions with respect to him. And I
14 seriously doubt one of the opinions that you formulated had
15 anything to do with dishonesty; maybe a little nonchalant;
16 maybe a lot of things, but dishonesty, I submit, no. That's
17 not what Investigator Isetts is about.

18 This was a short case, ladies and gentlemen. It
19 got extended a little bit into Friday, and now we sit here
20 on Monday. Your recollection of the testimony should be
21 relatively fresh, and I'll remind you once again that it is
22 your recollection of the testimony and the context under
23 which that testimony was given that controls. And if
24 encompassed within that testimony is not just the words that
25 the witnesses spoke, and not just the sentences that they

Colloquy

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1 uttered, but their demeanor and posture on that stand. They
 2 were truthful. They told you what happened that evening to
 3 the best of their ability, and they were consistent in their
 4 identification of Roy Dove as the individual that stabbed
 5 Keith Banks on February 1, 1997. Thank you.

6 THE COURT: Thank you. Now, members of the jury,
 7 you've been listening now for almost two hours. My charge
 8 is going to be very long, so I'm going to send you out to
 9 lunch. Don't talk about this case. Please be back here at
 10 1:30, so I can charge you as to the law. Thank you.

11 (Jury takes luncheon recess.)

12 THE COURT: All right. Mr. Roberts, I shall
 13 charge identification in accordance with your summation, but
 14 I would ask you whether or not you want me to charge
 15 self-defense because, obviously, it's a conflicting theory.
 16 On one hand you're saying he wasn't there, and on the second
 17 hand if he was there it was self-defense, which I did not
 18 hear you argue. So I'll ask you do you want me to charge
 19 self-defense?

20 MR. ROBERTS: I think they can consider that,
 21 Judge. If they decide that he was there, then the next step
 22 is if he was, was he just trying to defend himself as a
 23 result of --

24 THE COURT: Okay. See you then at 1:30.

25 MR. ROBERTS: Thank you.

Court Charge

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1 (The Court takes the luncheon recess.)

2 (The jury is brought into the courtroom.)

3 THE COURT: Members of the jury, my charge is
 4 going to be a rather lengthy one, so I ask that you pay
 5 particular attention to it. I've tried to cut it down as
 6 much as I can. I'm going to repeat some of the things I
 7 said to you when we first met.

8 Mr. Dove stands before you as a result of an
 9 indictment found by a Grand Jury charging him with these
 10 various offenses, and I've already told you that the
 11 indictment must not be considered by you in any way as
 12 evidence of his guilt. All it does is set the stage for a
 13 trial before a court and before a jury to determine whether
 14 or not he is guilty of all or any of the charges.

15 I've already explained to you our respective
 16 functions. Mine, I handle the law. But you are judges of
 17 the facts. You have to judge the weight of the evidence.
 18 You have to judge the credibility of the witnesses, and then
 19 it's going to be your obligation to decide whether or not
 20 this defendant is guilty of all or any of the crimes.

21 Now, it is proper for me to comment on the
 22 evidence, should I decide to do that, but, obviously, if I
 23 did I'd be relying on my memory. And if I were to say
 24 anything about the evidence that didn't agree with the way
 25 you recalled the testimony and the evidence to be, then I

Court Charge

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1 suggest you disregard anything I may say and rely on your
2 own memory.

3 Apply the same test to the remarks made by both
4 attorneys during their summations. If what they have said
5 concerning the evidence doesn't agree with you, you use your
6 own recollections as well.

7 I did tell you that there would be, during the
8 course of the trial, various motions or objections made by
9 the respective attorneys, and that I had to rule on them as
10 a matter of law. So you're not to take the way I have ruled
11 as being prejudicial to either party. I only rule on the
12 law, and that's it.

13 The fact that I may have asked any questions
14 should not be regarded by you as an indication as to how I
15 personally feel this case should be decided. It's not for
16 me to do that. This is your function, and yours alone.

17 Now, under the indictment, the first count charges
18 that on the 1st day of February of 1997 in this city,
19 Mr. Dove did purposely or knowingly murder Keith Banks by
20 his own conduct.

21 What do I mean by murder? Murder is when a person
22 purposely causes the death, or such serious injury that will
23 result in the death either purposely or knowingly. But,
24 yet, when we talk about murder there are various lesser
25 included offenses within murder. One would be possibly

Court Charge

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1 passion provocation murder, which I shall describe shortly.
2 Another can be aggravated manslaughter, or there can be
3 reckless manslaughter or murder if you find that all the
4 elements that I shall give you are met by the State beyond a
5 reasonable doubt. And, again, what that expression means I
6 will define more fully and carefully later on.

7 Now, a person is guilty of passion provocation if
8 you find that the defendant purposely and knowingly caused a
9 person's death, and that he did not act in the heat of
10 passion resulting from a reasonable provocation. If you
11 find that to be a fact, then the defendant will be found
12 guilty of murder. However, if you find that this defendant
13 purposely or knowingly caused the death or serious bodily
14 injury that resulted in death, that he did act in the heat
15 of passion resulting from a reasonable provocation, then he
16 would be guilty of what we call passion provocation
17 manslaughter.

18 So in order to find this defendant guilty, the
19 State is required to prove each of the following elements
20 beyond a reasonable doubt:

21 One, that this defendant caused the death of Keith
22 Banks; that he did so purposely or knowingly; and that he
23 did not act in the heat of passion resulting from a
24 reasonable provocation.

25 When we talk about purposely, a person who causes

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1 another's death does so purposely when it is his conscious
2 object to cause that death or to cause such injury that
3 would result in death.

4 A person who causes another's death does so
5 knowingly when that person is aware that it is practically
6 certain that his conduct will either cause death or the
7 serious bodily injury that did result in death.

8 Now, the nature or the purpose with which a
9 defendant acted towards Keith Banks is a question of fact
10 for you to decide. Purpose and knowledge are conditions of
11 the mind which cannot be seen and can only be determined by
12 inferences from a person's conduct, words or acts. It is
13 not necessary for the State to produce a witness or
14 witnesses who could testify that defendant stated, for
15 example, that his purpose was to cause that death, or that
16 he knew that his conduct would cause the death.

17 It is within your power to find that proof of
18 purpose or knowledge has been furnished beyond a reasonable
19 doubt by inferences which may arise from the nature of the
20 acts and the surrounding circumstances. Such things as the
21 place where the act occurred, the weapon that might have
22 been used, the number, the nature of the wounds, and all
23 that might have been said or done by a defendant preceding,
24 connected with, or immediately succeeding the events leading
25 to the death of Keith Banks are among the circumstances to

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1 be considered.

2 Now, although the State must prove that a
3 defendant acted either purposely or knowingly, the State is
4 not required to prove a motive. If the State has proven the
5 essential elements of the offense beyond a reasonable doubt,
6 a defendant must be found guilty of this offense regardless
7 of his motive or lack of a motive. But if, however, the
8 State has proven a motive, you may consider it as far as it
9 gives meaning to other circumstances.

10 On the other hand, you may consider the absence of
11 motive in weighing whether or not a person is guilty of the
12 crime charged.

13 Now, a homicide, or a killing with a deadly
14 weapon, which can be a knife in this case as alleged, in
15 itself would permit you to draw an inference that a
16 defendant's purpose was to take life or to cause such
17 serious bodily injury that would result in death.

18 Now, a deadly weapon is any weapon which in the
19 manner it is used or is intended to be used is known to be
20 capable of producing either death or such serious bodily
21 injury that would result in death. So that in your
22 deliberations you must consider the weapon used, the manner,
23 the circumstances of the killing. And if you're satisfied
24 beyond a reasonable doubt that this defendant stabbed and
25 killed Keith Banks with a knife, you may draw an inference

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1 from the weapon used; that is, the knife, and from the
2 manner and circumstances of the killing as to a defendant's
3 purpose or knowledge.

4 Now, the third element that the State has to prove
5 beyond a reasonable doubt to find the defendant guilty of
6 murder is that he did not act in the heat of passion
7 resulting from a reasonable provocation. Now, passion
8 provocation manslaughter is a death caused either purposely
9 or knowingly; that is committed in the heat of passion
10 resulting from a reasonable provocation. Passion
11 provocation manslaughter has four factors which distinguish
12 it from murder.

13 In order for you to find a defendant guilty of
14 murder the State only need to disprove one of them beyond a
15 reasonable doubt. And the four factors are:

16 (1) That there was adequate provocation;
17 (2) That the provocation actually impassioned the
18 defendant;

19 (3) That he did not have a reasonable time to
20 cool off between the provocation and the act which caused
21 the death; and,

22 (4) That he did not actually cool off before
23 committing the act which caused the death.

24 So you have to determine whether the provocation,
25 if any, was adequate. Whether that provocation is adequate,

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1 essentially amounts to whether loss of self-control is a
2 reasonable reaction to the circumstances. The provocation
3 must be sufficient to arouse the passions of an ordinary
4 person beyond the power of his control. For example, words
5 alone do not constitute adequate provocation.

6 On the other hand, a threat with a knife, with a
7 knife or a gun, or a significant physical confrontation
8 might be considered adequate provocation.

9 Secondly, you must determine whether the defendant
10 actually was impassioned; that is, whether or not he
11 actually lost his self-control.

12 Then, third, you must determine whether he had a
13 reasonable time to cool off. In other words, you must
14 determine whether the time between the provoking events, if
15 any, and the act which caused the death was inadequate for
16 the return of a reasonable person's self-control.

17 And then, fourth, you must determine whether the
18 defendant actually did not cool off before committing the
19 act which caused the death; that is, whether he was still
20 impassioned.

21 Now, if you determine that the State has disproved
22 beyond a reasonable doubt that there was adequate
23 provocation, or that the provocation actually impassioned
24 the defendant, or that he did not have a reasonable time to
25 cool off, or that actually not cool off, and in addition to

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1 disproving one of those four factors, you determine that the
 2 State has proven beyond a reasonable doubt that the
 3 defendant purposely or knowingly caused the death, then you
 4 must find the defendant guilty of murder. But, on the other
 5 hand, if you determine the State has not disproved at least
 6 one of these factors of passion provocation manslaughter
 7 beyond a reasonable doubt, but that the State has proven
 8 beyond a reasonable doubt that he purposely or knowingly
 9 caused that death, you must find him guilty of passion
 10 provocation manslaughter.

11 You also have a right to consider a lesser degree,
 12 which is aggravated manslaughter.

13 A person is guilty of aggravated manslaughter if
 14 he recklessly causes the death of another person under
 15 circumstances manifesting extreme indifference to human
 16 life.

17 In this case you have to **consider** and find the
 18 following elements beyond a reasonable doubt:

19 One, that the defendant caused the death of Keith
 20 Banks; that he did so recklessly, and that he did so under
 21 circumstances manifesting extreme indifference to human
 22 life.

23 Now, when we speak of recklessly, a person who
 24 causes another's death does so recklessly when he is aware
 25 of and consciously disregards a substantial and

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1 unjustifiable risk that death will result from his conduct.
 2 The risk must be of such a nature and degree that
 3 considering the nature and the purpose of the defendant's
 4 conduct and the circumstances known to him, that his
 5 disregard of that risk is a gross deviation from the
 6 standard of conduct that a reasonable person would follow in
 7 the same situation. In other words, you must find that the
 8 defendant was aware of, and consciously disregarded the risk
 9 of causing death.

10 Now, if you find that he was aware of, and
 11 disregarded the risk of causing that death, you must
 12 determine whether that risk that he disregarded was
 13 substantial and unjustifiable.

14 In doing so you must consider the nature and the
 15 purpose of his conduct and the circumstances known to him.
 16 You must determine whether in light of those factors
 17 defendant's disregard of that risk was a gross deviation
 18 from the conduct that a reasonable person would have
 19 observed in his situation.

20 But another element is that the State must prove
 21 beyond a reasonable doubt that he acted under circumstances
 22 manifesting extreme indifference to human life, and that
 23 phrase does not focus on the defendant's state of mind but,
 24 rather, on the circumstances under which you find he acted.

25 If in light of all of the evidence you find that

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1 his conduct resulted in a probability as opposed to a mere
2 possibility of death, then you may find that he acted under
3 circumstances manifesting extreme indifference to human
4 life.

5 On the other hand, if you find that his conduct
6 resulted in only a possibility of death, then you must
7 acquit him of aggravated manslaughter and consider the
8 offense of reckless manslaughter, as I have explained it to
9 you, which simply means causing a death recklessly. And by
10 recklessly, I've already indicated to you that a person who
11 causes another's death does so recklessly when he's aware
12 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
16 conduct and the circumstances known to him, that his
17 disregard of that risk is a gross deviation from the
18 standard of conduct that a reasonable person would follow in
19 the same situation. So you must find -- in order to convict
20 a defendant beyond a reasonable doubt of reckless
21 manslaughter, you have to find that he was aware of and
22 disregarded the risk of causing the death, and that you have
23 to determine that the risk that he disregarded was
24 substantial and unjustifiable.

25 Now, the second count of this indictment says that

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1 Mr. Dove on that same time and place, that while engaged in
2 the commission of robbery, did cause the death of Keith
3 Banks. And in this regard the State contends that while the
4 defendant was engaged in the commission of, or the attempted
5 robbery, he killed Keith Banks, and the law says criminal
6 homicide constitutes murder when it is committed when a
7 person is engaged in the commission of, or an attempt to
8 commit robbery, in the course of committing that particular
9 or attempting that crime thus cause the death of another
10 person.

11 Now, generally it does not matter that the act
12 which caused the death was committed recklessly or
13 unintentionally or accidentally. The person is guilty of
14 what we call felony murder as if he had purposely or
15 knowingly committed the death -- the act which caused the
16 death.

17 So in order for you to find the defendant guilty
18 in this regard of what we call felony murder, the State is
19 required to prove beyond a reasonable doubt from all the
20 evidence in the case all the essential elements of the crime
21 charged.

22 Accordingly, before you can find a defendant
23 guilty of felony murder, the State must prove beyond a
24 reasonable doubt that on or about the 1st day of February,
25 1997, the defendant was engaged in the commission of robbery

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1 or the attempted robbery; that the death of Keith Banks was
2 caused by the defendant, and that the death of Banks was
3 caused at sometime within the course of the commission of
4 that particular crime or the attempted crime, including the
5 aftermath of flight and concealment.

6 Now, the State has to prove the first element
7 beyond a reasonable doubt, that he was engaged in the
8 commission of the robbery or of the attempted robbery. The
9 second and third require the State to establish that the
10 victim's death was caused by the defendant and was caused
11 during the commission of that particular crime or the
12 attempted crime.

13 Now, if you find that the defendant -- beyond a
14 reasonable doubt that the defendant was engaged in the
15 commission of the crime of robbery, or the attempted
16 robbery, and that the death was caused by him, and that the
17 death was caused at sometime within the attempted robbery or
18 the robbery itself, then -- and you find these facts beyond
19 a reasonable doubt, then the defendant would be guilty of
20 what we call felony murder.

21 On the other hand, if you find that the State has
22 failed to prove to your satisfaction beyond a reasonable
23 doubt any one or more of these elements, then you must find
24 him not guilty of the felony murder.

25 Now, the defendant -- the defendant, as part of

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1 his general denial of guilt contends that the State has not
2 presented sufficient reliable evidence to establish beyond a
3 reasonable doubt that he is the person who has committed the
4 alleged offense.

5 Now, where the identity of the person who has
6 committed the crime is in issue, the burden of proving that
7 identity is on the State. The State must prove beyond a
8 reasonable doubt that this defendant is the person who
9 committed the crime.

10 A defendant has neither the burden nor the duty to
11 show that the crime, if committed, was committed by someone
12 else, or to prove the identity of that other person. You
13 must determine, therefore, not only whether the State has
14 proven each and every element of the offense charged beyond
15 a reasonable doubt but also whether the State has proven
16 beyond a reasonable doubt that this defendant is the person
17 who committed it.

18 Now, in order to meet its burden with respect to
19 the identification, the State has presented the testimony of
20 various witnesses. If you recall these witnesses identified
21 the defendant in court as the person who committed the
22 offense. According to these witnesses, their identification
23 of the defendant in this court is based upon the
24 observations and the perceptions which they have made of the
25 defendant on the scene at the time the offense was being

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1 committed.

2 Now, it is your function as jurors to determine
3 what weight, if any, to give to this testimony. You must
4 decide whether it is sufficiently reliable evidence upon
5 which to conclude that this defendant is the person who
6 committed the offense charged.

7 In going about your task you should consider the
8 testimony of these witnesses. Consider their capacity or
9 the ability to make the observations or perceptions which
10 they say they made. So unless the in-court identification
11 results from the observations or the perceptions of the
12 defendant by the witnesses during the commission of the
13 crime, the in-court identification -- I'll withdraw that.

14 Unless the in-court identification results from
15 the observations or the perceptions of the defendant by the
16 witnesses during the commission of the crime rather than
17 being the product of an impression gained at the
18 out-of-court identification procedure, it should be afforded
19 no weight. So the ultimate issue of the trustworthiness,
20 trustworthiness of an in-court identification is for you to
21 decide.

22 Now, if after a consideration of all the evidence
23 you have a reasonable doubt as to the identity of the
24 person, of the defendant as the person present at the time
25 and place of the crime, you must acquit him. However, if

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1 after consideration of all the evidence you are convinced
2 beyond a reasonable doubt of his presence at the scene, you
3 will then consider whether the State has proven each and
4 every element of the offense charged beyond a reasonable
5 doubt.

6 Now, in addition, the defendant contends that
7 while he was not the person involved, and therefore the
8 identification is not adequate, he also says in the event
9 you, as a jury, find that he was there, then he says the
10 justification of self-defense is to be offered to you.

11 Now, the statute reads, the use of force upon or
12 toward another person is justifiable when the person
13 reasonably believes that such force is immediately necessary
14 for the purpose of protecting himself against the use of
15 unlawful force, unlawful by other persons.

16 In other words, self-defense is the right of a
17 person to defend himself against any unlawful force.
18 Self-defense is also the right of a person to defend himself
19 against seriously threatened unlawful force that is actually
20 pending or reasonably anticipated. When a person is in
21 imminent danger of bodily harm, that person has a right to
22 use force, or even deadly force, when that force is
23 necessary to prevent the use against him of unlawful force.
24 However, the force used by a defendant must not be
25 significantly greater than. It must be proportionate to the

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1 unlawful force threatened or used against him. By unlawful
2 force, we define that as force used against a person without
3 that person's consent in such a way that the action would be
4 either a civil wrong or a criminal offense.

5 Now, if the force used by a defendant was not
6 immediately necessary for his protection, or if the force
7 used by him was disproportionate in its intensity, then the
8 use of such force by a defendant is not justified, and the
9 self-defense fails.

10 So, therefore, a person can only use that amount
11 or degree of force that he reasonably believes is necessary
12 to protect himself against harm. If the defendant is
13 attempting to protect himself against exposure to death or
14 the substantial danger of serious bodily harm, he may resort
15 to the use of deadly force. Otherwise, he may only resort
16 to non-deadly force.

17 The use of deadly force may be justified only to
18 defend himself against force or the threat of force of
19 nearly equal severity, and it is not justifiable unless a
20 defendant reasonably believes that such force is necessary
21 to protect himself against death or serious bodily harm.

22 One cannot respond with deadly force to a threat
23 or even an actual minor attack. For example, a slap or an
24 imminent threat of being pushed in a crowd would not,
25 ordinarily, justify the use of deadly force to defend

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1 himself against such unlawful conduct.

2 Therefore, you must determine whether the
3 defendant used deadly force.

4 If you find he did so, then you must determine
5 whether he reasonably believed that he had to use deadly
6 force to defend himself against the unlawful conduct of
7 another. Now, a reasonable belief is one which would be
8 held by a person of ordinary prudence and intelligence
9 situated as this defendant was. Self-defense exonerates a
10 person who uses force in the reasonable belief that such
11 action was necessary to prevent his death or serious bodily
12 injury, even though his belief was later proven mistaken.

13 So, accordingly, the law requires only a
14 reasonable, not necessarily a correct judgment. Now, even
15 if you find that the use of deadly force was reasonable,
16 there are limitations on the use of deadly force.

17 If you find the defendant, with the purpose of
18 causing death or serious bodily harm to another provoked or
19 incited the use of force against him, then that defense is
20 not available to him. If you find the defendant knew that
21 he could avoid the necessity of using deadly force by
22 retreating, providing the defendant knew he could do so with
23 complete safety, then that defense is not available to him
24 either.

25 So that in your inquiry as to whether a defendant

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1 who resorted to deadly force knew that an opportunity to
2 retreat with complete safety was available, the total
3 circumstances, including the attendant excitement
4 accompanying the situation must be considered.

5 So that the State still has the burden of proving
6 to you beyond a reasonable doubt that if self-defense is
7 used as a defense, that that defense is untrue. This
8 defense only applies if all the conditions or the elements
9 previously described exist. The defense should be rejected
10 if the State disproves any of the conditions beyond a
11 reasonable doubt.

12 The same theory applies to the issue of retreat.
13 Remember, that the obligation of a defendant to retreat only
14 arises if you find that the defendant resorts to the use of
15 deadly force. If a defendant does not resort to the use of
16 deadly force, one who is unlawfully attacked may hold his
17 position and not retreat when the attack upon him is by
18 deadly force or some lesser force.

19 Now, the next count of the indictment, which this
20 defendant is charged, says that at the same time and place
21 this defendant did knowingly commit an act of robbery upon
22 Keith Banks, and in the course of committing that robbery
23 was armed with, and did threaten the immediate use of a
24 deadly weapon, a knife.

25 The law says a person is guilty of robbery if in

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1 the course of committing a theft, either he knowingly
2 inflicts bodily injury or uses force upon another, or
3 threatens another with, or purposely puts him in fear of
4 immediate bodily injury. So in order for you to find the
5 defendant guilty of the crime of robbery the State must
6 prove that the defendant was in the course of committing a
7 theft; that while in the course of committing that theft he
8 either knowingly inflicted bodily injury, used force upon
9 another, or threatened another with, or purposely put
10 another in fear of immediate bodily injury.

11 Now, the State must prove beyond a reasonable
12 doubt that this defendant was in the course of committing a
13 theft. And in this connection you're advised that an act is
14 considered to be in the course of committing a theft if it
15 occurs in an attempt to commit the theft, either during the
16 commission of the theft itself or in immediate flight after
17 that attempt.

18 By theft we mean the unlawful taking or the
19 exercise of unlawful control over property of another with a
20 purpose to deprive that person thereof.

21 Now, I've already explained what the word
22 purposely means. So that, again, the State must prove that
23 this defendant was in the course of committing the theft;
24 that in the course of committing that theft this defendant
25 knowingly either inflicted bodily injury or used force upon

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1 another. Again, under this particular charge you have a
 2 right to consider whether this was robbery in the first
 3 degree, which is the use of a knife; whether it was robbery
 4 by force without the necessity of the actual force involved,
 5 merely the taking.

6 Now, the fourth count in this particular charge is
 7 that at the time and place this defendant did knowingly and
 8 unlawfully possess a certain weapon, a knife, under
 9 circumstances not manifestly appropriate for such a lawful
 10 use as it may have. And the law in this regard says any
 11 person who has in his possession any weapon with a
 12 purpose -- no. I'll withdraw that.

13 Any person who knowingly has in his possession a
 14 knife without any explainable lawful purpose is guilty of a
 15 crime. So, in order to convict the defendant on this charge
 16 the State has the burden of proving beyond a reasonable
 17 doubt that the defendant had a knife; that he possessed the
 18 knife knowingly, and the knife that he had was not, for
 19 instance, of an explainable lawful purpose. That, we
 20 mean -- in other words, a kitchen knife in a kitchen is an
 21 appropriate item. However, a kitchen knife taken out of
 22 that kitchen and used in the street then becomes such an
 23 unlawful possession of an item. That is what is meant by
 24 this particular law.

25 So the State has to prove; one, that he knowingly

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1 possessed this particular knife; and that his possession of
 2 that knife was for an inappropriate purpose.

3 And the last indictment is that not only was
 4 Mr. Dove in possession of a knife unlawfully, but that it
 5 was his intention to use that knife unlawfully against the
 6 person of another; in this case, against Keith Banks. So
 7 the law says, any person who has in his possession any
 8 weapon with a purpose to use it unlawfully against the
 9 person or property of another is guilty of a crime. So the
 10 State has to prove these elements beyond a reasonable doubt.

11 One, that a knife was used; that this defendant
 12 possessed it; that he possessed this weapon with a purpose
 13 to use it against another person, and that his purpose was
 14 to use that weapon unlawfully.

15 And by weapon we mean anything readily capable of
 16 inflicting serious bodily injury or death.

17 Secondly, the State has to prove that he had
 18 possession. By possession we mean actual custody. And the
 19 third, that his purpose in possessing that weapon was to use
 20 it against another person. And by purpose I've defined as a
 21 condition of the mind which cannot be seen, but can only be
 22 determined by a person's inferences, conduct, words or acts.

23 In determining a defendant's purpose in possessing
 24 a weapon, you may consider that a person acts purposely with
 25 respect to the nature of his conduct or a result of his

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1 conduct if it is his conscious object to engage in conduct
2 of that nature. That is, a person acts purposely if he
3 means to act in a certain way or cause a certain result.

4 And the fourth element is that he had a purpose to
5 use this in a manner that was proscribed by law. So you
6 have to find that he had not only possessed the weapon
7 unlawfully, but that his purpose in possessing that weapon
8 was to accomplish the crime which the State sets forth he
9 has done. Those are the elements that the State has to
10 prove beyond a reasonable doubt.

11 Now, there is for your consideration in this case
12 a certain oral statement alleged to have been made by the
13 defendant. It is your function to determine whether or not
14 that statement was actually made by the defendant, and if
15 made, whether such statement or any portion of it is
16 credible.

17 In considering whether or not that statement
18 allegedly made by him is credible, you should take into
19 consideration the circumstances and the facts surrounding
20 the giving of that statement as well as all other evidence
21 in this case. If, after a consideration of all these
22 factors you determine that the statement was not actually
23 made, or that his alleged statement is not credible, you
24 must disregard the statement completely.

25 If you find, however, the statement was made, and

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1 that part or all of it is credible, you may give such weight
2 to that portion of the statement you found to be truthful
3 and credible as you deem it should be accorded in your
4 deliberations.

5 Now, you have heard testimony that a witness has
6 been previously convicted of a crime. This testimony may
7 only be used by you in determining the credibility or
8 believability of that witness' testimony. A jury has a
9 right to consider whether a person who has previously failed
10 to comply with society's rules as demonstrated through a
11 criminal conviction would be more likely to ignore the oath
12 requiring truthfulness on the witness stand than a law
13 abiding citizen. You may consider in determining this
14 issue, the nature and the degree of the prior conviction and
15 when it occurred. However, you're not obligated to change
16 your opinion as to the credibility of a witness simply
17 because of a prior conviction. It is evidence that you may
18 consider along with the other factors we have previously
19 discussed in determining credibility of a witness.

20 Now, an expert has testified in this particular
21 case. In legal terminology, an expert witness is a witness
22 who has some special knowledge or training that is not
23 possessed by the ordinary juror and, thus, who may be able
24 to provide assistance to a jury in its fact finding duties.

25 In this case the doctor was called as an expert,

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1 and he testified.

2 Now, you're not bound by his opinion, but you
3 should consider it and give it the weight you think it's
4 entitled to; whether that be great or slight. You may
5 reject it. But in examining his opinion consider the
6 reasons given for it. Consider his qualifications and his
7 credibility.

8 Now, you have heard comments about prior
9 contradictory statements of witnesses. Evidence, including
10 a witness' statement or testimony prior to trial showing
11 that at a prior time a witness has said something which is
12 inconsistent with the witness' testimony at trial may be
13 considered by you for the purpose of judging a witness'
14 credibility. It may also be considered by you as
15 substantive evidence; that is, proof of the truth of what is
16 stated in a prior contradictory statement.

17 Evidence has been presented showing that at a
18 prior time a witness has said something, or failed to say
19 something which is inconsistent with that witness' testimony
20 at trial. This evidence may be considered by you as
21 substantive evidence or proof of the truth of the prior
22 contradictory statement or omitted statement.

23 However, before deciding whether the prior
24 inconsistent statement or omitted statement reflects the
25 truth, in all fairness you will want to consider all of the

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1 circumstances under which that statement or failure to
2 disclose occurred.

3 You may consider the extent of the inconsistency
4 or omission and the importance or lack of importance of that
5 inconsistency or omission on the overall testimony of the
6 witnesses as bearing on his or her credibility. You may
7 consider such factors as where and when the prior statement
8 or omission occurred, and the reasons, if any at all.

9 Now, again, the extent to which such
10 inconsistencies or omissions reflect the truth is for you to
11 determine. Consider their materiality, and the relationship
12 to their entire testimony and all the evidence in the case.
13 When, the circumstances under which they were said or
14 omitted, and whether the reasons given, therefore, appear to
15 be believable and logical.

16 In short, consider all that I have told you about
17 prior inconsistent statements or omissions.

18 Now, there is in evidence a series of photographs
19 that were taken apparently by someone who identified the
20 defendant. Now, the possession of photographs by police
21 does not necessarily connote any criminal purpose. Police
22 have in their gallery pictures of individuals who have not
23 committed crimes. So you're not to take the fact that there
24 is such photographs of the defendant as an indication of any
25 prior criminal record of any kind.

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1 Now, I've stressed in the very beginning, and I do
2 it again now, a defendant on trial is presumed to be
3 innocent unless each and every element of an offense is
4 proven beyond a reasonable doubt, and the defendant must not
5 be found guilty of that charge unless the State is able to
6 do so. So the burden of proving each element of a charge
7 beyond a reasonable doubt rests squarely upon the State, and
8 that burden never shifts to the defendant.

9 The defendant in a criminal case has no obligation
10 or duty to prove his innocence or to offer any proof
11 regarding his innocence.

12 The defendant in this case chose not to be a
13 witness. It is his constitutional right to remain silent.
14 So I charge you you're not to consider for any purpose in
15 any manner or at arriving at your verdict the fact that he
16 did not testify. Nor should that fact enter into your
17 deliberations or your discussions in any manner or at any
18 time.

19 A defendant is entitled to have a jury consider
20 all of the evidence, and he is entitled to the presumption
21 of innocence even if he does not testify as a witness.

22 Again, in judging the determination as you must
23 whether or not a person is to be credible, take into
24 consideration the appearance, the demeanor of a witness, the
25 manner in which he or she may be testifying, a witness'

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1 interest in the outcome of the trial, if any; their means of
2 obtaining knowledge of the facts, the witness' power of
3 discernment, meaning their judgment, their understanding,
4 their ability to observe, recollect and relate; the possible
5 bias in favor of any side for whom a witness testified; the
6 extent to which, if at all, each witness either corroborated
7 or was contradicted or supported or discredited by other
8 evidence, or whether the witness testified with an intent to
9 deceive you; the reasonableness or unreasonableness of the
10 testimony a witness has given, and all other matters in the
11 evidence which serve to support or discredit his or her
12 testimony to you.

13 During your deliberations you may ask what is more
14 reasonable, the more probable, or the more logical version.

15 Now, inconsistencies or discrepancies in the
16 testimony of a witness or between the testimony of different
17 witnesses may or may not cause you to discredit such
18 testimony. Two or more persons witnessing an incident may
19 see or hear it differently. An innocent misrecollection,
20 like failure of recollection, is not an uncommon experience.

21 In weighing the effect of a discrepancy, consider
22 whether it pertains to a matter of important or unimportant
23 detail, and whether the discrepancy results from innocent
24 error or willful falsehood.

25 Now, you have a right in your discretion to

Court Charge

90

1 believe the testimony that a witness has given to you, but
 2 if you feel any witness has deliberately attempted to
 3 mislead you in any way, then you have a right to either
 4 accept all of that testimony, part of it, and you have a
 5 right in your discretion to ignore all of it. So you must
 6 give it such credibility as you feel it's entitled to.

7 Now, evidence may either be direct or
 8 circumstantial. Direct evidence means evidence that
 9 directly proves a fact without an inference, and which in
 10 itself, if true, conclusively establishes the fact.

11 On the other hand, circumstantial evidence means
 12 evidence that proves a fact from which an inference of the
 13 existence of another fact may be drawn. And by inference we
 14 mean a deduction of fact that may logically and reasonably
 15 be drawn from another fact or group of facts established by
 16 the evidence.

17 Whether or not an inference should be drawn is for
 18 you to decide using your own common sense, knowledge, and
 19 everyday experience. Ask yourselves, is it probable,
 20 logical and reasonable.

21 It is not necessary that all facts be proven by
 22 direct evidence. They may be proven by direct evidence,
 23 circumstantial evidence, or a combination of both. All are
 24 acceptable as a means of proof. In many cases
 25 circumstantial evidence may be more certain, satisfying and

Court Charge

91

1 persuasive than direct evidence.

2 When we talk about direct evidence, if you see
 3 that it's snowing, that's direct evidence. Yet, if by the
 4 same time you've gone to bed, the ground is clear, and yet
 5 when you wake up in the morning you find snow on the ground,
 6 you have a right to believe that during the night it snowed.
 7 This is what we talk of circumstantial evidence.

8 Now, there's been some testimony in this case from
 9 which you may infer that Mr. Dove fled shortly after the
 10 alleged commission of the crime. The question of whether he
 11 did flee after the commission of the crime is another
 12 question of fact for your determination.

13 Now, mere departure from a place where a crime has
 14 been committed does not constitute flight. But if you find
 15 that this defendant, fearing that an accusation or an arrest
 16 would be made against him on the charge involved in this
 17 indictment, took refuge in flight for the purposes of
 18 evading that accusation or arrest, then you may consider
 19 such flight in connection with all the other evidence in
 20 this case as an indication or proof of consciousness of
 21 guilt.

22 Flight may only be considered as evidence of
 23 consciousness of guilt if you should determine that his
 24 purpose in leaving was to evade an accusation or arrest for
 25 the offenses charged in this indictment.

Court Charge

92

1 Now, the State has the burden of proving a
2 defendant guilty beyond a reasonable doubt. Some of you may
3 have served as jurors in civil cases where you were told
4 that it is necessary to prove only that a fact is more
5 likely true than not true.

6 In criminal cases the State's proof must be more
7 powerful than that. It must be beyond a reasonable doubt.

8 A reasonable doubt is an honest and reasonable
9 uncertainty in your minds about the guilt of a defendant
10 after giving full and impartial consideration to all of the
11 evidence.

12 Now, a reasonable doubt may arise from the
13 evidence itself or from a lack of evidence. It is a doubt
14 that a reasonable person hearing the same evidence would
15 have. By proof beyond a reasonable doubt is proof, for
16 example, that leaves you firmly convinced of a defendant's
17 guilt.

18 In this world we know very few things with
19 absolute certainty. In criminal cases the law does not
20 require proof that overcomes every possible doubt. If,
21 based on your consideration of the evidence, you're firmly
22 convinced of the defendant's guilt of the crime charged, you
23 must find him guilty. But if, on the other hand, you're not
24 firmly convinced of his guilt, you must give him the benefit
25 of the doubt and find him not guilty.

Court Charge

93

1 Now, there's nothing different in the way a jury
2 is to consider the proof in a criminal case from that in
3 which all reasonable persons treat any question depending
4 upon evidence presented to them. You are expected to use
5 your own good common sense. Consider the evidence for only
6 those purposes for which it has been admitted. Give it a
7 reasonable and fair construction in the light of your
8 knowledge of how people behave.

9 It is the quality of the evidence, not simply the
10 number of witnesses that control.

11 Now, anything that has not been marked in evidence
12 cannot be given to you in the jury room even though it may
13 have been marked for identification. Only those items
14 marked in evidence can be given to you.

15 Now, very shortly you'll go into the jury room to
16 start your deliberations. You are to apply the law as I
17 have instructed you as to the facts as you find them to be
18 for the purpose of arriving at a fair and correct verdict.
19 This verdict must represent the considered judgment of each
20 juror. It must be unanimous as to each charge.

21 This means all of you must agree if a defendant is
22 guilty or not guilty on any charge.

23 Since this is a criminal case, again, your verdict
24 must be unanimous. All 12 jurors ultimately deliberating
25 must agree. You should decide the case on the evidence

Court Charge

94

1 without bias, without prejudice, without sympathy, and
 2 without reference to any suspicion or conjecture.
 3 If there are any objections to the charge, I'll
 4 hear counsel at side bar.
 5 MR. ROBERTS: No objection. I have a housekeeping
 6 issue, if I can approach.
 7 THE COURT: Come on up.
 8 (Side bar.)
 9 MR. ROBERTS: Judge, on the photo array, on the
 10 signed, the signature on Number 5, the defendant's picture,
 11 there's a signature of an additional witness who didn't
 12 testify. I think we can agree it has to be redacted. The
 13 question is how to do it. If you would just put a slip over
 14 it, the inference is going to be there that somebody else
 15 signed that. I, frankly, don't know how to deal with it.
 16 THE COURT: If it's simply put on -- I really
 17 don't know.
 18 MR. ROBERTS: Other than photocopy the back.
 19 THE COURT: Then you lose the picture -- you mean
 20 the back, and attach it?
 21 MR. ROBERTS: And attach it to it.
 22 MS. CHARLES: Or we can just staple it closed.
 23 You're saying photocopy on the back.
 24 MR. ROBERTS: Photocopy the back with that
 25 signature eliminated.

Court Charge

95

1 THE COURT: We'll do it that way.
 2 MR. ROBERTS: We should tell them -- well --
 3 THE COURT: If I tell them, then you highlight
 4 something. You know, we'll simply do it that way, then send
 5 it in a little bit later.
 6 MR. ROBERTS: Okay.
 7 (Open court.)
 8 THE COURT CLERK: As your name is called, please
 9 step from the jury box. Juror Number 1, Robert Buchanan.
 10 Please step from the jury box.
 11 THE COURT: Swear them in first.
 12 (The sheriff's officers are sworn.)
 13 THE COURT: Mr. Roth, as Juror Number 1 now,
 14 you'll become the foreman of the jury.
 15 Now, if during your deliberations any of the
 16 jurors have a question of fact or feel you need further
 17 assistance or instructions, write your questions on a sheet
 18 of paper, and give it to the sheriff's officer who will be
 19 standing outside the jury room at the door, and in turn give
 20 it to me. I will then go over the questions with the
 21 lawyers, and I will try to answer them as quickly as
 22 possible. Please be patient. If you do send out a
 23 question, do not disclose where you stand on your
 24 deliberations. Again, I am submitting to you a verdict
 25 form. In the first count you're to consider passion

Court Charge

96

1 provocation murder. If you find the defendant guilty on
2 that first count, then go directly to the second count. On
3 the other hand, if you find him not guilty as to passion
4 provocation murder, you have the right to consider murder.
5 If you find him guilty as to murder, then you're finished on
6 that first count.

7 If you find him not guilty, then you have a right
8 to consider aggravated manslaughter. Again, if you find not
9 guilty on that, then you have a right to rule on reckless
10 manslaughter.

11 Then on the third count where he's charged with
12 robbery, you have a right to consider whether this was
13 attempted robbery while armed, or attempted robbery, which
14 we refer to as a lesser included offense.

15 Members of the jury, please go into the jury room.
16 (The jury returns to the jury room.)

17 THE COURT: Mr. Buchanan, I want to thank you for
18 serving. You were very attentive. I'm sorry you didn't
19 make the last 12. We're not excusing you yet. We want you
20 to be here when the jury comes in with a verdict or when
21 they come in with a question. So that I'm going to ask the
22 sheriff's officer to take you to another room. You can talk
23 to yourself. If there's anything you need, just ask them.
24 Thank you.

25 MS. CHARLES: Your Honor --

Colloquy

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1 THE COURT: Yes.

2 MS. CHARLES: I think there's a typo with regard
3 to the first count.

4 THE COURT: Tell me.

5 MS. CHARLES: Should be murder, not passion
6 provocation murder.

7 THE COURT: No. The case law requires provocation
8 be ruled on first.

9 MS. CHARLES: Okay. Well, then where's the -- I'm
10 not seeing it. I'm sorry, Judge, I didn't see the murder
11 there. That's my problem. Sorry.

12 THE COURT: The Court rules that you have to rule
13 that out first.

14 Okay. Bring the rest of it in, and tell them the
15 rest will be brought in shortly.

16 Everything else in order, counsel?

17 MR. ROBERTS: Yes.

18 (The jury begins deliberations at 2:30 p.m.)

19 THE COURT: Mr. Roberts, based on your comments as
20 to the signatures on the back of picture Number 5, the Court
21 has agreed with you, and so has the State, to allow the --
22 something to be placed over it in place of the other
23 photograph -- not the photograph, the back of that
24 photograph. I find that to be satisfactory.

25 You've asked that I advise the jury as to certain

Colloquy

98

1 things. Please place on the record your objection.

2 MR. ROBERTS: Thank you, Judge.

3 The photograph of my client, Number 5 in this
4 line-up, was actually taken when he was arrested a couple of
5 days after the incident. In this photograph he is wearing
6 what appears to be a red sweatshirt.

7 One of the witnesses identified him the night of
8 the incident as wearing a red sweater. I feel that the fact
9 in this picture he's wearing a red sweatshirt is
10 prejudicial; may be connected up by a jury as to the
11 incident itself. There has been no testimony as to when any
12 of these photographs were taken. Your Honor did charge that
13 these pictures can be in possession of the Police Department
14 in matters other than criminal, but I would urge the Court
15 to further instruct the jury that there has been no
16 testimony as to when any of these photographs were taken,
17 and they should not have any conjecture or guesswork as to
18 when, in fact, they were.

19 I think, clearly, because of the testimony it
20 might be very prejudicial and unfair because he was wearing
21 this days later when he was arrested.

22 MS. CHARLES: Your Honor, I believe that your
23 initial charge with respect to same governing how
24 photographs may come into the hands of police personnel
25 certainly is sufficient, and no additional charge should be

Colloquy

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1 given as to draw additional attention to that particular
2 photograph.

3 THE COURT: I think the original comment made by
4 the Court as to the photographs should be sufficient. I
5 shall not make any further observations.

6 MR. ROBERTS: Judge, you also indicated that you
7 wouldn't instruct the jury as to the fact that we did redact
8 and paste over on the back. My concern is, jurors being
9 inquisitive, it's very obvious that we've done something.
10 Some of them may want to rip this off and take a look. I
11 would ask that you advise them not to.

12 THE COURT: No, I think then we'll be highlighting
13 the fact completely and draw their attention. And it is --
14 I've examined it, and it looks -- the backing looks the same
15 as all the others.

16 MR. ROBERTS: We've done it on every one.

17 THE COURT: So I see by -- if I were to give them
18 that instruction it would, perhaps, give them incentive to
19 find out what was behind it. I'll let it stand as it is.

20 Bill, bring that to the jury.

21 MR. ROBERTS: Judge, I'm going to be in Judge
22 Brown's. He wants me over there.

23 THE COURT: As long as we know where you are.

24 MS. CHARLES: And I won't be far. I'll find a
25 number for you to reach me, your Honor.

Colloquy

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1 (The Court receives a question from the jury at
 2 3:25 p.m., which is marked C-1 in evidence.)
 3 THE COURT: For the record, Mr. Roberts, you waive
 4 the appearance of the defendant for the purposes of this
 5 matter?
 6 MR. ROBERTS: I do, your Honor.
 7 THE COURT: The jury has sent out the note: When
 8 was the picture of the defendant taken, the date? And I am
 9 sending in their response. There has been no testimony as
 10 to when the defendant's picture was taken. And that's how
 11 it's going to go to them.
 12 MR. ROBERTS: I'm sorry. The question was the
 13 defendant --
 14 THE COURT: Of the defendant.
 15 MR. ROBERTS: I'm sorry, Judge. Repeat that
 16 again, your answer.
 17 THE COURT: There has been no testimony as to when
 18 the defendant's picture was taken.
 19 MR. ROBERTS: And I would ask that you add to
 20 that, and you are not to consider or guess as to when that
 21 photograph was taken. Something along those lines because
 22 they can't now guess and say, well, it might have been taken
 23 then, or we have to consider it.
 24 THE COURT: There's no testimony before them.
 25 Anything else is guessing.

Colloquy

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1 MR. ROBERTS: I know, but I would ask that you add
 2 something along the lines that I suggested to assure that
 3 they don't.
 4 THE COURT: You may not guess. All right. You
 5 may not guess.
 6 All right. Thank you. I put that on.
 7 (The jury note with the Court's answer is given to
 8 the jury in the jury room by the sheriff's officer.)
 9 (It is now 4:05 p.m.)
 10 THE COURT: Have the defendant come out.
 11 Counsel, I intend to call the jury out, then ask
 12 them if they want to stay longer, or whether they want to
 13 return tomorrow morning.
 14 Ask the alternate to come out and the jurors to
 15 take their place.
 16 (The jury is brought into the courtroom.)
 17 THE COURT: Ladies and gentlemen, I don't want to
 18 interfere with your deliberations. I called you out to
 19 decide whether or not you want to stay longer. I'm willing
 20 to stay -- or whether, otherwise, come back tomorrow
 21 morning. So, Mr. Roth, will you canvass your jurors and let
 22 us know after you return to the jury room.
 23 MR. ROTH: Okay. Thank you.
 24 (The jury returns to the jury room.)
 25 (Jury communication at 4:10 p.m. to the sheriff's

Colloquy

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1 officer.)

2 THE SHERIFF'S OFFICER: They want to go.

3 THE COURT: Have the alternate come out. Advise
4 them to return tomorrow morning as they come out -- have
5 them come out. I'll tell them. We need him out. Bring him
6 out first. We'll tell them to leave. We need the defendant
7 here.

8 (The defendant is brought into the courtroom.)

9 THE COURT: Have the alternate come out, and have
10 them line up. Right in front of the jury box, you can line
11 up.

12 (The jury is brought into the courtroom.)

13 THE COURT: Members of the jury, I'll take your
14 advice. You're to return tomorrow morning at 9 o'clock.
15 The evidence will be taken from you now and returned to you
16 tomorrow morning. And, Mr. Buchanan, we need you then, too.
17 All right. Thank you. Don't talk about the case once
18 you're out of here.

19 (The jury leaves the courtroom.)

20 THE COURT: It's my intention, gentlemen, to
21 advise as soon as I know the jurors are all there, to have
22 the officers bring the evidence in to them without the
23 necessity of them coming out at all. Is that all right with
24 you?

25 MR. ROBERTS: That's fine. We don't have to be

Colloquy

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1 here at 9 sharp.

2 THE COURT: Without the necessity of having the
3 defendant here or you here. They will not come into the
4 courtroom.

5 MR. ROBERTS: Great.

6 THE COURT: All right.

7 Now, bring out Mr. Jones again.
8
9

10
11 (Whereupon the Dove matter is adjourned for the
12 day, to be continued on Tuesday, April 7, 1998 at 9 a.m.)
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C E R T I F I C A T E

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I, FRANCES L. FORBES, C.S.R., License Number
XI-01085, 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 Proceedings, and is a true and accurate compressed
transcript of my stenographic notes to the best of my
knowledge and ability.

Frances L. Forbes, C.S.R.
Official Court Reporter

9-17-99
Date

Essex County Courthouse

A-6522-9874

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL PART
ESSEX COUNTY, INDICTMENT NO: 2358-5-97
APP. DIV. NO. 6522-9874 Jg

STATE OF NEW JERSEY,
Complainant,

vs.

ROY DOVE,
Defendant.

STENOGRAPHIC TRANSCRIPT
OF
TRIAL PROCEEDINGS

VERDICT

FILED
APPELLATE DIVISION

Place: Essex County Courthouse
50 West Market Street
Newark, New Jersey 07102

OCT 18 1999

R. Collins
Clerk

Date: Tuesday, April 7, 1998
Volume 1 of 1
Pages 1 - 11

B E F O R E:

THE HON. JULIUS A. FEINBERG, J.S.C., AND A JURY.

TRANSCRIPT ORDERED BY:

DEBORAH C. COLLINS, ESQ., Office of the Public Defender

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

ROSALYN CARY CHARLES, ESQ., Assistant Prosecutor for the
County of Essex, Attorney for the State

RICHARD M. ROBERTS, ESQ., (Roberts & Fielo, Esqs.)
Attorney for the Defendant

REC'D
APPELLATE DIVISION

OCT 18 1999

R. Forbes
Clerk

FRANCES L. FORBES, C.S.R.
Official Court Reporter
50 West Market Street
165 Essex County Courthouse
Newark, New Jersey 07102

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I N D E X

JURY VERDICT 12:10 p.m.

E X H I B I T S

EXHIBIT	EVID.
C-2 Jury Note 11:25 a.m.	3
C-3 Jury Note 11:35 a.m.	4

PAGE 3

Verdict

3

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(The jury begins deliberations at 9:15 a.m.)
 THE COURT: We'll send them out for a break. Have the alternates -- tell the alternate as well to come in.
 (The jury is brought into the courtroom at 10:50 a.m.)
 THE COURT: I called you out to tell you that I think you need a break for a while, get some air. I'll send you downstairs, if you want, for coffee. Have a break for about 25 minutes.
 When you come back, go back into the jury room and continue your deliberations.
 THE JURORS: Thank you. Thank you.
 (The jury takes a recess from 10:50 until 11:15 a.m.)
 (The jury resumes deliberations at 11:15 a.m.)
 (The Court receives a note from the jury at 11:25 a.m., which is marked C-2 in evidence.)
 THE COURT: The jury has sent out the following note: Can we get a short definition of the four murder charges?
 I'll do my best, subject to counsels' approval. I intend to advise them in the very beginning before they can consider any of the murder charges they have to satisfy themselves that the State has proven beyond a reasonable doubt as to the identification of the defendant, because if they're unable to resolve that issue they cannot resolve the issue of the murder. Do you agree with me?

Verdict

1 MS. CHARLES: I agree with you, logically, your
2 Honor. I would just assume since they're getting there,
3 they've gotten past the identification.

4 THE SHERIFF'S OFFICER: Judge, we have a light
5 right there. Do you want me to go in there?

6 THE COURT: Yes. See. Maybe there's something
7 new.

8 (The jury sends out another question at
9 11:35 a.m., which is marked C-3 in evidence.)

10 THE COURT: This note: Does armed mean, in Count
11 Three, does armed mean concealed or visible?

12 MS. CHARLES: I wouldn't answer that in the
13 affirmative. I would give them the law with respect to
14 possession, but it could mean -- that could mean --

15 THE COURT: It could mean either. Let's first get
16 to this other issue.

17 MR. ROBERTS: Judge, I would agree that you should
18 charge them as to the getting by the identity situation.

19 You know, sometimes you can never tell what
20 questions are about. It certainly does no harm, and, if, in
21 fact, they haven't gotten by that --

22 THE COURT: Yes, it seems to me that if they can't
23 resolve that issue, then the other is moot.

24 MR. ROBERTS: And if they have, then it's done.
25 So at least advise them of it.

Verdict

1 THE COURT: All right. That seems like -- to make
2 it short, I don't know how, but I'm going to do my best.

3 All right. Have the jury come out and the
4 alternate.

5 (The jury is brought into the courtroom at 11:40 a.m.)

6 THE COURT: Members of the jury, I have two notes.
7 I'll take the first one first. Can we get a short
8 definition of the four murder charges?

9 I'll do my best. However, I must advise you
10 before you consider the issue of the murder and the charges
11 against the defendant, you consider that only if you have
12 already decided as to the identification, that the State has
13 proven the identification of the defendant beyond a
14 reasonable doubt, then you can consider whether or not he,
15 in effect, can be charged with the murder.

16 Now, as I've indicated to you, murder involves the
17 knowing or purposeful killing of an individual. And you
18 have to consider first what we call passion provocation.

19 Provocation is such -- I'll try to limit it as
20 much as I can and still give you the gist of what the
21 particular charge is.

22 Now, passion provocation manslaughter is death
23 caused purposely or knowingly, as I have defined it for you;
24 that is, committed in the heat of passion resulting from a
25 reasonable provocation. It has four factors that you have

Verdict

6

1 to consider.

2 (1) That there was adequate provocation;
3 (2) That the provocation actually impassioned the
4 defendant;

5 (3) That he does not have a reasonable time to
6 cool off; and,

7 (4) That he did not actually cool off before
8 committing the act.

9 Now, you have to consider whether, in fact, there
10 was such provocation; whether the provocation is adequate,
11 essentially, amounts to whether there was a loss of
12 self-control as a reasonable reaction to the circumstances.
13 Words alone do not constitute adequate provocation. The
14 provocation must be sufficient to arouse the passions of an
15 ordinary person beyond the power of his control.

16 Then you must determine whether he was actually
17 impassioned, whether he lost his self-control, whether he
18 had a reasonable time to cool off; in fact, did he cool off,
19 before you go on to the next element, which is the murder
20 itself.

21 Now, murder, as I've indicated, is something the
22 State has to prove that this defendant caused the death of
23 Keith Banks, and that he did so purposely or knowingly, and
24 that he did not act in the heat of passion resulting from a
25 reasonable provocation.

Verdict

7

1 I've defined purposely and knowingly to you.

2 The question is then at the time the event took
3 place did he know, and his purpose was either to inflict
4 serious bodily injury that resulted in death.

5 Then I've told you there is what we call
6 aggravated manslaughter, and by aggravated manslaughter we
7 say a person is guilty of aggravated manslaughter if he
8 recklessly causes the death of another person under
9 circumstances manifesting extreme indifference to human
10 life. The State under this section has to prove the
11 following elements beyond a reasonable doubt:

12 That the defendant caused his death; that he did
13 so recklessly, and that he did so under circumstances
14 manifesting extreme indifference to human life.

15 By recklessly we mean when a person is aware of,
16 and consciously disregards a substantial and unjustifiable
17 risk that death will result from his conduct. The risk must
18 be of such a nature and degree that considering the nature
19 and the purpose of his act and his conduct and the
20 circumstances known to him that his disregard of that risk
21 was a gross deviation from the standard of conduct that a
22 reasonable person would follow in that situation.

23 In other words, you must find that he was aware
24 of, and consciously disregarded the risk of causing death.

25 Now, if you find that he was aware of, and

Verdict

8

1 disregarded the risk of causing that death, then you must
 2 determine whether that risk was -- that he disregarded was
 3 substantial and unjustifiable. You must determine the
 4 nature and the purpose of his conduct, and the circumstances
 5 known to him, and you must determine whether in light of
 6 those factors his disregard of that risk was a gross
 7 deviation from the conduct that a reasonable person would
 8 have observed in his situation.

9 The difference between reckless manslaughter and
 10 aggravated manslaughter is that in aggravated manslaughter
 11 the State has to prove that beyond a reasonable doubt, that
 12 he acted under circumstances manifesting extreme
 13 indifference to human life.

14 Now, that phrase does not focus on his state of
 15 mind but under the circumstances which you find he acted.

16 If, in light of the evidence, you find that his
 17 conduct resulted in a probability as opposed to a mere
 18 possibility of death, then you may find that he acted under
 19 circumstances manifesting extreme indifference to human
 20 life. On the other hand, if you find that his conduct
 21 resulted only in a possibility of death, then you may
 22 consider reckless manslaughter, which I've already indicated
 23 is the situation.

24 That is just about as brief as I can make these
 25 situations known to you.

Verdict

9

1 Now, your next question is: Does armed mean
 2 concealed or visible? It could mean either.

3 Now, you may please continue your deliberations,
 4 and I thank you.

5 A JUROR: Thank you.

6 (The jury returns to deliberate at 11:45 a.m.)

7 (The jury reaches a verdict at 12:10 p.m.)

8 THE COURT: All right. Have the jury come out and
 9 the alternate as well.

10 (The jury is brought into the courtroom.)

11 THE COURT CLERK: Mr. Foreman, please rise.

12 Have you agreed upon your verdict?

13 THE FOREMAN: Yes, Ma'am.

14 THE COURT CLERK: Is this verdict unanimous?

15 THE FOREMAN: Yes, Ma'am.

16 THE COURT CLERK: How do you find as to Count One
 17 of Indictment 2358-5 of the 1997 term, charging the
 18 defendant, Roy Dove, with passion provocation murder?

19 THE FOREMAN: Not guilty.

20 THE COURT CLERK: How do you find as to murder?

21 THE FOREMAN: Not guilty.

22 THE COURT CLERK: As to aggravated manslaughter?

23 THE FOREMAN: Guilty.

24 THE COURT CLERK: As to Count Two, murder
 25 committed in the commission of attempted robbery?

Verdict

10

1 THE FOREMAN: Guilty.
 2 THE COURT CLERK: As to Count Three, attempted
 3 robbery while armed?
 4 THE FOREMAN: Guilty.
 5 THE COURT CLERK: Count Four, unlawful possession
 6 of a knife?
 7 THE FOREMAN: Guilty.
 8 THE COURT CLERK: Count Five, unlawful possession
 9 of a knife for an unlawful purpose?
 10 THE FOREMAN: Guilty.
 11 THE COURT: Thank you. Please be seated.
 12 Now, members of the jury, you heard your foreman
 13 read your verdicts.
 14 As your name is called, if this is your verdict
 15 you'll say yes. If it is not, you'll say no.
 16 (The Court Clerk polls the jury and all are in
 17 agreement with the verdict as announced by the foreman.)
 18 THE COURT: I thank you, and I appreciate the time
 19 each of you has given, including Mr. Buchanan, for this
 20 particular case.
 21 I am going to call downstairs and verify the fact
 22 that you're dismissed. I'll ask you to wait in the jury
 23 room while I find that out.
 24 (The jury returns to the jury room.)
 25 THE COURT CLERK: Sentence date, April 22.

Verdict

11

1 THE COURT: All right. Mr. Dove, you'll be
 2 sentenced by this court on April 22.
 3 What were the prior records?
 4 MS. CHARLES: He has two prior first degree
 5 robbery convictions.
 6 THE COURT: Two priors?
 7 MS. CHARLES: So --
 8 THE COURT: And he's awaiting another murder
 9 charge?
 10 MS. CHARLES: Robbery.
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(Whereupon, the matter is concluded.)

C E R T I F I C A T E

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I, FRANCES L. FORBES, C.S.R., License Number
XI-01085, 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 Proceedings, and is a true and accurate compressed
transcript of my stenographic notes to the best of my
knowledge and ability.

Frances Forbes
Official Court Reporter
Essex County Courthouse

.C.S.R.

Sept. 16, 1999

Date

A-6522-9874

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL PART
ESSEX COUNTY, INDICTMENT NO: 2358-5-97
APP. DIV. NO. **6522-9874** *Jgc*

STATE OF NEW JERSEY, :
Complainant, :
vs. :
ROY DOVE, :
Defendant. :

STENOGRAPHIC TRANSCRIPT
OF
MOTION FOR RETRIAL
AND
SENTENCING

FILED Place: Essex County Courthouse
APPELLATE DIVISION 50 West Market Street
Newark, New Jersey 07102

OCT 18 Date: Friday, May 29, 1998
Volume 1 of 1
Pages 1 - 21

R. B. ...
Clerk

B E F O R E :
THE HONORABLE JULIUS A. FEINBERG, J.S.C.

T R A N S C R I P T O R D E R E D B Y :
DEBORAH C. COLLINS, ESQ., Office of the Public Defender

A P P E A R A N C E S :
ROSALYN CARY CHARLES, ESQ., Assistant Prosecutor for the
County of Essex, Attorney for the State
RICHARD M. ROBERTS, ESQ., (Roberts & Fielo, Esqs.)
Attorney for the Defendant.

R. B. ...
REC'D
APPELLATE DIVISION
OCT 18 1998

FRANCES L. FORBES, C.S.R.
Official Court Reporter
50 West Market Street
165 Essex County Courthouse
Newark, New Jersey 07102

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3	MOTION FOR RETRIAL	
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Argument-Roberts

1 THE COURT: State_v_Roy_Dove.
 2 MS. CHARLES: Rosalyn Cary Charles for the State.
 3 MR. ROBERTS: Richard Roberts for the defendant.
 4 THE COURT: Mr. Roberts, do you have an
 5 application?
 6 MR. ROBERTS: Yes, your Honor.
 7 THE COURT: I'll hear you.
 8 MR. ROBERTS: Thank you, Judge.
 9 Your Honor, Mr. Dove has asked for a new trial
 10 based on certain elements of the trial that was heard before
 11 your Honor.
 12 I want to start out on the issue that I briefed
 13 that I considered to be a most egregious departure from the
 14 normal standards that occurred in this trial.
 15 Just for the record, and to refresh your
 16 recollection, a knife was used, allegedly, in the murder of
 17 the victim in this case.
 18 THE COURT: Yes.
 19 MR. ROBERTS: Discovery was given to me prior to
 20 the trial, and that discovery indicated that there was no
 21 murder weapon found. There was discovery from witnesses
 22 that indicated that, in fact, a knife was turned over to the
 23 State, to the police. But, again, as far as what we
 24 received in discovery there were no reports of any weapon
 25 turned over; and, in fact, there was no weapon.

Argument-Roberts

4

1 Cross examination of certain witnesses was based
2 on that determination, that there was no weapon that could
3 be produced by the State. As I recall there was a fairly
4 considerable cross examination, and certain strategies by
5 defense was based on the fact there was no weapon found.

6 After the State rested, much to the chagrin of the
7 prosecutor who was totally faultless in this, new evidence
8 was brought forth to her, which was turned over to me that,
9 in fact, a knife was turned over to the Newark Police
10 Department. The knife was turned over as a result of
11 information received from a witness who was cross examined
12 on that fact based on my original knowledge of the case that
13 a weapon, in fact, was not turned over.

14 However, discovery was then given to the
15 prosecutor who turned it over to me showing that a weapon
16 was turned over by this particular witness to the Newark
17 Police Department.

18 At that time both the prosecutor, and I thought
19 that the knife was, in fact, in the custody of the property
20 room of the Newark Police Department. There was, as I
21 recall, a property sheet that was signed by the detectives
22 in this case turning the knife over to the property room.

23 A search was made by the State for that weapon,
24 and it was determined that, in fact, the weapon was missing.
25 Not that it wasn't turned over; in fact, the evidence shows

Argument-Roberts

5

1 that it was, but at -- or at the time of the trial that
2 knife could not be found, and was not found, and was not
3 turned over.

4 We were then faced with the situation of a
5 turnabout, a 180 degree turnabout in the evidence, where now
6 a knife was, in fact, at least turned over by the witness
7 who said that she turned it over. There was testimony,
8 Judge, that there were no -- there was no attempt to take
9 any fingerprints of that knife.

10 Obviously, and I suggest very, very importantly,
11 the defense had no opportunity ever to test that knife for
12 fingerprints. Again, up until the State's case was
13 concluded the defense never knew that a knife was, in fact,
14 in the custody of the State. We don't know when the knife
15 was lost. We don't know what happened to the knife. So the
16 defense had no opportunity to test that knife for
17 fingerprints.

18 The State, the Police Department never did make
19 any opportunity -- take any opportunity to test that weapon.

20 What do we do then with the new evidence. I
21 suggest that, first of all, and I know -- I believe what the
22 Court may suggest and what the prosecutor may suggest
23 concerning strategies that are used in court during trials,
24 I suggest, Judge, that first of all no matter what was going
25 on on that trial, no matter what was happening in the mind

Argument-Roberts

6

1 of defense counsel or in the mind of the prosecutor, a
 2 mistrial should have been asked for. I suggest a mistrial
 3 should have been granted on the basis of that new evidence
 4 that was discovered. However, one was not, which I suggest
 5 is another egregious error on the part of counsel.

6 What do we do then? After the defense rested, I
 7 made an application to the Court, and I briefed it. I'm not
 8 going to belabor the cases -- asking for a charge that would
 9 indicate that, if, in fact, the State was at fault in any
 10 way in losing evidence, an inference must be drawn that had
 11 that evidence been produced it would have been positive for
 12 the defense and negative for the State.

13 The charge in Youngblood was as follows where
 14 evidence was missing: More significantly the trial judge
 15 instructed the jury if you find that the State has allowed
 16 to be destroyed or lost any evidence whose content or
 17 quality are in issue, you may infer that the true fact is
 18 against the State's interest.

19 That basically is the charge that I asked your
 20 Honor to give to the jury. Given the really unique
 21 circumstances of the evidence in question, given the
 22 absolute unique and critical place that evidence has in that
 23 trial, given the lack of opportunity of the defense to test
 24 for fingerprints -- or the State to test for fingerprints,
 25 for whatever reason they decided not to -- I'm talking about

Argument-Roberts

7

1 the police -- that knife rises to the most critical of all.

2 To have that go before the jury, the issue of lost
 3 evidence, without a charge, I think, is critical, and I
 4 think contributed greatly to the jury's decision. Had a
 5 charge been given where the jury would have been told, look,
 6 the evidence is lost. It's the State's fault, whether
 7 purposely or negligently. Had that evidence been produced,
 8 you are to find that it would have been a positive effect on
 9 the State and negative on the -- positive for the defense,
 10 negative for the State. I think it might have changed the
 11 whole complexion of the jury's verdicts.

12 Unfortunately, your Honor did not charge the jury
 13 as to that evidence. I think because of that, Judge, and I
 14 think, again, we'll all agree that the way this came about
 15 was very unusual. I think that Mr. Dove's due process was
 16 violated. I think a new trial is in order on that issue
 17 alone, because of the critical nature of that evidence.

18 Do you want me to go on, Judge, or do you want to
 19 have the State respond to that?

20 THE COURT: Go ahead.

21 MR. ROBERTS: Two other items, your Honor, I'll
 22 discuss. One, if the Court will recall the testimony of the
 23 witnesses there was never any direct testimony of anybody,
 24 any witness at all observing Mr. Dove take a knife and
 25 striking the victim. There was circumstantial evidence

Argument-Roberts

8

1 placing him at the scene. But as I recall the testimony, no
2 one put a knife in his hand, and taking that knife and
3 striking the victim, and no circumstantial evidence could be
4 more compelling than direct evidence, and the charges so
5 depict. But in this case I suggest that the testimony was
6 so weak that it did not rise to that of a conviction.

7 By the way, again, just talking about that issue
8 of the weight of the evidence, you can see how important
9 that knife becomes when there was, in fact, no direct
10 testimony of anyone seeing Mr. Dove place that knife or
11 strike the victim with that knife.

12 Again, the fingerprints or lack of fingerprints
13 are such an important issue, or the lack or inability to
14 test for fingerprints.

15 Secondly, Judge -- or, thirdly, I suggest the
16 verdict was inconsistent. The jury came back with
17 aggravated manslaughter, finding not guilty on the homicide;
18 and, yet, finding him guilty on felony murder, without going
19 into the specifics of the charges. I suggest that the
20 intent was in conflict in the jury's mind, and on that basis
21 that should not stand.

22 Other than that, Judge, I have nothing at this
23 time.

24 THE COURT: Miss Charles.

25 MS. CHARLES: Your Honor, I would submit to the

Argument-Charles

9

1 Court that although counsel's arguments should be given some
2 consideration in light of all of the evidence that was
3 presented to the Court, that the motion for a new trial
4 should be denied.

5 One could give, could afford a lot of weight to
6 Mr. Roberts' argument with regard to the lost evidence if
7 and only if that was the only evidence presented to the
8 Court at this time. But I would submit to the Court that we
9 had additional, we had competent evidence that allowed a
10 jury to make an appropriate finding in this matter.

11 The knife itself, whether or not there's
12 substantial questions surrounding the knife itself. One,
13 whether or not it was actually the murder weapon. But let's
14 just assume for argument's sake that it was, in fact, the
15 murder weapon.

16 This was a knife that was found on the street.
17 There was a little controversy as to whether it was found in
18 an alleyway or found in the curb or found on the sidewalk.
19 But let's just assume for argument's sake that the weapon
20 itself was found. There was also testimony adduced at trial
21 from Mary Rasheedah Banks as well as her sister, another
22 sister, who ultimately turned this weapon in to the police
23 that the weapon was placed -- that, one, there was no
24 evidence that there was any blood or anything on this
25 particular weapon. So that brings into question whether or

Argument-Charles

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1 not it was, in fact, the murder weapon.

2 And, additionally, outside of the fact that they
3 were not able to testify to the presence of any kind of
4 blood on this particular weapon, the weapon was placed in a
5 plastic bag.

6 Now, typically, in order to preserve any kind of
7 evidence, and particularly blood samples and things of that
8 nature, weapons are not handled in such -- I mean, evidence
9 is not handled in that manner. They're typically placed in
10 paper bags to preserve whatever evidentiary evidence might
11 be present.

12 Additionally, this weapon was handled by Rasheedah
13 Banks, very possibly destroying any kind of fingerprint
14 evidence that may or may not have been present at the time.

15 So I would submit that if your Honor were to
16 afford any weight to counsel's argument with respect to the
17 fact that the weapon was ultimately misplaced by the State,
18 that even if this weapon were produced, that it would not
19 prove or disprove anything.

20 Additionally, as I submit that the State had other
21 competent evidence. This was not a circumstantial case.
22 Counsel has made -- has described the manner in which his
23 client was identified as if it was haphazard and without
24 some degree of certainty. But three individuals made
25 photographic identifications of this particular defendant as

Argument-Charles

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1 being the person who was seen at the scene, who was observed
2 at the scene not once, but at least twice with particular --
3 there was a male witness who testified, who indicated that
4 Mr. Dove had come to the scene earlier. He had gotten a
5 pretty good look at him at that point, and then he later
6 returned to the scene. So I would submit that
7 identification in this particular case is not in issue.

8 If it were an issue I think that the weapon, or
9 the loss or the lack of presence of this weapon might be of
10 more concern in this particular case. So I submit that on
11 those particular issues the motion for a new trial should
12 fail.

13 I would also add that the standards espoused by
14 the defense in this case be utilized by the Court in
15 evaluating such a case is the federal standard, whether or
16 not the -- the issue -- the evidence was material to guilt
17 or innocence; whether or not there was some prejudice to the
18 defense, and whether or not there was bad faith on the part
19 of the government.

20 I would submit that the three-prong test espoused
21 by the defense in this case has not been met because,
22 clearly, there was no bad faith on the part of the
23 government. At best one could attribute the efforts by the
24 State as akin to some Keystone cop investigation. But
25 having it rise to the level of bad faith, I submit, that is

Argument-Charles

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1 not the case. And for the other reasons stated, I submit
2 that material to innocence or guilt or prejudice to the
3 defendant also must fail.

4 With regard to whether or not the verdicts were
5 inconsistent, I would submit that they are not. Felony
6 murder is, essentially, a strict liability claim. And if
7 the jury believed this individual was engaged -- was in the
8 course of committing a robbery or some underlying felony --
9 in this particular case they found Mr. Dove guilty of the
10 underlying felony first degree robbery -- and if during the
11 course of committing that felony someone is killed, then one
12 is guilty of a felony murder.

13 The fact that the jury returned its verdict on a
14 lesser included, on the aggravated manslaughter, is not at
15 all inconsistent because it's very well -- very possible and
16 very logical this jury may have believed that although
17 Mr. Dove struck the victim in the chest, in the heart area,
18 that based on the circumstances that they were apprised of,
19 they did not necessarily believe that his actions were
20 purposeful and knowing.

21 However, they could easily construe his actions to
22 be circumstances which are reckless in this particular case.
23 So the verdict itself, I would submit, is not inconsistent.
24 And for all those reasons, your Honor, the State would
25 submit that the motion for a new trial should be denied.

Argument-Roberts

13

1 THE COURT: Mr. Roberts.

2 MR. ROBERTS: Yes, just briefly, if I may respond,
3 Judge, on two issues.

4 Number one, again, the material that was turned
5 over after the State's case comprised of a statement from
6 the witness, numerous pages of police reports from, as I
7 recall, at least two different detectives. I suggest that
8 whenever these reports were in the possession of the Newark
9 Police Department, or somewhere in the Prosecutor's Office,
10 the fact that it was not turned over, whether intentionally
11 or negligently, does, in fact, constitute bad faith, and
12 does comply with the third prong of the test that I
13 indicated in my brief.

14 Further, the prosecutor indicated that there was a
15 question whether or not the knife that was found was, in
16 fact, the murder weapon. And I suggest that that clearly
17 goes to the most important issue in the case, and goes
18 clearly to the credibility of Miss Banks who made that
19 statement. She said without any question that was the
20 murder weapon. No question about it. I saw it. That's it.

21 There was various testimony as to what kind of
22 knife it was. There was various testimony as to whether or
23 not there was blood on the knife. Again, without it there's
24 no way of testing, no way of knowing if, in fact, it was.
25 And the fact that we don't know if it was the murder weapon

Argument-Charles

14

1 or not adds to the question that was left in the minds of
 2 the jury. Was Miss Banks accurate in what she said? Did
 3 she see the actual knife? Was it the knife? We simply
 4 don't know, and that's the entire, major controversy that
 5 exists without the presence of that knife.

6 MS. CHARLES: Your Honor, briefly, if I could. I
 7 don't recall any testimony where Miss Banks indicated that
 8 that specifically was the murder weapon. I believe she said
 9 she saw a knife that she thought could be the murder weapon,
 10 but with the emphasis added by counsel, I don't recall that
 11 being the case.

12 Additionally, with regard to the evidence that was
 13 produced, your Honor is well aware of the situation where
 14 the State brought the newly discovered evidence to the
 15 attention of the State, and the State was of the mind not to
 16 utilize it, and typically when evidence or -- of such nature
 17 is brought, if this had been -- this could be interpreted as
 18 a discovery violation, and typically a remedy is to exclude
 19 that evidence. This evidence was very favorable to the
 20 State, and the State was of the mind not to utilize it.

21 The defense was of a mind to use it. The State
 22 then decided that if the defense was going to use it,
 23 obviously, as embarrassing as it may have been, it would be
 24 less embarrassing if the State brought it forth. So just so
 25 that the record is clear with respect to those

Court Ruling

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1 circumstances.

2 THE COURT: Mr. Roberts, you've made an
 3 application for a new trial under Rule 3:20-1, and the gist
 4 of that: A judge shall not, however, set aside the verdict
 5 of the jury as against the weight of the evidence unless
 6 having given due regard to the opportunity of the jury to
 7 pass upon the credibility of the witnesses it clearly and
 8 convincingly appears there was a manifest denial of justice
 9 under the law.

10 Now, the issue as to that particular knife was
 11 raised before the jury, and the sufficiency or lack of
 12 sufficiency of the investigation by the police was properly
 13 put before the jury and commented on in the summation by
 14 defense counsel as to that particular issue.

15 So I feel it resulted in a fact question that a
 16 jury, not only had the right to, but did determine. I find
 17 that under the rule, I find no denial of justice, and I deny
 18 the application.

19 I'll hear you on the question of an extended term.

20 MS. CHARLES: Your Honor, the State filed the
 21 appropriate application on April 17 of 1998 requesting a
 22 mandatory life sentence for this particular individual
 23 pursuant to 2C:43-7.1. In support of same the State's
 24 application included copies of defendant's two prior
 25 convictions for first degree offenses. These two prior

Colloquy

16

1 first degree offenses were robberies which took place on
2 separate occasions, and for which defendant pled guilty, or
3 was found guilty for these offenses on separate occasions.

4 The statute which supports this application
5 indicates that it is a mandatory sentence if your Honor is
6 to find that the predicate prior convictions exist, and I
7 would submit that the -- that the judgments of convictions
8 submitted to the Court are proof positive, or at least are
9 typically afforded substantial accord when one is looking to
10 prove the predicate process.

11 On February 17, of 1989, Mr. Dove was convicted of
12 first degree robbery and fourth degree possession of a
13 weapon. And on October 14 of 1988, Mr. Dove was convicted
14 of two counts of first degree robbery; one count of third
15 degree possession of a weapon, and a count of resisting
16 arrest. Pursuant to the statute I would submit that the
17 State has met its burden with respect to the filing of a
18 mandatory sentence for life imprisonment without parole. I
19 would just add that based on this particular defendant's
20 history, not only is he a candidate for the mandatory life
21 sentence, he is also a candidate for a mandatory extended
22 term under subsection B of that same statute, and he is,
23 likewise, a candidate for a persistent offender under
24 2C:44-3A. But the operative statute in this particular case
25 is, obviously, the most serious of which, which would

Colloquy

17

1 subject this individual to life imprisonment without parole.

2 THE COURT: Mr. Roberts.

3 MR. ROBERTS: Judge, before I respond -- and
4 there's not much I can respond to in your decision
5 denying --

6 THE COURT: I also should add, in addition, as to
7 the question as to the finding by the jury as to the
8 conflict of the various counts, I ought to comment on that.
9 They found that robbery had been committed, and that as a
10 result of that robbery a person was killed. So I feel they
11 probably found under Count Two that the felony -- it was a
12 felony murder.

13 As to Count One, apparently a question of knowing
14 and purposeful murder may have influenced their verdict. I
15 find no conflicting problem on the jury returning the
16 verdict as they did. So I've amended my decision to include
17 that. I'll hear you.

18 MR. ROBERTS: Judge, I ask your Honor -- you did
19 not address yourself specifically to the issue of the charge
20 to the jury as to the lost evidence. I don't know if you
21 want to or not.

22 THE COURT: I know. I felt that counsel had
23 properly presented the issues in summations, and I did not
24 feel that it required a charge from the Court on that
25 particular area.

1 MR. ROBERTS: Thank you, Judge.
 2 Your Honor, as to the extended term -- I mean, as
 3 to the life sentence, I would hope that you would tell me
 4 I'm wrong, but my reading of the statute does indicate that
 5 the Court has no discretion in that the judgments of
 6 conviction that were given to me appear to be accurate.
 7 In fact, this defendant was convicted, or pleaded
 8 guilty to the charges, and the crimes indicated by the
 9 prosecutor. So I would have no comment to that, Judge, at
 10 this time.
 11 THE COURT: All right. I'll hear you with
 12 reference to the presentence report, if you have any remarks
 13 therein.
 14 MR. ROBERTS: Judge, no additions or corrections
 15 other than jail time.
 16 THE COURT: Yes. He's entitled to an additional
 17 seven days, I believe.
 18 So make a total of 326 days.
 19 MR. ROBERTS: 326 altogether?
 20 THE COURT: Yes.
 21 MR. ROBERTS: Okay.
 22 THE COURT: Mr. Dove, you've sent a letter to me,
 23 which I have read, and you protest your innocence which you
 24 have done all the way through. Except as I must necessarily
 25 point out to you, the issue of the facts was for a jury and

1 not for me to determine. My function, after a jury having
 2 found you guilty of the charge, I am, therefore, obligated
 3 by law to sentence you therein. I realize you maintain your
 4 innocence, and I'm assuming, therefore, properly, that an
 5 appeal will be properly filed. Outside of that I make no
 6 further comments to you with regard to this.
 7 Is there anything you want to say?
 8 MR. DOVE: Yes. I just like to say I didn't kill
 9 nobody. I wasn't in that area. When the police arrested me
 10 I didn't run. I didn't know anything about it. I didn't
 11 know nothing why I was locked up for. I lived on 21st
 12 Street where I got locked up. If I had killed someone, when
 13 I saw the police coming, I would have ran. But it ain't too
 14 much I can -- that's all right. I just don't believe it.
 15 THE COURT: The only thing I comment on, of
 16 course, is your postscript of your letter to me. I may have
 17 got high, but I did not have to steal or kill.
 18 MR. DOVE: Yes, I get a check on the 1st. This
 19 happened the 1st. I don't have no reason why. I get \$500
 20 check every 1st of every month. This happened on the 1st.
 21 That don't make no sense. Mailman right my way come early
 22 in the morning, and this happened. Come on. These people,
 23 they hiding for someone who did it. They know who did it.
 24 When one of them get killed, I guess somebody will say
 25 Mr. Dove, I'm sorry, you know. I don't know none of those

1 people.

2 THE COURT: Mr. Dove, unfortunately, as I have
3 indicated to you, a jury has found you guilty of all of
4 these charges. The State has made a motion for an extended
5 term as a repeat offender, and pursuant to the statute
6 they've confirmed their right to do so, and I must agree by
7 virtue of the evidence submitted to me that they are
8 correct, and I shall sentence you accordingly.

9 The jury, despite your disagreement, required a
10 total time of less than four and one-half hours to determine
11 your guilt on these very serious matters.

12 I have considered your presentence report very
13 carefully. You're 36 years of age. You've been convicted,
14 as the State has indicated, of two serious crimes before.
15 There's the necessity to deter you and others.

16 This Court, under Indictment Number 2358-5-97, for
17 the purpose of sentencing merges Count One with Count Two,
18 and under Count Two you're sentenced for a period of life
19 imprisonment without parole. I impose \$100 Victims
20 Compensation award; a \$75 Safe Street award, and a \$30
21 police penalty.

22 Count Three shall merge for purposes of sentencing
23 with Count Two.

24 On Count Four, I impose a consecutive 18 month
25 sentence, and impose an additional \$50 Victims Compensation

1 award, a \$75 Safe Street award, and a \$30 police penalty.

2 Count Five shall merge for the purpose of
3 sentencing with Count Two.

4 Credit will be given for 326 days served in
5 custody.

6 Sir, you have the right to file an appeal within
7 45 days, and counsel will be assigned if that be necessary.

8 Thank you.

9 MS. CHARLES: Thank you, your Honor.

10 MR. ROBERTS: Thank you, Judge.

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(Whereupon, the matter is concluded.)

CERTIFICATION

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I, FRANCES L. FORBES, C.S.R., License Number
 XI-01085, 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 Proceedings, and is a true and accurate compressed
 transcript of my stenographic notes to the best of my
 knowledge and ability.

Frances L. Forbes, C.S.R. *Sept. 16, 1999*
 Official Court Reporter Date
 Essex County Courthouse

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